

## PLANNING PANELS VICTORIA

PLANNING SCHEME AMENDMENT:	Amendment GC81 to the Melbourne Planning Scheme and the Port Phillip Planning Scheme
PLANNING AUTHORITY:	Minister for Planning
SUBMITTER:	J & D Bowen (Owner) and Bowen & Pomeroy Pty Ltd (Occupier)
SUBJECT LAND:	128 Salmon Street, Port Melbourne

### OUTLINE OF SUBMISSIONS

#### J & D BOWEN and BOWEN & POMEROY PTY LTD

##### Introduction

1. These submissions are made on behalf of J & D Bowen and Bowen & Pomeroy Pty Ltd in relation to Amendment GC81 (the **Amendment**) to the Melbourne Planning Scheme and the Port Phillip Planning Scheme.
2. J & D Bowen and Bowen & Pomeroy Pty Ltd also rely upon its submission to the Amendment, dated 15 December 2017 (Submission 181).

##### The Site

3. J & D Bowen and Bowens & Pomeroy Pty Limited, respectively own and lease land at 128 Salmon Street, Port Melbourne (the **Site**). Both companies are owned and operated by members of the Bowen family and for ease of reference throughout this submission both entities will be referred to as **Bowens**.
4. Bowens business was established in 1894 and remains a family-owned company, specialising in the supply of timber and building supplies to the Victorian building trade. Bowens employs approximately 1,200 people and operates from 20 sites in Victoria and one in Queensland.

5. Over 98 percent of Bowens customer base are builders or professional tradesmen.
6. The principal business activities of Bowens consist of the marketing, distribution and sale of timber and building supplies, including: builders hardware; framing timber; fixing timber; lock-up timber; flooring and decking; doors and door furniture; hand and power tools; paint and adhesives; on-site hire; prefabricated walls; and trusses and floor systems.
7. The Site is 9,182 sqm and is developed with a Bowens Timber & Hardware warehouse, showroom and car parking.
8. The Site was occupied in 2014, purchased in 2015, during which time approximately \$1 million was invested in both fixing and upgrading the building on the Site. This included removing steel bracing elements, removing cranes, replacing all electricals, fixing the roof and building offices and showroom.
9. The Site currently employs approximately 30 staff, completes 50 deliveries a day and serves over 100 customers per day.
10. The Submitters have invested significant capital in the Site, and it is important to the future business operations of Bowens that they are able to continue business operations from the Site indefinitely.
11. Bowens submit that they are strategically located to assist in the cost effectiveness of the construction activity that is to take place over coming years and adopts the submissions of Mr Morris QC and Ms Collingwood on 3 May 2018 with regard to the failure of the Amendment to provide sufficient protection for existing businesses, particularly businesses whose operations provide services to the construction industry to assist with the renewal of Fishermans Bend.

### **How the proposed Amendment will impact the Site**

12. The Site is located in the Wirraway Precinct and is identified as a proposed road and proposed Wirraway North open space under the draft Fishermans Bend Framework Plan (the **Framework Plan**).
13. The Site will also be impacted by the proposed Clause 4.0 to the Capital City one Schedule 1 (**CCZ1**).

### **The proposed road**

14. Bowens submits that the road proposed to run across the northern half of the Site is misconceived, inappropriate and unnecessary.
15. Primarily, the proposed road fails to consider the existing conditions of Salmon Street, which include an overpass extending directly pass the Site. As far as Bowens is aware, no submission has been made to the Panel regarding the removal of this overpass, or how the road proposed to be developed across the northern half of the Site might reasonably be expected to go either under or over it to connect to Rocklea Drive.
16. If the road is not intended to traverse Salmon Street, and provide a link to Rocklea Drive, its functionality must be questioned. Indeed, even if the overpass were to be removed, and the road did connect to Rocklea Drive, it would only serve to provide a vehicular link to Thackery Street, currently a dead end road.
17. Bowens also submits that any infrastructure works that served to facilitate the construction of the proposed road, and its navigation of an existing overpass, must be estimated at costing many millions of dollars.
18. In circumstances where:
  - a) the necessary infrastructure required under the Framework Plan has not had funding mechanisms definitively allocated; and
  - b) the construction, necessity and functionality of the proposed road has been inadequately determined,

there are real questions as to whether the road will (or could) ever actually be constructed.

