

4 February 2019

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Dear Team Leader

### **Proposed Planning Scheme Amendment C309: West Melbourne Structure Plan**

The Victorian division of the Urban Development Institute of Australia (UDIA Victoria) welcomes the opportunity to lodge a submission in response to the proposed Planning Scheme Amendment C309 – West Melbourne Structure Plan (“the Amendment”).

In principle, UDIA Victoria considers West Melbourne as a critical piece in the urban renewal pipeline for Melbourne, and supports the vision for West Melbourne as set out in the exhibited Structure Plan. However, having reviewed the proposed amendment and supporting documentation, UDIA Victoria holds significant concerns with the approach taken within the draft controls. Critically, **UDIA Victoria considers the SGS feasibility testing of the controls fundamentally flawed in its approach, and as such, rejects the use of its findings as a reliable indicator for the commercial viability of the proposed controls.**

UDIA Victoria notes the high level of uncertainty created by the current built form controls across West Melbourne, as evidenced by the high number of applications reviewed by VCAT, is an inefficient planning outcome. However, the number of overlapping, commercially significant mandatory controls proposed in this amendment goes too far the other way. The West Melbourne Built Form Strategy states, “A flexible framework is required to ensure that built form outcomes are responsive to site characteristics and plot sizes ... and are not overly prescriptive”, and that the new controls “should give greater certainty to the community but still support flexibility on a site by site basis. UDIA Victoria submits that the controls as currently proposed do not meet this objective – with the very real likely impact of stifling the urban renewal of the precinct.

### **Requested changes to Planning Scheme Amendment C309:**

1. Reconsider the **application of the Special Use Zone** (Schedule 6 to Clause 37.01, which does not comply with the guidance in Planning Practice Note 03, in favour of the Activity Centre Zone or Central City Zone;
2. **Delete the mandatory floor area ratios** contained within the proposed Design and Development Overlays, in favour of discretionary controls, or retain and include uplift provisions that would assist to improve the ability of applicants to meet the target objectives for non-residential uses and affordable housing;
3. Delete the **mandatory minimum floor areas for non-residential uses** contained within the proposed Schedule 6 to Clause 37.01, which are particularly broad brushed, and disregard the commercial realities of preferred tenancy locations for various commercial uses, in favour of clear local policy guidance for employment uses;
4. **Delete the affordable housing** targets from the zone, in favour of the introduction of local policy providing clear targets, and flexibility as to how the delivery targets may be met as part of any voluntary affordable housing agreement; and

5. **Amend the Design standards for car parking contained within proposed Schedule 14 to Clause 45.09, to be discretionary rather than mandatory.**

UDIA Victoria also requests that the background to the SGS feasibility testing is provided for review, and the opportunity to provide further comment on the specific targets, minimum non-residential floor area requirements, and floor area ratios once a transparent review of the feasibility testing assumptions and methodology can be undertaken.

## Summary of Issues

The above points are all discussed in detail below.

### 1. Feasibility Testing, Stage 2 Report, SGS Economics and Planning

The Feasibility Testing contained within the *West Melbourne Structure Plan – Stage 2 Report* (SGS Economics and Planning, June 2017) does not contain sufficient information to be used as a reliable indicator of the combined impact of the Amendment on development feasibility. Land use and revenue assumptions set out in the report are flawed, and critical assumptions underpinning the residual land value calculations, and the calculation methodology itself, is absent from the report – preventing any a complete critical assessment of the testing.

The feasibility testing is based on an assessment of *average* 2017 land values – both for rates valuation data and local sales evidence, and revenue assumptions, pre-amendment. That is, any increase in expectations based on uplift as a result of the Amendment is ignored, and the difference in expected rates per square metre for small vs large sites is also ignored.

