

*Planning and Environment Act 1987*

# **Fishermans Bend Standing Advisory Committee – Tranche 2 Report**

**Port Phillip Planning Scheme draft Amendment  
C172port  
118 Bertie Street, Port Melbourne**

**28 April 2020**

## About this report

On 15 September 2019, the Minister for Planning signed a letter referring the following proposal to the Fishermans Bend Standing Advisory Committee (Committee):

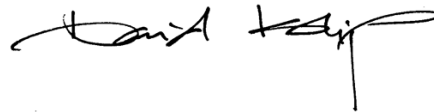
- Tranche 2 - Port Phillip Planning Scheme draft Amendment C172port (118 Bertie Street, Port Melbourne).

The referral was provided to the Committee by the Department of Environment, Land, Water and Planning (DELWP) on 17 September 2019.

This is the report of the Fishermans Bend Standing Advisory Committee – Tranche 2 Report under Section 151 of the *Planning and Environment Act 1987*.



Dalia Cook, Chair



David Islip, Member (Office of the Victorian Government Architect)



Rachael O'Neill, Member

28 April 2020

# Contents

|   | Page      |
|---|-----------|
| <b>1 Executive summary and recommendation .....</b>   | <b>1</b>  |
| 1.1 Summary.....  | 1         |
| 1.2 Conclusion .....  | 3         |
| 1.3 Recommendation .....  | 4         |
| <b>2 Amendment summary .....</b>  | <b>5</b>  |
| 2.1 Procedural issues.....  | 10        |
| <b>3 Key issues .....</b>   | <b>14</b> |
| 3.1 Issues in dispute .....   | 14        |
| 3.2 Committee's approach to its role.....   | 16        |
| <b>4 Built form .....</b>   | <b>17</b> |
| 4.1 The issues .....  | 17        |
| 4.2 Character and built form response .....   | 17        |
| 4.3 Layout and detailed design .....  | 24        |
| 4.4 Environmentally sustainable development.....  | 32        |
| <b>5 Land use .....</b>   | <b>35</b> |
| 5.1 The issues .....  | 35        |
| 5.2 Extent of employment generating uses .....  | 35        |
| 5.3 Build to Rent proposal.....   | 43        |
| <b>6 Affordable housing .....</b>   | <b>47</b> |
| 6.1 Relevant policies, strategies and planning scheme provisions .....  | 47        |
| 6.2 Preliminary issue - what types of development should contribute to Affordable housing under the policy? ..... | 49        |
| 6.3 Key issues.....   | 50        |
| 6.4 Approach to referred or called in applications .....  | 50        |
| 6.5 Providing for Affordable housing within the Amendment .....   | 52        |
| 6.6 Establishing a benchmark for an Affordable Housing contribution.....  | 60        |
| 6.7 Appropriate wording for the Incorporated Document .....   | 63        |
| <b>7 Infrastructure and development contributions .....</b>   | <b>66</b> |
| 7.1 The issues .....  | 66        |
| 7.2 Traffic and movement .....  | 66        |
| 7.3 Response to potential for flooding .....  | 69        |
| 7.4 Development contributions .....   | 72        |
| <b>8 Wording of the draft Incorporated Document .....</b>   | <b>78</b> |
| 8.1 The issues .....  | 78        |
| 8.2 Aboriginal cultural heritage.....   | 78        |
| 8.3 Subdivision.....  | 79        |
| 8.4 Council supervision fee .....   | 79        |

|            |  |           |
|------------|--|-----------|
| 8.5        | Environmental Audit Overlay .....                          | 80        |
| 8.6        | Responsible Authority .....                                | 80        |
| 8.7        | Expiry date .....  | 81        |
| <b>9</b>   | <b>Integrated assessment .....</b>                         | <b>84</b> |
| 9.1        | Approach .....   | 84        |
| 9.2        | Analysis and key findings.....                             | 84        |
| 9.3        | Response to Terms of Reference .....                       | 85        |
| Appendix A | Recommended form of Incorporated Document .....            | 87        |
| Appendix B | List of Submitters .....                                   | 104       |
| Appendix C | Document List .....  | 105       |
| Appendix D | About the Fishermans Bend Standing Advisory Committee..... | 123       |

## List of Tables

|         |                          |   |
|---------|--------------------------|---|
| Table 1 | Amendment summary .....  | 5 |
| Table 2 | Outline of proposal..... | 6 |
| Table 3 | Committee process .....  | 9 |

## List of Figures

|          |  |    |
|----------|--|----|
| Figure 1 | Site location .....  | 8  |
| Figure 2 | Proposal – ground floor plan.....  | 8  |
| Figure 3 | Proposal – south-east elevation.....   | 9  |
| Figure 4 | Map 1: Building typologies.....  | 18 |
| Figure 5 | Map 2: Building heights.....   | 19 |
| Figure 6 | Sandridge Urban Structure.....   | 37 |
| Figure 7 | Maximum affordable weekly rents by income bracket as a<br>proportion of the DHHS market rents and Urbis rental tracker<br>new apartment rent ..... | 58 |

## List of Abbreviations

|                    |   |
|--------------------|---|
| the Act            | <i>Planning and Environment Act 1987</i>  |
| AHD                | Australian Height Datum   |
| Amendment          | draft Amendment C172port to the Port Phillip Planning Scheme  |
| CCZ(1)             | Capital City Zone (Schedule 1)  |
| Committee          | Fishermans Bend Standing Advisory Committee   |
| Council            | Port Phillip City Council   |
| DDO32              | Design and Development Overlay Schedule 32  |
| DELWP              | Department of Environment, Land, Water and Planning   |
| Framework          | <i>Fishermans Bend Framework, The next chapter in Melbourne's growth story, September 2018</i>  |
| GC81               | Amendment GC81 to the Melbourne and Port Phillip Planning Schemes gazetted on 5 October 2018  |
| Planning Scheme    | Port Phillip Planning Scheme  |
| Precinct           | Fishermans Bend Urban Renewal Area as mapped in the Capital City Zone (Schedule 1)  |
| Review Panel       | Fishermans Bend Planning Review Panel into Amendment GC81   |
| SMP                | Sustainability Management Plan  |
| Taskforce          | Fishermans Bend Taskforce   |
| Terms of Reference | Terms of Reference for the Fishermans Bend Standing Advisory Committee signed by the Minister for Planning on 5 October 2018 and updated on 9 February 2020 |

# 1 Executive summary and recommendation

## 1.1 Summary

The Fishermans Bend Urban Renewal Precinct presents a substantial opportunity to create a thriving and diverse extension to the Central City. The relevant provisions of the Melbourne and Port Phillip Planning Schemes were re-cast by the state government through Amendment GC81 in late 2018, including a new Vision, Framework and planning controls. This followed an extensive process of public consultation with recommendations by a Review Panel from Planning Panels Victoria.

The Fishermans Bend Standing Advisory Committee was subsequently established. Its current focus is to advise the Minister for Planning on the appropriateness of site specific permission for the use and development of land through referred draft planning scheme amendments. The majority of these are expected to stem from permit applications ‘called in’ by the Minister for Planning, noting that these were put on hold until the new planning controls and policies were introduced. The planning permit application for this site was lodged in June 2016.

This is the first report of the Committee in response to referral of a draft planning scheme amendment known as Tranche 2 for the land at 118 Bertie Street, Port Melbourne. Tranche 1 includes three sites in Normanby Road, South Melbourne and Tranche 3 relates to a property on the corner of Montague Street and Munro Street, South Melbourne.

Draft Amendment C172port proposes to introduce an Incorporated Document in the Port Phillip Planning Scheme (Planning Scheme) through Schedules to Clauses 45.12 (Specific Controls Overlay) and 72.04 (Documents Incorporated in this Planning Scheme). The Incorporated Document would grant permission for the use and development of the land for a mixed use development comprising dwellings, offices and retail premises and subdivision to create a new roadway.

Notice of the draft Amendment notice was confined to relevant public authorities since there are no third party participation rights in the underlying Planning Scheme controls including the Capital City Zone.

The Terms of Reference signed by the Minister for Planning on 5 October 2018 and updated on 9 February 2020 (Terms of Reference) preclude the Committee from considering either the application or operation of the Infrastructure Contributions Overlay (Clause 45.11) or the quantum or need for public open space, roads and laneways in evaluating the appropriateness of the Amendment.<sup>1</sup>

The parties came to a substantial consensus position that supported the proposed land use and development for this land. Parties considered it appropriate to progress the draft Amendment subject to refining the content of the draft Incorporated Document and sought a recommendation of the Committee accordingly.

Irrespective, the Committee is obliged to consider all matters referred to in Clause 20 of the Terms of Reference, including all submissions and evidence presented to it during the Hearing.

---

<sup>1</sup> Clause 21 of the Terms of Reference.

The Committee's review of the proposal was assisted by the information provided to it as well as its observations from inspections of the site and area. It took an active role in the Hearing and subsequently to explore issues it regarded as important.

Key issues considered by the Committee were:

- the adequacy of the design response by reference to relevant policies and controls, including whether changes suggested by the parties including the Fishermans Bend Taskforce are warranted
- the acceptability of the proposed land use by reference to policy directions, including the nature and benefits of the proposed Build to Rent model
- the method of securing an adequate contribution for Affordable housing and the parameters for a subsequent agreement under section 173 of the *Planning and Environment Act 1987* (the Act)
- proposed development contributions, including how to address the provision of the new roadway on site
- disputed elements of the draft Incorporated Document.

The Committee finds:

- The proposal for a site specific planning scheme amendment should be considered as a whole, assessed in terms of its potential to generate net community benefit and to achieve sustainable development consistent with Clause 71.02-3 of the Planning Scheme.
- The proposed built form would be consistent with the preferred future character for the Sandridge Precinct and constitutes a suitable response to the provisions of the Design and Development Overlay (Schedule 32). In addition:
  - the proposal would respond suitably to the potential for flooding subject to conditions substantially as agreed
  - the provision of the new roadway on part of the land generally in accordance with the *Fishermans Bend Framework, September 2018* (Framework) is a positive aspect of the proposal
  - residual uncertainty remains about the built form outcomes arising from further wind testing and this should preferably be resolved before permission is granted by way of an Incorporated Document
  - by contrast, while the achievement of a certified 5 Star Green Star rating is appropriate for the proposal, its components can be identified or refined as part of the approval granted.
- The Committee is not prepared to revisit the recently introduced plot ratios in the relevant planning policy pertaining to employment generating uses. The proposal would not meet this important policy for the Sandridge Precinct even though car parking areas have been largely designed to meet objectives for adaptable spaces. On an integrated assessment, this should not prevent the grant of permission overall.
- The Build to Rent model is strongly supported as meeting policy objectives for Fishermans Bend and should be enshrined in the permission granted.
- Affordable housing is a vital part of the policy context and proposals should be well resolved at the stage they are considered by the Committee. In particular:
  - There is no justification for a more relaxed approach to be taken to the provision of Affordable housing for land purchased before the introduction of the current

planning scheme controls or where permit applications were lodged before that time.

- The policy in Clause 22.15 provides flexibility as to the method of delivery of Affordable housing.
- In general, section 173 agreements to be created under an Incorporated Document should reflect actual offers (or equivalent) where they have been found to be qualitatively acceptable. If this is not achievable, there may be merit in providing a 'minimum baseline' against which to compare a proposed contribution under the policy.
- Appropriate development contributions are proposed by the development for this stage of the renewal of the Fishermans Bend Precinct, bearing in mind that an Infrastructure Contributions Plan has not yet been incorporated into the Planning Scheme. In the circumstances, it is also reasonable to provide notice in the Incorporated Document that a subsequent levy may be charged by Melbourne Water under the *Water Act 1989*.

The Committee identifies other matters for further consideration by government agencies arising from this referral:

- It is desirable to clarify which types of development are liable to contribute to Affordable housing under the policy in Clause 22.15-4.3.
- Financial and governance responsibilities for 'localised' infrastructure (such as the new roadway on this site) if this infrastructure is not funded by the Infrastructure Contributions Plan in future.

## 1.2 Conclusion

The Committee is satisfied that draft Amendment C172port to the Port Phillip Planning Scheme would be consistent with the relevant planning policies and provisions including the Fishermans Bend Framework, subject to the Incorporated Document confirming each of the following:

- The residential component of the proposal must be made available as a Build to Rent scheme unless the Responsible Authority grants secondary consent for an alternative residential use.
- The section 173 agreement to secure Affordable housing should require the owner to provide at least 6% of the Gross Residential Leasable Floor Area leased at a discounted market rental of 35% through a registered housing provider or similar for the economic life of the building, with a mechanism for adjustments for changing income and rental levels over time to continue to satisfy relevant Ministerial guidelines and orders pertaining to definitions of affordability.
- The new roadway must be constructed as part of the permission granted and must be made available as a roadway open to the public at all times, to the satisfaction of the relevant road authority.

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



## **1.3 Recommendations**

The Committee recommends that:

- 1. Draft Amendment C172port to the Port Phillip Planning Scheme be prepared and approved subject to the Incorporated Document recommended by the Standing Advisory Committee in Appendix A of this Report.**
- 2. Before finalising Amendment C172port, the Proponent demonstrate acceptable updated wind testing outcomes and consequential built form implications.**

## 2 Amendment summary

The following tables outline key aspects of the Amendment and its consideration by the Committee.

**Table 1 Amendment summary**

| Amendment summary                |  |
|----------------------------------|--|
| <b>Amendment No</b>              | Port Phillip Planning Scheme draft Amendment C172port  |
| <b>Date of Amendment request</b> | 29 May 2019  |
| <b>Site address</b>              | 118 Bertie Street, Port Melbourne  |
| <b>Proponent</b>                 | Lateral Estate Pty Ltd   |
| <b>Council</b>                   | Port Phillip City Council  |
| <b>Zone</b>                      | Capital City Zone Schedule 1   |
| <b>Overlays</b>                  | Design and Development Overlay Schedule 32<br>Environmental Audit Overlay<br>Infrastructure Contributions Overlay Schedule 1<br>Parking Overlay Schedule 1   |
| <b>Designation in Framework</b>  | Core area of Sandridge Precinct (Map 2 – Sandridge Urban Structure) under the Capital City Zone Schedule ), Precinct area S3 under Design and Development Overlay Schedule 32  |
| <b>Exhibition</b>                | 17 September to 16 October 2019  |
| <b>Authorities notified</b>      | 5  |
| <b>Submissions</b>               | 6 (Refer to Appendix B)  |
|                                  | <b>Issues raised by non-appearing authorities in submissions:</b>  |
|                                  | <u>APA Group (APA)</u>   |
|                                  | <ul style="list-style-type: none"> <li>Did not object to the proposal given that there are no APA VTS gas pipelines within 800m of the subject site and the site is outside of the measurement length of the nearest APA VTS gas pipeline.</li> </ul>  |
|                                  | <u>Department of Transport</u>   |
|                                  | <ul style="list-style-type: none"> <li>Did not object to proposal as site does not abut any proposed transport upgrades within Fishermans Bend Framework Plan apart from the proposed new road abutting the subject site. In addition, neither Bertie Street nor the proposed new road are intended to accommodate public transport services.</li> <li>Provided a draft Green Travel Plan condition to consider including in the Incorporated Document.</li> </ul> |

Environment Protection Authority Victoria (EPA)

- Noted the site is affected by an amenity buffer to Colonial Brewery, Hanson and Citywide (concrete batching plants) prescribed by the Planning Scheme.
- Following assessment, these three industries are not expected to have a significant impact on the proposed development as their location is not within any identified industrial separation distance as referred to in Publication 1518.
- The general findings of the Amenity Impact Plan, Detailed Site Investigation Report and Acoustic Report indicate the potential risk of harm to amenity is low, and the mitigation measures proposed for noise will ensure that an appropriate level of amenity is achieved for the development.
- Noted the site is affected by the Environmental Audit Overlay and the specific matters in Ministerial Direction No. 1 and Planning Practice Note 30 must be addressed.
- EPA recommended:
  - Any approval should require the design of the building to meet the requirements of “Better Apartments” and that noise treatment applied to the building is equivalent to that required by Practice Note No 83.
  - The building design demonstrate that any impact of external air quality is minimised.
  - Reference to Barro in relation to the separation distance to the subject site be addressed and the correct industry name (Citywide) is referenced in the GHD report (May 2019).

**Table 2 Outline of proposal**

| Outline of proposal |   |
|---------------------|---|
| <b>Site area</b>    | 3,033sqm  |
| <b>Land use</b>     | 773sqm of commercial and retail floor area<br>165 Build to Rent apartments with communal facilities including concierge, landscaped terraces, rooftop swimming pool and gymnasium   |
| <b>Built form</b>   | 6 storey podium form with tower above to a total of 20 storeys (75.4m AHD to top of services).<br><br>The tower component would be 14 storeys (levels 7-20) and set back 26.7m from the front boundary of the site and 5m from all other property boundaries.<br><br>9 metre wide laneway to be constructed on south eastern side of the land.<br><br>204 bicycle spaces, 101 car parking spaces, 6 car share spaces and 8 motorcycle spaces. |

## Outline of proposal

**Site and surrounding area** The site is on the north eastern side of Bertie Street near the inward bound ramps of the West Gate Freeway. It currently contains a single storey warehouse and office building used for motor repairs. The property has a landscaped front setback with four substantial Lemon-scented gum trees.

---

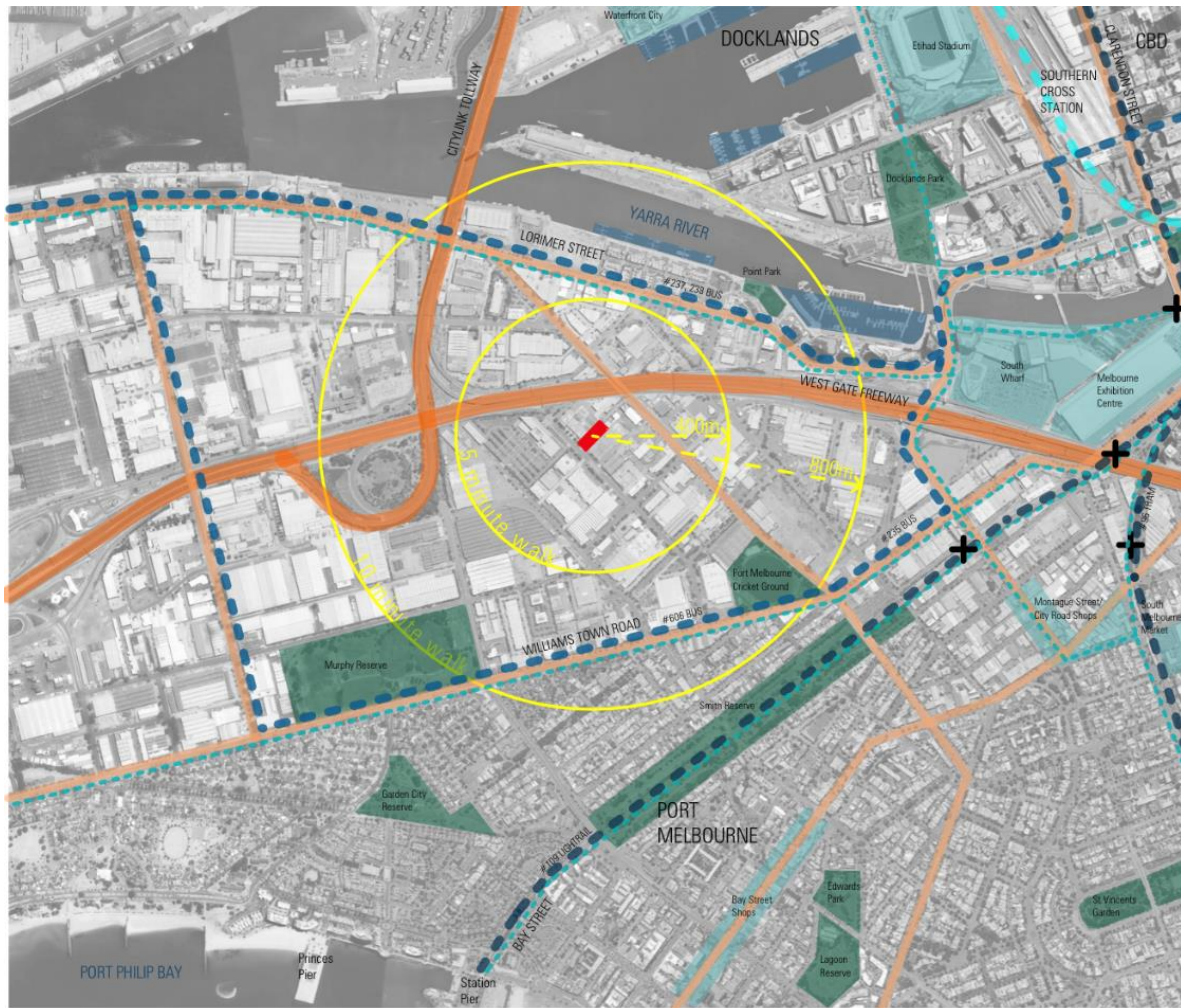
Nearby properties in Bertie Street are used and developed for warehouses, service industry and offices, including the Toyota headquarters diagonally opposite. The adjacent property to the south east is sizeable with a dual frontage to Ingles Street. It is currently vacant and proposed to be redeveloped.<sup>2</sup>

---

---

<sup>2</sup> 277-281 Ingles St, Port Melbourne. The permit application for that site was 'called in' by the Minister for Planning and its consideration was deferred. The Committee was provided with a copy of plans accompanying a current Planning Scheme Amendment for that site, which is being processed by DELWP after receipt of further information from the Proponent (Documents 62-65). DELWP advised that this proposal is likely to be referred to the Standing Advisory Committee in future.

**Figure 1 Site location**



Source: Mako Architecture Urban Context Report

**Figure 2 Proposal – ground floor plan**



Source: Mako Architecture – architectural package



**Figure 3 Proposal – south-east elevation**



Source: Mako Architecture – architectural package

**Table 3 Committee process**

| Committee process         |  |
|---------------------------|--|
| <b>Members</b>            | Dalia Cook (Chair), David Islip (Office of the Victorian Government Architect), Rachael O'Neill  |
| <b>Directions Hearing</b> | 12 November 2019   |
| <b>Hearing</b>            | 11-13 February 2020, with a resumed Hearing 'on the papers' between 3 April – 14 April 2020 (concerning evidence and documents received after the original Hearing)  |
| <b>Site inspection</b>    | Unaccompanied 14 February 2020   |
| <b>Appearances</b>        | <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>Ms Emily Marson, Solicitor, Best Hooper Lawyers on behalf of Port Phillip City Council (Council) who called Dr Marcus Spiller, economist and town planner, SGS Economics Pty Ltd to give expert evidence</p> <p>Ms Megan Schroor, Solicitor, Norton Rose Fulbright on behalf of Melbourne Water</p> |

## Committee process

Mr Mark Naughton and Mr Johan Moylan, Solicitors, Planning and Property Partners on behalf of the Proponent, Lateral Estate Pty Ltd. They called Mr Mark Dawson and Mr Rhys Quick, economists of Urbis to give expert evidence. Mr James Guthrie, Development Manager, Lateral Estate Pty Ltd was also available to answer questions from the Committee at the Hearing.

---

|                            |               |
|----------------------------|---------------|
| <b>Date of this Report</b> | 28 April 2020 |
|----------------------------|---------------|

---

## 2.1 Procedural issues

### (i) Revised plans and documents

The Committee evaluated the proposed development on the basis of plans prepared by Mako Architects dated 20 May 2019 (Revision D) as relied on by the Proponent. It has also had regard to all documents provided to DELWP as referred to it, including submissions from non-attending authorities.

### (ii) Referral of economic questions

The Committee referred discrete questions arising from evidence called by parties to another Member of the Standing Advisory Committee, Dr Peter Marshall, a qualified and experienced economist who was unable to attend the Hearing.<sup>3</sup> These questions focused on the potential to ‘benchmark’ contributions for Affordable housing and other key elements of evidence presented by Dr Spiller (called by Council) and Mr Dawson and Mr Quick (called by the Proponent). The Committee tabled all correspondence with Mr Marshall and offered parties an opportunity to provide submissions or evidence in response.

During the Hearing, the Committee also asked Mr Dawson whether it would be possible for him to assess whether certain percentages of discounted rent would satisfy the definition of ‘Affordable’ housing under the Act. A ‘reverse brief’ was compiled<sup>4</sup> and responded to by Mr Dawson<sup>5</sup>, with opportunities given to other parties to respond.

### (iii) Proposed tree removal

Following an inspection of the site and surrounds, the Committee identified a need for an arboricultural assessment of the four large trees in the frontage to the site, including justification for their removal to facilitate the proposed development as reflected on the application plans. The Proponent was asked to provide this assessment before the Hearing was formally closed.

All statutory authorities including Council did not raise any concerns with the proposed removal of all trees on site to facilitate the proposal.

---

<sup>3</sup> Document 54.

<sup>4</sup> Documents 106-108.

<sup>5</sup> Document 127.

### Tree Department Pty Ltd report

The Proponent engaged Mr Simon Howe, Consultant Arborist to prepare an Arboricultural Assessment of the four eucalypt trees.<sup>6</sup> He identified them as Lemon-scented gums (*Corymbia citriodora*) and undertook a ground-based visual assessment.

Tree 1 was identified as a mature tree with a height of 23 metres and width of 14 metres. Tree 2 was identified as growing as a pair with Tree 1, being mature with a height of 24 metres and a width of 9 metres. Tree 3 was regarded as semi-mature, with a height of 19 metres and width of 10 metres albeit with a sparse crown. It was given a Moderate arboricultural rating. Tree 4 was identified as mature, with a height of 22 metres and width of 10 metres.

Mr Howe explained that Trees 1, 2 and 4 were assessed of High arboricultural value as *“substantially scaled and prominent trees in the immediate precinct, with long useful life expectancies of more than 20 years”*.<sup>7</sup>

Mr Howe found that the new roadway would encroach 26% into the Tree Protection Zone of Tree 3 and entirely through the base of Tree 4.<sup>8</sup> Trees 3 and 4 would therefore need to be removed to facilitate the construction of the new roadway as identified in the Framework.

To limit encroachment to 10% of the Tree Protection Zones of Trees 1 and 2 as recommended by the relevant Australian Standard, Mr Howe calculated that the building would need to be set back approximately 7.1 metres at ground level from the site frontage (but less for Tree 2), and approximately 10.5 metres at podium levels 2-7 for adequate canopy clearance.

### Proponent’s submissions

In summary, the Proponent submitted that:

- The Framework and associated planning controls are expected to facilitate a fundamental transformation of the built form and landscape setting of the Precinct including the creation of new roads and public parks.
- The property adjoins a proposed 12 metre wide linear park along its southern boundary and would be opposite the second largest park in the Sandridge Precinct.
- Trees 3 and 4 require removal to facilitate the new roadway as shown in the Framework.
- The area of the site that can be built on is limited to 2,212sqm (given the need to build the new roadway). Any further reduction (estimated as a minimum 178sqm across a number of levels) would fundamentally compromise the viability of the proposal.
- The trees are not protected under any relevant overlay provisions, are not native to Victoria and the requirements of Clause 52.17 (Native Vegetation) do not apply to the land.

### Committee’s opinion

The Committee acknowledges that permission is not required under any provision of the Planning Scheme to remove the four trees. However, it is likely that they would be identified as ‘significant trees’ for the purposes of the relevant Council local law.

---

<sup>6</sup> Document 114.

<sup>7</sup> Page 4 of his assessment.

<sup>8</sup> Tree Protection Zones were calculated in accordance with AS4970-2009 Protection of trees on development sites.



These trees constitute both an important site opportunity and constraint. They are sizeable and healthy Australian natives which are prominent in an otherwise sparsely landscaped setting. They are also very close to the site frontage.

Were these trees not in a comprehensive urban renewal area, the Committee would have found it difficult to support their removal, especially Trees 1 and 2 which are not required to facilitate identified road infrastructure. Another factor that would otherwise support their retention is the suggestion in the Proponent's wind assessment that they be retained.

However, it is also relevant that re-cast provisions of the Planning Scheme do not seek landscaped setbacks for this area, presumably recognising its Capital City Zone status. The focus in policy at Clause 22.15-4.7 is on adequate landscaping to be provided within open space. There is also a preference in Clause 2.7 of the DDO for a zero lot line for new street walls.

In combination with this, the impacts of retaining Trees 1 and 2 need to be considered against the realistic constraints they would impose on the development envelope. It would also make it more challenging to achieve a consistent podium presentation to the street as generally contemplated by DDO32.

A key element of the Framework is the intent to create a new landscape character for the Precinct, including parks and along roadways. There will be proximate opportunities for sizeable native tree planting for this particular site to provide an attractive environment. The Committee emphasises that priority should be given by relevant authorities to detailed precinct and infrastructure planning to ensure that these areas provide a high quality landscape overall.

The Committee is of the view that there are other mechanisms available to ensure that the proposal suitably deals with wind impacts even if the trees were removed. It is also relevant that all authorities supported the removal of these trees in the context of the redevelopment proposal.<sup>9</sup>

Balancing these matters, the Committee accepts that it is not essential to retain the trees as part of the proposal.

#### **(iv) Cultural Heritage Management Plan**

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

The Committee enquired about the progress of investigations under this legislation. The proponent responded that the Act does not define the amendment of a planning scheme as a 'statutory authorisation', prior to which a Cultural Heritage Management Plan or relevant exemption must be resolved. Rather, these requirements must be met before the start of any works on site.

---

<sup>9</sup> Although the officer who prepared the report to Council appeared to have supported the retention of some (if not all) the trees.

Consequently, the Proponent suggested that this matter could be addressed via condition of the Incorporated Document and all parties supported this approach. The Committee agrees with this assessment and addresses this in greater detail in Chapter 8.2.

## 3 Key issues

### 3.1 Issues in dispute

The Committee directed parties to circulate a Statement of Issues, identifying which elements of the Amendment had been resolved and which matters remained unresolved.<sup>10</sup> It further required the circulation of a ‘track changes’ version of the draft Incorporated Document with input from all parties before the Hearing.<sup>11</sup>

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

#### (i) Built form and design response

All parties accepted that the proposal constituted a suitable response to relevant provisions of the Planning Scheme including building heights, setbacks and preferred character. However, some authorities considered that higher acoustic protection was required for internal amenity. Also, the Taskforce submitted that the design should be further refined to include a ‘visual break’ in the tower element of the building.

The parties were content to rely on the Proponent’s expert reports and associated recommendations as demonstrating capacity to comply with the 5 Star Green Star requirements for environmental sustainability.

Throughout the Hearing and subsequently, the Committee explored the need for a greater level of certainty in meeting this commitment as well as managing wind impacts as discussed in Chapters 4.3 and 4.4.

#### (ii) Land use and adequacy of employment generating floor area

All parties supported the proposed Build to Rent proposal. Given the early stage of redevelopment of this part of the Precinct and site characteristics, parties also accepted the limited amount of employment generating floor space compared to higher plot ratios in relevant policy provisions.

The Committee considered that this issue was significant and requested more detailed submissions and evidence from the Proponent to support the extent of employment generating floor area.

As detailed in section 5.2 of this Report, the amount of employment generating floor space proposed is not consistent with policy for the Sandridge Precinct.

---

<sup>10</sup> Document 38 and components.

<sup>11</sup> Represented in Document 47a.

**(iii) Affordable housing contribution**

All parties agreed that the Proponent should provide at least 6% of apartments as Affordable housing to satisfy the policy in Clause 22.15 of the Planning Scheme. Some authorities differed in terms of their approach to delivery mechanisms as well as the wording of the relevant obligation.

DELWP, the Taskforce and the Proponent agreed on the form of wording for a section 173 agreement within the draft Incorporated Document.

Port Phillip City Council (Council) provided its own preferred drafting of this condition on the final day of the Hearing.<sup>12</sup> It called evidence suggesting that a benchmark or ‘deemed to comply’ provision should be established, against which to compare the value of any offers from this and other proponents.

The Committee also obtained written advice on this issue from Dr Peter Marshall, a Member of the Committee.