19. Bowens submits that the proposed road should be removed from the Framework Plan, and that that portion of the Site be designated 'Mixed use medium (non-core activity) on Figure 13 – Activity Cores in the Framework Plan. This designation is consistent with adjoining land to the immediate north of the Site.

### **The proposed designation of open space**

20. The southern half of the Site has been designated in the Framework Plan as proposed Wirraway North open space. Map 17 '*Open Space Staging*' of the Open Space Strategy identifies the timing for the Land to become open space is 20 to 30 years.

21. The Open Space Strategy identifies at page 119:

*“The analysis in this report shows that a significant funding shortfall of in excess of \$800 million would exist to deliver the proposed open space network, and this could increase over time if land is not acquired early in the development timeframe (due to expected strong land value appreciation)”.*

22. Bowens adopts the submissions of Ms Collingwood, dated 30 April 2018, particularly regarding the provision of public open space, which provide:

- a) the 200m criteria lacks strategic justification;
- b) Ms Thompson's 'tightened criteria requiring the 200m to be safe and *easily walkable* is overly restrictive; and
- c) there is no sound basis to discount linear space when calculating the quantum of open space.

23. Pursuant to the analysis undertaken by Ms Collingwood in her submission, Bowens submit that there are real questions as to requirement for the amount of public open space as required in the Framework Plan. There are also real

questions as to the mechanisms by which the proposed open space network will be funded.

24. Accordingly, Bowens submit that matters of equity and fairness dictate that, as the Site has been stipulated for public purposes in its entirety, it would be appropriate for the public open space designation to be removed from the Site in the Framework Plan and that portion of the Site be designated 'Mixed use medium (non-core activity) on Figure 13 – Activity Cores in the Framework Plan.
25. This is supported by the existing long term business operations at the Site, the intention of Bowens to occupy the Site indefinitely, and the fact that the business operations on the Site support the construction activities that are to take place within Fishermans Bend in years to come.

#### **The proposed Clause 4.0 to the CCZ1**

26. 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.*

27. 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.
28. 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.

29. While Document 227 demonstrates an improvement, and would facilitate alterations and additions for existing buildings on the Site, it does not provide for new buildings and works, which, Bowens submits, unfairly constrains the ongoing operation of existing businesses. This constraint is proposed to apply in circumstances where Bowens intends to continue operations on the Site indefinitely, there is a very real possibility that it may well be many years before the Site is acquired for public use and it is not intended to apply a Public Acquisition Overlay (PAO) over the Site.

### **The appropriate mechanism for the acquisition of land**

30. Should the Panel determine that it is inappropriate to remove either the proposed public open space, or the proposed road from the Site, or both, Bowen submits that it is appropriate that a Public Acquisition Overlay (PAO) be applied.
31. 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.
32. I note the Part B submission contains the following footnote on Page 3:
- <sup>2</sup> *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.*
33. 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.
34. As Bowens 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.

35. 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.
36. Bowen 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, Bowen 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”.*
37. Bowen 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.
38. 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.

### **Specific changes requested**

39. Bowen submits that:
- a) the proposed road on the Site is inappropriate and misconceived and it should be removed from the Framework Plan;
  - b) there are real questions as to the necessity for the amount of public open space that has been proposed in the Amendment, and in circumstances where:
    - i. the entirety of the Site is intended to be acquired; and

- ii. the Site is capable of providing a necessary service in the area for many years to come,  
  
fairness and equity dictate that proposed open space designation on the Site be removed from the Framework Plan;
- c) the Site should be designated as 'Mixed use medium' (non-core activity) on Figure 13 – Activity Cores' in the Framework, which is consistent with the adjoining land to the north;
- d) in the alternative, Bowen submits that it is appropriate that a PAO be applied to the Site; and
- e) Clause 4 should be further amended to allow new buildings and works on land.

### **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 J & D Bowen Pty Ltd and Bowen & Pomeroy Pty Ltd

16 May 2018



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