IN THE MATTER OF

FISHERMANS BEND REVIEW PANEL

AMENDMENT: GC81 to the Port Phillip and Melbourne Planning Schemes

PLANNING AUTHORITY: The Minister for Planning

SUBJECT LAND: 400 – 430 City Road, Southbank
44 – 54 White Street, South Melbourne
176 – 184 Gladstone Street, South Melbourne

OUTLINE OF SUBMISSIONS

Introduction

1. These submissions are made on behalf of the following landowners in relation Amendment GC81 to the Port Phillip and Melbourne Planning Schemes:

   (a) Wadhawan Holdings Pty Ltd, owner of land at 400 - 430 City Road, South Melbourne, in the Montague Precinct (Submitter 143);

   (b) Kador Group Holdings Pty Ltd, owner of land at 44 – 54 White Street, South Melbourne in the Sandridge Precinct (Submitter 141) and

   (c) Carri Nominees Pty Ltd, owner of land at 174 – 184 Gladstone Street, South Melbourne in the Montague Street (Submitter 123).

   [collectively referred to as "the Landowners"]

2. The Landowners will each rely on a further submission that addresses their specific concerns in relation to the Amendment.
3. In addition to these submissions, the Landowners\(^1\) rely on the expert evidence of:

(d) Mr David Song, of Song Bowden Planning in relation to town planning considerations; and

(e) Mr Jason Walsh of TraffixGroup in relation to parking and traffic matters.

4. The Landowners also generally endorse and adopt the general submissions made on behalf of the landowners represented by Mr Tweedie, Mr Canavan and Ms Sharp, on 19 April 2018 (document 252).

**Testing the Vision**

5. The Review Panel ought reject the Minister’s submission that it is not open to it to test the assumptions that underpin the *Fishermans Bend Vision*, 2016 (“the Vision”) and which substantially informed the built form controls, including the Floor Area Ratios (“the FAR”).

6. The Landowners also adopt the submissions of Mr Tweedie, Mr Canavan and Ms Sharp in relation to this issue.

7. The Terms of Reference (“the TOR”) provide:

   3. *The purpose of the Review Panel is to advise the Minister for Planning on the appropriateness of the proposed planning scheme amendment GC81.*

8. It is difficult to understand how the Review Panel could determine whether the Amendment is appropriate without assessing the key propositions advanced in the Vision. A proper analysis of the strategic merit of the Amendment requires the Review Panel to go behind the built form controls. A strategic assessment that merely reviews the controls for compliance with the Vision is no assessment at all.

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\(^{1}\) Except Carri Nominees Pty Ltd.
9. The TOR at paragraph 27 confer a wide power on the Review Panel to inform itself as it sees fit. It must consider:

(a) The State policy context of the Fishermans Bend area.

(b) The extent to which the proposed changes to the Capital City Zone Schedule 1 (Port Phillip Planning Scheme) and Capital City Zone Schedule 4 (Melbourne Planning Scheme) allows for *Fishermans Bend Vision*, September 2016 to be achieved.

(c) The extent to which all other proposed changes sought by GC81 allows for the *Fishermans Bend Vision*, September 2016 to be achieved.

(d) All relevant submissions made in regard to the proposed changes to the Port Phillip and Melbourne Planning Schemes; and

(e) An assessment of whether the proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on *The Form and Content of Planning Schemes*.

10. However, the TOR do not expressly restrict the Review Panel’s consideration of the Amendment to these matters. The TOR at paragraphs 35(a) and (e), respectively, contemplate changes to the draft Fishermans Bend Framework, and require the Review Panel to prepare a summary of reasons for recommending (or otherwise) amendments to the Amendment. The scope of these terms is plainly broad in scope and reasonably extends to a consideration of the merit of the Vision.

11. If the Review Panel is of the view that the scope of the TOR are not sufficiently broad as to allow it to consider the Vision, it should request the Minister to vary the TOR to enable it to do so, pursuant to paragraph 15 of the TOR.
12. It is extremely important that the Review Panel is permitted to critically assess the Vision, as well as the Framework and proposed planning controls. In particular, the population target of 80,000 requires close scrutiny. Adopting a wrong, or less than optimal population target is likely to seriously undermine the achievement of the important strategic imperatives for Fishermans Bend set out in Plan Melbourne and State policy.

13. The population target of 80,000 was incorporated into Ms Hodyl’s Urban Design Strategy without question, was used to establish the overall height and scale for each precinct, as well as the FAR for core and non core areas, provided the basis for forecasting demand for open space, schools, community infrastructure and public transport and is translated into the dwelling density policy at clause 22.XX.²

14. The Minister has sought to lead evidence for the purpose of justifying the 80,000 target, and has made submissions about the merits of the target. The Minister has put the issue ‘in play’ and cannot have it both ways. The need to critically assess the 80,000 population target is made more important by Ms Hodyl's acknowledgement that no work had been done to identify the maximum growth that could be accommodated in Fishermans Bend without detrimentally impacting its ‘liveability’.

