Contour
Town Planners

Town Planning Report (Further Report)

11-31 Montague Street,
Southbank

Date of Report 30 November 2017
Prepared by Andrew Biacsi

Contents

Executive Summary .......................................................... 3
1 Introduction .......................................................................... 4
2 Subject Land ........................................................................... 5
3 Precincts ................................................................................ 7
   3.1 Fisherman's Bend ............................................................. 7
   3.2 Southbank ......................................................................... 8
   3.3 Docklands ......................................................................... 9
4 Planning History ................................................................. 11
   4.1 Fisherman's Bend ............................................................. 11
   4.2 Southbank ......................................................................... 13
   4.3 Docklands ......................................................................... 15
5 Planning Framework at the Relevant Date ......................... 17
   5.1 Fisherman's Bend ............................................................. 17
   5.2 Southbank ......................................................................... 18
   5.3 Docklands ......................................................................... 23
6 Considerations ....................................................................... 28
   6.1 State of Development ....................................................... 28
   6.2 Availability of Facilities .................................................... 29
   6.3 Access to existing and proposed public
       transport and other infrastructure .................................. 29
   6.4 General aspect and amenity .............................................. 31
   6.5 Intensity and pattern of existing and
       proposed development ...................................................... 31
   6.6 Availability of development sites for each of
       the Precincts ................................................................. 31
   6.7 Development contributions ............................................. 33
   6.8 Hypothetical purchaser at Relevant Date ....................... 36
7 Conclusion ............................................................................. 37

Attachment 1  Letter of Instruction from CCW dated 05
               September, 2017
Attachment 2  Form 44A – Expert Witness Declaration
Attachment 3  Precinct Map

© Contour Consultants Aust Pty Ltd

The information contained in this document is confidential
and intended solely for the use of the client identified in the
report for the purpose for which it has been prepared and no
representation is made or is to be implied as being made to
any third party. Use or copying of this document in whole or
part without the written permission of Contour Consultants
Aust Pty Ltd constitutes an infringement of copyright.
The intellectual property contained in this document
remains the property of Contour Consultants Aust Pty Ltd.
Executive Summary

This Report provides a comparison at the Relevant Date, from a planning perspective, between three (3) precincts:

- Fisherman's Bend, including the Subject Land;
- Southbank; and
- Docklands.

Subject Land is located in the Montague Precinct which is one of several precincts that forms part of the Fisherman's Bend Precinct (being also known as the Fisherman's Bend Urban Renewal Area).

The following summarises key findings of my Report that would have been applicable at the Relevant Date:

→ The Draft Vision for Fisherman's Bend presents a 50-year vision for the renewal of the Precinct. The full development of the Southbank and Docklands Precincts is unlikely to take this amount of time with their completion estimated to be within the range of 30-40 years.

→ Of the three Precincts, Fisherman's Bend as a whole is the most deficient in terms of its access to public transport and other public infrastructure assets and services.

→ In terms of general aspect and amenity, a comparison of the three Precincts causes one to come to the view that both Southbank and Docklands, being substantially developed and more beneficially located, offer the greatest amenity compared with Fisherman's Bend.

→ At the time of Fisherman's Bend being designated an urban renewal area by Government, there were still development opportunities and an unrealised potential for further development available in the other two Precincts.

→ The matter of development contributions in Fisherman's Bend at the Relevant Date was somewhat unresolved and fluid which would have served to delay decision making on major development proposals in the broader Fisherman's Bend area.

→ The Subject Land is located within the Montague Precinct in Fisherman's Bend, being one of the preferred areas for early commencement of development within Fisherman's Bend.

→ Any proposal for redevelopment of the Subject Land could have been dealt with in much the same way as others in Fisherman's Bend with conditions of approval being negotiated on a case by case basis.

→ My advice to a hypothetical purchaser would have been that the Subject Land was not so constrained that it could not have been given a planning approval for its redevelopment based on permit conditions that would have encapsulated what was known at the time including development contributions negotiated with the Government as part of a s.173 Agreement together with a range of other items that inevitably applied to many similar projects of the day.
1 Introduction

1 I received instructions from Corrs Chambers Westgarth (CCW), lawyers acting for the Department of Economic Development, Jobs, Transport and Infrastructure (DEDTJR) in Supreme Court Proceeding SCI 201502923 (Secretary to the Department of Economic Development, Transport and Infrastructure v Caradi Pty Ltd formerly Scared Bear Pty Ltd) referred to herein as ‘the Proceeding’.

2 The Proceeding relates to the property Nos. 11-31 Montague Street, Southbank (the Subject Land).

3 My instructions are confirmed in correspondence from CCW dated 05 September 2017 (see Attachment 1). I have been requested to research and produce a further planning report in relation to the Proceeding that assesses the differences and similarities between the Subject Land as part of the Montague Precinct that forms part of the Fisherman's Bend Urban Renewal Area and the Southbank and Docklands Precincts.


5 As set out in my Instructions from CCW, the purpose of this further planning report is to provide a comparison at the Relevant Date, from a planning perspective, between three precincts:

   → Fisherman's Bend, including the Subject Land;
   → Southbank; and
   → Docklands.

6 In preparing this report, I am to have reference to the following:

   → Joint statement of valuation experts (included at Attachment A1 to my Instructions); and
   → Schedule of comparable sales relied upon by the valuers (included at Attachment A2 to my Instructions).

7 As also set out in Attachment A to my Instructions from CCW, this further report is also to compare a number of specific considerations across the Precincts.

8 For the purposes of preparing this report, I understand that the Relevant Date is the date of acquisition of the Subject Land pursuant to the Land Acquisition and Compensation Act 1986 being 19 December, 2013 (the Relevant Date).

9 I have been provided with a copy of the Expert Witness Code of Conduct contained in Form 44A of the Supreme Court (General Civil Procedure) Rules 2005 (Code). I acknowledge that I have read the Code and agree to be bound by it. I have included at Attachment Z, the relevant declaration in accordance with the terms of the Code.
2 Subject Land

10 The Subject Land is known as 11-31 Montague Street, Southbank. It is formally described as Crown Allotment 104B, City of South Melbourne, Parish of Melbourne South and shown on Certificate of Title Volume 10294 Folio 632. (Refer to Figures 2.1-2.3)

11 I understand that the Subject Land has a total area of approx. 1.59 hectares and is variously affected by easements and other encumbrances (i.e. Reserves) along its northern edge.

12 The predominant use of the Subject Land has been for at grade car parking.

13 As has been detailed in my 2016 Report, the Subject Land is included within the Montague Precinct of the Fisherman’s Bend Urban Renewal Area (FBURA). The FBURA is discussed further in the following section of this report.
17 As set out in my Instructions, the purpose of this further report is to provide a comparison at the Relevant Date from a planning perspective between three precincts (collectively referred to as the Precincts) being:

- Fisherman’s Bend, Including the Subject Land;
- Southbank; and
- Docklands

18 The Map at Attachment 3 of this report clearly identifies the Precincts, together with the Subject Land. As set out in my Instructions, this Map also identifies the location of the various sales identified in the schedule of comparable sales relied upon by the valuers (included at Attachment A2 to my Instructions).

19 A brief description of each Precinct follows.

3.1 Fisherman’s Bend

20 The Fisherman’s Bend Precinct also referred to as the FBURA is an area of approximately 250 hectares\(^1\), located to the south of Port Melbourne, Docklands and the Yarra River and west of the CBD and Southbank.

21 It is bound by the West Gate Freeway and Lorimer Street to the north, City Road to the east, Williamstown Road and Boundary Street to the south and City Link and Todd Road to the west. (Refer to Figures 3.1 and 3.2)

22 At the Relevant Date, the land within the Fisherman’s Bend Precinct is used for predominantly industrial purposes with ‘approximately 18,000 people working in the precinct’\(^2\).

\(^1\) Refer to pg. 12 of the Fisherman’s Bend Urban Renewal Area Draft Vision (September 2013)

\(^2\) Refer to pg. 14 of the Fisherman’s Bend Urban Renewal Area Draft Vision (September 2013)
29. At the Relevant Data, the FBURA is generally characterised as an inner-urban industrial/commercial area that is representative of its past. It has undergone some change in the form of industrial and commercial development consistent with its zoning for industrial and mixed commercial purposes and proximity to the Port of Melbourne and the central city of Melbourne.

3.2 Southbank

30. Southbank is located on the south side of the Yarra River, opposite Melbourne’s central city area. It extends to St Kilda Road to the east, Dorcas Street, Kings Way and the West Gate Freeway to the south, and Clarendon Street to the west. (Refer to Figure 3.3)

31. At the relevant data, the Southbank Precinct is featured for its lively promenade which stretches along the south side of the Yarra River from Hamer Hall and the Southgate shopping and dining complex to the Crown Entertainment complex to the west of the Precinct. The promenade area incorporates cafes, restaurants, shops together with hotels, major office headquarters and apartments.

32. The City of Melbourne’s demographic profile of Southbank in 2013, at the relevant data, identified that there had been significant and rapid residential development with the majority of residents residing within high rise apartments. Amongst these apartment towers is the Eureka Tower.
33 The Southbank Precinct has been progressively developed in line with an overarching Structure Plan (or similar strategy document) and suite of planning controls that have applied to the Precinct guiding its development for some 30 years. The area has been a focus for growth. There has been some criticism about the extent of development that has occurred over the years in the Precinct which has resulted in a perceived lack of public amenity in various streets and public spaces away from the River or promenade frontage.

34 Nonetheless, the Southbank Precinct is regarded as having performed an important role as an adjunct to the central city in fostering urban renewal, accommodating residential and commercial expansion and generally enhancing the amenity of the public realm addressing the Yarra River.

3.3 Docklands

35 Docklands is generally located on the north side of the Yarra River, west of the Melbourne CBD. As shown on the plan included at Figure 3.4, the Docklands precinct also includes an area of land on the south side of the Yarra River which includes the Yarra’s Edge development.

36 Docklands extends to Footscray Road and Dudley Street to the North, Adderley Street and Spencer Street to the East and Salmon Street to
the west (on the south side of the Yarra River). (Refer to Figure 3.4)

37 The development timeframe for the Docklands Precinct is said to be 25 years, and as such at the Relevant Date, development within the Precinct was well advanced with construction commencing in 1997.

38 At the Relevant Date, the Docklands Precinct includes the newly opened Melbourne Star Observation Wheel and surrounding entertainment, restaurant and retail within the Harbour Town Shopping Centre, the Sports Stadium, bridges linking the Precinct with the Melbourne CBD, extended tramlines connecting Docklands with the broader public transport network, together with residential and office towers.

Image an extract of Figure 8 of Clause 21.13 of the Melbourne Planning Scheme at the Relevant Date.
4 Planning History

4.1 Fisherman’s Bend

39 On 2 July 2012, the Minister for Planning announced the rezoning of the Fisherman’s Bend area to a ‘Capital City Zone’ and declared it a project of State Significance under section 201(f) of the Planning and Environment Act 1987.

40 The Minister for Planning prepared Amendment C102 to the Port Phillip Planning Scheme to facilitate the transition of the FBURA from a primarily industrial precinct to a mixed use precinct with a residential and commercial focus.

41 Amendment C102 to the Planning Scheme was gazetted on the 5 July 2012 and brought about the rezoning of the Subject Land together with other changes to the Planning Scheme which seek to give effect to the Government’s declaration of Fisherman’s Bend as an area of State Significance.

42 The Amendment also modified the schedule to Clause 61.01 of the Planning Scheme to make the Minister for Planning the responsible authority for administering the Fisherman’s Bend area for development proposals over a certain threshold including:

→ Development with a building height of 4 storeys or greater.

→ Use and/or development for 60 or more dwellings.

→ Use and/or development with a gross floor area exceeding 10,000 square metres.

→ Use and/or development where any part of the land is owned by a public authority and/or municipal council and the estimated cost of development is more than $10,000,000.

43 The Montague Precinct Structure Plan was prepared by the City of Port Phillip and adopted by the Council on 11 September 2012. At this stage, the Structure Plan held no formal or statutory status from the point of view of the Planning Scheme. Accordingly, whilst its purpose might have been to guide Council’s thinking, the Minister as the responsible authority, was not bound by the Structure Plan or required to give it any weight.

44 The Structure Plan applied to the former industrial area of South Melbourne generally north of City Road, and includes the Subject Land.

45 The Structure Plan provides a planning framework to guide future urban renewal within the Montague Precinct. The Structure Plan divides the Precinct into three neighbourhoods with the Subject Land falling in the Northern Neighbourhood.

46 In terms of outcomes, the Structure Plan acknowledges the suitability of the Subject Land for mixed use including residential apartments at upper levels and built form with a preferred maximum height of 100 metres (27 storeys) inclusive of a 19 metre (5 storey) street wall.
47 The Fishermans Bend Urban Renewal Area Draft Vision (September 2013) (Draft Vision) and Interim Fishermans Bend Design Guidelines (September 2013) (Interim Design Guidelines) were released concurrently by Places Victoria in September 2013. These documents were publicly exhibited with submissions closing on 22 November 2013.

48 The Draft Vision provides a vision for how the FBURA may look in 2050 through outlining the overarching strategic directions and key moves needed to realise the vision and transforming the Fishermans Bend industrial areas into a thriving, mixed-use inner city environment.

49 The FBURA Draft Vision identifies 10 strategic directions which outline the key aspirations and qualities that Fishermans Bend must build on.

