IN THE MATTER OF PROPOSED AMENDMENT GC81

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

CLOSING SUBMISSION ON BEHALF OF MCC

Date of document: 24 May 2018
Filed on behalf of: Melbourne City Council
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INTRODUCTION

1. This closing submission addresses the following topics:
   a) the Vision and the task of this Advisory Committee (AC);
   b) proposed amended draft controls for the Melbourne Planning Scheme;
   c) response to AC’s request for information on the FAU and queries raised in Document 294;
   d) areas of agreement and those that remain in dispute between the CoM and the Minister; and
   e) response to selected landowners’ submissions.

2. The City of Melbourne requests that the AC makes the following recommendation in its report:
   
   It is appropriate for the Minister to make proposed planning scheme amendment GC81 subject to:
   
   (A) revisions in order to ensure the Vision for Fishermans Bend, the 10 strategic directions and the 8 sustainability goals of the draft Framework are realised;
   
   (B) implementation of a mechanism to acquire, fund and deliver key infrastructure called up by the plans in the proposed planning scheme maps, including the parks and tram routes through Lorimer; and
   
   (C) implementation of a mechanism to deliver affordable housing targets.

THE VISION AND THE TASK OF THIS ADVISORY COMMITTEE

3. The AC allowed all parties to make submissions on the correct approach to its task and the Vision.

4. The introductory words to the Terms of Reference appointing the AC are:
   
   to report on the proposed Planning Scheme Amendment GC81 for Fishermans Bend to ensure the vision for Fishermans Bend is realised.

5. Clearly by these introductory words, the Minister intended the AC’s primary role to be ensuring the delivery of the Vision.

6. However, the purpose of the Review Panel is expressed in broader terms, namely:
   
   The purpose of the Review Panel is to advise the Minister for Planning on the appropriateness of the proposed planning scheme amendment GC81.
7. The AC must approach its task of advising on the ‘appropriateness’ of the proposed planning scheme amendment GC81 in broad terms. This task is required to include, on its own terms of reference:
   a) Informing itself in any way it sees fit;¹
   b) Carrying out a public hearing;²
   c) Producing a report that includes a summary of the reasons for recommending changes to the proposed amendment and a track change version of the controls in addition to any changes to the draft Framework.³

8. The correct approach for the AC is to consider the Terms of Reference as a whole:
   The context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed.⁴

9. Adopting the approach to interpretation of the Terms of Reference which is applicable to interpretation of statutes as required by the High Court in Project Blue Sky,⁵ it seems plain that the AC’s task is not limited to consideration of the ‘Vision’ in a narrow sense but that it has a broader task under its Terms of Reference.

10. Notwithstanding, the Vision is Government policy and is a document that ought to carry significant weight in the AC’s consideration of the appropriateness of the proposed amendment. It was within the powers of the Government to adopt the Vision, and more specifically to adopt the target of 80,000 people as Government policy. It is a number that has been arrived at through a long process which has involved significant community consultation.

11. The landowners ask the AC to look behind the Vision and to recommend that the 80,000 population target ought to be reviewed. While the AC can take into account the full range of relevant policies in considering the proposed planning scheme amendment, not just the Vision, it is not entitled to "look behind" the Vision and recommend that the Vision itself be amended. That is clearly not within its terms of reference.

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¹ At [27]
² At [16]
³ At [35]
⁴ See, for example, Dixon CJ in Commissioner for Railways (NSW) v Agalianos (1955) 92 CLR 390 at 397 cited with approval in Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355 at 381.
⁵ (1998) 194 CLR 35
Moreover, for all of the reasons already submitted, the CoM considers that the 80,000 population target will provide for an extremely high density community. While it will not ‘fix’ Melbourne’s housing problems, it will play a fair role in accommodating Melbourne’s growth to 2050 and beyond. The reality is that Melbourne will need to get better at doing density in the inner and middle ring suburbs to ‘fix’ the housing problem.\(^6\) Professor Adam’s presentation on this issue was very persuasive.\(^7\) Creating another Southbank in Fisherman’s Bend (but without the transport infrastructure) is a poor solution and in any event will not ‘fix’ the problem.

Accommodating a population of 12,000 people and 6,000 workers in Lorimer will result in:

a) significant built form (with street walls consistently between 4-8 storeys in height and often with substantial tower elements interspersed with other building typologies), as illustrated by Ms Pearson and Ms Hodyl’s modelling; and

b) a very high density residential community.

CoM has made extensive submissions about the negative built form implications of a FAR exceeding the proposed 5.4:1 and 4:1, including extensive submissions about the poor urban design outcomes which have been achieved in Southbank where a podium on tower typology is adopted and repeated throughout the precinct.

PROPOSED AMENDED DRAFT PLANNING CONTROLS FOR THE MELBOURNE PLANNING SCHEME

During the 45 days of AC public hearings, considerable effort has been made by the CoM to:

a) consult with the proponent Minister and City of Port Phillip;

b) consider the views of all submitters, particularly those who expressed concerns in relation to Lorimer precinct; and

c) prepare a set of proposed controls for the Melbourne Planning Scheme for consideration of the Minister and the AC.

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\(^6\) Refer Koos de Keijzer, *Independent Urban Design Evidence* p 6 (Document 141)

\(^7\) Document 122
16. Significant progress has been made. Complexity has been reduced. The proposed controls have been strengthened and most drafting errors corrected.

17. The CoM has put together a bundle of amended clauses (which track changes to the latest versions of the Minister’s controls). The CoM’s proposed controls are contained in a separate folder of documents, including both tracked and clean versions.