15. Moreover, the Review Panel requested further explanation of the rationale for the population target of 80,000 residents, the projected demand for dwellings and the contribution to Plan Melbourne dwellings numbers. The Minister responded in its Supplementary Information Note 2 (“SIN2”) and parties have in turn responded to the SIN2 in detailed submissions.

16. On the basis that this information is now before the Review Panel and has been substantially ventilated during the course of the proceeding, it would be an unfortunate outcome if the Review Panel were to refuse to make associated findings (and recommendations as appropriate).

² Para 13 of the Minister’s Part B Submission
The population target of 80,000

17. The population target was an essential element in determining the scale and density of development in Fishermans Bend. Put plainly, if the 80,000 population target is wrong, so are the proposed built form controls.

18. Ms Hodyl acknowledged in her evidence that:

(a) 80,000 was a critical assumption in her analysis and shaped the character of each precinct;

(b) Getting the FARs right is absolutely critical;

(c) The proposed FARs are based on an assumed population of 80,000, with a 75% build out by 2050;

(d) Achieving the suggested 75% build out is critical to the delivery of the population target by 2050;

(e) There are significant problems for the community if the 75% build out is not achieved by 2050 - this would be a “massive” underdevelopment of the urban renewal precinct.

19. Ms Hodyl gave evidence that ‘ground testing’ of the estimated 75% build out was confined to informal conversations with stakeholders where she:

(a) was presented with two figures (50% and 100%) and simply adopted the middle figure; and

(b) did not request from the Department any research or other material that might provide an empirical, or any reliable basis for the 75% estimation;

20. Ultimately, Ms Hodyl conceded that she could have no confidence that there would be a 75% build out by 2050.
21. The Minister submitted that a target population is necessary for the proper and orderly planning of Fishermans Bend:

\[\textit{Working to a target population is critical to responsible planning and the staged investment that follows and that without a target it is impossible to understand the quantum of demand for infrastructure and services a future community will require, nor... nor is it possible to take action to ensure such demand is considered holistically and matched with supply in a timely manner.}\]

\[\ldots\]

\[\textit{Working to a target allows for major upfront investments in infrastructure such as public transport and community facilities such as schools and community hubs in the most effective way.}^3\]

22. It is difficult to reconcile the Minister’s submissions about the need for a degree of certainty with respect to the anticipated population of Fishermans Bend (particularly in relation to infrastructure planning), with Ms Hodyl’s evidence. If a population target does serve any real purpose (which is questionable), it is by no means clear that it will achieve it in practice in this instance.

23. The Minister’s explanation for how the 80,000 target was arrived at does not withstand scrutiny. The basis for the figure is set out in the Minister’s Part A\(^4\) and B\(^5\) submissions, and the SIN2. Places Victoria was tasked with the role of master planning for Fishermans Bend and commissioned several reports to assist in understanding the opportunities and constraints presented by the precinct.\(^6\) Other submissions have explored the contents of the reports in detail and it is not proposed to repeat that exercise here.

24. However, the following observations are relevant to a consideration of whether the 80,000 target was established with the rigour expected of planning for a State significant urban renewal precinct:

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\(^3\) The Minister’s Part A submission at [152] and [153].
\(^4\) From [54].
\(^5\) From [13].
\(^6\) SIN2 at [2].
(a) The *Fishermans Bend Infrastructure Assessment* (GHD), October 2012 was based on the growth scenarios identified by the Minister in the SIN2. The report identified the need for increased infrastructure capacity to cater for the highest growth scenario (such as an additional electricity substation and upgrades to sewerage and water supply connections) but did not identify any impediment to achieving the highest (or a higher) growth scenario, or an 'outer limit' on infrastructure capacity;

(b) The *Real Estate Market Assessment* (Macroplan Dimasi), December 2012 assessed the development opportunities, issues and risks associated with each precinct and responded to the pre-determined scenarios provided to it by Places Victoria. It did not set out to provide advice about higher growth outcomes;⁷

(c) The *Fishermans Bend Preliminary Community Infrastructure Needs Assessment* (ASR Research) Final Report - December 2012 focused on identifying community infrastructure impacts and response requirements for the development scenarios provided by Places Victoria. The Addendum report addressed a request to revise down development scenarios under consideration (Scenario A, 20,000 – 15,000 dwellings and Scenario B, 40,000 to 30,000 dwellings);

(d) The *Transport issues and opportunities* (AECOM), December 2012 provided a high level due diligence assessment of existing conditions, issues and opportunities, based on the development scenarios provided to it by Places Victoria. It recommended a range of future feasibility studies, options assessments and further associated work (amongst other matters) but did not establish an impediment to growth beyond the highest growth scenario;

(e) The *Fishermans Bend economic and employment study* (SGS Economics & Planning), November 2012 sought to inform Places Victoria of the

⁷ See page 94 of the report.
significance and dynamics of Fishermans Bend in a regional and metropolitan context, and to understand the precinct’s economic links to the Melbourne CBD, again based on the provided development scenarios;

(f) The *Fishermans Bend Urban Renewal Area Funding Options Paper* (Price Waterhouse Coopers), April 2013 was also confined to the development scenarios and made no findings about whether additional growth was preferable or reasonably achievable; and

(g) The *Fishermans Bend Demographic Profiling* (Places Victoria), July 2013 comprises a series of graphs and schematics which profile development scenarios against the individual precincts.

