

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
PERPETUAL NORMANBY PTY LTD**

Introduction

1. These submissions are made on behalf of Perpetual Normanby Pty Ltd, Submitter 120 to this Review Panel. (PN)
2. PN has an interest in the land at 228-238 Normanby Road, South Melbourne. (**Site**)
3. This Site is currently used for warehouse contained in a two storey building.
4. It has an area of 3,064 with a frontage of approximately 61m to Normanby Road and Munro Street and a frontage of 50m to Montague Street. It lies on the north-east corner of Normanby Road and Montague Street.
5. The Site lies within the Montague Precinct pursuant to the Proposed Amendment. It lies opposite the proposed Montague North Park.
6. The Site has an existing planning permit, MPA14/007 issued on the 14th May 2015. (**Permit**). The Permit allows for two independent towers of 39-storeys (133m) and 49 storeys (165m) comprising 608 sqm retail floor space and 525 dwellings.
7. An extension of time to the permit was approved by DELWP and the new commencement date is 20 May 2018 and completion 20 May 2021. Endorsed plans for the development are provided to the Review Panel.

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 72-76.
10. PN made a submission to the Minister dated 14 December 2017 raising a number of issues including:
 - a) Site specific concerns
 - (i) Building height and floor area ratio
 - Proposed reduction in building height and introduction of mandatory floor area ratio unreasonable and unjustified, particularly in Montague North
 - Tower developments are part of the vision for Montague North and there should be recognition of existing permits in establishing the preferred vision and built form
 - No potential local amenity considerations which would justify the lowering of the building heights
 - Should be recognition of existing permits in determining preferred built form controls for a site/precinct
 - In particular, current/approved building heights need to be given weight in any assessment associated with determining preferred building heights
 - b) Use of floor area ratio as development standard flawed as:
 - (i) Set on basis of population forecasts, which are too low
 - (ii) Overlap between height controls and floor area ratios confusing and misleading
 - (iii) Concerns regarding floor area uplift, as noted by Panel Report associated with Amendment C270 to the Melbourne Planning Scheme:

- Does not clearly apply principles of equality, consistency, accountability and transparency
 - Vague and may be open to misinterpretation in application
 - No strategic justification for scope of public benefits provided
 - Too many opportunities for inconsistent outcomes in negotiation of agreements for public benefit
- c) Other built form standards
- (i) Mandatory provisions are not warranted
 - (ii) Mandatory provisions may restrict innovation and contemporary design outcomes, which should be encouraged in urban renewal areas
- d) Proposed laneway
- (i) New indicative laneway along east boundary connecting Munro Street and Normanby needs to be acknowledged as enclosed link; if expectation that laneway should be open to sky, alternative location should be considered
- e) Parking rates
- (i) Proposed lowering of parking rates such that residential developments can only provide half of dwellings with a car space inconsistent with other policies encouraging dwelling diversity, including supply of larger dwellings to cater for families and larger household types
 - (ii) No direct correlation between car ownership, parking supply and traffic volumes
 - (iii) Larger households will need cars for convenience, weekend activities and holidays but will use alternative modes of travel to get to and from work/school on weekdays
- f) Draft development plan overlay

- (i) Usefulness of Development Plan Overlay provision questioned having regard to:
 - Existing permits issued
 - Duplication of existing provisions
 - Potential difficulty in co-ordinating individual landowners

- g) General concerns
 - (i) Population targets inadequate
 - Setting a cap on growth at odds with role of urban renewal areas to accommodate population and employment growth
 - Would continue to put pressure on established suburbs
 - (ii) Given that population and employment densities capped on basis of future public transport capacity, proposed public transport services are inadequate and increased investment in public transport infrastructure required
 - (iii) Land use planning and associated provisions premature given no government commitment to public transport proposals

- h) Transitional provisions
 - (i) None at present
 - (ii) Required to protect existing permits and applications lodged before the approval date

- i) Drafting issues
 - (i) Errors in documentation, including:
 - Use of wrong table numbers
 - Errors in land use tables
 - Confusing mandatory and discretionary provisions

