

IN PLANNING PANELS VICTORIA

AMENDMENT GC81

PLANNING AUTHORITY: Minister for Planning

LANDOWNER: Delta Group

SUBJECT LAND: 577 Plummer Street and 299 Bridge Street
Port Melbourne

DELTA'S OUTLINE OF SUBMISSIONS

Introduction

1. These submissions are made on behalf of Delta Group ("Delta"), the owner of land at 577 Plummer Street and 299 Bridge Street, Port Melbourne (referred to respectively as "the Plummer Street Site" and "the Bridge Street Site").
2. In addition to these submissions, Delta relies on the expert evidence of:
 - (a) Mr David Song, of Song Bowden Planning in relation to town planning considerations; and
 - (b) Mr Jason Walsh of Traffix Group in relation to parking and traffic matters.
3. Delta also relies on its submission to the Amendment, filed with the Review Panel on 15 December 2017 (Submission 180).

Overview of Delta's business

4. Delta Group is one of Australia's leading contractors, offering services in demolition, civil engineering, specialist design and construction, asbestos and

- hazardous waste removal, recycling and waste management, environmental management services, and heavy plant and equipment hire.
5. Delta's operations began in the late 1970s, with founder and Managing Director, Con Petropolous, operating a single prime mover and excavator. Over the following years, the business grew substantially and diversified its operations. From the outset, Delta has provided demolition and excavation services. Over the years, Delta has added to its areas of expertise to include recycling and waste transfer services.
 6. Delta provides services to the industrial, natural resources, transport, and government and environment sectors. Major projects throughout Australia in which Delta has had a role including the QV building, Crown Casino, Melbourne Cricket Ground, Federation Square, 50 Martin Place, the Amcor Paper Mill, Queens Wharf, Western Sydney Stadium, Capitol Grand and Lady Cilento Children's Hospital.
 7. Presently, Delta employs over 680 staff nationally. Delta employs over 400 staff in Victoria, across the following businesses:¹
 - (a) A transfer station and Green Star accredited waste facility, demolition and construction business, transport depot, bin hire, and recycled timber warehouse and heavy equipment rental business at Port Melbourne;
 - (b) A recycling plant at Brooklyn; and
 - (c) A clean fill tip at Heatherton.
 8. Delta's head office is located at the Plummer Street Site.

The Port Melbourne business operations

The Plummer Street Site

9. The Plummer Street Site has an area of approximately 9,047sqm.

¹ Excluding subcontractors.

10. Delta employs 80 staff at the Plummer Street Site, which accommodates a transfer station and recycled timber warehouse.
11. The transfer station is used for sorting timber, metals, plastics, carpet and general construction waste. Once sorted, Delta categorises the waste, processes it as required and transfers it to the appropriate location when traffic conditions are favorable.
12. 'Whelan the Warehouse', Delta's timber recycling division, is also located on the Plummer Street Site, where timber is received, processed and sold via the onsite retail and wholesale outlet.

The Bridge Street Site

13. The Bridge Street Site has an area of approximately 13,700m².
14. The Bridge Street Site is the port of call for all maintenance, repairs, engineering and storage of machinery. It accommodates several workshops to perform this role, which often involves the total rebuild of heavy machinery weighing up to 150 tonnes.
15. The allocation of trucks, bins and supplies to various jobsites is also coordinated at the Bridge Street Site. Manufacturing for civil works, including steel fabrication and custom industrial lighting is also coordinated from this site. These materials are provided to construction sites throughout Melbourne's CBD and inner urban area (within 10 – 15km).
16. Office space and various storage areas comprise approximately 5,000m² of the Bridge Street Site. The remainder is dedicated to parking and storage of machinery at different stages of repair.

The future of Delta's Port Melbourne businesses

17. Delta intends to operate from its Port Melbourne sites for the foreseeable future. The Plummer Street Site enjoys existing use rights that support Delta's continued operation.

