

*Planning and Environment Act 1987*

**Fishermans Bend Standing Advisory Committee Report – Tranche 4 Report**

**Draft Port Phillip Planning Scheme Amendment C177port  
272-280 Normanby Road, South Melbourne**

**7 January 2021**

*Planning and Environment Act 1987*

Fishermans Bend Standing Advisory Committee Tranche 4 Report pursuant to s151 of the Act

Draft Port Phillip Planning Scheme Amendment C177port

272-280 272-280 Normanby Road, South Melbourne

7 January 2021

Members of the Fishermans Bend Standing Advisory Committee who considered this referral:



Tim Hellsten, Deputy Chair



Rachael O'Neill, Member

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## Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
CCZ1	Capital City Zone (Schedule 1)
the Committee	Fishermans Bend Standing Advisory Committee
Council	Port Phillip City Council
DDO30	Design and Development Overlay (Schedule 30)
DELWP	Department of Environment, Land, Water and Planning
DoT	Department of Transport
EPA	Environment Protection Authority
ESD	Environmentally Sustainable Design
Framework	Fishermans Bend Framework
Incorporated Document	<i>No. 272-280 Normanby Road, South Melbourne</i>
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
OVGA	Office of the Victorian Government Architect
PO1	Parking Overlay (Schedule 1)
PPF	Planning Policy Framework
Proponent	Samma Group Pty Ltd and Spec Property Developments Pty Ltd
SCO	Special Control Overlay
Strategy	<i>Fishermans Bend Urban Design Strategy</i>
Taskforce	Fishermans Bend Taskforce

# 1 Overview

## (i) Referral summary

Referral summary	
<b>The Amendment</b>	Draft Port Phillip Planning Scheme Amendment C177port proposes to introduce the Specific Controls Overlay (Clause 45.12) to the subject land and amend Clause 72.04 to refer to an Incorporated Document for No. 272-280 Normanby Road, South Melbourne
<b>Common name</b>	272-280 Normanby Road, South Melbourne
<b>Description of proposal</b>	The draft Amendment introduces site specific planning controls to facilitate the demolition of the existing buildings and for the use and development of a multi-storey building comprising retail remises, office and dwellings
<b>Subject land</b>	272-280 Normanby Road, South Melbourne
<b>Proponent</b>	Samma Group Pty Ltd and Spec Property Developments Pty Ltd
<b>Council</b>	City of Port Phillip
<b>Notice of Amendment</b>	3 July – 3 August 2020 Notice given to parties identified in Clause 26 of the Committee's Terms of Reference
<b>Date of referral</b>	26 October 2020
<b>The Committee</b>	Members of the Standing Advisory Committee Tim Hellsten (Deputy Chair), Rachael O'Neill
<b>Site inspection</b>	16 November 2020
<b>Consultation</b>	Video conference Directions Hearing, 30 November 2020 Video conference roundtable, 7, 9, 10 and 11 December 2020
<b>Parties to the roundtable</b>	<p>Department of Environment, Land, Water and Planning represented by Mr Andrew Walker of counsel instructed by Ms Amara Coleman of Harwood Andrews who called planning evidence from Mr Robert Milner of Kinetica</p> <p>City of Port Phillip represented by Mr Simon Gutteridge</p> <p>Samma Group Pty Ltd and Spec Property Developments Pty Ltd represented by Mr Chris Wren QC and Mr Sean McArdle of Counsel instructed by Mr Rory O'Connor of Hall and Wilcox who called evidence from:</p> <ul style="list-style-type: none"> <li>- Mr Marco Negri of Contour on planning</li> <li>- Mr Craig Czarny of Hansen on urban design</li> <li>- Ms Charmaine Dunstan of Traffix Group on parking</li> <li>- Mr Craig Yelland of Yelland Co on land value analysis.</li> </ul> <p>Mr James Pearce, project architect of Fender Katsalidis attended on behalf of the Samma Group to respond to Committee questions</p> <p>Fishermans Bend Taskforce represented by Mr Aidan O'Neill of the Department of Jobs, Precincts and Regions</p> <p>Melbourne Water represented by Mr Nickolas Karageorge</p>

	Environment Protection Authority represented by Ms Trisha Brice Office of the Victorian Government Architect represented by Ms Jill Garner
<b>Citation</b>	Fishermans Bend SAC Tranche 4 – 272-280 Normanby Road, South Melbourne [2021] PPV
<b>Date of this report</b>	7 January 2021
<b>Reissued with correction</b>	Reissued 8 April 2021 with correction. Inserting the word ‘no’ on page 19, in the third sentence of the fourth paragraph under “(iii) Discussion and findings”

## (ii) Findings

The Committee finds:

- That at proposed 33 storey building is excessive in height and it should be reduced to 24 storeys.
- At 33 storeys the proposed setbacks off Johnson and Munro Streets are inadequate to achieve the policy and Vision outcomes for the Montague Precinct.
- The proposed setbacks are appropriate if the building is reduced to 24 storeys.
- The amended ground floor and podium plans provide for appropriate street level activation.
- The podium façade treatment is appropriate.
- The external staircase treatment is appropriate as amended.
- The proposal is generally consistent with Clause 58 and detailed design consistent with its standards can be addressed through the Incorporated Document.
- The development should achieve a 3 bedroom dwelling ratio of 20 per cent with an additional 5 per cent achievement as demand increases through the provision of flexible floor plates.
- The communal areas provided are adequate with minor changes.
- The Proponent’s approach to Housing Affordability is appropriate.
- The proposal in its amended form provides for adequate employment floorspace.
- Adequate provision has been made for car parking and car share spaces.
- Bicycle provision consistent with Clause 37.04 can be achieved on site and through provisions in the Incorporated Document.
- The draft Incorporated Document is generally appropriate but should be amended to address issues identified by parties and consistent with the Committee’s preferred version.

## (iii) Recommendation

1. Adopt Port Phillip Planning Scheme Amendment C177port with the changes to the Incorporated Document set out in the Committee’s preferred version contained in Appendix E.

## 2 Introduction

### (i) Terms of Reference

The Fishermans Bend Standing Advisory Committee (the Committee) was appointed by the Minister for Planning on 26 July 2020. The purpose of the Committee is set out in its Terms of Reference dated 29 April 2020 (Appendix A):

- a) Advise the Minister for Planning on only unresolved issues between the Proponent and other parties relating to site-specific planning controls pursuant to clause 45.12 to achieve appropriate land use and development outcomes for land within Fishermans Bend in advance of approval of an Infrastructure Contributions Plan.
- b) Provide a timely, transparent and consultative process for assessment of the suitability of site specific planning controls for land within Fishermans Bend.

The Terms of Reference set out that the Committee in assessing the appropriateness of a site specific planning control to facilitate a proposal:

- must consider:
  - a. Relevant aspects of the Planning and Environment Act 1987, the Planning Policy Framework, and the Local Planning Policy.
  - b. The content and purposes of the planning controls introduced under Amendment GC81.
  - c. The compliance of the proposal with the requirements of the permanent planning controls set out in paragraphs 14-15, or 17, of these Terms of Reference, as applicable.
  - d. Whether any departure from the Framework compromises the objectives of the Framework.
  - e. The cumulative effect on the preferred character of the relevant precinct or the ability to achieve the objectives of Fishermans Bend arising from any departures from the Framework or the requirements of the permanent planning controls.
  - f. The provision of appropriate development contributions in the form of monetary contribution, land contribution, works in kind or a combination of these and the extent to which they are consistent with, and contribute to, the objectives of the Framework.
  - g. All relevant submissions and evidence regarding the site-specific planning control to facilitate the proposal.
- must not consider submissions and evidence in relation to:
  - a. The application or operation of the Infrastructure Contributions Overlay.
  - b. The quantum of or need for public open space, roads and laneways.

The draft Amendment and proposal were referred to the Committee on 26 October 2020 (Appendix B) with the following documents (refer Appendix D):

- Amendment documents
- The proposal including final plans and schedule of changes prepared by Fender Katsalidis, dated 5 October 2020 and the following application supporting documents:
  - *Urban Context Report*, Fender Katsalidis, Oct 2020
  - Planning report from Urbis, 29 May 2020 and height advice of 5 October 2020
  - *Urban Design Memo*, Hansen, 3 June 2020 and memo of 12 October 2020

- *Landscape Concept Report*, Tract, 3 June 2020
- *Traffic Engineering Assessment*, Traffix Group, June 2020 and further advice of 6 October 2020
- *Waste Management Plan*, Leigh Design, 28 May 2020
- *ESD Opportunities Assessment*, Sustainable Development Consultants, June 2020
- Wind Tunnel testing letter, Vipac, 29 May 2020
- *Amenity Impact Assessments - Noise*, SLR, June 2020
- *Amenity Impact Assessments - Air Quality*, SLR, September 2019
- *Arboricultural Assessment and Report*, Treelogic, June 2020
- Affordable Housing Calcs Memo, 5 October 2020
- Planning Report by Marco Negri of Contour, October 2020.
- Office of the Victorian Government Architect (OVGA) Design Review Report and subsequent responses to amended plans
- referral responses to 30 storey proposal and amended plans for 33-34 storeys
- Proponent without prejudice Incorporated Document, 11 September 2020
- Table of issues in contention and agreement between the parties.

## **(ii) Membership**

The members of the Committee dealing with Referral No 4 include:

- Tim Hellsten, Deputy Chair
- Rachael O'Neill, Member.

Amy Selvaraj, Senior Project Officer at Planning Panels Victoria, assisted the Committee.

## **(iii) Background to the draft Amendment and proposal**

The draft Amendment involves amending the Port Phillip Planning Scheme to facilitate the development of 272-280 Normanby Road, South Melbourne (subject land) by:

- applying the Specific Controls Overlay to the subject land (SCO3)
- amending the Schedule to Clause 45.12 (Specific Controls Overlay) to reference a new Incorporated Document – *No. 272-280 Normanby Road, South Melbourne* (Incorporated Document)
- amending the Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to refer to the new Incorporated Document.

The draft Incorporated Document<sup>1</sup> allows the use and development of the land in accordance with the specific controls set out in Clause 4 of the document which take the form of conditions including:

- amended plans
- laneway and laneway s173 Agreement
- façade strategy, materials and finishes and reflectivity
- Landscaping Plan
- Johnson Street Park
- traffic, parking and loading

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<sup>1</sup> Document 64



- noise attenuation
- amenity impact
- wind assessment
- disability access
- Environmental Audit
- Environmentally Sustainable Design including Water Sensitive Urban Design, Green Star rating and rain water tanks/third pipe
- affordable housing
- Melbourne Water and Department of Transport conditions.

The identified purpose of the Incorporated Document is:

To facilitate the demolition of an existing building on the land identified in Clause 3 for the use and development of a multi-storey building comprising retail premises, office and dwellings and alteration of access to a Road Zone Category 1 in accordance with Clause 4 of this document.

The chronology of key events leading to the referral are summarised in Table 1.

**Table 1** Background to the proposal

Date	Event
15 July 2019	s20(4) application request lodged with DELWP (40 storey scheme)
19 July 2019	Further information sought by DELWP
25 September 2019	Proponent provides further information and amended plans
6 June 2020	Proponent submits a 30 storey proposal
28 June 2020	Minister for Planning approves referral of 30 storey scheme to Committee
3 July – 3 August 2020	Notice of Amendment provided to parties identified in clause 26 of the Terms of Reference
3 August 2020	Application referred to Office of the Victorian Government Architect (OVGA) to prepare a Design Review report
25 August 2020	Notice and referral responses and OVGA Design Review report provided to Proponent
28 August 2020	Proponent advises that no plan changes are proposed
15 September 2020	Meeting between parties and OVGA to discuss issues and prepare a statement of agreement and issues in dispute Proponent submits amended plans for a 33-34 storey scheme
22 October 2020	Further meeting between parties to discuss amended 33-34 storey proposal
26 October 2020	Proposal referred to Committee

The development proposal plans (Fender Katsalidis, Rev 5, 6 October 2020, Document 8) referred to the Committee provides for (Figure 1):

- a 33-34<sup>2</sup> storey building comprising a 6 level podium and a setback, 27 level tower
- 272 or 301 dwellings (depending on bedroom number mix) including social housing and affordable housing units
- communal recreational space and facilities for residents
- employment uses including ground floor retail floorspace, SoHo tenancies (small office home office) and office floor space over levels 1 to 4
- above ground level carparking including motorcycle spaces and bicycle parking within and adjacent to the building
- a ground level lobby and through-block pedestrian connection
- a crossover to Munro Street with vehicle access via the new laneway
- a pedestrian laneway to the east of the site from Munro to Normanby Road.

**Figure 1** Development proposal



Johnson and Normanby Road view      Munro Street view

Source: Fender Katsalidis Urban Design Report Oct 2020

<sup>2</sup> There are 33 levels to the building and the top level includes roof top plant and equipment and an amenity terrace. The top level is not roofed but has a wall height of three metres

#### (iv) Issues in dispute

The key issues in dispute or conditionally accepted are summarised in Table 2.

**Table 2** Summary of issues in dispute

Issues	Summary	Party	Report section
Building height	Height not justified and should be reduced	DELWP Council FBTF OVGA	4.1
Tower setbacks	North-west (Johnson Street) setback: <ul style="list-style-type: none"> <li>should be increased to 10 metres</li> <li>podium/lower tower to park engagement</li> <li>setback detail to Melbourne Water assets</li> </ul>	DELWP Council FBTF OVGA* MW*	4.2
	North (Munro Street) setback: <ul style="list-style-type: none"> <li>should be increased to 10 metres</li> </ul>	DELWP Council FBTF OVGA	
	East (laneway setback): <ul style="list-style-type: none"> <li>increase setback or reduce width of laneway</li> </ul>	DELWP Council	
Design detail	Ground floor level and activation including: <ul style="list-style-type: none"> <li>final floor levels</li> <li>tenancies to open up to street and park interface at grade (no sills and 80 per cent)</li> <li>DDA compliance to apartment lobby from Normanby Road and to SoHos</li> <li>relocation and redesign of SoHo units</li> <li>lack of activity along laneway</li> </ul>	DELWP Council MW*	4.3
	Podium design treatment refinement required	OVGA*	
	Podium parking arrangement including: <ul style="list-style-type: none"> <li>over reliance on greening</li> <li>requires sleeving to Munro and Johnson Street</li> <li>impact on office tenancy floor plates</li> </ul>	DELWP Council FBTF OVGA	
	External staircase access required to each level and further detailing to create sense of arrival and space	DELWP* Council FBTF* OVGA*	
	Clause 58 assessment not provided	DELWP Council	
	Podium communal area design details including informal gathering and children's playground and clarification of commercial exercise space	DELWP Council	4.4

Issues	Summary	Party	Report section
Dwelling mix	301 dwelling option of 40 three bedroom dwellings not acceptable – 25 per cent required	DELWP* Council*	4.4
Employment Floor area	<ul style="list-style-type: none"> <li>should be increased to 4,174 square metres</li> <li>details of adaptable area conversion</li> <li>s173 Agreement for SoHo units</li> </ul>	DELWP Council FBTF*	4.6
Parking	Carparking provision above scheme rates too high (oversupply not supported)	Council FBTF	4.7
	Car share space numbers to be increased	DELWP Council FBTF	
	Bicycle parking shortfall for 301 dwelling option	DELWP Council	
Affordable Housing	Proposal includes the gifting of 12 dwellings – Council considers the contribution should equate to 6 per cent of number of apartments	Council	4.5
Johnson Street closure delivery	Appropriate condition for works in kind, design, road level raising and road closure process	DELWP Council* FBTF* OVGA*	4.8

\* Conditionally acceptable

## (v) Limitations

### *Issues under consideration*

The Terms of Reference makes it clear that the Committee is to only consider the unresolved issues referred to it for advice. This means that the overall merits of the proposal have not been tested and the Committee confines its review to particular issues identified in the statement of agreement and issues in dispute.

### *Consideration of submissions*

The Terms of Reference identify that the Committee will consider the matters referred to it by convening “a round table or virtual forum using video conferencing or similar technology to discuss the issues in dispute” and that further “submissions or evidence can be provided by any party to address the issues in dispute”.

### *Site inspection*

Mr Hellsten inspected the subject land on 16 November 2020. Member O’Neill was unable to inspect the subject land but informed herself about the proposal based on aerial images and other images provided with the supporting documentation, submissions and evidence. She is also familiar with the precinct through involvement in other Fishermans Bend sites in close proximity to the subject site.

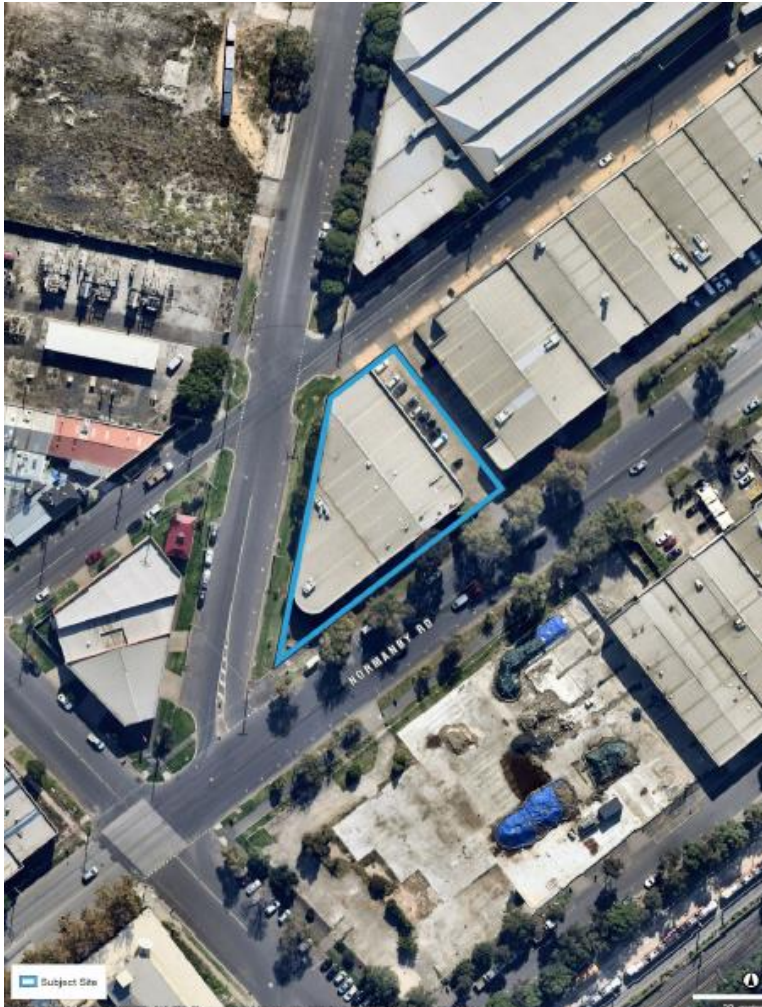


## 3 Subject land and planning context

### 3.1 The subject land

The subject land, 272-280 Normanby Road, South Melbourne (Plan of Consolidation 161638A), is located on the corner of Normanby Road, Johnson and Munro Streets (Figure 2). The irregular shaped lot is 2,609 square metres in area.

