

Planning and Environment Act 1987

Panel Report

**Melbourne Planning Scheme Amendment C309
West Melbourne Structure Plan**

11 October 2019

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Melbourne Planning Scheme Amendment C309

West Melbourne Structure Plan

11 October 2019



Sarah Carlisle, Chair



Annabel Paul, Member



David Merrett, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Amendment	Melbourne Planning Scheme Amendment C309
Built Form Strategy	<i>West Melbourne Built Form Strategy</i> , City of Melbourne, February 2018
CIV	capital improved value
CLUE	Census of Land Use and Employment
Council	Melbourne City Council
DDO[number]	Design and Development Overlay Schedule [number]
DELWP	Department of Environment, Land, Water and Planning
EAO	Environmental Audit Overlay
EUV	existing use value
FAR	floor area ratio
FAU	floor area uplift
GRZ	General Residential Zone
MSS	Municipal Strategic Statement
PPN[number]	Planning Practice Note [number]
PPP	Planning and Property Partners
PPP clients	Spencer Street West Melbourne Pty Ltd, Fort Knox Self Storage (Vic) Pty Ltd and Holder East Pty Ltd
Practitioner's Guide	<i>A Practitioner's Guide to Victorian Planning Schemes</i> Version 1.2, DELWP, August 2019
Preliminary Land Contamination Assessment	<i>Preliminary Land Contamination Assessment</i> , Golder Associates, 17 April 2019
RLV	residual land value
Spencer Street activity centre	proposed local activity centre along Spencer Street between Hawke and Dudley Streets
Stadiums	Stadiums Pty Ltd and Floton Pty Ltd
Structure Plan	West Melbourne Structure Plan, 2018
SUZ6	Special Use Zone Schedule 6
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Melbourne Planning Scheme Amendment C309
Common name	West Melbourne Structure Plan
Brief description	Implements the <i>West Melbourne Structure Plan 2018</i> through the application of local policy, the Special Use Zone and updated or new Design and Development Overlays
Subject land	West Melbourne (see Figure 1)
Planning Authority and Proponent	Melbourne City Council
Authorisation	19 October 2019
Exhibition	22 November 2018 to 4 February 2019
Submissions	54 (see Appendix A)

Panel process

The Panel	Sarah Carlisle (Chair), David Merrett and Annabel Paul
Directions Hearing	Planning Panels Victoria, 4 June 2019
Panel Hearing	Planning Panels Victoria, 8, 9, 10, 11, 12, 15, 16, 18, 19, 22, 23 and 24 July 2019
Site inspections	Unaccompanied, 5 July 2019 Accompanied, 9 July 2019
Appearances	See Appendix B
Citation	Melbourne PSA C309 [2019] PPV
Date of this Report	11 October 2019

Executive summary

West Melbourne is an inner urban area of Melbourne strategically located between the central city and North Melbourne, and adjacent to the urban renewal areas of City North, E-Gate, Dynon and Arden-Macaulay. It is currently undergoing rapid change.

Melbourne Planning Scheme Amendment C309 (the Amendment) seeks to implement the land use and built form components of the *West Melbourne Structure Plan 2018* (the Structure Plan). The Structure Plan sets out the vision for West Melbourne as a place with unique identity and a counterpoint to the central city. It envisages five precincts with a true mix of uses and with varied areas of character and varied building typologies within and between precincts.

The Amendment is ambitious in its scope, and proposes a number of innovative approaches to managing growth in West Melbourne. It proposes mandatory floor area ratios, minimum non-accommodation floor area requirements, and affordable housing contributions that are relatively novel in the metropolitan Melbourne context. It proposes to apply the Special Use Zone to wide areas within West Melbourne to deliver the suite of controls required to ensure that growth is managed in accordance with the Structure Plan's vision.

The Amendment was exhibited from 22 November 2018 to 4 February 2019 and received 54 submissions. Submissions raised many issues, from whether the Amendment facilitates an appropriate level of growth in West Melbourne, to the use of the Special Use Zone, mandatory floor area ratios and minimum non-accommodation floorspace requirements. Affordable housing contributions were another key concern. Other issues included the limited scope of floor area uplift, the appropriateness of the proposed heights and other built form controls, the appropriateness of the proposed parking rates and other parking requirements, and the blanket application of the Environmental Audit Overlay to the Structure Plan area.

On balance, the Panel considers that the proposed planning controls will result in a net community benefit and sustainable development, subject to addressing various matters raised in submissions and addressed in this report. The Panel supports the Amendment, subject to a number of detailed recommendations.

Strategic justification

Several submissions considered that the Amendment 'undercooks' the growth and development potential of West Melbourne, primarily through the introduction of mandatory floor area ratio limits. Submitters considered that the Amendment would result in an underutilisation of the land and a missed opportunity to accommodate growth in this important strategic location.

West Melbourne has an important role to play in accommodating growth, and a number of policies in Plan Melbourne support its continued growth. However despite being adjacent to the central city and surrounded by current, proposed or future urban renewal areas, Plan Melbourne does not identify a similar role for West Melbourne. Updated population projections for West Melbourne are for a population of around 19,000 at 2036 and around 21,500 at 2041, and the Structure Plan sets a jobs target of 10,000 jobs by 2036. The Amendment has been 'road tested' with capacity modelling that demonstrates that West Melbourne will be capable of accommodating the projected population and jobs target. The

Panel is satisfied that the level of growth facilitated by the Amendment is consistent with West Melbourne's role as an important infill area identified for incremental and ongoing growth, and is appropriate in the policy context.

The Special Use Zone

On balance, the Panel considers that the Special Use Zone is the appropriate zone to facilitate the Structure Plan's vision. One of the key benefits is that the Special Use Zone allows a tailored Table of Uses that can make developments with 10 or more dwellings a permit required use. It also allows the inclusion of affordable housing and minimum non-accommodation floor area requirements, which the Panel supports (albeit in a modified form). While it is unusual to apply the Special Use Zone to such a large area of urban land, the Panel is satisfied that there is no other combination of zones and other VPP tools that can effectively deliver the vision. The Panel did not reach this conclusion lightly, and it should not be regarded as justification for planning authorities to pursue the Special Use Zone where other zones or alternative planning tools are more appropriate.

Floor area ratios

West Melbourne is under considerable development pressure. Recently approved developments are slowly starting to erode the distinction between West Melbourne and the central city. Mandatory floor area ratios are a legitimate tool to use in response to this development pressure, and can assist in delivering the built form and character outcomes sought for West Melbourne in the Structure Plan. Working with the built form controls, they also have the potential to deliver a range of beneficial outcomes relating to sustainable development, and vibrant, social streetscapes that provide a high quality pedestrian and public realm and foster community.

Built form testing demonstrates that the proposed floor area ratios for each precinct are generally appropriate and that in most instances, the relationship between the floor area ratios and the built form controls is appropriate. The Panel supports Council's proposal to increase the floor area ratio within the Spencer Street activity centre and along part of King Street from the exhibited 4:1 to 5:1.

Non-accommodation floor area requirements

The Panel supports the principle of the minimum non-accommodation floor area requirements in the Special Use Zone, but considers that the proposed percentages for each precinct should be revisited. Non-accommodation development should be directed to the precincts where this type of land use is most suited. The Flagstaff Precinct should have the highest proportion, followed by the Station and Spencer Precincts, then the Adderley Precinct. Council should also consider whether a higher percentage is appropriate in the Spencer Street activity centre, where the Structure Plan encourages a concentration of commercial activity.

The Panel considers that the requirements should be discretionary rather than mandatory, to avoid unintended consequences such as small areas of unusable commercial floorspace in a particular development, and commercial floorspace being delivered in inappropriate locations that may become difficult to lease.

Affordable housing

There is a clear and significant need for affordable housing in the municipality, established in Council's *Homes for People* Housing Strategy. A six per cent contribution may not be enough to fully address the need quantified in the Housing Strategy, but it is aligned with the size of the contribution sought in Fishermans Bend. In light of the development feasibility testing undertaken by SGS Economics and Planning on behalf of Council, the Panel does not consider that it would be appropriate to recommend a higher contribution in West Melbourne.

Many submitters, and some experts, considered that the exhibited affordable housing requirements were effectively mandatory, which is inconsistent with the voluntary nature of the affordable housing framework established by the Act. The Panel considers that while the provisions are discretionary, the discretion is inappropriately constrained and should be broadened.

The Panel supports locating the affordable housing requirements in the zone, rather than in a local policy. This gives them greater weight. Further, there is no obvious home for the requirements in the Municipal Strategic Statement or elsewhere in the local policy framework.

To ensure that forms of affordable housing other than social housing are seen to be assessed and managed in a clear, transparent and consistent manner, Council could consider developing guidance material setting out how such contributions will be assessed and secured to ensure that the housing remains affordable going forward.

Floor area uplift

The Amendment provides for floor area uplift where a Special Character Building identified in the Structure Plan is successfully retained as part of a redevelopment proposal. The Panel supports this aspect of the controls. Floor area uplift should also be available where:

- the minimum non-accommodation floor area requirements are exceeded (but only in the Flagstaff Precinct)
- social housing contributions are provided
- affordable housing contributions above 6 per cent are provided.

In each case, the floor area uplift should be discretionary, to allow a proper balanced assessment of whether (and how much) uplift is appropriate in each case in light of the community benefit being provided.

Council could consider developing some guidance around how uplift for social and affordable housing contributions will be assessed. The more certainty there is regarding the likely level of uplift that could be expected, the greater the likelihood that developers will offer affordable housing contributions. This guidance could be combined with the guidance suggested above, relating to the assessment and management of affordable housing contributions other than social housing.

Environmental Audit Overlay

The exhibited Amendment proposed a blanket application of the Environmental Audit Overlay over the whole of the Structure Plan area. The Panel does not support this approach, as there was insufficient work undertaken to establish that the whole of the Structure Plan area is potentially contaminated. The Panel supports Council's post-

exhibition proposal to only apply the Overlay to sites that have been identified as potentially contaminated through the Preliminary Contamination Assessment undertaken by Golder Associates.

Built form controls

The Panel largely supports the built form controls in the Part C version of the Design and Development Overlay (DDO) schedules, subject to:

- reducing the upper level setbacks to laneways in the Flagstaff Precinct from 6 metres to 4 metres, and expressing the setbacks as 'preferred' rather than 'minimum'
- including additional Built Form Outcomes relating to setbacks in all DDOs to ensure appropriate consideration of amenity and equitable development rights
- expanding the requirements relating to floor to ceiling heights to all land uses, not just non-residential uses, and rewording the requirements for clarity
- removing the requirement relating to fine grain adaptable tenancies at ground floor level
- minor drafting changes to the requirements relating to active street and laneway frontages.

Other matters

In relation to other matters:

- The Flagstaff Precinct should be extended to incorporate the land between Wren Lane, Dudley Street, Rosslyn Street and Spencer Street, including the Festival Hall site and the former Australia Post site.
- Subject to minor adjustments, the proposed parking rates and other parking provisions in Council's Part C controls are appropriate, and will assist in implementing the vision outlined in the Structure Plan.
- In relation to the justice facilities (the Melbourne Assessment Prison and the Judy Lazarus Transition Centre) in the Flagstaff Precinct:
 - The Judy Lazarus Transition Centre should be rezoned to Public Use Zone Schedule 3, rather than the exhibited Special Use Zone, to reflect the zoning of the Melbourne Assessment Prison.
 - A decision guideline should be added to DDO33 requiring the responsible authority to consider the views of the Department of Justice and Community Safety for development in proximity to the justice facilities.
 - The Parking Overlay Schedule 14 should not be applied to the Judy Lazarus Transition Centre.
- In relation to the Miami Hotel site in the Historic Hilltop Precinct:
 - The site is capable of accommodating more intensive built form than what would be allowed under the existing General Residential Zone.
 - Further work should be undertaken to inform the selection of an appropriate suite of controls that suitably responds to the Structure Plan, the site's context and its sensitive interfaces.
 - Any change to the controls that apply to the site should be the subject of a separate amendment, to allow participation from potentially affected third parties.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Melbourne Planning Scheme Amendment C309 be adopted as exhibited subject to the following consolidated recommendations.

The Part C controls include many changes to the exhibited versions, most of which the Panel supports. The Panel has used the Part C controls as the starting point for its preferred versions in Appendix D, and has tracked its recommended changes against the Part C versions (the Part B version has been used for the Parking Overlay Schedule 14, as there was no Part C version). The Panel preferred versions in Appendix D do not track changes between the exhibited controls and the Part C controls, as this would be difficult to follow, particularly when combined with the Panel's recommended changes to the Part C controls.

The changes tracked in Appendix D include changes from the Part C controls recommended by the Panel, changes to reflect Council's response to the Panel's drafting queries (Document 125), and minor changes made for clarity. The latter are self-explanatory and are not explained in notes. Nor has the Panel made specific recommendations about these minor drafting changes.

Primary recommendation

- 1. Adopt the Part C controls (Document 116) with the changes shown in Appendix D, which reflect the specific recommendations contained in this report.**
- 2. Update the descriptions of local areas in Clause 21.11, the map in Figure 5 in Clause 21.11 and the Growth Area Framework Plan in Clause 21.04 to reflect the new West Melbourne local area policy in Clause 21.16-6.**

Changes to Clause 21.16-6 (Appendix D1) and the Structure Plan

- 3. Amend Clause 21.16-6 by replacing the population forecasts with "around 19,000 at 2036 and around 21,500 at 2041", as shown in Appendix D1.**

Changes to the Special Use Zone Schedule 6 (Appendix D2)

- 4. Amend the percentage requirements for non-accommodation floor area at Clause 2.0, to better direct commercial uses to the areas most suited to commercial activity based on locational characteristics, transport connections and existing and preferred character. Flagstaff should have the highest percentage, followed by Spencer and Station, followed by Adderley. Indicative percentages are included in Appendix D2.**
- 5. Amend the minimum non-accommodation floor area requirements to:**
 - a) convert them to discretionary requirements**
 - b) include additional application requirements and decision guidelines to guide the exercise of discretion.**
- 6. Amend the affordable housing provisions to broaden the basis on which the responsible authority may exercise its discretion.**
- 7. Delete the development viability test provisions and replace them with the following decision guideline:**

Whether it can be demonstrated that the affordable housing contribution would render the proposed development economically unviable.

8. Replace the transitional provision in Clause 2.0 with the following:

These requirements do not apply to the use of land in accordance with a planning permit for buildings and works granted before the approval date of Amendment C309.

Changes to all Design and Development Overlay Schedules (Appendices D3 to D6)

9. Amend the Schedules to allow discretionary floor area uplift for:

- a) social housing contributions**
- b) affordable housing contributions that exceed 6 per cent.**

10. Add the following Built Form Outcomes under the heading 'Building heights and street wall heights':

- Development that appropriately considers the amenity impacts on neighbouring development and achieves a high standard of internal amenity within the development.**
- Development that is set back from side and rear boundaries to ensure internal spaces receive adequate levels of daylight and privacy.**
- Equitable development with primary outlook to the street or within development sites.**

11. Replace the Built Form Outcomes and Built Form Requirements relating to floor to ceiling heights with:

Adaptable buildings

Built Form Outcomes

- Developments with lower levels that can be adapted from residential uses to employment uses.**

Built Form Requirements

- Minimum floor-to-ceiling heights of:**
 - 4 metres for the ground floor.**
 - 3.3 metres for other floors up to the height of the street wall.**

12. Delete the Built Form Requirement relating to fine grain adaptable tenancies.

13. Amend the Built Form Outcomes and Built Form Requirements relating to Active Streets and Laneways, to clarify and improve their operation.

Additional changes to Design and Development Overlay Schedule 33 (Flagstaff Precinct) (Appendix D3)

14. Amend the Schedule to allow discretionary floor area uplift for the delivery of non-accommodation floor area that exceeds the minimum requirements specified in the Special Use Zone Schedule 6.

15. Replace the Built Form Requirements relating to setbacks with the following:

Preferred setback above the podium:

- 3 metres from the front title boundary**
- 4 metres from Laneways**
- 6 metres to all other side and rear boundaries.**

16. Insert the following decision guideline into the Schedule:

The views of the Department of Justice and Community Safety in relation to development in proximity to the Melbourne Assessment Prison and the Judy Lazarus Transition Centre.

Changes to the Parking Overlay Schedule 14 (Appendix D7)

17. Amend Clause 2.0 to clarify that a permit is required to exceed the maximum parking rates specified in the Table, as shown in Appendix D7, and replace Clause 3.0 with 'None specified'.

18. Delete the application requirement at Clause 4.0 for a Car Parking Demand Assessment, and reword the decision guideline for a Car Parking Demand Assessment at Clause 4.0 as follows:

Consideration of current usage patterns of car parking facilities within a 400m radius of the site, including daytime, evening and night time occupancy rates.

Changes to the Environmental Audit Overlay

19. Delete the Environmental Audit Overlay from land that has not been identified as potentially contaminated by the report titled "Amendment C309 West Melbourne Structure Plan - Preliminary Land Contamination Assessment - April 2019".

General changes relating to the Flagstaff Precinct

20. Amend Figure 1 of the Special Use Zone Schedule 6 and the map in Clause 21.16-6 to realign the boundary of the Flagstaff Precinct to include the land between Wren Lane, Dudley Street, Rosslyn Street and Spencer Street that is currently proposed to be part of the Spencer Precinct.

21. Rezone 50 Adderley Street, West Melbourne (the Judy Lazarus Transition Centre) to Public Use Zone Schedule 3.

22. Delete the Parking Overlay Schedule 14 from 50 Adderley Street, West Melbourne (the Judy Lazarus Transition Centre).

Further recommendations

Recommendations about broader systemic changes in relation to the Planning and Environment Act and the VPP are beyond the scope of the Amendment, and are therefore beyond the Panel's remit. Nevertheless, the Panel encourages DELWP to consider the following:

- Develop a commercially focused mixed use zone, that is not part of the residential suite of zones, to better cater for situations such as West Melbourne where a true mix of uses with a significant commercial or employment generating component is sought.
- Consider legislative changes to support cash contributions toward affordable housing outcomes. Cash contributions could provide flexibility in how affordable housing contributions are delivered, and could solve many of the concerns raised in submissions to this Amendment.
- Consider, in consultation with the EPA, including some exemptions in the Environmental Audit Overlay that allow for low risk forms of development to occur without the need for an environmental audit.

PART A – BACKGROUND AND CONTEXT

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment seeks to implement the land use and built form components of the *West Melbourne Structure Plan 2018* (the Structure Plan). Specifically, it proposes to:

- amend the Municipal Strategic Statement (MSS) to:
 - insert a new Clause 21.16-6 (West Melbourne), to ensure the vision for the area reflects the Structure Plan
 - update Clause 21.16-5 (North and West Melbourne) to remove references to West Melbourne
 - amend Clause 21.17 (Reference Documents) to include the Structure Plan
- rezone most of the land currently zoned Mixed Use Zone (MUZ) to a Special Use Zone with a new Schedule 6 (SUZ6)
- rezone recently expanded and new public open spaces to the Public Park and Recreation Zone
- amend existing Schedules 28, 29 and 33 to the Design and Development Overlay (DDO28, DDO29 and DDO33) and add a new schedule 72 (DDO72) to implement the built form controls and design recommendations in the Structure Plan
- apply a new Schedule 14 to the Parking Overlay (PO14) to the SUZ6 land, to introduce maximum parking rates of:
 - 0.3 spaces per dwelling
 - 0.5 spaces per 100sqm of net floor area for all other uses
- apply an Environmental Audit Overlay (EAO) to the Structure Plan area to ensure that potentially contaminated land is suitable for a sensitive use.

Key features of the Amendment include:

- mandatory floor area ratios for all of the land to be zoned SUZ6
- minimum floorspace requirements for non-accommodation uses for all SUZ6 land where a permit is required for Accommodation (applications for 9 or less dwellings do not require a permit)
- a 6 per cent affordable housing requirement for all SUZ6 land except in the Adderley Precinct
- a requirement for active ground floor uses along Spencer Street between Hawke and Dudley Streets, to help deliver a new activity centre (the Spencer Street local activity centre)
- provisions to encourage the retention of buildings identified as special character buildings.

(ii) The subject land

The Amendment applies to land shown in Figure 1 below. The Structure Plan area is bounded by Victoria Street (north), Peel and William Streets (east), La Trobe Street (south) and Railway Place and Adderley Street (west). The Structure Plan area is divided into five precincts – Flagstaff, Spencer, Adderley, Station and Historic Hilltop. The SUZ6 is proposed to be applied to the land shaded green.

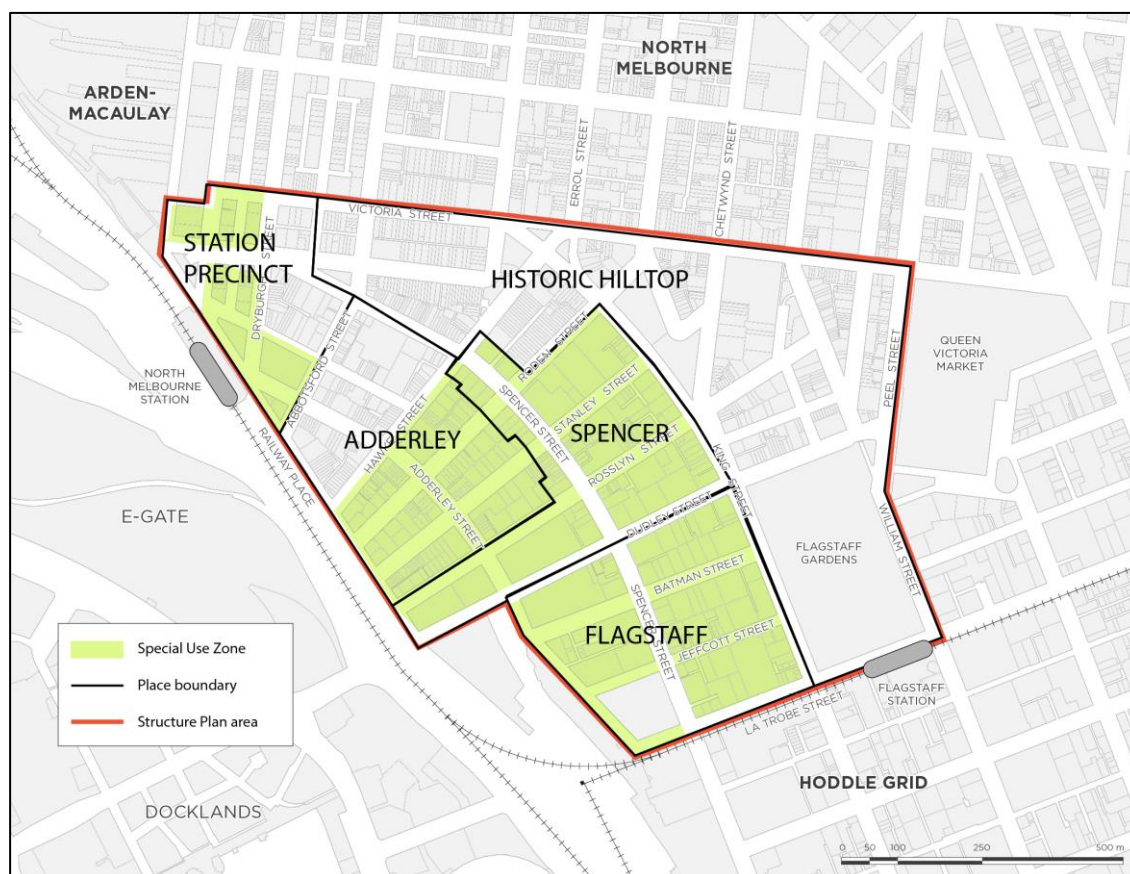


Figure 1 Precinct boundaries and application of the Special Use Zone in West Melbourne

Source: Clause 21.16-6 Part B version (Document 86)

1.2 West Melbourne and surrounds

West Melbourne is situated between the central city and North Melbourne. It is adjacent to the urban renewal areas of Arden Macaulay, E-Gate and Docklands, and is close to the Dynon and City North urban renewal areas. The broader context is shown in Figure 2 below.

West Melbourne currently contains a mix of residential, commercial and industrial uses along with the major regional open space of Flagstaff Gardens. North Melbourne (future West Melbourne) Station is located at the north west edge of the Structure Plan area, and is a major interchange station connecting six train lines to Melbourne's northern and western suburbs. Flagstaff Station, part of the City Loop, is located at the south east corner of the Structure Plan area.

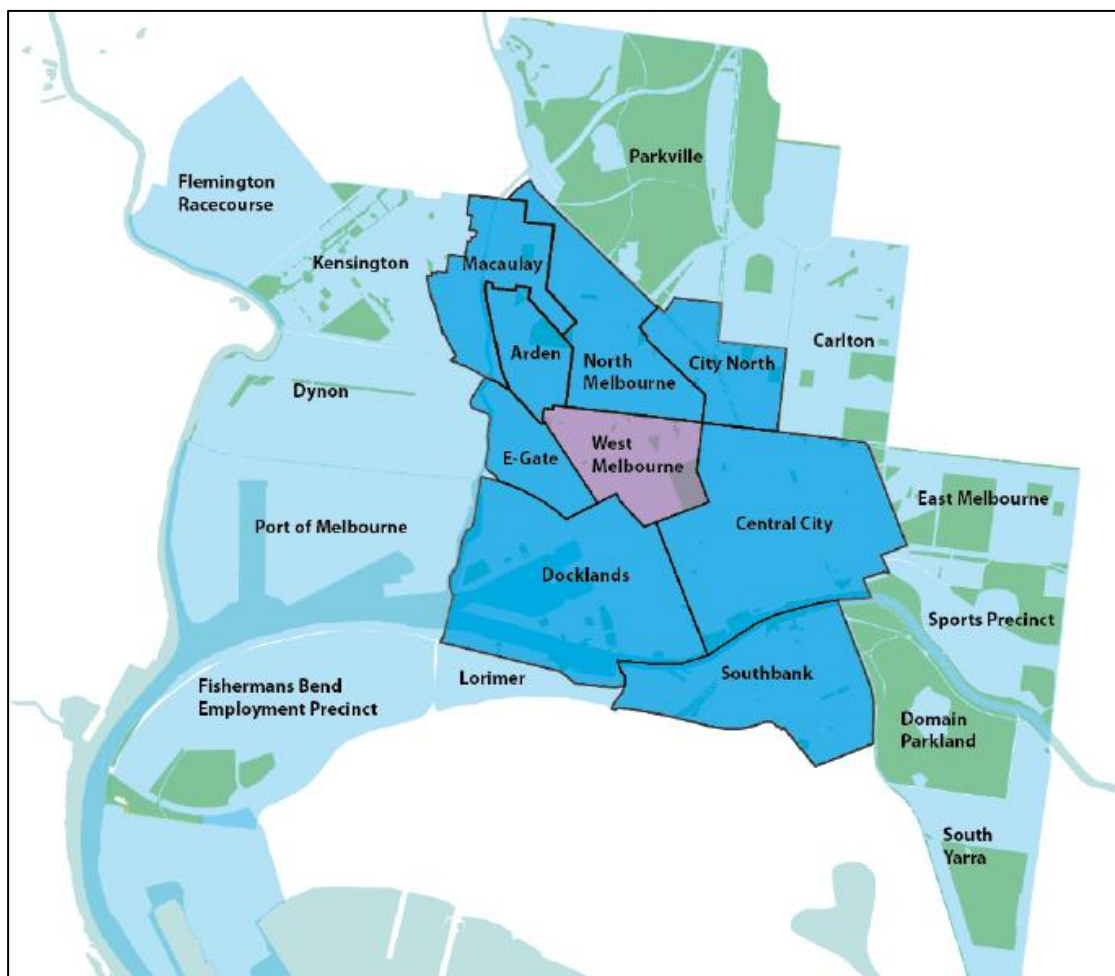


Figure 2 West Melbourne context

Source: Council's Part A submission (Document 34) at page 36

The *West Melbourne Built Form Strategy*, February 2018 (the Built Form Strategy) explains the type of development envisaged in West Melbourne, in the context of the neighbouring areas. Council elaborated in its Part A submission, concluding that:¹

The vision for West Melbourne, as detailed in the Structure Plan and Built Form Strategy, builds upon this strategic positioning and moves away from treating West Melbourne as just a transitional zone between the growing central city and other areas. While still supporting and providing for significant growth, it places a greater recognition and value of West Melbourne as a place of value in its own right as an evolving and distinct neighbourhood. The proposed planning and built form proposals help support this while ensuring positive relationships with its different adjacent areas...

1.3 Council's proposed Part A changes to the Amendment

After considering submissions received following exhibition of the Amendment, Council (through its officers) recommended various changes to the Amendment. These were

¹ Council's Part A submission at paragraph 139

described in its Part A submission and in the Future Melbourne Committee minutes dated 7 May 2019. The changes are summarised in Table 1.

Table 1 Council's proposed post-exhibition changes

Control	Proposed change
Clause 21.16-6	- include an additional objective/direction to support the functioning and growth of education uses in West Melbourne
SUZ6	<ul style="list-style-type: none"> - include a reference to educational uses in the first purpose in the Schedule - in the Table of Uses, remove 'Dwelling' from the section 2 entry for Accommodation (as Dwelling is separately included in section 1) - in Clause 2.0, change references to 'Housing Providers' to 'an affordable housing provider, including Registered Housing Agencies' - rezone the Judy Lazarus Transition Centre to the Public Use Zone Schedule 3 (for consistency with the Melbourne Assessment Prison), rather than SUZ6 as exhibited
DDO33	<ul style="list-style-type: none"> - amend the built form requirements to recognise the sensitivity of the recreational yards at the Melbourne Assessment Prison and the Judy Lazarus Transition Centre - remove 488-494 La Trobe Street from the list of special character buildings, as it had been demolished since the Amendment was prepared
DDO72	<ul style="list-style-type: none"> - reword the decision guideline relating to sunlight into streets and lower levels of buildings to include sunlight into parks - correct the footer to refer to the correct schedule number
EAO	- revise the extent of the EAO to only apply to sites identified as potentially contaminated in the report prepared by Golder Associates titled <i>Preliminary Land Contamination Assessment</i> dated 17 April 2019 (the Preliminary Land Contamination Assessment)
PO14	<ul style="list-style-type: none"> - reword the car parking rate for non-dwelling uses as a rate 'per net sqm of floor area' rather than 'per net sqm floor area of building' (no changes were proposed to the rate) - delete the PO12 from two sites in Anderson Street, so that only the PO14 applies

The Panel has reviewed the Council's proposed Part A changes and supports them, unless otherwise recommended in this Report.

1.4 Procedural issues

(i) Request for DELWP to attend the Hearing

The Panel wrote to DELWP on 6 June 2019 to request that representatives of DELWP Planning Group attend the Hearing and address it on the conditions of authorisation (Document 2). DELWP accepted this request and made a submission on day 1 of the proceedings (Document 42).

(ii) Submissions beyond the scope of the Amendment

The issue

The Amendment does not propose any changes to the zoning or built form controls that apply in the Historic Hilltop Precinct.

Council referred five submissions from landowners in the Historic Hilltop Precinct to the Panel:

- the Roman Catholic Trusts Corporation (Submission 9)
- Flagstaff Views Owners Corporation (Submission 17)
- Echo Links Holdings Pty Ltd (Submission 28)
- Miami Hotel Group (Submission 36)
- King Street Investments Pty Ltd (Submission 42).

Four of these submissions sought site-specific changes to the planning controls applying to their sites, including zoning and/or height controls.

Council submitted that while it did not wish to prevent the relevant submitters (Miami Hotel Group, Echo Link Holdings and King Street Investments) from being heard by the Panel, these submissions were beyond the scope of the Amendment. Council did not raise this issue at the Directions Hearing or in its Part A submission, and only hinted at the issue in its Part B submission. It did not address the issue in any detail until its Part C reply submission.

Mr Woodland represented Miami Hotel Group at the Hearing. He submitted that Miami Hotel Group had not been given notice of Council's position. Had it known Council were going to take this position it would have prepared its case differently, including obtaining legal representation to put legal arguments in response to Council's position.

The Panel allowed Miami Hotel Group the opportunity to provide further written submissions in response to Council's position. Further submissions, prepared by Russell Kennedy Lawyers, were provided on 9 August 2019 (Document 123). Council was given an opportunity to respond, but informed the Panel on 12 August (Document 124) that the submissions did not raise any issues that Council had not already addressed.

Submissions

Council submitted that submissions seeking site-specific changes to the controls applying to sites in the Historic Hilltop Precinct are not submissions within the scope of section 21 of the Act, which allows any person to make a submission "*about an amendment*". It submitted in relation to Miami Hotel Group's submission in particular:²

... Although the site is affected by the Amendment, the change requested to the Amendment is well beyond the scope of anything that could reasonably be contemplated as a change that might occur to the exhibited Amendment. Neighbours and others have had no notice of the submitter's request, but may well consider themselves to be significantly impacted by the application of controls to the site that would facilitate its development to a far greater height than could currently be permitted. Real procedural fairness issues would arise if the Panel entertained a

² Council's Part C submission at paragraph 130

submission to rezone land or to change controls for land which were not the subject of amended controls in the exhibited amendment.

