



Fishermans Bend

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Planning Scheme Amendment GC81

EXPERT EVIDENCE

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Expert Evidence | Strategic Advice | Development Approvals

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Attachments

Attachment 1 – Statement of Considerations

Attachment 2 – Expert Witness Statement

Attachment 3 – Curriculum Vitae

1 INTRODUCTION

1.1 Purpose

1 Melbourne City Council has asked that I undertake an independent planning assessment of the statutory merits of proposed Amendment GC81 (**the Amendment**) to the *Melbourne and Port Phillip Planning Schemes* (**Planning Schemes**) in the context of the strategic outcomes it seeks to achieve.

2 The Amendment proposes to introduce new statutory planning provisions and implementation tools for the Fishermans Bend Urban Renewal Area (**FBURA**).

1.2 Scope of evidence and considerations

3 This evidence addresses the Amendment, using the Lorimer Precinct, (being that part of Fishermans Bend within the City of Melbourne) as a case study to illustrate the Amendment's strengths and shortcomings.

4 This report assumes that the Advisory Committee and the reader are broadly familiar with the Amendment and the relevant background documents, referenced at **Attachment 1**.

5 Of particular importance to informing this report; the Amendment and its strategic justification have been:

- The *Fishermans Bend Framework – Draft for consultation* (2017)(**Framework**);
- The *Fishermans Bend Advisory Committee Report to the Minister for Planning On Draft Fishermans Bend Framework* (October 2017), prepared by the Ministerial Advisory Committee for Fishermans Bend (**MAC Report**).
- Select submissions to the GC81 Amendment that have provided practical examples of issues this report identifies with the statutory documentation.

6 The significance of the MAC Report is its expression of the considered opinion of the expert committee charged with overseeing the latest strategic

vision and policy content for the FBURA. As relevant, reference is made to that report throughout this evidence.

7 The evidence provides:

- An overview commentary placing the Amendment in context;
- A structured review of some of the key strategic initiatives and the strengths and shortcomings of the associated statutory tools, including recommendations for change or improvement;
- A commentary on particular statutory features.

1.3 Witness statement

8 An Expert Witness Statement and Curriculum Vitae is included as **Attachment 2** and **Attachment 3** of this report.

2 OVERALL APPROACH

2.1 Transformation

- 9 Fishermans Bend is described as Australia’s largest urban renewal project covering approximately 480 hectares of land, in central Melbourne¹.
- 10 Fishermans Bend does not fit the stereotypical image of an urban renewal area of wide-ranging redundancy and obsolete building stock. It has progressively experienced renewal of industrial and commercial building stock and remains an important location of economic activity and employment.
- 11 Currently largely comprised of low scale industrial, service and commercial buildings and a large number of businesses, the Framework intends the area to be socially, economically, physically and environmentally transformed and restructured into a major mixed use, highly sustainable, precinct.
- 12 By 2050, with approximately 70% of the urban renewal area redeveloped, the Framework envisages 80,000 new residents (from approximately 200 residents today), and the area to be providing 80,000 jobs (currently 30,200 jobs today).
- 13 The Framework advances a series of land use, development, connection and infrastructure plans to give effect to its vision.

2.2 Lessons from the immediate past

- 14 It is now widely accepted that the initial raft of strategic and statutory initiatives advanced for the FBURA, recorded in the *Historic Timeline* of the Framework, were ill conceived and premature.
- 15 The challenge was so much more than enabling major high density / high rise residential redevelopments of variously assembled land parcels.
- 16 It failed to properly appreciate the need for and complexity of retrofitting and restructuring an old port side industrial hinterland into a leading example of sustainable inner city living and employment.

¹ Fishermansbend.vic.gov.au

- 17 Striving to create *'A great place to be'* has been forefront of metropolitan development strategy for decades. Fishermans Bend is expected to deliver that manner of outcome.
- 18 Interim planning controls had to be “urgently” introduced via GC50 and GC59 in November 2016 to temper the pace and consequences of inappropriate planning provisions, poor amenity outcomes and provide the breathing space for fuller careful consideration about the necessary approach to a different outcome. The controls included mandatory height provisions and a sunset clause ensuring an interim role till March 2018.
- 19 The Framework can therefore be characterised as the ‘reset button’. However, there are approximately 13 proposals in Lorimer that have either already been approved (4) or are somewhere between pre-application to and notice of decision.
- 20 It represents a rare opportunity to complete a major rethink about the new vision and how to deliver it. It is the opportunity to learn from the lessons of the past about how to approach comprehensive redevelopment on the vast scale over time frames measured in decades.

2.3 The Amendment

- 21 One of the fundamental strategic issues presented by the Framework and GC81 is that the controls are intended to form part of a larger ‘package’ of plans and planning provisions and are acknowledged in the Part A submission as to be completed.
- 22 The ‘GC81 Draft Planning Scheme Amendment Information Sheet’ states that there is further work in the form of detailed precinct plans to occur, and that *‘detailed decisions about the implementation and timing of actions and infrastructure delivery will be subject to community consultation and normal government policy and budget process’*.
- 23 The community, stakeholders, interested and affected parties are asked to support or comment upon parts of a ‘package’ of proposed strategic and 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.

- 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, broach 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 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;
 - 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 GC81 may need to further revisited.

2.4 MAC recommendations 2016

31 It is instructive to reflect upon the 40 recommendations of the MAC and the Minister's Response in February 2016. That report included the following among other considerations:

- The Minister supported the urgent need for short, medium and long-term financial plans. The financial plan was being developed then and the same is the case two years later.
- The need for stronger interim planning controls was advanced. GC50 arguably responded to this recommendation but as put in this evidence GC81 might be appropriately viewed as a second stage in the development of long term sustainable controls.
- Public Acquisition Overlays should be applied to land required for community or physical infrastructure once identified through the Precinct Plans.

- An agreed new *Vision* “*should be given statutory weight as a new State Planning Policy Statement. There is also a need to consider new planning instruments to better provide for the orderly development of the Area such as new Urban Renewal Zone.*”

32 It is evident that GC81 is an incremental step towards some of those recommendations but regrettably falls short.

- The documentation of the Amendment is disjointed with the Framework deconstructed and partially reproduced in a number of separate policies, zones and overlays in two different planning schemes.
- Existing planning tools not conceived with the comprehensive urban renewal challenge in mind have been adapted for use with mixed results.
- Tools that might have been used to capture value and secure funding such as the Development Contribution Plan Overlay are retained but not employed as part of this ‘package’.
- Land is identified in the Framework and the proposed schedules to both the Capital City Zone and the Design and Development Overlay that will have to be publicly acquired but the overlay for that purpose is not included.
- No short-term financial plan is presented, and the MAC Report has again recommended that Government put in place an infrastructure delivery strategy and governance arrangement at the same time as introducing new planning controls.

33 The planning provisions of GC81 fall well short of the promise of a new Urban Renewal Zone, particularly if that zone was to embody the precinct planning strengths of the Activity Centre or Urban Growth Zones and the associated strategic and equitable rationale of the Development Contribution Plan.

34 This evidence would tell a quite different story if in addition to the provisions exhibited the precinct structure plans had also been prepared and detailed; the infrastructure costed; the contributions equitably distributed; and the overall ‘package’ was integrated.

- 35 In my opinion the recommendations of the 2016 MAC report should remain the statutory objective. The statutory planning tools like the on-ground outcomes for Fishermans Bend, should strive to demonstrate leadership in their integration, comprehensiveness, completeness and 'fit for purpose'.
- 36 Any recommendation and early use of the provisions of GC81 should only be on the basis that they are also a further step towards the above.

3 TIMELY PROVISION OF CORE INFRASTRUCTURE

3.1 Policy context

37 The provision of *Infrastructure* is a primary theme of *State Planning Policy Framework* (Clause 19 VPPs).

38 It is appropriate to be reminded about the core messages of that policy:

- Social and physical infrastructure should be provided in a way that is efficient, equitable, accessible and timely.
- Recognise social needs by providing land for accessible community resources;
- Growth and redevelopment should be planned in a manner that allows logical and efficient provision of infrastructure;
- Strategic planning should facilitate the efficient use of infrastructure.
- Planning authorities are to consider the used of development contributions levies in funding of infrastructure.

39 It is concluded in this report that the attributes of the infrastructure proposals fail or fall well short of the expectations of some of the above core policy intentions, with major consequences for the operation and outcomes of the Framework and Fishermans Bend.

3.2 What is sought to be achieved

40 The Framework and the purposes of the proposed 4th Schedule to the Capital City Zone seek the transformation of a vast historical commercial industrial precinct into:

- A world leading sustainable area that incorporates sustainable transport patterns;
- Best practice sustainable design into all development; and
- A highly liveable mixed-use area.

41 The sheer scale of the infrastructure challenge is gauged from the scope of key initiatives in the Framework:

- New walking and cycling connections;
- New road links and the closure of others;
- Future tram and rail connections;
- Doubling open space to the equivalent of two thirds the size of Docklands;
- Four primary schools and a public secondary school;
- Multi-purpose health, arts and sports community hubs.

42 The extent and complexity of the spatial implications of this is briefly explored below.

43 The Framework is a multi-layered plan illustrating an ‘end state’ – an idealisation of the future when the transformation process is complete, and land use, development, social, physical and transport infrastructure come together in an integrated and holistic crescendo.

44 Taking Lorimer Precinct as a case study the preferred “end state” and delivery projects can be usefully contrasted with the existing conditions to get a sense of the vast restructure and displacement of established activity that is required.

45 To deliver the ‘end state’ in Lorimer requires among other matters major capital works expenditure; the securing of significant tracts of privately held land for future public uses and ownership and the closure of existing important public roads such as Turner Street for open space as well as:

- The securing and creation of multiple new roads,
- The securing and establishment of large areas of land for public open space across the full length of the precinct;
- The closure of other roads currently providing access to parcels of land and established business; and

- New bridges and tram routes, some over land currently used for commercial purposes.

46 Linked to the delivery of each of those projects is a complex and unique web of:

- Diverse private and body corporate ownerships and titles;
- Established businesses and employment;
- Diverse investment in building stock of various but generally sound conditions and further potential lifespans;
- Different agendas of land and stakeholders;
- Commitments, legal, personal and other constraints and the like.

