

Planning and Environment Act 1987

Fishermans Bend Standing Advisory Committee – Tranche 1C Report

**Port Phillip Planning Scheme draft Amendment
C166port
256-262 Normanby Road, South Melbourne (Site 2)**

6 August 2020

About this report

On 8 September 2019, the Minister for Planning signed a letter referring the following proposal to the Fishermans Bend Standing Advisory Committee (Committee):

- Port Phillip Planning Scheme draft Amendment C166port (256-262 Normanby Road, South Melbourne).

This is the report of the Committee under Section 151 of the *Planning and Environment Act 1987*.



Dalia Cook, Chair



Michael Kirsch, Deputy Chair



Stefan Preuss, Member
(Office of the Victorian Government Architect)

6 August 2020

Contents

	Page
1 Executive summary and recommendation	5
1.1 Summary.....	5
1.2 Conclusions.....	7
1.3 Recommendation	7
2 Introduction.....	8
2.1 Amendment summary.....	8
2.2 Procedural issues.....	11
3 Built form and design response	14
3.1 Building height.....	14
3.2 Building setbacks	19
3.3 High quality public realm, podium design and facades	26
3.4 Other design issues	29
4 Affordable housing	32
4.2 Is there a need to benchmark Affordable housing contributions?.....	33
4.3 The level of specificity for the Affordable housing commitment	36
4.4 Is it appropriate to provide an exemption in the Incorporated Document in line with the policy provision?	38
5 Flooding and flood mitigation	40
6 Other matters	46
6.1 Development contributions	46
6.2 Expiry of the Incorporated Document	46
6.3 Other submissions.....	47
6.4 Response to Terms of Reference	48
 Appendix A Recommended form of Incorporated Document	 50
Appendix B List of submitters.....	70
Appendix C Document List	71
Appendix D Summary of the Terms of Reference	83

List of Tables

Table 1	Amendment summary	8
Table 2	Summary of proposal underpinning the draft Incorporated Document	9
Table 3	Committee process	11
Table 4	DDO30 Area M1 Building typology and preferred precinct character	14
Table 5	Metropolitan Melbourne income ranges: 1 July 2020.....	33
Table 6	Response to mandatory considerations	48
Table 7	Response to report requirements.....	49

List of Figures

Figure 1	Site location	8
Figure 2	Normanby Road (southern elevation)	10
Figure 3	DDO30 Map 1 Building Typologies (precincts).....	15
Figure 4	DDO30 Map 2 Building heights	15
Figure 5	Comparison of Proponent and Council's preferred indicative tower floorplates	21
Figure 6	Street view massing of new built form with indicative building massing for Sites 1 and 3.....	23
Figure 7	Indicative tower floorplate layout	25
Figure 8	Council's indicative changes to entry arrangements at Montague Street	43

Glossary

the Act	<i>Planning and Environment Act 1987</i>
Affordable housing	has the same meaning as in section 3AA of the Act
AHD	Australian Height Datum
Amendment	draft Amendment C166port to the Port Phillip Planning Scheme
CCZ(1)	Capital City Zone Schedule 1
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
draft Guidelines	Draft Fishermans Bend Social and Affordable Housing Guidelines prepared on behalf of the Fishermans Bend Taskforce (version 3)
ESD	Environmentally Sustainable Development
Framework	<i>Fishermans Bend Framework, The next chapter in Melbourne's growth story, September 2018</i>
Planning Scheme	Port Phillip Planning Scheme
Precinct	Fishermans Bend Urban Renewal Area as included in mapping for the Capital City Zone Schedule 1
Review Panel	Fishermans Bend Planning Review Panel into Amendment GC81
SCO	Specific Controls Overlay
Sea Level Rise Guidelines	<i>Planning for Sea Level Rise Guidelines, February 2017</i>
SMP	Sustainable Management Plan
Taskforce	Fishermans Bend Taskforce
Terms of Reference	Terms of Reference for the Fishermans Bend Standing Advisory Committee signed by the Minister for Planning on 5 October 2018 and updated on 9 February 2020

1 Executive summary and recommendation

1.1 Summary

The subject land is one of three adjoining sites in the Montague Precinct of Fishermans Bend seeking a site specific Amendment to the Port Phillip Planning Scheme (Planning Scheme) to facilitate a specific use and development. The property is identified by the Department of Environment, Land, Water and Planning (DELWP) as Site 2. Sites 1 and 3 to either side of the subject land have been deferred from consideration by the Standing Advisory Committee (Committee) at the request of the Proponents.

The Proponent for the subject land circulated amended development plans in advance of the Hearing as a basis for evaluating the draft Incorporated Document. The Fishermans Bend Taskforce (Taskforce) and Port Phillip City Council (Council) responded that the built form would not represent a suitable response to character objectives for this sub-precinct, even though the amended plans would comply with the maximum 20 storey discretionary height control under the Design and Development Overlay Schedule 30 (DDO30).

Discussions continued between the Proponent, DELWP and the Taskforce before the Hearing in an attempt to arrive at a suitable built form response.

On the morning of the Hearing, the Proponent advised the parties that it proposed to rely on a 'new built form' consisting of increased side setbacks to the proposed building tower. A notable change was an increase in the setback above the proposed shared laneway to be created on the land. Setbacks within the podium and the amount of non-residential floor space would remain unaltered. If supported, the 'new built form' would be given effect to by conditions of the Incorporated Document requiring the proposed setbacks to form the basis of amended plans for approval.

DELWP and the Taskforce indicated they were prepared to support the draft Amendment based on the 'new built form'.

Although Council regarded the increased side setbacks proposed as an improvement, it continued to advocate for an increase in front and rear setbacks at tower level to both Normanby Road and Munro Street, as well as a reduction in overall building height to a maximum 15 storeys.

Other issues that remained unresolved between the parties at the Hearing included Affordable housing and how the design response should balance the risk of flooding with the need for active frontages at ground level.

Council was particularly concerned that the Proponent had not committed to any particular Affordable housing offer. In these circumstances, it urged the Committee with the benefit of expert evidence to impose a 'benchmark' for Affordable housing within the section 173 agreement proposed in the Incorporated Document.

The Proponent reiterated its commitment to provide Affordable housing as part of the development of the land but submitted that it was appropriate for the Incorporated Document to expressly contemplate a contribution below the 6 per cent minimum referred to in policy if certain circumstances applied. This approach was strongly opposed by DELWP,

the Taskforce and Council. At the conclusion of the Hearing, the Proponent agreed to remove this potential exemption from the draft Incorporated Document to satisfy these authorities.

Melbourne Water sought to impose conditions requiring finished floor levels to achieve sufficient clearance above the projected flood level. It would only be prepared to permit minimal transitional areas below this in the form of access infrastructure; not active commercial or retail use. It considered that the Proponent's plans could meet these requirements.

DELWP in particular sought a wider transitional area for active use at ground level but this was not supported by Melbourne Water. Council also suggested ways of consolidating access infrastructure to meet both Melbourne Water's preferences and activation imperatives.

The Committee accepts that the use and development intended to underpin the Incorporated Document for this site would achieve a high degree of compliance with policy objectives for Fishermans Bend. It further agrees that the remaining issues for its consideration are relatively narrow as identified by the parties – focusing on the adequacy of the built form response, securing a suitable contribution to Affordable housing and identifying a reasonable approach to ground floor levels and layout to balance relevant objectives.

On the issue of built form, the Committee concludes that the 'new built form' will achieve an acceptable response to building typology and preferred built form character for this part of the Montague Precinct. It would provide a slender tower with visual interest and capacity for suitable amenity outcomes for future residents and on adjoining sites. The podium treatment is consistent with expectations for this part of the Precinct and can be detailed to be suitably activated to both the main roads and the newly created laneway. The Committee does not support additional front and rear setbacks or a reduction in building height for the subject land as suggested by Council and is satisfied that the overall design response is appropriate for this site. The Committee concludes that the building would meet the maximum preferred height and minimum preferred setbacks while achieving relevant objectives of DDO30.

In relation to Affordable housing, the Committee agrees with Council that a level of specificity is desirable to enable a more comprehensive assessment of a proposal. However, in the absence of a specific proposal for Affordable housing, establishing a more general requirement in the Incorporated Document that is consistent with policy is one acceptable approach. This is the approach proposed by the three authorities and supported by the Proponent. However, the Committee observes that this approach would leave greater scope for negotiation (and potential disagreement) at the time the agreement is given effect to by a particular proposal since there is little detail in the relevant policy itself as to what practical contribution would meet the 6 per cent minimum requirement.

The Committee also confirms its view that the policy 'exemption' to enable less than 6 per cent Affordable housing should not be replicated in the Incorporated Document. The time to undertake this assessment is before gazettal of the Incorporated Document since it is an input into the evaluation of net community benefit. The Proponent has been provided with this opportunity but has not taken it up.

On the issue of striking the balance between protecting against flooding and seeking to activate key building frontages, the Committee accepts DELWP's position that it is preferable to provide a confined 'sacrificial' or transitional area for active use along the frontage especially given the intended role of Normanby Road as a key boulevard, even though this

may be below the preferred clearance above the flood level. Impacts could be managed through a flood mitigation plan condition of the Incorporated Document.

1.2 Conclusions

The Committee concludes:

- It is appropriate to prepare a Planning Scheme amendment introducing an Incorporated Document to facilitate the use and development of the subject land generally as proposed, reflecting the 'new built form' subject to refinements proposed by the Committee.
- The proposal is capable of meeting applicable policy for Affordable housing and the condition of the Incorporated Document proposed by DELWP and the Taskforce represents one feasible way forward.
- The Committee supports DELWP's preference for a functional transitional area within the frontage to the property to provide suitable street activation while managing the effects of potential flooding.

The Committee's recommended form of the Incorporated Document is provided at Appendix A of this report.

1.3 Recommendation

The Committee recommends:

Prepare and approve draft Amendment C166port to the Port Phillip Planning Scheme subject to the Incorporated Document as shown in Appendix A of this report.

2 Introduction

2.1 Amendment summary

The following tables outline key aspects of the site and its context as well as the proposal used to evaluate the site specific Amendment.

Table 1 Amendment summary

Amendment summary	
Amendment No	Port Phillip Planning Scheme draft Amendment C166port (Amendment)
Date of Amendment request	22 February 2019
Site address	256-262 Normanby Road, South Melbourne (Site 2)
Proponent	Ausan Property CBD Pty Ltd
Council	Port Phillip City Council
Exhibition	12 September to 11 October 2019
Parties notified	5
Submissions	6 (Refer to Appendix B)

The draft Amendment has been prepared by DELWP in a form that would comply with the Ministerial Direction on the Form and Content of Planning Schemes.

Figure 1 Site location



Table 2 Summary of proposal underpinning the draft Incorporated Document

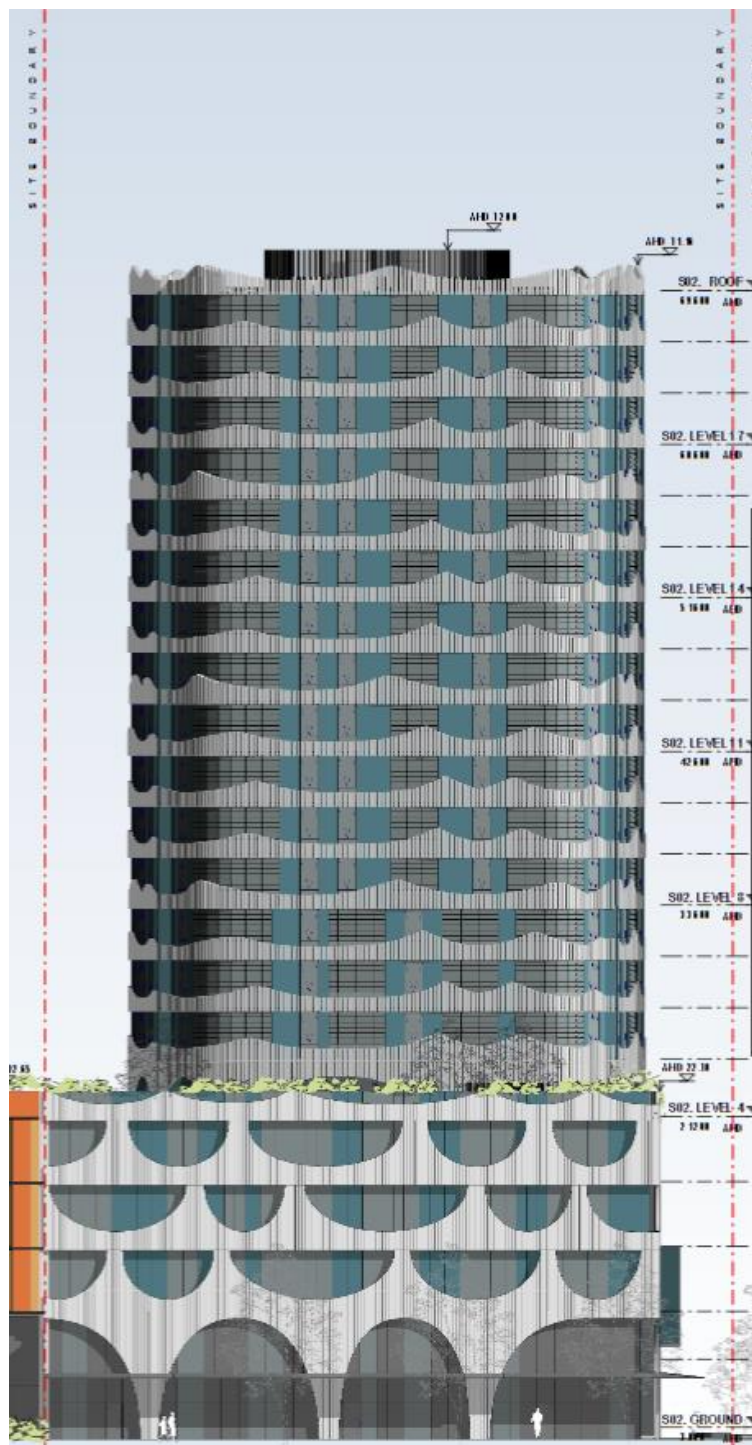
Proposal summary	Based on amended plans dated 14 April 2020 ¹
Site area	2,024 sqm
Land use	158 dwellings ² and 3,337 sqm of floor area for commercial and retail use
Site and surrounding area	The subject land is located mid-block on the northern side of Normanby Road and contains two attached double storey industrial buildings. Adjacent sites have industrial buildings of a similar scale. Land diagonally opposite at 245-251 and 253-273 Normanby Road both have approval for 40 storey residential buildings
Building form	Podium-tower typology
Height	Four storey podium (22.70 metres Australian Height Datum (AHD) to top of podium parapet) and 16 storey tower to a total of 20 storeys (71.10 metres AHD to top of parapet)
Setbacks	Podium: to boundary line at Normanby Road, Munro Street and western boundary, 4.5 metres from the eastern boundary to create a new laneway Tower: Minimum 5 metres from Munro Street and Normanby Road. 6.37 – 15 metres from the western boundary and 8.5 – 15 metres from the eastern boundary (new built form)
Other key elements	Ground floor and podium commercial tenancies sleeving car parking Communal terrace on podium roof 113 car parking spaces, 212 bicycle spaces and 3 motorcycle spaces ³
Zone	Capital City Zone Schedule 1
Overlays	Design and Development Overlay Schedule 30 Environmental Audit Overlay Infrastructure Contributions Overlay Schedule 1 Parking Overlay Schedule 1

¹ Unless otherwise specified. Consistent with the rest of this report, the variations proposed after the Hearing started to increase certain tower setbacks are referred to as the 'new built form'.

² The number of dwellings is expected to be reduced under the 'new built form' proposal.

³ Referencing the amended plans in Document 24c, although the Proponent agreed to modify the floor plan to cater for the 'new built form' including a maximum 110 car parking spaces.

Figure 2 Normanby Road (southern elevation)



Source: Amended application plans prepared by Hayball Architects dated 14 April 2020

Table 3 Committee process

Committee process	
Members	Dalia Cook (Chair), Michael Kirsch (Deputy Chair), Stefan Preuss (Office of the Victorian Government Architect)
Directions Hearings	30 October and 19 November 2019 25 March and 2 April 2020 (on the papers)
Hearing	15, 16, 18 and 19 June 2020
Site inspection	Unaccompanied, various dates in June and July 2020
Appearances	Mr Rupert Watters of Counsel with Ms Kate Morris, Solicitor, Harwood Andrews on behalf of the Department of Environment, Land, Water and Planning (DELWP) Mr Aidan O'Neill on behalf of the Fishermans Bend Taskforce (Taskforce) Ms Maria Marshall and Ms Kierra Parker, Solicitors, Maddocks, on behalf of Port Phillip City Council (Council). They called Dr Marcus Spiller, economist and town planner, SGS Economics Pty Ltd to give expert evidence Ms Kate Kinsella on behalf of Melbourne Water Mr Reto Hoffman and Gemma Robinson, Solicitors, Rigby Cooke on behalf of the Proponent. They called: <ul style="list-style-type: none"> - Mr Mark Sheppard, Urban Designer, Kinetica to give expert evidence - Mr Tom Jordan, Architect and Managing Director, Hayball Architects to outline elements of the proposal.
Date of this Report	6 August 2020

2.2 Procedural issues

(i) Terms of Reference

The Committee operates under Terms of Reference signed by the Minister for Planning. These were updated by the Minister on 29 April 2020 to provide a more streamlined process for future referrals that will involve only the issues in dispute between the parties being referred to the Committee, together with a Design Review report from the Office of the Victorian Government Architect.

The Committee indicated to parties that it intended to continue to undertake its role for the current draft Amendment under the Terms of Reference in force at the date this matter was referred to it namely, those updated on 9 February 2020 (Terms of Reference). No party raised any concern with this approach and the Committee was not given directions otherwise from either the Minister or the Department of Environment, Land, Water and Planning.

A summary of relevant aspects of this version of the Terms of Reference is provided in Appendix D to this report.

The Amendment proposes to introduce a site specific control in schedules to Clauses 45.12 and 72.04 of the Planning Scheme to facilitate the use and development of the land in

accordance with the conditions set out in an Incorporated Document pursuant to section 6(2)(j) of the *Planning and Environment Act 1987* (Act).

The Committee has evaluated the appropriateness of the draft Amendment and draft Incorporated Document by reference to the proposal for the use and development of the land as outlined in Table 2, subject to the Proponent's commitment to amended plans being prepared for approval to reflect the 'new built form'.

(ii) Conduct of the Hearing

The Hearing was conducted during the Coronavirus pandemic when people were encouraged by the State Government to work from home if possible and to observe social distancing requirements. Consequently, the Hearing was held by video conference hosted by Harwood Andrews, solicitors for DELWP.

The Committee is conscious of requirements for Panel hearings to be made public, consistent with the updated requirements of the *COVID-19 Omnibus (Emergency Measures) Act 2020* in conjunction with the Act.

However, the same obligation does not arise for Advisory Committees under the Act and the Terms of Reference enable the Committee to control its hearing processes. On this basis, the video conference hearing was not live streamed although a link was made available to any person who requested it.

(iii) Application plans and documents

The Committee had prepared to consider the proposed development on the basis of plans prepared by Hayball Architects dated 14 April 2020 (Revision 2)⁴ as circulated by the Proponent (referred to as the 'amended plans'). However, on the morning of the Hearing the Proponent requested and was granted an adjournment to enable parties to consider a proposal with increased tower side setbacks (referred to as the 'new built form'). On return to the Hearing, the Proponent confirmed that it would be prepared to commit to amending the proposal to reflect the setbacks shown in Document 80.

The other parties provided their updated positions on the basis of the new built form, subject to the preparation of more detailed plans, including indicative plans indicating the ability to comply with Clause 58 (Better Apartment Design Standards). This further material was provided by the Proponent during the Hearing (Documents 100 and 101) and no party raised any substantial concerns with this material.

As indicated above, the changes proposed in the 'new built form' plans were sufficient to satisfy both DELWP and the Taskforce that it would be appropriate for them to support the proposal underpinning the Incorporated Document as consistent with preferred neighbourhood character and building typology subject to conditions.

Council expressed concern that it had only been advised of the proposed changes on the morning of the Hearing and had prepared detailed submissions on the basis of the amended plans circulated at the direction of the Committee. Ultimately, Council took a pragmatic view to enable the Hearing to progress with updated input from Council officers and confirmed its view that the Committee had accorded procedural fairness to all parties.

⁴ Document 24c.

The Committee considers itself obliged to comment on the course of action adopted by the Proponent. In terms of outcomes, there is no doubt that it is desirable for a proponent to work with all authorities to try to arrive at a built form proposal:

- that would respond suitably to relevant planning controls and policies
- that would achieve acceptable outcomes for the Precinct
- against which the site specific amendment can be evaluated.

