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Chair  
Fishermans Bend Planning Review Panel  
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To the Chair

### **Fishermans Bend – Options for Provision of Public Open Space**

1. The purpose of this letter is to summarise the work undertaken by the State Government to date in determining how land which is required for public open space and roads will be provided. Provision of land for community facilities will be addressed in a separate letter.
2. Specifically, this letter:
  - a. identifies the options considered to provide land for public open space and roads and explains what provision method has been chosen;
  - b. provides information on all privately owned land affected by the public open space plan shown in the draft Fishermans Bend Strategic Framework ('the Framework');
  - c. shows worked examples of how each land provision scenario will operate.

### **Summary**

3. The total quantum of public open space required under the Framework is 352,683m<sup>2</sup>.
4. Of this, existing Crown land will be used to deliver 114,188m<sup>2</sup>.
5. The balance of the public open space as contemplated by the Framework is expected to be delivered through a combination of mechanisms as follows:
  - a. under clause 52.01<sup>1</sup>;
  - b. using clause 3 and 4 of the CCZ the for Fishermans Bend; and
  - c. purchasing land where it is practicable to do so, or via compulsory acquisition. These mechanisms would only be used in instances where an entire title is required.
6. In terms of the quantum of private land affected and delivered by each mechanism:<sup>2</sup>
  - a. 5,490m<sup>2</sup> of open space will be set aside as public open space pursuant to 5 existing planning permits (if acted on) at subdivision.

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<sup>1</sup> This mechanism has already been used to secure provision of land for public open space via a condition on five planning permits for subdivision.

<sup>2</sup> In addition to the cash equivalent of 124,320m<sup>2</sup>.

- b. The proposed planning controls in the CCZ are expected to facilitate the provision of 86,377m<sup>2</sup> of land. This impacts 38 different titles.
  - c. 146,628m<sup>2</sup> of land will either be purchased or, if necessary, compulsorily acquired. This impacts 17 different titles.
7. Remediation and land improvements will be completed by the developer but, insofar as the use of the land for public open space requires that the land be remediated to a higher standard than would be required for residential development, this 'gap' would be funded from developer contributions.

### **Background**

8. The Vision<sup>3</sup> for Fishermans Bend in 2050 is for '[a] thriving place that is a leading example for environmental sustainability, liveability, connectivity, diversity and innovation'.<sup>4</sup> The Vision sets new benchmarks for urban renewal including in terms of targets for access to open space, community service provision and the share of active and public transport movements compared to car-based transport. This is a challenge given:
  - a. the relatively small percentage of land in public ownership (10%);
  - b. the large number of individual landowners (over 300);
  - c. the lack of existing public open space and community infrastructure in Fishermans Bend; and
  - d. the high density resident and worker populations envisaged for the area (80,000 residents and 80,000 workers).
9. Land is needed to provide for new public open space and roads identified in the Framework. The land which may be required is able to be identified from the following figures in the Framework:
  - a. Figure 8: Road Network
  - b. Figure 17: Public Space
10. To the extent practicable, the Framework has sought to locate public open space and roads on Crown land. The open space plan recommends converting 114,188m<sup>2</sup> of Crown land into public open space (including by narrowing or closing roads to create linear green links).
11. This delivers around one third of the land necessary for the new public open space network. The remainder of the land needed to deliver the proposed public space network is private land. The potentially affected land is listed in Attachment 1 and located on the map in Attachment 2.
12. It is desirable to identify the potentially affected private land now so that the State government can explore all available options to secure the land and prepare a funding and finance plan to provide for the acquisition of land where necessary.

### **Mechanisms for Provision of Land for Public Open Space**

13. As set out above, the Taskforce has identified four mechanisms by which land can be provided for public open space:
  - a. the proposed planning controls (other than clause 52.01) for Fishermans Bend;

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<sup>3</sup> *The Fishermans Bend Vision 2016, DELWP.*

<sup>4</sup> *The Fishermans Bend Vision 2016, DELWP.*

- b. under clause 52.01<sup>5</sup> (for public open space only);
- c. by purchasing land where it is practicable to do so; or
- d. by compulsory acquisition.

