

**IN THE MATTER OF
FISHERMANS BEND PLANNING REVIEW PANEL**

-and-

**IN THE MATTER OF
AMENDMENT GC81**

TO THE MELBOURNE and PORT PHILLIP PLANNING SCHEMES

OPENING GENERAL SUBMISSIONS

1. These submissions are made on behalf of the following parties that have properties located within one or more of the precincts under consideration in Amendment GC81 (“the Amendment”):-

Montague –

- 90 Gurnner 2 – 28 Montague Street Pty. Ltd.
2 – 28 Montague Street and 80 Munro Street, South Melbourne
(Document 48, p.1 – 4) (Document 245, p.5) Sheppard p.35
- 91 E133 Property Development Pty. Ltd.
30 – 38 Thistlehwaite Street, South Melbourne
(Document 48, p.5 – 8) Sheppard p.41
- 173 EPC Pacific Pty. Ltd.
123 Montague Street, South Melbourne
(Document 48, p.9 – 12) Sheppard p.85
- 131.2 The Jane Property Group
166 Buckhurst Street, South Melbourne
(Document 48, p.13 – 16) Sheppard p.81
Permit Application MINRA 6/2013, 20-storey mixed-use development
- 131.1 The Jane Property Group
134 – 150 Buckhurst Street, South Melbourne
(Document 48, p.17 – 20) (Document 245, p.26) Sheppard p.77
- 96.1 Gladyslake Pty. Ltd., Ausun Property CBD Pty. Ltd. and DW Keira Pty. Ltd.
96.2 248 – 254, 256 – 262 and 264 – 270 Normanby Road, South Melbourne
96.3 (Document 48 (p.33 – 36) (Document 245, p.7, 6 & 4) Sheppard p.55(d) & p.66
- 95 Lutkas Pty. Ltd.
203 – 205 Normanby Road, South Melbourne (Document
(Document 48, p.37 – 40) (Document 245, p.10) Sheppard p.49
- 94 Thousand Degree Pty. Ltd.
91 – 95 Montague Street, South Melbourne
(Document 48, p.41 – 44) (Document 245, p.13) Sheppard 45

Lorimer –

- 130 VCHQ2 Pty. Ltd.
880 – 884 Lorimer Street, Port Melbourne
(Document 48, p.45 – 48) Sheppard p.35
- 79 W.W. Sidwell Investments Pty. Ltd.

- 870 Lorimer Street, Port Melbourne
(Document 48, p.49 – 52) Sheppard p.27
- 162 Lorimer Place Owners Corporation
874 – 886 Lorimer Street and 338 – 356 Ingles Street, Port Melbourne
(Document 48, p.53 – 57) Sheppard p.39

Sandridge –

- 182 Lateral Estate Pty. Ltd.
118 Bertie Street, Port Melbourne
(Document 48, p.57 – 60) (Document 245, p.1) Sheppard p.37
- 242 Core Complex Pty. Ltd.
1 Fennell Street, Port Melbourne
(Document 48, p.61 – 64) Sheppard p.42
- 131.3 The Jane Property Group
469 & 471 Williamstown Road, Port Melbourne
(Document 48, p.21 – 24) Sheppard p.29
- 131.4 The Jane Property Group
32 – 38 Fennell Street and 50 – 60 Bertie Street, Port Melbourne
(Document 48, p.29 – 32) Sheppard p.33

Wirraway –

- 131.5 The Jane Property Group
332 Plummer Street and 21 Smith Street, Port Melbourne
(Document 48, p.25 – 28) Sheppard p.27

The Review Panel's Terms of Reference – Scope of Review –

2. The Fishermans Bend Planning Review Panel (“the Panel”) was established pursuant to Part 7, Section 151 of the *Planning and Environment Act 1987* to report on the Amendment. The purpose of the Panel is:-
- “3. ... to advise the Minister for Planning on the appropriateness of the proposed planning scheme amendment GC81.”
- (all underlining is my emphasis)
3. The Macquarie Dictionary defines “*appropriate*” as meaning:-
“*Suitable or fitting for a particular purpose.*”
4. Paragraph 27 of the Terms of Reference requires the Panel to consider, inter alia:-
- “a. *The State policy context of the Fishermans Bend area.*
- b. *The extent to which the proposed changes to the Capital City Zone Schedule 1 (Port Phillip Planning Scheme) and Capital City Zone Schedule 4 (Melbourne Planning Scheme) allows for the “Fishermans Bend Vision, September 2016” to be achieved.*
- c. *The extent to which all other proposed changes sought by GC81 allow for the “Fishermans Bend Vision, September 2016” to be achieved.*

- d. *All relevant submissions made in regard to the proposed changes to the Port Phillip and Melbourne Planning Schemes; and*
- e. *An assessment of whether the proposed planning provisions make proper use of the Victorian Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on the form and content of Planning Schemes.”*

Importantly the terms do not say the Panel cannot assess the Vision or the population target – in contrast, for instance, to the Terms of Reference for the East-West Link Advisory Committee’s prohibition of considering the business case.

5. The outcomes sought by the Terms of Reference require a written report to be produced to provide, inter alia:-

- “a. *A summary of the Review Panel’s reasons for recommending (or otherwise) amendments to the proposed planning scheme amendment. (does not exclude abandonment)*
- ...
- c. *Any additional recommendations for amendments to the proposed City Zone Schedule.*
- d. *Any additional recommendations for amendments to all other proposed planning scheme changes sought by the planning scheme amendment.*
- e. *Any changes required to the draft Fishermans Bend Framework as a result of recommendations made to the planning scheme amendment.*
- ...”

6. In assessing the “*appropriateness*” of the proposed planning scheme amendment, the Strategic Assessment Guidelines that Minister’s Direction No. 11 requires a planning authority to evaluate are relevant. Planning Practice Note 46 identifies strategic considerations for assessment that include:-

- “1. *Why is an Amendment required?*
 - *will the planning policy or provision to be introduced result in a good planning outcome?*
 - *will the Amendment have a nett community benefit?*
 - *will the community benefit outweigh the cost of the new requirements?*
 - *Does the Amendment repeat provisions already in the scheme? If so, what additional value will the Amendment provide?”*

7. The types of environmental, social and economic issues that need to be considered include 19 different issues. This Amendment will influence all of the nominated issues.

8. The second consideration is whether the Amendment implements the objectives of planning and requires consideration of whether it implements the objectives set out in sections 4(1) and 12(1)(a) of the Act. It goes without saying that the question of whether the Amendment is fair, orderly and economic is in issue before the Panel.

9. Does the Amendment secure a pleasant and efficient working, living and recreational environment? Does the Amendment protect public utilities and enable the orderly provision and co-ordination public utilities and other facilities for the benefit of the community? Does the Amendment balance the present and future interests of all Victorians? (Section 4(1) P&E Act). We don't know!
10. The second consideration also requires an assessment of any environmental, social and economic effects. This includes an evaluation of the costs and benefits to business and the community arising from any requirement of the Amendment.¹ It goes without saying that this has not been done and represents one of the major criticisms of the Amendment. No business case has been put forward, no funding model has been put forward, the community and, in particular, the development community (the providers of accommodation for future residents and workers) does not know how much it is expected to contribute per levy unit and therefore whether the Amendment is viable.
11. Clearly, if the Amendment is not viable i.e., if the development cost per unit is not competitive against the market – it will not happen. As the MAC submitted on Day 1 *“There won't be any development unless its viable.”*
12. Strategic consideration 5 provides:-
- “5. *Does the amendment support or implement the State Planning Policy Framework (SPPF)?*
- To ensure planning schemes further the objectives of planning in Victoria, planning authorities must take into account and give effect to the general principles and specific policies contained in the SPPF.*
- *what objectives and strategies of the SPPF are relevant and how are they relevant?*
 - *does the amendment or proposal support or give effect to the objectives and strategies of the SPPF?*
 - *are there any competing SPPF objectives? If so, how have they been balanced in favour of nett community benefit and sustainable benefit (clause 10.02 of the Planning Scheme)?*
 - *does the amendment support or give effect to any relevant adopted state policy?”*
13. Of particular relevance to the proposed amendment under this consideration is the State Planning Policy, Plan Melbourne and clauses 9, 10, 15, 16 and 17 of the respective planning schemes.

¹ Ibid. p.3.

14. The tenth strategic consideration is what impact the new planning provisions will have on the administrative costs of the responsible authority. At this stage it appears the responsible authorities will be the cities of Melbourne and Port Phillip. We do not know what the cost implications for those authorities will be in implementing and administering the proposed planning provisions. It follows that Councils are unable to document the likely resource costs of implementing and administering the proposed changes to the planning scheme proposed by the Amendment. Is the Melbourne City Council prepared to, or in the position to compulsorily acquire the Lorimer Central Open Space?² Is the City of Port Phillip prepared to implement the flood mitigation system proposed by Ramboll Consulting Group?³ If the answer to those two questions, which are but two of many, is no – is the State Government prepared to invest the necessary resources into this area?⁴ We don't know!

Amendment GC81 –

15. As the Panel is well aware the Amendment introduces a number of changes to the respective planning schemes. Clause 21.13-3 of the Melbourne MSS and clause 21.06-8 of the Port Phillip MSS contains the following:-

“The State Planning Policy identifies Fishermans Bend as a Priority Urban Renewal Area. It is an unparalleled renewal opportunity within Melbourne. It will provide for 80,000 jobs (40,000 within the mixed-use precinct and 40,000 in the Employment Precinct) and a range of well serviced, high density housing options for 80,000 people. ...”

16. A new combined clause 22XX Fishermans Bend Urban Renewal Area contains the policy basis of:-

“This policy implements the vision for Fishermans Bend, as set out in the Fishermans Bend Framework, XX 2018 as a “thriving place that is a leading example of environmental sustainability, liveability, connectivity, diversity and innovation” that will accommodate 80,000 residents, 40,000 jobs and be Australia’s largest Green Star – Community.”

