

**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

Minister

MELBOURNE CITY COUNCIL

MCC

PORT PHILLIP CITY COUNCIL

PPCC

OTHERS

Other Submitters

INTERIM SUBMISSION ON BEHALF OF MCC

Date of document:
Filed on behalf of:
Melbourne City Council Legal
Town Hall
Swanston St MELBOURNE
VIC 3000

9 May 2018
Melbourne City Council

Ref: Brigid Ryan
TEL: 9658 9485
Email: brigid.ryan@melbourne.vic.gov.au

TABLE OF CONTENTS

INTRODUCTION..... 3

REFERRAL AUTHORITY..... 5

INFRASTRUCTURE DELIVERY THROUGH THE FAR 5

LIABILITY ISSUES..... 6

THE DRAFTING AND STRUCTURE OF THE DDO 7

RESPONSE TO MR SHEPPARD'S RECOMMENDATIONS..... 9

REVISED CCZ 4 PLANS..... 10

ALIGNING INFRASTRUCTURE WITH POPULATION: THE 75% BUILD OUT 11

THE FAU..... 13

AFFORDABLE HOUSING..... 16

DCP 19

CAR PARKING..... 20

EXISTING USES..... 21

ESD..... 24

TRANSITIONAL PROVISIONS 24

RESPONSE TO LANDOWNERS' GENERAL SUBMISSIONS 25

CONCLUSION 26

INTRODUCTION

1. The Lorimer precinct was the specific focus of:
 - a) the CoM Submissions dated 20 March 2018 during Phase 1;¹
 - b) the urban design evidence of Mr de Keijzer;²
 - c) the statutory planning evidence of Mr Milner;³ and
 - d) the report of Ms Pearson and the presentation by Professor Adams.
2. In that sense, the Lorimer-precinct hearings are a continuation of the CoM case to date.
3. The CoM considers it timely to provide a response to the Minister's Supplementary Information Notes (SIN) dated 28 March 2018,⁴ the Minister's Supplementary Submissions to Part B Submissions dated 28 March 2018,⁵ the Minister's Part B changes to the proposed CCZ schedule dated 28 March 2018,⁶ the Minister's changes to the proposed planning scheme maps⁷ and the 'general' submissions and evidence of the landowner groups.
4. In these submissions, the CoM identifies outstanding issues and partial or complete solutions which may be able to be resolved between the CoM, CoPP and the Minister in relation to proposed Amendment GC81 during the Advisory Committee hearings scheduled to conclude on 24 May 2018.
5. The key remaining issues for the CoM are (in no particular order):
 - a) Council to be recommending referral authority where not the Responsible Authority;
 - b) If the FAR is to be used to require land for open space and roads to be vested, introducing clauses on the planning scheme that will remove risk of liability for Council;

¹ Document 120

² Document 141

³ Document 73

⁴ Document 151

⁵ Document 151

⁶ Document 156a

⁷ Document 156b

- c) DDO controls that are Lorimer specific, clear and easy to understand and encourage a high quality urban environment, with diverse accommodation and a diversity of built form;
 - d) Amending the CCZ maps, in particular to deal with the tram alignment and streets and laneways;
 - e) Aligning infrastructure to the planned population and jobs through a variety of means including a partly reduced FAR, a capped FAU and updated infrastructure analysis;
 - f) Limiting FAU to affordable housing (at least until a DCP or ICP is prepared and incorporated);
 - g) Including additional mechanisms to deliver the 6% affordable housing target (should be State wide for all urban renewal precincts);
 - h) Including in the planning scheme the mechanism for protecting the tram route and Lorimer Central;
 - i) Resolving the relationship between clauses 3.0 and 4.0 of the CCZ and cl 52.01 to make it clear that a cl 52.01 cash contribution is required in addition to the vesting of the land through the FAR;
 - j) Retaining or preferably reducing the maximum car parking provisions, and including more strongly worded controls/policies about how car parking within podium is to be designed;
 - k) Retaining the mandatory minimum non-dwelling floorspace requirements and exploring a mechanism for transferrable development rights;
 - l) Stronger ESD provisions which deliver the intent of the Fishermans Bend Vision and draft Framework;
 - m) Making appropriate provision for the continued operation of the concrete batching plants; and
 - n) Resisting the landowners' call for transitional provisions.
6. These submissions provide an update on some of those issues, arising through the case presented by the landowners and the Minister so far.

7. These submissions also provide a response to those recommendations of Mr Sheppard that were flagged for further consideration in the Urban Design Submissions.⁸

REFERRAL AUTHORITY

8. On 20 March 2018, the CoM made submissions that it ought to be a referral authority, where it is not the responsible authority.⁹
9. CoM is yet to receive a response to this submission from the Minister. The CoM will provide drafting to reflect this change on, or before, the drafting day.

INFRASTRUCTURE DELIVERY THROUGH THE FAR

Issue

10. The CoM's opening submissions identified the need for the proposal to deliver open space through the FAR mechanism to be fair and equitable.
11. It also highlighted its concerns about liability for compensation in circumstances where the state of the law is uncertain. Those concerns have been borne out in the submissions of the landowners. Mr Morris, in particular, said that there were three possible scenarios that may arise as a result of the amendment. He was not able to say with any certainty which of those three scenarios would come to pass. He identified issues associated with each scenario.
12. Absent very significant government intervention, which appears to be unlikely, the traditional options to fund infrastructure would be:¹⁰
- a) a full cost apportionment DCP including for roads and the construction of open space; and
 - b) an open space levy of well over 17%, to pay for the cost of acquisition of land required for open space.
13. An ICP is another option.
14. The CoM understands that the intention behind the proposed FAR mechanism is to avoid the significant cost imposition of the traditional infrastructure funding methods on landowners. However, it is clear from these hearings that the FAR mechanism has not been universally accepted by the landowners.

