

IN THE MATTER OF
PROPOSED AMENDMENT GC81 TO THE MELBOURNE
AND
PORT PHILLIP PLANNING SCHEMES
FISHERMANS BEND REVIEW PANEL

**OUTLINE OF SUBMISSIONS ON BEHALF OF FRANK WALKER AND
SEL REKLAW PTY LTD (ACN 114 715 669)**

Introduction

1. These submissions are made on behalf of Frank Walker and Sel Reklaw Pty Ltd (ACN 114 715 669), Submitter 150 to this Review Panel. (**Sel Reklaw**)
2. Sel Reklaw is the owner of the land at 541 Graham Street, Port Melbourne. (**Site**)
3. This Site currently houses several warehouse buildings used for the purpose of storage and distribution.
4. The Site itself is a large land parcel with an area of 14,025sqm. It has a 77m frontage to Graham Street to the east. It abuts land and a vehicle ramp associated with the Westgate Freeway to the north and a large warehouse building for Fantastic Furniture to the west.
5. Pursuant to the Proposed Amendment, the Site lies within the Wirraway Precinct, in a Non-Core area. An FAR of 2.1:1 applies to the Site with discretionary site coverage of 70% (DDO Doc #66F). A density of 131 dwellings per hectare is proposed (Doc #66D)
6. Significantly, under the Proposed Amendment, a new 22m wide road lies along the northern boundary of the Site (extension of Woolboard Road). No crossovers to the new road are permitted (Map 2 Doc #66E). A new open space area along the south of the new road (width unspecified) is nominated in the CCZ Map 3 (Doc #66E) but not in the DDO Map 3 (Doc #66F). A neighbourhood park to the west with an area of 1,864sqm is proposed (Map 3 Doc #66E). Mandatory equinox overshadowing

controls between 12.30pm to 3.30pm apply to this park (Doc #66F). The alignment of the underground Metro Rail “clips” the north-east corner of the Site.

7. The Site lies within Precinct W-4 with the following preferred character:

Generally a mid-rise scale of development with opportunities for additional upper levels that are visually recessive from the streets and JL Murphy Reserve and do not result in podium-tower forms.

Provision of private and communal open space within developments with good access to sunlight to provide high levels of amenity for residents and workers.

A variety of street wall heights between 4 and 8 storeys to contribute to architectural diversity within the street and provide opportunities for portions of the street to receive greater levels of sunlight access through out the day.

8. Planning application, PA1700321, submitted in December 2017 seeks a permit for demolition and construction of four towers of 15 and 18 storeys on the Site for offices, shops, food and drink premises and apartments. A further information request from DELWP dated 16 January 2017 was received by the Sel Reklaw in mid-January 2018.
9. This application was called-in by the Minister in February 2018.

Submissions

10. In December 2017, Sel Reklaw made a submission to the Minister raising a number of issues including:
 - a) The setting aside of land for new streets, lanes and open space pursuant to the proposed CCZ is inequitable and a poor planning outcome;
 - b) The setting aside of new streets, lanes and open space as a pre-condition to approval of a permit for any buildings and works pursuant to the proposed CCZ is inequitable and a poor planning outcome;
 - c) The concept of public benefits (FAU) is not justified and is unreasonable and inequitable taking into account the relatively low threshold of FAR;

- d) Public benefits and public infrastructure should be funded through a fully developed, transparent and justified development contributions plan;
 - e) The maps in the CCZ should be amended to remove any reference to “potential metro rail alignment”, roads and public open space;
 - f) The DDO is unnecessarily complex, confusing and contradictory;
 - g) The overshadowing controls are unreasonable and should not be mandatory;
 - h) The building height at 6 storeys is unreasonably restrictive and unjustified given the physical and strategic context of the Site;
 - i) The local policy diminishes and “down plays” the strategic significance of the Site and precinct and is unnecessarily conservative;
 - j) The local policy concerning FAR, affordable housing, dwelling mix, ESD and FAU is arbitrary and cannot be justified;
 - k) The lack of transitional provisions for existing permit applications is unfair.
11. These submissions are generally addressed in the oral and written submissions already presented to the Review Panel by Mr Canavan QC, Mr Tweedie SC and Ms Sharp. Sel Reklaw does not repeat these submissions but expresses its strong support and endorsement of the submissions.
12. Although submissions with regard to the legality of the Proposed Amendment, the population target, the FAR, the FAU, the parking overlay and the reduction in height and development opportunity for the Site and Fishermans Bend generally are not repeated in these submissions, this should not in any way be taken by the Review Panel as not being issues of continuing grave concern to Sel Reklaw.
13. In this regard, despite the various (and indeed, fundamental) changes that have been made to the Proposed Amendment during the course of the Panel hearing, the underlying objections of Sel Reklaw that the Vision and Framework starts from the wrong premise (ie a population target rather than a built form target) and significantly and unjustifiably diminishes the development potential of Fishermans Bend as a State Significant Urban Renewal Precinct on the edge of the CBD have not been addressed.