However, the timing in this matter was a concern to the Committee since it had the potential to disadvantage parties and to disrupt the hearing process. It also left built form outcomes somewhat uncertain since only a ‘snapshot’ of the key changes were indicated in plan form but a full package of amended plans was not provided. This issue is addressed further in Chapter 3, with consequential recommendations for the wording of the Incorporated Document.

The Committee rejects the submission by the Proponent that “key” authorities had been consulted about potential changes on a ‘without prejudice’ basis and that Council could have been more proactive to involve itself in these discussions. It is incumbent on a proponent to involve all authorities in this type of discussion as early as possible given their statutory function and expertise pertaining to development in the precinct.

The Committee is conscious of the need to deal with referred matters efficiently and the State Government directive to facilitate consideration of proposals within minimum timeframes. On this basis, the Committee considered it was appropriate to proceed on the basis of the Proponent’s commitment to the ‘new built form’. These modifications to the proposal were able to be tested (at least in principle) by parties and the Committee at the Hearing, including through the expert evidence of Mr Sheppard.

The Committee has also had regard to all documents referred to it by DELWP, including submissions from non-attending authorities in addition to all documents on the tabled document list at Appendix C.

(iv) Cultural Heritage Management Plan

The land is within an area of identified cultural heritage sensitivity having regard to its proximity to the Yarra River. The *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2018* require a Cultural Heritage Management Plan to be prepared and approved for the relevant activity area unless the proposal is demonstrated to be exempt.

The Committee is satisfied that the Act does not define the amendment of a planning scheme as a “statutory authorisation”, prior to which a Cultural Heritage Management Plan or relevant exemption must be resolved. Rather, these requirements must be met before the start of any works on the land.

Consequently, this matter can be addressed through a condition of the draft Incorporated Document as proposed by the parties, consistent with other referrals to date. Any report submitted by a qualified professional concluding that there has been significant ground disturbance across the entire activity area (such that the proposed activity is exempt from the need for a Cultural Heritage Management Plan) would need to be submitted to the satisfaction of the Minister for Planning as Responsible Authority.

3 Built form and design response

3.1 Building height

(i) The issues

The issues are:

- would the proposed building height of 20 storeys be consistent with preferred built form outcomes for this part of the Montague Precinct?
- is there a need to reduce the proposed building height to 15 storeys to achieve relevant objectives?

(ii) Relevant policies, strategies and planning scheme provisions

The CCZ1 (Clause 37.01) includes the purpose:

To create a thriving urban renewal area that is a leading example for design excellence, environmental sustainability, liveability, connectivity, diversity and innovation.

More detailed, place specific policies are contained in the Design and Development Overlay Schedule 30 (DDO30) and include encouragement of:

- ... varied built form typologies that align with the precinct character area as detailed in the relevant Schedule to the Design and Development Overlay.

The Vision for the Precinct is contained in Clause 21.06-8 of the Planning Scheme. It seeks a distinct character and identity for each Precinct, with a preferred future character and built form typology. DDO30 includes the site in Area M1 of the Montague Precinct (refer to Figure 3) and applies the following key provisions.

Building typology and precinct character

Table 4 DDO30 Area M1 Building typology and preferred precinct character

Building typology	Preferred precinct character
Hybrid (predominantly mid-rise)	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 height

Discretionary maximum building height of 68 metres (20 storeys). This is consistent with Figure 10 (Building heights) in the Framework that applies the same height designation to the site and the broader area between Munro Street and Woodgate Street.

Figure 3 DDO30 Map 1 Building Typologies (precincts)

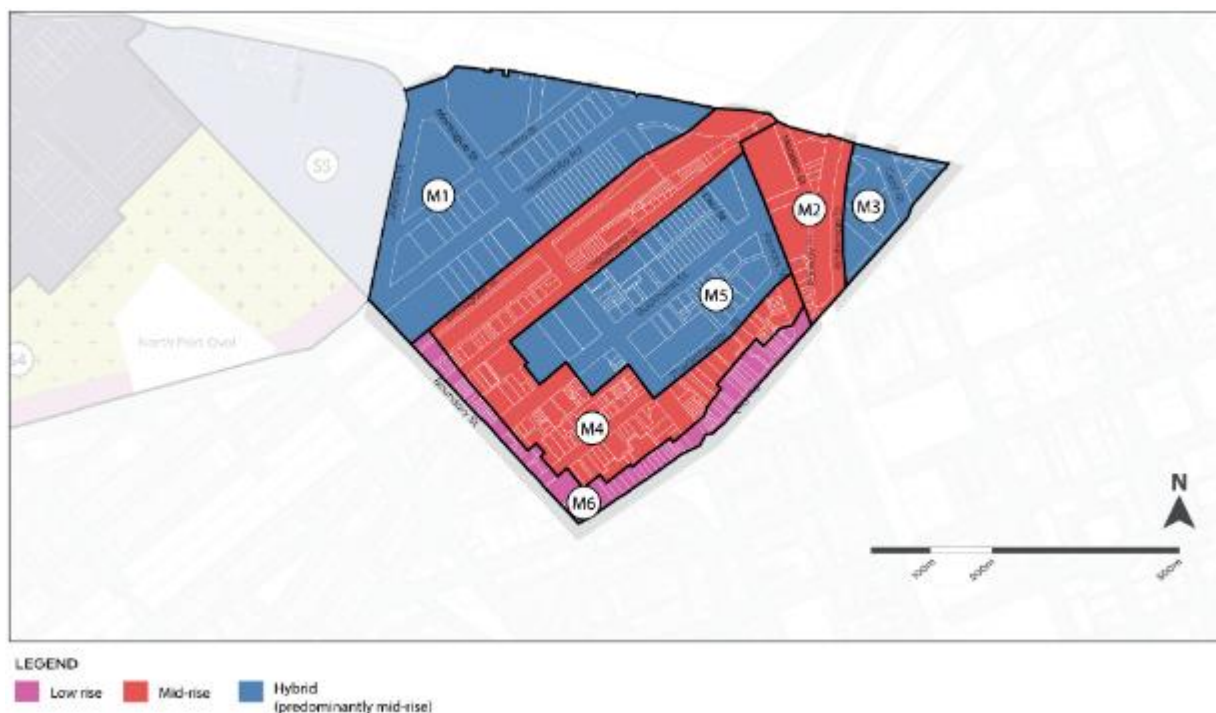
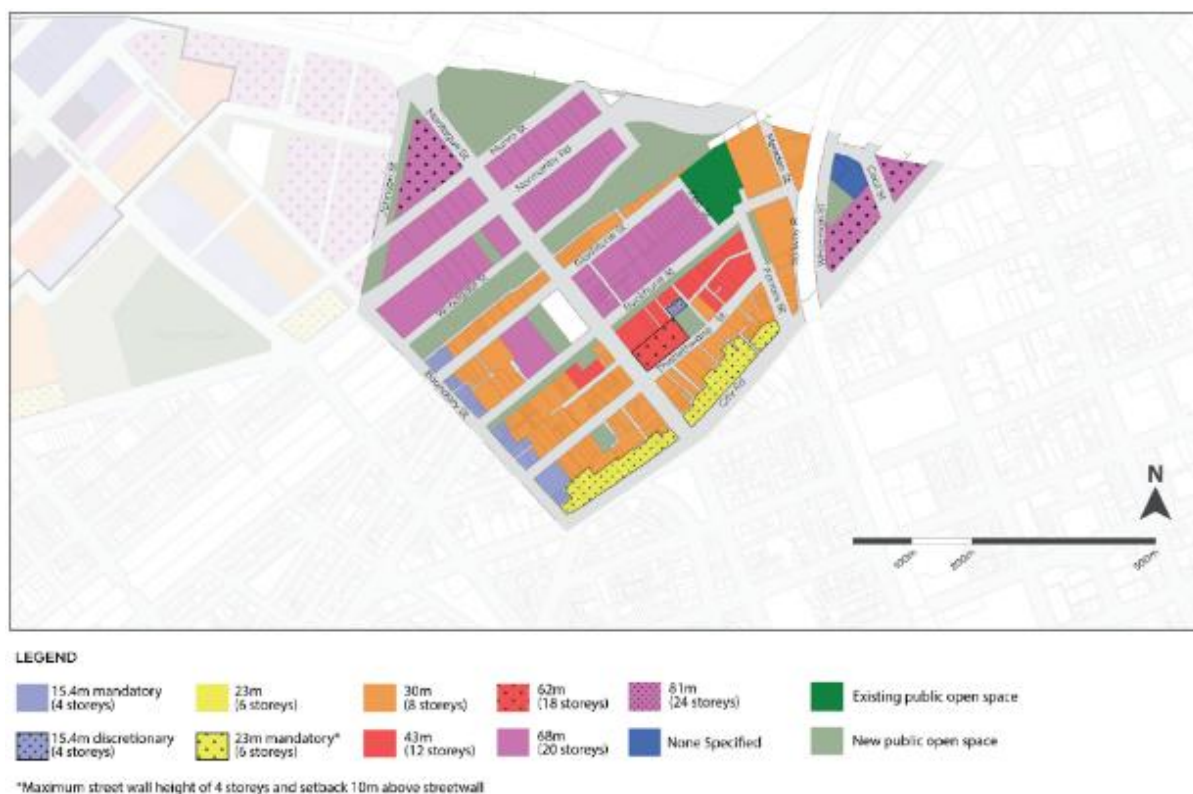


Figure 4 DDO30 Map 2 Building heights



Street wall height

Discretionary street wall height between 4 – 6 storeys.

It is policy in Clause 22.15 (Fishermans Bend Urban Renewal Area Policy) to assess applications against the following criteria:

- *Buildings should contribute to a high quality public realm.*
- *Developments should deliver spaces, including open spaces, for people to meet, gather, socialise, exercise and relax.*
- *Developments should deliver variation in massing, building height, and roof forms and staggering or offsetting of tower footprints.*

(iii) Evidence and submissions

DELWP and the Taskforce originally indicated they were not satisfied that the proposed built form depicted in the amended plans (including a 20 storey building height) circulated in accordance with the Committee's directions (Document 24c) (referred to in this Report as the 'amended plans') would respond suitably to the preferred future character of the Montague Precinct. Similarly, Council did not support the building height and setbacks of the proposal.

However, at the Hearing, DELWP and the Taskforce confirmed that they would support the building at the 20 storey height proposed subject to modified tower side setbacks as committed to by the Proponent (referred to in this Report as the 'new built form'). DELWP submitted that the 20 storey height was within the preferred height range and consistent with the mid to high rise character sought for the area. DELWP also noted that the proposed setback and building form changes (discussed in the following section) were a significant improvement and ameliorated its earlier concerns about the building's height.

The Proponent submitted that a 20 storey building height was consistent with DDO30 and would provide an appropriate transition in height from taller buildings in the area.

Mr Sheppard gave expert urban design evidence on behalf of the Proponent. He regarded the proposal depicted in the amended plans would be acceptable subject to confined changes such as refinements to the ground floor canopy. He noted that DDO30 contemplates taller, high rise buildings where the built form objectives are achieved and that a 15 storey office building, which would comply with the discretionary maximum height would be approximately 58 metres high; not much lower than the proposal. Mr Sheppard considered that:

- the proposed height varies from almost all of the existing, approved and proposed building heights in the area and will therefore contribute to a *"varied and architecturally interesting skyline"* as sought by policy
- the building will not cause material additional overshadowing of the footpath or the proposed park on the south side of Normanby Road compared with the preferred DDO envelope and would comply with DDO30 overshadowing requirements.

Mr Sheppard concluded that the proposed height *"complies with the discretionary maximum height, achieves the Built form outcomes and will help deliver the preferred character and built form typology for Area M1"*.

Council submitted that the building should be consistent with the intent for a predominant mid-rise typology and its height should be reduced to 15 storeys accordingly. This would achieve appropriate variation when considered in the context of the site, including the 20 and 21 storey towers most recently proposed for the adjacent sites (referred to by DELWP as Sites 1 and 3).⁵ Council submitted that Mr Sheppard's reliance on existing and proposed buildings

⁵ Those referrals are currently on hold at the request of the Proponents.

taller than 20 storeys did not take into account that these buildings were approved under the previous planning controls and did not contribute to the mid-rise objectives now in place. Council was also concerned that if a 20 storey building was approved on this site, it would become the benchmark for future applications.

(iv) Discussion

The assessment of an appropriate building height for this site triggers the consideration of a range of factors and is not limited to the numeric guidance provided in DDO30. While these provisions are important, acceptable heights also need to be considered within the context of the overarching design outcomes that are sought and that informed the preferred typology and precinct character.

The Committee acknowledges Council's support for a 15 storey building, and its view that the acceptable maximum height should be consistent with the DDO30 preferred precinct character of *"mid to high-rise development"* with a *"hybrid (predominantly mid-rise)"* building typology. The Committee accepts that at this point in time, no current approvals have been granted for the northern side of this part of Normanby Road and there is an opportunity to contribute to the achievement of preferred character outcomes.

However, DDO30 also contemplates buildings up to 20 storeys, consistent with the building heights in the Framework. Beyond this, there is little specific guidance about the relative proportions or preferred locations sought for mid or high-rise buildings, other than the general preference for a *"predominantly mid-rise"* building typology.

A common sense reading of this suggests that the majority of buildings should be in the mid-rise range and that not all of these buildings should be at the upper end of the preferred height.

In considering these provisions, the Committee has also been influenced by the overarching design outcomes that are sought for this area. Mr Sheppard adopted a similar approach and noted that these outcomes include achieving a *"varied and architecturally interesting skyline"* and limiting *"impacts on the amenity of the public realm as a result of overshadowing and wind"*. The Committee agrees that while the preferred heights in the DDO30 are an important factor, they must be considered within the context of the broader objectives within which they are set.

The Committee agrees with Council's observation that there are a significant number of existing and approved buildings that are above the mid-rise range and in some cases significantly outside that range. The Committee also expects that taller buildings (beyond 20 storeys) might be justified for some additional sites that are directly adjacent to taller buildings to provide a 'transition' in building height and partly screen these buildings in streetscape views. The Committee supported this approach in relation to Site 6 (C163port), although it recommended a lower height than was generally agreed in submissions to more closely align with Precinct objectives.

These factors suggest that the scope for predominantly mid-rise buildings is more limited than the DDO30 anticipates and that a strict application of preferred building typology would restrict many, if not all, remaining sites to heights up to 15 storeys. It is not clear that this would necessarily be an appropriate response to other relevant considerations, such as

individual site context, including how they relate to existing and approved high-rise buildings in the area.

For this reason, the Committee is prepared to accept a degree of flexibility up to the mandatory maximum 20 storey height, however, this balance needs to take account of other design benefits and positive outcomes. This is consistent with DEWLP's acknowledgement in its Part B submission *"that height and building typology are only two aspects of the design of the development and that a sufficiently well-designed building which delivered strongly on other objectives might represent an acceptable outcome even if it was of a high-rise typology"*.

Having assessed the new built form proposal, the Committee is satisfied that it has a number of positive design elements, including the revised tower floorplate and setbacks, and will achieve the broader outcomes sought in the DDO30. The Committee is also satisfied that the proposed height is a reasonable response to the existing and approved buildings in the immediate area, while providing appropriate variation in building height.

Although not directly relevant to its built form assessment, the Committee notes that the proposal will have broader benefits such as the provision of additional housing, including affordable housing, a positive mix of residential and commercial uses, high quality apartment design and a contribution to the proposed laneway on its eastern boundary. In an overall sense, the Committee is satisfied that, subject to architectural design development, the amended proposal would be a suitable response to the 'design excellence' provisions.

On balance, the Committee is satisfied that a 20 storey building on this site is appropriate, subject to it including the setbacks and other design elements that are discussed later in this report. In combination, these design elements will result in a development that is consistent with the majority of the overarching outcomes and objectives sought in the DDO30 and the Framework.

In reaching this position, the Committee acknowledges that a 20 storey building might potentially impact on the ability of the precinct to deliver the preferred building typology objective, but it is satisfied that a well-designed building of this height would be appropriate for this site.

There was discussion during the Hearing and in submissions about the relationship of this land (Site 2) with Sites 1 and 3. At Directions Hearings for these three referrals, the Committee indicated a strong preference for these matters to be heard and assessed together to enable consideration of the relationships between these buildings and emerging precinct character. However, this did not eventuate due to requests for deferral from the Proponents of Sites 1 and 3.

The Committee accepts that approving a 20 storey building on this land would be a relevant factor in assessing suitable building heights on directly abutting Sites 1 and 3. For example, Mr Sheppard explained that the Proponents of these sites were in the process of revisiting building heights with input from DELWP and consideration is being given to a reduction in height for Site 3 to reduce overshadowing to the proposed park opposite. Although the Committee has not formed any views about the merits of the proposals for Sites 1 and 3, their assessment will, in the future, need to respond the general aspiration for predominantly mid-rise buildings, with a presumption that buildings should not exceed 20 storeys and that there should be variation in building height. The approval of a 20 storey building on Site 2 will no

doubt be a factor in the consideration of those provisions, and will potentially impact on the determination of appropriate building heights for those sites.

Finally, DELWP noted that there was an element of “*first in first served*” in relation to Site 2 and the impacts this might have on the future consideration of the proposals for Sites 1 and 3. While this is not a principle enshrined in the planning scheme provisions, it is a somewhat inevitable consequence of development applications being considered and approvals being granted at different times.

(v) Conclusion

The Committee concludes:

- A building with a 20 storey height with increased tower side setbacks and a clearer, more slender architectural form proposed by the Proponent during the Hearing would constitute an acceptable design response for this land. It would come within the definition of ‘high rise’ development which is contemplated within the Precinct and would meet the upper end of the preferred maximum building height under DDO30. It would also provide opportunities for a varied skyline particularly when viewed in the context of potential heights on land yet to be redeveloped and other taller approved development nearby.
- It is not necessary to reduce the height of the proposed building to 15 storeys as proposed by Council to achieve an acceptable response to current policies and controls.

3.2 Building setbacks

(i) The issues

The key issues are:

- the acceptability of the setbacks proposed by the Proponent at the Hearing, identified as the ‘new built form’
- whether it is necessary to achieve the front and rear setbacks preferred by DDO30 for this site.

(ii) Relevant policies, strategies and planning scheme provisions

Setbacks above the street wall

DDO30 Table 4 sets out the following setbacks above the street wall:

- 10 metre preferred (discretionary) setbacks for buildings between eight and twenty storeys
- 5 metre minimum (mandatory) setbacks for buildings between eight and twenty storeys.

Side and rear setbacks

DDO30 Table 5 sets out the following side and rear setback provisions.

Part of building	Building height	Qualification	Preferred setback	Minimum setback
Below the Maximum street wall height	None specified	if not within 300 mm of a side or rear boundary	9 metres	6 metres
Above the Maximum street wall height	≤ 20 storeys	where any part of the building below the Maximum street wall height is built on the boundary	10 metres	5 metres
		other buildings	10 metres	10 metres
	> 20 storeys	where the building has direct interface with: West Gate Freeway City Link overpass	10 metres	5 metres
		other buildings	10 metres	10 metres

For this site, the preferred side and rear setbacks above the street wall are 10 metres, with a minimum of 5 metres.

In addition, *“That part of a building below the maximum street wall height should be built on or within 300mm of a side boundary”*.

A planning scheme amendment can depart from these provisions, but the ToR direct the Committee’s consideration to how a proposal performs relative to the full suite of the controls introduced by GC81, including DDO30.

(iii) Evidence and submissions

DELWP and the Taskforce raised concerns about the tower setbacks in the amended proposal circulated before the Hearing but supported the revised setbacks shown in the ‘new built form’ proposal, subject to the apartments achieving the objectives of Clause 58 (Better Apartment Design Standards).

