

# Hobsons Bay Planning Scheme Amendment C88

Date of Report 13 November 2017  
Report Prepared for Precinct 15 (Landowners Consortium)  
Prepared by **Andrew Biacsi**



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## Attachment 1 Expert Witness Declaration

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# 1 Introduction

- 1 I have been requested by Norton Rose Fulbright (NRF), on behalf of the Precinct 15 Landowners Consortium (**the Consortium**), to consider the town planning implications of proposed Hobsons Bay Planning Scheme Amendment C88 (**the Amendment**) which generally affects the land known as 'Precinct 15, Altona North'<sup>1</sup> (**the Precinct**). The Precinct includes the land bound by Blackshaws Road to the south, New Street to the east, Kyle Road to the west and the West Gate Freeway to the north.
- 2 The Consortium has an interest in multiple sites located within the Precinct affected by the Amendment as shown in Figure 2.2 (referred to variously as Precinct 15).
- 3 Attachment 1 provides a summary of my professional qualifications and experience in accordance with the Planning Panels Victoria 'Guide to Expert Evidence'.
- 4 The Amendment proposes to implement (in part) the recommendations of the *Hobsons Bay Industrial Land Management Strategy, June 2008* (HBILMS), by facilitating the replacement of part occupied and part vacant industrial land with residential and mixed use development in association with the Altona North Comprehensive Development Plan (CDP).
- 5 I received instructions from NRF in correspondence dated 10 August 2017. I have been asked to prepare a report that considers planning matters and outlines my opinion regarding Amendment C88 with particular regard for its implications for the Landowners Consortium land (**LC land**).
- 6 In preparing this report, I have:
  - Inspected the Precinct and land within the Consortium's ownership.
  - Reviewed the provisions of the Hobsons Bay Planning Scheme (**the Planning Scheme**);
  - Reviewed the exhibited version of the Amendment and relevant background reports and material including which those informed the Amendment;
  - Reviewed the Council Officer Reports associated with the Amendment as contained in the Agenda to Council meetings held on 15, December, 2015, 14 February 2017 and 10 October 2017;
  - Reviewed the submissions made to Amendment C88 by NRF Lawyers on behalf of the Consortium;

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<sup>1</sup> Land generally Identified as Precinct 15 within *Hobsons Bay Industrial Land Management Strategy (June 2008)*, with the exception of land at 65-69 Kyle Road, Altona North.



## 1 Introduction

- 
- Considered the submissions in response to the public exhibition period;
  - Reviewed relevant Ministerial Planning Practice Notes and Ministerial Directions;
  - Considered relevant reference documents and panel reports; and
  - Reviewed various strategic studies or/or reports relevant to the Amendment.

7 I note that separate expert evidence relating to traffic and economic considerations is to be presented to the Panel in this matter.



## 2 Landowners Consortium Land



- 8 The land controlled by the Consortium, affected by the Amendment, accounts for approximately 83% of the overall Precinct, comprising multiple sites dispersed across the Precinct as shown in Figures 2.1 and 2.2 below.
- 9 The LC land can be described as nine distinct land holdings, being:
  - 4 & 40 – 68 Kyle Road, Altona North (former Gilbertsons Meat Processing Complex) (1);
  - 188 – 198 Blackshaws Road, Altona North (2);
  - 2 – 48 New Street, South Kingsville (3);
  - 200 Blackshaws Road, Altona North (4);
  - 232 Blackshaws Road, Altona North (5);
  - 248 Blackshaws Road, Altona North (6);
  - 280 – 288 Blackshaws Road, Altona North (7);
  - 8 – 38 Kyle Road, Altona North (8); and
  - 4 Watson Street, South Kingsville (9).
- 10 The Precinct consists of predominantly Industrial 1 zoned land, with a small linear strip of properties fronting New Street and Blackshaws Road (being 50-100 New Street and 182-186 Blackshaws Road, South Kingsville) included in the Industrial 3 Zone.
- 11 In general terms, the land affected by the Amendment has historically been used for a variety of industrial and warehouse purposes, reflective of its current zoning.
- 12 This overall land within the Precinct is largely vacant with the exception of a number of warehouse buildings located along the southern portion of the Precinct (along the site's frontage to Blackshaw Road and New and Kyle Streets) and hard surfaced areas used for at grade car parking and storage. Only a relatively small percentage of the properties within the Precinct are currently operational.
- 13 The majority of the Precinct has been designated as a 'Strategic Redevelopment Area' as identified under Clauses 21.02, 21.03 and 21.08 of the Planning Scheme and the HBILMS. The exception being the land at 248 Blackshaws Road, Altona North (formerly the Don Smallgoods and Apollo Engineering site) which is identified as a 'Secondary Industrial Area'. The intent of the 'Secondary Industrial Area' as described within HBILMS is to ensure the continued longevity of the food manufacturer known as Don Smallgoods, as *'an important and viable industry in this locality'*. I note that this use no longer exists and the land is currently vacant.

## 2 Landowners Consortium Land

- 
- 14 The combined LC landholdings account for 55.4 hectares of the overall 67 hectare (approx.) site forming the land generally known as Precinct 15.
  - 15 The LC land contains a combined frontage to Kyle Road of 610m (approx.), a combined frontage to Blackshaws Road of 680m (approx.) and a combined frontage to New Street of 347m (approx.).
  - 16 Located within the north east portion of the land includes two individual sites both of which were formerly used for the purpose of a quarry. These sites have been subsequently filled.
  - 17 The land experiences a modest fall across various portions of the site (in the order of between 1m and 3m) generally as one proceeds out from the centre of the site to each of its boundaries.
  - 18 I note that the land at 2 Watson Street, located at the north east tip of the Precinct, has been identified as land which is affected by the West Gate Tunnel Project.

### Surrounding context

- 19 The land to the south, east and west of the Precinct is used predominantly for residential purposes, containing a mix of single and double storey dwellings of differing architectural styles and ages.
- 20 North of the Precinct is the Brooklyn Electrical Terminal Station which is also zoned Industrial 1 Zone (this land is also included in the Amendment). North of this land is the West Gate Freeway and beyond (being the West Gate Freeway) contains the former Bradmill site, which has been rezoned for residential and commercial purposes as part of the Bradmill Precinct.
- 21 The Precinct is bordered to the north - east by the Bacchus-Marsh to Newport freight railway line and the APA gas and fuel pipelines which run parallel to the railway line.
- 22 The land to the north - west is currently used for industrial purposes and does not form part of the Amendment.
- 23 More generally, the Precinct also benefits from its proximity to the following services and facilities:
  - Altona North Major Activity Centre / Altona Gate (as designated under Plan Melbourne 2017-2050<sup>2</sup>) located along Millers Road approx. 730m to the west (geodesic distance);
  - The Circle Neighbourhood Activity Centre located approx. 420m south of the site;
  - Borrac Square Neighbourhood Activity Centre located approx.

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<sup>2</sup> See page 53 of Plan Melbourne.

## 2 Landowners Consortium Land

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840m (geodesic distance) south west of the site; and

- The Millers Road Enterprise Area which runs north to south along Millers Road, between Blackshaws Road to the north and Ross Road to the south. The beginning of this strip (being the corner of Blackshaws Road and Miller Road) is located approx. 700m west of the site;
- A number of 'micro' centres, business zonings and local activity centres<sup>3</sup> are also located within a 1km radius of the site; and
- Numerous reserves, playing fields and community facilities including McIvor Reserve and Footscray Hockey Club (approx. 100m north east), Edwards Reserve (approx. 180m east) and Newport Lakes Reserve (approx. 275m south east) located within easy walking distance.

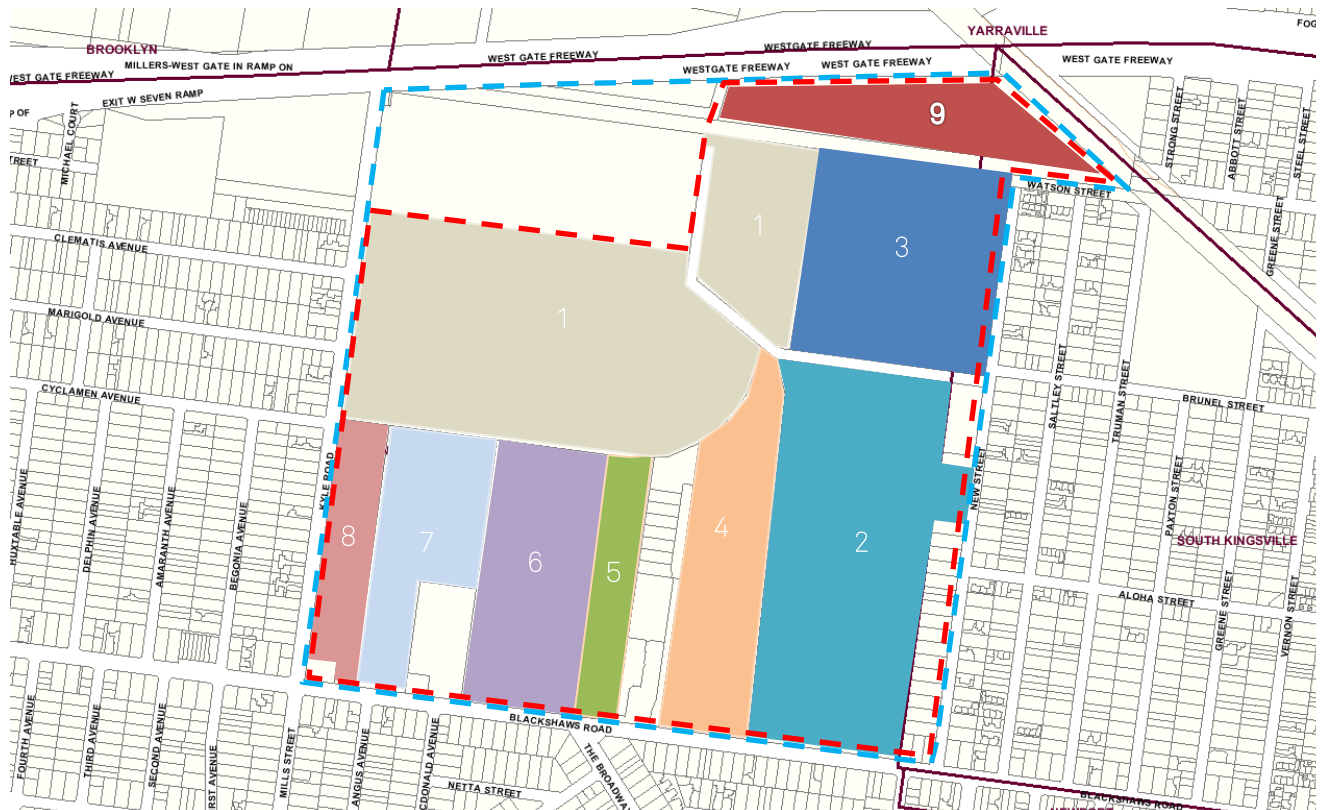
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<sup>3</sup>As identified on page 56 of the *Hobsons Bay Activity Centres Strategy: Technical Report (2016)*