50 Furthermore, the Montague precinct more generally, within which the Subject Land is contained, is said to have a character whereby ‘Montague will be made up of distinct neighbourhoods – with building heights varying across the precinct to respond to the low-rise scale of established residential areas in South and Port Melbourne, through to existing tower forms in Southbank and Docklands’ and in this regard to the north of the light rail ‘new development is expected to reflect tower forms with well-designed podiums which will achieve a human scale and an attractive and activated street level experience’.  

51 The Draft Vision will be implemented through a number of means including ‘funding to ensure the early delivery of infrastructure’ with a number of funding mechanisms to be explored during the preparation of the Strategic Framework Plan including development contributions by developers towards the delivery of infrastructure projects. In this regard, a development contributions plan will be prepared for the FBURA in addition to open space contributions will also be required as part of all development proposals.

52 Amendment C162 to the Melbourne Planning Scheme was gazetted on 12 September 2013. The Panel Report dated 15 February 2012 provided the following summary of Amendment C162:  

Amendment C162 to the Melbourne Planning Scheme proposes to insert a revised Municipal Strategic Statement (MSS). In doing so it makes two significant changes to the MSS:

→ It introduces the concept of ‘urban renewal’ as part of a settlement strategy for urban growth within the City of Melbourne, and

---

5 Refer to pg. 59 of the Fisherman’s Bend Urban Renewal Area Draft Vision (September 2013)

4 Refer to pg. 57 of the Fisherman’s Bend Urban Renewal Area Draft Vision (September 2013)

4 Planning History

4.2 Southbank

53 At the relevant date, as a result of Amendment C162 the Melbourne Planning Scheme identified the Fisherman's Bend Precinct as an Urban Renewal Area under Clauses 21.04 and 21.13 of the Planning Scheme, consistent with the classification of Southbank and Docklands.

54 The redevelopment of Southbank was contemplated as early as 1982 when (then) Planning Minister Evan Walker identified it as an urban renewal opportunity. 6

55 The State Government's first plan for Melbourne was the 1984 Central Melbourne: Framework for the Future. This plan identified Southbank as one of the recommended Action Plans. In 1984, when the area was identified, nearly half of the area was owned by the State Government. 7

56 Following the identification of Southbank in 1984, the document titled 'Southbank: a development strategy' was prepared by the Ministry for Planning and Environment in 1986. This plan envisaged Southbank as a low rise, mixed use area with the Council recommending maximum building heights of no more than 20 metres. 8

57 Completion of the Arts Centre complex at the north-east corner of Southbank in the 1980s was followed by the Jennings Southgate development immediately west which opened in 1992.

58 In mid-1993 the construction of the Crown Casino commenced, replacing the temporary casino in the World Trade Centre on the north side of the Yarra River. The Crown Casino complex opened in 1997. On the west side of Clarendon Street, the Melbourne Exhibition Centre was completed in 1996.

59 The Southbank Structure Plan (Final Draft) 1999 was prepared by the Department of Infrastructure and the City of Melbourne in 1999. It was included in the Melbourne Planning Scheme as a reference document but not adopted by the Victorian Government. 9

60 The area around Queensbridge began development in 2005 with Freshwater Place. A plaza linked to the north bank and Flinders Street Station via a pedestrian and cycle path developed from the Sandridge Bridge.

61 The Southbank Plan 2007 provides a 10 to 15 year vision for Southbank and was developed in collaboration with the (then) Department of

---

6 Central City Built Form Review: A History of Built Form Control in Central Melbourne prepared for the DELWP by Ramsay Consulting pg. 14
8 Refer to pg. 14 of the Central City Built Form Review: A History on Built Form Controls in Melbourne prepared by Ramsay Consulting for DELWP
9 Refer to pg. vii of the Southbank Plan 2007 under the heading Planning & Policy Context
Sustainability and Environment (OSE). The Plan identifies opportunities for Southbank with an emphasis on the importance of the public environment. The Plan outlines that a high quality public environment is even more important in dense areas, such as Southbank.¹⁰

52 The Southbank Structure Plan (2010) was then prepared to update the 1999 and 2007 plans. It provides a vision and strategy for the next 30 years for the area’s continued development ‘…as an extension of the central city, with a high-density mix of commercial and residential uses, a built form of a human scale and fine grain detail, greater permeability, activity and pedestrian priority at street level’.¹¹

53 At the Relevant Date, Southbank had been the subject of ongoing urban renewal for close to 30 years with opportunities for ongoing redevelopment still remaining. It is said to have brought the ‘…Yarra River into the heart of the city’s life and provided a dynamic extension of the Central City with good commercial and residential high-density development opportunities.’¹²

Figure 4.1
HISTORICAL AERIAL OF SOUTHBANK IN 1967


¹⁰ Refer to pg. 23 of the Southbank Structure Plan Background Report
¹¹ Refer to Clause 21.04-1.2 at the Relevant Date
¹² Refer to Clause 21.04-1.2 at the Relevant Date
4.3 Docklands

64 The Precinct now known as Docklands was the busiest port in Melbourne from the early 1900s to 1950s and was handling an estimated 90 per cent of Victoria’s imports.13

65 By the end of the 1970s most of the shipping and cargo handling had moved to new docks further west and over the course of the 1980s, Docklands fell into disrepair and disuse. 14

66 In 1989 the Victorian Government released for public consultation the ‘Melbourne’s Docklands: A Strategic Planning Framework’. 15

67 Then in 1995 the Victorian Government released a plan for Docklands and commits to developing the area. At this time, ownership was transferred to the Docklands Authority.

68 A Planning Scheme Amendment (Melbourne Planning Scheme Local Section Amendment L202) approved in October 1996 established the statutory planning controls for Docklands.16

69 The Docklands Authority’s November 1997 Key Design Principles required that the design of developments in Docklands should be:17

- for all people and their needs
- responsive to Melbourne
- responsive to the site
- focused on the water
- focused on the public realm
- economically viable and vital
- diverse and integrated
- creative and innovative
- ecologically sustainable
- dynamic

---

16 Refer to Docklands article posted on 1 September 1998 Architecture Australia – September 1998 (Vol 87 No 5) obtained from https://architectureau.com/articles/melbourne-docklands/
17 Refer to the explanatory report for Amendment C01 to the Melbourne Planning Scheme
70 The plan for Docklands being the *Melbourne Docklands Area Planning Provisions* April, 1999 was introduced as an Incorporated Document under Clause 81 of the Melbourne Planning Scheme.

71 Amendment C01 to the Melbourne Planning Scheme gazetted 30 April 1999 was prepared at the request of the Docklands Authority and updated the existing planning controls for the area to acknowledge and facilitate the Dockland Authority's development strategy for the Precinct.

72 The Stadium, La Trobe Street Bridge and Bourke Street Bridge opened in 2000 with the first residential tower completed in 2001.

73 In 2002 the Yarra's Edge Precinct in Docklands commenced its development.

74 Amendment C116 to the Melbourne Planning Scheme made changes to the schedules to Clauses 52.03 and 81 to insert a new Incorporated Document titled 'Melbourne Convention Centre Development, Southbank and North Wharf redevelopment, Docklands, April 2006', and amended the schedule to Clause 61.01 to make the Minister for Planning the responsible authority for the Melbourne Convention Centre Development Southbank and associated Northbank redevelopment Docklands, Precinct Plan area. This Amendment was gazetted on 17 May 2006.

75 Amendment VC047 to the Melbourne Planning Scheme gazetted on 07 April 2008 translated provisions from the *Melbourne Docklands Area Planning Provisions, September 2006* into Clause 37.05 (Docklands Zone). This Amendment also made changes to Clause 52.27.

76 In the years that followed, up to the Relevant Date, investment in infrastructure including the extension of tramlines together with development investment in residential towers and major office headquarters alongside retail and entertainment in the Harbour Town Shopping Centre and the Melbourne Star Observation Wheel shaped the Docklands Precinct into much of what you see today.

77 At the Relevant Date, Docklands already incorporated major infrastructure including public transport connections and development investment, both commercial and residential.

---


5 Planning Framework at the Relevant Date

5.1 Fisherman's Bend

78 My earlier report (2016 Report) included a detailed outline of the Planning Framework at the Relevant Date as it related to the Subject Land, including maps of the applicable zone and overlay controls.

79 As outlined in Chapter 7 of that report, at the Relevant Date, the following was known about the Planning Framework of the Subject Land and FBURA under the Port Phillip Planning Scheme:

→ The Subject Land was zoned Capital City Zone – Schedule 1 which allowed a range of uses including high density residential use. There were no stipulated height controls for the Subject Land under the CCZ or any overlay control under the Planning Scheme.

→ The Subject Land was subject to a Development Contributions Plan Overlay – Schedule 2 which would have required development contributions to be negotiated on an application by application basis via a Section 173 Agreement. Contribution rates for residential and other uses were being advanced by the Government at the time.

→ The Subject Land was subject to a Parking Overlay – Schedule 1 the focus of which was on specifying maximum car parking rates (as opposed to a minimum provision).

→ The FBURA was an area declared by the State Government to be of State significance.

Development pressure was evident in the FBURA, at the Relevant Date, brought about principally by the heightened development potential that resulted from the gazettal of Amendment C102 to the Planning Scheme.

80 The MSS of the Melbourne Planning Scheme at the time encouraged higher density development in designated Urban Renewal Areas. This will include residential development.

81 Clause 22.25 of the Melbourne Planning Scheme applied to land within Schedule 4 of the Capital City Zone, being the land within the Lorimer Precinct of Fisherman’s Bend. The policy provided a local response to Clause 15 of the State Planning Policy Framework (SPPF) and also built on Clause 21.06 relating to city structure and built form.

82 Clause 22.25 outlines objectives and policy relating to matters of building design; wind and weather protection; public spaces and landscape; car parking, access and safety; energy and resource efficiency.
5.2 Southbank

83 At the Relevant Date, the Southbank Structure Plan 2010 was a key strategic document guiding the development of Southbank and it was also acknowledged as a reference document under the Melbourne Planning Scheme.

84 The majority of Southbank was zoned Capital City Zone (CCZ3) under the Melbourne Planning Scheme. Schedule 3 applies specifically to Southbank.

85 The land outside the CCZ3 was included within either the Public Use Zone (PUZ) Schedule 1, 2 or 7, the Mixed Use Zone (MUZ) or the Residential 1 Zone (R1Z) or Public Park and Recreation Zone (PPRZ). The Victoria Barracks on St Kilda Road, bound by Wadey Street, Wells Street and Coventry Street is Commonwealth Land not controlled by the Planning Scheme. (Refer to Figure 5.1)

Figure 5.1 ZONE MAP

Image reproduced from Zone Map no. 8 and 11 of the Melbourne Planning Scheme at the Relevant Date (as at V138 on 10 December 2013) obtained from http://planning-schemes.delwp.vic.gov.au/planning-scheme-histories/planning-scheme-history-index

86 The stated purpose of Schedule 3 at that time was as follows:

- To develop Southbank as an extension of the central city, providing for a mix of commercial and residential land uses that complement the capital city function of the locality.
- To comfortably accommodate a residential and worker population in a pleasant neighbourhood where all public spaces are comfortable, bright and safe.
- To maintain and enhance the role of Southbank as a cultural and arts precinct.
5 Planning Framework at the Relevant Date

→ To develop Sturt Street as an arts and performance precinct with services and activities for local residents and visitors.

→ To support art facilities and creative industry businesses along Sturt Street.

→ To deliver local services and facilities within an approximate 400m walk from all residences.

→ To provide uses at ground floor and upper podium floors to promote a visual link with, and facilitate the passive surveillance of, the public realm.

→ To support commercial, retail and community uses along pedestrian corridors.

→ To ensure that the mitigation of wind effects is incorporated into building design.

87 Under the Table of Uses at Clause 1.0 of the Schedule, a wide range of land uses were allowed without a permit in the CCZ3 including:

→ Accommodation provided the conditions of use are met

→ Office

→ Retail Premises (other than Adult sex bookshop, Department store, Hotel and Tavern)

88 A planning permit was required for the development of land within the CCZ3, including the demolition of buildings and subdivision.

89 At the Relevant Date, the Southbank Precinct was also affected by a number of overlays, including:

→ Design and Development Overlay Schedules 3, 4, 5, 6, 7, 27, 58 and 60;

→ Environmental Audit Overlay (EAO);

→ Heritage Overlay (HO); and

→ Parking Overlay Schedules 1 and 12.

90 The extent of DDO60 and building heights specified in Table 1 to Schedule 60 are illustrated in Figure 5.2. Clause 2.0 of DDO60 states that:

→ A permit cannot be granted to vary the Maximum Building Height in Area 6 – Southbank Village, Area 7 – Arts Centre or Area 4B – Dodds Street.

1917
5 Planning Framework at the Relevant Date

- Buildings and works should not exceed the building heights specified in Table 1 to this Schedule and should meet the built form outcomes.

91 No Development Contributions Plan Overlay (DCPO) affected the land within the Southbank Precinct at the Relevant Date. At the Relevant Date, DCPO Schedule 1 under the Melbourne Planning Scheme specifically relates to the Fisherman's Bend Development Contribution Plan.

92 It is acknowledged that at the Relevant Date proposed Amendment C208 to the Melbourne Planning Scheme was on exhibition, with submissions to be received by 16 December 2013. Amendment C208 proposed to apply the Development Contributions Plan Overlay over the three urban renewal areas of Southbank, City North and Arden-Macaulay.

93 In addition to the Zone and Overlay controls referenced above, the State and Local Planning Policy Frameworks at the Relevant Date also provide guidance regarding the development of the Southbank Precinct.

