

**Referral 1: Fishermans Bend Infrastructure Funding
Draft Planning Scheme Amendment GC224
Report – Volume 1 – Main Report**

Precincts Standing Advisory Committee Report

Planning and Environment Act 1987

7 April 2025

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

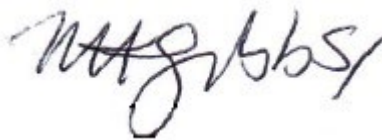
Report pursuant to section 151 of the PE Act

Report Volume 1 – Main Report

7 April 2025



Con Tsotsoros, Chair



Meredith Gibbs, Member



Geoff Underwood, Member



Sally Conway, Member

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Glossary and abbreviations

Amendment	draft Amendment GC224
Catalytic infrastructure	infrastructure classification in the FBDCP -includes infrastructure that is ordinarily the responsibility of the State Government
CCZ	Capital City Zone
CCZ1	Schedule 1 to Clause 37.04 of the Capital City Zone, Port Phillip Planning Scheme
CCZ4	Schedule 4 to Clause 37.04 of the Capital City Zone, Melbourne Planning Scheme
CIL	community infrastructure levy
Committee	Precincts Standing Advisory Committee
DCP	development contributions plan

DCP Guidelines	Development Contributions Plan Guidelines, amended March 2007
DCP Ministerial Direction	<i>Ministerial Direction on the preparation and content of development contributions plans</i>
DCPO	Development Contributions Plan Overlay
DDO	Design and Development Overlay
DDO67	Schedule 67 to Clause 43.02 of the Design and Development Overlay, Melbourne Planning Scheme
DDO30, DDO32, DDO33	Schedules 30, 32 and 33 to Clause 43.02 of the Design and Development Overlay, Port Phillip Planning Scheme
Developers Profit Based Approach	the approach used by Mr Haines to assess the potential development profit of additional OSU dwellings based on comparable sales
DIL	development infrastructure levy
DPO	Development Plan Overlay
DTP	Department of Transport and Planning
Employment precinct	Fishermans Bend Employment precinct, also known as the NEIC (Fishermans Bend National Employment and Innovation Cluster)
Essential infrastructure	infrastructure classification in the FBDCP - infrastructure that warrants cost sharing arrangements, and is prioritised for inclusion in the DCP or in the Open Space Uplift
EY	Ernst & Young
FBDCP	Fishermans Bend Urban Renewal Area Development Contributions Plan (Fishermans Bend Taskforce, Department of Transport and Planning, November 2023)
FB Framework	<i>Fishermans Bend Framework</i> (Department of Environment, Land, Water and Planning, 2018)
FBURA	Fishermans Bend Urban Renewal Area, being the precincts of Lorimer, Wirraway, Sandridge and Montague precincts of Fishermans Bend
GC81 Panel	The Fishermans Bend Planning Review Panel that considered submissions to Amendment GC81
Hartley Street Park	Hartley Street/Lorimer Street Neighbourhood open space (L_OS05)
ICP	Infrastructure Contributions Plan

ICPO	Infrastructure Contributions Plan Overlay
interim contributions	development contributions collected since the introduction of Amendment GC81, either through site-specific planning controls or voluntary agreements under section 173 of the PE Act and calculated using existing 'interim' contribution rates
IPO	Incorporated Plan Overlay
IPO2	Schedule 2 to the Incorporated Plan Overlay in the Port Phillip Planning Scheme
IPO7	Schedule 7 to the Incorporated Plan Overlay in the Melbourne Planning Scheme
LAC Act	<i>Land Acquisition and Compensation Act 1986</i>
Land Value Based Approach	the 'before' and 'after' valuation approach used to value FBDCP land and OSU park land
Local infrastructure	infrastructure classification in the FBDCP - includes infrastructure ordinarily funded and delivered through a combination of works normal to the development or by local government
Lorimer Central Park	Ingles Street Precinct open space (L_OS03 and OSU L_3 and 4) (identified on FBDCP maps as 'Lorimer Central')
Lorimer Neighbourhood Park	Lorimer Street Neighbourhood open space (L_OS04 and OSU L_5)
Lorimer Parkway	a landscaped, civic, cycling and pedestrian east-west spine through Lorimer, supporting a diversity of uses, social interactions and transport movements
Melbourne Water drainage projects	FBDCP projects DR02, DR03, DR05, DR06, DR07, DR09, DR10, DR11, DR12, DR13 and DR14. Note that DR04 and DR08 were included in the exhibited FBDCP but were later removed and do not appear in the final FBDCP
Metro 2	Proposed underground rail tunnels from Newport to Clifton Hill
Montague North Park	Montague North Park, corner of Montague Street and Munro Street (M_OS02)
NEIC	Fishermans Bend National Employment and Innovation Cluster, also known as the Fishermans Bend Employment precinct
OSU	Fishermans Bend Open Space Uplift mechanism

OSU candidate site	an entire OSU development site, including the OSU park and the adjacent developable area (referred to as the ‘total site area’ in the final version of the CCZ provisions)
OSU park	land shown as ‘Public open space site – eligible for Open Space Uplift’ in the relevant CCZ Schedules maps
PAO	Public Acquisition Overlay
PIP	Precinct Implementation Plan
Planisphere Strategy	Fishermans Bend Public Space Strategy, prepared by Planisphere for the Fishermans Bend Task force (2017)
REPS	River Esplanade Pump Station
Sandridge Recreation Precinct	the area containing five sites proposed to be an integrated open space and recreation precinct in Sandridge
SCO	Specific Controls Overlay
SHU	social housing uplift
Turner Street Linear Park	The green diagonal hatched area of “10 metre landscape setback” located within private land to the south of the 30-metre-wide Turner Street road reserve, as shown in the current CCZ4
PE Act	<i>Planning and Environment Act 1987</i>
VCAT	Victorian Civil and Administrative Tribunal
VPA	Victorian Planning Authority
Wirraway North Park	Precinct open space at the corner of Salmon Street and Woolboard Road (W_OS05 - land)

A number following the zone or overlay abbreviation in this report refers to the schedule number.

Overview

Referral summary

Referral date	17 March 2024
The Amendment	draft Amendment GC224
Referral description	The Amendment proposes to implement the Development Contributions Plan and the Fishermans Bend Open Space Uplift mechanism by introducing new planning provisions for the four Capital City zoned precincts
Subject land	Lorimer Precinct, located in Melbourne municipal district, and Montague, Sandridge and Wirraway Precincts located in the Port Phillip municipal district
The Proponent	Department of Transport and Planning (Precincts)
Planning Authority	Minister for Planning
Exhibition	1 December 2023 to 23 February 2024
Submissions	Number of Submissions: 64

Committee process

Committee Members	Sarah Carlisle (Chair of first and second Directions Hearings), Con Tsotsoros (Chair of third Directions Hearing and Hearings), Meredith Gibbs (Deputy Chair), Geoff Underwood, Sally Conway
Committee assisted by	Georgia Brodrick, Project Officer, Office of Planning Panels Victoria
Directions Hearings	15 and 30 April and 8 May 2024
Hearing	6, 7, 11, 13, 14, 18, 20, 25, 26, 27 and 28 November and 3, 4, 5, 9, 11, 12, 13, 16, 17, 18 and 19 December 2024 and 6 February 2025
Date last material received	13 February 2025
Site inspection	Unaccompanied, 4 October 2024
Parties	See Appendix B
Citation	Precincts Standing Advisory Committee Referral 1 [2025] PPV
Date of this report	7 April 2025

Executive summary

Fishermans Bend is Australia's largest urban renewal project. It has an area of about 480 hectares in the Melbourne and Port Phillip municipalities, making it more than twice the size of Melbourne's neighbouring Central Business District. Recognising the area will be the focus for large scale investment and growth, it has been declared a 'Project of State Significance' under Part 9A of the *Planning and Environment Act 1987*.

In its ultimate form, Fishermans Bend is expected to accommodate over 80,000 residents and 80,000 jobs. The Fishermans Bend Framework has helped guide the transformation of the predominantly low rise industrial area towards this vision since 2018. The Framework:

- identifies five precincts (Lorimer, Montague, Sandridge, Wirraway and Employment Precincts) to help achieve this
- seeks to deliver public open space, major roads and community infrastructure through an Infrastructure Contributions Plan
- identifies two proposed tram routes and two potential train stations on the proposed Metro 2 underground rail tunnels.

In July 2019, Amendment GC81 implemented the Fishermans Bend Framework by introducing relevant policy and provisions into the Melbourne and Port Phillip Planning Schemes, including the Infrastructure Contributions Plan Overlay. It was anticipated that an Infrastructure Contributions Plan (ICP) would be prepared and would provide one means of securing contributions towards funding infrastructure for Fishermans Bend. However, currently ICPs can only be used in greenfield settings and therefore an ICP was unable to be prepared for Fishermans Bend. Given the brownfields setting of Fishermans Bend, it is now proposed to introduce a development contributions plan through this Amendment as one mechanism to collect development contributions.

The Amendment applies to land in the Fishermans Bend Urban Renewal Area (FBURA).

As shown in Figure 1, the FBURA consists of four of the five Fishermans Bend precincts:

- Lorimer, located in the Melbourne municipal district
- Montague, Sandridge and Wirraway, located in the Port Phillip municipal district.

The Amendment proposes an innovative approach to development contributions in Victoria.

Its primary purpose is to introduce two mechanisms to fund public infrastructure projects identified in the Fishermans Bend Framework:

- the Fishermans Bend Development Contributions Plan (FBDCP)
- the Fishermans Bend Open Space Uplift mechanism (OSU), which seeks to incentivise developers to provide land for public open space in exchange for additional development rights.

These two mechanisms are not proposed to fund all infrastructure projects required for the FBURA. Additional funding to that raised by the FBDCP and value received through the OSU will be required to deliver the full suite of projects set out in the Fishermans Bend Framework.

The FBDCP includes about \$2.44 billion of projects identified in the FB Framework. It proposes to cap the levy amount such that the FBDCP is expected to collect about \$1.75 billion (or 71 percent of total project costs). Additional value received through the OSU could increase cost recovery

from 71 to 94 percent. The Victorian government would monitor and manage the shortfall, funding it through Victorian government budget processes over the life of the FBDCP and other external sources (such as Australian government grants).

The Amendment was exhibited from 1 December 2023 to 23 February 2024 and received 64 submissions.

Key issues raised through submissions are addressed in this Report under the following chapter headings:

- Strategic issues
- Fishermans Bend Development Contributions Plan Overarching issues
- Fishermans Bend Development Contributions Plan projects
- Open space uplift
- Open space uplift parks
- Public Acquisition Overlay
- Amendment form and content.

The Report includes:

- 'Formal recommendations' which specifically relate to the draft Amendment
- 'Information recommendations' which relate to matters sitting outside the draft Amendment, but the Committee hopes will assist the Proponent and the Minister in finalising the Amendment.

For the reasons set out in this Report and subject to addressing the more specific issues raised in submissions and discussed in the following chapters, the Committee concludes:

- The Amendment is strategically justified and should proceed.
- The Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework.
- The Amendment will achieve a net community benefit.

Recommendations

Based on the reasons set out in this Report, the Committee recommends:

- 1. Proceed with draft Amendment GC224 subject to the Committee's recommended changes in this Report.**
- 2. Amend the Fishermans Bend Development Contributions Plan as shown in Report Volume 2 Appendix I.**
- 3. Amend the proposed Melbourne Planning Scheme provisions as shown in Report Volume 2 Appendix G.**
- 4. Amend the proposed Port Phillip Planning Scheme provisions as shown in Report Volume 2 Appendix H.**
- 5. Recalculate the open space uplift ratios for all four precincts in the Fishermans Bend Urban Renewal Area:**
 - a. using a 50 percent incentive on the base case value of open space uplift land**
 - b. adopting separate ratios for each of the four precincts**
 - c. using the 'before and after' land valuation approach (unencumbered basis)**

- d. including remediation and embellishment costs.
- 6. Apply the Public Acquisition Overlay to 6 Rocklea Drive, Port Melbourne (whole) and 112 Salmon Street, Port Melbourne (whole).
- 7. Apply the Public Acquisition Overlay to 458 Graham Street, Port Melbourne (whole) subject to consulting with the landowner and occupier (if required).

Based on the reasons set out in this Report, the Committee makes the following informal recommendations:

- 8. The Department of Transport and Planning should request an exemption from Direction 5 of the *Ministerial Direction on the preparation and content of development contributions plans* from the Minister for Planning to allow community infrastructure to be funded by the development infrastructure levy under the Fishermans Bend Development Contributions Plan.
 - a. If the exemption is granted, the Fishermans Bend Development Contributions Plan (final version) should be amended to remove the Community Infrastructure Levy.
 - b. If the exemption is not granted, the Fishermans Bend Development Contributions Plan should be adopted in the final version (with a separate Community Infrastructure Levy).
- 9. The Department of Transport and Planning should prepare and make available guidance material on the land acquisition process and valuation methods used in the Fishermans Bend Development Contributions Plan.
- 10. The Department of Transport and Planning should prepare a Governance (Implementation) and Funding (Finance) Strategy that includes the following key principles:
 - a. The Victorian government is committed to delivering all projects identified in the Fishermans Bend Framework regardless of whether they are funded by the Fishermans Bend Development Contributions Plan or other means.
 - b. The timely delivery of the Fishermans Bend tram and Metro 2 (and associated infrastructure) is fundamentally important to achieving the vision of the Fishermans Bend Framework, and without which realisation of the aspirations of the Fishermans Bend Framework may be at risk.
 - c. Any open space uplift parks not delivered using the open space uplift mechanism will be delivered by the Victorian government.
- 11. The Department of Transport and Planning should apply the Developers Profit Based Approach (or other similar method) as part of the five-yearly reviews of the open space uplift to test whether the open space ratios result in an open space uplift that is a genuine incentive.
- 12. The Department of Transport and Planning should consider the appropriateness of expanding the scope of the open space uplift as part of the five-yearly reviews of the open space uplift.

13. The Department of Transport and Planning should:

- a. include explicit reference to the Victorian government's commitment to delivering all open space identified in the Fishermans Bend Framework, including all open space uplift land not delivered using the open space uplift mechanism, in the Governance (Implementation) and Funding (Finance) Strategy**
- b. provide a more detailed explanation of the process for not taking up the open space uplift, including the legal mechanism(s) and land valuation method(s) to be used, in Factsheet 2 or other guidance material.**

14. The Department of Transport and Planning should monitor the impacts of open space uplift dwellings on population growth in the Fishermans Bend Urban Renewal Area as part of the five-yearly reviews of the Fisherman Bend Development Contributions Plan.

15. The Department of Transport and Planning should revise Factsheet 2 (or other relevant guidance material) to reflect that the open space uplift will be reviewed as follows:

- a. annual review of the open space uplift land valuations**
- b. a review every five years, in consultation with Melbourne and Port Phillip City Councils, and landowners (and developers) of open space uplift land, which considers:**
 - remediation costs**
 - the extent to which the open space uplift has been taken up**
 - whether the OSU should be expanded beyond residential uses**
 - landowner and developer feedback on how they are approaching the choice to take up the open space uplift and perceived barriers to its uptake**
 - whether open space uplift sites have been purchased or acquired, and if so, the basis of the valuation**
 - the methodology, inputs and assumptions for the calculation of the uplift ratios**
 - the 'headroom' available on each undeveloped open space uplift site after any updated (increased) ratios are applied**
 - the rate and types of development occurring in each precinct**
 - comparison of the calculated uplift ratios with an alternative or check methodology based upon a profits analysis.**

1 The Standing Advisory Committee process

1.1 Terms of Reference and key issues in referred submissions

The Minister for Planning appointed the Precincts Standing Advisory Committee (the Committee) on 24 October 2023. The purpose of the Committee is set out in its Terms of Reference (Appendix F1) to:

...provide timely and independent advice on the following referrals:

- a. Unresolved issues raised in submissions on draft precinct plans
Having regard to the referral letter, any issues raised in submissions on draft precinct plans, including draft planning scheme amendments, that have not been resolved by the precinct planning lead, and in respect of which the Minister for Planning has sought advice.
- b. Any other precinct planning matters
Having regard to the referral letter, any other strategic or statutory precinct planning matters as decided by the Minister for Planning

The Minister for Planning provided a referral letter dated 17 March 2024 requesting the Committee's independent review and advice in relation to the proposed Fishermans Bend Development Contributions Plan (FBDGP) and associated draft Amendment GC224 to the Melbourne and Port Phillip Planning Schemes (the Amendment). The Amendment was prepared by the Department of Transport and Planning Precincts (the Proponent).

The Amendment was exhibited from 1 December 2023 to 23 February 2024 and 62 submissions were received.

The Minister referred all submissions to the Committee for review and advice, noting that submissions had raised the following key issues and themes:

- land valuation and land acquisition processes
- operation and implementation of the proposed open space uplift
- proposed 'master planning' approach to implementation of the DCP projects
- the level set for the proposed 'three-in-one' contribution charge, and its operation and implementation
- the scope of the essential infrastructure proposed to be included
- drafting of the associated planning controls.

1.2 Procedural issues

(i) First Directions Hearing

A Directions Hearing was held on 15 April 2024. On 18 April 2024, the Committee issued directions about key dates and actions leading to a Hearing expected to begin on 27 May 2024.

(ii) Second and Third Directions Hearings and Hearing adjournment

On 26 April 2024, the Proponent:

- advised that its expert, Ms Fisher was involved in an accident and unavailable to prepare her expert report by 13 May 2024
- requested an urgent Directions Hearing be held on 30 April 2024.

On 29 April 2024, the Proponent:

- requested the Hearing be adjourned until after 14 October 2024 due to the availability of Ms Fisher, and advised it preferred not to split the Hearing
- provided a proposed timetable and procedural directions for the future conduct of the Hearing.

On 29 April 2024, Melbourne City Council requested a third Directions Hearing be held on Monday 6 May 2024 to give parties time to respond to directions and timeframe for the conduct of the hearing proposed by the Proponent.

On 30 April 2024, a second Directions Hearing was held after which the Committee advised parties:

- the commencement of the Hearing would be rescheduled from 27 May 2024 to 14 October 2024 (at the earliest)
- no party objected to rescheduling the Hearing
- parties had the opportunity to comment on, and provide alternative suggestions to, the Proponent's proposed timetable and process
- it would hold a third Directions Hearing to consider revised hearing dates and directions for the conduct of the Hearing.

On 8 May 2024, a third Directions Hearing was held.

On 13 May 2024, the Committee issued further directions about key dates and actions leading to a rescheduled Hearing to begin on 6 November 2024.

(iii) Experts and joint expert meetings

The provision of evidence by all parties' experts was grouped according to the following themes:

- DCP matters
- land valuation matters
- OSU ratio and modelling matters
- planning and drafting matters.

The Committee had the benefit of receiving expert evidence from the experts listed in Table 1.

Table 1 Summary of experts

Expert name	Expertise	Party calling expert
Joanne Fisher	DCPs	Proponent
Chris De Silva	DCPs	Proponent
Matthew Ainsaar	DCPs	Proponent
Chris McNeill	DCPs	Melbourne City Council
Alex Hrelja	DCPs	Port Phillip City Council
Luke McIntosh	Land valuation, OSU	Proponent
Ryan Costin	OSU	Proponent
Nick Haines	Land valuation, OSU	Melbourne City Council
Les Brown	Land valuation	Prime Port Melbourne Pty Ltd, One Smarter Pty Ltd, Aquaino Pty Ltd, and Pendomer Pty Ltd

Expert name	Expertise	Party calling expert
Andrew Kinnaid	Land valuation	Goodman Ltd
Mark Woodland	Planning	Proponent
John Glossop	Planning	Melbourne Water
Robert Milner	Planning	Prime Port Melbourne Pty Ltd, One Smarter Pty Ltd, Aquaino Pty Ltd, and Pendomer Pty Ltd
Leanne Hodyl	Urban design	Melbourne City Council
Robert Panozzo	Community and open space	Port Phillip City Council
Kirsten Bauer	Public realm works	Port Phillip City Council
David Quincey	Costings and contingencies	Melbourne Water

The following joint expert statements were received:

- Joint Expert Statement on land valuation, prepared by Luke Mackintosh and Ryan Costin of EY, Les Brown of M3, and Andrew Kinnaird of Urbis (completed on 19 July 2024)
- Joint Expert Statement on OSU, prepared by Luke Mackintosh and Ryan Costin of EY, and Nick Hains of MSV (completed on 23 August 2024)
- Joint Expert Statement on development contributions, prepared by Matt Ainsaar of Urban Enterprise, Alex Hrelja of Hill PDA Pty Ltd, Chris McNeill of Ethos Urban, Chris De Silva of Mesh Planning, and Jo Fisher of Mesh Planning (completed on 10 October 2024).

1.3 The Committee's approach

The Committee has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The material before the Committee is significant, with 635 documents tabled throughout the Hearing.

The Committee has considered all written submissions made in response to the exhibition of the Amendment, observations from its site visit, and submissions, evidence and other material presented to it during the Hearing and received in accordance with its directions. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Committee in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

The Committee has reviewed the various versions of the Amendment documentation submitted by the Proponent and other parties. The various versions included some substantive changes, and other drafting changes made for clarity. The Committee supports the Proponent's final versions except where otherwise stated in its Report.

The Committee's recommended versions of the following documents are in Report Volume 2:

- Fishermans Bend Development Contributions Plan
- Melbourne Planning Scheme:
 - Clause 11.03-6L

- Capital City Zone Schedule 4
- Development Contributions Plan Overlay Schedule 1
- Incorporated Plan Overlay Schedule 7
- Port Phillip Planning Scheme
 - Clause 11.03-6L
 - Capital City Zone Schedule 1
 - Development Contributions Plan Overlay Schedule 2
 - Incorporated Plan Overlay Schedule 2.

The Committee recommends a number of changes to the FBDCP (final version). Many of these changes will require consequential changes to the proposed implementing provisions of the Melbourne and Port Phillip Planning Schemes. Not all of these changes are reflected in the Committee recommended versions of the planning scheme provisions. The Proponent will need to ensure the adopted and approved versions of the planning scheme provisions reflect, and are consistent with, the adopted and approved version of the FBDCP.

The Committee also makes ‘informal’ recommendations that are:

- not strictly concerning the Amendment documentation
- not necessary for the Amendment to proceed but would improve understanding and operation of the Amendment.

The Committee trusts these will be of assistance to the Proponent and the Minister in finalising the Amendment.

1.4 Report structure

The Committee has prepared two volumes of the Report:

- Report Volume 1 – Main Report
- Report Volume 2 – Appendices.

1.5 Terminology

(i) Acronyms

The Glossary and Abbreviations table at page 6 contains a comprehensive list of acronyms used in this Report.

(ii) Amendment versions

The Committee refers to the following Amendment document versions in this Report:

- exhibited – Amendment documents that were exhibited and submitters originally responded to
- version 1 – provided by the Proponent on 10 September 2024 in response to Direction 18a
- version 2 – provided by the Proponent on 31 October 2024, accompanying its Part B submission
- version 3 – provided by the Proponent on 18 December 2024, accompanying its Part D submission
- version 4 – provided by parties (other than the Proponent) on 31 January 2025 in response to the Proponent’s version 3 documentation

- final version – provided by the Proponent on 13 February 2025 after the drafting discussion on 6 February 2025.

1.6 Acknowledgements

It is not possible to acknowledge all who contributed to the Amendment GC224 process, through the original written submissions, suggestions for site inspections, the evidence, and the submissions and presentations of the parties.

The Committee thanks all who participated in this process. It appreciates the time people put into their submissions, and the way in which parties participated in the Hearing. The Committee thanks the Proponent for its assistance in setting up and hosting the document sharing platform.

The Committee particularly thanks the office of Planning Panels Victoria for its support and assistance throughout the process, with special acknowledgment to Georgia Brodrick, Project Officer and Gabrielle Trowse, Project Officer.

(i) Project identification

The Committee refers to projects using the FBDCP project identification system as shown below.

X_YYZZ

Where:

- **X** is the first letter of the name of the FBURA precinct in which the project is located:
 - L=Lorimer; M=Montague; S=Sandridge; and W=Wirraway.
- **YY** is the project infrastructure type as shown in Table
- **ZZ** is the project number.

Table 22 FBDCP codes for project infrastructure types

FBDCP code	Infrastructure type
AC	Community hub projects: Art and cultural hub
BR	Transport bridge
DR	Drainage
IT	Transport intersection
OS	Public open space
PT	Land for public transport
SR	Community hub projects: Sport and recreation facilities
TR	Transport: street (road)

For FBDCP projects introduced by the Proponent after exhibition, the letter “N” is added after the FBURA precinct letter (for example, MN_TR01).

For projects proposed for inclusion by Port Philip Council, the project identification number is preceded by “COPP” (for example, COPP_M_TR12).

For OSU candidate sites, the Committee uses an identification format based on the relevant Capital City Zone (CCZ) provisions:

OSU_YZZ

Where:

- **Y** is the first letter of the name of the FBURA precinct in which the OSU park is located:
 - L=Lorimer; M=Montague; S=Sandridge; and W=Wirraway.
- **ZZ** is the OSU number as shown in the CCZ.

(ii) 'Catalytic', 'Essential' and 'Local' infrastructure

The exhibited FBDCP identified three categories of infrastructure required to unlock the development of the FBURA:

- 'Catalytic infrastructure' – Public transport, schools, and health services that will have a transformational effect on the urban renewal of the area. This infrastructure will be funded and delivered by the Victorian government.
- 'Essential infrastructure' – Infrastructure required to establish the future urban structure of the area, such as Precinct and Neighbourhood open spaces, streets that make up the key movement network, key community hubs, and major drainage and flood mitigation infrastructure. This infrastructure will be largely funded by development contributions, with some contribution from other government sources.
- 'Local infrastructure' – Some open spaces, the network of minor streets and laneways, and other community facilities. This infrastructure will be funded and delivered through a combination of works normal to the development of sites and incrementally by local government.

(iii) OSU terminology

The OSU has a range of specific terminology, discussed in detail in Chapter 6.1.

The key terms include:

- **base density:** the mandatory maximum dwelling density currently applying to land in the FBURA
- **developable area:** the area of the OSU candidate site that will be developed after the OSU park is excised (and potentially other land for public purposes is excised, depending on the timing). Refer to Chapter 6.1 for further details
- **OSU candidate site:** the entire OSU development site, including the OSU park and the adjacent developable area
- **OSU park:** the area of open space identified for delivery by the OSU
- **OSU ratio:** the OSU dwelling uplift divided by the 'base case' dwelling yield (as permitted under the existing applicable maximum dwelling densities which vary across core and non-core areas of the four FBURA precincts)
- **OSU uplift:** the number of additional dwellings permitted on the developable area in exchange for the OSU park
- **OSU uplift dwellings:** the additional dwellings delivered on the developable area in exchange for the OSU park.

2 The Amendment

2.1 Background

Fishermans Bend is Australia's largest urban renewal project. It has an area of about 480 hectares in the Melbourne and Port Phillip municipalities, making it more than twice the size of Melbourne's neighbouring Central Business District. Recognising the area will be the focus for large scale investment and growth, it has been declared a 'Project of State Significance' under Part 9A of the PE Act.

In its ultimate form, Fishermans Bend is expected to accommodate over 80,000 residents and 80,000 jobs. Since 2018, the *Fishermans Bend Framework* (Department of Environment, Land, Water and Planning) (FB Framework) has helped guide the transformation of the existing predominantly low rise industrial area towards this vision. The FB Framework:

- identifies five precincts (Lorimer, Montague, Sandridge, Wirraway and Employment precincts -the latter also known as the Fishermans Bend National Employment and Innovation Cluster (the NEIC)) to help achieve this
- seeks to deliver public open space, major roads, and community infrastructure through a range of funding sources, including an Infrastructure Contributions Plan
- identifies two proposed tram routes and two potential Metro 2 train stations.

In July 2019, Amendment GC81 implemented (in part) the FB Framework by introducing relevant policy and provisions into the Melbourne and Port Phillip Planning Schemes, including the Infrastructure Contributions Plan Overlay (ICPO). It was anticipated that an infrastructure contributions plan (ICP) would be prepared and would provide one means of securing contributions towards funding infrastructure for Fishermans Bend.

The ICPO prohibits the grant of a permit to subdivide land, construct a building or carry out works until an ICP has been incorporated into the planning scheme. Since then, the Specific Controls Overlay (SCO) has been applied to discreet parcels of land to enable development. Infrastructure contributions have been collected through interim arrangements, either through site-specific planning controls or voluntary agreements under section 173 of the PE Act.

Currently, ICPs can only be used in greenfield settings. Given the brownfields setting of Fishermans Bend, the Proponent is now proposing a Development Contributions Plan (DCP) as one mechanism to collect development contributions.

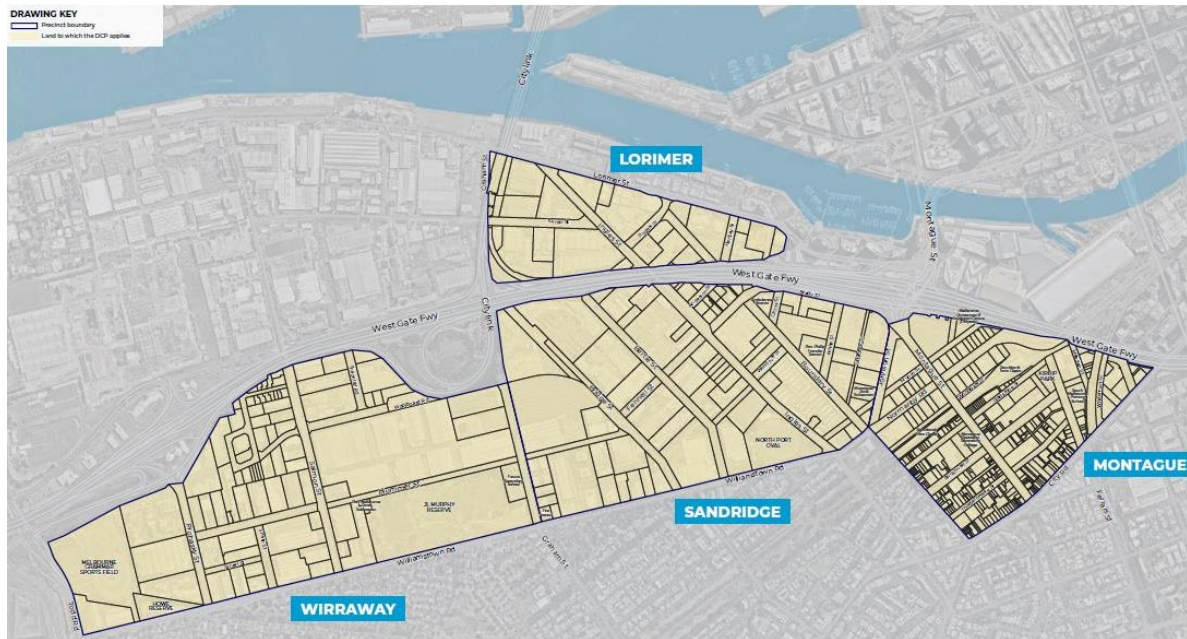
A comprehensive overview of prior strategic planning for Fishermans Bend is provided in Appendix D.

2.2 The Fishermans Bend Urban Renewal Area

The Amendment applies to land in the Fishermans Bend Urban Renewal Area (FBURA).

As shown in Figure 1, the FBURA consists of four of the five Fishermans Bend precincts:

- Lorimer, located in the Melbourne municipal district
- Montague, Sandridge and Wirraway, located in the Port Phillip municipal district.

Figure 1 Land to which the Amendment applies

Source: Document 74a

2.3 Amendment description

The Amendment proposes an innovative approach to development contributions in Victoria.

Its primary purpose is to introduce two mechanisms to fund public infrastructure projects identified in the FB Framework by:

- incorporating the FBDCP into Melbourne and Port Phillip Planning Schemes and apply the Development Contributions Plan Overlay (DCPO) to the FBURA
- amending the CCZ schedules applying to land in the FBURA to introduce the Fishermans Bend Open Space Uplift mechanism (the OSU), which seeks to incentivise developers to provide land for open space in exchange for additional development rights.

The FBDCP nominates the:

- Minister for Precincts as the Collecting Agency, responsible for the administration and enforcement of the FBDCP
- Secretary, Project Development¹ as the Development Agency, responsible for the provision of all infrastructure projects funded by the FBDCP and the timing of all works.

As noted in Chapter 1.5(iv), the exhibited FBDCP identified three categories of infrastructure required to unlock the development of the FBURA:

- 'Catalytic' infrastructure
- 'Essential' infrastructure
- 'Local' infrastructure.

The 120 projects included in the FBDCP are all within the Essential infrastructure category. Some of the FBDCP projects, including the community hubs, some open space, bridges and the tram corridors, are specifically identified as key projects in the FB Framework.

¹ Within the meaning of the *Project Development and Construction Management Act 1994*, which is currently the Secretary of the Department of Transport and Planning.

Additional funding to that raised by the FBDCP and the OSU will be required to deliver all infrastructure projects required for the FBURA (i.e. for Catalytic and Local infrastructure projects).

The FBDCP includes about \$2.44 billion of projects identified in the FB Framework. The Development Infrastructure Levy (DIL) has been capped at a set amount (\$34,635 per dwelling or \$286 per square metre of gross non-residential floorspace) rather than adopting the standard approach of setting a levy based on project costs and apportionment that recovers the total cost of required infrastructure. Described as a ‘three-in-one’ levy, the DIL includes charges for:

- transport, recreation and community infrastructure
- open space projects included in the FBDCP (replacing the current 8 percent public open space contributions under Clause 53.01 of each of Melbourne and Port Phillip Planning Schemes), and
- major drainage and flood mitigation works (in lieu of a separate charge ordinarily levied on new development by Melbourne Water).

The FBDCP is expected to collect about \$1.75 billion (or 71 percent of total project costs). However, additional value received through the OSU incentive scheme could increase cost recovery from 71 to 94 percent. The Victorian government would monitor and manage the shortfall, funding it through Victorian government budget processes over the life of the FBDCP and other external sources (such as Australian government grants).

Several open space projects, which could also be categorised as Essential infrastructure, are excluded from the FBDCP because they are proposed to be delivered through the OSU. The OSU sits alongside the FBDCP and is implemented through proposed changes to (primarily) the Capital City Zone Schedules in Melbourne and Port Phillip Planning Schemes.

The OSU is designed to deliver open space to the Victorian government in exchange for additional dwelling density on adjacent land. The scheme is voluntary.

In simple terms, the OSU operates by allowing a landowner to trade land required for public open space in the FBURA (identified in the CCZ schedule as ‘eligible for open space uplift’) for the right to deliver additional dwellings on their retained land.

Where a developer elects to use the OSU, OSU uplift dwellings will be delivered on land adjacent to the relevant OSU open space park.

The Victorian government has committed to deliver all open space in the FB Framework, including any open space identified for delivery by the OSU that is not delivered using this mechanism.

In addition to implementing the FBDCP and the OSU, the Amendment also proposes to:

- introduce ‘master planning’ to enable greater flexibility in the delivery of infrastructure in specified areas
- make changes to elements of the urban layout of the FBURA from that shown in the FB Framework’s.

Specifically, the Amendment proposes changes outlined in Table 3.

Table 33 Exhibited Amendment changes

Proposed changes	Planning Scheme clauses to be amended	
	Melbourne Planning Scheme	Port Phillip Planning Scheme
To reference the FBDCP and give effect to the OSU, revise:	Clause 11.03-6L-06 (Fishermans Bend Urban Renewal Area) (Reference Documents)	Clause 11.03-6L-04 (Fishermans Bend Urban Renewal Area)
To give effect to the FBDCP and OSU, revise:	Capital City Zone Schedule 4 (CCZ4)	Capital City Zone Schedule 1 (CCZ1)
To give effect to the FBDCP, introduce:	Development Contributions Plan Overlay Schedule 1	Development Contributions Plan Overlay Schedule 2
To give effect to the FBDCP, revise:	Design and Development Overlay Schedule 67	Design and Development Overlay Schedules 30, 32 and 33
To give effect to the FBDCP, delete:	Infrastructure Contributions Overlay Schedule 1	Infrastructure Contributions Overlay Schedule 1
To give effect to the FBDCP (specifically the 'three-in-one' levy), revise:	Clause 53.01 Schedule	Clause 53.01 Schedule
To give effect to master plan areas, introduce:	Incorporated Plan Overlay Schedule 7	Incorporated Plan Overlay Schedule 2
To designate the: <ul style="list-style-type: none"> - Secretary, Department of Transport and Planning as a determining referral authority for permit applications - Melbourne Water as the recommending referral authority for any permit application to use, develop and subdivide land 	Clause 66.04 Schedule	Clause 66.04 Schedule
To designate the Minister for Precincts as responsible authority for development contributions matters in the Fishermans Bend Urban Renewal Area	Clause 72.01 Schedule	Clause 72.01 Schedule
To incorporate the FBDCP into the Planning Scheme through:	Clause 72.03 Schedule Clause 72.04 Schedule	Clause 72.03 Schedule Clause 72.04 Schedule

2.4 Planning context

The planning context relevant to the Amendment is set out in Appendix E.

3 Strategic issues

3.1 Strategic justification

(i) The issue

The issue is whether the Amendment is strategically justified and achieves a net community benefit.

(ii) Evidence and submissions

The Proponent submitted the Amendment is strategically justified because:

- it has strategic support in Plan Melbourne 2017-2050, the FB Framework, and the Planning Policy Framework of both Melbourne and Port Phillip planning schemes
- the FB Framework contains a clear commitment to introducing an infrastructure contributions mechanism to assist funding the infrastructure projects identified in the Framework
- introducing the FBDCP and removing the ICPO are essential to realising the FB Framework vision
- it will result in a net community benefit, the threshold for approving a planning scheme amendment.

The Proponent noted that no submission suggested the Amendment, at a broad level, is not strategically justified.

All DCP experts agreed that the FBDCP is needed to support future development of the FBURA.²

Mr Woodland gave planning evidence for the Proponent. His evidence was the Planning Policy Framework (through Clauses 11.02-3S and 19.03-1S) requires development to contribute financially to providing infrastructure using either a DCP or an ICP. He added that State planning policy:

- does not solely rely on the DCP or the ICP to fund infrastructure, and referred to Clause 53.01, permit conditions and section 173 agreements as examples of other mechanisms
- requires infrastructure funding and delivery mechanisms that enable infrastructure to be provided in an efficient, equitable, accessible and timely way.

Mr Glossop, a planning expert called by Melbourne Water, stated the:

- Amendment is strategically justified
- FBDCP is appropriate for Fishermans Bend.

Mr Glossop considered section 4(1) of the PE Act (objectives of planning in Victoria) and Planning Scheme Clauses 01, 11 and 19 were relevant to the Amendment. He added:

Without seeking to define the term, 'orderly' planning within this Amendment would generally relate to whether the necessary infrastructure was identified, appropriately funded and able to be provided in a timely manner. It is within this framework that I have considered the strategic justification for the Amendment.

It should not be controversial to observe that, in general terms, mechanisms to secure funding and delivery of infrastructure to support the redevelopment of urban renewal areas

² Document 121

like Fishermans Bend would generally be consistent with notions of orderly and proper planning.

Port Phillip City Council raised concerns the exhibited FBDCP does not facilitate the achievement of the FB Framework vision. It submitted the FBDCP should fund all infrastructure essential to achieve the FB Framework vision and it is unrealistic to expect developers and Council to fund key local infrastructure that has been excluded from the FBDCP.

Melbourne City Council questioned whether the Amendment would produce a net community benefit because there was no comprehensive funding strategy to demonstrate how all the infrastructure required for the FBURA would be delivered. It stated:

In circumstances where the Amendment will lift the barrier to development, it is speculative to suggest it will provide a net community benefit when it is not known whether the community will be provided with other items of basic and essential infrastructure.

It submitted that without a comprehensive funding strategy, the Amendment does not enable efficient, equitable, accessible and timely provision of social and physical infrastructure.

Other submissions stated the Amendment lacks the critical strategic basis, is out of sequence and does not represent orderly planning.

Submissions also raised issues with the strategic justification for the OSU. The Proponent submitted the OSU is strategically justified because:

- the FB Framework:
 - includes a policy target for all residents and workers to have access to public open space within 200 metres
 - proposes to triple the amount of open space across Fishermans Bend
- it has the potential to deliver significant public benefit and reduce pressure on development contributions by securing almost 7 hectares of open space, with public benefit value of approximately \$223 million.

Mr Woodland considered the proposed OSU mechanism, if properly designed, has the potential to meet the policy objectives of being efficient, equitable, accessible and timely. He referred to Plan Melbourne which provides the policy basis for using such a value capture mechanism at page 140:

Urban renewal precincts and sites offer significant opportunities to deliver tangible broader public benefit through their rezoning for social or affordable housing, as well as local assets such as open space and community facilities.

Consideration needs to be given to developing a new requirement that when land is rezoned to allow for higher value uses, a proportion of the value uplift should be contributed to the delivery of broader public benefit outcomes...

Mr Woodland also referred to Victoria's Value Creation and Capture Framework which states:

The Victorian State Planning Policy Framework sets out formal land use planning policies and principles that apply to value creation and capture tools such as planning controls and development contributions plans. This includes broader policy objectives such as economic development and environmental management, open space and housing development.

He considered the OSU mechanism would contribute to achieving the FB Framework's open space policy outcomes.

(iii) Discussion

The Committee considers the Amendment is strategically justified and will result in net community benefit.

The FB Framework and relevant planning policy objectives provide strategic support for the introduction of funding mechanisms to collect contributions towards infrastructure projects in the FBURA. All projects included in the FBDCP and OSU are included in the FB Framework. The FB Framework provides the strategic justification for these projects.

The FB Framework cannot be realised without a fit for purpose development contributions mechanism (and associated planning scheme changes). The FBDCP is the key implementation measure for achieving this. The Committee agrees with Mr Woodland that Plan Melbourne and Victoria's Value Creation and Capture Framework provide additional policy bases for applying the OSU mechanism. The key benefit of the Amendment is that it provides the two principal funding mechanisms to deliver a large proportion of the infrastructure required to achieve the FB Framework vision in an orderly manner.

The Committee acknowledges the concerns of Melbourne and Port Phillip City Councils that not all projects that are essential (in the ordinary sense of the word) for the required urban transformation of the FBURA are included in the FBDCP and the OSU, and that other funding sources yet to be secured will be required. This creates a level of uncertainty.

To minimise this, and for the reasons set out in Chapter 4.8, the Committee considers that a comprehensive funding strategy that specifies how all infrastructure required for the FBURA will be funded, and when they will be delivered, is required to achieve orderly planning and avoid some of the potential disbenefits of the partial funding approach of the Amendment. This will be particularly important for Victorian government funded 'Catalytic' projects like the Fishermans Bend tram and the Metro 2 train which will be crucial for realising the FB Framework vision. In addition, in following chapters the Committee addresses the choice of projects for inclusion in both the FBDCP and the OSU and makes several recommendations to better achieve the FB Framework.

In Chapter 4, the Committee concludes that the capped amount for the DIL is appropriate and is unlikely to unreasonably impact development across the FBURA. It makes recommendations in chapter 4 to overcome the potential unfairness due to the lack of external apportionment in calculating the DIL.

In Chapter 6, the Committee addresses concerns about the uncertainties of the OSU as a mechanism to deliver open space identified in the FB Framework, either at all or in a timely manner. It concludes that the potential negative impacts of the OSU are manageable and that overall, the OSU is likely to act as incentive for developers to deliver open space free of charge to the Victorian government and thereby assist in achieving the FB Framework vision.

The Amendment is an important step forward in achieving the FB Framework vision. It is already overdue. There will be continuing uncertainties and challenges in the immense transformation of the FBURA from its current industrial setting to its future high density urban form, providing much needed housing. The regular reviews of the FBDCP and the OSU will ensure that any failings of the funding mechanisms are able to be addressed in a timely manner to ensure the orderly delivery of the infrastructure required for the growing population.

On balance, the Committee considers that if the specific issues discussed in the following chapters are addressed, the Amendment will achieve a net community benefit.