25. On a proper review, the reports do not explain how the 80,000 population target was determined or why development should be limited to that target. Even on the Minister’s best evidence it is apparent that the 80,000 population target remains unexplained, untested and unjustified.

26. The population target has not changed since 2013. However, there is real doubt that it was ever established on a proper basis that might reasonably inform proper and orderly planning for such an important land resource. This deficiency has not been overcome with time or subsequent work.

27. On the contrary, the 80,000 figure has been incorporated into every expert analysis that underpins planning for Fishermans Bend since 2013. As acknowledged by the Minister in the Part A Submission:

> *Any change in the target population would need to be reconciled with changes to the Floor Area Ratios applied across Fishermans Bend. Additionally, recalculation would need to be made in respect of infrastructure demand and service provision, including transport, open space and community facilities.*

28. The Minister asserts further in the Part B submission:

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8 At [159].
One of the criticisms made of the 80,000 figure is that it is too low given the level of population growth currently being experienced in Melbourne. It is noted that none of these submissions appears to suggest an alternative figure, but all seem to imply that development levels in Fishermans Bend should be left entirely unregulated. It is questionable whether such an approach could be described as ‘planning’ let alone orderly planning.9

29. This somewhat glib assertion misses the point. The Minister is the proponent of the Amendment. It is incumbent on the Minister, not any individual landowner, to establish the optimal development outcomes for Fishermans Bend. These outcomes must be strategically justified.

30. In particular, any population target must reflect Plan Melbourne’s designation of Fishermans Bend as a priority urban renewal precinct in which it is appropriate to maximise development potential.10 There is no evidence of the necessary balancing exercise required to properly arrive at decisions about height and scale in this precinct. That exercise is one that recognises this important policy imperative to maximise growth and tempers it to the minimum extent necessary to achieve amenity, and liveability character outcomes.

31. It is apparent from Ms Hodyl’s evidence that the Urban Design Strategy was not informed by strategic planning considerations. It was a pure urban design exercise that sought to achieve the population target. Ms Hodyl conceded that she had not considered her vision or analysis ‘through the lens’ of net community benefit. She agreed that in undertaking her work, strategic merit was not ‘the touchstone’ and that she ‘looked at it from an urban design perspective’ only.

32. Ms Hodyl’s concession that she designed to a resident population of 80,000 undermines the Minister’s submission that the figure is not a target per se. This was illustrated further by Ms Hodyl’s decision to reduce density in Sandridge

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9 At [19].
10 Plan Melbourne, Policy 2.2.1 at page 50, and Map 4 at page 26.
to accommodate her suggested increase in scale in Montague. The Minister’s Part A submission affirmed this approach:

_The FARs are set by the population targets of 80,000 residents and 40,000 employees by 2030. The FARs establish an overall development potential within Fishermans Bend focused on delivering the GFA needed to support this population growth._

33. There is no evidence before the Review Panel that would suggest that the 80,000 target represents the optimal or even preferable outcome for Fishermans Bend:

(a) Benchmarking the density and built form outcomes against other urban renewal precincts is an exercise of limited value, as they cannot establish that any particular outcome is appropriate for Fishermans Bend;

(b) An assessment of the _likely population growth_ cannot have reasonably informed the 80,000 target (or any other target) as it is itself dependant on factors that are yet to be finalised;

(c) The ability of the market to deliver dwellings can only influence the rate of growth and is not relevant to setting an overall population target for the provision of the FAR and other built form controls;

(d) ‘Consistency with the Vision’ for Fishermans Bend cannot justify the 80,000 population target, given that it is unknown whether higher growth scenarios that might better achieve the Vision, and no higher growth scenarios have been tested.\(^{12}\)

34. The argument about whether 80,000 is the right population target is fairly described as futile, because the population target was arrived at in a way that fundamentally undermines its validity. The ultimate built form outcomes should derive from a land capability assessment that establishes the maximum

\(^{11}\) At para 180.

\(^{12}\) See these reasons for the 80,000 target set out in the Minister’s Part B submission at para [15].
infrastructure capacity (and any other capacity limit). That is the appropriate starting point. The development potential of the land should then be tempered by reasonable development constraints to arrive at a balanced and considered vision for Fishermans Bend.

**Infrastructure Planning for Fishermans Bend**

*The Ministerial Advisory Committee*

35. The Fishermans Bend Advisory Committee ("the MAC") was appointed in July 2015 pursuant to section 151 of the *Planning and Environment Act 1987* ("the PE Act") to provide advice to the Minister in relation to the Fishermans Bend Urban Renewal Area.

36. The *Fishermans Bend Advisory Committee Report 1*, October 2015 stated:

> The Committee’s conclusion is that the decision in 2012 to rezone 250 hectares of industrial land to Capital City Zone in advance of due diligence and planning work was misguided, and that the subsequent release of light handed planning guidelines in mid-2014, without establishing clear financial, governance and implementation arrangements for the Area, did little to improve the situation.\(^{13}\)

37. The MAC acknowledged the substantial development that had occurred in the area since 2014 and stated:

> The number and scale of these development approvals is alarming, but more alarming is that development is proceeding without reliable implementation mechanisms to ensure that contamination will be addressed, that planned new roads can be built, that connected open space can be secured and that infrastructure will be delivered in time, or at all.

