

7 June 2021

Andrew Gear
Executive Director
Planning Implementation and Heritage
Department of Planning, Environment, Land, Water and Planning

By email: andrew.gear@delwp.vic.gov.au

Dear Andrew

Amendments to the Better Apartment Design Standards

The Urban Development Institute of Australia, Victoria Division (UDIA Victoria) welcomes the opportunity to respond to the announcement of the amendments to the Building Better Apartments Design Standards (Standards).

We commend the Victorian Government's commitment to ongoing engagement with the urban development industry as part of the development of policy, guidelines and standards impacting the design and delivery of apartments in Victoria. Whilst we acknowledge that the Department for Land, Environment, Water and Planning (DELWP) incorporated some of the industry's feedback during the initial consultation throughout 2019, we are concerned that the amendments with the most significant impacts have largely remained the same.

We also reiterate our view that the amendments to the Standards appear to be aimed at lifting the standards of the lowest common denominator without considering the impact of additional regulation on innovation in design. We consider that this remains the case, and we remain concerned that the proposals will constrain innovation and encourage homogenous outcomes.

UDIA Victoria has consistently provided feedback to the consultation process that the proposed amendments to the Standards will, in general, reduce yield and otherwise increase the cost of delivering residential apartment projects. This will directly affect the viability of residential development, which in turn will result in fewer jobs, reduced supply of dwellings, and worsening housing affordability. We stand by this feedback.

We also note the amendments will disproportionately impact on projects of 40 apartments or less by reducing the yield and increasing construction costs, thereby making it harder to meet feasibility requirements. This type and scale of apartment development is typically located in the inner and middle ring.

Currently, the Melbourne apartment market faces enormous challenges. The Covid restrictions during 2020 and the collapse of overseas migration, intakes of international students and tourism has significantly impacted both apartment sales and the rental market, particularly in central Melbourne. Given the already weak demand, we strongly urge the State Government to defer the implementation

of any requirements that will decrease the yield and/ or increase the cost of delivering apartment projects.

Meanwhile, the State Government has recently launched the Big Housing Build and planning systems reform, both of which we commend but which will take many months to establish and deliver results. We consider the amendments to the Standards, and the consequential reduction in projects meeting feasibility requirements, will significantly diminish the benefits from these two programs.

Recommendations

In the context of the above, we recommend the following:

1. **Defer the introduction of the amendments for at least 12 months** to see if, and to what extent, the central Melbourne apartment market recovers, and to allow time for the Big Housing Build and planning systems reform to establish before making any changes.
2. **Remove the wind testing requirements from the Standards and require councils to carry out a municipal-wide assessment** to determine areas where there is a risk of adverse impacts to wind movements. The requirement for wind testing should be included in an overlay thereby capturing all development types, and it should be limited to developments of ten storeys or more based on industry feedback.
3. **Amend the landscaping requirements**, especially the canopy cover and deep soil planting, so that it is responsive to the site and urban context, rather than applying uniform requirements. Further, if canopy cover and deep soil requirements represent the existing or preferred urban context, these requirements should apply to all development types as part of an overlay, rather than exclusively residential development.
4. Leave the **threshold for landscaped communal open space at 40 apartments** to ensure projects of less than 40 apartments are viable in terms of yield and cost.

We set out detailed feedback that supports these recommendations at **Appendix A**.

Overall, UDIA Victoria cannot support the introduction of new mandatory requirements at this stage. However, a number of the policy proposals can be included in the Apartment Design Guidelines for Victoria to provide clarity around the interpretation and application of the existing provisions of Clause 58 of the Victoria Planning Provisions, as we continue to monitor and review its operation and effects.

Should you wish to discuss any of the matters raised in this response, please contact Caroline Speed, Director of Policy and Research, on caroline@udiavic.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Matthew Kandelaars'.

