

Planning and Environment Act 1987

Fishermans Bend Standing Advisory Committee – Tranche 3 Report

**Draft Port Phillip Planning Scheme Amendment C176port
2-28 Montague Street and 80 Munro Street, South
Melbourne**

3 July 2020

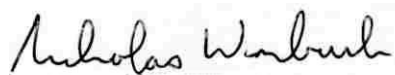
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Fishermans Bend Standing Advisory Committee Tranche 3 report under section 151 of the Act

Draft Port Phillip Planning Scheme Amendment C176port

2-28 Montague Street and 80 Munro Street, South Melbourne

3 July 2020



Nick Wimbush, Chair



Jill Garner, Member



Rachael O'Neill, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
AHD	Australian Height Datum
CCZ1	Capital City Zone Schedule 1
Committee	Fishermans Bend Standing Advisory Committee
Council	City of Port Phillip
COVID-19	Novel Coronavirus 2019
DDO30	Design and Development Overlay Schedule 30
DELWP	Department of Environment, Land, Water and Planning
EPA	Environment Protection Authority
FBURA	Fishermans Bend Urban Renewal Area
Framework Plan	Fishermans Bend Framework Plan
MMRS	Melbourne Main Replacement Sewer
OVGA	Office of the Victorian Government Architect
PPF	Planning Policy Framework
PPP	Planning Property Partners
Review Panel	Fishermans Bend Review Panel
Taskforce	Fishermans Bend Taskforce
the Strategy	Fishermans Bend Urban Design Strategy
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

Overview

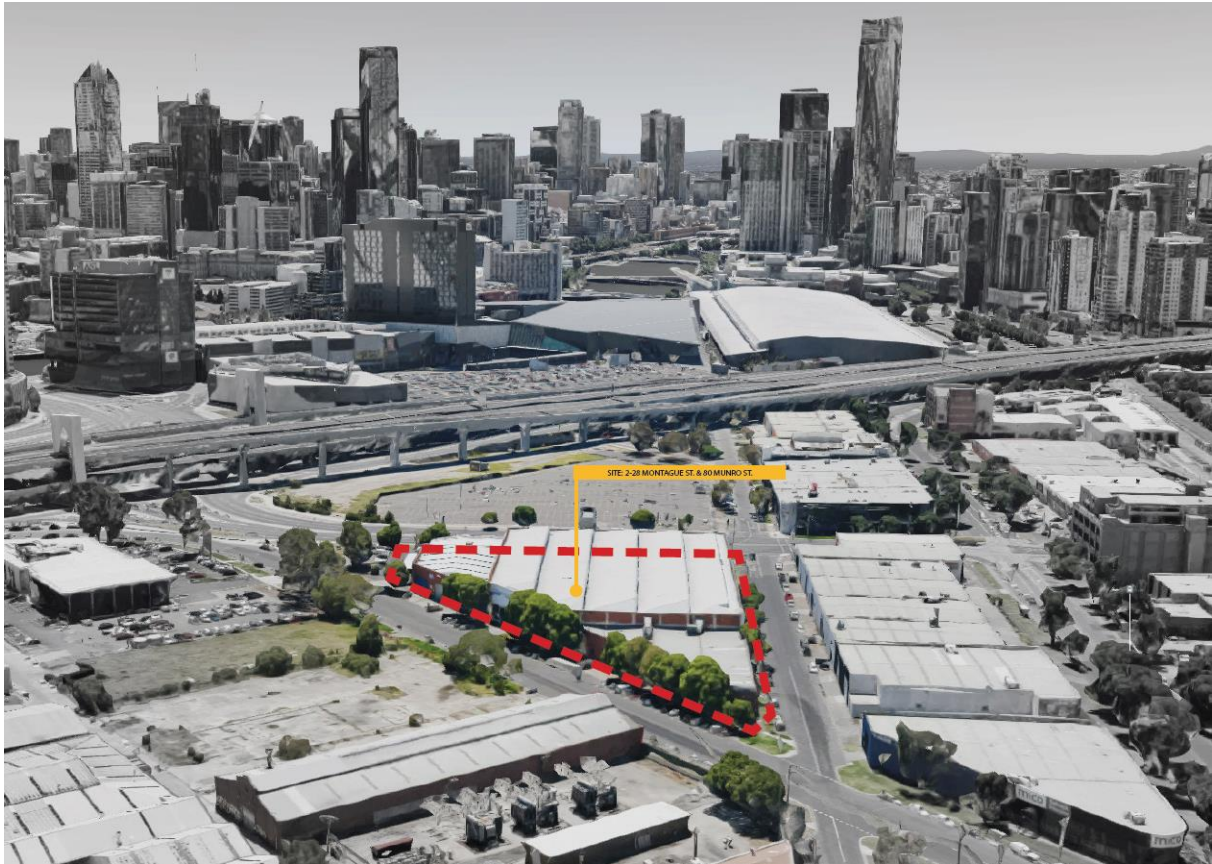
Summary

The Amendment	Draft Port Phillip Planning Scheme Amendment C176port would introduce the Specific Controls Overlay (Clause 45.12) to the site and include an Incorporated Document at Clause 72.04 to control use and development.
Common name	2-28 Montague Street and 80 Munro Street, South Melbourne.
Brief description of proposal	The Amendment would introduce site-specific planning controls to facilitate the demolition of the existing buildings and staged construction of a mixed-use building comprising dwellings, hotel, serviced apartments, childcare centre, retail premises, provision of additional car parking under the Parking Overlay and creation and alteration of access to Road Zone Category 1 on the site.
Subject site	2-28 Montague Street and 80 Munro Street, South Melbourne. The land is a triangular shaped parcel of approximately 9,720 square metres bounded by Montague, Johnson and Munro Streets as shown in Figure 1.
Main planning controls	<p>Clause 21.06-8: Fishermans Bend Urban Renewal Area</p> <p>Clause 22.15: Fishermans Bend Urban Renewal Area Policy</p> <p>Clause 37.01s01: Capital City Zone (CCZ1)</p> <p>Clause 43.02s32: Design and Development Overlay Schedule 30 (DDO30)</p> <p>Clause 45.09s1: Parking Overlay (PO)</p> <p>Clause 45.11s1: Infrastructure Contributions Overlay (ICO)</p> <p>Clause 45.03: Environment Audit Overlay (EAO)</p>
The Proponent	Gurner 2-28 Montague Street Pty Ltd
Local Government Area	City of Port Phillip
Exhibition	Notice provided to parties from 13 January to 12 February 2020
Submissions received from:	<p>Fishermans Bend Taskforce</p> <p>City of Port Phillip</p> <p>Melbourne Water</p> <p>APA Group</p> <p>Department of Transport</p> <p>Environment Protection Authority</p>

Advisory Committee process

The Committee	Members of the Standing Advisory Committee Nick Wimbush, Jill Garner and Rachael O'Neill
Directions Hearing	Planning Panels Victoria, 28 February 2020
Committee Hearing	Videoconference hearing, 20, 21, 22, 23 and 24 April 2020
Site inspections	Unaccompanied on Friday 15 May 2020
Citation	Fishermans Bend SAC Tranche 3 - 2-28 Montague Street, South Melbourne [2020] PPV
Date of this Report	3 July 2020

Figure 1 Site location¹



¹ From Urban Context Report, July 2019, looking south west to north east towards CBD.

Figure 2 **Artists impression²**



² From Cox Architects amended plans dated 4 April 2020. Looking south from ground level approximately under the Westgate Freeway.

Executive summary and recommendation

The Fishermans Bend Urban Renewal Area (FBURA) 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.

This is one of the early reports prepared by the Committee that relates to land at 2-28 Montague Street and 80 Munro Street, South Melbourne. Draft Amendment C176port proposes to introduce an Incorporated Document into the Port Phillip Planning Scheme (Planning Scheme) through Clause 45.12 (Specific Controls Overlay) and Clause 72.04 (Documents Incorporated in this Planning Scheme). The Incorporated Document would grant permission for a staged Master Plan that will facilitate the use and development of the land for a mixed use development comprising dwellings, hotel, serviced apartments, childcare centre, retail premises and creation and alteration of access to Road Zone Category 1 on the site.

Notice of the draft Amendment 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 considering the appropriateness of the Amendment.³

The parties were in general agreement that the site was suitable to host a development of the scale and magnitude proposed. Views differed as to the ultimate scale of the towers and the differentiation of scale between the towers. Issues in dispute also related to matters of design detail including the public plaza and connections and the interface of the proposal with the public realm and the overprovision of car parking.⁴ All parties supported the scale of Affordable housing being provided, including the location within the development of the 20 apartments that will be gifted to Womens' Housing Limited. There was a dispute between the Proponent and Melbourne Water in relation to a nearby sewer vent, including whether works were required to upgrade it and who would be responsible to bear the cost of any necessary works.

³ Clause 21 of the Terms of Reference.

⁴ The proponent was seeking approval to provide car parking at a rate in excess of that nominated in the Parking Overlay.

Irrespective, of parties' positions including areas of agreement, 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.

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 parties are warranted
- acceptability of, including the terms, of the Affordable housing component of the development
- disputed elements of the draft Incorporated Document.

The Committee finds:

- The proposal generally contributes positively to many of the ambitions for urban design outlined in the Fishermans Bend Framework, the Vision and the particular objectives and standards for the Montague Precinct in Design and Development Overlay Schedule 30. The proposal has the capacity to contribute to a lively mixed-use neighbourhood consistent with the preferred built form character for the precinct.
- Several detailed design challenges are yet to be resolved so conditions in the Incorporated Document need to ensure that the proposal is refined to achieve urban design excellence.
- The gifting of the Affordable housing apartments is endorsed and that the tenure of the balance of the Affordable housing offer should run with the life of the development and not be limited to 20 years.
- If the sewer vent stack requires odour mitigation for new residents following the odour assessment, any works or project redesign should be undertaken and paid for by the Proponent.
- There is policy support for encouraging and promoting alternate modes of transport and minimising the reliance on private motor vehicles. The over provision of car parking is not supported.

The Committee is satisfied that Draft Amendment C176port to the Port Phillip Planning Scheme would be consistent with the relevant planning policies and provisions including the Fishermans Bend Framework subject to the further refinement of the draft Incorporated Document.

Recommendations

Based on the reasons set out in this Report, the Fishermans Bend Standing Advisory Committee recommends

- 1. Adopt Draft Port Phillip Planning Scheme Amendment C176port with the Incorporated Document as shown in Appendix C to this report.**

1 Introduction

1.1 Background

The draft planning scheme Amendment was referred to the Fishermans Bend Standing Advisory Committee (the Committee) on 19 December 2020. Revised Terms of Reference were provided to the Committee on 9 February 2020.⁵

Under Clause 42 the Committee is to report to the Minister on:

- A summary of the site specific planning control, the proposal and all submissions received.
- The Advisory Committees recommendations regarding the site specific planning control and the proposal.
- A summary of the Advisory Committee's reasons for its recommendation.
- A copy of the site specific planning control including recommended conditions to form part of the site specific planning control.
- A list of persons who made submissions considered by the Advisory Committee.
- A list of persons consulted or heard.

Between the Directions Hearing and the Main Hearing, Victoria went into lockdown to manage the spread of Coronavirus Disease 2019 (COVID-19). Under COVID-19 protocols a face to face hearing was not possible.

The Main Hearing was run by videoconference over five days, organised by the Department of Environment, Land, Water and Planning (DELWP) and Harwood Andrews Lawyers. Whilst the new format was challenging for all concerned, the Hearing was successfully run and completed including the calling of expert evidence.

1.2 Summary of issues raised in submissions

DELWP provided a high-level summary of submissions in its Part A submission to the Committee.⁶ This is reproduced below:

City of Port Phillip has expressed general support of the proposal, subject to the inclusion of a suite of conditions. These pertain to the heights of the building and its exceedance to preferred building heights in the precinct, car parking layout to the satisfaction of Council and provision of carrying out works in accordance with the Sustainable Management Plan, Waste Management Plan, Drainage /Engineering and other functional requirements. The matter of building height and setbacks is a key issue in contention.

Fishermans Bend Taskforce has raised design concerns with respect to the proposal, in particular, the heights of the buildings and inadequate response to sustainable transport provision for the proposal.

Department of Transport has recommended the inclusion of conditions to provide a Green Travel Plan to meet sustainable transport objectives, the inclusion of conditions to require appropriate licence to have the development

⁵ The Minister has provided revised Terms of Reference to the Committee dated 29 April 2020. As this matter was referred and the Hearing held under the 9 February 2020 Terms of Reference, the earlier Terms have been used in guiding this report.

⁶ Document 53.

project more than 300mm beyond the Montague Street boundary and removal of the redundant crossover on Munro Street.

Melbourne Water provided conditional requirements pertaining to three matters, to address:

- a) finished floor levels of the development to mitigate flooding issues
- b) odour mitigation from a sewer stack located to the north of the site and
- c) protection of its infrastructure location in proximity to the proposed development

...

APA group has expressed no objections to the proposed Amendment.

Environment Protection Authority has stated that the existing industries are not expected to have a significant impact on the proposal development and is satisfied that the mitigation measures proposed will provide an appropriate level of amenity for the proposed development.

1.3 Key issues

1.3.1 Agreed issues

(i) Affordable and Social Housing

Whilst there was considerable discussion around affordable and social housing in the Hearing, there was general agreement that the offer in the proposal is an acceptable and welcome response to the requirement for 6 per cent of such housing in the planning scheme. The Proponent proposes to provide four affordable dwelling to be leased for 20 years and 20 dwellings to be gifted to Women's Housing Limited. Based on the proposed gifting of 20 dwellings, DELWP and the Taskforce supported the lease timeframe. Council sought a lease for not less than 30 years.

The Proponent provided revised wording for the Incorporated Document⁷ which the Committee has in part included in Appendix C. The Committee has recommended that the lease for 20 years be increased to a period corresponding to the 'economic life of the building'. The Committee also agrees with DELWP that there is merit in securing the contribution based on a percentage rather than on a number of apartments, which may change in the ultimate delivery of the project. The provision of social and affordable housing does not have a time limit on it in the planning scheme (Clause 22.15-1) and the Committee considers the policy intent is for the housing to be provided in perpetuity, or at least for the building life.

(ii) Melbourne Water

There were a number of issues raised by Melbourne Water including:

- The need for a 5 metre setback of built form from the Melbourne Main Replacement Sewer (MMRS) on Johnson Street

⁷ Document 74.

- The planning response to flood levels; noting the Special Building Overlay is not on the site
- The need to note Melbourne Water might require future contributions to flood mitigation in the Fishermans Bend Urban Renewal Area (FBURA) by proponents.

These issues were resolved, and conditions included in the incorporated document as necessary.

1.3.2 Issues in dispute

(i) Height and built form

Whether the heights of the proposed towers (particularly Towers 1 and 2) are consistent with the preferred vision for the site in the Fishermans Bend Framework Plan (Framework Plan) and Design and Development Overlay Schedule 30 (DDO30) was a matter considered at length in the Hearing and expert evidence was called. This issue is discussed in Chapter 2.

(ii) Public Realm

A number of elements associated with the public realm such as laneway widths, setbacks and viewlines were the subject of detailed submissions and evidence in the Hearing. These issues are discussed in Chapter 3.

(iii) Melbourne Water

The MMRS runs under Montague Street and then generally north–south on the eastern side of Johnson Street. There is a 14 metre high sewer vent stack from the MMRS which can emit odour under normal operations including hydrogen sulphide gas. Whether this vent stack could have odour impacts on future development and who might fund any mitigation (if required) were contested matters in the Hearing. This issue is addressed in Chapter 4.1.

(iv) Parking and transport

Parking provision (car, bicycle, motorcycle and car share) was disputed at length. The dispute relates primarily to the land use and provision rates in the planning scheme. This issue is considered in Chapter 4.2.

1.3.3 Other issues

There are a number of other issues which are covered by the Incorporated Document and were raised by submitters such as environmentally sustainable design, development contribution (in-kind) for potential works on Johnson Street and others. The Committee considers these are important issues to the success of the project but generally not so significance that they require specific discussion in this report. The Committee has reviewed the suggested comments on these issues in finalising the recommended Incorporated Document in Appendix C.

2 Height and built form

2.1 The issues

The issues are:

- Will the proposal contribute to the preferred built form character set out in the Framework?
- Are the proposed heights consistent with planning scheme requirements?

2.2 Relevant planning controls

Clause 21.06-8 of the Planning Scheme 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 Montague is divided into two precincts, being the north and south. The vision for the north is:

Montague North is a gateway to Fishermans Bend from the CBD, Southbank and Docklands. It establishes a relationship and transition to the eastern part of Sandridge, as well as Montague South, with excellent walking and cycling links to adjoining precincts. Commercial and some retail and community activities are located within podium and upper levels of mixed use buildings. Businesses are attracted in particular by proximity to nearby commercial and cultural activities, and high quality, high amenity public realm.

Relevantly, the policy seeks to:

- 6.8.20 Encourage development to respond to the preferred character as identified in Schedule 30 to the Design and Development Overlay.
- 6.8.21 Encourage tower and hybrid development. Towers should be spaced to provide for outlook and internal amenity with setbacks to protect amenity of streets and laneways.
- 6.8.22 Encourage buildings that are set back from the street boundary at ground level to create forecourts, courtyards and landscaping at building entrances. Podium street wall heights respond to the street width.
- 6.8.23 Encourage heights, location and position of towers that allows for sunlight access to the southern side of Normanby Road at September equinox.
- 6.8.24 Encourage laneways and through block links that facilitate connection to tram and neighbouring precincts.

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

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

To create thriving, lively mixed-use neighbourhoods that have distinct identity and character consistent with the preferred character for each precinct.

The land is included in the Capital City Zone, Schedule 1 - Fishermans Bend Urban Renewal Area (CCZ1). As relevant to matters of design, the purpose of the Schedule broadly reflects the objectives included at Clause 22.15.

Pursuant to Clause 4.2 of the Schedule the construction of a building and the carrying out of works must be generally in accordance with the relevant Maps of the Schedule. This does not apply to a new road or laneway marked as indicative.

Design and Development Overlay, Schedule 30 applies to the Montague Precinct. The design objectives include:

To ensure, in Montague North, a mix of mid and high-rise scales and hybrid and podium-tower typologies.