47 The *Fishermans Bend Urban Design Strategy* (September 2017) (**FBUDS**) correctly noted that;

“Most of the land is held by private owners which is unusual for urban renewal precincts of this scale. This makes it difficult to readily identify sites for critical public infrastructure such as transport and open space.”

48 And

“Any one of these aspects (Challenges) on their own would represent a significant challenge in planning effectively for Fishermans Bend. Together they demonstrate the scale of intervention that is now required in order to put Fishermans Bend back on track to realising the vision and to deliver on this this once in a generation city shaping opportunity.”

49 This complexity of considerations for each of the Fishermans Bend Precincts can be contrasted with a major urban renewal project such as the Alphington Mills, with its unitary ownership and comprehensive demolition and redevelopment, contiguous delivery of housing and infrastructure, as a continuous master planned construction management project.

3.3 How is to be delivered

- 50 The Amendment seeks to rely upon a combination of policy, zone and Design and Development Overlay provisions to address the timely delivery of core and essential infrastructure.
- 51 The Amendment would reference the Framework through each of the above types of planning tools and indicate as statements of policy at Clause 22.27 of the *Melbourne Planning Scheme* the desire to secure:
- New public and community open space,
 - New streets laneways and pedestrian connections; and
 - More sustainable transport including new tram, train and bus routes.
- 52 It would seek to secure each of the above future public land assets as part of the permit approval process, either by subdivision and or buildings and works as part of the proposed Capital City Zone provisions.
- 53 The Maps upon which the securing of land is required for this infrastructure (Map 2 and 3 to the 4th Schedule of the Capital City Zone) omit reference to a range of new lanes and roads indicated in the *Delivering Lorimer* plan in the Framework.
- 54 I have interpreted Clause 4.0 of Schedule 4 to the Capital City Zone to require the setting aside of land for public use, but there is no requirement to construct the relevant section of road or establish the park land or contribute to the cost of the same through the existing Development Contribution Plan Overlay.
- 55 The *Fishermans Bend Urban Design Strategy* (2017) (**FBUDS**) advances various scenarios (pages 80-81) illustrating how land for parks, streets and laneways can be secured at no cost to the public purse and with no loss of yield for the developer.
- 56 The theoretical model is flawed if all or most of the developable site is required for public ownership or if the severance of the public works and ownership limits the site's ability to be developed.
- 57 In those circumstances the land will need to be purchased by government.

- 58 The controls also raise a series of questions regarding the equitable approach to development, yields and costs. Many land owners would be required to carry the cost of handing over land for a public purpose because it has been decided that a park or connection should be located on part or all of their land holding.
- 59 On the other hand, others unaffected by public infrastructure needs on their land would be able to optimise the yield on their land while also gaining the benefit, at no direct cost, for the infrastructure provided on others land.

3.4 The strengths and shortcomings of the statutory provisions

- 60 A principal concern with Amendment GC81 is that it could be about to repeat some of the same mistakes of the immediate past, by progressing principally built form planning provisions (with some potential to capture some public benefits), ahead of being sure how the whole package of necessary public and private works can be delivered in an integrated, effective and timely manner.
- 61 In this context the funding and timing of infrastructure delivery is critical, as is how to capture, share and reinvest the value uplift that has arisen from the rezoning of the area and the proposed planning provisions.
- 62 The Framework notes (Page 7) that detailed decisions about the implementation and timing of actions and infrastructure delivery will be subject to community consultation and normal government policy and budget processes.

“All projects and initiatives requiring funding will be carefully assessed against budget capacity, with rigorous business cases and cost benefit analyses applied as part of their economic impact Statement.”

- 63 This needs to be read in conjunction with *Plan Melbourne* where it notes the following, under Policy 1.1.2, addressing the redevelopment of major urban renewal precincts:

“The timing of land release in these precincts needs to be in sync with policy drivers, market demand and the delivery of infrastructure and services. If developed properly the precincts will become a network of connected places, linked to each other and their surrounding neighbourhoods and developing diverse uses and characteristics”

- 64 There is a real danger that this incremental approach will create as many challenges as it solves. To illustrate:
- The FBUDS suggests that open space will be secured as land earmarked for public open space is developed. However public open spaces and corridors could be seriously compromised and not delivered if some land earmarked for open space is not redeveloped and cannot be contiguously secured.
 - The development of land that relies upon new roads for access will be frustrated, inefficiently developed or denied if the new access is not secured early in the delivery of the redeveloped precinct.
 - Routes for new tram and rail tracks, walkways and cycle routes are meaningless unless they are complete and secured and available to the community early in the redevelopment process. After all these will be some of the key ingredients and catalysts that will be relied upon to attract new business and new residents to the area.
- 65 There is an embedded vulnerability in the Framework and the statutory controls that at various stage public acquisitions will be required to complete and or deliver key pieces of infrastructure because the private sector cannot or will not do so, in a timely manner.
- 66 If that is the realistic scenario then the source and timing of funding to acquire and compensate becomes a critical early question.
- 67 The complexity of assembling the required land to create the required movement and open space networks calls into question the feasibility of the extent of physical restructure required in the Lorimer Precinct.
- 68 For instance, the Framework would require Turner Street upon which many properties and businesses currently rely to be closed only to have to secure land for a replacement public road, performing a similar role and function on private land, 100 metres to its south.
- 69 During the time while the road continues to be required for access an important section of open space cannot be provided.
- 70 The manner of 'bold' new network structure, planning and design, advocated in the Lorimer Precinct Plan can be delivered in green field

situations, with relative ease, because of the limited constraints and staged development of areas.

- 71 The 'greenfield' approach is enhanced because the major capital works projects have been identified and costed and their delivery is funded through development contributions all known at the outset over a relatively short period by a small group of developing parties.

3.5 Conclusions and Recommendations

- Detailed plans, such as cross sections and definition of the land required to be secured for all movement and open space networks are required as a matter of urgency and before gazettal of Amendment GC81, so that any further development that is approved properly accounts for the land needed and is able to demonstrate how proposals will integrate with the new structure.
- Approval of any revised built form controls via Amendment GC81 should be deferred until at least the above has been completed but preferably not before it is clearly understood how the funding and timely delivery of the required open space and movement infrastructure is to be secured and funded.
- Urgently move to capture part of the 'windfall' and increased value generated through the enhanced development potential of Fishermans Bend on the basis that the beneficiaries of the required infrastructure would benefit from its delivery.
- Rely on a development contribution scheme or similar mechanism to secure and apply funding to the necessary acquisition of land and the timely delivery of open space, transport and other identified necessary infrastructure.
- Concurrently review the Precinct Plans with a view to simplifying and reducing the assembly of additional public land for infrastructure and how to service the new community with the least disruption and delay.

4 THE SIZE OF THE COMMUNITY AND THE INFRASTRUCTURE THAT IT NEEDS

4.1 Policy context

72 Under the heading *Structure Planning* the State Planning Policy Framework seeks *to facilitate the orderly development of urban areas* (Clause 11.02-2 MPS).

73 Strategic planning, structure plans and development contribution plans are among plans advanced as the means to effectively manage land use and development of an area.

74 It is expected that structure planning will *“facilitate the logical and efficient provision of infrastructure and use of existing infrastructure and services.”*

75 For the reasons identified below the strategic planning and structure planning so far advanced in the Framework and Amendment is unlikely to deliver the above orderly outcomes.

4.2 What is sought to be achieved

76 The Framework is aspirational, targeted and clear in stating that Fishermans Bend will be home to 80,000 residents and 80,000 jobs by 2050.

77 I understand that these targets have been in place since the release of the first draft Vision in 2013.

78 These targets are informed estimates based upon explicit assumptions and provide a foundation upon which physical and community infrastructure needs and transport modelling and planning has presumably been based.

79 These population estimates have also been used in developing density controls, and the customised *Floor Area Ratio (FAR)* of residential and commercial floor space for each precinct in Fishermans Bend.

80 The benefits of introducing a density control is outlined in the Framework (Page 39) in providing for:

- Certainty about future overall population growth and densities;

- Alignment between population growth and distribution and infrastructure provision;
- Land use mix including employment opportunities;
- Diversity of housing types, including mid-rise apartments development.

4.3 Strengths and shortcomings in the statutory approach

- 81 A fundamental shortcoming of the Framework and GC81 is that they are conceived around facilitating and encouraging development that significantly exceeds the certainty of the planned FAR with the consequential implications of notably increased yields, densities and population, in excess of the 2050 target, and the infrastructure planning that has occurred.
- 82 The strategic and statutory mechanisms to enable this uncapped yield and variation from the base line is the *Floor Area Uplift (FAU)* (an ability to increase floor area in exchange for various nominated public benefits) in conjunction with the extensive reliance upon discretionary and unlimited height controls.
- 83 A number of submissions have asserted the Framework targets are too conservative particularly in the context of residential use and population.
- 84 This would be particularly true in the case of the provision of affordable housing if for each affordable dwelling an additional 8 dwellings can be provided. This multiplier may result in community housing, but it will also place a considerable additional burden upon the planned infrastructure.
- 85 The Technical Fact Sheet #2 and #3 addressing public benefits and Floor Area Uplifts (arising from the provision of community hubs and open space) openly concede an inability to estimate how many additional dwellings will be generated by this benefit.
- 86 The corresponding Technical Fact Sheet #1 on delivering affordable housing as a public benefit does not address the housing and population consequences of the take up of the benefit.

- 87 In the event that the FAU is widely approved and applied certainty regarding population, the adequacy of infrastructure and services would be progressively eroded.
- 88 Save for the locations nominated as mandatory height controls on Map 2 to proposed DDO67 and the protection of open space from shadow there is no assurance about the extent of additional growth and whether further and additional community and transport infrastructure would be required.
- 89 A responsible authority may be placed in a difficult position weighing and balancing discretionary height and densities against a range of public benefits. A further contributor to the complexity may be understanding what public benefits are required.
- 90 Respect for discretionary heights and density would be further tested if there is a prospect of securing land, at no cost, ear marked for public ownership as a transport connection or open space.
- 91 The recent history of discretionary height controls in the CAD prior to Amendment C270 to the *Melbourne Planning Scheme* has shown how significant variations in height and density might eventuate.
- 92 A key rationale for Amendment C270 as stated in the Explanatory report was, *'the dramatic increase in the quantity, density and scale of development proposed, and approved, within the Central City. Cumulatively, this increase in density has created poor amenity outcomes that have the potential to damage the investment attraction to the central City and the renowned liveability of Melbourne, generally'*.
- 93 There is insufficient experience and evidence post C270 to be assured that major variations from preferred outcomes are a thing of the past.
- 94 I note that the Minister for Planning's Part A submission, also acknowledges this scenario, with the potential for changes to the target population as a result of the FAU scheme. The relevant comment in the Part A submission is; *"Should take up of the FAU result in increased population densities above the target level, the FAR may need to be revised down over time"*.
- 95 This creates further uncertainty.

