95-97 LORIMER STREET, DOCKLANDS
Submission prepared on behalf of Claric 178 Pty Ltd

FISHERMANS BEND PLANNING REVIEW PANEL

PREPARED BY ANTHONY MSONDA-JOHNSON OF ROBERTSDAY
MAY 2018
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1. Roberts Day act on behalf of Claric 178 Pty Ltd, the landowner of 95-97 Lorimer Street, Docklands, and lodged a written submission in respect to proposed Planning Scheme Amendment GC81 [Submission No. 37].

2. The submission made by Claric 178 Pty Ltd raises issues with Amendment GC81 which largely have already been raised by other parties through the course of the Panel hearing to date. Our client has participated in various government initiated public consultation processes, with written submissions lodged with Places Victoria regarding the draft Vision for the Fishermans Bend Renewal Area 2013, to Melbourne Council’s proposed Lorimer Structure Plan and most recently to the draft Fishermans Bend Framework 2017 (draft Framework).

3. Claric 178 Pty Ltd’s primary concern regarding the draft Framework is the lack of information contained in the draft Framework itself and the associated proposed planning policies and controls (zone and overlays) regarding how and when a landowner is to be compensated by the State of Victoria in instances where 100% of the landholding is identified for future community infrastructure.

4. The basis of the concern stems from the commercial reality experienced by Claric 178 Pty Ltd, whereby:
   - They have difficulties in securing long term leases for their land, as tenants are aware that the site may be acquired. The inability to secure long term leases is creating financial hardship.
   - Tenants who would need to make a significant financial investment through developing the site as part of setting up their business on the site avoid the site.
   - They have experienced a significant increase in their land tax and Council rates given the perceived development potential derived from the site’s Capital City Zone classification.
Section Two_Subject Site and Strategic Context

5. The subject site is known as 95-97 Lorimer Street, Docklands. The subject site forms the south-eastern corner of the intersection between Lorimer and Hartley Streets / Point Park Crescent. The site's frontage to Lorimer Street is approximately 45 metres in length, with a 50 metre long frontage to Hartley Street. The overall site area is approximately 2,200 square metres. The site is presently used for warehousing / light industrial purposes, with associated at-grade car parking and no notable on-site vegetation.

Figure 1: Aerial Image of the subject site

6. The entire landholding at 95-97 Lorimer Street is identified as open space within the Lorimer Precinct plans contained within the Fishermans Bend Strategic Framework Plan, July 2014 (amended September 2016) and the draft Framework.
Figure 2: Subject site within the Lorimer Precinct plan from the Fishermans Bend Strategic Framework Plan, July 2014 (amended September 2016)
Figure 3: Subject site within the Lorimer Precinct plan from the draft Framework
7. In addition to the site’s classification in the draft Framework, Map 3 of the proposed Capital City Zone – Schedule 4 associated with the Review Panel’s Consolidated Day 1 version also depicts the site as open space.

8. Through the creation of the Fishermans Bend Urban Renewal Area, the land at 95-97 Lorimer Street was rezoned from Business 3 Zone to Capital City Zone – Schedule 4 (CCZ4). Our client has advised that following the change to the site’s zoning, their Council Rates and Land Tax has increased due to the perceived development opportunity associated with the purpose and intent of the CCZ4.

9. However, as the Framework nominates open space on the site, there has been no opportunity to pursue a built form outcome on the site. This has possibly been an unintended consequence impacting some but not all landowners, whose land has been burdened through the rezoning process.

10. Since the creation of the Fishermans Bend Urban Renewal Area, Claric 178 Pty Ltd’s project team has engaged with various State and Local Government agencies in respect to progressing a design response for the site that includes a built form element.

11. The built form element was proposed to anchor the north-western portion of the site to assist in defining the intersection and giving the open space a sense of address without generating unreasonable amenity impacts to the surrounding open space. The design response was prepared because various iterations of the Framework, including the Amended April 2015 version, stated under Key Element 3: Open Space:

   Both types of open space have been identified on private land on Plan 3: these locations are indicative only. While it is desirable to create open space as shown, final positions are to be negotiated through the development contributions and Clause 52.01 processes.

12. During the discussions with the various government agencies, it became clear there was no opportunity to negotiate a built form outcome on the site. The open space identified on 95-97 Lorimer Street was and continues to be treated as a mandatory outcome.

13. In conjunction with the open space at 95-97 Hartley Street, the open space designation also extends partially into the land to the east at 85-93 Lorimer Street (which is subject to Planning Permit No. 2014001587, approving a mixed use development ranging in height between 47 and 49 storeys) and into land to the south at 13-33 Hartley Street (which is subject to Planning Application No. PA1600119, and was one of the 26 Planning Applications called in by the Minister of Planning earlier this year).
14. In the event the land can only be used as open space moving forward, it is Claric 178 Pty Ltd’s opinion that the key omissions from proposed Amendment GC81 include:

- The lack of any certainty within the draft Framework as to the process and timing for compensation to those affected landowners, particularly in instances where 100% of a site is identified as open space (and / or a road).
- The lack of recognition of the open space extending across 95-97 Lorimer Street, 85-93 Lorimer Street and 13-33 Hartley Street within the Lorimer Precinct plan on page 73 of the draft Framework, as has occurred with other large areas of proposed open space within the Lorimer Precinct.
- A Public Acquisition Overlay which applies across the land to signify its future intended use as open space.

