

**PLANNING PANELS VICTORIA
IN MELBOURNE**

IN THE MATTER OF PROPOSED AMENDMENT CG81

**ADVISORY COMMITTEE REVIEW PANEL APPOINTED BY THE MINISTER FOR
PLANNING UNDER S 151 OF THE PLANNING & ENVIRONMENT ACT 1987**

FISHERMANS BEND URBAN RENEWAL AREA

BETWEEN:

MINISTER FOR PLANNING

Minister

MELBOURNE CITY COUNCIL

MCC

PORT PHILLIP CITY COUNCIL

PPCC

OTHERS

Other Submitters

REPLY SUBMISSIONS ON BEHALF OF MCC

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INTRODUCTION

1. The CoM reiterates the critical importance of ensuring that Fishermans Bend is a highly liveable, environmentally sustainable, economically vibrant part of our great city.
2. As the Advisory Committee (**AC**) is aware, the CoM supports the fundamentals of the amendment including:
 - a) the proposed urban structure including the proposed quantum and location of open space;
 - b) the use of a population target to align population and infrastructure provision;
 - c) the use of a FAR in conjunction with maximum building envelopes, to deliver a diverse and appropriately scaled built form;
 - d) mandatory winter overshadowing controls of public parks; and
 - e) the use of a FAU to provide social housing; and
3. The CoM also supports the use of an ICO to provide a statutory basis for contributions towards infrastructure and the acquisition and vesting of land required for the parks, as part of the overall funding and finance package.
4. The CoM reiterates the extensive areas of agreement between the CoM and the Minister as set out in the CoM's closing submissions.¹ In addition to those areas of agreement, there is now agreement that the MCC should be a referral authority for all applications for which the Minister is the Responsible Authority.² Areas of disagreement between the Minister and the CoM are outlined in the CoM closing

¹ Doc 348 at [19].

² Document 350 at [239].

submissions dated 24 May. Those areas of agreement and disagreement are not repeated in these reply submissions.

5. The CoM strenuously disagrees with the landowner submissions' that the fundamentals of the amendment are to be found wanting. To the contrary, the urban design strategy, an ambitious project which included the modelling of the future urban structure for the entirety of the 4 precincts, extensively tested through these hearings, has been found to be robust.
6. The FAR, in particular, is fundamental to producing a good urban design outcome. While the CoM argues that the FAR to the north of the Lorimer Green spine should be reduced to further encourage good design outcomes, its submissions have been directed towards refinement of the amendment, rather than challenging its fundamental building blocks.
7. The CoM refers to and repeats its urban design submissions on that issue, and reiterates that one of the key urban design outcomes for Lorimer, considered of utmost importance to the CoM in creating a sustainable and diverse community, is the need to deliver a range of building typologies. Not only does the delivery of a range of building typologies deliver choice to the community, but it provides visual interest and avoids the compounding adverse effects of the tower podium typology. An appropriate FAR is the key to achieving this urban design imperative.

STRUCTURE OF SUBMISSIONS

8. These submissions:
 - a) provide a brief response to the NRF, PPP, Hanson and Delta Group closing submissions;
 - b) respond to the proposed use of the Infrastructure Contributions Overlay (**ICO**) in the Fishermans Bend Urban Renewal Area (**FBURA**); and
 - c) attach the final form of the CoM's proposed incorporated document on ESD, and consequential changes to the CCZ schedule.

RESPONSE TO NRF CLOSING SUBMISSIONS (DOC 359)

9. The CoM has already responded to most of the NRF arguments in its various submissions. This document provides a response only to new matters and matters which require some clarification. The relevant paragraphs of the NRF submission are identified in square brackets after the subheading, with the response provided below.

