
Request to be heard?: Yes

Precinct: Wirraway

Full Name: Rhodie Anderson

Organisation: Fishermans Bend Management Pty Ltd

Affected property:

Attachment 1: Letter_to_Fisher

Attachment 2:

Attachment 3:

Comments: Please see uploaded letter

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Your ref:

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15 December 2017

Fishermans Bend Task Force
Department of Environment, Land, Water and Planning
8 Nicholson St,
EAST MELBOURNE VIC 3002

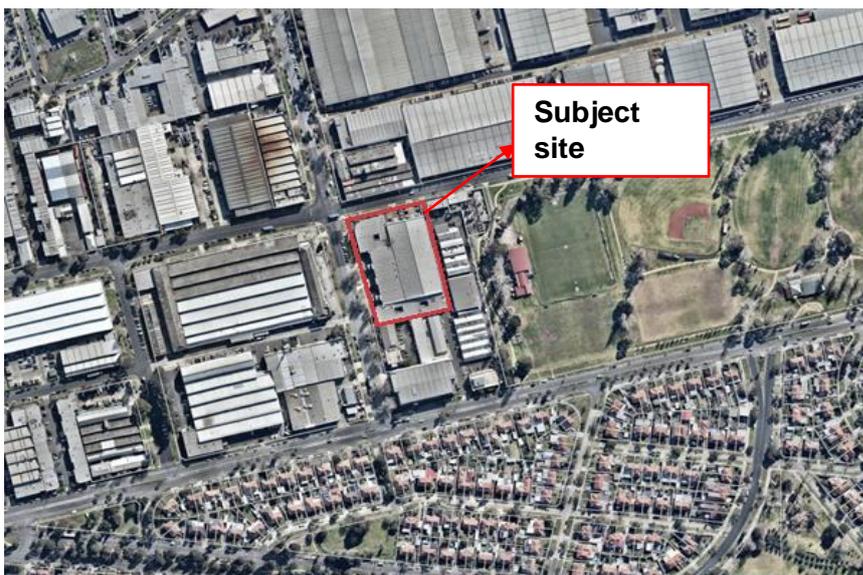
Dear Sir/Madam

18 - 22 Salmon Street, Port Melbourne Amendment GC81

We act on behalf of Fishermans Bend Management Pty Ltd, the owner and prospective developer of the land at 18-22 Salmon Street, Port Melbourne, which is affected by Proposed Amendment GC81.

Our client is the Applicant for a current planning permit application (App. Ref. PA1700301) proposing redevelopment of the land for a 12 storey mixed use building comprising a primary school, a library, a community hall, two (2) supermarkets, specialty retail tenancies, offices, residential apartments and publicly accessible spaces including a through-block link. The application was submitted to the Department of Environment, Water, Land and Planning (DELWP) on 13 November 2017.

The subject site is a key landholding within the Core Area of the Wirraway Precinct, being on the south-east corner of Plummer and Salmon Streets. The site has a frontage to Salmon Street of approximately 120.7 metres, a frontage to Plummer Street of approximately 80.5 metres and a total site area of 9,712m².



Site location plan

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Our client has reviewed the documentation associated with proposed Amendment GC81, specifically as it relates to the Port Phillip Planning Scheme. Whilst the overarching intent and vision of the Amendment to create a sustainable, mixed use community is supported, in broad terms it is our client's submission that the proposals contain a number of provisions that are unnecessarily complex, unclear and restrictive, and which will undermine the renewal of the precinct.

Proposed Planning Controls

Below is a brief summary of the key controls proposed by the Amendment, as we interpret them, which would specifically affect our client's site.