4.4 Conclusions

- 96 As currently planned it is appropriate to question whether the Framework and the indicative structure plans for the precincts have appropriately provided for open space, community facilities and possibly transport capacity.
- 97 If Fishermans Bend is to be developed in an orderly manner and the logical and efficient provision of infrastructure is to occur, then either:
- Limits should also be placed upon the scope and extent of Floor Area Uplifts and infrastructure and contributions planned accordingly: or
 - The public benefits derived from FAU should include a pro rata further contribution to a consolidated infrastructure fund to augment service delivery.

4.5 Recommendation

- 98 Additional modelling should be undertaken under a series of development scenarios enabled by the proposed planning framework and provisions to establish the population threshold that will warrant additional infrastructure and where and how that might be provided.

5 CREATING A MIXED USE ENVIRONMENT AND EMPLOYMENT

5.1 The policy context and justification

99 State *Settlement* policy (Clause 11.06 MPS) and more particularly metropolitan development strategy (*Plan Melbourne - 2017-2050*) place a high priority upon job creation in proximity to the established and emerging growth areas and the city's Major Urban Renewal Precincts.

To create a city structure that drives productivity, attracts investment, supports innovation and creates jobs.

100 The Framework and Amendment GC81 place a priority on this outcome but rely upon untested techniques.

5.2 What is sought to be achieved and its implications

101 It is the expressed intent that Fishermans Bend will, in due course, host 80,000 jobs by 2050 with 50% targeted for the Employment Precinct and the balance taken up in the four mixed-use precincts.

102 There are currently estimated to be 13,000 employees in the Employment Precinct.

103 To achieve the mixed use development outcome in the four precincts and jobs targets across Fishermans Bend would require a notable proportion of existing jobs and businesses across the whole area to be displaced and which would be unlikely to re-establish in the same locality.

104 A high proportion of existing commerce and business in Fishermans Bend is reliant upon ground level, land extensive, single storey, port, logistics and serviced based activities that are unlikely to be viable, suitable or candidate uses in a mixed use, higher density residential community environment.

105 Accordingly, a considerable body of new employment and different sectors of economic activity will need to be attracted to the area.

106 The Framework characterises the future in the following terms;

“Fishermans Bend will play a vital role in securing new high value jobs for Victoria, building on its legacy of world-leading technology and innovation (Page 21);

And

The Employment Precinct has the potential to become Australia’s premier design and manufacturing centre, supporting large and small scale manufacturing, be it high tech, bespoke or artisan. The precinct could also provide a hub for innovation, entrepreneurship, and design excellence, drawing on its industrial heritage and buildings on its proximity to the thriving knowledge sector (page 15).

- 107 The role of new and improved transport connections is advanced as an important ingredient in leveraging this new employment base to Fishermans Bend.
- 108 The strategy provides for a minimum *Floor Area Ratio* in activity cores for employment floor areas, to ensure that job targets are met and would allow the FAR to be exceeded if the additional floor area was commercial without the need to provide public benefits of the *Floor Area Uplift*.
- 109 While this approach encourages maximisation of employment opportunities it adds complexity and uncertainty as to how the market might respond and its implications for the land use mix, and overall residential and employment populations. This in turn could have flow on implications for infrastructure provision.
- 110 In the characterisation of *Distinctive Precincts* (Framework pages 22-23):
- Montague and Lorimer are envisaged as mixed-use precincts with minimum commercial FARs of 1.7:1 and 1.6:1 respectively.
 - Sandridge would be a premier office and commercial centre with a core area FAR of 3.7:1.
 - Despite Wirraway not being characterised as strongly as a mixed use environment or employment centre it is proposed to have the second highest commercial FAR of 1.9:1.
- 111 It is to be recalled that Fishermans Bend is advanced in a competitive local environment in which seven *National Economic and Employment Clusters*

have been identified in *Plan Melbourne* to serve a similar role. The four mixed use precincts are not identified as part of the NEIC.

5.3 How it is proposed to be delivered

- 112 The amendment seeks to secure employment floor area as part of every development and via local policy rather than through a zone or land use schedule.
- 113 The proposed *Fishermans Bend Urban Renewal Area* policy at Clause 22.27 expresses its employment-based *Objectives* in terms of promoting employment generating floor space and the policy is expressed in terms of “*encouraging all development*” to set aside non-residential floor area to provide floor areas for employment generating uses. The policy is correctly characterised as discretionary and a guideline and not a requirement.
- 114 Thus, the policy uses the language of ‘enabling’ the ‘preferred’ minimum floor area ratio which ‘should’ be set aside (Clause 22.27-3).
- 115 Where development provides for less than the minimum floor area policy considerations include a series of possible justifications for providing less than the minimum.

5.4 Strengths and shortcomings of the statutory approach

5.4.1 The need for early delivery of public transport

- 116 The early provision of public transport linking the loop, Melbourne Metro and the tram network to Fishermans Bend will be an essential factor influencing whether employment is attracted to the area when other competing locations for the type of employment sought offer better access for employees to public transport.

5.4.2 Conflicting uses and priorities

- 117 Given the manner in which the planning provision is written any non-residential use would qualify as suitable to occupy commercial floor space. The list of prohibited uses in the Capital City Zone 4 would be extremely few and regardless would not be candidate activities.
- 118 Since the provisions seek to secure or mix a minimum amount of commercial floor area with the high probability of a residential component

this has the potential to create potential conflicts and amenity consequences.

- 119 For instance, nightclubs, function centres, hotels, industries etc, are discretionary uses.
- 120 The purposes of the proposed Capital City Zone 4 include and place priority on employment over residential outcomes.

“To create highly liveable mixed use areas that give priority to employment over residential use”.

- 121 In this context the priority is placed upon creating a minimum amount of space for employment and commercial floor space. It might prove difficult to deny uses with off-site amenity impacts that might assist in delivering those jobs, but which would conflict with residential uses.
- 122 I am advised that officers of the City of Melbourne regularly deal with this issue in the CCZ1 and CCZ2.

5.4.3 Building typologies and ratios

- 123 In mixed-use areas the inclusion of some ground floor non-residential uses is widely accepted and implemented, particularly where that activates street frontages.
- 124 More recently the *Stonnington Planning Scheme*, through the recently gazetted Amendment C172 has sought to encourage the use of the lower level of buildings in the Chapel Street Activity Centre for uses other than residential, requiring adaptable floor areas (higher floor to ceiling heights) which can be used for commercial purposes.
- 125 It is too early to evaluate how successful that has been in creating employment. As with Fishermans Bend the adaptive floor area could still be occupied for residential purposes.
- 126 Climate change, ground water, flood level and contamination issue and the absence of public transport further complicate the circumstances of Fishermans Bend. In the absence of quality public transport services there will need to be an adequate supply of both residential and non-resident parking. The prospect of that being provided in a basement is highly constrained and unlikely.

127 Thus, when minimum commercial floor areas are specified and encouraged in excess of 1.5 times the gross developable area and provision has to be made for parking also at or immediately above ground level an unusual and little tested building typology is required particular if that composition is further complicated by mixing it with a residential component.

128 The effect is likely to be medium or high-rise buildings that have the attributes of a 'club sandwich' with:

- Some ground level commercial space and activation,
- Ground and lower floors taken up with car parking as is evident in a number of development in and around Southbank,
- Commercial floor space above car parking; and apartments above.

129 The proposed policy at 22.27 encourages all development towards this outcome.

130 This is a relatively untested development scenario and risky policy position to adopt, while accepting that the policy provisions provide exemptions to excuse the minimum provision of commercial floor space.

131 If the recent trends in planning approvals are taken as a 'litmus test' of preferred outcomes to date, the market has been primarily focused upon delivering residential rather than employment outcomes in Fishermans Bend.

132 If this has any real prospect of being turned around in the short to medium term, then the conditions and circumstances of providing employment need to be strongly attuned to what employers require and seek in terms of the work place environment and buildings that suit their needs.

5.4.4 Zones and precincts

133 Historically land use planning has used zones or precinct structure plans to prioritise land use outcomes and separate incompatible land uses.

134 In this way an area can have a mixture of uses without all buildings seemingly being a mixture of uses; incompatible uses can be separated, and the different needs of commerce and residents uses can be properly catered for in buildings that reflect their different needs.

- 135 Given the above it would be an important role of the foreshadowed precinct structure planning that consideration be given in core areas to identifying areas where predominantly commercial and employment outcomes are required and areas where predominantly residential outcomes would be expected.
- 136 The planning provisions for Fishermans Bend need to be stronger on delivering employment outcomes if the employment objectives are to be met. 'Encouraging' an outcome and providing number discretions to avoid that outcome cannot be relied upon.

5.4.5 Transferable and agglomeration of use employment floor area rights

- 137 An alternative approach worthy of exploration might be the use of transferable use and floor space rights in which a local market with flexibility is established to ensure that a group of developments can provide apartment living provided that they agglomerate and develop an 'employment building' that exceeds the cumulative FAR encouraged on the other sites. This outcome embodies a carrot and stick approach to ensuring that employment floor area is created alongside residential land use.
- 138 A similar recommendation is made in the MAC Report.
- 139 Clearly if the conceptual tool and approach is seen as having merit the model would need further careful development and may require enabling legislation.

5.5 Conclusions and recommendations

- 140 A large number of jobs and work places will be displaced in delivering the vision for Fishermans Bend.
- 141 Attracting the replacement and growth of new sectors of employment is complicated by the lack of infrastructure and particularly high quality public transport connections with the rest of the metropolitan area.
- 142 Fishermans Bend presents unique and complex site development challenges in attracting employment as the whole or a component of every development.
- 143 The employment area provisions need to be reviewed and strengthened to provide a stronger assurance that land will be set aside for predominantly

employment outcomes and to link the provision of residential outcomes to a commitment to deliver commercial floor space even if that is requirement is transferred to dedicated employment buildings.

