

---

**Request to be heard?:** Yes

**Precinct:** Montague

**Full Name:** Clare Somerville

**Organisation:** SM253 Pty Ltd

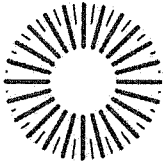
**Affected property:** 253-273 Normanby Road, South Melbourne

**Attachment 1:** Letter\_to\_Fisher

**Attachment 2:**

**Attachment 3:**

**Comments:** See attachment.



Fishermans Bend Planning Review Panel  
1 Spring St  
Melbourne, VIC 3000  
Via online submission portal

15 December 2017  
Matter 82649439  
By Email

Dear Planning Review Panel

**Fishermans Bend Planning Review Panel  
Planning Scheme Amendment GC81  
Submission by SM253 Pty Ltd**

We act for SM253 Pty Ltd (**SM253**) in relation to the land at 253-273 Normanby Road, South Melbourne, which is contained within the Montague precinct.

Our client has reviewed the draft documents to be considered as part of Planning Scheme Amendment GC81 and makes the following submission to the Fishermans Bend Planning Review Panel.

Our client intends to be heard at the Public Hearing and has completed the relevant online form as part of lodging this letter of submission. Our client raises the following grounds:

**1.1 Built form**

- (a) The building heights in Schedule 30 to the Design and Development Overlay (**DD030**) and referenced in clause 21.06 (including relevantly to SM253, a discretionary height of 20 storeys) are arbitrary, and do not appropriately take into account the context of the land, the opportunity for urban consolidation and the opportunity for architectural excellence to be achieved with taller built form;
- (b) The requirement in Schedule 1 to the Capital City Zone (**CCZ1**) that a permit must not be granted or amended in excess of the Floor Area Ratios in table 1 is unreasonable, and like the proposed building heights does not appropriately take into account the context of the land, the opportunity for urban consolidation and the opportunity for architectural excellence to be achieved with taller built form;
- (c) The proposed public benefit and floor area uplift provisions in the CCZ1 are lacking in detail, and only sought to be supported by an informal guideline document which could be arbitrarily amended without the public rigour of a planning scheme amendment process;
- (d) The mandatory building separations required within a site in DDO30 are unnecessarily restrictive and do not appropriately take into account the context of the land, the opportunity for urban consolidation and the opportunity for architectural excellence to be achieved;
- (e) The reference in clause 22.15 to:
  - (1) encouraging proposals of more than 300 dwellings to provide 25% 3 bedroom dwellings in the Montague precinct is onerous and fails to have regard to market demand for dwellings of that size. While the aspiration for housing diversity is supported, this can be facilitated through flexible design layouts so that one and two bedroom dwellings

Doc 68950117.1



- could be combined and adapted into three or more bedroom dwellings where required to meet purchaser demand;
- (2) requiring non-residential floor area for employment generating uses (at a ratio of 1.6:1 for the Montague precinct) fails to have regard to other mechanisms to contribute to employment generation;
- (f) The prohibition in DDO30 for a permit being granted for a building which would cast any additional shadow across existing and proposed parks/reserves at specified times is unnecessarily restrictive, and fails to have regard to the role, context and quality of the relevant reserve, existing overshadowing to that reserve and the reasonableness of any proposed overshadowing having regard to those matters; and
- (g) The requirement in the CCZ1 that a permit must not be granted to construct a building or construct or carry out works where the vehicle access points and crossovers are located along roads designated as 'no cross overs permitted' in Map 2 (including Normanby Road in the Montague precinct), fails to have regard to the context of the land and the number of existing crossovers.

## 1.2 Affordable Housing

- (a) While the aspiration for dwelling diversity is supported, the reference to 6% affordable housing in clause 22.15 is:
- (1) vague, without having any regard to the practical and legal factors to achieve that outcome;
- (2) relies on an arbitrary percentage which is unsupported and inappropriately sought to be enforced through a policy document;
- (3) conflicts with the State wide approach to affordable housing sought to be achieved through the *Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Act 2017*; and
- (4) is unnecessarily onerous, having regard to the existing requirement to pay Development Contributions in the Fishermans Bend area.

## 1.3 Car Parking

- (a) The proposed amendment to Schedule 1 to the Parking Overlay to provide that a permit *must not* be granted to provide more than 0.5 car parks per dwelling has had no regard to:
- (1) market demand for car parking associated with apartments;
- (2) the lack of adequate public transport infrastructure in Fishermans Bend; and
- (3) the fact that the provision of car parking does not necessarily contribute to vehicular use (it doesn't follow that provision of a car park means that the vehicle will be used every day); and
- (b) The amendment will affect the marketability and saleability of properties in the precinct and will delay pre-sales, preventing financing for approved projects being provided.

## 1.4 Subdivision and Adaptability of buildings

- (a) The requirement that car parks be retained in a form of common property in single ownership (sought to be achieved through clause 21.04, the permit requirements in CCZ1 and the decision guidelines in the CCZ1) ignores the existing legislative framework for the management of common property and effectively precludes the strategic intention underpinning the requirement,



namely the desire to create flexibility in the car parking to facilitate the adaptation of car parking spaces to alternative uses in the future; and

- (b) The requirement in DDO30 that car parking areas have a floor-floor height of not less than 3.8 metres to make provision for future conversion of the spaces (further referenced in clause 22.15):
  - (1) will add to the height of the building, in circumstances where there is a proposal for maximum building heights; and
  - (2) ignores the capacity for creative solutions in the design of car parking spaces to create opportunities for the future adaptation of those spaces. The objective should be that the design of car parking areas should not preclude the possibility of future alternative uses, and an explanation be required as to how a building can achieve those objectives into the future. That objective should be expressed as a performance requirement and not as a prescriptive requirement.

**1.5 Clause 22.15**

- (a) The clause inappropriately seeks to impose controls on development when it is a policy document.

**1.6 Development Plan Overlay**

- (a) The application of the Development Plan Overlay is unnecessary, having regard to the detailed strategic planning objectives sought to be included in the planning scheme through the requirement for general accord with the Framework, and will only impose another unnecessary layer of planning control.

**1.7 Transitional Provision**

- (a) All provisions of the Planning Scheme that are amended by Amendment GC81 (and particularly, CCZ1, DDO30 and PO1) should include a transitional provision to the effect that the amended clauses do not apply to:
  - (1) an application for a planning permit lodged before the approval date of Amendment GC81; and
  - (2) an application for an amendment of a permit under section 72 of the Act, if the original permit application was lodged before the approval date of Amendment GC81.

Our client reserves its right to amend these grounds through the Panel process.

Yours sincerely

**Heidi Asten**  
Partner  
Herbert Smith Freehills

+61 3 9288 1710  
+61 424 185 663  
heidi.asten@hsf.com

**Clare Somerville**  
Senior Associate  
Herbert Smith Freehills

+61 3 9288 1929  
+61 427 907 483  
clare.somerville@hsf.com