To ensure that built form protects where possible, sunlight penetration to key open space, spines and other identified public open spaces, streets and laneways and facilitates comfortable wind conditions, to deliver a high quality public realm.

Table 1 to Clause 2.4 of the Schedule includes the land in Area M1 with a sought building typology of 'hybrid (predominantly mid-rise)'. The preferred precinct character statement for Area M1 is:

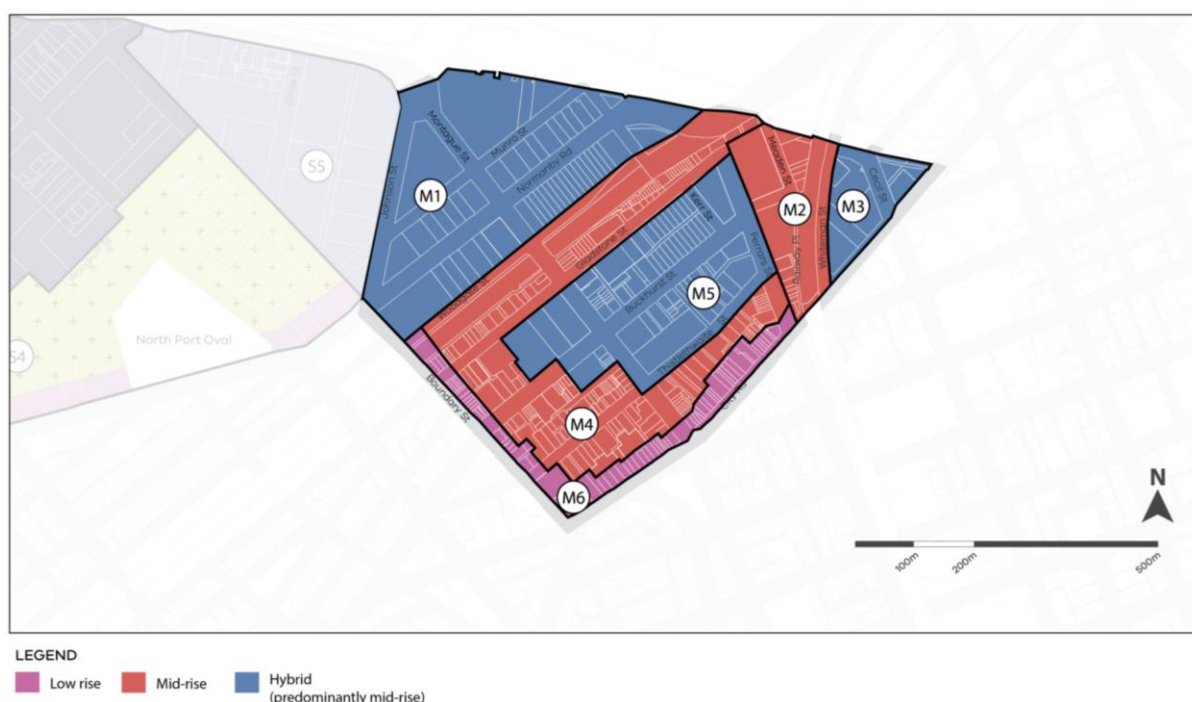
Mid to high-rise developments.⁸ On larger sites, a hybrid of perimeter blocks with slender towers that create fast moving shadows and minimise the perception of visual bulk when viewed from streets.

Clause 2.5 sets out building height outcomes that include those that:

- Respond to the preferred precinct character and typologies in Table 1.
- Contribute to a varied and architecturally interesting skyline.

In terms of buildings and works it notes that these should not exceed the relevant height specified in Map 2 to the schedule. As relevant, Map 2 (Building Heights) nominates a height of 81 metres (24 storeys) to the land.

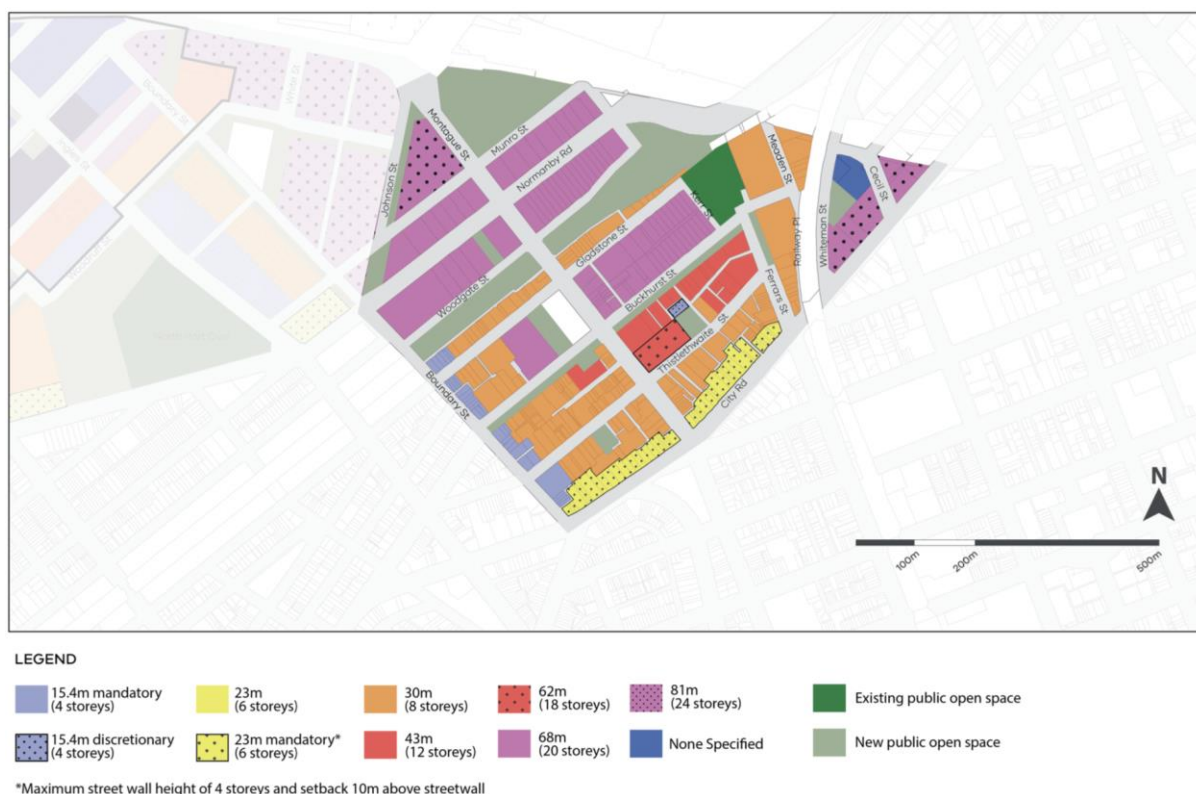
Figure 3 Building typologies⁹



⁸ Clause 2.4 to Schedule 30 sets out built forms for mid and high rise development which is 7 storeys to 15 storeys for mid-rise' and 16 storeys and taller for 'high-rise'.

⁹ DDO30, page 16 of 17.

Figure 4 Building heights¹⁰



Clause 2.10 relates to building separation within a site and includes the following built form outcomes:

- Delivers high quality amenity within buildings having regard to outlook, daylight and overlooking.
- Offsets direct views between buildings within the same site.
- Achieves privacy by building separation rather than screening.
- Ensures tall buildings do not appear as a continuous wall when viewed from street level.

Table 6 in the schedule sets out preferred and minimum building separation. As relevant to the proposal, the minimum building separations are:

- for that part of the building below the Street wall – a minimum building separation of 6 metres with a preferred building separation of 12 metres.
- for towers:
 - 20 storeys or less – a minimum building separation of 10 metres and a preferred building separation of 20 metres.
 - more than 20 storeys – a minimum and preferred building separation of 20 metres.

¹⁰ DDO30, page 16 of 17

2.3 Building heights

The proposal includes development of three towers above podiums. The towers are separated by pedestrian links extending between adjacent streets and by a central public space.

Tower 1 has a 5 storey (22.6 AHD) podium and a tower height of 38 storeys (131.05 AHD) and an overall height of 136.55 AHD to the crown of the building. Tower 2 has a 5 storey (22.6 AHD) podium Task and a tower height of 28 storeys (102.65 AHD) and an overall height of 108.15 AHD to the crown of the building. Tower 3 has a 6 storey podium (26.4 AHD) and a tower height of 15 storeys (60.85 AHD) and an overall height of 66.35 AHD to the crown of the building.

2.3.1 Evidence and submissions

DELWP and the Taskforce supported the proposed heights for Towers 1 and 3; however both authorities submitted that Tower 2 should be reduced from 28 storeys to 24 storeys.

DELWP:

- submitted that, subject to the changes it was seeking, the development achieves a high degree of compliance with policy and applicable controls
- acknowledged that there is no dispute that the land is a 'gateway site' to the precinct
- noted that there was no mandatory height control that applied to the land and that the preferred maximum is 24 storeys.

DELWP acknowledged the size of the land, its island nature and its identification as a 'gateway' in providing its general support for the scale of development proposed and submitted that it was less of a concern to set a precedent for future development because of the land's characteristics. These features lent support for the height of Tower 1; however DELWP submitted that it was not the case that all towers should exceed the preferred maximum height of 24 storeys.

DELWP submitted that reducing the height of Tower 2 to 24 storeys would provide for a development that is more in keeping with the design objectives and built form outcomes sought by DDO30. DELWP submitted that having towers that range in height between 15, 24 and 38 storeys more closely reflects the 'mix of mid and high rise' scales sought in the design objectives and the preferred character for Area M1. DELWP submitted that *"the existing proposal skews too heavily towards the 'high rise' end of the equation, noting that Tower 3 is already at the upper limit of 'mid-rise' and that Tower 1 represents a 50 per cent exceedance of the preferred maximum for this area."* Mr Watters submitted that the reduction in height would also contribute to a more varied skyline; acknowledging that this effect may be relatively minor depending on the view of the land.¹¹

The Taskforce also acknowledged the land's attributes, including that it is the largest developable site within the Montague Precinct; is an island site bound by 'robust street frontages' and bounded to the north by the Westgate Freeway; and is absent of sensitive interfaces.

¹¹ Page 6 of DELWP's Part B submission.

The Taskforce submitted that the proposal responded to the preferred precinct character and building typologies of Table 1 in DDO30 and that the variation in height between the towers would achieve a discernible difference and *“provide variation in heights across the site that will contribute to a varied and architecturally interesting skyline.”*¹² Nevertheless, the Taskforce agreed with DELWP that the height of Tower 2 should be reduced to 24 storeys.

Port Phillip City Council (Council) submitted the proposed built form including height was an inappropriate response to DDO30 and Clause 22.15. Council submitted that the height of Tower 1 should be reduced to 29 storeys and the height of Tower 2 should be reduced to 20 storeys. Council submitted that proposed heights were *“excessive and not in keeping with the mid-rise building typology sought for the Precinct.”*, and that the visual bulk of the proposal will be *“overbearing within the surrounding street network”*.

Council submitted that there was nothing in the current planning controls that identify the land as a ‘gateway’ to the Precinct or a landmark site and that rather the whole of the M1 Precinct is recognised as the gateway to the broader Montague Precinct. Council submitted that the ‘landmark’ nature of the site is reflected in the fact the Montague North has the highest discretionary height specified in the Montague Precinct.

Council submitted that the height of Tower 1 is not consistent with the preferred character sought by the controls that were so recently introduced into the planning scheme, and that the proponent was placing too much reliance on existing approvals (that pre-date Amendment GC81) to justify the proposed heights. Council submitted that the *“excessive building height proposed, together with the building footprint, exacerbates the overbearing nature of the proposal.”*¹³

In support of its position, Council submitted that reducing the height of Tower 1 to 29 storeys would achieve a reasonable transition from the taller approvals in Normanby Road and the 20 storey preferred maximum building height now applying to Normanby Road and the east side of Munro Street. The reduction in height of Tower 2 to 20 storeys would ensure consistency with the mid-rise/hybrid character sought for Precinct M1. It also submitted that the reduction in height of the buildings might also alleviate wind impacts and the amelioration measures.

The Proponent submitted that DELWP’s position was not based on an empirical assessment of off-site impacts or amenity but to require *“better”* compliance with policy outcomes. The Proponent submitted that Council had also not advanced amenity concerns to justify its issue with height and adopted an arbitrary position in numerical terms and an approach that DDO30 should be more closely adhered to. The Proponent was critical of Council’s submissions that the planning controls do not identify the land as a ‘gateway’ or ‘landmark’ site in that it *“undervalues the unique characteristics of the site and its context.”*

The Proponent also submitted that Council’s position was at odds with the Fishermans Bend Review Panel’s (Review Panel) consideration of the role and status of live applications, observing that the Review Panel acknowledged that live applications would inevitably lead

¹² Page 16 of Taskforce’s submission.

¹³ Page 6 of Council’s submission.

to approval of development that exceeded the discretionary height controls, particularly in the Montague Precinct. The Review Panel observed:

Montague is a diverse area of Fishermans Bend. Its proximity to the CBD makes it a key Precinct, and it will have the greatest density of built form. Much of Montague is likely to be punctuated by taller buildings due to permits already granted, and some applications yet to be considered. If done well, this could add diversity and interest to two parts of the Precinct.

... the occasional development that exceeds the preferred heights – even significantly so – will not, in the Review Panel's view, fundamentally undermine the Vision.¹⁴

Noting the existing approvals, the Proponent submitted that consideration of whether a proposal will fit in a particular location must consider those approvals. The Proponent submitted that it did not contend that there is an overall emerging scale that *"significantly exceeds the nominated height"*. The Proponent submitted that the application of discretionary rather than mandatory height controls were *"purposeful and considered"* and that the exercise of discretion is directed to an assessment of a proposal taken as a whole is an acceptable outcome having regard to the strategic context of a site; state and local planning policy objectives; objectives of the Act; and the physical context of the site.

The Proponent submitted that the *"question is not, as the Taskforce and Department have put it, whether an alternative, or different version of the proposal is better or preferable."* And, the *"Committee is required to assess the proposal that is before it. It is not required to consider whether the proposal in a modified form is a better outcome."*¹⁵

The Proponent submitted that the proposal achieved the built form outcomes for height at Clause 2.5 of DDO30, in that it:

- incorporates both mid and high rise towers, contributing to diverse character outcomes sought for Montague North
- represents design excellence and quality architecture that will make a positive 'landmark' contribution to the skyline
- generates no unreasonable amenity outcomes
- provides a transition to lower scale neighbourhoods.

The Proponent relied on the evidence of Messers Milner, Sheppard and McGurn. Mr Milner provided a strategic overview of the proposal including in the context of the history of the planning for Fishermans Bend. In his view, the 'lens' by which the merits of the proposal should be assessed was to consider the legacy and consequences and that means that there will be a built environment that in part reflects the expectations of 2012, that in part reflects the GC81 outcomes and the 'go-between' matters (including the subject proposal) which are the ones that have to 'knit' between the heightened and tempered expectations.

Mr Milner observed that whilst the planning controls do not identify the land as a 'gateway' or 'landmark' site, the land fulfils that role. In Mr Milner's view, the land is located where one will first experience the tenor of development as you enter Fishermans Bend. He observed that the land would be read and experienced 'in the round' and that it is unique and a gateway to the Precinct. It was Mr Milner's opinion that the proposal provides for a genuine diversity of heights between the towers; that a reduction in height of Tower 2 is not

¹⁴ Page 10 of the Proponent's submission.

¹⁵ Page 29 of the Proponent's submission.

required; and that it will sit in a context of higher built form. Mr Milner noted that regardless of the controls, it seems a *“nonsense that the hero site would be underdeveloped”* in the context of other sites and approvals.

In cross-examination Mr Milner maintained this position and in response to questions from the Committee, advised that approving the development was not to show disregard to the policy framework, but that it must also be considered having regard to the site’s attributes and context. In response to questions in re-examination, Mr Milner opined that a reduction in the height of Tower 1 would mean that the land was *“simply undercooked”* and that reducing the height of Tower 2 would have a negligible impact.

Mr Sheppard acknowledged the attributes of the land and referenced existing approvals on surrounding sites and advised that given the preferred height is discretionary, it must mean that there is an expectation that heights may differ, otherwise they would be written as mandatory controls. Further, it was his view that the DDO calls for one to look at the built form outcomes, and if these can be satisfied, then additional height can be contemplated.

Mr Sheppard was of the view that the height difference between the towers is very significant and the architectural language is clear. In his view, what is being proposed is a ‘hybrid’ in that it includes low, medium and high scale; responds favourably to the preferred character; there will be a different form on the skyline because of the architectural form, and that amenity impacts are confined to overshadowing of the linear park, which is inevitable even with a scheme that complies with the preferred height. It was Mr Sheppard’s evidence that the proposal achieves the built form outcomes and in addition, Tower 1 will provide a focal point.

During cross-examination Mr Sheppard agreed that there has been a proper strategic setting behind the controls but advanced the position that the site features need to be considered and that in the future there will be higher buildings in Montague Street. He responded that there would be no urban design benefit to reducing the height of the tower. In his view, to reduce the height of Tower 1 to the height advanced by Council would mean that it would no longer read as a ‘landmark’ building. It was Mr Sheppard’s view that the reference to ‘predominantly mid-rise’ applied to the Precinct not just to the land. He acknowledged that a reduction in heights would still contribute to growth objectives, but *“less so”*.

It was Mr McGurn’s position that discretion is required when applying the controls and that the land is an *“obvious candidate”* for discretion to be given having regard to the issue of height. He observed that it is the first site that one sees coming out of the City, one of the largest and it is a significant site at the entrance point to Fishermans Bend. Mr McGurn observed that Map 2 in DDO30 showing 24 storeys for the land is higher than the 15 storeys ‘mid-rise’ referenced at Clause 2.4 of DDO30. It was his view that it was *“incongruous”* that the map differs from the description.

Mr McGurn’s view was that the proposal is entirely consistent with the preferred character described for the Precinct at Table 1 to the Schedule. Mr McGurn’s evidence was that the proposal complied with the built form outcomes of Clause 2.5 of the Schedule and that the *“clear gradation of heights delivers an interesting silhouette or profile on the skyline.”* Further, there was no overshadowing impacts and that an adequate distinction was made between the heights of Tower 1 and Tower 2.

