

## **IN PLANNING PANELS VICTORIA**

### **AMENDMENT GC81**

PLANNING AUTHORITY: Minister for Planning

LANDOWNERS: Diamond Salmon Pty Ltd and others

SUBJECT LAND: See Attachment 1

### **LANDOWNERS' OUTLINE OF SUBMISSIONS**

#### **Introduction**

1. These submissions are made on behalf of the following landowners:
  - (a) Diamond Salmon Pty Ltd (submitter 167);
  - (b) One Smart Pty Ltd (submitter 172);
  - (c) Moniton Pty Ltd (submitter 222);
  - (d) Mitzmazal Pty Ltd (submitter 208);
  - (e) Thistlethwaite St Pty Ltd (submitter 115).

[Collectively referred to as “the Landowners”]

2. The Landowners own the land set out at Attachment 1.
3. All of the subject landholdings are within the Wirraway Precinct, with the exception of land owned by Thistlethwaite, which is in the Montague Precinct.

4. In addition to these submissions, the Landowners rely on the evidence of Mr David Barnes, Managing Director of Hansen Partnership, as well as their respective submissions to the Amendment.<sup>1</sup>

### **Overarching issues**

5. The Landowners adopt the submissions made on behalf of other Landowners (documents 252, 253, 263 and 276).
6. Mr Barnes sets out his expert opinion in relation to the benefits and deficiencies of the Amendment in general terms, and in relation to each of the Landowners' sites. Mr Barnes' extensive experience in structure planning, the preparation of character studies, and other strategic planning projects sets him apart from many of the experts who have given evidence before the Review Panel. His evidence ought to be given substantial weight.
7. Mr Barnes acknowledges positive aspects of the Amendment, including:
  - (a) The overall Vision, with four precincts of a generally different scale and character (five including the employment precinct);
  - (b) The emphasis on the Lorimer, Sandridge and Montague Precincts as the precincts most suitable to accommodate higher density development, with a commercial / employment focus; and
  - (c) A transition to a lower scale Wirraway Precinct, with a progressively reducing scale moving away from the CBD.
8. However, Mr Barnes' voice joins the chorus of experts in this proceeding, the overwhelming consensus of which points to the abandonment of the Amendment, or its substantial modification. Mr Barnes expresses the overarching view that *the Draft Framework and Amendment are overly complex,*

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<sup>1</sup> Mr Barnes' evidence does not address land owned by Thistlethwaite Street Pty Ltd at 156 – 162 Thistlethwaite Street, South Melbourne.

*theoretical, purist and prescriptive, given the existing land use patterns and infrastructure in the area.*<sup>2</sup>

9. Acknowledging the considerable planning history which must be overcome in Fishermans Bend, the evidence presented by the Minister to the Review Panel demonstrates that planning for Fishermans Bend as though it were a greenfields area gives rise to substantial issues and difficulties, which the Amendment has failed to overcome or sufficiently address (despite reactive changes to the controls during the course of the hearing).
10. In summary, Mr Barnes identifies the following areas of concern in relation to general considerations:
  - (a) The use of mandatory controls, or controls that provide little guidance by way of the exercise of discretion;<sup>3</sup>
  - (b) The potential for unforeseen consequences arising out of the gap between the theoretical and practical – generated largely by the use of a range of new and innovative planning tools;<sup>4</sup>
  - (c) The application of the Floor Area Ratio (“the FAR”) and Floor Area Uplift (“the FAU”) regime in a confusing, complex and ultimately unjustified manner;<sup>5</sup>
  - (d) The considerable mismatch between the FAR and built form controls, and in particular, the proposed numerical maximum height limits;<sup>6</sup>
  - (e) The flawed use of the FAR to provide new roads, lanes and parks, and the lack of justification for the quantum and location of this infrastructure;<sup>7</sup>

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<sup>2</sup> At [18].

<sup>3</sup> At [25].

<sup>4</sup> At [25].

<sup>5</sup> At [30]. The deficiencies associated with the implementation of the proposed FAR / FAU regime are explored further at [32].

<sup>6</sup> At [35].