15. Having regard to the consideration that went into defining the 5 proposed scenarios for securing land for public open space and roads within the Minister of Planning’s submission to date (Document No. 99), Claric 178 Pty Ltd consider this information, at the very least, should be incorporated into the draft Framework.

16. Whilst Document No. 99 does not shed any light on the timing for compensation, it does provide useful information to a diverse range of stakeholders as to how the State Government proposes to secure land for public open space and roads. In the same way that useful information is set out within the draft Framework in respect to the definition and purpose of the Floor Area Ratio including diagrams – in our client’s view the same level of information should be included in respect to the issues of land acquisition and compensation.

17. The open space extending across 95-97 Lorimer Street, 85-93 Lorimer Street and 13-33 Hartley Street should be formally recognised as a key piece of infrastructure to be delivered within the Lorimer Precinct within page 73 of the draft Framework, such as the Lorimer Central Open Space and Lorimer West Open Space, key projects 5 and 8, respectively.

18. Given the Lorimer Precinct is to be afforded a central and western open space, we submit that the open space in question should be referred to as Lorimer East Open Space.

19. The open space should be a short or medium term infrastructure item because there is an existing residential population residing within its immediate walkable catchment, including multiple residential towers and townhomes within Mirvac’s Yarra’s Edge community directly opposite the proposed open space to the north. This existing community would greatly benefit from the early delivery of the open space, in addition to the emerging community associated with the approved development at 83-95 Lorimer Street and the proposed development at 13-33 Hartley Street.

20. Claric 178 Pty Ltd recommend the State Government demonstrates its commitment to the Fishermans Bend vision by acquiring the land concurrently with approving the proposed development at 13-33 Hartley Street. These two outcomes, combined with the planning approval already issued for the site at 85 – 93 Lorimer Street can facilitate the successful delivery of a key sub-precinct within the Lorimer Precinct, inclusive of affordable housing, community floor space, open space and other complementary features. This outcome can occur in a highly visible and strategic location within the Lorimer Precinct. The subject site is the gateway into the precinct and the Employment Precinct, with a combined frontage along Lorimer Street of approximately 130 metres.

21. Based upon the Minister of Planning’s submission to date in respect to the options for the provision of open space within Fishermans Bend (Document No. 99), Claric 178 Pty Ltd understands that as State Government has declared Fishermans Bend a Project of State Significance under Part 9A of the Planning and Environment Act 1987, a Public Acquisition Overlay is not required to be applied to land before it is compulsory acquired.

22. Within Document No. 151 [Supplementary Information Note 5], paragraph 6 states:

> On 5 July 2012, by notice published in the Victorian Government Gazette, the former Minister for Planning issued a ‘Notice of Declaration of Project under Section 201F of the PE Act.’

23. In the almost 6 years since the publication of the notice, the previous and current Minister have not compulsorily acquired the land from Claric 178 Pty Ltd nor have they sent written correspondence to Claric 178 Pty Ltd outlining their intent to acquire the land and the timing associated with this acquisition. As set out in paragraph 4 in this submission, this inaction by the State Government to acquire the land, which has long been identified as open space in multiple iterations of the Framework for Fishermans Bend, has commercial ramifications for Claric 178 Pty Ltd.
24. The uncertainty arising from this issue is contrary to the following objective in Section 4 of the Planning and Environment Act 1987:

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

25. For this reason, Claric 178 Pty Ltd recommends a Public Acquisition Overlay is applied to the site. This planning tool, commonly used to acquire land for public purposes, will at the very least demonstrate in a more transparent manner the State Government’s intent to acquire the land and enable the landowner to seek compensation under the Land Acquisition and Compensation Act.

26. In addition, Claric 178 Pty Ltd also seek clarity as to how the valuation of the land is to be calculated. Specifically, will it be based on the zone of the land and the full allowance of floor space allowed by the applicable Floor Area Ratio of 5.4:1 for the Lorimer Precinct?

27. Given the site’s strategic nature due to it’s large site area, lack of proposed building height restrictions, main road frontage, open space abuttal, and proximity to a future tram line and Melbourne’s Central City, Docklands and Southbank, Claric 178 Pty Ltd also believe the site is capable of accommodating affordable housing through the proposed Floor Area Uplift (FAU) mechanism. As such, Claric 178 Pty Ltd believe the property valuation should incorporate a FAU representing the provision of affordable housing at a rate of 6% of the proposed housing stock able to be achieved within the applicable FAR.
Section Four _ Conclusion

28. In summary, Claric 178 Pty Ltd are seeking revisions to the draft Framework and the associated proposed planning and policy controls to clearly articulate how landowners whose land is wholly required for open space or roads are to be compensated in the short term, particularly given the Fishermans Bend project has been declared a state significant project for many years now.

29. The land at 95-97 Lorimer Street cannot be developed for any other purpose due to the release of various iterations of the Framework, with government agencies previously opposing any proposed redevelopment of the site which incorporated a small building footprint and retention of a large parcel of open space.

30. The compulsory acquisition of the land by the State Government will not only prevent further financial hardship and uncertainty for Claric 178 Pty Ltd but it will also demonstrate to the community the State Government’s commitment to delivering the vision for Fishermans Bend. Alternatively, a Public Acquisition Overlay should be applied to those sites that are entirely encumbered as future open space within the Framework, thereby enabling the respective landowners to seek compensation at a time which suits them.