18. Construction within Melbourne's CBD is the primary driver for demand for the services and supplies provided at Delta's Port Melbourne sites. On any given day, Delta is active on at least 60 worksites, of which 45 to 50 are located within the CBD.
19. The CBD (and proximate inner urban suburbs) accounts for approximately 80% of Delta's business in Victoria and generates approximately \$250 million dollars (or roughly 65% of Delta's annual turnover).
20. The viability of the construction services provided by Delta require its business to be conducted from sites close to the CBD and on the Port Melbourne side of the West Gate bridge. Relocating Delta's Port Melbourne businesses would be costly. Suitable sites close to the CBD are extremely rare.
21. The capacity to continue its business operations from the Port Melbourne sites is of critical importance to Delta. There is a low prospect of acquiring similarly suitable land proximate to the CBD. Moreover, Delta has recently leased another 5000sqm site at 349 Bridge Road, Port Melbourne, further entrenching its operations in this location.

The Amendment as it affects Delta's land

22. The Port Melbourne sites are within the Sandridge Precinct.
23. The vision for Sandridge is:

One of Melbourne's premium office and commercial centres, balanced with diverse housing and retail.²

24. The proposed planning controls:
 - (a) Align Fennel and Plummer Streets to provide for a new tram route and identify the redevelopment of the Funnell/Plummer/Bridge Street intersection as a medium term infrastructure project;³

² Page 23 of the Framework – "Delivering Sandridge".

- (b) Provides for open space on the north west and south west corners of the realigned intersection of Plummer/Bridge/Fennel Streets, and along the Bridge Street frontage of the Bridge Street Site;⁴
- (c) Nominate two potential metro routes along Fennel Street, splitting at Bridge Street to run along Plummer Street or divert north toward the Employment Precinct. Both routes traverse the Plummer Street Site;⁵
- (d) Propose a new 22m road through the southern portion of the Bridge Street Site (in a generally east – west direction) and a new lane through the Bridge Street Site (in a generally north – south direction);⁶
- (e) Propose a new 22m road along the northern boundary of the Plummer Street Site (in a generally east – west direction);⁷
- (f) Locate the Port Melbourne sites primarily in the Sandridge Core Area, with the southern portion of the Bridge Street Site located in the non-core;⁸
- (g) Apply an FAR of 8.1:1 in the core area and 3.3:1 in the non-core area;⁹
- (h) Identify the eastern and southern boundaries of the Plummer Street Site and the north and east boundaries of the Bridge Street Site as primary active frontages (part of the eastern boundary of the Bridge Street Site is a secondary active frontage);¹⁰

³ Page 22 of the Draft Fishermans Bend Framework. The tram route will require a set back on the northern side of Plummer Street of 16m.

⁴ See Map 3 of the CCZ, and page 57 – Figure 17 – Public Space.

⁵ The proposed CCZ to the Port Phillip Planning Scheme. See also page 75 of the Draft Fishermans Bend Framework.

⁶ Ibid.

⁷ Ibid.

⁸ See Map 1 of the exhibited DDO.

⁹ See Table 1 to the CCZ.

¹⁰ Ibid.

- (i) Apply a maximum discretionary building height to the Plummer Street site of 12 storeys (along Plummer Street) and 24 storeys to the northern part of the site;¹¹
- (j) Apply a maximum discretionary height of 24 storeys along the northern boundary of the Bridge Street Site (extending to Bridge Street) and 8 storeys to the southern portion of the site, fronting the new lane;¹²
- (k) Include part of the Port Melbourne sites in an 'Investigation Area – Arts and Cultural Hub';¹³ and
- (l) Impose mandatory built form controls with respect to setbacks, tower separation distance and overshadowing of public open space.

