PLANNING PANELS VICTORIA
IN MELBOURNE

IN THE MATTER OF PROPOSED AMENDMENT CG81

ADVISORY COMMITTEE REVIEW PANEL APPOINTED BY THE MINISTER FOR
PLANNING UNDER S 151 OF THE PLANNING & ENVIRONMENT ACT 1987

FISHERMANS BEND URBAN RENEWAL AREA

BETWEEN:

MINISTER FOR PLANNING

MELBOURNE CITY COUNCIL

PORT PHILLIP CITY COUNCIL

OTHERS

Minister

MCC

PPCC

Other Submitters

SUBMISSIONS ON BEHALF OF MCC

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INTRODUCTION

1. Fishermans Bend is an unparalleled opportunity to continue to show the world how Melbourne creates great, liveable, economically vibrant precincts. It has the potential to demonstrate how to create a place that responds to the contemporary issues of climate change, population growth, high density living and connection to nature, heritage and each other. It is an opportunity to showcase how well planned and sustainable density of excellent design quality can be delivered on a precinct scale.

2. Lorimer, at one sixth the size of the Hoddle Grid, will extend the functions of the Central City south and west, provide new iconic open space and open up connections across and to the Yarra River and to the Fishermans Bend National Employment and Innovation Cluster (NEIC). To ensure that a high functioning, economically sustainable and well-loved part of the city is delivered, planning certainty must ensure the early delivery of public transport, embed a true mix of uses, deliver well connected walkable places and build on the existing character and heritage of the area.

The MCC Resolution

3. The MCC unanimously endorsed the City of Melbourne (CoM) submission to the proposed amendment at its meeting on 12 December 2017.\(^1\) Key recommendations from that submission which are directly related to the proposed planning controls include (in summary):

   a) support for the overall vision, the 10 strategic directions and the 8 sustainability goals around which the draft Fishermans Bend Framework (draft Framework) is structured;\(^2\)

   b) the planning controls are in some instances not bold or strong enough to deliver that vision and the directions and goals;\(^3\)

   c) the planning controls should be simplified and drafting errors corrected;\(^4\)

   d) the draft Framework target requires a 5 star green star as built rating.\(^5\)

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\(^1\) MCC, Council Meeting Minutes, Meeting Number 18, 12 December 2017 at 5:30pm, Item 6.8

\(^2\) At [4]

\(^3\) At [62]

\(^4\) At [8] and [51]

\(^5\) At [10]
e) the proposed controls need to be revisited to achieve sustainable and active transport;\textsuperscript{6}

f) social infrastructure requirements for the baseline population should be delivered with the FAR;\textsuperscript{7}

g) population and services should be modelled on a 100\% development build out rate for Lorimer, not a 75\% rate;\textsuperscript{8}

h) the 6\% affordable housing target should be delivered as part of the FAR with the FAU delivering additional benefits;\textsuperscript{9}

i) there needs to be a mechanism to provide essential infrastructure for the ‘uplift’ population under the FAU scheme;\textsuperscript{10}

j) the ‘How to Calculate Floor Area Uplifts and Public Benefit in Fishermans Bend’ (Public Benefit Guidelines) need to be revisited;\textsuperscript{11}

k) a minimum floor area for commercial floorspace should be mandated, not discretionary;\textsuperscript{12}

l) further clarity is required on the open space that is intended to be delivered through the FAR controls and the open space that will be acquired;\textsuperscript{13}

m) 52.01 open space contributions should be reconsidered if likely to result in a shortfall (having regard to the FAR scheme and other proposed funding sources);\textsuperscript{14}

n) an independent design review panel should be established for Fishermans Bend;\textsuperscript{15}

o) the proposed 3m AHD FFLs will create a poor built form response and should be reconsidered in light of an integrated water strategy;\textsuperscript{16}

\textsuperscript{6} At [20]
\textsuperscript{7} At [26] and [36]
\textsuperscript{8} At [40]
\textsuperscript{9} At [46]
\textsuperscript{10} At [27]-[28] and [45]
\textsuperscript{11} At [29]
\textsuperscript{12} At [33]
\textsuperscript{13} At [48]
\textsuperscript{14} At [49]
\textsuperscript{15} At [52]
\textsuperscript{16} At [16]
p) the CoM should be the responsible authority (RA) for all applications under 40,000 sqm.\textsuperscript{17}

4. The endorsed CoM submission contains a number of other recommendations which, while they may eventually require a planning scheme amendment, are more related to the draft Framework and to future work than to the planning controls, including:

a) a transition plan should be developed;\textsuperscript{18}

b) an integrated flooding and drainage strategy should be incorporated in the final version of the draft Framework as a matter of priority;\textsuperscript{19}

c) an independent place specific renewal agency should be established for Fishermans Bend;\textsuperscript{20} and

d) there should be legislative change to facilitate the pooling of funds received from the FAU and any other infrastructure funding mechanisms to enable delivery of substantial physical, social or community infrastructure projects most effectively.\textsuperscript{21}

5. Council resolved that the CoM may be represented and appear at the hearing and put forward Council’s submission supported by more detailed evidence and advice consistent with the submission.\textsuperscript{22}

6. The submissions to the Advisory Committee (AC) by other parties, and the list of preliminary questions raised by the AC, raise a number of issues that are not directly addressed by the Council resolution. These submissions seek to address those questions in a manner consistent with the CoM’s endorsed submission.

CoM’s Overall Position on the draft Framework

7. The CoM generally supports the draft Fishermans Bend Framework 2017 (draft Framework) subject to it being finalised, including a detailed timeline of implementation steps and being amended to address the key concerns around sustainability, delivery of affordable housing and delivery of infrastructure including open space.

\textsuperscript{17} At [57]

\textsuperscript{18} At [61]

\textsuperscript{19} At [17]

\textsuperscript{20} At [56]

\textsuperscript{21} At [60]

\textsuperscript{22} Minute 6.8 clause 1.4 dated 12 December 2017 carried unanimously
8. At a broad level, the CoM generally supports the overall vision,\textsuperscript{23} the 10 strategic directions\textsuperscript{24} and the 8 sustainability goals.\textsuperscript{25}

9. CoM supports the objectives of the draft Framework and in most instances supports the proposed strategies.

10. At a precinct level, the CoM supports the vision for Lorimer,\textsuperscript{26} the urban structure identified for Lorimer,\textsuperscript{27} and the identification of infrastructure for the target 12,000 residential population and 6,000 worker population.

11. The CoM's central concern is the lack of certainty regarding the delivery of the proposed infrastructure required ‘to make Fisherman's Bend a world leading urban renewal project’.\textsuperscript{28}

**CoM’s Overall Position on proposed Amendment CG81**

12. The CoM supports making changes to the MSS to provide a sound policy basis for a more detailed set of controls in the form of a CCZ schedule, DDO schedule, PO and EAO. The CoM also supports the use of a local policy for the Fishermans Bend Urban Renewal Area (FBURA). The CoM will work with the Minister’s advisors to fine tune the proposed MSS and local policy provisions.

13. The CoM also broadly supports the urban design principles which sit behind the built form controls contained in the DDO (subject to some exceptions). However, it considers that further work needs to be done to ensure that the DDO is drafted in a way that makes it easy to implement and does not have unintended negative consequences. As presently drafted the DDO schedule is too complex, contain gaps and inconsistencies\textsuperscript{29} and would not be able to be applied by council officers without significant difficulty.

\textsuperscript{23} pp 19-21
\textsuperscript{24} P 24
\textsuperscript{25} P 27
\textsuperscript{26} P 22
\textsuperscript{27} As generally shown on Fig 20, p 73
\textsuperscript{28} At [5].
\textsuperscript{29} For example, Ms Hodyl gave evidence that she agreed that a Lorimer specific DDO could include the changes already shown in her expert witness statement in addition to a number of changes from the Part A/Day 1 version of the controls including:

- Provisions relating to mandatory heights could be deleted and the Map 2 building heights would only include the colours that are relevant to Lorimer;
- The definition of street wall height would be amended to include reference to laneways;
- The provisions which relate to the freeway interface should be amended as they did not appear to make sense in the context of Lorimer given the interface with the service road.
14. The CoM has some more fundamental concerns with the CCZ schedule. The key areas of uncertainty that need to be addressed prior to the amendment proceeding concerns the uncapped nature of the FAU in terms of its impact on built form, population and infrastructure and the way in which the CCZ4 deals with the provision of infrastructure.

15. The CoM considers it critically important that the controls provide a high level of certainty for developers and decision-makers, that they are legally certain, fair and equitable and will produce a quality urban design outcome as well as facilitate an economic, social and environmentally sustainable part of the city.

16. The Ministerial Advisory Committee (MAC) submitted on day 1 of the AC hearings that the funding and finance strategy (and other pieces of ongoing work) should be finalized in parallel with the planning controls.

17. While the CoM's preference would have been for the funding and finance strategy, the precinct structure plans and the DCP or ICP to have been exhibited and considered with this proposed amendment, so that the controls could have been introduced as a total package, the CoM expects that a future DCP/ICP and precinct structure plans will need to be considered by a further public process.

18. Further, the CoM is critically concerned about the interim situation if the introduction of the new proposed controls are substantially delayed without a suitable set of further interim controls being introduced. It is concerned not only about prejudicing the delivery of key infrastructure required by the Framework, but about irreparably prejudicing the overall urban design and sustainability outcomes sought for the precinct.

Neighbourhood parks should be indicated with a number and the phrase 'in that defined space' should be clarified.

In addition the CoM suggests further changes to the DDO would be useful such as:

- Removing the objective "to encourage developments to create publicly accessible, private and communal open spaces" as it does not appear to relate to the operative provision of the DDO for Lorimer;

- Translating some of the Table 1 preferred future character elements in the MSS to design outcomes which are to guide the exercise of discretion under the Design and Development Overlay.

On 16 March 2018, Mr Glossop gave evidence that the preferred character elements could potentially be decanted into the DDO, but if that was to be done it would require care in the drafting. The CoM agrees. For example, some of the character statements could be translated to 'built form outcomes' to guide the exercise of the discretionary requirements of the DDO.

30 See Mr Milner's evidence at [21] and [25] and Mr Shipp's evidence at [97].

31 See Mr Milner's report at [58]-[59].
19. In those circumstances, the CoM agrees with the Minister that the amendment should be introduced as the "first implementation phase" of the draft Fishermans Bend Framework 2017.\textsuperscript{32}

20. Further amendments will be required to:
   a) incorporate a DCP or ICP;
   b) introduce an appropriate governance framework;
   c) incorporate the precinct plans;
   d) increase the public open space contribution requirement; and
   e) either introduce a PAO on, finalise purchase on the open market or serve a notice of intention to acquire on those parts of the land required to deliver the tram network and the parcels of land publicly identified on 16 March 2018 as needing to be acquired to deliver the open space needed for the Vision to be realized.\textsuperscript{33}

21. In the meantime, the CCZ4 provisions should be amended to ensure that there is no overlap between the various funding mechanisms in the planning controls. For example:
   a) clause 52.01 may need to be amended to provide clarity that the 8% contribution is to be paid in cash in addition to land set aside under the FAR mechanism;\textsuperscript{34} and
   b) map 3 may need to be amended to identify those sites which are to be acquired rather than vested through the FAR mechanism.\textsuperscript{35}

**Government Commitments**

22. The CoM calls on the government to provide certainty on the funding and delivery of open space and community infrastructure across Fishermans Bend.

23. The CoM seeks a commitment from the State to direct acquisition of Lorimer Central and the tram route (or at least the imposition of a PAO with the relevant state

\textsuperscript{32} Minister's Part A submission at Section 2, [1].

\textsuperscript{33} The FBURA is a declared project of State or regional significance under section 201F of the Planning and Environment Act 1987; Glossop at [16]. Section 101I of the Act provides that the Secretary may compulsory acquire land for the purpose of a declared project.

\textsuperscript{34} As foreshadowed in [17] of letter dated 14 March 2018 from DELWP to the AC (AC Document 99)

\textsuperscript{35} The first attachment to AC Document 99 ("Properties proposed partially or wholly for open space") identifies 3 sites in Lorimer under the column "public open space on entire site", namely 816 Lorimer St (Site L1a Crown land adjacent to Bolte Bridge), 876-886 Lorimer St (Site 11, Lorimer Central) and 95 Lorimer St (Site 16, corner of Hartley and Lorimer St). The combined site areas of Sites 11 and 16 is 14,345 sqm.
government body nominated as the acquiring authority) acknowledging that the
delivery of Lorimer Central and the tram are catalyst projects for development in
Lorimer. Lorimer Central has the potential to be a place for new iconic public space,
and should be recognised as such.

24. The CoM also joins with the City of Port Phillip to call on the government to commit
to, as a matter of priority:
   a) prioritising a precinct scale flooding and water management plan; and
   b) delivering the sustainability hub.

Ministerial Advisory Committee

25. The CoM agrees with the vast majority of the MAC’s recommendations; both those
in its report and those recommendations made to this AC on day 1 of the hearings
in relation to the proposed planning controls.

26. Areas of particular agreement include, but are not limited to the importance of:
   a) planning for the proposed 80,000 residents and 80,000 jobs;
   b) resisting the urge to re-visit those numbers as they have been well
      established over a period of time and enjoy bipartisan support and general
      community acceptance;
   c) finalising a governance framework and funding and finance plan as a matter
      of priority;
   d) the early delivery of public and active transport and early public realm
      investment;
   e) strengthening the requirements to provide commercial floorspace;
   f) including further requirements or incentives for design excellence;
   g) increasing the requirements for affordable housing and ensuring that a wider
      spectrum of affordable housing is delivered (including key worker housing)
in addition to social housing; and
   h) continual delivery and implementation monitoring and a full review in 10
      years.

27. The CoM suggests that a full review in 5 years is more appropriate given the current
development pressures within Lorimer and Montague.