⁸ Document 192

⁹ Submission on behalf of MCC dated 10 March 2018, pp 11-15 (Document 120)

¹⁰ Other options are available, such as a betterment levy (GAIC equivalent).

Solution

15. Mr Morris, in answer to Ms Carlisle's questions, said that the use of the FAR mechanism, if combined with another mechanism to trigger compensation (such as a PAO), would be effective to reduce the compensation payable arising from the reservation (and ultimately acquisition) of land for a public purpose.
16. This approach would, necessarily, involve funding from elsewhere to cover the compensation payable. Funding sources may include raising the cl 52.01 levy substantially to cover the costs of acquisition, a DCP, a betterment tax and so on.
17. The CoM considers that this approach is worthy of further consideration at least to fund the parks and tramway if not the roads, streets and laneways.¹¹
18. Land that is required for higher order infrastructure, such as the tram, must be acquired by way of a clear process, whether that is by direct acquisition or a PAO or otherwise.
19. The CoM agree with Mr Morris that there must be a funding plan – a point that has been made on numerous occasions by both CoM and CoPP.
20. It is in all parties' interests that the amendment has a clear statutory basis and provides an outcome that is fair and equitable.
21. Given the significance of this issue, the CoM's current "work in progress" draft of the CCZ (**Attachment 8**) removes the cl 3.0 and 4.0 triggers which require the vesting of land for parks and roads. That leaves a significant vacuum which will need to be filled prior to the amendment proceeding.

LIABILITY ISSUES

22. These submissions are made without prejudice to the matters already raised by the CoM in relation to using the FAR to require the vesting of land for open space (and to a lesser extent streets and roads).

Issue

23. Mr Batt and Ms Foley are of the opinion that the compensation provisions of the *Planning and Environment Act 1987* would not be engaged if a permit was refused on the basis that land had not been provided for the roads and open spaces as required by the Capital City Zone schedule.¹²

¹¹ A PAO or equivalent is not needed over the streets and laneways, at least within the Lorimer precinct, given their local function (as per the evidence of Mr Shipp).

¹² Document 155

24. A different view has been expressed by the landowners.
25. The difference of opinion simply reflects the CoM's submissions to the AC early in the hearing that this issue has not been settled by the Court.¹³ The CoM, therefore, remains concerned that if the compensation provisions are triggered, Council is potentially exposed to liability where it is the Responsible Authority.
26. Simply put, the Council is not in the same position to bear the financial risk compared to the budget of State government.

Solution

27. All parks which are to be 'acquired' (as nominated by the government in document 138) should not trigger cl 3.0 and 4.0 of the CCZ 4 (discussed further below). This would include Lorimer Central. Those parks need to be separately protected (eg by a PAO). That is, however, only a partial solution.
28. The planning provisions could be amended to make the Minister a determining referral authority for all applications for which the Council is the Responsible Authority, which in turn would mean that the Minister is liable to pay any compensation emanating from a refusal on the public purpose ground.¹⁴
29. Alternatively, the requirement to vest the land could be limited to situations in which the Minister is the Responsible Authority. That is less than ideal as it may encourage multiple applications of 24,999 sqm of floorspace.
30. Lastly, a MOU between the Minister and Council whereby the State agrees to accept risk of liability arising from delivery of open space for Fishermans Bend Urban Renewal Area may resolve this issue. However, if a MOU is to be entered into, it should occur prior to the amendment proceeding and should be a matter of recommendation by the Panel to the Minister.

THE DRAFTING AND STRUCTURE OF THE DDO

Issue

31. The CoM Urban Design Submission dated 10 April 2018 sets out the CoM's key issues relating to the DDO, including its support for a Lorimer specific DDO.¹⁵
32. In addition to the issues outlined in its Urban Design Submission dated 10 April 2018, the CoM has also recorded its preference for:

¹³ Document 120 at [44] – [46]

¹⁴ see s 109 of the *Planning and Environment Act 1987* (Vic)

¹⁵ Document 192

- a) using storeys for calculating street wall heights and building height;
 - b) using metres for calculating the height of buildings for the purpose of imposing setbacks and building separation and the height of buildings for the purpose of imposing wind effects requirements;
 - c) using the general structure of DDO10 (in particular cl 2.3 and use of the tables which set out built form outcomes and requirements).
33. The CoM notes that, subject to keeping the control simple, Mr Sheppard generally agrees with that approach.¹⁶

Solution

34. The CoM requests that the DDO maps include the following:
- a) preferred heights in storeys;
 - b) maximum street wall heights in storeys (including how the street wall adjacent to the tram is to be treated and how the street wall adjacent to Turner St is to be treated);
 - c) the location of the Lorimer parkway, Lorimer Central etc (ie places referred to in the new built form outcomes table that the CoM proposes be included in the DDO);
 - d) the location of the open space protected by the shadow controls (with each park numbered, so it can be cross referenced in the overshadowing control table).
35. The CoM has also requested shadow diagrams showing the effect of the street wall proposed along the tram route on Lorimer Central.
36. The CoM tables a Lorimer specific DDO (**Attachment 6**) which picks up on the issues it has raised. It has been informed by the structure of DDO10, proposed amendments C308 and C309 and a response to the evidence of Mr Sheppard and Mr deKeijzer.
37. The CoM understands that a Lorimer specific DDO is likely to be produced by the Minister on 14 May 2018, after hearing further evidence and submissions.
38. The CoM anticipates that the drafting of the DDO is a matter that can largely be resolved between the Minister and the CoM.

