

Planning and Environment Act 1987

Fishermans Bend Standing Advisory Committee – Tranche 1B Report

**Port Phillip Planning Scheme draft Amendment
C163port
203-205 Normanby Road, South Melbourne (Site 6)**

13 May 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 C163port (203-205 Normanby Road, South Melbourne).

The referral was provided to the Committee by the Department of Environment, Land, Water and Planning (DELWP) on 11 September 2019.

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)



Peter Marshall, Member

13 May 2020

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Glossary

the Act	<i>Planning and Environment Act 1987</i>
Affordable housing	has the same meaning as in section 3AA of the Act
AHA	Affordable Housing Association
AHD	Australian Height Datum
Amendment	draft Amendment C163port to the Port Phillip Planning Scheme
BESS	Built Environment Sustainability Scorecard
CCZ(1)	Capital City Zone (Schedule 1)
Committee	Fishermans Bend Standing Advisory Committee
Council	Port Phillip City Council
DELWP	Department of Environment, Land, Water and Planning
DDO30	Design and Development Overlay Schedule 30
draft Guidelines	Draft Fishermans Bend Social and Affordable Housing Guidelines prepared on behalf of the Fishermans Bend Taskforce
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
VCAT	Victorian Civil and Administrative Tribunal

1 Executive summary and recommendation

1.1 Summary

Fishermans Bend is identified as a substantial renewal area which is intended to appear and function as an extension of Melbourne's Central City. The Montague Precinct is a key focus for new development proposals. Some of these, including the current proposal, were lodged under former planning scheme provisions and were 'called in' for consideration by the Minister for Planning but have not been determined.

Since that time, Amendment GC81 to the Melbourne and Port Phillip Planning Schemes re-cast the provisions for the Fishermans Bend Precinct.¹ This involved an extensive public consultation process including a Review Panel from Planning Panels Victoria. The *Fishermans Bend Framework, The next chapter in Melbourne's growth story, September 2018* (Framework) underpins these provisions and is included as a reference document in the Port Phillip Planning Scheme (Planning Scheme).

More recently, the Fishermans Bend Standing Advisory Committee (Committee) was established by the Minister for Planning. It is tasked with considering the appropriateness of site specific proposals referred to it.

Draft Amendment C163port proposes to introduce an Incorporated Document in the schedules to Clauses 45.12 and 72.04 of the Port Phillip Planning Scheme to grant permission for the use and development of the land at 203-205 Normanby Road for a mixed-use development comprising dwellings and retail premises and the alteration of access to a road in a Road Zone (Category 1).

Public notice of the draft Amendment was confined to relevant statutory authorities since there are exemptions to the third party participation requirements in the underlying planning controls including the Capital City Zone.

The parties came to a substantial consensus position in support of the proposed land use and development. Parties considered it appropriate to progress the draft Amendment subject to refining the content of the draft Incorporated Document. The method for delivery of Affordable housing within the proposed development also remained in dispute and Council called expert evidence on this issue.

Irrespective, the Committee is obliged to independently consider all matters in Clauses 14 and 20 of the Terms of Reference, including the appropriateness of the proposed development in light of the re-cast planning controls as well as all submissions and evidence presented to it. In accordance with its Terms of Reference, the Committee has critically evaluated the appropriateness of the design response of the proposed development, with a particular emphasis on building height, even though this was an aspect of the proposal largely agreed between the parties.

The Committee is not satisfied that the proposal as represented by the current application plans would be consistent with the full suite of re-cast planning policies and provisions.

¹ As mapped in Schedule 1 of the Capital City Zone.

There are two key concerns – building height and podium façade design, and the proposed Affordable housing contribution.

With respect, the Committee considers that authorities considering the proposal to date have placed too much weight on mitigating deficiencies of an existing approval for the neighbouring site issued under a former Planning Scheme regime, whereas primary emphasis needs to be given to achieving the Vision sought by the re-cast planning controls. This contemporary vision envisages a clear change (reduction) in heights of buildings approved under earlier controls. The objectives of DDO30 including a preferred maximum building height of 20 storeys are intended to guide the redevelopment of the Precinct moving forward.

On the issue of Affordable housing, the Committee accepts that there may be many ways a Proponent can satisfy the policy in Clause 22.15-4.3 of the Planning Scheme. However, the contribution should represent at least 6% of the development and be provided at a level that is “Affordable” as this term is defined in the *Planning and Environment Act 1987* and associated declarations. The Committee finds that the proposal to transfer 10 x 1 bedroom dwellings to a registered housing provider would not meet this key policy for the Fishermans Bend Precinct. On the Committee’s calculations, either the number of dwellings to be provided as Affordable housing should be increased to 17 or a minimum benchmark should be used to provide a base for equivalent value.

In these circumstances, the Standing Advisory Committee supports draft Amendment C163port, subject to important modifications to the Incorporated Document.

1.2 Conclusions

The Committee concludes:

- The proposed mix of land use would satisfy strategic planning objectives for the Montague Precinct.
- The built form as currently proposed would not be consistent with future character aspirations for the Montague Precinct in terms of building height and façade design and treatment. The Committee recommends modifications to the proposal to suitably moderate between preferred character outcomes and nearby approvals for taller buildings, including:
 - a reduction in building height to a maximum of 30 storeys (101 metres to Australian Height Datum to the top of the lift overrun and facade)
 - podium redesign to achieve an acceptable streetscape and public realm presentation to Normanby Road, the proposed highline linear park to the rear and the adjacent site to the west
 - further work to achieve high standards of Environmentally Sustainable Development sought for the Precinct under the re-cast planning controls.
- The proposed Affordable housing contribution does not meet the policy in Clause 22.15-4.3 which is central to the achievement of the Vision for the Precinct. The provision should represent at least 16.7 x 1 bedroom apartments. Alternatively, a minimum baseline for a contribution equivalent to 2.1% Gross Leasable Residential Floor Area could be included as a requirement of the Incorporated Document, subject to a delivery mechanism to be approved by the Responsible Authority.

- Conditions of the draft Incorporated Document would enable the proposal to respond to the potential for flooding, although there are urban design benefits in allowing a small area of the retail or commercial tenancies below the levels proposed by Melbourne Water subject to appropriate protective measures.
- Appropriate development contributions have been proposed within the draft Incorporated Document.

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

1.3 Recommendation

The Committee recommends:

Draft Amendment C163port to the Port Phillip Planning Scheme be prepared and approved subject to the Incorporated Document being modified as shown in Appendix A of this report.

2 Introduction

2.1 Amendment summary

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.

The following tables outline key aspects of the site and its context, the proposed development, the Amendment and its consideration by the Committee.

Table 1 Amendment summary

Amendment summary	
Amendment No	Port Phillip Planning Scheme draft Amendment C163port
Date of Amendment request	1 February 2019
Site address	203-205 Normanby Road, South Melbourne (Site 6)
Proponent	Lutkas Pty Ltd
Council	Port Phillip City Council
Exhibition	12 September to 11 October 2019
Parties notified	5
Submissions	6 (Refer to Appendix B)

Figure 1 Site location

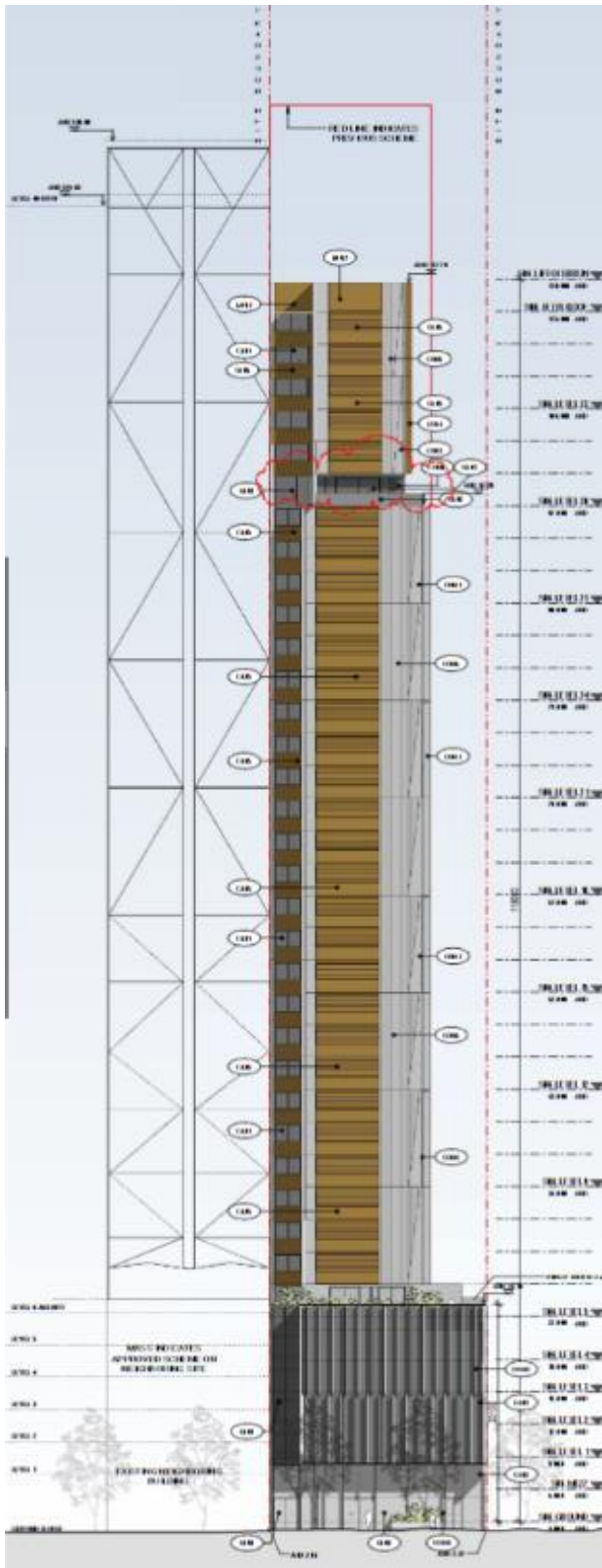


Table 2 Summary of proposal underpinning the draft Incorporated Document

Proposal summary	
Site area	1,183 sqm
Land use	171 dwellings and 2,093 sqm of floor area for commercial and retail uses
Site and surrounding area	<p>The site sits between Normanby Road and Woodgate Street and is occupied by a single level industrial/warehouse building. The site abuts a 40 storey hotel development under construction at 199-201 Normanby Road and a car dealership to the west that extends to Montague Street.</p> <p>The Gravity building, a 29 storey mixed use development, has been recently developed at 89 Montague Street, to the south of the site. Recent approvals in the immediate area include:</p> <ul style="list-style-type: none"> - 245-251 Normanby Road, 40 storey residential building - 253-273 Normanby Road, 40 storey residential building - 202-214 Normanby Road, 40 storey serviced apartments.
Building form	Podium-tower typology with tower
Height	36 storeys plus basement (118 metres Australian Height Datum) with a five storey podium
Setbacks	<p>Podium: nil setbacks from all property boundaries aside from front (with fin projections within north and south setbacks).</p> <p>Tower: 0-3 metres to the east, 5.8 – 7.5 metres to the west, 6 metres to the north (front) and 6 metres to the south (rear) property boundaries.</p>
Other key elements	<p>Ground floor and podium commercial tenancies sleeving car parking to the north and south</p> <p>Communal terrace on podium roof</p> <p>Lift overrun concealed behind façade</p> <p>40 car spaces and 197 bicycle spaces²</p>
Zone	Capital City Zone Schedule 1
Overlays	<p>Design and Development Overlay (Schedule 30)</p> <p>Environmental Audit Overlay</p> <p>Infrastructure Contributions Overlay (Schedule 1)</p> <p>Parking Overlay (Schedule 1)</p>

² This would meet the requirements of the Parking Overlay, providing less than 127 car parking spaces and encouraging sustainable transport use.

Figure 2 Normanby Road (northern elevation)



Source: Amended application plans prepared by Hayball Architects dated 23 October 2019

Table 3 Committee process

Committee process	
Members	Dalia Cook (Chair), Michael Kirsch (Deputy Chair), Stefan Preuss (Office of the Victorian Government Architect) and Peter Marshall
Directions Hearing	30 October 2019 and 19 November 2019
Hearing	2 – 4 March 2020. Hearing closed 12 March 2020 upon final document request.
Site inspection	Unaccompanied 25 March 2020
Appearances	<p>Mr Rupert Watters of Counsel with Ms Kate Morris, Solicitor, Harwood Andrews on behalf of the Department of Environment, Land, Water and Planning (DELWP)</p> <p>Mr Aidan O'Neill on behalf of the Fishermans Bend Taskforce (Taskforce)</p> <p>Mr Terry Montebello 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</p> <p>Ms Kate Kinsella on behalf of Melbourne Water</p> <p>Mr Reto Hoffman, Solicitor, Rigby Cooke and Ms Angela Croome, Town Planner, SJB Planning on behalf of the Proponent. They called Mr Mark Sheppard, Urban Designer, Kinetica to give expert evidence. They also called Mr Tom Jordan, Architect and Managing Director, Hayball Architects, to outline the design intent of the proposal.</p>
Date of this Report	13 May 2020

2.2 Procedural issues

(i) Application plans and documents

The Committee evaluated the proposed development on the basis of plans prepared by Hayball Architects dated 23 October 2019 as relied on by the Proponent. It has also had regard to all documents referred to it by DELWP, including submissions from non-attending authorities in addition to documents on the tabled document list at Appendix C.

The Committee also had the benefit of Precinct wide 3D modelling presented by DELWP throughout the Hearing. This provided a flexible tool which assisted the Committee to understand surrounding proposed and approved built form and had the capacity to undertake modelling and basic modifications to the proposal.³

³ The Committee was advised that the inputs to this model are provided by permit applicants and that the model is maintained by Urban Circus. It has been used throughout the process as an aide to verify evidence and submissions, although the Committee has principally relied on the application plans in its deliberations.

(ii) Preparation of further architectural renderings at the request of the Committee

The Committee is conscious of its Terms of Reference signed by the Minister for Planning⁴ (Terms of Reference) that require it to advise on the appropriateness of the site specific control in light of relevant planning policy and controls as discussed further in Chapter 3.1. Clause 19 of the Terms of Reference provides that the Committee may inform itself in any way it sees fit.

A key component of the proposal to be facilitated by the site specific control is the development of the land with a 36 storey building. A mandatory consideration for the Committee under the Terms of Reference is to consider compliance with the current Planning Scheme policies and controls, as well as whether a departure from these would compromise objectives of the Framework, including cumulative effects.

The Committee advised the parties early in the Hearing that it would interrogate the acceptability of the proposed building height in light of the Vision contained in Local Planning Policy and the provisions of the zone and overlay, also taking into account nearby existing approvals. This was to enable it to carry out its task under the Terms of Reference, with a particular focus on whether any departures would compromise the objectives of the Framework.

Before closing the Hearing, the Committee requested the Proponent prepare further architectural renderings to depict views of the proposed development from key vantage points. These were identified by the Committee as views from Normanby Street and Woodgate Street, from the north western corner of Normanby Road and Montague Street (identified by Mr Sheppard as the key public vantage point) as well as views from the proposed linear 'highline' park along existing tram depot facilities to the south.

In these renderings, the Committee requested the building be depicted at its proposed height (36 storeys), and alternately at 34, 32 and 30 storeys respectively. It also requested the volumetric depiction of a notional building on adjacent land to the west that would meet the preferred maximum 20 storey height for the Precinct, with podium presentation and setbacks in line with DDO30.

The further architectural renderings are depicted in Documents 86a-99b. The Proponent also provided a vantage point further west along Normanby Road.

The Committee had the benefit of the application plans and the architectural renderings on its site inspection.

Parties were also invited during the Hearing to input as to the form of recommendation that should be made by the Committee if it did not support the height of the development as proposed. No specific direction was provided by parties, other than general opposition from the Proponent to a recommendation for a building of a reduced height.

(iii) 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.

⁴ Signed on 5 October 2018 and updated on 9 February 2020.

The Committee is satisfied that the *Planning and Environment Act 1987* (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 site.

Consequently, this matter could be addressed via condition of the draft Incorporated Document as agreed by the parties. Any report submitted by a qualified professional concluding that there has been significant ground disturbance across the entire activity area would need to be submitted to the satisfaction of the Minister for Planning as Responsible Authority.

3 Context

3.1 Terms of Reference

The Committee operates under Terms of Reference signed by the Minister for Planning. Clause 5.0 of the Terms of Reference 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 draft Amendment proposes to introduce a site specific control into the Planning Scheme, to facilitate a particular use and development on the site in accordance with the conditions set out in an Incorporated Document. The Committee has evaluated the appropriateness of the draft Incorporated Document by reference to the proposal for the use and development of the land as outlined in Table 2.

The Committee is conscious of the ways in which a site specific control through a planning scheme amendment differs from a planning permit that may be granted for the land. Conceivably, a site specific control could amend the provisions of the planning scheme that would otherwise apply to the land, whereas a planning permit would need to be determined within the existing planning scheme framework having regard to relevant considerations under the Act.

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. In Chapter 7.5, the Committee provides a brief summary of how it has responded to each of these matters.⁵

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.*

⁵ The Committee has considered all relevant matters but has not necessarily documented each in detail.

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

f. A list of persons consulted or heard.

The Committee distils these outcomes into a table in Chapter 7.5.

The Minister for Planning signed amended Terms of Reference for the Fishermans Bend Standing Advisory Committee on 29 April 2020. However, this Committee has provided its analysis and recommendations in line with the Terms of Reference as they applied at the date of the Hearing of this referral, recognising that substantial deliberations had occurred and the Minister for Planning did not otherwise advise the Committee to complete the current referral under the amended Terms of Reference.

3.2 Issues in dispute between the parties

The Committee is conscious that the current referral has a long history, with a planning permit for a similar proposal having been ‘called in’ by the Minister for Planning before the re-cast controls were put in place. The called in application was not determined. Instead, a draft Planning Scheme Amendment was proposed to facilitate the proposed use and development in accordance with an Incorporated Document.

The parties, including DELWP and relevant authorities, have been involved in lengthy negotiations to try to narrow what they regard as key issues for assessment in advance of referral to this Committee.

Recognising this work, the Committee directed parties to circulate a Statement of Issues, identifying which elements of the Amendment had been resolved and which matters remained unresolved.⁶ It further required the circulation of a ‘track changes’ version of the draft Incorporated Document with input from all parties before the Hearing.⁷

These documents confirmed that all authorities considered it appropriate to prepare and approve an Amendment to introduce an Incorporated Document to facilitate the use and development of the land generally as proposed. Issues in contention that emerged in these documents and as the Hearing progressed focused on the following.

(i) Built form and design response

DELWP indicated that it was satisfied that the proposed built form would respond suitably to the preferred future character of the Montague Precinct. In particular, this view was influenced by the designation of the area for mid to high rise buildings as well as the priority it afforded to the need to conceal the western wall of the adjacent building under construction.

Similarly, Council supported the general height, form and design of the proposal. This view was formed with the benefit of input from its urban design consultant.

Much emphasis was given by DELWP and Council about the design imperative for this site to provide an active frontage to the blank western wall of the 40 storey development under construction on the neighbouring site to the east, at 199-201 Normanby Road.

⁶ Documents 29 and 30.

⁷ Documents 56 and 58.

Initially, the Fishermans Bend Taskforce did not support a building with a height of 36 storeys. It considered that a building of 30 storeys would represent a suitable response to the re-cast planning controls and to the site's emerging built form context having regard to current approvals.

However, at the Hearing, the Taskforce confirmed that it would support the building at the height proposed subject to design refinements focusing on improving the ground floor experience, differentiating between podium and tower and creating a vertical break in the massing of the south western elevation.

The design response including built form issues are discussed in Chapter 4.

Melbourne Water raised issues of design detail and layout relating to the proposed ground floor levels to reduce the risk of flooding and associated damage. This issue is discussed in Chapter 6 in more detail.

(ii) Affordable housing

All parties accepted that genuine weight should be given to the recently introduced policies in the Planning Scheme seeking an Affordable housing contribution for new development in Fishermans Bend. However, the practical application of this provision to the proposal was a key issue in dispute.

Council and the Proponent differed in approach as to how to evaluate the acceptability of the Affordable housing offer for this proposal and more broadly. Another issue was the level of specificity required at this stage to secure the contribution through the Incorporated Document.

Council sought to provide a minimum benchmark for the evaluation of Affordable housing contributions for this and other development moving forward. This position was not supported by DELWP or the Proponent.

The Taskforce also referred the Committee to the draft Fishermans Bend Social and Affordable Housing Guidelines, prepared by a consultant on its behalf following targeted consultation. However, given their lack of current status, it did not seek to rely on these draft Guidelines to support its position on the draft Amendment.

(iii) Development contributions

Like other 'called in' matters that have been converted to draft Amendments referred to this Committee, the 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.⁸ These reflect interim development contributions levied by it on

⁸ Document 8.

development in the Precinct since 2014, subject to indexation. These figures were not opposed by the Proponent.

Another issue considered at the Hearing was how to address potential public open space contributions that may be levied in future under the *Subdivision Act 1989*.

Melbourne Water also advised the Committee early in the process that it is seeking to upgrade infrastructure within the 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.⁹

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. However, it was unable to provide detailed cost estimates or a likely indication of when these works will be undertaken. Consequently, its 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*.

(iv) Other matters

Other matters identified for closer consideration by the Committee included the timing of expiry of the specific control and the wording of provisions of the draft Incorporated Document.

3.3 Committee's approach to its role

The Committee was advised by this and other proponents of the toll this process has taken on them - dramatically extending the cost and timelines for approvals and reducing the extent of certainty they would otherwise have sought to achieve. The Committee accepts that this may now be compounded by challenges raised by Coronavirus Disease.

A key element of this process is to enable a range of parties to be heard, consistent with the limited notice and review rights provided under applicable Planning Scheme provisions. In this context, the Committee has given substantial weight to the position of all statutory authorities, as evidenced in the body of this report. Likewise, it has carefully considered the submissions and expert evidence presented by parties.

The Committee is comprised of experienced professionals whose role is to independently evaluate the appropriateness of the Amendment in light of the re-cast provisions of the Planning Scheme as they stand. The Committee's recommendations are intended to inform the decision to be made by the Minister for Planning.

The application of sound precinct planning is crucial. Another important element is to consider the potential net community benefit and sustainable development that would result from the proposal if progressed.

In light of this, the fact the parties appeared to have reached a consensus position that the site specific control would be appropriate (subject to refinement) is relevant to but not determinative of the views of the Committee. Likewise, neither the personal circumstances of

⁹ Document 36.

this particular proponent nor the planning history of the site can be determinative, since the permission would attach to the land rather than to the current owner.

This report is underpinned by the need for the Committee to respond to all matters in the Terms of Reference as outlined in Chapter 3.1 in a fulsome way.

4 Built form

4.1 Design excellence

(i) The issues

The issues are:

- what is meant by ‘design excellence’ in the context of the proposal and the applicable Planning Scheme provisions
- whether the proposal achieves ‘design excellence’.

(ii) Relevant policies, strategies and planning scheme provisions

The Framework includes the strategy to:¹⁰

Encourage architectural design excellence in new buildings.

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.

This is also the first design objective of DDO30, which also includes the decision guideline “whether the proposal delivers design excellence”, and one of the objectives of Clause 22.15.

The objective is supported by more detailed, place specific policies in the DDO30:

- *Encourage varied built form typologies that align with the precinct character area as detailed in the relevant Schedule to the Design and Development Overlay.*
- *Encourage fine grain, pedestrian scale environment.*

It is policy in Clause 22.15 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

There were frequent references to ‘design excellence’ in submissions and evidence, including how the term might be applied and whether it would be achieved by the proposal.

The Proponent referred to a discussion of design excellence in *Richmond Icon Pty Ltd v Yarra CC*¹¹, where the Victorian Civil and Administrative Tribunal (VCAT) stated “... *high quality or architectural excellence means high quality having regard to what planning policy seeks to achieve in an area*”. In this context, the Proponent submitted that the proposal was an

¹⁰ Strategy 1.9.5.

¹¹ (Red Dot) [2011] VCAT 2157.

appropriate response to the relevant Planning Scheme provisions, achieved the requirements and purposes of the provisions and was not required to “*win any architectural awards*”.

The Taskforce submitted that the proposal in its current form did not achieve ‘design excellence’, and recommended various changes to improve the overall design with an intent to satisfy the ‘design excellence’ test. These changes are discussed later in this chapter.

(iv) Discussion

Policy seeking architectural or ‘design excellence’

The achievement of ‘design excellence’ in Fishermans Bend is a recurring aspiration in the relevant Planning Scheme provisions, and is included as a strategy in the Fishermans Bend Framework.¹²

The Committee acknowledges that the term ‘design excellence’ has been interpreted differently in different situations and that there currently does not appear to be a specific and conclusive definition.

The *Richmond Icon* decision referred to above noted that:

47. Planning Panels Victoria and the Tribunal have considered the question of architectural excellence or design excellence in a number of decisions, but without any clear consensus, other than that it is an undefined and difficult concept (particularly given acceptable outcomes and preferable decisions). Some decisions identified architectural excellence as “good mannered design[16]”, avoiding adverse impacts[17], or likely to be valued by future generations as representative of its time[18].

It also cited and agreed with the following observation in an earlier VCAT decision (the *Pentas Property Investment* case):¹³

From our perspective however, the consideration of design excellence must be focussed entirely on those matters encompassed within the planning scheme,... which, in general terms, seeks to “... achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties ...”, and which “... take into account the natural, cultural and strategic context of its location”. Issues of individual taste or preference for architectural styles are irrelevant.