18. Together, the CoM amended controls specify the revisions to proposed amendment GC81 which are required to strengthen the controls to deliver the intent of the Vision in a workable format that increases clarity and reduces uncertainty and on which CoM support is conditional:
   a) edits to the draft Framework (document 341, tab 1);
   b) inclusion of a table of preferred character in the Minister’s version of the MSS dated 21 May (document L48) (document 341 tab 2) (which otherwise adopts the majority of CoM’s suggestions);
   c) edits to cl 22.0X (document 341, tab 3);
   d) edits to cl 37.04 schedule (CCZ schedule) (noting that many of these edits are designed to ensure the document is simplified, internally consistent and accords with the head clause) (document 341, tabs 4 and 5);
   e) edits to cl 43.02 schedule 67 (DDO67) (specific to the Lorimer precinct) (document 341, tabs 6 and 7);
   f) minor further edits to cl 45.09 Schedule (Parking Overlay schedule) (noting this document is largely agreed) (document 341, tab 8);
   g) inclusion of some of the ESD permit conditions from the Minister’s version of the CCZ schedule as an Incorporated Document “ESD Requirements in Fishermans Bend” under clause 81 (a work in progress at document 341, tab 9, subject to further revisions);
   h) edits to cl 81 to include 3 incorporated documents (document 341, tab 10);
   i) a revised ‘How to calculate floor area uplifts in Fishermans Bend’ dated 16 May 2018 (document 320); and
   j) edits to Clause 66 dated 16 May 2018 (document 319).

AREAS OF AGREEMENT BETWEEN THE COM AND THE MINISTER

19. CoM records agreement reached with the Minister on the following aspects of the proposed amendment documentation:
a) The general re-structuring of the DDO67 and the majority of its content including building typologies, preferred heights, the use of storeys for street wall heights and preferred heights, building separation and requirements for adaptable buildings.

b) Removing the requirement to vest land identified for open space through cl 3.0 and 4.0 of the CCZ4, coupled with a proposal to utilize an alternative statutory mechanism (the ICPO) to effect the acquisition of the open space network.8

c) A cap on total floor space, not just dwelling floorspace, in the CCZ4 (at least as far as the Minister’s proposed amendment documentation is concerned, noting that on 23 May 2018, the Minister left this issue open for the AC’s consideration).

d) Limitation of public benefits available under the Floor Area Uplift to social housing (at least for the time being until further work is done on whether it can also be applied to the bring forward costs for community infrastructure) in the CCZ4.9

e) Inclusion of the car share, motorcycle and bicycle provisions in the CCZ4.10

f) Inclusion of the third pipe and rainwater capture requirements in the CCZ4.

g) Amendments to the CCZ4 to manage the encroachment of sensitive land uses within 300 metres of the concrete batching plants of Hanson and Barro.

h) Agreement in principle to exemptions from specific requirements of the CCZ schedule for existing uses, noting that the final drafting of the exemptions remains an outstanding issue.

i) Reconfiguration and a minor addition of 190 m² to the open space network as a consequence of Ms Thompson’s recommendations, resulting in a total open space provision in Lorimer of 50,181 m².

j) Agreement that the proposed tram routes should be shown on the Lorimer Urban Structure Map in the CCZ.11 The CoM also understands that the

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8 City of Melbourne will separately address the AC on the ICPO issue on 18 June 2018, as directed.
9 Minister’s closing submission on Lorimer Precinct (Document L45) at [27.1]
10 Table 2 of the Minister’s CCZ tabled on 14 May 2018 (document 307)
11 Minister’s closing submission on Lorimer Precinct (Document L45) at [68.1]
Minister is currently considering amending the ‘landscape strip’ to the south of Turner Street to ‘open space’ or ‘road widening’ to reflect its true designation.

k) Agreement that the network of roads and laneways should be shown on the Lorimer Urban Structure Map in the CCZ.

l) Agreement that there should be some minor alterations to the street network in the final version of the Lorimer Urban Structure Map in the CCZ, including showing Hartley Street as a partial road closure, removal of the 12 m street to the west of Hartley Street and relocation of a north south street to align with the title boundary to 111 Lorimer Street.

MATTERS OUTSTANDING OR UNRESOLVED BETWEEN THE COM AND THE MINISTER

20. The principal areas which remain outstanding or where agreement has not been reached on the proposed amendment documentation with the Minister are as follows.

An ICPO should be introduced at the same time as the gazettal of the amendment

21. If the ICPO is introduced at the same time (which is the CoM’s primary position), then a permit will not be able to be granted until an ICP is in place. This will prevent further funding shortfalls. It will also reduce liability risks for MCC.

22. Unless an ICPO is applied at the same time as the amendment is gazetted, then there must be:

   a) changes to clause 66.04 to make the Minister a determining referral authority for all applications where the MCC is the Responsible Authority, to reduce the MCC’s risk of liability for compensation in the intervening period between gazettal of the amendment and the ICPO;

   b) an immediate raising of the ‘interim’ DCP levy and cl 52.01 rate from 8% in the current schedule to reflect the extent of land required in the Lorimer precinct for open space, noted by Ms Brennan in oral submissions to be approximately 18% in Lorimer (calculated on the basis of the proposed 50,181 sqm over a total site area of 27.6ha).

The Protection of the Tram Corridor

[12 Document 319

[13 Note this figure is still too low given that much of the land required for open space will be delivered in the employment precinct.]
23. CoM notes the Minister’s submission at L45 [67.2] that planning for the tram route will continue over the next 12 months and ‘whilst the acquisition method cannot be determined yet, ... TfV has previously used a PAO to ensure the land required for public transport is secured and provided in a timely manner’.

