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

COSTA FOX DEVELOPMENTS PTY LTD

Introduction

1. These submissions are made on behalf of Costa Fox Developments Pty Ltd (CFD), Submitter 71 to this Review Panel.

2. Costa Asset Management Pty Ltd and RARE Cost Super Pty Ltd are the owners of the land at 99 – 111 Lorimer Street, Docklands. (Site)

3. This Site is currently used for car parking associated with the adjoining Subaru car dealership.

4. It has an area of 4,109 sqm with three street frontages – approximately 62.88 m to Lorimer Street, 89.30 m to Boundary Street, and 21 m to Roger Street. It lies on the southern side of Lorimer Street and on the south-east corner of the intersection of Rogers Street in Docklands.

The Proposed Amendment and the Site

5. Pursuant to the Proposed Amendment, the Site lies within the Lorimer Precinct in the Core Area (maximum FAR 5.4:1 to include a minimum non-dwelling FAR 1.7:1).

6. A preferred maximum height of 61.4 m applies to the Site under the DDO. If a building is between 30 m and 68 m any part of the building above 23 m must be set

\[1 \text{ Doc 66 Part F.}\]
back 9 m or 3 m if the wall does not include window to habitable rooms and/or balcony.

7. A 10 m landscape setback from the northern boundary (along Lorimer Street) is included in the Framework, the exhibited Clause 37.04 – Combined Capital City Zone (CCZ) Schedule Map 2 and the Lorimer Precinct DDO map, presumably to accommodate a road widening and the proposed tram route on Lorimer Street.

8. This setback was also shown as “proposed road” in Map 1, Map 2 and Map 3 of exhibited CCZ.

9. No crossovers are permitted along the northern boundary of the Site and a “secondary active frontage” is nominated along the southern boundary of the “proposed road”.

10. “Primary active frontages” are nominated to Roger Street and Boundary Street.

11. A new 12 m wide road is included along the east boundary of the Site in the Framework. This road was not identified in the exhibited CCZ but has since been included in the Lorimer Precinct CCZ Map 1.

12. A public open space to the south of the Site is nominated as a “neighbourhood park” in Map 3 to the DDO where a permit cannot be granted to vary the requirement that no overshadowing is permitted between 11:00am to 2:00pm on 22 September.

13. This park is proposed by Ms Thompson in her evidence to the Review Panel to be relocated to the east of the Site.

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2 At Page 35.
3 Doc 66 Part F.
4 Document L8.
5 Document 66 Part E.
6 Map 2 Doc 66 Part E.
7 Map 1 Doc 66 Part E.
8 Map 1 Doc 66 Part E.
9 Page 73.
10 Document 156B and Lorimer Precinct Map – CCZ Map 1 (Document L8).
11 Map 3 Doc 66 Part E.
12 Map 3 Doc 66 Part F.
13 Doc 108.
14. The Site lies within Sub-precinct “L3” in the proposed MSS Clause 21.13 where, inter alia, “slender towers located to minimise overshadowing of the Lorimer parkway” is the preferred character.

15. The Site is identified as “education and community hub” in the Community Infrastructure Investigation Areas map.\(^{14}\)

**Current Permit Application on the Site**

16. A current planning application, PA1700285, for a 40-storey tower comprising retail, offices, food and drinks premises, library and 396 dwellings was submitted to the Minister for Planning in September 2017. The plans prepared by Rothe Lowman Architects show:

a) community library at ground floor level;

b) four retail tenancies including a cafe;

c) residential entries at Lorimer Street and Boundary Street;

d) office sleeves surrounding the car parking at podium levels 1 to 2;

e) residential and communal facilities sleeves surrounding the car parking at podium levels 3 and 4; and

f) a residential tower setback at 10 m minimum from all boundaries for levels 5 – 39.

17. The planning application has been “called-in” by the Minister.

**CFD’s Submissions**

18. CFD made a submission to the Minister dated 13 December 2017 raising a number of issues including:

a) proposed planning policies outlined in the Framework and Amendment GC81 lack strategic justification;

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\(^{14}\) Lorimer Precinct Map – CCZ Map 1 (Document L8).
b) the Proposed Amendment is not supported by State Planning Policy or the Melbourne Planning Scheme;

c) it prescribes inflexible building envelope based on arbitrary population and job targets;

d) the population targets do not take into account:

(i) economics of inner city land supply; and

(ii) need for flexibility in rapidly changing city;

e) imposition of maximum FAR is inconsistent with overarching State and local policies in terms of:

(i) urban design;

(ii) proximity of land to CBD;

(iii) optimising use and efficiency of public transport;

(iv) urban consolidation; and

(v) provision of affordable housing in locations with access to services and infrastructure;

f) proposed policies seek to rush in arbitrary controls that are a significant departure from existing Planning Scheme provisions and tight timeframes lack procedural fairness and are contrary to natural justice, given significance of draft policy changes;

g) not consistent, logical and incremental refinement of policy documents issued to date; and

h) given significant departure from existing policy proposed by new controls, reasonable to expect transitional provisions be included to ensure existing planning applications lodged prior to gazettal of new controls determined under existing provisions.
19. CFD adopts the submissions as above and the oral and written submissions already presented to the Review Panel on behalf of the Landowners Group by Mr Canavan QC, Mr Tweedie SC and Ms Jane Sharp, together with the evidence of the various witnesses called by the Landowners.