Typically, a commercial assessment of development feasibility required for a project is the discounted cash flow analysis. The feasibility testing applies the residual land value (RVL) approach, adopting a measure of 125% of site value as a threshold for what is considered likely to be feasible. However, the calculation methodology, and crucially, critical assumptions regarding development and financing costs, profit margins, and sensitivity over time are not stipulated in the report, and as such cannot be scrutinized. Given that this report is being applied by the City of Melbourne to support the viability of the combined proposed mandatory controls in the amendment, it is crucial that industry has an opportunity to transparently review the feasibility testing. **UDIA Victoria therefore requests to be provided with further information regarding the assessment, and the opportunity to provide further comment with respect to the testing methodology itself – which may lead to commentary regarding the specific targets contained within the Amendment.**

### 2. Application of the Special Use Zone

The proposed use of the SUZ is inappropriate and does not address the requirements of Planning Practice Note 03 – specifically, *Application of the Special Use Zone is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays.*

If Council is seeking to apply an ‘all encompassing’ zone, then appropriate alternatives include:

- Activity Centre Zone (on the basis of West Melbourne being a large Neighbourhood Activity Centre (see PPN56),
- or the Capital City Zone (via a new Schedule).

### 3. Mandatory floor area ratios

There are many sites that have evident potential to accommodate greater density beyond what is allowed by the mandatory provision, without adversely impacting public realm quality or local character.

In the absence of a floor area uplift provision (where a clear basis is required from which to measure uplift), mandatory FARs are overly prescriptive – particularly in the Flagstaff precinct where there is a low likelihood of achieving the preferred maximum building height with the mandatory height limit.

As currently drafted, there is no flexibility for even marginal increases to the FAR of a proposal which may in turn increase the commercial viability of a development to enable the provision of affordable housing targets or non-residential uses. This outcome is contrary to the urban design objective of supporting flexibility on a site by site basis.

Whilst use of Floor Area Ratios provides some level of flexibility in site specific design responses, the mandatory nature of the controls prohibits minor adjustments to the FAR for proposals which may otherwise meet built form tests. Taking the SGS Feasibility Testing at face value (which we question), even the sensitivity testing contained within the report identified a marginal feasibility in the South (Flagstaff) and Central (Spencer) precincts for mixed use development without a retail component when the 6% affordable housing and development contributions had been accounted for (Table 25) – even without accounting for lower land values being seen today than the 2017 values reflected in the SGS report. This outcome is particularly concerning for those sites not located on a main road and subsequently less suited to retail uses and in our view requires revision.

The use of a mandatory floor area ratio to control density also has the potential to inhibit minor changes to existing buildings where works are required. For example, if an existing building already exceeds a 4:1 floor area ratio and minor external are proposed which would increase the floor area ratio but have a negligible impact on the building envelope, this would be prohibited. This can also restrict environmentally sustainable outcomes such as retrofitting and repurposing older building stock where the floor area ratio already exceeds 4:1.

Noting the City of Melbourne’s overarching objective of providing development certainty, UDIA Victoria submits that there is sufficient urban design guidance within the DDOs to ensure development applications positive development outcomes. As such, **the amendment should be revised to provide either discretion in assessment of FAR, or uplift provisions to ensure that the other use and design objectives of the amendment may be realized.**

### 4. Use for Accommodation - Mandatory minimum non-residential floor area requirements

UDIA Victoria recognises the imperative of encouraging a strong balance of residential and employment-generating uses in West Melbourne and providing clear guidance to applicants of this objective.

However, the mandatory controls set out in the proposed Schedule 6 to Clause 37.01 are a blunt, and an overly simplistic approach to achieving land use diversity in the precincts. There are many sites in the precinct that are located with poor exposure and amenity, where it will be simply unviable to achieve the required quantum of non residential use across the ground plane of the site. We also note the approach of using FAR as a means to control land use was specifically rejected by the Fishermans Bend Panel, and therefore question the suitability of its application in this Amendment.

As drafted this provision makes any Accommodation use prohibited unless it is in conjunction with a use other than accommodation provided at a specified rate.

These provisions serve to significantly limit the type of redevelopment that is possible under the proposed planning controls without consideration for the cumulative impact of these provisions with the FAR on the viability of the sites within the nominated Precincts. In our view, the combined impact of these provisions are likely to render forms of ‘Accommodation’ such as aged care, community care, group accommodation and residential buildings as not commercially viable. This creates a perverse effect of limiting housing choice and accommodation options.

#### UDIA Victoria requests:

- the opportunity to review and provide further comment on the specific target percentage requirements after being provided with the development and finance cost assumptions and calculation methodology sitting behind the feasibility testing within SGS Stage 2 report , and
- the introduction of discretion with respect to assessment of non-residential floor area requirements, and
- revisions to the draft provision to exempt non-dwelling accommodation uses.