94 At the Relevant Date, the State policy at Clause 11.4-4 of the Melbourne Planning Scheme which relates to Central Melbourne identified Southbank as a major development opportunity for establishing high scale and high density mixed residential and commercial precinct.
5 Planning Framework at the Relevant Date

95 The local policies of the Melbourne Planning Scheme identify at Clause 21.02-1 that the Central City encompasses the Hoddle Grid, Southbank and Docklands.

96 A key issue identified in clause 21.03 (Vision) relating to settlement is the need "To accommodate the municipality’s growth over the coming 20 to 30 years the footprint of intensive growth areas will need to expand beyond Central City (Hoddle Grid, Docklands and Southbank) into designated new urban renewal areas."  

97 At the Relevant Date, the MSS identifies five types of areas which are represented on the Growth Area Framework Plan at Figure 1 of Clause 21.04. This Growth Area Framework Plan identifies Southbank, Docklands and Fisherman’s Bend as "Existing Urban Renewal Areas". (Refer to Figure 5.3)

98 Clause 21.13 of the Melbourne Planning Scheme sets out specified objectives for the Southbank (21.13-1) and Docklands (21.13-2) Urban Renewal Areas, noting that Fisherman’s Bend is within the City of Port Phillip municipality. The objectives contained within Clauses 21.13-1 and 21.13-2 are grouped under the headings of:

→ housing;
→ economic development;
→ built environment and heritage;
→ transport; and
→ infrastructure.

29 Refer to Clause 21.03-1 of the Melbourne Planning Scheme at the Relevant Date
99 Clause 22.01 provides urban design objectives and building design policy guidance for the Capital City Zone, excluding Schedule 4 (Fisherman's Bend Urban Renewal Area). Specific objectives are provided for Schedule 3 to the CCZ (Southbank). These objectives are:

→ To connect and integrate Southbank with the central city and the Yarra River.

→ To provide easy and attractive access to, and across the Yarra River from the central and southern parts of Southbank.
5 Planning Framework at the Relevant Date

→ To develop pedestrian and cycling connections so that Southbank has a fine grain network.

→ To encourage the redevelopment of the area bounded by City Road, Kings Way, Haig Street/Lane and the Westgate Freeway into a vibrant, mixed use area that includes smaller premises and establishes a distinct fine grained urban character.

→ To encourage buildings to be designed so that car parking can be converted to alternative uses in the future.

→ To ensure developments contribute to a high quality public realm and to passive surveillance of the public domain.

→ To incorporate laneways and other means of achieving building permeability.

→ To encourage the incorporation of art work into building design to enhance the arts and cultural character of Southbank.

100 Clause 22.01 also outlines that it is policy that the design of buildings within Southbank (Schedule 3 to the CCZ) is assessed against specified design standards. These design standards relate to matters of noise attenuation, pedestrian connections in various scenarios and encouraging development that reflects traditional fine-grained nature of a specific part of Southbank being the area bounded by City Road, Kings Way, Haig Street/Lane and the Westgate Freeway.

101 At the Relevant Date, there were no provisions of the LPPF that stipulated a preferred or maximum building height for Southbank with this guidance provided by the various DDO Schedules affecting land within the Precinct.

5.3 Docklands

102 At the Relevant Date, the Docklands Precinct was included in the Docklands Zone (DZ) under the Melbourne Planning Scheme. (Refer to Figure 5.4)

103 The purpose of the DZ being:

→ To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

→ To ensure that use and development take account of the unique nature of the water environment.

→ To encourage a variety of dwelling types within the Melbourne Docklands area to suit a diversity of needs.

→ To ensure that development takes account of the relationship of the Melbourne Docklands area to the Central Activities District and the policies relating to the future development of the Central Activities District and other parts of the capital city.
5 Planning Framework at the Relevant Date

→ To encourage visual and physical linkages between the Melbourne Docklands and adjacent areas, in particular the Central Business District.

→ To provide for the conservation and enhancement of buildings, areas and places of scientific, aesthetic, architectural or historical significance.

104 As shown in Figure 5.4 above, Schedules 1 through 7 of the DZ apply to the different sub-precincts within Docklands. These Schedules relate to the:

→ Yarra’s Edge Precinct (Schedule 1);
→ Victoria Harbour Precinct (Schedule 2);
→ Batman’s Hill Precinct (Schedule 3);
→ Stadium Precinct (Schedule 4);
→ Digital Harbour Precinct (Schedule 5);
→ Business Park Precinct (Schedule 6); and
→ Waterways (Schedule 7).
5 Planning Framework at the Relevant Date

105 Each Schedule has its own unique purpose for the relevant Precinct, however, with the exception of Schedule 7, all include the purpose that seeks:

→ To provide for a range of residential, commercial, recreational, business and leisure uses within a mixed use environment.\(^{21}\)

106 As required by Clause 37.05-1, the land use permit requirements are set out in the Table of uses at Clause 1.0 of each Schedule. Schedule 3 to the DZ is the least restrictive in terms of land use as no land use is prohibited under the Schedule.

107 A planning permit was required for the development of the Subject Land under the DZ (various Schedules), including subdivision of the land.

108 At the Relevant Date, the Southbank Precinct was also affected by a number of overlays, including:

→ City Link Project Overlay

→ Design and Development Overlay Schedule 12, 49, 50, 51, 52, 53, 54 and 59

→ Development Plan Overlay Schedule 2, 3, 4, 5, 6 and 7

→ Heritage Overlay

→ Parking Overlay Schedules 1, 6, 8, 9, 10, 11, 13

109 There was no Development Contribution Plan Overlay (DCPO) affecting the Docklands Precinct at the Relevant Date nor was there any amendment underway that sought to introduce a DCPO or similar.

110 Schedules 49, 50, 51, 52, 53 and 54 to the DDO\(^{22}\) all specify maximum building heights in Table 1 and in the case of Schedules 49, 50 and 54 minimum widths of waterfront promenades. Clause 2.1 of these Schedules outlines that a permit is not required to construct a building or construct or carry out works if the requirements of Table 1 (and Table 2 where relevant) are met.

111 In addition to the Zone and Overlay controls referenced above, the State and Local Planning Policy Frameworks at the Relevant Date also provide guidance regarding the development of the Docklands Precinct.

112 The relevant State and local policies of the Planning Scheme have been discussed in the preceding Southbank section of this report with references made to Docklands, as appropriate.

\(^{21}\) Refer to Schedules 1 through 8 to the Docklands Zone of the Melbourne Planning Scheme at the Relevant Date

\(^{22}\) Refer to Figure 5.4 which provides a visual representation of the DDO Schedules at the Relevant Date
113 The local policy at Clause 25.25 (Urban Design Within the Docklands Zone) of the Planning Scheme applies only to land within the Docklands zone. This primary purpose of this policy being to ‘...stimulate and guide the work of the private and public sector developers to achieve design excellence’.\textsuperscript{23} The objectives of this policy are:

→ To provide a waterfront place of character and quality in which to live and work, creating both a tourism asset and a boost to Victoria’s prosperity.

→ To encourage exciting, viable developments built to the highest design and environmental standards.

→ To respond to the changing urban context of Docklands whilst strengthening its relationship with the Hoddle Grid and the Yarra River Corridor.

114 At the Relevant Date, subclauses 1.0 through 7.0 of Clause 22.18 of the Planning Scheme outline specific objectives, design principles and performance guidelines that are to be considered.

115 The provisions of SPPF and the LPPF reinforce the strategic opportunities of Docklands as an urban renewal area and the role that the Docklands Precinct will play in accommodating the growth of Melbourne.

116 The local policies, including Clause 22.18, do not specify a preferred or maximum building height for Docklands with this guidance provided by the various DDO Schedules affecting the Precinct.

\textsuperscript{23} Refer to Clause 22.18 of the Melbourne Planning Scheme at the Relevant Date
Figure 5.5
MAP OF DDO

Image reproduced from DDDPR 3 Map nos. 7 and 8 of the Melbourne Planning Scheme at the Relevant Date (V/DS9 on 10 December 2013) obtained from http://planning-schemes.delwp.vic.gov.au/planning-scheme-histories/planning-scheme-history-index
6 Considerations

6.1 State of Development

117 Southbank has been an urban renewal area and under development since the early 1980s, close to 30 years at the Relevant Date, and in terms of development is the most advanced of the Precincts.

118 At the Relevant Date, Southbank is home to the State’s major arts facilities as part of its the internationally recognised Arts Precinct and other major activity areas including the Southbank Promenade, Melbourne Convention and Exhibition Centre and the South Wharf complex. In addition, Southbank has been the centre of residential and commercial tower development and identified as an extension of the Central City.

119 Docklands was identified as an urban renewal area almost 15 years later than Southbank in 1995. Since the Government’s significant ownership and commitment to develop the Precinct, Docklands has flourished with development including the Stadium, bridges at La Trobe Street and Bourke Street, extension of tramlines, a multitude of residential towers and commercial office buildings, including major corporate headquarters. In addition retail and entertainment facilities provided within the Harbour Town Shopping Centre and the Melbourne Star Observation Wheel also shaped the state of development within the Docklands Precinct.

120 At the Relevant Date, Docklands incorporated major infrastructure including road (City link) and public transport connections together with significant development investment, both commercial and residential. In the decade from 2000–01 to 2009–10 about 5,500 apartments each year were approved in the CBD. Docklands and Southbank. Between 2011–12 and 2013–14 this increased to an average of over 14,000 approvals each year. 24

121 At the Relevant Date, development within the Fisherman’s Bend Precinct was yet to commence however the Draft Vision (2013) expressed that it is likely the Montague Precinct (which includes the Subject Land) and the Lorimer Precinct will experience development initially due to the ready access to existing infrastructure and services, as compared to the balance of Fisherman’s Bend. 25

122 That said, the Draft Vision presents a 50-year vision for the renewal of the Fisherman’s Bend area which one assumes, takes into account the maturation of the full extent of the Precinct. The full development of the Southbank and Docklands Precincts is unlikely to take this amount of time particularly given the early involvement and extent of Government interest in both of these Precincts compared to Fisherman’s Bend which mainly held in private ownership, covers an extensive area and is not as advantaged as the other two areas.

24 Refer to pg. 31 of 124 of the Plan Melbourne Refresh Discussion Paper October 2015
25 Refer to pg. 67 of the Fisherman’s Bend Urban Renewal Area Draft Vision 2013
6.2 Availability of Facilities

123 At the Relevant Date, the Southbank and Docklands Precincts incorporate numerous facilities including supermarkets, restaurants, retail and professional services. Fisherman's Bend, due to its history, continues to be used predominantly for industrial and business purposes and is lacking in the provision of facilities such as café/restaurant, retail and professional services evident in the other Precincts.

124 Within Southbank, at the Relevant Date, the Southbank Promenade provides a significant number of restaurants and cafes alongside retailing within the Southgate shopping centre. The Southbank Precinct also includes smaller scale supermarkets at 89 City Road and at 151 Sturt Street. Southbank is also home to the State’s major arts facilities as part of its the internationally recognised Arts Precinct and other major activity areas including the Melbourne Convention and Exhibition Centre and the South Wharf complex. 28

125 Within Docklands, at the Relevant Date, a collection of restaurants are located along Newquay Promenade and also within the Harbour Town Shopping Centre. A full line supermarket is located on Merchant Street within the Victoria Harbour development and a Costco which opened in 2009. Smaller convenience style supermarkets are also located elsewhere within Docklands.

126 By comparison, there are no supermarkets or any substantive retail facilities within Fisherman’s Bend with the closest supermarkets located at Bay Street in Port Melbourne, Cecil Street in South Melbourne and an IGA express within the Yarra’s Edge development in Docklands (south side of the Yarra River).

127 The availability of facilities within Fisherman’s Bend is markedly different to that found within Southbank and Docklands which is not unexpected given the history and pattern of development in the Precinct and the timing anticipated for the delivery of future urban renewal.

6.3 Access to existing and proposed public transport and other infrastructure

128 Each of the Precincts all have connections to public transport and road infrastructure at the Relevant Date. However, the coverage of the public transport services and the type of service (rail, tram, light rail or bus) varies amongst each Precinct.

129 At the Relevant Date, light-rail and bus routes service Fisherman’s Bend however these services are concentrated more within the northern and eastern parts of Fisherman's Bend (Montague and Lorimer Precincts) and as a consequence the coverage of services is disproportionate within the Precinct. In terms of road infrastructure, Fisherman's Bend has convenient and direct access onto the Westgate Freeway and Citylink via ramps at Montague Street, Todd Road and City Road/Kings Way.

28 Refer to Clause 21.04-1.2 of the Melbourne planning Scheme at the Relevant Date
6 Considerations

130 The Draft Vision for the FBURA released in 2013 also identifies the future Domain Metro Station that can be accessed by travelling east (along Park Street)27 and in the longer term, a new Fisherman's Bend station located along the civic spine near Ingles Street. The Draft Vision also outlines that a second Metro station may be located further west within Wirraway.28 At the Relevant Date, these initiatives would have been regarded as medium to long term prospects.

131 Southbank has excellent proximity to and connections with various forms of public transport services including tram and bus routes which traverse and/or border the Precinct and Flinders Street Station on the north side of the River (at the eastern end of Southbank). Pedestrian bridges constructed as part of the urban renewal of the Precinct have assisted in providing convenient and direct connections to the Central City and public transport provided within, including Flinders Street Station and to a lesser extent Southern Cross.

