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DX 259 Melbourne

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**Proposed Amendment GC81 to the  
Port Phillip Planning Scheme  
Fishermans Bend**

**Closing day submission on behalf of the City of Port Phillip**



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# Introduction

## Overview

1. These are the closing submissions on behalf of the City of Port Phillip (**Council**). They respond to key issues and general matters which have arisen during the hearing.
2. Council takes this opportunity to reiterate its priority strategic outcomes as set out in its December 2017 submission, and importantly, to emphasise the need for robust and effective planning controls that provide certainty and enhance the ability to deliver on the Fishermans Bend Vision.
3. Over the course of this hearing, Council has made various submissions including:
  - stage 1 submissions including evidence on infrastructure planning, drainage, affordable housing and accompanied by technical advice on car share;
  - stage 2 submissions including evidence on urban design and sustainability and accompanied by the Overarching Urban Design Report;
  - opening submission for each precinct (3) accompanied by the precinct specific urban design reports; and
  - closing submission for each precinct.
4. We note that the Minister has also prepared several submissions and Supplementary Information Notes, and provided amended planning scheme documents throughout in relation to matters raised by submitters and the Review Panel.
5. Accepting that the implementation of planning provisions for Fishermans Bend will require an on-going process given its extensive delivery timeframe of 30+ years, Council welcomes the Minister's commitment to expanding the scope of precinct planning.
6. We submit that this recognises that the precinct planning process provides the opportunity to further resolve detailed spatial planning matters as highlighted in Council's endorsed submission and explained in the urban design reports presented in Council's precinct submissions to the Panel. Ultimately, it is the Minister's acceptance of this that has enabled Council to support deferring the resolution of many of the matters contained within those reports until that time. That said, Council is extremely keen to get on with the task of continuing to work collaboratively with Government and all stakeholders on this process following the finalisation of Amendment GC81.

7. With regard to the urban design reports, Council reiterates that while 3 of these were prepared on a precinct basis, they are not intended to be *the* precinct plans. Rather, these reports were prepared to explain the two 3D models that Council officers prepared to test Amendment GC81 and Council's endorsed spatial changes from its December Endorsed Submission to this process.
  
8. This overall closing submission will set out:
  - aspects of Amendment GC81 as currently proposed by the Minister that align with Council's position (including where greater alignment has occurred through the course of this hearing);
  - changes to Amendment GC81 that are still sought by Council; and
  - detailed changes to Amendment GC81 that Council recommends, but that it considers can be deferred to, and resolved through further detailed precinct planning.
  
9. The overarching messages that Council wishes to convey to the Review Panel through these closing submissions are that:
  - the September 2016 Vision (the **Vision**) for Fishermans Bend has been endorsed by Council and Council considers that the draft Framework and Amendment GC81 go a long way to giving effect to that Vision;
  - refinements to Amendment GC81 proposed by the Minister throughout the course of this hearing further align the proposed controls with the outcomes sought by the Vision;
  - finalising and embedding the 'recast' Fishermans Bend Framework and a new set of supporting planning controls into the Planning Scheme at the earliest possible time is crucial to giving effect to the Vision and ultimately, to setting Fishermans Bend up for success; and
  - the existing planning controls do not give effect to the Vision and will in fact compromise its achievement.

## Restating the need

10. The First Ministerial Advisory Committee (the **First MAC**) was set the task of advising the Minister on a path forward to 'recast' the strategic planning for the area.
  
11. In October 2015, after being requested by the Minister to provide recommendations, the First MAC made the following observation:

‘Unfortunately, the current planning and implementation arrangements for the Area are flawed and if continued, would result in poor urban outcomes for new residents and workers, existing residents and works local businesses, the Port of Melbourne and both local and State Government.’

