

Our reference 30019561
Direct line +61 [REDACTED]
Email [REDACTED]@gadens.com

gadens

Gadens Lawyers
ABN 29 991 935 627

17 April 2023

[REDACTED]
Panel Chair
Planning Panels Victoria
GPO Box 2392
MELBOURNE VIC 3001

Level 13
Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia

GPO Box 48
Melbourne VIC 3001

By Email: planning.panels@delwp.vic.gov.au

DX 304 Melbourne

Dear [REDACTED]

T +61 3 9252 2555
F +61 3 9252 2500

gadens.com

**Ballarat Planning Scheme Amendment C235ball (Amendment)
Miners Rest Township Plan (MRTP)**

1. We act for Resi Ventures Pty Ltd (**Resi**), a submitter to the Amendment and developer of 1-11 Victoria Street, Miners Rest (**1-11 Victoria Street**) and 13-91 Victoria Street, Miners Rest (**13-91 Victoria Street**).
2. We note that the directions hearing for the Amendment will be held on Thursday, 20 April 2023.
3. Ahead of the directions hearing, we wanted to clarify Resi's revised position – which differs from that set out in its submission – to assist the Panel in preparing for the directions hearing.
4. Resi's submission dated 15 December 2022 (prepared by its then legal representatives, Planning & Property Partners Pty Ltd) sought the following changes to the Amendment:
 - (a) **Change No. 1:** 13-91 Victoria Street should be identified as appropriate for immediate redevelopment and should form part of the proposed rezoning (from a Farming Zone to a General Residential Zone); and
 - (b) **Change No. 2:** 1-11 Victoria Street should retain its current General Residential Zone – Schedule 1 (**GRZ1**) zoning.
5. A copy of Resi's submission is contained in **Attachment 1**.
6. Resi continues to seek Change No 2.
7. In relation to Change No 1, Resi no longer seeks rezoning of 13-91 Victoria Street as part of the Amendment. However, for the avoidance of doubt, Resi maintains its submissions that the MRTP is out of date and that the policy framework should be updated to reflect the ability of 13-91 Victoria Street to contribute meaningfully to residential land supply in the short term. Resi further submits that this would reflect the intent of the MRTP, which had identified investigating the development potential of 13-91 Victoria Street as a "medium to long" priority, being within 4 to 8 years of its adoption in 2019.
8. At the Panel Hearing, Resi intends to call two expert witnesses to support its revised submission, being [REDACTED] from Milner Planning Advisory (town planning) and [REDACTED] from Urban Expertise (land economics). Resi expects that it will require 6-7 hours to present its submissions (including its expert evidence).
9. Resi has also briefed a range of other technical experts to prepare expert statements, which will inform [REDACTED] planning evidence. At this stage, Resi does not intend to call these experts unless another party or the Panel has questions. In light of this, we think it would be prudent to allocate one (1) reserve day in the timetable to accommodate any cross-examination (if required).

Gadens is an association of independent firms.

10. Resi has briefed [REDACTED] of Counsel to appear on its behalf at the directions hearing and at the hearing.
11. Resi will separately file an Online Request to be Heard Form which confirms the information set out above, today as required.
12. Ballarat City Council has been copied to this correspondence.

Yours sincerely

[REDACTED]

[REDACTED]

Partner

Enc

cc info@ballarat.vic.gov.au

ATTACHMENT 1: RESI SUBMISSION

15 December 2022

The Relevant Officer
Ballarat City Council
The Phoenix
25 Armstrong Street
SOUTH BALLARAT 3350

Dear Sir/Madam

**AMENDMENT C235BALL TO THE BALLARAT PLANNING SCHEME
1-11 & 13-91 VICTORIA STREET, MINERS REST**

We act for ResiVentures ('**Resi**'), developer of 1-11 Victoria Street, Miners Rest ('**1-11 Victoria Street**') and 13-91 Victoria Street, Miners Rest ('**13-91 Victoria Street, Miners Rest**').

Our client wishes to make a submission in Amendment C235ball to the Ballarat Planning Scheme ('**Amendment**').

Resi considers that changes to the Amendment are required prior to it being incorporated into the Ballarat Planning Scheme ('**Planning Scheme**').

Its reasons follow.

The Sites

Resi is the developer of two adjoining sites in Miners Rest, being:

- 1-11 Victoria Street, Miners Rest; and
 - 13-91 Victoria Street, Miners Rest.
- (collectively, the '**Sites**')

The Sites sit approximately 13km north of Ballarat, on the outer edge of Miners Rest. Resi intends to develop the Sites for residential subdivision and, in respect of 1-11 Victoria Street, Miners Rest, substantial progress has already been made.

1-11 Victoria Street

1-11 Victoria Street is comprised of 15 consolidated titles pursuant to a Crown Grant, resulting in an irregularly shaped lot with a total site area of 10.65 hectares.

Pursuant to the Planning Scheme, 1-11 Victoria Street is currently zoned General Residential Zone – Schedule 1 ('**GRZ1**') and subject to Schedule 2 to Environmental Significance Overlay, the Land Subject to Inundation Overlay, the Erosion Management Overlay and the Floodway Overlay.

Planning permit PLP/2017/585 authorising a multi-lot subdivision was issued on 12 July 2022 pursuant to the orders of the Victorian Civil and Administrative Tribunal in proceeding P11603/2021. The lots to be created pursuant to the subdivision are an average of 626m² in area.

13-91 Victoria Street

13-91 Victoria Street sits immediately south of 1-11 Victoria Street.

It is similarly irregular to 1-11 Victoria Street, however constitutes a much larger land holding at some 41.58 hectares.

