



AM 166 PORT PHILLIP PLANNING SCHEME: SITE TWO - EVIDENCE OF DR MARCUS SPILLER



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SUMMARY OF EVIDENCE

1. I (Marcus Spiller) have been instructed by Maddocks on behalf of the City of Port Phillip to provide expert evidence in respect of the affordable housing aspects of Am 166 to the Port Phillip Planning Scheme. This amendment is intended to facilitate the development of 256 – 262 Normanby Road, South Melbourne, known as 'Site 2'.
2. My evidence, in summary, is set out below.
 - a) The draft Incorporated Document (ID) submitted by the proponent is non-committal about the provision of affordable housing.
 - b) The proponent's draft ID acknowledges the policy to achieve 6% affordable housing in the development but offers no assurance that this outcome will be achieved in any form.
 - c) Meanwhile, the Planning Scheme provision for the incorporation of 6% affordable housing is, by itself, inoperable. This is because the 6% target carries no 'deemed to be comply' provision, other than outright transfer of 6% of dwellings to a registered provider at zero consideration.
 - d) This deficiency has been recognised by the State Government, as is evident in the Fishermans Bend Task Force (within the Department of Jobs, Precincts and Regions) moving to issue Guidelines to assist proponents to interpret and comply with the 6% target.
 - e) The Taskforce's draft Guidelines propose that a proponent's response to the 6% target will be deemed to be acceptable if they undertake to transfer 6% of dwellings at a 35% discount to market price. Proponents may offer fewer than 6% but at a higher discount so that the financial value of the offer is maintained.
 - f) Therefore, the Taskforce's draft Guidelines propose an affordable housing inclusionary expectation equivalent to transfer of 2.1% of dwellings at zero consideration ($6\% \times 0.35 = 2.1\%$).
 - g) The Taskforce's initiative in proposing a deemed to comply provision for the 6% affordable housing target in Fishermans Bend is welcome. However, in my opinion the nominated standard is too low. It is also confined to residential development; that is, non-residential development avoids any expectation to contribute towards affordable housing requirements in the Precinct.
 - h) In my opinion, the deemed to comply provision for the Fishermans Bend affordable housing target should be transfer of housing at zero consideration to a registered provider at the rate of 3% of all marketed floorspace (residential and non-residential) in the development. This is equivalent to transferring 6% of dwellings at 48% discount to market (in contrast to the Taskforce's 35% discount).
 - i) My preferred deemed to comply provision derives from a measurement of the aggregate need for permanent affordable housing infrastructure in Fishermans Bend and apportionment of this task across three funding sources – Commonwealth Government, State Government and the development process (land owners).
 - j) I recommend that the ID be redrafted to give effect to my preferred deemed to be satisfactory provision. Should the Panel not accept this preferred deemed to comply provision, the deemed to comply provision proposed by the Taskforce should, at the very least, be adopted (as outlined at (f) above).

1. INTRODUCTION

1.1 Credentials

3. My full name is Marcus Luigi Spiller and I am a Principal and Partner of SGS Economics & Planning Pty Ltd (SGS), based in the firm's Melbourne office at Level 14, 222 Exhibition Street, Melbourne, VIC, 3000.
4. I hold the following academic qualifications:
 - PhD (Global Studies, Social Science and Planning), RMIT University, Melbourne, 2009
 - Master of Commerce (Economics), University of Melbourne, 1986
 - Bachelor of Town and Regional Planning, University of Melbourne, 1978.
5. I have extensive experience in public policy analysis as an urban economist and planner. I specialise in metropolitan strategic planning, housing policy, urban infrastructure funding and the links between urban structure and regional economic performance. I have provided advice to all tiers of government and the private sector related to the dynamics of housing, transport, employment, infrastructure and the general economy in cities.
6. I have previously presented expert evidence at Panel and similar hearings.
7. Additional information regarding my qualifications and experience is included in Attachment A.

1.2 Instructions

8. I have been instructed by the City of Port Phillip to provide expert evidence regarding the affordable housing matters raised by Am 166 .
9. My instructions were set out in a written brief from Maddocks acting on behalf of Council. These are reproduced at Appendix B.

1.3 Evidence preparation

10. My evidence is based on a review of Incorporated Document provided by the proponents as part of their request for a Planning Scheme Amendment, as furnished to me by Maddocks.
11. The opinions in this expert evidence statement are my own.

2. REPORT ON SITE 2

2.1 A non-committal Incorporated Document from the proponent

12. The proponent has prepared a draft Incorporated Document (ID) for the Planning Scheme amendment. Amongst other things, the ID addresses how the proponent intends to meet the policy requirement for 6% of dwellings to be affordable housing as defined in the Act.
13. The ID envisages that before the development starts the owner will enter into a Section 173 agreement for the delivery of 6% affordable housing, or a lesser percentage provided it has the equivalent financial value.
14. This agreement will allow for:
 - Transfer of the dwellings to an approved affordable housing provider, and / or
 - Leasing of the dwellings to an approved provider for a period of not less than 20 years.
15. As I discuss below, the nomination of a 20 year term for the lease option is problematic as it does not relate to the economic life of a dwelling.
16. Apart from this parameter, the draft ID says nothing about the conditions under which the dwellings in question would be transferred or leased. This includes price and annual lease fee.
17. This form of words allows for the transfers or leases to carry a discount to market value ranging anywhere between 100% and just above 0%.
18. The draft ID further proposes that if the proponent cannot find an approved provider willing to enter into a transfer or lease agreement, they may make a cash in lieu payment of equivalent financial value to an approved provider, so that, presumably, affordable housing can be supplied elsewhere in the Precinct.
19. I support the concept of a cash in lieu payment. However, in the draft ID the value of this cash in lieu payment and/or the method by which it is to be determined is left undefined.
20. Finally, the draft ID restates the provisions of the Planning Scheme which allow the proponent to provide a lesser percentage or even zero affordable housing if it can be demonstrated that any higher amount would render the project unviable.
21. In my reading, the draft ID makes no commitment to provide affordable housing. It defers all key aspects of the response to the 6% target, including the crucial question of the discount to market price to be factored into proposed transfers or leases, to future negotiations.
22. The draft ID 'kicks the can down the road' and provides no guidance or markers by which a review authority such as VCAT might resolve whether a future agreement or non-agreement is reasonable in the context of the 6% policy built into the Planning Scheme. In my view, this is not good planning practice.
23. It is important to set out a measurable and monetizable affordable housing requirement in the ID now rather than deferring this question to the time when the condition is imposed. Efficiency and commercial risk management are better served if proponents know well in advance what their financial obligations are in terms of compliance with planning rules. Knowing these obligations in advance will give