12. The First MAC provided a coherent plan for moving forward with the planning of Fishermans Bend and it is important to keep in mind that this was the genesis for where we are today.
13. In this context, the landowner’s submissions that the Review Panel should recommend that the process be abandoned is simply untenable and should be rejected outright.
14. We reiterate our Stage 1 and Stage 2 submissions that the role of this Review Panel is not to start again. It is to take the baton that was passed onto it and move **forward** with it.
15. Council’s Stage 2 submission and the accompanying Overarching Urban Design Report explained and diagrammatically illustrated the key changes that Council seeks to the various plans that form part of the Framework, some of which are also embodied within the planning controls.
16. This submission focuses on some of the key issues that Council considers must be resolved for Amendment GC81 to give effect to the Vision.
17. Throughout this hearing, Council has sought to offer a constructive, balanced and pragmatic view about what changes should be made. Our position in this Review Panel has not been static. We have been content to give ground when we have considered that a response to our proposals represents a reasonable compromise. In this regard, there is a common thread, amongst the government parties at least, which seeks to find an appropriate solution to the issues that have been identified. This is to be compared to the by and large negative stance of the landowners even in the context of their main experts agreeing to many aspects of Amendment GC81.
18. In view of the submissions made concerning the Vision, we reiterate our submissions that the Vision is simply not before this Review Panel. The Terms of Reference make it abundantly clear that the purpose of this process is for the Review Panel to provide advice on the *extent to which the Amendment GC81 gives effect to the Vision* not how the Vision should be changed.

## **The basis for Council's views**

19. Council has directed significant resources to informing itself on the appropriate way forward for the Framework and Amendment GC81.
20. In addition to the development of two complete 3D models and the subsequent urban design reports that explained them, Council engaged a range of experts over the past 12 months to inform its views on a range of matters. These are reiterated below.
21. Council commissioned three substantial studies to inform its views on:
  - the impact of the early delivery of the tram network (Price Waterhouse Coopers, 2017) (document # 86);
  - options for a more design-led, sustainable and public realm driven drainage solution (Ramboll, 2017) (document # 76a & 76b); and
  - the feasibility and likely costs of certain infrastructure (Mesh Planning, Charter Keck Cramer & Cossill Webley Consulting Engineers, 2017) (document #78b).
22. Council sought expert advice from five experts specifically in relation to Amendment GC81:
  - Infrastructure planning and funding: Mr Paul Shipp, Director – Urban Enterprise;
  - Social and affordable housing: Dr Marcus Spiller, Director – SGS Economics and Planning;
  - Integrated water management: Mr Tom Patterson, Senior Engineer – Ramboll Environ (called jointly with the City of Melbourne);
  - Environmentally sustainable design: Mr Euon Williamson, Director – Creative Environment Enterprises (called jointly with the City of Melbourne); and
  - Urban design: Mr Simon McPherson, Director – Global South.
23. Based on all of the above, Council submits that the views it has expressed in both its endorsed submission and in the material it has presented to the Review Panel (including the revised planning controls it tabled at the drafting day yesterday) have been founded on thorough research and analysis, are informed by an acute understanding of the issues and are pragmatic in their application.

24. Regarding the controls that Council proposed as part of the drafting day, Council would like to point out that while many changes are proposed, Council has sought to:
- give effect to its endorsed submission by providing constructive solutions to issues it has raised;
  - work as far as possible to give effect to the above within the confines of the vMinister’s Part C version of the controls; and
  - propose changes which aim to make the controls clearer.

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## Matters of alignment with the Minister

### Transitional provisions

25. Landowners and developers have argued for transitional provisions once Amendment GC81 proceeds. The suggested transitional provisions have been put to the Review Panel in various forms (Mr Canavan QC, Mr Morris QC, Mr Tweedie SC, Mr Finanzio SC, Ms Collingwood and probably others).
26. The rationale for these requests and the intent behind them has been relatively universal in arguing for self-interest over net community benefit though, so Council proposes to respond to them collectively.
27. Curiously, even expert witnesses jumped onto the bandwagon and made submissions in their expert evidence that transitional provisions should be included. They did so notwithstanding that clearly the issue is not one that calls for an expert *opinion* but rather a submission. The making of submissions by experts detracts from their requirement to be impartial and we submit this affects the weight that should be given to their evidence.
28. For instance, we recall and recount to the Review Panel Mr Song’s evidence where he conceded that although he was aware of applications he had not analysed the overall impact of them. In his Sandridge evidence, on the issue of transitional provisions, Mr Song posed the question “if you do not use transitional provisions here then where do you use them?”
29. In reply, we suggest that you **only** use transitional provisions where their use does not defeat the purpose of the change that is being introducing.
30. Transitional provisions are not an accepted practice across the board.
31. Transitional provisions have been used in the process of putting in place broad changes that are to apply across the board such as was the case with the new residential zones (as pointed out by Mr Morris QC).