132 Southbank also has direct and easy access to major road infrastructure such as the Westgate Freeway, City Link, Kings Way and St Kilda Road arterials.

133 Docklands is the only Precinct to include a railway station at the Relevant Date with Southern Cross Railway Station located within the eastern portion of the Precinct. In addition, tram services connect Docklands with the Central City to the east along Flinders, Collins and La Trobe Streets, providing good connectivity and permeability within the Precinct. Bus services along Footscray Road and Spencer Street supplement the rail and tram services.

134 In terms of road infrastructure, Docklands has direct and convenient connections with the West Gate Freeway/Bolte Bridge and City Link via Footscray Road, Wurundjeri Way and Lorimer Street.

135 In terms of a comparison between the Precincts, FBURA as a whole is the most deficient in terms of its access to public transport and other public infrastructure assets and services. The planning for the FBURA is in its infancy and public infrastructure planning and delivery is some way off in terms of fulfilling the vision for the Precinct.

136 Mechanisms for the procuring of expanded public transport services, park, schools and other community infrastructure have yet to be "bedded-down" with development proposals being advanced for individual sites and being assessed on a largely individual and indiscriminate case by case basis.

137 At the Relevant Date, the timing and delivery of public infrastructure was very uncertain as was the means for procuring the land and funding for its delivery.

27 Refer to pg. 40 of the FBURA Draft Vision 2013
28 Refer to pg. 38 of the FBURA Draft Vision 2013
### 6.4 General aspect and amenity

138 In terms of general aspect and amenity, a comparison of the three Precincts causes one to come to the view that both Southbank and Docklands, being substantially developed and beneficially located offer the greatest amenity compared with the FBURA.

139 Southbank, due in large part to its location, proximity to the central city, extensive river frontage, accessibility to the Arts Precinct, Botanical Gardens and extensive public transport options offers a high level of amenity. Its general aspect, situated adjacent to the central city with a substantial cross-river vista towards the central city, causes Southbank to be regarded as an attractive inner city destination.

140 Similarly, Dockland also is benefitted by locational advantages, extensive water frontage and excellent public transport. With the benefit of significant public infrastructure investment in public spaces and the amenity leveraged off its proximity to the water's edge, port and central city, Docklands too offers a high level of amenity and aspect.

141 By contrast, the FBURA is an area that is not as beneficially located in terms of amenity or general aspect. Whilst there are parts of the Precinct which can be compared with areas of Southbank and Docklands and exhibit characteristics which will inevitably allow them to attain a similar standard, large areas of the Precinct will inevitably present challenges in terms of interface compatibility and achieving developments that can co-exist with each other as part of the ongoing process of renewal and transition. Difficulties with the delivery of an appropriate level of public and local amenity and infrastructure are likely to challenge the ultimate realisation of the vision for the Precinct.

### 6.5 Intensity and pattern of existing and proposed development

142 The planning framework for the Precincts at the Relevant Date identified and encouraged higher density development, including taller and more intense tower forms, consistent with their designation as Urban Renewal Areas and the planned expansion of the Central City.

143 The proposed pattern of development in Fisherman's Bend is envisaged to locate taller tower forms closer to similar developments within the CBD and where public transport links are the strongest (Lorimer, much of Sandridge and the northern part of Montague, including the Subject Land28). The southern parts of Fisherman's Bend by comparison are expected to be of a lower scale and intensity in response to the low-rise character of adjoining residential areas. 29

144 The FBURA Draft Vision (2013) outlines that new development is expected to reflect tower forms with well-designed podiums which are intended to achieve a human scale and an attractive and activated street level experience. 30

28 Refer to pg. 53 of the FBURA Draft Vision 2013
29 Refer to pg. 52 of the FBURA Draft Vision 2013
30 Refer to pg. 59 of the FBURA Draft Vision 2013
6 Considerations

145 The Fisherman’s Bend Urban Renewal Area Draft Vision 2013\textsuperscript{32} identifies height limits for each neighbourhood precinct which vary from maximum 4 storey buildings to maximum 18 storey buildings with parts of Lorimer, Sandridge and Montague Precincts identified for ‘towers above mid-rise podiums’. There is no specific number of storeys identified for ‘towers above mid-rise podiums’. As noted previously, the Port Phillip Council at the Relevant Date had already adopted a Structure Plan that affected the Subject Land that provided for a preferred maximum height of 100m (27 storeys).\textsuperscript{33}

146 Unlike the current predominantly inner urban industrial character of Fisherman’s Bend, the existing development within both Southbank and Docklands at the Relevant Date is characterised by taller tower forms.

147 Under DDO60, the Southbank Central Core (Area 2) is to be the focus for the highest scale and intensity of building forms with a discretionary building height of 160m.

148 Under DDO51, the Batman’s Hill Precinct (Area 2) of Docklands envisages a building height of 180m, the tallest in Docklands under the Planning Scheme at the Relevant Date.

6.6 Availability of development sites for each of the Precincts

149 It has not been possible to ascertain with absolute precision the availability of development sites within the various Precincts. It appears however that the following applied at a time around the Relevant Date:

→ The area available for future development in Southbank as at 2010 was estimated to be approx. 38.2ha (or 24.2% of Southbank).\textsuperscript{34} Allowing for an estimate of subsequent development activity (i.e. after 2010), it appears likely that the available area for future development was closer to 15-20% at the Relevant Date;

→ All land in Docklands had been contracted by the Government (or its agency) to developers and more than two-thirds of the land in Docklands was nearing completion or had been developed.\textsuperscript{35} The picture in Docklands around the Relevant Date was likely to be similar to this.

→ The situation in Fisherman’s Bend at the Relevant Date was more fluid in the aftermath of Amendment C102 and rezoning of substantial tracts of land in Fisherman’s Bend to Capital City Zone. This announcement caused considerable interest and activity in

\textsuperscript{32} Refer to Figure 27: Key Move 10 – Proposed height limits for each neighbourhood precinct, included on pg. 53 of the Fisherman’s Bend Draft Vision 2013
\textsuperscript{33} Refer to the Montague Precinct Structure Plan 2012
\textsuperscript{34} Refer to Section 1.6 of the Southbank Structure Plan 2010.
\textsuperscript{35} Sourced from Places Victoria as built or nearing completion by December 2015.
6 Considerations

Fisherman's Bend in terms development pressure at the time and since.

150 At the Relevant Date, despite the announcement by Government of the Fisherman's Bend as a designated urban renewal area, there were still development opportunities and an unrealised potential available in the other two Precincts. In the case of Docklands however, much of this had been locked up by landowners who already had a stake and long term investment in the Precinct. The situation in Southbank was more fluid than this with an apparent more diverse spread of ownership of land throughout the Precinct.

6.7 Development contributions

151 The picture concerning development contributions in each of the Precincts is not clear taking into account the available information. This is particularly the case in Docklands and Southbank where to the best of our knowledge, no formal development contributions plans existed over the Precinct. In both cases, Government held ownership or control of substantial landholdings in each of the Precincts enabling a greater level of input and control over public investment and infrastructure in those Precincts.

152 The matter of development contributions in Fisherman's Bend at the Relevant Date was somewhat unresolved although as indicated in the 2016 Report in the absence of a Development Contributions Plan for the Precinct, negotiations with permit applicants on individual projects were being undertaken on a case by case basis.

153 Development contributions were being secured via conditions of planning permit requiring permit applicants to agree to a Section 173 Agreement under the Planning and Environment Act 1987 stipulating payment of a cash development contribution based on a per dwelling rate for residential developments and a dollar per square metre rate for commercial and retail floor area.

154 Rates are believed at the time to have been based around the following:

- $15,500 - $15,900 per dwelling;
- $180 per square metre of gross commercial floor area; and
- $150 per square metre of gross retail floor area.

155 Cash contributions at the time were required to be indexed. Agreements were required to address a number of matters including the identification of infrastructure to which the funds would be put, timing of payment etc.

156 In addition to the development contributions negotiated as part of a planning permit, other items that would ordinarily be required to be addressed by a permit holder (at its cost) would be:
6 Considerations

- Provision for all necessary off-site road works and traffic mitigation measures;
- Provision for public laneways or through-block links to be created and given over if the site so commanded;
- Provision for public open space (usually as a cash contribution);
- Any measures necessary to mitigate any potential flooding risk or unacceptable noise impacts, if required; and
- An environmental audit to remedy any site contamination risk, if required.

157 At the Relevant Date, the issue of affordable housing and what level of provision might be expected of individual development projects was also being discussed in Government.

158 In terms of infrastructure provision across the broader Fisherman's Bend Precinct, at the Relevant Date the details of the type and timing of infrastructure items likely to be required was not generally known or had been clearly resolved. The prospect of major road network acquisitions, school and community infrastructure provision, public parks and transport infrastructure, whilst indicated conceptually had not been fully resolved. It was apparent however that from a high level standpoint, as illustrated in the Fisherman's Bend Draft Vision at the Relevant Date, major infrastructure items were to be variously provided for across the Precinct with some areas appearing less constrained in this regard than others.

159 The issue of development contributions in Fisherman's Bend at the Relevant Date was evolving and the manner in which it was to be addressed remained uncertain. This was causing delay in the procurement of planning permits at the time and has since.

160 There was considerable uncertainty about the amount, the type and timing of contributions and infrastructure items and this would have served to delay decision making on major development proposals in Fisherman's Bend. As part of the release of the Fisherman's Bend Draft Vision, the Government announced that:

- A number of funding mechanisms will be explored during the preparation of the Strategic Framework Plan. This includes development contributions provided by developers towards the delivery of infrastructure projects.
- A Development Contributions Plan will be prepared for the Fishermans Bend Urban Renewal Area and may contribute to funding critical infrastructure such as:
  - community facilities such as schools, libraries and gyms.

38 See page 67 of the Fisherman's Bend Urban Renewal Area Draft Vision
6 Considerations

- parks and open spaces for recreation purposes.
- light rail and bus infrastructure to ensure high levels of connection to the CBD & surrounding suburbs.
- pedestrian and cycle paths for sustainable transport options.
- public realm improvements for high quality public spaces.
- local roads, intersections and drainage.
- land acquisition to deliver the above.

→ In addition to development contributions, a range of other funding options are being considered through the planning phase and may include:

- council rates
- special rates or charges (e.g. community infrastructure levy); and
- direct state funding

→ Open space contributions will also be required as part of all development proposals.

161 In relation to the Subject Land which is located within one of the preferred areas for early commencement of development within the Montague Precinct, the issue of infrastructure was not as significant an issue as it might have been in other areas in the Precinct. The Subject Land was not earmarked for any particular infrastructure item (such as a new park or new road etc). It benefitted from its proximity to Southbank and the central city and enjoyed excellent access and location benefits relative to transport and services. On that basis, any proposal for redevelopment of the Subject Land could have been dealt with in much the same way as others have been elsewhere in the Precinct at the time, subject to a permit with conditions of approval requiring development contributions and other infrastructure items to be provided.
6.8 Hypothetical purchaser at Relevant Date

162 The manner in which projects across the Precinct might have been dealt with would have varied particularly in the early stages of the release of the Draft Vision and subsequently, the Strategic Framework Plan.

163 Whilst there is no doubt that infrastructure delivery per se will be more problematic in Fisherman’s Bend as compared to Docklands or Southbank given the difference in Government interest and investment in the Precincts and the greater dependency in Fisherman’s Bend on private funding of infrastructure, I do not expect the issue to be paralysing in terms of its impact on development approvals.

164 This ultimate provision of infrastructure including transport and like services and facilities in Fisherman’s Bend is likely to be slow compared with Southbank and Docklands. That said, development approvals will continue to flow, contributions sourced and inevitably, infrastructure delivered as and when funding allows.

165 The vastness of the Fisherman’s Bend Precinct itself is an issue in terms of coordinating infrastructure and without a clear path in terms of development contributions plan having been prepared or approved, the process of renewal is likely to be sporadic and largely indiscriminate.

166 At the Relevant Date, my advice to a hypothetical purchaser would have largely reflected the above discussion. The Subject Land was not so constrained that it could not have been given a planning approval for its redevelopment based on permit conditions that would have encapsulated what was known at the time. That is development contributions based on a cash payment, negotiated with the Government as part of a s.173 Agreement, together with a range of items that inevitably applied to many similar projects of the day such as traffic works, public streetscape works, site remediation works and the provision of public opens space in addition to the cash contribution.
7 Conclusion

My summary of the matters addressed herein is expressed generally in the following terms:

→ The Draft Vision for Fisherman's Bend presents a 50-year vision for the renewal of the Precinct. The full development of the Southbank and Docklands Precincts is unlikely to take this amount of time (more likely 30-40 years) particularly given the early involvement and extent of Government interest in both of these Precincts compared to Fisherman's Bend.

→ In terms of a comparison between the Precincts, Fisherman's Bend as a whole is the most deficient in terms of its access to public transport and other public infrastructure assets and services.

→ In terms of general aspect and amenity, a comparison of the three Precincts causes one to come to the view that both Southbank and Docklands, being substantially developed and beneficially located offer the greatest amenity compared with Fisherman's Bend.

→ At the Relevant Date, despite the announcement by Government of the Fisherman's Bend as a designated urban renewal area, there were still development opportunities and an unrealised potential available in the other two Precincts for further development.

→ The matter of development contributions in Fisherman's Bend at the Relevant Date was somewhat unresolved and fluid which necessitated negotiations between Government and permit applicants on individual case by case basis to procure development contributions.

