1. Introduction

1.1. These submissions relate to the residential apartments at 201 Collins Street, Melbourne, Victoria. They are made on behalf of the following parties:

   a. Owners Corporation 3 on Plan of Subdivision PS428405M ( Owners Corporation ) which is responsible for the management and administration of Common Property 3 on Plan of Subdivision PS428405 (an amended copy showing layout of carpark is Document 9);


1.2. The properties are part of the strata title that also includes the Westin Hotel and City Square.

1.3. The WRA consists of 32 apartments, 48 private car parking spaces and 24 storage units.
1.4. The individual owners of WRA are members of the Owners Corporation, and also Owners Corporation 1 and Owners Corporation 2 on the Plan.

2. Key Issues

2.1. The WRA commends and supports the development of the Melbourne Metro Rail Project, as a long-awaited major infrastructure project in Victoria.

2.2. The key issues that the WRA raise relate to the delivery of the project and the legacy design of particular infrastructure. These are summarised as:

   a. recognition of the historical relationship and integration of City Square, Westin building and Regent Theatre;

   b. proposed effects of the Incorporated Document and planning scheme amendments;

   c. concerns relating to project delivery;

   d. requirement for consultation on reinstatement of City Square;

   e. requirement for consultation on legacy design of the private carpark owned by the WRA;

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1 Image sourced from http://www.eventconnect.com/venue/finder/1624/The-Westin-Melbourne/
3. Overview of the City Square Precinct, Westin Building and Regent Theatre

City Square Precinct

3.1. The idea of creating a major civic open space in the heart of Melbourne’s city was first adopted by the Melbourne City Council in 1966 when it began acquiring and demolishing properties along Swanston Street between the Town Hall and St Paul’s Cathedral.2

3.2. Following the acquisitions, the Melbourne City Council owned all the land enclosed between Swanston Street, Collins Street, Flinders Lane and the Regent Theatre.

3.3. A temporary public square was first installed in 1968, with the redesign being completed in May 1980 when it was officially opened by Queen Elizabeth II. This design of City Square received much public criticism for its bareness and lack of aesthetics.

3.4. In the late 1990s, half of City Square was sold by the Melbourne City Council to Staged Developments Australia Pty Ltd and RPHT Pty Ltd for the development of the Westin Hotel by the Marriner Group. The intention was that the parties would develop a design

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2 The Council also intended to demolish the Regent Theatre however the Builders Laborers’ Federation ban prevented this from occurring.
that incorporated both a “New City Square” and the Westin Hotel, together with a public carpark below City Square. The refurbishment of the Regent Theatre was also included in this project due to its interaction with City Square at that time.

3.5. The integration of these three Melbournian landmarks is recognised in the Urban Design Strategy:³

The site was formerly occupied by buildings, which were acquired by the City of Melbourne to create a new civic space, and has since been redesigned twice. The current form was built in the 1990s in connection with the restoration of the Regent Theatre and development of the adjoining Westin Hotel with active frontages onto the square.

3.6. During this redesign in the 1990s, the developers and the City of Melbourne had extensive discussions about the built form of City Square and the Westin Hotel. The discussions were crystallised in the following documents:

a. a Development Agreement, where the City of Melbourne undertook to only operate City Square as a civic space, the land below as a public car park and restricting the types of uses of City Square with regard to public events (for example, a circus is prohibited);⁴

b. a Section 173 Agreement registered on City Square, being Instrument X233303D, which defines the current built form of City Square and the Westin building, and creates an obligation on the Melbourne City Council to consult with the Westin and WRA before erecting or placing any new structures on City Square;

c. an easement as to light and air for the space above City Square, created by the Plan (E-1 and E-5).

3.7. The Section 173 Agreement contains a number of clauses that highlight the importance of the integration between City Square and the Westin Hotel. Examples include:⁵

Clause 2.2(b)(iii)

… SDA agrees with the Council that SDA must ensure that, unless SDA and the Council otherwise agree, the use of the Hotel Development and Apartment Development complies with, and any alterations to the Hotel Development and Apartment Development … comply with the Council’s Urban Design Requirements which include, without limitation … that the design of the Hotel Development and Apartment Development must be based on an acceptance that

³ Page 74, Urban Design Strategy, Appendix M to the EES.

