

# Fishermans Bend Public Infrastructure Funding and Delivery

## Expert Evidence Statement

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AMENDMENT GC81, CITY OF PORT PHILLIP

MARCH 2018

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# 1. QUALIFICATIONS

1. My name is Paul Shipp and I am a Director of Urban Enterprise Pty Ltd, of 389 St Georges Road, North Fitzroy.
2. Urban Enterprise is a firm of urban planners, land economists and tourism planners based in Melbourne. The firm has 28 years' experience providing consultancy services to all levels of Government and a wide range of private sector organisations in Victoria and in other States of Australia.
3. I am a qualified urban planner and economist with have 13 years' experience and specialise in the field of development contributions.
4. I have been involved in the preparation and review of many Development Contributions Plans, Infrastructure Contributions Plans and proposed public open space contributions for Councils and developers across Melbourne and regional Victoria.
5. I have appeared as a Planning Panel expert witness in respect of development contributions, and I have assisted Urban Enterprise Managing Director Matt Ainsaar in the preparation of expert witness statements in respect of development contributions over many years.
6. My educational qualifications and memberships of professional associations include:
  - Bachelor of Urban Planning and Development, University of Melbourne;
  - Master of Commerce, RMIT University;
  - Member, Planning Institute of Australia;
  - Committee Member, Planning Institute of Australia (Victorian Division);
  - Certified Practising Planner (CPP), Planning Institute of Australia; and
  - Member, Victorian Planning and Environmental Law Association.

## 2. ENGAGEMENT

### INSTRUCTIONS AND INFORMATION

7. I was instructed by the City of Port Phillip to prepare an expert witness statement to present at the Planning Review Panel hearing in relation to this matter on behalf of the City of Port Phillip.
8. My instructions were to consider the following matters:
  - Review the way in which Amendment GC81 (**Amendment**) proposes to require and manage the delivery of public infrastructure, and the extent to which this is likely to achieve the objectives of the draft Framework Plan;
  - Consideration of the adequacy of the current interim levies collected;
  - Considerations for the introduction of an Infrastructure Contributions Plan;
  - The alignment of infrastructure needs to likely development projections, including additional yield likely through the Floor Area Uplift scheme; and
  - How public benefits are likely to be delivered, and issues for government (such as location, certainty, design).
9. I am separately engaged by the City of Melbourne to give evidence in respect of this matter and have prepared a separate evidence statement for each council. The content of my two evidence statements is consistent with the exception of paragraphs hereafter which are highlighted in **yellow**.
10. I have reviewed the amendment documentation and other relevant public documents, including:
  - Amendment GC81 documentation and selected submissions (numbers 143, 149, 153, 173, 180, 188, 203, 206, 208, 210, 215, 220);
  - Fishermans Bend Draft Planning Scheme Amendment GC81 Minister for Planning Part A Response, 19 February 2018 (**Part A Submission of the Taskforce**) and amended planning controls;
  - The Planning Review Panel Directions;
  - Fishermans Bend Framework Draft for Consultation, Department of Environment, Land, Water and Planning (**DELWP**), 2017; (**Framework**)
  - Supporting Fact Sheets exhibited with the Amendment regarding the Floor Area Uplift scheme;
  - Fishermans Bend Urban Design Strategy, Hodyl and Co, September 2017 (**Urban Design Strategy**);
  - Fishermans Bend Community Infrastructure Plan, DELWP, 2017 (**Community Infrastructure Plan**);
  - Fishermans Bend Public Space Strategy, Planisphere, April 2017 (**Public Space Strategy**);
  - Infrastructure Contributions Plan Guidelines, DELWP, October 2016 (**ICP Guidelines**);
  - Development Contributions Guidelines, Department of Sustainability and Environment, March 2007 (**DC Guidelines**);
  - Ministerial Direction on the Preparation and Content of Development Contributions Plans, Minister for Planning, 11 October 2016 (**DCP Ministerial Direction**);
  - Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans, Minister for Planning, 20 October 2016 (**ICP Ministerial Direction**);

- Planning and Environment Act 1987 (as relevant to public infrastructure funding) (the **Act**);
  - City of Melbourne and City of Port Phillip planning schemes (as relevant to public infrastructure funding).
11. I have also reviewed information provided to me that I understand are not public documents. These include:
- Draft Fishermans Bend Development Contributions Plan, SGS, November 2013 (**Draft DCP**), provided to me by the City of Melbourne;
  - Draft Development Contributions Options Study, Urban Enterprise, December 2012, provided to me by the City of Melbourne. I was a contributing author of this report;
  - Fishermans Bend Funding and Financing Infrastructure Case Studies Stage 2 and 3 Report, Mesh Planning, January 2018, provided to me by the City of Port Phillip;
  - Three Section 173 Agreements provided to me by the City of Port Phillip relating to interim development contributions in Fishermans Bend applying to land at the following addresses:
    - 89-103 Gladstone Street, South Melbourne;
    - 164 Ingles Street, Port Melbourne; and
    - 165-167 Gladstone Street, South Melbourne.
  - A sample of Planning permits provided to me by the City of Melbourne which contain conditions relating to development contributions in the Lorimer Precinct.
12. I am familiar with Fishermans Bend and the surrounding area.
13. A copy of the relevant information that is required to accord with the Planning Panels Victoria - Expert Evidence is attached at Appendix A to this report.

#### SCOPE

14. My evidence primarily relates to the method of delivery and funding of **public infrastructure**, such as roads, intersections, community infrastructure, open space and recreation infrastructure, and land contributions for these infrastructure types. My references in this evidence to public infrastructure funding relate to these infrastructure types which are normally funded (at least in part) by development contributions.

#### STRUCTURE OF STATEMENT

15. This witness statement follows the following structure:
- First, I outline the statutory framework as it currently applies to public infrastructure funding (Section 3).
  - Second, I provide an overview of the proposed Amendment as it relates to public infrastructure funding and delivery (Section 4).
  - I then provide (in Section 5) an analysis of the issues that I consider need to be addressed that relate to the public infrastructure funding framework.
  - My conclusions are summarised in Section 6.
16. I note that my evidence relates to both the content of the amendment as well as content that I consider to be absent from the amendment and therefore absent from the overall public infrastructure funding framework for Fishermans Bend.

### 3. STATUTORY FRAMEWORK

#### OVERVIEW

17. In this section, I provide an overview of the statutory framework which enables a variety of mechanisms to be used to require development contributions to public infrastructure.
18. The mechanisms summarised include:
  - Planning permit conditions;
  - Development Contributions Plans (**DCP**);
  - Infrastructure Contributions Plans (**ICP**);
  - Voluntary section 173 agreements under the Act; and
  - Open space contributions.

#### PLANNING PERMIT CONDITIONS

19. Planning permits can include conditions that require infrastructure to be provided or a cash contribution to be made towards infrastructure provision.
20. In terms of infrastructure provision, planning permit conditions are generally used to require development proponents to provide local infrastructure which directly relates to and benefits that development, such as local roads and intersections, footpaths, street lighting, local drainage works and so on. This infrastructure is usually provided within or adjacent to the development site.
21. Where higher order infrastructure is required which benefits multiple landowners (such as community facilities or arterial roads), contributions to these infrastructure types are generally funded through other statutory mechanisms such as development contributions, infrastructure contributions or voluntary agreements, as opposed to planning permit conditions.

#### DEVELOPMENT CONTRIBUTIONS PLANS

22. Under the current Victorian planning system, development contributions can be collected by a Collecting Agency in accordance with the Planning and Environment Act 1987, the DCP Ministerial Direction and the DC Guidelines (2007).
23. Part 3B of the Act provides for the imposition of either or both a Development Infrastructure Levy (**DIL**) and a Community Infrastructure Levy (**CIL**) as part of a DCP. The Act specifies the contents required for a DCP and the responsibilities of the various agencies, including the responsible authority, collecting agency, development agency and local councils.
24. The DCP Ministerial Direction sets out the following main requirements:
  - “A development contributions plan must not be applied to land that is within a development setting to which an infrastructure contributions plan may apply. This does not apply to a development contributions plan for which notice of an amendment to the planning scheme was given under section 19 of the Planning and Environment Act 1987 before 30 June 2017.”
  - “A development contributions plan must not impose a development infrastructure levy or a community infrastructure levy in respect of the development of land for: a) a non-government school; or b) housing provided by or on behalf of the Department of Health and Human Services.”
  - “The following works, services or facilities may be funded from a development infrastructure levy:

- a) Acquisition of land for: roads; public transport corridors; drainage; public open space; and community facilities.
  - b) Construction of roads, including the construction of bicycle and foot paths, and traffic management and control devices.
  - c) Construction of public transport infrastructure, including fixed rail infrastructure, railway stations, bus stops and tram stops.
  - d) Basic improvements to public open space, including earthworks, landscaping, fencing, seating and playground equipment.
  - e) Drainage works.
  - f) Buildings and works for or associated with the construction of: a maternal and child health care centre; a child care centre; a kindergarten; or any centre which provides these facilities in combination.”
25. The Ministerial Direction does not identify the infrastructure types that may be funded from the CIL. The DC Guidelines state that “Community infrastructure includes projects involving the construction of all other buildings or facilities used for community or social purposes.” (p.17)
26. The Act enables a maximum CIL amount to be set through a Government Order. The maximum amount is currently \$1,150 per dwelling.
27. The DC Guidelines provide further guidance as to how DCPs are to be prepared and administered, including the matters that DCPs are to consider.
28. In my assessment of the Amendment later in this statement, I refer to the extent to which, in my opinion, the infrastructure funding framework resulting from the Amendment would meet the basic principles of need, nexus, equity and accountability.

