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

**Stage 2 – Montague Precinct Closing Submission on behalf of
the City of Port Phillip**

Introduction

Overview

1. These closing submissions only address matters that are specific to Montague.
2. Matters that apply more broadly across the various precincts and the main contentions made by landowners will be dealt with in the Council's overall closing submissions.
3. So far as Montague is concerned, Council's Montague Urban Design Report (**Montague Report**) is a comprehensive document that builds on the Council's endorsed submission of 13 December 2017. The Montague Report critically assesses Amendment GC81 against the Vision and further develops the ideas within the Framework. It is a refinement of work that the Taskforce has done. It represents work completed over the last 6 months by highly experienced urban designers, place makers and strategic planners.
4. The Montague Report, coupled with the Overarching Urban Design Report prepared by Council, does what no other party has done in the totality of this hearing. That is, to set out clearly both diagrammatically and in text form the changes that are sought to Amendment GC81.
5. All of the matters contained within the Montague Report were carefully crafted having regard to the Terms of Reference and in particular, to assist the Review Panel in completing its brief.
6. For this reason, Council implores the Review Panel to be mindful of the Montague Report in relation to every aspect relating to properties in Montague that have been raised. In some instances, the Montague Report has no implication on a property. In other cases it has a material implication, particularly in relation to:
 - the Montague North Park;
 - the properties on the block bounded by Buckhurst Street, Montague Street, Gladstone Street and Ferrars Street;
 - Core Area sites to the west of Montague Street;
 - Sites proposed by Council and Ms Thompson as open space on Thistlethwaite Street; and
 - the properties on the north side of Buckhurst Street between Ferrars Street and Montague Street.

7. We respectfully submit that while many parties have an understandably narrow interest in the outcomes, apart from the Taskforce, Council is the only submitter which has weighed all the various issues in considering what they mean to the creation of the Montague *precincts* within the broader Fishermans Bend as a whole.
8. We refer to the Montague “precincts” (as in plural) because in truth Montague, has two key areas: Montague North and Montague South. There are very different outcomes sought by the Vision for these two areas which must be given clear expression and distinction in the planning controls.
9. The Montague Report contains 9 key recommendations which are set out throughout the report but also summarised at pages 51 and 52. Those 9 key recommendations provide very clear direction on what Council submits should and needs to be done. The key recommendations are also illustrated in the body of the report where the recommendation requires a map or plan change.
10. It is important to note that although Mr Sheppard did provide a response to Council’s Overarching Urban Design Report in his Addendum dated 10 April 2018, neither he nor any of the other experts have provided a response to the Montague Urban Design Report.
11. Notwithstanding, many of the recommendations contained in the Montague Report flow from the Overall Urban Design Report which was tendered as part of the Council’s Stage 2 submission.
12. Mr Sheppard did helpfully comment on certain aspects of the Montague Report. In particular, we note that Mr Sheppard agrees with Council’s Recommendation 6 which is to include a plan in (an appropriate part of the controls) showing the proposed Montague Urban Structure. Council has proposed that Figure 23 (page 31) of the Montague Report be that plan.
13. As proposed by Council, it overlays and draws out the key interactions between:
 - Core areas with a more refined Core Retail Area within it;
 - Primary and Secondary Frontages;
 - the proposed open space network;
 - proposed key boulevards, streets and laneways;
 - the Art and Cultural Hub;
 - the Sports and Recreation Hub; and

- the Education and Community Hub.
14. The plan provides a better (indeed we would say the only) fulsome visual representation of the collection of initiatives set out in the Framework for Montague.
 15. Further, as to recommendation number 7 of the Montague Report, Council notes that Mr Sheppard agreed under cross-examination with the Council's promotion of the tooth and gap approach to the north side of the important Buckhurst Street spine between Ferrars Street and Montague Street.
 16. Noting this, Council submits that this necessitates a different approach to the planning controls within the DDO concerning street wall heights and built form in this specific area.
 17. The recommended changes to give effect to that tooth and gap approach are found at 40 of the Montague Report. The Review Panel should specifically note that the resulting building forms as exhibited in Amendment GC81 will result in the Buckhurst Street Green Spine, which is Montague's key retail street, as being in shade for much of the time. The Review Panel should therefore recommend that the planning controls do not give effect to the Vision in this regard.
 18. In the case of the laneways, Mr Sheppard also agreed that it was sensible to show the indicative locations of these laneways in the controls, subject to their refinement as part of the development of Precinct Plans. (See Council Recommendation 2)

Response to Key Issues

Parks and the Sports and Recreation Hub

19. Similarly to Council, Ms Thompson supported the nomination of additional parks in the south of Montague along Thistlethwaite and the removal of the small open space along Gladstone Street.
20. Mr Sheppard supported the consolidation of these small parks into a larger park.
21. Both Mr Sheppard and Ms Thompson have recognised the so-called gritty character and finer grain built forms proposed in Montague South however Mr Sheppard did not consider that justified smaller parks. Council restates its support for Ms Thompson's approach. Council considers that the adopted 2016 Vision for a gritty, urban character in Montague South is consistent with the strategy to create smaller and more regular urban open spaces.
22. In relation to the Montague North Park, Council has proposed (Recommendation 3) that the Sport and Recreation Hub should be co-located with the Montague North Park rather than a portion of the site being sold off for private development. No witness disagreed with the

notion of co-location either generally or in relation to this specific site (probably because its logic is near on impossible to argue with). Even the Minister, who has stated that he wants to persist with the ‘investigation area’ approach has not said that the outcome does not make sense. As per the Mesh Report, Council submits that the mixed use approach proposed in the Framework and planning controls is unlikely to be feasible or deliver the benefits of co-location.

