PLANNING SCHEME AMENDMENT: Amendment GC81 to the Melbourne Planning Scheme and the Port Phillip Planning Scheme

PLANNING AUTHORITY: Minister for Planning

SUBMITTER: Nias Nominees Pty Ltd (trading as Soundfirm) & Roger Savage

SUBJECT LAND: 23-31 Fennell Street, Port Melbourne

OUTLINE OF SUBMISSIONS

NIAS NOMINEES P/L (TRADING AS SOUNDFIRM) & ROGER SAVAGE

Introduction

1. These submissions are made on behalf of Nias Nominees Pty Ltd (trading as Soundfirm) and Roger Savage (referred to in these submissions collectively as Soundfirm) in relation to Amendment GC81 (the Amendment) to the Melbourne Planning Scheme and the Port Phillip Planning Scheme.

2. Soundfirm also relies upon its submission to the Amendment, dated 15 December 2017 (Submission 178).

The Site

3. Nias Nominees Pty Ltd is the registered proprietor of land at 23-31 Fennell Street, Port Melbourne (the Site). The Site is located on the corner of Fennell Street and Bertie Street, Port Melbourne.

4. From the Site, Nias Nominees Pty Ltd operates Australia’s largest independent picture and sound post production company, trading as Soundfirm.

5. Roger William Savage is the sole director, founder and CEO of Soundfirm. During his career, Mr Savage has worked with internationally renowned acts, including the Rolling Stones, as well as numerous iconic Australian and
international films and has been internationally recognised for his work, including one Academy Award nomination, and two British Academy of Film and Television Awards (BAFTA), from five nominations.

6. Soundfirm was established in 1983 in Bank Street, South Melbourne. In 1990 it relocated to Crockford Street in Port Melbourne, before moving to the Site in 2013.

7. The Site was acquired for $3.4 million, and was purchased with a view to being a long-term location for the business. To that end, Soundfirm undertook an extensive refurbishment of the Site to establish a purpose-built facility, specifically designed for local and international film and television post-production.

8. The Site has also been engineered to comply with the Motion Picture Association of America Content Security Program, referred to as MPAA Accreditation, which enables Soundfirm to work on assignments from the US.

9. Designing and refurbishing the Site as a cutting-edge facility has cost over $3.5 million. Works to the Site include:

   a) installation of dark fibre into the building;

   b) 32 kilowatt solar panels on the roof;

   c) Toshiba low energy and low noise air-conditioning;

   d) 21 individual air handling units;

   e) the only DolbyAtmos sound mixing room (20m x 12m x 6m) in Australia;

   f) installation of internal high speed integrated networks.

10. Accordingly, the total investment in the Site has been in excess of $7 million, which has undoubtedly contributed to Soundfirm’s reputation as a world class post-production studio (of which there are only two in Australia).
11. Soundfirm employs 24 full time staff and engages freelance operators and contractors on demand. Over the last four-years it has employed freelancers to the value of $2,368,000. Given the specialist skill-set of Soundfirm’s employees and the limited number of similar businesses, if Soundfirm is forced to close there is a limited prospect of its employees finding sustainable employment going forward.

12. Given the significant cost of establishing Soundfirm’s operations at the Site, it would not be feasible to simply move and re-establish elsewhere.

How the proposed Amendment will impact the Site

13. The Site is located within the Sandridge Precinct. The vision for Sandridge, provided on page 23 of the Fishermans Bend Framework Plan (the Framework Plan) is:

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

14. The proposed planning controls:

   a) propose open space over the entirety of the Site; and

   b) nominate an indicative underground rail station location on Fennell
      Street, directly adjacent to the Site.

The proposed designation of open space

15. Soundfirm understands that Ms Joanna Thompson of Thompson Berrill
    Landscape Design, the expert engaged by the Minister for Planning, has
    proposed reconfiguring the provision of public open space as set out in the
    Framework Plan.

16. Document 108, page 3, illustrates the Public Open Space Plan, as proposed by
    Ms Thompson. On this plan, The Site is marked as “TBLD proposed removal of
    FBF open space”. We understand that the amendment of open space was
supported by the evidence of Mr Mark Sheppard, of David Lock and Associates.

17. Soundfirm understands that the Minister does not support the removal of open space on the Site.

18. Document S37, "Response to proposed changes – Sandridge on behalf of the Minister for Planning" discusses the recommendations made by Ms Thompson at paragraph 29. Several of Ms Thompson’s recommendations have been supported, however the proposed removal of open space on the Site, has not received support:

29.6 The proposal to reconfigure the open space on the corner of Fennell and Bertie Streets is also not supported.

19. Document 99a tabled by the Minister “Properties Proposed partially or wholly for Open Space”, does not include the address for the Site. Presumably this is an oversight, considering Document 99b “Fishermans Bend – Public Open Space Network” appears to continue to designate the Site as public open space.