#### VOLUNTARY AGREEMENTS

29. Voluntary agreements can also be made in respect of public infrastructure funding. These are invariably formalised under Section 173 of the Planning and Environment Act 1987.
30. Voluntary agreements are sometimes used to collect development contributions in the early stages of development of a precinct if no formal mechanism (such as a DCP) is approved at the time land is rezoned.
31. Voluntary agreements are also sometimes used in place of a DCP (for example, where there are few landowners), and are also commonly used to give effect to works in-kind agreements where a DCP does exist.

#### INFRASTRUCTURE CONTRIBUTIONS PLANS

32. The Infrastructure Contributions Plan (ICP) system recently replaced the DCP system in Greenfield Growth Areas and introduces a Standard Levy amount and list of allowable items on which the Standard Levy revenue can be expended.
33. The ICP system also provides for the imposition of a Supplementary Levy in exceptional cases when the Standard Levy cannot adequately fund the necessary infrastructure or where additional infrastructure is required to unlock development of an area.
34. The ICP Guidelines foreshadow the extension of the system to Strategic Development Areas, which are defined as “locations within existing urban areas that are planned or become available for significant growth and change. Generally, these areas will be identified in a Strategic Plan such as Plan Melbourne (for

example National Employment Clusters and Urban Renewal Areas), a Municipal Strategic Statement or a regional growth plan.” (p.15)

35. The existing DCP system will continue to operate in other areas until such time that the ICP system is extended to Strategic Development Areas.
36. A key difference between the DCP and ICP systems is the greater clarity regarding the specific infrastructure types that are allowable in an ICP provided in the ICP Guidelines and Ministerial Direction through the lists of Allowable Items. The DCP system is less definitive in terms of the infrastructure types that can be funded.
37. Details of how the ICP system will apply to Strategic Development Areas such as Standard Levy amounts, allowable infrastructure items and implementation guidelines have not been published.

#### OPEN SPACE CONTRIBUTIONS

38. In addition to the use of a DCP or ICP, two mechanisms are available to Councils to specifically levy public open space contributions from development:
  - Open space contributions collected under Clause 52.01 of the Planning Scheme; or
  - Open space contributions collected under the Subdivision Act 1988.
39. Clause 52.01 of the Planning Scheme allows a Council to levy a public open space contribution payable by subdivision proponents by specifying a contributions rate in the relevant Schedule to the clause.
40. If no public open space contribution rate is specified in a schedule to Clause 52.01, open space contributions can be levied through the Subdivision Act based on a case by case assessment of open space need up to a maximum rate of 5% (except in development settings where public open space contributions are levied through an ICP).
41. The ICP Guidelines (p.17) note that “in strategic development areas it will be possible to levy open space contributions through section 18(1AB) of the Subdivision Act 1988, clause 52.01 of the VPP or an ICP.” If this stated intention is ultimately carried through to the ICP Ministerial Direction for Strategic Development Areas when it finally transpires, this would result in some flexibility in the mechanisms that could be used to require open space contributions in Fishermans Bend.
42. Open space contributions can be made through a land contribution, monetary contribution, or combination of both. Local policies are often included in the Planning Scheme to designate locations and circumstances where councils will accept or prefer a land or monetary contribution.
43. Open space contributions can be expended by Councils to acquire or improve land for open space purposes. There is no requirement for monetary contributions to be expended in the area in which they were collected.
44. In greenfield growth areas, it is common for a DCP to raise funds to acquire land for and fund improvements to active open space reserves, while Clause 52.01 is commonly used to require the provision of land for passive open space. Developers are commonly required to improve passive open space at their cost.
45. Given that multiple sources can be used to fund public open space, it is important that there is no overlap that occurs as a result of a particular public infrastructure funding framework (commonly referred to as ‘double-dipping’).

#### EXISTING FISHERMANS BEND PUBLIC INFRASTRUCTURE FUNDING FRAMEWORK

46. A Development Contributions Plan Overlay (**DCPO**) applies to land in the Lorimer, Montague, Sandridge and Wirraway Precincts of Fishermans Bend. The DCPO was introduced through Amendment C170 in July 2012.
47. The Employment Precinct is not subject to a DCPO.



48. A DCPO commonly facilitates the collection of development contributions levies through an approved DCP that is incorporated into the Planning Schemes.
49. The DCPO does not include a 'Summary of Costs' or a 'Summary of Contributions', and states that "the preparation and incorporation of a development contributions plan is required." This DCPO was applied in July 2012.
50. Although a DCP typically (but not always) accompanies a planning scheme amendment process to rezone land and introduce strategic and statutory planning guidance for development in the relevant area, a DCP has yet to be incorporated into the Melbourne and Port Phillip Planning Schemes.
51. Until such time that a DCP is incorporated into the planning scheme, the DCPO provides the statutory basis for planning permit conditions to require interim development contributions to be paid by development proponents. However, the DCPO does not specify the interim levy amount nor the infrastructure items that interim contributions must be expended on. The details of interim contributions are therefore the subject of negotiations on a site by site basis.
52. To date, interim development contributions have been negotiated and secured through voluntary section 173 agreements between landowners and the Victorian Planning Authority (VPA).
53. The agreements provided to me by the City of Port Phillip have consistent provisions as follows:
- Interim levies are set at \$15,900 per dwelling, \$150 per sqm of retail floorspace and \$180 per sqm of commercial floorspace;
  - Interim levies are payable to the VPA and are to be indexed quarterly by the ABS Producer Price Index (or equivalent), commencing 1 July 2015;
  - Interim levies collected by the VPA are to be expended on particular project types, including community and recreation infrastructure projects, transport infrastructure projects (including public transport), open space improvement projects and land acquisition for these projects; and
  - If a future DCP levy is lower than interim levies, the VPA must refund the difference to affected landowners. Agreements do not include provisions for a circumstance where future DCP levies are higher than interim levies.
54. I have scanned the planning permits provided to me by the City of Melbourne, which include conditions requiring landowners to enter into section 173 agreements in respect of interim development contributions. At least one permit<sup>1</sup> contains specific conditions which relate to land and works that are to be provided by the landowner in lieu of interim development contributions.
55. Although interim contributions have been collected for a number of years, there is no DCP infrastructure list to guide expenditure of the funds and no information has been released as to how and when the interim funds might be expended.
56. The ICP system does not currently apply to Fishermans Bend.
57. Schedules to Clause 52.01 of both the Melbourne and Port Phillip Planning Schemes require a public open space contribution in Fishermans Bend as follows:
- The public open space contribution rate is 8% for the Lorimer, Montague, Sandridge and Wirraway Precincts.
  - The public open space contribution rate is 5% for the Employment Precinct.

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<sup>1</sup> MPA14/0006, 85-93 Lorimer Street, Docklands. Issued by the Minister for Planning, 14 July 2015.

## 4. THE AMENDMENT

### OVERVIEW

58. In this section I provide a summary of the proposed Amendment as it relates to public infrastructure funding and delivery.
59. The Amendment seeks to implement the Framework which has been created to “provide direction for development and establishes benchmarks for high quality design and development outcomes.” (Amendment GC81 Information Sheet).
60. The Amendment “translates elements in the draft Framework into planning terms and addresses the following key issues for Fishermans Bend:
- Identifies the preferred land use, form and intensity of urban development in each of the four mixed use precincts, including new floor area ratios and maximum height controls.
  - Identifies and safeguards potential key transport alignments and services and the preferred locations for public open space and community infrastructure.” (Amendment GC81 Information Sheet)
61. The proposed changes to the Planning Schemes are summarised in Table 1.

