

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
BELSIZE NOMINEES PTY LTD**

Introduction

1. These submissions are made on behalf of Belsize Nominees Pty Ltd (**Belsize**), Submitter 196 to this Review Panel.
2. Belsize is the owner of the land at 351-387 Ingles Street, Port Melbourne (**Site**).
3. This Site is currently occupied by a car dealership (Melbourne City Volvo/Jaguar and Land Rover).
4. It has an area of 13,944 sqm with a frontage of approximately 144m to Turner Street and 189 m to Ingles Street. It is bound by a low scale office building and associated car parking to the north, and a low scale commercial building to the west.

The Proposed Amendment and the Site

5. Pursuant to the Proposed Amendment, the Site lies within the Lorimer Precinct in the Core Area (maximum FAR 5.4:1 to include a minimum non-dwelling FAR 1.7.1).
6. A preferred maximum height of 80.6 m (24 storeys) applies to the western half of the Site and a preferred maximum height of 42.2 m (12 storeys) applies to the south eastern part of the Site under the DDO.
7. The following mandatory maximum street wall heights apply to the Site:

- a) maximum 23 m for street walls on streets with a width greater than 12 m;
and
 - b) maximum 30 m for street walls if overall building is less than 38 m and road width is greater than 22 m.
8. A new 22 m wide road along the western boundary of the Site is included but it is unclear as to whether the road is entirely within the Site boundary or saddles it.¹
 9. Three new “indicative” laneways running through the Site (one in the north-south direction and two in the east-west direction) are included in the Framework. These were not in the exhibited CCZ but are shown in the most recent version of the controls.²
 10. Ingles Street and Turner Street are both primary active frontages and no crossovers are permitted.
 11. A new public open space “C” is included on the eastern part of the Site, fronting Ingles Street, with no additional overshadowing permitted between 11:00am to 2:00pm on 22 September.³
 12. The following new public open space are included in the surrounding areas of the Site:
 - a) public open space “C” to the west of the Site (over the proposed 22m north-south road) with no additional overshadowing permitted between 11:00am to 2:00pm on 22 September;⁴
 - b) a linear park to the south of the Site along Turner Street noting that the overshadowing requirements are unclear⁵ although the most recent Lorimer DDO Map provides that there no overshadowing controls⁶; and
 - c) public open space “B” to the south of Turner Street with a no overshadowing requirement between 10.30am to 1.30pm on 22 September.⁷

¹ Map 1 and Map 2 of exhibited Clause 37.04 – CCZ Schedule (Document 66 Part E) and Lorimer CCZ Map 1 (Document L8).

² Lorimer Precinct Map – CCZ Map 1 (Document L8).

³ Lorimer Precinct Map – DDO (Document L8) and Map 3 and Table 7 of the DDO Schedule (Document 66F).

⁴ Lorimer Precinct Map – DDO (Document L8) and Table 7 of the DDO Schedule (Document 66F).

⁵ Shown as public open space “C” in Table 7 of the DDO Schedule (Document 66F) which suggests it is subject to equinox overshadowing control.

⁶ Lorimer Precinct Map – DDO (Document L8).

13. The Site lies within Sub-precinct “L1” in the proposed MSS Clause 21.13 where, inter alia, “*hybrid developments of mid-rise perimeter blocks and tower developments*” is the preferred character.
14. The Site is identified as “*sports and recreational hub*” in the Community Infrastructure Investigation Areas map.⁸

Current Permit Application on the Site

15. A planning application, PA13/006575, of the Site for 5 towers of 25, 35, 30, 40 and 45 storeys comprising retail, offices, community space, dwellings and parking was submitted to the Minister for Planning in June 2013. The permit application is still live and no decision has been made.
16. The permit application has been subject to a rigorous planning assessment. Numerous revisions have been made to the plans in response to the feedback from the Department of Environment, Land, Water and Planning, the Metropolitan Planning Authority (now the VPA) and the Office of the Victorian Government Architect.
17. The most recent plans prepared by Artisan Architects show an application for 5 towers of 11, 16, 30, 34 and 34 storeys consisting of:⁹
 - a) 1,192 (80,927 sqm) dwellings;
 - b) 3,514 sqm of retail floor space;
 - c) 725 car parking spaces;
 - d) 2,832 sqm of community hub;
 - e) a public plaza; and
 - f) 719 bicycle spaces.