24. The Minister produced a plan on 21 May showing part of the tram corridor, namely along Lorimer St, and indicated that the remaining tram corridor would be shown on a new CCZ map, and that the further urban structure plan to the CCZ would be produced on 23 May. On 23 May that plan was not produced and no formal explanation has been offered as to why it has not been produced.

25. CoM states that the tram must be both shown on the CCZ maps and protected from development as a matter of urgency, given that:
   a) the intensive high density development proposed by the planning controls is predicated on the provision of public transport; and
   b) an application has already been made for development at 111 Lorimer Street (recently called in) which will prejudice (or at least make more expensive) the delivery of the preferred tram route if it is granted and acted upon.

26. The position of TfV (that the tram alignments are preferred but not finally settled) does not undermine this position. It is common, if not standard practice, to protect preferred transport routes while the detailed work is undertaken. This issue is discussed further below.

**The preferred and mandatory street wall heights**

27. The CoM has a strong preference for a map of preferred street wall heights, among other things, to improve legibility and allow for a nuanced approach to street wall height.

28. CoM also takes a different view to the Minister in relation to the appropriate preferred and mandatory maximum street wall heights, with some examples explained further below.

29. CoM considers that a 23 m mandatory street wall height should be applied to the north of Lorimer central (noting that Ms Hodyl confirmed in cross examination that she had assessed the street wall height on the basis that it was to be 23 m). It is difficult to tell what the preferred and mandatory street wall height to Lorimer Central actually is on the Minister's DDO – noting that the map in the DDO does not show the tramway. On the Minister's DDO, a maximum 6 storey street wall height (equivalent of 29.4 m) may apply, assuming that the tramway is to be
characterized as a road, and that it is to be less than 22m wide. But this is far from clear.

30. COM considers that there should not be a 4 storey preferred street wall height on the freeway, nor should there be preferred and mandatory maximum street wall heights facing elevated road structures.

31. CoM supports the concept underpinning Ms Hodyl’s proposal to increase street wall height to 8 storeys on wide streets if the building is under 10 storeys (to encourage non-podium-tower typologies). However, CoM considers that a maximum 10 storey street wall height is preferable to facilitate that outcome.

32. The built form outcome of Ms Hodyl’s proposed street wall height (8 storeys) and building height (10 storeys) would be a mid-rise development with double loaded, single aspect dwellings. In the case of a perimeter block typology, where the street wall height traditionally equals the overall building height, an upper level setback after the 8 storey street wall height would only work if the base of the perimeter block is ‘double loaded’ with predominantly single aspect apartments.

33. In comparison, open block typology comprises of a ‘village’ of different building types and heights on a site that are centred around a common private open space. An open block typology will result in a series of developments with a range of different street wall heights that each respond to the context. Developments that interface wider streets or street corner can accommodate a higher street wall height in these models. For developments interfacing narrow streets or laneways, or situated ‘mid-block’, a lower street wall height will be more contextually appropriate. The range of typologies in one site through an open block also mean that some developments on site will support double loaded (single aspect) apartment floor plates, and others will have a single loaded (dual aspect) apartment floor plate.

34. The CoM proposes a 10 storey maximum street wall height with corresponding built form outcomes designed to facilitate open blocks within the prescribed FAR. Given the large blocks in Lorimer, perimeter blocks and open blocks could be achieved under the CoM proposed controls on several sites, so long as car parking with dealt with through consolidated parking as outlined in the examples given by Ms Pearson in document L12 attachment 2 paginated pages 16-17.
Example of open block using 10 storey street wall height that responds to context. Source: Quartier Massena Paris

Example of open block in Melbourne that responds to context (the Melburnian)
Primary and secondary Active Frontages

36. The CoM does not support the inclusion of the revised primary and secondary active frontages map in the Minister’s latest DDO and recommends that this is deferred to the Precinct Structure Planning Stage where full consideration and detailed analysis can be carried out.

37. CoM submitted in the Urban Design Submission dated 10 April 2018 that further work is required before this exercise could be done. The CoM position is different to that of CoPP on this aspect of the proposed amendment. CoM has requested that the analysis supporting the classification of streets referred to in par 10.2.6 of the Minister’s closing submission on Lorimer. CoM may make further submissions once it sees that information. However, it can record that it does not accept the location of the streets shown on the Lorimer DDO map 3 (document L47). In particular, the CoM has concerns about the primary frontages being shown on Boundary Street (on the south side only) and Ingles Street. CoM is also concerned that the northern side of Lorimer Central is not shown as a secondary activated street frontage.

Other DDO Matters

38. The CoM also notes that the Table of Building Typologies has not been amended with the Minister’s DDO to reflect the revised definition of the Lorimer Parkway as confined to Turner St and hence area L3 still refers to the Lorimer Parkway. Many of these issues are spelt out in the ‘notes’ to the tracked changes version of the DDO (document 341 tab 6). The CoM’s preferred character table in the MSS (document 341, tab 2) has been worded to address the Minister’s new definition of the Lorimer parkway.

Differential FAR

39. CoM has made detailed submissions in support of application of a FAR of 4:1 for L1, L2, L3 (Lorimer North) and 5.4:1 in L4 (Lorimer South), as opposed to a uniform FAR of 5.4:1 across the whole precinct to provide clear alignment between population and planned infrastructure.

