

**IN THE MATTER OF
FISHERMANS BEND PLANNING REVIEW PANEL**

-and-

**IN THE MATTER OF
DRAFT AMENDMENT GC81
TO THE MELBOURNE and PORT PHILLIP PLANNING SCHEMES**

OUTLINE OF CLOSING SUBMISSION PURSUANT TO DIRECTION 26

1. These submissions are made on behalf of the owners represented by Planning & Property Partners (“the owners”) in response to the Review Panel’s Direction 26 following the tabling of further revisions on behalf of the Minister on 14 May, 2018.
2. I have had the benefit of reading the Outline of Closing Submissions on behalf of the Landowners Group prepared by Messrs. Canavan and Tweedie and Ms. Sharp instructed by Norton Rose Fulbright and Russell Kennedy Lawyers as well as their revised Part C controls. On behalf of the owners I endorse those submissions and accordingly do not propose to recapitulate the matters to be canvassed before the Review Panel.
3. In response to the Norton Rose Fulbright letter of 15 May, 2018 seeking an extension of time for the filing closing submissions, Harwood Andrews on behalf of the Minister (Document 315) opposed such an application citing as its first reason:-
 - “1. *A primary outcome of the Review Panel is to recommend amendments to the proposed Amendment, including through the provision of a track change version of the proposed controls.*
 - ...”
4. The above reference is indicative of the mindset that has beset this process from its commencement. The constant changes made on behalf of the Minister are demonstrative of the proposition that this whole process is planning on the run and riddled with the same set of problems it is allegedly trying to cure.
5. The “*primary outcome*” of the Review Panel’s Terms of Reference is:-
 - “*To advise the Minister for Planning of the appropriateness of the proposed Planning Scheme Amendment GC81.*”

The Review Panel has been established to provide independent advice. It is not, or hopefully will not become a mere drafting service for the Department. If this should occur it would set an appalling precedent for a process lacking any sense of procedural fairness. It must not become a template for future draft planning scheme amendments only to be subsequently used as a

justification under section 20(4) of the *Planning and Environment Act* – as appears to be the Minister’s intentions for this draft Amendment.

6. Mr. Morris (Document 311 [16 – 17]) made reference to the role of the Review Panel and the need for credibility. In the circumstances of this Amendment, the Review Panel needs to represent the community by providing “*fearless advice to the government*” in response to the primary purpose of the Terms of Reference.
7. The Minister’s Part C submission, contrary to my opening general submission (Document 263) seeks to confine the above purpose by submitting that the Vision is not open to the Review Panel to critique. The Terms of Reference do not preclude such a critique should the Panel consider it appropriate. The Harwood Andrews letter (Document 315) fails to refer to the words “(or *otherwise*)” contained in clause 35(a) of the Terms of Reference. Nor does it refer to clause 35(e), i.e., “*any changes required to the draft Fishermans Bend Framework as a result of recommendations made to the Planning Scheme Amendment*”.
8. For the reasons set out in Document 263, it is clearly open to the Review Panel in forming an opinion about the “*appropriateness*” of the draft amendments to consider the unpinning document upon which the whole Amendment is predicated. In seeking to gain support in the Part C submission as to the purpose of the Amendment, the Minister relies upon the MAC first report. In doing so, it makes reference to the Vision September 2013 at [6] and observes:-
 - “7. *The overall Vision for Fishermans Bend has been redefined and enhanced over time, but its fundamentals have never varied: Fishermans Bend is intended as a mixed-use area, consisting of five distinct and diverse precincts, with a population of 80,000 residents in 2050.*”
9. The Part C submission seeks to draw upon the authority of the MAC first report, but of course does not reference the criticisms in that report of the underlying assumptions which are highlighted in my Document 263 at [24 – 37], in particular, the MAC’s observation:-

“4.7 Community Infrastructure, Public Open Space, Public Realm and Activation –

The 2012 rezoning and the subsequent planning work demonstrated an inadequate understanding of the residential development market in Melbourne which has meant that all planning to date was based on population projections which are half the likely outcome if current development trends continue. The previous projections provided for the addition of the population of Greater Shepparton to the Area. Current development trends indicate that the Area may need to provide for the population of Greater Ballarat. In reality, Fishermans Bend is not just another suburb for Melbourne, but a city within itself. Planning for population of this scale requires the planning for the full range of supporting and sustaining community and social infrastructure. To date, this has not occurred for Fishermans Bend.”