During cross examination Mr McGurn also adopted the position that in applying the planning controls it is appropriate to consider the site's context. In response to questions regarding the expressed preferred height, Mr McGurn answered that he agreed that one had to start somewhere, but that one also needs to read the planning scheme as a whole and consider the context. Once this process had been followed then one could reach a view. He did not agree that the proposal undermines the work that has gone into developing the planning controls. Mr McGurn agreed in answer to questions that a reduction in height of Tower 2 would result in a loss of residential floor space but that a reduction in height would not alter his support for the proposal.

2.3.2 Discussion

In the Committee's view, the proposal responds to the policy objectives for large sites (greater than 3,000 sqm) to include through block links and define separate buildings. Namely, it includes:

- A composition of three tower forms, described as a 'family of buildings'.
- Towers 1 and 2 emerge from a combined 5-storey podium that effectively presents as a continuous (perimeter) street wall on Montague Street.
- Tower 3 has its own 6-storey podium.
- Buildings are separated by a public plaza and two public pedestrian connections.
- Tower 1 is located on the northeast point of the site and at 38 storeys high, is designed to be a gateway or signifier of entry to the Montague precinct.
- Tower 2 at 28 storeys high, is proposed to mediate between Tower 1 and Tower 3.
- Tower 3 is located on the southwest point of the site and at 15 storeys high, is designed to respond to the mid-rise ambitions of the preferred precinct character as identified in the DDO.

More particularly, the Committee notes the acceptance of DELWP and the Taskforce of the height of Tower 1, at 38 storeys and the submissions of Council that it is entirely inconsistent with the preferred character sought in the planning scheme.

On the bare numbers Tower 1 is significantly over the preferred maximum height. However, the Committee accepts the submissions and evidence that the site, and particularly the location of Tower 1, is a gateway into Fishermans Bend, and thus is deserving of, and can carry the proposed height. Whilst it may not be a gateway in planning policy, there is no doubt in the Committee's mind that it is a gateway site in fact. Travelling south under the Freeway on foot or in a vehicle on Montague Street the northern corner of the site presents as the first part of Fishermans Bend from this access point. A sense of this can be gained from the rendering in Figure 2 of this report.

While other built form will likely be present in the area over time, visually Tower 1 will be the first major form visible as you enter Fishermans Bend on Montague Street. In this instance, the Committee does not accept Council's position that approval of the scheme will undermine the recently introduced planning controls and that within the context of differing and higher built form of existing approvals, the proposal will contribute to the diversity and interest across the skyline. The Committee cautions against the notion that similar conclusions could be reached on other sites within the Fishermans Bend area or the Montague Precinct.

The Committee is more convinced by the arguments of DELWP and others that the height of Tower 2 should be reduced to the preferred maximum height of 24 storeys. The reasons for this are simple: it will provide greater articulation and differentiation between Towers 1, 2 and 3, and Towers 1 and 2 in particular. In doing this it will also enhance the ‘gateway’ effect of Tower 1.

The Committee does not consider that the reduction in height of Tower 2 will result in under-development of a site that will still be intensely developed. The Committee also notes that none of the expert witnesses suggested such a reduction would be fatal to the proposal in urban design or planning terms.

Tower 3 at 15 storeys is an appropriate response to the mid-rise ambitions of the preferred precinct character. Although its height sits at the upper level of ‘mid-rise’ as identified in the DDO, it sets up a reasonable formal relationship with the rest of the Montague precinct.

2.3.3 Conclusions

The Committee concludes that the height of Tower 2 should be reduced to 24 storeys and has included an amendment to the Incorporated Document accordingly.

2.4 Built form and typology

2.4.1 Perimeter blocks/Slender towers

The ‘preferred precinct character’ at Table 1 in DDO30 refers to achieving, on larger sites, a *“hybrid of perimeter blocks with slender towers that create fast moving shadows and minimise the perception of visual bulk when viewed from the streets”*.

(i) Evidence and submissions

DELWP and Council did not expressly address the issue of ‘perimeter blocks/slender towers’ in submissions. However, Council submitted that the *“proposal will appear bulky and will result in overbearing impacts including amenity impacts on the public realm, exacerbated by height.”*¹⁶

The Taskforce submitted that the proposal is acceptable from a tower massing perspective. It observed that ‘slender towers’ is not defined and submitted that guidance to assist in the assessment of a proposal is to be found in considering the outcome of the preferred character statement which is the creation of *“fast moving shadows”* and the minimisation of the *“perception of visual bulk when viewed from the street.”* In informing its view the Taskforce referred to the Fishermans Bend Urban Design Strategy prepared by Hodyl + Co (the Strategy), which also does not define ‘slender towers’, but outlines the assumptions implemented in the 3D testing for the Strategy and which references low, mid and high rise buildings. Noting that the criterion used in the Strategy assumes a rectilinear tower floorplate, the Taskforce sought to benchmark the proposal against the ‘maximum floor plate.’

¹⁶ Page 4 of Council’s submission.

Table 1 Building floorplates¹⁷

Building typology	Minimum building width (metres)	Maximum building width (metres)	Minimum floorplate (unless site size is smaller)	Maximum floorplate
Residential apartments (low-mid-rise)	10 m	20 m	450m ²	900m ²
Residential apartments (high-rise)	15 m	30 m	600m ²	900m ²
Commercial buildings (mid-high rise)	15 m	50 m	600m ²	2,000m ²

A slenderness ratio of maximum 10.1 has generally been adopted for towers

The Taskforce observed that Towers 1 and 2 are primarily residential buildings with floorplates of approximately 892 square metres and 925 square metres respectively and Tower 3 is primarily a commercial building with a floorplate of approximately 1,177 square metres. It submitted that Towers 1 and 3 are consistent with the benchmark and that Tower 2 exceeded the benchmark by approximately 25 square metres, which it deemed ‘negligible’.

In forming its view that the building form was acceptable, the Taskforce concluded that *“depending on the aspect that one appreciates tower forms from, the curvature of the buildings will result in some interfaces presenting as slender, while others will present more broadly.”*¹⁸ The Taskforce submitted the Strategy anticipated such an outcome.

Mr Milner addressed the issue of ‘slender tower’ and also identified that the expression not defined in DDO30. For guidance, Mr Milner referenced DDO26 in the Planning Scheme that relates to St Kilda Road North and includes a maximum width of 35 metres. Acknowledging that St Kilda Road is a different context to Fishermans Bend, Mr Milner also noted that the minimum tower separation in DDO26 is nine metres compared to 20 metres in DDO30 *“ensuring the latter embodies a greater sense of separation, space and articulation between towers, even if the maximum width was greater than 35 metres”*.¹⁹ He noted that Towers 1 and 2 would comply with the guideline advanced by DDO26 but at a width that varies between 40 and 60 metres, Tower 3 would not.

In support of the breadth of Tower 3, Mr Milner noted the separation between it and the other towers and the setback of 38 metres it has from the street edges of Munro Street and Johnson Street. It was his evidence that this setback in conjunction with the width of Johnson Street of 30 metres and which increases to 50 metres on the oblique because of the alignment of the streets, that *“a substantial space is assured for solar penetration around the tower and to mitigate any sense of cumulative building mass.”* And further, he noted *“the proposed closure of Johnson Street, south of Munro Street as a future open space link makes the experience of the towers from this space particularly relevant. In that context the*

¹⁷ Extracted from the Fishermans Bend Urban Design Strategy, Hodyl + Co, page 98 (Page 10 of the Taskforce submission)

¹⁸ Page 13 of the Taskforce submission.

¹⁹ Page 28 of Mr Milner’s evidence.

towers would be experienced as a defining edge to an important, view corridor towards Charles Grimes Bridge, with CityLink in the foreground.”²⁰

Mr Sheppard addressed the concept of perimeter block in detail and noted that there is no definition of the concept in DDO30 or elsewhere in the planning scheme. Mr Sheppard observed that the triangular shape of the land would result in an internal triangular shaped courtyard if the typical building depths were applied. It was his evidence that:

The design response of the proposal can be seen as an adapted perimeter block in which the first design move is to round out the awkward internal angles of the triangular courtyard. The second design move relocates the internal courtyard to the Johnson Street, resulting in the following benefits to the public realm:

- it breaks up what would otherwise be a long continuous frontage to Johnson Street
- it provides a pedestrian through connection in accordance with the new laneway indicated in CCZ1 Map 1 and DDO30 Map 3
- it improves the legibility and solar access of the courtyard by opening it up to Johnson Street.²¹

Mr Sheppard was also of the view that Towers 1 and 2 were ‘slender’ and that they will create interplay of shadow and light in the public realm and be read as separate forms at various parts of the day. He observed that Tower 3 is ‘mid-rise’ and that this in conjunction with the slender towers, a *“hybrid of a perimeter block”* and compliance with the street wall requirements of DDO30 means that the proposal is *“generally in accordance with the built form typology and preferred precinct character of Area M1.”²²*

(ii) Discussion

The Committee observes that the design intent of podiums is to establish a street presence with human scale, grain and character to support the ambitions of the precinct to become a thriving, lively mixed use neighbourhood.

There were differing views as to whether the design has ‘slender’ towers and ‘perimeter blocks’. Without an agreed reference point the perspective will depend to some extent on the observer.

The Committee notes Mr Sheppard’s evidence in relation to perimeter blocks and more specifically that the design is a ‘hybrid’ perimeter block approach. Given the triangular site the Committee accepts that it is difficult to achieve a more traditional perimeter block approach that you might see on a square or rectangular site. The points of the triangle drive the design to a large extent. The response in this proposal has been to provide more in the manner of ‘corner blocks’ with a significant public realm element and associated throughways and laneways.

The Committee considers that in general, the placement of podiums on the larger site combines a significant extent of street wall with a well-located public plaza and through-site pedestrian connections. The extent of continuous street wall to podiums has the capacity to suggest a perimeter block typology. Nominating two different heights to podiums contributes to defining separate buildings on the large site. The Committee is therefore

²⁰ ibid

²¹ Page 8 of Mr Sheppard’s evidence.

²² ibid

satisfied that for this challengingly shaped site, the design response and its perimeter elements coupled with openings to Johnson, Munro and Montague Street is an acceptable response.

While the podiums are generally acceptable in form, wall elevations to perimeter streets, laneways and public realm show limited detail on materials, grain and scale. This issue is discussed in Chapter 3 of this Report.

In relation to whether the design of the towers is slender, again the Committee is satisfied that the design is an appropriate response to the planning controls. Yes, the towers could be more slender, and the Committee accepts that from some angles the visual bulk of the development will be significant, as can be seen from the montages prepared by Mr Flood. However, from other angles the separation between towers will provide significant views through to the beyond and as you travel through and around the site such views will open up and close again.

It is also important to remember the development context in this area. The development will be viewed not as an element in itself, whether seen as slender or bulky, but as an element or site within a very significant range of development around it both proposed and approved.

(iii) Conclusion

The Committee concludes that the design is an appropriate response to the planning scheme in relation to perimeter blocks and slenderness of development.

2.4.2 Building separation

At podium level Towers 1 and 2 are separated by a distance of 29.3 metres and Towers 2 and 3 are separated by a minimum distance of 9.7 metres at ground level and these setbacks reduce to 24.18 metres at first floor and above between Towers 1 and 2 and increase to 10.85/10.93 metres between Towers 2 and 3.

At tower level, a distance of 33.36 metres separates Towers 1 and 2 and a distance of 20 metres separates Towers 2 and 3.

(i) Evidence and submissions

DELWP and the Taskforce did not make submissions regarding the tower separation above podium level. Council questioned whether compliance was achieved between Towers 2 and 3.

Mr Sheppard's evidence identified two areas where the proposal provides less than the 12 metre preferred building separation below the maximum wall height. These occurred at the ground floor pedestrian link between Towers 1 and 2 and between Towers 2 and 3 at all podium levels.

Mr Sheppard's view was that the pedestrian link between Towers 1 and 2 is between retail premises and the width of the link complies with the width for laneways sought by CCZ1.²³

²³ The width of the laneway is shown as 6 metres at Map 1 in the CCZ1.

The second non-compliance, including the parties' views about the width of the laneway, is addressed in Chapter 3 of this Report. However, in support of the non-compliance, Mr Sheppard observed that the minimum separation at ground floor is 9.7 metres at ground level and "*almost*" 11 metres to levels 1 and 4. In support of this approach, he made the following observations:

- All of the affected dwellings have high quality outlook over open space.
- The proposed separation is sufficient to maintain privacy without screening.
- The towers above meet the mandatory building separation, avoiding a continuous wall when viewed from street level.²⁴

(ii) Discussion

Subject to discussion about the laneways in Chapter 3, the Committee is satisfied that the relatively minor departures from preferred minimum separation distances are not significant to the overall design.

(iii) Conclusion

The Committee concludes the separation distances between towers in the design are acceptable.

²⁴ Page 5 of Mr Sheppard's evidence.

3 Public realm

3.1 The issues

The issues are:

- Does the proposal satisfy planning scheme requirements?
- Is the siting and layout of the podium level adequately resolved to ensure the provision of a high quality public realm?
- Does the proposal have adverse impacts on the public realm surrounding the land?

3.2 Relevant planning controls

An objective of Clause 22.15.2 that is relevant to the public realm is *“to create thriving, lively mixed-use neighbourhoods that have distinct identity and character consistent with the preferred character for each precinct.”*

Clause 22.15-4.4 addresses Design excellence where 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:

- 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.

Clause 22.15-4.7 addresses Landscaping. It is policy to:

- Encourage developments to provide landscaping in all areas of open space including public open space, communal open space and private open space.

This part of the policy details hard and soft landscaping outcomes, relating to sense of place; Water Sensitive Urban Design; plant selection to support the creation of habitats and biodiversity; and sustainable planting, including deep soil zones and water efficiency.

Clause 22.15-4.8 addresses New streets, laneways and pedestrian connections. The policy sets siting parameters for new pedestrian connections and laneways and this in turn is reflected in the DDO controls.²⁵ It is policy that for sites in excess of 3,000 square metres, new streets, laneways or paths create mid-block through links and define and separate buildings. It is policy that these new connections should provide direct access to existing or proposed public transport stations and routes and existing or proposed public open space. It is also policy that:

- New shared streets or shared laneways should prioritise pedestrian movement and safety.
- New streets and laneways should be designed to:
 - Enable views through the street block.

²⁵ Map 3 in DDO30 shows a ‘new laneway – 6 metres wide (location indicative) traversing the land in a general east-west orientation.

- Have active frontages in a core area.
- Be open to the sky.
- Allow for canopy tree planting.

DDO30 sets out the following relevant design objective:

To ensure that built form protects where possible, sunlight penetration to key open space, spines and other identified public open spaces, streets and laneways and facilitates comfortable wind conditions, to deliver a high quality public realm.

Clause 2.7 of the Schedule relates to Street wall height. The built form outcomes seek to achieve street walls that:

- Deliver a distinct human scale street wall.
- Deliver appropriate street enclosure having regard to the width of the street with lower street walls on narrower streets.
- Allow for views to the sky from the street or laneway.
- Do not overwhelm the public realm.
- On Normanby Road, maximise opportunities for sunlight penetration on the southern side of the street.

Table 3 in the Schedule includes preferred and maximum street wall heights in specific locations. A new street wall must not exceed the maximum street wall height. As relevant, the preferred street wall to Montague Street and Munro Street is of at least 4 storeys and a maximum height of 6 storeys and to Johnson Street (because it is identified as proposed public open space) has a preferred street wall height of 4 storeys and a maximum height of 6 storeys.

Clause 2.8 of the Schedule relates to Setbacks above the street wall. It seeks the following built form outcomes:

- Help deliver comfortable wind conditions in the public realm.
- Enable adequate daylight and sunlight in streets and laneways.
- Allow for views to the sky from the street or laneway.
- Do not overwhelm the public realm.
- Enable adequate daylight and sunlight in streets and laneways.
- Minimise the visual bulk of upper floors when viewed from streets and laneways.

Table 4 in the Schedule sets out preferred and minimum setbacks above street wall. Any part of the building above the maximum street wall height should be set back from a street wall at least the Preferred setback specified in the table or must be set back from a street wall at least the Minimum setback specified in the table. The setback from a street less than 9 metres wide must be measured from the centreline of the street. A negative value setback must be interpreted as a zero setback.

The table includes specific locations and as relevant to this matter includes 'other locations'. Where building heights are greater than 8 storeys and less than 20 storeys the preferred setback is 10 metres and the minimum setback is 5 metres; and where building heights are greater than 20 storeys the preferred setback is 10 metres and the minimum setback is 10 metres.

Clause 2.11 relates to Wind effects on the public realm. The built form outcome is to achieve local wind conditions that *"maintain a safe and pleasant pedestrian environment on footpaths and other public spaces for walking, sitting or standing."* Table 7 in the schedule

sets out wind conditions and the specified outcome. The built form requirements specify that buildings and works higher than 40 metres must not cause unsafe wind conditions in publicly accessible areas within the assessment distance²⁶ from all facades; and should achieve comfortable wind conditions in publicly accessible areas within the assessment distance from all facades.

Clause 2.12 relates to Active street frontages. The built form outcomes are to achieve buildings that:

- Address the define existing or proposed streets or open space and provide direct pedestrian access from the street to ground floor uses.
- Address both street frontages if the building is on a corner.
- Create activated building facades with windows and legible entries.
- Consolidate services within sites and within buildings, and ensure any externally accessible services or substations are integrated into the façade design.
- Avoid unsafe indents with limited visibility.

Clause 2.13 relates to Adaptable buildings and Clause 2.14 relates to Building finishes.

3.3 Evidence and submissions

(i) Public realm

The public realm on-ground space between podiums and includes:

- a public plaza to the north addressing Johnson Street
- a north-south laneway between Tower 2 and Tower 3 linking the public plaza to Munro Street
- an east-west pedestrian connection linking the public plaza to Montague Street and carved through the podium that extends under Tower 1 and Tower 2.

This chapter includes a review of the proposal as it relates to the public realm, both within the land and within its context against the relevant clauses of DDO30.

