

20 August 2001

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BY FACSIMILE

Mr Ian Hicks
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Dear Mr Hicks

Amendment C25 to the Port Phillip Planning Scheme

We act for the Becton Group of Companies.

Attached is a submission prepared on behalf of our client concerning the amendment.

Our client wishes to be heard before any panel appointed to consider the amendment.

Due to the imprecision and uncertainty concerning a number of aspects of the amendment, our client reserves the right to provide further comments should Council elect to clarify any of those aspects.

Yours faithfully
MINTER ELLISON



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Our reference: PAXB SBS 1313164

Attachment: Submission

**SUBMISSION CONCERNING AMENDMENT C25
TO THE PORT PHILLIP PLANNING SCHEME**

The Esplanade Hotel, 11-12 The Esplanade and 6 Victoria Street, St Kilda

THE BECTON GROUP OF COMPANIES

1. This submission is made on behalf of the Becton Group of Companies ('Becton') concerning Amendment C25 ('Amendment') to the Port Phillip Planning Scheme ('Scheme'). The Amendment concerns the land located at 11-12 The Esplanade and 6 Victoria Street, St Kilda ('Land'). Becton is the owner of the Land.

Policy

2. The specific reference to the hotel on the Land, such as clause 21.04-6, is inappropriate. They are the only specific property references within a policy aimed at a municipal wide vision. The hotel is not of such significance that it warrants this specific reference.
 - 2.1 Further, it is entirely inappropriate for a planning scheme to seek to control issues relating to the managerial and operational aspects of a land use, such as is attempted by the policy references at page 20 of the draft Municipal Strategic Statement.
 - 2.2 Those policy references are too prescriptive. Examples include clause 21.05-1 'St Kilda Neighbourhood' dot points 4-8, and clause 21.05-6 'St Kilda Neighbourhood' dot points 3 and 4.
 - 2.3 The policy references are unreasonable in that they seek to achieve a specific economic outcome for a specific property in private ownership. The clauses referred to in paragraph 2.2 also demonstrate this point.

- 2.4 The policy references assert as fact a series of matters which are at best controversial subjective opinions, and at worst, misconceived. Examples include the reference in clause 21.03-6 to the 'historic character of the foreshore', clause 21.05-2 'maintain key cultural icons, including the Esplanade Hotel', and clauses 21.05-1 and clause 21.05-6 'an incubator of independent local music and comedy talent'.

Design and Development Overlay

3. The overlay is poorly drafted and ill conceived. Many of the statements contained within the overlay are those more appropriate to a specific local policy statement. Further, many of the clauses within the overlay are in fact matters concerning the heritage significance of the Land and as such are matters more pertinent to a heritage overlay rather than one designed to address design.
- 3.1 Many of the design objectives in clause 1.0 of the DDO are self serving, unnecessarily restrict the redevelopment of the Land, and are excessively prescriptive. The 'Manual for the Victorian Planning Provisions' states that the purpose of such controls should be to:

implement requirements based on a demonstrated need to control built form and the built environment. The built form outcome intended to be achieved must be clearly stated and the way in which the requirements imposed will achieve this clearly expressed. Where possible, performance based requirements should be used rather than prescriptive ones. (Page 43)

The objectives are not clearly stated, nor do they explain what outcome will be achieved by the requirements and they are unnecessarily prescriptive.

- 3.2 The design objectives include statements which are unclear and unhelpful in their future interpretation eg. reference to the Hotel building as being a 'landmark' (objective one)

which would appear to relate more to its reputation than building profile and reference to a 'preferred prevailing massing and skyline profile' without identifying what constitutes the preferred massing and the location of the 'relevant vantage points' (objective six).

- 3.3 The design objectives also use emotive provisions in places, eg 'overpowering' (objective seven), 'imbalance' (objective five), 'multiplicity' (objective five) or 'dominating' (objective seven) the foreshore. The objectives should particularise the impacts to be avoided.
- 3.4 The second and third objectives should call upon a future development to 'recognise and respect' the experience and pedestrian environment along the Esplanade. The requirement in the exhibited design objectives to 'enhance' those experiences and linkages is an unreasonable test when those areas actually sit outside the proposed overlay control and constitute public spaces.
- 3.5 The fourth design objective is vague to the point of being meaningless. Many people would in fact describe the relationship as far from harmonious having regard to the natural tension which exists between local residents and visitors which are attracted to the foreshore and other local attractions and activities.
- 3.6 The eighth design objective and the outcomes in the Table make reference to the need to maintain the silhouette of the hotel on the Land when viewed from the foreshore or the pier. It is unclear whether this is achievable having regard to the proposed location of the development envelope, and it is not explained why it is necessary to preserve any such silhouette which may exist particularly given the heritage and architectural value of the building, which does not warrant Shrine Vista Preservation status.
- 3.7 The eighth design objective should also be re-expressed to require key views to be 'taken into account and, where appropriate, protected'.