**(iv) Development contributions**

The land is covered by the Infrastructure Contributions Overlay, although an Infrastructure Contribution Plan has not yet been prepared and approved for the Precinct. 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 appropriate development contributions.

The Taskforce provided monetary amounts for development contributions considered appropriate for this proposal. These reflect interim development contributions levied by it on development in the Precinct since 2014 subject to indexation. The Proponent did not oppose these figures.

Melbourne Water 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.

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 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*.

The use of a ‘Note’ in the Incorporated Document was not supported by the Proponent but was not opposed by DELWP.

Another issue that arose during the Hearing concerned financial and governance responsibilities for the proposed new roadway to be constructed on land currently within title

---

<sup>12</sup> Document 83.

to the site. This roadway is identified in the Framework at 12 metres wide, but all parties agreed it was appropriate to reduce this to 9 metres as currently proposed.

The Proponent committed to constructing the road and would not oppose a requirement to transfer it to Council. However, it opposed a proposal to require its provision *at no cost* to the Proponent, as suggested by Council since this may preclude a subsequent claim for compensation. Instead, it submitted that this is a matter for another time, to be determined under legislative provisions such as Part 5 of the Act.

#### **(v) Wording of Incorporated Document**

Other matters identified for closer consideration by the Committee included Aboriginal heritage significance, relevant noise standards, the time for expiry of the Incorporated Document and which entity is the Responsible Authority under the Planning Scheme for various matters.

### **3.2 Committee's approach to its role**

The Committee indicated early and consistently that it considered itself obliged to evaluate and advise on the appropriateness of the site specific Amendment as a whole, including the form of the draft Incorporated Document.

The fact the parties appeared to have reached a position that the site specific control is appropriate subject to refinement (as summarised in Chapter 3.3) is relevant to but not determinative of the views of the Committee.

The Committee is an independent body which operates under Terms of Reference which oblige it to consider matters identified in Clause 20 and as specified. During this process, the Committee also identified numerous matters that had either not been addressed fully or at all.

In practice, much of the Hearing focused on unresolved issues between the parties. However, parties were also asked to provide the Committee with an understanding of the design response, how the proposal would meet the policy in respect of employment uses, the nature of the evaluation of cumulative traffic and transport impacts, safety issues associated with potential flooding and more.<sup>13</sup>

Overall, the Committee adopted an active role to address questions and residual matters it identified. It kept the Hearing 'open' to allow for confirmation of unresolved matters. A resumed Hearing was held at the request of the Proponent, but was converted to a Hearing 'on the papers' given restrictions associated with the Coronavirus disease.

---

<sup>13</sup> This was required in written directions of the Committee dated 15 November 2019.

## 4 Built form

### 4.1 The issues

Key issues include:

- Would the proposal contribute to the preferred built form character set out in the Framework and Vision? Have relevant objectives and standards of DDO32 been met?
- Acceptability of particular aspects of the layout and detailed design of the proposal
- Does the proposal respond suitably to objectives for environmentally sustainable development?

### 4.2 Character and built form response

#### (i) Relevant policies, strategies and planning scheme provisions

Clause 21.06-8 contains the Vision for Fishermans Bend. Overall, the Vision seeks to ensure the delivery of a variety of built form typologies, including low, medium and high rise buildings at a range of densities. It anticipates that each Precinct will have a distinctive role, character and identity.

The Vision for Sandridge includes:

*Architecturally diverse towers extending Melbourne's skyline towards Port Phillip Bay. A high density mixed use activity centre will be established around the proposed Sandridge Metro Station and light rail interchange, including housing, retail, recreation, dining, community, entertainment, health and education services.*

Relevantly, the policy seeks to:

- 6.8.25 *Encourage development to respond to the preferred precinct character as identified in Schedule 32 to the Design and Development Overlay.*
- 6.8.26 *Support tower development within core areas, along with hybrid development, and produce a strong vertical form or landmarks.*
- 6.8.27 *Ensure core area heights are reduced in key locations to protect existing and proposed open spaces from being overshadowed.*
- 6.8.28 *Ensure active frontages are provided with commercial and/or retail uses within the core at lower levels to define street edges of primary and secondary streets and interfaces with public open spaces.*

The *Fishermans Bend Framework, September 2018* (Framework) is a Reference Document in the Planning Scheme.

Clause 22.15 (Fishermans Bend Urban Renewal Policy) is a key policy for this proposal. It addresses design excellence, environmentally sustainable design, communal open space and landscaping, new streets, laneway and pedestrian connections. It includes the objectives:

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

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

The land is located in the Capital City Zone (Schedule 1 – Fishermans Bend Urban Renewal Area) and is identified in the Core area of the Sandridge Precinct.

Design and Development Overlay (Schedule 32) (DDO32) provides controls for the Sandridge Precinct. The Design objectives for the Sandridge Precinct replicate the placemaking objective for the Precinct outlined in the Framework, and as relevant, seek:

*To ensure in the Core area a mix of mid-rise and high-rise podium towers that support significant commercial buildings.*

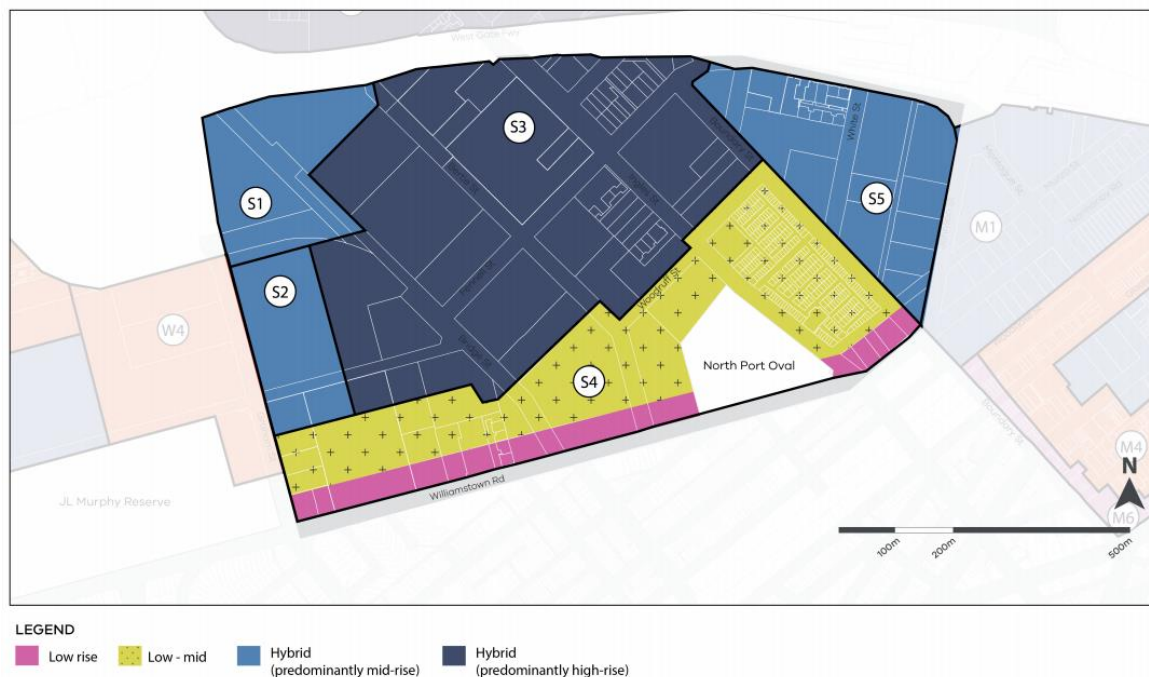
*To ensure built form protects sunlight penetration to identified public open spaces, streets and laneways, and facilitate comfortable wind conditions, to deliver a high quality public realm.*

*To ensure high levels of internal amenity for all development.*

The land is identified in Precinct Area S3 of DDO32 which encourages a Hybrid (predominantly high-rise) built form. The preferred precinct character statement for Area S3 seeks:

*Predominantly tower developments with some mid-rise buildings. Provision of towers with large floorplates with high quality outlook to support commercial development.*

**Figure 4 Map 1: Building Typologies**

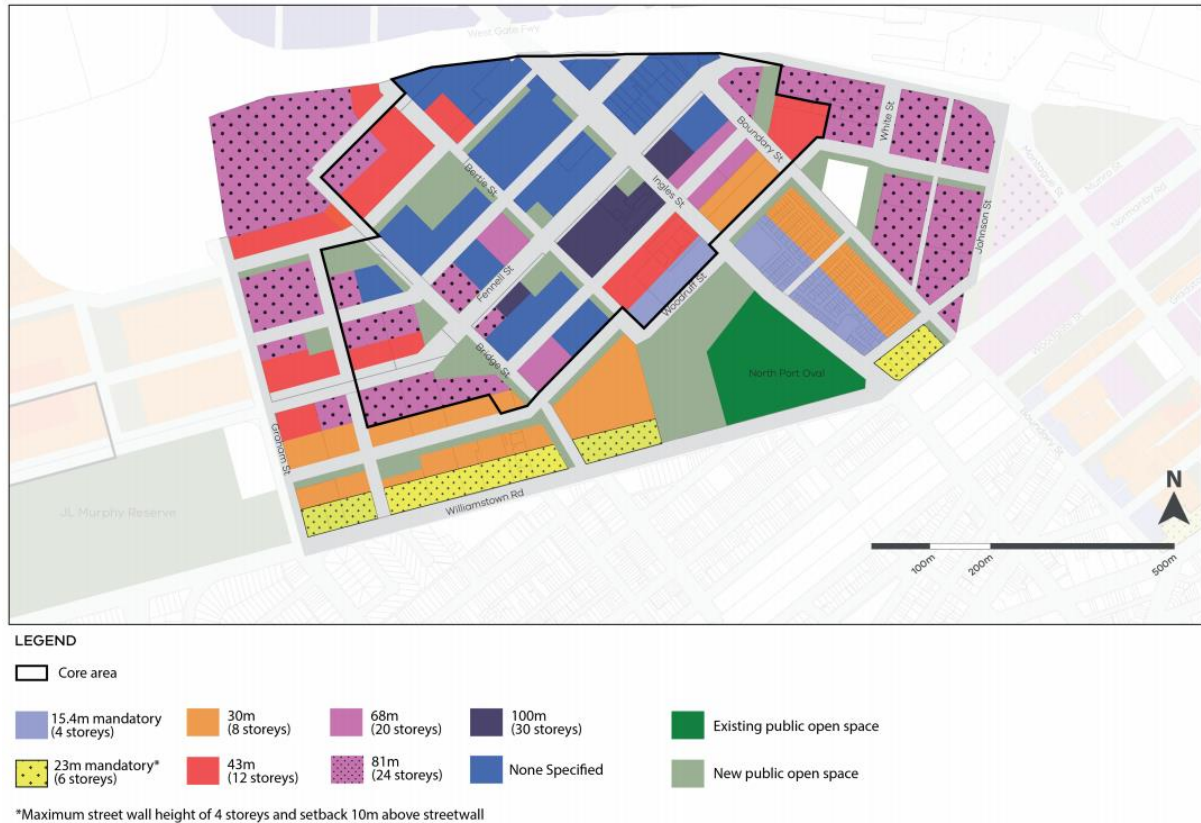


Source: DDO32 (page 17 of 18)



The site has a preferred maximum building height of 43 metres (12 storeys) fronting Bertie Street, with the remainder of the site excluded from a preferred building height.<sup>14</sup>

**Figure 5 Map 2: Building heights**



Source: DDO32 (page 18 of 18)

## (ii) Evidence and submissions

Parties generally agreed that the proposed built form would suitably respond to the preferred future character for the Sandridge Precinct and there was a high degree of compliance with the provisions of DDO32.

DELWP submitted that the proposal generally meets the intent of the Framework, DDO32 and local policy at Clause 22.15, including policies regarding design excellence. It supported the approach to the building design in that it substantially met the preferred maximum building height and setbacks for the podium and would provide a well set back tower to a height of 20 storeys in an area with an unrestricted maximum building height. It was also comfortable with the limited intrusion of the tower element of the building into the preferred 12 metre building height at the front of the site, considering that the overall design presented suitably to Bertie Street.

<sup>14</sup> In general, high-rise building typology is defined in Clause 2.4 as being 16 storeys and taller.



DELWP originally raised concerns regarding whether the proposal would respond appropriately to flood levels but did not oppose the approach ultimately taken by Melbourne Water and Council as outlined in Chapter 7.3.

The Taskforce generally supported the built form response as consistent with the preferred future character for Precinct area S3 of the Core for the Sandridge Precinct including the proposed building typology, street wall, height, massing and setbacks. It also supported the provision of a new roadway on the site at 9 metres wide compared with the preferred 12 metre width indicated in the Framework Plan.

Beyond this, the Taskforce considered that certain improvements should be made to the design of the building to present suitably to the public realm and to meet objectives for high quality design. It suggested consideration be given to three particular aspects of the design:<sup>15</sup>

- extending the brick piers in the podium to the ground floor to assist in “*grounding the building and reinforcing a sense of vertical expression and rhythm along this interface*”
- “*incorporating a centralised break/rebate across the south eastern elevation to assist in breaking down the horizontal mass into two discernible volumes*” specifically relating to the tower component
- refining the use of certain external materials (gold panels) to better align with the “*balance of the architectural language*”.

The Taskforce submitted that other matters of design detail could reasonably be addressed through conditions of the Incorporated Document since they would not have a material impact on either the building envelope or layout.

Council also generally supported the proposed built form as an acceptable site and Precinct outcome subject to conditions.<sup>16</sup> More specifically, Council supported the 5 metre proposed upper level north west setback to the tower on the basis that the preferred 10 metre setback under DD032 would unreasonably constrain development on this site given its dimensions and the need to create a new roadway along the south east boundary. It also noted that the tower is set back 26.7 metres from the front boundary of the site, almost three times the preferred setback in DD032 which would go some way to mitigating the visual impact of the tower.

In terms of overshadowing, Council confirmed that:

*The proposal will change the pattern of shadow falling onto the reserve at 11am, however the new shadow does not fall onto the protected portion of the public open space, thereby complying with the overshadowing requirement at Clause 2.6 of DD032. By midday, the shadow cast by the proposal covers only half of Bertie Street and is acceptable.*<sup>17</sup>

Council called for the inclusion of a provision within the Incorporated Document to ensure that the overshadowing requirements of the new park will be met even if amended plans are

---

<sup>15</sup> Document 2B.

<sup>16</sup> A detailed assessment of the proposal was contained in the officer’s report to the Council meeting dated 25 September 2019. Internal Council referral comments were subsequently provided to the Committee.

<sup>17</sup> Paragraph 19, Submissions at Hearing.

submitted for approval with different floorplates or heights. DELWP supported this approach, although it conceded that other mandatory considerations could also have potentially been re-stated in the Incorporated Document.

The Proponent submitted that the built form response was appropriate to the site and its policy setting. In response to suggestions for potential enhancement, it submitted that it should not necessarily be centralised. It submitted this would assist in retaining the dichotomy between the ‘vertical crystalline tower form’ and the ‘horizontal solid masonry podium form’. For similar reasons, the Proponent did not support the suggestion that there should be a continuous ‘slot’ extending through to the podium since it would diminish its deliberate solidity.<sup>18</sup>

The Proponent also did not support an extension of the brick façade to ground level since there would be potential to shift the residential character of the ‘terrace house row’ and dilute the contrast between the vertical and horizontal building forms. The Proponent offered to work with the Taskforce to arrive at a suitable presentation for the gold cladding.

The Proponent also sought to rely on a written Urban Design Statement prepared by Mr Sheppard of David Lock & Associates. However, this was not circulated to parties in advance of the Hearing and Mr Sheppard was not made available by the Proponent for cross examination. The Committee expressed reservations about accepting this document, but did so since there was no objection from any party and the Proponent was not calling any urban design evidence.

In the circumstances, the Committee has limited the weight given to Mr Sheppard’s opinions<sup>19</sup> and has instead given priority to the views of relevant authorities and relied on its own expertise.

### **(iii) Discussion**

The owner of this site made submissions to the Fishermans Bend Planning Review Panel for Amendment GC81 that were considered in Chapter 7.8 of the Panel’s Sandridge Precinct - Report No. 4 and led to recommendations to amend the draft provisions of the Design and Development Overlay. Essentially, the Review Panel acknowledged the development constraints that would apply to the site given its width, proposed Floor Area Ratios and the location of the proposed roadway.

This Committee is now considering the proposal from the lens of the re-cast Planning Scheme provisions but without the restrictions of the current dwelling density cap.

### **Massing, height and setbacks**

The architecture is composed of two key components - the podium and tower. The podium is a six storey form which will suitably activate Bertie Street and the new roadway, supplemented by a communal outdoor terrace to the podium roof.

---

<sup>18</sup> Document 75.

<sup>19</sup> In particular, it was unable to test his presumptions pertaining to the scope for equitable development of adjoining sites but has considered this issue more broadly.

The design intent of the podium is to create a vertical grain and rhythm reflective of row housing to the podium and a curtain-wall tower to 20 storeys that will reflect the sky, forming a counterpoint to the solid podium.<sup>20</sup>

The Committee is satisfied that this building height, massing and typology responds well to the preferred precinct character for DDO32 and that the design intent can reasonably be achieved.

The proposed building would meet key preferred setbacks to Bertie Street but not for the south east, north west and north east boundaries, where the preferred setback under DD032 is 10 metres.

The Committee supports the dispensation in setback for the south east side of the property given the interface with the proposed linear new park (designated on adjacent land) which will create sufficient spaciousness. Likewise, the setback of 5 metres to the north west and north east boundaries will not have significant amenity impacts on public or private land. In particular, the tower's upper floor setbacks of 5 metres from each of the three property boundaries will achieve an acceptable building envelope from an amenity perspective given the narrow width of the site and the need not to unreasonably constrain development in the tower floor plan. This would represent sufficient compliance with relevant built form objectives and would not unreasonably limit development on adjacent sites.

The podium has zero setbacks from all property boundaries which would necessitate the removal of existing mature trees from the frontage of the property. The Committee notes that the proposal would be consistent with built form objectives under DDO32 seeking a zero lot line for buildings fronting Bertie Street.

### **Overshadowing**

Clause 43.02-2.6 provides that the proposed park to the south west of the subject site must not be overshadowed between 11.00am and 2.00pm on 22 September. The shadow diagrams accompanying the application indicate that this requirement will be met.

There is no expectation in the Planning Scheme that the proposed linear park adjacent to the new roadway will be free from overshadowing and it is inevitable that this will occur to some extent.

DELWP proposed a condition of the Incorporated Document preventing overshadowing the proposed park to replicate existing Planning Scheme provisions.

While the Committee accepts that protection from overshadowing is a key objective of relevant planning provisions (and that they are met in this instance), it does not consider that this outcome should be given priority over the full range of other applicable provisions relating to this development, which may be implied if these provisions were singled out for replication in the Incorporated Document.

If an amended proposal was applied for, the Responsible Authority would need to consider the extent of compliance with all underlying provisions of the Planning Scheme that would otherwise apply, including those relating to setbacks, building height and the like.

---

<sup>20</sup> Architectural Design Report, Document 2D(3a).

### **Facade changes recommended by the Taskforce**

The Committee considers there is already a strong sense of address to the apartments fronting Bertie Street. This would be achieved through the recess in the façade that aligns with the ground floor lobby entry. The stepping in the street canopy will also assist in signalling a sense of address.

The Committee does not consider the design changes sought by the Taskforce, especially a further visual break in the tower element, are necessary to achieve an acceptable outcome.

The narrow width of the tower, broad view lines from the new park to the south and new roadway and park to the south east will ensure the tower is not perceived as a monolithic form. The balcony recesses in the tower would further provide a sense of shadow and depth to break up the façade. From street level, the peripheral awareness of the building will primarily be of the ground floor and podium levels above, with the tower as a secondary element.

The Committee considers that a centralised rebate to the tower would consequentially reduce the floor area of apartments and likely require a redesign due to the impact on internal amenity.

A related issue identified by the Committee is that the sense of address to the apartments in the tower component is less apparent and presents as secondary to the Bertie Street interface. The main lobby entry is further impacted by its close proximity to the truck bay entrance and its associated roller door and footpath crossover. The access for a high percentage of residents and visitors would be via the new roadway, on the south east. From an urban design perspective, the awareness of the primary sense of address would not be achieved through a recess in the tower (as suggested by the Taskforce), but rather at street level and the floors above to the podium.

The Committee recommends the introduction of a more defined recess in the façade of the podium across Levels Ground-6 from the new roadway frontage to create a legible hierarchy for building entry. This could achieve a similar architectural expression, dimension and setback with the building entry recess provided to Bertie Street.

The Taskforce's suggestion to extend the brick piers in the podium to the ground floor is not unreasonable, however the Committee considers that the proposed rhythm and grain could also be adequately achieved by the proposed white honed precast concrete walls, which act as repeating blades to the ground and first floor façade. A key challenge here is the opportunity for daylight penetration to the deep floor plates of the commercial and retail areas, given the south east orientation being predominantly in shade.

### **Opportunities for development on adjoining sites**

The Committee has considered the need to provide scope for equitable development in the Precinct. The proposed road and park to the south east will create a physical buffer to help reduce overshadowing impacts at street level. The setback of the tower 26.7 metres from Bertie Street further mitigates the impacts of overshadowing on the ground floor.

The proposed building setback of 5 metres to the north west and north east boundary will require any future development to respond appropriately to cumulative impacts in terms of

privacy and amenity, including a northern aspect for daylight and sunlight to the proposal's apartments and communal areas.

The Committee considers that this could be managed reasonably through appropriate design, especially considering that the land to either side is more sizeable and has scope for a more tailored design response.

#### **(iv) Conclusion**

The Committee concludes:

- The proposal will contribute suitably to the preferred built form character for the Sandridge Precinct and will provide a hybrid building form as sought for Precinct S3.
- The proposal is highly consistent with particular elements of DDO32 that relate to built form and will result in a building of appropriate height, massing and setbacks.

### **4.3 Layout and detailed design**

#### **(i) Design excellence**

Design excellence underpins aspirations for future development of the Precinct as outlined in the Framework. It is also a design objective for the Sandridge Precinct with policy at Clause 22.15-4.4 providing:

##### ***Design excellence***

*It is policy to:*

- *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 to assess proposals 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.*

#### **Evidence and submissions**

The Proponent submitted that the proposal represented design excellence.

Council submitted that some elements of the design did not align with expectations of design excellence but suggested that these matters could be addressed through conditions, such as addressing heat gain as a result of the extent of glazing.

#### **Discussion**

The aspiration for design excellence is a strong thread through policy and the relevant controls for all new development in Fishermans Bend. That said, it is one element of policy that needs to be balanced against the full suite of policies that apply.

The Committee is of the view that architecturally, the design represents a satisfactory response to its physical and policy context but does not achieve design excellence.

In its opinion, the achievement of design excellence would necessitate greater consideration of internal amenity of apartments, most likely through a single loaded corridor to the tower rather than a double loaded corridor. This would have supported natural cross ventilation to all apartments and improved access to daylight but would require a fundamentally different design scheme. In addition, the high proportion of south facing apartments presents as a constraint to achieving high internal amenity for all apartments.

Likewise, the proposal remains reliant on performance glazing for environmental sustainability rather than offering an integrated design solution (such as one which would offer solar control through external shading devices, material selection and architectural expression).

However, on balance, the Committee is satisfied with the design response and is not recommending changes to address this particular objective.

#### **(ii) Retention of design team**

Council's draft of the Incorporated Document dated May 2019 suggested retention of the Design Team throughout the design development and documentation phases of the development, and up until completion. This condition was not pursued at the Hearing.

The Committee asked Council why this condition was no longer part of the draft Incorporated Document and how imperative it was. Council responded that while it was no longer included in the discussion version of the Incorporated Document it would not be opposed to its inclusion.

The Committee supports the aspirations for high quality design and delivery of development within the Precinct. Post approval, measures to value manage development may ultimately compromise the quality of materials and finishes, design intent, internal amenity and environmental performance. A condition requiring retention of the architectural team may assist in ensuring the design intent is fully delivered, especially where this represents design excellence. Another reason such a condition may be pursued is where there is a particular skill set within the architectural team that should be retained throughout detailed design and delivery of the project.

On balance, the Committee considers that the complexity of the architectural design in this instance is not sufficient to warrant this condition being included.

#### **(iii) Better Apartment Design Standards (Clause 58)**

##### **Evidence and submissions**

Early in the hearing Mr Naughton on behalf of the Proponent submitted that Clause 58 did not apply, however, later acknowledged that the provisions did apply. He referenced this in the written submission for the Proponent but submitted that *"the proposal responds appropriately to and achieves a high level of compliance with clause 58"*.

DELWP advocated for the standards in Clause 58 of the Planning Scheme to apply to the proposed development. However, it submitted that the Committee does not need to make a

ruling on whether transitional provisions technically apply because it is dealing with a planning scheme amendment rather than a permit application. Council also submitted that the transitional provisions did not apply since the proposal was no longer an application for planning permit.<sup>21</sup>

Mr Watters confirmed that a key consideration is consistency with policy, with a number of provisions supporting the application of Clause 58 standards. DELWP submitted that, as a minimum, the Committee should apply these provisions to the proposal, especially within a ‘flagship urban development precinct’.

That said, the proposal was considered by all parties to demonstrate substantive compliance with Clause 58.<sup>22</sup>

However, Council raised specific concerns regarding the design of apartments such as 3A and 3C due to the room depth from glazing, single aspect nature of these rooms and the recessed location of the glazing along interior edge of an inset balcony.

Following submissions on behalf of DELWP, the Proponent confirmed that apartments 1D and 1E would comply with Clause 58.07-1 regarding the functional layout and size of the bedrooms.

## **Discussion**

The Committee agrees with DELWP and Council that Clause 58 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.

The Committee regards these provisions as providing current minimum industry wide standards for the assessment of new apartment buildings. It is entirely reasonable to reference these standards when assessing a planning scheme amendment for the Precinct given stated planning scheme objectives which include a high standard of internal amenity and public realm contribution for all new development in Fishermans Bend.

In addition to issues raised by DELWP and Council, the Committee has concerns regarding the internalised room to apartment 3A and its intended use. This can be addressed through a condition requiring compliance with the Standards of Clause 58.

The Committee records the Proponent’s advice as reflected in the plans that air conditioning condensers will be housed in banks behind the lift core on each level. The Committee observes that this design response is appropriate and should be reinforced as a condition of the Incorporated Document.

---

<sup>21</sup> Mr Watters for DELWP observed that, as noted in the Urbis report submitted with the Amendment, the original application for planning permit was ‘significantly modified’ and was resubmitted to DELWP in September 2017. Amendment VC136 was gazetted on 13 April 2017, whereby an amended application that triggered section 50(7) of the Act, would not enjoy the transitional provisions alleviating the need to comply with Clause 58.

<sup>22</sup> An assessment was provided by DELWP to the Committee in Document 47b.



**(iv) Dwelling diversity**

All authorities supported the proposed mix of 1, 2 and 3 bedroom apartments and the number of 100sqm or larger dwellings, including 3 bedrooms apartments for families. The proposal provides for 165 dwellings, of which 34 dwellings are three-bedroom dwellings – equating to 20% of the dwelling stock.

The Committee considers that this dwelling mix is appropriate and will contribute to housing diversity objectives consistent with policy objectives for the Sandridge Precinct in Clause 22.15.

**(v) ‘Dual Key’ apartments**

DELWP raised concerns about the design of apartment types 3C and 3D (DWG number 1518 – A 4202 D) where there were kitchenettes in the foyers to the bedrooms and the opportunity for a dual key arrangement. It was concerned about the potential for these apartments to be sublet as separate tenancies and proposed they be removed.

The Proponent explained that the dual key apartments in other projects it had developed tend to be the most heavily occupied because they offer flexible living arrangements, especially for multi generational families. It sought to retain the functionality of these apartments as designed.

The Committee does not consider it necessary for one kitchenette to be removed from each dual key apartment as proposed by DELWP. On the contrary, the provision of two sets of cooking facilities potentially provides a more diverse housing offer as sought by policy. For example, it would not be out of the question for two sets of unrelated tenants to share one dual key apartment on the basis that it is more cost effective and they agree to share some facilities in common, such as a balcony. In addition, there was no suggestion by DELWP that such an arrangement would put unacceptable pressure on the overall provision of communal open space, car parking or the like for the development as a whole.

However, the setback of the kitchenettes from the glazing at over 9 metres in the dual key apartments would result in poor natural daylight and does not meet the standards of Clause 58. The Committee is of the view that apartments designed as dual key should not be of lesser amenity to that required of two single bedroom dwellings by comparison. Further design development should be undertaken to resolve these issues.

**(vi) Noise**

**Evidence and submissions**

A key unresolved issue at the Hearing related to noise attenuation. DELWP and Council advocated for noise attenuation levels inside the proposed apartments that were equivalent to internal noise standards required under Clause 58 of the Planning Scheme. DELWP submitted it:

*... considers that the current state of Fishermans Bend does not provide a basis for watering down the delivery of the vision, particularly at the outset. Moreover, Standard D19 is specifically intended to apply to areas that are*



*located close to industrial zones and major transport infrastructure – i.e. areas in which amenity might already be expected to be degraded.*

Council observed that that the site is located within 140 metres of the West Gate Freeway to the north and is subject to the noise influence areas as detailed in Clause 58.04-3.

The Proponent submitted that sufficient acoustic amenity would be provided to the future apartments if the recommendations of its acoustic report were pursued. More specifically, it explained that the proposal as designed would meet the standard in Clause 58 for living rooms, but not for bedrooms.

### **Discussion**

The Committee is of the view that as the site is within a ‘noise influence area’ that both living areas *and* bedrooms within the building should be designed and constructed to achieve the noise levels in Clause 58 which represent current accepted standards for new development. This is especially the case given the high standards of design expected of new buildings in the Precinct. The need for appropriate noise mitigation was reaffirmed during the Committee’s inspection of the subject site and surrounds and the observations of the noise level impacts from the West Gate Freeway.

The Committee also noted that there are seven apartments that would directly access the podium car park across levels 2 and 3. To protect amenity and to prevent noise and pollution, the Committee recommends that an air lock is provided through the addition of a secondary door.<sup>23</sup>

### **(vii) Wind**

DDO32 includes a design objective for the Sandridge Precinct which is:

*To ensure built form protects sunlight penetration to identified public open spaces, streets and laneways, and facilitate comfortable wind conditions, to deliver a high quality public realm.*

Clauses 2.5, 2.8 and 2.9 of DDO32 also include wind as a consideration under built form, seeking:

- building heights that limit impacts on the amenity of the public realm as a result of overshadowing and wind
- setbacks above street walls that help deliver comfortable wind conditions in the public realm
- side and rear setbacks that mitigate wind effects on the public realm.

Specifically, Clause 2.11 of the DDO Schedule addresses Wind effects on the public realm to:

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

---

<sup>23</sup> The project architect confirmed that this had originally been provided but could be reinstated.

## Discussion

Council's urban designer expressed concerns about the wind analysis for the proposal undertaken by Windtech and recommended further wind testing be carried out to meet prescribed wind impact criteria to the ground level footpaths, podium and roof.

The Committee observes that the implications of wind impacts on the final building design are yet to be fully tested. The Proponent's wind report recommended ameliorative treatments as follows:<sup>24</sup>

*... inclusion of porous screens (approximately 20-30% porosity) along the north-eastern façade of the podium. These will be located along the eastern corner balconies for Levels 2, 5 and 6.*

*... chamfer ... the southern and western podium corners at Ground Level.*

*... setback ... the Ground Level south-western façade.*

The recommended measures have not yet been fully implemented in the submitted design from an architectural perspective. Further testing and consideration of the amenity to the future park and common spaces within the building is still required. The wind report's suggested treatment includes the retention of the existing significant trees to Bertie Street which are now proposed to be removed. A wind assessment of the roof top from an amenity perspective was also recommended.

The Committee considers that further work is required to resolve this issue since there is a disconnect between the recommendations of the expert assessment and the design of the development for which approval is sought.

While it may be possible to address this matter during the implementation of the conditions of the Incorporated Document if approved, it is unclear as to the extent of physical or other measures required to achieve an acceptable design to suitably mitigate wind impacts as they have not yet been integrated into the architectural design. They will also need to be confirmed as fit for purpose.

