

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report

Melbourne Planning Scheme

Referral No 3: Treasury Square, Melbourne

11 September 2020

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Priority Projects Standing Advisory Committee Report pursuant to s151 of the Act

Melbourne Planning Scheme

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Members of the Priority Projects Standing Advisory Committee who considered this referral:



Tim Hellsten, Chair



Debra Butcher, Member



Andrew Hutson, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
BVRT	Building Victoria's Recovery Taskforce
CCZ1	Capital City Zone (Schedule 1)
CLPO	City Link Project Overlay
Council	Melbourne City Council
DDO10	Design and Development Overlay (Schedule 10)
DELWP	Department of Environment, Land, Water and Planning
DoT	Department of Transport
EAO	Environmental Audit Overlay
ESD	Environmentally Sustainable Design
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
PO12	Parking Overlay (Schedule 12)
PPF	Planning Policy Framework
the Committee	Priority Projects Standing Advisory Committee

1 Overview

(i) Referral summary

Referral summary	
Date of referral	28 August 2020
Members	Tim Hellsten (Chair), Debra Butcher and Andrew Hutson
Description of referral	Proposed rezoning to the Melbourne Planning Scheme to apply the Capital City Zone (Schedule 1), Design and Development Overlay and the Environmental Audit Overlay (Schedule 10) and make changes to Clause 53.01 and Clause 66.04 (Referral of Permit Applications under Local Provisions) and a planning permit for a two lot subdivision
Common name	Referral No 3: Treasury Square, Melbourne
Municipality	City of Melbourne
Planning Authority	Minister for Planning (for the purposes of this referral)
Proponent	VicTrack
Subject land	279-357 Wellington Parade South, Melbourne
Site inspection	Not undertaken because of COVID 19 restrictions
Submissions	32 submissions (Appendix C)
Consultation	Matter dealt with 'on the papers'
Information relied upon	All proposed amendment documentation and the draft planning permit provided through the consultation process and the submissions made to the proposal and updated documents provided to DELWP by VicTrack (Appendix D)
Date of this report	11 September 2020

(ii) Findings

The Committee finds:

- The application of the Central City Zone (Schedule 1) and the Environmental Audit Overlay to the subject land is appropriate.
- Parking Overlay (Schedule 12) should be deleted and replaced by Parking Overlay (Schedule 1).
- Design and Development Overlay (Schedule 10) is acceptable for the subject land and provides sufficient protection of the public amenity of Birrarung Marr and the Yarra River from overshadowing.
- Design and Development Overlay (Schedule 10) should be augmented to include requirements to ensure development does not impact on the integrity of the Hoddle Grid when viewed across the site from the east and south and to provide for pedestrian and cycle linkages through the site to link the Central City network and parklands.
- Design and Development Overlay (Schedule 1) as proposed by Amendment C308 should be applied to the site if it is approved before the proposed Amendment is

approved or, alternatively applied through a subsequent planning scheme amendment as soon as practicable. This would address many of the urban design and public realm issues identified by the City of Melbourne and provide for a more appropriate urban design response in conjunction with Design and Development Overlay (Schedule 10).

- The approach to deferring payment of the public open space contribution to the future owner of Lot A is reasonable and should be managed through a permit condition requiring a section 173 Agreement.
- The proposed changes to Clause 53.01 are generally supported noting the minor risk of deferred open space payments not occurring if Lot A is not further subdivided.
- The proposed change to Clause 66.04 is appropriate but should be amended to refer to the correct Clause number (Clause 6.0) in Schedule 1 to Clause 37.04.
- The draft planning permit is appropriate subject to the inclusion of appropriate stormwater condition(s), preferably following further consultation with City of Melbourne.

(iii) Recommendations

Draft Amendment:

- 1. Amend the Schedule to Clause 66.04 Referral of permit applications under local provisions to refer to 'Clause 6.0 of Schedule 1 to Clause 37.04'.**
- 2. Delete Parking Overlay (Schedule 12) and replace it with Parking Overlay (Schedule 1).**
- 3. Amend Design and Development Overlay (Schedule 10) in consultation with the City of Melbourne to include additional requirements to:**
 - a) ensure development does not impact on the integrity of the Hoddle Grid from views across the site from the east and south.**
 - b) provide for pedestrian linkages across the site. This change is not required if Design and Development Overlay (Schedule 1) as proposed by Melbourne Planning Scheme Amendment C308 is applied to the site.**

Draft subdivision planning permit

- 4. Amend the draft planning permit consistent with the Committee's version in Appendix E with an additional condition(s) that provides for stormwater discharge to be managed to the satisfaction of the City of Melbourne. Final condition wording should be sought from the City of Melbourne or an alternate wording used consistent with the Committee's suggestion at Section 4.4 of this Report.**

The Committee further recommends:

- 5. Apply Design and Development Overlay (Schedule 1) as proposed by Melbourne Planning Scheme Amendment C308 if approved before finalisation of the proposed Amendment or apply it to the site through a subsequent amendment as soon as practicable, in addition to Design and Development Overlay (Schedule 10).**

2 Introduction

(i) Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference (Appendix A) to:

... provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

The Committee was provided with a letter of referral from the Minister for Planning dated 28 August 2020 (Appendix B) that tasked it to:

- a. provide a brief report to me within 20 business days from the date of the letter or when the member is satisfied that it has been provided with all relevant information;
- b. consider the draft planning permit and amendment documents which formed the basis of the consultation process;
- c. consider all written submissions collected during the consultation process, via the Engage Vic portal and those parties who have written to me directly;
- d. address the following issues in its report in addition to those matters set out in the Terms of Reference:
 - i. the appropriateness of the planning controls proposed by VicTrack, including matters raised in the City of Melbourne's submission;
 - ii. overshadowing;
 - iii. urban design and public realm;
 - iv. impacts on key view lines between significant areas of the city, public spaces, and heritage buildings;
 - v. existing and future pedestrian links between key public spaces; and
 - vi. any other matter that the committee considers appropriate.
- e. with respect to the proposed subdivision:
 - i. prepare a draft planning permit to approve the proposed two-lot subdivision including relevant requirements relating to servicing authorities, protection of transport infrastructure and future development; and
 - ii. recommend whether the open space requirement in the schedule to clause 53.01 of the Melbourne Planning Scheme should be reduced for the proposed two-lot subdivision (noting that the requirement would remain in place for further subdivision).

This is Referral No. 3.

The letter of referral makes it clear that the Committee is to only consider the matters referred. *This means that the overall merits of the proposal have not been tested and the SAC confines its review to particular issues.*

A subsequent letter to the Committee from the Minister for Planning dated 1 September 2020 (Appendix B) advised that:

I clarify that I wish to refer submissions and other documents received about the above proposal to the Priority Projects Standing Advisory Committee (SAC) for advice

under Section 151 of the Planning and Environment Act 1987 rather than appoint another committee.

(ii) Membership

Due to the issues to be resolved, the members of the Committee dealing with Referral No. 3 include:

- Tim Hellsten, Chair
- Debra Butcher, Member
- Andrew Hutson, Member.

The Committee was assisted by Georgia Thomas, Project Officer, of the office of Planning Panels Victoria.

(iii) Background to the proposal

The letter of referral set out a brief history of key issues that led to this referral, summarised in Table 1.

Table 1 Background to the proposal

Date	Event
22 January 2020	Request from VicTrack to Minister for a combined 96A planning scheme amendment (C370melb) (the Amendment) and planning permit application for a two-lot subdivision for 295-357 Wellington Parade South, known as Treasury Square to be prepared and approved under s20(4) of the Planning and Environment Act (Act)
April – May 2020	Department of Environment, Land, Water and Planning (DELWP) undertakes consultation process to seek the views of interested parties. 32 submissions received ¹
1 July 2020	VicTrack provides DELWP with a response to submissions including further urban design advice
11 August 2020	Request from VicTrack to Minister to modify the Amendment to include changes to the public open space contributions under Clause 53.01 to reduce the 5 percent public open space contribution triggered by the subdivision to 0.00001% until the land is sold and reverts to a 5 percent contribution
28 August 2020	Referral to Committee by Minister

The proposed Amendment and planning permit application was supported by:

- a draft Planning Permit
- a Planning Report by Urbis Pty Ltd
- a draft plan of subdivision PS835657M and subdivision report by Veris Licensed Surveyors, 20 March 2020
- an Infrastructure Servicing Report by SMEC, 11 December 2019.

¹ Includes submissions received on the Engage Victoria website and by the Minister for Planning's office

An Urban Design Review report² was produced by Kinetica in June 2020 for VicTrack to provide an assessment of the proposed Amendment, informed by the Melbourne Planning Scheme as well as the Urbis report and submissions. It provides a detailed analysis of the state and local strategic planning context for the site including Plan Melbourne, the Municipal Strategic Statement (and earlier 2006 version) and the City of Melbourne's 1999 City Plan. It includes modelling of building envelopes based on DDO10 and local policy as well as a shadow analysis.

(iv) Limitations

Consultation

The letter of referral required the Committee to undertake its review of the project "*on the papers*". This approach did not allow the Committee to ask questions of submitters or clarify submission aspects or document content. While the Committee did not consult with any parties it reviewed and considered:

- all proposed Amendment documentation and the draft planning permit provided through the consultation process and other documentation identified in Appendix D
- the submissions made to the proposal.