(iv) Conclusions and recommendations

For the reasons set out in this Report and subject to addressing the more specific issues raised in submissions and discussed in the following chapters, the Committee concludes:

- The Amendment is strategically justified and should proceed.
- The Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework.
- The Amendment will achieve a net community benefit.

The Committee recommends:

Proceed with draft Amendment GC224 subject to the Committee’s recommended changes in this Report.

3.2 Implementing the Fishermans Bend Framework Plan

3.2.1 Revision of the Fishermans Bend Framework

(i) Background

In addition to implementing the FBDCP and the OSU, the Amendment also proposes to:

- apply the Incorporated Plan Overlay (IPO) to designated ‘master planning’ areas to provide development flexibility
- make minor refinements to the layout of the FBURA relating to:
 - the widths of key internal streets
 - the planned open space network
 - the location of community infrastructure hub sites, either confirmed locations or investigation area boundaries.

Evidence and submissions relating to the IPO and master planning are discussed in Chapter 3.3.

(ii) The issue

The issue is whether it is appropriate and justified to revise urban design elements of the FBURA, established in the FB Framework, through this Amendment.

(iii) Evidence and submissions

At the Hearing, the Proponent referred to a range of changes to the urban design elements of the FB Framework proposed by the Amendment as “*minor refinements to the layout of FBURA*”. They were also often referred to as ‘spatial changes’ to the FBURA.

In response to a Committee Direction, the Proponent provided Document 74c which outlined the proposed changes to the current provisions. The current provisions had been introduced by Amendment GC81 to implement the FB Framework. It explained the work undertaken to inform the proposed changes included:

- Refinement of the urban structure through the precinct implementation planning process (complete as a draft for consultation for Montague, underway to inform infrastructure planning for other precincts).
- Investigations and studies into best practice infrastructure design and delivery.
- Consultation with industry, stakeholders and the community.

Melbourne and Port Phillip City Councils both submitted the changes were significant, were not minor and not supported by adequate urban design work or evidence.

Port Phillip City Council submitted it was not appropriate to revisit the FB Framework through the development contributions process. It added:

Council submits that this has the real potential to undo a lot of the good work that was achieved via the Framework and its associated lengthy committee hearing [for Amendment GC81].

It submitted any revisiting or refinement of the FB Framework should be done through the precinct implementation plan (PIP) process. It noted the draft Montague PIP process was underway, but not complete, and submitted that any changes to the FB Framework resulting from that process should occur through that planning scheme amendment and not as part of this Amendment. Port Phillip provided a document outlining a range of mapping and spatial changes appearing in the Proponent's Amendment documents that were matters being dealt with in the draft Montague PIP.³ The Proponent agreed that several of the proposed changes should be addressed through the Montague PIP process and removed them from the Amendment documents (final version).⁴

Revised locations for community hubs, or their investigation areas, were generally supported however Port Phillip City Council submitted the Health and Wellbeing Hub investigation area proposed for Wirraway should be reinstated. It submitted the Hub should not be removed from the planning scheme maps strategies without a clear and transparent commitment and consultation on the matter from the Victorian government, including if the plan is to no longer deliver the hub here or elsewhere.

Ms Hodyl, the only urban design expert to give evidence at the Hearing, stated the Amendment proposed significant changes to the public realm in Lorimer that should be subject to a thorough design review process, which had not occurred. She did not support the proposed changes in Lorimer except for the following, which she considered would improve urban design outcomes:

- introducing primary active frontages to Turner Street
- not allowing crossovers on Turner Street frontage
- including a new 12-metre-wide road along the freeway boundary.

She considered that local streets should remain 22 metres wide so that transport and landscape requirements can be met.

Mr Panozzo, in considering the provision of open space and community infrastructure in the FBDCP, raised concerns with several departures of the FBDCP from open space and community infrastructure provision as set out in the FB Framework. He noted the proposed departures were not underpinned by an analysis of the open space, sport and recreation network and demand.

(iv) Discussion

The urban design changes proposed by the exhibited Amendment vary from minor refinements to significant changes. The Committee agrees with Ms Hodyl that proposed changes to the Lorimer public realm are significant. The same applies to several changes to Sandridge, Wirraway and Montague. They cannot fairly be described as "*minor refinements to the layout of FBURA*" as the Proponent sought to do.

³ Document 311a

⁴ Document 336

Several of the proposed changes were the subject of extensive submissions. The Committee considers the more substantive changes to open space parks in following chapters.

The Committee accepts it could be appropriate to include minor refinements as part of this Amendment where it can be demonstrated that the proposed changes will not undermine the FB Framework vision, its objectives or the adequacy of infrastructure provision required by the future FBURA community. It is also sensible to include any genuine corrections needed.

However, many of the Proponent's proposed changes are more substantial, and are not justified by strategic work. Further, the Proponent did not provide evidence (for example, urban design or traffic evidence) in support of the proposed departures from the FB Framework.

The FBURA will ultimately be home to over 80,000 residents and thousands of office workers and visitors in a high density environment. After comprehensive consideration, the GC81 Review Panel found this future population would need to be supported with sufficient public open space, including linear open space along road reserves, and transformation of the public realm including generous streets. The Committee does not dispute Ms Hodyl's evidence that a few of the proposed changes would provide better urban design outcomes, but overall the proposed spatial changes were not adequately ventilated before the Committee.

In general, public realm and urban design changes to the FB Framework should be considered through the PIP process undertaken for each FBURA precinct or, where applicable, through the master planning process (discussed below at Chapter 3.3).

The exception is community hubs, or their investigation areas, where new or revised locations have been determined in consultation with the relevant stakeholders. The Committee accepts this is not the case for the Health and Wellbeing Hub in Wirraway and agrees with Port Phillip Council that reference to an investigation area for this Hub should be reinstated in Clause 11.03-6L-07.

Unless expressly specified in this Report (Volumes 1 and 2), the Committee does not support any of the proposed changes to the future urban layout of the FBURA identified:

- in Document 74c, and
- by Port Phillip City Council in Document 311a as being changes proposed by the draft Montague PIP that the Proponent sought to implement as part of this Amendment.

(v) Conclusions and recommendations

The Committee concludes:

- Unless otherwise explicitly mentioned in this Report, it is not appropriate to make changes to the future urban layout of the FBURA as shown in the FB Framework through this Amendment.
- Any such changes should be considered and strategically justified through the PIP process undertaken for each FBURA precinct or, where applicable, the master planning process.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **revert to the urban structure shown in the current planning scheme provisions for each of Melbourne and Port Phillip Planning Schemes except:**
 - **for community infrastructure hub sites, or investigation areas, but not including the Wirraway Health and Wellbeing Hub.**

- as otherwise explicitly recommended by the Committee.

Amend all proposed Melbourne Planning Scheme and Port Phillip Planning Scheme provisions to reflect and be consistent with the revised Fishermans Bend Development Contributions Plan.

3.2.2 Lorimer Central Park layout

(i) Background

The exhibited FBDCP showed a reconfigured area of open space for Lorimer Central Park, a Precinct level park, as compared to the current Map 1 in Schedule 4 to the Capital City Zone (CCZ4) in the Melbourne Planning Scheme. The existing layout is based on the FB Framework. It is also proposed to include Lorimer Central Park in a master planning area, along with surrounding land.

Figure 2 Existing and exhibited CCZ4 open spaces



Source: Document 74c

Lorimer Central Park in the existing CCZ4 is shown in the location of a strata title development known as 'Lorimer Place'. Lorimer Place includes 25 lots and the common property on Plan of Subdivision PS602537Y (owned by the Lorimer Place Owners Corporation). The common property includes a strip of land shown as "10 metre road widening" (yellow line) in the exhibited CCZ4 and is currently used as a private access road for lot owners.

(ii) The issue

The issue is whether the exhibited layout for Lorimer Central Park (L_OS03 and OSU_L3 & 4) is appropriate and justified.

(iii) Evidence and submissions

Consistent with the FB Framework, Ms Hodyl supported reverting to the current configuration of Lorimer Central Park and surrounding open space and laneways as shown in the CCZ4 because:

- Lorimer Central Park plays an important role in providing access to winter sunlight
- the revised configuration exhibited in the FBDCP would result in a significantly overshadowed park
- the current configuration of Lorimer Central Park is part of a network of open space, streets and laneways that provide for a continuity of connections to the wider precinct and broader cycling networks
- the current configuration, which locates the park away from Lorimer Street, would reduce overshadowing, noise, exposure to northerly winds and exposure to the 'busyness' of the long-term freight route along Lorimer Street

- the changes proposed in the exhibited FBDCP (including those to Lorimer Neighbourhood Park (L_OS04) and surrounds) will significantly diminish the utility, quality and connectivity of the park
- the current layout was reached after thorough analysis through the GC81 process and from an urban design perspective, there is no good reason to depart from that layout.

VCHQ2 Pty Ltd, a Lorimer Place lot owner, supported the existing configuration of the park.

As the Hearing progressed the Proponent tabled various documents containing urban design modelling and overshadowing analysis for Lorimer Central.⁵ Ultimately, the Proponent agreed to reinstate the current CCZ4 open space layout and its surrounds, and this was reflected in the Amendment documents (final version). It noted that further options for the layout of Lorimer Central Park could be considered through the master plan process.

Melbourne City Council did not support the exhibited configuration for Lorimer Central Park. It was *“not closed to considering alternative arrangements for Lorimer Central through the master planning (incorporated plan) process”* but considered it highly unlikely alternative arrangements would allow for an appropriate urban design that would also support OSU capacity. It remained open to master planning for the area which includes Lorimer Central Park provided built form provisions are included in IPO schedule to protect the park from overshadowing.

(iv) Discussion

Urban design analysis for Lorimer Central Park presented during the Hearing did not persuade the Committee that the exhibited layout, or any alternative layout tabled, would produce a superior urban design layout to the existing configuration as shown in the CCZ4, or maintain adequate access to winter sunlight. There is no evidence before the Committee to warrant departing from the current configuration of Lorimer Central Park and the surrounding street network at this time. The Committee accepts Ms Hodyl’s evidence that the current configuration will deliver a better urban design outcome than the exhibited layout.

Further consideration of design issues for Lorimer Central Park are set out in Chapter 3.3.2 (Master planning approach) and Chapter 7.3 (Open space uplift parks).

(v) Conclusions

The Committee concludes:

- The exhibited layout for Lorimer Central Park (L_OS03 and OSU_L3 & 4) has not been strategically justified.
- The existing layout of Lorimer Central Park (and surrounding street and laneway network) as shown in Map 1 of the CCZ4 should be retained.

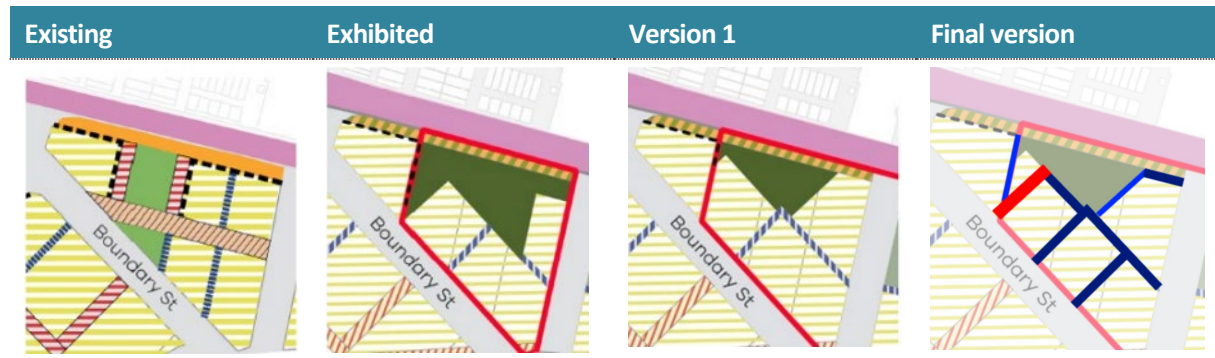
⁵ Documents 159b, 159e and 199.

3.2.3 Lorimer Neighbourhood Park layout

(i) Background

The Proponent provided revised layouts for Lorimer Neighbourhood Park as follows:

Figure 3 Layouts for Lorimer Neighbourhood Park (in order): existing CCZ4, exhibited version, version 1, final version



Source: existing and exhibited: Document 15; version 1: Document 145h; final version: Document 338

(ii) The issue

The issue is whether the exhibited layout for Lorimer Street neighbourhood open space (L_OS04 and OSU L_5) (Lorimer Neighbourhood Park) is appropriate and justified.

(iii) Evidence and submissions

The Proponent submitted the version 1 layout was a better outcome than the existing CCZ4 configuration because:

- it resulted from a careful collaborative design process involving the property owner and Melbourne City Council officers
- it has better solar access and connectivity to the wider open space network.

The Proponent provided documentation concerning a current development proposal for 99-109 Lorimer Street (Document 107d). 99 Lorimer Street Project Pty Ltd, representing the landowner, submitted:

- it had been resolving a design package that would be used to inform a planning scheme amendment request to apply a Special Control Overlay (SCO) to the site
- relocation of the public open space to the Lorimer Street frontage provides improved:
 - solar access, functionality and surveillance of the open space
 - connection to the open space network
 - development outcome.

Ms Hodyl gave evidence (in relation to version 1 layout):

Changes to the design of the Lorimer Parkway, including the removal of a key east-west street link, and changes to the Turner Street landscape design, ... together will diminish the quality of this space, and its role as a major landscaped civic, cycling and pedestrian spine.

Changes to the configuration of Open Space 4 [Lorimer Neighbourhood Park], ... will impact the function and experience of this public space, and result in it being disconnected from the parkway.

She recommended reverting Lorimer Neighbourhood Park and its surrounding road network to its current CCZ4 configuration. Ms Hodyl noted alternative layouts could be pursued through the

development of a master plan, paired with the OSU, and must deliver the Lorimer Parkway concept.

Melbourne City Council submitted:

- Lorimer Neighbourhood Park is important in achieving Lorimer Parkway, linking Lorimer Central Park and Hartley Street Park in conjunction with the new proposed 18-metre-wide street, which will be a 'green street' consistent with the FB Framework
- the Proponent's proposed changes to the park layout reflect a current development proposal (yet to be assessed) rather than the FB Framework and its officers have repeatedly expressed concerns about the proposal
- the version 1 layout compromises urban design outcomes for both the open space and road network including the proportions of the space, the sense of it being 'public' space, activation, accessibility and linkage of the broader Lorimer open space network
- the current CCZ4 configuration was the result of careful consideration by the GC81 Panel which included evidence by Ms Hodyl, called by the proponent of Amendment GC81 in support of the current layout
- the introduction of laneways in subsequent versions of the park layout were welcome.

(iv) Discussion

The Committee acknowledges that some urban design work has been undertaken as part of the current development proposal for 99-109 Lorimer Street. However, the exhibited layout of the Lorimer Neighbourhood Park has potential to disconnect the open space from the Lorimer Parkway, an integral part of the FB Framework.

The Committee accepts the evidence of Ms Hodyl that the proposed changes to Lorimer Neighbourhood Park and surrounding street network will compromise key elements of the open space itself and their role in the east-west parkway linkage envisaged for Lorimer.

The Proponent supported reinstating the laneway detail for 99 Lorimer Street, to better understand the site's proposed permeability and green links. This goes some way to addressing the Committee's concerns, but design challenges remain and further consideration is required.

Consistent with the Committee's conclusions in Chapters 3.2.1 and 3.2.2, further work is required to strategically justify any changes to the park layout, which should occur through the master plan process or PIP process.

(v) Conclusions

The Committee concludes:

- The exhibited and final layouts for Lorimer Neighbourhood Park (L_OS04 and OSU L_5) has not been strategically justified.
- The existing layout of Lorimer Neighbourhood Park (and surrounding street and laneway network) as shown in Map 1 in the CCZ4 should be retained.

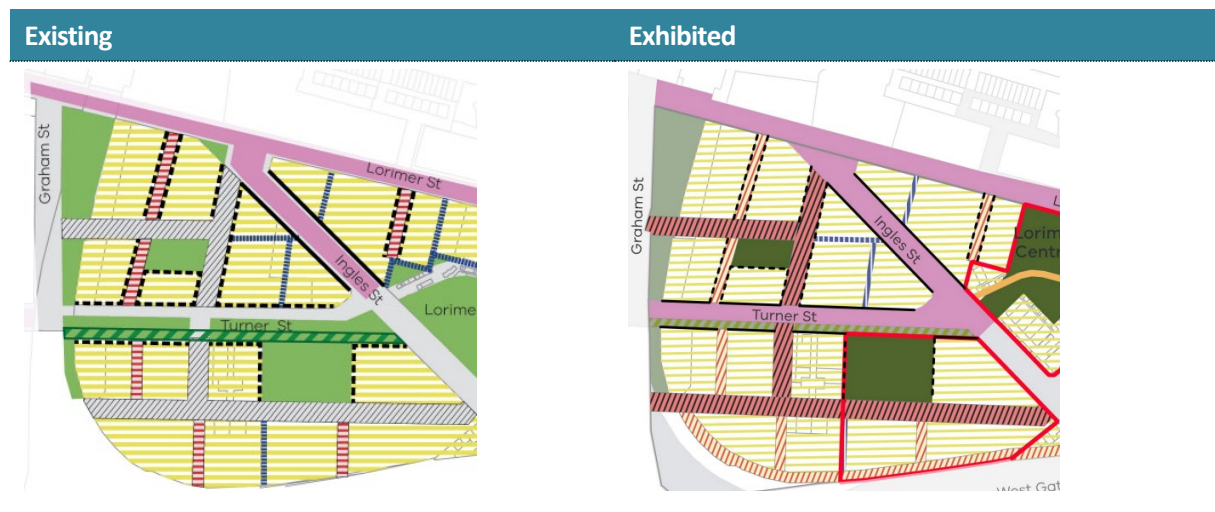
3.2.4 Turner Street Linear Park

(i) Background

Map 1 in the existing CCZ4 shows a green diagonal hatched area of '10 metre landscape setback' located within private land to the south of the 30-metre-wide Turner Street road reserve (Turner

Street Linear Park). The exhibited CCZ4 shows the 10-metre strip within the 30-metre road reserve.

Figure 4 Existing and exhibited layouts of Turner Street



Source: Document 15

(ii) The issue

The issue is whether it is appropriate and justified to relocate the 10-metre-wide linear landscape strip (open space) from its current CCZ4 location south of the Turner Street road reserve between Graham Street and Ingles Street.

(iii) Evidence and submissions

Ms Hodyl recommended Turner Street be 40 metres wide including a 10-metre-wide linear open space. She considered that moving the 10-metre landscape setback into the 30-metre road reserve would diminish the urban outcomes in Lorimer. She stated the current layout was “*an important element of creating a generous green, landscaped spine (see Figure 15) that also accommodates transport needs*”. Figure 15 of Ms Hodyl’s evidence is shown below.

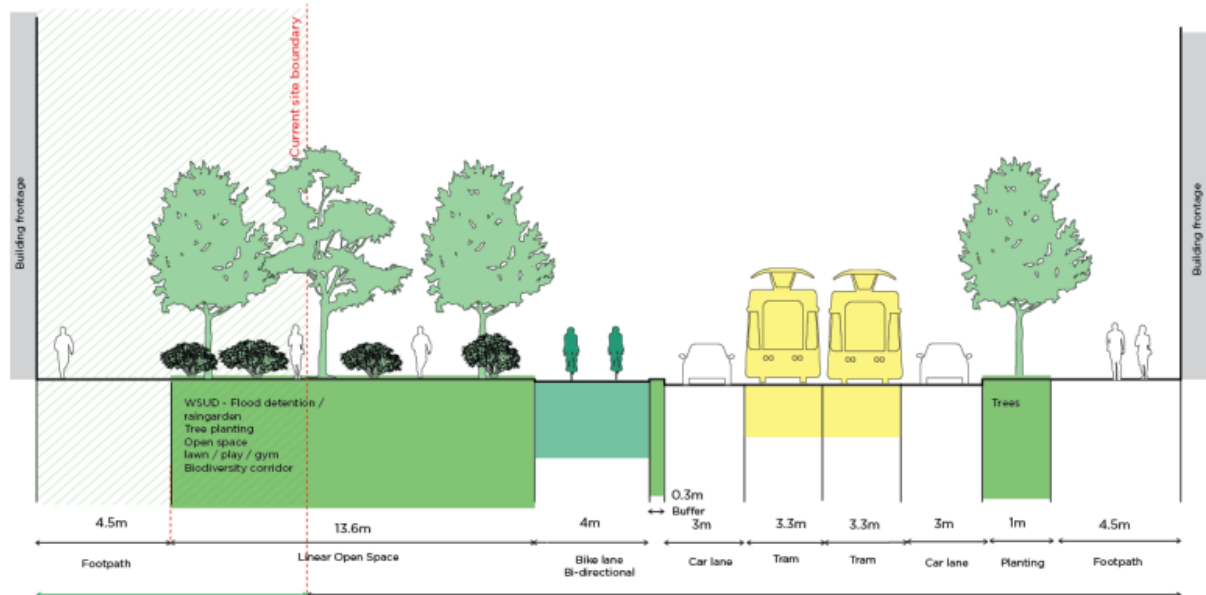
Ms Hodyl referred to the Lorimer Parkway, which includes the Turner Street Linear Park, as the defining feature of the Lorimer precinct:

...a highly-landscaped, pedestrian-oriented east-west spine that is an attractive, direct connection, generous in dimensions and supporting a diversity of uses, social interactions and transport movements. This has been a core concept of Lorimer since 2013 and has remained in place through multiple iterations of the design and planning strategy for Lorimer.

In her view, a 40 metre width was necessary to achieve all of the public realm and urban design outcomes required for the Turner Street Linear Park.

Figure 5 Ms Hodyl's evidence – Turner Street indicative design concept prepared by Melbourne City Council

Section 1B: Turner St linear open space - 13.6m width of linear open space within a 40m road reserve at tram stop – diagram for discussion purposes only



Source: Document 107

The Proponent did not agree that 40 metres is required and submitted:

- testing of international best practice suggests a maximum preferred width of up to 30 metres for activated main streets, with widths wider than this typically associated with boulevards and arterial roads
- the role of Turner Street is more akin to 'inner city main streets' such as Collins Street with a 30 metre width rather than a street such as Southbank Boulevard
- 30 metres is a sufficient width to enable a good balance between activation, enclosure, recreation, street dining and transport needs, with the cross section to be finalised through the Lorimer PIP
- Clause 11.03 of the Melbourne Planning Scheme refers to closing Turner Street and the cross section in Document 159c shows that if the road is closed to vehicular traffic, a 30 metre width is sufficient to accommodate an 11 metre width of linear open space, public transport, cycling and pedestrian paths
- alternatively, if Turner Street remains open to private vehicle movements, a narrower linear park of 5.7 metres can still be provided within 30 metres
- if the Committee recommends widening of Turner Street, it should be considered for inclusion in the OSU.

Melbourne City Council submitted Turner Street Linear Park, as envisaged by the FB Framework and currently shown in the CCZ4, is essential to the vision for Lorimer. It referred to the following statement in the FB Framework:

This high density, mixed-use precinct [Lorimer] is centred on the creation of a central parkland and is stitched together with a linear green spine and landscaped pedestrian and cycling links. This will create an important public transport, recreational link and biodiversity corridor linking to the adjacent Employment Precinct (original emphasis).

It submitted:

- Turner Street cannot play its intended role unless it is 40 metres wide

- it has not been decided whether Turner Street will be closed to traffic, and the Proponent has provided no information to underpin an assumption that it will be closed to traffic
- the Proponent did not provide evidence of any kind that Turner Street Linear Park functions adequately at 30 metres wide, whether closed to traffic or not.

Melbourne City Council did not agree the streets referenced by the Proponent were appropriate comparisons to the Turner Street Linear Park. It referred to the Fishermans Bend Ministerial Advisory Committee's report on the FB Framework which recommended that priority be given to *"the development of the proposed Turner Street Boulevard in order to showcase the open space, active transport and biodiversity vision for Fishermans Bend"*.

(iv) Discussion

The FB Framework seeks to integrate open space and provide built form relief through wider road reserves. Unlike Collins Street, the FB Framework identifies a 10-metre-wide linear open space corridor along Turner Street. The Committee accepts Ms Hodyl's evidence about the importance of Turner Street forming part of the Lorimer Parkway and its role in assisting to achieve the FB Framework targets for sustainable transport. The Committee accepts 40 metres is required to achieve an appropriate level of functionality given its intended uses (tram, cycling corridor, pedestrian boulevard and open space). It considers this to be the case whether or not Turner Street is ultimately closed to vehicular traffic.

The Proponent has not provided sufficient urban design analysis or any evidence to support the proposed change.

(v) Conclusions

The Committee concludes:

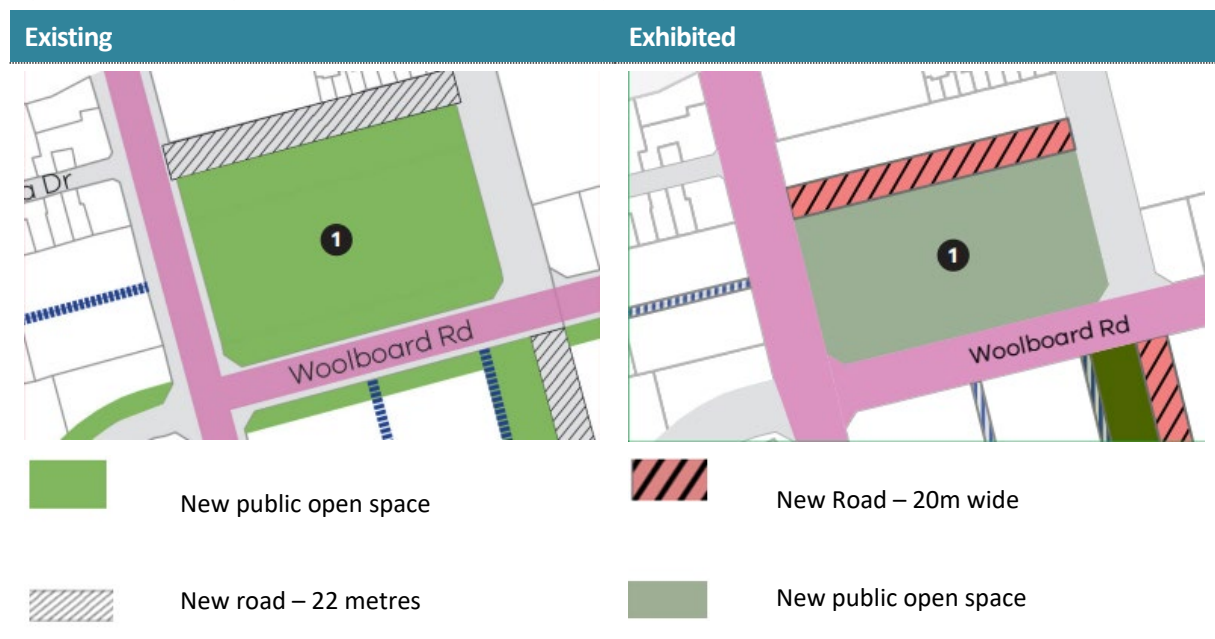
- It is not appropriate or strategically justified to relocate Turner Street Linear Park (the 10-metre-wide linear landscape strip) from its current CCZ4 location south of the Turner Street road reserve between Graham Street and Ingles Street.
- The existing layout of Turner Street as shown in Map 1: Lorimer Urban Structure of Schedule 4 to Clause 37.04 of the Melbourne Planning Scheme should be retained.

3.2.5 Wirraway North Park

(i) Background

The exhibited FBDCP identifies Wirraway North Park as a Precinct level park.

The existing CCZ1 in the Port Phillip Planning Scheme shows Wirraway North Park as being approximately 2.26 hectares. The park includes the property at 112 Salmon Street and part of the adjacent property at 128 Salmon Street. The exhibited CCZ1 shows a reduced area of approximately 1.39 hectares, which only affects 112 Salmon Street.

Figure 6 Existing and exhibited layouts for Wirraway North Park

Source: Document 74c

(ii) The issue

The issue is whether it is appropriate and justified to reduce the size of the Precinct level park at the corner of Salmon Street and Woolboard Road (W_OS05) (Wirraway North Park).

(iii) Evidence and submissions

The Proponent submitted:

- the Fishermans Bend Public Space Strategy, prepared by Planisphere for the Fishermans Bend Task force in 2017 (Planisphere Strategy)⁶, identified the park as a 'Precinct Open Space' of 1.99 hectares
- the size of the park was increased in FB Framework to 2.22 hectares because:
 - the FB Framework identified an elevated freight route which impacted the northern part of 128 Salmon Street
 - a new street was proposed along the land affected by the elevated freight route. However, given the impact on the site's existing use and future development potential, the whole of 128 Salmon Street would have needed to be acquired
 - the FB Framework identified the remnant area of 128 Salmon Street not required for the new street as open space, integrated with the adjacent property at 112 Salmon Street, as Wirraway North Park
- the freight route will no longer traverse the FB Framework alignment and 128 Salmon Street will no longer be affected
- the exhibited FBDCP categorises Wirraway North Park as Precinct open space which will accommodate a rectangular field; picnic tables and BBQ facilities; infrastructure to support sports field (fencing, goal posts, lighting, seating); terraced seating; skate park facilities; small pavilion to support sports field (player amenities, public toilets)

⁶ Document 39e

- since exhibition, it has undertaken further work which demonstrates the required infrastructure can be accommodated on 112 Salmon Street without the need to acquire (part of) 128 Salmon Street (included in Supplementary Information Note 07⁷).

It submitted future precinct planning for Wirraway will provide opportunity for:

- further consideration of Wirraway North Park
- the role and function of the proposed new road along the north of the park, or whether adequate access can be achieved from existing roads on three sides of the park.

Port Phillip City Council sought to retain the park size shown in the existing CCZ1. It submitted:

- Wirraway North Park will fulfil an important active recreation and public open space role by being able to accommodate a properly sized sporting surface
- the reduced size is not large enough to accommodate a standard size multi-purpose sports field and will jeopardise the ability to incorporate facilities to meet the known future demand generated in the area
- the Proponent's concept plan in Supplementary Information Note 07 included a junior field suitable for junior level sports only, which is a very significant reduction in the overall services and participation capability of the ground as compared to Council's intended two senior rectangular pitches within an oval configuration (for flexibility) and would have significant flow on implications on other active spaces in the network
- it is not sensible to say that because there will no longer be 'remnant land' left over from the acquisition of 128 Salmon Street for the freight route, the full size of the park shown in existing CCZ1 is not required – if the open space is required, it should be provided
- retaining the existing size of the park is essential given the critical shortage of active recreation facilities in Fishermans Bend.

Port Phillip City Council relied on Mr Panozzo's evidence that identified a significant shortage of open space in the FBURA to support its submission that the amount and functionality of open space in the FBURA should not be reduced by the Amendment.

The Proponent challenged Mr Panozzo's evidence stating, in its Part C submission, that the question of the adequacy of the open space to be provided in the FBURA was fully resolved through GC81 process.

Mr Woodland's evidence was that the FBDCP will deliver 95 percent of the open space identified in the FB Framework (or once Kirrip Park is accounted for, 99 percent).

(iv) Discussion

As a Precinct level park, the grounds and facilities of Wirraway North Park serve a function beyond the immediate neighbourhood. The Proponent has sought to demonstrate the layout and design of the park can fulfill this purpose with the required infrastructure accommodated on 112 Salmon Street only, without the need to acquire (part of) 128 Salmon Street.

The Proponent accepted the provision of open space was settled through the GC81 Amendment process, and yet seeks to reduce the amount of open space through what it describes as "*minor refinements*". It may be that the reduction is minor in the context of the FBURA as a whole and Mr Woodland's figures are correct. However, the Committee is mindful that the GC81 Panel acknowledged that the proposed provision of open space in Fishermans Bend falls well short of

⁷ Document 196

the targets set by the Planisphere Strategy (which were based on recommendations of the World Health Organisation) and comparable international and local examples.

The Committee has concerns that the proposed reduction in area of Wirraway North Park could have a significant impact on its functionality as a Precinct level park. The concept plans provided by the Proponent provided no comfort that the reduced size is workable for its intended purpose. Further detailed work is required.

These matters, together with the location of access roads for the park, should be explored through the PIP for Wirraway. To the extent that any consequential changes to the FBDCP are required as a result of the PIP process, they can be addressed through the associated planning scheme amendment.

(v) Conclusions

The Committee concludes:

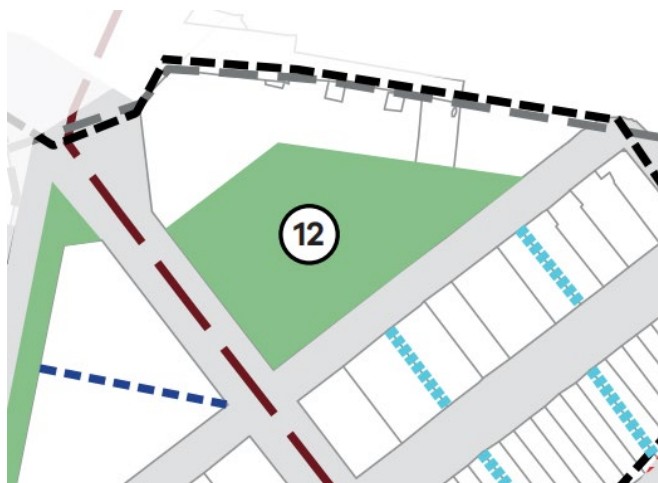
- It is not appropriate or strategically justified to reduce the area of Wirraway North Park (W_OS05) from its current CCZ1 size.
- The existing area of Wirraway North Park as shown in Map 3: Wirraway Urban Structure of Schedule 1 to Clause 37.04 of the Port Phillip Planning Scheme should be retained.
- Any proposed change to the area of Wirraway North Park should be dealt with through the PIP process.

3.2.6 Montague North Park

(i) Background

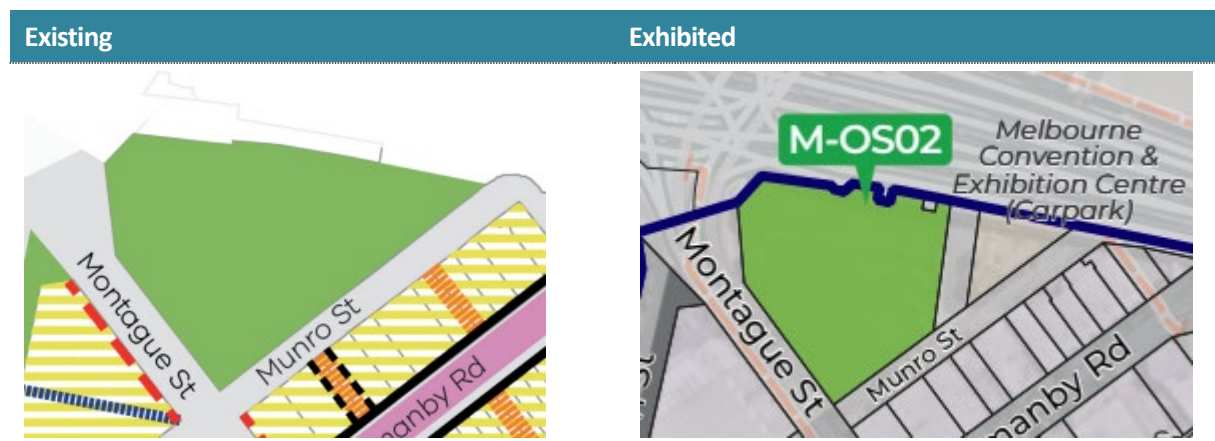
The FB Framework identifies the park as a long term project with a layout shown in green on Figure 7. The open space area is 1.1 hectares and the adjacent developable area (shown in white) is 0.9 hectares.

Figure 7 FB Framework layout for Montague North Park



Source: Document 108

The existing CCZ1 shows an area larger than that in the FB Framework (see Figure 8).

Figure 8 Existing CCZ1 and exhibited FBDCP for Montague North Park layouts

Source: existing: Document 30; exhibited: Document 3

The exhibited FBDCP identifies Montague North Park as a Neighbourhood level park with an area of approximately 1.58 hectares as shown in Figure 8 (known as 11 Montague Street). The triangle of land proposed for removal, known as 1-5 Brady Street, has an area of 0.24 hectares.

Project M_OS02 is for embellishment (only) of the park. The underlying land at 11 Montague Street and 1-5 Brady Street is Crown land.

(ii) The issue

The issue is whether it is appropriate and justified to make spatial changes to Montague North Park, corner of Montague Street and Munro Street (M_OS02) (Montague North Park).

(iii) Evidence and submissions

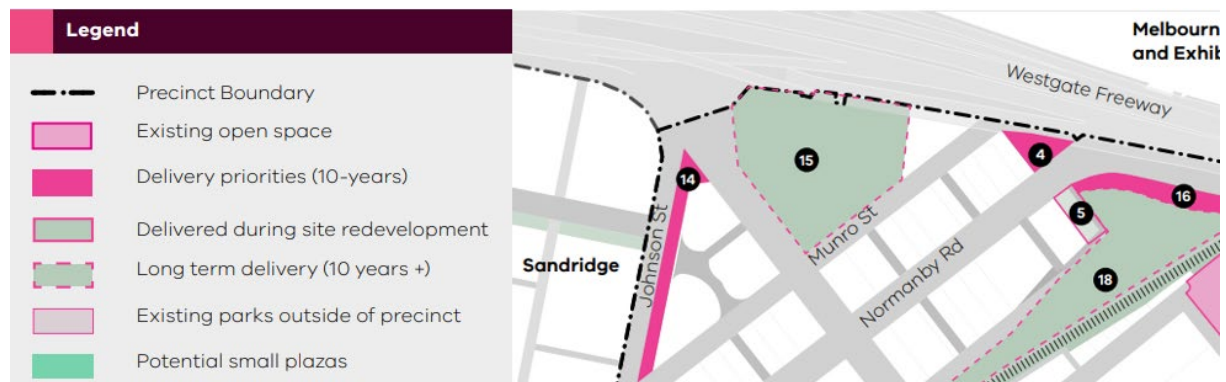
The Proponent submitted:

- the current CCZ1 layout of Montague North Park was a result of the GC81 Panel process
- subsequent investigations revealed the Victorian government has leases with the Melbourne Convention and Exhibition Centre Trust for use of the relevant land for car parking:
 - for 11 Montague Street, a lease until 2035
 - for 1-5 Brady Street, an ongoing lease
- 1-5 Brady Street is not available for open space, but instead the exhibited FBDCP provides 0.59 hectares of open space elsewhere in Montague by utilising unused road space and adding nearby land as open space at Doran Street Plaza (0.4ha at 130-148 Normanby Road and 0.19ha at closure of Doran Street)
- this results in a total combined area of 2.17 hectares, an increase as compared to the current CCZ1.

The Proponent provided the following map (Figure 9) from the draft Montague PIP to show the proposed layout of the park. The item numbers represent:

- item 15: Montague North Park
- item 4: Doran Street North Plaza
- item 5: Doran Street South Upgrade
- item 18: Route 109 light rail.

Figure 9 Extract from draft Montague Precinct Infrastructure Plan showing revised Montague North Park and Doran Street Plaza



Source: Document 177

Port Phillip City Council submitted:

- Montague North Park is a critical area of Neighbourhood open space
- reduction in the size of the park by approximately 3,970 square metres significantly impacts on its functionality as a key open space required to provide both active and passive recreation to cater for future needs
- two non-contiguous, smaller spaces “do not provide the versatility or the scope for facilities that a larger park of equal area does”
- the ‘replacement’ triangular piece of land identified in Doran St (item 4 of Figure 9) is partially under the freeway and cannot be used the same way as land integrated in a larger space
- this goes against the FB Framework’s objective to ensure flexible provision of open space
- it is unclear why 1-5 Brady Street cannot be included in the park given it is Crown land and the Proponent has not provided any evidence tying the land to any proposal going forward
- the existing CCZ1 layout should be retained.

Port Phillip City Council did not support the new park on Doran Street as part of this Amendment because it is not in the existing FB Framework and is not proposed for funding in the FBDCP. It submitted this change, if it is to be pursued, should be dealt with in the Montague PIP process.

The Proponent’s final position was:

- Map 1 (Montague urban structure) in the CCZ1 should be updated as set out in the map at Document 101g to “Identify Doran Street north and south of Normanby Road as road closure projects” and “For Woodgate Street, Doran Street, Ferrars Street, revert CCZ layer, and base layer for other ordinance maps, to current scheme alignment/extent of Woodgate Street (review through PIP process)”
- the FBDCP should not include funding for embellishment of Doran Street.

(iv) Discussion

The Committee has interpreted the Proponent’s final position as proposing to change the layout of Montague North Park (reduce its size and, consequently, its shape) from that shown in the current CCZ1 and to provide a commensurate measure of open space in the separate location of Doran Street without FBDCP funding for embellishment.

The current CCZ1 layout was the result of consideration by the GC81 Panel. It said:

The [GC81] Panel considers that the whole of the Montague North site should be used for public open space purposes. Montague has the lowest amount of open space per resident and worker ... and increasing the amount of public open space by expanding Montague North Park will be a good outcome.

It agrees with Port Phillip that the expanded park ... frees up land for the location of a major Sport and Recreation hub, which will create excellent synergies.

The Proponent has provided no open space, urban design or other strategic planning work to justify the proposed change or to demonstrate that the proposed open space area in Doran Street is an appropriate 'replacement' for the removal of 1-5 Brady Street from the park. It relies primarily on the existing "*ongoing*" lease arrangements over 1-5 Brady Street to justify the reduction in size of the park but has provided very little detail about those lease arrangements.

This has not been helpful to the Committee. The mere existence of a leasehold interest over an area of future open space currently shown in the relevant planning scheme is not a barrier to that land ultimately being acquired and used for open space. The Victorian government could wait for the lease to expire, seek to negotiate with the lessee to terminate the lease early or compulsorily acquire the leasehold interest.

If the use of 1-5 Brady Street as car parking for the Melbourne Convention and Exhibition Centre is to be given priority over the provision of open space in this location then it must be demonstrated that the alternative put forward provides an overall equivalence, not just in total area of open space but also its functionality and role in the urban form of Montague. The Committee is not satisfied that this has been demonstrated as part of this process and there is no basis to depart from the layout as shown in the current CCZ1.

The Committee acknowledges that these (or similar) changes are proposed as part of the Montague PIP process. They should be thoroughly ventilated and tested through appropriate strategic work and evidence as part of that process. It is inappropriate for the changes to be made as part of this Amendment.

(v) Conclusions

The Committee concludes:

- It is not appropriate or strategically justified to reduce the area of Montague North Park (M_OS02) from its current CCZ1 size.
- The existing area of Montague North Park as shown in Map 1: Montague Urban Structure of Schedule 1 to Clause 37.04 of the Port Phillip Planning Scheme should be retained.
- Any proposed change to the layout of Montague North Park should be dealt with through the PIP process.