Therefore, the Committee considers it preferable that further assessment and consequential work be undertaken before the Amendment is gazetted. The amended condition of the draft Incorporated Document (Clause 4.34) will only be required if the Committee's recommendation to undertake this work before gazettal is not adopted.

## (viii) Public realm

### Evidence and submissions

Council identified concerns with the recessed doors at the ground level from a security, safety and maintenance perspective and submitted that the setback to the entrances should be reduced. Council also raised concerns with the splayed window line to the ground floor tenancy given its southerly orientation, extent of shading and limited public amenity.

---

<sup>24</sup> Windtech WC895-09F02 (REV1) – WE Report May 28 2019, Document 2D(1u).

Mr Naughton observed that Mr Sheppard shared the view that the entrances were too recessed but agreed that this issue could be addressed through reducing the setback to the entrances. The Proponent also explained that the corner splay to the retail tenancy fronting Bertie Street was proposed in response to the initial wind report.

### **Discussion**

The quality of the public realm is supported by a continuous street canopy that will provide weather protection, setbacks to retail spaces to encourage outdoor seating and a level of activation to both street frontages. The ability to access bicycle parking directly from the street will also enhance amenity to the public realm and for the apartments. Further design development of the truck bay entry, roller door position and associated services (such as fire services) is required to reduce safety and visual impacts on the public realm.

One additional challenge for the ground floor condition was to ensure an integrated approach to compliance and mitigation of flooding impacts but this has been managed acceptably in the design.

The Committee observes that the recessed apartment doors, bike store entrance, truck bay entry, lobby entries to Bertie Street and the new roadway to the Ground Floor as designed may present a safety risk. It shares Council's view that changes are required to reduce the depth to the entry areas to address Crime Prevention through Environmental Design.

The Committee also observes that the retail tenancy is south facing, in shadow and lacking external amenity - a greater focus on the internal area is required. It suggests that a squared off corner would offer more retail area and provide improved definition to the building edge.

To support 24 hour surveillance of the street, a line of sight from the concierge area on the Ground Floor to the street is also recommended to improve safety and surveillance.

Landscaping will need to be subject to Council's satisfaction through the endorsement of an updated Landscaping and Public Realm Plan for the communal areas on the podium and rooftop.

### **(ix) Access to communal space**

A further issue raised in the Council officer's assessment was the lack of direct access from the apartments in the podium to the communal open space; however in response to questions from the Committee during the Hearing, Ms Marson advised that Council was not pursuing this issue.

Residents with dwellings accessed via the Bertie Street entrance would need to exit the building and go through the residential entrance on the proposed new roadway to access communal facilities including the gym, outdoor terraces and pool.

On balance, the Committee does not support the option of extending the lift core for apartments within the upper podium to the Level 7 communal area since this would negatively impact the amenity and functionality of the communal area. Reasonable access to this area and the rooftop communal facilities is already provided from the lift servicing the tower and car park.

**(x) Materials, colours and finishes**

DDO32-2.15 notes that façade finishes should:

*Provide visual interest on all facades and avoid blank facades.*

The materials, colours and finishes include face brickwork, powder coated windows and metal balustrades, performance glazing, aluminium spandrel panels, 'Golden Bark' Archclad panels and honed precast concrete columns. The Committee is satisfied that this selection offers a balanced and restrained palette, consistent with the design intent.

The Committee requests further detail on the truck bay roller door entry, with the intent to minimise its visual impact on the streetscape.

The Taskforce had requested that the use of the gold panels in the façade be further refined. The Committee appreciates the intent of the Taskforce, but does not regard this as a priority. It is of the view that it is sufficient that the overall façade composition will need to be subject to the satisfaction of the Responsible Authority.

**(xi) Conclusions**

The Committee concludes:

- The design response falls short of the aspiration for design excellence for buildings in the Precinct but would achieve a positive integration with the public realm subject to modifications to the design as recommended in conditions of the draft Incorporated Document, including:
  - enhancing pedestrian safety around entrances to the building
  - reducing the visual impact of the access to the truck bay and associated roller door
  - improving surveillance between the concierge area and the street
  - locating all air-conditioning condensers behind the lift core (or otherwise concealed from public view).
- Referred planning scheme amendments for apartments should be evaluated by reference to the provisions of Clause 58 of the Planning Scheme which represent minimum industry standards.
- The development as proposed would achieve partial compliance with the provisions of Clause 58 of the Planning Scheme but further acoustic attenuation is required in the apartments to achieve appropriate levels in the bedrooms. The requirements of the draft Incorporated Document proposed by DELWP set appropriate noise levels:
  - not greater than 35dB(A) for bedrooms, assessed as an LAeq, 8h from 10pm to 6am.
  - not greater than 40dB(A) for living areas, assessed LAeq, 16h from 6am to 10pm.
- Other modifications to improve the amenity and functionality of the building for users should include:
  - the provision of an airlock to apartments located in the podium
  - modifications to the internal layout of apartments to meet daylight standards
- The implications of wind mitigation on the design of the building should be resolved before the Amendment is gazetted. More specifically, the further work that parties are proposing in Clauses 4.31 and 4.32 of the draft Incorporated Document should be undertaken now to understand the functional and built form implications for the proposal.

## 4.4 Environmentally sustainable development

### (i) Relevant policies, strategies and planning scheme provisions

The purpose of CCZ1 includes:

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

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

The Framework establishes eight sustainability goals, including being a 'climate resilient community' and 'a low carbon community'.<sup>25</sup> Objective 7.2 seeks to:

*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.*

More specific policy guidance as to sustainability objectives sought is contained in Clause 22.15-4.5, consistent with the policy basis to:

*Creat[e] a benchmark for sustainable and resilient urban transformation that supports the creation of a climate adept, water sensitive, low carbon, low waste community.*

Residential development should achieve an average 7 star NatHERS rating for each building. A minimum 5 Star Green Star Design and As-Built rating (or equivalent) is also mandatory under Clause 4.3 of Schedule 1 to the Capital City Zone. Other objectives for Energy Efficiency are provided in Clause 58.03-1.

### (ii) Evidence and submissions

A Sustainability Management Plan prepared by Ark Resources (SMP) was submitted with the amendment request and proposed the following key sustainable design measures:<sup>26</sup>

- *Rainwater harvesting system for toilet flushing and irrigation*
- *A 26 kW solar photovoltaic system*
- *High performance glazing and energy efficient building services, appliances and fixtures*
- *Environmentally preferable internal finishes.*

Council's Sustainable Design Officer raised concerns that:

*The SMP does not address the National Construction Code or NatHERS (other than the cooling load provision) standards recommended in the Fishermans*

---

<sup>25</sup> Page 62.

<sup>26</sup> Document 2D(1n), pages 24-25.

*Bend Local Policy at Clause 22.15 of the Planning Scheme, alternatively stating the development would achieve: The SMP states the proposal would achieve:*

- *A FirstRate 5 energy rating of 7.0 stars*
- *A maximum annual cooling load of 30MJ/m<sup>2</sup> in accordance with the Victorian Better Apartment Design Standards (December 2016) - Climate Zone 21*
- *A Green Star 5 Star Rating.*
- *A NABERS Energy 5 Star rating, which is defined as ‘Excellence’*
- *The Best Practice standard for stormwater quality in accordance with Clause 22.12 (WSUD) of the Planning Scheme.<sup>27</sup>*

Council’s officer suggested a 10% buffer above the minimum 60 point Green Star 5 Star Rating, “as outlined in the Arup Report Fisherman’s Bend Review of Sustainability Standards refer Appendix A for 5 star Pathway for 66 points”.<sup>28</sup> Council’s officer also raised concern with the heat gain that would result from the extent of glazing and sought for this to be addressed by a condition.

At the Hearing, Council explained that its concerns have now been adequately addressed in Clauses 4.42 to 4.50 of the draft Incorporated Document. Likewise, DELWP was satisfied that the inclusion of conditions in the draft Incorporated Document relating to the Green Star Rating as prescribed by the zone would be sufficient.

### **(iii) Discussion**

It appears to the Committee that a relatively high degree of reliance has been placed by parties on the consultants’ reports prepared for the Proponent pertaining to Environmentally Sustainable Development. The parties expect further refinement to occur through the implementation of the conditions of the draft Incorporated Document.

However, it is unclear from the report and submissions on behalf of the Proponent *how* the proposal will achieve the 10 points for the Innovation category which, in the Committee’s understanding, is typically hard to achieve. A further response was submitted by Ark Resources which reduced reliance on the Green Star Innovation category and proposed a 3 point buffer elsewhere.<sup>29</sup>

In addition, the Committee regards the reliance on performance glazing to the tower for heat control as a long term design risk and not reflective of design excellence. The Framework refers to the need to consider a built environment that is “*resilient to heat waves*” and a design approach that is “*adapted to a warming environment*”.<sup>30</sup> In particular, the north west and north east elevations raise concerns in terms of heat loads, safe occupancy and resilience due to peak energy demands.

These issues require resolution through significant redesign of the facade. The Committee agrees with Council that this project should seek a certified Green Star rating, as per the

---

<sup>27</sup> Officers report to Council dated 25 September 2019, page 50.

<sup>28</sup> Refer City of Port Phillip Internal Referral Comments, Document 7a and also ARUP report.

<sup>29</sup> Document 102.

<sup>30</sup> Pages 25 and 62 respectively.

mandatory condition in CCZ1, rather than just benchmarking against the Design and As-Built rating tool. Only a certified Green Star rating will ensure fully independent, verified assurance. The Committee agrees with the *Arup Fishermans Bend Review of Sustainability Standards 2018*, where a 10% buffer above the minimum 60 points was considered an appropriate pathway to meeting the benchmark of 5 Star Green Star. This recommendation is consistent with what the Committee understands is sought by the Green Building Council of Australia in practice.

The Proponent must register the project with the Green Building Council of Australia to ensure the development will meet the 5 Star Green Star Design and As-Built v1.3 rating. The Proponent should then submit all relevant documentation consistent with the proposed building design for a Design Review Certified Rating.

The Design Review Certified Rating is not a standalone certification, rather it is as an interim step towards the As-Built certification. Submissions for a Design Review Certified Rating can be lodged early in the design process and as soon as the required evidence is available. This can be lodged at the time of the design brief or design development. It is therefore an appropriate mechanism to demonstrate compliance as part of the planning approval process.

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.

#### **(iv) Conclusions**

The Committee concludes:

- The project should seek a certified Green Star rating, as per the mandatory condition in CCZ1.
- The Green Star rating should allow for a 10% buffer and achieve 66 points.
- To meet the aspirations of the Framework, the facade needs significant design development to achieve an approach that will be resilient to heat waves and that is adapted to a warming environment.



## 5 Land use

### 5.1 The issues

Key issues include:

- Whether the proposal has provided sufficient employment generating land use having regard to relevant policy for the Sandridge Precinct.
- The nature of the Build to Rent proposal and how central this is to the permission sought.

### 5.2 Extent of employment generating uses

#### (i) Relevant policies, strategies and planning scheme provisions

In summary, at state level, policy seeks to:

- provide for a strong and innovative economy; contribute to the economic wellbeing of the state and foster economic growth by facilitating decisions so that each region may build on its strengths and achieve its economic potential (Clause 17)
- protect and strengthen existing and planned employment areas and plan for new employment areas (Clause 17.01-1S)
- plan for the redevelopment of Major Urban Renewal Precincts in and around the Central City to deliver high quality, distinct and diverse neighbourhoods offering a mix of uses (Clause 17.01-1R)
- ensure there is an adequate supply of commercial land in appropriate locations (Clause 17.02-1S).

At the local level, policy seeks to encourage the co-location of housing and employment to maximise accessibility to public transport. In terms of Fishermans Bend and more specifically the Sandridge Precinct, Clause 21.01-2 (Strategic Approach) seeks to maximise job opportunities in a changing economy through objectives that include creating opportunities for high intensity commercial uses. This objective is supported by Clause 21.04-3 (Office and Mixed Activity Areas) which identifies as a key issue that the Sandridge Precinct is an area suitable for significant commercial development.

Clause 21.06-8 identifies key planning challenges for Fishermans Bend, including ensuring the creation of employment opportunities, with a focus on the Sandridge Precinct as part of an expanded Central City with large format office, retail, education, health, entertainment, cultural activities and other complementary employment creating uses. A key planning challenge is:

*Managing the transition of Fishermans Bend Urban Renewal Area from a principally industrial area towards a genuine mixed use environment which provides for co-location of jobs with new dwellings.*

Clause 22.15 of the Planning Scheme implements the vision as set out in the Framework, for Fishermans Bend to be a “thriving place that is a leading example for environmental sustainability, liveability, connectivity, diversity and innovation” that will accommodate 80,000 residents and 80,000 jobs.



Objectives of Clause 22.15 relevant to employment include:

- *To create a prosperous community that supports diverse employment opportunities across all precincts that build on proximity to the Central City and Port of Melbourne.*
- *To promote employment generating floor space in all precincts that supports growth in the knowledge, creative, design, innovation, engineering, and service sectors.*

Clause 22.15-4 sets out the policy for employment floor area and states that development in a Core area in the relevant Map in Schedule 1 to the Capital City Zone should provide floor area for employment generating uses. It sets a preferred minimum plot ratio for use other than dwellings.

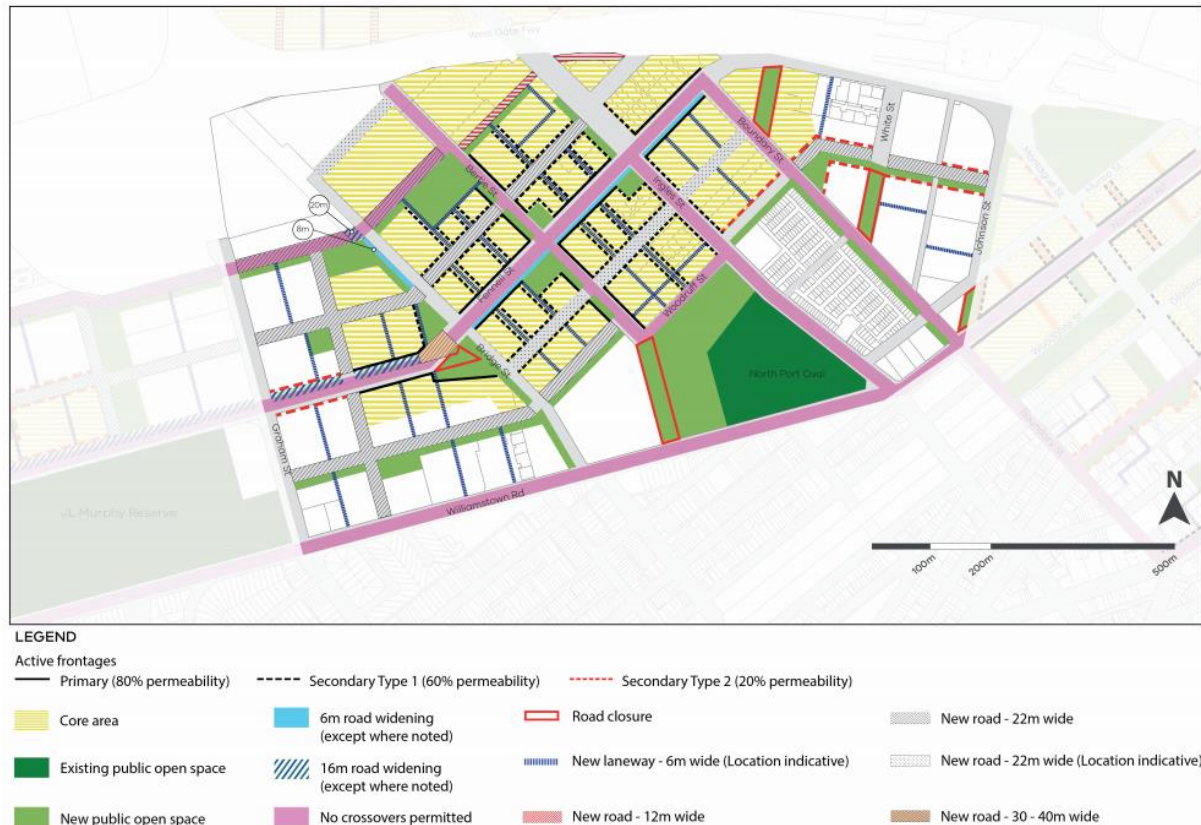
The land is included in a Core area. The preferred minimum plot ratio for Sandridge that is specified in Table 1 to the policy is 3.7:1.

The policy includes matters that the Responsible Authority will consider, as appropriate, in applications where development in the Core area provides less than the minimum plot ratio. These include:

- *Whether the built form envelope available on the site makes it impractical to provide the minimum plot ratios.*
- *Whether the application is associated with the continued operation or expansion of an existing employment or residential use on site.*
- *Whether the buildings floor to floor heights, layout and design will facilitate future conversion from residential to employment generating uses or from car parking areas to other employment generating uses.*
- *Whether the development can demonstrate that it is contributing to the employment objectives of this policy while providing less than the minimum plot ratio.*

Land use and urban design outcomes for the Sandridge Precinct are set out in Map 2: Sandridge Urban Structure as shown in Figure 6.

**Figure 6 Sandridge Urban Structure**



Source: Schedule 1 to the Capital City Zone

Relevant objectives in relation to employment in DDO32 include:

- *To ensure in the Core area a mix of mid-rise and high-rise podium towers that support significant commercial buildings ...*
- *To encourage adaptable floorspace to facilitate a reduction in car dependence and an increase in commercial floor space over time.*

Clause 2.14 of the Schedule refers to 'adaptable buildings' and built form outcomes as follows:

*Buildings that:*

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

*Car parking that:*

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

Table 9 sets out building elements and adaptability opportunities, including floor to floor heights, adaptable dwelling layout and minimal load bearing walls to maximise flexibility for retail or commercial refits.

The Framework sets out the following key vision at page 21 for the Sandridge Precinct:

*Sandridge is the largest of the capital city zoned neighbourhoods and will encompass a diverse range of characteristics. It will become one of Melbourne's*

*premium office and commercial locations, centred around public transport connections providing excellent access to the CBD.*

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

The proposal includes 775sqm of non-residential floor area at ground floor comprising 317sqm of commercial floor area and 458sqm of retail floor area. The six commercial tenancies range in size from 34-79sqm. This would equate to a plot ratio of 2:1:1 (exclusive of the land set aside for the new roadway), compared with the preferred plot ratio of 3.7:1 in policy at Clause 22.15-4.1.

All parties to the Amendment proceeding supported the proposed land use mix. None took issue with this deviation from policy relating to employment generating uses.

### **Authority positions**

DELWP acknowledged that the plot ratio is a discretionary target and accepted a reduction as acceptable in this instance. In forming this view, it acknowledged the size of the site and its locational constraints; short-term market conditions; the contribution of the development to delivering urban renewal in the first stage of the Precinct's transition from an industrial area; the contribution to employment objectives; and the scope to adapt car parking spaces in the future. It explained that the reduction in commercial floor space relative to the preferred ratio was justified in particular by:

*The locational attributes of the subject site, which is located some distance from anywhere it is likely to attract passing trade; and*

*The early stage in the development cycle of Fishermans Bend at which time this development is occurring, noting that the 'critical mass' of consumers is not yet installed in Fishermans Bend.<sup>31</sup>*

Mr Watters on behalf of DELWP noted that there was simply not the demand at this stage for a higher level of employment generating use and submitted that, whilst the Department did not accept all of Mr Quick's evidence, it considered that a reduction in the floor space ratio was appropriate for the site at this stage of Precinct renewal.

The Taskforce submitted that the only reason that it supported a reduced floor space ratio in this instance was that it agreed that the site area made the *"built form envelope challenging to deliver a practical floorplate for land uses other than dwellings"* and noted that the development allows for the potential future conversion of car parking areas to commercial floor space.

The Taskforce submitted that the strategic basis for the non-residential plot ratios is contained within the *Fishermans Bend Urban Design Strategy, Hodyl & Co, 2017* which adopted projected job numbers for the Precinct as recommended by SGS Economics and Planning. It also submitted that the strategic basis was tested during the Amendment GC81 process and that Mr Quick had not referred to either report in his evidence to this Committee but had used his own calculations.

---

<sup>31</sup> DELWP Part B submission, paragraph 5(c).

The Taskforce was somewhat critical of Mr Quick's evidence that 'pushing development in Core areas to provide a minimum floor area for non-residential uses will be a bad result in the longer term'. It submitted that:

*allowing early residentially dominated development schemes to 'crowd' out future opportunities for large-scale commercial offices to locate in Fishermans Bend in the medium term would be a much worse outcome.*

The Taskforce submitted that the Framework is a long term strategy and that it is important to preserve commercial land. Its submission noted the locational attributes of the subject land, being approximately 200 metres from future heavy and light rail access points, and the position of the Department of Transport at the Public Briefing held by the Committee that it was finalising its business case for tram and active transport links. Mr O'Neill on behalf of the Taskforce submitted that such provision is "*clearly not decades away*".

The Taskforce cited the example of the current proposal for the adjoining land at 277-281 Ingles Street, Port Melbourne and advised the Committee that it included substantial non-residential floor space. Mr O'Neill advised the Committee that had the proponent sought a dispensation from the floor space ratio in that instance, the Taskforce would have opposed it.

The Taskforce suggested that if the Committee remained concerned about the provision of employment generating floorspace, some townhouses within the podium level could potentially be designed to include home offices. The Proponent opposed this suggestion, relying on Mr Quick's evidence that it was sufficient that spaces within the development were adaptable and able to be converted in future if there was market demand. It emphasised that flexibility was appropriate at this point in time.

In response to questions by the Committee, the Taskforce confirmed that it considered the Build to Rent scheme as a residential use rather than a commercial use.

Council supported the provision of commercial floor space at the amount proposed on the basis of the smaller size of the site, its physical constraints and its locational limitations. It also submitted that the floor space was appropriate on the basis that the retail and commercial tenancies would activate Bertie Street and the new roadway.

Council agreed with Mr Quick's evidence that there is insufficient market demand at present to support a larger retail or commercial offer on this site but Ms Marson on behalf of Council submitted that its position may be different if the land was being redeveloped "*further down the track*".

### **Proponent submissions and evidence**

The Proponent submitted it was appropriate for the Committee to support a proposal that did not meet the preferred plot ratio for employment generating uses in this instance, relying on the expert evidence of Mr Quick. It also submitted that the Build to Rent model would generate employment which is closely aligned with the policy basis for Fishermans Bend emphasised within both Clause 22.15 and the Framework. It emphasised the ability to convert car parking areas to future commercial or office use if required.

In giving evidence to the Committee, Mr Quick observed that the plot ratio set out in the planning scheme would require the provision of 7,850sqm of commercial floor space on the

subject land and that 2,000,000sqm of commercial floor space would be achieved overall if every site in the Precinct delivered commercial floor space to the preferred plot ratio. Of that, 1,300,000sqm of floor space would be provided within the Sandridge Precinct, which would be close to three times that set out in the Framework.

Mr Quick noted that the requirement in the policy is not mandatory; regarding its realisation a long-term proposition and that there needs to be an ‘interim step’ to achieve that vision in time. In his view, it was not necessary for every site to meet the plot ratio - noting that sites are not homogenous with some more suited to providing commercial floor space. To illustrate this, he referred to the proposed development of the adjacent site at 277-281 Ingles Street, Port Melbourne. In his view that proposal “*presents as a major competitive location for retail and commercial development*”, due to its proximity and larger scale. He advised that the proposed uses would benefit from exposure to future high traffic volumes.

Mr Quick considered the demand for future retail space and concluded that the capacity for retail land use in the Sandridge Precinct will only emerge in the longer term when there is a critical mass of residents, workers and visitors to support development. He concluded that on the basis of proposed developments (including the subject land, the adjacent property to the south and one in Johnson Street, South Melbourne) that the immediate catchment of residents over the next 10 years would only support a convenience grocery store and a couple of shops, such as take-away food or small restaurants. He also observed that the local workforce currently does not generate significant demand.

In terms of commercial floor space need, Mr Quick observed that estimating demand for commercial floor space over a long period of time is difficult and that demand is not simply a function of the resident population. He observed that Southbank and Docklands have taken over 20 years since initial development to yield high levels of office accommodation and that critically these were supported by rail services. Mr Quick’s evidence was that he expected the Sandridge Precinct to take as long to reach capacity, possibly not until after a train line is delivered, “*which is not budgeted for by the Government at this stage.*”

He regarded the proposed commercial floor space as more than sufficient to meet Precinct needs over the next 10 years. In his view, to provide more on this site would lead to potentially vacant tenancies based on lack of demand and locational constraints at the end of a dead end street which he concluded is “*not an ideal planning outcome*”.

Mr Quick also observed that the subject land is at the edge of the Core area and that one would expect greater density to be located around the rail corridor to the south of the subject land. He also observed that the Build to Rent model has the advantage of being able to meet commercial needs at a future time through the conversion of the car parking areas, and that it generates its own employment through the management and maintenance of the building.

In cross examination by Mr Watters, Mr Quick confirmed that the Committee should not take his evidence to suggest that the plot ratio is inappropriate, but that it should not be “*slavishly applied*”.

In response to questions by the Committee as to the attractiveness of the commercial floor space fronting the new road at ground level, Mr Quick responded that the spaces would not

be difficult to lease on the basis that they are located at ground level and offer flexible spaces for small or home offices.

Mr Naughton for the Proponent submitted that the proposal would generally comply with the employment objectives of the policy at Clause 22.15-4.1 in that the Build to Rent model would generate employment above that of a standard apartment building by virtue of its management, concierge, cleaning, maintenance staff and the like, even though this was confirmed as a “modest” contribution.

Mr Naughton and Mr Guthrie, the development manager for the Proponent also explained that the practicality of converting the car parking for future commercial floor space was more likely in a Build to Rent model. In particular, Mr Guthrie noted that the Framework includes a strategy that car parking remain in common property<sup>32</sup> to “*future proof*” its potential for reconfiguration which would be consistent with the proposal.

### **(iii) Discussion**

#### **Does the proposal meet policies pertaining to employment generating uses?**

A key consideration is the policy vision for the Sandridge Precinct as one of Melbourne’s premium office and commercial locations. While mixed use development is encouraged throughout Fishermans Bend, it is significant that policy for this Precinct expressly seeks a high proportion of employment generating land use.

All parties accepted that the preferred commercial floor plot ratio would require the provision of 7,850sqm of employment generating floor space for this development, whereas only 753sqm is proposed; a substantial shortfall. This includes the provision of two retail tenancies fronting Bertie Street and smaller commercial spaces fronting the new roadway.

The Committee accepts that the proposed commercial floor space will contribute in some way towards employment objectives outlined in Clause 22.15-4.1, however it is clear that it falls well short of what is anticipated for this particular Precinct.

The Committee agrees with the Taskforce that the Build to Rent model is a residential land use that does not satisfy the preferred employment generating uses ratio, although there are flow-on employment benefits that will likely derive from the management and maintenance of the building.

To this extent, the proposal does not comply with relevant policy.

The Committee is not persuaded that it would be appropriate for it to revisit the plot ratio in the Planning Scheme. This was the outcome of a highly considered process with the benefit of detailed evidence.

That said, the Committee accepts that the plot ratio is discretionary. There may well be circumstances where the preferred plot ratio cannot be provided for a particular site, or a site may not be a suitable candidate for a large amount of employment generating land use, whether by virtue of its size, location or site specific characteristics.

---

<sup>32</sup> Strategy 1.6.2 of the Framework suggests to design car parks to allow for future conversion to alternative uses and subdivided as common property (not individually titled) to be managed by the owners corporation and leased to property owners.



In this particular instance, the Committee accepts that the site is not ideally configured or located to accommodate a high proportion of employment generating land use, but it was not suggested that it is fundamentally unable to. Rather, the Proponent and its expert suggested that there is no current commercial appetite beyond the extent provided for, and that poorer outcomes would be provided for this stage of the redevelopment of the Precinct if commercial properties were unable to be tenanted.

The Committee acknowledges the expertise of Mr Quick but was not presented with a fulsome assessment of market demand to arrive at any conclusions in this regard. At best, the Committee accepts Mr Quick's evidence that at this stage of urban renewal there is likely to be limited demand for increased commercial uses on the subject land beyond the amount proposed. Nevertheless, it still considers it appropriate to 'future proof' developments and to facilitate a higher proportion of commercial land use consistent with the policy framework over time.

It is also important to note that although this may be one of the first development approvals, it may not ultimately be the first to be constructed or operational. For example, localised demand for commercial and retail use could be influenced materially by the timing of development on the adjacent site at 277-281 Ingles Street which would be expected to substantially increase the local population.

#### **Capacity to adapt parts of the building to increase employment generating uses over time**

A relevant consideration in Clause 22.15-4 is the extent to which a building makes future provision for additional employment generating land use.

The Committee accepts that the floor to floor heights of 3.8 metres for car parking areas would notionally enable future conversion to employment generating uses.

One potential benefit of the Build to Rent model as proposed with single ownership and management is to maintain the opportunity to convert car parking areas for use for employment generating land use if future demand emerges. This could otherwise be challenging if the building and its car parking spaces were strata titled for conventional apartments.

Ensuring the building remains in a single ownership and management under the Build to Rent model would retain future conversion as a potential option. However, in reality, the take up of this opportunity will depend on a combination of improved options for public transport, together with increased commercial demand.

In terms of the Taskforce's suggestion that home offices could potentially be included within apartments in the podium if the Committee favoured additional office floor space, the Committee accepts Mr Quick's evidence that this decision should be left to market demand rather than forming a requirement of the Incorporated Document. Also, the Committee notes that, subject to satisfying the requirements of Clause 52.11 of the Planning Scheme, a 'Home based business' does not require a planning permit in the Capital City Zone. The Committee is satisfied that these apartments could be readily used for such purpose should a future tenant seek to do so.



#### **(iv) Conclusion**

It is essential to maintain the long term vision for the Sandridge Precinct as an area for significant commercial development to support the economy of the Central City. The Committee reinforces the aspiration for a high proportion of employment generating floor space in the Core area of the Precinct in particular.

The Committee is cognisant that there may be site-by-site considerations that influence the timing and provision of employment generating floor space and understands the rationale for the development of the current proposal. Nevertheless, the Committee finds that the proposal does not satisfy the policy relating to employment generating uses and makes only a small contribution to the future designation of the Sandridge Precinct.

The functional ability to convert car parking areas to commercial or office floor space at some time in the future is a positive element of the proposal but there can be no certainty about its uptake.

The overall acceptability of the proposal therefore depends on the sum of its parts, and the extent to which it would achieve net community benefit and sustainable development as a whole. This is discussed in Chapter 9 of this Report where the Committee undertakes an integrated assessment of key issues having regard to Clause 71.02-3 of the Planning Scheme.

It will be evident that the Committee's overall support for the proposal is closely aligned with the Build to Rent proposal as discussed below.

### **5.3 Build to Rent proposal**

#### **(i) Relevant policies, strategies and planning scheme provisions**

In particular, local policy seeks to encourage housing diversity and affordability and at Clause 21.01-1 (Vision) seeks *"to create a "city that promotes affordable, accessible and diverse housing types to meet the needs of all current and future residents"*.

At Clause 21.04-1 (Housing and Accommodation) it is policy to support a diverse range of housing types to suit the needs of Port Phillip's community and to support private, public and community sector involvement in the provision of housing to ensure a range of housing choice is available.

Specific to the Precinct, policy at Clause 21.06-8 (Fishermans Bend Urban Renewal Area) identifies a key planning challenge to ensure the supply of housing keeps pace with population growth and demographic change.

Clause 22.15 (Fishermans Bend Urban Renewal Area Policy) includes policy to:

- *Encourage a diversity of housing typologies and sizes within each precinct and within individual development sites.*
- *Encourage design that delivers a range of housing types suitable for households with children ...*

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

Mr Naughton advised the Committee that the Proponent chose this site specifically to deliver a Build to Rent project in Fishermans Bend. The Proponent referred to the extensive time

since originally engaging in discussions with DELWP in late 2015 about the Build to Rent proposal and *“its earnest desire to bring the first Build to Rent proposition to Fishermans Bend”*.