The ‘new built form’ proposal provides:

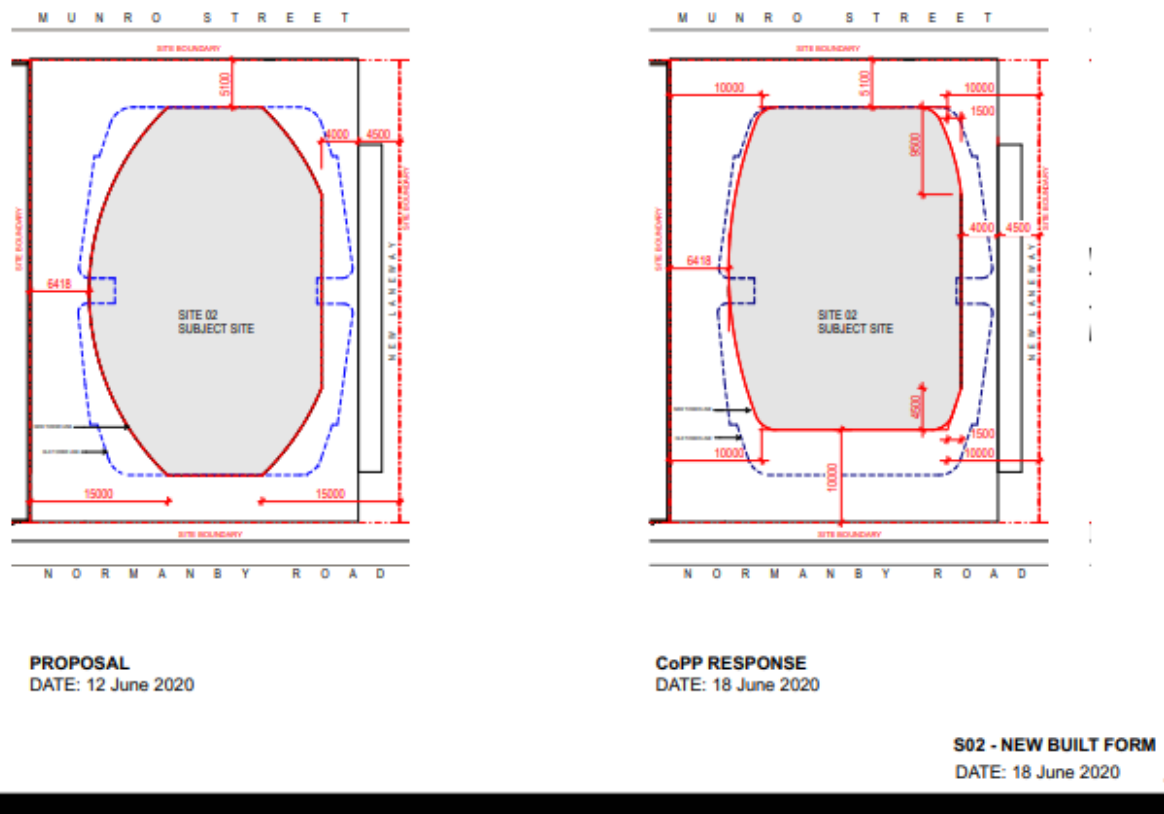
- curved archways at podium level, with entries and glazing set back behind this
- a 4.5 metre wide laneway at ground floor along the eastern boundary with a minor reduction of 50 millimetres to 4.45 metres
- varying front and rear setbacks above the podium that begin at 5 metres at the centre of the site
- an eastern setback above the podium that varies between 4 metres and 10.5 metres (according to Council’s response diagram), together with a 4.5 metre setback from the lane centreline, this represents an 8.5 metre – 15 metre setback
- a western setback above the podium that varies between 6.42 metres and 15 metres (according to Council’s response diagram).

Council raised various concerns about the proposed setbacks in the context of its preference for a 15 storey building and submitted that:

- the podium setback to the laneway should be retained at 4.5 metres and not be reduced to 4.45 metres (to overcome potential complications with applying Clause 2.8 of DDO30, referring to streets less than 9 metres wide)
- the front tower setback to Normanby Road should be increased to 10 metres, consistent with approved setbacks on the opposite side of Normanby Road
- the rear tower setback to Munro Street should be increased to 10 metres, although it would support a 5 metre setback if the 10 metre setback to Normanby Road was provided
- while the tower side setbacks *“are a significant improvement on the built form”*, the proposed maximum 15 metre side setback at the front and rear (largely a product of the elliptical building shape proposed) are *“excessive”* and should be reduced to a maximum of 10 metres.

The indicative setbacks of the ‘new built form’ are depicted on the left of Figure 5 overlaid on the amended plans indicative tower footprint. The same exercise is undertaken on the right of the figure for Council’s preferred indicative tower setbacks.

Figure 5 Comparison of Proponent and Council’s preferred indicative tower floorplates



Source: Document 97

The Proponent outlined the background to the proposed setback changes and submitted that the ‘new built form’ was an appropriate response to the built form outcomes sought in the DDO30. It relied on the evidence of Mr Sheppard whose expert evidence responded to the amended plans circulated before the Hearing, dated 14 April 2020. Mr Sheppard assessed

the proposal against the DDO30 and concluded that it was an appropriate urban design response to its physical and planning context.

Mr Sheppard assessed the podium arrangement and noted that the street wall heights and other design elements are consistent with DDO30. However, he recommended that the height of the proposed canopies along Normandy Road, Munro Street and the proposed laneway be reduced by 0.8 metres to three metres above the ground.

Mr Sheppard then assessed the tower front setbacks against the DDO30 built form outcomes and concluded that:

- the side tower setbacks result in a tower width at the street frontages that is approximately half of the lot width, allowing for a good level of solar access, daylight and sky views for future residents, particularly if adjoining sites were developed with comparable setbacks
- overshadowing diagrams prepared by Hayball Architects show that the additional shadow impact caused by the 5 metre setbacks would have a minor impact
- the width of the streets and the relative narrowness of the tower will allow good daylight in both streets
- the five metre setback will not unreasonably diminish sky views from Normanby Road or Munro Street or result in an unreasonably overwhelming form or visual bulk from the public or private realm compared to a 10 metre setback.

Mr Sheppard also assessed tower side setbacks against the DDO30 built form outcomes and concluded that:

- shadow diagrams prepared by Hayball Architects demonstrate that reduced setbacks will not have a material impact on solar access
- they would result in a reasonable level of amenity for the new laneway on the eastern side of the property
- the shape of the tower floorplate and the internal layouts will provide good internal outlooks, even if the neighbouring properties are similarly developed
- the shape of the tower floorplate will:
 - maintain clear view lines between it and neighbouring towers with a similar floorplate
 - provide sky views and sufficient spacing between buildings
 - avoid unreasonable visual bulk
 - avoid a continuous wall when seen from street level
- if the proposed tower floorplate was replicated on abutting properties, the 10 metre cumulative separation between tower forms would avoid the need to provide privacy screens to habitable areas.

The Committee invited Mr Sheppard to provide a memo advising if any of his opinions had changed as a result of the changed tower setbacks in the 'new built form'. Mr Sheppard provided an addendum to his evidence report⁶ that included:

The proposed changes will reduce the impact of the proposed tower on the amenity of the public realm and improve the amenity of its residents and future residents to the east and west. In particular:

⁶ Document 93.

- *The narrower edge of the tower at each street frontage will reduce its impact on the sense of openness, extent of sky view and daylight experienced within each street.*
- *The narrower edge of the tower at the Normanby Street frontage will reduce the extent of shadowing on the southern footpath.*
- *The length of each street from which it will be possible to see sky between adjoining towers will increase and is likely to more closely match that which would result from towers that conform with the preferred tower setbacks*
- *The greater side setbacks will improve the daylight and outlook experienced from the proposed and future neighbouring apartments, particularly if this form is replicated on the adjoining properties.*

The 'new built form' is modelled volumetrically in Figure 6.

Figure 6 Street view massing of new built form with indicative building massing for Sites 1 and 3



Source: Documents 81 and 82

(iv) Discussion

The Committee notes that the front and rear setbacks are 5 metres or greater and therefore comply with the DDO30 mandatory minimum provision.

The Committee believes that the DDO30 preferred 10 metre front and rear setbacks would typically be intended to apply to generally rectilinear building. In this case, the proposal is for a generally elliptical building, which results in the shape itself mitigating some of the impacts that setbacks try to achieve for a more conventional rectilinear building.

The proposed elliptical building shape also supports the following objectives:

- enabling adequate daylight and sunlight in streets and laneways
- allowing for views to the sky from the street or laneway

- not overwhelming the public realm
- minimising the visual bulk of upper floors when viewed from streets and laneways
- ensuring tall buildings do not appear as a continuous wall when viewed from street level
- achieving privacy through separation rather than screening.

The Committee is satisfied that the elliptical shape broadly meets the intent of the preferred 10 metre setbacks.

The Committee does not consider that Council's proposed floorplate is a suitable design response for this site as it would result in wider, bulky frontages. Further, while it would somewhat decrease overshadowing to Normanby Road due to the 'cut-off' southern end and a resulting shorter shadow, it would increase overshadowing to the laneway due to the wider Munro Street frontage and would narrow diagonal view lines between the buildings. The Proponent provided an indicative tower floorplate layout (Document 111) in support of its proposal shown in Figure 7.

- sunlight and daylight penetration to apartments of the proposal and future neighbouring buildings views from apartments to open sky privacy between neighbouring buildings due to angled facades
- perception of visual bulk due to a more slender frontage.

In summary, the disadvantage of the longer shape (towards the south) is offset by the benefits of the narrower frontage (particularly to the north) in an overall clearer and more convincing design approach. This is also more consistent with the high quality design sought for the Precinct. The Committee therefore considers that the proposed setbacks are a suitable design response to DDO30 and preferred character.

(v) Conclusions

The Committee concludes:

- The minimal setbacks at podium level are consistent with policy objectives relating to consistent, activated streetscape and laneway presentation.
- The side setbacks proposed in the ‘new built form’ for the tower would create a slender building with a generally elliptical form which is supported. This would deliver advantages by reducing visual impact on the public realm, including views from and through the new laneway. It would also facilitate improved sky views and access to daylight for future residents and reduce overshadowing on the laneway compared with a more rectilinear floorplate.
- Although there may be sound reasons why a 10 metre front and rear setback should be supported for some sites within this precinct in line with provisions of DDO30, the proposed tower setbacks of 5 to 15 metres to Normanby Road and Munro Street would achieve an acceptable built form outcome at this site.

The increased side setbacks in the ‘new built form’ are key to the Committee’s overall support for the proposal. However, given timing, the Proponent was unable to provide a comprehensive set of plans on which to base the Incorporated Document. Instead, it committed to conditions in the Incorporated Document requiring the preparation of a full set of amended plans to give effect to the nominated reduced setbacks. The changes supported by the Committee are included in the recommended Incorporated Document at Appendix A.

3.3 High quality public realm, podium design and facades

(i) The issues

Key issues are:

- is the podium and facade design consistent with objectives for the sub-precinct or are improvements warranted as suggested by authorities?
- what main changes to achieve active and functional street and laneway frontages should be directed through conditions of the Incorporated Document?

(ii) Relevant policies, strategies and Planning Scheme provisions

The DDO30 seeks:

Active street frontage

Buildings fronting the Primary (Normanby Road) and Secondary (Munro Street and indicative laneway) active streets should:

- achieve a diversity of fine-grain frontages
- provide canopies over footpaths where retail uses are proposed
- deliver the clear glazing specified in a table to the clause.

Building finishes

Built form outcomes:

- Facade finishes that:
 - Provide visual interest on all facades
 - Do not compromise road safety.

Built form requirements:

- Buildings should avoid blank facades.
- Building walls facing a street or public place should be detailed to provide visual interest
- Buildings fronting main roads should use materials and finishes with a perpendicular reflectivity less than 15 per cent, measured at 90 degrees to the facade surface.

(iii) Evidence and submissions

DELWP generally supported the detailed design changes sought by Council (discussed below) in addition to the following changes:

- *... resolution of floor levels between the retail tenancies and new laneway to achieve floor alignment and street activation to the greatest extent possible*
- *Location of fire booster cupboards and other services along street frontages as required. This service must be integrated as part of the architectural design of the building.*

DELWP also raised issues related to flooding and finished floor levels that are discussed in section 5 of this Report.

The Taskforce generally supported Council's commentary on "*public realm engagement*" and provided some commentary on the Normanby Road and laneway frontages.

Council responded to various detailed design issues, and submitted that:

- the canopy over the Munro Street footpath should be reduced in height from 3.8 metres to 3.0 metres (as recommended by Mr Sheppard) except where it extends over a driveway
- elements of the podium arrangement should be redesigned, including:
 - the street presentation of the building
 - the entries to the retail tenancies.

In relation to the podium reconfiguration, Council sought:

- reconfiguration of the Normanby Road retail tenant entries by:
 - consolidating the stairs and disabled ramp (or lift)
 - extending retail floorspace to the facade

- provision of more legible, fine-grained and pedestrian scale entries to all retail tenancies
- provision of a second entry to the easternmost retail tenancy fronting Normanby Road from the laneway
- relocation of the commercial lobby further south along the lane to allow a retail tenancy to be located on the corner of Munro Street and the lane
- more legible entry points designed to communicate the use
- broader, splayed and recessed entrances to Normanby Road.

These changes were supported by DELWP and the Taskforce and are addressed in the recommended Incorporated Document at Appendix A.

Council also identified various poor design outcomes associated with the flood related internal level changes within the tenancies fronting Normanby Road. These are discussed in Chapter 3 of this Report.

The Proponent acknowledged the various detailed changes that were sought by other parties and although it did not oppose any of the ground level changes in principle, it expressed a preference for a degree of flexibility in how the ground floor tenancies were configured and accessed to provide options for future tenants. Mr Sheppard also queried whether the level of design specificity sought by Council was necessary and agreed with the Proponent that it would be reasonable and appropriate to retain a degree of flexibility.

(iv) Discussion

The Committee notes that the ‘new built form’ proposal has only been presented as conceptual volume with an indicative floor plate. Mr Jordan (Architect and Managing Director, Hayball Architects) stated that a similar architectural approach would be applied when documenting the ‘new built form’ as for the earlier version of the proposal, however this does not give certainty about the actual outcome. Ideally, the actual design and facade proposals, with all drawings and relevant details, would have their design quality assessed and approved prior to the Incorporated Document being approved.

Nevertheless, the Committee has reviewed the changes sought by the authorities and generally supports them.

The Committee agrees with the emphasis placed by the parties on the presentation of the front facade to Normanby Street, a designated key boulevard, and the need for a streamlined, activated interaction between the building and the newly created laneway to its east. The Committee has also included a condition requiring that the canopies to be reduced from 3.8 metres to 3.0 metres consistent with Mr Sheppard’s recommendation, except where it extends over the Munro Street driveway.

The Committee’s review of the proposal also identified further issues that require resolution when the amended plans are prepared:

- the edge details of the podium facades where turning the corner to the laneway and abutting site 1 – this can be addressed through the Incorporated Document condition that requires the preparation of a ‘facade strategy’
- facade maintenance needs to be demonstrated on both, podium and tower facades, particularly between external opaque elements (such as precast concrete panels or aluminum blades) and the glass facade - this too can be addressed as above

- revised podium design including:
 - reconsideration of the relationship between the bold ground and mezzanine arches with their very shallow depth to the glass facade. This is a key issue for resolution.
 - a more carefully considered and fine grain retail facade as a default
 - consideration of legibility and signage of retail tenancies, residential and commercial lobbies

These issues can be addressed through conditions of the Incorporated Document requiring the preparation of amended plans, including the Committee's refinement to Condition 4.7 (h) (iii)

- the provision of at grade access from the residential car park to the residential lift core – the Committee has included an Incorporated Document condition requiring safe access from residential car parking areas to residential lift doors
- confirmation that the walls separating the commercial tenancy from the car park can largely be removed to enable a future commercial use, demonstrating adaptability – the Committee has included an Incorporated Document condition to that effect.

The Committee acknowledges the need for flexibility in commercial and retail floorplates and facade design to cater for future tenants who are not yet identified. For instance, there is scope for some of the ground floor tenancies to be amalgamated to suit larger tenancies and this would impact the placement of entries and other fenestration. On balance, the Committee considers that the refinements it has recommended or supported would achieve good universal building outcomes and would not compromise bespoke solutions for future tenants. These practical issues can be addressed by secondary consent provisions to be included in the Incorporated Document, allowing the Responsible Authority to approve amendments that would comply with conditions if demonstrated to achieve acceptable outcomes.

(v) Conclusion

The Committee concludes:

- The podium design is broadly acceptable, but various detailed design elements should be reviewed and improved in the amended plans to be prepared under the Incorporated Document.
- The changes sought by the authorities are appropriate and should be included as requirements of the Incorporated Document.

The changes supported by the Committee are included in the recommended Incorporated Document at Appendix A.

3.4 Other design issues

(i) The issues

The issue are:

- would the 'new built form' proposal comply with Clause 58?
- what laneway width along the eastern boundary of the site is desirable?
- whether the proposal acceptably meets policies seeking high standards of environmental sustainability

- the need for a revised wind impact assessment.

(ii) Clause 58 (Apartment developments)

The Proponent agreed to a requirement for the amended plans to demonstrate compliance with standards equivalent to those in Clause 58 (Better Apartment Design Standards). It prepared an indicative tower floorplan suggesting that these requirements could be met within the proposed floorplate. This was not opposed by any party and was a precondition for DELWP and other authorities supporting the proposed height and modified setbacks.

Following the Hearing, the Proponent circulated an updated Clause 58 assessment based on the 'new built form' (Documents 111 and 112). DELWP provided its response to the assessment in a revised Incorporated Document (Document 114) that refined the condition relating to communal outdoor open space and included a new condition requiring that all three bedroom apartments comply with Standard D25 in Clause 58.02-7. No other submissions or responses to the assessment were received from other authorities.

The Committee agrees with the authorities that Clause 58 standards should be used to assess the proposal, consistent with other contemporary apartment proposals, irrespective of whether they are processed as planning permits or planning scheme amendments. This is consistent with the view of the Committee expressed for draft Amendment C172port (Bertie Street) and draft Amendment C163port (Site 6).

The Committee acknowledges the revised Clause 58 assessment provided by the Proponent and DELWP's response.

The Committee notes that the Incorporated Document retains the overarching condition that requires apartments to comply with Clause 58 and supports the revisions proposed by DELWP.

(iii) Laneway width

The initial proposal included a 4.5 metre wide contribution to a proposed 9 metre wide laneway to be jointly provided by this site and the adjoining property to the east (Site 3) for the full length of these sites. The contribution from this site was subsequently reduced to 4.45 metres in the 'new built form' plans.

The Proponent advised the Committee that the reduction *"was a requirement of the Taskforce and DELWP to offset or rectify a discrepancy in the DDO30 control and avoid what they consider would otherwise be a mandatory setback – notwithstanding mandatory controls don't apply in a planning scheme amendment application and the reduction is de minimus"*. Council opposed the reduced width, even though it was not regarded as material.

It is not clear to the Committee what benefit would be derived from reducing the width of the laneway contribution for this site particularly where the mandatory provisions can be overcome in a planning scheme amendment where there is no practical disadvantage, so it has retained the original 4.5 metre specification in the recommended Incorporated Document by deleting proposed condition 4.7 (a). Even if this width was matched by the adjacent site in due course, the laneway would be provided with sufficient spaciousness and functionality and would include capacity for landscaping or seating. However, this is a matter of detail that is best resolved between the parties before the Amendment is approved.

(iv) Environmentally Sustainable Development

The proposal was accompanied by a Sustainable Management Plan (SMP)⁷ that addresses among other things, roof top renewable energy and Green Star accreditation.

The Committee has previously discussed the achievement of ESD principles in its report on Port Phillip Planning Scheme draft Amendment C163port (Site 6). Without repeating the detail of that analysis here, the Committee believes that:

- roof top renewable energy needs to be demonstrably maximised for this site
- the SMP should be revised to reflect the ‘new built form’ and other recommended changes
- the SMP should provide more detailed evidence of steps taken for certification by the Green Building Council of Australia.

The Committee is satisfied that these matters are appropriately addressed in the recommended Incorporated Document at Appendix A.

(v) Wind impact statement

The proposal was accompanied by a Wind Impact Statement.⁸ Given the significant built form changes envisaged as a consequence of the ‘new built form’, the Committee recommends that an updated Wind Impact Statement should be prepared, based on modelling or wind tunnel testing demonstrating compliance with relevant objectives. The Committee is satisfied that condition 4.37 in the Incorporated Document would provide for this.

⁷ SMP Revision C, 30 April 2019, Simpson Kotzman.

⁸ WIS, 7 May 2019, Vipac Engineers and Scientists.

4 Affordable housing

(i) Key issues

Key issues arising during the Hearing included:

- whether a benchmark should be applied to the provision of Affordable housing as suggested by Council in expert evidence
- the wording of the section 173 agreement required by the Incorporated Document, including the level of specificity for the commitment
- the appropriateness of including a provision in the Incorporated Document allowing an Affordable housing contribution below 6 per cent in identified circumstances.

(ii) Key policies, strategies and Planning Scheme provisions

The Framework seeks “*at least six per cent of all housing in Fishermans Bend [to be] affordable*” by 2050.⁹

Clause 22.15 of the Planning Scheme contains the Fishermans Bend Urban Renewal Policy as introduced by Amendment GC81. The policy basis includes the provision of “*at least six per cent of dwellings as Affordable housing, with additional Social housing dwellings provided as part of a Social housing uplift scheme*”.

