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**Request to be heard?:** No

**Precinct:** Sandridge

**Full Name:** Martin Spigelman

**Organisation:** Eldorado Group; Betieport Pty Ltd & Ingleport Pty Ltd

**Affected property:** 49 Bertie Street and 225 Ingles Street, Port Melbourne

**Attachment 1:**

**Attachment 2:**

**Attachment 3:**

**Comments:** Attached

# THE ELDORADO GROUP

Bertieport Pty Ltd – ACN 110 218 025  
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P.O. Box 143, St Kilda 3182

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15<sup>th</sup> May 2018

Ms Andrea Harwood  
Senior Project Manager  
Planning Panels Victoria  
GPO Box 2392  
Melbourne VIC 3001  
Via email: [planning.panels@delwp.vic.gov.au](mailto:planning.panels@delwp.vic.gov.au)

Dear Andrea,

## Submission to the Fishermans Bend Review Panel No. 49 Bertie Street and No. 225 Ingles Street, Port Melbourne

This submission is in relation to the properties at No. 49 Bertie Street and No. 225 Ingles Street, Port Melbourne, specifically regarding the potential implications of the Fishermans Bend Draft Framework and associated draft controls upon the development potential of these two sites.

We respectfully request you accept this late written submission, as the amendment has just come to our attention and we have been reviewing the array of documentation that has been tabled with the Review Panel.

**Figure 1 – Aerial photo of subject sites**



Source: Nearmaps

This submission has arisen from further review of various pieces of expert evidence and submissions made by City of Port Phillip to the Fishermans Bend Review Panel. Essentially, we consider the new draft Framework:

- Continues to exacerbate uncertainty for land owners.
- Is misaligned to the long-standing vision for Fishermans Bend as an expansion of the Central City.
- Provides for heights in some locations, including the subject site, that do not optimise use of existing infrastructure, such as bus routes and open space.
- Misaligns height controls and Floor Area Ratios.

## The Subject Sites

Both subject sites are located within the 'core' area within the Sandridge Precinct, within a Capital City Zone – Schedule 1 (CCZ1) and affected by a Parking Overlay – Schedule 1 (PO1), Design and Development Overlay – Schedule 30 (DDO30) and a Development Contributions Plan Overlay – Schedule 2 (DCPO2).

### Impact of the Proposed Controls under Amendment GC81

Specific to the site, the key implications of the draft controls are summarised as follows:

- **Building Height, Floor Area Ratios (FAR) and Overshadowing Controls**

Amendment GC81 seeks to amend the DDO30 to include new height controls, affecting the subject sites as follows:

- 49 Bertie Street – limit the south-western half of the site to 20 storeys, whilst the north-eastern half of the site is identified as being 'unlimited'.
- 225 Ingles Street – limit the entire site to 12 storeys.

These building height controls may seem reasonable within this context, however the ability for the sites to be developed to those extents is likely to be hindered by additional built form controls proposed under GC81 which relate to floor area ratios (FARs) and overshadowing upon public open spaces.

In considering appropriate building height and built form controls, it is important to consider the aspirations for the Sandridge Core Precinct, which is to become a premium office and commercial centre, balanced with diverse housing and retail, taking on the role of expanding the central city from the CBD and Docklands. The proximity of the site to the potential metro station further supports the provision of intensive mid to high-rise mixed-use development.

Both sites are identified within a 'core' area within the Sandridge Precinct and hence, have an applicable 8.1:1 FAR, together with a 3.7:1 minimum commercial FAR under the GC81 controls. We agree with the findings of Mr Sheppard (in submission dated March 2018), who states that such controls should be based on built form modelling rather than the distribution of floor area based on population targets.

We submit that the proposed FAR controls are misaligned with the height controls, particularly for the Bertie Street site, in that they would not enable the highest and best use of the land within this core area, putting the site at risk of being left vacant and significantly underutilised. Both sites are identified in the draft Framework Plan as being within an investigation area for an education and community hub (for a primary school), however we consider the ability to deliver such aspirations to be limited given the proposed restrictions on built form and floor area anticipated by the framework and draft controls.

We submit that the inclusion of employment opportunities and community facilities on privately owned sites within Fishermans Bend should be incentivised for land owners and developers rather than being mandatory requirements upon which comparatively minor uplift potential is hinged. Incentivising such outcomes would encourage land owners and developers to deliver high quality products which will benefit the future Fishermans Bend community and achieve the aspirations for Sandridge.