The Vision [37]

10. The CoM refers to and repeats its submissions on the relevance and weight to be given to the Vision by the AC.³ While the NRF submission says the CoM shares its view about the correct interpretation of the Terms of Reference,⁴ that is not correct. The CoM agrees with the Minister that the role of the Advisory Committee is not to "look behind" or interrogate the Vision, but rather that it must have regard to that document, which is adopted government policy and to give it significant weight.⁵

The FAR [104]-[115]

11. The landowners criticize the Minister's version of the controls for not providing a definition of "dwelling floor area ratio". The CoM version of the CCZ (doc 341 attachment 4) does provide such a definition. It appears that either the NRF representatives have not read the CoM version of the controls, or have ignored them.

Applying The FAU [146] - [157]

12. At [146], the landowners take issue with using the definition of social housing in the *Housing Act 1983* on the basis that the definition in the *Planning and Environment Act 1987 (P&E Act)* should be used. The landowners may not realise that the *P&E Act* defers to the definition of social housing to the definition in the *Housing Act*.
13. The CoM agrees (and, as set out below, the Minister also appears to agree) with the landowners' submission at [152] that the Part C controls are unsatisfactory in that they do not provide policy guidance as to how much social housing is required for how much FAU, and do not restrict the provision of the social housing to the FBURA.
14. The CoM version of the CCZ schedule provides a complete solution to this issue by requiring that the s173 agreement is in accordance with the *How to Calculate Floor Area Uplift in Fishermans Bend Incorporated document* which the CoM prepared and circulated as document 320.
15. The Minister's Part C submissions stated that DELWP agrees with the use of an incorporated or reference document which sets out the relevant benefit ratio and decision making criteria. Presumably the Minister will be guided by the AC's assessment of the CoM's proposed document.

³ Document 348 at [3]-[14].

⁴ Doc 359 at [37].

⁵ Document 348 especially at [10]-[11].

16. Mr Tweedie, in oral submissions, suggested that there should be third party review of the FAU. However, section 149 of the P&E Act does not enable third party review in any event (it applies only to a 'specified person' eg landowners).
17. The CoM was opposed to a section 149 review of the FAU in so far as it concerned community infrastructure (for reasons explained in some detail in oral submissions). While the CoM indicated that section 149 review of a decision to dis-allow FAU for social housing is not so problematic, the CoM does not consider it necessary to have a section 149 review available if the exercise of discretion is confined as per its proposed incorporated document (as drafted in document 320). Nor would it be fundamentally opposed to section 149 review of the decision to (refuse to) enter into an agreement for FAU if the Advisory Committee considered that to be an important part of the FAU scheme.
18. Based upon the CoM's proposed documents, the "planning decision" as to whether to allow an FAU (based upon infrastructure implications and built form outcomes) is one that *is reviewable* as it will be part and parcel of the decision on the development application. The earlier decision (whether to enter into the section 173 agreement) just formalizes the pre-condition to the grant of the permit.
19. At [157] the landowners say there is no reason why the FAU mechanism should be restricted to social housing. The CoM has explained its reluctant position that community infrastructure should not be a FAU category simply because of the complexities associated with including that category at this time, in advance of the ICP/DCP. As to the roads, commercial and open space categories, the CoM considers that they can be delivered by other available statutory mechanisms, whereas social housing is something that can only be delivered by a FAU given the current provisions of the *Planning and Environment Act 1987*.
20. The CoM re-iterates its position that if FAU is restricted to social housing, there must be some other mechanism to provide for other categories of affordable housing other than policy "encouragement".

Reservation of Land For Public Purposes [168]-[186]

21. The landowners have been quick to condemn the Minister for abandoning the "FAR" mechanism as exhibited and instead suggesting an alternative, namely the ICO.
22. The CoM submits that the Minister should be applauded for being responsive to the submissions made about that mechanism.
23. The AC will recall that using the FAR mechanism for the acquisition of land for public purposes was one of Mr Milner's primary concerns with the amendment. The Minister's responsiveness to that issue, as to many of the submissions made by the

CoM on other topics, was appropriate and welcome. Further submissions about the ICO are made below.

