

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
INCHCAPE AUSTRALIA LIMITED**

Introduction

1. These submissions are made on behalf of Inchcape Australia Limited (**Inchcape**), Submitter 254 to this Review Panel.
2. Inchcape is the owner of the land at 99 – 111 Lorimer Street, Docklands. (**Site**)
3. It has an area of 16,797sqm with three street frontages – Lorimer Street to the north, Boundary Street to the south-west, and Hartley Street to the east. It includes all the land in the “triangle” between Lorimer, Rogers, Boundary and Hartley Streets, except the Costa Fox Development’s (**CFD**) land (Vol 10172 Fol 373, CA 12B) in the western corner.
4. The Site is used for a Subaru car dealership with double storey commercial show rooms and offices and car parking and a 4-wheel drive training area to the south.
5. The total building area on the Site is approximately 6,732sqm made up as follows:

Main Showroom and Office (1st Floor)	1,753m ²
STI Showroom & workshop (1st Floor)	1,204m ²
Ground Floor Workshop	1,910m ²
Ground Floor Showroom, Offices and Training	1,865m ²

Total Lettable Area: 6,732m²

External display area is 12,463m²

6. The building was constructed in early 2002.
7. Inchcape intends to consolidate its operations on the Site and, in the short to medium term, to develop the existing use and buildings on the Site.

The Proposed Amendment and the Site

8. Pursuant to the Proposed Amendment, the Site lies within the Lorimer Precinct in the Core Area (maximum FAR 5.4:1 with a maximum Dwelling FAR 3.7:1)¹.
9. A preferred maximum height of 61.4m (18 storeys) applies to the Site under the DDO.²
10. A “10m landscape setback” from the northern boundary (along Lorimer Street) is shown on Map 2 of the Capital City Zone (CCZ)³ and the Lorimer Precinct CCZ map.⁴
11. This setback was also shown as “*proposed streets and setbacks*” or “*proposed roads*” in Maps 1, 2 and 3 of CCZ⁵ and the DDO⁶.
12. The Framework (page 73), Doc 156B and Doc L8 show the land to be a “*proposed tram route*”, “*future tram corridor*” or “*potential future tram corridor*”.
13. No crossovers are permitted along the northern boundary of the Site⁷ and a “secondary active frontage” is nominated along the southern boundary of the “proposed road”.⁸ “*Primary active frontages*” are nominated in part to Boundary Street and Hartley Street and to an internal road.⁹
14. A new 22m wide road is included through the middle of the Site in an east-west direction.¹⁰

¹ CCZ Doc 307

² Doc 66 Part F

³ Doc 66 Part F- check Part E?

⁴ Doc L8

⁵ Doc 66 Part E

⁶ Doc 66 Part F

⁷ Map 2 Doc 66 Part E, Doc L8 Map 1, Doc 317,

⁸ Map 1 Doc 66 Part E, Map 1 Doc 66 Part F

⁹ Map 1 Doc 66 Part E, Map 1 Doc 66 Part F

¹⁰ The Framework Page 73, Maps 1, 2 and 3 CCZ Doc 66 Part E and DDO Doc 66 Part F, Doc L8, Doc 317

15. The Framework shows that Hartley Street to the east is to include as a “*proposed tram route*” and a “*new bridge/existing bridge upgrade*”.¹¹ Doc 66 Part E CCZ Map 1 shows Hartley Street to be closed to traffic.¹²
16. A “*new 12m wide road*”, presumably within the Site, is located along the eastern boundary to Hartley Street.¹³
17. Two additional 12m wide north-south roads and a north-south and an east-west “*new indicative laneway*” are proposed in the Framework at Page 73.¹⁴ The location of the western-most 12m road is unclear.¹⁵
18. A public open space in the centre of the Site¹⁶ is nominated in the Framework at Page 73 and is nominated as “*new public open space*” in the CCZ Doc 66 Part E¹⁷ and a “*neighbourhood park*” in Map 3 to the DDO Doc 66 Part F.¹⁸ The DDO Table 1 provides that a permit cannot be granted to vary the requirement that no overshadowing is permitted between 11:00am to 2:00pm on 22 September.¹⁹
19. Ms Thompson recommends in her evidence to this Review Panel that the neighbourhood park be partially relocated in a north-south direction with an abuttal to Lorimer Street and to “*provide access to the Yarra River*”.²⁰ The area of the original park as shown in Doc 108 is to be 2,505sqm and this increases to 4,232sqm if it is relocated.²¹
20. The Site lies within two Sub-precincts “L3” and “L4” in the proposed MSS Clause 21.13-3.²²
21. The preferred character of L3 is:

Slender towers located to minimise overshadowing of the Lorimer parkway

¹¹ Also shown in Doc 156B and Doc L8

¹² Also shown in Doc L8

¹³ Framework Page 73, CCZ Map 2 Doc 66 Part E, Doc 156B, Doc L8

¹⁴ See also Doc 156B, Doc L8, Doc 317

¹⁵ This was queried by parties including Melbourne City Council during the submissions of Costa Fox Developments.