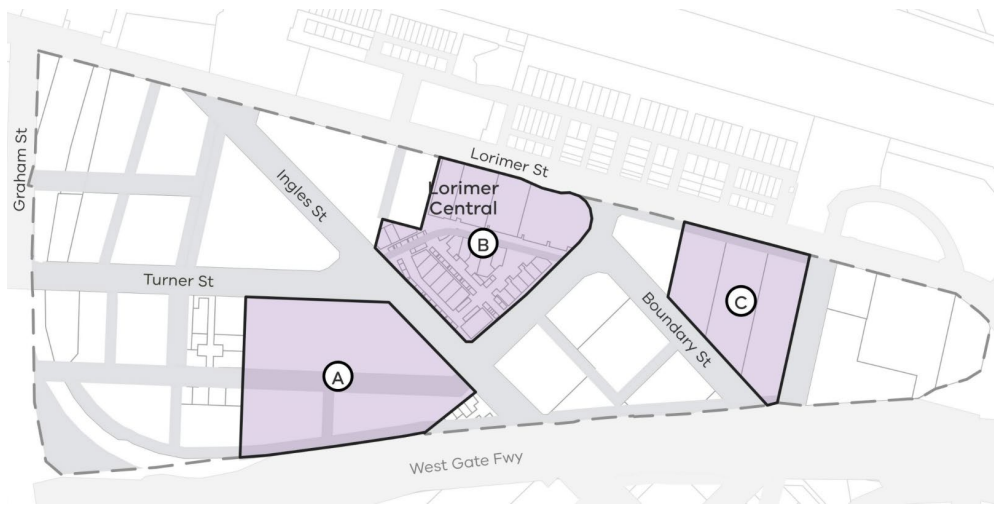
3.3 Master planning

3.3.1 Master planning approach

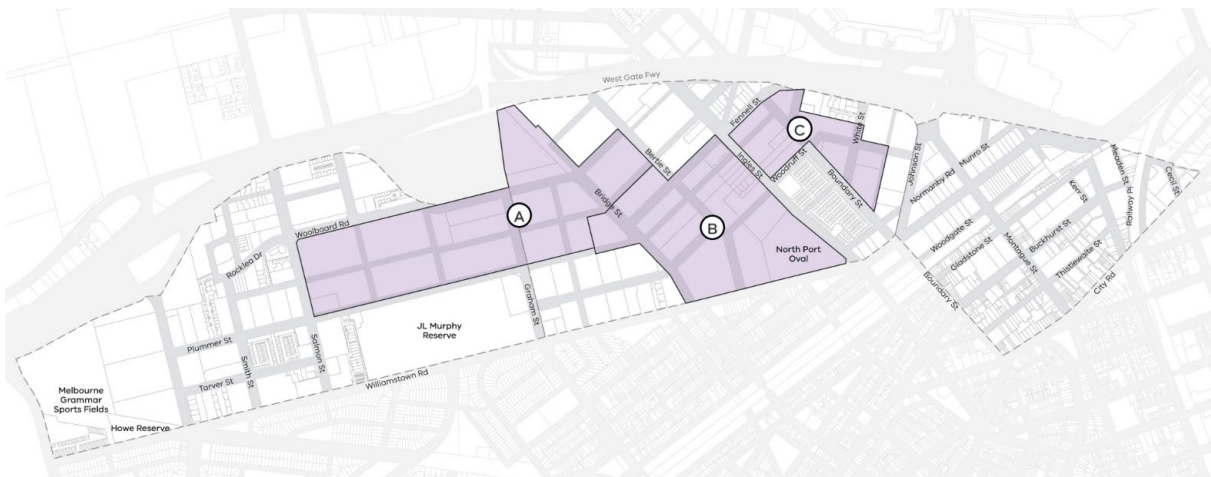
(i) Background

The Amendment proposes to introduce six potential master plan areas (see Figure 10 and Figure 11 below) by applying the IPO to:

- enable a flexible approach to locating infrastructure on large or complex sites (or both)
- depart from certain CCZ and Design and Development Overlay (DDO) schedule requirements.

Figure 10 Exhibited Melbourne IPO7 locations

Source: Document 17

Figure 11 Exhibited Port Phillip IPO2 locations

Source: Document 29

In the exhibited Amendment, master planning was proposed to be voluntary, and permits could be granted prior to the inclusion of an incorporated plan in the scheme. This was referred to as an 'opt-in' approach. Landowner(s), or the Victorian government, would decide if, and when, to use the approach. It was suggested that the master planning approach might be taken up, for example:

- if inactivity was affecting the delivery of Essential infrastructure, or
- in conjunction with the preparation of a PIP.

(ii) The issues

The issues are whether:

- an integrated approach to infrastructure provision across the FBURA will be achieved if incorporated plans are approved before finalising the PIPs for each of the four FBURA precincts
- the IPO should enable variation to mandatory built form provisions in the DDO schedules
- the IPO should allow variations to dwelling density distribution provisions in the CCZ schedules
- preparation of incorporated plans should be voluntary

- the IPO is the appropriate tool for master planning
- the relevant council should be a referral and approval authority for incorporated plans.

(iii) Evidence and submissions

Melbourne City Council did not support the use of the IPO in Lorimer, submitting it would:

- result in a piecemeal approach to planning that focuses on selected sites individually rather than the precinct as a whole
- potentially change the urban structure and built form requirements without public consultation
- risk a substandard outcome that does not consider refined transport and movement, public spaces, community facilities, activity cores and environmental sustainability at a precinct scale
- reduce the Victorian government's priority for drafting and implementing the Lorimer PIP if incorporated plans were already approved.

Melbourne City Council requested that if the IPO is retained, permit activity be prohibited in Area B (IPO7 Map 1), which includes Lorimer Central Park, until a master plan has been incorporated into the Planning Scheme. The Proponent supported this request, noting the area is impacted by the proposed tram route, open space and community infrastructure. The IPO7 (final version) included a new requirement and decision guidelines seeking to respond to the views of Melbourne City Council.

Port Phillip City Council submitted:

- the overlap between master planning and PIPs should be clarified
- the North Port Oval expansion should be delivered through a master planning process
- the process and responsibilities associated with the Goodman sites identified for master planning are unclear
- the ability to have multiple development plans for the area is concerning.

Mr Woodland recommended development of incorporated plans for Areas B in both the IPO7 (Melbourne) and IPO2 (Port Phillip), and the western portion of Area A in the IPO2, be government led rather than voluntary due to the complexities of the sites and the need to coordinate public transport infrastructure. The Proponent supported this approach for Areas B in both planning schemes.

Goodman requested the DPO rather than the IPO be applied to its five sites because:

- their location, size and common ownership allows them to be planned in combination
- they represent a significant portion of the FBURA
- Goodman is a sophisticated entity capable of leading the preparation of a master plan.

Goodman added that the DPO:

- is more flexible than the IPO and can more easily accommodate changes over time
- can be prepared in stages around when the sites are developed to reflect the changing market dynamics and evolution of the FBURA
- is unlikely to have third party impacts, and any such impacts are already appropriately addressed in the DPO provisions.

The Proponent submitted:

- the IPO identifies the need and potential for further detailed master planning

- there is a need for detailed planning around the location identified for Sandridge Station, there is potential for the Sandridge PIP to serve as a master plan incorporated through the IPO, and it supported a prohibition on the grant of a permit in Area B (IPO2 Map 1) prior to the inclusion of an incorporated plan in the planning scheme
- it has been engaging with relevant landowners regarding landowner led master plans for their sites in Lorimer.

Ms Hodyl stated the IPO schedule should not include provisions that undermine important amenity provisions that apply across Lorimer.

Melbourne City Council submitted that if the IPO is retained:

- an incorporated plan should be required to identify and explain the dwelling density distribution (excluding uplift dwellings) and, to address potential equity issues, affected landowner consent should be required for any reduced density due to redistribution
- the CCZ4 should:
 - specify that land use must be generally in accordance with any incorporated plan or otherwise with Map 1 (Lorimer urban structure)
 - specify the allowable dwelling density as the density specified in any incorporated plan
- the IPO7 and the CCZ4 should not allow an incorporated plan to redistribute OSU or social housing uplift (SHU) dwellings, and if allowed, affected landowner consent should be required for any reduced density due to redistribution
- the applicable maximum dwelling density across the plan area should be applied to all stages of an incorporated plan.

The final versions of the IPO2 and IPO7 stated:

An incorporated plan must not result in an overall residential density greater than that specified in Table 1 of Schedule 4 to the Capital City Zone across the nominated incorporated plan area, not including additional residential density arising from the integration of Social Housing Uplift or Open Space Uplift, as outlined in Schedule 4 to the Capital City Zone.

The Proponent also revised the incorporated plan requirements to clarify that mandatory built form provisions cannot be modified through the incorporated plan process, but that variations to discretionary provisions in the relevant DDO schedule may be made.

After comprehensively comparing the functionality and benefits of the Development Plan Overlay (DPO) and IPO within the context of advice in Planning Practice Note 23, Mr Woodland supported the IPO as the appropriate tool for master planning. Relevant advice he referred to states:

The IPO requirement for a planning scheme amendment to incorporate or change the plan enables third parties to be involved in the process of making or changing the plan. For this reason, the IPO should normally be used for land that is likely to affect third-party interests and land comprising multiple lots in different ownership. Most redevelopment of existing urban land will fall into this category, particularly where the surrounding land use is residential.

Melbourne City Council requested it be a referral and approval authority for incorporated plans. Mr Woodland considered this to be unnecessary. He explained:

- any IPO incorporated plan would have its own planning scheme amendment process that would be exhibited and referred to Councils and relevant state agencies
- unresolved submissions would be referred to an independent panel under the PE Act
- if the incorporated plan was approved through a ministerial amendment, the views of Council, state agencies and affected parties would most likely be sought.

Mr Woodland recommended that rather than Melbourne City Council having official referral authority status, the IPO2 and IPO7 should require the views of the relevant council (and the Department of Transport and Planning) be sought and responded to. The Proponent agreed and included relevant provisions in subsequent versions of the IPO schedules.

(iv) Discussion

Master planning will provide an appropriate level of flexibility for the delivery of infrastructure on large or complicated sites. It will provide flexibility in terms of timing, allowing a landowner or developer to lead the process when land is ripe for development and conversely, allowing the Victorian government to lead where necessary to activate development. This could be crucial in facilitating early development in FBURA precincts that do not yet have an approved PIP.

The Committee considers that the benefits of this flexibility outweigh potential downsides of the proposed approach. It acknowledges concerns about adding another layer of strategic planning and the possibility of a fragmented approach. However the Committee is confident that with careful coordination and communication between stakeholders, these concerns can be addressed.

The flexibility enabled through the IPO master planning process should not extend to allowing changes to key mandatory built form provisions in the relevant DDO schedules. The Committee considers relevant provisions in the final versions of the IPO2 and IPO7 achieve this.

The Committee is concerned about the proposed change during the Hearing to the master planning approach for Areas B in the IPO7 and IPO2 which would prohibit the grant of a permit prior to the inclusion of an incorporated plan in the scheme. This would have the effect of making the preparation of a master plan mandatory for these areas rather than voluntary. It has no information as to whether affected landowners fully understand the implications of this proposed change, or if they are aware of the change at all.

The Committee does agree with Mr Woodland's advice that it is preferable that master planning for complex sites where public transport is proposed should be led by the Victorian government. However, it believes the preparation of a PIP is the appropriate process for this type of master planning because there will be factors to consider well beyond the boundaries of the incorporated plan area. Master planning through the IPO should not replace the function or need for the PIPs. For these reasons the Committee does not support the proposal to prohibit the grant of a permit in these areas prior to the development of an incorporated plan.

Using the IPO, rather than the DPO, ensures that changes to the FB Framework or any approved PIP will be subject to a planning scheme amendment and the required strategic justification provided. This is important as the IPO allows variations to discretionary built form standards established in the DDO schedules.

Mr Woodland provided sound reasons why the IPO, rather than the DPO, is the appropriate tool to enable the master planning process. The DPO provides a less restrictive approach by enabling development plans to be approved or amended without the need for a planning scheme amendment. However, the intensive scale and nature of change envisaged on these large existing urban sites is likely to impact third party interests. Consistent with advice in Planning Practice Note 23, the IPO is the more appropriate tool in these circumstances.

The Committee supports the IPO2 and IPO7 (final version) provisions which guarantee that the overall residential density of the incorporated plan area is not increased (leaving aside SHU and OSU dwelling increases) and that SHU or OSU dwelling densities cannot be redistributed.

The Committee agrees with referencing the views of both councils in the incorporated plan requirements of their respective IPO schedule as shown in the final version documents. Future development will ultimately impact land in each municipality so it is important each council's views are sought in the development of the plan and seriously considered, rather than seeking their views through referral of an amendment as part of the exhibition process once a plan has already been prepared.

(v) Conclusions and recommendations

The Committee concludes:

- An integrated approach to infrastructure provision across the FBURA can be achieved if smaller incorporated plans are approved before finalising the PIPs.
- It is appropriate to provide for master planning through the IPO, in addition to the PIPs, on large or complex sites (or both).
- The IPO is the appropriate tool for master planning of these areas because it enables third party involvement on issues that will affect them.
- The Committee supports the final version of the IPO which do not permit variations to mandatory built form provisions in the DDO schedules (but could allow variations to discretionary provisions).
- The preparation of incorporated plans should be voluntary and the IPO schedules should not allow prohibitions on the grant of permits in any Area before a plan is incorporated.
- It is appropriate that:
 - the overall residential density of the incorporated plan area cannot be increased by any redistribution of dwelling densities across a master planning area
 - the master planning process cannot redistribute social housing uplift and open space uplift dwelling densities.
- The views of the relevant council, Department of Transport and Planning and affected owners and occupiers of land should be sought and responded to before an incorporated plan is approved.

The Committee recommends the following changes to the draft Amendment GC224:

Amend Melbourne Planning Scheme Incorporated Plan Overlay Schedule 7, as shown in Report Volume 2 Appendix G:4, and Port Phillip Planning Scheme Incorporated Plan Overlay Schedule 2, as shown in Report Volume 2 Appendix H:4, to:

- **delete the provisions that prohibit some types of permit being granted in Area B before an incorporated plan has been incorporated into the scheme.**

3.3.2 Melbourne IPO7 master planning boundaries

(i) Background

The Amendment proposes to apply the IPO Schedule 7 (IPO7) to enable master planning in three locations in the Lorimer precinct shown in Figure 10 above.

(ii) The issue

The issue is whether the master planning boundaries proposed for Melbourne IPO7 Areas A, B and C are appropriate.

(iii) Evidence and submissions

Melbourne City Council did not support the application of the IPO7 to Area A.

Ms Hodyl considered IPO7 was not needed for Area A, and stated:

- the site context and infrastructure requirements are logical, not overly complex and can be resolved through a standard development permit process
- it would create unnecessary uncertainty around outcomes that are already resolved and which have not been questioned through the Amendment except for reducing the street width from 22 to 20 metres.

The Proponent did not support Ms Hodyl's recommendation to delete Area A. Mr Woodland considered IPO7 should apply to Area A because it is a large site in single ownership in the Lorimer Core (and noting that the IPO7 contemplates master planning in Area A on an opt-in basis).

Ms Hodyl and Mr Woodland agreed it was acceptable to apply the IPO7 to Area B. Mr Woodland explained master planning was needed for land use and infrastructure in Area B because it comprises multiple sites in the Lorimer Core and the proposed tram route bisects it. He thought the Victorian government should lead the master planning process in Area B. Ms Hodyl noted that while application of the IPO7 could lead to further uncertainty on future urban design outcomes that will be delivered, it does provide a suitable vehicle for resolving design changes and connecting them to the infrastructure funding mechanism.

Ms Hodyl and Mr Woodland agreed IPO7 was justified for Area C (as exhibited). Mr Woodland stated it is a large site in single ownership that should have opt-in master planning.

Claric 178 Pty Ltd (Claric) requested the IPO be applied to 13 Hartley Street (parcel 110) and 95 Lorimer Street (parcel 111) to identify the area as subject to future master planning to determine the exact location of infrastructure. It considered the master planning process on these sites would enable options to be explored.

The Proponent agreed with Claric and submitted IPO7 Area C should be extended to parcels 110, 111 and 112. This was reflected in the IPO7 (final version). Melbourne City Council did not support the extended area, submitting that 'greater flexibility' was not a sufficient reason alone to support application of the IPO.

(iv) Discussion

The Committee has concluded master planning on large or complex sites is appropriate. While it agrees with Ms Hodyl that aspects of Area A are logical and not overly complex, it is a large area that could support a range of future design layouts. The Committee supports revisions to the IPO schedules which remove the ability to vary mandatory requirements under the CCZ4 or DDO67, allowing amendments to discretionary standards only. Through this approach, the Committee considers there is scope to explore design options with a degree of flexibility that will not compromise important design standards established through existing planning provisions.

IPO7 is appropriate for Area B because it includes several properties and has a range of complex issues (in particular the proposed public transport corridor), and therefore warrants further investigation through a master planning process. The Committee considers the IPO7 (final version) will avoid sub-optimal outcomes for Lorimer Central Park by removing the ability to alter mandatory provisions in the DDO67.

The Committee agrees with the Proponent that Area C should be extended to include Parcels 110, 111 and 112 east of Hartley Street. These areas could benefit from further exploration of options to coordinate planning for future parks and the public transport corridor.

(v) Conclusion

The Committee concludes the master planning boundaries proposed for Areas A, B and C in the IPO7 are generally appropriate, although Area C should be revised to:

- include parcels 110, 111 and 112 east of Hartley Street as shown on Map 1 in the IPO7 (final version).

3.3.3 Port Phillip IPO2 master planning boundaries

(i) Background

The Amendment proposes to apply the IPO Schedule 2 (IPO2) to enable master planning in three locations in Port Phillip shown in Figure 11 above.

(ii) The issue

The issue is whether the master planning boundaries proposed for Port Phillip IPO2 Areas A, B and C are appropriate.

(iii) Evidence and submissions

Mr Woodland considered IPO2 was justified for Area A because the area:

- comprises multiple sites, predominantly in single ownership
- straddles the Wirraway and Sandridge precincts and includes Core and Non-core areas
- adjoins the location of the future train station in its western part.

Mr Woodland considered IPO2 was justified for Area B because the area:

- comprises multiple sites predominantly in the Sandridge Core
- is bisected by the future tram route
- will have a centrally located future train station.

Mr Woodland did not identify similar justification for application of the IPO2 to Area C. He recommended the IPO2 not apply to Area C but if it remained, it should be developer-led and there should be discretion for a permit to be granted before an incorporated plan is approved (in other words, master planning should be 'opt-in' in Area C).

The Proponent submitted the preparation of an incorporated plan should be led by the Victorian government in IPO2 Area C because it contains numerous government land parcels.

(iv) Discussion

IPO2 is appropriate for Areas A and B because they include large sites with complex issues that should be further investigated through a master planning process, consistent with the reasons provided by Mr Woodland.

The site at 50 Salmon Street (part of Area A) is an example of a large site with complex issues that would benefit from master planning because:

- no crossovers are permitted along the Plummer Street frontage

- the Salmon Street frontage will be lost if the park is delivered as shown on the FBDCP maps
- it appears that a six-metre laneway proposed on the western side of the site would become the site's only access.

If infrastructure and access are not sequenced in a certain order, 50 Salmon Street may become 'land locked'. A master planning process is required to ensure this is appropriately addressed.

While acknowledging Mr Woodland's recommendation that Area C not be subject to an IPO, the Committee considers there is scope to explore design options through master planning for Area C.

As for the Lorimer IPO7, the Committee supports proposed changes to the IPO2 (final version) which remove the ability to vary mandatory built form standards in the applicable DDO schedules. The IPO2 (final version) allows master planning with a degree of flexibility that will not compromise important design standards.

(v) Conclusion

The Committee concludes the master planning boundaries proposed for Areas A, B and C in the IPO2 are generally appropriate.

4 Overarching issues

4.1 The Development Infrastructure Levy

(i) Background

The exhibited FBDCP:

- adopts a three-in-one approach that incorporates three potential separate infrastructure charges (development infrastructure, open space and drainage) into a single DIL amount
- places a cap on the DIL at a set amount (\$34,635 per dwelling or \$286 per square metre of gross non-residential floorspace)
- adopts a single charge area, covering all FBURA precincts, for the DIL
- apportions 100 percent of the cost of all projects to the FBURA except for the Salmon Street bridge project (BR01) which has 50 percent of its costs apportioned to the FBURA.

(ii) The issues

The issues are whether:

- the capped, 'three-in-one' DIL rate is appropriate
- calculating the DIL without estimating apportionment of projects within the FBURA and external to the FBURA is appropriate.

(iii) Evidence and submissions

DIL rate

Ms Fisher said the Fishermans Bend Taskforce provided the amount and form of the proposed DIL. The Proponent did not propose to make any change to the proposed capped DIL, other than as discussed in relation to the application of the Community Infrastructure Levy (see Chapter 4.2).

Submissions generally supported the 'three-in-one' approach to the DIL because it provides developers with upfront certainty about applicable infrastructure charges.

Several submissions did not support, or raised concerns with, the proposed DIL rate and said it:

- was too high and would negatively affect the financial viability of projects
- was not accompanied by a feasibility analysis to demonstrate that increased rates above current interim rates would provide viable investment and development opportunities
- could compromise the quality of built form should developers seek to offset the increased development costs by using cheaper construction methods or materials
- is inconsistent with Victoria's Housing Strategy and could impact housing affordability
- could negatively impact on the future delivery of public infrastructure
- may create a hesitancy to develop in the FBURA compared to other urban renewal precincts such as Arden (which has a significantly lower DCP levy amount).

Mr Ainsaar noted the Arden DCP levy amount excludes drainage works and open space land. He added:

- if the open space levy amount equivalent to the contribution amount required by Clause 53.01 of the Melbourne Planning Scheme was applied (7.06 percent), the levy would increase to an amount generally equivalent to that proposed in the FBDCP

- adding drainage costs as well would mean the Arden levies would likely be higher than those in the FBDCP.

No party provided evidence which tested the development feasibility of the capped DIL. All DCP experts agreed it was appropriate to apply a cap in certain circumstances. Mr Ainsaar explained capping the levy amount is unusual but appropriate in this instance to limit any adverse impact of levies on housing affordability and development viability. He considered that the extent to which a collecting agency wishes to subsidise development through use of a capped levy is at its discretion.

Mr De Silva noted that the capped levy was a key feature of the FBDCP with the shortfall in funding resting with the Victorian government unless other incentives were able to assist in reducing the funding gap.

No expert advanced a view regarding the proposed levy amount.

Apportionment

A submission questioned whether applying a single charge area for the FBURA is fair or whether there should be separate charge areas for each of the FBURA precincts. It noted the Montague precinct will only benefit from an increase of 0.6 hectares of public open space, and yet landowners in that precinct are expected to make the same contribution to open space as landowners in other precincts.

All DCP experts agreed that it was appropriate for the FBDCP to be based on one charge area.

Mr Ainsaar considered the adoption of a single charge area appropriate because:

- all projects are needed and shared across the FBURA
- the road network forms an integrated network
- community and recreation hubs service the whole FBURA.

The Proponent submitted:

- a whole-of-FBURA approach was appropriate because of the extent of shared demand for various project types
- local projects were excluded from the FBDCP because it would be more difficult to establish nexus between a local infrastructure item and its use by all residents in the FBURA.

The Proponent added:

It is accepted that an alternative approach would have been to divide the proposed charge area for the DCP into multiple smaller charge areas in which it could be said that there was a nexus between the local roads in each charge area and the proposed charge area. This approach would, however, have made the funding of larger scale items of infrastructure more complex as it would have required decisions to be made about the level of usage which should be attributed to each item in respect of each charge area.

On balance it was considered preferable to adopt a more straightforward approach, especially in circumstances where lower order infrastructure was capable of being funded through other sources including Council rates and conditions on development permits.

Several submissions also raised concerns in relation to the 100 percent apportionment of all FBDCP projects (except one) to the FBURA, submitting that some projects would benefit external users.

The Proponent explained the FBDCP levee project is part of a proposed levee that extends beyond the boundaries of the FBURA. The part of the levee included in the FBDCP extends from Spencer

Street to Bolte Bridge / Graham Street and the FBDCP does not include the section along the northern and western extent of the NEIC.

Port Phillip City Council submitted a DCP should ensure funds are raised equitably across all users of infrastructure in a defined catchment. It questioned whether the major flood and drainage infrastructure included in the FBDCP had a wider benefit than the FBURA community. It noted the DCP Guidelines set out the principles of a DCP, including “*infrastructure costs must be apportioned on the basis of projected share of usage*”. Port Phillip City Council submitted the FBDCP should include a reasonable external apportionment for Melbourne Water drainage projects, based on the proportion of the area protected in the FBDCP compared with the proportion of the area outside the FBDCP charge area that is protected.

Melbourne City Council’s submission aligned with Port Phillip City Council’s emphasising that external usage of all major drainage projects, not just the levee, should be apportioned on the understanding that the drainage projects operate as an integrated whole. It submitted Melbourne Water would need to determine whether different projects would require different levels of apportionment.

Melbourne Water submitted the FBDCP area receives the principal benefit of the drainage infrastructure provided for in the FBDCP and no evidence has been presented with an assessment of contended external demand. Melbourne Water explained modelling was undertaken for the whole Fishermans Bend area including the NEIC and it is not possible to estimate with any level of accuracy the external benefit of drainage projects. It raised concerns as to how funding from external beneficiaries would be obtained within a reasonable timeframe to allow delivery of the infrastructure.

The Proponent submitted the component of the development levy notionally attributed to paying for major drainage works is significantly below a 100 percent apportionment of demand because it is not a full cost recovery DCP. It said apportionment in the context of a capped levy is a theoretical exercise as the Victorian government is the Development Agency and will effectively be meeting the cost of external demand (consistent with the position adopted by the Advisory Committee considering the Arden DCP).

Melbourne Water agreed with this approach to external apportionment and submitted:

This is a radical and new approach which is not provided for the DCP Guidelines, but nevertheless accords with the principles of need, nexus and equity.

Port Phillip City Council contested the proposition that the funding gap is the external apportionment. It submitted apportionment relates to the costs attributed to the charge area and external benefitting areas, not the amount collected from the charge area. In this case, 100 percent of the cost of the drainage projects has been attributed to the FBURA and zero percent has been attributed to those external areas that benefit from those same drainage projects.

Melbourne City Council clarified it is not seeking perfect apportionment, but rather that the matter be addressed properly.

Regarding the levee, the Proponent submitted it is difficult to apply this concept to a large piece of fixed infrastructure which is critical to delivery of the FBURA because:

- its use stems from a ‘passive’ activity in that it involves using land for development that has been enabled by the levee
- it is necessary for the safe delivery of development in the FBURA (development permits may be refused without it)

- there has been no suggestion that the levee would be provided simply to protect existing land subject to flooding in Melbourne and Port Phillip if the FBURA was not being redeveloped
- additional benefit to other areas does not change this fact and especially where the additional benefit is unclear
- the DIL component notionally attributed to paying for major drainage works is significantly below the 100 percent apportionment of demand.

(iv) Discussion

DIL rate

Development infrastructure levies are one factor which affect the development viability of projects. The exhibited FBDCP states that the *“draft DCP charge rate has been set at a level that ensures that development makes a reasonable contribution towards the cost of delivering essential infrastructure in Fishermans Bend, whilst also balancing development feasibility considerations”*.

The Victorian government has committed to fund the shortfall for FBDCP projects of approximately \$700 million and this amount is at its discretion.

There is no evidence before the Committee to suggest the proposed rate will create a major deterrent to development in the FBURA or significantly impact housing affordability. None of the DCP experts raised concerns about the amount of the capped levy.

Mr Ainsaar’s evidence included a useful comparison of the various component of the FBDCP DIL with levies applied in the Arden Urban Renewal Precinct. The Committee accepts that once all component parts, including drainage and open space, are considered, the levies on future development for the two renewal areas are likely similar.

The Committee agrees with Mr Ainsaar that development contributions are one element in the housing affordability equation and that property markets and conditions will fluctuate and change over the life of the FBDCP. It is expected that the capped DIL rate will be considered alongside development activity levels through the five-year reviews of the FBDCP.

Apportionment

A DCP must comply with the PE Act and the DCP Ministerial Direction. In addition, the DCP Guidelines should be followed unless it can be demonstrated an alternative methodology can continue to meet the requirements of the PE Act.

Consistent with the DCP Guidelines, the FBDCP should (amongst other things):

- demonstrate the nexus between new development and the need for new infrastructure
- apportion infrastructure project costs based on share of usage
- be transparent by documenting and justifying all assumptions to the calculation of levies.

The Committee considers the FBDCP generally demonstrates nexus because the new infrastructure needed for the new FBURA community has generally been justified through the FB Framework since 2018.

However, calculation of the DIL amount is not based on an apportionment exercise and is not transparent because it has been capped at what the Proponent considered a reasonable upper limit, rather than based on the value and apportionment of total project costs (as per the DCP Guidelines).

The Committee has stated above that, in principle, it accepts a capped levy approach because it will help ensure the levy amount does not hinder the feasibility of future development needed for the FBURA community.

The Committee agrees with Mr Ainsaar that a single charge area is appropriate because projects which have been included in the FBDCP are needed and shared across the FBURA and likely to be used by the whole of the future FBURA community. It is therefore equitable that all new development in the FBURA contributes to the provision of FBDCP infrastructure at the same rate.

Regarding external apportionment, the Committee does not believe that demand for all FBDCP projects (except one) will be generated entirely by the existing and future FBURA population. In particular, the Committee has similar concerns to Melbourne and Port Phillip City Councils that the benefit of major drainage projects may extend beyond the FBURA and this has not been accounted for in estimating costs attributable to the FBDCP catchment area. The Committee also has concerns that potential external usage of District open space projects in the FBDCP has not been estimated.

The Proponent has suggested the 29 percent of costs not recovered through the FBDCP (the 'gap') accounts for external demand. An estimated figure of external demand cannot be confirmed because there is no supporting work which apportions each project based on the share of usage within and outside the FBURA. Charging local developers for demand generated by external users would be unfair, inequitable, and does not accord with section 4(1)(a) of the PE Act.

The Committee accepts the Arden DCP also adopts a capped levy without the usual apportionment of projects. The Victorian Planning Authority (VPA) Projects Standing Advisory Committee that considered the Arden DCP concluded:

- there should be external apportionment of certain projects because it is clear there are external benefits
- it was not possible to determine the external benefit but the Victorian government funding gap 'should' cover the external benefits.

The Committee is unaware of discussions or information presented to the VPA Projects Standing Advisory Committee that led it to conclude that the funding gap should cover the external benefits. For the FBDCP, the Committee was not presented with enough information to confidently make the same conclusion. To the Committee's knowledge, the work has simply not been done.

The Committee acknowledges the FBURA is, to some extent, an exceptional case. It accepts the single charge area approach which avoids the need to undertake an apportionment exercise for demand for infrastructure within the FBURA, that is, between the four FBURA precincts. However, there is no supporting information to:

- conclude that capping the DIL appropriately accounts for external demand outside the FBURA while meeting the PE Act's requirement for fairness
- justify such a deviation from the DCP Guidelines.

To overcome this and to meet the PE Act's requirement for fairness and to improve transparency, an external apportionment exercise must be undertaken before the Amendment is finalised. This will be relatively simple for most projects, but for other projects (such as the major drainage and flood mitigation projects) more detailed analysis will be required.

(v) Conclusions and recommendation

The Committee concludes:

- The capped, ‘three-in-one’ DIL rate is appropriate.
- There is no supporting information to suggest the DIL charge rate will unreasonably impact development across the Fishermans Bend Urban Renewal Area.
- Project costs must be apportioned based on projected share of usage by the FBURA community.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **apportion project costs based on the projected share of usage by the future Fishermans Bend Urban Renewal Area community.**

4.2 The Community Infrastructure Levy

(i) Background

The Minister for Planning has issued directions under section 46M of the PE Act, through the DCP Ministerial Direction, which restricts the type of works, services or facilities that can be funded from a DIL. Any unlisted community infrastructure item can only be funded up to a capped amount per dwelling through a Community Infrastructure Levy (CIL).

The exhibited FBDCP did not include a CIL. Rather, it provided that all proposed community infrastructure would be funded through the DIL, including community infrastructure not permitted to be funded from a DIL.

The DCP Ministerial Direction provides:

The Minister may grant an exemption from the need to comply with this Direction in relation to a particular development contributions plan. An exemption may be granted subject to conditions.

(ii) The issues

The issues are whether:

- it is appropriate and justified for the FBDCP to fund community infrastructure from the DIL when this is not permitted under the DCP Ministerial Direction
- an exemption should be sought to allow community infrastructure to be funded by the DIL.

(iii) Evidence and submissions

Some submissions considered the exhibited FBDCP did not comply with the DCP Ministerial Direction because it included community infrastructure projects that were not permitted to be funded through a DIL.

All development contributions experts agreed that charges for community infrastructure should be identified as a separate CIL.

The Proponent acknowledged the discrepancy with the DCP Ministerial Direction, and in the FBDCP (final version) included a CIL in addition to the DIL. It explained:

- it proposed a separate CIL and a reduced DIL amount (by an amount equivalent to the new CIL amount) resulting in no change to the overall DCP levy payable
- construction projects to be funded by the CIL would include Lorimer Art and Cultural Building (L_AC01), Sandridge Art and Cultural Building (S_AC01b), Sandridge Sport and Recreation Building (stage 1) (S_SR01b) and Prohasky Reserve Sports Pavilion (W_OS01b).

Port Phillip City Council requested that funding be collected through the DIL method rather than introducing a CIL so that a higher proportion of contributions collected could be directed to community infrastructure projects. It submitted a CIL was unnecessary because:

- the Minister for Planning has power to exempt a DCP from the need to comply with restrictions on the type of works, services or facilities than can be funded from a DIL
- an exemption would enable the FBDCP DIL to fund community infrastructure.

The Proponent did not oppose the Committee recommending that an exemption be sought from the Minister for Planning to enable all projects to be funded through the DIL, noting that:

- the circumstances of the FBURA are recognised as exceptional
- all DCP experts called by DTP support the seeking of an exemption.

(iv) Discussion

Unless an exemption is granted, the DCP Ministerial Direction does not allow community infrastructure to be funded out of a DIL and the FBDCP will require a separate CIL. The Committee acknowledges that the FBDCP (final version) is now compliant with the DCP Ministerial Direction in this regard as it includes a CIL.

The Committee supports the Proponent requesting that the Minister for Planning grant an exemption from the DCP Ministerial Guidelines (Direction 5) to allow community infrastructure to be funded out of the DIL under the FBDCP. This would avoid the need for a CIL which adds complexity to an already complex funding situation.

Even in standard DCPs, the cap on the CIL applied under the DCP Ministerial Direction generally results in substantial shortfalls in the funding of community infrastructure under a DCP. The FBURA is the largest urban renewal project in Australia and its infrastructure requirements are unprecedented. The additional costs of providing the necessary community infrastructure projects in the FBURA will be very substantial, if these are funded through a separate CIL capped in accordance with the DCP Ministerial Direction, and there is a significant risk that essential community infrastructure will not be delivered.

The Committee therefore considers community infrastructure projects in the FBURA should be funded from the DIL, and this is a clear case where the exercise of the Minister's discretion to grant such an exemption would be appropriate.

However, if the exemption is either not sought or not obtained, the FBDCP (final version) with its separate CIL and DIL amounts remains appropriate and community infrastructure can be funded first from the CIL and augmented by other funding sources. In this respect, the Committee supports the clarifications to funding of community infrastructure in the FBDCP (final version).

(v) Conclusions and informal recommendation

The Committee concludes:

- In the absence of a Ministerial exemption, it is not appropriate for the FBDCP to fund community infrastructure from the DIL when this is not permitted under the DCP Ministerial Direction.
- The introduction of the CIL in the FBDCP (final version) complies with the DCP Ministerial Direction.
- The Minister for Planning would need to approve an exemption from Direction 5 of the DCP Ministerial Direction to enable the identified community infrastructure to be funded through the DIL.
- The FBURA demonstrates exceptional circumstances that justify funding community infrastructure through a DIL rather than the standard CIL required by the DCP Ministerial Direction unless an exemption is granted.

The Committee informally recommends:

The Department of Transport and Planning should request an exemption from Direction 5 of the *Ministerial Direction on the preparation and content of development contributions plans* from the Minister for Planning to allow community infrastructure to be funded by the Development Infrastructure Levy under the Fishermans Bend Development Contributions Plan.

- If the exemption is granted, the Fishermans Bend Development Contribution Plan (final version) should be amended to remove the Community Infrastructure Levy.
- If the exemption is not granted, the Fishermans Bend Development Contribution Plan should be adopted (with a separate Community Infrastructure Levy).

4.3 Costing, contingency and land valuation

4.3.1 Costing and contingency

(i) Background

The exhibited FBDCP explains how projects were costed. It states:

- Road and intersection construction costs have been determined by Slattery (2023).
- Community facility costs have been determined by the Victorian Planning Authority (VPA) Benchmark costing information (July 2020), PlanCost and WT Partnership and escalated to March 2023 dollars by Slattery.
- Open space and recreation costs have been determined by Slattery (2023).
- Local distributed storage construction costs have been determined by GHD on behalf of Melbourne Water. Major drainage and flood mitigation projects have been costed by Melbourne Water.

A contingency of 15% has been applied to all projects, with the exception of Major drainage and flood mitigation projects costed by Melbourne Water.

The FBDCP (version 1) introduced an alternative contingency approach for the major drainage and flood mitigation projects, costed by Melbourne Water. Melbourne Water adopted a probabilistic (P90) contingency derived by conducting a Monte-Carlo simulation based on the base estimate and the contingent risks identified for each project.

‘P90’ refers to a cost estimate with a 90 percent probability of the project being delivered within that cost (and a 10 percent chance of exceeding the estimate). ‘P50’ refers to a cost estimate with a 50 percent probability of the project being delivered within that cost (and a 50 percent chance of exceeding the estimate).

(ii) The issues

The issues are whether the:

- project cost estimates are appropriate
- contingencies applied to projects are appropriate
- exhibited FBDCP land valuations are appropriate.

(iii) Evidence and submissions

Submissions were concerned about the way that FBDCP projects had been costed, including the contingencies applied.

Parties accepted adopting contingencies in the FBDCP but sought to minimise the extent of funds quarantined. They suggested one way to do that is to progress with the detailed design of projects so the project costs could be estimated with a level of certainty and the need for a large contingency was avoided. The Proponent accepted that principle.

The DCP experts did not address the topic of contingencies at the expert meeting. Mr De Silva considered applying a standard 15 percent contingency to project costings was appropriate and said that any increase to a ‘standard’ contingency would require further project specific justification.

Melbourne and Port Phillip City Councils submitted:

- the costings for some projects are too low because essential components have been omitted or do not meet the relevant council’s standards
- the costings for other projects are too high, particularly for the major drainage and flood mitigation projects, due to inadequately progressed design and an excessively conservative contingency.

Melbourne City Council submitted all open space projects should use a 30 percent contingency.

For Melbourne Water drainage projects,⁸ Port Phillip City Council submitted:

The substantial contingencies represent a potential over-costing for these projects that will be crowding out potential funding for many other projects in the DCP. With a total cost of \$302 million, the high levels of contingencies represent significant amounts of the DCP levy that is being sequestered for “just in case” purposes and because insufficient design related issues have been resolved.

Port Phillip City Council described the contingencies as a ‘necessary evil’ and stated there “*should be a limit on the contingencies adopted*” because their effect is to raise funds for an expenditure that may be unnecessary and therefore may impose unnecessary levies. Port Phillip City Council submitted a contingency:

... is an impost on the DCP, and more so when the DCP is a capped levy with limited funding and represents “lazy” money. Moreover, charging a contingency crowds out the

⁸ DR02, DR03, DR05, DR06, DR07, DR09, DR10, DR11, DR12, DR13 and DR14 (Document 104d). DR04 and DR08 were included in the exhibited FBDCP but were later removed and do not appear in the final FBDCP.

delivery of other infrastructure which is funded to a higher degree of confidence and certainty.

Both councils submitted that Melbourne Water should advance the designs of its drainage projects, with Melbourne City Council seeking at least 50 percent design, preferably before the FBDCP is finalised but in any case before the first five-yearly review of the FBDCP. Port Phillip City Council said more design work was needed for both BR01 (Salmon Street bridge) and the Melbourne Water drainage projects before including them in the FBDCP.

Both Councils were critical of Melbourne Water's use of a probabilistic (P90) contingency introduced with FBDCP (version 1).⁹

Melbourne City Council submitted Melbourne Water's use of a P90 contingency was unjustifiably conservative and should be reduced to a P50 contingency regardless of any redesign or re-costing of the projects. Port Phillip City Council submitted a P50 and P90 contingency "*were both too high*" and instead at a maximum, the projects should be subject to a standard contingency rate as applied to other projects in the FBDCP (such as 25 percent).

Melbourne Water submitted:

- using a P90 estimate is conservative but appropriate for crucial infrastructure needed for the safe development of the FBURA
- the same approach is used by the VPA in its Benchmark and Infrastructure Costs Guide (2019)
- as design for the drainage projects progresses, cost estimates will be refined
- if the overall cost of a particular project reduces from the FBDCP, estimates will be identified in the periodic reviews of the FBDCP and if appropriate, excess funds allocated to other projects
- the FBDCP will not collect more than the costs of development infrastructure.

In its closing submission, Melbourne Water committed to advancing the drainage projects to a 50 percent design before the first five-yearly review of the FBDCP.

Mr Quincey, an expert in costing water infrastructure and flood mitigation projects called by Melbourne Water, stated:

- earlier costings of the Melbourne Water projects had used deterministic contingencies of varying percentages depending on the type of infrastructure
- setting a deterministic percentage based solely on the opinion of the person setting the percentage lacks rigour, auditability, and any mathematical basis for the number produced
- using probabilistic modelling to assess the levels of contingency for drainage projects is the preferred method and given that almost all large public and private organisations use probabilistic modelling to assess contingency, in line with best practice
- the risk assessment and modelling process methodology which resulted in the updated (version 1) costings and contingencies for the Melbourne Water drainage projects is appropriate.

In response to Mr Quincey's evidence, Melbourne City Council submitted that while both probabilistic and deterministic contingencies can be used, there is a finite budget for FBDCP projects so it would prefer the same approach to contingencies be taken.

⁹ Document 97

DR01 (Construction of distributed storages across the four precincts) is a large infrastructure item with a high degree of uncertainty in the costs. Melbourne City Council submitted:

- this is consistent with the distributed storages forming part of a complex hybrid system, located within a complicated brownfields context and of a scale not seen before
- costing of DR01 should include appropriate contingencies that account for the considerable uncertainties associated with the project
- it would welcome applying Melbourne Water’s probabilistic contingency assessment method used for other drainage projects to DR01.

In response, the Proponent:

- did not agree to a standard contingency rate of 25 percent for drainage projects (other than DR01)
- agreed to review cost estimates for DR01 closer to construction and include contingencies appropriate to the novelty and complexity of distributed storage (noting that contingencies are already included in road projects)
- accepted that Melbourne Water should advance the designs of all its drainage projects to at least a 50 percent design, preferably before the FBDCP is finalised but in any case to inform the first five-yearly review.

The Proponent provided project sheets for all FBDCP projects which set out the final proposed costings and contingencies (Document 301).

(iv) Discussion

Information presented to the Committee explains how projects were formulated and costed. All work has been undertaken by appropriately qualified professionals. With cost estimates adjusted to March 2023 dollars, the Committee is confident the FBDCP can progress with the project costs specified in the project sheets. To increase confidence in the figures, costings should be updated to the latest benchmark date immediately prior to finalisation of the Amendment.

Although the exhibited FBDCP stated that all projects (except for Melbourne Water major drainage projects) included a 15 percent contingency, in fact a range of contingencies has been applied. This is appropriate because different project types have different risks, and some projects are further advanced in design than others. For example, project sheets for roads and crossings show a level of design detail such that some projects have no contingency.

Where contingencies are included, they mostly appear to be deterministic assessments. As the designs mature, and the delivery agency becomes more confident of the estimate, it may be appropriate to reduce the contingency. The Committee encourages this to the extent possible before the Amendment is finalised, particularly for bridge projects and the Melbourne Water drainage projects (discussed further below). To the extent not possible, this should occur as part of the first review of the FBDCP and thereafter at each review.

With respect to Melbourne Water’s drainage projects, the Committee accepts Mr Quincey’s evidence that the P90 probabilistic contingency is appropriate and in line with best practice. However, the result is that the FBDCP project budget contains some large contingent sums.

The Committee acknowledges the concerns of both Melbourne and Port Phillip City Councils that allocating FBDCP funding to contingencies that may not be required leads, on one view, to other Essential projects (that is, projects eligible for DCP funding) not being funded by the FBDCP. There

was also concern that excessively high contingencies may impose unnecessary levies on developers.

The Committee has taken the approach that selection of projects for the FBDCP must be undertaken by reference to transparent criteria, as set out in the FBDCP (see Chapter 5.1), not by reference to a notional amount ‘available’ through FBDCP funding.

Because the Victorian government has committed to delivering all projects identified in the FB Framework, whether funded by the FBDCP or not, and the DIL is capped, there is no ‘lazy money’ in the FBDCP as submitted by Port Phillip City Council.