Specifically, regarding Floor Area Uplift, the draft Framework states:

*Introduce a Floor Area Uplift (FAU) control that is focused on delivering the following public benefits (in order of priority):*

- *Community infrastructure: developers can seek to apply a FAU on their site to deliver identified community hubs (see strategy 3.1.1 for the range and location of hubs where this applies). For every 100m<sup>2</sup> of community infrastructure delivered, developers are able to deliver an equivalent value of residential floor area.*
- *Additional public open space: developers can seek to apply a FAU on their site to deliver public open space that is in addition to the identified open spaces within this draft Framework and the required 8% public open space contribution. This public open space must be transferred across to the relevant authority. For every 26m<sup>2</sup> of public open space delivered, developers are able to deliver an equivalent value of residential floor areas.*

We submit that the overall approach is significantly flawed in that the FAR requirements will operate in conjunction with Clause 52.01 (Open Space Contribution and Subdivision), which requires that subdivision proponents within Fishermans Bend to pay an 8 per cent contribution for public open space. It is unclear in the proposed controls as to whether land owners will be eligible for credits under Clause 52.01 for land set aside for public open space.

The above open space contribution requirement, together with the expectation that a portion of a land owner's site be set aside for community infrastructure, is considered to be particularly onerous and creates a significant barrier to effective urban renewal of the precinct, reducing the incentive for land owners to actually pursue the redevelopment of their sites, particularly given there is no clarity regarding who is responsible for delivering this infrastructure and the costs involved in doing so.

Furthermore, the Development Contributions Plan Overlay (DCPO) currently requires development proponents to pay a levy to fund shared infrastructure, with the interim levy set at \$15,900 per dwelling. No amended DCP has been proposed as part of this amendment, therefore we understand that this levy still applies, regardless of additional requirements for the gifting of land and cost of works to provide open space.

In summary, it is considered that the proposed framework for public infrastructure provision is flawed given the extent of missing detail, potential overlaps and unresolved matters, which results in a lack of certainty for developers and authorities alike. Furthermore, the excessive contribution requirements together with no provision for substantial compensation or floor area uplift for land owners who are forced to set aside land for community infrastructure creates an environment that is not conducive to significant redevelopment.

The proposed DDO30 control also seeks to introduce mandatory overshadowing controls which prohibit any new development from casting shadow over identified public open spaces. Relevant to these sites, is Northport Oval, which is located to the east / south-east of the sites and must not be cast in any additional shadow by new development between the hours of 11:00am and 2:00pm from 21 June to 22 September under the proposed controls. The fact that Northport Oval is proposed to undergo a substantial increase in size under GC81 (i.e. bringing it closer to both sites), will have significant implications upon the development capabilities of the site, particularly given the controls are intended to be mandatory.

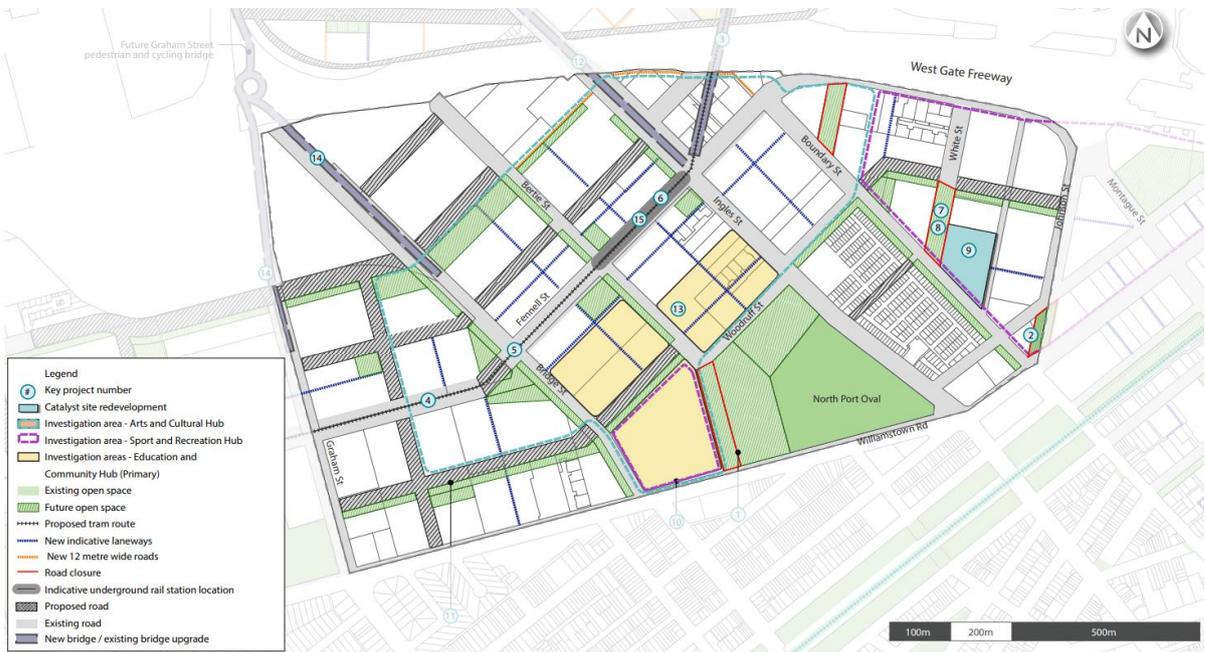
## ● **Provision of Public Open Space & Roads**