⁷ Lorimer Precinct Map – DDO (Document L8) and Table 7 of the DDO Schedule (Document 66F).

⁸ Lorimer Precinct Map – CCZ Map 2 (Document L8).

⁹ February 2016.

18. In October 2016, Belsize put the planning application on hold pending the outcome of this Review Panel.

Belsize's Submissions

19. Belsize made a submission to the Minister dated 15 December 2017 raising a number of issues including:

- a) proposed planning policies outlined in the Framework and Amendment GC81 lack strategic justification;
- b) it prescribes inflexible building envelope based on arbitrary population and job targets;
- c) the mandatory overshadowing requirements are onerous and not strategically justified;
- d) imposition of maximum FAR is inconsistent with overarching State and local policies in terms of:
 - (i) urban design;
 - (ii) proximity of land to CBD;
 - (iii) optimising use and efficiency of public transport;
 - (iv) urban consolidation; and
 - (v) provision of affordable housing in locations with access to services and infrastructure;
- e) proposed policies seek to rush in arbitrary controls that are a significant departure from existing Planning Scheme provisions; and
- f) not consistent, logical and incremental refinement of policy documents issued to date.

20. Belsize adopts the submissions as above and the oral and written submissions already presented to the Review Panel on behalf of the Landowners Group by Mr

Canavan QC, Mr Tweedie SC and Ms Jane Sharp, together with the evidence of the various witnesses called by the Landowners.

Implications of the Proposed FAR and the Building Envelope Controls on the Site

21. The evidence of Mr McGurn provides a summary of the existing and proposed planning controls affecting the Site.
22. The Lorimer Precinct evidence of Mr Sheppard provides an urban design overview of the Precinct with specific assessment of the Site included at pages 45-48. This evidence is supplemented by Mr Sheppard's Lorimer 3D Massing and Shadow Study Summary.¹⁰
23. The current planning permit application would be prohibited under the Proposed Amendment by virtue of the FAR and mandatory overshadowing controls.
24. The modelling of the Site shows that the maximum FAR can be achieved on the Site within the proposed building envelope controls however, Mr Sheppard also notes that *"as a result of the provision of new roads, lanes and parks, along with the need to avoid overshadowing of surrounding parks, makes it difficult to achieve the maximum dwelling and minimum non-dwelling FAR on the site"*.¹¹
25. There is little development potential on the Site for FAU after providing the maximum FAR.
26. There is also a significant difference between the proposed FAR (and resultant building height) and the existing controls and the current planning permit application for 5 towers.
27. If approved without transitional provisions, the Proposed Amendment would require yet another redesign of the planning application resulting in a substantial reduction in GFA.
28. Both Mr Sheppard and Mr McGurn consider that the Proposed Amendment does not encourage the optimisation of the development potential of the Site noting its

¹⁰ Document 230 – this addendum includes revised modelling of the Site to reflect the amended version of the controls, Document 156A & 156B.

¹¹ Page 48 Sheppard Lorimer Statement.

location on the edge of the Melbourne CBD in an Urban Renewal Precinct and on the doorstep of a new tram route.

29. A desire to not exceed population targets is, in Belsize's submission, strategically flawed and will ultimately result in an underutilisation of Fishermans Bend to the disadvantage of existing and future generations of Melbourne.
30. In this regard, Belsize relies on the evidence of Mr McGurn and Mr Sheppard and the detailed submissions and evidence called by the Landowners Group.

Implications of the Proposed Roads and Parks on the Site

31. The Proposed Amendment includes a park and three roads to be located on the Site, with the exhibited provisions requiring the setting aside of the land, the construction of the roads and park and the "gifting" of the roads and parks to the Council.
32. Mr McGurn calculates that the area of Site required under the exhibited Proposed Amendment to be set aside, constructed and then transferred to the relevant authority is 27.7% of the Site being 3,863 sqm of a site of 13,944 sqm.
33. Whilst the latest version of the controls remove the gifting of open space from Section 3.0 of the Proposed Controls, it appears that it is still proposed that new roads and laneways, including internal laneways, will be constructed by the Applicant and ultimately be transferred to the relevant road authority (whether by way of a section 173 agreement or an Infrastructure Contributions Plan).
34. The current provisions require that the construction of buildings and works must be generally in accordance with the relevant Maps of the Schedule and, in this regard, there may be flexibility with regard to the exact location of roads and laneways although the approach of the relevant responsible authority is not yet known.
35. In the circumstances of the Site, flexibility in the location of the laneways is important to allow for the careful location of built form to prevent overshadowing of the parks to the south and west, noting Belsize supports Mr Sheppard's opinion that the overshadowing provisions should be discretionary to allow a site-by-site assessment.