The Committee urges Melbourne Water to progress the design of its projects as soon as possible, preferably prior to finalisation of the Amendment. All Melbourne Water projects should be advanced to at least 50 percent design within the first five years of commencement of the Amendment. Any reductions in project costs resulting from this further design work should be considered for allocation to Essential projects that have not been included in the gazetted FBDCP.

For DR01 (Construction of distributed storages across the four precincts), the Committee accepts the 25 percent deterministic contingency, as reflected in the final costing sheet (Document 303). Given the nature of this project, the risks arise largely from the ground and construction works required which will only become better known closer to the actual work being undertaken. This is not a project where contingencies can be significantly reduced at this stage by further design.

(v) Conclusions and recommendations

The Committee concludes:

- The project cost estimates are appropriate.
- The contingencies as recorded in Documents 301 and 303 are appropriate.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **adopt the cost estimates and contingency sums stated in Documents 301 and 303 (updated as necessary).**

4.3.2 Land valuation approach and information about the land acquisition process

(i) Background

The exhibited FBDCP includes property-specific land valuations for all land to be acquired using FBDCP funding. The valuations were prepared using a direct comparison approach (‘before and after’) of the underlying land value based on assumptions which included the land being ripe for development.

(ii) The issues

The issues are whether the exhibited FBDCP:

- includes appropriate land valuations
- provides sufficient information about the land acquisition process.

(iii) Evidence and submissions

The land valuation experts agreed the direct comparison approach was appropriate.

Landowners made submissions about both the method of valuation and property-specific valuations in the exhibited FBDCP. The Proponent provided updated land valuations for several properties after reaching agreement with relevant landowners. These were reflected in the FBDCP (final version).

Several submissions considered the exhibited FBDCP did not provide enough information about how the Victorian government would acquire land identified for public purposes or the valuation methods to be used. They submitted further information should be provided such as:

- step-by-step details of the land acquisition process, including that the Victorian government would first seek to acquire the land by negotiation and if terms (including the price) could not be agreed, the land would be compulsorily acquired under the *Land Acquisition and Compensation Act 1986* (LAC Act)
- the method the government would use to determine the price it would offer under a negotiated purchase.

(iv) Discussion

The Committee accepts the evidence of the land valuation experts that use of the direct comparison approach to land valuation is appropriate. The Committee does not comment on specific land valuations because these were agreed between the Proponent and the relevant landowners.

It is important that potentially affected landowners have access to adequate information about land acquisition processes and valuation methods so that they can clearly understand what to expect. The Committee considers that the FBDCP (final version) contains sufficient information but that further and expanded guidance on the land acquisition process and valuation methods to be used should be provided elsewhere (such as in an updated Factsheet 1 or other guidance material to accompany the FBDCP).

(v) Conclusions and informal recommendation

The Committee concludes:

- The approach to land valuation used in the FBDCP is appropriate.
- The information in the FBDCP (final version) about the land acquisition process is sufficient but other guidance material on the process and valuation methods to be used should be made available.

The Committee informally recommends:

The Department of Transport and Planning should prepare and make available guidance material on the land acquisition process and valuation methods used in the Fishermans Bend Development Contributions Plan.

4.4 Applying the Development Infrastructure Levy

(i) Background

The exhibited FBDCP applies the DIL to all dwellings delivered by the development, that is, the base permitted density dwellings and the OSU uplift dwellings.

(ii) The issue

The issue is whether it is appropriate to apply the DIL to OSU uplift dwellings.

(iii) Evidence and submissions

Kador Group submitted the DIL should not apply to additional dwellings enabled by the OSU because it would defeat the intent of the uplift.

Melbourne City Council submitted the DIL should be applied to all development, including OSU uplift dwellings, unless there are good reasons for a particular category to be excluded.

The Proponent considered it is appropriate to apply the DIL to OSU dwellings because:

- all dwellings create demand for services and infrastructure
- the DIL applies to all dwellings regardless of tenure or dwelling type
- the FBDCP includes exemptions for schools and social housing in accordance with the DCP Ministerial Direction.

Mr McNeill, a DCP expert who gave evidence for Melbourne City Council, supported applying the DIL to OSU uplift dwellings because they are additional demand units and should therefore be liable to pay development contributions.

(iv) Discussion

The Committee supports the premise that all new development which produces additional demand units should contribute towards the cost of development infrastructure, subject to the exemptions as set out in the DCP Ministerial Direction.

The DIL should be payable on all OSU uplift dwellings because the additional population will generate additional demands on infrastructure and services. Issues around how the OSU operates and whether it will provide a genuine incentive for developers to opt in to the scheme are discussed in Chapter 6. As discussed, the incentive created by the OSU is based on a separate calculation and does not rely on an exemption from paying development contributions on OSU uplift dwellings.

(v) Conclusion

The Committee concludes the Development Infrastructure Levy should apply to OSU uplift dwellings.

4.5 Works-in-kind provisions

(i) The issue

The issue is whether the works-in-kind provisions specified in the FBDCP are appropriate.

(ii) Evidence and submissions

Submitters generally supported the FBDCP works-in-kind provisions. The Property Council of Australia submitted that providing for works-in-kind in the FBDCP is highly desirable because it provides transparency to developers about how their contributions are used.

Several submitters sought further clarification of works-in-kind mechanisms in the FBDCP in relation to:

- land valuations
- process of agreement with the Collecting and Development Agencies
- timing for payment of any contributions.

Melbourne Water requested that FBDCP section 5.3.3 be revised to specify:

- Only works or land identified in the DCP can be provided in lieu.
- The Development Agency must provide Melbourne Water with an opportunity to review and provide comments on the detailed design of any proposed works in kind that has the potential to affect Melbourne Water's functions as the floodplain manager.

Melbourne Water did not support use of the word 'should' to avoid any risks that works adjacent to FBDCP projects could be included as works in lieu.

Melbourne City Council submitted that the Development Agency and future asset owner are unlikely to ever be the same agency and that any agreement for works-in-kind should provide for approval of the design of works by the future asset owner, and the future asset owner should be a party to any section 173 agreement for works-in-kind.

The Proponent supported requests to clarify and update works-in-kind provisions at sections 5.3.3 and 5.3.5 of the FBDCP.

(iii) Discussion

The Committee supports providing clarification to works-in-kind provisions in the FBDCP. As the Development Agency for the FBDCP is the Victorian government and the councils or Melbourne Water will often be the future infrastructure asset owners, it is important future asset owners are party to agreements for works-in-kind and have a role in approving detailed design of works.

The revised wording proposed by the Proponent in sections 5.3.3 and 5.3.5 of the FBDCP (final version) makes clear that:

- future asset owners must agree to works-in-kind arrangements, including the scope and detailed design of works
- the agreement securing the works-in-kind will include processes for approval of the design of works by both the Development Agency and future asset owner
- works-in-kind will not necessarily have to occur through a permit application process
- details of any reimbursement for works-in-kind, including staging and timing of payment, will be negotiated with the Collecting Agency and the Development Agency.

(iv) Conclusion

The Committee concludes the works-in-kind provisions are generally appropriate as shown in the FBDCP (final version).

4.6 DCP timeframe and review

(i) Background

The FBDCP proposes a 30-year FBDCP timeframe with reviews every five years.

The PE Act does not place any limit on the timeframe for a DCP.

The DCP Guidelines state:

DCPs must have a reasonable time horizon

A DCP must include a time horizon. This time horizon should not exceed 20 to 25 years. If the time horizon is not reasonable, new development in the early years will be paying for infrastructure that will not be delivered until many years later. This is inequitable and unreasonable.

The DCP Guidelines explain that in setting a timeframe it is important to consider:

- the time horizon for strategic planning, infrastructure provision and funding
- the expected rate of new development, and
- the degree of certainty in projecting growth.

(ii) The issues

The issues are whether:

- the proposed 30-year FBDCP timeframe is appropriate
- it is appropriate to review the FBDCP every five years
- the FBDCP includes enough guidance regarding the scope for reviewing the FBDCP every five years.

(iii) Evidence and submissions

One submission considered the FBDCP delivery timeframe of 2055:

- did not offer a reasonable nexus between development contributions and infrastructure upgrades, and would likely benefit future rather than current landowners
- was outside the time horizon specified in the DCP Guidelines and was therefore inequitable and unreasonable.

The Proponent submitted that the timeframe responds to the FB Framework targets and accounts for changes in development activity arising from the COVID-19 pandemic.

No DCP expert raised concern about the proposed 30-year timeframe for the FBDCP.

Mr Ainsaar said there is no limit on the timeframe for a DCP but a DCP must specify a timeframe. He considered the timeframe of 30 years reasonable because:

- it is generally in line with the FB Framework
- although it is a significant planning period and longer than typical for a DCP, it reflects the significant scale of the FBURA, the expected rate of development and the extensive infrastructure to be delivered.

Mr De Silva stated that while a 20-year timeframe is often associated with a greenfield DCP, the timeframe must be informed by and respond to the development context. In this case, 30 years generally reflects the scale of the FBURA, the mix of funding sources and that the FBDCP will have regular periodic reviews.

Mr De Silva supported reviewing the FBDCP every five years and noted the need to consider a range of factors including:

- a review of projects and costs, and associated charges
- location and type of approvals
- location and rate of development activity
- changes required because of changes in policy.

Mr Ainsaar considered the exhibited review provisions should be strengthened and clarified given the importance and scale of the FBDCP area. He said it would be useful to state that the review should include:

- the validity of the development forecasts and expected yields
- the achieved rate of development having regard to the FBDCP timeframe
- the infrastructure list and estimated infrastructure costs having regard to actual outcomes
- the operation of the OSU.

Mr Hrelja agreed in principle with Mr Ainsaar but said it was more important to develop an accurate and comprehensive estimate of FBDCP levy income, funding gap and funding strategy for all projects at the outset rather than leaving this for a review.

The Proponent accepted Mr Ainsaar's recommendation that the review process could be strengthened and proposed to adopt wording suggested by Melbourne City Council. The FBDCP final version includes the following new content in Section 5.6:

Reviews of the DCP will include a review of relevant policy and project requirements and costs as well as associated charges and extent of development activity.

Reviews of the DCP may include:

- achieved versus anticipated development yield (both type and quantum);
- achieved versus anticipated resident and worker population;
- uptake of the OSU;
- additional development yield from the OSU/SHU (as committed to elsewhere in the DCP);
- updated population forecasts;
- updated information about the infrastructure needs of the existing and forecast population;
- any developments in relation to the provision of catalytic infrastructure;
- any difficulties experienced with the delivery of local infrastructure via developer works;
- review of drainage infrastructure, including distributed storage and major drainage infrastructure;
- updated confidence in cost estimates and the potential to update contingencies included in cost estimates;
- refinement of design for DCP projects;
- the implications of approved or proposed precinct infrastructure plans;
- the implications of approved incorporated plans;
- consideration of input from Collection Agency, Development Agency and relevant asset owners;
- other relevant matters.

(iv) Discussion

While the DCP Guidelines advise caution in setting very long-term horizons for reasons of equity, the Committee agrees with Mr Ainsaar and Mr De Silva that it is appropriate to apply a 30-year timeframe to the FBDCP. This is consistent with the FB Framework and is appropriate for the scale of redevelopment and infrastructure proposed for the FBURA.

The PE Act requires collecting and development agencies to report annually to the Minister for Planning on DCP levies received and their use. The PE Act does not, however, specify requirements for reviewing DCPs. The DCP Guidelines recommend DCPs are reviewed every three years to identify any changes required resulting from:

- a review of the municipality's strategic planning framework
- an unexpected change in planning circumstances related to development or policy

- a mismatch between the actual/emerging needs of the community compared to the expected needs outlined in the DCP, and
- a change in the expected timing and quantum of new development that formed the basis of the approved DCP.

The Committee supports a review of the FBDCP every five years, and agrees with Mr Ainsaar that the review provisions should be strengthened and clarified given:

- the scale and cost of development and infrastructure proposed within the FBURA
- the long-term planning horizon
- the number of stakeholders involved in developing and providing infrastructure within the FBURA.

The Committee also supports the scope of review proposed by Melbourne City Council. It covers the matters suggested by the DCP Guidelines and, while detailed, appropriately clarifies tasks that are likely to be required for each review without mandating. These matters should be included in the FBDCP.

(v) Conclusions

The Committee concludes:

- The proposed 30-year timeframe for the FBDCP is appropriate.
- It is appropriate to review the FBDCP every five years.
- The five-yearly reviews should be guided by more detailed guidance regarding the scope of such reviews.

4.7 Interim contributions

(i) Background

Since the introduction of Amendment GC81, development infrastructure contributions and open space contributions have been collected by the VPA through interim arrangements, either through voluntary agreements under section 173 of the PE Act or site-specific planning controls. These are referred to as ‘interim contributions’.

These arrangements typically identify the contributions rate payable and indexation provisions, payment timing, and a schedule of infrastructure to be funded by contributions. Development approvals may also require that the development contributions agreement includes a schedule of specific infrastructure projects (land or construction) to be provided by the landowner as works-in-kind, where those projects are considered to provide a broader precinct function.

The interim contribution rates are less than the DIL rate proposed under the FBDCP. At the time public consultation on the draft Amendment commenced, the interim charges were:

- \$27,968 per dwelling; and
- \$231 per sqm of non-residential floorspace¹⁰

The updated interim charge includes a \$3,000 charge for major drainage and flood mitigation works but does not include a public open space contribution. The existing 8 percent public open space will remain a requirement under clause 53.01 until gazettal of the Amendment.

According to Document 74, as of 31 March 2024:

¹⁰ Document 74

- a total of \$46,410,152 had been received
- a total of \$10,160,000 had been allocated towards the delivery of Kirrip Park and associated streetscape works
- the total balance held by the VPA is \$36,250,152.

The Proponent advised that all unspent contributions held by the VPA would be directed towards delivering FBDCP projects.

(ii) The issues

The issues are whether the FBDCP should:

- exempt development undertaken in accordance with pre-existing approvals where interim development contributions have been applied
- include transitional provisions to confirm that interim contribution rates will continue to apply to development applications made before the Amendment gazettal date
- enable a cash refund or development credit for land or works contributions already made in the FBURA as part of prior development approvals
- include land and construction costs associated with road project W_TR05 (Tarver Street extension east) at 19 Salmon Street, Port Melbourne.

(iii) Evidence and submissions

Pre-existing approvals

Some submissions requested that the FBDCP be amended to:

- confirm that development undertaken in accordance with pre-existing approvals subject to interim contribution rates will be exempt from paying the DIL
- confirm that approved applications that have not yet executed a section 173 agreement to facilitate interim contributions will be exempt from paying the DIL
- include transitional provisions to apply existing interim contribution rates to applications submitted after exhibition of the FBDCP but before it is gazetted.

It was submitted this would ensure procedural fairness for current development applications that were costed and pursued under pre FBDCP rates.

The Proponent clarified that the exhibited DCPO exempts land or development which has an existing agreement requiring the payment of development contributions or the provision of community or physical infrastructure (works-in-kind).

Mr De Silva was satisfied that the approach adopted to use collected funds is appropriate and will not lead to increased charges being paid by landowners or developers.

All DCP experts agreed it would be appropriate to include explanatory information about interim contributions in the FBDCP to improve transparency.

R.Corporation Pty Ltd submitted:

- where an authorisation has been granted before the Amendment, even where additional demand units are added (through an amendment to the authorisation), the entire authorisation should proceed under the interim contributions arrangements and should not be subject to the DIL
- if additional demand units are added after the commencement of the Amendment, there is the potential for 'double dipping' if open space contributions have already been paid

under Clause 53.01 (where contributions are collected as a percentage of site value, rather than per approved dwelling) because the FBDCP DIL levy includes an open space contributions charge (part of the three-in-one approach)

- this would be unfair.

Melbourne and Port Phillip Councils submitted additional demand units under amended pre-Amendment authorisations should be subject to the DIL where there is no danger of double dipping.

The Proponent agreed it is not fair and reasonable to charge twice for open space contributions and this potentially could occur if demand units added after the commencement of the Amendment attract the DIL. However, it submitted:

- that most existing SCO schedules have a per dwelling rate for open space and any increase in demand units would be covered by the existing provisions in the SCO schedule
- where this is not the case, the process for amending the SCO schedules (which would be required for any amendment that increases demand units) provides an opportunity to adjust development contributions accordingly
- there is one existing permit in Lorimer and six in Port Phillip that have made provision for open space contributions under Clause 53.01
- if these existing permits were amended for additional demand units and the DIL does not apply to those additional demand units there will be limited impact because:
 - there is a limited number of these permits
 - it is unclear how many of them will be acted on and would seek to increase demand units
- the potential revenue lost is outweighed by the policy intent to allow developers with existing permits to act on them consistent with the contribution regime of that time.

The Proponent supported clarifying exemptions provisions in the FBDCP section 5.3.6 and the relevant DCPO Schedules for development with existing approvals. It did not support extending exemption provisions to apply interim rates to new development applications without existing approvals or agreements requiring development contributions.

The Proponent proposed the following drafting for Clause 4.0 of the DCPO Schedules (final version):

The following land or development is exempt from payment of development contributions:

...

- Land which is, or has been, developed in accordance with an existing authorisation (including an Incorporated Document incorporated into this Scheme) issued or approved before the commencement of GC224 if that authorisation requires the payment of development contributions or the provision of community or physical infrastructure (other than laneways and roads or other works necessary as a result of the grant of the relevant approval). If the land is developed in accordance with a new authorisation issued or approved after the commencement of Amendment GC224, then this exemption does not apply. Where this exemption applies, payment of development contributions or provision of infrastructure is still required in accordance with the relevant authorisation.

19 Salmon Street

The Proponent proposed to revise the exhibited FBDCP to reduce the project extent of road project W_TR05 by deleting land and construction costs from 19 Salmon Street (parcel 58) noting these works will be provided under existing agreements.¹¹

In applying principles of fairness, Mr Milner, a planning expert called by the Gadens Clients, recommended the owner of 19 Salmon Street be entitled to either a cash refund or development credit for contributions to land and works for the Tarver Street widening and open space enhancement (W_TR05) as exhibited.

Prime Port Melbourne Pty Ltd, the owner of 19 Salmon Street, requested the land and works for W_TR05 be included in the FBDCP and that it be provided with a cash refund or development credit for land and works already contributed. It submitted the Tarver Street extension on 19 Salmon Street will provide an important mid-block link, contributing to traffic, pedestrian and cyclist linkages in the FBURA and would improve the public realm.

The Proponent submitted that there was no proper basis for Prime Port Melbourne's request. It added:

- landowners must have made a judgement about development costs when proceeding with a development application
- landowners should not be permitted to now seek to retrospectively apply the FBDCP to obtain further advantage by recovering the cost of what had been given willingly
- an additional point should be added to section 3.1.1 of the FBDCP to clarify that the following transport projects are not included in the FBDCP:
 - Land or construction projects where there is an existing development approval requiring the project to be delivered at no cost to government.

(iv) Discussion

Pre-existing approvals

The Committee appreciates the extensive information provided by the Proponent to explain interim contributions collected to date.

It is fair and equitable for land with pre-existing authorisations requiring the payment of development contributions to be exempt from payment of the DIL, and that contributions under those approvals should continue to be paid in accordance with relevant existing agreements.

The Committee does not support interim provisions that extend an exemption to new applications made since exhibition of the Amendment but prior to its approval. The exhibited FBDCP rates are readily available and should be factored into development decisions for new applications.

The Committee acknowledges the potential for 'double dipping' if any of the pre-Amendment authorisations collected open space contributions through Clause 53.01 and were based on the value of the land to be developed (rather than the demand units allowed under the original permission). Given the very limited situations where this could occur, the Committee agrees with the Proponent that applying the principle that pre-Amendment authorisations can proceed based on the contributions arrangements already in place outweighs the potential loss in revenue by not applying the DIL to these additional demand units. The Committee considers the drafting that

¹¹ Document 94

would be required to avoid ‘double dipping’ would be complex and could lead to ambiguities about what is and what is not exempt, difficulties in administering the provision, and disputes in particular cases. This is to be avoided. The Committee supports the wording of Clause 4.0 (final version) of the relevant DCPO Schedules.

However, where an application has not been approved before commencement of the Amendment, the Committee considers that any subsequent approval should be subject to the DIL. The existing interim contributions rates were not linked to a detailed infrastructure plan, and it is accepted that they would not generate sufficient funding to pay for essential infrastructure in the FBURA. Developers have known the expected quantum of development contributions likely under the FBDCP for some time and are responsible for factoring these costs into decisions about feasibility. In the unlikely event that they have not done so, they have an opportunity to amend live applications to take account of the charges proposed under the FBDCP or withdraw applications if they are not viable.

19 Salmon Street

The Committee considers that credits or refunds should generally not be given for contributions already made, either land or works, which are normally developer funded and do not warrant cost sharing arrangements. These are standard development costs associated with providing infrastructure that is for the benefit of the residents of the new development, rather than for the benefit of the wider FBURA. The Committee supports clarifying this position through the additional point at section 3.1.1 of the FBDCP as proposed by the Proponent in the FBDCP (final version).

However, the Committee has concerns with removing the land and construction costs for the Tarver Street widening at 19 Salmon Street from the FBDCP. The land and works at 19 Salmon Street already contributed will form part of a new mid-block street which is for critical active transport, linear open space and a biodiversity link through the area.¹² The project is not standard developer works and will have a wider benefit. It should therefore remain in the FBDCP. Any subsequent application for reimbursement would be subject to the works-in-kind reimbursement provisions in section 5.3.5 of the FBDCP.

(v) Conclusions and recommendations

The Committee concludes the FBDCP should:

- Exempt development of land in accordance with pre-existing approvals where interim development contributions have been applied because this would result in a fair and equitable outcome.
- Not include transitional provisions that apply interim contributions rates to development applications made (but not determined) before the Amendment commences.
- Not enable a cash refund or development credit for land or works contributions already made in the FBURA as part of existing development approvals where they are normal to the development process, do not warrant cost sharing arrangements and are not included as a project in the FBDCP.
- Retain land and construction costs associated with W_TR05 project at 19 Salmon Street, Port Melbourne (as exhibited).

¹² Document 151a

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- include land and construction costs associated with W_TR05 project at 19 Salmon Street, Port Melbourne (as exhibited).

4.8 Governance and finance

(i) The issues

The issues are whether a Governance (Implementation) and Funding (Finance) Strategy should be prepared, and if so:

- whether they should be a single document or two separate documents
- whether they should be incorporated into the FBDCP
- what content they should contain
- whether they should be prepared as part of the Amendment.

(ii) Evidence and submissions

The Committee for Melbourne and the Urban Development Institute of Australia each sought a commitment to clear funding and delivery timeframes to give the development sector more certainty and stimulate investment in the FBURA.

Melbourne and Port Phillip City Councils requested a governance and implementation strategy and comprehensive funding and finance strategy be prepared alongside the FBDCP. They considered these strategies necessary to renew Fishermans Bend successfully and requested they:

- clearly identify and document the pathway and commitment to delivering infrastructure items that are excluded from the FBDCP
- identify the role of all agencies in prioritising, planning, designing and delivering infrastructure
- identify the role of each council in approving future council-owned assets.

Port Phillip City Council specifically sought:

- funding and updated timeframes for delivering catalytic infrastructure, including the Fishermans Bend tram and Melbourne Metro 2
- an updated Fishermans Bend Partnership Agreement and work program commitments with key stakeholders that clarify the approach to integrated planning and delivery.

In the development contributions experts' joint statement:

- all agreed the FBDCP should be accompanied by documents such as a governance strategy and funding strategy that will play an important role in the funding approach
- four experts agreed the strategies should be prepared after the FBDCP is approved, and in consultation with key stakeholders as appropriate
- two experts considered there is an information gap between the FBDCP and the funding strategy factsheet, and it is unclear why some funding strategy decisions have been made.

Mr McNeill recommended the strategies clearly set out:

- the broader organisational framework for delivering infrastructure and development in the FBURA

- how projects referenced in the FBDCP but not funded (in full or in part) in the FBDCP are to be delivered, who is responsible for funding those projects, when they are to be delivered and to what design standards, who is responsible for delivery, and the role that councils and government agencies are to play in delivery and approval
- the process for delivering works-in-kind projects and the role Melbourne City Council would play in approving and authorising such projects
- an equity mechanism or criterion to ensure fair distribution of revenue between FBURA precincts, local government areas and infrastructure projects (by type) while having regard for the rate of development occurring in a governance and implementation strategy.

Mr De Silva recommended the Proponent develop the scope of the governance and implementation strategy in consultation with Melbourne City Council, Port Phillip City Council and key delivery partners after the FBDCP is approved.

At the Hearing, there were differing views as to whether these strategies belonged within or outside the FBDCP.

The Proponent did not support a governance and implementation strategy or a funding and finance strategy. It submitted:

- the FBDCP content complies with the requirements of section 46K of the PE Act
- section 46QB requires DCP funds to be spent only on DCP projects
- it is progressing work separately with Councils and Melbourne Water to develop a delivery agreement as part of the ongoing partnership approach to delivering infrastructure in the FBURA.

(iii) Discussion

The FB Framework has an ambitious vision that needs to deliver a significant amount of infrastructure to achieve the intended outcomes. There is generally a correlation between certainty in how and when infrastructure will be developed and decisions by developers about if or when to develop. However, the alternative methodology adopted in the preparation of the FBDCP (including the capped DIL that does not result from total infrastructure cost and apportionment) does not have the transparency evident in a DCP that applies a conventional DCP methodology.

Authorities and developers would benefit from a governance and finance strategy that helps clarify how the timing and delivery of projects in the FBDCP relates to those that have been excluded. This includes Catalytic infrastructure projects which will influence when and how land is developed in the FBURA, other Victorian government (or other externally) funded projects identified in the FB Framework, and open space to be delivered by the OSU.

The Committee considers the following key principles should be included in the strategy (regardless of whether they are also included in the FBDCP):

- the Victorian government commitment to delivering all projects identified in the FB Framework regardless of whether they are funded by the FBDCP
- timely delivery of the Fishermans Bend tram and Metro 2 (and associated infrastructure) is fundamentally important to achieving the vision of the FB Framework, and without which realisation of the aspirations of the FB Framework may be at risk
- any OSU parks not delivered using the OSU will be delivered by the Victorian government.

Ideally, the strategy should include indicative delivery timings and funding sources (committed and potential) for each FB Framework project.

It is unnecessary for the strategy to be included in the FBDCP as it would govern delivery of projects sitting outside the FBDCP.

Ideally, the Governance (Implementation) and Funding (Finance) Strategy would accompany the Amendment. If this is not possible, it should be developed and finalised as soon as possible after the Amendment is gazetted.

(iv) Conclusions and informal recommendation

The Committee concludes:

- A Governance (Implementation) and Funding (Finance) Strategy should be prepared as soon as possible, but without delaying the Amendment.
- The Governance (Implementation) and Funding (Finance) Strategy should include the following key principles:
 - the Victorian government is committed to delivering all projects identified in the FB Framework regardless of whether they are funded by the FBDCP or other means
 - the timely delivery of the Fishermans Bend tram and Metro 2 (and associated infrastructure) is fundamentally important to achieving the vision of the FB Framework, and without which realisation of the aspirations of the FB Framework may be at risk
 - any open space uplift parks not delivered using the open space uplift mechanism will be delivered by the Victorian government.
- The Governance (Implementation) and Funding (Finance) Strategy should be a single document that clearly distinguishes between the implementation and finance elements.
- The Governance (Implementation) and Funding (Finance) Strategy should not be included in the FBDCP.

The Committee informally recommends:

The Department of Transport and Planning should prepare a Governance (Implementation) and Funding (Finance) Strategy that includes the following key principles:

- **The Victorian government is committed to delivering all projects identified in the Fishermans Bend Framework regardless of whether they are funded by the Fishermans Bend Development Contributions Plan or other means.**
- **The timely delivery of the Fishermans Bend tram and Metro 2 (and associated infrastructure) is fundamentally important to achieving the vision of the Fishermans Bend Framework, and without which realisation of the aspirations of the Fishermans Bend Framework may be at risk.**
- **Any open space uplift parks not delivered using the open space uplift mechanism will be delivered by the Victorian government.**

5 Fishermans Bend Development Contributions Plan projects

5.1 Project selection

(i) Background

Section 4K of the PE Act regulates the contents of a DCP but does not specify how projects must be selected. The DCP Ministerial Direction sets out works, services or facilities that may be funded from a DIL, including:

- Acquisition of land for:
 - roads
 - public transport corridors
 - drainage
 - public open space
 - community facilities, including but not limited to, those listed under clause 5(f).
- Construction of roads, including the construction of bicycle and foot paths, and traffic management and control devices.
- Construction of public transport infrastructure, including fixed rail infrastructure, railway stations, bus stops and tram stops.
- Basic improvements to public open space, including earthworks, landscaping, fencing, seating and playground equipment.
- Drainage works.
- Buildings and works for or associated with the construction of:
 - a maternal and child health care centre
 - a child care centre
 - a kindergarten, or
 - any centre which provides these facilities in combination.

As outlined in chapter 2.2, the exhibited FBDCP:

- funds only 'Essential' infrastructure
- excludes 'Catalytic' infrastructure – to be funded by the Victorian government
- excludes 'Local' infrastructure – to be delivered by works normal to development or funded by local government.

In addition, the exhibited FBDCP at section 2.5 stated projects were selected having regard to the following considerations:

- they are essential to the delivery of the urban structure outlined in the Framework
- their major contribution to the safety of the public
- they have demonstrated capacity to leverage and enable development activity
- the reasonable distribution of projects across the affected area
- the scale of the project.

The infrastructure projects that have been included in the FBDCP were said to have the following characteristics:

- they reflect the vision and strategic aspirations as expressed in the Framework
- they are essential to the health, safety, and wellbeing of the community
- they will be used by a broad cross-section of the community
- they are not recurrent items.

(ii) The issue

The issue is whether the methodology used to select projects for inclusion in the FBDCP is appropriate.

(iii) Evidence and submissions

Melbourne City Council and Port Phillip City Council were concerned with the lack of transparency about the methodology used to select projects for inclusion in the FBDCP and whether the methodology was appropriate for project selection.

Mr DeSilva explained the high-level infrastructure classifications of Catalytic, Essential and Local were identified to recognise the varying types and roles of infrastructure to assist in the selection of projects. This was considered important because not all infrastructure projects could reasonably be included in the FBDCP due to the vast overall number of projects and associated costs.

Mr Hrelja said the distinction between Essential and Local infrastructure is not clear, nor why the exhibited FBDCP does not include all local infrastructure where delivery co-ordination, agency delivery and cost apportionment is needed. He suggested an alternative approach to classification.

Port Phillip City Council submitted that the high-level categorisation was “*misconceived*”, and that all Local infrastructure is essential in the ordinary sense of the word as it is required to deliver the FB Framework’s vision.

Melbourne City Council submitted although the FBDCP stated there were three categories of infrastructure, there were, in fact, four: Catalytic, Local, Essential (funded by the DCP) and Essential (not funded by the DCP).

Mr McNeill requested further details of the project selection methodology to understand:

- how projects were classified as Catalytic, Essential or Local
- which Essential infrastructure was included in the FBDCP and which was not.

The Proponent explained the selection process did not start with adoption of the high-level categorisation process. Instead it commenced with a bottom-up approach, whereby all projects irrespective of the type and classification, but excluding future Victorian government funded construction projects, were identified.

Ms Fisher provided detail about project selection. She said it was an iterative process continually refined by:

- Project scope and type – having regard to the desire to implement a single consolidated levy for infrastructure including open space and drainage.
- Quantum of projects and the total cost – it was acknowledged that all potential infrastructure projects could not be funded directly from the DCP.

Mr DeSilva supported the guiding principles for project selection set out in section 2.5 of the exhibited FBDCP.

The Proponent tabled Document 129, in response to a Direction from the Committee, which stepped through the project identification, classification, selection and the prioritisation process.

Melbourne City Council submitted:

All of the experts accepted the project selection criteria in the DCP and Document 129 as fundamentally sound. However, the documentation and evidence before the SAC indicates

that those criteria played a confined role in the project selection process, and that many projects that met the criteria were excluded based upon a “prioritisation” process which in some cases simply amounted to a direction from the Taskforce that a particular project be excluded.

Mr Ainsaar said the FBDCP projects are strategically justified, generally accord with background technical reports, the FB Framework Plan and the DCP Ministerial Direction and DCP Guidelines (subject to consideration of the CIL).

The Proponent submitted there was broad agreement that projects in the FBDCP (final version) were suitable for inclusion, both in terms of merit and eligibility. It identified three outstanding issues:

- whether public transport land should be included
- Port Phillip City Council’s proposal to remove the Salmon Street bridge
- a proposal by Goodman Ltd (Goodman) to remove four road projects.

Some submissions requested further refinement of the FBDCP projects list by including some additional projects and excluding other projects.

The Proponent said:

- funding decisions have been influenced by the practical reality that there is a limit on the amount of money that the Victorian government can contribute
- projects have been prioritised where they are considered to deliver the most benefit
- many road and intersection projects sought by Port Phillip City Council are local projects which do not serve a broad strategic function, albeit they may have sufficient nexus with the FBURA to justify funding under the FBDCP
- the ability to fund the arts and cultural hubs and sports and recreation projects is severely constrained by the need to rely on a capped CIL and they are considered likely suitable candidates for external funding from other sources.

The Proponent referred to the need for decisions about how funding should be assigned and that this is “*ultimately a political, rather than a planning, judgment*”.

At the Hearing, the Proponent accepted that in some “*loose sense*” all infrastructure specified in the FB Framework is essential, in that it should be provided and that ‘essential’ is a value laden term. It proposed to amend reference to the three higher order categories in the final version FBDCP to refer to four categories of infrastructure:

- Catalytic infrastructure
- DCP and OSU funded infrastructure
- Developer works
- Other infrastructure.

Other infrastructure would include:

- essential infrastructure that has not been included in the DCP (that is, it is not ‘DCP or OSU funded infrastructure’) because its inclusion in the DCP would make the DCP too expensive
- infrastructure that is typically provided by local government over time in line with strategic and budget priorities.

The Proponent proposed to clarify in the FBDCP that ‘Other infrastructure’ would be funded by a range of sources, including Commonwealth, Victorian and local government.

(iv) Discussion

There is no set methodology for selecting projects to include in a DCP.

The DCP Ministerial Guideline sets out works, services and facilities that may be funded by a DCP. All projects in the FBDCP are consistent with the DCP Ministerial Guideline.

The DCP Guidelines provide that a DCP must be strategically justified and linked to the State or local planning policy framework in the planning scheme. It says infrastructure projects can be included in a DCP if they will be used by the future community of an area, including new and existing development. New development does not have to trigger the need for new infrastructure, but it can only be charged in accordance with its projected share of usage. In this way, nexus and need can be established between new development and the need for new infrastructure.

Reflecting the DCP Guidelines, the Committee has considered the methodology employed for project selection in terms of whether it:

- allows for a selection of projects that are strategically justified through the FB Framework
- can demonstrate both need and nexus.

The Committee agrees with submissions that the exhibited Amendment did not include sufficient information to understand, at a detailed level, how some of the projects were classified and selected for inclusion in the FBDCP. The Proponent provided a significant volume of information throughout the Hearing process to clarify the methodology, and this has assisted the Committee.

The key matter for the Committee is whether the methodology employed has resulted in a list of projects that is consistent with the principles of need and nexus and is therefore appropriate for inclusion in the FBDCP.

Generally, the Committee is satisfied that the methodology identified relevant criteria for project selection, which are broadly outlined in section 2.5 of the FBDCP. These criteria ensure that projects included in the FBDCP satisfy both need and nexus (subject to recommended modifications to the FBDCP as outlined in the following chapters).

However, in addition to these considerations, funding decisions were made about various projects for reasons that went beyond planning considerations (which the Proponent acknowledged). Higher level classifications, while not necessary, help provide transparency around these other considerations, making it clear how the Victorian government proposes the different classes of infrastructure should be funded.

The Committee accepts that given the scale of infrastructure projects identified for the FBURA in the FB Framework, not all of them could be included in the FBDCP without impacting development feasibility, even though all might technically qualify for inclusion in a DCP. That said, the Committee refers to the role of the capped levy which is intended to protect development feasibility. If additional projects are included in the FBDCP now, it is the funding gap which will increase. Including additional projects would have no impact on development feasibility.

It is beyond the scope of the Committee's task to make a recommendation as to whether the size of the funding gap is appropriate or whether projects should be 'traded' for one another to meet a specified funding figure existing outside the FBDCP.

The Committee considers requests for project inclusions or exclusions in the following chapters based on whether the methodology, including guiding principles and classifications, have been consistently applied to infrastructure projects and not on a cost basis.

Refinements to the infrastructure classifications proposed by the Proponent in the FBDCP (final version) are supported as they provide greater clarity about the breadth of infrastructure required in the FBURA and the range of ways in which it will be funded. The proposed wording is more transparent and reduces the inclination to view the classifications as indicating a level of hierarchy or importance. The Committee is therefore comfortable that the requirements for transparency of project selection have been met by the FBDCP (final version).

(v) Conclusions

The Committee concludes:

- The methodology used to select projects to include in the FBDCP is appropriate.
- Changes to wording proposed in the FBDCP (final version) to clarify project classification and selection provide greater transparency and are supported.

5.2 Project scope and project sheets

(i) The issues

The issues are whether:

- project sheets are required for inclusion in the FBDCP
- the project sheets provided on 24 January 2025 are sufficiently detailed to allow for an adequate understanding of project scope and associated costs.

(ii) Evidence and submissions

Melbourne City Council submitted that further information was required to provide greater certainty about the scope of FBDCP projects, including detailed design and costings. It submitted it was too difficult to piece together information from numerous documents and hampered the ability to provide meaningful feedback on the scope and costing of FBDCP projects.

Port Phillip City Council submitted there has been a failure to properly scope infrastructure, particularly open space embellishment. It sought project sheets for each project as part of the approved FBDCP.

All DCP experts agreed attaching individual project sheets setting out costing detail and project scope, including cross-sections that were the basis of costings for road projects, would improve the FBDCP.

In accordance with a Committee Direction, the Proponent provided project sheets for each project in the FBDCP. They included a broad description of the project, categorisation, land and works costs, contingencies (where applicable) and other fees (where applicable). Cross sections were included for road projects. Major drainage projects presented an overall cost only, based on an estimate from Melbourne Water prepared by WT Partnership.

Melbourne City Council acknowledged the project sheets but maintained its position that more fundamental updates are required before the FBDCP is finalised. It said the project sheets should be 'bespoke' rather than generic based on approximate areas and costs per square metre. It sought a 'project sheet package' which would include:

- an explanation that project sheets are subject to further consultation, indicative and subject to change
- more detail to explain the scope of each project
- high resolution diagrams
- the source of scope and costings.

It emphasised the importance of project sheets in facilitating the delivery of works-in-kind projects and to enable the future asset owner to understand the infrastructure for which it will take responsibility. Melbourne City Council was concerned that the project sheets:

- still required the reader to refer to other documents to understand the project scope
- did not adequately address distributed storage elements required for road projects.

Melbourne City Council sought several specific changes to the project sheets:

- include a 30 percent contingency for all open space projects
- L_TR01 - replace Port Phillip City Council palette with Melbourne Central Business District palette and update project sheet and costs accordingly
- L_IT01 – make clear it includes a signalised pedestrian crossing of Lorimer Street
- L_IT01 and L_IT03 – amend descriptions to include infrastructure locations and reference to ‘signalised pedestrian crossing’ (intersection type 9)
- DR01 – corrections, inclusion of source documents and a detailed description of the scope of works comprising the project in each municipality
- DR02 - DR14 – replace the drainage summary table with costs sheets included in Document 97 (Proponent – Day 1 DCP costing sheets provided by Melbourne Water)
- update costs from March 2023 to the most recent quarter
- review all functional layout plan diagrams for intersection projects and amend if necessary to align with adjoining roads.

(iii) Discussion

The Committee supports including project sheets in the FBDCP to:

- allow for a transparent understanding of project scope and costings that form the basis of the FBDCP
- facilitate works-in-kind to be undertaken by developers.

It would have been useful to exhibit project sheets with the FBDCP to reduce confusion and uncertainty about the scope and costing of projects to be delivered. The Committee found it difficult at the outset to navigate the volume of information, presented in various forms, required to gain a solid understanding of projects included in the FBDCP.

The project sheets provided on 24 January 2025 are considered acceptable to include in the FBDCP subject to some refinement to provide greater clarity about project scope and costings:

- review project title and description to correct any errors and ensure consistent labels are used
- include reference to source documents
- consider including a glossary to explain terminology where not clear, such as ‘hard space’
- use high resolution diagrams.

Following review of the scope of some projects, the total costs of Melbourne Water drainage projects listed in Documents 301 and 303 and as included the FBDCP (final version) amount to a sum less than in the exhibited FBDCP. In round figures, the difference is \$308,500,000 down to

\$296,900,000. Using the project sheets and costs addresses the request by both councils that costs be as accurate as possible.

It is understood design of DR01 is ongoing and assets will be delivered progressively. This should be reflected in the project sheet so as not to require a planning scheme amendment as the project is delivered. For the same reason, it would be prudent to include a note on the project sheets that all projects will be subject to further detailed design.

The project sheets will need to be updated to reflect the Committee's recommendations regarding reverting the urban structure as shown in the current Melbourne and Port Phillip planning scheme provisions, or as otherwise explicitly recommended by the Committee.

(iv) Conclusions and recommendations

The Committee concludes:

- Project sheets should be included in the FBDCP.
- Project sheets provided on 24 January 2025 are sufficiently detailed to understand the project scope and associated costs subject to:
 - reviewing the project title and description to correct any errors and ensure consistent labels are used
 - referencing source documents
 - including a glossary to explain unclear terminology such as 'hard space'
 - using high resolution diagrams
 - replacing the drainage summary table (DR02 - DR14) provided with costs sheets in the Document 97 costing sheets provided by Melbourne Water
 - including a note to explain that all projects will be subject to further detailed design
 - reverting figures of affected projects to the urban structure as shown in the current planning scheme provisions (except as otherwise explicitly recommended by the Committee).

The Committee recommends the following changes to the draft Amendment:

- **Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to include the project sheets provided on 24 January 2025, subject to the following changes:**
 - review project title and description to correct any errors and ensure consistent labels are used
 - reference source documents
 - include a glossary to explain unclear terminology such as 'hard space'
 - use high resolution diagrams
 - include a note to explain that all projects will be subject to further detailed design
 - revert figures of affected projects to the urban structure as shown in the current planning scheme provisions (except as otherwise explicitly recommended by the Committee).

5.3 Public transport land projects

(i) Background

The exhibited FBDCP included four land projects for the proposed new tram lines:

- PT01 – Wirraway – Plummer Street widening between Salmon and Graham Streets
- PT02 – Lorimer – alignment through Lorimer Central
- PT03 – Lorimer – Lorimer Street widening between Rogers and Hartley Streets
- PT04 – Sandridge – alignment for bridge across Westgate Freeway to Ingles Street.

(ii) The issue

The issue is whether it is appropriate to include public transport land projects in the FBDCP.

(iii) Evidence and submissions

There were submissions for and against including public transport land projects in the FBDCP.

All DCP experts except Mr Hrelja agreed it was appropriate to fund public transport land projects in the FBDCP because they are an essential component of the FB Framework and it is an important first step in demonstrating commitment to the projects.

My Hrelja agreed it is important to fund public transport land as early as possible, but the source of funds is a funding strategy decision and the funds do not have to be sourced from DCP levies.

Port Phillip City Council acknowledged it is possible to fund public transport land projects in a DCP, but did not support their inclusion submitting that land and other works associated with public transport are primarily a Victorian government responsibility. Port Phillip City Council expressed concern that there is no certainty that these projects will be delivered in the life of the FBDCP and without a firm commitment to a timeframe consistent with the FBDCP, the allocation of any funding from DCP levies is not appropriate.