Overshadowing [189]

24. The outline of closing submissions on behalf of the landowners group (13 June 2018) argues that the existing and proposed open spaces are not of a status that warrant mandatory solstice controls.⁶ They argue in favour of discretionary equinox controls.⁷
25. The CoM's submissions in support of the Minister's proposed winter solstice controls are consistent with the MCC's recent resolution seeking authorization from the Minister to prepare and exhibit Amendment C278 to the Melbourne Planning Scheme. The CoM reiterate the importance of protecting the amenity of public parks to ensure the future liveability of the city. Particularly in areas anticipated to have higher density and higher populations, the importance of these parks to the well-being of citizens becomes critical.
26. Amendment C278 proposes to implement the findings of the *Sunlight Access to Open Spaces Modelling Analysis Report, February 2018* and introduce new sunlight protection provisions into the Planning Scheme by:⁸
 - a) Amending Clause 22.02 Sunlight to Public Spaces. The proposed policy reflects a shift to maximising winter sunlight access to all public parks across the municipality.
 - b) Introducing a new Schedule to the Design and Development Overlay (DDO8). The proposed DDO8 nominates levels of sunlight protection for all public parks across the municipality (excluding Hoddle Grid and Southbank).
 - c) Introducing a new municipal wide Design and Development Overlay Planning Scheme Map (excluding the Hoddle Grid and Southbank) identifying the park controls.
27. The DDO8 is drafted as a mandatory control, providing winter sun protection.
28. Further the CoM reminds the AC of the evidence of Mr Sheppard under cross examination regarding the potential adverse shadow consequences that can arise

⁶ At [190]

⁷ At [192]

⁸ Further information about the amendment can be found at <http://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/MeetingAgendaItemAttachments/815/14586/MAY18%20FMC2%20AGENDA%20ITEM%206.3%20R.pdf>

as a result of the cumulative effect of individual decisions under discretionary controls. If the AC is minded to entertain the landowners' submissions that the overshadowing controls have a discretionary element, the provisions would need to be carefully drafted to ensure that the exceptions were true exceptions, and assessed in the context of cumulative impact.

Tracked Changes Controls [Documents 368 (CCZ), 369 (LPPF) and 370a (DDO)]

29. The landowners propose to remove reference to the Fishermans Bend Framework from the controls on the basis that the draft Framework "bears no resemblance" to the amendment. The AC will recall Mr Milner's evidence that the Framework is a useful document to have regard to in understanding and giving context to the proposed planning controls. That is particularly the case for Lorimer, given that the Melbourne Planning Scheme will only deal with one precinct within the broader FBURA. The CoM has proposed amendments to the draft Framework (document 341 attachment 1) such that it is consistent with the CoM's version of the controls. It would not be a difficult task to update it to reflect the final adopted version.

LPPF

30. The CoM agrees with the observation of Ms Carlisle that the NRF LPPF has had many of the metrics removed from the policy. The CoM submits that removing the metrics is inappropriate.⁹
31. Given the importance of Fishermans Bend to the future of the city's growth and prosperity, the controls and policies need to adopt strong targets and high standards, as set out in the Fishermans Bend Framework.
32. The CoM reminds the AC of a case it tendered on the topic of whether the LPPF should specify a minimum percentage of dwellings in larger developments to have 3 or more bedrooms, namely *Caydon Cremorne No.1 Development Pty Ltd v Yarra CC (Red Dot)* [2016] VCAT 423 (18 March 2016) (document 132). In that case, the Tribunal stated:

90. The council and the objectors submit that there is an unacceptable concentration of one bedroom apartments and that planning scheme policies aimed at facilitating a diversity of housing options is not achieved by this proposal.

91. We share those concerns. In a large development in excess of 260 apartments a concentration of 80% of single bedroom apartments is not consistent with policy outcomes encouraging housing diversity. The applicant's evidence in support of the high proportion of single bedroom apartments is that it reflects the applicant's assessment of market demand.

⁹ While the CoM version of the LPPF policy also removes many of the metrics – it relocated them to the CCZ rather than removing them from the amendment altogether.