The Committee agrees that ‘design excellence’ should include what planning policy seeks to achieve in an area, but this will depend on the quality and specificity of the respective policy. Further, planning policies often refer to ‘design excellence’, which would make an exclusive reference to “*what planning policy seeks to achieve*” a circular argument.

There may be benefit in having a clear definition of ‘design excellence’ as it is referred to in the policy or the DDO. That said, the Framework and Planning Scheme provide a reasonable degree of specificity about what built form outcomes are sought for this Precinct.

¹² Strategy 1.9.5.

¹³ [2005] VCAT 2196.

The Committee agrees that the term ‘design excellence’ should not favour particular architectural styles or individual tastes but considers that irrespective of architectural style, there are principles of good design that can inform whether a design can be considered excellent.

While some aspects of the Planning Scheme are predominantly concerned with external impacts of developments, there are good design principles that relate to issues such as building functionality, organisation, internal amenity, way-finding and the like that can clearly contribute to design excellence. Further, while particular architectural styles may not be specified or preferred, an architectural approach chosen for a particular development can be developed poorly or well. So, a design may be considered excellent or not, depending on how well it has been developed and executed.

The question is what weight should be given to the aspiration for ‘design excellence’ for this proposal, noting that this objective derives from the zone and overlay controls as well as policy.

It is conceivable that a building may fall short of representing ‘design excellence’ yet, on an integrated assessment of all relevant policies, may represent an acceptable site outcome.

That said, this Committee is of the view that the vision for the Precinct seeks a higher than conventional standard of design. Therefore, it is important to ensure that all proposals considered for approval through an Incorporated Document are keenly focused on achieving this objective.

While the proposed design for this constrained site has merit and a solid design approach to build on, the Committee considers that several aspects of the design still lack the development and resolution that it would expect to constitute ‘design excellence’.

The Committee discusses these design issues in the following sections and identifies matters that need to be further resolved for the proposal to reach ‘design excellence’, or at least acceptability.

(v) Conclusion

The Committee concludes:

- Changes are required to the proposed design to achieve the ‘design excellence’ sought by the applicable policy, zone and overlay controls. These changes are discussed in the following chapters.

4.2 Character and built form response - building massing and height

(i) The issues

The key issues are:

- The extent to which the proposed 36 storey (118 metre) building is consistent with the outcomes sought in the Framework and Planning Scheme, including the preferred maximum building height of 68 metres (20 storeys) in the Core of the Montague Precinct.
- Whether the proposal contributes to a varied skyline and sufficiently responds to the preferred height and character for this part of the Precinct.

- How the development should respond to the 40 storey building under construction on the adjacent site at 199-201 Normanby Road, South Melbourne.

(ii) Relevant policies, strategies and planning scheme provisions

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.

The 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 buildings and works height of 68 metres (20 storeys).

Figure 3 DDO30 Map 1 Building Typologies (precincts)

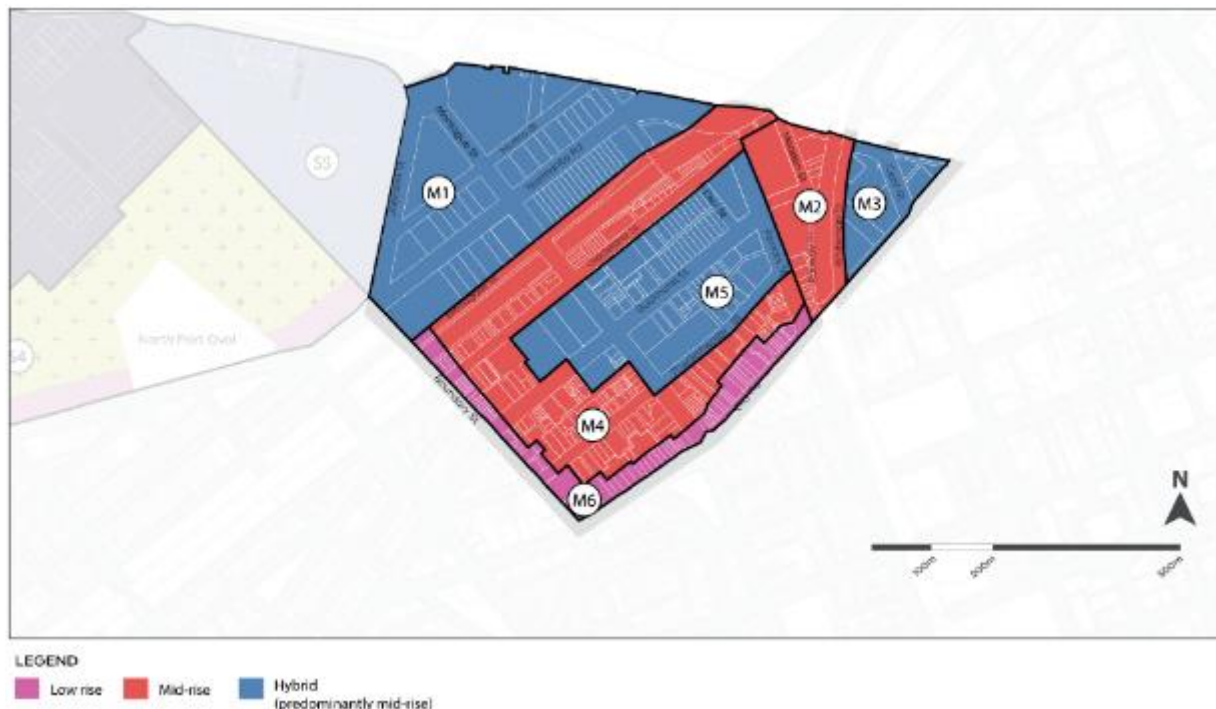
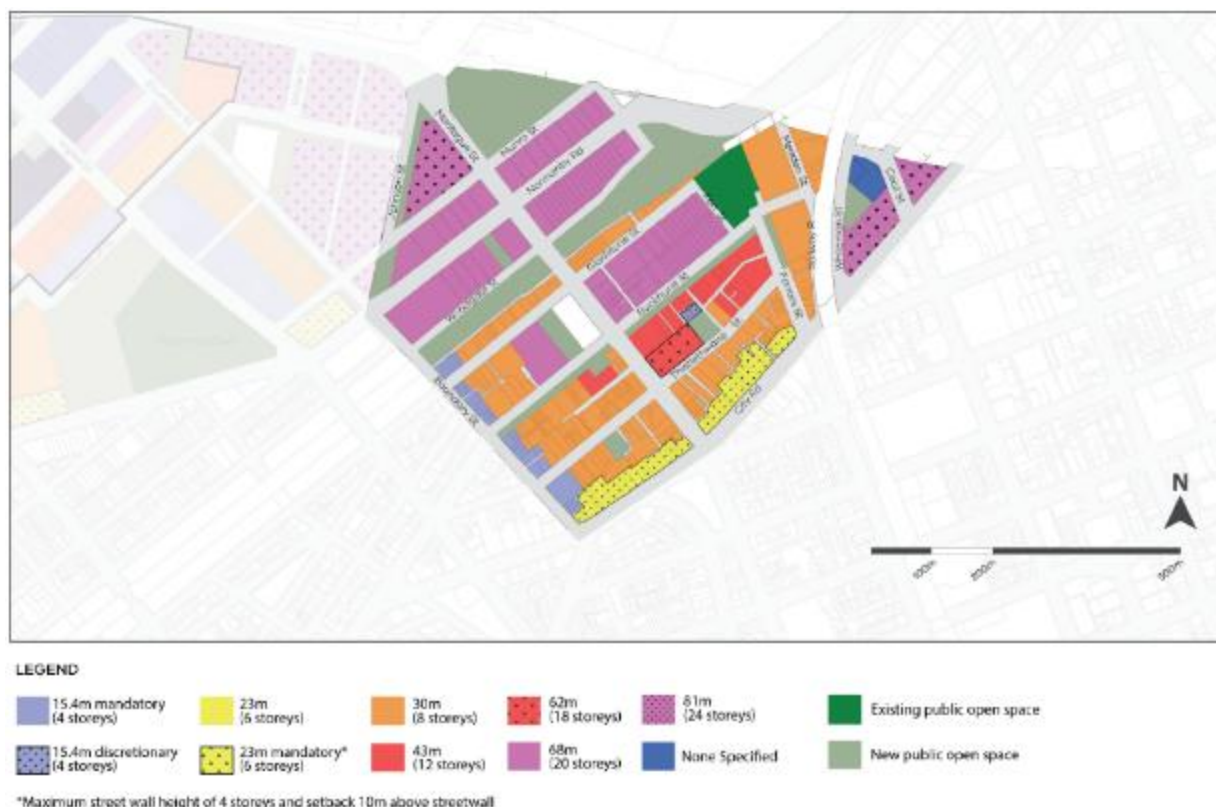


Figure 4 DDO30 Map 2 Building heights



(iii) Evidence and submissions

The Proponent outlined the building design and the rationale for the proposed 36 storeys in an area with a discretionary maximum height of 68 metres (20 storeys). The rationale relies largely on the fact that the site abuts a 40 storey building under construction (199-201 Normanby Road)¹⁴ that will provide a mostly blank wall with a graphic pattern of different concrete finishes and glass on the shared boundary of the sites (refer to Figure 5). The Proponent submitted that a positive aspect of the design was that the 36 storey building proposed would screen this blank wall and commence a transition in scale from this 40 storey building down to the surrounding development for which the DDO30 provides a preferred maximum of 20 storeys.

¹⁴ Approved under the former Planning Scheme provisions pre Amendment GC81.

Figure 5 199-201 Normanby Road, endorsed plans TP304 Rev. H, West Elevation and TP404 Rev. H, Perspective West



The Proponent relied on the presentation of Mr Jordan (Project Director for Hayball Architects) in relation to the design response and design detail. Mr Jordan supported the proposed building height because it would address the blank wall on the adjoining building and, in his view, would provide for the two buildings to be ‘read as one’.

Mr Jordan indicated that the most significant viewpoints were from the public realm, particularly distant views along Normanby Road to the west of the site. He advised that he had considered (but not documented) his assessment of views to the building and how effective the proposed building (or a building of a different height) would be in screening the adjacent building.

The Proponent also relied on the evidence of Mr Sheppard who supported the proposed building height because it would screen and be read as a single building with the adjacent building and contribute to the mix of ‘mid to high rise developments’ sought by the DDO30. He did not believe that other factors, such as overshadowing or wind, constrained the proposed height of the building. Mr Sheppard concluded that *“it would be a poorer outcome if the building were to be lowered, exposing more of the blank wall”*.

Mr Sheppard had not documented his assessment of how effectively the proposal (or a building of a different height) would screen views to the 40 storey building, but advised that the key vantage points would be from the corner of Montague Street and Normanby Road, and further to the west along Normanby Road, and to a lesser extent from the light rail line and associated proposed open space to the south west of the site. Mr Sheppard acknowledged that the proposed tower needed *“a legible difference”* in height from the neighbouring tower.

DELWP submitted that the proposed building height was acceptable because it would provide a transition down from the adjacent 40 storey building, screen views to that building from the

public realm, contribute to the mix of mid and high rise development in the area, contribute to a varied and architecturally interesting skyline and would have limited impacts on the public realm through overshadowing and wind.

The Taskforce submitted that a uniform height of 20 storeys in the Precinct was not encouraged but that a varied built form was sought.

In this case, the Taskforce initially supported a 30 storey building height as a means of balancing the DDO30 discretionary maximum of 20 storeys with the adjacent approved 40 storey building. Following further consideration, the Taskforce agreed that the 36 storey proposal would be an appropriate design response to the adjacent building, but identified a number of detailed design issues that were necessary in order to achieve ‘design excellence’. These issues are discussed in the following sections.

Council did not raise concerns about the proposed building height.

From the outset, the Committee was concerned that the height of the proposed building exceeds the preferred maximum heights for this area under DDO30 by a significant margin. The Committee was concerned about the implications this may have for achieving the Vision for this part of the Montague Precinct set out in the Framework, and the preferred character sought under the policy and DDO30. The Committee therefore sought further information from the Proponent, including architectural renderings from various vantage points, to enable it to better assess the impacts of the building height on the character sought for this area under the policy and the controls.¹⁵

The renderings reflected building heights of 36, 34, 32 and 30 storeys on the subject site, with the constructed 40 storey building on the adjacent site as the backdrop. The Committee requested that the renderings include an indication of a 20 storey built form on the adjoining site to the west (in line with DDO30 provisions), to provide additional context and to enable the Committee to better assess the impacts of built form of varying heights on the subject site. The Proponent also provided view lines from further to the west along Normanby Road and from the corner of Woodgate Street and Montague Street.¹⁶

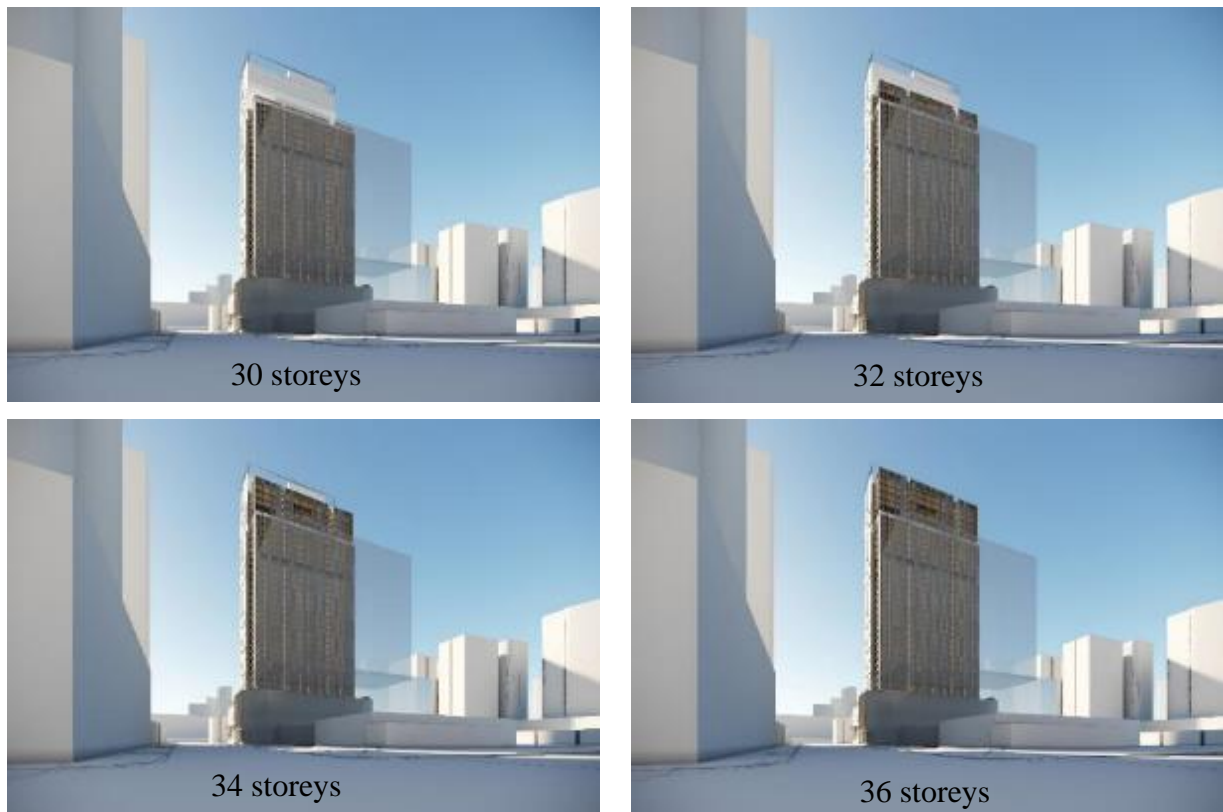
DELWP assisted this investigation through its live 3-dimensional model of the area and the variation of building height in the model.

The following figures show the exploration of building heights from these vantage points.

¹⁵ Document 90.

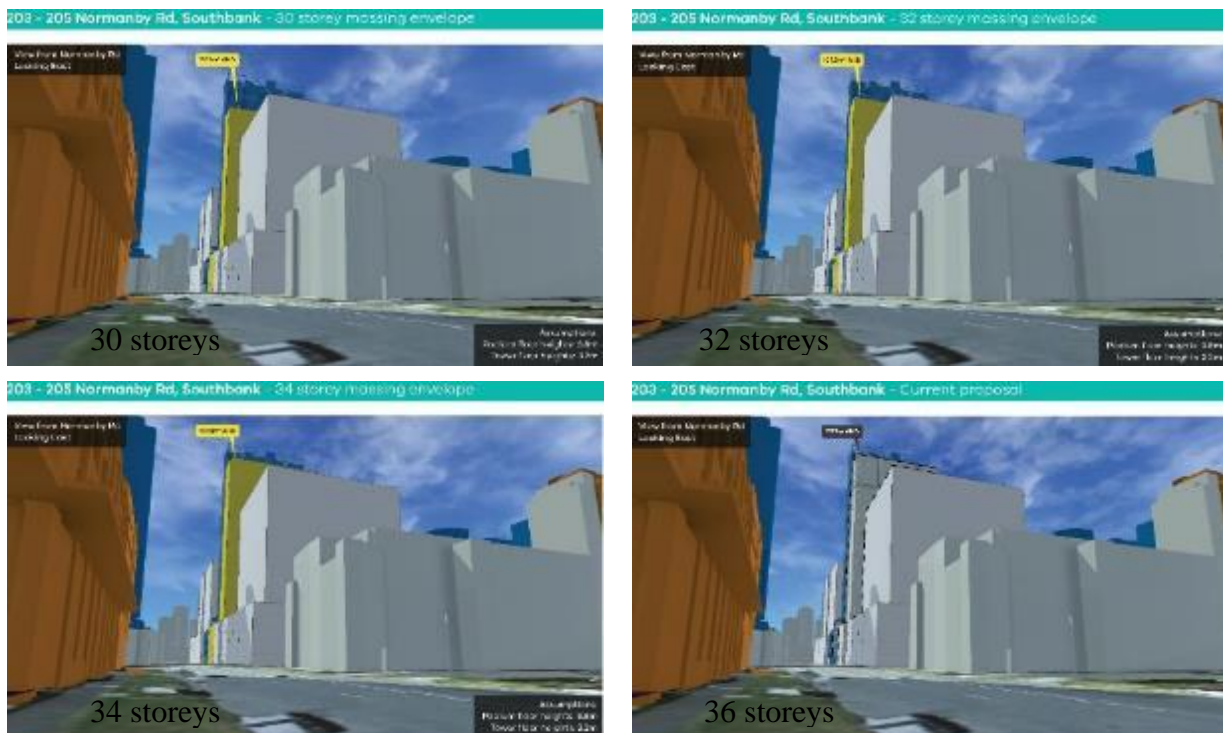
¹⁶ Documents 95-100.

Figure 6 Architectural renderings from the corner of Montague Street and Normanby Road at 30, 32, 34 and 36 storeys



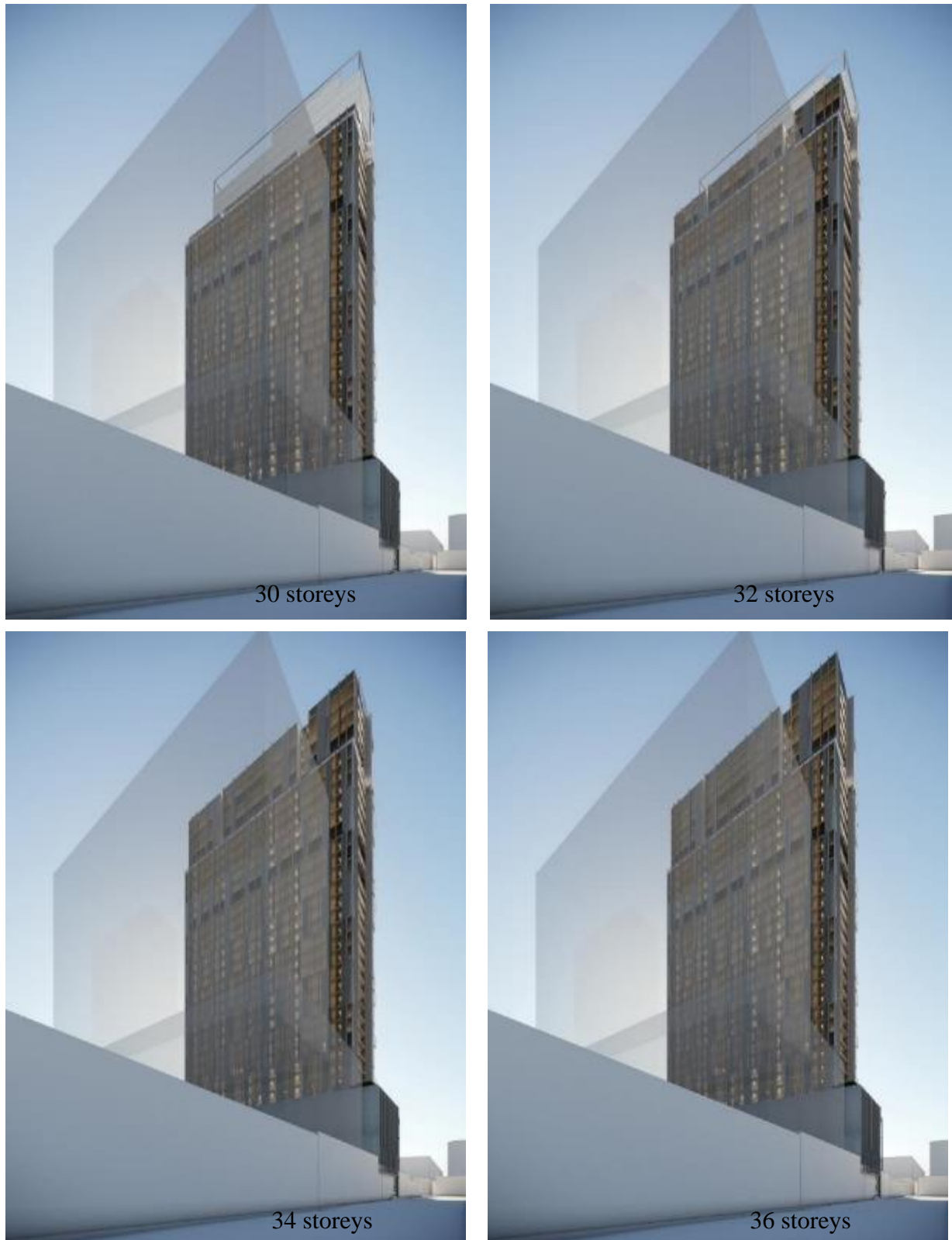
Source: Documents 96a, 96b, 96c and 96d

Figure 7 Massing views from DELWP 3-D model at 30, 32, 34 and 36 storeys



Source: Document 80.

Figure 8 Architectural renderings from the intersection of Woodgate Street and Montague Street at the height of the tramline/bike path at 30, 32, 34 and 36 storeys



Source: Documents 98a, 98b, 98c and 99d.

(iv) Discussion

The Committee's task is to assess the Amendment in accordance with the scope of considerations included in Clauses 19-21 of its Terms of Reference. In this context, the Committee has had regard to the relevant planning objectives and provisions, particularly those related to the building height, form and typology outcomes that are sought. It has needed to evaluate the weight to be given to the relationship of the site with the adjoining sites including the 40 storey building under construction.

The Committee considers that the future character of the Montague precinct envisaged in the Framework and the Planning Scheme is of prime importance in considering whether the proposed building height will deliver an acceptable planning outcome.

The parties emphasised the various references to high rise buildings in the description of the preferred character of this part of the Montague Precinct in the local policy and DDO30. However, the meaning of this term is significantly influenced by the provisions of DDO30. Strictly speaking and without consideration of the neighbouring development this would mean a mid- to high-rise building of up to 20 storeys is strongly preferred.

Also, there is an expectation in the Planning Scheme for a varied skyline, which anticipates that taller buildings need not necessarily be 'matched' by equally tall buildings. While the Planning Scheme provisions seek a transition to lower rise areas of built form, there is no indication that a high rise building should necessarily transition to a taller building height in establishing the preferred precinct character.

The Committee accepts that there might be instances where it is appropriate to exceed this preferred height, but considers that any such proposal should provide clear justification referable to the Planning Scheme objectives including the Framework if it is to be supported.

The need for a transition in height

A relevant consideration is the extent to which the proposed development should provide a transition from the 40 storey development at 199-201 Normanby Road down to the preferred future heights in the Montague Precinct as reflected in DDO30.

As a starting point for responding to the preferred character sought by the Planning Scheme, the Committee assessed the development at the range of 16 to 20 storeys - up to half the height of the neighbouring 40 storey development and likely close to the height of anticipated future development in the area, including the corner site to the west.

The Committee concludes that a 20 storey development on the subject land would not constitute a site responsive outcome, notwithstanding policy provisions, since it would not provide a suitable transition from the 40 storey development at 199-201 Normanby Road to the preferred heights of the Precinct. Therefore, the Committee agrees that to deliver the preferred character envisaged in the Framework and sought under the local policy and the DDO30, some higher built form would be appropriate on this site.

In assessing whether the proposed height is consistent with the preferred character for the Precinct, it is necessary to consider the site's context and how the proposal will be viewed from key vantage points within the Precinct. In this context, the Committee has had particular regard to:

- the volumetric relationship with the adjacent built form of the 40 storey building under construction (130.8 metres, with 131.78 metres to top of lift overrun)
- the extent to which the building on the subject land should be responsible for obscuring the boundary edge wall of the adjacent site to achieve acceptable outcomes from the public realm
- consequences for visual bulk.