→ There was considerable uncertainty about the amount, the type and timing of contributions and infrastructure items and this would have served to delay decision making on major development proposals in the broader Fisherman's Bend area.

→ The Subject Land is located within one of the preferred areas for early commencement of development and as such the issue of infrastructure was not as significant an issue as it might have been in other areas in the Precinct.

→ Any proposal for redevelopment of the Subject Land could have been dealt with in much the same way as others have been elsewhere in the Precinct at the time, subject to a permit with conditions of approval requiring development contributions and other infrastructure items to be provided on a negotiated case by case basis.

→ At the Relevant Date, my advice to a hypothetical purchaser would have been that the Subject Land was not so constrained that it could not have been given a planning approval for its redevelopment based on permit conditions that would have encapsulated what was known at the time. Development contributions negotiated with the Government as part of a s.173 Agreement together with a range of other items that inevitably applied to many similar projects of the day.
Attachment 1
Letter of Instruction from CCW
dated 05 September, 2017
5 September 2017

By email: ab@contour.net.au
Andrew Biasci
Contour Consultants Australia Pty Ltd
Level 1, 283 Drummond Street
Carlton VIC 3053
Australia

Confidential and privileged

Dear Mr Biasci

Secretary to the Department of Economic Development,
Jobs, Transport and Infrastructure v Caradi Pty Ltd formerly
Scared Bear Pty Ltd SCI 201502923 - Appointment as
Consultant

We refer to:

(a) our letter of instructions dated 30 November 2015;
(b) your planning report dated 28 January 2016; and
(c) your phone call with Melanie Bond and David Hastie on 5 September 2017.

1 Purpose of this letter

1.1 The purpose of this letter is to confirm the engagement of Contour Consultants
Australia Pty Ltd (Consultant) by Corrs Chambers Westgarth (Corrs) to perform
the services for the proceeding identified in Attachment A to this letter
(Services), subject to the terms of this letter.

1.2 We refer to previous correspondence and our recent discussions and confirm that
we act for the Department of Economic Development, Jobs, Transport and
Resources in this proceeding.

2 Value of the Services

2.1 It is agreed by the parties that the amount payable by Corrs to the Consultant for
the due and proper performance of the Services by the Consultant in accordance
with this letter will be within the range of $17,500 - $20,000 for the Services (Fee).
The Consultant must promptly notify Corrs on becoming aware that the Fee may exceed this range. The Fee includes:

(i) all taxes, levies and fees (excluding GST) which are payable in relation to the performance of the Services; and
(ii) all costs associated with performance of the Services.

3 Consultant's obligations

3.1 The Consultant must perform the Services:

(i) with due skill, care and diligence;
(ii) with expedition and without delay;
(iii) in accordance with all applicable laws and the requirements of all relevant authorities;
(iv) at the Consultant's own cost and risk, except to the extent this letter expressly provides otherwise; and
(v) in accordance with Corrs' reasonable instructions and requirements and the documents attached to this letter (including the additional terms contained in Attachment B to this letter).

3.2 It is agreed by the parties that the personnel at the Consultant responsible for delivery of the Services will be Andrew Biacsi.

4 Payment of the Fee

4.1 Once the Services are performed, the Consultant may give Corrs a valid tax invoice for the performed services which should be addressed to the Department of Economic Development, Jobs, Transport and Infrastructure (Invoice) care of John Walter of Corrs Chambers Westgarth. An Invoice must include:

(i) details of the period/quantity of the Services in respect of which the Invoice relates; and
(ii) such other information as Corrs reasonably requires.

4.2 If Corrs requests, the Consultant must provide Corrs with all relevant records to calculate and verify the amount set out in any Invoice.

4.3 Unless expressly stated otherwise in this letter, the Fee does not include GST. Corrs is not required to pay the GST component of the Fee until

4.4 Corrs receives a tax invoice from the Consultant in respect of the taxable supply (which terms have the meaning given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)).
5 Requirements for report

5.1 You must comply with Order 44 and Form 44A (Expert Witness Code of Conduct) of the Supreme Court (General Civil Procedure Rules) 2015 (Supreme Court Rules) as they relate to expert evidence.

5.2 An extract of order 44 and Form 44A of the Supreme Court Rules is annexed to this letter at Attachment C. In particular, we draw your attention to paragraph 3 of the Code of Conduct that sets out certain requirements in relation to the preparation of an expert report, including the following:

(i) The report shall state the opinion of the expert and shall state, specify or provide:

(A) name and address of the expert;
(B) an acknowledgement that the expert has read the code and agrees to be bound by it;
(C) the qualifications of the expert to prepare the report;
(D) the facts, matters and assumptions on which the opinion is based (a letter of instructions may be annexed);
(E) the reasons for;
(1) any literature or other materials utilised in support of;
(2) a summary of –
the opinion;
(F) if applicable, that a particular question, issue or matter falls outside the expert’s field of expertise;
(G) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person’s qualifications;
(H) a declaration –
(1) that the expert has made all the enquiries which the expert believes are desirable and appropriate; and
(2) that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
(I) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
(J) whether an opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
5.3 Other instructions regarding report:

(i) Please list any publications that you have authored or co-authored that are relevant to your field of expertise, and particularly in relation to the questions set out below. If you have research or publications in preparation but not completed, you should list these separately.

(ii) Your report should be signed and should annex copies of this letter of instructions, identify the documents relied upon in the report and be accompanied by clear copies of any photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter to which the report refers.

6 No other entitlement

6.1 Except as expressly provided for under section 4 above, and subject to section 6.2 below, the Consultant has no other entitlement for payment of the Services under this letter.

6.2 The Consultant releases Corrs from liability for expenses, losses and costs in connection with the Services in excess of the amount referred to in section 2.

7 Intellectual property

7.1 The Consultant warrants that any documents, reports, databases, data, software, processes, tools, technologies and other materials used, provided, produced or created by or on behalf of the Consultant in the course of providing the Services will not infringe any patent, registered design, trademark or name, copyright or other protected right (Intellectual Property Right) or Moral Right (which term has the meaning in the Copyright Act 1968 (Cth)).

7.2 All rights, title and interest in any Intellectual Property Rights created in the course of providing the Services vest in, and are assigned by the Consultant as legal and beneficial owner to, Corrs upon their creation.

7.3 Corrs grants the Consultant a non-exclusive, royalty-free licence to use, reproduce and modify the information or data provided to the Consultant by or on behalf of Corrs, for the purposes of delivering the Services.

7.4 Nothing in this letter has the effect of assigning any pre-existing Intellectual Property Rights of a party. If the Consultant incorporates any pre-existing Intellectual Property Rights in the Services (whether owned by the Consultant or not), the Consultant grants Corrs a non-exclusive, perpetual, royalty-free licence to use, reproduce and modify those pre-existing Intellectual Property Rights.

7.5 The Consultant will, at its own cost, execute all documents and do all things requested by Corrs for Corrs to obtain the benefits of this section 7. The Consultant will not do or omit to do anything which may prejudice Corrs’ Intellectual Property Rights.
8 Sub-contracting

8.1 The Consultant must not sub-contract to any third person any of its obligations under this letter without the prior written consent of Corrs, which consent may be given or withheld by the Corrs in its absolute discretion.

8.2 The Consultant must ensure that any person engaged by it complies with all obligations imposed on the Consultant by this letter. The Consultant will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this letter and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Consultant itself.

9 General

9.1 (Records and audit): The Consultant must keep, and ensure that its subcontractors keep, accurate records of the performance of the Services. These records must be available for inspection and copying by us or its representatives for a period of seven years after the completion of the Services or earlier termination of this letter.

9.2 (Assignment):

(i) The Consultant may not assign, novate or transfer in whole or in part its rights or obligations under this letter without the prior written consent of Corrs.

(ii) Corrs may, by written notice to the Consultant, assign, novate or transfer in whole or in part its rights or obligations under this letter.

(Governing law and jurisdiction):

(i) This letter is governed by and is to be construed in accordance with the laws applicable in Victoria.

(ii) Each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waiver any right to object to any proceedings brought in those courts.

(relationship of the parties):

(i) This letter is not intended to, and will not, create a partnership, joint venture or agency relationship between the parties.

(ii) The Consultant is an independent contractor and is not and must not purport to be a partner, joint venturer or agent of Corrs.

(iii) The Consultant must at no time act as the agent of Corrs or hold itself out as being the agent of Corrs.
10 Background

10.1 On 30 November 2015, we provided instructions for the preparation of an expert town planning report concerning the property at 11 to 31 Montague Street, Southbank (the Property). The Property was compulsorily acquired by the Department on 19 December 2013 (Relevant Date).

10.2 On behalf of the dispossessed owner, Caradi Pty Ltd, Mr Robert Milner provided a planning report dated 30 January 2016. In his report, Mr Milner made the following observations:

7 At and preceding the relevant date the subject land was situated within the 'Montague Precinct' of the Fishermans Bend Urban Renewal Area (FBURA).

8 Fishermans Bend comprises approximately 250 hectares of inner urban industrial land, situated on the southern side of the Port of Melbourne and the Yarra River and to the west of Southbank. It is well connected to the Central Business District and includes land within the City of Port Phillip and the City of Melbourne.

9 Historically, this part of Fishermans Bend was predominantly the manufacturing and industrial hinterland to the Port of Melbourne.

10 Manufacturing activity has declined in recent decades, and a transition towards the production and distribution of higher valued products and services has occurred. In this context, the role of the Port of Melbourne and the surrounding industrial precinct has changed.

11 The central city has concurrently experienced significant growth in population, housing and commercial activity.
12 The urban renewal of Fishermans Bend follows the redevelopment and renewal of Southbank and Docklands.

13 Fishermans Bend is part of the 'next stage' in the comprehensive urban renewal and expansion of Melbourne’s central city to accommodate projected population growth, employment activities and other metropolitan significant facilities that warrant a capital city location such as the Exhibition & Convention Centre.

10.3 On 17 March 2017, having been asked to consider Mr Milner’s report, you advised that you did not think any of the matters raised by Mr Milner altered your opinions in the matter.

10.4 When responding in relation to Mr Milner’s report, you mentioned the issue of development contributions relevant to the Property, a topic also addressed in your 30 January report:

A prudent purchaser would have known, at the relevant date, that the Minister/Department was undertaking negotiations with permit applicants on an individual case by case basis at the time, relating to a development contribution based on a widely known rate of $15,500 per apartment dwelling plus a $ per square metre rate for other non-residential floor space.

11 Valuation report

11.1 The parties in the proceeding have retained four valuers, being Mr Dudakov, Mr Brown, Mr Torr and Mr Murray. At the direction of the Court, a joint conference of valuers was held on 14 December 2016 and a joint statement of experts was prepared. We enclose a copy of that joint statement at Attachment A1.

11.2 There are various differences between the land valuers, a number of which are noted in the joint statement.
5 September 2017
Contour Consultants Australia Pty Ltd
Secretary to the Department of Economic Development,
Jobs, Transport and Infrastructure v Caradi Pty Ltd
formerly Scared Bear Pty Ltd SCI 201502923 - Appointment as Consultant

12 Summary
12.1 We trust that the nature of the report that is being sought is clear. In essence, what is being sought is a report that will assist the Court to understand both the differences and the similarities between the Property as part of the Montague precinct that forms part of the Fisherman’s Bend Urban Renewal area and the Southbank and Dockland precincts.

If you have any questions or require further information, please contact Melanie Bond on (03) 9672 3182 or email melanie.bond@corrs.com.au.

Yours faithfully
Corrs Support Services Pty Ltd

[Signature]

John Walter
Partner

attachments
ATTACHMENT A - Services

The researching and production of a further planning report on the Property (at 11-31 Montague Street, Southbank) by 6 October 2017 (or as otherwise agreed).

The report should have reference to the following attachments:

1) Joint statement of valuation experts (Attachment A1); and
2) Schedule of comparable sales relied upon by the valuers (Attachment A2).

The purpose of the further report is to provide a comparison at the Relevant Date, from a planning perspective, between three precincts:

(i) Fisherman's Bend, including the Property;
(ii) Southbank and
(iii) Docklands,

(collectively the Precincts).

When preparing the further report, please take into consideration and identify matters known and anticipated at the Relevant Date.

Considerations

We ask that the further report, as at the Relevant Date, compares the following:

(i) the state of development;
(ii) the availability of facilities (such as supermarkets, restaurants and the like);
(iii) access to existing and proposed public transport and other infrastructure;
(iv) general aspect and amenity;
(v) the intensity and pattern of existing and proposed development; and
(vi) the availability of development sites for each of the Precincts.

When considering and reporting on the Precincts, it may be helpful to provide a short history of the planning and development of each of the other two precincts (being Southbank and Docklands) compared to the planning and development of the Fisherman's Bend area. That is, noting the views expressed by Mr Milner at paragraph 12 quoted above.

Further considerations

When preparing your report, please address the issue of development contributions applicable to the Property and/or other parts of the Fisherman's
Bend precinct compared to the position in both the Southbank precinct and the Docklands precinct at the Relevant Date.

Please also consider and report whether and, if so, how the proposal for development contributions in the Fisherman’s Bend precinct would be anticipated at the Relevant Date to impact upon the timing, scope and content of infrastructure and facilities which may need to be provided as part of the residential development of the precinct.

If asked to advise a hypothetical purchaser at the Relevant Date, please advise what advice would you have given in relation to the likely timing of provision of infrastructure, transport and like services and facilities in this precinct compared to Southbank and Docklands.