28. The main area of disagreement between the MCC and the MAC relates to the
proposal to mandate a 4 star green star as built requirement, rather than 5 stars.
BACKGROUND TO THE MCC INVOLVEMENT

The Vision

29. The MCC and CoM had no involvement in the rezoning of the FBURA to CCZ.\textsuperscript{36}

30. MCC made submissions on the 2013 draft Fishermans Bend Vision and the 2016 draft Fishermans Bend Vision.

31. The AC is directed to pages 20 to 23 of the Vision which describes “Lorimer in 2050”.

32. MCC generally supported the basic principles of the final Fishermans Bend Vision (September 2016).

33. In particular, the Council supported:
   a) using and building upon the 10 strategic directions from the 2013 Draft Vision;
   b) commitment for Fishermans Bend to be a Green Star Community and to achieve the five sustainability goals;
   c) commitment to public and active transport, including river crossings, and to investment in transport infrastructure, before, during and after residential and business construction; and
   d) the vision for Lorimer as a mixed use precinct and extension of the central city and the vision for the Employment Precinct as a world-renowned location for innovative industries and producing world-leading research, engineering, technology and products.

34. The CoM’s consistent position on the draft Vision reflects the public consultation on the Recast Vision, summarized in the Forward by the Minister as follows:

   People told us they wanted Fishermans Bend to be a leader in innovation and sustainability. They wanted good transport networks and community facilities to be prioritised.

   They wanted Fishermans Bend to have affordable housing and be prepared for climate change, with a healthy biodiversity and community. And they wanted Fishermans Bend to stay in touch with its local history—going back beyond European settlement to the area’s Aboriginal owners.

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\textsuperscript{36} Amendment C170 to the Melbourne Planning Scheme was made on 29 June 2012 by (then) Minister for Planning, Matthew Guy. The Minister exempted himself from the application of ss 17, 18 and 19 of the PE Act and the Regulations on the basis that it was appropriate in the interests of Victoria or a part of Victoria. At the same time, the Minister for Planning declared Fishermans Bend as a project of state significance under s 201F of the PE Act.
The CoM's Role on the Taskforce

35. The Fishermans Bend website states:

The Fishermans Bend Taskforce was established in January 2016 to lead the planning of the area on the recommendation of the Ministerial Advisory Committee.

The Taskforce comprises members from the Department of Environment, Land, Water and Planning, City of Melbourne and City of Port Phillip, and Development Victoria.

36. The Taskforce operates as a part of DELWP, reporting to the Minister for Planning via a Deputy Secretary. Mechanisms to facilitate knowledge sharing and a collaborative approach between the Taskforce and the CoM evolved over time but included a series of cross organisational working and reference groups to address key matters including transport, open space, community infrastructure and sustainability. There were also regular catch-ups between senior staff at the Taskforce and CoM officers and informal conversations between Taskforce and CoM officers as required. The CoM provided feedback on two different (early) versions of the draft planning controls (noting that those versions were very different to the controls that were eventually exhibited). The CoM did not have the opportunity to comment on the exhibition version of the controls prior to the commencement of this AC.

37. Three of the CoM's employees have been seconded to DELWP to work within the taskforce at various times. However, the CoM was not a "member of" the Taskforce and its officers while seconded at the Taskforce, were not required to report back to the CoM, were not answerable to the CoM and had no independent decision-making powers. Having said that, the model worked reasonably well in facilitating an open dialogue and knowledge sharing between DELWP and the CoM.

38. The Minister is commended for setting up this inclusive process which enabled the knowledge of local government and state government to be brought together.

THE MELBOURNE CITY COUNCIL'S STATUTORY ROLE IN THE FBURA

Responsible Authority Status

39. The Minister for Planning is the RA for "developments with a gross floor area exceeding 25,000 square metres" in the whole of the Municipality, with the FBURA being no exception. 37

37 CI 61.01 schedule 1 states:
40. The *Melbourne Planning Scheme Amendment Central City Built Form Review C270 (26 October 2016)* (C270) Panel Report states:

The City of Melbourne’s (Submitter 24) written submission included:

_in the Central City both the Minister and the City of Melbourne undertake the role of responsible authority, with the Minister assuming the role for developments over 25,000 square metres._

The arrangement began some decades ago, and developments of this scale are now significantly more common. As a result, the State is required to make decisions on a large number of developments compared with when the 25,000 square metres threshold was set, and on many developments that are not in any sense ‘State significant’.

The City of Melbourne is readily equipped as responsible authority to administer these developments and seeks a review the current responsible authority arrangements within the Central City. This review would include whether a higher decision-making threshold is warranted to focus the State’s decision-making back onto developments of State significance. The review would consider increasing the State significant development threshold to 35,000 or 40,000 square metres. This measure would reduce duplication and overlap, significantly improve efficiency in the development application process and ensure greater consistency in the application of planning policy within the City.

The Minister’s reply was that there was no proposal to modify this aspect of the Planning Scheme and it lay outside the Amendment. It was noted that the Amendment provides for the Council to be a recommending referral authority for developments over 25,000 square metres in floor area.

(iii) Discussion

The Panel considers that there is merit in the argument that the dividing line for Ministerial and Council management of applications is set too low. The 25,000 square metre limit was set at or before the introduction of the Melbourne VPP-based Planning Scheme in March 1999 when the scale of development was appreciably lower than that occurring today.

The role of the Council as recommending (rather than determining) referral authority gives the Council an only secondary role in the outcome on permit applications.

The Minister for Planning is the responsible authority for matters under Divisions 1, 1A, 2, and 3 of Part 4 and Part 4AA of the Act and matters required by a permit or the scheme to be endorsed, approved or done to the satisfaction of the responsible authority in relation to:

Developments with a gross floor area exceeding 25,000 square metres. ...

The Growth Areas Authority, now known as the Metropolitan Planning Authority, is the responsible authority for matters under Division 2 of Part 9 of the Act in relation to any agreement that makes provision for development contributions for land in the Fishermans Bend Urban Renewal Area as identified in Figure 3.

...Despite anything to the contrary stated in this schedule, the Council of the City of Melbourne is the responsible authority for administering and enforcing the scheme for applications for subdivision or consolidation of land including buildings or airspace and other applications made under the Subdivision Act 1988 within the municipal district of the City of Melbourne, except for ....
The Panel agrees with the Minister, however, that this is a matter of some significance and cannot receive attention as part of this Amendment. Nevertheless, in the Panel's view, the submission was a valid one and it should be given separate consideration.

41. The issue of the threshold floor level is before this AC as the AC is tasked with the role of assessing the proposed changes to the Capital City Zone (CCZ) schedule, among other things. In turn, the CCZ schedule (which exempts applications from notice and review rights) locks out the MCC from participating in permit applications within its own Municipality (with the MCC not even having referral authority status, discussed below).

42. As submitted to the C270 Panel, the State's role as the RA should be confined to assessing developments of State significance (with a 40,000 sqm threshold being an appropriate delineation of State and local responsibility).

43. Having said that, the CoM is concerned about:
   a) the extent of the shortfall in funding arising principally from the decision to rezone the land to the CCZ prior to appropriate value capture mechanisms being put in place;
   b) the fact that a DCP and funding and finance strategy has still not been finalized; and
   c) the legal uncertainties arising from the proposed planning controls (including the proposal to use the FAR to deliver open space).

44. In the absence of an agreed funding and finance strategy between the public agencies, a DCP and a clear statutory mechanism underpinning the FAR scheme, the CoM is concerned about the lack of information upon which to assess its risk, responsibility and liability:
   a) to pay compensation under section 98 of the PE Act;
   b) for the acquisition and development of land proposed for public use;
   c) for the delivery of key pieces of public and community infrastructure;
   d) for the risk management of flooding and drainage.

45. This concern is confirmed by the reference in the Part B Submissions of the Minister to the right of affected landowners who are aggrieved by the proposed provision of
open space and new streets and lanes to seek to trigger compensation under s 98(2) of the PE Act.\(^{38}\)

46. The CofM expects these issues to be dealt with through the redrafting of the controls and this issue to be revisited during consideration of the governance framework for the FBURA.

**Referral Authority Status**

47. Unlike the other areas of the Municipality which are zoned CCZ, the MCC is not currently a recommending referral authority for the FBURA.\(^{39}\)

48. The MCC should be a recommending referral authority for all applications for which it is not the RA within its Municipality. Among other things, the MCC has particular expertise in interpreting and applying its own planning scheme and has particular expertise in drainage, urban design, traffic, heritage, ESD and other matters that it can usefully offer advice on as a referral authority.

49. Clause 66.04 and proposed CCZ4 should therefore be amended to ensure that the MCC is a recommending referral authority for applications for matters for which it is not the RA within its Municipality.\(^{40}\)

**Other Functions**

50. The MCC clearly has a pivotal role in the future of the FBURA, not just due to its RA role in assessing more ‘minor’ applications and its referral authority status (if granted) but as the body charged with collecting cl 52.01 contributions and doing all the things that councils do, such as drainage, road maintenance, waste collection, administering by-laws, enforcing the planning scheme and so on. The

\(^{38}\) Part B Submissions of the Minister (14 March 2018) p 17 at [51].

\(^{39}\) Schedule 1 to cl 66.04 provides that the MCC is the recommending referral authority for “any permit application for development with a gross floor area exceeding 25,000 square metres within the Capital City Zone” with reference to “Clause 6.0 of Schedule 1 and 2 and Clause 3.0 of Schedule 3 to Clause 37.04”. As an example, Clause 6 of schedule 1 provides:

6.0 Referral of applications

An application that includes the creation or alteration of access to the arterial road – Wurundjeri Way must be referred in accordance with section 55 of the Act to the referral authority specified in the schedule to clause 66.04.

An application for development with a gross floor area exceeding 25,000 square metres must be referred in accordance with section 55 of the Act to the referral authority specified in the schedule to clause 66.04.

\(^{40}\)As an aside, the wording of schedules 1-3, cl 66.04 and cl 61.01 should be redrafted to ensure consistency between the provisions. This is important in the context of the Tribunal and Court’s interpretation of the words in cl 61.01 in *Melbourne CC v Minister for Planning (Includes Summary) (Red Dot) [2015] VCAT 370* upheld on appeal in *Forum Theatre Holdings Pty Ltd v MCC & Anor* [2016] VSC 534 at [110]-[117].
CoM and MCC will, in its many roles, be responsible for interpreting and applying the proposed planning controls.

51. Further, the vision for Lorimer is:

A vibrant, mixed use precinct close to the Yarra River and connected to Melbourne's CBD, Docklands and emerging renewal areas.

52. Lorimer is critically important as a key urban renewal precinct within the Municipality and will play a key role as an extension to the central city and the Hoddle Grid as well as an important connection to the NEIC within the Employment Precinct.

53. The MCC, and the City of Melbourne are therefore well placed to provide input to this AC on both the strategic merit of the proposed Amendment, and also the statutory planning aspect of the proposed controls.

OUTLINE OF MCC EVIDENCE

54. The CoM relies upon the evidence of:

a) Mr Rob Milner, statutory planning;

b) Mr Euan Williamson, ESD;

c) Mr Paul Shipp, infrastructure funding and delivery;

d) Mr Tom Ramboll, flooding and water management; and

e) Mr Koos deKeijzer, urban design.

Mr Milner

55. The CoM agrees with Mr Milner's overall thesis that Amendment GC81 should be seen only as a further incremental step towards the full package of planning measures that are needed to realise the vision.

56. The CoM considers that many of the issues that Mr Milner raises can be addressed by more certainty being provided about the government's approach to the delivery of infrastructure and consequential amendments to the proposed planning controls. It is also critical that a transition plan is developed and an agency is established to manage transition issues and oversee development in Fishermans Bend.

Mr Williamson

57. The CoM relies on Mr Williamson's ESD evidence in relation to, among other things, its submissions that:

a) the proposed controls do not yet sufficiently implement the Vision nor the objectives expressed in the draft Framework;
b) the controls should be amended to provide higher standards and greater levels of consistency with the Melbourne Planning Scheme; and

c) in particular, the requirement to achieve 4 star green star as built is below what is expected of other major developments in the CoM and should be lifted to a mandatory 5 star green star as built requirement.\textsuperscript{41}

Mr Shipp

58. The CoM relies on Mr Shipp's infrastructure planning evidence in relation to, among other things, its submissions that:

a) it is critical that public infrastructure planning is informed by the most accurate development yield estimates possible;

b) there is a risk that the development projections have been set at a level that will not fully reflect the likely development outcomes for two reasons:

i) if more than 75% of sites not already approved for development in Fishermans Bend are developed, the ultimate development yield could exceed the projections; and

ii) any yield further to the FAR delivered through an uncapped FAU scheme will be over and above the projections, resulting in higher overall demand for infrastructure;

c) the planning controls need to clearly set expectations for the delivery of land and infrastructure through the FAR scheme;

d) various aspects of the FAU scheme need clarification; and

e) various aspects of the wider funding and delivery framework need to be clarified prior to the amendment being introduced to ensure that there is neither an overlap or a shortfall which arises from the expectations for the delivery of land and infrastructure through the FAR and FAU schemes.

Mr Patterson

59. The CoM relies on Mr Patterson's flooding evidence in relation to its submissions that:

a) there are precinct scale flooding issues that need to be considered in the future planning for Fisherman's Bend; and

\textsuperscript{41} noting that the Melbourne Planning Scheme policy application requirements for larger developments are framed as design requirements, not 'as built' requirements, but that the CoM experience is that 5 star developments are being delivered
b) options exist to implement precinct scale measures to reduce the extent to which raised FFLs are required to mitigate risk.

60. Without state government intervention, significant parts of Lorimer will be subject to the requirement for raised floor levels, which in turn can lead to very poor urban design outcomes. The CoM joins with the City of Port Phillip in suggesting that there should be policy included in the planning scheme which seeks to avoid that outcome, coupled with a commitment to delivering a precinct wide drainage plan.