¹⁶ XXN of Mr Sheppard by J Forsyth on 14 April 2018

39. The CoM has also proposed changes to the MSS. The changes reflect the proposed DDO, including policies on flooding and provide corrections and clarifications (**Attachment 7**).

RESPONSE TO MR SHEPPARD'S RECOMMENDATIONS

40. These submissions respond to the recommendations of Mr Sheppard that were under consideration by the CoM at the time of its urban design submissions.

Issue

41. Mr Sheppard recommends making street wall heights discretionary.

Response

42. The CoM is not opposed in principle to allowing a permit to be granted for an increase in the street wall height if it means that a building typology is delivered that is not a podium tower, subject to acceptable overshadowing consequences.
43. For example, it may be appropriate to increase the street wall height on the south of 30m east west streets to allow, for example, a 10 storey perimeter block development where this delivers specified built form outcomes and complies with overshadowing and wind considerations.
44. This change is reflected in the CoM's proposed DDO.

Issue

45. Mr Sheppard recommends that streets greater than 22m in width should have a maximum street wall height of 30 m (at present this is only allowed where the overall building height is less than 38m).
46. The CoM understand that the effect of this change would be to increase the street wall heights on Lorimer St and Ingles St from 6 to 8 storeys. It may also change the street wall height on Turner St, depending on how that street is treated by the DDO.

Response

47. Again, CoM is not opposed in principle to allowing a permit to be granted for an increase in the street wall height (on selected streets) if it means that a building typology is delivered that is not a tower on podium, subject to acceptable overshadowing and wind consequences and delivering specified built form outcomes.
48. This change will be reflected in the CoM's proposed DDO.

Issue

49. Mr Sheppard recommends minimum street wall heights.

Response

50. The CoM submits that this recommendation is unnecessary and that concerns regarding lower street wall heights can be dealt with through the built form outcomes set out in the draft DDO, unless further justification is presented to progress this recommendation further.

REVISED CCZ 4 PLANS

51. These submissions are made without prejudice to the matters already raised by the CoM in relation to using the FAR to require the vesting of land for open space (and to a lesser extent streets and roads). The submissions are made to inform the CCZ plans should the Minister adopt that mechanism.

Issue

52. The plans do not differentiate between the land to be vested through cl 3.0 and 4.0 and the land to be separately acquired.
53. The Minister's revised CCZ plan showing the roads and streets and laneways should show the dimensions of the new road reserves.¹⁷
54. It is not currently clear whether or how the proposed tram alignment along Lorimer St and through the park is to be protected. The tram alignment must be protected, preferably with a PAO.
55. The designation of a landscape strip along Lorimer St and Turner St has no link back to clause 3.0 and 4.0 and in any event is not a genuine designation of the reason for the setback. There is a current application which proposes built form on that alignment at 111 Lorimer St, demonstrating the urgency for protection.

Solution

56. Revised CCZ 4 plans need to be prepared:
- a) If the FAR is to be used to vest land, the open space plan should separately identify the land to be vested through the FAR and land to be separately acquired.
 - b) The plan showing the roads and streets and laneways should show the dimensions of the new road reserves, and should include the 12m wide streets and laneways for Lorimer.
 - c) The proposed laneway to the east of 111 Lorimer St should align with the (new) title boundary (the CoM takes a pragmatic view on this issue given

¹⁷ Document 156b

that the subdivision has already occurred, notwithstanding the disconnect between the new title boundary and the laneway to the north across Lorimer St).

- d) The CCZ and plans should also be revised to deal with the tram alignment, for its full length.
 - i) A PAO should be applied along Lorimer St and through the proposed park.
 - ii) The tram alignment on Turner St is shown on the draft Framework as being within the current road reserve. It is appropriate that it remains on the land to the north of that road reserve given that the south will be less overshadowed (and hence should be used for other activities within the linear spine).
- e) The 10 m wide setback to Turner St should be shown as a road widening or linear park, not a landscape strip.

ALIGNING INFRASTRUCTURE WITH POPULATION: THE 75% BUILD OUT

The Issue

- 57. Aligning infrastructure to the planned population and worker target (currently 12,000 people and 6,000 jobs in Lorimer) is essential. The CoM continues to be of the opinion that a 100% build out should be planned for and the FAR amended accordingly. (The FAU is separately discussed below)
- 58. On any calculation, the residential densities proposed for Lorimer are high.¹⁸
- 59. The landowners argue that the built form outcomes ought to be determined, and then infrastructure planned based upon a maximized population. This issue has been comprehensively addressed by all parties. The CoM remains of the view that the densities proposed, and the corresponding built form outcomes, for Lorimer are already very significant and are pushing the boundaries of what can be acceptably accommodated in this renewal area.
- 60. Mr Shimmin's oral evidence is that the residential densities proposed for Lorimer (based on a 100% build out) are acceptably high – noting they are higher than the densities in Southbank and Docklands both now and forecast to 2037 and beyond

¹⁸ See the CoM Urban Design submissions. The CoM has requested information from Ms Hodyl as to how the 255 dwellings/ha in Document 66 Part D Table 2, (clause 22.XX) Day 1 version) has been calculated and notes that request remains outstanding. So too, if the correct figure to insert into the draft Framework for the net developable area.