38. The MAC observed that a serious rethink of the financial and governance arrangements was required.

> There is no single body with the necessary powers and responsibility to deliver the planning, financing and implementation arrangements the area needs. This is clear project delivery risk but also a significant financial risk to the Government.\(^{14}\)

\(^{13}\) Page [4].

\(^{14}\) Page [18].
39. The MAC recognised that financial arrangements needed to go beyond the application of a Development Contributions Plan ("a DCP"):

Further, the precinct was intended to be 'self-funding' with infrastructure funded via a Development Contributions Plan. However, this approach is not adequate or appropriate in an inner urban renewal context because it leaves a significant funding shortfall and is subject to significant uncertainty and risk around timing and delivery of infrastructure. The high density urban renewal context and fragmented patterns of private ownership of land will require new models for delivery of development infrastructure, beyond delivery by individual developers of works-in-kind delivery of infrastructure items identified in the draft Development Contributions Plan.¹⁵

40. The MAC recommended immediate action to:

- Refresh and redefine the rationale and vision for Fishermans Bend in the context of wider planning for the capital city, and the changes which have occurred to the economic and policy settings affecting the Area including decisions about the Port;

- Establish effective governance and financial arrangements appropriate to the scale of the Fishermans Bend urban renewal task; and

- Confirm the key decisions about transport for the Area and in particular, the timing and route/s of the future tram network, the route for dedicated cycling and walking track/s to the Central Business District and the long term planning for any future Metro line through the Area.¹⁶

41. The MAC regarded these priority items as a precondition to neighbourhood planning:

Detailed neighbourhood planning for Lorimer, Wirraway, Sandridge and the Employment Precinct should not proceed in advance of decisions on these issues. Fine grain neighbourhood planning can proceed for the Montague precinct where light rail infrastructure is in place, but should not be finalised in the absence of a refreshed vision regarding the preferred future of the precinct.¹⁷

42. In addressing infrastructure funding and delivery in more detail, the MAC identified the urgent need for a financial plan:

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¹⁵ Page [18].
¹⁶ Page [6].
¹⁷ Page [5].
The Advisory Committee has identified that priority action is required in relation to preparation of a Financial Plan, stating:

'There is an urgent need for a short, medium and long term financial plan for the development of Fishermans Bend, which considers all potential sources of funding including open space contributions, development contributions, special rates/levies to capture a proportion of the land value uplift provided by the 2012 rezoning, local and State government revenue and debt financing and possible Commonwealth government funding. This also needs to include innovative ways to facilitate and incentivise private sector delivery of infrastructure, which go beyond works-in-kind delivery.'

In addition, further work is also required to:

- Investigate use of transparent density bonuses to leverage development outcomes for a community benefit.
- Give consideration to value uplift capture mechanisms from land value uplift created by public investment in rail infrastructure, applied along transport spines or around transport nodes.
- Look at innovative ways to deliver community infrastructure involving different service forms and partnerships with the private sector, and facilitating vertical integration of community infrastructure into development.
- Initiate discussions with Councils in order to facilitate the acceptance of works-in-kind private sector provision of community infrastructure within developments once the needs of the future population are understood.
- Identify key catalyst community and development infrastructure to drive development outcomes.\(^\text{18}\)

43. The Advisory Committee suggested a two-phase approach to preparing an Infrastructure Plan for Fishermans Bend:

* A high level Infrastructure Plan prepared to accompany the recast Strategic Framework Plan, with indicative costings on key transport infrastructure.

* Detailed Infrastructure Plan/s with detailed costing and funding strategies identified for all infrastructure (community and physical), developed in conjunction with the detailed Precinct Plans.\(^\text{19}\)

44. Regarding transport planning, the MAC found:

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\(^{18}\) Page [45].

\(^{19}\) PAGE [37].
Whatever the future vision for the Area, it will need additional rail transport. An early in principle decision on the timing and route/s of the tram network, and any future Metro line through the Area is critical and must precede further decisions about possible development yield and density outcomes and fine grain neighbourhood planning. This must also consider potential options for public transport in relation to the Employment Precinct and any capacity issues on existing tram routes.

Following these early decisions, the Transport Planning Work outlined in the Taskforce Action Plan should be completed as a matter of urgency.

The Ministerial Response to the MAC’s recommendations

45. In February 2016, the Ministerial Response to the MACs recommendations was published. The report provides that each of the MACs 40 recommendations were carefully considered, with 34 being adopted in full and 6 in part. The creation of the Taskforce was an early response to the report.

46. Relevantly, the Minister supported the urgent preparation of a financial plan and the application of Public Acquisitions Overlays (amongst other matters). The Minister indicated support for the early in principle decision on the timing and route/s of the tram network, and any future Metro line through the Area as a precondition to further decisions about possible development yield and density outcomes.