Capped FAU

40. A cap on the FAU of 10% to mitigate unintended consequences on built form and infrastructure provisioning.

Mandating Non-Residential Floorspace

15 Document L45
41. Mandating a non-residential floorspace FAR within the total FAR is necessary to deliver the employment targets and mixed use development as per the Vision. CoM refers to and relying upon all the evidence in this regard that non-residential floorspace in accordance with the Vision still simply not be delivered in the absence of mandatory controls. CoM in particular refers to the applications made in Lorimer to date, as per Ms Pearson’s revised table contained in Attachment 3 of the CoM’s opening submissions (document 124).

**Development application trends**

<table>
<thead>
<tr>
<th>Landuse Development Activity</th>
<th>Status</th>
<th>Description</th>
<th>Building height</th>
<th>Number of dwellings</th>
<th>Dwelling density</th>
<th>Number of residents</th>
<th>Responsible party (if relevant)</th>
<th>Approimately Total FAR</th>
<th>Approximate Non-Res FAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>165-00-001-00000-00000-00000</td>
<td>Permit issued</td>
<td>Residential floor development</td>
<td>5 stories</td>
<td>1,070 dwellings/ha</td>
<td>756</td>
<td>2,881 residents/ha</td>
<td>CoM</td>
<td>5,000</td>
<td>4,500</td>
</tr>
<tr>
<td>11-00-001-00000-00000-00000</td>
<td>Permit issued</td>
<td>Residential floor development</td>
<td>5 stories</td>
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<td>CoM</td>
<td>5,000</td>
<td>4,500</td>
</tr>
<tr>
<td>165-00-001-00000-00000-00000</td>
<td>Application on hold</td>
<td>Residential floor development</td>
<td>5 stories</td>
<td>1,070 dwellings/ha</td>
<td>756</td>
<td>2,881 residents/ha</td>
<td>CoM</td>
<td>5,000</td>
<td>4,500</td>
</tr>
<tr>
<td>11-00-001-00000-00000-00000</td>
<td>Application on hold</td>
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<td>756</td>
<td>2,881 residents/ha</td>
<td>CoM</td>
<td>5,000</td>
<td>4,500</td>
</tr>
</tbody>
</table>

**Referral Provisions**

42. Changes ought to be made to clause 66.04 and to the CCZ4 to make CoM a referral authority for all applications for which it is not the Responsible Authority, consistently with all other areas of the Municipality within the CCZ.  \(^{16}\)

**Affordable Housing**

43. An increase in the policy target for affordable housing (15% suggested by the Melbourne City Council, 10% by the MAC), and a mechanism (for all urban renewal areas) to achieve that target, is necessary to realize the Vision.

**ESD Conditions**

44. Strengthening the ESD provisions including to require mandatory 5 star green star (or equivalent) for new buildings or additions containing ≥ 10 dwellings or ≥ 5,000 sqm floorspace are also necessary to achieve the targets in the Framework, and to achieve the Vision.

\(^{16}\) Document 319
45. Without prejudice to its primary position, CoM notes that the adoption of an incorporated document for ESD standards as proposed in the revised CoM controls would go a long way to mitigating the concerns about locking in lower ESD standards indefinitely.

Drafting Issues

46. While the Minister’s formal position on the majority of the edits to the proposed CCZ4, MSS and DDO67 is (unfortunately) not known, it appears from the drafting session that many of the edits proposed by the CoM may be generally welcome (other than the areas of specific disagreement set out above).

47. Certainly, the CoM has tried to be of assistance in undertaking a detailed review of the latest version of the proposed controls, and re-iterates the position put by the Minister through Ms Brennan that there has been very considerable amounts of consultation between the Minister and the councils.

NEXT STEPS

48. The CoM has identified a number of priority actions that should be progressed outside of the amendment process. The CoM invites the AC to recommend as a matter of urgency:

   a) that the tram routes and design of the bridge over the Yarra River be finalized and funded;

   b) a governance body is established for leadership and ongoing land use planning;

   c) the development of a transition plan\textsuperscript{17} which will deal with issues such as road closures, sequencing and timing of development, catalyst projects and the like;

   d) a funding and finance plan and the finalisation of a DCP or ICP;\textsuperscript{18}

   e) detailed precinct planning, which should be incorporated into the scheme, with any consequential amendments to the MSS, LPPF, CCZ and DDO and maps within them;\textsuperscript{19}

\textsuperscript{17}Minister’s closing submission on Lorimer at [15.1] (Document L45)

\textsuperscript{18}Also recommended by the MAC advice to Ministerial Advisory Committee dated May 2018, p 2 (document 303)

\textsuperscript{19}Ibid p 2
f) resolution of whether an LSIO or SBO ought to be applied in Lorimer (noting that Melbourne Water acknowledge there was a need for that to occur once they have finalized their flood modelling work); and

g) implementation of a standing design review panel for Fishermans Bend.

49. The CoM will work to support the Government where it can to progress these urgent issues as a matter of priority.

RESPONSE TO AC’S REQUEST FOR INFORMATION ON THE FAU AND QUERIES RAISED IN DOCUMENT 294

Floor Area Uplift Cap of 10%

50. CoM propose a 10% cap on the floor area uplift calculated as a percentage of total floorspace (not just dwelling floorspace). It proposes that the statutory mechanism to implement the cap could be through cl 4.0 of the CCZ4 as follows:

A permit must not be granted or amended (except where the amendment does not increase the extent of non-compliance) to construct a building or construct or carry out works with a Floor Area Ration in excess of 110% of the Total Floor Area Ratios in Table 1.20

51. The AC asked the CoM what the impact of the 10% cap would be on the delivery of affordable housing within the new FAR proposed for Lorimer (ie 5.4:1 to the south and 4:1 to the north). Ms Carlisle inquired to the following effect: is it possible to deliver 6% affordable housing of the FAR dwellings under this scenario? Can the 10% uplift deliver the 6%? What would be the total number of social housing dwellings in Lorimer on that scenario?