Delta's position

25. Delta relies on the following principal contentions:

- (a) The Amendment fails to provide sufficient protection for existing businesses;
- (b) The application requirements for new sensitive uses, set out in Clause 2 to Schedule 1 of the CCZ are impracticable in that they require applicants to undertake an audit of industrial businesses proximate to their land;
- (c) The proposed Schedule 1 to the CCZ imposes a regulatory regime that effectively acquires private land without compensation – such a regime is unlawful and unfair;

¹¹ See Map 2 of the DDO. See also page 43 of the Framework – Figure 12 - Building Height Controls. The Minister's Part C version of the DDO (document 262b) designates the north part of the Plummer Street Site for a building height of 80.6m, the southern part of the Plummer Street site for a building height of 42.2m.

¹² Ibid. The Minister's Part C version designates the northern part of the Bridge Street Site for a building height of 4.2m and the southern part of the Bridge Street Site for a building height of 29.4m

¹³ See page 53 of the Framework – Figure 15 – Community Facilities and Services.

- (d) The CCZ unfairly attributes the cost of constructing roads and improving open space to individual landowners without any prospect for the timely offset against development contributions (or income generated by future development); and
 - (e) The changes sought by Port Phillip City Council in respect of the Sandridge Precinct are inappropriate.
26. Delta adopts the submissions made by Mr Tweedie, Mr Canavan, and Ms Sharp on 19 April 2018, and the submissions made by Ms Collingwood on 30 April 2018 with respect to the general deficiencies of the Amendment. In particular:
- (a) The population target of 80,000 lacks a sound strategic basis and cannot properly inform the Amendment, and the built form controls in particular;
 - (b) There lacks a sound rationale for the proposed discretionary maximum heights, which are derived from a maximum population target of 80,000 residents;
 - (c) The Amendment is premature because:
 - (i) no commitment to funding of key infrastructure, including public transport has been made; and
 - (ii) the metro rail route and station locations within Fishermans Bend have not been identified.
 - (d) The Amendment inappropriately uses the proposed FAR / FAU regime as a density control, in circumstances where no sound justification for such a limitation has been provided;
 - (e) Even if the use of the FAR regime is acceptable in principle, the numerical FARs are unjustified and have the potential to unreasonably suppress development, particularly where the FAR is set substantially lower than the discretionary maximum height limit for a particular site;

- (f) The FAR does not, as asserted by the Minister, justify the acquisition of privately owned land without compensation;
- (g) The failure to apply a Public Acquisition Overlay or other mechanism to fairly acquire land represents a fundamental deficiency of the Amendment;
- (h) The proposed parking rate of the Parking Overlay is too low.

27. It is submitted that the Review Panel should advise the Minister that the Amendment is not appropriate.

Lack of protection for existing businesses

Additional protection for existing businesses

28. The Amendment fails to provide sufficient protection for existing businesses. Delta will provide goods and services to the construction industry to assist the renewal of Fishermans Bend. The retention of businesses like Delta will aid the cost effectiveness of construction activity.
29. Delta endorses the changes to the proposed built form controls set out in the evidence of Mr Marco Negri,¹⁴ which seek to provide additional protection and support to existing uses, specifically:
- (a) Add objectives of the proposed clause 22.XX that:
 - (i) *support the continued operation of industrial uses within Fishermans Bend to assist the construction sector in the delivery of goods and services and services to the Central City, as well as for the development and infrastructure necessary to realise renewal; and*
 - (ii) *apply the agent of change principle to ensure that new development implements measures to mitigate against potential amenity impacts from existing industry and warehouse uses, or from ongoing port operations.*

¹⁴ Filed on behalf of Barro Group Pty Ltd (document 173).

(b) Address at clause 22.XX-3 uses with adverse amenity potential by recognising the need to support the continued operation of industrial uses by;

(i) *applying the agent of change principle to ensure that new development implements measures to mitigate against potential amenity impacts from existing industry and warehouse uses, or from ongoing port operations.*

(ii) *requiring that an application for a sensitive use within the threshold distance set out at clause 52.10 is accompanied by an Amenity Impact Plan that is prepared to respond to the industrial activities identified in the Audit of all Uses with Adverse Amenity Potential Incorporated Document.*

(iii) *considering the view of the Environment Protection Authority.*

(c) Incorporate a document titled – *Audit of Uses with Adverse Amenity Potential.*

30. These suggested changes appropriately balance the impetus for renewal against the importance of allowing existing businesses to continue to operate, particularly where those businesses contribute to renewal of Fishermans Bend.