17. One of the purposes of the new CCZ proposed is:-

“To implement the Fishermans Bend Vision, September 2016 and the Fishermans Bend Framework, XX 2018.”

18. The balance of the multiple changes flowing from the Amendment are all predicated upon the “*appropriateness*” of the population projections adopted to underpin the Amendment provisions and, in particular, the Urban Design Strategy. The population projections derive from the 2016 Vision. Page 6 of the 2016 Vision states:-

² Submission on behalf of MCC, 20 March, 2018 [218]. It clearly doesn't want to!

³ Witness Statement, Tom Patterson, Ramboll, 7 March, 2018.

⁴ See, in particular, the Mesh January 2018 Report, p.81

“Planning for a Liveable Fishermans Bend

Latest projections show that Victoria is on track to have a population of 10.1M by 2051, with 8M people living in Greater Melbourne⁵.

Fishermans Bend will play an important role in Melbourne’s growth and prosperity, supporting 80,000 residents and 60,000 jobs⁶.”

19. The 2016 Vision succeeded the draft Vision September 2013. That Vision contained the following at page 16:-

“The opportunity for renewal –

On average more than 80,000 people move to Melbourne each year. Over the next 40 years, Melbourne’s population is expected to grow from 4.1M to 6.5M.”

On page 7, the Introduction said:-

“The Fishermans Bend Urban Renewal Area (as shown below) provides a unique opportunity to expand Melbourne Central City to the south-west, connecting the existing Central Business District to Port Phillip Bay. By 2050, Fishermans Bend could accommodate up to 40,000 new jobs and 80,000 residents.”

20. The explanatory report accompanying the Amendment includes the following:-

“Support/Implement the State Planning Policy Framework and Adopted State Policy –

The draft Amendment supports the State Planning Policy Framework by establishing a framework for large scale renewal within a city urban area, which will provide for housing, jobs and social and physical infrastructure to support the city’s population growth and requirements.

By 2050, Fishermans Bend will be home to approximately 80,000 residents and provide employment for up to 80,000 workers. The Amendment seeks to facilitate this development by reflecting the State’s key planning documents; Plan Melbourne and Homes for Victorians.”

21. As the proposed MSS changes highlight the State Planning Policy identifies Fishermans Bend as a Priority Urban Renewal Area. That policy is located within Plan Melbourne. It is therefore appropriate to consider whether the Amendment properly responds to the direction of the State Planning Policy Framework and whether the projected 80,000 population figure “*appropriately*” carries out the policy imperatives of that Framework.
22. The above proposition is one that has been endorsed by every witness appearing before the Panel and, in particular, the only planning witness who has strategically looked at the Amendment for any of the authorities, Mr. Milner. He agreed in cross-examination from Mr.

⁵ Victoria in Future 2016.

⁶ See also page 15 reference to same numbers.

Tweedie that it is appropriate to assess the Amendment against the provisions of Plan Melbourne.

23. Question 4 of Document 20 addressed the underlying assumption upon which the most critical elements of the Amendment are predicated. The Urban Design Strategy and the character of the four precincts are based on an assumed population target of 80,000 people, generating in the order of 37,000 dwellings. Whilst Ms. Hodyl undertook her modelling based on a 75% completion by 2050, that number needs to be tempered by her caveat relating to monitoring and subsequent adjustment.

The Population Target

The Fishermans Bend Advisory Committee (the Committee) –

24. In July 2015, the Minister appointed the Committee to review the process to date for the planning for the Urban Renewal Area. The Committee issued a report in October 2015 (Report 1). Its Executive Summary recorded it examined a wide range of background material and sought briefings from many of those involved in the planning and from the key stakeholders.⁷ The opening three paragraphs of the Executive Summary are appropriate to consider as a starting point for the consideration of this Amendment.

“The urban renewal of Fishermans Bend (“the Area”) is a nationally significant opportunity to build on Melbourne’s best assets. The former industrial district, south of the Yarra River and west of Southbank, offers a large area of affordable developable land close to the Central Business District which allows the opportunity to provide attractive office space for the high end service industries which have formed a significant part of the recent employment growth of Melbourne and the creative industries which have a strong traditional base in adjoining areas.

The Area also offers the opportunity for significant residential growth with the advantages of a highly desirable inner city lifestyle and the benefit of reducing the pressure on development in Melbourne’s middle suburbs and on the fringe. It has the potential to assist housing affordability by increasing supply and, with the recent inclusion of the Employment Precinct between the Westgate Freeway and the Yarra River, the further potential to become an important employment cluster for twenty-first century industries.

Maximising these opportunities is complex because the Area has difficult geotechnical conditions and high levels of contamination, and unlike most large urban renewal areas in comparable cities, the land is largely in fragmented private ownership. These factors make a best practice approach to the renewal taste imperative.”⁸

25. Report 1 continued:-

“In the first instance, the Committee recommends that immediate action be taken to:-

- *Refresh and refine the rationale and vision for Fishermans Bend in the context of wider planning for the capital cities, and the changes which have occurred to the*

⁷ Fishermans Bend Advisory Committee Report 1, October 2015, p.4.

⁸ Ibid. p.4.

economic and policy settings affecting the Area including decisions about the Port;

- *Establish effective governance and financial arrangements appropriate to the scale of the Fishermans Bend urban renewal tasks; and*
- *Confirm the key decisions about transport for the Area and, in particular, the timing and route/s of the future tram network, the route for dedicated cycling and walking track/s to the Central Business District and the long term planning for any future Metro line through the Area.*

*These actions underpin the future planning for the Area. Detailed neighbourhood planning for Lorimer, Wirraway, Sandridge and the employment **precinct should not proceed in advance of decisions** on these issues. Fine grain neighbourhood planning can proceed for the Montage precinct where light rail infrastructure is in place, but should not be finalised in the absence of a refreshed vision regarding the preferred future of the precinct.”⁹*

(my emphasis)

26. Report 1 discusses Background in Section 3. Of particular relevance to the underlying premise of this Amendment is the following:-

*“Due diligence and planning work proceeded after the re-zoning. Places Victoria, established a Project Co-Ordination Group and commissioned a series of background reports based on low, medium and high growth scenarios. Most planning was based on a mid-range scenario of 80,000 residents and 40,000 jobs. The research undertaken was extensive and generally competent although poorly integrated. Soil contamination and high level geotechnical input were reported in June 2012 but all other reports were submitted from December 2012 to December 2013, **well after key decisions were made.** Assumptions also changed during the study period and some reports had different scenarios and planning assumptions to others. There does not appear to have been co-ordination or knowledge sharing as the various reports were compiled. (my emphasis)*

In addition, some of the initial planning for the Area used models developed for “greenfields” low density residential development to assess the need for infrastructure and services and a complex “brownfields” high density urban development area.¹⁰

...

Draft Vision –

A Draft Vision for Fishermans Bend was released in September 2013 by Places Victoria. This Vision identified the opportunity for a population of 80,000 and 40,000 jobs to be accommodated and included an outline of key aspirations and qualities for Fishermans Bend.¹¹

(i.e. the baseline!)

...

Strategic Framework Plan –

... in July 2014, the Fishermans Bend Strategic Framework Plan ... was released.

⁹ Ibid. p.5.

¹⁰ Ibid. p.11

¹¹ Ibid. p.10.

... there was no community consultation about Fishermans Bend planning after the release of the Draft Vision and prior to the release of the Strategic Framework Plan in July 2014 and limited consultation with the two Councils involved. Neither Council endorsed the Strategic Framework Plan.¹²

27. Section 4 of Report 1 sets out the key issues, findings and recommendations which the Committee made after reviewing the background material and meeting the various agencies and stakeholders and that led to its first recommendation of refreshing and redefining the Vision.¹³

The second recommendation was:-

- “A Financial Plan –

There is an urgent need for a short, medium and long term financial plan for the development of Fishermans Bend, which considers all potential sources of funding including open space contributions, development contributions, special rates/levies to capture a proportion of the land value uplift provided by the 2012 rezoning local and State government revenue and debt financing and possible Commonwealth government funding. This also needs to include innovative ways to facilitate and incentivise private sector delivery of infrastructure, which go beyond work-in-kind delivery.

- Resourcing –

For the planning and implementation of Fishermans Bend Urban Renewal Area needs to reflect the scale of the task. In the immediate term, work on the planning of the Area requires significant additional resources.

- Best Practice Governance Arrangements –

Current governance arrangements are complicated, are undermining confidence and will not produce good outcomes. Given the significant delivery and financial risks of the Fishermans Bend Urban Renewal Area, and the poor urban outcomes which are now on the way to being delivered, and given that none of the bodies currently involved in the primary governance of Fishermans Bend Urban Renewal Area will have an impartial view about the most appropriate governance structure for Fishermans Bend, it is recommended that the Department of Premier and Cabinet commission a rapid review of the options based on an examination of best practice models in similar urban renewal projects.¹⁴ (my emphasis)

28. At page 25, the Committee observed:-

*“Inner city urban renewal land is a finite resource and its future development potential should be maximised and supported by a properly conceived integrated transport plan that addresses rail, bus, walking, cycling and water transport options. **To date planning for Fishermans Bend has failed to provide this.** (my emphasis)*

29. This observation and preceding analysis led to a series of recommendations on page 26 including, in particular, that an early in principle decision on the timing and routes of tram

¹² Ibid. p.11.

¹³ Ibid. p.17.

¹⁴ Ibid. p.19.

networks and any future Metro line is critical and must precede further decisions about possible development yield and density outcomes and fine grain neighbourhood planning.

