Dear Sir / Madam,

**Additional Submission to the Fishermans Bend Draft Framework and Controls**

**No. 14 – 16 Salmon Street, Port Melbourne**

This submission relates to the properties at No. 14 & 16 Salmon Street, Port Melbourne (the subject site), and supplements previous submission made regarding this site and the implications of the Fishermans Bend Draft Framework and associated controls upon the development potential of the subject site, specifically the requirements for provision of new streets and public open spaces.

This additional submission is made on the basis of evidence prepared by Mr David Batt QC (Document 155), circulated to us after our presentation to Panel. The evidence, and subsequent submission by legal counsel, have highlighted the impact of the public open space identified for our land, which was previously unclear.

**Figure 1 – Map 3: Open Space Layout**

*Source: Proposed Capital City Zone – Schedule 1*
Proposed planning controls and impact on subject site

The proposed policy framework under Amendment GC81 earmarks the northern portion of the subject site for the future provision of a new 12 metre wide road / new public open space (linear park), however we submit that the extent to which these requirements apply to the site, the mechanism for how such land is to be acquired and developed for public use, the timeframes for delivery of such aspirations and the identification of who is responsible for the delivery, are all highly ambiguous due to lack of detail and direction contained within the proposed planning controls.

Sub-clause 4.0 under Schedule 1 to the Capital City Zone states:

A permit must not be granted to construct a building or construct or carry out works where the provision for any new streets, laneways or public open space generally in accordance with Map 2 and Map 3 is not provided.

This requirement for private land to be set aside for public infrastructure by way of a mandatory planning control in the zone is considered to be highly inappropriate given no information or certainty is provided regarding compensation, timing and responsibilities for the delivery of infrastructure. This control creates significant uncertainty and makes it very difficult to plan for future development of a site.

We request clarification from the Minister for Planning with regard to how much of the subject site is to be set aside for public infrastructure, as the maps provided within the proposed Schedule 1 to the zone and the draft Framework are unclear as to whether the public infrastructure is provided wholly within the subject site, or whether it is split with the adjoining site to the north.

We note that Panel Submission Document 138 summarises adjusted open space areas identified in the Expert Witness Statement (Document 75) by Joanna Thompson, and states that the subject site is
required to set aside 478sqm of new public open space (equating to 22% of site area). We request further clarification as to how these figures were arrived upon.

Furthermore, we question the level of amenity this linear park will be afforded given it is located immediately south of the site at No. 18-22 Salmon Street, which is a large corner site with frontages to both Salmon Street and Plummer Street, capable of accommodating 24 storeys under the proposed GC81 built form controls. It is reasonable to assume that any development on that site will cast significant shadow within the proposed public open space identified under the zone.

Mechanisms for delivery of new local streets and public open space

We submit that the proposed inclusion of a mandatory control mechanism under the Capital City Zone – Schedule 1 for the provision of new streets, laneways and public open space (as identified in the relevant maps) is inappropriate and inequitable, particularly in instances where portions of privately owned land is identified for the provision of such public infrastructure. It is considered that acquisition of such land should be undertaken by way of a mechanism that offers affected private land owners a degree of certainty as to how they will be compensated for acquisition of land for public use and clarity regarding who is responsible for the delivery of this infrastructure.

In lieu of the currently proposed controls, we consider there to be two more appropriate mechanisms to deliver these public infrastructure aspirations, including:

• Application of a Public Acquisition Overlay (PAO) to portions of land identified for public uses, which is a commonly used mechanism to identify land for public acquisition to facilitate a public benefit outcome. The PAO can include specific measures to ensure that private land owners can be appropriately compensated for land acquired, hence we submit that this is a more appropriate mechanism to facilitate public infrastructure aspirations in a fair and reasonable manner, without any reliance upon land owners developing their land to facilitate delivery of public infrastructure.

• A Development Contributions Plan (DCP) can also be devised and incorporated into the planning scheme to ensure that land owners are appropriately compensated for land acquisitions associated with public roads and public open spaces via allowances and dispensations for contributions normally required of land owners when developing their site. The DCP will also need to discern who is responsible for delivery of the required public infrastructure, which will be dependent on how the DCP policy is structured (i.e. based on land value calculation of land being contributed, or provision of funding for acquisition of privately owned land). We consider a DCP will effectively provide further clarity to land owners regarding their responsibilities and rights to compensation.