**TABLE 1 PROPOSED CHANGES TO PLANNING SCHEMES THROUGH GC81**

CHANGE	CITY OF MELBOURNE	CITY OF PORT PHILLIP
Environmental Audit Overlay (EAO)	Requires land to be remediated before a sensitive use commences.	
Municipal Strategic Statement	Provides the strategic direction to realise the vision for the relevant precinct(s).	
Local Policy	Provides guidance on how to evaluate and exercise discretion in the assessment of planning permit applications. This includes; employment, dwelling densities, community and diversity, design excellence, active street frontages, energy, urban heat island, water management, waste management, public open space, new streets and laneways, smart cities, sustainable transport and floor area uplift.	
Capital City Zone	Outlines land use and development outcomes. This includes; land uses, subdivision, floor area ratios, floor area uplift, building Green Star requirements, provision of streets and laneways, core and non-core areas, open space network and advertising signs.	
Design and Development Overlay (DDO)	Outlines built form controls. This includes; building heights, setbacks and separation, overshadowing, wind, active street frontages, adaptable buildings, building finishes and landscaping.	
Parking Overlay	Sets maximum car parking rates to foster sustainable transport outcomes. This overlay also establishes additional car parking plan requirements, which include the provision of bicycle, car share and motorcycle spaces. Additional design standards are included to provide further guidance.	
Consequential changes	Consequential changes to list new maps within the schedule to What does this Scheme Consist of? Consequential changes to remove the Fishermans Bend Strategic Framework Plan (September 2016).	
Development Plan Overlay (DPO)	N/A	Protects areas of strategic importance to ensure development achieves defined outcomes.
Environmental Significance Overlay (ESO)	N/A	Provides guidance on development within the Port of Melbourne interface.

Source: Amendment GC81 Information Sheet.

## PROPOSED CHANGES TO THE PUBLIC INFRASTRUCTURE FUNDING FRAMEWORK

62. The Framework identifies a range of public infrastructure required to support development of Fishermans Bend and to achieve the Framework Vision. Individual precinct actions shown in the Framework (pp.69-79) include:
- Intersection upgrades;
  - Road closures;
  - Road widening and streetscape upgrades;
  - Community hubs;
  - New and improved open spaces;
  - Pedestrian and cycling connections;
  - New and widened bridges; and
  - Public transport upgrades including tram stops, tram extensions and potential rail station areas.
63. Land acquisition forms an important part of the public infrastructure required to support development. Land will be required for a range of public infrastructure types, particularly road widening, new areas of open space and community hubs.
64. In respect of how this infrastructure is proposed to be funded and delivered, the Framework provides limited detail, other than the following statement (p.67):
- “A comprehensive precinct based investment funding plan is being developed to deliver Fishermans Bend and realise the vision by 2050. This plan will consider a mix of funding sources, including direct developer pays systems such as an Infrastructure Contributions Plan.”
65. The Amendment material does not include a new infrastructure funding mechanism, such as new Development Contributions Plan Overlay (**DCPO**) Schedules, changes to the existing DCPO Schedules or a new Infrastructure Contributions Plan Overlay (**ICPO**).
66. The existing DCPO (and the existing Schedules) would remain in place.
67. The Part A Submission of the Taskforce (paragraphs 123-5, 220-1) confirms that a funding and finance plan is under preparation and is considering a range of potential funding sources for public infrastructure, including development contributions, open space contributions, annual residential charges, property rates and general levies. The Part A Submission of the Taskforce confirms that interim development contributions will continue to be collected (paragraph 124).
68. The proposed Amendment would, however, introduce a range of new planning controls which include both mandatory and voluntary contributions to public infrastructure, including:
- Capital City Zone Schedules which apply a maximum Floor Area Ratio (**FAR**) to residential uses for each Precinct (and commercial uses in non-core areas) and requires certain land to be set aside for public purposes on some sites; and
  - Capital City Zone Schedules which identify that maximum FAR can be exceeded if, in Core Areas, the additional floorspace is not used for Dwelling; or a public benefit and Floor Area Uplift (**FAU**) is provided in core or non-core areas; or a combination of these.
69. In support of the FAU scheme, a new Reference Document is proposed, titled “How to calculate floor area uplift and public benefits in Fishermans Bend”.
70. A suite of planning controls proposed within Local Policies and overlays serve to guide the ultimate built form, urban design and density of development in Fishermans Bend. These include: separate maximum

dwelling densities for each precinct, variable height controls, and variable requirements for setbacks, building separation, overshadowing and others.

71. Together, the new planning controls would create a complex set of requirements which would impact the ultimate built form and yield for each site.
72. Although new mandatory controls which set out a comprehensive approach to public infrastructure funding are not included (such as a new DCP), the Amendment proposes to introduce:
  - A new mandatory mechanism to require developers to make provision for public land for some public infrastructure through the FAR controls; and
  - A new voluntary mechanism to deliver public infrastructure for community facilities and open space (in addition to affordable housing) through the FAU controls.

**FLOOR AREA RATIO AND FLOOR AREA UPLIFT CONTROLS**

73. The following definitions are included in the Schedules to the Capital City Zone relevant to the FAR controls:
  - Floor Area Ratio (**FAR**) means the Gross Floor Area divided by the Gross Developable Area;
  - Gross Floor Area (**GFA**) means the area above ground of all buildings on a site, including all enclosed areas, services, lifts, car stackers and covered balconies. Dedicated communal residential facilities and recreation spaces are excluded from the calculations of Gross Floor Area. Voids associated with lifts, car stackers and similar service elements should be considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor.
  - Gross Developable Area (**GDA**) means the area of the proposal land, including any proposed streets, laneways, new public open space and land for community infrastructure (public benefit).
74. In Table 2, I provide a summary of the FAU scheme as set out in the proposed Reference Document and supporting Fact Sheets exhibited with the Amendment. This includes the public benefits to be provided in exchange for a FAU.
75. I note that none of these public benefits are mandatory and the FAU scheme is therefore discretionary.
76. I also note that the supporting material regarding public benefit ratios is contradictory in places - I address this issue later in my evidence.

**TABLE 2 SUMMARY OF PROPOSED FLOOR AREA UPLIFT SCHEME**

PUBLIC BENEFIT	PUBLIC BENEFIT RATIO	FURTHER INFORMATION
Affordable Housing	8 additional dwellings to each affordable housing unit	Completed and gifted to an affordable housing association in perpetuity New dwellings must be of equivalent sizes to affordable housing units
Additional public open space	1 additional dwelling to the equivalent value of the additional public open space.	For every 26sqm of public open space, developers can deliver an equivalent value of residential floor area; Must be in addition to POS required to be provided in accordance with the Framework and in addition to any POS contributions in accordance with Clause 52.01; Must be provided at ground level; Must be at least 1,000sqm in area with a minimum dimension of 30m.
Delivery of community infrastructure	1 additional dwelling to the equivalent value of the community infrastructure.	Could include education and community hubs, sports and recreation hubs, health and well-being hubs or arts and cultural hubs; Sites must be located within an 'Investigation Area' Must meet minimum floorspace requirements for the facility;

Source: How to calculate floor area uplift and public benefits in Fishermans Bend, Fact Sheets, summarised by Urban Enterprise.

## RESULTING FISHERMANS BEND PUBLIC INFRASTRUCTURE FUNDING FRAMEWORK

77. I provide a summary of the infrastructure funding framework that would result from the existing public infrastructure funding framework and the aspects of the Amendment that relate to public infrastructure in Table 3.
78. As mentioned earlier in my evidence, the Framework does not outline how the range of existing and proposed public infrastructure funding mechanisms are intended to operate in conjunction with each other.
79. The final column of Table 3 details my interpretation of how the various infrastructure funding mechanisms are proposed to operate based on the Amendment material and in the absence of this detail.

**TABLE 3 PROPOSED FISHERMANS BEND PUBLIC INFRASTRUCTURE FUNDING FRAMEWORK**

MECHANISM	STATUS	EFFECT	INFRASTRUCTURE TYPES TO BE FUNDED <sup>1</sup>
Development Contributions Plan Overlay	Applies to all precincts except Employment Precinct. No DCP has been approved. No DCP is included in the Amendment. Section 173 agreements collect interim contributions.	Requires development proponents to pay a levy to fund shared infrastructure. Interim levy set at \$15,900 per dwelling (2015) and indexed quarterly by CPI.	Not specified
Clause 52.01	Applies to all Precincts. The Amendment <u>does not</u> propose any changes.	Requires subdivision proponents to pay open space contributions set at 8% for all precincts except Employment Precinct (5%).	Open space land and/or improvements
Floor Area Ratio (FAR) and Capital City Zone Schedule	The Amendment proposes to <u>introduce</u> new controls to all Precincts (except Employment Precinct)	The CCZ Schedules apply a maximum floorspace yield relative to site area and require land to be set aside for public purposes.	Land for local open space Land for road widening Land for new local roads Land for new laneways
Floor Area Uplift (FAU)	The Amendment proposes to <u>introduce</u> new controls to all Precincts (except Employment Precinct)	Provides opportunities for developers to agree to provide public benefits in exchange for additional floorspace.	Affordable housing Community infrastructure Additional open space land

Source: Urban Enterprise, 2018, based on City of Melbourne and City of Port Phillip Planning Schemes, Amendment GC81 and supporting documents.