30. At page 28 the Committee observed:-

“4.7 Community Infrastructure, Public Open Space, Public Realm and Activation –

The 2012 rezoning and the subsequent planning work demonstrated an inadequate understanding of the residential development market in Melbourne which has meant that all planning to date was based on population projections which are half the likely outcome if current development trends continue. The previous projections provided for the addition of the population of Greater Shepparton to the Area. Current development trends indicate that the Area may need to provide for the population of Greater Ballarat. In reality, Fishermans Bend is not just another suburb for Melbourne, but a city within itself. Planning for population of this scale requires the planning for the full range of supporting and sustaining community and social infrastructure. To date, this has not occurred for Fishermans Bend.”

31. Section 5 dealt with Neighbourhood Precinct Planning and Infrastructure and the Infrastructure Plan. At page 36, the Committee observed:-

“However, as outlined earlier in this report, the Fishermans Bend Advisory Committee has identified a number of priority issues and the need for immediate action relating to:-

- *Defining the rationale and vision for Fishermans Bend in the context of changes to the economic and policy setting, and wider capital city planning.¹⁵*
- *Governance and financing arrangements, including the need for high-level, whole- of-State-government commitment to the project, with Federal and Local government input.*
- *Transport priorities including key decisions and commitments around future tram or heavy rail, port related freight traffic, and early provision walking and cycling infrastructure.*

*This work is fundamental and critical to all future planning for Fishermans Bend. Accordingly, the detailed Precinct Planning **should not proceed until** clarity is provided around the Vision and transport priorities for the whole of the precinct except in relation to the Montague Precinct where light rail infrastructure exists.”¹⁶ (my emphasis)*

32. The balance of that section, addressed infrastructure plans, transport infrastructure, community infrastructure, sustainable infrastructure, development contributions and the timeline and process. Under this latter heading the Committee observed:-

¹⁵ Note reference to the emergence of Plan Melbourne in 2015 at p.15.

¹⁶ Ibid. p.36.

“The Metropolitan Planning Authority Taskforce Action Plan suggests that each detailed Precinct Plan will be developed in parallel with the Strategic Framework Plan, with strategy and detail being mutually reinforcing. However, the Advisory Committee recommends early consultation with stakeholders on the Strategic Framework Plan, ahead of work on the detailed Precinct Plans. The Advisory Committee is conscious that to date there has not been any consultation on the Strategic Framework Plan, and sees value in this occurring to assist in identifying and resolving issues in detail via the Precinct Plans.”¹⁷

33. Section 7 addressed further research or planning work and relevantly observed:-

“Vision for Fishermans Bend –

The Advisory Committee has recommended that priority action be taken to refresh and redefine the Vision –

“Using the 2013 Draft Vision for Fishermans Bend as a baseline, articulate and define the economic, social and environmental vision for the Area in the context of wider capital city planning and the changes in the economic and policy settings which have impacted on Fishermans Bend since the original rezoning.”

This work should:-

- *Define the overarching strategic position and role for Fishermans Bend.*
- *Test a number of **macro scenarios** to consider various options for the ultimate population, density, mix and servicing requirements.*
- *Understand future preferred residential densities to assist in planning for community facilities, open space, and housing diversity.*
- *Consider employment outcomes based on alternative scenarios.*
- *Be informed and guided by key decisions on public transport priorities.*

In addition:-

- *Once this is completed, together with key decisions on transport priorities, there is an urgent need to update the Strategic Framework Plan to provide overarching guidance for other planning work and the assessment of permit applications.*
- *There is also a need to close the loop on engagement on the Draft Vision, with feedback on what has been heard, and what has been done to inform ongoing planning for the Area.”¹⁸ (my emphasis)*

34. Section 8.6 contains the various recommendations. It is highly pertinent that the Committee's first recommendation and first priority required work to be undertaken which has not so far been undertaken. There has been no material presented to the Panel to demonstrate testing of macro scenarios the Committee considered necessary for determining the ultimate population, the

¹⁷ Ibid. p.39.

¹⁸ Ibid. p.44.

ultimate density and the ultimate mix and servicing requirements has been undertaken. Instead, the 80,000 figure has been trotted out time and time again as the target. It has effectively become the *“Emperor’s New Clothes”* of the Hans Christian Andersen fairy tale.

35. The MAC recommendations and conclusion concerning the middle growth scenario are in stark contrast to the discussion in the Part B submissions on behalf of the Minister dealing with population targets [13 – 22], the supplementary submissions [9 – 18] and, in particular, the Minister’s second SIN. The spin sought to be achieved by SIN 2 is in stark contrast to the observations of the MAC that noted *“to date planning for Fishermans Bend has failed to provide this”*¹⁹ (i.e., maximising the renewal Area’s future development potential).
36. The MAC sought to redefine the Vision with its nominated 80,000 target. It was clearly not satisfied with the level of work, otherwise, why would it recommend testing macro scenarios to consider the ultimate population? The answer to that is quite simple, the work had not been done. Contrast this obvious conclusion with the assertions made in [26] of SIN 2. Whilst some documents purporting to support the assertions contained in SIN 2 were provided, what is particularly pertinent is the lack of minutes from those meetings. No evidence has been led to substantiate the assertions. In light of the findings of Report 1, the only conclusion that can be reached is that the target was not soundly based.
37. Every action has a reaction or consequence. Minister Guy’s unilateral rezoning could be considered at the extreme end of a pendulum that has now generated a consequential swing in the opposite direction by those tasked with the job of seeking to put a framework around that rezoning. The reaction of the group tasked with that job would no doubt be a wonderful script for an episode of *“Yes Minister”* and Sir Humphrey.

The Alleged Justification of the Population Target -

38. The Minister’s Part A response to Document 20 addresses issue 4:-

“155. The residents target is based on several factors, including:-

- (a) the aspiration for the precinct described in Plan Melbourne, with the precinct expected to play an important role in housing Melbourne’s growing population;*

¹⁹ Ibid. p.25.

- (b) *benchmarking dwelling density for an inner-city mixed-use and liveable precinct, based on local and international examples;*
- (c) *estimation of the development practicalities of delivering additional dwellings year-on-year to 2050;*
- (d) *the ability of the utility, roads, public transport and other infrastructure elements to cater for growth;*
- (e) *the need to balance the creation of communities, jobs and entertainment with the need to provide public open space, preserve heritage and celebrate culture; and*
- (f) *delivery of a Green Star certified sustainable community.*

156. *These factors, coupled with the many background reports summarised in the draft Framework and the early work of Places Victoria in 2012 and 2013 (public records available at www.fishersmanbend.vic.gov.au) have contributed to arriving at the optimal population of 80,000 residents by 2050.”*

39. The Fishermans Bend Ministerial Advisory Committee’s submission to this Panel addresses the issue of numbers on page 15:-

- *Estimated resident and worker numbers are critical to the planning of all necessary infrastructure and services.*
- *Estimates of about 80,000 residents and 40,000 workers by 2050 in the four initial Fishermans Bend precincts were determined based on the initial work undertaken by Places Victoria in 2012/2013 (particularly work on transport, employment land and market take-up).*
- *These numbers were included in the Vision document released for consultation by Premier Napthine and Minister Guy in 2013 – all landowners notified.*
- *These estimates were also included in the original Plan Melbourne of 2013 and in a revised Plan Melbourne of 2016 ...”.*

40. It would appear the Committee, contrary to its conclusions and recommendations in Report 1 has succumbed to the myth of the “*Emperor’s New Clothes*”. So has the Minister’s Taskforce. The UDS is the manifestation of the myth.

41. Report 1 sought to maximise (not optimise) the development potential of the inner city urban renewal land noting it to be a finite resource.²⁰ Its first priority recommendation was to use the 2013 draft Vision as a baseline from which to articulate and define the economic, social and environmental vision for the area. To do this, the Committee recommended that the work should “*test a number of macro scenarios that consider various options for the ultimate population, density, mix and servicing requirements.” This has not been done. On any analysis it is apparent the Committee required the “*baseline*” figure to be reassessed by reference to macro testing.*

²⁰ Report 1, p.25.

42. The only report on the Fishermans Bend website from Places Victoria of 2012/2013 that undertakes any form of “*macro testing*” of the population densities is the MacroPlan Dimasi Fishermans Bend Urban Renewal Area Real Estate Market Assessment Final Report 14 December, 2012 (extract in Document 106).

43. The scope of the MacroPlan Dimasi study identified in Section 1.1 required, inter alia:-

- “• *Commentary of the development impacts of three specific development scenarios identified by Places Victoria, namely:*

Scenario A –

15,000 dwellings, 35,250 residents, 17,300 jobs and up to 200,000m² GFA.

Scenario B –

30,000 dwellings, 70,500 residents, 35,730 jobs and up to 500,000m² GFA.

Scenario C –

60,000 dwellings, 141,000 residents, 58,000 jobs and up to 850,000m² GFA.”²¹

44. Section 1.3 dealt with the urban renewal context and in particular identified the future population growth as:-

“By 2050, Melbourne’s population is likely to reach between 5.6 and 6.4 million.

If current trends persist for the next 20 years (i.e., by 2031) the market will need to deliver an additional 555,000 dwellings within metropolitan Melbourne.

This equates to around 30,000 new dwellings each year.

This growth will likely be disbursed across the Melbourne metropolitan area including key residential urban renewal areas including the Central City area.

In accordance with the aspirations for urban renewal outlined in Melbourne @ 5 million, future dwelling supply is likely to occur in the following areas:-

- *53 – 55% of Melbourne’s major growth corridors (up to 305,250 dwellings).*
- *45 – 47% within Melbourne’s inner and middle ring areas (up to 260,000 dwellings).²²*

45. Section 3.3 analyses the development impacts. It included the following:-

“Overview –

²¹ MacroPlan Dimasi Fishermans Bend Urban Renewal Area Real Estate Market Assessment Final Report, p.6.

²² Ibid. p.16.