(ii) Setbacks above street wall

DELWP submitted that the proposed zero setback of Tower 3 to the new laneway failed to comply with Clause 2.8 of DDO30. It submitted that having regard to Table 4 in DDO30, Tower 3 (with a height of 15 storeys) must provide a minimum setback above street wall of 5 metres and preferably a setback of 10 metres.

DELWP noted that the proposed laneway²⁷ marginally exceeds 9 metres in width, which means that pursuant to the control, a setback from the street wall is to be measured from the street wall. DELWP's preferred solution was to reduce the width of the laneway to 9 metres so that the setback would be measured from the centreline of the street. DELWP considered this to be a reasonable approach given that a width of 9 metres would be 3 metres wider than that contemplated in the Framework.

²⁶ As defined at Clause 2.11 of DDO30.

²⁷ 'Laneway' is defined in DDO30 as a street with a width of 9 metres or less.

DELWP submitted a subsequent submission on Day 2 of the Hearing²⁸ that addressed the issue of the laneway further. The purpose of the submission was to provide an indication of what DELWP had intended by its position to reduce the width of the laneway to 9 metres or slightly less if required. DELWP acknowledged the position of the Taskforce and Council and the options available including not requiring compliance with the requirement; or requiring a greater setback to the tower element of Tower 3. It remained DELWP's position that the reduction in the laneway width is an acceptable solution to the issue, noting:

- the generous width of the laneway, even after a reduction of 710mm
- the relatively short length of the laneway
- the adoption of a generous setback above the street wall for Tower 2.

The Taskforce did not support DELWP's position. It submitted that whilst the setback did not comply, the Taskforce was satisfied that the proposed laneway is consistent with policy directions of Clause 22.15-4.8 to deliver a high quality pedestrian connection through the land. The Taskforce observed that it is not necessary to satisfy the planning scheme simply for the sake of it and further, because this is an Amendment, it is possible to permit a proposal that does not comply.

Council submitted that, in addition to the podium, the upper levels of Tower 3 do not meet the street wall requirement. Council did not accept that the internal setbacks shown on Section 03 were accurate and tabled its own section.²⁹ In Council's assessment, the non-compliance was greater than the difference advanced by DELWP. Council agreed with the Taskforce that the appropriate response was not to reduce the width of the laneway and submitted that it seeks an improved setback to the upper levels of Tower 3 to respond to the requirement.

Mr Sheppard acknowledged that the setback of Tower 3 did not comply; however in his view, it is preferable to have a wider link. He noted that the minimum separation at ground floor is 9.7 metres and is 11 metres to levels 1 to 4.

During cross-examination, Mr Sheppard responded that it was *"nonsensical to penalise a proponent when they were providing a wider laneway."*

Mr McGurn also did not support a reduction in the width of the laneway noting that a *"pinch point"* at the curve of the tower being less than 5 metres is an acceptable solution.

(iii) Overshadowing

The controls

The effect of the overshadowing controls set out at Clause 2.6 of DDO30 means that there are no overshadowing controls that apply to the proposed linear public open space along Johnson Street shown in Map 4 (Overshadowing). The proposed open space to the east of the land at 231 Normanby Road shown in Map 4 is subject to the control that buildings must not cast additional shadow above the shadows cast by hypothetical buildings built to the Maximum street wall height and existing buildings between 11:00am and 2:00pm on 22 September.

²⁸ Document 64a.

²⁹ Document 61c.

North Port Oval is located to the north-west of the land and is included in Map 4 of DDO30. The overshadowing controls require that there is no overshadowing between 11:00am and 2:00pm on 21 June and 22 September.

Evidence and submissions

DELWP and the Taskforce did not raise concerns with the extent of overshadowing; although DELWP noted that the reduction in the height of Tower 2 as it sought, would have the potential to reduce overshadowing to the Normanby Road footpath at 11:00am on 22 June.

Council took the Committee through the urban design referral comments.³⁰ In support of its position to reduce the heights of the buildings, the comments observe that the overshadowing diagrams demonstrate that the proposed towers “*create a ‘wall of shadows’ in June and September*” and “*when considered with the cumulative effects of overshadowing by other large developments, the total amount of overshadowing is detrimental to the amenity of Johnson Street, Munro Street and Normanby Road.*”³¹

Mr Sheppard addressed overshadowing in his evidence and observed that the proposal does not overshadow the proposed park during the prescribed hours.

In terms of shadows cast over the proposed linear park, Mr Sheppard observed that the extent of shadow cast by a built form that complied with the preferred street wall and overall building heights would cast similar shadows. In referencing the shadow diagrams prepared by the architects, he observed that the overshadowing attributed to the built form above the preferred heights is “*limited to a small area of fast moving shadow between approximately 10:30 and 12pm*”, and that the “*gap in the street wall at the ‘Town Square’ allows for additional sunlight to enter into Johnson Street and the proposed open space than otherwise afforded by the preferred maximum street wall height until shortly after 10am at 22 September.*”³²

In terms of the Munro Street footpath, Mr Sheppard’s opinion was that the extent of overshadowing was acceptable, noting that there were not specific controls applying to it and the extent of overshadowing attributed to built form cast above the preferred heights was limited to a small area of fast moving shadow between approximately 10:30am and 12:30pm. During cross-examination he accepted DELWP’s proposition that a reduction in the height of Tower 2 would reduce the shadow cast on the southern footpath; however observed that it would be a “*brief snapshot*” and of “*modest benefit at the Winter Equinox*”.

Mr McGurn addressed the proposed overshadowing of the North Port Oval and observed that the shadows from the proposal fall largely within those cast by the development at 60-82 Johnson Street at 9:00am and will not affect the public open space on 21 June.

(iv) Street wall height

The street walls range in height between 5 storeys (Towers 1 and 2) and 6 storeys (Tower 3).

DELWP and the Taskforce raised no issues with the proposed street walls. Council advised that it generally supported the podium heights. It did however submit that should the

³⁰ Documents 61a and 61b.

³¹ Page 5 of Council’s urban design comments – Document 61a.

³² Page 12 of Mr Sheppard’s evidence.

Committee recommend that the building heights be reduced to the heights sought by Council then *“part of the podium to Towers 1 and 2 could be increased to six levels subject to appropriate elevation treatment to articulate the building mass and respond to the different character sought for Johnson, Montague and Munro Streets and the internal lane.”*³³

The Proponent submitted that all street walls comply with the mandatory 6 storey height at Table 3 of DDO30. It submitted that there is unlikely to be any material difference in terms of sunlight or other impact on the public realm to Johnson Street and noted that the ‘built form outcomes’ do not address open space and offer no guidance in relation to the relationship between built form and open space.

Mr Sheppard identified in his evidence that the street wall heights to Johnson Street would comply with the DDO if they were on any other street within the same width and noted that neither the GC81 report nor the Strategy provided guidance or rationale for a 4 storey street wall adjacent to open space. It was Mr Sheppard’s evidence that the proposed street wall to Johnson Street was appropriate as it satisfied the built form outcomes and would maintain *“reasonable access to sunlight in the proposed open space.”*³⁴

(v) Active street frontages and Building finishes

Council was critical of the proposal, particularly in terms of the level of detail provided on the plans. It submitted that the plans fail to provide architectural detail and do not include a full suite of elevation places or a detailed materials schedule. Council observed that the photomontages provide much finer detail. As noted above, Council tabled detailed urban design comments³⁵ that identified a number of aspects of the proposal that require further detail to demonstrate active street frontages are achieved.

Council submitted that the proposed laneway between Johnson Street and Munro Street and the proposed laneway to Montague Street did not align with the indicative laneway shown on Map 3 (Active Street Frontages) in DDO30 and would not align with the future road to the north as part of the approved development at 60-82 Johnson Street or the proposed through-block link from Munro Street to Normanby Road between the proposed developments at 256-262 and 248-254 Normanby Road. It submitted that the siting of the plaza and laneways should be revised to address these concerns.

Council submitted that the *“new lane and corridor would facilitate pedestrian movement, but the curvature, central raised planters and fittings along the new lane would impede views through the street block, desire lines and user safety.”*³⁶ It submitted the pedestrian permeability was constrained by *“circuitous routes”* and that no ramp access was provided to the childcare entrance. It also submitted that the landscaping should not obstruct desired lines or legibility and surface materials should be more pedestrian friendly. Council was concerned with the landscaping planters and the effect the covered walkways will have on the ability for the landscaping to thrive.

³³ Page 7 of Council’s submission.

³⁴ Page 14 of Mr Sheppard’s evidence.

³⁵ Documents 61a and 61b.

³⁶ Page 8 of Council’s submission.

The Proponent observed that the plans were prepared as a Master Plan process and that the level of detail Council is seeking will come at a later stage when the respective stages of development are being proposed. It observed that the architects are a 'tier 1' architectural practice and that there can be comfort that what is being proposed is of a high architectural merit.

Mr Sheppard acknowledged that the plans detailed limited information in relation to the elevation treatments and noted that they suggest a strong horizontal emphasis rather than a diversity of fine grain frontages as required by the built form outcomes. He recommended a condition be included in the Incorporated Document requiring that elevations be provided of all street walls that demonstrate façade articulation with a vertical emphasis. The Proponent confirmed that it would accept a condition to this effect.

Noting Melbourne Water requirements to address flooding and the sewer pipe and vehicular access, Mr Sheppard concluded that the proposal achieves an *"appropriately human scaled frontage at ground floor."* He observed that planting will be provided on top of the podium and the balconies and openable windows will contribute to a *"human scale street wall."*³⁷

During evidence in chief, Mr Sheppard responded to Council's submission regarding the lack of legibility and continuous link, and said that to the contrary he considered that is what is proposed.

Both Mr Sheppard and Mr McGurn responded to questions during cross examination to the effect that the activation of the town square and passive surveillance is more important than passive surveillance from the apartments above ground level.

(vi) Wind impacts

Council was concerned that wind impacts on the public realm have not been assessed to an acceptable level for the Committee to be able to conclude that the impacts will be acceptable.

The Council submitted:

- The wind assessment was undertaken for the earlier design with lower heights and it is not clear if recommended amelioration will be effective for the new designs.
- The effect of wind on the pedestrian spaces in the public realm is thus unknown and substantial treatments may be required to ameliorate wind impacts.
- The original assessment showed wind comfort criteria could not be met at the Montague North Park.
- The extent of awnings and screens is of concern and their impacts on overall design unknown.

Council requested a number of conditions in the Incorporated Document to ensure that the wind impacts of the detailed design are properly assessed and appropriate mitigation provided which does not create architectural or amenity concerns in its own right.

³⁷ Page 15 of Mr Sheppard's evidence.

3.4 Discussion

The Committee addresses all of the relevant design outcomes in this section, and divides the discussion to address the various parts of the public realm. The Committee observes that what is before it is a Master Plan and that there will be further design work undertaken by the architects, and indeed observes that this fact is important for all to note. At the outset the Committee observes that further detailed design is needed to confirm the quality of and contextual engagement between buildings and place. More design consideration of the nature of each perimeter street wall is important. For example, the Johnson Street (future) linear open space will present a different contextual condition to Munro Street. The significant traffic context on Montague Street will provide reference for an appropriate street wall design on the east. The design of the through-podium pedestrian entry from Montague Street requires considerable design refinement.

Overall, subject to further refinement and consideration the Committee is satisfied that the public realm can achieve the built form outcomes sought in DDO30.

(i) Public plaza to Johnson Street

At pedestrian level, the plans show active occupancies to ground floor tenancies that accord with built form outcomes for active frontages. Whilst there is limited detail on materials, grain and scale, the Committee understands that detailed resolution to confirm the quality and engagement with the public realm will come at the relevant stage and accepts Mr Sheppard's suggestion for the requirement to prepare detailed elevations. The Committee also observes that these detailed plans will address other matters such as how the various ramps and level changes will work, including compliance with access requirements and urban design treatments.

The Committee agrees with Council's submissions that retaining walls, planter beds and soft landscape need to be carefully considered to limit the impact on space and visual and physical connectivity. The Committee observes that updated landscape plans were not prepared prior to the Hearing but observes that the public plaza has capacity to host good scale canopy trees, which in addition to enhancing the public realm, may also help ameliorate wind. The Committee also agrees with Council that there is a need to provide more opportunities for deep soil planting and that this should be achieved through 'dropping' planter boxes into the basement rather than building up over the deck.

The Committee considers that there is potential for the plaza to work better with the (future) linear open space to be built within the road reservation of Johnson Street. A cooperative, coordinated urban design and landscape approach is encouraged along the entire Johnson Street frontage, including identifying any need for tree protection, tree planting and pedestrian crossing location to link the plaza to (future) street connections. The Committee notes that there should be a pedestrian crossing that allows pedestrians to cross the road safely between the site and the connection on the Salvo site (60-82 Johnson Street).

(ii) Public realm and laneway between Tower 2 and Tower 3

The plans show active frontages at pedestrian level. The Committee observes that the architectural concept section shown in Figure 5 suggests formal interest, vertical

engagement and general activation to the public realm of the laneway between Tower 2 and Tower 3.

This concept proves the laneway width can compensate for a reduced podium setback, however, the Committee observes that it is disappointing that the design sensibility of the sketch concept is not to be found in the Amended Masterplan Section 03 (Figure 6).

Figure 5 The first 20 metres – activated public realm³⁸

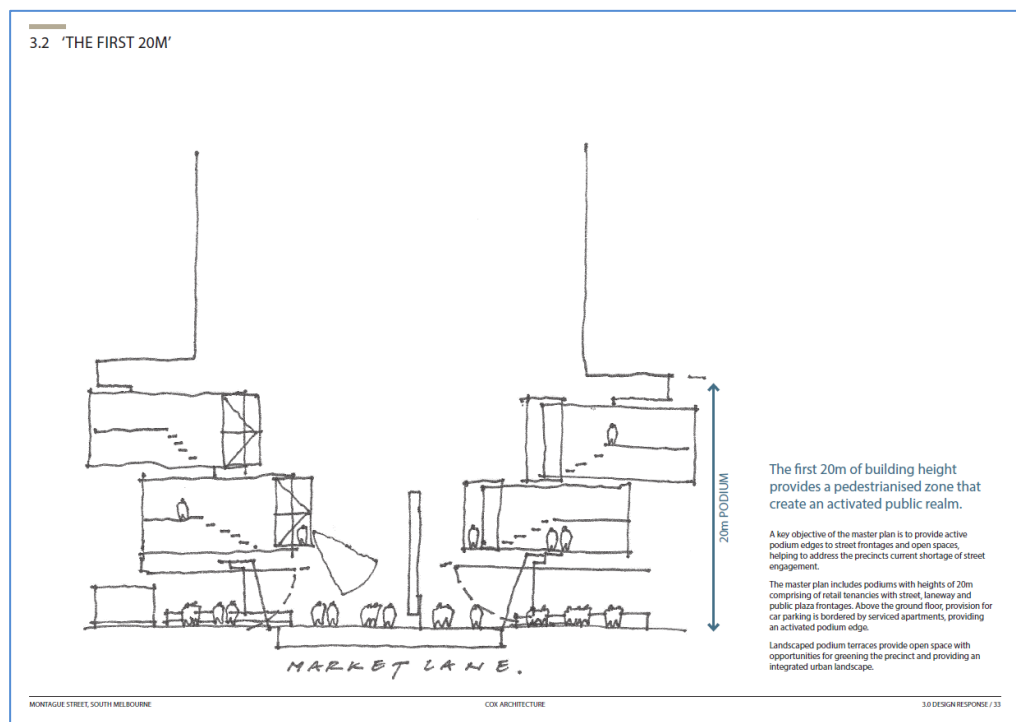
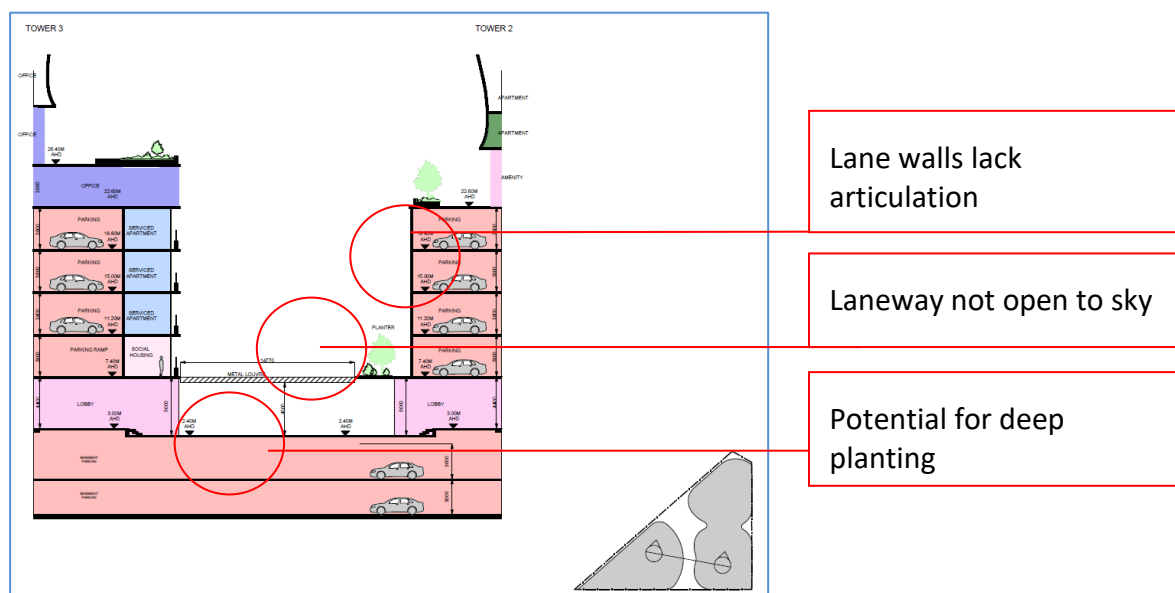


Figure 6 Tower 3 and Tower 2 Lobby Section 03 (annotations by Committee)³⁹



³⁸ Page 33 of the Urban Context Report – Document 5t.

³⁹ Cox Amended Master Plan.