1. The content of this column is my interpretation of the existing controls and the Amendment material.

80. In the absence of a DCP or information outlining how each public infrastructure type is proposed to be funded and delivered, it is difficult to understand how the suite of public infrastructure mechanisms are intended to operate in conjunction with each other.
81. It is therefore difficult to assess the implications of this for Government and developers and to test the proposed framework against the established principles of need, nexus, equity and accountability. In particular, in my view the Amendment does not meet the principle of accountability.
82. In addition to this issue, it is my view that the proposed public infrastructure funding framework has a number of other gaps, potential overlaps and unresolved issues which I address in the next section.

## 5. ISSUES

83. In this section, I provide my view on what I consider to be the key issues relating to the proposed public infrastructure funding framework. These include:
- The way in which the various mechanisms proposed to deliver public infrastructure would operate in conjunction and result in a **framework** which meets the principles of need, nexus, equity and accountability;
  - The intended operation of the **Floor Area Ratio** controls as they relate to public land and other infrastructure funding mechanisms;
  - The proposed delivery of **roads and laneways**;
  - The funding of **open space** land acquisition and improvements;
  - The intended operation of the **Floor Area Uplift** controls and the likely outcomes;
  - The way that **development projections** have been established and the implications if actual yields vary from the projections for infrastructure provision and funding;
  - The extent to which sufficient information is available to assess whether the proposed public infrastructure funding framework will generate **sufficient funds** to cover the cost of the public infrastructure; and
  - The importance of establishing clear **governance arrangements** to guide public infrastructure funding and delivery.
84. Given the large number of submissions to the Amendment, I do not outline all issues raised in relation to infrastructure funding. I refer to individual submissions as relevant to the particular issues I have identified.

### 5.1. PROPOSED PUBLIC INFRASTRUCTURE FUNDING FRAMEWORK

85. Although the Framework makes reference to a range of infrastructure actions and indicative timing in the 'Next Steps' section, the Amendment does not include any new planning controls which mandate contributions to public infrastructure other than the FAR controls which relate only to public land for open space, roads and laneways.
86. A DCP has not been exhibited as part of the Amendment to support the Framework, however the existing DCPO continues to apply and provides for the ongoing collection of 'interim' development contributions levies.
87. The Framework (p.67) foreshadows the use of "a mix of funding sources, including direct developer pays systems such as an Infrastructure Contributions Plan."
88. Although the ICP system is not yet available for Fishermans Bend, the ICP Guidelines (p.13) foreshadow the future application of the system to Strategic Development Areas. Given its designation in Plan Melbourne as a "Priority Major Urban Renewal Precinct" (p.26), it is my view that Fishermans Bend is a logical candidate for the future application of an ICP.
89. The statutory framework for DCPs and ICPs does not definitively identify whether a DCP or ICP would need to be prepared for Fishermans Bend.
90. In the absence of a resolution and an exhibited DCP, my assessment has been made on the basis that either a DCP or ICP could ultimately be used to fund public infrastructure in Fishermans Bend.

91. The Draft Framework does not provide any clear indication as to whether a DCP process is intended to be completed, despite the DCPO being introduced in 2012.
92. In the absence of a defined infrastructure list and known costs, it is my view that it is less likely that works will be delivered in-kind compared to if a DCP was in place. If interim contributions apply for some time, the actual delivery of new infrastructure works may be delayed until the VPA accumulates sufficient funds to deliver projects.
93. I note that there is limited information provided in the Framework which specifies how State infrastructure will be funded, such as tram and train network extensions and major bridges.

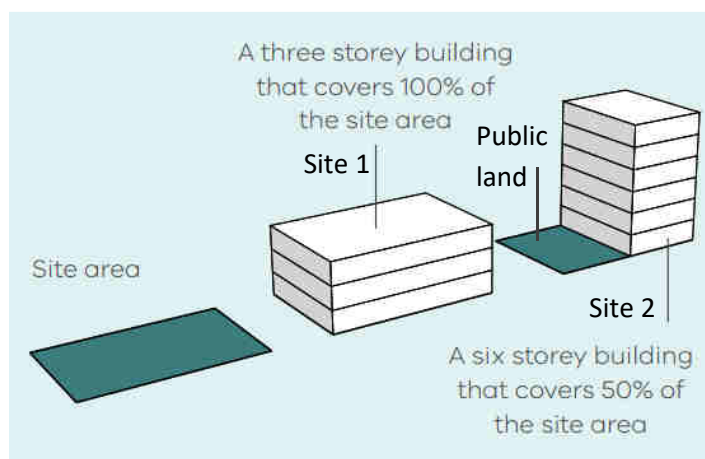
## Findings

94. In my view, the public infrastructure funding framework for Fishermans Bend is unresolved. This results in a lack of certainty for all parties, such that it is not possible in my view to be confident that the objectives of the Framework will be achieved in respect of public infrastructure.
95. I note that multiple submissions (such as numbers 206, 208, 215, 220) raise concerns in respect of this issue.
96. It is also not possible, in my opinion, to be confident that the proposed public infrastructure funding framework will achieve the guiding principles of need, nexus, equity and accountability. As long as an 'interim' development contributions system is in place, this will be the case.
97. Given the broad range of infrastructure types required to support development in Fishermans Bend, it is my view that the Framework should clearly set out the various levels of infrastructure to be funded and the proposed mechanism(s) through which each will be funded. This would clarify:
  - The public infrastructure items (including works and land) which are to be funded through development contributions;
  - The open space infrastructure (including works and land) which is to be funded through open space contributions;
  - The local infrastructure items (including works and land) which are to be funded by developers through permit conditions; and
  - Any other infrastructure types which are to be delivered through other mechanisms, such as State infrastructure.
98. This information should be accompanied by estimates of costs and potential revenue from the various mechanisms, and the introduction of a complete public infrastructure funding framework and associated statutory controls.
99. In my view, the Amendment should not be approved in the absence of this information. This view is in part informed by the fact that the Amendment seeks to address part of the public infrastructure funding task through the introduction of public land requirements associated with the FAR controls without resolving how these controls would relate to a future DCP/ICP and public open space contributions.
100. My views specific to FAR, FAU, open space and local roads follow in greater detail.

## 5.2. FLOOR AREA RATIO

101. As summarised earlier in my evidence, the Amendment proposes to introduce maximum FAR to all land in Fishermans Bend through new schedules to the Capital City Zone as a way of limiting the density and ultimate floorspace yield of each Precinct.
102. The Framework states that: “Floor Area Ratios can establish maximum and minimum ratios to control the amount of development that can occur on each site” (p.38) and that “a FAR control will facilitate the delivery of the much needed parks and streets where these are designated on privately owned sites”. (p.39)
103. The FAR controls are therefore both a means of limiting density and a means of obtaining land for public infrastructure without limiting the development yield that would otherwise have been possible on sites within which public land is required.
104. This is because “the developer can then modify how this yield is designed within their site to deliver parks and street (sic) with no loss of yield or return from their land” (Framework, p.39).
105. My interpretation of this is that the FAR controls have been formulated to compensate landowners who are required to provide land for roads and/or open space, on the basis that all landowners within certain Precincts and core/non-core areas are proposed to have the same potential yield as a ratio to gross land area.
106. I have provided an example of this in Figure 1, with an indicative scenario that:
- Site 1 has no land identified for public purposes; and
  - Site 2 has 50% of the land identified in the Schedule to the Capital City Zone for open space.
107. My interpretation of the proposed controls is that the owner of Site 2 would be required to surrender 50% of their land for open space purposes but would ultimately be able to deliver the same development yield at Site 1, because Site 2 could develop a higher building to achieve the same FAR as Site 1 (assuming that this is possible under the suite of urban design controls such as height limits).

Figure 1 FLOOR AREA RATIO DIAGRAM



Source: Framework, p.39.