Matthew Kandelaars
Chief Executive Officer
Urban Development Institute of Australia, Victoria

Appendix A – Detailed Feedback

1. Current market context

Central Melbourne

- UDIA Victoria analysis of SQM Research data illustrates the significant impact of COVID-19 on the apartment market across the CBD, Southbank and Docklands. Between March 2020 and March 2021 across these three postcodes, rents fell by 33 per cent, rental yields dropped by 31 per cent and vacancies more than doubled.
- Further, Charter Keck Cramer analysis illustrates the dramatic decline in forecast for apartment completions in metropolitan Melbourne to 2024. The data shows new completions:
 - peaked at nearly 20,000 new apartments in 2016, prior to the removal of OTP concessions;
 - are forecast to decline to 8,700 in 2022; and
 - just 800 in 2024.
- Member feedback suggests this is in part related to C270, BADS, removal of off-the-plan stamp duty concessions, and the imposition of the Foreign Purchaser Additional Duty.
- Meanwhile costs continue to increase. The cost to build a new apartment is estimated between \$300,000-450,000 for a typical design that is modest but good quality. This cost has **increased approximately 30% in the past five years**.
- Also since 2016 there have been at least 21 Federal and State interventions largely relating to fiscal policy and planning requirements restricting both demand and supply. These are outlined below.
- All these factors have **coalesced to create an environment hostile to apartment development** in central Melbourne.

Inner and middle ring

- Conversely, the inner and middle ring apartment market is stable, however the availability of sites is an issue.
- The BADS amendments will disproportionately impact on projects of 40 apartments or less by reducing the yield and increasing construction costs thereby making it harder to meet feasibility requirements. This type and scale of apartment development is typically located in the inner and middle ring.
- Reduced viability of small apartment projects is likely to result in less supply of this typology and developers instead pursuing townhouse projects (for which BADS does not apply) on sites that may otherwise be suited for apartments.
- These apartment projects also provide private market affordable housing, and State Government policy has a preference for new social and affordable housing to be provided in locations close to

services and amenities which are often in the inner and middle ring. These would typically be provided as part of the projects described above.

2. Federal and State Government market interventions since 2016

Since 2016, the following **policy and regulatory changes have combined to create an extremely hostile environment** for the Melbourne apartment market. The State Government should have regard to the cumulative impact of these changes on the viability of the infill apartment market when considering implementing the amendments to BADS. The policy and regulatory changes include the following:

- Restriction of lending to foreign property buyers without a domestic income by Australian banks (2016);
- Decreased height allowances and constraining built form controls introduced through the Melbourne Planning Scheme Amendment C270 (2016);
- Removal of off-the-plan stamp duty concessions for investors by the Victorian Government (2017);
- APRA limits on interest-only loans with a loan-to-value ratio above 80% (2017);
- APRA instructions to authorised deposit-taking institutions to limit interest-only loans to 30% of new residential loans (2017, however this was removed in 2018);
- Introduction of a New Dwelling Exemption Certificate by the Federal Government (2017);
- Introductions of a 50% cap on the sale of new apartments to foreign investors by the Federal Government (2017);
- Introduction of the Federal Annual Vacancy Fee for foreign investors (2017);
- Introduction of the Vacant residential land tax by the Victorian Government (2017);
- Introduction of absentee owner surcharge by the Victorian Government (2017);
- Introduction of the Better Apartments Design Standards by the Victorian Government (2017);
- Increase of foreign purchaser duty by the Victorian Government (2019);
- Increase of absentee land tax surcharges by the Victorian Government (2019);
- Introduction of the building cladding levy by the Victorian Government, estimated to add 0.82% (\$2460-\$3690 per apartment) to construction cost (2019);
- Uncertainty regarding amendments to the Better Apartment Design Standards, notably requiring all developments of 10 dwellings to provide a minimum of 25 square metres of landscaped communal space at a cost of approximately \$18,00 per dwelling (2019);
- State tax changes that extend stamp duty to cover development agreements (2019);
- Requirement to 'voluntarily' gift of 6% of project dwellings for affordable housing introduced through Planning Scheme Amendment C309 (2019);

- Very restrictive urban design controls across the central city and Southbank introduced through Planning Scheme Amendment C308 (ongoing);
- Federal and State COVID response and border closures (March 2020) resulted in:
 - Significant reduction in immigration and population growth in the next two years.
 - Vastly reduced international student numbers.
 - Local residents moving to regional and coastal areas.
 - Increase in purchase of dwellings in greenfield areas.
- Waiver of the VRLT for properties that are vacant in 2020 (September 2020); and
- Uncertainty regarding the planning controls, planning processes and government investment in Melbourne's urban renewal precincts (ongoing 2021).