Melbourne City Council submitted that public transport land should not be in the FBDCP because it is properly categorised as Catalytic infrastructure, in the same way public transport is categorised as such. It said there is not much point in classifying infrastructure as Local, Essential and Catalytic to help decide what is in and what is outside the FBDCP if that classification is not applied consistently. Melbourne City Council suggested that planning provisions offer alternative means for the Victorian government to identify land required for public transport.

The Property Council of Australia supported the inclusion of land for proposed new tram lines in the FBDCP because it would help establish a much needed public transport connection between Fishermans Bend and the Melbourne Central Business District.

Although Mr De Silva's evidence said public transport land projects should be the first priority under the FBDCP, some submissions said there is nothing in the Amendment or the PE Act that can require the Victorian government to proceed to acquire land within any particular timeframe, even when nominated as a short term time project.

Goodman submitted:

- the need for public transport projects does not spring solely from the urban renewal of the FBURA
- public transport land projects should be deleted from the FBDCP or the apportionment to the FBDCP should be reduced to recognise their broader public benefits.

The Proponent submitted:

- there is no dispute that it is lawful to fund land for public transport out of a DCP
- public transport land is a crucial component of the ultimate urban structure of the FBURA, and on that basis, satisfies the criteria for inclusion specified in clause 2.5.1 of the FBDCP
- most experts supported retention of public transport land in the FBDCP
- the overall cost is marginal and removing them to create space for other projects will create very little saving
- the fact that others might elect not to include public transport land if they were responsible for preparing the FBDCP is not a sufficient basis for its exclusion.

The Proponent proposed to remove public transport project PT04 from the FBDCP because of uncertainty over when this infrastructure would be needed. It also proposed to reclassify public transport land projects as 'Road widening' projects rather than 'Public transport widening', and to reduce the width of PT01 from a 10-metre widening of Plummer Street to a 5-metre widening.

Melbourne City Council submitted that public transport land projects should be shown in the planning scheme and noted PT04 is not shown in the existing Port Phillip CCZ1. Melbourne City Council identified that projects were described with various references in the planning schemes and submitted that all references should refer to 'land for public transport' and not road widening.

The Lorimer Central Owners Corporation requested that the exhibited FBDCP and Melbourne Planning Scheme maps, which show the Lorimer Central common property (currently used as a road) as a 10 metre 'road widening' when it is not a public road, be corrected.

(iv) Discussion

The Committee views provision of public transport to the FBURA as clearly Catalytic and this was not disputed by any party. The Committee considers the land required to enable the public transport to be part of the public transport project and therefore also Catalytic. On this basis, it should not be included in the FBDCP.

The Committee acknowledges that land for public transport can be included in a DCP. The provision of public transport to the FBURA is an essential component of the FB Framework. Further, public transport land generally meets the considerations at section 2.5 of the FBDCP. It is essential to the delivery of the urban structure outlined in the FB Framework and has demonstrated capacity to leverage and enable development activity.

However, that could equally be said for PT04 which is now proposed to be removed. The Committee is not convinced the timing of the need for PT04 is vastly different from PT01, which is part of the same transport corridor. The Proponent's approach to project selection is not consistent in this respect which the Committee found unhelpful in understanding the Proponent's approach.

Although not appropriate for inclusion in the FBDCP, the Committee considers it important that the planning framework should contain a clear commitment to the delivery of public transport land. The Committee considers that public transport land should be clearly identified as land required for a future public transport corridor (rather than as road widening projects) in the CCZ4 and CCZ1 for clarity and to correctly identify its future use. This will also correct the mapping error in relation to Lorimer Central.

(v) Conclusions and recommendations

The Committee concludes:

- It is not appropriate to include public transport land projects in the FBDCP.
- Land required for public transport projects should be included in the CCZ schedules and identified on relevant maps as ‘public transport land’.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- remove public transport land projects.

Amend the Capital City Zone Schedule 4 (Melbourne), as shown in Report Volume 2 Appendix G:2, and the Capital City Zone Schedule 1 (Port Phillip), as shown in Report Volume 2 Appendix H:2, to:

- identify public transport land projects with the description ‘public transport land’.

Amend the Development Contributions Plan Overlay Schedule 1 (Melbourne), as shown in Report Volume 2 Appendix G:3, and the Development Contributions Plan Overlay Schedule 2 (Port Phillip), as shown in Report Volume 2 Appendix H:3, to:

- remove the row ‘Public transport land’ in Clause 2.0 Summary of costs.

5.4 Transport projects

5.4.1 Background

The exhibited FBDCP included 65 transport projects, excluding Public Transport Land projects. The projects comprised:

- one bridge project – the Salmon Street bridge upgrade (construction only)
- 38 road projects
- 26 intersection projects.

5.4.2 Bridge projects

(i) The issues

The issues are whether the FBDCP should be amended to:

- remove the Salmon Street bridge upgrade (BR01)
- include an Ingles Street bridge upgrade
- include an active transport bridge across the West Gate Freeway between Lorimer and Sandridge precincts (Hartley Street alignment).

(ii) Evidence and submissions

The Proponent explained that the FB Framework identifies six bridge projects for delivery in the FBURA. The following criteria were considered when selecting which bridge projects to include in the FBDCP:

- proximity to existing bridges
- capacity of existing bridges to be upgraded
- impact on overall project costs.

The Proponent submitted the first two criteria favour upgrading existing bridges and the third favours minimising the number of bridges in the FBDCP due to high overall costs. It said a decision was made that the Hartley Street bridge, including an active transport component, should be delivered as part of the future tram project proposed for this bridge and funded from other sources.

The Salmon Street bridge upgrade was selected for inclusion in the FBDCP over the Ingles Street bridge based on:

- the difference in physical conditions
- the proximity of the Ingles Street bridge to the proposed active transport connection to be delivered as part of the Hartley Street bridge tram project
- existing access to the NEIC from Lorimer by Turner Street and Lorimer Street
- the full cost of the Ingles Street bridge would have to be attributed to the FBDCP, whereas 50 percent of the Salmon Street bridge upgrade could be allocated to a future NEIC DCP
- the desire to provide an early link between Wirraway and the NEIC with the scheduled opening of the Innovation Precinct in 2026.

Melbourne City Council submitted active transport connections across the West Gate Freeway are fundamental elements in achieving the vision in the FB Framework for an 80:20 mode split between sustainable transport and car-based travel. It said new and improved active transport connections between Lorimer and Sandridge must be funded by the FBDCP, including:

- upgrade of the Ingles Street bridge to provide a Strategic Cycling Corridor (C1) standard cycle facility and to increase amenity and safety for people walking
- an active transport bridge across the West Gate Freeway between Lorimer and Sandridge precincts, preferably using the PT04 (Hartley Street) alignment.

Melbourne City Council submitted that these projects:

- are fundamental to achieving the vision in the FB Framework
- are Essential as opposed to Local infrastructure
- rank highly on an objective assessment of the criteria in the DCP
- are supported by all experts as worthy of consideration for DCP funding
- would provide connections to the proposed Metro 2 station in Sandridge.

Reference was made to the Jacobs Report 'Improving Connectivity in Fishermans Bend' which states:

Today the M1 corridor, which runs through the heart of Fishermans Bend, is a clear barrier to efficient movement. Without enhanced connections across the M1, it will be challenging to establish a close sense of community between the various precincts. There are currently two relatively narrow overpasses across the M1 at Ingles Street and Salmon Streets and underpasses under the M1 at Montague Street and Todd Road at the far eastern and western edges of the renewal area.

These links currently carry private car traffic and some bus services. The provision of walking and cycling connections is relatively limited. Without improvement in these links, the renewal area will likely develop as separate zones with limited urban flow across and through the area. Without improvement in connectivity it will also prove extremely challenging to achieve the vision of Fishermans Bend being largely connected through active and public modes of transport. The precinct could be at risk of developing as a home for people who largely travel to work in other parts of Melbourne via private car on the M1 freeway.

Melbourne City Council submitted the costs for the Ingles Street bridge ‘active transport only’ option referred to in Supplementary Information Note 02¹³ were based on an incorrect reading of the Jacobs report and associated with a new bridge structure rather than an upgrade using a cantilevered structure. Melbourne City Council noted the Jacobs report said this cantilevered option was worthy of further investigation, likely to be feasible and lower cost than a new bridge.

The Proponent was concerned an active transport only option would not achieve outcomes required to achieve delivery of public transport outcomes identified in the FB Framework (bus route).

All DCP experts agreed the Ingles Street bridge is an eligible DCP project type, a key connection linking Sandridge and Lorimer precincts, identified as a strategic cycling corridor in the FB Framework and will include a bus route. Mr Ainsaar referred to the explanation for the selection of transport projects in the FBDCP, which demonstrated the following attributes:

- they are fundamental to the overall key movement network.
- they have a designated future cycling and/or linear open space function.

He said he was not qualified to comment on whether the project is fundamental to the movement network.

Ms Hodyl supported including both the Ingles Street bridge and the active transport link across the West Gate Freeway (Hartley Street alignment) in the FBDCP. She said:

- the Ingles Street bridge is:
 - pivotal in connecting Lorimer Street to the south
 - currently designed to prioritise vehicular traffic
 - not supportive of safe pedestrian or cycling connections
 - essential irrespective of other public transport interventions
- an active transport connection over the freeway (Hartley Street alignment) is:
 - supported by the FB Framework
 - required because the existing connections with a separation distance of 850 metres is excessive for a high density neighbourhood and will reduce active transport as a preferred mode of travel.

Melbourne City Council expressed concern that removal of PT04 from the FBDCP signals uncertainty for delivery of an active transport connection in the Hartley Street area and said the need for active transport connections arises independently of public transport projects.

Port Phillip City Council submitted the Salmon Street bridge is an expensive project with little immediate impact, no impact on the public realm and bridges over freeways should be funded by the Victorian government. It said the Salmon Street design should be more advanced before including the bridge in a DCP so that the contingency amount should be reduced to a more reasonable level.

Melbourne City Council submitted that the Salmon Street bridge upgrade project should be retained but not at the expense of the upgrade of the Ingles Street bridge or an active transport connection over the freeway at the Hartley Street alignment.

¹³ Document 167

(iii) Discussion

The FB Framework aspires to offer “*unprecedented levels of walking, cycling and public transport connectivity that will set a new benchmark for Melbourne*”. It sets a target for 80 percent of trips made by sustainable transport.

The Committee agrees with submissions that active transport connections over the West Gate Freeway will be very important in achieving this vision.

The Salmon Street bridge upgrade and the Ingles Street bridge upgrade have a similar function to perform in the active transport network, providing key pedestrian links and forming part of a Strategic Cycling corridor alongside an existing roadway. Their role in the overall transport network lends itself to having a wider function than infrastructure classified as Local.

It is noted that the final version FBDCP refers to new and upgraded bridges over the West Gate Freeway as Catalytic infrastructure except where they are included in the FBDCP. This explanation does not make sense; either a bridge upgrade over the freeway is Catalytic or it is not. Inclusion in the FBDCP is not a distinguishing feature that justifies a different classification.

The Committee considers a new bridge is Catalytic because it is providing a new connection which will have a ‘transformational effect on the urban renewal of the area’. It is not an upgrade or improvement, but rather a new connection. Upgrading the Ingles Street bridge to improve the active transport connection is not considered Catalytic in the same way, but rather an Essential project to promote active transport modes of travel over the bridge.

The Committee accepts Ms Hodyl’s evidence that the Ingles Street bridge is pivotal in connecting Lorimer Street to the south. There is a clear aspiration in the FB Framework to create a strong connection between Lorimer and the commercial centre in Sandridge. There is no evidence to suggest the Ingles Street bridge is less important to the movement network for Fishermans Bend than the Salmon Street bridge. They should both be considered priorities for inclusion in the FBDCP.

Bridge construction costs are high. The Committee notes the Jacobs report finding which identifies an opportunity to investigate upgrade options for the Ingles Street bridge rather than constructing an entirely new bridge. This should be further scoped and costed and included in the FBDCP.

In contrast, the Hartley Street bridge and active transport connection would accommodate a tramway and require the construction of a new bridge. This is a Catalytic project and should not be funded through the FBDCP.

For completeness, the Committee does not support submissions that the Hartley Street bridge should proceed ahead of the future tram project. If this were to occur, it could have a detrimental impact on the future provision of the tram project.

(iv) Conclusions and recommendation

The Committee concludes:

- an active transport upgrade of the Ingles Street bridge should be further scoped and costed and included in the FBDCP
- the FBDCP should:
 - include the Salmon Street bridge upgrade
 - not include an active transport bridge (Hartley Street alignment) across the West Gate Freeway between Lorimer and Sandridge precincts.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- include an active transport upgrade for the Ingles Street bridge following further scoping and preparation of a cost estimate.

5.4.3 Road and intersection projects

(i) The issues

The issues are whether the FBDCP should be amended to:

- remove road projects on arterial roads M_TR02A, M_TR02B, M_TR03 and W_TR09
- remove road projects W_TR08, S_TR01, S_TR03 and S_TR04
- remove mid-block roads
- include new road projects requested by Port Phillip City Council, including Boundary Street and Munro Street
- include new intersection projects requested by Port Phillip City Council
- include a new intersection at the intersection of Hartley Street and Lorimer Street.

(ii) Evidence and submissions

Roads

The Proponent explained new roads and upgrades were prioritised for funding through the FBDCP based on their function, importance to the network and overall urban structure, and nexus to FBURA-wide development. Key criteria for selection of road projects included:

- on-road public transport routes (tram infrastructure has been classed as Catalytic and attributed to the Victorian government)
- strategic or on/off road protected cycling routes
- roads proposed to have a linear open space function with associated biodiversity, urban cooling, Water Sensitive Urban Design and passive recreation functions
- other roads that are important because of their function within the FBURA (e.g. Graham Street or Montague Street), or because of existing conditions (e.g. the limited existing road network in Lorimer and impact of West Gate Freeway disconnecting it from the rest of its original grid structure in Sandridge).

At the Hearing, Ms Fisher provided a step-by-step explanation of road project selection using these criteria.

Port Phillip City Council submitted that many of the projects funded by the FBDCP are for arterial roads, which serve a broader role and should not be included.

The Proponent agreed to the removal of Montague Street and Normanby Road on the basis that they were arterial roads. Graham Street was retained on the basis that while it was currently an arterial road, it is proposed to be downgraded. The active transport components of these projects were retained and referred to as separate projects MN_TR01, MN_TR02 and expansion of projects SN_TR02 and SN_TR03.

Goodman sought removal of the following road projects from the FBDCP:

- W_TR08 – Woolboard Road new local road, road reserve through to Graham Street
- S_TR01 – Woolboard Road extension between Graham Street and Bridge Street

- S_TR03 – Bridge Street upgrade, between Williamstown Road to S-TR01
- S_TR04 – new local road between Bridge Street and Bertie Street.

Goodman submitted:

- there should be more rigorous categorisation of infrastructure based upon the impact of a project on the FBURA and the broader community consistent with the DCP Ministerial Direction and Guidelines
- land for these projects should be acquired through the application of the Public Acquisition Overlay.

The Proponent did not support removal of these projects and suggested the request to remove them was based on a conflation of the means of acquisition with the funding mechanism proposed. It said the fact land may be compulsorily acquired does not prevent a DCP being used to raise funds for the acquisition.

Submissions requested removal of mid-block roads from the FBDCP, suggesting they could be delivered as developer works. The Proponent explained the mid-block roads included in the FBDCP had a through block collector function.

Port Phillip City Council sought the inclusion of numerous additional road projects, identifying several as 'Priority Streets', and submitted the improvement of local streets is critical to the success of the FBURA.

Ms Bauer stated that local roads are vital to the success of Fishermans Bend and should be classified as Essential infrastructure.

Port Phillip City Council submitted Priority Streets have the following functions and roles:

- key linkages to linear park and cycle networks (Fennell Street, Bridge Street north, New Road between Smith and Salmon Steets, Gladstone Street, Thistlethwaite Street, Ferrars Street)
- a key role in the local vehicular movement (Fennell Street - Boundary Street to Ingles Street).

Other local roads were said to have a supportive but still critical role in the network.

Port Phillip City Council submitted local roads, including Priority Streets, should be funded by the FBDCP because:

- they are appropriate for inclusion in a DCP as explained in Port Phillip City Council's Supplementary Information Note 03¹⁴
- delivery as developer works (through permit conditions) as envisaged by the Proponent will not be legally enforceable
- Council does not have the financial capacity to deliver these works, particularly to a level envisaged by the Proponent's cross-sections.

The Proponent submitted:

- no transport evidence was led to support inclusion of the road projects requested by Port Phillip City Council
- it would be possible to fund some local road projects through developer works

¹⁴ Document 258

- it has not been sufficiently demonstrated that Port Phillip City Council cannot fund upgrades to roads it says should be upgraded
- roads in the FBDCP will be subject to progressive upgrade rather than occurring at the same time
- many of the streets identified for upgrade lack a nexus with the FBURA because they are unlikely to be used by a substantial percentage of residents in other FBURA precincts, and even if some have sufficient nexus, they are not sufficiently significant to warrant funding ahead of other projects.

The Proponent submitted two of the requested priority projects, COPP_W_TR01 (new street between Smith and Salmon Street) and COPP_M_TR12 (Ferrars Street), had already been partly delivered or committed in a way that deprioritises them. A third, the Bridge Street north extension, contains only a short length of cycling infrastructure that is a dead-end road to the north and therefore difficult to characterise as having a key linkage function.

Port Phillip City Council explained the FB Framework identifies the full length of the Bridge Street north extension which leads into a future connection across the West Gate Freeway. It submitted it has strategic importance in setting the foundations for the future pedestrian bridge / cycling connections within the core activity centre. It noted that part of the street is located within a large development site.

Port Phillip City Council did not agree with the Proponent's approach to nexus. It submitted the correct test is whether the network of roads provides broad benefit across a catchment. Having well designed local roads that encourages people to use active transport benefits the whole road network by reducing the volume of vehicles.

The Proponent agreed with a network approach but did not agree that this supports funding of lower order roads. It submitted the network approach is appropriate where items of infrastructure operate to distribute demand more evenly over the whole network and this extends to higher order roads which have the effect of taking traffic off the broader network.

Intersections

The Proponent explained funding of intersection projects is based on an 'agent of change' principle and prioritised for inclusion in the FBDCP where:

- demand for a new intersection arises from the development of the FBURA in line with the FB Framework
- the intersection is located on or adjoining to a priority road project
- a controlled intersection (signalised) treatment is proposed.

Port Phillip City Council requested the inclusion of six additional signalised intersections, five additional pedestrian operated crossings and two unsignalised intersections in the FBDCP to provide for adequate safety for pedestrians and cyclists. It noted that safety is paramount to achieve modal shift goals and necessitates consideration of all intersection treatments and linkages, not just priority routes. Port Phillip City Council submitted these intersections were consistent with the first dot point above and were justified to support safe and efficient movement. It noted that the Proponent has advised that four intersections would be funded by the Victorian government and therefore not included in the FBDCP.

The Proponent revised the location of intersection W_IT02 to the preferred location identified as COPP_W_IT07 (intersection of Williamstown Road and Smith Street) and explained it is currently

working with Port Phillip City Council to deliver priority road safety upgrades in this area. The Proponent submitted it had not seen any information that would support full signalisation in this location.

The Proponent did not support other intersection projects requested by Port Phillip City Council. It submitted other requested intersection or crossings served only a local function and may be delivered as part of development of the area around them.

Melbourne City Council submitted a signalised intersection was required at, or near, the intersection of Lorimer Street and Hartley Street. This new intersection was supported by the Proponent as LN_IT01.

(iii) Discussion

Roads

The future transport network is crucial in achieving the vision of the FB Framework. That is reflected in the amount of funding allocated towards transport projects in the FBDCP (roads and intersections make up approximately 48 percent of all project costs included in the FBDCP).

The FB Framework envisages significant transformation of the road network and the Committee understands there is no commitment to funding all the required road projects through the FBDCP, although all projects may demonstrate some level of nexus. The Committee agrees a broad approach to nexus is needed where there are many competing demands for funding. It is reasonable to include higher order road projects that are likely to provide a greater overall benefit to the FBURA. Ms Fisher's explanation of the criteria used for road project selection was clear and consistent with the broader network approach.

The Committee agrees that in this circumstance it is appropriate to remove arterial road projects from the FBDCP. While they meet the selection criteria and are eligible for inclusion in the FBDCP, their benefits extend well beyond the FBURA catchment and there has been no attempt to determine external apportionment for these projects. The Committee supports the inclusion of Boundary Street and Munro Street upgrades to replace the active transport functionality that may otherwise be lost by removal of the arterial road projects.

The Committee is not persuaded that projects W_TR08, S_TR01, S_TR03 or S_TR04 should be removed from the FBDCP as requested by Goodman. These projects are all part of a proposed 'Neighbourhood Street' connection, which will include a strategic off-road protected cycling route with a linear open space function. The projects are clearly consistent with the criteria specified for road projects, as are mid-block roads with a collector function.

Other road projects requested for inclusion by Port Phillip City Council have been considered against the criteria outlined for the selection of road projects. The Committee appreciates Port Phillip City Council is anticipating the need for additional cycling infrastructure beyond that outlined in the FB Framework and understands work to identify these needs is occurring through the Montague PIP process. However, the Committee does not recommend changes to the FBDCP project selection as part of this Amendment based on yet to be agreed outcomes.

The Committee considers two of Port Phillip City Council's projects meet the selection criteria:

- Ferrars Street (COPP_M_TR12): a 'Neighbourhood Street' with part of the street having a linear open space function and connecting to Kirrip Park. The Committee does not agree that partial delivery of the street upgrade is a reason to exclude the remaining upgrade

works from being funded through the FBDCP when it meets some of the specified criteria.

- Bridge Street north extension (COPP_S_TR06): a part 'Neighbourhood Street' with part of the street having a protected on-road cycling route function. While the DCP only includes part of the new street, the FB Framework includes all of the street as it leads into a proposed new bridge over the West Gate Freeway. Delivery of part of the road could be considered for future developer works (noting much of the street is part of a large redevelopment site). However, given its wider role as an important active transport connection to a potential new bridge, or other connection under the Freeway, this function within the FBURA is more important than for other local roads and is more appropriate as a DCP funded project.

Intersections

Requests for additional intersections are primarily sought to improve pedestrian safety. While the intersection criteria do not specifically mention safe movement, the Committee notes the general project selection criteria in section 2.5 of the FBDCP includes:

- their major contribution to the safety of the public
- they are essential to the health, safety and well-being of the community.

The Committee does not have sufficient information or evidence to consider the safety implications of the requested intersection treatments or crossings. Whether those intersections are required for safety reasons should be further explored through the development of PIPs.

The Committee has no concerns with the inclusion of the proposed new intersection treatment at the corner of Hartley Street and Lorimer Street, which is supported by the Proponent.

(iv) Conclusions and recommendations

The Committee concludes the FBDCP should be revised to:

- remove road projects on arterial roads: M_TR02A, M_TR02B, M_TR03 and W_TR09
- retain road projects W_TR08, S_TR01, S_TR03 and S_TR04
- retain mid-block roads with a collector function
- include the following road projects requested by Port Phillip City Council and supported by the Proponent: MN_TR01/SN_TR03 (Boundary Street) and MN_TR02/SN_TR02 (Munro Street)
- include the following road projects requested by Port Phillip City Council: COPP_M_TR12 (Ferrars Street) and COPP_S_TR06 (Bridge Street north extension)
- consider the need for intersections and crossings as proposed by Port Phillip City Council through the PIP process for each FBURA precinct
- include a new intersection at the intersection of Hartley Street and Lorimer Street (LN_IT01).

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **remove road projects on arterial roads: M_TR02A, M_TR02B, M_TR03 and W_TR09**
- **include road projects MN_TR01/SN_TR03 (Boundary Street) and MN_TR02/SN_TR02 (Munro Street)**

- include road projects **COPP_M_TR12 (Ferrars Street)** and **COPP_S_TR06 (Bridge Street north extension)**
- include a new intersection at the intersection of **Hartley Street and Lorimer Street (LN_IT01)**.

5.5 Open space projects

5.5.1 Background

The exhibited FBDCP included 34 open space projects, of which:

- five are in Lorimer, 11 in Wirraway, 10 in Sandridge and 8 in Montague
- 21 are classified as Neighbourhood, five as Linear, five as District and two as Precinct
- one (L_OS05) was not included in the open space classifications list (Appendix 2 of the FBDCP).

The exhibited FBDCP states that funding for open space under the FBDCP will be directed to:

- Land for sites that are not developable to planned densities in the Framework once the future open space is excised.
- Embellishment of new active recreation reserves, and partial upgrades to JL Murphy Reserve.
- Key parks in each precinct having regard to optimising walkable catchments and establishing key urban structural elements.

Ms Fisher explained funding for open space projects was prioritised based on:

- securing land for future open space, essential for the proposed urban structure
- considering existing facilities, such as Kirrip Park, which does not require further upgrade at this time
- direction of the FB Taskforce.

5.5.2 District open space – North Port Oval and Prohasky Street Reserve

(i) The issues

The issue are whether the FBDCP should:

- fund embellishment for additional works identified as part of the North Port Oval expansion and redesign
- extend the Prohasky Street Reserve project over the Elder Smith Reserve and include four additional netball courts within the scope of project S_OS01.

(ii) Evidence and submissions

Port Phillip City Council requested FBDCP funding for the following projects:

- a varied scope of embellishment projects in the 'Sandridge Recreation Precinct' to integrate and improve North Port Oval, including some demolition works
- construction of four additional netball courts at the Elder Smith Reserve.

Port Phillip City Council identified five sites which form the Sandridge Recreation Precinct, as shown in Figure 12.

Figure 12 Sites forming the Sandridge Recreation Precinct

Source: Document 283

Port Phillip City Council referred to:

- FB Framework Objective 3.6 which seeks to “Reconsider existing public open spaces within Fishermans Bend in the context of a changing urban environment”. It includes the following strategies:
 - 3.6.1 Redesign and/or expand Westgate Park, JL Murphy Reserve and North Port Oval to incorporate more active uses, multi-functional spaces and improved interface design
 - 3.6.5 Increase the degree of use and range of activities held to provide public access to existing sports fields.
- the Planisphere Strategy which notes “*North Port oval will be expanded and redesigned to act as an anchor for the community*”.

Port Phillip City Council submitted it is seeking to integrate planning, funding and delivery of infrastructure across the five sites to create an integrated open space and recreation precinct (Sandridge Recreation Precinct). It outlined existing constraints associated with the North Port Oval site:

- it is generally fenced off and effectively restricted to sporting clubs and tenants
- it is operating at capacity
- it needs to be redesigned to improve public use to meet the short and long term growing demand of the FBURA community.

The Proponent referred to the increase in the scope of projects at the Sandridge Recreation Precinct, S_OS09A and S_OS09B, combining them into one project (S_OS09 Recreation reserve – community use – land and embellishment) in the final version FBDCP. It submitted the project extent already provides for one hectare more open space land and active recreation embellishment than the Framework anticipated and did not support the additional scope sought by Port Phillip City Council.

Regarding Elder Smith Reserve, funding for four netball courts was included in the exhibited FBDCP but is removed in the final version FBDCP because according to the Proponent, the Victorian government had already given Port Phillip City Council funding towards the construction of four netball courts at Elder Smith Reserve. The Proponent tabled Document 228 The Elder Smith Reserve Netball Facility Port Melbourne – Community Engagement Summary Report, May 2023, a Port Phillip City Council document showing a concept for four netball courts on the site.

Port Phillip City Council sought an integrated design for the Prohasky Street playing fields and Elder Smith Reserve and requested project W_OS01:

- be extended over Elder Smith Reserve
- include four additional netball courts within its scope (making a total of eight courts), allowing for future detailed design to determine their final location and integration.

The Proponent believed the outcome Port Phillip City Council seeks for Elder Smith cannot be achieved at Elder Smith Reserve or on the adjoining Prohasky Street reserve. It submitted:

- if Port Phillip City Council wishes to deliver further netball courts at Prohasky Reserve, other facilities already included and costed in project W_OS01 will need to be removed, and their associated cost allocation may be redirected for delivering those netball courts
- it will work with Port Phillip City Council to establish what can be achieved on the site.

Mr Panozzo stated there are shortages in active open space, noting that early planning did not plan the areas proposed for open space. He recommended that available land and facilities be developed intensely to meet additional demand.

(iii) Discussion

A District open space generally serves a community beyond its catchment area. This is most evident in low density greenfield sites where open space users are drawn from a large region beyond those paying the DIL. For fairness and equity reasons, such district open spaces are usually excluded from a DCP.

The FBDCP categorises District open space in a different context and way. The FBURA will be a high density environment where open space will be at a premium. Many of the District open space projects seek to make existing and expanded open spaces accessible to members of the FBURA community. This is clearly an outcome sought by the FB Framework for North Port Oval which is identified as one of the sites that should incorporate more active uses, multi-functional spaces and improved interface design. The additional embellishment works sought by Port Phillip City Council are consistent with this objective and development in the FBURA should therefore contribute towards these open space projects.

Nonetheless, as discussed in Chapter 4.1, the Proponent should assess the extent of external demand for all District open space projects to ensure only FBURA-related demand is attributed to the DIL.

The Committee is unclear whether four additional netball courts can be accommodated on either Elder Smith Reserve or the Prohasky Reserve site. Both Port Phillip City Council and the Proponent agree further design work is required. Given the uncertainty around whether the additional courts can be accommodated, the Committee does not recommend they be prioritised for inclusion in the FBDCP.

(iv) Conclusions and recommendations

The Committee concludes the FBDCP should:

- Fund embellishment for additional works identified as part of the North Port Oval expansion and redesign.
- Not extend the Prohasky Street Reserve project over the Elder Smith Reserve and should not include four additional netball courts within the scope of W_OS01.
- Identify the proportion of external demand for District open space projects included in the FBDCP and only apportion the amount attributable to demand generated by the Fishermans Bend Urban Renewal Area community to the FBDCP.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

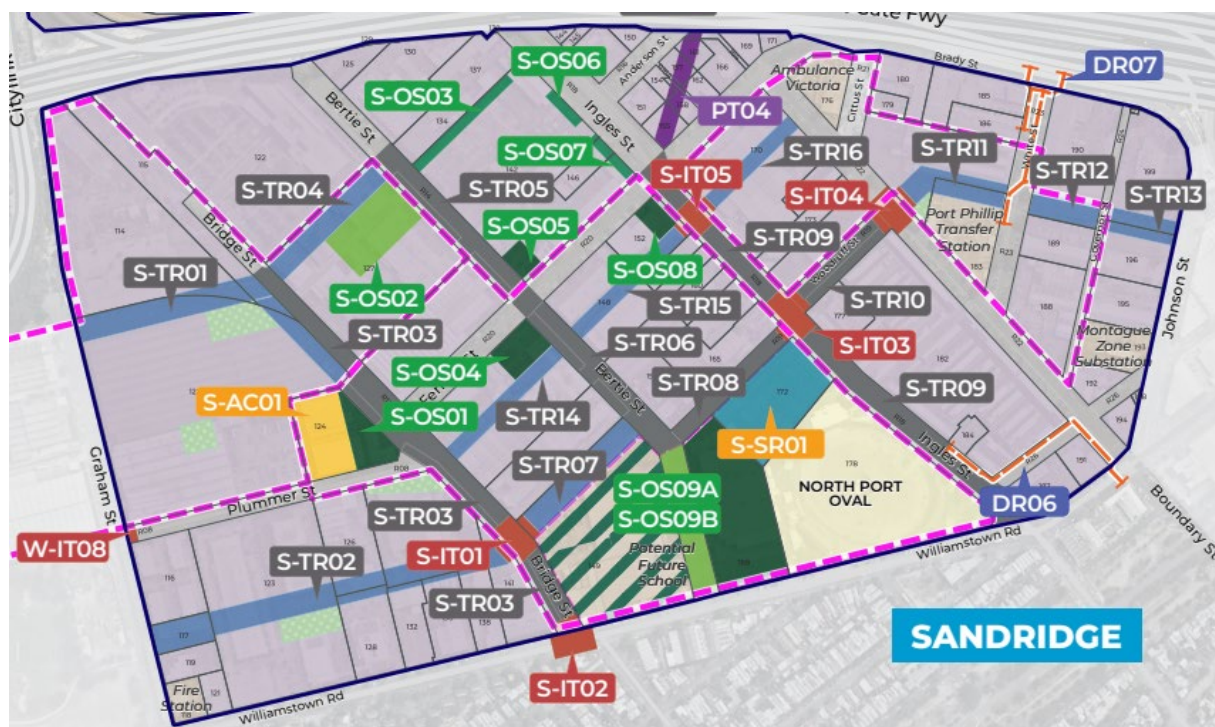
- include funding for embellishment works identified as part of the North Port Oval expansion and redesign sought by Port Phillip City Council.

5.5.3 Neighbourhood and Linear open space – Sandridge

(i) The issue

The issue is whether it is appropriate for the FBDCP to include open space projects (S_OS01, S_OS04, S_OS05, S_OS06, S_OS07 and S_OS08) proposed in the Sandridge precinct.

Figure 13 Sandridge Precinct Map



Source: Document 3

(ii) Evidence and submissions

Port Phillip City Council requested the following open space projects not be funded through the FBDCP:

- Plummer Street /Bridge Street north corner Neighbourhood park (S_OS01).
- Corner of Fennell Street and Bertie Street southern Neighbourhood park (S_OS04)
- Corner of Fennell Street and Bertie Street northern Neighbourhood park (S_OS05)
- Ingles Street northern Linear open space (S_OS06)
- Ingles Street Linear open space north of Fennell Street (S_OS07)
- Corner of Fennell Street and Ingles Street Neighbourhood park (S_OS08).

Port Phillip City Council submitted:

- the projects are associated with proposed public transport or state road upgrades
- the public transport projects are unlikely to be constructed within the FBDCP timeframe

- removing these projects (land and embellishment) would free up over \$48 million of the total FBDCP cost.

All DCP experts agreed:

- a DCP can fund state infrastructure
- rail and tram infrastructure is important to the success of FBURA, and the Victorian government should fund their construction.

All DCP experts except Mr Hrelja considered it is appropriate to the FBDCP to fund land for public transport because:

- public transport projects are an essential component of the FB Framework
- it is an important first step and demonstrates the commitment to public transport projects.

Mr Hrelja believed it is important to fund land for public transport as early as possible, but the source of funds is a funding strategy decision. He stated DCP levies do not have to source funds for public transport land.

In response, the Proponent submitted:

- S_OS01 is expected to be delivered as part of the adjacent Sandridge Art and Cultural Hub rather than as part of any public transport project
- funding for embellishment of S_OS04 and S_OS08 should be removed from the FBDCP but funding for land acquisition should remain so that the land can be protected until the public transport project is delivered
- an existing development approval requires S_OS05, S_OS06 and S_OS07 to be delivered as works-in-kind.

(iii) Discussion

The Committee agrees with the Proponent that the FBDCP should include S_OS01 because it is open space is associated with the abutting Sandridge Arts and Culture hub.

The FB Framework identifies land for future state transport projects including their associated public spaces. The DCP Guidelines refer to the ability for a DIL to fund state infrastructure, however this will not be appropriate in every circumstance.

Projects S_OS04 and S_OS08 should be removed from the FBDCP because their primary function is to provide access to the associated public transport project, the proposed Sandridge Metro 2 station. While these projects are classified as Neighbourhood parks, they are unlikely to be neighbourhood open spaces in which the FBURA community would seek to recreate. Rather, they will be transient public spaces needed to support state level public transport.

The projects should not be included in the FBDCP solely to protect the land from inconsistent development until the projects are delivered, or as an expression of a commitment to public transport projects. In line with the evidence of Mr Hrelja, these are not strategic reasons to include projects in the FBDCP and the DCP Guidelines do not include such reasons as part of the methodology for selecting projects.

The Committee considers that the land is sufficiently protected because it is identified as future open space in the relevant planning scheme maps (subject to making the Committee's recommended changes discussed in Chapter 5.3). If there are concerns that this is insufficient, the

Proponent could apply a PAO which has as one of its purposes to “*reserve land for a public purpose and to ensure that changes to the use or development of the land do not affect this*” (Clause 45.01).

It is less clear to the Committee that the primary function of S_OS05, S_OS06 and S_OS07 is to provide access to public transport. Projects S_OS06 and S_OS07 are linear open spaces located on a strategic cycling corridor with connection to a broader network of streets with a linear open space function. This is a critical part of the future FBURA structure, and these projects are therefore appropriately included in the FBDCP.

The Committee does not have sufficient information to determine the primary function of S_OS05 and notes this project is to be delivered as works-in-kind through an existing development approval. The type of embellishment for the park as identified in the project sheets is typical for a Neighbourhood park.¹⁵ The Committee finds no reason to exclude it from the FBDCP.

(iv) Conclusions and recommendation

The Committee concludes:

- It is appropriate for the FBDCP to include S_OS01 because it is open space associated with the abutting Sandridge Arts and Culture hub.
- Public spaces primarily associated with public transport, specifically Neighbourhood S_OS04 and S_OS08, should be excluded from the FBDCP.
- S_OS06 and S_OS07 are Linear open spaces which form part of a wider linear open space network and should be retained in the FBDCP.
- S_OS05 should also be retained in the FBDCP.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- remove open space projects S_OS04 and S_OS08.

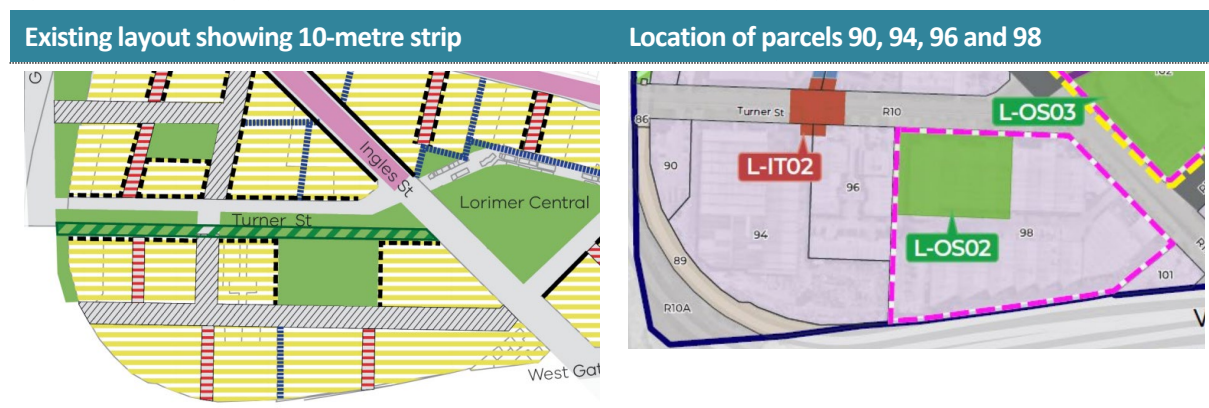
5.5.4 Turner Street Linear Park

(i) Background

The Committee concluded in Chapter 3.2 that Turner Street should be 40 metres wide, including a 10-metre landscape strip on private land, consistent with how the Turner Street Linear Park is specified in the current CCZ4 and the FB Framework.

Figure 14 shows the current ‘10-metre landscape setback’ in the CCZ4 and the affected sites, namely sites 90, 94, 96 (‘96’ is covered by the label L-IT02) and 98.

¹⁵ Document 301

Figure 14 Existing layout for Turner Street Linear Park and location of parcels 90, 94, 96 and 98

Source: existing layout: Document 15; location of parcels 90, 94, 96 and 98: Document 136

(ii) The issues

The issues are whether the FBDCP should fund:

- the acquisition of 10-metre-wide strip of land on Turner Street between Ingles Street and the Bolte Bridge
- remediation and embellishment of the 10 metre strip.

(iii) Evidence and submissions

Ms Hodyl and Mr McNeill supported the 10-metre landscape strip being funded through the FBDCP.

The Proponent submitted that if the Turner Street Linear Park spatial layout specified in the FB Framework is retained, the 10-metre linear open space for:

- parcels 96 and 98 should be delivered through the OSU
- parcels 90 and 94 should be delivered through works-in-kind under existing approval (SCO36 Melbourne Planning Scheme) – land and landscaping.

The Proponent provided built form modelling to illustrate how the affected sites could accommodate the uplift.

Melbourne City Council supported including the 10-metre open space in either the FBDCP, the OSU (land and remediation) or a combination of both. It submitted:

- the entire open space could be delivered through the OSU
- parcels 96 and 98 have ample uplift available to provide 10-metre-wide open space
- if the existing error in SCO36 is:
 - corrected (the reference to Lorimer Street should be Turner Street), the required open space will be delivered if SCO36 is acted on
 - not corrected, parcels 90 and 94 have sufficient uplift to each deliver the open space
- the open space should be identified as a new OSU park to ensure the land (and remediation) can be delivered using the OSU if SCO36 is not acted on (noting Melbourne City Council generally did not support the OSU including embellishments).

Melbourne City Council submitted the embellishment of the 10-metre open space should be classified as an open space project rather than a transport project and:

the embellishment of the Turner Street linear spine including for active transport, amenity and integrated water management functions (as well as distributed storage functions – see drainage submissions) should be funded by the DCP.

The Proponent sought the Committee's recommendation on whether the 10-metre strip of open space for Turner Street should be funded by the FBDCP or the OSU.

(iv) Discussion

As discussed in Chapter 3.2, the Turner Street Linear Park, as envisaged by the FB Framework is crucial for achieving the Lorimer vision. As local public open space, it meets criteria for inclusion in the FBDCP.

It would not be practical to deliver the Turner Street Linear Park through the OSU, or a combination of existing approvals and the OSU, including the park in the OSU. This is because:

- it would rely on four separate projects being delivered to make up the linear park
- each project may be delivered at a significantly different time and by a different mechanism (under one or more existing approvals, using the OSU) or not at all
- the Victorian government would have no control over when park segments would be delivered.

Given the Turner Street Linear Park is important to achieving the Lorimer vision as identified in the FB Framework, the Committee considers it should be included in the FBDCP to provide certainty that it can be delivered in an orderly way.

(v) Conclusions and recommendation

The Committee concludes:

- Turner Street Linear Park is not suitable for inclusion in the OSU mechanism.
- Turner Street Linear Park should be funded by the FBDCP as an open space project (including land, remediation and embellishments).

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **include Turner Street Linear Park as an open space project (including land, remediation and embellishments)**
- **make consequential changes to relevant maps to show Turner Street Linear Park as 'Public open space site – not eligible for Open Space Uplift'.**

5.5.5 Other Port Phillip parks

(i) The issues

The issues are whether the FBDCP should fund:

- additional land cost for Wirraway North Park
- embellishment or a greater level of embellishment funding for all open space projects in the FBDCP
- a new Linear open space project in Salmon Street.

(ii) Submissions

Port Phillip City Council requested FBDCP funding for land, embellishment or additional embellishment for several open space projects as follows:

- Wirraway North Park (W_OS05) – additional land and embellishment funding
- Montague North Park (M_OS02) – additional embellishment funding
- Whiteman Street Neighbourhood park (M_OS08) – embellishment funding
- Rocklea Drive Neighbourhood park (W_OS03) - embellishment funding
- Woolboard Road extension Linear open space (S_OS03) – embellishment funding
- Gittus Street (SN_OS01) and White Street (SN_OS02) closures – embellishment funding
- Linear open space – Salmon Street – land and embellishment funding (new Linear open space project).

Its strategic rationale for the additional funding was:

- the size of Wirraway North Park should be reinstated to its current extent in the CCZ1 and funding provided to cover associated land costs
- all open space is required to be provided in a state to be used for quality open space
- Linear open space plays an important role in providing areas for increased passive recreation, improved modal shift and urban greening goals in the FBURA and all Linear open space included in the FB Framework should therefore be included in the FBDCP
- the FB Framework recognises the importance of Linear open space to the achievement of sustainability goals in the FBURA
- embellishment of open spaces in Fishermans Bend should be to a functional standard, in accordance with the standardised requirements for each type of open space identified by Port Phillip City Council.

Port Phillip City Council supported revisions to the CCZ1 (version 2) to show the Salmon Street Linear open space and submitted it should be included in the FBDCP as its provision is not possible without FBDCP funding.