proponents maximum opportunity to develop designs and cost structures that meet planning objectives for the precinct.

2.2 The Incorporated Document proposed by DELWP

24. I was provided with a copy of the DELWP proposal for the ID on May 28, 2020.
25. The DELWP draft differs from that put forward by the proponent in that it, appropriately in my view, does not include a viability 'get out' clause and proposes a 30 year term were the parties to agree to leasing arrangement.
26. Otherwise, the DELWP version generally reflects the position taken in the proponent's ID which is to leave all key questions regarding the effect of the affordable housing provision, including the effective value of the agreement, to future negotiations.
27. I believe the approach taken by DELWP is flawed for the same reasons as those outlined above. The draft ID provides the parties with no direction as to what would be reasonable satisfaction of the 6% affordable housing target. A review body, like VCAT, would similarly have no solid means by which it might resolve a dispute over compliance with the policy. This uncertainty makes for higher risks and higher transaction costs for all parties.

2.3 'Apples and oranges' conundrum presented by the 6% target

28. As is illustrated by both the proponent's and DELWP's drafts of the ID for Site 2, the 6% affordable housing target in the Planning Scheme is problematic in that it does not make clear what is expected of a proponent. It does not provide guidance as to what would be acceptable in terms of the \$ value of the affordable housing package that might be offered by a development proponent in response to the requirement nominated in the Scheme.
29. Proponents may take a multiplicity of approaches in response to the 6% target. These can range from subsidised home ownership, to time bounded affordable rental, to transfer of dwellings to community housing providers (CHPs) at a discounted price, to transfer of some dwellings at zero consideration etc.
30. My preference is for affordable housing to be provided as *permanent* infrastructure for a sustainable Fishermans Bend precinct. This implies the transfer of dwellings to registered community housing providers for rental to eligible households (as opposed to home ownership).
31. Nevertheless, proponents may continue to respond to the affordable housing policy in the precinct in a variety of ways. There is, therefore, a clear need for a method to compare 'apples and oranges' when proponents come forward with their packages in response to the 6% target. This is so the Responsible Authority can determine whether a particular proponent is meeting the affordable housing objectives of the Scheme and is offering a reasonable deal compared to what might have been offered by other parties in other development applications.
32. In this context, it is possible to compare disparate packages of affordable housing responses by expressing the value of the housing benefit being offered in **net present value** (NPV) terms.
33. The various components of the proponent's response could and should be valued in present value terms and added together to provide a valuation of the total package.

2.4 Fishermans Bend Task Force Guidelines

34. The State Government has recognised that the 6% performance target set for affordable housing in Fishermans Bend is difficult to implement in the absence of a 'deemed to comply' provision.

35. Through the Fishermans Bend Task Force (the Taskforce) in the Department of Jobs, Precincts and Regions (DJPR), Government has commissioned Guidelines to assist proponents and approval authorities in the practical application of the 6% target.
36. The Guidelines are now in their third draft form. They have been provided to me by Maddocks. Amongst other guidance, they include an 'endorsed model' or what I would characterise as a 'deemed to comply provision' for satisfaction of the 6% target.
37. In my reading, the Guidelines (Version 3 – hereinafter referred to as the 'Guidelines') indicate that a proponent that offers to transfer 6% of housing – in the same proportional mix as the development as a whole - at a 35% discount to market price will be deemed to have satisfactorily met the Fishermans Bend affordable housing policy.
38. As per my discussion at paragraphs 28 to 33, proponents may offer less housing at a greater discount, more housing at lower discount or any variation of price and tenure so long as the financial value is equal to, or higher than, the 'endorsed model'.
39. In value terms, selling 6% of dwellings at a 35% discount to market price is the equivalent of transferring 2.1% of dwellings to a registered affordable housing provider at zero consideration ($6\% \times 0.35 = 2.1\%$).
40. I could find no evidence or justification for the 6% @ 35% discount deemed to comply provision in the draft Guidelines, though these may exist somewhere.
41. I understand from information shared by the Taskforce at other Fishermans Bend Standing Advisory Committee hearings that the nominal deemed to comply provision in the Guidelines was derived from an assessment of the scale of discount to market price required to render a dwelling affordable to households on moderate incomes as defined by the Planning and Environment Act. This discount was identified as 30% and then increased to 35% to provide a safety buffer.
42. I note, in passing, that such a methodology cannot provide a 'stable' deemed to comply provision for the purposes of assessing compliance with the 6% target. If housing prices increase at a faster rate than incomes, as they have been in recent years, it would be necessary to adjust the 35% upwards to preserve affordability over time.
43. I note also that the draft Guidelines do not appear to make allowance for affordable housing contributions from non-residential development. As explained below, I believe all development should contribute to the formation of adequate affordable housing infrastructure for Fishermans Bend, regardless of land use.
44. The Guidelines deem a 30 year lease to be effectively the same as transferring title to a housing asset. This is based on the (reasonable) assumption that the built fabric of a dwelling will have a useful life of 30 years. However, I do not fully support the approach taken in the Guidelines because it ignores the land value component of title transfers. If a leasing option is to be included in an affordable housing provision agreement, I would recommend that the receiving agency, that is the affordable housing provider, should have a continuing interest in the land component of the asset in question at the conclusion of the lease.