⁴ This agreement was to remain in effect for 50 years. The WRA has been unable to locate a copy of the Development Agreement, and has requested same from the Melbourne City Council (not received at the time of finalising these submissions).

⁵ Staged Developments Australia Pty Ltd (SDA) was the owner and developer of the Westin Hotel and WRA.
the New City Square is essentially a civic space that will be designed as a formal space incorporating bluestone paving, trees, water features, banners, sculptures, furniture and landscape as deemed appropriate by the Council.

Clause 2.2 (e)
… SDA agrees with the Council that SDA must … ensure that the ground floor uses within the Hotel Development at all times compliment and are consistent with the function of the New City Square as an important civic space for the City of Melbourne.

Clause 2.2 (f)
… SDA agrees with the Council that SDA must … ensure that a strong public interface is maintained at all times between the Hotel Development and the New City Square.

Clause 2.2 (l)
… SDA agrees with the Council that SDA must … ensure that any use of sculpture or artworks adjacent to Collins Street or the New City Square from time to time is only with the prior agreement of the Council and with the prior approval of the Council to the relevant sculpture or artwork.

3.8. As part of the Development Agreement, Staged Developments Australia Pty Ltd contributed $1.5m towards the redevelopment of City Square.

3.9. Since its completion in about 2000, City Square has continued to serve “as a local open space and as a platform for events staged to complement activity in the nearby retail core”.6

The Westin Building

3.10. Below is Section E-E’ in the Plan.7 It contains the following layout

a. Hotel Basement, part of Carpark Level 1 and Ground Storey to Seventh Storey (Lot 3), which is owned by TA Covenant Pty Ltd and operated as “The Westin Melbourne”;

b. Eighth Storey to Fourteenth Storey, and part of Carpark Level 3, which are the WRA;

c. the balance of the Carpark Levels (Lot 2), which are owned and operated by the Melbourne City Council as a public carpark;

d. the airspace above site level, being City Square (Lot 1), which is also owned by the Melbourne City Council.

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6 Page 74 EES Appendix M.
7 This Section is facing the Westin building and City Square from Flinders Lane.
3.11. As can also be seen from the Plan of Subdivision, the structure of the Westin Building and City Square are integrated with one another.

4. Proposed Planning Scheme Amendment

The Incorporated Document

4.1. The WRA support the comments of Mr Robert Milner of IO Consulting Group in paragraph 201 of his Report: 

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I recommend that the Incorporated Document should be amended to insert a requirement at Clause 5.1 – Development Plans – requiring that:

- A Development Plan should be exhibited concurrently with its referral to relevant authorities, giving the community a minimum of two weeks to

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provide any comment or feedback to either their relevant municipality or to the MMRA.

- That a municipality may seek public comments upon the Development Plan prior to detailing its comments on the plan.
- A summary report on any community submissions received must accompany the development plan submitted for endorsement by the Minister.

4.2. To reflect this change the WRA seek the following changes to the Incorporated Document as included in Technical Note 56 (5 September 2016):

5.1.4 A draft Development Plan must be provided to the Office of the Victorian Government Architect and, relevant Council/s for consultation, and where relevant, to the Roads Corporation, Public Transport Development Authority, Melbourne Water and Heritage Victoria.

5.1.5 A draft Development Plan must be made available for public inspection and comment on a clearly identifiable Project website for 14 days prior to its consideration by the Minister for Planning under clause 5.1.7, and details must be provided of the entity and contact details to which comments can be directed during that time.

5.1.6 A Development Plan submitted to the Minister for Planning for approval under clause 5.1.7 must be accompanied by a summary of consultation and response to issues raised in the consultation under clause 5.1.4 and 5.1.5.

4.3. If the Committee is not minded towards requiring the inclusion of the EPRs as an incorporated document (as suggested by other submitters), then it is submitted that there be a higher inclusion in the incorporated document for public consultation prior to a referral document being finalised and / or changed.

4.4. On the basis that there is a higher degree of consultation during the course of the Project that what is currently provided in the EES, the WRA acknowledges the need for flexibility in the EPRs and the WRA therefore supports the MMRA’s position that the EPRS be a reference document (and not incorporated into the planning schemes).