- to 2050. These submissions attach the extracts from the geografia website referred to in cross examination of Mr Shimmin (**Attachment 1**).
61. The CoM does not accept that Fishermans Bend is, or should be, another Southbank. It should be a place where residential densities are high, but not at the expense of amenity and livability. Repeated tower on podium typologies will not deliver an environment that will showcase high quality, high density apartment living and risks repeating the mistakes of Southbank. Repeated tower on podium typologies will not help to change the Melburnian aversion to apartment living. Repeated tower on podium typologies will not create a great place to live, work and recreate, for all of the reasons previously given.
 62. As flagged in its Urban Design Submissions,¹⁹ the CoM undertook modelling to explore the effect of reducing the FAR to better align with the target population for Lorimer. It chose to model a reduced FAR only to the north of the Lorimer green spine, in recognition that the land to the north of the parkway is better placed to provide a diversity of built form while the land to the south of the parkway can accommodate multiple tower forms without undermining the CoM's overall vision for Lorimer. The CoM has therefore reduced the FAR to 4:1 to more closely align with 12,000 population target to the north of the precinct, but has not reduced the FAR in the south.
 63. The reduction in the FAR to 4:1 north of the Lorimer green spine will result in a significantly different built form outcome – one which reflects more closely the CoM's view of this high density residential precinct on the edge of the CBD, and avoids the pitfalls of Southbank.
 64. The CoM refers to Ms Pearson's Lorimer Built Form Testing and Capacity Modelling Report dated May 2018 (**Attachment 2**). Ms Pearson's modelling indicates that, with a reduced FAR to 4:1 north of the parkway, there will be a total of 6,499 dwellings in Lorimer including 5,198 FAR dwellings with the remainder being 1,301 DAM dwellings (ie already permitted). When dwellings from approved residential permits and FAR dwellings are combined, this results in a total population of 13,257 people rather than the planned for 12,000 people in Lorimer precinct under the draft Framework and the Vision.
 65. Previous modelling carried out by CoM in March 2018 concluded that if the current FAR of 5.4:1 is applied across all sites in Lorimer and the approved permits proceed, this will deliver 15,392 residents and 7,545 workers. This is 22% above

¹⁹ Document 192, at [26]-[27]

- the current population target in Lorimer upon which the infrastructure has been planned for. The 22% figure does not account for an uplift in population that could be delivered through the FAU.
66. Further CoM modelling dated May 2018 endeavours to equate FAR with the planned for population and jobs targets in the draft Framework for Lorimer. The revised modelling analysis considers a reduced FAR which better aligns with planned for social and community infrastructure, open space and transport.
 67. The reduced FAR does result in 4796 total workers, which is below the 6,000 target, offsetting the slightly higher number of residents. This reduction in jobs is a historic consequence of the permits granted in Lorimer.

Solution

68. The Advisory Committee should recommend a reduction in the FAR to 4:1 north of the Lorimer green spine to better align with the 12,000 target population and to create a more diverse built form.
69. If the result of the Advisory Committee recommendations is that the build out of Lorimer precinct will result in a resident population in excess of 12,000 on a full build out (as per the figures outlined above), then an updated infrastructure assessment is required to ensure that the planned infrastructure continues to be suitable for that population. This does not need to hold up the introduction of the Planning Scheme Amendment.

THE FAU

Issue

70. The CoM raised concerns with all three categories of FAU:
 - a) Affordable (social) housing;
 - b) Community infrastructure;
 - c) Open space.

The solution

71. The CoM supports the changes to the CCZ4 schedule para CCZ4.0p6 in document 156A in so far as the Council is listed as a party to the section 173 agreement for FAU. It also supports the nomination of the categories of public benefit in the definitions section (noting that the CofM suggests the categories be reduced to Social housing, as set out below).
72. The Minister's further submissions do not address (or address sufficiently) the way in which the FAU for community infrastructure would operate. Unless and until that

- clarification is provided, it should not be a category of FAU. It may be that the FAU for bringing forward community infrastructure is best introduced into the planning scheme at the same time as the DCP or ICP given their interrelationship. Further, if it is to be a category of FAU, it is inappropriate that it be reviewable at VCAT because the deliver agency under the DCP/ICP must have the final say, as previously submitted.
73. The CoM does not support a FAU for additional open space for the reasons already outlined.
74. The CoM supports the use of an FAU for social housing, so long as:
- a) it is capped and coupled with a decision guideline requiring consideration about whether further infrastructure is required to support the additional population;
 - b) the planning scheme provisions are clear that an agreement to allow an FAU does not derogate from the need to ensure that the development provides an acceptable urban design outcome; and
 - c) the Public Benefit Guidelines document is amended.
75. The CoM has tried to reflect these changes in its “work in progress” version of the CCZ.
76. Ms Hodyl states that the FAU is only available by agreement which provides the opportunity for careful consideration of the potential impacts of more significant population growth.²⁰ However, the exercise of the Minister’s discretion to enter into an FAU agreement should be independent of the effects of the planning application, which is assessed later. In other words, the decision to grant an FAU should not involve consideration of impacts of the FAU on built form or infrastructure – that is something that is assessed through the planning application, rather than at the initial FAU agreement stage.
77. The considerations relevant to a decision to enter into a FAU should be strictly limited to the matters set out in the Public Benefit Guidelines (the ratio, security of tenure, whether there is a provision of the agreement that requires the accommodation to be suitable and tenure blind etc).
78. The CoM’s proposed work in progress CCZ proposes decision guidelines to assist the exercise of discretion as to whether or not *a permit should be granted* for:

²⁰ L Hodyl (2018) Addendum 5 [48] (Document 154)