¹⁶ Map 3 Doc 66 Part E

¹⁷ See also Doc 156B, Doc L8 and Doc 317

¹⁸ See also Doc 156B where it is labelled “C”

¹⁹ Map 3 Doc 66 Part F, Table 1 Doc 66 Part F

²⁰ Doc 108, Page 41 Jo Thompsons’ statement of evidence and Doc 107

²¹ Doc 138 (L15)

²² Doc dd Part B

Lower street wall heights along Lorimer parkway to maximise the amount of sunlight penetrating between tower elements to reach the southern side of the parkway

22. The preferred character of L4 is:

Hybrid developments of mid-rise perimeter blocks and tower developments

Well-spaced towers that avoid a wall-of-towers effect when viewed from the Yarra River, Lorimer Parkway, internal streets and the West Gate Freeway

Towers that create a visual landmark to the West Gate Freeway recognising that this is an important arrival point into the central city

Location and design of towers to minimise overshadowing of parks and streets in the Sandridge precinct

Activation of new north-south laneways and streets

Lower street wall heights on the east and west of the new large park on Turner Street

Elsewhere, higher street wall heights that assist in mitigating noise pollution from the West Gate Freeway into the Lorimer Precinct.

Service access only on the new service road along the West Gate boundary

23. The northern part of the Site lies partially in an identified area as “*education and community hub*” in the Community Infrastructure Investigation Areas map and the southern part of the Site lies in an area identified as “*arts and cultural hub*”.²³

Inchcape’s Submissions

24. Inchcape made a submission to the Minister dated 14th December 2017 and again on 20th April 2018 raising a number of issues including:

- a) Inchcape currently operates the existing Suburu dealership on the Site;
- b) The dealership employs approximately 100 people;

²³ Lorimer Precinct Map – CCZ Map 1 (Doc L8).

- c) The intention is to consolidate our business on the site for the foreseeable future;
- d) Aspects of the master planning for Fishermans Bend are concerning including:
 - (i) The tram alignment along the Lorimer Street frontage;
 - (ii) The 10m landscape strip along the Lorimer Street frontage;
 - (iii) The new road through our site;
 - (iv) The introduction of linear public open space through our site;
- e) Inchcape understands the need to plan for Melbourne's growth but is has not been consulted by the government;
- f) The likely impact of these proposals on the business will be severe and will significantly impact the value of the asset;
- g) Inchcape recently sold part of the surplus land to generate funds to reinvest in the business in the short medium term;
- h) If the proposal proceeds, it will significantly impact the capacity of the Site financially, commercially and operationally;
- i) Inchcape opposes the location of public open space on our site;
- j) Inchcape questions the delivery method of the open space;
- k) There is no public open space acquisition (**PAO**) on the site;
- l) Inchcape understands that there is no compensation proposal through a PAO and open space is to be procured through a development bonus mechanism;
- m) Inchcape is concerned about the uncertainty and ability to reinvest in our existing premises given a proposal on our land may trigger the transfer of public infrastructure requirements;
- n) The existing business simply cannot operate under such circumstances; and

- o) Inchcape urges the government to reconsider the master planning process and the proposed delivery method.
- 25. Inchcape 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.
- 26. In response to the Minister's Part C submissions and the amended controls dated 14 May 2018, Inchcape supports the written submissions of Mr Morris QC dated 18 May 2018 (with regard to the proposed introduction of an Infrastructure Contributions Plan Overlay) and the oral submissions of Mr Canavan QC made on 16 and 17 May 2018.
- 27. In support of its submissions, Inchcape also refers to the submissions of CFD (16 May 2018) and the written and oral evidence of Ms Dunstan with regard to the proposed tram route and traffic management issues associated with the Lorimer Precinct and particularly the land parcels owned by CFD and Inchcape.

