
Request to be heard?: Yes

Precinct: Sandridge

Full Name: Mario Lo Giudice

Organisation: HACP Pty Ltd

Affected property: 14 Woodruff Street, Port Melbourne

Attachment 1: Submission_-_HA

Attachment 2:

Attachment 3:

Comments: Please see uploaded Submission

14 December 2017

1st floor, 333 Drummond Street, Carlton
P.O. box 1144, Carlton, 3053 Victoria
Banco Management Pty. Ltd
ACN 056 975 467

Telephone: 03) 9347 5055
Facsimile: 03) 9347 0287
E-mail: property@bancogroup.com.au
Web site: www.bancogroup.com.au

The Hon. Richard Wynne MP
Minister for Planning
Level 16
8 Nicholson Street
EAST MELBOURNE VIC, 3002

Dear Minister,

Submission in response to the Draft Fishermans Bend Framework and Amendment GC81 to the Port Phillip Planning Scheme

We refer to the draft Fishermans Bend Framework Plan and Amendment GC 81 to the Port Phillip Planning Scheme ("the Amendment") that was recently released for consultation.

We oppose both the Framework Plan and the Amendment and intend to make detailed submissions at the Advisory Committee Hearing that we understand is set to commence on 12 February, 2018.

We are concerned that the consultation period is unduly rushed. The Amendment documentation has been prepared in haste and as a consequence is riddled with errors. As a result, it is not possible to understand the full effect of the Amendment.

We think it unfair that the exhibition period, for such a significant strategic Amendment (informing the structure of what is referred to as Australia's largest Urban Renewal project) is so tight, is further constrained by the Christmas holiday period and is based on inaccurate and incomplete work.

Our primary position is that the Amendment documentation should be redrafted so that its effect is clear, and then the Amendment documentation re-exhibited, and with a fair and reasonable opportunity provided for us (and other parties) to consider and make further submissions about the re-exhibited Amendment documentation.

It is only then that we can properly consider the effect of the Amendment, and make informed submissions to the Committee and to fully assist it in its deliberations.

The Advisory Committee Hearings must be postponed to facilitate this process.

Our further submissions regarding the merits of the Amendment are without prejudice to our primary position.

Our Interest

We have an interest in land at 14 Woodruff Street, Port Melbourne ("the land") having entered into a contract to acquire the land. This property is included in the Sandridge sub-precinct of Fishermans Bend. It is a residual parcel, containing an extant factory building, of a larger holding that is currently being developed with town houses. It is generally north of the North Port Oval.

Since entering into the contract to purchase the land, we have engaged with Officers of the City of Port Phillip, prepared documents to accompany a planning application and lodged an application with the Council (P/640/2017).

The application is in the process of being assessed by the Council. It will be considered by the Council at a meeting during February 2018. On the basis of our ongoing communication with Council Planners, we understand that officers will recommend that the application be supported.

Lack of any transitional provisions

The planning controls proposed by the Amendment do not include transitional provisions. The draft controls also include some mandatory requirements that are not met by our current application (including building height, setbacks, car parking and shadow requirements).

As a result, in the event that the Amendment is gazetted before our application is decided, it will not be possible for a permit to be granted for the proposal.

This is grossly unfair:

- We have incurred significant cost in, and acted in good faith in, preparing and lodging the current application.
- The application has been prepared to satisfy the provisions of the Scheme as it currently stands, including the current DDO and Framework Plan.
- The application was prepared in consultation with Council Officers and refined following guidance provided by Council Officers during that consultation process.
- The Amendment proposes a mandatory height of 4 storeys (15.4 metres) which is lower than the height of the heritage building on the site (at around 20.5 metres)!

We request that the Amendment includes transitional provisions that ensure that our current application is not prohibited or disadvantaged by any changes to planning controls that apply.

Our Submission

We will present a detailed submission setting out our position at the Advisory Committee hearing.