## Findings

108. Although this approach, on the face of it, does not affect the development yield, I have identified what I consider to be gaps or areas of ambiguity in relation to the FAR controls and the associated requirement to set aside land for public purposes:
- I have not tested each property against the range of density and urban design controls (such as height, setbacks and so on) to confirm whether those affected by road widening, new streets and laneways and open space can each achieve the maximum yield under the relevant FAR, and whether the resulting building footprint results in an inefficient building design. If some sites cannot achieve their maximum FAR and/or are impacted such that building and floorplate layouts and designs are inefficient or more costly due to the allocation of land to public purposes, this would be inequitable. Sites identified as containing land for public purposes may also be less able to access the FAU scheme due to the greater likelihood that height limits would be exceeded.
  - The definition of Gross Floor Area (GFA) includes “the area above ground of all buildings on a site, including all enclosed areas, services, lifts, car stackers and covered balconies.” Car parking is not specifically included in this definition. Given that it is likely that at least some car parking will be provided above ground rather than below ground due to soil conditions and flooding risk, it is likely that car parking would be assessed as forming part of the GFA, however in my view this should be clarified in the definition to avoid any uncertainty.
  - The requirement in the Capital City Zone Schedules for subdivisions to “make provision for” any new streets, laneways or public open space does not necessarily require the land to be vested in the relevant Council, although this intent is made clear in the Urban Design Strategy in respect of public open space (p. 80). This is a key issue raised in submissions made by landowners and should be clarified in the planning controls.
  - The planning controls do not specify whether land set aside for public open space in accordance with the maps shown in the Capital City Zone Schedules would be eligible to receive a credit as a public open space contribution under Clause 52.01. This should be clarified. I provide further commentary on funding and delivery of open space infrastructure later in my evidence.
109. In my view, the issues identified above need to be clarified before a full assessment of the appropriateness of the proposed FAR system can be made, both in terms of how it would contribute to the achievement of the Framework vision, and whether the FAR controls would form an equitable component of the overall public infrastructure funding framework.
110. In particular, if testing of the urban design and FAR controls shows that some sites are not able to achieve the maximum FAR due to the amount of land required for public purposes, or are compromised in terms of the layout, construction cost or design such that the value of the land is reduced in comparison to sites that are not required to provide land for public purposes, then this would be inequitable in my opinion.
111. Greater clarity as to whether public land set aside for open space as part of the operation of the FAR is intended to be credited as a public open space contribution will have a particularly significant bearing on the overall funding and delivery of open space.
112. I note that it is common practice for compensation for public land to take the form of ‘credits’ applied against development contributions liabilities and/or open space contributions liabilities under a DCP or Clause 52.01 of a Planning Scheme.
113. The absence of a DCP or ICP limits any assessment of the extent to which the proposed FAR controls could result in an effective mechanism to deliver public land and equitably compensate landowners.

### 5.3. ROADS AND LANEWAYS

114. The Framework (p.35) identifies that a number of existing road reserves are to be widened, including Turner Street (Employment Precinct), Plummer Street (Wirraway and Sandridge) and Fennell Street (Sandridge). These road reserves are proposed to accommodate future tram routes.
115. In addition, a new network of local streets and laneways is to be established through subdivision of private land.
116. It is not clear whether any road infrastructure (land or works) is to be funded by a DCP/ICP, or whether there is a reliance on the FAR mechanism to require direct delivery by developers.
117. The Capital City Zone Schedules require land to be set aside to facilitate the widenings, new streets and laneways through the requirement that “the layout of the subdivision must make provision for any new streets, laneways, or public open space generally in accordance with Map 2 and Map 3”.

#### Findings

118. In my opinion, there are four main issues associated with roads and laneways.
119. **First**, the way in which the land for the roads and laneways is to be acquired is not specified.
120. In greenfield growth areas, land for local roads and laneways is generally vested in Council by developers as part of the subdivision process with no compensation payable, however land for higher order roads such as arterial roads is generally included in a DCP or ICP (including land required to widen existing reservations).
121. In my view, the proposed method for land provision, acquisition and any necessary compensation should be specified, including the role of the FAR mechanism (if any) in requiring delivery of land and construction of local roads and laneways.
122. **Second**, the planning controls do not state that permit requirements must include the construction of local streets and laneways. Although it is common practice for local roads and laneways to be constructed by development proponents to provide access to and near their property, I consider that this is a gap which would result in unclear infrastructure responsibilities as the area develops.
123. **Third**, the Framework does not identify anticipated higher order road costs. In the absence of a DCP/ICP and associated cost estimates, it is not possible to assess the proposed delivery of public road infrastructure against the tests of need, nexus, equity and accountability.
124. **Fourth**, I consider there to be challenges associated with the proposed road widenings. The challenge relates to the timing of land acquisition which in turn would impact the timing of delivery of the new road profile and associated public transport route.
125. Land ownership is relatively fragmented in much of Fishermans Bend. This means that a passive approach to land acquisition (whereby land affected by the proposed road widenings would be acquired at the time individual properties are subdivided / developers) could result in significant delays to the construction of major road and public transport routes. The construction of these main road and public transport routes will be critical to support the desired land use transformation.
126. In the absence of a Public Acquisition Overlay or some other mechanism that enables compulsory acquisition, there is no mechanism to compulsorily acquire land for major transport routes and delivery of the routes could be delayed. In my view, acquisition mechanisms should be considered early in the development period.

## 5.4. OPEN SPACE

127. As identified earlier in my evidence, a range of mechanisms exist to collect contributions towards open space. The current public infrastructure funding framework in Fishermans Bend could include two separate mechanisms to fund and deliver open space:
- Interim development contributions under the DCPO; and
  - Public open space contributions collected through Clause 52.01.
128. The three section 173 agreements provided to me by the City of Port Phillip identify that interim development contributions may be expended open space improvement projects, including new parks, new urban squares and improvements to existing open space and recreation areas and land acquisition required for these projects.
129. However, interim development contributions are collected as a consolidated amount per dwelling or per square metre of floorspace, meaning that the proportion of the interim development contributions revenue that may be spent on open space items is unknown.
130. The public open space contributions rates of 8% (Montague, Lorimer, Wirraway and Sandridge Precincts) and 5% (Employment Precinct) were introduced by Amendment GC7 (gazetted 7 August 2014) as part of the suite of planning controls introduced to give effect to the Fishermans Bend Strategic Framework Plan July 2014.
131. The Framework does not provide any detailed information as to how open space is to be funded in Fishermans Bend and how the various funding sources are intended to operate in partnership.
132. The Framework (p.39) identifies that open space areas located on private land are proposed to be delivered through the FAR controls and the associated requirements of the Schedules to the Capital City Zone.
133. As stated earlier in my evidence, it is not clear whether open space contributions credits are proposed to be applied to open space areas provided through the FAR controls or not.
134. It is also not clear whether open space contributions would be calculated based on the site area including or the site area excluding public land.

### Findings

135. In my view, the following issues need to be resolved in respect of open space funding:
- Clarity regarding the application of credits or otherwise to open space areas on private land is required. This will have a significant bearing on the overall cost of delivering the proposed open space network; and
  - A number of properties are identified in the Framework entirely as required for open space. The Framework does not specify how these sites are to be acquired. In the absence of a DCP or ICP, the intended acquisition mechanism is not clear.
136. In order to address these issues, it is my view that the proposed approach to open space delivery and funding should be more clearly set out as part of this Amendment. This should include information on how interim development contributions levies, ultimate development or infrastructure contributions, public open space contributions, the FAR controls and land acquisition mechanisms are proposed to operate in conjunction with each other.
137. An important part of this is to finalise the estimates of the cost of acquiring and improving the open space network, the likely development contributions and open space contributions revenue that could be applied to open space, and the appropriateness of the open space contributions rates in the Planning Schemes.

138. This is especially important in the context of work previously prepared by Urban Enterprise as part of the Public Space Strategy (p. 114) which found that the existing open space funding framework could result in a funding shortfall to government in the order of \$800m under the current open space contributions rates.
139. Given that the Amendment includes controls which relate to part of the open space funding mix, it is important that the balance of the funding and delivery framework for open space is clarified to enable a full assessment of the extent to which the proposed framework meets the principles of need, nexus, equity and accountability.
140. In particular, the prospect of double-dipping - where developers are required to make multiple contributions to the same types of open space through separate mechanisms - cannot be discounted at present. This brings into question the equity of the proposed approach to open space funding and delivery.
141. The issue of the absence of certainty regarding how landowners will be compensated for providing land for open space (and public roads) is raised in a number of submissions (such as 143, 173, 180, 203, 206 and 208).
142. If there is a shortfall in the revenue that will be generated through existing mechanisms (i.e. interim development contributions and public open space contributions), these mechanisms should be adjusted or an additional funding source identified to ensure that the proposed open space network can be funded and delivered as intended.