Increasing the proportion of 2 and 3 bedroom apartments also impacts on affordability issues.

92. We find this evidence unsatisfactory because while market preference and affordability issues are relevant and important issues, so too is planning policy that encourages diversity of housing options in developments of this type and scale. We do not accept the proposition that larger apartments can or will be provided in future stages.

93. The Design Guidelines for Higher Density Residential Development contains an Element relating to Dwelling Diversity. Objective 5.1 is to provide a range of dwellings sizes and types in higher density residential developments. Design suggestion 5.1.1 calls for a mix of dwelling types particularly in larger residential developments (e.g. to suit single people, family groups of varying sizes, students, the elderly, people of limited mobility and people of low to moderate incomes).

94. *The objective is worthy but not especially helpful in terms of providing specific guidance about what might constitute an acceptable distribution of dwelling types and sizes. The difficulty confronting us therefore is the lack of specificity in planning schemes about what constitutes an appropriate distribution of apartment sizes.*

33. That Tribunal decision is a good example of how a lack of specific metrics makes it very difficult for future decision makers to implement a general policy.
34. The AC asked Mr Tweedie why at LPP-3 p 35 the reference to "precinct character" had been removed. The Minister's Part C version of the controls do actually remove the statement of future character from the MSS and put it into the building typologies table of the DDO. The CoM version retains the statement of preferred character in the MSS.
35. The CoM is strongly of the view that there should be a statement of preferred character in the MSS. It should guide the exercise of discretion under both the CCZ and the DDO.
36. If the Minister's version is to be preferred, then the table in the DDO will need to be renamed from "building typology" to "building typologies and preferred character" and the local policy reference will need to be updated.

CCZ Schedule

37. The CoM opposes the NRF changes to the CCZ schedule for reasons previously explained.
38. On the specific wording, the CoM opposes the proposed change from "generally in accordance with" to "have regard to". Firstly, it makes no grammatical sense for a subdivision, use or buildings and works to "have regard to" the maps. Secondly, it is entirely unclear what is meant by that phrase in circumstances where the usual parlance is "generally in accordance with". The fact that the landowners have not

removed the "requirement" altogether is testament to the fact that the requirement is necessary to give effect to the urban structure shown in the maps.

DDO schedule

39. CoM opposes the NRF proposed changes to the DDO schedule for Lorimer (except to say that it does not comment on the changes to the wind conditions, not having been present for the wind evidence).
40. CoM also notes Mr Sheppard's oral concession that the 60m street wall height on corners of streets greater than 30m should not apply given the significant number of such corners in Lorimer.
41. The CoM agrees with Mr Tweedie's oral submissions that the way the "building typologies" table is worded needs revision. CoM has put forward an alternative form of words that addresses the concerns raised by Mr Tweedie on that issue.

RESPONSE TO PPP CLOSING SUBMISSIONS (DOC 362)

42. Mr Wren stated:

Mr. Milner presented a "response slide" in his presentation to this Review Panel. That slide recommended as follows:-

- Review in the light of the merits of submissions and evidence.
- Put together the "complete" package:
 - Structure plans;
 - Infrastructure;
 - Cost/timing;
 - Funding mechanisms;
 - Governance;
 - Re-draft the suite of planning provisions;
 - Exhibit and independently review;
 - Recommend a complete package."

23. In response to the question from Ms. Mitchell as to what the Panel should do following the completion of his evidence, Mr. Milner recommended that the Panel issue an interim report identifying what further work needed to be done and possibly to also suggest some sort of holding position pending the completion of that work.

24. The landowners' submission as part of its conclusion attaches a suggested revision of the Part C controls that could be included as such as stop gap.

43. The CoM (and, it seems, the Minister) agree with Mr Milner that Amendment CG81 should be seen as the next step, and not the final step, in the complete package of planning controls for Fishermans Bend.