## Funding for other public land

38. The implication of the Minister's proposed change to CCZ1 by the deletion of clauses 3 and 4 is that the delivery of public open space will need to be facilitated by a different mechanism.
39. While we note the Minister's indications that the ICP will be explored as the tool to provide for this, this is not a matter that forms part of Amendment GC81 and will have to be progressed via another planning scheme amendment in the future.
40. Independently of this Review Panel, we will be seeking that the Minister enters into discussions with Council to establish a shared position around how infrastructure levies (including those that are currently being collected) are to be used and distributed.
41. As per Council's endorsed submission, this would need to:
- consider the list of projects to be included in a future ICP; and
  - establish a process to ensure that projects are the subject of conceptual design investigations that can inform robust cost estimates (such as what is included in the Mesh Report).
42. Principles that would need to underpin any role expected of Council in a future ICP (or any other funding and financing arrangement) were also included in Council's endorsed submission. These include the following:
- Funds for State infrastructure should explore the use of a range of revenue streams including Land Tax, Stamp Duty, and other levies.
  - Arrangements must be affordable and sustainable for Council, and fair from an inter-generational equity and user pays perspective. This includes recognising that Council's rate revenue must be directed to maintenance and service delivery rather than delivery of new infrastructure to support development.
  - Financing arrangements must create the necessary 'cash-flow' to deliver catalyst / early infrastructure and projects.

## Floor Area Uplift

43. Initially the FAU was proposing to be used to deliver Social Housing as well as public open space and community hubs. The Minister's proposed refinement of the FAU, so that the only Public Benefit is Social Housing will encourage the greater take up of this crucial public benefit while also responding to Council's concern about the implication of the broader FAU scheme on the overall population that could result. Council supports this change.
44. Council also supports the Minister's proposal to ensure that the councils are a required signatory to section 173 agreements that provide for FAU proposals.
45. We also agree entirely with the requirement that section 173 agreements are a pre-requisite to permitting extra floor area. The submission made by landowners that the FAU ought to be reviewable at the VCAT is not supported. The provision of Social Housing requires complex arrangements with registered housing providers. There is likely to be a list of criteria that are established by those housing agencies to the increasing provision of Social Housing that must be worked through. This can only be done in the context of a truly negotiated outcome, and not an imposed one.

## Mandatory controls

46. Council supports the Minister's proposed application of mandatory controls to overshadowing, setbacks / separation distances and the interface with existing residential communities. This is a sensible and balanced approach in the context of the enormous development pressures that the Fishermans Bend is likely to encounter over coming years and decades.
47. We are content to adopt the Minister's Stage 1 submissions which unlike any other submission or expert evidence, presented a comprehensive analysis of *Practice Note 59* and the principles to be adopted in relation to the use of mandatory controls.
48. In coming to this conclusion, Council is cognisant of the First MAC's conclusion on the adequacy of what it considered 'light handed' planning guidelines' (refer to page 4 of their first report to the Minister in October 2015).
49. Throughout the hearing we have cross-examined each witness which has been critical of the use of mandatory controls to understand the basis of their opinion. We are comfortable in submitting that none of them has done a proper analysis of *Practice Note 59* to inform their views. Consequently, we submit that the Review Panel should give little weight to the various opinions which opposed the use of mandatory elements in the planning provisions. Expert witnesses are not beyond the basic rules of evidence and in that regard, no expert witness is entitled to give an unsupported opinion let alone one based on a predisposition to one methodology over another.

**Other matters**

50. Throughout the hearing, the Minister has altered his position on a range of matters, to either agree with solutions proposed in Council's endorsed submission, or has offered an alternative way to deal with the issue. Not including the matters already discussed in this submission, the relevant changes proposed by the Minister are summarised below and are supported by Council:

- Amend the local policy to encourage increased provision of 3-bedroom dwellings to apply to proposals of over 100 dwellings instead of 300.
- Amend CCZ1 so that the minimum commercial floor areas must be delivered to access the full FAR in Core Areas.
- Amend the provisions to include a future urban structure plan for each precinct that collates the key proposed land use and infrastructure outcomes and requires that all development be generally in accordance with these plans.
- Agree to further investigate activity centre planning as part of the precinct planning process.
- Amend the relevant maps to make Bertie Street a Primary Active Frontage street.
- Amend the maps to remove the Secondary Active Frontage designation from Woodruff Street, Boundary Street and Johnson Street.
- Strengthen the policies related to diverse building typologies by relocating them from the MSS to the DDO.
- Apply a separate DDO schedule for each precinct.
- Amend CCZ1 to make requirements for 3rd pipe plumbing and water tanks with minimum collection and storage volumes mandatory.
- Amend the local policy to encourage alternatives to raised floor levels (to manage flooding) to facilitate activated, safe and vibrant streets.
- Relocate requirements relating to 'sleeving' of car parking areas and creation of adaptable car parking areas from the Parking Overlay to the DDO.
- Amend the relevant maps of controls to add a new street parallel to the south of Fennell Street between Bridge Street and Boundary Street.

- Amend relevant maps to reorient laneways to run predominately perpendicular to Fennell Street and Plummer Street, include them in the Capital City Zone and require developers to deliver them generally in accordance with the locations shown, at their cost.

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## The Vision

51. In our Stage 1 submission we referred the Review Panel to the Panel Report for the Epping North Growth Area and identified a principle established by that planning panel. The principle was that it is government that has the role of establishing a vision for an area. Once established, the role of planners is to then to deal with the planning provisions which give effect to it.
52. Despite it being a very different development context, the same principle applies for Fishermans Bend. The Vision has been set by government following an intensive round of community consultation.
53. One of the key issues that has emerged through the course of this hearing is whether the Vision for Fishermans Bend is a matter which up for consideration by this Review Panel. We have been emphatic in our view that it is not.
54. The Terms of Reference (**TOR**) note that at the core of its purpose, the Review Panel was:
- ...appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to report on the proposed Planning Scheme Amendment GC81 for Fishermans Bend, to ensure the Vision for Fishermans Bend is realised.
55. Paragraph 27 of the TOR states that:
- The Review Panel may inform itself in anyway it sees fit, but must consider:
- The extent to which the proposed changes to the Capital City Zone Schedule...allows for the *Fishermans Bend Vision, September 2016* to be achieved; and
  - The extent to which all other proposed changes sought by GC81 allows for the *Fishermans Bend Vision, September 2016* to be achieved.
56. The task of the Review Panel is, therefore, a clear and direct one. This does not, with respect, include questioning or opening the Vision for debate.
57. The Vision is a Government endorsed (and Council endorsed) document that has provided parameters for the Framework and the planning provisions.

58. The Vision is a document that communicates its plan and ambition by three means:
- by the text;
  - by the diagrams and conceptual drawings; and
  - by the orders of magnitude of population and workforce (numerically)
59. The process involved in arriving at the Vision is explained in one of the background documents. It is simply not open for the Review Panel to substitute its own views over those that have been established through a separate and thorough process.
60. The landowners and development interests supported by many of their experts have sought to reject and indeed undermine the years of consultation and iterations which led to the Vision being finalised and adopted in September 2016.
61. Mr Biasci, for example, questioned the Vision and the matters which fall out of the Vision. For instance, he does not agree with the outcome of the Vision for Wirraway to become a mid-rise scaled precinct.
62. We submit that should make it relatively easy for the Review Panel to reject much of Mr Biasci's assessment. It is premised upon an incorrect starting position. It is misguided. The opinions which are based on such a frame are therefore tarnished with the same misconception.
63. Mr Shimmin sought to persuade the Review Panel to adopt **his** variation of *Victoria In Future (VIF)* to come up with an expected population at 2051 (that is greater than *Plan Melbourne*) which he then says has implications for what is proposed at Fishermans Bend. His variation proposes an adjustment to population levels of Central Melbourne of either 10% or 15% through to 2051. He then considers what the implications of *that* should be for Fishermans Bend. He says this is conservative because over the past few years, Central Melbourne achieves a share of 13% therefore, he says, the (VIF) modelled share is less than what has transpired over the last few years.
64. In response to Mr Shimmin's evidence, we submit that what may have transpired for the last few years in the context of a housing boom and a new set of policies to promote living in the central city does not mean that that will continue through to 2051. VIF is a sophisticated tool that considers policy, as well as trends in forming its estimates.
65. It is not surprising that VIF has been exceeded by ERP in the last 5 or 8 years. Records have been broken by the extent of population and housing growth over the last 8 – 10. The question is whether that pattern will continue to 2051.