Miami Hotel Group's submission in response (Document 124) asserted that Council's position:

- incorrectly applies section 21, and Part 3 generally, of the Act
- is contrary to proper principles of statutory interpretation and case law
- seeks, incorrectly, to retrospectively apply the 'standing test' for submissions to what occurs at a panel hearing (namely considerations of relevance, weight and the appropriateness of any requested recommendations)
- seeks, incorrectly, to curtail the scope of the powers of a panel under sections 24 and 25 in hearing submissions and making recommendations.

Miami Hotel Group pointed to the decision of Justice Morris in *Australian Conservation Foundation v Latrobe City Council* [2004] VCAT 2029, which held that a submission can be 'about an amendment' even if it relates to an indirect effect of the amendment, provided there is a sufficient nexus between the two. It submitted that the 'indirect effect' test sets a low threshold. It submitted that Miami Hotel Group's submission was 'about the amendment' as it raised indirect effects of the Amendment (namely constraining the development potential of the site). It went on to submit:³

The adoption of the Historic Hilltop Precinct (a new policy concept under the Melbourne Planning Scheme), consideration of appropriate zoning and controls within that area and other work have led to a positive decision to place (or, if one prefers, retain), the relevant sites within the particular zone.

All of the above is patently *about the amendment*, and a proposition that a submitter in this context cannot say to a Panel that the proposed adopted zoning (or retained zoning) is not preferred, and seeks a recommendation that a subsequent or different zone be applied, is incorrect.

This leads to a crucial misunderstanding in the submissions of the City of Melbourne, that is, that the test at s.21, which relates to submissions considered by the Planning Authority, somehow sets the bounds for matters that can be put at the Panel hearing; further, that it somehow sets the bounds of what the Panel might consider.

Miami Hotel Group submitted that the Panel must consider all submissions referred to it by Council under section 24, and may make any recommendation it thinks fit under section 25 (Miami Hotel Group's emphasis). It noted that panels often consider submissions and make recommendations that a different zone be applied to that proposed in the exhibited amendment.

Discussion and findings

The real issue here is whether the disputed submissions are 'about the Amendment'. *Australian Conservation Foundation v Latrobe City Council* provides authority for the proposition that a panel need not consider submissions, even those that have been referred to it, if the submissions are not relevant (ie 'about the amendment').

Council referred to the Panel report for Yarra C220 that sought to implement the Johnson Street Local Area Plan. In that case, Yarra City Council referred submissions to the Panel that

³ Document 124 at paragraphs 3.4 to 3.6

sought site-specific rezonings that differed from the exhibited zones. The Yarra C220 panel stated:

The Panel heard submissions and evidence in relation to the proposed re-zonings. This was primarily on the basis of section 24 of the Act which states:

The panel must consider all submissions referred to it and give a reasonable opportunity to be heard to:

(a) any person who has made a submission referred to it ...

Council referred the submissions “out of an abundance of caution” – the Panel heard them for the same reason.

The Panel agrees that as a general principle it is not the role of a panel to go beyond the exhibited Amendment and ‘to stand in the shoes’ of the planning authority. However, the Panel is aware of other amendments (not in the City of Yarra) where the strategic work that underpins the amendment has not been applied in a consistent fashion, and essentially identical parcels of land have been treated differently for no explicit reason. In these cases the Panel thinks it may be appropriate for a panel to consider land that might not have been covered by the exhibited amendment.

But none of this is relevant here: for this Amendment Council has applied the strategic work consistently and the strategic work is well-founded. The Panel does not support any further rezoning of private land as part of the Amendment.

It is not clear whether the situation before this Panel is directly analogous to that before the Yarra C220 panel. It appears from that panel’s report that Yarra C220 applied to land within Precincts 1 and 2 in the Johnson Street Local Area Plan. At least some of the submissions sought rezoning of land outside these precincts, and therefore (it would appear) outside the area subject to the amendment. That is not the case with submissions relating to land in the Historic Hilltop Precinct. Other submitters before the C220 panel acknowledged that their submissions were beyond the scope of the panel hearing, although the reasons for this are not clear from the report.

In this case, Council officers and the Future Melbourne Committee considered the disputed submissions, and referred them to the Panel. There was no indication from Council when the submissions were referred that there was any doubt in Council’s mind as to whether the submissions were ‘about the Amendment’. Nor was this possibility raised in the Directions Hearing (the purpose of which is to consider procedural matters of this nature), or Council’s Part A submission. The issue was only hinted at in Council’s Part B submission, and was not fully explored or explained until Council’s reply submissions, after it had effectively closed its main case. In the meantime, Council led evidence from Ms Hodyl that responded directly to the Miami Hotel Group’s submission, and supported the submission in part by recommending that the site be rezoned to the SUZ.

The Panel does not agree that the disputed submissions are not ‘about the Amendment’. The four sites in question are clearly within the West Melbourne Structure Plan area, and are part of the land affected by the Amendment. In the Panel’s view, the decisions not to rezone land within the Historic Hilltop Precinct, or to relax the height controls applying within the precinct, are just as much ‘about the Amendment’ as the decision to change the controls in the other precincts. Both decisions stem from the Structure Plan, and rely on the Structure Plan as providing the strategic justification for the decisions.

The Panel notes that Council’s own post-exhibition changes include rezoning the Judy Lazarus Transition Centre in the Flagstaff Precinct to Public Use Zone 3, instead of the exhibited SUZ6. It seems somewhat incongruous for Council to argue that the proposed

post-exhibition change to the zoning of the Judy Lazarus Transition Centre is within the scope of the Amendment, but a change to the exhibited zoning of the Miami Hotel site is not within the scope of the Amendment.

The Panel considers the merits of the disputed submissions in the Historic Hilltop Precinct chapter.

1.5 Summary of issues

Council referred 54 submissions to the Panel. Over half supported the Amendment in full or in part.

The key issues raised by submitters were:

- whether the Amendment unnecessarily restricts the development potential of West Melbourne
- the choice of zone
- the use of floor area ratios, including:
 - the appropriateness of mandatory controls
 - the relationship between floor area ratios and heights
 - impacts on development feasibility
- the lack of floor area uplift (other than for retaining special character buildings)
- the requirements for minimum floorspace for non-accommodation uses, including:
 - the appropriateness of mandatory controls
 - impacts on development feasibility
- the controls fail to facilitate or encourage commercial only development
- there should be greater support for educational uses
- built form controls, including:
 - the preferred building heights (which were considered both too high and too low)
 - street wall heights
 - setbacks
- affordable housing requirements, including:
 - justification of the 6 per cent affordable housing target
 - concerns over the mandatory nature of the requirements
 - concerns that the requirements are overly focussed on the delivery of social housing, at the expense of other forms of affordable housing
 - concerns over the requirement to gift affordable housing contributions
 - practical concerns, including the workability of the development viability test
- car parking requirements are too restrictive
- the blanket application of the EAO (as exhibited – Council changed its approach as part of the recommended post-exhibition changes described in Chapter 1.3)
- the lack of transitional provisions.

The key issue for the EPA was:

- the justification for the blanket application of the EAO.

The key issues for the Department of Justice and Community Safety were:

- the zoning of the Judy Lazarus Transition Centre

- ensuring that the DDO33 controls for the Flagstaff Precinct adequately reflect the operational, security, privacy and other requirements of the Melbourne Assessment Prison and Judy Lazarus Transition Centre
- ensuring that the parking rates in the PO14 do not impact on parking requirements for the significant number of staff required at the facilities
- ensuring that the Department is consulted on changes to land use to the west of Melbourne Assessment Prison, such as open space and road closures, that could impact on prisoner transport.

The key issues for the Community Housing Industry Association Victoria and the Affordable Housing Industry Advisory Group were:

- both were supportive of voluntary affordable housing contributions being gifted to registered housing agencies, but recommended some changes to the wording of the requirements
- the need for State government investment in social housing
- concerns about the practical implementation of the development feasibility test
- ensuring that affordable housing contributions will be economically viable
- concerns that the cost of the affordable housing contribution may in effect be passed on to purchasers of private dwellings
- allowing for other models of affordable housing contributions and alternative delivery mechanisms.

The key issues for the Urban Development Institute of Australia and the Property Council of Australia were:

- the lack of an overarching Economic Strategy for the Melbourne central business district and immediate surrounds
- the appropriateness of the feasibility testing as an indicator of commercial viability of development under the proposed controls
- choice of zone
- mandatory floor area ratios
- mandatory minimum non-accommodation floorspace requirements
- affordable housing requirements
- mandatory design standards for car parking areas.

1.6 The Panel's approach

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report is in three parts:

- **Part A** provides the background and context for the Amendment. It includes a discussion of the strategic justification for the Amendment.
- **Part B** deals with overarching issues under the following headings:
 - Population, employment, capacity and feasibility
 - The Special Use Zone

- Floor area ratios
- Minimum non-accommodation floor areas
- Affordable housing
- Floor area uplift
- Car parking
- Environmental Audit Overlay
- Other issues.
- **Part C** deals with the Precincts, and includes a chapter for each of the five Precincts.

1.7 Part B and Part C controls

Council provided two further iterations of the proposed controls throughout the course of the Hearing. Part B controls were tabled part way through the Hearing (Document 86), and Part C controls were tabled toward the end of the Hearing, representing Council's final position on the Amendment (Document 116). The Panel appreciates the proactive approach taken by Council in responding to submissions and expert evidence raised through the hearing process.

The Panel largely supports the changes made by Council through the Part B and C controls, and has based its preferred version of the controls contained in Appendix D on the Part C version.

1.8 Electronic material

The Panel acknowledges the significant efforts made by the parties, in particular Council, in contributing to a largely electronic hearing process. Council presented almost all of its material electronically, which contributed significantly to the efficiency of the Hearing and the reduction of paper usage. The Panel found Council's Policy E-Book attached to its Part A submission particularly helpful, both in the Hearing and in writing up the report. The Panel appreciates the significant efforts made by Council in setting up a OneDrive account for the Hearing, and loading its (and where possible other parties') material into OneDrive on a daily basis.

2 West Melbourne Structure Plan

2.1 Vision

The Structure Plan sets out the vision for West Melbourne:⁴

West Melbourne will retain its unique identity, varied areas of character and mix of uses as it evolves into one of Melbourne's distinct inner urban neighbourhoods and a counterpoint to the central city. Its heritage and other characterful buildings will provide opportunity for a diverse range of uses. New mixed use development will bring high amenity for residents, workers and visitors. Its wide green streets will provide excellent connections and a network of local places and spaces to rest and play with Spencer Street as a vibrant local high street.

The vision is intended to be delivered through a series of Objectives and Actions that relate to built form and density, land uses, infrastructure, movement and access, and streets and spaces.

The Structure Plan envisages:

- a distinct place with diverse surroundings, consisting of five precincts identified based on their character
- well designed, sustainable development that responds to the vision, supported by mandatory maximum floor area ratios and preferred maximum heights
- a genuine mix of uses, supported by minimum employment floor area requirements
- a local activity centre along Spencer Street between Hawke and Dudley Streets, supported by active frontage requirements
- enhanced activity around the North Melbourne (future West Melbourne) Station
- applicants providing a minimum of 6 per cent affordable housing in the Flagstaff, Spencer and Station Precincts
- a climate resilient place with increased canopy and understorey planting, protection of solar panels and water management integrated into building and street design
- people-friendly streets incorporating Water Sensitive Urban Design principles, with open space, recreation spaces and canopy trees
- better walking and cycling routes that connect the Structure Plan area to surrounding areas including North Melbourne, Arden, E-Gate, Docklands, the Queen Victoria Market and the central city.

Some of the key elements of the Structure Plan are represented on Figure 3, which was provided by Council in response to a Panel direction. They include:

- the Spencer Street activity centre
- the Spencer Street improvements and possible tram extension
- the Hawke Street linear open space, forming a 'green spine' connecting West Melbourne to the Errol Street shops in North Melbourne
- pocket parks in Chetwynd Street, Hawke Street, William Street, King Street and to the north of the North Melbourne (future West Melbourne) Station (some of these are already present)

⁴ Structure Plan at section 1.2

- potential linear open space along Stanley Street, Rosslyn Street, Batman Street and the lower part of Adderley Street
- a future pedestrian and cycling connection to E-Gate and Docklands from the end of Hawke Street.

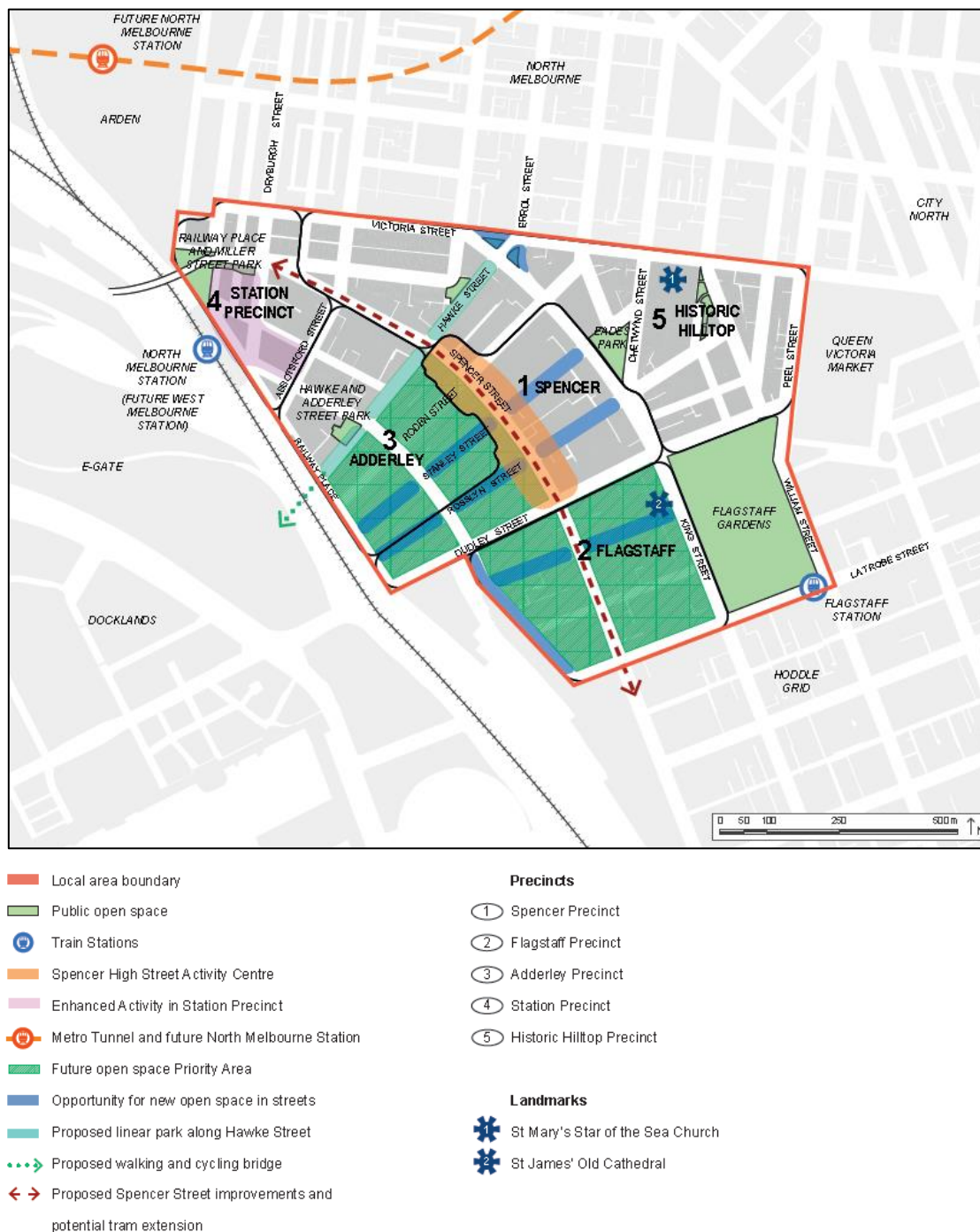


Figure 3 Figure 21 from Part C version of Clause 21.16-6

2.2 Population and employment

West Melbourne currently has a residential population of around 5,500, and around 5,500 jobs (as at 2017). The Structure Plan notes that the residential population has increased by around 2,000 people over the past decade. Jobs, on the other hand, have decreased by 25 per cent over the past decade.

The Structure Plan assumes a forecast population in West Melbourne of around 8,000 to 9,000 by 2037, and around 10,000 jobs by 2036. More detail is provided on:

- page 29, which includes graphics representing the floorspace requirements and number of dwellings required to accommodate the forecast population and jobs
- page 44, which explains how the proposed floor area ratios and built form controls can accommodate the forecast population and jobs.

The population figure in the Structure Plan was based on forecasts prepared by Geographia for Council in 2015 and 2017. Council has since commissioned updated forecasting from .id consultants, which predict a population in West Melbourne of 18,687 by 2036. Council has undertaken capacity modelling to test whether the proposed controls can accommodate the revised population. These matters are discussed in detail in Chapter 6.2.

2.3 Land use mix

The Structure Plan discusses the desired land use mix in West Melbourne in section 2.2. It notes that in the 10 years before the Structure Plan was prepared, jobs had decreased by 25 per cent, while residential dwellings had increased by around 90 per cent. It notes the potential for the mixed use character of West Melbourne and local employment opportunities to be lost. The objectives and actions set out in section 2.2 seek to ensure that:⁵

... West Melbourne retains a true mix of uses, with a broad range of spaces that enable community and creative uses, and support services for the neighbouring areas of Docklands, Parkville and the central city.

The Structure Plan states that the current MUZ is delivering predominantly residential development, and that it is proposed to rezone parts of West Melbourne to the SUZ or equivalent zoning, to enable a minimum proportion of the maximum floor area to be dedicated to non-residential uses. The land use mix will be supported by the new Spencer Street activity centre and new walking and cycling connections that will ensure good access to community and creative infrastructure within and around West Melbourne.

2.4 Floor area ratios and built form controls

The Structure Plan proposes floor area ratios and built form controls for each precinct that seek to deliver the vision and design objectives set out for each precinct in the Structure Plan. The floor area ratios and building envelope controls are summarised in Table 2.

Table 2 Existing heights, proposed heights and proposed FARs

Precinct	Existing heights*	Proposed heights*	Proposed FAR
Station	- 5 storeys	- 8 storeys	5:1
Spencer	- 4 storeys	- 10 storeys fronting Dudley Street - 8 storeys fronting Spencer and King Streets - 6 storeys elsewhere	4:1

⁵ Structure Plan at page 51

Precinct	Existing heights*	Proposed heights*	Proposed FAR
Adderley	- 4 storeys	- 6 storeys fronting Adderley Street between Hawke and Dudley Streets - 4 storeys elsewhere	3:1
Flagstaff	- 40 metres (around 12 storeys)	- 16 storeys	6:1

* all heights are preferred maximums

The Structure Plan also envisages minimum non-accommodation floor area requirements for all accommodation uses that require a permit under the SUZ6, and includes requirements relating to active frontages, pedestrian and cycling connections, open space and the like.

No changes are proposed to the controls in the Historic Hilltop Precinct, those parts of the Adderley Precinct that are to be retained in the GRZ or the MUZ, or those parts of the Station Precinct that are to be retained in the MUZ.

2.5 Affordable housing

Objective 7 of the Structure Plan is to help deliver affordable housing in West Melbourne. The Structure Plan notes that the 2011 census indicated that 10 per cent of all Victorian households are either homeless, on low incomes and in serious rental stress, or living in social housing.

The Structure Plan includes the following actions:

- Applicants should provide a minimum of 6 per cent affordable housing in the Flagstaff, Spencer and Station Precincts. If the Victorian Government affordable housing policies are updated, the target will be increased.
- Facilitate and strengthen the partnership between community housing providers and the development industry.

The Structure Plan states that West Melbourne's location, established community services, access to transport and existing job opportunities make it an ideal location for affordable housing, and for people on low to moderate incomes in industries such as medical, universities, tourism and arts and creative industries to live. It notes that similar cities including Sydney, Vancouver and London have similar, but often stronger, planning requirements for affordable housing.

The Structure Plan states:⁶

The affordable housing delivered in West Melbourne should be provided in perpetuity with the assets transferred at no cost to a Registered Affordable Housing Association or provider and secured by a Section 173 Agreement.

It refers to the SGS Stage 2 report as demonstrating the feasibility of a 6 per cent affordable housing contribution, and states that:⁷

⁶ Structure Plan at page 56

⁷ Structure Plan at page 57

If, after considering the current market conditions and a site's particular characteristics, concerns exist about the viability of providing affordable housing, applicants will need to prove why the affordable housing is unable to be delivered. This could consist of a more rigorous 'open book' approach to demonstrate their concerns and/or submit a detailed viability report (which could be analysed by an independent third party at the cost of the applicant) to show that providing affordable housing is not viable for a particular site.

3 Background and context

3.1 The 2005 Structure Plan

The previous West Melbourne Structure Plan was completed in 2005 and informed the existing planning controls for the area. The 2018 Structure Plan indicates that since 2005, there has been a significant amount of change in the area, and that areas with discretionary height controls close to the central city and North Melbourne (future West Melbourne) Station *“have been developed in a way that significantly exceeds current planning controls and existing growth forecasts”*. It goes on to state:⁸

The ambiguity and flexibility of the current built form controls leads to uncertainty for the community, landowners and developers regarding what is considered an appropriate level of development in West Melbourne. It also means that supporting infrastructure, such as open space, transport and community facilities, are not keeping pace with increasing populations.

3.2 The development of the 2018 Structure Plan

Section 1.6 of the Structure Plan outlines the community engagement process Council undertook in developing the Structure Plan. It states that Council *“worked with the community and stakeholders to develop a shared vision for West Melbourne to help guide and manage future growth in the area”*. The community engagement included three phases, as well as ongoing discussions with key stakeholders, resident groups and others:

- Phase one: Understanding the community’s likes, concerns and priorities for the area to help shape the new structure plan (April-May 2015)
- Phase two: Engagement on the draft vision and ideas in the Ideas for West Melbourne discussion paper (February-March 2017)
- Phase three: Engagement on the draft West Melbourne Structure Plan (July - August 2017).

Council adopted the Structure Plan on 6 February 2018.

3.3 Conditions of authorisation

The Amendment was authorised on 19 September 2018, subject to a number of conditions and recommendations. The Panel invited DELWP to attend the Hearing and address the Panel on the conditions of authorisation. The conditions and recommendations related to:

- the affordable housing requirements
- the proposed blanket application of the EAO to the whole of the Structure Plan area
- other drafting and procedural matters
- the wording of the minimum non-accommodation floor area requirements
- the feasibility testing.

The conditions, and DELWP’s submission to the Panel, are discussed in the relevant chapter.

⁸ Structure Plan at page 18

3.4 Related amendments

A number of recent or current amendments relate directly or indirectly to the Structure Plan area or its immediate surrounds, and provide context for Amendment C309.

(i) Amendment C258 – the West Melbourne Heritage Review

Amendment C258 applies to all land within the municipality affected by a Heritage Overlay, including land within the Structure Plan area. Amendment C258 seeks to (among other things) implement the *West Melbourne Heritage Review 2016*, which documented the established heritage of the area and recommended levels of protection. The Structure Plan was informed by Amendment C258, which is expected to be adopted by Council in the second quarter of the 2019-2020 financial year.

Interim heritage overlays were introduced in West Melbourne in March 2018 by Amendment C273. The interim overlays largely mirror the permanent controls sought through C258. Amendment C258 also proposes to make changes to Council's local heritage policies. The new policies adopt a contemporary heritage classification system of Significant, Contributory and Non-Contributory, replacing the pre-existing system of gradings ranging from A to D.

(ii) Amendment C308 – Central Melbourne urban design

Amendment C308 proposes to improve the quality of urban design in the central city and Southbank by consolidating urban design policy and introducing built form controls in a new schedule to the DDO. Amendment C308 affects land to the immediate east and south of the Structure Plan area. Council submitted that C308 will *"contribute to shaping the urban design interface shared between the Central City, and the Flagstaff and Historic Hilltop precincts"*. Council expects that Amendment C308 will be adopted by Council in the second quarter of the 2019-2020 financial year.

(iii) Amendment C270 – Central city built form review

Amendment C270 implemented the DELWP led Central City Built Form Review by applying permanent planning controls to maintain the liveability of the central city and Southbank, and allow for sustainable growth and development in the longer term. Council submitted that it, like Amendment C308, will *"contribute to shaping the built form interface shared between the Central City, and the Flagstaff precinct"*.

A key element of Amendment C270 was the introduction of floor area ratios, which Council submitted *"provide much needed certainty and consistency of built form outcomes"*. It also introduced mandatory and discretionary height controls, building separation requirements, revised overshadowing and wind requirements, and a floor area uplift scheme in exchange for the delivery of public benefits including affordable housing.

(iv) Amendment VC148

Amendment VC148 was a state-wide amendment gazetted on 31 July 2018. It introduced a new integrated Planning Policy Framework (PPF) in Clauses 10 to 19 of all planning schemes, replacing the previous State Planning Policy Framework. Over time, the Local Planning Policy Framework in each planning scheme will be updated and incorporated into the integrated PPF.

Council submitted that the proposed new Clause 21.16-6:⁹

... has been drafted in a manner that is consistent with the existing local area policies within the MSS, and has not been drafted on the basis of the new structure of the integrated PPF. This is consistent with the intention that integration of existing [Local Planning Policy Frameworks] into the PPF will take place as a further, future stage of reform.

Council submitted that Clause 21.16-6 is nevertheless consistent with the intent behind Amendment VC148, tailored to the local context with locally specific content.

⁹ Council's Part A submission at paragraph 105

4 Planning context

4.1 Planning policy framework

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report and its Part A submission. The Panel has reviewed Council's response and the policy context of the Amendment and has made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

Victorian planning objectives

Council considered the Amendment will assist in implementing State policy objectives set out in section 4 of the Act by:

- providing for the fair, orderly, economic and sustainable use, and development of land
- securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- conserving and enhancing those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
- protecting public utilities and other assets and enabling the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community
- balancing the present and future interests of all Victorians.

Clause 11 (Settlement)

Council submitted that the Amendment supports Clause 11.01-1R (Settlement – Metropolitan Melbourne) by:

- creating mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts, that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.

Council submitted that the Amendment supports Clause 11.02- 1S (Supply of urban land) by:

- ensuring that sufficient land is available to meet forecast demand
- planning to accommodate projected population growth over at least a 15 year period and provide clear direction on locations where growth should occur.

Council submitted that the Amendment supports Clause 11.02-2S (Structure planning) by implementing a Structure Plan that:

- takes into account the strategic and physical context of the location
- provides the broad planning framework for West Melbourne as well as the more detailed planning requirements for precincts, where appropriate
- provides for the development of sustainable and liveable urban areas in an integrated manner
- assists the development of walkable neighbourhoods
- facilitates the logical and efficient provision of infrastructure and facilitates the use of existing infrastructure and services.

Clause 13 (Environmental risks and amenity)

Council submitted that the Amendment supports Clause 13.04-1S (Contaminated and potentially contaminated land) by ensuring that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely.

Clause 15 (Built Environment and Heritage)

Council submitted that the Amendment supports Clause 15.01-1S (Urban design) by:

- requiring development to respond to its context in terms of character
- ensuring development contributes to community and cultural life by improving the quality of living and working environments
- ensuring the interface between the private and public realm protects and enhances personal safety
- ensuring development supports public realm amenity and safe access to walking and cycling environments and public transport
- ensuring that the design and location of publicly accessible private spaces, including car parking areas, forecourts and walkways, is of a high standard, creates a safe environment for users and enables easy and efficient use
- promoting good urban design along and abutting transport corridors.

Clause 16 (Housing)

Council submitted that the Amendment supports Clause 16.01-4S (Housing affordability) by increasing the supply of well-located affordable housing by facilitating a mix of private, affordable and social housing in suburbs, activity centres and urban renewal precincts.

Clause 17 (Economic development)

Council submitted that the Amendment supports Clause 17.01-1S (Employment – Diversified economy) by facilitating growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services, based on the emerging and existing strengths of each region.

Council submitted that the Amendment supports Clause 17.02-1S (Business) by ensuring commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

4.2 Municipal Strategic Statement

The Growth Area Framework Plan

Council submitted the Amendment is consistent with its Growth Area Framework Plan contained in Clause 21.04, extracted in Figure 4 below. Council noted that West Melbourne is neither:

- part of the Hoddle grid or central city
- a current, proposed or potential urban renewal area
- stable residential area.

Growth would be targeted to the central city and urban renewal areas and be limited in the stable residential areas. Other areas (like West Melbourne) would be managed for ongoing and incremental growth.

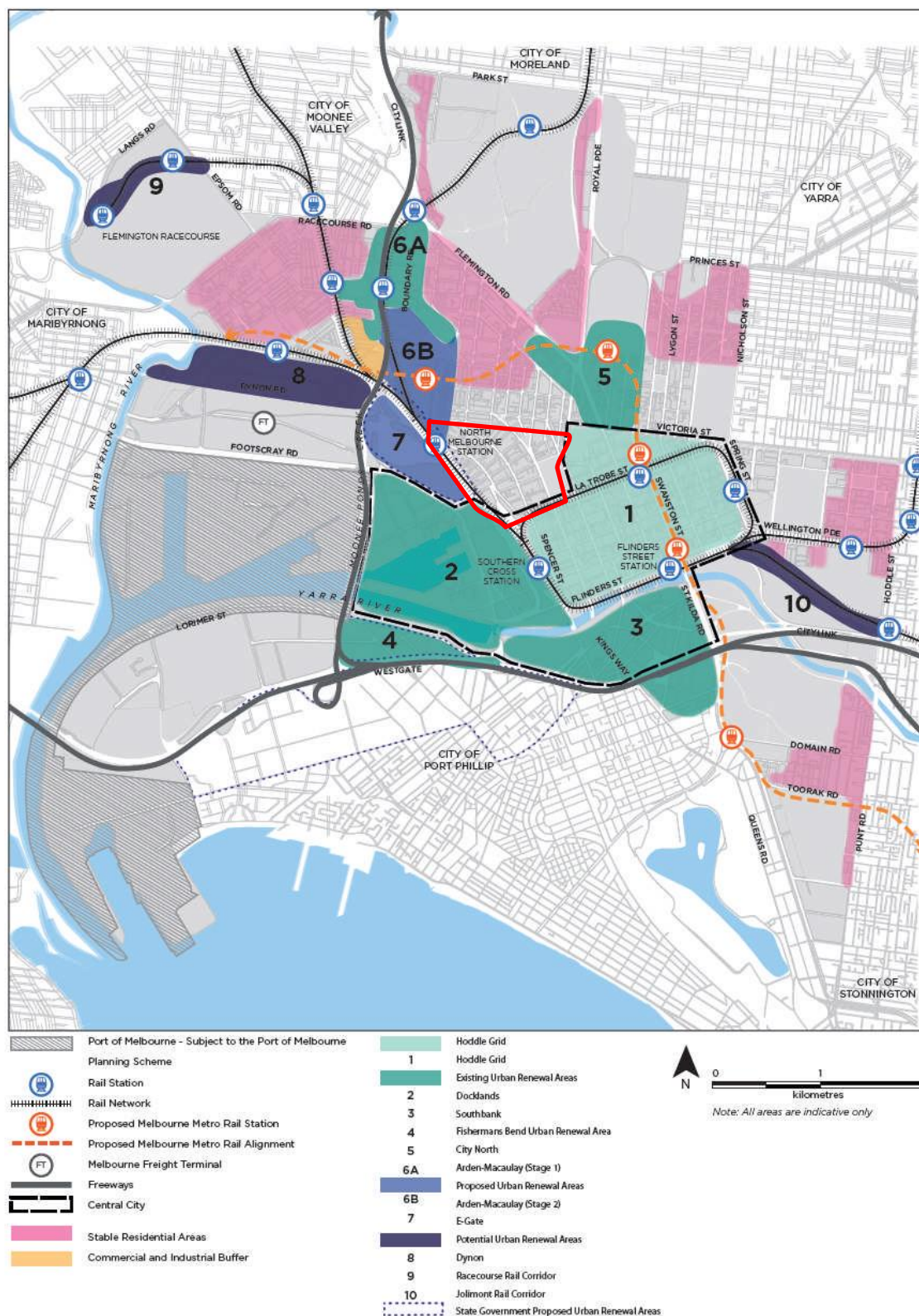


Figure 4 Council's Growth Area Framework Plan

Source: Clause 21.04, with Panel's annotation

4.3 Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. During the Hearing West Melbourne was frequently referred to as "the hole in the donut" as it lacked any specific strategic direction, as distinct from other surrounding precincts. Council referred to Map 4 of Plan Melbourne to demonstrate that West Melbourne is not identified for significant growth. It is not part of the central city, a 'Priority Precinct' or an 'Other Precinct' (which represent major urban renewal areas). Council emphasised that its Growth Area Framework Plan was consistent with Map 4.