The Proponent did not support additional land funding for Wirraway North Park because it did not support the increased size of the park, as discussed in Chapter 3.2.5.

The Proponent partly supported requests for embellishment funding for all FBDCP open space projects, in the form of funding for demolition and remediation, to make land safe for public access at the time of acquisition.

It indicated it was considering a range of other options for open space projects where embellishment funding was not included in the FBDCP, including opportunities to redeploy funding from OSU embellishment projects if these are included in the OSU ratio and for councils to use their own revenue.

(iii) Discussion

The Committee has recommended the size shown in the current CCZ1 for Wirraway North Park be retained (Chapter 3.2.5). As a result, it also supports FBDCP funding for the reinstated land component of Wirraway North Park (W_OS05).

The Committee supports funding for remediation of all FBDCP open space projects, so they are made safe for public use at the time of acquisition. Regarding additional embellishment funding, the Committee accepts the Proponent's position not to include further costs at this time given the

constrained funding environment and with detailed design not established for many of the open spaces in the FBDCP. The Committee encourages the Proponent to continue to explore possible options for embellishment funding of projects in finalising the Amendment.

The Committee is satisfied that the selection of public open space projects for inclusion in the FBDCP has focussed on securing land for future open space, essential for the proposed urban structure, subject to recommendations about specific projects referred to in this Report. The Committee does not support the inclusion of the additional linear open space project in Salmon Street on this basis.

(iv) Conclusions and recommendation

The Committee concludes the FBDCP should:

- fund additional land cost for Wirraway North Park
- not include embellishment, or a greater level of embellishment, funding for all open space projects in the FBDCP, apart from remediation costs as shown in the FBDCP (final version)
- not include a new linear open space project in Salmon Street.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **include additional land costs for Wirraway North Park (W_OS05).**

5.5.6 New active open space outside FBURA

(i) The issue

The issue is whether it is appropriate and justified for the FBDCP to fund a contribution to the land component of active open space in the NEIC.

(ii) Submissions

Melbourne City Council submitted:

- the FBDCP should fund a contribution to the land component of active open space in the NEIC
- providing active open space in the NEIC is essential to service the needs of the FBURA
- the GC81 Panel's recommendations for open space in the FBURA were based on the assumption that approximately 24 hectares of new open space, including approximately 15 hectares of District active open space, would be delivered in the NEIC, principally to serve the needs of the residents of the FBURA.

Melbourne City Council referred to the following evidence given by Ms Joanna Thompson, an open space expert, during the GC81 Panel hearing:

Additional District open space for sporting use will be required in the Employment Precinct [NEIC] to cater to the forecast population in the Lorimer and Montague Precincts, where it is not feasible to provide larger open space that can accommodate sports fields.

The Proponent submitted it inappropriate to include funding in the FBDCP for NEIC open space. It submitted open space provision will be a matter dealt with in the separate process of planning for

the NEIC. It provided Supplementary Information Note 08¹⁶ which stated that the PIP process would include a separate plan for the NEIC and would be progressed in 2025.

(iii) Discussion

The Committee acknowledges that the GC81 Panel's recommendations for open space in the FBURA were made in the context of a significant provision of open space in the NEIC that would be used by the FBURA community, especially from Lorimer and Montague where large scale active open spaces are not feasible.

It accepts the Proponent's assurance that planning for open space in the NEIC will be progressed in 2025 as part of planning for the NEIC precinct and foresees the possibility that as part of that process, and any resulting DCP for the NEIC, there may be an external apportionment to the FBURA to account for demand for open space from the FBURA.

That said, it is not possible as part of this Amendment to make any provision for this demand in the FBDCP. Planning for open space in the NEIC has not progressed sufficiently to understand what open space is proposed and how it might be used, no estimated costings have been provided and no analysis of an appropriate apportionment of demand to the FBURA undertaken.

(iv) Conclusion

The Committee concludes it is not appropriate or justified for the FBDCP to fund a contribution to the land component of active open space in the NEIC.

5.6 Community hub projects

(i) Background

The exhibited FBDCP included four community projects, comprising:

- land and construction components for Stage 1 of a consolidated sport and recreation hub in Sandridge, combining the Sandridge, Montague and Wirraway hubs referred to in the FB Framework (S_SR01)
- land and construction components for a consolidated stand-alone art and cultural hub in the Sandridge core area, combining the Sandridge and Wirraway art and cultural hubs referred to in the FB Framework (S_AC01)
- construction of an art and cultural hub in Lorimer, to be delivered as part of a mixed-use development (L_AC01)
- construction of a pavilion at the future Prohasky Street Reserve (W_OS01a).

(ii) The issues

The issues are whether the FBDCP should be amended to:

- include Stage 2 of the Sandridge Sport and Recreation Hub
- include the construction component of the Montague Art and Cultural Hub
- include the land component of the Lorimer Art and Cultural Hub

¹⁶ Document 197

- include the land component of the Lorimer Sport and Recreation Hub or alternatively the augmentation of the Sandridge Sport and Recreation Hub, combined with the upgrade of the Ingles Street bridge to provide access.

(iii) Evidence and submissions

The Proponent explained there were 14 community hub projects in the initial list arising from the FB Framework. Art and cultural hubs, and sport and recreation hubs were prioritised for inclusion in the FBDCP because the health and well-being, and education hubs will be funded by the Victorian government. The scope of community hubs was further refined during the FBDCP selection process as follows:

- the scope of the Sandridge Art and Cultural Hub was revised to reflect that it is to be a single, consolidated hub that services the Wirraway, Sandridge and Montague precincts
- the Lorimer Art and Cultural hub will be delivered as part of a mixed-use development and therefore no land is required
- the Taskforce advised that the Lorimer Sport and Recreation Hub is to be removed from the project list
- whilst a sport and recreation hub is not to be provided within Wirraway, a sporting pavilion construction project was added at the Prohasky playing fields
- the Sandridge sport and recreation facility is relocated to be adjacent to North Port Oval.

Port Phillip City Council noted there has been a complete reorganisation of the hubs compared to the FB Framework. It generally supported prioritising sport and recreation and art and cultural hubs as Essential infrastructure for DCP funding and submitted the following projects should be included in the FBDCP:

- Stage 2 of the Sandridge Sport and Recreation Hub (S_SR01)
- the Montague Art and Cultural Hub.

Melbourne City Council submitted land and construction of the Lorimer Art and Cultural Hub should be included in the FBDCP together with one of:

- the land component of a 6,000 square metre indoor sports and recreational facility in the NEIC to service the needs of Lorimer residents or
- Stage 2 of the Sandridge Sport and Recreation Hub (S_SR01) coupled with the upgrade to the Ingles Street bridge for the active transport component to provide better accessibility between Lorimer and Sandridge.

Mr Panozzo undertook a detailed analysis of community hub requirements including an assessment of the proposed DCP community hub projects with:

- requirements identified in the *Fishermans Bend Community Infrastructure Plan 2017*, which informed the FB Framework
- his own independent analysis
- community infrastructure outcomes in Melbourne's growth areas.

Mr Panozzo recommended a significant increase in infrastructure provision for community hubs and pavilions to be included in the FBDCP, most of which was not pursued by submitters.

Regarding the Sandridge Sport and Recreation Hub, Mr Panozzo strongly supported the inclusion of Stage 2 in the FBDCP based on population threshold grounds, which would allow for the construction of eight indoor courts as recommended in the FB Framework. This was a lesser number of courts than recommended for provision in the *Fishermans Bend Community*

Infrastructure Plan. Mr Panozzo also supported inclusion of the Montague Art and Cultural Hub based on an assessment of library needs.

Port Phillip City Council submitted:

- demand for the Sandridge Sport and Recreation Hub will be high
- it is logical to construct the facility as one multi-level building given the scarcity of land
- it will be required well within the DCP timeframe
- it cannot be delivered in stages because it will be multi-storey.

Melbourne City Council supported an increase in the number of courts in the Sandridge Sport and Recreation Hub to eight courts and associated spaces (i.e. Stage 2 of the development) to service the residents of Lorimer if land for a Lorimer sport and recreation hub is not included in the FBDCP. However, support was on the proviso that it would be coupled with an active transport upgrade to the Ingles Street bridge to provide better accessibility between Lorimer and Sandridge.

Ms Fisher supported funding a Lorimer sport and recreation hub through the FBDCP, noting it is a project in the FB Framework and of a kind that would be funded by a DCP.

The Proponent submitted:

- sport and recreation hubs for Sandridge and Lorimer are higher order Essential infrastructure and there is no capacity to include additional funding for either due to DCP funding limitations and CIL caps
- it is supportive of partnering with Councils to seek grant funding from other sources to support delivery of this (and other) facilities
- the location of the Lorimer sport and recreation hub can be addressed through master planning for both Lorimer and the NEIC.

Port Phillip City Council submitted the FBDCP should include funding for the Montague Art and Cultural Hub, consistent with expectations of the FB Framework, and noted its inclusion was supported by Ms Fisher and Mr Panozzo. It identified a potential site for the Hub, in an existing building owned by the Victorian government and therefore did not seek funding for a land component through the FBDCP.

The Proponent agreed that the Montague Art and Cultural Hub was Essential infrastructure but submitted there was no capacity to include it as a DCP project due to DCP funding limitations and CIL caps.

Melbourne City Council noted the FB Framework identified five key community infrastructure projects for Lorimer and the FBDCP only includes funding for the construction component of one project, the Lorimer Art and Cultural Hub, and that this is *“hopelessly deficient”*. It sought additional funding for land component of the Lorimer Art and Cultural Hub using an appropriate methodology, recognising that it would be contained in a mixed-use building. Funding was also sought for an increase in construction costs to allow a floorspace component of 3,000 square metres. It noted the size and scope of the facility was based on its own document, but identified changes over time that require a larger facility including:

- a greater than previously estimated resident population in Lorimer
- the provision of other community hubs that are no longer anticipated
- standard sizes of similar Melbourne City Council facilities.

Melbourne City Council said an increase was supported by Mr Panozzo's evidence which identified the need for additional general community meeting space and a Level 2 community centre in the Lorimer precinct, preferably co-located with the Lorimer Art and Cultural Hub.

The Proponent agreed that additional floorspace was warranted.

Melbourne City Council did not accept the Proponent's submission that funding of community hub projects by the FBDCP were severely constrained by the need to rely on a capped CIL because:

- all DCP experts agree a Ministerial exemption should be sought so that funds may all be collected as DIL rather than CIL
- the land component of community facilities is appropriately funded by DIL
- the Victorian government is funding the gap between the funds collected and the cost of projects included in the FBDCP, and so the funding source of the DIL or CIL is irrelevant.

Melbourne City Council submitted the land and construction component for the Lorimer Art and Cultural Hub meet the FBDCP criteria for project inclusion, and development provided in a mixed-use development (strata title) will still have a 'land component'.

Mr Ainsaar and Mr McNeill both supported identification of a funding source for a land component, with a preference for an incentive scheme for developers to provide the land or if not feasible, inclusion in the FBDCP.

(iv) Discussion

Art and culture, and sport and recreation, community hub projects are Essential infrastructure according to the FBDCP classification and will be very important to the amenity and liveability of the FBURA.

Criteria used to select community hub projects from the FB Framework for inclusion in the FBDCP is less transparent to the Committee than for other infrastructure categories. It appears the primary reason for the consolidation of facilities and the exclusion of others was to reduce costs. With the scale of infrastructure projects identified for the FBURA this is understandable, but makes it difficult for the Committee to recommend the inclusion of one project over another when they all qualify as Essential infrastructure and meet the selection criteria set out at Chapter 2.5 of the FBDCP.

Land for hub projects is relatively scarce in urban renewal areas. The Committee accepts that the need for the community hubs was established through the Amendment G81 process. It notes that if uplift schemes are effective, the resident population is likely to be higher than the forecast of 80,000 people, generating even further need for the community hubs. All hub projects would qualify for inclusion in a DCP, with land components as DIL projects and construction components as CIL projects (noting an exemption from the CIL may be sought).

The proposed provision of community hubs in the FBDCP is quite different to that envisaged in the FB Framework. Mr Panozzo's evidence provided a contemporary assessment of proposed community infrastructure provision by the FBDCP.

In a constrained funding environment, with a scarcity of available land, it makes sense to consolidate facilities where possible and therefore pursue Stage 2 of the Sandridge Sport and Recreation Hub as a multi-level facility rather than pursue an additional stand-alone hub in Lorimer as a FBDCP project. The Committee recommends in Chapter 5.4.2 that an active transport

upgrade of the Ingles Street bridge be included in the FBDCP. This would provide Lorimer residents improved access to the Sandridge facility.

A 'land component' to accommodate 3,000 square metres of floorspace is required for the Lorimer Art and Cultural Hub to be delivered as part of a mixed-use development. It should be included in the FBDCP.

Although the Montague Art and Cultural Hub meets the criteria for inclusion for the FBDCP, it could make a good candidate for external funding if housed in an existing Victorian government owned building as suggested by Port Phillip City Council.

(v) Conclusions and recommendations

The Committee concludes:

- The FBDCP should be revised to include:
 - Stage 2 of the Sandridge Sport and Recreation Hub
 - a land component for the Lorimer Art and Cultural Hub.
- The construction component of the Montague Art and Cultural Hub could make a good candidate for external funding if housed in an existing Victorian government owned building.
- The FBDCP should not include a land component for the Lorimer Sport and Recreation Hub.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **include Stage 2 of the Sandridge Sport and Recreation Hub**
- **include a land component for the Lorimer Art and Cultural Hub.**

5.7 Drainage projects

5.7.1 Drainage – distributed storages (DR01)

(i) Background

The exhibited FBDCP included \$11 million for the construction of distributed water storage that was identified in the *Water Sensitive Technical Report 2019* and reflected in the *Water Sensitive City Strategy*. Because distributed storage is to be delivered as part of streetscape and open space projects listed elsewhere in the FBDCP, costs associated with DR01 were limited to excavation.

(ii) The issue

The issue is whether the scope and application of the distributed storages project (DR01) is appropriate.

(iii) Submissions

Melbourne City Council submitted the distributed storages project is not properly scoped and significantly under-costed. It sought six key recommendations for distributed storage.

Recommendations which the Proponent did not accept (or only partly accepted) included (summarised):

- the final FBDCP should include an appropriate map of projects (i.e. an updated Map 7 in the FBDCP)
- the CCZ4 should be amended to include a mandatory condition that new and upgraded roads must provide distributed storage to the satisfaction of the Responsible Authority (coupled with FBDCP funding for those works)
- for FBDCP projects with a distributed storage component, a project sheet should be prepared which clearly scopes and costs that component
- for non-FBDCP projects with a distributed storage component, the projects should be fully costed and scoped, funding should be provided for marginal costs and a clear mechanism should be included for allocation of DR01 funding to developers completing works in kind
- contingencies should be included in cost estimates appropriate to the novelty and complexity of distributed storage.

The Proponent supported changes to the maps subject to further refinement and prioritisation ahead of a delivery plan.

The Proponent submitted further refinement of the project scoping and plans can be undertaken as part of the FBDCP review, once updated modelling is completed, and following the detailed planning required to be undertaken as part of the PIP process.

The Proponent did not support funding for distributed storage projects in non-FBDCP streets, and submitted these should be funded by council or developer works.

Port Phillip City Council sought to clarify integrated water management and distributed storage requirements, how costs were allocated across projects and a significant increase in funding for DR01.

The Proponent submitted that DR01 is not intended to fully fund the cost of distributed storages that may be located in non-FBDCP streets, open space or arterial roads, noting the *Fishermans Bend Water Sensitive City Strategy* identifies local distributed storage as a shared responsibility. It explained that further work is required to determine the locations of the local distributed storages and will work further on this with Melbourne City Council and Port Phillip City Council.

Notwithstanding, the Proponent proposed to increase funding for DR01 by \$20 million to cover drainage connections, bioretention, overland flow channel, tree pits, and soil and gravel drainage layers included in construction costs. This is reflected in the final version of the FBDCP.

(iv) Discussion

The Committee generally supports the proposed approach in the FBDCP to distributed storage through open space and road projects, as this is when works are most appropriately undertaken. As further work is required to determine the exact locations and approach to distributed storages, it is not appropriate to include the exhibited Map 7 in the FBDCP.

Given final locations of distributed storage assets are yet to be determined, and to ensure opportunities are not missed, it is appropriate to include a condition in the CCZ1 and CCZ4 schedules which would require new and upgraded roads to provide this infrastructure. However, the Committee does not consider this needs to be tied to FBDCP funding as sought by Melbourne City Council. There may be circumstances where it is entirely appropriate for a developer to

undertake the works as part of works normal to development. The Committee supports the proposed wording of the relevant condition in the CCZ schedules (final version).

The Committee supports the increase in funding allocated to the distributed storage project which makes allowance for a more specific range of costs that will be associated with provision of this infrastructure.

(v) Conclusions

The Committee concludes the scope and application of the distributed storage project (DR01) is appropriate subject to:

- deleting Figure 7 from the FBDCP
- including a condition in CCZ schedules requiring new and upgraded streets to provide for distributed storage infrastructure as shown in the CCZ schedules (final version)
- increasing the funding component by approximately \$20 million as proposed in the final version of the FBDCP.

5.7.2 River Esplanade Pump Station (DR02)

(i) Background

The exhibited FBDCP showed the River Esplanade Pump Station (REPS) project (DR02) located on the edge of the Yarra River, outside the FBURA. The FBDCP Final version showed the REPS located within Hartley Street Park (L_OS05).

(ii) The issue

The issue is whether the River Esplanade Pump Station (DR02) should be located within the Hartley Street Park (L_OS05).

(iii) Submissions

Melbourne City Council submitted:

- the REPS should not be located within the Hartley Street Park as it would have unacceptable impacts on the park
- a large portion of the park would be lost for open space use
- design of the park would be extensively dictated by the pump station being in a prominent central location
- its location should be reassessed.

Melbourne City Council requested that if the REPS is to be in Hartley Street Park (contrary to their position):

- the cost of land occupied or encumbered by the REPS should be attributed to the drainage project, not open space
- there should be an equivalent area of open space added to another open space project within Lorimer
- its design should be fully scoped in consultation with Melbourne City Council and re-costed before the FBDCP is finalised.

Melbourne Water submitted:

- it considered numerous sites for the location of the REPS, and consulted with and received feedback from Melbourne City Council on these sites
- the Hartley Street Park location was preferred for a range of operational reasons
- it considered further requirements for the REPS to reduce the land area required (between 530 square metres and 710 square metres, reduced from an initial 1,100 square metres)
- the final design would be subject to further investigation of existing conditions and collaboration with stakeholders.

The Proponent provided Supplementary Information Note 15¹⁷ to outline urban design principles that would be used to guide development of the REPS to ensure the facility complements its location in a new future high quality open space, high density setting.

Melbourne City Council submitted it was unclear how the design principles would be applied, and whether they are binding.

The Proponent suggested wherever the pump station is ultimately located, a thorough urban design review process will be undertaken to ensure that the pump station integrates with its surroundings.

(iv) Discussion

The Committee accepts Melbourne Water's submission that several sites were investigated for location of the REPS and the preferred location for operational reasons was ultimately found to be Hartley Street Park.

It is not unusual for a facility such as the REPS to be located in parkland, although such facilities are not always successfully integrated with the park. The Hartley Street Park makes an important contribution to the overall open space provision in Lorimer and the Committee considers there is opportunity to design a facility to minimise the amount of land occupied and land restricted for public use.

The Committee agrees with Melbourne City Council that land required for the facility that is not open to the public should be included in the FBDCP as part of the drainage project, rather than the open space project. Melbourne Water has identified an approximate area of between 530 square metres and 710 square metres that will be required for "*exclusive space*" and this is the amount that should be included as the land component of DR02.

It is unclear how the guiding principles set out in SN-15 are intended to be applied, but the Committee encourages Melbourne Water, Melbourne City Council and the Victorian government to work together on the detailed design of the REPS to ensure these urban design principles are considered.

¹⁷ Document 203.

(v) Conclusions and recommendation

The Committee concludes:

- It is appropriate to locate the River Esplanade Pump Station (DR02) within the Hartley Street Park (L_OS05).
- The area required exclusively to accommodate DR02 (where public access will not be permitted) should be allocated to the drainage asset and not included in public open space calculations.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **Amend Table 10 to reduce the land component of L_OS05 and include an equivalent land component for DR02 by an amount which reflects the area needed to accommodate the River Esplanade Pump Station where no public access will be permitted.**

5.8 Project timings

(i) The issue

The issue is whether timings for delivery of FBDCP projects are appropriate.

(ii) Submissions

Submitter concerns included:

- project delivery timelines not aligning with relevant demand
- long-term delivery timeframes for FBDCP projects creating uncertainty and adversely impacting development potential and feasibility, ongoing leasing arrangements, and general business operations
- general requests for the timely delivery of infrastructure to promote future development and employment in the FBURA.

Submissions requested changes to timeframes for specific projects, usually to bring them forward or, where projects were identified as being delivered in stages, to deliver the project in a single stage.

The Proponent explained the indicative project delivery timeframes in the exhibited FBDCP (Figures 9, 10 and 11 of the exhibited FBDCP) had been determined having regard to “*existing development activity and anticipated development fronts, based on a consideration of community needs and orderly planning, and balancing cash flow considerations*”. The timeframes are indicative only and subject to change, including in response to:

- agreed works-in-kind (land or construction) opportunities
- changes to development patterns and community needs, and
- network priorities.

In response to submissions, the Proponent provided Table X (replacing Figures 9, 10 and 11 of the exhibited FBDCP) (Document 99k) with revised timeframes for some FBDCP projects.

Port Phillip City Council submitted key open space land acquisitions and upgrades should occur before 2032, with priority given to North Port Oval expansion. Port Phillip City Council largely

agreed with the Table X revised open space timeframes with Council still requesting a small number of open space projects be delivered earlier.

Melbourne City Council requested more information on the timing of open space delivery, particularly open space delivered via the OSU. It also identified errors in indicative delivery figures in the exhibited FBDCP.

(iii) Discussion

The Committee is satisfied that the Proponent's Table X revisions to project delivery timeframes have been determined having regard to an appropriate balance of factors and have, at least in part, responded to submitter concerns. Section 3.2 of the final FBDCP makes clear the timeframes are indicative only and states:

All items in the DCP will be provided as soon as practicable and as soon as sufficient contributions are available, ... and acknowledging the Development Agency's capacity to provide the balance of funds not recovered by the DCP.

The scope of the periodic review of the FBDCP is sufficient to allow appropriate adjustments to delivery timeframes over the life of the FBDCP to ensure that FBDCP projects are delivered in an orderly manner consistent with the growing needs of the FBURA.

Because the OSU sits outside the FBDCP, timings for delivery of OSU parks are not included in Table X. The FB Framework contains indicative timing priorities for delivery of these parks. Because the OSU is voluntary, the timing of actual delivery of OSU parks will be dependent on developer decisions unless the Victorian government steps in to acquire and deliver any of these parks (either to ensure early delivery or where the OSU is not taken up). The scope of the periodic review of the OSU is sufficient to monitor the rate and location of OSU parks being delivered using the OSU.

(iv) Conclusion

The Committee concludes the timings for projects set out in Table X of the final FBDCP (final version) are appropriate.

6 Open space uplift

6.1 Background and Open space uplift terminology

Mandatory maximum dwelling densities currently apply to land in the FBURA (referred to as ‘the base density’). Under existing provisions, they can only be exceeded where a developer chooses to provide social housing, at no cost, through the SHU mechanism. The proposed OSU would provide a second way to increase development yield above the maximum dwelling densities.

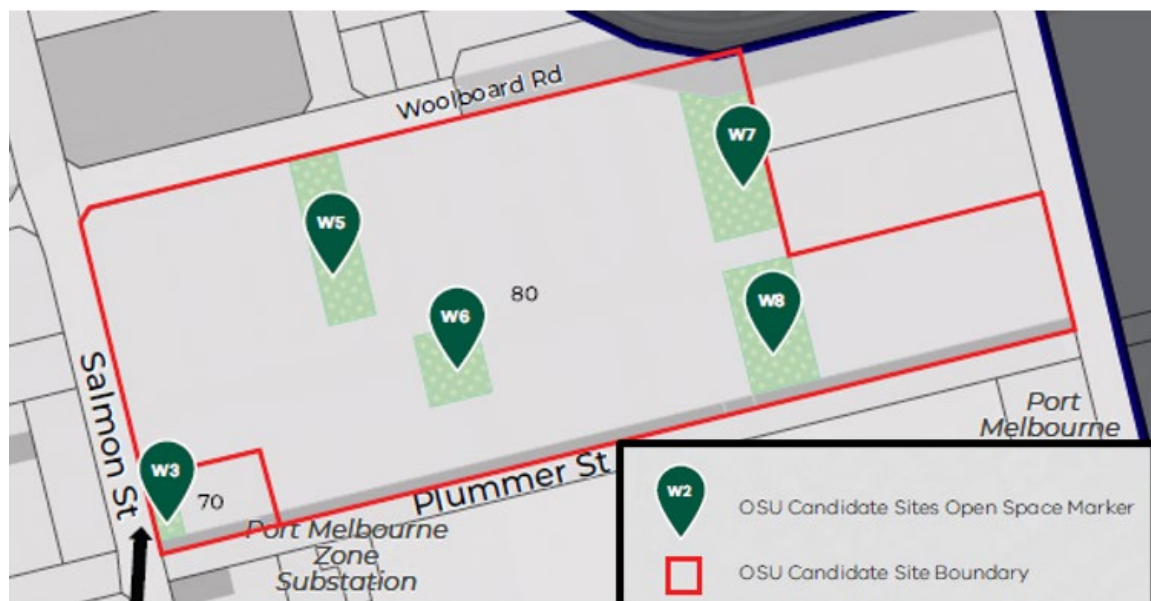
Purpose of the OSU

The OSU is implemented through the CCZ schedules. It is intended to incentivise developers to provide land for open space, without cost to the Victorian government, in exchange for additional permitted dwelling density (that is, above the base density) on adjacent land. The additional dwelling density is referred to as the ‘OSU uplift’ or ‘the uplift’ and the additional dwellings permitted under the OSU are referred to as ‘OSU uplift dwellings’.

How the OSU operates

By way of example, Figure 15 depicts five areas of open space proposed to be delivered by the OSU (OSU parks). The OSU parks are shown in light spotted green with the relevant OSU park identifier marked in dark green with a letter and a number. In the relevant CCZ Schedule maps, OSU parks are identified as ‘Public open space site – eligible for Open Space Uplift’.

Figure 15 Example of OSU parks and related OSU candidate sites



Source: Document 127d

The OSU parks are located within OSU candidate sites. The entire development site, including the OSU park and the adjacent developable area, is referred to as ‘the OSU candidate site’. In the above example, the boundary of each OSU candidate site are shown on Figure 15 in red (parcels 70 and 80).

The OSU dwellings would be delivered on the balance of the OSU candidate site, that is, the land remaining after the OSU park and any other land identified for public purposes (such as a road) is excised (referred to as ‘the developable area’).¹⁸

In the example depicted in Figure 15:

- OSU_W3 (on parcel 70) is an OSU park of approximately 934 square metres proposed to be delivered by the OSU in exchange for additional dwelling density on the developable area of the property at 50 Salmon Street.
- OSU_W5 to W8 (on parcel 80) are four separate OSU parks proposed to be delivered by the OSU in exchange for additional dwelling density on the developable area of parcel 80. Parcel 80 has various street addresses but is in single ownership.

A development using the OSU must comply with all other applicable provisions. OSU candidate sites were identified as suitable for the OSU because they have sufficient capacity to accommodate the additional OSU uplift dwellings on the developable area while complying with all existing CCZ built form provisions.

Transfer of the OSU park to the Victorian government will be secured by an agreement under section 173 of the PE Act.

Other attributes of the OSU include:¹⁹

- The OSU is voluntary.
- The OSU is designed to provide a genuine incentive for take up of the scheme.
- If a developer does not use the OSU, the OSU park will be purchased (by negotiation) or compulsorily acquired by the Victorian government.
- The OSU park must be made “*safe and suitable for public access*” before being transferred.
- The six percent affordable housing requirement will not apply to OSU uplift dwellings.
- The DIL will be charged on a per dwelling rate to all dwellings in a development (that is, both the base density dwellings and the uplift dwellings).
- The existing SHU provisions will continue to apply to the FBURA, in addition to the OSU.

Calculating the OSU uplift

The number of OSU uplift dwellings is calculated using the following formula:

$$\text{Uplift Dwellings} = (N/10,000) \times \text{OSU park area}$$

Where:

- **N** is the applicable OSU uplift dwelling density shown in the CCZ, being the additional dwelling density per hectare of the open space land to be gifted
- **OSU park area** is the required area in square metres of the OSU park as set out in the relevant Planning Scheme.

The total number of dwellings permitted on the developable area is calculated by adding the number of uplift dwellings (calculated using the above formula) to the base dwelling density calculated for the whole OSU candidate site (that is, the total site area including the OSU park).²⁰

¹⁸ In the OSU modelling, the term ‘net developable area’ is used to refer to the area of land available for development after not only the OSU park, but also all other land required for public purposes (such as roads), is excised: Document 127d

¹⁹ Document 5.

²⁰ For the purposes of calculating the total number of dwellings permitted on the developable area, the total site area to which the base dwelling density is applied may or may not include other land required for public purposes (that is, in addition to the OSU park) depending on whether the OSU is taken up before or after that other land is excised, as the case may be.

Open space policy

The Amendment includes a new public open space policy (in Clause 11.03) which refers to the OSU together with various other provisions relating to the OSU including a map and list of OSU parks, OSU-related application requirements and OSU-related decision guidelines. The Melbourne Planning Scheme provisions are shown with Port Phillip variations in square brackets:

Public open space strategy

To encourage the provision of land for public open space, where identified as Open Space Uplift in Map 4 [7] of Schedule 4 [1] to the Capital City Zone, by allowing an Open Space Uplift in accordance with Schedule 4 [1] of the Capital City Zone.

To facilitate the provision of precinct and neighbourhood open space (including linear open space) identified in the Fishermans Bend Framework ... via a combination of development contributions, open space uplift and other government-led measures.

Relationship between the FBDCP and the OSU

Generally, land and remediation costs for OSU parks were not included in the exhibited FBDCP. As originally conceived, the OSU did not include park embellishment costs as part of the ratio calculations. However, in some cases (but not all), OSU park embellishment costs were included in the exhibited FBDCP as separate projects.

The FBDCP funds the delivery of other public open space identified in the FB Framework (which are not OSU parks).

6.2 Open space uplift ratio

(i) Background

The OSU ratio is the OSU dwelling uplift yield divided by the 'base case' dwelling yield (as permitted under the existing applicable maximum dwelling densities which vary across core and non-core areas of the four FBURA precincts).²¹

The OSU ratio is used to calculate the OSU uplift dwelling density that appears in the CCZ schedule provisions. The OSU uplift dwelling density is used to calculate the number of OSU uplift dwellings permitted to be delivered on the developable area of an OSU uplift site in exchange for the provision of the OSU park for nil consideration.

The higher the OSU ratio, the greater the number of OSU uplift dwellings are permitted per area of OSU park land provided.

Factsheet 2 states the OSU ratios:

- were set to ensure that developers can realise the value of OSU park land by way of additional development yield
- were set for 'core' and 'non-core' areas, with a higher ratio in core areas reflecting the land values associated with higher dwelling densities and additional land value relating to commercial components of development
- will be monitored over time and updated as necessary to ensure they provide a genuine incentive relative to the value of the OSU park land.

The exhibited OSU ratios did not include 'below the line' additions to OSU park land values to allow for:

²¹ Document 65, updated by Document 86

- the costs for making the land safe and suitable for public access (such as demolition, asbestos removal and contamination remediation costs)
- park embellishments.

(ii) The issues

The issues are whether the OSU ratios are appropriate and justified including whether:

- they provide a sufficient incentive for developers to take up the OSU
- the approach to setting and testing the OSU ratios is appropriate including:
 - adoption of separate ratios for each of the four FBURA precincts
 - the land valuation approach
 - inclusion of remediation and embellishments costs as below the line costs.

(iii) Evidence and submissions

Mr Costin of Ernst & Young (EY) explained how EY calculated and tested the OSU ratios:

- EY undertook land valuations for proposed OSU parks, as selected by the Proponent, to determine the 'base land value', that is the unencumbered underlying market value of the land to be gifted.
- A 'target incentive', essentially an allowance to incentivise developers to use the scheme, was added to the base land value. The initial incentive range of 25-35 percent of the base land value tested by EY was set by the Proponent.
- EY identified the additional dwellings needed through the OSU to attain target incentives of 25 percent, 30 percent, and 35 percent above the base land value.
- EY calculated the range of ratios for each of the four FBURA precincts which reflected the lowest ratio required to achieve a 25 percent incentive and the highest ratio required to achieve a 35 percent incentive by reference to the properties in each of the core and non-core areas of each precinct.
- Based on the Proponent's preference for a single ratio across the FBURA, EY recommended the adoption of a single OSU ratio for core and non-core areas. These were the ratios included in the exhibited Amendment.

The Proponent undertook built form modelling for each OSU candidate site to test whether the maximum number of uplift dwellings generated by the proposed ratio could be accommodated on the developable area within the built form envelope set by the planning provisions. With two exceptions, Lorimer Central Park and 299 Bridge Street (discussed further in Chapters 7.3 and 7.5), the modelling demonstrated the developable area of all OSU candidate sites have the physical capacity within the built form envelope to achieve the uplift available using the exhibited ratios.

At the conclave, Mr Mackintosh, Mr Costin and Mr Haines supported adopting different ratios for each precinct because it would result in *"a more balanced distribution of benefit, given that the ratio calculation is based on underlying land value which varies across the four precincts"*. The Proponent accepted this.

The land valuation experts agreed that the 'before and after' approach is appropriate, consistent with the valuation approach for FBDCP land (referred as the 'Land Value Based Approach'). This approach estimates the increase in land value potentially available to a landowner taking up the OSU and provides a preliminary sense of the amount of uplift incentive proposed. Mr Ainsaar supported a consistent approach for valuing FBDCP funded land and OSU park land.

Mr Costin explained that sites that are subject to strata title had been valued as if they were in single ownership because valuations are undertaken assuming the land is ready for development and in the case of strata title this would be when all landowners agree to sell.

Mr Haines generally supported EY's method of calculating the OSU ratios but did not support the assumption that when deciding whether to take up the OSU a developer would consider the notional percentage increase in the dollar value (over the base case) for the additional dwellings. He said a developer would instead compare the estimated profit for the additional dwellings allowable under the OSU against the lump sum that the developer would receive by not taking up the OSU (that is, for selling the OSU park to the Victorian government or as compensation for compulsory acquisition of the OSU park).

Mr Haines analysed whether the exhibited OSU ratio for Lorimer would provide an incentive by calculating the potential development profit of additional dwellings based on comparable sales data in Lorimer and assuming:

- a reasonable profit margin is 20 to 30 percent (after GST)
- a developer would adopt a five-year delay for realising this profit and apply a five percent annual discount rate.

He described his method as the 'Developers Profit Based Approach' and gave evidence that this is one method, and but not the only method, to establish an appropriate ratio.

Mr Haines said the Developers Profit Based Approach (or another developer-centred method adopted after consultation with developers) should be used to check whether the OSU provides a sufficient incentive as part of regular reviews and before adopting a final ratio for the Amendment.

Mr Haines concluded that for Lorimer an uplift incentive which adds 25 to 35 percent to the base land value would be unlikely to provide a sufficient incentive. Instead, an incentive of at least 50 percent would be required. During questions, Mr Haines stated that he saw no harm in adopting a ratio at the higher end of the range provided that the impact of the additional population on infrastructure can be managed. The difference in ratios calculated using a 45 percent incentive and a 50 percent incentive would not make a substantial difference to the number of dwellings at a precinct level but could make a crucial difference to a developer of a particular site and act as an incentive to take up the OSU.

Mr Costin considered a 45 percent incentive would be sufficient. During questions, he agreed the difference between using a 45 percent incentive and 50 percent incentive could be a deciding factor in whether a particular developer used the OSU or not. Mr Costin stated that to maximise the uptake of the OSU, the ratios can be raised as high as the capacity of the relevant precinct to accommodate additional density.

Ms Hodyl gave evidence the ratios should not be set so high as to negatively impact built form outcomes. Mr Woodland stated it is important that the ratio is high enough to provide sufficient incentive for a developer to take up the uplift opportunity.

The OSU joint expert statement records:

The experts highlight that the practical difference between ... an assumed +45% uplift (in the land value based approach) and +50% ... in many cases is a very small increase in the number of additional residences able to be supported. The experts consider this difference to be marginal.

The Proponent submitted there is not much difference between a 45 percent and 50 percent incentive and that a 45 percent incentive is sufficient for developers to take up the OSU.

During the Hearing, the Proponent provided work by EY to demonstrate how the ratios would change based on various positions put by submitters. EY recalculated and tested the ratios:

- for core and non-core areas for each precinct (that is, precinct-specific ratios)
- for an incentive range of 40 to 50 percent
- including remediation costs for all OSU parks on a per square metre basis including preliminaries (contamination, demolition and asbestos removal, and a 15 percent contingency) plus a contamination levy (costs provided by Mesh)
- including costs of embellishments for all OSU parks (costs provided by Mesh)
- using updated land valuations (as agreed with submitters)
- including Hartley Street Park, Turner Street Linear Park and 18-22 Salmon Street park as potential additional OSU parks in the relevant precinct
- making other minor changes to correct errors and reflect adjusted areas of open space.

It also undertook sensitivity testing on increased land values of 10 and 50 percent.

The Proponent undertook further built form modelling based on the recalculated ratios and other relevant changes (such as site reconfigurations). The Proponent submitted the further work demonstrated:

- the inclusion of park embellishments has a “*moderate but manageable*” impact on the ratio
- the additional dwellings associated with the recalculated (increased) ratios can be physically accommodated on the developable area of all OSU candidate sites except for 299 Bridge Street
- impacts of increased ratios on the SHU and the population of the FBURA are acceptable (discussed in Chapter 6.4)
- considered together, the changes are acceptable.

Melbourne City Council submitted:

- the ratio should be set to ensure at least a reasonable prospect of it being taken up. Relying on the evidence of Mr Haines, the ratio for Lorimer should be based on a 50 percent incentive
- the ratio must not be set so high that it has negative impacts on urban design and built form outcomes, delivery of social housing and the ability to service the additional population
- remediation costs should be included in the OSU only if there is a requirement to provide the land in a remediated state that is fit for purpose as open space land (specifically for use as a “*children’s playground*”)
- embellishment costs should not be included because their inclusion was raised late in the Hearing process and was not able to be properly explored.

Another submission echoed Melbourne City Council’s concerns about reliance on the Proponent’s further OSU modelling (Document 208) because it was provided late in the Hearing process and unable to be tested.

The Proponent accepted OSU parks would be required to be remediated to a condition that is suitable for use as a children’s playground. This would be required in the section 173 agreement.

Port Phillip City Council supported including the cost of embellishment of all OSU parks in the OSU ratios. It submitted that open space in its municipality should be embellished to its standards and the provisions should be amended to require “*any embellishment of open space under the OSU*”

scheme to be in accordance with a park masterplan which is prepared to the satisfaction of the responsible authority in consultation with the council of the relevant municipality”.

The Proponent submitted a landscape plan is already a permit application requirement under the CCZ and no change is required.

(iv) Discussion

The Committee considers the general approach to setting and testing the ratio is appropriate with one exception, discussed below.

For the OSU to be effective, the ratio must be high enough to incentivise developers to take up the scheme, delivering public open space ready for use for the growing population of the FBURA. At the same time, the ratio must not be so high as to cause unacceptable impacts for the future development of the FBURA (impacts of the OSU are discussed in Chapter 6.4).

There was general agreement between the experts on a range of matters including:

- the adoption of separate ratios for each of the four FBURA precincts
- the land valuation approach used (same as for FBDCP land)
- ratios can be calculated including costs for remediation of open space land and park embellishments as below the line additions, provided any adverse impacts of a higher ratio can be managed appropriately.

The Committee accepts the evidence that for Lorimer, an incentive of 50 percent over the base case is required to ensure the OSU provides a sufficient incentive for its uptake, noting it was based on analysis of comparable sales data. It also accepts that the difference in ratios calculated using a 45 percent incentive and a 50 percent incentive could make a crucial difference to a developer in deciding whether to use the OSU.

The ratio testing demonstrates the viability of using a 50 percent incentive across all FBURA precincts and the Committee concludes in Chapter 6.4 that the impacts of the OSU, using the recalculated ratios, are acceptable. Therefore, although sales-based analysis has not been undertaken for the other three precincts, the Committee recommends that the ratios be recalculated for all FBURA precincts using a 50 percent incentive. In the period before the first periodic review of the OSU and thereafter, analysis of comparable sales data for the other precincts (and an update for Lorimer) can be undertaken and used in the review process to test the attractiveness of the OSU and ratios modified as necessary.

The Committee supports a requirement that OSU parks transferred to the Victorian government be made safe and suitable for public access. This is in line with Ministerial Direction 1 (Potentially Contaminated Land). Inclusion of relevant remediation costs as a below the line addition to the assessed underlying unencumbered value of the OSU park land in the OSU ratio calculations is appropriate.

The ratio testing also demonstrates that OSU park embellishment costs can be added as a below the line addition to the ratio calculations without adversely impacting the viability of the incentive. The embellishment costs used by EY to calculate the final proposed ratios, provided by Mesh, were calculated using a mix of per square metre costings and costs of the actual embellishments required. The Committee considers the Mesh figures are sufficient for calculating the ratios. The extent of embellishment of OSU parks will be determined at the design stage for each site. To the extent that embellishment costs can be more accurately estimated before the Amendment is

finalised, those updated figures should be used to calculate the final ratios, but the Amendment should not be held up for this purpose.

If OSU park embellishment costs are included in the ratio calculations, as recommended by the Committee, OSU parks will be delivered as embellished open space. This means that there is no need for OSU park embellishment projects to be included in the FBDCP and they should be removed.

(v) Conclusions and recommendations

The Committee concludes:

- To better ensure that the open space uplift provides a genuine incentive for developers, the ratios should be calculated using a target incentive of 50 percent above the base land value of OSU park land.
- Otherwise, the general approach to setting and testing the ratios is appropriate including:
 - the adoption of separate ratios for each of the four FBURA precincts
 - the land valuation approach used (same as for FBDCP land)
 - inclusion of costs for remediation of open space land and park embellishments for all OSU parks in the ratio calculations.
- With these changes, the ratios are likely to provide a sufficient incentive for developers to take up the open space uplift.
- Mr Haines' Developers Profit Based Approach should be used as part of the regular reviews of the open space uplift to ensure that the open space uplift remains a genuine incentive for developers.

The Committee recommends the following changes to the draft Amendment:

Recalculate the open space uplift ratios for all four precincts in the Fishermans Bend Urban Renewal Area:

- using a 50 percent incentive on the base case value of open space uplift land
- adopting separate ratios for each of the four precincts
- using the 'before and after' land valuation approach (unencumbered basis)
- including remediation and embellishment costs.

Amend all proposed Melbourne Planning Scheme and Port Phillip Planning Scheme provisions to reflect the revised open space uplift ratios.

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- remove embellishment open space projects for all open space uplift parks.

The Committee informally recommends:

The Department of Transport and Planning should apply the Developers Profit Based Approach (or other similar method) as part of the five-yearly reviews of the open space uplift to test whether the open space ratios result in an open space uplift that is a genuine incentive.

6.3 Design of the open space uplift mechanism

6.3.1 The issues

The issues are whether the:

- scope of the OSU is appropriate – in particular, whether it should include:
 - non-residential developments
 - land required for transport projects
 - all proposed public open space land in the FBURA
- OSU provisions will achieve their intended outcomes.

6.3.2 Scope of the open space uplift

(i) Evidence and submissions

Mr Woodland gave evidence that because the OSU because is relatively new, it should be limited to residential development and should not include other types of uses. He said the merits of extending the OSU beyond its current scope could be considered in the future.