#### 5.5. FLOOR AREA UPLIFT

143. The proposed Amendment would introduce a new local policy (Clause 22.27-3) and zone provisions (Clause 4.0, Schedule 4 to the Capital City Zone) to give effect to a Floor Area Uplift (FAU) scheme.
144. The Framework (p.39) identifies that “additional opportunities to support the realisation of the Fishermans Bend Vision and sustainability goals will be provided through the introduction of a Floor Area Uplift.”
145. The scheme may deliver additional public benefits (including affordable housing, additional open space and community hubs) if developers choose to take up the incentive of greater development yield in return, however the scheme is not mandatory and is also not ‘as of right’ in that the Responsible Authority must assess whether the public benefit proposed is satisfactory.
146. Fact Sheets exhibited alongside the Amendment provide information on the relationship between the FAU scheme, public infrastructure funding, development contributions, height limits and density controls as follows:
- All height limits and built form controls apply equally to all development, regardless of whether a public benefit is provided;
  - Government is not reliant on the additional open space to ensure a base level of open space is delivered, and is not reliant on community infrastructure public benefits to ensure essential community infrastructure is delivered;
  - Development contributions are not payable on community infrastructure floorspace provided or affordable housing units, however levies are payable on any additional dwellings achieved as a result of the FAU;
  - The Fact Sheets do not specify whether development contributions levies are payable on additional dwellings resulting from FAU associated with the open space public benefit;
  - Development may deliver community infrastructure hubs as works in-kind with the construction value of the floorspace (and associated pro-rata land value) offset against any development contributions levies payable.

147. In my view, the FAU scheme as set out in the planning controls and supporting Fact Sheets contains contradictory and ambiguous information in respect of the additional open space and community infrastructure public benefits.
148. I will now discuss issues associated with each of these public infrastructure public benefits separately.

#### Community Infrastructure Public Benefit

149. I have identified three main issues associated with the proposed community infrastructure public benefit.
150. **First**, in my opinion there is contradictory and ambiguous information relating to how the scheme would operate.
151. The public benefit ratio in relation to community infrastructure is defined as ‘One additional dwelling to the equivalent value of the community infrastructure.’ (*How to Calculate Floor Area Uplifts and Public Benefits in Fishermans Bend*).
152. That is, a developer would provide community infrastructure and in exchange would be entitled to construct additional dwellings with an equivalent value. The additional dwellings would result in the overall GFA exceeding the maximum FAR which applies to the site (subject to meeting height and built form controls).
153. I note that the *Fishermans Bend Technical Fact Sheet #2: Delivery of Community Infrastructure Hubs as a Public Benefit* exhibited alongside the Amendment includes a different definition of the public benefit ratio as follows: “development may deliver community infrastructure hubs as works in kind with the construction value of the floor space (and associated pro-rata land value) provided for community infrastructure hubs offset against any development contributions levies payable.”
154. In my opinion, the stated public benefit ratio for community hubs is somewhat ambiguous, given that:
- a. The supporting Fact Sheets do not provide sufficient clarity regarding how components of the scheme would be valued, including how the construction value of the community floorspace and ‘uplift’ dwelling floorspace would be calculated; and
  - b. The pro-rata land value associated with the community floorspace is identified as forming part of the public benefit in *Fishermans Bend Technical Fact Sheet #2*, but not in *How to Calculate Floor Area Uplifts and Public Benefits in Fishermans Bend*.
155. In order to address this issue, I consider that further information should be provided to address each of these areas of uncertainty and ambiguity, and that all information relating to the proposed public benefit ratios be consolidated into a single set of guidelines which comprise an Incorporated Document to the Planning Schemes given that the information within the document would be so critical to decision making.
156. **Second**, in my view the public benefit associated with a developer delivering a community infrastructure hub could overlap with the existing DCPO and/or future DCP or ICP.
157. In the absence of a DCP or ICP, it is difficult to predict which infrastructure items could ultimately be delivered as works in-kind. However, it is common for a DCP or ICP to include community hubs as an infrastructure item. If such an item is delivered by a developer as works in-kind, then the developer would receive a credit against their levy liability equivalent to the value of the community space and be able to increase the overall development yield of the site, a dual private benefit.
158. The public benefit proposed, therefore, would simply be the delivery of community hubs “in-kind” by developers. If this is the intent of the Framework, this would appear to limit the public benefit associated with this incentive, although direct delivery of community infrastructure hubs by developers under the FAU scheme would provide the benefit of early delivery of community infrastructure (i.e. concurrent to development).

159. If this is not the intent of the Framework, it is my view that the Fact Sheet should be amended to remove reference to development contributions works in-kind credits.
160. In the absence of a DCP or ICP, it is not clear how community infrastructure is intended to be delivered by government if developers do not deliver community infrastructure hubs as part of the FAU scheme.
161. **Third**, the use of a discretionary mechanism to deliver essential infrastructure results in a degree of uncertainty.
162. There is no way that government can mandate the delivery of this public benefit. If developers do not voluntarily deliver the community infrastructure, government will be responsible for acquiring land and delivering the essential infrastructure. I note that Submission 206 raises the concern that the proposed public benefit ratio is unlikely to be taken up by the development industry due to insufficient financial incentive.
163. The *Fishermans Bend Technical Fact Sheet #2 Delivering Community Infrastructure Hubs as a Public Benefit* identifies that government is not reliant on the community infrastructure public benefit to ensure essential community infrastructure is delivered.
164. The Fact Sheet states that community infrastructure “will be funded through a combination of infrastructure contributions levies collected from development, and other state revenue sources. A development may seek to fund the construction of a community infrastructure hub to meet all or some of its development contribution obligations. State Government also retains the option of strategically identifying and acquiring, either by negotiation or compulsory acquisition, sites for delivery of community infrastructure, if private development is not taking up this option.” (p.2)
165. As mentioned earlier in this section, the mechanisms by which community infrastructure land and facilities will be delivered by government do not form part of the Amendment and therefore remain uncertain.
166. I consider that there is a significant degree of uncertainty associated with:
- Whether the development industry will ultimately deliver community infrastructure hubs under the FAU mechanism;
  - How community infrastructure hubs are to be delivered in respect of land acquisition and construction in the event that the private sector does not “opt-in” for direct delivery; and
  - Where the community infrastructure hubs will ultimately be located, with subsequent implications for government planning for co-location of other land uses such as open space, government services and retail.
167. In my view, these issues should be addressed prior to proceeding. This is particularly important in the absence of an alternative mechanism which sets out how and where community infrastructure will be delivered, such as a DCP or ICP.

#### Open Space Public Benefit

168. The public benefit in respect of open space is defined in *How to calculate floor area uplifts and Public Benefits in Fishermans Bend* (October 2017), the proposed Reference Document, as public open space “additional to:
- Any public open space required to be provided in accordance with the Framework;
  - Any public open space contributions in the form of land for the purposes of Clause 52.01; and
  - Any communal open spaces provided on site exclusively for the use of residents and occupants of the development, or any publicly accessible communal open space which is proposed to be retained in private or owners corporation ownership.”

169. The public benefit ratio is defined in the same document as: “one additional dwelling to the equivalent value of the additional public open space.”
170. I have identified four main issues associated with the proposed additional open space public benefit.
171. **First**, the *Fishermans Bend Technical Fact Sheet #3* provides detail that is somewhat contradictory to the wording in the proposed Reference Document. For example:
- The Fact Sheet infers that the public benefit relates to public open space that is “in addition to the identified open space within the Framework and the required 8% public open space contribution”. The wording is different to the proposed Reference Document, which refers only to a public open space land contribution;
  - The Fact Sheet also states that “for every 26sqm of public open space delivered, developers are able to deliver an equivalent value of residential floor areas”. This information is not provided in the proposed Reference Document and appears superfluous given that the proposed benefit ratio simply equates the value of a dwelling to the value of the additional open space.
172. **Second**, it is not clear whether land which is not within a building footprint for the purposes of achieving a suitable FAR or to meet other urban design controls (such as setbacks) would be able to be used for open space as a public benefit. This should be clarified.
173. **Third**, the material does not clarify whether the additional open space is to be improved (and remediated if relevant). This should be clarified.
174. **Fourth**, I consider that the additional open space public benefit is likely to be negligible, given that:
- The requirement for a minimum additional open space land area of 1,000sqm could limit the opportunity to provide this public benefit to larger sites only; and
  - The public benefit of the additional open space provided (i.e. new open space supply) would be offset (at least in part) by the occupants of the additional residential floorspace permitted (i.e. additional open space demand).
175. Based on my review, changes to the supporting material are required to ensure that:
- a. Only one definition of the public benefit and the public benefit ratio is provided, and only one document guides the implementation of the proposed scheme;
  - b. Clarity is provided as to what is being valued (i.e. land value of the additional public open space, and construction value of the additional residential floorspace, if this is what is intended);
  - c. Greater clarity is provided as to how the open space public benefit is to be valued, and whether the open space land is to be improved or remediated; and
  - d. Any superfluous references to the ratio of open space in terms of square metres are deleted.