**Mr de Keijzer**

61. The CoM will call Mr de Keijzer’s in stage 2 of the hearings.

**Professor Rob Adams**

62. As foreshadowed in the CoM’s request to be heard form, the presentation of the CoM’s case will include presentations by Professor Adams, Director of City Design at the CoM.

63. Mr Adams will make a presentation to the AC on the broad, but highly relevant topic of city shaping. He is not being called as an independent expert due to his role at CoM.

**Ms Pearson**

64. The City of Melbourne has also filed a report by Ms Adelise Pearson, Strategic Planning Urban Design officer at the CoM. Ms Pearson is also not being called as an expert witness. Ms Pearson has been testing the proposed planning scheme controls with a built form model, including both the FAR and the FAU and it was considered appropriate to put her work before the AC for its consideration.

65. Ms Hodyl’s Urban Design Strategy (UDS) included a built form model which shows ‘how Lorimer may look by 2050 when 75% of Lorimer is expected to have developed ..’. However that image ‘does not illustrate the impact of additional yield that may be approved via a Floor Area Uplift.’ Further, the model was constructed prior to the drafting of the proposed planning controls, and hence does not fully reflect those controls. In those circumstances, the CoM considered it was appropriate to test the planning controls with its own built form model.

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42 Figure 52 p 170.
66. Mr Pearson's work illustrates what Lorimer could look like under the proposed controls if the FAU is taken up with the 'affordable housing' public benefit option, under a variety of different assumptions.\(^{43}\)

67. Ms Pearson's work also:
   a) provides information about the current development applications and approvals in Lorimer;
   b) tests which sites can't achieve the FAR and which sites can achieve an FAR, (based upon specified assumptions);\(^{44}\) and
   c) identifies a number of uncertainties arising from the controls (particularly the proposed DDO) the majority of which have now been clarified.\(^{45}\)

68. Ms Pearson's work in general confirms the modelling undertaken by Ms Hodyl. Where there are differences, those differences are explained by:
   a) Ms Pearson adopting the lower street wall height and Ms Hodyl adopting the higher street wall height where the street walls intersect;
   b) Ms Pearson adopting a maximum block length of 50m (as per the exhibition version of the controls);
   c) Ms Hodyl not modelling the two most constrained sites in Lorimer, namely the long site to the immediate west of the freeway and the triangle site on the corner of Ingles St and the freeway; and
   d) Ms Hodyl not modelling the 25 lot subdivision which includes Lorimer Central as one site, on the basis that Lorimer Central was a site that she understood would be acquired.

**WHY NEW CONTROLS ARE IMPORTANT**

69. It goes without saying that Fishermans Bend is vitally important to Melbourne and to Victoria. It is a project of national significance.

70. Others have already made compelling submissions about why, if the current interim planning controls for the FBURA are left in place, even for the short term, the urban

\(^{43}\) See eg Fig 4.15 on p 29 in particular.

\(^{44}\) See p 23 Ms Pearson's report for the 4 sites that she identified as not meeting the FAR.

\(^{45}\) some of which have now been addressed by the Minister’s evidence, further tracked controls and Part A submissions
design outcome in the FBURA is likely to be irreparably compromised. This will in turn compromise the value of future development in Fishermans Bend.

71. The AC is referred to the permits granted and current applications in the Lorimer precinct to demonstrate the extent to which the Vision for the precinct will be compromised if development is allowed to proceed under the present controls. (See Attachments 1 and 2 which contain still images from the MCC and the Department’s 3D models respectively. The MCC’s Development Activity Monitor can be viewed online at https://developmentactivity.melbourne.vic.gov.au/).

72. Appendix 2 to Ms Pearson’s report includes development summaries and some key visual images and plans of the proposed developments and comments on the relationship of each proposal to the draft Framework. As can be seen from her summary, many of the proposals do not provide the setbacks necessary to accommodate the tram, the laneways and the open space proposed by the Framework and they grossly exceed the proposed FAR for Lorimer of 5.4:1. Ms Pearson has prepared a replacement page to her report which sets out the FAR of the non-dwelling uses for those developments (Attachment 3).

73. If development proceeds in line with those applications, the Lorimer precinct simply will not achieve the vision of a highly walkable, mixed use, inclusive, sustainable, vibrant, high amenity precinct, attributes which are central to its success as an extension of the central city.

74. The CoM notes the statistics in the Minister’s Part A submissions, notably if Lorimer is built out to capacity under the current controls, it would reach 29,000 people. Figure 3 of Ms Hodyl’s expert statement (Fig 9 UDS) estimates the density in Lorimer at 954 residents/ha based upon current development trends.

75. As stated in the Part A submission:

   The Amendment is necessary to reorient the trajectory of development in Fishermans Bend. On its current trajectory, development will simply not achieve the Vision for the area. In particular, it will not achieve an inclusive and healthy community providing for a range of diversity of dwelling options for all types of households and affordable housing. It will be a very high-density environment of repetitive residential towers with little diversity in building typology, nominal employment generating uses and little or no street activation due to high levels of podium car parking.

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46 For the reasons set out in the Minister’s Part A submissions, the MAC report and Mr Bates’ evidence.

47 Part A sub [37]-[39].

48 At [91].
76. The CoM is strongly of the view that without significant and urgent intervention, the domination of the podium tower typology, coupled with the lack of controls over other aspects of the private and public realm and the lack of infrastructure planning will lead to a very poor outcome in Lorimer.

77. The CoM's position is supported by its Places for People 2015 (Attachment 4) study which outlines some of the poor consequences of development proceeding in accordance with a predominant podium tower typology:49

Places for People 2015 expands beyond the traditional focus of the public realm and highlights the congruencies between private development and connected local living. The comparative block studies reveal the impact of built form on land use, urban structure and walkability in three different locations within the study area: the central city, Southbank and Docklands (Fig. 30 and Fig. 49).

Significant observations were made in relation to the podium tower blocks in Southbank and Docklands. The large-scale building footprints of the podium tower blocks generated a coarsely grained urban structure. Above-ground car parking discourages walkability and increases car dependence. Large occupancies for businesses provide few entrances onto the public realm where there are low levels of social interaction (low pedestrian counts). The large floor plate dimensions with towers above impose a reliance on mechanical systems for ventilation, cooling and lighting. There is a prevalence of tall towers on top of podiums offering only a homogenous housing 'choice' aimed at a narrow purchaser market, and so limiting the diversity of occupants. These typologies avail themselves to limited adaptability to suit peoples' changing needs. The height of towers and their set back from the street diminishes peoples' sense of connectedness to the street, and passive surveillance of the public realm.

The central city block consists of smaller-scale buildings with a finer-grain urban structure. This enables a more diverse and higher quantity of land uses around small-scale streets and laneways, favouring a range of small to medium businesses with multiple entrances, giving more purpose and interest to walking. There is no car parking in the central city block. The central city buildings feature narrow floor plates and higher floor-to-ceiling heights that are adaptable to changing land uses over time.

78. In so far as it is said that it is not fair to introduce revised controls, or that there should be a transitional provision, the CoM supports the Minister's position that the current applications should be decided under the new controls.

79. While the permit applicants will submit that transitional provisions are needed to provide a fair outcome, fairness arguments go both ways. If the permit applicants are given the benefit of transitional provisions, they will get an advantage over those who build under the new provisions. The concept of fairness in the PE Act also must take into consideration future residents and workers, as well as members of the

49 At p 66
public whose rates and taxes may need to be spent on infrastructure provision. Moreover, the nature of interim controls is that they can, and should, be revisited. Applicants who made applications under the current controls did so with knowledge that new controls were under development.

THE POPULATION TARGET

80. The CoM strongly supports sustainability goal 1 and its associated objectives. Those two objectives are well conceived. They should be central to the AC's consideration of the issues before it in this case.

81. The State Planning Policy Framework supports the central city becoming Australia's largest commercial and residential centre by 2050. One strategy to implement this goal is to plan for the redevelopment of major urban renewal precincts in and around the central city (including 'priority precincts' such as Fishermans Bend, Arden and Macaulay) to deliver high-quality, distinct and diverse neighbourhoods offering a mix of uses. Although higher density outcomes are expected to be delivered in Fishermans Bend, Plan Melbourne and the Melbourne Planning Scheme do not promote higher densities at all cost.

82. The Minister argues, and the CoM agrees, that working to a target population is useful and appropriate to assist with responsible planning. The Minister’s Part A Submission states:

Fishermans Bend is well positioned to accommodate 80,000 residents and 80,000 jobs including 40,000 jobs in the employment precinct over the next 35 years.

83. The CoM agreed with Mr Bates’ evidence in so far as it deals with the importance of population targets.

84. Clause 21.13 of the proposed Amendment states:

The State Planning Policy identifies Fishermans Bend as a priority urban renewal area. It is an unparalleled renewal opportunity within Melbourne. It will provide for 80,000 jobs (40,000 within the mixed use precinct and 40,000 in the Employment Precinct) and a range of well serviced, high density

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50 Draft Framework p40.
51 Clause 11.06-1 and Policies 1.1.1 and 1.1.2 Plan Melbourne.
52 eg policy 2.2.1 is to "Facilitate well-designed, high-density residential developments that support a vibrant public realm in Melbourne’s central city" and p 44 Plan Melbourne states "Areas in and around the central city offer significant urban renewal opportunities to develop as new places for people to live and work but need supporting community infrastructure and public spaces."
53 Minister’s Part A submission at [39]
housing options for 80,000 people. Lorimer is planned to accommodate 12,000 residents and 6,000 jobs.

85. The MCC agrees with the population targets of 80,000 and 40,000 respectively, and notes Ms Hodyl’s evidence that a residential population target of 80,000 translates to an average residential density of 323 per hectare.\textsuperscript{54}

86. The CoM agrees that an overall population density of 323 dwellings/ha is appropriate, and accepts that Lorimer is an appropriate location within the FBURA for increased densities. However, the CoM has serious concerns over the level of density proposed for Lorimer especially as the FAU may deliver:

a) a substantial additional residential population (under the public benefit scheme); and

b) a substantial additional worker population (given the uncapped commercial floorspace and the unrestricted height controls in most of Lorimer).

87. The issue of population density has been examined in Transforming Australian Cities for a More Financially Viable and Sustainable Future (2010), a report jointly commissioned by the Victorian Department of Transport and the City of Melbourne to establish the potential to transform metropolitan Melbourne to meet the projected population of 8 million by 2050 (Attachment 5: extract from Transforming Australian Cities). That report states:

   If Australia’s major cities are to meet future demands for population growth without simply repeating past practices of taking over farmland on the urban fringe, a new paradigm needs to be found.

   This needs to involve containing future development and infrastructure within the current city boundaries to the greatest extent possible, while achieving greater efficiencies and affordability.

   This is the aspiration of most cities but achievement typically falls short.

   Strategies to achieve livability and sustainability within the confines of existing city boundaries need to comprise the six key ingredients of existing successful cities, namely:

   • Mixed use
   • Density
   • Connectivity
   • High quality public realm
   • Local character
   • Adaptability

\textsuperscript{54} Ms Hodyl evidence at p 28
Of the elements listed above, the question of city density is arguably the most important. Compact cities with high densities are emerging as the most robust in the challenges posed by climate change. They are capable of operating on lower consumption and often produce more equitable social characteristics and access to essential services.

Cities such as Barcelona with 200 persons per hectare, and more recently Malmo Bo01 in Sweden, are examples worth reflecting on. Built in 2001, Bo01 is an exemplar of a low carbon footprint. The development's density of 120 persons per hectare equates to about eight times the typical Australian urban density. Bo01 is comprised of highly sustainable buildings of 2-5 storeys in height. As with Barcelona, this low rise high density dispels the myth that high density requires high rise. It is arguable that no new building needs to be higher than 6-8 storeys to achieve high density compact cities for the future. This built form is not only more sustainable but reduces the need for excessive embedded and operating energy; for example: windows can be operable and used for passive ventilation and cooling; stairs become alternatives to lifts for the lower floors; and the reduced height helps ameliorate excessive wind effects at ground level, which is characteristic of much taller buildings.

88. The CoM's Local Liveability Study 2015 provides valuable data on population density within the Municipality (Attachment 6). Page 21 of that document provides data on gross and net densities, as well as other information, such as the ratio of residents to workers, number of car spaces per dwelling, average length of blocks and so on. Each precinct in then given a performance indicator of good, average or poor for each item measured by the study.

89. According to that study, Southbank contains the highest density of residents in the central city of some 270 residents per ha. Some submitters argue that the population target of 80,000 will result in the FBURA not taking its fair share of Melbourne's projected growth. However, the CoM rejects that proposition. The densities proposed for Lorimer are high in comparative terms.

Density Controls: Will the FAR and FAU deliver the targeted population?

90. The CoM supports objective 1.11, namely:

   Align population, job growth and residential densities with the provision of infrastructure and amenities.

91. The CoM is concerned that strategy 1.11.3 of the draft Framework (the FAU strategy) and the corresponding provision of the Proposed Amendment, will not achieve objective 1.11.

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55 The City of Melbourne Local Liveability Study 2015 at p 21 records some parts of Southbank with a density of 270 people per ha. Mr Bates notes that the projected residential density of Southbank to 2034 is 392 people per ha.
Consistent with the objectives of ‘orderly’ planning in s 4(1)(a) of the Planning and Environment Act 1987 (Vic) (PE Act), the CoM’s position is that planning for infrastructure should be based on the projected population. That, in turn, raises the question: what is the projected population?

Ms Hodyl’s expert statement says:56

The population target of 80,000 people is set in place for 2050. The FARs are directly aligned with this population target however in the longer term they do not limit the overall population growth to a cap of 80,000 people. This is because the FARs have been increased to account for the assumption that not every site will redevelop by 2050. The Urban Design Strategy acknowledges the difficulty of estimating what percentage of sites are likely to redevelop over a 30-35 year period. It sets the assumption that 75% of sites are likely to redevelop in this time.