This is a high level qualitative assessment of the nature and scale of the impacts of development under each scenario reflecting our real estate market analysis of the development opportunities, issues and risks relating to each of the precincts.

...

Evaluation Criteria –

The author has defined the following important categories to describe the nature of potential impacts resulting from development within all precincts of FBURA during the development horizon.

- 1. Value Potential – i.e., private sector value uplift with the potential to fund a share of public investment;*
- 2. Economic Value & Scalability – i.e., global industry competitive, multi-sector investment and employment outcomes, increased productivity and enhanced industry comparative advantage;*
- 3. Private Investment Value – i.e., attractiveness as a regional destination for Core Plus investment (A-REIT) and potential to unlock value at a metropolitan, Central City and local area levels; and*
- 4. Value of Public Investment – i.e., potential to trigger catalytic long term investment and create systems efficiency through local employment sustainability.*

The following sub-categories provide further context for describing the likely scale (using a sliding impacts scale: i.e., low, medium, high) within all precincts in FBURA during the development horizon:

- 1. Value Capture Potential –*
 - Category 1 Potential to result in a major market investment signal.*
 - Category 2 Potential to result in both upfront and long-term infrastructure funding.*
 - Category 3 potential to result in critical mass that will unlock economic multipliers.*
 - Category 4 Potential to result in high level of mixed-use development early in the project.*
- 2. Economic Value and Scalability –*
 - Category 5 Potential to trigger for major investment in the precinct of regional significance.*
 - Category 6 Potential to generate multi-sector economic investment & growth outcomes (i.e., freight/logistics, high tech, health, education, tourism).*
 - Category 7 Potential to increase labour force participation & productivity.*
 - Category 8 Potential to result in enhanced industry comparative advantage and global competitiveness.*
- 3. Investment Value –*
 - Category 9 Potential to significantly enhance regional attractiveness – i.e., provide a destination for major office/retail investment - particular Core Plus Assets (A-REIT).*

- *Category 10 Potential to provide a major destination for major international HQ (i.e., port, freight & logistics, manufacturing, services).*
- *Category 11 Potential to result in investment networks that link the local area to Central City and broader metropolitan business networks.*
- *Category 12 Potential to result in major entertainment hub that provides for day/night and weekend economic activity.*

4. *Value of Public Investment –*

- *Category 13 Potential to trigger catalytic long-term investment reflecting the future growth potential of the area.*
- *Category 14 Infrastructure Utilisation/Efficiency.*
- *Category 15 Employment Sustainability and Mode Shift.*
- *Category 16 Potential Pay-back on investment.*²³

46. The author defined themes and described component parts of the valuation criteria and noted that they may be examined further by Places Victoria in developing multi-criteria assessment tools for analysing impacts relating to future development within FBURA.

47. Three themes were identified, namely multi-sector drivers, economic & social activity/participation indicators and liveability. Under the latter theme, the author noted:-

*“Liveability is important to economic competitiveness and an important factor in attracting skilled workers and capital investment.”*²⁴

The Economists Intelligence Unit rankings were identified.²⁵

48. The author’s assessment of Scenario A was summarised on page 88 under the four multi-sector drivers as being relatively low/moderate. Table 34 on page 89 scored each of the four categories through the 16 measures for Scenario B as having the following overall potential:-

- *Value capture potential – above moderate.*
- *Economic value and scalability – above moderate.*
- *Investment value – above moderate.*
- *Value of public investment – above moderate.*²⁶

49. Table 35²⁷ contained a similar summary assessment of Scenario C (i.e., 60,000 dwellings) and assessed the overall potential as:-

- *Value capture potential – very high.*
- *economic value and scalability – very high.*
- *investment value – very high.*
- *value of public investment – very high.*²⁸

50. The concluding remarks of the author were:-

- *Maximising the potential for the private sector to deliver a mix of developments will unlock value and provide a basis for funding key infrastructure whilst*

²³ Ibid. p.85.

²⁴ Ibid. p.86.

²⁵ Viz, Shimin evidence.

²⁶ Ibid. p.90.

²⁷ Ibid. p.91.

²⁸ Ibid. p.92.

minimising future costs to City of Melbourne, City of Port Phillip and the State government.

- *Ensuring multiple development fronts and a competitive land supply will help facilitate feasible development and encourage new employment opportunities from productivity.*²⁹

51. The Places Victoria earlier work reports identified on the website are as follows:-

- “• *Community Engagement Report (Places Victoria December 2013)*
- *Community Infrastructure Plan (Final Report – SJB Urban July 2013)*
- *Fishermans Bend Baseline Utility Assessment Report*
- *Arterial Road Connection Feasibility Study (Parsons Brinckerhoff June 2013)*
- *Light Rail Options Assessment*
- *Traffic Survey (GHD July 2013)*
- *Walking and Cycling Report (GTA Consultants July 2013)*
- *Heritage Study (Biosis June 2013)*
- *Historical Account (Biosis June 2013)*
- *Buffer Study (GHD June 2013)*
- *Affordable Housing Options Paper (Judith Stubbs & Associates June 2013)*
- *Economic and Employment Study (SGS Economics and Planning November 2012)*
- *Transport Issues and Opportunities Study (Aecom December 2012)*
- *Preliminary Contamination Study (Golder Associates June 2012)*
- *High Level Geotechnical Input (Golder Associates June 2012)*
- *Preliminary Community Infrastructure Needs Assessment (ASR Research December 2012)*
- *Real Estate Market Assessment (MacroPlan Dimasi December 2012)*
- *Existing Land Budget (GHD Places Victoria February 2013)*
- *Fishermans Bend Demographic Profiling (Places Victoria June 2013)*
- *Infrastructure Assessment (GHD December 2012)*
- *Metro Rail Technical Feasibility Study (Raylink July 2013)”*

A number of other reports were released onto the website in March 2018 including:-

- “• *Fishermans Bend Urban Renewal Area Funding Options Paper (PricewaterhouseCoopers, April 2013).*”

52. Appendix B to the Part A submission replicates the website’s summaries of the reports. SIN 2 makes reference to some of them. Its description of the MacroPlan Dimasi report [19 – 21] is demonstrative of the spin attempted by the SIN.

53. The transport reports are:-

- Arterial Road Connection Feasibility Study, June 2013, Parsons Brinckerhoff

²⁹ Ibid. p.100.

The report identifies feasibility options for providing arterial connections between Graham Street and the Prohasky Street/Westgate Freeway ramps, it recommended a combination of options to be chosen as the preferred route. It makes no judgments about optimal residential population.

- Light Rail Options Assessment, May 2013, Aurecon

This study analysed the tram alignment options and made a recommendation that Route 3 was the preferred route which is the one adopted in the draft Framework. No reference to a preferred residential population numbers.

- Traffic Survey, July 2013, GHD

The report investigates existing traffic demand.

- Walking and Cycling Report, July 2013, GTA Consultants

The study looked at route options for a principal Bicycle Network and concept designs of five key corridors and two intersections. Again, no reference to population preferences.

- Transport Issues and Opportunity Study, December 2012, Aecom

The report appears to be the result of a number of stakeholder meetings with mind maps developed following those meetings for a number of different subjects. The summary includes:-

“A number of recommendations are made which include implementing a Travel Demand Management Strategy, investigating traffic conditions to determine current use, develop a fine grain pedestrian network and end trip facilities for cyclists, as well as major pieces of tram and train infrastructure in the long term. Integration with other major activity centres and noodle points across the city is identified as critical.

This information informed the MPA’s approach to sustainable modes of transport ...”

Again no reference to population density preferences.

- Metro Rail Technical Feasibility Study, July 2013, Raylink

This report aims to assess the options to extend Metro rail services to Fishermans Bend and identifies preferred alignment. It is a very preliminary report.

54. The report that deal with “*Employment Land*” is:-

- Economics and Employment Study, November 2012, SGS

This report looks at existing conditions and studies its economic and employment context at that time. It notes that employment and manufacturing and transport has declined and site contamination and drainage hinders further industrial development. It makes a number of recommendations suggesting development opportunities in each precinct. The summary notes:-

“Findings of the study have been utilised in identifying prospects for retention and growth of important existing industry, and recognising those industries appropriate to assist in transitioning from the area, and determining the significance of opportunity in extending the Melbourne CBD over the Yarra River to Port Phillip Bay.”

It makes no comment on preferred numbers.

55. The market take-up reports was:-

- Real Estate Market Assessment, December 2012, MacroPlan Demasi

This is the report summarised above. The webpage summary includes the following:-

“As part of the study the theoretical development capacity across the four precincts is analysed in the strength and weaknesses of the area from a real estate development standpoints identified ... four “priority projects” are suggested which include major retail activity nodes, major commercial developments, major residential developments and a light rail extension into the Sandridge Precinct.

The assessment has helped inform precinct planning and the role of the Urban Renewal Area in the central city context.”

As indicated above, the highest scenario achieves the highest score in terms of return for dollar investment of the scenarios analysed.

56. The Fishermans Bend Infrastructure Assessment October 2012, GHD provided an assessment of existing infrastructure capacity and future requirements to accommodate the proposed renewal based on the four scenarios. Initially the assessment was based on the lower scenario and an Addendum was provided in December 2012 to reflect the increased density scenario. The outcome of that report indicated that stormwater, water supply, sewerage, gas supply, electricity, telecommunications could all be supplied, subject to the supplier increasing its infrastructure capacity to cope with the numbers. It will obviously add to the cost but as the authors observed in their Executive Summary General Comments:-

“Developer Contribution Plans for the installation, relocation, upgrade of utility and networks, road and tram infrastructure are recommended to be established as early as possible. This is of particular importance for any precinct wide servicing strategies.”

57. ASR Research undertook a preliminary Community Infrastructure Needs Assessment, December 2012 based on the first scenario with the lower density number of residents. The outcome for each community infrastructure category obviously increase with each increase in dwelling numbers. In response to the objectives set for the report, the author recommends a preliminary list of community infrastructure requirement, potential timing and staging of the delivery, indicative costing, principles for the provision of infrastructure and provides recommendations for the next steps and subsequent stages.