The Committee explored these site specific conditions aided by the additional renderings and site visits referred to earlier. The Committee notes that the additional renderings do not accurately depict the actual appearance of the blank wall as approved, which will feature a graphic pattern in different concrete and glass finishes that relates to the hotel architecture as well as two vertical light court rebates.

The Committee inspected the site and viewed it from all vantage points suggested by the parties. In line with Mr Sheppard's evidence, it concluded that a key view line is from the Normanby Road and Montague Street intersection (where people may stop at the pedestrian crossing or traffic lights) but also the junction of the elevated tram line (future public open space) where it crosses over Montague Street.

The Committee considers that the bike, pedestrian path and future open space along the tram line is an important vantage point. While currently a transitional space for pedestrians, cyclists and tram commuters, this is expected to develop into the primary neighbourhood open space for the immediate surrounds.

By comparison, the Committee found that the more distant views along Normanby Road were less significant and would likely be obscured by other development along Normanby Road in the longer term.

The 'blank wall' at 199-201 Normanby Road

Submitters highlighted the desirability of ameliorating views of the blank wall at 199-201 Normanby Road as justification for the proposed height of the development allowed under the Incorporated Document.

Council explained that the proposed development has a task to do in concealing the blank wall to *"ameliorate the impact of the approved building next door"* but that this will involve *"some compromises to Precinct outcomes"*.

The Proponent acknowledged that the proposal was, in part, seeking to *"fix the errors of a past regime"*. In response to questions from the Committee, Mr Sheppard conceded that he may not have been in a position to support the building at the proposed height if there was no imperative to conceal the majority of the adjacent wall.

The Committee does not consider that the approved 40 storey development at 199-201 Normanby Road justifies 36 storeys on the site, as the parties suggested. The preferred character for the Precinct is clearly set out in the Framework, the local policy and the DDO30. It does not envisage a high rise precinct of buildings up to 40 storeys. Allowing future development that substantially exceeds preferred maximum heights for the Precinct on the basis of higher adjacent approvals has the potential to perpetuate the former Planning Scheme regime and detract from the preferred future character to an even greater extent. Such an approach does not respond to policy aspirations for the Precinct.

That said, the Committee agrees that there would be benefit in minimising the visual impact of the western wall of the adjoining building, but is not satisfied that a 36 storey building is necessary to achieve this or that submissions and evidence adequately considered whether alternative (lesser) building heights would address this issue.

Consolidated analysis

The Committee's analysis, assisted by the additional renderings and inspections, lead it to conclude that a 30 storey building will provide a more appropriate transition to the preferred '20 storey' maximum height in the DDO30, a more legible difference in height and improved volumetric relationship with the adjacent building and the potential to improve environmental impacts such as reducing overshadowing of the future linear park. There is also the prospect of increased daylight and outlook for future dwellings that may be constructed on land to the west (as discussed in Chapter 4.4 below).

Another consideration is that 30 storeys would reasonably screen the adjacent building, noting that screening existing buildings is not a key priority in the planning controls or policy when referencing preferred future character. In reaching this conclusion, the Committee found that the visual impacts of the blank wall will be largely mitigated by the separation distance and upward view lines from the key public realm viewpoints.

It is inevitable that decision makers in the Montague Precinct, in particular, will be faced with the reality of current building approvals at heights substantially above now-preferred heights.ⁱ In such instances, there may be justification for some increase in heights above the preferred height as explained above, but a balance should be struck in favour of achieving the preferred future character of the relevant precinct. This will come into closer focus when detailed Precinct Plans under preparation are released by the Taskforce.

While the Committee acknowledges submissions and evidence on the height issue, it believes that they placed too great a weight on mitigating the deficiencies of an existing approval under a former Planning Scheme regime, whereas primary emphasis needs to be given to achieving the Vision sought by the re-cast planning controls. This contemporary vision envisages a clear change (reduction) in heights of buildings approved under earlier controls, and the objectives of DDO30 as currently drafted are intended to guide the redevelopment of the Precinct moving forward.

(v) Conclusions

The Committee concludes:

- Given the site's context and relationship with the adjacent site on which a 40 storey development is under construction, some exceedance of the maximum preferred height of 20 storeys (68 metres) in the DDO30 is justified, and will not compromise the preferred character of the Precinct.
- The proposed height contemplated under the Incorporated Document (36 storeys and 118 metres) would be inconsistent with the preferred character, and is not an appropriate response to the Framework, the local policy and the Planning Scheme provisions.
- The Committee recommends the building height allowed under the Incorporated Document be reduced to 30 storeys. A development of 30 storeys would strike an appropriate balance between need for a height transition, volumetric relationship, and

concealment of the boundary wall to the east. This still represents 10 storeys above the preferred maximum height and should be seen as unique to this site.

- To enable the development's form to align with the adjacent boundary wall's pattern of geometry and finishes, a height of 101 metres Australian Height Datum to the top of the façade (covering plant room and the like) is recommended.

(vi) Recommendation

The Committee recommends:

Include a condition in the Incorporated Document requiring amended plans to be submitted for approval by the Responsible Authority in consultation with the City of Port Phillip that reduce the building height to a maximum of 30 storeys (101 metres Australian Height Datum to the top of the lift overrun and façade).

This recommendation is included in the recommended Incorporated Document at Appendix A.

4.3 Character and built form response - building setbacks, interfaces and facades

(i) The issues

The key issues are whether:

- the building represents an acceptable site response even though it exceeds mandatory minimum setbacks in DDO30
- the building would integrate appropriately with approved built form on the adjacent site
- the building will contribute to the vision for the Precinct for a high quality public realm, including whether further changes are necessary.

(ii) Relevant policies, strategies and Planning Scheme provisions

The DDO30 includes the following provisions:

Street wall height

Discretionary street wall height between 4 – 6 storeys.

Setbacks

Mandatory 10 metre setback for buildings taller than 20 storeys.

Active street frontage

Buildings fronting the Primary (Normanby Road) and Secondary (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 façades.
 - Do not compromise road safety.

Built form requirements:

- Buildings should avoid blank façades.
- 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 façade surface.

(iii) Evidence and submissions

The Proponent submitted that the proposal achieves the purposes of the DDO30 and relied on the evidence of Mr Sheppard who generally supported the proposed setbacks and façade design, but recommended the following changes to the podium arrangements:

- reduce the ground floor setback from Normanby Road to a maximum of 0.5 metres
- introduce stronger vertical articulation onto the ground floor Normanby Road façade
- incorporate a canopy above Normanby Road, at least 3 metres above the footpath but no higher than 4.5 metres, extending at least over the Normanby Road footpath and Woodgate Street.

DELWP noted that the proposed setbacks did not comply with the mandatory 10 metre setback in the DDO30, but agreed with Mr Sheppard that this was acceptable given that the site is only 20 metres wide and that applying a 10 metre setback would not be feasible or desirable. DELWP submitted that the building finishes and design response were acceptable, but noted the various refinements sought by the Taskforce and supported *“any improvements to the presentation of the Proposal, subject to the proviso that any such improvements should not reduce internal or nearby pedestrian amenity”*.

The Taskforce explained that *“more should be done to improve the ground floor experience, differentiate the podium from the tower and break up the mass of the building at its south-west elevation”*. It submitted that further design improvements were necessary and suggested the following options, particularly if the proposed 36 storey height was approved:

- a more defined ‘shadow gap’ to further distinguish the building from the building at 199-201 Normanby Road
- a vertical rebate or similar architectural design solution on the western elevation to break down the broad presentation of that interface
- consideration of ‘opening up’ the podium façade to provide legibility from the street
- a zero setback at the ground floor to Normanby Road
- provide further consideration to treatment of the blank wall as part of a consistent design language.

The Taskforce noted that its concerns about boundary wall treatments and canopy weather protection raised in its referral response had been addressed by the Proponent in ‘sketch plans’ prepared by Hayball Architects (dated 5 February 2020 and titled SK1-SK4).¹⁷

¹⁷ Document 62.

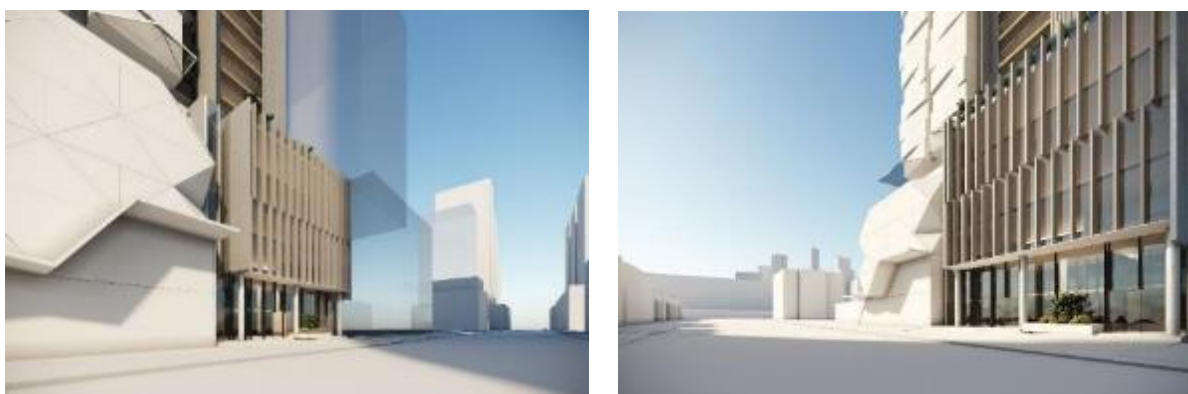
The Proponent did not support the changes sought by DELWP and the Taskforce, and submitted that they were unnecessary. However, the Proponent also acknowledged that the changes were relatively minor and could be accommodated by way of condition if supported by the Committee.

Regarding the west elevation, the Taskforce indicated during the Hearing that a darker colour glass treatment as proposed by the Proponent may be acceptable instead of a shallow rebate.

Council did not make submissions about these design issues.

The Committee sought further architectural renderings of the façade and edge condition between the proposal and 199-201 Normanby Road, which were provided.¹⁸

Figure 9 Further Architectural Renderings – Podium



¹⁸ Documents 99a and b.

Figure 10 North, West and South elevations

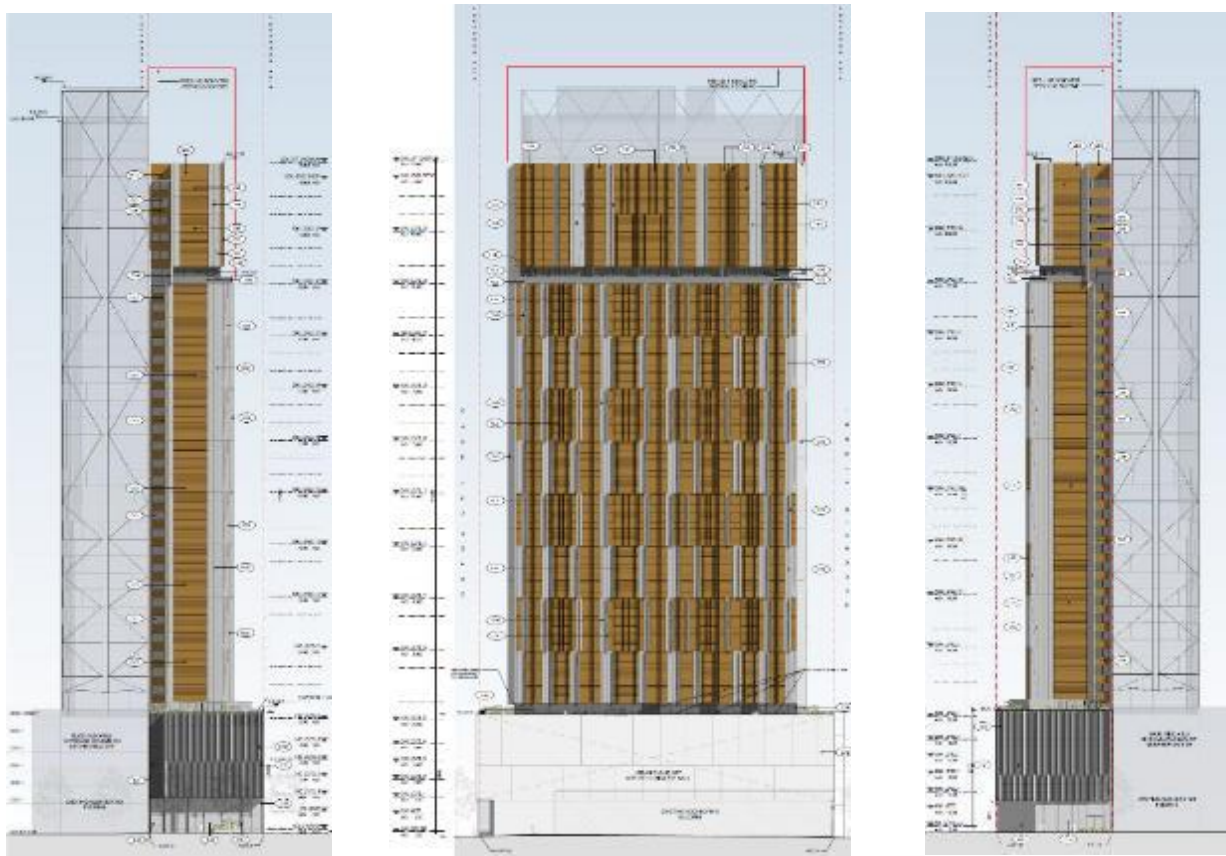


Figure 11 Material selection



(iv) Discussion

Podium and tower setbacks

At 20 metres wide, the subject site is narrow for its targeted use and density and the Committee agrees with Mr Sheppard that it does not lend itself to a perimeter block typology.

The Committee supports the suggestions by Mr Sheppard and the Taskforce to reduce the Normanby Road podium setback to between zero and 0.5 metres as it provides better street activation, aligns with the neighbouring development and provides more useable floor area to the development.

The Committee considers the podium height of five storeys is appropriate in this context. The proposed west side zero setback for the podium is also supported subject to important design issues addressed below.

The proposed six metre front and rear setbacks above the podium are less than the preferred setback of ten metres but greater than the minimum five metres provided for under DDO30.¹⁹ The Committee considers this adequate because of the site's constraints and the approved setbacks at 199-201 Normanby Road.

The Committee considers however, that front and rear setbacks that interface with 199-201 Normanby Road need to demonstrate a more nuanced response as discussed further below.

Above the podium, the Committee agrees with Mr Sheppard that a 10 metre western side setback is unfeasible (being half the site width) and would limit the development from achieving the objectives and vision for the Precinct. The Committee notes that the eastern setback of the 199-201 Normanby Road tower, which is comparable, varies between five and seven metres. The 5.8 metre setback at typical lower tower levels and the 7.5 metre setback at typical upper tower levels present a similar setback and are supported.

Interface with 199-201 Normanby Road

Due to the similar site geometry and direct adjacency of 199-201 Normanby Road, the two developments will closely relate to each other. Mr Jordan suggested that the two towers would be read as one. The Committee considers that the towers will at least be read as a pair, if not as a single entity.

The hotel development is taller and features distinctive architectural expression which includes complex, triangulated geometry of the northern and southern façades and particularly the podium. The western façade picks up the architectural approach as 2-dimensional graphic patterns with different finishes.

The Committee recognises that interfacing with this complex neighbouring geometry is challenging but considers it is essential to support the claim of 'design excellence' and avoid unconsidered, awkward relationships.

The proposed elimination of the northern ground level setback and addition of a canopy would further necessitate design development to the interface between the two buildings. While less prominent in the near term, further consideration of the southern interface between the two

¹⁹ DDO30 Table 4: Setbacks above the street wall.

buildings is also required as this aspect will be the prime interface for residents with the future linear park to the rear.

Canopies

Clause 2.12 of DDO30 provides that *“buildings fronting the Primary and Secondary active streets...[should] provide canopies over footpaths where retail uses are proposed”*. The Committee supports DELWP’s and Mr Sheppard’s recommendation to add canopies of minimum 3.0 metres and maximum 4.5 metres height to both Normanby Road and Woodgate Street to provide weather protection over the footpaths.

The Committee concludes that canopies that are well integrated with the building architecturally need to be provided to both streets.

High quality public realm, podium design and facades

Podium design and treatment

The Taskforce raised concern about the northern street wall and suggested a more active, engaging and tactile interface. It was further concerned about the vertical fins above the ground floor obscuring views from the public realm into commercial tenancies. The Proponent suggested that a horizontal view angle of about 45 degrees would be sufficient.

The Committee reviewed the additional renderings provided and supports the Taskforce’s concern about side-on views as seen in Figure 9 (Further Architectural Renderings – Podium). The Committee considers however that views in and out from various angles can be addressed in different ways and should correspond with the design concept for the building overall.

More fundamentally, however, the northern podium façade to Normanby Road and the ground floor in particular are considered insufficiently resolved to create a distinctive and engaging podium and public interface and do not provide sufficient visual interest. The ground floor façade lacks a clear design concept that either ties it more strongly to its context and place or creates a clearer presence of its own in the context of the overall architectural concept for the building.

As part of further developing the podium design, a clear sense of address for the residential and commercial uses is considered important. These changes are vital to contribute acceptably to the high quality public realm experience sought for the Precinct by policy. The Urban Context Analysis document prepared by Hayball Architects which accompanied the draft Amendment includes references to heritage buildings in the area that may provide clues to enrich the materiality of the podium.

Based on the drawings and additional architectural renderings of the podium interface, the Committee is unconvinced that the rebate included in the proposed podium between it and the adjacent building sufficiently addresses the interface (as suggested by Mr Sheppard). There appear to be unresolved elements that need detailed design consideration of both the abutting and proposed forms and finishes. Respective drawings such as floor plans, sections and elevations need to adequately show the exact interfaces. The setback reduction and canopy will also need to be fully integrated into the design approach and respond carefully to the 199-201 Normanby Road edge condition.

Tower

The Committee considers the façade concept outlined by Mr Jordan of a ‘not too noisy’ and generally rectilinear approach to be valid. Pattern making would be provided through different finishes, shading blades, with different shades of colour and shifts in the geometry.

At present, the façade details are insufficiently resolved to allow an unambiguous assessment of their appearance and performance.²⁰

More significantly, the Committee considers that the level of resolution of the western facade does not yet sufficiently extend to the northern and southern facades of the tower and the podium, where the ‘pattern-making’ approach could be further developed. The Committee is also concerned about the lack of shading on the northern façade which is more of a north/north-west orientation and potentially subject to significant heat gain in summer.²¹

The western façade is more resolved and features a more nuanced treatment with winter garden zones, glazing, opaque elements and shifting vertical shading fins, which typically cover three stories, thereby visually breaking the scale down vertically.

The Committee is unconvinced by the suggestion to introduce a central, vertical flat dark glass treatment to break up the visual bulk horizontally. Because the western façade is reasonably three dimensional, featuring a degree of depth, the Committee considers that any breaking up of the visual bulk horizontally would have to be three dimensional, such as through an actual rebate that is well integrated with the architectural concept.

At the recommended height of 30 storeys, and if a horizontal breakup of the façade is retained, the Committee questions whether a further horizontal breakup will be required. This needs to be tested however, when a clearer depiction of the building’s facades has been developed and recommended changes are incorporated.

The Committee considers the palette of materials selection acceptable, featuring various complementary colours and finishes of Dulux Powder Coated Aluminium, precast concrete and glass. However, the corresponding façade render does not adequately show respective glazing, instead giving an unrealistic impression of visual depth and balconies. In particular, the combined effect of various shades of bronze powder coated aluminium panels and bronze tinted glazing, including its reflectivity needs to be assessed carefully.

Avoiding blank facades

The Committee acknowledges that the location of the future laneway on the site to the west has not been resolved, especially in the context where a particular development has not been approved or committed to. This means that the Proponent needs to respond to a number of possible scenarios.

While the Proponent suggested that a future development to the west is likely to build against the proposed podium wall on the subject land, locating the laneway more internal to the site, this is not a given.

The proposed west facing concrete podium wall features some geometric rhythm in line with the western façade design, however it only does this above ground level, features only one type

²⁰ Including whether the main glazing elements to living areas are clear or opaque, for example.

²¹ Despite the details included in the list of changes to plans, Document 6B(4).

of finish and relies on the annotation “*urban public art applied concrete wall*”. Without a high quality piece of public art or a more refined design concept, the wall would create a negative visual impact on both Normanby Road and Woodgate Street contrary to policy aspirations for a high quality public realm, especially along main road frontages.

By comparison, the similar scale western boundary wall of 199-201 Normanby Road features a more sophisticated pattern in three different finishes that creates some visual interest in line with the overall building design.

The Committee concludes that the proposed design of the western wall is insufficient to provide visual interest and that a more considered design approach is required, such as:

- refining the design of the podium west wall to create visual interest, with the critical parameter being that it should stand alone if the neighbouring development does not go ahead, or
- including a high quality piece of public art to be provided by the Proponent as part of the podium design (not just a painted mural), supported by an independent expert appointed by Council or DELWP.

If the neighbouring development to the west commenced construction and would cover the blank wall before the development on the subject land was complete, this requirement could be revisited.

(v) Recommendation

The Committee recommends:

The Incorporated Document include a condition that amended plans be approved by the Responsible Authority in consultation with the City of Port Phillip that provide:

- a well resolved podium treatment for the western façade, providing a high quality interface with the public realm, including the potential new public laneway**
- podium facades above ground floor providing improved views into the commercial tenancies from side angles**
- reworked front and rear façades to a higher standard of architectural design to achieve:**
 - **improved streetscape presentation to Normanby Road and the proposed linear park to the south, consistent with the Fishermans Bend Framework and Vision**
 - **a more considered, synthesised built form response to the podium of the building under construction on the adjacent property to the east.**

This recommendation is included in the recommended Incorporated Document at Appendix A.

4.4 Western tower setback

(i) The issue

The key issue relates to the reduced side setbacks to the west (5.8 and 7.5 metres rather than 10 metres required in DDO30) and the possible 'equitable development' implications for the adjoining site to the west.

(ii) Evidence and submissions

The Proponent submitted:

Based on the evidence of Mr Sheppard (and comments from the COPP officer assessment), the Proponent submits that, when taking into account the adjacent 40 storey tower and width of the property to the west:

- *the proposal will allow equitable access to privacy, sunlight, daylight and outlook for current and future built form; and*
- *the cumulative impact of the Proposal is low given the Land has a unique context, having to 'design around' the adjacent high-rise tower.*

The density proposed (and supported by DELWP and Council) is reflective of this unique context and will not adversely impact future proposals.

Regarding side setbacks to the west, Mr Sheppard expressed the view that "the site is only approximately 20m wide. Applying a 10m setback from the western boundary would render a tower unfeasible". He concluded that "the relatively unique circumstances of this site warrant a variation from the existing setback requirements".

Mr Sheppard noted that:²²

The mechanism of prescribing minimum side setbacks aims to share the burden of achieving separation equally between adjoining properties. However, the extent of that burden is dependent on the width of the lot. A 10m setback on the site imposes a much greater burden than a 10m setback on the neighbouring property, which is much wider.

The maintenance of an adequate level of sunlight, daylight and sky views in the public realm is a consequence of the proportion of the width of a property occupied by a tower, rather than its absolute width.

I consider that the proposed western tower setback responds appropriately to the circumstances of the site, the built form outcomes, and the principle of equitable development. In particular:

- *Table 5²³ establishes an expectation for a minimum 20m separation between towers above 20 storeys. The property to the west is approximately 4 times the width of the site. Therefore, an equitable sharing of a 20m separation is for one-fifth of this separation to be provided on the site and remaining four-fifths to be provided by any future development to the west, which could be accommodated on that property. The proposal*

²² Document 52, pages 9-10.

²³ DDO30 Table 5 Side and rear setbacks.

incorporates a minimum 5.8m setback (which increases to a minimum of 7.8m above Level 30), which is well above one-fifth of 20m.

- *The proposed tower only occupies 71% of the lot width. This will ensure a reasonable contribution to sky views, sunlight and daylight in the adjacent public realm.*
- *Even if a future tower on the western neighbour is only setback 10m, this would result in a separation of approximately 15.8m between future towers, avoiding the need for screening of habitable windows and balconies.*

Therefore, I consider that the proposed tower side setbacks are appropriate.

(iii) Discussion

The Committee agrees that this is a narrow site in a precinct that supports medium and high-rise development, and that a 10 metre set back would be unfeasible in this instance.

As the upper tower typical floor plan shows, a 7.5 metre setback (leaving about 12.5 metre width for the building) can accommodate a core, circulation and typical apartment layouts. The lower tower typical floor plan with a setback of 5.8 metres makes greater use of the site width and accommodates more residential floor area and apartments as a result, which the Committee sees as positive.

The Committee concurs with Mr Sheppard that it is more difficult for the subject land to achieve the 10 metre side setback than its western neighbour and has already indicated that it is appropriate to reduce the setback for this development.

However, the Committee does not agree that a future tower separation of 15.8 metre (5.8 metres on the proposal site and 10 metres on the neighbouring site) would necessarily be sufficient to meet the intent of the planning provisions, particularly if the proposed height was over and above the preferred height of the precinct, which would have the capacity to reduce daylight, views to the sky, and increase wind tunnel effects.

The Committee regards the need to achieve an acceptable building height and separation to provide views to sky and access to daylight for the future development on the adjoining site to the west as a significant issue. This is another reason to moderate the height of the building in preference to concealing the adjacent blank wall entirely.

On balance, the Committee supports the proposed setback of 5.8 metres for the western side of the tower up to the recommended maximum of 101 metres (30 storeys) since:

- the recommended maximum height will lessen some of the effects on the neighbouring property
- there is capacity for neighbouring sites to propose a consolidated development such as the 'called in' permit application to provide increased flexibility in terms of separation, layout and the provision of internal amenity. A consolidated proposal would be preferable from a site planning and Precinct point of view compared with individual slender sites being developed separately.