This means that more than 80,000 people are likely to be accommodated in Fishermans Bend beyond 2050.

If 100% of sites were developed according to the proposed FARs the potential population would be in the order of 106,000 residents (see Table 4).

[emphasis added]

The FAR has been established based on a 75% build out only (although this does not appear to be spelt out in the draft Framework). If there is 100% build out, that will increase the population within the FAR to approximately 106,000 people. If the FAU delivers the target 6% affordable housing (namely 6% of the FAR), the population may be up to 150,000.57 This latter figure represents almost double the 80,000 target.

A residential population target of 80,000 translates to an average residential density of 323 per hectare (gross). A residential population of 149,639 residents translates to an average residential density of 603 people per hectare.58

The City of Melbourne considers that an uncapped FAU, combined with FARs set on an assumed 75% build out rate, provides too much scope for the population densities and targets to be significantly exceeded, which in turn leads to a significant risk of a shortfall in infrastructure to support the population.59

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56 At [82]-[84]
57 Ms Hodly evidence at [88]
58 Hodyl evidence p 28
59 See Mr Milner’s evidence at [96]-[98] and Mr Shipp’s evidence at [181], [188]-[189] and [196]-[197].
A Precinct Based Approach

97. In the proposed Amendment documents and background reports, population targets are expressed as totals across the precincts and as totals within each precinct.

98. On the one hand, a FBURA wide approach is used:
   a) 80,000 new residents by 2050 which equates to 323 people/ha;
   b) 80,000 new workers by 2050 (40,000 within the mixed use precincts and 40,000 in the Employment Precinct); and
   c) an affordable housing target of 6% across the precincts.

99. On the other hand, a precinct by precinct approach is also applied:
   a) Lorimer is planned to accommodate 12,000 residents and 6,000 jobs;\(^\text{60}\)
   b) applying an average household size of 2.04, Lorimer is planned to accommodate 5882 households;\(^\text{61}\)
   c) the total FAR for Lorimer is 5.4:1\(^\text{62}\) comprising:
      i) a maximum residential FAR of 3.6:1;\(^\text{63}\) and
      ii) a minimum commercial FAR of 1.7:1.\(^\text{64}\)
   d) the dwelling density identified for Lorimer in Table 2 of the proposed Cl 22.27 (as amended by the Part A submission) is 255 dwellings/ha, which translates to approx. 520 people/ha (assuming 2.04 people per dwelling).\(^\text{65}\)

(There is not a precinct specific target for affordable housing. There is also no precinct or site expectations or limits on the amount of FAU. Coupled with the lack

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\(^{60}\) Draft Framework p 72 and UDS p 108.

\(^{61}\) UDS p 108, see also Draft Framework p 72. According to the draft Framework p 72, the net developable area and the gross area of Lorimer are both 25 hectares. Therefore, the maths don’t seem to add up. The target number of households (namely 5882) divided by the number of hectares (25) = 235 households/ha and 12,000/25 = 480 people per ha. The dwelling density in Table 2 of 255 dwellings/has should therefore be clarified.

\(^{62}\) draft Framework p 41 and CCZ4

\(^{63}\) Table 13, UDS

\(^{64}\) cl 22.27 and UDS p 82.

\(^{65}\) The figure of 255 dwellings/ha in Lorimer in clause 22.27 appears to have been calculated by the UDS and replicated in the draft Framework. The CoM requested that Ms Hodyl clarify how this figure had been arrived at, and also to clarify what the correct gross and net developable areas should be to include at p 72 of the draft Framework, noting that the figures of 25 ha a piece were wrong.
of precinct wide targets for affordable housing, there are no controls on how the FAU will be distributed between precincts (and between buildings or sites.)

100. Both sets of forecasts are helpful for different purposes. For example, the FBURA wide forecasts are important to determine regional open space provision, while the precinct forecasts are more important to determine local infrastructure needs, and to set appropriate FARs for each precinct.

101. At a precinct level, Ms Pearson’s report identifies that instead of the 12,000 people ostensibly targeted in Lorimer, there could be a population of over 20,000 if there is a 100% build out rate and the FAU is taken up to accommodate the 6% target of affordable housing (namely 6% of the FAR). She also notes that if the 6% population of the FAR floor space is delivered via to FAU, then the overall percentage of affordable housing within Lorimer will still only be 3.5% given the substantial number of additional dwellings required to deliver the affordable dwellings.66 (Attachment 7).

102. The only conclusion to draw from Ms Hodyl and Ms Pearson’s work is that:
   
   a) if the FAU delivers 6% affordable housing (namely 6% of the residential FAR floorspace) in Lorimer, the population targets will be substantially exceeded; and on the other hand
   
   b) if the population targets are met, then the affordable housing is unlikely to be delivered.

103. Ms Hodyl’s assumption of a 75% build out rate to 2050 across the 4 precincts67 has been subject to some criticism. While the CofM does not take issue with the basis of her precinct wide assumption, the CofM argues that the setting aside of land for open space, public transport, roads, community infrastructure and the like for Lorimer should be based upon a capacity analysis, not a point in time analysis. Infrastructure delivery (particularly community infrastructure) on the other hand, is something that can and should be delivered on the basis of planned (and monitored) uptake of development.

104. The Population and Demographics Background report proceeds on the assumption that Lorimer and Montague will be developed first. It proceeds on the basis that, in Lorimer, capacity begins to be exhausted in the early 2030s and the 12,000 population target will be achieved 2037.68 Even if Mr Mackintosh is correct to say

66 P 29 Ms Pearson’s report.
67 Eg Ms Hodyl’s evidence at [89]
68 Population and Demographics Background Report Table 2, p 4. See also pp 11-13.
that the projected number of apartments in the Population and Demographics Background Report is optimistic beyond 2022 (noting that the report says 'the overall development rates shown in Table 2 are strong but not unreasonable assumptions for a future inner city precinct'), all that does is to push the point at which capacity is exhausted in Lorimer forward beyond 2037.

105. The current applications in Lorimer and Montague support the proposition that those precincts will be developed first. Even if the concrete batching plants are not redeveloped by 2050, there is a strong likelihood that the 12,000 target will be exceeded.

106. Accordingly, the CoM submits that it is appropriate to modify the FAR to reflect a 100% build-out, at least for the Lorimer precinct regardless of whether a 2050 timeframe is adopted, or a capacity approach is taken.

**FLOOR AREA RATIO (FAR)**

107. The CoM supports the use of FARs to regulate both density and building typology.

108. As explained in the Amendment C270 panel report, the evolution of the central city was influenced by a plot ratio system (and a bonus system), in place from the 1960s to the late 1990s. Base plot ratios were allocated to districts, beyond which bonuses could be achieved for a range of prescribed benefits including plazas, common areas and specific uses such as 'international standard hotels'. These plot ratios were combined with other controls, such as street wall heights on main streets outside the retail core.

109. From the mid 1990's to the introduction of Amendment C270, many parts of the city's built form was largely managed by the performance based approach to planning rather than mandatory controls. Through Amendment C270, a density control was re-introduced. The reason for re-introducing the density control was to counteract the profound impact on the character and environmental quality of the city arising from unprecedented levels of growth including the cumulative effects of intensive development on shadow, wind, daylight and street character. The controls were also considered necessary as the levels of density had significantly outpaced investment in open space and community infrastructure, with very little value capture or private investment in such infrastructure.

110. The Amendment C270 Panel concluded at p40:

> Community disquiet about the loss of some of the central city's valued attributes and physical appearance that has been the result of this development boom has been one catalyst for the introduction of Amendment C262 and this Amendment. Another has been community concerns about poor standards of apartment design, the impacts of increased residential density on public transport and road congestion in some locations, and a
consequent reduction in the quality of the street environment in terms of overshadowing and increased wind impacts.

... It is evident, that, if all approved developments proceed, the consequences of added density will exacerbate an already undesirable situation. The public realm is largely a product of private development and the built form that is permitted.

111. The FAR is also an important component of the recently adopted West Melbourne Structure Plan.

112. The CoM understands that the FAR in this case has also been used to help deliver open space and internal streets, increasing permeability and amenity. The Urban Design Strategy proceeds on the basis that the FAR mechanism can be used to avoid government being required to pay compensation for land which has been designated in the framework for open space.\(^{(69)}\)

113. Given the decision to rezone the land without putting in place an appropriate value capture mechanism, profits that have already been made from the rezoning have not been reinvested in the precinct. Among other things, that decision means it will be extremely costly to redevelop Fishermans Bend with necessary infrastructure.

114. Due to the challenges identified in Ms Hodyls' evidence and the draft Framework, the Minister argues that a unique approach to planning for the redevelopment of Fishermans Bend is required. The CoM is not opposed to pursuing a 'unique approach' (in fact it agrees that a unique approach is required). However a 'unique approach' does not mean an approach that is uncertain, ambiguous or opaque. The CoM is eager to ensure that the approach adopted provide a high degree of certainty and transparency for all stakeholders (including council), and is equitable. Mr Milner and Mr Shipp both question that aspect of the amendment.\(^{(70)}\)

115. In part, Ms Pearson's modelling helps assure the CoM that the FAR regime is equitable, with some minor qualifications dealt with later in these submissions.

116. Council has a concern about the drafting of the first paragraph of clauses 3.0 and 4.0 of the CCZ4. Clause 4.0 states:

\[\text{A permit must not be granted to construct a building or construct or carry out works where the provision for any new streets, laneways, or public open space generally in accordance with Map 2 and Map 3 is not provided.}\]

\(^{(69)}\) Fig 38 p80.

\(^{(70)}\) See Mr Milner's evidence at [168]-[171] and [270]-[272] and Mr Shipp's evidence at [108]-[109].
117. It is not clear from the drafting whether the streets, laneways (noting that none are shown despite the wording of the provision) or public open space shown on Maps 2 and 3 must be constructed, handed over as public land and so on.

118. The Minister's Part B submission states:

   It is intended that the provisions operate to the following effect:
   (a) All plans provide a spatial depiction of open space and new streets;
   (b) All new streets and laneways within development sites are constructed by the developer, with streets and lanes subsequently to vest in the relevant authority;
   (c) Remediated and improved public open space is provided by the developer as part of the development, with the cost of remediation and improvement refunded from development contributions, but the land transferred at no cost to the relevant authority.

119. Map 2 in CCZ4 is as follows:

120. Map 2 has been taken from Fig 8 of the draft Framework, showing the road network.

121. Map 2 can be compared with Figure 20 of the draft Framework, which shows the network of roads and lanes proposed to create further permeability through Lorimer.
Infrastructure Delivery in Lorimer (Fig 20)

122. Map 3 of the CCZ4 shows the 'new open space' as follows:

Map 3 Open space layout

123. The CoM's position is that the CCZ4 should show the network of proposed roads and laneways shown on the draft Framework that are to be "provided" through the
FAR mechanism. The network of streets and laneways are critical to achieving a highly permeable urban structure. They are directly relevant to the Vision for Lorimer at p22

Smaller streets and laneways link to Lorimer Street, inviting people to explore the precinct or wander down to the river edge.

and as shown in the following plan at p 23 of the Vision:

124. The CoFM agrees that there should be some flexibility in the location of the laneways.

125. Mr Glossop suggests that:

55. The Framework provides a series of precinct plans (one for each neighbourhood) at pages 71, 73, 75, 77 and 799. These plans show more detail than the plans contained in the draft CCZ schedule (Maps 1, 2 and 3).

56. Consideration should be given to including these precinct plans in the schedule. The plans should be inserted in place of Maps 1, 2 and 3 or be in addition to them. Another decision guideline should be added to the Land use, Subdivision and Buildings and works requirements that a permit must be generally in accordance with the precinct plans.

126. The CoM supports including a precinct plan in principle (but suggest that new plans should be drawn up for this purpose, as per the City of Port Phillip's submission).

127. The Decision Guidelines in the exhibited version of proposed CCZ4 (use, buildings and works and subdivision) provided for consideration of whether the:

a) use of land is generally in accordance with the Framework; and

b) the layout of the streets, laneways and open space are consistent with those shown in the Framework.
128. The CoM agrees with the City of Port Phillip's submission that there be a mandatory 'Permit Requirement' that all permits granted (use, buildings and works and subdivision) must be generally in accordance with the precinct plans.

129. The CoM does not have a concern about using the FAR to deliver any streets and laneways that are required for the development. None of the new streets in Lorimer are collector roads, as confirmed by the ITP. It is standard practice to require local streets and laneways that are required for the development to be constructed at the developer's cost and vested in council.71 There is a clear statutory basis for requiring conditions to be placed on permits to ensure the delivery of those items of infrastructure.72

130. Those items should not be DCP items and hence there should not be any overlap.

131. As Mr Glossop notes:

51. The expression of the buildings and works requirement is unclear about whether the streets, laneways and public open space must be shown on a plan, or whether they are to be constructed as part of the approved development.

52. There is also some ambiguity in the following passage at Clause 4.0:

A permit must not be granted to construct a building or to construct or carry out works where the provision for any new streets, laneways, or public open space generally in accordance with Map 2 and Map 3 is not provided.

53. This requirement is poorly expressed and the outcome being sought is not clear. A possible alternative would be to delete the requirement and instead include a new section under the heading 'Conditions on permits' that requires the following:

Any road, street or laneway on land shown in Maps 2 and 3 must be constructed to the satisfaction of the responsible authority.

Open space shown on Map 3 must be developed as publicly accessible open space to the satisfaction of the responsible authority.

All land developed as publicly accessible open space must remain publicly accessible to the satisfaction of the responsible authority. This condition ceases to have effect if the publicly accessible open space is vested in or transferred to the local council or public land manager.