44. As the Minister said in its Part A submission (doc 49b):¹⁰

This Amendment is a critical building block in the strategic planning for the Fishermans Bend Urban Renewal Area (Fishermans Bend). It represents the first implementation phase of the draft Fishermans Bend Framework 2017 (draft Framework) which provides long-term guidance on development of Fishermans Bend until 2050.

45. The Minister has committed to undertaking the precinct plans and the ICP, producing a funding and finance package and producing a governance framework.
46. The CoM supports and welcomes the Minister's commitments in that regard. CoM will work collaboratively with Government to expedite and enable these to occur.
47. Despite Mr Wren's assertion to the contrary, the tracked changes version of the controls proposed by the NRF landowners are the antithesis of the "holding position" contemplated by Mr Milner.
48. Mr Milner was critical of the premature rezoning of land without appropriate value capture and infrastructure provision. As he stated at [15] of his evidence:
- The challenge was so much more than enabling major high density / high rise residential redevelopments of variously assembled land parcels.
49. Using the NRF version of the controls would simply repeat the problems of the past - namely putting in place an interim framework that does not appropriately temper development¹¹ nor provide for infrastructure provision nor protect the future urban structure of Fishermans Bend.
50. If there was to be a "holding position", it would have to be one which did not allow development to proceed that had the potential to undermine the future urban structure, character and (importantly) infrastructure provision in the FBURA, in a manner similar to the way in which Part A of the urban growth zone operates to prevent use and development of land that would prejudice the "logical, efficient and orderly future urban development of the land, including the development of roads, public transport and other infrastructure".
51. The other option Mr Milner put forward was to treat Amendment CG81 as the "first step" in the "reset" button, with the other parts of the package to quickly follow.¹²

¹⁰ Doc 49B p4 at [1].

¹¹ See Mr Milner's evidence at [18]

¹² Mr Milner at [36].

RESPONSE TO HANSON [Doc 364]

52. Hanson's argument that there should be exemptions from infrastructure contributions for upgrades of existing uses is something that can, and should, be dealt with through a future ICP, discussed below.
53. Mr Kane asked for the Hanson land to be exempt from the DDO and suggested that the street wall height provisions were inconsistent with their proposed development concepts. The street wall height provisions of the DDO are preferred maximum heights in the CoM version of the DDO, and hence would not prevent the upgrade of the Hanson site as contemplated.
54. Mr Kane also suggested that not only Mr Barnes, but Mr Negri and Mr Milner supported third party review rights for the concrete batching plants. It was not Mr Negri's evidence that concrete batching plants 'should be given a voice'.¹³ Mr Milner raised a broader concern about disruption to existing uses during the transition phase, especially in relation to the proposal to use the FAR to deliver streets and potentially create access issues for existing businesses. He noted that the concern would not be as great if structure plans and infrastructure delivery plans had been produced as part of the package.
55. CoM does not consider that third party notice is required, but certainly supports Mr Milner's recommendation that there be a transition plan prepared, and appropriate governance arrangements in place to manage issues like access.

THE ICO

56. The CoM supports the proposal to apply the ICO to the FBURA for the purposes of:
- a) levying monetary contributions for infrastructure; and
 - b) requiring landowners to contribute land pursuant to the powers to be conferred by the *Planning and Environment Amendment (Public Land Contributions) Bill 2017 (PLC Provisions)*.
57. The CoM agrees with the Minister's submissions¹⁴ that that use of the ICO utilizing the land contributions mechanism available as a result of the PLC Provisions is lawful, fair, appropriate and timely. The PLC Provisions provide:
- a) a clear statutory basis for the acquisition of land required for urban renewal;

¹³ Paras 64-65 of Mr Negri evidence

¹⁴ Part C Submissions, document 350.