14. Further details about these mechanisms are set out below.

#### **Planning controls for Fishermans Bend (other than clause 52.01)**

15. The draft Amendment contains several elements aimed at ensuring or encouraging the provision of land for public open space. These are:

- a. Clause 3.0 of the CCZ requires that the layout of any subdivision must make provision for, among other things, public open space generally in accordance with the Maps contained in the applicable CCZ Schedule.<sup>6</sup>
- b. Clause 4.0 of the CCZ prohibits the grant of a permit to construct a building or construct or carry out works where the development does not make provision for, among other things, public open space generally in accordance with the relevant maps contained in the applicable CCZ Schedule;<sup>7</sup>
- c. The floor area ratio ('FAR') controls have been drafted to apply to the gross, rather than net, developable area of the relevant land in order to ensure that the overall development potential of the land is not affected if part of it is provided for public open space and/or roads;
- d. The floor area uplift ('FAU') scheme identifies additional public open space beyond that in the Framework as one of the acceptable forms of public benefit for which a developer may obtain an uplift.

16. In this way, the proposed controls ensure that land identified as new public open space or roads in the Framework are not developed in a way that is inconsistent with that designation in the Framework. They also facilitate contemporaneous provision of public open space or roads with development. In addition, the floor area uplift scheme provides an incentive for developers to provide additional public open space beyond that identified in the Framework.

#### **Public open space contributions (Clause 52.01)**

17. Under clause 52.01, a person who proposes to subdivide land must make a contribution for public open space in an amount specified in the schedule to that clause. Currently, the schedule for Fishermans Bend specifies a contribution of 8%. This requirement will be imposed as a condition on any subdivision permit separately from and additional to the provision of land for new public open space under the Fishermans Bend planning controls described above. The public open space contribution will be preferred in cash rather than as land, to support whole site acquisition.

#### **Purchase of land or compulsory acquisition**

18. As set out above, these two mechanisms would generally only be used in instances where an entire title is required. This impacts 146,628m<sup>2</sup> contained in 17 different titles.

19. In the first instance, where it is practicable to do so, this land would be purchased on the open market. For example, if the land is advertised for sale on acceptable terms.

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<sup>5</sup> This mechanism has already been used to secure provision of land for public open space via a condition on five planning permits for subdivision.

<sup>6</sup> Document 66e, CCZ 3.0p2

<sup>7</sup> Document 66e, CCZ 4.0p1.

20. In all other cases, this land will need to be compulsorily acquired. As Fishermans Bend has been declared a Project of State Significance under Part 9A of the *Planning and Environment Act*, a Public Acquisition Overlay (**PAO**) will not be required to be applied to the land before it is compulsory acquired. In the circumstances, it is not currently proposed to apply a PAO to any land to secure it for the purpose of public open space.

### Funding Mechanisms

21. The Taskforce has identified four potential funding sources for land required to be purchased or compulsory acquired for public open space or roads:
- a. **Council Rates** – It is not proposed to use Council rates as a funding mechanism for provision of new public open space or roads in Fishermans Bend.
  - b. **Public open space contributions under cl. 52.01** – As set out above, the public open space contribution rate in Fishermans Bend is currently set at 8% (of the site value of the land and is preferred in cash rather than land. These contributions are required to be paid directly to Councils (into general open space revenue). The Council will be asked to agree that contributions collected from within Fishermans Bend will be spent within Fishermans Bend.
  - c. **Developer contribution** – A Development Contribution Plan Overlay ('DCPO') applies across Fishermans Bend for the purpose of levying contributions for works, services and facilities, before development can commence. It provides for a Section 173 Agreement to be used to make provision for development contributions, in advance of a Development Contribution Plan ('DCP') being prepared and approved. The interim contribution rate is set at \$15,900 per dwelling and pro-rated to \$180 per 100sqm office and \$150 per 100sqm retail (\$2013 Indexed).
  - d. **State and Commonwealth grants** - A further potential source of funding for public open space is State or Commonwealth grants. However, the ad hoc nature of this funding means that it cannot be relied upon, at this time.

### Scenarios for securing land for public open space or roads

22. Five scenarios have been prepared to illustrate how the methods of providing land described above would or could operate in different situations. A working example of each is presented in Attachment 3. These are:
- a. **Scenario 1** – using the planning controls to regulate built form. This scenario provides a 'base case' for comparison and does not involve the delivery of any public open space or roads. It uses the FAR on a site to deliver development gross floor area ('GFA'). This is the most common scenario to be used in Fishermans Bend and will apply to over 400 titles or almost 90% of all private land. Page 38 of the Framework and the *Urban Design Strategy* describes how this scenario works. The developer pays the interim DCP and POS contribution.
  - b. **Scenario 2** – using the CCZ planning controls to regulate built form when part of the land is provided for public open space. When the Framework identifies new public open space as being located within a development site, the land for public open space will be provided using this scenario. As the FAR is based on the gross developable area, the reduction in the overall size of the land caused by the provision of the public open space does not result in a reduction in the GFA which can be delivered. That is, the same GFA is permitted on the site regardless of whether public open space is provided on the site. There is no loss of development yield. This scenario assumes:

- i. There is not a significant lag time between when land, a component of which is identified as new public open space, is developed and the time at which there is a demand for that new public space in Fishermans Bend. This risk will need to be monitored and addressed if necessary.
  - ii. The cost to convert the built form GFA from the entire site area to the net site area is also not unreasonable. It assumes the net land available after the provision of the public open is still viable to build on in a manner reasonably consistent with what could otherwise be built on the gross site area. The FAR mechanism gives developers considerable flexibility to manage heights, massing and building character on their land.
  - iii. the cost of remediating the land for public open space would initially be paid for by the developer and the developer will then be reimbursed to the extent that the remediation is to a higher standard than would be required for residential development. This 'gap' would be funded from interim developer contributions.
  - iv. the cost of improving or embellishing the public open space will initially be paid for by the developer and the developer will then be reimbursed for that cost out of either the interim developer contributions.
  - v. The developer is required to pay the public open space contribution under clause 52.01 and the interim DCP contribution (unless the DCP contribution is offset by works in kind).
- c. **Scenario 3** – delivering a new local road within a site. When a local road is required to service and make the development of the land functional it should be delivered by the developer as works normal to development. The Framework describes a local road network (page 35) to ensure the local streets are coordinated and will, when fully delivered, provides a coherent and efficient local road network between sites. The local street will be handed to the local council upon completion. The developer pays the interim DCP and POS contribution.
  - d. **Scenario 4** – this scenario is used for delivering a road widening within a site. Road widening is proposed for parts of Plummer / Fennel St (Wirraway and Sandridge precincts), Turner St and Lorimer St (Lorimer Precinct).<sup>8</sup> Where possible, it is intended that land identified for road widening in the Framework will be provided through the planning controls. This may not be achievable, however, where the road widening is required before the relevant site is developed. Where the planning controls are ineffective, the land will have to be provided through compulsory acquisition or a private sale. If the land were compulsorily acquired, the developer would pay the POS contribution based on the reduced land area. There would be no change to the interim DCP payment. In either case, the physical 'road widening' works– would be delivered by the State or by local government, depending on the status of the road (e.g. arterial, local, etc.).
  - e. **Scenario 5** – this scenario is used when the government needs to deliver new public open space over an entire site. Under these circumstances the Government will secure the land via a negotiated purchase or compulsory acquisition. This will require a valuation based on the highest and best use of the land. No interim DCP or POS contribution will be required.

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<sup>8</sup> Framework, p. 35.

## Sites affected by the open space plan

23. A summary table has been prepared identifying all sites partially or wholly identified in the Framework for new open space (Attachment 1). The table notes the address, land area, open space area, submitter number and likely method of provision.
24. A plan has been prepared showing the location of each site with a unique identifier. This plan is consistent with the open space plan described in the Framework (Attachment 2).
25. Attachment 2 shows 60 private sites may be affected. Five of these sites already have been granted permits subject to conditions requiring the provision of land for public open space. Of the remaining 55 sites this represents around 11% of all titles within the four re-zoned precincts. The likely method of provision for the land and the total land area required is:

<b>Method of provision</b>	<b>Via planning controls</b>	<b>Open space on entire site</b>	<b>Existing Permit</b>
<b>Number of titles</b>	38	17	5
<b>Land Area (m<sup>2</sup>)</b>	86,377	146,628	5,490

26. The land which may potentially be used for public transport infrastructure in addition to the public open space use is included in Attachment 1. Examples of this land provision would reserving land for a future metro station entrance.
27. The total private land that is required to be provided is 238,495m<sup>2</sup>, including 5,490m<sup>2</sup> to be provided on the basis of existing permits.
28. 8% of the gross developable area is approximately 124,320m<sup>2</sup>. Rather than receive this clause 52.01 contribution as additional land, the preference is to receive it as the cash equivalent to support acquisition of whole sites as described in paragraph 6(c).
29. The Framework has assumed that land must be tested and if necessary remediated prior to the land being improved. The government has made an assumption that the interim development contributions will meet costs of remediation to a higher standards and improvements to the land.
30. Improvements of the open space is assumed to be completed by the developer and funded from developer contributions as works in kind. Whilst grants and other funding sources will likely be used from time to time these have been disregarded for the sake of this document.

Yours faithfully



For Fishermans Bend Taskforce

14 / 3 / 2018

Attachment 1 – table describing private land affected

Attachment 2 – map locating open space sites

Attachment 3 – worked example of 5 land provision scenarios