Submissions

The Committee notes that 32 submissions were included in materials provided to it. Duplicate submissions have only been counted once as have multiple submissions from the one submitter. Submissions provided to the Committee are listed and numbered in Appendix C. The Committee has used its own numbering for the submissions as VicTrack's submission analysis (which did not respond to all submissions) used several numbers twice.

Site inspection

Because of the movement restrictions associated with COVID 19, the Committee has not inspected the subject land but has informed itself about the proposal based on aerial images and other images provided with the supporting documentation. The Committee members are familiar with the site.

² Document 4

3 Site and planning context

3.1 The subject land

The subject land is located at 279-357 Wellington Parade South, Melbourne (Lot 1 on TP803405J). It forms part of a larger railway lot owned by VicTrack that extends between Flinders Street and the west side of Punt Road at Richmond Station. The subject land is shown in Figure 1 within the green lines. The Amendment Explanatory Report identifies that the land:

... borders the Melbourne Central Business District (CBD) to the north (Flinders Street) and the Batman Avenue CityLink extension on the western boundary. The southern boundary of the site backs onto 12 sets of railway tracks which lead into Flinders Street station which is approximately 500 metres to the south west of the site. To the east of the site is mixed use commercial and residential buildings and Wellington Gardens. Vehicular entry to the site exists to the north and north east.

The land is predominantly vacant except for at grade railway lines infrastructure, storage sheds and a substation. The land has been declared as surplus to transport requirements by the Department of Transport.

Figure 1 Subject land

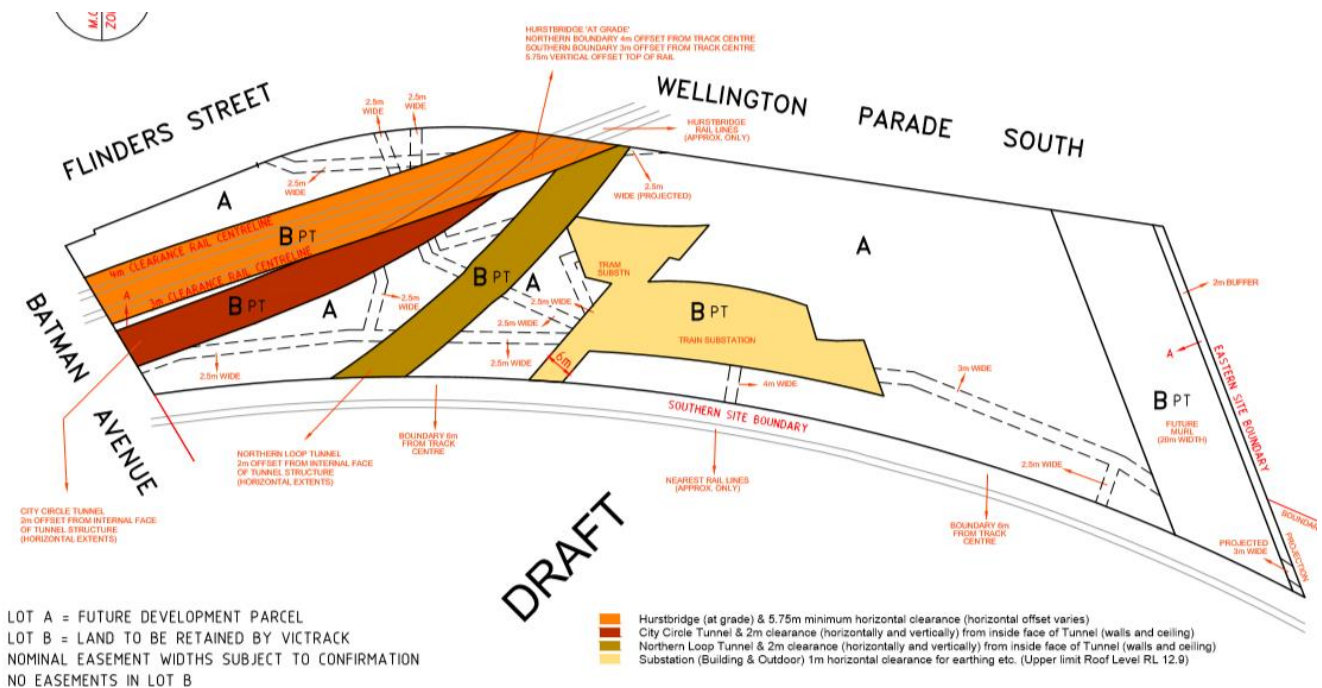


To its eastern edge the site abuts an existing four storey office building (289 Wellington Parade) which is integrated into a residential and apartment tower building at 279 Wellington Parade.

3.2 Planning permit application

The draft planning permit for a two lot subdivision supports the subdivision of the future development site (Lot A) from the larger railway lot and create a separate lot (Lot B) to be retained by VicTrack for major transport infrastructure, comprising the tram substation, the train substation, the Hurstbridge lines, the City Circle Tunnel and the future Northern Loop Tunnel as detailed in draft plan of subdivision (Figure 2).

Figure 2 Proposed plan of subdivision



3.3 Planning framework

(i) Planning Policy Framework (PPF)

The Explanatory Report and Urbis' Planning Report identify that the proposed Amendment and permit support the following state policies in the PPF:

- **Clause 11 (Settlement)** by providing additional capacity for a wide range of uses to be consolidated in central Melbourne and focusing investment and growth in places of state significance, including Metropolitan Melbourne Central City and Transport Gateways.
- **Clause 13.04-1S (Contaminated and potentially contaminated land)** by applying the EAO to manage the remediation of the site.
- **Clause 15 (Built Environment and Heritage)** by applying the CCZ1 and DDO10 to provide an appropriate planning framework to guide the future development and ensure it responds to its landscape, built form and cultural heritage character and provides for a functional, accessible, safe and diverse physical and social environment through the location of activities and development of high quality buildings and urban design.
- **Clause 17 (Economic development)** by creating a new CBD site that provides additional capacity for a range of uses in central Melbourne.

- **Clause 18.01-2S (Transport System)** by managing land adjacent to key transport routes.

(ii) Municipal Strategic Statement (MSS)

The Explanatory Report identifies that the Amendment and permit support the following elements of the MSS:

- **Clause 21.02 (Municipal Profile)** by facilitating a major development site that will support the consolidation of major uses and economic activity in central Melbourne and that is well serviced by existing infrastructure and transport, enhancing Melbourne's status as a global city.
- **Clause 21.04 (Settlement)** by accommodating future growth over the next 20-30 years by increasing the footprint of the CCZ in an appropriate location earmarked for urban renewal (Jolimont Rail Corridor Potential Growth Area).
- **Clause 21.05 (Environment and Landscape Values)** by the applying an appropriate planning framework to ensure any environmental or ecological impacts of the future use and development of the land will be addressed.
- **Clause 21.06 (Built Environment and Heritage)** by providing an appropriate planning framework to protect and enhance the existing built form character and heritage of Melbourne and ensure any overshadowing of future development is controlled in a manner consistent with existing planning scheme requirements.
- **Clause 21.08 (Economic Development)** by contributing a new major development site to the CBD, accommodating major commercial uses supporting Melbourne's Capital City function and advancing the objective of a 'Prosperous City'.
- **Clause 21.09 (Transport)** by providing a site with close access to major train stations and multiple modes of transport while retaining protection of key transport infrastructure assets. Retaining PO12 will also ensure any future provision of parking on the site for residential development will be appropriately managed to support alternative modes of transport.
- **Clause 21.15 (Potential Urban Renewal Areas)** by providing for urban renewal on a vacant and underutilised site in the Jolimont Railway Corridor as part of the Sports and Entertainment Area.

(iii) Local Planning Policy Framework (LPPF)

- **Clause 22.01 (Urban Design within the Capital City Zone)** - the key elements of this policy provides a framework that will form the basis of assessment for any future development of the land to ensure a high level of design quality, amenity and contribution to the public realm including:
 - retaining views into and out of the Hoddle Grid and Southbank and vistas to important civic or historic landmark
 - ensuring the design of public spaces, buildings and circulation spaces meets high quality design standards
 - development contributes to a high quality public realm
 - providing a human scale to the street wall, weather protection, sunlight access, summer shadow, comfortable wind conditions and active frontages
 - the cumulative impact of the scale, setbacks and height of developments
 - adequate separation between towers to achieve sunlight access to streets.

- **Clause 22.02 (Sunlight to Public Spaces)** by applying CCZ1 and DDO10 to ensure new buildings allow good sunlight access to public spaces and do not result in significant loss of sunlight and diminish the enjoyment of public spaces including Birrarung Marr.

The Committee agrees that these are the key policy considerations and that the proposed Amendment and subdivision permit is broadly consistent with them. The Committee notes that as part of Melbourne Planning Scheme Amendment C308 it is proposed to delete Clause 22.01 and replace it with a new DDO Schedule 1. This is discussed further at Section 4.2.

(iv) Zones and overlays

The following zones and overlays apply to the site or are proposed to be applied by the proposed Amendment as shown in Table 2.