- b) a statutory equalisation scheme;
 - c) a dispute resolution mechanism in relation to land valuations; and
 - d) 'machinery' provisions designed to ensure accountability and transparency.
58. The use of the ICO will be an important tool in the Minister's funding and finance plan for the FBURA, which is under development.¹⁵ The CoM notes the Minister's commitment to producing a DCP/ICP for the FBURA within the next 12-18 months.¹⁶
59. The CoM expects that the ICO will need to go through a further public process before being introduced into the scheme. The CoM always contemplated that there would be a further public process to introduce the ICP/DCP and the precinct plans into the scheme. As set out in the MCC Opening Submissions:¹⁷

17. While the CoM's preference would have been for the funding and finance strategy, the precinct structure plans and the DCP or ICP to have been exhibited and considered with this proposed amendment, so that the controls could have been introduced as a total package, the CoM expects that a future DCP/ICP and precinct structure plans will need to be considered by a further public process.

18. Further, the CoM is critically concerned about the interim situation if the introduction of the new proposed controls are substantially delayed without a suitable set of further interim controls being introduced. It is concerned not only about prejudicing the delivery of key infrastructure required by the Framework, but about irreparably prejudicing the overall urban design and sustainability outcomes sought for the precinct.

19. In those circumstances, the CoM agrees with the Minister that the amendment should be introduced as the "first implementation phase" of the draft Fishermans Bend Framework 2017.

20. Further amendments will be required to:

- a) incorporate a DCP or ICP;
- b) introduce an appropriate governance framework;
- c) incorporate the precinct plans;
- d) increase the public open space contribution requirement; and
- e) either introduce a PAO on, finalise purchase on the open market or serve a notice of intention to acquire on those parts of the land required to deliver the tram network and the parcels of land publicly identified on 16 March 2018 as needing to be acquired to deliver the open space needed for the Vision to be realized.

¹⁵ Document 151, Supplementary Submissions to Minister's Part B Submissions at [49].

¹⁶ Document 151, Supplementary Submissions to Minister's Part B Submissions at [48].

¹⁷ Document 120 at [17]-[20].

60. In assessing proposed Amendment GC81, the AC is entitled to ask itself whether it is sufficiently comfortable that the infrastructure shown in the CCZ schedule maps (including the open space) is appropriate and deliverable.
61. In other words, the AC is able to comment and make recommendations in broad terms as to whether Amendment CG81 is an appropriate planning scheme amendment – even absent the original ‘clause 4’ mechanism for the acquisition of open space - if coupled with a future infrastructure contributions scheme or some alternative such as an increase in the open space levy coupled with a DCP and PAO.
62. The AC is also able to make recommendations as to whether any changes ought to be made to the amendment to deal with the hiatus between the introduction of a scheme to fund the infrastructure and the adoption of the Amendment which requires that permit applications be generally in accordance with the plans proposed to be part of the CCZ schedules.
63. The AC does not, however, need to make recommendations on the appropriateness of the ICO.
64. Nevertheless, the CoM notes for the record its general agreement with the Minister in the face of adverse submissions from the landowners on the ICO.

Response to the Delta Group [Doc 326]

65. The CoM agrees with the Minister’s response to the preliminary submissions by the Delta Group (document 326), as follows.
66. The PLC provisions are intended to apply not only to greenfields growth areas, but also to strategic redevelopment areas.¹⁸
67. The ICO mechanism is not properly characterized as a ‘value capture’ mechanism.¹⁹ The ICO, as with the DCPO, can be applied even where land is not proposed for rezoning.
68. The ‘equalisation’ scheme contemplated by the legislation requires the public purpose land to be valued on a site-specific basis.²⁰ The Ministerial guidelines will set out the method for valuing the land. It is entirely premature and speculative to make an argument that the valuation methodology is or may be unfair when the guidelines have not even been published.