Capital City Zone Schedule 1 (CCZ1)

- Provision of a new public open space in the north west portion of the site at the street corner. A permit must not be granted for buildings and works on this land where this open space is not allowed for in the proposal;
- A new 12m wide road along the southern boundary of the site. It is unclear whether this designation falls partly or entirely on our client's land;
- Both Plummer and Salmon Street frontages are designated as "no crossover" streets, where a permit must not be granted for the creation of vehicle access points unless no other access is possible; and
- A maximum floor area ratio of 4.1:1, which must not be exceeded unless the additional floor area is "*not used for a Dwelling*" or a public benefit and subsequent floor area uplift are agreed.

Design and Development Overlay Schedule 30 (DDO30)

- Preferred maximum building height of 24 storeys;
- Based on the current 12 storey proposal (rather than the maximum 24 storey height limit);
 - Mandatory maximum street wall height to Plummer Street (width less than 22m) of 6 storeys and 23m
 - Mandatory maximum street wall height to Salmon Street (width greater than 22m) of 8 storeys or 30m
 - Preferred minimum setbacks above street walls of 10m, mandatory minimum setback of 5m
 - Mandatory maximum wall height of 6 storeys and 23m on side and rear boundaries
 - Mandatory building separation within a site of 20m for components greater than 6 storeys (23m) in height. Lesser separation is permitted for non-habitable interfaces.

- Prescriptive wind impact requirements for buildings over 40m in height.

Development Plan Overlay Schedule 2 (DPO2)

- Requires that a Development Plan generally in accordance with the *Fishermans Bend Vision, Fishermans Bend Framework* and any adopted *Precinct Plan* be approved prior to any permit being granted for development of the land;
- The Development Plan must consider opportunities for a public transport interchange, a public square and integration of public transport infrastructure, as well as maximising commercial densities and creating an appealing pedestrian environment.

Parking Overlay Schedule 1 (PO1)

- Imposes maximum rates of parking provision of 0.5 spaces for each dwelling, 1 space / 100sqm of office and retail space and for places of assembly, and 2 spaces / 100sqm of supermarket space.
- A permit may only be granted to exceed the maximum rates of provision if a car parking plan is prepared and demonstrates:
 - Share car spaces are provided at a rate of 1 / 60 car spaces or 1 / 90 dwellings, whichever is higher.
 - Motor cycle spaces allocated at a rate of 1 / 100 car spaces or 1 / 50 dwellings, whichever is higher.
 - Bicycle spaces allocated at a rate of 1 / dwelling and 1 / 10 dwellings for visitors, 1 / 50sqm or non-residential floor space and 1 / 1,000sqm for visitors.

Submissions in Relation to Proposals

Our client makes the following submissions in relation to the proposals laid out in the Amendment documents, both in relation to the specific designations that affect its land, and more broadly about the structure and content of proposed controls and policies:

General Observations and Comments

Generally speaking, the proposed planning framework as drafted is overly complex and includes excessive duplication of controls and policy provisions.

The purpose of the Planning Scheme at Clause 1.02 (amongst others) seeks to “*provide a clear and consistent framework within which decisions about the use and development of land can be made*”. For the reasons ventilated below, the proposed suite of controls and the Framework Plan fail to satisfy this purpose.

The Framework and planning controls would impose a strict, rigorous and largely mandated use and development framework. Given the transitional nature of this urban renewal area -

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one that is targeted to achieve increased population growth and higher density land use and development outcomes – this appears counterintuitive. Further, the regulatory nature of the Amendment is at odds with the context of the performance-based framework of the Victoria Planning Provisions

The Amendment is underscored by a lack of commitment to new public transport and infrastructure. While the Amendment acknowledges a 40-year plan, the controls and Framework Plan provide no tangible resolution or action plan for essential infrastructure (particularly public transport) to the area. Our client submits that this inherent uncertainty regarding the accessibility of the precinct will have a dual negative effect of constraining the development potential of land holdings and limiting market interest in future commercial/residential product.

The Amendment does not include any transitional provisions. This is a critical shortfall in the controls, as there are no allowances for amendments to existing permits or current permit applications. Our client submits that this is highly unreasonable for landowners that have already invested significant time and capital to advance proposals which largely accord with the current vision for Fishermans Bend set out in the Planning Scheme.