Mr Milner believed limiting the OSU to residential uses is a structural weakness of the mechanism. He said 50 Salmon Street provided an example where the OSU would offer no benefit to a developer because commercial development would be more likely to be the highest and best use of the site. 50 Salmon Street is discussed further in Chapter 7.7.

Mr Woodland said including commercial development in the OSU would necessitate a mandatory density limit on commercial development which is not supported by existing policy and would require considerable further work to set an appropriate ratio. He stated:

- The Fishermans Bend Ministerial Advisory Committee supported allowing unlimited commercial floor areas within the height and overshadowing controls in order to accommodate additional commercial development and job creation.
- The Fishermans Bend Review Panel [the GC81 Panel] concluded that setting a maximum commercial floor area ratio is inconsistent with the Vision and draft Framework.
- The approved Fishermans Bend Framework (and associated planning provisions) do not set any commercial floorspace 'cap'.

Numerous submissions supported expansion of the OSU to non-residential development, sites which include land required for transport projects and all proposed open space land in the FBURA.

The Proponent submitted it would be inappropriate to expand the OSU to commercial development given the clear policy position of unrestricted commercial development in the FBURA.

(ii) Discussion

The existing CCZ provisions do not include a mandatory maximum density for commercial uses. Therefore, the OSU as currently conceived cannot be applied to commercial development without significant changes to the CCZ schedules and supporting policy, such as applying a mandatory limit on commercial development. Such a change would have considerable implications that have not been canvassed before the Committee or tested. The GC81 Panel carefully considered these issues, and there is no evidence before this Committee to warrant departing from its conclusions and the current planning scheme provisions.

As outlined above, considerable work has been undertaken to select and test the proposed OSU candidate sites. Crucially, sites have been selected if the developable area has the physical capacity for uplift dwellings within the built form provisions. This is not the case for all development sites where part of the site is proposed for public open space. Therefore, it would be inappropriate to expand the OSU to include all sites in the FBURA with proposed public open space.

Given the OSU is new, it would be wise to commence with a limited scope. Early learnings can be captured as part of the periodic reviews of the OSU. Further, expanding the type of land coming within the scheme, for example to sites that include public transport land, would require substantial further work which could delay the Amendment.

However, the Committee sees no reason why, if the OSU successfully delivers public open space as part of residential developments, that it could not be expanded in the future. The appropriateness of expanding the scope should be considered at the periodic reviews of the OSU.

(iii) Conclusion and informal recommendation

The Committee concludes:

- It is appropriate to confine the open space uplift to residential development.
- The appropriateness of expanding the open space uplift mechanism should be considered at the periodic reviews of the open space uplift.

The Committee informally recommends:

The Department of Transport and Planning should consider the appropriateness of expanding the scope of the open space uplift as part of the five-yearly reviews of the open space uplift.

6.3.3 Intended outcomes

(i) Evidence and submissions

Submissions expressed concern the OSU would not deliver public open space, either at all or in a timely manner, because:

- the OSU is too uncertain, fragile and based on various assumptions
- the pathway for a development that does not take up the OSU is not clear enough.

The experts acknowledged that the OSU involves uncertainties, but said they would reduce over time as the OSU became more understood.

Mr Woodland stated:

- there is uncertainty over whether and when particular OSU parks will be delivered
- if the Planning Authority considers that any OSU parks should be delivered in the early phases of renewal, it may be better if these sites were included within the FBDCP.

He added:

If over time it becomes clear that landowners are opting not to take up the OSU, then the Planning Authority could elect to either amend the DCP or apply PAOs to the relevant sites as part of the periodic review of the planning provisions.

Mr Milner said that the OSU's shortcomings meant that there could be a minimal delivery of open space using the OSU.

The valuation and OSU experts said further clarification is required about how landowners would receive compensation for OSU parks when not taking up the OSU. This is required:

- to properly assess the OSU's incentive, and
- where a developer does not want a higher density.

Ms Hodyl gave evidence the Victorian government's guarantee to deliver OSU parks where the OSU is not taken up is "*critical*" to the scheme. She said:

If sufficient open space is not delivered, and delivered early in the renewal process, then the base densities allowable across the Lorimer precinct are not supportable, which undermines the overall urban renewal strategy of Fishermans Bend.

The Proponent submitted the OSU is voluntary, both in its design and in practice. This is clear in Factsheet 2 and in the Planning Scheme provisions. The Proponent explained that when not taking up the OSU, permit conditions could require that OSU park land be fenced and made safe to a basic level until the Victorian government purchased or acquired the site.

The Proponent submitted the reference in Clause 11.03 to "*other government-led measures*" as the alternative to FBDCP and OSU funded open space was sufficient to clarify the Victorian government's commitment to deliver OSU parks and nothing further is required in the Planning Scheme. The FBDCP (final version) states that the Victorian government is responsible for securing OSU parks not delivered by the OSU.

Port Phillip City Council's support for the OSU was subject to:

- a clear and unequivocal commitment by the Victorian government to deliver all OSU parks as open space (either by voluntary purchase or compulsory acquisition) if the uplift opportunity is not taken up with a reasonable time, which is "*emphatically stated in the planning policy framework*"
- clarity that land identified as an OSU park in the Planning Scheme only indicates that the primary method for funding the park is the OSU (as opposed to the delivery of the open space as being optional).

While generally supporting the OSU, Melbourne City Council expressed concern about the uncertainty created by the Victorian government's lack of commitment to the timing of acquisition where the OSU is not taken up.

Goodman submitted due to the uncertainty of the OSU, identification of land as an OSU park makes the scheme "*all but mandatory*". Landowners not taking up the OSU would be faced with undeveloped, unattractive pockets of land within development sites while waiting for the Victorian government to purchase or compulsorily acquire the open space land, essentially forcing them to opt into the scheme. It submitted:

Future market dynamics may not support developers to deliver the some or all of the housing uplift that would justify the provision of land for the OSU. What would then remain might be the worst of all worlds, with projects that ought otherwise have been included in the DCP – and hence identified, scoped, costed, funded and delivered with all of the rigour that comes with that – instead being left to a voluntary mechanism, but still subject to the prospect of compulsory acquisition and a compensation dispute under the LAC Act.

Goodman also submitted that where a permit application for an OSU candidate site does not use the OSU, the responsible authority will be confronted with a conflict of interest. In granting the permit it would forgo the opportunity to receive the OSU park at no cost and "*in that circumstance there would be an incentive for a responsible authority to refuse a permit application on the basis of a pretext, rather than for the true planning reason*".

Port Phillip City Council submitted there is a potential conflict of interest for the responsible authority in administering the OSU due to the additional development contributions levies that would be raised by the uplift dwellings. To avoid this, it submitted the levies from OSU dwellings should be used to fund additional projects rather than the ‘funding the gap’ under the FBDCP.

Overall, the Proponent submitted adopting the OSU will have significant benefits. For example, if all OSU sites are delivered using the OSU, the OSU will:

- i Facilitate the delivery of \$252M of open space land, that is not funded through the DCP...
- ii Generate DCP revenue from uplift dwellings of approximately \$109.9m which will provide greater certainty regarding the capacity to meet embedded funding shortfalls within the DCP.
- iii Create a saving to the DCP of \$74.4m in embellishment costs which may be redirected to other unfunded projects, or further manage funding shortfalls within the DCP.

(ii) Discussion

The Committee acknowledges that many submitters, including the two councils, have a genuine concern about the uncertainties of the OSU, not just because it is untested. This concern is largely driven by the importance of delivering suitable open space in the FBURA to meet the growing demands of what will be a very densely populated area. The GC81 Panel made clear that the large increase in density and public realm transformation must go together. Without this, the intent of the Framework will not be achieved.

There is, undoubtedly, a level of uncertainty associated with the OSU mechanism. It is not possible to predict how many OSU parks will be delivered using the mechanism and when. That will depend on market dynamics. The Committee has discussed the need for the OSU ratios to be set at a level that provides a genuine incentive for uptake of the scheme. It also acknowledges that there will be situations where the OSU is not currently applicable (for example, commercial development) or not attractive (for example, a low density development).

The Committee agrees that the Victorian government’s commitment to deliver all open space identified in the Framework, including all OSU parks not delivered using the OSU, is crucial. The statement in the FBDCP (final version) that the Victorian government is responsible for “*securing*” OSU parks not delivered by the OSU should be strengthened by adding the words “*and delivering*”. The Committee recommends that this commitment also be explicitly stated in the Governance (Implementation) and Funding (Finance) Strategy but considers no changes to the planning scheme provisions are required.

Overall, the Committee considers that the uncertainties of the OSU are not so great that it should not be progressed. The OSU offers clear benefits where used. OSU parks will be delivered as open space alongside the development of the adjacent land, embellished and in a safe and suitable condition ready for use. The periodic review process should be used to assess whether the OSU is delivering the open space required as the population grows over time.

The OSU is clearly intended to be voluntary. To achieve this intent, its design must ensure a developer can freely choose either to take up the OSU or to develop without using the uplift. To do this, developers must be able to assess the merits of taking up the OSU and to that extent, the pathways for taking up the OSU and not taking it up need to be clear. This includes clarity on the method of acquisition of OSU parks by the Victorian government where the developer chooses not to use the OSU, including compensation for the OSU park land.

In this respect, Factsheet 2 (or other relevant guidance material) should be amended to clearly state methods (including land valuation methods) that will be used for the purchase (by

negotiation) or compulsory acquisition of OSU parks. The periodic reviews should include consultation with developers to better understand how developers are assessing the benefits and disbenefits of using the OSU and barriers to uptake of the OSU.

On the issue of conflicts of interest, the Committee is confident the existing legal framework is sufficient to ensure that the responsible authority acts according to law and there is redress if it does not. Responsible authorities are faced with similar potential conflicts of interest daily, such as a local council considering a permit application for a substantial development that would deliver a significant number of rateable properties and therefore considerable additional rate revenue.

(iii) **Conclusions and recommendations**

The Committee concludes:

- The potential benefits of the OSU outweigh the uncertainties of the scheme.
- The pathway for not taking up the OSU should be better explained, either in Factsheet 2 or guidelines to be developed.
- It is crucial that the Victorian government's commitment to delivering all open space identified in the FB Framework, including all OSU land not delivered using the OSU, be made explicit.
- Any conflicts of interest raised by the OSU can be managed within the existing legal framework.
- The success of the OSU in delivering open space, and whether open space is being delivered at the right time to meet population increases, should be assessed at each periodic review of the FBDCP and the OSU.

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **revise section 3.1.2 'Public open space' to clarify that the Victorian government is responsible for securing "and delivering the embellished park" for open space uplift land not delivered using the open space uplift.**

The Committee informally recommends:

The Department of Transport and Planning should:

- **include explicit reference to the Victorian government's commitment to delivering all open space identified in the Fishermans Bend Framework, including all open space uplift land not delivered using the open space uplift mechanism, in the Governance (Implementation) and Funding (Finance) Strategy**
- **provide a more detailed explanation of the process for not taking up the open space uplift, including the legal mechanism(s) and land valuation method(s) to be used, in Factsheet 2 or other guidance material.**

6.4 Impacts of the open space uplift

6.4.1 The issue

The issue is whether the potential impacts of the additional dwellings delivered through the OSU are acceptable including:

- built form impacts

- the impact on the uptake of the SHU
- population increases resulting from take up of the OSU.

6.4.2 Built form impacts

(i) Evidence and submissions

Some submissions expressed concern about the built form impacts of the OSU. The Proponent submitted the urban design impacts of the OSU are managed through the Planning Scheme provisions because any additional development (uplift dwellings) obtained through the OSU are subject to the same provisions, including the same mandatory overshadowing provisions, as other developments in the FBURA.

Mr Woodland said the current and proposed planning scheme provisions provide an appropriate framework to ensure the OSU does not adversely impact urban design and amenity outcomes.

He gave evidence that when considering suitable sites for the OSU, there must be sufficient gap or 'headroom' on the developable area of OSU candidate sites between the building height (when uplift dwellings have been added to the base case) and the maximum building height under the planning provisions to allow for use of the OSU over time. He explained that as land values go up and the ratio is recalculated, more uplift will become available. He did not express a view on how much headroom is needed, but it is a matter to be considered.

Ms Hodyl generally supported the OSU in Lorimer cautioning that *"uplift schemes should not be positioned as a 'trade-off' between financing and amenity/liveability"*. She said:

For the OSU to be effective there needs to be sufficient capacity above the base allowable densities to enable its operation, while not undermining broader design objectives such as housing diversity and high levels of amenity.

The Proponent undertook built form modelling to demonstrate that the maximum OSU uplift can occur within the permitted building envelope on the developable area of all but two OSU candidate sites. The built form envelope used for the modelling included:

- building heights:
 - where a discretionary height is nominated in the Planning Scheme, a mandatory building height was assumed
 - where a 'non-specified' height is nominated, the maximum height was determined by either a mandatory overshadowing provision which applies to an adjacent open space or the 'Procedures for Air Navigation Services – Aircraft Operations' (PANS-OPS) surface determined by Essendon Airport (300 to 325 metres)
- minimum floor to floor heights, plot ratios not used for dwellings (core areas), setbacks and building separations
- maximum street wall heights and car parking spaces
- site coverage which allows for the minimum required communal open space
- floor plate: minimum building width, maximum building depth and minimum floor plate area (unless site size is smaller), as contained within Table 14 of the Fishermans Bend Urban Design Strategy (2017) by Hodyl + Co (with a floor plate efficiency of 85 percent applied)
- relevant overshadowing provisions.

The developable areas on the following OSU candidate sites cannot accommodate the maximum uplift offered by the OSU within the building envelope:

- Lorimer Central Park (OSU_L3 & L4)
- 299 Bridge Street park (OSU_S12).

The specifics of these two sites are discussed further in Chapter 7. Generally, the Proponent submitted that where uptake of the OSU would result in a discretionary building height being exceeded, a permit application would be required, and the responsible authority would have the ability to assess whether the built form impacts of the development were acceptable.

Melbourne City Council was satisfied that urban design impacts of the OSU can be managed except for Lorimer Central, which it submitted should not be an OSU candidate site.

Port Phillip City Council expressed concern about the limited ‘headroom’ in the building envelope over time for parks at:

- 299 Bridge Street, Port Melbourne (OSU_12)
- 123-135 Montague Street, South Melbourne (OSU_15)
- 50 Salmon Street, Port Melbourne (OSU_3).

(ii) Discussion

There are two principal means of managing the built form impacts of the OSU.

The first is through the selection of OSU candidate sites. With the exceptions noted, the developable areas of all OSU candidate sites have the physical capacity to accommodate the maximum OSU uplift within the built form envelope implied by the planning provisions. The Committee acknowledges that the ‘headroom’ available is more limited on some sites than others. This should be considered in the periodic review of the OSU and any adjustments made as necessary.

The second is application of the planning provisions. Where a discretionary provision would be exceeded by a development incorporating OSU uplift dwellings (such as a discretionary height limit), a permit will be required. In that case, the responsible authority can ensure that either the built form impacts are acceptable or refuse the permit. If a mandatory provision is not met, an OSU development cannot proceed. Further, the Committee has concluded the master planning process must not be able to change key mandatory built form provisions and the Proponent’s final drafting reflects this. This will ensure that built form impacts of the OSU are appropriately managed through the Planning Schemes.

6.4.3 Social housing uplift

(i) Evidence and submissions

Submissions queried whether the OSU would negatively impact delivery of social housing under the SHU because the OSU would be the first uplift likely to be taken up by developers, leaving less incentive (or room within the built form envelope) for SHU uplift dwellings.

Mr Woodland gave evidence it is reasonable to prioritise the OSU over the SHU because:

The OSU is only available on a relatively limited number of strategic sites, whereas the SHU is available to all sites across the precinct, and

There is a broader challenge in keeping the overall DCP costs as low as possible in order to achieve development feasibility across the precinct. Incentivising the delivery of open space on these sites via the OSU mechanism is an important part of the overall infrastructure delivery strategy.

Mr Costin stated that the OSU would be more attractive to developers than the SHU because typically a developer would prefer a product that is not restricted.

The Proponent submitted the OSU will not adversely impact the likely uptake of the SHU. The built form modelling demonstrates there is ample space remaining in the building envelopes to accommodate both OSU and SHU uplift dwellings, except for the two sites identified (Lorimer Central and 299 Bridge Street).

Melbourne City Council submitted the potential impacts on the SHU are acceptable given:

- the potential benefits of the OSU, and
- most sites are not in the OSU and are not therefore impacted.

(ii) Discussion

The Proponent's modelling demonstrates the OSU will not adversely impact on the availability and uptake of the SHU when considered at the level of the FBURA. The SHU applies to all sites across the FBURA while the OSU applies to relatively few. The Committee is satisfied that for the sites where the OSU applies, the Proponent's modelling demonstrates sufficient capacity for SHU dwellings after OSU dwellings are considered except for Lorimer Central and 299 Bridge Street.

6.4.4 Population

(i) Evidence and submissions

Some submissions expressed concern about the impact of the additional population that would result from take up of the OSU.

Mr Woodland noted that the OSU, if fully taken up, would result in an additional 1,200 dwellings based on the exhibited ratios or approximately 2,300 dwellings (based on the version 2 precinct-based ratios). He said that the potential increase in population from these additional OSU dwellings would be relatively minor in the context of the potential population of the FBURA of up to 120,000 residents. He considered that the impacts of the additional population delivered through the OSU should be monitored and reviewed regularly.

The Proponent's modelling estimated 3,148 additional OSU dwellings (based on version 2 ratios with remediation and embellishment costs added to the ratio calculations) and between 9,739 and 19,000 SHU dwellings assuming:

- the OSU is taken up for all OSU parks to the maximum extent achievable
- likely scenarios for uptake of the SHU across the FBURA.²²

The Proponent submitted the modelling demonstrated that even using the highest level of uptake of the SHU, the cumulative population increases of the two uplifts would not push the expected total population beyond the 120,000 upper bound suggested by the GC81 Panel as being supportable based on existing infrastructure planning. Therefore, the additional population resulting from OSU uplift dwellings can be accommodated and would be reviewed as part of the regular reviews of the FBDCP.

Melbourne City Council accepted the population impacts of the OSU can be managed through the regular review process.

²² Document 208, updating the figures in Document 151b

(ii) Discussion

The FB Framework contemplates a population in the range of 80,000 to 120,000 people (depending on the extent of take up of the SHU). In the context of the FBURA's proposed population of up to 120,000, the population impacts of the OSU are relatively minor, even when considering the Proponent's revised estimate of 3,148 dwellings (a figure based on the conservative assumption that all OSU candidate sites are developed to the maximum uplift available).

The FBURA population may grow faster or slower than forecast and the contribution of the OSU to that growth is hard to predict. The impact of the OSU on population growth in the FBURA should be monitored and be part of the periodic reviews of the FBDCP and the OSU.

6.4.5 Conclusion and recommendation

The Committee concludes the potential impacts of the open space uplift are acceptable, although population impacts should be monitored.

The Committee informally recommends:

The Department of Transport and Planning should monitor the impacts of open space uplift dwellings on population growth in the Fishermans Bend Urban Renewal Area as part of the five-yearly reviews of the Fisherman Bend development Contribution Plan.

6.5 Review of the open space uplift**(i) The issue**

It was common ground that regular review of the OSU will be required to understand whether the scheme delivers its intended outcomes. The issue is what scope of review would be appropriate.

(ii) Evidence and submissions

The land valuation and OSU experts agreed:

- site-specific land values should be reviewed annually
- OSU ratios should be reviewed periodically
- Mr Haines' Developers Profit Based Approach could be used to check whether the OSU continued to be a genuine incentive for developers.

Mr Woodland recommended the following matters be reviewed:

- the scope of the OSU
- the impacts of additional OSU dwellings on population forecasts.

The Proponent submitted:

- Review of the OSU would likely be conducted in parallel with the FBDCP reviews.
- OSU park land values could be revised annually by a registered valuer based on a site-specific methodology for each lot, aligning with the annual review of FBDCP land.
- The review could consider whether the methodology for calculating the ratio should evolve more towards the Developers Profit Based Approach.

Melbourne City Council submitted that the OSU should be reviewed as follows:

- a. Annual review of the OSU land valuations;

- b. A review every 3-5 years, in consultation with the councils and landowners of the OSU sites, which considers:
 - i. remediation costs;
 - ii. the extent to which the OSU has been taken up;
 - iii. whether OSU sites have been purchased or acquired, and if so, the basis of the valuation;
 - iv. the methodology, inputs and assumptions for the calculation of the uplift ratios;
 - v. the rate and types of development occurring in each precinct; and
 - vi. comparison of the calculated uplift ratios with an alternative or check methodology based upon a profits analysis.

It submitted that appropriately worded policy generally reflecting this review process should be included in Clause 11.03. The Proponent agreed that Clause 11.03 should contain a general policy (which is reflected in the final version of the provision) but submitted Factsheet 2 should be updated to outline indicative scope of the OSU review.

(iii) Discussion

A periodic review of the OSU should be used to assess its success in delivering OSU parks and whether that is occurring in a timely way given actual FBURA population increases over time. The review should occur every five years except for land valuations which should be reviewed annually. For the first review, the Proponent should consider starting two to three years after the Amendment is gazetted to capture early learnings.

The scope proposed by Melbourne City Council is appropriate with the following additional considerations (noting that the impact of the OSU on population growth is included the review of the FBDCP):

- landowner and developer feedback on how they are approaching the choice to take up the OSU and perceived barriers to uptake of the OSU
- the 'headroom' available on each remaining OSU candidate site after any updated (increased) ratios are applied
- whether the OSU should be expanded beyond residential uses.

The Committee considers the planning scheme provisions should reflect that ongoing review of OSU will be required to ensure that it remains a genuine incentive over time. This is an essential element of the OSU. The Committee considers Clause 11.03 (final version) achieves that and informally recommends that Factsheet 2 (or other guidance material) be updated to outline the indicative scope of the OSU review.

(iv) Conclusions and recommendation

The Committee concludes it is appropriate for the open space uplift to be reviewed as follows:

- Annual review of the open space uplift land valuations
- A review every five years, in consultation with Melbourne and Port Phillip City Councils, and landowners (and developers) of open space uplift land, that considers:
 - remediation costs
 - the extent to which the open space uplift has been taken up
 - whether the OSU should be expanded beyond residential uses
 - landowner and developer feedback on how they are approaching the choice to take up the open space uplift and perceived barriers to its uptake

- whether open space uplift sites have been purchased or acquired, and if so, the basis of the valuation
- the methodology, inputs and assumptions for the calculation of the uplift ratios
- the 'headroom' available on each undeveloped open space uplift site after any updated (increased) ratios are applied
- the rate and types of development occurring in each FBURA precinct
- comparison of the calculated uplift ratios with an alternative or check methodology based upon a profits analysis.

The Committee informally recommends:

The Department of Transport and Planning should revise Factsheet 2 (or other relevant guidance material) to reflect that the open space uplift will be reviewed as follows:

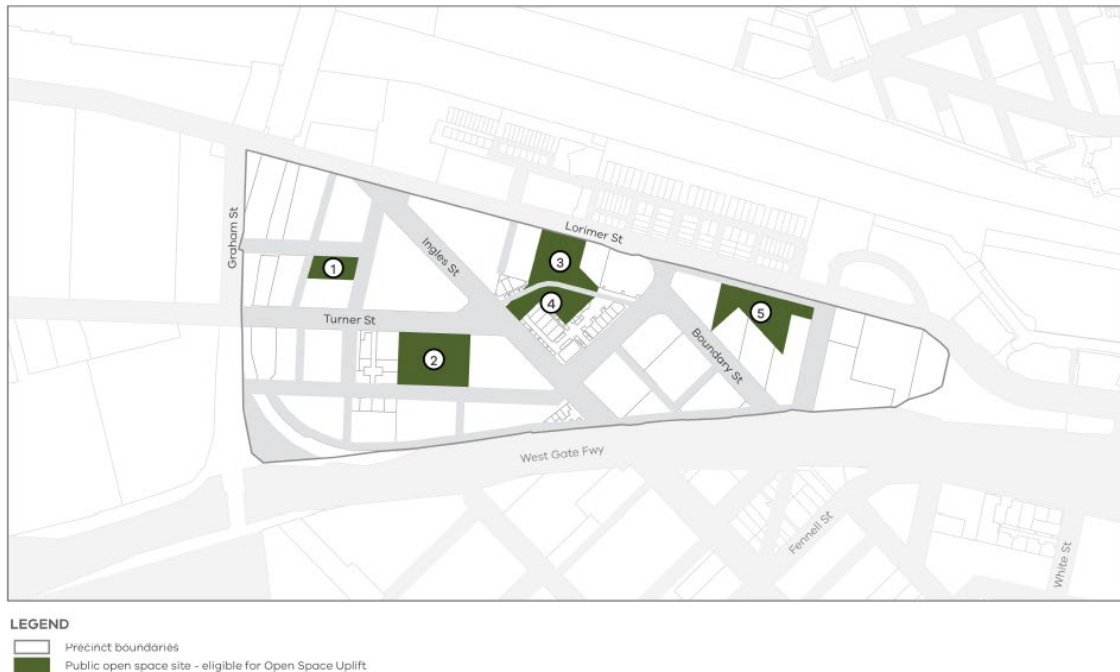
- annual review of the open space uplift land valuations
- a review every five years, in consultation with Melbourne and Port Phillip City Councils, and landowners (and developers) of open space uplift land, which considers:
 - remediation costs
 - the extent to which the open space uplift has been taken up
 - whether the OSU should be expanded beyond residential uses
 - landowner and developer feedback on how they are approaching the choice to take up the open space uplift and perceived barriers to its uptake
 - whether open space uplift sites have been purchased or acquired, and if so, the basis of the valuation
 - the methodology, inputs and assumptions for the calculation of the uplift ratios
 - the 'headroom' available on each undeveloped open space uplift site after any updated (increased) ratios are applied
 - the rate and types of development occurring in each precinct
 - comparison of the calculated uplift ratios with an alternative or check methodology based upon a profits analysis.

7 Open space uplift parks

7.1 Background

The exhibited Amendment proposed 21 OSU parks across the FBURA, as identified in Figure 16 (Lorimer) and Figure 17 (Montague, Sandridge and Wirraway) below.

Figure 16 Lorimer OSU parks (exhibited)



Source: Document 15

Figure 17 Montague, Sandridge and Wirraway OSU parks (exhibited)



Source: Document 30

7.2 The issue

The following were all exhibited as OSU parks except for the Hartley Street Park and 18-22 Salmon Street park (which were included in the FBDCP):

- Lorimer Central Park (OSU_L3 & L4)
- Hartley Street Park (L_OS05)
- 299 Bridge Street park (OSU_S12)
- 18-22 Salmon Street park (W_OS07)
- 50 Salmon Street park (OSU_W3)
- the following five parks (the five Port Phillip parks):
 - Woolboard Road extension Neighbourhood park (OSU_W7)
 - Plummer Street north corner Neighbourhood park (OSU_W8)
 - Bertie Street and Woolboard Road corner extension Neighbourhood park (OSU_S13)
 - Thistlethwaite St/George Street Neighbourhood park (OSU_M15)
 - Whiteman Street Neighbourhood park (OSU_M16).

The issue is whether they should be OSU parks.

7.3 Lorimer Central Park (L_OS03 and OSU_L3 & 4)

(i) Background

As exhibited, Lorimer Central Park was proposed to be funded by the:

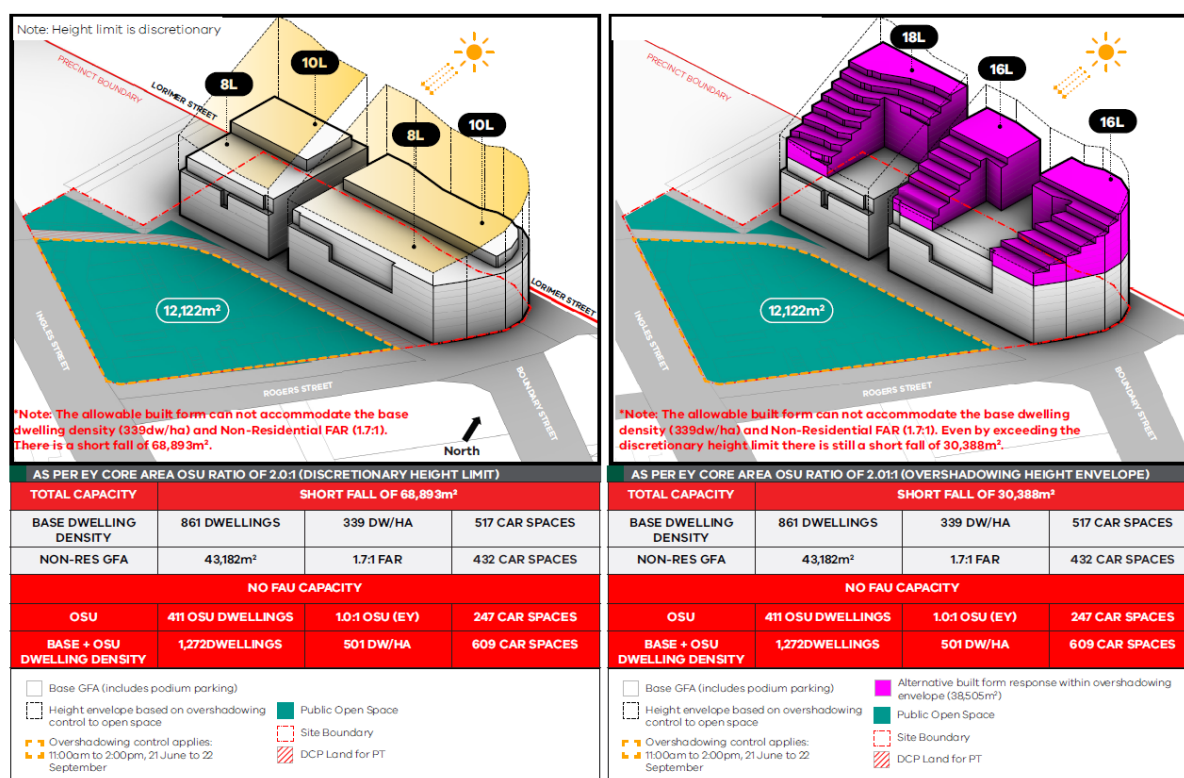
- OSU for land and remediation (OSU_L3 & L4)
- FBDCP for embellishment (L_OS03).

As discussed in Chapter 3.2.2, exhibited FBDCP showed a reconfigured area of open space for Lorimer Central Park as compared to the current planning provisions, which were based on the FB Framework and the GC81 Panel Report. During the Hearing, the Proponent agreed to revert to the current open space configuration shown in the CCZ4.

The Lorimer Central Park OSU candidate site (874-886 Lorimer Street and 338-356 Ingles Street, Port Melbourne) is a strata title development known as 'Lorimer Place'. Lorimer Place includes 25 lots and the common property on Plan of Subdivision PS602537Y (owned by the Lorimer Place Owners Corporation). The common property includes a strip of land that bisects the OSU candidate site, currently used as an access road for lot owners.

The 25 lots are generally developed as warehouses and offices.

The Proponent's OSU modelling, based on the current open space configuration of Lorimer Central Park, demonstrated that the developable area of the OSU candidate site cannot accommodate any OSU uplift, as shown in Figure 18.

Figure 18 OSU modelling for OSU uplift on Lorimer Central Park OSU candidate site

Source: Document 127d

(ii) Evidence and submissions

Ms Hodyl stated Lorimer Central Park should not be included in the OSU because the developable area cannot accommodate any OSU uplift (assuming the current open space configuration). Under questioning, she conceded that the current open space configuration was potentially not the only one that could produce good urban design outcomes, but it had been reached after much consideration and was supported by the GC81 Panel. From an urban design perspective, there was no good reason to depart from that configuration. Mr Haines also considered Lorimer Central Park is not suitable for inclusion in the OSU.

Mr McNeill recommended:

... if it is established that the OSU mechanism is unable to deliver open space in a manner consistent with the Framework, the acquisition of land, along with demolition, asbestos removal and contamination remediation costs, should be included as a DCP project.

Mr Woodland supported Lorimer Central Park as an OSU park. However, he had not considered the modelling that showed that the developable land could not accommodate any uplift.

The Proponent accepted that the current configuration of the Lorimer Central Park (that is, as shown in the current CCZ4) makes it impossible to deliver even the base level of density contemplated by the CCZ. Despite this, it maintained that Lorimer Central Park should remain an OSU park because it is a master planning site which “means that there is scope to review the siting and configuration of the site to achieve OSU, satisfy shadow requirements and produce good urban design outcomes”. Built form modelling for an alternative configuration of the park (including the exhibited configuration) demonstrated that an uplift is possible.

Melbourne City Council submitted Lorimer Central Park is not suitable for the OSU because:

- the current configuration of the open space land is “*intentional and important*”, having been tested and determined through the GC81 Panel process
- no OSU uplift on the developable area is available with the current configuration
- rearranging the site to allow sufficient uplift to be achieved would come at an unacceptable cost in terms of urban design outcomes, particularly overshadowing
- shadow testing concluded that the extent of overshadowing of the open space was greater for the reconfigured option (exhibited version) as compared to the existing configuration (with minor exceptions at 11am and 2pm at the winter solstice)²³
- its strata title ownership makes the OSU approach impracticable because both:
 - a decision by all the lot owners to sell to a developer (or, less likely, to consolidate and develop themselves) and
 - after the first decision has been made and implemented, a second decision by the developer to adopt the OSU and provide the OSU park
 are required
- expert evidence established that the ‘highest and best use’ for the Lorimer Central project site would likely be its current use.

Instead, Melbourne City Council requested:

- include funding to acquire, remediate and embellish Lorimer Central Park in the FBDCP
- prioritise the purchase of Lorimer Central Park in the staging plan in conjunction with delivery of the tram project.

Melbourne City Council submitted Lorimer Central Park should be funded by the FBDCP because:

- its delivery is important to achieving the vision for Lorimer
- it is a priority project when assessed against the criteria in section 2.5.1 of the FBDCP, noting it is:
 - the only Precinct park in Lorimer
 - the only park in Lorimer with winter sunlight provisions
 - identified in the FB Framework as a ‘key project’.

The Lorimer Place Owners Corporation (owner of common property on Plan of Subdivision PS602537Y at 874-886 Lorimer Street and 338-356 Ingles Street, Port Melbourne) submitted Lorimer Central Park is not suitable for inclusion in the OSU because:

- the developable area of Lorimer Place is not capable of accommodating the additional uplift dwelling density (assuming its current configuration)
- such a mechanism is inappropriate for land in 25 separate titles and ownership.

VCHQ2 Pty Ltd, a Lorimer Place lot owner, made similar submissions on the impracticability of the lot owners acting in concert. It supported retention of the existing configuration of the open space and submitted it should not be an OSU park and instead funded by the FBDCP.

(iii) Discussion

The Proponent agreed to retain the current configuration of the Lorimer Central Park while proposing that alternative configurations be able to be considered through the master planning process. This is supported by the Committee (see Chapters 3.2.2 and 3.3.2).

²³ Document 199

With the current configuration, there is no OSU uplift capacity available. The built form modelling demonstrates that the allowable built form envelope cannot accommodate even the base dwelling density, let alone any uplift, including when the discretionary height limit is exceeded. The principal restriction is the overshadowing provision.

The modelling demonstrates that it is possible to reconfigure the open space in a way that provides sufficient capacity for the OSU to operate and potentially meet the overshadowing controls. Therefore, the master planning process could, at least theoretically, achieve a reconfiguration of the site that:

- provides sufficient capacity for the OSU to operate
- produces good urban design outcomes.

Ms Hodyl conceded that this is at least a possibility.

However, the overshadowing testing provided by the Proponent²⁴ provides little comfort that an alternative configuration that allows for an OSU uplift will result in acceptable overshadowing impacts. The Committee considers this is crucial because Lorimer Central is the only park in Lorimer with winter sunlight provisions.

On balance, there is insufficient evidence before the Committee to conclude that there is a realistic prospect of a suitable alternative configuration for Lorimer Central Park being found through the master planning process that allows for the OSU without compromising urban design outcomes. The Committee considers it would be an inefficient use of resources to undertake a task that has already been through the rigorous testing of the GC81 process.

Further, the fact that the OSU candidate site is strata titled makes the prospect of delivering the Lorimer Central Park through the OSU extremely unlikely. In this respect, the Committee agrees with the submissions of Melbourne City Council and the Lorimer Place Owners Corporation that the practicalities of such a large number of individual lot owners agreeing to a single course of action are almost insurmountable.

For these reasons, Lorimer Central Park should not be included in the OSU.

Lorimer Central Park meets the criteria for funding by the FBDCP and should be included in the FBDCP (land, remediation and embellishment) as an open space project.

The Committee notes Melbourne City Council has requested purchase of the site be prioritised in the staging plan as a strategic land purchase in conjunction with delivery of the tram project. As the Committee does not have confirmation of timing for the delivery of the tram, it makes no recommendation in relation to proposed timing for purchase of the land.

(iv) Conclusion and recommendations

The Committee concludes:

- The Lorimer Central Park is unsuitable for the OSU mechanism.
- The FBDCP should fund the Lorimer Central Park as an open space project (including land, remediation and embellishment).

²⁴ Document 199

The Committee recommends the following changes to the draft Amendment:

Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- include Lorimer Central Park (L_OS03) as an open space project (including land, remediation and embellishment)
- make consequential changes to relevant maps to show Lorimer Central Park as ‘Public open space site – not eligible for Open Space Uplift’.

7.4 Hartley Street Park (L_OS05)

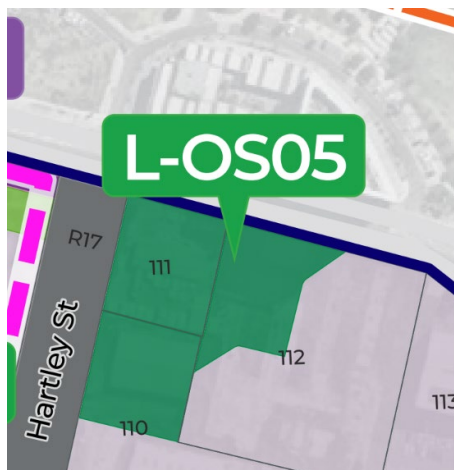
(i) Background

The exhibited Amendment did not identify Hartley Street Park as an OSU park, but the Proponent indicated it could be.

The Hartley Street Park (L_OS05) (0.64 hectares) is shown in Figure 19 and consists of:

- part of 13-33 Hartley Street (DCP Parcel ID: 110)
- all of 95-97 Lorimer Street (DCP Parcel ID: 111), and
- part of 85-93 Lorimer Street (DCP Parcel ID: 112).

Figure 19 Hartley Street Park (L_OS05)



Source: Document 3

The exhibited FBDCP funded acquisition of the land and remediation for L_OS05, but not embellishment. The FBDCP (final version) includes park embellishment.

(ii) Evidence and submissions

The Proponent submitted Hartley Street Park could be included in the OSU (and removed from the FBDCP) because its further built form modelling demonstrates that the developable area of the OSU candidate site has substantial uplift capacity, although the precise amount depends on which parcels are included in the OSU candidate site.

Although the principal position of the landowner of parcel 111, Claric 178 Pty Ltd (Claric), was that the PAO should apply to the site (further discussed at Chapter 8.4), in the alternative it did not object to all three parcels being in the OSU. It submitted:

- the same family owns parcels 110 and 111

- parcel 110 is subject to a Specific Controls Overlay Schedule 32 of the Melbourne Planning Scheme which provides for development of 13 Hartley Street for a residential building 50 storeys high (400 dwellings and 173 car spaces) and the setting aside of 27 percent of the site area for public open space
- parcels 110 and 111 should be master planning sites to enable transfer of the required public open space to the Victorian government through an approved use and development outcome on parcel 110
- the existing approvals for both parcels 110 and 112 could expire and in that event, including Hartley Street Park in the OSU *“could assist in incentivising a scenario in which a single developer acquires all three sites”*.

The owner of parcel 112, South Wharf Towers Pty Ltd, queried why the parcel was not included in the OSU. It submitted the site could benefit from the uplift if the current permit was not acted on.

Melbourne City Council submitted:

- 95 Lorimer Street (parcel 111) should not be included in the OSU because:
 - the landowner is seeking to reconfigure Hartley Street Park through the master planning process to transfer development rights from parcel 111 to 110
 - parcels 110 and 112 have existing approvals that, if acted on, would leave parcel 111 as an OSU candidate site without any developable land and therefore unable to be delivered using the OSU
- the FBDCP should fund the acquisition, remediation and embellishment of parcel 111 with the remainder of Hartley Street Park in the OSU.

Ms Hodyl’s evidence was the layout of the open space pre-dated GC81, was confirmed through that process and its reconfiguration should not be opened up for debate.

(iii) Discussion

The Proponent’s built form modelling shows there is ample capacity for the required OSU uplift dwellings if:

- parcels 110, 111 and 112 are considered as the OSU candidate site
- parcels 110 and 111 are considered as the OSU candidate site
- parcels 110 and 112 are each considered as a separate OSU candidate site.

The entirety of parcel 111 is identified for future open space. There is no balance land in parcel 111 to accommodate dwellings (either base density dwellings or uplift dwellings).

The relevant landowners have no objection to the land being included in the OSU.

If Hartley Street Park is included as an OSU park and the existing approvals for parcels 110 and 112 are both acted on, parcel 111 would be left as an OSU candidate site without any developable area to accommodate an uplift. It is also possible that this could occur if parcels 110 and 112 are both developed independently as OSU projects or if they are developed without taking up the OSU. In these scenarios, the Victorian government would need to purchase or acquire parcel 111 (in the same manner as any other OSU park not delivered using the OSU).

As its principal position, the owner of parcel 111 requested a PAO be applied. The Committee discusses (in Chapter 8.2) appropriate criteria for applying a PAO in the FBURA, one of which includes that the whole of the site is identified for a future public purpose. As discussed further in Chapter 8.4, the Committee considers that if it transpires that both parcels 110 and 112 are

developed without delivering parcel 111 as public open space, then the PAO should be immediately applied to parcel 111 (95-97 Lorimer Street).

(iv) Conclusion and recommendation

The Committee concludes:

- It is appropriate to include Hartley Street Park (L_OS05) as an OSU park (land, remediation and embellishment) provided that if both parcels 110 and 112 are developed without delivering parcel 111 as public open space, then the PAO is immediately applied to parcel 111 (95-97 Lorimer Street).