47. It is clear that these recommendations of the MAC have not been fulfilled. At this point in time:

(a) There is no financial plan;

(b) There is no clear commitment to the provision and timing of public transport, or the primary routes, including fixed rail;

(c) Public acquisition overlays have only been proposed during the course of the hearing, and on a limited basis; and

(d) There is a high level of uncertainty about the provision of infrastructure, arising from the proposed acquisition mechanism in the CCZ.
48. Importantly, the Amendment does not include a DCP or similar mechanism to facilitate infrastructure funding. As Mr Shipp observed in his evidence:

In the absence of a DCP or information outlining how each public infrastructure type is proposed to be funded and delivered, it is difficult to understand how the suite of public infrastructure mechanisms are intended to operate in conjunction with each other.

It is therefore difficult to assess the implications of this for Government and developers and to test the proposed framework against the established principles of need, nexus, equity and accountability. In particular, in my view the Amendment does not meet the principle of accountability.

In addition to this issue, it is my view that the proposed public infrastructure funding framework has a number of other gaps, potential overlaps and unresolved issues ... 20

49. Mr Shipp's evidence highlights the lack of clarity as to how the range of existing and proposed infrastructure funding mechanisms are intended to operate together, including the existing Development Contribution Plan Overlay (with no DCP), the 8% open space contribution in clause 52.01 (for all except the Employment Precinct), the operation of the CCZ which prohibits a permit being granted for subdivision or buildings and works without the provision of roads and open space, and the FAU scheme. 21

50. Mr Shipp concluded:

97. Given the broad range of infrastructure types required to support development in Fishermans Bend, it is my view that the Framework should clearly set out the various levels of infrastructure to be funded and the proposed mechanism(s) through which each will be funded. This would clarify:

- The public infrastructure items (including works and land) which are to be funded through development contributions;
- The open space infrastructure (including works and land) which is to be funded through open space contributions;

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20 Page 12 of Mr Shipp's evidence report.
21 See the discussion at page 12 of Mr Shipp's evidence report.
• The local infrastructure items (including works and land) which are to be funded by developers through permit conditions; and

• Any other infrastructure types which are to be delivered through other mechanisms, such as State infrastructure.

98. This information should be accompanied by estimates of costs and potential revenue from the various mechanisms, and the introduction of a complete public infrastructure funding framework and associated statutory controls.

99. In my view, the Amendment should not be approved in the absence of this information. This view is in part informed by the fact that the Amendment seeks to address part of the public infrastructure funding task through the introduction of public land requirements associated with the FAR controls without resolving how these controls would relate to a future DCP/ICP and public open space contributions.

51. The MAC, in its 2015 report, expressed disapproval of a site-by-site approach to the provision of infrastructure, yet that is exactly what the proposed CCZ schedule delivers:

For example, the delivery of a proposed network of streets and laneways on a site by site basis is simply unachievable where there are a number of smaller sites. In these circumstances, if one landowner does not wish to develop their property, the whole plan could fail. A more proactive approach will be essential. On the ground, the lack of coherent implementation arrangements is also of significance in the development of the public realm, which requires rigorous implementation of a vision for spaces that are attractive and human scale. This will not occur with the current arrangements.22

52. In light of this background it is concerning that the Minister has submitted to this Review Panel that:

Two issues that extend beyond the scope of the Amendment per se are:

(a) the future governance arrangements for Fishermans Bend; and

(b) the totality of funding arrangements for the provision of infrastructure and transport infrastructure in particular.23

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22 At page [20].

23 At para [7] of the Minister’s Part B Submission.
53. The Minister acknowledges that early delivery of transport infrastructure will be a key driver of development in Fishermans Bend, but submits that both the delivery and financing of that infrastructure is a State Government matter.\footnote{Ibid at para [11(a)].} Further, notwithstanding that Infrastructure Victoria’s 30 Year Strategy, December 2016, recommended the delivery of the Fishermans Bend tram extension within 5 to 10 years, and the metro rail in 15 to 30 years, these matters are ‘beyond the budget window’ and cannot be guaranteed.\footnote{Ibid at para [11(d)]} This approach of deferring key transport funding decision to a later unspecific time undermines the Amendment.

54. Whilst the Minister has indicated that a financial plan will be prepared within the next 12 to 18 months, the lack of a commitment by the Government to the funding, timing and location of public transport infrastructure is a fundamental impediment to the proper and orderly planning for Fishermans Bend. Ms Dunstan observed:

*Fundamentally my view is that the Framework and supporting controls fail to deliver the level of public transport certainty that is required for this area.*

*The most critical issue being the metro rail alignment and station locations that would be necessary to support the employment and residential, and mode share aspirations of the Framework. To date, the transport requirements for an additional 20,000 jobs in the employment precinct has not been modelled in so far as I can see.*

*This clearly needs to be reviewed and resolved, so that the area can be effectively planned around the feasible station locations and associated bus and light rail connections also planned for.*

*In my view, a critical issue is whether both Wirraway and the Employment Precinct can be served by a metro rail alignment or whether it is one or the other (as is currently suggested but not explicitly stated). This clearly has significant implications to station locations, and additional public transport services that may be required.*\footnote{Page 1 of Ms Dunstan’s report.}
55. The Landowners adopt the submissions of Mr Tweedie, Mr Canavan and Ms Sharp that without the confirmed details of the proposed routes of the tram and train network, and a commitment to the timing of the provision of fixed rail, the Amendment is premature. A clear commitment to future public transport routes is necessary to facilitate the orderly planning of the precinct.