71. A quick look around planning schemes in other inner and middle ring municipalities suggest that a similar profile is present in locations such as (but not limited to) those listed below.

- Brunswick Street, Fitzroy
- Smith Street, Fitzroy
- Swan Street, Richmond
- Bridge Road, Richmond
- Chapel Street, South Yarra
- Lygon Street, East Brunswick
- Sydney Road (Brunswick to Coburg)
- High Street (Northcote to Preston)
- Footscray Central
- Box Hill Central
- Doncaster Hill

and many more.

72. Indeed, as pointed out to Mr Sheppard by the Review Panel, the company he works for was directly responsible for much of the urban design analysis that informed the basis for the sort of heights set out in the above examples.

73. On any properly informed view, it could not be said that development has been locked out of Melbourne's inner and middle ring suburbs. It may be that the scale of change in these locations is predominantly mid-rise in scale, but this only serves to highlight the point that Professor Adams was making. Indeed, we would encourage the Review Panel to head to say, Lygon Street, East Brunswick and determine for itself whether the development industry has been 'locked-out' of the market.

## **FAR in conjunction with maximum building envelopes**

74. Setting planning controls requires more than just keeping your fingers crossed. You need provisions to ensure consistency of good design which achieves desired outcomes. Sometimes that guidance can be via a nudge in the right direction (through policy) while other times it might need to be a littler heavier handed (through a planning control).

75. Mr Sheppard's evidence indicates that he accepts that it is not appropriate to continue with the current controls. During cross-examination, he also indicated that he accepts that a FAR control is an appropriate control to use to bring about diversity. Indeed, he agreed that height and setbacks alone will inevitably lead to development proposals just 'filling up the envelope' as it were without this added layer. As to the FAR, apart from Wirraway non-core, he does not say that the FAR as specified is inappropriate. Rather, he says that he does not know if it *optimises* outcomes in terms of density.
76. While critical of the 'looseness of fit', Mr Sheppard (as did many other experts) at the same time agreed that there needed to be some form of gap between the FAR and the heights / setbacks to achieve the architectural diversity that he himself agreed was a good idea.
77. Another source of concern for Mr Sheppard was what he described as the abruptness of the change in floor area between Core and Non-Core areas. Mr Sheppard's principal basis for his concern was the proximity to future public transport of some of these areas. While this is a relevant consideration, it is not the only one and thus, it should not, in isolation be determinative. In this regard, we remind the Review Panel that no other party other than Council and Ms Hodyl sought to consider the skyline created by Fishermans Bend and the desire for neighbourhoods to not all be the same in terms of their rhythm and intensity. Accordingly, we refer the Review Panel to our submissions concerning the skyline set out in Council's Overarching Urban Design Report (provided as part of Stage 2 General Submissions). We also refer the Review Panel back to the Vision which calls for distinctive areas.
78. Despite what many of the legal advocates (Mr Tweedie SC and Mr Canavan QC for example) have submitted on behalf of their clients, all of the urban designers that gave evidence ultimately only varied on the application of the tools, rather than their choice of tools, or the principles that underpin those choices. Given that urban design is not a precise science, this is not surprising. However, given the fact that so many experts held such similar views in principle, should be notable to the Review Panel.

## **'Emerging' character**

79. Mr Sheppard's other main criticism was more closely related to what he considered as the 'emerging character of the area'.
80. His concept of emerging character related to a character that exists only on paper rather than one that is sprouting from the ground as it were. Other than the proposal by Salvo and one at the end of Plummer Street by Third Street, no information was provided to the Panel to substantiate the claim that any of these proposals have progressed past the first step of securing a planning permit, despite many of them holding such permits for many years.

81. Very few have gone to market as far as we can tell, let alone achieving the benchmark 80% pre-sales that would typically be required to attract bank lending. None seem to have building approval, construction drawings or the like which might otherwise indicate an advanced stage of preparation for actual construction. So much for the 'emerging' character.
82. With this in mind, we urge the Review Panel to be very careful about accepting that existing permits should be afforded any significant weight in determining the so called emerging character of an area. This is particularly true when one considers that the outcomes being sought since 2012 are the reason why this process is occurring in the first place.