#### Statutory Weight of Supporting Documents

176. I note that the public benefits and public benefit ratios are not included in the planning scheme, and the proposed Reference Document *How to calculate floor area uplift and public benefits in Fishermans Bend* can be changed without the need for a Planning Scheme Amendment process.
177. In my view, greater accountability and equity over time would be secured if the proposed Reference Document is instead included as an Incorporated Document to the Planning Schemes.

## 5.6. DEVELOPMENT PROJECTIONS

178. The Framework (p.28) states that “the density of Fishermans Bend will be managed through the combination of floor area ratios and height controls to accommodate a population of 80,000 residents and 80,000 jobs.”
179. The Framework (p.18) identifies that a total of 36,897 dwellings are projected to be constructed within Fishermans Bend.
180. In essence, the Amendment seeks to facilitate the delivery of a particular outcome in terms of the quantum of population, dwellings and employment in Fishermans Bend.
181. In my view, it is critical that public infrastructure planning for urban growth areas is informed by the most accurate development yield estimates possible. This is particularly important in Fishermans Bend, given the significant scale and complexity of the proposed development and the extensive range of new and upgraded infrastructure required to support the land use transition.
182. The Urban Design Strategy (p.77) identifies that development projections are to be achieved through:
- FAR controls which are based on the assumption that 75% of land not currently subject to a planning permit will be developed by 2050; and
  - The assumption that 90% of dwellings from approved planning permits will proceed to construction.

### Findings

183. In my view, it is reasonable to expect that the development yield projections could be exceeded.
184. This view is supported by the Part A Submission of the Taskforce which identifies that there could be an additional 17,712 private dwellings constructed under the Affordable Housing FAU scheme (paragraph 174).
185. Given that the expected development yield has informed assessments of infrastructure requirements, such as open space needs and community and recreation facilities, any material variation in development yield would have implications for public infrastructure planning and funding.
186. For example, the Community Infrastructure Plan identifies (p.67) the need for 14 community hubs based on the project population of 80,000 residents. This information is a critical input into the calculation of overall public infrastructure costs and calculation of development contributions to be levied to ensure all public infrastructure is provided and that the principles of need, nexus, equity and accountability are met.
187. In the absence of a DCP or ICP, it is not possible to properly assess the proposed development yield and apportionment of overall infrastructure costs.
188. In my view, there is a risk that the development projections have been set at a level that will not fully reflect the likely development outcomes for two reasons:
- a. If more than 75% of sites not already approved for development in Fishermans Bend are developed, the ultimate development yield could exceed the projections; and
  - b. The projections relate only to the area within the Floor Area Ratio. Any further yield delivered through the FAU scheme will be over and above the projections, resulting in higher overall demand for infrastructure.
189. In Fishermans Bend, the fragmented land ownership and variety of existing building types and conditions make it difficult to predict how many sites will develop over a particular period (the Framework uses 2050 as the end of the planning timeframe). However, it is my view that public infrastructure planning should generally take into account the upper bounds of likely yield at full development so that infrastructure demand can be fully assessed.



190. If 100% of sites are developed, I estimate that an additional 9,840 dwellings could be constructed within the FAR controls (based on the yield estimates in the Urban Design Strategy).
191. Further, the development projections do not account for any additional yield (dwellings or commercial floorspace) that may be delivered through the FAU scheme.
192. If only the affordable housing public benefits are delivered (i.e. excluding the community infrastructure and additional open space public benefits), and affordable housing units ultimately comprise 6% of all dwellings within the FAR as per the Framework target, I estimate that an additional 17,712 dwellings could be constructed (subject to height limits and built form controls).
193. Table 4 provides a summary of my calculations to arrive at an estimated scale of additional dwelling yield that may be possible under the proposed planning controls. Overall, I estimate that an additional 29,767 dwellings could be constructed (equating to 81% of the projected yield of 36,900).
194. My interpretation of the Urban Design Strategy is that the scale of the potential dwelling yield relative to projections is consistent across the Precincts. That is, each precinct (and therefore each municipality) could experience an ultimate dwelling yield which exceeds projections by approximately 81%.
195. Although this is a theoretical maximum additional yield, my analysis provides an indication of the potential scale of additional dwellings that could be constructed in Fishermans Bend (not including any additional yield relating to additional commercial floorspace or additional dwellings associated with the community infrastructure and additional open space FAU public benefits).

**TABLE 4 POTENTIAL ADDITIONAL DWELLING YIELD**

Row		Dwellings	Calculation	Source
<b>Full development scenario</b>				
A	New dwellings required to achieve population target of 80,000 (excluding approved dwellings)	29,820		Urban Design Strategy p.75
B	Moderated FAR ratio (based on assumed 75% build out)	1.33		Urban Design Strategy p.78
C	Total new dwelling potential at 100% development (excluding approved dwellings)	39,661	A x 1.33	Derived by Urban Enterprise
D	<b>Potential additional dwellings through 100% of sites developed</b>	<b>9,841</b>	C – A	Derived by Urban Enterprise
<b>Affordable Housing Public Benefit</b>				
E	Total dwellings required to meet 80,000 population target	36,900		Urban Design Strategy p.75
F	Potential affordable housing units at 6% of total	2,214	6% x E	Derived by Urban Enterprise
G	Potential additional dwellings through FAU benefit ratio of 8:1	17,712	8 x F	Derived by Urban Enterprise
H	<b>Total potential additional dwellings</b>	<b>29,767</b>	D+F+G	Derived by Urban Enterprise

Source: Fishermans Bend Urban Design Strategy; Urban Enterprise.

196. Any development yield which exceeds the Framework projections will result in additional demand for infrastructure that has not been planned for. This includes demand from workers accommodated within any additional commercial floorspace above the minimum FAR which is not limited in core areas.
197. Although additional revenue from interim development contributions levies will also be received, it is difficult to retrofit infrastructure items later in a development period. It is particularly difficult and costly to seek to acquire additional land once a significant proportion of land in an area has been redeveloped. The key risk is that less infrastructure will ultimately be delivered than is needed.

198. Public infrastructure funding mechanisms such as DCPs rely on projections of development yield. In practice, actual development yields often vary from the projections to some degree due to a range of factors, especially in established areas.
199. In the case of Fishermans Bend, it is my view that the scale of potential additional development yield above projections (as set out in Table 4 of my evidence) could result in a significant under-provision of infrastructure, although in the absence of a DCP it is not possible to fully assess this risk.

## 5.7. INFRASTRUCTURE COSTS AND RESPONSIBILITIES

200. The Framework does not identify the estimated cost of public infrastructure.
201. In the absence of this information, it is not possible to form a detailed view as to the appropriateness of the quantum of interim development contributions. However, I have nevertheless identified a number of funding shortfall risks to government as follows.
202. Given that the Section 173 agreements provided to me in respect of interim contributions do not include a clause which would require additional levy payments if the ultimate DCP levy exceeds the interim levy, government will not be able to recoup the balance (if any) of contributions owed by development proponents from whom interim levies have been collected. This scenario would result in a funding shortfall to government.
203. Although major public transport items are generally not funded by DCPs on the basis that this is the responsibility of the State government, the section 173 agreements provided to me show that interim levies may be expended by the VPA on “public transport projects, eg light rail extension”.<sup>2</sup> Any such expenditure on State items would reduce the funds available to deliver public infrastructure such as roads, community and recreation infrastructure and associated land acquisition.
204. Work previously prepared by Urban Enterprise as part of the Public Space Strategy (p. 114) found that the open space funding framework could result in a funding shortfall to government in the order of \$800m under the current open space contributions rates. The Amendment does not propose to change the rates set out in Clause 52.01 of the Planning Schemes to address this potential shortfall.
205. In January 2018 the City of Port Phillip commissioned a study<sup>3</sup> to estimate the cost of two case study infrastructure items expected to be included within the future DCP or ICP. The report found that:
- The estimated cost of delivering a Sport and Recreation Hub in Montague (based on a range of technical assumptions that I have not peer reviewed) and associated land acquisition is expected to be in the order of \$88m - \$96m (p.70); and
  - The estimated cost of delivering a section of the Plummer Street and Fennell Street streetscape upgrade (including land acquisition, road works, intersection works and associated services and civic spaces) is expected to be in the order of \$251m (p.80). I note that the authors of the report based this estimate on a view that some properties would need to be acquired in their entirety.
206. Combined, the two case studies have an estimated cost of at least \$339m. If these works were to be delivered using development contributions revenue at the interim levy rate of (\$15,900 in July 2015 values, or \$16,415 in December 2017 values<sup>4</sup>), the cost of these two items alone would account for the levies paid in respect of over 20,650 dwellings, which equates to 56% of the projected dwelling yield in Fishermans Bend.

