

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
NORMANBY ROAD DEVELOPMENTS PTY LTD**

Introduction

1. These submissions are made on behalf of Normanby Road Developments Pty Ltd, Submitter 207 to this Review Panel. (**NRD**)
2. NRD is the owner of the land at 235-239 and 241-243 Normanby Road, South Melbourne. (**Site**)
3. This Site is currently used for the purpose of a tertiary education facility contained in a two and three storey building.
4. It has an area of 3,232sqm with a frontage of approximately 50m to Normanby Road and Woodgate Street and a depth of 65m. It lies on the southern side of Normanby Road between Montague Street and Boundary Street.
5. It lies within the Montague Precinct pursuant to the Proposed Amendment.
6. A current planning application, PA1700315, for a 40-storey tower comprising retail, offices and 326 dwellings was submitted to the Minister for Planning in December 2017. The plans prepared by Hayball Architects show:
 - a) Retail frontages to Normanby Road and Woodgate Street;
 - b) Car access from Woodgate Street;
 - c) A 3.0m laneway along the eastern boundary from Normanby Road and Woodgate Street;

- d) Retail/office sleeves surrounding the car parking at podium levels 1 and 2;
 - e) Apartments with external terraces and wintergardens at podium levels 3 and 4;
 - f) An open space and communal facilities at podium level 5; and
 - g) A residential tower setback 10m from all boundaries for levels 6 – 39.
7. The planning application has been “called-in” by the Minister.

Submissions

8. The evidence of Mr McGurn provides a summary of the existing and proposed planning controls affecting the Site.
9. The Montague Precinct evidence of Mr Sheppard provides an urban design overview of the Precinct with specific assessment of the Site included at pages 89-92.
10. NRD 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) The Proposed Amendment is not supported by State Planning Policy or the Port Phillip Planning Scheme;
 - c) It prescribes inflexible building envelope based on arbitrary population and job targets;
 - d) The population targets do not take into account:
 - (i) Economics of inner city land supply; and
 - (ii) Need for flexibility in rapidly changing city;
 - e) Imposition of maximum floor area ratio 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;
- f) Proposed policies seek to rush in arbitrary controls that are a significant departure from existing Planning Scheme provisions and tight timeframes lack procedural fairness and are contrary to natural justice, given significance of draft policy changes;
- g) Not consistent, logical and incremental refinement of policy documents issued to date; and
- h) Given significant departure from existing policy proposed by new controls, reasonable to expect transitional provisions be included to ensure existing planning applications lodged prior to gazettal of new controls determined under existing provisions.
11. NRD submissions as above are generally addressed in the oral and written submissions already presented to the Review Panel by Mr Canavan QC and Mr Tweedie SC.
12. With regard to the issues of specific relevance to NRD, both Mr McGurn and Mr Sheppard have modelled the implication of the Proposed Amendment on the Site.
13. Both witnesses identify that the current planning application would be prohibited under the Proposed Amendment by virtue of the FAR controls and other design details.
14. An assessment of the impact of the proposed controls on the Site shows that the maximum FAR can be achieved on this Site within the proposed building envelope

controls. A reliance on FAU is necessary to achieve a building envelope that meets the discretionary height for the Site.

15. There is a significant difference between the mandatory maximum FAR floor space (and resultant building height of about 7 storeys) and the envisaged discretionary height of 67.8m (20 storeys).
16. There is an even greater difference between the proposed FAR (and resultant building height) and the discretionary 40 storey height under the existing CCZ.
17. There is also a significant difference between the discretionary height of 20 storeys and existing approvals in Montague which range from an existing 30 storey building (Gravity Building) and approvals for buildings which range between 27-49 storeys in height.
18. It is submitted that a halving of the current discretionary height limit in Montague North as proposed in the Amendment is not reasonable and can not be justified for urban design or amenity reasons.
19. In this regard, the evidence of Mr Sheppard is relied upon, noting his evidence that:
 - a) The proposed 20 storey discretionary height in Montague North ignores the emerging character of the area (existing building and issued permits);
 - b) The southern side of Normandy Road will still be in shadow at a discretionary height of 20 storeys noting solar access will effectively result from gaps between buildings;
 - c) A sense of openness will be created by the 30m wide road reserve and the proposed tower separation (at upper levels);
 - d) The Montague Core does not abut an area of low-rise sensitivity; and
 - e) A desire to not exceed population targets to justify the proposed FAR and discretionary height at 20 storeys is not supported.

20. As already submitted to this Panel, the Landowners, including NRD, strongly reject the starting point of this Proposed Amendment being a population target rather than a built form outcome.
21. In this regard, NRD submits the benefits of its Site allow for substantial redevelopment for retail/office and residential development:
 - a) Proximity to the CBD (approximately 1km);
 - b) Proximity to the 96 and 109 tram routes;
 - c) Emerging character of the area;
 - d) Lack of any sensitive site abuttals;
 - e) Lack of any substantial constraints on development in terms of heritage, vegetation or insurmountable flooding or environment issues; and
 - f) The abuttal of the Site to 245-251 Normanby Road to the west which has a recently approved planning permit for a 40 storey development.
22. NRD submits there is no reasonable planning justification for the lowering of the discretionary height from 40 storeys to 20 storeys in Montague North. NRD relies on the evidence of Mr Sheppard that the discretionary height should remain at 40 storeys.
23. With regard to the 6.1:1 FAR, and the construct of the FAU controls, NRD relies on the submissions and evidence already provided to this Review Panel.
24. Although the exhibited controls and the most recent controls before this Review Panel do not include a park on the Site, it is noted that the evidence of Ms Thompson recommends that a neighbourhood park should be located on the southern side of the Site (page 29, Statement of Evidence of Ms Thompson).
25. In addition to procedural issues regarding the timing of this recommendation and the uncertainty of whether or not it will form part of potential new controls, NRD strenuously opposes this change.

26. The location of open space in the southeastern part of the Site would severely, and unreasonably, constrain the development potential of the Site as a result of the potential for overshadowing of the park.
27. It is submitted that the justification for the park offered by Ms Thompson in her evidence (being that each property should be 200m from a park) does not provide sufficient justification for this late change to the exhibited controls given the extent of overshadowing and the constraint on development of the remainder of the Site.
28. In this regard NRD notes Mr Shepard's evidence that "*open space planning may have been focussed too much on distributing open space in smaller parcels to enable it deliver as part of development, rather than identifying the most appropriate open spaces for the future community*". NRD also draws attention to the Landowner's overarching submissions with regard to the lawfulness and reasonableness of the manner in which the Proposed Amendment is attempting to require land to be "gifted" without compensation.
29. NRD submits the Review Panel should reject the proposed change to the location of the neighbourhood park onto their Site.
30. With regard to the inclusion of a Development Plan Overlay over the Site, for the same reasons expressed in the submissions of Lie Properties, NRD can see no reason for such a control. Further, it has significant downsides.
31. With regard to parking provision, Lie Properties 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.
32. Finally, NRD submits that the lack of transitional provisions in the Proposed Amendment is extremely unfair.
33. NRD submits that, at the very least, transitional provisions should be included that operate so as to exempt a current planning application that has lawfully been applied for under the existing controls from the need to comply with any new provisions.. The overarching submissions of the Landowners in this regard are relied upon.

Conclusion

34. 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.

19 April 2018

Nick Tweedie

Jane Sharp

Instructed by Norton Rose Fulbright