23. Council’s recommended action achieves multiple objectives with the one action. It means that a site for this large public building is identified, making its placement in the precinct certain and able to be funded by the proposed DCP. Furthermore, the location is at a gateway to the precinct, allowing a real opportunity for a landmark building to be provided.

Art and Cultural Hub

24. In much the same manner as with the Sport and Recreation Hub, the logic of locating this facility at the location of the existing school on the corner of Montague Street and Buckhurst Street does not appear to be opposed by anyone other than the Minister who proposes this not on the merits, but more so on a desire to persevere with investigation areas.

Building heights and Core / Non-Core designation

25. Council agrees with the proposed building heights in the Montague North Precinct. However, it has recommended an alternative approach in Montague South which involves recognising Gravity as the tallest form and then gradually transitioning to lower built form at the new Montague Park and on Buckhurst Street. (per Recommendation 9)
26. Council’s lower heights and tooth and gap approach will break up the building massing and reducing overshadowing by creating faster moving shadows and shards of sunlight penetration to the street. This is particularly important for the Buckhurst Street green spine. It also complements the southern side of Buckhurst Street with its finer grain subdivision pattern, series of characterful bluestone lanes and red brick buildings.
27. A key difference between Mr Sheppard and the Minister in this area relates to his characterisation of the area as having an *emerging character* dictated by planning permits that have been issued but not acted upon. In other words this emerging character he speaks of actually has not emerged at all, other than for the Gravity Building. Adoption of the fiction of the emerging character concept undermines one of the principle purposes of the change in trajectory by the Minister which is driving the revised Framework and planning controls. The clear message is that things have to be done differently rather than continue along with the ‘business as usual’ approach. Giving recognition to this fiction of the emerging character would be one of the most utterly backward and retrograde decisions taken yet in the chequered history of planning for Fishermans Bend. We cross examined Mr Sheppard on

this issue and what he had done to satisfy himself of the likely emergence of that character. Council finds it somewhat bemusing that Mr Sheppard made no attempt to understand the intentions of his clients with respect to the permits they hold, or their progress in turning those permits into an actual development, even after he was cross-examined on this point. There are no building permits, no construction drawings, no sales and marketing as far as we know.

28. We respectfully submit that the community would be confused to learn that the Review Panel has recommended that built form be guided by the type of development which the review of Fishermans Bend was purposed to modify especially having regard to the fact that the permits are unlikely to ever transpire into built form. Again, we say that it is just remarkable that not a single case has been presented to this Review Panel which has informed the Review Panel of any advance sales, off the plan sales, or anything in relation to the many thousands of “ghost” apartments contained within the numerous permits issued which contribute to the supposedly emerging character. Yet, the expert evidence called by the Taskforce made it clear that proposals generally do not get finance until they are ~80% sold.
29. Suggestions that these permits will translate to buildings within the relatively short life spans of the relevant permits is fanciful at best. Therefore, the Review Panel should reject these permits as an influencing factor in determining character and instead rely on the Vision and the policy. At best a few *might* be built, but not a quantum which should be an influencing factor or set a so called emerging character.

Extension of core area west of Montague street

30. We disagree with the Minister’s extension of Sub-Precinct 1 to a few lots on the west side of Montague Street. That area should be within a different sub-precinct. The change is not based on principle but rather on a curious and largely illogical. Montague Street is an excellent and logical boundary for the precinct bearing in mind the change in cadastre by and large to the west of Montague Street.

Identification of core retail area

31. The Montague Report identifies a core area for retail and proposed changes to Primary and Secondary Active Frontages which focus the key retail activity along Buckhurst Street and George Street downgrade Normanby Road and remove the activity interface altogether from Montague North Park and Johnson Street.
32. Again, we would observe that no other urban design experts considered the issue of a retail core area and then sought to match the primary active frontages to the main streets in that area, rather than allowing elongated dispersed primary active frontages.