- a) the use of land for dwellings in excess of the FAR; and
 - b) development including an FAU component.
79. The current proposed CCZ decision guidelines are inadequate. CCZ 4.0p65-68 blur the distinction between the matters that ought to be considered when entering into an agreement and the matters that must be considered in relation to the grant of a permit.
80. While it is relatively straightforward to assess the built form implications of the FAU dwellings, it is difficult to know how the infrastructure implications of granting an FAU could be assessed on a site by site basis, even if there is a decision guideline directed to that consideration.
81. The Submission of the Australian Institute of Architects²¹ gives an example from NSW in which floor area uplifts are offered in return for certain planning or design outcomes, including the example where a bonus of up to 10% for floor space OR height is permitted.
82. The Melbourne City Council's resolution does not set out an appropriate cap. It is the view of the City of Melbourne officers that, given the significant need for social housing, a cap of 10% (being 10% of the total floorspace of a development, including non-dwelling floorspace) would be manageable and provide an appropriate balance between facilitating good social outcomes while not unreasonably compromising the impacts on planned infrastructure.
83. CoM reiterates the need to cap FAU.
84. If it is not capped, then a density control must be introduced. To introduce a 'soft cap' the Minister proposes to amend the proposed CCZ to add a further condition for Dwelling as a Section 1 use. However, at the time that document 156a was tabled, the CoM identified a potential unintended consequence of the Minister's proposed drafting being that FAU dwelling (and the uplift dwellings) would appear to be prohibited under the Part B version of the proposed control. This issue has also been raised by Mr Tweedie. The CoM has also noted in its Urban Design submissions the difficulties with the soft cap mechanism proposed by the Minister in the absence of a dwelling density plan.
85. If the FAR matches a 100% build out (discussed above) then the only need for a density control is to regulate an unconstrained FAU. Despite the CoM being initially

²¹ Document 259

supportive of the density control, is much easier to cap the FAU than introduce a density control.

AFFORDABLE HOUSING

Issue

86. Key direction 6 of the Vision is:

6. Diverse communities

Fishermans Bend is a place for a diverse range of people at all stages of life. A variety of housing types, including higher density and medium scale apartments, are complemented by community services, well-designed open spaces and tree-lined streets. This creates a place where families of all types can live fulfilling lives. Affordable housing is provided as part of the residential mix.

87. According to the Vision:

People of all backgrounds and ages find Lorimer a welcoming and convenient place to live and work.

88. The Minister for Planning Part B changes to the CCZ (Document 156a) defines Public Benefit for the purposes of securing a floor area uplift as including the provision of 'social housing'. The term 'social housing' is defined in the revised CCZ as follows:

Social Housing has the same meaning as in the *Housing Act 1983*

89. The practical effect of this revision is to limit the provision of housing to those eligible for 'social housing'. To be eligible for 'social housing', a person must live in Victoria and:

- a) be an Australian citizen or a permanent resident;
- b) not earn or own more than the current social housing income and asset limits;²² and
- c) not own or part-own a property.

²² The income limits for the Register of Interest from 1 April 2018 are:

- Single person \$992 weekly income;
- Couple, no dependents \$1518 weekly income;
- Family (one or two parents) with dependent children \$2047 weekly income.

The asset limit for Register of Interest is \$32,276. The threshold limits are lower for Priority Access housing. Source: <www.housing.vic.gov.au social-housing-income-and-asset-limits> on 8 April 2018.

90. The CoM agrees that extracting the definition of 'social housing' provided clarity on the type of housing to be delivered by the FAU. However, it will only go part way to the broader target of 6% affordable housing in FBURA. There is no mechanism proposed to deliver housing for categories of people who are not eligible for social housing²³ but otherwise require affordable housing such as key workers and lower income groups who will provide vital services in Fishermans Bend and will be essential to the success of the 'peninsula' model but require discounted rent in order to live locally.
91. This is potentially a lost opportunity to achieve the Vision and the draft Framework particularly given that draft Framework contemplates a broader range of options for delivery of social and affordable housing.²⁴ The value of delivering affordable housing in Fishermans Bend is a benefit to the whole community:
- When commuting becomes too expensive or too hard on family life, they often change jobs. The economy loses skilled workers and there are fewer families and older people in the community, and the quality of community life drops for everyone.²⁵
92. CoM requested advice as to the number and address of sites within Fishermans Bend Urban Renewal Area for which Section 173 agreements have been executed to date which provide for development contributions and a copy of each permit and s 173 Agreement. In response, the Minister confirmed that there are 5 relevant sites. These sites are listed in table in Appendix 1. None of the s 173 agreements or permits in this bundle makes provision for affordable housing.²⁶
93. CoM has recently been provided with 2 further permits issued by VCAT by consent where the Minister was the Responsible Authority for sites within the City of Port Phillip municipality.²⁷ By order, both permits now make provision for affordable housing to be delivered in a broad sense pursuant to a s 173 Agreement. It seems reasonable to conclude that had these permits not been negotiated through a VCAT process, then the market would not have elected to provide affordable housing.

²³ See Judith Stubbs (2013) 'Fishermans Bend Urban Renewal Area: Options for Delivery of Affordable Housing' prepared for Places Victoria.

²⁴ Draft Framework (2016) p 55, par 3.5.3 and 3.5.5

²⁵ Stubbs (2013) p 7

²⁶ They provide for: community and recreation infrastructure projects including sport and rec and libraries; transport infrastructure projects; open space; land acquisition for the above.

²⁷ *SM253 Pty Ltd v Minister for Planning* VCAT Order dated 27 November 2017 (Attachment 3) and *BEG Developments Pty Ltd v Minister for Planning* VCAT Order dated 23 January 2018 (Attachment 4)

94. On 6 February 2018, the Future Melbourne Committee endorsed the West Melbourne Structure Plan 2018 (the Structure Plan). Planning Scheme Amendment C309 (Document 266b) (submitted to the Minister for authorisation by resolution of the Council on 17 April 2018) implements the land use and built form directions and the design recommendations of the Structure Plan. One of the amendments made by C309 is to Clause 21.16 in the MSS to insert a new clause which includes provision for affordable housing as follows:

Housing

Require the provision of affordable housing in the Flagstaff, Spencer, and Station precincts.