6 FINANCE, CONTRIBUTIONS AND FLOOR SPACE UP LIFT

6.1 Policy context

144 The *Planning and Environment Act* and Victorian planning schemes seek to facilitate the timely provision of planned development infrastructure to communities through the preparation and implementation of development contribution plans (Clause 19.03 *Melbourne Planning Scheme*).

6.2 What is sought to be achieved

145 The framework identifies the need for a broad range of new infrastructure to serve the new community including new movement networks, tram and train routes; open space areas and corridors, community hubs, sports, arts and recreation facilities, schools, other education and health facilities.

146 The development industry can expect to bear the direct cost associated with each project, but a considerable part of the above infrastructure has a broader community and regional benefit and its cost should be borne equitably across the benefitting community and from the public purse in so far as there are broad city-wide benefits.

6.3 How are contributions to be statutorily delivered

147 The Framework and the Amendment indicate where many of the 'big ticket' open space and movement network infrastructure items will be located in the plans forming part of the Capital City Zone and Design and Development Overlay Schedule 67.

148 Permit applications for subdivision and buildings and works under the Capital City Zone would require that provision be made for any new street, laneway or public open space generally in accordance with the above plans.

149 No indication is provided as to if, when and how ownership might be transferred to the public or how the land should be used and maintained in the interim.

150 No responsibility for the construction of roads, lanes or the establishment of open space is established.

- 151 A permit can only be granted under the provisions of the Capital City Zone for a floor area greater than the Floor Area Ratio, but only if a public benefit and Floor Area Uplift is calculated and specified in a manner agreed with the responsible authority and secured by a Section 173 Agreement.
- 152 Technical Fact Sheets, outside the planning scheme, are to be relied upon to indicate where, when and under what conditions affordable housing, public open space and community hub benefits can be agreed.
- 153 8% contribution to public open space, as provided for at Clause 52.01 of the *Melbourne Planning Scheme*, is not proposed to be varied by the amendment despite the MAC Report noting that that new open space in the draft Framework is based upon the assumption that public open space contributions in Fishermans Bend will be 10%.
- 154 The Lorimer Precinct of the Fishermans Bend Urban Renewal Area will retain a Development Contributions Plan Overlay (Schedule 1). It will remain devoid of a summary of costs and contributions and provide for negotiated agreements, confirmed by Section 173 agreements, on a site by site basis.

6.4 Strengths and shortcomings of the statutory provisions

6.4.1 A period of hiatus

- 155 In the event that the proposed provisions of GC81 were adopted and gazetted there would be a period when the status quo would seemingly remain, until such time as a financial plan was agreed, costed and contributions assigned.
- 156 No contributions would be made to infrastructure save for 8% of land for public open space (or the equivalent monetary value); any benefits flowing from the floor space up lift; or any ad hoc negotiations arising under the provisions of the DCPO.
- 157 The point of difference between the status quo and the Amendment is that the latter identifies the infrastructure that will be required but not the costing and contributions.
- 158 This would in effect create a transition period defined by the time to gazette contributions where applicants would be able to negotiate unique 'deals',

which may or may not be equitable in the face of finalised costing and contributions.

6.4.2 Methods of funding and viability

- 159 Development contributions plans are but one mechanism in seeking to capture value from the uplift arising from the significantly increased development potential of the FBURA.
- 160 The opportunity presented by the rezoning to the Capital City Zone has been lost however the MAC Report has indicated the Fishermans Bend Taskforce is currently preparing a funding schedule that has four key value capture elements while commenting on the possibility of Commonwealth grants:
- Development / Infrastructure Contribution Plans;
 - Open space contributions;
 - A Community Infrastructure Levy; and
 - Council rates (including special charges from the renewal area).
- 161 The language of the Framework leaves a tone of uncertainty as to whether and what government will fund in terms of infrastructure projects;
- “All projects and initiatives will be carefully assessed against budget capacity with rigorous business cases and cost benefit analysis applied as part of the economic impact assessment.*
- For infrastructure projects this will require ensuring consistency with government Investment Lifecycle and High Value / High Risk Guidelines. For all other initiatives and actions, implementation will depend on the evidence and the likely net community benefit”.*
- 162 The MAC Report also draws attention to the ‘Fair Go Rates System’, which would diminish any cumulative financial benefit derived at a municipal level from the uplift in the rates base from Fishermans Bend.
- 163 All of the above directly contribute to project viability and the delivery of housing growth and jobs. Because the Amendment has in affect ‘shown its hand’ on only half of the infrastructure equation (outcomes but not costs) and seeks to partially cap yields by applying a Floor Area Ratio to one

primary prospective use and a minimum floor area to another, there is no assurance about project viability when the matrix of cost allocations and contributions is finally settled and known.

164 The MAC Report makes a similar point when it notes:

“Whilst the it is important that the overall vision is achieved, this will only happen if statutory planning arrangements are set at levels that can be delivered via property development process” (Page 29).

165 This concern is further developed with the MAC Report commentary upon the provision of minimum commercial floor areas. In an unusual recommendation it has proposed that:

“ - the developer agree to an open book examination of the financial arrangements for the development by an independent Development Viability Review Panel and the Panel agrees that the delivery of the requirement for a minimum commercial area affects the financial viability of the development (Page 19).

166 Such a recommendation has no applied precedent operating in the Victorian planning system and tends to underline the inherent uncertainty that the MAC holds for project viability when the entire package of provisions is eventually brought together.

167 The ‘road testing’ of the entire package of planning provisions should be the time and venue to understand and evaluate development project viability rather than a case by case financial testing, post gazettal.

6.4.3 Inequitable contributions

168 The proposed subdivision and buildings and works provisions require some land owners to set aside land for public purposes where indicated on infrastructure plans while other, unaffected parties have to make no similar contribution.

169 The supporting documentation suggests that arrangement would be equitable because the Floor Area Ratio would not be diminished, and the area might be absorbed in permitted building envelope.

170 That theoretical model does not account for all situations. The ‘reservation’ of part of a site for a later public purpose may also impact upon the size, shape, configuration and the develop ability of the residual land.

171 The costs of assembling land should be equitably distributed across the developable land. The public acquisition of the land required for new infrastructure would enable such an outcome.

6.4.4 The use of floor area uplifts as a contribution

172 I have previously expressed the view to the Panel considering Amendment C270 to the *Melbourne Planning Scheme* that the use of the floor area uplift, was a sound concept poorly executed.

173 That Panel shared that view and recommended that the Minister for Planning not proceed with the concept as presented in that Amendment. This was advice not accepted by the Minister.

174 I address the issue of the FAU being used in the context of affordable housing in the next section of this evidence but make the following observations about its broad application.

175 The FAU as advanced in the Framework can be characterised as a ‘wildcard’. In its current construction and composition, it is poorly conceived with a range of possible outcomes.

176 None of the exhibition material provides assurance or certainty about its outcomes in terms of:

- Take up;
- Achievement of policy expectations;
- The amount of additional housing generated;
- The greater demand for infrastructure;
- The public benefit to be derived from the additional open space or community hubs on any particular sites; and
- The type and location of infrastructure required to serve additional population.

- 177 It has to be presumed that any contribution plan incorporated into DCPO would be based upon the Floor Area Ratio and not the Floor Area Uplift, being the conservative assumption that few parties may apply the up lift but the base line infrastructure needs to be paid for.

6.5 Conclusions

- 178 The amendment is premature to be applied until such time as the viability of development under the Floor Area Ratio and built form planning provisions and necessary contributions are fully understood and evaluated.
- 179 While it might be argued that there is flexibility how infrastructure might be funded and therefore there are different equations as to how viability will be affected, it would be an unfortunate outcome if some infrastructure required early in the renewal process cannot be funded because of project viability and making commitments before the full 'story' is known.

6.6 Recommendations

- 180 Review project viability in the light of the financial and development contribution plans;
- 181 Place a Public Acquisition Overlay over land that needs to be acquired early in the delivery of the FBURA in order to secure critical transport links and open space areas, and factor these into the Financial Plan.
- 182 Review and confirm the amount of land required for public open space and amend the provisions of Clause 52.01 to meet that need and the public acquisition of that land.

7 AFFORDABLE HOUSING

7.1 Policy basis

183 The State Planning Policy Framework seeks ‘*to deliver more affordable housing close to jobs, transport and services*’. (Clause 16.01-5).

184 The associated strategies include encouraging a significant proportion of new development to be affordable for households on low to moderate incomes.

185 Plan Melbourne, Policy 2.3.3 seeks to,

‘strengthen the role of planning in facilitating and delivering the supply of social and affordable housing’.

186 Plan Melbourne recognises that there is a pressing need to increase the supply of social and affordable housing for households unable to afford market-rate housing.

187 It notes that current approaches to delivering affordable housing, such as requiring Section 173 agreements or through Development Plan Overlays have been criticised for not being sufficiently robust and inequitably applied.

188 Plan Melbourne goes on to state:

“The planning system will be reformed to facilitate the delivery of more social and affordable housing. These reforms will clearly define social and affordable housing contributions, create a clear head of power for affordable housing contributions, and clarify the role the planning system has to play in the delivery of new housing. These reforms will explore inclusionary zoning and mechanisms to capture and share value created through planning controls.” (my underlining)

At Policy 2.3.4 within Plan Melbourne - *Create ways to capture and share value uplift from rezonings* - it states that:

“Consideration needs to be given to developing a new requirement that when land is rezoned to allow for higher value uses, a proportion of the value uplift should be contributed to the delivery of broader public benefit outcomes such as social and affordable housing”.

7.2 Background study

189 *'Fishermans Bend Urban Renewal Area: Options for Delivery of Affordable Housing'*, was prepared by Judith Stubbs & Associates (2013) as part of the early background studies to the Fishermans Bend Framework and planning provisions.

190 The report analyses the need to provide affordable housing and recommends a target provision of 20% affordable housing be provided within Fishermans Bend, noting that this is a conservative estimate of likely future affordable housing demand.²

191 The report explores a number of mechanisms to deliver affordable housing.

192 The options for creation of affordable housing range from what are described as reasonably 'weak' interventions such as providing incentives for creation of affordable housing, through to 'stronger' requirements such as mandating a proportion of relevant dwelling types, levies or other mandatory contributions for affordable housing.