## 2 Landowners Consortium Land

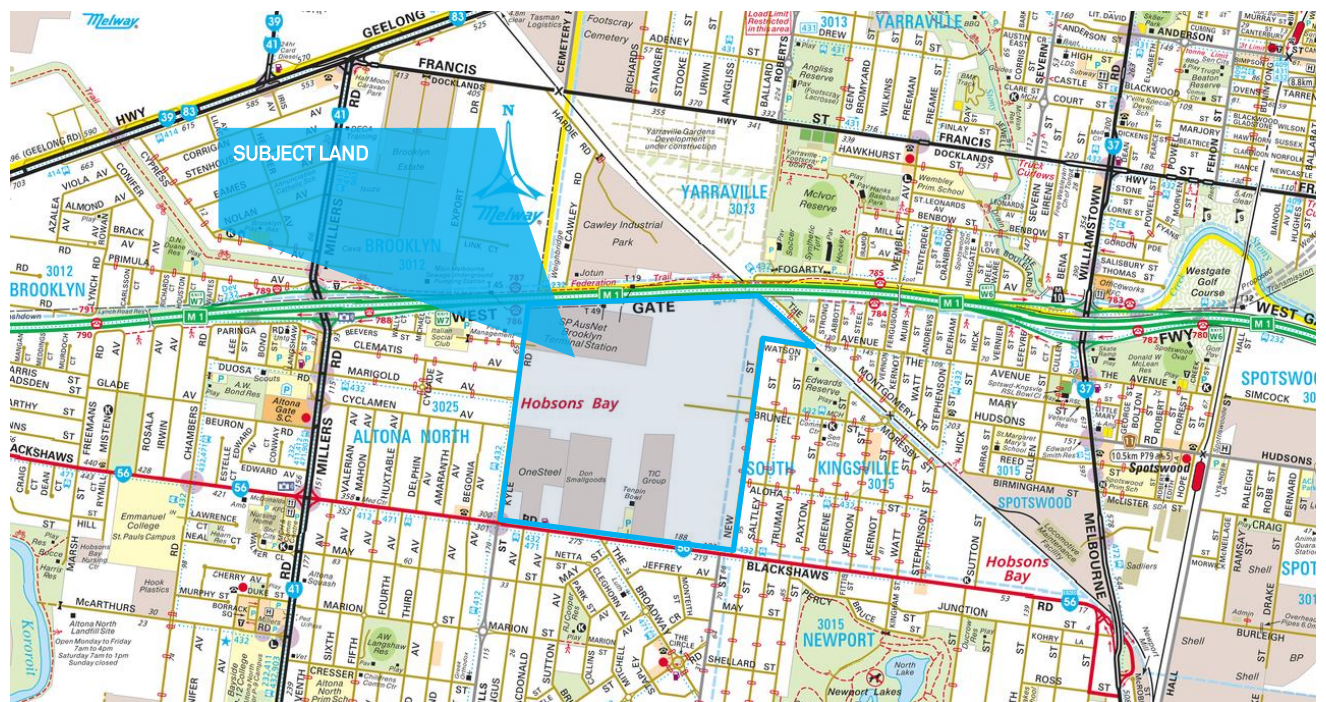
**Figure 2.1**  
**SUBJECT LAND**

LC land interests within the Precinct 15 Altona North area (outlined in red, with the entirety of land affected by the Amendment outlined in blue).



**Figure 2.2**  
**LOCALITY MAP—AMENDMENT AREA (INCLUDING PRECINCT 15 LAND AND THE**  
**BROOKLYN TERMINAL)**

Source: extract of Melways Maps Online





## 2 Landowners Consortium Land

**Figure 2.3**  
**AERIAL PHOTOGRAPH**

Source: Nearmap Pty Ltd



# 3 Hobsons Bay Planning Scheme

## 3.1 Existing Zones and Overlays

24 The LC land is included partly within the Industrial 1 Zone (IN1Z) and the Industrial 3 Zone (IN3Z) and partly covered by a Heritage Overlay (HO166) under the provisions of the Hobsons Bay Planning Scheme (HBPS) (Refer to Figures 3.1 – 3.3).

Figure 3.1  
ZONING PLAN

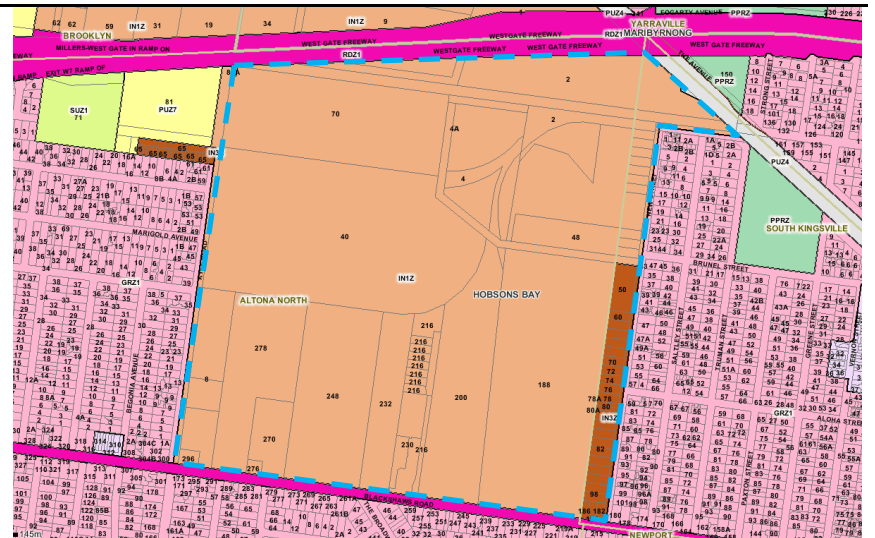
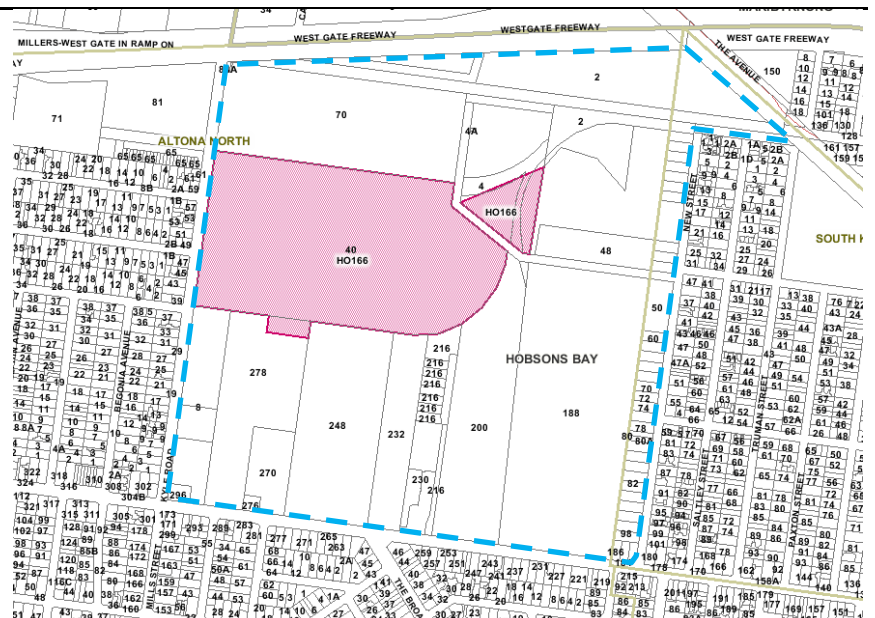


Figure 3.2  
HERITAGE OVERLAY PLAN



## Industrial 1 Zone (IN1Z)

25 The purpose of the IN1Z is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.





### 3 Hobsons Bay Planning Scheme

- 
- *To provide for manufacturing industry, the storage and distribution of goods and associated uses in a manner which does not affect the safety and amenity of local communities.*

#### Industrial 3 Zone (IN3Z)

26 The purpose of the IN3Z is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict.*
- *To provide a buffer between the Industrial 1 Zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community.*
- *To allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations.*
- *To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.*

#### Heritage Overlay (HO166)

27 The purpose of the Heritage Overlay is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To conserve and enhance heritage places of natural or cultural significance.*
- *To conserve and enhance those elements which contribute to the significance of heritage places.*
- *To ensure that development does not adversely affect the significance of heritage places.*
- *To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.*

28 HO166 is a site specific overlay relating to the former 'Gilbertsons Meat Processing Complex' at 40-68 Kyle Road, Altona North (identified as 65 - 75 Kyle Road on the Schedule). It is noted that all buildings on this land have since been demolished, with the land being currently vacant.

### 3 Hobsons Bay Planning Scheme

## 3.2 Planning Policy

29 The State and Local Planning Policy Framework set out in the Planning Scheme provides a strategic policy context for the future redevelopment of the municipality, including the Amendment land.