The proposed Framework under Amendment GC81 and the proposed CCZ1 controls identify the requirement for provision of public infrastructure, as follows:

49 Bertie Street – provision of a new linear public open space adjacent to the north-eastern boundary of the site, together with provision of a new 18-metre-wide road along the south-eastern boundary, with a new linear public open space along the south-eastern side of the proposed road. Furthermore, a new laneway is identified as cutting through the site in a north-west to south-east direction, however this laneway is not depicted in the maps contained in Schedule 1 to the CCZ.

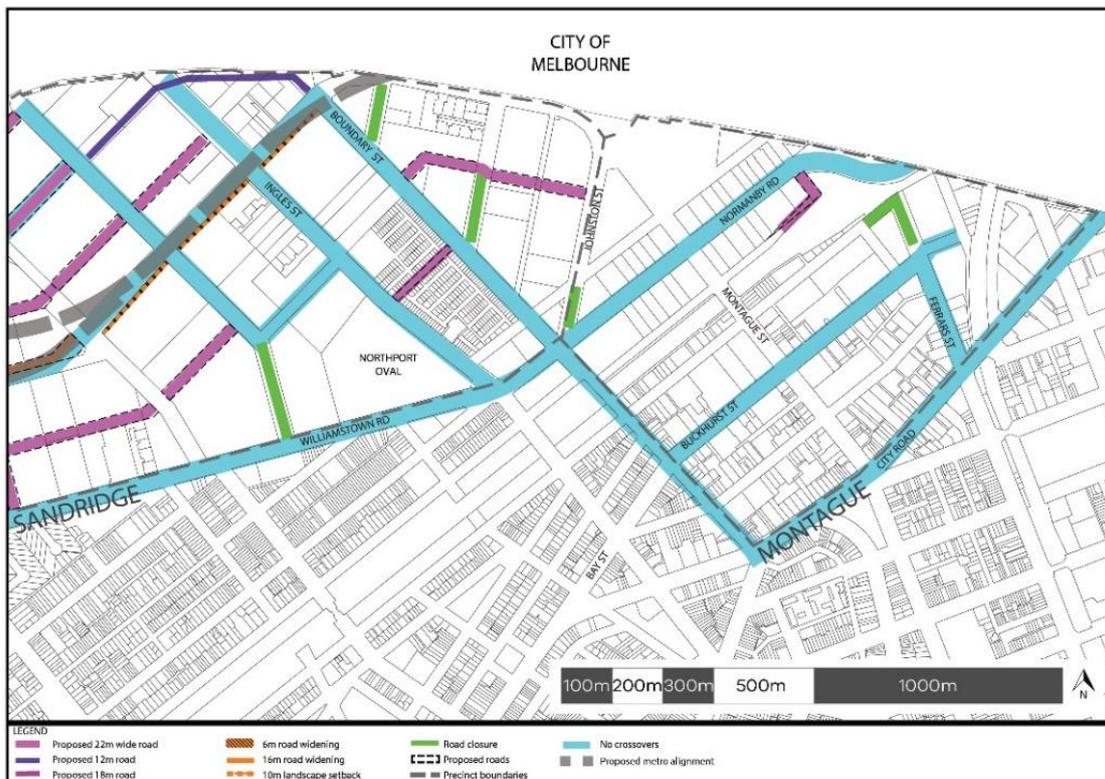
225 Ingles Street – the draft framework plan identifies a new laneway spanning the length of the site (adjacent to the south-eastern boundary), however this is not depicted in Map 2 of the draft CCZ1.