193 The report states:

*'In the case of FBURA, **strong intervention** will be required through the planning system and/or some form of subsidies by government to create affordable and low cost housing based on the evidence from this study if any very low, low or moderate income households are to be included or live affordably in FBURA'.*

194 In the comparative table of options provided within the report, the incentive scheme, such as proposed through the floor area uplift scheme, is not recommended (p.59), however mandatory intervention mechanisms such as development contributions are recommended. (p.61-62).

195 The report goes on to state that development contributions are assessed as the most effective funding strategy in meeting the identified need.

² Fishermans Bend Urban Renewal Area: Options for Delivery of Affordable Housing', prepared by Judith Stubbs & Associates 2013, p. 37

7.3 What is proposed?

- 196 The draft Framework sets a target of 6% affordable housing across Fishermans Bend, equating to approximately 2,200 affordable housing units within a total target population of approximately 80,000 people, or 40,000 dwellings.

7.4 How will this be statutorily delivered?

- 197 The proposed planning provisions seek to implement this through a local policy and a voluntary 'floor space uplift' scheme, to incentivise the provision of the public benefit, with the housing units gifted at no cost to an affordable housing association in perpetuity, secured through Section 173 Agreement registered on title.
- 198 This is similar to the floor space uplift mechanism used in the central city to deliver a public benefit, implemented as part of Amendment C270.

7.5 Strengths and weaknesses of the statutory provisions

7.5.1 Voluntary or mandatory affordable housing

- 199 It is widely recognised that there is a need for an increased supply of affordable housing in Victoria.
- 200 Past provisions that have 'encouraged' the delivery of affordable housing have not been effective, with little supply being provided in key inner urban renewal areas.
- 201 State planning policy at Clause 16.01-5 seeks to deliver more affordable housing closer to jobs, transport and services, however it has lacked corresponding mechanisms to require this provision, or stronger incentives for developers to deliver this form of housing.
- 202 On this basis, the reliance upon a different mechanism, being the FAU, to provide for affordable housing within Fishermans Bend is supportable provided that it does actually deliver a significant quantity of affordable housing.
- 203 The proposed mechanism, the floor area uplift, has theoretical merit in incentivising the private sector to deliver housing throughout the Fishermans Bend precincts.

- 204 A similar approach is now being implemented in the central city and Southbank as an outcome of Amendment C270 to the Melbourne Planning Scheme.
- 205 However, it is too early to determine the success of that floor area uplift in delivering affordable housing.
- 206 The proposed provisions for Fishermans Bend have some key differences to Amendment C270, with a ratio of 1 affordable housing unit to be provided with every additional 8 market value dwellings proposed. This contrasts with Amendment C270 that requires the public benefit to be of equal to (or greater than) the total value of the FAU.
- 207 The proposed Fishermans Bend model may prove to be more attractive to developers than is the case in Amendment C270, where other public benefits, such as open space, plazas etc are possibly easier and more cost effective to deliver for the same benefit.
- 208 However, the key concern remains that the delivery of affordable housing is hoped for, but unassured.
- 209 Plan Melbourne asserts the way forward for affordable housing will be through a system of contributions under a 'new head of power'.
- 210 It criticises the delivery of affordable housing through a negotiated outcome and Section 173 Agreements as not being sufficiently robust and inequitably applied.
- 211 The recent Homes for Victorians statement of government Housing policy and the Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Act 2017 provide a context to facilitate more affordable housing in the State. In the case of the latter legislation the Act has been authorised and not gazetted and the obligation is upon voluntary contribution rather than a mandatory one.
- 212 The MAC Report is also supportive of the use of the floor area uplift and further supports a voluntary provision via Section 173 agreements to allow the affordable housing to be delivered off site. However, the report shares my concern regarding whether the proposed provision will result in the achievement of the wider affordable housing goals for the precinct.

- 213 It has recommended a 5-year review and the consideration of mandatory planning provisions in the event the housing targets are not met.
- 214 While the time lines differ, this recommendation aligns with the background study that strong intervention is required, with significant risk that without mandatory contributions, levies or other similar process, that the resultant yield is likely to be low and the response by developers uncertain.

7.5.2 Percentage contribution

- 215 It is unclear how the 6% target for affordable housing in the Framework Plan was set, given that the background report recommends a conservative target of 20%.
- 216 Adding to the arbitrariness and appropriateness of the target is the recommendation in the MAC Report that the target should be 10%.
- 217 As an entirely voluntary system, solely dependent on developers to choose to take advantage of the uplift scheme, it is academic what percentage is set unless there is a mandatory requirement to provide affordable housing.
- 218 As there is no legislative base to mandate the requirement of affordable housing there is a greater prospect of the affordable housing being delivered if the target is set lower and commercially attractive.

7.6 Recommendations

- 219 The time line for review of the effectiveness of the affordable housing uplift scheme should be reviewed annually and early intervention, with a view to seeking mandatory provisions, should be instigated in the event that there is evidence of low contributions.
- 220 Flexibility should be embodied in the provision of affordable housing with the option for the housing to be provided by way of a cash contribution to a housing association for the provision elsewhere in the FBURA.
- 221 That the Advisory Committee recommend to the Minister for Planning that there needs to be legislative options and choice to require contributions to affordable housing.

8 PROPOSED NEW POLICY, ZONE AND OVERLAY PROVISIONS

8.1 Overview

222 The suite of planning controls proposed as part of the Amendment include:

- Changes to the MSS.
- A new local policy for Fishermans Bend (**Clause 22.27 Fishermans Bend Urban Renewal Area**).
- A new schedule to the Capital City Zone (**CCZ4**) that includes provisions relating to land use, subdivision, floor area ratios, floor area uplift, Green Star requirements, provision of streets and laneways and open space.
- A new Design and Development Overlay (**DD067**) that includes built form controls, and
- New schedule to the Parking Overlay (**PO**) that sets maximum car parking rates to encourage sustainable transport.
- The *Fishermans Bend Strategic Framework Plan* (September 2016) is to be removed as an incorporated document, and the *Fishermans Bend Framework Plan* and other background reports are to become reference documents to the relevant planning schemes.

8.2 Zone and Incorporated Plan

223 The approach taken in translating the Framework Plan and background reports into statutory controls is focused on delivering the land use and built form vision, rather than a new urban community.

224 As noted earlier one of the recommendations of the Ministerial Advisory Committee in February 2016 was to consider new planning tools to implement the Vision and Framework.

225 Recommendation 9 states:

“Once agreed, the redefined Vision should be given statutory weight as a new State Planning Policy Statement. There is also a need to consider new

planning instruments to better provide for the orderly development of the Area, such as a new 'Urban Renewal Zone'.

- 226 This recommendation for a new Urban Renewal Zone would be more akin to the 'Urban Growth Zone' used in greenfield areas or the Activity Centre zone, by providing for a comprehensive planning instrument to implement the full range of planning provisions required. This would extend beyond land use and built form controls, but also include requirements for the delivery of infrastructure.
- 227 If the Urban Renewal Zone was to operate in a similar way to the Urban Growth Zone, it would also have the ability to implement a detailed incorporated precinct structure plan, or framework plan, requiring all use and development to be *'generally in accordance with'* the plan(s).
- 228 This is quite different than the proposed controls proposed by this Amendment.
- 229 While both proposed schedules to the Capital City Zone and the Design and Development Overlay seek to *"implement the Fishermans Bend Vision, September 2016 and the Fishermans Bend Framework, XX, 2018"*, neither of these documents are proposed to be incorporated into the respective planning schemes and there is no overall plan provided within the schedule to the zone or DDO.
- 230 As proposed reference documents, these are only intended to serve as background material, rather than forming part of the statutory control.
- 231 There are also detailed objectives, strategies and figures within the Framework that provide useful detail on the delivery of the intended vision that are not reflected within the statutory controls.
- 232 This information is important to properly understand what is required, yet the Amendment will give minimal statutory weight to these documents.

8.3 Land use and Development Controls

8.3.1 Absence of need for further reference in State policy

- 233 Contrary to the recommendations of the MAC in 2016 I do not see the need for the State Planning Policy Framework to make further references to Fishermans Bend.

234 Metropolitan development strategy, detailed in *Plan Melbourne*, has appropriately acknowledged the National Employment and Innovation Cluster and Major Urban Renewal Precinct roles of Fishermans Bend.

8.4 Local policy outcomes

8.4.1 Comprehension

235 The Amendment provides for the *Fishermans Bend Urban Renewal* policy at Clause 21.13-3 to be comprehensively rewritten and for that to be complemented by a new *Fishermans Bend Urban Renewal Area* policy at Clause 22.27.

236 In turn that is to be read in conjunction with Schedule 4 to the Capital City Zone – *Fishermans Bend Urban Renewal Area* and Schedule 67 to the Design and Development Overlay – *Fishermans Bend Urban Renewal Area*.

237 The sheer number of ‘deconstructed’ and overlapping provisions and the confusing manner in which policy and development control are mixed throughout the documentation highlights why there is an urgent need for a new zone or similar mechanism required to succinctly and systematically address an urban renewal challenge of this complexity in a structured consolidated manner in the planning scheme.

238 It is to be remembered that what is presented in the Amendment is an incomplete ‘package’ of relevant provisions.

239 It can be anticipated that the complexity and understanding the statutory documentation will get harder as precinct structure plans and contributions are layered and added.

240 The amendment makes use of tools in the VPP’s, but the composite approach detracts from a clear appreciation of what is required and expected.

241 The Framework is notably easier to understand than the Amendment and yet the former will not be readily available to the user of the planning scheme.