2.5 Preferred method for setting a deemed to comply provision

45. Independently from the Taskforce, I have developed a different method for establishing a reasonable deemed to comply provision for affordable housing that could be factored into the ID for Site 2.
46. In contrast to the approach which has been adopted by the Taskforce, my preferred method does not rely on the affordability capacity of a specific household type at a particular point in time. Rather, it addresses itself to the global and long term requirement for affordable housing infrastructure in Fishermans Bend, then apportiones the obligation to provide this infrastructure across three parties – the Commonwealth

Government, the State Government and those involved in realising the plan for Fishermans Bend, namely developers and land owners in the Precinct.

47. I estimate the current need for affordable rental housing in metropolitan Melbourne, inclusive of social housing as defined in the Planning & Environment Act, to be 13% of all households (see Table 1).
48. The provision of social and affordable housing is essential infrastructure for the formation of successful communities. In this sense, it is similar to the provision of transport networks, water cycle management, open space systems, hospitals and clinics, schools and other community facilities.
49. Like these other infrastructure systems, the planning of new communities, such as Fishermans Bend, should allow for the provision of affordable rental housing (as defined in the Planning & Environment Act) in line with projected need.
50. In my opinion, planning for Fishermans Bend should factor in a long run requirement for affordable rental housing in line with the metropolitan average. That is, 13% of all dwellings in the Precinct should be affordable rental housing (within the income parameters defined in the Planning & Environment Act).

TABLE 1: METROPOLITAN MELBOURNE HOUSING MARKET SEGMENTATION, 2016

	Other households (a)	Moderate rental stress (b)	Severe rental stress (c)	Outside private market (d)	Total households (a + b + c + d)	Quantum of Demand (b + c + d)	Demand share of total households
Homeless	NA	NA	NA	20,429	20,429	20,429	100%
Living in social housing	NA	NA	NA	48,978	48,978	48,978	100%
Very low income households	300,997	30,359	52,672	NA	384,027	83,031	22%
Low income households	279,465	35,822	14,837	NA	330,124	50,659	15%
Moderate income households	320,328	23,577	4,564	NA	348,470	28,141	8%
Above moderate income households	641,333	NA	NA	NA	641,333	0	0%
All households	1,542,123	89,758	72,073	69,407	1,773,361	231,238	13%

Source: SGS Economics & Planning, based on ABS Census 2016 and VIF 2016

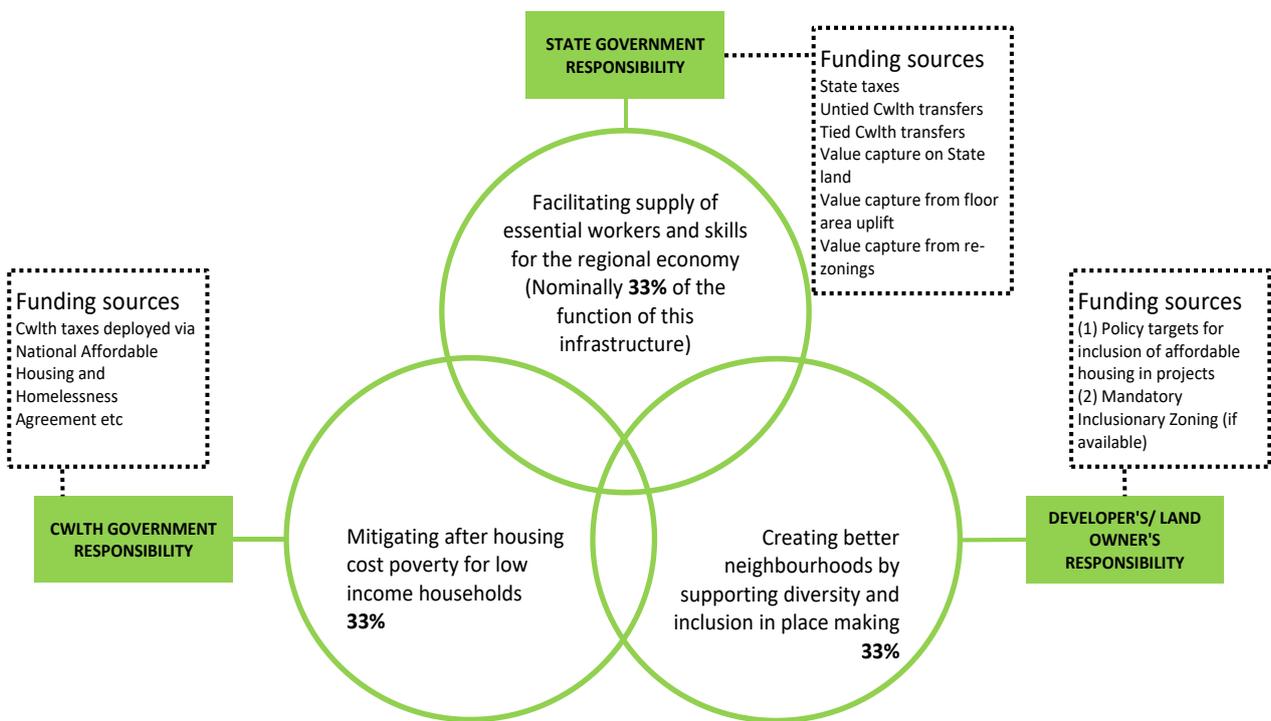
Note: Other households includes both rental households who are not in rental stress and non-rental households, and does not contribute to demand for social and affordable housing

51. In my experience, the provision of social and affordable housing infrastructure delivers three types of benefit for the community:
 - **alleviating or averting poverty**
 - **improving the operation of labour markets** by ensuring adequate accommodation for essential workers and skilled staff for key industries, and
 - **creating better places**, recognising that places of diversity and inclusion are highly valued and sanctioned in policy.
52. The last of these three benefits – creating better places - lies squarely within the domain of place makers and town planning.
53. If roughly equal value is accorded to the three functions of affordable housing infrastructure, the development approval system could be expected to fund one

third of the overall cost of providing this form of housing in the community (see Figure 1).

