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

AQUAINO PTY LTD

Introduction

1. These submissions are made on behalf of Aquaino Pty Ltd, Submitter 68 to this Review Panel. (Aquaino)

2. Aquaino Pty Ltd is the owner of the land at 112 Salmon Street, Port Melbourne. (Land)

3. This Land has been the business home of Gunnersens Pty Ltd (Aquaino) for over 40 years and currently houses an office building and a series of large warehouses and concrete hardstand areas.

4. As stated on the Gunnersens' website, Gunnersens is wood-based panel products, timber and decorative surface materials distributor:

   Gunnersen is the largest independently Australian owned distributor of wood-based panel products, timber and decorative surface materials in New Zealand and Australia.

   Established in 1879, Gunnersen has always been an Australian owned company, and it is still led by the Gunnersen family. With the retirement of Thorry Gunnersen and Peter Gunnersen in 2008, Nils Koron has taken the helm as Managing Director with Nils Gunnersen, Executive Director. The history of Gunnersen has been one of growth through product and technological innovation. The family takes pride in the company history, yet balances this with a vision for future growth and prosperity. Gunnersen employs over 250 people nationally and overseas. From large commercial fit-outs to kitchen renovations, Gunnersen distributes products for interior and exterior building applications.
Leading manufacturers from Australia and around the world entrust their brands and products to Gunnersen to ensure low cost distribution combined with effective marketing and brand awareness campaigns.

5. The Land itself is a very large land parcel comprising two titles and an area of 17,555sqm. It has frontages to Woolboard Road, Salmon Street and Thackray Road.

6. A heritage overlay (HO246) lies over the Site and the statement of significance identifies the Pels, Innes Neilson and Kosloff post-modern office built in 1995 as significant.

7. Pursuant to the Proposed Amendment, the Land lies within the Wirraway Precinct, in a Non-Core area. An FAR of 2.1:1 applies to the Land with no cross-overs to Salmon Street and Woolboard Road.

8. Significantly, the Land is nominated as public open space and urban space (encumbered) pursuant to Map 3 and nominated in the Framework as Wirraway North open space (page 77).

9. In accordance with Part B Ministerial Submissions and Documents 99, 99A (corrected) and 138, 100% of the Land is required for public purposes and it appears that the government intends to acquire the land via a negotiated purchase or compulsory acquisition. No public acquisition overlay or details of when this process will occur has been provided.

10. Planning application, PA1700225, submitted in April 2017 seeks a permit for demolition and construction of six towers of 12, 15 and 18 storeys on the Site for retail, child care centre, communal facilities and apartments. This application was called-in by the Minister shortly before a scheduled VCAT compulsory conference in January 2018.

Submissions

11. In December 2017 and February 2018, Aquaino made a submission to the Minister raising a number of issues including:

a) Prematurity of the amendment having regard to:
(i) Uncertainty surrounding the design of the transport network and the anticipated population densities;

(ii) Neither a funding model or report/costing analysis have been released that would inform how the community infrastructure, transport projects, new roads and public open spaces proposed are to be funded.

b) Floor area ratio would represent a poor planning outcome;

c) Proposed heights in Wirraway will not realise the potential of the precinct;

d) Requirements for adaptable car parking areas and floor plates are not sufficiently flexible to permit beneficial design outcomes;

e) Planning controls fail to include transitional provisions which is inequitable, unjust and inconsistent with the principles of proper planning; and

f) The designation of the Land for public open space is unjust, ill-conceived and without proper basis noting -

   (i) Its proximity to the JL Murphy Reserve;

   (ii) Its extensive area which is excessive in this locality; and

   (iii) Its proximity to an elevated road and the future freight alignment; and


g) A Public Acquisition Overlay should be applied to the Land if it is required for a public purpose.

12. 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. Aquaino does not repeat these submissions but expresses its strong support and endorsement of the submissions.

13. With regard to the legality and reasonableness of the Proposed Amendment particularly the FAR, FAU and the drafting of the controls, Aquaino relies on the oral and written submissions already made to this Review Panel.
14. Given the particular circumstances of the Aquaino Land and the Framework’s nomination of 100% of the Site as public open space, Aquaino draws particular attention to the detailed submissions (paragraphs 74-82, 109-199) with regard to the manner in which the Government is intending to acquire public open space.

15. Aquaino submits that the Proposal Amendment is a de facto reservation of its Land without a right to compensation.

16. This is contrary to the objectives of the Planning and Environment Act Section 4(2)(l) of the Planning and Environment Act provides that an objective of the planning framework established by this Act is:

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

17. Accordingly, it is submitted it is ultra vires and manifestly unfair to set aside the Aquaino Land for public open space as is proposed through this Amendment.

18. Aquaino submits that if its Land is to be acquired, for reasons of fairness and certainty, the timing of the acquisition should be specified and provided so that the future of the business on the Site can be determined.

19. The uncertainty affecting the status of the land and the changing planning controls have affected the Gunnersens business and family. It is a classic case of financial blight.

20. In addition to the uncertainty attached to the future of the land for open space, Aquaino draws the Review Panel’s attention to uncertainty and changing nature of the planning controls that have plagued land owners in Fishermans Bend over the last five years.

21. This is illustrated in Appendix A which lists the changes to the controls and how it has applied to the Land since 2012.

22. These changing controls, resultant changes to architectural plans and reports and the uncertainty attached to the process has had a highly detrimental financial and emotional impact on Aquaino and the Gunnersen family.
23. **Appendix B** details the costs that have been incurred by Aquaino in its attempt to develop the Land in accordance with the planning scheme and/or to trigger a compensation claim arising from the nomination of 100% of the Land for a public purpose. **Appendix B** shows that over $1 million dollars has been expended.