52. CoM submitted that not even an uncapped FAU could deliver 6% affordable housing within Lorimer due to the 8 "FAU" dwellings for each social housing dwelling, which meant that it would not be possible to realistically deliver more than about 3.5% of social housing even with buildings of a significant scale.21

53. The results of the further CoM work illustrate that if a cap of:

a) 10% if adopted, then it will be possible to deliver 1.7% of the 'FAR' dwellings as social housing, equating to an overall social housing percentage of 1.2%; and

20 Document L11.8

21 See Ms Pearson's report document 82 p 29.
 b) 20% if adopted, then it will be possible to deliver 3.4% of the ‘FAR’ dwellings as social housing, equating to an overall social housing percentage of 2.2%.

54. The CoM workings are extracted below.

<table>
<thead>
<tr>
<th></th>
<th>Dwellings</th>
<th>Residents</th>
<th>Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAM (2 approved permits)</td>
<td>1,301</td>
<td>2,654</td>
<td>60</td>
</tr>
<tr>
<td>FAR</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lorimer North:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1 total FAR including 1.25 1 for non-residential uses</td>
<td>5,290</td>
<td>10,608</td>
<td>4,766</td>
</tr>
<tr>
<td>Lorimer South: 5.4 1 total FAR including 1.7 1 for non-residential uses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacity of FAR + DAM (100%)</td>
<td>6,591</td>
<td>13,262</td>
<td>4,846</td>
</tr>
<tr>
<td>FAU @ 110% - Social Housing (1.7%)</td>
<td>88</td>
<td>180</td>
<td>0</td>
</tr>
<tr>
<td>FAU @ 110% - Market Value component</td>
<td>707</td>
<td>1443</td>
<td>0</td>
</tr>
<tr>
<td>Total capacity @ 110%</td>
<td>7,296</td>
<td>14,885</td>
<td>4,846</td>
</tr>
<tr>
<td>FAU @ 120% - Social Housing (3.4%)</td>
<td>177</td>
<td>361</td>
<td>0</td>
</tr>
<tr>
<td>FAU @ 120% - Market Value component</td>
<td>1414</td>
<td>2885</td>
<td>0</td>
</tr>
<tr>
<td>Total capacity @ 120%</td>
<td>8,092</td>
<td>16,538</td>
<td>4,846</td>
</tr>
</tbody>
</table>

Response to Document 294

55. The CoM's response to document 294 is attached to this Submission (Attachment 1).

GENERAL REPLY TO LANDOWNER SUBMISSIONS

56. None of the submitters fundamentally questioned the proposed urban structure of Lorimer as set out in the draft Framework.

57. The main issues raised included:

a) the potential for conflict between Lorimer Central and the concrete batching plants;

b) whether a better alternative to Lorimer Central would be to open it up to the north;

c) the location of certain streets and laneways and whether they were practicable; and

d) the impact of the proposed mandatory shadow controls and FAR on development yield.

58. Each of these issues is dealt with below.

Urban Design and Planning Evidence – Lorimer Specific

59. In the course of his oral evidence, Mr Sheppard accepted that:
a) Lorimer Central was a ‘very important open space’;

b) A FAR is a useful planning tool to adopt in the Fishermans Bend context;

c) A differential FAR between the north and south of Lorimer is appropriate to the extent that a different character is desirable in Lorimer;

d) With a FAR of 4:1 there would be delivery of perimeter block developments supporting a character differential for Lorimer north; and

e) Lorimer Central will be the heart geographically of the Lorimer precinct but also the heart in the sense of being a central place for community activities.

Extract from the Vision p 23

60. One of the issues raised during the evidence of Mr Sheppard in the Lorimer precinct hearings was the height controls between Lorimer and the Yarra River and appropriate built form.

61. Relevantly, Ms Hodyl’s addenda 6 also noted that lower tower heights are located north of Lorimer and that there was a strategy to step down the heights of buildings towards the river.
• The lower tower heights north of the Lorimer Parkway are part of the built form strategy to step the heights of buildings down towards the river. While there are some towers located on the river’s edge a significant portion of the riverfront area to the north of Lorimer is low-rise.

Extract from Hodyl Addenda 6 dated 30 April 2018 p28 (Document 277)

62. The area to the north of Lorimer Street is generally 30m in height. Table 1 of DDO49 specifies a maximum building height of 30m, except for a single or twin 130m tower on the Bourke Street axis.22 (Attachments 2 and 3).

63. The Minister’s reply submission (doc L45) at [39.1] states:

   The lower tower height north of the Lorimer Parkway have been identified as part of the built form strategy to step the heights of buildings down towards the River. There are some towers located on the river’s edge. However, a significant portion of the area to the north of Lorimer Parkway is low rise.

64. The combination of DDO49, the preferred maximum heights in L1, L2 and L3 (compared with unlimited heights in L4) and a differential FAR between the north and south of the Lorimer Parkway will provide an appropriate transition from the high building facing the freeway to the Yarra river.

Figure 10: Sub-precincts within Fishermans Bend Urban Renewal Area

Lorimer sub-precincts defined in the MSS, extracted from the Minister’s 14 May 2018 Version Planning Controls (SIN15)

22 See also Yarra’s Edge Bolte Precinct Development Plan (June 2013) (copy of full document available on request).
65. Mr McGurn's evidence was to the effect that the GFA under the proposed controls is substantially reduced compared to the GFA allowable under the current controls.