- (f) The potential for the commercial floor area requirements to act as a dis-incentive to development in the short to medium term;<sup>8</sup> and
  - (g) The lack of justification for mandatory built form controls relating to setbacks, and mandatory controls generally relating to street wall height, building wall heights on side and rear boundaries, setbacks above the street wall from new and existing streets and lanes, side and rear setbacks and building separation distances.<sup>9</sup>
11. All of these issues have been thoroughly agitated during the course of the hearing. That element of repetition is not a basis to diminish the importance or potency of the similar views expressed by the experts. On the contrary, it is appropriate to give substantial weight to the common threads that have been expressed against the Amendment in much of the expert evidence, and submissions presented to this Review Panel.
  12. No doubt the Review Panel seeks solutions to the substantial issues identified by the experts who have appeared before it. It looks to the submitters for answers. However, there is an inherent difficulty in attempting to fix something that is so fundamentally broken. Arguably, it is not the Landowners' role to generate solutions to problems that go to the heart of the Amendment, particularly where they are of the view that it cannot be fixed and ought be abandoned.
  13. The reticence on the part of experts and submitters alike to embark on a 'band aid' approach to 'spot fixing' the Amendment should not be judged critically, particularly given the potential for unforeseen consequences arising from ongoing changes to the Amendment made during the course of the hearing. These difficulties are exacerbated by uncertainty as to whether the

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<sup>7</sup> See [38] to [47].

<sup>8</sup> At [54] and [55].

<sup>9</sup> At [63] to [65].

Minister has or has not agreed to the many modifications recommended the Minister's experts.

14. It is submitted that the following principles ought guide the Review Panel's consideration of the Amendment:
  - (a) discretionary maximum height restrictions are the appropriate tool to set an order of scale within each of the precincts Fishermans Bend. However, the numerical discretionary maximum height limits must have a clear strategic basis (which is presently lacking);
  - (b) the quantum and location of open space must have an empirical, or other sound basis and should have regard to the impact on the development potential of neighbouring and nearby sites, as well as title boundaries;
  - (c) overshadowing controls should be discretionary, except in relation to identified sensitive or special locations (and should not include streets in core areas);
  - (d) notions of density per se should be disregarded as a tool that purportedly guides height and scale. A quality ground plane determines liveability, not density, except at the upper end of infrastructure capacity. The evidence does not establish a population density threshold beyond which amenity or liveability might be impacted in Fishermans Bend, nor does it establish the need for density controls;
  - (e) height and scale should be determined by reference to the strategic importance of the precinct, tempered by character and other appropriate planning considerations (of which density is not one). If Fishermans Bend is to be designed to a population target, it ought be a target that has a proper basis;

- (f) the amenity, character and liveability objectives sought for Fishermans Bend can be achieved through the application of a DDO that applies discretionary height limits, with appropriate decision guidelines directed to delivering a quality ground plane;
- (g) if the Review Panel determines that the FAR mechanism is necessary (which is not agreed), the FAR should:
  - (i) be unhooked from notions of height and scale – the FAR has nothing to do with built form outcomes in Fishermans Bend;
  - (ii) be acknowledged as a value capture mechanism;
  - (iii) should be applied equitably, and should reasonably relate to the discretionary maximum height limit; and
  - (iv) should not be relied on to deliver essential infrastructure.
- (h) The FAU regime:
  - (i) requires certainty in substance and in terms of how it will be implemented;
  - (ii) should be related to the true cost of development, not just yield;
  - (iii) must be applied equitably;
  - (iv) should also not be relied on to deliver essential infrastructure; and
  - (v) must provide a clear process for review of related decisions by planning and responsible authorities.

15. The general consensus of the experts who have given evidence before the Review Panel (except those experts called on behalf of the Minister) is that

the FAR / FAU regime requires substantial modification. If the FAR was informed by amenity and character considerations, the potential for FAU uptake undermines those objectives. There does not appear to be any explanation for the variable relationship between the FAR and discretionary height limits, generating a greater ‘tax’ on land in some circumstances, without any apparent basis. Similarly, the operation of the FAU is not well resolved and does not appear to provide for a review process. There is clearly a lot more work to do if an FAR / FAU regime is to be applied in Fishermans Bend.

16. At this stage, it is open to the Review Panel to recommend the application of discretionary maximum height limits to guide the height and scale of built form in Fishermans Bend, with decision guidelines that seek to deliver high amenity at the ground plane, either as a final or interim response to the Amendment. The difficulty associated with this course, is the apparent lack of a strategic basis for the discretionary height controls currently proposed.