Implications of the Proposed Amendment on Inchcape's Business

- 28. As is evident from the written submissions already made by Inchcape to the Minister, Inchcape is not a property-development company but is a car dealership company.
- 29. Further, it has no intention of moving its premises from the Site or becoming a property developer in the foreseeable future.
- 30. Inchcape intends to stay at the Site and to consolidate and grow its business as demonstrated by its sale of surplus land to CFD to fund the further development of the Subaru dealership.
- 31. The use of the land for "*Motor vehicle sales*" falls within the definition of "*retail premises*" pursuant to Clause 74 of the Melbourne Planning Scheme. It does not fall within the definition of "*warehouse*" or "*industry*".
- 32. Pursuant to the existing CCZ4 in the Melbourne Planning Scheme, the use is a Section 1 use noting the purposes of the CZ4 include:

To provide for a range of residential, commercial, industrial, recreational, business and leisure uses within a mixed use environment.

To encourage employment uses and the continued operation of existing uses.

33. Under the current CCZ, a permit is not required for the use of the Site for retail premises although a permit is required for buildings and works.
34. The Proposed Amendment seeks to replace the existing CCZ4 with a new CCZ4 and pursuant to Doc 66 Part E (Part B controls) and Doc 307 (May 14 Version), a permit is required for the use of a “Retail Premises” if the gross leasable floor area exceeds 1,000sqm and the land is not in a core area.
35. The current gross leasable floor area of the Subaru dealership is over 6,700sqm. Putting aside existing use rights (addressed below), a permit would be required for the use of the site pursuant to the proposed Clause 37.04.
36. The purposes of CCZ4 are proposed to be as follows²⁴:

To implement the Fishermans Bend Vision, September 2016 and the Fishermans Bend Framework, XX 2018.

To create a world leading sustainable area that incorporates sustainable transport patterns and best practice sustainable design into all developments.

To create a highly liveable mixed-use area that prioritises employment uses over residential uses, [within core areas well serviced by public transport]

To achieve the population targets, job growth and residential densities [within each precinct] of Fishermans Bend and enable a scale of growth that is aligned with the provision of infrastructure.

To provide public benefits where the scale of development exceeds nominated Floor Area Ratios.

To support the continued operation of existing industrial uses which facilitate the urban renewal of Fishermans Bend and to apply the agent of change principle to ensure that new

²⁴ Doc 307 CCZ May 14 Version

development for sensitive uses incorporates measures to mitigate potential amenity impacts from those industrial uses.

37. Relevantly, although the purposes include support for a mixed use precinct and employment uses and the continued operation of existing industrial uses, the encouragement for continuing operation of “existing uses” is no longer a purpose of the CCZ.
38. Section 2.0 of the CCZ4 requires that the use of land must be generally in accordance with the Maps of this schedule. Map 4 of the Schedule refers to the Lorimer Precinct and, as above, the “uses” it identifies for the Site are “core area”, roads and public open space.
39. The most relevant decision guidelines are:

The impact the proposal has on the realisation of employment targets, ensuring that employment uses are maximised and safeguarded in [core] areas well serviced by public transport.

Whether the use provides for employment uses in line with targets set out in the Fishermans Bend Urban Renewal Area Local Policy.

40. Section 2.0 of the CCZ May 14 Version provides that the use requirements do not apply “to an *application for the use of land in accordance with a planning permit for buildings and works issued before the approval date of Amendment GC81*”.

Given the Subaru dealership was constructed in 2002 pursuant to a planning permit, Inchcape may be able to take advantage of the exemption for use under an existing planning permit, however it is not clear whether there will be ongoing support in the future for existing uses such as the Subaru dealership. This is compounded by the proposed requirements for buildings and works as follows.

41. Pursuant to Clause 37.04-4, a permit is required for buildings and works, and Section 4.0 of the Proposed CCZ requires that *"The construction of a building, and the carrying out of works, must be generally in accordance with the relevant Maps of this schedule"*.²⁵
42. Section provides that *"this requirement does not apply to an application to amend a permit issued before the approval date of Amendment GC81"*.
43. The relevant Maps of the schedule, Map 4 Lorimer Precinct, shows roads, public open space, laneways and landscaping setback²⁶ as described above.
44. The existing layout of the Site is not generally in accordance with Map 4 Lorimer Precinct.
45. It is submitted that it is extremely unlikely that buildings and works to the Subaru Dealership business on the Site would be *"generally in accordance"* with Map 4.
46. For obvious reasons, a new road and park through the middle of the Site, a landscaped setback to Lorimer Street (through existing access and car parking) as well as a new 12m road along the eastern boundary and various other laneways is entirely inconsistent with the layout of a car dealership.
47. Therefore, unless the exemption from the buildings and works requirements of the Proposed Amendment can be utilised by Inchcape through an amendment to a permit rather than a new permit application (which would depend on the existing planning permit and the detail of a proposal), under the Proposed Amendment, a permit for buildings and works to the Subaru dealership would be prohibited.
48. Clause 4.0 includes mandatory bicycle, motorcycle and car share parking for developments of over 10,000sqm non-residential floor space.
49. This may be problematic for the Subaru dealership if the floor area exceeded 10,000sqm noting that the provision is expressed in mandatory terms and its applicability to motor sales is questionable.