4.5. Currently there are no requirements in the Incorporated Document that give notice to interested parties of any document that is made available for inspection or that may be amended without public consultation. Accordingly, it is submitted that a new provision be inserted in the Incorporated Document that requires the Authority to establish a database (whether by internet or otherwise) allowing interested parties to register their interest and receive notification prior to the implementation of, and changes to, referral...
documents (i.e. Urban Design Strategy, EPRs, Environmental Management Framework).

4.6. Similar to the consultation period for a proposed development plan, any comments received from the public should also be given to the relevant person for consideration prior to approval.

5. **Project Delivery**

5.1. The EES proposes to construct CBD South station by using the mined cavern construction method (i.e. through excavation of City Square).⁹

5.2. The EES describes the following Early Works for CBD South:¹⁰

   a. service relocation and/or protection; and

   b. demolition and shaft construction at City Square.

5.3. Given the impacts on the WRA and the proximity to CBD South Station, the owners seek inclusion, as key stakeholders, in the various consultation processes contemplated through the EES. This can be done through provisions in the Incorporated Document and EPRs as discussed throughout these submissions.

**Temporary occupation of car park**

5.4. The EES provides:¹¹

   *In the CBD, Melbourne Metro would impact a small number of car parks (both public and private) underneath City Square. MMRA is working with permanent residents of the Westin Hotel to identify solutions to manage impacts on private car parking, and with the City of Melbourne on arrangements for public car parking.*

5.5. While these discussions are ongoing, the EES does not create a requirement on the MMRA to provide solutions to manage impacts on private car parking in Precinct 6. This is despite discussions in the EES for replacement car parking in other precincts.

5.6. Chapter 8 of the EES discusses replacement car parking in other precincts as follows:

   **Precinct 2:**¹²

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⁹ Page 6-27 EES.
¹⁰ Page 6-38 EES.
¹¹ Page 7-25 EES.
¹² Page 8-25 EES.
**Car Parking**

Carparks along Childers Street that are currently used for South Kensington station and JJ Holland Park would be occupied temporarily for construction traffic and equipment manoeuvring. Options are being investigated to provide replacement parking in the vicinity of the station to minimise impacts on rail patrons driving to the station. It is expected that the contractor would be required to provide replacement car parking in the vicinity of the station during the construction phase.

Precinct 3: 13

**Replacement Car Parking**

The recommended Environmental Performance Requirements for the operation of Melbourne Metro would include maximising the number of replacement car parking spaces along Laurens Street, including the retention or replacement of loading zones to service the needs of businesses in the precinct. The provision of a new high capacity railway station that provides connections across the broader metropolitan network would provide some compensation for any loss of parking in the precinct.

Precinct 4: 14

**Replacement Car Parking**

Modifications would be made to existing parking arrangements along Grattan Street, Royal Parade and Elizabeth Street to suit the revised traffic arrangements and meet the needs of the area’s hospitals and university. The recommended Environmental Performance Requirements for managing traffic operations include optimising the number of replacement car parking spaces along Grattan Street, including the retention or replacement of short-term car parking and disability spaces in accordance with DDA requirements. The provision of a new high capacity railway station that provides connections across the broader metropolitan network would provide some compensation for the loss of parking in the precinct.

Precinct 5: 15

**Replacement Car Parking**

Limited changes are proposed to car parking arrangements in the CBD North station precinct. In the context of the large number of car parking spaces available in the area (on-street and off-street), this reduction would be expected to have minimal impact.

5.7. These provisions relating to replacement car parking for other precincts is reflected in EPR T1: “alternate car parking where possible to replace public parking lost from Childers Street, Laurens Street, Grattan Street, Domain Road, St Kilda Road and Albert Road during construction …”

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13 Page 8-31 EES.
14 Page 8-37 EES.
15 Page 8-43 EES.
5.8. The impact on the WRA will be unique as there is a proposed temporary occupation of part of land owned by private individuals. In other circumstances, it is expected that other impacted parking areas for the station designs will be for public or commercial lots. Where private land is to be disrupted in other precincts, it appears that the land will be compulsorily acquired as part of the Project.