The public realm and laneway between Towers 2 and 3 is suitable in width but is not open to the sky – a horizontal louvre screen over effectively encloses it. In the Committee's view, this design approach is not consistent with the built form outcomes included in DDO30, which require laneways to be open to the sky and to accommodate deep planting. It also erodes the potential casual surveillance over the laneway as suggested by the design response sketch.

Consistent with the Committee's observations above in relation to the opportunities to provide for deep soil planting, Section 03 (Figure 6) highlights the capacity to find space for deep planting under the laneway. As discussed in section 4.2 of this Report, car parking is proposed in excess of the planning scheme requirements; an approach the Committee is not supporting. The Committee is of the view that reducing car park provision could facilitate this improvement to the public realm. The Committee also considers that a more nuanced approach to wind amelioration is required in lieu of the horizontal metal louvre screen.

Generally, the Munro Street laneway provides good north-south connectivity through the large block. The Committee considers the reduced podium setback is acceptable if the design quality of the lane is refined to better meet the ambitions for a laneway. This includes providing active and engaging frontages, being open to the sky and allowing for canopy tree planting.

The laneway will have 24-hour open access, so defined ownership, management and maintenance of this public realm will need clarity. This is addressed in the Incorporated Document.

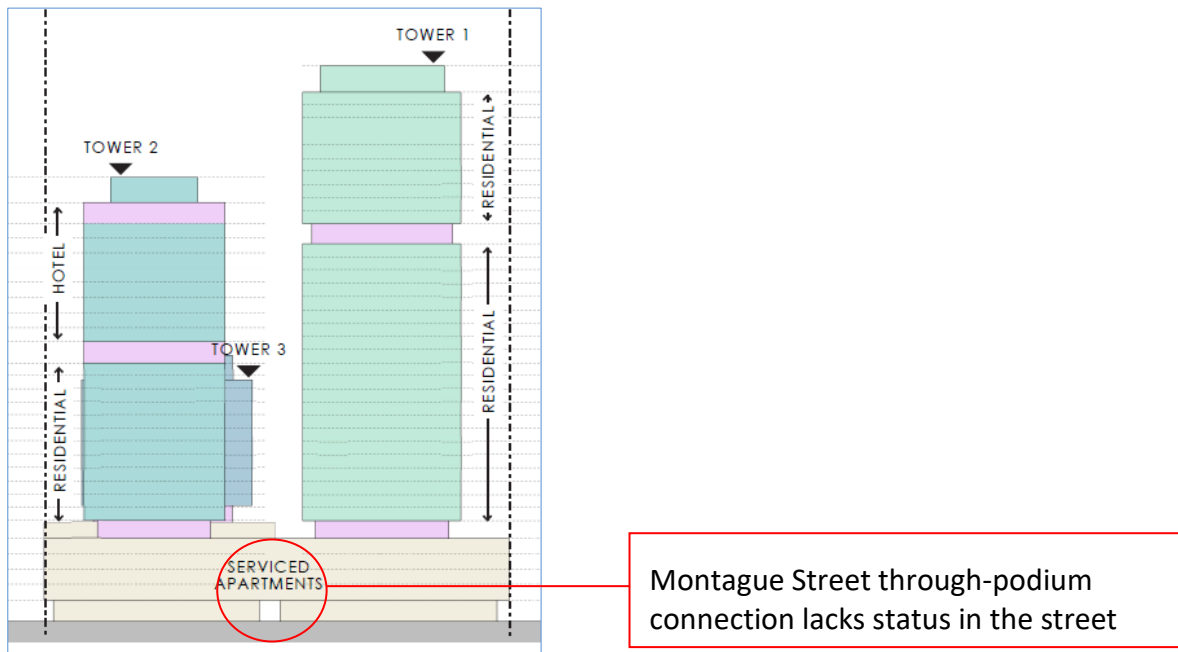
(iii) Public realm and through-podium laneway between Tower 1 and Tower 2

The Committee is of the view that the east–west pedestrian connection between Towers 1 and 2 cannot be defined as a laneway. It is carved through the podium that extends under both Towers 1 and 2, linking the public plaza to Montague Street and to the (future) public open space to the east. The Committee considers that this pedestrian route meets the general description of an arcade – it is not open to the sky, has a ceiling/soffit over and cannot meet the ambitions of a laneway with respect to planting.

At pedestrian level, the plans show occupancies to ground floor tenancies generally in accord with urban design visions and that are appropriate for the busy Montague Street frontage. However, although the connection to Montague Street provides adequate east–west connectivity through the large block, further design refinement is required to achieve a safe, visible, quality pedestrian entry.

Clarity will be needed on how public and private access will work in this through-podium connection. Spatial quality, lighting and finish need to be understood – it must be a safe, attractive and appropriately scaled link to Montague Street. Within the Master Plan there is limited detail on materials, grain and scale and the quality of the arcade experience needs to be detailed. The ceiling/soffit is low and the entry has little urban presence on Montague Street (Figure 7).

Figure 7 North East (Montague Street) elevation⁴⁰



(iv) Podium wall heights

The Committee observes that podium walls have a significant impact on the public realm by establishing human scale, grain and character. It considers that the proposed different heights of 5 and 6 storeys of the podiums make an adequate contribution to defining separate buildings on this large site and generally define an acceptable scale for perimeter street walls and for the internal site laneway and public space elevations.

Although street/laneway wall heights to podiums are acceptable, section 3.4(i) of this Report provides commentary on the limited detail available to judge materials, grain and composition. The Committee reiterates that further design is needed to confirm quality and engagement between buildings and place. Significantly more design consideration of the nature of all street walls, laneway walls and walls facing into the public realm is needed.

(v) Impact on amenity of public open space

The Committee accepts the submissions and evidence advanced by the Proponent with regard to potential off-site impacts. The Committee observes that no overshadowing controls apply to the (future) open space located to the west of the site, including the linear park on the road reservation on Johnson Street. It also observes that the shadow diagrams indicated that the requirement relating to the future public open space to the east will be satisfied.

The Committee notes that there are no overshadowing controls pertaining specifically to Normanby Road and accepts Mr Sheppard's evidence that the impacts are not unreasonable.

⁴⁰ Cox Amended Master Plan.

(vi) A sense of address from the public realm

The Committee notes that there is potential for a good sense of address from the public realm for ground floor tenancies and to lobbies of upper level facilities. However, there is limited detail on materials, finishes and scale and it is important to confirm the quality of the interface between public realm and tenancies. Entry ‘signifiers’ are not yet developed – the quality of each entry will contribute to various good outcomes including way-finding, safety and community pride.

The challenge of, and requirement to, mitigate inundation is generally resolved across the site except for the services cupboard on Montague Street, the floor level of which needs to be raised to satisfy Melbourne Water’s requirements. All lobbies and entries need a sense of space – they need to be generous enough to allow unrestricted negotiation of required level changes via ramp, stair or lift.

The Committee agrees with Council’s submissions relating to the need to resolve access to some parts of the development. For example, the lobby to the childcare facility will need to accommodate potentially high numbers of prams and people – the functionality of all lobby spaces is critical. The social housing lobby entry could be adversely impacted by its close proximity to carpark entry and service zone crossovers on Munro Street – considered detailed design is required.

(vii) Wind impacts

The Committee notes the submissions of Council in particular on wind impacts. Ensuring an attractive, welcoming microclimate without significant wind impacts will be critical if the public realm elements of the proposal are to reach their full potential.

As discussed in Section 3.4(ii) above, the use of design features such as overhead louvres may provide mitigation of wind impacts, but they may also cause poor design outcomes. Getting this balance right in the final design will be critical.

Without the detailed plans and detailed designs it is difficult to accurately model the wind impacts, but the Committee is satisfied that the conditions in the Incorporated Document in Appendix C provide an adequate framework to ensure this issue is addressed.

3.5 Conclusions

The Committee concludes:

- The success of the project as a whole will be judged to a large degree on the success of the public realm elements.
- **The new plaza** on Johnson Street offers good public amenity and contributes to a connected pedestrian environment beyond the site. It needs further design refinement of hard and soft landscapes, including better integration with (future) linear open space on Johnson Street.
- **The variety of tenancies on the ground** make a positive contribution to an active, high quality public realm – material choice, scale and detail require refinement to confirm the architectural quality of thresholds. Entry signifiers are needed and pedestrian pinch points should be avoided.
- **The Munro Street laneway** provides good north–south connectivity through the large block. The reduced podium setback is acceptable if the design quality of the

lane is refined to better meet the ambitions for a laneway. These included active and engaging frontages, being open to the sky and allowing for canopy tree planting.

- **The Montague Street connection** provides only adequate east–west connectivity through the large block. Further design refinement is required to achieve a safe, visible, quality pedestrian entry.
- Protection of the amenity of the public realm as a result of **overshadowing** is considered satisfactory.
- Protection of the amenity of the public realm to mitigate **wind impact** using horizontal louvre canopies is not a desirable outcome. This results in unacceptable enclosure over the Munro Street laneway. Further refinement of above laneway street walls and the introduction of canopy trees may resolve wind issues by a more satisfactory urban design outcome.

4 Other issues

4.1 Sewer vent stack

4.1.1 The issues

The issues are:

- Whether odour from the sewer vent stack may have an impact on sensitive uses (residential) introduced by the development of Tower 1.
- If such impacts are established as likely to occur, what mitigation might be required and who should pay for it?

Whilst this issue was raised in submissions, it really only came to a head in the latter part of the Hearing. In response the Committee sought written submissions from Melbourne Water, then the Proponent, then DELWP in closing.⁴¹ DELWP also provided suggested conditions for the Incorporated Document with its closing.

4.1.2 Whether there will be odour issues

(i) Evidence and submissions

Melbourne Water's view was that there are likely to be amenity impacts from odour from the vent stack. As it put in its submission:

... High rise construction can potentially bring residents into contact with emissions from vents, which can result in significant odour issues if insufficient measures are taken to reduce the risk.⁴²

In support of its position it tabled a GHD Odour Modelling report from 2007 which indicated that there could be 5 Odour Units (OU) detected on the edge of the site.

Melbourne Water suggested conditions for the incorporated document that, in summary:

- Required notice to future residents of possible amenity impacts
- Sought to indemnify Melbourne Water against the cost of any required mitigation (works and maintenance).

In its later submission of 27 April 2020, Melbourne Water submitted that a condition should be included (amongst others) in the Incorporated Document requiring an odour assessment and preparation of an odour management plan including recommendations for any mitigation required.

The Proponent submitted that there is no evidence before the Committee that there will be an odour impact. It submitted that the GHD Odour report is 'outdated' and uses a 'worst case scenario' which leads to considerable uncertainty as to whether there will actually be any impact, and an assessment, including modelling of the post construction wind environment, should be undertaken before there is any discussion of mitigation or costs of same.⁴³

⁴¹ Documents 82, 84 and 86 respectively. DELWP provided suggested draft conditions in Document 86.

⁴² Document 24.

⁴³ Document 81.

DELWP in its closing submission submitted that a two-stage approach of assessment; then mitigation (if required) is appropriate. DELWP submitted that the Proponent's suggested wording for an assessment condition was suitable with some modifications related to Melbourne Water infrastructure.

(ii) Discussion

That sewer vent stacks emit odour at times is not in dispute. This issue is whether the vent stack on Johnson Street is likely cause amenity impacts on new residents in Tower 1. The Committee considers that an assessment of likely odour impact is an important first step. The reasons for this are that:

- The GHD assessment is dated and the starting inputs for consideration are likely to have changed in the past 13 years.
- The built form proposed will have significant impacts on the local wind environment and thus will be an important input into odour modelling. For example, increased turbulence around the building may increase atmospheric mixing; and have a positive (that is, reduced impact) effect on odour and amenity.

The Committee agrees with DELWP that the Proponent's changes put forward⁴⁴ regarding an odour assessment are reasonable. Establishing an accurate picture of potential impact (or no predicted impact) seems a logical first step.

(iii) Conclusion

The Committee concludes that the Proponent should undertake an odour assessment prior to the consideration of mitigation, and a suggested condition is included in Appendix C.

4.1.3 Odour mitigation and who should pay?

(i) Evidence and submissions

Melbourne Water's position can be summarised from its submission of 27 April 2020 as:

- The vent stack is a critical community asset but its upgrade is not required for the development of Fishermans Bend; the benefit of any upgrade will only accrue to the occupants of the development.
- The Proponent is the 'agent of change' and thus any upgrade is their responsibility; Melbourne Water's remit does not extend to upgrading public infrastructure to accommodate individual developments.
- Mitigation works to the vent stack will benefit the occupants of the development; there will be little if any broader benefit.

In support of its position Melbourne Water drew on a number of VCAT cases.

The Proponent submitted that the sewer and vent stack are public infrastructure that serve the existing and future occupants of Fishermans Bend and the cost of such infrastructure is normally covered by the community rather than individual landowners.

⁴⁴ Document 81

It further submitted that the potential need for mitigation works is not attributable to this development, but development in the area more broadly, and it would be inequitable to penalise the Proponent for developing early in the precinct.

In summary:

The Applicant submits that there is a lack of sufficient nexus between the proposed development and the potential need to modify the sewer stack, and outcome necessitated by the urban renewal of the area rather than this particular development.

In its closing submission DELWP accepted Melbourne Water's advice that no MMRS sewer upgrades are proposed as part of the development of the FBURA, and thus in principle the benefit of any upgrade is this development itself, not the broader Fishermans Bend area.

DELWP submitted that the cost of any odour mitigation therefore should be met by the Proponent, but with the proviso that if a sewer or vent stack upgrade is undertaken by Melbourne Water in future then the Proponent should effectively receive a 'credit' for any mitigation works undertaken as part of development.

DELWP suggested condition wording in Document 86 to give effect to the above.

(ii) Discussion

Assuming the assessment required in Section 4.1.2 is undertaken and it is determined odour mitigation is required, the question is who pays? The clear distinction to be made in this case is between what constitutes work for the good of the broader FBURA and community, and what constitutes works to benefit a particular development.

Whilst much time was spent on this issue in submissions, it is clear to the Committee that the potential odour impact from the vent stack, and therefore the benefit in mitigating it, accrues only to this development.

Mitigation of the vent stack emissions (if required) is not because of the overall development of Fishermans Bend. The odour impact from the vent stack is limited in spatial extent and its improvement or treatment could not in any terms be argued to be a precursor for the development of the FBURA.

Some developments will need to respond to these local impacts and constraints, and some will not. To inflate the treatment of the vent stack emissions to a precinct or urban renewal area scale is neither necessary nor appropriate.

The Committee accepts the incorporated document wording suggested by DELWP, including the 'hedge' against future sewer or vent stack upgrades.

(iii) Conclusion

The Committee concludes that if the vent stack requires odour mitigation for new residents following the odour assessment, any works should be undertaken and paid for by the Proponent.

Conditions in the incorporated document are shown in Appendix C.

4.2 Parking

(i) The issues

The issue is whether the proposed parking provision is appropriate when viewed against the planning scheme.

(ii) Background

The parking requirements for the site are set out in the planning scheme at:

- Table 2 to CCZ1 (37.04s01) – bicycles, motorcycles, car share
- The Parking Overlay (45.09s01) – car parking
- Car Parking (52.06) – child care centre car parking.

The rates put forward by the main parties in the Hearing diverged due to different land use assumptions and thus generation rates. Table 2 below summarises the position of the Proponent and the estimates prepared by the Taskforce and DELWP.

Table 2 Car parking provision

Item	Proponent ⁴⁵	Taskforce ⁴⁶	DELWP ⁴⁷
Car parking	687	536	603
Bicycle parking	908	1,098	1,174
Motorcycle parking	12	10	14
Car share spaces	3 ⁴⁸	16	20

(iii) Evidence and submissions

Carparking

Whilst there was some disagreement about the numbers, all parties agreed that the proposal contains an oversupply in car parking, primarily in Stage 1 of development.

Mr Walsh, the expert for the Proponent, gave evidence that the provision is appropriate as:

- The site is only moderately served by public transport.
- Australian Bureau of Statistics data supports higher rates of car parking.
- The density of development in the area is not sufficiently advanced to allow for the concept of a 10 minute walkable neighbourhood.

The Taskforce did not accept the evidence of Mr Walsh and noted that the Proponent's own expert Mr Milner had noted the location attributes of the site in terms of public transport accessibility amongst other things. It further submitted that benchmarking against recent developments in the vicinity was not appropriate given there have been changes in planning context since they were developed; not least a strategic policy context which seeks to actively discourage private car transport.

⁴⁵ From the Master Plan referenced in Mr Walsh's evidence.

⁴⁶ From submission Document 57.

⁴⁷ From Document 73b. Rounded by Committee.

⁴⁸ To be provided in Stage 1 with future needs to be determined.

The Taskforce submitted that parking provision is not acceptable and should “*meet the metrics of the planning scheme*”.⁴⁹

DELWP submitted in its Part B submission that an overprovision of up to 105 spaces appeared likely; later calculations by DELWP suggested that the overprovision may be more like 84.

DELWP submitted that the overprovision is acceptable for a range of reasons including:

- it is unlikely to materially impact on sustainable transport provision
- the overprovision should not impact on local amenity
- there is reasonable public transport in the area but limited light and heavy rail which is unlikely to be improved in the overprovision of parking in Stage 1.

Mr Marson for the Council submitted that it also objected to the oversupply of parking for amongst other reasons:

... due to the locational attributes of the site being close to light rail and bus routes, bicycle routes and proximity to South Melbourne and South Wharf. The subject site is possibly one of the most well served in the Fishermans Bend Urban Renewal Area.

Bicycle, motorcycles and car share

As shown in Table 2 above, there were different requirements calculated in response to the planning scheme, depending on the rates used and the land use mix. For example see DELWP’s discussion⁵⁰ as to whether a ‘serviced apartment’ should be treated the same as for a ‘dwelling’; it submitted it should with a consequently higher provision of bicycle spaces needed.

Mr Walsh’s view was that the provision of bicycle and motorcycle parking and car share spaces is acceptable at this time and can be addressed in future in planning for each stage via a Traffic Engineering Assessment. In response to questioning around car sharing his evidence was that he had discussed the issue with a car share company and the provision of three spaces in Stage 1 is adequate.

Similar to car parking, the Taskforce submitted that the provision of bicycle parking, motorcycle spaces and car share spaces should be in accordance with the planning scheme; being an increase in car share spaces and bicycle spaces and a small decrease in motorcycle parking.