The Committee recommends the following changes to the draft Amendment:

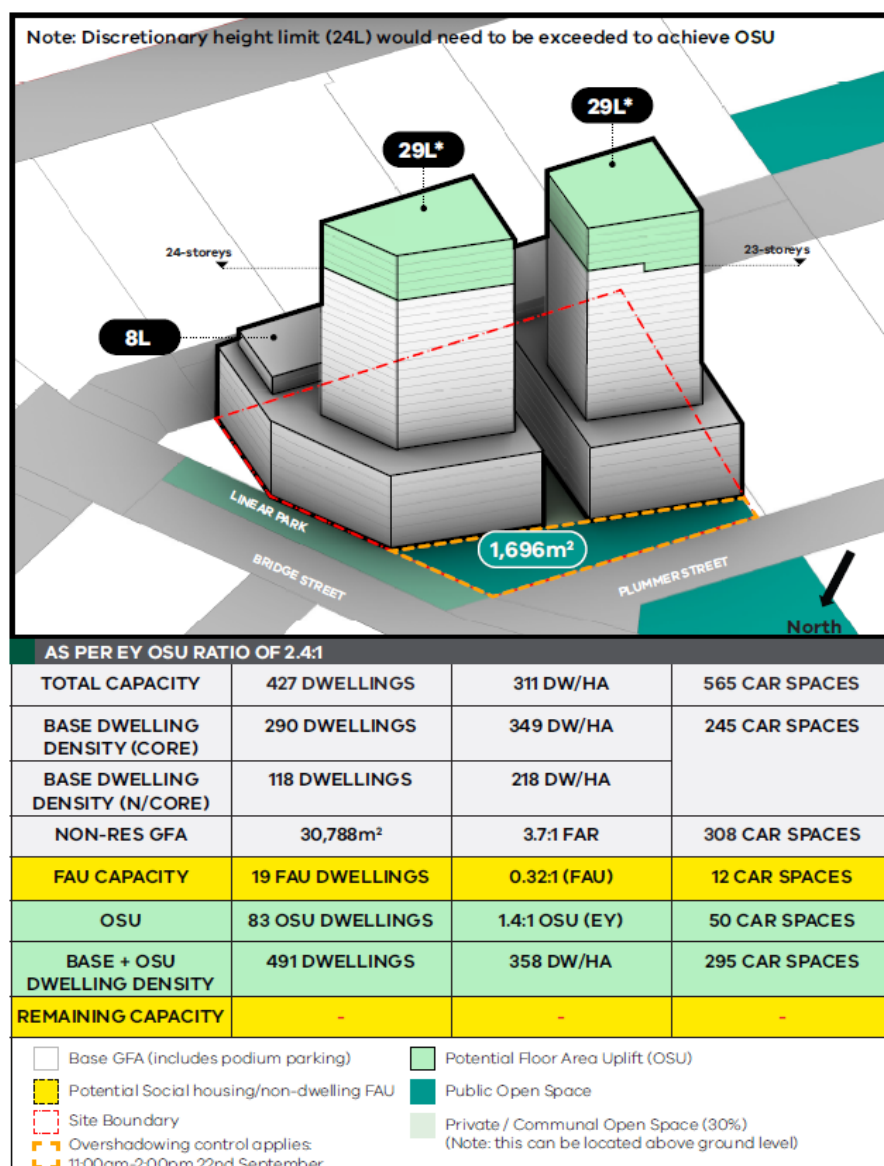
Amend the Fishermans Bend Development Contributions Plan, as shown in Report Volume 2 Appendix I, to:

- **remove Hartley Street Park (L_OS05) as a project funded by the Fishermans Bend Development Contributions Plan**
- **make consequential changes to relevant maps to show Hartley Street Park as ‘Public open space site – eligible for Open Space Uplift’.**

7.5 299 Bridge Street Park (OSU_S12)

(i) Background

The exhibited Amendment identified 299 Bridge Street open space as an OSU park. The built form modelling demonstrated that the developable area of the OSU candidate site cannot accommodate the OSU uplift required to deliver the OSU park unless the discretionary height limit of 24 levels is exceeded, as shown in Figure 20.

Figure 20 Built form modelling for 299 Bridge Street

Source: Document 127d

(ii) Submissions

The Proponent submitted that 299 Bridge Street, Port Melbourne (OSU_S12) is suitable for inclusion in the OSU because:

- built form modelling demonstrates that although the maximum uplift cannot be achieved within the discretionary height limit, the planning scheme provisions ensure that a permit will only be granted if the urban design impacts of the OSU development are acceptable²⁵
- the modelling assumes the full amount of commercial floor space will be provided, and the planning scheme contemplates situations where this may be departed from

²⁵ Provision of 1696 square metres of open space based on modelling under the August 2024 Open Space Uplift Study in which DTP Precincts OSU ratios of 1:1 and 1.42:11 are modelled (Document 93, page 46) and the October 2024 Open Space Uplift Study in which the DTP Precincts OSU ratio of 1.4:12 is modelled (Document 127d, page 46), which aligns with the ratio for Sandridge identified by EY as achieving 45 percent target uplift (Document 127c, Annexure 1)

- alternative built form modelling shows that a smaller park relocated on the OSU candidate site can achieve the uplift within the discretionary height limit.²⁶

(iii) Discussion

There was no real opposition to including 299 Bridge Street park in the OSU despite it being one of the two exceptions to the selection criterion that the developable area of the OSU candidate site must be able to accommodate the dwelling uplift within the built form envelope.

Although the Proponent's alternative built form modelling showed a differently configured project could achieve the uplift within the built form envelope, it was based on a much smaller park being delivered – 500 square metres as compared to 1,696 square metres. The Proponent provided no justification for what would be a material change to the outcome sought for the park in the FB Framework. The Committee found this modelling unhelpful.

That said, where a discretionary height is nominated in the planning scheme, the modelling assumed it to be mandatory (as explained in Chapter 6.4.2). Therefore, an OSU development on this site would require a permit (to exceed the discretionary height control). The Committee has concluded that in these cases, the built form impacts of the OSU can be appropriately managed through the permit application process.

The Committee therefore considers it is appropriate for the 299 Bridge Street park to be identified as an OSU park.

(iv) Conclusion

The Committee concludes it is appropriate to include 299 Bridge Street, Port Melbourne (OSU_S12) in the OSU mechanism (land, remediation and embellishment).

7.6 18-22 Salmon Street Park (W_OS07)

(i) Submissions

The exhibited FBDCP includes funding for delivery of 900 square metres of open space and embellishments (W_OS07) at 18-22 Salmon Street, Port Melbourne (total site area of 9,700 square metres).

During the Hearing, the Proponent provided built form modelling showing that open space of 871 square metres could be delivered using the OSU. Four hundred OSU dwellings could be accommodated on the developable area within the implied built form envelope (above a base density of 178 dwellings).

No submission was received from the landowner (who was not a party to the Hearing).

(ii) Discussion

The built form modelling demonstrates the site at 18-22 Salmon Street has capacity for a considerable uplift, more than twice the base case, if the open space on the site was an OSU park. This would appear to offer sufficient incentive for a developer to consider using the OSU.

²⁶ Further modelling provided in SIN-12 (Document 198) for provision of 500 square metres based on DTP Precincts OSU ratio of 1.4:1

However, the open space was exhibited as a FBDCP project, and no submission was received from the landowner.

Procedural fairness requires that the owner of 18-22 Salmon Street (and potentially the occupier if a long term lease applies) be given an opportunity to be heard before changing the status of the open space from FBDCP funded to an OSU park. If the Proponent wishes to include this site in the OSU, it must give the owner and occupier an opportunity to provide a submission and consider that submission before reaching a final position.

(iii) Conclusion

The Committee concludes that while the site at 18-22 Salmon Street, Port Melbourne (which contains W_OS07) has sufficient capacity to accommodate OSU uplift dwellings, it would not be appropriate to change it to an OSU candidate site without consulting with the landowner and occupier (if required).

7.7 50 Salmon Street Park (W_OS06 and OSU_W3)

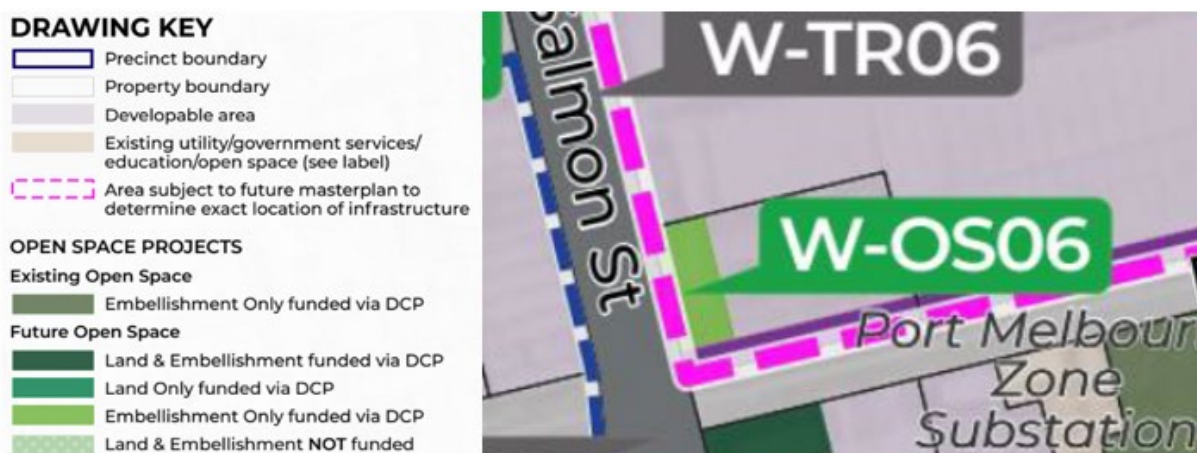
(i) Background

The site at 50 Salmon Street (4,890 square metres) is situated on the corner of Salmon and Plummer Streets. It has a warehouse building, tenanted and currently used for a go kart business.

Existing and proposed provisions include:

- future public open space (OSU_W3 (land and remediation) and W_OS06 (embellishment)) on the south-west corner, at the intersection of Salmon and Plummer Streets (934 square metres) (long term)
- public transport land project PT01, a 10-metre widening of Plummer Street on the western side of the OSU candidate site (434 square metres) (short term), reduced to 5-metre widening in the FBDCP (final version)²⁷
- no crossovers are permitted along the Plummer Street frontage
- the south-west corner of the site is subject to a 450 metre-wide pipeline buffer for the South Melbourne – Brooklyn high pressure gas pipeline.

Figure 21 50 Salmon Street as shown in the exhibited FBDCP



Source: Document 3

²⁷ The Committee concludes in chapter 2.1 that this reduction is not strategically justified

(ii) Evidence and submissions

The owner, One Smarter Pty Ltd, submitted OSU_W3 should be funded by the FBDCP and the PAO applied. It submitted the OSU is inappropriate to deliver the park because:

- the OSU will provide little incentive because the available uplift is only 11 dwellings out of a total capacity of 128 dwellings²⁸
- modelling prepared for the owner by Urbis shows:
 - development of the site for commercial use exceeds what the base case dwelling density provisions allow
 - overshadowing provisions along Plummer Street will significantly constrain development
 - the 50 Salmon Street park and PT01 result in a significant loss of potential floorspace
- the designation of both frontages of the site for public purposes “*severely impedes its developability, ‘land-locking’ it with public purpose land*”.

Mr Milner gave evidence for the owner that:

- because the most likely development scenario is for commercial (or other non-residential) use, the OSU is unlikely to be used
- the existence of the pipeline buffer makes accommodation and dwelling discretionary uses and a permit would be required for an OSU development
- although permits have been granted for residential developments subject to a pipeline buffer, the buffer creates a perceived risk which can have a large impact on use and development outcomes, including reduced densities
- once the land areas required for PT01 and OSU_W3 are removed, the residual land would be effectively incapable of development until one, but probably both, acquisitions and their associated development are completed, and effectively ‘land lock’ the remaining land by removing their frontages to public streets
- the 50 Salmon Street park should be funded by the FBDCP.

Mr Woodland stated:

- the existence of the pipeline buffer does not favour the site being used for non-residential over residential purposes
- there are numerous examples where residential development has been permitted within a comparable distance from a high pressure gas pipeline.

Relying on its built form modelling, the Proponent submitted it is appropriate to include 50 Salmon Street as an OSU candidate site because there is sufficient uplift available on the developable area.

(iii) Discussion

The Committee accepts that the site at 50 Salmon Street is constrained. The pipeline buffer which covers the south-west corner of the site (not the whole site) adds complexity. However Mr Milner accepted that development of land within a pipeline buffer for residential use is not uncommon.

After the land for PT01 (assuming a 10-metre-strip) and the open space are excised, 3,522 square metres of developable area remains. The Committee is not convinced a non-residential development will necessarily be more attractive to a developer than residential (and that the OSU is therefore unlikely to be able to be taken up).

²⁸ Built form modelling based on EY’s revised core area ratio of 2.6:1.

The revised built form modelling using a 50 percent incentive (and all relevant inclusions such as remediation and embellishments) identifies the balance of the site (after PT01 has been delivered) can accommodate:

- 128 dwellings (total site capacity)
- 90 dwellings (base case)
- a maximum of 36 OSU dwellings.

This demonstrates that the site can accommodate the OSU uplift without exceeding the built form envelope.

No crossovers are permitted along the Plummer Street frontage. The Salmon Street frontage will be lost if the park is delivered as shown on the FBDCP maps. It appears that a six-metre laneway proposed on the western side of the site would become the site's only access. However, the site will be subject to master planning and the issue of potential 'land locking' can be addressed in that process. This is not a reason to exclude the site from the OSU.

(iv) Conclusion

The Committee concludes it is appropriate to include 50 Salmon Street park (OSU_W3) in the OSU mechanism (land, remediation and embellishment).

7.8 Five Port Phillip parks

(i) Submissions

The Proponent proposed that five parks in Port Phillip be delivered by the OSU. The parks are:

- Woolboard Road extension Neighbourhood park (OSU_W7)
- Plummer Street north corner Neighbourhood park (OSU_W8)
- Bertie Street and Woolboard Road corner extension Neighbourhood park (OSU_S13)
- Thistlethwaite Street/George Street Neighbourhood park (OSU_M15)
- Whiteman Street Neighbourhood park (OSU_M16).

Port Phillip City Council submitted the OSU is too uncertain to deliver the parks because all are:

- of a size and location that is critical to the open space network
- classified as Neighbourhood parks, indicating *"their relative importance to the locality and to the amenity and liveability of the future residential areas"*.

Instead they should be funded by the FBDCP.

(ii) Discussion

The Committee has addressed the uncertainties of the OSU elsewhere in this Report and concluded that notwithstanding the uncertainties, the OSU should be progressed subject to regular reviews. The Proponent's built form modelling demonstrates that the developable areas on the five OSU candidate sites can accommodate the uplift within the implied built form provisions and no other reasons for their exclusion from the OSU were advanced.

(iii) Conclusion

The Committee concludes it is appropriate for the five parks to remain as open space uplift land (land, remediation and embellishment).

8 Public Acquisition Overlay

8.1 Background

The exhibited Amendment does not propose to apply the PAO to any land.

Section 5(4B) of the LAC Act provides that declared ‘special project land’ can be acquired without the need for reservation (that is, without applying a PAO). Under Part 9A of the PE Act, the Secretary of the Department may declare land required for a ‘project of state significance’ to be ‘special project land’ for the purposes of section 5 of the LAC Act. The FBURA is a declared ‘project of state significance’ within the meaning of Part 9A of the PE Act.

The GC81 Panel recommended the PAO be applied to:

... parks in conjunction with (or immediately after) the Precinct plan process, when the final boundaries of the land required are resolved.

... the future tram alignments, the future Metro stations and any arterial road widening as soon as practicable once there is a degree of certainty as to the boundaries and dimensions of the land required.

The Attorney-General has a discretion to declare land to be proposed to be reserved for public purposes if satisfied that the value of the land may be substantially affected by a proposal to reserve land for public purposes (section 113 of the PE Act).

In this chapter the term ‘reservation’ of land refers to applying a PAO to land.

8.2 Use of the Public Acquisition Overlay

(i) The issue

The issue is whether it is appropriate to apply the Public Acquisition Overlay (PAO) to land in the FBURA.

(ii) Evidence and submissions

Mr Milner stated that for reasons of fairness and equity *“the PAO should be applied to all land where a substantial portion or the entire holding is required for a future public reservation”* in the FBURA. The PAO should be applied now.

His principal reasons were:

- landowners cannot control the timing and funding of any acquisition or compensation
- the affected land is *“blighted”* because:
 - No assurance can be given about how long the existing use(s) of the land can operate.
 - Opportunities to sell the land to a third party are seriously reduced and if it occurs there is no opportunity to recover the loss on sale, because of how the land is ‘reserved’.
 - The scope for establishing new uses is seriously constrained and potentially curtailed.
 - Contracts, agreements or leases are likely to be devalued and short term because of the lack of committed time frame to purchase.
 - There is no incentive for further improvement or maintenance of the property, except for essential works.
 - There is the prospect that the property may cease being used and fall into disrepair well in advance of an offer to purchase by government, with this being an influence on the price offered for the asset.

Mr Milner considered applying the PAO would address these issues and allow affected owners to claim compensation for losses experienced while awaiting land acquisition by the Victorian government.

During questions, Mr Milner conceded the PAO was not required in the FBURA and that a landowner can seek a declaration under section 113 of the PE Act from the Attorney-General to trigger an avenue for compensation.

Mr Woodland thought the PAO to be just one tool for acquiring land for a public purpose and is not always used.

The Proponent submitted it is not appropriate to apply the PAO in the FBURA because:

- its preferred method of acquisition is by negotiation (without reservation) and there is no requirement for a PAO in this case
- where compulsory acquisition is proposed, the DTP Secretary would declare the relevant land to be 'special project land' and therefore no PAO would be required
- in planning terms, it is not unfair for the DTP Secretary to exercise powers conferred by Parliament for the specific purpose for which they are conferred
- existing uses of land identified for future public purposes can continue
- landowners can seek to negotiate with the Secretary for purchase of their land
- landowners experiencing specific hardship can seek a declaration under section 113 of the PE Act and thereby trigger a right to compensation.

Accepting that the GC81 Panel had recommended the PAO be applied in certain circumstances, the Proponent submitted:

- the GC81 Panel's recommendation is not binding and was made based on the identification of land to be acquired for public purposes in the Framework amounted to a 'de facto reservation' and landowners should be compensated for that 'de facto reservation'
- the PE Act has materially changed since the GC81 Panel's recommendations were made, and the traditional notion of fairness has also changed. Specifically, in 2021 Parliament amended the PE Act to clarify that 'de facto reservation', whether arising from a planning instrument or by refusal of a permit, does not give rise to a right to compensation. This demonstrates the PE Act does not intend that an owner of land should be able to trigger a right to compensation simply because the use of their land is restricted, even to a significant extent.

Some submissions requested the PAO be applied to land identified as required for a public purpose under the FB Framework. They submitted:

- identifying land as required for a public purpose under the FB Framework, the FBDCP and associated provisions effectively sterilises the land causing considerable hardship to landowners, particularly where the whole site is identified for future acquisition
- although existing uses can continue, landowners suffer losses for the reasons set out by Mr Milner in his report
- applying the PAO is consistent with the objectives of the PE Act including achieving fairness (s4(1)(a)) and *"to provide for compensation when land is set aside for public purposes and in other circumstances"* (s4(2)(l))
- the PAO puts prospective purchasers on notice of the proposed future use and acquisition of the land

- nothing has changed since the recommendation of the GC81 Panel and that recommendation should be implemented.

Submitters requested the PAO be applied to the following sites:

- Lorimer Central (open space and/or tram corridor)
- 95-97 Lorimer Street (whole)
- 6 Rocklea Drive (whole)
- 112 Salmon Street (whole)
- 50 Salmon Street (either the whole or part).

In addition to the general reasons for applying the PAO set out above, each landowner made site-specific submissions (discussed further below in this chapter).

(iii) Discussion

The Committee accepts the PAO is not needed to acquire land identified in the FBURA for a future public purpose because Part 9A of the PE Act applies. If a PAO were to be applied in the FBURA, it would be for another reason.

The Committee agrees with Mr Milner that in some situations the PAO will need to be applied to achieve fairness as required by section 4(1)(a) of the PE Act because the PAO enables the possibility of obtaining compensation before the land is acquired. These are situations where the landowner bears an unusually high burden compared to general landowners facing a restriction on use of their land. This includes where the whole site (or a very substantial portion) is to be acquired for a public purpose and the strategic planning process has progressed to the point where, in the words of the GC81 Panel, *“there is a degree of certainty as to the boundaries and dimensions of the land required”*.

In the FBURA, it would be inappropriate, therefore, to apply the PAO to:

- OSU candidate sites, noting they are generally not entire sites, having been selected based on retaining developable land to deliver the uplift and where exact boundaries of the open space could change
- land identified in the DCP for a public purpose within a master plan area until the master plan process is completed.

The Committee does not believe that the 2021 amendments to the PE Act are a valid reason to depart from the GC81 Panel’s PAO recommendations.

The *Planning and Environment Amendment Act 2021* amended section 98(1)(a) of the PE Act to clarify that compensation may only be claimed where a planning scheme expressly reserves land with the words *“to reserve land for a public purpose”*. Currently, the PAO is the only available mechanism that achieves this.

The amending Bill’s second reading speech and statement of compatibility made clear that Parliament’s intention in making the amendment was that compensation would not be available where a DCP (amongst other strategic planning instruments) *“indicates an intention that the land may be used for a public purpose in the future”* and that intention has not been formalised by applying the PAO to a particular site.

Therefore, it is now clear that the formal reservation of the land for a public purpose by applying the PAO is the trigger that enlivens compensation rights under section 98(1)(a) of the PE Act. Where there is no PAO, a landowner whose land is identified for acquisition for a public purpose

must rely on the land being acquired by the Victorian government, voluntarily or compulsorily (unless it is an OSU park in which case the landowner may be able to obtain a benefit through that scheme) or seek a declaration under section 113.

However, the 2021 amendment says nothing about the appropriateness of applying the PAO in particular cases where a DCP indicates certain land may be used for a public purpose in the future, that is, it says nothing about the decision to apply the PAO.

In this regard, the Committee disagrees with the Proponent's characterisation of the 2021 amendments as having changed the general notion of fairness regarding 'planning blight'. There will continue to be situations where the notion of fairness embedded in section 4(1)(a) of the PE Act requires a PAO to be applied. These include where the identification of the land as being required for a public purpose will cause the landowner a high degree of disadvantage, perhaps occurring well before the proposed acquisition. In some cases, and particularly in the context of a 30-year timeframe for the FBDCP, fairness will require that the landowner has access to compensation for losses suffered in the short term while awaiting acquisition of land identified for public purposes. Each case must be assessed on its merits.

(iv) Conclusion

The Committee concludes it is appropriate to apply the Public Acquisition Overlay in the FBURA where each of the following is satisfied:

- the boundaries of the required land are clearly defined
- the entire site (or a very substantial portion) is intended to be acquired for public purposes
- the proposed acquisition will cause the landowner a high degree of disadvantage.

8.3 Lorimer Central Park

(i) Background

The background to Lorimer Central Park is set out in Chapters 3.2.2 and 7.3.

(ii) The issue

The issues whether it is appropriate and justified to apply the PAO to Lorimer Central Park.

(iii) Submissions

The Lorimer Central Owners Corporation (Owners Corporation) submitted that Lorimer Central Park (L_OS03/OSU_L3 & 4) is not suitable to be an OSU park. Instead it should be funded by the FBDCP and a PAO applied to the identified open space and any area required for a road or tram corridor.

It submitted a PAO is required to achieve fairness because the affected land is effectively sterilised. It is an undue burden on individual landowners to require them to seek a declaration from the Attorney-General, as suggested by the Proponent, and a "*waste of resources*" where the PAO can readily be recommended and put in place.

The Owners Corporation also submitted that the site should be subject to master planning and accepted that applying the PAO requires a final position on the location and area of the required open space and any road or tram corridor.

(iv) Discussion

The Committee has concluded that IPO Area B, which includes Lorimer Central Park, is appropriate for master planning. Therefore, it is inappropriate to apply the PAO until the master planning process is completed and the boundaries of land required for public purposes are finalised.

If after the master planning process is complete, there are entire lots within Lorimer Central (or a very substantial proportion) required for public purposes it would be appropriate to apply the PAO to those lots without delay (provided the landowner can demonstrate disadvantage).

(v) Conclusion

The Committee concludes:

- It is not appropriate to apply the PAO as part of this Amendment to Lorimer Central Park.
- It would be appropriate and justified to apply the PAO without delay (assuming the relevant landowners are disadvantaged) to parts of Lorimer Central Park, if after the master planning process is complete, there are entire lots (or a very substantial proportion of lots) within Lorimer Central Park required for public purposes.

8.4 95-97 Lorimer Street

(i) Background

The background to 95-97 Lorimer Street (parcel 111), part of the Hartley Street Park, is set out in Chapter 7.4.

(ii) The issue

The issue is whether it is appropriate and justified to apply the PAO to 95-97 Lorimer Street (parcel 111), which is identified as required for future open space as part of the Hartley Street Park.

(iii) Submissions

As its principal position, the owner of 95-97 Lorimer Street, Claric 178 Pty Ltd (Claric), sought a PAO as part of the Amendment (and not after the Lorimer PIP process).

Claric submitted since the entire the site was identified as future public open space in the draft Vision for the FBURA in 2013, it has suffered significant disadvantages such as:

- difficulty securing long term leases resulting financial hardship
- tenants who would need to develop the site to establish their business on the site have chosen not to do so
- significant increases in land tax and Council rates due to the perceived development potential of the site under the CCZ.

Claric supported the site being part of an OSU candidate site because it did not consider applying the PAO to be a likely outcome of the Amendment.

(iv) Discussion

The Committee has concluded that it is appropriate to include the entire Hartley Street Park (L_OS05) (parcels 110, 111 and 112) in the OSU and the sites will be subject to master planning. Therefore, it is inappropriate to apply the PAO as part of this Amendment.

As discussed in Chapter 7.4, the Committee acknowledges the concern of Melbourne City Council that if the current approvals for parcels 110 and 112 are acted on, parcel 111 will be left as an OSU site with no developable area. In Chapter 7.4, the Committee found it would be appropriate to apply the PAO in these circumstances, noting that the whole of parcel 111 is identified as future public open space. Claric's submission regarding the disadvantage it has suffered, and will continue to suffer, support this conclusion.

The Committee recommends that this issue be included in the periodic reviews of the OSU and if this situation arises, the PAO be applied to parcel 111 without delay (provided the landowner can demonstrate disadvantage).

(v) Conclusions

The Committee concludes:

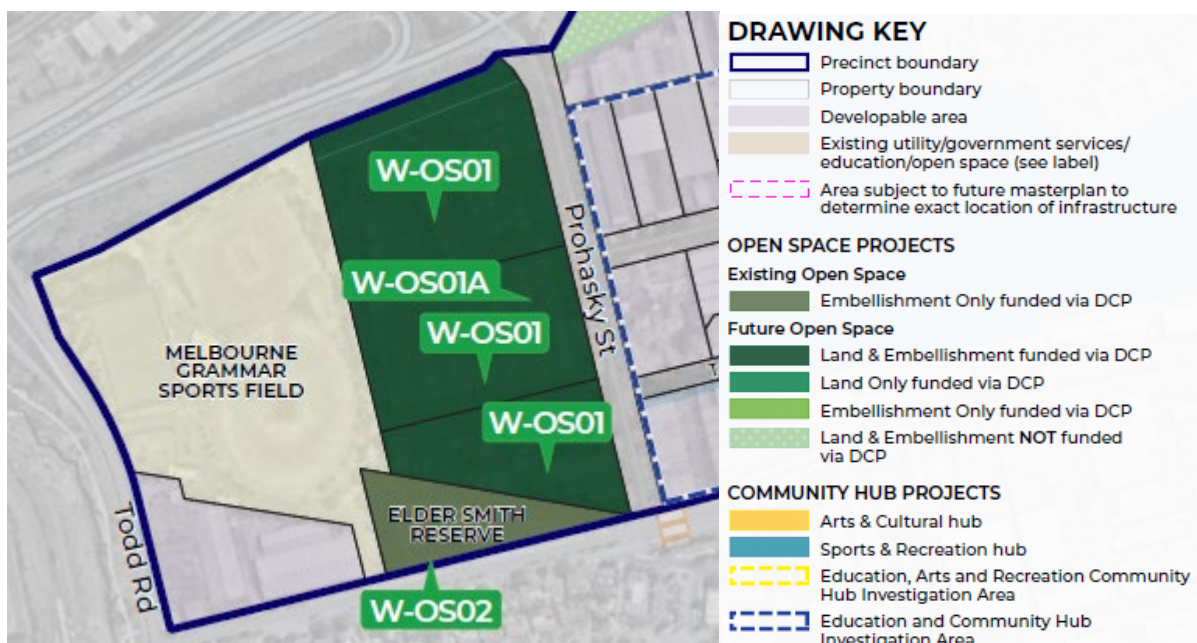
- It is not appropriate to apply the PAO as part of this Amendment to 95-97 Lorimer Street.
- As concluded in Chapter 7.4, it would be appropriate and justified to apply the PAO without delay to 95-97 Lorimer Street, if both parcels 110 and 112 are developed without delivering 95-97 Lorimer Street (parcel 111) as public open space.

8.5 35-37 Prohasky Street

(i) Background

The entirety of 35-37 Prohasky Street is identified for future public open space, being the northern-most part of W_OS01 (Prohasky Street recreation reserve) and as shown in Figure 22.

Figure 22 Prohasky Street recreation reserve as shown in the exhibited FBDCP



Source: Document 3

(ii) The issue

The issue is whether it is appropriate and justified to apply the PAO to 35-37 Prohasky Street.

(iii) Submissions

The trustee of the owner of 35-37 Prohasky Street, CorVal Partners Limited (CorVal), requested a PAO be applied to the site. It submitted:

- the entirety of 35-37 Prohasky Street is identified for future public open space, being the northern-most part of W_OS01 (Prohasky Street recreation reserve)
- the land has been used since 1985 for shipping container storage
- recently the surrounding locality has been redeveloped in line with the vision for Fishermans Bend, including the approval of a nearby 17-storey residential building
- this has led to increased amenity complaints about the current use and, in response, reduced site operating hours and permit conditions that existing operations not cause detrimental impact on the amenity of the surrounding neighbourhood
- land use conflict and amenity complaints are likely to increase, putting pressure on the continued use of the site for its current use
- sale or development of the land is not viable because the entire site is identified as future public open space
- the land should be acquired earlier than identified in the exhibited FBDCP (2046-2055) consistent with the acquisition timeframe of 2035-2045 for other sites that make up W_OS01 for the Prohasky Reserve.

(iv) Discussion

The entire site is identified for future open space.

The Committee considers that the current use can continue, at least in the short term, regardless of the identification of the land for future open space. No submission was made that the future open space is reducing the financial return on the land at present. However, the Committee accepts that this may not continue to be the case, and that as the locality becomes more urbanised, land use conflicts are likely to increase with the result that the current use may not be viable at some point in the future. If that occurs, it is likely the owner will experience disadvantage due to the identification of the whole the site for future public open space, because at that point it will be very likely that there will be limited alternative uses for the site and the owner unable to sell. Accordingly, at that time it would be appropriate to apply the PAO.

The FBDCP (final version) identifies all of W_OS01 will be delivered in the medium term, that is between 2035 and 2045.²⁹ This may alleviate some of the submitter's concerns.

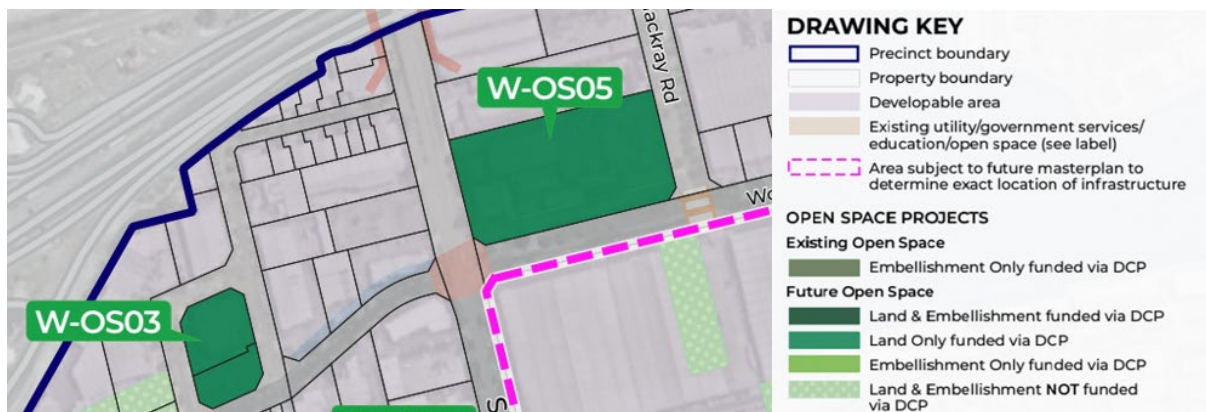
(v) Conclusion

The Committee concludes it is not appropriate to apply the PAO to 35-37 Prohasky Street as part of the draft Amendment.

8.6 6 Rocklea Drive and 112 Salmon Street**(i) Background**

The entirety of each of 6 Rocklea Drive (W_OS03) and 112 Salmon Street (W_OS05) are identified for future public open space, as shown in Figure 23.

²⁹ Document 99k (Day 1 version) not changed in the final set of documents provided by the Proponent.

Figure 23 6 Rocklea Drive (W_OS03) and 112 Salmon Street (W_OS05) as shown in the exhibited FBDCP

Source: Document 3

(ii) The issue

The issue is whether it is appropriate and justified to apply the PAO to 6 Rocklea Drive and 112 Salmon Street.

(iii) Submissions

The respective owners of 6 Rocklea Drive and 112 Salmon Street submitted that because the entire area of each site is proposed as public open space (respectively W_OS03 and W_OS05), they each are experiencing considerable hardship of the kind referred to above in Chapter 8.2.

Specifically, in relation to 112 Salmon Street, Aquaino Pty Ltd (Aquaino) submitted:

- Amendment GC7 (gazetted on 7 August 2014) incorporated the FB Framework into the planning scheme which identified the site as public open space
- after this, Aquaino sought to divest and obtain fair value for the site and lodged a permit application for the purpose of triggering compensation under section 98 of the PE Act
- the permit application was pursued at VCAT after a failure to determine. The Minister for Planning called the application in and referred it to the GC81 Panel
- the GC81 Panel supported the site as future public open space and recommended that a PAO be applied when the final boundary is resolved. We are now at that point
- due to the open space designation, Aquaino has been unable to attract tenants willing to pay market rates and it is uncommercial to undertake any significant improvements to attract higher-paying tenants
- Aquaino sought offers to purchase the property through an invitational expression of interest campaign in late 2023 without success, despite active marketing
- Aquaino continues to pay significant holding costs including land tax.

The owner of 6 Rocklea Drive, Pendomer Pty Ltd (Pendomer), submitted it is in a similar position to the owner of 112 Salmon Street.

Both owners submitted in the absence of any certainty regarding the timing for acquisition, the *“objective of fairness in subsection 4(1)(a) [of the PE Act] weighs in favour of applying a PAO to their land”*.

(iv) Discussion

The entirety of each site is identified for future open space.

The Committee accepts Pendomer and Aquaino have experienced, and will continue to experience, significant disadvantage due to the identification of the whole of each respective site for future public open space.

There is sufficient certainty as to the boundaries of the land required for open space insofar as each property is affected. Although there is some uncertainty as to the northern boundary of Wirraway North Park (W_OS05), this only impacts 128 Salmon Street, not 112 Salmon Street which will be required in its entirety regardless of how that issue is resolved (see Chapter 3.2.5).

(v) Conclusion and recommendation

The Committee concludes it is appropriate and justified to apply the PAO as part of this Amendment to 6 Rocklea Drive (whole) and 112 Salmon Street (whole).

The Committee recommends the following changes to the draft Amendment:

Apply the Public Acquisition Overlay to 6 Rocklea Drive, Port Melbourne (whole) and 112 Salmon Street, Port Melbourne (whole).

8.7 50 Salmon Street

(i) Background

The background to 50 Salmon Street is set out in Chapter 7.7.

(ii) The issue

The issue is whether it is appropriate and justified to apply the PAO to 50 Salmon Street (whole or in part).

(iii) Evidence and submissions

The owner, One Smarter Pty Ltd, sought a PAO over the whole of the site or alternatively, over those parts of 50 Salmon Street affected by:

- public transport land project PT01
- the 50 Salmon Street OSU park (OSU_W3) and related FBDCP embellishment project (W_OS06).

One Smarter Pty Ltd submitted 50 Salmon Street has been ‘blighted’ and it has suffered, and will continue to suffer, loss.

These submissions were supported by Mr Milner.

(iv) Discussion

The Committee has concluded the 50 Salmon Street park is appropriate for inclusion in the OSU and the issues around the potential ‘land locking’ of the site can be resolved through the master planning process (see Chapter 3.3.3). Therefore, it is inappropriate to apply the PAO to the site, either in whole or in part.

(v) Conclusion

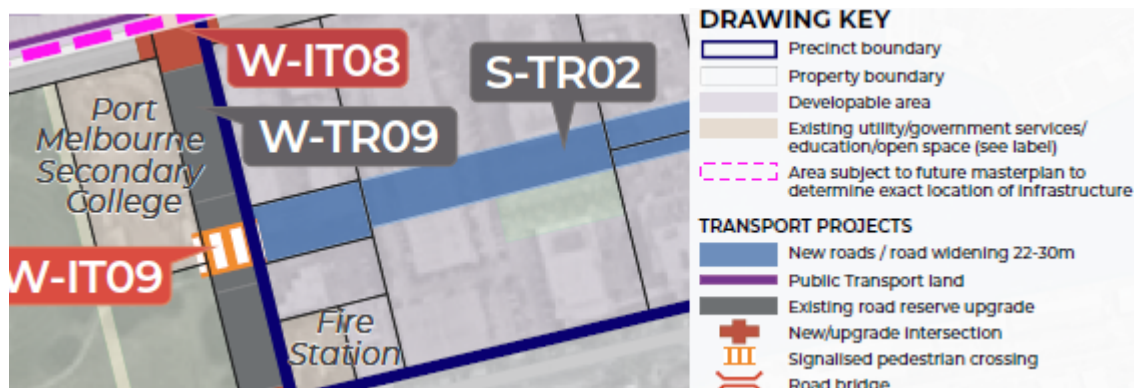
The Committee concludes it is not appropriate to apply the PAO as part of this Amendment to 50 Salmon Street.

8.8 458 Graham Street

(i) Background

The exhibited FBDCP identifies the whole of 458 Graham Street as being required for a new local road (S_TR02). 458 Graham Street is the rectangular shaped land at the western-most end of S_TR02 (shown in blue), directly opposite W_IT09 (shown as orange and white stripes), as shown in Figure 24.

Figure 24 458 Graham Street as shown in the exhibited FBDCP



Source: Document 3

(ii) The issue

The issue is whether it is appropriate and justified to apply the PAO to 458 Graham Street (whole).

(iii) Submissions

Foxhay Timber & Hardware Pty Ltd (Foxhay), owner of 458 Graham Street, submitted:

- the FBDCP identifies the entirety of 458 Graham Street for a new local road (S_TR02) with a timeframe for delivery of 2046-2055
- the land has been used since 1954 as a timber and hardware business, but the owner wishes to sell (Mr Foxhay wishes to retire) but has been unable to because the land is identified as a future road - a private consortium previously agreed to purchase the land, but the sale did not proceed
- new or alternative uses are not realistic given the planning provisions, and the land no longer has any development potential or future value, leading to hardship
- the long-term timeframe for delivering S_TR02 should be reduced (brought forward) or alternative means for compensation provided.

The landowner did not specifically request a PAO be applied.

(iv) Discussion

The project sheet for S_TR02 identifies a proposed 30-metre-wide local street between Graham Street and Bridge Street south of Plummer Street together with a linear park which affects all, or if not all then the vast majority, of 458 Graham Street. The entire property will likely need to be acquired.

The Committee accepts Foxhay has experienced disadvantage due to the identification of the whole of the site for a future road. Given the long-term timeframe for S_TR02 (currently estimated between 2046 and 2055), this will continue for many years.

Based on the Committee's criteria as set out in Chapter 8.2, the site is eligible for applying PAO as part of this Amendment.

The Committee recommends the Proponent consult with Foxhay (and any future tenant) about applying the PAO to provide the option of compensation before the road is acquired. If the landowner agrees, the PAO should be applied as part of this Amendment.

(v) Conclusion and recommendation

The Committee concludes it is appropriate and justified to apply the PAO as part of this Amendment to 458 Graham Street (whole), subject to consultation with the landowner and occupier.

The Committee recommends the following changes to the draft Amendment:

Apply the Public Acquisition Overlay to 458 Graham Street, Port Melbourne (whole) subject to consulting with the landowner and occupier (if required).

9 Amendment form and content

9.1 General drafting

Drafting should be consistent with current guidance including the Practitioner's Guide to Victoria's Planning Schemes (Department of Transport and Planning). The provisions should be drafted in plain English, with clear and concise language and avoid the passive voice.

9.2 Fishermans Bend Development Contributions Plan

The FBDCP (final version) did not include most of the Tables and Figures that were included in the exhibited version. A range of updated maps and tables were provided throughout the Hearing. The Proponent will need to ensure the maps and tables in the final FBDCP reflect the Committee's recommended changes to the FBDCP.

9.3 Planning scheme provisions

9.3.1 Committee's preferred versions

Report Volume 2 contains the Committee's recommended versions of the following Amendment provisions:

- Melbourne Planning Scheme (refer Appendix G)
 - Clause 11.03-6L
 - CCZ 4
 - DCPO1
 - IPO7
- Port Phillip Planning Scheme (refer Appendix H)
 - Clause 11.03-6L
 - CCZ1
 - DCPO2
 - IPO2.

The changes shown in Appendices G and H reflect the Committee's recommendations in Report Volume 1, as well as some minor corrections. Other consequential changes will be required to give effect to the Committee's recommended changes to the FBDCP. These are not included in Appendices G and H.

9.3.2 OSU provisions

(i) The issue

The issue is whether the provisions in the CCZ schedules achieve the intent of the OSU.

(ii) Submissions

Melbourne City Council requested a Dwelling be changed from not requiring a permit (Section 1 use in the current and exhibited versions of the CCZ4) to requiring a permit (Section 2 use) so that the OSU provisions operate as intended. It submitted:

- several planning provisions that implement the OSU refer to the term 'total site area'

- that term is defined by reference to “*the area of the land the subject of the application*” (emphasis added)
- a Dwelling does not require a permit so there would be no application
- no permit is required to exceed the dwelling density by using the OSU – rather, it can be exceeded with a section 173 agreement that secures delivery of the OSU park
- although development would require a building and works permit, the CCZ4 provisions relating to dwelling density apply regardless of the need for a permit and the ‘total site area’ definition should be tied to the use application
- the change from no permit to requiring a permit would not be an additional burden on landowners because:
 - a building and works permit is required regardless
 - a permit is required for Dwelling if the use is in an amenity buffer, which applies to almost all of the Lorimer precinct (CCZ4 Map 3)
- the issue only affects Lorimer.

Port Phillip City Council noted the issue does not impact the precincts in its municipality because a permit is required for a Dwelling use in the ‘Core’ areas of the three FBURA precincts in the Port Phillip Planning Scheme. It submitted in practice all development will require a building and works permit.

The Proponent initially agreed to revise CCZ4 to require a permit for a Dwelling. In response to questions from the Committee, the Proponent submitted:

- it would be possible to amend the definition of ‘total site area’ to reference both a situation where an application was required and one where no application was required, and therefore no change to the Use Table would be required
- in practice, all land in Lorimer will need a use permit for a Dwelling because all sites are in the amenity buffer
- there is no need to require a use permit for a Dwelling because it effectively already is a Section 2 use due to the application of the amenity buffer provisions.

Regarding procedural fairness, the Proponent and Melbourne City Council submitted no further notification is required because no one is likely to be materially adversely affected by requiring a use permit for Dwelling. The Proponent preferred a solution to the drafting issue that did not risk the need for future notice or any delay to the Amendment.

The CCZ Schedules (final version) retained Dwelling as a Section 1 use and retained the drafting of the definition of ‘total site area’ (with the reference to the ‘application’).

(iii) Discussion

The provisions needed to implement the OSU evolved considerably during the Hearing and the final versions reflect a high degree of agreement between the Proponent and the two Councils.

Introducing a change to the provisions that would require a use permit for a Dwelling as suggested by Melbourne City Council raises procedural fairness concerns. Further, the suggested change was raised late in the Hearing process and had not been the subject of any expert evidence. Because it had not been fully explored at the Hearing, there could be unintended consequences.

In any event, the Committee considers the final versions of the CCZ schedules achieve the intent. An OSU development will generally require both a building and works permit and a use permit, due to:

- the amenity buffer provisions in the Melbourne Planning Scheme (which apply to almost all land in the Lorimer precinct)
- the requirement for a use permit for Dwelling in the 'Core' areas of the three Port Phillip FBURA precincts.

If in the future the Melbourne Planning Scheme amenity buffer provisions were to change (including Map 3), it may no longer be the case that all sites in Lorimer are covered by the amenity buffer. Therefore, there would be no 'application', with the result that the CCZ4 provisions would no longer operate as intended. Similarly, there could be future changes to permit requirements under the Port Phillip Planning Scheme that cause issues with the operation of the OSU provisions.

Any future planning scheme amendments will need to ensure that the dwelling density and OSU provisions continue to operate as intended.

(iv) Conclusion

The Committee concludes the final versions of the CCZ schedules achieve the intention of the OSU scheme.