58. The PricewaterhouseCoopers Renewal Area Funding Options Paper was based on four scenarios, the first three of which were the same as the MacroPlan Dimasi scenarios, whilst the fourth was a discussion scenario based on 40,225 residential dwellings and 750,000m² of commercial. As SIN 2 [22] records the report looked at projected funding requirements and cost estimates and assessed various different funding options open to government. The key findings and recommendations included:-

- “
 - *An interim and detailed business case be prepared to further develop the funding models and mechanisms and their application to FBURA. This report outlines a number of due diligence pieces that are required to confirm their applicability to FBURA. These business case(s) should also investigate for FBURA:-*
 - *detailed assessment of infrastructure requirements;*
 - *market consultation of suitability of funding mechanism;*
 - *further development of the preferred funding model(s) including legislative impacts; detailed stakeholder assessment; governance model(s), tax efficiencies, etc. ...;*
 - *risk implications on stakeholders and financial modelling, along with detailed economic analysis. This should include sensitivity analysis of financial projections to test financial robustness;*
 - *implementation plan and project (road map).”*

59. None of the these reports undertook a comparative analysis of the scenarios using multifaceted assessment criteria for evaluation apart from the MacroPlan Dimasi report. There is no basis for asserting the target came from any of background reports. The only report that undertook an evaluation of scenarios emphatically favoured the highest scenario.

60. The Panel can take from the above that the 80,000 target is based on a moderate growth scenario when the projected population to 2050 was between 5.6 to 6.4 million a basis the Committee described as “*an inadequate understanding ... based on half the likely outcome ...*”³⁰. The target has not changed. It has never been and, more importantly, is not now “*appropriate*”!

61. The target is the underlying basis of the Vision. The target is the outcome the UDS was designed to achieve. The target was the outcome the precincts have been designed to accommodate. It is the basis of the FAR. Is the basis “*appropriate*”? It has been translated into the dwelling density in policy 22XX. It pervades the CCZ and DDO provisions.

62. Can this in any way withstand a strategic review based on the SPPF’s required by Direction 11?

³⁰ Report 1, p.28.

63. Obviously, such a review needs to assess whether the Amendment is consistent with and achieves the policy objectives of Plan Melbourne.
64. It is submitted that having regard to the Panel's Terms of Reference and purpose – it is essential that the Panel very closely reviews the “*underlying*” basis of the Amendment to determine whether it is appropriate and consequently should reject the Minister's submission that it not review the Vision or the target.
65. I adopt the submissions of Messrs. Canavan and Tweedie and Ms. Sharp in Document 252 in support of this contention.

Plan Melbourne

66. Clause 11.06 Metropolitan Melbourne has the objective of creating a city structure that drives productivity, attracts investment, supports innovation and creates jobs. The policy guideline says that in considering this policy, planning must consider as relevant: Plan Melbourne 2017 – 2050.
67. Clause 11.06-1 contains the strategies that include:-
“Plan for the redevelopment of Major Urban-Renewal Precincts in and around the Central City to deliver high-quality, distinct and diverse neighbourhoods offering a mix of uses.”
68. Clause 11.06-2 seeks to provide housing choice close to jobs and services. The strategy to achieve this is to manage supply of new housing and locations that will meet population growth and create a sustainable city. In addition, it seeks to maintain the UGB, facilitate increased housing in the established areas and direct new housing and mixed-use development into urban renewal precincts and sites.
69. Plan Melbourne works on a projected population growth for the metropolitan centre of 7.9 million by 2051.³¹ The major urban renewal precincts including the four before this Panel are identified on page 15. The four precincts are referenced in Map 4 on page 6 as “*priority precincts*”!
70. Direction 1.3 seeks to create development opportunities at urban renewal precincts across Melbourne to ease pressure on established areas and provide greater certainty for residents, investors and the construction and development industry (p.38). Policy 1.3.1 is to plan for and facilitate the development of urban renewal precincts to accommodate future growth by concentrating development within urban renewal precincts (p.39).

³¹ Metropolitan Planning Strategy, Plan Melbourne 2017 – 2050, p.7. (based on already out of date 2016 projections).

71. Direction 2.1 is to manage the supply of new housing in the right locations to meet population growth and create a sustainable city.

“The social, economic and environmental benefits of creating a more compact, sustainable city are profound. Some of the benefits of compact, high-density neighbourhoods are as follows:-

Social –

It encourages positive social interaction and diversity, improves the viability of (and access to) community services and enables more (and better integrated) housing.

Economic –

It enhances the economic viability of development, improves the economic viability of infrastructure delivery and utilises existing infrastructure.

Transport –

It creates sustainable demand for more transport options – including public transport, walking and cycling – and can reduce overall travel time.

Environment –

It creates opportunities for efficient use of resources and materials, create less pollution through the promotion of sustainable transport ...

- *seek to locate at least 65% of new housing in established areas of Melbourne and no more than 35% in growth areas in line with current levels of development and Victoria in Future projections.”*

72. Policy 2.1.1 is to maintain the permanent UGB whilst Policy 2.1.2 is to facilitate an increased percentage of new housing in established areas to create a city of 20-minute neighbourhoods. Figure 7 (p.47) has the aspirational scenarios of 230,000 new dwellings for inner-metro by 2051 based on a 70/30 split.

73. Direction 2.2 is to deliver more housing closer to jobs and public transport. It will do this by locating medium and high-density development near services, jobs and public transport to support the objectives of consolidation and housing choice. It notes the significant opportunities for housing development in and around the central city and, in particular, for medium and high-density development in urban renewal precincts.

74. Policy 2.2.1 is to:-

“Facilitate well-designed, high-density residential developments that support a vibrant public realm in Melbourne’s central city.

Directing population and housing growth into defined change areas will enable the Victorian government to work with local governments, developers and stakeholders to create sustainable, liveable and attractive places that appeal to a range of households – including families with children and older – and single – person households.

A number of major urban renewal precincts have been identified in the central city (as shown on Map 4). Maximising development opportunities of these precincts will minimise

the need to increase residential densities in other parts of the city. The sequencing of infrastructure within these precincts will maximise their development potential and provide timely services and amenities for the residents.

There is a need to find ways to give the market some flexibility to maximise development opportunities. For instance, additional development rights could be granted in exchange for the provision of additional amenity in the central city and other key urban renewal structure plan areas.”

75. Policy 2.2.2 is to:-

“Direct new housing and mixed-use development to urban renewal precincts and sites across Melbourne.

The redevelopment of urban renewal precincts and sites will create more diversity in the housing market – including opportunities for affordable and social housing – as well as more jobs and community services. Urban renewal precincts will be major sources of medium and high-density mixed-use development.

Additional urban renewal opportunities need to be identified through regional planning in partnership with the local government sector.

Local government will be supported to deliver outcomes at identified local urban renewal precincts and sites, particularly if they have complex issues that need to be addressed such as site contamination.”

76. In considering these two policies, it is important to note they are distinct and refer to different areas across Melbourne. Policy 2.2.1 specifically identifies the urban renewal precincts identified in the central city (as shown on Map 4). This is to be contrasted with Policy 2.2.2 which is directed to sites across Melbourne.

77. The clear implication of the distinction between Policy 2.2.1 and 2.2.2, is that the former supports “*high-density*” residential development in Melbourne’s central city. Policy 2.2.2 applies to the hinterland outside of the central city area. The policy for the area that is relevant to the debate before this Panel is Policy 2.2.1, not 2.2.2. The four priority precincts are identified on Map 4. The policy seeks well-designed, high-density residential development that supports a vibrant public realm. To do this it seeks to “*maximise development opportunities*”. Contrast these words with Policy 2.2.2 where they do not appear. Those words have work to do to achieve the desired policy outcome.

78. Hence, the policy imperative that comes from Plan Melbourne and therefore the SPPF is that in the four precincts it is policy to facilitate well-designed, high-density residential developments that support a vibrant public realm in Melbourne’s central city. That is the starting point from which to consider whether this Amendment is appropriate.

79. The question for the Panel is whether it is “*appropriate*” in light of this direction, to apply a population target predicated on a population 1.5 million less than Plan Melbourne’s projection of

7.9 million? Is it appropriate to consider the aspirations of Melbourne @ 5 million that sought to supply future dwellings with 53 – 55% in the major growth corridors and 45 – 47% in the inner and middle ring areas, as opposed to Plan Melbourne seeking to locate at least 65% of new housing in established areas of Melbourne and no more than 35% in growth areas.

80. If Mr. Shimin's conservative projections are to be given consideration, is it appropriate to consider a target population based on a medium growth scenario when the likely figure is 9.4 million, i.e., 3 million more people than the high growth scenario of 2012? Does a medium growth scenario created in 2012 form a sound basis for maximising development opportunities in the major urban renewal precincts in the central city?
81. Mr. Sheppard analysed the aspirational target of 230,000 dwellings by 2051 on his page 15 and following. On the assumption that his assessment is near the mark, the question that needs to be asked is what happens when Southbank, Docklands and Arden-Macaulay are full? Where do we put the additional 120,000 dwellings that the Inner Metro is required to accommodate? Do we put a "SOLD OUT" sign on Inner Metro? Are people going to somehow miraculously stop coming to Melbourne in 2050?
82. Frankly, the answer to these questions is so blindly obvious as to make this Amendment a farce. Can it really be said that adopting an FAR of 2:1 in the non-core area of Wirraway, within a 20 minute neighbourhood of a station, equate to maximising development opportunities? Wirraway is the fourth "priority" precinct of the "Major Urban Renewal Precincts" as shown on Map 4. It is not Port Melbourne. It is not South Melbourne or Middle Park. It is an area Plan Melbourne seeks to use to help limit the outward push of the city.
83. How can an urban design strategy, with its FAR's and height restrictions designed to accommodate a population target created in 2012 be the basis for this Amendment? How can it in any way be said to be "appropriate" to adopt clause 22XX, new capital city zones, the DDO's or the MSS policies based on figures that are so perversely inconsistent with Plan Melbourne?
84. Mr. Tweedie, on behalf of Mr. Canavan and Ms. Sharp, addressed the Panel on the question of whether the FAR's and FAU are both appropriate and legal. I adopt their arguments and wholeheartedly endorse the same and will not recapitulate them.