14. In addition to legal submissions made on its behalf and the witnesses called by the Landowners Group, Sel Reklaw has engaged Mr Sheppard, Mr McGurn and Mr Eaddy to provide an assessment of the Proposed Amendment and its application to the Site.
15. Mr McGurn and Mr Sheppard have assessed the built form and character outcome of the Proposed Amendment as it affects the Site.
16. Mr Sheppard gave oral evidence that the maximum FAR cannot be achieved on this Site within the proposed building envelope controls (6 storey preferred building height) as a result of the mandatory provision of the 22m public road to the north, the open space along this road, the neighbourhood park to the west, the site coverage at 70% and potentially, the overshadowing controls to the neighbourhood park.
17. Mr McGurn considers that even if the FAR can be achieved, the development yield of 2.1:1 is very modest given the context of the Site within 200m of both the Wirraway and Sandridge Activity Centres.
18. In this regard, it is not surprising that the development yield is very modest given that, in accordance with the evidence of Mr McGurn, almost 42% of the Site is required to be provided for public infrastructure.
19. Relevantly, the public infrastructure required under the controls is not infrastructure needed by the re-development of the Site and whilst the Site will enjoy its share of a general benefit, the road and both areas of open space are, on any reasonable assessment, for the purpose of the broader Wirraway Precinct and Fishermans Bend. This is demonstrated by the fact that no crossovers from the Site are permitted to the new road to the north.
20. That compensation for this public infrastructure (including the setting aside of the land for the infrastructure, the construction of the infrastructure and the transferral of the land to Port Phillip City Council) is not provided for in the Proposal Amendment is unlawful and, quite frankly, unfair to the extreme.
21. As already submitted to the Review Panel, this *de facto* reservation of its land without a right to compensation is in breach of the objectives of the *Planning and Environment*

Act. Section 4(2)(1) of the *Planning and Environment Act* provides that an objective of the planning framework established by this Act is:

(1) *to provide for compensation when land is set aside for public purposes and in other circumstances.*

22. Sel Reklaw supports submissions made by other parties that this element of the Proposed Amendment is *ultra vires* and manifestly unfair.
23. Putting aside the issue of public infrastructure and having regard to the built form outcome proposed for the Site, as already submitted to this Panel, the Landowners, including Sel Reklaw, strongly reject the starting point of this Proposed Amendment being a population target rather than a built form outcome.
24. In this regard, Sel Reklaw submits the benefits of its Site allow for substantial redevelopment for retail/office and residential development, including:
 - a) Proximity to the CBD (approximately 1km);
 - b) Proximity to the proposed tram routes along Plummer Street and the underground rail;
 - c) Existing and emerging character of the area;
 - d) Lack of any sensitive site abuttals that would cause development to be reduced in scale;
 - e) Lack of any substantial constraints on development in terms of heritage, vegetation or insurmountable flooding or environment issues; and
 - f) The abuttal of the Site to the Westgate Freeway which provides a robust opportunity for substantial built form to reduce the impact of the freeway on the Precinct in the immediate and broader context.
25. Further, as provided in the evidence of Mr Eaddy, the Proposed Amendment has failed to consider the environmental constraints of the Melbourne wind climate and consequently, lower adversely shaped buildings from a wind perspective may result. Mr Eaddy considers that taller aerodynamically wind engineered buildings may

mitigate the wind effects on the surrounding streetscapes without the need for the significant built form restrictions in the Proposed Amendment.

26. Sel Reklaw submits there is simply no reasonable planning justification for the setting of a mandatory FAR of only 2.1:1 in Wirraway Non-Core.
27. In this regard, it is submitted that the only reason for the very low FAR for the Wirraway Non-Core is that the arbitrary population target of 80,000 has been substantially absorbed by other precincts in Fishermans Bend and Wirraway Non-Core is the last precinct to be “filled”. Given there have been no infrastructure reasons put forward to the Review Panel as to why the population target is 80,000 people, this resulting “running out of population” to fill Wirraway Non-Core is not, on any reasonable view, an example of orderly and proper planning of a State Significant Urban Renewal Precinct.
28. The argument that the low FAR is character-driven or in order to achieve family-friendly housing is flimsy and has not been substantiated. In this regard, Mr Sheppard has demonstrated to the Review Panel that mid-rise character and family-friendly housing can be provided in developments of up to 12-15 storeys and well above an FAR of 2.1:1.
29. With regard to the lowering of the preferred height from 18 storeys to 6 storeys in the Proposed Amendment, not only is this an example of a substantial reduction in development opportunity and a squandering of very valuable land on the door of the CBD, it ignores the submissions of many of the very experienced developers in this area that the soil quality, inability to create basement parking and construction costs make development of six storeys unviable in this area. It is surprising such submissions have not been taken into consideration given these developers will be parties that eventually deliver the vision for Fishermans Bend.
30. With regard to parking provision, Sel Reklaw relies on the evidence of Ms Dunstan noting her opinion that the rate for dwellings should be a maximum of 1 space per dwelling, not 0.5 per dwelling. The Landowners overarching submissions also address this issue.

31. Finally, Sel Reklaw submits that the lack of transitional provisions in the Proposed Amendment is highly unfair. Sel Reklaw submits that transitional provisions should be included for planning applications that have lawfully been applied for under the existing controls. The overarching submissions of the Landowners in this regard are relied upon.

Conclusion

32. For the above reasons together with overarching submissions and evidence provided to the Review Panel, it is submitted that the Review Panel should recommend that the proposed Amendment not proceed in its current form.

17 May 2018

Chris Canavan

Jane Sharp

Instructed by Russell Kennedy Lawyers