66. His 'modelling' was not helpful in the sense that the 'GFA' that he modelled under the existing controls and the proposed controls did not represent a realistic building (recall 'the Cheese').

![Diagram of building massing controls]

67. In any event, it is clear that the GFA under the new controls will be lower in almost all cases – this can be established by comparing the floor areas in the proposed applications (noting that they are a guide only as to what may have been permitted) and comparing them to the floorspace allowable under the proposed FAR.

68. It is self-evident that the changes will reduce yield – one of the purposes of the proposed amendment is to create a fundamentally different built form outcome compared to the current controls.

69. Mr McGurn was also concerned about the impact of the mandatory overshadowing controls especially in the context of the proposed open space to the south of 351 Ingles Street.

70. The CoM agrees with the Minister's proposed amendments to the DDO schedule to allow street wall height shadow.

71. CoM understands that the Minister has done further shadow modelling to test Ms Thompson’s open space layout. If that further work demonstrates that the FAR
cannot be achieved on any site as a result of the proposed new open space areas, an amendment to the controls ought to be investigated which produces an acceptable amenity outcome for the park but does not create an unreasonable imposition on development yield (eg shifting the time of day during which the 3 hours of sunlight is required).

**SUBMITTERS 79, 130 AND 162**

**Lack of consultation**

72. Submitters 79, 130 and 162 stated on 10 May 2018 that there has been a lack of consultation. It is suggested that it was by pure coincidence that Mr Gedge of the Owners Corporation associated with submitter 162 found out about the proposed draft Framework and Vision for the Fishermans Bend Renewal Area.

73. In advance of the AC process, there was adequate consultation with landowners regarding the proposal to consider revised planning controls in the Fishermans Bend Urban Renewal Area.

74. Various landowners have stated that they have made investment decisions as recently as in the past few years and have been caught by surprise by the proposed planning scheme amendments.

75. CoM refers to the following chronology of publicly recorded events and marks opportunities for input and consultation with an asterix:

a) In 2015, the Minister committed to recast the planning for Fishermans Bend (Minister Part A submission dated 19 February 2018);

b) In April 2015, the Minister for Planning, under section 20(4) of the P&E Act, approved Amendment GC29 to the MPS and PPPS which introduced interim planning controls and updates the Fishermans Bend Strategic Framework Plan, July 2014;

c) In June 2015, the Minister appointed a Ministerial Advisory Committee (MAC) to review the strategic work;

d) In October 2015, the MAC produced their first report;

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23 These three submitters were jointly represented by Mr Wren. 130 VCHQ2 Pty. Ltd. 880 – 884 Lorimer Street, Port Melbourne (Submitter 130); 79 W.W. Sidwell Investments Pty. Ltd. 2 870 Lorimer Street, Port Melbourne (Submitter 79); 162 Lorimer Place Owners Corporation 874 – 886 Lorimer Street and 338 – 356 Ingles Street, Port Melbourne (Submitter 162). His written submission relates to all three (Document L16)

24 Mr Wren, Opening Submission, Lorimer Precinct, Document L16

25 Ibid p 5
e) From October 2015 until July 2016, MAC held monthly meetings, working groups, continuous review of Taskforce work, extensive consultation and community and stakeholder engagement, Expert Forum (MAC presentation, document 57, p2);*

f) In May/June 2016, the Taskforce consulted on a new draft Fishermans Bend Vision;*

g) In September 2016, the Fishermans Bend Vision (September 2016) was released by the Taskforce;

h) In November 2016, the Taskforce undertook public consultation to inform and test principles and objectives being developed for a new framework;*

i) In 2016, interim planning controls were introduced via planning scheme amendment GC50 and GC59 which applied to Fishermans Bend;

j) In October 2017, the draft Framework was released for consultation and the Minister appointed the Fishermans Bend Planning Review Panel;

k) In November 2017, the draft amendment documentation was released;

l) In or about November 2017, public notice was published in The Age (prehearing Document 1);

m) In October to November 2017, extensive community information and drop in sessions were held (prehearing Document 1);*

n) As part of the engagement on the draft Framework and planning controls, there were 27 face-to-face events held at locations across Fishermans Bend and neighbouring areas. Over 1200 participants attended the events and 251 submissions were received by the Planning Review Panel;*

o) On 15 December 2017, submissions on the draft amendment closed. However, late submissions have been accepted.

76. Respectfully submitters 79, 130 and 162 had every opportunity to engage with this process prior to close of submissions on the draft amendment by the AC (noting late submissions have been accepted).

Ingles Investments Pty. Ltd. Café & Gym

77. Since 2010, Ingles Investments Pty Ltd a family owned business have operated a cafe and gym including a Taekwondo facility from Site E2 within Lorimer Place ‘Designed for Livin’.

78. Site E2 is indicated below as the middle warehouse at 350 Ingles Street.
79. Site E2 forms part of proposed Lorimer Central Open Space.

80. On the one hand, Submitter 162 argues that a range of sensitive uses with E2 are appropriate:

‘The café now services all of the surrounding people for breakfast and lunches having up to 300 people coming through its doors on a daily basis.
...
The Taekwondo studio provides the local school children and residents with a safe environment to express themselves and empowers them with the tools of becoming valuable members of the local community.
...
It now houses over 100 members ranging from the ages of 3 to 75 years old.’