Uses with adverse amenity potential

31. The proposed controls attempt to diminish the potential for land use conflict by requiring new sensitive uses to prepare an Amenity Impacts Report that details (amongst other matters):

- *An assessment of the impact of the proposed sensitive use on existing industry / warehouse uses; and*
- *An assessment of the impact of nearby port operations, freight routes or major transport infrastructure on the proposed sensitive use; and*
- *Measures proposed to mitigate potential amenity impacts of existing industry / warehouse uses or port, freight, and transport infrastructure on the proposed sensitive use, to within acceptable levels.*

32. This requirement applies to proposals to use land for dwellings, residential village, retirement village, hostel, child care centre, education centre, or informal outdoor recreation uses which do not meet the threshold distance from industrial or warehouse uses referred to in the table to clause 52.10, or that are within 300m of any existing warehouse or industrial use.
33. It is unclear why the second dot point does not include a requirement for an assessment of the impact of existing industrial / warehouse uses on the proposed sensitive use.
34. Delta endorses the changes to these provisions recommended by Mr Negri. The task of auditing industrial and warehouse uses should not be left to permit applicants. The risk of error is too great, and it would require unnecessary repetition of the auditing task. It is preferable for the Responsible Authority to assume responsibility for the role of auditing existing industrial / warehouse uses.

The proposed acquisition mechanism

35. The proposed Schedule 1 to the CCZ, imposes a regulatory regime that effectively acquires private land without compensation – such a regime is unlawful and unfair.
36. This provision unreasonably requires any existing business that wishes to make even minor improvements to its land to give up that part of it identified by the CCZ for roads or laneways.
37. The proposed acquisition mechanism in the CCZ:
 - (a) does not fairly provide for the improvement of land used in association with the ongoing operation of existing businesses;
 - (b) assumes the Floor Area Ratios sufficiently compensate existing businesses for the loss of at-grade land; and

(c) does not constitute proper and orderly planning in that the delivery of the vision for Fishermans Bend is jeopardised by reliance on individual landowners to deliver roads, lanes and parks.

38. The Minister has presented to the Review Panel document 227, which set out an amendment to clause 4 of the CCZ. The modification is a paltry attempt to improve the provision as it applies to existing businesses:

4. *A permit (other than a permit authorising alterations and additions to an existing building used for a purpose which was lawful before the commencement of this provision) must not be granted or amended to construct a building or construct or carry out works in respect of land shown as a new road, street or laneway on the relevant Map in the schedule until an agreement made under section 173 of the Planning and Environment Act 1987 has been entered into by the landowner, Responsible Authority and the local council (if not the Responsible Authority) which must provide for:*

- *In respect of any part of the land which is shown as new roads, streets or laneway on the relevant Map in the schedule:*
 - *Its construction to the satisfaction of the Responsible Authority and the relevant road management authority; and*
 - *Its transfer to, or vesting in the relevant road authority as a public road at no cost to the relevant road authority.*

A permit (other than a permit authorising alterations and additions to an existing building used for a purpose which was lawful before the commencement of this provision) must not be granted to construct a building or construct or carry out works in respect of any part of land shown as new public open space on the relevant Map of this schedule until an agreement made under section 173 of the Planning and Environment Act 1987 has been entered into by the landowner, Responsible Authority and the local council (if not the Responsible Authority) which must provide for its transfer or vesting in the local council as public open space at no cost to the local council.

39. The modified provision drafting does not represent a substantial improvement as it is limited to existing buildings and fails to provide for new buildings and works even where they are not on the land identified for future roads or laneways. This unreasonably restricts the operation of existing businesses. There

is no basis to prevent landowners from improving their land in association with ongoing business operations.