Implications of the Proposed FAR and Building Envelope Controls on the Site

20. The evidence of Mr McGurn provides a summary of the existing and proposed planning controls affecting the Site.

21. The Lorimer Precinct evidence of Mr Sheppard provides an urban design overview of the Precinct with specific assessment of the Site included at pages 22-26. This evidence is supplemented by Mr Sheppard’s Lorimer 3D Massing and Shadow Study Summary.\(^{15}\)

22. The evidence of Ms Charmaine Dunstan provides a summary of the existing and proposed traffic and parking controls affecting the Site.

23. With regard to the issues of specific relevance to CFD, McGurn has modelled the existing and proposed built form controls to assess and compare the result building envelope within a built form must be designed. Mr Sheppard has modelled the proposed built form controls with usable floor plate dimensions.

24. Both witnesses identify that the current planning application would be unlikely to be supported under the Proposed Amendment by virtue of the FAR controls and other design details such as the potential to overshadow the proposed neighbourhood park to the south (or the east if Ms Thompson’s recommendation is accepted).

25. An assessment of the impact of the proposed controls on the Site shows that the maximum FAR can be achieved on this Site within the proposed building envelope controls. A reliance on FAU may be necessary to achieve a building envelope that meets the discretionary height for the Site.

26. However, if the proposed 12 m wide road is located within the Site then it will not be able to accommodate the maximum FAR.

\(^{15}\) Document 230 – this addendum includes revised modelling of the Site to reflect the amended version of the controls, Document 156A & 156B.
27. There is limited additional development potential within the envisaged discretionary height of 61.4 m (18 storeys) after providing the maximum dwelling FAR and minimum non-dwelling FAR.

28. There is a significant difference between the proposed FAR (and resultant building height) and the maximum 40 storey height under the existing CCZ.

29. There is also a significant difference between the discretionary height of 61.4 m (18 storeys) and the current permit application for a building 40 storeys in height.

30. It is submitted that a reduction in the current maximum height limit by more than half in Lorimer as proposed in the Proposed Amendment is not reasonable and cannot be justified for urban design or amenity reasons.

31. In this regard, the evidence of Mr Sheppard is relied upon, noting his evidence that:

a) the proposed 61.4 m discretionary height in Lorimer is not necessary to control the scale of development and a density control would provide for flexibility for lower, broader built form and taller, slender forms;\textsuperscript{16}

b) there is capacity for a taller building than the preferred maximum height while still avoiding overshadowing of the park to the south during the September equinox;

c) even at 40+ storeys, a tower would not cause overshadowing of the Lorimer Central Park during the winter solstice at 11am - 2pm; and

d) a desire to not exceed population targets to justify the proposed FAR and discretionary height at 18 storeys is not supported.

32. As already submitted to the Review Panel, the Landowners, including CFD, strongly reject the starting point of this Proposed Amendment being a population target rather than a built form outcome.

33. In this regard, CFD submits the benefits of its Site allow for substantial redevelopment for retail/office and residential development:

\textsuperscript{16} Paragraph 45 of Mr Sheppard's Lorimer evidence.
a) Proximity to the CBD (within walkable distance to Docklands and the CBD west end);

b) Proximity to the established Yarra’s Edge residential precinct;

c) Easy access to the Employment precinct and the West Gate Freeway (via Lorimer Street);

d) Emerging character of the area;

e) General lack of sensitive site abuttals;

f) Lack of any substantial constraints on development in terms of heritage, vegetation or insurmountable flooding or environment issues;

g) Large lot offering an opportunity to optimise the density without amenity impact on neighbouring uses; and

h) The abuttal of the well-established Subaru dealership site to the west with intention to continue expanding its business.

34. CFD submits there is no reasonable planning justification for the lowering of the discretionary height from 40 storeys to 18 storeys in Lorimer precinct. CFD relies on the evidence of Mr Sheppard that the proposed maximum heights in Lorimer be removed.

35. With regard to the 5.4:1 FAR, and the construct of the FAU controls, CFD relies on the submissions and evidence already provided to the Review Panel.

**Implications of the Proposed Park to the East of the Site**

36. Although the exhibited controls and the most recent controls before this Review Panel do not include a park on the Site, it is noted that the evidence of Ms Thompson recommends that part of the southern open space be relocated to sit to the east of the Site.¹⁷

¹⁷ Page 41, Document 75.
37. In addition, the timing of the recommendation raises procedural issues and creates uncertainty of whether or not it will form part of potential new controls. On these bases, CFD strenuously opposes this change.

38. The location of open space to the east of the Site would severely, and unreasonably, constrains the development potential of the Site as a result of the potential for overshadowing of the park.

39. CFD submits that the reasons for the park offered by Ms Thompson in her evidence (being that each property should be 200 m from a park and there is access and views to the north including the Yarra River) do not provide sufficient justification for this late change to the exhibited controls given the potential extent of overshadowing and the constraint on development of the Site.