4.5 Layout and detailed design

(i) The issues

The key issues are:

- accessibility and circulation
- achieving an adaptable building in line with policy at Clause 22.15
- compliance with Better Apartment Design Standards (Clause 58 of the Planning Scheme)
- protecting internal amenity and open space
- addressing potential wind effects.

(ii) Evidence and submissions

Submissions generally supported the detailed design elements of the proposal, although there were some suggested and agreed changes addressed by conditions in the draft Incorporated Document. These were outlined by the Proponent as follows:

- (a) A condition requiring a planter box to the north of Apt 5 to provide greater physical separation between the communal terrace and the private open space for the apartment;*
- (b) A condition ensuring implementation of the SMP and require the SMP to show water tanks capacity of 0.5m³ per 10sqm of roof catchment and that all toilets are connected to rainwater tanks;*
- (c) A condition requiring an acoustic assessment of bedrooms and living areas once the building is occupied;*
- (d) A condition requiring fixed screens to separate private terraces on Level 30;*
- (e) A condition requiring a further Waste Management Plan (to address concerns of Council);*
- (f) Secondary bedrooms at Level 30 to be redesigned so that the secondary areas associated with the saddle back bedrooms can comply with the minimum width to depth dimension of Clause 58.07-3 Windows objective.*

In addition to these matters, the Committee's review of the proposal has identified other issues discussed below.

(iii) Better Apartment Design Standards

The Committee agrees with DELWP and Council that Clause 58 (Apartment Developments) should be used to assess the proposal consistent with the assessment of other similar proposals, irrespective of whether they are processed as planning permits or planning scheme amendments. This is consistent with the view of the Committee in draft Amendment C172port (Bertie Street).

The Committee agrees that the 'Window' objective of Clauses 58.07-3 and 55.07-14 (To allow adequate daylight into new habitable room windows) needs to be applied and that respective bedroom arrangements on level 30 need to be redesigned to comply with the secondary area requirement of:

- a minimum width of 1.2 metres
- a maximum depth of 1.5 times the width, measured from the external surface of the window.

This coincides with the Simpson Kotzman Daylight assessment report²⁴ that concluded:

The assessment of snorkel bedrooms at Level 30 was found not to comply with the BESS IEQ target, that of a daylight factor greater than 0.5% to at least 90% of the floor area within each bedroom. As tabulated in Appendix A, the specified bedrooms achieved 0.5% daylight factor to 58%, 69% and 83% of floor area, all below the minimum 90% floor area target.

The Committee further considers that the accessibility provisions need to be demonstrated to “ensure the design of dwellings meets the needs of people with limited mobility”, including in bathroom dimensions.

The Committee notes that typical internal corridors do not meet the Better Apartment Design Standards. With regard to the standard in Clause 58 that common areas and corridors should feature “at least one source of natural light and natural ventilation” the Committee considers that in this specific instance the provided solution is acceptable due to the site constraints, number of apartments per lift core and length of corridors needed.

Recommendation

The Committee recommends:

Include a condition in the Incorporated Document that apartment layouts be redesigned as necessary to meet the window standards in Clause 58 of the Planning Scheme and Built Environment Sustainability Scorecard daylight requirements.

This recommendation is included in the recommended Incorporated Document at Appendix A.

(iv) Adaptable buildings

Clause 2.13 of DDO30 (Adaptable buildings) includes the following built form outcomes:

Buildings that:

- *Provide for the future conversion of those parts of the building accommodating non-employment uses to employment uses.*

Car parking that:

- *Can be adapted to other uses over time,*

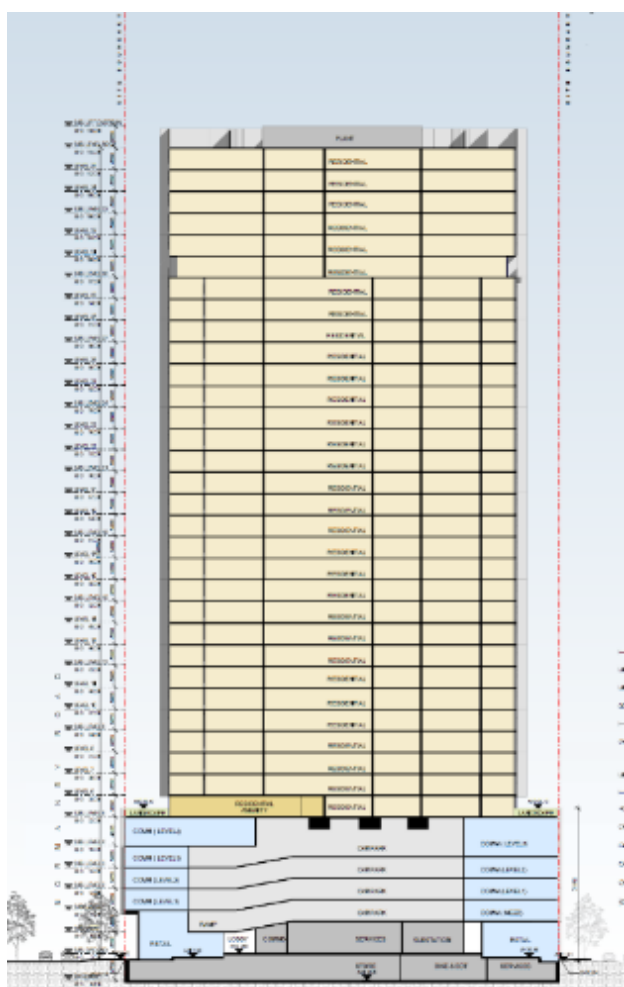
The Building elements in DDO30 Table 9 (refer to Table 5) should incorporate the Adaptability opportunities identified in the table.

²⁴ Document 6A(5c).

Table 5 DDO30 Table 9 Adaptable buildings

Building element	Adaptability opportunity
Lower levels up to the height of the street wall	At least 4.0 metres floor to floor height at ground level. At least 3.8 metres floor to floor height for other lower levels
Car parking areas	In areas not in a basement: <ul style="list-style-type: none"> - Level floors. - A floor-to-floor height at least 3.8 metres. Mechanical parking systems to reduce the area required for car parking
Dwelling layout	The ability for one and two-bedroom dwellings to be combined or adapted into three or more bedroom dwellings
Internal layout	Minimal load bearing walls to maximise flexibility

Figure 12 Site 6 - Section A-A, Drawing S06_A11.01



Levels 1, 2 and 3 as well as associated car parking levels are 3.0 metres in height floor to floor - short of the 3.8 metres sought by Table 9. This would provide less future adaptability to convert car parking into commercial tenancies.

The Taskforce suggested that floor to floor heights of commercial tenancies were acceptable. This was in the context of the proposal providing above the target for employment generating land use. It also considered that the provision of smaller commercial tenancies may provide a range of opportunities.

The Committee considers the narrow site constraints challenging for an efficient above ground car park. The proposal 'sleeves' the front and back elevations with commercial uses which is important but leaves little residual space to accommodate car parking. Typical car park floors accommodate only about ten cars. Were the floor to floor height higher, the associated ramps would be longer, further compromising car park layouts or further reducing commercial tenancies.

The three metre floor to floor height appears to transpire from the car parking to the commercial tenancies. Three metre floor to floor height is typically a residential, not a commercial, height. In commercial tenancies a three metre floor to floor height is needed to accommodate services, suspended floors or ceilings, finishes and flexible layouts such as meeting rooms with supplementary air conditioning.

Multi-level underground car parking would be more efficient and generally preferred, but the Committee understands that the ground conditions (including flooding and potential contamination) in Fishermans Bend make this challenging.

Automated car stacking systems such as in the adjacent hotel development may be an alternative.

Regarding the adaptability of car parking, the Committee considers that levels 3 and 4 (due to higher ceilings and being at the end of ramping) offer the greatest potential for future conversion of car parking into higher uses and potential front-to-back connection with commercial tenancies.

The Committee concludes that the floor to floor heights are generally acceptable but suggests that future adaptability of car parking to higher uses should be demonstrated for levels 3 and 4.

Recommendation

The Committee recommends:

Include a condition in the Incorporated Document that the Proponent maximise future adaptability for car parking areas on levels 3 and 4.

(v) Accessibility and circulation

Inclusiveness and diversity are key elements of the policy framework for the Precinct.

The Committee notes that the Normanby Road disabled access into the commercial lobby appears to be through the residential entrance, up a ramp, lobby and an internal door back into the commercial lobby (refer to Figures 13 and 14 below). Internally, the doorway and corridor from the residential lobby into the commercial lobby appear tight, are not dimensioned and it is unclear whether an automated door would be specified and how a disabled person would gain access. For example, if the upper floor commercial tenancies included healthcare practices, the convoluted access could be an issue for many patrons.

The Committee does not consider this arrangement best practice for equitable access as the path is too long and likely to rely heavily on signage for way finding.

Figure 13 Normanby Road access

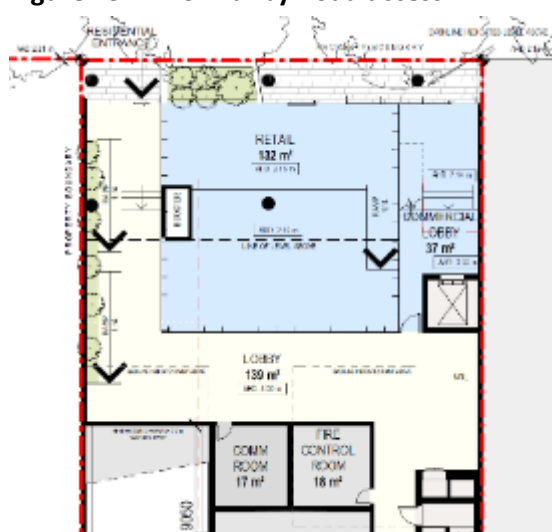
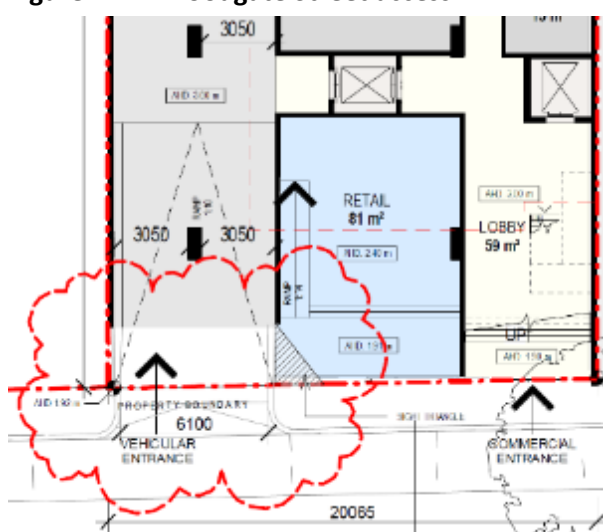


Figure 14 Woodgate Street access



At the Woodgate Street entrance there does not appear to be any disabled access into the lobby at all. This would mean that a person who can't use stairs either can't access the south retail tenancy or Woodgate Street at all or would have to travel through the south central lift, down the car park ramp onto the footpath and back into the retail tenancy. As a last resort a person would have to travel even further via Normanby Road, Montague Street and Woodgate Street just to get to the back of the building or towards the future park, which – according to the Taskforce – is likely to be only in the order of one metre above Woodgate Street at this point.

The Committee is also concerned about the lack of a safe, ramped walkway to enter and exit the building and ground floor lift lobby for cyclists and the like next to the car park entrance and loading bay. It sees potential danger when, for example, parents and children with bicycles need to share the ramp with vehicles, wait for the lift to the basement, while others may need to exit the lift and cars or trucks may enter or exit the building. Exiting the lift lobby to enter the ramp appears even more potentially hazardous.

It is important to provide all abilities access to all parts of the building, especially in a comprehensive urban renewal area.

A redesign is required to accommodate a dedicated, safe pathway on the ramp and the lift lobby needs to be expanded to safely accommodate waiting and passing of respective parties and to allow safe exiting.

Therefore, the Committee concludes that ground floor accessibility and circulation is insufficiently resolved and should be addressed in amended plans.

Recommendation

The Committee recommends:

Include a condition in the Incorporated Document that amended plans be approved by the Responsible Authority in consultation with the City of Port Phillip that provide:

- i. **as part of the podium and ground floor redesign, fully demonstrated equitable disabled access through pathway diagrams and appropriately dimensioned and annotated drawings**
- ii. **safe access for cyclists and other users incorporated into the southern ground floor design.**

This recommendation is included in the recommended Incorporated Document at Appendix A.

(vi) Car access ramp containment on site

While DELWP does not see *“a useful purpose”* in prohibiting any ramping outside of the site boundary, Council *“considers that it does serve a useful purpose as Drawing SO6_A03.01 Rev 7, 23-10-2019 (ground floor plan) shows a nominal kerb and footpath and parallel parking along Woodgate abutting the rear of the subject site, and a vehicle crossing rising from the carriageway to the vehicular entry at the property boundary.”* Council argued that this *“transition from the carriageway level into the building must be wholly accommodated on the Land rather than in the road reserve.”*

While the partial ramping outside of the building may help the building with the transition to 3.0 metres AHD as recommended for flood protection, it is not clear whether any ramping outside of the building would hinder future changes to Woodgate Street and the footpath as part of Precinct upgrade works. In any event, it would not be desirable for public infrastructure to be graded to meet the needs of a particular proposal.

Recommendation

The Committee recommends:

Reinstate the condition of the draft Incorporated Document that requires the development to contain all ramps within the site boundary.

This recommendation is included in the recommended Incorporated Document at Appendix A.

(vii) Services

The current design proposes central services rather than split air conditioning systems. In response to questioning, Mr Jordan suggested this could be included in a condition.

The Committee considers that a potential change to split air conditioning systems, with condenser units potentially accommodated on balconies would be a poor outcome.

Recommendation

The Committee recommends:

Include a condition in the Incorporated Document that all air conditioning system components be located internal to the building or otherwise not visible from public views or located in areas designated for private open space.

This is included in the recommended Incorporated Document at Appendix A.

(viii) Wind effects

The Committee notes that the Vipac Wind Impact Statement – Site 6, 4. July 2019 is *“based on Vipac’s experience as a wind-engineering consultancy”* but does not appear to include any wind modelling of the building and surrounding conditions.

Clause 2.11 of DDO30 (Wind effects on the public realm) includes the outcome:

Local wind conditions that:

- *Maintain a safe and pleasant pedestrian environment on footpaths and other public spaces for walking, sitting or standing.*

It also includes the following built form requirement:

Buildings and works higher than 40 metres:

- *Must not cause unsafe wind conditions as specified in Table 7 in publicly accessible areas within the assessment distance from all façades.*

Table 7 specifies how to define targeted wind conditions for sitting, standing and walking areas.

The Committee notes that the Vipac's comfort criteria of:

- 5.6-7.5 metres/second for walking
- 3.9-7.5 metres/second for standing,

appear to be inconsistent with the DDO30 specified conditions of less or equal to:

- *5 metres/second for walking areas*
- *4 metres/second for standing areas.*

Regarding non-public areas, the Vipac assessment states that:²⁵

... as a minimum...balcony /rooftop terrace area meet the criterion for walking since:

- *these areas are not public spaces;*
- *the use of these areas is optional;*
- *many similar developments...experience wind conditions on balconies and elevated deck areas in the vicinity of the criterion for walking.*

However, it should be noted that meeting the walking criterion on elevated recreation areas will be no guarantee that occupants will find wind conditions in these areas acceptable at all times.

Vipac concluded that “educating occupants about wind conditions at open terrace/balcony areas during high-wind events and fixing loose, lightweight furniture on the terrace are highly recommended.”

In the communal roof top areas on level 5, only two smaller areas (shown as BBQ and seating areas) appear to be nominated for the wind assessment. These are annotated with “3m high wind screen with 30% porosity and pergola over” and are assessed as complying with the walking criterion.

The Committee is concerned that the wind assessment report:

- considers the walking criterion sufficient for the level 5 areas which are depicted as seating areas
- does not appear to assess comfort conditions on non-winter garden private open space, such as the north and south facing balconies and level 5 private terraces
- does not comment on the level 5 roof top communal area outside these confined areas.

²⁵ Section 2.6.1 Terrace/Balcony and Rooftop areas recommended criterion discussion.

The Committee concludes the Wind Impact Statement does not provide sufficient evidence of suitable comfort conditions in:

- the public realm
- all level 5 communal outdoor areas
- open private balconies and terraces (excluding winter gardens).

Recommendation

The Committee recommends:

Include a condition in the Incorporated Document that an updated comprehensive wind assessment be prepared (including modelling) that:

- i. reflects all changes to the building including building height, setbacks, facades, canopies and any other features that may impact wind conditions**
- ii. correlates with the DDO30 requirements for wind effects on the public realm**
- iii. correlates comfort criteria to proposed communal uses**
- iv. assesses comfort on all outdoor communal spaces and open private balconies.**

This recommendation is included in the recommended Incorporated Document at Appendix A.

4.6 Environmentally sustainable development

(i) The issue

The issue is whether the proposal acceptably meets policies seeking high standards of environmental sustainability.

(ii) Relevant policies, strategies and planning scheme provisions

The Framework includes the following 'sustainability' goal, objectives and strategies:

Sustainability goal 7: A low carbon community

Objective 7.1 Develop Fishermans Bend as a zero net emissions precinct

Objective 7.2 Design, construct and operate to best practice green building standards

Strategy 7.2.1 Require new developments to meet 4-Star Green Star Design and As-built (or equivalent) ratings and 5-Star Green Star Design and As-built (or equivalent) for all buildings over 5000 square metres, and clearly indicate future increases to performance requirements

Strategy 7.2.2 Encourage highly energy-efficient buildings that are also adapted to a warming climate

Strategy 7.3 Maximise renewable energy generation, storage and distribution

Strategy 7.3.1 Maximise renewable energy generation such as solar panels on appropriate rooftops and sharing or storing of this energy

Clause 22.15 includes the objective:

To ensure development is carried out in accordance with ecologically sustainable development principles.

The CCZ1 includes the purpose:

To create a world leading sustainable urban renewal area that incorporates best practice sustainable design into all developments and supports sustainable transport patterns.

Clause 4.3 of the CCZ1 includes requirements relating to Green Star rating and Third pipes and rainwater.

Relevant decision guidelines include:

- *The proposed sustainability rating of the building.*
- *Whether appropriate sustainable water, waste and energy management is proposed.*

(iii) Evidence and submissions

The Proponent noted that the proposal was supported by an updated Sustainable Management Plan (SMP)²⁶ and submitted that it “*achieves or can achieve the ‘5-star green star’ ‘Australian Excellence’ rating*”. The Proponent also advised that it did not contest the changes to the SMP required by Clause 4.38 of the Incorporated Document that relate to:

- external shading
- bike parking spaces
- rain water tank capacity and connections.

The Proponent also submitted a memorandum from Simpson Kotzman²⁷ in relation to the SMP, which stated:

We believe that the SMP (rev. H dated 24 October 2019) currently outlines all of the applicable objectives and targets of planning policies and controls to the site and details a viable pathway for the compliance with each of these where relevant.

The main pathway to ensuring compliance is the commitment for independent certification of the 5 Star Design and As-Built Rating v1.2 “Australian Excellence” by the GBCA within 12 months of occupation of the building which is consistent with the requirements of the Fisherman’s Bend Urban Renewal Area CCZ1 amendment to the Port Phillip Planning Scheme ...

Regarding further changes that may be proposed to the ESD commitments the SMP currently provides a proposed pathway to meet the targeted objectives. The final credits to be achieved in the design and construction of the development will need to be finalised during the future detailed design and construction phase to suit all of the parties involved in the construction and certification process (Council, GBCA, Builder, Developer, etc.), whilst still maintaining the committed 5

²⁶ Document 6B(7).

²⁷ Document 46g.

Star rating. We note that no major / significant building design changes are envisaged to be required to achieve the certified 5 star Green Star rating based on our assessment of the proposed development plans and the viability of each of the individual targeted credits in the preliminary pathway presented in the SMP.

DELWP submitted that the proposed conditions in the Incorporated Document would enable the proposal to meet the Green star permit requirements for new buildings pertaining to a minimum 5 Star Green Star Design and As-Built rating (or equivalent) with the Green Building Council of Australia.

The Taskforce and Council did not make submissions about environmentally sustainable development issues.

(iv) Green Star Design and As-Built and NatHERS requirements

In aiming to meet the high standards of environmental sustainability there are aspects of the development that may directly impact the design of the building and compliance with the planning provisions while others are less visible or have no impact. Direct aspects can include integral parts of the building such as the façade, shading, planting and the like. Other aspects that are more concealed may include building services, paint finishes or material properties. Lastly, there are procedural aspects such as management of the design and construction process that are entirely invisible to the outward product.

In this context, the Committee acknowledges Simpson Kotzman’s advice that “...no major / significant building design changes are envisaged to be required to achieve the certified 5 star Green Star rating”.²⁸

In the same document, the Proponent commits to achieving the objectives and targets, specifically through independent certification:

*The main pathway to ensuring compliance is the commitment for independent certification of the 5 Star Design and As-Built Rating v1.2 “Australian Excellence” by the GBCA within 12 months of occupation of the building.*²⁹

This commitment as opposed to an ‘equivalent’ to a 5 Star Green Star Design and As-Built rating gives the Committee some confidence about the seriousness of the aspiration.

The Proponent should then submit all relevant documentation consistent with the proposed building design for a Design Review Certified Rating by the Green Building Council of Australia. The Design Review Certified Rating is not a standalone certification, rather it is as an interim step towards the As-Built certification. Submissions can be lodged early in the design process as soon as the required evidence is available. It is therefore an appropriate mechanism to demonstrate compliance at planning application stage. The independent assessment and respective Design Review Certified Rating by a certified assessor through the Green Building Council of Australia will determine whether the project can and is on track to achieve the 5 Star Green Star Design and As-Built rating. It can also identify which measures would be required to achieve the target.

²⁸ Document 46g.

²⁹ Document 46g.

The Committee notes that the Green Star Design and As-Built system referenced by the Proponent needs to be updated to the current version at the point of registration, which would currently be *Green Star Design and As-Built v1.3*.

The Committee acknowledges that the Proponent is targeting a 6 point buffer to achieve the required 60 points for a 5 Star Green Star rating, however it also notes that the Green Star Scorecard in the SMP³⁰ relies heavily on 10 innovation points (the maximum extent achievable). It is the Committee's understanding that this is typically hard to achieve.

The Committee notes that the "*Sample NatHERS Assessment Report*"³¹ only models a number of apartments but indicates a level of compliance with the energy efficiency targets of 7 Star NatHERS average and 6 Star minimum.

(v) Energy efficiency and adaptation to a warmer climate

Energy efficiency and adaptation to a warmer climate is largely covered by the Green Star and NatHERS targets. Notwithstanding, on the basis of the documentation to date, the Committee remains concerned about the lack of shading on the north (-west) façade.

(vi) Heat island mitigation and green elements

It is unclear whether the following objective and strategy in the Framework are sufficiently addressed by the podium roof in the area marked as 'landscape':

Objective 4.2 Embed green infrastructure into the design of public spaces and buildings

Strategy 4.2.1 Encourage the inclusion of well-designed and managed green roofs and green walls in new development

The SMP includes 75 percent of total site area to comply with respective Solar Reflectivity Indices. As the north setback is set to be reduced, this means 75 percent of roof surfaces will need to comply with the Solar Reflectivity Indices or alternatives such as Photovoltaic or Green Roof elements will need to be provided.

(vii) Renewable energy generation and storage

The Framework includes the following objectives and strategy under Sustainability goal 7: A low carbon community:

Objective 7.1 Develop Fishermans Bend as a zero net emissions precinct

Objective 7.3 Maximise renewable energy generation, storage and distribution"

Strategy 7.3.1 "Maximise renewable energy generation such as solar panels on appropriate rooftops and sharing or storing of this energy.

The 3kW (minimum) solar system proposed in the SMP would fall short of this objective as it is of a size that is more typical of a solar system on a single family home.

The Committee considers the objective needs to be taken seriously and should be demonstrated in relevant documentation.

³⁰ Document 6A(5f).

³¹ Document 6A(5f).

(viii) Water and waste management

Water and waste management are largely covered by the Green Star assessment and a 55kL rainwater tank has been incorporated in the drawings.

The Committee notes that the location of the bin room is not ideal as it requires movement of bins from the basement but acknowledges space restrictions on the ground floor. This was addressed in conditions suggested at the Hearing, as well as a preference for separate refuse rooms for residential and commercial tenancies (if reasonably possible). The Committee supports these requirements.

(ix) Conclusions

The Committee concludes:

- The commitment to achieving the Green Star Design and As-Built targets through independent certification has been started and is commended.
- The Proponent's consultant's opinion that no significant building design changes are envisaged to achieve the certified 5 star Green Star rating will need verification after any redesign such as a reduction in building height.
- The green roof components on the podium roof need to be clearly specified.
- Roof top renewable energy generation needs to be demonstrably maximised.

(x) Recommendation

The Committee recommends:

Include conditions in the Incorporated Document requiring:

- i. drawings and supporting documentation to demonstrate that renewable energy generation on the development's roof is maximised**

the SMP to be reviewed and revised to take account of the relevant Committee recommendations, including the reduced building height and to provide more detailed evidence of steps taken for certification by the Green Building Council of Australia. This recommendation is included in the recommended Incorporated Document at Appendix A.