Mr Naughton tabled information prepared by Lateral Estate Pty Ltd to demonstrate its experience in developing and managing projects of this kind in New South Wales and elsewhere. In his opening submission to the Committee, he referenced the Build to Rent model as part of the overall net community benefit provided by the proposal. This was consistent with Mr Quick’s evidence.

The Proponent submitted that the Build to Rent model would provide housing diversity directly aligned with local policy and the planning controls, explaining:

*The model is attractive to facilitate longer term rent opportunities which is in the interests of the operators as well as tenants, particularly insofar as it is targeted to deliver a long-term vibrant and stable community. It involves operationally ‘different’ buildings, being buildings specifically designed around a longer leasing proposition.*

*Relevantly, the build-to-rent model is effectively another asset class of rental product in single ownership, that can of course be repurposed in the future with relative ease compared to developments that are ‘set up’ to be strata-subdivided. This is particularly important in the context of the aspirations and development of Fishermans Bend through to 2050 and beyond. [Committee’s emphasis].*

The Taskforce was particularly supportive of the Build to Rent proposal as consistent with Strategy 3.5.1 of the Framework, to *“support a partnership approach between government, private industry and the community housing sector to deliver a range of affordable housing options”*. It advised that its in principle view was that the Build to Rent model would fit this designation.

Mr Quick outlined the social and economic benefits of the Build to Rent proposal in his evidence and Mr Dawson was called to provide oral evidence at the Hearing as author of the Build to Rent Analysis report, May 2019 lodged with the Amendment on behalf of the Proponent.

The Proponent also requested that consideration be given to the benefit of the Build to Rent model as a form of Affordable housing in broad terms by comparison with conventional apartment ownership. This position was advanced in Mr Quick’s evidence and in Mr Dawson’s oral evidence to the Committee. Mr Quick explained:

*With a Build-to-Rent offer being the key use for the subject site, the proposed development will still generate substantial economic and social benefits, both in the short term and over a longer period. As an established and well received housing concept in major global markets such as the US and the UK, Build-to-Rent as an alternative form of rental housing has proved to be able to provide a more affordable and secure housing choice for those renting long-term, kick-start development and attract residents more quickly to a new market, generate additional employment, and importantly meeting an identified need*

*in Port Phillip to address housing affordability, particularly for the large cohort of residents.*

Mr Quick identified the lack of rental stock and increasing rental costs in the order of 25% to 30% in Victoria over the last 10 years. He observed that *“with most other areas across Port Phillip being constrained in land supply, Fishermans Bend provides an opportunity to address these issues and ensure a healthy and more sustainable local housing market over the longer term.”*

Mr Quick supported the Build to Rent proposal as:

- responding to market demand for rental property and ensuring faster delivery and increased certainty of housing supply
- lower housing costs for renters (longer rental terms and higher security of tenure)
- direct and indirect employment (during construction) and on-going employment in the management and maintenance of the building
- kick-starting redevelopment of Fishermans Bend with the ability to attract new residents and a long-term lease arrangement that promotes creating a sense of place during the early stages of the area’s regeneration
- greater housing diversity
- contributing towards alleviating housing stress.

The Build to Rent model was also linked to the opportunity to provide long term discounted rental for Affordable housing as defined in the legislation as discussed further in Chapter 6.

However, when questioned by the Committee, the Proponent responded that the Incorporated Document should not specify or limit the approved use to Build to Rent. Instead, it sought flexibility as to the nature of housing that could be provided within the approved built form as a multi dwelling proposal.

### **(iii) Discussion**

In the Committee’s view, the Build to Rent model is a fundamental component of this particular proposal. It formed the basis of material prepared in support of the Amendment, the expert evidence and submissions on behalf of the Proponent. It is clear that this type of land use informed the consideration of the overall Amendment by DELWP, Council and the Taskforce.

The Committee also acknowledges the investment and commitment to the project and the subject land by Lateral Estate Pty Ltd which has experience in delivering this type of project in New South Wales and, as the Committee heard, has committed to delivering this land use on this site in Fishermans Bend.

There is strong policy support for housing diversity. The Committee accepts that Build to Rent accommodation is a form of housing that is needed within Fishermans Bend. It accepts the evidence of Mr Quick and Mr Dawson that the Build to Rent model includes many potential benefits in addressing the need for more rental accommodation within the Port Phillip

municipality. Broader social benefits potentially include length of tenure, settled communities and associated investment in a community and neighbourhood.<sup>33</sup>

The Committee also places great emphasis on the ability for the Build to Rent model to “*kick-start the redevelopment of Fishermans Bend*” and to create a sense of place during the early stages of the Precinct’s regeneration in line with Mr Quick’s evidence. It appears that this model may also be able to deliver development in a more timely manner compared with say, build-to-sell apartments that require significant individual pre-sales.

The Build to Rent model provides an added degree of adaptability for the potential conversion to a greater amount of employment floor space since the building and its constituent uses are proposed to be retained and operated in the one ownership as explained by the Proponent.

The Committee considers the Build to Rent model central to the permission sought in this Amendment for these reasons cumulatively. Its assessment of the proposal may well have been different if this proportion of conventional apartments were proposed in this part of the Sandridge Precinct.

There is no currently defined land use term in the Planning Scheme specific to the Build to Rent model. The permission proposed to be granted in this instance is for multi dwellings. This would encompass the Build to Rent proposal as a form of residential development.

However, in light of the Committee’s finding about the centrality of the proposed housing model to the overall acceptability of the proposal, it recommends that the Build to Rent model be enshrined in the Incorporated Document by way of a condition to ensure its delivery. This could provide that the approved dwellings must take the form of a Build to Rent model unless otherwise approved by the Minister as Responsible Authority. This would ensure that absolute best endeavours are applied to facilitate this particular housing model as currently proposed.

#### **(iv) Conclusions and recommendations**

The Committee concludes:

- The Build to Rent model is an essential component of the proposed development and should be enshrined in the Incorporated Document.

The Committee recommends that:

- The Incorporated Document include a condition that restricts the residential component of the proposal to a Build to Rent model unless otherwise approved by the Responsible Authority. This may need to be secured through a section 173 agreement depending on whether the obligations in the Incorporated Document continue to bind the operator once the special control has expired.

---

<sup>33</sup> Dependent on the operational model pursued.

## 6 Affordable Housing

### 6.1 Relevant policies, strategies and planning scheme provisions

The Vision and Framework for the Precinct consistently express a desire to create a thriving, diverse and inclusive community. A key element is to make provision for Affordable housing to make housing accessible to very low, low and moderate income earners.

The term 'Affordable housing' is defined in section 3AA of the Act as:

*... housing, including social housing that is appropriate for the housing needs of any of the following:*

- a. Very Low Income Households*
- b. Low Income Households*
- c. Moderate Income Households.*

Section 3AA(2) provides:

For the purposes of determining what is appropriate for the housing needs of very low income households, low income households and moderate income households, regard must be had to the matters specified by the Minister by notice published in the Government Gazette. Clause 22.15 of the Planning Scheme seeks 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.”*

All parties agreed that the provision of Affordable housing is a central component of the re-cast policy for the Precinct.

Clause 22.15-4.3 outlines the policy to achieve this objective:

#### ***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.*

The policy confirms that the term Affordable housing has the same meaning as in the Act.

The Notice of the Order in Council dated 1 June 2018<sup>34</sup> contains a table of household incomes indicating which households are regarded as very low, low or moderate income households.

The Ministerial Notice under Section 3AA(2) of the Act dated 17 May 2018 is also relevant to the Committee's deliberations.<sup>35</sup> It provides specific matters for consideration when determining what is appropriate for the housing needs of very low, low and moderate income households. These considerations include allocation; affordability; longevity (public benefit); tenure; type of housing; location; integration and estimates of housing need based on identified sources.

It is evident that the provision of Affordable housing in Victoria by private interests is currently achieved through voluntary mechanisms, and the Planning Scheme adopts this approach.<sup>36</sup>

### **Other work on behalf of the government**

As a precursor to the Committee's views, it is worth noting that this Committee is one of a number of expert bodies requested to consider this issue and to make recommendations to government.

The Committee was advised that the report of the Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing had recently been provided to the Minister for Planning. However, this Committee has not been provided with access to this report or any of its recommendations since they have not been made public.<sup>37</sup>

In the absence of this, it is difficult at this time to ensure a consistent approach to Affordable Housing mechanisms for the Precinct of Fishermans Bend.

For future referrals, it will also be important that the findings on this and future referrals are shared by DELWP to enable the potential for a consistent view to develop .

Other important work being undertaken is the preparation of Guidelines for Affordable Housing in Fishermans Bend on behalf of the Taskforce. The Committee was provided with draft version 2 of the Guidelines at the Hearing and draft version 3 subsequently. This document was prepared by expert consultants with input from stakeholders and relevant industry representatives and was intended to be policy neutral in intent.

Notably, the Taskforce clarified that it did not rely on these Guidelines in respect of this Amendment since they were not intended to apply to existing called-in applications and were only in draft form.

---

<sup>34</sup> Document 11.

<sup>35</sup> Document 70.

<sup>36</sup> The Committee notes the discussion and associated recommendations of the Fishermans Bend Review Panel into GC81 in Chapter 8 in particular.

<sup>37</sup> Although the Standing Advisory Committee may inform itself as it sees fit, such as by requesting a briefing from the Ministerial Advisory Committee, it is conscious of its obligations to provide natural justice to all parties as part of its process so it has not pursued this approach.

## 6.2 Preliminary issue - what types of development should contribute to Affordable housing under the policy?

It is clear that the policy in Clause 22.15 applies to this proposal. One interpretation of the policy is that there is an expectation that at least 6% of approved dwellings should be provided as Affordable housing.

However, it is not clear whether other types of non-residential development should contribute to Affordable housing in the Precinct. This question arose in assumptions made in evidence from Dr Spiller on behalf of Council, who suggested that a benchmark or 'deemed to comply' provision would need to be applied to all residential, commercial and industrial development in Fishermans Bend.

Read as a whole, Clause 22.15 is expressed to apply to all development in the Precinct - the wording in Clause 22.15-4.3 uses the words 'development should provide ...'. However, it then refers to permitted residential development as the subject of the Affordable housing to be provided.

In the Committee's opinion, this leaves genuine uncertainty moving forward as to what type of development should 'provide' Affordable housing, noting that an equivalent contribution would need to be made for non-residential development if applicable.

The findings and recommendations of the Review Panel for GC81 tend to indicate that only residential development is intended to provide Affordable housing:

*The Review Panel finds:*

- *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 ...<sup>38</sup>*
- *Clause 22.XX-3 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.<sup>39</sup>*

Regardless of these recommendations, much rests on the wording of the policy provision as it stands in the Planning Scheme. The current wording of the clause read as a whole suggests to the Committee that *only* residential development should contribute to the provision of Affordable housing in the Precinct under the policy. That said, higher order policy objectives relating to Affordable housing in Fishermans Bend in the Framework and Vision are potentially more generic.

The Committee considers that this is an important issue that requires clear resolution moving forward in the early stages of Precinct renewal. It is desirable for the government to assess the extent to which non-residential forms of development are intended to contribute to Affordable housing and clarify the wording of the operative policy provision if necessary.

---

<sup>38</sup> Page 92 Fishermans Bend Planning Review Panel Report No. 1 – Volume 1, 19 July 2018.

<sup>39</sup> As above, page 99.



## 6.3 Key issues

Key issues identified by the parties include the method of delivering Affordable housing as part of this proposal and evaluating its acceptability. The Committee also identified a number of substantive issues including:

- The approach to referred or ‘called in’ applications
- Practical implementation of the policy to this proposal including:
  - How Affordable Housing is proposed to be provided within the Amendment
  - The need for a proposed ‘benchmark’ for an Affordable Housing contribution.
  - The appropriate form of wording in the draft Incorporated Document.

## 6.4 Approach to referred or called in applications

### (i) Evidence and submissions

In terms of how the policy provision should be applied to a particular proposal, DELWP submitted that:

*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.*<sup>40</sup>

No party contested this approach.

A related question arose as to whether there should be any flexibility in the provision of Affordable housing for proposals that have been called in by the Minister for Planning, such as the current referral to this Committee.

DELWP expressly submitted that it may be reasonable to relax the provision of 6% Affordable housing for land that was purchased before the current planning controls. This would most likely encompass all sites for which permit applications have been called in and converted to draft Planning Scheme amendments. Mr Watters explained:<sup>41</sup>

- DELWP acknowledges that the maximum development capacity of the site has been reduced by changes to the Fishermans Bend planning framework in recent years, including through the imposition of affordable housing requirements (even if only policy-based). DELWP consider it is reasonable to make allowance for this by permitting a reduced provision of affordable housing.*
- Secondly, the development is occurring early in the development cycle of Fishermans Bend. Early development of Fishermans Bend is important to create investor confidence in Fishermans Bend and encourage further development which is necessary to ultimately delivering the vision for Fishermans Bend, including the provision of additional affordable housing ...*

---

<sup>40</sup> DELWP Part B submission, Document 55.

<sup>41</sup> DELWP Part B submission, Document 55, paragraph 13.

Council responded that:<sup>42</sup>

*The proposition put by DELWP that developers who purchased land prior to the introduction of Amendment GC81 should be able to provide less affordable housing due to the reduction in development capacity ... is, with respect, misguided.*

*The 6% affordable housing target has been a feature of policy ... since ... November 2016 ... Regardless, there is nothing in Clause 22.15-4.3 to differentiate between the timing of acquisition of interests in land and the provision of affordable housing.*

## **(ii) Discussion**

The Committee agrees with DELWP that a failure to provide at least 6% Affordable housing would not necessarily be fatal to the approval of an Incorporated Document for a proposed development and land use.

It is relevant to consider the whole suite of applicable policies when determining the overall acceptability of a proposal. This stems from the origin of the 'obligation' in policy, as well as the capacity for an Incorporated Document to alter the underlying Planning Scheme provisions.

Beyond this, the Committee approaches the submission by DELWP that some inherent flexibility may be given for Affordable housing in approvals for land purchased *before* GC81 with great caution.

For some called in applications such as this, as acknowledged by Council, the land was purchased after GC50 when Affordable housing provisions were already in place. This would have influenced development expectations to some extent. Irrespective, the need to contribute to social infrastructure should be shared across all development in the Precinct, particularly more substantial developments such as those being considered by the Committee in current referrals.

There are also at least two distinct advantages conferred on called in and subsequently referred applications compared with current planning provisions (aside from being able to progress to approval before an approved Infrastructure Contributions Plan). They are not obliged to comply with now operative dwelling density provisions and they are not bound to contribute to infrastructure in the same way as later developments will be. However, there is no indication in the Terms of Reference, applicable policies or controls that 'called in' or referred applications should be treated any differently when evaluating the provision of Affordable housing.

The Committee regards compliance with Clause 22.15-4.3 as a key element of the overall suite of re-cast provisions applying to the Precinct. This is also evident from the commentary of the Review Panel for GC81. It is clear to the Committee that this element of the proposal has clear potential to result in a tangible community benefit, although particular care needs to be taken to ensure how it is provided will achieve workable outcomes.

---

<sup>42</sup> Paragraphs 72-73, Submission at Hearing.

Even though the Committee recognises that the Affordable housing contribution stems from a policy rather than a mandatory control, it supports a positive assumption that every application for use and development of land in Fishermans Bend (including called in and referred applications) should at least genuinely aspire to provide at least 6% Affordable housing in line with the policy, all things being equal.

There is also an express provision in the policy enabling the consideration of a lesser amount (to zero) if specific circumstances justify this as a matter of fairness. Relevant matters include the building envelope, whether the objective would otherwise be met and whether it would render the development economically unviable. The Proponent did not seek to rely on any of these exemptions for this proposal.

### **(iii) Conclusion**

The Committee concludes:

- The provision of Affordable housing in the Precinct is governed by policy rather than mandatory provisions. Conceivably, a site specific planning scheme amendment could permit development that did not meet this policy. However, the Committee regards this policy as central to the achievement of the Vision and Framework for the Precinct.
- It is appropriate to apply the policy seeking Affordable housing within the Precinct equally to applications for land purchased before the introduction of GC81 as for land purchased after; irrespective of whether an earlier permit application has been ‘called in’ by the Minister for Planning or a site specific planning scheme amendment is sought.

## **6.5 Providing for Affordable housing within the Amendment**

The parties addressed this matter in the Statement of Issues document. In essence, they agreed that it was appropriate for the Incorporated Document to provide for a section 173 agreement to secure the provision of Affordable housing.

### **(i) Proponent’s offer**

The Proponent offered to lease a proportion of dwellings to a registered housing provider at a discounted long term rental that would make them “Affordable” within the income bands in the relevant Ministerial Order.

The Proponent explained that its preference was to provide 6% of the total number of dwellings (rounded down to 9) at 30% reduced market rental through a registered housing provider. It proposed this arrangement over a 20 year term, which it considered to be a realistic timeframe, after which the dwellings would likely need refurbishment. The Proponent emphasised that this offer aligns well with the Build to Rent model since the building would be held in consolidated ownership. It also committed to providing a full range of facilities for Affordable housing units compared with conventional apartments, such as access to the pool, gym and the like.

This Amendment does not propose a Social housing component as this term is defined by the legislation and referred to in planning policy. In addition, the density cap does not apply given the Terms of Reference for this referral. For these reasons, the concept of a Floor Area Uplift as referred to in Clause 22.15-4.3 does not apply to the proposal.

DELWP supported the Proponent's offer as meeting the policy for Affordable housing in the Planning Scheme.

The Taskforce was also inclined to support this offer (as initially agreed to with the Proponent) but expressed a preference for a longer timeframe for the provision of Affordable housing, such as 30 years.

Council had concerns with a number of aspects of the Proponent's offer. It expressed a preference for the Affordable housing units to be transferred to a registered housing provider (as a gift or for a reduced price) or otherwise at least offered at a discounted rent in perpetuity. It submitted that a cash-in-lieu contribution should be a last resort, to be expended on Affordable housing *within* the Precinct rather than more broadly.

The Committee forms a consolidated view on the acceptability of the Affordable housing offer at the conclusion of this chapter after considering all relevant inputs below.

## **(ii) Delivery mechanisms**

A question arose as to the extent a Proponent should be given flexibility to determine the delivery mechanism for providing at least 6% Affordable housing under the policy in Clause 22.15-4.3.

### **Evidence and submissions**

DELWP submitted that the policy did not mandate any particular delivery mechanism and that a section 173 agreement to give effect to this provision should be similarly flexible. This could include the provision of Affordable Housing through:

- gifting apartments or offering them at a reduced sale price to a registered housing provider or similar
- leasing dwellings to a registered housing provider or similar entity at discounted rent for a fixed period
- a cash-in-lieu contribution – but only if the Proponent's best efforts had not been able to secure affordable housing within the development.

In terms of the mechanism for delivery, Council advocated strongly for a preference for gifting five dwellings to a Housing Trust approved by the Responsible Authority, to be managed as social housing for residents in the very low and low income ranges. A transfer of dwellings was intended to ensure the ongoing availability of this infrastructure in perpetuity. Council considered this was the principal way to meet the policy provision. Dr Spiller agreed when giving evidence for Council.

Council also supported the notion that Affordable housing could potentially be provided through discounted rent (nine dwellings) to an approved housing provider, to cater for very low or low income earners for a minimum 30 years. In cross examination by Mr Watters, Dr Spiller agreed that a lease was capable of valuation.

Council was principally concerned with the lack of clarity in the draft clauses of the Incorporated Document, especially with respect to how the value of Affordable housing could be calculated if it was not gifted outright. Also, it would only contemplate a cash-in-lieu contribution as a last resort.

## Discussion

So far, proposals that have come before this Committee have Affordable housing spread throughout the overall housing offer for the site. This would create positive social benefits and genuine housing diversity. At the same time, its practical success in this urban renewal area will depend on careful integration and management.

That said, the Committee considers that the drafting of the policy for Affordable housing is deliberately flexible and inherently provides for a wide range of potential mechanisms to meet the policy intent. These would include all three mechanisms addressed by DELWP (or a combination), as well as other suitable mechanisms that may emerge over time as this part of the housing market matures and diversifies.

The policy sets a new direction for housing in Fishermans Bend reflecting current and anticipated needs. This presents both a new challenge and opportunity for a renewal precinct such as this, which may become a lead for other locations in Victoria. In this setting, the Committee is reluctant to interpret the policy prescriptively since it is desirable for the market to propose innovative and workable ways to deliver the Affordable housing that is needed.

### (iii) Cash in lieu contributions

#### Evidence and submissions

Dr Spiller accepted that a cash in lieu contribution would be a legitimate way to meet the policy to provide Affordable housing. However, he emphasised that there would need to be a legally binding arrangement for these assets to be deployed to provide an equivalent amount of housing value *elsewhere in Fishermans Bend* to achieve policy objectives. He also supported an administrative fee (say 10% as proposed by the draft Guidelines prepared by the Taskforce, version 2) to account for changes in value over time.<sup>43</sup>

Dr Marshall also accepted that a Proponent could potentially make a cash in lieu contribution to satisfy the policy.

DELWP and the Taskforce agreed. As explained, Council discouraged the use of this mechanism; being its least preferred.

The drafting of the Incorporated Document discussed at the Hearing proposed a ‘best endeavours’ clause, whereby a cash in lieu contribution could only be made if the Responsible Authority was satisfied that a Proponent’s best endeavours to provide another more direct arrangement had not been successful.

## Discussion

The Committee agrees that it would notionally be possible to provide a cash in lieu contribution of the equivalent of at least 6% of dwellings to satisfy the Affordable housing policy. It also supports the use of the ‘best endeavours’ clause so long as this is rigorously tested by the Responsible Authority in practice.

However, the Committee’s support for a cash in lieu option is also contingent on there being a way to ensure that the money is directed to the provision of Affordable housing in the

---

<sup>43</sup> This was supported in Council’s draft of the section 173 agreement condition.

Precinct, not elsewhere. This is because the policy is geographically targeted to enhancing housing diversity *in the Precinct*.

This raises the broader question about what bodies or mechanisms are to be established by the Taskforce, Councils or other bodies or arms of government to support this option, or whether it will be left to registered housing providers to make appropriate arrangements. It is unclear whether the recommendations of the Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing will provide directions on governance arrangements for such contributions.

The Committee is aware of the intent from the Framework to form a Fishermans Bend Housing Trust or similar under the auspices of the Taskforce. This type of arrangement if it progresses could be a governance mechanism to establish early, effective, integrated outcomes.

**(iv) Minimum length of time Affordable housing should be secured for**

**Evidence and submissions**

As mentioned, DELWP would accept discounted rental for 20 years as meeting the provision of Affordable housing.

By contrast, Council and its expert witness Dr Spiller advocated for an arrangement that would continue in perpetuity rather than being ‘time bounded’. This reflected their view of Affordable housing as a form of ongoing infrastructure required for a successful community.

Dr Marshall preferred Affordable housing to be delivered by a Proponent for the ‘economic life of the building’ as a way of satisfying the intent of the policy. He considered this would create “*equity between developers*” and would facilitate the delivery of apartments in Build-to-Sell developments.

**Discussion**

It is clear that gifting or transferring apartments to a registered housing provider at a reduced price will enable the permanent provision of Affordable housing, or at least will enable the provider to retain a residual interest in the land.

The situation with leasing is somewhat different. Approaching this matter from first principles, the Committee considers that a 20 year discounted leasing period to enable Affordable housing would fall short of the long term and enduring policies outlined for Fishermans Bend as a renewal precinct and extension of the Central City. It is also unclear how long it will take for the redevelopment of Fishermans Bend to achieve ‘critical mass’ and vitality as an extension of the Central City relative to a 20 year timeframe.

There may be some merit in securing such an arrangement for a minimum 30 years, reflecting the timeline of the current Fishermans Bend Framework and Vision until 2050. However, this timeframe is only an indication of the projected reach of current strategic planning, which itself is expected to be reviewed or enhanced.

The Committee regards the provision of Affordable housing as an important component of the approval granted for each particular use and development since it constitutes a contribution to key community infrastructure for the Precinct. The intent to provide an

inclusive and diverse community in the Precinct would not be well served if apartments used for Affordable housing were converted to conventional rentals after a limited time.

Instead, the Committee accepts Dr Marshall's proposition that it is reasonable for the obligation to provide Affordable housing to endure for the economic life of the building. This would tie it directly to its capacity to be used for the approved use and development. If the land was ultimately to be redeveloped, an applicant would need to comply with relevant provisions at that point in time, which may involve a re-negotiated agreement for Affordable housing.

This extended timeframe raises the practical issue of how to ensure that rental of these apartments will remain "Affordable" over time, as both property prices and incomes will vary. This is considered below with the benefit of Mr Dawson's supplementary evidence. The Committee is satisfied this can be addressed in the detail of a future section 173 agreement.

#### **(v) How to make discounted rent "Affordable"**

##### **Evidence and submissions**

###### Dr Marshall

Dr Marshall was asked by the Committee to express an opinion about the capacity for discounted rental to meet the policy intent to be "Affordable" as this term is defined in the Act.

He accepted the generally accepted figure in contemporary studies that for housing to be 'Affordable' to lower income households to avoid income stress, only 30% of income should be allocated to housing costs.<sup>44</sup> Mr Dawson also applied this figure in his calculations.

Using median rentals for apartments from Real Estate Institute of Victoria figures, Dr Marshall calculated that a single income earner in the moderate income category (that is, the upper end of the benchmark in the Order in Council) could only afford to pay 65% of the rent for the median apartment. This would equate to a discount of 35% on market rental to avoid housing stress. He noted this was often seen as a provision targeting 'key workers' in a particular profession, such as teachers, police and nurses.

Dr Marshall confirmed that at the time of his review, this was the same discounted rental figure proposed in the draft Taskforce Guidelines, referencing the 30% figure plus a small 'buffer'.

###### Mr Dawson

At the Hearing, the Committee asked Mr Dawson whether it would be possible to calculate if a certain percentage of discounted rental would make it "Affordable" to the households targeted by the Order in Council. Following the hearing, a 'reverse brief' was provided by the Proponent and refined by the Committee. Mr Dawson provided a detailed written response focusing on what constitutes affordable rent for the income bands stipulated in the Order.<sup>45</sup>

---

<sup>44</sup> Australian Bureau of Statistics, 2017.

<sup>45</sup> Document 127. The income bands are at June 2019 and have been compared to 2019 market rents.



Mr Dawson converted annual incomes for the three income bands in question into an “Affordable weekly rent” using the widely accepted 30% cap on income spent on rental. He then compared this with market rents for both new apartments and Department of Health and Human Services units in nearby areas.

Mr Dawson demonstrated that a variety of households would be able to afford rental for Department of Health and Human Services units without any discount, without incurring rental stress. He explained that:

*If we review new apartment rents in the central areas of Melbourne, for single households only the upper end of the moderate-income bands can afford to pay 70% or more of market rent for one-bedroom apartments within 30% of their household income. This is also the case for couple households without children in a two-bedroom apartment. However, for a couple in a one-bedroom apartment the median of the low income band would be able to afford 70% of market rent. This is also the case for a family household living in a two-bedroom apartment. In this case, upper ends of moderate income households would in theory require a lower level of discount to market rent and still be able to pay 30% or less of their household income on rent.*

Mr Dawson highlighted the disparity between income and rent across the different spatial areas (with higher rent payable in inner Melbourne, but income bands provided for Greater Melbourne). He believed this made it more challenging to provide affordable housing for very low or low income households within Fishermans Bend, although the alignment is closer for moderate income households.

Mr Dawson explained that the relationship between the two data sets (income and rent) could be assessed annually using regular rental data and updates to income band information using the Australian Bureau of Statistics Housing Group of the Consumer Price Index.

## **Discussion**

The Committee accepts that an offer to provide at least 6% of apartments at discounted rental could satisfy the policy. However, it is important to ensure that the percentage discount would make these apartments accessible to people within the income categories in the Order in Council, both now and for the life of the contribution, for this offer to remain “Affordable”.

Reviewing Mr Dawson’s evidence, the Committee considers that the focus of the enquiry should be confined to new apartments, not Department of Health and Human Services rental figures - one category explored by Mr Dawson. This is because the nature of the Affordable housing proposed in this instance is private housing offered at a discount within a housing product otherwise offered on market terms. On the basis of submissions to the Committee, the most suitable location for comparison of market rentals appears to be with the Central Precinct.

This matrix is illustrated in Table 5 to Mr Dawson’s supplementary evidence below.

**Figure 7 Extract from Maximum Affordable Weekly Rents by Income Bracket as a proportion of the Urbis Rental Tracker New Apartment Rent**

|                  |          | Single Person    |                 |                       | Couple (One Bedroom) |                 |                       | Couple (Two Bedrooms) |                 |                       | Family (Two Bedrooms) |                 |                       | Family (Three Bedrooms) |                 |                       |
|------------------|----------|------------------|-----------------|-----------------------|----------------------|-----------------|-----------------------|-----------------------|-----------------|-----------------------|-----------------------|-----------------|-----------------------|-------------------------|-----------------|-----------------------|
|                  |          | New Product Rent | Affordable Rent | % of New Product Rent | New Product Rent     | Affordable Rent | % of New Product Rent | New Product Rent      | Affordable Rent | % of New Product Rent | New Product Rent      | Affordable Rent | % of New Product Rent | New Product Rent        | Affordable Rent | % of New Product Rent |
| Central Precinct | Very Low |                  | \$75            | 15%                   |                      | \$112           | 22%                   |                       | \$112           | 17%                   |                       | \$157           | 27%                   |                         | \$157           | 14%                   |
|                  |          |                  | \$150           | 31%                   |                      | \$225           | 54%                   |                       | \$225           | 33%                   |                       | \$315           | 55%                   |                         | \$315           | 27%                   |
|                  | Low      | \$489            | \$195           | 40%                   | \$489                | \$292           | 70%                   | \$672                 | \$292           | 43%                   | \$672                 | \$409           | 71%                   | \$1,160                 | \$409           | 35%                   |
|                  |          |                  | \$240           | 49%                   |                      | \$359           | 86%                   |                       | \$359           | 53%                   |                       | \$503           | 87%                   |                         | \$503           | 43%                   |
|                  | Moderate |                  | \$300           | 61%                   |                      | \$420           | 101%                  |                       | \$420           | 63%                   |                       | \$629           | 109%                  |                         | \$629           | 54%                   |
|                  |          |                  | \$359           | 74%                   |                      | \$539           | 129%                  |                       | \$539           | 80%                   |                       | \$755           | 131%                  |                         | \$755           | 65%                   |

Source: Document 127 –Additional Work prepared by Mr Dawson for Proponent - 118 Bertie Street Affordable Rent Analysis, Figure 5

In the Committee's view, this table demonstrates that:

- a discount of 30% rental will make housing affordable for couples in a one bedroom apartment or a family in a two bedroom apartment for households in the lower end of the low income range upwards
- however, the concern is most acute for single person households (claimed to be the area of greatest current need) where a single person at the lower end of moderate range would need a 39% discount to make the rental affordable. Similarly, a moderate income family in a three bedroom apartment could not afford the rent unless discounted by at least 35%.

For this reason, the Committee prefers the approach taken by Dr Marshall and the draft Guidelines that rental should be discounted by a minimum of 35%.

The Committee recognises that this would constitute affordable rental for only certain categories of household in the low to moderate range but considers this an acceptable way to meet the policy pertaining to Fishermans Bend, especially considering the type of development within which this form of housing would be provided.

It will also be important for a provision to be built into the section 173 agreement to enable the affordability of the housing offer to be reviewed over time to account for changing incomes and rental pricing as suggested by Mr Dawson.

#### (vi) Mix of dwellings and the concept of 'tenure blind' dwellings

##### Evidence and submissions

The policy expressly prefers a mix of one, two and three bedroom dwellings for the provision of Affordable housing. Council preferred a requirement to provide Affordable housing units in a representative proportion of the housing mix within the development as a whole.

The Proponent explained that its discussions with housing providers indicate there is currently a very high level of demand for Affordable one bedroom units, principally targeted to older single women. It sought flexibility as to which types of apartments should be allocated to Affordable housing, rather than necessarily providing a representative mix of the development as a whole.