Council also supported the full provision of bicycle parking and car share spaces; said to be an undersupply of 180 bicycle spaces and 16 car share spaces.

(iv) Discussion

Depending on the metric and rates considered, the overprovision of car parking in Stage 1 does not appear to be a significant issue, given that the overprovision on DELWP’s calculations is for stage one is only in the order of 84 spaces.

However, the Committee having reviewed the evidence and submissions cannot see any justification for an overprovision of car parking. There was conflicting evidence on public

⁴⁹ This comment also applied to car share and bicycle parking.

⁵⁰ In Document 73b.

transport provision: on the one hand that the site is only moderately served by public transport and on the other that it is public transport rich. The Committee notes that on its site inspection the distance to the light rail Stop 126 is not far.⁵¹ Similarly the walking distance from the site to the edge of the Yarra River is approximately the same, about 350 metres.

Coupled with the strategic policy direction to reduce private car use, the Committee considers the justification for an overprovision of car parking, even in Stage 1, is weak.

The Committee is not concerned about the provision of motorcycle parking, being a relatively small requirement and movement in the provision calculations of only a few spaces.

However, the Committee considers that the provision of bicycle parking and car share spaces should be provided consistently with the planning scheme. This is because transport planning generally is moving to the provision of alternative forms of transport, and the planning scheme is a critical part in fostering this change. There has been no substantive justification in the Committee's mind as to why there should be an apparent under provision of these elements.

The Committee notes that DELWP considers the Table to 4.2 could be clarified to resolve the issue of bicycle provision for serviced apartment, but in the interim the position that 'serviced apartments' be treated as 'dwellings' (consistent with the approach to car parking), leading to a higher provision of bicycle spaces is supported.

4.2.2 Conclusions

The Committee concludes that the Incorporated Document should specify that planning scheme requirements for the provision of parking must be met as shown in Appendix C.

⁵¹ Route 109. The Committee has calculated the walking distance from the northern most point of the site to the stop is only approximately 350 metres.

Appendix A Parties to the Committee Hearing

Submitter (in order of appearance)	Represented by
Department of Environment, Land, Water and Planning	Mr Rupert Watters of Counsel instructed by Harwood Andrews Lawyers
Fishermans Bend Taskforce	Mr Aidan O'Neill
Melbourne Water	Ms Kate Kinsella
City of Port Phillip	Ms Emily Marson of Best Hooper Lawyers
Gurner 2-28 Montague Street Pty Ltd	Mr Jeremy Gobbo QC and Ms Nicola Collingwood of Counsel instructed by Planning and Property Partners calling evidence as follows: <ul style="list-style-type: none">- Mr Rob Milner in planning- Mr Stuart McGurn in planning- Mr Mark Sheppard in urban design- Mr Jason Walsh in traffic and parking Mr Daniel Flood in photomontages (evidence circulated but Mr Flood was not called)

Appendix B Document list

No.	Date	Description	On behalf of
1a	6/1/2020	Parties Notified	Ms Shobhna Singh on behalf of Department of Environment, Land, Water and Planning (DELWP)
1b	“	Referral list and applicant details	“
2a	“	80 Munro Street ,South Melbourne Vicplan Planning Property Report	“
2b	“	Port Phillip C176port 001sco Map03 Exhibition	“
2c	“	Schedule to Clause 45.12 Specific Controls Overlay Compare	“
2d	“	Schedule to Clause 45.12 Specific Controls Overlay	“
2e	“	Schedule to Clause 72.04 Documents Incorporated in Planning Scheme Compare	“
2f	“	Schedule to Clause 72.04 Documents Incorporated in Planning Scheme	“
3a	“	191028 - 2-28 Montague Street – Fishermans Bend Taskforce Referral	“
4a	“	2-28 Montague Street and 80 Munro Street, Rapid Assessment Report	“
4b	“	2-28 Montague Street and 80 Munro Street, referral letter from Minister for Planning to Standing Advisory Committee	“
5a	“	C176port Amenity Buffer Report	“
5b	“	C176port Apartment Adjustment Mix	“
5c	“	C176port Application Form	“
5d	“	C176port Architectural plans	“
5e	“	C176port Certificate of Title Allotment 107	“
5f	“	C176port Certificate of Title Allotment 108A & 108B	“
5g	“	C176port Clause 45.12 Schedule (track changes)	“
5h	“	C176port Clause 45.12 Schedule	“
5i	“	C176port Clause 72.04 Schedule (track change)	“
5j	“	C176port Clause 72.04 Schedule	“
5k	“	C176port Explanatory Report	“

No.	Date	Description	On behalf of
5l	“	C176port Instruction Sheet	“
5m	“	C176port Landscape Plan	“
5n	“	C176port Melbourne Water advice	“
5o	“	C176port Noise Impact Assessment	“
5p	“	C176port Request Ministerial Intervention	“
5r	“	C176port Sustainable Management Plan	“
5s	“	C176port Town Planning Report	“
5t	“	C176port Traffic Report	“
5u	“	C176port Urbis Request Further Information Response Letter	“
5v	“	C176port Waste Management Plan	“
5w	“	C176port Wind Report	“
5x	“	C176port Incorporated Document	“
6	“	200219 2 - 28 Montague Street DELWP Advice	“
7	12/02/2020	Letter from DELWP to City of Port Phillip - Extension of Time Request approval	Mr Adam Crupi on behalf of DELWP
8	18/02/2020	Letter from DELWP to Melbourne Water - Extension of Time Request approval	Mr Adam Crupi on behalf of DELWP
9	21/02/2020	Letter from Fishermans Bend Standing Advisory Committee (SAC) - Montague Street and Munro Street - Directions Hearing notification letter	Nick Wimbush, SAC Chair
10	26/02/2020	Letter from Department, Environment, Land and Water to Proponent – Request for Information - 28 Montague Street and 80 Munro Street	Ms Shobhna Singh on behalf of DELWP
11	“	Letter from DELWP to SAC circulating Applicants version draft Incorporated Document with DELWP changes	Ms Kate Morris, Harwood Andrews on behalf of DELWP
11a	“	C176port Draft Incorporated Document - DELWP edits - 26 Feb 2020 (Applicants version with DELWP changes)	“
12	5/03/2020	Fishermans Bend Standing Advisory Committee – Directions and Timetable (v1) and Distribution List (v2)	Nick Wimbush, SAC Chair

No.	Date	Description	On behalf of
13	10/03/2020	Draft Fishermans Bend Affordable Housing Guidelines - track changes between version 2 and 3	Mr Nick Roebuck on behalf of Fishermans Bend Taskforce
13a	"	Fishermans Bend Affordable Housing Guidelines Draft V3 update 20 02 20	Nick Wimbush, SAC Chair
14	13/03/2020	Letter from DELWP to SAC circulating OVGA Design Review (Direction 9)	Ms Kate Morris, Harwood Andrews on behalf of DELWP
14a	"	OVGA Victorian Design Review Panel 2-8 Montague Street Design Report	"
14b	"	Pre-application plans provided to OVGA - 2-8 Montague Street	"
15	16/03/2020	Fishermans Bend Standing Advisory Committee – SAC Montague Street and Munro Street - updated Directions (v2) - COVID-19	Nick Wimbush, SAC Chair
16	"	Email from Proponent on Expert Witness confirmation (Direction 12)	Mr Johan Moylan, PPP, on behalf of Proponent
17	20/03/2020	Letter from the Proponent to SAC seeking to vary the proposed timeframes associated with the finalisation and circulation of amended plans	Mr Mark Naughton, PPP, on behalf of Proponent
18	23/03/2020	Email from City of Port Phillip to SAC - in regard to Proponent seeking vary proposed timeframes	Ms Emily Porter, Best Hopper for COPP
19	24/03/2020	Letter from DELWP to SAC regarding Proponents letter of 20.03.20	Ms Kate Morris, Harwood Andrews on behalf of DELWP
20	25/03/2020	Email from Proponent to SAC - regarding DELWPs change in Hearing start date	Mr Johan Moylan, PPP, on behalf of Proponent
21	"	Email from Melbourne Water in regard to Proponents suggested dates	Ms Kate Kinsella for Melbourne Water
22	"	Letter from DELWP to SAC regarding suggested vantage points – 25.03.20	Ms Kate Morris, Harwood Andrews on behalf of DELWP
22a	"	2-28 Montague Street – DELWP & Fishermans Bend Taskforce Vantage points	"

No.	Date	Description	On behalf of
23	26/03/2020	FB SAC Montague and Munro St – Updated Directions (v3) following requests from Proponent and DELWP	Nick Wimbush, SAC Chair
24	30/03/2020	Further Melbourne Water Submission	Kate Kinsella on behalf of Melbourne Water
25	01/04/2020	Letter from COPP to SAC re Vantage Points	Ms Marson on behalf of COPP
26	“	COPP suggested Vantage Points	“
27	04/04/2020	Email from Proponent to SAC – response to Directions 4 and 12	Mr Johan Moylan, PPP, on behalf of Proponent
28	“	Statement of Changes to Amended Plans (direction 3)	“
29	“	Proponent Amended Master Plans (direction 3)	“
30	09/04/2020	Expert Evidence of Mark Sheppard – Urban Design – 09 04 20	“
31	“	Expert Evidence of Jason Walsh – Traffic – 09 04 20	“
32	“	Expert Evidence of Rob Milner – Planning – 09 04 20	“
33	6/04/2020	Email request from SAC to Key Parties - joint proposal for Video Conferencing Hearing	Ms Thomas on behalf of PPV
34	14/04/2020	Email from DELWP to PPV - Draft Directions 14 April 2020	Ms Morris, Harwood Andrews on behalf of DELWP
34a	“	Draft Directions for Hearing Arrangements	“
35	“	Expert Evidence Stuart McGurn – Planning - 14 09 20	Mr Johan Moylan, PPP, on behalf of Proponent
36	“	Expert Evidence - Daniel Flood - Visual montages – Floodslicer - 09 04 20	“
37	“	Email response to Draft Directions 14 April 2020	Mr Johan Moylan, PPP, on behalf of Proponent
38	15/04/2020	Response from Melbourne Water to Proponent in respect to the vent.	Kate Kinsella on behalf of Melbourne Water
39	“	Report for Melbourne Main Reliever - Odour Assessment for Emissions to Air - 25 10 07 - Vent 3	“

No.	Date	Description	On behalf of
40.	“	Email from Melbourne Water to Parties on proposed Hearing Arrangements	Kate Kinsella on behalf of Melbourne Water
41.	16/04/2020	Email from Proponent to SAC on draft Hearing arrangements 16 April 2020	Mr Johan Moylan, PPP, on behalf of Proponent
42.	“	Email from FB Taskforce to Proponent on Hearing arrangements	
43.	“	Letter from FB SAC Montague Street and Munro Street to Parties - Hearing Directions 16 April 2020	Nick Wimbush, SAC Chair
44.	17/04/2020	Fishermans Bend Taskforce Outline Submission C176port	Mr Nick Roebuck on behalf of Fishermans Bend Taskforce
45.	“	Letter from FB SAC Montague Street and Munro Street to Parties - Hearing Timetable (v2)	Nick Wimbush, SAC Chair
46.	“	Letter from DELWP to all parties – Teams Invite and Hubshare - 17.04.20	Ms Morris, Harwood Andrews on behalf of DELWP
47.	“	Letter from DELWP to parties - Plan Controls, Permits, Site Maps, 3D model and Part A	Ms Morris, Harwood Andrews on behalf of DELWP
48a.	“	Planning Policy and Controls Book - Strategic Planning Documents - Fishermans Bend Framework Oct 2018	“
48b.	“	Planning Policy and Controls Book - Strategic Planning Documents - Fishermans Bend Vision Sept 2016	“
48c.	“	Planning Policy and Controls Book - Strategic Planning Documents – Plan Melbourne 2017-2050 Strategy	“
48d.	“	Planning Policy and Controls Book - Strategic Planning Documents - Port Phillip Planning Scheme Extracts - 12.04.2020	“
49.	“	Fishermans Bend Planning History - 0. Index of surrounding Permits	“
50a.	“	Fishermans Bend Planning History - 6 - 78 Buckhurst Street - 1a. Permit issued 1 September 2014. Amended 16 October 2019	“

No.	Date	Description	On behalf of
50b.	“	Fishermans Bend Planning History - 6 - 78 Buckhurst Street - 1b. Master plans endorsed 25 May 2017	“
50c.	“	Fishermans Bend Planning History - 6 - 78 Buckhurst Street - 1c. Stage 1 Plans endorsed 31 Aug 2017	“
50d.	“	Fishermans Bend Planning History - 6 - 78 Buckhurst Street - 1d. Stage zero plans not endorsed (overall built form will remain unchanged)	“
50e.	“	Fishermans Bend Planning History - 15 - 87 Gladstone Street - 2a. Permit issued 1 Sep 2014. Amended 4 Nov 2016 and 3 Jan 2019	“
50f.	“	Fishermans Bend Planning History - 15 - 87 Gladstone Street - 2b. Endorsed plans 3 January 2019	“
50g.	“	Fishermans Bend Planning History - 60 - 82 Johnson Street - 3a. Permit issued 20 May 2015. Amended 17 Oct 2016 and 14 Aug 2019	“
50h.	“	Fishermans Bend Planning History - 60 - 82 Johnson Street - 3b. Decision plans not endorsed	“
50i.	“	Fishermans Bend Planning History - 134 - 142 Ferrars Street - 4a. Permit issued 10 April 2017. Amended 29 June 2018	“
50j.	“	Fishermans Bend Planning History - 134 - 142 Ferrars Street - 4b. Architectural Plans endorsed 29 March 2018	“
50k.	“	Fishermans Bend Planning History - 122-201 Normanby Road - 6a. Permit issued 1 Sep 2014. Amend 23 Feb 2016, 29 June 2018 and 11 Sep 2018	“
50l.	“	Fishermans Bend Planning History - 122-201 Normanby Road - 6b. Endorsed plans 17 July 2019	“
50m.	“	Fishermans Bend Planning History - 202-214 Normanby Road - 7a. Permit issued 22 Aug 2016. Amend 14 Jul 17, 24 Nov 17, 20 Mar 19	“
50n.	“	Fishermans Bend Planning History - 202-214 Normanby Road - 7b. Endorsed plans, 29 July 2019	“
50o.	“	Fishermans Bend Planning History - 245-251 Normanby Road - 8a. Permit issued 25 Jan 8 accord with VCAT Order P21662017 23 Jan 17	“
50p.	“	Fishermans Bend Planning History - 245-251 Normanby Road - 8b. Permit Decision Plans not endorsed	“

No.	Date	Description	On behalf of
50q.	“	Fishermans Bend Planning History - 253-273 Normanby Road- 9a. Permit issued 5 Dec 17 VCAT Order P16042017 271117. Permit amend 210519	“
50r.	“	Fishermans Bend Planning History - 253-273 Normanby Road - 9b. Condition 1 - Amended Plans - Endorsed 21 May 2019	“
50s.	“	Fishermans Bend Planning History - 10. Montague Precinct - Planning history map - 22.10.19	“
50t.	“	Fishermans Bend Planning History - 11. Fishermans Bend - Permits, Applications & Amendment Proposals - 23.01.20	“
50u.	“	Fishermans Bend Planning History - 12. Fishermans-Bend-Permit History 03.03.20	“
50v.		Fishermans Bend Planning History - 134 - 150 Buckhurst Street - 5a. Permit	
50w.	“	Fishermans Bend Planning History - 134 - 150 Buckhurst Street - 5b. Decision plans part 1 not endorsed	“
50x.	“	Fishermans Bend Planning History - 134 - 150 Buckhurst Street - 5c. Decision Plans part 2 not endorsed	“
51.		Site Specific Map book - C176 - 2-28 Montague Street	
52.	“	Screenshots from 3D model - C176 - 17.04.20	“
53.	“	Part A Submission – Montague Street and Munro Street	“
53a.	“	Appendix 1 - C176port Draft Incorporated Document - DELWP - 17.04.20	“
53b.	“	Appendix 2 - C176port Clause 58 Assessment 17.04.20	“
54.	20/04/2020	Letter from DELWP - DELWP Part B submission	Ms Morris, Harwood Andrews on behalf of DELWP
54.	“	DELWP Part B submission	Mr Watters on behalf of DELWP
55.	“	Melbourne Water supplementary submission	Ms Kinsella on behalf of Melbourne Water
56.	“	Email from EPA on Melbourne Water Submission	EPA

No.	Date	Description	On behalf of
57.	“	Fishermans Bend Taskforce submission	Mr Aidan O’Neill on behalf of FB Taskforce
58.	“	City of Port Phillip - Traffic & car parking referral comments	Ms Marson, Best Hooper on behalf of Council
59.	“	Email from Proponent - Proponent Witness Order	Mr Johan Moylan, PPP, on behalf of Proponent
60.	“	Email from FB Taskforce to SAC - Conditions included within Incorporated Document	Mr Nick Roebuck on behalf of Fishermans Bend Taskforce
61.	21/04/2020	City of Port Phillip submission	Ms Marson, Best Hooper on behalf of Council
61a.	“	COPP Referral Comments - Urban Design - 2-28 Montague Urban Design Referral 200420	“
61b.	“	COPP Referral Comments - Urban Design 2-28 Montague Urban Design Referral Attachment A: Planning Application referral to Urban Design (20 04 20)	“
61c.	“	COPP Referral Comments - Urban Design - 2 28 Montague Laneway section	“
61d.	22/04/2020	COPP track changes version of Incorporated Document	“
62.	“	Proponent’s opening submission	Mr Gobbo QC, on behalf of Proponent
63.	“	Building height diagram prepared by Mr Sheppard	Mr Gobbo QC, on behalf of Proponent
64a.	“	DELWP note on laneway width	Mr Watters on behalf of DELWP
64.b	“	DELWP plan	Mr Watters on behalf of DELWP
65.	“	Traffix Group memorandum – car parking, bicycle parking and motor bike parking	Mr Gobbo QC, on behalf of Proponent
66.	“	Traffix Group heat maps – existing and future transport options	Mr Gobbo QC, on behalf of Proponent