Table 2 Existing and proposed controls

Existing controls	Proposed controls or amended provisions	SAC recommendation
Public Use Zone - Transport (PUZ4)	Capital City Zone (Schedule 1 – Outside the Retail Core)(CCZ1)	Support
Parking Overlay (Schedule 12) (PO12)	Design and Development Overlay (Schedule 10) (DDO10)	Support with changes
	Retain PO12	Replace PO12 with PO1
City Link Project Overlay (CLPO)	Environmental Audit Overlay (EAO)	Support
	Retain CLPO	Support
	Amend the Schedule to Clause 53.01 (Public Open Space Contributions and Subdivision)	Support
	Amend the Schedule to Clause 66.04 (Referral of Permit Applications under Local Provisions)	Support with changes

The purpose of the CCZ is:

- To enhance the role of Melbourne's central city as the capital of Victoria and as an area of national and international importance.
- To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.
- To create through good urban design an attractive, pleasurable, safe and stimulating environment.

The CCZ is applied across different parts of the Central City, each included within a schedule to the zone. The CCZ land proximate to the subject land is located in Schedule 1 (Outside the retail core) which has the following purpose:

- To provide for a range of financial, legal, administrative, cultural, recreational, tourist, entertainment and other uses that complement the capital city function of the locality.

Schedule 1 identifies a Table of Uses as well as use, subdivision, buildings and works and signage provisions including application requirements and decision guidelines. No application requirements or decision guidelines are identified for subdivision.

The purpose of the EAO is:

- To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.

It requires that before a sensitive use commences or the construction or carrying out of buildings and works in association with a sensitive use, a certificate of environmental audit or an environmental audit statement that the environmental conditions of the land are suitable for the sensitive use in accordance with Part IXD of the *Environment Protection Act 1970*.

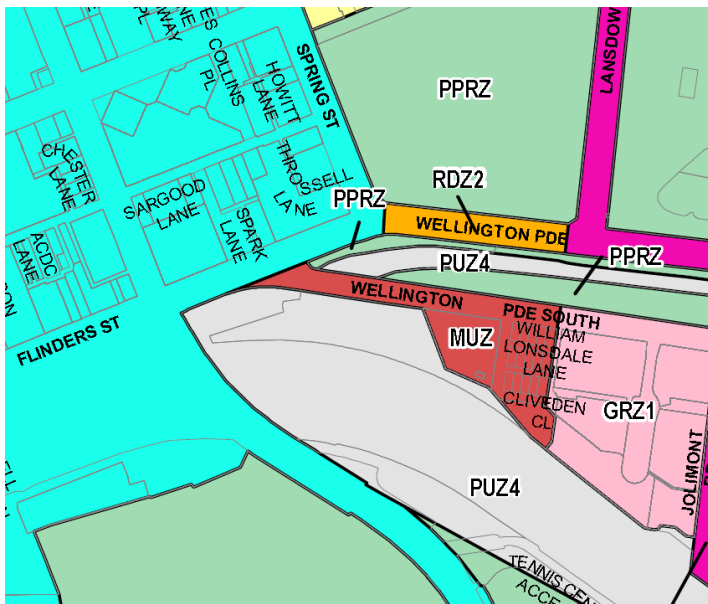
The objectives of DDO10 include:

- To ensure development achieves a high quality of pedestrian amenity in the public realm in relation to human scale and microclimate conditions such as acceptable levels of sunlight access and wind.
- To ensure that development respects and responds to the built form outcomes sought for the Central City.
- To encourage a level of development that maintains and contributes to the valued public realm attributes of the Central City.
- To ensure that new buildings provide equitable development rights for adjoining sites and allow reasonable access to privacy, sunlight, daylight and outlook for habitable rooms.
- To provide a high level of internal amenity for building occupants.
- To ensure the design of public spaces and buildings is of a high quality.
- To encourage intensive developments in the Central City to adopt a podium and tower format.

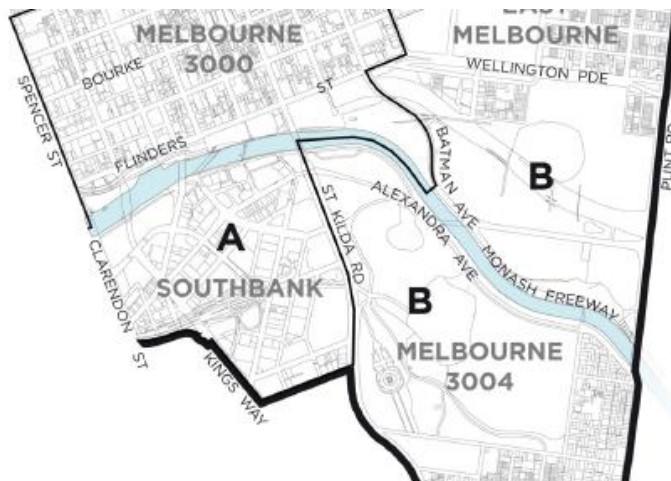
DDO10 extends across the majority of the CCZ except the core area of that zone (covered by other DDOs).

DDO10 identifies requirements for built form (including street wall height, building setbacks and tower floorplates), wind effects and overshadowing of identified spaces (including Parliament and Treasury Gardens and the Yarra River corridor), application requirements as appropriate (including an urban context, wind analysis and 3D modelling) and decision guidelines. A permit is not required under DDO10 for subdivision.

Parking Overlay (Schedule 12) (PO12) and the City Link Project Overlay (CLPO) as they apply to the subject land are not proposed to be changed by the proposed Amendment.

Figure 3 Existing Zoning**(v) Particular provisions**

Clause 53.01 requires a public open space contribution (percentage of land, site value or combination of both) to the Council for an amount specified in the Schedule. The Schedule provides for a contribution of between 5 and 7.06 percent within the City of Melbourne as depicted on a series of maps. The subject land is within area B in Map 4 (5 percent) while CCZ1 land to the west and north is within area A (7.06 percent).

Figure 4 Schedule 1 to Clause 53.01 – Map 4 detail

Clause 66.04 requires the referral of a permit application to a referral authority specified in the schedule as a determining or recommending referral authority. This referral requirement is in addition to those identified in Clauses 66.01, 66.02 and 66.03. The permit application referral requirements of Clause 6.0 of CCZ1 include:

- ...
- An application for development with a gross floor area exceeding 25,000 square metres must be referred in accordance with section 55 of the Act to the referral authority specified in the schedule to clause 66.04.

(vi) Ministerial Directions and Planning Practice Notes

Ministerial Direction No. 1 – Potentially Contaminated Land, 27 September 2001 seeks to “ensure that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by any contamination”. It requires an assessment of land using the same requirements of the EAO or allows deferral of this assessment because of the difficulty or undertaking it before hand, to a later date where this is set out by the amendment (by the application of the EAO in this case).

Planning Practice Note 30: Potentially Contaminated Land, June 2005 (PPN30) provides guidance on the application of the EAO. The Environmental Audit Overlay (EAO) is applied when the “*planning authority has made an assessment that the land is potentially contaminated land, and is unlikely to be suitable for a sensitive use without more detailed assessment and remediation works or management*”.

While PPN30 suggests that previous zoning is not sufficient reason in itself to justify application of an EAO, it identifies railway yards as having a high likelihood of contamination.

The Committee considers that the Amendment is generally consistent with other Ministerial Directions including:

- *Ministerial Direction on the form and content of Planning Schemes*
- *Ministerial Direction No. 9 Metropolitan Planning Strategy*
- *Ministerial Direction No. 19 Preparation and content of amendments that may significantly impact the environment, amenity and human health.*

4 The issues

The issues identified in the referral (sections d.i – vi and e.i and ii) to be resolved are addressed in this Chapter under the following section headings:

- Appropriateness of the proposed controls (d.i)
- Urban design considerations:
 - Urban design (d.i)
 - View lines (d.iv)
 - Overshadowing (d.ii)
 - Public realm (d.i)
 - Pedestrian linkages (d.v)
- Changes to Clause 53.01 (e.ii)
- Subdivision permit (e.i)
- Other matters (d.vi).

The Committee has considered these issues in the context of the 32 submissions made to the proposed Amendment and permit as summarised in Table 3.

Table 3 Summary of submission issues

Issue	Submission	Report section
Site should be used for a park or for public use and benefit	5, 6, 7, 10, 12, 19, 23, 25, 26, 27, 28, 29, 30, 31, 32	4.5
Impact on character of area	6, 9, 17, 30, 31	4.2
DDO10 is inadequate to address key built form considerations suggesting that: <ul style="list-style-type: none"> - a tailored DDO or DPO should apply - apply DDO as per Amendments C308 and C278 	15, 17, 20, 22, 24	4.1, 4.2
Overshadowing including impacts on Wellington Park, Yarra River and Birrarung Marr	5, 6, 7, 9, 11, 12, 13, 15, 17, 19, 20, 23, 25, 26, 27, 28, 29	4.2
Height including introduction of a mandatory heights	5, 6, 7, 12, 13, 16, 17, 19, 21, 23, 25, 26, 27, 28, 29, 30, 31	4.2
Loss of views to heritage buildings including 1 Spring Street	5, 6, 7, 12, 14, 23, 25, 26, 27, 28, 29, 30, 31	4.2
Loss of outlook, privacy and amenity from One East development	5, 7, 8, 12, 23, 26, 27, 28, 29	4.5
Transport and traffic impacts including parking and related emissions	5, 6, 7, 8, 9, 12, 16, 18, 23, 25, 26, 27, 28, 29, 30, 31	4.5
Additional provision of open space and pedestrian links required	13, 19	4.2

Issue	Submission	Report section
Economic, social and environment impacts	9, 23, 25, 30, 31	4.5
Changes to Clause 66.04	3	4.1
Additional permit conditions	3, 4	4.4

Table 4 sets out the key submission issues of the City of Melbourne (Council).