3. Communal open space

Summary of change

- Requirement to provide communal open space for developments of 10 or more dwellings (rather than 40 or more dwellings).
 - A minimum of 30 square metres of landscaped communal open space must be provided for developments of between 10 and 12 dwellings.
 - For developments with 13 or more dwellings, an additional 2.5 square metres must be added for every dwelling over 12, or 220 square metres, whichever is lesser. This additional space (in excess of the base 30 square metres) may be provided indoors or outdoors.

Comment

- This will lead to increased development costs (as well as maintenance costs by any owner's corporation), which may negatively impact housing affordability.
- If a roof terrace is added, this terrace will need lift and stair access, shade and possibly deep tree planting. The cost of this space compared to a conventional roof will add at least \$180,000 to the development cost that will be divided by the number of apartments. For example, for a development of ten apartments, this will **add \$18,000 to the cost of each apartment plus roughly \$1,000 for each apartment in annual maintenance costs.**
- For developments with 13 or more dwellings, this additional space (in excess of the base 30 square metres) may be provided indoors or outdoors. This may **add costs in the order of \$3,500 - \$7,000 per dwelling** depending on the overall number of dwellings and the communal space being provided.
- For developments with 13 or more dwellings, if the space is internal and it roughly equates in size to a one-bedroom apartment, then the loss of sellable area (land cost) of approximately \$100,000, is added to the construction cost of this space which is approximately \$175,000

creating a total cost of \$275,000. This cost will be spread across the remaining apartments, for example if there are ten additional apartments, the **cost per apartment is \$27,500**.

Operational impacts

The cost of communal space will penalise small developments compared to larger ones because:

- The cost of landscaped communal open space compared to a conventional roof will add at least \$180,000 to the development cost that will be divided by the number of apartments.
- This requirement will also reduce revenue because the inclusion of the communal space (which is not sellable) may reduce the developable yield and amount of sellable space achievable on any given site:
 - This revised equation will make development of small blocks of units less profitable and therefore will imply that residential apartments (that is an affordable product compared to houses/townhouses) will not be the 'highest and best use' for many sites.
 - Such sites instead would be developed with fewer dwellings, such as townhouses, or new owner-occupied single houses which do not have onerous planning requirements and are more expensive for end buyers. Over time this will reduce supply of apartments.
- The most economical place to provide communal open space will be at the front of the block in the street setback. As this space would be sandwiched between the ground floor apartment and low permeable fences to the street (as demanded by BADS), then this space is unlikely to get much use.

Technical questions

- It is not clear if a roof terrace and associated lift structure would be counted as a storey by councils but this interpretation seems likely. This point needs clarification in the planning scheme or there will be further reductions in yield.
- It is also unclear how these standards are applied where there is a Development Plan or staged development. For example, if planned open space is delivered within one permit, do subsequent stages receive the benefit of this or will they be assessed as stand alone stages, therefore requiring additional spaces to be provided?

4. Landscaping

Summary of changes

- Defined requirements for soil volumes required for trees and climbers on structure.
- Tree canopy cover requirements replace tree number requirements. While deep soil zone requirements haven't increased for sites greater than 750m², the requirement for minimum canopy cover means more intensive (and costly) planting in these zones.

Comment

- To allow for required deep soil volumes, developments will have to be planned with reduced building footprints and basement area, or increase budgets to allow for more generous landscape treatments at upper levels.
- We fail to see the exclusive link between residential development and tree canopy cover; tree canopy cover should also be **required for all development types** if that is the existing or preferred urban context.
- Further, uniform rules for vegetation ignore the building context and are contrary to the stated objective of responding to the existing urban context. For example, a building in Cremorne obviously has a different landscape and urban context to one in Burwood.
- The requirement for trees of different sizes depending on site area are arbitrary and excessive. We are aware of developments that have achieved successful and high-quality roof gardens with soil volumes much lower than those which are prescribed.
- The cost and maintenance of large-scale garden areas built over apartments is very high. **Landscape maintenance costs are typically in excess of \$10,000 per year** and they dilapidate quickly. These areas are notorious for leaking over time, requiring careful design and construction. They should be avoided for any small-scale developments.
- There are other ways to achieve the same canopy amenity such as a pergola with vines growing over it. This requires far less soil to maintain the health of the plant(s) therefore the additional cost is reduced.