The acquisition of privately owned land

56. It is intended that new streets and lanes are to be provided and constructed by the landowner, then vest in the relevant Council. In respect of open space, remediated and improved public open space is to be provided by the landowner with the cost of remediation to be refunded from development contributions, but the land transferred to the relevant Council at no cost to the relevant Council. The Minister relies on the FAR regime to assert that the acquisition of land in these circumstances is fair and lawful.

57. This issue was dealt with at length in the submissions of Mr Tweedie, Mr Canavan and Ms Sharp at [139] to [199] and the Landowners adopt those submissions.

58. The Review Panel may well be reluctant to make determinative findings about the legality of the proposed acquisition of private land. However, it is an important consideration in advising the Minister about whether the Amendment is appropriate because it adds to the uncertainty of the Amendment. The Amendment as presently drafted is unresolved and comprises ‘too many moving parts’. The fact that the parties are unclear about the Minister’s position in relation to the recommendations of its own witnesses illustrates this proposition.

59. As observed by Mr Milner:

[23] The community, stakeholders, interested and affected parties are asked to support or comment upon parts of a ‘package’ of proposed strategic and

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27 See the Minister’s Part B Submissions at para [36].
statutory measures without the benefit of key and in some cases essential parts of the ‘package’.

[24] While the amendment addresses broad policy expectations, land use and development controls it only exposes part of the package of precinct plans infrastructure provisions, uplift benefits and development contributions.28

- Indicative layouts are advanced for precincts with an explicit expectation of more fulsome structure plans.
- The MAC report advises that financial modelling is well advanced, but the package only discloses parts.
- Possible public land reservations are identified but the amendment is silent on how it will all be assembled.

[25] There is no escaping the fact that aspects of GC81, if implemented as presented, breach new and untested techniques in statutory planning, the funding and delivery of infrastructure and private sector development.

[26] The challenge is compounded by the multiple layering of these ‘innovative’ techniques on individual development sites with very real questions, incapable of being currently answered regarding the impact on both public and private sector project viability.

[27] This is an issue raised in the MAC Report on multiple occasions and a genuine concern that I hold in commenting on the merits of GC81. The merits and Vision of the Framework will be eroded and compromised if outcomes cannot or will not be delivered.

[28] To illustrate and support the point made in a number of submissions what are the combined and compounded implications of the following on development and infrastructure viability?

- A minimum commercial / employment component of floor space;
- A maximum and differential plot ratio for residential uses;
- A 6% affordable housing contribution;
- An 8 – 10% open space contribution;
- A prescription on the proportion of bedroom numbers;
- An expectation that land will be handed over without compensation by some affected parties towards roads and open space;

28 At page [9].
• Unspecified contributions to community facilities;
• Unspecified floor space up lift by further contributions to open space;
• Unspecified and probable development contributions to public transport;
• Addressing site contamination issues;
• Limitations on the ability to provide basement parking;
• Silence upon if and where public acquisitions of land will occur.
• Uncertainty about how and when infrastructure will be delivered.

[29] While the MAC has correctly indicated the desirability of using floor area uplifts to 'incentivise' public benefits and the provision of affordable housing this cannot be viewed in isolation of other substantial unquantified and unspecified costs.

[30] It is probable that when the full ‘package’ and scope of costs and projects is appreciated the development controls advanced in GC&I may need to further revisited.

60. These comments highlight the probability of unintended consequences if the Amendment is approved. The Amendment should not be approved until such time as key elements are resolved. The risk of poor outcomes arising from poor planning, exacerbated by a rushed process, is otherwise too great.

The Floor Area Ratio and Floor Area Uplift regime

61. The Landowners dispute the Minister’s assertion that the use of the FAR as a density control serves a series of useful functions:

(a) It will not necessarily assist in ensuring the development in Fishermans Bend will be delivered consistent with infrastructure capacity because it does not restrict development – the discretionary height controls serve this function. The FAU is unlimited and the likely uptake is unknown;

29 The Minister’s Part B Submission at para 25.
(b) The FARs only send a clear signal to the market about what reasonable development expectations should be in Fishermans Bend if they are strategically sound – they were based on a questionable population target without reference to strategic considerations;

(c) The FARs are one way to achieve precincts with a distinct character but they are not the only way. Moreover, unless soundly based, they are likely to unreasonably suppress the development potential of land within Fishermans Bend;

(d) The use of the FAR mechanism to deliver roads, lanes and open space is inequitable and likely unlawful;

(e) Whilst the FAR establishes a threshold density above which additional floor space triggers a contribution towards public benefits, unless that threshold has a demonstrable strategic basis it is not a mechanism that will incentivise investment.