Deliver approximately 5500 additional dwellings to meet the projected population growth.

95. Clause 2 of the proposed SUZ states:

Use of land

Use for Dwellings – Affordable Housing

For land located in the Flagstaff, Spencer and Station Precincts, as shown on Figure 1, where a permit is required to use land for Dwellings, one in sixteen dwellings within the development (at least 6%) should be an affordable housing dwelling, which is to be provided to a Housing Provider at no cost or to be held in an affordable housing Trust and managed for the sole purpose of affordable housing.

If in calculating the affordable housing requirement the result is not a whole number, the affordable housing requirement is to be rounded up to the nearest whole number.

96. [As an aside, cl 2 of the SUZ also contains provisions which require a minimum floor area not used for a dwelling].
97. The Council's resolution did not state how affordable housing should be delivered in Fisherman's Bend and hence officers cannot take the issue any further other than to draw the AC's attention to the C309 documents and to draw the AC's attention to the fact that, without intervention, the Vision for Fishermans Bend, and for Lorimer, will be unlikely to be met.
98. The evidence supports further steps being taken to ensure that affordable housing will be provided in Fishermans Bend. In addition to Mr Spiller's evidence, the AC has heard that:

- a) Ms Hodyl does not expect the FAU by itself to deliver 6% social housing.²⁸ Further, she said if it was used in that way it would provide unacceptable urban design impacts.²⁹
- b) Mr de Keijzer stated that delivery of affordable housing delivery is important although he does not necessarily support the FAU/FAR,³⁰
- c) Mr Mackintosh stated that while he had not done the numbers he did not expect affordable housing to be delivered by the market alone;³¹ and
- d) Mr Milner stated that the delivery mechanism for affordable housing needed to be stronger: 'We continue to pay lip service to affordable housing and don't deliver it. The mechanisms will need to be much stronger if we are going to walk the talk'.³²

Solution

- 99. Corresponding changes need to be made to the Public Benefit Guidelines (to reflect the proposal that FAU be limited to social housing) including to clarify what is meant by the term 'Registered Affordable Housing Association' (which is not a defined term under the *Housing Act 1983*).
- 100. The CoM calls on the government to, at a minimum, formulate a solution to the delivery of the baseline 6% affordable housing in Fisherman's Bend (a solution that should be applied consistently across all urban renewal areas).
- 101. This solution does not necessarily involve the developers all gifting a percentage of the development for social housing. Other solutions are clearly available. The market must, at least, be required to construct housing to meet the needs of lower income households, in a tenure blind model, even if government subsidies are required to deliver that housing product.

DCP

Issue

²⁸ Oral evidence of L Hodyl on 15 March 2018 (AM)

²⁹ L Hodyl (2018) Addendum 5 p 13 (Document 154)

³⁰ And not necessarily for delivery through the FAU/FAR: Evidence during XXN by Chris Wren QC on Day 15, 10 April 2018.

³¹ Evidence during XXN by Peter O'Farrell on Day 6, 19 March 2018

³² Evidence in chief on Day 9, 22 March 2018

102. The s 173 agreements and permits reviewed by CoM deal with the possibility of a future DCP. However they say that the developer has no future liability for any additional development contributions above the \$15,900.³³
103. The evidence before the AC points to a significant funding shortfall for reasons already stated.
104. If transitional provisions are not included and the 'interim' levy not increased, the funding shortfall will only grow.³⁴

Solution

105. CoM welcomes the Minister's confirmation that a final DCP or ICP is required and will be delivered in the next 12-18 months.³⁵ That DCP or ICP will form part of a broader funding and finance package. CoM agrees that proposed Amendment GC81 can proceed without a DCP, which is consistent with its earlier submissions on this matter, but subject to the provision of a broader funding and finance package as requested also by CoPP.³⁶
106. The Minister should immediately increase the interim levy based upon its most recent information of infrastructure required and the costs of that infrastructure.
107. CoM has broad agreement with the list CoPP provides of further essential work set out in paragraph 27 of the Addendum to Stage 1 Overarching Submission dated 9 April 2018.

CAR PARKING

108. The CoM has produced:
- a) a revised Parking Overlay (**Attachment 5**) and CCZ having regard to the oral evidence of Ms Dunstan and the report of Mr Walsh; and
 - b) proposed changes to the DDO (built form outcomes and requirements under the heading adaptable buildings and car parking) in order to address some

³³ Refer Appendix 1

³⁴ Refer Fishermans Bend Public Infrastructure Funding and Delivery Expert Evidence Statement of P Shipp dated March 2018 p 17-18, 25. (Document 72)

³⁵ Supplementary Submissions to Part B Submissions dated 28 March 2018 [48] (Document 151). Draft DCP dated November 2013 prepared by Places Victoria.

³⁶ CoPP Addendum to Stage 1 Overarching Submission dated 9 April 2018, p 4-5 (Attachment to Document 182)

of the issues raised in Amendment C308 documentation, and to consolidate matters raised across the parking overlay and DDO.