### **Maximum discretionary building heights**

83. In relation to building heights, for the avoidance of any doubt, Council urges the Review Panel that in setting discretionary height limits it is important to keep in mind what the predominant built form is expected to be, not what the odd exceedance might result in.
84. We reiterate that in his evidence, Mr Sheppard agreed that mid-rise is generally up to around 12 storeys, with some elements of up to 15 storeys. In Wirraway, proposed heights are 24 storeys for a significant area, which is substantially more than what could be considered mid-rise. We accept that there may be some exceedance of discretionary heights but that should not be the rule. The discretionary height specified in planning controls should be the predominant height not the occasional taller height.
85. As we have said throughout the hearing, it is very important to say what you mean in the Planning Scheme, and not to leave ambiguous 'crumbs' of what may have been intended.
86. Council relies on the evidence of Mr McPherson (who supported heights of between 14 and 16 storeys in this area) in submitting that the proposed 24 story discretionary height in Wirraway should be reduced to 15 storeys.
87. Other changes proposed by Council throughout its submissions relating to its 'tooth and gap' approach to vary the height of buildings at the street interface of Plummer Street and for Buckhurst Street in between Montague Street and Ferrars Street were supported outright by Mr Sheppard.
88. Council tabled planning controls to encourage this outcome at the drafting day yesterday and submits that they ought to be given strong consideration by the Minister and the Review Panel.

89. Lastly in relation to heights, Council wishes to highlight its changes to facilitate mid-rise campus style development in the north-west of Sandridge, and to protect the amenity of streets in South Melbourne that are afforded mandatory overshadowing controls in DDO8 from development within the Wadhawan Holdings land.

### **Tower widths**

90. Council made submissions in its Stage 2 Overarching Submissions regarding the need to limit the dimensions and overall floorplate area of towers to ensure that they deliver a high-quality outcomes both in terms of their internal amenity and the effect they have on the public realm.
91. These submissions were informed by the work of architecture firm Hayball that informed Melbourne Amendment C270 as well as development benchmarking undertaken by Council officers. Council submits that no reason has been put to the Review Panel not to recommend the introduction of such a control here.

### **Laneway widths**

92. Council's precinct based submissions called for laneway widths of 9 metres in Sandridge and 12 metres in Wirraway. The Minister agreed with the 9 metre widths in Sandridge but not the 12 metre widths in Wirraway. We continue to submit that in Wirraway, there will be a need for wider laneways to provide for the character expected of this precinct.
93. The proposed dimensions will ensure that these laneways will be fit for purpose from a functionality and liveability perspective and will reinforce the different character intended for these two different areas. We also however acknowledge the Minister's statement that the final dimensions will be considered further as part of the precinct planning process.

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## **Specific matters**

### **Social and affordable housing**

94. In response to a question from the Panel Chair, Mr Canavan QC on behalf of a significant stable of developer submitters, confirmed that it was the position of his clients that the development industry has no responsibility to contribute towards the provision of social housing.
95. During cross-examination, Mr Biasci indicated that he, in-principle, supports the application of the FAU for the provision of Social Housing. In principle, he also supports an inclusionary scheme for the provision of a proportion of a developer's responsibility to provide social housing. He agreed that housing affordability must be shared responsibility.

96. Therefore, he disagrees with Mr Canavan QC that the private sector has no responsibility at all for the provision of social housing.
97. The Minister's revised position is to specify that FAU for affordable housing is to apply to Social Housing and that this is to be the only form of Public Benefit for the purposes of the FAU. Council agrees with this approach.
98. Nonetheless, Council continues to rely on the evidence of Dr Spiller that some proportion of the housing delivered within the FAR should be required to be delivered in an inclusionary sense. That is, delivered without reliance on FAU.
99. This will ensure that a proportion of social housing is locked in and that the population resulting from FAU is limited so that the gap between planned infrastructure and population can be managed over time.
100. The Minister's decision to not accept Council's submission that there should be 20% of housing provided as affordable housing for low to moderate income earners, with 6% of the total housing being Social Housing is deeply disappointing to Council.
101. Housing affordability is an issue that must be considered on many levels if Melbourne and indeed Australia is to overcome the worrying trend of housing stress and homelessness.
102. This involves providing for Social Housing (managed by registered housing agencies) as well as encouraging the market to deliver other forms of housing that is directed towards low to moderate income earners such as 'build-to-rent' and 'rent-to-own'. One without the other only places greater pressure on Social Housing which must be considered merely as the back stop.
103. Given that the market is already starting to pursue schemes such as build to rent and rent to own, a policy 'nudge' to use the earlier vernacular would be sufficient to achieve the required 20% target for affordable housing. Given that this would not compel such an outcome but only require it to be a consideration in formulating and assessing development proposals, this is not an unreasonable planning proposition. Accordingly, we submit that the Panel ought to recommend that the Minister include the text proposed by Council that encourages 20% of all housing delivered to be affordable for low to moderate income earners in the Local Policy per Council's endorsed submission.