### 5. Car parking provisions

We are concerned with the mandatory requirement for car parking to be retained as common property upon subdivision, and the specific nature of specific design standards for facilities of 50 or more spaces.

It is understood that this requirement is to allow for off-street car parking to be publicly accessible, thereby taking advantage of underutilised private car parking spaces, and to allow for future conversion of car parking spaces to alternative uses.

There is currently no discretion in the wording of the requirement for the responsible authority to agree that a car park can be held in private ownership should the situation be appropriate. **The introduction of discretion to the Design standards for car parking is requested** – particularly noting the effect of the overlapping controls required to be balanced in any one application whilst also achieving commercial viability of a project.

### 6. Affordable Housing Provisions

UDIA Victoria acknowledges the chronic underprovision of social and affordable housing in Victoria. As a member of the Affordable Housing Industry Advisory Group (AHIAG), UDIA Victoria supports affordable housing policy that is commercially viable, scalable, and transparently applied. Whilst there is a role in the planning system to provide for some element of affordable housing, at present, the Planning and Environment Act recognizes that affordable housing negotiations are to be voluntary. UDIA Victoria supports this approach, and is actively involved in capacity building for planners through partnership with DELWP in the delivery of the Introduction to Property Development Economics for Affordable Housing course.

The proposed amendment, with its “discretionary requirement” for a preferred gifting of 6% of dwellings in the Flagstaff, Spencer and Station precincts *without any corresponding uplift requirements*, is not in accordance with the focus on voluntary agreements under the recently introduced affordable housing provisions of the Act.

Fundamentally, we are concerned that the requirement for gifting (\$0 consideration) does not accord with the intent of Section 3AA(3) of the Act, under which a Minister cannot include price ranges for the purchase or rent of affordable housing.



Further, the specification of preferred provision method (“*provided to a Housing Provider at no cost or to be held in an affordable housing Trust and managed for the sole purpose of affordable housing*”), is limiting and ignores potential private solutions or innovative models for the provision of affordable housing as defined by the Act which may provide similar or potentially stronger outcomes for the provision of affordable housing - but which may also be commercially viable.

The proposed application requirement requiring a commercial feasibility assessment for those applications not proposing to provide 6% of affordable housing raises specific issues with regard to the implementation of decision-making (method, time to consider, and how such a decision could be assessed by planning officers (or indeed VCAT), or the timeframe for such a decision. Specifically, there are costs associated with the preparation of such a report, there is no clear guidance in the decision guidelines as to what constitutes “economically non-viable” (levels of either development or financing costs or profit margins considered “acceptable”), and as such there is no certainty with respect to how discretion would be applied. In the event that a permit is not granted on the basis that the affordable housing requirement is not met, it is not clear how VCAT may assess such an application when VCAT do not consider commercial matters in their assessment of planning matters. Further, a quantity surveyor is not the appropriate qualification for such a report.

**UDIA Victoria proposes that a clear affordable housing target and preferred method of fulfilling the target is appropriately identified through local policy – not through a zone.**

UDIA Victoria also supports the separate submission made by the AHIA.

On the whole we consider that greater flexibility is required in the drafting of the controls to enable site-specific responses to occur; as in their current form they are likely to result in the underutilisation of land and serve as a barrier to the realization of urban renewal objectives in West Melbourne.

Due to the potential impact of these issues on development in West Melbourne, UDIA Victoria requests the opportunity to meet with Council Officers to discuss and resolve these matters. In particular, we request the opportunity to review and provide comment on the critical development and finance cost assumptions sitting behind the feasibility testing SGS Stage 2 report, which have not been identified in the report.

We will also be lodging a request to heard at the panel hearing which is set down for the week commencing Monday 8 July 2019.

If you have any queries, please do not hesitate to contact Kate Weatherley, Policy and Communications Advisor, by email ([kate@udiavic.com.au](mailto:kate@udiavic.com.au)) or by phone (9832 9600) for further information.

Yours sincerely,

A handwritten signature in black ink that reads 'Danni Hunter'. The signature is stylized with a large, sweeping underline that loops back under the name.

**Danni Hunter**  
**Chief Executive Officer**

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