54. The assessed requirement for social and affordable housing infrastructure in Fishermans Bend is 13% of all dwellings. The planning system could therefore be reasonably expected to provide the equivalent of 4% of all new dwellings as permanent affordable rental housing within the parameters defined in the Planning & Environment Act 1987 (13% x 33% rounded down).
55. In my view, the obligation to help form a successful community at Fishermans Bend through the provision of adequate affordable housing infrastructure is not confined to the proponents of residential development. As with other forms of infrastructure, this obligation also applies to the proponents of non-residential development, in this case retail and commercial development.

FIGURE 1 THREE FUNCTIONS OF AFFORDABLE HOUSING INFRASTRUCTURE



Source: SGS Economics & Planning Pty Ltd

56. Across the Melbourne metropolitan area as a whole, residential floorspace accounts for roughly 75% of all floorspace. For convenience, I have assumed that the same ratio will hold across the whole Fishermans Bend Precinct.
57. Based on the share of the need for affordable housing infrastructure which can reasonably be expected to be funded via the development assessment system, 4 affordable housing units should be generated for every 96 market dwellings.
58. If *all* market floorspace is to carry an obligation to fund 1/3rd of the affordable housing infrastructure required in Fishermans Bend, a general inclusionary requirement for affordable housing can be calculated as follows (assuming that residential land use accounts for 75% of all floorspace):

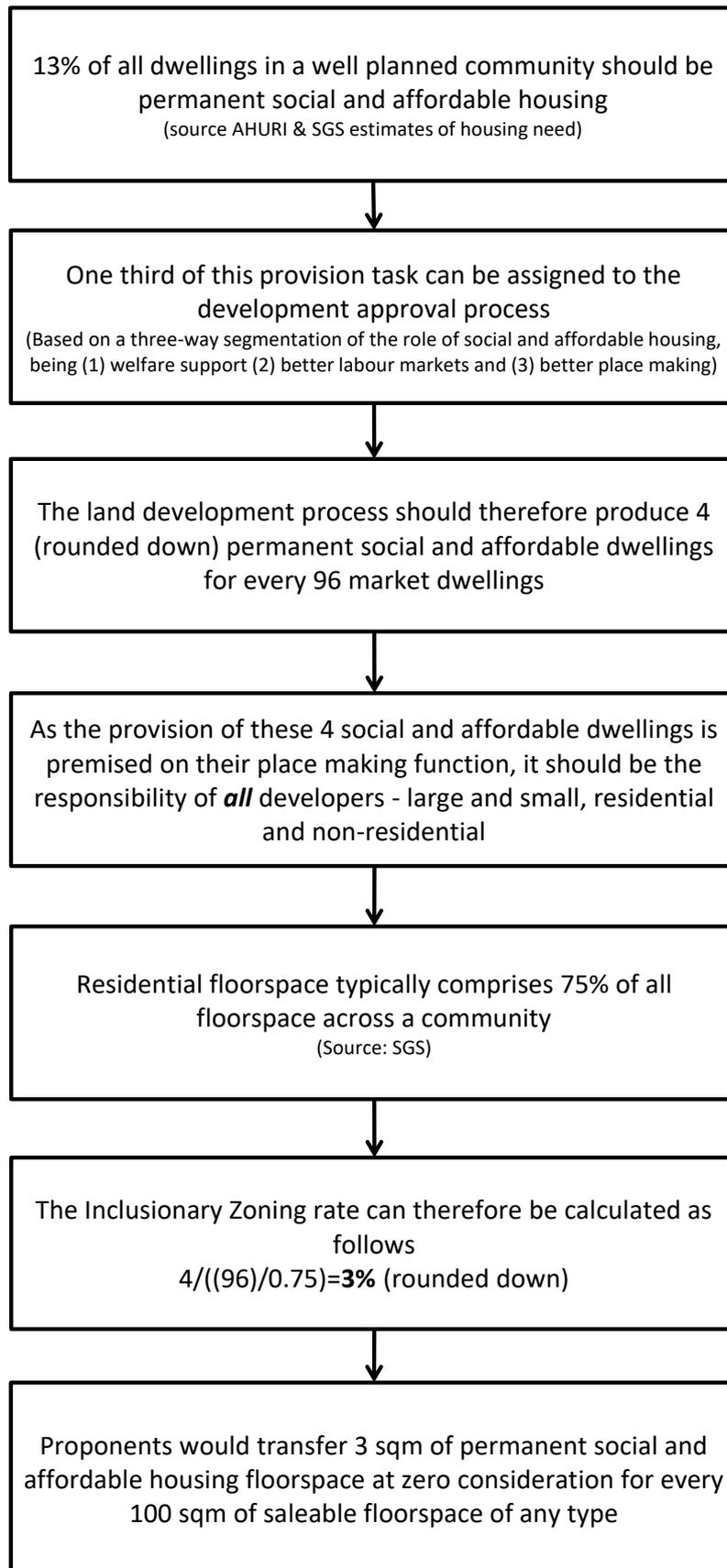
$$4/((96)/0.75)=3.12\%$$

That is, the quantum of affordable housing to be provided by a proponent should be the equivalent of 3% (rounded down) of all market floorspace in the development.