Duplication of Dwelling Density Provisions

The Amendment includes a floor area ratio control in the CCZ1, a dwelling density policy at Clause 22.15-3 and a “*preferred minimum floor area ratio which should be set aside for a use other than dwelling*” also at Clause 22.15-3. Each of these proposals seeks to limit the number of dwellings to be delivered in new developments.

In this regard the structure of the Amendment is unnecessarily complicated, repetitive and difficult to understand, even for planning professionals. The intent to prioritise non-residential floor space over new housing could be more helpfully expressed as a single, “dwelling floor area” control or policy. However, our client strongly submits that if a framework to promote non-residential land uses were to be pursued, it should allow sufficient discretion for a market-led approach, to ensure that it does not inhibit development in the precinct.

Built Form Controls

Much like the dwelling density provisions, the built form controls in proposed DDO30 are unnecessarily complex and should be simplified. Controls should be expressed as preferred design parameters to enable site responsive outcomes to be realised.

It is unclear what the “*building setbacks from new and existing streets and laneways*” control at Part 2.0 of the control seeks to achieve. Our best guess is that it is to be read as expressing setback requirements for upper building levels above a street wall. If so, this should be clarified and the control included within *Table 1 – Built Form Requirements*.

The relationship between the mandatory floor area ratio restrictions and the built form controls is highly questionable. Achieving maximum building envelope parameters would, certainly on our client’s land, require the delivery of a significant amount of non-residential floor space, supplemented by a very limited number of dwellings. The market demand for development with such a high proportion of non-residential floor space has not been tested

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with any rigour, and the way the controls have been drafted, would not allow any reasonable opportunity for a market-driven response to land use.

Maximum Parking Rates

The Amendment outlines a vision for transport movements in the future that appears unrealistic in the absence of any meaningful commitments by Government for the delivery of transport infrastructure in the area. This is compounded by the proposed PO1, which seeks to impose ambitious maximum car parking requirement for dwellings, retail and commercial uses. In relation to retail uses, it is important to note that supermarket operators require at least 4 car spaces per 100m² to be made available. If the car spaces cannot be provided, the operator will not commit to a tenancy. Given the significant growth proposed in this area, it is essential that supermarkets be encouraged to establish in this area.

It is submitted that the parking requirements are too narrowly drawn, do not reflect existing conditions, are entirely dependent on the delivery of public transport infrastructure (for which there is no committed funding or timeframe) and do not provide decision-makers sufficient discretion to consider these factors in determining applications. The proposed PO1 amendments should be revised or omitted accordingly.

Submissions in Relation to Specific Site Designations

Development Plan Overlay

Our client objects to the proposed imposition of DPO1 on its land for the following reasons:

- There is nothing in the Amendment documents or supporting material to indicate that the 'Wirraway Transport Interchange' is a committed public infrastructure project.
- It is unreasonable to require landowners to plan and design for a project with no status, and to sterilise development of land in the interim through imposition of a prohibition on planning permits.
- Planning Practice Note 23 (Applying the Incorporated Plan and Development Plan Overlays) requires a strategic framework to underpin the Overlay, which provides direction about development outcomes and provides certainty to land owners and third parties about the form of development. Under circumstances where the status of the infrastructure project driving the application of the Overlay is uncertain, the Amendment cannot comply with the requirements of the Practice Note.
- If the delivery of the Wirraway Transport Interchange project were to receive necessary Government funding to become a committed infrastructure project in the future, then the more appropriate planning mechanism to facilitate the realisation of the project would be the Public Acquisition Overlay.
- The current interim controls make allowance for the potential future accommodation of a public transport interchange adjacent our client's land, through setback expectations from Plummer Street. The current framework should remain in place until such time as there is more certainty around the design requirements for a future interchange, if it is to be pursued at all.