30 The following Clauses of the policy frameworks are considered relevant to the Amendment:

### State Planning Policy Framework

- Clause 09 – Plan Melbourne
- Clause 10 – Operation of the State Planning Policy Framework
- Clause 11 – Settlement
  - Clause 11.02 – Urban Growth
  - Clause 11.03 – Activity centres
  - Clause 11.04 – Open space
- Clause 11.06 – Metropolitan Melbourne
- Clause 13 – Environmental Risks
- Clause 13.03-1 – Use of contaminated and potentially contaminated land
- Clause 15 – Built Environment and Heritage
  - Clause 15.01 – Urban Environment
  - Clause 15.02 – Sustainable Development
  - Clause 15.03 – Heritage
- Clause 16 – Housing
  - Clause 16.01 – Residential Development
  - Clause 16.01-3 – Housing Opportunity Areas
- Clause 17 – Economic Development
  - Clause 17.01 – Commercial
  - Clause 17.02 – Industry
- Clause 18 – Transport
  - Clause 18.01 – Integrated Transport
  - Clause 18.02 – Movement Networks



### 3 Hobsons Bay Planning Scheme

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- Clause 19 – Infrastructure

#### Local Planning Policy Framework

- Clause 21.01 – Municipal Strategic Statement
- Clause 21.02 – Hobsons Bay Key Issues and Strategic Vision
- Clause 21.03 – Settlement
- Clause 21.04 – Open Space
- Clause 21.05 – Environment
- Clause 21.06 – Built Environment and Heritage
- Clause 21.07 – Housing
- Clause 21.08 – Economic Development
- Clause 21.09 – Transport and Mobility
- Clause 21.10 – Infrastructure
- Clause 22.01 – Heritage Policy
- Clause 22.02 – Industry
- Clause 22.08 – Hobsons Bay North Neighbourhood Character Policy

31 Clause 21.02 of the Planning Scheme describes the planning challenges and strategic vision for the municipality. Under Clause 21.02 - 5 (Strategic Framework Plan) the land known as Precinct 15 is identified as being located within a 'Strategic Redevelopment Area.' It is envisioned under this Clause that the majority of urban growth within the City of Hobsons Bay is projected to be accommodated within these designated Strategic Redevelopment Areas.

32 Clause 21.03 - 2 specifically relates to 'Strategic Redevelopment Areas', and provides the following objective:

- *To successfully manage the transition and strategic redevelopment of redundant industrial areas identified as Strategic Redevelopment Areas through the development of Outline Development Plans (i.e. master plan) or other appropriate planning controls to achieve net community benefit.*

33 Within Clause 21.03-2, the following strategies (inter alia) are of particular relevance to this amendment:

- *Manage change in Strategic Redevelopment Areas carefully; protect the existing and ongoing viable use of existing industries; retain employment generating uses where possible; and subject to appropriate justification, introduce new land uses.*

### 3 Hobsons Bay Planning Scheme

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- *Require the preparation of an Outline Development Plan (i.e. a master plan), for Strategic Redevelopment Areas that are no longer suitable for traditional industrial uses and are in multiple ownership in consultation with land owners, adjoining land owners, key government stakeholders and the Council to ensure that the Strategic Redevelopment Area as a whole can integrate with its surrounds and address significant interface issues.*
  - *Ensure that there is an appropriate interface between conflicting land uses when planning for the redevelopment of redundant industrial sites identified as Strategic redevelopment Areas.*
  - *Require residential and other new sensitive land uses to include appropriate measures to protect residential amenity including noise attenuation within new buildings and appropriate design and sitting of private open space to protect occupants' amenity.*
  - *Where appropriate, consider the potential for new character in future residential areas of the Strategic Redevelopment Areas.*
  - *Ensure the provision of appropriate community infrastructure or an adequate contribution to support new communities.*
  - *Ensure that the existing road layout and subdivision pattern that defines and characterises the broader neighbourhood is considered and respected by new development.*

34 These objectives and strategies are to be implemented by the following policy guidance, application of zones and overlays and further strategic work (inter alia):

- *Use local policy at Clause 22.01 to ensure that heritage issues are given appropriate consideration at an early stage when making decisions about the future uses and development of industrial sites.*
- *Use local policy at Clause 22.02 to ensure the viability of ongoing industries.*
- *Apply the Design and Development Overlay, or a Development Plan Overlay or other appropriate planning control to implement the Hobsons Bay Industrial Land Management Strategy 2008 to manage the transition of redundant industrial land identifies as a Strategic Redevelopment Areas for alternative uses.*
- *Apply the Development Plan Overlay or Design and Development Overlay to ensure that new, refurbished and converted developments for new residential and other noise sensitive uses constructed in proximity to existing industry include appropriate acoustic measure to attenuate noise levels within the building and private open space areas.*

### 3 Hobsons Bay Planning Scheme

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- *Apply the Environmental Audit Overlay to contaminated sites.*
  - *Prepare Outline Development Plans (i.e. a master plan) for entire precincts identified as Strategic Redevelopment Areas in the Industrial Land Management Strategy 2008 prior to consideration of rezoning applications.*
  - *Manage the transition of the Strategic redevelopment Areas as outlined in the Hobsons Bay Industrial Land management Strategy 2008, through the development of Outline development Plans, Development Plan Overlays, Design and Development Overlays or other planning tools, as appropriate, to ensure an integrated development that, amongst other things, ensures appropriate buffer distances are maintained from nearby industry and ongoing operations of the Port are protected.*

35 Clause 21.06 (Built Environment and Heritage) of the Planning Scheme envisages that the new residential character in Strategic Redevelopment Areas will need to consider and respect the character of the existing surrounding area.

36 With specific reference to the built environment Clause 21.06-1 provides the following objectives:

- *To ensure that new development respects and enhances the preferred neighbourhood character of the existing residential areas of Hobsons Bay.*
- *To protect and enhance the amenity of residential areas.*
- *To protect the amenity of residential areas adjacent to land uses with off-site amenity impacts and protect industry and sensitive open space from constraints and adverse impacts caused by the encroachment of residential development.*
- *To provide landscaping that enhances open space areas and surrounding amenity.*

37 Clause 21.07 (Housing) foresees that residential areas within the municipality will provide a distinctive neighbourhood focus, a sense of community and provide a diverse choice of housing types to meet the needs of Hobsons Bay.

38 Under this Clause the following objective and strategies (inter alia) are noted:

#### **Objective**

- *To encourage and facilitate the provision of a range of dwellings types to suit the varying needs of the community in a high quality living environment.*

### 3 Hobsons Bay Planning Scheme

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#### Strategies

- *Provide a mix of housing types that better reflects the cross section of household sizes and the provision of housing for people with particular needs.*
  - *Encourage subdivision that provides a range of lot sizes to cater for diversity of housing stock and a better matching of house size and type varying community needs.*
  - *Support medium density residential development where it can be accommodated within the capacity of existing infrastructure.*
  - *Support medium density development where the character and amenity of the neighbourhood is not prejudice.*
  - *Encourage higher density residential development in appropriate locations where it can be accommodated within the capacity of existing infrastructure.*
  - *Support higher density residential development in appropriate locations where there is access to safe, efficient and reliable public transport.*
  - *Encourage higher density residential development within activity centres in a manner that does not detract from the concentration and viability of retail and commercial in the centres.*
  - *Encourage shop top housing in neighbourhood activity centres.*
- 39 Clause 21.08 (Economic Development) identifies the need to manage and facilitate a successful transition of identified Strategic redevelopment Areas, whilst protecting the existing and ongoing viability of Core and Secondary Industrial Areas from the impacts of encroachment of residential and other sensitive land uses.
- 40 I note that Map No. 3<sup>4</sup> of Clause 21.08 designates the majority of Precinct 15 as being located within a 'Strategic Redevelopment Area', with the exception of a rectangular parcel of land fronting Blackshaws Road which is identified as a 'Secondary Industrial Area'.
- 41 Clause 21.10 seeks to ensure the delivery of necessary community infrastructure to enhance the liveability of the existing and future residents within the municipality. Under this Clause the following strategies are noted:
- *Provide appropriately located community facilities and services in response to community needs.*
  - *Facilitate the provision of a range of well designed community facilities and services which meets the needs and lifestyles of the*

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<sup>4</sup> See page 5 of 5 of Clause 21.08.

### 3 Hobsons Bay Planning Scheme

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*community to provide for better quality of life.*

- 42 In the course of preparing this statement, I have also reviewed the following documents which have served to inform my opinion:
- *Altona North Comprehensive Development Plan June 2017;*
  - *Altona North Background Report June 2017;*
  - *Hobsons Bay City Council Vision Document (October 2016);*
  - *Hobsons Bay Housing Strategy (2017);*
  - *Hobsons Bay Industrial Land Management Strategy June 2008;*
  - *Hobsons Bay City Council Economic Development Strategy 2015-2020;*
  - *Hobsons Bay City Council Affordable Housing Policy Statement (2016); and*
  - *Hobsons Bay Activity Centre Strategy: Technical Report (December 2016).*

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### 3.3 Ministerial Directions

- 43 The following Ministerial Directions are relevant to the consideration of the proposed Amendment:
- Ministerial Direction – Form and Content of Planning Schemes (updated)
  - Direction No. 1      Potentially Contaminated Land
  - Direction No. 9      Metropolitan Planning Strategy
  - Direction No. 11      Strategic Assessment of Amendments;
  - Direction No. 15      The Planning Scheme Amendment Process

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### 3.4 Plan Melbourne

- 44 Plan Melbourne 2017-2050 is the current Metropolitan Strategy for Melbourne following Amendment VC136 on 27 March 2017 and in accordance with Ministerial Direction No. 9 referred to above, must be considered by the Responsible Authority when preparing the Amendment.
- 45 Under Plan Melbourne, the Precinct is located within the Western Subregion which is expected to be the fastest growing region within the State, experiencing significant employment, civic and housing growth into the middle of this century.
- 46 Plan Melbourne anticipates that the Western Subregion will accommodate an extra 113,000 jobs and 400,000 people by 2031 and additional 520,000 extra people by 2051.