In summary, we suggest that a Public Acquisition Overlay be applied in lieu of the proposed Capital City Zone controls and further consideration be given to a Development Contributions Plan under the Overlay and how this can be structured to provide for funding for the acquisition of privately owned land and compensation for the burden imposed upon affected land owners.

Compensation for acquisition of land for provision of public infrastructure by way of revised Floor Area Ratios and Floor Area Uplift

The subject site is identified in a ‘non-core area’ within the Wirraway Precinct and is proposed to have an applicable 2.1:1 FAR. Implementing this FAR will limit the total allowable floor area to approximately 4,620 square metres for this site, basically just over twice the site area. This is an unreasonable imposition on land that is supposed to be part of the expanded Central City.

The Minister for Planning has suggested that the proposed controls are suitable given that the area to be set aside for public infrastructure can still be used as part of the total site area when calculating allowable gross floor area under the FAR requirements.

Regarding Floor Area Uplift, the draft Framework states:
Introduce a Floor Area Uplift (FAU) control that is focused on delivering the following public benefits (in order of priority):

- Community infrastructure: developers can seek to apply a FAU on their site to deliver identified community hubs (see strategy 3.1.1 for the range and location of hubs where this applies). For every 100m² of community infrastructure delivered, developers are able to deliver an equivalent value of residential floor area

- Additional public open space: developers can seek to apply a FAU on their site to deliver public open space that is in addition to the identified open spaces within this draft Framework and the required 8% public open space contribution. This public open space must be transferred across to the relevant authority. For every 26m² of public open space delivered, developers are able to deliver an equivalent value of residential floor area.

It is considered unreasonable that a floor area uplift is only available to a land owner if public open space in addition to the open spaces already identified in the draft Framework is provided.

We submit that the overall approach is significantly flawed in that the FAR requirements will operate in conjunction with Clause 52.01 (Open Space Contribution and Subdivision), which requires that subdivision proponents within Fishermans Bend to pay an 8 per cent contribution for public open space. It is unclear in the proposed controls as to whether land owners will be eligible for credits under Clause 52.01 for land set aside for public open space.

The above open space contribution requirement, together with the expectation that a portion of a land owner’s site be set aside for public infrastructure, is considered to be particularly onerous and provides a significant barrier to the urban renewal of the precinct, and reduces the incentive for them to actually pursue redevelopment of the subject site, particularly given there is no clarity regarding who is responsible for delivering this infrastructure and the costs involved in doing so.

Furthermore, the Development Contributions Plan Overlay (DCPO) currently requires development proponents to pay a levy to fund shared infrastructure, with the interim levy set at $15,900 per dwelling. No amended DCP has been proposed as part of this amendment, therefore we understand that this levy still applies, regardless of additional requirements for the gifting of land and cost of works to provide open space.

In summary, it is considered that the proposed framework for public infrastructure provision is flawed given the extent of missing detail, potential overlaps and unresolved matters, which results in a lack of certainty for developers and authorities alike. Furthermore, the excessive contribution requirements together with no provision for substantial compensation or floor area uplift for land owners who are forced to set aside land for public infrastructure creates an environment that is will not facilitate redevelopment.

Conclusion

We consider the ambiguity of the proposed controls to be highly problematic in that they create a significant degree of uncertainty for land owners, whilst the proposed public infrastructure and development contribution requirements will render the redevelopment of many sites, including the subject site, unviable due to the loss of land without compensation, together with significant contribution costs currently proposed.

We consider it is highly unreasonable, especially for land marked for a modest scale of height of FAR, that it be burdened with:

- Gifting of land (around 22% of the site) for public open space
- The cost of providing the public open space
- No compensation for the land, through a PAO or DCP
- No credit of the gift towards development continuations to be paid
- No credit of the gift towards the 8% POS contribution required under subdivision
Essentially, the controls and draft framework will significantly hinder the long-term development potential of the subject site and many other sites, hence potentially compromising the ability to deliver upon aspirations for the provision of community uses within Wirraway and the broader Fisherman’s Bend area.

We trust this submission is valuable for consideration of the draft Fishermans Bend controls. If you have any questions please don't hesitate to contact me on 0418 300 399 or email j.weinmann@bigpond.com.

Your Sincerely,

Jacob Weinmann
Director
For & on behalf of Bellamia Nominees Pty Ltd & PCLC Investment Pty Ltd