Likewise, policy intends for these dwellings to be substantially indistinguishable from other dwellings within the development to ensure genuine integration. Council explained the concept of 'tenure blind' apartments in this context, whereby it would not be possible for an observer to distinguish between conventional occupancies and Affordable housing occupancies based on built features or occupancy.

## Discussion

The Committee commends the logic behind the provisions seeking integration of Affordable housing units. This is also consistent with the relevant Ministerial Notice.

It will be important to ensure that the apartments offered as Affordable housing within Fishermans Bend developments have equivalent amenity to others in the building, rather than being those that may be less desirable for sale.

It is also important at a Precinct wide level to deliver a mix of dwelling types to cater for all households. At the same time, there may be good reason to provide some flexibility in delivering the mix of housing within each development to cater for greatest demand.

The Committee considers this can be suitably addressed through flexibility in the section 173 agreement – the default position should require a mix of housing representative of the underlying approval which should be represented in spatial terms by at least 6% *of Gross Residential Leasable Floor Area* rather than at least 6% of the number of dwellings which is potentially more arbitrary, but this could be varied with the agreement of the Responsible Authority.

If this figure were to result in less than whole numbers of apartments, the differential could be rounded up consistent with the policy reference to “at least 6%” or potentially be made up by cash in lieu.

In this way, a proponent could facilitate the delivery of a form of housing that was actually most needed in the relevant planning horizon. If a variation from the underlying housing mix was sought, it would be highly relevant for the Proponent to demonstrate the outcomes of its discussions with registered housing providers including projected short, long and medium term demands for Affordable housing.

## (vii) Conclusion

The Committee concludes:

- The policy provision at Clause 22.15-4.3 does not mandate a particular form of delivery. Significantly, it provides flexibility in the mechanisms for delivery of Affordable housing. This would enable innovative and tailored responses for this urban renewal area.
- Legitimate options for the provision of Affordable housing may include gifting, discounted sale or reduced rental through a registered housing provider. Cash in lieu could be considered but should be a last resort and must be expended in the Precinct.
- If reduced rental is offered, it should be for the ‘economic life of the building’. On the basis of current rental and income figures, market rentals for the Fishermans Bend Precinct should be reduced by at least 35% to make apartments affordable for a range of moderate to low income earners, especially single income households.
- It is important for Affordable housing units to be physically and operationally integrated into the overall development. At first instance, the mix of apartments provided for Affordable housing should reflect the underlying mix within the development, but this could be varied based on evidence of current need from housing providers.

## 6.6 Establishing a benchmark for an Affordable Housing contribution

### (i) Evidence and submissions

Council submitted that it was imperative for a benchmark or similar ‘deemed to comply’ provision to be established to enable offers for the provision of Affordable housing to be valued. This would be especially important to compare offers that involved alternative methods of delivery.

A benchmark or ‘deemed to comply’ provision was not supported by the Proponent. DELWP and the Taskforce considered the acceptability of particular offers could be qualitatively evaluated without such a provision. For example, DELWP considered that offers could be assessed against a base calculation of Net Present Value.

DELWP explained that it did not currently support a ‘deemed to comply’ provision for Affordable housing, in the form proposed by Dr Spiller or more generally. It considered this would represent a significant change to the wording and role of the policy introduced by GC81. If an alternative method was to be adopted, it suggested this should be transparent, such as by (more universal) planning scheme amendment or formal adoption of public policy, rather than on an ‘ad hoc’ basis when evaluating a particular Amendment or permit application.

It was also concerned that a minimum percentage contribution may fetter the exercise of discretion. That said, it would not oppose the use of Dr Spiller’s work as a “useful tool” to inform an assessment of acceptability of a particular offer.

#### Dr Spiller

Dr Spiller has qualifications and experience in economics and planning. He approached the provision of Affordable housing as an “inclusionary infrastructure requirement”.

He was concerned that there is no guidance to enable a decision maker to evaluate the acceptability of any proposed method to deliver less than 6% Affordable housing transferred at zero consideration. In the absence of this, he emphasised the potential variability that would be caused by differing housing mixes or targeting different types of households. He explained:

*I believe it is important to convey to the development industry what Government believes is an acceptable response to the 6% in terms that developers can understand, that is, what would compliance with the target ‘cost’ and what needs to be factored into their feasibility assessments.<sup>46</sup>*

Dr Spiller suggested that a reasonable ‘minimum value requirement’ should be specified to enhance understanding and application of the 6% policy provision, referred to as a ‘deemed to comply provision’ or benchmark. He considered it would be possible to compare different offers by expressing the value of the housing benefit in terms of Net Present Value.

Dr Spiller approached the formulation of a benchmark by calculating the percentage of dwellings that would be required for Affordable housing in the Precinct as 13%. He then identified that the provision of this type of housing has three community functions of equal

---

<sup>46</sup> Paragraph 20 of Dr Spiller’s expert report, Document 44.

value, and that the function of ‘place making’ should be funded from private development in the Precinct. On this basis, he allocated 1/3<sup>rd</sup> of the need to this sector. This was applied to 4 dwellings for every 96 offered to the market with an average 75% residential floorspace across all development and estimated average unit size of 80 square metres.<sup>47</sup>

Significantly, Dr Spiller considered that all categories of development (residential, commercial, retail, industrial and so on) should be required to contribute equally to the provision of Affordable housing in the Precinct.

On this basis, Dr Spiller suggested that a benchmark or ‘deemed to comply’ provision be established whereby a Proponent should be required to provide *3% of all market floor space within any development as Affordable housing for zero consideration*. Equivalent offers could be considered by reference to this benchmark.

#### Dr Marshall

As explained, the Committee requested written advice from Dr Marshall.<sup>48</sup> He noted that the strategic direction for Affordable housing in Fishermans Bend has already been determined at 6% in the policy; not the 13% that Dr Spiller calculated based on Census data and Victoria in Future. He questioned Dr Spiller’s methodology in allocating the ‘community functions delivered by social housing’, finding them “*purely qualitative*”, without evidence of being a “*definitive list [or] that they quantitatively account for a third of each of the Affordable housing task*” in the absence of further evidence.

In principle, Dr Marshall supported the creation of a minimum benchmark for Affordable housing to assess offers made by a proponent under the policy. He too accepted that the income ranges in the Notice of Order in Council were important in delivering such a benchmark, although he offered a different basis for calculation of a minimum figure compared with Dr Spiller.

Dr Marshall suggested a benchmark should be calculated as:<sup>49</sup>

$$\frac{\Sigma\{(Gross Lettable Area of apartment) \times (percentage discount)\}}{Gross Residential Lettable Area of Building.}$$

*Gross Residential Lettable Area of Building.*

*This means that for every 100 dwellings, a developer could transfer over 2 dwellings that approximate 2.1% of GRLA and satisfy the Affordable Housing requirements. It also means that developers could propose different combinations to meet the Affordable Housing requirements. The essential part is that every proponent is foregoing 2.1% of income or sales across every site.*

This would result in 2.1% of Gross Leasable Floor Area for residential development to be provided as Affordable housing at a minimum to achieve the intent of the policy at Clause 22.15-4.3. Dr Marshall further explained that an advantage of using Gross Leasable Floor Area in the calculation was that it would generally reflect the apartment mix within the development overall.

---

<sup>47</sup> See page 7 of Dr Spiller’s expert report.

<sup>48</sup> Principally Document 54. All correspondence with Dr Marshall took the form of tabled documents and he was provided with a recording of the hearing and access to tabled documents of relevance.

<sup>49</sup> Pages 5-6, Document 115.

This minimum benchmark was predicated on the basis that a Proponent could still meet the policy provisions if they were to provide Affordable housing within the reach of top income bracket for a single person within the moderate income range.

In Dr Marshall's view, the actual provision of such housing could be achieved in any number of equivalent ways, to be proposed by an individual proponent and approved by the Responsible Authority.

## **(ii) Discussion**

In light of comments above supporting flexibility in delivery mechanisms for Affordable Housing, the Committee is disinclined to fix a conventional benchmark as to the value of Affordable Housing to be delivered in a particular project.

There is also a need for decision makers to avoid converting the policy provision into an inclusionary control by default, since this was an option considered but not ultimately pursued in the re-cast planning provisions for the Precinct.

One potential negative of setting such a benchmark may also be to unintentionally revert to the 'lowest common denominator', especially if the benchmark is fixed as proposed by Dr Marshall as the minimum needed to satisfy the obligation (single person, moderate income range).

At the same time, the Committee recognises the practical challenges for evaluating the adequacy of a potential contribution when converted to monetary terms. This becomes potentially more challenging if seeking to ensure a degree of equity across all contributions.

If there is a well defined offer that has been qualitatively assessed and agreed by relevant authorities (or the Committee) as meeting the policy, this could be enshrined in a section 173 agreement and would be a valid way to 'bed down' this element of a proposal.

The section 173 agreement could allow for an equivalent contribution to be provided through another mechanism subject to the consent of the Responsible Authority. For example, the value of providing 6% of units at a reduced rental of 35% for the economic life of a building is capable of calculation in dollar terms (subject to adjustment for varying incomes and rental prices over time). An equivalent discount on sale or gifting could readily be calculated.

However, the Committee sees some utility in setting a "minimum baseline" for a contribution in circumstances where no defined offer forms part of the proposal or if there is debate about its acceptability at the time of approval of the Incorporated Document that cannot be resolved. The terminology "minimum baseline" would make it clear that this is the minimum contribution that could reasonably satisfy the policy, but the provision should be applied to encourage proponents to cater for the needs of all income bands when delivered across the Precinct, including very low and low income earners.

In circumstances where a minimum baseline is warranted, the Committee supports the methodology proposed by Dr Marshall. This is directly tied to relevant income bands, long applied percentages of the proportion of income to be expended on rent, and average apartment size.



By contrast, the methodology advanced by Dr Spiller relies on far more qualitative inputs, such as assumptions about the value of various objectives of Affordable housing and seeks to update calculations of need for Affordable housing beyond that in the current Planning Scheme provisions.

To address Council's concern about the variability of inputs, this minimum baseline can be maintained at an "Affordable" level over time by confirming or recalculating the equation as required to reflect current incomes and rental amounts.

### **(iii) Conclusions**

The Committee concludes:

- It is not necessary to establish a benchmark or 'deemed to comply' provision to apply the policy at Clause 22.15-4.3. However, there may be potential value in using such a provision as a tool for comparing relevant offers made by a proponent.
- If the Committee was to support such a provision, it should be understood as a 'minimum baseline' and, in the absence of more fulsome expert analysis on a Precinct wide basis, the methodology proposed by Dr Marshall is preferred.
- The Committee agrees with DELWP that if a minimum baseline provision (or similar) was to be pursued as a companion to the policy to facilitate its equitable application, this should be explored through the Guidelines being prepared by the Taskforce. Such guidelines are capable of being adopted by the government on a Precinct wide level and have benefited from stakeholder and expert input.

## **6.7 Appropriate wording for the Incorporated Document**

As mentioned, all parties agreed that it was reasonable to provide for a section 173 agreement to secure the Affordable housing commitment. However, parties expressed key differences in opinion as to the level of detail to be resolved upfront as part of this approval process, as distinct from being negotiated (or re-negotiated) at the time the section 173 agreement is prepared and executed.

### **(i) Evidence and submissions**

DELWP expressed a preference for a broad mechanism for the provision of Affordable housing which could be used for other Incorporated Documents rather than drafting a bespoke provision to reflect the particular site under consideration.

DELWP acknowledged that this does not specifically reflect the affordable housing offer forming part of the application. It accepted that this may leave it open to a Proponent to make a different offer after gazettal of the Amendment and would be prepared to consider this on its merits (provided some elements were fixed as proposed in its draft Incorporated Document).

As drafted by DELWP, key components of the agreement (at draft Clause 4.56) would require:

- The delivery of a minimum 6% of the total Gross Residential Leasable Floor Area for Affordable housing as defined by the Act within the development before the development is occupied:



- by transfer or lease to a registered housing provider, approved housing provider or trust; or
  - by leasing under management of these bodies for a minimum 20 year period (potentially less than 6% overall number but of equivalent value),
  - comprising one, two or three bedroom dwellings with at least one bicycle space allocated per dwelling.
- Alternatively, the payment of an amount of money to one of the bodies above if best endeavors have been unsuccessful and the payment is equivalent to the value that would otherwise have been delivered.
  - ‘Value’ is defined as the monetary value of a dwelling offered for sale at a ‘sufficient discount’ from market value determined by an independent valuer to meet the requirements of the Act for Affordable housing.

This provision was supported by the Proponent in principle.

Council took a fundamentally different approach to DELWP.<sup>50</sup> It considered the appropriate time to determine whether an affordable housing offer meets the policy objective is at the time of resolving the wording of the Incorporated Document. It submitted that that the Committee should not ‘defer’ consideration of what form the Affordable housing contribution should take to when the section 173 agreement is being prepared. It also re-emphasised the purported lack of certainty provided by the drafting as proposed.

## **(ii) Discussion**

There is always a balance to be struck when approving a proposed use and development – to achieve a level of certainty as to the outcome that will be delivered but to allow flexibility where matters are yet to be resolved in detail. This principle also applies to the approval of a development through an Incorporated Document; a form of Planning Scheme amendment.

The Planning Scheme in Clause 4.4 of CCZ1 provides detailed guidance as to the types of information that must accompany a permit application (by analogy to the current process) to describe the Affordable housing offer. These include a report addressing how the proposal would contribute to relevant objectives, the number and location of the units and their proportion, a mix representative of the development and plans depicting the extent of integration. The management and maintenance of this type of housing is included in the decision guidelines. This suite of information is to enable an assessment of qualitative compliance with both the policy and the Ministerial Notice.

In this instance, the Committee is strongly of the view that an outline of the key components of the Affordable housing offer should be ‘locked in’ as part of the approval wherever possible. It forms an important part of the proposal for which permission is sought. To the extent that the policy is flexible, the Amendment application stage is the time at which these options should be explored to arrive at an in-principle contribution (or quantitative equivalent) to be secured by the section 173 agreement mechanism.

It is evident that Affordable housing is an important way a development can contribute to net community benefit. If the Incorporated Document was drafted in a way that would allow a

---

<sup>50</sup> Its preferred drafting for the Incorporated Document is contained in Document 83.

completely different offer to be pursued (in qualitative terms), this could conceivably affect the overall 'decision making process' for the proposal after the event, since all elements of the proposal will have been assessed cumulatively to achieve net community benefit and sustainable development.

### **(iii) Conclusions and recommendations**

The Committee concludes:

- It is appropriate for the Incorporated Document to require a section 173 agreement to secure the Affordable housing offer.
- It is highly desirable to resolve the Affordable housing offer with specificity before approving the Incorporated Document since it forms an integral part of the overall use and development seeking approval. If fundamental changes were proposed, this would have clear potential to affect the overall assessment of the appropriateness of the proposal.
- The Affordable housing contribution for this proposal should take the form of at least 6% of the Gross Residential Leasable Floor Area as Affordable housing by committing to a 35% discounted rental to a registered housing provider, trust or other approved entity for the economic life of the building or another method of delivery to equivalent value. This would qualitatively meet both the objective and numerics of the policy, including all relevant considerations under the Ministerial Notice.
- The preferred form of wording for a section 173 agreement for this Amendment is contained in Appendix A within the draft Incorporated Document. It may be possible to use a similar model for other site specific Amendments, but the appropriateness of the provisions would need to be assessed by reference to the particular proposal.

## 7 Infrastructure and development contributions

### 7.1 The issues

Key issues include:

- Potential cumulative traffic and movement impacts of the proposal
- Whether the proposal suitably responds to the potential for flooding
- Have development contributions been suitably addressed?

### 7.2 Traffic and movement

#### (i) Relevant policies, strategies and planning scheme provisions

State and local policy seek to promote alternate modes of transport and minimise reliance on private motor vehicles. There is strong policy support to achieve these objectives specifically for the Fishermans Bend Precinct. A relevant purpose of Schedule 1 to the Capital City Zone is:

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

Clause 22.15 (Fishermans Bend Urban Renewal Area Policy) includes as a policy basis to:

- *Create a connected, permeable and accessible community that prioritises walking, cycling and public transport use*
- *Encourage developments to be designed to support 80% of movements via active public transport.*

Policy pertaining to sustainable transport at Clause 22.15-4.9 seeks to:

- *Ensure development does not compromise the delivery of future public transport including new tram, train and bus routes*
- *Reduce impacts of new vehicle access points on pedestrian, public transport and bicycle priority routes*
- *Design internal connections to give priority to bicycle and pedestrian movements*
- *Provide high levels of and easy access to bicycle parking facilities, including end of trip change rooms, showers and lockers*
- *Encourage developments to provide less than the preferred maximum number of car spaces*
- *Encourage developments to provide for future conversion of car parking for alternative uses.*

The land is included in the Parking Overlay, Schedule 1. In addition, the provision of parking for CCZ1 is contained in Clause 4.2. This would require 1 bicycle space per dwelling, one visitor parking space per 10 dwellings, one motorcycle space per 50 dwellings and 2 car share spaces plus 1 per 25 car parking spaces. These requirements are met by the current proposal.

**(ii) Evidence and submissions**

The proposal would provide for a new roadway within the site at a width of 9 metres compared with the designated width of 12 metres in the Framework. Council confirmed:

*While the proposal designates only a 9m wide roadway...Council submits that this is acceptable due to the constraints of the site and given the likely vehicular traffic that will eventually utilise the road ... Further, the provision of a 12m wide roadway would impact feasibility and usability as intended by the Fishermans Bend Framework.<sup>51</sup>*

Council explained that the road is intended to be a local urban road and that its traffic engineers were satisfied that it would be suitable to facilitate traffic flow in circumstances where Ingles Street terminates at the West Gate Freeway to the north-west of the subject land. The 9 metre width could facilitate a 6 metre wide road with a separate 1.5 metre wide pedestrian path either side of the road pavement or a consolidated pedestrian path of 3 metres on one side.

No party opposed the Amendment on the basis of traffic movements, car parking or cumulative impacts in terms of traffic generation.

DELWP submitted that the inclusion of the Department of Transport's suggested conditions in the Incorporated Document would address the sustainable transport objectives of Clause 22.15.

Council observed that the car parking provision did not trigger the need for planning approval under the Parking Overlay and that it was satisfied with proposed clauses 4.4(i) to (m) of the draft Incorporated Document. Likewise, it considered that the sustainable transport policy at Clause 22.15-4.9 would be met.

The Taskforce advised the Committee that the Fishermans Bend Planning Review Panel Integrated Transport Plan Peer Review expert witness statement, GTA 2018 addressed cumulative transport movements, informed density controls and led to high active and public transport targets that are contained in the Framework. The Taskforce submitted that the Amendment does not raise any major concerns from a transport perspective, however encouraged the Committee to review the background reports to inform it of the broader Fishermans Bend development context.

The Proponent submitted that the proposal would not generate unreasonable traffic or transport impacts. It relied in part on the Traffic Impact Assessment prepared by Transport and Traffic Planning Associates. This report confirmed that projected traffic generation from the site was likely to be comparable to existing conditions.

The Proponent also submitted that the Review Panel's recommendations in respect to transport modelling are relevant, noting that its findings adopted Mr Kiriakidis' recommendations from the peer review on behalf of the Minister for Planning. The Review Panel found:

---

<sup>51</sup> Document 71, paragraph 22.

- *transport modelling should be iteratively updated and refined as the urban renewal of Fishermans Bend progresses*
- *further detail on road geometry, traffic management and safety measures should be developed as part of the Precinct planning phase.*

DELWP also continued to rely on the traffic and transport assessments undertaken as part of the GC81 process, noting that expert inputs on travel targets and the like had informed the content of the Parking Overlay.

Mr Naughton advised the Committee that the Proponent cannot assist further in evaluating traffic cumulative impacts due to a lack of available information given the early timing of the project in the renewal of the Precinct. However, he did note that there is appropriate provision of car parking and sustainable initiatives. He submitted that the material presented should give the Committee comfort that the proposal would not ‘tip the balance’ in terms of traffic impacts and that appropriate movement networks would be created.

### **(iii) Discussion**

The Committee finds that the new roadway will make a positive contribution to the Precinct by creating side street access and a new cycling and pedestrian link consistent with the Framework. The 9 metre width is supported as a suitable balance between providing functionality and spaciousness while retaining suitable land area for development.

The Committee acknowledges the difficulty in assessing the cumulative traffic and transport impacts of the proposal on the realisation of the ultimate vision for Fishermans Bend. Even the site specific impacts are somewhat uncertain, such as whether the reduced proportion of car parking to be provided on site is realistic.

Important work is being undertaken by the Taskforce and the Department of Transport including precinct planning that is expected to provide more detailed guidance in the area of cumulative transport impacts.

In the absence of defined timeframes and a detailed scope of Precinct wide works, the Committee considers it appropriate for it to focus principally on ensuring a proponent is:

- seeking to achieve the policy objectives relating to sustainable transport for the proposal
- providing suitable functionality for all forms of transport with the potential for future integration where appropriate
- ensuring individual site contributions to enhanced local movement networks proposed by the Framework are suitably responded to, and
- will not compromise broader objectives regarding the delivery of public transport and other infrastructure.

In this regard, the Committee observes that the proposal responds suitably to these parameters since:

- it will not compromise the delivery of public transport
- vehicle access into the proposed development is consolidated to one point which is accessible from the new road shown on the Framework and not from Bertie Street (designated as a ‘no crossovers permitted’ road) and the vehicle access point is separated from pedestrian entrances into the building

- the proposed road width of 9 metres will facilitate a road width and pedestrian path either side to separate pedestrians and cyclists from motor vehicles
- the proposed car parking rate is lower than the planning scheme requirements for the various uses consistent with the provisions of the Parking Overlay
- sustainable transport measures within the proposed development include 6 on site car share spaces and 204 bicycle spaces
- the car park is able to be converted to alternative uses if there is future opportunity for reduced on site parking.

The Committee is conscious of the scope of its Terms of Reference. It would be highly desirable for it to be in a position to undertake a more fulsome analysis of the cumulative traffic and movement impacts of referred development on a Precinct wide basis. However, this will only realistically be possible once detailed precinct planning has advanced and infrastructure funding commitments are known.

#### **(iv) Conclusion**

The Committee concludes:

- On the basis of information available to it, it is satisfied that the proposed development would integrate suitably with the road network and has been designed with acceptable functionality.
- The proposal has also responded reasonably at a site level to sustainable transport controls, policies and objectives.

### **7.3 Response to potential for flooding**

The key issue is:

- The suitability of the design response having regard to the capacity for sea level rise, riverine inundation and overland flows and whether the proposal has capacity to achieve acceptable safety outcomes.

#### **(i) Response to sea level rise, riverine inundation and overland flows**

This is an important contextual element of many sites in the Precinct which are prone to flooding from various sources. To date, this has also provided limited opportunity for subterranean works such as basement car parking.

#### **Evidence and submissions**

Clause 22.15 - Fishermans Bend Urban Renewal Area Policy focuses on:

- *Creating resilience against the impacts of sea level rise and flooding from storm events without compromising the urban form at the ground level.*
- *Addressing the potential flood impacts with measures which in the first instance maintain activity at ground level.*

If this had been a conventional planning permit application, Melbourne Water would be a recommending referral authority under the Planning Scheme. Melbourne Water as the relevant waterway district manager proposes a suite of Precinct wide works to provide greater protection to the Fishermans Bend Urban Renewal Area.

Ms Schroor advised that a flood mitigation strategy in the form of a Development Services Scheme is underway. The following Precinct wide infrastructure is proposed:<sup>52</sup>

- a. A levee along the northern boundary of Fishermans Bend to protect it from coastal-tidal flooding, riverine flooding and sea-level rise;*
- b. pump stations to drain the stormwater drainage network when outlet levels are lower than Yarra River levels; and*
- c. pipes to convey flood water and alleviate flooding and drainage.*

Melbourne Water relied on the *Planning for Sea Level Rise Guidelines, February 2017, Port Phillip and Westernport Region* as the basis for its suggested conditions for the proposal.<sup>53</sup>

Melbourne Water advised that the internal finished floor level of the lift lobbies and concierge area are to be set no lower than 3.0 metres to Australian Height Datum (AHD) which is 600mm above the applicable 2100 year flood level of 2.4 metres to AHD. It preferred a freeboard of 600mm above the 2100 flood level of 2.4 metres to AHD for lobbies, lifts and areas containing electrical installations for this proposal, but would accept parts of the building such as retail or commercial areas, truck bays and bicycle parking being set at the flood level.

The conditions proposed for this Incorporated Document by Melbourne Water were noted as not necessarily being applicable to all development sites in the Precinct, especially if there is a more significant grade separation between street level and the proposed finished floor level than for this site.

In response to questions by the Committee, Melbourne Water confirmed that the floor levels identified for this proposal were not contingent on Precinct wide infrastructure being constructed and operational.

Originally, Melbourne Water considered that limited ‘sacrificial’ parts of the building could potentially be set below preferred freeboard above the flood level (if greater clearance was not achievable) provided they were subject to a Flood Risk Management Plan. In its final position, Melbourne Water did not support the inclusion of any conditions allowing finished floor levels at the site to go below 2.4 metres AHD, irrespective of whether a Flood Risk Management Plan was provided.

It also became apparent from later Melbourne Water correspondence in response to clarification requests from the Committee that overland flows arising from Council’s drainage system may not have been evaluated fully.

Council’s drainage engineers reviewed the modelling from Melbourne Water prepared by GHD and were concerned that a small section of flooding encroached into the proposed building footprint at 2.45 metres to AHD. The design proposes a minimum finished floor level of 2.5 metres AHD. Given that this creates a small margin of freeboard, Council recommended the following:<sup>54</sup>

---

<sup>52</sup> Extract of submission at Hearing.

<sup>53</sup> It responded to questions asked by the Committee as to the application of these Guidelines in Document 85. This included modelling outcomes that the duration of a 1% AEP tidal flood event is likely to be at its highest for a period of approximately 15 minutes (para 1.6).

<sup>54</sup> Document 104.



*Habitable finished floor levels – 300mm buffer required = 2.75m to AHD*

*Non-habitable finished floor levels – 150mm buffer required = 2.60m to AHD*

*Electrical fittings and switches – 600mm buffer = 3.05m to AHD*

Melbourne Water also sought a condition requiring internal ramping of the entry points to the two pedestrian paths to the minimum flood level. DELWP requested a seamless transition from the public realm to the private realm in response to any changes required in meeting Melbourne Water's conditions.

## **(ii) Discussion**

Clearly, the architectural design needs to allow for sea level rise, riverine and local overland flows as a key site constraint. Flood mitigation measures need to be integrated into the design without compromising the urban design quality to the streetscape. Melbourne Water accepted that there is a balance to be struck and the Committee agrees.

This site has the benefit of more favourable conditions pertaining to anticipated flooding compared with others in the Precinct, including minimal level differential between the site and the street. This has resulted in an ability to either meet or exceed the flood level at all instances. On this basis, the Committee has not needed to focus especially on balancing the need to manage flood risk with the need for activated site frontages, as is starting to arise in other referrals to it.

The Committee has satisfied itself that the proposal would suitably account for all forms of potential flooding, including overland flows and that the amended suite of conditions proposed by Melbourne Water and Council (as agreed to by DELWP and the Taskforce) are appropriate. In particular, the Committee has revised the relevant flood level for the front (centre) of the site from 2.4 metres to AHD as calculated by Melbourne Water to 2.45 metres as calculated by Council for overland flows and increased finished floor levels for this part of the site in the Incorporated Document as sought by Council.

The Committee notes the significance of potential Precinct wide mitigation works to be undertaken by Melbourne Water. However, given the uncertainty about the nature, timing and effectiveness of these works, the Committee has needed to ensure that this particular proposal provides a suitable response to forecast flood levels without regard to these works.

One other issue that concerned the Committee was the ability for emergency vehicles to access the site in times of flooding. This may potentially be an issue for many sites proposed to be redeveloped in the Precinct, particularly to the south east of the subject site. The GHD modelling demonstrates that access to the tower will be readily available from the proposed laneway.<sup>55</sup> Beyond the site, however, vehicle access from Bertie and Ingles Street may be problematic given the extent of flooding - highlighting the need for a Precinct led solution.

---

<sup>55</sup> Document 104a.

## 7.4 Development contributions

The Terms of Reference direct the Committee to consider appropriate development contributions in connection with each proposal referred to it. At the same time, they clarify that the Committee should not have regard to contributions that would otherwise be required under the Infrastructure Contributions Overlay.<sup>56</sup>

This reflects the Minister's intention to enable called in applications to be considered and potentially approved in advance of a formalised Infrastructure Contribution Plan, which is still some time away.<sup>57</sup>

### (i) Contributions requested by the Taskforce

The Taskforce provided an itemised list of development contributions it would be seeking 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.<sup>58</sup> It explained that these amounts are consistent with interim development contributions applied since 2014 to development in the Precinct (subject to indexation).<sup>59</sup>

*\$16,916.51 per dwelling*

*\$191.51 per sqm of gross office/commercial floor area*

*\$159.59 per sqm of gross retail floor area*

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

The Committee asked the Taskforce to summarise the type of infrastructure funded by the interim development contributions. It responded that, to date, funds have gone to the delivery of the South Melbourne Primary School, purchase of the former General Motors Holden site, purchase of land for Kirrip Park and improvements, Railway Place tram upgrade, intersection and streetscape upgrades. These works were costed at \$13.7m, noting that development contributions paid to the Victorian Planning Authority was in the order of \$8m. Development contributions of \$10m are expected to be collected in 2020.<sup>60</sup>

DELWP and the Taskforce agreed to conditions of the Incorporated Document to provide that the development would be exempt from any future contributions that may otherwise be imposed for development in the Precinct under the Infrastructure Contributions Overlay. Likewise, if the equivalent contribution for this land was ultimately less under the Infrastructure Contributions Overlay, the Proponent would be refunded the difference.

---

<sup>56</sup> 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.

<sup>57</sup> 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.

<sup>58</sup> Document 98.

<sup>59</sup> Based on the now superseded *Fishermans Bend Strategic Framework Plan 2014*.

<sup>60</sup> Refer to Document 98 and to the links provided by the Taskforce in Document 80.

**(ii) New roadway on the site**

This represents a significant contribution for the land. This was a discrete issue considered by the Review Panel for GC81 who recommended consideration be given to further investigation to optimise the roadway location and width as part of the Precinct plan process.

This issue has been resolved by the Framework which now identifies a 12 metre wide new roadway along the south eastern side of the site (within title). As explained, the parties agreed that a 9 metre wide road would be suitably functional and would meet the objectives of the Framework for site permeability and an enhanced movement network. The Committee agrees.

The important residual question is who is responsible to pay for the new roadway (land value and construction) and whether it properly constitutes ‘works in kind’, or whether conventional compensation mechanisms should remain available.

**Evidence and submissions**

The Proponent agreed to construct the new roadway, which it advised would cost in the order of \$2 million.<sup>61</sup> It also agreed to transfer the new road to Council, as the local road authority, in line with earlier discussions.

The draft Incorporated Document prepared by DELWP and supported by Council proposed to include a requirement in Clause 4.22 that the road be transferred *at no cost* to the relevant road authority.

This form of wording was strongly opposed by the Proponent because it was considered to potentially remove any rights to claim compensation under section 98 of the Act.

DELWP responded that removing these words may arguably create a right to compensation under this provision rather than ‘deferring the question’.<sup>62</sup> It pointed to the version of the Strategic Framework Plan for Fishermans Bend before the land was purchased which provided that developers are expected to construct local roads as part of their development.

More broadly, DELWP explained that *“a fair economic analysis of the impact of the Incorporated Document on the value of the land would need to consider the benefits conferred on the subject site relative to an equally sized parcel of land to which the CCZ and DDO32 applied in full”* including additional dwellings, a requirement to pay the interim development contribution (with shielding from any potential future higher amount) and a reduction in the width of the roadway recognising development capacity.<sup>63</sup>

DELWP suggested that the new roadway is principally a road that benefits the subject site in that it enables access other than from Bertie Street, a designated ‘no crossovers road’ in the Framework. This position was strongly resisted by the Proponent who considered that there was broader anticipated use of the new roadway as a movement network to benefit the Precinct including adjacent land holdings.