**Figure 2** Subject land (outlined in blue)



Source: Urbis Planning Report May 2020

### 3.2 Planning framework

#### (i) Planning Policy Framework (PPF)

- Clause 11 – Settlement, particularly 11.01-1R (Metropolitan Melbourne)
- Clause 13 – Environmental Risks and Amenity particularly policies regarding Floodplain Management, Contaminated and Potentially Contaminated Land and Noise abatement
- Clause 15 – Built Environment and Heritage, particularly policies relating to Urban Design – Metropolitan Melbourne and Building Design

- Clause 16 – Housing, particularly polices regarding Housing Supply and Housing Affordability
- Clause 17 – Economic Development
- Clause 18 – Transport, particularly policies regarding Sustainable Personal Transport and Car Parking.

**(ii) Local Planning Policy Framework**

- Clause 21.04 – Land Use
- Clause 21.05 – Built Form
- Clause 21.06 – Neighbourhoods
- Clause 22.06 – Urban Design Policy for Non-Residential Development and Multi-Unit Residential Development
- Clause 22.12 – Stormwater Management (Water Sensitive Urban Design)
- Clause 22.13 – Environmentally Sustainable Development
- Clause 22.15 – Fishermans Bend Urban Renewal Area Policy.

**(iii) Zones and Overlays**

The Amendment proposes the application of the Special Controls Overlay. The purpose of the Overlay along with the purposes of existing Zones and Overlays which currently apply to the site and are to be retained are shown in Table 2.

**Table 3 Existing controls**

Controls	Purpose and objectives
Clause 37.01 Capital City Zone (Schedule 1 – Fishermans Bend Urban Renewal Area)(CCZ1)	Purpose: <ul style="list-style-type: none"> <li>• To create a thriving urban renewal area that is a leading example for design excellence, environmental sustainability, liveability, connectivity, diversity and innovation.</li> <li>• To create a highly liveable mixed-use area where the scale of growth is aligned with the provision of public transport and other infrastructure.</li> <li>• To create a world leading sustainable urban renewal area that incorporates best practice sustainable design into all developments and supports sustainable transport patterns.</li> <li>• To provide public benefit in the form of Social housing where development exceeds the nominated Dwelling density.</li> <li>• To support the continued operation of strategically important existing uses and existing industrial uses that provide services to the construction industry, and ensure new development includes measures to mitigate potential amenity impacts from those industrial uses.</li> </ul>
Clause 43.02 Design and Development Overlay - Schedule 30 (Fishermans Bend – Montague precinct) (DDO30)	Purpose: <ul style="list-style-type: none"> <li>• To identify areas which are affected by specific requirements relating to the design and built form</li> </ul> Design objectives of DDO30: <ul style="list-style-type: none"> <li>• To create a thriving urban renewal area that is a leading example for design excellence, environmental sustainability, liveability,</li> </ul>

Controls	Purpose and objectives
	<p>connectivity, diversity and innovation.</p> <ul style="list-style-type: none"> <li>• To ensure, in Montague North, a mix of mid and high-rise scales with hybrid and podium–tower typologies.</li> <li>• To ensure, in Montague South, a mid rise scale encouraging hybrid and tooth and gap typology, supported by infill row, terrace and shop top developments that preserve identified character buildings and sensitively respond to heritage fabric.</li> <li>• To ensure built form protects where possible, sunlight penetration to key open space, spines and other identified public open spaces, streets and laneways, and facilitates comfortable wind conditions, to deliver a high quality public realm.</li> <li>• To encourage adaptable floorspace to facilitate a reduction in car dependence and an increase in commercial floor space over time.</li> </ul>
Clause 45.03 Environmental Audit Overlay (EAO)	To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.
Clause 45.09 Parking Overlay - Schedule 1 (Fishermans Bend Urban Renewal Area) (PO1)	<ul style="list-style-type: none"> <li>• To identify appropriate car parking rates for various uses in the Fishermans Bend Urban Renewal Area.</li> <li>• To provide for the future adaptation of car parking to other uses and innovations in transport technology.</li> <li>• To encourage alternative forms of parking to be provided including car share and consolidated precinct based parking.</li> </ul>
Clause 45.11 Infrastructure Contributions Overlay - Schedule 1 (Fishermans Bend Infrastructure Contributions Plan (ICO1)	No current applicable content
Clause 45.12 Special Controls Overlay (SCO3)	To apply specific controls designed to achieve a particular land use and development outcome in extraordinary circumstances.

**(iv) Particular provisions**

- Clause 52.06 – Car Parking
- Clause 52.29 – Land Adjacent to a Road Zone, Category 1
- Clause 52.34 – Bicycle Facilities
- Clause 53.18 – Stormwater Management in Urban Development
- Clause 58 – Apartment Developments.

**(v) Fishermans Bend Framework Plan**

The Fishermans Bend Framework, September 2018 (Framework) provides direction and guidance for the development of an 800 hectare urban regeneration area, to accommodate 80,000 residents and 80,000 jobs across five precincts by 2050. The vision for Fishermans

Bend is to create liveable and vibrant neighbourhoods that are world leading examples of urban renewal.

The subject land is located on the western edge of the Montague Precinct's core area (Figure 3), the vision for which is a *"diverse and well-connected mixed use precinct celebrating its significant cultural and built heritage, and network of gritty streets and laneways."*

Key Framework directions which relate to the subject land include:

- closing Johnson Street and providing a public open space area (project 8)
- providing for a new 9 metre wide laneway to the east of the site
- mid rise development with some towers (68 metres or 20 storeys) and dwelling ratios of 450 dwellings per hectare.

**Figure 3** Montague Precinct





## 4 The issues

The issues identified in the 'Table of issues in contention and agreement between the parties' are discussed in this Chapter.

### 4.1 Building height

Clause 22.15 (Fishermans Bend Urban Renewal Policy) applies to all use and development within Fishermans Bend. Objectives relevant to built form include:

- To create a thriving urban renewal area that is a leading example for design excellence, environmental sustainability, liveability, connectivity, diversity and innovation.
- To create thriving, lively mixed-use neighbourhoods that have distinct identity and character consistent with the preferred character for each precinct.

DDO30 nominates the site as having a preferred hybrid building typology:

Mid to high-rise developments. On larger sites, a hybrid of perimeter blocks with slender towers that create fast moving shadows and minimise the perception of visual bulk when viewed from streets.

Building heights outcomes for DDO30 include that:

- they respond to the preferred precinct character and building typologies
- contribute to a varied and architecturally interesting skyline
- limit impacts on the amenity of the public realm resulting from overshadowing and wind
- provide an appropriate transition and relationship to heritage buildings and existing lower scale neighbourhoods.

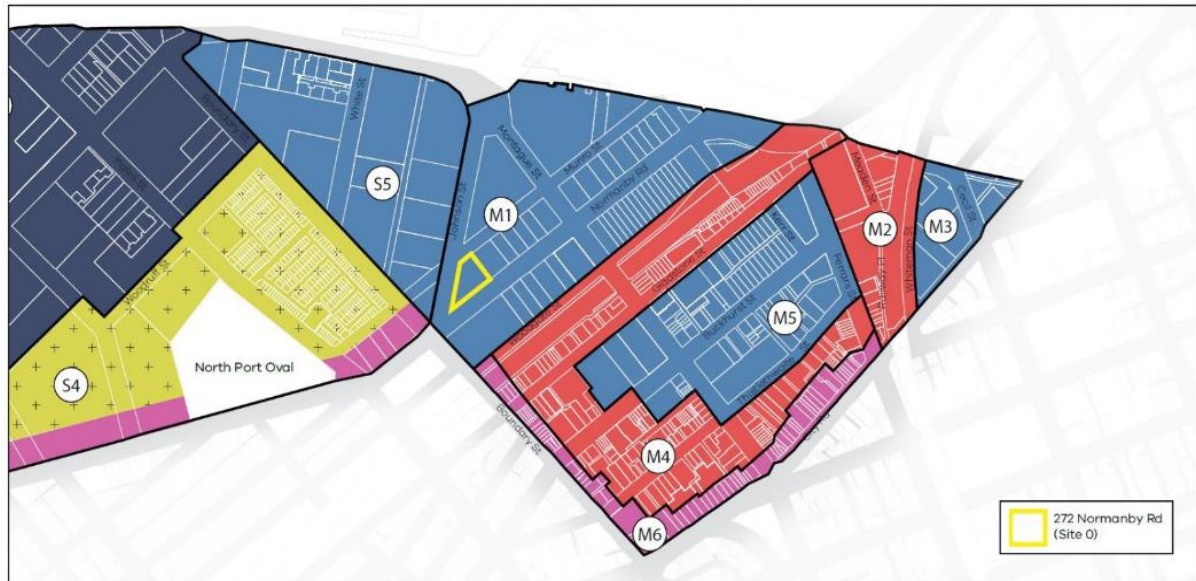
Building typology and height provisions across the Montague and adjoining Sandridge precincts are shown in Figure 4.

Building heights requirements for hybrid areas "*should not exceed*" a height of 20 storeys or 68 metres. Non-habitable architectural features and building services may exceed the specified height.

In relation to the subject land, DDO30 identifies a preferred street wall height of at least 4 storeys and maximum of 6 storeys.

The proposal is for a 33-34 storey development (112.20 metres Australian Height Datum (AHD)) including plant level which exceeds the preferred height by 13 storeys or 44.2 metres. At 6 storeys, the proposed street wall height is consistent with DDO30.

**Figure 4 Building typologies and heights**



**LEGEND**

- Low rise
- Low - mid
- Mid-rise
- Hybrid (predominantly mid-rise)
- Hybrid (predominantly high-rise)

Source: DELWP Part A submission



**LEGEND**

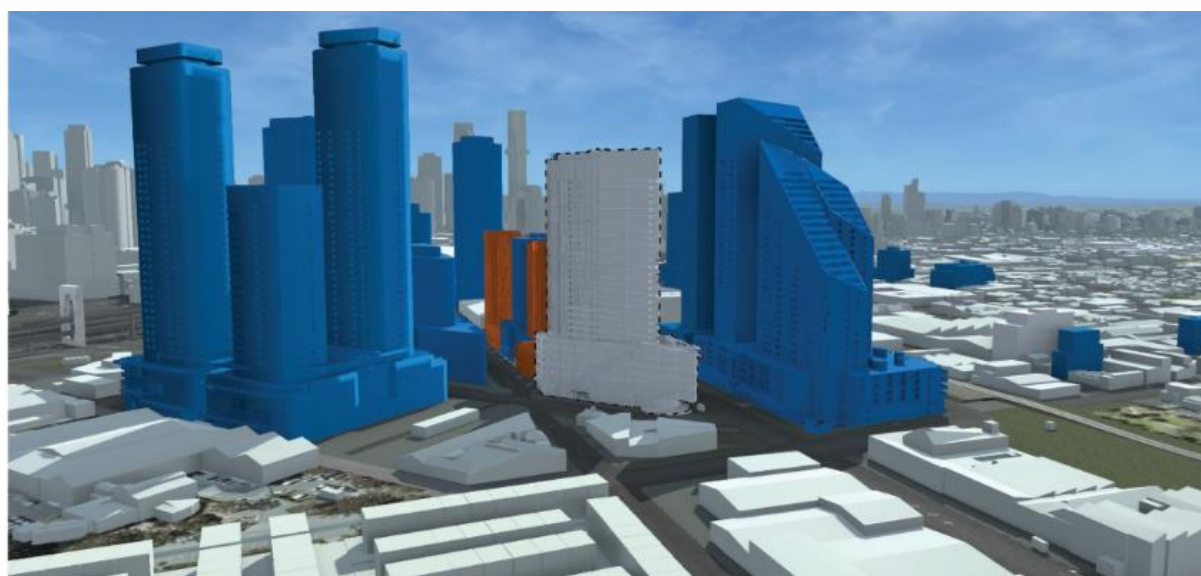
- 15.4m mandatory (4 storeys)
- 23m (6 storeys)
- 30m (8 storeys)
- 62m (18 storeys)
- 81m (24 storeys)
- Existing public open space
- 15.4m discretionary (4 storeys)
- 23m mandatory\* (6 storeys)
- 43m (12 storeys)
- 68m (20 storeys)
- None Specified
- New public open space




\*Maximum street wall height of 4 storeys and setback 10m above streetwall

Source: DELWP Part A submission

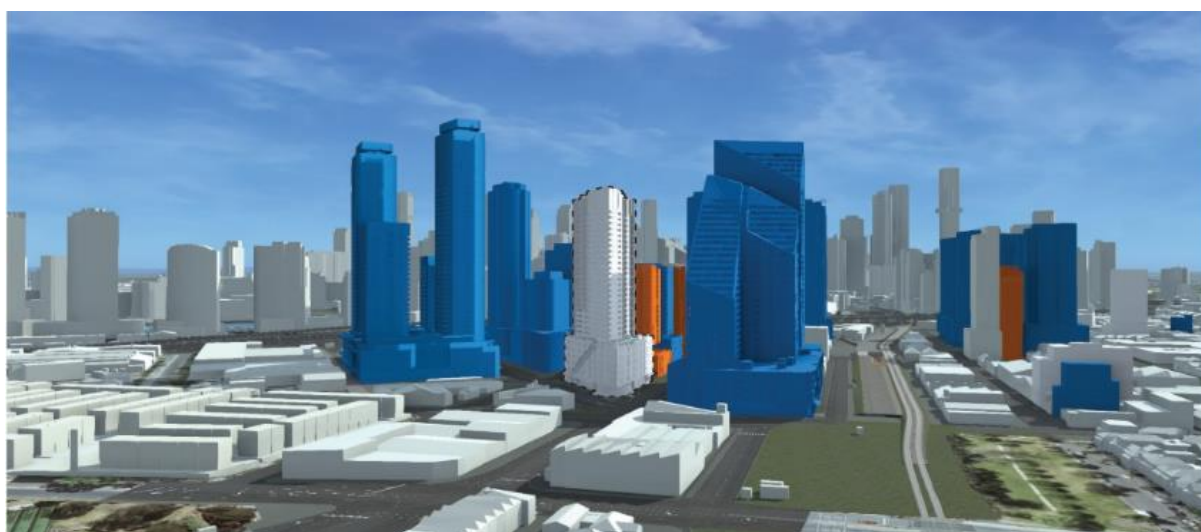
DELWP's submission included an analysis of the proposal with approved development including the 'Gurner' site to the north, 'Salvo' site to the northwest (within the Sandridge Precinct) and 'RCorp' site to the south (Figure 5) and which are also depicted in plan form in Figure 6.




**Figure 5** Comparison of proposed development to approved development



-  Outline of 272 - 280 Normanby Rd, South Melbourne
-  Approvals
-  Planning scheme amendment requests currently under consideration

Source: DELWP Part A submission – Appendix A, Aerial view 04



-  Outline of 272 - 280 Normanby Rd, South Melbourne
-  Approvals
-  Planning scheme amendment requests currently under consideration

Source: DELWP Part A submission – Appendix A, Aerial view 07



**Figure 6** Precinct approved and proposed building heights



**(i) The issue**

The issue is whether the proposed building height is appropriate.

## (ii) Evidence and submissions

All authorities ((DELWP, OVGA, the Fishermans Bend Taskforce (Taskforce) and Council)) opposed the proposed height of the building. DELWP and the Taskforce submitted that it should be a maximum height of 24 storeys and Council submitted that it should not exceed 30 storeys. OVGA did not nominate a height that it would find to be acceptable; however, submitted that there was no valid argument for it to exceed the DDO provision by so much.

Mr Walker on behalf of DELWP submitted that the key issues in the matter were whether the proposed height and setbacks above the podium would compromise the vision for the Montague Precinct. He observed that the preferred height limit for the land is 20 storeys and that the proposal significantly exceeds this by over 40 metres, or 60 per cent. He submitted that any departure from the controls, that were recently introduced into the planning scheme following an extensive process, must be justified. He submitted that the controls are not out of date, remain relevant and should be applied.

Mr Walker observed that the subject land is included in Area M1 (within the DDO) and that the building typology is 'hybrid (predominantly mid rise)' and that the preferred precinct character is "*mid to high rise developments*". On that basis he submitted that 'high rise' is the exception rather than the rule and that the controls do not contemplate a variation of height limits by so much.

Noting that the context of the subject land is also a relevant consideration, DELWP sought to highlight the key differences between other sites and their recent approvals as well as describing the attributes of other nearby properties. Mr Walker observed that the land to the west (Sandridge Precinct) has a mandatory height limit of 6 storeys, land to the south is outside the Fishermans Bend precinct and development on Boundary Street is developed

with modern three storey townhouses, which in DELWP's view are unlikely to be redeveloped. In this context, DELWP submitted that the subject land must act as a transition point from higher scale development to the north to lower scales to the south.

In differentiating the subject land from other sites that have planning approval, DELWP submitted that the land at 2-28 Montague Street 'the Gurner site' is a very large site that forms a gateway to the precinct and that the approved development transitions in height within the site. Land at 245-251 Normanby Road (the RCorp site) is also a large site, capable of accommodating higher built form and that also transitions in scale across the site. Land at 60-82 Johnson Street (the Salvo site) is also a very large site and has a 'legacy permit' for its redevelopment. Mr Walker submitted that the approvals on these sites do not set a precedent for height on the subject land, that this site is not a gateway or "*pivotal site*" and that its interface with a future park tempers the development potential.

DELWP called Mr Milner to provide planning evidence. Mr Milner supported DELWP's position that the site was suitable to accommodate height above the preferred 20 storeys and a height of 24 storeys would be appropriate. He observed that the built form outcome would be defined by the precinct the site is contained within, the DDO and the site's constraints. Whilst there will be scope to vary standards on a Precinct basis, there will not be the opportunity to vary it on a site specific basis.

Mr Milner also observed that the intent behind the controls was to provide a transition down from the north to the south. In terms of context, he also observed that the triangle site to the west of the subject land was subject to a preferred height limit of more than the subject site at 24 storeys but regardless given its constraints in terms of size and shape, it is more likely to be developed at a lower scale.

Ms Garner submitted on behalf of OVGA and noted that the overall building height of 33 storeys was not acceptable, although qualified the position, in observing that had the design been approached in a different manner, then it may have been acceptable. It was OVGA's view that the proposal is a "*conventional design*" and that there is no valid argument for the height to exceed the DDO preferred height limit. Ms Garner submitted that OVGA did not see within the design something that might be considered provocative enough for design challenge and does not agree that the tower is slim. In response to questions by the Committee, Ms Garner was of the view that the same architectural expression could be retained with a reduction in overall height to 24 storeys.

On behalf of the Taskforce Mr O'Neill submitted that it was not helpful to look at each site as though it is an island and that one needs to consider the context. He said that it is also important to look at the local planning policy framework in concert with the zone and DDO and that development of land to a certain height is not a right, but a proposal must be considered in the whole against all relevant provisions.

Mr O'Neill agreed with the proposition advanced by Mr Milner that it is not intended that every site will be capable of achieving a building up to 20 storeys and further, that if this height was achieved on every site then the vision of achieving a mid to high rise built form would not be realised. Rather, what is intended is a diversity of built form. Mr O'Neill submitted that the proposal is a significant departure from policy aspirations.

Mr Gutteridge submitted on behalf of Council. He advised the Committee that Council had been supportive of the previous scheme for a 30 storey proposal, subject to changes,

including compliance with the commercial floor area ratio and car parking rates and provision of 6 per cent affordable housing. Council opposed the additional height sought by the revised scheme. Whilst observing that the subject land is considered by Council to be a “*gateway site*” it is not necessary in the Council’s submission, to mark it with a tall building and that the entrance to the Montague Precinct at the southern end is already marked by the buildings being constructed on the RCorp site.