132. The CoM sees merit in Mr Glossop's suggestion that the CCZ4 be amended to include a new mandatory condition on permits requiring the roads and laneways to be constructed (where those roads or laneways are not DCP items). The wording of this 'permit condition' will need to be carefully drafted to ensure that the roads are

71 Mr Shipp's evidence at [120]-[122].

72 The streets should not have to be provided, however, for buildings and works in relation to existing uses – but only where the site is to be re-developed.
constructed to the council's satisfaction, to allow some flexibility in the precise location of the laneways and internal streets and to make sure the condition is not imposed where only minor works are proposed.

133. Both Mr Milner and Mr Shipp are concerned about the timing of delivery of new roads and linear corridors in circumstances where they are:
   a) to be provided through the FAR scheme rather than compulsorily acquired; and
   b) to be provided only as development of those sites occurs rather than delivered early.

134. This issue will need to be carefully managed under a transition plan.

135. Clarity should also be provided in the CCZ as to whether the tram corridor will also be shared with vehicles as it passes to the north of Lorimer Central, noting that the sites to the north may need a road for access if no cross overs are permitted to Lorimer St.

136. The CoM is also concerned that further clarity is needed in relation to the proposal to use the FAR to deliver open space.

137. It is not clear from the drafting of the controls whether any open space that is 'provided' is credited under the cl 52.01 and how the provision works if more than 8% of land must be 'provided'.

138. The CoM does accept that these matters can be negotiated (as has occurred with current approvals). However, as a body who receives the open space contribution, and potentially receives the land which is vested by way of the FAR or cl 52.01 provisions, and as a body that will be assessing applications (whether as a referral authority or otherwise), the CoM suggests that there is merit in the planning controls providing clarity as to how the scheme is intended to operate.

73 For example, the permit issued for 85-93 Lorimer Street included permit conditions requiring:
   a 2100 sqm park to be constructed and vested in the Melbourne City Council;
   carriageways along the eastern and southern side of the land to be constructed and vested in the Melbourne City Council;
   and acknowledging that those requirements will constitute full satisfaction of both the open space contribution and any development contribution.

The permit issued for 150 Turner St includes a requirement to enter into a section 173 agreement in relation to development contributions and also requires the vesting of land in the Melbourne City Council for the 10m setback to Turner St and the 22m wide road shown on the framework plan.
139. One way of providing clarity may be to amend the schedule to cl 52.01 to provide greater clarity. If it is intended that a cash contribution is required in addition to the provision of land through the FAR scheme, then the policy in 22.26 will need to be amended. This issue, and the 'equity' of the scheme for delivery of open space is discussed further below under the 'Open Space' heading.

140. As noted above, the Minister's Part B submission says that it is intended that 'remediated and improved public open space is provided by the developer as part of the development, with the cost of remediation and improvement refunded from development contributions'.

141. The CoFm suggests that the CCZ4 should not require the open space to be constructed. That is a matter that can be left to negotiation under the current section 173 agreement for developer contributions, and is a matter that could be negotiated as part of a WIK agreement under a future DCP.

FLOOR AREA UPLIFT (FAU)

142. The CoM is also a supporter of the appropriate use of FAU controls, as illustrated by its support of an FAU system in Amendment C270.

143. However, the CoM's support for the FAU is qualified.

Additional Open Space

144. The CoM does not support 'additional open space' being made a category of public benefit.

Community Infrastructure

145. The FAU should not be relied upon to deliver land for community infrastructure, as the FAU is an opt in scheme whereas land for community infrastructure is a basic infrastructure requirement.

146. The controls, the Public Benefit Guidelines and the fact sheets need to make it clear whether the FAU is to be used to fund community infrastructure or just to incentivise its early delivery, with funding provided through a DCP.\textsuperscript{74}

\textsuperscript{74} Compare, for example, what is said in Technical Fact Sheet #2 (that a WIK credit will be provided for land and development) with what is said in the Part A submission, namely that a 'more traditional model' such as and ICP will be considered if the market does not 'opt in'. The difficulty with the approach in the Part A submission is that the DCP or ICP must be prepared immediately and cannot await the 'testing' of the market, and further that the value of the public benefit should be ascertained having regard to whether or not credits will be provided.

The planning scheme should be absolutely clear about how the public benefit scheme works. The planning scheme should specifically state that the FAU scheme simply incentivizes the early deliver of community hubs, and that if delivered as FAU, the developer will also receive a development contributions credit for
147. The CoM does not oppose the FAU being used to incentivize the early delivery of infrastructure, as long as:

a) the community infrastructure is funded (eg included in the DCP) and therefore its delivery guaranteed regardless of the take up of the FAU scheme;

b) the 'uplift' reflects the fact that works in kind credits will be applied;

c) the delivery of the community infrastructure is in accordance with the identification areas shown on p 73 of the draft Framework and the precinct plans once incorporated.\footnote{75}

148. The CoM seeks clarification about how a WIK agreement could be entered into under the current voluntary section 173 agreement regime in circumstances where the cost of delivery exceeds the total DCP levy for the development. If there is no ability for that to occur, then the CoM suggests that is simply another reason for a DCP to be prepared as soon as is possible.

149. Finally, the CoM is still unclear about how the dollar for dollar value has been calculated, whether it is commensurate with the benefit and the increase in dwellings that may result from this category of FAU.

150. Given the interaction with the current development contributions scheme and the future DCP, and agreement relating to this category of public benefit should be between all relevant parties including the developer, council, receiving agency, delivering agency and the Responsible Authority.

Affordable Housing

151. The FAU for the affordable housing component must be capped, with a corresponding mechanism to deliver affordable housing within the FAR. If the FAU for affordable housing is not capped, it has the potential to significantly undermine the density controls (and the infrastructure that has been planned around the population target). The substantive issues around affordable housing are discussed later in this submission.

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\footnote{75} The CoM is also concerned that the very large 'investigation areas' shown on the plans may not result in the community facilities being provided in the optimum locations. There is a need to be more specific about locations. However, this cannot be done for Lorimer in the absence of a precinct plan. The planning controls should reflect the fact that the precinct plans will ultimately guide the appropriate location of those hubs.

both land and works (if that is what is meant). If that is the case, then the additional number of dwellings should be set at a relatively modest level to reflect the fact that a credit will be provided.

See Mr Shipp’s evidence at [149]-[167]
Non dwelling Floor Area

152. The CoM opposed the proposal to allow the FAR to be exceeded if "additional" non-dwelling floorspace is provided. The CoM understands that the rationale for the provision is to incentivise the provision of commercial floorspace. However, additional floorspace over and above the FAR, whether for residential or employment generating uses, will have the same impacts on the built form. In particular, the addition of floorspace over and above the FAR is likely to diminish the prospect of a diversity of building typologies, as demonstrated by Ms Hodyl's FAU modelling.

The FAU provisions

153. The operable provisions on the FAU in the proposed Amendment are contained at cl 4.0 of schedule 4.0 to cl 37.04 Capital City Zone. That clause prevents a permit from being granted for a development in excess of the specified FAR except in various circumstances. One of those circumstances is where a:

Public benefit and floor area uplift as calculated and specified in a manner agreed to and approved by the responsible authority is provided, and the permit includes a condition (or conditions) which requires the provision of the public benefit to be secured via a section 173 agreement made under section 173 of the Planning and Environment Act 1987.

154. Schedule 4 to cl 37.04 does not contain a definition of 'public benefit'. Further, proposed Clause 22.27-3 which includes a policy on FAU does not specifically reference affordable housing or other categories of public benefit.

155. The only link between the FAU scheme and the categories of public benefit is to be found in the 'reference document' listed in cl 22.27-5, namely the Public Benefit Guidelines76 which describe affordable housing, 'additional public open space' and 'delivery of community infrastructure' as one of three 'public benefit categories'.

156. The guidelines also set out details of how the FAU scheme works including for affordable housing that:

a) it be 'gifted' (provided in perpetuity with the assets transferred at no cost) to a Registered Affordable Housing Association;

b) eight additional dwellings to each affordable housing unit be provided;

c) the affordable housing unit mix replicates (size etc) the dwelling mix constructed and delivered for the market by the developer;

76 ‘How to calculate Floor Area Uplifts and Public Benefits in Fishermans Bend’ (October 2017)
Is the FAU Reviewable?

157. In Amendment C270, the Panel stated at p60:

Intention to make the FAU scheme non-reviewable

One aspect of the FAU Scheme that received attention at the Hearing was how ‘agreed to’ by the Responsible Authority under the CCZ Schedule was to be interpreted - in relation to the public benefit contribution, and to what extent if differed, if at all, with the well established planning phrase ‘to the satisfaction of the responsible authority’.

Ms Brennan submitted that the requirement to provide public benefits under the FAU Scheme is a precondition to being able to develop above 18:1 and is linked to the purpose and object of Act to secure a ‘pleasant working, living and recreational environment for Victorians.’ Ms Brennan contended that unless there is compliance with the FAU Scheme, a planning permit application cannot be considered and no jurisdiction is triggered. Both Ms Brennan and Mr Rantino submitted that as the compliance with the FAU scheme is a condition precedent, any decision arising from this aspect cannot be reviewed at VCAT through the usual statutory merits review process or under s149 of the Act.

Ausvest submitted that there is no real difference in the interpretation of “agreed to” as compared to “to the satisfaction of”, as both would enable a merits review. Ausvest expressed its concern that the Responsible Authority may ignore the Guidelines. Conversely, Ausvest noted that even though the Guidelines can be considered under s60 of the Act, whether or not they are a reference or incorporated document, the Guidelines cannot and should not constrain the decision-maker. Ausvest submitted that it was concerning that what was being proposed was a contributions scheme which intended to preclude any review of its application to a particular property.

Ms Brennan submitted that the entering into a s173 agreement was voluntary. Ms Brennan’s contention that the exercise of the discretion of the responsible authority in relation to the category of public benefit falls outside the usual legislative merits review processes, renders obsolete the argument of a s173 agreement being voluntarily entered into by the proponent.

158. The Minister’s Part B Submission asserts that the provision of a public benefit agreed with a responsible authority is properly characterised as a condition precedent to exceeding the mandatory FAR.77

159. The CoM agrees with that submission, and with Ms Brennan’s submissions in Amendment C270 that the entry into an agreement for the provision of a public benefit is voluntary. The scheme is an opt-in scheme – the developer may opt in if it comes to a suitable, consensual arrangement with the RA. Neither the developer nor the RA can be ‘forced’ to enter into an agreement. (The CoM suggests that the planning provisions should also acknowledge that there will also need to be ‘agreement’ with a range of other bodies, not just the RA.)

77 Minister’s Part B Submission (14 March 2018) p 19
160. If such an agreement is entered into, then the statutory precondition is satisfied and a FAR can be exceeded.

161. Whether the FAR should be exceeded is a different matter. If there were no third party exemptions, a third person may be able to review the planning merits of the decision to grant the permit (including the decision to allow floor area above the maximum FAR). But of course that situation does not apply here.

**Should the Public Benefit Guidelines Be Incorporated?**

162. Mr Glossop’s evidence is\(^7\):  

> Given the role that this document has in decision-making and the exercise of discretion, I am of the view that this document must necessarily be an Incorporated Document.

163. The role of the Public Benefit Guidelines in the planning scheme largely turns on the question of whether a decision to enter into an agreement is voluntary or reviewable by VCAT.

164. This issue needs to be resolved and the controls drafted accordingly. One way of resolving this issue is to draft the controls in such a way as to make it clear that an FAR may only be exceeded if an agreement for a public benefit has been entered into in accordance with the Public Benefit Guidelines. Whether the condition precedent was satisfied would then turn on the question of compliance with the Public Benefit Guidelines. The Public Benefit Guidelines should be an incorporated document if the controls were proposed to operate in that manner.

165. While the drafting exercise is complex, the CoM considers that the regime can work effectively if the controls are written well and accord with the enabling provisions of the Planning and Environment Act 1987. It is noted that there will be (at least from 1 June 2018), a clear statutory mechanism to allow voluntary section 173 agreements to be entered into for the provision of affordable housing.

166. At a minimum, the controls should make it clear that:

a) that the condition precedent to the exercise of discretion to allow an uplift is the entry into an agreement between the relevant parties, namely:

i) the owner, the Responsible Authority, the Council, the Receiving Agency and the Delivery Agency in relation to community infrastructure; and

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\(^7\) At [132] and in oral evidence on 16 March 2018.
ii) the owner, the Responsible Authority, the Council and the Registered Housing Provider in relation to affordable housing;
b) the condition precedent will only be satisfied if the written agreement is in accordance with the Public Benefit Guidelines (or an amended version);
c) where such an agreement has been entered into, a permit must not be granted with a floor area in excess of the FAR plus the floor area uplift as specified in the agreement; and
d) the agreement to deliver the public benefit should be formalised through a section 173 agreement and registered on title.

Clause 22.03

167. The Panel's preliminary list of questions states:

How are community needs identified to determine appropriate public benefits to be delivered in exchange for the FAU? What mechanisms are proposed to be used to update any list of public benefits? Will the existing approach of the City of Melbourne as set out in Clause 22.03 of the Melbourne Planning Scheme be used? Is the FAU regime as transparent as it needs to be? What status should guidelines for applying the FAU have? Should they be referenced in the planning scheme?

168. Clause 22.03 of the Melbourne Planning Scheme "Floor Area Uplift And Delivery Of Public Benefits" applies to land within Schedules 1, 2 and 3 of the Capital City Zone that are also subject to Schedule 10 to the Design and Development Overlay. It does not, therefore, apply to the FBURA. Clause 22.03 contains policy guidelines for applying the FAU scheme in the central city. Many of the principles in cl 22.03 have been translated across to the decision guidelines in the CCZ4, but they have been slightly reworded. Further, the definition of FAR and FAU in cl 22.03 are different to that in proposed CCZ4.