Map 4

Key features in and around Melbourne's central city

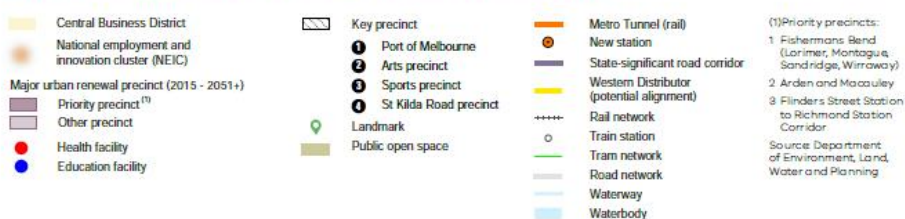


Figure 5 Map 4 from Plan Melbourne

Source: Plan Melbourne, with Panel's annotation

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in Table 3.

Table 3 Relevant parts of Plan Melbourne

Outcome	Directions	Policies
1 Melbourne is productive city that attracts investment, supports innovation and creates jobs	1.3 Create development opportunities at urban renewal precincts across Melbourne	1.3.2 Plan for new development and investment opportunities on the existing and planned transport network
2 Melbourne provides housing choice in locations close to jobs	2.3 Increase the supply of social and affordable housing	2.3.4 Create ways to capture and share the value uplift from rezonings
4 Melbourne is a distinctive and liveable city with quality design and amenity	4.4 Respect Melbourne's heritage as we build for the future	4.4.1 Recognise the value of heritage when managing growth and change
5 Melbourne is a city of inclusive, vibrant and healthy neighbourhoods	5.1 Create a city of 20-minute neighbourhoods	5.1.1 Create mixed-use neighbourhoods at varying densities

Council submitted that while West Melbourne is not identified as an urban renewal precinct, the SUZ6 will help retain and attract the types of businesses appropriate to West Melbourne, such as in the health and education sectors, and ensure it remains a healthy, vibrant mixed use neighbourhood.

4.4 Planning scheme provisions

(i) Zones

The Amendment proposes to rezone most land currently in the MUZ to the SUZ6. Figure 6 below shows the proposed zoning, and reflects Council's proposed post-exhibition change to rezone the Judy Lazarus Transition Centre Public Use Zone – Schedule 3 (Health and community), to reflect the current zoning of the Melbourne Assessment Prison.

The purposes of the SUZ are:

To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.

The specific purposes of the SUZ6 are:

- To implement the West Melbourne Structure Plan 2018 and support the development of West Melbourne as a vibrant, mixed use inner city neighbourhood with a genuine mix of retail, commercial, education and residential uses and affordable housing
- To retain and increase local employment and facilitate an increase in jobs in West Melbourne

- To support a less car dependent transport system by ensuring that opportunities to adapt and repurpose car parks are protected, and to facilitate the adoption of sustainable transport alternatives
- To encourage provision of new public open spaces throughout West Melbourne to meet the different needs of the growing community
- To develop the Spencer Street Village as a local activity centre with a mix of commercial, retail, residential and community uses to complement its activity centre function.

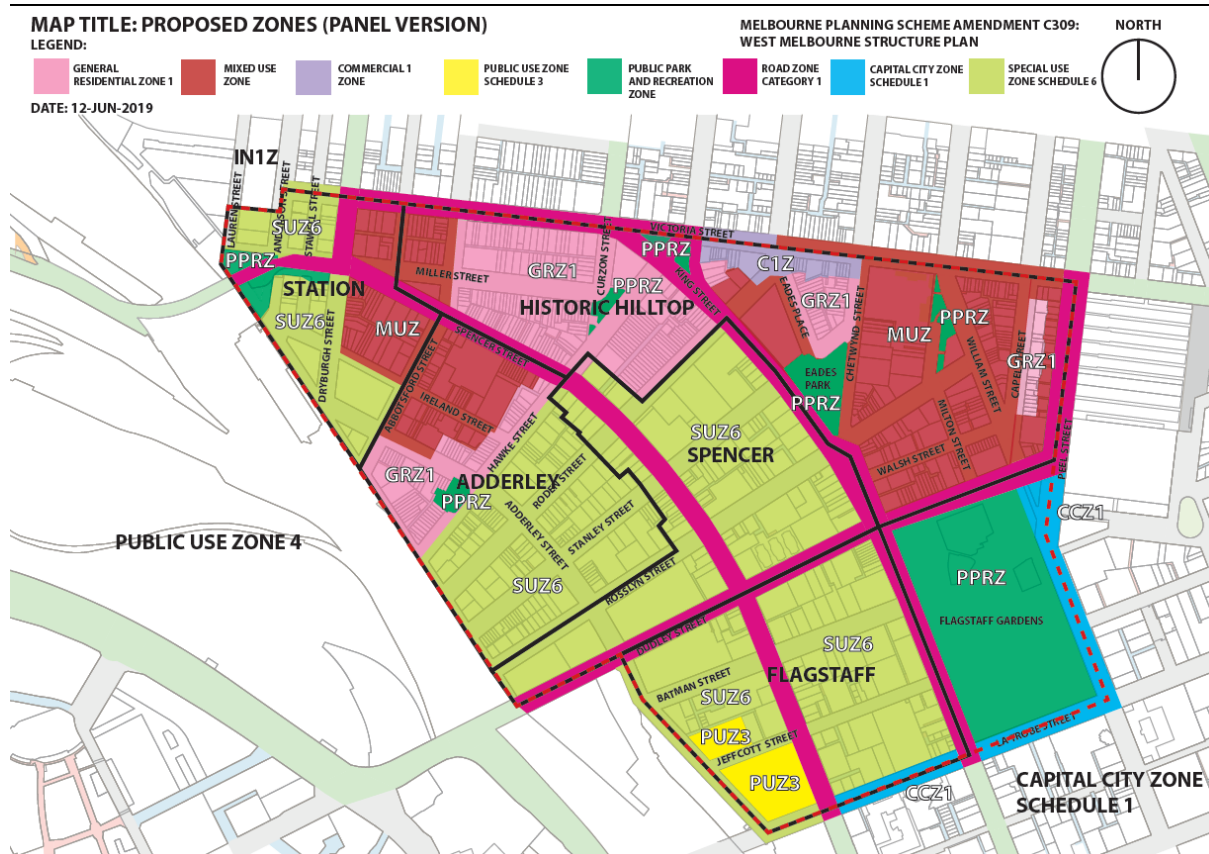


Figure 6 Proposed zones

Source: Council map book (Document 41)

(ii) Overlays

Design and Development Overlays

The Amendment proposes to apply new or amended DDO schedules to the land proposed to be rezoned SUZ6, as shown in Figure 7.

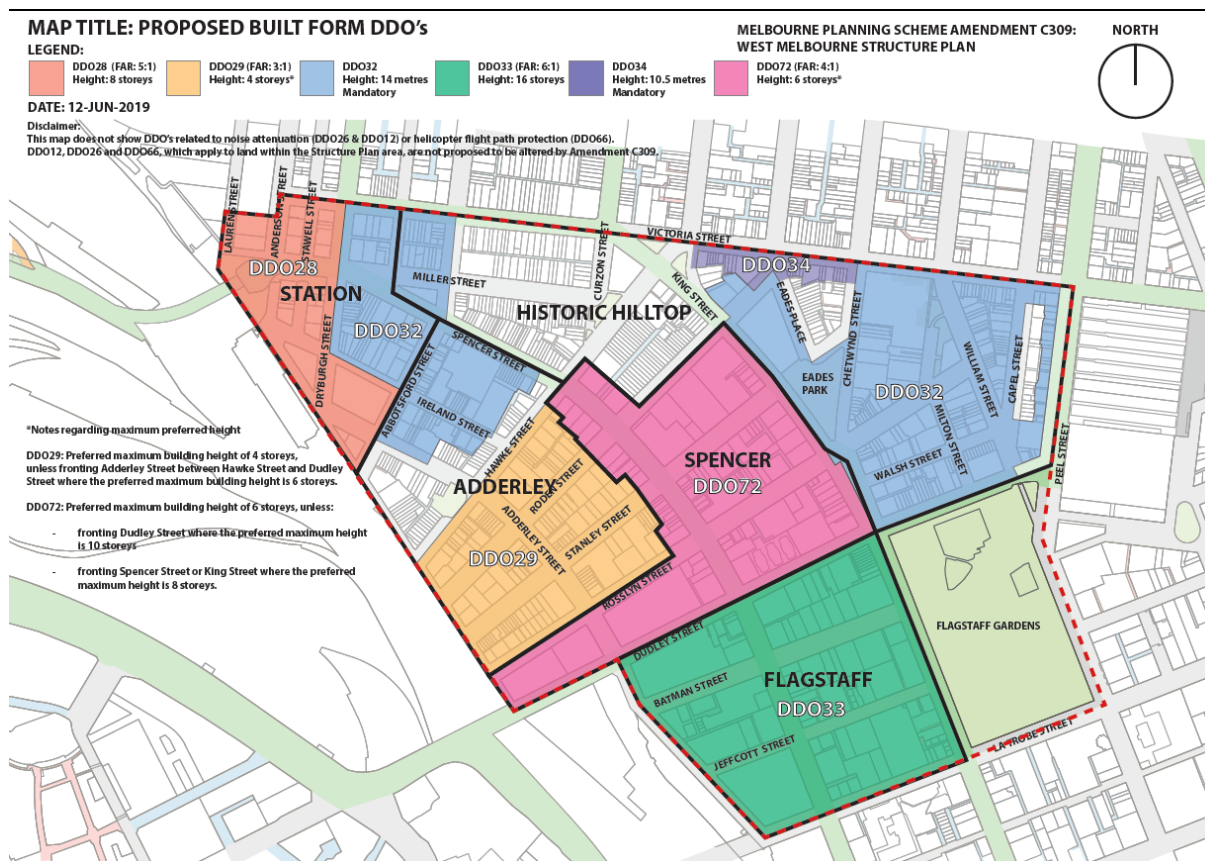


Figure 7 Proposed Design and Development Overlays

Source: Council map book (Document 41)

The purpose of the DDO is:

To identify areas which are affected by specific requirements relating to the design and built form of new development.

The DDOs contain some common design objectives and others that are specific to the relevant precinct. For example:

- DDO28 (Station) seeks to generate activity around the North Melbourne Station
- DDO29 (Adderley) seeks to reinforce the role of Railway Place as a pedestrian link within and outside of the precinct
- DDO33 (Flagstaff) seeks to ensure development does not impact upon outlook from Flagstaff Gardens and St James Old Cathedral
- DDO72 (Spencer) seeks to emphasise Dudley and King Streets as important boulevards into the city.

The DDOs contain a floor area ratio for each precinct, built form outcomes and requirements and a list of special character buildings.

Parking Overlay

The Amendment proposes to apply the PO14 to land proposed to be rezoned SUZ6. The purposes of the PO are to:

- facilitate an appropriate provision of car parking spaces in an area
- identify areas and uses where local car parking rates apply
- identify areas where financial contributions are to be made for the provision of shared car parking.

The objectives of the PO14 are to:

- support long term sustainable transport patterns and minimise road congestion in West Melbourne
- identify appropriate car parking rates for West Melbourne
- ensure parking facilities are efficient and flexible to meet changing community needs
- minimise negative impacts of parking facilities on the public realm and transport networks
- provide for future adaption of car parking to other uses and innovations in transport technology.

PO12 (Residential development in specific inner city areas) currently applies to part of the Historic Hilltop Precinct and Flagstaff Gardens. This Amendment does not change PO12, although Council's post-exhibition changes include removing the PO12 from two sites that the PO14 will now be applied to.

Environmental Audit Overlay

The Amendment proposes to apply to EAO to land in the Structure Plan area. The purpose of the EAO is:

To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.

As exhibited the EAO was proposed to apply to all of the Structure Plan area. Some submitters objected to this on the basis it was not strategically justified. After considering submissions, Council proposed to refine the application of the EAO to properties identified in the Preliminary Contamination Assessment.

Heritage Overlay

Large areas of West Melbourne are currently affected by interim Heritage Overlays, which are proposed to be made permanent by Amendment C258. See Figure 8.

The purposes of the Heritage Overlay are to:

- conserve and enhance heritage places of natural or cultural significance
- conserve and enhance those elements which contribute to the significance of heritage places
- ensure that development does not adversely affect the significance of heritage places
- conserve specified 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.

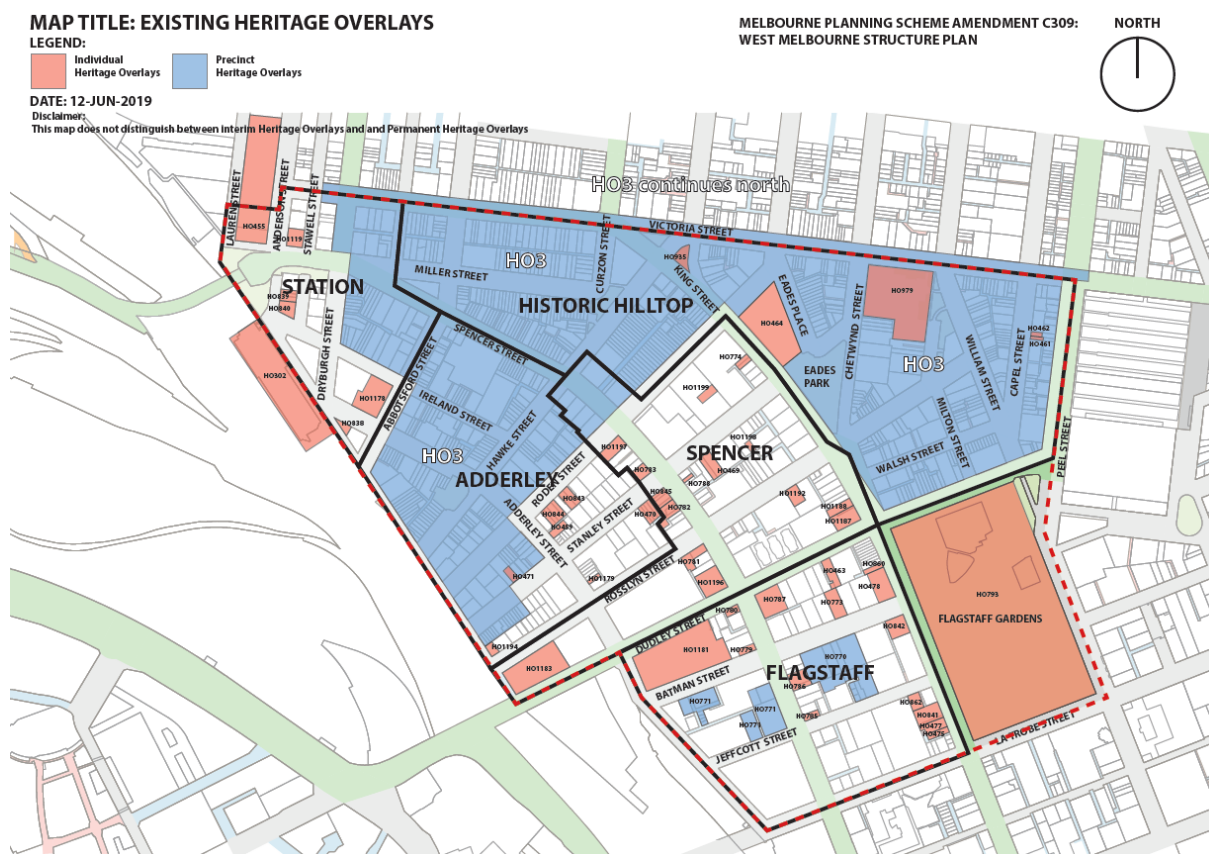


Figure 8 Existing Heritage Overlays

Source: Council map book (Document 41)

(iii) Other provisions

Relevant particular provisions include Clause 52.06 (Parking).

4.5 Ministerial Directions and Practice Notes

(i) Strategic Assessment Guidelines

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018. That discussion is not repeated here.

(ii) Planning Practice Note 13: Incorporated and Background Documents

The Structure Plan will be a background document that can provide clarity.

(iii) Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes

The Amendment includes two mandatory provisions:

- minimum non-accommodation floor area requirements in the SUZ6
- floor area ratio limits in the DDOs.

Some submitters argued that the affordable housing requirements are also effectively mandatory.

Planning Practice Note 59 (PPN59) provides guidance on when mandatory controls may be appropriate. It states that mandatory provisions are the exception, and that the VPP are primarily based on the principles that there should be discretion for most developments, and that applications are to be tested against objectives and performance outcomes rather than prescriptive mandatory requirements.

Nevertheless, PPN59 recognises that there will be circumstances where a mandatory provision will provide certainty, and ensure a preferable and efficient outcome. It sets out criteria to assess when mandatory provisions may be appropriate:

- Is the mandatory provision strategically supported?
- Is the mandatory provision appropriate to the majority of proposals?
- Does the mandatory provision provide for the preferred outcome?
- Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?
- Will the mandatory provision reduce administrative costs?

(iv) Planning Practice Note 60: Height and Setback Controls for Activity Centres

West Melbourne is not part of an activity centre. However Council referred to PPN60 for guidance on height and setback controls in the DDOs.

(v) Other

Other relevant Ministerial Directions and Practice Notes are discussed in the relevant issue chapter.

5 Strategic justification

5.1 Evidence and submissions

Most submitters and expert witnesses commented on whether the Amendment was supported by the existing policy framework. There were two camps – one saying it was consistent, and the other saying that the extent of recent development indicated the need to update West Melbourne’s policy framework. Some submitters considered the Amendment would ‘undercook’ the potential of West Melbourne and would result in an underutilisation of the land and a missed opportunity to accommodate growth.

Council submitted:¹⁰

West Melbourne is not identified in the framework plan at cl 21.04 as being part of the Hoddle Grid, nor an urban renewal area (existing, proposed or potential), nor a stable residential area. It is, by default, an area ‘of ongoing and incremental growth’.

That designation means that:

- a) growth is expected to occur in an ‘ongoing’ and ‘incremental’ fashion (ie smaller increments responding to existing character rather than wholesale change as in an urban renewal area consequent upon an amendment which proposes a new built form and character); and
- b) the area is to be assessed based upon the policies that apply to that area, including the Mixed Use Zone, the General Residential Zone, the Heritage Overlay, the various DDOs (DDO28, 29, 32 and 33) and cl 21.16.

It went on to state:¹¹

... the absence of an ‘intensification’ designation for West Melbourne in Plan Melbourne (and the MSS) should not be characterised as a mistake or oversight, but as a deliberate, informed decision that should be respected. Plan Melbourne is the pre-eminent strategic planning guidance for Melbourne, and the Panel should not entertain any argument to depart from its clear direction for West Melbourne.

Council called Mr Barnes to give planning evidence. Mr Barnes supported Council’s analysis of the policy framework. His evidence was:¹²

Areas targeted for growth include the Hoddle Grid and designated existing, proposed and potential urban renewal areas. West Melbourne is not a designated urban renewal area that is targeted for growth. It is best characterised as an area expected to experience ongoing incremental growth.

Mr Barlow gave planning evidence for a group of clients represented by Planning and Property Partners – Spencer Street West Melbourne Pty Ltd, Fort Knox Self Storage (Vic) Pty Ltd and Holder East Pty Ltd (the PPP clients). Mr Barlow focussed on the future role of West Melbourne, reflected on its planning and growth history, and considered that the existing policy framework did not reflect the current and future direction of the Flagstaff and Spencer precincts, in particular. He analysed the old format planning scheme controls dating back to 1954, the new format controls, Amendments C20 and C162 and a history of

¹⁰ Council Part B submission at paragraph 6

¹¹ Council Part B submission at paragraph 18

¹² Mr Barnes’ expert witness statement at paragraph 36

consistently under-estimating population projections. He considered that incremental growth should not be considered minor or moderate change, but reflects the development taken up by land that can accommodate it over time. Mr Barlow considered West Melbourne is of increasing strategic importance in linking urban renewal areas, supporting the role of the central city and contributing further to the inner city's residential and employment growth.

Mr Barlow's evidence was that West Melbourne needed to make a greater contribution to employment than the contribution envisaged in the Structure Plan and the controls, as surrounding areas reach capacity:¹³

... the Hoddle Street Grid, Docklands and Southbank are unable to deliver the required employment floorspace beyond 2036, where opportunities to deliver employment space have been impacted by significant residential development in the last decade, along with changes to the built form controls. Within the Hoddle Street Grid, remaining sites are either heavily constrained or unable to accommodate the larger floor plates required by commercial land uses. Areas such as Southbank and Docklands, which initially emerged as 'spill over' extensions to the CBD, are also nearing employment development capacity. Further, limited office development has occurred in Southbank over recent years, largely due to its distance away from key train stations.

Mr Barlow considered the City North urban renewal area was a good example of an area that has *"an important connection for knowledge and innovation, linking the area between the Central City and Parkville [National Employment and Innovation Cluster]"*. He considered that West Melbourne could play a similar role linking the central city and the Arden-Macaulay urban renewal area, as well as linking to Parkville. Mr Barlow's view was:¹⁴

... whilst the [Structure Plan] identifies the locational attributes of West Melbourne and encourages employment generating uses, it does not do so to a degree that is truly reflective of the important role West Melbourne plays within the broader central region or responds to future growth forecasts (as opposed to targets).

Mr Quick gave similar evidence for the PPP clients, in an economic context.

In cross examination, Mr Barlow conceded that West Melbourne was not identified as a current, proposed or potential urban renewal area, as an extension of the CBD or identified for significant growth.

Mr Glossop also accepted that West Melbourne was different. In referring to Fishermans Bend, he stated:¹⁵

As an aside, I think that the approach taken to Fishermans Bend is deservedly different as it is a large scale urban renewal project and requires the creation of new neighbourhoods. To that extent, I think that planners and government had a greater agency to effect and control built form and land use change in that context. I do not think that such an approach would be warranted in West Melbourne.

West Melbourne is an existing and established location that is attached to the Central Business District (and other areas). Redevelopment in West Melbourne will necessarily be piecemeal (lot-by-lot) as the area's existing urban pattern is effectively

¹³ Mr Barlow's expert witness statement at paragraph 16

¹⁴ Mr Barlow's expert witness statement at paragraph 61

¹⁵ Mr Glossop's expert witness statement at paragraphs 34 and 35

'set'. While the WMSP is a place-making document, one must acknowledge that key aspects of that 'place' are already in place and will remain so.

Council responded to the proposition that West Melbourne needed to provide for higher population and employment growth:¹⁶

Council rejects the suggestion that the Central City is approaching capacity and that its surrounding urban renewal areas will be unable to accommodate forecast growth into the future. However, this is clearly not an issue that this Panel needs to grapple with. Nor could this Panel grapple with that issue. The State government is responsible for developing and implementing the plan for Metropolitan Melbourne. Even if the Panel could, as a matter of law, 'go behind' Plan Melbourne, it clearly does not have the resources to do so. Hearing the views of a couple of submitters and a couple of expert witnesses (no matter how eminent) in relation to population and capacity is clearly not a sound basis to depart from the clear direction in Plan Melbourne as to how growth is to be accommodated.

5.2 Discussion

The Panel can only make an assessment of the Amendment against the current policy framework. It is not the role of the Panel to assess whether it should be the subject of a new policy framework. The Panel agrees with Council that to do the latter would undermine the role of Plan Melbourne in setting planning policy, particularly for this important CBD fringe location and the inner suburbs where there will always be a strong demand for more intense development.

The Panel's approach has been to consider:

- what level of growth the current policy framework envisages for West Melbourne
- what level of growth the Amendment provides for
- whether the Amendment 'undercooks' the development potential of West Melbourne in that context.

(i) What level of growth does the policy framework contemplate?

The current policy direction for West Melbourne is for incremental and ongoing growth. The Panel considers that the level of growth that can be expected is at a scale less than an urban renewal area, and more than a stable residential area.

Plan Melbourne is perhaps remarkable not by what it says about West Melbourne, but what it does not say. West Melbourne cannot be considered as a greenfield or even a brownfield redevelopment opportunity or an urban renewal area (either current or future). Nor has it been identified for significant growth. This direction of Plan Melbourne is reflected in Council's Growth Area Framework Plan at Clause 21.04 (Settlement), which similarly lacks any reference to West Melbourne's specific strategic role.

As Council pointed out, there have been a number of opportunities to review West Melbourne's strategic role over recent years, at both a State and local level. These have included Amendment C20 (which introduced new built form controls to West Melbourne), Amendment C162 (the latest MSS review), Melbourne 2030, Plan Melbourne 2014 and Plan

¹⁶ Council Part B submission at paragraph 29

Melbourne Refresh 2017. Despite this, State and local policy has consistently identified West Melbourne as an area for incremental and ongoing growth.

Mr Barlow referred to the panel reports for the new format planning scheme in 1999 and Amendment C20 to demonstrate there was support for more growth in West Melbourne. He emphasised that Amendment C20 referred to the Flagstaff precinct as the 'CBD Fringe'. Council countered that the panel for the more recent Amendment C162 supported the designation of West Melbourne as neither part of the central city nor an urban renewal area. In the intervening period Plan Melbourne has also reached the same conclusion.

The Panel agrees with Council that, despite the many opportunities to review its strategic role, West Melbourne remains an infill area that will be the subject of ongoing incremental growth. It agrees that any fundamental change to the strategic role of West Melbourne should be considered in the next iteration of Plan Melbourne, not by this Amendment.

That said, the Panel accepts that West Melbourne has an important role to play in accommodating growth, and that there are a number of other policies in Plan Melbourne that support its continued growth. The Amendment is providing for further growth in West Melbourne, principally by increased height limits but perhaps tempered by the use of mandatory floor area ratios.

Council has taken a place-based approach in the Structure Plan that was supported by a variety of expert witnesses and the Office of the Victorian Government Architect's Design Review Panel. In demonstrating West Melbourne is its own place, distinct from the central city and surrounding urban renewal areas, Council submitted that:¹⁷

West Melbourne has an existing character, which is highly valued by the community. This existing character provides it with a unique opportunity to play a different, but nevertheless highly complementary role, to those other areas identified for growth. West Melbourne offers the potential to accommodate a rich, diverse, highly liveable, dense, mixed use community – a community based upon the well thought-out and detailed Structure Plan. West Melbourne provides the opportunity for people to experience dense apartment living in a different way to the opportunity that is offered at Southbank, with its inactive streets and dominance of podium car parks.

This existing, valued character provides sound reason for treating West Melbourne differently to the urban renewal areas identified in Plan Melbourne and the Planning Scheme. Further, the planning framework supports areas like West Melbourne being treated differently.

The Panel agrees, but this is not to say that there is a homogenous character across all of West Melbourne. The character varies from precinct to precinct. For example, the majority of the Historic Hilltop Precinct has a strong residential character whereas in the Flagstaff Precinct, the existing development, mix of uses and a lack of variation in housing typology (which is predominantly apartment-style) suggests a different character. The precinct chapters take this further in respect of the specific controls for each precinct.

The Panel acknowledges the concerns expressed by Mr Barlow and others regarding the strategic context of West Melbourne and the need to ensure it plays its role in providing for population and employment growth in metropolitan Melbourne.

¹⁷ Council's Part B submission at paragraphs 15 and 16

In her memo responding to Mr Quick's evidence (Document 44), Ms Hodyl (who gave urban design evidence on behalf of Council) compared the population density that could be accommodated under the proposed controls to similar national and international precincts. She concluded that the density for West Melbourne is "*about right*".

The controls allow for a population density of 25,946 people per square kilometre in West Melbourne, compared to:

- 13,900 for Arden-Macaulay
- 19,600 for City North
- 29,310 for Docklands
- 32,258 for Fishermans Bend.

All of these precincts are designated as urban renewal areas in Plan Melbourne (refer to Figure 5 above). West Melbourne is not identified as a current, potential or future urban renewal area.

(ii) Does the Amendment 'undercook' the development potential of West Melbourne?

In the Panel's view, the policy framework does not expect West Melbourne to do as much 'heavy lifting' in providing for population growth compared to designated urban renewal areas. The West Melbourne population density is higher than some urban renewal areas (Arden Macaulay and City North), and the Panel is satisfied that West Melbourne is and will continue to play a role in accommodating population growth in inner Melbourne. The Panel is not persuaded that West Melbourne should do more, and considers that its future growth potential under the proposed controls is consistent with its ongoing and incremental growth role.

The Structure Plan was informed by a comprehensive set of background reports and studies and an extensive assessment of existing conditions and characteristics of West Melbourne. This included its strategic context, locational characteristics, relationship to the central city and surrounding urban renewal areas, street layout, traffic movements and patterns, as well as existing character and emerging shifts in character as a result of recent construction and approvals. There is a clear and logical connection between the comprehensive analysis of existing conditions, the future vision for West Melbourne set out in the Structure Plan, and the controls that are proposed to help deliver that vision.

On balance, the Panel believes the Amendment, in taking a place-based approach to West Melbourne, will deliver a reasonable level of net community benefit based on planning controls that are tailored to each precinct that provide for increased development opportunities and greater certainty. This is a core tenet of the Victorian planning system that is appropriately reflected in Clause 71.02-3 (Integrated decision making):

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations

The Panel considers the proposed planning controls will result in sustainable development, subject to further assessment in the following chapters.

5.3 Conclusion and recommendations

The Panel concludes that the Amendment is strategically justified and supports a range of State and local planning policies. It does this by providing for incremental and ongoing growth that is at a level less than what can be expected in an urban renewal area and more than a stable residential area. The Amendment should proceed, subject to a number of detailed recommendations outlined in this report.

Some consequential changes will be required to the descriptions of Local Areas in Clause 21.11, and the map in Figure 5 (Local Areas) in Clause 21.11. Consequential changes may also be required to the Growth Area Framework Plan map in Clause 21.04, which shows the north west corner of the West Melbourne Structure Plan area as part of the Arden Macaulay (Stage 2) urban renewal area.

The Panel recommends:

Adopt the Part C controls (Document 116) with the changes shown in Appendix D, which reflect the specific recommendations contained in this report.

Update the descriptions of local areas in Clause 21.11, the map in Figure 5 in Clause 21.11 and the Growth Area Framework Plan in Clause 21.04 to reflect the new West Melbourne local area policy in Clause 21.16-6.

Both the Part B and Part C controls propose many changes which would be difficult to follow in track changes. For the purposes of this report the Panel has adopted the Part C controls as the starting point for its preferred versions in Appendix D, rather than the exhibited versions.

The Panel preferred versions of the controls in Appendix D include the following types of changes (shown in track changes):

- changes to reflect the Panel's specific recommendations
- changes that the Panel recommends, but that are not significant enough to warrant a specific recommendation
- changes to reflect Council's response to the Panel's drafting queries (Document 125)
- some restructuring and minor drafting changes that seek to provide clarity to the controls, but that do not change their substantive effect.

The first three types of changes are explained with drafting notes. Drafting notes have been included in DDO33 (Flagstaff), but they are not included in the other DDOs in respect of common changes. The minor drafting changes are self-explanatory, and are generally not accompanied with drafting notes. For clarity, the tracking only shows changes to text, not where text has been moved.

PART B – OVERARCHING ISSUES

6 Population, employment, capacity and feasibility

6.1 Introduction

As outlined in Chapter 2, the Structure Plan envisages a population of 8,000 to 9,000 residents, and 10,000 jobs, by 2036. This represents an additional 4,500 to 6,500 jobs, assuming retention of some of the existing 5,518 jobs (as at 2015) in the area.

The population of 8,000 to 9,000 was based on forecasts prepared by Geographia in 2015 and 2017. Council has recently published updated population forecasts undertaken by .id consultants, which estimate a population of 18,687 by 2036, and 21,498 in 2041, from 5,809 in 2016. Council has adopted the revised forecasts. The jobs target has not changed.

Two background reports by SGS Economics informed the preparation of the Structure Plan and the Amendment. Mr Szafraniec was the lead author of the Stage 1 report (*West Melbourne Employment and Economic Summary*, November 2016), which provided an analysis of the current economic context, baseline employment and floorspace forecasting and identification of realistic opportunities and trade-offs to which the structure plan process needed to respond. Mr Spencer was the lead author of the Stage 2 report (*West Melbourne Structure Plan – Stage 2 report*, June 2017), which included an analysis of development feasibility under the proposed controls. Both Mr Szafraniec and Mr Spencer provided expert evidence to the Panel on behalf of Council.

Council prepared revised capacity modelling in June 2019, which models whether the revised population forecast can be accommodated under the proposed controls. The revised capacity modelling was attached to Mr Szafraniec's expert witness statement.

6.2 Population figures

(i) The issues

The issues are:

- whether the revised population figures are reasonable
- whether the original population forecasts were adopted as a target in response to which the planning controls have been drafted.