---

<sup>61</sup> No detailed costings were provided to the Committee to verify this amount.

<sup>62</sup> This would to a large extent depend on whether the Amendment equated to a ‘reservation of the land for a public purpose’ under the planning scheme.

<sup>63</sup> Closing submission, para 33.

Council was given a further opportunity to confirm its position after the Hearing. It indicated its preference for the roadway to be transferred at no cost to it. However, if the Committee was not prepared to support this arrangement, it would prefer a requirement be imposed on the Proponent to establish a private road, ensure it remained open at all times and maintain it at its expense on an ongoing basis.<sup>64</sup>

Council referred the Committee to Clause 4.3 of CCZ1 which provides that where a new roadway is identified on the land and not funded by an Infrastructure Contributions Plan, a condition must be imposed in a permit requiring the owner to enter a section 173 agreement to construct the road and transfer or vest it in the road authority as a public roadway at no cost. It submitted that to delete the words from the draft Incorporated Document requiring the transfer to be “at no cost to the relevant road authority” would be inconsistent with this provision.

In response, the Proponent pointed out that Clause 4.3 is not strictly applicable to this proposal, which is an amendment to the Planning Scheme and not a planning permit. It also emphasised that the provision does not require transfer of the land at no cost if it is agreed the land is to remain as a private road.

## **Discussion**

The Committee regards the commitment to provide and construct this roadway as a positive aspect of the proposal. It would contribute to enhanced movement networks across Fishermans Bend and to a preferred new access arrangement for the site itself consistent with the preferred road hierarchy. It would provide increased separation between the proposed building and the linear park identified in the Framework on the adjacent site at 277-281 Ingles Street. The new roadway width of 9 metres rather than 12 metres also responds to and respects the heritage building footprint of the Former Australian Motor Industries Factory building (Heritage Overlay Schedule 165) fronting 289 Ingles Street, Port Melbourne.

As one of the first applications following the re-cast Planning Scheme provisions, this amendment highlights some of the practical issues requiring resolution for new or upgraded infrastructure for the Precinct, especially where this is designated on private land. There is a legitimate question as to how these types of infrastructure are to be funded, both in terms of their underlying land value and the costs of construction.

The Committee was not provided with any direct guidance from the parties as to how to approach works to be physically provided in advance of the approval of an Infrastructure Contributions Plan. However, it accepts that the authorities consider that this particular roadway is not of a character that should be regarded as ‘works in kind’ to be offset from other contributions.

The Committee was advised by the Taskforce that the types of infrastructure to be funded by the Infrastructure Contributions Plan have not yet been determined, but that there is likely to be a substantial shortfall between the amount that can be recouped as infrastructure contributions and the overall extent of new and upgraded infrastructure required for the full realisation of the Vision for Fishermans Bend.

---

<sup>64</sup> Document 104.

On this basis, it is probably reasonable to assume that it is unlikely that the Infrastructure Contributions Plan will fund infrastructure items with a more limited local role, such as this new roadway. For conventional *permit applications* after this time, the Committee expects that Clause 4.3 of CCZ1 would provide a clear way forward.

It would notionally be possible for the Committee in *future planning scheme amendment referrals* to make specific recommendations about how the costs of on-site infrastructure such as future local roads should be allocated. However, this would have the capacity to substantially lengthen and complicate hearings, particularly in connection with engineering and valuation evidence or similar.

No evidence was called in this particular matter to enable the Committee to verify the detailed projected costs of the roadway or options for its funding. However, in the absence of this, the Committee has considered the context of this site and the potential character and function of this new roadway to provide some guidance for the future resolution of this issue.

The Committee does not agree that the roadway would only serve the site itself. If this was the case, it would only need to terminate after the new access point was created off Bertie Street. That said, in principle, given the location of the site and the availability of existing road connections from Bertie Street to Ingles Street, the Committee takes the view that the roadway would principally serve the subject land although there would likely be other users, including the adjacent property to the rear if redeveloped in line with the Framework. The roadway would also create a walk-through and bicycle connection for other users to improve functional networks in this part of the Precinct.

Taking a pragmatic approach to progressing this Amendment, the Committee considers that it is sufficient for it to proceed on the basis that the proposal includes a commitment to construct and make available a new local roadway generally in accordance with the Framework.

In the absence of being in a position to make specific findings about the fair allocation of cost for this new roadway, the Committee considers it reasonable to leave scope for the potential operation of conventional compensation provisions in the legislation, as suggested by the Proponent.

The Committee recognises that this may impact on the decision by a local road authority such as Council whether to accept the vesting of the road. Therefore, the wording of the Incorporated Document could provide for the election of Council to have the road vested in it.

In practice, it would not matter to the Committee whether the road was to be in public or private ownership, provided there was an ongoing obligation to maintain it and ensure it remained open for use by the public. This is consistent with the existing mix of public and private infrastructure assets emerging in the Precinct, referred to by Council in Document 104b where it explained that the roads in question were generally transferred to it where they were designed to Council specifications, but not otherwise.

The ongoing obligation for maintenance and continuing function could be required by a section 173 agreement (as contemplated by CCZ1) and generally in the form proposed by

Council, which would persist after the expiry of the Incorporated Document. The Committee has made recommendations accordingly.

### **(iii) Potential contribution for water catchment upgrades**

#### **Evidence and submissions**

Melbourne Water explained that this Precinct wide infrastructure was unlikely to be funded by the Infrastructure Contributions Overlay. Consequently, for called in applications such as this (which are not subject to these charges), it sought a 'Note' to be included in the Incorporated Document to explain that it may subsequently levy charges in respect of the land under its powers in the *Water Act 1989*.

The Proponent opposed the inclusion of a note in the Incorporated Document, although it did not appear that the Proponent contested the potential use of these underlying powers by Melbourne Water at a later date.

DELWP and the Taskforce were generally comfortable with a note as proposed. DELWP acknowledged that the Victorian Civil and Administrative Tribunal often discourages the use of notes in planning permits, but considered that the situation was different here since a planning scheme amendment was concerned, being subordinate legislation. It further explained that it was not unusual for planning scheme provisions to include notes to reference potential action under related legislation.

#### **Discussion**

The Committee takes a practical view of this issue. The inclusion of a note in the Incorporated Document will not affect the existence or otherwise of Melbourne Water's fundamental powers under the *Water Act*. Likewise, payment of development contributions under the Incorporated Document will not automatically alleviate further payment by the Proponent or a subsequent owner under this legislation (if levied).

The practical effect of including a note in this instance is to give public notice to anyone seeking to obtain a future interest in the land that additional obligations may be imposed by Melbourne Water in connection with the permitted use or development.

The Committee considers that it is reasonable for such notice to be given in circumstances where a future levy may be likely, and the application does not fall under conventional processes. While it may be possible to address this in the forthcoming building approval process, the Incorporated Document is the first source of approval for the use and development. Relevantly, there is scope for a note to be included within the form and content rules of drafting planning schemes.

On balance, the Committee suggests it is preferable to include a note in the planning scheme provision compared with a less transparent or enduring form of notice from Melbourne Water to this particular proponent.

### **(iv) Public open space**

The Proponent explained that the Build to Rent model it was pursuing would not involve subdivision of either the residential or commercial component. Rather, it would be held and controlled under a consolidated ownership arrangement.

In these circumstances, the parties agreed that it was appropriate for a planning permit to be sought for subdivision in the ordinary course if this was ultimately proposed. This would presumably trigger the need for a contribution for public open space under the *Subdivision Act 1988* if the development was found to create a need for open space, referable to Clause 53.01 of the Planning Scheme. The schedule to this provision fixes an 8% public open space contribution for the Fishermans Bend Urban Renewal Area.

However, the Committee is conscious that as a matter of practice, a proportion of money collected under the interim development contributions is being spent on the purchase or provision of new open space (amongst other things). If further subdivision of a referred application was proposed, relevant authorities may need to consider ways to avoid potential 'double dipping'.<sup>65</sup>

Moving forward, this is unlikely to be an issue for development subject to an approved Infrastructure Contributions Plan if consolidated contributions are levied, including a public land percentage contribution.

---

<sup>65</sup> Although the Committee notes that the two types of contributions would be made under different legislative provisions and to different collecting (and potentially administering) agencies. This issue was explored in more detail and with finer detail resolution in respect of Site 6 since subdivision of the apartments was a likely outcome. In that matter, the parties proposed conditions of the Incorporated Document to avoid potential 'double dipping'.



## 8 Wording of the draft Incorporated Document

### 8.1 The issues

This section of the Report addresses aspects of the Incorporated Document that warrant specific comment and are not dealt with elsewhere. The Committee had the benefit of marked up versions of the draft Incorporated Document on behalf of all parties. This was the subject of further discussion at the Hearing, including a ‘without prejudice’ drafting session.

The Committee relies on the advice of DELWP that the draft Incorporated Document would meet the Ministerial Direction on the Form and Content for Planning Schemes approved under section 7(5) of the Act.

### 8.2 Aboriginal cultural heritage

The Proponent commissioned Dr Tim Stone to prepare a Significant Ground Disturbance Assessment dated November 2019. The assessment was submitted to the Committee before the Hearing (Document 52).

The assessment considered:

- whether the subject land has been subject to significant ground disturbance as defined under the *Aboriginal Heritage Regulations 2018*
- whether a Cultural Heritage Management Plan (CHMP) is required for the proposed development and the reasons for that conclusion.

Dr Stone concluded that:

- *construction of multiple dwellings at 118 Bertie Street, Port Melbourne may proceed without any further Aboriginal cultural heritage investigation, or CHMP. The reason is that the land proposed for development has been subject to significant ground disturbance in its entirety and therefore is not an area of cultural heritage sensitivity that requires a CHMP.*
- *In the highly unlikely event that items of Aboriginal cultural heritage are uncovered during the course of development, all work at the subject site must cease and the developer, or its contractors, must contact the Heritage Advisor or AV for advice. It is an offence under the Aboriginal Heritage Act 2006 to harm Aboriginal cultural heritage without written authorization.*

No parties disputed the conclusions of the report. Mr Watters advised the Committee that DELWP accepted Dr Stone’s finding that no CHMP is required for the proposed activities.

Clauses 4.6 and 4.7 of the draft Incorporated Document address the requirement for an appropriately qualified professional to prepare a report confirming that a CHMP is not required; or if required, a letter from Aboriginal Victoria confirming that a CHMP has been approved for the land and that all works must be undertaken in accordance with the requirements of the approved CHMP.

On the basis of the assessment and DELWP's submissions, the Proponent confirmed that Dr Stone's assessment would be submitted to the Minister as Responsible Authority to satisfy draft Clause 4.6 of the Incorporated Document.

The Committee concludes that the proposed wording of the Incorporated Document is acceptable in this instance. However, the Committee does not reach any independent conclusions about the veracity of the report as demonstrating significant ground disturbance since this is a matter to be addressed conclusively before works start, noting the requirement for the report to be to the satisfaction of the Minister as Responsible Authority.

### **8.3 Subdivision**

All parties agreed that the Incorporated Document should include permission for subdivision of the new roadway. However, any further subdivision - such as to create apartments on separate title or commercial tenancies, which is not currently proposed - would require approval under standard provisions of the Planning Scheme.

Clause 4.1 of the draft Incorporated Document deals with this matter. During the discussion at the conclusion of the Hearing, DELWP proposed alternate wording to improve the clarity of this provision. The Committee concludes that the proposed wording of the clause dealing with the exemption is appropriate as re-drafted.

However, the Committee considers that it is not appropriate to expressly exclude Clause 53.01 of the Planning Scheme relating to a public open space contribution since there remains notional potential for the land to be subdivided. The nature of such a contribution is different from the interim development contribution required by the Taskforce and would be administered by Council as the collecting authority. The question as to whether this and relevant provisions of the *Subdivision Act 1988* would apply could be considered if subdivision was sought at a later stage.

The Committee also notes that this approach is generally consistent with that taken by parties in respect of the referral of draft Amendment C163port – 203-205 Normanby Road, South Melbourne (Site 6).

### **8.4 Council supervision fee**

#### **(i) Evidence and submissions**

Council advocated for a requirement for the Proponent to pay a supervision fee equivalent to 2.5% of the actual cost of the construction of the new roadway. It considered this appropriate because the Incorporated Document alleviated the need for further permission for subdivision. Under normal circumstances, this fee would be applicable under relevant provisions of the *Subdivision Act 1988* and *Subdivision (Fees) Regulations 2016*.

The Proponent agreed to construct the roadway at its cost and to pay a 0.75% engineering checking fee as proposed in the Incorporated Document. However, it opposed the payment of an additional supervision fee. It also pointed to the provisions of the *Local Government Act 1989* and associated Regulations that would enable Council to waive a fee if 'no appreciable burden' was created.

**(ii) Discussion**

There is likely to be some burden imposed on the responsible road authority to supervise a road nominated to vest in it. The Committee considers that it is reasonable for the Proponent to pay a supervision fee only if the roadway is intended to become a public road vested in Council. By way of reference, under section 17(2)(a) of the *Subdivision Act 1988*, Council may charge a supervision fee at its discretion, but this is not mandatory. Under Regulation 11 of the *Subdivision (Fees) Regulations 2016*, the maximum supervision fee is 2.5% of the value of the works.

However, if the roadway is to remain a private road, the Committee has not been persuaded why a supervision fee would be necessary to ensure the roadway is constructed to the appropriate standard in addition to the engineering checking fee (which has been accepted).

Additional words could be inserted in the draft Incorporated Document to specify that the supervision fee is only required if the roadway is to become a public road.

## **8.5 Environmental Audit Overlay**

Clause 4.4.1 of the draft Incorporated Document sets out the requirements for an environmental audit. No party contested the proposed wording of the clause. The Committee makes no other recommendations in relation to this matter.

In settling the draft Incorporated Document, it is also apparent that some conditions recommended by the Environment Protection Authority in its submission to DELWP had not been included. The Committee considers these reasonable and has made provision for them, noting that there was no express objection by the Proponent raised at the Hearing.

## **8.6 Responsible Authority**

The draft Incorporated Document stipulates different roles and responsibilities for respective responsible authorities - the Minister for Planning, Victorian Planning Authority and Port Phillip City Council. These roles are detailed at Clause 1.4 of the draft Incorporated Document and were discussed at the conclusion of the hearing.

The only part of these responsibilities that was disputed between the parties was the authority responsible for the future section 173 Agreement pertaining to Affordable housing.

Ms Marson on behalf of Council submitted that it should be the Responsible Authority for this section 173 agreement since Clause 72.01 (Responsible Authority for this Planning Scheme) confers this responsibility on the Minister in respect of matters in Part 4 or 4AA of the Act which do not include section 173 agreements. It explained that it regarded itself as the Responsible Authority for section 173 agreements entered into for properties within the Precinct to date.

Mr Naughton on behalf of the Proponent submitted that Council's interpretation is not correct since the other part of the head clause in the Schedule to Clause 72.01 refers to "matters required by a scheme to be endorsed".

In closing, Mr Watters on behalf of DELWP concurred with the Proponent's submission although he relayed his instructions that the Department was content for Council to be a party to the section 173 agreement.

In concluding comments, Council submitted that it was arguable that the Minister is the Responsible Authority. It did not seek a ruling on the issue but supported DELWP's position that council be a party to the agreement as a practical way forward.

The Committee is satisfied that this outcome is consistent with the provisions of the Planning Scheme.

## **8.7 Expiry date**

### **(i) Introduction**

Clause 4.6.3 of the draft Incorporated Document as drafted by DELWP provides for expiry of the control approved by the Amendment:

- If the development has not commenced 3 years after the approval date
- If use of the land has not commenced 5 years after the approval date
- If the development is not completed 5 years after the approval date.

DELWP and the Proponent disagreed about these timeframes.

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

The Proponent submitted that these dates are inadequate and should be extended at least to 4 years to start and 6 years to complete. Its original preference was for 5 years to start and 7 years to complete development.

It tabled a letter prepared by Lateral Estate Pty Ltd dated 7 February 2020 (Document 77) in support of its position which explained:

- *Fishermans Bend is currently very early in its infancy of converting into a residential and commercial community. The land is currently almost entirely industrial, and 118 Bertie Street is at the dead-end of a secondary road. The Government has currently not committed funding for any infrastructure to support the growth of Fishermans bend, and the timing is unclear.*
- *Lateral Estate are proposing for the whole development at 118 Bertie Street to be a Build-to-Rent community. This means we need to procure funding for the project without any pre-sales. Our experience in funding of new Build to Rent developments in Sydney has revealed that as this is a pioneering concept in Australia, the process to get funding approved is time consuming.*
- *Lateral Estate commenced work on our original Permit application at the end of 2015. The considerable delays over the four years since has resulted in missing the timing of a solid, bankable, rental market. As a result, time will be required to obtain the funding once the financier is satisfied the rental market has improved.*

- *Lateral Estate (and our internal construction arm) are based in Sydney and would require setting up a Melbourne office and time this with the completion of our existing projects already in our pipeline, which includes completing large staged estates.*

DELWP opposed the Proponent's position, submitting:

*DELWP's objection to the longer period sought by the Proponent is a principled one. One of the effects of the proposed Amendment is that the development will be exempt from compliance with any Infrastructure Contributions Plan ultimately incorporated into the Scheme. That ICP will be used to fund critical infrastructure for Fishermans Bend. DELWP sees no reason why the Proponent should give an extended exemption from the operation of the ICP if it is not actively undertaking development.*

DELWP submitted that the provisions of the Specific Controls Overlay (Clause 45.12-2) enable an extension of time to be granted for the operation of an Incorporated Document. The Proponent could apply for this if needed in future.

The Proponent responded that it should not be required to go to the expense of seeking an extension of time and potentially have to seek a review of the Minister's decision.

Mr Watters provided examples of other projects in the Precinct that had longer expiry dates<sup>66</sup> but observed that they were for larger, generally staged development. In closing, he advised the Committee that the Department would not oppose longer time frames in all instances but that it did not consider this warranted in the circumstances.

### **(iii) Discussion**

The Committee considers that a balance should be struck between providing realistic timeframes for development to start while not encouraging speculative approvals within Fishermans Bend.

Ultimately, the parties are not so far apart in relation to the timeframes for expiry. Relevant considerations affecting a realistic timeframe for this proposal include that it is effectively 'first in time' in advance of upgrades or additions to key infrastructure.

In the Committee's view, what the Proponent is seeking is not unreasonable given the emerging nature of the Precinct and the scale of the development. Further, given the Committee's support for restricting the approval to the Build to Rent model, it accepts the Proponent's that there may be a need for longer time to secure funding for what is a relatively new concept, particularly in Victoria. Also, the effects of Coronavirus disease on the development industry are potentially significant but as yet unknown.

Although the Committee accepts that it may take longer to start the project, the Proponent has not demonstrated why additional time is required to construct the building. If the building has started in accordance with the permission granted, an extension of time to complete should be straightforward if there is a demonstrated need.

---

<sup>66</sup> Document 90.

In terms of drafting, the Committee observes that clause 4.63 of the draft Incorporated Document refers to the approval of Amendment C173 and it should refer to Amendment C172port. This error has been corrected in the drafting of the Committee's version of the Incorporated Document.

**(iv) Conclusion**

The Committee concludes:

- The expiry clause in the draft Incorporated Document should provide 4 years to start the development and 5 years to complete.

## 9 Integrated assessment

### 9.1 Approach

When considering a proposal to develop and use land, a Responsible Authority almost invariably needs to balance competing objectives that arise in the policy and physical setting. This is an important part of the Committee's role in considering referrals to it.

This site specific amendment has a long gestation and is the first of many expected to be referred to the Committee.

The Committee is very mindful that the planning framework recently introduced by Amendment GC81 followed a lengthy process which included independent evaluation by the Review Committee with the benefit of extensive public submissions and expert evidence. These re-cast planning provisions provide a firm base for consideration of proposals through site specific amendments even though more detailed precinct planning is underway.

It is challenging to evaluate the cumulative impact of proposals at this early stage of Precinct renewal especially in terms of built form, land use, transport and infrastructure. In this setting, priority should be given to upholding the clear planning policy objectives for the Fishermans Bend Urban Renewal Precinct from the outset to enable the long term strategic vision to be achieved.

Site specific departures may be warranted in the exercise of discretion, but they should be rigorously tested by reference to the strategic Framework and Vision which direct the bigger picture.

### 9.2 Analysis and key findings

Clause 71.02-3 of the Planning Scheme seeks to achieve integrated decision making. It provides:

*Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.*

The Committee has balanced numerous considerations leading to its support for the draft Amendment. Principally, these include:

- The built form of the proposal is well aligned with preferred character outcomes for the Core area of the Sandridge Precinct including the provisions of DDO32, although it does not represent design excellence.
- Policy sets a high bar for Environmentally Sustainable Development in the Precinct. The credentials of this proposal will need re-assessment and further design work to achieve a suitable outcome, with elements including heat gain and wind response warranting more substantial exploration and resolution.
- The proposal would facilitate new small scale commercial and retail premises that would contribute to the transition of this part of the Precinct at a local level. However, it does



not meet the important policy for employment generating land use for the Sandridge Precinct by some margin, even though it makes notional provision for adaptable floorspace.

- On balance, the Build to Rent model has the potential to generate economic and social benefits that would in part offset the lack of compliance with the employment uses policy and should therefore be enshrined as a key element of the approval. A notable benefit is the provision of a diverse mix of housing to cater for a broader range of households which is a priority for the Precinct and which would represent an acceptable land use outcome for the site as a whole.
- The fundamental elements of the Proponent's offer for Affordable housing through discounted rental within the development are capable of meeting the policy intent, subject to adopting recommendations of the Committee to effect suitable tenure, affordability and housing mix.
- The proposal would make appropriate development contributions based on accepted calculations at this point in time, but is likely to benefit from being permitted before the approval of the Infrastructure Contributions Plan for Fishermans Bend.
- The construction and provision of a new roadway on land represents a positive contribution to the movement networks designated within Framework, even though its principal benefit is likely to be to the land itself.

The Committee's overall support for the proposal should be understood as contingent on conditions to be included in the Incorporated Document as recommended in Appendix A. These are central to securing the balance of net community benefit and sustainable development for this particular proposal.

### 9.3 Response to Terms of Reference

| Relevant clause | Terms of Reference requirement   | Section/s of the report that address the requirement |
|-----------------|--|--|
| 41              | 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. |  |
| 42              | The report is to be produced following the conclusion of the public hearing and is to provide the following:   |  |
| 42(a)           | A summary of the site specific planning control, the proposal and all submissions received.  | Chapter 2  |
| 42(b)           | The Advisory Committee's recommendations regarding the site specific planning control and the proposal.  | Chapter 1  |
| 42(c)           | A summary of the Advisory Committee's reasons for its recommendations.   | Chapters 1, 9 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   |

| Relevant clause | Terms of Reference requirement        | Section/s of the report that address the requirement |
|-----------------|---------------------------------------|--|
| 42 (f)          | A list of persons consulted or heard. | Table 3  |

## **Appendix A      Recommended form of Incorporated Document**

## PORT PHILLIP PLANNING SCHEME

### INCORPORATED DOCUMENT

Specific controls for 118 Bertie Street, Port Melbourne

DATE TO BE INSERTED

Incorporated document pursuant to Section 6(2)(j) of the *Planning and Environment Act 1987*

Incorporated document in the Schedules to Clauses 45.12 and 72.04 of the Port Phillip Planning Scheme

Standing Advisory Committee additions are marked in [blue](#).

Standing Advisory Committee deletions are marked in ~~red strikethrough~~.

## 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, offices and retail premises in accordance with Clause 4 of this document.

## 3. LAND DESCRIPTION

- 3.1. The control in Clause 4 applies to the land at 118 Bertie Street, Port Melbourne being the land contained in Certificate of Title Volume 10267 Folio 567 and more particularly described as Lot 1 on Plan of Subdivision 342848C. The land is identified in Figure 1 below.

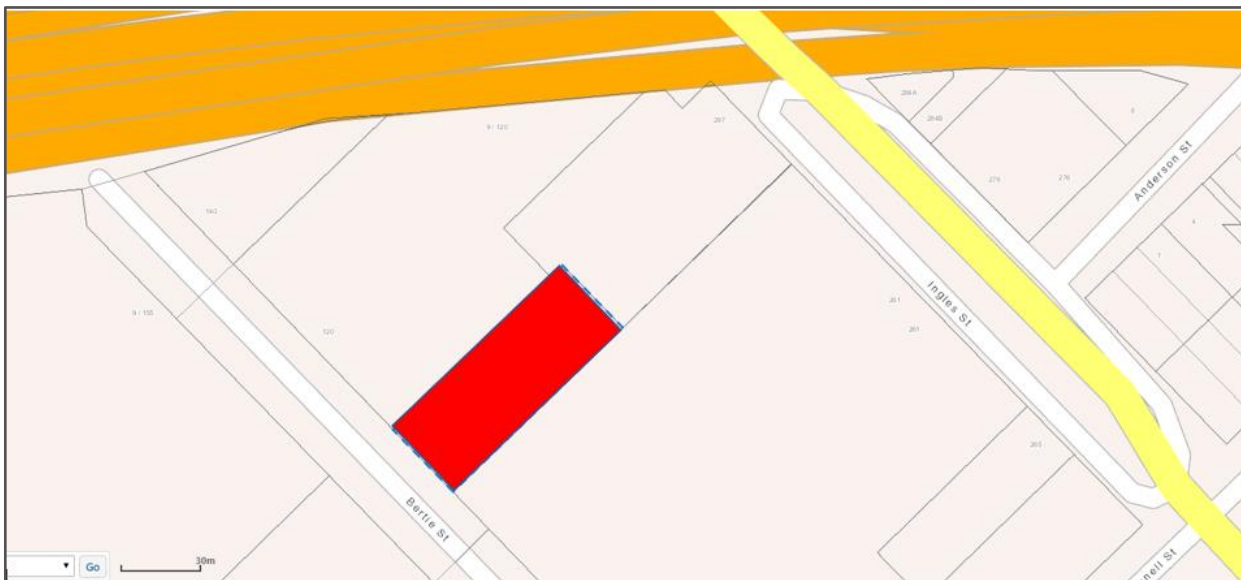


Figure 1: Map of Land subject to this Incorporated Document

## 4. CONTROL

### Exemption from the Planning Scheme requirements

- 4.1. Subject to [C](#)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.
- 4.2. A permit is required to subdivide the land, with the exception of a subdivision which creates a road ~~to be vested in the City of Port Phillip~~ and no additional lots are created.
- 4.3. An application for subdivision is exempt from the requirements in Clause 45.11 (Infrastructure Contributions Overlay) of the Planning Scheme [but not from the requirements in Clause 53.01 \(Public Open Space Contribution and Subdivision\) if applicable.](#)

### ~~Compliance with the endorsed plan~~ **Approved use and development**

[4.4](#) The dwellings approved by this control may only be used for a Build to Rent scheme (where the land is held in single ownership and occupation is comprised of rental tenancies with shared facilities provided through a centralised management arrangement), unless otherwise approved in writing by the Responsible Authority.

~~4.4~~ [4.5](#) The use and development of the land must be undertaken generally in accordance with all documents approved under Clause 4.

### Amended plans

~~4.5~~ [4.6](#) Before the development starts, excluding demolition, excavation, piling and site preparation works, amended plans must be submitted to and approved by the ~~Minister for Planning~~ [Responsible Authority](#). The plans must be drawn to scale and fully dimensioned including to show natural ground level, floor levels, wall and building heights and lengths, with heights to be expressed to Australian Height Datum (AHD) and three copies plus an electronic copy must be provided. The plans must be generally in accordance with the architectural plans entitled Drawing No. 1518 - A 0000 Rev D to 1518 - A 9001 Rev D (64 sheets), all dated 20 May 2019, prepared by Mako Architecture but modified to show:

- a) [A zero lot line to the ground level retail tenancy to the Bertie Street and new roadway frontage.](#)
- b) [Reduced setback of the ground floor residential entrances, entrance to the bicycle store and entry into the lobby of the tower from the new roadway to provide improved safety to pedestrians.](#)
- c) [Improved legibility through design for the building entry to the tower to provide a line of sight from the concierge area from the new roadway.](#)
- d) [A recess in the south elevation \(from ground level to level 6\) to provide a readily identifiable entrance into the lobby of the building \(in a similar architectural expression, dimension and setback adopted in the building entry from Bertie Street\).](#)
- e) [Provision of an airlock between the car park and the apartments in the podium at levels 2, 3 and 4.](#)
- f) [Refinement of the design of the truck bay entry, roller door position and associated services to reduce visual impacts on the public realm and enhance pedestrian safety.](#)
- ~~a)g)~~ [The layout of apartments to comply with the Standards of Clause 58 of the Port Phillip Planning Scheme.](#)
- ~~b)h)~~ [A plan and cross section of the new road showing above and below ground placement of services, streetlights and trees \(as applicable\).](#)
- ~~e)i)~~ [Consistent paving treatment for the crossover/driveway to the south-east corner of the land and the pedestrian path that runs the length of the south-east side boundary.](#)
- ~~d)i)~~ [The vehicle crossing off the new road to incorporate an intermediate pedestrian refuge or be reduced in width to 6.1m or less.](#)

- ~~e)k)~~ Plan notations for all vehicle crossing works to be in accordance with the City of Port Phillip Vehicle Crossing Guidelines and Standard Drawings.
- ~~f)l)~~ Plan notations for the project to achieve a minimum 5 Star Green Star Design and As-Built rating (~~or equivalent~~ with a 10% buffer, achieving 66 points) with the Green Building Council of Australia.
- ~~g)m)~~ Plan notations for the project to include the Sustainable Design Measures and Water Sensitive Urban Design measures of the approved Sustainable Management Plan and Water Sensitive Urban Design Response.
- ~~h)~~ ~~Reduction of visual bulk/horizontal mass of the tower form above the podium along the south eastern elevation by providing a legible rebate to the building.~~
- ~~i)n)~~ Visitor bicycle parking for the retail / commercial spaces; spaces should be in a location that is visible on approach to the building and in a space with public surveillance.
- ~~j)o)~~ Swept path plans confirming a B85 and B99 vehicle can enter/exit all ramps at the same time.
- ~~k)p)~~ A swept path plan confirming truck access to and from the loading bay.
- ~~l)q)~~ The disabled car park design to meet AS 2890.6.
- ~~m)r)~~ An additional 300mm clearance around the two car share bays.
- ~~n)s)~~ Headroom clearance in the car park and along all ramps.
- ~~o)t)~~ Any changes necessary to meet the requirements of the Melbourne Water conditions below and any consequential design changes required to ensure a seamless transition from the public realm to the private realm.
- ~~p)~~ ~~The dimensions of the master bedrooms for Dwellings 1D and 1E modified to comply with Clause 58.07-1 (Functional layout).~~
- ~~q)~~ ~~The kitchenettes in Dwellings 3C and 3D removed.~~
- ~~r)u)~~ Cross-sections for each commercial and retail tenancy (as appropriate) showing finished floor levels of both external and internal areas and their interface between the public and private realm.
- ~~s)v)~~ Plan notations requiring the project to meet:
- the requirements of the Façade Strategy in the corresponding condition(s) below.
  - the requirements for external reflectivity in the corresponding condition(s) below.
  - the requirements for Landscaping and the Public Realm in the corresponding condition(s) below.
  - the requirements for Traffic, Parking and Loading and Unloading in the corresponding condition(s) below.
  - the requirements for new Roads and Laneways in the corresponding condition(s) below.
  - the requirements of the Waste Management Plan in the corresponding condition(s) below.
  - the Noise Attenuation and Mitigation requirements in the corresponding condition(s) below.
  - the requirements of the Amenity Impact Report in the corresponding condition(s) below.
  - the requirements of the Wind assessment in the corresponding condition(s) below.
  - the requirements of Melbourne Water in the corresponding condition(s) below.
  - the Environmentally Sustainable Design, Green Star and Third Pipe requirements in the corresponding condition(s) below, including details of the proposed roof top solar PV.