### 3 Hobsons Bay Planning Scheme

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- 47 Policy 1.1.2 acknowledges, in addition to major urban renewal precincts there are a number of former industrial and other sites which are underutilised and could be redeveloped to help accommodate a significant amount of the projected residential and jobs growth across metropolitan Melbourne over the next 35 years.
- 48 Plan Melbourne further acknowledges that the timing of land release in these particular precincts will need to be *“in sync with policy drivers, market demand and the delivery of infrastructure and services. If developed properly, the precincts will become a network of connected places, linking to each other and their surrounding neighbourhoods and developing diverse uses and characteristics.”*
- 49 Direction 1.3 seeks to identify and create opportunities for development within urban renewal sites and precincts across Melbourne, which can ease the pressure on established areas and provide certainty for residents, investors, and the construction and development industry. It is further acknowledged that additional opportunities will also emanate from brownfield sites, former industrial areas or the underutilised or surplus government land. Renewal of these sites will offer opportunity to improve local amenity, accommodate more housing and offer a greater mix of uses to support local amenity.
- 50 Policy 1.3.1 further acknowledges that significant opportunities exist across Melbourne for urban renewal precincts to accommodate the projected future growth. This policy states that a number of former industrial and other sites across Melbourne are currently underutilised and Local Planning authorities should seek to identify and plan for ways in which these sites could be repurposed to create jobs and accommodate growth.
- 51 Direction 2.2 seeks to reduce the cost of living by increasing housing supply near services and public transport. This initiative states that urban renewal precincts and sites across Melbourne (among other locations) are key areas to direct new housing growth and mixed-use development.
- 52 Policy 2.2.2 seeks to encourage redevelopment of urban renewal precincts and sites, which help create more diverse housing markets and contribute to additional jobs and community services.
- 53 Policy 2.2.2 also recognises that these sites will be major sources of medium and higher density mixed-use development across metropolitan Melbourne and further acknowledges that local governments will be supported in delivering outcomes at identified local urban renewal precincts and sites, particularly those which have complex issues that need to be addressed such as site contamination.
- 54 Policy 2.2.4 identifies Melbourne as containing a number of residential areas that qualify as greyfield sites, particularly in established middle and outer suburbs. It is recognized that these areas have generally been redeveloped in an uncoordinated and unplanned manner. This

### 3 Hobsons Bay Planning Scheme

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policy further acknowledges greyfield areas as providing an ideal opportunity for land consolidation and should be supported by a coordinated approach to planning that delivers a greater mix and diversity of housing and provides more choice for people already living in the area as well as for new residents.

- 55 Direction 2.3 acknowledges that in order for Melbourne to remain liveable for all its citizens, an increase in the supply of social and affordable housing is needed. It is further acknowledged that a range of housing types need to be developed within suburbs all across Melbourne to improve affordability.
- 56 Direction 2.4 seeks to facilitate and streamline the decision-making processes for population and housing growth in the right locations. Under this Plan it is envisioned that a streamlined, codified approval process will be developed and implemented for defined change areas, to expedite decision making and provide stakeholders with greater certainty. Policy 2.4.2 further seeks to facilitate the remediation of contaminated land, particularly on sites in developed areas of Melbourne with potential for residential development.
- 57 As the current metropolitan planning strategy for Melbourne, Plan Melbourne reinforces much of the longstanding policy objectives that have consistently applied across metropolitan planning schemes for decades. In this regard, it does not alter the fundamentals of long standing urban consolidation policy and planning that has prevailed over metropolitan Melbourne for many decades.

## 4 The Amendment

### 4.1 Hobsons Bay Planning Scheme Amendment C88

- 58 The Amendment seeks to implement parts of the *Hobsons Bay Industrial Land Management Strategy (June 2008)* (HBILMS).
- 59 The Amendment applies to the land generally known as 'Precinct 15, Altona North' (as delineated in the HBILMS) and the Brooklyn Electrical Terminal Station, being the land generally bound by Blackshaws Road, New Street, Kyle Road and the West Gate Freeway; illustrated at Figure 4.1 below. More specifically, Precinct 15 comprises approximately 67 hectares of land, containing a frontage to Blackshaws Road, a frontage to Kyle Road, a frontage to New Street, a frontage to Watson Street, a frontage to the Newport Rail Corridor and a frontage to the West Gate Freeway. This Precinct constitutes the largest strategic redevelopment area in the municipality and one of the largest brownfield redevelopment sites in inner metropolitan Melbourne.

**Figure 4.1**  
**PRECINCT 15, ALTONA NORTH AREA**

Precinct Boundary - Comprehensive Development Plan (outlined in blue, with the entirety of the land affected by the Amendment outlined in red)



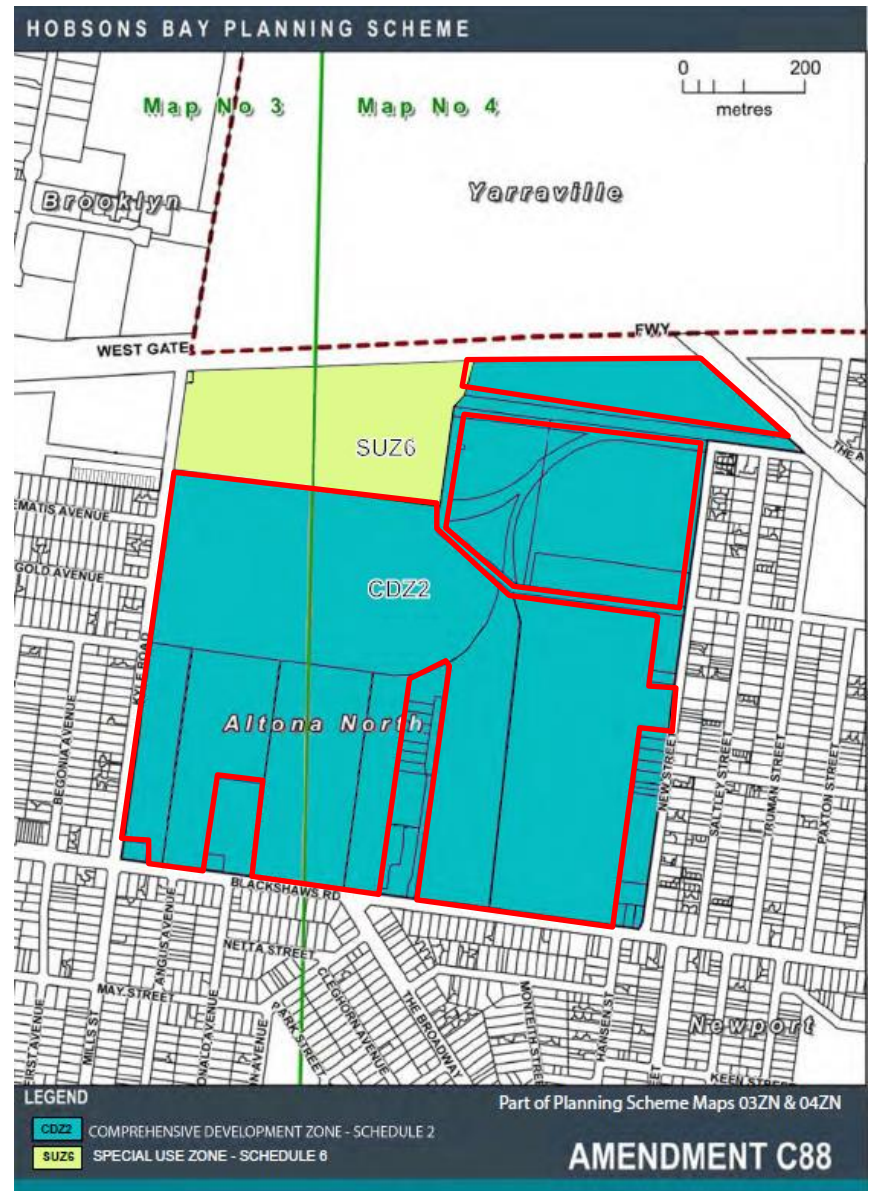
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## 4 The Amendment

**Figure 4.2**  
**PRECINCT 15 ALTONA NORTH ZONING MAP**

Proposed Zoning map showing the Amendment boundaries and LC land (outlined in red) within the Precinct.



- 60 In summary, the Amendment proposes to apply the Comprehensive Development Zone (CDZ), a Development Contributions Plan Overlay (DCPO), the Environmental Audit Overlay (EAO), delete the existing Heritage Overlay (HO), rezone land and update sections of the Particular and General Provisions of the Planning Scheme to reflect the built form and land use outcomes of the Comprehensive Development Plan (CDP) and Development Contributions Plan (DCP).
- 61 More specifically, the key components of the Amendment can be summarised as follows:

## 4 The Amendment

- 
- Rezone land at 70-84 Kyle Road, Altona North (Brooklyn Electrical Terminal Station) from Industrial 1 Zone (IN1Z) to Special Use Zone (SUZ);
  - Rezone the remainder of Precinct 15 land from IN1Z and IN3Z to the CDZ;
  - Introduce Schedule 6 to the SUZ to the land at 70-84 Kyle Road, Altona North;
  - Introduce Schedule 2 to the Comprehensive Development Zone (CDZ2);
  - Apply the DCPO to the whole of the land (excluding 70-84 Kyle Road, Altona North);
  - Introduce Schedule 2 to the DCPO;
  - Apply the EAO to the whole of the land (excluding 70-84 Kyle Road, Altona North);
  - Deletes HO166 as it relates to the former Gilbertsons Meatworks site;
  - Inserts a new entry in the Schedule to Clause 52.01 of the Planning Scheme requiring 9.2% of the land (or cash equivalent) contributed to Public Open Space;
  - Inserts a new entry in Schedule 4 to Clause 52.28 to prohibit gaming machines to be located within the designated town centre;
  - Amends and/or insert the relevant Planning Scheme Maps; and
  - Incorporate the Altona North Comprehensive Development Plan and the Altona North Development Contribution Plan into the Planning Scheme by listing them in the Schedule to Clause 81.01.