- 3.8 The ninth design objective is too vague to be of any practical assistance and should be deleted.
- 3.9 The tenth design objective is unclear and appears to require the maintenance of a particular building which is inappropriate within a design objective and is a matter which overlaps with provisions in a heritage overlay. This design objective also fails to particularise what is meant by 'the special role' of the Baymor Flats buildings. This is a particularly vague and imprecise design objective.
- 3.10 Design objective eleven also makes mention of the presence of open spaces within the overall property which have absolutely no applicability to the intent of DDO controls to achieve a built form outcome within the neighbourhood. These are private spaces and it is unclear what purpose or outcome is intended to be achieved. The objective should be deleted.
- 3.11 Design objective twelve makes reference to the domestic scale and ambience of surrounding residential streets. It should also acknowledge the scale and substance of abutting residential towers. This objective fails to acknowledge the scale of a number of existing buildings which are anything but 'domestic'. The objective should be rewritten or preferably deleted.
- 3.12 The fourteenth design objective includes reference to 'essential significance'. It is unclear what is meant by this term and the objective therefore offers little assistance or guidance and should be deleted as it merely duplicates other existing heritage policies and controls. The following design objective should also be deleted for the same reasons. The objective is in fact incapable of being met because existing policy in the Scheme states that significant buildings cannot be demolished unless they are structurally unsound and cannot feasibly be reused.

- 3.13 Design objectives fourteen and fifteen are unnecessary and duplicate existing controls. They also suggest a blurring of the distinction between the need to provide appropriate built form parameters for the Land and the need to ensure ongoing viability and management of the hotel on the Land.
- 3.14 The design objectives overstate the overall heritage significance of The Esplanade Hotel, in particular the north-east wing, and the Baymor Flats.
- 3.15 Design objective seventeen relating to the protection of sunlight access to public spaces in mid-winter is too onerous and inappropriate. It would be best expressed in similar terms to that set out in the Outcome section of the table to schedule 12. ie. 'reasonable solar access is provided to . . .', and if any reference is necessary, refer to the equinox.
- 3.16 The reference to the protection of sunlight access to adjoining private open spaces (objective eighteen) is in direct conflict with the standards prescribed under the Good Design Guide and ResCode and should be deleted.
- 3.17 The final design objective is self-defeating as a result of the inability to provide any imaginative design response which occurs because of the strict and numerous controls which deny a designer the ability to deliver the kind of response sought. It is unnecessary for an objective to require compliance with the provisions in which it is positioned and requirements elsewhere in the Scheme.

4. Buildings and Works Controls

Height

- 4.1 The reference in the height control to 'design objectives for height' is vague as such objectives are not clearly identified in clause 1.0 of the schedule. The blurring of the design guidelines with other matters is particularly problematical.

- 4.2 The requirement that any height between the preferred maximum and the absolute maximum must achieve all of the outcomes in the table is particularly onerous having regard to the wording of a number of those objectives and the lack of precision in their drafting and intended outcomes.

Setbacks

- 4.3 The reference to 'design objectives for setbacks' is also vague given the lack of precision in the drafting of the design objectives in clause 1.0.
- 4.4 The requirement for basements to be fully below ground is onerous and unnecessary.
- 4.5 The requirement to achieve all of the outcomes in the table is particularly onerous having regard to the wording of a number of those objectives and the lack of precision in their drafting and intended outcomes.

Overshadowing

- 4.6 The impact of this control is unclear due to the imprecise drafting. The overshadowing controls should not be imposed as a mandatory requirement and should be discretionary matters after they have been altered to include reasonable and appropriate objectives for the assessment of any additional overshadowing.
- 4.7 The uncertainty is increased due to the wording of each provision which varies from referring to 'no overshadowing' to 'generally avoid' to 'generally not further overshadow' and 'generally avoid casting significant shadows'.
- 4.8 We note that in relation to the shadow provisions on Alfred Square, the Council's own consultant indicates that this provision would be quite onerous in terms of the information which would need to be submitted to demonstrate compliance.

- 4.9 The overshadowing of private open space is prescribed at a level which exceeds the provisions of the Good Design Guide and ResCode and yet there is no justification why that should occur in this location.
- 4.10 The provision should adopt a similar approach to that in the outcomes column of the table to schedule 12 (ie. 'reasonable solar access is provided to ...').
- 4.11 Even if the provisions in the table specifying height within building envelopes were complied with, the final dot point in the provision is incapable of being met. The provisions are not limited to 'new' shadows, and make no reference to the importance of considering the function and utility of any area affected by any additional overshadowing.
- 4.12 The adoption of the winter solstice is unreasonable having regard to the onerous nature of the controls. The requirements should be based upon the equinox.