40. Moreover, the operation of the CCZ is unclear:
- (a) It requires the agreement of the landowner, Responsible Authority and the Council (if not the Responsible Authority) as to the provision and construction of the road, laneway or park, but fails to provide any remedy or review process if no agreement is reached; and
 - (b) It is ambiguous as to whether land transferred for public open space is required to be improved for that purpose – the relevant s173 Agreement must provide for the transfer or vesting of the land in the local council “as public open space” but does not identify the required condition of the land.
41. Other parties have addressed the legality question in some detail and it is not proposed to revisit it here. Delta adopts the submissions of Mr Canavan, Mr Tweedie and Ms Sharp in relation to this issue and has supplemented those submissions in its presentation.

The costs of roads and open space

42. The CCZ unfairly attributes the cost of constructing roads and improving open space to individual landowners without any prospect for the timely offset against development contributions (or income generated by future development).
43. This approach assumes that all landowners are developers. It is inequitable to visit the cost of public infrastructure on individual landowners within the precinct, in this manner. This inequity is exacerbated in respect of landowners who wish to continue operating industrial businesses in Fishermans Bend.
44. The proposed infrastructure regime for Fishermans Bend:

- (a) Fails to accord with the principles of need, nexus, equity and accountability;
 - (a) Lacks clarity in respect of how the various mechanisms proposed will operate together;
 - (b) Fails to establish that the proposed funding mechanisms will enable the timely delivery of infrastructure;
 - (c) Fails to demonstrate that the operation of certain funding mechanisms such as the FAR are fair and proportionate; and
 - (d) Inappropriately defers the resolution of infrastructure funding to a later time.
45. Mr Shipp expands on these matters in his evidence report and Delta endorses Ms Shipp's views.
46. These deficiencies are likely to seriously undermine investor confidence. There is a clear need for more work to be undertaken in respect of infrastructure funding. The Amendment should not progress until that work has been undertaken and the proposed infrastructure regime resolved.

Port Phillip Council's suggested changes

47. Port Phillip City Council ("the Council") has proposed substantial changes to the exhibited planning controls, as they affect Delta's land. The changes are described in the Council's Urban Design Report for the Sandridge Precinct.¹⁵
48. The Council proposes to:
- *Increase public open space on the northern side (within 577 Plummer Street) to 3,000 sqm to create a generously sized new civic square. (This excludes the linear park along the western side of Bridge Street.)*

¹⁵ See pages 25 to 33.

- *Reduce the amount of open space on the southern side to 1,500 sqm (through removal of public open space from 299 Bridge Street, and only providing public open space within the existing road reserve).*
 - *Apply overshadowing controls to the northern public open space to create a high quality civic space.*
 - *Remove overshadowing controls from the southern public open space.*
 - *Co-locate the Sandridge Art and Cultural Hub with the open space on the north-west corner of Plummer Street and Bridge Street.¹⁶*
49. The purpose of these changes appears to be the delivery of a large civic building containing a library and art gallery, and civic plaza in this location. The Council recommends the acquisition of the entire Plummer Street Site to achieve this outcome.
50. Whilst the changes necessitate the relaxation of the overshadowing controls (as the primary open space is proposed to be located on the northern side of Plummer Street), it is unclear why the preferred maximum heights for the Plummer Street Site need to be reduced.
51. The Council's proposed modifications would result in a reduced requirement for acquisition of the Bridge Street Site, which is positive. However, the changes as they affect the Plummer Street Site would give rise to the need to acquire the entire site.
52. The identification of the entire Plummer Street Site for public infrastructure clearly impacts Delta's ongoing business operations. The only fair mechanism to deal with land in this circumstance is the timely application of a Public Acquisition Overlay. Whilst the Minister has expressed the view that sites will be acquired in circumstances where they are wholly required for public infrastructure, the means and timeframe for acquisition remains unclear. This is unsatisfactory and should be resolved before the Amendment is approved.

¹⁶ Page 18 of the Urban Design Report.

Stuart Morris QC

Nicola Collingwood

Instructed by Mills Oakley

Date: 3 May 2018