40. In this regard CFD notes Mr Shepard’s evidence that “placing larger open spaces on fewer properties may affect the equity of the land acquisition mechanism and the ability of these properties to realise their notional maximum floor area within the proposed building envelope controls”.

41. CFD also draws the Review Panel’s attention to the Landowner’s overarching submissions with regard to the lawfulness and reasonableness of the manner in which the Proposed Amendment is attempting to require land to be “gifted” without compensation.

42. CFD submits the Review Panel should reject the proposed change to the location of the neighbourhood park onto the adjoining site.

**Implications of the Proposed Road and Parking Overlay on the Site**

43. With regard to the implication of the proposed roads and tram alignment and parking controls, CFD relies on the evidence of Ms Dunstan.

44. Ms Dunstan’s review of the material supporting the Proposed Amendment is that there is a lack of information and certainty regarding the proposed tram route and how it transitions between Turner Street and the Yarra River. She considers that the protection of public transport routes is a key objective in the Framework and therefore a map should be included within the controls which details proposed public transport routes.
45. Ms Dunstan notes that the most recent version of the Lorimer Precinct maps\(^{18}\) retain the term “10 m landscape setback” rather than “proposed road”, but that the use of this term is inconsistent with the Framework which nominates the tram route within this space. Ms Dunstan states that “If the 10m setback is used for the tram right-of-way, approximately 7m of the 10m wide strip will be devoted to tram tracks, not landscaping, resulting in a tram carriageway close to the boundary of the site”.

46. CFD submits that, in effect, the 10 setback is designated to facilitate the proposed tram route and therefore should be shown as a road widening and lawfully acquired by the Government. The City of Melbourne (CoM) agrees \(^{19}\).

47. CFD submits that the Lorimer Street road widening/tram route will have a significant impact on the development of the Site and compensation for the loss of land for public infrastructure should be provided for.

48. Ms Dunstan also raises issue with the proposed 12m wide laneway along the eastern side of the Site noting that although it may be that the road is intended to provide access to the Site (although this is not clear), it is problematic with regard to its intersection with Lorimer Street to the north and its configuration to the south creating an awkward 4 leg intersection between Boundary Street and the new 18m wide east-west road to Hartley Street.

49. Consistent with the evidence of Mr Sheppard, CFD submits that if the proposed 12m wide road is located within the Site then it will not be able to accommodate the maximum FAR.

50. Further, if the 12 m wide road and the 10 m “landscape setback” are both included on the Site, under the exhibited controls, CFD is being asked to construct and “gift” approximately 1,620 sqm or 39% of the Site area without compensation. It is submitted that the Review Panel should reject this approach on the basis that it is not only unlawful and unreasonable but manifestly unfair given the road widening and tram route will potentially benefit the precinct and the whole of FBURA.

\(^{18}\) Document L8.
\(^{19}\) CoM’s Interim Submission for the Lorimer Precinct, 9 May 2018, paragraph 55 and 56.
51. With regard to parking provision, CFD 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.

Implications of Lack of Transitional Provisions on the Site

52. Finally, CFD submits that the lack of transitional provisions in the Proposed Amendment is extremely unfair.

53. CFD has purchased the CCZ Site in an Urban Renewal Precinct with legitimate expectations that they will be able to develop the Site in accordance with the relevant planning controls.

54. CFD has invested significantly in the Site and has spent over $1.5M to date in project costs in good faith that the “goal posts” won’t shift.\textsuperscript{20}

55. CFD rejects the Minister’s assertion\textsuperscript{21} and CoM’s submission\textsuperscript{22} that the landowners of transitional provisions has the potential to prejudice the future development of the Precinct as envisaged under the Framework. The current permit application provides a significant net community benefit to the Precinct by providing community facilities and substantial commercial space to support the employment and mix use aspirations under the MSS.\textsuperscript{23}

56. Is it fair or reasonable to require CFD to throw away the significant project costs incurred to date to achieve a flawed vision? The answer is a resounding “no” from the submitters to this Review Panel without exception and must also be the Review Panel’s answer.

57. CFD submits that, at the very least, transitional provisions should be included that operate so as to exempt a current planning application that has lawfully applied for approval under the existing controls from the need to comply with any new

\textsuperscript{20} This figure consists of $585,000 in development management consultant fees, $187,200 in Metropolitan Planning Levy, $717,748 in consultant and legal fees and $16,500 in environmental cost.  
\textsuperscript{21} Minister for Planning Part A Response (14 March 2018), para 231 – 235.  
\textsuperscript{22} CoM’s Interim Submission for the Lorimer Precinct (9 May 2018), para 134.  
\textsuperscript{23} Clause 21.13-3.
provisions. The overarching submissions of the Landowners in this regard are relied upon.

Conclusion

58. 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, Ms Dunstan and Mr McGurn, it is submitted that the Review Panel should recommend that the proposed Amendment not proceed in its current form.

16 May 2018

Chris Canavan QC

Jane Sharp

Instructed by Norton Rose Fulbright