A relevant objective in Clause 22.15-2 is:

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 contains the operative provision as follows:

Providing for Affordable housing

Affordable housing

It is policy to assess proposals against the following criteria:

- *Development should provide at least six per cent of dwellings permitted under the dwelling density requirements in the Capital City Zone (excluding any Social housing uplift dwellings) as Affordable housing, unless, any of the following apply:*
 - *The built form envelope available on the site makes it impractical to do so.*
 - *It can be demonstrated that the development will contribute to the Affordable housing objectives of this policy while providing less than the minimum amount.*
 - *It can be demonstrated that meeting the Affordable housing objectives of this policy would render the proposed development economically unviable.*
- *Affordable housing should:*
 - *Be a mix of one, two and three bedrooms that reflects the overall dwelling composition of the building.*
 - *Have internal layouts identical to other comparable dwellings in the building.*

⁹ Page 48.

- *Be externally indistinguishable from other dwellings.*

Social housing is a subset of Affordable Housing, but this proposal does not include a Social housing component or associated uplift scheme (noting that density controls do not apply to this proposal and are excluded by the Committee’s Terms of Reference).

What is Affordable housing?

As noted above, the policy at Clause 22.15-4.3 seeks development to provide at least 6 per cent of dwellings within a development in Fishermans Bend as Affordable housing. A relevant objective of the Act is “to facilitate the provision of affordable housing in Victoria”. Affordable Housing is defined in section 3AA of the Act as:

... housing, including social housing, that is appropriate for the housing needs of very low income households; low income households; moderate income households.

The Minister for Planning published a notice dated 17 May 2018 setting out matters to which regard must be had for the purposes of determining what is appropriate for the housing needs of very low, low and moderate income households.

In addition, an Order in Council is published annually which specifies the income ranges for very low, low and moderate income households. The current Order in Council is dated 1 July 2020 with income ranges for metropolitan Melbourne replicated in Table 6.

Table 5 Metropolitan Melbourne income ranges: 1 July 2020

	Very low income range (annual)	Low income range (annual)	Moderate income range (annual)
Single adult	Up to \$26,090	\$26,091 - \$41,750	\$41,751 - \$62,610
Couple, no dependents	Up to \$39,130	\$39,131 - \$62,620	\$62,621 - \$93,920
Family (one or two parents and dependent children)	Up to \$54,780	\$54,781 - \$87,670	\$87,671 - \$130,500

Source: Order in Council dated 1 July 2020

4.2 Is there a need to benchmark Affordable housing contributions?

(i) Evidence and submissions

As expressed in other referrals, Council was concerned that the policy in Clause 22.15 does not provide any basis on which to assess the value or acceptability of an offer for Affordable housing. In the absence of this, it submitted that consistent decision making could be problematic, if not impossible. It relied on the evidence of its expert economic and town planning witness, Dr Spiller, who urged the Committee to recommend that a benchmark or ‘deemed to comply’ provision be adopted to implement the policy for emerging proposals.

Dr Spiller’s evidence is summarised in detail in earlier reports of the Committee, particularly C172port (Bertie Street) and was put in similar terms for this draft Amendment. In essence, he identified a need for 13 per cent of housing to be Affordable in Fishermans Bend. He

considered there are three key functions of Affordable housing – alleviating or averting poverty, improving the operation of labour markets and creating better places; with the latter a specifically a responsibility of land owners and developers. He therefore converted this to a benchmark of 3 per cent gross leasable floor area across all types of new development (equivalent to 6 per cent of dwellings being transferred at a discount of 48 per cent from market value). Dr Spiller emphasised that an important benefit of his methodology (compared with Dr Marshall's, for example) was that it is not subject to variation over time if house prices increase or income levels decrease.¹⁰

In previous hearings, the Committee raised the potential uncertainty as to whether the policy only seeks for new residential development to contribute to Affordable housing in Fishermans Bend. Dr Spiller considered this scenario and amortised the contribution to 4 per cent if only residential development was included.¹¹

DELWP was concerned that benchmarking a contribution to Affordable housing may fetter the exercise of discretion for a particular proposal. It submitted that if a deemed to comply provision or benchmark was proposed, it should derive from a government policy that has followed due process. Nevertheless, DELWP and the Taskforce accepted that a benchmark could be a useful tool to evaluate the adequacy of a particular contribution.

The Taskforce commissioned the Draft Fishermans Bend Social and Affordable Housing Guidelines (draft Guidelines) to provide parameters for assessing and securing contributions to assist permit applicants. The draft Guidelines suggest that one way of meeting the 6 per cent requirement would be to offer dwellings at a discount of 35 per cent from market value to achieve the Affordability criteria in the Act.

Another issue raised near the conclusion of the Hearing was whether the minimum 6 per cent Affordable housing contribution should apply to all dwellings to be approved as part of the site specific amendment, or only to the maximum number of dwellings that would otherwise be permissible in Clause 2.1 of the Capital City Zone Schedule 1.

Council originally suggested it was the latter, whereas DELWP and the Taskforce suggested it should be based on the actual number of dwellings to be approved under the Incorporated Document. In subsequent correspondence, Council acknowledged that the density controls do not apply to this referred matter given the Terms of Reference and its position was adjusted accordingly.¹²

(ii) Discussion

The Committee sees benefit in establishing a non-mandatory minimum baseline for Affordable housing contributions as a way of applying the policy in Clause 22.15 to particular proposals. Such a minimum baseline would also allow the value of different offers to be compared and would provide increased transparency and equity in the approvals process. The reason the Committee prefers the wording 'baseline' rather than 'benchmark' is because it is one minimum way to meet the policy target but should not necessarily be seen as the preferred outcome for all contributions.

¹⁰ Dr Marshall provided for a 2.1 per cent contribution of gross leasable floor area based on the 6 per cent target multiplied by the 35 per cent discount to make the median apartment affordable to moderate income earners.

¹¹ By reference to 4sqm of each 125sqm.

¹² Document 109.

As indicated in other referrals with comparable evidence, the Committee does not support the methodology for a benchmark or deemed to comply provision proposed by Dr Spiller, particularly in its attribution of a percentage of the proportion of Affordable housing to be provided by private development.

The Committee does not propose to revisit the 6 per cent minimum target for Affordable housing contained in the policy at Clause 22.15, noting it has been introduced relatively recently with the benefit of expert input and independent Panel analysis.

The Committee prefers the approach to a minimum benchmark generally as proposed in the draft Guidelines prepared by the Taskforce. This figure is also consistent with the analysis of Dr Marshall in his advice to the Committee considering Amendment C172port (Bertie Street), equating to 2.1 per cent of gross leasable residential floor area. However, it will be important to include a mechanism to review this benchmark over time to ensure that it continues to meet the definition of Affordable housing in the Act, since housing prices and incomes can be expected to change over time.

In the Committee's view, a minimum baseline is particularly useful where there is no defined Affordable housing offer as part of a proposal such as this. It would also enable the housing to be provided through a number of mechanisms so long as equal or higher value was provided, preserving the flexibility envisaged by the policy at Clause 22.15-4.3. The benchmark expressly provides for the median apartment, reflecting a mix of dwelling sizes sought by policy.

For completeness, in terms of which dwellings the 6 per cent contribution should apply to, the Committee has evaluated the draft Amendment by reference to a particular use and development proposal without applying any density controls from current Planning Scheme provisions (as directed by the Terms of Reference). In these circumstances, the Committee considers that it is equitable to determine the Affordable housing contribution by what will be permitted on this land. If more dwellings are permitted beyond the current dwelling density controls, more Affordable housing should be made by the Proponent proportionate to the dwelling increase. This is consistent with the principles of planning in Victoria which refer to the fair and orderly development of land.

The Proponent itself acknowledged that a deeming provision would provide a measure for developers to aspire to and to factor into the cost of purchase. However, it sought to distinguish its own position since the land was purchased three to four years ago – before the guidelines were formulated.

The Committee has previously indicated and confirms its position that it is possible for an offer for Affordable housing to meet the policy qualitatively to the satisfaction of the Responsible Authority, without reference to an underlying baseline. The adequacy of such an offer would depend on an agglomeration of factors including a minimum target of 6 per cent within a development, demonstrating affordability to income ranges specified in the Order in Council and meeting the qualitative considerations in the Ministerial Notice.

The Committee recognises that this issue is still evolving and that this particular referral pre-dates formal adoption of the draft Guidelines. In these particular circumstances, the Committee considers it reasonable that the Minister for Planning as Responsible Authority retains some flexibility to negotiate specific outcomes for referred matters.

This finding influences the Committee’s recommended content for the section 173 agreement in the draft Incorporated Document, as discussed in the following chapter.

(iii) Conclusion

The Committee concludes:

- There is scope to implement a minimum baseline as an assessment tool to evaluate whether policy in Clause 22.15-4.3 is met. This baseline should be generally as proposed by the Taskforce’s draft Guidelines, equating to a 2.1 per cent contribution of Gross Leasable Residential Floor Space. A mechanism should be provided to review this minimum baseline to ensure ongoing affordability over time by reference to relevant orders and notices.
- While a minimum baseline is favoured as a way forward, this issue is still emerging and justifies flexibility for the Responsible Authority to determine whether and how the policy target is met by referred proposals. It is equally legitimate to assess the acceptability of a contribution to Affordable housing qualitatively by reference to the minimum 6 per cent target in policy, policy preferences as to housing mix and the like, income levels fixed by the Order in Council and parameters in the Ministerial Notice.

4.3 The level of specificity for the Affordable housing commitment

(i) Evidence and submissions

All parties accepted that genuine weight should be given to policies in the Planning Scheme seeking an Affordable housing contribution for new development in Fishermans Bend.

The Proponent submitted that it intended to satisfy policy seeking a minimum 6 per cent contribution but did not explain how this would be provided within the proposed development or otherwise. In cross examination of Dr Spiller, it sought to distinguish the way the Planning Scheme provisions deal with Affordable housing compared with Social housing, for example, it only seeks details of engagement with housing providers and a makes a reference to housing in perpetuity for Social housing.

DELWP and the Taskforce considered it appropriate to require a minimum 6 per cent contribution to Affordable housing through a condition of the Incorporated Document requiring a section 173 agreement to be entered into.

DELWP’s draft condition would require at least 6 per cent of dwellings to be provided as Affordable housing through sale or lease to a registered housing provider, approved housing provider or trust at a *“sufficient discount from market value”*; to be determined by an independent valuer. A mix of one, two and three bedroom dwellings would be required, including a bicycle space for each dwelling and owners corporation costs would need to be included. If the Proponent was unable to achieve this despite best endeavours, a cash-in-lieu contribution could be accepted.

Council provided an alternative form of condition for a section 173 agreement referencing its proposed benchmark, in addition to securing an ongoing interest in the underlying land value.

(ii) Discussion

The Committee accepts Council's submission in principle that, wherever possible, a Proponent seeking a site specific amendment within the Fishermans Bend Precinct should specify the nature of the Affordable housing contribution to demonstrate how it will meet the policy target. For example, one apparently confined input such as the length of time over which the Affordable housing will be provided may have a profound impact on the offer overall (noting that the parties' and expert preferences included 20 years from the Proponent, 30 years from DELPW, the economic life of the building by Council and 'in perpetuity' for Dr Spiller).

The Committee has previously found that the time period for the commitment to Affordable housing should be the economic life of the building, in line with Dr Marshall's advice to the Committee in the Bertie Street referral. This approach strikes a suitable balance between policy objectives seeking to secure long term availability and ongoing diversity, while recognising that the contribution is tied to a particular development approval. If the building were demolished or repurposed, a new contribution would need to be evaluated at that point in time if relevant provisions continued to apply.

Although the requirements for a permit application do not technically apply to planning scheme amendments, the Committee would support the level of detail identified in Clause 4.4 of Schedule 1 to the Capital City Zone being provided before a planning scheme amendments is approved. This has two distinct advantages – it would enable an assessment of suitability by reference to legislation and associated instruments, as well as the overall net community benefit anticipated from the site specific proposal.

However, in the circumstances of this referral, provided a minimum 6 per cent contribution to Affordable housing is committed to and secured by a section 173 agreement, the absence of further detail of the actual contribution is not fatal to the Committee's support for the draft Amendment.

In practice, the use of a more generic section 173 agreement requirement would shift the timing for consideration of the acceptability of the actual offer to after the approval of the Amendment. DELWP has indicated that it would be prepared to assume this responsibility from an officers' perspective.

One potential option to provide greater certainty would be for the Minister for Planning to require the Proponent to provide an outline of the mechanism/s by which Affordable housing would be provided as part of the proposal to enable an in principle assessment of its suitability before approval of the Amendment.

(iii) Conclusion

The Committee concludes:

- It is desirable for a specific Affordable housing offer to be formulated as part of a site specific planning amendment to enable an assessment of suitability and overall net community benefit.
- However, if no parameters have been provided for an Affordable housing contribution, the drafting recommended by DELWP in the draft Incorporated Document is an acceptable way to require a commitment to deliver a minimum 6 per cent contribution to Affordable housing.

4.4 Is it appropriate to provide an exemption in the Incorporated Document in line with the policy provision?

(i) Evidence and submissions

The Proponent originally advocated for the inclusion of a provision in the section 173 agreement under the Incorporated Document to mirror the exceptions in Clause 22.15-4.3 regarding building envelope, economic viability and the like. It submitted it was entirely appropriate to replicate this part of the policy within a condition to enable further assessments to be undertaken once detailed design and costings were known.

DELWP opposed the approach taken by the Proponent, suggesting that consideration of the application of the policy, including the exemption, was a key matter to be determined upfront as part of the evaluation and Amendment approval process. It submitted:

The Department does not agree that it is appropriate to reserve the possibility that the Proposal may not provide affordable housing to some future date.

The Department agrees that clause 22.15-4.3 provides flexibility to allow for a reduction in provision of affordable housing below the 6% target. However, the Department considers that the proper time to exercise that flexibility is at the approval stage, rather than leaving open the question.

Likewise, Council submitted that the ability for an applicant to make a contribution to Affordable housing needed to be determined before approval of the Amendment. In its view, to do otherwise would defer a decision on the delivery of Affordable housing to after the approval stage.

Dr Spiller also critiqued the financial analysis ‘*The impact on project viability of an affordable housing contribution*’ prepared by Urban Enterprise, dated January 2019 and submitted by the Proponent with the draft Amendment documentation.¹³ In summary, this indicated that the proposal (as formulated at that time before the Amendment) was not financially viable in the lending environment and marketplace at that time, but that its viability would be diminished further if an Affordable housing contribution was made. The authors of this report were not made available for cross examination.

Council, supported by Dr Spiller considered that the financial analysis was flawed since it factored a pre-determined land value into the feasibility model rather than treating the land value as residual. The Proponent strongly opposed this approach, since the purchase price is a known, fixed outlaid cost of developing this site.

Near the conclusion of the Hearing, the Proponent ultimately agreed to delete the wording of the policy exemption from its preferred version of the Incorporated Document to satisfy the authorities.

(ii) Discussion

For the record, the Committee addresses the issue of when it may be appropriate to consider a reduction in the provision of Affordable housing for a particular proposal since it may be relevant for other referrals.

¹³ Document 2E(2e).

The Committee considers that the Affordable housing offer is integral to the overall acceptability of a proposal to use or develop land in Fishermans Bend, irrespective of whether the approval mechanism is an incorporated document or a planning permit. In the Committee's opinion, local policy contemplates proponents pursuing integrated housing models (where possible) to overcome some of the challenges associated with the affordability of conventional dwellings in the Central City.

The Committee noted that the Hearing had been adjourned for some months to allow the Proponent to obtain expert economic evidence on this issue, but the Proponent ultimately decided not to call an economic witness. The Committee also asked whether there could be a further opportunity for this issue to be addressed before gazettal of the Amendment, but the Proponent responded that it did not propose to demonstrate that the proposal was economically unviable. It also did not suggest that the site was not capable of facilitating Affordable housing in line with policy.

The Committee finds that the Proponent has not demonstrated that it cannot or should not provide an Affordable housing contribution in line with minimum policy requirements. In fact, the Proponent accepted that it had considered the issue of viability, including making provision for Affordable housing, in formulating its 'new built form' proposal.¹⁴

In these circumstances, the Committee does not support re-stating the policy exceptions in the provisions of the section 173 agreement. The opportunity for a proponent to demonstrate that a proposal should not provide Affordable housing or should only provide less than the 6 per cent target is at the application and evaluation stage – not following its approval.

(iii) Conclusion

The Committee concludes:

- The Amendment should either demonstrate compliance with the policy for Affordable housing or that one of the relevant exceptions in the policies applies before its approval.
- The Proponent had the opportunity to address the policy exemption but did not provide persuasive evidence why a contribution of less than 6 per cent Affordable housing should be required.

The Committee's preferred Affordable Housing condition is contained in the recommended Incorporated Document at Appendix A.

¹⁴ The number of dwellings is expected to be reduced from 158 to approximately 125, subject to detailed design.

5 Flooding and flood mitigation

(i) Key issues

Key issues are:

- have the amended plans responded suitably to the potential for flooding?
- how should transitional areas at ground floor level be resolved to balance acceptable flooding outcomes with suitably activated frontages?

(ii) Key policies, strategies and Planning Scheme provisions

The Fishermans Bend Precinct is susceptible to flooding from sea level rise, riverine inundation and overland flows. Therefore, the layout and design of any building on the subject land needs to take account of the potential for flooding and respond appropriately.

Melbourne Water participated in this draft Amendment in its capacity as relevant floodplain management authority, regional drainage authority and waterway management authority under the *Water Act 1989*.¹⁵

The Terms of Reference refer to section 12 of the Act. Section 12(2)(b) calls for a planning authority to have regard to any significant effects it considers the environment may have on any use or development envisaged in the amendment.¹⁶ In this instance, flooding has the capacity to create safety impacts for users of the proposed use or development as well as potential for building damage. Although this is a precinct wide issue, the Incorporated Document needs to make appropriate provision for a sufficient response at a site specific level and to ensure that flow on effects are able to be managed.

Key policies, strategies and Planning Scheme provisions referable to the Terms of Reference include:

- Clause 13.01-1 Coastal Inundation and Erosion – combined effects and risks associated with climate change in planning decision making processes should be planned for, land subject to coastal hazards should be managed (where possible) to ensure future development is not at risk.
- Clause 13.02-1 Floodplain management – seeks to assist the protection of life, property and community infrastructure from flood hazard; avoid intensifying the impacts of flooding through inappropriately located uses and developments.
- Clause 22.15-4.5 seeks to achieve a climate adept community. It provides criteria for the assessment of proposals in flood prone areas including the need for design elements to be resilient to flooding, land uses at ground floor being able to easily recover, essential services to be located to address potential flooding and the need to integrate best practice Water Sensitive Urban Design. The policy expressly seeks to “*only consider raising the internal ground floor level above street level as a last resort ...*”
- *Planning for Sea Level Rise Guidelines, February 2017* (Sea Level Rise Guidelines) (developed on behalf of Melbourne Water in accordance with Ministerial Direction

¹⁵ If this was a permit application, Melbourne Water would have the role of recommending referral authority.

¹⁶ A similar requirement is imposed on responsible authorities under section 60(1)(f).

13 and Planning Practice Note 53, *Managing coastal hazards and the coastal impacts of climate change*).

- *Guidelines for development in flood affected areas, February 2019 (DELWP)*.

(iii) Evidence and submissions

Responding to potential for flooding

Melbourne Water explained that 1% Annual Exceedance Probability flood levels for the year 2100 have been calculated for the subject land at 2.4 metres to Australian Height Datum (AHD) in accordance with the Sea Level Rise Guidelines.

Melbourne Water proposed conditions for the draft Incorporated Document requiring modifications to parts of the ground floor plan to achieve sufficient clearance above the predicted flood level:¹⁷

- finished floor levels for all ground floor areas including lift and stair lobbies, all areas with electrical installations and all basement entry and exit points a minimum 3.0 metres AHD (600mm above the flood level)¹⁸
- finished floor levels for all retail areas and commercial lobbies a minimum 2.4 metres AHD with minimal transitional areas containing landings, stairs or ramps below this. This was considered a significant concession compared with the preference in the Sea Level Guidelines for all finished floor levels fixed at 600mm above the flood level.¹⁹

Melbourne Water sought for these amendments to be to its satisfaction. It evaluated the amended plans and concluded that they were generally in accordance with its proposed requirements.