No.	Date	Description	On behalf of
67.	“	Melbourne Water - Submission of Further Information	Kate Kinsella on behalf of Melbourne Water
68.	23/04/2020	Proponent - Extracts of plans for 248-270 Normanby Road	Mr Gobbo QC, on behalf of Proponent
69.	“	Further shadow analysis prepared by Cox differentiating shadows cast by towers 1 and 2	“
70.	“	Revised layout of temporary car park prepared by Mr Walsh	“
71.	“	Additional Windtech advice dated 6 April 2020	“
72.	“	Proponent draft Incorporated Document dated 23 April 2020	“
73a.	“	Memorandum regarding bicycle, motorcycle and car share car parking requirements under the Capital City Zone	Mr Watters, on behalf of DELWP
73b.	“	Car parking requirement calculations - Attachment	“
74.	“	Proponent Drafting for affordable housing condition	Mr Gobbo QC, on behalf of the Proponent
75.	“	Women’s Housing Limited letter of support dated 20 April 2020	“
76.	“	EPA letter dated 23 April 2020 regarding the sewer stack	Mr Watters, on behalf of DELWP
77.	24/04/2020	Proponent submission	Mr Gobbo QC, on behalf of the Proponent
78.	“	Melbourne Water revised conditions for Incorporated Document	Kate Kinsella on behalf of Melbourne Water
79.	“	FB Taskforce - Draft Incorporated Document – comment on other parties - 20200424	Mr Aidan O’Neill, on behalf of the Taskforce
80.	“	Proponent – SLR Response to Sewer Vent letter	Ms Collingwood, on behalf of the Proponent
81.	“	Odour Amenity condition drafted by Proponent	“
82.	27/04/2020	Melbourne Water submission on costs of works	Kate Kinsella on behalf of Melbourne Water

No.	Date	Description	On behalf of
83.	28/04/2020	Information from DELWP to SAC - Information Sharing Note - 28.04.20	Ms Morris, Harwood Andrews on behalf of DELWP
84.	29/04/2020	Proponents record of submission and response to Melbourne Water	Mr Gobbo QC and Ms Collingwood, on behalf of the Proponent
85.	1/05/2020	DELWP closing submission C176Port	Ms Morris, Harwood Andrews on behalf of DELWP
86.	“	DELWP Draft Melbourne Water Conditions re sewer stack - C176Port	“
87.	5/05/2020	Fishermans Bend SAC - Correspondence from SAC regarding Terms of Reference - 5 May 2020	Nick Wimbush, SAC Chair

Appendix C Committee preferred version of the Incorporated Document

PORT PHILLIP PLANNING SCHEME

INCORPORATED DOCUMENT

Specific controls for No. 2-28 Montague Street and 80 Munro Street, South Melbourne

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

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

DATE TO BE INSERTED

1. INTRODUCTION

- 1.1. This document is an Incorporated Document in the schedules to Clauses 45.12 and 72.04 of the Port Phillip Planning Scheme (the Planning Scheme) pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.
- 1.2. The land identified in Clause 3 of this document may be used and developed in accordance with the specific control contained in Clause 4 of this document.
- 1.3. The control in Clause 4 prevails over any contrary or inconsistent provision in the Planning Scheme.
- 1.4. The Minister for Planning is the responsible authority for administering Clause 45.12 of the Planning Scheme with respect of this Incorporated Document except that:
 - a) The City of Port Phillip is the responsible authority for matters expressly required by the Incorporated Document to be endorsed, approved or done to the satisfaction of the City of Port Phillip;
 - b) The Victorian Planning Authority is the responsible authority for matters under Division 2 of Part 9 of the Act relating to any agreement that makes provision for development contributions;
 - c) The City of Port Phillip is the responsible authority for the enforcement of the Incorporated Document.

2. PURPOSE

- 2.1. To facilitate the demolition of existing buildings on the land identified in Clause 3 for a staged use and development of three multi-storey buildings comprising dwellings, residential hotel (serviced apartments), hotel, motor vehicle sales, food and drink premises, childcare centre, office, retail premises and create or alter access to a road in a Road Zone Category 1 in accordance with Clause 4 of this document.

3. LAND DESCRIPTION

- 3.1. The control in Clause 4 applies to the land at 2-28 Montague Street and 80 Munro Street, South Melbourne being the land contained in Certificate of Titles Volume 03174 Folio 609 and Volume 09795 Folio 735 and more particularly described as Crown Allotment 107 City of South Melbourne Parish of Melbourne South, and Crown Allotments 108A and 108B City of South Melbourne Parish of Melbourne South. The land is identified in Figure 1 below.

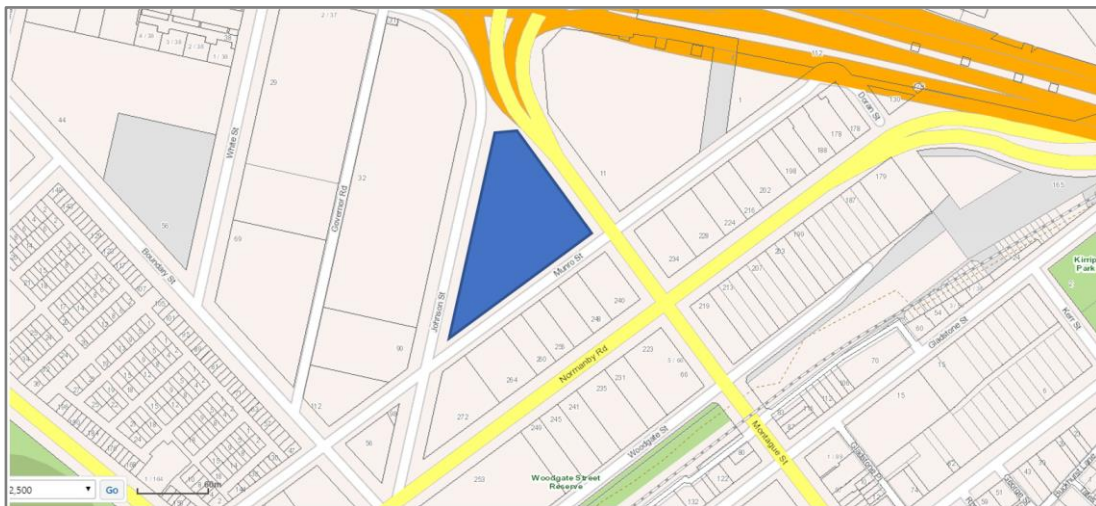


Figure 1: 2-28 Montague Street and 80 Munro Street, South Melbourne

4. CONTROL

Exemption from the Planning Scheme requirements

- 4.1. Subject to Clause 4.2, no planning permit is required for, and no provision in the Planning Scheme operates to prohibit, control or restrict the use or development of the land in accordance with the provisions contained in Clause 4.
- 4.2. A permit is required to subdivide the land and any such application is:
 - a) Exempt from the requirements in Clause 45.11 (Infrastructure Contributions Overlay) of the Planning Scheme.
 - b) Exempt from the requirements in Clause 53.01 (Public Open Space Contributions) of the Planning Scheme.
- 4.3. Notwithstanding Clause 4.2(b), any permit allowing subdivision of the land must include a condition requiring payment to the City of Port Phillip before a statement of compliance is issued, of a public open space contribution equal to 8% of the site value of the land.

Compliance with the endorsed plan

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

Layout and use of the development not to be altered

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

Amended Master Plan

- 4.6. Before the commencement of the development, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land, an amended Master Plan must be submitted to and approved by the Responsible Authority. The Master Plan must generally be in accordance with the architectural plans dated 3 April 2020, prepared by Cox Architects but modified to show:
 - a) The height of Tower 2 reduced from 28 storeys to 24 storeys.
 - b) Car parking provided at a rate consistent with the planning scheme requirements of Clause 3 of Schedule 1 to the Parking Overlay.
 - c) Bicycle parking, motorcycle parking and car share spaces provided at a rate consistent with the planning scheme requirements of Clause 4.2 of Schedule 1 to the Capital City Zone.
 - d) Ground, podium rooftop and tower rooftop plans to detail principal open space, laneways and pedestrian connections, landscaping (including opportunities for deep soil planting) and sustainable design features of the proposal (as applicable).
 - e) Cross-section drawings of all buildings, including basement levels.
 - f) Elevation drawings of all buildings including nominal details of materials and finishes.
 - g) Elevation and cross-section detail drawings of ground level transitions from footpath level to any vehicle entries and raised building entries and internal lanes within the site.
 - h) All plan and elevation drawings to show principal dimensions, including natural ground level, building ground floor levels, and maximum building heights, with heights expressed to Australian Height Datum (AHD).
 - i) Provision of all public realm connections through the site, between Johnson Street to Montague Street and Johnson Street to Munro Street to form part of and be delivered by Stage 1.
 - j) Detailed dimensions of all public and private areas within the development, including the east-west through block link.

Staging

4.7. Before the development starts, excluding demolition, excavation, piling and site preparation works and works to remediate contaminated land, a Staging Plan must be submitted to and be approved to the satisfaction of the Responsible Authority. This Staging Plan must include:

- a) details of staging of the development;
- b) plans and information detailing any public realm works, including those to Johnson Street.
- c) details of any proposed temporary treatment and use of vacant land.

The development must proceed in the order of the stages as shown on the endorsed plan(s), unless otherwise agreed to in writing by the Responsible Authority.

Detailed Development Plans

4.8. Before the development of any stage starts, excluding demolition, excavation, piling and site preparation works and works to remediate contaminated land, amended plans must be submitted to and approved by the Responsible Authority for that stage. 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 master plan approved under Clause 4.6 but modified to show:

- a) Detailed dimensioned plan drawings of all basement, podium and tower levels detailing car, motorcycle and bicycle parking and associated access ways, loading bays, waste storage rooms and collection points, stores, land uses and nominal dwelling layouts.
- b) Detailed ground, podium rooftop and tower rooftop plans showing open space, laneways and pedestrian connections, landscaping and sustainable design features (as applicable).
- c) The public realm, including the 'Town Square' and laneways must achieve design excellence and user amenity, including through the provision of way-finding, legibility, Crime Prevention through Environmental Design (CPTED) benefits, connectivity within the subject land and to surrounding streets and connections, be open to the sky and include quality hard and soft landscaping and lighting.
- d) A reduction in the width/extent of awnings over the internal lane and appurtenant Council Roads.
- e) A reduction in the reliance on screens and awnings for wind mitigation in lieu of revisions to tower forms, orientation, height and architecturally resolved and integrated solutions.
- f) Elevation drawings showing details of materials and finishes.
- g) Detailed cross-section drawings of all buildings, including basement levels.
- h) The layout of all dwellings (including affordable housing) to comply with the Standards of Clause 58 of the planning scheme.
- i) At least 25% of apartments be 3-bedroom dwellings.
- j) The width and number of vehicle crossings reduced; where a wide crossing is necessary, it must incorporate a pedestrian refuge.
- k) Vehicle exits to incorporate pedestrian sight lines.
- l) Communal open space for in each stage must satisfy the objectives of Clauses 58.03-2 and 58.03-3 of the planning scheme.
- m) All ground level tenancies and lobbies to have direct accessibility from adjoining streets or laneways.
- n) Details of bicycle end-of-trip facilities, convenient to principle bike stores.
- o) The location of car share spaces (including EV charging) in all stages.
- p) The layout and design of the car parks and ramps to meet the design standards of Clause 52.06 of the planning scheme.

- q) 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.
- r) Details of how the threshold spaces between steps and tenancy frontages are proposed to be used to offset adverse impacts on active frontages due to flood requirements.
- s) Visitor bike parking integrated into the design so as to not clutter the public realm and impede access/activation of site edges.
- t) The podium facades differentiated to address the hierarchy and functions of the future street network and broken up vertically and by variations in materiality.
- u) Details of back of house for the commercial tenancies, including access to waste stores and a loading bay.
- v) Elevation and cross-section detail drawings of ground level transitions from footpath level to any vehicle entries and raised building entries and internal lanes within the site.
- w) Any changes required to meet the requirements of the Façade Strategy in the corresponding condition(s) below.
- x) Any changes required to meet the requirements of the Landscaping Strategy in the corresponding condition(s) below.
- y) Any changes required to meet the requirements of the Lighting Strategy in the corresponding condition(s) below.
- z) Any changes required to meet the requirements of the Traffic Impact Assessment Report in the corresponding condition(s) below.
- aa) Any changes required to meet the requirements of the Waste Management Plan in the corresponding condition(s) below.
- bb) Any changes required to meet the applicable accessibility provisions of the Building Code of Australia and the applicable provisions of the Disability (Access to Premises – Buildings) Standards 2010 in the corresponding condition(s) below.
- cc) Any changes required to meet the requirements of the Wind assessment in the corresponding condition(s) below.
- dd) Any changes required to meet the requirements of the Amenity Impact report in the corresponding condition(s) below.
- ee) Any changes required to meet the drainage/engineering requirements in the corresponding condition(s) below.
- ff) Any changes required to meet the requirements of Melbourne Water in the corresponding condition(s) below.
- gg) Any changes required to meet the Environmentally Sustainable Design, Green Star and Third Pipe requirements in the corresponding condition(s) below, including details of rooftop solar PV on the roof plan.
- hh) Any changes required to meet the Department of Transport requirements in the corresponding condition(s) below.
- ii) Any changes required to meet the noise attenuation and mitigation requirements in the corresponding condition(s) below.
- jj) Any changes and technical information required as a consequence of any other provision in Clause 4.

Aboriginal Cultural Heritage

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

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

4.10. All works on the land must be carried out or constructed in accordance with the requirements of any approved CHMP or otherwise in accordance with the requirements of the *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2018*.

Johnson Street, Town Square and Laneways

4.11. Prior to the occupation of the abutting buildings, the following works, including as required, paving, lighting, servicing infrastructure and installation of street furniture, must be undertaken to the satisfaction of and at no cost to the City of Port Phillip:

- a) Reconstruction of Johnson Street in accordance with the approved landscape master plan and civil construction plan.
- b) Construction of the 'Town Square' including paving and landscaping incorporating best practice Water Sensitive Urban Design.
- c) Construction of the internal laneway from Johnson Street to Munro Street to Montague Street.

4.12. The 'Town Square' and laneways located within the subject land may remain in private ownership but must be accessible 24 hours, 7 days per week to the public to the satisfaction of the City of Port Phillip.

4.13. The owner must, at its cost, maintain the 'Town Square' and laneways on the subject land to the same standards as is required by the City of Port Phillip for the adjoining road(s).

Façade Strategy & Materials and Finishes

4.14. Before the plans required by Clause 4.8 are approved a Façade Strategy for that stage must be submitted to and approved by the Responsible Authority. Unless specified otherwise by the Responsible Authority, the Façade Strategy must be generally in accordance with the Design response dated July 2019 prepared by Cox Architects 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 external colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance. This can be demonstrated in coloured elevations or renders from key viewpoints, to show the materials and finishes linking them to a physical sample board with clear coding.
- c) Elevation details generally at a scale of 1:50, or other suitable scale agreed to by the Responsible Authority, illustrating typical building details, entries and doors, utilities, and any special features which are important to the building's presentation.
- d) Cross sections or other documentation method of demonstrating the façade systems, including fixing details indicating junctions between materials and significant changes in form and/or material.
- e) Information about how the façade will be accessed, maintained and cleaned.
- f) Example prototypes and/or precedents that demonstrate the intended design outcome as indicated on plans and perspective images, to produce a high-quality built form outcome in accordance with the design concept.
- g) Details of a temporary treatment of any blank walls that may be temporarily visible to the public realm, as a result of the staged development of the land.

Reflectivity

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

Landscaping and Public Realm

- 4.16. Before any stage of the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land, a detailed landscaping and public realm plan(s) for that stage 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 Jack Merlo Design dated 2 September 2018 and accompanying report, and include:
- a) Details of the reconstruction of the part of Johnson Street that abuts the subject land, including landscaping, mature tree planting and Water Sensitive Urban Design elements.
 - b) Any changes required to accord with the amended Master Plan and Detailed Development Plans required by Clauses 4.6, 4.8 and 4.9.
 - c) A planting schedule of all proposed trees and other vegetation including botanical name, common names, pot sizes, sizes at maturity, and quantity of each plant and their protection and maintenance.
 - d) Deep soil zones of at least 1.5m or planter pits for canopy trees.
 - e) Details of green facades, podium or terrace planting that is water efficient, located and designed to be sustainable, viable and resilient and appropriate to micro-climate conditions.
 - f) How the landscaping responds to water sensitive urban design principles, including how rainwater will be captured, cleaned and stored.
 - g) Details of all hard-landscaping materials, finishes and treatments and urban design elements including paving, lighting, seating and balustrading.
 - h) Details of surface materials and finishes and construction of retaining walls, pathways, kerbs and access ways.
 - i) Elevations, sections, levels and details including materials and finishes of public realm works including reconstruction of public assets.
 - j) Any landscaping works within land owned by City of Port Phillip must be undertaken to its standard of materials, plant species and finishes.
- 4.17. All landscaping shown in the approved landscape and public realm plans must be carried out and completed prior to occupation of buildings under each stage and thereafter maintained to the satisfaction of the City of Port Phillip.

Public Lighting Plan

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

Demolition Management Plan

4.20. Before demolition starts, a detailed Demolition Management Plan (DMP) must be submitted to and approved by the City of Port Phillip. The DMP's objectives must be to minimise the impact of works associated with the demolition on neighbouring buildings and structures and activities conducted in the area generally. The DMP must address the following matters:

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

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

Traffic, Parking and Loading/Unloading

4.22. Before any stage of the development starts, excluding demolition, piling, excavation, site preparation works, and works to remediate contaminated land, an updated traffic engineering assessment and other supporting information as appropriate for that stage 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 Traffix, dated June 2019 but modified to include:

- a) Confirmation of pedestrian sight splays at all vehicle exits;
- b) Details of crossing widths including pedestrian refuges as required.
- c) Details of how traffic within the internal aisle directly abutting the accessway to the street will be managed.
- d) Details of internal aisle design near the accessway to ensure there is no queuing onto the street.
- e) Details of how vehicle access will be provided for each stage.
- f) Confirmation that the car park has been designed to meet the design standards of Clause 52.06 of the planning scheme including car space dimensions, motorcycle spaces in accordance with AS2890.1, clearance from walls / columns / obstructions, aisle widths, ramp clearances etc.
- g) Details of traffic flow for the childcare use confirming users do not have to reverse or do U-turns to exit the basement.
- h) Details of any boom gates or similar restricted access points in the two basement car park levels, including confirmation vehicles at access points do not overhang or obstruct pedestrian access.
- i) Clarification of the accuracy of Drawing No. MP-07 Tower 1 ramp or otherwise.