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

~~4.6~~ 4.7 The development 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

~~4.7~~ 4.8 Before the development starts, including demolition, bulk excavation and site preparation works and works to remediate contaminated land, one of the following must be provided to the Responsible Authority:

- a) A report prepared by a suitably qualified professional confirming to the satisfaction of the Responsible Authority that a Cultural Heritage Management Plan (CHMP) pursuant to the *Aboriginal Heritage Act 2006* is not required; or
- b) A certified Preliminary Aboriginal Heritage Test (PAHT) under sections 49B and 49C of the *Aboriginal Heritage Act 2006* in respect of the development of the land; or
- c) A letter from Aboriginal Victoria confirming a CHMP has been approved for the land.

~~4.8~~ 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*.

4.9

## Façade Strategy & Materials and Finishes

4.10. Before the ~~plans required by Clause 4.6 are approved~~ ~~development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land~~, a Façade Strategy must be submitted to and approved by the by the Responsible Authority 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 Design response dated 17 April 2019 prepared by Mako Architecture 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 ~~Minister Responsible Authority for Planning~~, 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 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

4.11. Except with the consent of the ~~Minister for Planning~~ 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

- 4.12. Before the plans required by Clause 4.6 are approved ~~development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land~~, a detailed landscaping and public realm plan(s) must be submitted to and approved by the City of Port Phillip. The plan(s) must be generally in accordance with the plans prepared by NBR & Partners Pty Ltd dated 16/05/2019 (Revision B) and accompanying report, and include:
- a) Detailed landscaping for the ground floor, podium and roof communal areas.
  - ~~a)~~ b) 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)~~ c) How the landscaping responds to water sensitive urban design principles, including how rainwater will be captured, cleaned and stored.
  - ~~c)~~ d) Details of all hard-landscaping materials, finishes and treatments and urban design elements including paving, lighting, seating and balustrading.
  - ~~d)~~ e) Details of surface materials and finishes and construction of retaining walls, pathways, kerbs and access ways.
  - ~~e)~~ f) Elevations, sections, levels and details including materials and finishes of public realm works including reconstruction of public assets.
- 4.13. All landscaping shown in the approved landscape and public realm plans must be carried out and completed prior to occupation of the buildings and thereafter maintained to the satisfaction of the City of Port Phillip.

## Public Lighting Plan

- 4.14. Before the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land, a detailed lighting plan must be prepared and approved by the City of Port Phillip. This plan must:
- a) Identify all proposed lighting sources, lux levels and spillage details and address how the lighting will integrate with the existing lighting in the interfacing public spaces.
  - b) Require all public lighting to conform with AS1158, AS3771 and the Public Lighting Code September 2001.
- 4.15. The approved lighting plan must be implemented as part of the development to the satisfaction of the City of Port Phillip.

## Demolition Management Plan

- 4.16. Before demolition starts, a detailed Demolition Management Plan (DMP) must be submitted to and approved by the City of Port Phillip. The DMP's objectives must be to minimise the impact of works associated with the demolition on neighbouring buildings and structures and activities conducted in the area generally. The DMP must address the following matters:
- a) Staging of dismantling/demolition.
  - b) Site preparation.
  - c) Public safety, amenity and site security.
  - d) Management of the construction site and land disturbance.
  - e) Operating hours, noise and vibration controls.
  - f) Air and dust management.
  - g) Waste and materials reuse.
  - h) Stormwater and sediment control.

- i) Management of public access and vehicle, bicycle and pedestrian linkages around the site during demolition.
- j) Protection of existing artworks in the public realm.
- k) Site access and traffic management (including any temporary disruptions to adjoining vehicular, bicycle and pedestrian access ways).
- l) Details of temporary buildings or works (such as landscaping works to activate and improve the site and street frontage) to be constructed should works cease and the site remain vacant for 6 months after completion of demolition.

4.17. 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**

- 4.18. Before the plans required by Clause 4.6 are approved, ~~development starts, excluding demolition, piling, excavation, site preparation works, and works to remediate contaminated land~~, an updated traffic engineering assessment including functional layout plans and other supporting information as appropriate must be submitted to and approved by the City of Port Phillip. The traffic engineering assessment must be generally in accordance with the Traffic Impact Assessment Report prepared by Transport and Traffic Planning Associates, Rev 1 dated May 2019.
- 4.19. 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.
- 4.20. 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.
- 4.21. Traffic access and parking and loading/unloading arrangements must not be altered without the prior written consent of the City of Port Phillip.
- 4.22. Before the development is occupied, vehicle crossings must be constructed in accordance with the ~~any~~ City of Port Phillip's Vehicle Crossing Guidelines and standard drawings to the satisfaction of the City of Port Phillip. All redundant crossings must be removed and the footpath, nature strip, kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the City of Port Phillip.

### **New roads and laneways**

- 4.23. Before the development starts excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, Engineering Drawings and Computations (as applicable) must be submitted to and approved by the City of Port Phillip the following matters:
- a) All road works and associated drainage to the satisfaction of the City of Port Phillip.
  - b) A cross section of the new ~~r~~Road must be submitted showing above and below ground placement of services, streetlights and trees (as applicable).
  - c) The plans and cross section of the new ~~r~~Road must demonstrate how services, driveways and street lights will be placed so as to achieve the street reserve width and accommodate street tree planting (as applicable).
  - d) Independent drainage, the direction of stormwater runoff and a point of discharge for the land to the satisfaction of the City of Port Phillip.
  - e) Underground reticulated water (including dual reticulation and a connection point to connect to a potential future precinct scale alternative water supply via a third pipe network), sewerage, gas, electricity and telecommunications located and bundled (utilising common trenching) to the satisfaction of the City of Port Phillip and the relevant servicing authority(s).

- f) All works for stormwater, Water Sensitive Urban Design, drainage, street trees, and landscaping.
- g) All bearings, distances, levels, street names, lot numbers, lot sizes, reserves and easements.
- h) A plan certified by an engineer showing the extent and depth and compaction of fill in excess of 300mm placed on the land.
- i) Payment to the City of Port Phillip of an engineering design checking fee equivalent to 0.75% of the values of documented works.

4.24 Before the development is occupied, if the City of Port Phillip elects to accept the new roadway as a public road, any land identified or set aside as a new road or laneway on the approved plans must be transferred to, or vested in the relevant road authority ~~as a public road at no cost to the relevant road authority~~. This does not apply to a new laneway that is agreed to be retained in private ownership to the satisfaction of the City of Port Phillip.

4.25 If the new roadway remains a private road the owner must enter into an agreement under section 173 of the Planning and Environment Act 1987 with the City of Port Phillip to:

- a) give rights of access to the road and to the public at all times; and
- b) maintain the road at its cost to the standards as required by the City of Port Phillip.

## Waste Management Plan

~~4.24~~ 4.26 Before the plans required by Clause 4.6 are approved, ~~development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land~~ an amended Waste Management Plan must be prepared and submitted to and be approved by to the City of Port Phillip. The Plan must be generally in accordance with the Waste Management Plan Rev G dated 16/05/2019 prepared by Elephants Foot Recycling Solutions but modified to:

- a) Require number of bin allocation and collection points for both Core 1 and Core 2 buildings (for total 165 residential units).
- b) Provide more details regarding on site waste compaction.
- c) Allocate space for hard waste.
- d) Provide more detail on fire prevention on both chute compactor rooms and other waste areas.

~~4.25~~ 4.27 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~~ 4.28 Before the development starts, excluding demolition and site preparation works, an Acoustic Report prepared by a qualified acoustic consultant must be submitted to and approved by the Responsible Authority. The report must:

- a) Specify noise attenuation measures to achieve a maximum noise level not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am and 40dB(A) for living areas, assessed as an LAeq,16h from 6am to 10pm;
- b) Noise levels should be assessed in unfurnished rooms with a finished floor and the windows closed and be based on average external noise levels measured as part of a noise level assessment.

~~4.27~~ 4.29 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.

## Amenity Impact Report

~~4.28~~ 4.30 Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, an Amenity Impact Report prepared by a suitably qualified environmental consultant must be submitted to and approved by the City of Port Phillip. The report must be generally in accordance with the Amenity Impact Report prepared by GHD dated May 2019.

~~4.29~~ 4.31 The approved Amenity Impact Report must be implemented to the satisfaction of the City of Port Phillip.

## Disability Access

~~4.30~~ 4.32 Before development is occupied, a Disability Discrimination Act Assessment/Audit, prepared by a suitably qualified consultant, must be submitted to the City of Port Phillip. This document must provide an assessment of the development (including public realm works or publicly accessible areas) against the applicable accessibility provisions of the Building Code of Australia and the applicable provisions of the Disability (Access to Premises – Buildings) Standards 2010.

## Wind Assessment

~~4.31~~ 4.33 Before ~~the development starts~~ plans required by Clause 4.6 are approved, ~~excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land~~, an amended comprehensive wind tunnel test and environmental climate assessment report must be submitted to and approved by the ~~Minister for Planning~~ Responsible Authority in consultation with the City of Port Phillip. The amended report must be generally in accordance with the report prepared by Windtech dated 28 May 2019 but modified to address all changes required under this Clause 4 and must:

- a) Include wind tests taken at various points within the surrounding road network, including, carried out on a model of the approved building inclusive of the modifications required to determine the wind impacts of the development and provide recommendations for any modifications which must be made to the design of the building to improve any adverse wind conditions within the public realm and podium rooftop and open space areas.
- b) Demonstrate (or provide built form recommendations) that the development will ensure all publicly accessible areas, including footpaths will not be unreasonably affected by 'unsafe wind conditions' as specified in Table 7 of Schedule 32 to Clause 43.02 Design and Development Overlay of the Port Phillip Planning Scheme.
- c) Demonstrate (or provide built form recommendations) that the development will be able to achieve 'comfortable wind conditions' as specified in Table 7 of Schedule 32 to Clause 43.02 Design and Development Overlay of the Port Phillip Planning Scheme.

~~4.32~~ 4.34 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.

~~4.33~~ 4.35 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

~~4.34~~ 4.36 Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, the owner of the land must enter into agreement(s) pursuant to section 173 of the *Planning and Environment Act 1987* with the Victorian Planning Authority and the Minister for Planning 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 ~~Minister for Planning~~ Responsible Authority. The agreement(s) must:

- a) Require the developer to pay a development contribution of:

- \$16,916.51 per dwelling;
  - \$191.51 per sqm of gross office/commercial floor area; and
  - \$159.59 per sqm of gross retail floor area.
- b) Require that development contributions are to be indexed annually from 1 July 2020 using the Price Index of Output of the Construction Industries (Victoria) issued by the Australian Bureau of Statistics.
- c) Require registration of the Agreement on the titles to the affected lands as applicable.
- d) Include a schedule of the types of infrastructure to be delivered by the Victorian Planning Authority or their successor.
- e) Confirm that contributions will be payable to the Victorian Planning Authority or their successor.
- f) Confirm that ~~the contributions will be used by Victorian Planning Authority or their successor to deliver the schedule of types of infrastructure~~ the Victorian Authority Planning or its successor, will use the contributions to deliver the schedule of types of infrastructure.
- g) Require payment of the development contribution/s before the earliest of the following:
- The issue of an occupancy permit for the development; or
  - The issue of a statement of compliance in relation to the subdivision of the land in accordance with the development allowed under this specific control.
- h) Confirm the procedure for refunding monies paid if an approved Development Contribution Plan or Infrastructure Contributions Plan for the area is less than the amount stipulated in the section 173 agreement.
- i) ~~The agreement must~~ Make provision for its removal from the land following completion of the obligations contained in the agreement.
- j) ~~Require~~ The owner of the Land must to pay all reasonable legal cost and expense of this agreement including preparation, execution and registration on title.

### **Overshadowing**

~~4.35 The building must not result in any overshadowing of parks protected by mandatory overshadowing controls as shown on Map 4 of Clause 43.02 Schedule 32 (Design Development Overlay) of the Port Phillip Planning Scheme.~~

### **Drainage/Engineering**

~~4.36~~ 4.37 Before the development starts excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, or as otherwise agreed by the Responsible Authority, a stormwater drainage system design incorporating integrated water management design principles, must be submitted to and approved by the City of Port Phillip.

~~4.37~~ 4.38 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)**

4.39 The internal finished floor level of lift lobbies and the concierge area must be set no lower than 3.05 metres to Australian Height Datum (AHD) which is 600mm above the applicable 2100 year flood level of 2.45 metres to AHD.

4.40 The finished floor levels of the truck bay and adjoining service areas (with the exception of the electrical substation) must be set no lower than 2.4 metres to AHD.

4.41 All areas accommodating electrical installations (e.g. electrical sub-stations, switch-rooms etc) must be set no lower than 3.0 metres to AHD, unless with the prior written consent of the relevant service authority.



4.42 The finished floor level of the bicycle storage area must be set no lower than 2.4 metres to AHD.

4.43 The entry points into the two internal pedestrian paths (corridors shown in dark blue on the plans – Drawing No. 1518, Revision D dated 20/05/2019) must ramp up internally to achieve a finished floor level no lower than 2.45 metres to AHD before reaching the internal stairwells, with a seamless transition from internal areas to the public realm.

4.44 All retail and commercial spaces fronting Bertie Street must be constructed with finished floor levels no lower than 2.45 metres to AHD with all other retail and commercial spaces constructed with finished floor levels no lower than 2.4 metres to AHD.

~~4.38 With the exception of retail/commercial and non-habitable transition areas, all other ground floor areas (including lift and stair lobbies) must be set no lower 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 Retail areas must be set no lower 2.4 metres to the Australian Height Datum (AHD) which is 600mm above the applicable 2040 projected flood level of 1.8 metres to AHD.~~

~~4.40 All areas with electrical installations (e.g. Electrical Sub-Stations, Switch-rooms etc) must be set no lower 3.0 metres to the Australian Height Datum (AHD) which is 600mm above the applicable projected flood level of 2.4 metres to AHD.~~

~~4.41 Basement entry point of the proposed development must be set no lower 3.0 metres to the Australian Height Datum (AHD) which is 600mm above the applicable projected flood level of 2.4 metres to AHD.~~

## Environmental Audit

~~4.42~~ 4.45 Before the development starts, excluding demolition, excavation, piling and site preparation works, and works to remediate contaminated land, or a sensitive use commences on the land, the ~~Minister for Planning~~ 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.

## Environmentally Sustainable Design

### Sustainability Management Plan & Water Sensitive Urban Design Response

~~4.43~~ 4.46 Before plans required by Clause 4.6 are approved, ~~the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land and prior to endorsement of plans under Clause 4.48 of this approval~~, an amended Sustainability Management Plan and Water Sensitive Urban Design Response (WSUDR) must be submitted to, be to the satisfaction of and approved by the City of Port Phillip. The SMP and WSUDR must be generally in accordance with the Sustainability Management Plan & Water Sensitive Urban Design Response prepared by Ark Resources Reference: File 1014A - Revision I, dated 24 May 2019, but modified to show:

- a) Details of external shading to habitable rooms in the north-east and north-west tower elevations (if proposed).
- b) The number of bicycle spaces to be consistent with the architectural plans.
- c) Rainwater tank capacity to meet the FBURA tank sizing requirement of 0.5m<sup>3</sup> per 10m<sup>2</sup> of roof catchment.
- d) The rainwater tank to connected to all toilets throughout the development.
- ~~d)e) Design actions to minimise impacts of air pollution such as locating ventilation intakes on the side of the building away from the Westgate Freeway.~~



~~4.44~~ 4.47 Where alternative Environmentally Sustainable Design measures are proposed to those specified in this condition, the City of Port Phillip may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes.

~~4.45~~ 4.48 Prior to the occupation of the building, a report (or reports) from the author of the Sustainability Management Plan & Water Sensitive Urban Design Response approved under this Incorporated Document, or similarly qualified person or company, must be submitted to the satisfaction of the City of Port Phillip and must confirm all measures specified in the approved SMP and WSUD report have been implemented.

### Green Star rating

~~4.46~~ 4.49 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 a 10% buffer, achieving 66 points) with the Green Building Council of Australia.

~~4.47~~ 4.50 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~~ with a 10% buffer, achieving 66 points).

### Third pipe and rain tank water

~~4.48~~ 4.51 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~~ 4.52 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~~ 4.53 A rainwater tank must be provided that:

- a) Has a minimum effective volume of 0.5 cubic metres for every 10 square metres of catchment area to capture rainwater from 100% of suitable roof rainwater harvesting areas (including podiums); and
- b) Is fitted with a first flush device, meter, tank discharge control and water treatment with associated power and telecommunications equipment approved by the relevant water authority.

~~4.51~~ 4.54 Rainwater captured from roof harvesting areas must be re-used for toilet flushing and irrigation, or controlled release.

### 3D Model

~~4.52~~ 4.55 Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land (or as otherwise agreed with the ~~Minister for Planning~~ Responsible Authority), a 3D digital model of the development and its immediate surrounds must be submitted to and approved by the ~~Minister for Planning~~ 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. ~~The development must be in accordance with the endorsed 3D model, to the satisfaction of the Minister for Planning.~~

### Building Appurtenances and Air conditioning condensers

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

4.57 All air conditioning condensers must be housed in banks behind the lift core of each floor (not provided on balconies).

~~4.53~~

## City of Port Phillip Engineering Requirements

~~4.54~~ **4.58** Before the issue of a Statement of Compliance for the subdivision of the land or occupation of any building approved under this control, the following must be undertaken or caused to be provided to the satisfaction of the City of Port Phillip:

- a) The land must be independently drained and provided with a legal point of discharge;
- b) Full construction of all new roads and footpaths, and drainage at no cost to the City of Port Phillip unless otherwise agreed;
- c) Fire plugs and water supply in accordance with the requirements of the Metropolitan Fire and Emergency Services (MFB) 'Planning Guidelines for Emergency Vehicle Access and Minimum Water Supplies within the Metropolitan Fire District (Guideline No: GL-27)' to the satisfaction of the City of Port Phillip Fire Safety Officer and the Chief Officer of the Metropolitan Fire Brigade;
- d) Vehicle crossings;
- e) Underground reticulated water (including dual reticulation and a connection point to connect to a potential future precinct scale alternative water supply via a third pipe network), sewerage, gas, electricity and telecommunications located and bundled (utilising common trenching) to the satisfaction of the City of Port Phillip and the relevant servicing authority(s).
- f) Payment to the City of Port Phillip of a supervision fee equivalent to 2.5% of the actual cost of street construction works as specified in the relevant Street Construction Contract Schedule if the roadway is to be transferred to the City of Port Phillip as a public road. This fee is not payable if the road is to remain as a private road on title to the land;
- g) Issue of a Final Completion Certificate by the City of Port Phillip Asset Management Section, for the acceptance of street construction, site grading etc;
- h) Infill planting of mature (2-3 metres height) street trees (of an approved species, number and location) along Bertie Street;
- ~~i)~~ **j)** Filling, shaping and grading of the land to drain satisfactorily to an approved place of discharge;
- ~~j)~~ **k)** Street nameplates or payment in this respect;
- ~~k)~~ **l)** Steel or concrete poles for public street lighting;
- ~~l)~~ **m)** Street lighting in accordance with the relevant Australian Standard;
- ~~m)~~ **n)** Payment of a bond, to be held by the City of Port Phillip, to ensure that all works are satisfactorily completed (including defect rectification), and landscaping works are maintained to the satisfaction of the City of Port Phillip for a period of 12 months, after which the City of Port Phillip would assume responsibility for maintenance of landscaping works within the public roads;
- ~~n)~~ **o)** A full set of 'as constructed' digitised construction plans for works, roads and drainage;
- ~~o)~~ **p)** A certified plan showing the extent and depth of fill in excess of 300mm placed on ~~any of the lots~~ **the land**;
- ~~q) — The new Road along the south side of the site vested in the City of Port Phillip as a Road.~~

## Advertising Signs

~~4.55~~ **4.59** No advertising signs either external or internal to the building/s shall be erected, painted or displayed without the prior written approval of the City of Port Phillip.

## Department of Transport (Network Planning – Transport Group)

~~4.56~~ **4.60** 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) Objectives for the GTP. The objectives must be linked to measurable targets, actions and performance indicators.

- b) A description of the existing active private and public transport context.
- c) Initiatives that would encourage [residents/employees/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; and
  - Installation of signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3.
- d) Timescale and costs for each action initiative.
- e) The funding and management responsibilities, including identifying a person(s) responsible for the implementation of actions initiatives.
- f) A monitoring and review plan requiring annual review for at least five years.

### Affordable Housing

4.61 Before the development starts, excluding demolition, bulk excavation, piling, site preparation works, and remediation works, the owner must enter into an agreement under section 173 of the *Planning and Environment Act 1987*, to the satisfaction of the Responsible Authority, for the delivery of affordable housing (as defined in the Planning and Environment Act 1987).

~~4.57~~ 4.62 — 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).

~~4.59~~ 4.63 — 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 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; and~~
  - ~~ii) — In the form of one or two or three bedroom dwellings with one or more bicycle parking space allocated per dwelling.~~
- ~~d) — Provide that in lieu of delivering all or part of the affordable housing in accordance with within Clause 4.62 4.57(a), (b) and (c), the Responsible Authority may agree to payment of an amount of money to a registered housing agency (or other housing provider or trust) if the Responsible Authority is satisfied that:~~

- ~~i) The owner has made best endeavours to secure a registered housing agency recipient (or other housing provider or trust) for the affordable housing and has not been successful; and~~
- ~~ii) The payment amount is equivalent to the value of the affordable housing that would otherwise have to be delivered less the value of any affordable housing provided within the development).~~

~~4.60 4.64 Provide that where the affordable housing is to be delivered using only the mechanism in Clause 4.62 4.57b) i), the Responsible Authority may accept a lesser percentage of affordable housing in satisfaction of Clause 4.62 4.57a) provided it is of equivalent value.~~

4.63 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 at least 6 percent of the Gross Residential Leasable Floor Area within the development facilitated by this Incorporated Document, for 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) leasing the 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, subject to Clause 4.63(b) and (c);
  - ii) transfer of the dwellings within the development to a registered housing agency or other housing provider or trust approved by the Responsible Authority for no fee or at a discount to an equivalent or higher value to (i); or
  - iii) any other mechanism providing a contribution of equivalent or higher value to Clause 4.63(a)(i) to the satisfaction of the Responsible Authority.
- b) Provide that if the affordable housing is delivered under Clause 4.63(a)(i), the housing 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 including communal open space, swimming pool and gymnasium at no extra fee for occupants of affordable housing dwellings
  - iv) allocate one or more bicycle parking space allocated per dwelling for the term of the agreement,unless otherwise agreed in writing by the Responsible Authority.
- c) Provide that if the affordable housing is delivered under Clause 4.63(a)(i), 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.

4.64 The agreement may provide that:

- a) In lieu of delivering all or part of the affordable housing in accordance with Clause 4.63(a), the Responsible Authority may agree to payment of an equivalent amount of money to a registered housing agency or other housing provider or trust to be expended for affordable housing in the Fishermans Bend Urban Renewal Area provided the Responsible Authority and 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.

~~4.64~~ 4.65 For the purpose of these provisions, ‘value’ means the monetary value of a dwelling offered for sale at the date of the agreement ~~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.~~

#### **Tree Protection**

~~4.62~~ 4.66 Before the development starts, a tree protection fence must be erected around the northernmost existing street tree on Bertie Street to comply with AS 4970 - 2009 Tree protection on development sites to the satisfaction of the City of Port Phillip.

#### **No Damage to Existing Street Tree**

~~4.63~~ 4.67 The proposed works must not cause any damage to the retained existing street tree. Root pruning of the tree must be carried out to the satisfaction of the City of Port Phillip prior to the construction of the crossover/works.

#### **Removal and Replacement of Street Tree**

~~4.64~~ 4.68 Before the development starts, the amenity value and removal and replacement cost of the southernmost Bertie Street tree must be paid by the applicant/owner to the City of Port Phillip. Removal and replacement, including 24 month maintenance of the street tree, may only be undertaken by the City of Port Phillip.

#### **Expiry**

~~4.65~~ 4.69 The control in this document expires in respect of land identified in Clause 3 of this document if any of the following circumstances apply:

- a) development of that land has not commenced ~~three~~ four (~~43~~) years after the approval date of Amendment C173; or
- b) use of that land has not commenced five (5) years after the approval date of Amendment C173; or
- c) development of that land is not completed five (5) years after the approval date of Amendment C173.

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

**END OF DOCUMENT**

## Appendix B List of Submitters

| No. | Submitter   |
|-----|---|
| 1   | APA Group   |
| 2   | Port Phillip City Council   |
| 3   | Melbourne Water   |
| 4   | Environment Protection Authority Victoria (EPA)                       |
| 5   | Department of Transport   |
| 6   | Fishermans Bend Taskforce (Department of Jobs, Precincts and Regions) |

## Appendix C Document List

*Document list Version 30 – 14/04/2020*

| No.    | Date         | Description   | On behalf of  |
|--------|--------------|---|---|
| 1      | 15/9/2019    | Letter from Minister for Planning referring the sites to the SAC                                      | Department of Environment, Land, Water, and Planning (DELWP) on behalf of Minister for Planning |
| 2      | October 2019 | USB of application material, hard copy attachments and plans – as outlined below:                     | DELWP   |
| 2A(1a) | “            | Referral Letter to Standing Advisory Committee (SAC) from Minister 118 Bertie Street                  | “   |
| 2A(1b) | “            | DELWP Rapid Assessment report - 118 Bertie Street   | “   |
| 2A(1c) | “            | DELWP Docs - Amended Schedule and Maps - Schedule to Clause 45.12 Specific Controls Overlay Compare   | “   |
| 2A(1d) | “            | DELWP Docs - Amended Schedule and Maps - Schedule to Clause 45.12 Specific Controls Overlay           | “   |
| 2A(1e) | “            | DELWP Docs - Amended Schedule and Maps - Schedule to Clause 72.04 Docs Incorporated in scheme compare | “   |
| 2A(1f) | “            | DELWP Docs - Amended Schedule and Maps - Schedule to Clause 72.04 Docs Incorporated in scheme         | “   |
| 2A(1g) | “            | DELWP Docs - Port Phillip C172port 001 specific controls overlay SCO24 Map 02 Approval                | “   |
| 2A(2)  | “            | DELWP Docs - DELWP Incorporated Document Template 29 Aug 2019   | “   |
| 2A(3)  | “            | DELWP Docs - 118-Bertie-Street-Port-Melbourne-Vicplan-Planning-Property-Report                        | “   |
| 2B     | “            | Fishermans Bend Taskforce Referral Response - 118 Bertie Street, Port Melbourne                       | “   |
| 2C     | “            | Parties notified by DELWP   | “   |
| 2D(0a) | “            | Submission by Applicant - Application Form - Bertie Street  | “   |
| 2D(0b) | “            | Submission by Applicant - Cover Letter - Lateral Estate - Bertie Street                               | “   |



| No.    | Date | Description  | On behalf of |
|--------|------|--|--------------|
| 2D(1a) | “    | Submission by Applicant - Town Planning Report, Urbis - including Appendix B (Planning Policy and Controls) and C (Clause 58 Assessment) | “            |
| 2D(1b) | “    | Submission by Applicant - Explanatory Report   | “            |
| 2D(1c) | “    | Submission by Applicant - Incorporated Document  | “            |
| 2D(1d) | “    | Submission by Applicant - Instruction Sheet  | “            |
| 2D(1e) | “    | Submission by Applicant - Map Details  | “            |
| 2D(1f) | “    | Submission by Applicant - Clause 45.12 Schedule  | “            |
| 2D(1g) | “    | Submission by Applicant - Clause 51.01 Schedule  | “            |
| 2D(1h) | “    | Submission by Applicant - Clause 72.03 Schedule  | “            |
| 2D(1i) | “    | Submission by Applicant - Clause 72.04 Schedule  | “            |
| 2D(1j) | “    | Submission by Applicant - Appendix A - CoT - Title Document - 118 Bertie Street  | “            |
| 2D(1k) | “    | Submission by Applicant - Appendix A - CoT - Title Plan - 118 Bertie Street  | “            |
| 2D(1l) | “    | Submission by Applicant - Appendix D - Build to Rent Analysis - 118 Bertie Rd Port Melbourne Build to Rent                               | “            |
| 2D(1m) | “    | Submission by Applicant - Appendix D - Build to Rent Analysis - Lateral Estate - Affordable Housing Offer                                | “            |
| 2D(1n) | “    | Submission by Applicant - Appendix E - Sustainability Management Plan 118 Bertie Street, Port Melbourne Rv 240519                        | “            |
| 2D(1o) | “    | Submission by Applicant - Appendix F - Waste Management Plan - 118 Bertie Street, Port Melbourne April 2019 Rev G                        | “            |
| 2D(1p) | “    | Submission by Applicant - Appendix G - Landscape Design Statement Rev F 20190516   | “            |
| 2D(1q) | “    | Submission by Applicant - Appendix G - Landscape Development Application   | “            |
| 2D(1r) | “    | Submission by Applicant - Appendix H - 118 Bertie Street Amenity Impact Plan   | “            |
| 2D(1s) | “    | Submission by Applicant - Appendix I - Traffic Assessment Report 118 Bertie Street May 2019 Rev I  | “            |
| 2D(1t) | “    | Submission by Applicant - Appendix K - Acoustic Report   | “            |
| 2D(1u) | “    | Appendix J - Pedestrian Wind Environment Study WC895-09F02(rev1)   | “            |

| No.     | Date | Description                                      | On behalf of |
|---------|------|--|--------------|
| 2D(2)   | “    | Architectural Plans combined - 118 Bertie Street | “            |
| 2D(2a)  | “    | 0000 - cover [D] - 118 Bertie Street             | “            |
| 2D(2b)  | “    | 0101 - site plan - existing context uses [D]     | “            |
| 2D(2c)  | “    | 0102 - site photos - existing context uses [D]   | “            |
| 2D(2d)  | “    | 0103 - site photos - existing site [D]           | “            |
| 2D(2e)  | “    | 0104 - site plan - existing _ demolition [D]     | “            |
| 2D(2g)  | “    | 1001 - context - existing condition [D]          | “            |
| 2D(2h)  | “    | 1002 - context - future street [D]               | “            |
| 2D(2i)  | “    | 1003 - context - existing condition [D]          | “            |
| 2D(2j)  | “    | 1004 - context - future street [D]               | “            |
| 2D(2k)  | “    | 1101 - plan level 01 - ground [D]                | “            |
| 2D(2l)  | “    | 1102 - plan level 02 - parking [D]               | “            |
| 2D(2m)  | “    | 1103 - plan level 03 - parking [D]               | “            |
| 2D(2n)  | “    | 1104 - plan level 04 - parking [D]               | “            |
| 2D(2o)  | “    | 1105 - plan level 05 - podium [D]                | “            |
| 2D(2p)  | “    | 1106 - plan level 06 - podium [D]                | “            |
| 2D(2q)  | “    | 1107 - plan level 07 - terrace [D]               | “            |
| 2D(2r)  | “    | 1108 - plan level 08 [D]                         | “            |
| 2D(2s)  | “    | 1109 - plan level 09 [D]                         | “            |
| 2D(2t)  | “    | 1110 - plan level 10 [D]                         | “            |
| 2D(2u)  | “    | 1111 - plan level 11 [D]                         | “            |
| 2D(2v)  | “    | 1112 - plan level 12 [D]                         | “            |
| 2D(2w)  | “    | 1113 - plan level 13 [D]                         | “            |
| 2D(2x)  | “    | 1114 - plan level 14 [D]                         | “            |
| 2D(2y)  | “    | 1115 - plan level 15 [D]                         | “            |
| 2D(2z)  | “    | 1116 - plan level 16 [D]                         | “            |
| 2D(2aa) | “    | 1117 - plan level 17 [D]                         | “            |
| 2D(2ab) | “    | 1118 - plan level 18 [D]                         | “            |
| 2D(2ac) | “    | 1119 - plan level 19 [D]                         | “            |
| 2D(2ad) | “    | 1120 - plan level 20 [D]                         | “            |
| 2D(2ae) | “    | 1121 - plan level 21 - roof terrace [D]          | “            |
| 2D(2af) | “    | 1122 - plan - roof [D]                           | “            |