62. Both the 2015 and 2017 MAC reports highlight the need for funding mechanisms to facilitate and incentivise private sector delivery of infrastructure. If the FARs are set cynically low, they are likely to dampen development impetus and at worse, render development in Fishermans Bend uncompetitive relative to other urban renewal precincts such as Southbank and Docklands.

Public Open Space

63. It is submitted in relation to open space that:

(a) The 200m criteria lacks strategic justification;

(b) Ms Thompson’s ‘tightened’ criteria requiring the 200m to be safe and easily walkable is overly restrictive; and
(c) There is no sound basis to disregard linear space when calculating the quantum of open space.

The Open Space Strategy

64. The Department of Environment, Land, Water and Planning ("the Department") on the behalf of the Fishermans Bend Taskforce engaged Planisphere to prepare the Fishermans Bend Public Space Strategy ("the OSS"). The development of the OSS was guided by input from the Taskforce alongside the City of Melbourne, City of Port Phillip and the Department.\(^{30}\)

65. The OSS sets out a Public Space Vision based on themes:

(a) Attaining quality;

(b) Providing quantity;

(c) Making places;

(d) Enabling responsiveness;

(e) Creating connections; and

(f) Achieving environmental sustainability.\(^{31}\)

66. The OSS sets out objectives that variously relate to the themes, including:

- Ensure a variety of recreational spaces is provided that caters for different demands and uses both day and night

- Ensure an equitable distribution of public open spaces across Fishermans Bend

- Provide sufficient public open spaces to achieve an integrated, accessible network that ensures a high quality living and working environment

\(^{30}\) Page 2.

\(^{31}\) Page 8.
• Ensure that all new areas of public open space are well located for access and amenity
• Ensure the design of spaces facilitates community gathering, social interaction and cohesion
• Provide places for people of all ages, abilities and interests
• Improve opportunities for active recreation
• Support active travel and low speed modes such as walking and cycling
• Improve connections within Fishermans Bend
• Include mechanisms within the planning scheme to encourage public and semi-public open spaces within private developments.\(^{32}\)

67. The 2016 Vision provides for open space within 200m walking distance of all residents and workers.\(^{33}\) Whilst the OSS does not discuss the merits of the 200m criteria, it includes an objective that seeks to:

Ensure that all residents and workers are within 200m of publicly accessible open space (either publicly or privately owned).\(^{34}\)

68. The proposed areas of open space set out in the OSS\(^ {35}\) are included in the Framework at Figure 17 – Public Space.\(^ {36}\)

69. In addressing the question of how much open space is enough, the OSS provides:

Fishermans Bend should aim to deliver best practice for quantity of public open space per capita, however, this must be balanced against the realities of the cost of purchasing land within the Capital City Zone and the fact that the vast majority of the land within Fishermans Bend is within private ownership. It is noted that the total public space provision is not referenced in this discussion, as in most cases comparative statistics are only available for public open space provisions.\(^ {37}\)

\(^{32}\) Page 8.
\(^{33}\) Page 7.
\(^{34}\) Page 64.
\(^{35}\) Page 54.
\(^{36}\) Page 57.
\(^{37}\) Page 28.
70. The OSS also acknowledges the difficulties associated with funding open space:

The current planning scheme requirements for the provision of public open space in Fishermans Bend as part of developer contributions are 5% in the Employment Precinct and 8% elsewhere. This can be taken as land (percentage of the development site) or as monetary contributions (percentage of the value of the land). These requirements need testing through this strategy to determine whether this will provide adequate public open space for the intended future population (residents and workers). 38

71. Several experts are acknowledged as having input into the OSS, including statutory and strategic planners, an architect and an urban designer comprising the Planisphere team, and Mr Paul Shipp, Director of Urban Enterprise Pty Ltd in relation to property economics and developer contributions.

72. Given the involvement of the Taskforce and Department, it is reasonable to conclude that the Taskforce and at least the Department (if not the Minister) were satisfied that the OSS met the objectives for open space in Fishermans Bend.

Ms Thompson’s evidence

73. There is no doubt that open space is important to liveability in high-density precincts. However, there is a real question about whether it is appropriate to apply the 200m criteria to Fishermans Bend on a blanket basis, let alone on the basis of Ms Thompson’s more stringent test of a safe and easy walking distance.

74. Ms Thompson records in her evidence that there is general consensus that the ‘preferred’ distances to open space range from 400m to 200m, with 200m to 300m noted as more appropriate for children, people with limited mobility and the elderly. 39 Ms Thompson also observes that there is no industry

38 Page 29.
39 Ms Thompson’s report at page 8.
accepted standard for the quantity of open space in high density urban renewal areas.\textsuperscript{40}

75. Ms Thompson’s evidence does not establish that the 200m test in the OSS ought be applied throughout Fishermans Bend. It falls well short of providing a reasonable basis on which to conclude that her more stringent test is a preferable outcome. On the material before the Review Panel it is reasonable to ask why a range of distances (even distances that range between 200m and 400m) are inappropriate.