(ii) Evidence and submissions

Mr Szafraniec supported the revised forecast population figure of “around 20,000 people”. He explained the key reasons for the increase from the original figures on which the Structure Plan are based:¹⁸

- A higher assumed base population due to the latest ERP (Estimated Resident Population) available.
- A higher number of assumed dwellings due to the latest development activity data available.

¹⁸ Mr Szafraniec's expert witness statement at paragraph 53

- A higher assumed average household size [from 1.98 persons per dwelling to 2.23 persons per dwelling].
- Current planning controls for the area.

Mr Szafraniec concluded that the revised figures *“fall within the ranges detailed in the SGS Stage 1 report and, I believe, are more realistic when considering the future amount of population that needs to be accommodated in West Melbourne.”*

Mr Barlow and Mr Quick both considered the population forecast in the Structure Plan of 8,000 to 9,000 was effectively a target, and that the built form controls were drafted to achieve this target. Council rejected this notion and submitted that Mr Barlow and Mr Quick *“gave no rational explanation for why they had made their erroneous assumption, despite the documents saying otherwise.”* Council submitted that neither the Structure Plan nor the Built Form Strategy contained any information that states there was a population target to be achieved.

Mr Quick considered the exhibited population figure of 8,000 to 9,000 was without justification and referred to the SGS Stage 1 report that supported a range of between 14,000 and 21,000 people. His evidence was:¹⁹

Despite engaging SGS as the economic expert informing the development of the Structure Plan, the City of Melbourne appear to have ignored the more realistic population projections they have prepared, instead adopting a range of 8,000-9,000 people. This is claimed to be a forecast, although I have not seen evidence of its derivation. It appears to be a target set by Council for West Melbourne which represents a significantly reduced rate of growth for the suburb compared to recent years, and other forecasts.

In his addendum responding to Mr Szafraniec’s evidence, he stated:²⁰

On this matter, Mr Szafraniec and I are in agreement. Given the location of West Melbourne adjacent to the CBD, and with the opportunity for regeneration, West Melbourne should accommodate a population in excess of 20,000 people in time, along with a sizeable workforce.

Council submitted that:²¹

The forecasting of population and jobs is an inexact science. It is useful for a range of purposes in municipal wide planning. Population forecasting is especially useful to allow councils to plan infrastructure. It is, however, inevitably based upon projecting forward past trends, as well as anticipating future trends (such as migration, market cycles and so on). The population forecasts should not be the tail that wags the dog in this amendment.

(iii) Discussion

The exhibited population forecast was low – significantly less than the revised estimates from .id consultants, and significantly less than the earlier SGS estimates in its Stage 1 report. If Council maintained the exhibited forecast, the Panel would have had concerns that it significantly under-estimated likely population growth, and did not consider a range of matters that should have been considered.

¹⁹ Mr Quick’s expert witness statement at paragraph 63

²⁰ Mr Quick’s expert witness statement addendum at page 2

²¹ Council Part C submission at paragraph 8

To Council's credit it recognised this and importantly substantiated the increased forecast using the latest data and a more realistic average number of people per household. There is now general agreement that the revised population forecast is appropriate.

The Panel accepts that the original forecast was just that – a forecast, and not a target. As discussed in Chapter 6.4, the updated capacity modelling undertaken by Council demonstrates that the revised forecast population can be accommodated within the floor area ratios and built form controls, demonstrating to the Panel's satisfaction that the controls have not been designed to deliver a target population of 8,000 to 9,000.

The Panel accepts that there are logical reasons for the revised population figure. It appears that West Melbourne's population is increasing along with that of the rest of Victoria, and it is appropriate that the latest data be used to determine the forecast population. The Panel agrees with Council that forecasting has its limitations and it should not be determinative to the Panel's consideration of the Amendment.

The only reference to population numbers proposed to be included in the Planning Scheme itself is in Clause 21.16-6. The exhibited version refers to the original forecast of 8,000 to 9,000. Council's Part B (and Part C) controls update these references to align with the revised forecasts. The Panel supports this change, but considers that the numbers should be rounded rather than exact given the inexact nature of population forecasting.

(iv) Conclusions and recommendation

The Panel concludes:

- The revised population forecast of around 19,000 people by 2036 is appropriately based on the latest data and a more realistic household size.
- Neither the original nor the revised population forecasts can be considered as a target.
- Both the local policy in Clause 21.16-6 and the Structure Plan should be updated to refer to the revised population forecast.

The Panel recommends:

Amend Clause 21.16-6 by replacing the population forecasts with “around 19,000 at 2036 and around 21,500 at 2041”, as shown in Appendix D1.

6.3 Employment figures

(i) The issue

The issue is whether the forecast (and target) of 10,000 jobs is reasonable.

(ii) Evidence and submissions

By 2036 Council estimates there will be a need for 4,500 and 6,500 additional jobs to support the delivery of 10,000 jobs across West Melbourne. Council, Mr Szafraniec and Mr Quick referred to the employment figure as a 'target'. They also considered retaining employment in West Melbourne was important to maintain a mix of uses.

Mr Szafraniec endorsed the employment figures. He noted that 80 per cent of Melbourne's employment growth in the last 15 years occurred in the CBD, Docklands and Southbank. As these areas reach capacity, other well-connected major renewal areas such as Arden,

Fishermans Bend and the Parkville National Employment and Innovation Cluster would provide continued employment growth for the inner city. West Melbourne would play a reduced, but important role, with the key employment sectors for growth being:

- support urban services or niche or advanced manufacturing
- support or emerging commercial office-based employment
- health related consulting services or aligned health businesses
- education providers and related student services.

Mr Szafraniec supported the goal of retaining employment in West Melbourne as:²²

- A mix of employment and residential activity contributes to the innate environmental quality and character of West Melbourne as a diverse mixed-use area.
- The availability of affordable and flexible floorspace, in proximity to universities, cultural infrastructure and the CBD, supports the productivity and creativity of businesses in West Melbourne. This offer fulfils a niche function which is not readily substitutable.
- The conversion of large floorplate commercial activity to residential development and the subdivision of lots on strata title, results in a fragmentation of ownership which is very difficult to reverse. Policy to require ongoing employment uses is a risk management approach to protect future choices and ensure the area can adapt to future needs.
- Related to the above, a diversity of activity can prevent the development of a 'monoculture' or single use area. This diversity can support future resilience as demographic and economic trends change.
- A mixed-use environment can also support a more diverse housing environment.

Mr Szafraniec considered the target of 10,000 jobs by 2036 could be achieved. He estimated there would be between 9,965 and 12,380 jobs created depending on which of the following employment scenarios was used:

- Scenario 1 was a baseline scenario based on 2016 data, broader macro-economic trends and local employment drivers.
- Scenario 2 assumed residential growth in selected precincts with strong linkages to the Parkville National Employment and Innovation Cluster.
- Scenario 3 leveraged off the Queen Victoria Market redevelopment to create an arts and culture precinct in West Melbourne.

Council referred to Mr Szafraniec's evidence in concluding:²³

Beyond maintenance of economic activity, Mr Szafraniec's evidence is that with "additional supportive policies, investment and market demand", the target of 10,000 jobs by 2036 is achievable. When Mr Szafraniec was asked whether West Melbourne should not have a higher jobs target, being so close to the economic core of Melbourne, he was adamant that the answer was 'no'. The "vast majority" of employment growth is expected in the core - the CBD, Docklands and Southbank – which have the characteristics to support that growth.

Mr Quick noted there is currently a trend of modest employment growth in West Melbourne and considered the target of 10,000 jobs was at the lower end of the forecast spectrum. Mr

²² Mr Szafraniec's expert witness statement at paragraph 40

²³ Council Part B submission, pages 9/10, paragraph 23

Quick stated that *“a substantial increase in office floorspace will be required to accommodate the uplift in workers. The controls influencing built-form and use outcomes must therefore be flexible enough to allow commercial development that users want to occupy.”* He concluded that institutional and larger commercial office users would need larger floorplates, not low rise office space that could be used to activate a street environment.

(iii) Discussion

There was agreement between all parties that retaining and increasing employment in West Melbourne is an important goal. The Panel considers it is important that West Melbourne makes a contribution to employment in inner Melbourne, even though it is not an area identified for significant growth by Council and the State Government. This will prevent West Melbourne from becoming a dormitory suburb, and will contribute to the vision of West Melbourne as a vibrant mixed use location. West Melbourne has an important support role to play in complementing the employment functions of the central city, Parkville National Employment and Innovation Cluster and nearby urban renewal areas.

The key area of disagreement between the experts is whether the proposed planning controls will deliver the jobs target. This matter is considered more fully in Chapters 6.4 and 6.5, however the Panel accepts that an aspirational target of 10,000 jobs is important for West Melbourne, to arrest the trend of (until recently) declining employment uses and increasing residential uses.

(iv) Conclusion

The Panel concludes that an employment target of 10,000 jobs by 2036 is appropriate for West Melbourne.

6.4 Development capacity

(i) The issue

The issue is whether the population forecast and employment target can be achieved under the proposed controls.

(ii) Evidence and submissions

Council

The Amendment is supported by two capacity modelling reports. The first was developed between March 2017 and October 2017. This *“informed the development of built form controls for each precinct that could support additional development and deliver the emerging design objectives for each place in West Melbourne.”* The second was Council’s capacity modelling report dated June 2019 that was attached to Mr Szafraniec’s expert witness statement. Mr Szafraniec reviewed a draft of this report but did not have a role in finalising it.

As Council’s revised capacity modelling was not part of the exhibited Amendment and not foreshadowed at the Directions Hearing, other parties were provided with an opportunity to review the updated modelling. Mr Quick provided an addendum to his expert witness statement that addresses this.

As the first capacity report was based on out-of-date population figures, it is now largely redundant. There were different inputs into the second report that were not considered in the first report, including:

- the updated population forecast
- an increase in the average household size from 1.98 persons to 2.23 persons
- incorporation of 2016 Census of Land Use and Employment (CLUE) data at a property level, not a block level.

The stated purpose of second report was:

The purpose of capacity modelling is to understand how many dwellings, residents and workers can be accommodated under the proposed density controls. The capacity modelling and built form testing for West Melbourne were undertaken at the same time to understand the impact of the desired built form outcome on the future capacity of West Melbourne.

The updated capacity modelling looks at the total built floor space that could be theoretically built in West Melbourne, based on the built form controls and the likelihood of sites to redevelop (refer to Table 4 and Figure 9 below).

Table 4 Capacity modelling criteria for sites likely or unlikely to develop

Category	Site features
Sites unlikely to develop	<ul style="list-style-type: none"> - Sites listed on the Victorian Heritage Register - Sites with more than 10 strata titles - Sites that had redeveloped (prior to 2016) according to the City of Melbourne Development Activity Monitor - Sites under 500sqm that are in the GRZ, DDO31, DDO32 or DDO34
Sites developing or likely to develop under current controls	<ul style="list-style-type: none"> - Strategic sites within the GRZ, DDO31, DDO32 or DDO34 - Sites with a planning permit or developments under construction in October 2017 - Sites with developments that had been completed between January 2016 and October 2017
Sites likely to develop under proposed controls	<ul style="list-style-type: none"> - Sites with less than 10 strata titles - Sites with no recent approved development applications - Sites with live planning applications (October 2017) - Minimal heritage restrictions - Large site area, with potential for multiple developments - Adjacent sites in the same ownership

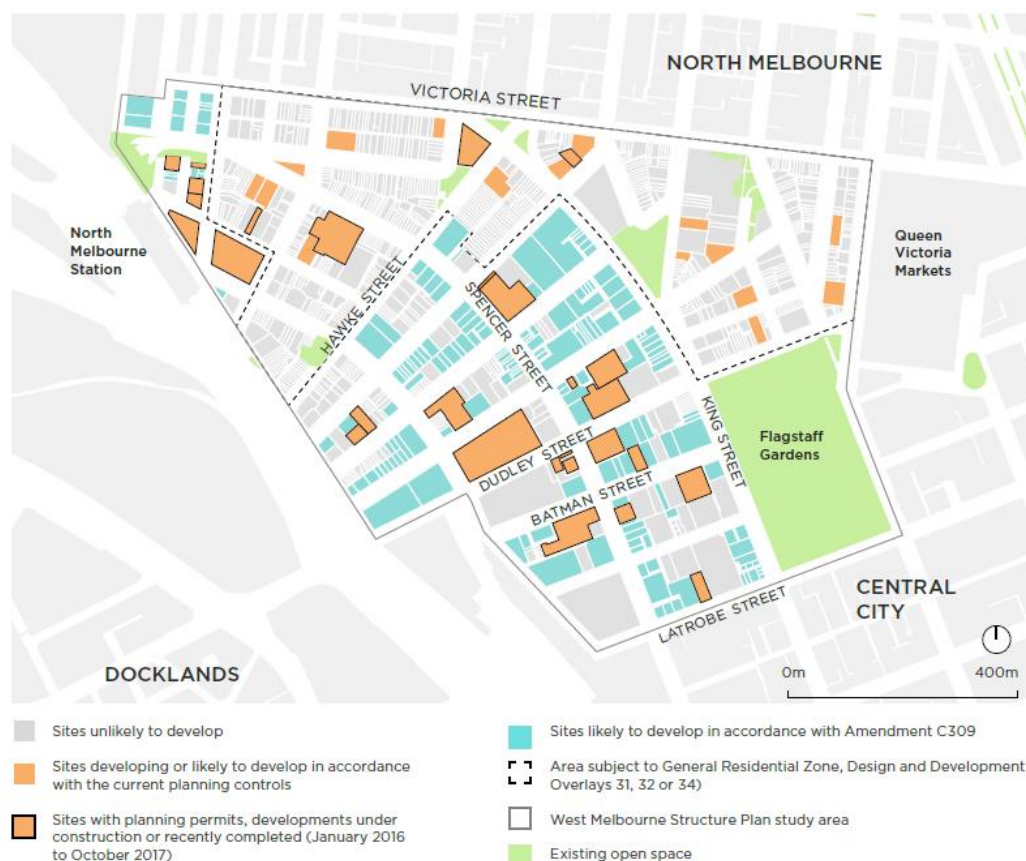


Figure 9 Capacity modelling status of land in West Melbourne

Source: Council capacity modelling memo attached to Mr Szafraniec's evidence

The relevant floor area ratios and minimum non-accommodation floor area requirements were used to generate the residential and non-residential floorspace capacity of the sites likely to develop.

The capacity modelling report found that the proposed controls provide capacity for:

- 10,843 dwellings (including 243 affordable housing units), which could accommodate a residential population of 23,593
- 6,506 jobs (in total, including current and new jobs).

It concluded that .id consultants' population forecast of 18,687 by 2036 and 21,498 by 2041 could be accommodated, with some margin. It also noted that some sites that are currently unlikely to develop will in the future become sites that are more likely to develop, creating potential for further capacity.

Mr Szafraniec supported the findings of Council's June 2019 modelling. He accepted that the minimum floor area requirements would only accommodate 65 per cent of the 10,000 jobs target (only a 935 job increase in current levels) but concluded that, with "*additional supportive policies, investment and market demand*", the target of 10,000 jobs by 2036 is achievable.²⁴

²⁴ Mr Szafraniec expert witness statement at paragraph 60

I believe that there is potential for additional employment above that estimated in the Capacity Modelling for two main reasons:

- There is potential for intensification of employment within the existing floorspaces that are 'unlikely to change'. This could be achieved through refurbishment of internal spaces or simply (new) businesses with more workers utilising the same space. If the average workspace ratio on sites 'unlikely to change' decreased from the average of 53 to 30 this could provide for an additional 1,700 workers.
- There is also the potential for sites to develop with more retail/commercial space above the minimum non-accommodation controls, but below the overall maximum Floor Area Ratio (FAR). This could take the form of a small increase (above the minimum control) across a number of sites or a few entirely commercial office building. If, hypothetically, employment uses were to capture an additional 20 per cent of the total FAR across all areas (i.e. within Flagstaff, employment uses captured 2.0 rather than 1.0 of the 6.0 FAR) then there could be an additional 3,000 workers. This would also have an impact on the dwelling capacity which under this hypothetical scenario would be reduced by 1,000 dwellings or 2,300 people.

Based on these hypothetical adjustments, West Melbourne would accommodate 11,300 total jobs, 9,800 total dwellings and 21,260 total people.

Submitters

Mr Quick provided tentative support for Council's general approach in the capacity modelling.²⁵

Broadly, I agree with the nature of the approach taken by the Council to assess the capacity of West Melbourne under the proposed FAR controls, including identification of sites unlikely to develop, sites already being developed, or likely to develop in accordance with current controls (essentially under construction, approved permits or applications), and sites likely to develop in accordance with Amendment C309.

However he identified the following concerns:

- He considered that more sites should have been identified as unlikely to develop:
 - his view was that buildings constructed in the last 10 to 15 years are unlikely to be developed prior to 2036, not just sites developed from 2016 onwards
 - sites less than 500sqm – his view was that all sites less than 500sqm should be considered unlikely to develop, irrespective of the zone that applies.
- A larger dwelling size (80sqm instead of 70sqm) should be used if the household size (persons per household) is increased.
- Some sites identified as likely to develop are unlikely to do so – he identified 22 sites as constrained due to heritage, strata subdivision or current institutional use. This totalled nearly 20,000sqm of land.

These factors would all reduce the total amount of additional floorspace likely to be delivered.

In reviewing Mr Szafraniec's evidence, Mr Quick made the following comments in his addendum:²⁶

While Mr Szafraniec was not responsible for the previous low population projections, nor finalisation of the planning controls supporting the Structure Plan, I find that his

²⁵ Mr Quick's expert witness statement addendum, page 5

²⁶ Mr Quick's expert witness statement addendum, page 2

acceptance of the conclusions of Council's capacity analysis without more detailed investigation concerning. He confirmed through his evidence-in-chief that he had an opportunity to review a draft of the capacity modelling. Despite recognising that Council's capacity calculations only indicated delivery of 65% of the 10,000 job target, and that to achieve that target could mean reduction of the capacity of West Melbourne to support the projected population (Szafraniec paragraph 69), he appears to accept the capacity modelling, indicating the population forecast and employment could "technically" be achieved if full capacity of the suburb is realised by 2036.

Mr Quick applied his own sensitivity analysis, factoring in assumptions to address his concerns outlined above, and assuming that the target of 10,000 jobs is achieved (which would require some of the residential floorspace in Council's capacity analysis to be reallocated to employment uses). Using Council's June 2019 capacity modelling as a baseline, Mr Quick concluded that by 2036 there would be capacity for:

- 2,321 less dwellings
- 5,204 less residents (resulting in a total of 18,389, slightly under the revised forecast of 18,687).

Mr Quick concluded:²⁷

The capacity analysis of Council can only be considered an absolute maximum development outcome for West Melbourne. With the forecast population and employment levels just fitting in, if they do at all, then it is clear that the proposed controls introduced by this Amendment may fail to deliver the vision for West Melbourne. They certainly won't allow the City to capitalise on the opportunity presented by such a well-located and connected precinct with renewal potential adjacent to the CBD. Greater flexibility needs to be maintained.

Council response

In response to Mr Quick's evidence, Council submitted:

- Mr Quick conceded that the publicly available CLUE data for West Melbourne (residential) demonstrates that the current dwelling size in West Melbourne is less than 70 sqm, and that the trend is towards smaller apartments.
- Mr Quick conceded that he had not considered that the St James Cathedral was part of a larger parcel of land that could accommodate some development.
- Mr Quick has focussed on why the capacity analysis is too bullish and not considered ways in which the capacity analysis is conservative. Examples provided were:
 - the floor area uplift provided for the retention of special character buildings
 - development that had occurred under the current controls at a higher density than would be permitted under the proposed controls, such as the UAG and Yarrabank sites.
- Site consolidation may lead to sites currently identified as undevelopable being developed.
- On sites containing a heritage building, the floor area ratio controls allow the floor area to be effectively transferred from a heritage-constrained part of the site to an unconstrained part of the site.

²⁷ Mr Quick's expert witness statement addendum, page 8

Council concluded with:²⁸

A tit-for-tat argument about the likelihood of particular sites in West Melbourne redeveloping could go on forever but would serve no useful purpose. There will be sites designated as 'likely to develop' when they are, on close inspection, unlikely to develop. But for every one of those sites, there is likely to be a site designated as 'unlikely to develop' that should have been designated as 'likely to develop', or a site designated as 'likely to develop in accordance with Amendment C309' that should be designated as 'likely to develop in accordance with the current controls'. The work that was done provides a good 'reality check' and provides Council with a reasonable basis to conclude that, all other things being equal, both the forecast population and the jobs target are likely to be able to be accommodated under the proposed controls.

(iii) Discussion

The Panel appreciates the extent of work Council has completed to determine the future capacity of West Melbourne and to 'road test' the proposed controls. The Panel also appreciates the evidence of Mr Quick in providing his own sensitivity analysis of the capacity modelling.

Capacity modelling depends on a number of assumptions to test the ability of an area to deliver on the forecasts. That said, it is important to road test the proposed controls to ensure no obvious undesirable outcomes eventuate, such as under-delivering on the floorspace needed to accommodate the population projections and jobs target.

The Panel is satisfied that the capacity modelling provides an appropriate 'cross check' that the controls will not result in an inability to accommodate the projected population and jobs target for West Melbourne.

(iv) Conclusions

The Panel concludes:

- A population of around 20,000 and employment of around 10,000 jobs by 2036 will be achievable under the proposed controls.

6.5 Development feasibility

(i) The issue

The issue is whether the proposed planning controls will unreasonably impact on development feasibility.

(ii) Evidence and submissions

Council

Council engaged SGS Economics and Planning in 2017 to provide advice on the demand for employment floorspace, development feasibility and implementation options to assist in the preparation of the Structure Plan. This information is included in the SGS Stage 2 report.

²⁸ Council Part C submission at paragraph 26

The feasibility testing in the Stage 2 report considered the impact of floor area ratios, land use mix (the minimum non-accommodation floor area requirements), affordable housing requirements and development contributions on development feasibility.

Mr Spencer authored the Stage 2 report and provided evidence on development feasibility. In preparing his evidence Mr Spencer sought land valuation advice from Ms Robyn Cowie from *m3property* who recommended changes to several assumptions used in the modelling in the Stage 2 report, including changes to revenue and cost assumptions.

Mr Spencer described his methodology for the feasibility analysis:

- The test of development feasibility compared the residual land value (RLV) associated with a hypothetical development that is permissible under the proposed controls with the existing use value (EUV) of the site.
 - The RLV is calculated by deducting all development costs, including the developer's margin for profit and risk, from all revenues.
 - The EUV is the capitalised value of the site assuming the net revenue stream from the existing use were to continue in perpetuity.
- The redevelopment of a site is feasible when the RLV of that development is higher than the EUV of the site.

Figure 10 below describes the feasibility test using two examples. Where the RLV is greater than the EUV, a developer can offer the landowner a price premium for the site, leading to a potential sale and redevelopment. If the EUV is greater than the RLV then the opposite is likely (that is, a sale is unlikely or a development would be unfeasible).

A margin of 25 per cent on the EUV was used *"to account for some level of enticement for landowners to sell to developers."* That is, if a developer can offer a 25 per cent higher price than the EUV, a rational landowner is more likely than not to accept this offer.

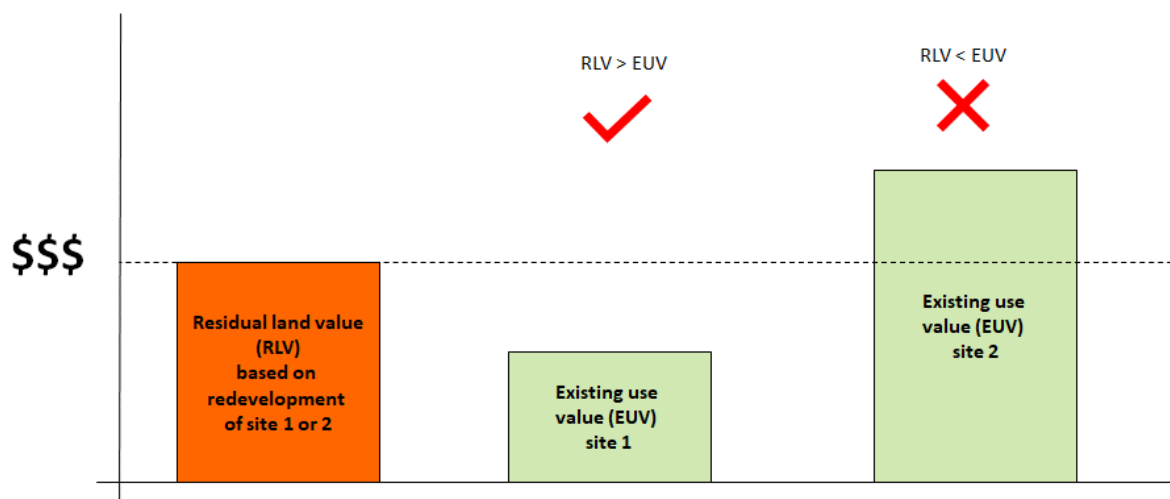


Figure 10 Diagrammatic representation of feasibility analysis

Source: Mr Spencer's expert witness statement

Mr Spencer explained that a low EUV is usually associated with an underutilised site that may, for example, have an old single storey warehouse on it. A higher EUV may reflect more substantial improvements on the site. He elaborated:²⁹

The fact that the second site is not feasible does not necessarily suggest a deficiency with the planning controls. It reflects the fact that sites with significant existing improvements have a higher existing use value and are less likely to be redeveloped than sites with a lower value of improvements.

Any assessment of RLV and EUV will reflect specific market conditions at a point in time. It is conceivable that the relative values of the existing and prospective land uses will change over time. If the margin between the RLV and EUV of site 2 were to decrease and the RLV were to overtake the EUV, redevelopment of this site would then become feasible.

Importantly Mr Spencer noted:³⁰

... while some landowners may hold out in anticipation of extracting a higher land price at a future date, it is not appropriate to calibrate the feasibility assessment to any specific landowner's intentions. Similarly, high prices paid for development sites assuming that a development approval will be granted, should not be used as a benchmark for current land values.

In his evidence Mr Spencer adjusted his approach from the Stage 2 report. The feasibility analysis in his evidence statement compared RLV to EUV, whereas the Stage 2 report compared RLV to capital improved value (CIV) taken from Council's rate data base. The CIV reflects the market value of the property, rather than its existing use value. Mr Spencer noted *"where planning controls allow for higher value land uses than the existing use, and recent sales reflect these development opportunities, the assessed CIV of a site will be higher than the EUV."*

Mr Spencer concluded the Stage 2 report approach using the average CIV plus 25 per cent has generated relatively high values. Ms Cowie supported this and proposed a set of EUVs based on:

- lower range industrial use – \$2,500 to \$3,500 per square metre
- higher range commercial office use – \$5,000 to \$8,500 per square metre
- an average range, to reflect the average of the mix of uses – \$3,000 to \$5,000 per square metre.

Mr Spencer prepared two tables showing the results of the feasibility analysis, based on lower EUV sites and average EUV sites. These are provided in Figure 11 and Figure 12 below. Feasibility analysis was undertaken for each of the following hypothetical development scenarios for a typical 1000sqm site in each precinct (except Historic Hilltop):

- residential only development (only in Adderley and Station, where some MUZ is being retained and residential only development will remain possible)
- commercial only development
- mixed use (commercial and residential) with and without a retail component.

Mr Spencer adopted a traffic light system for feasibility based on:

²⁹ Mr Spencer's expert witness statement at paragraphs 72 and 73

³⁰ Mr Spencer's expert witness statement at paragraph 79

- green – feasible (with a RLV to EUV ratio of 1.25 or greater)
- yellow – marginal (with a RLV to EUV ratio of 1.00 to 1.24)
- red – unfeasible (with a RLV to EUV of less than 0.99).

The analysis was then sensitivity tested assuming a 6 per cent affordable housing contribution gifted at no cost to a registered housing provider, a requirement to pay developer contributions (noted as 'DCP' in the Figures), and both an affordable housing contribution and developer contributions.

The results showed that on low EUV sites (Figure 11 below):

- Flagstaff – all development scenarios are feasible, including with an affordable housing contribution and developer contributions.
- Spencer – mixed use is feasible, but becomes marginal without retail and with affordable housing and developer contributions. Commercial only development is marginal.
- Adderley – residential and mixed use with retail are feasible, mixed use without retail is marginal and commercial only development is not feasible.
- Station – residential and mixed use with retail are feasible. Mixed use without retail becomes marginal with affordable housing contributions. Commercial only is not feasible.

Using average EUVs (Figure 12 below), more scenarios become either marginal or not feasible.

Ratio of RLV to EUV	Flagstaff	Spencer	Adderley	Station
Residential only	na	na	1.49	2.48
Commercial only	1.37	1.06	-0.71	-1.18
Mixed use 1: retail, comm, residential	2.45	1.91	1.43	2.37
Mixed use 2: comm, residential	2.00	1.50	1.13	1.76

Ratio of RLV to EUV with DCP*	Flagstaff	Spencer	Adderley	Station
Residential only			1.45	2.42
Commercial only	1.32	1.03	-0.74	-1.24
Mixed use 1: retail, comm, residential	2.39	1.87	1.40	2.31
Mixed use 2: comm, residential	1.94	1.46	1.09	1.69

Ratio of RLV to EUV with 6% AH	Flagstaff	Spencer	Adderley	Station
Residential only	na	na	na	1.73
Commercial only	na	na	na	na
Mixed use 1: retail, comm, residential	1.92	1.54	na	1.78
Mixed use 2: comm, residential	1.47	1.13	na	1.16

Ratio of RLV to EUV with 6% AH and DCP	Flagstaff	Spencer	Adderley	Station
Residential only	na	na	na	1.68
Commercial only	na	na	na	na
Mixed use 1: retail, comm, residential	1.86	1.50	na	1.71
Mixed use 2: comm, residential	1.41	1.09	na	1.10

Figure 11 Revised feasibility testing – lower EUV sites

Ratio of RLV to EUV	Flagstaff	Spencer	Adderley	Station
Residential only	na	na	1.24	2.06
Commercial only	0.96	0.80	-0.59	-0.98
Mixed use 1: retail, comm, residential	1.71	1.43	1.19	1.98
Mixed use 2: comm, residential	1.40	1.13	0.94	1.46

Ratio of RLV to EUV with DCP*	Flagstaff	Spencer	Adderley	Station
Residential only	na	na	1.21	2.02
Commercial only	0.92	0.77	-0.62	-1.03
Mixed use 1: retail, comm, residential	1.68	1.40	1.16	1.92
Mixed use 2: comm, residential	1.36	1.10	0.91	1.41

Ratio of RLV to EUV with 6% AH	Flagstaff	Spencer	Adderley	Station
Residential only	na	na	na	1.44
Commercial only	na	na	na	na
Mixed use 1: retail, comm, residential	1.34	1.15	na	1.48
Mixed use 2: comm, residential	1.03	0.85	na	0.97

Ratio of RLV to EUV with 6% AH and DCP	Flagstaff	Spencer	Adderley	Station
Residential only	na	na	na	1.40
Commercial only	na	na	na	na
Mixed use 1: retail, comm, residential	1.30	1.12	na	1.43
Mixed use 2: comm, residential	0.99	0.82	na	0.92

Figure 12 Revised feasibility testing – average EUV sites

Mr Spencer concluded that “*provided there are sufficient sites with lower existing use values in West Melbourne suitable for redevelopment, development feasibility should not be a barrier to their redevelopment in the short to medium term.*” He noted:³¹

A significant proportion of properties in West Melbourne host relatively low-scale existing development, many of which are likely to have relatively modest existing use values. The City of Melbourne data suggests that of 331 non-residential properties in West Melbourne, the scale of the existing development on 81% of these properties is only 1 or 2 storeys in height. 111 properties (34%) feature single storey development, 157 properties (47%) host 2 storey development, 39 (12%) host 3 storey development and the remaining 24 properties have development 4 or more storeys.

This difference in the relative feasibility of lower and higher value sites is to be expected in a precinct that is in transition: lower value uses are likely to be replaced first, then, as the precinct matures, sites with higher land values and more substantial existing investments will eventually be replaced. Sites that currently host low-scale office uses in West Melbourne are likely to become candidates for redevelopment as they become ‘run down’ or no longer meet market expectations.

Submitters

Some submitters expressed concerns over the use of EUV rather than market values in the feasibility analysis. For example, Mr Pitt submitted on behalf of Stadiums Pty Ltd and Floton Pty Ltd (Stadiums) that the feasibility analysis is flawed because the land values used in the analysis are not market values. They submitted that the lack of a solid empirical case for the feasibility testing is concerning, as small changes in assumptions suggest mixed use developments are unviable in many scenarios, with the consequence that the Amendment would be likely to stultify development (based on Mr Quick’s evidence).