¹⁸ At [101]-[104]

¹⁹ At [106]-[112]

²⁰ At [114]

69. The CoM agrees with the Minister that Review Panel Ministerial Advisory Committee process has provided a fair opportunity for all parties to have a say on the areas proposed for public open space within the 4 precincts.²¹ At least so far as Lorimer is concerned, there was little dispute in relation to the amount of land that was proposed to be set aside for open space, or the location of that land. The CoM had the opportunity to work through Ms Thomson's recommendations and ultimately agreed with the Minister's final position on both the quantum and location of open space within Lorimer. The Panel will, presumably, adjudicate on the two issues that were raised by landowners in Lorimer in relation to the quantum and location of the open space, namely:
- a) whether Lorimer Central is an appropriate location for open space noting the submissions made about the proximity of the concrete batching plants and Mr Sheppard's suggestion that it could be 'opened up' to the north; and
 - b) the suitability of locating a park on the land to the immediate east of 111 Lorimer St (noting that the FAR can still be achieved on that site).²²
70. Section 172D of the Act allows land to be acquired in advance of the development of the land, thus facilitating the early delivery of infrastructure. The preliminary submissions of Mr Morris identify a concern that landowners, not wishing to develop and instead wanting to remain in occupation, could have their land taken without compensation (section 172G). This issue arises as a direct consequence of the PLC Provisions. It is not an issue specific to the FBURA. The circumstances which are contemplated by section 172D may never eventuate in the FBURA. That is, the Minister may decide not to acquire land where landowners wish to remain in occupation. So the concern is a hypothetical one and one which arises from the drafting of the legislation. It is not a legitimate reason to recommend against the use of the ICO.
71. Clause 45.11-6 enables certain classes of land or development to be exempt from infrastructure contributions. That provision is a useful one in the context of existing uses in the FBURA and should be applied to ensure that uses such as the Hanson and Barro uses are not required to make a land contribution where they want to simply upgrade their existing plants.

Next Steps

²¹ At [122]. Note, however, that the CoM understands that land will also need to be acquired within the employment precinct to service the needs of the urban renewal precincts.

²² Costa Fox submission para [25] and [42].

72. The 'steps required to implement an ICP for Fishermans Bend'²³ identified by the Minister include:
- a) the application of the ICO to all contribution land;
 - b) amendments to the *Ministerial Direction on the Preparation and Contents of Infrastructure Contributions Plans*²⁴ (**Ministerial Direction**) specifying:
 - i) a standard levy for the contribution land in the FBURA;
 - ii) the method for valuing land within the plan area; and
 - c) the incorporation of an ICP including, among other things, the infrastructure to be provided and funded through the ICP.
73. The CoM understands that the following issues are yet to be resolved:
- a) whether the amendments to the Ministerial Direction will include all urban renewal areas or be specific to the FBURA;
 - b) whether the levy will be applied on a per dwelling or a land area basis, and how residential, commercial and mixed use developments will be treated;
 - c) whether both inner public purpose land and outer public purpose land will be included in the ICP (noting that it was Ms Thomson's evidence that land in the employment area would also be required to service the areas zoned for capital city purposes, including Lorimer)²⁵;
 - d) whether there will be a standard levy only or both a standard and a supplementary levy;
 - e) whether the ICO will be gazetted at the same time as Amendment CG81;
 - f) if an ICO is gazetted in advance of an ICP being incorporated, whether there will be any "scheduling out" of land or development applications through an "interim arrangement" (ie section 173 agreement) in similar terms to the current exemptions in the DCPO (noting that the same wording is used in the head clause); and
 - g) whether the amendment to introduce the ICO and the ICP respectively will be through a section 20A or 20(4) amendment or through an exhibited planning scheme amendment.

²³ Minister's submissions on the ICP (document 308)

²⁴ Document 309b

²⁵ See eg Ms Thompson's expert evidence at p 17.

