5 December 2017

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Planning Panels Victoria Attn: The Panel Coordinator Level 5, 1 Spring Street, Melbourne VIC 3000

## NORTON ROSE FULBRIGHT

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Your reference:

Our reference: 2849696

**Dear Panel Coordinator** 

## Monash Planning Scheme Amendment C129 Land: 1221-1249 Centre Road, Oakleigh South

We continue to act for Sterling Global in relation to the above matter.

We refer to the Panel's directions dated 4 December 2017.

We maintain our position that legal professional privilege subsists in the legal advice provided to Urbis. In this regard, we note that:

- The relevant Council report quotes from a letter from Urbis which was submitted with Council in response to a Council RFI.
- The Council report has quoted part of the Urbis letter, including where it states "Legal advice obtained by our client in relation to these applications has confirmed that the proposed use should be characterised as rehabilitation works, which is an innominate use in the SUZ and GRZ".
- The legal advice was not and has never been released to Council and the Urbis letter does not quote from the advice itself, as is suggested in the Panel's letter.
- The advice is merely referred to, it does not disclose the gist, substance or conclusions reached in the advice. It is referenced to support Urbis' opinion about the way the permit application should be characterised. In our view, this is the same as saying "advice received has confirmed our view that...." This does not amount to a waiver of privilege in the advice.
- The advice was not referenced for the purpose of seeking to obtain some advantage in proceedings. It was simply referenced to give the Council some comfort in its assessment of the application that what was being applied for i.e. "back filling and site rehabilitation", was appropriate.
- Council accepted the Urbis response and opinion as to characterisation and issued a permit accordingly.

Notwithstanding the above, we are instructed to provide a copy of the advice (copy enclosed) to the extent that it addresses the characterisation issue. Otherwise, those parts of the advice not relevant to the APAC-#60912645-v1

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characterization issue have been redacted. We note the advice runs to 26 pages. Where whole pages have been redacted (pp's 2, 5, 9-10, 12-16, 20-25) these have not been reproduced in the enclosed version.

Yours faithfully

Rory O'Connor Senior Associate Norton Rose Fulbright Australia Partner: Sally Macindoe

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