<sup>2</sup> Common term included in Schedule 1 of all agreements provided to me.

<sup>3</sup> Fishermans Bend Funding and Financing Infrastructure Case Studies Stage 2 and 3 Report, Mesh Planning, January 2018.

<sup>4</sup> Indexed by Urban Enterprise using ABS 6427.0 Producer Price Indexes, Australia, Table 17. Output of the Construction industries, subdivision and class index numbers: Building Construction Victoria.

207. The examples provided in this section indicate that delivering public infrastructure is likely to be very costly relative to the interim levies and open space contributions rates that are currently in place. I note that this is based on a small sample of infrastructure items, and that I have not been provided with or asked to undertake a full assessment of overall infrastructure costs.

#### Findings

208. Overall, it is not possible in my view to be satisfied that there will not be a funding shortfall relating to the delivery of public infrastructure in Fishermans Bend until a fully costed DCP or ICP is prepared.
209. Given that the Framework and supporting planning controls seeks to introduce mechanisms that will form part of the overall public infrastructure funding framework, it is my view that a DCP should form part of the Amendment.
210. In the absence of this information, it is also not possible to determine that the overall proposed public infrastructure funding framework will align with the principles of need, nexus, equity and accountability.
211. In my view, government should seek to replace any interim infrastructure funding arrangements as soon as practicable. As long as interim contributions are collected there is a lack of certainty in respect of public infrastructure delivery and an ongoing funding shortfall risk to government.
212. In the interim, the Framework does not provide any information regarding which government would be responsible for funding and delivering which infrastructure types, how any funding shortfall would be addressed and by whom.

#### 5.8. GOVERNANCE

213. Ongoing governance arrangements for Fishermans Bend are not clear. Ultimately, it is likely that implementation of the public infrastructure funding framework will require co-operation across numerous governments and other parties, such as DELWP, Councils, the Victorian Planning Authority and developers.
214. I understand that the VPA is collecting interim development contributions. The City of Melbourne and the City of Port Phillip are separately collecting public open space contributions.
215. It is not clear how funds would be distributed between the various precincts, infrastructure projects and local government areas.
216. In my view, this complex administrative environment is likely to be inefficient and could lead to challenges in terms of accumulating funds for major projects and reaching agreement on project priorities and funding responsibilities.
217. It is my view that a co-ordinated approach to strategic land acquisition and infrastructure delivery is required to ensure that all infrastructure items are delivered in a timely manner. This co-ordinated approach will be particularly important for finalisation of a DCP or translation into an ICP. The Framework does not provide direction in this regard, including the expected role of the City of Port Phillip.

## 6. CONCLUSIONS

218. The Amendment proposes to introduce Floor Area Ratio and Floor Area Uplift controls that are designed (in part) to procure certain types of public infrastructure through Floor Area Ratio and Floor Area Uplift schemes.
219. The Amendment does not provide any detail on how the balance of the public infrastructure task is to be funded or delivered, or any information which demonstrates that the proposed infrastructure will be able to be adequately funded through the existing and proposed framework.
220. In the absence of a fully costed DCP (or ICP), it is not possible to know whether the overall public infrastructure funding framework will be able to deliver the necessary infrastructure, and, equally importantly, whether the ultimate framework will meet the principles of need, nexus, equity and accountability.
221. Given that the DCPO was introduced some years ago, it is my view that this Amendment should be accompanied by a fully costed DCP. As long as interim contributions are collected, there is a lack of certainty for all parties in respect of public infrastructure delivery.
222. I consider it a reasonable possibility that actual development yield could significantly exceed projections. This could result in an under-provision of infrastructure in Fishermans Bend.
223. Notwithstanding the primary issues identified above, there are a number of other specific issues identified in my evidence that relate to the FAR and FAU controls that should be addressed. In my view, aspects of these controls do not align with the principles of equity and accountability.

### DECLARATION

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



Paul Shipp

Director, Urban Enterprise Pty Ltd

BUPD, MCom, MPIA, CPP.

## APPENDIX A REQUIREMENTS OF PLANNING PANELS VICTORIA – EXPERT EVIDENCE

### NAME

Paul Shipp, Director, Urban Enterprise Pty Ltd.

### ADDRESS

389 St Georges Road, North Fitzroy, Vic 3068

### QUALIFICATIONS

- Bachelor of Urban Planning and Development, University of Melbourne;
- Master of Commerce, RMIT University.

### PROFESSIONAL AFFILIATIONS

- Member, Planning Institute of Australia;
- Committee Member, Planning Institute of Australia (Victorian Division);
- Certified Practicing Planner (Planning Institute of Australia).
- Member, Victorian Planning and Environmental Law Association.

### EXPERIENCE

I have 13 years' experience as a planner and urban economist and specialise in the field of development contributions.

Urban Enterprise has a track record of successfully preparing Development Contributions Plans for Councils as well as negotiating development contribution arrangements with Councils on behalf of developers.

I have been involved in the preparation and review of many Development Contributions Plans, Infrastructure Contributions Plans and proposed public open space contributions for Councils and developers across Melbourne and regional Victoria.

I have appeared as a Planning Panel expert witness in respect of development contributions, and I have assisted Urban Enterprise Managing Director Matt Ainsaar in the preparation of expert witness statements in respect of development contributions over many years.

### AREAS OF EXPERTISE

Areas of expertise include strategic urban planning, development contributions and urban economics.

### EXPERTISE TO PREPARE THIS REPORT

My experience in urban planning and urban economics over the past 13 years has provided the tools to develop a specialisation in development contributions. I have prepared numerous Development Contributions Plans and have provided advice to public and private sectors in regards to development contributions.

I am therefore qualified to prepare this report and expert witness statement.

## INSTRUCTIONS

My instructions were to consider the following matters:

- Review the way in which Amendment GC81 proposes to require and manage the delivery of public infrastructure, and the extent to which this is likely to achieve the objectives of the draft Framework Plan;
- Consideration of the adequacy of the current interim levies collected;
- Considerations for the introduction of an Infrastructure Contributions Plan;
- The alignment of infrastructure needs to likely development projections, including additional yield likely through the Floor Area Uplift scheme; and
- How public benefits are likely to be delivered, and issues for Council (such as location, certainty, design).

## FACTS, MATTERS AND ASSUMPTIONS RELIED UPON

I have relied on the following for my assessment:

- Amendment GC81 documentation and selected submissions (numbers 143, 149, 153, 173, 180, 188, 203, 206, 208, 210, 215, 220);
- Fishermans Bend Draft Planning Scheme Amendment GC81 Minister for Planning Part A Response, 19 February 2018 (Part A Submission of the Taskforce) and amended planning controls;
- The Planning Review Panel Directions;
- Fishermans Bend Framework Draft for Consultation, Department of Environment, Land, Water and Planning, 2017; (Framework)
- Supporting Fact Sheets exhibited with the Amendment regarding the Floor Area Uplift scheme;
- Fishermans Bend Urban Design Strategy, Hodyl and Co, September 2017 (Urban Design Strategy);
- Fishermans Bend Community Infrastructure Plan, DELWP, 2017 (Community Infrastructure Plan);
- Fishermans Bend Public Space Strategy, Planisphere, April 2017 (Public Space Strategy);
- Infrastructure Contributions Plan Guidelines, DELWP, October 2016 (ICP Guidelines);
- Development Contributions Guidelines, Department of Sustainability and Environment, March 2007 (DC Guidelines);
- Ministerial Direction on the Preparation and Content of Development Contributions Plans, Minister for Planning, 11 October 2016 (DCP Ministerial Direction);
- Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans, Minister for Planning, 20 October 2016 (ICP Ministerial Direction);
- Planning and Environment Act 1987 (as relevant to public infrastructure funding) (the Act);
- City of Melbourne and City of Port Phillip planning schemes (as relevant to public infrastructure funding).
- Fishermans Bend Funding and Financing Infrastructure Case Studies Stage 2 and 3 Report, Mesh Planning, January 2018, provided to me by the City of Port Phillip;

- Three Section 173 Agreements provided to me by the City of Port Phillip relating to interim development contributions in Fishermans Bend applying to land at the following addresses:
  - 89-103 Gladstone Street, South Melbourne;
  - 164 Ingles Street, Port Melbourne; and
  - 165-167 Gladstone Street, South Melbourne.
- A sample of Planning permits provided to me by the City of Melbourne which contain conditions relating to development contributions in the Lorimer Precinct;
- My familiarity with the site and the surrounding area; and
- Relevant experience.

#### DOCUMENTS TAKEN INTO ACCOUNT

See above.

#### IDENTITY OF PERSONS UNDERTAKING THE WORK

Paul A. Shipp

#### SUMMARY OF OPINIONS

Refer to Section 6: Conclusions.