³¹ Mr Spencer’s expert witness statement at paragraphs 148 and 149

In his addendum, Mr Quick considered using EUV and not CIV was “*admirable in theory, but means the feasibility analysis is divorced from the reality of what a buyer or seller will be looking at on a property transaction – the market value remains critical.*” He considered it was “*simply a construct*” and “*not a value that has any real meaning to anyone.*” Mr Quick considered:³²

For the feasibility modelling to have some connection to reality, then the EUV plus the premium applied should broadly represent the market value. As an alternative approach, Mr Spencer could have used market values, but not applied the 25% margin (i.e. if RLV less market value was over 1 it is feasible).

Mr Quick provided a list of recent sales in West Melbourne to demonstrate that market values were considerably higher than the EUV ranges assumed by Mr Spencer (\$2,500 to \$5,000 per sqm). Mr Quick’s values per square metre ranged from:

- \$4,688 to \$11,874 in Adderley
- \$7,300 to \$26,000 in Flagstaff
- \$7,000 in Station.

Mr Quick considered the proposed planning controls may dampen prices but they would not be expected to come back to EUV plus 25 per cent. Mr Quick undertook a sensitivity analysis of the feasibility assessment based on the higher Stage 2 report CIV values, and concluded that based on CIVs, “*all development is considered unviable, or in some limited cases marginal.*”

Council response

Council referred to the Holder East proposal at 501-525 King Street (in the Spencer precinct) which is a commercial only development at a near-compliant 5.2:1 floor area ratio, and submitted that “*the existence of applications for commercial developments that are generally compliant with the proposed FARs is high-quality evidence that commercial development in accordance with the Amendment is feasible, right now, in the precinct.*”

Council concluded in its Part C submission:³³

- First, in an established urban area where infill redevelopment is occurring, you do not expect all development to be feasible in the short-term. The Amendment should not be assessed by asking, for example, whether most development scenarios are currently feasible on most sites. This is an unrealistic hurdle that is unlikely to be met except where there is a proposed change in zoning controls enabling development for a higher-value use, as might occur in an urban renewal area transitioning from low-value industrial uses to high-value residential and mixed uses.
- Second, as West Melbourne transitions and current improvements age, redevelopment of properties with higher existing use values would be expected. Or, put more simply, feasibility generally improves over time.
- Third, there is general agreement that the feasibility of commercial development has generally improved since 2017, which is the point in time to which the feasibility testing relates.
- Fourth, at any given time, it is only necessary for development of a handful of sites to be feasible.

³² Mr Quick’s addendum, page 12

³³ At paragraph 35

- Fifth, it is not the role of feasibility testing for a planning scheme amendment to test feasibility of a particular development on a particular site under the proposed controls, and Mr Spencer has not sought to do this. Mr Spencer explains that the development feasibility analysis is high level and not site specific and does not account for the unique characteristics of specific sites, building designs and developers that mean that development feasibility will vary from site to site.
- Sixth, feasibility testing is based on a set of assumptions, all of which can be changed, meaning that infinite sensitivity testing is possible. All that is necessary or appropriate is a reasonable amount of such testing.
- Finally, feasibility testing is only a tool to provide a general indication of how things are likely to proceed.

(iii) Discussion

There are parts of West Melbourne, particularly in the Flagstaff Precinct and to a lesser extent the Spencer Precinct, where land speculation based upon achieving building heights in excess of the preferred heights appears to have increased the price of development sites. Mr Quick considered that the EUVs used in Mr Spencer's feasibility analysis were too low. The Panel acknowledged that Mr Quick's recent sales figures were in some cases significantly higher than the EUVs used by Mr Spencer. The EUVs used by Mr Spencer were generalised figures across quite large precincts, and it is difficult to conclude whether or not they would be too low in relation to any particular site. However the EUVs were obtained from a land valuer with experience in the area.

The property market is cyclical and supports some uses over others at different points during its cycle. The feasibility of different forms of development is therefore likely to change significantly over the 20 year life of the Structure Plan. Material presented to the Panel suggests that there has been a recent (albeit modest) shift in the market in favour of commercial development. Mr Szafraniec provided some statistics that demonstrate this. In 2019 there have been applications for 1380 dwellings (equivalent to 3,146 residents) and only 18,000 square metres of retail/commercial space (equivalent to 750 jobs).

Holder East has two current applications for commercial only developments in West Melbourne, one in the Spencer Precinct at 501-525 King Street, and one in the Flagstaff Precinct at 500 La Trobe Street. These applications suggest that commercial only developments might be viable in the current market, albeit at heights and floor area ratios that slightly exceed what would be allowed under the proposed controls. And yet the feasibility testing suggests that both of these applications may not be feasible. This demonstrates that it is not appropriate to rely too heavily on feasibility testing.

The Panel appreciates the depth of investigations into development feasibility to 'road test' the Amendment's ability to deliver the vision in the Structure Plan. The failure to do so would leave an important question unanswered. That said, there are limitations to feasibility testing. Mr Spencer himself cautioned the Panel against relying too heavily on feasibility testing. He indicated that it was merely a cross checking exercise, and does not provide an accurate prediction of what is likely to happen over the 20 year life of the Structure Plan.

Notwithstanding its limitations, the feasibility testing has provided the Panel with a reasonable level of comfort that the Amendment is not proposing controls that are so restrictive as to discourage any redevelopment in West Melbourne. Both Mr Spencer and Mr Quick agreed that sites that may not be feasible to develop now might become so in the

future, and that in an infill area like West Melbourne, only a handful of sites per year would need to develop to meet the vision of the Structure Plan.

The Panel is therefore satisfied that the feasibility testing generally demonstrates that at least some development is likely to be feasible under the proposed controls, and that the controls should not hinder the delivery of the vision outlined in the Structure Plan. That said, some aspects of the Amendment may restrict feasible development, in particular commercial development. The Panel has made recommendations to address this in the following chapters.

(iv) Conclusions

The Panel concludes:

- Feasibility testing has its limitations and should not be relied on too heavily in considering whether the proposed planning controls are appropriate.
- That said, the feasibility testing has demonstrated there is a likelihood that at least some development will be generally feasible under the proposed controls, and that the controls will not hinder the delivery of the vision outlined in the Structure Plan.
- This conclusion is supported by the fact that current applications indicate there is a market for commercial only development that largely complies with the proposed controls, with support for residential uses remaining strong.

7 The Special Use Zone

7.1 Introduction

The Structure Plan indicates that West Melbourne's proximity to the central city and transport networks make it an attractive location for a mix of uses, but this is restricted by both the land value and the current zoning. The Structure Plan states that:³⁴

While the application of the mixed use zone was intended to support a genuine mix of uses, there is now a significant risk of losing employment activity from West Melbourne and not being able to deliver the required employment floorspace and job growth in West Melbourne if it retains its current zoning.

It is proposed to use the Special Use Zone (or an equivalent) as it is considered that there is no appropriate combination of other currently available planning zones, overlays and local policies to give effect to the desired objective to support mixed use development to facilitate a range of business and employment opportunities within this specific location.

7.2 The issue

The issue is whether the SUZ is appropriate.

7.3 Guidance

(i) Planning Practice Note 3: Applying the Special Use Zone

Planning Practice Note 3 – Applying the Special Use Zone, May 2017 (PPN3) sets out some general principles that need to be understood when considering whether to apply the SUZ, including:

- The complexity of planning requirements is reduced by keeping the number of zones to a minimum.
- Detailed and complex site specific zones are discouraged in preference for clear policy guidelines as the primary tool for decision making.

PPN3 states that the SUZ is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays. The SUZ can be considered when either:

- An appropriate combination of the other available zones, overlays and local policies cannot give effect to the desired objectives or requirements.
- The site adjoins more than one zone and the strategic intent of the site, if it was to be redeveloped, is not known and it is therefore not possible to determine which zone is appropriate.

(ii) Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.2, DELWP, August 2019 (the Practitioner's Guide) directs that before deciding on which zone should be applied, consideration be given to:

³⁴ At page 53

- the land including physical characteristics, uses, ownership and management
- the intended planning outcome
- the purposes and the provisions of the zone
- the extent of local variation available in a schedule to the zone.

Special purpose zones are discouraged unless there is clearly no suitable alternative.

7.4 Evidence and submissions

Council

Mr Barnes (who gave planning evidence for Council) supported the application of the SUZ, and considered that the SUZ6 as exhibited reflects the vision for the area as set out in the Structure Plan and addresses the key outcomes sought for the area. He stated:³⁵

A characteristic of the Mixed Use Zone is the emphasis it gives to residential rather than commercial uses. This is particularly an issue when market forces have a strong preference for residential rather than commercial development, which has been the case for inner Melbourne for a number of years. In effect, the Mixed Use Zone operates as a de facto residential zone. 'Dwelling' is a Section 1 use and does not require a proportion of a development to provide for non-residential uses. The proposed Schedule 6 to the SUZ has been designed to overcome this characteristic of the Mixed Use Zone.

As a strategic planner who has worked on a number of strategic planning projects throughout Melbourne over many years, I have for a long time been an advocate for a new type of Mixed Use Zone that gives emphasis to commercial over residential uses. The Special Use Zone 6 effectively does this.

Mr Barnes highlighted that there had been an assessment of alternative zones and approaches as outlined in the SGS Stage 2 report. Various planning tools had been considered to implement the Structure Plan, including:

- increased use of the Commercial 2 Zone
- a finer grained application of various zones
- a new business oriented Mixed Use Zone
- a Special Use Zone
- vertical zoning
- a floor area uplift scheme
- using the local planning policy framework.

Mr Barnes considered a combination of standard zones such as a Commercial 1 Zone for the Spencer Street activity centre and the Commercial 3 Zone for the other parts of the Structure Plan that are proposed to be zoned SUZ. He concluded:³⁶

Those zones are not appropriate as they do not reflect the land use balance reflected in the Structure Plan and do not provide the opportunity to introduce specific land use requirements into the scheme for affordable housing and a proportion of non-accommodation floor area.

³⁵ Mr Barnes' expert witness statement at paragraphs 77 and 78

³⁶ Mr Barnes' expert witness statement at paragraph 82

Mr Barnes did not consider that the Capital City Zone or the Activity Centre Zone as suggested by some submitters were appropriate, given that a key aim of the Structure Plan is to distinguish West Melbourne from the Capital City, and that West Melbourne is not an activity centre.

Submitters

Various submitters considered that the SUZ was not appropriate, or consistent with PPN3. Some suggested alternative zones, overlays or local policies to deliver the vision and outcomes sought by the Structure Plan. For example, the Urban Development Institute of Australia suggested the Activity Centre Zone or Capital City Zone instead. SJB Planning on behalf of UAG West Melbourne Pty Ltd suggested the MUZ or Commercial 1 Zone and a revised DDO.

Mr Barlow (who gave planning evidence for the PPP clients) agreed with Council that the MUZ was not appropriate for all of the West Melbourne area, stating:

The unsuitability of the zone is further highlighted by the refocus on the facilitation of employment uses and need for West Melbourne to accommodate a greater proportion of jobs in the future.

However Mr Barlow considered that the SUZ was unnecessary and an incorrect use of the VPP. He considered that the proposed SUZ6 was a MUZ by another name and would unnecessarily restrict the opportunity to establish employment activities within parts of West Melbourne. He did not consider that the Explanatory Report for the Amendment provided adequate justification for the SUZ.

Mr Glossop gave planning evidence on behalf of 355 Spencer Street Pty Ltd, the owner of the properties at 102-108 Jeffcott Street, 355-369 and 371-383 Spencer Street (the Sands & McDougall buildings). These properties are contained within the Flagstaff Precinct, and therefore the Flagstaff Precinct was the focus of Mr Glossop's evidence. According to Mr Glossop, PPN3 and the Practitioner's Guide indicate that the SUZ should be used as a 'last resort', and in limited circumstances. He considered that the proposed use of the SUZ was contrary to how the zone had been applied in the past and was arguably a misuse of the VPP.

Mr Glossop's office conducted research into how the SUZ has been applied across Victoria, and found that:

- it had been used 367 times
- it was most typically used for one-off or standalone purposes such as for golf courses, educational facilities, airfields etc
- it was less frequently applied to precincts, such as the Anglesea Tourism Precinct (SUZ8 in the Surf Coast Planning Scheme), the Wangaratta Civic Precinct (SUZ6 in the Wangaratta Planning Scheme), and the Ballarat West Employment Zone (SUZ14 in the Ballarat Planning Scheme).

Mr Glossop had not seen an example of the application of the SUZ to a large urban area like West Melbourne before.

Mr Glossop considered that the rationale for the SUZ was the ability to:

- provide for mandatory non-accommodation floor space area requirements, that could not be achieved in the schedule to the MUZ or in a local policy (given it is mandatory)

- include the affordable housing requirements.

Mr Glossop did not support the mandatory non-accommodation floor area requirements, and recommended that the affordable housing requirements be shifted to policy. His evidence was that if these provisions are not included in the SUZ6, it followed that there was no reason to apply the SUZ.

Mr Glossop cautioned the Panel against supporting the SUZ in this instance, as he considered that this would lead to a rise in more councils seeking to create their own zones, contrary to the VPP and the principle of consistency and standardised controls across Victorian planning schemes.

Several submitters suggested that the Capital City Zone should be applied to West Melbourne, particularly in the Flagstaff Precinct which, they submitted, should be seen as a logical extension to the central city. For example, G2 Urban Planning submitted on behalf of 328-348 Spencer Street Pty Ltd:³⁷

It is logical as has been submitted by a number of submitters that the Flagstaff Precinct should be included within the Capital City Zone. Council ought to reconsider its position on the Flagstaff Precinct as it is demonstrably a precinct where a capital city style development ought to take place. This view is supported by Mr Barlow in his evidence, he advocates for a Capital City Zone and the removal of the FAR for the precinct.

G2 Urban Planning agreed with Council that the MUZ is no longer appropriate for “*such a strategic precinct*”, and that the MUZ would continue to preference residential development. It submitted that the Capital City Zone would more likely deliver the land use mix sought in Flagstaff.

G2 Urban Planning submitted that the Flagstaff Precinct has the ability to provide significant employment, and that the controls should be centred on encouraging office development. It submitted that the Flagstaff Precinct has a different character to the rest of West Melbourne, and “*given its abuttal to large institutional uses and the city grid proper it has limited potential to impact on the finer grain and historical elements of West Melbourne to the north including the Hilltop precinct*”. It pointed to the Flagstaff Station and the proposed tram line extension along Spencer Street, submitting that:

With significant upgrades in this part of West Melbourne there is no reason why the Flagstaff precinct can't function as an extension of the central CBD. The rate of office development in Docklands gives some indication of the potential take-up which could take place in this strategic precinct. The infrastructure is already in place and as Mr Barlow has indicated the West Melbourne area does not suffer from a lack of infrastructure.

G2 Urban Planning submitted that whilst the aspirations of local residents are important in formulating future controls for the precinct there is also a wider obligation to ensure this part of West Melbourne meets the ongoing demand for the expansion of the city. It submitted that in this context the inclusion of the precinct in the Capital City Zone is both logical and desirable.

³⁷ G2 Urban Planning submission at page 6

The PPP clients advocated for the Capital City Zone to be applied in the Flagstaff and Spencer Precincts, relying on the evidence of Mr Barlow who stated:³⁸

The areas of West Melbourne which the [Structure Plan] recognise as being capable of accommodating a range of uses with commercial opportunities, being Flagstaff and Spencer (with parts of Adderley), can be located within a zone already created to guide the development of the central city - being the Capital City zone.

In oral evidence, Mr Barlow indicated that he considered the Capital City Zone appropriate for the parts of the Station Precinct proposed to be zoned SUZ6 as well.

Amendment C20 introduced new built form controls to various parts of the municipality, including West Melbourne, in December 2001. Mr Barlow emphasised that the C20 Panel referred to the Flagstaff Precinct as ‘the CBD Fringe’, and described it as an area where:³⁹

... opportunities to cater for inner city housing demand and commercial uses looking for proximity to the CBD should be provided for. The support that these areas offer to the capital city role of Melbourne should take precedence over other factors mentioned in the Built Form Review, such as reflecting existing building heights. It should be acknowledged that these are areas in transition and where substantial change may be expected.

He suggested that this supported the notion that the Flagstaff Precinct is an extension of the CBD, and supported the application of the Capital City Zone. He noted the high degree of flexibility to customise the purposes of the Capital City Zone to address specific local matters, modify the table of uses and implement specialist policy.

Mr Barlow highlighted that the Capital City Zone has been applied to other parts of the municipality outside the CBD including Southbank (Schedule 3), Fisherman’s Bend Urban Renewal Area (Schedule 4), City North (Schedule 5), Carlton Connect (Schedule 6) and the Melbourne Arts Precinct (Schedule 7).

Stadiums submitted that the Festival Hall site (which is located at the southern end of the Spencer Precinct) should be included within the Capital City Zone and that there is a strong argument that all of the Flagstaff Precinct should be within the Capital City Zone as well.

Council response

Council responded to the criticisms of submitters and experts in its Part C submission. It submitted that any designation of the area as Capital City Zone should be solidly founded in State policy and should be a matter dealt with at a State level and not through a local planning scheme amendment. It submitted:⁴⁰

Council reiterates its position that the CCZ would be inappropriate because of the CCZ’s purpose of enhancing the role of Melbourne’s central city as the capital of Victoria and as an area of national and international importance, which is the antithesis of the purpose of the Amendment, which is to recognise West Melbourne as having an identity distinct from the CBD.

Council submitted that the existing seven schedules to the Capital City Zone apply either to the CBD itself, to precincts that make a direct contribution to enhancing the role of

³⁸ Mr Barlow’s expert witness statement at paragraph 81

³⁹ Page 138 of the C20 Panel Report

⁴⁰ Council’s Part C submission, paragraph 69

Melbourne's central city as the capital, or (in the case of the City North and Carlton Connect precincts) to areas of national and international importance. It submitted that all of the land covered by the Capital City Zone is recognised in Plan Melbourne as serving an important state-wide function. West Melbourne is not.

7.5 Discussion

The Panel agrees with submitters and with Mr Glossop and Mr Barlow that the use of the SUZ for a large urban area is unusual, and would represent a departure from how the SUZ has been typically used in the past. The Panel is also mindful that a key premise of the VPP is to maintain consistency of planning controls across Victoria, and that special purpose zones are discouraged unless there is no suitable alternative.

The Panel notes that DELWP did not raise any concerns over the proposed application of the SUZ in its letter of conditional authorisation for the Amendment.

(i) Mixed Use Zone is not appropriate

It was common ground among Mr Barnes, Mr Barlow and Mr Glossop that the MUZ is not delivering the true mixed use outcomes sought by the Structure Plan. The MUZ allows residential development as of right (without a permit). This, together with recent market conditions, has resulted in a high proportion of primarily residential developments occurring within the Structure Plan area. As a by-product, there has been a loss of employment uses in the area which are consistently seen as playing an important role in West Melbourne. No witness considered that the MUZ should remain.

All witnesses agreed that there is a need for a commercially focussed mixed use zone that is not part of the residential suite of zones, and that this should be further considered at the State level. The Panel agrees, and encourages DELWP to give further consideration to a mixed use zone that does not favour residential outcomes over commercial land uses.

Accepting that the MUZ is not appropriate, the questions then become: what is the appropriate zone, or other planning tools, to deliver the vision in the Structure Plan? Is the SUZ the appropriate tool?

(ii) Other zones considered

Through evidence and submissions it was apparent that Council and various submitters had explored a range of alternative zones to achieve the Structure Plan vision. While the Commercial 1 and 3 zones were explored by Mr Barnes, and the Comprehensive Development Zone and Activity Centre Zone suggested by some submitters, the primary alternative option presented to the Panel was the Capital City Zone. The primary rationale for the Capital City Zone appeared to be the ability to provide for a tailored schedule (much the same as the SUZ6 is proposing), and that by virtue of West Melbourne's location adjacent to the central city, it represents a logical extension of this zone.

Under cross examination by Council, Mr Glossop accepted that it was legitimate to use the SUZ if no other planning tools could achieve the outcomes sought. He accepted that the commercial zones and the Comprehensive Development Zone were not suitable. He also conceded that West Melbourne was not recognised as an area of national or international importance in State policy, unlike other areas contained within the Capital City Zone. However he did not consider that this precluded the use of the Capital City Zone.

Mr Barlow also agreed that other zones such as the Commercial 3 Zone didn't have enough "finesse" to achieve the vision. He accepted that Plan Melbourne was silent on West Melbourne (unlike the other areas included in the Capital City Zone), however stated that Plan Melbourne emphasised other policies such as the need for more jobs within central Melbourne which, in his view, would include West Melbourne.

(iii) Is the Capital City Zone appropriate?

The purposes of the Capital City Zone are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To enhance the role of Melbourne's central city as the capital of Victoria and as an area of national and international importance.
- To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.
- To create through good urban design an attractive, pleasurable, safe and stimulating environment.

While Mr Barlow and Mr Glossop were supportive of the Capital City Zone in the Flagstaff and Spencer Precincts (in which their clients' land was located), they had given less thorough consideration as to whether it was appropriate elsewhere in the Structure Plan area. The Panel observes that much of the Adderley Precinct is low scale, and the Station Precinct is more physically separated from the existing Capital City Zone.

The Melbourne Planning Scheme currently differentiates West Melbourne from the central city and urban renewal areas through its Local Planning Policy Framework, and in particular in the Growth Area Framework at Clause 21.04-1. Plan Melbourne does not identify West Melbourne as part of the central city, or as an area for urban renewal being State significant areas as focal points for growth.

Notwithstanding this, throughout the Hearing it was apparent to the Panel that the distinction between the Flagstaff Precinct and the central city is somewhat 'blurred'. This is evident not only in the physical form of this part of West Melbourne, but is also reflected in the wide ranging decisions by VCAT in Flagstaff, with the surrounding built form and proximity to the city justifying in some cases very large buildings (with significant departures from the DDO recommended heights). That said, in other cases, VCAT gave more weight to West Melbourne as an area of *"on-going and incremental change, and not urban renewal"*⁴¹.

Other precincts were more readily agreed by parties as being more distinct from the central city.

The Panel acknowledges that the history of planning controls for West Melbourne (and Flagstaff in particular) suggests that Flagstaff has, at times, been considered in a very similar manner (including the same zoning) to the CBD. However this is no longer the case. The Panel accepts that West Melbourne has a strong connection to the central city, and plays an important service and support role to the central city. However, as discussed in Chapter 5, it has not been recognised anywhere as part of the central city or as an urban renewal area of

⁴¹ *Spacious Property Developments Group Pty Ltd v Melbourne CC* [2015] VCAT 1895

state or national importance. Rather, it is consistently recognised in the Planning Scheme and Plan Melbourne as a separate area, with a separate role.

This is consistent with the Structure Plan, which has a clear vision for West Melbourne to maintain a separate identity to the central city.⁴²

West Melbourne will retain its unique identity, varied areas of character and mix of uses as it evolves into one of Melbourne's distinct inner urban neighbourhoods and a counterpoint to the central city.

As discussed in Chapter 5, there have been various strategic planning exercises where the role and preferred future character of West Melbourne has been reviewed, including the recent review of the MSS (Amendment C162) and Plan Melbourne Refresh that reviewed areas for growth across the metropolitan region. In neither instance was the role of West Melbourne recommended to change to take account of population pressures, proximity to the central city and other urban renewal areas, or for other reasons. This is in contrast to areas such as City North (which was rezoned to the Capital City Zone by Amendment C196), which is now recognised as an extension to the central city and as a 'Knowledge Precinct' where education, research and medical uses can cluster.

The Capital City Zone, when applied outside the central city, has consistently been applied to precincts that are recognised as part of the central city, and/or areas of national or international significance (such as Carlton Connect). This is a critical distinction, given the second purpose of the Capital City Zone is:

To enhance the role of Melbourne's central city as the capital of Victoria and as an area of national and international importance.

The Structure Plan clearly seeks to maintain West Melbourne as having a distinct identity to the central city and to urban renewal areas, while still providing for good opportunities for growth to accommodate forecast population.

While the Capital City Zone would allow for a tailored schedule in much the same way as the SUZ, and is a VPP zone that that would ordinary be favoured over a SUZ, the Panel accepts Council's position that applying the Capital City Zone would be contrary to the vision of the Structure Plan. The Capital City Zone is not appropriate in an area that seeks to differentiate itself from the central city, and is not an area of national or international significance.

(iv) Is the Special Use Zone appropriate?

Overall, while the Panel shares the concerns of many submitters and experts that the SUZ is intended for 'special' cases only, for the reasons set out above it is ultimately persuaded that this is a case where there are no other suitable zones or combination of planning tools available to deliver the vision in the Structure Plan.

Further, the Panel supports retaining the affordable housing provisions in the zone, and supports the minimum non-accommodation floor area requirements, for the reasons set out Chapters 9 and 10. No other zone readily supports these requirements (other than perhaps

⁴² West Melbourne Structure Plan, Section 1.2 Vision at page 10

the Capital City Zone, which the Panel does not consider appropriate for the reasons set out in the previous section).

The SUZ also allows for a tailored table of uses that allows for office development to be ‘as of right’ (which in turn supports commercial development and employment), and provides for purposes, application requirements and decision guidelines that can be specifically tailored to deliver the vision in the Structure Plan.

At the Hearing the Panel queried the appropriateness of the SUZ6 for parts of the Adderley Precinct which are residential in nature, low scale and fine grained. However the Panel accepts that there were no specific submissions in relation to this matter and that the more intact residential part of the Adderley Precinct is remaining in the General Residential Zone and the Mixed Use Zone. On further reflection, the Panel considers it unlikely the non-accommodation floor area requirements would be imposed on smaller lots in the SUZ6 parts of the Adderley Precinct, as development of smaller lots would be less likely to include 10 or more dwellings. Nor would the affordable housing requirements be triggered in smaller scale developments.

On balance, the Panel supports the application of the SUZ. The Panel cautions it has not taken this position lightly, and does not consider that this should be justification for other councils to pursue the SUZ where other zones or alternative planning tools are more appropriate.

Several submitters, and some of the experts, recommended that if the SUZ was adopted, some changes should be made to the exhibited SUZ6 to better facilitate employment generating uses. This is discussed in Chapter 7.

7.6 Conclusion

The Panel concludes:

- On balance, the SUZ is the appropriate zone to facilitate the Structure Plan’s vision.

Recommendations about broader systemic changes in relation to the VPP are beyond the scope of the Amendment, and are therefore beyond the Panel’s remit. Nevertheless, the Panel strongly encourages DELWP to consider developing a commercially focused mixed use zone, that is not part of the residential suite of zones, to better cater for situations such as West Melbourne where a true mix of uses with a significant commercial or employment generating component is sought.

8 Floor area ratios

8.1 Introduction

(i) The Structure Plan

Objective 1 of the Structure Plan is:

Introduce floor area ratio controls and accompanying built form controls that celebrate West Melbourne's diverse character.

The Structure Plan explains the rationale for the use of floor area ratios at pages 38 to 39. The benefits are said to include:

- responding better to the varying characteristics of specific sites
- providing a clear and consistent measure to support efficient decision making
- delivering a range of different building typologies, rather than just developing each site to its maximum allowed height
- providing greater certainty about the level of population growth to determine the need for supporting infrastructure
- supporting additional benefits to an area, such as new laneways, retention of heritage buildings and additional open space, by allowing flexibility for how the floor area ratio is achieved on each site without reducing the total amount of development on a site.

The Structure Plan also notes that floor area ratios can be used to set minimum floor areas for non-residential uses, to help deliver a mix of uses in the area.

The Structure Plan goes on to provide a comparison of the floor area ratios proposed with other cities around Australia and the world, and to explain how the floor area ratios were tested through both built form and development feasibility testing.

The rationale and benefits of floor area ratios are also discussed extensively in Section 2 of the Built Form Strategy.

(ii) The controls

The floor area ratios are contained in the DDOs. Table 5 sets out the exhibited floor area ratios proposed for each precinct, plus changes proposed by Council in response to the recommendations of Ms Hodyl.

Table 5 Proposed floor area ratios

Precinct	Exhibited FAR	Council proposed changes
Flagstaff (DDO33)	6:1	None
Spencer (DDO72)	4:1	- 5:1 for properties with direct frontage to Spencer or King Streets - 4:1 elsewhere
Adderley (DDO29)	3:1	None
Station (DDO28)	5:1	None

The floor area ratios are mandatory maximums. They are calculated on gross floor area above ground level, including services, lifts, car stackers and covered balconies. Basements are excluded.

Any amendments to an existing permit that exceeds the maximum floor area ratio cannot increase the extent of non-compliance.

A floor area uplift is available where a special character building is successfully retained. Uplifts are addressed in the next chapter.

(iii) The built form testing

Breathe Architects were engaged to undertake built form testing of the proposed floor area ratios. They tested 11 sites shown on Figure 13 below. According to the Built Form Strategy:⁴³

The built form control testing identified that the proposed floor area ratio controls, accompanied by the built form controls and design recommendations, help to achieve commercially deliverable, well-designed buildings that achieve the proposed design recommendations.

After exhibition of the Amendment, Council engaged Breathe Architects to undertake a sensitivity analysis, testing the effects of increasing the floor area ratios and heights on some sites. The further testing included several sites that were part of the original testing, and an additional three sites that were not included in the original testing (refer to Figure 14 below).

8.2 The issues

The issues are:

- whether floor area ratios as a tool are strategically justified
- whether they should be mandatory
- the relationship between floor area ratios and built form controls (particularly heights)
- the appropriateness of the particular floor area ratio for each precinct.

⁴³ Built Form Strategy at page 66

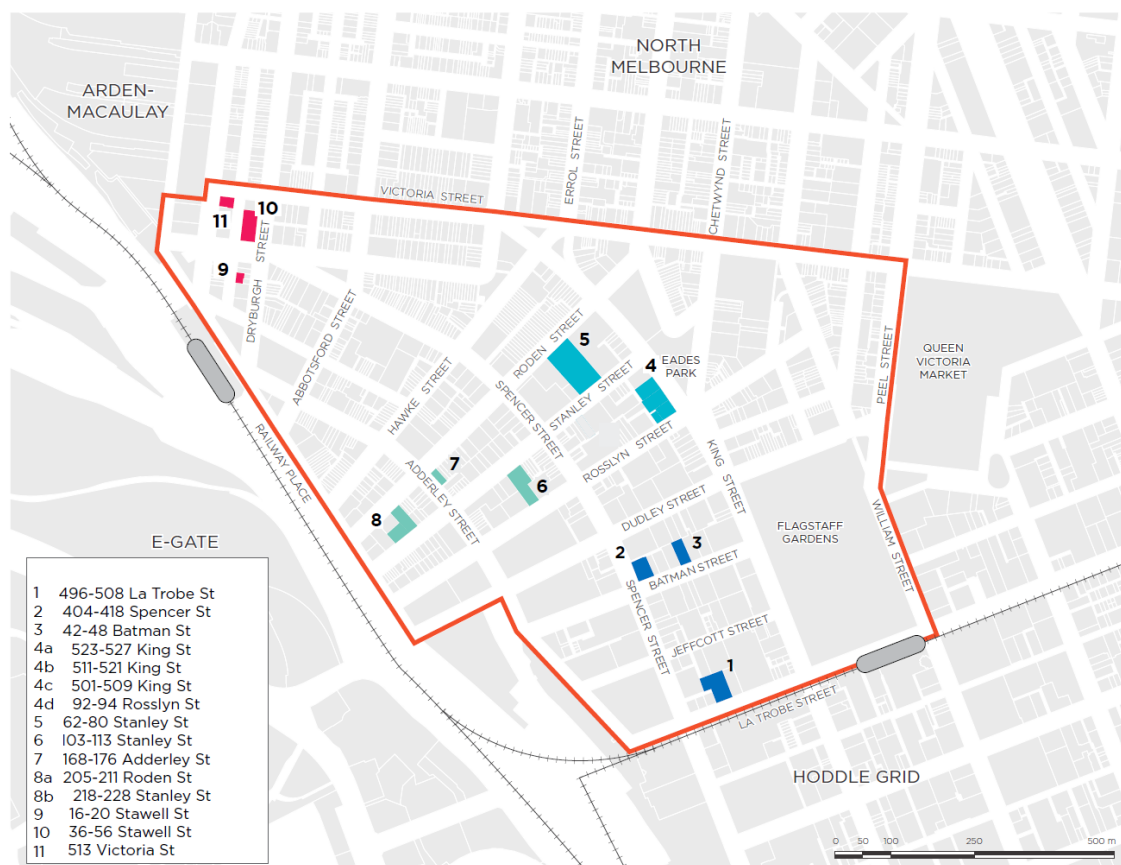


Figure 13 Original built form testing sites

Source: West Melbourne Built Form Control Testing, Breathe Architecture



Figure 14 Additional built form testing sites

Source: Appendix 3 to Mr McLeod's expert witness statement

8.3 Are floor area ratios strategically justified?

(i) Evidence and submissions

Council

Council submitted that the floor area ratios are needed to address the significant development pressure in West Melbourne, and the deficiencies of the current controls which Council submitted are allowing excessive density, insufficient building separation and excessive site coverage. Council submitted that it underwent a comprehensive process to determine that a floor area ratio was an appropriate tool, and then test whether the proposed floor area ratios were appropriate.