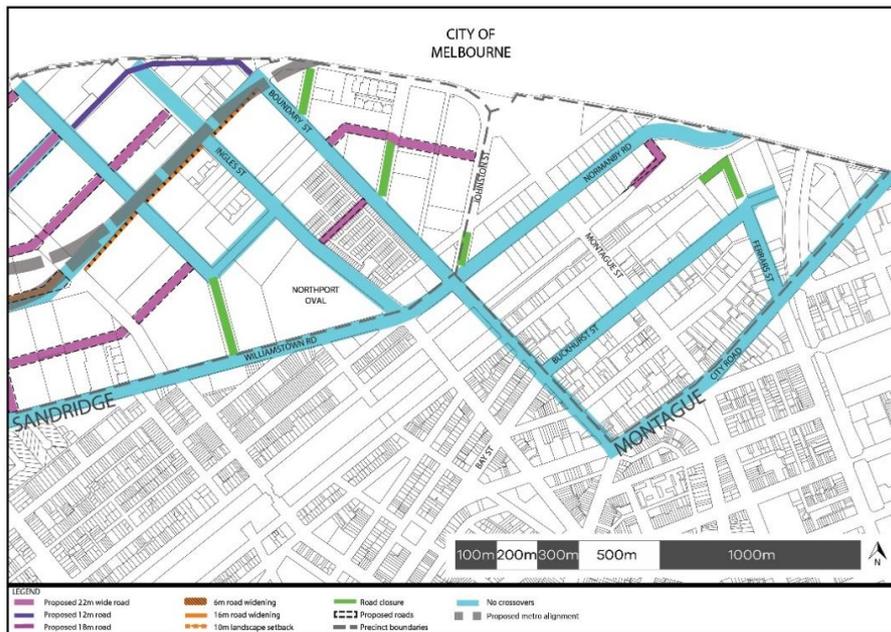
**Figure 2 – Infrastructure Delivery in Sandridge**



Source: Fishermans Bend Draft Framework

**Figure 3 – Maps 2 and 3 (Street and Laneway Layout and Open Space Layout)**





Source: Draft CCZ1

We submit that the extent to which these public infrastructure requirements apply to the sites is unclear due to the discrepancies between maps across various documents. Furthermore, the mechanism for how such land is to be acquired and developed for public use, the timeframes for delivery of such aspirations and the identification of who is responsible for the delivery, are all highly ambiguous due to lack of detail and direction contained within the proposed planning controls. Furthermore, there is particular uncertainty regarding responsibilities for delivery of public infrastructure when new public open spaces and roads directly abut privately owned land.

It is understood that the Minister has recently proposed a rewording of the permit requirements relating to provision of roads and open spaces. The revised schedule to the Capital City Zone proposes a requirement for a Section 173 agreement to be entered into when developing on sites with land reserved for a new road or public open space. The Section 173 is required to include provisions for the developer to fund the cost of construction (for new roads) and transfer the land to the relevant public authority at no cost to the relevant authority. We consider this to represent an inequitable mechanism to obtain land from private land owners.

It is considered that acquisition of such land should be undertaken by way of a mechanism that offers affected private land owners a degree of certainty as to how they will be compensated for acquisition of land for public use and clarity regarding who is responsible for the delivery of this infrastructure.

In lieu of the currently proposed controls, we consider there to be two more appropriate mechanisms to deliver these public infrastructure aspirations, including:

- Application of a Public Acquisition Overlay (PAO) to portions of land identified for public uses, which is a commonly used mechanism to identify land for public acquisition to facilitate a public benefit outcome. The PAO can include specific measures to ensure that private land owners can be appropriately compensated for land acquired, hence we submit that this is a more appropriate mechanism to facilitate public infrastructure aspirations in a fair and reasonable manner, without any reliance upon land owners developing their land to facilitate delivery of public infrastructure.
- A Development Contributions Plan (DCP) can also be devised and incorporated into the planning scheme to ensure that land owners are appropriately compensated for land acquisitions associated with public roads and public open spaces via allowances and dispensations for contributions normally required of land owners when developing their site. The DCP will also need to discern who is responsible for delivery of the required

public infrastructure, which will be dependent on how the DCP policy is structured (i.e. based on land value calculation of land being contributed, or provision of funding for acquisition of privately owned land). We consider a DCP will effectively provide further clarity to land owners regarding their responsibilities and rights to compensation.

In summary, we suggest that a Public Acquisition Overlay be applied in lieu of the proposed Capital City Zone controls and further consideration be given to a Development Contributions Plan under the Overlay and how this can be structured to provide for funding for the acquisition of privately owned land and compensation for the burden imposed upon affected land owners.

## Conclusion

We consider the proposed draft framework and associated controls to be highly problematic due to the misalignment of many of the controls with the overarching aspirations for not only the Sandridge Precinct, but for the broader Fishermans Bend area. Essentially, the controls and draft framework will significantly hinder the long-term development potential of the subject sites and many other sites.

We urge the Fishermans Bend Taskforce and the Minister for Planning to further consider and acknowledge the significant potential of this area to contribute employment and housing in a city which is growing faster than anyone has anticipated.

If you have any questions, please don't hesitate to contact me on 0409 527 556.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'M. Spigelman', written in a cursive style.

Martin Spigelman

on behalf of  
The Eldorado Group  
Bertieport Pty Ltd and Ingleport Pty Ltd