The valuers, in their respective reports, have identified various sales said by one or more of them to be comparable or of assistance when valuing the Property. We enclose a schedule of those sales at Attachment A2.

As part of your report, could you please prepare a clear map which locates each of those sales, relevant to both the Property itself and shows the location of each of those sales relative to the Precincts that we have asked you to report upon.
IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
VALUATION, COMPENSATION AND PLANNING LIST

No. S Cl 2015 02923

IN THE MATTER of the Land Acquisition and Compensation Act 1986

- and -

IN THE MATTER of Section 80 of the Land Acquisition and Compensation Act 1986 whereby The Secretary DEDJTR refers a disputed claim for determination by the Supreme Court of Victoria.

BETWEEN:

Secretary to The Department of Economic Development, Jobs, Transport and Resources, A Body Corporate established under Section 41A of the Project Development Act and Construction Management Act 1994

Applicant

- and -

Caradi Pty Ltd formerly Scared Bear Pty Ltd.

Respondent

STATEMENT OF EXPERTS

Mr Dudakov and Mr Brown for the Applicant

And

Mr Torr and Mr Murray for the Respondent

At the direction of the Court, a Conference of Valuers was held on Wednesday 14 December, 2016.

1. At the commencement of the conference each valuer tabled his adopted valuation as at the date of the Notice of Acquisition, viz. 19 December 2013.

The assessments are:

Mr Dudakov $21.71 Million
Mr Brown $21.4 Million
Mr Torr $52.4 Million
Mr Murray $55 Million

Joint Statement
2. All valuers generally agree on the following:

- The highest and best use for the land was for high rise residential development. While there was some divergence as to the likely timing of development ultimately nothing in each of the valuers respective valuations turned on this point as all valuers relied on analysis of comparable sales in determining value. The exception to that statement is that the respective valuers' perception of the likely timeframe until development does influence the way in which they treat contamination remediation costs in their calculations. Murray/Torr applied a full impact, Dudakovi/Brown applied a deferred/olluted impact.

- The properties at 85-93 Lorimer Street and 60-82 Johnson Street were considered to be directly comparable in terms of location, size and development potential. However the valuers diverged in their respective interpretation as to the weight given to the various dealings and transactions relating to these properties.

- The portion of the subject property affected by the previous strata acquisition for the widening of Citylink had a significantly reduced value.

- The planning experts for both parties agree that the development schemes proposed by Rothe Lowman and Hayball are reasonable responses to the planning regime at the relevant date.

- The Joint Statement of the environmental consultants included the following, summarised, estimates of remediation costs (no basement scenario):
  
<table>
<thead>
<tr>
<th>Consultant</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Clarke</td>
<td>$2,432,000</td>
</tr>
<tr>
<td>Mr Parker</td>
<td>$3,766,000</td>
</tr>
<tr>
<td>Mr Pump</td>
<td>$3,606,000</td>
</tr>
<tr>
<td>Mr Scoffern</td>
<td>$7,204,110</td>
</tr>
</tbody>
</table>
3. The Valuers identified the following issues as giving rise to the substantial differences between their respective assessments:

- The Impact of site contamination on value and the various environmental reports and the subsequent return of the Joint Expert Report.

- The relevance and application of the sale of 85-93 Lorimer Street, Docklands in February 2014.

- The relevance and application of the conditional Contract of Sale of 60-82 Johnson Street, South Melbourne in May 2014 which ultimately did not proceed to Transfer.

- The relevance of the various development schemes postulated for the subject property.
4. Dealing with each issue in turn:

4.1 Environmental Report

Mr Dudakov

Mr Dudakov did not make a specific deduction for the cost of environmental clean-up. Mr Dudakov considered that any such cost comprised part of a suite of reasons which justified a 25% downward adjustment from the key sale he relied on, namely 85-93 Lorimer Street.

Mr Dudakov acknowledges that the recently completed Joint Experts Report significantly reduces the likely cost impact for site clean-up and as such would justify him reviewing his downward adjustment to 15% and hence resulting in a reviewed valuation of $24.61 million, calculated as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Area</th>
<th>Rate ($/m²)</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unencumbered Land</td>
<td>13,103.2m²</td>
<td>$1,750/m²</td>
<td>$22,930,600</td>
</tr>
<tr>
<td>Encumbered Land</td>
<td>2,796.8m²</td>
<td>$ 600/m²</td>
<td>$ 1,678,080</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$24,608,680</strong></td>
</tr>
</tbody>
</table>

Adopt

Mr Brown

Mr Brown did not make a specific deduction for the cost of environmental clean-up. In order to make such a deduction, such information in respect of the sales evidence needs to be obtained in order to gross the sales up, i.e. the sale price plus the clean-up cost to obtain the clean site value.

Unfortunately, the market is not this sophisticated where clean-up costs are either not obtained or estimated with significant ranges.

In light of the agreement between experts and the cost provided for the purpose of valuation, an adjustment to the value assessed is considered warranted given the consensus of experts as per the Joint Statement summary:

Mr Brown has revised his unencumbered land value to $1,800 per square metre, indicating $23,586,400. Added to the encumbered value of $1,709,985, indicates a rounded value of $25,300,000.

Mr Torr

In his valuation he had relied on the (then) cost estimate of Mr Pump ($4,780,000) and deducted that sum from the valuation of the land. Based on the Joint Statement he has revised his valuation as follows:

- Prudent parties to a sale of the subject land, armed with the current opinions of the engineers, would look for some consensus in the cost estimates and in doing so would, in his opinion, take a mid-point on the three estimates that are relatively close, and discard the one that is not. On that basis the average cost estimate is $3,298,000.
- He has adjusted his valuation upwards by $1,500,000, being the (rounded) difference between the estimate originally relied on and what he sees as the consensus of the more recent estimates.
- Accordingly, his valuation is revised from $52,400,000 to $53,900,000.
Mr Murray

Mr Murray relied upon the advice from Mr Pump in relation to the cost of environmental clean-up. The cost range was between $4,666,309 and $4,764,701. Mr Murray elected to apply a rounded allowance of $5,000,000 deducted from the land value component.

Mr Murray acknowledges the Joint Experts Report and particularly that Mr Pump and Mr Parker's opinion are closely aligned being $3,606,000 and $3,766,000. Mr Murray has therefore reduced his clean-up allowance by $1,000,000 to $4,000,000 to reflect the updated clean-up assessment. Accordingly, his valuation has increased from $55,000,000 up to $56,000,000.
4.2 Sale of 85-93 Lorimer Street

Mr Dudakov

Mr Dudakov considers this sale to be most comparable in terms of date, size and location. Mr Dudakov has investigated the circumstances surrounding the sale and considers that it fully complies with the Spencer concept of market value whereby there was both a fully informed and not over-anxious vendor and a fully informed and not over-anxious purchaser. Furthermore, the sale was brokered by a real estate agent actively engaged in the area.

Mr Dudakov’s investigations indicated that the property was previously subject to Due Diligence entered into in early to mid 2013 at a lesser sum but no sale eventuated.

Mr Dudakov acknowledges that subsequent sales from March 2014 onward show a significant rise in value from that disclosed in the sale of 85-93 Lorimer Street but considers that these changed levels to be a function of a rapidly rising market and a greater appreciation of the impact of value arising from the rezoning of the Fishermans Bend Urban Renewal Area in July 2012 and subsequent release of the Fishermans Bend Urban Renewal Area Draft Vision in September 2013.

Mr Dudakov acknowledges that events subsequent to the sale have resulted in a lower density than originally anticipated due to parkland and transport corridor requirements. However, at the date of sale informed parties were well aware that any public use requirement would carry with it a compensation entitlement. As it transpired the provision of open space in the permitted plan enabled an offset against development contributions.

Mr Brown

Mr Brown agrees with Mr Dudakov that this is the most comparable sale. Mr Brown has made enquiries regarding the sale and is satisfied the property sold on a fully informed basis with knowledgeable purchaser and vendor.

In relation to date of sale (a critical factor given the date of the NDA), it is the most proximate.

Mr Brown agrees the locality and the market were experiencing considerable change with the recognition of the rezoning of the greater Fishermans Bend area coupled with a heightened market for development sites. Mr Brown also notes he has not seen a copy of the Contract of Sale for this property.

Mr Torr

Mr Torr considers that this is a very low sale, and that it is significantly below the levels of value show by the wider market for this type of property. Whilst analysis of the available sales on a $/m² basis is problematic due to differing height limits/development yield, sales locations, fast market change and the ‘newness’ of the Fishermans Bend Urban Renewal Area, alternative analysis on a $/apartment site basis is instructive.

Sales analysed on that basis in his Report (March 2016), together with other sales around the relevant date that have subsequently come to his attention, show, on his analysis, a relatively tight range of $33,000 to $43,000 per apartment site. There are of course nuances in each sale that need to be considered, but they all stand in stark contrast to the Lorimer St sale, which analyses at $13,000 - $13,800 per apartment site (depending on what assumption is made on its development capacity).

Mr Torr also notes in relation to the Lorimer St sale:

- Planning documents available before the time of sale show this property to be in the path of a proposed ‘high frequency public transport corridor’ (or proposed new tram route), and a proposed public park area.
- Given that the urban renewal area did not yet have a formulated developer contributions plan that would have presented uncertainties around the development potential of the site, and the extent to which those proposed public use land areas would be "compensable" under a future developer contributions plan.

- As events turned out, approximately 41% of the site has been ear-marked for these public uses.

- The subsequent development approval for this site has a substantially lower development density than the subject property: 1 apartment to 9.4 m² of land, compared to the subject property (Rohe Lowman scheme) of 1 apartment to 6.06 m² of land. A substantial yield difference, part of which is attributable to the public use land areas referred to above.

Mr Murray

- Mr Murray agrees with Mr Torr that this is a very low sale and that it is significantly below the levels of value shown by the wider market for this type of property when referenced to a number of transactions that were occurring in this property sector.

- Mr Murray has made further inquiries regarding the circumstances of the history of the sale and has confirmed previous advice by the marketing agent, Mr R. Hutton of Lemon Baxter Real Estate. Mr Hutton confirmed that the original sale price of the first contract was $18,250,000 in February 2013 and that within a week of the termination of the contract and removal of the caveat, the property was recontracted by Little Projects in February 2014 at the same consideration.

- Mr Murray agrees with Mr Dudakov that market awareness of the rezoning of the Fishermans Bend Urban Renewal Area in July 2012 and more particularly the subsequent release of the Fishermans Bend Urban Renewal Area Draft Vision in September 2013 positively impacted on market value levels. This further confirms Mr Murray's view that this is a very low sale not representative of market levels.

- Mr Murray is also of the view that it is appropriate to carry out analyses of the available sales on both a rate per square metre of land area as well as an apartment/dwelling site basis with reference and adjustments to potential yield/height limit, location, etc. Sales evidence included within his report as well as further sales considered post the mediation conference have indicated a range that falls within $30,000 and $51,000 per apartment site. Mr Murray is of the view that this sale is out of line with the wider market evidence even with adjustments for varying yield scenarios (1,400 apartments or 980 apartments), variations in density and public land use requirements.
4.3 80-82 Johnson Street 're-sale' in May 2014

**Background**

60-82 Johnson Street sold in November 2012 for $10,100,000 ($1,033 per m²). It was then offered for sale (post relevant date) and was contracted to be sold on 18 May 2014 at $85,500,000 ($5,677 per m²) subject to obtaining a planning permit by 27 August 2014. After agreeing to extend the time limit for the permit twice, the parties mutually agreed to withdraw from the sale in March 2015.

**Mr Dudakov**

Mr Dudakov notes the substantial uplift in value between the price negotiated in May 2014 for 60-82 Johnson Street and the sale of 85-93 Lorimer Street in February 2014. Mr Dudakov notes that one of the reasons the sale price has to be treated with caution is that the sale was conditional on obtaining planning approval. Further, and of equal importance, Mr Dudakov observes that due to delays experienced in obtaining planning approval this contract was extended with the consent of the vendor on at least two occasions throughout 2014 in a rapidly rising market, indicating to him that the vendor was well aware that the contract price was fuscous. Had this not been the case the vendor could have opted to terminate the contract and to put the property back on the market.

**Mr Brown**

Mr Brown notes the comments of Mr Dudakov in relation to the second conditional sale. Of particular relevance is the date of sale and at which point sales are relevant or not relevant given the date of the Notice of Acquisition, 19 December 2013.

Mr Brown also notes the conditional sale has not settled and is of the view it holds little relevance in this matter for this reason. Mr Brown notes he has been provided with a copy of the contract for the 2012 sale, but not the 2014 sale.

**Mr Torr**

Mr Torr agrees that the price in this contract of sale reflects the value of the land with a Permit, and that is a factor that requires adjustment in the valuation of the subject land. In making that adjustment it is relevant that the permit being sought as a condition of the contract was not an overly ambitious one and in fact that permit was ultimately approved 3 months after the parties agreed to 'walk away.'

The failure of the Contract to proceed to settlement was not, on Mr Torr's information, due to matters to do with the land or the agreed price. The permit approval suffered unforeseen delays, including running into the impending State election (November 2014) and then a serious illness for the Minister who could approve it. In the interim the purchaser had acquired two other development projects and both parties, as he understands it, were prepared to end the Contract.

The sale price ($65.5 million) represented $34,680 per apartment, which is in line with other sales evidence, excluding 85-93 Lorimer St.

Mr Torr agrees that 2014 was a period of fast escalation in values for this type of property and that that is a factor to be taken into account in the analysis of this sale. However he does not consider that the 5 month period between the relevant date of valuation and the date of this sale precludes it (with adjustment) as a guide to market value in December 2013.