109. The CoM remains of the view that precinct based solutions should be encouraged but agrees with Ms Dunstan that the PO (which only triggers a permit for providing more than the maximum number of spaces) can only go so far in that regard. The parking overlay can, however, encourage parking to be consolidated in one building on large sites which contain multiple buildings. Broader precinct based car parking is something that needs to be encouraged and incentivised by the government.
110. Although various experts have expressed some concern about the 3.8m floor to ceiling heights producing an inefficient car park layout, if the buildings are sleeved with active uses then the floor to ceiling heights need to be 3.8 m in any event, whether they are designed for adaptability or not.
111. The drafting of the PO has been complicated by the fact that it being used for something that the VPPs are not set up for. It would be preferable if the VPPs were amended to:
- a) allow a schedule to be included to cl 52.34 (bike parking); and
 - b) make it clear that rates for motorcycle and car share parking can be set by a schedule to the parking overlay.
112. Failing such an amendment, those requirements are appropriately contained in the CCZ schedule.
113. The CoM refers to and repeats its urban design submissions which call on the Advisory Committee to resist the call by the landowners to increase the maximum parking rate. Once car based patterns are established, it will be nigh on impossible to reverse that trend. The CoM's preference is, in fact, for the maximum rate for dwelling to be reduced.
114. The CoM was able to extract the car parking provision proposed for 6 of the applications in Lorimer, including the two approved permits, as follows
- a) Average car parking provision ratio (for two approved permits) is 0.73 per dwelling;
 - b) Average car parking provision ratio (for six applications including the two approved permits) is 0.76 per dwelling.
115. That data confirms the CoM's submissions that, in Lorimer, a rate of 1 space per dwelling is greater than what the market is demanding. Applying such a rate would, therefore, be ineffective to curb parking.

EXISTING USES

Issue

116. The Minister is yet to provide a comprehensive response to the issue of how existing uses will be supported through the transitional process. The Minister's lawyers have indicated that they will address this issue, and have handed up a document which proposes amendments to the CCZ (doc 227), but they have promised a further version.
117. Mr Barnes and Mr Negri propose changes to the MSS to recognise the role played by the concrete batching plants. While the CoM supports the ongoing operation of those industries, and the general intent of the proposed changes, it does not accept in full the changes proposed by those experts.

Solution

118. The CoM supports the concrete batching plants remaining the area to facilitate the process of transition. The CoM expects that the concrete batching plants will eventually transition out of the Lorimer precinct, but accepts that may not happen within the lifetime of the framework plan.
119. A permit is required (cl 1.0 of the CCZ) for certain uses if the threshold distance in cl 52.10 is not met. Mr Negri proposes that there be an incorporated document that identifies the cl 52.10 uses that may trigger the need for a permit, as well as the potential amenity impacts associated with each of those uses.
120. The CoM does not oppose in principle the proposition that there should be such a plan. However, the proposal that it should be incorporated is very problematic for 2 reasons:
- a) First, it is the existence of the use which triggers the need for a permit, not whether the use is identified in the plan. Hence, such a plan will only be of assistance if it is updated each time a permit is issued for a new s52.10 use.
 - b) Secondly, it is unrealistic to expect that the planning scheme will be amended very few years for the purposes of updating such a plan.
121. If such a plan is developed to aid permit applicants, the councils and the DELWP in assessing whether a permit is required, the plan should sit outside the planning scheme.
122. It is a plan that could be updated regularly as between the Minister, CoPP and CoM as permits are granted. Alternatively, if there is a suitable governance body established for the FBURA (as suggested by CoM) then that body could be responsible for preparing and updating the plan.

123. The CoM supports the proposition by Mr Negri that there should be exemptions from various application and permit requirements in the CCZ for buildings and works permits for ongoing industrial uses. There could be a single clause to achieve that result.
124. The CoM does not accept that there needs to be specific provisions in the LPPF - they are double ups and add little to Mr Negri's proposed changes to the MSS and CCZ.
125. In so far as the MSS changes are concerned, the CoM suggests that (as agreed by Mr Negri), they should be confined to supporting the "continued operation of the concrete batching plants" and further that it should be limited by the words "during the transition from the land from an industrial area to a high density mixed use area". The reference at p9 of 12 in Mr Negri's version of the MSS to "the continued transport infrastructure" should be amended to "access".
126. The CoM does not accept that the use of land for a park (informal outdoor recreation) should trigger a permit for use. The use of the land nominated as park in the planning scheme should not be up for debate. Regulating the development through a permit trigger for use is inappropriate and is the equivalent of using a hammer to kill an ant. The relevant public authority (whether it be the council the State or another governing body) will design and construct the parks. To the extent that there are reverse amenity issues, there is no reason to think that they would not be taken into account by that body at the time of the design. In all likelihood, the land will be rezoned at the time of acquisition in any event – and so the issue will be a moot point.
127. The CoM does not accept that additional objectives ought to be added to the CCZ as Mr Negri proposes. They elevate the importance of those existing uses too high, given that the primary purpose of the CCZ is to provide for a high density mixed use precinct. If there are amendments to the objectives, it would be appropriate to say words to the effect "To manage the transition from a primarily industrial area to a high density mixed use area over time."
128. Barro raises access issues. The concern raised by Barro about the closure of Turner St should be able to be managed by way of a transition plan - a recommendation that the CoM made to the Advisory Committee in its opening submissions.
129. Barro is concerned by the proposed road beside the Freeway. If there is an appropriate exemption to cl 3.0 and 4.0 for the redeveloped of land in association with existing uses, then even a redevelopment of the Barro land will not trigger cl 3 and 4. Therefore, the only way that land could be required for the road would be by way of acquisition. If that land was acquired for a road, then Barro would be entitled

to compensation. Whether or not the construction of that road creates significant impacts on the Barro business could be assessed at that time, but it appears that the trucks could still proceed under the Ingles St overpass, and along the new road and access the site either via the new road or via Boundary St.

ESD

130. Stronger ESD provisions are required to deliver the Vision and the sustainability goals of the draft Framework. Mr Williamsons' uncontested evidence is that the controls as drafted will not meet the goals of the Framework.
131. A 5 star design and as built standard should be adopted and is supported by the Property Council of Australia.³⁷
132. The ESD provisions in proposed Amendment GC81 including proposed clause 22.27, and the proposed DDO and CCZ should be amended for consistency with the existing provisions in the Melbourne Planning Scheme and to ensure that the sustainability objectives are delivered.