On behalf of the Proponent, Mr Wren QC submitted that the proposal before the Committee is a strategic process, and not a planning application, that is “*influenced by the strategic work reflected in GC81, but not strictly bound by it.*” In this respect, he submitted that it is not different from any planning scheme amendment which is always influenced by preceding strategic work, but “*necessarily brings an open mind to the merits of the matter.*” He submitted that it is within this context that the key question is whether the proposal provides an acceptable built form and land use outcome that will provide a net community benefit and advance the long-term vision for Montague North.

Mr Wren submitted that the proposed building will fit within the emerging and preferred character of the area, both of which, in his view are already collaborating to achieve a diversity of heights and a varied and architecturally interesting skyline as sought by the DDO. He submitted that the site sits at the entrance to the Montague Precinct and that the proposal will achieve a nesting of development.

Mr Wren relied on the urban design and planning evidence of Messrs Czarny and Negri. It was Mr Czarny’s view that the site was “*one of distinction*” and that its features set it apart from other parcels within the precinct. He observed that the proposal was a bespoke design that achieves asymmetry and that the design emphasises its context, achieving slenderness through the bow of the building. Mr Czarny noted that the DDO calls for diversity and opined that the “*site deserves something that is different.*”

Mr Negri shared the view that the proposal would contribute to the diversity sought by the controls and that it would be viewed as a building sitting within a group of buildings that are taller. In response to questions put by Mr Walker in cross examination as to whether approval of the proposal would compromise the realisation of the future Vision, Mr Negri advised that he thought that it would not, and that the ambition is to achieve a thriving, mixed use environment. He noted that there are other sites that do not have the same attributes as the subject site, noting the triangular site on the west side of Johnson Street, and concluded that the subject site can accommodate more height.

In support of the scale of development proposed, Mr Wren also relied on the evidence of Mr Yelland. Mr Yelland was called to provide an economic analysis of the commercial viability of the site. It was Mr Yelland’s evidence that only the development at the proposed height was potentially viable, achieving a projected return of 16.8%, noting that if there were a further \$1 million dollars of savings then it would be more commercially viable.

Mr Wren sought to rely on Mr Yelland’s evidence and the track record of his client to support submissions that this “*is an approval that would be buildable*” and that “*Samma Group, a Melbourne based builder and developer, can deliver this project through competitive build costs, but only just.*” He submitted that “*land speculation will not deliver Fishermans Bend, but real projects that appropriately integrate economic considerations can.*” Mr Wren concluded, “*If the project is to provide the social benefits demanded by the*

*decision makers, the project must be able to cover the cost of doing so. The only way this will occur is by enabling the project to achieve a level of yield that can demonstrate its viability to its financiers."*

**(iii) Discussion and findings**

There was a good deal of discussion, including in submissions, evidence and cross-examination as to whether the site formed a 'gateway' or performed a similar role at the entrance to the Montague Precinct and the point at which it would have greater visibility or presence on approach from the south.

The Committee accepts that the site is located at the entrance to the Montague Precinct on approach from the south, but does not agree that it acts as a gateway site. It agrees with Mr Milner that the more prominent site on the approach from Williamstown Road will be to the RCorp development and that it will be when one approaches from the angle in the road that the site will have more prominence. It also does not accept that the subject land is an island site, it has only achieved some appearance of this because of the laneway to be constructed to the north of the building. The Committee accepts that it is one of the larger sites in the precinct but notes that it is considerably smaller than the three nearby sites that were consistently referenced by all parties in submissions and evidence.

While the Committee agrees that its interface to streets on three sides and its size lend themselves to some flexibility in scale and design of the proposal, it is of the view that the proposed height will be inconsistent with the planning controls and Vision for the Montague Precinct. In forming this view, the Committee has, as required by the Terms of Reference, considered the cumulative effect the proposal will have on the achievement of the preferred character for the Precinct.

As in other matters that have come before the Committee, the Committee is keen to convey the message that whilst there may be opportunities for the called-in applications to exceed the preferred height controls, these may well be the exception rather than the rule. The Committee considers that there needs to be locational and/or site attributes that lend themselves to a higher form. Further, there certainly should be no presumption amongst future proponents that there will be leniency given to allowing significant variation of the preferred controls based on a proposal being effectively caught up in the strategic planning for Fishermans Bend or relying on legacy permits to justify a departure from the preferred height limits.

In this regard, the Committee agrees with Mr Milner's observation that whilst every site has a role to perform in reaching the Vision, not all sites will achieve the same outcome. It is clear to the Committee, as it was in the consideration of the proposal for the 'Gurner site' that there are some sites that may be capable of achieving more by way of height than other sites and some will do more of the 'heavy lifting' than others. However, having said that, it is also noted that while tower 1 on the 'Gurner site' was approved at 38 storeys, well above the preferred height control, tower 2 was approved at 24 storeys (consistent with the preferred height) and tower 3 was approved at 15 storeys (below the preferred height limit). The three towers achieved a stepping or transition across the site itself.

It is clear that the subject land will sit amongst higher built form that has already been approved; however, in the Committee's view, it is appropriate that this site and the approved development provide a transition in height to the south and south-west. The site

is at the periphery of the Montague Precinct and to its south west there is a mandatory height control of 23 metres (6 storeys) and to its south east is the lower scale residential area that does not form part of the Fishermans Bend area.

Further, the subject land abuts the 'Gurner site' and will interface with tower 3 that has a height of 15 storeys. The Committee also observes that the site to its north-east has a current proposal for a 70 metre high building. The Committee considers that the proposed height would be discordant with these interfaces and would not achieve or help deliver the preferred precinct character described in Table 1 of the DDO. It is clear that what is sought in Precinct M1 is mid to high rise developments, with predominantly mid rise. Mid rise is defined as 7 to 15 storeys and high rise is development of 16 storeys and taller. Within Precinct M1 the preferred heights shown on Map 2 in the DDO is 68 metres (20 storeys) apart from the 'Gurner site', which is shown as 81 metres (24 storeys).

In terms of the commercial viability of the project, the Committee notes that Mr Yelland observed that it was expensive to develop in Fishermans Bend because of the development contributions and that land is generally more appealing to investors looking to retain existing tenants on the land than to developers who need to achieve a particular return to realise a profitable development. The Committee also notes the response to questions by it to Mr Yelland about the implications the cost of development will have on the realisation of developments that must comply with the planning controls, that is, those beyond the call-in matters.

Notwithstanding, the Committee is very cautious in applying weight to Mr Yelland's evidence to support the Proponent's case in terms of achieving a particular height for the site. If it is the case, and the Committee does not endorse such a view, that the commercial viability of projects that must comply with planning scheme requirements stifle the realisation of the Vision for the Fishermans Bend area, this is an issue well beyond the remit of this Committee. This Committee is bound by its Terms of Reference and charged to make recommendations in relation to the proposal before it having regard to the controls that apply.

The Committee is therefore more focused on the merits of the proposal as it seeks to implement the objectives of the controls. The Committee also notes that the realisation of the Vision is a long-term one with the Framework noting that is a long-term strategic plan for the development of Fishermans Bend to 2050. To be influenced by the commercial viability of a project for a particular developer and a time in point that is very early in the realisation of the long-term vision would, in the Committee's view, do little to work towards achieving the Vision.

The Committee considers that the proposal is too high when measured against the design objectives and the preferred precinct character set out in the DDO. The Committee notes that the position of DELWP and the Taskforce to support 24 storeys also exceeds the preferred height control, but the Committee sees that this seeks to achieve an integrated outcome, including an interesting skyline, with a lower built form that will sit forward of the approved higher developments on adjacent and nearby sites.

The Committee notes that Council was supportive of a 30 storey building and the OVGA was of the view that the height of 33 storeys may be acceptable with a different design, so it may be that a height other than 24 storeys could be achieved on the site (subject to design)



without compromising the objectives of the precinct, but an alternate height or design was not before the Committee.

The Committee observed that Ms Garner's response to questions put by the Committee that the same architectural composition and language could be retained through a reduction in height to 24 storeys. The Committee is satisfied that in recommending that the proposal be approved at 24 storeys that it is not requiring a complete redesign or a substantially different proposal.

The Committee finds:

- that the proposed 33 storey building is excessive in height and should be reduced to 24 storeys.

## **4.2 Tower setbacks**

DDO30 provisions for setbacks above street wall height require that buildings should meet the preferred street setback (10 metres for buildings above 20 storeys) and "*must meet*" the minimum setback (also 10 metres). DDO30 further provides for a preferred side setback of 9 metres (below street wall) and a mandatory minimum of 6 metres, increasing to 10 metres above the street wall.

The proposal includes:

- a Normanby Road tower setback of 10 metres (compliant)
- a Johnson Street tower setback of 4 to 5 metres (non-compliant)
- a Munro Street tower setback of 5 metres (non-compliant)
- an eastern boundary tower setback (measured from centre of future 9 metre wide laneway) of 10 metres (largely compliant).

### **(i) The issue**

The issue is whether the proposed tower setbacks to Johnson Street, Munro Street and the eastern (laneway) boundary are appropriate.

### **(ii) Evidence and submissions**

DELWP submitted that the setbacks of the tower from Johnson Street and Munro Street should be increased to 10 metres and the setback of the tower from the future laneway should be increased to achieve a setback of 10 metres from the centreline of the laneway (the width of the laneway be reduced by 100mm or the setback increased to 10 metres from the title boundary).

DELWP relied on Mr Milner's evidence who was of the view that the proposed combination of height and reduced setbacks would facilitate outcomes that seek to create fast moving shadows and minimise perception of visual bulk from streets; ensure solar penetration and minimise the wind impacts; and avoid overwhelming the public realm with excessive visual bulk, with particular emphasis on the impact of the future Johnson Street park.

Mr Milner acknowledged that should the setbacks be achieved then the central core would need to be relocated. It was his view that if the proposal remained at 33 storeys then a 10 metre setback would be essential; however he observed that "*given the constraints of the site I would be more open to contemplate a reduction on some of the tower setbacks if the height of the development was more consistent or proximate with the DDO provisions.*" In

justifying support for the 10 metre setback, Mr Milner observed that it would align with the setback of the tower on the 'Gurner site' and contribute to the slenderness of the proposed tower.

The Taskforce was also supportive of increasing the setbacks to adhere to the planning scheme controls, particularly in terms of compliance with the mandatory setback. The Taskforce cited adverse visual bulk impacts, particularly to the future Johnson Street Park, to support its position.

The OVGA submitted that the Johnson Street setback was acceptable but that the Munro Street setback was insufficient.

Council was also supportive of achieving the 10 metre setbacks and compliance with the setback from the laneway.

Mr Wren submitted that the proposed setbacks responded positively to the 'design outcomes' at Clause 2.8 of the DDO. He observed that the Vipac report<sup>3</sup> demonstrated acceptable ground level wind conditions; that the setbacks make negligible difference to overshadowing given the orientation of the site and the shape of the tower; and that the tower provides a slender, sculptural element.

The evidence of Messrs Czarny and Negri supported these submissions. In Mr Czarny's view the *"asymmetrical placement of the tower above the podium gives priority and greater spaciousness to Normanby Road as the primary address."* Further, he observed that the *"proposed development does achieve a 'slenderness' at its pointed 'bow' through tapering to the triangular corner."*

### **(iii) Discussions and findings**

The Committee does not see merit in reducing the width of the laneway to achieve strict compliance with the mandatory setback of the DDO and agrees with Mr Negri's observation that it seems to be a matter of *"ticking the box"* to achieve compliance with an otherwise mandatory control. The Committee agrees that the setback is sufficient to provide appropriate separation from a building on the adjoining site and also considers that the setback to Munro Street is acceptable given its limited abuttal.

At the proposed height the Committee holds concerns regarding the visual dominance that the tower would have to the future Johnson Street Park. The Committee notes that the architects have carefully crafted the podium to provide visual interest and dominance at a pedestrian scale through the use of the external staircase and green wall, nevertheless it is not convinced that the tower is appropriately set back to satisfy the built form outcomes, particularly relating to that of not overwhelming the public realm.

The Committee agrees with Mr Czarny that the tower has been sculpted well and orientates itself well to Normanby Road. Despite concluding that the interface with the future Johnson Street Park will be acceptable, the Committee also notes Mr Czarny's response during cross-examination that an increased setback of 10 metres to that frontage would be noticeable. The Committee agrees with Mr Milner, that the proposed setbacks would be more appropriate if the height of the tower is reduced. Given the Committee's recommendation

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<sup>3</sup> Document 16

in relation to the tower height above, the Committee is prepared to agree to a deviation from the preferred setbacks to a tower above 20 storeys on the basis of the design of the podium and tower.

The Committee finds:

- At 33 storeys the proposed setbacks off Johnson and Munro Streets are inadequate to achieve the policy and Vision outcomes for the Montague Precinct.
- The proposed setbacks are appropriate if the building is reduced to 24 storeys.

### **4.3 Design detail**

DDO30 seeks the following built form outcomes for active street frontages include:

- Address and define existing or proposed streets or open space and provide direct pedestrian access from the street to ground floor uses.
- Address both street frontages if the building is on a corner.
- Create activated building façades with windows and legible entries.
- Car parking that does not detract from the public realm.

DDO30 requirements include:

- buildings fronting the primary (Normanby) and secondary (Johnson) active streets to achieve a diversity of fine-grain frontages, provide canopies over footpaths for retail uses and should provide preferred glazing to a height of 2.5 metres to achieve permeability criteria (80 per cent for primary streets and 60 per cent for secondary streets)
- Car parking should be sleeved with active uses so that it is not visible from the public realm or adjoining sites.

Clause 58 sets out objectives (which must be met) and standards (should be met) for apartment development and decision guidelines relating to urban context and design, amenity impacts, on site amenity and facilities, detailed design and internal amenity.

#### **(i) The issues**

The issues are:

- whether the proposal provides for appropriate activation at street level
- whether the podium façade treatment is appropriate including the provision of podium carparking
- whether the external staircase treatment is appropriate
- whether the proposal is consistent with Clause 58 (Apartment developments).

#### **(ii) Evidence and submissions**

##### **Ground floor level and activation**

DELWP, the Taskforce and Council were critical of the proposed finished floor level of the ground floor of AHD3.00. DELWP submitted that it is more appropriate to increase the height of the ground floor to the west and northwest so the finished floor level is at grade with the Johnson Street Park and provides for sacrificial edges along the new laneway, Munro Street and Normanby Road. It submitted that the front part of the retail premises could achieve a frontage of four metres before transitioning to a finished floor level of AHD2.4.

DELWP also proposed changes to the Incorporated Document to achieve enhanced permeability of the commercial premises fronting Normanby Road and the Johnson Street park and DDA compliance from the public realm into the development, including to the lobbies and lifts.<sup>4</sup>

The Taskforce also made submissions on these alleged failings of the development and provided examples of how urban design can be integrated within public space and buildings to respond to changes in levels and achieve ‘design excellence’ as is sought in the DDO.

In addition to these issues, Council also made submissions on the treatments of the SoHos; what it considered to be a poor interface to the laneway including through the siting of the vehicle access, substation and bicycle parking; and the failure of the plans to address implications for having to respond to Melbourne Water’s requirements in relation to the drainage/sewerage pipeline assets.

The OVGA noted the improvements that had been made through the amended plans, including the relocation of the crossover and the redesign of ramps. Ms Garner also submitted that the ground level was acceptable subject to the further refinement of levels, including a sense of depth. In noting that the inclusion of the SoHos was a positive design response, she submitted that it was disappointing that the design of the podium does not “*acknowledge their presence*” and that a change in built form should be integrated into the design.

Ms Garner submitted that a ‘skin of materiality’ does not contribute to a sense of place, and that achieving depth, such as through window reveals, achieves a physical and visual connection of the podium. She stressed, “*good materials is what is important.*”

Melbourne Water submitted that the changes to the floor levels could be readily achieved through good design and supported DELWP’s suggestion to raise the height of the Johnson Street Park. Mr Karageorge submitted that the plans do not demonstrate separation compliance from Melbourne Water’s assets and sought conditions requiring this.

In opening Mr Wren tabled a revised ground floor plan and an updated podium plan.<sup>5</sup> The project architect, Mr Pearce was called on Day 4 of the roundtable to talk to the updated plans, and in particular to address the green wall. Mr Pearce indicated that he was aware of the OVGA’s submissions regarding depth and further detailed work at podium level and agreed that the refinement should occur following the initial planning stage.

Mr Pearce noted that they would expect that a façade concept package would be a requirement of the approval and that the architects could explore further the detailing of the SoHos.

### **Podium car parking, the external staircase and the green wall**

DELWP, the Taskforce and Council were critical of the proposal to provide car parking (particularly as it was not sleeved with active uses as is sought by the DDO) within the podium. The Taskforce submitted that the Proponent had not advanced reasons as to why a basement car park had not been proposed, particularly where there were other nearby

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<sup>4</sup> Document 116

<sup>5</sup> Documents 91 and 94 respectively

examples of approved developments that included basement car parks. Melbourne Water advised the Committee in response to questions that a basement could be included on the site, subject to design.

All authorities, including OVGA submitted that the external staircase contributed to the architecture in a positive way, with the Taskforce noting, *“if done well, it could become a positive aspect of the design that could function as an extension of the public realm.”*

Council submitted that the staircase added visual interest to the Johnson Street elevation; however identified issues for further consideration and refinement, including providing access to all podium levels with rebates at each floor level and identifying potential issues with any projections over Council and Department of Transport assets.

Mr Wren tabled documentation confirming that it would cost in the order of \$10 million to construct a basement, which equates to an additional cost of \$3,000 per square metre.<sup>6</sup> He submitted that the car parking within the podium is partly concealed behind an *“active skin of office and residential floor space and partly treated with a green wall.”* He noted that the sleeved car parking areas have a minimum floor to ceiling height of 3.8 metres and could be converted to office space in the future, if market conditions supported this.

All authorities, including OVGA, expressed concerns with the proposed green wall, including its viability, noting the weather conditions in Melbourne and more particularly in Fishermans Bend. The Committee was provided with examples of instances where green walls had failed or not been as successful as first proposed. Ms Garner also submitted that should the green wall fail, the building if left exposed, needs to be appropriately designed.

Mr Czarny described that in an urban design sense, an *“active frontage”* is *“A grade”* design and a green wall is *“B grade”* design. In noting that the car parking was largely concealed, Mr Czarny observed the limited exposed areas are *“well mannered behind a north oriented planted façade”*. In his view, the design treatment is *“integrated with a distinctive rising stair lining the future park at the ground plane with the open podium space above.”* Mr Czarny suggested that a way to respond to concerns with the success of the green wall would be to impose a bond. In without prejudice discussions, Mr McArdle opposed such an imposition, noting that bonds were more typically required for existing assets such as street trees.

Mr Pearce spoke at length of various examples of green walls that his office has designed and that are either in existence or being provided as part of developments presently under construction. He explained that what is being proposed in this instance are planter boxes where landscaping is planted in real soil and where mesh is provided for them to grow up. The planters align with the car park floor levels so they can be accessed if required.