13-91 Victoria Street was formerly a basalt quarry operated by Boral until 2017 and remediation works will take place in the first quarter of 2023.

Resi intends to progress residential subdivision of this site.



Amendment C235Ball and the Sites

Under the Amendment, 1-11 Victoria Street would become subject to a new Schedule 3 to the Neighbourhood Residential Zone ('NRZ3').

13-91 Victoria Street is marked as a "medium to long term priority" for residential development, subject to further technical studies.

The NRZ3 would include a number of variations to ResCode standards, including minimum subdivision area (750m²), maximum building site coverage of 45%, minimum permeability of 45% and landscaping requirements.

The imposition of the NRZ3 is ostensibly intended to implement the findings and directions of the Miners Rest Township Plan 2019 ('MRTP').

Concerns in respect of Amendment C235ball

Resi holds a number of concerns in respect of the adequacy and appropriateness of the Amendment.

In broad terms, the Amendment as drafted risks both unduly constraining land supply within Miners Rest, and squandering opportunities for meaningful residential development that would address community needs in the short, medium and long term.

Age of underlying strategic work

The Amendment, as noted above, seeks to implement the MRTP.

Whilst Resi does not take issue with implementation of the MRTP in principle, it must be noted that the strategic work that underpins it is now years old. Frankly, that strategic work can readily be described as having been conceived and undertaken in a bygone era that bears little resemblance to the world the Planning Authority finds today.

Whilst it is not unusual for strategic planning to take place over the course of years (indeed it could readily be said that it is typical), the course of events in the years since completion of the MRTP have heralded fundamental changes in respect of the use and demand for residential land in regional Victoria.

We refer of course to the Covid-19 pandemic.

As the Planning Authority will doubtless be aware, the pandemic has heralded mass migration into regional Victoria and substantially more demand for residential land. By way of example, Ballarat real estate markets sold 300 lots in 2019, 600 in 2020 and approximately 1200 lots sold in 2021.

Clearly, the assessments underpinning the MRTP are now outdated and erroneous.

Concerningly, no work has been done to quantify the accelerating effect of urban migration into regional Victoria in the wake of the pandemic. This is particularly material when regard is had to the MRTP's assessment that Miners Rest (in 2019) held approximately 12.5 years of available land supply (i.e. to 2031). Even if we assume for a moment that assessment remains valid, by the time the MRTP is reflected in the Planning Scheme, 2031 will only be some 7 years away.

Without the growth aspirations of the MRTP being appropriately expanded, and its conclusions appropriately updated having regard to its age, there is substantial and meaningful risk of a residential land undersupply being entrenched by the Amendment as presently proposed.

Specifically, the characterisation of 13-91 Victoria Street as requiring further technical analysis is outdated and inappropriate, particularly in respect of airport noise which appears to be the primary concern. These concerns are relics of the period during which the MRTP was prepared and have been substantively addressed in the intervening period.

13-91 Victoria Street is ready and able to meaningfully contribute to housing supply in Miners Rest. MRTP should be amended to delete the reference to development of 13-91 Victoria Street as a "medium to long' term priority" and instead identify it as appropriate for immediate redevelopment by it forming part of the proposed rezoning.

Inappropriate minimum lot size

The 750m² minimum lot size proposed under the NRZ3 would have appreciable adverse impacts both in respect of both available land supply and housing affordability.

Market data for Ballarat West and Miners Rest indicates that the overwhelming majority of purchasers in these corridors are seeking land sizes of 650m² or less. This typically enables a house & land package to be achievable for \$600,000 or less.

These outcomes make a meaningful contribution to both housing affordability and diversity.

Conversely lots of 750m², in addition to being relatively undesirable in the Miners Rest residential housing market, would also attract house & land prices of some \$800,000.

This jump in cost would effectively push land in Miners Rest beyond affordability for the vast majority of likely purchasers, in addition to mandating lot sizes that are unresponsive to market demand and respond poorly in respect of housing diversity.

The minimum lot size under NRZ3 should be discretionary and reduced to no more than 600m².

Inconsistency with approved outcomes

As noted above, planning permit PLP/2017/585 was issued on 12 July 2022 authorising a multi-lot subdivision of 1-11 Victoria Street.

As detailed above, the lots to be created pursuant to the subdivision are an average of 626m².

Resi fully intends to realise the development authorised by planning permit PLP/2017/585 and has already obtained endorsed plans. The Planning Authority should treat the development outcome approved by planning permit PLP/2017/585 as forming part of the status quo.

Whilst Resi acknowledges that the doctrine of accrued rights would protect its ability to rely on planning permit PLP/2017/585, it must be said that the imposition of NRZ3 on 1-11 Victoria Street is redundant in the context of the existing GRZ1 zoning and the nature of the permitted development.

The lots established will, on average, be some 120m² smaller than the minimum under the proposed NRZ3, and the smallest lots would be more than 300m² smaller than proposed NRZ3's minimum.

There is simply no utility, nor legitimate planning purpose, in rezoning 1-11 Victoria Street in the face of the approved development which is plainly inconsistent with the provisions of NRZ3.

The Amendment should be changed to retain the present GRZ1 zoning of 1-11 Victoria Street.

Conclusion

Resi supports the Amendment and implementation of the MRTTP in principle, however meaningful and substantive changes are required to ensure net community benefit is achieved given higher land consumption than was originally forecast.

Resi reserves the right to amend or expand upon this submission and to rely upon it in any hearing before Planning Panels Victoria.

Please contact [REDACTED] on 03 [REDACTED] should the Planning Authority have any queries in respect of this submission.

Yours faithfully

[REDACTED]

[REDACTED]
Planning & Property Partners Pty Ltd