### **The Wirraway Precinct issues**

17. In summary, Mr Barnes makes the following recommendations in relation to the Wirraway Precinct:
  - (a) Extend the area of greatest development intensity along the linear core further north and south, in the vicinity of Salmon Street, to optimise development potential within a 400m walking distance of the proposed rail;<sup>10</sup>
  - (b) Increase building heights along the north side of Plummer Street from 42.2m (12 storeys) to 80.6m (24 Storeys);

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<sup>10</sup> At [75].

- (c) Around the key intersection of Plummer and Salmon Streets, increase the preferred maximum height to 80.6m (24 storeys) on the south side of Plummer Street between Smith Street and JL Murphy Reserve;
  - (d) Graduate building height to a 42.2m (12 storeys) on Williamstown Road (where the controls depict 15.4m or 4 storeys) and 29.4m (8 storeys) with the possibility of an upper level setback to 35.8m (10 storeys) along the north side of Williamstown Road (where the controls depict 15.4m or 4 storeys);<sup>11</sup> and
  - (e) Remove from the DDO the prohibition on overshadowing of the south side of Plummer Street, given its nomination as the most densely developed part of the Wirraway Precinct.<sup>12</sup>
18. Additionally, Mr Barnes recommends delaying the introduction of mandatory maximum car parking rates until such time as transport infrastructure is delivered (consistent with the evidence of Ms Dunstan and Mr Walsh).
19. The Landowners submit that the recommendations made by Mr Barnes both advance the Vision for the Wirraway Precinct and respond to the strategic importance of Fishermans Bend more generally.

### **Individual site issues**

#### S2/19 Salmon Street, Port Melbourne (Diamond Salmon Pty Ltd)

20. A description of the Site and the existing planning controls are set out in Mr Barnes' report at page 28.
21. The Amendment:
- (a) locates the Site in the Wirraway core;
  - (b) applies a FAR of 4.1:1 and an employment FAR of 1.9:1;

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<sup>11</sup> Para [76].

<sup>12</sup> At [83] and [84].

- (c) applies a discretionary height limit of 80.6m (24 storeys);
  - (d) applies mandatory setback controls;
  - (e) nominates the Plummer and Salmon Street frontages as ‘primary active frontages’; and
  - (f) provides for linear public open space along the Site’s east boundary.
22. The issues for the Site largely revert to the broader Wirraway Precinct issues:
- (a) The mandatory setback controls are not supported;
  - (b) there is no need for linear open space along the east boundary of the Site; and
  - (c) the overshadowing controls relating to the south side of Plummer Street are unjustified.
23. There is no strategic justification for mandatory setback controls. Moreover, the overshadowing controls that apply to the south side of Plummer Street are too onerous, given the Site’s core location.
24. The linear park is not contiguous with linear open space either to the north or south and does not provide or contribute to connectivity in the precinct. The Landowners endorse the submissions made in relation to the excessive and purist approach to the provision of open space, evident in Ms Thompson’s gap analysis and the open space plan more generally.
25. The Landowners acknowledge Mr Barnes’ support for a maximum height of 80.6m to the Site, given its location in the core area close to proposed public transport and the JL Reserve. However, the Landowners submit that there lacks a strategic basis for the numerical maximum discretionary height limits.

50 Salmon Street, Port Melbourne (One Smart Pty Ltd)

26. A description of the Site and the existing planning controls are set out in Mr Barnes' report at page 23.
27. The Amendment:
  - (a) locates the Site in the Wirraway core;
  - (b) applies a discretionary height limit of 42.2m (12 storeys);
  - (c) imposes a mandatory street wall maximum height of 23m (6 storeys) to Plummer and Salmon Streets;
  - (d) applies a FAR of 4.1:1 and an employment FAR of 1.9:1;
  - (e) applies mandatory setback requirements;
  - (f) proposes street widening across the Plummer Street frontage;
  - (g) identifies the Plummer and Salmon Street frontages as 'primary active frontages';
  - (h) provides for the possible metro alignment;
  - (i) proposes new public open space at the corner of Plummer and Salmon Streets;
  - (j) applies mandatory overshadowing requirements to the south side of Plummer Street; and
  - (k) requirement to prepare a development plan.
28. The issues for the Site are identified by Mr Barnes as follows:
  - (a) The inequity associated with the mechanism for delivery of roads and parks, which burdens individual land owners;