In regards to the earlier sale of this property for $10.1 million in 2012 Mr Torr is not aware of the circumstances giving rise to that sale. However he makes the observation that the change in value to the second sale is most extraordinary and, since that later sale is broadly corroborated by other market evidence (see above), he place no reliance on the first sale.

He further notes that what is apparent from a comparison of these two sales is that they stand in stark contrast to one another (Lorimer St at $2,063/m², Johnson St $5,587/m²). And that extent of difference cannot be explained by the 3 month difference in dates, or the 'with permit' condition in the latter sale. He concluded, on the basis of other market evidence, that the Lorimer St sale is a low sale.
Mr Murray

Mr Murray agrees that the price ($55,000,000) in this contract of sale reflects the value of the land with a Permit, and that an adjustment is required when referencing it to the subject land. Mr Murray understands that the condition of the contract requiring the planning permit to issue, was not considered onerous and had City of Port Phillip support in the application.

Mr Murray concurs with Mr Tom's comments on the failure of the Contract to proceed.

Mr Murray noted that the sale price represented $34,688 per apartment, which is in line with sales evidence at that date, except for the transaction at 85-93 Lorimer Street.

Mr Murray agrees that 2014 was a period of strong escalation in values for this type of property and that it is a factor to be taken into account when comparing to the subject. Mr Murray considers that the 5 month period between the relevant date of valuation and the date of sale does not preclude it from assisting to value the subject.

Mr Murray notes the earlier sale of this property for $10,100,000 in November 2012 and consequently places no reliance on it due to the date of sale but highlights that it shows extraordinary escalation within an emerging market.

Mr Murray is of the view that even though the sale date is 3 months later than the Lorimer Street sale, the permit condition cannot explain the variation in rate per square metre or rate per apartment. In Mr Murray's view this sale further confirms that the Lorimer Street sale can be considered to be out of line with market levels.
4.4 Relevance of Development Schemes

Mr Dudakov

While Mr Dudakov has analysed, where possible, comparable sales on both a dollar per m² of land area and a price per achievable apartment, he places far less reliance on the latter for the purpose of determining value.

Mr Dudakov takes this view because where no permit exists at the date of sale, as was the case with the subject property, the achievable number of units is very much a matter of conjecture. Further, in some instances, such as the case with the permit issued for 85-93 Lorimer Street (subsequent to the date of purchase), a reduction in achievable units was agreed to in exchange for offsetting concessions for development contributions and for the provision of open space.

Mr Brown

Mr Brown is of the view that an analysis of a sale on as many differing bases as possible is useful. The issue becomes dealing with significant sites of high volumes of units surrounded by significant sites with like potential.

The further complication in Fishermans Bend was the imposition of a Development Plan Overlay — Schedule 2 which had indicative contribution levels of $15,000 per dwelling and $180 per square metre for commercial and retail.

Coupled with this is the largely industrial nature of the area with no real amenities and proximity to the CBD, as opposed to Southbank.

Mr Brown in his initial work gave consideration to Southbank sales, but drew the conclusion that these sites were not comparable as Southbank had no Development Plan Overlay and was more proximate to the CBD and services.

Mr Brown remains of the view that interim uses for the land in Fishermans Bend will be live options as the volume of land available for development is significant and the take up rate to date for development is negligible.

Mr Torr

A check method of sales analysis, such as $/apartment, is important in the subject valuation because the available sales evidence is both low in volume and has varying development density potential, which is a significant driver of the $/m² price achievable. That check method also facilitates cross-referencing with sales outside of the Fishermans Bend Urban Renewal precinct.

He does not agree with Mr Dudakov’s statement that the ‘number of units is very much a matter of conjecture’. The subject property has two professionally prepared schemes, which were ratified by expert planners, and the majority of the sales had prepared schemes, or permit applications, or approved permits. That is not to say that there is absolute accuracy in this analysis method, because scheme variations do occur, however it is no more subjective than alternative sales analysis methods.

In regards to the apartment yield on the Lorimer St property being scaled down Mr Torr notes that the provision of parts of it for open space and the tram corridor was an identifiable risk at the time of sale, and that is one of the reasons he treats this sale with caution.
Mr Murray

Mr Murray is of the view that an analysis of sales evidence on as many bases as possible is of assistance in the valuation exercise.

The use of value per square metre of site area and per apartment is generally accepted as appropriate when considering sites of the size and expected development potential of the subject. The use of the proposed schemes, as prepared by expert planners, on the subject and many of the sale properties provide a strong indication as to potential yields. A number of schemes were in place prior to the relevant date on holdings within the subject's immediate area even though the development in the area was at an embryonic stage.

Mr Murray concurs with Mr Brown that the Infrastructure Levy applicable to the "Fisherman's Bend" area is a major factor that must be considered when comparing the subject to sale properties outside the subject area.
ATTACHMENT A2 – Schedule of comparable sales

<table>
<thead>
<tr>
<th>No</th>
<th>Address</th>
<th>Sale Date</th>
<th>Sale Price</th>
<th>Land Area (m²)</th>
<th>Zoning (at sale)</th>
<th>Zoning (current)</th>
<th>Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>125-133 Thistlethwaite Street</td>
<td>Apr 2013</td>
<td>$4,125,000</td>
<td>1,211</td>
<td>CCZ1</td>
<td>CCZ1</td>
<td>$3,406/m²</td>
</tr>
<tr>
<td></td>
<td>South Melbourne</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>14 Woodruff Street</td>
<td>Jul 2012</td>
<td>$25,000,000</td>
<td>40,000</td>
<td>CCZ1</td>
<td>CCZ1</td>
<td>$646/m²</td>
</tr>
<tr>
<td></td>
<td>Port Melbourne</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>60 - 82 Johnson Street</td>
<td>Dec 2012</td>
<td>$10,100,000</td>
<td>9,776</td>
<td>CCZ1</td>
<td>CCZ1</td>
<td>$1,045/m²</td>
</tr>
<tr>
<td></td>
<td>South Melbourne</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>85 Lorimer Street</td>
<td>Feb 2014</td>
<td>$18,500,000</td>
<td>8,847</td>
<td>CCZ4</td>
<td>CCZ4</td>
<td>$2,091/m²</td>
</tr>
<tr>
<td></td>
<td>Docklands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Part 25, 880 Lorimer Street</td>
<td>Jan 2012</td>
<td>$3,150,000</td>
<td>4,160</td>
<td>B32</td>
<td>CCZ4</td>
<td>$788/m²</td>
</tr>
<tr>
<td></td>
<td>Port Melbourne</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>332 Plumer Street</td>
<td>Jan 2012</td>
<td>$4,650,000</td>
<td>8,062</td>
<td>IN1Z</td>
<td>CCZ1</td>
<td>$626/m²</td>
</tr>
<tr>
<td></td>
<td>Port Melbourne</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>830 Lorimer Street</td>
<td>Jul 2010</td>
<td>$8,350,000</td>
<td>14,300</td>
<td>IN1Z</td>
<td>CCZ4</td>
<td>$584/m²</td>
</tr>
<tr>
<td></td>
<td>Port Melbourne</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Address</td>
<td>Year</td>
<td>Cost</td>
<td>Floor Area</td>
<td>Zone</td>
<td>Floor</td>
<td>Rate</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------</td>
<td>-------</td>
<td>----------</td>
<td>------------</td>
<td>------</td>
<td>-------</td>
<td>--------</td>
</tr>
<tr>
<td>8</td>
<td>411-451 Docklands Drive, Docklands</td>
<td>Dec 2011</td>
<td>$21,920,000</td>
<td>16,303</td>
<td>DZ6</td>
<td>N/A</td>
<td>$1,345/m²</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$31,795,854</td>
<td></td>
<td></td>
<td></td>
<td>$1,950/m²</td>
</tr>
<tr>
<td>9</td>
<td>8 Hopkins Street, Footscray</td>
<td>Dec 2013</td>
<td>$17,000,000</td>
<td>13,180</td>
<td>PDZ2</td>
<td>N/A</td>
<td>$1,290/m²</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>38 Freshwater Place, Southbank</td>
<td>Oct 2013</td>
<td>$30,000,000</td>
<td>3,096</td>
<td>-</td>
<td>CCZ3</td>
<td>$9,690/m²</td>
</tr>
<tr>
<td>11</td>
<td>42-48 Balston Street, Southbank</td>
<td>Oct 2013</td>
<td>$7,000,000</td>
<td>1,455</td>
<td>-</td>
<td>MUZ</td>
<td>$4,811/m²</td>
</tr>
<tr>
<td>12</td>
<td>250 Spencer Street, Melbourne</td>
<td>Jun 2013</td>
<td>$75,000,000</td>
<td>11,755</td>
<td>-</td>
<td>CCZ1</td>
<td>$6,380/m²</td>
</tr>
<tr>
<td>13</td>
<td>15-35 Thistlethwaite Street, South Melbourne</td>
<td>Apr 2013</td>
<td>$4,400,000</td>
<td>1,194</td>
<td>-</td>
<td>CCZ1</td>
<td>$3,685/m²</td>
</tr>
<tr>
<td>14</td>
<td>125-133 Thistlethwaite Street, South Melbourne</td>
<td>Apr 2013</td>
<td>$4,125,000</td>
<td>1,211</td>
<td>-</td>
<td>CCZ1</td>
<td>$3,406/m²</td>
</tr>
<tr>
<td>15</td>
<td>60-82 Johnson Street, South Melbourne</td>
<td>Nov 2012</td>
<td>$10,100,000</td>
<td>9,776</td>
<td>-</td>
<td>CCZ1</td>
<td>$1,033/m²</td>
</tr>
<tr>
<td>16</td>
<td>134-150 Buckhurst Street,</td>
<td>Aug 2012</td>
<td>$11,000,000</td>
<td>5,457</td>
<td>-</td>
<td>CCZ1</td>
<td>$2,016/m²</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Date</td>
<td>Value</td>
<td>Size</td>
<td>Code</td>
<td>Unit Cost</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-------------</td>
<td>--------</td>
<td>--------</td>
<td>-------</td>
<td>-------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>164 Ingles Street, Port Melbourne</td>
<td>Jul 2012</td>
<td>$25,000,000</td>
<td>39,406</td>
<td>IN1Z</td>
<td>$634/m²</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>19-35 Flemington Road, North Melbourne</td>
<td>Apr 2012</td>
<td>$22,000,000</td>
<td>4,056</td>
<td>MUZ</td>
<td>$5,424/m²</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>123-135 Montague Street, South Melbourne</td>
<td>Sep 2010</td>
<td>$12,700,000</td>
<td>5,711</td>
<td>IN1Z</td>
<td>$2,224/m²</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>85-93 Lorimer Street, Docklands</td>
<td>Feb 2014</td>
<td>$18,250,000</td>
<td>8,847</td>
<td>CCZ1</td>
<td>$2,063/m²</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>10-12 Leason Street, Kew</td>
<td>Apr 2009</td>
<td>$300,000</td>
<td>1,338</td>
<td>R1Z</td>
<td>$224/m²</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>14-16 Leason Street, Kew</td>
<td>Apr 2009</td>
<td>$300,000</td>
<td>$224</td>
<td>R1Z</td>
<td>$224/m²</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>144A Mascoma Street, Strathmore</td>
<td>Mar 2009</td>
<td>$850,000</td>
<td>17,100</td>
<td>PPRZ</td>
<td>50/m²</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>14-16 Leason Street, Kew</td>
<td>Dec 2008</td>
<td>$300,000</td>
<td>1,394</td>
<td>R1Z</td>
<td>$215/m²</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>30 Prohasky Street</td>
<td>Dec 2008</td>
<td>$4,110,000</td>
<td>5,430</td>
<td>INZ1</td>
<td>$266/m²</td>
<td></td>
</tr>
<tr>
<td>Port Melbourne</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>---------------------------</td>
<td>-------------------</td>
<td>----------------</td>
<td>-------------------</td>
<td>----------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>535A Mount Ridley Road, Mickieham</td>
<td>Aug 2006</td>
<td>$200,000</td>
<td>8,361</td>
<td>CA</td>
<td>$24/m²</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>70 Heyington Place, Toorak</td>
<td>May 2007</td>
<td>$165,000</td>
<td>508</td>
<td>PPRZ</td>
<td>$325/m²</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>60-82 Johnson St, Southbank</td>
<td>May 2014</td>
<td>$55,000,000</td>
<td>9,776</td>
<td>-</td>
<td>CCZ1</td>
<td>$5,626/m²</td>
</tr>
<tr>
<td>29</td>
<td>60-82 Johnson St, Southbank</td>
<td>Dec 2012</td>
<td>$10,100,000</td>
<td>9,776</td>
<td>-</td>
<td>CCZ1</td>
<td>$1,033/m²</td>
</tr>
<tr>
<td>30</td>
<td>85 Lorimer St, Docklands</td>
<td>Feb 2014</td>
<td>$18,250,000</td>
<td>8,847</td>
<td>-</td>
<td>CCZ4</td>
<td>$2,063/m²</td>
</tr>
<tr>
<td>31</td>
<td>97-117 Kavanagh St, Southbank</td>
<td>Jun 2014</td>
<td>$145,000,000</td>
<td>19,648</td>
<td>-</td>
<td>CCZ3</td>
<td>$7,380/m²</td>
</tr>
<tr>
<td>32</td>
<td>6-78 Buckhurst St, South Melbourne</td>
<td>Sep 2014</td>
<td>$42,000,000</td>
<td>9,600</td>
<td>-</td>
<td>CCZ1</td>
<td>$4,375/m²</td>
</tr>
<tr>
<td>33</td>
<td>134-150 Buckhurst St, South Melbourne</td>
<td>Aug 2012</td>
<td>$11,050,000</td>
<td>5,456</td>
<td>-</td>
<td>CCZ1</td>
<td>$2,025/m²</td>
</tr>
<tr>
<td></td>
<td>164 Ingles St, Port Melbourne</td>
<td>Jul 2012</td>
<td>$25,000,000</td>
<td>39,406</td>
<td>-</td>
<td>CCZ1</td>
<td>$634/m²</td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------</td>
<td>----------</td>
<td>-------------</td>
<td>-------</td>
<td>---</td>
<td>-----</td>
<td>-------</td>
</tr>
<tr>
<td>36</td>
<td>6-78 Buckhurst Street, South Melbourne</td>
<td>Sep 2014</td>
<td>$43,000,000</td>
<td>9,356</td>
<td>-</td>
<td>CCZ1</td>
<td>$4,596/m²</td>
</tr>
<tr>
<td>37</td>
<td>85-93 Lorimer Street, Docklands</td>
<td>Jan 2014</td>
<td>$18,250,000</td>
<td>8,857</td>
<td>-</td>
<td>CCZ4</td>
<td>$2,061/m²</td>
</tr>
<tr>
<td>38</td>
<td>60-82 Johnson Street, South Melbourne</td>
<td>Jun 2014</td>
<td>$55,500,000</td>
<td>9,776</td>
<td>-</td>
<td>CCZ1</td>
<td>$5,677/m²</td>
</tr>
<tr>
<td>39</td>
<td>93-119 Kavanagh Street, Southbank</td>
<td>Jun 2014</td>
<td>$145,000,000</td>
<td>20,259</td>
<td>-</td>
<td>CCZ3</td>
<td>$7,157/m²</td>
</tr>
<tr>
<td>40</td>
<td>134-150 Buckhurst Street, South Melbourne</td>
<td>Apr 2013</td>
<td>$11,000,000</td>
<td>5,457</td>
<td>-</td>
<td>CCZ1</td>
<td>$2,016/m²</td>
</tr>
</tbody>
</table>
ATTACHMENT B - Terms