The Proponent further confirmed that ground floor levels and configuration had not changed in the 'new built form' proposal.²⁰

The conditions proposed by Melbourne Water are principally intended to provide suitable clearance to protect against storm surges. However, it explained that the roads adjacent to the subject land are also subject to overland flows associated with the local drainage network. This network is controlled by Council. The applicable flood level from overland flows for 2100 is 2.0 metres AHD on Munro Street and 1.85 metres AHD on Normanby Road. Melbourne Water therefore explained that sufficient protection would be provided if minimum floor levels were adopted as proposed by it.

In summary, all parties and the Committee were satisfied that, in this instance, the minimum finished floor levels needed to manage the risk of overland flows would be achieved for this site in line with conditions sought by Melbourne Water.

¹⁷ Consistent with the *Planning for Sea Level Rise Guidelines*.

¹⁸ For basement entry ramps this would require a flood proof apex.

¹⁹ During the course of the Hearing, Melbourne Water clarified that it would support the proposed lift platform depicted on the north eastern corner of the ground floor tenancy being a minimum 2.4 metres to AHD but that electronic and hydraulic systems associated with the lift would need to be a minimum 3.0 metres to AHD.

²⁰ With no changes made to any of the levels or floorplate configuration within the podium. However, it is expected that some consequential changes will be required such as a reduction in car parking to reflect lower apartment numbers overall.

Transitional area

Melbourne Water's proposed conditions would also allow 'minimal' transitional (or sacrificial) areas below 2.4 metres to enable a shift from street level to specified minimum finished floor levels. However, it did not support a wider transitional area. It explained:

... at-grade areas should be minimised to those areas which are required to achieve the necessary transition from street level to the minimum [finished floor levels] ...

Measures such as flood proofing and flood management cannot be relied on over time, to satisfactorily ameliorate the impacts of flooding, and the cumulative effect of similar developments would result in a significant increase in flood damages associated with a major storm event.²¹

Melbourne Water clarified that a key purpose of floor level conditions was to minimise the risk of flood damage in a simple and reliable way. It considered that the resultant differences in grade between proposed floor levels and street interfaces were achievable and would still enable street interaction and sufficient activation. In terms of how to strike the balance, Melbourne Water concluded that *"as outlined in the City of Port Phillip's response in relation to amended plans, there are various design responses available to achieve better urban design outcomes, including universal access, without compromising standards for flood protection"*.

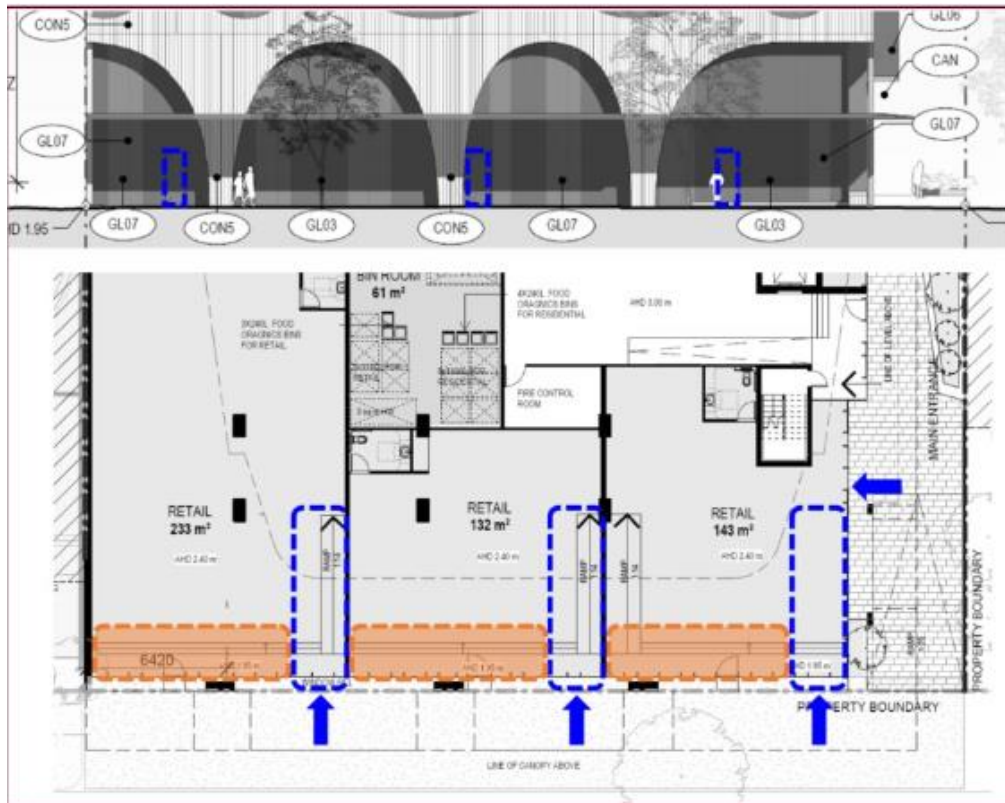
This was a notable point of difference compared with DELWP's position. DELWP sought a minimum area five metres wide to achieve a transition in level while allowing for seating or more functional use to enhance the activation of the front and rear facades. It considered that allowing only steps and ramps in these areas (as supported by Melbourne Water) would detract from the presentation of the building to the public realm.

Council effectively took a 'mid point' between these two authorities. It considered that the internal level changes required for flood risk management would result in 1-1.5 metre deep 'unusable space' interfacing with Normanby Road. It considered this would not meet design outcomes sought in Clause 22.15-4.4 or Clause 2.12 of DDO30 for a fine-grain, pedestrian environment, appropriate detailing to the street and encouraging the opportunity for social interaction at the interface between the public and private realm.

Council suggested this issue could be addressed as part of the re-working of the facade to achieve more intuitive locations for entrances, with consolidated steps and ramps or lift for the front tenancies and extending retail floorspace to the facade as indicated in Figure 7.

²¹ Document 60 and reiterated in submissions at the Hearing.

Figure 8 Council's indicative changes to entry arrangements at Montague Street



Source: Council's built form submission, Document 90, page 7

Legend: Blue arrows and outlines denote consolidated stairs and entry ramp, orange shading represents extending retail floor space to the facade (with a 450mm level difference remaining)

The Proponent maintained its preference for the plans as designed, recognising the practicalities of seeking to avoid flooding for future tenants as well as the desire to provide each tenancy with separate access infrastructure.

Melbourne Water explained that if the Committee ultimately supported wider transitional areas with capacity for active use (such as seating) contrary to its preferred position, a Flood Mitigation Plan condition should be included in the Incorporated Document requiring an acknowledgement of risk by the owner and the use of flood resilient building materials.

Note in the Incorporated Document

Melbourne Water advised the Committee early in the process that it is seeking to upgrade infrastructure within the entire Fishermans Bend Precinct to make it more resilient to the effects of sea level rise and inundation. These would include a levee, upgrades to drainage infrastructure and pumping stations.²²

Melbourne Water explained that it appears unlikely that this infrastructure will be funded by the Infrastructure Contributions Plan to be developed and implemented under Clause 45.11 of the Planning Scheme. In any event, this proposal would not be subject to this contributions regime by virtue of the Terms of Reference.

Melbourne Water was unable to provide detailed cost estimates or a likely indication of when these works will be undertaken. Consequently, as with other referrals to the Committee, its

²² Document 36.

strong preference was for a 'Note' to be included in the Incorporated Document that it may seek further contributions from the owner of the land under the *Water Act 1989*.

This was not opposed by any party and has been an approach proposed in other matters referred to the Committee.

(iv) Discussion

The Committee reinforces the importance of managing and reducing impacts of flooding within Fishermans Bend. This is a key site constraint for many properties in the precinct and requires a considered response on a site by site basis as well as on a precinct wide basis. The Committee notes that Melbourne Water is actively working on more place specific guidelines, especially for the Montague Precinct, which is encouraged as a priority now that permission for development in this precinct is progressing.

At the same time, there are other important policy imperatives and DDO30 objectives to achieve activated streetscapes, especially along key main roads such as Normanby Road, recognising its role envisaged by the Framework and re-cast planning controls.

This may mean that even though a preferred finished floor level could physically be achieved to avoid flooding, there may be countervailing considerations that lead to a modified design response for confined parts of the building. This is especially relevant in light of policy at Clause 22.15-4.5 that seeks *"any level change required between the street level and internal ground floor should be integrated into the design of the building to maintain a good physical and visual connection between the street and internal ground floor"*.

The Committee has already indicated in the context of other referrals that, in some circumstances where the risk of flooding is not significant and the risk of property damage can be managed so there is no community cost of a flood event,²³ it is inclined to support limited 'interface' areas with greater activation. The narrow sacrificial edge of the Normanby Road retail facade as depicted in the amended plans is not regarded as useful and is not supported. On balance, the Committee supports a confined 'sacrificial' or transitional area at the front of the site (Normanby Road frontage) that can tolerate short term inundation, given the streetscape benefits that would result from an activated frontage.

DELWP's suggestion of a minimum five metre wide sacrificial edge would allow a useable zone directly inside the facade for various purposes. In the Committee's view, transitional areas for this site should not just be 'minimal' but sufficiently sized to accommodate the comfortable passing of people – including people with disabilities – including under conditions of social distancing required by COVID-19. A sacrificial edge can also more easily support subdivision and narrow retail tenancies where a significant portion of the frontage would be taken up by a landing. It can thereby support the viability of retail in this location.

If there was no rear entry to retail areas (which is conceivable given the floorplan in the amended plans), these transitional areas may also need to accommodate delivery of goods. The retail tenancy to Munro Street is not very deep however and a 5 metre minimum depth of the sacrificial edge would potentially limit useful layouts particularly towards the back of the tenancy.

²³ Especially given the limited estimated time for inundation and limited flows as originally explained by Melbourne Water.

A solution with a generous enough landing, ramp and stairs and an elevated retail edge of up to 450mm could work for some particular tenants' layouts but would limit flexibility, potential subdivision and indoor-outdoor serviceability and as such not maximise the chances of retail to be successful in this location.

In summary, the Committee considers the provision of a sacrificial zone preferable. This should be a minimum of four metres wide to accommodate for example two rows of tables and chairs plus circulation space. The Incorporated Document should also include a condition requiring the approval of a Flood Mitigation Plan to require the use of flood resilient building materials and other practical measures to reduce impacts.

As tenancies may change over time, the Proponent's architectural team is encouraged to configure the facade, entries, potential tenancies, stairs and ramps to accommodate different tenant types, sizes and operations.

(v) Conclusions

The Committee concludes:

- The subject land is able to respond suitably to the risk of flooding through conditions of the Incorporated Document.
- The Committee is conscious of the Proponent and Melbourne Water's preference for a minimal sacrificial area at the frontage of the retail and commercial tenancies. On balance, it supports a confined (four metre) sacrificial area at the front of the site (Normanby Road frontage) that can tolerate short term inundation subject to its recommendations to achieve appropriate functionality and to streamline access infrastructure where possible.
- Conditions of the Incorporated Document should include the approval of a Flood Mitigation Plan to manage the impacts of flooding in sacrificial areas below the designated flood level.

6 Other matters

6.1 Development contributions

Like other ‘called in’ matters that have been converted to draft Amendments and referred to this Committee, the subject land is covered by the Infrastructure Contributions Overlay. An Infrastructure Contribution Plan has not yet been prepared and approved for the Precinct.

Nevertheless, the Terms of Reference expressly indicate that it may be appropriate to grant permission for a use and development before such a plan is incorporated, subject to ensuring an obligation for each proposal to make appropriate development contributions.

The Taskforce provided monetary figures for development contributions considered appropriate for this proposal.²⁴ These reflect interim development contributions levied by it on development in the Precinct since 2014, subject to indexation. These figures were not opposed by the Proponent and are proposed to be included in a section 173 agreement under the Incorporated Document.

In addition, the Proponent has agreed to dedicate part of its land to develop and maintain a new public laneway (with a width of 4.5 metres), generally consistent with the Fishermans Bend Framework. It is expected that this would be mirrored on adjacent land to achieve a laneway of some 9 metres wide. The Proponent has accepted a condition of the Incorporated Document requiring it to construct and landscape the laneway and keep it open to the public in perpetuity (as a laneway on private title).

This is regarded by the Committee as an important contribution to the movement network in the Precinct, being one which would provide public realm activation and other community benefits.

6.2 Expiry of the Incorporated Document

(i) The issue

A relevant consideration when assessing the appropriateness of the site specific control is the issue of when the control in the Incorporated Document should expire.

The draft Incorporated Document prepared by DELWP provides for the control to expire if:

- the development is not started within three (3) years of the approval of the Amendment
- the use is not started within five (5) years of the approval of the Amendment
- the development is not completed within five (5) years of the approval of the Amendment.

The Specific Controls Overlay (SCO) provides a default provision for the control to expire if the use and development is not started within two years or completed within one year of commencement. Alternatively, it provides for the Incorporated Document to specify other dates and for the Responsible Authority to extend these periods subject to a request made in time.

²⁴ Document 7.

(ii) Submissions

The Proponent sought five years to start the development, but indicated it would accept four years to start the development. It explained that three years to commence development of this scale would be ambitious, even without added challenges as a result of the COVID-19 pandemic.

DELWP did not support a longer commencement period and noted that the permit holder could seek an extension if necessary.

(iii) Discussion

The Committee acknowledges the complexities and challenges raised by the Proponent, especially during the COVID-19 pandemic and beyond, but also notes that the Incorporated Document provides a three year commencement period which is one year longer than the default two years in the Specific Controls Overlay. As DELWP noted, the Proponent will also have the opportunity to apply for an extension, as has occurred elsewhere in Fishermans Bend.

As with other referrals before it for similar types of development, the Committee is satisfied that the arrangements in the draft Incorporated Document are appropriate.

While a longer time period was recommended by the Committee for the proposal in Tranche 2 (Bertie Street), this was on the basis of the nature of the development being a Build to Rent proposal, which is a different housing and funding model that is relatively new in the Victorian marketplace.

6.3 Other submissions

APA Group is the Pipeline Licensee for the South Melbourne – Brooklyn pipeline and the Bay Street – Unichema pipeline. It did not object to the draft amendments²⁵ since the risks of direct threats that could result in the full rupture of the pipeline were deemed non-credible and the subject sites were outside the area in which APA Group would have greatest concern for sensitive land uses.

The Department of Transport did not object to the proposed planning scheme amendments and recommended the following conditions be elaborated on and included in the relevant Incorporated Document:²⁶

- Before the building is occupied a Green Travel Plan should be submitted and approved by the Responsible Authority.
- The endorsed Green Travel Plan is implemented and complied with to the satisfaction of the Responsible Authority.

VicRoads confirmed the Department of Transport did not object to the site specific controls included but recommended specific conditions be included in the Incorporated Document for Site 2 requiring a section 173 agreement in respect of elements protruding into the Normanby Road reserve and adequate site distances for vehicular access.

²⁵ Amendments C165port: 264 - 270 Normanby Road, South Melbourne (Site 1), C166port: 256 - 262 Normanby Road, South Melbourne (Site 2), C164port: 248 - 254 Normanby Road, South Melbourne (Site 3) and C163port: 203 - 205 Normanby Road, Southbank (Site 6).

²⁶ For all amendments as above.

The conditions requested by VicRoads and the Department of Transport have been included in the recommended Incorporated Document at Appendix A.

6.4 Response to Terms of Reference

The Committee provides a summary of its responses to its Terms of Reference in Tables 6 and 7.

Table 6 Response to mandatory considerations

Clause	Mandatory consideration
20a.	<p><i>The matters set out in sections 12 and 60 of the Planning and Environment Act 1987, the Planning Policy Framework, the Local Planning policy Framework including the Municipal Strategic Statement and local planning policies.</i></p> <p>The proposal against which the Incorporated Document has been evaluated would respond well to planning policies seeking to activate and increase densities in Fishermans Bend, especially for mixed use development including commercial and retail land use at lower levels and residential at upper level.</p> <p>The proposal has the potential to achieve a high standard of design and a positive contribution to the public realm, as well as providing sustainable development.</p>
20b. & 20c	<p><i>The content, including the purposes of the planning controls introduced under Amendment GC81.</i></p> <p><i>The compliance of the proposal with the requirements of the permanent planning controls set out in paragraphs 14-15 of these Terms of Reference</i></p> <p>The proposed use and development (if amended to reflect the ‘new built form’ proposed by the Proponent at the Hearing) would constitute a positive response to the planning controls by:</p> <ul style="list-style-type: none"> - providing built form that responds acceptably to building typology and preferred precinct character - meeting the plot ratio for employment-generating uses and providing adaptable areas within the podium - generating new housing opportunities which cater for a variety of households - creating a new laneway to improve the pedestrian network in this part of the precinct, with capacity for active uses beside it - providing car parking at rates less than the Parking Overlay and bicycle parking to encourage sustainable modes of transport.
20d.	<p><i>Whether any departure from the Fishermans Bend Framework (September, 2018) compromises the objectives of the Fishermans Bend Framework, September 2018.</i></p> <p>There are no notable departures from the Framework identified for this draft Amendment.</p>
20e.	<p><i>The cumulative effect on the preferred character of the relevant precinct or the ability to achieve the objectives of Fishermans Bend Framework (September, 2018) or the requirements of the permanent planning controls set out in paragraphs 14-15.</i></p> <p>This issue is addressed in Chapter 3 in respect of building height and setbacks in particular. While the Committee finds that the ‘new built form’ represents a suitable response to preferred precinct character, allowing a 20 storey building on this site will necessitate careful assessment of applications for adjacent and nearby land to ensure that overall precinct character outcomes are achieved.</p>
20f.	<p><i>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 the Fishermans Bend Framework (September, 2018), and contributes to the objectives of the Fishermans Bend Framework, September 2018.</i></p>

Clause	Mandatory consideration
	The Incorporated Document would facilitate appropriate development contributions consistent with the Framework in circumstances where an Infrastructure Contributions Plan has not been approved. A 'Note' in the Incorporated Document will advise the owners of the land of potential future contributions that may be levied by Melbourne Water for Precinct wide infrastructure.
20g.	<i>The Ministerial Direction outlining the 'Form and Content for Planning Schemes' approved under section 7(5) of the Planning and Environment Act 1987 when drafting and/or reviewing site specific planning controls.</i> The Committee has been informed by DELWP that the draft Incorporated Document would comply with the Ministerial Direction.
20f.	<i>All relevant submissions and evidence regarding the site specific planning control to facilitate the proposal.</i> A summary of all submissions and evidence is provided in the body of this report.

Clause 41 of the Terms of Reference state:

The Advisory Committee must produce a written report for the Minister for Planning on each request for a site specific planning control to facilitate a proposal or, where a hearing is conducted for multiple requests, each group of requests.

Clause 42 sets out the specific matters that the Committee's report must address. Table 7 identifies the location of the Committee's response to these requirements.

Table 7 Response to report requirements

Relevant paragraph	Report requirement	Section/s of the report that address the requirement
42(a)	A summary of the site specific planning control, the proposal and all submissions received.	Executive summary, Chapters 2.1 and 6.3
42(b)	The Advisory Committee's recommendations regarding the site specific planning control and the proposal.	Chapter 1 and individual chapters
42(c)	A summary of the Advisory Committee's reasons for its recommendations.	Chapters 1, 3, 4, 5 and 6
42(d)	A copy of the site specific planning control including recommended conditions to form part of the site specific planning control.	Appendix A
42(e)	A list of persons who made submissions considered by the Advisory Committee.	Appendix B
42(f)	A list of persons consulted or heard.	Table 3 of Chapter 2.1

Appendix A Recommended form of Incorporated Document

The base for this recommended Incorporated Document is the version provided by DELWP dated 9 July 2020 (Document 114) that includes its recommended changes following the without prejudice discussion at the Hearing as well as the changes required to achieve compliance with Clause 58 of the Port Philip Planning Scheme.

All changes shown are recommended by the Committee.

Tracked Added

~~Tracked Deleted~~

PORT PHILLIP PLANNING SCHEME

INCORPORATED DOCUMENT

Specific controls for 256-262 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*.
- 1.2. The Minister for Planning is the responsible authority for administering Clause 45.12 of the Planning Scheme with respect of this Incorporated Document except that:
 - a) The City of Port Phillip is the responsible authority for matters expressly required by the Incorporated Document to be endorsed, approved or done to the satisfaction of the City of Port Phillip;
 - 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;
 - c) The City of Port Phillip is the responsible authority for the enforcement of the Incorporated Document.

2. PURPOSE

- 2.1. To facilitate the use and development of the land identified in Clause 3 for a mixed-use development comprising dwellings, offices and retail premises, in accordance with Clause 4 of this document.

3. LAND DESCRIPTION

- 3.1. The control in Clause 4 applies to the land at 256 to 262 Normanby Road, South Melbourne being the land contained in Certificates of Title Volume 9666 Folio 725 and Volume 9669 Folio 524 and more particularly described in Plans of Consolidation 161765S and 161789C. The land is identified in Figure 1 below.