169. The CoM considers it important that a different approach is taken to the FBURA. At a minimum, the categories of public benefit should be expressly stated in the scheme to ensure that they are aligned with the Vision and the draft Framework.

DEVELOPMENT CONTRIBUTIONS PLAN (DCP)

170. The draft Framework says that a comprehensive precinct based funding plan is being developed and that the plan will consider a mix of funding sources including an ICP.79
171. Schedule 1 to the DCPO (introduced through CG16 on 24 July 2014) states that:

**FISHERMANS BEND URBAN RENEWAL AREA DEVELOPMENT CONTRIBUTIONS PLAN**

1.0 Area covered by this development contributions plan
Fishermans Bend Urban Renewal Area, which is covered by the DCPO1.

2.0 Summary of costs
None specified. The preparation and incorporation of a development contributions plan is required.

3.0 Summary of contributions
None specified. The preparation and incorporation of a development contributions plan is required.

4.0 Land or development excluded from development contributions plan

A permit may be granted to subdivide or use land, construct a building or construct and carry out works before a precinct wide development contributions plan has been prepared to the satisfaction of the responsible authority if any of the following apply:

- A site specific development contributions plan has been prepared by the developer to the satisfaction of the Minister for Planning;
- An agreement under Section 173 of the Planning and Environment Act 1987 has been entered into with the responsible authority that makes provision for development contributions;
- The permit contains a condition requiring an agreement under Section 173 of the Planning and Environment Act 1987 that makes provision for development contributions to be entered into before the commencement of the development.

...

172. There is an equivalent provision in DCPO (schedule 2) of the Port Phillip Planning Scheme.

173. A DCP has not been incorporated in the proposed Amendment to date despite what the Fishermans Bend Strategic Framework July 2014 states at p45:

The MPA intends to prepare the DCP within 12 months of this Plan being finalised, in consultation with councils, DTPLI, PTV and VicRoads. It is estimated that the DCP levy will be close to $16,000 (2013 dollars) per dwelling, $18,000 per 100 square metres of office and $15,000 per 100 square metres of retail floor space.

174. The land was rezoned in 2012. A draft DCP was prepared in 2013. A 'discounted' rate of $15,900 was adopted of roughly half of the cost of the works estimated in the DCP (approx. $30,000 per dwelling). The Public Space Strategy says at p 104 that:

The DCP is presently capped at $15,900 per dwelling (in 2013 values and indexed quarterly ...) with infrastructure costs estimated at around $30,000
per dwelling (2013 dollars). Therefore, there will be a funding gap for all infrastructure types, including open space.

It is now 5 years later and still there is no DCP for the FBURA.

The CoM has copies of the two permits for major developments issued within Lorimer (Attachments 8 and 9).

The permit for 150 Turner St, issued in September 2016, contains a condition requiring a section 173 agreement to be entered into before development starts which requires the developer to pay a development contribution of $15,900 per dwelling and $18,000 per 100 sqm of gross commercial floor area and $15,000 per 100 sqm of gross retail area (all indexed) "or other amount outlined within an approved development contributions plan to the satisfaction of the Responsible Authority". The permit condition also requires the section 173 agreement to include a schedule of the types of infrastructure to be delivered by the Metropolitan Planning Authority or their successor.

In relation to timing, the 150 Turner Street permit states that the payments are made as follows: 10% at the time of building permit issue for each stage and 90% prior to the issue of a Statement of Compliance. Further, a bank guarantee is required to be provided to the Responsible Authority to the value of 50% of the value of the development contribution to prior to the commencement of any works (to be returned after full payment of the development contribution). Contributions are payable to the Metropolitan Planning Authority (or their successor).

The permit for 85-93 Lorimer St, issued in 2015, contains a condition requiring a section 173 agreement to be entered into that requires certain works to be undertaken and land to be vested in the Melbourne City Council in full satisfaction of the 'requirement' to pay development contributions and to make open space contributions.

The City of Melbourne has asked the lawyers acting for the Minister for copies of permits and executed section 173 agreements in the FBURA and has not yet received a response to that request.

The two permits illustrate the negotiated 'stop gap' approach to funding infrastructure in the FBURA. If the permits are acted upon, they will successfully add to the open space provision and pool of funds to deliver other items of infrastructure in Lorimer. However, there is currently not sufficient information to ascertain whether the contributions are fair in the context of the infrastructure that will be required to support the population.
182. The time has come to finalise the DCP, however difficult, to provide some certainty to all parties. Each dwelling that gets approved that pays the 'discounted' rate potentially adds to the shortfall in funding.

183. The section 173 agreement mechanism, while useful as an interim measure, undermines the general principle that development contributions should only be levied in accordance with an approved development contributions plan.\textsuperscript{80}

184. The use of the section 173 agreement mechanism for anything other than a stop gap creates a poor precedent and undermines accountability and transparency in the planning process. While the mechanism may be effective (so long as all agreements are entirely voluntary), it should not be left in place for any longer than necessary.

185. The CoM submits that a DCP should be prepared urgently.

186. The CoM notes the Minister's assumption that the \textit{interim} development contributions will meet costs of remediation to a higher standard and improvements to the land.\textsuperscript{81} The CoM requests that the Minister undertakes an analysis of whether the current interim contributions are sufficient to cover all of the foreshadowed DCP items. The current interim 'voluntary' $15,900 levy should then be raised to reflect a more realistic level to at least try to minimise the shortfall in funding until such time as a DCP is finalized.

**AFFORDABLE HOUSING**

187. The CoM supports sustainability goal 3, objective 3.5 which relates to affordable housing and the strategies which relate to objective 3.5. However, the proposed Amendment falls short of achieving those objectives.

188. Proposed Clause 21.13-3 introduces a clause relating to affordable housing in the Municipal Strategic Statement (MSS) of the Melbourne Planning Scheme in relation to Lorimer:

   The Fishermans Bend Urban Renewal Area will seek to achieve an affordable housing target of 6% across the precincts. Delivering improved housing affordability, choice and a diversity in this key area of Melbourne.

189. Proposed Clause 22.27 retains an objective in cl 22.27-2 and policy (under the heading community and diversity in cl 22.27-3) on affordable housing, including supporting the provision of 6% affordable housing.

\textsuperscript{80} \textit{Cameron Manor Pty Ltd v Mornington Peninsula SC (Red Dot) [2007] VCAT 1822} at [27].

\textsuperscript{81} AC Document 99 at [29]
Unlike other aspects of the FBURA vision, the quantum of 6% is not 'aspirational'. It simply reflects the current proportion of affordable housing in the municipality. The Part A submission states at [192]:

"A target of 5% was identified as in line with the IMAP assessment inner Melbourne affordable rental housing needed (undertaken in 2008) and to maintain the then current social housing mix of around 6%. (Biruu report, Inner Region Affordable Housing Overlay (May 2008). It is also understood this same report underpinned the 6% target originally introduced by GC50."

The City of Melbourne Homes for People document also says

In 2012, only 6 per cent of available housing in the municipality was affordable to the lowest 25 per cent of earners; of this only 1 per cent was provided in the private open market (see fig 3.5)

Infrastructure Victoria, in their 30 Year Infrastructure Strategy (December 2016) identified affordable housing as one of three critical infrastructure priorities for the State.

The provision of 6% will not solve the problem of affordability, it will simply maintain the status quo.

The Oct 2017 MAC states:

Infrastructure Victoria has identified affordable housing as a key focus for State infrastructure benefit. Fishermans Bend is a logical location for a strategy to unlock this opportunity. New partnerships, incentivising planning strategies and government and private funding will be necessary to deliver well-targeted housing affordable solutions for both key-worker affordable housing and diversified community profiles to meet the needs of a growing city.

In these circumstances, it is the MAC’s view that the target in the draft Framework of 6% of all housing to be affordable to low-moderate income earners is too low. The MAC supports a target of 10%, to be delivered using the full range of strategies outlined in the draft Framework including government action and industry partnerships. It is the MAC’s view that this issue should be reviewed within 5 years, and that if progress towards the target of 10% is not being made, then mandatory inclusionary zoning at that level should be enacted.

... Recommendations

- Establish a voluntary provision via 173 agreements to allow the affordable housing agreed as part of Floor Area Uplift to be delivered off site but within the same precinct as the Uplift is provided and in a location with the same walkability index.
- Establish a target of 10% of all housing to be affordable to low-moderate income earners to be delivered using the range of strategies outlined in the draft Framework.
• Review achievement of the 10% target within 5 years and if progress
towards the target is not being made, then mandatory inclusionary zoning at
that level should be enacted with the potential for exemptions based on
development viability.

195. The CoM agrees with the MAC that the target in policy should be raised. There
should be a minimum requirement to provide the base level of 6% affordable
housing within the FAR. The overall policy target for affordable housing should be
15%, which could be achieved through a number of methods, including government
funded housing and a capped FAU.

196. Further, the requirement to provide 6% affordable housing should apply to each
precinct, rather than being a FBURA wide target.

197. The key criticisms levelled against responsible authorities who try to impose
affordable housing provisions on major developments in Victoria are:

a) there is no clear statutory basis for the imposition of such a requirement;

b) the requirements should not be ad hoc such as to create market distortion
(the level playing field argument);

c) the requirements need to be ‘certain’ (eg with a consistent definition of
affordable housing, a clear mandatory requirement or FAU scheme and a
clear mechanism for implementation such as through a registered housing
provider); and

d) the requirement must not be too onerous so as to undermine development
viability.

198. The CoM considers that the proposed Amendment provides the opportunity to put
in place controls that address all of those issues.

199. There is a clear strategic basis for including affordable housing requirements in the
amendment. That strategic basis will become even clearer from 1 June 2018, or
earlier if proclaimed, when the Planning and Building Legislation Amendment
(Housing Affordability and Other Matters) Act 2017 (amending Act) introduces a
new objective into the PE Act, namely:

- to facilitate the provision of affordable housing in Victoria.62

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62 PE Act new s 4(1)(fa)
200. The Affordable Housing Background Report\(^{83}\) demonstrates why it is important in planning terms to provide for affordable housing (not just social housing), and why, unless there is intervention, the development of Fishermans Bend will exclude those on low incomes, including key workers.

201. The CoM supports a ‘tenure blind’ model for the provision of social housing, and supports the principle that such housing should be integrated with other housing. Even on that basis alone, the supply of affordable housing cannot simply be left to government – a significant quantity of affordable housing must be planned for within large developments such as are proposed in the Lorimer precinct.

202. The CoM agrees that the requirements for affordable housing should be applied consistently throughout the urban renewal areas of Melbourne to ensure a level playing field for development. The new planning controls for the FBURA have the capacity to put in place requirements and mechanisms that can be adopted in other urban renewal precincts. The fact that the Minster is leading the way with this proposed Amendment provides the State with a unique opportunity to put in place controls that are certain, clear and supported by legislation.

203. The government is commended for introducing the Amending Act which will introduce a definition of affordable housing which will then apply to the VPPs.\(^{84}\) The new definition is:

housing, including social housing, that is appropriate for the housing needs of any of the following:

(a) very low income households;
(b) low income households;
(c) moderate income households.

204. Categories (a) to (c) are to be specified by Order on recommendation of the Minister under s 3AB of the PE Act. The Minister is to specify a range of household income as (a) very low, (b) low and (c) moderate. It has been stated publicly\(^{85}\) that an Order will be made around the same time as commencement (1 June 2018). Statistical data published by the ABS are to be used as the reference.\(^{86}\)

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\(^{83}\) Options for delivery of affordable housing study (2013, commissioned by Places Victoria) (Affordable Housing Background Report)

\(^{84}\) Clause 71 of the Scheme provides that words have their ordinary meaning unless the term is defined in the PE Act.

\(^{85}\) GLSAC Panel hearing re Manningham Street.
205. Social housing is included in the new definition of affordable housing under the PE Act. The definition of social housing is adopted from s 4(1) of the Housing Act 1983 (Vic):

(a) public housing; and
(b) housing owned, controlled or managed by a participating registered agency.

206. The proposed Amendment removes the former definition of ‘affordable housing’ from cl 22.27 of the Melbourne Planning Scheme, achieving consistency with the PE Act. Any reference to ‘affordable housing’ will now be construed in light of the definition of ‘affordable housing’ in the PE Act.

207. The amending Act also amends s173(1) of the PE Act to enable a RA to enter into an agreement with an owner of land for the development or provision of land in relation to affordable housing. This amendment supports the operative provision of the proposed Amendment, namely the FAU scheme for affordable housing, discussed earlier in this submission. However, as Mr Milner’s evidence identifies, there is still a legislative gap, namely a clear mechanism to enable the mandatory provision of affordable housing.\(^7\) While this gap exists, there will continue to be uncertainty and inconsistencies surrounding the imposition of permit conditions requiring affordable housing to be provided.

PUBLIC OPEN SPACE

208. The CoM agrees with objective 3.7 of the draft Framework which relates to public open space, and with the strategies to achieve that objective.\(^8\)

209. The CoM generally accepts the quantity and location of public open space shown in the planning controls, on the basis of the target population of 80,000 for the FBURA, in circumstances where it acknowledges the cost implications of requiring a greater provision of more public open space.

210. It also generally supports the specific location and layout of the proposed open space within the Lorimer precinct. In particular:

a) Lorimer Central is an appropriate location for open space as it is centrally located and protected from Lorimer Street, which is a busy freight route and projected to become even busier over the next 10 years. It places the open

\(^7\) At [219]-[221].

\(^8\) With the caveat that the CoM’s preference would be for the overshadowing controls to apply between 10am and 3pm for major parks.
space in easy walkable distance from all residents in Lorimer. Lorimer Central provides the opportunity to deliver an iconic public space.

b) The Turner St linear spine is well conceived.

c) The shadow controls in the DDO to provide sunlight to key areas of open space are appropriate.