62 By way of background, the Council at its meeting on 14 February 2017 resolved to request the Minister for Planning for Authorisation to prepare Amendment C88 to the Hobsons Bay Planning Scheme.

63 Authorisation was granted and the Amendment was subsequently exhibited from 6 July 2017 – 1 September 2017. A total of 102 submissions were received.

64 At its Ordinary Council meeting on 10 October 2017, the Council endorsed the Amendment recommended by its Officers in response to submissions and resolved to refer all submissions to an independent Planning Panel.

## 4 The Amendment

### 4.2 Schedule 2 to the CDZ and Altona North Comprehensive Development Plan

65 The primary tools for the implementation of the land use and built form outcomes sought by Amendment C88 are Schedule 2 to CDZ and the CDP.

66 The exhibited Explanatory Report notes that the proposed CDZ will be introduced *‘...to provide for use and development that is more suitable to the land’s current residential context. Industrial use of the land is no longer sustainable in the area in light of modern requirements for pollution control with regard to the close proximity of residential areas, and a local road network that is not suitable to the larger vehicles used in contemporary industry.’*

67 Having regard to Clause 1.0 of the CDZ2 (Table of uses) I note the following Section 1 uses and conditions (inter alia) which are of particular relevance :

#### ‘Section 1-Permit not required’ uses

- Accommodation (other than Corrective institution, Camping and caravan park and Residential aged care facility).

Subject to the following conditions:

- *Must be located in the residential areas; or*
- *Must be at least 7.2 metres above natural ground level at the primary street frontage excepting building entries in the local town centre or business area.*
- *Must be no more than 3,000 dwellings in the CDP area.*

- Office

Subject to the following condition:

- *Must be located in the local town centre area or business area.*

- Retail premises (other than Adult sex bookshop, Department store, Gambling premises and Supermarket).

Subject to the following condition:

- *Must be located in the local town centre area.*

68 Having regard to Section 2.0 uses of the Table of uses, I note the following uses and conditions (inter alia) which are of particular relevance:

#### ‘Section 2-Permit required’ uses

- Retail premises (other than Adult sex bookshop, Department store, Gambling premises and Supermarket) – where the section 1 condition is not met.

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Subject to the following condition:

- *Must be located in the business area.*
- Supermarket

Subject to the following condition:

- *Must be located in the [local] town centre.*

69 I note under Section 3.0 of the Table of uses, the use of the land for 'Department store' and 'Gaming premises' are prohibited.

70 Pursuant to Clause 4.0 of the CDZ2, no permit is required to construct a building or construct or carry out works for (amongst other things) one dwelling on a lot more than 300 square metres in area (subject to conditions).

71 I note, in the glossary to the CDP, higher density housing / apartments and medium density housing is defined as housing with an average density of 200 dwellings per NDA and 50 dwellings per NDA respectively.

72 With particular regard to Clauses 2.0 (Use of land), 3.0 (Subdivision), and 4.0 (Buildings and works) of the CDZ2, it is prescribed that '*All requirements in the CDP must be met*'.

73 Further to the above, the CDP generally proposes:

- up to 3,000 dwellings;
- building heights of two to three storeys along Kyle Road and New Street;
- building heights of three to five storeys on Blackshaws Road and up to six storeys in the remainder of the Precinct;
- six hectares of open space including one central park, four smaller parks and one landscaped drainage reserve;
- 0.47ha of land for a new community facility (1,753m<sup>2</sup> building);
- up to 5,500m<sup>2</sup> gross retail floor area for a local town centre (as designated by Table 3 of the CDP) that may include retail – food and beverage (3,060m<sup>2</sup>) and a supermarket (2,420m<sup>2</sup>) – see Table 5 of the CDP;
- a new business area of 33,040m<sup>2</sup> gross commercial floor area<sup>5</sup> (as designated by Table 5 of the CDP) that includes 5,400m<sup>2</sup> gross floor area of existing commercial uses;

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<sup>5</sup> It is my understanding that this figure (in relation to the Business Area) was increased from 7,000m<sup>2</sup>.

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- a minimum 9.2% public open space contribution or equivalent (R31 and proposed Schedule to Clause 52.01), equating to a total of 4.75ha including a 3.15ha central park; and
  - a minimum 5% affordable housing (R17).

74 The CDP divides the Precinct 15 land into five distinctive ‘sub-precincts’, described as follows:

- **Local Road Frontages** (being land generally fronting New and Kyle Streets);
- **Blackshaws Road Frontage** (being land generally fronting Blackshaws Road, with the exception of land located within the business area and town centre);
- **Internal Residential Areas** (being land located within the site, which does not contain a frontage to any existing street/road networks);
- **Business Area** (being land located centrally along the site’s frontage to Blackshaws Road); and
- **Town Centre** (being located to the east of the Business Area, along the site’s frontage to Blackshaws Road).

75 Plan 4 of the CDP identifies the five sub - precincts listed above.

76 The following proposed land use and development outcomes are identified in Table 2 for each of the sub-precincts:

### Local Road Frontages

- Preferred land use is ‘*Residential. New Street includes a row of industrial premises that will convert to residential over time.*’
- Preferred development outcome is ‘*townhouse or terrace style built form, appropriate to the scale of existing dwellings on the opposite side of the street.*’

### Blackshaws Road Frontage

- Preferred land use is ‘*Residential. Does not include the frontage in Business Area or Town Centre.*’
- Preferred development outcome is ‘*townhouses or apartments, appropriate to the scale of existing dwellings on opposite side of the street. Buildings should front onto Blackshaws Road and provide an active frontage where possible.*’

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### Internal Residential Areas

- Preferred land use is *‘residential with provision of a centrally located larger open space that should support a diverse range of activities. A distribution of smaller local parks should provide a specific role for the surrounding community.’*
- Preferred development outcome is a *‘mix of townhouses and terrace style dwellings with occasional medium-rise apartments located away from existing neighbourhoods and focussed along connector roads, open spaces, near to the town centre and business area or where it can be demonstrated that it is providing a noise attenuation function. All apartments should include some open space on site. Encourage apartment buildings that capitalise on key views and vistas to Port Phillip Bay and the central Melbourne skyline. Public open space areas should be a focal point for the surrounding residential uses.’*

### Business Area

- Preferred land use is *‘mixed use for the existing commercial area comprising of commercial, light industrial uses and residential above. In the unestablished area, predominantly offices and other suitable uses at ground floor with the potential for residential properties to be located above ground floor. Some residential uses may be appropriate at ground floor if it can be demonstrated that it is not a prominent location and allows for the Boulevard connector to remain punctuated with active frontages at street level. Includes a location for a new community centre opposite the Broadway.’*
- Preferred development outcome is *‘the existing commercial area at Shaws Business Park will continue in its existing capacity and over time may intensify and integrate further with the new development for this area and the proposed town centre. Physical linkages between the existing and proposed centre should be encouraged to assist in the transition towards an integrated centre in the future. Buildings should be built to the property boundary adjoining the street frontage, or otherwise have activity within the front setback. Active frontages should be located on street corners, along Blackshaws Road and distributed along the Boulevard connector to ensure activity at ground level. Car parking and service infrastructure should be located to the rear of primary pedestrian access points.’*

### Town Centre

- Preferred land use is a *‘mixed use town centre made up of fine grain retail, a supermarket, offices and cafes. Residential can be located above. A civic space will provide the community with a flexible, central meeting space.’*
- Preferred development outcome is to *‘encourage the town centre to*

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*be oriented toward a 'main' street. The supermarket will include an overhead/underground car park or a car park at grade that could convert in the future to a more intense town centre development. Car parking should not be visible from key street frontages. Buildings should either be built to the property boundary adjoining the street frontage or should allow a front setback for on-street dining.*

77 As it relates to Local Road Frontages sites, Table 2 of the CDP proposes:

- A maximum building height of 9m ;
- A maximum front façade height of 2 storeys; and
- A preferred 4m front setback.

78 As it relates to the Blackshaws Road Frontage, Table 2 of the CDP proposes:

- A maximum building height of 13.6m;
- A maximum front façade height of 3 storeys; and
- A preferred 4m front setback.

79 As it relates to the Internal Residential Areas, Table 2 of the CDP proposes:

- A maximum building height of 20m;
- A maximum front façade height of 3 storeys; and
- A preferred 3m front setback

80 As it relates to the Business Area, Table 2 of the CDP proposes:

- A maximum building height of 16.8m;
- A maximum front façade height of 4 storeys; and
- No preferred front setback (except for Blackshaws Road which is 3m).

81 As it relates to the Town Centre, Table 2 of the CDP proposes:

- A maximum building height of 16.8m;
- A maximum front façade height of 4 storeys; and
- A preferred 2m front setback (except for Blackshaws Road which is 3m)

82 In the Town Centre, a preferred development outcome is that 'ground

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level facades should be articulated into sections no greater than 8m wide in order to establish fine grain built form.’

- 83 In addition to the requirements outlined within the CDP, Sections 2.0, 3.0 and 4.0 of the CDZ2 provide (amongst other things) a list of application requirements, exemption from notice requirements and decision guidelines. Further detail in relation to a number of these provisions will be discussed later in my report.
- 84 I note Map 1 to the CDZ2 designates the whole of the land at 2 Watson Street, South Kingsville as an area required by the West Gate Tunnel Project.
- 85 Furthermore, (as previously acknowledged) the CDP is proposed to be included as an incorporated document within the Schedule to Clause 81.01 of the Planning Scheme.
- 86 Finally, I note that the Amendment does not propose any changes to the LPPF which is a little surprising given the scope of the project, the proposal to (at very least) create a new NAC in Precinct 15 and that part of the land will remain as a nominated ‘secondary industrial area.’<sup>6</sup> I accept that this is not fatal to the Amendment and that the changes in time could be made as part of follow on Amendment.