Figure 1: Map of Land subject to this Incorporated Document

- 3.2. The land identified in Figure 1 of this document may be used and developed in accordance with the specific control contained in Clause 4 of this document.

4. CONTROL

Exemption from the Planning Scheme requirements

- 4.1. The control in this Clause 4 prevails over any contrary or inconsistent provision in the Planning Scheme.
- 4.2. Subject to Clause 4.3, 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 this Clause 4.
- 4.3. A permit is required to subdivide the land except where the subdivision creates a road and no additional lot is created.
- 4.4. 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.
- 4.5. Notwithstanding Clauses 4.3 and 4.4, any permit allowing subdivision of the land must include a condition requiring payment to the City of Port Phillip before a statement of compliance is issued, of a public open space contribution equal to 8% of the site value of the land.

Compliance with the approved documents

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

Amended plans

- 4.7. Before the development starts, excluding demolition, excavation, piling and site preparation works, 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) and three copies plus an electronic copy must be provided. The plans must be generally in accordance with the architectural plans entitled Drawing S02_A03.01-A03.05, S02_A10.01-A10.04, S02_A11.01, S02_A20, 21 and 30, all dated 14 April 2020, prepared by Hayball Pty Ltd but modified to show:
 - a) ~~The new laneway reduced in width from 4.5m to 4.45m with the ground floor and podium levels along the new laneway to increase by 50mm;~~
 - b) The tower form, comprising levels 5 to 20, modified to a slender elliptical form generally in accordance with the drawings prepared by Hayball entitled "S02 – New Built Form" and "Normanby Road – Elevation" date printed 12/06/2020 with the following minimum tower setbacks:
 - i. 5000mm setback from Normanby Road street wall;
 - ii. 4000mm setback from the new laneway street wall;
 - iii. 6300mm from the boundary with 264-270 Normanby Road; and
 - iv. 5000mm setback from the Munro Street wall;
 - c) Updated elevations and sections showing the new tower form of Condition 4.7(b) including the lift overruns, rooftop services and parapet projections above the roof height (69.600 AHD);
 - d) Revised apartment layouts within the new built form of Condition 4.7(b)) which achieve the objectives of Clause 58 of the Port Phillip Planning Scheme as applicable ~~and~~ to the satisfaction of the Responsible Authority;
 - e) A revised development summary;
 - f) The Munro Street podium façade consistent with the true height of each floor of the podium;

- g) Details of temporary urban public art applied to the western podium concrete wall;
- h) Better street level presentation of the building with the public realm and legibility of entry points through:
 - i. Reconfiguration of the entries/interface of retail tenancies to Normanby Road, by
 - consolidating stairs and disabled ramp (or lift) for each tenancy,
 - provision of broader entrances that are splayed and recessed, to also provide shelter,
 - extending retail floorspace to the façade such as by providing openable windows and/or balconies overlooking the street.
 - ~~P~~provision of a second entry to the eastern-most retail tenancy fronting Normanby Road from the laneway.
 - ii. Provision of more fine-grained and pedestrian scale entries to retail tenancies on all street/laneway frontages. The legibility of entry points should be designed to communicate the use.
 - iii. The use of different materiality and a variation in the façade and awning to convey a sense of address for the residential entry foyer abutting the laneway.
 - iv. Relocation of the commercial lobby further south along the new laneway (with opportunities for indoor and outdoor seating to benefit from the northeast aspect).
 - v. The laneway interface and access enhanced with seating and external ramps delivering more active edge to the laneway and equitable access from both the residential foyer area and direct link to the laneway.
 - vi. Reduction of the height of the ground level canopies from 3.8 metres to 3.0 metres, except where it extends over a driveway.
- i) A direct path of travel within the laneway, ~~with respect to location of encroaching columns of the building within the laneway and~~ landscape beds and seating;
- j) Provision of a footpath along the Munro Street frontage;
- k) Ground floor tenancies provided with safe rear entries to allow for 'back of house' and service/water/delivery access;
- l) The column adjacent to the loading bay (closest to the aisle) relocated to ensure safe entry/egress of the loading area;
- ~~m) — Encroachment of the upper ground floor and Level 1 into the laneway deleted and the residual internal floor areas reconfigured as necessary;~~
- ~~n) — The overall building height reduced to no more than 15 storeys while retaining the tower-podium typology with minimum upper level setbacks;~~
- ~~o) — Chamfering of the eastern and western facades of the building along the Normanby Road interface to minimise visual bulk and mass to Normanby Road;~~
- p) Detailed cross-sections of the ~~new 4.45m-wide~~ laneway;
- q) Dimensions of the at-grade front portion of the retail premises. This area should have a width of at least ~~5~~ four metres before transitioning to a floor level of 2.4m AHD;
- r) A cross section through the north eastern and south eastern retail tenancies and the new laneway, and resolution of floor levels between the retail tenancies and new laneway to achieve floor level alignment and street activation to the greatest extent possible;
- s) Location of fire booster cupboards and any other services along street frontages as required. This service must be integrated as part of the architectural design of the building;
- t) Dimensions of commercial floor areas that sleeve the car parks;

- u) Location of all affordable housing units within the development and allocated bicycle spaces;
- v) The communal outdoor open space provided in accordance with Standards D7 and D8 of Clause 58.03-3 (Apartment Developments);
- w) All three bedroom dwellings within the development to comply with Standard D25 of Clause 58.07-2 (Room depth);
- x) The communal outdoor open space provided with larger lawn and casual seating areas, and the indoor communal spaces allowed more flexibility to be fitted out and equipped as required to meet the diverse needs of future residents;
- y) The plant equipment on the podium level relocated to a more discreet area such as the mid-block, side setback area away from the laneway and Normanby Road and setback at least 3.0 metres behind the building façade and screened to reduce views from the public realm if required;
- z) Safe pedestrian accessibility from residential car parking areas to residential lift doors;
- aa) Confirmation that the walls separating the commercial tenancy on the same level from the car park could largely be removed to enable a future commercial reuse;
- bb) Any changes required to meet:
 - i. the requirements of the Façade Strategy in the corresponding condition(s) below.
 - ii. the requirements for Landscaping and the Public Realm in the corresponding condition(s) below.
 - iii. the requirements for Traffic, Parking and Loading and Unloading in the corresponding condition(s) below.
 - iv. the requirements for new Roads and Laneways in the corresponding condition(s) below.
 - v. the requirements of the Waste Management Plan in the corresponding condition(s) below.
 - vi. the Noise Attenuation and Mitigation requirements in the corresponding condition(s) below.
 - vii. the requirements of the Wind assessment in the corresponding condition(s) below.
 - viii. the requirements of Melbourne Water in the corresponding condition(s) below.
 - ix. the Environmentally Sustainable Design, Green Star and Third Pipe requirements in the corresponding condition(s) below, including details of the maximised proposed roof top solar PV.
- cc) Plan notations requiring the project to meet the requirements for external reflectivity in the corresponding condition(s) below.

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.

Aboriginal Cultural Heritage

- 4.9. 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 satisfaction of 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.
- 4.10. 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*.

Façade Strategy & Materials and Finishes

- 4.11. 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 Responsible Authority in consultation with the City of Port Phillip. 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 colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance. 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) Details of design treatment along the eastern elevation of the retail floor space where it interfaces with the new laneway to ensure that visual interest is achieved and views to any possible storage or 'back of house' areas is minimised;
 - e) Cross sections or other method of demonstrating all typical facade systems, including fixing details indicating junctions between materials and significant changes in form and/or material;
 - f) Information about how the façade will be accessed, maintained and cleaned;
 - g) 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

- 4.12. 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

- 4.13. 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 the City of Port Phillip. The plan(s) must be generally in accordance with the plans prepared by Tract Consultants dated 20 February 2020 and accompanying report, but modified to include:
- a) *Platanus orientalis* and *Betula pendula* replaced with other plants species with less allergen concerns;
 - b) Details of drainage and soil volumes on the podium level to ensure resilient and long-lasting plantings;
 - c) A planting schedule of all proposed trees and other vegetation including botanical name, common names, pot sizes, sizes at maturity, and quantity of each plant and their protection and maintenance;

- d) Details of how the landscaping responds to water sensitive urban design principles, including how rainwater will be captured, cleaned and stored;
 - e) Details of all hard-landscaping materials, finishes and treatments and urban design elements including paving, lighting, seating and balustrading;
 - f) Details of surface materials and finishes and construction of retaining walls, pathways, kerbs and access ways;
 - g) Elevations, sections, levels and details including materials and finishes of public realm works including reconstruction of public assets.
- 4.14. Before the building is occupied, all landscaping, lane and public realm works shown in the approved landscape and public realm plans must be carried out and completed to the satisfaction of the City of Port Phillip and thereafter maintained to the satisfaction of the City of Port Phillip.

No Damage to Existing Street Trees

- 4.15. The proposed development and works must not cause any damage to the existing street tree(s). All trees will require a tree protection zone which complies with AS 4970-2009 at all times throughout the demolition and construction phase of the development. A tree protection fence must be installed around any tree that is likely to be impacted by construction. The fence must be constructed in a diamond or square position around each tree trunk from 4 panels of a minimum height 1.8m x minimum length 2.1m, interlocking by bolted clamps and concrete pads. No entry to this area is permitted without the consent of the City of Port Phillip.

Pruning of Root Systems of Existing Street Trees

- 4.16. Any pruning of the root system of any existing tree to be retained is to be done by hand by a qualified Arborist to the satisfaction of the City of Port Phillip.

Pruning of Canopies of Existing Street Trees

- 4.17. Any pruning that is required to be done to the canopy of any trees retained on-site or where the canopy of neighbouring property tree/s overhang the site, is to be done by a qualified Arborist to AS 4373 - 2007 *Pruning of Amenity Trees* to the satisfaction of the Responsible Authority.

Public Lighting Plan

- 4.18. 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 the City of Port Phillip. 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 conform with AS1158, AS3771 and the Public Lighting Code September 2001.
- 4.19. The approved lighting plan must be implemented as part of the development to the satisfaction of the City of Port Phillip.

Demolition Management Plan

- 4.20. Before demolition starts, a detailed Demolition Management Plan (DMP) must be submitted to and approved by the City of Port Phillip. 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. 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.

4.21. Demolition must be carried out in accordance with the approved DMP to the satisfaction of the City of Port Phillip.

Traffic, Parking and Loading/Unloading

4.22. Before the development starts, excluding demolition, piling, excavation, site preparation works, and works to remediate contaminated land, an updated traffic engineering assessment including functional layout plans and other supporting information as appropriate must be submitted to and approved by the City of Port Phillip. The traffic engineering assessment must be generally in accordance with the Traffic Impact Assessment Report prepared by TTM Consulting (Vic) Pty Ltd, dated 12 June 2015 (amended 25 February 2020) but modified to show:

- a) Expected movements between residents and retail/commercial premises;
- b) Impact with reference the future streetscape and cumulative traffic;
- c) The location of the six (6) car share spaces, details of who will occupy these spaces and how they will be managed;
- d) At least 50% of all car parking spaces shown with EV charging points (provided in all car park levels);
- e) Full pedestrian sight triangles for vehicles exiting to Munro Street in accordance with Clause 52.06;
- f) Swept path assessment show two (B85 and B99) vehicles can enter/exit the site at the same time;
- g) Confirmation if a swipe card access arrangement (e.g. boom gate) is proposed. Any boom gate proposed must be installed/setback in such a way that any queuing is contained wholly within the site. A Car Parking Management Plan including details of which movements near the entrance have priority must be provided;
- h) Bicycles facilities table updated to reflect current scheme and numbers;
- i) Basement and upper level bike facilities located conveniently so that they are accessible from building entrance;
- j) At least 20% of bike racks should be horizontal (i.e. not wall mounted) as per AS 2890.3;
- k) Residents/visitors and retail/commercials bike racks clearly distinguished.

4.23. 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 the City of Port Phillip.

- 4.24. 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 the City of Port Phillip.
- 4.25. Traffic access and parking and loading/unloading arrangements must not be altered without the prior written consent of the City of Port Phillip.
- 4.26. Loading/unloading and waste collection ~~will~~ **must** be undertaken during non-peak hours due to the location of the loading bay location adjacent to vehicle entry.
- 4.27. Before the development is occupied, vehicle crossings must be constructed in accordance with the City of Port Phillip's Vehicle Crossing Guidelines and standard drawings to the satisfaction of the City of Port Phillip. 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 the City of Port Phillip.
- 4.28. The carpark and mechanical stackers designed in accordance with clause 52.06 of the Port Phillip Planning Scheme.
- 4.29. Bicycle facilities designed in accordance with clause 52.34 of the Port Phillip Planning Scheme.

New Roads and Laneways

- 4.30. Before the development starts excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land Engineering Drawings and Computations (as applicable) must be submitted to and approved by the City of Port Phillip the following matters:
 - a) All road / lane works and associated drainage to the satisfaction of the City of Port Phillip;
 - b) A cross section of the new Lane must be submitted showing above and below ground placement of services, lighting and landscaping (as applicable);
 - c) Independent drainage, the direction of stormwater runoff and a point of discharge for the land to the satisfaction of the City of Port Phillip;
 - d) All works for stormwater, Water Sensitive Urban Design, drainage, and landscaping.
 - e) All bearings, distances, levels, and easements;
 - f) A plan certified by an engineer showing the extent and depth and compaction of fill in excess of 300mm placed on the land;
 - g) Payment to the City of Port Phillip of an engineering design checking fee equivalent to 0.75% of the values of documented works.

Legal Agreement for Laneway Construction and Public Access

- 4.31. 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 Minister for Planning and City of Port Phillip 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 Minister for Planning. The agreement(s) must:
 - a) Give rights of access to the internal laneway within the site to the public at all times and ensure that access is maintained in a safe and sightly condition;
 - b) Construct the internal lane to the satisfaction of the City of Port Phillip before the occupation of the building;
 - c) Require the owner, at its cost, to maintain the internal lane to the same standard as is required by the City of Port Phillip for the adjoining roads;

- d) Provide that all requirements of the City of Port Phillip being met regarding the design and physical treatment of the internal lane including landscaping, street furniture, lighting and servicing infrastructure;
- e) Require that a bank guarantee to the value of 50% of the construction cost of the internal laneway be deposited with the City of Port Phillip prior to the commencement of the works. The bank guarantee will be returned upon final completion of the internal laneway to the satisfaction of the City of Port Phillip;
- f) Provide for the parties to enter into a further agreement regarding the use and development of the internal laneway in the event that the land at 248-254 Normanby Road is developed. The further agreement must:
 - i. Continue the rights of public access referred to at (a) above;
 - ii. Provide for the construction of the internal lane referred to at (b) above, if not already completed;
 - iii. Provide for the continued maintenance of the internal lane referred to (c) above; and
 - iv. Provide for the termination of any previous s 173 agreement regarding the laneway.

Waste Management Plan

- 4.32. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land an amended Waste Management Plan must be prepared and submitted to and be approved by to the City of Port Phillip. The Plan must be generally in accordance with the Waste Management Plan dated 20 March 2020 prepared by Leigh Design but modified to:
- a) Show use of compaction units;
 - b) Show space for E-waste;
 - c) Separate bin rooms for commercial and residential bins;
 - d) A more convenient passage from bin rooms to loading bay, such as the passage width increased and dimensioned, doors relocated and aligned and replaced with roller doors;
 - e) Loading/unloading and waste collection will be undertaken during non-peak hours due to the location of the loading bay location adjacent to vehicle entry.
- 4.33. The approved Waste Management Plan must be implemented to the satisfaction of the City of Port Phillip. Waste storage and collection must be undertaken in accordance with the approved Waste Management Plan 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

- 4.34. Before the development starts, excluding demolition and site preparation works, an Acoustic Report prepared by a qualified acoustic consultant must be submitted to and approved by the Responsible Authority. The report must:
- a) Specify noise attenuation measures to achieve a maximum noise level not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am and 40dB(A) for living areas, assessed as an LAeq,16h from 6am to 10pm;
 - b) Noise levels should be assessed in unfurnished rooms with a finished floor and the windows closed and be based on average external noise levels measured as part of a noise level assessment;
 - c) 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.

- 4.35. 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 to the satisfaction of the City of Port Phillip.

Disability Access

- 4.36. Before development is occupied, a Disability Discrimination Act Assessment / Audit, prepared by a suitably qualified consultant, must be submitted to the City of Port Phillip. 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

- 4.37. Before the development starts, excluding demolition, excavation, piling, 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 Minister for Planning in consultation with the City of Port Phillip. The amended report must be generally in accordance with the report prepared by Vipac Engineers and Scientists dated 7 May 2019 (amended 13 March 2020) but modified to address all changes required under ~~this~~ Clause 4 and must:
- a) Reflect all changes to the building including building height, setbacks, facades, canopies and any other features that may impact wind conditions;
 - b) Include wind tests taken at various points within the surrounding road network, publicly accessible areas within an assessment distance determined in accordance with Clause 2.11 of Schedule 30 to Clause 43.02 Design and Development Overlay of the Port Phillip Planning Scheme. The tests are to be undertaken in accordance with industry best practice, including, 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 podium rooftop and open space areas;
 - c) Demonstrate (or provide built form recommendations) that the development will ensure all publicly accessible areas, including footpaths will not be unreasonably affected by 'unsafe wind conditions' as specified in Table 7 of Schedule 30 to Clause 43.02 Design and Development Overlay of the Port Phillip Planning Scheme;
 - d) Demonstrate (or provide built form recommendations) that the development will be able to achieve 'comfortable wind conditions' as specified in Table 7 of Schedule 30 to Clause 43.02 Design and Development Overlay of the Port Phillip Planning Scheme;
 - e) Meet the DDO30 requirements for wind effects on the public realm;
 - f) Correspond to the comfort criteria in DDO30;
 - g) Assess and satisfy appropriate comfort criteria to all components of common areas and open balconies.
- 4.38. Any further modifications required to the development in order to ensure acceptable wind conditions to the surrounding streets and public areas must be carefully developed as an integrated high-quality solution with the architectural design and must not rely on street trees or wind amelioration screens within the public realm to the satisfaction of the City of Port Phillip.
- 4.39. The recommendations and requirements of the approved Wind Impact Assessment Report must be implemented to the satisfaction of the City of Port Phillip before the development is occupied.

Development Contribution

4.40. 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 Minister for Planning 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 Minister for Planning. 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) 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;
- c) Require registration of the Agreement on the titles to the affected lands as applicable;
- d) Include a schedule of the types of infrastructure to be delivered by the Victorian Planning Authority or their successor;
- e) Confirm that contributions will be payable to the Victorian Planning Authority or its successor;
- f) Confirm that the contributions will be used by Victorian Planning Authority or its successor, to deliver the schedule of types of infrastructure;
- g) Require payment of the development contribution/s before the earliest of the following:
 - The issue of an occupancy permit for 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.;
- h) 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;
- i) The agreement must make provision for its 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.

Overshadowing

4.41. The building must not result in any overshadowing of parks protected by mandatory overshadowing controls as shown on Map 4 of Clause 43.02 Schedule 30 (Design Development Overlay) of the Port Phillip Planning Scheme.

Drainage/Engineering

4.42. 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 the City of Port Phillip.

4.43. 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 the City of Port Phillip.

Melbourne Water (Flooding, Drainage and Sea Level Rise)

- 4.44. With the exception of retail areas and commercial lobbies the Finished Floor Levels (FFLs) of all ground floor areas (including all lift and stair lobbies but excluding lift platforms) must be set no lower than 3.0 metres (m) to Australian Height Datum (AHD).
- 4.45. 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 up to four metres wide (including sacrificial retail areas) containing lift platforms, 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 m to AHD, in accordance with condition 4.3844 above.
- 4.46. Areas with finished floor levels below 2.4 m to AHD must be constructed with flood resilient design elements and materials, including waterproof doors and windows, elevated power outlets, and flood resistant floor and wall materials etc.
- 4.47. All areas with electrical installations (e.g. electrical substations, switch rooms etc) must be set no lower 3.0 m to the AHD.
- 4.48. All basement entry and exits points, including lift entries, stairwells, windows, openings and vents, that could allow entry of floodwaters to the basement levels, must be set no lower than 3.0 m to AHD. The basement ramps must incorporate a flood proof apex set no lower than 3.0 m to AHD, to prevent floodwaters entering the basement levels during a flood event.
- 4.49. All electronic hydraulic services associated with the lift platform must be set no lower than 3.0m to AHD, unless enclosed within a waterproof housing to the satisfaction of Melbourne Water.
- 4.50. Prior to the commencement of buildings and works, a Flood Risk Management Plan prepared by an accredited risk management professional must be submitted to the satisfaction of Melbourne Water and endorsed by the Responsible Authority covering any areas within the building with finished floor levels below 2.4 metres to AHD (including any at grade transition areas). Any requirements of the Flood Risk Management Plan endorsed under this Incorporated Document must be implemented to the satisfaction of the Responsible Authority and Melbourne Water at all times. The Flood Risk Management Plan must address any matter relevant to managing flood risk at the site, to the satisfaction of Melbourne Water, including:
- a) identify the flood risk/s;
 - b) clearance from electrical and other services;
 - c) implement flood resilient construction materials within flood affected areas of the building;
 - d) provide for on-going building maintenance;
 - e) identify a clear protocol to activate the flood response plan;
 - f) provide for the installation of flood depth indicators;
 - g) provide for the installation of flood advisory signs;
 - h) describe evacuation procedures and assembly points; and
 - i) include a recovery procedure after the flood has receded.
- 4.51. Where finished floor levels are below 2.4 metres to AHD, before the occupation of the development, the owner must enter into an agreement with the Responsible Authority and Melbourne Water pursuant to Section 173 of the *Planning and Environment Act* 1987. The Agreement must be registered on title and must provide for the following to the satisfaction of the Responsible Authority and Melbourne Water:
- a) Prospective and future owners of the property to be informed that the Land and building is subject to inundation from flood waters;
 - b) Melbourne Water to be indemnified against any loss or damages associated with flooding; and
 - c) The implementation of the approved Flood Risk Management Plan.

