

IN THE MATTER OF

FISHERMANS BEND REVIEW PANEL

AMENDMENT: GC81 to the Port Phillip and Melbourne
Planning Schemes

PLANNING AUTHORITY: The Minister for Planning

SUBJECT LAND: 400 – 430 City Road, Southbank
44 – 54 White Street, South Melbourne
577 Plummer Street and 299 Bridge Street,
Port Melbourne

OUTLINE OF SUBMISSIONS

Introduction

1. These submissions are made on behalf of the following landowners in relation Amendment GC81 to the Port Phillip and Melbourne Planning Schemes:
 - (a) Wadhawan Holdings Pty Ltd, owner of land at 400 - 430 City Road, Southbank, in the Montague Precinct (Submitter 143);
 - (b) Kador Group Holdings Pty Ltd, owner of land at 44 – 54 White Street, South Melbourne in the Sandridge Precinct (Submitter 141) and
 - (c) Delta Group, owner of land at 577 Plummer Street and 299 Bridge Street, Port Melbourne in the Sandridge Precinct (Submitter 180).

[collectively referred to (for convenience) as “the WKD Landowners”]

2. The WKD Landowners each rely on the submission made by Stuart Morris QC on 18 May 2018, which was tabled as Document 326.
3. Additionally, subject to the following comments, the WKD Landowners endorse and adopt the closing submissions made on behalf of “Landowners” represented by Chris Canavan QC, Nick Tweedie SC and Jane Sharp of Counsel, on 13 June 2018 (“Landowners’ Closing Submissions”).
4. Like the Landowners, the WKD Landowners are diverse and separate landowners, with different interests. They make this joint submission as a matter of convenience, not because their interests coincide.
5. Any suggestion that the WKD Landowners are “greedy” or “negative” is unfair and irrelevant. A landowner is entitled, as the solicitor’s advertisement tells us, to “fight for fair!” And the panel has a duty to consider the fairness of any proposed planning controls.
6. As the Landowners’ Closing Submissions make clear, good public decision-making is just as much about the means as the end. See *Hasan v Moreland City Council* [2005] VCAT 1931 at [17]:

The existence of a power does not provide a justification to use it. Thought must always be given, not just to whether an outcome is desirable, but what is the best method to achieve that outcome. The journey can be as important as the destination. When more than one method is available to achieve an outcome, it will be necessary to consider which is the best or better method, having regard to questions of efficiency, equity, certainty and freedom, as well as the extent to which the substantive objective will be achieved.

7. In this case the Minister has looked at the tool shelf, conducted a legal analysis to consider what tool might be *capable* of being used (which legal analysis appears to be flawed), and then determined that, because it believes a tool is capable of being used, it should be used. (“Ahh, there I see an ICP for taking land!”) As a consequence, the Minister’s Part C case is like using an axe to open a can of beans!

8. The point made in the Landowners' Closing Submissions about the starting point (a population target) being flawed ought be accepted. Put simply, as explained in oral submissions, it displays ignorance about the dynamics of a city and what makes cities great.
9. The WKD Landowners endorse the Landowners' Closing Submissions in relation to procedural fairness. Whilst it is true that there has been some opportunity to respond, including by this submission, this is a half-baked solution when the change brought about by the Part C submission is so fundamental and transformational. And, of course, the opportunity to respond is really confined to those who are already participating in the process; it is not an opportunity given to all affected landowners.

Stuart Morris

Instructed by Mills Oakley

Date: 13 June 2018