TRANSITIONAL PROVISIONS

133. We have already made submissions as to why, on balance, it would be a fair outcome if no transitional provisions are provided.
134. The introduction of transitional provisions has the potential to significantly and adversely affect the ability of the precinct to be developed. 111 Lorimer St is a good example. It prejudices the future development of the precinct in the following ways:
- a) proposes built form over the proposed tramway along Lorimer Street;
 - b) provides an inactive frontage dominated by car parking services and access ways at both ground and podium levels along a north south laneway (a laneway that is supposed to be activated and led from the park on Boundary Street to Lorimer Street);
 - c) overshadows the proposed park on Boundary Street as per the diagram in Ms Pearson's report;
 - d) does not align with the existing north south connection to the river (noting that this horse has now bolted given the subdivision that was approved); and
 - e) delivers an inadequate level of non-residential development.

³⁷ Refer Euan Williamson Addenda 1 p 6 (Document #) and Letter to the Panel from the Property Council of Australia dated 18 April 2018 (Document 248).

135. Ms Pearson's report (p 7 of her report, but note there was a replacement page separately tendered as document 124c) demonstrates that the number of dwellings in the pipeline, namely 4721, is almost the entire target number of dwellings for Lorimer (5882). It also demonstrates the lack of non-residential floorspace. We have already made submissions about the infrastructure funding shortfall that would be exacerbated if transitional provisions were included in the amendment.

RESPONSE TO LANDOWNERS' GENERAL SUBMISSIONS

136. The landowners submit that the time should be taken to get the controls right,³⁸ yet they are not willing to wait until the proper planning for the precinct is undertaken before proceeding with development applications.
137. The landowners submit on the one hand that the amendment is premature because the planning for and delivery of key public infrastructure is not resolved.³⁹ Yet, on the other hand, they argue that development can, and should, proceed in the absence of such commitments. The arguments are hard to reconcile.
138. The landowners submit that the current permits have been approved because they have been judged to be acceptable outcomes that provided net community benefit.⁴⁰ While the permits may have been judged as representing "acceptable outcomes" in the context of the current 'interim' controls, that provides little comfort when it is clear that the controls are inadequate to the task.
139. It is universally agreed by all expert witnesses who have proffered an opinion on the subject,⁴¹ that the current controls (which among other things do not make proper provision for infrastructure) will not produce an acceptable planning outcome at Fishermans Bend. So much is manifestly obvious.
140. The landowners' submission is effectively that the Advisory Committee should recommended abandonment of this amendment. The practical implication of that submission is retention of the status quo.
141. The Advisory Committee should reject the proposition⁴² that the amendment is incapable of being fixed by the Panel.

³⁸ Document 253 at [22].

³⁹ Document 253 at [19b].

⁴⁰ Document 253 at [13]

⁴¹ including Mr Biacsi, Mr McGurn, Mr Sheppard and Mr Milner

⁴² Document 253 at [14]

142. If the Advisory Committee forms a view that a standard approach to infrastructure contributions should be adopted (cl 52.01 and a DCP/ICP), and a PAO applies in addition to the FAR mechanism, that does not involve abandoning the amendment.
143. Even in those circumstances, the amendment can progress with a modified clause 3.0 and 4.0 of the CCZ, a raising of the interim DCP levy, based upon the best current information, a commitment to produce a DCP/ICP within a specified time period, an immediate raising of the cl 52.01 levy to a minimum of 17% and the imposition of PAOs over the parks.
144. If the Advisory Committee has significant concerns about any aspect of the Amendment, it should adopt Mr Milner's suggestion to produce an interim report to enable those concerns to be addressed.

The AC should reject the suggestion that the current controls could simply be tweaked on an interim basis. If the Advisory Committee is inclined to recommend further work be undertaken, it should recommend stricter interim controls be adopted (eg controls that prevent development from proceeding if it is not generally in accordance with the Vision and (an amended) Framework) until final controls are developed through a further process.

CONCLUSION

145. Significant progress towards the adoption of proposed Amendment GC81 has been made during Phase 1 of the hearings of the Advisory Committee. Further submissions will be made on closing. The CoM hopes that the issues as between the Minister and the CoM can continue to be narrowed.
146. The CoM has proffered its suggested versions of the CCZ, DDO, PO and MSS as interim draft versions, noting that it expects further refinements to these documents to occur prior to the drafting day. The issues raised by the case are complex, and the drafting process is difficult.
147. There are further outstanding issues for which solutions are yet to be identified:
- a) The funding and finance plan must be completed and released before the Amendment is adopted to ensure that the Amendment is consistent with the government's financing plan, which appropriate mechanisms for the acquisition of land required for public purposes.
 - b) Further work is required on the topic of raised floor areas and flooding risk management and impact mitigation.
 - c) A governance body must be established.

Juliet Forsyth

Owen Dixon Chambers West

Eliza Bergin

Anthony Mason Chambers

Liability limited by a Scheme approved under Professional Standards Legislation

Appendix 1: Table summarising information provided by the State to CoM on
8 March 2018

Appendix A Tab	Address	Permit	Agreement
1	89-103 Gladstone Street, South Melbourne	Permit 2013-002601	Executed, undated
2	165-167 Gladstone Street, South Melbourne	Permit 1140/2014	Executed, undated
3	164 Ingles Street, South Melbourne	Permit 2013- 001464 Permit P2/2016/A	Executed 2015 Executed 2016
4	320 Plummer Street, South Melbourne	Permit MPA140005 (original and amended permit)	Executed, undated
5	19 Salmon Street, Port Melbourne	Permit 1181/2014 Permit 201534819 – condition 17 requires development contributions	Executed 16 June 2015 No agreement