He advised that as with other projects, the landscaping could be planted during construction so that when the building is complete the landscaping has had time to settle in and grow. It also allows for trees that do not take or survive to be replaced. He provided examples of Sapphire by the Gardens in Exhibition Street that is presently under construction and Australia 108 and 1 Central Place in Sydney. In response to questions by the Committee as to whether they explored other design options, Mr Pearce advised that they had but what

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<sup>6</sup> Document 113

they were keen to achieve was a sense of texture and depth. The Committee cited the example of the Nishi building in Canberra, and Mr Pearce noted that the building was a good example as the planters gave the office building depth and interest because the landscape is always changing, compared with glazing in an office building.

In terms of the external staircase, Mr Pearce note that it was not intended to be a primary means of access and that it was a piece of the design, that would facilitate activity and allow the building to engage with the public realm.

### **Clause 58 requirements**

DELWP and Council submitted that it was appropriate for the proposal to comply with the Standard of Clause 58 of the planning scheme. Mr Walker noted that this was the approach adopted by the Standing Advisory Committee in its assessment of sites 2 and 6 and 118 Bertie Street, Port Melbourne.

In the discussion regarding the Incorporated Document, Mr McArdle indicated that the Proponent was supportive of a requirement to comply with the objectives of Clause 58.

### **(iii) Discussions and findings**

The Committee was greatly assisted by the overview provided by Mr Pearce on the final day of the hearing and is satisfied that what is being sought by the DDO in terms a *“leading example for design excellence”* can be achieved in this project. Despite initial reservations regarding the green wall and the potential for failure, the Committee is satisfied that what is being proposed will more readily be achieved and maintained, as evidenced by the examples provided by Mr Pearce. This is a very different response to a more traditional ‘green wall’. The Committee agrees with Mr Czarny that the landscaping will unify the building with the future park and also with Mr Pearce that what will be achieved is more visually interesting than glazing in an office building.

The Committee agrees with Mr McArdle that it is not necessary to require a bond in relation to the green wall and that requirements for its design and detail, implementation and maintenance can be adequately dealt with through the Incorporated Document.

In this instance the Committee is satisfied that it is not necessary to provide a basement car park and that the car parking, that will be retained in common ownership (as is sought through the controls and will be implemented in the Incorporated Document) will allow future adaptability, if required.

The Committee is satisfied that the depth and richness of materiality sought by OVGA can be achieved and that the requirement for a façade strategy should ensure that this is approved and delivered. The Committee agrees with Mr Czarny that the building has been designed *“in the round”* and addresses all of its interfaces in an appropriate manner. In this regard, the Committee does not hold the same concerns as Council in relation to the interface with the future laneway and considers it more appropriate to site the vehicle access and other back of house activities within that interface.

The Committee is also satisfied that the issues around finished floor levels, activation and DDA access can be successfully addressed through further design.

The Committee agrees with all submitters that the external staircase provides visual interest to the elevation and an element of uniqueness or a ‘talking point’ for viewers/passers-by of

the building. Its use will also achieve activation of the elevation. Issues of access to each level can be addressed through the Incorporated Document and the Committee agrees with Mr McArdle that it is not appropriate to require access 24 hours per day.

The Committee expects, as have other Committees in their assessment of other proposals within Fishermans Bend, that apartments are designed and sited to satisfy the standards of Clause 58. The Incorporated Document will require this.

The Committee finds:

- The amended ground floor and podium plans provide for appropriate street level activation.
- The podium façade treatment is appropriate and the amended Incorporated Document makes appropriate provision for a Façade Strategy.
- The external staircase treatment is appropriate as amended.
- The proposal is generally consistent with Clause 58 and detailed design consistent with its standards can be addressed through the Incorporated Document.

#### **4.4 Communal areas and dwelling diversity**

Clause 22.15-4.2 seeks to encourage a diversity of housing typologies and sizes and encourage a range of housing types suitable for households with children by providing adaptable floor plates allowing one and two bedroom units to form larger apartments with 25 percent of dwellings comprising three bedrooms.

It also seeks to achieve access to outdoor communal green space, including children's play spaces that offer a range of facilities, garden and recreation areas, with consideration given to all users.

DDO30 includes a requirement that dwelling layout has the ability for one and two bedroom dwellings to be combined or adapted into three or more bedroom dwellings.

The proposal includes two dwelling configurations:

- configuration option 1 (301 dwellings) - 58 one bedroom, 203 two bedroom and 40 three bedroom
- configuration option 2 (272 dwellings) - 33 one bedroom, 170 two bedroom and 69 three bedroom.

The podium includes a running track, a commercially operated exercise space and resident amenities, including a swimming pool and dining area. The landscape plan prepared by Tract and submitted with the earlier version of the plans<sup>7</sup> showed a children's playground and a viewing deck that comprised hard and soft landscaping. The landscape plan was not updated to reflect the plans now before the Committee.

##### **(i) The issues**

The issues are:

- whether the number of three bedroom dwellings is appropriate

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<sup>7</sup> Document 12

- whether the communal open space is sufficient in size, location and useability to satisfy the needs of future residents.

## **(ii) Evidence and submissions**

### **Dwelling diversity**

DELWP submitted that it opposed the 301 dwelling option on the basis that it would only provide for 13 per cent of three bedroom apartments, falling well short of the 25 per cent target set out at Clause 22.15-4.2. Subject to confirmation that the 272 dwelling proposal achieves the 25 per cent target Mr Walker submitted that DELWP supports that option.

Mr Walker also submitted that DELWP is supportive of the proposal achieving a 20 per cent provision of three bedroom apartments with the provision of an additional 5 per cent as demand arises. Support for this option was however predicated on the reduction in the overall height of the building to 24 storeys and that the plans demonstrate that the one and two bedroom apartments can be converted to achieve the additional 5 per cent.

It was Mr Milner's evidence that the 25 per cent target should be achieved and that there is greater strategic support for achieving the target with the changes advanced by Covid-19 that has resulted in more people working from home and people seeking more adaptive apartments that have a dedicated working space separate from living space.

Similarly to DELWP, Council also opposed the 301 dwelling option and supported the 272 dwelling option. Council is of the view that compliance with the 25 per cent target should be achieved.

The Taskforce supported the Proponent's approach of being able to convert apartments to achieve the 25 per cent target, should the market dictate and was satisfied that the plans demonstrated how this could be achieved. Mr O'Neill also submitted that the Incorporated Document should include a requirement to achieve this, noting that an equivalent outcome should also be achieved if the building height or footprint is altered through the Committee's recommendation.

Mr Wren was critical of DELWP's approach to its consideration of the merits of the proposal, noting that it had, in his view, looked at it as though it were an application for permit rather than an Amendment, which required a more strategic view. He submitted that there needed to "*be a touch of realism*" in the assessment and that to achieve the strategic vision of a thriving area that "*you need the people*". He submitted that it was not reasonable to expect a developer to build three bedroom apartments that people will not buy.

In his written submission Mr Wren relied on data included in a report prepared by Urbis in 2019 that was a demand by product type analysis.<sup>8</sup> The report showed that sales of three bedroom apartments equated to 10 per cent of the overall mix in apartment developments in inner Melbourne. The report also noted that over the last four preceding years, the three bedroom sales had represented between 6 and 10 percent of inner Melbourne apartment sales.

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<sup>8</sup> Document 10



Notwithstanding, Mr Wren concluded that the design includes adaptable floorplates that can be converted should the market respond. Mr Negri also noted that the target could be achieved through the adaptable floor plates.

### **Communal areas**

In relation to the communal open space, DELWP submitted that the landscape plan needs to be updated to reflect the amended plans and show how the space will accommodate an outdoor play area for children and an informal gathering space. DELWP was critical of the location of the communal outdoor space, which is sited to the south of the tower and will be overshadowed for most of the day.

Mr Milner was also critical of the space and facilities and deemed them inadequate (referencing a lap pool and single lane running track) for a development of this scale. In his view, the dedication of the entire space to communal facilities would be more appropriate.

The Taskforce did not oppose the design of the communal open space subject to a requirement that the landscape plan be prepared that is generally in accordance with the plan prepared by Tract in June 2020.<sup>9</sup>

Council was supportive of the extent of communal facilities and open space at podium level but raised issues of design detail relating to access between the spaces, and noted that there is a missed opportunity to extend the landscaping to screen the lift and storage area. Council also submitted that it would be better for the stair to open onto a shared space rather than on to the commercially operated exercise space.

Mr Wren referenced the requirement of Standard D7 - Communal Open Space at Clause 58 of the planning scheme and noted that the proposal exceeds the requirement. He also submitted that residents and staff of the commercial uses within the building could use the commercially operated fitness space.

## **(iii) Discussions and findings**

### **Dwelling diversity**

The Committee considers it appropriate to aspire to the housing diversity embodied in the planning framework and to strive towards the three bedroom target. However, it is also cognisant that the attractiveness of such apartments may not be as immediate as for smaller apartments based on previous sales data. However, perhaps Mr Milner is correct in his observation that changes in the way we live and work brought about by Covid-19 will likely result in greater demand for larger apartments that provide flexible living.

Equally, the Committee is also mindful that deviation from various parts of the planning framework for Fishermans Bend, whether it be building height, employment floor space or housing diversity, it is a 'slippery slope' into undermining the intent and delivery of the Vision for Fishermans Bend. As such, the Committee is inclined to agree with DELWP's approach in requiring that initially the development achieve a target of 20 per cent with an additional 5 per cent achievement as demand increases.

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<sup>9</sup> Document 12

The Committee is satisfied that this outcome would be consistent with policy to achieve housing diversity within individual sites, noting that the plans show adaptable floor plates where one and two bedroom apartments can be consolidated to provide for three bedroom apartments.

### **Communal areas**

In terms of the communal open space, the Committee considers that the area and diversity of uses is consistent with the policy objectives. It is also mindful that these spaces will be complemented by the future park that will be sited adjacent the front of the building. The Committee notes that there will be overshadowing of the communal space; however does not see this as a fatal outcome and that often shade is sought, particularly when children are playing or people are eating at the communal facilities. The Committee notes the Proponent's acceptance of the DELWP's drafting of the landscape requirement and that the revised landscape plan be generally in accordance with the Tract June 2020 plan. The landscape plan can also address Council's issues of design.

The Committee finds:

- The development should achieve a 3 bedroom dwelling ratio of 20 per cent with an additional 5 per cent achievement as demand increases through the provision of flexible floor plates.
- The communal areas provided are adequate with minor changes.

## **4.5 Affordable housing**

Clause 22.15 includes the following objective:

To encourage Affordable housing and the provision of community infrastructure, open space and housing diversity to support a diverse and inclusive community.

Clause 22.15-4.3 identifies that development should provide at least six percent of dwellings as Affordable housing in a mix of one, two and three bedroom dwelling formats. The policy encourages the provision of a further eight dwellings for social housing (Social housing uplift).

The proposal provides 12 social housing apartments that will be gifted to a registered housing provider.

### **(i) The issue**

The issue is whether the affordable housing provision is appropriate.

### **(ii) Evidence and submissions**

DELWP and the Taskforce were supportive of the proposed affordable housing provision. The Taskforce noted that it has prepared draft Affordable Housing Guidelines which identifies that 6 per cent of housing provided at a 35 per cent discount to market value would meet the policy. It also advised the Committee in its view, providing a lower percentage but at a greater discount or entirely gifted would also satisfy the policy. The Taskforce was supportive of the proposal to gift 12 apartments, noting that such a contribution exceeds the value of 6 percent at a 35 per cent discount.

Council was also supportive of the gifting of 12 apartments; however, sought for the contribution to equate to 6 per cent of apartments. It also submitted that the housing must

be provided via a Section 173 Agreement and that the mix of the gifted apartments should be consistent with the overall mix of the development. Mr Gutteridge noted that the proposal to provide 10 1-bedroom apartment, 1 2-bedroom apartment and 1-3 bedroom apartment, whilst providing a mix of dwellings, would be inconsistent with the overall mix for either dwelling option.

Mr Wren submitted that the gifting of the apartments equated to a value in the order of \$5.9 million and was a “*generous housing contribution*”. Mr Wren submitted that the gifting of 12 apartments was the equivalent to a contribution of 10 to 11 per cent at a discounted rate of 35 per cent and 30 per cent respectively. He also submitted that the gifting of dwellings has the benefit of ensuring that they can be available for ‘very low income’ households, as defined in section 3AA of the Act in comparison to discounting rents to the extent required to satisfy the definition of affordable housing for ‘moderate income’ households.

### **(iii) Discussion and findings**

The Committee accepts that the gifting of 12 apartments is consistent with policy objectives to provide affordable housing. The Committee accepts Mr Wren’s submissions as to the ongoing benefit of gifting apartments to a registered housing provider and accepts both his and Mr O’Neill’s submissions that the contribution exceeds the 6 per cent target included at Clause 22.15.

The Committee observes, as other Committees dealing with different tranches have, that the affordable housing provision may be provided in any manner of ways and that it is appropriate to provide flexibility in the drafting of the Incorporated Document to facilitate its delivery. The Committee notes the Proponent is supportive of DELWP’s drafting of the relevant clauses in the Incorporated Document in providing such flexibility and supports such an approach.

The Committee is also satisfied that the proposal to gift the apartments includes a sufficient mix of apartment typologies and notes that DELWP’s version of the clause in the Incorporated Document requires that the mix reflects the mix of apartments and in the development and that the apartments must be physically indistinguishable from other apartments.<sup>10</sup> In this regard, the Committee is satisfied that the proposed wording of the Incorporated Document as it relates to affordable housing reflects the policy intent of Clause 22.15-4.3 of the planning scheme.

The Committee finds:

- That the Proponents approach to Housing Affordability is appropriate.
- The Incorporated Document should be consistent with DELWPs drafting for Housing Affordability.

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<sup>10</sup> Document 120

## 4.6 Employment floor area

Clause 22.15 includes the following objectives:

- To promote employment generating floor space in all precincts that supports growth in the knowledge, creative, design, innovation, engineering, and service sectors.
- To create thriving, lively mixed-use neighbourhoods that have distinct identity and character consistent with the preferred character for each precinct.

Clause 22.15-4.1 sets out a preferred minimum plot ratio of employment generating uses of 1.6:1 for the Montague Precinct.

DDO30 seeks to provide for the future conversion of proposed non-employment areas and uses to employment uses by setting floor to floor heights for lower building levels and the adaptation of car parking areas to other uses through similar means.

The proposal provides 4,072 square metres of commercial floor space, which includes retail tenancies at ground level, SoHo tenancies, office tenancies at levels 1 to 4 and a commercial outdoor exercise area.

As detailed on the plans, the proposal achieves a commercial floor area ratio of 1.4:1. The required floor space equates to 4,174 square metres.

### (i) The issue

The issue is whether the proposal provides for adequate employment floor area.

### (ii) Evidence and submissions

DELWP submitted that it was supportive of a reduced ratio of 1.4:1 on the basis that the height of the building is reduced to a maximum of 24 storeys and amended plans demonstrate that the car parking spaces can be converted to commercial uses in the future and that such a conversion would achieve the 1.6:1 ratio.

The Taskforce also submitted that it would support the proposed ratio on the basis that the plans demonstrate that the car spaces can be adapted and that the car parking areas be retained in a single or consolidated title as common property (which is consistent with the requirements set out at Clause 3.1 of the CCZ1).

Council submitted that the proposal should comply with the ratio of 1.6:1. Mr Gutteridge suggested in oral submissions that the communal open space area could be converted to a commercial use, which may pick up the shortfall and would also satisfy DELWP's concern that it is an area compromised by overshadowing.

Mr Wren submitted that the proposal was *"very close to meeting the numerical requirements"* provided at Clause 22.15. He also observed that the employment floor area targets should be considered in the context that the proposal is in the early stage of Fishermans Bends' transition into a new urban area and that the Montague Precinct is very proximate to the Central Business District.

In his evidence-in-chief Mr Negri observed that the plot ratio for commercial floor area within the controls is based on gross floor area and that the architects had calculated it on leasable floor area. On Mr Negri's calculations the proposal therefore complies with the plot ratio at Clause 22.15-4.1. No party questioned Mr Negri's calculation and Mr McArdle in

closing submitted the proposal complies with or could readily comply with the plot ratio of 1.6:1.

### **(iii) Discussions and findings**

The Committee accepts Mr Negri's interpretation or correct classification of the 'plot ratio'. 'Plot ratio' is defined at Clause 73.01 of the planning scheme as *"The gross floor area of all buildings on a site, divided by the area of the site."*

However, whether or not the plot ratio complies with the policy, the Committee is satisfied that the total commercial floor area is consistent with policy objectives, including contributing to the employment objectives of Clause 22.15. That said, the Committee considers that the level 6 outdoor commercial recreation space is not necessary to make up any plot ratio requirement and its repurposing for resident communal space or public viewing would have little impact on achieving the policy objectives.

Notwithstanding, the Committee agrees that all car parking spaces must be retained in common ownership to facilitate potential future conversion from car parking to employment generating uses. Ms Dunstan confirmed in answers during cross examination that the proposed car parking arrangements could be readily adapted with the removal of the car stackers and based on the floor to ceiling heights. As such, the Committee accepts DELWP's proposed wording for the Incorporated Document.

The Committee finds:

- That the proposal in its amended form provides for adequate employment floor space acknowledging the site's configuration.

## **4.7 Car parking, bicycle parking, motorcycles and car share**

Schedule 1 to Clause 37.04 provides minimum parking provisions for bicycles, motorcycles and car share.

Parking Overlay, Schedule 1 requires a permit to provide more than the maximum car parking space provision (0.5 per 1 to 2 bedroom dwellings, 1 per 3 or more bedroom dwellings, 1 per 100 square metres of retail or office gross floor area). This does not apply to the provision of additional car parking that is allocated for car share or precinct based parking.

Clause 52.34 sets out bicycle parking provision ratios for employees, customer/visitors based on retail and office floor space.

The proposal provides 212 above ground level car spaces (levels 1 to 5) and 11 motorcycle spaces accessed off Munro Street and 339 bicycle parking spaces (175 located at ground level within the building). Against the requirements of Clause 37.04 this represents an:

- over allocation of 5 motorcycle spaces
- under allocation of 5 car share spaces
- under allocation of resident bicycle parking spaces for dwellings of 15 spaces.

Under Clause 52.34 the required number of retail/office use spaces are provided with capacity to satisfy the 5 visitor/customer spaces through wall rack mounting adjacent to the proposed laneway.

**(i) The issues**

The issues are:

- whether adequate provision has been made for car share spaces
- whether sufficient bicycle provision has been made.

**(ii) Evidence and submissions**

DELWP, the Taskforce and Council opposed the oversupply of car parking, which on the face of the expert evidence prepared by Ms Dunstan, equated to 20 surplus car parking spaces.

Prior to providing her evidence-in-chief, the Proponent circulated an amended page 23 of Ms Dunstan's evidence. Ms Dunstan had realised that an error had occurred at Table 3 of her evidence due the calculation of car parking spaces for 3-bedroom apartments. She had updated the table and as a result there was no longer an oversupply of car parking and approval is therefore not required to vary the maximum car parking provisions. No parties opposed this revised position.

DELWP submitted that car share spaces should be provided at the statutory rate of 10 spaces. Council had identified that there was an oversupply of 3 car parking spaces and sought for those spaces to be allocated for car share spaces in addition to the four car share spaces proposed by the Proponent. Council was supportive of a requirement to be included in the Incorporated Document that the provision could be subject to monitoring and review.

In terms of car share, Ms Dunstan observed in her evidence that there are seven share vehicles within 500 metres of the site and that share pods are available in the wider area. The closest car share pod is located approximately 300 metres to the north-west of the site, at the intersection of Boundary Street and Kitchen Road.