24. Notwithstanding the history of planning changes in Fishermans Bend and its objection to the Proposed Amendment before the Review Panel, if the Proposed Amendment is gazetted in some form, Aquaino submits consistent with the objectives of planning in Section 4(1) of the Act “to provide for the fair, orderly, economic and sustainable use, and development of land”, transitional provisions, such as those included in Amendment GC29, should be included in the controls so that existing permits and existing planning applications are assessed against the controls that existed at the time of the application. This would provide fairness, certainty for applicants and decision makers and a level of community confidence in the future development of Fishermans Bend.

25. In the Aquaino case, transitional provisions would ensure that at least some of the $1 million already spent on its Land would not be costs thrown away and landowners could plan the future use and development of their land with some confidence.

26. Finally, Aquaino supports the submissions of parties to this Review Panel that the Proposed Amendment has been hastily prepared and that there are significant drafting issues with the controls as demonstrated by the number and substantive natures of the amendments that have made during the course of this hearing.

**Conclusion**

27. 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.

3 May 2018

Chris Canavan

Jane Sharp
Memorandum to Phil Martin: 3 Tiers Advisory

Document 2:
Date: 17 January 2018
Re: 112 Salmon Street, Port Melbourne
From: Tim Biles

Timeline Summary

<table>
<thead>
<tr>
<th>Year</th>
<th>Fishermans Bend</th>
<th>Aquaino – 112 Salmon Street</th>
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| 2012 | Fishermans Bend declared as State Significant under P&E Act 1987  
5 July 2012 - Lorimer, Montague, Sandridge, Wirraway rezoned to Capital City Zone (Melbourne C170 and Port Phillip C102) | The site was not identified for POS but green link along Woolboard Road was shown on the plans. |
| 2013 | Fishermans Bend Urban Renewal Area Draft Vision released by Places Victoria |  |
| 2014 | Responsibility for Fishermans Bend Transferred to the Metropolitan Planning Authority (MPA- now the VPA)  
6 Aug 2014 - Fishermans Bend Strategic Framework Plan (July 2014) incorporated into the relevant planning schemes as part of GC7 | The Gunnersen site was identified as “Proposed Neighbourhood Open Space” (refer Page 19) in the Fishermans Bend Strategic Framework Plan (FBSFP). Under Key Element 3: Open Space it says that the location of open spaces is indicative only and “while it is desirable to create open space as shown, final positions are to be negotiated through the development contributions and Clause 52.01 process”. |
|      | During this period, Gunnersen’s representatives met with VPA officers (Jane Monk & others) to discuss the effect of the POS proposal and how it would be resolved. No clear process was identified for acquiring the land except to say it may be required in ‘20 years’ time’. We note that a later title search of the Gunnersen property showed it as being Crown
<table>
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<tr>
<th>Date</th>
<th>Event</th>
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<tr>
<td>Oct 2014</td>
<td>Land, despite being in the trustee ownership. This has now been rectified and may have been a reason for its designation as a POS site in the FBSFP.</td>
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<td>2015</td>
<td>Victorian Government committed to recast the Vision and Framework Fishermans Bend. An 'Employment Precinct' was included for the area. Amendment GC29 gazetted on 17 April 2015 to update the Fishermans Bend Strategic Framework Plan (amended April/2015) and introduce maximum building heights Fishermans Bend Ministerial Advisory Committee established</td>
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<tr>
<td>2016</td>
<td>The Fishermans Bend Taskforce established Fishermans Bend Vision (September 2016) released 14 Nov 2016 - Amendment GC50 to introduce a suite of interim planning controls (subsequent amendment GC59 to correct technical errors) - Interim controls to expire 30 March 2018 Fishermans Bend Taskforce undertakes consultation to inform final Framework</td>
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|          | 16 Oct 2014 - Aquaino decided to submit a Planning Application consistent with the property's current zoning. This was designed to either trigger a claim for compensation under the:  
  - The Planning and Environment Act  
  - The Land Acquisition and Compensation Act; or  
  - Result in a planning approval for development. |
|          | Pre App meeting with the DELWP was held on 16 June 2015 with Larry Parsons & others in relation to the permit application plans. |
|          | A Project team was assembled by Gunnersens’ and a development concept prepared based upon the September 2016 Fishermans Bend vision.  
  12 Oct 2016 - Pre-application meeting with Fishermans Bend Taskforce & DELWP  
  This meeting did not foreshadow or resolve an acquisition strategy, however it did confirm the land was still required for POS.  
  Dec 2016 - Development plans amended to respond to mandatory height and setback controls - delays application & adds cost |
| 2017 | **22 Oct 2017 - Fishermans Bend Framework** The next chapter in Melbourne’s growth story released for Draft for consultation  
**28 Oct 2017 - Exhibition of draft controls via proposed Amendment GC81** |
| 12 Apr 2017 - Planning Permit Application lodged.  
5 Jul 2017 - meeting with Kate Kraft to discuss application.  
2 Aug 2017 - Port Phillip Council recommends refusal.  
**Sept 2017 - VCAT review – Failure to determine lodged by Gunnersen lawyers.**  
VCAT set hearing date of **26 March 2018** to review application.  
**22 Dec 2017 - Minister advised VCAT that matter was to be called in and referred to an Advisory Committee at a date to be confirmed.** |