59. On this basis, proponents would transfer 3 sqm of permanent social and affordable housing floorspace at zero consideration for every 100 sqm of saleable floorspace of any type. This is the equivalent of 2.9% of all floorspace in a given building¹.
60. In my opinion, this should be the benchmark value for any 'solution' offered by the proponent to meet the 6% affordable housing target. That is, they should transfer dwellings at zero consideration in a number equivalent to 3 sqm for every 100 sqm of market floorspace or provide an alternative solution with the same or better financial result for the receiving agency in present value terms.
61. This logic is summarised in Figure 2 below.

¹ This is calculated as follows,
If $A = 0.03M$
 $A/(M+A) = 2.9\%$
Where M = marketed floorspace, A = affordable housing floorspace

FIGURE 2 DERIVATION OF BENCHMARK VALUE FOR INCLUSION OF AFFORDABLE (RENTAL) HOUSING



62. Application of the approach set out above would require a broad interpretation of Clause 22.15-4.3 to refer to all development across the precinct rather than just residential development projects.
63. If a narrow interpretation were to be applied, the benchmark or deemed to comply provision to satisfy the 6% target would be transfer of dwellings at zero consideration with aggregate floorspace equivalent to 4% of the market *residential* floorspace in the development².
64. This would be regrettable, in my view, as it implies that the obligation to contribute to affordable housing infrastructure in Fishermans Bend is to be confined to residential development when all development will benefit from the amenity and improved place quality afforded by this infrastructure.

2.6 Comparison of deemed to comply provisions

65. In the following table I compare the deemed to comply provisions across the proponent's ID, the Taskforce Guidelines and my recommended approach. The comparison is expressed in two ways – (1) the level of discount required for transfer of 6% of units and (2) the minimum percentage of units or floorspace that would need to be transferred at zero consideration.

TABLE 2 DEEMED TO COMPLY PROVISIONS

	Site 2 Proponent's draft Incorporated Document	Taskforce Guidelines	Recommended method	
			If target applies to all development	If target applies to residential buildings only
Minimum market discount required on transfer of 6% of dwellings at proportional mix	None proposed	35%	48%	63%
Minimum % of floorspace (or equivalent units) transferred at zero consideration	None proposed	2.1%	2.9%	3.8%

² If this provision rate of 4 per 100 were to be fulfilled on site, affordable housing would represent 3.8% of floorspace

3. RECOMMENDATIONS

66. I recommend that:

1. The ID for the proposed development at Site 2 should include a deemed to comply provision for the 6% affordable housing performance requirement.
2. This deemed to comply provision should be set at transfer at zero consideration of dwellings with an aggregate floor area equivalent to 3% of all marketed floorspace in the building.
3. If this provision is not acceptable to the Panel, then at the very least, the deemed to comply provision set out in the Guidelines should apply.
4. If stock is to be leased rather transferred, the minimum period of the lease should be set at 30 years and the affordable housing provider in question should have a continuing proportional interest in the land value at the end of the lease.
5. Proponents should have the option to meet the deemed to comply provision with a cash payment which is equivalent in present value terms.

APPENDIX A: PLANNING PANELS

VICTORIA EXPERT WITNESS

DECLARATION

a) The name and address of the expert

Marcus Luigi Spiller

SGS Economics & Planning Pty Ltd

Level 14, 222 Exhibition Street

Melbourne

b) The expert's qualifications and experience

PhD (Global Studies, Social Science and Planning), RMIT University, Melbourne, 2009

Master of Commerce (Economics), University of Melbourne, 1986

Bachelor of Town and Regional Planning, University of Melbourne, 1978

I am a Principal and Partner of SGS Economics & Planning Pty Ltd, a firm I helped to establish almost 3 decades ago. Formally qualified in commerce and urban planning, I've practiced as a consultant for much of my career, though I've also worked as an academic, local government town planner, Ministerial Adviser and senior bureaucrat in State and Commonwealth Government agencies. I am widely published in regional economic development, housing policy, infrastructure funding and metropolitan governance. This includes writing and co-editing two books on urban management. I am an Associate Professor at the University of Melbourne as well as holding Adjunct Professorships at RMIT University and UNSW. I've been awarded the title of Life Fellow of the Planning Institute of Australia.

c) The expert's area of expertise to make the report

I am a leading adviser in urban infrastructure policy, including funding mechanisms. I have been involved in the formation of development contributions legislation, including to do with affordable housing, in most Australian jurisdictions. I argue for a clear separation of user charges, betterment levies, impact mitigation payments and inclusionary zoning provisions in planning legislation.

I have authored and co-edited an internationally published book on infrastructure funding and management. (Wellman, K., and Spiller, M. (2012) *Urban Infrastructure: Finance and Management*, Wiley).

I am a widely quoted expert on the role of the planning system in generating contributions towards affordable housing. My list of publications includes:

Spiller, M. and Anderson-Oliver, M. (2015) *Revisiting the economics of inclusionary zoning*, Paper presented to the Australian Housing Researchers Conference, Hobart, February 2015

I have consulted extensively on how affordable housing contributions can be efficiently and equitably effected via development approval processes. Clients have included IMAP, the NSW Government and most recently, Hobsons Bay, Maroondah and Maribyrnong Councils.

d) Other significant contributors to the report and where necessary outlining their expertise
None.

e) Instructions that define the scope of the report

My instructions in this matter were provided in writing by Maddocks (see Appendix B)

f) The facts, matters and all assumptions upon which the report proceeds

All these matters are detailed in my evidence statement.

g) Reference to those documents and other materials the expert has been instructed to consider or take into account in preparing the report, and the literature or other material used in making the report

All these matters are detailed in my evidence statement.

h) Provisional opinions that have not been fully researched for any reason (identifying the reason why such opinions have not been or cannot be fully researched)

These matters are detailed in my evidence statement.

i) Questions falling outside the expert's expertise and also a statement indicating whether the report is incomplete or inaccurate in any respect

These matters are detailed in my evidence statement.