5.9. During construction works, without access to private car parking, access to the Westin building by vehicle will be stymied due to limited available public parking. This is especially concerning because some owners are elderly, infirm or otherwise limited in mobility.

5.10. The private carpark also includes storage units (Lots ST1 to ST24) that are owned by the individual owners of the WRA. The temporary occupation of this space will also prevent the owners and other occupants from having the use and benefit of the storage.

5.11. Accordingly, the WRA seek for inclusion of a new EPR to ensure that access is maintained during the construction works and temporary occupation of City Square, and that suitable replacement storage facilities are provided. To this effect, a New EPR can be introduced:

*In consultation with the owners of the Westin Residential Apartments, prior to the commencement of early works or any construction works, allocate and fund appropriate secure alternative parking and household storage units (of a similar standard to that displaced) for the use of those owners and/or their tenants, licensees, invitees or otherwise during the temporary occupation of City Square and until private car parking spaces below the Westin Residential Apartment are available for permanent use. Options must also be made available to persons to assist with access and carriage of household goods between the alternative parking and the Westin Residential Apartments.*

5.12. The MMRA and WRA are exploring the option of alternative car parking at Flinders Gate Car Park together with the use of a concierge and valet service. However, without being included in the EPRs, there is limited scope for the MMRA to be required to provide alternative parking and storage facilities.
Acoustic Shed – acoustic treatment to WRA

5.13. Mr Peter Fearnside¹⁶ has given evidence to the Committee that approximately the first six months of construction will involve concrete pouring, which must be done prior to the construction of an acoustic shed.

5.14. In order to avoid disturbance from excessive noise levels during the construction process, acoustic treatment should be applied to individual apartments in the WRA that are west facing and on the return. Due to the appearance of such treatments, the application should be at the option of each owner.

5.15. It is submitted that the option for the acoustic treatment be included as an EPR.

Acoustic Shed – design

5.16. Once the acoustic shed has been constructed, Mr Rob Moore¹⁷ has welcomed the opportunity at CBD South for the shed to be used externally for various public uses including display screens, a green wall and / or as a rooftop attraction. The owners of the WRA supports this concept of a secondary use of the acoustic shed as “street art”.

5.17. If this concept were to be adopted as part of the project, the WRA seeks to be included in a consultation group that discusses the height and features of the acoustic shed in so far as it goes beyond what is necessary for the function of the acoustic shed. This is premised on the fact that an increase in height of the acoustic shed further affects the amenity of the apartments and access to light and air.

5.18. For example, the sketch provided in Mr Moore’s slides appears to include trees and railing at the top of the acoustic shed. While these may increase the visual appeal for those using the acoustic shed as a rooftop, it may also affect the outlook from some of the apartment.

5.19. Similarly, rooftop access may affect the privacy of an apartment or may create additional acoustic disturbance.

¹⁶ Peter Fearnside of Marshall Day Acoustics, giving evidence for the City of Melbourne.

¹⁷ Project Executive, City of Melbourne.
Traffic

5.20. The WRA supports the evidence of Mr Shaun Smedley of Smedley Technical & Strategic\textsuperscript{19} that the storage of trucks outside of the city is better than being within the city.

Protection Works

5.21. The declaration of this project being a declared project under the Major Transport Projects Facilitation Act 2009 and the EES does not exclude the operation of the Building Act 1993. Accordingly, the protection works regime applies.

5.22. The rights of a landowner are included in Part 7 of the Building Act 1993. This includes:

a. service of a Protection Works Notice (Form 3) and the opportunity of the landowner to respond (Form 4);

b. works not allowed to be carried out until:
   i. the scope of the works are agreed;
   ii. determination by the relevant building surveyor; or
   iii. determination by the Building Appeals Board;

\textsuperscript{18} Page 25, Document 88.
c. inspection of plans, drawings and specifications of the proposed building works;

d. compulsory insurance cover;

e. a right to recover all costs and expenses necessarily incurred by the landowner in the carrying out of, and supervising the carrying out of, protection works;

f. a right of referral to the Building Appeals Board.