10. The Part C submission dealing with the Population Target is post-event justification for a preconceived number that has not been the subject of “*macro scenario testing*” as recommended by the MAC in 2015. The submission criticises submitters for failing to demonstrate what the appropriate population target should be. That criticism, however, is misguided. It is not the role of submitters to undertake the “*macro scenario testing*” that the MAC said was needed to “*maximise future development of the finite resource that is inner city urban renewal land*” (MAC Report 1, page 25).
11. The current Plan Melbourne Policy 2.2.1 specifically deals with the four Fishermans Bend precincts in the following terms:-
- “Facilitate well-designed, high-density residential developments that support a vibrant public realm in Melbourne’s central city.”*
- Directing population and housing growth into defined change areas will enable the Victorian government to work with local governments, developers and stakeholders to create sustainable, liveable and attractive places that appeal to a range of households – including families with children and older – and single – person households. A number of major urban renewal precincts have been identified in the central city (as shown on Map 4). Maximising development opportunities of these precincts will minimise the need to increase residential densities in other parts of the city. The sequencing of infrastructure within these precincts will maximise their development potential and provide timely services and amenities for the residents.*
- There is a need to find ways to give the market some flexibility to maximise development opportunities. For instance, additional development rights could be granted in exchange for the provision of additional amenity in the central city and other key urban renewal structure plan areas.”*
12. Documents 325 and 342 demonstrate the failure of the draft Amendment to achieve the aspirations of this policy. There has been no suggestion that Plan Melbourne is to be reviewed, amended or changed in any way and yet the practical outcome of the draft Amendment will render that policy nugatory.
13. In light of the above policy, the draft Amendment can be seen as lacking ambition and to be “*picking low hanging fruit*”. The DDO’s Map 1 reinforce this proposition with their predominance of low and mid-rise typologies. The genesis for these typologies is the work undertaken by Places Victoria leading to the 2013 Vision. It has not been revisited notwithstanding the extensive criticism of it by the MAC Report 1. Equally, the FAR methodology is now redundant in light of the Minister abandoning his vigorously defended methodology for providing public open space. As the Review Panel is aware, Ms. Hodyl was presented with a population target and precinct description based on that target. For the reasons discussed in Document 263 and above, that approach is flawed and should be rejected as being “*inappropriate*” by the Review Panel.