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

Name Dr Marcus Spiller

Date May 25, 2020

APPENDIX B – INSTRUCTIONS

Maddocks

AMENDMENT C166 TO THE PORT PHILLIP PLANNING SCHEME (SITE 2)

PLANNING PANELS - VICTORIA

PORT PHILLIP CITY COUNCIL

MEMORANDUM TO EXPERT – MARCUS SPILLER

INTRODUCTION

- We act for Port Phillip City Council (Council).
- This matter relates to Amendment C166 (Amendment) to the Port Phillip Planning Scheme (Scheme).
- The Amendment seeks to apply site specific controls to the land at 256-262 Normanby Road, South Melbourne (Site 2).
- The site specific control seeks to facilitate the demolition of existing buildings on the site, building and works associated with the construction of multi-level mixed use developments, use of the land for multiple dwellings and alteration of access to a road.
- The Amendment was prepared and submitted to the Minister for Planning (Minister) by SJB Planning Pty Ltd on behalf of the owners of the Subject Land (Ausan Property CBD Pty Ltd) (Applicant) who seek the Minister's preparation and authorisation of the Amendments under s 20(4) of the Planning and Environment Act 1987 (Vic) (Act).
- The Minister has referred the Amendment to the Fishermans Bend Standing Advisory Committee (SAC) for consideration and invited Council to provide a written response to the Amendment.
- On 1 May 2020, SAC directions version 2 was circulated, a copy is included in your brief at Tab 1.
- The SAC has scheduled a virtual public hearing in respect of the Amendment to commence on Monday 15 June 2020 at 10:00am.

YOUR INSTRUCTIONS

- You are instructed to provide a witness statement and appear as an expert witness on Council's behalf at the hearing.
- Please ensure that your witness statement complies with the Panels Practice Note for Expert Evidence (Tab 11).
- Specifically can you please:
 - review the Incorporated Document (both the proponent and DELWP's versions) to facilitate Amendment C166 and provide any recommended changes to the conditions relating to affordable housing.

[8016200-26627001_1]

Maddocks

11.2 → review Council's position on the Amendment and the planning framework relating to affordable housing; and

11.3 → review the Applicant's economic evidence and provide your opinion as to the impact of that evidence on an affordable housing condition in the Incorporated Documents.

12. → By Monday 1 June 2020, all parties must circulate evidence on which they seek to rely.

13. → We request that you provide us a draft of your evidence by 27 May 2020.

14. → You will be called as an expert at the hearing on Tuesday 16 June from 10:00am.

BACKGROUND

- The background to the Amendment is complex given the planning history of the Fishermans Bend Urban Renewal Area. A chronology of the history of the Fishermans Bend Urban Renewal Area is included in your brief at Tab 7. The Terms of Reference of the SAC are Tab 2 of your brief.
- We note your prior involvement in the preparation of reports relating to Affordable Housing for the SAC's consideration of Amendment GC81 in early 2018 as well as your involvement in preparing expert evidence for related Amendment C163 affecting Site 6 in the Fishermans Bend Urban Renewal Precinct.
- The Minister is the Responsible Authority for land use and development in the Fishermans Bend Urban Renewal Area.
- Site 2 is in the Montague Precinct of the Fishermans Bend Urban Renewal Precinct sited on the northern side of Normanby Road.
- The Amendment seeks to facilitate the redevelopment of the site with a multi-storey mixed use building. This is achieved by amending Clause 71.04 of the Scheme to include an Incorporated Document containing conditions of development on the site.
- Sites 2 is identified on the aerial image below.

[8016200-26627001_1]

page 2



(Source: Nearmap.com—retrieved 12 November 2019)

Amendment-C166—Site-2

21. → In 2015, Site 2 was the subject of planning permit application 4/2015/MIN/A.
22. → On 17 May 2016, Council's Statutory Planning Committee considered Sites 1, 2, 3, 5 and 6 and resolved to advise the Minister it did not support the applications because of concerns about a lack of variety in building height, tower setbacks, building mass and bulk, cumulative density, traffic and wind impacts, the limited provision of affordable housing, the lack of provision of community infrastructure, and detail design, operational and amenity matters.
23. → The Minister did not make a decision on the applications.
24. → On 12 November 2017, the owners of Sites 1, 2 and 3 lodged an application for review in the Victorian Civil and Administrative Tribunal against the Minister's failure to determine the applications in the statutory timeframe.
25. → Prior to the scheduled VCAT hearing, on 21 February 2018 the Minister called in the proceeding under s 58(4)(b) of the Victorian Civil and Administrative Tribunal Act 1998.
26. → Amendment C166 proposes to implement a site specific control to facilitate.
 - 26.1 → demolition of the existing warehouse building on site,
 - 26.2 → development of a 20-storey mixed-use building comprising
 - 26.2.1 → 157 dwellings comprising a mix of 1, 2 and 3 bedrooms; and
 - 26.2.2 → retail and commercial tenancies at ground floor and in the podium.

[8016200-26627001_1]

page 3

27. → On 15 April 2020, the Applicant submitted amended application material including amended Architectural Plans, an updated Development Summary and a list of changes to plans.
28. → A copy of the amended application for Site 2 is included in your brief at Tab 3.
29. → The proponent is due to file a new Incorporated Document based on the amended plans on 8 May 2020. We will send this to you as soon as we receive it.

Planning controls

30. → Site 2 is within Schedule 1 to the Capital City Zone (CCZ1) and is subject to the following overlays.
 - 30.1 → Schedule 30 to the Design and Development Overlay (DDO30);
 - 30.2 → Environmental Audit Overlay (EAO);
 - 30.3 → Schedule 1 to the Infrastructure Contributions Overlay (ICO1); and
 - 30.4 → Precinct 1 of the Parking Overlay (PO).
31. → A copy of all relevant planning scheme provisions are included in your brief at Tab 6.
32. → You attention is drawn in particular to the provisions of Clause 22.15 (Fishermans Bend Urban Renewal Area Policy) at Clause 22.15-4.3 (Affordable housing) with which you will be familiar.