- (b) The lack of justification for the 42.2m (12 storey) height limit, given the Site's location at the key intersection of Salmon and Plummer Streets;
  - (c) The lack of justification for mandatory setbacks;
  - (d) The application of the FAR controls, which have the potential to diminish the impetus for development until public transport is provided;
  - (e) The excessive provision of open space on three corners of the intersection; and
  - (f) The premature application of a DPO that prohibits a planning permit being granted until a development plan has been prepared for the Site.
29. The overshadowing controls do not apply to the park on the Site, however the Landowners question the logic for incorporating parks on the north and south side of Plummer Street, a proposition that appears excessive given the core location of the Site.
30. Mr Barnes expresses concern about the futility of applying the DPO at this stage, given the location and design of any future transport interchange is unknown.
31. The other issues raised have been dealt with as part of the general and Wirraway precinct submissions.

299 Williamstown Road and 11 Salmon Street, Port Melbourne (Moniton Pty Ltd)

32. A description of the Site and the existing planning controls are set out in Mr Barnes' report at page 31.
33. The Amendment:
- (a) locates the Site in the non-core area of the Wirraway precinct;

- (b) applies a mandatory maximum building height of 15.4m (4 storeys) to the southern third of the Site;
- (c) applies a discretionary maximum building height of 15.4m (4 storeys) to the northern two-thirds of the Site;
- (d) applies an FAR of 2.1:1;
- (e) proposes a new 11m road along the northern boundary (half of a 22m road);
- (f) proposes a linear park along the entire northern boundary of the land, parallel to the proposed new road; and
- (g) provides for public open space at the north west boundary of the Site.

34. The issues for the Site are identified by Mr Barnes as follows:

- (g) The opportunity for increased height along the northern side of Williamstown Road, and the expansion of the Wirraway core;
- (h) The inequity of imposing the burden of the provision of the east / west road on individual an landowner and the need for a fair mechanism for delivery of public infrastructure;
- (i) The lack of justification for the mandatory setback controls; and
- (j) The impact of the proposed low parking rate.

35. Mr Barnes recommends increased heights along the north side of Williamstown Road. This represents an appropriate response to the NRZ land to the south, given the substantial buffer provided by this arterial road. The impact of the increment of change brought about by the increased height is mitigated to some extent by the fact that residential land on the south side of Williamstown Road has always had an interface with major industrial area.

36. Moreover, the proposed increased heights would not overshadow residential land to the south during the day (at the solstice). Adopting a 4 storey height limit along Williamstown Road (whether discretionary or mandatory) would be monotonous and undermines the objective to achieve diversity in Fishermans Bend.

359 Plummer Street, Port Melbourne (Mitzmazal Pty Ltd)

37. A description of the Site and the existing planning controls are set out in Mr Barnes' report at page 19.

38. The Amendment:

- (a) locates part of the Site in the Wirraway core and part in the non-core;
- (b) applies a FAR of 4.1:1 to land in the core and 2.1:1 to land in the non-core areas;
- (c) applies an employment FAR of 1.9:1 to land in the core area;
- (d) Provides a new 22m wide road connection along the northern and western edges of the Site (CCZ);
- (e) provides for a new 6m road widening or a 10m landscape buffer along the Plummer Street frontage (CCZ);
- (f) applies a discretionary height limit of 80.6m (24 storeys) to the northern half of the Site;
- (g) applies a discretionary height of 42.2m (12 Storeys) along the southern half of the Site fronting Plummer Street (DDO);
- (h) Applies mandatory overshadowing controls relating to the southern side of Plummer Street.

39. The issues for the Site are identified by Mr Barnes as follows:

- (k) The proposed controls relax the existing mandatory 12 storey height limit, but the Site will be substantially impacted by reason of the proposed new roads (3,500sqm of the 7,378sqm site) – an equitable mechanism to acquire land for a public purpose must be implemented;
  - (l) The application of two height controls to the Site, which is only partly within the core, is complicated and problematic – this represents an unreasonable constraint on the Site;
  - (m) The 42.2m (12 storey) height limit on the Plummer Street frontage is not supported and represents a lost opportunity – 80.6m (24 storeys) is supported in this location;
  - (n) Mandatory setback controls are not supported; and
  - (o) Mandatory overshadowing controls to the south side of Plummer Street are not supported.
40. The north south road along the Site’s western boundary is supported, but as it is proposed for the benefit of the precinct generally, a public acquisition overlay is appropriate.
41. Mr Barnes does not support the proposed east west link on the Site’s northern boundary, as it is unnecessary and unreasonably impacts the Site. It completes the road grid but is not required as the block is reduced in size by the curved layout of Rocklea Drive.