81. On the other hand, submitter 162 says:

Is it appropriate to locate an “informal outdoor recreation use” opposite an operating concrete batching plant? 26

82. Further, submitter 162 quotes a desktop dust study:

There is potential for dust emissions to occur from fines in spillage on the road and yard, fugitive emissions from bunkers and conveyors, aggregate stored in the stockpiles and fabric filters.27

83. Respectfully, submitter 162 cannot logically argue both for existing sensitive uses at Site E2 and also against future sensitive uses in the proposed location of Lorimer Central of which Site E2 is part. Both scenarios locate sensitive uses (childrens Taekwondo at site E2) in proximity to Hanson and Barro’s concrete batching plants.

84. As previously submitted, the CoM does not consider that the proposed location of Lorimer Central is precluded by the location of the concrete batching plants, noting that they are required to comply with SEPPs and EPA licence conditions including that they contain routine emissions within their site boundaries.

Access

26 At [18]

27 At [20]
85. The CoM welcomes the Minister’s revised CCZ4 maps, which show laneways along each area of public open space, including a laneway to the north of the tram corridor through Lorimer central, which will presumably provide access for the sites on Lorimer Street and the three warehouse shown in the plan above.

SUBMITTER 36: CLARIC NINETY-NINE PTY LTD

86. Claric Ninety-Nine Pty Ltd (Claric 99) submits that the new service road proposed along the freeway to the south of its site at 13-33 Hartley Street Docklands further reduces their net developable area (noting that 40% of it was proposed for public infrastructure already).²⁸

87. Claric 99 submits that there is no strategic justification for the service road. They are also concerned about the amenity of the area under the tram bridge. One of the issues raised relates to whether Hartley Street must be closed to facilitate the proposed tram bridge.

88. The CoM sought clarification on this issue in light of:

   a) its understanding that the Hartley Street road reserve is 30m wide;
   b) the Jacobs’ report showing the elevated tram route will contain shared paths on both sides but also showing a "left in" and "left out" one way property access on either side; and
   c) both the exhibited version and the latest version of the CCZ4 (Map 4, tab 3 doc 307) shows that Hartley Street is closed.

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²⁸ Document L20 p 12
89. The Minister clarified at [56.1] of the closing submission on Lorimer Precinct (document L45) that Hartley Street will remain open but narrowed to allow for an elevated light rail/pedestrian and cyclist bridge to be located in the centre of Hartley Street.

90. The Minister’s closing submissions on Lorimer advises that the tram will be delivered within a 10 metre corridor with 10 metres either side of the tramway for access in both directions on Hartley Street (to be marked on the new version of the 1(d) map tabled on 21 May 2018).

91. The CoM understands that Hartley Street at ground level will become one way and provide street access for 13 Hartley Street. It will connect to the 12 metre service road running along the precinct’s southern edge adjacent to the Freeway.

92. The CoM also proposes amendments to the preferred and maximum street wall heights in locations which front the proposed elevated tram alignment, such as the 13 Claric St site, which is located to the immediate east for the elevated alignment (see the CoM DDO 67 street wall height map and the table of street wall heights in the schedule itself).

93. The Minister also confirmed orally the proposed new 12m wide north south street shown to the west of Hartley Street can be removed given continued access along Hartley Street. The map in CCZ4 must be amended accordingly.
94. The CoM supports the 12m wide service road running along the freeway as it will provide enough room for large trucks and 2-way traffic, and will serve multiple development sites, allowing those sites to activate their other street frontages, providing improved pedestrian amenity within the precinct itself.

**SUBMITTER 71: COSTA FOX DEVELOPMENTS PTY LTD (111 Lorimer Street)**

**The tram and the 10m landscape setback**

95. At each stage of the process, the CoM has noted its concern about the nomination of the tram route shown on p 73 of the Framework along Lorimer Street as a "landscape setback" in proposed CCZ4.

96. The Minister has now responded to this issue and confirmed that it will be nominated as a proposed tram route.

**The north south street near the eastern boundary of the 111 Lorimer Street land**

97. Ms Dunstan is concerned about the proposed location of the north south street located in proximity to the eastern boundary of 111 Lorimer Street as follows:

   The proposed 12m wide laneway on the site’s eastern boundary (which appears to be intended to provide vehicle access to the site) is not shown in the planning controls and is only identifiable upon a detailed review of the Framework.

   The proposed 12m wide laneway is not a good transport planning outcome as it creates two significant conflict points:

   - At Lorimer Street with the proposed tram ROW – which the Jacobs Report confirms is intended to be located immediately adjacent to the site and dividing the laneway from the Lorimer Street carriageway.
   - At Boundary Street it creates an awkward 4-legged intersection on a strategic cycling corridor. This area also may be a priority pedestrian area under the ITP (the ITP is not clear whether the priority pedestrian
area is along Lorimer Street or the new east-west road link to Hartley Street).  

98. Ms Dunstan's assessment of the location of the new east west street and the proposed 12 m wide streets does not appear to be accurate.

99. The new east west street is actually further north than shown on the plan above, and the proposed laneway further to the west.

100. The following is a sketch plan showing the CoM's interpretation of the approximate location of the framework streets overlaid on an aerial, with the 111 Lorimer Street site marked in blue and the street network marked in red:

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29 Refer p 17 of Powerpoint by C Dunstan (Document L33)
101. As shown on the draft Framework plan:
   a) the east west street more or less lines up with the corner of Boundary and Rogers Street; and
   b) the laneway lines up with the break in the built form to the north.