Council explained that, notwithstanding assumptions to the contrary made in several submissions and by some experts, the floor area ratios are not being used as a tool to manage population or jobs.⁴⁴

The ability of the Structure Plan FARs to accommodate projected population was **tested**, as was their ability to deliver against the target of 10,000 jobs by 2036 (proposed cl 21.06-6), but the FARs were not target-driven or limited by targets. Rather, the process of developing the FARs was iterative and responsive to the existing and preferred character of each precinct ... (Council's emphasis)

Council called Ms Hodyl to present urban design evidence in relation to the Amendment. Her evidence was:⁴⁵

The pairing of a density control with building envelope controls is a standard planning mechanism that is utilised nationally and internationally in regulating development. This approach is increasingly common in central Melbourne, with recent amendments in the Central City and Fishermans Bend proposing this approach.

The key reasons for utilising a density control together with building envelope controls, rather than the traditional use of height and density controls, include:

- Managing overall densities that occur within a precinct/area to ensure that they do not lead to adverse amenity outcomes including overcrowding of public spaces and excessive pressure on existing infrastructure.
- Avoid the need to 'borrow' amenity from side or rear boundaries which occurs when development yields are too high.
- Design flexibility where there are varied site conditions including a range of site sizes, orientation, shapes and number of frontages.
- Opportunities for design flexibility to respond to heritage buildings.
- The delivery of diversity in built form outcomes, including housing diversity.
- Clear guidance on potential development yield which avoids speculation and escalating land prices.

All of these benefits are explicitly sought in West Melbourne. These benefits can only be provided with certainty if the FAR is a mandatory control.

Mr Barnes noted that floor area ratios are becoming increasingly common in Melbourne, following the introduction of the central city built form controls via Amendment C270. He supported the use of floor area ratios in West Melbourne as a tool to manage density of

⁴⁴ Council's Part A submission at paragraph 55(a)

⁴⁵ Ms Hodyl's evidence statement at paragraphs 85 to 87

development and to maintain the character of the area in the face of “*very significant development pressures*”, as well as to manage built form and provide flexibility in heights, setbacks and building typologies.

Council called evidence from Mr McLeod of Breathe Architects, who stated:⁴⁶

Based on the testing undertaken, the mandatory FAR combined with preferred height control is workable from an architectural perspective to the extent that it makes it possible to design buildings that appear to provide high amenity housing, meet the overall and precinct-specific Design Recommendations of the West Melbourne Structure Plan 2018 ... and negotiate developer interests such as yield maximisation without penalty.

His evidence was that the built form testing demonstrated the potential for the floor area ratios and built form controls to deliver “*exceptional sustainability outcomes*” including:

- the flexibility to allow primary aspects to be oriented for improved solar access, improved passive heating and cooling
- the ability to introduce large courtyards and generous building separation to enable cross-flow ventilation and good access to daylight
- the ability to provide large areas of deep soil planting to help relieve issues such as stormwater management, Urban Heat Island Effect, and loss of biodiversity.

He also pointed to the potential for buildings designed under the controls to encourage vibrant, social streetscapes that foster community through highly walkable, permeable pedestrian environments supported by activated through-site links, publicly accessible open space and human-scale interfaces that encourage passive surveillance and interaction between building residents and pedestrians.

Mr McLeod’s view was that without a floor area ratio control, developers would be incentivised by financial profit to maximise built form on a site, to the detriment of the benefits outlined above. In oral evidence, he indicated that an additional benefit of a floor area ratio control was to dampen speculation about land values, by setting a clear and certain limit on development yield.

Submitters

Many submitters questioned the strategic justification for the floor area ratios, submitting that they were not necessary to achieve the vision for the Structure Plan area or for each precinct, and that they should be removed altogether. They submitted that the floor area ratios were too low, overly prescriptive, may prevent reasonable and feasible development, and would potentially result in an underutilisation of the land.

The PPP clients submitted that the mandatory floor area ratios must be abandoned. If they are implemented, they must be:

- discretionary
- increased to align with the built form expectations of the precincts, particularly for employment based land uses

⁴⁶ Mr McLeod’s evidence statement at paragraph 16

- used to incentivise non-residential uses above the minimum requirements by allowing uplifts and greater building heights.

Mr Barlow (who presented planning evidence for the PPP clients) stated:⁴⁷

I have two primary concerns with the use of the FAR approach. The first relates to the delivery of employment space in West Melbourne and the second to the 'emphatic' limitation that will be placed on the West Melbourne area.

His opinion was that the floor area ratios *"are an inefficient and contradicting planning control which will inevitably constrain development for employment uses"*. He pointed to the fact that feasibility testing concluded that stand-alone commercial developments are unlikely to be feasible, and that mixed use buildings are likely to contain employment spaces that will have limited appeal and will not be able to accommodate key uses such as education, research or larger health activities that require a lot of floorspace and larger floorplates.

Mr Barlow considered that there is a risk that sites will develop in accordance with the floor area ratios and then have no additional capacity to deal with future growth. His evidence was that the floor area ratios will inevitably favour residential development with limited employment floor space, which will 'lock up' sites for many decades (his evidence was that commercial sites generally redevelop every 40 to 50 years subject to capital value and ongoing utility of the space, whereas residential developments turn over less frequently).

Mr Quick (who presented economic evidence for the PPP clients) stated:⁴⁸

The use of FAR sets a hard cap on the capacity of West Melbourne which allows little flexibility to adapt to the future needs of residents and workers in the Central City.

He considered that the floor area ratios, in combination with other built form controls, would make it difficult to redevelop smaller sites and would result in smaller floorplates unsuitable for larger scale commercial uses. Several submitters, including G2 Urban Planning on behalf of 328-348 Spencer Street and Gray Puksand on behalf of 363 King Street, agreed. G2 Urban Planning submitted that *"proper use is not being made of more substantial sites within the precinct and this flies in the face of proper planning"*.

UAG West Melbourne submitted that the proper considerations for determining net community benefit and sustainable development are matters such as:

- whether the built form outcome is an acceptable response to the strategic and physical context of the land
- amenity impacts to surrounding properties
- whether matters such as site access, carparking and traffic impacts can be satisfactorily addressed.

UAG noted that VCAT had ordered the grant of a permit on the UAG site at 45-55 Dudley Street for a development that exceeds the proposed floor area ratio, having satisfied itself that these matters could be properly addressed. UAG submitted that this demonstrates that the application of a floor area ratio to its site is not justified.

⁴⁷ Mr Barlow's expert witness statement at paragraph 113

⁴⁸ Mr Quick's expert witness statement at paragraph 118

Council response

Council responded in its Part C submissions to the proposition that floor area ratios would discourage commercial development:

Submitters say that a FAR discourages commercial, because commercial will only be feasible where there is more floor area. What the submitters have not done is explain how any increased FAR will not be simply be consumed by residential. In any case, as has been discussed, there is good evidence that commercial will be feasible with the proposed FARs.

(ii) Discussion

The two most recent amendments that sought to introduce floor area ratios into the Melbourne Planning Scheme were:

- Amendment C270, which introduced the central city built form controls
- Amendment GC81, which introduced new planning controls in Fishermans Bend (and affected both the Melbourne and Port Phillip Planning Schemes).

The C270 Panel supported floor area ratios in the central city, albeit with some reservations that the rate of 18:1 is substantially higher than in key comparable cities. It recognised that floor area ratios were a legitimate tool to respond to significant development pressure and emerging trends for ‘hyper-dense’ development, and that floor area ratios – even mandatory ones – will not necessarily stifle design creativity or reduce flexibility in design responses.

This Panel agrees with the C270 panel that floor area ratios are a legitimate tool to respond to development pressure, where that pressure is leading to non-preferred outcomes. It accepts that West Melbourne is under considerable development pressure. This is demonstrated by the recent trend discussed in the precinct chapters toward approvals that significantly exceed the current (and proposed) heights, particularly in the Flagstaff and (to a lesser extent) Spencer Precincts. The Panel agrees with Council that this trend is starting to erode the distinction between West Melbourne and the central city, and to compromise the character and amenity outcomes sought by the Structure Plan.

The Panel is also satisfied that floor area ratios are a legitimate tool that can assist in delivering the character outcomes sought for West Melbourne. The proposed floor area ratios are significantly lower than the 18:1 that applies in the central city, which will inevitably lead to a different, lower scale and less dense built form in West Melbourne, reinforcing it as a place that is distinct from, rather than an extension of, the central city. The variation in floor area ratios between precincts will similarly help to deliver distinct characters within the different precincts.

Floor area ratios allow flexibility regarding how the floor area is delivered on a site. The Panel accepts Mr McLeod’s evidence that this can deliver multiple benefits, including encouraging more site responsive design, better internal amenity, better orientation and passive design principles, more generous communal spaces, and more opportunities for deep root planting. It accepts Ms Hodyl’s evidence that floor area ratios can also assist in preserving heritage buildings and special character buildings by allowing new built form to be more intensively distributed to other parts of a site. Preserving and re-purposing heritage and special character buildings will further contribute to the character of West Melbourne.

The Panel is less persuaded that a floor area ratio, of itself, will necessarily deliver the varied built form typologies sought by the Structure Plan. It seems clear from submissions and evidence that there are other forces at play that influence built form typology, including construction costs and the desires of the market. This appears to be particularly so for commercial development, which generally seeks larger floorplates. This may result in a more 'squat' built form. That said, the Panel is satisfied that the floor area ratios will work in combination with other elements of the built form controls that seek to encourage a diversity of typologies.

The Panel is not persuaded that the floor area ratios will necessarily discourage commercial development. The success or otherwise of commercial development in West Melbourne is more likely to be driven by market forces, including the current higher returns on residential development. The experts agreed that the market is cyclical, and influenced by many factors including the supply of vacant residential and commercial floorspace. The experts recognised that over the past couple of years, the market, although still dominated by residential, has started to show signs of a shift toward commercial development. This appears to be borne out by the fact that there are current applications in West Melbourne for commercial only development. The Panel does not consider that the introduction of floor area ratios is likely to impact overly strongly on this market trend.

The Panel acknowledges that many larger scale commercial uses, including Grade A office space, require larger floorplates than residential development. It is not, however, persuaded that the floor area ratios will necessarily result in smaller floorplates, thereby discouraging commercial development. As Mr McLeod acknowledged in his oral evidence, it is generally cheaper to construct a shorter fatter building than a taller slender one. If there is a market for larger commercial floorplates, nothing in the floor area ratio controls prevents them from being built. Site sizes in West Melbourne are likely to have a more direct impact on the ability to achieve the required commercial floorplates than the floor area ratios, as are the setback controls (although the Panel notes that setback controls only apply in Flagstaff, and are discretionary).

The Panel notes that the Fishermans Bend Review Panel did not support floor area ratios, and instead supported a dwelling density control. However there are some important distinctions between the way in which floor area ratios were proposed to be used in Fishermans Bend, and the way in which they are proposed to be used in West Melbourne.

One of the purposes of the Fishermans Bend floor area ratios was to align population and employment to the targets in the Fishermans Bend Framework. The Fishermans Bend Review Panel accepted the rationale for a density control in Fishermans Bend, to help align development and infrastructure provision with the projected population, but considered that a dwelling density control was a more effective way to achieve this objective. It considered that a floor area ratio control could have unintended consequences, such as encouraging smaller dwelling sizes with less common and circulation spaces, and reducing housing diversity. The Panel said:⁴⁹

⁴⁹ Refer to page 67 of Volume 1 of the Fishermans Bend Overview Report

[A floor area ratio] runs the risk of forcing a developer to choose between, providing, say, one three-bedroom apartment and two single-bedroom apartments in the same floorspace. Directly limiting the number of dwellings avoid this choice.

This Panel is satisfied that the floor area ratios in West Melbourne are not seeking to control population, as discussed in Chapter 6.4. The Panel also notes Council's submissions that West Melbourne is not so constrained as Fishermans Bend in terms of infrastructure provision, and there is less need to limit the population in West Melbourne to align it with supporting infrastructure.

For these reasons, the Panel does not consider that a dwelling density control should be preferred in West Melbourne to a floor area ratio control, as was the case for Fishermans Bend.

On balance, the Panel considers that the floor area ratios are strategically justified. They have the potential to assist in delivering significant benefits for the current and future residents of West Melbourne, and for the community more broadly, particularly in terms of sustainable development outcomes.

(iii) Conclusions

The Panel concludes that the floor area ratios are strategically justified:

- West Melbourne is under considerable development pressure which risks eroding the distinction between West Melbourne and the central city. Floor area ratios are a legitimate tool to use in response to this development pressure.
- The floor area ratios can assist in delivering the built form and character outcomes sought for West Melbourne, including a distinction to the central city and distinct characters in each precinct.
- The floor area ratios have the potential to deliver multiple benefits in terms of internal amenity, urban design outcomes, and preserving heritage and special character buildings.
- The West Melbourne floor area ratios are not designed to contain population. Nor is there a need to contain the population in West Melbourne due to infrastructure constraints. There is therefore no reason to support a dwelling density control (as in Fishermans Bend) rather than a floor area ratio control.

8.4 Mandatory versus discretionary floor area ratios

(i) Evidence and submissions

Council

Council submitted that mandatory floor area ratios are required in West Melbourne due to the significant development pressure faced in the area, demonstrated by the number of VCAT cases, and the number of recent approvals that are significantly in excess of the current (and proposed) discretionary heights:⁵⁰

⁵⁰ Council's Part B submission at paragraph 87

The discretionary approach of the current controls has not delivered the desired outcomes as the concept of an area of 'transition' from the CBD has become inappropriate with increased height in the CBD, and as the unique character of West Melbourne has been recognised as worthy of protection.

It submitted that several recent panels had found that development pressure was a justification for mandatory controls in inner city locations, including Yarra C220 (implementation of the Johnson Street Local Area Plan), Melbourne C270 (the central city built form controls), Melbourne C240 (the Bourke Hill controls) and Melbourne C245 (the Queen Victoria Market controls).

Council relied on the evidence of Mr Barnes in submitting that mandatory floor area ratios in West Melbourne are justified when assessed against the PPN59 criteria. Mr Barnes' evidence was:

- The Structure Plan and background documents provide strong strategic justification for mandatory floor area ratios.
- Given West Melbourne's location and development pressures, there is a high risk that proposals will exceed the floor area ratios if they are not mandatory.
- The built form testing suggests that floor area ratios, in combination with other built form controls, will deliver the preferred built form outcomes set out in the Structure Plan.
- While proposals with a low level of non-compliance are likely to be generally acceptable, those with a high level of non-compliance are likely to be unacceptable.
- A mandatory floor area ratio will reduce administrative costs. A discretionary requirement is likely to result in heavily contested planning appeals, which would increase administrative costs for Council.

Mr Barnes concluded that there is a "*strong case*" for mandatory floor area ratios in West Melbourne, on the basis that:

- the Structure Plan clearly sets out a vision for the area that has strong references to character and amenity
- overly intensive development that significantly exceeds the floor area ratios has the potential to put the vision at risk
- the floor area ratios are used in conjunction with discretionary building height controls
- West Melbourne is not an activity centre in a strategic growth area, in which flexibility should be provided to realise policy ambitions to encourage development. Rather, it is an area identified for incremental infill development.

He concluded that the controls "*adequately balance the need to encourage development in such a location, with ambitions to protect and respond to the existing character of the area*". He reiterated in his oral evidence that mandatory floor area ratios are important in ensuring West Melbourne retains a distinct character to that of the central city or Docklands.

Mr McLeod's evidence, backed by the additional built form testing, was that as the floor area ratios increased, he found it increasingly difficult to achieve the design objectives of the

Structure Plan and what he regarded as good, sustainable design outcomes. Council submitted:⁵¹

Mr McLeod is recognised as a leading architect. If he struggles to produce good amenity outcomes as the FARs increase, we ask rhetorically: how will the majority of architects fare?

Submitters opposing mandatory floor area ratios

Many submitters argued that the floor area ratios, if they are retained, should be discretionary. They argued that mandatory controls do not provide sufficient flexibility, or allow development to be assessed on its merits. They considered that mandatory controls stifle creativity and innovative, site-responsive design, particularly on larger sites that could accommodate additional density without producing off-site impacts or bad planning outcomes.

355 Spencer Street submitted that a discretionary tool was consistent with the overarching performance based nature of the VPP, and that the varied opinions of the experts in relation to the appropriateness of floor area ratios as a tool was *“an example of why a discretionary tool is to be preferred over that of a mandatory requirement”*. It referred to Council’s argument that mandatory controls should be supported given a number of recent VCAT decisions that had approved heights in excess of the current discretionary controls, and submitted:⁵²

Council’s position suggests that the Tribunal decisions have resulted in an unacceptable planning outcome. It is submitted these submissions should be given little weight by the Panel given they advance of a proposition that undermines review function of the Tribunal and its consideration of applications.

Mr Glossop (who gave planning evidence for 355 Spencer Street) stated:⁵³

Firstly, considering the mandatory floor area ratio, I note that seems to be limiting density without a particular objective or benefit in mind. A floor area ratio does not achieve any specific urban design outcome, since the ratio could be made up in numerous ways (subject to the built form requirements and built form outcomes). Even if a specific urban design outcome was sought, this is not a sufficiently consistent or sensitive context to warrant a mandatory control. If I consider again the Criteria set out in PPN59, I note that the mandatory floor area ratio:

- Does not appear to clearly implement any particular objective.
- Does not appear to have a strategic basis, and the Amendment documentation does not appear to justify why exceeding the ratio would be inappropriate.
- Would potentially limit development to well below the preferred maximum height of 16 storeys in many cases and would thereby unreasonably restrict otherwise appropriate development.
- Is unlikely to have any bearing on administrative costs.

G2 Urban Planning submitted on behalf of 328-348 Spencer Street:⁵⁴

The application of a mandatory requirement in a precinct like the Flagstaff Precinct is totally inappropriate. The control must remain a discretionary control to allow a

⁵¹ Council’s Part B submission at paragraph 93

⁵² 355 Spencer Street submission at paragraph 26

⁵³ Mr Glossop’s expert witness statement at paragraph 94

⁵⁴ G2 Urban Planning submission at pp7-8

variation in built form justified by its context and overall quality of development. Our client is strongly opposed to any form of mandatory requirement at this location. A mandatory requirement offers no incentive for the site to be redeveloped in the future.

Submitters supporting mandatory floor area ratios

Submissions from the community, including Mr Mitchell-Wong, Mr Waters, and Mr Rogers and Ms Sweeting, strongly supported mandatory floor area ratio controls. They highlighted that constraining overly dense development leads to better social outcomes through protecting public amenity and facilitating the provision of communal open space for residents of new developments where they can interact socially. By constraining density, mandatory floor area ratios reduce overcrowding and demand on public infrastructure. They limit development that might constrain the development potential of neighbouring land, leading to better equitable development outcomes.

Submitters argued that insufficient regard was had to discretionary controls, including by VCAT. They argued that mandatory controls provide certainty for the community, and reduce applications that include ‘ambit claims’ from developers. Mandatory controls avoid the community having to spend time and resources fighting applications in VCAT that exceed discretionary controls. Submitters highlighted that they often felt ‘out gunned’ in VCAT, and that they could not possibly put up a fair fight against well-resourced and well-funded developers seeking to exceed discretionary controls.

Council response

Council’s Part C submissions stated that no submitter presented a considered position to the Panel about what might replace the mandatory floor area ratios. It submitted:

... No FAR and a discretionary height limit is the current controls. They have not worked. A discretionary FAR is pointless. Council’s testing shows that, except perhaps to a limited extent in Flagstaff, any floor area uplift for commercial would have unacceptable urban design and character implications.

Council submitted that no evidence was led that supports the proposition that mandatory floor area ratios will stifle creative, site-responsive design. Council relied on Mr McLeod’s built form testing and his evidence that the floor area ratios provide design flexibility while removing yield maximisation as a key driver of built form. Council pointed to the fact that the C270 panel accepted that mandatory floor area ratios enable more site responsive and creative designs, and assist designers to persuade clients not to overdevelop a site.

(ii) Discussion

The panel for Amendment C96, which introduced the 2005 West Melbourne Structure Plan, did not support mandatory controls. It concluded that provided the policy and controls clearly guide the exercise of discretion, discretionary heights should only be exceeded in “*special circumstances*”, and that there should only be “*minor incursions*” above the limits. “*To conclude otherwise would be to also conclude that the whole performance-based tenet of the VPPs has been wrong*”.

Council submitted that the C96 panel did not (and could not have) foreseen the “*immense pressure for development that West Melbourne has experienced*”. It submitted that since the C96 panel report in 2006, there has been increasing recognition that mandatory controls still have a valuable part to play in a performance-based system.

Development pressure is not necessarily a bad thing. However, the Panel accepts that where development pressure is leading to non-preferred outcomes, it can provide a justification for mandatory controls, provided the PPN59 criteria are otherwise met. As indicated in Chapter 8.3, the Panel accepts that West Melbourne is under considerable development pressure, due to its location and proximity to the central city. This development pressure is likely to increase as surrounding urban renewal areas such as Arden Macaulay and E-Gate come online.

The Panel agrees with Mr Barnes that the PPN59 criteria are met. It finds that the floor area ratios are strategically supported, for the reasons outlined in Chapter 8.3. It agrees with Mr Barnes that while small exceedances of the floor area ratios are likely to be generally acceptable, a large number of significant exceedances will produce unacceptable results, and will compromise the character for West Melbourne envisaged in the Structure Plan. While it does not necessarily go so far as to agree with Council and with Ms Hodyl that discretionary floor area ratios are “pointless”, it is persuaded by the evidence of Mr McLeod that the more the floor area ratios are exceeded, the harder it becomes to deliver many benefits of a floor area ratio outlined in Chapter 8.3.

West Melbourne is an infill area that has an existing character which the Structure Plan seeks to protect and maintain. The Panel accepts that recent developments and approvals that significantly exceed the current discretionary heights are beginning to erode West Melbourne’s existing character. Given the Amendment also proposes discretionary heights, mandatory floor area ratios will assist in limiting the scale of new development so that it is more consistent with the existing character of the area. This will help deliver the Structure Plan’s vision.

The community consultation undertaken in relation to the Structure Plan delivered a clear message that the community is seeking certainty from the planning controls for West Melbourne, principally around the degree of development intensity that can be expected, and building heights. This was reinforced in submissions from residents of West Melbourne, including Mr Mitchell-Wong, Mr Waters, and Mr Rogers and Ms Sweeting. They all highlighted the significant burden that discretionary controls can place on the community when decisions are challenged in VCAT.

On balance, having considered the criteria set out in PPN59, the Panel considers that mandatory floor area ratios are justified. Combined with discretionary heights and other built form controls, they strike an appropriate balance in terms of delivering certainty and maintaining flexibility.

(iii) Conclusion

The Panel concludes:

- Mandatory floor area ratios for West Melbourne are justified.

8.5 Relationship with built form controls

(i) Evidence and submissions

Several submitters objected to the floor area ratios on the basis that they would not allow a site to develop to the proposed preferred heights, particularly in the Flagstaff Precinct where the preferred height is 16 storeys and the floor area ratio is 6:1. They submitted that in

Flagstaff, sites developed with a relatively large floorplate (as is often the case for commercial only development) are likely to reach the maximum floor area ratio at heights of only 6 to 8 storeys.

Mr Barlow's evidence (for the PPP clients) was:⁵⁵

The modified Design and Development Overlays appropriately seek to provide for greater height of development than the existing mandatory or preferred height limits for the southern and western parts of the area. Yet it also proposes to introduce intensity controls via a floor area ratio that will significantly limit the opportunity to attain such heights.

Mr Glossop's evidence (for 355 Spencer Street) was that the floor area ratio in Flagstaff:⁵⁶

... would potentially limit development to well below the preferred maximum height of 16 storeys in many cases and would thereby unreasonably restrict otherwise appropriate development.

The Panel directed Council to address the relationship between the floor area ratios and the proposed building envelopes in each precinct. It did so through the evidence of Ms Hodyl and Mr McLeod.

Mr McLeod's evidence was that the combination of floor area ratios and discretionary height limits in each precinct were "*congruous*" and "*workable and achievable*". He only identified one site (Site 5, 60-82 Stanley Street in the Spencer Precinct) where he had difficulty reaching the maximum floor area ratio due to site constraints. He noted the possibility of exceeding the discretionary height limit on suitable parts of the site to potentially overcome the difficulty. He concluded:⁵⁷

In all other testing scenarios, the combination of specific FAR figures and discretionary height limits prescribed were neither deemed to be excessively high to the extent that poor urban design or apartment amenity outcomes would be resorted to in order to achieve the maximum allowable gross floor area (GFA); or excessively low to the extent that they would result in small building footprints that eroded desired street wall enclosure or street activity.

Ms Hodyl expressly supported the pairing of mandatory floor area ratios with discretionary height controls, and provided specific support for the proposed floor area ratios and heights in each precinct, subject to minor modifications to the floor area ratios and heights in the Spencer Precinct (discussed in the next chapter). She explained:⁵⁸

The degree of design and development flexibility is related to the 'degree of fit'. The 'looser' the fit, the greater the variance in built form typologies that will be delivered.

If the degree of fit is 'tighter', then the range of built form typologies will decrease, the potential for site specific responses declines and the pressure on discretionary building envelope controls increases.

If the degree of fit is too loose, it can represent an underdevelopment of the site (or an area). ...

⁵⁵ Mr Barlow's expert witness statement at paragraph 71

⁵⁶ Mr Glossop's expert witness statement at paragraph 94

⁵⁷ Mr McLeod's expert witness statement at paragraph 24

⁵⁸ Ms Hodyl's expert witness statement at paragraphs 90 to 95

The proposed approach in West Melbourne is directly linked to the Vision and character outcomes sought for each precinct. It provides a 'moderate' fit which I support.

(ii) Discussion

The Panel is not persuaded that the relationship between the floor area ratios and the built form controls is inappropriate. The Panel prefers the evidence of Mr McLeod and Ms Hodyl to that of Mr Barlow and Mr Glossop, and is satisfied that the (albeit limited) built form testing demonstrates an appropriate fit between the floor area ratios and the heights in most instances.

The Panel acknowledges the concerns expressed by several submitters that the floor area ratios may prevent development achieving the preferred maximum height limits on some sites, particularly in the Flagstaff precinct where, on the evidence of Ms Hodyl, the fit is somewhat 'looser' than in the other precincts. Some lower built form is not, in itself, a bad thing. The Structure Plan envisages a mix of building typologies and building heights across the West Melbourne area, including in the Flagstaff Precinct, which will help to distinguish it as its own place, separate from the central city.

(iii) Conclusion

The Panel concludes:

- The built form testing demonstrates that in most instances, the relationship between the floor area ratios and the built form controls is appropriate.

8.6 Floor area ratio for each precinct

(i) Evidence and submissions

Flagstaff Precinct

G2 Urban Planning submitted on behalf of 328-348 Spencer Street Pty Ltd that *"by any assessment the floor area ratio of 6:1 [in Flagstaff] is restrictive"*. It noted that many developments have been approved far exceeding the proposed 6:1, and that more are proposed. Many developments had also been approved that exceed the preferred heights, *"and have done so for many years now"*. G2 Urban Planning submitted:⁵⁹

Introducing a FAR of 6:1 simply creates a medium rise built form as a backdrop for much higher buildings approved in the last 20 years. This is a regressive planning instrument that seeks to 'wind back the clock' and effectively stifle any meaningful redevelopment of larger sites in the precinct which do not have sensitive interfaces.

Mr Quick noted the proximity of the Flagstaff Precinct to Flagstaff Station, and noted that *"locations such as this are typically where principal office concentrations should be directed"*. Tract made similar submissions on behalf of R & M Holdings to the effect that Flagstaff was capable of additional density, and should be treated differently to the rest of the Structure Plan area.

⁵⁹ G2 Urban Planning submission at page 8

Mr McLeod gave evidence on the relationship between the floor area ratio and the built form controls in each precinct. His evidence in relation to Flagstaff was:⁶⁰

Flagstaff: the relationship between the 6:1 FAR and the 16 storey preferred height felt congruous and the most flexible of the four precincts with a diversity of forms that accommodated workable floorplates. While flexible, in no case was the relationship between the floor area ratio and preferred height so loose that, for example, an impractically slender tower could be placed in the middle of a completely open ground floor. Such an outcome would nonetheless be mediated by the structure plan design recommendations as well as developer interests such as floorplate efficiency and construction methodology.

Mr McLeod's additional built form testing considered higher floor area ratios of up to 10:1 in Flagstaff. His evidence was that the outcomes under floor area ratios of 7:1 and 8:1:⁶¹

... were all found to be workable to a base level of compliance, however the ability for the controls to encourage some significant design recommendations in the structure plan was seen to be compromised, notably in the ability to support courtyard buildings below 10 storeys with the benefits of cross-flow ventilation, open-space with deep root planting, human-scale street interfaces, and the ability to foster strong communities. It is noted, however, that the podium tower typology may be appropriate in some areas to the context of this precinct.

Similarly, the testing he undertook at floor area ratios of 9:1 and 10:1 were "*workable*", but further compromised design recommendations for a human-scaled neighbourhood environment.

Ms Hodyl supported the floor area ratio of 6:1 in the Flagstaff Precinct, stating that the built form testing "*demonstrates that the height limits paired with a FAR of 6:1 support the delivery of a range of typologies and site specific responses to each location*". In her view, the additional built form testing demonstrated that as densities increase and heights remain the same, the diversity of building typologies diminishes, leading to a predominance of tower podium development across the precinct. "*This does not effectively deliver on the Vision or preferred character outcome*".

Ms Hodyl undertook her own built form testing of several sites in the Flagstaff Precinct at a floor area ratio of 6:1, including two commercial only buildings on sites in the Flagstaff Precinct. Her evidence was that:

- 496-501 La Trobe Street – the modelling "*indicated that it is possible to deliver a Grade A Commercial Building within the proposed built form envelope. No changes to the development controls are therefore required to deliver high-quality commercial buildings*"
- 363 King Street – the modelling demonstrated that a building of either 11 or 16 storeys could be delivered. She concluded that "*the development controls are appropriate and do not deliver simply 6 storey slab buildings or underdeveloped sites*".

⁶⁰ Mr McLeod's expert witness statement at paragraph 41

⁶¹ Mr McLeod's expert witness statement at paragraphs 35 and 38

Ms Hodyl concluded:⁶²

I consider that the 6:1 FAR is therefore the appropriate setting to deliver the built form strategy for Flagstaff.

She conceded that the further built form testing demonstrated an opportunity for a “*minor further increase*” on some sites, but considered that this should be dealt with by offering floor area uplift for the provision of social housing, rather than increasing the floor area ratio across the precinct.

Spencer Precinct

Submitters within the Spencer Precinct considered the proposed floor area ratio of 4:1 was too low, included Stadiums in relation to the Festival Hall site. Stadiums submitted that the proposed floor area ratio takes no account of the special characteristics of the Festival Hall site and the consequences of its heritage registration. Further details of this submission are discussed in the Spencer Precinct chapter (Chapter 16).

Mr McLeod’s evidence on the relationship between the floor area ratio and the built form controls in Spencer was:⁶³

Spencer: the relationship between the 4:1 FAR and context dependent preferred heights felt congruous and sufficiently flexible, and only marginally tight in one specific case (Site 5, as mentioned earlier) where significant building separation was inevitable, resulting in inherently lower site coverage, resulting in some difficulty achieving the maximum FAR when all forms were taken to their maximum heights. On more typical sites, the relationship was not seen to be too tight such that it was not possible to achieve the maximum FAR within the preferred height without undesirably covering the entire site, or too loose such that built form could be distributed in a patchy manner that failed to align with the structure plan design recommendations.

Mr McLeod’s additional built form testing tested a number of sites in Spencer at a floor area ratio of 5:1. His evidence statement discussed the results on one of the larger sites, and on a smaller site. He found that on the larger site, the higher floor area ratio of 5:1 still supported a cluster of buildings around internal courtyards and a large open space area, but to achieve the maximum floor area ratio all buildings had to be taken to the maximum 8 storey height limit, resulting in a loss of variation in heights across the site. He acknowledged that the heights are discretionary and could be exceeded, but his evidence was that increasing the heights would likely result in a decrease in the quality of the open space on the site. For the smaller site, a floor area ratio of 5:1 “*resulted in small buildings that accommodated one apartment per level and did not encounter any difficulty in creating amenity within the site or locating program, including commercial tenancies*”.

Ms Hodyl largely supported the proposed floor area ratio of 4:1 in Spencer, although she recommended increasing the floor area ratio to 5:1 for properties fronting Spencer Street within the activity centre, and along King Street. She noted that there are many narrow sites in the activity centre, and building to party walls is encouraged. She therefore considered that varied building typologies in this location was not a driving outcome, and that a floor area ratio of 4:1 could represent a potential underdevelopment of these sites.