Urban structure

33. Council submits that the cumulative effect of its proposed changes to parks, community hubs and building heights, together with the proposed clustering of retail and commercial activity, provide some of the ‘meat’ on the ‘bones’ of the urban structure. This urban structure will clearly guide future development in Montague and ensure it reaches the potential identified within the Vision. (Recommendation 6)

Response to the evidence

34. Those that gave evidence regarding Montague included Mr Sheppard, Mr McGurn and Mr Song and the traffic experts.

Mark Sheppard

35. As outlined in the introduction to this submission, Mr Sheppard was in broad agreement with the majority of Council’s propositions in relation to Montague.
36. Council also notes that Mr Sheppard did not take issue with the planning tools proposed as they relate to the use of plot ratios in conjunction with height, setback and overshadowing controls. Instead, Mr Sheppard suggested that the controls need not be mandatory (where they are) and refinements *may* be required to appropriately ‘tune’ those settings (particularly the FAR) to ensure that the development opportunity is ‘optimised’. His expert evidence is in stark contrast to the landowners he represents which have suggested that Amendment GC81 should not proceed *at all*.
37. The issue in relation to whether controls should be mandatory extends to a broad range of considerations as set out in Practice Note #59. The Review Panel should avoid simply accepting the predisposition of experts who *prefer* performance based controls or discretionary provisions where prescription is warranted. Council submits that the correct way to proceed is to undertake the analysis set out in the Minister’s Stage 1 submission. Curiously, no other expert or landowner bothered to do such an analysis. We are not surprised. Undertaking such an analysis overwhelmingly leads one to the conclusion that mandatory controls are not simply preferred here but necessary. Furthermore, extensive 3D built form modelling has been carried out which generally accepts mandatory controls. Indeed, this analysis has shown that the controls work for the vast majority of sites.
38. In terms of what is proposed by Amendment GC81 for Montague, we note that Mr Sheppard’s primary concerns related to the difference between the FAR and the FAU in terms of what he regarded as a “looseness of fit”. His other concern related to his view that built form was predicated too heavily on population levels.

39. Council relies on the evidence of Ms Hodyl and Mr McPherson in relation to the appropriateness of the FARs noting that they have been compared to other similar redevelopment areas both in Australia and elsewhere and found to be comparable..
40. So far as population levels are concerned, we would also note that so far as the densities that the FARs create (which have been attacked as being *sub-optimal*) the tabled Infrastructure Australia Report which mapped population densities at 2046 proposes a range of densities across Fishermans Bend, primarily in the range of 100 to 500 persons per hectare.
41. Montague is in that range, noting that its density is at the upper end of the scale even before matters such as the effect of FAU, as well as the fact that the FARs have been increased by a factor 133% to account for the estimated 75% of the population predicted by 2051.
42. As a result, ultimate densities will be significantly higher than predicted. Accordingly, Council submits that there is no need to make changes to the FAR or the discretionary building heights for the Montague Precinct on account of Ms Sheppard's evidence. Given the virtually unanimous views expressed by all participants (Minister, both councils, landowners and experts) on the likely (as opposed to the planned) population, it is clear that the concerns expressed by landowners and the argument in relation to FAR and population are totally unfounded at this point in time. Montague in particular has some of the highest potential for FAU of each of the precincts. Accordingly, we submit that the FARs for Montague are appropriate in the context of the order of magnitude population set out in the Vision.

Stuart McGurn

43. Mr McGurn's evidence was very brief in so far as it related to the general issues. His evidence was clearly not informed by any thorough analysis of the vitally important contextual aspirations for Fishermans Bend as expressed in the Vision and the sub-precinct statements found in the MSS.
44. In that context, his evidence was too focussed on the site-specific issues he considered, rather than assisting the Review Panel by a contextualised analysis based on the fact that this is a State-declared area slated for transformative change which *requires management*.
45. Given that the rest of Mr McGurn's evidence related to urban design (noting that he is not an expert in this field), and that evidence was proven under cross-examination by Ms Brennan to not be representative of what could be considered realistic buildings. Council respectfully considers that this evidence should be afforded little, if any weight.

David Song

- 46. Mr Song’s assessment in relation to the 400 City Road site was uninformed by any consideration of the Vision. In cross-examination he proffered a view that the Vision should be given limited weight, despite it reflecting the outcomes of an Advisory Committee process comprising a significant amount of consultation before it was considered, and endorsed by Government. Furthermore, he was content for the built form on this site to overshadow the southern side of key streets in South Melbourne which are protected from overshadowing by strict controls on buildings on the northern side of the street in that area. We say such an outcome is perverse and the Review Panel should be careful to ensure that it does not let planning fall into disrepute in this manner.

- 47. The City Road land can still accommodate considerable built form without casting shadows on the south sides of Market and York Streets (contravening a mandatory provision elsewhere in the Scheme). It should not matter that the area is not within DDO8. That is not the point. The point is that this is an amendment in which a Planning Authority ought to be cognisant of the unintended implications of what it may permit. To suggest that all of the sites within DDO8 need to avoid casting shadows over the streets in question only for a development further north to do that very thing is an illogical proposition.

- 48. Finally in relation to the City Road land, Council reiterates that the site is separated from Southbank by the imposing West Gate Freeway which is both wide and significantly elevated at this location. To suggest otherwise appears, at best, clutching at straws.

- 49. That concludes Council's closing remarks for Montague.

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and

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