5 Affordable housing

5.1 Introduction

(i) Key policies, strategies and Planning Scheme provisions

The Framework is a long term strategic plan for the development of Fishermans Bend to 2050 that builds on the previously released Fishermans Bend Vision and has been prepared with input from the community, industry, key stakeholders and local councils. It seeks “*at least six per cent of all housing in Fishermans Bend [to be] affordable*” by 2050.³²

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.*
 - *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).

³² Page 48.

The target of at least 6% Affordable housing has been well documented and is discussed at length in the Report of the Review Panel into Amendment GC81 (Review Panel) in Chapter 8. In summary, the Review Panel found that:

- the six per cent target should apply to all dwellings within Fishermans Bend, not just the 36,900 dwellings required to accommodate the target population of 80,000
- although the Review Panel had doubts about whether the six per cent target was adequate, it was not in a position to recommend a different target.³³

Community building is an underlying policy driver for Fishermans Bend, as evidenced from the Framework and more detailed policies in the Planning Scheme that give effect to the Vision. A key way policy seeks to achieve this is for a broader range of lower income households to be provided with access to housing within this urban renewal area.

(ii) Draft Guidelines

To assist the implementation of policy considerations, the Taskforce commissioned the Fishermans Bend Social and Affordable Housing Guidelines (draft Guidelines). These are ultimately intended to be endorsed by DELWP, the City of Port Phillip and the City of Melbourne.

The Guidelines referenced in this report are Draft Version 3 dated 20 February 2020. They were drafted in consultation with DELWP, Department of Health and Human Services, Department of Jobs, Precincts and Regions (under which the Taskforce is established), industry stakeholders and not-for-profit bodies.

The draft Guidelines explain that they have been developed to:

...set out the planning policy, application requirements and guidance to support Applicants, the Responsible Authority, Registered Housing Agencies, and the community to understand and apply the planning policy provision for Affordable Housing in Fishermans Bend.³⁴

The Guidelines do not have any status in the Planning Scheme as yet, but the Taskforce confirmed they are intended to operate as a future guide to implementing policy provisions for Affordable Housing in Fishermans Bend.

(iii) What is Affordable housing?

As noted above, the policy at Clause 22.15-4.3 seeks development to provide at least 6% of dwellings within a development as Affordable housing. It is important to understand what is meant by Affordable housing in this context.

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.

³³ Page 93, Report No. 1 dated 19 July 2018.

³⁴ Page 2.

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 6 June 2019. The current income ranges for metropolitan Melbourne are replicated in Table 6.

Table 6 Metropolitan Melbourne Income Ranges: 1 June 2019

	Very low income range (annual)	Low income range (annual)	Moderate income range (annual)
Single adult	Up to \$25,970	\$25,971 - \$41,550	\$41,551 - \$62,310
Couple, no dependents	Up to \$38,950	\$38,951 - \$52,230	\$52,231 - \$93,470
Family (one or two parents and dependent children)	Up to \$54,520	\$54,521 - \$87,250	\$87,251 - \$130,870

Source: Order in Council dated 6 June 2019

The draft Guidelines include a useful summary of Affordable housing which brings together the definition in the Act, the Ministerial Notice dated 17 May 2018, the Order in Council dated 6 June 2019 and relevant criteria that an applicant must respond to. It explains:

Affordable Housing is any residential built form that meets the legislated definition and satisfactorily responds to the 'Specified Matters' published by Ministerial Notice, and will result in housing that is appropriate for the housing needs of very low, low or moderate income households.

These matters establish the criteria that an Application must respond to, and that an Application will be assessed against, summarised as:

A built form that is:

- 1) Appropriate for an Eligible Household in terms of:*
 - Tenure (rental or ownership);*
 - Type (built form, number of bedrooms and amenity);*
 - Integration with market housing;*
 - Time it is available as Affordable Housing; and*
 - Response to housing need.*
- 2) Affordable for an Eligible Household. A general guide is that no more than 30 per cent of a household's gross annual income should be spent on housing costs.*
- 3) Allocated to an Eligible Household whose gross household income is below the Affordable Housing income limits for Greater Melbourne established by Governor in Council Order at the point of occupancy, and managed over time*

*under an appropriately regulated Affordable Housing management arrangement.*³⁵

For dwellings to meet the definition of Affordable housing, they should have regard to the criteria listed above that address appropriateness, affordability and allocation.

5.2 Key issues

An important input for assessing the appropriateness of the site specific control under the Terms of Reference involves considering how Affordable housing would be secured as part of the land use and development outcomes sought.

The Proponent consistently committed to deliver Affordable housing within the development in an attempt to meet the policy at Clause 22.15-4.3. It offered to provide for the sale of 10 x 1 bedroom apartments at a discount of 30% to market value to either a housing trust or through a shared equity scheme.

Parties were in broad agreement throughout the Amendment process and Hearing about the need for the proposal to contribute to Affordable housing in Fishermans Bend. Likewise, they supported the proposed requirement for a section 173 agreement in the Incorporated Document to secure the commitment to provide Affordable housing.

However, parties differed in their approach to the following matters:

- the general operation of the Affordable housing policy framework including:
 - application of the policy to residential and non-residential land
 - how to assess a proposal's contribution to Affordable housing
 - timing of when to consider a reduction in the provision of Affordable housing
- how the policy should be implemented for this proposal including:
 - benchmarking an Affordable housing contribution
 - potential methods of delivery
 - housing mix
 - owners corporation
- evaluating the Proponent's offer.

5.3 General operation of the Affordable housing policy

(i) Application of the policy to residential and non-residential land

Evidence and submissions

There was general acceptance by parties that at least 6% of dwellings should be delivered on a *site by site basis* to meet the policy, although Council and its expert witness Dr Spiller considered that the responsibility for delivering the 6% should be shared across *all* types of development within Fishermans Bend, not just residential development.

Dr Spiller considered that development of land for all purposes, not only residential land, should contribute to Affordable housing in Fishermans Bend since *"the provision of social and*

³⁵ Document 61a, page 12.

affordable housing is essential infrastructure for the formation of successful communities". This led to his recommendation for a 3% levy on all floorspace in Fishermans Bend.

Mr Montebello on behalf of Council pointed out that the policy is expressed to apply to *"use and development of all land within Fishermans Bend"*. He also explained that the wording in Clause 22.15-4.3 refers to *"development"* not only residential development.

However, the provision then becomes more prescriptive about how the minimum 6% should be delivered with reference to residential development which creates some uncertainty. Also, the Vision in Clause 21.06 refers to a contribution by residential development without reference to other types of development.

The Proponent submitted that it would involve 'inventive legal argument' to expand the policy for the provision of Affordable housing to all types of land use in Fishermans Bend.

The Proponent, DELWP, the Taskforce and its draft Guidelines proceeded under the assumption that the 6% Affordable housing target should be met by each applicable site. They also appeared to take the view that the responsibility for delivering Affordable housing rests with only residential developers.

DELWP referred the Committee to the conclusion of the Review Panel on this issue which recommended that the (then draft) policy should be rewritten to *"specify that it is policy that applications for residential development in Fishermans Bend include at least six per cent affordable housing"*³⁶ [DELWP emphasis].

Discussion

There is still a lack of clarity around this issue, as identified by the Committee in the report for draft Amendment C172port (Bertie Street, Tranche 2).

Although there is broad agreement in the context of draft Amendments referred to the Committee to date that the minimum 6% of Affordable housing should be delivered on a site-by-site basis, it is unclear as to whether achievement of the Vision for the Precinct depends on some form of contribution from all types of development and how this would be achieved in practice.

The Committee suggests that the Government review the drafting and intended operation of Clause 22.15-4.3 to confirm whether non-residential development is intended to contribute to Affordable housing under the provision.

(ii) Assessing a contribution to Affordable housing as part of an Amendment

Context

The Review Panel considering Amendment GC81 concluded that the provision of Affordable Housing in Fishermans Bend should not be mandatory. It explained:³⁷

Social housing, and affordable housing more generally, are state-wide issues requiring a coordinated state-wide response. It is not the role of Fishermans Bend to solve these issues, although it (like every other urban renewal area in Victoria) has a part to play.

³⁶ Fishermans Bend Planning Review Panel – Report No. 1, Volume No. 1, page 99.

³⁷ As above, Chapter 8.4.

The Review Panel does not support mandatory affordable housing contributions in Fishermans Bend. The current statutory and policy framework in Victoria is geared towards voluntary, rather than mandatory, contributions. This is reinforced by the recently passed Housing Affordability Act, which establishes a framework to support voluntary section 173 agreements to support the provision of affordable housing.

The Review Panel accepts the evidence of Mr Biacsi and Mr Mackintosh that imposing mandatory requirements would likely put Fishermans Bend at a competitive disadvantage compared to other urban renewal precincts that do not have mandatory requirements ...

Submissions

The Proponent in the current Amendment quoted DELWP's submission to Amendment C172port (Bertie Street Build to Rent proposal) in support of how to approach a proposal:

Consistent with the Review Panel's rejection of a mandatory requirement for affordable housing, the requirement is part of a local policy, rather than part of a control. As such, a failure to provide 6% of dwellings does not automatically preclude the grant of a permit. Rather, the ultimate degree of compliance or non-compliance with the policy is one of a range of matters to be considered in deciding whether to grant an approval.

The Proponent submitted that assessing the proposed Affordable housing contribution is part of an integrated decision making task and that the balancing exercise flows onto the concept of net community benefit. It concluded that:

A justifiable reduction of affordable housing to less than 6% of the dwellings proposed does not make development in Fishermans Bend prohibited and does not prevent a development from achieving many other important policy objectives.

Discussion

The Committee accepts the submissions of DELWP and the Proponent that Affordable housing contributions in Fishermans Bend are not mandatory, given that it is expressed as a policy rather than a requirement in the Planning Scheme. This approach is consistent with the statutory framework in place in Victoria.

The Committee further accepts the submissions from DELWP and the Proponent that a failure to meet the minimum 6% contribution in policy would not necessarily be fatal to the approval of a specific control to facilitate the use and development of land.

The overall acceptability of the proposal would depend to a large extent on an integrated assessment of all applicable policies within the Planning Scheme to achieve net community benefit and sustainable development.

This is especially the case where the first part of the policy provision expressly contemplates that there may be circumstances where a reduction could be justified, such as where the built form makes it impractical, where it affects economic viability or where the policy objectives would otherwise be met.

That said, this Committee broadly regards the provision of Affordable housing by development within Fishermans Bend as a key responsibility for developers and central to the achievement of the Vision for the Precinct. Any variation from the minimum 6% contribution would need to be evaluated against the exceptions within the policy itself, with a Precinct-wide approach in mind.

Conclusion

The Committee concludes that:

- The Planning Scheme does not impose a mandatory requirement for 6% Affordable housing to be given effect to by each permit application, let alone a site specific control effected by Planning Scheme Amendment. However, a contribution for Affordable housing is a key policy provision for the Precinct overall and any variation should be evaluated rigorously.

(iii) When to consider a reduction in the provision of Affordable housing

Submissions

The Proponent advocated for the inclusion of a provision in the section 173 agreement required under the Incorporated Document mirroring the exceptions in Clause 22.15-4.3 (regarding building envelope, economic viability and the like).

The Committee noted that the Hearing had been adjourned earlier to allow the Proponent to obtain expert economic evidence on this issue, but the Proponent ultimately decided not to call an economic witness. When asked for the reason behind this, the Proponent explained that it had engaged a witness who had been involved with the drafting of the draft Guidelines on behalf of the Taskforce which created challenges for her appearance as a witness in this proceeding.

DELWP rigorously opposed this approach, suggesting that it was a key matter to be determined upfront as part of the evaluation and 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. It referenced the detailed application requirements applying to a permit application (by analogy) in Clause 4.4 of CCZ1. To do otherwise would be to defer a decision on the delivery of Affordable housing to after the approval stage.

Discussion

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.

Therefore, it is vital to assess its capacity to be provided and the adequacy of the offer by reference to the policy before approving the use and development.

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 would still be acceptable with less or no provision of Affordable housing is at the application and evaluation stage – not following its approval. If the provision of Affordable housing was to change substantially post approval, this would have the potential to affect the integrated assessment of relevant considerations to achieve net community benefit and sustainable development.

For this reason, proponents are encouraged to provide the level of detail contained in the application requirements to the CCZ1 and to provide well resolved offers for Affordable housing as part of the project for which approval is sought.

It is clear to the Committee that the question of whether Affordable housing should be provided and what would be an appropriate agreed outcome should be decided at the approval stage. This should be clear and as definitive as possible, outlining the proposal including the terms of transfer such as the number and type of dwellings and location within the building. If it is cash-in-lieu, the mechanisms for determining the value should be included or how it is to be calculated.

Conclusion

The Committee concludes:

- The Terms of Reference require the Committee to evaluate the site specific control by reference to relevant policy, including that in Clause 22.15. The land use and development outcome sought should either demonstrate compliance with the policy for Affordable housing, or that one of the exceptions in the policies applies, before approval.
- The section 173 agreement should secure the key elements of an identified Affordable housing contribution where it has been confirmed as meeting all relevant provisions. Otherwise, a 'minimum baseline' should be provided for as discussed in Chapter 5.4 below.

5.4 Implementation of Affordable housing policy

(i) Potential methods of delivery and timing

Evidence and submissions

There are a range of different methods of delivering Affordable housing and these are expected to continue to diversify over time.

As explained by the parties, one way of meeting the policy would be to gift a minimum 6% of dwellings to a registered housing entity. There are many other potential ways of delivering such housing, including discounted sale, discounted leasing or money substituted for dwellings (cash-in-lieu). A shared equity scheme was discussed by the Proponent as outlined below.

Council expressed a strong preference for the gifting or discounted sale of dwellings to ensure a perpetuity of the interest. It regarded cash-in-lieu as a last resort, once all other avenues were explored and exhausted.³⁸ If discounted leasing was proposed, it suggested that the owner should also transfer an underlying interest in the land to the housing provider or other entity.

The Proponent clarified in the Hearing that it would prefer to undertake a sale rather than a lease. This is also a preference expressed in the draft Guidelines.

In regard to leasing for Affordable housing, the draft Guidelines propose a length of 30 years. In his advice in relation to draft Amendment C172port, Dr Marshall proposed that the Affordable housing leasing should extend for the 'economic life of the building'. This would ensure the continuation of the availability of Affordable housing in Fishermans Bend commensurate with the relevant approval. It would also create greater value equality with offers to provide Affordable housing through discounted sale arrangements.

In the draft Guidelines, Net Present Value was used to allow comparisons across different leasing periods. However the draft Guidelines did not compare leases to discounted or outright sales. A fixed length lease would mean that at the end of the lease, the dwelling is 'lost' to affordable housing and would return to the conventional housing stream. On a Net Present Value basis, it would be valued under the draft Guidelines at approximately half of the equivalent sale offer.

Discussion

The Committee considers that the policy is flexible, with all of the mechanisms mentioned above being legitimate options.

There are circumstances when a discounted lease may be logical, such as in Build-to-Rent buildings where there is no subdivision of apartments and the whole building remains in single ownership and management. Any lease arrangement should be for the economic life of the building to meet objectives of the Vision to create an inclusive community as part of Precinct renewal.

Similarly cash-in-lieu is a legitimate form of delivery. There are certain instances where cash-in-lieu may be desirable. For example in a high-end complex offering only 4 bedroom apartments, it would be equitable and desirable to accept cash-in-lieu as a contribution for Affordable housing which can be used elsewhere to purchase or lease dwellings in the Precinct.

This again illustrates the potential relevance of a minimum baseline to compare different delivery mechanisms. In the scenario above, a fixed ratio of residential floorspace could be used to determine the value of the payment in a simple way.

The policy requires at least 6% of dwellings be provided as Affordable housing. For the proposed development, 6% of 171 translates to 10.26 dwellings; not a whole number. In this case, the use of the words "*at least 6%*" suggests to the Committee that it would be reasonable to round up this figure or to look at alternatives, such as to deliver 10 dwellings and the remainder as cash.

³⁸ Dr Spiller also suggested that a percentage premium should be imposed on cash-in-lieu contributions since its effective value would diminish over time. He did not specify what this percentage should be, although the draft Guidelines suggest 10%.

Conclusion

The Committee concludes:

- Gifting, discounted sale, leasing and cash-in-lieu are all legitimate forms of delivery of Affordable housing under a site specific control, as well as other mechanisms that may emerge to meet policy objectives.
- Any discounted lease to provide Affordable housing should subsist for the economic life of the building to achieve the Vision and objectives for Fishermans Bend.

(ii) Housing mix

The policy specifically seeks a mix of dwellings be provided as Affordable housing in terms of a *“mix of one, two and three bedrooms that reflects the overall dwelling composition of the building”*.

This development proposes 171 dwellings comprised of 31 x 1 bedroom, 98 x 2 bedroom and 42 x 3 bedroom. If the 10.26 dwellings are proportionally allocated, this would result in 1.86 x 1 bedroom, 5.88 x 2 bedroom and 2.52 x 3 bedroom apartments. It is not clear what an acceptable outcome would be in this case.

At this stage, the Proponent offered all single bedroom apartments in response to particular demand indicated by Affordable housing entities. This is a great virtue of the policy and this flexibility should be retained, but this again highlights the importance of being able to assess differing offers against a benchmark.

Another way of addressing this issue would be to require the minimum 6% contribution to relate to Gross Leasable Residential Floor Area to represent the median apartment. There could also be a requirement in the section 173 agreement to provide a mix of Affordable housing in representative proportion to the underlying development, unless otherwise agreed by the Responsible Authority.

(iii) Owners corporation

In order to achieve an inclusive community, it will be important to ensure that Affordable housing apartments are provided with the same level of amenity and functionality as other apartments within the development.

The issue of Owners corporation fees and the desire for ‘tenure blind’ apartments (where their use for Affordable housing was not distinguishable from other types of housing) was raised during the Hearing.

In a letter to the Proponent, Unison Housing Limited (a registered housing provider) stated that:

- the lots are structured in a separate Owners corporation with reduced fees that would exclude high cost maintenance items and services, but
- have a facility for occupiers to ‘opt in’ via a service charge to access other building services such as swimming pool, concierge etc.³⁹

Owners corporations are usually separate entities established after the completion of the building construction and are usually unrelated to the developer. This entity becomes

³⁹ Document 82.

responsible for the maintenance and upkeep of the building, with the impost shared across all the apartments.

The Unison proposal would create a dual Owners corporation fee structure. The costs of maintaining these high end services can be prohibitive to occupants of Affordable housing. If absorbed by remaining owners, this would impose extra cost. The Committee considers that in practice, the additional costs would have to be absorbed by remaining owners, otherwise it would be very hard to ensure a tenure blind arrangement.

The Committee suggests that the Taskforce could consider providing clarity in the draft Guidelines relating to Owners corporation fees and its role in facilitating 'tenure blind' Affordable housing (being physically and functionally indistinguishable from conventional apartments).

(iv) Benchmarking an Affordable housing contribution under the policy

The question of whether a benchmark or minimum standard was necessary or desirable to assess offers for Affordable housing for this and future site specific controls was a central issue in the Hearing.

Evidence and submissions

Council was concerned that the policy 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 witness, Dr Spiller, who urged the Committee to recommend that a benchmark or 'deemed to comply' provision be adopted to implement the policy in emerging proposals.

This approach was opposed by the Proponent and DELWP. DELWP confirmed that *"the Department does not currently support the adoption of a 'deemed to comply' policy in the form preferred by Dr Spiller or otherwise"*. It was concerned that this may fetter the exercise of discretion for a particular proposal and that if this approach was to be adopted, it should not be on an ad hoc basis. Instead, it should be provided for in a transparent, adopted government policy.

The Proponent did not support a benchmark for Affordable housing, since this would be tantamount to converting policy into a mandatory form.

It submitted that the Committee should take a flexible approach to enable *"commercial solutions to be found for social problems"*, with capacity for innovative delivery mechanisms to emerge. It explained that this would have the prospect of being more responsive to provider needs. As a matter of principle, it was also concerned that the use of a benchmark may dissuade a greater contribution from developers.

If a benchmark was considered, the Proponent submitted that Dr Spiller's form of the benchmark had not been *"appropriately calibrated"*, also explaining that Clause 22.15 does not support a metric based on floor area.

Dr Spiller's approach

Dr Spiller highlighted what he called the 'Apples and oranges conundrum':

The 6% inclusionary target in the Planning Scheme is problematic insofar as it does not make clear what is expected of a proponent. It does not provide sufficient guidance as to what would be acceptable in terms of the \$ value of the affordable housing package that might be offered by a development proponent in response to the 6% requirement nominated in the Scheme.⁴⁰

Dr Spiller suggested that a benchmark should be established to require a minimum of 3% of all floor space within a development to be delivered as Affordable housing or equivalent value. In his opinion, if a proponent were to meet this benchmark they would be ‘deemed to comply’ with the policy provision.

Dr Spiller proposed a first principles approach to satisfying the 6% Affordable housing requirement. He relied on ABS Census data and State Government population projections to indicate that there is a need for 13% of dwellings to be affordable. He suggested that the planning system (development approvals) should be responsible for a third of this task (rounded down to 4%), derived from its place making function. Dr Spiller then proposed that the responsibility be spread across all development in the Precinct, equating the overall obligation to 3% of all floor space.

Discussion

Policy at Clause 22.15-4.3 has been written in a way that provides flexibility in the method of delivery of Affordable housing, provided it would satisfy the legislative requirements. The Committee evaluating draft Amendment C172port reached a comparable conclusion.

Dr Spiller envisaged a benchmark that would operate as a mandatory target or a ‘deemed to comply’ provision. Although a benchmark was also envisaged by Dr Marshall in his advice to the Committee considering Amendment C172port, there was no suggestion that such benchmark should be mandatory or that it should adopt the same methodology as proposed by Dr Spiller.

The Committee regards the evidence of Dr Spiller as equivalent to attempting to reset the strategic target for Affordable housing in Fishermans Bend at 13%. The 6% target has been recently introduced into the Planning Scheme on the basis of expert analysis and commentary by the Review Panel. Importantly, it is expressed as a minimum target, using the words “*at least 6%*”. This Committee is not in a position to recommend a different target.

The main input into a benchmark is the discount from market value to provide affordable dwellings. The draft Guidelines suggest a benchmark of a 35% discount from market value for both sale or rental.

The Committee considers that this is a reasonable reflection of the discount required to make dwellings affordable, noting that this is the minimum discount required to make, say, a 2 bedroom apartment affordable for a single income household at the top of the moderate income range (generally representing a median apartment). Therefore, this discount should be seen as the ‘minimum baseline’ such that offers should generally equal or exceed this level.

However this only refers to one type of household. If the three types of households (low, very low and moderate) are considered there is a significant range of discounts required to make a dwelling affordable. For example a couple with no dependents in the middle of the low income

⁴⁰ Document 53, page 2.

range would require nearly a 50% discount on market value to afford a median⁴¹ apartment. The minimum discount for a single person on a very low income to afford a 1 bedroom apartment is 57%.⁴²

Dr Marshall in his advice to the Committee in C172port (Bertie Street)⁴³ converted this discount to a percentage of residential floorspace, arriving at a proposed benchmark of 2.1% (6 percent x 0.35 discount). The method implied by the draft Guidelines uses Net Present Value to compare different proposals.

The two benchmarks are broadly equivalent with the two main variants being the indivisibility of apartments and the average price per square metre for different size apartments. The ratio method is simple to implement. It is just a simple percentage of total residential floor space in the building which can be easily compared across different offers.

In the Committee's opinion, it is possible for an offer to meet the policy without reference to an underlying benchmark to meet the criteria. The adequacy of such an offer would depend on an agglomeration of factors, including a minimum target of 6% within a development, being affordable to income ranges specified in the Order in Council and meeting the qualitative considerations in the Ministerial Notice.

However, if an offer does not meet all aspects, such as the Proponent's offer of 10 x 1 bedroom apartments which does not meet the aspiration for proportionality of 1, 2 and 3 bedroom apartments, there is potential utility in using a benchmark in its place.

A benchmark or minimum standard that is non binding would also allow for comparison across different types of offers and would provide increased transparency and equity to the process. Importantly, it would not impact on the flexibility of delivery mechanisms since the Affordable housing could be provided by any number of means to satisfy Council and the Responsible Authority, provided it was of equivalent or higher value.

Conclusion

The Committee concludes:

- Where possible, it is legitimate to assess a contribution to Affordable housing qualitatively by reference to the minimum 6% figure, policy preferences as to housing mix and the like, income levels fixed by the Order in Council and parameters in the Ministerial Notice.
- If a discounted rental or sale is applied to make housing 'Affordable' it should be a minimum of 35% on the basis of current income and housing prices.
- There is scope to implement a benchmark understood as a 'minimum baseline' as an assessment tool to compare different offers in site specific controls or in planning permit applications, but this would not be mandatory. This approach could be considered in an adopted future policy.
- If a 'minimum baseline' is used to provide guidance for acceptability of this element of a specific control such as this one, it should be based on 2.1% of Gross Leasable Residential Floor Space as calculated by Dr Marshall.

⁴¹ Based on a median apartment value of \$550,000.

⁴² Based on 1 bedroom apartment value of \$350,000

⁴³ Dr Marshall's advice is contained in Documents 64 and 65. Dr Spiller was given the opportunity to evaluate this evidence and to respond in Document 77 and verbally in evidence in chief at the Hearing.

5.5 Evaluating the Proponents offer

(i) Proponent's offer

So far the approach taken to the referred applications is for the proponent to identify the means by which Affordable housing would be provided as part of the development. Once approval is granted, it is likely that the proponent will also need to take responsibility under the section 173 agreement to secure a deal with a housing trust or other recognised housing entity to deliver the committed dwellings.