| No.     | Date | Description   | On behalf of |
|---------|------|---|--------------|
| 2D(2ag) | "    | 2001 - section A [D]  | "            |
| 2D(2ah) | "    | 2002 - section B [D]  | "            |
| 2D(2ai) | "    | 3001 - southeast [D]  | "            |
| 2D(2aj) | "    | 3002 - southwest [Bertie Street] [D]                            | "            |
| 2D(2ak) | "    | 3003 - northwest [D]  | "            |
| 2D(2al) | "    | 3004 - northeast [D]  | "            |
| 2D(2am) | "    | 4001 - DETAIL - driveway [D]                                    | "            |
| 2D(2an) | "    | 4101 - PODIUM - Bertie Street frontage - existing condition [D] | "            |
| 2D(2ao) | "    | 4102 - PODIUM - Bertie Street frontage - future condition [D]   | "            |
| 2D(2ap) | "    | 4104 - PODIUM - Bertie Street frontage - detail sections [D]    | "            |
| 2D(2aq) | "    | 4105 - PODIUM - New Street frontage [D]                         | "            |
| 2D(2ar) | "    | 4108 - PODIUM - New Street frontage - detail sections [D]       | "            |
| 2D(2as) | "    | 4150 - TOWER - typical facade - detail sections [D]             | "            |
| 2D(2at) | "    | 4201 - 3 bed - apartment plans [D]                              | "            |
| 2D(2au) | "    | 4202 - 3 bed - apartment plans [D]                              | "            |
| 2D(2av) | "    | 4203 - 3 bed - apartment plans [D]                              | "            |
| 2D(2aw) | "    | 4204 - 3 bed - apartment plans [D]                              | "            |
| 2D(2ax) | "    | 4205 - 3 bed - apartment plans [D]                              | "            |
| 2D(2ay) | "    | 4206 - 2 bed - apartment plans [D]                              | "            |
| 2D(2az) | "    | 4207 - 2 bed - apartment plans [D]                              | "            |
| 2D(2ba) | "    | 4208 - 2 bed - apartment plans [D]                              | "            |
| 2D(2bb) | "    | 4209 - 2 bed - apartment plans [D]                              | "            |
| 2D(2bc) | "    | 4210 - 1 bed - apartment plans [D]                              | "            |
| 2D(2bd) | "    | 8001 - shadow diagram - existing condition [D]                  | "            |
| 2D(2be) | "    | 8002 - shadow diagram - existing condition [D]                  | "            |
| 2D(2bf) | "    | 8003 - shadow diagram - future condition [D]                    | "            |
| 2D(2bg) | "    | 8004 - shadow diagram - future condition [D]                    | "            |
| 2D(2bh) | "    | 8101 - amenity - sunlight [D]                                   | "            |
| 2D(2bi) | "    | 8102 - amenity - ventilation [D]                                | "            |

| No.     | Date | Description   | On behalf of |
|---------|------|---|--------------|
| 2D(2bj) | “    | 8103 - amenity - communal space [D]   | “            |
| 2D(2bk) | “    | 9001 - selected perspective views [D]   | “            |
| 2D(3a)  | “    | Submission by Applicant - Architectural Design Report and Urban Context Report, Mako Architecture                       | “            |
| 2D(3b)  | “    | Submission by Applicant - Architectural Plans (Design Response Report), Mako Architecture                               | “            |
| 2D(3c)  | “    | Submission by Applicant - 1518 118 Bertie Street Model  | “            |
| 2D(4a)  | “    | Submission by Applicant - Perspective Image prepared by 3DA Bertie Street 16 05 2019                                    | “            |
| 2D(4b)  | “    | Submission by Applicant - 118 Bertie Street Survey  | “            |
| 2D(5a)  | “    | Submission by Applicant - 118 Bertie Street Application Payment Receipt   | “            |
| 2D(5b)  | “    | Submission by Applicant - Media Release - Hon Tim Pallas 180927-Supporting-Build-To-Rent-In-Victoria                    | “            |
| 2D(5c)  | “    | Submission by Applicant - Detailed Site Investigation Report (DSI), Environmental Investigation                         | “            |
| 2D(5d)  | “    | Submission by Applicant - Metropolitan Planning Levy Certificate (2448)   | “            |
| 2D(5e)  | “    | Submission by Applicant - Letter from DELWP - PA1600111 118 Bertie Street 2nd Extension of Time approval                | “            |
| 2D(5f)  | “    | Submission by Applicant - Correspondence between DELWP and Proponent regarding road width 118 Bertie Street - PA1600111 | “            |
| 2E(1a)  | “    | Submission by Applicant - Written pre-app advice to applicant - Email dated 31 Oct 2018                                 | “            |
| 2E(1b)  | “    | Submission by Applicant - Written pre-app advice to applicant -Email dated 13 Dec 2018                                  | “            |
| 2E(1c)  | “    | Submission by Applicant - Written pre-app advice to applicant - Email dated 19 Dec 2018                                 | “            |
| 2E(1d)  | “    | Submission by Applicant - Written pre-app advice to applicant - Email 16 July 2019                                      | “            |
| 2E(1e)  | “    | Submission by Applicant - Written pre-app advice to applicant - Email 24 July 2019                                      | “            |
| 2E(1f)  | “    | Submission by Applicant - Written pre-app advice to applicant -Email dated 30 November 2019                             | “            |

| No.    | Date       | Description   | On behalf of  |
|--------|------------|---|---|
| 3      | 28/10/2019 | Letter to DELWP regarding Terms of Reference  | Dalia Cook, Standing Advisory Committee (SAC) Chair |
| 4      | 31/10/2019 | Directions hearing notification letter with Committee's directions  | Planning Panels Victoria                            |
| 5      | 1/11/2019  | Submission received by DELWP from Fishermans Bend Taskforce   | DELWP   |
| 6      | 11/11/2019 | Harwood Andrews cover letter with links to <ul style="list-style-type: none"> <li>policy and controls book</li> <li>electronic versions of current planning permits granted for land within the Sandridge Precinct and other land in proximity</li> </ul>   | Harwood Andrews on behalf of DELWP                  |
| 6A(1)  | "          | 118 Bertie Street - Index to Planning Policy and Controls Book  | "   |
| 6A(1a) | "          | 118 Bertie Street - Land  | "   |
| 6A(1b) | "          | 118 Bertie Street - Zone and Overlays   | "   |
| 6A(1c) | "          | 118 Bertie Street - Particular Provisions   | "   |
| 6A(1d) | "          | 118 Bertie Street - General Provisions  | "   |
| 6A(1e) | "          | 118 Bertie Street - Planning Policy Framework   | "   |
| 6A(1f) | "          | 118 Bertie Street - Local Planning Policy Framework   | "   |
| 6A(g)  | "          | 118 Bertie Street - Operational Provisions  | "   |
| 6A(h)  | "          | 118 Bertie Street - Reference Documents   | "   |
| 6B(1)  | "          | Surrounding Permits 118 Bertie Street - Permit for 60-82 Johnson Street   | "   |
| 7      | 11/11/2019 | Port Phillip City Council email attaching: <ul style="list-style-type: none"> <li>electronic copy of all internal Council referral responses, excerpt from: City of Port Phillip Housing Needs Assessment and Allocations Framework Report and 'In Our backyard' Growing affordable housing in Port Phillip</li> <li>marked up commentary on the draft Incorporated document dated May 2019 including 'without prejudice' conditions</li> </ul> | Simon Gutteridge, on behalf of City of Port Phillip |
| 7a     | "          | Internal Council referral responses (word version)  | "   |
| 7b     | "          | Internal Council referral responses (pdf version)   | "   |

| No.       | Date       | Description   | On behalf of  |
|-----------|------------|---|---|
| 7c        | “          | Attachment 1 - excerpt from: City of Port Phillip Housing Needs Assessment and Allocations Framework Report, by Beverley Kliger and Associates, March 2019  | “   |
| 7d        | “          | Attachment 2 - ‘In Our Backyard’ Growing affordable housing in Port Phillip 2015 – 2025, City of Port Phillip, 2016 (adopted 12 Apr 2017)   | “   |
| 7e        | “          | Council draft Incorporated Document - marked up commentary without prejudice (word version)   | “   |
| 7f        | “          | Council draft Incorporated Document – clean version of marked up commentary without prejudice (pdf version)   | “   |
| 8         | 12/11/2019 | Letter from Lateral Estate to DELWP dated 7 August 2019, regarding affordable housing   | Planning & Property Partners on behalf of proponent |
| 9         | 13/11/2019 | Letter from Fishermans Bend Taskforce regarding Build to Rent Proposal  | Fishermans Bend Taskforce                           |
| 10        | “          | Draft Incorporated Document - DELWP   | Harwood Andrews on behalf of DELWP                  |
| 11        | “          | Notice of the Order in Council – Bertie Street  | Fishermans Bend Taskforce                           |
| 12        | 14/11/2019 | Precinct planning update and ICP update   | Fishermans Bend Taskforce                           |
| 13        | 19/11/2019 | Email for Department of Transport advising that they do not object to the minor amendments to the Incorporated Document   | Department of Transport                             |
| 14        | 20/11/2019 | 3D model included with the permit application for 118 Bertie Street   | Lateral Estate (Proponent)                          |
| 15        | ”          | Clarification of Taskforce’s position in relation to the proposed townhouses fronting the proposed 9m east-west street.   | Fishermans Bend Taskforce                           |
| 16a and b | ”          | Elaboration on outstanding urban design issues in relation to amended plans (2 attachments letters): <ul style="list-style-type: none"> <li>• 20 November 2019</li> <li>• 14 August 2019</li> </ul> | Fishermans Bend Taskforce                           |
| 17        | 12/12/2019 | Email from Proponent of snapshots from the model and response to direction 2  | James Guthrie, Lateral Estate for the Proponent     |

| No. | Date       | Description   | On behalf of   |
|-----|------------|---|--|
| 18  | "          | Model snapshot 1 - 12 12 19   | "  |
| 19  | "          | Model snapshot 2 - 12 12 19   | "  |
| 20  | "          | Model snapshot 3 - 12 12 19   | "  |
| 21  | "          | Model snapshot 4 - 12 12 19   | "  |
| 22  | "          | Model snapshot 5 - 12 12 19   | "  |
| 23  | "          | Model snapshot 6 - 12 12 19   | "  |
| 24  | "          | Model snapshot 7 - 12 12 19   | "  |
| 25  | "          | Pages from 02 Design Response   | "  |
| 26  | "          | Pages from 02 Design Response2  | "  |
| 27  | "          | Pages from 02 Design Response3  | "  |
| 28  | "          | Pages from 02 Design Response4  | "  |
| 29  | "          | Pages from 02 Design Response5  | "  |
| 30  | "          | Pages from 02 Design Response6  | "  |
| 31  | 13/12/2109 | Letter attaching parties' consolidated version draft Incorporated Document for 118 Bertie Street                                | Ms Kate Morris, Harwood Andrews on behalf of DELWP                       |
| 32  | "          | Incorporated Document - C173 - Bertie Street - Consolidated version all parties   | "  |
| 33  | 18/12/2019 | Letter from DELWP responding to request for clarification in relation to the SAC Terms of Reference                             | Mr Matt Cohen, for DELWP   |
| 34  | 09/01/2020 | Email from Proponent to SAC - requesting direction that City of Port Phillip confirm position on statement of issues in dispute | Mr Johan Moylan, Planning & Property Partners on behalf of the Proponent |
| 34a | "          | DRAFT - Statement of issues in dispute Amendment C172?port - 118 Bertie Street  | "  |
| 35  | 10/01/2020 | Email from SAC to Council on direction requesting confirmation on position  | Ms Amy Selvaraj on behalf of the SAC                                     |
| 36  | 13/01/2020 | Email from Council) to SAC in regard to request for confirmation on position  | Mr Simon Gutteridge for Council  |
| 37  | 15/01/2020 | Email from SAC to parties - update on request draft Statement of Issues   | Ms Amy Selvaraj on behalf of the SAC                                     |



| No. | Date       | Description   | On behalf of   |
|-----|------------|---|--|
| 38  | 22/01/2020 | Letter from DELWP to SAC - Statement of issues - 118 Bertie Street  | Ms Kate Morris, Harwood Andrews on behalf of DELWP                       |
| 38a | "          | Statement of Issues in dispute Amendment C172port - 118 Bertie Street - signed by DELWP                                 | "  |
| 38b | 23/02/2020 | Statement of Issues in dispute Amendment C172port - 118 Bertie Street - signed by DELWP and Melbourne Water             | Ms Victoria Vilagosh, Norton Rose Fulbright on behalf of Melbourne Water |
| 38c | 28/02/2020 | Statement of Issues in dispute Amendment C172port - 118 Bertie Street - signed by Council - 28 01 20                    | Ms Emily Marson, Best Hooper Lawyers on behalf of Council                |
| 39  | 3/02/2020  | Lateral Estate - Expert Evidence – Mr Rhys Quick - Economics - 118 Bertie Street  | Mr Johan Moylan, Planning & Property Partners on behalf of the Proponent |
| 40  | 4/02/2020  | SAC request to Proponent in regard to evidence of Mr Quick  | Ms Amy Selvaraj on behalf of the SAC                                     |
| 41  | "          | SAC request to Melbourne Water and the Proponent  | Ms Amy Selvaraj on behalf of the SAC                                     |
| 42  | "          | Fishermans Bend Urban Renewal Area: Options for Delivery of Affordable Housing, June 2013, Judith Stubbs and Associates | Ms Emily Marson, Best Hooper Lawyers on behalf of Council                |
| 43  | "          | SAC request to Melbourne Water and the Proponent - correction to submission date  | Ms Amy Selvaraj on behalf of the SAC                                     |
| 44  | "          | Council - Expert Evidence – Dr Marcus Spiller - Social and affordable housing - 118 Bertie Street                       | Ms Emily Marson, Best Hooper Lawyers on behalf of Council                |
| 45  | "          | Declaration on the tools and models used in 3D Model screenshots  | Mr Peter Goh on behalf of DELWP  |

| No. | Date      | Description   | On behalf of   |
|-----|-----------|---|--|
| 46  | 6/02/2020 | Letter to SAC from DELWP - Part A Submission  | Ms Kate Morris,<br>Harwood<br>Andrews on<br>behalf of DELWP                          |
| 47  | "         | DELWP Part A submission - 118 Bertie Street Port Melbourne - Final  | "  |
| 47a | "         | Appendix 1 Incorporated Document - 118 Bertie Street Port Melbourne - Consolidated version - all parties' positions   | "  |
| 47b | "         | Appendix 2 Clause 58 assessment table (118 Bertie Street, Port Melbourne)   | "  |
| 48  | "         | SAC query to DELWP - permit application   | Ms Amy Selvaraj<br>on behalf of the<br>SAC   |
| 49  | "         | SAC query to Proponent - modifications to plans   | Ms Amy Selvaraj<br>on behalf of the<br>SAC   |
| 50  | "         | Response from Melbourne Water to SAC in regard to request   | Ms Megan<br>Schroor, Norton<br>Rose Fulbright on<br>behalf of<br>Melbourne Water     |
| 50a | "         | Email dated 13 December 2019 from Melbourne Water to DELWP  | "  |
| 50b | "         | Melbourne Water - 118 Bertie Street - Statement of Grounds (6 February 2020)  | "  |
| 50c | "         | Melbourne Water revised conditions for inclusion in Incorporated Document - 6 February 2020   | "  |
| 51  | "         | Response from Proponent to SAC - update on request in regard to evidence of Mr Quick  | Mr Johan Moylan,<br>Planning &<br>Property Partners<br>on behalf of the<br>Proponent |
| 52  | 7/02/2020 | Response from Proponent to Direction 14(d) find advice by Dr Tim Stone on requirements of the <i>Aboriginal Heritage Act 2006</i> and the <i>Aboriginal Heritage Regulations 2018</i> . | Mr Johan Moylan,<br>Planning &<br>Property Partners<br>on behalf of the<br>Proponent |
| 53  | "         | Fishermans Bend Taskforce - outline submission response to Direction 8  | Mr Aidan O'Neill,<br>on behalf of the<br>Fishermans Bend<br>Taskforce                |

| No. | Date       | Description  | On behalf of  |
|-----|------------|--|---|
| 54  | 10/02/2020 | Letter from SAC to Peter Marshall  | Dalia Cook, SAC Chair   |
| 55  | "          | Letter regarding DELWP??? Part B and DELWP Part B submission   | Mr Rupert Watters, on behalf of DELWP                                     |
| 56  | "          | Letter from Mako to Lateral Estate - regarding Dimensioned bedroom plans Apartment types 1D and 1E   | Mr Mark Naughton, Planning & Property Partners on behalf of the Proponent |
| 57  | "          | Fishermans Bend Taskforce submission<br>Includes attachments –<br><ul style="list-style-type: none"> <li>○ Fishermans Bend Taskforce Referral Response - 118 Bertie Street (Document 2B); and</li> <li>○ draft Fishermans Bend Affordable Housing Guidelines v2 January 2020 (Document 57a)</li> </ul> | Mr Aidan O'Neill, on behalf of the Fishermans Bend Taskforce              |
| 57a | "          | draft Fishermans Bend Affordable Housing Guidelines v2 January 2020  | "   |
| 58  | "          | Page 3 of 4 of Capital City Zone   | "   |
| 59  | "          | Page 9 of 16 of Capital City Zone Schedule in Port Phillip Planning Scheme   | "   |
| 60a | "          | Melbourne Water submission   | Ms Megan Schroor  |
| 60b | "          | Melbourne Water conditions   | "   |
| 61  | "          | Letter from DELWP to SAC - Information on 277 Ingles Street  | Ms Kate Morris, Harwood Andrews on behalf of DELWP                        |
| 62  | "          | DELWP Attachment – Request Further Information - C181port 277-281 Ingles Street, Port Melbourne - 7 11 19  | "   |
| 63  | "          | DELWP Attachment - 277 Ingles Street Architectural Plans- 13.12.2019   | "   |
| 64  | "          | DELWP Attachment - Town Planning Report 277 Ingles Street  | "   |
| 65  | "          | DELWP Attachment - Request Further Information Response letter - 277 Ingles St, Port Melbourne - 13.12.19  | "   |

| No. | Date       | Description   | On behalf of   |
|-----|------------|---|--|
| 66  | “          | DELWP - Document 54 Fishermans Bend Planning Review Panel - Correspondence from Harwood Andrews re ministerial call-in of permits | “  |
| 67  | “          | DELWP – Letter from Minister to Council - 118 Bertie Street Call-in letter - 21.02.18   | “  |
| 68  | “          | DELWP - Document 93 Fishermans Bend Planning Review Panel - Minister for Planning - Submission on permit call in- 140318          | “  |
| 69a | ”          | Fishermans Bend Planning Review Panel Report No 1 – Volume 1 – Overview - 18 07 19  | Mr Johan Moylan, Planning & Property Partners on behalf of the Proponent |
| 69b | “          | Fishermans Bend Planning Review Panel – Sandridge Precinct – Report No. 4 - 18 07 19  | “  |
| 70  | 11/02/2020 | Specified Matters Under Section 3AA2 Ministerial Notice   | Dalia Cook, SAC Chair  |
| 71  | ”          | Council submission  | Ms Emily Marson, Best Hooper Lawyers on behalf of City of Port Phillip   |
| 71a | “          | Clause 62.04  | “  |
| 71b | “          | Page 3 of Subdivision Act   | “  |
| 71c | “          | Pages 31 to 35 of Subdivision Act   | “  |
| 71d | “          | VCAT decision P2133/2019  | “  |
| 72  | ”          | Advice prepared by Mark Shephard  | Mark Naughton, Planning & Property Partners on behalf of the Proponent   |
| 73  | “          | Financial review article  | “  |
| 74  | “          | Lateral Residences advice regarding dual key apartments dated 10 February 2020  | “  |
| 75  | “          | Architectural statement prepared by Mako Architecture dated 7 February 2020   | “  |
| 76  | “          | Dual key definition prepared by Mako Architecture dated 7 February 2020   | “  |

| No. | Date       | Description  | On behalf of   |
|-----|------------|--|--|
| 77  | "          | Advice pertaining to expiry date of Incorporated document prepared by Lateral Estate dated 7 February 2020 | "  |
| 78  | "          | Mako Architecture response dated 5 December 2019 to Taskforce urban design comments                        | "  |
| 79  | "          | Marked up vantage points for screen shots from 3D Model  | David Islip, SAC Member  |
| 80  | "          | Email from FB Taskforce - further information regarding infrastructure contributions                       | Mr Aidan O'Neill, on behalf of the Fishermans Bend Taskforce           |
| 80a | "          | GC81 Document 76B Part 1 – Mesh Report Funding and Financing Infrastructure Report                         | "  |
| 80b | "          | GC81 Document 76B Part 2 – Mesh Report Pt 2 - Funding and Financing Infrastructure Report                  | "  |
| 80c | "          | GC81 Document 76A - Evidence of Paul Shipp - Infrastructure Funding and Delivery                           | "  |
| 80d | "          | Original Fishermans Bend Strategic Framework Plan - 3-Implementation                                       | "  |
| 80e | "          | GC81 Document 100 - Letter from Taskforce to Chair Interim Developer Contribution - 160318                 | "  |
| 81  | 12/02/2020 | Mark Sheppard response clarification email   | Mark Naughton, Planning & Property Partners on behalf of the Proponent |
| 82  | "          | Planning for sea level rise guidelines, February 2017  | Norton Rose Fulbright, on behalf of Melbourne Water                    |
| 83  | "          | Affordable housing clauses proposed by City of Port Phillip  | Ms Emily Marson, Best Hooper Lawyers on behalf of City of Port Phillip |
| 84  | "          | Extract from AS/NZS 2107:2016  | Mark Naughton, Planning & Property Partners on behalf of the Proponent |

| No. | Date       | Description  | On behalf of   |
|-----|------------|--|--|
| 85  | "          | Response from Melbourne Water  | Ms Megan Schroor Norton Rose Fulbright, on behalf of Melbourne Water   |
| 86  | "          | Planning Practice Note 8   | Ms Kate Morris, Harwood Andrews on behalf of DELWP                     |
| 87  | "          | Submission on behalf of proponent Lateral Estate   | Mark Naughton, Planning & Property Partners on behalf of the Proponent |
| 88  | "          | Schedule to Clause 72.01 of the planning scheme  | Ms Emily Marson, Best Hooper Lawyers on behalf of City of Port Phillip |
| 89  | "          | Vantage points taken from 3D model   | Ms Kate Morris, Harwood Andrews on behalf of DELWP                     |
| 90  | "          | Fishermans Bend Permits - Details of permit expiry dates – 11 02 2020                                    | "  |
| 91  | "          | Amendments to Clause 4.1 and new Clause 4.2 in draft Incorporation Doc - DELWP without prejudice session | Ms Kate Morris, Harwood Andrews on behalf of DELWP                     |
| 92  | 13/02/2020 | Amendments to Clause 4.1 and new Clause 4.2 in draft Incorporation Doc - Clearer Text version            | "  |
| 93  | "          | DELWP 118 Bertie Street - Reply Submissions - 12 02 2020 – Pdf and Word version                          | Ms Kate Morris, Harwood Andrews on behalf of DELWP                     |
| 94  | "          | Letter from DELWP to SAC - 118 Bertie Street - vesting of road- 13.02.2020                               | "  |
| 95  | "          | Memorandum from SAC - Bertie Street - Follow up matters following the Hearing                            | Dalia Cook, SAC Chair  |
| 96  | "          | Letter from SAC to Parties - Eucalyptus trees at the front of the property                               | "  |

| No.  | Date       | Description   | On behalf of   |
|------|------------|---|--|
| 97   | 14/02/2020 | Email from PPV to Proponent - correction to number of eucalyptus trees  | Ms Amy Selvaraj on behalf of the SAC                                     |
| 98   | "          | Letter from FB Taskforce to SAC - Interim development contributions update - 14 02 20   | Mr Aidan O'Neill, on behalf of the Fishermans Bend Taskforce             |
| 99   | "          | Email from Lateral Estate to SAC - updates on hearing follow up   | Mr Johan Moylan, Planning & Property Partners on behalf of the Proponent |
| 100  | "          | Letter from Lateral Estate to SAC -Statement from architect on Context Modelling  | "  |
| 101  | 18/02/2020 | Letter from SAC to Peter Marshall – provision of Extra Documents  | Dalia Cook, SAC Chair  |
| 102  | 19/02/2020 | Letter from Proponent to SAC - Ark Resources Letter of Advice   | Mr Johan Moylan, Planning & Property Partners on behalf of the Proponent |
| 103  | "          | Letter from DELWP to SAC - 118 Bertie Street -vesting of road advice  | Ms Kate Morris, Harwood Andrews on behalf of DELWP                       |
| 104  | 20/02/2020 | Letter from City of Port Phillip to SAC - comment on Melbourne Water Conditions and Condition 4.22 of draft Incorporated Document | Best Hooper Lawyers on behalf of City of Port Phillip                    |
| 104a | "          | Attachment 1 - Email from Council Drainage Engineer   | "  |
| 104b | "          | Attachment 2 - New Street and Lanes in FBURA  | "  |
| 105  | 21/02/2020 | Email from the SAC to Parties seeking comment on correspondence from City of Port Phillip   | Ms Amy Selvaraj on behalf of the SAC                                     |
| 106  | 24/02/2020 | Letter from Lateral Estate to SAC - Mr Dawson's scope of potential further work   | Mr Johan Moylan, Planning & Property Partners on behalf of the Proponent |



| No.  | Date       | Description   | On behalf of  |
|------|------------|---|---|
| 107  | 25/02/2020 | Email from Proponent to SAC in response to query in regard to Mr Dawson's scope of work                 | Mr Johan Moylan, Planning & Property Partners on behalf of the Proponent  |
| 108  | 26/02/2020 | Email from SAC to Parties - further work to be undertaken by Mr Dawson on behalf of the Proponent       | Ms Amy Selvaraj on behalf of the SAC                                      |
| 109  | 27/02/2020 | Letter from Fishermans Bend Taskforce to Site 6 SAC on version 3 draft FB Affordable Housing Guidelines | Ms Amy Selvaraj on behalf of the SAC                                      |
| 109a | "          | Fishermans Bend Affordable Housing Guidelines Draft V3 update 20 02 20                                  | "   |
| 110  | "          | Letter from Proponent to SAC – Comments on Overland Flow and Vesting of the Road                        | Mr Mark Naughton, Planning & Property Partners on behalf of the Proponent |
| 111  | 28/02/2020 | Letter from Melbourne Water to SAC - Melbourne Water Conditions   | Ms Megan Schroor, Norton Rose Fulbright on behalf of Melbourne Water      |
| 112  | "          | Melbourne Water - Agreed conditions Feb 2020 - 118 Bertie Street - 10.02.2020                           | "   |
| 113  | "          | Letter from Proponent to SAC - Arboricultural Assessment  | Mr Mark Naughton, Planning & Property Partners on behalf of the Proponent |
| 114  | "          | Arborist Assessment - 118 Bertie Street   | "   |
| 115  | 2/03/2020  | Dr Peter Marshall - advice on affordable housing for Bertie St (Amendment c172port)                     | Dr Peter Marshall   |
| 116  | "          | 116. Dr Peter Marshall - Incorporated document Bertie Street  | "   |
| 117  | "          | Email from SAC to Parties with Peter Marshall's advice and opportunity to comment                       | Ms Amy Selvaraj on behalf of the SAC                                      |

| No. | Date       | Description  | On behalf of   |
|-----|------------|--|--|
| 118 | 3/03/2020  | Email from Proponent to SAC in regard to comments from Melbourne Water in response to City of Port Phillip   | Mr Johan Moylan, Planning & Property Partners on behalf of the Proponent |
| 119 | 4/03/2020  | Track changes version of Draft Fishermans Bend Affordable Housing Guidelines v3  | Ms Amy Selvaraj on behalf of the SAC                                     |
| 120 | "          | City of Port Phillip - Dr Spiller Memo to Maddocks on Dr Marshall advice ( <i>tabled in Tranche 1 – referral Site 6 C163port (203 – 205 Normanby Road)</i> ) | Ms Amy Selvaraj on behalf of the SAC                                     |
| 121 | "          | Email from SAC - change in due dates for comments on Dr Peter Marshall advice and Mr Dawson work   | Ms Amy Selvaraj on behalf of the SAC                                     |
| 122 | 5/03/2020  | Email from SAC to Parties - clarification and minor number error in Dr Marshall advice on affordable housing   | Ms Amy Selvaraj on behalf of the SAC                                     |
| 123 | "          | Email from Melbourne Water to SAC in regard to Proponents response to Melbourne Water comments   | Ms Megan Schroor Norton Rose Fulbright, on behalf of Melbourne Water     |
| 124 | 6/03/2020  | Letter from Council to SAC - Comments on tree removal and Melbourne Water conditions   | Ms Emily Marson, Best Hooper Lawyers on behalf of City of Port Phillip   |
| 125 | "          | Email from Melbourne Water to SAC on naming of Conditions in draft Incorporated Document   | Ms Megan Schroor Norton Rose Fulbright, on behalf of Melbourne Water     |
| 126 | 10/03/2020 | Letter from Proponent to SAC on Dr Marshall affordable housing advice and request to reconvene hearing   | Mark Naughton, Planning & Property Partners on behalf of the Proponent   |
| 127 | "          | Additional Work prepared by Mr Dawson for Proponent - 118 Bertie Street Affordable Rent Analysis   | "  |
| 128 | "          | Letter from DELWP to SAC - Submissions on Dr Marshall affordable housing advice  | Mr Rupert Watters, on behalf of DELWP                                    |

| No. | Date       | Description  | On behalf of  |
|-----|------------|--|---|
| 129 | 12/03/2020 | Letter from SAC to Parties Bertie Street - Reconvening the hearing for affordable housing and directions in relation to the COVID-19 virus and how it may affect Planning Panels | Chair, SAC  |
| 130 | 19/03/2020 | Letter from SAC to Parties - Status of Reconvened Hearing  | Chair, SAC  |
| 131 | 20/03/2020 | Letter to PPV advising agreeance of proceedings 'on the papers'  | Ms Kate Morris, Harwood Andrews on behalf of DELWP  |
| 132 | "          | Further submissions on affordable housing  | "   |
| 133 | 27/03/2020 | Fishermans Bend SAC - Letter from SAC to Parties - resumed Hearing on the papers   | Chair, SAC  |
| 134 | 02/04/2020 | Letter to SAC – Final submissions on Affordable Housing  | Mr O'Neill, on behalf of Fishermen's Bend Taskforce |
| 135 | 03/04/2020 | Letter to SAC – Final submissions on Affordable Housing  | Best Hooper of behalf of Council                    |
| 136 | 14/04/2020 | Proponent Closing Submission   | Mr Moylan on behalf of Lateral Estate               |

## Appendix D      About the Fishermans Bend Standing Advisory Committee

The Fishermans Bend Standing Advisory Committee (Committee) was appointed by the Minister for Planning under section 151 of the *Planning and Environment Act 1987* in October 2018. The Minister also approved Terms of Reference (ToR) for the Committee in October 2018 and amended these on 9 February 2020.

The Committee consists of:

- Co-Chairs: Dalia Cook and Nicholas Wimbush
- Deputy Chair: Michael Kirsch
- Members: Jill Garner, David Islip, Peter Marshall, Rachael O'Neill, Kate Partenio, Stefan Preuss and John Roney.

The Committee is assisted by Ms Amy Selvaraj, Senior Project Officer and Ms Georgia Thomas, Project Officer, with Planning Panels Victoria.

The purposes of the Committee are to:

*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.*

*Provide a timely, transparent and consultative process for assessment of the suitability of site specific planning controls for certain land within Fishermans Bend.*

The ToR require that the Committee's assessment of proposals consider:

- *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.*
- *The content, including the purposes of the planning controls introduced under Amendment GC81.*
- *The compliance of the proposal with the requirements of the permanent planning controls set out in paragraphs 14-14, or 17, of these Terms of reference, as applicable.*
- *Whether any departure from the Fishermans Bend Framework (September, 2018) compromises the objectives of the Fishermans Bend Framework, September 2018.*
- *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.*

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

The ToR direct that the Committee is not to consider submissions and evidence in relation to:

- *The application or operation of the Infrastructure Contributions Overlay.*
- *The quantum of or need for public open space, roads and laneways.*