In summary, and in addition to the absence of any transitional provisions, we have concerns with:

- The proposed mandatory building height (4 storeys at 15.4m) at Clause 2.0 of Schedule 30 to the Design & Development Overlay.
- The proposed mandatory building setbacks at Clause 2.0 of Schedule 30 to the Design & Development Overlay.
- The proposed mandatory built form requirements set out in Table 1 at Clause 2.0 of Schedule 30 to the Design & Development Overlay.

- The proposed mandatory overshadowing of public open space requirements at Clause 2.0 of Schedule 30 to the Design & Development Overlay.
- The proposed floor area ratios and floor area uplift scheme set out at Clause 4.0 of Schedule 1 to the Capital City Zone.
- The proposed mandatory requirement for the delivery of streets, laneways and public open space at Clause 4.0 of Schedule 1 to the Capital City Zone.
- The nomination of land in Woodruff Street, on the north-west boundary of the site, along the south-east side of Woodruff Street, as new public open space in both the Fishermans Bend Framework Plan and Schedule 1 to the Capital City Zone.
- The limitation on parking imposed by proposed Schedule 1 to the Parking Overlay (without an opportunity for a permit to be granted to vary the requirement except in very limited circumstances) and the requirement for car parking to be held in common property.
- The imposition of mandatory provisions and mandatory requirements for conditions to be included in any permit that issues (for example the mandatory requirement that a condition be inserted in any permit to the effect that a 4 Star Green Star Design and As Built rating or equivalent is achieved).

We also consider that the Amendment documentation should not reference the Fishermans Bend Framework Plan, Neighbourhood Precinct Plans or any other document outside the planning provisions. To avoid confusion, the controls should be drafted to speak for themselves. The schedules should not include schedule specific definitions. Definitions should be included in relevant clauses at Clause 70 of the Port Phillip Planning Scheme.

Building Height

Strategy 1.13.1 of the Fishermans Bend Framework Plan seeks to:

'Retain mandatory 4 storey height limits along the boundaries of the Fishermans Bend that respond to existing low-scale development patterns in South Melbourne and Port Melbourne.'

Whilst the land is not located along the boundary of the Fishermans Bend, the *Building height controls plan* at Figure 12 includes it in a precinct with a mandatory maximum building height of 4 storeys. This designation is inconsistent with the strategy and fails to recognise the existing context of the land.

Clause 2.0 of Schedule 30 to the Design & Development Overlay provides that a permit cannot be granted for a building with a height exceeding 4 storeys and 15.4m in areas designated '*4 storeys (mandatory)*' on the relevant plan. This requirement is onerous and fails to acknowledge the nature of development on the land – that is an extant 3 storey factory building with tall floor to ceiling heights producing an overall maximum building height of approx. 20.5m.

The establishment of a mandatory height limit below the height of the existing building on the site has no rational justification. It also provides no incentive for the adaptive re-use of the extant building on the land. It is in summary a poor planning outcome having regard to the ambition for the urban renewal of the precinct.

We request that the land be designated as 4 storeys (discretionary) in the Framework Plan and schedule 30 to the Design & Development Overlay to acknowledge the existing development context and to provide a degree of flexibility.

Mandatory building setbacks

The building setback requirements at Clause 2.0 of schedule 30 to the Design & Development Overlay are internally inconsistent.

The requirements at the bottom of page 2 set out mandatory setbacks (not expressed as either maximum or minimum and not expressed relative to a road frontage a side boundary or a rear boundary) that preclude the establishment of a 'street wall' at the height and in the form aspired to by the Built form requirements at Table 1.

We request that requirements be specified in discretionary rather than mandatory terms. We also request that the requirements be accurately drafted to provide clear guidance.

Mandatory built form requirements

The Built form requirements set out in Table 1 of schedule 30 to the Design & Development Overlay should be expressed as discretionary requirements.

This is particularly important in respect of the property at 14 Woodruff Street given that the existing building has a built form composition that is inconsistent with the requirements.

Overshadowing of public open space requirements

The property at 14 Woodruff Street is located to the north-east of a District/Precinct Park that comprises an existing area of open space (North Port Oval) and a proposed area of open space.