COUNCIL'S POSITION

33. → Council considered the Amendment at its meeting of 25 September 2019 and resolved that it does not support the Amendment in its current form.
34. → When Council considered the Amendment, it did not provide any affordable housing arguing that it made the proposal unviable economically.
35. → On 8 October 2019 Council wrote to the Minister outlining its position.
36. → Of relevance to your instructions, Council resolved that.
 - 2.39 Sites 01, 02 and 03 do not propose to provide any affordable housing, arguing it may make the applications unviable. Site 06 proposes three affordable housing options, 6% of dwellings rented to moderate income households for 10 years; 6% of dwellings offered for sale to a Housing Association etc, or 2% of dwellings gifted / transferred to a Housing Association etc.
 - 2.40 ... Sites 01, 02 and 03 should provide affordable housing, at least to the same degree as Site 06, and ... all the sites should preferably provide 6% by transfer to a Housing Association etc.
37. → A full copy of Council's Officer's Report, resolution and letter to the Minister is included in your brief at Tabs 4 and 5.
38. → We will update you with Council's position on the updated Incorporated Document provision when it becomes available.

Incorporated Document

39. → The Incorporated Document acts as a control regulating the development of the Subject Land by containing conditions that would otherwise appear on the planning permit.

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40. → The Incorporated Document covers a number of issues. The Incorporated Document proposed by the Proponent is at Tab-12. The Proponents affordable housing condition commences at 4.51 of the Incorporated Document. ¶
41. → The Proponent has confirmed that they will be calling expert economic evidence, which we assume will be relevant to affordable housing. ¶
42. → Council is proposes that a similar affordable housing condition, as included in the Incorporated Document for Site 6, should be inserted into the Site 2 Incorporated Document. The Council preferred affordable housing condition on Site 6 (which you supported) was ¶
- ¶
- (x) → Before the development starts, excluding demolition, bulk excavation, piling, site preparation works, and remediation works, the owner must enter into an agreement with the Responsible Authority and the City of Port Phillip under section 173 of the *Planning and Environment Act 1987*, to the satisfaction of the Responsible Authority for the delivery of affordable housing (as defined in the *Planning and Environment Act 1987*). ¶
- ¶
- (x) → The Agreement must: ¶
- a) → Provide for the delivery of 6 percent of the total number of dwellings, for affordable housing as defined by Section 3AA of the *Planning and Environment Act 1987*, before the development is occupied. ¶
- ¶
- b) → Provide for the affordable housing delivered in compliance with 4.53(a) to meet a benchmark value which shall be no less than the equivalent of transferring ##% of the Gross Lettable Area of the building to a registered housing agency or housing provider or trust at zero consideration. ¶
- ¶
- c) → Unless otherwise agreed by the Responsible Authority, utilise one or more of the following mechanisms for the delivery of the affordable housing: ¶
- ¶
- i) → Transfer of the dwellings to a registered housing agency or other housing provider or trust approved by the Responsible Authority, or ¶
- ii) → Leasing of the dwellings as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority for the economic life of the building, with registered housing agency retaining a ##% interest in the value of the land. ¶
- ¶
- d) → Require the affordable housing to be delivered: ¶
- i) → Within the development, and ¶
- ii) → In the form of one, two and three bedroom dwellings in accordance with the composition of the development, with one or more bicycle parking space allocated per dwelling ¶
- iii) → Have internal layouts identical to other comparable dwellings in the building. ¶
- iv) → Be externally indistinguishable from other dwellings. ¶
- ¶
- e) → Provide that in lieu of delivering all or part of the affordable housing in accordance with Clause 4.53(a), (b) and (c), the Responsible Authority may agree to payment of an amount

- of money to a registered housing agency (or other housing provider or trust) if the Responsible Authority is satisfied that: ¶
- i) → The owner has made best endeavours to secure a registered housing agency recipient (or other housing provider or trust) for the affordable housing and has not been successful; and ¶
- ii) → The payment amount is equivalent to the benchmark value at 4.53(b) less the value of any affordable housing provided within the development. ¶
- ¶
- (x) → Provide that where the affordable housing is to be delivered using only the mechanism in Clause 4.53(c)(i) the Responsible Authority may accept a lesser percentage of affordable housing in satisfaction of Clause 4.53(a) provided it meets the benchmark value at 4.53(b). ¶
- ¶
- (x) → For the purpose of these provisions, 'value' means the monetary value of a dwelling offered for sale at a sufficient discount (including a discount to zero) from market value as determined by an independent valuer (appointed by the President of the Australia Property Institute – Victorian Division) to meet the needs of households with income ranges specified within any Ministerial Order made under 3AB of the *Planning and Environment Act 1987* in force at the time of entry into the agreement. The cost of the independent valuer is to be met by the owner. ¶
43. → We will receive DELWP's track changed version of the proponents Incorporated Document with any proposed changes on 18-May. We will provide a copy as soon as possible for your review. ¶
44. → We note that the Fisherman's Bend Taskforce has recently released a Version 3 Affordable Housing Guideline, which is Tab-13 to your brief. ¶
- Fee proposal** ¶
45. → We kindly request you provide us with an electronic copy of your fee proposal for Council's consideration. ¶
46. → Please also provide a schedule of fees and rates in the event that you are required to perform additional tasks in the future relating to this matter, including for the preparation of an expert evidence report and time to appear as an expert witness. ¶
47. → If your fee proposal is approved, all accounts for this matter should be referred directly to Maddocks (marked to the attention of Kierra Parker). ¶
- Maintaining client legal privilege and confidentiality** ¶
48. → The advice you are being asked to provide may be relied upon for any future hearing or litigation and for the purposes of providing legal advice to our client. You must as far as legally possible treat all communications relating to the scope of works as confidential and subject to client legal privilege. ¶

Other matters

- 49. → Please find enclosed an indexed brief of documents. Kindly let us know if you require any further information or documentation.
- 50. → Please contact Kierra Parker on 9258 3796 or kierra.parker@maddocks.com.au if you have any queries.