8.4.2 Controls as policy

242 By way of illustration of the above points:

- Floor Area Ratios are located in the *'Buildings and Works'* provisions of the CCZ, but the "Minimum floor area ratio not used for dwellings" would be located in the local policy at Clause 22.27;
- A dwelling density control is included in policy at Clause 22.27 that requires all developments in Lorimer to comply with a maximum dwelling density of 225 dwellings per hectare. It is not clear how this would operate on a site-by-site basis particularly if the area experienced a high take up on the Floor Area Uplift or the site was constrained by mandatory height controls. The reference to 'Table 1' in the policy is incorrect.
- The inclusion of *'Sub Precinct Preferred Character Outcomes'* as a broad statement of strategy is misplaced. Ordinarily such statements might be found as neighbourhood character policy at Clause 22 but preferably would be included in a Design and Development Overlay Schedule addressing precinct specific built form outcomes.
- The presentation of these sub-precinct character outcomes is unusual when the structure plans for the precincts have not been prepared and therefore the strategic justification is weakened.
- The strategies of Clause 21.13-3 refer to the location of various new transport and infrastructure. The policy would be greatly assisted by an overall representation of the preferred structure of the precinct and the location where the various initiatives are hoped to be delivered.
- The policies for *'Community and Diversity'* at Clause 22.27 seek to encourage proposals of more than 300 dwellings to provide for a nominated percentage of 3-bedroom dwellings.
- The policy directive reads more like a control and would probably be applied in that manner, without strategic justification.

- A preferable approach would be to be firm on the need for genuine diversity but let the market bring forward product and mix that it perceives to be sought.

8.5 The Capital City Zone 4

8.5.1 Purposes - contradictory

243 The purposes of the schedule are internally contradictory. The following purpose cannot be reconciled with the latter.

To ensure that the overall floor area aligns with the population targets, jobs growth and residential densities to enable a scale of growth that aligns with the provision of infrastructure.

To provide public benefits where the scale of growth exceeds infrastructure provision.

244 As detailed earlier in this evidence the first purpose is the one upon which infrastructure planning and provision should be based. The second purpose should be revised to read:

To provide public benefits where the scale of development exceeds nominated Floor Area Ratios.

8.5.2 Purposes – unrelated to provisions

245 The purposes of the schedule seek to create a highly liveable mixed- use area that gives priority to employment uses over residential uses.

246 In practice *Accommodation* is a Section 1 use and while a number of employment uses are also categorised in Section 1 many are also discretionary – Section 2 uses.

247 This short-coming is compounded by locating all the provisions relating to employment floor space in the local policy at Clause 22.27 and not in the Zone provisions where the purpose is sited.

248 The matters are further confused by the sub clause 4 - *Buildings and Works* provisions of the CCZ, requiring that in core areas the additional floor area that results from exceeding the floor area ratio are not to be used for dwellings.

249 While this latter point might have merit in the context of public benefits associated with public open space and a community hub, it will not support affordable housing policy, which structures the benefit on the basis of housing being delivered by the Floor Area Uplift.

8.5.3 Exemptions from notice and review

250 Both the CCZ and DDO schedules provide exemptions from notice and review for all applications for use, subdivision and for buildings and works.

251 The CCZ provision was conceived to facilitate development within the capital city in a relatively stable strategic planning and development context with sophisticated and tested planning conditions in place.

252 Even so, more recently the wholesale exemption from notice has come under greater scrutiny as result of the impact of significant change impacting development in proximity to old and new residential apartments.

253 While the appropriateness of the Capital City Zone is challenged elsewhere in this evidence the exemptions of notice provisions is more problematic in this environment of transformation, lack of certainty and the application of untested planning provisions.

254 The redevelopment of Fishermans Bend brings with it a range of potential conflicts because of the degree of disruption and mix of uses proposed.

255 Established business and employment will be impacted during the transitional period and the progressive delivery of infrastructure. This is one party that should have a voice and opportunity to comment upon arrangements that may be detrimental and disruptive to their continuing operation.

256 Similarly, as residential and commercial / employment uses are mixed so the potential for conflict and the place for engagement is increased.

257 The case for exemption might be more supportable if detailed structure plans and infrastructure delivery plans had been the subject of public comment and formed part of the 'package' of gazetted documents.

8.5.4 Table of uses

258 Threshold distances

259 Many Section 1 uses in the Capital City Zone, including *Accommodation* are permitted provide that they must meet the threshold distance from industrial and/ or warehouse uses referred to in the Table to Clause 52.10.

260 The rationale for the qualification is appreciated but its application on a day to day basis particularly in the short to medium term is daunting given the range of uses and threshold distances nominated in the table to Clause 52.10, and the vast number of businesses and commercial and industrial activities in Fishermans Bend.

261 If the condition is to apply to Section 1 uses, then there is a strong case that the responsible authorities should maintain a current and detailed land use base that plots the presence of any qualifying industrial and commercial use which is available to any prospective applicant.

Permitted uses and active frontages

262 In the absence of precinct or neighbourhood structure plans a broad range of retail activity is permitted to establish within buildings without a permit provided that they are located with frontage to a primary or secondary active frontage, which in the case of Lorimer are detailed at Map 1 to the CCZ Schedule.

263 Retail uses include shop, a department store, a supermarket, retail premises, and restrictive retail premises.

264 The extent of proposed active frontage is extensive raising the concern that in the absence of a structure plan and 'main streets' there is a real prospect that retail activity will be dissipated randomly over a precinct or internalised in buildings rather than concentrated to the convenience of residents and persons working in the area.

265 This concern should be addressed through structure plans with the reference in the proposed *Decision Guidelines* to the consideration "of any relevant *Neighbourhood Precinct Plan*" potentially covering off on this issue.

- 266 The issue draws attention to the need for early approval of neighbourhood plans as part of the package.
- 267 A secondary concern is one of timing and the provision of infrastructure. Many of the active frontages nominated in Map 1 to the CCZ4 are to roads and open spaces that do not exist as public spaces nor have exposure to activity.
- 268 In the absence of those spaces being created and being accessible the activation of those frontages particularly with commercial uses will be fundamentally compromised. This presents practical problems in how to regulate early development approvals to require active frontages particularly if the space then proves difficult to occupy.
- 269 The problem would be diminished by the early delivery of the new roads and open space.

8.5.5 Subdivision and buildings and works

- 270 Both of the above sections of the CCZ4 require provision of new streets, lane ways and public open space in accordance with Map 2 and 3 to the zone.
- 271 A comparative analysis of Map 2 and its corresponding plan in the Framework indicate many of the lanes shown in the latter are not referenced in the former and some sections shown for tramway are represented as 10-metre-wide landscape strips.
- 272 The reasoning or motivation for these omissions and confusing purposes is neither stated nor understood. Regardless, the operation of the planning scheme cannot rely upon reference to the Framework and require land for landscaping when it will be required at a later date, for a known public purpose.
- 273 Further under the heading 'conditions on permits' there is a requirement relating to buildings proximate to the future metro route shown on Map 2. The metro route is not shown on Map 2 or any other map forming part of the clause. It is only included in the Framework.
- 274 The resolution of these concerns rests in the Map showing all connections that are preferred and the correct purpose of their transport or movement role.

8.5.6 Demolition

- 275 The provisions of the Capital City Zone, at Clause 37.04, create the option for a schedule to require a permit for demolition.
- 276 The proposed 4th Schedule provides a requirement for a permit for essentially all demolition with the purpose of seeking to ensure through Section 173 agreements that temporary uses and landscaping occurs if a site is vacant for 6 or more months.
- 277 The practicality and appropriateness of this outcome in an area that is being promoted for comprehensive redevelopment and in which construction activity, the continuity of uses and the presence of buildings will be constantly changing is questioned for reasons of the administrative burden and the ability to objectively enforce any agreement in such a dynamic environment.

8.6 Design and Development Overlay Schedule 67

- 278 There are a series of weaknesses with proposed DDO67 that make comprehension difficult and outcomes uncertain.

8.6.1 Purposes

- 279 Two purposes warrant comment.
- 280 It is not clear how or why developments should make private and communal open space in development accessible to the public.
- 281 A further purpose seeks to support family friendly living through “*housing design*” that supports family needs. There is no further provision that addresses this topic save for a “*Definition*” that states that visual relationships between internal apartment areas and communal spaces provided for recreation and play are critical.
- 282 While safety through design is important it is difficult to understand how this purpose and definition are to be applied and evaluated as satisfactory. Are certain dwellings expected to supervise play areas and is the purpose intended to apply to the internal layout of dwellings as well as between dwellings and communal areas.

283 These are matters best addressed by Clause 58 – *Apartment Development* - and should be deleted from this DDO schedule.

8.6.2 Built height

284 The built form outcomes under this heading reference preferred future precinct character. Since the DDO is the most direct tool informing built form and in turn character is it appropriate that the statements of preferred character by sub-precinct are located as a new section in this schedule and removed from local policy at Clause 21.13.

8.6.3 Building setbacks from new and existing streets and laneways

285 This provision includes a requirement for buildings to be setback from the street or laneway a different distance depending upon their height and the setback to be between a discretionary and a mandatory provision.

286 It is presumed, but not stated, that the setback sought is from the existing or proposed property boundary and not for built form above a street wall;

287 There is no statement as to how the setback can be used or how it should be presented;

288 The provision would result in a variable setback of buildings depending upon their relative height and their order in the street, although it is not clear whether this is the desired urban design outcome.

289 The purpose of the discretionary setback is unclear when a proposal will have satisfied the setback by meeting the mandatory provision. This is further complicated by language that requires that matters must be provided only to introduce discretionary considerations in the detail.

290 This whole clause should be reviewed and restated to make its intentions and application clear.

8.6.4 The built form requirements table

291 The following does not provide a comprehensive comment on the urban design merit or outcome that would result from the application of these provisions but focuses on the intent and comprehension of the controls.

- 292 The *Built Form* table addresses issues of street wall heights, walls on boundaries, buildings setback from boundaries and the separation of buildings.
- 293 It does so by mandating many relationships between height and setback, with some limited exceptions, and expressing a built form outcome.
- 294 While understanding the intent to create a distinctive built form and a high amenity I am troubled by an approach seeking to mandate outcomes in such a diverse urban context in which site conditions and opportunities vary significantly between sites and where every eventuality cannot be foreshadowed.
- 295 That manner of mandatory approach worked historically in St Kilda Road where a uniformity of outcome was sought relying on a consistent subdivision and size of lots.
- 296 However, the emerging circumstance and experience of the application of Clause DD026 to the *Port Phillip Planning Scheme* (the outcome of Amendment C107) is showing that prescription and mandatory setbacks does not result in the most appropriate outcomes.
- 297 Despite my earlier concerns about the poor amenity outcomes that preceded C270 I recommend that except where essential for a particular effect, the setbacks should be discretionary, within nominated tolerances, and the outcomes more clearly expressed.
- 298 Like DD026 to the *Port Phillip Planning Scheme* the provisions would be greatly assisted by diagrams that illustrate the preferred outcomes.
- 299 Comprehension of the table is challenging as the following two points illustrate
- Street wall heights. It is unclear why there appears to be no requirement for street wall height limits for buildings over 10 storeys on streets with a width of greater than 22 metres. Why this street wall height would not apply to taller buildings is unclear.
 - The building separation controls are difficult to interpret and appear to apply the same requirements to buildings 'greater than 8 storeys' and to buildings 'up to 6 storeys', with a setback requirement of at least 6 metres. Furthermore, this is less of a setback than those for a

building between 7-8 storeys (23-30 metres) that requires a setback of 9 metres.