85. It is submitted that even with the best drafting intentions in the world, that which is so flawed cannot be made good. Clause 22XX, clause 21.06, the CCZ, the DDO's or the maps and plans cannot be allowed to proceed based on such a fundamentally flawed population target.
86. It is not a matter of plucking another number out of the air. The work needed to be done (as required of by Report 1) still needs to be done. It needs to be done on the basis identified by Mr. Sheppard.³² Only then can the Plan Melbourne policy be achieved.
87. The Capital City Zone and proposed DDO changes cannot be allowed to proceed with their respective maps and plans because they are too contaminated by the target population. Unfortunately this whole exercise is a waste of time not to mention an enormous waste of resources. Had the MAC's first work task been properly undertaken, then we might, possibly, be considering something that just needs a "*touch-up*". Sadly, that is not the case.
88. There may be a desire on the part of the Panel to attempt to provide some middle course recommendation to the Minister, perhaps in line with Mr. Milner's response to the Chair's first question following his evidence-in-chief. The problem with that course is that you do not have the equivalent of "*reference project*" upon which to properly base a meaningful amendment that could provide the level of certainty and direction warranted by the opportunities available within this major priority urban renewal precinct. The reason for that is that you do not know how many people could be accommodated within an appropriate vertical UGB and you do not know vital information concerning the provision of infrastructure, its cost and who is to fund it.
89. Another very important ingredient in this exercise is, as the MAC observed, precinct planning should run parallel with the preparation of the framework, but that that work should only occur once the full implications of infrastructure provision are known. How can capital city zone maps or DDO plans be incorporated into a planning scheme when no one knows whether they are viable, what they are going to cost and will the aspirations, for instance Lorimer Central, be unrealistic in terms of cost? To put such features into a plan and then prohibit development that does not otherwise accommodate these features is unlawful, uncertain and likely to lead to planning blight.
90. It follows from the above that the Panel should report back to the Minister that the planning scheme amendments proposed are not appropriate.

Funding –

91. Clause 1 of the SPPF and Section 4(1) of the Act have as objectives:-

³² A proposition supported by Simon McPherson in his Witness Statement [43] and [173] and in answer to cross-examination by Mr. Canavan.

“To provide for the fair, orderly, economic and sustainable use and development of land.”

92. Strategic consideration two of Planning Practice Note 46 asks whether the Amendment implements the objectives of planning and addresses any economic effects. In particular, there should be an evaluation of the costs and benefits to business and the community arising from any requirement of the Amendment.³³
93. Clause 17 of the SPPF requires planning to contribute to the economic well-being of communities and the State as a whole by supporting and fostering economic growth and development by providing land, facilitating decisions, and resolving land use conflicts, so that each district may build on its strengths and achieve its economic potential. The various objectives and strategies underpinning this policy seek to provide a nett community benefit.
94. It is highly relevant and very telling that no strategic planning evidence has been called on behalf of the Minister to support the Amendment. Mr. Glossop’s brief was no more than a drafting exercise and did not trespass into any consideration of the merits of the Amendment. The Panel can draw its own conclusions from this lack of strategic supporting evidence particularly when all other planning witnesses have been strident in their criticism of it.
95. Planning panels and advisory committees are called upon to consider the strategic planning framework and overall merits of planning scheme amendments on a regular basis. This exercise is carried out in a somewhat academic exercise. This is not to disparage or in any way criticise the work of panels or committees, but is rather a commentary on the process adopted in this State.
96. The witnesses called before the Panel who have been so critical of the Amendment on the other hand, are required to address the statutory implications of strategic exercises on a day to day basis and bring to bear the reality of having to deal with the outcome of wherever an amendment ultimately leads.
97. The Panel, fortunately, is in this case comprised of the most senior and experienced planners within the State. This is obviously no accident, but rather a recognition of the significance and importance of getting this Amendment *“right!”* Whilst the Panel brings its experience into the deliberations of the *“appropriateness”* of this Amendment, it is submitted that it should place

³³ Planning Practice Note 46, p.3.

significant weight on the opinion evidence that has been led before it concerning the merits or otherwise of what the Taskforce and the Minister are now proposing.

98. Mr. Milner succinctly summarised Amendment GC81 as having the following attributes:-

- “• *incremental.*
- *disjointed.*
- *confusing.*
- *incomplete.*
- *innovative.*
- *uncertain role for transferrable development rights.”*

99. Significantly, Mr. Milner observed that the outcomes are envisaged but not the costs. The viability in attraction of developing Fishermans Bend relative to other areas will be influenced by the costs and contributions, and constraints of the FAR. Contributions costs and yields are closely linked and they need to be integrated and settled concurrently.

100. In terms of addressing the Amendment, his headline reconsiderations were:-

- “• *the choice of zone.*
- *the intrinsic wisdom of a new urban renewal zone.*
- *integrated provisions.*
- *incorporation of the Framework.*
- *consolidation and comprehension of policy.*
- *distinctions between policy and controls.*
- *clearer and consistent expression of purposes.*
- *need for public notice.*
- *consistency of mapping.*
- *discretion and tolerance in setback and separation.”*

His conclusions were that the Amendment feels, reads and should be managed as a work in progress and needed a complete revised and refined set of provisions urgently and cautioned about the inclusion of any further interim or incomplete measure.

101. Mr. Milner is one of Victoria’s more senior experienced Planners. His opinion about this Amendment is damning. Of even greater significance, is that his evidence was called by a party who has supposedly been “*consulted*” and been “*involved*” with the process of preparing the Amendment.

102. Mr. Biacsi, Mr. McGurn, Ms. Heggen, Mr. Barnes, Mr. Song, Mr. Negri and Mr. Rogers have all expressed varying levels of reservations about the merits of the Amendment. As stated previously, no strategic planning evidence has been called in support of the Amendment. That

is therefore all the more reason to rely upon and accept their evidence rather than assertions and submissions to the contrary.

103. Just as damning is the evidence of Mr. Shipp. His key points (Document 110) succinctly provides his overview of the Amendment on behalf of both Councils. His first point is that the approach to infrastructure funding is not sufficiently resolved. He expresses three reasons why that is important and says that it could be addressed by:-
- “• *Identify the proposed funding source(s) for all public infrastructure types in the Framework to ensure that the principles of development contributions are met;*
 - *Ensure that the planning controls clearly set out delivery responsibilities for public infrastructure types not proposed to be funded by another mechanism;*
 - *Review all existing and proposed mechanisms for open space funding and, if required, adjust mechanisms and/or introduce a new mechanism(s) having regard to the above point; and*
 - *Prepare and exhibit a DCP or ICP.”*
104. His second key point revolved around the actual development yield could significantly exceed projections and suggested:-
- “• *Ensure the Framework can respond to likely yields rather than current projections.”*
105. His third key point is that the FAR scheme does not align with the principles of equity and accountability and could result in challenges to the delivery of critical infrastructure items. Mr. Tweedie on behalf of the Landowners Group has already addressed the FAR system in terms of its delivery of open space and how that does not work and is inequitable. This is confirmed by Mr. Shipp’s analysis.
106. His fourth point suggests that the FAR and FAU schemes are unclear and inconsistent. It is self-evident that the FAU system is totally inequitable, non-reviewable and at the whim of authorities who cannot be brought to account.
107. It is again highly significant that Mr. Shipp’s evidence was called on behalf of both Councils.
108. Whilst not called to give evidence, a funding and financing infrastructure case study was submitted on behalf of Port Phillip Council via the work of Mesh Urban Planning and Design. That report analysed the cost implications of two projects, namely the Sports Hub on the Gurnner site and the Fennell/Plummer streetscape and intersection upgrade.

109. The report contains some sobering and significant observations in terms of the above criticisms. In Section 5.3.3 on page 75 dealing with the summary of the second case study (the intersection upgrade), the authors observed:-

“Given the scale of the Case Study 2 streetscape upgrade and its role as a catalyst for redevelopment of the area, the co-ordinated and timely delivery of this project needs to be actively considered, including the form and function of the primary delivery agency. In light of the above, the ability and capacity of government to deliver this type of project, along with the many others, needs to be examined. In particular, the potential involvement of a development agency to secure the land, deliver the infrastructure project, plan for and amalgamate development sites and divest these on the open market should be considered.

110. Section 6 contains the conclusions reached by the authors from undertaking the two case studies. Section 6.3 on page 81 is highly illuminating and bears repeating.

“6.3 Implementation, Funding and Delivery –

In conclusion, the land and construction cost of both the proposed sport and recreation hub and Fennell/Plummer streetscape and intersection upgrade are significant. Given these infrastructure projects only form part of the broader share infrastructure assets to be delivered across the Fishermans Bend Precinct, government will need to ensure that a clear, transparent and robust funding strategy is established. A future funding strategy will need to have particular regard to the following matters:-

- *Project scope –*

Given the significant land and construction costs estimated for both Case Study 1 and 2, government may wish to review the scale, scope and location of future projects to reduce the overall project costs;

- *Staging and time of delivery –*

The time and staging of delivery will greatly influence the respective project cashflows and, in particular, the amount and length of time funds will need to be borrowed. This in turn will affect the borrowing capacity of the development agency;

- *Affordability –*

If the total delivery costs are to be shared across the catchment area via a future Development Contributions Plan (or similar shared funding mechanism), the total combined cost of these facilities may significantly impact upon the affordability of the area. Given the substantial costs of the Case Study projects, it is likely that the combined total cost of all higher order infrastructure required to meet the needs of the future Fishermans Bend community will result in a high overall charge per dwelling.