Conservation

- 4.13 This provision should be deleted as it duplicates the existing heritage overlay control and controls and policies applying to the property.
- 4.14 The provision purports to require that the front section and north east wing **must** be retained and conserved. It is submitted that there is no other provision in a planning scheme, or the *Heritage Act*, which mandates the retention of a building in all circumstances and this is entirely inconsistent with the discretion which is available under the heritage overlay control.
- 4.15 It is submitted that this entire section should be deleted from the overlay control.

Building Design

- 4.16 This control also makes reference to certain design objectives for building design. This is again unclear having regard to the format of clause 1.0 which does not specifically identify which objectives are building design objectives.
- 4.17 The design provisions then go on to prescribe that 'only a portion' and 'only a very limited portion' can exceed the preferred maximum height and absolute building height respectively. The reference to 'comparable scale' is unhelpful. These provisions clearly pre-suppose an outcome before a specific design has been assessed on its merits. It should be deleted.
- 4.18 The design section refers to a substantial proportion of the roof ridgeline being able to be seen against open sky when viewed from the Esplanade and the St Kilda Pier. It is unclear whether this provision can be complied with having regard to the likely location of higher building elements to the rear of the hotel on the Land. It is more likely that the provision will have the effect of sterilising the development envelope in a way which is not justified by the architectural and heritage status of hotel building on the Land.
- 4.19 The building design provisions repeat the lack of precision evident in the design objectives and fail to give guidance or techniques for deemed to comply development, which is their stated purpose.
- 4.20 The objectives seek to impose a 'deemed to comply' test with respect to the broader design objectives within the overlay. The impossibility of ever achieving this is demonstrated by the fact that a design is only deemed to comply if the ten imprecise and inherently subjective 'requirements' concerning building design are met.

Table to Schedule 12

5. The setbacks and parameters which have been used in the table are not supported and unreasonably constrain the potential for an innovative design response for any redevelopment of the Land.
- 5.1 The view cone control is raised for the first time in the table, but is not mentioned or otherwise referenced at all in any of the vast number of design objectives. If it is to be retained, it should be clearly explained and linked back to the design objectives within the body of the overlay control.
- 5.2 The basis for the view cone is contested. It is submitted that the views of the building sought to be achieved by the view cone do not warrant the degree of restriction upon the development potential of the Land. Further, the exclusion of development to preserve views from the south results in the increased exposure of the Bayview Flats when viewed from the north, which will result in a detrimental impact upon the streetscape and the overall context of the hotel.
- 5.3 The table is so structured, regulated and prescribed that it denies to a designer the flexibility needed to respond to the opportunities and constraints of the Land, which should properly inform a design response for the Land. Although setbacks retain a degree of discretion, it is noted that this discretion is itself inordinately constrained by the extensive and imprecise objectives which must be met in order to qualify for the discretion.
- 5.4 It is submitted that the entire table would be better expressed in plan form which could be incorporated into the Scheme. The plan would identify building envelopes with reference to setbacks from boundaries, and then indicate preferred and maximum height outcomes.

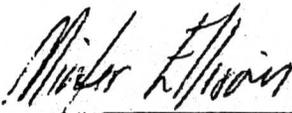
- 5.5 The outcomes expressed in the table are, in general, too prescriptive and repeat the imprecise wording of the objectives in the body of the overlay such as 'landmarks'. Again, it is submitted that the references to preserving the 'silhouette', preserving the backdrop to the hotel as open sky, forecourt controls and 'monolithic' building forms are neither helpful, clear or directive. The outcomes would be better expressed in the form adopted on page 8 of 8 of the overlay (except for the reference again to 'monolithic').
- 5.6 The height limits proposed are simply inappropriate and unduly prescriptive. Further, the breaking up of the Land into precincts and sub-areas creates considerable difficulty with the achievement of a consistent application of height controls across the Land due to its slope.

Heritage

6. Becton is presently receiving advice on the proposed statement of significance for the hotel and proposed internal building controls. It is submitted that the Amendment should modify the extent of controls over internal works within the hotel as presently contained in the Heritage Overlay.

General

7. Becton proposes to submit a specific building proposal for the Land to any panel appointed by the Minister to consider the Amendment which it will submit should inform the final content of the Amendment.



MINTER ELLISON
for and on behalf of the Becton
Group of Companies

20 August 2001