It was Ms Dunstan's view that the provision of 9 car share spaces in this location is "*significantly excessive*". In her evidence-in-chief Ms Dunstan explained that based on discussions with car share operators, an operator requires 30 active users to be financially viable. The spaces need to be publicly accessible and should be used by residents and businesses, as user needs typically occur at different times of the day and require easy access to generate income.

Ms Dunstan observed that car share has now been in operation for some time and that its inception pre-dated Uber and the like and that these other industries have frustrated the car share market. She provided the real time example of booking an Uber from her office to South Melbourne which would pick her up in 2 to 3 minutes and cost \$6 to \$8 compared with time and cost of accessing a car share vehicle. She also observed that car share operators had sought to address another perceived gap in the market and had repositioned itself to fill a "*mobility gap*" and now provides larger vehicles for rent, including 4WD, vehicles with bicycle racks and vans for moving items and the like.

In cross-examination, Mr O'Neill asked Ms Dunstan questions relating to her evidence in the GC81 hearing in relation to car share spaces. He sought to highlight that the figures had been introduced recently on the basis of a study commissioned by the City of Port Phillip as part of the strategic overview.

In response she noted that the previous study had not had input from providers; that it was now two years hence from the GC81 report (and both Uber and car share providers had

continued in operations, offering different services); and that demands change as technology changes and will change again when there are autonomous vehicles.

In closing Mr McArdle advised the Committee that the Proponent was agreeable to the requirement in the Incorporated Document allow for the monitoring and review of the number of car share spaces to the satisfaction of Council. This would allow the provision to increase or reduce provision as appropriate.

Ms Dunstan recommended compliance with the statutory bicycle requirement, generating the need to accommodate an additional 15 spaces. No parties opposed this recommendation.

The proposal provides motorcycle parking of 11 spaces, compared to the statutory requirement to provide 6 spaces. No parties opposed this oversupply.

### **(iii) Discussions and findings**

The Committee accepts Ms Dunstan's calculations in relation to the provision of car parking and notes that there is no longer an oversupply of car parking. The Committee also accepts her recommendation to provide an additional 15 bicycle spaces for the residential component of the development. The Committee observes that the motorcycle parking is provided in excess of the statutory rate. On the basis of these features, the Committee concludes that the proposal will contribute to achieving policy objectives that seek to prioritise alternate modes of transport.

In relation to car share parking, the Committee accepts Ms Dunstan's evidence in relation to the availability of nearby car share and the limitations imposed, including commercial viability to an operator, in housing the spaces internally within a development. The Committee also accepts that demands and modes change. The Committee also notes the findings of the Review Panel in GC81 in its following observation:

In relation to car share arrangements, the Review Panel supports Port Phillip's submission for a greater supply of car share spaces, however, to achieve greater uptake, these spaces should be publicly accessible, and where practical, not be located in private dwelling complexes.<sup>11</sup>

Further, in light of the fact that there is no oversupply of car parking, the Committee is reluctant to require the provision of additional car parking to satisfy the statutory rate for car share. This position differs from the approach taken by the Standing Advisory Committee in the Tranche 3 report, which is on the basis that the expert evidence was more compelling as to the shift in focus of car share operators and also on the basis that an oversupply of car parking is not being proposed as part of this development.

On this basis, the Committee proposes to include a requirement to provide 4 car share spaces. However, the Committee also notes the Proponent's agreement to allow for the provision to be monitored and amended to the satisfaction of Council should conditions change.

The Committee finds:

- That adequate provision has been made for car parking and car share spaces.

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<sup>11</sup> Extract from page 127 of Fishermans Bend Planning Review Panel report (GC81)

- Bicycle provision consistent with Clause 37.04 can be achieved on site and through the Incorporated Document.

## **4.8 Johnson Street Park**

### **(i) The issue**

The issue is whether the draft Amendment provides appropriate conditions for the delivery of the Johnston Street public open space.

### **(ii) Evidence and submissions**

DELWP submitted that the condition pertaining to the delivery of the Johnson Street park should be flexible and provide for the Proponent to deliver it as works in kind.

The Taskforce submitted that the delivery of the park should occur as part of the proposed development. It stressed that to not *“unequivocally make this the ambition would be a lost opportunity”*. It advised the Committee that it agreed with DELWP’s proposed Incorporated Document condition.

Council supported the delivery of the park in lieu of development contributions however observed that the delivery of it requires resolution of a range of matters, including the road closure, detailed design of the park, site contamination and removal, realignment of upgrade of underground services. It also submitted that the design should be revised to maximise interaction with the park and provide opportunities for passive surveillance at lower levels. It submitted that any condition for works in kind would need to include flexibility to accommodate the potential disconnect between development of the subject site and the road closure.

Mr Wren submitted that the parties agree that the Incorporated Document should provide flexibility for the delivery of the park as works in kind. In the discussion regarding the proposed wording of the Incorporated Document Mr McArdle reiterated that point and observed that the delivery of the park was beyond the Proponent’s control.

### **(iii) Discussion and findings**

The Committee considers that DELWP’s proposed wording of the Incorporated Document provides sufficient flexibility for the delivery of the park as works in kind or alternatively as part of development contributions. The proposed works also seeks to encourage the delivery of the park as part of the proposed development.

The Committee finds:

- The draft Incorporated Document based on suggestions by the parties provides appropriate conditions for the delivery of the Johnston Street public open space.



## 5 Summary of reasons and recommendation

### 5.1 Reasons

The key issue presented by the proposal was that of height and building setbacks. The Committee considers that the issues of detailed design, dwelling diversity, commercial floor space and parking can be adequately addressed through the Incorporated Document as set out in this report.

The Committee acknowledges that the site's dimensions makes a fully compliant development challenging and that the site sits within the context of taller buildings approved on nearby large lots when viewed from the south, south-west. It also acknowledges that the proposed building design is distinctive and architecturally interesting and would contribute to a diversity of heights, varied skyline and contribute to a thriving precinct consistent with policy and DDO30 objectives. However, at 33-34 stories the building will not achieve the preferred character and transition of built form and height to the south and south-west as envisaged by the Framework, policy and DDO30. Allowing a building on this precinct edge site to so significantly exceed the mid rise preferred building typology would in the Committee's opinion compromise the objectives of the Framework.

The Committee however, considers that the contextual and policy setting of the site does allow some additional height to be accommodated above 20 stories. While it is difficult to artificially land on a suitable height the Committee accepts the position of DELWP and the Taskforce that 24 storeys is reasonable. It considers the 30 storeys acceptable to Council to not achieve the height transition sought by the Framework. The Committee considers at this height the proposed podium and tower element typology is appropriate and provides a good interface to Normanby and Johnson Street (and the proposed park). Retaining the proposed setbacks (at the reduced height) is considered reasonable and retains the integrity of the building design.

The Committee note the concerns of parties relating to the podium level including parking areas visible from the public realm. The Committee considers that the parking arrangement is reasonable in this instance noting some of the challenges associated with the sites shape and the considered landscape treatment to Johnson and Munro Streets. The proposed landscape treatment will provide visual interest (potentially more so than glazing and where properly constructed and maintained) and integration with the proposed park.

The draft Incorporated Document provided with the draft Amendment was discussed during the roundtable with various versions of it provided by DELWP (incorporating comments and submissions from the Taskforce, Melbourne Water, EPA and DoT), Council and the Proponent.<sup>12</sup> Key disputed changes related to building heights and tower setbacks. Generally, there was agreement about the approach to commercial floor area, dwelling diversity, affordable housing parking, detailed design although the wording options varied language varied particularly where the Proponent sought greater flexibility.

The Committee has set out its preferred form of the Incorporated Document (Appendix E) based on these discussions. Generally the Committee accepted the changes outlined by

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<sup>12</sup> Documents 120, 107 and 119 respectively

DELWP and incorporated the majority of those sought by Council (where accepted by the Proponent and other parties) and a number of those proposed by the Proponent so as to include some reasonable level of flexibility or to delete requirements that were not in the form of conditions (including notes) or that were unreasonable or not sufficiently justified. The Committee's version also includes some reordering of conditions, greater consistency in language and format, corrections and simplification where necessary. Given the extent of changes it is not useful to show the changes as tracked changes or practical to summarise them succinctly. The Committee suggests that DELWP should undertake a final check of the document to ensure the language and use of terms is consistent with the Practitioner's Guide or if some of the conditions can be consolidated or simplified to reduce the significant number of requirements.

## **5.2 Recommendation**

The Committee recommends:

- 1. Adopt Port Phillip Planning Scheme Amendment C177port with the changes to the Incorporated Document set out in the Committee's preferred version contained in Appendix E.**

## Appendix A Fishermans Bend SAC Terms of Reference

### Terms of Reference

#### Fishermans Bend Standing Advisory Committee

An advisory committee was appointed pursuant to section 151 of the *Planning and Environment Act 1987* to advise on outstanding issues relating to site-specific planning controls to facilitate proposals to redevelop land within Fishermans Bend prior to the introduction of an Infrastructure Contributions Plan. Site specific planning controls relate to :

- land subject to permit applications called in by the Minister before the approval of Amendment GC81; and
- land subject to a proposal for use and development in Fishermans Bend that responds to local policy set out in the relevant planning scheme, meets the requirements of the controls introduced by Amendment GC81 and makes appropriate development contributions.

#### Name and Membership

1. The Advisory Committee is to be known as the 'Fishermans Bend Standing Advisory Committee'.
2. The Advisory Committee is to have members with the following skills:
  - a. Statutory and Strategic Land Use Planning
  - b. Planning Law
  - c. Urban Design and Architecture
3. The Advisory Committee will include an appointed Senior Panel Member as Chair, a Deputy Chair and members.
4. The Fishermans Bend Task Force and the Development Approvals and Design unit within the Department of Environment, Land Water and Planning (DELWP) will liaise with Planning Panels Victoria (PPV) to support the Advisory Committee process.

#### Purpose

5. The purpose of the Advisory Committee is to:
  - a. Advise the Minister for Planning on only unresolved issues between the Proponent and other parties relating to site-specific planning controls pursuant to clause 45.12 to achieve appropriate land use and development outcomes for land within Fishermans Bend in advance of approval of an Infrastructure Contributions Plan.
  - b. Provide a timely, transparent and consultative process for assessment of the suitability of site-specific planning controls for land within Fishermans Bend.

#### Background

6. Fishermans Bend is Australia's largest urban renewal project covering approximately 480 hectares of mainly industrial land. The area includes land in the City of Melbourne and the City of Port Phillip. Fishermans Bend is identified as a priority precinct in Plan Melbourne and will play a key role in accommodating significant population and employment growth.
7. In 2012, the former Minister for Planning declared Fishermans Bend a project of State significance and approved Melbourne Planning Scheme Amendment C170 and Port Phillip Planning Scheme Amendment C102.
8. On 3 October 2016 the Minister for Planning released the *Fishermans Bend Vision – The next chapter in Melbourne's growth story, September 2016*.

9. In November 2016 the Minister introduced interim planning controls as part of Planning Scheme Amendment GC50 (updated by Amendment GC59).
10. In October 2017, the Minister released the draft *Fishermans Bend Framework*. Proposed permanent planning controls through draft Amendment GC81 were prepared to enable the realisation of the Vision and support implementation of the Framework.
11. On 19 December 2017 and 21 February 2018, the Minister called in twenty six applications for land use and development in Fishermans Bend from VCAT (pursuant to clause 58(2)(a) of Schedule 1 to the *Victorian Civil and Administrative Tribunal Act 1998*) and from himself (as the responsible authority under section 97B of the *Planning and Environment Act 1987*) (the Applications).
12. Consideration of the Applications was deferred until the permanent planning controls for Fishermans Bend were approved as it was considered that the cumulative impact of the applications raised major issues of policy.
13. Amendment GC81 was introduced into the Melbourne Planning Scheme and Port Phillip Planning Scheme under section 20(4) of the *Planning and Environment Act 1987*. It introduced permanent planning controls, and included the final *Fisherman's Bend Framework, September 2018* (the Framework) as a reference document. It included the Infrastructure Contributions Overlay, which prevents a permit from issuing until an Infrastructure Contributions Plan (ICP) is incorporated into the scheme.

*Land subject to permit applications called in by the Minister before the approval of Amendment GC81*

14. The Advisory Committee is to consider a site-specific planning control to facilitate a proposal for land use and development within Fishermans Bend, subject to the proposal:
  - a. responding to local policy;
  - b. meeting the requirements of the Design and Development Overlay, Parking Overlay and Capital City Zone other than:
    - i. the dwelling density requirement;
    - ii. the requirement to be generally in accordance with the Fishermans Bend Framework (September, 2018); and
    - iii. the permit condition requirement to enter a section 173 agreement to provide a new road or laneway; and
  - c. making appropriate development contributions.
15. In relation to the requirements to be generally in accordance with the Fishermans Bend Framework (September 2018) and to provide new roads and laneways, proponents will be encouraged but not required to meet these requirements.
16. Proponents who lodged a permit application prior to the approval of GC81, may prepare a site specific planning control to facilitate a proposal which responds to the permanent planning controls as set out in paragraphs 14 and 15.

*Land subject to new proposals*

17. The Advisory Committee is to consider a site-specific planning control to facilitate a proposal for land use and development within Fishermans Bend, subject to the proposal:
  - a. responding to local policy;
  - b. meeting the requirements of the Design and Development Overlay, the Parking Overlay and the Capital City Zone; and
  - c. making appropriate development contributions.

## Scope

18. The Advisory Committee may inform itself in anyway it sees fit.

19. In assessing the appropriateness of a site specific planning control to facilitate a proposal, it must consider:
- Relevant aspects of the *Planning and Environment Act 1987*, the Planning Policy Framework, and the Local Planning Policy.
  - The content and purposes of the planning controls introduced under Amendment GC81.
  - The compliance of the proposal with the requirements of the permanent planning controls set out in paragraphs 14-15, or 17, of these Terms of Reference, as applicable.
  - Whether any departure from the Framework compromises the objectives of the Framework
  - The cumulative effect on the preferred character of the relevant precinct or the ability to achieve the objectives of Fishermans Bend arising from any departures from the Framework or the requirements of the permanent planning controls.
  - The provision of appropriate development contributions in the form of monetary contribution, land contribution, works in kind or a combination of these and the extent to which they are consistent with, and contribute to, the objectives of the Framework.
  - All relevant submissions and evidence regarding the site-specific planning control to facilitate the proposal.
20. The Advisory Committee is directed not to consider submissions and evidence in relation to:
- The application or operation of the Infrastructure Contributions Overlay.
  - The quantum of or need for public open space, roads and laneways.

## Method

21. The Minister for Planning may refer a proposal for advice on unresolved issues associated with the site-specific planning control to facilitate the proposal in accordance with the scope outlined within these Terms of Reference.
22. The Advisory Committee may apply to the Minister for Planning to vary these Terms of Reference in any way it sees fit before submitting its report(s).
23. The Advisory Committee may meet and invite others to meet with it when there is a quorum of at least two Committee members including either the Chair or Deputy Chair.
24. The Advisory Committee may seek advice from experts, including legal counsel where it considers this is necessary.
25. Planning Panels Victoria is to provide administrative support as required.

## Notice

26. DELWP will be responsible for notifying the City of Port Phillip and City of Melbourne (as appropriate) and relevant persons including land owners and occupiers who may be affected by the proposed request for site specific planning controls.
27. The Advisory Committee is not expected to carry out any additional public notification or referral but may do so if it considers it to be appropriate.
28. Submissions will be collected by DELWP. Copies of submissions will be made available to the City of Melbourne and the City of Port Phillip (as appropriate) and other submitters upon request.
29. Petitions and pro-forma letters will be treated as a single submission and only the first name to appear on the first page of the submission will receive correspondence in relation to the Advisory Committee.
30. DELWP will provide recommended conditions to be considered as part of any site specific planning control, should the Advisory Committee determine to recommend adoption of the site specific planning control.



## Process

### Pre-referral to Advisory Committee

31. Proponents, through DELWP, will submit their finalised proposals and relevant submissions to the Office of Victoria Government Architect (OVGA) for a Design Review. The OVGA will provide a design response within 5-10 business days that will be provided to all parties to each proceeding.
32. The Proponent will respond to any issues raised through the Design Review report and provide a final application to DELWP who will distribute to the parties.
33. The relevant Proponent, Council, DELWP, Fishermans Bend Taskforce, relevant agencies and the OVGA will meet to discuss the final application and prepare a short report that provides a statement of agreement and contentions, outlining the remaining issues in dispute.

### Referral to Advisory Committee

34. The proposal, 'statement of agreement and issues in dispute' and submissions will be referred to the Advisory Committee by letter from the Minister for Planning or delegate of the Minister for Planning.
35. The Advisory Committee will convene a round table or virtual forum using video conferencing or similar technology to discuss the issues in dispute.
36. Further submissions or evidence can be provided by any party to address the issues in dispute.

## **Submissions are public documents**

37. The Advisory Committee must retain a library of all documentation provided to it until a decision has been made on its report or five years has passed from the time of its appointment.
38. Any supporting documentation must be made available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain in confidence.
39. All information may be made publicly available online where consent has been given.

## **Outcomes**

40. The Advisory Committee must produce a short written report for the Minister for Planning on each request for a site-specific planning control to facilitate a proposal or, where a round table or other forum is conducted.
41. The report is to provide a brief summary of the following:
  - a. The site-specific planning control and the proposal and submissions and evidence received.
  - b. The recommendations and rationale regarding resolution of issues in dispute through the site-specific planning control and its consistency with the Framework.
  - c. A copy of the site-specific planning control including recommended conditions to form part of the site specific planning control.
  - d. A list of persons consulted or heard.
42. The report will be publicly released at the discretion of the Minister for Planning.

## **Timing**

43. The Advisory Committee is required to commence its work within 10 business days after receipt of a referral for a proposal.
44. The Advisory Committee is required to submit its report in writing no later than 20 business days from the completion of the round table or other forum for each referred matter.

## Fee

45. The fee for the Advisory Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
46. The costs of the Advisory Committee will be met by the Department of Environment, Land, Water and Planning, who may ask the Proponent of any matter to meet those costs.



**Richard Wynne MP**  
**Minister for Planning**

**Date:** 29 / 04 / 2020

## Appendix B Letter of referral



Hon Richard Wynne MP

Minister for Planning  
Minister for Housing

8 Nicholson Street  
East Melbourne, Victoria 3002

Mr Nick Wimbush  
Co-Chair, Fishermans Bend Standing Advisory Committee  
Level 5, 1 Spring Street  
MELBOURNE VIC 3000

Ref: MBR040659



Dear Mr Wimbush

**REFERRAL TO FISHERMANS BEND STANDING ADVISORY COMMITTEE  
272-280 NORMANBY ROAD, SOUTH MELBOURNE (C177port)**

I write to advise you that I have decided to refer draft planning scheme amendment C177port, which proposes to introduce a site-specific planning control at 272-280 Normanby Road, South Melbourne, to the Fishermans Bend Standing Advisory Committee for independent advice.

The Department of Environment, Land, Water and Planning (DELWP) will work with Planning Panels Victoria to notify relevant government agencies and parties of the proposed planning scheme amendment request in accordance with item 26 of the standing advisory committee terms of reference dated 29 April 2020.

I will consider the advice of the advisory committee before I make any decision on the draft planning scheme amendment.