## Sustainable design

104. Amendment GC81 proposes to require all development to be designed and built to achieve accreditation at the Green Building Council of Australia's 4-Star Standard.
105. The Minister produced a range of expert reports (by ARUP, Aecom and Point Advisory) during the Panel hearing at the request of the City of Port Phillip and the City of Melbourne.
106. One of these reports (ARUP) favours the 4-Star approach, transitioning to 5 Stars in the coming decade, while another (Point Advisory) appears to indicate that the targets in the Framework are unlikely to be achieved with a 4-Star approach. The latter view was shared by the expert evidence of Mr Williamson on behalf of the City of Port Phillip and City of Melbourne.
107. During the Hearing, the Property Council of Australia submitted a letter to all parties to the Panel hearing that supported the adoption of a **5-Star Green Star Rating** for all projects in Fishermans Bend (see Document #248).
108. Given the Property Council's position is consistent with Council's endorsed submission, and that the experts (Mr Williamson, Arup and Point Advisory) appear to indicate that 5-Stars will be required sooner rather than later, Council re-states its endorsed position on this.

## Public open space

109. Council's endorsed submission raised several proposed changes to the open space network. The need for many of these changes was agreed to by Ms Thompson, who gave evidence on behalf of the Minister on this topic.
110. The Minister has agreed to many of Ms Thompson's changes and, thus, Council accepts the quantum of open space now proposed by the Minister.
111. In relation to the locations proposed, Council accepts that the Minister's proposed new configuration for Sandridge North can achieve a similar outcome and accepts this outcome. Council is also happy to explore the finer detail around the location of the proposed open space on the two Delta sites as part of precinct planning **if** the Minister is willing to confirm that this will be in the scope for that work.
112. Considerations for this as part of precinct planning should include ensuring that the open space is knitted into the broader urban design of the precinct by locating it in prominent locations, co-locating it with other civic infrastructure and ensuring that built form outcomes can work in tandem to balance enclosure with a sense of openness in what will be a dense precinct (despite what some of the land owners may claim).

113. On a more practical level, locating open space that is fit for purpose while also endeavouring to achieve many intended outcomes with the one move should be given every consideration. This is the case with Council's propositions for the Delta site on the north-western corner of Plummer Street and Bridge Street. Council continues to be of the view that there are multiple urban design, place making and infrastructure delivery efficiency benefits of its proposal.
114. As far as Montague is concerned, while Council still considers that its proposal for the Montague North Park is sensible and will lead to a very good outcome, we consider that this outcome could be pursued by Council outside of this process given that the State already owns the entire parcel.
115. Once the location of the open space network is agreed, it is then necessary to consider:
- how much development ought to be permitted to cast shadows over these spaces, and
  - whether these controls should be expressed in mandatory terms or not.
116. Council submits that the Review Panel's first consideration ought to be how hard the open space network will be required to work. These open spaces will need to cater for a densely developed area of at least 323 residents per hectare.
117. The second consideration is that the two most significant parks (JL Murphy Reserve and North Port Oval) are already catering for the significant population to the south in Port Melbourne, and in the case of North Port Oval, a sports ground that has long been associated with the Port Melbourne VFL football team.
118. Given the use of these spaces and their standing in the community, Council considers that they must be afforded priority in the form of the strongest of controls. Therefore, Council is in strong alignment with the Minister on his choice of a mid-afternoon winter solstice control for these spaces.
119. The second proposition by the Minister is that each precinct should have at least one park that has a winter solstice control so that residents in apartment buildings will have access to afternoon winter sun. Council also wholeheartedly supports the Minister in this objective as it will serve to create a high amenity precinct that effectively learns from some of the errors of Southbank and the Docklands which are widely regarded by the community as areas that are on the most part, cold, windy and shady places.
120. The choice to propose less strict afternoon spring equinox controls for other smaller open spaces throughout, and not at all to the proposed linear open space network, shows a balance in the Minister's thinking that ought to be supported as well.