8.7 Recommendations

- 300 The planning controls be revisited to consider a more comprehensive, clear provision that includes an incorporated document or an overall precinct structure plan or framework plan, that future use and development needs to be *'generally in accordance with'*.
- 301 That the policy is revisited to retain it as policy only and remove development standards or requirements.
- 302 That the detailed heights, setbacks, overshadowing, adaptable building and landscaping requirements be reviewed to ensure improve clarity and avoid contradictory requirements.

9 COMMENTS ON PLANNING EVIDENCE

303 In more recent instructions I have been asked to comment on the planning evidence statement prepared by John Glossop of Glossop Town Planning Pty Ltd, on behalf of the Minister for Planning, in his capacity as the planning authority.

304 The evidence statement is principally directed at addressing whether GC81 makes proper use of the Victorian Planning Provisions and whether it is in accordance with the Ministerial Direction on the form and content of planning schemes.

305 The evidence can be summarised as:

- Endorsing the use and application of the Capital City Zone, the Design and Development Overlay; the Environmental Audit Overlay and the Parking Overlay but rejecting the use of the Development Plan Overlay for select sites in the City of Port Phillip;
- Recommending the inclusion of the draft precinct plans from the Framework in the DDO;
- Seeking a broad range of changes to the provisions of the DDO Schedule 67 to address inconsistencies and poor statutory drafting;
- Endorsing the maps presented in the Capital City Zone Schedule, subject to one additional inclusion;
- Recommending that some the local policy provisions might be better located in the schedules to the zone or the overlay;
- Concurring that the FAR, FAU and associated benefits should be mandatory requirements;
- Seeming to endorse the use of mandatory built form controls on the basis of the justification provided by the Urban Design Strategy;
- Supporting the Framework being a reference document in the planning scheme.

- Supporting the view that the amendment supports State planning policy.

306 Mr Glossop has had the opportunity to inform a significant re-drafting of the statutory provisions of GC 81 during the course of preparing his evidence and therefore does not comment as extensively as I do in this evidence on the shortcomings of the exhibited material.

9.1 Zones and overlays

307 As will be evident from the earlier sections of my evidence I do not share his conclusion regarding the appropriateness of the proposed Central City Zone and Design and Development Overlay.

308 I do endorse the Environmental Audit Overlay and the Parking Overlay and pass no comment on the Development Plan Overlay as it would not apply in the City of Melbourne.

309 As the witness reviewing and commenting upon the planning authority's statutory proposal I consider it was incumbent upon Mr Glossop to review and evaluate possible alternative zone and overlays before endorsing the proposed modifications of the existing controls addressing the area.

310 I consider this particularly important, as the FBMAC has recommended to the Minister the development and application of a new Urban Renewal Zone.

311 Despite reviewing that Advisory Committee Report Mr Glossop does not evaluate this as an option or any other zone or overlay.

312 He does mention the Priority Development Zone and the Comprehensive Development Zone, which are two existing alternative zones suitable for application during the transitional period when land use and development transforms from one outcome to another, but he does not debate their respective strengths and weaknesses to address the statutory the issues presented by Fishermans Bend.

313 Further his evidence does not acknowledge nor explore the statutory planning consequences or implications of what the Part A submission notes are but part of the statutory mechanisms and tools that will be required for Fishermans Bend.

- 314 He makes no distinction between short and longer-term needs and whether there may be a need to review the appropriateness of these statutory tools with the release of further details.
- 315 In the event that the Advisory Committee sees a need to recommend short term actions to the Minister then the CCZ and DDO may be appropriate, but the Committee is not assisted by evidence that does not address the larger and more diverse long term statutory challenges presented by Fishermans Bend.

9.2 Absence of advice on infrastructure

- 316 The above point is further illustrated by the absence of comment by Mr Glossop on the matter of infrastructure provision and the associated planning controls.
- 317 I note that his consideration of the State Planning Policy Framework (Paragraphs 138-145) omits any mention of Infrastructure provision, yet this is arguably the key short-term challenge facing Fishermans Bend.
- 318 His report is almost devoid of comment on the timely provision of infrastructure, but he does note and comment upon the adequacy of mapping seeking to secure land for public roads and open space.
- 319 Given that he is in effect endorsing the use of a zone and design and development overlay to secure public land it is a notable omission that his report does not explore or evaluate the need and or merit of the Public Acquisition Overlay and the Development Contributions Plan Overlay as alternative statutory mechanisms to secure land for a public need.
- 320 Generally, I find the evidence is at arm's length from any consideration or discussion about the strategic and practical implications and unusual statutory challenges presented by Fishermans Bend.
- 321 The evidence concentrates on a desktop analysis against technical statutory drafting direction and guidance. That is a necessary process, but its value is wasted if the broader discussion on the statutory challenges, tools and options has not occurred.

9.3 Inclusion of Precinct Plans

322 The recommendation to supplement the various maps proposed to be included in the CCZ and DDO with the conceptual precinct plans included at the rear of the Framework suggests Mr Glossop acknowledges some of my concern about the omission of the Framework as an Incorporated Plan, or similar plans in policy and the absence of clear and succinct plans providing direction for precincts.

323 The short-comings of the recommendation are that:

- The plans are in their formative stages and will be subject to more fulsome development and statutory review in the foreseeable future; and
- The Capital City Zone is poorly structured to do justice to the necessary explanation of land use and development purposes and requirements that structure plans need Approved schedules to the Activity Centre Zone illustrate the scope of the task.

9.4 Other considerations

324 Within the above context and for the reasons outlined previously in my evidence I concur and disagree with Mr Glossop on the following matters.

9.4.1 Agree

- The Schedule to DDO67 needs to be comprehensively redrafted.
- The FAR and FAU and their benefits should be mandatory provisions.
- The built form provisions of the DDO would be greatly assisted by the inclusion of diagrams.

9.4.2 Disagree

- That because the land is currently zoned Capital City is a sensible justification for retaining in that zone during the decades of urban renewal.

- That built form controls on height and setbacks should be mandatory.
- That the Maps included in the Schedules to the CCZ and the DDO are sufficiently clear for statutory interpretation.

10 CONCLUSIONS

- 325 The vision, principles and many of the strategies of the Framework are essentially sound but the package of statutory controls is notably incomplete and insufficiently resolved to be applied with confidence.
- 326 A new suite of statutory provisions should not be implemented until the full consequences and costs of development and infrastructure provision are properly appreciated and responsibility attributed.
- 327 Financial and development contribution plans as well as Neighbourhood Structure Plans should be completed as a matter of urgency and subject to review with the development industry to properly appreciate how the whole package might impact on project viability.
- 328 For the sake of expediency, a revised package of statutory controls might not take the form of a new Urban Renewal Zone, as discussed in this evidence, but the zone should remain the objective to be delivered in due course.
- 329 The timeframe of the interim planning provisions should be extended to enable the above to be completed but varied to ensure that regard is taken to the Framework and ensure that no approvals in the meantime compromise the delivery of key infrastructure required by the Framework.
- 330 Transitional provisions should not apply to 'live' permits save in the circumstances that it can be clearly demonstrated that the proposal is generally consistent with the Framework.
- 331 Apply the numerous conclusions and recommendations in this evidence to the further refinement of the framework and the statutory controls.

Rob Milner

March 2018

Attachment

1 Statement of Considerations

Attachment

Schedule of Relevant Considerations

The following table details a summary of the relevant planning scheme considerations addressed in this report.

| | |
|--|---|
| Address | Fishermans Bend |
| Amendment | Amendment GC81 – Fishermans Bend Planning Panel |
| State Planning Policy Framework | <ul style="list-style-type: none"> • Clause 11.02-2 Structure Planning • Clause 11.06 - Settlement • Clause 15 Built Environment and Heritage • Clause 16.01-5 Housing • Clause 17 Economic Development • Clause 18 Transport • Clause 19 - Infrastructure |
| Local Planning Policy Framework | <ul style="list-style-type: none"> • Clause 21.03 Vision • Clause 21.04 Settlement • Clause 21.06 Built Environment and Heritage • Clause 21.07 Housing • Clause 21.08 Economic Development • Clause 22.09 Transport • Clause 21.10 Infrastructure • Clause 21.13 Urban Renewal Areas - Fishermans Bend Urban Renewal Area • Clause 22.27 Employment and Dwelling Diversity within the Fishermans Bend Urban Renewal |
| Incorporated Documents | <p>Fishermans Bend Strategic Framework Plan, July 2014 (amended September 2016)</p> <p>Plan Melbourne 2017-20150</p> |
| Amendment Documents | Exhibited draft clauses and schedules, particularly for Melbourne Planning Scheme |
| Background Documents | <p>Fishermans Bend Framework – Draft for consultation (2017)</p> <p>Fishermans Bend Advisory Committee Report to the Minister for Planning on Draft Fishermans Bend Framework (October 2017)</p> |

| | |
|---|---|
| | <p>Documents included on the 'draft Framework background reports', at www.fishermansbend.vic.gov.au including:</p> <ul style="list-style-type: none"> • Fishermans Bend Urban Design Strategy, Hodyl & Co (September 2017) • Fishermans bend Economic and Employment Study, 2016 – SGS • Fishermans Bend Community Infrastructure Plan, 2017, 2017 – Fishermans Bend Taskforce • Fishermans Bend Urban Renewal Area: Options for delivery of Affordable Housing, Judith Stubbs & Associates (2013) <p>Port Phillip Planning Scheme Draft Framework Fact Sheets Technical Fact Sheets</p> |
| <p>Other documents</p> | <p>Amendment C270 Melbourne Planning Scheme Homes for Victorians Planning and Building Legislation Amendment (Housing Affordability and other matters) Act 2017 Part A Submission for Minister Planning Evidence – John Glossop Urban Design Evidence - Leanne Hodyl</p> |
| <p>Zone</p> | <p>Capital City Zone, Schedule 4, Melbourne Planning Scheme</p> |
| <p>Overlays</p> | <p>Design and Development Overlay, Schedule 67 Development Contributions Plan Overlay, Schedule 1 Parking Overlay, Schedule 13 Environmental Significance Overlay, Schedule 1 Environmental Audit Overlay</p> |
| <p>Other relevant references</p> | <p>As referred to in the body of the report</p> |

Attachment

2 Expert Evidence

Expert Witness Statement

The name and address of the expert

Robert Milner, Director of 10 Consulting Group Pty Ltd, 3/2 Yarra Street, South Melbourne, Victoria, 3205.