If you would like further information, please contact Jane Homewood, Executive Director, Statutory Planning Services, DELWP, on (03) 8683 0975 or email [jane.homewood@delwp.vic.gov.au](mailto:jane.homewood@delwp.vic.gov.au).

Yours sincerely

**HON RICHARD WYNNE MP**  
Minister for Planning

28 / 06 / 2020



## Appendix C Submissions

No.	Submitter
1	APA Group
2	City of Port Phillip
3	Melbourne Water
4	Environment Protection Authority Victoria (EPA)
5	Fishermans Bend Taskforce, Department of Jobs, Precincts and Regions
6	Department of Transport
7	Samma Group Pty Ltd and Spec Property Developments Pty Ltd

## Appendix D Document list

No.	Date	Description	Provided by
1	28/06/20	Letter of Referral from Minister 28 06 20	Minister for Planning
<b>Final Application Plans dated 6 October 2020 and Supporting Documents</b>			
1A	26/10/20	C177port – Application Form	Department of Environment, Land, Water and Planning (DELWP)
1B	“	C177port – Request for Ministerial Intervention	“
2	“	C177port – Explanatory Report	“
3	“	C177port – Applicant’s Draft Incorporated Document (updated)	“
4	“	C177port – Clause 45.12 (track changed)	“
5	“	C177port – Clause 72.04 Schedule (track changed)	“
6	“	C177port – Instruction Sheet	“
7	“	C177port – 272 Normanby Road Urban Context Report (updated)	“
8	“	C177port – 272 Normanby Road Planning Architectural Plans (Rev05) (updated)	“
9	“	C177port – Updated Ground Floor Plan (with RLs)	“
10	“	C177port – Planning Report	“
11	“	C177port – Urban Design Memo	“
12	“	C177port – Landscape Concept	“
13	“	C177port – Traffic Report	“
14	“	C177port – Waste Management Plan	“
15	“	C177port – Environmentally Sustainable Design Report- Opportunities Assessment	“
16	“	C177port – Wind Assessment Memo	“
17	“	C177port – Amenity Impact Assessment – Noise	“
18	“	C177port – Amenity Impact Assessment – Air Quality	“
19	“	C177port – Arborist Report	“
20	“	C177port – Affordable housing Calcs	“
21	“	C177port - 272-280 Normanby Road Schedule of Changes (Rev05)	“
<b>Background Documents</b>			
<i>Referral responses based on 30 storey scheme</i>			

No.	Date	Description	Provided by
22	"	Submission summary table based on 30 storey scheme	"
23	"	APA response - 30 storey scheme	"
24	"	CoPP response - 30 storey scheme (Combined)	"
25	"	DoT response - 30 storey scheme (combined)	"
26a	"	Melbourne Water response - 30 storey scheme 31 Jul 20	"
26b	"	Melbourne Water response 2 - 30 storey scheme	"
26c	"	Melbourne Water response 2 – attachment main sewer	"
27	"	Fishermans Bend Taskforce (FBTF) response - 30 storey scheme	"
28	"	Office of the Victorian Government Architect (OVGA) Design Response report - 30 storey scheme	"
29	"	EPA advice to SAC - 30 storey scheme	"
<i>30 storey scheme and supplementary documents</i>			
30	"	Draft Incorporated Document by Proponent - 30 storey scheme	"
31	"	Architectural Drawings - 30 storey scheme	"
32	"	Urban Context Report - 30 storey scheme	"
33	"	Cultural Heritage Management Plan (CHMP) statement - 30 storey scheme	"
34	"	Cost Estimate - 30 storey scheme	"
35	"	Viability Study - 30 storey scheme	"
<i>Pre-app advice on 30 Storey scheme May 2020</i>			
36	"	Normanby Road 29 levels (REV C) plans	"
37	"	Written advice to Proponent May 2020	"
<b>Response of Parties to Final Application Plans &amp; Draft Table of Issues in Contention</b>			
38	"	Draft Table of Issues in Contention & Agreement 21 10 20 - For Comment by Parties	"
39	"	APA response to amended plans and supporting material	"
40	"	CoPP response to amended plans (Rev 05, Dated 06-10-2020)	"
41	"	DoT response to amended Application Plans	"
42	"	EPA response to SAC Incorporated Document conditions - 23 09 20	"
43	"	FBTF response to Final Application Plans & Draft Table of Issues in Contention – 19 10 20	"
44	"	OVGA Design Memo 02 - Response to Amended Submission Report dated 21 10 20	"

No.	Date	Description	Provided by
44a	16/11/20	OVGA's Design Memo 01 – Response to without prejudiced Plans received 15 September 2020 (as referenced in the Table of Issues in Contention & Agreement)	Ms Singh, DELWP) – not listed in parties to the roundtable
<b>Table of Issues in Agreement &amp; Contention 26 10 20</b>			
45	26/10/20	Final Table of Issues in Contention & Agreement 26.10.20 and Signed Counterparts	Harwood Andrews for DELWP
45a	“	Table of Issues in Contention & Agreement - Proponent Signed Counterpart	“
45b	“	Table of Issues in Contention & Agreement - DELWP Signed Counterpart	“
45c	“	Table of Issues in Contention & Agreement - FBTF Signed Counterpart	“
45d	“	Table of Issues in Contention & Agreement - MW Signed Counterpart	“
45e	“	Table of Issues in Contention & Agreement - EPA Signed Counterpart	“
45f	“	Table of Issues in Contention & Agreement - CoPP Signed Counterpart	“
45g	“	Table of Issues in Contention & Agreement - OVGA Signed Counterpart	“
46	“	Email letter to FB SAC - sending referral documentation 26 10 20	“
47	27/10/20	Port Phillip C177port 001 Specific Controls Overlay Map 03 Exhibition	Ms Singh, DELWP
48	“	Schedule to Clause 45.12 Specific Controls Overlay	“
49	“	Schedule to Clause 45.12 Specific Controls Overlay Compare	“
50	“	Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme	“
51	“	Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme Compare	“
52	2/11/20	Email from Proponent in regard to roundtable dates	Mr O'Connor, Hall & Wilcox for Proponent
53	“	Email from DELWP on roundtable dates	Ms Morris, Harwood Andrews for DELWP
54	4/11/20	Letter from SAC to parties - Directions Hearing notification	Mr Hellsten, Chair of SAC
55	16/11/20	Letter from DELWP to all parties – Teams Invite and Hubshare instructions	Ms Morris, Harwood Andrews for DELWP
56	17/11/20	Urbis Planning Advice - Building Height memorandum - 5 October 2020	Ms Singh, DELWP

No.	Date	Description	Provided by
57	"	Urban Design Memo, Hansen - 272 Normanby Road, South Melbourne - 12 10 2020	"
58	"	Traffic Engineering Assessment, Traffix Group - memorandum 6 October 2020	"
59	"	Contour Planning Report - Macro Negri, October 2020	"
60	23/11/20	Proponent Clause 58 Assessment Table (updated)	Ms Coleman, Harwood Andrews for DELWP
61	"	Sustainable Management Plan – ADP Consulting (updated ESD Report - 5 October 2020)	Mr Denham, Hall & Wilcox for Proponent
62	24/11/20	Letter from SAC to parties – Directions, Timetable and Distribution list (v4)	Mr Hellsten, Chair of SAC
63	25/11/20	Correspondence from EPA to SAC on attendance at hearing	Ms Brice, EPA
64	"	Original Draft Incorporated Document by Proponent	Harwood Andrews for DELWP
65	27/11/20	Proponent's Affordable housing proposal (Affordable Housing Calcs)	Mr O'Connor, Hall & Wilcox for Proponent
66	30/11/20	Proponent - Expert Evidence - Craig Yelland - Development viability	Mr Denham, Hall & Wilcox for Proponent
67	"	Proponent - Expert Evidence - Craig Czarny - Urban Design	"
68	"	Proponent - Expert Evidence - Marco Negri - Planning	"
69	"	Proponent - Expert Evidence - Charmaine Dunstan - Traffic	"
70	"	Email letter to SAC on behalf of DELWP - Part A and Expert Evidence	Ms Coleman, Harwood Andrews for DELWP
71	"	Part A Submission - 272-280 Normanby Road South Melbourne	"
72	"	Part A submission - figures only - enlarged	"
73	"	Appendix 1 to Part A - Views of approvals and current Planning Scheme Amendment requests	"
74	"	Appendix 2 to Part A - Clause 58 Assessment	"
75	"	Appendix 3 to Part A - Draft Incorporated Document with DELWP, EPA, DoT preferred changes	"
76	"	DELWP - Expert Evidence - Robert Milner - Planning	"
77	3/12/20	Proponent - Supplementary Expert Evidence - Craig Yelland - Develop viability DELWP scheme	Mr Denham, Hall & Wilcox for Proponent
78	4/12/20	Fishermans Bend Taskforce - Submission C177port	Mr Roebuck, Fishermans Bend Taskforce
79	"	Proponent - Opening Submissions - Port Phillip C177	Mr Denham, Hall & Wilcox for Proponent

No.	Date	Description	Provided by
80	"	Proponent - Revised street Elevations (Direction 10) 20 11 30	"
81	"	Proponent - Revised Facade Strategy 20 11 30	"
82	"	Melbourne Water Submission - 272-280 Normanby Road South Melbourne	Mr Karageorge, Melbourne Water
83	5/12/20	Email Letter to SAC on behalf of DELWP - Part B Submission	Ms Morris, Harwood Andrews for DELWP
84	"	DELWP C177port - Part B Submission	"
85	"	DELWP - Appendix 1 to Part B Submission - Built Form Context Map	"
86	7/12/20	DELWP Context Map - Normanby Road 272 rev04	Ms Garreffa, Harwood Andrews for DELWP
87	"	City of Port Phillip - Submission C177port	Mr Gutteridge, City of Port Phillip
88	"	City of Port Phillip - Appendix 1 - C177port - CoPP Clause 58 Assessment Table	"
89	"	Cases and decisions referred to in DELWP's Part B submission (12 documents)	Ms Garreffa, Harwood Andrews for DELWP
90	9/12/20	Email from Hall and Wilcox – revised plans	Mr Denham, Hall & Wilcox for Proponent
91	"	Revised ground floor plan (TP100) – Revision 6	"
92	"	Alternative mix description	"
93a	"	TP107 Revision 6 (updates to narrations)	"
93b	"	TP108 and TP109 Revision 6 (updates to narrations)	"
94	"	Johnson Street elevation areas active and planted calculations	"
95	"	Melbourne Water presentation	Mr Karageorge, Melbourne Water
96	"	Melbourne Water Edits - Draft Incorporated Document with DELWP, EPA, DoT preferred changes	"
97	"	Email from CoPP - provision of presentation documents	Mr Gutteridge, City of Port Phillip
98	"	City of Port Phillip – Folder of CoPP Photos - Sites and surrounds photos (18 photos)	"
99	"	City of Port Phillip – Folder of Wider Context photos (12 photos)	"
100	"	City of Port Phillip - 199-201 Normanby Road - Tower setbacks	"
101	"	City of Port Phillip - 202-214 Normanby Road - Tower setbacks	"

No.	Date	Description	Provided by
102	10/12/20	Proponent - Charmaine Dunstan - Traffic - Evidence Correction - Amended Statutory Table	Mr Denham, Hall & Wilcox for Proponent
103	"	Fishermans Bend Taskforce - Draft Incorporated Document with Fishermans Bend Taskforce Changes - 2020 12 10	Mr Roebuck, Fishermans Bend Taskforce
104	"	Email from EPA - comments on Incorporated Document	Ms Brice, EPA
105	"	DELWP- Platinum building photo	Ms Coleman, Harwood Andrews for DELWP
106	"	DELWP - DDO30 as in force just before GC 81 was approved	"
107	"	City of Port Phillip - DELWP Draft Incorporated Document with City of Port Phillip referred changes (10-12-2020)	Mr Gutteridge, City of Port Phillip
108	"	DELWP - Annotated Cross Sections (pages 8 and 9 of Mr Negri's report)	Ms Coleman, Harwood Andrews for DELWP
109	"	Email from Fishermans Bend Taskforce to SAC provision of photo montages Gurner site	Mr O'Neill, Fishermans Bend Taskforce
110	"	Fishermans Bend Taskforce - Gurner montages from park	"
111	"	Email from DELWP to IAC - Further draft Incorporated Document	Ms Coleman, Harwood Andrews for DELWP
112	"	DELWP - Draft Incorporated Document - FB Taskforce and DELWP Edits 10.12.20	"
113	"	Proponent - Emails -constructability and cost estimates for 3 level basement	Mr Denham, Hall & Wilcox for Proponent
114	"	Proponent - UAG West Melbourne Pty Ltd v Melbourne CC [2018] VCAT 1855	"
115	"	Proponent - Perpetual Trustee Company Limited v Minister for Planning [2018] VCAT 567	"
116	11/12/20	DELWP - Draft Incorporated Document - Consolidated Version - All Parties - 11.12.20	Ms Coleman, Harwood Andrews for DELWP
117	"	Email from DELWP to SAC in response to Proponents further materials and Tribunal decision	Ms Coleman, Harwood Andrews for DELWP
118	"	DELWP - DCF 407 King Street Developing Entity v Melbourne CC [2017] VCAT 423	"
119	"	Proponent - Proponent draft Incorporated Document (Appendix 3 to Part A - Draft Incorp Doc DELWP EPA DoT preferred changes – 11 12 20	Mr Denham, Hall & Wilcox for Proponent
120	"	DELWP - Final Draft Incorporated Document (Hearing Version) - DELWP with Consolidated Changes - 11.12.20	Ms Coleman, Harwood Andrews for DELWP

## Appendix E Committee preferred version of the Incorporated Document

PORT PHILLIP PLANNING SCHEME

INCORPORATED DOCUMENT

272-280 Normanby Road, South Melbourne

DATE TO BE INSERTED

Incorporated document pursuant to Section 6(2)(j) of the *Planning and Environment Act 1987*  
Incorporated document in the Schedules to Clauses 45.12 and 72.04 of the Port Phillip Planning Scheme



## 1. INTRODUCTION

- 1.1. This document is an Incorporated Document in the schedules to Clauses 45.12 and 72.04 of the Port Phillip Planning Scheme (the Planning Scheme) pursuant to section 6(2)(j) of the *Planning and Environment Act 1987* (Vic) (Act).
- 1.2. The Minister for Planning is the responsible authority for administering Clause 45.12 of the Planning Scheme with respect to this Incorporated Document except that:
  - a) Port Phillip City Council (Council) is the responsible authority for matters expressly required by the Incorporated Document to be endorsed, approved or done to the satisfaction of the Council;
  - b) The Victorian Planning Authority is the responsible authority for matters under Division 2 of Part 9 of the Act relating to any agreement that makes provision for development contributions; and
  - c) Council is the responsible authority for the enforcement of the Incorporated Document.

## 2. PURPOSE

- 2.1. To facilitate the demolition of existing buildings for the use and development of the land in Clause 3 for a mixed use development comprising retail premises, office and dwellings and creation or alteration of access to a Road Zone Category 1 in accordance with Clause 4 of this document.

## 3. LAND DESCRIPTION

- 3.1. The control in Clause 4 applies to the land at 272-280 Normanby Road, South Melbourne being the land contained in Certificate of Titles Volume 09666 Folio 398 and more particularly described as Land in Plan of Consolidation 161638A (Land). The Land is identified in Figure 1 below.



Figure 1: 272-280 Normanby Road, South Melbourne

## **4. CONTROL**

### **Exemption from the Planning Scheme requirements**

- 4.1. The Land may be used and developed in accordance with the specific control contained in Clause 4 of this document.
- 4.2. The control in this Clause 4 prevails over any contrary or inconsistent provision in the Planning Scheme.
- 4.3. Subject to Clause 4.4, no planning permit is required for, and no provision in the Planning Scheme operates to prohibit, control or restrict the use or development of the Land in accordance with the provisions contained in Clause 4.
- 4.4. A permit is required to subdivide the Land except where the subdivision creates a road and no additional lot is created.
- 4.5. An application for subdivision is exempt from the requirements in Clause 45.11 (Infrastructure Contributions Overlay) of the Planning Scheme but not from the requirements in Clause 53.01 (Public Open Space Contributions) if applicable.
- 4.6. Notwithstanding Clauses 4.4 and 4.5, any permit allowing subdivision of the Land must include a condition requiring payment to Council, before a Statement of Compliance is issued, of a public open space contribution equal to 8 per cent of the site value of the Land.

### **Compliance with the endorsed plan**

- 4.7. The use and development of the Land must be undertaken generally in accordance with all documents approved under Clause 4.

### **Layout and use of the development not to be altered**

- 4.8. The development and layout of uses on the Land as shown on the approved plans must not be altered or modified without the prior written consent of the Responsible Authority.

### **Amended development plans**

- 4.9. Before the development starts, excluding demolition, excavation, piling and site preparation works and works to remediate contaminated land, amended plans must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and fully dimensioned including to show natural ground level, floor levels, wall and building heights and lengths, with heights to be expressed to Australian Height Datum (AHD). The plans must be generally in accordance with the plans prepared by Fender Katsalidis dated 5/10/2020 entitled Job No: 19013, Drawing Nos. TP000-TP004, TP101-TP106, TP130-131, TP200, TP201, TP250, TP 450-451, TP500-508, TP550 (all Rev 05) and the plans prepared by Fender Katsalidis dated 8/12/2020 Drawing Nos. TP100, TP107-TP109 and TP551 dated 1/12/2020 (all Rev 06) but modified to show:
  - a) Reduction of building height to a maximum of 24 storeys;
  - b) At least 20 per cent all dwellings to contain three (3) or more bedrooms, in addition to a detailed design and plan notations demonstrating how adaptable floor plates will facilitate future conversion of a sufficient number of dwellings containing one (1) and two (2) bedrooms to achieve an overall ratio of at least 25 per cent of all dwellings containing three (3) or more bedrooms (as the demand arises) in accordance with Clause 22.15 of the Scheme;
  - c) A minimum plot ratio not used for Dwelling of 1.4:1, in addition to a detailed design of car parking areas demonstrating how the building floor to floor

heights, layout and design will facilitate future conversion of car parking areas to other employment generating uses to achieve a minimum plot ratio not used for Dwelling of 1.6:1 in accordance with Clause 22.15 of the Scheme;

- d) The provision for the ground floor level of the site to the west and northwest raised so that the finished floor level at the ground floor is at grade with the future park;
- e) Any raised finished floor levels to Johnson Street integrated into the public realm to provide for spill out activation and seating, while also providing for integrated approaches to universal access;
- f) The provision of a pedestrian and universally accessible entrance to the main lobby of the building from the lane and the ramping of the lane so that finished floor levels at the ground floor are at grade with the lane;
- g) The provision of operable windows to Tenancy 1 at its interface with Johnson Street;
- h) The primary glass line of the building at the ground level set back 500mm from the property boundary above a plinth rising to a maximum height of 500mm above the natural ground level of the street to provide for seating to be integrated into the façade design on Normanby Road;
- i) Cross-sections for each commercial and retail tenancy (as appropriate) showing finished floor levels to AHD of both external and internal areas and their interface between the public and private realm demonstrating good physical and visual connection between Normanby Road and interior, and Johnson Street Park and interior. A range of measures such as minimal transitional areas within retail tenancies and public realm urban design outcomes (slopes and stairs etc.) can be utilised to achieve this outcome;
- j) A detailed elevation scaled at not less than 1:50 to demonstrate the frontages along the ground level to a height of 2.5 metres, excluding any solid plinth or base are:
  - at least 80 per cent clear glazing or alternatively open to Normanby Road; and,
  - at least 60 per cent clear glazing or alternatively open to Johnson Street.
- k) DDA compliance from the public realm to all retail, commercial and SoHo tenancies and 'private public places' such as apartment lobbies and lifts from Normanby Rd;
- l) Detailed internal layout plans of commercial tenancies within the podium to demonstrate active use of these internal spaces where they interface Normanby Road and Johnson Street;
- m) Each level (other than Level 1) of the podium provided with access via the external staircase with provision of a landing area at each level, to provide a greater sense of arrival and relationship to active land uses within the podium;
- n) A detailed design of the proposed external communal areas on Level 6, showing how multiple use of the space (by children, for informal gatherings and as a running track) will operate;
- o) Compliance with Clause 58 of the Planning Scheme;
- p) The number of car parking spaces to not exceed the maximum rates specified in Table 1 of Schedule 1 to the Parking Overlay;

- q) Bicycle and motor cycle parking in accordance with at least the minimum parking provision specified in Table 2 of Schedule 1 to the Capital City Zone at Clause 37.04 of the Planning Scheme.