The Proponent explained that it has been in contact with a number of Registered Affordable Housing Associations (AHA) for the delivery of dwellings under the Affordable housing policy. It initially had discussions with Unison Housing Ltd and was advised that existing demand was for predominantly one bedroom apartments. Submissions on behalf of the Proponent suggested that the demand for one bedroom apartments was around 70% of the demand for Affordable housing dwellings.

The Proponent explained that it has had subsequent discussions with Launch Housing Ltd and National Affordable Housing Consortium. Mr Hoffman on behalf of the Proponent confirmed that all AHAs approached to date have expressed interest in receiving the dwellings either as a discounted sale or gift.

The Proponent also expressed interest in a shared equity scheme run by the Consortium. A shared equity scheme is where an eligible buyer purchases the dwelling at a discount (say 65% of the value) and the rest of the equity rests with an AHA. In a shared equity scheme the cost to a developer is the same as a direct discounted sale to an AHA.

This led to the Proponent's offer set out in the Part A submission of DELWP as follows:

- *6% of overall dwelling yield (or 10 x 1 bedroom dwellings) provided for a minimum of 15 years, either privately managed or managed by a registered Housing Association, Trust or Housing Provider for moderate income households; or*
- *6% of overall dwelling yield (or 10 x 1 bedroom dwellings) sold to a registered Housing Association, Trust or Housing Provider at a 30% discount to market value; or*
- *2% of the overall dwelling yield (or 3 x 1 bedroom dwellings) gifted to a registered Housing Association, Trust or Housing Provider.*

This offer was later amended to increase the term of any discounted lease to 20 years. At the Hearing the Proponent expressed that the offer of one bedroom apartments was driven by demand as articulated by the AHA.

The Proponent had further discussions after the DELWP submission process and the current offer is the delivery of 10 x 1 bedroom apartments at a discount of 30% to market value to either a housing trust or through a shared equity scheme. A shared equity scheme essentially means the ownership is shared by the AHA and an owner. When they sell, the AHA gets 30% percentage equity from the sale, so time is indeterminate in this delivery mechanism. The Committee understands that the discount of 30% reflected an early draft of the Guidelines which was subsequently increased to 35%.

Before the Hearing concluded, the Proponent confirmed that its preference was to gift or sell the apartments at a reduced market price rather than to enter a long term leasing arrangement with the associated management obligations.⁴⁴

DELWP's initial suggestion was that the sale or rental of Affordable housing apartments within the development should be discounted by 70%. However, it did not present evidence or make detailed submissions as to why this figure was appropriate, and noted that a 30% discount would have the potential to make dwellings affordable for moderate income earners. In any event, it was reluctant for a section 173 agreement to 'lock in' absolute numbers since it considered the Order in Council and Ministerial Notice to create ongoing obligations to ensure the housing remained affordable as this term is defined in the Act.

Some authorities supported the Proponent's current offer whilst Council did not support the offer.

(ii) Evaluation

To evaluate the offer in broad terms, 10 dwellings is 5.8% of the 171 dwellings. So the offer falls marginally short of the 'at least 6%' target. The discount of 30% below market value is below the discount now recommended by the draft Guidelines but as was discussed earlier, the Proponent was informed early in the process that 30% would be sufficient.

Importantly, the offer does not meet the test of proportionality of the types of dwellings by bedrooms as sought by the policy. The application proposes 31 x 1 bedroom, 98 x 2 bedroom and 42 x 3 bedroom apartments. Six per cent of apartments is 10.26 dwellings (171×0.06). This equates to 1.86 x 1 bedroom, 5.88 x 2 bedroom and 2.52 x 3 bedroom apartments when proportioned. Since a portion of a dwelling cannot be delivered, the numbers need to be rounded or a component tendered as cash-in-lieu. Rounding all of them up gives 2 x 1 bedroom, 6 x 2 bedroom and 3 x 3 bedroom for a total of 11 dwellings. Rounded down, there are 1 x 1 bedroom, 5 x 2 bedroom and 2 x 3 bedroom for a total of 8 dwellings. This is a significant difference and illustrates one of the difficulties in applying the policy.

If these are extrapolated into monetary values, a more clear answer about the differential attributed to apartment size can be provided. The Proponent did not provide estimates of the apartment values so the Committee has used Melbourne CBD median values as an example.⁴⁵ If a benchmark was used to assess offers against each other, the absolute values are not quite as important as it is a relative measure - the relationship between the values of the apartments is important. However, the actual values become critical if a cash-in-lieu component is used.

There are a number of ways this could be compared against a benchmark to assess minimum acceptability.

The Melbourne CBD median apartment values are shown in Table 7. Using proportional *values* calculated above, benchmark valuations can be established.

⁴⁴ The offer for leasing was for 20 years.

⁴⁵ Median values sourced from realestate.com.au on 18/04/2020.

Table 7 Calculation of Benchmark Value

	Median value (\$)	Proportion	30% Discount (\$)	35% Discount (\$)
1 Bedroom	350,000	1.86	195,300	227,850
2 Bedroom	560,000	5.88	987,840	1,152,480
3 Bedroom	820,000	2.52	619,920	723,240
Total			1,803,060	2,103,570

The benchmark valuation result is \$1,803,060 for the 30% discount and \$2,103,570 for the 35% discount. To compare the Proponent's offer of 10 x 1 bedroom apartments comes in at \$1,050,000 (\$350,000x10x0.3). This is 58% of the benchmark value derived for the 30% (\$1,803,060) discount and 50% of the benchmark for the 35% discount (\$2,103,570).⁴⁶

This assessment can also be performed using the *floorspace* benchmark. The total residential floorspace for the building is 14,932 square metres. Taking 1.8% of total residential floorspace with a 30% discount (6 percent x 30% discount) results in 268.8 square metres. At 2.1% ((6 percent x 0.35 discount, favoured by Dr Marshall) the result is 313.6 square metres. The Proponent's plans have 1 bedroom apartments at 53 square metres in size. Hence the calculation will be 10x53x0.3 which equals 159 square metres with a 30% discount.

The results for the floorspace benchmark in comparison to the Proponent's offer are 59% for the 30% discount and 51% for the 35% benchmark. This shows that the two benchmarks – by value and floorspace – are broadly equivalent when assessing an offer.

The Proponent's offer of 10 x 1 bedroom apartments reflects the demand indicated by Unison Housing Limited. However the offer does not reflect the express intention of the policy to deliver a proportional representation of the apartment mix. Therefore, to create an equivalent offer to the 6% floorspace benchmark with a 35% discount from market value with just 1 bedroom apartments would require 16.9 (17) dwellings.

In the Committee's opinion, the offer falls well short of the minimum required to satisfy the Affordable housing policy.

In the absence of this type of equalising provision, it would be open to a developer to elect to provide only the smallest apartments within a development which are not necessarily equivalent to the median apartment. The Committee appreciates that there may be sound reasons why a registered housing association may best be served by being provided with a higher (or exclusive) proportion of particular types of apartment, but this should generally be equalised in value to achieve the 6% contribution across the development as a whole.

In addition, a departure from representative apartment mix should also be approved by the Responsible Authority to ensure that there is suitable justification in the particular circumstances.

⁴⁶ Note that this amount is not what is actually expected from the Proponent but is used to create a comparison. If a cash in lieu contribution is proposed, the actual value will be determined at a later date.

(iii) Wording for a section 173 agreement

Submissions

All parties agreed it was appropriate for the Incorporated Document to provide for a section 173 agreement to secure Affordable housing. The question of how much detail and what should be included at the approval was contested.

DELWP proposed a draft condition that would require at least 6% 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 were required, including a bicycle space for each dwelling. If the Proponent was unable to achieve this despite best endeavours, a cash-in-lieu contribution could be accepted.

Council’s suggested drafting of the section 173 agreement was provided at the Hearing.⁴⁷ Council advocated strongly for either a benchmark or a specific delivery mechanism to be provided in the section 173 agreement to provide certainty of implementation. In terms of delivery mechanisms, it only provided for a transfer or lease at first instance, or cash-in-lieu contribution if this could not be achieved.

Discussion

The Committee considers that it is preferable for a defined Affordable housing offer to be secured as part of the approval. Other mechanisms could be adopted to the satisfaction of the Responsible Authority and Council if they provided equivalent or higher value.

It is important for the section 173 agreement to provide for a representative mix of housing at first instance but this could be varied with the consent of the Responsible Authority. It is also important to ensure access to all common facilities at no extra fee for Affordable housing dwellings, especially if substantial Owners Corporation fees are likely.

The Committee considers that if the current offer is expanded to comply with all aspects of policy, the Proponent should sell the equivalent of 16.9 (17) x 1 bedroom apartments at a discount of 35% from market value to an Affordable Housing OR gift 6 x 1 bedroom apartments to meet the Affordable housing policy for this proposal. Alternatively, any other delivery mechanism should be equivalent or higher in value.

However, since there has been no commitment to deliver this upgraded Affordable housing offer and there is also scope for a shared equity scheme or similar, the benchmark of 2.1% Gross Leasable Residential Floor Area supported by the Committee forms a suitable base for establishing the minimum value to be provided by Affordable housing in the section 173 agreement.

(iv) Recommendation

The Committee recommends that its preferred form of wording for the Affordable Housing conditions be adopted as provided in the recommended Incorporated Document at Appendix A.

⁴⁷ Document 76.

6 Flooding and flood mitigation

6.1 Introduction

(i) The proposal

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.

The application plans propose the following finished floor levels:⁴⁸

- entry from Normanby Road at 2.16 metres AHD, stepping and ramping up to 2.4 metres for the remainder of the retail area
- ramping to lobby and main lift to 3.00 metres AHD, stepping to commercial lift at 3.00 metres AHD
- service areas with substations set at 3.00 metres AHD
- entry from Woodgate Street at 1.91 metres AHD, stepping and ramping to 2.4 metres for the remainder of the retail premises
- steps to the rear lobby and lift area at 3.00 metres AHD.

(ii) Key policies, strategies and Planning Scheme provisions

Melbourne Water's submission raised flooding issues, which the Committee is obliged to consider under Clause 20(h) of its Terms of Reference. 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*.⁴⁹

The Committee is also obliged to consider this issue in light of the Terms of Reference which 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.⁵⁰ 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.

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.

⁴⁸ Noting that natural ground at the frontage at street level varies between 2.13-2.2 metres AHD on Normanby Road and between 1.90-1.92 metres AHD on Woodgate Street.

⁴⁹ If this was a permit application, Melbourne Water would have the role of recommending referral authority.

⁵⁰ A similar requirement is imposed on responsible authorities under section 60(1)(f).

- 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 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) The issues

Key issues are:

- the potential for sea level rise, riverine inundation and overland flows for this site
- whether the proposal is likely to achieve acceptable safety outcomes
- the need to balance resilience to flooding with acceptable built form outcomes
- giving notice of potential future levies for Precinct-wide flood mitigation works.

(iv) The potential for sea level rise, riverine inundation and overland flows for this site

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

Melbourne Water proposed conditions on the draft Incorporated Document (Clauses 4.40-4.43 as discussed at the Hearing) requiring modifications to parts of the ground floor plan to achieve sufficient clearance above the predicted flood level:⁵¹

- retail areas – minimum 2.4 metres AHD (at flood level)
- all other ground floor areas (including lift and stair lobbies) and areas with electrical installations – 3.0 metres AHD (600mm above flood level)
- all basement entry points – 3.0 metres AHD (as above).

The proposed conditions would also allow minimal areas below 2.4 metres to enable a transition from street grade to the specified minimum finished floor levels but would not support an area that could be used for seating or more active use.

Melbourne Water explained:⁵²

... there has been ongoing discussions between parties, including DELWP, Melbourne Water and the proponent, regarding minimum floor level requirements and potential implications for the street interface or activation and pedestrian access. It is our submission that the minimum FFLs specified in our conditions can be reasonably achieved, without compromising flood protection standards or urban design objectives for the site.

⁵¹ Consistent with the *Planning for Sea Level Rise Guidelines*.

⁵² Paragraph 5.8, Document 68.

It sought for these amendments to be to its satisfaction.

Melbourne Water clarified that a key purpose of floor level conditions was to minimise the risk of flood damage. In its experience, there is greater pressure on the authority to carry out mitigation works in response to economic loss.

In response to questions by the Committee, Melbourne Water did not support protective measures as alternative solutions for a new build, such as flood gates since they may require regular maintenance and their reliability could diminish over time.⁵³

(v) Whether the proposal is likely to achieve acceptable safety outcomes

The conditions proposed by Melbourne Water are intended to provide suitable clearance to protect against storm surges. Beyond this, it clarified that a key purpose of the Precinct wide works was to reduce the severity and risk of flood events so safety requirements will be met. However, to the extent that a residual risk will remain, site works to achieve suitable floor levels will still be required.

Melbourne Water also explained that the roads adjacent to the subject land are subject to overland flows associated with the local drainage network. This network is controlled by Council. However, the applicable flood level from overland flows for 2100 is 1.9 metres AHD, below the level for sea level rise and inundation.

Therefore, 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 by conditions sought by Melbourne Water aimed principally at addressing sea level rise and storm surge.

In addition, it is intended that the Precinct wide infrastructure to be installed and operated by Melbourne Water will provide an increased level of safety for new buildings and their users. That said, Melbourne Water explained that the finished floor levels are based on predicted flood levels without relying on this future infrastructure. The logic for this is sound, that the principal obligation is to ensure suitable built form responses, with limited reliance on mechanical and other infrastructure.

(vi) The need to balance resilience to flooding with acceptable built form outcomes

The conditions proposed by Melbourne Water would require almost immediate stepping or ramping up within the retail tenancies on both sides of the property. This would eliminate the 'intermediate' floor areas currently proposed within these tenancies which are below the flood level.

The Committee explored this issue at the Hearing, querying whether there would be scope to retain confined areas as useable, active retail areas along the two site frontages. This was not supported by Melbourne Water.

Melbourne Water also explained that it would not support a Flood Mitigation Plan condition for this approval in conjunction with finished floor levels less than 600mm above the flood level (which had been originally proposed in other referrals such as for Tranche 2 - Bertie Street)

⁵³ Although the Committee notes that there is a manual flood barrier at the Woodgate Street entrance on the endorsed plans for the building at 199-201 Normanby Road.

since it has not been demonstrated that the proposal could not meet the relevant standard, given the limited differential between natural ground and street levels.

The Committee understands the importance of site and Precinct wide planning to reduce the impacts of flooding within Fishermans Bend. At the same time, there are other important policy imperatives to achieve activated streetscapes, especially along key main roads. This may mean that even though a preferred finished floor level could physically be achieved, there may be countervailing considerations that lead to a modified design response. 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”*.

In some circumstances, where the risk of flooding is not significant⁵⁴ and the risk of property damage can be managed so there is no community cost of a flood event, the Committee would be inclined to support confined ‘interface’ areas with greater activation. If stepping or ramping was required from the immediate street edge, this would create reduced integration and activation with the street.

On balance, the Committee considers that the layout and levels of the front retail tenancy are supportable in this instance if the internal area of the building below 2.4 metres AHD is constructed so as to withstand flooding and avoid associated damage. The Committee would be supportive of Melbourne Water requiring a Flood Mitigation Plan and potentially associated flood barrier mechanism in this instance as long as it does not negatively impact the appearance of the ground floor built form interface.⁵⁵ This should allow for a minimum 4 metre deep area to provide at least two rows of patron seating and circulation in a café type tenancy.

That said, the Committee supports the measures proposed for the retail premises at the rear of the site where site levels are lower and an activated frontage is a somewhat lesser priority than for Normanby Road.

The Committee also notes that Melbourne Water is actively working on more place specific guidelines, especially for the Montague Precinct, which is desirable.

In the referral of the Bertie Street proposal to the Committee (draft Amendment C172port), Melbourne Water initially proposed a Flood Mitigation Plan condition for areas of the building that would be below the flood level but there was no need for its implementation based on agreed finished floor levels. The Committee would support a condition of this type being applied to reduce the impacts of flooding for the interface areas within the front retail tenancy.

(vii) Giving notice of potential future levies for Precinct-wide flood mitigation works

Submissions

Melbourne Water indicated that it may seek a financial contribution from the owner of the land for future flood mitigation works across the Precinct.⁵⁶ It originally sought a condition of the draft Incorporated Document to require payment of such contribution. However, when

⁵⁴ Especially given the limited estimated time for inundation and limited flows.

⁵⁵ The Committee notes that the 199-201 Normanby Rd endorsed plans feature a manual flood barrier at the Woodgate Street entrance to the car park.

⁵⁶ As explained in its submission (Document 68) these would comprise a levee on the northern boundary of the Precinct, pump stations and additional pipes to convey flood water.

questioned by the Committee, it advised that it was not in a position to provide details of either the method of calculation or the amount likely to be sought.

Instead, it sought the inclusion of a 'Note' in the Incorporated Document giving notice of the potential for a future charge to be levied in respect of the subject land under the *Water Act 1989*, in addition to any contributions required under the Incorporated Document. Melbourne Water explained that:

A whole-of-government-approach is currently being formulated for the provision of infrastructure for Fishermans Bend. As the applicable funding mechanism and contribution rates are yet to be determined, it is considered more appropriate at this time to include the notation proposed, which will provide the applicant with an understanding that there is likely to be a requirement for the payment of a contribution fee.

This was not opposed by any party, and was supported by DELWP and the Taskforce as an acceptable way forward at this point in time.

Mr Watters on behalf of DELWP acknowledged that the inclusion of permit notes to give notice of a potential future contribution or requirement is not generally supported by the Victorian Civil and Administrative Tribunal on review. However, he distinguished the current referral since it involves a planning scheme amendment. Mr Watters explained that it was not unusual to include a 'Note' within provisions of the Planning Scheme, referencing other planning scheme provisions.

Committee position

It appears that this Amendment is one of a relatively limited category of proposals that will be considered for approval before the adoption of an Infrastructure Contributions Plan or before Precinct-wide flood mitigation works are designed or costed.

On this basis, the Committee accepts that it is reasonable to include a 'Note' in the Incorporated Document advising of a potential future contribution that may be required for these works. This is especially the case where there is otherwise limited visibility of such an obligation, especially to a potential future purchaser, who may otherwise consider that all infrastructure contributions have been specified.

However, the use of this technique should not persist indefinitely and should not be a substitute for the detailed work required to identify future obligations on land owners or developers.

The Committee notes the comments by Melbourne Water that the infrastructure may not be included within the scope of the Infrastructure Contributions Plan. If it sits outside this and is likely to be levied under provisions of the *Water Act 1989*, Melbourne Water should publicly release details of the works and basis of allocation to landowners within the Precinct in a timely and transparent way. This is needed for future Precinct planning to give stakeholders a more comprehensive understanding of the true cost of development.

(viii) Conclusions

The Committee concludes:

- The subject land is able to respond to the risk of flooding in circumstances where there is limited height differential between site and adjacent street levels.

- The proposal is capable of responding appropriately to the potential for flooding subject to modifications to finished floor levels generally as recommended by Melbourne Water.
- On balance, the Committee supports a confined 'sacrificial' 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. The Incorporated Document should include a condition requiring the approval of a Flood Mitigation Plan to provide further guidance.

7 Other matters

7.1 Development contributions

(i) The issue

The Terms of Reference require the Committee to assess:

*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.*⁵⁷

(ii) Discussion

Under the Terms of Reference, the Committee must consider whether appropriate development contributions will be secured for each proposal referred to it.

The Committee understands the Terms of Reference to indicate that it should not have regard to contributions that would be required under a future Infrastructure Contributions Plan, when approved.⁵⁸ This would facilitate approval of referred applications in advance of a formalised Infrastructure Contribution Plan, which will require substantial further work leading to ultimate approval.⁵⁹

Contributions requested by the Taskforce

The Taskforce provided an itemised list of development contributions it seeks from the Proponent for each type of land use (based on the number of apartments or gross floor area for other uses), to be secured through a section 173 agreement. It explained that these amounts are consistent with interim development contributions applied to development in the Precinct since 2014 (subject to indexation) but that the methodology is Cabinet in Confidence.

These figures were not opposed by the Proponent and were supported by DELWP.

The Committee notes the public commitment made by DELWP and the Taskforce at the Public Briefing run by the Committee on 28 January 2020 and at the Hearing to reimburse any contributions made if they exceed the amount required for equivalent land under a relevant (subsequent) Infrastructure Contributions Plan. Likewise, if the amount levied on equivalent land under the Infrastructure Contributions Plan was higher, this landowner and developer would not be obliged to contribute more than currently required. This is reflected in the Incorporated Document as drafted.

⁵⁷ Clause 20.

⁵⁸ No planning permit could be granted for an equivalent development by virtue of Clause 45.11-2 until an Infrastructure Contributions Plan has been incorporated in the Planning Scheme. However, a bespoke planning scheme amendment is more flexible because it can 'switch off' that provision.

⁵⁹ As explained by the Taskforce in its presentation at the Standing Advisory Committee Public Briefing. Detailed reports have been prepared on behalf of the Taskforce and other authorities but they are classified as Cabinet-in-Confidence. No official decisions have been made as to which infrastructure items will be funded or to what extent.

Melbourne Water Levies for potential Precinct works

This issue has been addressed by the Committee in Chapter 6. A 'Note' will be included in the draft Incorporated Document as requested by Melbourne Water.

Public open space

The Terms of Reference preclude the Committee from considering the *quantum or need* for public open space, roads and laneways in evaluating the appropriateness of the Amendment.⁶⁰ However, the Committee considers that the need to make appropriate contributions for public open space is a relevant consideration under the Terms of Reference, especially given the importance of this issue in the objectives of the Framework including Sustainability goal 3 – an inclusive and healthy community. This would also have the potential to relate to the social effects of the Amendment, as is a consideration in section 12 of the Act.

The Incorporated Document would exempt the use and development from all relevant permissions under the Planning Scheme, aside from future subdivision which would require a planning permit.

The issue

A question arose at the Hearing as to the potential for a public open space contribution to be required under the *Subdivision Act 1988* in addition to contributions required under the Incorporated Document.

Discussion at the Hearing

The Proponent and parties agreed that it would be appropriate for a public open space contribution to be made if the apartments were subdivided, but they clarified that this would not be levied under Clause 53.01 of the Planning Scheme (Public Open Space Contribution and Subdivision).

Clause 53.01 ordinarily requires a fixed sum of 8% of the value of the land to be provided in lieu of public open space for all land within the Fishermans Bend Precinct. The Incorporated Document as drafted by the parties would similarly require a fixed 8% contribution for public open space.

The Committee enquired how the parties could be satisfied that there would be no 'double dipping' if a public open space contribution may be required for subdivision, because it is conceivable that a proportion of the contribution levied by the Taskforce may also be spent on public open space within the Precinct. This was a potentially relevant enquiry since correspondence from the Taskforce indicated that a substantial proportion of interim development contributions collected from approved development in the Precinct had already been expended on public space acquisition and associated construction works, such as Kirrip Park.⁶¹

Mr Montebello explained on behalf of Council that the prospect of 'double dipping' would not technically arise, because the two contributions are levied under different legislative provisions and are administered by different authorities for different purposes. A public open space contribution would be administered by Council whereas the 'interim development

⁶⁰ Clause 20.

⁶¹ Document 8.

contributions' contemplated under the Incorporated Document would be administered by the Taskforce.

The parties suggested a practical approach to resolve this issue. They proffered wording for the draft Incorporated Document that would enable the section 173 agreement to include a schedule precluding the interim development contribution from being spent on public open space acquisition.

Although this mechanism is somewhat clunky, the Committee sees this as a practical way forward for the relatively confined number of 'called in' applications.

This issue is expected to resolve for new permit applications which will be subject to the Infrastructure Contributions Plan if it includes a public land percentage contribution as currently discussed. Otherwise, the division of responsibilities for this type of infrastructure may need to be better defined between these authorities in future agreements of this type.

(iii) Conclusions

The Committee concludes:

- The draft Incorporated Document makes appropriate provision for development contributions for this proposal in advance of the approval of an Infrastructure Contributions Plan.

7.2 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 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.

(ii) Submissions

The Proponent sought five years to start the development, but indicated it would accept four years to start consistent with numerous permits for substantial buildings in the Precinct granted by the Victorian Civil and Administrative Tribunal. The Proponent highlighted various factors in support of a longer commencement period, including:

- the scale and complexity of the project

- issues and uncertainties associated with Affordable housing, development infrastructure contributions, contributions for infrastructure to protect against flooding and (yet to be approved) Precinct Plans being prepared by the Taskforce
- timing constraints associated with the current lease
- the possible time required to prepare, submit and approve plans for endorsement.

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

DELWP provided a table of 23 recent permit approvals that included:

- time for commencement
- time for completion
- whether an extension of time had been granted.⁶²

The table indicates that all 23 approvals include either a two or three year period for commencement, with 11 having been granted an extension.

(iii) Discussion

The Committee acknowledges the complexities and challenges raised by the Proponent but also notes that the Incorporated Document provides a three year commencement period, one year longer than the default two years in the SCO. As DELWP noted, the Proponent will also have the opportunity to apply for an extension, as has occurred elsewhere in Fishermans Bend.

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.

7.3 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 amendments⁶³ 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 of the area in which APA Group would have greatest concern for sensitive land uses.

VicRoads recommended the following condition be included in the Incorporated Document:

Prior to commencement of the development, the owners of the land must enter into an agreement with the Department of Environment, Land, Water and Planning (DELWP) pursuant to section 138 (A) of the Land Act 1958 to indemnify the Crown in relation to claim or liability arising from elements of the approved development that project more than 300mm within the Normanby Road road

⁶² Document 88.