Table 4 City of Melbourne submission issues

Issue	Report section
Redraft amendment in line with its suggestions then re-exhibit:	
<ul style="list-style-type: none"> - prepare a revised DDO10 to include mandatory provisions to avoid further overshadowing of Birrarung Marr and the Yarra River and surrounding parklands and provide for a height transition from the Hoddle Grid edge through lower height and reduced visual bulk and include provisions from Amendment C308 (DDO1), include best practice ESD standards, provide for a hierarchy of pedestrian connections (to Cliveden Close, a north-south connection and laneway connection), minimise crossovers and limit access to Wellington Parade South - introduce a noise management control (similar to DDO12) - replace PO12 with a PO discouraging car parking - provide an affordable housing mechanism (including social housing) 	4.1, 4.2, 4.5
Amend planning permit to:	4.3, 4.4
<ul style="list-style-type: none"> - require a feature survey - include stormwater conditions obtained by further referral to Council's Infrastructure and Assets Department - include additional condition regarding vehicle access including easements - future development of lot B to consider window treatment on southern boundary - amend plan of subdivision to include a 3 metre light and air easement along the eastern boundary - inclusion of the mandatory relevant authorities requirement condition and Telecommunications condition (Clause 66.01) - open space contribution condition 	
Run an international design competition	4.5
Publish the Richmond to Docklands Masterplan	4.5
Requests early engagement before future Expression of Interest and sale processes commence	4.5

4.1 Appropriateness of proposed controls

The issues are:

- whether the proposed controls are appropriate
- whether the proposed controls address the City of Melbourne's concerns.

(i) Submissions

Zone

Several submissions do not support the rezoning of the land to allow for a large commercial or residential development and consider that it should be retained for a public use.

Council's submission agrees with the analysis of zone options set out in the Urbis report and supports the application of the CCZ1 to the site, considering it provides for a range of appropriate uses and is an appropriate zone interface and transition to the land to the south-east of the site. It submitted that the application of the CCZ1 was consistent with the state policies in the PPF, MSS and LPPF.

Overlays

The EPA submission supports the application of the EAO and identifies that this is consistent with its previous advice to VicTrack which referenced an earlier environmental site assessment undertaken by GHD for VicTrack in 2019.

Council's submission makes no comment about the EAO.

Council's submission as well as other submissions questioned the appropriateness of DDO10 to address a range of significant urban design considerations relevant to the site and its context including height and overshadowing. The nature of these concerns is discussed in more detail in Section 4.2. Council considered that controls should also be introduced (potentially through a new DDO) relating to Environmentally Sustainable Design (ESD) and the management of noise (similar to DDO12).

Council considered that such a large prominent government site warranted a best practice approach to discouraging carparking in favour of bicycle, motorbike and carsharing options (through a new PO rather than PO12 which applies to residential development only), ESD and affordable housing including social housing consistent with its own strategies. The submission is unclear on the preferred mechanism for achieving the housing outcomes identified.

VicTrack's submission assessment considered that there was no basis to remove PO12 and replace it with a control providing for a lower rate than any other sites along the Flinders Street corridor or other strategic sites in the CBD close to public transport. It noted in response to noise that adjoining sites along the Flinders Street rail corridor and above the Melbourne Underground Rail Loop are not subject to an acoustic attenuation overlay and no need for a tailored control based on the amenity considerations of Clause 58 (Apartment Developments).

Other submissions supported site specific tools such as a Development Plan Overlay or incorporating aspects of proposed DDO8 relating to sunlight (Melbourne Planning Scheme Amendment C278).

Particular provisions

The submission of Department of Transport (DoT) identified that the proposed amendment to the Schedule to Clause 66.04 should refer to Clause 6.0 of Clause 37.04 (CCZ1) rather than

Clause 3.0. This change was supported by VicTrack in its assessment of submissions.³

Council's submission makes no comment about Clause 66.04.

The changes to Clause 53.01 were not included in the exhibited Amendment documents and is discussed separately at 5.3.

(ii) Discussion and findings

Zone

The Committee supports the application of the CCZ1 to the subject land. It considers the application of the zone logical as a site on the periphery of the CBD and as an appropriate transition of zoning from the north side of Flinders Street to the adjoining Mixed Use Zone to the south east. The zone provides for an appropriate mix of uses that reflect the sites designation as a renewal site as part of the Jolimont Rail Corridor Potential Growth Area. The application of the zone supports the policies and strategies of the PPF, MSS and LPPF and will ensure that the site is appropriately integrated into the Central City.

Overlays

The application of the EAO is appropriate for a former railway yard and consistent with Ministerial Direction No 1 and PPN30 and will provide an appropriate mechanism to manage potential contamination for any future sensitive use.

The Committee supports the use of a DDO on the site, considering the tool critical to guiding appropriate built form outcomes on what is a significant and prominent site. DDO10 is applied consistently to the CCZ1 and should be applied to the site as a minimum. The proposed use of DDO10 however, does not fully satisfy the concerns of Council. The Committee discusses the appropriateness of DDO10 in the context of the urban design considerations of the referral in Section 4.2.

Amendment C278 seeks to protect winter sunlight access to public parks via a range of mechanisms. As Amendment C278 has not had the benefit of a Panel Hearing, it is premature to determine its appropriateness or wider application including to the subject land.

The Committee notes that DDO12 provides for noise attenuation for residential development around the Docklands sporting precinct. The Committee considers it unnecessary to introduce an additional DDO to manage noise, although it notes that noise will potentially be an important site design consideration given its proximity to key road and rail routes. It observes that if a site specific DDO was to be developed, a noise attenuation requirement could be included, but it does not consider this necessary as other provisions exist in the planning scheme to address off site noise issues and noise transmission within sites including Clause 58.04-3.

The Committee agrees with Council's observations that PO12 is limited to residential applications and that future site development is likely to contain a variety of residential, accommodation and commercial uses. The Committee notes that PO12 is generally applied in peripheral locations around the CBD whereas PO1 is applied to land in the CCZ1. PO1 has

³ Document 3

the same outcome largely for residential uses while providing guidance on parking provision for other uses. It would appear logical to apply PO1 (and delete PO12) to be consistent with its broader application to the CCZ1. While acknowledging Council's desire to set higher benchmarks for discouraging onsite parking provision for this site, such a site specific approach via a new PO control is inappropriate and inconsistent with other sites equally close to public transport and pedestrian networks. Opportunity however, still exists for different parking outcomes to be explored through a future development application process.

The Committee acknowledges that Council has undertaken considerable work in the areas of ESD and affordable housing, including social housing provision, setting significant targets for its own sites. While the Committee acknowledges that this site is a significant strategic site and presents an opportunity to be an exemplar for environmental performance and affordable housing outcomes, taking such an opportunistic or a site by site approach rather than as a considered, consistent Central City wide approach is not reasonable at the strategic planning level or to provide greater certainty. While an amended version of a DDO could identify further requirements for environmental standards and affordable and, or social housing, the Committee observes that other scheme policies enable these matters to be explored and considered at the development application stage.

The Committee does not consider that a Development Plan Overlay should be applied to this site given it is currently in one ownership and the future development of Lot A as a single parcel can be appropriately managed through existing and proposed controls.

Particular provisions

The Committee supports the proposed changes to the Schedule to Clause 66.04 to require the referral of any application for buildings and works on the site triggered under Schedule 1 to Clause 37.04 to VicTrack and DoT and for these agencies to be identified as determining referral authorities. This will provide an appropriate mechanism to ensure major site development responds to and protects future transport interests.

The post-exhibition changes to Clause 53.01 are discussed in Section 4.3.

The Committee finds:

- The application of the Central City Zone (Schedule 1) and the Environmental Audit Overlay to the subject land is appropriate.
- Parking Overlay (Schedule 12) should be deleted and replaced by Parking Overlay (Schedule 1).
- The proposed change to Clause 66.04 is appropriate but should be amended to refer to the correct Clause number (Clause 6.0) in Schedule 1 to Clause 37.04.

4.2 Urban design and public realm considerations

The issues are whether the proposed Amendment:

- provides for an appropriate urban design response
- impacts on key view lines between significant areas of the city, public spaces and heritage buildings
- adequately addresses overshadowing
- provides for appropriate public realm response
- provides for existing and future pedestrian links between key public spaces

- addresses the concerns of the City of Melbourne.

(i) Submissions

Council's submission outlined a range of urban design issues and what it considered to be the inadequacy of the current DDO10 in addressing the prominent strategic location of the site on the edge of the Hoddle Grid and its proximity to significant public spaces. It identified that the site does not share the same urban characteristics as the Central City to which the DDO10 design objectives are focused and should be subject to a revised DDO10. The submission sets out the additional planning requirements that should be applied to the site (as summarised in Table 4) either through a new DDO, an amended DDO10 or an acceptance of the design standards and provisions proposed through Amendment C308. Specifically, the submission sought a DDO control that would:

- ensure that building heights and building typologies provide a transition to the Hoddle Grid and don't erode the Hoddle Grid's defined edge;
- preventing overshadowing of the Yarra River, Birrarung Marr, and adjacent public places;
- provide for future site permeability and granularity through the inclusion of a hierarchy of links, including a key north-south pedestrian and cycling connection;

VicTrack's assessment of Council's submission (based on Kinetica's Urban Design Review) considered that DDO10 provided an appropriate framework to guide issues relating to built form, public realm and pedestrian amenity and overshadowing. It noted that DDO10 was applied to other comparable sites including Federation Square and World Trade Centre.

