



# UNCHAIN INC

**Submission on 1-7 Waterfront Place  
January 2013**

## **What is unChain Inc?**

unChain Inc (originally unChain St Kilda) is an incorporated body with membership of Port Phillip residents and traders. (See [www.unchainstkilda.org](http://www.unchainstkilda.org)). Originally we were brought together by concerns about the proposed development on the St Kilda Triangle. Now we are interested in an array of matters arising in Port Phillip, especially the appropriate development of our inner city.

We have members from all political parties but we do not have any political allegiance. We have an e-mail membership of over 2500 people. In the 2012 Port Phillip Council elections, three unChain councillors were elected and we gained about 36% of the first preference votes across the municipality. We can therefore claim to speak on behalf of a significant number of residents and traders in Port Melbourne and the broader Port Phillip community. unChain put in a submission on the draft Port Melbourne Waterfront UDF in March 2012.

## **The Request for consent to approve a development**

In November 2012 the developer of Waterfront Place sought from the City of Port Phillip, the responsible authority, consent to approve a development of three buildings of 5, 10 and 19 storeys. This request is different from a normal

planning application and means no public notification is required and third party objectors are unable to appeal to the Victorian Civil and Administrative Tribunal. The developer is also applying to remove restrictive covenants on the land, which were applied to protect Beacon Cove residents.

It is submitted that the Council should refuse consent because

- This is not a request to 'vary' the Beacon Cove Concept Plan and Precinct plan
- On planning merits, there are substantial matters to take into account that are better considered through the current UDF process.

### **Submission: This is not a request to 'vary' the approved plans**

It is submitted that this is not a request to 'vary' the approved plans and therefore the Council does not have the authority to approve the request.

Waterfront Place is part of a Comprehensive Development Zone in the Port Phillip Planning Scheme. This provides that the use of the land must be in accordance with the Beacon Cove Concept Plan No. 1 and the Beacon Cove Precinct Plan No. 1. However the use of the land may 'vary' from these plans if the use is in accordance with a plan prepared to the satisfaction of the responsible authority (Schedule 1 Clause 2.0). Similarly the buildings and works may 'vary' from the plans if the development is in accordance with a plan prepared to the satisfaction of the responsible authority (Clause 3.0).

What does the word 'vary' mean? This is important because it places a limitation on the authority of the responsible authority.

The appropriate definition of 'vary' in the Concise Oxford dictionary is 'differ in size, degree, or nature from something else of the same general class'. The word 'vary' does not include any change whatsoever. The responsible authority can only approve a 'variation' of the approved Beacon Cove Plans that keeps the development in the 'same general class'.

It is clear that the size of the proposed buildings at Waterfront Place and their uses constitute a qualitative difference from the buildings envisaged in the Beacon Cove Plans. This request therefore is not a request to 'vary' the Beacon Cove Plans. Therefore the Council, as the responsible authority, does not have the authority to approve them.

As noted above, the normal rights that citizens have in planning matters regarding notification and appeal to VCAT do not apply to the decision of the Council to approve a 'variation' of the Beacon Cove Plans. This is a powerful reason for limiting the Council's authority to approve minor variations that retain the fundamental nature of the Beacon Cove Plans. The Council does not have the authority to approve major changes that would result in buildings

at Waterfront place that are not of 'the same general class' of the buildings envisaged in the Beacon Cove Plans.

There are various presumptions that protect 'fundamental rights and liberties' in interpreting statutes. There are rebuttable presumptions that Parliament did not intend to:

- invade common law rights;
- restrict access to the courts
- deny procedural fairness to persons affected by the exercise of public power.

In interpreting statutes (or the Planning Scheme) the courts will prefer to interpret a word such as 'vary' in a way that does not interfere with these fundamental rights and liberties. The courts will presume that Parliament does not intend to take away fundamental rights unless it makes this intention clear beyond doubt.

It is therefore submitted that the word 'vary' in the Planning Scheme should be interpreted narrowly since the normal third party appeal rights are removed for 'variations' of the Beacon Cove Plans. It is submitted that the Developer's application is not a request to 'vary' the Plans and therefore the Council does not have the authority to approve the application.

### **Submission: Planning Merits**

Secondly, it is submitted that even if the Council does have the authority to approve the Waterfront Place application, it should not. There are significant issues to consider and this should be done through the UDF process rather than this request to consent to a variation of the Beacon Cove Plans.

It is not intended to go into detail on the planning merits of this application. unChain has read the submission of the Beacon Cove Neighbourhood Association and is aware of the submission of the Port of Melbourne Authority. Clearly these raise significant issues on the merits of the application. These include

- Rationale for height limits on the site
- The implication for height limits along the rest of the Port Phillip foreshore
- Impacts on viewlines
- Impacts on Beacon Cove
- Impact on residential amenity in Port Melbourne generally
- Impact of the loss of community facilities
- Impact on the operations of the Port of Melbourne
- Impacts on traffic in the area

The City of Port Phillip is developing an Urban Design Framework for the Port Melbourne foreshore area. This process will be completed in 2013. unChain submits that the Council should complete the UDF. This process will give all

interested parties, including the developer, to make submissions. It will also mean that Council will make a more informed decision on the changes to the Planning Scheme for Port Melbourne. Council will then be able to properly assess any planning application for 1-7 Waterfront Place.

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