5.23. The WRA submits that the application of the *Building Act* 1993 be specifically included as an EPR.

6. **Reinstatement of City Square**

6.1. As already stated, the owners of the WRA are beneficiaries of the current design of the built form of City Square and have a right of consultation with Melbourne City Council prior to any structure being placed or erected on City Square. This is in addition to having the benefit of two easements as to light and air.


**Preparation of Urban Design Strategy**

6.3. Chapter 1.4.3 of the UDS provides that it “*has been developed in consultation with key stakeholders …*”.\(^{20}\) The stakeholders involved in the consultation are set out in the Appendix to the UDS.

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\(^{19}\) Giving evidence for the MMRA in Cross-Examination.

\(^{20}\) Page 9, Urban Design Strategy, Technical Appendix M of the EES.
6.4. Despite the history and relationship between City Square, the Westin Hotel and the WRA, it is disappointing that the owners of the WRA were not considered as “key stakeholders”.

City Square

6.5. The WRA seek acknowledgement through the Project that the owners are part of the beneficiaries of the design and integration between the current form of City Square and the Westin building.

6.6. This should then carry through to being included in a consultation group for the legacy design of City Square.

6.7. The proposed EPR will read as follows:

In consultation and agreement with the City of Melbourne, owners of the Westin Residential Apartments and the Westin Hotel, develop and implement a plan for the re-establishment of City Square and any design or proposed design that is not the same as existing prior to the commencement of the Project.

6.8. Similarly, the owners of the WRA seek to be recognised as a key stakeholder in the existing EPRs relating to the re-establishment of City Square, such as existing SC7, LV1 and LV2 in the EPRs.

Emergency Access Structures within the Westin Hotel

6.9. The UDS provides that “[v]entilation, maintenance and emergency access structures will also be located in City Square and within the adjoining Westin Hotel”.

CBD SOUTH

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<tr>
<th>Organisation</th>
<th>Involvement</th>
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<tr>
<td>City of Melbourne</td>
<td>+ Attendees stakeholder requirements workshop</td>
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<tr>
<td>Public Transport Victoria</td>
<td>+ Half day 1 October 2015</td>
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<tr>
<td>VicRoads</td>
<td>+ Attendees provided feedback on draft document, discussed their perspectives as to physical characteristics and opportunities; issues and challenges; with a focus on access and integration.</td>
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<tr>
<td>Metropolitan Planning Authority</td>
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<td>Department of Economic Development, Jobs, Transport and Resources</td>
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<td>Metro Trains Melbourne</td>
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<td>Bicycle Network Victoria</td>
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<td>Heritage Victoria</td>
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<tr>
<td>Office of the Victorian Government Architect</td>
<td>+ Unable to attend 1 October meeting, separate 1:1 meeting 12 October 2015.</td>
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<tr>
<td>Federation Square</td>
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6.10. Clarification was sought from the Authority on 2 September 2016 as to what structures are proposed to be located within the Westin Hotel and whether there would be a compulsory acquisition of land. No response has been received.

6.11. As seen on the Plan of Subdivision, to access the WRA from street level, there is a narrow easement (E-3) in the foyer of the Westin Hotel to access the lifts.

6.12. The WRA seeks leave to have the opportunity to file further submissions in relation to the proposed structures within the Westin Hotel following a response from the Authority.

6.13. Similarly, the WRA seek a direction from the Committee that any structures installed in the Westin Hotel as part of the Project not interfere with their rights of access to the apartments, storage units or car parking.

**Public Car Park**

6.14. The EES is not clear on the legacy design of the land below City Square and the Westin building. The images on the Project’s website show an intention for an expansive station design below ground.\(^{21}\)

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\(^{21}\) It is acknowledged from the evidence of Mr Ron Jones of Jones & Whitehead Pty Ltd, expert witness in urban design for the MMRA, that the design is a concept only.
6.15. When discussing the options for proposed CBD South Station in the EES, Option A, which is described as the “optimal solution”, contained the following description:\textsuperscript{23} 

\textit{Option A does require the acquisition of City Square and underground car parks however much of the space is able to be returned to public uses post project.}

6.16. This comment is not understood as the concept design for the station requires a large part of the land below City Square. In fact, in discussions with the MMRA, the MMRA have said that the carpark below City Square will not be returned for public use after completion of the Project. Instead, whatever land remains below City Square (including the Westin building) will be available for the exclusive use of the WRA.