Operational impacts

- To allow for required deep soil volumes, developments may have to be planned with reduced building footprints and basement area, or budget for more generous landscape treatments at upper levels. This will lead to reduced yield and increased development costs (as well as maintenance costs by any owner's corporation), which will negatively impact housing affordability.

Technical questions

- It is unclear how the communal open space areas are affected by the deep soil area requirements - are they included or added together?
 - For example, if a warehouse is redeveloped in Prahran for 20 apartments on a 1000sqm built-out site, then it would require a communal roof garden of 50sqm with 49sqm required for a deep soil planter providing 28 cubic meters of soil for a type B tree. Is the deep soil planter included or additional?
 - If these areas are built at roof level with lift access then they will increase building height again – is this considered a 'storey' as defined by the planning scheme?

- Raised planters also create safety issues because they can allow children to climb over balustrades or unsafe maintenance conditions.

5. Balcony sizes

Summary of changes

- North and South facing minimum balcony depths have been reduced from 2m to 1.7m and 1.2m respectfully. This is to allow better solar access to apartments below.
- Apartments with a finished floor level of 40 metres or more above ground level do not require private open space. They must however provide the equivalent space internally (8 – 12 square metres) in addition to the minimum apartment dimensions currently required. Balconies and terraces above 40 metres are still allowed.

Comment

- Apartments with a finished floor level of 40 metres or more above ground providing the equivalent space internally (8 – 12 square metres) may add net costs in the order of \$20,000 – \$30,000 per dwelling, however the additional net sellable area should offset these costs.
- These changes are broadly positive and acknowledge that there are a variety of diverse needs in relation to balcony sizes, and that smaller private spaces can be offset with larger and more usable communal spaces.
- It also recognises that large north and south facing balconies can negatively impact internal daylight to apartments, which creates less environmentally sustainable internal design. This represents a good shift in thinking that places a higher level of importance on environmental sustainability.

6. Building materials - Higher quality building facades

Summary of change

- Requirement to ensure that building materials are durable and of a high quality.

Comment

- The choice of façade materials becomes very narrow.

Operational impacts

- Glass curtain walls are unable to achieve high ESD requirements and are increasingly problematic. This may result in precast concrete and brick facades being the dominant materials moving forward, noting that the latter is very expensive and only viable on inner ring apartments.

- While the standards don't limit or exclude materials, they clearly promote the use of materials such as brick, glass, steel, and concrete. These façade materials tend to be more costly than "lightweight" materials such as timber, metal cladding, boards and render, etc.
- The more durable materials are likely to be higher in embodied carbon. This is a cost to the environment and may represent a real cost in the future.
- Councils may place too much reliance on the 'typical palette' of materials provided in the guidelines, which may unreasonably limit architectural expression.

7. Wind Assessment

Summary of change

- Requirement to provide a wind assessment with applications for buildings of five or more storeys.

Comment

- Again, we fail to see the exclusive link between residential development and issues with wind; that is, a commercial building ten stories high could have the same impact as a residential building ten stories high, however the requirement for wind assessment only relates to residential development.
- If wind impacts are of general concern, we suggest all development above a stated height should be captured. To achieve this, we suggest requiring councils to carry out municipal-wide studies to establish if there are high risk wind impact areas within the municipality. This defined area should then be subject to an overlay so that all development within the defined area is required to have a wind assessment, not just residential developments.
- Further to the above, industry feedback strongly suggests wind assessments should only be required for proposed developments of ten stories or more. We have consistently asked DELWP to provide the evidence for requiring wind impact assessments for residential development of five or more stories, however this has not been provided.

Operational impacts

- The process of wind modelling is unclear, time consuming and costly. It represents a major risk to project viability in high wind area such as Docklands.
- There is only a handful of wind engineers in Melbourne and they currently operate at full capacity with a current backlog of at least two months to run wind tunnel analysis.
- The guidelines remove the ability for developers to mitigate wind effects with street trees (although more trees are encouraged in all other criteria).

Technical question

- It is unclear whether new developments on adjacent sites can or must be factored into the study depending on their status (for example, unpermitted, approved Development Plan, planning permit approval). This requires clarification.