

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
CITIPOWER PTY LTD**

Introduction

1. These submissions are made on behalf of Citipower Pty Ltd, Submitter 175 to this Review Panel. (**Citipower**)
2. Citipower is the owner of the land at 90-96 Johnson Street, South Melbourne. (**Site**)
3. This Site is currently used for the purpose of an electrical substation.
4. It has an area of 4,066sqm with frontages to Johnson Street, Munro Street and Governor Streets.
5. It lies within the Sandridge Precinct, in a Non-Core area pursuant to the Proposed Amendment. An FAR of 3.3:1 applies to the Site.
6. The Fishermans Bend Framework (page 74) shows an “*indicative laneway*” along the northern boundary of the Site (noting although it appears to be located on the property to the north, the Minister’s representative advised in oral submissions on 30 April 2018 that it is intended to be on the Site). To the west over Grovenor Road, the Port Phillip Depot site is nominated as “*Catalyst site redevelopment opportunity*”.
7. There are no planning applications applying to the Site itself, however, to the immediate north at 60-82 Johnson Street, a planning permit (MPA 14/003-1) allowing for 4 towers of 46, 26, 43 and 20 storeys has recently been extended in time and is expected to be commenced in the near future.

Submissions

8. Citipower made a submission to the Minister dated 15 December 2017 raising a number of issues including:
 - a) Population estimates
 - (i) Population/employment projections forming basis for planning controls inadequate and cap growth potential
 - b) Floor area ratio and dwelling density
 - (i) Proposed floor area ratios and dwelling densities will result in underdevelopment and limit financial viability
 - (ii) Variation mechanism based on public benefit: definition of and assessment criteria for public benefit unclear
 - c) Street wall heights and setbacks
 - (i) Drafting of planning controls unreasonably complex
 - (ii) Inconsistencies with respect to use of mandatory and discretionary built form outcomes
 - (iii) Unclear how proposed mandatory setbacks devised
 - (iv) Should be discretionary to allow for development to respond to site context
 - (v) Use of mandatory controls will stifle development opportunities
 - d) Car parking provision
 - (i) Car parking cap unreasonable until public transport realised
 - (ii) Also undermines objective of providing family housing
 - e) Affordable housing
 - (i) Lack of clarity regarding 6% affordable housing

- (ii) Source of 6% figure
 - (iii) Definition of affordable housing
 - (iv) Method of delivery
 - f) Consultation and timing
 - (i) Procedural fairness issues given:
 - Interim controls applied without consultation
 - Lack of formal notification regarding proposed planning scheme
 - Inadequate ability to prepare for Advisory Committee Hearing given condensed timeframe
9. Citipower's submissions listed above are generally addressed in the oral and written submissions already presented to the Review Panel by Mr Canavan QC, Mr Tweedie SC and Ms Sharp. Citipower does not repeat these submissions but expresses its strong support behind the submissions.
10. That the submissions with regard to the issues such as population target, the FAR, FAU, the parking overlay and the reduction in height and development opportunity for the Site and Fishermans Bend generally are not repeated in these submissions should not in any way be taken by the Review Panel as not being issues of grave concern to Citipower.
11. In addition, Citipower has engaged Ms Heggen to provide an assessment of the Proposed Amendment and its application to the Site.
12. Ms Heggen's evidence with regard to the overarching issues has already been presented to the Review Panel (Goodman's submissions on 26 April 2018) and her oral and written evidence in this regard is relied upon.
13. With regard to the assessment of the impact of the proposed controls on the Site, Ms Heggen shows that the maximum FAR can be achieved on this Site within the

proposed building envelope controls. A reliance on FAU is necessary to achieve a building envelope that meets the discretionary height for the Site.

14. There is a significant difference between the mandatory maximum FAR floor space and the envisaged discretionary height of 24 storeys.
15. Ms Hodyl has also modelled the Site in Addenda 2 and 6 and, despite a different built form outcome, her modelling further shows a significant difference between the mandatory FAR and envisaged discretionary height.
16. In this regard, it is submitted that there is an unreasonable and inappropriate “loose fit” between the FAR and the discretionary height limits in the Proposed Amendment.
17. Citipower relies on the evidence of Ms Heggen who asks a threshold question *”Is it appropriate planning practice that there is such a great divergence between the mandatory FAR and discretionary FAU built form outcomes even if extremely valuable infrastructure is extracted?”*.
18. In Ms Heggen’s opinion, the answer is “no”; such a divergent built form outcome and density of development possibility as demonstrated in the Citipower example, is poor planning practice and one that potentially casts planning in a very poor light.
19. It is submitted that there is a significant difference between the discretionary height of 24 storeys and the existing approval for development on the site to the immediate north of between 26-46 storeys in height. Although not calculated, it is submitted that it is also obvious that the FAR for the approved soon-to-be-constructed development to the north would well exceed the mandatory 3.3:1 FAR applying to that site and the Citipower Site.
20. Citipower submits that the lack of recognition of existing approvals in the Proposed Amendment paints an incomplete picture of the future character of the area. It is a serious flaw in the Proposed Amendment particularly given the emphasis that has been placed by Ms Hodyl and the Minister with regard to specific character outcomes in the different precincts.
21. It is submitted that an FAR of 3.3:1 for the Site and the discretionary height of 24 storeys as proposed in the Amendment is not reasonable and can not be justified for

urban design or amenity reasons; there are no streetscape, shadow, character, internal or external amenity reasons that have been identified by any witness. The controls cannot be justified having regard to the strategic location of the Site in a State-recognised urban renewal precinct.

22. As already submitted to this Panel, the Landowners, including Citipower, strongly reject the starting point of this Proposed Amendment being a population target rather than a built form outcome. The evidence of Ms Heggen, Mr Biacsi, Mr Sheppard, Mr McGurn and Mr Milner is relied upon.
23. With regard to the legality and reasonableness of the Proposed Amendment particularly the FAR, FAU and the drafting of the controls, Citipower relies on the oral and written submissions already made to this Review Panel on behalf of the Landowners Group. Citipower also notes the submissions of Mr Wren QC supporting these submissions.
24. With regard to parking provision, Citipower 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.

Conclusion

25. For the above reasons together with overarching submissions and evidence provided to the Review Panel, and in reliance of the site-specific evidence of Ms Heggen, it is submitted that the Review Panel should recommend that the proposed Amendment not proceed in its current form.

2 May 2018

Chris Canavan

Jane Sharp

Instructed by Norton Rose Fulbright Australia