74. The CoM notes that resolution of these issues is beyond the scope of the AC's Terms of Reference.
75. The CoM notes for the record (but does not seek a formal recommendation from the AC) that it is supportive of the Ministerial Direction being amended to include a standard levy for all urban renewal areas. The CoM is awaiting the finalization of the standard levy so that the ICP or ICO can be applied to the Macaulay Urban Renewal Area. This should be progressed as a matter of urgency.
76. Even if progressed urgently, it will presumably take some time for the amendments to the *Ministerial Direction on the Preparation and Contents of Infrastructure Contributions Plans* to be prepared. Accordingly, the CoM expects there to be a lag time between gazettal of Amendment CG81 (with or without an ICO) and incorporation of the ICP, even if incorporation of the ICP is done through a section 20A amendment.²⁶
77. If the ICO is gazetted at the same time as Amendment GC81, with the ICP to follow, the effect of that would be to prevent development in the FBURA prior to an ICP being incorporated, unless there was an interim arrangement in terms similar to the current DCPO. Preventing further development in the FBURA until such time as the ICP was incorporated would avoid the risk of development applications being made to 'trigger' the compensation provisions of the Act in the interim.
78. If the ICO is not introduced at the same time as proposed Amendment CG81 (or if it is introduced but there is an 'interim arrangement'), then the Minister must be a determining referral authority to reduce risk of liability of Council. **The CoM seeks that recommendation from this AC.**
79. If an 'interim arrangement' is to be used, then the levy ought to be lifted above the current \$15,900, as per the CoM's previous submissions on that topic. There are presumably more recent costings done by the DELWP, which should be used as a basis for the revised interim amount. **The CoM also seeks that recommendation from this AC.**
80. The Minister's submissions imply that the Minister is likely to adopt a standard levy in the short term, so as to enable the land transfer provisions to operate, and to

²⁶ Doc 309 attachment 1 *Overview of the Infrastructure Contributions Plans System* states that an ICP that proposes to impose a standard levy will be dealt with under section 20A provided that certain pre-requisites are met.

apply a supplementary levy later on “in order to deliver the required infrastructure for the FBURA”.²⁷

81. The CoM considers it essential that a supplementary levy is set for the FBURA. An ICP introducing a supplementary levy is likely to require a further public process. CoM recommends that the work necessary to implement a supplementary levy be expedited. The CoM notes, and welcomes, the Minister’s previous commitments to produce an ICP for FBURA within 12-18 months. The CoM would welcome the opportunity to be consulted on items proposed to be included in the ICP.

ESD

82. In closing submissions, the CoM submitted a draft incorporated document. The CoM requested to opportunity to refine the wording of the document with input from its ESD expert, The CoM also noted that it would respond to the issue raised by Ms Carlisle, namely whether there ought to be exemptions for alterations and additions in respect of existing uses.
83. The CoM has now finalized this document, and proposes that there be a change to the CCZ schedule and to the incorporated document. The effect of the change is to exempt both existing uses (pre CG81) and additions less than 50sqm from the third pipe requirements, and to exempt additions less than 50sqm from the ESD conditions. The changes are generally in accordance with Mr Williamson’s evidence and are consistent with the CoPP policy cl 22.13. (Attachments 1 and 2)

CONCLUSION

84. The CoM re-iterates paragraph 2 of its original endorsed submission:

Fishermans Bend represents a significant opportunity for the growth of Melbourne. As Australia’s largest urban renewal site and proposed Green Star Community, it will set the direction and benchmark for other renewal areas across the city for years to come. It is therefore critical that the Framework sets high aspirations and delivers against its vision, not just for the future prosperity and sustainability of Fishermans Bend but for Melbourne.

85. The original rezoning under the previous Government put this area on the back foot. The efforts of this Government to provide a more certain and clear framework as well as deliver the required parts of a good city are laudable.

²⁷ Doc 308 Submissions of the Minister in relation to Infrastructure Contributions Plan (Public Land Contributions) at [33]-[34].

86. The CoM acknowledges the extensive work of the public agencies, the Taskforce, DELWP, City of Port Phillip and City of Melbourne officers in working to ensure that the quality and amenity of this area provides its future citizens and workers with a great place to live and work and a place that will continue to attract investment over time.
87. The CoM acknowledges the Minister's responsiveness to issues raised and his openness to continue working through the issues through precinct planning, funding and financing and governance arrangements.
88. The CoM wishes the AC well in their deliberations.

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