⁶³ 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).

reserve (unless DELWP provides written confirmation the above agreement is not required).

The Department of Transport did not object to the proposal and recommended the following conditions be included in the Incorporated Document:

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.

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

Additional conditions were also proposed by DELWP with the agreement of the parties to supplement the condition pertaining to an environmental statement or certificate, to secure future action if required.

7.4 Implementing the Committee's recommendations

The Committee's conclusions include key findings that the height of the proposed building should be reduced to respond to preferred future character for the Precinct, and that a more significant contribution to Affordable housing should be secured for the draft Amendment to achieve net community benefit and sustainable development consistent with Clause 71.02-3 of the Planning Scheme.

The Committee has considered two main mechanisms to give effect to these preferred outcomes. The first option is to recommend that the Amendment not be gazetted until amended plans are prepared to the satisfaction of relevant authorities taking into account the comments of the Committee. The second option is to enable the permission to be granted but to address these changes (albeit substantial) by way of conditions.

Ordinarily, given the scale of these changes and the potential for consequential changes, the Committee would have recommended the former approach. However, taking a pragmatic view of the need to progress development applications in Victoria's current State of Emergency and all this entails for the development industry and broader economy, the Committee has recommended these matters be addressed by way of conditions in the Incorporated Document.

7.5 Response to Terms of Reference

The Committee provides a summary of its responses to Its Terms of Reference in the following tables.

Table 8 Response to mandatory considerations

Clause	Mandatory consideration
20a.	<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>

Clause	Mandatory consideration
	<p>The Committee refers to relevant provisions in its discussion of each recorded issue. With some exceptions, Committee finds that the Incorporated Document would meet a number of key planning challenges identified in policy including making a transition at individual site level from a principally industrial area to a genuine mixed use environment with co-location of employment opportunities and an increased supply of housing.</p> <p>Notwithstanding, the Committee has concerns about some key urban design elements in responding to preferred future character, including building height. The Committee also considers that the Incorporated Document should ensure the sufficiency of the proposed contribution to Affordable housing, noting that the current offer falls short of policy aspirations for the Fishermans Bend Urban Renewal Area.</p> <p>Environmentally sustainable development objectives also require more attention in the implementation of the Incorporated Document.</p>
<p>20b. & 20c</p>	<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 proposal would meet many requirements of the Design and Development Overlay including a podium and tower building typology with a high rise building (over 16 storeys), street wall height and mandatory overshadowing provisions. It would not meet some building setback provisions but a dispensation is generally supported given the site context. A key concern is with the response to building height and its effect on preferred Precinct character. More work is also required to ensure the provisions relating to wind effects on the public realm are satisfied and to achieve active street frontages. There is further capacity for certain lower floors of the building to be made more adaptable to provide for future employment uses.</p> <p>The proposal would meet the requirements of the Parking Overlay.</p> <p>There is a generally high level of compliance with the requirements of the Capital City Zone (Schedule 1), including provision for relevant conditions in the Incorporated Document.</p> <p>In terms of the purposes of the planning controls, the proposal would not currently achieve design excellence and has not yet demonstrated itself to be a leading example of environmental sustainability or diversity. It should also consider a more fulsome opportunity for future car parking adaptation.</p>
<p>20d.</p>	<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>Key objectives that could be compromised relate to:</p> <ul style="list-style-type: none"> • Sustainability goal 1 – a connected and liveable community; Objective 1.13, Design buildings to protect internal amenity and deliver a high quality public realm. • Sustainability goal 3 – an inclusive and healthy community; Objective 3.5, Deliver affordable housing outcomes through well-established partnership models between government and industry. • Sustainability goal 4 – a climate resilient community. <p>The Committee has recommended changes to the Incorporated Document to address potentially unacceptable outcomes.</p>
<p>20e.</p>	<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>The Committee finds that allowing a building on this site in a mid block location significantly taller than the preferred building height would have potential for flow on effects on built form character, especially for properties further west towards Montague Street. If a similar approach was adopted adjacent to the 40 storey serviced apartment building under construction opposite for example, the built form of this block could be discordant with preferred future character for a</p>

Clause	Mandatory consideration
	hybrid, mid to high rise building typology as sought to be implemented by the Design and Development Overlay (Schedule 30). The Committee has recommended a reduction in the height of the proposed development to 30 storeys.
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> <p>The Committee considers that 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.</p>
20g.	<p><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></p> <p>The Committee has been informed by DELWP that the draft Incorporated Document would comply with the Ministerial Direction.</p>
20f.	<p><i>All relevant submissions and evidence regarding the site specific planning control to facilitate the proposal.</i></p> <p>A summary of all submissions and evidence is provided in the body of this report and in appendices (for authorities which did not appear at the Hearing).</p>

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 report must address. Table 9 explains where the Committee has responded to these requirements.

Table 9 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.	Chapter 2 and 7.3
42(b)	The Advisory Committee's recommendations regarding the site specific planning control and the proposal.	Chapter 1.3
42(c)	A summary of the Advisory Committee's reasons for its recommendations.	Chapter 1.2 and individual Chapter conclusions
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 (Chapter 2)

Appendix A Recommended form of Incorporated Document

The base for this recommended Incorporated Document is the version prepared by DELWP and dated 18 February 2020 (Document 56) and used for the ‘without prejudice discussion’ of conditions at the conclusion of the Hearing. All changes shown are recommended by the Committee.

Tracked Added

~~Tracked Deleted~~

PORT PHILLIP PLANNING SCHEME

INCORPORATED DOCUMENT

Specific controls for 203-205 Normanby Road, South Melbourne

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

(DATE TO BE INSERTED)

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 land identified in Clause 3 of this document may be used and developed in accordance with the specific control contained in Clause 4 of this document.~~
- 1.3 ~~The control in Clause 4 prevails over any contrary or inconsistent provision in the Planning Scheme.~~
- 1.4 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 and retail premises and to allow alteration of access to a road in Road Zone Category 1, in accordance with Clause 4 of this document.

3. LAND DESCRIPTION

- 3.1 The control in Clause 4 applies to the land at 203-205 Normanby Road, Southbank, being the land contained in Certificates of Title Volume 9630 Folio 211 and Volume 9433 Folio 933 and more particularly described in Title Plans TP276279U and TP276156M. The land is identified in Figure 1 below.



Figure 1: 203-205 Normanby Road, Southbank

4.

- 4.1 [The land identified in Clause 3 of this document may be used and developed in accordance with the specific control contained in Clause 4 of this document.](#)

- 4.2 [The control in Clause 4 prevails over any contrary or inconsistent provision in the Planning Scheme.](#)

Exemption from the Planning Scheme requirements

- 4.3 Subject to Clause 4.2, 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.
- 4.4 A permit is required to subdivide the land and any such application is:
- a) Exempt from the requirements in Clause 45.11 (Infrastructure Contributions Overlay) of the Planning Scheme.
 - b) Exempt from the requirements in Clause 53.01 (Public Open Space Contributions) of the Planning Scheme.
- 4.5 Notwithstanding [Clause 4.3 and 4.4b](#), 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 in accordance with all documents approved under Clause 4.

Amended Plans

- 4.7 Before the development starts, excluding demolition, bulk excavation, piling and site preparation works, amended plans must be submitted to and approved by the Responsible Authority in consultation with the City of Port Phillip. 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 Project No. 1949, Drawing Nos. S06_A03.01 Rev 7, S06_A03.02 Rev 7, S06_A03.03 Rev 7, S06_A03.04 Rev 8, S06_A03.05 Rev 3, S06_A10.01 Rev 8, S06_A10.02 Rev 7, S06_A10.13 Rev 7, S06_A10.04 Rev 8, S06_A11.01 Rev 8, S06_A20 Rev 5, and S06_A21 Rev 3, all dated 23 October 2019, prepared by Hayball Architects but modified to show:
- a) [A maximum building height of 101 metres AHD \(equivalent to 30 storeys\) to the top of the lift overrun and façade.](#)
 - b) [A re-designed northern podium façade that contributes to a high quality public realm commensurate with the main road location.](#)
 - c) [A re-designed southern podium façade that provides improved integration and a high quality presentation to the future linear park.](#)
 - d) [High quality artwork or other form of visual interest on the western podium wall sufficient for it to present acceptably as an external face of the building \(unless a building is constructed to the shared boundary and fully obscures views to this wall before development starts\).](#)
 - e) [Podium façades above ground floor to better enable views into the commercial tenancies from side angles.](#)
 - f) [The northern and southern tower facades refined in line with the overarching architectural approach to the building, including incorporating shading on the northern façade.](#)
 - g) ~~A vertical architectural treatment/s to be incorporated into the western elevation by way of a contrasting colour or material or other architectural element to further break up the perceived mass of that façade into two main elements from distant views.~~
 - h) [Apartment layouts that meet the windows standard in Clause 58.07-3 of the Port Phillip Planning Scheme.](#)

- i) The car spaces located between ramps on the mezzanine and levels 1 to 3 deleted.
- j) The car spaces adjacent to walls/columns/stores to incorporate 300mm clearance.
- k) Provision of a deep soil planter box north of the apartment 5 screen to create greater physical separation between the communal terrace and the private open space for that apartment.
- l) Equitable disabled access as part of the podium and ground floor redesign, demonstrated through pathway diagrams and appropriately dimensioned and annotated drawings.
- m) Safe access for cyclists and other users incorporated into the southern ground floor design.
- n) Air conditioning system components that are located internal to the building or otherwise not visible from public views or in areas designated for private open space.
- ~~d) The secondary areas associated with saddle back bedrooms on level 30 amended to comply with Clause 58.07-3 (Apartment Developments) minimum width to depth dimension requirements.~~
- ~~e) Fixed screens to separate the private terraces on level 30.~~
- o) Vehicle access ramping contained within the subject site.
- p) Reduced ground floor setback from Normanby Road to a maximum of 0.5 metres.
- q) Maximised adaptability of car parking areas on Levels 3 and 4 to enable potential future conversion.
- r) Canopies above Normanby Road and Woodgate Street at least 3 metres above Street level but no higher than 4.5 metres above street level.
- s) Relocation of the bin storage areas to the rear of the loading bay to provide a convenient path for collection.
- t) Any changes required to meet the requirements of the Façade Strategy in the corresponding condition(s) below.
- u) Any changes required to meet the requirements of the Landscaping Strategy in the corresponding condition(s) below.
- v) Any changes required to meet the requirements of the Lighting Strategy in the corresponding condition(s) below.
- w) Any changes required to meet the requirements of the Traffic Impact Assessment Report in the corresponding condition(s) below.
- x) Any changes required to meet the requirements of the Waste Management Plan in the corresponding condition(s) below.
- y) Any changes required to meet the noise attenuation and mitigation requirements in the corresponding condition(s) below.
- z) Any changes required to meet the applicable accessibility provisions of the Building Code of Australia and the applicable provisions of the Disability (Access to Premises – Buildings) Standards 2010 in the corresponding condition(s) below.
- aa) Any changes required to meet the requirements of the Wind assessment in the corresponding condition(s) below.
- bb) Any changes required to meet the drainage/engineering requirements in the corresponding condition(s) below.
- cc) Any changes required to meet the requirements of Melbourne Water in the corresponding condition(s) below.
- dd) Any changes required to meet the Environmentally Sustainable Design, Green Star and Third Pipe requirements in the corresponding condition(s) below, including details of rooftop solar PV on the roof plan.
- ee) Any changes required to meet the Department of Transport requirements in the corresponding condition(s) below. Any changes required to meet the noise attenuation and mitigation requirements in the corresponding condition(s) below.

- ff) Any changes and technical information required as a consequence of any other provision in Clause 4.

Layout and use of the development not to be altered

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

Aboriginal cultural heritage

- 4.9 Before the development starts, including demolition, excavation, piling, site preparation works and works to remediate contaminated land, one of the following must be provided to the Responsible Authority:
- a) A report prepared by a suitably qualified professional confirming to the satisfaction of the Responsible Authority that a Cultural Heritage Management Plan (CHMP) pursuant to the *Aboriginal Heritage Act 2006* is not required; or
 - b) A certified preliminary Aboriginal Heritage Test (PAHT) under sections 49B and 49C of the *Aboriginal Heritage Act 2006* in respect of the development of the land; or
 - c) A letter from Aboriginal Victoria confirming a Cultural Heritage Management Plan (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 ~~be generally in accordance with the Plans entitled Project No. 1949, Drawing Numbers S06_A20 Rev 5 and S06_A21 Rev 3 dated 23-10-19, prepared by Hayball Pty Ltd and also 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) Cross-sections or other method of demonstrating all typical ~~the~~ façade systems, including fixing details indicating junctions between materials and significant changes in form and/or material.
 - e) Information about how the façade will be accessed, maintained and cleaned.
 - f) Example prototypes and/or precedents that demonstrate the intended design outcome as indicated on plans and perspective images, to produce a high-quality built form outcome in accordance with the design concept.

Reflectivity

- 4.12 Except with the consent of the Responsible Authority, all external glazing 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 and Public realm

- 4.13 Before the development starts, excluding demolition, bulk excavation, piling, site preparation, a detailed landscaping and public realm plan(s) must be submitted to and approved by the City of Port Phillip. The plan(s) must include:
- a) 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.
 - b) How the landscaping responds to water sensitive urban design principles, including how rainwater will be captured, cleaned and stored.
 - c) Details of all hard-landscaping materials, finishes and treatments and urban design elements including paving, lighting, seating and balustrading.
 - d) Details of surface materials and finishes and construction of retaining walls, pathways, kerbs and access ways.
 - e) Compliance of proposed public realm works with disabled access requirements.
 - f) Elevations, sections, levels and details including materials and finishes of public realm works including reconstruction of public assets.
- 4.14 All trees must be of advanced maturity at the time of planting unless otherwise agreed by the City of Port Phillip.

Lighting strategy

- 4.15 Before the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land, a detailed lighting strategy must be prepared and approved by the City of Port Phillip. This strategy 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.
- 4.16 The approved lighting strategy must be implemented as part of the development to the satisfaction of the City of Port Phillip.

Demolition Management Plan

- 4.17 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 the site and street frontage) to be constructed should works cease and the site remain vacant for 6 months after completion of demolition.
- 4.18 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

- 4.19 Before the development starts, excluding demolition, piling, excavation, and 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 dated 24 June 2015 (amended 26 July 2019) and the supplementary 'response to traffic issues' document dated 22 October 2019 [but updated to reflect changes to the amended plans as required by Clause 4.7.](#)
- 4.20 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.
- 4.21 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.
- 4.22 Traffic access and parking and loading/unloading arrangements must not be altered without the prior written consent of the City of Port Phillip.
- 4.23 Before the development is completed, vehicle crossings must be constructed in accordance with the City of Port Phillip's current 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.

Waste Management Plan

- 4.24 Before the development starts, 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 1 May 2019 prepared by Leigh Design but modified to [provide](#):
- a) ~~Require number of details of~~ bin allocation and collection points ~~for a total 174 residential dwellings.~~
 - b) separate refuse rooms for residential and commercial tenements [if achievable](#)
 - c) compaction equipment for the development.
 - d) space allocation for compost/organic bin for future council services.
 - e) space allocation for charity and E-waste bins.
- 4.25 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

- 4.26 Upon completion and prior to the occupation of the building allowed by this approval, a report by a suitably qualified acoustic consultant must be submitted to, approved by and

be to the satisfaction of the Responsible Authority certifying that the dwellings achieve a maximum noise level of:

- (i) 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am; and
 - (ii) 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm;
- based on average external noise levels measured as part of a noise level assessment.

The report must detail the set-up on site and methodology of the testing process. Where post construction measurements and testing show internal noise levels exceeding those specified in the corresponding condition above, the applicant must make rectifications and re-test as necessary to demonstrate compliance with the noise levels to the satisfaction of the Responsible Authority.

The cost of certification acoustic works must be met by the developer.

- 4.27 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

- 4.28 Before the 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

- 4.29 Before the development starts, excluding demolition, excavation, piling, and site preparation works, and works to remediate contaminated land, an amended comprehensive wind tunnel test and environmental climate assessment report must be submitted to and approved by the Responsible Authority in consultation with the City of Port Phillip. The amended report must be generally in accordance with the report prepared by Vipac Engineers and Scientists, dated 4 July 2019 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 and podium rooftop spaces, 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 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 comfort criteria to all components of common areas and open balconies.](#)
- 4.30 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.

- 4.31 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

- 4.32 Before the development starts, excluding demolition, excavation, piling, and site preparation works, and works to remediate contaminated land, the owner of the land must enter into agreement(s) pursuant to section 173 of the *Planning and Environment Act 1987* with the Responsible Authority and make application to the Registrar of Titles to have the agreement(s) registered on the title to the land under section 181 of the Act to the satisfaction of the Responsible Authority. The agreement(s) must:
- Require the developer to pay a development contribution of:
 - \$16,916.51 per dwelling,
 - \$191.51 per sqm of gross office/commercial floor area,
 - \$159.59 per sqm of gross retail floor area.
 - 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.
 - Require registration of the Agreement on the titles to the affected lands as applicable.
 - Include a schedule of the types of infrastructure to be delivered by the Victorian Planning Authority or their successor.
 - Confirm that contributions will be payable to the Victorian Planning Authority or ~~their~~ its successor.
 - Confirm that the contributions will be used by Victorian Planning Authority or ~~their~~ its successor, to deliver the schedule of types of infrastructure.
 - Require payment of the development contribution/s before the earliest of the following:
 - The issue of an occupancy permit for the development of the land in accordance with this specific control; 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.
 - 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.
 - 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 to be developed must pay all reasonable legal cost and expenses of this agreement, including preparation, execution and registration on title.

Drainage/Engineering

- 4.33 Before the development starts excluding demolition, excavation, piling, and 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.
- 4.34 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)

- 4.35 With the exception of retail and non-habitable transition~~al~~ areas, all other ground floor areas (including lift and stair lobbies) must be set no lower ~~than~~ 3.0 metres to ~~the~~ Australian Height Datum (AHD) which is 600mm above the applicable projected flood level of 2.4 metres to AHD.
- 4.36 The ~~r~~Retail areas must be set no lower than 2.4 metres to ~~the Australian Height Datum (AHD)~~ with the exception of areas containing landings, steps or ramps which may be constructed at a lower finished floor level to the satisfaction of Melbourne Water. ~~The area for seating should be at least 4 metres wide to allow two rows of seating and circulation areas. which is 600mm above the applicable 2040 projected flood level of 1.8 metres to AHD.~~ The area for seating should be at least 4 metres wide to allow two rows of seating and circulation areas.
- 4.37 All areas with electrical installations (e.g. Electrical Sub-Stations, Switch-rooms etc) must be set no lower than 3.0 metres to ~~the Australian Height Datum (AHD) which is 600mm above the applicable projected flood level of 2.4 metres to AHD.~~
- 4.38 The ~~b~~Basement entry points of the proposed development must be set no lower than 3.0 metres to ~~the Australian Height Datum (AHD) which is 600mm above the applicable projected flood level of 2.4 metres to AHD.~~
- 4.39 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.
- 4.40 Where finished floor levels are below 2.4 metres to AHD, prior to the occupation of the development, 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

- 4.41 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 Responsible Authority must be provided with either:

- a) A certificate of environmental audit issued for the land in accordance with Part IXD of the *Environment Protection Act 1970*; or
 - b) A statement issued by an environmental auditor appointed under the *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.
- 4.42 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.
- 4.43 If there are conditions on a Statement of Environmental Audit that the Responsible Authority considers require significant ongoing maintenance and/or monitoring, the landowner 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 landowner 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 and Water Sensitive Urban Design

- 4.44 Before the development starts, excluding demolition, piling, excavation and site preparation works, and works to remediate contaminated land, a Sustainable Management Plan (SMP) and Water Sensitive Urban Design Response (WSUDR) must be submitted to and approved by the City of Port Phillip. The SMP and WSUDR must be generally in accordance with the Sustainable Management Plan and Water Sensitive Urban Design Response prepared by Simpson Kotzman Rev H dated 24 October 2019 but modified to show:
- (a) 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.
 - (b) 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.
 - (c) 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.
 - (d) 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.
 - (e) Details of any external shading to habitable rooms in the ~~north-east~~ and ~~north-west~~ ern tower elevations.
 - (f) Correction of references to the number of bike parking spaces to be consistent with the architectural plans.
 - (g) Rainwater tank capacity to meet the FBURA tank sizing requirement of 0.5m³ per 10m² of roof catchment.
 - (h) The rainwater tank to connected to all toilets throughout the development.
 - (i) Green roof components on the podium roof clearly specified.
 - (j) Renewable energy generation maximised on the roof top.

Where alternative Environmentally Sustainable Design (ESD) 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.

- 4.45 Before the development is occupied, a report (or reports) from the author of the Sustainability Management Plan & Water Sensitive Urban Design Response approved under this Incorporated Document, or similarly qualified person or company, must be submitted to the satisfaction of the City of Port Phillip and must confirm all measures specified in the approved SMP and WSUD report have been implemented in accordance with the approved plans.

Green Star rating

- 4.46 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.
- 4.47 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

- 4.48 A third pipe must be installed for recycled water to supply non-potable uses within the development for toilet flushing, fire services, irrigation, laundry and cooling, unless otherwise agreed by the relevant water authority.
- 4.49 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.
- 4.50 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;
 - 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.
- 4.51 Rainwater captured from roof harvesting areas must be re-used for toilet flushing, washing machine and irrigation or, controlled release.

3D Model

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

Building Appurtenances

- 4.53 All building plants and equipment on roofs and public thoroughfares must be concealed to the satisfaction of the Responsible Authority.

Advertising Signs

- 4.54 No advertising signs either external or internal to the building/s shall be erected, painted or displayed without the prior written approval of the Responsible Authority.

Department of Transport (Roads Authority)

- 4.55 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.

Department of Transport (Network Planning – Transport Group)

- 4.56 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;
- 4.57 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.

Affordable Housing

- 4.58 Before the development starts, excluding demolition, bulk excavation, piling, site preparation works, and remediation works, the owner must enter into an agreement with the Responsible Authority and City of Port Phillip 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*).
- 4.59 [The agreement must be registered on title to the land and the owner must be responsible for the expense of preparation and registration of the agreement including the Responsible Authority and Port Phillip City Council's reasonable costs and expenses \(including legal expenses\) incidental to the preparation, registration and ending of the agreement \(where applicable\).](#)
- 4.60 [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 title to the land to:](#)

- a) Provide for the delivery of Affordable housing as defined by Section 3AA of the Planning and Environment Act 1987, before the development is occupied. This may be provided by:
 - i. Transferring at least 2.1% percent of the Gross Residential Leasable Floor Area within the development to a registered housing agency or other housing provider or trust approved by the Responsible Authority at zero consideration;
 - ii. Transferring dwellings within the development to a registered housing agency or other housing provider or trust approved by the Responsible Authority at discount to market value to an equivalent or higher value than 4.60(a)(i);
 - iii. leasing dwellings within the development as Affordable housing under the management of a registered housing agency, housing provider or trust approved by the Responsible Authority at a minimum 35% discount from market rent for the economic life of the building approved under this control. The overall value of the leased dwellings must be equivalent or higher to 4.60(a)(i); or
 - iv. any other mechanism providing a contribution of equivalent or higher value to Clause 4.60(a)(i) to the satisfaction of the Responsible Authority.
 - b) The Affordable housing delivered under Clause 4.60(a) must:
 - i. take the form of one or two or three bedroom dwellings representative of the approved dwelling mix;
 - ii. be functionally and physically indistinguishable from conventional dwellings within the development;
 - iii. include access to all common facilities within the building at no extra fee for occupants of affordable housing dwellings; and
 - iv. allocate one or more bicycle parking space per dwelling for the life of the Affordable housing,
unless otherwise agreed in writing by the Responsible Authority.
 - c) Provide that if the affordable housing is delivered under Clause 4.60(a)(iii), the agreement must contain a mechanism for review of the minimum discount from market rent by reference to updated income and rental figures upon request by the Responsible Authority to ensure the housing continues to meet the definition of Affordable housing in the Planning and Environment Act 1987 and by reference to relevant Regulations, Ministerial Notices, Orders in Council and the like.
- 4.61 The agreement may provide that:
- a) In lieu of delivering all or part of the affordable housing in accordance with Clause 4.60(a)(i), the Responsible Authority may agree to payment of an equivalent amount of money to a registered housing agency or other housing provider or trust to be expended for affordable housing in the Fishermans Bend Urban Renewal Area provided the Responsible Authority and the City of Port Phillip are satisfied that:
 - i) the owner has made best endeavours to secure a registered housing agency recipient or other housing provider or trust for the affordable housing and has not been successful; and
 - ii) the payment amount is equivalent to the value of the affordable housing that would otherwise have to be delivered less the value of any affordable housing provided within the development.
- 4.62 For the purpose of these provisions, 'value' means the monetary value of a dwelling offered for sale at the date of the transfer (if applicable) or otherwise at the date of the agreement as determined by an independent valuer (appointed by the President of the Australia Property Institute – Victorian Division).