211. CoM's open space officer has assessed the open space evidence filed by the Minister and supports the recommendations made subject to the proposal to leave a green wedge of open space on Boundary Street shown on p 41 of Ms Thompson's evidence.

212. The CoM officer does not believe the remaining wedge can provide meaningful open space and suggests that the open space on Boundary St could be deleted fully and either:

a) incorporated into the land area to the north in open space fronting Lorimer Street; or

b) the equivalent area could provide a pocket park within the area bounded by Boundary Street, Rogers Street and the freeway.

213. Clause 52.01 of the Melbourne Planning Scheme specifies an 8% public open space contribution for the CCZ land in Fisherman's Bend and 5% for the employment area. Cl 22.26 states that land contributions for public open space will be preferred over cash contributions for the purposes of Clause 52.01 for land proposed to be developed and subdivided within areas identified on Map 1, including Lorimer.

214. An area of uncertainty for the CoM was to what extent, if any, the FAR will deliver public open space over and about the 8% required by cl 52.01. The Minister has

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89 This issue arose due to the differences between the process anticipated by the Open Space Strategy and the Urban Design Strategy. The Public Space Strategy anticipates that standard mechanisms, such as cl 52.01, DCPs and PAOs will be used for acquiring open space land. P 115, Page 39 of the draft Framework says "a FAR will facilitate the delivery of the much-needed parks and streets where these are designated on privately owned sites in FB. This is because ....". See also Urban Design report at p 21 and Fig 38 p 80.
now suggested that the cl 52.01 contributions in Lorimer are intended to be used for acquisition of the following sites:

a) Lorimer Central; and

b) The site on the corner of Lorimer and Hartley Streets.

215. The Minister’s submission suggests that the DCP will be used to fund construction of the open space, and that cl 52.01 funds will not be used for that purpose. 90

216. Lorimer Central park, the Hartley St open space and the Turner St linear spine are expected to be delivered early according to the Public Space Strategy:

The draft Framework states that Lorimer Central Open Space and the Northern Tram Corridor are medium term projects. It does not appear to set out a timeframe for delivery of the Turner Street spine or Hartley St open space.

218. The CoM calls upon the State to commit to the acquisition of the Lorimer Central park given:

a) the nature of the strata titled land holding;

b) the importance of that park to the precinct;

c) the lack of funds available to deliver it early (even if the cl 52.01 contributions were sufficient to purchase it over time); and

d) it cannot be delivered by the ‘FAR’ scheme.

90 Eg at p 21
219. The circumstances of the Lorimer Central site are as follows:

220. The Lorimer Place Owners Corporation has made a submission (sub 162) in relation to 874-886 Lorimer Street and 338-356 Ingles Street, Port Melbourne, shown on the following PPP map: ⁹¹

221. The PPP document helpfully shows the title plan as follows:

222. Submission 162 notes that the land is 2.5 ha and comprises 25 lots and common property.

223. Ms Hodyl has modelled the FAR on this site described as 880-884 Lorimer St as follows (note the property boundary): ⁹²

⁹¹ Document 48, p53-54
⁹² Hodyl evidence at [63]
224. Ms Hodyl says that:\(^3\)

The modelling demonstrates that the potential maximum yield enabled through the FAR of 23,760m² can be delivered on the remaining net developable area (3,700m²) and within the proposed built form controls.

There is little opportunity for this site to pursue a FAU as the FAR is closely aligned with the proposed built form envelope.

225. In contrast, Ms Pearson has modelled the 25 lot strata title as a whole as follows:\(^1\)

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[^3]: Hodyl evidence at [64]
[^1]: P 33
Ms Pearson concludes that the FAR cannot be delivered across the site due to the extent of open space and overshadowing requirements.\(^95\) Clearly if the FAR is based upon a reduced site area as per Ms Hodyl's report (excluding the open space area), then those conclusions change.

The other site that is identified as entirely for open space is 95 Lorimer Street, the site on the corner of Lorimer and Hartley St. The CoM notes the submissions of the owner (submission 37) that:

> Our client has had and continues to have concerns that the Fishermans Bend Framework Plan does not set out any process or timeframes for landowners who are to have their land acquired as a result of the designation of their land for open space within the Fishermans Bend Framework Plan.

The CoM suggests that if the FAR is not the mechanism to deliver this site, then some other mechanism (such as a PAO) ought to be used, with Map 3 amended accordingly.

The CoM has not had the opportunity to test whether the FAR could be met on all other sites if revisions are made to the open space network as recommended by Ms Thompson. If the FAR scheme is to be considered as an equalisation scheme, then this work should be done prior to the amendment proceeding.

Regardless of how effective the FAR will be to deliver some open space, a large part of the open space for Fisherman's Bend residents residing in the CCZ zoned precincts (including those in the City of Port Phillip) is expected to be delivered in the employment precinct.

In those circumstances, the CoM supports the MAC's recommendations to increase the CI 52.10 rate to at least 10%\(^96\) with a further review to decide if the rate needs to be increased further.

**EMPLOYMENT USES**

The CoM supports sustainability goal 2 'a prosperous community' and its associated objectives. Employment uses are important not only for jobs, but to ensure that the CCZ zoned precincts are vibrant, mixed use, walkable environments. In order for Lorimer to be a truly walkable, mixed use community, it is vitally important that it has a mix of land uses.

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\(^95\) P 23

\(^96\) P 12 MAC Oct 2017 report.
233. There is a significant risk that the proposed Amendment will not deliver the target 40,000 jobs in the CCZ precincts, and will not deliver a vibrant mixed use, walkable community.

234. The proposed Amendment includes a discretionary minimum floor area ratio for uses other than dwelling.

235. The proposed Amendment should make clear that the total FAR for Lorimer, being 5.4:1, is comprised of both the minimum commercial FAR of 1.7:1 plus a residential FAR 3.7:1.

236. Market indications (as illustrated by current approvals) are that there will be significant resistance to the minimum commercial floor area. The CoM’s position is that without a mandatory minimum commercial floorspace requirement, the mixed use vision for Lorimer will not be delivered.

237. It appears that the MAC, the Minister’s expert witnesses and the CoM’s expert witnesses are of the same opinion – left to the market the employment floorspace will not be delivered. Experts are also concerned, however, that it can be difficult to deliver non-residential floorspace in advance of an established residential population and public transport.

238. The viability of establishing non-residential floorspace will be assisted if the government delivers the tram and other public infrastructure such as Lorimer Central early.

239. The CoM does not oppose in principle the concept of allowing limited categories of exemptions to the requirement to deliver the 1.7:1 floorspace ratio. For example, car parking could utilise floorspace otherwise earmarked for commercial use as an interim measure as long as there are clear requirements for that floorspace to be converted to employment floorspace over time.

240. The CoM is currently considering the City of Port Phillip’s proposed mechanism to trigger a permit if the minimum floor area is not provided.

BUILT FORM

241. The Victorian Chapter of the Australia Institute of Architects suggest that the current tools are not sufficient to achieve the vision for architectural excellence.

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97 Ms Pearson’s report revised Table, attachment 1 to this submission.

98 See Mr Szafraniac’s report at [41], Mr Milner’s report at [108]-[109], [112]-[114], [131]-[132] and [143], Ms Hodyl’s evidence at [59]-[67] and the MAC’s Day 1 presentation p19-20.
Suggestions include a design review panel and design competitions. The CoM endorses both of these methods.

242. Submissions on built form will be made in the stage 2 hearings.

**SUSTAINABILITY**

243. The CoM supports sustainability goals 4-8 and their corresponding objectives. However, the CoM is concerned that a number of the strategies in the draft Framework, which have been translated into the planning controls, will not deliver on the objectives.

244. The Melbourne City Councils' local policy Energy, Water and Waste (cl 22.19) (attachment 10) was the first of its kind in Victoria. It is soon to be reviewed to update some of its requirements. Nevertheless, it has been applied for many years and has enjoyed general acceptance by the development community. It requires larger developments to have preliminary design potential to achieve 5 star green star or equivalent (but does not contain a mandatory 'as built' requirement).

245. The Melbourne Planning Scheme also contains a detailed policy for Water Sensitive Urban Design (cl 22.23) (attachment 11).

246. The CoM agrees that additional requirements are needed to realise the sustainability vision for Fishermans Bend. Instead of increasing the benchmark, however, the proposal for a 4 star rating is a retrograde step.

247. The CoM supports augmentation of the policy with the current ESD provisions in the CCZ schedule 'condition on permits', subject to them being amended to require that developments must meet the As Built 5 Star Green Star / Australian Excellence requirement and that this is demonstrated by the achievement of an approved and certified third party accredited as-built rating.

248. The CoM is currently considering whether the sustainability requirements for the FBURA should sit in a separate policy within clause 22.19 and 22.23, or whether they should be in a stand alone policy.

**FLOODING AND WATER MANAGEMENT**

249. The CoM agrees with sustainability goal 5 'a water sensitive community' of the draft Framework and with the corresponding objectives but CoM considers that the strategies to achieve the objectives must be significantly strengthened.

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99 at p 35 of their slides

100 P 61.
250. The site visit to the Gravity building in Montague told the story.

251. At present, only part of Lorimer is subject to an SBO (Attachment 12). However, as explained by Melbourne Water's Planning for Sea Level Rise Guidelines February 2017 (Attachment 13) (MW's Guidelines):

In certain circumstances, and where we have determined that land is liable to flooding by including advice about predicted sea level rise on a Property Information Statement issued under Section 158 of the Water Act 1989, Melbourne Water also has a role in recommending minimum floor levels for building permits issued under regulation 802 of the Building Regulations 2006.

252. The CoM understands that the whole of Lorimer is within an area that Melbourne Water has determined is liable to flooding, and hence that a 3m AHD level is the default FFL. MW's Guidelines explain at p 12:

Urban renewal areas

Similar to greenfield development, urban renewal areas provide an opportunity to apply a long-term planning approach to an entire development or redevelopment area. Also, these areas will see an increased number of occupants at risk of flooding in future. Therefore, urban renewal development will be assessed against the predicted 2100 1% AEP flood level.

... The predicted 2100 1% AEP flood level is 2.4 metres AHD, assuming 0.8 metres sea level rise.

...

253. The Guidelines explain at p 17 that, in the absence of limited concessions (see p 20):

In areas prone to tidal inundation, building floor levels should be at least 600 millimetres above the relevant predicted future 1% AEP flood level ...

254. As can be seen by the plan produced by Melbourne Water (Attachment 14), much of Lorimer's current street network sits below 3 m AHD.

255. The CoM's key position on flooding is that:

a) the LSIO should be applied to relevantly affected areas across Lorimer to ensure that flooding issues are dealt with in a systematic manner at the planning stage of developments;

b) precinct based solutions including a levy should be funded and implemented;
c) the draft Framework should make greater reference to the flooding work that has already been done and reference the need for, and location of, the proposed levy;

d) for example, the plans in the draft Framework could be updated to show potential retention basins (eg in the Lorimer Central open space) and blue lanes and green streets as per Mr Ramboll’s report;

e) objective 5.1.6 of draft Framework, namely to ‘retain design controls to raise habitable floor levels to avoid flooding’, should be replaced with a strategy that prioritises precinct based solutions over raising the FFLs to try to avoid creating poor urban design outcomes;

f) the local policy should be redrafted to ensure that raised FFLs are considered a last resort;

g) there needs to be consistency between the WSUD strategies in the local policy and the CoM’s current WSUD policy; and

h) there should be mandatory requirements on permits contained in the CCZ 4 to require the harvesting of rainwater and third pipe requirements.

TRANSPORT

A Place That Is Easy To Get Around

256. The Vision states:

New and improved connections will link Fishermans Bend to the CBD and Melbourne’s transport network, and leverage its strategic location between Port Phillip Bay, the Yarra River and the CBD. It will boast unprecedented levels of walking, cycling and public transport connectivity that will set a new benchmark for Melbourne.101

257. The CoM fully endorses the ‘targets for 2050’ under sustainability goal 1 of the draft Framework, including:

a) 80% of trips are made via sustainable transport;

b) a walkability score of 90% is achieved from homes and workplaces.

258. The CoM fully endorses objectives 1.1 to 1.10 of the draft Framework and most of the associated strategies for achieving those objectives.102 In particular,

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101 P 3

102 The only exceptions are:

Strategy 1.6.1: The CoM requests reduced maximum parking rates to below 0.5, reflecting the oversupply of residential spaces in the Central City.
strategy 1.11 which seeks to extend the tram network from the CBD to Fishermans Bend with the two new tram connections. It supports a future underground metro servicing Fishermans Bend. The strategies relating to permeability and pedestrian amenity as critical to achieving the Vision.

259. The CoM endorses the proposed road and laneway network shown on Figure 20 of the draft Framework. The street and laneway map should be included in the planning scheme.

260. The Integrated Transport Plan (2017) aims ‘to achieve a world class urban renewal outcome and transport system for Fishermans Bend’. Consistently with the Vision and the SPPF, it recommends ‘a high quality, connected and adaptable transport network be provided, prioritising walking, cycling and public transport whilst effectively managing freight and private vehicle movements.’

261. CoM submits:

a) walkability is key to a sustainable future for Fishermans Bend;

b) a walkability score of more than 90% is the appropriate target;

c) walkability will only be achieved with good urban design, street activation and a vibrant mix of uses;

d) early delivery of public and active transport, including river crossings, is necessary;

e) in particular the early delivery of the new tram route, in the short term 2018-2020, is critical to establish sustainable transport and land use patterns and reduce car dependency;

f) investment in transport infrastructure is required, before, during and after residential and business construction.

Public Transport

262. The Minister’s expert witness Mr Kirikiadis states that the area is poorly connected with public transport with the exception of the Montague precinct.

263. As at November 2015, there were limited bus routes to Fishermans Bend, two light rail routes through Montague and no heavy rail line (refer Attachment 14). The

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CoM does not support the ‘potential freight alignment’ shown in Figure 9.