²⁵ Doc 307 14 May version

²⁶ Doc 307 14 May version

50. Clause 4.0 Conditions on permits does not apply to permits for buildings and works to an existing use except as follows:

Where a new road, street or laneway is proposed on the land, and the road, street or laneway is not funded through an Infrastructure Contributions Plan, a permit must include a condition requiring an agreement to be made under section 173 Agreement of the Planning and Environment Act 1987 between the landowner, the responsible authority and the local council (if not the responsible authority) which provides for the:

- *Construction of the new road, street or laneway to the satisfaction of the Responsible Authority and the relevant road management authority; and*
- *Transfer of the new road, street or laneway to, or vesting in the relevant road authority as a public road at no cost to the relevant road authority.*

51. The decision guidelines are of general relevance only.
52. Finally, the proposed CCZ May 14 Version²⁷ includes an exemption from permit requirements, application requirements and conditions on permits for applications for buildings and works associated with a continuing lawful use of land for industrial and warehouse uses.
53. Motor sales and retail premises are not industrial and warehouses uses and although a lawful use of land, they are not afforded the same protection as is proposed for industrial and warehouses uses.
54. This is not equitable approach and it is one which unfairly elevates existing industrial and warehouse uses above all other existing lawful uses. The question is why?
55. It is submitted that the Site enjoys existing use rights for a car dealership/motor vehicle sales pursuant to Clause 63 of the Melbourne Planning Scheme and even if a new permit trigger is introduced which results in the use becoming a Section 2 use, Clause 63.05 provides that the use may continue provided no buildings and works are constructed or carried out without a permit.

²⁷ Doc 307

56. It is submitted that the provisions of Clause 4.0 of the proposed CCZ in effect ensures that, unless an application is for an amendment to an existing permit, no permit for buildings and works can, or will be, granted for any substantial buildings and works to the Subaru dealership as these buildings and works will not be generally in accordance with the relevant Maps of the CCZ.
57. Further, it is arguable that the mandatory nature of the provisions may operate to prevent any minor or unavoidable buildings and works being constructed on the Site despite the fact that they may become necessary to allow for the continuing operation of the Site (for example if the tram route was to be constructed and the Site needed re-organisation to continue its use). This would be contrary to Section 6 of the Planning and Environment Act:

Subject to subsections (4) and (4A), nothing in any planning scheme or amendment shall—

(a) prevent the continuance of the use of any land upon which no buildings or works are erected for the purposes for which it was being lawfully used before the coming into operation of the scheme or amendment (as the case may be); or

(b) prevent the use of any building which was erected before that coming into operation for any purpose for which it was lawfully being used immediately before that coming into operation; or

(c) prevent the use of any works constructed before that coming into operation for any purpose for which they were being lawfully used immediately before that coming into operation; or

(d) prevent the use of any building or work for any purpose for which it was being lawfully erected or carried out immediately before that coming into operation; or

(e) require the removal or alteration of any lawfully constructed building or works.

58. Inchcape submits that the regulatory regime proposed through the Proposed Amendment does not adequately protect its continuing operations on the Site.

59. Inchcape further submits that its continuing operations should be encouraged through the Proposed Amendment noting:
- a) Its long and established presence in Fishermans Bend;
 - b) The locational benefits for the business and customers to the business on the edge of the CBD close to transport routes and the docks;
 - c) The level of employment it provides with over 100 current employees;
 - d) Its commitment to continuing growth and expansion on the Site;
 - e) The length of time that Fishermans Bend may take to transform into the Vision;
 - f) The extraordinary position that appears to be demonstrated through Doc SIN15 that 101% of the target population for Lorimer will be achieved through existing permits and current permit applications and therefore the questionable continuing development of Lorimer given the manner in which the FAR and population target is proposed to work (ie It must be asked, has Lorimer reached its target already?); and
 - g) The current lack of government commitment in (substantial) monetary terms to public infrastructure in Fishermans Bend to facilitate its timely redevelopment.
60. Like the existing CCZ controls, the Proposed Amendment should encourage “*employment uses and the continued operation of existing uses*”, at least until such time as the Government is ready and willing to fund public infrastructure and pay compensation to businesses that will be affected.
61. In this regard, Inchcape submits that if public acquisition is to occur, compensation must be payable which takes into account not only the land set aside but if the business is prevented from its continued operations as a result of the Proposed Amendment, full compensation for the loss or relocation of the business.
62. Inchcape submits that the CCZ provision should be amended to include in Section 4.0 of the May 14 Version:

4.0 Buildings and works

The construction of a building, and the carrying out of works, must be generally in accordance with the relevant Maps of this schedule.