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If the DPO is to be adopted, our client submits that the control must include transitional provisions which enable permit applications made prior to its incorporation into the Planning Scheme to be considered and determined on their merits. The proposed ability to stage the preparation and implementation of Development Plans should be retained.

The control as currently proposed fails to uphold the objective of the Act to “*provide for the fair, orderly, economic and sustainable use, and development of land*”.

Public Open Space and New Road Designations

The future public open space on the north west corner of our client’s land, required under the proposed CCZI control, would seem to have some relationship to the notion of a future public transport interchange at the corner of Plummer and Salmon Streets, though this is not clearly explained in the Amendment material. In this regard we refer to our client’s submissions in relation to the proposed DPO1 control, regarding the imposition of mandatory requirements related to a public project for which no tangible commitment has been made by Government.

It is interesting to note that this future public open space area is not identified in the Fishermans Bend Public Open Space Strategy (**POSS Strategy**) dated April 2017 prepared by Planisphere. The purpose of the POS Strategy is to inform the Fishermans Bend Framework.

The proposed CCZI control would prevent a permit issuing until the open space and the road is provided to council. It is noted that our client’s current proposal facilitates access through the site, via a generous public plaza, to JL Murphy reserve to the east. In doing so it makes a positive contribution to the open space network in the precinct – an outcome that should not be prohibited through the introduction of the proposed controls.

The requirement, if any, for the provision of a new 12m wide road along the southern boundary of our client’s site (shown in Map 2 of the CCZ1 control) must be clarified.

The Amendment is entirely silent on matters of compensation, timing and process for public use designations on private land. It is our client’s submission that land owners must be fairly and adequately compensated for proposals which include a public use component, and that the Amendment must be resolved to clearly articulate the method of compensation. Insofar as the proposed planning controls prohibit a planning permit from being granted without handing over land for road and or open space, the controls constitute an unlawful acquisition of land other than ‘on just terms’ (see section 51 (xxxi)) of the Australian Constitution.

To introduce any controls, in particular mandatory restrictions on new development, ahead of resolving the public use model would be premature and unreasonable for landowners in the precinct.

Current Permit Application and Relationship of Amendment GC81 Proposals

The current permit application being run by our client provides a useful case study to highlight the shortcomings of the proposed Amendment.

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The application includes a number of initiatives that are broadly supported by the Amendment, including public facilities such as a primary school, library and community hall, generous retail provision (including supermarkets), office floor space, as well as a mix of apartments including a large proportion of accommodation suitable for families. The proposed building at 12 levels is half the height of the preferred maximum building height for the site expressed in the Amendment.

Even so, the proposed floor area ratio of the application would comfortably exceed maximum allowable densities under the proposed CCZ1 control. Even if it is assumed that the proposed public benefits (school, library, community hall) qualify for a floor area uplift for dwellings, the proposal would still be prohibited on account of the number of dwellings and alternative location of a public plaza space than promoted by the Amendment.

Our client submits that even a very high level assessment of the current application against the Amendment highlights the unhelpful rigidity of the proposed planning control framework. In this instance, it would have the effect of prohibiting a proposal which seeks to advance the underlying objectives of the Amendment, and which will make a positive and tangible contribution to the regeneration of Fishermans Bend as a sustainable mixed use community. We respectfully request that our client's submissions be taken into consideration in any further work undertaken to refine the structure and content of the Amendment. We would be happy to further ventilate our clients concerns with the proposed Amendment in any forum deemed appropriate.

Request to be heard

In making this submission, our client notes that it wishes to be heard at a public hearing. Our client will require 1 hour for submissions with representation and experts to be confirmed at a later date.

Please do not hesitate to contact me on 8648 3500 should you have any queries regarding our client's submission.

Yours faithfully

A handwritten signature in blue ink that reads "Rhodie Anderson". The signature is written in a cursive, flowing style.

Rhodie Anderson
Partner