- j) Details of disabled person spaces, including headroom clearance in accordance with Clause 52.06-9 of the planning scheme.
 - k) Confirmation, including on plans, of the number and location of staff, visitor and resident parking.
 - l) Details, including on plans and longitudinal cross-section drawings, of all ramp lengths, widths and heights (to AHD).
 - m) An empirical assessment of the expected traffic generation and impact for each premises.
 - n) Ground floor level visitor bike parking racks to be horizontal.
 - o) Details, including on plans or bike rack spacing and aisle widths, and the location of visitor, staff and resident spaces.
 - p) The number of scattered bike stores in the basements rationalised to a lesser number of stores, conveniently located near access points and end-of-trip change rooms etc.
 - q) Details, including on plans and cross-section drawings, of loading areas conveniently located near lifts and commercial spaces.
 - r) Details of at least 10% of all car spaces to incorporate common source EV charge points.
 - s) Details of Green Travel Plan measures.
- 4.23. The internal design of the car park and loading docks, the positioning of boom gates, card readers, control equipment, including car park control points, and ramp grades must be generally in accordance with the Australian and New Zealand Standard 2890.1-2004 and to the satisfaction of the City of Port Phillip.
- 4.24. The loading and unloading of vehicles and delivery of goods to and from the premises must at all times take place within the boundaries of the site and should not obstruct access to the car park of the development to the satisfaction of the City of Port Phillip.
- 4.25. Traffic access and parking and loading/unloading arrangements must not be altered without the prior written consent of the City of Port Phillip.
- 4.26. Before any stage of the development is completed, vehicle crossings must be constructed in accordance with the City of Port Phillip's Vehicle Crossing Guidelines and standard drawings to the satisfaction of the City of Port Phillip. All redundant crossings must be removed and the footpath, nature strip, kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the City of Port Phillip.

Waste Management Plan

- 4.27. Before any stage of the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land an amended Waste Management Plan for that stage must be prepared and submitted to and be approved by the City of Port Phillip. The Plan must be generally in accordance with the Waste Management Plan dated 21 August 2019 prepared by Leigh Design but modified to include:
- a) A detailed summary of the proposed land uses including number of bedrooms for each dwelling, serviced apartment and hotel room, details of the childcare centre including no. of children and staff and kitchen area, and details of retail and commercial uses including the motor vehicle sales and service use.
 - b) A detailed description of the waste management arrangements including disposal, storage and collection per the amended application drawings.
 - c) Separate refuse rooms for residential and commercial tenements.
 - d) Allocated space for E-waste, organic waste collection and waste from the motor vehicle sales and service use.
 - e) Plan details of bin/refuse rooms with clearly marked bin sizes, numbers and colours.
 - f) Plan details of retail and commercial back-of-house waste storage and access to bin rooms.
 - g) Loading bay locations and dimensions including minimum height clearances.

- h) Swept path diagrams confirming waste collection vehicles can enter and exit in a forward direction.
 - i) Details of measures to minimise the number of waste collections such as incorporation of compaction units and glass crushers if possible.
- 4.28. 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

- 4.29. Before any stage of the development starts, excluding demolition, site preparation works and works to remediate contaminated land, an Acoustic Report for that stage prepared by a qualified acoustic consultant must be submitted to and approved by the Responsible Authority. The report must specify noise attenuation measures to achieve a maximum level not greater than:
- a) 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am; and
 - b) 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm;
- 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.
- 4.30. 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.

Amenity Impact Report

- 4.31. Before the development starts, excluding demolition, excavation, piling, site preparation works, and works to remediate contaminated land, an amended Amenity Impact Report prepared by a suitably qualified environmental consultant must be submitted to and approved by the City of Port Phillip. The report must be generally in accordance with the Amenity Impact Report prepared by SLR dated August 2019 and amended to include:
- a) More details of the operation conditions of the Port Phillip Resource Recovery Centre such as the size of the plan, equipment, hours of operation, delivery times, truck numbers, processes and management.
 - b) An assessment of the odour emissions from the Melbourne Water sewer vent, including amenity impacts it may have on the future residents of the development and any amelioration works that may be required.
- The approved Amenity Impact Report must be implemented to the satisfaction of the City of Port Phillip.
- 4.32. Should the odour assessment require the undertaking of at source mitigation works, then prior to both the commencement of works and any proposed subdivision of the land, the landowner must enter into an agreement, with Melbourne Water and the Responsible Authority, pursuant to Section 173 of the *Planning and Environment Act, 1987*. The agreement must be registered on title and must, to the satisfaction of the Responsible Authority and Melbourne Water, provide for:
- a) The carrying out of any 'at source' mitigation works required by the odour assessment at the landowner's cost;
 - b) The landowner and/or any subsequent owners corporation to pay any maintenance costs associated with the mitigation works; and
 - c) The waiver or rebate by Melbourne Water of any liability attaching to the landowner or its successors in title arising from the replacement, repair or upgrading of the Melbourne Main Replacement Sewer up to the value of the works and maintenance costs paid by the owner or it

successors in title if the replacement, repair or upgrade occurs within 10 years of the completion of the development.

Disability Access

- 4.33. Before any stage of the development is occupied, a Disability Discrimination Act Assessment / Audit for that stage, 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

- 4.34. Before plans required by Clause 4.6 are approved an amended comprehensive wind tunnel test and environmental climate assessment report must be submitted to and approved by the Responsible Authority in consultation with the City of Port Phillip. The amended report must be generally in accordance with the report prepared by Windtech, dated 23 August 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 public realm 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 buildings to improve any adverse wind conditions within the public realm and communal 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 30 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 30 to Clause 43.02 Design and Development Overlay of the Port Phillip Planning Scheme.
 - d) 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.
- 4.35. 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

- 4.36. 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 Responsible Authority and make application to the Registrar of Titles to have the agreement(s) registered on the title to the land under section 181 of the Act to the satisfaction of the Responsible Authority. The agreement(s) must:
- a) Require the developer to pay a development contribution of:
 - \$16,916.51 per dwelling;
 - \$191.51 per sqm of gross office/commercial floor area; and
 - \$159.59 per sqm of gross retail floor area.
 - b) Any development contribution required by Clause 4.36a may be offset by any agreed costs of delivering approved changes to Johnson Street to the satisfaction of the City of Port Phillip in consultation with the Fishermans Bend Taskforce.

- c) Require that development contributions are to be indexed annually from 1 July 2020 using the Price Index of Output of the Construction Industries (Victoria) issued by the Australian Bureau of Statistics.
- d) Require registration of the Agreement on the titles to the affected lands as applicable.
- e) Include a schedule of the types of infrastructure to be delivered by the Victorian Planning Authority or their successor.
- f) Confirm that contributions will be payable to the Victorian Planning Authority or their successor.
- g) Confirm that the contributions will be used by Victorian Planning Authority or its successor, to deliver the schedule of types of infrastructure.
- h) Require payment of the development contribution/s before the earliest of the following:
 - The issue of an occupancy permit for any stage of the development; or
 - The issue of a statement of compliance in relation to the subdivision of the land in accordance with the development allowed under this specific control.
- i) Confirm the procedure for refunding monies paid if an approved Development Contribution Plan or Infrastructure Contributions Plan for the area is less than the amount stipulated in the section 173 agreement.
- j) The agreement must make provision for its removal from the land following completion of the obligations contained in the agreement.

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

Drainage/Engineering

- 4.37. Before any stage of 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 for that stage, must be submitted to and approved by the City of Port Phillip.
- 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.

Environmental Audit

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

Compliance with Statement of Environmental Audit

- 4.40. Where a Statement of Environmental Audit is issued for the land, the buildings and works and the use(s) of the land that are the subject of this permit must comply with all directions and conditions contained within the statement.
- 4.41. Where a Statement of Environmental Audit is issued for the land, before the commencement of the use, and before the issue of a Statement of Compliance under the Subdivision Act 1988, and before the issue of an occupancy permit under the *Building Act 1993*, a letter prepared by an Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must be submitted to

the Responsible Authority to verify that the directions and conditions contained within the statement have been satisfied.

- 4.42. Where a Statement of Environmental Audit is issued for the land, and any condition of that statement requires any maintenance or monitoring of an on-going nature, the owner(s) must enter into an agreement with the Responsible Authority pursuant to Section 173 of the *Planning & Environment Act 1987*, which must be executed before the commencement of the permitted use and before the certification of the Plan of Subdivision under the *Subdivision Act 1988*. All such expenses related to the Section 173 Agreement including drafting, negotiating, lodging, registering, execution and ending of the Agreement, including those incurred by the Responsible Authority, must be met by the owner(s).

Remediation Works Plan

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

Affordable Housing

- 4.44. Before the development starts, excluding demolition, bulk excavation, piling, site preparation works, and remediation works, the owner must enter into an agreement with the Responsible Authority and City of Port Phillip under section 173 of the *Planning and Environment Act 1987*, to the satisfaction of the Responsible Authority, for the delivery of affordable housing (as defined in the Planning and Environment Act 1987).
- 4.45. The agreement must:
- a) Provide for the delivery of at least 6% of the total number of apartments for affordable housing as defined by Section 3AA of the *Planning and Environment Act 1987* before the development is occupied. Unless otherwise approved by the Responsible Authority to achieve the provision of 6% of affordable housing, the allocation must include:
 - i. No less than four dwellings; and
 - ii. The gifting of no less than 20 social housing dwellings to the Women's Housing Limited or other social housing provider to the satisfaction of the Responsible Authority.
 - b) In respect of Clause 4.45(a) and unless otherwise agreed by the Responsible Authority, utilise one or more of the following mechanisms for the delivery of the affordable housing:
 - i) Transfer of the dwellings to a registered housing agency or other housing provider or trust entity approved by the Responsible Authority; or
 - ii) Leasing of the dwellings as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority, for a period of the economic life of the building.
 - c) Require the affordable housing to be delivered:
 - i) Within the development;
 - ii) In the form of a mix of one, two or three bedroom dwellings, with one or more bicycle parking space allocated per dwelling;
 - iii) Have internal layouts identical to other comparable dwellings in the building; and
 - iv) Be externally indistinguishable from other dwellings.
 - d) Subject to Clause 4.45(a), provide that in lieu of delivering all or part of the affordable housing in accordance with Clauses 4.45(a)(i) and 4.45(a)(ii), the Responsible Authority will agree to payment of an amount of money to a registered housing agency (or other housing provider or trust entity) if the Responsible Authority is satisfied that:

- i) The owner has made best endeavours to secure a registered housing agency recipient (or other housing provider or trust) for the affordable housing and has not been successful; and
- ii) The payment amount is equivalent to the value of the affordable housing that would otherwise have to be delivered, less the value of any affordable housing provided within the development.

4.46. For the purpose of these provisions, 'value' means the monetary value of a dwelling offered for sale at the date of the agreement 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 Section 3AB of the Planning and Environment Act 1987 in force at the time of entry into the agreement.

Environmentally Sustainable Design

Sustainability Management Plan & Water Sensitive Urban Design

4.47. Before any stage of the development starts, excluding demolition, excavation, piling, site preparation works and works to remediate contaminated land and prior to endorsement of plans under Clause 4.8 of this approval, an amended Sustainability Management Plan and Water Sensitive Urban Design Response (WSUDR) for that stage 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 ADP Consulting and Engineering, dated 3 July 2019, but modified to show:

- a) Evidence of how the proposal will achieve the 5 Star Green Star As-Built rating.
- b) The number of bicycle spaces to be consistent with the architectural plans.
- c) Details of any external shading to habitable rooms in the north-east and north-west tower elevations.
- d) Rainwater tank capacity to meet the FBURA tank sizing requirement of 0.5m³ per 10m² of roof catchment.
- e) The rainwater tank to connected to all toilets throughout the development.
- f) A green Travel Plan
- g) That sufficient rooftop space is available to accommodate the proposed 130kW solar PV.
- h) How the Urban Heat Island reduction commitments in the SMP would be achieved.
- i) The improvement on current National Construction Code energy efficiency standards including for building envelopes, lighting and building services increased from 10 to 20%.
- j) Confirmation the residential development can achieve and average 7 star NatHERS rating for each building.
- k) Details of non-glazed materials exposed to summer sun having a low solar absorptance.

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.

4.48. Prior to the occupation of the building of any stage, 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 measures specified in the approved SMP and WSUD report have been implemented.

Green Star rating

4.49. Prior to the commencement of buildings and works under any stage, 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 As-Built rating (with a 10% buffer) for that stage with the Green Building Council of Australia.

- 4.50. Within 12 months of occupation of the building under any stage, certification must be submitted to the satisfaction of the City of Port Phillip, that demonstrates that the building within that stage has achieved a minimum 5 Star Green Star As-Built rating (with a 10% buffer).

Third pipe and rain tank water

- 4.51. A third pipe must be installed for recycled water to supply non-potable outlets within the development for toilet flushing, irrigation, and washing machine, unless otherwise agreed by the relevant water authority.
- 4.52. An agreed building connection point must be provided from the third pipe, designed to the satisfaction of the relevant water supply authority, to ensure readiness to connect to a future precinct-scale recycled water supply.
- 4.53. 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.
- 4.54. Rainwater captured from roof harvesting areas must be re-used for selected toilet flushing, washing machine and irrigation, controlled release or as detailed within approved SMP.

Childcare use

- 4.55. The Child Care Centre (excluding the ground floor multi-purpose hall) may only operate between the hours of 6:00am and 7:00pm, Monday to Saturday, unless with the prior written consent of the Responsible Authority.
- 4.56. No more than 80 children may be cared for at the Child Care Centre at any one time, unless with the prior written consent of the Responsible Authority.

No External Amplified Equipment

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

Building Appurtenances

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

3D Model

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

Advertising Signs

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

Department of Transport

- 4.61. 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 Plan;
 - b) The objectives must be linked to measurable targets, actions and performance indicators;
 - c) A description of the existing active private and public transport context;
 - d) Initiatives that would encourage [residents/employees/visitors/customers] 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;
 - e) Timescale and costs for each action;
 - f) The funding and management responsibilities, including identifying a person(s) responsible for the implementation of actions; and
 - g) A monitoring and review plan requiring annual review for at least five years.
- 4.62. The endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
- 4.63. The Green Travel Plan must not be amended without the prior written consent of the Responsible Authority.

Roads

- 4.64. Before the development starts, unless with the prior written agreement from the Responsible Authority, the owner of the land must obtain a Crown land stratum licence under Section 138A of the Land Act 1958 for any part of the development that projects more than 300mm beyond the Montague Street boundary.
- 4.65. The canopy along the Montague Street property boundary to be setback back no less than 750mm from the back of kerb and remain clear of road infrastructure and assets including all street, directional, speed limit signage and LED sign/s.
- 4.66. The canopy projection located along the Montague Street facade at the corner of Munro Street must provide a minimum setback of 0.5 metres from any part of the traffic signals at this location.
- 4.67. Before the development of Stage 1 starts, the following roadworks at the intersection of Munro Street and Montague Street must be completed to the satisfaction of the Responsible Authority and at no cost to Department of Transport:
- a) The removal of the redundant north eastern crossover on Munro Street and associated Keep Clear line marking.
- 4.68. All disused or redundant vehicle crossing/s abutting the subject site must be removed and the area reinstated to kerb and channel to the satisfaction of the Responsible Authority and at no cost to the Department of Transport (Head, Transport for Victoria) prior to the occupation of the staged development hereby approved.

Melbourne Water (Flooding, Drainage and Sea Level Rise)

- 4.69. With the exception of retail areas, commercial lobbies and non-habitable transitional areas, the Finished Floor Levels (FFLS) of all ground floor areas (including residential lift and stair lobbies and the childcare centre lobby must be set no lower than 3.0 metres to Australian Height Datum (AHD).
- 4.70. The FFLs of retail areas must be set no lower than 2.4 metres to AHD, with the exception of transitional areas which may be at a lower finished floor level, to the satisfaction of Melbourne Water.
- 4.71. The FFLs of areas with 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 Melbourne Water.

- 4.72. All lift entries, stairwells, windows, opening, vents or any other entry and exit points that could allow entry of floodwaters to the basement levels must be set no lower than 3 metres to AHD unless with the prior written consent of Melbourne Water.
- 4.73. The basement ramps must incorporate a flood proof apex set no lower than 3 metres to AHD to prevent floodwaters entering the basement levels during a flood event.
- 4.74. All building setbacks must be maintained from the sewer unless with the prior written consent of Melbourne Water.
- 4.75. A build over agreement is required to be entered into with Melbourne Water and must include details of engineering plans confirming the required angle of repose requirements.
- 4.76. Prior to the commencement of works, a separate application direct to Melbourne Water must be made for any new or modified storm water connection to any Melbourne Water drain or watercourse.
- 4.77. Prior to the issue of an Occupancy Permit for Buildings 1, 2 and 3 a certified survey plan showing as constructed finished floor levels for each building must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.

Expiry

- 4.78. 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 any stage one has not commenced within four (4) years after the approval date of Amendment C176port; or
 - b) development of stage two has not commenced within four (4) years after the approval date of Amendment C176port; or
 - c) development of stage three has not commenced within eight (8) years after the approval date of Amendment C176port;
 - d) use of the land in any stage of the development has not commenced within two (2) years of completion of that stage of the development; or
 - e) development of all stages is not completed within ten (10) years after the approval date of Amendment C176port.

Notes:

Melbourne Water

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.

Department of Transport note

Separate consent may be required from Department of Transport (Head, Transport for Victoria) under the Road Management Act 2004 for all buildings and works (including projections, canopies, fixed shading devices, balcony framing etc) undertaken outside the title boundary within a Road Zone Category 1.

Department of Transport requests that the written certification of building projections qualifying for an exemption be directed to Department of Environment, Land, Water and Planning at property.portphillip@delwp.vic.gov.au

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