The expert's qualifications and experience

Robert Milner holds an Honours Diploma in Town and Country Planning from Liverpool Polytechnic. He is a Life Fellow of the Planning Institute of Australia and a Fellow of the Victorian Planning and Environmental Law Association.

A Curriculum Vitae is included at Attachment 2.

The expert's area of expertise to make this report

Robert has a broad range of expertise in planning and development matters enabling him to comment on a wide spectrum of urban and rural, statutory and strategic planning issues and processes.

Other significant contributors to the report

N/A

Instructions that define the scope of the report

Robert Milner has been instructed by the City of Melbourne to provide expert evidence in relation to Amendment GC81.

The identity of any person who carried out tests or experiments upon which the expert has relied on and the qualifications of that person

Not applicable.

The facts, matters and all assumptions upon which this report proceeds

There are no other facts, matters or assumptions upon which the report relies other than those explicitly stated in the report.

Documents and other materials the expert has been instructed to consider or take into account in preparing his report, and the literature or other material used in making the report

Rob Milner has reviewed the following material:

- *The Melbourne Planning Scheme;*

- *Exhibited Melbourne and Port Phillip Planning Scheme Amendment GC81;*
- *Fishermans Bend Strategic Framework Plan, July 2014 (amended September 2016)*
- *Fishermans Bend Framework – Draft for consultation (2017)*
- *Fishermans Bend Advisory Committee Report to the Minister for Planning on Draft Fishermans Bend Framework (October 2017)*
- *Documents included on the 'draft Framework background reports', at www.fishermansbend.vic.gov.au including:*
 - *Fishermans Bend Urban Design Strategy, Hodyl & Co (September 2017)*
 - *Fishermans bend Economic and Employment Study, 2016 – SGS*
 - *Fishermans Bend Community Infrastructure Plan, 2017, 2017 – Fishermans Bend Taskforce*
 - *Fishermans Bend Urban Renewal Area: Options for delivery of Affordable Housing, Judith Stubbs & Associates (2013)*

Other material as referenced in the body of this report

A summary of the opinion or the opinions of the expert

A summary of Robert Milner's opinions are provided within the body of the report.

Any provisions or opinions that are not fully researched for any reason

Not applicable.

Questions falling outside the expert's expertise and completeness of the report

Robert Milner has not been instructed to answer any questions falling outside his area of expertise. The report is complete.

Expert declaration

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



Robert Milner

March 2018

Attachment

3 Curriculum Vitae



ROBERT MILNER – DIRECTOR

Qualifications and Positions

- Director 10 Consulting Group Pty Ltd and The Milner Group Pty Ltd
- Diploma in Town and Country Planning (First Class Honours) Liverpool Polytechnic
- Life Fellow Planning Institute of Australia
- Fellow of the Victoria Planning and Environmental Law Association
- Former State and National President of the Planning Institute of Australia
- Member, Planning and Local Government Advisory Council (1994 – 1999)
- Deputy Chairman, Future Farming Expert Advisory Group (2009)

Employment History

| | |
|----------------|--|
| 2010 – Current | Director 10 Consulting Group Pty Ltd |
| 1999 – 2010 | General Manager, Senior Principal and Adjunct Senior Planning Counsel – Planning, CPG Australia Pty Ltd (Formerly the Coomes Consulting Group) |
| 1994 – 1999 | Director, Rob Milner Planning Pty Ltd and Savage Milner |
| 1991 - 1994 | Project Director, Collie Planning and Development Services |
| 1988 – 1991 | General Manager, Town Planning, Jones Lang Wootton |
| 1980 - 1988 | City Planner, City of Box Hill |
| 1977 – 1980 | Planner, Perrott Lyon Mathieson, Architects and Planners |
| 1976 – 1977 | Planner, Kirklees Metropolitan Borough Council |

Career Overview

Rob Milner is a respected strategic and statutory planner. He is equally competent in urban and regional practice.

He is recognised as a leader of the planning profession in Victoria. He has had a high profile career spanning 40 years with extended periods of experience working for local government and private practice.



Until 2010 he worked with CPG Australia building that planning team to be one of the larger and most respected strategic and statutory practices in Victoria. The team was twice awarded planning consultant of the year in Victoria.

He now directs 10 Consulting Group, as a small boutique consultancy offering the highest level of advice and service to clients wanting the benefit of Rob's considerable experience, knowledge and understanding of planning in Victoria.

He is regularly retained to provide expert evidence to courts, panels and tribunals on the broadest range of land use and development planning issues. He is usually involved in 4 or 5 different matters monthly and has a reputation for objectivity, an original style of evidence and for providing clear and fearless advice. Particular expertise is in complex and controversial projects, gaming matters, acquisitions and compensation and restrictive covenants.

He is an acknowledged advocate and negotiator and is regularly engaged in development approval and rezoning projects where process and relationships need to be carefully nurtured to ensure a viable and timely outcome.

His ability to communicate effectively among a broad range of stakeholders means that he is regularly engaged to facilitate workshops, conferences, consultation and other situations where leadership and engagement of groups is required.

His clients have included many State government agencies (including planning, community development, justice, roads, growth areas and regional development), municipalities throughout metropolitan Melbourne and regional Victoria, as well as a broad range of corporate and other private sector interests.

Robert Milner brings a high level of integrity to his work, choosing to participate on those projects that accord with his professional opinion.

Areas of Expertise and Experience

Strategic studies, policy development and statutory implementation

Rob is widely acknowledged for his capacity to take a strategic perspective to urban and regional and planning challenges and provide direction and leadership that is responsive, creative and thoughtful in its strategic intent and detail.



When combined with his depth of experience with strategic policy based planning schemes he is powerfully equipped to deliver sound advice on the spectrum of land use and development planning issues.

His strategic planning skills are ground in work experience at the State, regional, local and site specific levels dealing with the issues that affect a town or sub region or examining themes or subjects that span geographical areas.

While working for CPG Australia he lead multi disciplinary planning teams that worked for clients that included DPCD, Department of Justice, Department of Innovation, Industry and Regional Development, and many municipal councils in metropolitan Melbourne and regional Victoria.

In 1994 he lead the planning consultancy that recommended the model for the Victorian Planning Provisions, the strategic policy driven planning scheme that is now consistently used throughout Victoria.

In 2009 Robert served as the Deputy Chairman on the Future Farming Expert Advisory Group reporting to the Minister for Planning. That work addressed a broad range of issues facing the next three decades of land use and development in regional Victoria.

Expert evidence and advocacy

Rob is regularly called upon to provide expert evidence and reports to clients, courts, Independent Panels and VCAT. He has acted in this capacity or as an advocate in over 1,200 cases during his career.

He is often retained to provide the strategic perspective to planning disputes. He is equally capable in commenting on matters of urban design, and compliance with planning policy and provisions.

The scope of matters that he has addressed in this capacity is extremely diverse and includes:

- Medium density and high rise residential development,
- Greenfield, master planned communities in growth areas,
- Waste management, quarries and landfill proposals,
- Major shopping centres and mixed use developments,
- Industrial and residential subdivisions,
- Hotels, motels, restaurants and other leisure facilities

- Retirement villages,
- Rail projects,
- Coastal developments,
- Office and CBD projects
- Heritage projects
- Compensation and land acquisition matters,
- Liquor licence and gaming proposal,
- Freeway service centres and petrol stations,
- Agribusiness centres.

Legislative and planning scheme reviews and amendments

Aside from Rob's leadership of the consultant planning team that conceived the model for the Victorian Planning Provisions, he has been associated with many reviews of municipal planning schemes and amendments.

Planning scheme review usually takes the form of comprehensive research examining both the merits of the strategic policies as well as the statutory provisions. Wide ranging consultation is involved in the task.

Work associated with planning scheme amendments usually includes strategic justification of the proposal as well as statutory documentation and management of the process. The provision of expert evidence to independent panels is often involved.

In more recent times Rob has been involved in projects that entail a review of allied legislation as well as amendments to planning schemes. Recent relevant projects have included the following:

Reviews of Victorian planning provisions and allied legislation

- Activity Centre Zone construction and application in Footscray, Doncaster, Knox and Sunshine
- Tramway infrastructure and the VPP's,
- Higher density living adjacent to tramway corridors
- Liquor Licensing legislation and planning provisions
- Gaming (EGM) policy and provisions for Councils

- Review of the Farming and Green Wedge zones for their economic implications

Planning scheme reviews

- Shire of Surf Coast 2007
- Shire of Wellington 2009 -10
- Rural City of Horsham 2010
- Borough of Queenscliff 2011- current

Organisation audits and process reviews

Rob has a long and established career providing reviews of planning documents, teams and processes, particularly in a local government environment.

Trained as a LARP facilitator in 1990 as part of a Commonwealth Government initiative his experience in this area commenced with the development of planning and building specifications for tenders as part of Compulsory Competitive tendering process and the coaching of bid teams.

Since then Rob has developed a specialisation in providing reviews and recommendations to State and Local Government, which audit planning schemes, the performance of planning teams and departments and development approvals processes.

In the last 20 years he has worked with the majority of metropolitan councils and many regional municipalities; he prepared the model audit process for the Department of Sustainability and Environment in 2003 and recently provided a facilitated program for the Department of Planning and Community Development reviewing how it processes planning scheme amendments.

He has worked with Councils in Victoria, New South Wales and South Australia.

He uses a range of audit techniques, extensive consultation with users of the processes and provides detailed strategies on necessary reforms.

His most recent work has been as a major contributor to the VicSmart program.



Expert Evidence | Strategic Advice | Development Approvals