Extract from draft Framework plan (p 73)

102. The CoM has previously submitted that it considers that the new 12m north south street should align with the new title boundary to 111 Lorimer Street

103. While the street does form a 3 way intersection with Boundary Street on the draft Framework, it would not do so if it was shifted to the east to align with the new 111 Lorimer Street title boundary.

104. We note that the Minister’s proposed revised version of the CCZ4 plan (document L47 Map 1D) does not appear to have shifted this laneway sufficiently to the east
to align with the title boundary (although CoM understands that the Minister has accepted the CoM's recommendation that this should occur).

105. The CoM considers that this edit is likely to resolve the intersection issue as it will offset the street from Boundary Street. Nevertheless, the CoM suggests that the AC ought to recommend that the Boundary Street, Rogers Street and new east-west street intersection ought to be checked by the Minister's traffic engineers prior to gazettal.

106. A park is proposed by Ms Thompson in her evidence to the Review Panel to be relocated to the east of the Site (Document 108).

107. In so far as access may not be available to Lorimer Street from the new north south street due to the tram alignment, that is not a sufficient reason to remove the street altogether, which will provide access to 111 Lorimer Street and to the park.

**SUBMITTER 216: ANZ**

108. ANZ submits that it is premature for the tramway to be indicated on the plan in the draft Framework when the precise location of the tram route is still under investigation.

109. CoM replies that it does not oppose the addition of words to the draft Framework to clarify that the tram route is the 'preferred alignment' or words to that effect. However, CoM does not agree with the wholesale removal of the proposed tramway from the draft Framework.

110. CoM does not agree that the provision of a further bridge in addition to Charles Grimes Bridge is necessarily a poor outcome for the Yarra River precinct. Rather, if appropriately designed to an exemplary standard, it may become a positive feature of the Lorimer precinct. It must also be designed to provide maximum functionality for boat users.

111. CoM refers to and repeats in original submission (document 120):

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.
112. The fact that ANZ has made decisions (expensive decisions) seemingly without knowing that the tram route would be extended illustrates the point made by the CoM and other submitters - that the earlier that land is identified and protected with a PAO, the fewer decisions that will be made that will either prejudice, or be prejudiced by, the tram route.

113. The AC is directed to the travel time comparisons prepared by Aurecon. Each route considered travel times from nearby the ANZ Centre on Collins Street Docklands to an end point in central Fishermans Bend.\(^{30}\) Travelling on the Charles Grimes Bridge (option 2) led to 25.7 minutes travel time. Travelling through Lorimer directly via a tram bridge over the Yarra River (option 3) was a preferable 10.5 minutes travel time. The routes are pictured below:

![Comparison of Route Options](image)

Comparison of Route Options: Extract from Aurecon Fishermans Bend LRT Final Report (May 2013) p3

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\(^{30}\) Aurecon Fishermans Bend LRT Final Report (May 2013) p24
Mr Barnes identified that there is quite a narrow space between the Y3 and ANZ buildings (some 17m of the approximately 30m wide Collins Street road reserve) and that the Y3 building is under construction.

Clearly if the tram route had been identified earlier, then a decision could have been made to provide greater separation, if desired, to accommodate the tram route. However, the fact remains that the space is there and the route is the most efficient route, in terms of moving people directly between Fishermans Bend and the central city.

SUBMITTER 254: INCHCAPE AUSTRALIA LIMITED

99-111 Lorimer Street, Dockland (Subaru site)

The CoM supports the ongoing use of the site at 99 Lorimer Street for the Subaru dealership and considers that it is a compatible land use while Fishermans Bend is in transition. It notes that the Subaru dealership employs significant numbers of people. The CoM considers that an appropriate balance must be struck between providing exemptions in the controls to allow uses such as Subaru to continue to operate without unnecessary impediments, and facilitation of urban renewal.

CoM notes that the exemptions written into the Minister’s 14 May 2018 controls were picked up from the CoM draft CCZ, which in turn had adopted recommendations made by Mr Barnes in relation to ongoing warehouse and industrial uses. The CoM agrees that the exemptions should be extended to other existing uses, such as the Subaru use of land. However, the exemptions will need
to be carefully drafted to ensure that they do not undermine the achievement of urban renewal.

TRANSPORT FOR VICTORIA

118. Transport for Victoria indicated on 23 May 2018 that in order to protect against the risk that development closes off tram alignment options, Transport for Victoria ought be referred applications for development proposals that may prejudice the future tram alignment.

119. Of course, for that to occur, the tram alignment will need to be shown in the planning scheme and the planning scheme will need to be amended to include referral provisions (eg in clause 66) or a PAO (or potentially both with the referral provisions applying to an area 20-30m on either side of the PAO to pick up on the issue of current uncertainty in the preferred tram alignment raised by Transport for Victoria).

CLOSING

120. Despite the mutual recognition by the Minister and the CoM (and the City of Port Phillip) that the current situation in Fishermans Bend is untenable, the councils have not been complicit parties in this proposed amendment. The officers of the councils have interrogated the case put by the Minister, and have argued for changes to the proposed amendment where it appeared to present an outcome that was potentially unfair or likely to produce a poor future planning outcome.

121. CoM acknowledges the considerable progress that has been made during the AC process to date on many aspects of the draft amendment.

122. It also acknowledges that, whilst there are a number of outstanding issues, CoM has worked proactively and collaboratively to present workable solutions to these matters (as set out in our closing submission and revised controls). These revised proposals will provide a strengthened proposed amendment that the CoM can rely on to deliver the Fishermans Bend Vision with clarity and certainty to all parties involved.