20. The City of Port Phillip Urban Design Report marks the Site as “Proposed public open space’ and “Proposed Metro Station entry within a building”. The revised Sandridge DDO maps also mark the Site as “New public open space”.

21. Soundfirm supports the evidence of Ms Thompson regarding the proposed consolidation of open space, and the proposed removal of the open space designation for the Site.

Proposed Metro station

22. The Framework Plan proposes an underground Metro Station along Fennell Street, directly adjacent to the Site.

23. Soundfirm has substantial concerns that the construction of this Metro station would likely force it to cease operation and that the cost and time involved in re-establishing Soundfirm’s operations at another location would not be feasible.
24. Soundfirm submits that, as Fennell Street is already proposed to be served by a tram line, the proposed Metro station is unnecessary in this location. Accordingly, Metro route options servicing the employment precinct to the north should be preferred.

The proposed Clause 4.0 to the CCZ1

25. The suite of planning controls proposed to be introduced via Amendment GC81 to the Scheme includes amendments to the CCZ1. A permit requirement at clause 4.0 of the proposed CCZ1 is that:

   *A permit must not be granted to construct a building or construct or carry out works where the provision for any new streets, laneways or public open space generally in accordance with Map 2 and Map 3 is not provided.*

26. The proposed controls would prevent any permit issuing until the open space and road (encompassing the entire Site) is provided to Council, in circumstances where Wirraway North open space is identified as a long-term (2025+) infrastructure project under the Framework Plan.

27. We understand that Document 227 ‘Clause 4 - Buildings and works draft proposed change’, proposes amendments to Clause 4 of the Capital City Zone, Schedule 1. The Document 227 draft contains the qualification that only 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 unless the proposed road or public open space is transferred.

28. As the building on the Site is effectively built to all boundaries, or very close thereto, and thus no new buildings can be constructed on the Site, Bowen accepts the proposed amendment to Clause 4, as set out in Document 227.

The appropriate mechanism for the acquisition of land
29. Should the Panel determine that it is inappropriate to remove the proposed public open space designation in the Framework Plan, Soundfirm submits that it is appropriate that a Public Acquisition Overlay (PAO) be applied.

30. The Framework initially provided that no Public Acquisition Overlay (PAO) would be applied to land required for new roads of public open space, but rather these would be delivered through the imposition of mandatory conditions on permits which would require them to be provided in accordance with the relevant plan.

31. I note the Part B submission contains the following footnote on Page 3:

   2 The exception to this proposition is instances where whole sites are proposed to be used for public open space in which case, it is intended that they will be acquired. See Taskforce Statement, Fishermans Bend Options for the Funding of Open Space, 13 March 2018.

32. The letter 'Fishermans Bend – Options for Provision of Public Open Space' provides that, in instances where any entire title is required, land required for public open space will be purchased where it is practicable to do so, or compulsorily acquired, with the land valued at its highest and best use.

33. As Soundfirm has no intention of selling the Site, the Site would be acquired. However, the mechanism by which that is to be achieved is still unclear.

34. The Panel has been informed by Counsel for the Minister that as Fishermans Bend has been declared a Project of State Significance under Part 9A of the Planning and Environment Act, a PAO is not required to be applied to land to effect acquisition.

35. Soundfirm adopts the submissions made by Mr Canavan QC, Mr Tweedie QC and Ms Sharp on 19 April 2018 with respect to the general deficiencies in the Amendment, but particularly regarding the failure to apply a Public Acquisition Overlay over land designated to be required for a public purpose. In particular, Soundfirm notes paragraph 77 of the submission:

   "The mere fact that the Minister can lawfully proceed to acquire land without using a PAO is not sufficient reason not to do so. Landowners, Councils and taxpayers are entitled to know what land will be acquired, when and how it will be paid for. The suggestion that Landowners whose
land is clearly identified in the proposed controls as being required for public purposes will be better off without a PAO is ridiculous.”

36. Soundfirm also adopts the submission of Mr Morris QC and Ms Collingwood dated 14 May 2018, and the submissions of Mr Canavan QC dated 3 May 2018, particularly with regard to fairness and validity of land acquisition.

37. The PAO is clearly designated within planning schemes as the appropriate mechanism to identify land that has been reserved for a public purpose. The imposition of a PAO puts the status of land beyond doubt and provides greater certainty to landowners going forward.

Suggested recommendations

38. Soundfirm submits that:

   a) the proposed designation of open space on the Site should be removed from the Framework Plan in accordance with Ms Thompson’s recommendations; and

   b) the proposed Metro station on Fennell Street outside the Site should be removed from the Framework Plan.

39. In the alternative, Soundfirm submits that a PAO should be applied to the Site.

Conclusion

40. It is respectfully requested that the Review Panel should advise the Minister that the Amendment is not appropriate and should not proceed.

Carly Robertson
Counsel for Nias Nominees Pty Ltd (trading as Soundfirm) & Roger Savage

16 May 2018