103 State Government (2017), Integrated Transport Plan p 3; see SPPF cl 18.1-1 and 11.06-1.


closest train station to the FBURA is Southern Cross which is a 25 minute walk from the Lorimer precinct.\textsuperscript{106}

The Vision will not be achieved without significant and early investment in public transport infrastructure. The background report Deloitte (2015) states:

Public transport and active transport are both critical to ensure that Fishermans Bend will be connected with neighbouring places, spaces and facilities.\textsuperscript{107}

The Integrated Transport Plan proposes:

\begin{itemize}
\item[a)] a network of enhanced and new bus services which knit Fishermans Bend into wider Melbourne; and
\item[b)] two new light rail routes – one north and one south of the Westgate Freeway – connecting with the central city via a single new walking, cycling and public transport connection across the Yarra River.
\end{itemize}

Two options have been identified in the draft Framework for the future metro alignment.\textsuperscript{108}

CoM supports the proposed metro station in the Employment Precinct, being the northern alignment (refer draft Framework below). Large scale employment will not be viable without this.

In so far as the tram is concerned, the Part B submission states:

The delivery of proposed transport infrastructure, including the proposed tram routes, will be a State government matter. Financing will occur through State government budgeting processes.

\ldots

\ldots the delivery timeframes are beyond the budget window and so implementation within a particular period cannot be guaranteed.

None of the maps in the proposed amendment show the proposed tram line.

Map 2 in CCZ4 (extracted earlier in these submissions) has been taken from Fig 8 of the draft Framework (also extracted earlier), showing the road network.

Map 2 can be compared with Figure 20 of the draft Framework, which shows the proposed tram alignment. In particular:

\textsuperscript{106} J Kiriakidis, GTA Consultants (2018) Integrated Transport Plan Peer Review, p 8

\textsuperscript{107} Deloitte Access Economics, (2015) Fishermans Bend Economic and Transport Policy p ii

\textsuperscript{108} Draft Framework p 31
a) Map 2 shows a 10m wide 'landscape strip' where the tram is proposed to the south of Lorimer Street.

b) Map 2 shows a 10 m wide strip to the south of Turner St, in a location that is shown on the draft Framework as open space.

272. The draft Framework shows the 'road' to the north of Lorimer Central as an 'existing road', noting however that it is a private road (common property).

273. Map 3 of the CCZ4 (extracted earlier in these submissions) shows a 'proposed road' along the tram alignment to the south of Lorimer St but no 'road' through Lorimer Central.

274. The CofM submits that the Amendment should make it clear that the route for the tram needs to be preserved. The usual mechanism for doing that would be by the application of a PAO. If the Minister does not propose a PAO, then some alternative mechanism must be found.

275. Although not strictly within the Terms of Reference of the AC, CoM calls on the government to commit to, as a matter of priority. This infrastructure is required to service the proposed population and worker populations by 2050 under the draft Framework.

**Cycling and Active Travel**

276. The Vision is for the FBURA to:

> ... boast unprecedented levels of walking, cycling and public transport connectivity that will set a new benchmark for Melbourne.\(^{109}\)

277. The prioritisation and design of active transport initiatives can achieve transport planning objectives such as reduced traffic and parking congestion, energy consumption and pollution emissions, and help to create a more compact 'smart growth' development.\(^{110}\)

278. One of the ten key 'moves' to achieve the Vision was to create a walkable cycle-friendly place. In other words, within the precinct, ensure there are vast opportunities for walking and cycling.\(^{111}\)

279. The Victorian Cycling Strategy and the Vision both state a target for Fishermans Bend of 80 per cent of transport movements to be via public transport, walking or

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\(^{109}\) P 3  
cycling.\textsuperscript{112} The Vision also states that the integrated transport strategy will include cycle paths, tram lines and an underground rail line (metro).\textsuperscript{113}

280. The size of Fishermans Bend has the potential to generate a significant level of travel demand. Over 260,000 daily trips are expected to be generated by residential development alone. The Integrated Transport Plan states:

The most effective change from the business as usual approach is to generate a shift of short to medium length trips via public transport, walking and cycling, especially for those to the central city. This could reduce local vehicle movements by up to 90,000 vehicles per day.\textsuperscript{114}

281. Accordingly the Integrated Transport Plan includes a Cycling Plan which is reflected in the draft Framework.

\textsuperscript{112} State Government, Victorian Cycling Strategy 2018 – 2028, p 29
\textsuperscript{113} Figure 'New Benchmarks for Urban Renewal' in Vision p 7.
\textsuperscript{114} Transport for Victoria (2018) Integrated Transport Plan p 10 - 11
282. The Minister’s expert evidence includes a peer review of the Integrated Transport plan and states a number of challenges for active transport:

a) A limited bicycle network;

b) Constraints on north-south bicycle movements by reason of the Westgate Freeway;

c) The road environment for cyclists is constrained by heavy vehicle movements;

d) The walking environment is reduced in attractiveness;

e) The block sizes are large which increases walking distances.\(^{115}\)

283. CoM supports the multi-faceted approach in the draft Framework and proposed Amendment to deal with these issues, including minimum block lengths, policies on activation of streets, a cap on parking and so on. The CoM notes the Walkscore of above 90 as set out in the Integrated Transport Plan. Much of the Central City is above this score. This figure should be included in the draft Framework in either the MSS or the local policy.

284. The City of Melbourne’s Bicycle Plan 2016-20 (CoM Bicycle Plan), endorsed by MCC on 15 March 2016, proposes a vision of becoming a cycling city. The plan aims to increase bike use to one in four vehicles entering the city in the morning and eliminating serious crashes from the network. (Attachment 15)

285. GTA consultants background report indicates that there have been a number of black spots and lengths within and connecting to Fishermans Bend.\(^{116}\) Most notably, along the West Gate Freeway, within the Melbourne CBD, St Kilda Road, Kings Way, Clarendon Street, City Road, Ingles Street and Beach Street / Beaconsfield Parade.

286. A number of black spots and lengths associated with casualty accidents involving cyclists within and connecting to Fishermans Bend. This includes the Melbourne CBD, St Kilda Road, Clarendon Street, City Road, Ingles Street, Montague Street, Dorcas Street and Beach Street / Beaconsfield Parade.\(^{117}\)

\(^{115}\) P 8

\(^{116}\) GTA Consultants, Walking and Cycling Report (2013), Figure 3.5

\(^{117}\) GTA Consultants, Walking and Cycling Report (2013), Figure 3.6
287. Pre-existing black spots for cyclists coupled with a Vision for radicalising the number of cyclists makes it incumbent on the State to invest in significant cycling infrastructure that prioritises usability and safety.

288. GTA identified Lorimer Street between Todd Road and Montague Street as a fixed corridor for bicycles. GTA proposed a two-way off-road bicycle path on the north side of the road between Todd Road and Graham Street within the existing railway corridor. There is also potential for the provision of a pedestrian footpath within the northern road reserve, subject to their impact on the existing trees.

289. The CoM plan for Lorimer Street is for a separated bike lane. This continues to be an imperative during the lag period until delivery of the tram and proposed off road bike path through Lorimer.

290. The CoM supports the resolution of the specific design of cycling infrastructure through the precinct structure planning process for Lorimer and the Employment Precinct, with a high priority to be put on safety.

**Lorimer Street – Route for Port Freight**

291. Lorimer Street is proposed to remain the principal freight route for vehicles which cannot use the Westgate Freeway and require access to port facilities. This will support 24 hours a day, 7 days a week port activity at Webb Dock.

292. Despite the issues created by retaining Lorimer Street as the key freight route between Webb and Swanson Dock, the CoM does not support the new elevated freight connection shown on page 36 of the draft Framework (Fig 9). The link is proposed as a direct road and rail corridor to connect Webb Dock to Swanson/Appleton Docks in the form of an elevated road and rail structure (at the height of the Bolte Bridge when crossing the Yarra River).

293. CoM joins with City of Port Phillip in noting that: 118

>‘This proposal is not supported by Infrastructure Victoria, with their 2016 report Advice on Securing Victoria’s Ports Capacity which recommended that:

>\[i\] the capacity at the Port of Melbourne should be expanded to reach its capacity without constructing a dedicated road and rail freight link through Fishermans Bend to Webb Dock

>\[ii\] instead of building the freight link, a better longer term solution would be to build a second container port for Melbourne at Bay West (south of Werribee).’

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118 City of Port Phillip submission to the AC p 33.
294. CoM supports City of Port Phillip’s submission requesting deletion of that link from the draft Framework.

295. The request to delete the link is made in the knowledge that the freight traffic from Webb Dock will be utilising the existing primary freight route along Todd Road and Lorimer Street.

296. The CoM retains concerns over how the increased number of heavy vehicle movements that will be running through Lorimer Precinct along Lorimer Street will integrate with the urban realm in terms of both access and amenity. In particular, it will be important in the precinct planning stage to identify how meaningful connections can be made across to the Yarra’s Edge waterfront and the proposed health and wellbeing hub in Bolte West.

297. Precinct planning should also consider whether any precinct solutions can be adopted to mitigate the impact of noise and air emissions on people using both the public and private realm in the vicinity of Lorimer Street.

Car Parking

298. The Amendment applies schedule 13 of the Parking Overlay over Lorimer.

299. Maximum parking rates for residential land use should be reduced to below 0.5. All new parking in Lorimer:
   a) should be publicly accessible (and not strata-titled or in private ownership); and
   b) should have floor to floor heights and level floors to enable future adaptation.

300. Precinct based parking solutions are required. A design that disassociates parking structures from residential structures is preferred to achieve the 80:20 mix. Parking structures can then be retrofitted for other uses in the future.

301. Changes to the PO should be made to clarify the permit trigger and to embed a transition strategy and prioritise precinct based solutions.

Tram Bridge

302. The two proposed pedestrian and public transport bridges across the Yarra River and Victoria Harbour are fundamental to successfully connect Fishermans Bend to the central city and Docklands. The design must ensure the ongoing use of the waterways for river traffic and marine operations.

303. There are significant unresolved design and operational issues regarding the proposed freight bridge. The design and detail of the two proposed pedestrian and
public transport bridges across the Yarra River and Victoria Harbour need to be resolved as a matter of priority, in particular bridge height, form and operability.

EMPLOYMENT PRECINCT

304. The Employment Precinct, now one of Victoria’s National Employment and Innovation Clusters, forms part of the FBURA and is covered in the draft Framework (especially at pp78-79).

305. Save for adding a definition and reference to its status as a NEIC in clause 21.02-5, 21.08-3 and 21.16, the Amendment does not extend to the Employment Precinct.

306. The CoM suggests that it may be prudent to at least introduce Figure 23 of the draft Framework into the MSS (or equivalent) to ensure any applications for permits in the interim have regard to the Turner St spine, proposed tram alignment and potential rail station. Further, if there is a good reason behind removing reference to the 2 precincts in the text, then the plan should be updated accordingly.

307. The CoM will provide a response to any issues raised by submitters in relation to the employment precinct at the relevant time.

DRAFTING AND COMPLEXITY OF CONTROLS

308. Mr Milner states:

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.

309. The MCC has not criticised the choice of VPP tools in its submission. However, it does agree with Mr Milner that the way the tools have been drafted and used is confusing.

310. The CoM will produce a document which provides drafting suggestions in due course. The CoPP proposed controls address many of the issues raised in this submission. Rather than providing yet another tracked version of the controls, the CoM will consolidate its comments having regard to Ms Hodyl, Mr Glossop and CoFP’s suggestions. The CoM does not propose to redraft the DDO, and awaits a further version of the control from the Minister.

311. Some of the more major changes that the CoM suggests include but are not limited to:

a) redrafting some of the character statements in the MSS especially to acknowledge the role of Lorimer Central and including plans showing the
locations of the places referred to in the text, such as the community hub investigation areas;

b) including more maps and plans in the planning controls (generally as per the CoPP proposed controls);

c) making the DDO schedule Lorimer specific (eg removing references to mandatory heights etc);

d) redrafting the DDO schedule to make its provisions clear and to fill gaps (tables and diagrams will be necessary to assist understanding);

e) revising the local policy in relating to raised FFLs, redrafting (and/or moving) the ESD and WSUD provisions to align with the ESD and WSUD policies contained within the Melbourne Planning Scheme and moving the employment floor space policies to the CCZ;

f) mandating the requirement for minimum non-residential floor area in the CCZ (the CoM is currently considering CoPP’s approach to this issue);

g) removing the ability to allow additional non-dwelling floor area above the FAR;

h) including the streets and laneways shown on p 73 of the Framework in the CCZ schedule, (supported by Ms Hodyl in her oral evidence on 15 March 2018);

i) revisiting the provisions in cl 3.0 and 4.0 of CCZ 4 which require developers to ‘make provision’ for streets and open space (generally as per the CoPP proposed controls);

j) amending the CCZ to enable existing businesses to undertake minor redevelopment works without triggering the requirements to ‘provide for’ new roads and open space;\(^{119}\)

k) revisiting the open space map in the CCZ4 to separately identify sites that will be acquired; and

l) including the categories of public benefit in the CCZ4, and incorporating a set of public benefit guidelines.

\(^{119}\) Mr Glossop gave evidence that he would interpret the current version of CCZ4 as requiring the council to refuse to grant a permit for minor works on a site identified as open space.
312. The CoM will also provide a consolidated list of other changes to the planning scheme that it seeks, including changes to ensure there is no overlap between the FAR and open space, changes to the referral authority provisions and so on.

**OTHER ISSUES**

313. There are various other very important matters raised by submitters (such as the potential conflict between the concrete batching plants and proposed new uses, and the impacts of the tram bridge) which the CoM will respond to in reply.

**CONCLUSION**

314. Further submissions will be made in stage 2 of the hearings.

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