Schedule 30 to the Design & Development Overlay prohibits shadow being cast over this open space between the hours of 11.00am and 2.00pm from 21 June – 22 September.

This is a particularly high shadow test for an area of open space that is used for formal sport, is fenced to limit access and contains a variety of buildings including spectator stands. In this context the prohibition of shadow at mid-winter is unnecessary and provides an unreasonable limit on development opportunity.

The shadow requirement in respect of North Port Oval should relate to the equinox and should be expressed in discretionary terms.

Floor Area Ratio and Floor Area Uplift Scheme

The nominated Floor Area Ratios for Sandridge (3.3:1 for the non-core area) is far too low for a precinct that in some parts, promotes development up to 24 storeys in height.

The Floor Area Uplift Regime is similar to that proposed in respect of Amendment C270 to the Melbourne Planning Scheme. The Panel in that amendment considered the approach to be flawed and recommended it not be adopted.

Among other matters it found:

- *The FAU Scheme as proposed is in some ways similar to a DCP, but without meeting the requisite statutory requirements. The Panel was unable to identify any other existing statutory basis for the FAU scheme as proposed.*
- *The FAU Scheme fails to clearly apply the principles of equality, consistency, accountability and transparency to the securing of benefits and its implementation, including the Guidelines, is vague and may be open to misinterpretation.*
- *The strategic justification for the scope of public benefits is absent.*

These failings are also evident in the Floor Area Uplift Scheme proposed by the Amendment. The provisions should be removed from the Amendment.

Woodruff Street Open Space

The Fishermans Bend Framework Plan identifies an area of linear open space on the north-west boundary of the site, along the south-east side of Woodruff Street.

Schedule 1 to the Capital City Zone includes provisions preventing the grant of a permit where infrastructure (lane, streets or open space) shown on a specified plan is not provided.

The proposal to establish open space on Woodruff Street forward of the site is ill conceived. The proposed space will be crossed by at least eight closely spaced driveways serving the town houses that have recently been constructed. The amenity and function of the open space will be compromised.

The Woodruff Street open space should be removed from the Fishermans Bend Framework Plan and the Amendment documentation.

Car Parking Provision

The viability of development of properties in the Fishermans Bend Urban Renewal precinct will be compromised by the proposed limit on car parking numbers. The provisions provide an unnecessary limit on parking and are unable to be varied with a permit except in limited circumstances. This is unacceptable. A more flexible approach is required to ensure commercial viability particularly in the early stages of the development of the urban renewal precinct where other transport options are limited.

In addition, it is acknowledged that there is a need to encourage sustainable travel modes throughout the whole precinct, however, given that there is no direct correlation between residential parking supply and travel behaviour, the proposed mandatory parking rate allowing 0.5 spaces per dwelling is too low and unacceptable

Mandatory Provisions generally

The Amendment documentation includes a number of other mandatory controls (for example the mandatory requirement that a condition be inserted in any permit to the effect that a 4 Star Green Star Design and As Built rating or equivalent is achieved).

The use of mandatory controls and requirements is not appropriate in a performance based system. It can lead to perverse and unintended outcomes. This is particularly so when the controls have been drafted in haste and without an apparent consideration of their effect.

Controls should be discretionary, and so that regard can be had to the individual facts and circumstances of any particular permit application.

Conclusion

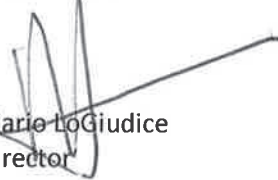
This submission sets out a summary of our issues.

We will attend and make further submissions at the Panel Hearing.

As we have indicated we consider that the amendment, as drafted, requires substantial rework to correct errors and that, in fairness to affected parties, the corrections should occur immediately, the Amendment should be re-exhibited and the Advisory Committee Hearing should be postponed.

We would welcome the opportunity to meet and discuss this with you in further detail.

Yours faithfully,
HACP Pty Ltd


Mario LoGiudice
Director