- *Delivery mechanisms –*

Based on the feasibility and options analysis explored as part of this project, government may wish to pursue a range of delivery options. This may include exploring delivering hubs by both the traditional purchase and construct method (Funding Option 1) as well as retaining a separate

strata allotment, constructing the infrastructure item and then divesting the balance of the site to the open market (Funding Option 2).

- *Development agency –*

The scale and number of projects required to support the redevelopment of Fishermans Bend Precinct raises a question as to the form and function of the ultimate development agency. The complex development context in terms of the existing landownership pattern, size and shape of the landholdings, site conditions, presence of existing businesses combined with the scale of the projects proposed and the need for significant upfront capital investment requires a particular type of development agency. The development agency must be well resourced, have the necessary financial capability, provide strong leadership and ideally have the necessary legislative tools (to) ensure a co-ordinated and timely approach to infrastructure delivery; and

- *Funding sources –*

Given the total cost to both Case Study 1 and 2, projects government will need to explore a number of funding sources and examine the pros and cons associated with each. In particular, government will need to determine whether they have the financial capability to deliver these projects given the large upfront capital cost and potential lengthy development time frames”.

111. In the light of that warning, is this Amendment viable? If the cost of development is to be of the order identified by Mesh and to be delivered across 37,000 odd levy units and commensurate commercial space, will any developer be left standing? The MAC observed that development must be viable. What is the point of amending the planning scheme as proposed with its maps and targets and urban design strategies with an unfunded, unlawful and inequitable funding mechanism (if it can be called that). It is trite that the development industry needs certainty. It needs to know what its upfront costs are going to be. Councils need to know whether they will be able to afford the infrastructure for which they will become responsible, and whether the DCP will cover them. Clause 52.01 requires a cash contribution of a site value equivalent. Obviously this is less than the capital improved value of a property. The shortfall between the two will be enormous. How is that going to be funded? We don't know.
112. This Amendment has been in the pipeline for some time. Apparently work is going on in the background to prepare precinct plans and a funding plan. To make sense of the Amendment, as the MAC recommended in Report 1, they all need to be considered concurrently.
113. It goes without saying that it is going to be a lot easier to amortise the cost of development over a larger number of units, than an artificially constrained number. One only needs to look at the MacroPlan Dimasi assessment as a statement of the obvious.

114. If one was to attribute Machiavellian qualities to Sir Humphrey, the outcome of the particular “Yes Minister” episode would see the ultimate redevelopment of Fishermans Bend fail. The pendulum swing that this Amendment represents and its lack of a legitimate underpinning and the levels of uncertainty identified before this Panel all point to it being “*inappropriate*”.

The Infrastructure Capacity Argument -

115. The Minister’s Part A response to Document 20 includes in its response to Issue 4 the assertion that the resident target was based, inter alia, on:-

“(d) *the ability of the utility, roads, public transport and other infrastructure elements to cater for growth;*

(e) *the need to balance the creation of communities, jobs and entertainment with the need to provide public open space, preserve heritage and celebrate culture; and*”

116. Setting aside the currently unresolved issues of heavy and light rail, with the location, timing and funding uncertainty, the other principle infrastructure items identified by the Minister and the Councils, is the capacity of the road network, the open space and the community facilities to cater for growth or, more bluntly the assertion that what has been planned will not cope with any increase in the population to be accommodated within Fishermans Bend.

Transport Infrastructure -

117. Evidence has been called from Mr. Fooks, Mr. Kiriakidis and Ms. Dunstan in relation to the road transport infrastructure proposed. Mr. Fooks neatly handballed most questions to Mr. Kiriakidis, accordingly I will focus on his evidence in this regard. Section 9 of his report provided his responses to submissions received. At page 68 in response to a submission that the Framework does not plan adequately for the total population that could reside in the Area, he observed:-

“Response –

The ITP outlines the strategic plan for “a connected and adaptable transport network” that is subject to detail operation and engineering planning. The transport modelling completed in support of the Framework Plan considers 80,000 residents and 60,000 jobs by 2050. I recommended in the body of this report that further analysis be completed to reflect the currently anticipated full-build-out scenario to ensure transport infrastructure planning reflects forward forecasted land use demands.

In terms of further changes to population and employment estimates for the precinct, transport planning flexibility allows for variations in the number of frequency of services on the planned network. I am confident that this in-built flexibility can accommodate changes to land use outcomes.”

118. In response to a direct question from Mr. Edwards concerning the capacity of the road network to accommodate a larger number of users, my notes of his answer were:-

“There is always a solution, you can engineer a solution, it’s just a matter of cost.

- *a PAO on the train and rail routes would be preferred;*

- *I am confident we could get meaningfully higher numbers with transport maximisation ... above the six figure mark.*

119. When pressed on this last observation, he said that without modelling he could not put a number on the increased capacity but was confident that it would well exceed 100,000 but by how much he did not know.
120. It goes without saying, that Mr. Kiriakidis was the traffic expert called on behalf of the Minister and that accordingly, the Minister is “*stuck*” with his evidence and the Panel can only conclude that the road network is not limited to accommodating 80,000 residents.
121. Ms. Dunstan was called on behalf of the Norton Rose parties. Her Section 4.3 dealt with the capacity of the proposed network and at page 20, she observed:-
- “I am satisfied that if appropriate public transport responses committed to and delivery within a reasonable timeframe, that the transport networks would be able to service significantly more than the targets of 80,000 residents and 80,000 jobs by 2050. In many respects, additional densities provide the impetus for a significant public transport response and the commitment to metro rail. This can be further supplemented by additional bus and light rail connections as demand requires.”*
122. She added orally that the higher residential population, the more likely it is that the job numbers would be filled.
123. Ms. Hodyl asserted that one consequence of increasing the population density for Fishermans Bend would be pedestrian congestion. As Mr. O’Farrell put to her, this on the other hand could be regarded as providing the “*vital*” public realm that is aspired to for this area. No evidence has been led to support Ms. Hodyl’s assertion and having regard to the proposed boulevards, linear open spaces and wide streets that Fishermans Bend is blessed with, it is submitted that Ms. Hodyl’s assertion is fanciful in the extreme and represents the paucity of her population target when spread across the redevelopment area.
124. It follows from the above the assertion that the road network cannot accommodate increased density in Fishermans Bend is false and should be dismissed.

Open Space –

125. The next argument rolled against the increase in density is that there will not be sufficient open space to accommodate those numbers.
126. As we heard from Ms. Thompson, the fallacy of that argument is demonstrated by the proposition that the design of the open space network proposed by Planisphere and as amended by her was based on accessibility rather than m²/person.

127. At page 25, Ms. Thompson observed:-

“Based on the best practice research I have undertaken into the provision of open space and high-density precincts, there is no industry accepted standard. While I acknowledge the Fishermans Bend Public Space Strategy (April 2017) nominates a target of 9m² per person, there is no industry accepted evidence base to support a minimum quantity of open space in high-density precincts. The more recent World Health Organisation Report on open space in high-density precincts, published in 2016 did not reference the 9m² per person, and reinforced instead the importance of accessibility of open space for all including children and the vulnerable. While the analysis has been undertaken regarding the quantum of open space per person, I consider that this needs to be considered as one factor in the analysis of open space and high-density precincts. The other factors as previously discussed relate to accessibility, distribution and quality of open space.”

128. There have obviously been a number of different plans prepared for open space for Fishermans Bend. Mr. McPherson was the lead consultant at SJB in preparing the Fishermans Bend Community Infrastructure Plan July 2013 of which Document 185 was the recommended approach for the open space infrastructure provision in Lorimer. He agreed that plan represents an acceptable outcome for the provision of open space in that precinct. It is based on open space within 300m and community facilities within 500m of every dwelling and work place.

129. The Planisphere Public Space Strategy April 2017 presents the basis of Ms. Thompson’s assessment. The Panel will recall her evidence that she disagreed with Planisphere’s view about the linear open space constituting “*public open space*” as opposed to street works. There is obviously scope for professional disagreement as to what constitutes open space, but having regard to her definition, the areas provided by Planisphere clearly satisfy that definition’s requirements. Whilst it is probably semantics, Ms. Thompson’s view about what constitutes “*safe and easy*” open space is being somewhat precious. Fitzroy Gardens do not constitute “*safe and easy*” open space based on her test. You need to cross a tramline and busy road to get to it. Based on her analysis, we now know that everyone using it at lunch or any time have not been safe nor found it easy to get there.

130. Whether the open space is within 200m or 400m to some extent will depend upon the ultimate demographic population to be accommodated within the precincts. The employment aspirations seek to encourage a smart economy workforce. It is probable that that workforce will be younger, mobile and not put off walking a little bit further to open space. In any event, what is planned at the moment is regarded by all of the experts as an acceptable outcome and is not population dependent.

131. All of the discussion concerning the open space plan has focused entirely inwardly towards the precincts. It is not had regard to the Area’s proximity to the Yarra, to the Bay or Albert Park, let alone its proximity to the City and its parks. The Area is blessed with a number of shared trails

providing walking and cycling access to the broader catchment of Melbourne including the Bay Trail, the Yarra River Punt, the Main Yarra Trail, the City Trail and the Sandridge Rail Trail.³⁴ It is not an area lacking connectivity and having regard to the likely age group the smart economy will attract, such connections will probably see a considerable increase in the Lycra brigade on those trails.