In addition, bicycle parking provision in accordance with the minimum parking provision specified in Table 1 of Clause 52.34-5 of the scheme where the requirements of Table 2 to the Capital City Zone at Clause 37.04 of the scheme do not apply.

- r) Ground floor bicycle parking to include ramp access from Normanby Road and the lane, access (including doors) of at least 1.5 metre width, and horizontal visitor racks;
- s) Deletion of the car stackers at Level 1;
- t) At least four (4) car share spaces;
- u) Plan and cross section drawings of the laneway showing vehicle access from Munro Street, pedestrian priority at the trafficable areas, separation of trafficable areas and barriers to prevent vehicle access beyond the car park entry, level transitions, lighting, street furniture, landscaping, surface materials and above and below ground services;
- v) At least 25 per cent of all car parking spaces on all levels to have access to an EV charging point;
- w) Details of back of house for the retail, commercial and SoHo tenancies, including access to waste stores and a loading bay;
- x) Vehicle crossing width reduced to 6.0 metre, or if greater than 6.1 metre width to include an intermediate pedestrian refuge;
- y) Full pedestrian sight triangles provided in accordance with Clause 52.06;
- z) Plan notations for all vehicle crossing works to be in accordance with the City of Port Phillip Vehicle Crossing Guidelines and Standard Drawings;
- aa) Details of any boom gate or similar barrier at the vehicle entry including setbacks to ensure vehicles queuing do not overhang the footpath;
- bb) Disabled car park design to meet AS 2890.6;
- cc) Car stacker outline dimensions;
- dd) Headroom clearance in the car park (confirming min. 3.8 metres clearance for mechanical stackers), and along all ramps, and the length, width and levels of all ramps;
- ee) Vehicle ramp lengths, widths and levels to AHD showing ramp grades, transition and headroom clearance to meet relevant planning scheme requirements and Australian Standards;
- ff) Loading area headroom clearance as per AS 2890.2 2018;
- gg) Access from the loading bay to the apartment lobby for moving furniture etc;
- hh) The building setback from Melbourne Water's pipe assets in Johnson Street to the satisfaction of Melbourne Water;
- ii) The length, width and height including underside clearance of all projections beyond the Title boundaries, confirming clearances from existing tree canopies;
- jj) Verandahs / awnings with a maximum height of 5.0 metres above Natural Ground Level to Normanby Road, Johnson Street and the laneway;

- kk) Revisions to the laneway ground floor plan to conceal building services;
- ll) A clear internal pathway to and from each stair landing (other than Level 1);
- mm) The podium rooftop termination of the stair opening onto a public space;
- nn) A clear path(s) between the podium rooftop communal amenities and the staircase without traversing the secure gated pool area;
- oo) The location and dimensions of all building services and utility installations including air conditioning; all such services and installations must be architecturally resolved and incorporated into the design of the building and minimised facing any street or laneway, and with air conditioning units not located on any balconies;
- pp) Plan notations requiring the project to meet the requirements of the corresponding condition(s) below relating to:
  - the Façade Strategy;
  - External reflectivity;
  - Landscaping and the public realm;
  - Traffic, parking and loading/unloading;
  - the laneway;
  - the Waste Management Plan;
  - Noise attenuation;
  - the Amenity Impact Report;
  - the Wind Assessment;
  - Melbourne Water;
  - Environmentally Sustainable Design, Water Sensitive Urban Design, Green Star and Third Pipe.

### **Aboriginal Cultural Heritage**

- 4.10. Before the development starts, including demolition, bulk excavation and site preparation works and works to remediate contaminated land, one of the following must be provided to the Responsible Authority:
  - a) A report prepared by a suitably qualified professional confirming to the satisfaction of the Responsible Authority that a Cultural Heritage Management Plan (CHMP) pursuant to the Aboriginal Heritage Act 2006 is not required; or
  - b) A certified Preliminary Aboriginal Heritage Test (PAHT) under sections 49B and 49C of the Aboriginal Heritage Act 2006 in respect of the development of the land; or
  - c) A letter from Aboriginal Victoria confirming a CHMP has been approved for the land.
- 4.11. All works on the land must be carried out or constructed in accordance with the requirements of any approved CHMP or otherwise in accordance with the requirements of the *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2018*.

### **Legal agreement for laneway construction and public access and landscape maintenance**

4.12. Before the development starts, excluding demolition, bulk excavation and site preparation works and works to remediate contaminated land the owner of the land must:

- a) Enter into an agreement under Section 173 of the Act with the Responsible Authority and Council;
- b) Register the Agreement on the Title for the Land in accordance with Section 181 of the Act; and
- c) Provide Council with the dealing number confirming the registration on the Title.

The agreement must be in a form to the reasonable satisfaction of Council, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including Council's reasonable costs and expense (including legal expenses) incidental to the preparation, registration of the agreement. The agreement must provide the following:

- a) Full construction of the laneway from Munro Street to Normanby Road to the satisfaction of and no cost to Council before the occupation of the building;
- b) Give rights of public access to the laneway located within the subject land 24 hours, 7 days a week but for the lane to remain at all times in private ownership as part of the subject land;
- c) The owner must, at its cost, maintain the laneway to the same standards as is reasonably required by Council for the adjoining road(s);
- d) All requirements of Council being met regarding the design and physical treatment of the laneway including landscaping, street furniture, lighting and servicing infrastructure.

### **Affordable housing**

4.13. Before the development starts, excluding demolition, bulk excavation, piling, site preparation works, and remediation works, the owner must enter into an agreement with the Responsible Authority and Council under section 173 of the Act, to the satisfaction of the Responsible Authority, for the delivery of affordable housing (as defined in the Act).

4.14. The agreement must be registered on title to the Land and the owner must be responsible for the expense of preparation and registration of the agreement including the Responsible Authority and Council's reasonable costs and expenses (including legal expenses) incidental to the preparation, registration and ending of the agreement (where applicable).

4.15. The agreement must be in a form to the satisfaction of the Responsible Authority and Council and must include covenants that run with title to the Land to:

- a) Provide for the delivery of at least 6 per cent of the total number of dwellings, for affordable housing as defined by section 3AA of the Act, before the development is occupied. This may be provided by utilising one or more of the following mechanisms for the delivery of affordable housing:
  - i. Transferring dwellings within the development to a registered housing agency or other housing provider or trust entity approved by the

- Responsible Authority at a minimum 35 per cent discount to market value;  
or
- ii. Leasing dwellings within the development as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority at a minimum 35% discount from market rent for a period of not less than 30 years for the building approved under this control. The overall value of the leased dwellings must be equivalent or higher to 4.15(a)(i); or
  - iii. Any other mechanism providing a contribution of equivalent or higher value to Clause 4.15(a)(i) to the satisfaction of the Responsible Authority.
- b) The Affordable housing delivered under Clause 4.15(a) must:
- i. Be delivered within the development approved by this control;
  - ii. Take the form of one or two or three bedroom dwellings representative of the approved dwelling mix;
  - iii. Be functionally and physically indistinguishable from conventional dwellings within the development;
  - iv. Include access to all common facilities within the building at no extra fee for occupants of affordable housing dwellings; and
  - v. Allocate one or more bicycle parking space per dwelling for the life of the Affordable housing,
- unless otherwise agreed in writing by the Responsible Authority.
- c) Provide that if the affordable housing is delivered under Clause 4.15(a)(ii), the agreement must contain a mechanism for review of the minimum discount from market rent by reference to updated income and rental figures upon request by the Responsible Authority to ensure the housing continues to meet the definition of Affordable housing in the Act and by reference to relevant Regulations, Ministerial Notices, Orders in Council and the like.
- 4.16. The agreement may provide that:
- a) In lieu of delivering all or part of the affordable housing in accordance with Clause 4.15(a), the Responsible Authority may agree to payment of an equivalent amount of money to a registered housing agency or other housing provider or trust to be expended for affordable housing in the Fishermans Bend Urban Renewal Area provided the Responsible Authority and Council are satisfied that:
    - i) The owner has made best endeavours to secure a registered housing agency recipient or other housing provider or trust for the affordable housing and has not been successful; and
    - ii) The payment amount is equivalent to the value of the affordable housing that would otherwise have to be delivered less the value of any affordable housing provided within the development.
- 4.17. For the purpose of these provisions, 'value' means the monetary value of a dwelling offered for sale at the date of the transfer (if applicable) or otherwise at the date of the agreement as determined by an independent valuer (appointed by the President of the Australia Property Institute – Victorian Division).

## **Façade Strategy and materials and finishes**

- 4.18. Before the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land, a Façade Strategy must be submitted to and approved by the by the Responsible Authority. Unless specified otherwise by the Responsible Authority, the Façade Strategy must include:
- a) A concise description by the architect of the building design concept and how the façade works to achieve this;
  - b) A schedule of external colours, materials and finishes, including the colour, type and quality of materials showing their application, appearance, depth and profile. This can be demonstrated in coloured elevations or renders from key viewpoints, to show the materials and finishes linking them to a physical sample board with clear coding;
  - c) Elevation details generally at a scale of 1:50, or other suitable scale agreed to by the Responsible Authority, illustrating typical building details, entries and doors, utilities, and any special features which are important to the building's presentation;
  - d) Cross sections or other documentation method of demonstrating the façade systems, including fixing details indicating junctions between materials and significant changes in form and/or material;
  - e) Information about how the façade will be accessed, maintained and cleaned;
  - f) Example prototypes and/or precedents that demonstrate the intended design outcome as indicated on plans and perspective images, to produce a high-quality built form outcome in accordance with the design concept.

## **Reflectivity**

- 4.19. Except with the consent of the Responsible Authority, all external façade materials and finishes must be of a type that does not reflect more than 20% of visible light when measured at an angle of incidence normal to the glass surface.

## **Landscaping, lane and public realm**

- 4.20. Before the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land, a detailed landscaping and public realm plan(s) must be submitted to and approved by Council. The plan(s) must be generally in accordance with the plans prepared by Tract dated 03 June 2020 and accompanying report, and
- a) Describes the landscaping vision;
  - b) A planting schedule of all proposed trees and other vegetation including botanical name, common names, soil depths and/or pot sizes and volumes, height and canopy at maturity, and quantity of each plant and their protection and maintenance;
  - c) Details of green facades, podium or terrace planting that is water efficient, located and designed to be sustainable, viable and resilient and appropriate to micro-climate conditions;
  - d) Plans, elevations and cross-sections associated with the podium level green facade to include appropriate vegetation selection and planting arrangement to realise the cascading landscaping and details of irrigation (at establishment and ongoing) and maintenance and any other requirements to ensure the ongoing health and vitality of plants in accordance with the landscape vision;



- e) How the landscaping responds to water sensitive urban design principles, including how rainwater will be captured, cleaned and stored for onsite use and the location and type of irrigation systems to be used including the location of water tanks;
- f) Details of all hard-landscaping materials, finishes and treatments and urban design elements including paving, lighting, seating and balustrading;
- g) Details of surface materials and finishes and construction of retaining walls, pathways, kerbs and access ways;
- h) Elevations, sections, levels and details including materials and finishes of public realm works including reconstruction of public assets;
- i) Any landscaping works within land owned by Council must be to Council's standard materials, plant species and finishes
- j) Provide for the through-block link along the northeast boundary, generally in accordance with the Ground Floor Plan dated 29/05/2020;
- k) Identify how the public open spaces (including the external staircase to the podium) will be publicly accessible for use by workers, residents and visitors to the site during daylight hours;
- l) Verandahs / awnings with a maximum height of 5.0 metre above NGL provided to Normanby Road and Johnson Street and the laneway to improve the pedestrian experience and provide weather protection from wind, sun and rain;
- m) Details of buildings and trees on neighbouring properties with a structural or root protection zone within the title boundary, including street trees;
- n) Location of servicing infrastructure for future assets such as conduits as a contingency for additional electrical assets within the public realm.

4.21. All landscaping shown in the approved landscape and public realm plans must be carried out and completed prior to occupation of the building and thereafter maintained to the satisfaction of Council.

#### **Public lighting plan**

4.22. Before the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land, a detailed lighting plan must be prepared and approved by Council. This plan must:

- a) Identify all proposed lighting sources, lux levels and spillage details and address how the lighting will integrate with the existing lighting in the interfacing public spaces;
- b) Require all public lighting to generally conform with AS1158.3.1-2000 *Lighting for roads and public spaces Pedestrian area (Category P) lighting – Performance and design requirements*, AS/NZS 428:2019.2 *Control of the obtrusive effects of outdoor lighting*, AS/NZS 428:2019.2 *Control of the obtrusive effects of outdoor lighting* and the Public Lighting Code December 2015 (v2).

4.23. The approved lighting plan must be implemented as part of the development to the satisfaction of Council.

#### **Demolition Management Plan**

4.24. Before demolition starts, a detailed Demolition Management Plan (DMP) must be submitted to and approved by Council. The DMP's objectives must be to minimise

the impact of works associated with the demolition on neighbouring buildings and structures and activities conducted in the area generally and be consistent with the Remediation Works Plan (RWP). The DMP must address the following matters:

- a) Staging of dismantling/demolition;
- b) Site preparation;
- c) Public safety, amenity and site security;
- d) Management of the construction site and land disturbance;
- e) Operating hours, noise and vibration controls;
- f) Air and dust management;
- g) Waste and materials reuse;
- h) Stormwater and sediment control;
- i) Management of public access and vehicle, bicycle and pedestrian linkages around the site during demolition;
- j) Protection of existing artworks in the public realm;
- k) Site access and traffic management (including any temporary disruptions to adjoining vehicular, bicycle and pedestrian access ways);
- l) Details of temporary buildings or works (such as landscaping works to activate and improve the site and street frontage) to be constructed should works cease and the site remain vacant for 6 months after completion of demolition;
- m) Management of potentially contaminated land.

4.25. Demolition must be carried out in accordance with the approved DMP to the satisfaction of Council.

#### **Construction management - piling**

4.26. Piling works must not include driven driving. Piling must be by bored, screw, or sheet piling or similar only unless otherwise agreed by Council through an approved Construction Management Plan.

#### **Traffic, parking and loading/unloading**

4.27. Before the development starts, excluding demolition, piling, excavation, site preparation works, and works to remediate contaminated land, an updated traffic engineering assessment and other supporting information as appropriate must be submitted to and approved by Council. The traffic engineering assessment must be generally in accordance with the Traffic Impact Assessment Report prepared by Traffix, dated 3 June 2020 but modified to include:

- a) The number of car parking spaces not exceeding the maximum rates of the Parking Overlay;
- b) The location of at least four (4) car share spaces, details of who will occupy these spaces and how they will be managed;
- c) Swept path plans confirming:
  - A B85 and B99 vehicle can enter/exit and pass along the length of all ramps at the same time;
  - Delivery and waste collection truck access to and from the loading bay;
  - Entry and exit for all critical car parking spaces; for example end of aisle, adjacent to columns or walls.

- d) On-going monitoring and review of car-share demand within the building with a commitment to increasing the number of spaces if there is demonstrated demand. A review must be submitted within 12 months of occupation.
- 4.28. The internal design of the car park and loading docks, the positioning of boom gates, card readers, control equipment, including car park control points, and ramp grades must be generally in accordance with the Australian and New Zealand Standard 2890.1-2004 and to the satisfaction of Council.
- 4.29. The loading and unloading of vehicles and delivery of goods to and from the premises must at all times take place within the boundaries of the site and should not obstruct access to the car park of the development to the satisfaction of Council.
- 4.30. Traffic access and parking and loading/unloading arrangements must not be altered without the prior written consent of Council.
- 4.31. Before the development is completed, vehicle crossings must be constructed in accordance with Council's Vehicle Crossing Guidelines and standard drawings to the satisfaction Council. All redundant crossings must be removed and the footpath, nature strip, kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of Council.
- 4.32. The carpark and mechanical stackers designed in accordance with clause 52.06 of the Planning Scheme unless otherwise agreed by the Responsible Authority.
- 4.33. Bicycle facilities designed in accordance with Clause 52.34 of the Planning Scheme.
- 4.34. All car parking spaces must be retained in a single or a consolidated title as common property.
- 4.35. The area set aside for car parking and access of vehicles and accessways must be constructed, delineated and clearly lined marked to indicate each car space, the access ways and the direction in which vehicles must proceed along the accessways in conformity with the endorsed plans. Parking areas and accessways must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.
- 4.36. Mechanical exhaust systems to the car park must be sound attenuated to prevent noise nuisance to the occupants of the building and surrounding properties to the satisfaction of the Responsible Authority.

### **Waste Management Plan**

- 4.37. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land an amended Waste Management Plan (WMP) must be prepared and submitted to and be approved by Council. The WMP must be generally in accordance with the WMP prepared by Leigh Design dated 28 May 2020, but amended to include:
  - a) Provision for organic/green waste storage;
  - b) Details of back-of-house access to the Refuse Zone(s) for the retail tenancies;
  - c) Details of clearance widths to the waste rooms.
- 4.38. The approved WMP must be implemented to the satisfaction of Council. Waste storage and collection must be undertaken in accordance with the approved WMP and must be conducted in such a manner as not to affect the amenity of the surrounding area and which does not cause any interference with the circulation and parking of vehicles on abutting streets.

## Noise attenuation

- 4.39. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, an Acoustic Report prepared by a qualified acoustic consultant must be submitted to and approved by the Responsible Authority. The report must be generally in accordance with the Amenity Impact Report prepared by SLR dated June 2020 and amended to:
- Achieve compliance with the following noise criteria for all dwellings within the development of:
    - 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am;
    - 40dB(A) for living areas, assessed as an LAeq,16h from 6am to 10pm.
  - Be generally in accordance with the technical requirements for measuring noise in Planning Practice Note 83 (August 2017) *Assessing external noise impacts for apartments*;
  - Identify noise levels of the plant equipment effects on the public realm and how any excessive noise will be mitigated so the proposal delivers a high-quality public realm.

The approved Amenity Impact Report must be implemented to the satisfaction of Council.

- 4.40. All air conditioning and refrigeration plant must be screened and baffled and/or insulated to minimise noise and vibration to ensure compliance with noise limits determined in accordance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1.