36. With regard to the north-south 22 m road, there is some uncertainty regarding the location of the proposed road along the western boundary. If the road saddles the western boundary, the Site may be landlocked until such time as the adjoining properties to the west are developed, noting that no crossovers are permitted to Ingles Street or Turner Street (which is also proposed to be closed to vehicular traffic). The Proposed Amendment should therefore ensure that if Belsize constructs the full extent of the new road (putting aside the issue of the potential location of the road on the adjoining properties), given the road will benefit not just Belsize but many other properties and the Precinct more generally, “credit” for this cost to Belsize should be provided.
37. Belsize submits that roads that are internal to the Site should not be required, as a matter of mandatory control or application, to be transferred to the relevant road authority, presumably Port Phillip City Council, noting this may prevent innovative design outcomes with internal landscaped links and potentially weather protected links given the maintenance and liability of the spaces would also be transferred to the Council.
38. With regard to the evidence of Ms Thompson to this Review Panel, it is noted that Ms Thompson recommends the removal of the “triangle” pocket park from the Site and the creation of a larger park to the west of the Site to the north of Turner Street and over the proposed north-south road.
39. Belsize supports the removal of the “triangle” park noting it was always a poor planning outcome having regard to its location, shape and the shadow diagrams of Ms Thompson which show it was to be overshadowed by buildings surrounding it.
40. With regard to the extended park to the west, assuming the Minister adopts this recommendation (which is not yet known), Belsize notes that modelling of built form on the Site has not taken into account this park with regard to shadowing implications. Given the location of the Site on the doorstep of the new tram route, Belsize submits caution should be exercised about the application of mandatory shadow controls which may unreasonably reduce development opportunity on surrounding sites.

41. Belsize also submits that given the extended area of the Site that will be available for GFA, the FAR and preferred height should be raised accordingly.
42. In this regard it is submitted that the arbitrary construct of a target population and the FAR to retain the population target, noting the position of the Minister and the Councils that the “giving” of FAR to one site or one area should therefore result in the “taking” of FAR from another site or area, is very poor planning of an Urban Renewal Precinct. If there are no insurmountable infrastructure constraints, no reasonable urban design/built form reasons and no amenity impacts of additional built form and floor area on a site, why should an academic population target determine the outcome? It is particularly extraordinary given the location of sites, such as Belsize’s Site on a new tram route connecting the Site to the CBD and the new Employment Precinct. Those living in the expanding outskirts of Melbourne can only dream of such ease of access.
43. With regard to parking provision, Belsize 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.

Implications of Lack of Transitional Provisions on the Site

44. Finally, Belsize submits that the lack of transitional provisions in the Proposed Amendment is extremely unfair.
45. Belsize has invested in the Site and spent hundreds of thousands of dollars to date pursuing a lawful planning application.
46. Belsize rejects the Minister’s contention¹² and City of Melbourne’s submission¹³ that the current applications have the potential to prejudice the future development of the Precinct as envisaged under the Framework. The work that has already gone into the current planning application demonstrates the willingness by the Applicant to be flexible, and further, that the current application plans can provide significant net community benefit to the Precinct.

¹² Minister for Planning Part A Response (14 March 2018), para 231 – 235).

¹³ CoM’s Interim Submission for the Lorimer Precinct (9 May 2018), para 134.

47. That said, the Proposed Amendment provides less scope for delivering FAR and consequently less scope to provide additional benefits to the Lorimer Precinct, but also will act as a deterrent to landholders such as Belsize from continuing to invest in a timely manner in Fishermans Bend. This is contrary to what the Framework is trying to achieve.
48. Belsize submits that, at the very least, transitional provisions should be included to exempt current planning applications from the need to comply with the new provisions. The overarching submissions of the Landowners in this regard are relied upon.

Conclusion

49. For the above reasons together with overarching submissions and evidence provided to the Review Panel, and in reliance of the site-specific evidence of Mr Sheppard and Mr McGurn, it is submitted that the Review Panel should recommend that the Proposed Amendment not proceed in its current form.

17 May 2018

Chris Canavan QC

Jane Sharp

Instructed by Norton Rose Fulbright