14. One further concern I would like to address, is on behalf of submitter 162, Lorimer Place Owners Corporation (Document 48, p. 53 – 57). The issue relates to the reservation of land as open space. Previously Document 99 indicated that Lorimer Central would be purchased or compulsory acquired. SIN 19 now indicates that acquisition will be through the ICP for the whole of the Lorimer Central site.
15. The issues of open space acquisition have been addressed in submissions by Mr. Pitt (Document M50) and by Mr. Morris in his preliminary submissions by Delta Group 18 May, in addition to his earlier submissions of 3 May – Document 311.
16. It is apparent from the Part C submission that the Minister has yet to issue any directions concerning the valuation methodology to be adopted for existing business within Fishermans Bend. The review mechanism that will ultimately be available involves a mediation and/or arbitration with the Valuer-General should there be disagreement, S46 GT. However, that disagreement can only be in the context of the Minister's direction as to the methodology to be adopted for any valuation of those properties. There is no review mechanism of that methodology. In the circumstances where the Minister has demonstrated a propensity to avoid scrutiny and a disregard for the property rights of existing owners, the owners have no comfort in the Minister's change of position concerning the acquisition of public open space. The traditional valuation methodology of the *Land Acquisition and Compensation Act* appears to have been jettisoned.
17. As has become abundantly clear, there are significant development difficulties faced in the realisation of the future for Fishermans Bend. It follows that the ability of a collection or development agency to proceed to acquisition will be dependent upon funding being available to acquire the sites. This is particular the case given that Lorimer Central owners are unlikely to be developing their respective properties in the foreseeable future. This will mean those sites will only be capable of minor redevelopment under the CCZ provisions. That will lead to the planning blight referred to by Messrs. Pitt and Morris. There is no mechanism within the ICP to nominate this site with the equivalent of a PAO. Rather, it is at the behest of the collecting or development agency as to when that decision is made. Contrast this position to a PAO applying on the site which could trigger an entitlement to compensation based on the known provisions of the *Land Acquisition and Compensation Act* within an ascertainable time.
18. For these reasons it is submitted that if the Review Panel considers that the land within the Lorimer Central POS should be appropriated as part of some future precinct structure plan, it must be accompanied by a PAO.

19. The owners of Lorimer Central respectively adopt the submissions made by Mr. Pitt on behalf of the Industry Business Hub, Document M50 as they are equally applicable to Lorimer Central. Of further concern is the “*proposed*” tram route. Transport Victoria was not prepared to adopt the expression “*proposed*” in relation to the alignment and would put it no higher than a recommendation for a river crossing. In the Herald Sun June 13, an article appeared on p.9 concerning the Lord Mayor meeting with supporters of the underwater tram connection for the Fishermans Bend redevelopment. The article concluded with the following:-

“An Andrew’s government spokeswoman would not comment specifically on the concept, but said the state Budget included \$1M for the next stage of Fishermans Bend public transport planning.

“Transport for Victoria has undertaken the initial stages of planning work to determine possible public transport connections into Fishermans Bend”, she said.”

20. The Review Panel has had the benefit of “*enlightenment*” from Transport for Victoria concerning its views on the tram routes. In light of that “*enlightenment*”, it is submitted that it is extremely premature to be putting any lines on plans let alone giving them any weight in a planning sense. In the absence of a properly defined transport route that has been fully costed and approved through a business plan by Transport for Victoria and approved by the State government, it is folly to speculate on the outcome let alone the timing.
21. To put speculative tram routes on the plan unaccompanied by a PAO is to play with the property rights of individual owners. It will depress the valuations of those properties, if not render them valueless for resale. This is the classic planning blight referred to in the above submissions.
22. Mr. Milner presented a “*response slide*” in his presentation to this Review Panel. That slide recommended as follows:-
- *Review in the light of the merits of submissions and evidence.*
 - *Put together the “complete” package:*
 - *Structure plans;*
 - *Infrastructure;*
 - *Cost/timing;*
 - *Funding mechanisms;*
 - *Governance;*
 - *Re-draft the suite of planning provisions;*
 - *Exhibit and independently review;*
 - *Recommend a complete package.”*
23. In response to the question from Ms. Mitchell as to what the Panel should do following the completion of his evidence, Mr. Milner recommended that the Panel issue an interim report identifying what further work needed to be done and possibly to also suggest some sort of holding position pending the completion of that work.

24. The landowners' submission as part of its conclusion attaches a suggested revision of the Part C controls that could be included as such as stop gap.
25. The owners endorse this conclusion but with the accompanying caveat that such a step is the basis for the next stage of the process that would be:-
- (a) the preparation, exhibition and consideration of an actual planning scheme amendment;
and
 - (b) further opportunities for parties to be properly consulted, listened to, have the ability to comment on and review and make submissions about that future amendment.
26. As the landowners' submission concludes:-
- "It is only through such a process that a final set of fair, lawful and equitable planning controls will be able to be implemented for Fishermans Bend."*

13 JUNE, 2018

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