156 – 162 Thistlethwaite Street, South Melbourne (Thistlethwaite Pty Ltd)

42. The Site is located in the Montague Precinct. It has an approximate area of approximately 779.14sqm, with a frontage to Thistlethwaite Street of 29.47m and Boundary Street of 22.33m. It is encumbered with low scale buildings used for light industry.

43. Mr Barnes does not address this Site in his evidence, specifically, given that the landowners singular concern relates to the car parking ratio.
44. However, Mr Barnes shares the concerns expressed by Ms Dunstan and Mr Walsh in relation to the application of a low parking rate, before planning for public transport is sufficiently progressed. Moreover, there lacks clarity about the circumstances in which a proposal might exceed the 0.5 car spaces per dwelling.
45. The Landowner endorses the evidence of Ms Dunstan and Mr Walsh in relation to the lack of justification for the proposed car parking rate of 0.5 spaces per dwelling.

### **Port Phillip Council's suggested changes**

#### The Council's approach

46. The City of Port Phillip appears to proceed on the basis that the Review Panel is confined to an assessment of whether the proposed controls are consistent with the Vision.
47. Other submitters have set out in full the reasons why the Review Panel is not so confined (documents 252, 263, 276 and the oral submissions of Mr Stuart Morris QC, made on 3 May 2018). The Landowners adopt those submissions.
48. The Council's approach to the Amendment is one that regards this process as an opportunity to undertake a detailed precinct planning exercise within the broad parameters of the Vision. Questions of whether the proposed controls represent an appropriate response to the strategic importance of Fishermans Bend appear to have been sidelined in the Council's approach to its design exercise. The Council's suggested changes fail to balance competing strategic objectives relating to, for example, the need to *maximise* development within urban renewal precincts of State

significance on the one hand, and the desire to achieve a lower scale character within the Wirraway precinct on the other hand.

49. Planning for Fishermans Bend has to comprise more than an academic urban design exercise undertaken by reference to the Vision alone. The Council's approach is not one that should be endorsed by the Review Panel.
50. In summary, the Landowners submit:
  - (a) There is no strategic basis to limit heights to 15 storeys in the Wirraway core – this suggestion is inconsistent with the strategic importance of the Plummer Street spine, which accommodates a tramline and potential underground rail station. Plan Melbourne and policy at every level supports higher density development at locations like this;
  - (b) It is inappropriate to determine matters of detail such as preferred built form typologies – such matters of detail (if appropriate at all) are properly addressed in precinct planning;
  - (c) The prospect of laneways every 50m is excessive and the suggestion that lanes be 12m wide to accommodate landscaping is unrealistic;
  - (d) There is no dispute that the intersection of Salmon and Plummer Streets should be the centre of activity for the Wirraway Precinct, however this calls for a strong built form response, rather than small areas of open space;<sup>13</sup>
  - (e) The suggestion that the built form controls should mandate a minimum area of open space in new developments lacks merit, particularly given the substantial open space provided throughout the precinct. This approach is overly prescriptive.

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<sup>13</sup> Consistent with the views expressed by Mr Barnes at para [122] of his report.

51. The Council's changes arise out of an urban design analysis that fails to give due regard to important strategic planning considerations. These strategic considerations must be given substantial weight in planning for such an important land resource. Accordingly, the Council's suggested changes ought be regarded with a level of caution, and should be given limited weight in the Review Panel's consideration of the Amendment.

### **Conclusion**

52. The Landowners submit that having regard to the above matters, and the issues canvassed in the overarching submissions raised by others, the Review Panel should advise the Minister that the Amendment is inappropriate and should be abandoned.

Nicola Collingwood

Instructed by Rigby Cooke Lawyers

Date: 14 May 2018

## ATTACHMENT 1

Diamond Salmon Pty Ltd (167)	S2/19 Salmon Street, Port Melbourne
One Smart Pty Ltd (172)	50 Salmon Street, Port Melbourne
Moniton Pty Ltd (222)	299 Williamstown Road and 11 Salmon Street, Port Melbourne
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