1 Definitions

Conflict of Interest includes any matter, circumstance, interest or activity affecting the Service Provider, any of its Personnel or sub-contractors (or any former Personnel or sub-contractor of the Service Provider) which impairs or might or might appear to impair the ability of the Service Provider to provide the Services to Corrs diligently, independently and in the best interests of the Corrs.

Personnel means any employee, officer or partner.

Probity Event includes any event relating to the Service Provider, the Service Provider's Personnel and any sub-contractor of the Service Provider:

(a) giving rise to a Conflict of Interest;
(b) having a material adverse effect on the character, integrity, or honesty of a relevant entity or person, including a criminal charge or conviction and a breach of a confidentiality, privacy or security obligation; or
(c) involving a material failure to achieve or maintain standards of ethical behaviour required by the Corrs.

2 Conflicts of interest, Incidents and probity

2.1 Conflicts of Interest

(a) The Consultant warrants that to the best of its knowledge, after making diligent inquiry, as at the date of this letter no actual, potential or perceived Conflict of Interest, except as disclosed to Corrs, exists or is likely to arise in the performance of the Services under this letter.

(b) The Consultant must use its best endeavours (including making all appropriate inquiries) to ensure that:

(i) a situation does not arise which might result in any actual, potential or perceived Conflict of Interest, and

(ii) any Personnel or sub-contractors of the Consultant do not engage in any activity or obtain any interests which might result in the Consultant or such Personnel or sub-contractors having any actual, potential or perceived Conflict of Interest.

(c) During the term of the engagement set out in this letter the Consultant will immediately notify Corrs of any matter that may give rise to an actual, potential or perceived Conflict of Interest with respect to Corrs or the Services and the notice must provide details of all relevant circumstances.

2.2 Probity

(a) During engagement set out in this letter :
(i) if a Probity Event with respect to this letter or the provision of Services occurs, the Consultant will immediately give written notice Corrs of the Probity Event, and the notice must provide details of all relevant circumstances; and

(ii) Corrs may give written notice to the Consultant that it believes such a Probity Event has occurred.

(b) Where the Consultant or Corrs gives notice under clause 2.2(a), the Consultant must:

(i) provide any information reasonably requested by the Corrs; and

(ii) take any steps reasonably required by Corrs, to address the Probity Event, including:

(A) procuring that the relevant Personnel or sub-contractor ceases to be Key Personnel; or

(B) requiring the Consultant to preclude any person from having any involvement in the provision of any Services under this letter.

3 Privacy

(a) The Consultant agrees to comply with its obligations (if any) under or arising pursuant to the Privacy Act 1988 (Cth) to the extent relevant to this letter. The Consultant also agrees to comply with:

(i) such other Commonwealth, State or Territory legislation related to privacy which is relevant to this letter;

(ii) any directions made by a Privacy Commissioner relevant to this letter; and

(iii) any other reasonable direction relating to privacy which is given by Corrs.

(b) The Consultant acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Consultant under or in connection with this letter.

(c) The Consultant agrees to ensure that any sub-contract entered into for the purpose of fulfilling the Consultant's obligations under this letter contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Consultant has under this clause 3, including the requirement in relation to sub-contracts.

(d) For the purposes of this clause 3:

(i) Code of Practice means a code of practice as defined in, and approved under, the Information Privacy Act 2000 (Vic);
(ii) **Information Privacy Principles** means the Information Privacy Principles set out in the *Information Privacy Act 2000* (Vic); and

(iii) **Privacy Commissioner** means the Commonwealth Privacy Commissioner or the Victorian Privacy Commissioner.
ATTACHMENT C – Order 44 and Form 44A (Expert Witness Code of Conduct) of the Supreme Court (General Civil Procedure Rules)
Order 44—Expert evidence

44.01 Definitions
In this Order, unless the context or subject matter otherwise requires—

*expert* means a person who has specialised knowledge based on the person's training, study or experience;

*opinion* includes more than one opinion;

*the code* means the expert witness code of conduct in Form 44A.

44.02 Application of Order
(1) This Order applies to a proceeding however commenced.

(2) This Order does not apply to the evidence of a party who would, if called as a witness at the trial, be qualified to give evidence as an expert in respect of any question in the proceeding.

(3) With respect to the opinion of a medical practitioner, in a proceeding for medical negligence in which the plaintiff claims damages for or in respect of bodily injury, this Order applies to an opinion on the liability of the defendant but does not otherwise apply to a medical report to which Order 33 applies.

44.03 Report of expert
(1) Unless otherwise ordered, a party who intends at trial to adduce the evidence of a person as an expert shall—

(a) as soon as practicable after the engagement of the expert and before the expert makes a report under this Rule, provide the expert with a copy of the code, and
Supreme Court (General Civil Procedure) Rules 2015
S.R. No. 103/2015
Order 44—Expert evidence

(b) not later than 30 days before the day
fixed for trial, serve on each other party, a
report by the expert in accordance with
paragraph (2) and deliver a copy for the use
of the Court.

(2) The report shall state the opinion of the expert and
shall state, specify or provide—

(a) the name and address of the expert;
(b) an acknowledgement that the expert has read
the code and agrees to be bound by it;
(c) the qualifications of the expert to prepare the
report;
(d) the facts, matters and assumptions on which
the opinion is based (a letter of instructions
may be annexed);
(e) in respect of the opinion—
   (i) the reasons for it;
   (ii) any literature or other materials utilised
       in support of it; and
   (iii) a summary of it;
(f) if applicable, that a particular question, issue
or matter falls outside the expert's field of
expertise;
(g) any examinations, tests or other
investigations on which the expert has relied,
identifying the person who carried them out
and that person's qualifications;
(h) a declaration—
   (i) that the expert has made all the
       enquiries which the expert believes are
       desirable and appropriate; and
(ii) that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

(i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(j) whether an opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.

(3) If the expert provides to a party a supplementary report, including a report indicating that the expert has changed the expert’s opinion on a material matter expressed in an earlier report—

(a) that party shall forthwith serve the supplementary report on all other parties; and

(b) in default of such service, the party and any other party having a like interest shall not use the earlier report or the supplementary report at trial without the leave of the Court.

(4) Any report provided by the expert pursuant to this Rule—

(a) shall be signed by the expert; and

(b) shall be accompanied by clear copies of any photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter to which the report refers.

44.04 Other party’s report as evidence

Unless otherwise ordered, a party may put in evidence a report served on that party by another party under this Order.
44.05 No evidence unless disclosed in report

Except with the leave of the Court or by consent of the parties affected, a party shall not, except in cross-examination, adduce any evidence from a person as an expert at the trial of a proceeding unless the substance of the evidence is contained within a report or reports which the party has served under this Order.

44.06 Conference between experts

(1) The Court may direct expert witnesses—
(a) to confer; and
(b) to provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for their not agreeing.

(2) The Court may specify the matters on which the experts are to confer.

(3) An expert witness may apply to the Court for further directions.

(4) The Court may direct the legal representatives of a party—
(a) to attend the conference;
(b) not to attend the conference;
(c) to attend or not to attend at the option of the party whom they represent.

(5) Subject to paragraph (1)(b), except as the parties affected agree in writing, no evidence shall be admitted of anything said or done by any person at the conference.

(6) An agreement reached during the conference shall not bind a party except in so far as the party agrees in writing.
Form 44A—Expert witness code of conduct

EXPERT WITNESS CODE OF CONDUCT

1. A person engaged as an expert witness has an overriding duty to assist the Court impartially on matters relevant to the area of expertise of the witness.

2. An expert witness is not an advocate for a party.

3. Every report prepared by an expert witness for the use of the Court shall state the opinion or opinions of the expert and shall state, specify or provide—

   (a) the name and address of the expert;
   
   (b) an acknowledgement that the expert has read this code and agrees to be bound by it;
   
   (c) the qualifications of the expert to prepare the report;
   
   (d) the facts, matters and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);
   
   (e) (i) the reasons for,

   (ii) any literature or other materials utilised in support of,

   (iii) a summary of—

   each such opinion;

   (f) (if applicable) that a particular question, issue or matter falls outside the expert’s field of expertise;

   (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person’s qualifications;

   (h) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

   (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate; and

   (j) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
4. Where an expert witness has provided to a party (or that party’s legal representative) a report for the use of the Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party’s legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i) and (j) of clause 3 of this rule and, if applicable, paragraph (f) of that clause.

5. If directed to do so by the Court, an expert witness shall—
   (a) confer with any other expert witness; and
   (b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing.

6. Each expert witness shall exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement.
Attachment 2
Form 44A – Expert Witness Declaration
Name and Address
Andrew Biacsi is a Director of Contour Consultants Australia Pty Ltd, Town Planners and practices from Level 1, 283 Drummond Street, Carlton Victoria, 3053.

Professional Qualifications
- Bachelor of Applied Science (Planning)
- Graduate Diploma in Urban and Regional Planning
- Director - Contour Consultants Australia Pty Ltd
- Member Planning Institute Australia

Professional Experience
First employed as a town planner in 1980. I have been employed in both public and private practice for a period of more than 35 years in Victoria, the A.C.T. and New South Wales. I have been in private practice since 1989 and at Contour Consultants since 1991.

Areas of Expertise
- Statutory and strategic planning and urban design.
- Advice and assessment of land use and development proposals to planning authorities, government agencies, corporations and developers (including major residential, retail, commercial, industrial, institutional and mixed use projects).
- Preparation and presentation of evidence before VCAT, Supreme Court of Victoria, the Magistrates Court and various government appointed independent panels and advisory committees.

Expertise to Prepare this Report
My training and experience including involvement with many forms of retail and mixed use developments in activity centre and other locations including central city and urban growth areas over a period of approximately 35 years qualifies me to comment on the town planning and strategic policy implications of this proceeding.

Instructions which Define the Scope of this Report
I received instructions from Corrs Chambers Westgarth Lawyers acting for the Department of Economic Development, Jobs, Transport and Infrastructure (DEDJTR) to prepare a planning report that addresses a number of specific matters set out in their letter of instruction to me dated 05 September 2017.

Facts, Matters and Assumptions Relied Upon
- Reviewed the Port Phillip Planning Scheme on or around 19 December, 2013;
- Reviewed the Melbourne Planning Scheme on or around 19 December, 2013;
- Reviewed relevant background documents and policies as referenced within the body of this report; and
- In addressing the matters set out in Attachment A of my letter of
in. I have been asked to make reference to the following attachments:

1) Joint statement of valuation experts (Attachment A1); and

2) Schedule of comparable sales relied upon by the valuers (Attachment A2).

Documents Taken into Account
Refer to the documents contained in my letter of instruction dated 5 September 2017 and as described in this Report.

Identity of Persons Undertaking the Work
Report prepared by Andrew Biacsi with the assistance of Angela Ash, Associate at Contour Consultants.

Relationship with Proponent
I have no private or personal business relationship with the proponent.

Summary of Opinions
Refer to Report.

There are no opinions contained in this Report which are not concluded opinions.

I acknowledge that I have read the Supreme Court of Victoria Expert Witness Code of Conduct and agree to be bound by it; and

I declare that I have made all inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court.

Andrew Biacsi
Director
Contour Consultants Australia Pty Ltd
Attachment 3
Precinct Map

A3

1978