Dated: → 13 May 2020

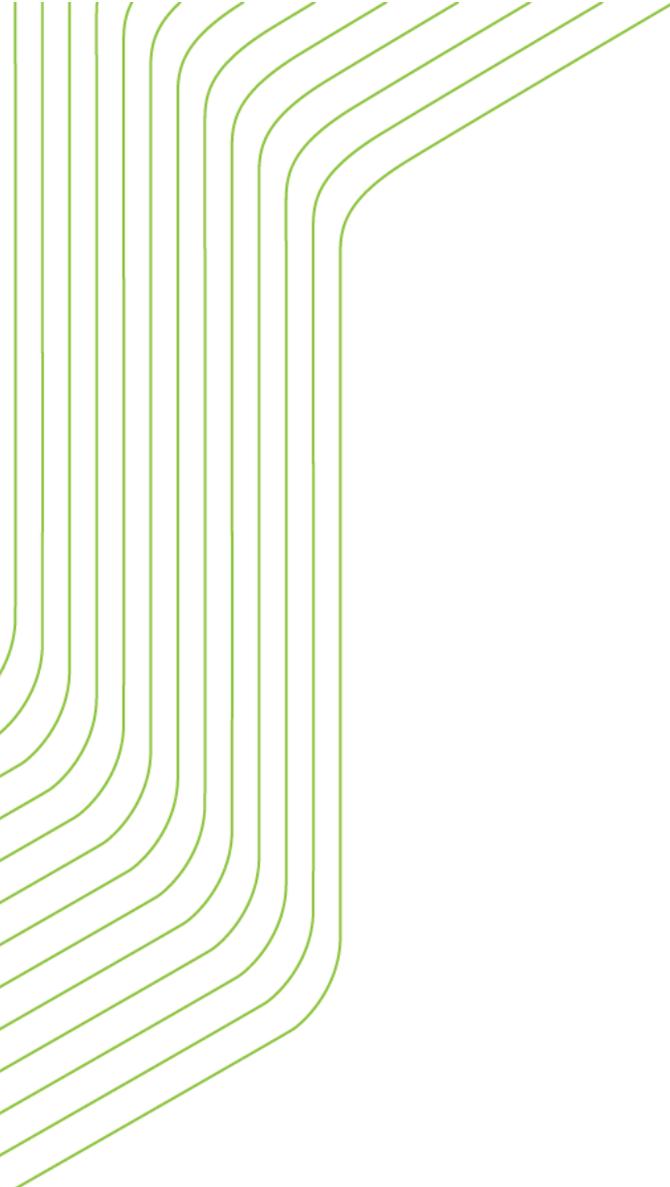
Maddocks

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TAB-NO	DESCRIPTION-OF-DOCUMENT	DATE
STANDING-ADVISORY-COMMITTEE-DOCUMENTATION		
1.	Directions and Timetable (version 2)	1-May-2020
2.	Terms of Reference	24-October-2019
C166-AMENDMENT-DOCUMENTATION-(SITE-2)		
3.	Amended Application material including statement of changes	15-April-2020
COUNCIL-REPORTS		
4.	Council Officer's Report and meeting minutes	25-September-2019
5.	Council's letter to the Minister outlining position on C164, C165 and C166	8-October-2019
RELEVANT-POLICIES		
6.	Relevant Planning Scheme provisions: Planning-Policy-Framework <ul style="list-style-type: none"> → Clause 11 – Settlement → Clause 13 – Environmental risks and amenity → Clause 15 – Built Environment and Heritage → Clause 16 – Housing → Clause 18 – Transport → Clause 19 – Infrastructure Local-Planning-Policy-Framework <ul style="list-style-type: none"> → Clause 21.01 – Vision and approach → Clause 21.04 – Land Use → Clause 21.05 – Built Form → Clause 21.06 – Neighbourhoods → Clause 22.12 – Stormwater Management (Water Sensitive Urban Design) → Clause 22.15 – Fishermans Bend Urban Renewal Area Policy Zone-and-Overlays <ul style="list-style-type: none"> → Clause 37.04 – Capital City Zone – Schedule 1 (CCZ1) → Clause 43.02 – Design and Development Overlay – Schedule 30 (DDO30) → Clause 43.03 – Infrastructure Contributions Overlay – Schedule 1 (ICO1) → Clause 45.03 – Environmental Audit Overlay (EAO) Particular-Provisions <ul style="list-style-type: none"> → Clause 52.06 – Car Parking → Clause 58 – Apartment Developments 	

TAB-NO	DESCRIPTION-OF-DOCUMENT	DATE
	General-Provisions <ul style="list-style-type: none"> ▪ → Clause 65 Decision Guidelines Operational-Provisions <ul style="list-style-type: none"> ▪ → Clause 71.02-Operation of the Planning Policy Framework 	
OTHER-RELEVANT-DOCUMENTS		
7.	Chronology for Fishermans Bend Urban Renewal Area	
8.	Fishermans Bend Taskforce referral response for C164, C165 and C166	14 August 2019
9.	Melbourne Water referral response	18 October 2019
10.	Council's internal referrals on the Amendment – original and updated on ammended plans.	
11.	Panels Guide to Expert Evidence	
12.	Proponent's Incorporated Document	8 May 2020
13.	Draft Affordable Housing Guidelines – Version 3	13 May 2020



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