132. It follows from the above analysis that the furphy of open space infrastructure being limited to the population target is obviously false.
133. Whilst on the topic of open space, Mr. Sheppard supports discretionary shadow controls for surrounding buildings. The contrary argument of a mandatory control, taken to its logical conclusion, would see the removal of all trees and structures within parks and areas of open space. Napoleon instigated the planting of trees on the southern side of highways to shade his troops on their way to battle. If you walk through Fitzroy Gardens, along the paths creating the Union Jack upon which it is based, you'll do so almost entirely in shadow. I walk my dogs every morning along Queens Walk in Yarra Park under the elms. I do so almost entirely in shade. If I want sunlight, I will go and find it. It's remarkable how many park benches in Yarra Park are located in shade. The arguments in support of mandatory controls imply a lack of confidence in the statutory planners' ability to apply discretionary controls. That is a sad reflection on the part of the Minister and the Councils in respect to their own staff, that they cannot exercise a sufficient professional judgment based on decision guidelines supposed to guide that judgment. The level of cottonwool we seem to be wrapping those poor planners in is stifling.

Community Infrastructure -

134. The City of Port Phillip put forward quite specific proposals for the location of various community infrastructure hubs in contrast to the unresolved proposition contained in the Framework. Wherever those hubs are to be located, they will be required to cater for the population that is ultimately to be accommodated in the Area. What the new school in Ferrars Street demonstrates is that one is not constrained by the horizontal footprint available for such hubs. High rise schools are a common feature in Europe. High rise community centres and other infrastructure can be readily accommodated throughout the various precincts if required. The number and their cost will be dictated ultimately by the number of persons they are designed to serve. To that extent, the numbers are essentially irrelevant as the cost will be borne in the same proportion to those numbers via the DCP. It goes without saying of course that the greater number of persons they serve, the easier it is to amortise that cost.

³⁴ Fishermans Bend Public Space Strategy April, 2017, by Planisphere, p.24.

135. It is therefore submitted that there is no substance to the concerns raised about density and infrastructure and accordingly those arguments should be dismissed.

Employment –

136. There has a paucity of evidence led to substantiate the Framework’s aspirations of 40,000 employees within the four precincts. Professor Eade specifically raised this issue on Day 15 and how to manage the decades in between any adoption of an amendment and the delivery of heavy rail. Mr. Mackintosh acknowledged that the area at the moment is not suitable for commercial development.
137. We do not know what incentives are going to be provided to encourage new head offices to come to Sandridge before the delivery of the new station. We gather that that is not likely for the next 30 years at least. What happens in the meantime? Is the Area to be blighted? All the architects acknowledge that you cannot accommodate residential and commercial within the same building. They need different entrances, different lifts, different car parking, different security arrangements and their structural integrity changes with the size of their floor plates. Whilst a residential building could have retail at ground level to achieve the activation required, there will be limited demand for commercial development in a residential building or vice versa. On small sites in particular, the requirement of having a minimum commercial floor area with no ability to transfer requirements between buildings is unfair, inequitable and unviable. If a large site is to have a commercial building, it will not be developed over the next 30 years. This will lead to blight.
138. None of these issues have been addressed within the Framework. No answers have been provided as to how that’s going to be resolved. There appears to be an attitude of *“build it and they will come”* but that which has to be built is not going to be built for 30 years. How is the Framework proposing to address that? It is interesting that the incentive of providing commercial floor space contemplated as a benefit in Amendment C270 has not been carried over into this Amendment. One would have thought there is a greater imperative to provide an incentive to build commercial floor space in Fishermans Bend than there is in the CBD.

Affordable Housing –

139. This issue is addressed by Messrs. Canavan, Tweedie and Ms. Sharp in [217] – [221]. I adopt their submissions and note in [221] they refer to the evidence of Mr. Mackintosh. He also observed:-

“Planning controls that increase supply increase affordability.”

Obviously competition keeps housing prices lower. If more dwellings can be constructed in Fishermans Bend the infrastructure cost can be amortised across a far greater number of units,

it is therefore more probable that there will be more affordable housing available. It is also more likely that if development is viable there is a greater chance of social housing becoming available.

Family Friendly Accommodation –

140. Again Mr. Tweedie addressed this issue in [222] – [234] and I again respectfully adopt their submissions. The Minister’s only planning witness Mr. Glossop regarded the concept as “*Orwellian*”. It is submitted that this concept constitutes a degree of social engineering that trespasses into the realm of elitism. In addition to nominating what “*family friendly housing*” means, is it also necessary to establish the ethnicity of the family and the cultural background from which that family originated to establish whether the envisaged type of housing is what they want? Is it not the role of “*market forces*” to respond to demand? Where is the cost benefit analysis of providing “*family friendly housing*” and the likely market take up of the same? Will this eventually lead to a demand that such housing be subsidised in the event that these so-called friendly units are not sold? It is submitted that there is more than adequate scope for “*families*” to find accommodation in Port Melbourne, South Melbourne and other surrounding suburbs of Port Phillip should they not be satisfied with the product being made available within Fishermans Bend. It is just part of an overall larger metropolitan area and should not be required to provide all things to all people.

Transitional Provisions -

141. Again I adopt the submissions on behalf of the landowner group in [239] – [243]. As that submission observed in [11] – [13], landowners who have either obtained permits or have applied for permits pursuant to the lawful planning scheme in place at the time of the application being lodged, have an entitlement to expect that application to be considered in accordance at law. The Minister’s attitude and, indeed his call-in, is demonstrative of a total disregard for the rights of those parties who have acted lawfully and in reliance upon the presumption that what is contained in the planning scheme means what it says. As the landowners’ submission observed in [131], Callinan J in *Temwood* stated the following principle:-

“Public authorities, particularly those with power to affect proprietary rights, are bound to act not only in good faith, but also fairly and reasonably. No public interest is truly served by conduct that falls short of this standard. Indeed, high-handed, unfair acquisitive conduct is not only unlawful but it is also likely to weaken the authority of, and confidence in public administration.”

142. There is no doubt that the Minister’s actions are high-handed, unfair and constitute a clear breach of the proprietary rights of applicants for permits based on their reliance on the current planning provisions. There is already Supreme Court litigation directly addressing this issue which will no doubt explore the legality of what the Minister has done.

143. Whilst it is a matter beyond the power of this Panel to give any direction, the Panel's Terms of Reference entitle it to recommend that transition provisions be included in any new amendment that ultimately gets promulgated following whatever process occurs subsequent to the receipt of the Panel's report.

What Next –

Governance –

144. As has been so clearly demonstrated by the recommendations of the City of Port Phillip and the City of Melbourne, there is complete divergence of opinion between the appropriateness of most of the DDO and CCZ provisions, the UDS and the application of the Framework. In response to a question from the Chair, Mr. Montebello advised that whilst the Council had been involved in the process and made submissions all the way through it, its views have clearly not been heard, or if heard, not listened to.
145. The MAC observed in Report 1 that no community consultation had occurred. This Panel Hearing in effect constitutes that consultation. In addressing the issue of best practice governance arrangements, Report 1 observed:-
- “None of the bodies which are currently involved in the primary governance of Fishermans Bend Urban Renewal Area will have an impartial view about the most appropriate governance structure of Fishermans Bend ...”*³⁵
146. Clearly, the City of Port Phillip has a fundamentally different view about how the Framework should guide the future development of Fishermans Bend. The question needs to be posed as to whether a Council charged with the responsibility of dealing with the suburbs within its municipality and the mindset that applies to such governance is appropriate to deal with designing a “*priority precinct*”? Its attitude to date has demonstrated a mindset that has just not grasped the policy impetus of Direction 2.2.1 and, it is submitted, it is unlikely to change. Further, the way the “*neighbourhood character*” descriptions have evolved from the Taskforce's deliberations for the various precincts and their adoption of FAR's, for instance in Wirraway of 2:1 in non-core areas, demonstrates that the Taskforce is not up to the job either.
147. The MAC recommended that the Department of Premier and Cabinet commission a rapid review of the options based on examination of the best practice models and similar urban renewal

³⁵ Report 1, p.19.

projects to establish the best governance arrangements for Fishermans Bend. This does not appear to have occurred or if it has, the product of such governance is demonstrably inadequate. The Panel should recommend this to occur.

The Drafting Exercise -

148. The Panel has set aside a period of time to discuss “*without prejudice*” redrafting of the Amendment documents. It is submitted that exercise will be the equivalent of seeking to build a wall without foundation. You cannot start the exercise based on a draft document that is so flawed from the outset.
149. It is submitted that what is needed is a new consideration of Fishermans Bend properly based on Plan Melbourne’s aspirations for it and undertaken by an independent body that does consult and listen to stakeholders and, in particular, the landowners who will carry the heavy burden, risk and possible rewards from providing the accommodation for residents and workers up to 2050 and beyond. The approach to be taken needs to be properly directed by Policy 2.2.1 and guided by the methodology suggested by Mr. Sheppard. The politics needs to be taken out of the exercise so that a rational, viable and sustainable vibrant public realm can be created in Melbourne’s central city. At the same time, it will be necessary to resolve the funding mechanisms for and timing of infrastructure. As Mr. Sheppard has acknowledged, some of the constituent parts of that realm have been identified, however, what is needed to be added to those bones can only be determined after the “*macro testing*” recommended six years ago. Such testing will also require an appropriate business case to be incorporated into the overall package for consideration.
150. It is submitted Mr. Milner got it right in his response slide:-
- “Pause*
- *Review in the light of the merits of submissions and evidence.*
 - *Put together the “complete” package:*
 - *Structure plans;*
 - *Infrastructure;*
 - *Cost/timing;*
 - *Funding mechanisms;*
 - *Governance;*
 - *Re-draft the suite of planning provisions;*
 - *Exhibit and independently review;*
 - *Recommend a complete package.”*
151. It is respectfully submitted that this Panel should make the above recommendation in response to this inappropriate draft amendment proposal.

23 APRIL, 2018

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