⁶² Ms Hodyl’s expert witness statement at paragraph 124

⁶³ Mr McLeod’s expert witness statement at paragraph 42

Adderley Precinct

Mr McLeod's evidence on the relationship between the floor area ratio and the built form controls in Adderley was:⁶⁴

Adderley: the relationship between the 3:1 FAR and typical 4 storey preferred height felt congruous but of the four precincts was the least flexible. This, however, was not to any notable detriment to design outcomes. In almost all cases the 3:1 FAR was only achievable at 4 storeys which limited the ability to vary building heights across the site. Other design recommendations such as the provision of deep soil planting areas and the retention of heritage buildings were nonetheless achievable and the creation of human-scaled street environments was seen to be inherent to the preferred heights.

Mr McLeod's additional built form testing included one site in Adderley (at 103-113 Stanley Street, which he tested at 4:1), but his evidence statement did not discuss the results.

Ms Hodyl supported the proposed floor area ratio of 3:1 in Adderley.

Station Precinct

Mr McLeod's evidence on the relationship between the floor area ratio and the built form controls in Station was:⁶⁵

Station: the relationship between the 5:1 FAR and typical 8 storey preferred height felt congruous and flexible with a similar level of flexibility to the Spencer precinct. No tests in this precinct produced any difficulty that suggested the relationship was unworkably tight or undesirably loose.

Mr McLeod's additional built form testing did not include any sites in the Station Precinct tested at a higher floor area ratio.

Ms Hodyl supported the proposed floor area ratio of 5:1 in the Station Precinct.

(ii) Discussion

The Panel considers that the proposed floor area ratios are generally appropriate. The capacity modelling undertaken by Council (discussed in Chapter 6.4) demonstrates that the floor area ratios are capable of accommodating the revised population forecasts of about 20,000 people, with some spare capacity. The evidence of Mr McLeod and Ms Hodyl was that as floor area ratios increase, it becomes more difficult to achieve all of the design recommendations in the Structure Plan for each precinct, and that the benefits outlined by Mr McLeod (discussed in Chapter 8.3) start to reduce. The Panel is satisfied that the (albeit limited) additional built form testing undertaken by Breathe Architects demonstrates that this is generally (although not always) the case.

The Panel acknowledges that the floor area ratio in the Flagstaff Precinct (at 6:1) is substantially lower than in the adjacent central city area (where General Development Areas have a floor area ratio of 18:1). However the Panel accepts the fundamental premise of the Structure Plan that West Melbourne should be maintained as a separate and distinct area to the central city. While the evidence of Ms Hodyl and Mr McLeod suggested that Flagstaff may be capable of accommodating a modest increase in floor area ratio, no alternative floor

⁶⁴ Mr McLeod's expert witness statement at paragraph 43

⁶⁵ Mr McLeod's expert witness statement at paragraph 45

area ratio backed by evidence was put to the Panel. The Panel therefore does not consider that it is appropriate to increase the floor area ratio in Flagstaff, although it does consider that there is some capacity for floor area uplift, which is discussed in Chapter 11.

Mr Barlow's evidence was that the floor area ratios should be removed altogether. In response to questions from the Panel, he indicated that if they were to be retained, he thought a floor area ratio of 9:1 (which represents half that of the central city) could be appropriate. The Panel appreciates Mr Barlow engaging with its questions, but notes that Mr Barlow did not have an opportunity to fully consider the planning or urban design implications of a floor area ratio of 9:1.

The Panel accepts Ms Hodyl's recommendation (which is supported by Council) that in the Spencer Street activity centre, the floor area ratio should be increased to 5:1. This recommendation was supported by built form testing, and no parties objected to the increase. The increased floor area ratio signals that more intensive development is encouraged in this key area, appropriately differentiating it from the rest of the Spencer Precinct. Higher floor area ratios may also assist in the provision of a higher proportion of commercial or employment floorspace in the activity centre.

The Panel also supports a higher floor area ratio of 5:1 along King St, noting that the preferred heights in King Street are 8 storeys (as is the case for the Spencer Street activity centre), and that King Street is a busy thoroughfare capable of accommodating more intensive built form than the mid-block parts of the Spencer Precinct.

While a floor area ratio of 3:1 in the Adderley Precinct appears somewhat low, the Adderley Precinct is largely lower scale than other parts of West Melbourne, and has smaller sites on which higher floor area ratios may be difficult to achieve. The Panel was not presented with any evidence that the floor area ratio of 5:1 in the Station Precinct was inappropriate. The Panel supports the proposed floor area ratios for the Adderley and Station Precincts.

(iii) Conclusions

The Panel concludes:

- In the Spencer Precinct, the floor area ratio for properties in the Spencer Street activity centre and along King Street between Roden and Dudley Streets should be increased from 4:1 to 5:1, as provided for in Council's Part C controls.
- The exhibited floor area ratios are otherwise appropriate.

9 Minimum non-accommodation floor areas

9.1 Introduction

(i) The Structure Plan

The Structure Plan seeks to ensure employment floorspace is provided to support a greater mix of commercial/retail uses in West Melbourne, in order to:

- address a decline in employment over recent years
- create mixed use areas that are more interesting and lively at different times of the day and days of the week
- help deliver the projected 10,000 jobs in West Melbourne by 2036.

The Structure Plan proposes a minimum non-residential floor area ratios of:

- 1:1 in the Spencer, Station and Flagstaff Precincts
- 0.5:1 in the Adderley Precinct.

The Built Form Strategy outlines in more detail the rationale for minimum non-accommodation floor area requirements. It states:⁶⁶

The redevelopment of many sites in West Melbourne from industry to predominately residential development is also having a significant impact on the mixed use character of West Melbourne and on employment levels, which have reduced by around 25 per cent over the last decade.

This is compromising the delivery of the vision for West Melbourne of a true mixed-use, walkable and vibrant neighbourhood and the economic prosperity of the city. It results in a lost opportunity to help deliver employment space and respond to future need.

It goes on to state:⁶⁷

If the current market trends continue, it is likely to deliver only around 600 jobs which wouldn't meet the projected total of 10,000 jobs in West Melbourne. ...

The viability of providing a mix of uses in these areas has been tested and is feasible (Economic and Employment Study, Part 2, SGS Economics and Planning 2017). This minimum proportion would help deliver around 4000 new jobs in West Melbourne, significantly contributing to the demand of between around 4500 (the base case) to 7000 new jobs (depending on employment type) by 2036.

It is considered that mandatory non-residential floorspace FAR within the total FAR is necessary to deliver the vision and future employment projections for West Melbourne to ensure the opportunity is not lost.

(ii) The controls

The proposed minimum non-accommodation floor area requirements are contained in the SUZ6. They are set out in Table 6, along with changes proposed by Council in response to Ms Hodyl's recommendations to increase the floor area ratio limits in parts of the Spencer Precinct. Council explained that the minimum floor area ratios set out in the Structure Plan

⁶⁶ Built Form Strategy at page 44

⁶⁷ Built Form Strategy at page 57

had been converted into percentages of the maximum floor area ratios allowed in each Precinct.

Table 6 Minimum non-accommodation floor area requirements

Precinct	Exhibited minimum non-accommodation floor area	Council proposed changes
Flagstaff	16.6 per cent of the gross floor area of the development	
Spencer	25 per cent of the gross floor area of the development	<ul style="list-style-type: none"> - 20 per cent for properties fronting King and Spencer Streets - 25 per cent for all other properties
Adderley	16.6 per cent of the gross floor area of the development	
Station	20 per cent of the gross floor area of the development	

(iii) The conditions of authorisation

The conditions of authorisation for the Amendment included the following:

Recommendation 1 – Reword the Floor Area Requirements

The mandatory minimum floor area requirements are very specific and may not be adaptable to respond to situations such as increased land values, or small lots. The minimum floor area requirements are proposed to be mandatory provisions. A planning permit will not be able to be granted for a proposal that does not meet the requirement, despite possibly meeting the objects for planning in the area.

Consideration should be given to re-drafting the mandatory minimum floor area requirement for ‘use other than accommodation’ to allow discretion to consider permit applications generally in accordance with the gross floor area amounts specified.

9.2 The issues

The issues are:

- whether minimum non-accommodation floor area requirements (including the percentages for each precinct) are strategically justified
- whether the requirements should be mandatory
- the appropriateness of requiring mixed use buildings
- whether the requirements should be relaxed for accommodation uses that generate employment.

Another issue is whether the requirement for non-accommodation floor area dispersed throughout the Structure Plan area could negatively impact on the development of the Spencer Street activity centre. This issue is discussed in Chapter 16.3.

9.3 Are the requirements strategically justified?

(i) Evidence and submissions

Ms Hodyl’s evidence on behalf of Council was mixed use neighbourhoods deliver a range of important benefits such as:

- convenience, where residents and workers have easy access to home, jobs and other facilities
- safe neighbourhoods that have activity across the day and the night
- social neighbourhoods where there is a high level of walkability
- environmental sustainability with less reliance on vehicular travel
- support for public transport as demand for services occurs across a greater part of the day.

Ms Hodyl recognised the difficulty in delivering mixed use neighbourhoods when left solely to the market, with the tendency for the highest market value product (residential) to be delivered at the expense of other uses (such as commercial). She therefore supported the inclusion of a minimum non-residential requirement to deliver the aims of the Structure Plan.

However Ms Hodyl considered that the exhibited minimum non-residential requirements create a blanket approach across each precinct without responding to the particular aims of delivering activity around the Spencer Street activity centre and the North Melbourne train station. In these areas, Ms Hodyl considered that the primary urban design outcome being sought by the Structure Plan is to create active places that are the hub of commercial and social activity within West Melbourne. She therefore preferred a control that focused retail and commercial development to these areas, and recommended that the controls be changed to:

- Remove the requirement for a minimum non-residential floor area within the key activity areas identified in the Structure Plan and replace this with a requirement to preclude residential uses from the lowest two floors as follows:
 - Properties fronting Spencer Streets between Hawke Street and Dudley Street
 - North Melbourne station precinct (where the SUZ applies).

Council did not support this recommendation and considered that the exhibited Amendment achieves the same outcomes, including requirements for active uses and non-residential requirements at ground floor within the activity centre.

Mr Barnes fully supported the need for, and appropriateness of, a non-accommodation floor area requirement to implement the aims of the Structure Plan to maintain and increase employment. However he was concerned that developments with a lower maximum floor area will require a higher minimum percentage of commercial floorspace. For example, the requirement in Flagstaff is 16 per cent of the gross floor area, and in Spencer and Station it is 25 per cent and 20 per cent respectively. He considered this seemed counterintuitive, particularly given the proportionally less requirement in the Flagstaff Precinct, which is better positioned for commercial floor space. He questioned the need for such a high level of precision in the controls, and suggested a single requirement for all precincts, for example 20 per cent.

As outlined in Chapter 6.3, Mr Szafraniec's economic evidence on behalf of Council was that the minimum non-accommodation floor area provisions in the SUZ6 are appropriate and will ensure a minimum amount of employment is delivered in West Melbourne. He noted that while the requirements would only deliver 65 per cent of the floorspace required to achieve the 10,000 jobs target, other policies and investments would help deliver the target.

In cross examination, Mr Quick was taken to a report titled *Unlocking the CBD* which he co-authored with Mr Barlow. That report concluded that there was a need to intervene in the

planning system to turn around the trend of residential uses outbidding commercial uses in the CBD. He accepted that the same scenario applied in West Melbourne.

The Panel observed on its site visits that there are currently a number of commercial vacancies throughout the Structure Plan area. In response to the Panel's questions, Mr Szafraniec said that often residential apartments are pre-purchased and in general it takes longer to lease commercial space. However he considered that in time, together with other enticements such as streetscape improvements and increased population, these spaces would attract employment uses.

Mr Spencer's feasibility evidence on behalf of Council (discussed in Chapter 6.5) showed that the non-accommodation floor area requirement will impact on development feasibility, particularly for sites with average or higher existing use values, and even more so when combined with the affordable housing requirements. Notwithstanding, he considered the controls appropriate.

Mr Barlow's evidence was that while the controls seek to facilitate mixed use buildings, they fail to adequately enable buildings that accommodate only employment generating uses. He considered that a preferable approach would be to:

- reduce the permit requirements for employment generating uses, for example by allowing 'office', 'education centre' and 'retail premises' as of right
- delete the floor area ratios
- refine the DDOs to encourage consolidation of lots to allow for the delivery of larger commercial floorplates
- redraft the DDOs to support built form that facilitates employment generating land uses with larger floor plates.

Under cross examination, Mr Barlow also recommended that the word 'local' be removed from the SUZ6 purpose that seeks "*to retain and increase local employment ...*", as the role of West Melbourne should be to encourage employment beyond local employment. Council supported this change and it is reflected in the Part C controls.

Mr Glossop supported the underpinning objectives of the Structure Plan, including the need for a mix of uses and in particular employment generating uses. However he had concerns with the mandatory approach in the exhibited controls, discussed below. Mr Glossop stated in oral evidence that over the last 10 or so years the residential market had been particularly strong, however his office had seen evidence in the last six months of increasing applications for commercial development. He considered that the proposed controls were an over-regulatory approach to achieving the desired outcome.

Stadiums submitted that the 25 per cent non-accommodation floor area requirement in the Spencer Precinct needs to be considered in the context of unoccupied former industrial land in West Melbourne of over 150,000sqm (Baseline report page 1) and further underutilised floor space.

(ii) Discussion

Overall, the Panel considers that it is appropriate to include minimum non-accommodation floor area requirements for West Melbourne. However it has concerns with the mandatory nature of the control (discussed in 10.4 below) and with the percentages for each precinct.

There was common ground among submitters and experts that the Structure Plan's objectives of supporting the development of West Melbourne as a vibrant, mixed use inner city neighbourhood, and retaining and increasing employment, are worthy. There was also general support for controls that encourage the provision of greater employment generating uses, albeit with diverging opinions about the nature of such controls.

The Panel agrees that provisions are needed to encourage the retention and growth of employment generating uses within West Melbourne, given the significant decline in employment over the past decade (which has only recently arrested). However it also agrees with Mr Glossop that while the provisions are attempting to correct a trend in the current market conditions, these conditions may change over time.

The Panel accepts that the current vacancies in commercial tenancies in West Melbourne are not necessarily indicative that the minimum commercial floor area requirements are flawed and would necessarily lead to further vacancies. It notes Mr Szafraniec's evidence that it can take some time to find commercial tenants in residential buildings. The Panel anticipates that with further redevelopment of former industrial and warehouse sites and with increased population over time, the proposed controls may generate the critical mass required to make the commercial floorspace in mixed use developments more attractive.

The Panel does not agree that the controls fail to adequately support stand-alone commercial developments. The proposed policy provisions, objectives of the zone, and minimum non-accommodation floor area requirements all encourage commercial development and seek to increase employment within the Structure Plan area. There is nothing in the controls that would prevent a commercial only application. Furthermore the refinements proposed to the SUZ6 discussed in Chapter 7 (including removing the floor space cap on as of right office development) will better facilitate commercial only development in West Melbourne.

The Panel understands Council's rationale that the minimum percentages have been determined to effectively relate to the area of the development's ground level – that is, 25 per cent where a 4:1 floor area ratio applies and 16 per cent where a 6:1 ratio applies (noting that this assumes full site coverage which would not always be the case). However the Panel shares Mr Barnes' concerns that the Flagstaff and Station precincts have comparatively lower non-accommodation floor area requirements, despite the locational and transport advantages of these areas.

Many submissions stated that the Flagstaff Precinct was most suited to commercial development, being highly proximate to the central city, within easy walking distance of the Flagstaff Station and various tram routes, and having a more commercial character than other parts of the Structure Plan area. The Station Precinct, being on the doorstep of the North Melbourne (to be renamed West Melbourne) Station, also has excellent transport access. Comparatively, the Spencer and Adderley Precincts are less well serviced by public transport.

While the Spencer Precinct is not as well serviced by public transport, the existing character of the precinct is less low scale and residential in nature than some other parts of West Melbourne. The existing built form is more robust, and its main road frontages are better suited to commercial development. Commercial development is also encouraged in the Spencer Street activity centre.

The Panel consider that Council should re-visit the proposed non-accommodation floor area percentages. The percentages should reflect the relative accessibility and suitability of each precinct for employment generating uses. The Flagstaff Precinct should have the highest percentage, followed by the Station Precinct and the Spencer Precinct. Adderley should have the lowest percentage requirement. The Panel has considered Mr Barnes' suggestion that a blanket percentage be applied across the entire Structure Plan area, say 20 per cent, however it considers that higher proportions of non-accommodation development should be directed to the precincts where this form of land use is most suited. Council should also consider specifying a higher percentage of commercial floorspace in the Spencer Street activity centre compared to the rest of the precinct (not lower, as reflected in Table 6). The Panel has provided indicative percentages in its preferred version of the SUZ6 in Appendix D2 as a starting point.

The Panel has considered Ms Hodyl's recommendation that instead of a mandatory non-accommodation floor area requirement, residential uses be precluded from the lowest two floors in the Station Precinct and the Spencer Street activity centre. It does not consider that this recommendation is warranted. The table of uses in the SUZ6 already includes a requirement that dwellings (except for entries) locate above ground level in the Spencer Street activity centre. This will ensure active frontages in this key location. In relation to the Station Precinct, the key sites surrounding the station have been recently redeveloped, and there is limited opportunity to secure active frontages in this location beyond those that have already been provided.

(iii) Conclusions and recommendation

The Panel concludes:

- The non-accommodation floor area requirements within the SUZ6 are strategically justified.
- The required percentages for each precinct should be reviewed, with higher proportions of non-accommodation development directed to the precincts where this form of land use is most suited. The Flagstaff Precinct should have the highest percentage requirement, followed by the Station and Spencer Precincts, then the Adderley Precinct, as reflected in the Panel's indicative percentages in Appendix D2.
- In the Spencer Precinct, Council should consider whether a higher percentage is appropriate for properties in the Spencer Street activity centre.

The Panel recommends:

Amend the percentage requirements for non-accommodation floor area at Clause 2.0, to better direct commercial uses to the areas most suited to commercial activity based on locational characteristics, transport connections and existing and preferred character. Flagstaff should have the highest percentage, followed by Spencer and Station, followed by Adderley. Indicative percentages are included in Appendix D2.

9.4 Mandatory versus discretionary requirements

(i) Evidence and submissions

Many submitters raised concerns with the mandatory nature of the minimum non-accommodation requirements in the SUZ6. They considered that the mandatory approach is too onerous and fails to have regard to other mechanisms that can contribute to employment generation. They submitted that the exhibited controls are not flexible enough, and fail to have regard to the reality for preferred tenancy locations for various commercial uses. They were concerned that the mandatory controls may result in a raft of unoccupied retail or office tenancies scattered throughout West Melbourne.

Ms Hodyl did not support the mandatory nature of the control. She gave evidence that the proposed mandatory percentages could lead to 'leftover' areas on higher floors rather than neatly occupying say the ground or ground and first floors. She also said that other considerations, such as location, proximity to public transport, site size and heritage constraints would impact on the potential for non-residential uses. Accordingly she recommended that the minimum non-accommodation floor area requirements be converted from a mandatory to a discretionary control.

Council did not support this recommendation, given the importance of a mix of uses to deliver the employment projections for West Melbourne. Council submitted that the mandatory non-accommodation floor area requirements are relatively modest. It pointed to the evidence of Mr Szafraniec that the control would only deliver around 65 per cent of the jobs sought, Mr Spencer's feasibility assessment that the controls would not prevent new development occurring in West Melbourne.

Mr McLeod supported the mandatory provision of non-accommodation floor space to guarantee a true mix of uses, and considered that architects have the skills to accommodate the requirements in an eloquent way. Based on his professional experience, he considered that there would be a ready market for boutique commercial spaces in an area like West Melbourne.

Mr Barnes considered the requirements of PPN59, outlined in Chapter 4.5(iii). He generally supported the mandatory approach, noting that the risk of discretion is that the mixed use character of West Melbourne will be lost. Under cross examination, Mr Barnes advised that he did not consider that a policy contains the same weight as a control. Policy needs to be balanced with other objectives, and therefore a mandatory control within the zone is preferred to ensure the employment and mixed use outcomes sought by the Structure Plan are achieved.

Mr Barnes advised that if the Panel was reluctant to support a mandatory requirement, then he considered that the Amendment should be modified to include:

- strong policies in Clause 21.16-6 supporting a requirement for residential development to include a proportion of commercial floorspace
- strong application requirements, such as a market assessment demonstrating demand for commercial uses as part of the proposed development
- strong decision guidelines clarifying those situations where discretion may be exercised to allow for a reduction or waiver in the proportion of commercial floorspace required, such as where the requirement would prevent a feasible

development (coupled with a requirement for a financial assessment of the viability of the project).

Mr Barnes also considered that if discretion was exercised to allow for a waiver of the minimum non-accommodation floor area, then there should be an associated requirement that an amount equal to the floor area waived be designed as 'adaptable floor space' so it could be converted to commercial use in the future if market conditions change.

Mr Barlow did not support the mandatory approach, and considered the control should be discretionary with strong guidelines to direct where commercial and retail uses should be provided.

Mr Glossop provided an assessment of the proposed mandatory non-accommodation floor area provisions against PPN59. His evidence was that the mandatory controls were not consistent with PPN59 and are not warranted for the following reasons (in addition to his concerns outlined in Chapter 9.3 above):

- While a mandatory requirement could increase the supply of mixed uses, it might be just as likely to discourage development and investment.
- The requirement does not incorporate flexibility and does not acknowledge that the same mix of uses could occur within separate applications on separate sites.
- The mandatory controls are unable to flexibly respond to market conditions.
- There are numerous reasons why a proposal not in accordance with the mandatory requirement may still be acceptable, such as having exemplar environmental sustainability, substantial heritage gains, or architectural significance.

Mr Glossop compared the proposed controls to Fishermans Bend, where local policy sets out job targets and employment objectives, specifies minimum commercial floor areas for new development, and sets out how Council will exercise discretion in relation to the amount of commercial floorspace proposed. This is coupled with application requirements that require consideration of how an application responds to the local policy. He considered that this was the preferred approach.

Many submitters considered that there should be incentives in the form of floor area uplifts and greater building heights for providing commercial and employment generating uses above the minimum requirements, rather than the mandatory control. Floor area uplift for commercial floorspace is discussed in Chapter 8.6.

(ii) Discussion

The Panel notes the significant opposition to the mandatory nature of the non-accommodation floor area requirements from submitters and experts. DELWP also urged Council to reconsider the mandatory nature of the controls in its authorisation letter. Mr Barnes was the only planning expert to provide some support for the mandatory nature of the controls. However, his support was tempered by concerns with the appropriateness of the percentages as discussed in Chapter 10.3 above. He offered an alternative approach to achieve the targets with a discretionary control.

On balance, the Panel considers that the minimum non-accommodation floor area requirements should be discretionary. It agrees with Ms Hodyl, Mr Barlow and Mr Glossop and many of the submitters that the mandatory nature of the controls, with fixed percentages, makes them a fairly blunt tool to deliver the Structure Plan aims. It considers

that there is a risk that the mandatory nature of the controls may discourage investment in certain areas, as suggested by Mr Spencer's feasibility analysis. The Panel considers that mandatory controls do not provide enough flexibility to cater for site attributes or constraints and site location, and could potentially result in unusable areas or vacancies on those parts of the Structure Plan that are less suited to commercial development. The Panel accepts that short term vacancies are not itself necessarily a significant problem, however more widespread vacancies are not desirable.

Having regard to PPN59, while the Panel supports the strategic intent of the control (discussed in Chapter 10.3) it does not consider that the majority of proposals not in accordance with the mandatory provision will be clearly unacceptable.

The Panel supports Mr Barnes' recommendations and Ms Hodyl's advice in her addendum (Document 33) that additional application requirements and decision guidelines be included to signal that exemptions or waivers should only be considered with strong justification, and to provide guidance on when exemptions or waivers are appropriate. It has included additional application requirements and decision guidelines in its preferred version of the SUZ6 in Appendix D2.

The Panel has considered the evidence of Mr Glossop about the approach taken to minimum employment floorspace requirements in Fishermans Bend. It considers that in this case, the requirements should be retained in the zone, rather than shifted to a local policy. Discretionary requirements in the zone are likely to have greater weight than addressing minimum commercial floorspace solely within policy. The Panel considers that there is a stronger imperative in West Melbourne for development to contribute to employment than in Fishermans Bend, where there are significantly more development opportunities, a significantly higher population density is anticipated (generating a stronger demand for local jobs), and development occurring over a longer time frame.

The Panel notes that the controls already contain requirements for adaptable buildings, and therefore does not consider that Mr Barnes' recommendation for an additional requirement in relation to adaptable floorspace is warranted.

(iii) Conclusions and recommendations

The Panel concludes:

- The non-accommodation floor area requirements should be discretionary, rather than a mandatory control.
- Additional application requirements and decision guidelines should be included in the SUZ6 to guide the exercise of discretion.

The Panel recommends:

Amend the minimum non-accommodation floor area requirements in the Special Use Zone Schedule 6 as shown in Appendix D2, to:

- a) **convert them to discretionary requirements**
- b) **include additional application requirements and decision guidelines to guide the exercise of discretion.**

9.5 Mixed use buildings

(i) Evidence and submissions

Several submitters considered that it was inappropriate to mandate a mixed use outcome in (almost) every development, rather than allowing more generally for a mix of uses across the Structure Plan area.

Mr Barlow's evidence was that some employment generating uses, such as medical uses, are not suited to co-location with residential use, which could lead to employment space being provided that is not fit for purpose and for market requirements. His evidence was that the design of mixed use buildings can be complex, particularly on small sites (for example achieving separate pedestrian and vehicular entries and carparking for employment and residential uses). Mr Glossop shared Mr Barlow's concerns about the challenge of accommodating residential and non-residential uses within one building, in terms of security and entries, circulation and car parking.

Stadiums submitted that there is no demonstrated demand for mixed use in single developments, and that the character of West Melbourne was actually not mixed use buildings, but rather a mix of uses in separate buildings.

Ms Hodyl's evidence was that mixed use buildings are widely accepted within high density inner city environments. In response to questions under cross examination, she did not agree that tourism, arts, health and education uses are better accommodated in stand-alone buildings, based on her personal and professional experience. Mr McLeod also gave evidence that mixed use buildings can be successful, giving examples of Breathe Architecture's Nightingale and Commons developments that both contain smaller scale non-accommodation uses at ground level, including retail and small office spaces. Mr McLeod stated in cross examination that he did not think any of the commercial floorspaces allowed for in his built form testing would be difficult to lease.

(ii) Discussion

Some submitters may not have fully appreciated that not every site in West Melbourne will need to comprise a mix of uses under the proposed controls. The requirements only apply to the SUZ land. They will not apply in the Historic Hilltop Precinct, or in those parts of the Adderley and Station Precincts that are to remain in the MUZ or the GRZ. Even within the SUZ land, developments with 9 or less dwellings would not trigger the non-accommodation requirement. Many smaller sites, particularly in the Adderley Precinct, will not be suitable for larger scale residential developments of 10 or more dwellings, and these smaller developments will not require a commercial or retail component.

The Panel notes the concerns expressed by Mr Barlow and Mr Glossop in relation to the challenges of designing mixed use buildings that share residential and commercial uses and that the controls may lead to employment space being provided that is not fit for purpose and for market requirements. However it thinks these concerns are somewhat overstated.

Ms Hodyl and Mr McLeod both gave oral evidence, in response to both cross examination and questions from the Panel, that co-location, even within small developments, is becoming increasingly common and can work well. The Panel considers that this is particularly the case for inner city areas such as West Melbourne, where walking, cycling and public transport are encouraged and a mixture of uses is part of the character of the area.

Commercial uses that are not suitable to co-locate with residential uses can be delivered in stand-alone commercial buildings.

However as discussed in Chapter 9.4, the Panel considers that the controls should be discretionary, to respond to site specific circumstances and to ensure that the percentages are not bluntly applied when they could lead to poor outcomes. the percentages should also be adjusted to better direct commercial development to the most suitable locations, as discussed in Chapter 9.3.

(iii) Conclusion

The Panel concludes:

- Discretionary controls that require mixed use development on larger developments within the SUZ6 area are appropriate and achievable for West Melbourne, and deliver on the aims of the Structure Plan.

9.6 Accommodation uses that generate employment

(i) Evidence and submissions

Mr Glossop highlighted that many of the uses nested within 'Accommodation' are employment generating, such as motel, residential hotel, corrective institution and residential aged care facility. He considered that requiring additional non-accommodation floor area in association with such uses was too onerous. Mr Glossop also considered that there may be other beneficial uses supported by policy (such as community care accommodation, rooming house and residential aged care facility) that shouldn't need to provide non-accommodation floor area.

UAG West Melbourne also submitted that the non-accommodation floor area requirements should not apply to a residential hotel and other employment generating uses that are clustered under 'Accommodation'.

Mr Barlow recommended that to better support employment generating uses in West Melbourne, the cap on as of right office floorspace should be removed, and that 'education centre' and 'retail premises' should also be as of right.

Council's Part B and Part C controls modified the SUZ6 to remove the floorspace cap on office as an as of right use, and to include the following additional as of right uses:

- community care accommodation
- residential aged care facility, subject to the condition that it must not be located at ground floor for properties within the Spencer Street activity centre
- rooming house.

Council did not accept that education centre and retail premises should be as of right. It considered that education centres have potential amenity impacts (such as traffic during drop off and pick up) that require consideration, and that retail premises should primarily be directed to the Spencer Street activity centre.

Council also included the following provision in its Part B and Part C controls, to address the concerns raised:

A permit can be granted to reduce or waive the requirement in relation to an application for Affordable Housing, Residential Hotel, Motel, Corrective institution or Residential Aged Care Facility.

(ii) Discussion

The Panel agrees with Mr Glossop and UAG that a range of Accommodation uses provide for employment, and that these should not be subject to an additional mandatory requirement for employment generating floorspace. It supports Council's changes in the Part C controls to address this issue, including the additional section 1 uses and the intent of the additional provision to allow discretion to reduce or waive requirements for non-accommodation floor area associated with an application for affordable housing, residential hotel, motel, corrective institution or residential aged care facility. The decision guidelines should include some recognition of these uses as being employment generating or beneficial in their own right, to guide the overall exercise of discretion.

In response to Mr Barlow's suggestion that retail premises become as of right throughout the SUZ6 area, the Panel agrees with Council that retail premises should be primarily directed to the Spencer Street activity centre unless they are small in scale (ie 'food and drink premises' and 'shop' up to 150sqm). Anything over 150sqm should be a section 2 use, considered through the planning application process. Furthermore, Retail premises includes a range of uses such as gambling premises, manufacturing sales, motor vehicle sales and others that may require more careful consideration where abutting or close to residential land use.

'Education centre' uses includes child care centres, kindergartens and primary schools as well as employment and training centres. While in most cases these uses are likely to be appropriate, there may be circumstances which require management of the use to avoid unreasonable amenity impacts (particularly where the use interfaces with housing). The Panel does not support these being included as section 1 uses. Retaining them as section 2 uses will allow for consideration of these impacts as part of the permit application process.

As discussed in Chapter 7 the Panel supports the removal of the cap on as of right office floorspace within the SUZ6, to promote and encourage office development within the Structure Plan area.

(iii) Conclusions

The Panel concludes:

- Community care accommodation, Residential aged care facility, and Rooming house should be section 1 uses within the SUZ6, subject to the condition that they must not be located at ground floor within the Spencer Street activity centre.
- Retail premises (other than Food and drink premises and Shop under 150sqm) should remain a section 2 use outside the Spencer Street activity centre.
- Education centre should remain a section 2 use.
- Additional decision guidelines should be inserted into the SUZ6 requiring consideration of whether the accommodation use provides for employment, and whether it is a beneficial use encouraged by planning policy (such as affordable housing or residential aged care facility).

The Panel's preferred version of the SUZ6 in Appendix D2 includes appropriate application requirements and decision guidelines to deal with the matters outlined in both this chapter and in Chapter 0.

10 Affordable housing

10.1 Introduction

(i) The Structure Plan

Objective 7 of the Structure Plan states:

Help deliver affordable housing in West Melbourne.

Actions to support this objective include:

- Applicants should provide a minimum of 6 per cent affordable housing (measured as 6 per cent of the proposed gross residential floorspace) for developments in Flagstaff, Spencer and Station Precinct. If Victorian Government affordable housing policies are updated, this target will be increased.
- Facilitate and strengthen the partnership between community housing providers and the development industry.

The Structure Plan outlines policy objectives in Plan Melbourne, the State Government's *Homes for Victorians* policy and Council's *Homes for People* Housing Strategy to increase the supply of affordable housing in well serviced locations, and refers to recent amendments introduced into the Act that seek to facilitate affordable housing supply through a voluntary contributions scheme. It states:⁶⁸

According to the 2011 Census, 10 per cent of all Victorian households are in one of the following categories:

- Various forms of homelessness
- On low incomes and in serious rental stress
- Living in social housing.

and:

In the City of Melbourne, supply alone is not delivering the desired housing mix and social diversity in our communities. There is a need to facilitate the provision of affordable housing.