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### 4.3 Submission by the LC

- 87 NRF, on behalf of the LC made a submission to the Amendment in correspondence dated 1 September 2017.

- 88 The submission identified the following areas of concern:

#### CDZ2

- Wording in the Zone schedule should provide flexibility in relation to compliance with the CDP. The CDP is to be an incorporated document and amendment of the planning scheme over time is not desirable. There should be reference to “generally in accordance with” the requirements of the CDP rather than “all requirements of the CDP must be met”.
- The allocation of uses and the associated conditions (where applicable) in the Table of Uses (Section 1 and 2 uses) should be considered. This is particularly the case in relation to “Accommodation” and “Supermarket”. The rationale for requiring a permit for a retail use in the town centre is unclear.
- Clarification is required regarding the limit on dwelling numbers and the mechanisms to ensure the equitable distribution of dwellings across the precinct.
- Permit application requirements are onerous and their broad application across the precinct will more often than not be unwarranted. The various requirements of a sustainability

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<sup>6</sup> See Clause 21.08 of the Planning Scheme



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management plan require some further consideration and clarification. Further distinction should be made to reflect different classes of permit applications to which the details of requirements should apply.

- Exemption from notice, decision requirements and review rights need greater clarity, as do the application of decision guidelines in addition to those found at clause 37.02.
- Provision should be made in Map1 for the proposed area required for the Westgate Tunnel Project (WTP) to be designated as mixed density residential in the event the WTP does not proceed.

### CDP

- The wording should be revised to ensure consistency with the CDZ and having regard to its incorporation in the planning scheme, to ensure there is provision for appropriate flexibility in relation to compliance with CDP requirements. The wording of “Requirements” and “Guidelines” should be reviewed to ensure consistency and appropriate designation. Further, consistency is needed between all images and text and some terminology requires further clarification or explanation.
- The distribution of uses and built form outcomes across the precinct requires further consideration, particularly in terms of the intended Local Town centre and disputed Business Area.
- Clarification is required regarding character, heritage, housing, built form and landscaping requirements as expressed in the CDP.
- Discretion for the use of options / alternatives in delivering “Requirements” should be included in the wording for each as expressed in the CDP, having particular regard to the fact that the CDP is not an exhaustive planning control and does not address every aspect of the precinct’s land use and development.
- The detail of provisions relating to integrated transport, walking, cycling and car parking requires further consideration and clarification.
- Clarity is required regarding the timing and implementation of service infrastructure provision.
- The status of the Background Report and Vision Documents are unclear.
- Mechanisms for the delivery of affordable housing require review.
- The detail of provisions relating to integrated water management and sustainability and utilities servicing require further consideration and clarification. The requirement to underground

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existing electrical assets is not a matter necessarily within the control of the landowners and should be reworded.

- Provision should be made for the proposed area required for the WTP project to be designated as mixed density residential in the event the WTP project does not proceed.
- Intended road and pathway dimensions should be standardised, and simplified.
- The precinct has long earmarked generous open space contributions, with an overall 9.2% contribution (excluding the WTP land). Requirements for equitable contribution across multiple landowners requires some further consideration. It is noted that the nature of open space use for the central park remains unresolved.

### DCP

- The DCP still requires some review for consistency in relation to the application of map legends, use of acronyms and detailed drafting.
- The DCP land valuations and the mechanism for allocating costs requires further consideration.

### Local Town Centre and Business Area

- A 5,500 square metre Town Centre has ample scope to entertain retail and business interests. The 33,000 square metre Business Area was introduced relatively recently, lacks strategic justification, and is unrealistic in this location.
- Greater and enhanced residential opportunities should be available for both the Town Centre and Business Area (as currently identified) and Figure 10 requires review.
- Alleged market demand for commercial development lacks justification and depth of analysis. There are limited attributes to warrant employment and office uses having regard to nearby services including public transport.
- Precinct 15 should not undermine existing nearby commercial activity and there are more suitably placed activity centres (including 3 Major Activity Centres) within Hobsons Bay to provide higher-density office accommodation in significantly better proximity to fixed rail and other public transport.
- The location and size of the proposed community facility requires further consideration.

# 5 Assessment of Proposed Planning Scheme Amendment C88

## 5.1 Overview

- 90 My assessment of the matters before the Panel takes the form of the following:
- the strategic basis for the Amendment (which I believe is fundamentally uncontroversial);
  - the mechanics of the Amendment including the tools selected; and
  - the issues raised by the Panel in its Directions<sup>7</sup> and my response to these, as appropriate.
- 91 I have also had regard for the matters raised by NRF, on behalf of the LC, and commented as appropriate on these.

## 5.2 Strategic Overview

- 92 The Precinct land offers a significant potential to make a major contribution to the achievement of metropolitan planning strategy including urban consolidation policy. In the words of the Council adopted HBILMS, the redevelopment of the Precinct *'will represent one of the more significant regeneration projects in Melbourne.'*<sup>8</sup>
- 93 A recommendation of HBILMS was that the Council in conjunction with the State Government and land owners facilitate the redevelopment process.<sup>9</sup> That collaboration has occurred and the product of that process is the Amendment. It was thought at the time that the pursuit of options which would secure the retention of Don Smallgoods on its (then) current site was a potentially desirable outcome. The fact that Don Smallgoods itself has vacated the land is of itself a major positive in terms of the planning and future regeneration of the Precinct.
- 94 The strategic importance of the renewal opportunity presented by Precinct 15 is recognised by its designation as an 'Identified Strategic Redevelopment Area' commencing in 2008 via the HBILMS and reflected by its subsequent and ongoing designation of similar description in the Planning Scheme. The inclusion of the HBILMS into the Planning Scheme and its implementation via various provisions of the LPPF (by Amendments C33 and C63) has laid the foundation for the Amendment.
- 95 The Planning Scheme currently observes the following strategic themes/strategies, amongst others, of relevance to the Amendment:
- A desire to accommodate urban growth in strategic redevelopment areas to facilitate urban consolidation;<sup>10</sup>



<sup>7</sup> Panels Directions as circulated on 3 November, 2017 by PPV.

<sup>8</sup> See page 16 of the HBILMS (2008).

<sup>9</sup> See page 16 of the HBILMS (2008).

<sup>10</sup> See Clause 21.02-3 of the Planning Scheme

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- A recognition that strategic redevelopment areas will define their own character which balances character and the costs associated with remediation of former industrial sites;<sup>11</sup>
  - A desire to manage the successful transition of strategic redevelopment areas through the development of an overall plan such as an outline development plan, master plan, overlays or similar;<sup>12</sup>
  - A desire to manage change in strategic redevelopment areas carefully to facilitate their transition whilst introducing new land uses;<sup>13</sup>
  - Use of the DPO or DDO or other appropriate planning controls for strategic redevelopment areas to facilitate the implementation of the HBILMS;<sup>14</sup>
  - The management of potential interface conflicts when planning the redevelopment of redundant industrial sites in strategic redevelopment areas.<sup>15</sup>

96 Plan Melbourne serves to remind us of the longstanding commitment of planning policy to urban consolidation particularly in circumstances involving the renewal and regeneration of strategic sites in the established suburbs of Melbourne with good access to services and facilities.

97 Plan Melbourne acknowledges the significance of urban renewal precincts throughout metropolitan Melbourne in terms of their potential to accommodate urban growth. Many of these precincts include former industrial and other sites that are under-utilised, are redundant or simply displaced in terms of their attractiveness to accommodate industrial development.

98 Urban renewal sites and precincts are regarded as strategic development opportunities capable of being planned and developed in order to ease the pressure on established and sensitive areas of Melbourne. As such, Plan Melbourne acknowledges urban renewal opportunities will come from brownfield sites, former industrial areas or underutilised or surplus government land.<sup>16</sup>

99 Plan Melbourne observes that urban renewal sites and precincts offer the opportunity to improve local amenity, accommodate more housing and offer the potential to achieve a greater mix of uses to support local

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<sup>11</sup> See Clause 21.02-3 of the Planning Scheme

<sup>12</sup> See Clause 21.02-3 of the Planning Scheme

<sup>13</sup> See Clause 21.03 and 21.08 of the Planning Scheme

<sup>14</sup> See Clause 21.03 and 21.08 of the Planning Scheme

<sup>15</sup> See Clause 21.08 of the Planning Scheme

<sup>16</sup> See page 38 of Plan Melbourne.

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communities. They are important sites that can be repurposed for mixed use to create jobs and also accommodate growth.<sup>17</sup>

- 100 Plan Melbourne also acknowledges the importance of maximising development opportunities in urban renewal precincts including finding ways to give the market some flexibility. An example of this is the granting of additional development rights in exchange for the provision of additional amenity in urban renewal and structure plan areas.<sup>18</sup>
- 101 Direction 2.2 is particularly apt in highlighting the strategic importance of urban renewal areas in terms of accommodating housing growth including medium and higher density development. Sequencing of infrastructure is also identified as an important issue as is the complexity associated with site contamination in former industrial locations.<sup>19</sup>
- 102 I am therefore confident having regard to the strategic settings of the Planning Scheme and metropolitan strategy, that the strategic basis for the Amendment is sound. It is aligned with metropolitan strategy, will implement State and local planning policy and has been informed by a process that has involved key stakeholders and agencies along its journey.
- 103 Having regard to the Ministerial Directions relevant to the assessment of the Amendment including Ministerial Direction No. 11 that requires a demonstration of its strategic justification, I am satisfied that in overall terms, the Amendment is warranted and justified. That is, the Amendment seeks to facilitate regeneration of a designated Strategic Redevelopment Area for urban renewal and growth comprising housing and mixed-use together with associated community infrastructure.

That is not to say that the Amendment in its present form is perfect or that the provisions it proposes could not be improved. I note that the Panel has already sought clarification on aspects of the statutory mechanisms proposed including the rationale for the choice of the CDZ and a response to some of the proposed provisions. I will comment on some of these issues later.

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<sup>17</sup> See page 39 of Plan Melbourne.