Other submissions addressed the inadequacy of the DDO10 and concerns regarding the possible overshadowing to the Yarra River and Birrarung Marr. Submissions expressed concern at the potential loss of views across the site to heritage buildings including 1 Spring Street on the north side of Flinders Street and the need for mandatory height limits to preserve the lower scale of the south side of Flinders Street. One submission identified that the site of Federation Square had previously hosted the former Gas and Fuel buildings which were of a substantial height and screened the view of the CBD and the north side of Flinders Street and that they were demolished, partly, because they obscured the CBD.

(ii) Discussions and findings

Amendment C308

The Committee notes that Amendment C308 proposes to replace Clause 22.01 with a new DDO1 which applies to the entire Central City but retains most DDOs including DDO10. The amendment is waiting final approval. The subject land is not included in that amendment (presumably because of its current zoning) but does adjoin its application to CCZ land. DDO1 proposes more detailed urban design guidance regarding urban structure, site layout, building massing and public interfaces. If Amendment C308 is approved, the Committee considers it appropriate to apply it to the subject land based on the proposed change to CCZ1, consistent with the proposed broader application of DDO1 across the Central City.

Podium and tower form provisions in DDO10

DDO10 contains provisions for street walls above which there is a setback for tower forms. Council suggested this typology applies appropriately to development in the CBD and does not sit comfortably with the subject site which has differing urban characteristics. While the

Committee considers that the provisions of DDO10 are not inherently problematic in themselves, the nature of the scale and form of potential site development would need to respond to a range of urban design issues including the integrity of the Hoddle Grid, overshadowing and impact of views.

Integrity of the Hoddle Grid

Council's submission sought a specific control for site development that provides a transition of scale to the Hoddle Grid so as to not erode the defined edge of the grid. The grid is defined at the edges along the west side of Spring Street and the north side of Flinders Street. The corner of these two streets contains the prominent former 'Shell House' at 1 Spring Street. The subject land has approximately a third of its northern boundary aligning with the south side of Flinders Street but the remaining section 'pulls' away from the street alignment. This change in alignment with Flinders Street and the grid would in itself offer a degree of protection for the urban clarity of the rectilinear CDB and the reading of the corner of the grid.

There remains however, the possibility that development on the subject land could detract from the integrity of the grid. There are a number of ways to address this. One option is to add an additional specific design objective to DDO10 however, this is not preferred because of the DDOs wider application and already large number of objectives (seven). An alternative is to include a site specific or broader requirement (for example as a design element in Table 3, as an application requirement or a decision guideline) to ensure development does not impact on the integrity of the Hoddle Grid. Amendment of DDO10 without further discussions with Council is problematic and comes with the risk of unintended consequences however, while proposed DDO1 provides for the consideration of 'special places', it is unlikely to provide the comfort or certainty sought by Council.

Overshadowing

Council's submission sought a mandatory requirement that no existing areas of sunlight in Birrarung Marr be subject to further overshadowing by the subject land's development. Other submissions raised similar concerns about the impacts of overshadowing on Birrarung Marr, the Yarra River and other public spaces.

The current provisions of DDO10 prevent overshadowing of Birrarung Marr between 11.00am and 2.00pm between the equinoxes of 22 April and 22 September. This six-month period covers the worse-case scenario of the winter solstice. There would be no circumstances under these protections where the Yarra River could be overshadowed by development of the subject land.

Given the distance of the subject land from Birrarung Marr and its orientation to it these mandatory provisions would substantially protect it from additional overshadowing. The current provisions in DDO10 are therefore considered sufficient in this regard.

View lines

The development of the site could impact on views to the south from existing sites and developments to the north of the site. It is not considered necessary to protect these views. Views from the public realm of Treasury Gardens would not be unreasonably impacted by development of the subject land.

Development on the subject land would impact on views to the southern edge of the Central City from the southern parklands and environs. This issue was raised in a number of submissions and should be considered in concert with the desire to retain the clarity in reading the Hoddle Grid and the Central City with the north side of Flinders Street being the substantial city edge.

Depending on building scale, site development when viewed from the south with buildings in the foreground, could detract from the clarity of this CBD edge. The addition of a DDO10 requirement to respond appropriately to the Hoddle Grid as identified above, would enable impacts on its integrity (including views) to be assessed.

Height

If the provisions regarding overshadowing in the DDO10 are retained, based on Kinetica's analysis the maximum height for any development would be approximately 80 metres at the western end and 90 metres to the east. This provision would in effect result in a maximum upper height limit for development. With the changes suggested by the Committee relating to view lines, the height and form of any development could also be assessed and would support a tapering of development height from lower heights at the western end to higher levels at the eastern end.

Specification of mandatory height provisions are not considered appropriate or necessary.

Pedestrian and cycling linkages

Council's submission sought north-south pathways through the subject land to link the City pathway network with parklands to the south. This is a reasonable outcome to be sought in an urban design sense as it would continue the linkages from Spring Street and Treasury Gardens to Birrarung Marr. DDO10 does not adequately provide for such linkages and warrants further provision in the manner identified above by the Committee in response to Hoddle Grid view lines. Such a change would not be required if DDO1 as proposed by Amendment C308 is applied to the site, as that control provides for the broader consideration of linkages.

Public realm

The Committee observes that while DDO10 allows for adequate consideration of the public realm in terms of street wall height, human scale and pedestrian amenity, proposed DDO1 is superior in terms of its broader public realm and streetscape interface and fine grain form considerations.

The Committee finds:

- Design and Development Overlay (Schedule 10) is acceptable for the subject land and provides sufficient protection of the public amenity of Birrarung Marr and the Yarra River from overshadowing.
- Design and Development Overlay (Schedule 10) should be augmented in consultation with the City of Melbourne to include requirements to ensure development does not impact on the integrity of the Hoddle Grid when viewed across the site from the east and south and to provide for pedestrian and cycle linkages through the subject land to link the Central City network and parklands.
- Design and Development Overlay (Schedule 1) as proposed by Amendment C308 should be applied to the site if it is approved before the proposed Amendment is

approved or, alternatively applied through a subsequent planning scheme amendment as soon as practicable. This would address many of the urban design and public realm issues identified by the City of Melbourne and provide for a more appropriate urban design response in conjunction with Design and Development Overlay (Schedule 10).

4.3 Deferring open space contributions and changes to Clause 53.01

The issues are:

- whether the open space contribution for the proposed subdivision should be deferred
- whether the proposed changes to Clause 53.01 are appropriate.

(i) Submissions

A 5 percent open space contribution is required for the proposed subdivision of the site under the provisions of the Schedule to Clause 53.01.

Council's submission suggested two alternative permit conditions in relation to a public open space contribution. The first proposed a 'standard' approach requiring the owner of the land pay an open space contribution equivalent to 5 percent of the site value of the land contained on Lot A, prior to the issue of a Statement of Compliance under the Subdivision Act 1988. The second approach would effectively enable the deferral of the 5 percent contribution to be paid after the Statement of Compliance issued, but no later than 31 December 2025. This was to be implemented via a section 173 Agreement.

The Committee understands that the purpose of the deferral was to enable the 5 percent to be paid by the future purchaser (and presumably the developer) of Lot A, rather than VicTrack, on the basis that any sale of the land would occur by 2025. This alternative was agreed to by Council as a result of pre-consultation with VicTrack.

VicTrack subsequently sought to modify this approach, identifying that due to the current economic conditions, there is a risk that a transaction of this scale might not occur by 2025. Accordingly, VicTrack sought to defer payment of the contribution until the future sale of the land to pass on the public open space liability to the future owner of the Lot A. This deferral is proposed to be undertaken by amending the schedule to Clause 53.01.⁴

The proposed amendment to Clause 53.01 seeks to insert under the heading 'Type or location of subdivision', for 'Treasury Square-279-357 Wellington Parade South, Melbourne' the following contribution requirement:⁵

For a 2 lot subdivision in accordance with Plan of Subdivision PS835657M by VicTrack for the purpose of excising land to be transferred to a third party 0.00001% of Lot A. For any further subdivision of Lot A on the Plan 5%.

The amended Explanatory Report for the amendment and permit application highlights that the nominal payment of 0.00001 percent is only relevant for the two lot subdivision that accompanies the amendment and it is further subdivision of the Lot A land that will trigger the amount specified under the Melbourne Planning Scheme of 5 percent.

⁴ Document 5

⁵ Document 6

(ii) Discussion and findings

The proposed changes to the schedule to Clause 53.01 did not form part of the project when consultation was undertaken, and no submitters have been able to respond to it. However, the concept of deferring the payment of the 5 percent to enable payment by a future owner/developer rather than VicTrack was discussed and subsequently supported by Council.

While the more recent deferral of the contribution sought by VicTrack has not been the subject of consultation with Council, the Committee considers that the principle agreed to by it (deferral of the payment to a future landowner/developer) remains. The 'new' approach sought by VicTrack seeks to address the current economic circumstances.