- j) Overly complex
11. The PN submissions as above have generally addressed in the oral and written submissions already presented to the Review Panel by Mr Canavan QC and Mr Tweedie SC., and by the evidence of the various witnesses.
 12. With regard to the issues of specific relevance to PN, Mr McGurn and Mr Sheppard have modelled the implication of the Proposed Amendment on the Site.
 13. Both witnesses identify that the current planning permit would be prohibited under the Proposed Amendment by way of the FAR controls.
 14. An assessment of the new controls shows that the FAR can be achieved on this Site within the proposed building envelope controls noting that the mandatory 6.1:1 FAR would limit a development on the Site to effectively 7 storeys unless the FAU provisions are utilised.
 15. As is evident from the endorsed plans, there is a significant difference between the built form approved under the Permit and the built form that could be achieved under the Proposed Amendment.
 16. PN submits that, as recognised through the approval of the Permit for the Site, it has significant opportunity for substantial redevelopment:
 - a) Proximity to the CBD (approximately 1km);
 - b) Proximity to the 96 and 109 tram routes;
 - c) Emerging character of the area;
 - d) Site and dimensions of the Site abutting three street frontages;
 - e) Lack of any sensitive site abuttals; and
 - f) Lack of any substantial constraints on development in terms of heritage, vegetation or insurmountable flooding or environment issues.
 17. PN submits that given these attributes of the Site and the existing permits and emerging character of Montague, there is simply no urban design or amenity

justification for the establishment of a FAR of 6.1:1 and a preferred height limit of 20 storeys (halving the existing preferred height limit).

18. To the extent that the FAR is being utilised to reduce population density to meet a fixed, and unreasonably low population target, PN strongly rejects this starting point of the Proposed Amendment. PN expresses grave concern that the development of an Urban Renewal Precinct on the edge of the Melbourne CBD is being approached in such a manner.
19. The evidence of Mr Sheppard and Mr McGurn together with the detailed written submissions and evidence of the Landowners Group is relied upon, noting Mr Shimmin's evidence with regard to Melbourne's population increase and the demand for inner city housing.
20. With regard to the proposed controls, PN submits that the lack of transitional provisions in the Proposed Amendment is unreasonable and unfair.
21. The lack of properly drafted transitional provisions not only affects current applications, but also current permits – since the introduction of new permit triggers (such as the need for new use permissions) may render those permits unable to be acted upon.
22. In addition, the provisions of clause 4.0 of the CCZ that purport to restrict the ability to amend existing permits without providing for open space, roads and laneways are also unlawful, inappropriate and unfair. They would have the effect that certain permits (such as PNs) would be unable to be amended in any way whatsoever.
23. Further, PN submits that there should be recognition of existing permits in the provisions so that amendments to permits and applications of extensions of time to existing permits take into account the planning context that was relevant at the time of the original approval. Again, this is a matter of fundamental fairness and equity.
24. It is proposed to apply a Development Plan Overlay over the Site. The purpose for the DPO is unclear. It does not appear that it could or would achieve legitimate planning outcome that could not be achieved by the existing controls. What is it proposed to do that cannot be achieved by a precinct plan or the DDO?

25. Moreover, while DPOs can be useful for large areas of land in single ownership, its application to numerous parcels of land which is in disparate ownership, is extremely problematic in terms of its operation. Simply put, who is going to prepare the development plan? Inevitably that burden will fall on the first developer to act, which is not equitable.
26. With regard to parking provision, PN 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.
27. Finally, as a matter of detail in the Framework plan for the Precinct, PN notes that a laneway is nominated along the north-east boundary of the Site. Whilst a laneway is accommodated in the existing Permit, it is not proposed to be open to the sky but is enclosed. Accordingly, flexibility in the controls should recognise that there are a variety of ways to achieve pedestrian permeability.

Conclusion

28. 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 Amendment should be abandoned in its current form.

19 April 2018

Nick Tweedie

Jane Sharp

Instructed by Norton Rose Fulbright