<sup>18</sup> See page 50 of Plan Melbourne.

<sup>19</sup> See page 50 of Plan Melbourne.

**5 Assessment of Proposed Planning Scheme Amendment C88****5.3  
Amendment Tools**

- 104 The Amendment proposes the use of the CDZ, a special purpose style of zoning used for specific purposes. It is said to be similar to the Special Use Zone but designed *‘to allow more complex developments in accordance with a comprehensive development plan incorporated in the planning scheme. Generally, only large or complex developments would warrant the use of this zone.’*<sup>20</sup> I am aware that the choice of the CDZ is a matter that the Panel has requested the Council and parties to address.<sup>21</sup>
- 105 I am also aware that the original amendment request for Precinct 15<sup>22</sup> proposed the use of the Residential Growth Zone for the majority of the land in combination with the Mixed Use Zone over that part intended as a neighbourhood activity centre (NAC). This was to be accompanied by a DPO and an associated development plan. An EAO and a DCPO and accompanying development contributions plan was to also apply.
- 106 Subsequent to June, 2016 when the Victorian Planning Authority (VPA) joined with Council to facilitate the Amendment, a revised planning scheme amendment package to that originally lodged was prepared. This was refined and a final version of the amendment package was considered by the Council at its meeting of 14 February, 2017. It is this version that now includes the use of the CDZ, DCPO and EAO that forms part of the Amendment and on which the LC and other parties to the Amendment have collaborated.
- 107 It must be said that the choice of the CDZ, whilst an option, is not the only option in this case and a selection of zones with an accompanying DPO and DCPO could easily have sufficed. The Development Plan could have done the work of the CDP (or Outline Development Plan or similar) and would have maintained the flexibility required over the duration of such a significant project to accommodate potentially changing or evolving market and preferential circumstances.
- 108 That is the challenge for the CDZ and accompanying CDP to ensure that these tools maintain the flexibility required over the lifetime of the project. As an incorporated document, the CDP is a document that can only be changed with a further amendment to the Planning Scheme. The precise form of the proposed development and ultimate mix of uses to be accommodated in the Precinct is uncertain as is the timeframe over which the Plan will be ultimately implemented. On this basis, the CDP must remain fluid and be able to be interpreted and applied with flexibility and not be burdened with prescription.
- 109 Subject to the above, I support the choice of the CDZ as it is intended to apply to *‘a large and complex development’* where the purposes, land use and development requirements are able to be specified in the schedule to the zone supported by the CDP. I am aware of criticism of aspects of the Schedule to the CDZ and the CDP including the level of

<sup>20</sup> See page 16 of the document titled ‘Using the VPP’s System’.

<sup>21</sup> See page 3 of the Panels Directions circulated on 3 November, 2017 by PPV.

<sup>22</sup> As lodged by Tract Consultants on 27 March, 2015.

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prescription, lack of flexibility, complexity of the provisions and justification for some of the requirements and tend to agree, that many of these need to be revisited in terms of their drafting in order to ensure the veracity and ongoing relevance of the tools. This is not a difficult exercise or one that would cause the CDZ to be abandoned in favour of another zoning tool or suite of tools. It simply remains a matter of competent legal drafting.

- 110 The complexity and overall volume of the CDP is also a matter that needs to be considered and any superfluous and wordy content stripped out to ensure its legibility, consistency and effectiveness as a planning tool.
- 111 Similarly, the choice of the DCPO is supported as a preferred tool to aid the delivery of infrastructure required as part of the proposed transition of the Precinct from a redundant industrial area into a fully developed mixed use urban area comprising a diversity of housing, a town centre and mix of uses including community facilities. As to the basis for the various contributions and their fairness and relevance, I will leave to others expert in that particular area to address, if necessary.
- 112 The use of the EAO and its relevance in the context of the Amendment land is also supported as is the deletion of the HO, for obvious reasons.
- 113 In summary, it remains for the Council and VPA to explain the rationale for the choice of zone and content of the CDP in this case. Although not the only option available, I accept that such tools are acceptable subject to a careful and considered assessment of the content of the provisions to ensure their relevance, legitimacy and ease of application and capacity to deliver the outcomes sought for the Precinct over the term of the project. It need not however be as cumbersome as the provisions are presently drafted nor turned into a first principles growth area planning exercise such as that in greenfield locations.

### 5.4 Consideration of the Schedule to the CDZ and CDP

- 114 As I have indicated above, the present drafting of the Amendment raises a number of issues which I believe need to be addressed in order for the Schedule to the CDZ in particular, to be considered both workable and acceptable.
- 115 Whilst not exhaustive, in relation to the Table of Uses at Clause 1.0 of the Schedule these include the following:
- The Map that identifies the Land should at very least be legible in terms of the information it conveys.
  - Terminology used throughout the Schedule to describe the various areas (e.g. residential, business and town centre) should be consistent across the various provisions (including the CDP) and reflect accepted planning scheme nomenclature;
  - The basis for nominating 7.2m above natural ground level in the Table for accommodation is mis-conceived;

## 5 Assessment of Proposed Planning Scheme Amendment C88

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- Reference to a limit of 3,000 dwellings in Section 1 of the Table is inappropriate;
  - Repeated reference to certain Section 1 uses in the Table as having to be located within an 'existing building' is not readily understood nor apparently justifiable;
  - The basis for the gross floor area limits opposite restricted recreation facility, service industry and veterinary centre in Section 1 of the Table is not clear;
  - Hospital and Hotel should be omitted from Section 2 to be consistent with the relevant Ministerial Direction as they would fall in any case into the '*Any other use not in Section 1 or 3*' category;
  - The basis for nominating 'Supermarket' as a Section 2 permit-required use in the town centre is questionable;
  - The prohibition of adult sex bookshop and gaming premises (Section 3) anywhere on the land appears to be a moralistic judgement rather than a town planning imperative.

116 In relation to the various Clauses of the Schedule to the CDZ which propose detailed requirements, I make the following general observations;

- Where the provisions repeatedly refer to "*all requirements in the CDP must be met*" what does this actually cover in terms of 'requirements'? The use of the word 'must' infers that there is no discretion to consider any variation to any requirement which does not appear to be appropriate;
- Avoid where possible, duplication of provisions across the various sub-clauses;
- Avoid superfluous provisions or out-dated references.

117 In relation to the proposed CDP, I make the following observations about the document and where I believe its contents should be reviewed:

- All superfluous material including detail of an informative or background nature should be stripped out including much of the Introduction (including its sub-clauses),
- Reproduction of the DCP material is unnecessary and should be omitted from the CDP;
- Objectives at Section 2.2 need to be critically assessed for their value and relevance;



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- Terminology throughout Section 3 that expresses a mandatory requirement by the use of the word 'must' needs to be reviewed;
  - The value and relevance of the 'Guidelines' (G1-G13) against each of the 'Requirements' (R1 – R10) needs to be reconsidered as they add little;
  - The 'Requirements' themselves need to be reconsidered in terms of their individual contribution and relevance;
  - Table 2 represents the 'Preferred Land Use and Built Form Outcomes' for each of the nominated sub-precincts. It is to be inferred that despite being represented as 'preferred' through a combination of Table 2 and Plan 4 (e.g. Requirement R7) and the provisions of the Schedule to the CDZ, in fact the built form outcomes (inclusive of height and setback) are mandatory. I regard this as confusing, unwarranted and unacceptable and therefore in need of review;
  - The requirement (R10) that interfaces 'must' be constructed in accordance with Plan 5 (and Figures 1 to 9) with no regard for any prospect of variation is unreasonably restrictive.
  - The prescriptive nature of the Housing requirements at Clause 3.2 needs to be reconsidered including some of the more arbitrary requirements including areas nominated for apartment development (R12) and the 5% affordable housing requirement (R17). Guideline G14 should be omitted as it is superfluous.
  - The issue concerning the delivery of 'affordable housing' on an indiscriminate individual case by case basis is a vexed one. The negotiation of contributions generally such as that proposed in this case is being undertaken by individual Councils across Melbourne typically at the planning scheme amendment stage of the process. The mechanism varies between Councils as does the nature and extent of the contributions. Such a system seems both haphazard and lacking in transparency and commitment at a State level.
  - In this case, leaving aside the basis for such a contribution in the first place (which I understand the LC is not contesting) the mechanism for the delivery of affordable housing needs to be determined. In this context, a review of Requirement R17 of the CDP is appropriate.
  - The 'requirements' at Clause 3.3.1 need to be carefully reviewed in terms of their relevance and value and the mandatory nature of many is not acceptable;
  - The guidelines at G15 and G16 should be omitted;

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- Table 3 and Table 5 should be omitted from the CDP as should the Town Centre Concept Plan at Figure 10 as they serve no valid purpose;
- Where the Design Guidelines at Table 4 serve to inform the requirements at Section 3.3.1 (and therefore are to be applied as if they are mandatory and without flexibility) then this level of prescription is not acceptable and requires amendment;
- In terms of the provisions of the CDP that address community facilities, open space and infrastructure these need to correspond with the proposed DCP. Whilst I have no particular view to express on these matters as others more expert in these areas may address any issues of concern, I remain of the opinion that, as a matter of principle, in these provisions there also needs to be flexibility rather than prescription built in to the implementation mechanisms.

118 In relation to the matter of the WTP, it seems on one view appropriate that in anticipation of the scenario that the area designated for the WTP is not required, an alternative use of that land is provided for within the CDP thereby avoiding further need for a planning scheme amendment to amend the CDP. The alternative might be to do as the Council suggest for the time being,<sup>23</sup> which is to simply remove the land from this Amendment until the future of this land is more certain.