The Committee in this context is comfortable with the principle of deferring payment of the contribution until the further sale of the land for development.

In terms of the proposed planning scheme mechanism, the Committee considers on face value, the proposal to amend the Schedule to Clause 53.01 is an unusual approach, given the approach agreed to by Council to deal with the original deferral to 2025 was via a section 173 Agreement. However, it would appear from the correspondence provided to the Committee that legal advice was sought in relation to the amendment which may have related to the most appropriate way to facilitate the 'new' approach. The Committee has not had the benefit of reviewing this advice.

The Committee considers that the proposed amendment to Clause 53.01 is acceptable if that is indeed the only way in which to facilitate the proposed approach to the public open space contribution.

The Committee considers that the most important aspect is that, regardless of what mechanism is used, the 5 percent contribution is required to be made. There should be no ability for any future developer to be able to avoid the contribution on such a significant site (for example, if Lot A is not subdivided further). It would appear based on the proposed clause, wording that this scenario could occur, if no further subdivision takes place. While the Committee considers it unlikely that further development of Lot A will not involve some subdivision component, further advice on drafting including whether an additional section 173 Agreement requirement is appropriate, might assist in addressing any potential unforeseen outcome.

The Committee finds:

- The approach to deferring payment of the public open space contribution to the future owner of Lot A is reasonable and should be managed through a permit condition requiring a section 173 Agreement.
- The proposed changes to Clause 53.01 are generally supported, noting the minor risk of deferred open space payments not occurring if Lot A is not further subdivided.

4.4 Proposed subdivision permit

The issue is:

- whether the draft planning permit is appropriate and includes relevant considerations relating to servicing authorities, protection of transport infrastructure and future development.

(i) Submissions

Submissions requesting additional conditions or changes to conditions were provided by Council, the EPA and DoT.

City of Melbourne required the addition of conditions relating to:

- the open space contribution (already discussed in Section 4.3)
- the requirement for a feature survey to overlay the proposed subdivision boundaries with existing features on site
- the need to refer the application to Council's Infrastructure and Assets Department for further comments in relation to stormwater discharge
- the need to establish appropriate vehicular access and egress to the site
- the need for future transport infrastructure on Lot B to take into consideration any proposed window treatments along the southern boundary of Lot A
- the requirement for a 3 metre wide light and air easement, unlimited in height, to be provided along the eastern boundary of the site to protect the adjoining development to the east which has windows located on the common boundary
- 'standard' referral authority, telecommunication and subdivision conditions.

The EPA supported the condition requiring an environmental audit to be completed prior to any sensitive use being established on the site, but sought an additional condition to capture any conditions or ongoing management resulting from the audit.

DoT was supportive of the draft permit subject to a series of amendments being made to it, which were provided in a 'tracked changes' version of the permit. The changes included the requirement for the certified plan of subdivision to its satisfaction, along with other information requirements, including consideration of easements.

Following receipt of submissions, VicTrack provided an updated draft planning permit⁶ which included the changes requested by DoT and the EPA. That version addressed some of Council's requested changes but not the requirements for a feature survey, vehicular access, and stormwater discharge requirements and amenity related easements. It is unclear if these changes were not supported or not considered by VicTrack. The updated version appeared to inadvertently leave out some of the conditions included in the exhibited version (which were not in dispute) as well as some conditions required by authorities and agreed to by VicTrack.

It is noted the Veris subdivision report included a discussion about light and air easements, concluding (page 5):

Irrespective of the above, it is considered Council has no legal basis to create easement rights to these windows as part of the subdivision nor is it reasonable for

⁶ Document 5

such a request to be made by Council. It is considered to not be necessary for the two-lot subdivision to address this in any conditions or notes.

Presently these windows do not enjoy such rights and the creation of an easement would create an encumbrance and restriction on title which will devalue the land and will impact development in the future. Rather should protection be afforded to these windows (it) should be addressed at the planning permit stage for development.

(ii) Discussion and findings

The Committee accepts and supports the changes proposed by VicTrack in its updated draft permit in relation to matters raised by the EPA and DoT. The Committee notes that it was originally concerned about the proposal to require the certified plan of subdivision to be to the satisfaction of DoT, as this should would typically be a role for the responsible authority. However, in this instance, given the need for the certified plan to ensure adequate height clearance and easements for current and future rail projects that will occupy Lot B, along with the consideration of existing and proposed easements, the Committee considers those changes are appropriate and appropriately address the protection of transport infrastructure.

In relation to the matters raised by Council, which are not addressed in the revised permit conditions, the Committee considers:

- Feature survey - This is already appropriately covered in the exhibited permit and there is no need for an additional condition.
- Vehicular access – The subdivision does not significantly change the way in which the site is currently accessed. Access conditions are more appropriate for the development phase of the site.
- Stormwater discharge - Prior to the finalisation of the permit advice should be sought from the City of Melbourne in relation to stormwater discharge. It is unfortunate that this advice was not provided in the submission from Council. Accordingly, Council should be requested to provide a suitable condition as a priority or alternatively a more standardised condition be used, for example *“All stormwater discharged from the site and associated off site works shall be designed and managed to the satisfaction of the City of Melbourne”*.
- Provision of light and air easements – The consideration of light and air issues to the east in the case of the existing building at 239-293 Wellington Street abutting the subject site is more appropriately addressed at the planning permit application stage for development. The issue raised in relation to the potential need for easements to the south in relation to future rail infrastructure in Lot B is addressed by the DoT conditions which include reference to the need to address *“air, light, fire, access and service easements”* to the satisfaction of DoT.

The three mandatory subdivision conditions under Clause 66.01-1 relating to service authority agreements, easements and certification were appropriately added into the updated VicTrack permit conditions. The mandatory conditions for telecommunications services were appropriately included in the exhibited version.

Melbourne Water’s submission offered no objection to the subdivision which the Committee assumes also supported the draft Melbourne Water condition. The submission confirms Council’s responsibility for local drainage.

The Committee's preferred permit conditions are included at Appendix E. They are based largely on VicTrack's amended version but with the insertion of conditions excluded from the exhibited version and changes identified above along with minor grammatical changes, revised headings and condition ordering to enhance readability.

The Committee finds:

- The draft planning permit conditions are appropriate with changes consistent with the Committee's preferred version of planning permit conditions in Appendix E and with the inclusion of an appropriate stormwater condition(s) preferably prepared following further consultation with City of Melbourne.

4.5 Other matters

4.5.1 City of Melbourne

Council's submission proposed that an international design competition be run for the site, that the Richmond to Docklands Masterplan be published and that it be engaged early before the commencement of major site Expression of Interest and sales processes commence in the future. The Committee notes that these are not matters particularly relevant to the proposed Amendment or subdivision permit.

4.5.2 City Link

DoT's submission identified that while City Link had not made a submission to the proposed Amendment or permit it *"wishes to be advised of submissions which impact the CityLink Overlay and be provided with the opportunity to make further submissions should a submission impact the Citylink Overlay"*.

The CLPO applies to a significant element of transport infrastructure and it is important that the Amendment and subdivision do not have an adverse impact on it. The Committee considers the change in zoning and subdivision application does not in itself impact on City Link infrastructure. The CLPO predominantly relates to advertising signage and appropriate referral mechanisms and Clause 66.03 for the referral of applications to the 'Roads Corporation'. Without a specific response from City Link, it is difficult for the Committee to assess whether it has a concern about the subdivision or should be further consulted. Regardless, the Committee has relied on DoT's supportive submission and considers that any future development of the site will enable DoT to identify broader system wide transport views through the referral mechanism proposed to be introduced in Clause 66.04. The Committee considers the proposed Amendment and subdivision do not detrimentally impact on City Link infrastructure.

4.5.3 Other submission issues

The Committee notes that many submissions called for the use of the land for a park or other community use and to provide for future connections and views. The Committee considers that the site's identification as part of an urban renewal precinct has been set in policy for some time and that appropriate controls can be placed on the site to ensure any future development compliments its setting and provides appropriate urban design outcomes including linkages.

The Committee considers the existing policy and other provisions of the Melbourne Planning Scheme, including Clause 58, provide adequate tools to respond to the issues of amenity, privacy and outlook for residents of adjoining buildings. These are appropriate matters to be considered at the development stage. The proposed subdivision has minimal to no impact on these issues. Similarly, a range of policy and particular provisions provide appropriate response to site access and egress, traffic and parking considerations at the development stage. The subdivision itself does not create any significant access, traffic or parking impacts.

5 Reasons and recommendations

5.1 Reasons

The subject land is an important strategic site located on the edge of the Hoddle Grid, adjacent to significant transport infrastructure and within the key view line of the Central City from the southern bank of the Yarra River and other important public open spaces. Having the right planning controls in place is critical to ensuring that appropriate built form can be accommodated on site that is respectful of its character, heritage and landscape setting and the amenity of adjoining occupiers. The proposed controls and permit, with modifications, will achieve these objectives and achieve an acceptable planning outcome.

Proposed controls

The proposed application of the CCZ1 to the site is the most appropriate zone given its location, likely use and relationship to the Central City. It is supported by and consistent with State and local policy. The application of the EAO is appropriate and supported by the EPA based on the historic use of the site and preliminary environmental site assessment.