6.17. Given the importance of the WRA to have access to private car parking and storage units interconnected with the Westin building, as is currently existing, the WRA seeks direction from the Committee that it is made clear in the approved documents that the car parking below City Square (and the Westin building), being only a small part of the current carpark, will not be available to the public and will be allocated to the WRA.

**Gymnasium and Swimming Pool Complex**

6.18. Carpark Level 1 contains a gymnasium and swimming pool complex of the Westin Hotel. The WRA has a licence agreement to use this complex for a fee, which is managed by the Owners Corporation.


\textsuperscript{23} Page 5-25 EES.
6.19. While the EES discusses that the “Westin’s services would be maintained during construction”,\(^{24}\) it is understood that the Project may necessitate temporary occupation of this complex. To the extent that the services are unavailable, the WRA alternative facilities to be provided by the MMRA or, where there are no suitable facilities, compensation.

7. Legacy Design of Car Park

7.1. As already discussed, access to a permanent car parking facility is fundamental to the ongoing use of the WRA as luxury apartments in the heart of the CBD.

7.2. Given the concept design of CBD South Station and the proposed construction works, the current configuration of the carpark on Carpark Level 3 of the Plan of Subdivision as part of the lots of the WRA and Common Property 3 (WRA Carpark) will be untenable after the land is returned to the owners.

7.3. A reconfiguration of the WRA Carpark may also affect other parts of the car park, which is currently owned by the City of Melbourne.

7.4. Accordingly, the plan of subdivision will need to be changed to accommodate the legacy design of the WRA Carpark.

7.5. Section 32 of the Subdivision Act 1988 requires a unanimous resolution of an owners corporation to alter a subdivision. Despite being requested to do so, the MMRA has not given notice of any statutory power allowing it to alter a plan of subdivision without unanimous consent. The WRA is concerned that the MMRA may use its powers to compulsorily acquire the WRA Carpark instead of temporarily occupying it, as currently proposed.

7.6. Based on this, together with a relocation of services and structural elements of the Westin building (which are on common property), a unanimous resolution of Owners Corporation 1, Owners Corporation 2, Owners Corporation 3 and Owners Corporation 4 will be required for implementation of the legacy design. Unanimous resolutions are inherently difficult to obtain given the number of lot owners and, in this case, that each will be affected in a different manner.

7.7. To assist in obtaining an unanimous resolution, it is necessary for the MMRA to actively engage with all lot owners (including all four Owners Corporations). If there is no agreement, then the MMRA will be unable to return the WRA carpark to the WRA.

\(^{24}\) Page 11-31 EES.
7.8. There has been no prior consultation with the Owners Corporation or the WRA as to specific requirements for the legacy design. To date, any discussions have been unilateral – being that, for example, an indicative parking layout plan has been provided but there has been no request for comments from the affected parties.

7.9. Owners Corporation 3 and WRA have since engaged a traffic engineer and a structural engineer to advise on the legacy design of the WRA Carpark.

7.10. Given the unique impact on the WRA, being that it is a residential building in the heart of Melbourne City that is not being compulsorily acquired, it is important that the WRA and the owners corporations be consulted on the legacy design of the WRA Carpark.

7.11. For reasons already stated, a failure to do this may result in some lot owners being aggrieved and not voting in favour of an alteration to the Plan of Subdivision. To this effect, the WRA seek inclusion of a new EPR to the following effect:

   In consultation and agreement with the owners of the Westin Residential Apartments and the owners corporations in Plan of Subdivision PS428405M, prepare a legacy design for the private car parking, storage units and services below the Westin building (to a similar standard as prior to the commencement of the project).

7.12. Similarly, to the extent that the WRA Carpark can be safely accessed following completion of the early works, the WRA seeks a commitment from the MMRA that it will restore access to the “new” carpark as soon as possible.

8. **Expert Evidence**


8.2. David Doolan of 4D Workshop.

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25 Until the design of the building envelope for CBD South is complete, it is difficult for the MMRA and the WRA to finalise the legacy design of the WRA Carpark.