121. The question as to whether the controls should be mandatory, and whether heights should match the impact of the overshadowing controls should be a simple one.
122. Mr Sheppard preferred to neither adopt a standard or make it mandatory but instead urged reliance on performance based 'decision guidelines'. So too did Mr Song. Neither could point to criteria to be used other than the commonly applied 'no unreasonable overshadowing' test, whatever that means. This is a test which unhelpfully begs an open-ended question. In the context of a development area with constant pressure for height and yield, we submit that such a crucial issue should not be left to be argued about in a piecemeal fashion over the years to come. It should be a critical consideration afforded a clear standard with a strong control.
123. It also goes without saying that building heights nearby to public open space should be consistent with those required to ensure compliance with the overshadowing standard.

## Community hubs

124. Amendment GC81 proposed to deliver community hubs by nominating large investigation areas and encouraging developers to deliver these within mixed use buildings via the FAU scheme.
125. Council's submission has highlighted some issues in the delivery of hubs and, in particular, the practicality of delivering Sports and Recreation Hubs, and Arts and Cultural Hubs within mixed-use buildings, given the large floorplates required for these types of facilities. It also suggested preferred sites to ensure delivery in the best location rather than relying on a more opportunistic approach.
126. The Minister has not disagreed with the suitability of these locations, but wants to retain the flexibility for them to be delivered on other sites. As we said in our closing submission for Wirraway, Council understands the Minister's desire to retain some flexibility in this regard. Having regard to this, Council:
- confirms its view that it has identified what it regards as the optimum preferred sites for the delivery of Community Hubs;
  - recommends these potential sites be identified in the Framework (and a future ICP), whilst maintaining a broader investigation area to allow flexibility for an alternative site to be selected if a suitable development proposal comes forward early; and
  - accepts that if the Panel considers further investigation is warranted prior to nominating sites, that this can occur as part of precinct planning and the development of the ICP.

## Population

127. Council's endorsed submission highlighted the risk that the ultimate population of Fishermans Bend could well significantly exceed the projected 80,000 residents, based on the potential development yield via FAR and FAU at full build out of the area.
128. Council's submission highlighted the risk to liveability and the adequacy of planned infrastructure to cater for this population.
129. The Minister has taken steps to address this issue by agreeing to limit FAU to Social Housing, and agreeing to monitor population and make changes as necessary to the planning of the area in 5 yearly intervals. Council accepts this is a reasonable approach at this point in time.
130. Perhaps more importantly, the fact it is possible that population will exceed the target that infrastructure has been planned for is a very good reason to not accept submissions seeking increases to the FAR. If the Review Panel is of a mind to consider such submissions, it ought to do so under the very serious infrastructure ramifications of such a recommendation.

## Use of the Development Plan Overlay

131. Council's endorsed submission suggested that the DPO could be utilised to protect the ability for larger anchor land uses (such as, but not limited to full line supermarkets) to establish in activity centres in the longer term and be used to enable a number of master-planning objectives to be achieved.
132. The Minister has suggested that this should form part of precinct planning which Council supports. Notwithstanding, Council still believes there is a role for the DPO in the interim, but perhaps after that as well (subject to the content and statutory weight of precinct plans).
133. Council has also advocated for the large tract of Goodman land holdings to be master planned via the same tool. It is understood that Goodman supports the thrust of this submission. It is understood that the Minister is open to considering this upon viewing the drafting for such a control.
134. The First MAC foreshadowed this type of approach to master planning when it advised the Minister that "one important option is to consider 'super-lot' planning which identifies opportunities for grouping multiple sites and bringing land owners together to apply a coordinated 'master-planning' approach to planning and delivering local infrastructure" (refer page 20 of the First MAC's first report to the Minister in October 2015).