This requirement does not apply to an application to amend a permit issued before the approval date of Amendment GC81.

This requirement does not apply to an application for buildings and works for a continuing existing use.

63. Alternatively, the protection afforded to industry and warehouse use should be extended to existing uses.
64. If the Review Panel does not support these suggestions, Inchcape submits that the provisions must be discretionary to ensure existing uses are not prevented from continued operation.

The lack of transparency of the Proposed Amendment

65. With regard to the transparency of the proposed controls, Inchcape supports the submissions and evidence called on behalf of CFD, noting that with regard to the proposed tram route, very similar issues affect Inchcape's Site.
66. Inchcape notes the evidence of Ms Dunstan regarding the lack of information and certainty of the proposed tram route and how it transitions between Turner Street and the Yarra River.
67. Inchcape submits that whilst the some versions of the Lorimer Precinct maps identify a "10 m landscape setback", others identify a "proposed road" and others a "future" or "proposed tram corridor".
68. Certainty and transparency of exactly what the land is to be set aside is not provided but must be provided.
69. Further, if it is to be used for a tram route or road widening to accommodate a tram on Lorimer Street or landscaping necessitated by the tram or road widening, the land is needed for a public purpose and should be identified as such in a straight-forward manner (such as a public acquisition overlay).

70. Compensation for the setting aside of the land and the eventual transfer of the land to the Melbourne City Council or Transport for Victoria must be provided pursuant to Section 4 of the *Planning and Environment Act 1987*.
71. It is submitted that it is of serious concern to Inchcape, and should be of concern to the Review Panel, that the Proposed Amendment has not proceeded in this way. It is hoped that this is an “unintended consequence” of the proposed drafting rather than a deliberate attempt by the Government to avoid paying for public transport infrastructure such as a tram.

The implications of the Proposed Amendment on the Site more generally

72. Inchcape has no intention of becoming property developers.
73. However, should the Site become unusable for a car dealership, or the Site is sold for example, Inchcape submits that the Proposed Amendment is unnecessarily conservative in its ambition for population, employment and built form.
74. Further, its method of procuring land for roads, laneways and parks is unclear and, at this stage, completely lacking in its transparency and detail.
75. Inchcape submits that the high proportion of its Site that is proposed to be required to be set aside including the park, east-west road, north-south roads (potentially 4) is onerous and significantly reduces the development potential of the Site noting the “development equalisation” of the FAR, and now the Infrastructure Contribution Plan Overlay, have serious issues in terms of lawfulness and applicability.
76. In this regard, Inchcape draws the Review Panel’s attention to the Landowner’s overarching submissions and evidence.
77. With regard to the proposed change to the location of the neighbourhood park on the Site, Inchcape does not support this change as it involves even more land being set aside for open space and does not, in practice, provide a link to the Yarra River any more than a laneway would (noting the traffic volumes along Lorimer Street and proposed tram route).

78. Inchcape does not support the provision of a 12m wide road on its Site to the east noting that it is not clear that is necessary and if required as a result of the tram along Hartley Street, it should be more properly identified for public acquisition.
79. For obvious reasons, a 22m wide road through the middle of the Site in an east-west direction and the various laneways (north-south) are not required, and are highly disruptive to the existing use (and an expanded use) and should therefore not be mandatory.
80. Inchcape submits that the Proposed Amendment has the potential to place a “*dead hand*” on its operations to its great disadvantage.
81. At the very least, Inchcape seeks that the Review Panel recommend that the Proposed Amendment be amended to support its existing operations in the same manner that other existing uses (such as industry and warehouse uses) are protected.

Conclusion

82. For the above reasons together with overarching submissions and evidence provided to the Review Panel, it is submitted that the Review Panel should recommend that the proposed Amendment not proceed in its current form.

21 May 2018

Chris Canavan QC

Jane Sharp

Instructed by Norton Rose Fulbright Australia