The application of DDO10 to the site is appropriate and consistent with its application more generally to the CCZ1. DDO10 provides an appropriate mechanism to consider shadowing impacts and building height. DDO10 in its current form, while allowing for more generalised consideration of views and built form impacts and relationship to heritage buildings, does not adequately manage potential impacts on the integrity of the Hoddle Grid when viewed across the site from the south or east. It is inadequate in achieving the pedestrian linkages sought by Council.

DDO10 should be augmented to include additional guidance on managing view lines to protect the integrity of the Hoddle Grid and to support the provision of appropriate connections. The Committee considers the urban design and public realm objectives and requirements of DDO1 as proposed by Amendment C308 are superior in many ways and should be applied to the site once approved in addition to DDO10. This will ensure consistency of urban design outcomes for the site with those to be applied across Central City and the CCZ. Applying DDO1 to the site would obviate the need for amending DDO10 to provide for pedestrian connections as suggested.

Consistent with the observations of VicTrack and Kinetica's Urban Design Report and the views of the Council, DDO1 as proposed by Amendment C308 should be applied to the site (assuming that it is approved). The Committee acknowledges that the timing of this Amendment and Amendment C308 may not align, thus requiring a separate amendment to apply it to the site. Its application however, is important and should be facilitated so that the sites' urban design controls are consistent with those proposed to be applied across the Central City to ensure appropriate and contemporary built form outcomes. This would address many of the urban design and public realm issues identified by Council.

The Committee agrees with Council's concerns about the application of PO12 and considers it should be removed by the Amendment and replaced with PO1 consistent with its wider application within the Central City to the CCZ1 and to enable parking outcomes for the wider range of land uses anticipated for the site.

The proposed changes to the Schedule to Clause 66.04 are supported to ensure that future development of the site takes into account the views of DoT and VicTrack to ensure future site development does not compromise significant transport infrastructure and networks.

While the Committee has not had access to VicTrack's legal advice about the drafting and necessity of proposed changes to the Schedule to Clause 53.01 (assuming it did relate to these issues), it accepts the changes (the final version dated 19 August 2020)⁷ largely because of the mandatory nature of the provision. The Committee observes the changes to Clause 53.01 could create a situation where no open space contribution is paid if the site is not further subdivided, although the Committee considers that prospect unlikely.

Planning permit

A two lot subdivision for the site is appropriate as proposed in the exhibited Plan of Subdivision as it responds to key considerations of the Melbourne Planning Scheme. The Committee is of the view that the exhibited version of the permit, augmented by VicTrack on 14 August 2020 in response to submissions from DoT and EPA, is generally acceptable. It should be amended to include a condition regarding stormwater, ideally prepared in consultation with the City of Melbourne or an alternate used generally consistent with that identified in Section 4.4. The Committee's preferred version of the permit conditions (largely based on VicTrack's amended version) are contained in Appendix E. The Committee considers this version of conditions provides an appropriate response to the provisions of the Melbourne Planning Scheme, mandatory referral authority considerations and matters identified by Council.

The Committee supports VicTrack's proposed changes to the Amendment and permit conditions to defer the open space contributions. It considers this a reasonable approach given the nature of the proposed subdivision, its future development and broad acceptance by Council. Broader issues relating to amenity, access, amenity easements and built form are properly matters for the development stage and related subdivision.

5.2 Recommendations

The Committee recommends:

Draft Amendment:

- 1. Amend the Schedule to Clause 66.04 Referral of permit applications under local provisions to refer to 'Clause 6.0 of Schedule 1 to Clause 37.04'.**
- 2. Delete Parking Overlay (Schedule 12) and replace it with Parking Overlay (Schedule 1).**
- 3. Amend Design and Development Overlay (Schedule 10) in consultation with the City of Melbourne to include additional requirements to:**
 - a) ensure development does not impact on the integrity of the Hoddle Grid from views across the site from the east and south.**

⁷ Document 6

- b). provide for pedestrian linkages across the site. This change is not required if Design and Development Overlay (Schedule 1) as proposed by Melbourne Planning Scheme Amendment C308 is applied to the site.**

Draft subdivision planning permit

- 4. Amend the draft planning permit consistent with the Committee's version in Appendix E with an additional condition(s) that provides for stormwater discharge to be managed to the satisfaction of the Melbourne City Council. Final condition wording should be sought from Melbourne City Council or an alternate wording used consistent with the Committee's suggestion at Section 4.4 of this Report.**

The Committee further recommends:

- 5. Apply Design and Development Overlay (Schedule 1) as proposed by Melbourne Planning Scheme Amendment C308 if approved before finalisation of the proposed Amendment or apply it to the site through a subsequent amendment as soon as practicable, in addition to Design and Development Overlay (Schedule 10).**

Appendix A Priority Projects SAC Terms of Reference

Priority Projects Standing Advisory Committee

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government has identified Victoria's building and construction sector as a key mechanism to revitalise Victoria's economy during the coronavirus (COVID-19) pandemic.
6. The Government has committed to a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy, keeping Victorians in work and priority infrastructure on track for completion.
7. The BVRT was formally announced on 26 April 2020. The Taskforce was established by the Minister for Planning and Treasurer to help keep Victoria's building and development industry running during the coronavirus crisis. The Taskforce will investigate planning and investment opportunities to boost Victoria's building and development industry over the short, medium and long term.

Method

8. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
9. The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered
 - c. whether, or which previously collected, submissions are to be considered by the Committee
 - d. how the costs of the Committee will be met.

10. The letter of referral will be a public document.
11. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
12. The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning,
 - b. referred submissions,
 - c. the comments of any referral authority,
 - d. the views of the project proponent,
 - e. the views of the relevant Council,
 - f. The relevant planning scheme.
13. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
14. The Department of Environment, Land, Water and Planning (DELWP) will be responsible for any further notification required. New submissions will be collected by DELWP.
15. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
16. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
17. The Committee may:
 - a. assess any matter 'on the papers'.
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
18. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

19. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
20. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

21. The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. A short description of the project.
 - b. A short summary and assessment of issues raised in submissions.
 - c. A draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral.
 - d. Any other relevant matters raised in the course of the Committee process.
 - e. Its recommendations and reasons for its recommendations.
 - f. A list of persons or authorities/agencies who made submissions considered by the Committee.
 - g. A list of persons consulted or heard, including via video conference.

22. Following the completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

Timing

23. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
- a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

24. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

The costs of the Advisory Committee will be met by each relevant proponent.



Richard Wynne MP
Minister for Planning

Date: 14 / 06 / 2020

Appendix B Letters of referral



Hon Richard Wynne MP

Minister for Planning
Minister for Housing

8 Nicholson Street
East Melbourne, Victoria 3002

Ref: MBR043073



Ms Kathy Mitchell
Chief Panel Member
Planning Panels Victoria
Level 5, 1 Spring Street
MELBOURNE VIC 3000

Dear Ms Mitchell

PLANNING SCHEME AMENDMENT C370MELB – TREASURY SQUARE

On 22 January 2020, I received a request from VicTrack for a combined planning permit application for a two-lot subdivision and a planning scheme amendment (C370melb) for a site in Wellington Parade, East Melbourne, known as Treasury Square.

The proposed amendment seeks to:

- apply the Capital City Zone Schedule 1 (Outside the Retail Core) to the land;
- apply the Design and Development Overlay Schedule 10 to the land;
- apply the Environmental Audit Overlay to the land; and
- amend Schedule to Clause 66.04 (Referral of Permit Applications under Local Provisions) to insert a requirement for planning applications triggered under Clause 3.0 of Schedule 1 to Clause 37.04 on the Treasury Square site to be referred to VicTrack as a determining referral authority to ensure that the current and future transport interests are protected regarding the future development of the site.

The site forms part of a larger single railway lot landholding owned by VicTrack which extends between Flinders Street and Richmond Stations. The project includes only a portion of the rail lot, located directly south of Wellington Parade South and Flinders Street, east of Batman Avenue. A separate new lot (with multiple parts) will need to be created from the larger parcel, and to protect major transport infrastructure on the site that will be retained in VicTrack ownership (comprising the tram substation, the train substation, the Hurstbridge/Mernda lines, the City Circle Tunnel and the future Northern Loop Tunnel).

I directed the Department of Environment, Land, Water and Planning (DELWP) to undertake a consultation process to seek the views of interested parties on the above project in April and May 2020. Following the closing of the consultation process, I have now received 25 submissions via the EngageVic portal and other parties have written to me directly.

Despite being a “superlot” subdivision, a 5 per cent open space contribution would be triggered under the schedule to clause 53.01 of the Melbourne Planning Scheme. VicTrack believes that this contribution should only be paid when the superlot is further subdivided by the successful bidder. In August 2020, VicTrack requested that the schedule to Clause 53.01 of the Melbourne Planning Scheme be modified to specify the following open space contributions for the land:

- 0.00001 per cent for the one off event of the VicTrack two lot subdivision; and
- 5 per cent for the further subdivision of the land.

The proposed changes to the schedule to Clause 53.01 of the Melbourne Planning Scheme did not form part of the project when consultation was undertaken.

I request that a suitability qualified member or members drawn from Planning Panels Victoria list and be appointed pursuant to section 151 of the *Planning and Environment Act 1987*, to undertake the following "on the papers". I would appreciate timely review of the project.