All costs associated with the creation, review, execution and registration of the agreement must be borne by the proponent and/or land owner/s.

Environmental Audit

- 4.52. 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 (with the exception of any works required by an accredited auditor), the Minister for Planning 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 *Environment Protection Act 1970* in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.
- 4.53. Where a Statement of Environmental Audit is provided, all the conditions of the Statement of Environmental Audit must be complied with to the satisfaction of the Responsible Authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental professional or other suitable person acceptable to the responsible authority. In addition, sign off must be in accordance with any requirements in the Statement conditions regarding verification of works.
- 4.54. If there are conditions on a Statement of Environmental Audit that the Responsible Authority considers require significant ongoing maintenance and/or monitoring, the **owner applicant** must enter into a Section 173 Agreement under the Planning and Environment Act 1987. The Agreement must be executed on title prior to the commencement of the use and prior to the issue of a Statement of Compliance under the Subdivision Act 1988. The **owner applicant** must meet all costs associated with drafting and execution of the Agreement, including those incurred by the Responsible Authority.

Environmentally Sustainable Design

Sustainable Management Plan & Water Sensitive Urban Design

- 4.55. Before the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land and prior to endorsement of plans under Clause 4.56 of this approval, an amended Sustainable Management Plan and Water Sensitive Urban Design Response (WSUDR) must be submitted to, be to the satisfaction of and approved by the City of Port Phillip. The SMP and WSUDR must be generally in accordance with the Sustainable Management Plan & Water Sensitive Urban Design Response prepared by Simpson Kotzman, dated 31 March 2020, but modified to show:
- a) The revised building tower form, internal layout and other relevant changes required by Clause 4.7;
 - b) Shading or other appropriate devices to the north façade **appropriately** sized appropriately to reduce unwanted heat gains;
 - c) Methods of reducing heat transfer between outside and habitable spaces such as provision of thermally broken window frames;
 - d) Any changes required to reflect the design approved under Clause 4.7 if any aspects of the SMP, NatHERS and Green Star Design and As-Built rating and individual Green Star credits may be affected;
 - e) An updated Green Star spreadsheet to reflect the current version of Green Star Design and As-Built and that reflects the actual proposed design and specification;
 - f) A current Confirmation of Registration Certificate for a Green Star Design and As-Built Rating of the proposed project by the Green Building Council of Australia;
 - g) A current Green Star Design Review Rating Certificate showing that the project has achieved a 5 Star Design Review Rating and is therefore on track to achieving the 5

Star Green Star Design and As Built Rating. This should include the respective Green Star scorecard with the independent assessor's comments and points achieved for each credit and category. This scorecard needs to match Simpson Kotzman's submitted Green Star spreadsheet above;

- h) Third pipe connection and Rainwater tank capacity consistent with the 'Third pipe and rain tank water' conditions below. ~~to meet the FBURA tank sizing requirement of 0.5m3 per 10m2 of roof catchment;~~
 - i) The rainwater tank ~~to~~ connected to all toilets throughout the development;
 - j) Green roof components on the podium roof clearly specified;
 - k) Renewable energy generation maximised on the roof top.
- 4.56. Where alternative Environmentally Sustainable Design measures are proposed to those specified in this condition, the City of Port Phillip may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes.
- 4.57. Prior to the occupation of the building, a report (or reports) from the author of the Sustainable 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 the City of Port Phillip and must confirm all measures specified in the approved SMP and WSUD report have been implemented.

Green Star rating

- 4.58. Prior to the commencement of buildings and works, evidence must be submitted to the satisfaction of the City of Port Phillip, 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.
- 4.59. Within 12 months of occupation of the building, certification must be submitted to the satisfaction of the City of Port Phillip, that demonstrates that the building has achieved a minimum 5 Star Green Star Design and As-Built rating (or equivalent).

Third pipe and rain tank water

- 4.60. A third pipe must be installed for recycled and rain water to supply non-potable outlets within the development for toilet flushing, fire services, irrigation, laundry and cooling, unless otherwise agreed by the relevant water authority.
- 4.61. An agreed building connection point must be provided from the third pipe, designed in conjunction with the relevant water supply authority, to ensure readiness to connect to a future precinct-scale recycled water supply.
- 4.62. 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.
- 4.63. Rainwater captured from roof harvesting areas must be re-used for toilet flushing, washing machine and irrigation, or controlled release.

3D Model

- 4.64. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land (or as otherwise agreed with the Minister for Planning), a 3D digital model of the development and its immediate surrounds must be submitted to and approved by the Minister for Planning. 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.

Building Appurtenances

- 4.65. All building plant and equipment on the roofs and public thoroughfares must be concealed to the satisfaction of the City of Port Phillip.

City of Port Phillip Engineering Requirements

- 4.66. Before the issue of a Statement of Compliance for the subdivision of the land or occupation of any building approved under this control, the following must be undertaken or caused to be provided to the satisfaction of the City of Port Phillip:
- a) The land must be independently drained and provided with a legal point of discharge;
 - b) Full construction of all new roads, lanes and footpaths, and drainage at no cost to the City of Port Phillip unless otherwise agreed;
 - c) Fire plugs and water supply in accordance with the requirements of the Metropolitan Fire and Emergency Services (MFB) 'Planning Guidelines for Emergency Vehicle Access and Minimum Water Supplies within the Metropolitan Fire District (Guideline No: GL-27)' to the satisfaction of the City of Port Phillip Fire Safety Officer and the Chief Officer of the Metropolitan Fire Brigade;
 - d) Construction of any new vehicle crossing;
 - e) Underground reticulated water (including dual reticulation and a connection point to connect to a potential future precinct scale alternative water supply via a third pipe network), sewerage, gas, electricity and telecommunications located and bundled (utilising common trenching) to the satisfaction of the City of Port Phillip and the relevant servicing authority(s);
 - f) Issue of a Final Completion Certificate by the City of Port Phillip Asset Management Section, for the acceptance of street construction, site grading etc;(as applicable);
 - g) Filling, shaping and grading of the land to drain satisfactorily to an approved place of discharge;
 - h) Street nameplates or payment in this respect;
 - i) Steel or concrete poles for public street lighting;
 - j) Street lighting in accordance with the relevant Australian Standard;
 - k) Payment of a bond, to be held by the City of Port Phillip, to ensure that all works are satisfactorily completed (including defect rectification), and landscaping works are maintained to the satisfaction of the City of Port Phillip for a period of 12 months, after which the City of Port Phillip would assume responsibility for maintenance of landscaping works within the public roads;
 - l) A full set of 'as constructed' digitised construction plans for works, roads and drainage;
 - m) A certified plan showing the extent and depth of fill in excess of 300mm placed on the land.

Advertising Signs

- 4.67. No advertising signs either external or internal to the building/s shall be erected, painted or displayed without the prior written approval of the City of Port Phillip.

Department of Transport

- 4.68. Before the development is occupied a Green Travel Plan (GTP) must be submitted to and approved by the Department of Transport. The Green Travel Plan must include, but not be limited to, the following:
- a) A description of the existing active private and public transport context;
 - b) Sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes;
 - c) Details of GTP funding and management responsibilities including details of a designated 'manager' or 'champion' responsible for coordination and implementation;
 - d) The types of bicycle storage devices proposed to be used for employee and visitor spaces (i.e. hanging or floor mounted spaces);
 - e) The types of lockers proposed within the change-room facilities, with at least 50% of lockers providing hanging storage space;
 - f) Security arrangements to access the employee bicycle storage spaces;
 - g) Reference to electrical vehicle charging points within the car park and provision of electrical infrastructure for future expanded provision;
 - h) A monitoring and review plan requiring review and update of the GTP at least every five years;
 - i) Initiatives that would encourage [residents/employees/visitors/customers/students] of 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 but not limited to:
 - Resident/employee/student welcome packs (e.g.: including provision of Myki/public transport travel card)
 - Promotion of various public transport smartphone applications, such as the Public Transport Victoria app and/or train or tram tracker;
 - Installation of tram, train and bus timetables in prominent locations in lifts and public areas (on noticeboards, etc);
 - Installation of signs in prominent locations advising of the location of existing and proposed car-share schemes, bicycle parking facilities for residents and visitor, tram stops, taxi ranks, railway stations, bus stops and bicycle paths;
 - Installation of signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3;
 - Details of bicycle parking and bicycle routes.
- 4.69. Once approved, the Green Travel Plan must be implemented and complied with to the satisfaction of the Department of Transport and must not be amended without the prior written consent of the Department of Transport.
- 4.70. All disused or redundant vehicle crossings along Normanby Road (east side of Montague Street) must be removed and the area reinstated to kerb, channel and footpath to the satisfaction of and at no cost to the road authority, prior to the occupation of the building hereby approved.
- 4.71. Before the development starts, unless with the prior written agreement from the Responsible Authority, the owner of the land must obtain a Crown land stratum licence under Section 138A of the *Land Act 1958* for any part of the development that projects more than 300mm beyond the Normanby Road boundary.
- 4.72. Adequate sight distances to be provided to vehicular access on Normanby Road including but not limited to tree pruning and/or removal of any road side visual obstructions etc to the satisfaction of and at no cost to the Responsible Authority.

Affordable Housing

- 4.73. Before the development starts, excluding demolition, bulk excavation, piling, site preparation works, and remediation works, the owner must enter into an agreement under section 173 of the *Planning and Environment Act 1987*, to the satisfaction of the Responsible Authority, for the delivery of affordable housing (as defined in the *Planning and Environment Act 1987*).
- 4.74. The agreement must be registered on the title to the land and the owner must be responsible for the expense of preparing and registering the agreement including the reasonable costs and expenses of the Responsible Authority and City of Port Phillip incidental to preparing, registering and ending the agreement where applicable.
- 4.75. The agreement must be in a form to the satisfaction of the Responsible Authority and the City of Port Phillip and must include covenants that run with the title to the land to:
- a) Provide for the delivery of a minimum 6 percent of the total number of dwellings in the approved development, as affordable housing as defined by Section 3AA of the *Planning and Environment Act 1987*, before the development is occupied;
 - b) Unless otherwise agreed by the Responsible Authority, utilise one or more of the following mechanisms for the delivery of the affordable housing:
 - i) Transfer of the dwellings to a registered housing agency or other housing provider or trust approved by the Responsible Authority; or
 - ii) Leasing of the dwellings as affordable housing for the economic life of the building under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority.
 - c) Require the affordable housing to be delivered:
 - i) Within the development; and
 - ii) In the form of a mix of one, or two and or three-bedroom dwellings (or otherwise) to the satisfaction of the Responsible Authority with one or more bicycle parking space allocated per dwelling.
 - iii) Be functionally and physically indistinguishable from other comparable dwellings within the development;
 - iv) To the extent permissible by law include access to all common facilities within the building at no extra fee for occupants of affordable housing dwellings;
 - d) Provide that in lieu of delivering all or part of the affordable housing in accordance with Clause 4.73(a), (b) and (c), the Responsible Authority may agree to payment of an amount of money to a registered housing agency (or other housing provider or trust) if the Responsible Authority is 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 total affordable housing that was otherwise proposed to be delivered under parts (a) and (b) less the value of any affordable housing actually delivered within the development.
 - e) Provide that where the affordable housing is to be delivered using only the mechanism in Clause 4.73(c)(i), the Responsible Authority may accept a lesser amount of affordable housing in satisfaction of Clause 4.73(a) provided it is of equivalent value.
- 4.76. For the purpose of these provisions:
- a) 'affordable housing' has the same meaning as set out at Section 3AA of the *Planning and Environment Act 1987*;
 - b) 'transfer' means transfer of title and does not mean transfer at no cost or consideration; and

- c) 'value' means the monetary value of a dwelling offered for sale at a discount from market value as determined by an independent valuer (appointed by the President of the Australia Property Institute – Victorian Division) to meet the needs of households with income ranges specified within any Ministerial Order made under 3AB of the Planning and Environment Act 1987 in force at the time of entry into the agreement.

Expiry

4.77. The control in this document expires in respect of land identified in Clause 3 of this document if any of the following circumstances apply:

- a) development of that land has not commenced three (3) years after the approval date of Amendment C166port; or
- b) use of that land has not commenced five (5) years after the approval date of Amendment C166port; or
- c) development of that land is not completed five (5) years after the approval date of Amendment C166port.

Note: Melbourne Water may issue a notice under the Water Act 1989 requiring the owner of the subject land to contribute to the cost of flood mitigation and drainage works in the Fishermans Bend urban renewal area. Any such contribution will be in addition to any contribution required under this Incorporated Document.

END OF DOCUMENT

Appendix B List of submitters

No.	Submitter
1	APA Group Pty Ltd
2	City of Port Phillip
3	Melbourne Water
4	VicRoads (The Roads Corporation, Department of Transport)
5	Department of Transport
6	Fishermans Bend Taskforce (Department of Jobs, Precincts and Regions)

Appendix C Document List

No.	Date	Description	On behalf of
1	8/9/2019	Letter from Minister for Planning referring the sites to the SAC	DELWP on behalf of Minister for Planning
2	September 2019	USB of application material, hard copy attachments and plans	DELWP
2B(a)	“	DELWP Docs - C166port - Site 2 - Amended Schedule to Clause 45.12 Specific Controls Overlay	“
2B(b)	“	DELWP Docs - C166port - Site 2 - Amended Schedule to Clause 45.12 Specific Controls Overlay Compare	“
2B(c)	“	DELWP Docs - C166port - Site 2 - Amended Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme	“
2B(d)	“	DELWP Docs - C166port - Site 2 - Amended Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme Compare	“
2B(e)	“	DELWP Docs - DELWP Incorp Doc Template 29 Aug 2019	“
2C	“	Fishermans Bend Taskforce referral response for Sites 1-3	“
2D	“	Parties notified by DELWP	“
2E(1a)	“	Submission by Proponent - C166port - Site 2 – Application form	“
2E(1b)	“	Submission by Proponent - C166port - Site 2 – Incorporated document	“
2E(1c)	“	Submission by Proponent - C166port - Site 2 – Certificate of Title 1	“
2E(1d)	“	Submission by Proponent - C166port - Site 2 – Certificate of Title 2	“
2E(1e)	“	Submission by Proponent - C166port - Site 2 – Certificate of Title 3	“
2E(1f)	“	Submission by Proponent - C166port - Site 2 – Certificate of Title 4	“
2E(1g)	“	Submission by Proponent - C166port - Site 2 – Certificate of Title 5	“
2E(1h)	“	Submission by Proponent - C166port - Site 2 – Certificate of Title 6	“
2E(1i)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Survey plan 1 of 5	“
2E(1j)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Survey plan 2 of 5	“

No.	Date	Description	On behalf of
2E(1k)	“	Submission by Proponent - C166port - Site 2 – 256-262 Normanby Rd - Survey plan 3 of 5	“
2E(1l)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Survey Plan 4 of 5	“
2E(1m)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Survey plan 5 of 5	“
2E(1n)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Aerial Plans	“
2E(1o)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Architectural plans, 13 pages	“
2E(1p)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Clause 58 Assessment	“
2E(1q)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Compliance table	“
2E(1r)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Acoustic Town Planning Report	“
2E(1s)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Landscape Concept Report	“
2E(1t)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Urban Context Report	“
2E(1u)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Development Summary	“
2E(1v)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Sustainable Management Plan	“
2E(1w)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Waste Management Plan	“
2E(1x)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Traffic Impact Assessment Report	“
2E(1y)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - Wind Impact Statement	“
2E(1z)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd- Extension of Time approval dated 17.05.19	“
2E(1aa)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - RFI letter dated 06.03.19	“
2E(1ab)	“	Submission by Proponent - C166port - Site 2 – 256 - 262 Normanby Rd - SJB Planning RFI Response dated 31.05.19	“
2E(2a)	“	Submission by Proponent - C166port - Site 2 – Cover letter 256-262 Normanby	“
2E(2b)	“	Submission by Proponent - superseded - C166port - Site 2 – Normanby Road Precinct Site 2	“

No.	Date	Description	On behalf of
2E(2c)	“	Submission by Proponent - superseded - C166port - Site 2 – Normanby Precinct Development Summary Site 2	“
2E(2d)	“	Submission by Proponent - C166port - Site 2 – Planning Report	“
2E(2e)	“	Submission by Proponent – C166port - Site 2 – 256 - 262 Normanby Road Financial Analysis FINAL v2.0	“
2E(2f)	“	Submission by Proponent - superseded - C166port - Site 2 – Wind Impact Statement	“
3	17/10/2019	Directions Hearing notification including Distribution List and Directions from Committee	Planning Panels Victoria
4	25/10/2019	Letter in response to Committee’s Directions with link to a) A ‘Planning Policy and Controls’ e-book b) A ‘Current Planning Permits’ e-book c) ‘Site Specific Maps’ e-books for each Amendment proposal	Harwood Andrews, on behalf of DELWP
4A(1a)	“	6-78 Buckhurst St - Permit - issued 1 September 2014. Amended 16 October 2019	“
4A(1b)	“	6-78 Buckhurst St - Permit - Master plans endorsed 25 May 2017	“
4A(1c).	“	6-78 Buckhurst St - Permit - Stage 1 Plans endorsed 31 Aug 2017	“
4A(1d)	“	5A(1d) 6-78 Buckhurst St – Permit - Stage zero plans not endorsed	“
4A(2a)	“	15-87 Gladstone St - Permit - issued 1 September 2014. Amended 4 11 16	“
4A(2b)	“	15-87 Gladstone St - Permit - Endorsed plans, 3 January 2019	“
4A(3a)	“	60-82 Johnson St – Permit - issued 20 May 2015. Amended 17 10 16 & 14 08 19	“
4A(3b)	“	60-82 Johnson St - Permit Decision plans not endorsed	“
4A(4a)	“	134-142 Ferrars St - Permit issued 10 April 2017. Amended 29 June 2018	“
4A(4b)	“	134-142 Ferrars St - Permit Architectural Plans endorsed 29 March 2018	“
4A(5a)	“	134-150 Buckhurst St - Permit issued 1 September 2014	“
4A(5b)	“	134-150 Buckhurst St - Decision plans part 1, not endorsed	“
4A(5c)	“	134-150 Buckhurst St - Decision Plans part 2, not endorsed	“