~~4.53 The agreement must:~~

- ~~a) Provide for the delivery of 6 percent of the total number of dwellings, for 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 entity approved by the Responsible Authority; or~~
 - ~~ii) Leasing of the dwellings as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority for a period of not less than 20 years.~~~~
- ~~c) Require the affordable housing to be delivered:
 - ~~i) Within the development;~~
 - ~~ii) In the form a mix of one or two or three bedroom dwellings with one or more bicycle parking space allocated per dwelling; and~~
 - ~~iii) Have internal layouts identical to other comparable dwellings in the building.~~
 - ~~iv) Be externally indistinguishable from other dwellings.~~~~
- ~~d) Provide that in lieu of delivering all or part of the affordable housing in accordance with within Clause 2(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 entity) 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 affordable housing that would otherwise have to be delivered less the value of any affordable housing provided within the development).~~~~
- ~~e) Provide that where the affordable housing is to be delivered using only the mechanism in Clause 2(b)(i), the Responsible Authority may accept a lesser percentage of affordable housing in satisfaction of Clause 2a) provided it is of equivalent value.~~

~~4.54 For the purpose of these provisions, 'value' means the monetary value of a dwelling offered for sale at a sufficient 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

- 4.63 The control in this Incorporated Document expires if any of the following circumstances applies:
- a) The development ~~of~~ is not started within three (3) years of the approval date of Amendment C163port.
 - b) The use is not started within five (5) years after the approval date of Amendment C163port.
 - c) The development ~~of~~ is not completed within five (5) years after the approval date of Amendment C163port.

END OF DOCUMENT

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.

Appendix B List of submitters

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

Appendix C Document List

No.	Date	Description	On behalf of
1	8/9/2019	Letter from Minister for Planning referring the Tranche 1 sites to the SAC	Department of Environment, Land, Water and Planning (DELWP) on behalf of Minister for Planning
2	September 2019	USB of application material, hard copy attachments and plans	DELWP
2A	“	DELWP Rapid Assessment Report Normanby Sites	“
2B(a)	“	DELWP Docs - C163port - Site 6 - Amended Schedule to Clause 45.12 Specific Controls Overlay	“
2B(b)	“	DELWP Docs - C163port - Site 6 - Amended Schedule to Clause 45.12 Specific Controls Overlay Compare	“
2B(c)	“	DELWP Docs - C163port - Site 6 - Amended Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme	“
2B(d)	“	DELWP Docs - C163port - Site 6 - 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 Site 6	“
2D	“	Parties notified by DELWP	“
2E(1a)	“	Submission by Proponent - C163port - Site 6 – Application form	“
2E(1b)	“	Submission by Proponent - C163port - Site 6 – Incorporated document	“
2E(1c)	“	Submission by Proponent - C163port - Site 6 – Certificate of Title 1	“
2E(1d)	“	Submission by Proponent - C163port - Site 6 – Certificate of Title 2	“
2E(1e)	“	Submission by Proponent - C163port - Site 6 – Certificate of Title 3	“
2E(1f)	“	Submission by Proponent - C163port - Site 6 – Certificate of Title 4	“
2E(1g)	“	Submission by Proponent - C163port - Site 6 – Planning submission Amendment C163port	“
2E(1h)	“	Submission by Proponent - C163port - Site 6 – 203 - 205 Normanby Road - Clause 58 Better Apartment Design Standard (BADs) Compliance table	“

No.	Date	Description	On behalf of
2E(1i)	“	Submission by Proponent - C163port - Site 6 – 203 - 205 Normanby Road - Survey plans 1 of 5	“
2E(1j)	“	Submission by Proponent - C163port - Site 6 – 203 - 205 Normanby Road - Survey plans 2 of 5	“
2E(1k)	“	Submission by Proponent - C163port - Site 6 – 203 - 205 Normanby Road - Survey plans 3 of 5	“
2E(1l)	“	Submission by Proponent - C163port - Site 6 – 203 - 205 Normanby Road - Survey plans 4 of 5	“
2E(1m)	“	Submission by Proponent - C163port - Site 6 – 203 - 205 Normanby Road - Survey plans 5 of 5	“
2E(1n)	“	Submission by Proponent - C163port - Site 6 – 203 - 205 Normanby Road - Waste Management Plan	“
2E(1o)	“	Submission by Proponent - C163port - Site 6 – 2nd RFI - Architectural Plans 08.08.19	“
2E(1p)	“	Submission by Proponent - C163port - Site 6 – 2nd RFI - Clause 58 Assessment 13.08.19	“
2E(1q)	“	Submission by Proponent - C163port - Site 6 – 2nd RFI - Development Summary 08.08.19	“
2E(1r)	“	Submission by Proponent - C163port - Site 6 – 2nd RFI - TTM Traffic Report 26.07.19	“
2E(1s)	“	Submission by Proponent - C163port - Site 6 – 2nd RFI - Updated Sustainable Management Plan 08.08.19	“
2E(1t)	“	Submission by Proponent - C163port - Site 6 – 2nd RFI - Urban Context Report 08.08.19	“
2E(1u)	“	Submission by Proponent - C163port - Site 6 – 2nd RFI - Wind Impact Statement	“
2E(1v)	“	Submission by Proponent - C163port - Site 6 – 2nd RFI Updated Better Apartment Design Standards (BADS) Plan 09.08.19	“
2E(1w)	“	Submission by Proponent - C163port - Site 6 – RFI 2 - Daylight Assessment 13.08.19	“
2E(1x)	14/02/2020	C163port - Site 6 – 203 - 205 Normanby Road - Acoustic Town Planning Report	“
3	7/10/2019	Letter to Committee regarding Directions Hearings	SJB Planning on behalf of Proponents for sites 6, 1 and 3
4	17/10/2019	Directions Hearing notification including Distribution List and Directions from Committee	Standing Advisory Committee (SAC)
5	25/10/2019	Letter in response to Committee’s Directions with link to: a) A ‘Planning Policy and Controls’ e-book	Harwood Andrews, on behalf of DELWP

No.	Date	Description	On behalf of
		b) A 'Current Planning Permits' e-book c) 'Site Specific Maps' e-books for each Amendment proposal	
5A(1a)	"	6-78 Buckhurst Street - Permit - issued 1 September 2014. Amended 16 October 2019	"
5A(1b)	"	6-78 Buckhurst Street - Permit - Master plans endorsed 25 May 2017	"
5A(1c)	"	6-78 Buckhurst Street - Permit - Stage 1 Plans endorsed 31 Aug 2017	"
5A(1d)	"	5A(1d) 6-78 Buckhurst Street – Permit - Stage zero plans not endorsed	"
5A(2a)	"	15-87 Gladstone Street - Permit - issued 1 September 2014. Amended 4 11 16	"
5A(2b)	"	15-87 Gladstone Street - Permit - Endorsed plans, 3 January 2019	"
5A(3a)	"	60-82 Johnson Street – Permit - issued 20 May 2015. Amended 17 10 16 & 14 08 19	"
5A(3b)	"	60-82 Johnson Street - Permit Decision plans not endorsed	"
5A(4a)	"	134-142 Ferrars Street - Permit issued 10 April 2017. Amended 29 June 2018	"
5A(4b)	"	134-142 Ferrars Street - Permit Architectural Plans endorsed 29 March 2018	"
5A(5a)	"	134-150 Buckhurst Street - Permit issued 1 September 2014	"
5A(5b)	"	134-150 Buckhurst Street - Decision plans part 1, not endorsed	"
5A(5c)	"	134-150 Buckhurst Street - Decision Plans part 2, not endorsed	"
5A(6a)	"	199-201 Normanby Road - Permit issued 1 09 14. Amended 23 02 16, 29 06 18 and 11 09 18	"
5A(6b)	"	199-201 Normanby Road - Endorsed plans 17 July 2019	"
5A(7a)	"	202-214 Normanby Road- Permit issued 22 08 16. Amended 14 07 17, 24 11 17, and 20 03 19	"
5A(7b)	"	202-214 Normanby Road - Endorsed plans, 29 July 2019	"
5A(8a)	"	245-251 Normanby Road - Permit issued 25 01 18 - VCAT Order P21662017 dated 23 01 17	"
5A(8b)	"	245-251 Normanby Road - Permit Decision Plans not endorsed	"

No.	Date	Description	On behalf of
5A(9a)	“	253-273 Normanby Road - Permit issued 5 12 17 - VCAT Order P16042017 dated 27 11 17 amended 21 05 19	“
5A(9b)	“	253-273 Normanby Road - Condition 1 - Amended Plans - Endorsed 21 May 2019	“
5A(10)	“	Index of surrounding Permits	“
5A(11)	“	Annexure - Status Map	“
5B	“	Planning Policy and Controls Book - Index	“
5B(1)	“	Zones and Overlays	“
5B(2)	“	Particular Provisions	“
5B(3)	“	General Provisions	“
5B(4)	“	Planning Policy Framework	“
5B(5)	“	Local Planning Policy Framework	“
5B(6)	“	Operational Provisions	“
5B(7)	“	Strategic Planning Documents	“
5C(1)	“	Site Specific Map Book (Site 6 - 203-205 Normanby Road)	“
6	28/10/2019	Letter responding to Committee’s directions of 17 October 2019, including: a) Electronic copies of all reports submitted by DELWP b) Amended plans and draft incorporated documents	Rigby Cooke Lawyers, on behalf of Proponent
6A	“	Index of Documents - Site 6	“
6A(1a)	“	Site 6 - Application form	“
6A(1b)	“	Site 6 - Application form - Certificate of Title VOLUME 09433 FOLIO 993	“
6A(1c)	“	Site 6 - Certificate of Title VOLUME 09630 FOLIO 211	“
6A(1d)	“	Site 6 - Covering letter	“
6A(1e)	“	Site 6 - Plan TP276156M	“
6A(1f)	“	Site 6 - Plan TP276279U	“
6A(2a)	“	Site 6 - RFI letter	“
6A(3a)	“	Site 6 - RFI Response - Acoustic Report	“
6A(3b)	“	Site 6 - RFI Response - Covering letter	“
6A(3c)	“	Site 6 - RFI Response - Landscape Concept Report.pdf (ID 1406619)	“
6A(3d)	“	Site 6 - RFI Response - Planning submission Amendment C163port	“
6A(3e)	“	Site 6 - RFI Response - SAC Compliance table (Site 6) (ID 1610809)	“
6A(3f)	“	Site 6 - RFI Response - Survey plans 1 of 5	“

No.	Date	Description	On behalf of
6A(3g)	“	Site 6 - RFI Response - Survey plans 2 of 5	“
6A(3h)	“	Site 6 - RFI Response - Survey plans 3 of 5	“
6A(3i)	“	Site 6 - RFI Response - Survey plans 4 of 5	“
6A(3j)	“	Site 6 - RFI Response - Survey plans 5 of 5	“
6A(3k)	“	Site 6 - RFI Response – Waste Management Plan RFI response (Site 6)	“
6A(4a)	“	Site 6 - Further RFI (Site 6)	“
6A(5a)	“	Site 6 - Further RFI Response - Architectural Plans 08.08.19	“
6A(5b)	“	Site 6 - Further RFI Response - Covering email	“
6A(5c)	“	Site 6 - Further RFI Response - Daylight assessment	“
6A(5d)	“	Site 6 - Further RFI Response - Development summary	“
6A(5e)	“	Site 6 - Further RFI Response - Clause 58 assessment	“
6A(5f)	“	Site 6 - Further RFI Response – Sustainable Management Plan	“
6A(5g)	“	Site 6 - Further RFI Response - TTM Traffic Report	“
6A(5h)	“	Site 6 - Further RFI Response - Updated Better Apartment Design Standards (BADS) Plan	“
6A(5i)	“	Site 6 - Further RFI Response - Urban Context Report	“
6A(5j)	“	Site 6 - Further RFI Response - Wind Impact Statement	“
6B(1)	“	Amended plans and draft incorporated document - Site 6 - 1949 Normanby Precinct Development Summary	“
6B(2)	“	Amended plans and draft incorporated document - Site 6 - 1949 Normanby Road Precinct Architectural Drawings A1 unclouded (ID 1740360)	“
6B(3)	“	Amended plans and draft incorporated document - Site 6 -1949 Normanby Road Precinct Architectural Drawings A3 (ID 1740352)	“
6B(4)	“	Amended plans and draft incorporated document - Site 6 – List of changes to plans Site 6 (ID 1740413)	“
6B(5)	“	Amended plans and draft incorporated document - Site 6 - Response to traffic issues TTM	“
6B(6)	“	Amended plans and draft incorporated document - Site 6 - Draft incorporated document Proponent mark-up -Word document	“
6B(7)	“	Amended plans and draft incorporated document - Site 6 - updated SMP	“
6C	“	Site 6 - Response to Cultural Heritage Management Plan (CHMP) clarification	“

No.	Date	Description	On behalf of
7	28/10/2019	Letter to DELWP regarding Terms of Reference	SAC
8	29/10/2019	Letter from Fishermans Bend Taskforce (DJPR) responding to Committee's directions	Aidan O'Neill, Fishermans Bend Taskforce
9	1/11/2019	Committee's Directions Letter	SAC
10	4/11/2019	In response to Committee's Direction 1: <ul style="list-style-type: none"> Three scalable sets of plans printed at A3 size Three scalable sets of plans printed at A1 size One printed copy of each updated assessment accompanying the amended plans such as ESD or traffic 	Rigby Cooke Lawyers on behalf of Proponent
11	7/11/2019	Link to 3D model	Rigby Cooke Lawyers on behalf of Proponent
12	13/11/2019	Correspondence requesting amendment to Direction 3	Harwood Andrews on behalf of DELWP
13	"	Correspondence regarding Directions 3 and 7	Maddocks on behalf of Council
14	"	Correspondence requesting extension of time to circulate comments on proposed changes to DELWP version of draft Incorporated Document.	Rigby Cooke on behalf of the Proponent
15	"	Melbourne Water – clarification of position	Melbourne Water
16	"	Letter from Fishermans Bend Taskforce regarding approach to Affordable Housing (Bertie Street)	Fishermans Bend Taskforce
17	"	Letter to SAC circulating draft Incorporated Document	Harwood Andrews on behalf of DELWP
18	14/11/2019	Notice of the Order in Council regarding Affordable Housing and email from Fishermans Bend Taskforce (<i>Circulated for Tranche 2 - Bertie Street</i>)	PPV on behalf of Fishermans Bend Taskforce
19	"	Committee further directions following on from parties correspondence	SAC
20	"	Letter from Proponent requesting adjournment of hearing, and for a further direction hearing to be held on 25 November 2019	Rigby Cooke on behalf of Proponent
21	"	DELWP response to adjournment request	Harwood Andrews on behalf of DELWP
22	"	City of Port Phillip response to adjournment request	City of Port Phillip

No.	Date	Description	On behalf of
23	15/11/2019	Email regarding matters that have been resolved and which remain in dispute and request to be heard	Rigby Cooke on behalf of Proponent
24	“	Email scheduling further directions hearing	SAC
25	18/11/2019	a) Correspondence regarding Direction 4b (agreed statement of resolved and unresolved issues), 4a and 17 (vantage points) b) Vantage points – aerial map of site 6	Harwood Andrews on behalf of DELWP
26	“	Melbourne Water’s comments on draft Incorporated Document	Melbourne Water
27	“	Site 6 - Outline submission (letter)	Fishermans Bend Taskforce
28	“	a) DELWP’s version of draft Incorporated Document with Council’s tracked changes b) Issues table DELWP provided with the Council’s commentary included	Maddocks on behalf of Council
29	“	Table with collated responses from all parties apart from Department of Transport to the DELWP version of the draft Incorporated Document circulated on 13 November 2019	Harwood Andrews on behalf of DELWP
30	19/11/2019	Statement of issues in dispute (referencing the collated table)	“
31	“	SAC Memorandum with proposed directions relating to architecture and urban design	SAC
32	21/11/2019	DELWP’s version of Incorporated Document with Council’s suggested tracked changes including comments on affordable housing	Maddocks on behalf of Council
33	“	Committee Directions and version 4 distribution list	SAC
34	29/11/2019	Proponent’s request to DELWP for further and better particulars for Site 6	Rigby Cooke for Proponent
35	“	Proponent’s request to Council for further and better particulars for Site 6	“
36	6/12/2019	Letter Melbourne Water - Fisherman’s Bend - response to direction 4	Norton Rose Fulbright for Melbourne Water
37	“	DELWP response to Melbourne Water	Harwood Andrews for DELWP
38	10/12/2019	Letter to SAC circulating DELWP version draft Incorporated Document - Site 6	“
39	“	Draft Incorporated Document - Site 6 - 203-205 Normanby Road Southbank - DELWP	“
40	11/12/2019	Letter to Rigby Cooke from DELWP - further and better particulars for site 6 - 11 12 19	“

No.	Date	Description	On behalf of
41	16/12/2019	Site 6 Incorporated Document - DELWP v9 December with City of Port Phillip position - 16 12 19	Maddocks for City of Port Phillip
42	17/12/2019	Letter to SAC and parties on City of Port Phillip updated position on further and better particulars and Affordable Housing request 17 12 19	"
43	18/12/2019	Letter from DELWP responding to request for clarification in relation to the SAC Terms of Reference	Mr Matt Cohen, for DELWP
44	19/12/2019	Proponents - Response Direction 5 on Draft Incorporated Document	Rigby Cooke for Proponent
45	6/01/2020	Email from Fishermans Bend Taskforce to Proponent in response to matters raised regarding the development on Site 6	Aidan O'Neill, Fishermans Bend Taskforce
45a	"	Fishermans Bend Taskforce without prejudice design suggestions – Urban Design Assessment: Site 6 - 203 – 205 Normanby Road, Southbank – December 2019	"
45b	"	Letter from Proponent (SJB Planning) to Fishermans Bend Taskforce in response to matters raised in correspondence dated 14 August 2019 - 10 Dec 2019	"
46	3/02/2020	Email from Proponent to SAC in regard to Direction 7 information	Rigby Cooke for Proponent
46a	"	Normanby Road Aerial View with 207-217 Proposed Massing prepared by Hayball Architects	"
46b	"	Normanby Road & Montague Street View prepared by Hayball Architects	"
46c	"	Normanby Road & Montague Street View with 207-217 Proposed Massing prepared by Hayball Architects	"
46d	"	Normanby Road & Boundary Street View prepared by Hayball Architects	"
46e	"	Normanby Road & Boundary Street View with 207-217 Proposed Massing prepared by Hayball Architects	"
46f	"	Normanby Road Site 6 - Sun Study prepared by Hayball Architects	"
46g	"	Memorandum from Simpson Kotzman on revised Sustainability Management Plan	"
47	17/02/2020	Email from Proponent to SAC response to direction 5 - updated summary of parties' positions and marked up incorporated document	"
48	"	Proponent updated Summary of Positions on Draft Incorporated Document table - Site 6 22.01.20	"
49	"	Site 6 Incorporated document - Matters in dispute version from Proponent 15 February 2020	"

No.	Date	Description	On behalf of
50	“	Proponent proposed version of the Affordable Housing Condition 11.12.19	“
51	“	Letter from Proponent to SAC attaching Mark Sheppard evidence statement - Site 6 Normanby Road	“
52	“	Proponent - Site 6 - 203-205 Normanby Road - Expert evidence – Mark Sheppard - Urban Design	“
53	18/02/2020	City of Port Phillip - Site 6 - 203-205 Normanby Road - Expert evidence – Dr Marcus Spiller - Affordable Housing	Maddocks on behalf of City of Port Phillip
54	“	Letter from DELWP to SAC circulating Part A submissions and attachments	Harwood Andrews for DELWP
55	“	DELWP Part A submission - Site 6 - 203-205 Normanby Road, South Melbourne	“
56	“	DELWP Part A Appendix 1 - Site 6 Normanby Road - draft Inc Doc - DELWP preferred version with notes	“
57	“	DELWP Part A Appendix 2 - Site 6 Normanby Road Clause 58 assessment Site 6	“
58	20/02/2020	Melbourne Water -Site 6 updated version draft Incorporated Document with notes - 19 02 20	Melbourne Water
59	“	Fishermans Bend Standing Advisory Committee Site 6 – response to request on Hayball Architects and updated Hearing Timetable (v2) 20 01 20	SAC
60	24/02/2020	Letter from FB Taskforce to SAC - outline submission Direction 9	Fishermans Bend Taskforce
61	26/02/2020	Letter from FB Taskforce to SAC on version 3 of the draft Fishermans Bend Affordable Housing Guidelines	“
61a	“	Fishermans Bend Affordable Housing Guidelines Draft V3 update 20 02 20	“
62	2/03/2020	Annotated plans - Hayball sketch mark ups in response to Fishermans Bend Taskforce comments (SK01 to SK04)	Rigby Cooke on behalf of Proponent
63	“	NSW Supreme Court decision - Mison v Randwick Municipal Council (1991) 23 NSWLR 734	Mr Rupert Watters on behalf of DELWP
64	“	Peter Marshall memo to SAC on affordable housing relating to 118 Bertie Street, Port Melbourne, Amendment C172port	SAC
65	“	Peter Marshall track changes comments on draft incorporated document relating to 118 Bertie Street, Port Melbourne, Amendment C172port	SAC
66	“	Track changes version of Draft Fishermans Bend Affordable Housing Guidelines V3	Fishermans Bend Taskforce

No.	Date	Description	On behalf of
67	“	Fishermans Bend Taskforce Submission and attachments: <ul style="list-style-type: none"> - Fishermans Bend Taskforce referral response for Site 6 (Document 2c); - Letter from SJB Planning in response to matters raised by Fishermans Bend Taskforce – 10.12.19 (Document 45b); - Fishermans Bend Taskforce without prejudice design suggestions - Urban Design Assessment Site 6 (Document 45a); and - draft Fishermans Bend Affordable Housing Guidelines v3 January 2020 (Document 61a) 	“
68	“	Melbourne Water submission	Melbourne Water
69	2/03/2020	Letter from DELWP to SAC - Circulating table of planning permits	Harwood Andrews for DELWP
69a	“	Fishermans Bend Planning Permits - 12.02.20	“
70	“	Letter from DELWP to SAC - attaching index of surrounding permits	“
71a	3/03/2020	Email from Melbourne Water on preferred conditions	Melbourne Water
71b	“	Melbourne Water agreed conditions February 2020 relating to flood risk management plan, 118 Bertie Street	“
72	“	DELWP 3D Model Screenshots - Massing diagrams, based on current applications and permits	Harwood Andrews for DELWP
73	“	DELWP 3D Model Screenshots - Massing diagrams, based on DDO massing envelopes	“
74	“	Enlargement of ‘timber’ diagram	Rigby Cooke on behalf of Proponent
75	“	City of Port Phillip submission	Maddocks on behalf of City of Port Phillip
76	“	City of Port Phillip submission preferred affordable housing condition	“
77	“	Spiller memo to Maddocks on Dr Marshall documents 64 and 65	“
78	“	PowerPoint presentation	Sheppard
79	“	DELWP 3D Model Screenshots - Updated version of document 72 with maximum modelled building heights (Massing diagrams, based on current applications and permits)	Harwood Andrews for DELWP

No.	Date	Description	On behalf of
80	“	DELWP 3D Model Screenshots - Updated version of document 73 with maximum modelled building heights (Massing diagrams, based on DDO massing envelopes)	“
81	4/03/2020	Proponents submission	Rigby Cooke on behalf of Proponent
82	“	Correspondence from Unison to proponent re affordable housing	“
83	“	Memo from Simpson Kotzman to proponent re amended plans	“
84	“	Memo from Simpson Kotzman to proponent re daylight access	“
85	“	ATO Class Ruling CR 2016/42	“
86	4/03/2020	DELWP closing submission	Harwood Andrews for DELWP
87	“	S173 agreements (development contributions) between the VPA and Sungard Availability Services VIC DC1 Pty Ltd, and between the VPA and 202N Pty Ltd	“
88	“	Updated table on Fishermans Bend permit history – dated 4 March 2020	“
89	5/03/2020	Email from SAC to Parties - clarification and minor number error in Dr Marshall advice on affordable housing	SAC
90	12/03/2020	Letter from SAC to Parties requesting proponent to prepare further architectural drawings	“
91	15/03/2020	Letter from Proponent to SAC - providing material from hearing and additional information 13 03 20	Rigby Cooke on behalf of Proponent
92	“	TTM (Cumulative)Traffic Report 20 Jan 2016	“
93	“	Site 6 Normanby Road - draft Incorporated Document - DELWP preferred version with Proponent additions at hearing - 04 03 20	“
94	“	DELWP example Affordable Housing Agreement from planning.vic.gov.au	“
95	20/03/20	Letter to PPV – Request for further architectural renderings	“
96a	“	Further architectural renderings - Corner Montague Street - 30 levels	“
96b	“	Further architectural renderings - Corner Montague - Street 32 levels	“
96c	“	Further architectural renderings - Corner Montague Street - 34 levels	“

No.	Date	Description	On behalf of
96d	“	Further architectural renderings - Corner Montague Street - 36 levels	“
97a	“	Further architectural renderings - 264 Normanby Street- 34 levels	“
97b	“	Further architectural renderings - 264 Normanby Street – 36 levels	“
97c	“	Further architectural renderings - 264 Normanby Street - 30 levels	“
97d	“	Further architectural renderings - 264 Normanby Street - 32 levels	“
98a	“	Further architectural renderings - Bike Path - 34 levels	“
98b	“	Further architectural renderings - Bike Path - 36 levels	“
98c	“	Further architectural renderings - Bike Path - 30 levels	“
98d	“	Further architectural renderings - Bike Path - 32 levels	“
99a	“	Further architectural renderings - Podium 1	“
99b	“	Further architectural renderings - Podium 2	“
100	“	Site 6 camera locations	“
101	26/03/2020	Fishermans Bend SAC Site 6 - follow up matters from Site 6 hearing	SAC
102	27/03/2020	Email letter from DELWP to SAC - response to SAC letter of 26.03.20	Harwood Andrews for DELWP
103	“	Letter from VicRoads to DELWP _ Normanby Street sites response including Site 6 - 18.10.19	“
104	“	Environmental Audit	“
105	12/04/2020	Email from SAC to parties - Clarification on report submission date to Minister for Planning	SAC
106	5/05/2020	Fishermans Bend SAC - Correspondence from SAC regarding Terms of Reference - 5 May 2020	SAC