I request that the member(s):

- a. provide a brief report to me within 20 business days from the date of the letter or when the member is satisfied that it has been provided with all relevant information;
- b. consider the draft planning permit and amendment documents which formed the basis of the consultation process;
- c. consider all written submissions collected during the consultation process, via the EngageVic portal and those parties who have written to me directly;
- d. address the following issues in its report in addition to those matters set out in the Terms of Reference:
 - i. the appropriateness of the planning controls proposed by VicTrack, including matters raised in the City of Melbourne's submission;
 - ii. overshadowing;
 - iii. urban design and public realm;
 - iv. impacts on key view lines between significant areas of the city, public spaces, and heritage buildings;
 - v. existing and future pedestrian links between key public spaces; and
 - vi. any other matter that the committee considers appropriate.
- e. with respect to the proposed subdivision:
 - i. prepare a draft planning permit to approve the proposed two-lot subdivision including relevant requirements relating to servicing authorities, protection of transport infrastructure and future development; and
 - ii. recommend whether the open space requirement in the schedule to clause 53.01 of the Melbourne Planning Scheme should be reduced for the proposed two-lot subdivision (noting that the requirement would remain in place for further subdivision).

Following receipt of the report, I intend considering the proposal under section 20(4) of the *Planning and Environment Act 1987*.

The costs associated with the process will be met by VicTrack. Officers from the DELWP will liaise with Planning Panels Victoria to facilitate this process.

Should you have any queries in relation to this project, please contact Paul Jarman, Director State Project Facilitation, DELWP, on (03) 8683 0921 or 0411 154 606, or by email at paul.jarman@delwp.vic.gov.au.

Yours sincerely



HON RICHARD WYNNE MP
Minister for Planning

28 / 08 / 2020



Hon Richard Wynne MP

Minister for Planning
Minister for Housing

8 Nicholson Street
East Melbourne, Victoria 3002

Ms Kathy Mitchell
Chief Panel Member
Planning Panels Victoria
Level 5, 1 Spring Street
MELBOURNE VIC 3000

Ref: MBR043429



Dear Ms Mitchell

PLANNING SCHEME AMENDMENT C370MELB – TREASURY SQUARE - REFERRAL TO PRIORITY PROJECTS STANDING ADVISORY COMMITTEE

I refer to my letter of 28 August 2020 regarding this matter.

I clarify that I wish to refer submissions and other documents received about the above proposal to the Priority Projects Standing Advisory Committee (SAC) for advice under Section 151 of the *Planning and Environment Act 1987* rather than appoint another committee.

As stated in my letter of 28 August 2020, I confirm that the matter be considered 'on the papers'.

Should you have any queries in relation to this project, please contact Paul Jarman, Director State Project Facilitation, Department of Environment, Land, Water and Planning, on (03) 8683 0921 or 0411 154 606, or by email at paul.jarman@delwp.vic.gov.au.

Yours sincerely

HON RICHARD WYNNE MP
Minister for Planning

01 / 09 / 2020

Appendix C Submissions

No.	Submitter
1	City of Melbourne
2	Melbourne Water
3	EPA
4	Department of Transport
5	Stewart Dobson (two submissions)
6	Valerie Stroehle
7	Elinor Colaso
8	Stephanie Donald
9	Margaret and Howard Jacob
10	Marian Lee
11	Desmond Grogan
12	MBCM City and Owners Corporation PS326720W
13	Alastair Roff
14	Daniel Salmon
15	Phillip Nominees Pty Ltd
16	Brett Maher
17	East Melbourne Group Inc
18	Mark Doyle
19	Michael Goddard
20	TGM Flinders Pty Ltd and AMCO Flinders Limited
21	Ralph and Virginia Audhelm
22	Rohan Storey
23	Michael McDowell
24	Gary Bateman
25	One East Melbourne Residents (petition with 27 signatures)
26	Kathleen and Phillip Pitsikas
27	Dianne Burns
28	J McDowell
29	Helen Pattison
30	Judy Edsall
31	P Hollick
32	Susan Oliver

Appendix D Document list

No.	Date	Description	Provided by
1	31/08/2020	Exhibited materials including: <ul style="list-style-type: none"> - Explanatory Report, Instruction Sheet, Zone and Overlay Map Sheets and Existing Scheme provisions – CCZ1, EAO, DDO10, Clause 53.01, Schedule to Clause 66.04 and draft Schedule changes - Draft Planning Permit - Plan of Subdivision - Supporting reports - Veris Subdivision Report, Urbis Planning Report, SMEC Infrastructure Servicing Report - Title details 	DELWP
2	“	Submissions	“
3	“	VicTrack response to submissions, June 2020 and covering letter to DELWP 1 July, 2020	“
4	“	Urban Design Review, Kinetica, June 2020	“
5	“	Letter from VicTrack to Minister requesting Minister amend Clause 53.01, including updated Amendment documents and modified permit conditions dated 14 August 2020	“
6	“	Email from VicTrack including updated version of Clause 53.01 dated 19 August 2020	“

Appendix E SAC preferred version of Planning Permit conditions

Plans

1. Before the plan of subdivision is certified under the *Subdivision Act 1988* a Plan of Subdivision generally in accordance with draft Plan of Subdivision PS835657M dated 3 February 2020 showing Lot A and Lot B must be submitted to the Department of Transport and the responsible authority to their satisfaction and endorsed by the responsible authority.
2. The layout and site dimensions of the proposed subdivision as shown on the endorsed plan(s) shall not be altered or modified without the consent of the Responsible Authority.
3. Any plan of subdivision submitted for certification under the Subdivision Act 1988 ('the certified plan') must be to the satisfaction of the responsible authority and the Department of Transport.
4. The certified plan must show the full address of the property being subdivided as shown above.
5. The certified plan must be based on recent survey dimensions and be accompanied by a copy of the Abstract of Field Records and Surveyor's report to the satisfaction of the responsible authority and the Department of Transport.
6. The certified plan must be to the satisfaction of the Department of Transport and include (but not limited to) the following:
 - a) all relevant height clearance and easements for railway tracks, the Melbourne Underground Rail Loop, any future rail tunnels and all associated infrastructure;
 - b) all air, light, fire, access and services easements required;
 - c) all existing and proposed easements required for utility services, infrastructure and access roads.

Mandatory authorities' conditions

7. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
8. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
9. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to any relevant authorities and the Department of Transport in accordance with Section 8 of that Act.
10. The owner of the land must enter into an agreement with:
 - a) A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant

can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

11. Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
 - a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

Department of Transport

12. Unless otherwise agreed in writing with the Department of Transport, prior to the issue of a Statement of Compliance all utility services, infrastructure and access roads must be located or relocated as required by any easements on the certified plan at the full cost of the permit holder and to the satisfaction of the Department of Transport.

Melbourne Water

13. Local drainage shall be to the Council's satisfaction.
14. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains and watercourses.

City of Melbourne

15. ***Insert stormwater condition in consultation with City of Melbourne or an alternate condition as discussed in Section 4.4 of the Committee's Report.***

Environmental Audit

16. Before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:
 - a) certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environmental Protection Act 1970, or
 - b) An environmental auditor appointed under the Environmental Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.
17. All the conditions of the Statement of Environmental Audit must be complied with to the satisfaction of the responsible authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental professional or other suitable person acceptable to the responsible authority. In addition, sign off must be in accordance with any requirements in the Statement conditions regarding verification of works.
18. If there are conditions on a Statement of Environmental Audit that require significant ongoing maintenance and/or monitoring the applicant must enter into a section 173 Agreement under the Planning and Environment Act 1987. The Agreement must be executed on title prior to the commencement of the use and prior to the issue of a Statement of Compliance under the

Subdivision Act 1987. The applicant must meet all costs associated with drafting and execution of the Agreement, including those incurred by the responsible authority.

Public Open Space contribution

19. Prior to the issue of a Statement of Compliance under the Subdivision Act 1988, the owner of the land must pay the Responsible Authority an open space contribution equivalent to 0.00001% of the site value of all the land contained within Lot A (being the land intended to be used for residential, commercial or industrial purposes) as valued by or for Melbourne City Council; or
20. Prior to certification of the plan, a legally binding agreement under section 173 of the Planning and Environment Act 1987 must be entered into between the Owner of the land and the responsible authority/Melbourne City Council for the deferral of the public open space contribution under section 18A of the Subdivision Act 1988 (Vic). The agreement must ensure that:
 - a) The public open space contribution must not be less than 0.00001% of the site value of Lot A.
 - b) The public open space contribution must be made as a cash contribution and paid no later than 31 December 2025 unless otherwise agreed between parties.
 - c) The section 173 agreement is to be registered on title to the land.
 - d) The agreement is to indemnify Council against any claims on the matter.
 - e) The owner of the land must pay all of Council's reasonable legal costs and expenses of this agreement, including Land Victoria registration fees.

Expiry

21. In accordance with section 68 of the Planning and Environment Act 1987, this permit will expire if one of the following circumstances applies:
 - a) The plan of subdivision is not certified under the Subdivision Act 1988 within two years of the date of issue of this permit. The Responsible Authority may extend this time if a request is made in writing before the permit expires, or within six months afterwards; or
 - b) The registration of the subdivision is not completed within five years of the date of certification. The time for registration of the subdivision cannot be extended.