### 5.5 Consideration of Panel's Issues

119 The following addresses the matters set out in the Panel's Directions in order of reference:

- a) I have already commented on the selection of the CDZ and CDP as the preferred tools proposed by the Amendment. I have already indicated my view that these tools are only one option of a number available to facilitate the Amendment and that the vision for the Precinct could just as easily have been implemented with a combination of zones and overlays (generally as originally intended). However in the circumstances, the use of the CDZ and the CDP in this case is appropriate.
- b) I am unable to discern the rationale for the heights proposed or why (in circumstances where a site as large and relatively unconstrained as the Precinct 15 land and which is capable of shaping or defining its own character) a maximum height over any part of the site should be limited to 6 storeys. What emerges from this at very least is that, whatever the height specified, it should be expressed in discretionary terms rather than as an absolute maximum height unable to be varied by Permit (i.e. because all requirements of the CDP must be met).
- c) The structure of the proposed Schedule to the CDZ needs to be carefully considered in order to ensure that the drafting of the provisions does not give rise to unintended consequences. Implicit in this is the need for flexibility and the ability for the outcomes

<sup>23</sup> This is in response to a submission from the WDA.

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sought for the Precinct to be adaptable.

For example, a clear understanding of what is a ‘requirement’ in the Schedule is necessary as the effect of the parent control in the CDZ for use, subdivision and buildings and works specifies that “*any requirement in the schedule must be met.*” The same comment would apply in respect of the Schedule which presently specifies that “...*all requirements of the CDP must be met.*” Again, this is a matter for legal drafting.

The comprehensive and somewhat overly complex mesh of objectives, requirements and guidelines in the CDP (as observed by the Panel) needs to be sifted through to ensure that only those that have a substantive purpose ought to be retained. A streamlining of provisions is an absolute necessity in this case.

- d) The rationale for 33,000m<sup>2</sup> of ‘commercial’ floorspace is not apparent from the material forming part of the Amendment.<sup>24</sup> It appears to be an arbitrary, highly aspirational and overly optimistic target. As a matter of general planning principle, the Precinct is not benefited by the sort of locational and strategic advantages (e.g. public transport, accessibility etc...)<sup>25</sup> that would support such a provision. Nor is the Precinct to support a higher order activity centre. The Council Officers Report of the 10 October, 2017, which attempts to address the issue of commercial and retail floor area offers no rationale for the 33,000m<sup>2</sup>.<sup>26</sup> Neither the Hobsons Bay Economic Development Strategy or Hobsons Bay Activity Centre Technical Report lend support (or explanation) to such a floor space provision.

In any event, the basis for having any floorspace figure specified in the CDP has not been justified let alone one that refers to a general category of use (“i.e. commercial or retail”) that is not recognised in land use terms by the Planning Scheme.

- e) The rationale for the 5,500m<sup>2</sup> ‘retail’ floor area (or the limit of 2,240m<sup>2</sup> on the supermarket) is also lacking in justification particularly in terms of its adequacy or otherwise to meet the modern day needs of the community. Ultimately, the designation of the activity centre as a NAC and its place in the retail hierarchy relative to other potentially competing centres is the key consideration in policy terms.

If there is need to have a floor space limit on retail use (leaving aside the issue of quantum), in my opinion the limit should appear in the

<sup>24</sup> The proposed Amendment (as reported to the Council) on 14 February, 2017 referenced 7,000m<sup>2</sup> of the commercial floor space (see page 20).

<sup>25</sup> See page 5 of the Vision Document identifies a limited public transport service and a limited capacity to support redevelopment in the road based transport network.

<sup>26</sup> See page 63 of the Report to the Ordinary Meeting of Council dated 10 October 2017.

## 5 Assessment of Proposed Planning Scheme Amendment C88

Schedule, it should relate to the use 'shop' in the local town centre, and 'shop' should be a Section 1 use. Any capacity to exceed the floor space limit should be subject to permit as should the capacity to develop 'shop' outside the local town centre (e.g. in the business area).

The rationale for the quantum and configuration of retail floor space is ultimately a matter for the economic experts but the essence of any control, should be to ensure that the activity centre is of a NAC designation and therefore one that serves the surrounding community (existing and proposed).

- f) I am not privy to any information concerning discussions with Government about a prospective primary school on the Precinct 15 land and therefore am unable to comment on this issue.
- g) Matters relating to the existing and proposed road network and the rationale for this are not relevant to my consideration and will be addressed by others.
- h) The overall structure of the CDP is one which requires careful review stemming from the fact that it is presently drafted as a highly prescriptive planning instrument that is complex, wordy and contains superfluous information. It also suffers from the use of ambiguous or conflicting terminology and detail that is highly questionable in terms of its value. The overall structure of the CDP is in need of an overhaul with the primary objective being to ensure that it is clear in its purpose and capacity to deliver the outcomes sought. In this regard and accepting the nature of the CDZ and a competently drafted Schedule, it may be that in this case that the key organising elements that establish the framework for the future development of the land need only be included in the CDP (without much of the superfluous detail).
- i) An exercise that typically befalls the Panel in these cases is the task of procuring a competently drafted set of planning controls and policies within the framework set by the various Ministerial Directions. I expect that the matters raised by the Panel in its Directions and those raised by the parties including questions about overall structure, terminology, formatting etc of the proposed provisions will be the subject of a 'discussion' on the final day of hearing.

120 There is no question that the issues already raised by the Panel in relation to the general form of the Amendment and those that will inevitably be addressed by the various Parties throughout the course of the Hearing should lead to a greatly improved and more workable set of planning controls.

## 6 Conclusion

121 Having regard to the foregoing discussion, it is my view that:

- the strategic basis for the Amendment is generally sound in that at a broad level, it is aligned with metropolitan strategy, will implement State and local planning policy and has been informed by a process that has involved key stakeholders and agencies along its path;
- the mechanics of the Amendment including the tools selected, whilst not perfect and able to be improved in terms of their overall drafting, are acceptable;
- the challenge in drafting the Schedule to the CDZ and accompanying CDP in this case is to ensure that these tools maintain the flexibility required over the lifetime of the project so as to avoid unintended consequences and that they be capable of delivering the outcomes sought for the Precinct;
- the present drafting of the Amendment raises a number of issues which I believe need to be addressed in order for the Schedule to the CDZ, to be considered both workable and acceptable;
- the overall structure of the CDP is one which requires careful review stemming from the fact that it is presently drafted as a highly prescriptive planning instrument that is complex, wordy and contains superfluous information. It also suffers from the use of ambiguous or conflicting terminology and detail that is highly questionable in terms of its value;
- the matters raised by the Panel in its Directions and those raised by the parties will be the subject of a 'discussion' on the final day of hearing and should lead to a greatly improved and more workable set of planning provisions.

122 Accepting that the Amendment is fundamentally uncontroversial in terms of its strategic basis, the issues of most interest and conjecture centre upon the substance of the controls rather than their form. I am therefore supportive of the Amendment subject to the qualifications outlined above.



ANDREW BIACSI  
DIRECTOR

CONTOUR CONSULTANTS AUST PTY LTD

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# Attachment 1

## Expert Witness Declaration

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**Attachment 1 - Expert Witness Declaration**

<b>Name and Address</b>	Andrew Biacsi is a Director of Contour Consultants Australia Pty Ltd, Town Planners and practices from Level 1, 283 Drummond Street, Carlton Victoria, 3053
<b>Professional Qualifications</b>	<ul style="list-style-type: none"> <li>• Bachelor of Applied Science (Planning)</li> <li>• Graduate Diploma in Urban and Regional Planning</li> <li>• Director –Contour Consultants Australia Pty Ltd</li> <li>• Member of Planning Institute of Australia (PIA)</li> </ul>
<b>Professional Experience</b>	First employed as a town planner in 1980. I have been employed in both public and private practice for a period of more than 35 years in Victoria, the A.C.T. and New South Wales. I have been in private practice since 1989 and at Contour Consultants since 1991.
<b>Areas of Expertise</b>	<ul style="list-style-type: none"> <li>• Statutory and strategic planning and urban design.</li> <li>• Advice and assessment of land use and development proposals to planning authorities, government agencies, corporations and developers (including major residential, retail, commercial, industrial, institutional and mixed use projects).</li> <li>• Preparation and presentation of evidence before VCAT, Supreme Court of Victoria, the Magistrates Court, Liquor Licensing Commission, Building Referees Board and various government appointed independent panels and advisory committees.</li> </ul>
<b>Expertise to Prepare this Report</b>	My training and experience including involvement with many forms of housing and mixed use developments over a period of approximately 35 years qualifies me to comment on the town planning and strategic policy implications of the proposal.
<b>Instructions which Define the Scope of this Report</b>	I received instructions from by Norton Rose Fulbright (NRF), on behalf of the Precinct 15 Landowners Consortium (LC), to consider the town planning implications of proposed Hobsons Bay Planning Scheme Amendment C88 (the Amendment).
<b>Facts, Matters and Assumptions Relied Upon</b>	<ul style="list-style-type: none"> <li>• Inspected the Precinct and land within the Consortium's ownership.</li> <li>• Reviewed the provisions of the Hobsons Bay Planning Scheme (the Planning Scheme);</li> </ul>

**Attachment 1 - Expert Witness Declaration**

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- Reviewed the exhibited version of the Amendment and relevant background reports and material including which those informed the Amendment;
  - Reviewed the Council Officer Reports associated with the Amendment as contained in the Agenda to Council meetings held on 15, December, 2015, 14 February 2017 and 10 October 2017;
  - Reviewed the submissions made to Amendment C88 by NRF Lawyers on behalf of the Consortium;
  - Considered the submissions in response to the public exhibition period;
  - Reviewed relevant Ministerial Planning Practice Notes and Ministerial Directions;
  - Considered relevant reference documents and panel reports; and
  - Reviewed various strategic studies or/or reports relevant to the Amendment.

**Documents Taken into Account**

Refer to documents described above and in report.

**Identity of Persons Undertaking the Work**

Report prepared by Andrew Biacsi with assistance of Martin Vahala, Town Planner of Contour.

**Relationship with Proponent**

I have no private or business relationship with the proponent, other than being engaged to prepare this report although my office is providing advice to LC on its landholding and development opportunities.

**Summary of Opinions**

Refer to my report.

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



**Andrew Biacsi**  
Director  
Contour Consultants Australia Pty Ltd