No.	Date	Description	On behalf of
4A(6a)	“	122-201 Normanby Rd - Permit issued 1 09 14. Amended 23 02 16, 29 06 18 and 11 09 18	“
4A(6b)	“	122-201 Normanby Rd - Endorsed plans 17 July 2019	“
4A(7a)	“	202-214 Normanby Rd - Permit issued 22 08 16. Amended 14 07 17, 24 11 17, and 20 03 19	“
4A(7b)	“	202-214 Normanby Rd - Endorsed plans, 29 July 2019	“
4A(8a)	“	245-251 Normanby Rd - Permit issued 25 01 18 - VCAT Order P21662017 dated 23 01 17	“
4A(8b)	“	245-251 Normanby Rd - Permit Decision Plans not endorsed	“
4A(9a)	“	253-273 Normanby Rd - Permit issued 5 12 17 - VCAT Order P16042017 dated 27 11 17. amended 21 05 19	“
4A(9b)	“	253-273 Normanby Rd - Condition 1 - Amended Plans - Endorsed 21 May 2019	“
4A(10)	“	Index of Surrounding Permits	“
4A(11)	“	Annexure - Status Map	“
4B	“	Planning Policy and Controls Book - Index	“
4B(1)	“	Zones and Overlays	“
4B(2)	“	Particular Provisions	“
4B(3)	“	General Provisions	“
4B(4)	“	Planning Policy Framework	“
4B(5)	“	Local Planning Policy Framework	“
4B(6)	“	Operational Provisions	“
4B(7)	“	Strategic Planning Documents	“
4C	“	Site Specific Map Book (256-262 Normanby Rd: Site 2)	“
5	28/10/2019	Letter from Applicant’s representative on behalf of the owners of site 1, 2 and 3	Rigby Cooke Lawyers, on behalf of Applicants
5A	“	Response to Cultural Heritage Management Plan (CHMP) clarification (Sites 1, 2 and 3)	“
6	“	Letter to DELWP regarding Terms of Reference	SAC Chair
7	29/10/2019	Letter from Fishermans Bend Taskforce (DJPR) responding to Committee’s directions	Aidan O’Neill, Fishermans Bend Taskforce
8	1/11/2019	Committee Directions Letter	Planning Panels Victoria
9	13/11/2019	Letter regarding hearing dates for site 2	Rigby Cooke on behalf of Ausan Property CBD Pty Ltd (Ausan)

No.	Date	Description	On behalf of
10	“	Letter from Fishermans Bend Taskforce regarding Build to Rent Proposal (Bertie Street)	Fishermans Bend Taskforce
11	14/11/2019	Notice of the Order in Council – Bertie Street – email from Fishermans Bend Taskforce	PPV on behalf of Fishermans Bend Taskforce
12	18/12/2019	Letter from DELWP responding to request for clarification in relation to the SAC Terms of Reference	Mr Matt Cohen, for DELWP
13	24/01/2020	Fishermans Bend SAC - Letter from SAC to Parties - adjournment site 2	SAC
14	02/03/2020	Letter from Site 2 Proponent to SAC - update on proceedings	Rigby Cooke on behalf of Site 2 Proponent
15	11/03/2020	Fishermans Bend SAC - Normanby Rd - 3 sites (1 2 and 3) - Further Directions Hearing notification	SAC
16	16/03/2020	Fishermans Bend SAC - Normanby Rd - 3 Sites (1, 2 & 3) – Directions in relation to COVID-19 Potential Impact on Planning Panels	SAC
17	25/03/2020	Fishermans Bend SAC - Normanby Rd - 3 Sites (1, 2 & 3) Cancellation of Directions Hearing and seeking confirmation from Proponents	SAC
18	01/04/2020	Site 2 Proponent Response to SAC confirmation letter from SAC dated 26 03 20	Rigby Cooke on behalf of Site 2 Proponent
19	02/04/2020	Letter to all Parties – Site 2 – Hearing Arrangements	SAC
20	09/04/2020	Joint letter from DELWP, FB Taskforce, COPP and Site 2 Proponent on SAC directions dated 02 04 20	Ms Kate Morris, Harwood Andrews for DELWP
21	14/04/2020	Melbourne Water - Site 2 Letter to SAC	Ms Kate Kinsella, Melbourne Water
22	15/04/2020	Letter from Site 2 Proponent to SAC -updated architectural drawings, updated planning assessment and technical reports	Rigby Cooke on behalf of Site 2 Proponent
23	“	Index to documents, April 2020	“
24a	“	Site 2 - Urban Context Report prepared by Hayball dated March 2020	“
24b	“	Site 2 - Normanby Precinct Development Summary site 2 April 2020	“
24c	“	Site 2 Architectural drawings 14.4.2020 (00-10 to S02_A030)	“
24d	“	Site 2 Architectural Renders – 1949 Normanby V01 laneway	“
24e	“	Site 2 Architectural Renders – 1949 Normanby Vignette Site 02	“

No.	Date	Description	On behalf of
24f	“	Site 2 Architectural Renders – 1949 Normanby Ground Level V01	“
24g	“	Site 2 Architectural Renders – 1949 Normanby Ground Level V02	“
25a	“	Site 2 Planning report - request to prepare, adopt, and approve Ministerial Amendment	“
25b	“	Site 2 - Response to Permanent Controls - SAC Compliance table (Site 2) v2	“
25c	“	Site 2 - Clause 58 Assessment April 2020 (ID 1789031)	“
26a	“	Site 2 - Wind Impact Assessment report prepared by Vipac revision 5 13.03.2020	“
26b	“	Site 2 - Acoustic Town Planning Report prepared by Vipac revision 4 27.03.2020	“
26c	“	Site 2 - Waste Management Report prepared by Leigh Design 20.03.2020	“
26d	“	Site 2 - Sustainable Management Plan Simpson Kotzman revision D 31.03.20	“
26e	“	Site 2 - Landscape concept plan prepared by Tract 20.02.2020	“
26f	“	Site 2 - Traffic Report prepared by TTM 25.02.2020	“
27	20/04/2020	Email from SAC to Proponent - requesting Statement of Changes to Architectural Plans	SAC
28	“	Fishermans Bend SAC - Site 2 - New timeframe for Draft directions and timetable	“
29	23/04/2020	Proponent - Site 2 - Statement of Changes-Site 2 Architectural Plans	Rigby Cooke on behalf of Site 2 Proponent
30	24/04/2020	Email from DELWP to Panel - proposed draft directions and hearing timetable for Site 2	Ms Kate Morris, Harwood Andrews for DELWP
31	“	DELWP - Proposed draft Directions Timetable - FB SAC - Site 2 - 24 04 20	“
32	“	Letter from Fishermans Bend SAC to Parties - Site 2 - Directions (v2) and Timetable (v1)	SAC
33	4/05/2020	Email letter from DELWP to Proponent Site 2 - Rigby Cooke Lawyers - 04.05.20	Ms Kate Morris, Harwood Andrews for DELWP
33a	“	Attachment to Letter - Draft Incorporated Document - template 04.05.20	“

No.	Date	Description	On behalf of
34	5/05/2020	Fishermans Bend Standing Advisory Committee - Sites 1 and 3 and Site 2 - Correspondence regarding Terms of Reference - 5 May 2020	SAC
35	8/05/2020	Letter from Site 2 Proponent - Direction 1a - 1d (confirming witnesses and documents to be relied on)	Rigby Cooke on behalf of Site 2 Proponent
36	"	Site 2 Fbx model (3D Model)	"
37	"	Proponent Site 2 - Draft Incorporated Document - 256-262 Normanby Road South Melbourne (Site 2)	"
38	12/05/2020	Fishermans Bend Standing Advisory Committee letter to parties - Site 2 - SAC Vantage Points - 12 May 2020	SAC
39	13/05/2020	Letter from Site 2 Proponent to DELWP regarding requested further information	Rigby Cooke on behalf of Site 2 Proponent
39a	"	Site 2 - Response to Fishermans Bend Standing Advisory Committee terms of reference	"
39b	"	Site 2 - shadow study for Clause 58 standard D8	"
39c	"	Daylight Study - Site 2 - daylight access to south facing balconies Simpson Kotzman	"
39d	"	Proponent Site 2 - Explanatory report	"
40	"	Letter from FB Taskforce to SAC on Site 2 amended architectural drawing package	Mr Aiden O'Neill for Fishermans Bend Taskforce
40a	"	Fishermans Bend Affordable Housing Guidelines Draft V3 update 20 02 20	"
41	14/05/2020	Melbourne Water - Response to Amended Plans - Normanby Rd - Site 2	Ms Kate Kinsella, Melbourne Water
42	19/05/2020	Letter from DELWP to SAC - links to Map book, Policy's, permits and summary - 19 05 20	Ms Kate Morris, Harwood Andrews for DELWP
43	"	Map book - Site 2	"
44	"	Planning Policy and Controls Book - Site 2	"
45	"	Surrounding Permits - Site 2 – 18 05 2020	"
46	"	Summary of Surrounding Permits - Site 2	"
47	"	Letter from DELWP to Parties – Site 2 Hub share and video hearing - 19 05 20	"
48	21/05/2020	City of Port Phillip - comments on Site 2 Amended Plans - 21 05 20	Ms Carla Oliva, Maddocks for City of Port Phillip

No.	Date	Description	On behalf of
49	28/05/2020	Letter from DELWP to SAC circulating draft Incorporated Document Site 2	Ms Kate Morris, Harwood Andrews for DELWP
50	“	Incorporated Document - DELWP 256-262 Normanby Road South Melbourne (Site 2)	“
51	“	Letter from SAC to Parties - Site 2 - update to Directions 5 and 8 timings	SAC Chair
52	1/06/2020	Letter from Proponent (Site 2) to Panel - Distribution of expert evidence	Rigby Cooke on behalf of Site 2 Proponent
53	“	Ausan Property CBD Pty Ltd - Expert Evidence Site 2- Mark Sheppard - Urban Design - 1 06 2020	“
54	“	City of Port Phillip - Expert Evidence Site 2- Marcus Spiller - Affordable Housing - June 2020	Ms Carla Oliva, Maddocks for City of Port Phillip
55	2/06/2020	Email letter from DELWP to Parties - circulating Part A Site 2	Ms Kate Morris, Harwood Andrews for DELWP
56	“	DELWP Part A submission - C166port (Site 2) <i>Note: Appendix 1: Draft Incorporated Document (DELWP preferred version) of the Part A Submission is identical to the draft Incorporated Document circulated by DELWP on 28 May 2020 (Document 50).</i>	“
57	“	Part A - Appendix 2 - C166port Clause 58 (Site 2) - 01.06.2020	“
58	3/06/2020	Email from Fishermans Bend Taskforce to SAC - no comment on DELWPs draft Incorporated Document Site 2	Mr Nick Roebuck, Fishermans Bend Taskforce
59	“	CoPP - changes to DELWP Incorporated Document 28.05.2020 - Site 2	Ms Kierra Parker, Maddocks for City of Port Phillip
60	5/06/2020	Melbourne Water Comments on Draft Incorporated Document Site 2	Ms Kate Kinsella, Melbourne Water
61	“	Melbourne Water Draft Incorporated Document (Site 2) - Changes sought 3 June	“
62	“	Email from Proponent (Site 2) to Parties in regard to Economic evidence of Mr Ainsaar	Rigby Cooke on behalf of Site 2 Proponent
63	“	Letter from SAC to Parties – Site 2 - SAC request for a referral response from City of Port Phillip drainage engineers	SAC Chair

No.	Date	Description	On behalf of
64	10/06/2020	Letter from DELWP to Parties- circulating further draft Incorporated Document - 10 June 2020	Ms Kate Morris, Harwood Andrews for DELWP
65	“	DELWP - Incorporated Document Site 2 - 10 06 2020	“
66	11/06/2020	Email from City of Port Phillip to Parties in regard to referral response requested by SAC from drainage engineers	Ms Carla Oliva, Maddocks for City of Port Phillip
67	“	Email from Proponent to Parties in regard to no further economic material <i>Note: Document ‘256 - 262 Normanby Road Financial Analysis FINAL v2.0’ provided by Proponent here is Document 2E(2e).</i>	Rigby Cooke on behalf of Site 2 Proponent
68	“	Email from PPV to Parties on behalf SAC in regard to Timetable scheduling for the hearing of this matter	PPV on behalf of SAC
69	“	Email from PPV to Site 2 Proponent on behalf of SAC in regard to confirmation on availability for cross examination	“
70	12/06/2020	Email response from CoPP in regard to Timetable scheduling for the hearing	Ms Maria Marshall, Maddocks for City of Port Phillip
71	“	Fishermans Bend Taskforce Submission SAC - Site 2 Amendment C166port	Mr Nick Roebuck, Fishermans Bend Taskforce
72	“	Melbourne Water Submission Site 2	Ms Kate Kinsella, Melbourne Water
73a	“	Email response from Site 2 Proponent in regard to Timetable scheduling for the hearing – Mr Jordan and Cross Examination	Ms Gemma Robinson, Rigby Cooke on behalf of Site 2 Proponent
73b	“	Email responses from Site 2 Proponent in regard to Timetable scheduling for the hearing – Mr Sheppard	Mr Reto Hofmann, Rigby Cooke on behalf of Site 2 Proponent
74	“	Letter from DELWP to Parties circulating Part B Submissions	Ms Kate Morris, Harwood Andrews for DELWP
75	“	DELWP - Part B Submission - Site 2 C166port - Final	“

No.	Date	Description	On behalf of
76	15/06/2020	Information from DELWP to SAC on draft Amendment C176port (2-28 Montague St and 80 Munro St, South Melbourne) - Information Sharing Note – 28 April 2020	Ms Kate Morris, Harwood Andrews for DELWP
77	“	Fishermans Bend SAC - Site 2 - Timetable (v2)	SAC Chair
78	“	City of Port Phillip - Council's submission Affordable Housing - Amendment C166port (Site 2 - 56-262 Normanby Rd)	Ms Carla Oliva, Maddocks for City of Port Phillip
79	“	Email from the Proponent confirming it seeks to amend the architectural plans or consent to particular conditions to amend the architectural plans	Mr Reto Hofmann, Rigby Cooke on behalf of Site 2 Proponent
80	“	Site 2 - New Built Form for the tower shown in a revised floor plan and basic elevation	“
81	“	Site 2 - Street view massing01 of revised built form	“
82	“	Site 2 - Street view massing02 of revised built form	“
83	“	Information from DELWP to SAC - Information Sharing Note 2	Ms Kate Morris, Harwood Andrews for DELWP
84	16/06/2020	Dr Peter Marshall memo to SAC re affordable housing (Bertie Street C172port (Document 115) and Site 6 CC63 Document 64) (corrected)	Ms Kate Morris, Harwood Andrews for DELWP
85	“	Dr Marcus Spiller memo to Maddocks on Dr Marshall advice (Doc 84 above)	“
86	“	Fishermans Bend Permits and Applications Status Map - 21.05.2020	Ms Kate Morris, Harwood Andrews for DELWP
87	“	Fishermans Bend Permit History - 16.06.2020	“
88	“	Email from Proponent Site 2 -Normanby Rd retail with dimensions added and Timetable confirmations	Rigby Cooke on behalf of Site 2 Proponent
89	“	Normanby Road front setback detail 16.06.2020 - with Dimensions added	“
90	17/06/2020	City of Port Phillip - Councils submissions on built form - Site 2 - Final	Ms Kierra Parker, Maddocks for City of Port Phillip
91	“	Email from SAC to Parties on follow up matters from Day 2 of the Hearing	PPV on behalf of SAC

No.	Date	Description	On behalf of
92	“	Email from Proponent on follow up matters from Day 2 of the Hearing and Sheppard brief memo	Mr Reto Hofmann, Rigby Cooke on behalf of Site 2 Proponent
93	“	Proponent - 256-262 Normanby Rd (Site 2) - Addendum to Expert Evidence - Mark Sheppard	“
94	18/06/2020	DELWP - Visual comparisons of building forms	Ms Kate Morris, Harwood Andrews for DELWP
95	“	Proponent Part A Submission - History and Built Form	Mr Reto Hofmann, Rigby Cooke on behalf of Site 2 Proponent
96	“	Mark Sheppard evidence presentation	Mr Reto Hofmann, Rigby Cooke on behalf of Site 2 Proponent
97	“	City of Port Phillip - Preferred setbacks in visual form (comparing Proponent's 'new built form' with Council's preferred built form)	Ms Kierra Parker, Maddocks for City of Port Phillip
98	“	Melbourne Water further clarification of lift platform height	Ms Kate Kinsella, Melbourne Water
99	“	Email from Proponent with indicative floorplate for the New Built Form and the development summary	Mr Reto Hofmann, Rigby Cooke on behalf of Site 2 Proponent
100	“	New Built Form - Site 2 - indicative floor plate	“
101	“	New Built Form - Site 2 - Normanby Precinct Development Summary for indicative floor plate	“
102	“	Email from Proponent - Changes proposed on Incorporated Document	Mr Reto Hofmann, Rigby Cooke on behalf of Site 2 Proponent
103	“	Proponent - proposed changes to Incorporated Document - 256-262 Normanby Rd - Site 2	“
104	19/06/2020	Proponent - Site 2 - Submissions on Affordable Housing	Mr Reto Hofmann, Rigby Cooke on behalf

No.	Date	Description	On behalf of
			of Site 2 Proponent
105	23/06/2020	Letter from Fishermans Bend SAC - Site 2 - Hearing close and outstanding information from the parties	SAC Chair
106	"	Email from Fishermans Bend Taskforce to Parties - Position in respect of the 6% reference in Clause 22.15 for Affordable housing for referred applications	Aidan O'Neill, Fishermans Bend Taskforce
107	26/06/2020	Letter from DELWP to Parties - clean version of the draft Incorporated Document and position in respect of the 6% reference for Affordable housing	Ms Kate Morris, Harwood Andrews for DELWP
108	"	DELWP - Preferred version of Incorporated Document Site 2 - clean version 26 06 2020	"
109	"	Email from City of Port Phillip to Parties -Affordable housing clarification	Ms Maria Marshall, Maddocks for City of Port Phillip
110	02/07/20	Site 2 - letter to SAC – additional dimensions and clause 58 assessment, variations to preferred setback and dwelling density	Ms Robinson, Rigby Cooke on behalf of Site 2 Proponent
111	"	Site 2 - Bads Assessment - Dimensioned plans	"
112	"	Site 2 - Clause 58 Assessment (ID 1810161)	"
113	10/07/2020	Letter from DELWP to SAC- follow up matter - clause 58	Ms Kate Morris, Harwood Andrews for DELWP
114	"	DELWP - tracked Clause 58 changes to clean draft Incorporated Document 9 July 2020	"
115	20/07/2020	Email from Proponent in regard to DELWP proposed 10 July condition 4.7(n)	Ms Robinson, Rigby Cooke on behalf of Site 2 Proponent
116	"	Email from DELWP in regard to proposed Condition 4.7(n)	Ms Kate Morris, Harwood Andrews for DELWP

Appendix D Summary of the Terms of Reference

Clause 5.0 of the Terms of Reference dated 9 February 2020 outlines the purposes of the Committee, to:

- a. Advise the Minister for Planning on the suitability of site specific planning controls pursuant to clause 45.12 (in accordance with the scope of these Terms of Reference) to achieve particular land use and development outcomes for certain land within Fishermans Bend in advance of the approval of an Infrastructure Contributions Plans.*
- b. Provide a timely, transparent and consultative process for assessment of the suitability of site specific planning controls for certain land within Fishermans Bend.*

The Terms of Reference provide parameters for consideration of a site specific planning control by the Committee at Clauses 14 and 15. These include:

- the proposal responding to local policy
- meeting the requirements of the Design and Development Overlay and Capital City Zone other than the dwelling density requirement; the requirement to be generally in accordance with the Framework and a requirement to enter into a section 173 agreement to provide a new laneway. However, a Proponent is expressly encouraged to meet these two latter requirements.

Likewise, through Clause 20 of the Terms of Reference, the Minister for Planning has directed the Committee in assessing a site specific control to consider:

- a. The matters set out in sections 12 and 60 of the Planning and Environment Act 1987, the Planning Policy Framework, the Local Planning policy Framework including the Municipal Strategic Statement and local planning policies.*
- b. The content, including the 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 ... of these Terms of Reference ...*
- d. Whether any departure from the Fishermans Bend Framework (September, 2018) compromises the objectives of the Fishermans Bend Framework, September 2018.*
- e. The cumulative effect on the preferred character of the relevant precinct or the ability to achieve the objectives of Fishermans Bend Framework (September, 2018) or the requirements of the permanent planning controls set out in paragraphs 14-15.*
- 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 the Fishermans Bend Framework (September, 2018), and contributes to the objectives of the Fishermans Bend Framework, September 2018.*

g. The Ministerial Direction outlining the 'Form and Content for Planning Schemes' approved under section 7(5) of the Planning and Environment Act 1987 when drafting and/or reviewing site specific planning controls.

h. All relevant submissions and evidence regarding the site specific planning control to facilitate the proposal.

In the Committee's view, this imposes a primary obligation on the Committee to evaluate the appropriateness of the site specific control by reference to the re-cast planning policies and controls for Fishermans Bend and the Montague Precinct, with a particular focus on strategic planning aspirations for the Fishermans Bend Precinct as a whole.

The Terms of Reference further clarify that the Committee should 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.

In terms of outcomes, the Terms of Reference require the Committee to produce a written report for the Minister on each referral, providing:

a. A summary of the site specific planning control, the proposal and all submissions received.

b. The Advisory Committee's recommendations regarding the site specific planning control and the proposal.

c. A summary of the Advisory Committee's reasons for its recommendations.

d. A copy of the site specific planning control including recommended conditions to form part of the site specific planning control.

e. A list of persons who made submissions considered by the Advisory Committee.

f. A list of persons consulted or heard.