76. A range of distances would provide flexibility to assist the resolution of difficulties associated with the acquisition of land. It would also resolve outcomes that are less than ideal, such as the location of open space on three corners of the intersection of Plummer and Salmon Streets. Ms Thompson acknowledged in her evidence that she had not had regard to title boundaries and acquisition issues, or the impact of the mandatory overshadowing control on the development potential of adjacent sites. This is a questionable approach in an urban renewal precinct.

77. Ms Thompson unreasonably excluded linear parks from her assessment of open space:

\begin{quote}
The majority of these green linear links form an extension of the transport corridors that may have a biodiversity role, but do not provide for a diversity of recreational uses.
\end{quote}

\ldots

\begin{quote}
I have not included the 12 metre wide Linear open space or green links given that I consider that the streetscapes, public realm and transport network should be designed to provide for future greening and a linking function, while the public open space is provided in a series of linked destination spaces.\textsuperscript{41}
\end{quote}

78. The characterisation of linear space as lacking functionality is simply incorrect. Linear spaces provide the opportunity for active and passive

\textsuperscript{40} Ibid.
\textsuperscript{41} Page 19.
recreation and, in particular, walking and cycling. The fact that they also increase connectivity throughout Fishermans Bend is not a valid discounting factor, nor is Ms Thompson’s characterisation of linear parks as part of the ‘streetscape.’

79. The OSS describes linear open space as follows:

Provide improved connectivity between streets and public open space reserves, designed to allow passive and active recreation, with a variety of functions and changing character. A width to length proportion is often used to ensure the effectiveness of linear open space. The more elongated a space is, the lower the possibility for a space to accommodate a variety of public uses. A minimum width of 12 metres enables a variety of activities to be undertaken within linear open space.42

80. Linear parks are described as a key element of the OSS:

Linear parks will be the organising structure within Fishermans Bend, linking public open spaces and creating legibility.

Located on the southern side of thoroughfares where possible, linear parks will have a multifunctional role, providing places for all types of activity including active pursuits, relaxation, events and incidental recreation. Turner Street will create a major green spine connecting the city to Westgate Park.

The character and function of linear parks will vary depending on the local conditions, but the overall design language will provide a unity across Fishermans Bend.43

81. The OSS recognises the health benefits associated with linear parks:

The public open space network could be designed to make active transport and healthy activities accessible and easy. A network of linear parks, public open spaces and links have been designed to encourage residents and workers to walk, run and cycle.44

82. Ms Thompson’s evidence exhibits a highly restrictive approach that is not balanced against competing imperatives. There is no reasonable basis to disregard the proposed linear parks in assessing the proposed quantum or

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42 Page 22.
43 Page 49.
44 Page 62.
distribution of open space, or to ‘tighten’ the 200m test. This restrictive approach has real and substantive consequences for landowners who are required to give over land designated for open space, whether or not they intend to develop it. It also complicates issues associated with the acquisition of land.

83. Ultimately, Ms Thompson’s evidence had a purist, academic quality that does not reflect the reality of planning for Fishermans Bend, or the need to balanced competing objectives to achieve outcomes that are both reasonable and fair.

**Lack of Transitional Provisions**

84. The lack of transitional arrangements will have serious financial consequences for permit applicants, and is unfair and unjustified.

85. It is simply not the case that transitional provisions would undermine the strategic intent of the Amendment or perpetrate unrealistic development expectations in Fishermans Bend.\(^{45}\) These assertions by the Minister are a paltry response to a very important issue. There is no substantive basis for the Minister’s position.

86. The financial impact of this approach is exacerbated for some landowners, who have already expended substantial funds in progressing permit applications, as well as the non-refundable Metropolitan Planning Levy.

87. The MAC in its 2017 report supported transitional provisions (in one form or another):

\[
7.18 \textit{Support for quality outcomes from existing planning approvals and current permit applications}
\]

\(^{45}\) See the Minister’s Submission On Call in and Consideration of Permit Applications, at pages 3 and 4.
In its first Report, the MAC expressed concern that some of the permits already issued are not in alignment with the Vision for the Area.

...

In relation to current permit applications (i.e. applications that have been lodged but are yet to be determined) the MAC suggests that the incoming permanent planning controls be applied judiciously. These ‘live’ permit applications were lodged under a former regulatory regime. Whilst the subsequent interim planning controls (introduced in November 2016) did not contain transitional provisions, the MAC recommends that some flexibility be applied to the assessment of these ‘live’ permits against any future permanent planning controls.

The MAC suggests that the existing ‘live’ permit applications be assessed against those permanent planning controls that relate to how the development impacts the site itself and its immediate physical surrounds, but that other new controls that relate other broader planning aspirations (such as environmental sustainability and commercial poor space) not be mandated in the assessment of these applications.46

88. The Landowners submit that the common form of transitional provisions should apply. Alternatively, transitional arrangements may operate to preserve those elements that are considered essential to preserve the proposed urban structure (bearing in mind that the Landowners will in their individual submissions dispute in some instances, the location and quantum of those elements). This might include saving provisions in respect of height and scale, whilst preserving land required for public infrastructure.

Conclusion

89. It is respectfully submitted that the Review Panel should advise the Minister that the Amendment is not appropriate.

46 Page 31.
Nicola Collingwood

Instructed by Mills Oakley

Date: 30 April 2018