## Incorporation of noise attenuation measures

- 4.41. Upon completion and prior to the occupation of the building(s), a report by a suitably qualified acoustic consultant must be submitted to, approved by and be implemented to the satisfaction of the Responsible Authority and Council:
- Certifying that the dwellings incorporate the noise attenuation measures as specified in the endorsed Acoustic Report and shown on the endorsed plans;
  - Verifying the dwellings achieve the internal noise levels specified in the corresponding condition(s) in this permit.

The report must detail the set-up on site and methodology of the testing process.

Where post construction measurement and testing shows internal noise levels exceeding those specified in the corresponding condition above, the applicant must make rectifications and retest as necessary to demonstrate compliance with the noise levels to the satisfaction of the Responsible Authority.

The cost of certification acoustic works is to be met by the Permit Applicant.

## No external amplified equipment

- 4.42. Without the further written consent of the Responsible Authority, no form of public address system, loudspeakers or sound amplification equipment must be used so as to be audible outside the premises.

## Amenity impact

- 4.43. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, an amended Amenity Impact Report prepared by a suitably qualified environmental consultant must be submitted to and approved by Council. The report must be generally in accordance

with the reports titled Amenity Impact Report Assessment – Noise (June 2020) and Adverse Amenity Impact Assessment – Air Quality (September 2019) both prepared by SLR dated June 2020 and amended to include:

- a) More details of the operation conditions of the Port Phillip Resource Recovery Centre such as the size of plant, equipment, hours of operation, delivery times, truck numbers, processes and management,
- b) New amenity issues that may be highlighted by this study and any subsequent mitigation measures that may be required to address these concerns.

The approved Amenity Impact Report must be implemented to the satisfaction of Council.

### **Disability access**

- 4.44. Before the development is occupied, a Disability Discrimination Act Assessment / Audit, prepared by a suitably qualified consultant, must be submitted to Council. This document must provide an assessment of the development (including public realm works or publicly accessible areas) against the applicable accessibility provisions of the Building Code of Australia and the applicable provisions of the Disability (Access to Premises – Buildings) Standards 2010.

### **Wind Assessment**

- 4.45. Before the development starts, excluding demolition, excavation, piling, and site preparation works, and works to remediate contaminated land, an amended comprehensive wind tunnel test and environmental climate assessment report must be submitted to and approved by the Responsible Authority in consultation with Council. The amended report must be generally in accordance with the report prepared by Vipac, dated 20 May 2020 but modified to address all changes required under this Clause 4 and must:
- a) Include wind tests taken at various points within the surrounding public realm with an assessment area determined in accordance with Clause 2.11 of Schedule 30 to Clause 43.02 Design and Development Overlay of the Planning Scheme and communal open space areas, carried out on a model of the approved building inclusive of the modifications required to determine the wind impacts of the development and provide recommendations for any modifications which must be made to the design of the building to improve any adverse wind conditions within the public realm and communal open space areas;
  - b) Include in the assessment the cumulative wind impacts from surrounding existing and approved developments at the time of the assessment;
  - c) Demonstrate (or provide built form recommendations) that the development will ensure all publicly accessible areas, including footpaths will not be adversely affected by 'unsafe wind conditions' as specified in Table 7 of Schedule 30 to Clause 43.02 Design and Development Overlay of the Planning Scheme.
- 4.46. Demonstrate achievement of the wind comfort criteria outlined in Clause 2.11 of DDO30 for areas within the assessment distance as follows:
- a) Sitting: The new park (Johnson Street closure) and areas in the public realm / publicly accessible private areas that are designed for outdoor seating;
  - b) Standing: The Normanby Road footpaths, the new laneway and areas outside building / tenancy entries on Munro Street (including proposed developments); and
  - c) Walking: The remaining publicly accessible areas.

- 4.47. Any further modifications required to the development in order to ensure acceptable wind conditions to the surrounding streets and public areas must be located within the development (not on public land) except for the approved projections, carefully developed as an integrated high-quality solution with the architectural design and must not rely on street trees or rely on wind amelioration screens within the public realm to the satisfaction of Council.
- 4.48. The recommendations and requirements of the approved Wind Impact Assessment Report must be implemented to the satisfaction of Council before the development is occupied.

### **Development contribution**

- 4.49. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, the owner of the Land must enter into agreement(s) pursuant to section 173 of the *Planning and Environment Act 1987* with the Responsible Authority and make application to the Registrar of Titles to have the agreement(s) registered on the title to the Land under section 181 of the Act to the satisfaction of the Responsible Authority. The agreement(s) must:
- a) Require the developer to pay a development contribution of:
    - \$16,916.51 per dwelling;
    - \$191.51 per sqm of gross office/commercial floor area; and
    - \$159.59 per sqm of gross retail floor area;
  - b) Any development contribution required by Clause 4.49a may be offset by any agreed costs of delivering approved changes to community infrastructure, including the future Johnson Street park which is encouraged to be delivered as part of the development to the satisfaction of Council in consultation with the Fishermans Bend Taskforce;
  - c) Require that development contributions are to be indexed annually from 1 July 2020 using the Price Index of Output of the Construction Industries (Victoria) issued by the Australian Bureau of Statistics;
  - d) Require registration of the Agreement on the titles to the affected lands as applicable;
  - e) Include a schedule of the types of infrastructure to be delivered by the Victorian Planning Authority or their successor;
  - f) Confirm that contributions will be payable to the Victorian Planning Authority or their successor;
  - g) Confirm that the contributions will be used by Victorian Planning Authority or their successor, to deliver the schedule of types of infrastructure;
  - h) Require payment of the development contribution/s before the earliest of the following:
    - The issue of an occupancy permit for any stage of the development; or
    - The issue of a Statement of Compliance in relation to the subdivision of the land in accordance with the development allowed under this specific control other than a boundary realignment or subdivision to create or vary a parcel for a road or otherwise with the consent of the Council in consultation with the Fishermans Bend Taskforce;

- i) Confirm the procedure for refunding monies paid if an approved Development Contribution Plan or Infrastructure Contributions Plan for the area is less than the amount stipulated in the section 173 agreement;
- j) The agreement must make provision for its ending and removal from the land following completion of the obligations contained in the agreement.

The owner of the Land must pay all reasonable legal cost and expense of this agreement including preparation, execution and registration on title.

### **Drainage and engineering**

- 4.50. Before the development starts excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, or as otherwise agreed by the Responsible Authority, a stormwater drainage system design incorporating integrated water management design principles, must be submitted to and approved by Council. The stormwater drainage system design must:
- a) Include a detailed response to Clause 22.12 (Stormwater Management (Water Sensitive Urban Design)) of the Planning Scheme;
  - b) Incorporate a legal point of discharge (LPD) to the satisfaction of Council.
- 4.51. The stormwater drainage system must be constructed in accordance with the design approved under this Incorporated Document, connected to the existing stormwater drainage system and completed prior to the occupation of the building to the satisfaction of Council.
- 4.52. Before the development starts excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, Plans, Engineering Drawings and Computations (as applicable) must be submitted to and approved by Council for:
- a) All laneway works and associated drainage to the satisfaction of Council;
  - b) A cross section of the laneway showing lighting, trees and below ground placement of services;
  - c) Independent drainage, the direction of stormwater runoff and a point of discharge for the land to the satisfaction of Council;
  - d) All works for stormwater, Water Sensitive Urban Design, drainage, street trees, and landscaping.

### **Services Plan and Report**

- 4.53. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, a Services Plan and Report prepared by a suitably qualified person must be prepared and approved by the Responsible Authority. The plan must detail the type, location and service authority requirements for the building based on the floor area and height of the building, number of dwellings, and all uses, and must identify the location, floor area and height required and allocated for each service, its visibility and ease of accessibility, and operational requirements including distances from entries and connection points, and safety.

### **Tree protection**

- 4.54. Before the development starts, including demolition, excavation, piling, site preparation works, and works to remediate contaminated land:
- a) A Tree Protection Management Plan (TPMP), setting out how the six (6) Council owned nature strip trees on Normanby Road will be protected during

construction, must be submitted to and approved by the responsible authority. When approved the TPMP will be endorsed and form part of the permit. The TPMP should generally follow the layout of Section 5 (i.e. General, Tree Protection Plan, Pre- construction, Construction stage and Post Construction) of AS4970 'Protection of trees on development sites'.

- b) A tree protection fence must be erected around the six (6) Council owned nature strip trees on Normanby Road to comply with AS 4970 - 2009 Tree protection on development sites to the satisfaction of Council.

#### **No damage to existing street tree**

- 4.55. The proposed works must not cause any damage to any retained existing street tree.

Any existing street tree must not be removed, lopped or pruned (including root pruning) without the prior consent of Council. Root pruning of any tree must be carried out to the satisfaction of the Council prior to the construction of buildings or works including crossover works.

#### **Removal and replacement of street trees**

- 4.56. Prior to the commencement of development the amenity value of the four street trees to be removed and the removal, replacement (where required) and maintenance costs must be reimbursed to Council by the developer. The removal of any street trees and replacement (if required) including 24 months maintenance of any new street trees, may only be undertaken by Council.

#### **Environmental Audit**

- 4.57. Before the development starts excluding demolition, excavation, piling and site preparation works, and works to remediate contaminated land or a sensitive use commences on the land, the Responsible Authority must be provided with either:
- a) A certificate of environmental audit issued for the Land in accordance with Part IXD of the *Environment Protection Act 1970*; or
  - b) A statement issued by an environmental auditor appointed under the *Environmental Protection Act 1970* in accordance with Part IXD of that Act that the environmental conditions of the Land are suitable for the sensitive use.

#### **Compliance with Statement of Environmental Audit**

- 4.58. Where a Statement of Environmental Audit is issued for the Land, the buildings and works and the use(s) of the Land that are the subject of this permit must comply with all directions and conditions contained within the statement.
- 4.59. Where a Statement of Environmental Audit is issued for the Land, before the commencement of the use, and before the issue of a Statement of Compliance under the Subdivision Act 1988, and before the issue of an occupancy permit under the *Building Act 1993*, a letter prepared by an Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must be submitted to the Responsible Authority to verify that the directions and conditions contained within the statement have been satisfied.
- 4.60. Where a Statement of Environmental Audit is issued for the Land, and any condition of that statement requires any maintenance or monitoring of an on-going nature, the owner(s) must enter into an agreement with the Responsible Authority pursuant to Section 173 of the *Planning & Environment Act 1987*, which must be executed before the commencement of the permitted use and before the certification of the Plan of Subdivision under the *Subdivision Act 1988*. All such expenses related to the Section 173 Agreement including drafting, negotiating, lodging, registering,



execution and ending of the Agreement, including those incurred by the Responsible Authority, must be met by the owner(s).

### **Remediation Works Plan**

- 4.61. Before any remediation works are undertaken in association with the environmental audit, a 'remediation works plan' must be submitted to and approved by the Responsible Authority. The plan should be prepared by a suitably qualified environmental consultant in consultation with the appointed Auditor and must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plans are permitted to be carried out before the issue of a Certificate or Statement of Environmental Audit.

### **Sustainability Management Plan and Water Sensitive Urban Design**

- 4.62. Before the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated, an amended Sustainability Management Plan (SMP) and Water Sensitive Urban Design Response (WSUDR) must be submitted to, be to the satisfaction of and approved by Council. The SMP and WSUDR must be generally in accordance with the Sustainable Management Plan Report prepared by ADP Consulting / Engineering, Rev 02, dated 05 October 2020, but modified to show:

- a) Increase rainwater tank sizing to 0.5m<sup>3</sup> per 10m<sup>2</sup> of catchment;
- b) All rainwater tanks to be connected to all potable water outlets within the development;
- c) Provision of a plan to demonstrate 75 per cent of site covered in surfaces to reduce urban heat island effect;
- d) Specification of non-glazed façade materials with low solar absorbance;
- e) Specify frequency of building systems tuning.

Where alternative Environmentally Sustainable Design measures are proposed to those specified in this condition, Council may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes.

When approved, the updated SMP will be endorsed and will then form part of this permit. The ESD initiatives in the endorsed SMP must be fully implemented and must be maintained throughout the operational life of the development to the satisfaction of the Responsible Authority.

### **Water Sensitive Urban Design**

- 4.63. Prior to the endorsement of plans under condition 4.9 of this Incorporated Document, a Water Sensitive Urban Design (Stormwater Management) Report that outlines proposed stormwater treatment measures must be submitted to, be to the satisfaction of and approved by Council.

The report must demonstrate how the development meets the water quality performance objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended. This can be demonstrated by providing:

- a) MUSIC modelling;
- b) A plan showing the catchment area in square metres;

- c) The stormwater device included on the relevant floor plans (devices are to include raingarden(s), rainwater tank(s), permeable paving etc. or a combination of one or more).

The report must demonstrate how the stormwater device will be maintained on an on-going basis. This can be demonstrated by providing a maintenance manual including the following information:

- a) A full list of maintenance tasks;
  - b) The required frequency of each maintenance task (monthly, annually etc.);
  - c) Person responsible for each maintenance task.
- 4.64. Prior to the occupation of the building, a report (or reports) from the author of the Sustainability Management Plan & Water Sensitive Urban Design Response approved under this Incorporated Document, or similarly qualified person or company, must be submitted to the satisfaction of Council and must confirm measures specified in the approved SMP and WSUD report have been implemented.

### **Green Star rating**

- 4.65. Prior to the commencement of buildings and works, evidence must be submitted to the satisfaction of Council, that demonstrates the project has been registered to seek a minimum 5 Star Green Star Design and As-Built rating (or equivalent) with the Green Building Council of Australia.
- 4.66. Within 12 months of occupation of the building, certification must be submitted to the satisfaction of Council, that demonstrates that the building has achieved a minimum 5 Star Green Star Design and As-Built rating (or equivalent).

### **Third pipe and rain water tank**

- 4.67. A third pipe must be installed for recycled and rain water to supply non-potable outlets within the development for toilet flushing, irrigation and washing machines, unless otherwise agreed by the relevant water authority.
- 4.68. An agreed building connection point must be provided from the third pipe, designed to the satisfaction of the relevant water supply authority, to ensure readiness to connect to a future precinct-scale recycled water supply.
- 4.69. A rainwater tank must be provided that:
- a) Has a minimum effective volume of 0.5 cubic metres for every 10 square metres of catchment area to capture rainwater from 100% of suitable roof rainwater harvesting areas (including podiums); and
  - b) Is fitted with a first flush device, meter, tank discharge control and water treatment with associated power and telecommunications equipment approved by the relevant water authority.
- 4.70. Rainwater captured from roof harvesting areas must be re-used for toilet flushing, washing machine and irrigation, controlled release or as detailed within the approved SMP.

### **Building Appurtenances**

- 4.71. All building plant and equipment on the roofs and public thoroughfares must be concealed and acoustically treated (as applicable) to the satisfaction of Council.

### 3D Model

- 4.72. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land (or as otherwise agreed with the Responsible Authority), a 3D digital model of the development and its immediate surrounds must be submitted to and approved by the Responsible Authority. The 3D model must be in accordance with the *Technical Advisory Note for 3D Digital Model Submissions* prepared by the Department of Environment, Land, Water and Planning.

### Advertising Signs

- 4.73. No advertising signs either external or internal to the building/s shall be erected, painted or displayed without the prior written approval of the Responsible Authority, unless otherwise in accordance with Clause 52.05 of the Planning Scheme.

### Melbourne Water Conditions (Flooding, Drainage and Sea Level Rise)

- 4.74. The following floor levels and installation requirements must be met:
- a) With the exception of retail areas and commercial floorspace including SoHo apartments the Finished Floor Levels (FFLs) of all ground floor areas (including all lift and stair lobbies), must be set no lower than 3.0 metres to Australian Height Datum (AHD);
  - b) The FFLs of retail areas and commercial lobbies must be set no lower than 2.4 m to AHD, with the exception of transitional areas containing landings, steps or ramps to the satisfaction of Melbourne Water. This does not include lift and stair lobbies, which must be constructed with minimum FFLs of 3.0 metres to AHD;
  - c) All areas with electrical installations (e.g. electrical substations, switch rooms etc) must be set no lower 3.0 metres to the AHD;
  - d) FFLs of the service areas for rubbish must be constructed no lower than 2.5 metres to the AHD;
  - e) Rainwater tanks must be shown with 10m<sup>3</sup> of storage per 200m<sup>2</sup> of roof area for the buildings;
  - f) Rainwater tanks must be shown to be designed to discharge in response to predicted rainfall events that could cause flooding;
  - g) Lateral clearance for asset replacement access for manholes and pipelines is to be a minimum of 2.5m (or other distance agreed by Melbourne Water) from the outside edge of the Johnson Street Main Drain and Melbourne Replacement Sewer, or outside any easement, whichever is greater. No permanent structures are permitted within this lateral clearance zone except with the approval of Melbourne Water;
  - h) The depth of the footings must be adequate to satisfy the angle of repose relative to the drain to the satisfaction of Melbourne Water.

### Department of Transport conditions or Head, Transport for Victoria

#### Public Transport (Bus Stop Works)

- 4.75. If the existing bus stop on Normanby Road (development side) cannot be used during the demolition and construction of the development a temporary bus stop must be provided in an alternative location at no cost and to the satisfaction of the Head, Transport for Victoria.
- 4.76. Any request for written consent to disrupt bus operations or a temporary bus stop on Normanby Road during the demolition and construction of the development must be

submitted to and approved by the Head, Transport for Victoria not later than 8 weeks prior to the planned disruption / temporary bus stop relocation and must detail measures that will occur to mitigate the impact of the planned disruption or temporary bus stop.

- 4.77. Prior to the occupation of the development, all works outlined on the endorsed plans for the updated bus stop (if any), bike facilities and public real works must be completed at no cost to and to the satisfaction of the Head, Transport for Victoria. Any temporary bus stop (if required) must be removed and the site reinstated to the satisfaction of the Head, Transport for Victoria.

#### Green Travel Plan

- 4.78. Prior to the occupation of each stage of the development, a Green Travel Plan must be submitted to and approved by the Responsible Authority in consultation with the City of Melbourne and the Head, Transport for Victoria. The Green Travel Plan must include, (but is not limited to), the following:
- a) Objectives for the Plan which are linked to measurable targets, actions and performance indicators;
  - b) A description of the existing active private and public transport context;
  - c) Initiatives that would encourage residents, employees and visitors to the development to utilise active private and public transport and other measures that would assist in reducing the amount of private vehicle traffic generated by the site including end of trip facilities;
  - d) Timescale and costs for each action;
  - e) The funding and management responsibilities, including identifying a person(s) responsible for the implementation of actions; and
  - f) A monitoring and review plan requiring annual review for at least five years.
- 4.79. The Green Travel Plan when approved must be implemented and complied with to the satisfaction of the and at no cost to Responsible Authority.

#### Roads

- 4.80. All disused or redundant vehicle crossings along Normanby Road must be removed and the area reinstated to kerb, channel and footpath to the satisfaction of and at no cost to the Head, Transport for Victoria prior to the occupation of the buildings hereby approved.

#### **Expiry**

- 4.81. The control in this document expires in respect of the Land if any of the following circumstances apply:
- a) development of the Land has not commenced within three (3) years after the approval date of Amendment C177port; or
  - b) development of the Land is not completed within five (5) years after the approval date of Amendment C177port;
  - c) The use of the Land has not commenced within five (5) years of the gazettal date of Amendment C177port to this Scheme.

**END OF DOCUMENT**