The Structure Plan indicates that affordable housing in West Melbourne should be “*provided in perpetuity with the assets transferred at no cost to a Registered Affordable Housing Association or provider and secured by a Section 173 Agreement*”. In this sense, the Structure Plan contemplates a 6 per cent social housing contribution, rather than affordable housing more broadly.

The Structure Plan states that the SGS Economics and Planning feasibility analysis (Stage 2 report) has determined that a 6 per cent contribution is feasible. It states that if concerns exist, the applicant will need to prove why the contribution cannot be delivered via a rigorous ‘open book’ approach and/or a detailed viability report showing that providing affordable housing is not viable for a particular site.

⁶⁸ Structure Plan at page 56

(ii) The controls

Clause 21.16-6 includes the following objective/direction:

- Encourage the provision of affordable housing in the Flagstaff, Spencer, and Station precincts.

Clause 2.0 of the SUZ6 states:

Use for Dwellings – Affordable Housing

For land located in the Flagstaff, Spencer and Station Precincts, as shown on Figure 1, where a permit is required to use land for Dwellings, one in sixteen dwellings within the development (at least 6%) should be an affordable housing dwelling unless otherwise agreed to by the Responsible Authority.

This should be 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, unless otherwise agreed to by the Responsible Authority.

If in calculating the affordable housing requirement the result is not a whole number, the affordable housing requirement is to be rounded up to the nearest whole number.

The controls include a 'development viability' test for applications that do not include a 6 per cent contribution gifted to a registered housing agency or managed in an affordable housing trust. The applicant must provide a detailed report setting out:

... indicative profit margins for the project, and substantiated findings demonstrating why the proposed number of affordable housing dwellings within the development ... cannot be delivered without rendering the project economically non-viable.

Application requirements include:

- a report addressing how the proposal contributes to the goal of delivering 6 per cent of housing as affordable housing in West Melbourne.

Decision guidelines include:

- the extent to which the proposal contributes to the provision of at least 6 per cent affordable housing in West Melbourne
- the views of the relevant housing provider.

(iii) Guidance

DELWP has published guidance for seeking and negotiating affordable housing agreements under the Act.⁶⁹ While it applies to agreements entered into in connection with permit applications, it provides some general principles as to when affordable housing contributions might be appropriate, namely where:

- there is no existing affordable housing planning provision or system in place in relation to the site
- value is generated through the planning process or value creating incentives that the Responsible Authority seeks to share towards an affordable housing purpose
- the landowner voluntarily agrees to enter into negotiations to provide for an affordable housing outcome.

⁶⁹ <https://www.planning.vic.gov.au/policy-and-strategy/affordable-housing/when-to-use>

The guidance emphasises the need for strategic work that establishes the need for affordable housing in the municipality, such as a Housing Strategy that identifies the relevant needs of households and dwelling types.

(iv) The conditions of authorisation

DELWP's conditions of authorisation for the Amendment included the following:

Condition 1 – Affordable Housing

Under the *Planning and Environment Act 1987*, affordable housing is to be provided on a voluntary basis and there is no obligation created for an applicant to provide affordable housing, to demonstrate that it could be provided on feasibility grounds, or to gift housing stock. The amendment should be amended to be consistent with these provisions. There are other models of affordable housing other than social housing. The requirement for social housing may unnecessarily limit the council's ability to take advantage of other opportunities to provide housing.

10.2 The issues

The issues are:

- strategic justification of the affordable housing provisions, including the size of the contribution
- whether the requirements are voluntary in nature
- whether the requirements facilitate affordable housing other than social housing
- the workability and fairness of the development viability test.

Another issue is whether floor area uplift should be available for affordable housing or social housing contributions. This is dealt with in Chapter 11.

10.3 Strategic justification

(i) Evidence and submissions

Council

The Panel directed Council to provide the strategic justification for the 6 per cent affordable housing contribution in its Part A submission. Council referred the Panel to the management response to submissions attached to the agenda for the Future Melbourne Committee meeting on 7 May 2019. The management response indicated that affordable housing is *"recognised as essential infrastructure that supports the functionality, social inclusion and economic prosperity of the city"*. It noted that affordable housing is one of Infrastructure Victoria's top three recommendations in the State's 30 year Infrastructure Strategy, stating:⁷⁰

Housing is becoming increasingly unaffordable in the City of Melbourne. In 2014, only 5 per cent of available housing in the municipality was affordable to the lowest 25 per cent of earners. More than one third of renters are in housing stress, with approximately 35 per cent of all renters in the City of Melbourne paying more than 30 per cent of their income on rent in 2016, an increase of 12.5 per cent from 2011 (Research by the City of Melbourne, 2017).

⁷⁰ Attachment 3 to the Future Melbourne Committee agenda of 7 May 2019, at page 8

The management response acknowledged that the 6 per cent requirement does not meet the demand for affordable housing in West Melbourne. Rather, it helps to maintain the current level of social housing typical in inner Melbourne. The management response noted that a 6 per cent contribution is consistent with other affordable housing requirements in the Planning Scheme, such as those in Fishermans Bend. It has also been feasibility tested by SGS Economics.

The management response explained that the threshold at which the affordable housing requirement applies (developments of 10 or more dwellings) was determined by:⁷¹

... calculating the point at which 6 per cent of the net floor area of a residential development containing dwellings constituted a sufficient floor area to accommodate one viable affordable housing dwelling. Six per cent of the total net floor area of ten standard sized dwellings will be sufficient to accommodate one affordable housing dwelling.

In its Part B submission, Council highlighted that facilitating affordable housing is one of the objectives of the Act (in section 4(1)(fa)), and is recognised as a critical issue in Plan Melbourne and the State Government's *Homes for Victorians* housing policy.

Ms Hodyl's evidence included consideration of the strategic justification for the affordable housing provisions. She said:⁷²

I consider the inclusion of the affordable housing requirement more important to the long-term sustainability of inner Melbourne than the minimum commercial requirements. This is because the market will deliver commercial buildings at some stages within the property cycle without the need for regulation. This is not the case for affordable housing which is highly unlikely to be delivered without government intervention - either an incentive or a requirement.

The economic analysis demonstrates that the affordable housing requirement is financially feasible. If a developer considers the requirement too onerous the Amendment provides the opportunity for this to be demonstrated and the requirement negotiated.

I therefore consider that no changes are required to the Amendment in regards to the minimum requirement for affordable housing delivery.

Submitters

Several submissions queried the strategic justification for the 6 per cent affordable housing target. Some felt the target was not high enough, given the significant shortage of affordable and social housing in Melbourne, which some (including the Community Housing Industry Association Victoria) described as a "*crisis*". For example, Ms Zylberberg submitted:

I worry that 6% may not be enough for affordable housing. What percentage of people working in the area are low income? The amount of affordable housing available should reflect this. It's important for a sense of community that people who work in an area are able to live there as well if they choose.

Ms Graham submitted:

Six per cent is way too small a provision for affordable housing. In my opinion, the target should be 20 or 30 per cent. Also, let's establish some real public housing —

⁷¹ Attachment 3 to the Future Melbourne Committee agenda of 7 May 2019, at page 9

⁷² Ms Hodyl's expert witness statement at paragraphs 72 to 74

not 'social housing' managed by community housing organisations. While many of these have laudable aims, they are not under the same obligation as the government to support and accommodate the most vulnerable in our society at reasonable rental rates.

The State Government has not shown a genuine commitment to public housing with its grossly defective Public Housing Renewal Program and other schemes that barely scratch the surface in providing housing for the 82,000 Victorians on the waiting list for homes. Maybe our local council could lead the way.

Other submitters opposed the affordable housing requirements, particularly the requirement to gift affordable housing dwellings to a housing provider or have them held in an affordable housing trust. They submitted that Mr Spencer's revised feasibility analysis demonstrated that the gifting requirement would in many cases make redevelopments marginally feasible or unfeasible. Many submitters called for incentives such as floor area uplift, or compensation for contributions.

Some submissions, for example UAG West Melbourne, Stadiums and 355 Spencer Street, argued that it is inequitable to require developers in West Melbourne to provide 6 per cent affordable housing in the absence of a state-wide obligation to provide affordable housing contributions. The Property Council of Australia submitted that developers should not be required to deal with differences in policy or interpretation across municipal boundaries. It submitted *"the provision of affordable housing should be provided with equal opportunity to succeed across Victoria, regardless of location"*.

The PPP clients submitted:⁷³

The proposed affordable housing requirement needs to come out of this Amendment. It is arbitrary and uncoordinated. It is inequitable. Paragraph 148-150 of the Council's Part B gives a demonstration of the Council's desire to undertake an experiment with this concept – with respect, the planning scheme and a person's property rights are not a laboratory. Concepts which are of such significance require rigour, proper scrutiny, proper coordination and structural support. They require equity. This concept in this Amendment offers none of these things. It would prejudice the development potential of the land within the Structure Plan area.

Mr Barlow (who gave planning evidence for the PPP clients) considered that the affordable housing requirements are *"poorly conceived"* and require further strategic work. He stated:⁷⁴

The proposed Amendment seeks to require affordable housing without the benefit of having undertaken sufficient strategic work to identify accompanying work on housing supply, public subsidies, an understanding of how the housing is to be delivered and by who, and without adequate guidance on how the financial viability assessment is to be prepared and determined.

Mr Barlow's view was that the affordable housing requirements (if they were to remain) should be based on a local housing strategy for West Melbourne, that considers affordable housing supply and targets based on local requirements.

G2 Urban Planning submitted on behalf of 328-348 Spencer Street that the 6 per cent gifting requirement is unreasonably onerous, and that Council should have exhibited a

⁷³ PPP clients submission at paragraph 6(d)

⁷⁴ Mr Barlow's expert witness statement at paragraph 16

Development Contributions Plan targeted at securing funds for affordable housing. It submitted:⁷⁵

Delivery of affordable housing through the private sector has not been successful as argued by the Property Council. There needs to be appropriate central oversight to ensure that those most eligible are getting the benefit. It is unrealistic for Council to expect individual landowners to be tasked with the obligation of delivering affordable housing.

Mr Glossop (who gave planning evidence for 355 Spencer Street) accepted that there is significant demand for affordable housing across Melbourne, but queried whether the requirements were needed. He noted that there are many examples of successful affordable housing projects in metropolitan Melbourne that have been achieved *“without the prescription of a blanket control”*.

Some submitters and experts called for the affordable housing requirements to be shifted to a local policy with a clear target and flexibility around how the target is met. Mr Glossop supported this approach, noting that it was consistent with the approach taken in Fishermans Bend. Ms Hodyl did not support this approach, as she considered that this would *“dilute its importance and disconnect the delivery of a required land use outcome from the zoning mechanism”*.

Council’s response

In its Part C submission, Council noted that *“all submitters and witnesses agree that there is an urgent need for more affordable housing to be provided”*. In response to submissions that argued that it is inequitable to have this obligation imposed only on West Melbourne, Council submitted:⁷⁶

Different areas are subject to different planning controls; that is how the Victorian planning system works. The market will quickly and efficiently factor the costs into land prices. In any case, this is a weak excuse for inaction on an issue that is so important.

In response to submissions (and questions from the Panel) as to why the affordable housing requirements are not dealt with in a local policy rather than in the zone, Council responded that there is no suitable home for the requirements in local policy. While it recognised that the Fishermans Bend affordable housing requirements are contained in local policy, it submitted that the MSS (in which Clause 21.16-6 sits) is not a suitable place for affordable housing requirements.

(ii) Discussion

The submissions and evidence raise the following key issues:

- whether the need for a 6 per cent affordable housing contribution has been established
- whether the requirements impact unacceptably on development viability
- whether the requirements should be in a local policy rather than the zone.

⁷⁵ G2 Urban Planning submission at page 7

⁷⁶ Council’s Part C submission at paragraph 99(e)

Need

The Panel is satisfied that Council's *Homes for People* Housing Strategy 2014-2018 identifies a need for affordable housing in the municipality, consistent with DELWP's guidance. The Strategy highlights the municipality's housing challenges, including insufficient affordable housing supply for vulnerable community members, poor access to affordable housing for low income key workers and rising housing costs outpacing growth and inflation. Page 24 of the Strategy discusses in detail the need for more affordable housing in the municipality. It states:

... in 2011, approximately half of our renters (around 13,000 households) were paying greater than 30 per cent of their gross household income on housing costs and are considered to be in 'housing stress'.

The Panel notes the submissions that 6 per cent is not enough of a contribution to address the need. Council's Housing Strategy establishes a 15 per cent target, and suggests that the shortfall in affordable housing in the municipality might be as high as 25 per cent. However the feasibility testing suggests that even a 6 per cent contribution gifted at no cost to a registered housing provider could impact on the feasibility of developments in a number of scenarios. A 6 per cent contribution is also aligned to the contribution sought in Fishermans Bend. In these circumstances, the Panel does not consider that it would be appropriate to recommend a higher target.

The Panel is not persuaded by Mr Barlow's evidence that a local (West Melbourne) housing strategy is required to justify the affordable housing requirements. DELWP's published guidance on affordable housing refers to the need for a municipal-wide needs analysis. The Panel considers that a local suburb-based housing strategy would place an unreasonable burden on planning and responsible authorities, and is not required in any event. Affordable housing issues are not so localised as to require a suburb by suburb analysis.

Development viability

Mr Spencer's revised feasibility analysis suggests that for average existing use value sites, the requirement to gift 6 per cent of dwellings to a registered housing provider could render development either marginally feasible or unfeasible in the majority of scenarios tested (see Chapter 6.5 for more detail).

Council's Housing Strategy highlights the critical role that development finance and viability play in delivering new housing. It references research from the University of Melbourne that identified that development costs and financing for affordable housing are major barriers to project success.

That said, the Panel does not consider that the feasibility testing demonstrates that the affordable housing aspects of the Amendment lack strategic justification, as some submitters and experts have suggested. Mr Spencer confirmed in response to questions from the Panel that his feasibility analysis is somewhat conservative. He did not model contributions less than 6 per cent, or 'non-gifted' affordable housing contributions. Further, as discussed in Chapter 6.5, while feasibility analysis is a useful tool to check whether redevelopment is likely to be facilitated or encouraged by an amendment, it should not be relied on too heavily.

Should the requirements be relocated to policy?

The Panel was not persuaded that the affordable housing requirements should be relocated to local policy. The Panel accepts Council's submission that there is no obvious home for the requirements in local policy (unlike Fishermans Bend). The head clause of the SUZ allows the schedule to specify any requirement in relation to the use of land, which would include affordable housing requirements. Further, the Panel agrees with Ms Hodyl (and others) that the importance of the requirements may be diluted if they were to be relocated to local policy rather than remaining in the zone. Given the need for affordable housing is so significant, the Panel supports the requirements being included in the zone rather than in policy.

(iii) Conclusions

The Panel concludes that the affordable housing requirements are strategically justified. Specifically:

- There is a clear and significant need for affordable housing in the municipality, established in Council's Housing Strategy. A localised housing strategy establishing the need at a local West Melbourne level is not required.
- While a 6 per cent contribution may not be enough to address the need as outlined in Council's Housing Strategy, it is aligned with the size of the contribution sought in Fishermans Bend. Further, in light of the feasibility testing, the Panel does not consider that it would be appropriate to recommend a higher contribution in West Melbourne.
- It is appropriate to locate the requirements in the zone, rather than in a local policy. They have more weight in the zone, and there is no obvious home for the requirements in local policy.

10.4 Are the affordable housing provisions voluntary?

(i) Evidence and submissions

Council submitted that the affordable housing requirements in the SUZ6 are voluntary, not mandatory. It emphasised that the words "*unless otherwise agreed to by the Responsible Authority*" allow some flexibility and discretion in the way the requirements are applied. It submitted that affordable housing contributions will be secured under section 173 agreements, consistent with the Act, and any proposed development has the opportunity to demonstrate that it is not feasible to deliver the affordable housing.

DELWP submitted that its officers were concerned that the requirements as originally drafted were not consistent with the voluntary nature of the affordable housing amendments to the Act. In response, Council amended the requirements prior to exhibition, changing 'must' to 'should', and adding "*unless otherwise agreed to by the Responsible Authority*". DELWP submitted:⁷⁷

⁷⁷ DELWP submission at paragraph 2.6

Without prejudice to any decision DELWP officers may subsequently make, the exhibited provisions as drafted will facilitate and implement current DELWP advice to responsible authorities in respect of affordable housing:

“Should a decision be made by a Responsible Authority to seek a voluntary agreement and the landowner is amenable to this discussion, the Responsible Authority is advised to consider a range of issues in determining the type, amount and delivery mechanism that they may seek to be realised as a starting point for discussions with the landowner.”

DELWP clarified in response to questions from the Panel that it was satisfied that the requirements (as redrafted by Council prior to exhibition) were not so mandatory in their application to prevent authorisation and exhibition of the Amendment. DELWP confirmed that at approval stage, it would be looking again at whether there was sufficient flexibility in the provisions to make them consistent with the voluntary nature of affordable housing contributions contemplated by the Act.

Several submitters asserted that the affordable housing requirements are in effect mandatory. Relying on the evidence of Mr Barlow, the PPP clients submitted:⁷⁸

The affordable housing requirements contained within the proposed Amendment are very clearly and obviously mandatory. Despite the use of the word ‘should’, it is only the responsible authority that has discretion as to what is deemed to be an acceptable provision and the form that provision must take.

Similarly, UAG West Melbourne submitted that the fact that the requirement will apply unless the Responsible Authority is satisfied that the contribution would render the project economically unviable *“effectively seeks to make the provision mandatory”*.

The Property Council of Australia submitted:⁷⁹

The Property Council does not support inclusionary zoning (mandatory affordable housing) on privately held property.

To impose inclusionary zoning on private land fundamentally alters the premise upon which the land was purchased and amounts to a tax on that landowner. Changes in government policy to this effect create sovereign risk and discourages both individual and institutional investment in Victoria.

Mr Glossop took a slightly different view. His evidence was:⁸⁰

The provision regarding affordable housing is not mandatory, although the assessment framework operates in such a way as to limit ‘discretion’ to a very narrow consideration (essentially: a project’s overall financial viability).

His evidence was that there may be factors other than development viability that might be relevant to the exercise of Council’s discretion, such as the amount of affordable housing available nearby, the scale of the project, the constraints of the site and the mix of uses proposed. He recommended that if the provisions are retained, they should be amended to allow for broader discretion.

⁷⁸ PPP clients submission at paragraph 36

⁷⁹ Property Council of Australia submission at paragraphs 10 and 11

⁸⁰ Mr Glossop’s expert witness statement at paragraph 52

(ii) Discussion

The PPP clients pointed to the Fishermans Bend Review Panel's discussion of affordable housing requirements. The Fishermans Bend Panel did not support mandatory requirements given:

- the Act establishes a voluntary framework for affordable housing contributions
- the evidence in Fishermans Bend suggested that a mandatory requirement to gift affordable housing contributions to a housing provider would impact significantly on development viability in Fishermans Bend
- a mandatory requirement would put Fishermans Bend at a competitive disadvantage compared with other urban renewal areas in which no such obligations apply.

This Panel does not consider that the West Melbourne affordable housing requirements are mandatory. It is satisfied that the terms 'should' and 'unless otherwise agreed by the responsible authority' allow a degree of discretion in the way the requirements are applied.

That said, it agrees with Mr Glossop that the discretion is highly constrained, and that there may be factors other than development viability that might be relevant to the exercise of discretion. The Panel agrees with Mr Glossop that the provisions should be amended to allow for broader discretion. It has included recommended changes in Appendix D2.

(iii) Conclusions and recommendation

The Panel concludes:

- While the exhibited affordable housing provisions are discretionary, the discretion is inappropriately constrained. The provisions should be amended to broaden the bases on which the Responsible Authority may exercise discretion.

The Panel recommends:

Amend the affordable housing provisions in the Special Use Zone Schedule 6 to broaden the basis on which the Responsible Authority may exercise its discretion, as shown in Appendix D2.

10.5 Different forms of affordable housing

(i) Evidence and submissions

Submitters were concerned that, because of the requirement to gift affordable housing contributions to a registered housing agency, the provisions are effectively limited to social housing contributions, and do not allow for other forms of affordable housing such as below market or subsidised private housing.

DELWP submitted that officers had expressed concerns about the requirement for affordable housing to be gifted to a housing provider or held in an affordable housing trust. The concern was that there may be other types of affordable housing that could be provided, that Council should not exclude. It submitted that the words "*unless otherwise*

agreed to by the Responsible Authority” (which were added prior to the Amendment being authorised for exhibition) provided flexibility in relation to the amount of affordable housing provided, and the form in which it is provided:⁸¹

This will allow the council the opportunity to accept other types of affordable housing provision as they emerge and does not absolutely require the council to require the provision ‘to a Housing Provider at no cost or to be held in an affordable housing Trust’.

Both the Affordable Housing Industry Advisory Group and the Community Housing Industry Association Victoria supported the gifting of affordable housing contributions to a registered housing agency, as this would secure them for affordable housing in perpetuity. However both submitted that other delivery models should be considered. The Advisory Group noted that even when a dwelling is gifted, the high operational costs of rates and owner’s corporation fees could make it difficult for a housing agency to feasibly manage. The Association recommended:

- flexibility in the gifting requirement to allow for co-investment by registered housing providers who *“may be able to leverage a 6 per cent gift into a higher percentage of affordable housing units”*
- flexibility to allow developers to ‘cash out’ their affordable housing contribution where a registered housing provider has determined that the units would not be appropriate or viable as affordable housing, even where gifted (such as in buildings where maintenance costs or owners corporation fees are likely to be high)
- cash contributions to:
 - assist in purchasing affordable housing in another development within West Melbourne
 - a registered community housing agency to develop affordable housing in West Melbourne
 - fund the development of affordable housing on council-owned land or put into a Housing Trust.

G2 Urban Planning (on behalf of 328-348 Spencer Street) also supported cash contributions.

(ii) Discussion

The exhibited affordable housing provisions are geared toward the delivery of social housing. They encourage affordable housing units to be gifted to a registered housing agency, or managed in an affordable housing trust. Section 4(1) of the *Housing Act 1983* defines social housing as public housing and housing *“owned, controlled or managed by a participating registered agency”*.

The Planning and Environment Act encourages the provision of affordable housing in the broader sense. Section 3AA defines affordable housing as housing that is appropriate for the needs or very low, low and moderate income households. It includes, but is not limited to, social housing.

⁸¹ DELWP submission at paragraph 2.5

Council's Housing Strategy demonstrates that while there is a significant need for social housing in the municipality, there is also a need for housing that is affordable to low and moderate income earners. Other forms of affordable housing could potentially provide equal benefits as social housing in terms of affordable housing outcomes. The submissions also highlight the importance of allowing some flexibility in the delivery of affordable housing contributions where the gifting of affordable housing units may not be the preferred or practical option for a registered housing provider.

On balance, the Panel is satisfied that the drafting of the provisions allows sufficient flexibility to allow other forms of affordable housing (apart from social housing) to be delivered. The Panel agrees with DELWP and Council, and with Mr Spencer, that the inclusion of the wording 'unless otherwise agreed by the responsible authority' allows for other forms of affordable housing to be delivered. However some drafting changes would make this clearer. The Panel recommends inserting a definition of affordable housing that adopts the broader definition in the Act, and creating a clearer distinction in the controls between affordable housing and social housing.

The Panel acknowledges the submissions of the Community Housing Industry Association Victoria that cash in lieu contributions provide a high degree of flexibility in how affordable housing (including social housing) might be delivered, and may overcome some of the practical difficulties associated with gifting one or two dwellings to a housing provider in an otherwise private development with potentially high ongoing holding and maintenance costs. There is some doubt as to whether the Act currently supports requirements for cash contributions toward affordable housing, but if cash contributions are voluntarily agreed by a developer, the Panel considers that they should be explored.

There are some practicalities that will need to be worked through if the affordable housing provisions are to operate effectively in relation to non-gifted contributions. For instance, it will be necessary to ensure affordable housing contributions that are not owned, controlled or managed by a registered housing agency are maintained and secured as affordable housing into the future.

In this regard, the Panel agrees with the submissions of the Property Council of Australia, which stated:⁸²

For the community, clear implementation mechanisms are important to ensure that affordable housing is reserved for low-moderate income earners, and dwellings not able to be immediately on-sold at market rates, ensuring that policy objectives are being met.

and that:

Clear parameters to define the number of affordable dwellings to be provided and at what percentage of market rent or sale those dwellings must be offered, removing ambiguity in the negotiation of affordable housing agreements.

Council could consider developing guidance material that addresses these concerns and ensures that other forms of affordable housing are assessed and managed in a clear, transparent and consistent manner.

⁸² Property Council of Australia submission at paragraphs 15 to 17

(iii) Conclusions

The Panel concludes:

- The exhibited affordable housing provisions are geared toward the delivery of social housing, given the strong emphasis on gifting affordable housing units to a registered housing provider, or managing them in an affordable housing trust.
- While the provisions as exhibited do not preclude other forms of affordable housing, a definition of affordable housing that adopts the broader definition in the Act should be inserted, and the provisions should be amended to create a clearer distinction between affordable housing and social housing.
- To ensure that other forms of affordable housing are assessed in a clear, transparent and consistent manner, Council could consider developing guidance material setting out how such contributions will be assessed, secured and managed to ensure that the housing remains affordable going forward.

Recommendations about broader systemic changes in relation to affordable housing are beyond the scope of the Amendment, and are therefore beyond the Panel's remit. Nevertheless, the Panel encourages DELWP to consider legislative changes to support cash contributions toward affordable housing outcomes. Cash contributions could provide greater flexibility in how affordable housing contributions are delivered, and could solve many of the practical concerns highlighted in submissions.

10.6 The development viability test

(i) Evidence and submissions

The Affordable Housing Industry Advisory Group expressed some concerns in relation to the development viability test, including:

- Council will not be privy to investment drivers underpinning a developer's assumptions about viability and returns
- a review of the development viability analysis is potentially a highly contentious, costly and timely exercise that could further decrease affordability and increase uncertainty
- the requirement for the landowner to bear the cost of review is not aligned to the principles of voluntary negotiation
- it is unclear how the information would be assessed and what the process would be if Council disagreed with a viability analysis provided by a developer.

The PPP clients and 355 Spencer Street echoed these concerns, submitting that the controls do not:

- specify what 'economically unviable' means
- define what profit margin is acceptable
- explain how project viability is to be calculated
- specify what information is required by Council
- specify whether there needs to be agreement on sales prices, or whether determinations of viability be made with reference to comparable developments

- set out how appropriate construction rates will be determined.

As the PPP clients put it:⁸³

Much of this, including allowable profit margins, will be left at the discretion of planners assessing applications (who will likely not have the necessary skills to assess project viability information) in consultation with ‘independent third parties’.

While Mr Barlow gave evidence that the affordable housing requirements should be deleted, his view was that if the Panel was to support the requirements, Council should be required to prepare a guidance note to guide the preparation and assessment of the viability report, including the establishment of an acceptable level of developer risk and return.

Mr Barlow’s evidence was that Council should prepare a guidance note to guide the preparation and assessment of the viability report, including the establishment an acceptable level of developer risk and return.

The Property Council of Australia submitted that the onus of funding and delivering a financial feasibility study lies with an applicant, which is *“yet another impost placed on the industry, and places further delays on an already exhaustive permit approval process”*. G2 Urban Planning (on behalf of 328-348 Spencer Street) submitted that the application requirements, including the development viability test, are onerous. *“Why is the burden on the permit applicant when Council has not justified the affordable housing impost?”*

Mr Spencer’s evidence was that the development viability test is open to manipulation so that affordable housing contributions can be avoided altogether. He referred to this as the ‘viability loophole’, and explained it as follows:⁸⁴

Because the affordable housing requirements in West Melbourne are discretionary, developers and landowner may not factor the full cost of these requirements into their land value calculations. Where a developer and landowner agree to a price for land that does not account for an affordable housing contribution, the developer will be able to demonstrate to the Responsible Authority, through the open book feasibility assessment mechanism, that they are unable to provide affordable housing contributions without rendering the project unfeasible.

...

In effect, a feasibility-based test for the discretionary requirement for affordable housing contributions would encourage developers to purchase land for a price that allows them to avoid making any affordable housing contributions ...

He suggested that this concern could be addressed by replacing the development viability test with a floor area uplift mechanism. He also suggested some improvements should the development viability test be retained:

- Guidance should be provided on what constitutes ‘economically non-viable’, and the controls should be amended to require the viability report to be compared against ‘current industry benchmarks’.
- Benchmarks should be determined by a suitably qualified professional independent of Council.

⁸³ PPP clients submission at paragraph 40

⁸⁴ Mr Spencer’s expert witness statement at paragraphs 189 and 192

- A Quantity Surveyor was not necessarily the right professional to prepare a development viability report.
- Developers should be allowed to provide their own report, as the possibility of independent review *“should provide sufficient incentive to ensure the report is accurate”*.

(ii) Discussion

The Panel has some significant reservations about the development viability test. Mr Spencer’s evidence suggests that it could result in a ‘viability loophole’ whereby developers may offer land prices on the (albeit speculative) assumption that they will be able to avoid providing the contribution under the viability test. This could undermine the Structure Plan’s objectives for delivering affordable housing in West Melbourne. Nothing was presented to the Panel, including by Council, suggesting how this loophole risk could be addressed.

The Panel also considers that:

- it is likely to be difficult to specify standard benchmarks or assumptions that would be accepted by Council in considering a feasibility analysis, given the range of development likely to take place in West Melbourne
- Council planners are unlikely to have the necessary skills to scrutinise a viability report, making it likely that independent expert review will be required in most cases
- a review of the development viability analysis is potentially a highly contentious, costly and timely exercise (particularly where independent expert review is required), that could further decrease affordability and increase uncertainty.

That said, the Panel supports the principle that, if it can be shown that affordable housing contributions would render a project unviable, that should guide the responsible authority’s discretion as to whether to reduce or waive the contribution, or to consider an alternative form of affordable housing contribution that does not impact so significantly on viability.

The affordable housing provisions in the Fishermans Bend local policy include a criterion that the responsible authority needs to take into account when considering an application that fails to provide a 6 per cent affordable housing contribution:

It can be demonstrated that meeting the Affordable housing objectives of this policy would render the proposed development economically unviable.

The criterion, which operates in a similar way to a decision guideline, allows some consideration of development viability but without the prescriptive and onerous requirements associated with the development viability test proposed in West Melbourne. The Panel considers that the Fishermans Bend approach is more appropriate.

(iii) Conclusions and recommendation

The Panel concludes:

- The development viability provisions should be deleted and replaced with a decision guideline that requires the responsible authority to consider whether it can be demonstrated that the affordable housing contribution would render the proposed development economically unviable.

The Panel recommends:

Delete the development viability test provisions in the Special Use Zone Schedule 6 and replace them with the following decision guideline:

Whether it can be demonstrated that the affordable housing contribution would render the proposed development economically unviable.

11 Floor area uplift

11.1 Introduction

(i) The controls

The DDOs allow the mandatory maximum floor area ratio to be exceeded if a Special Character Building is successfully retained. Each DDO lists the Special Character Buildings, which are identified in the Structure Plan on the basis of urban character work undertaken by Clare Scott Planning. The floor area ratio can be exceeded by the Bonus Floor Area (50 per cent of the gross floor area of the special character building). The controls do not contemplate floor area uplift for any other reason.

11.2 The issues

The issues are:

- the workability of the Bonus Floor Area mechanism for the retention of Special Character Buildings
- whether floor area uplift should be available for other matters, including:
 - retention of heritage buildings
 - provision of commercial floorspace
 - delivery of affordable or social housing
 - other matters, such as open space or other forms of public benefit.

11.3 Evidence and submissions

(i) Special character buildings

There was general support from submitters and experts alike for the Bonus Floor Area for retaining special character buildings. Mr Barnes' evidence was:⁸⁵

The provision of bonuses for special character buildings has planning merit, and provides an incentive to retain buildings that are not heritage listed but which make a significant contribution to the character of the area.

Mr Glossop supported the Bonus Floor Area mechanism in principle, but noted a number of practical concerns:

- It is unclear whether the 50 per cent applies to the pre-development gross floor area of the Special Character Building, or the floor area that is 'successfully retained'.
- It is unclear what 'successfully retained' requires. The control refers to the 'three dimensional form and details' when viewed from the street, which could amount to any manner of volume. If it means the front 5 to 6 metres, as sometimes occurs in commercial heritage streetscapes, the result could be a relatively small floor area that would seem unlikely to entice retention.

⁸⁵ Mr Barnes' expert witness statement at paragraph 184

Council responded to Mr Glossop's evidence by proposing a number of refinements to the Bonus Floor Area and Floor Area Ratio provisions in its Part C controls.

(ii) Heritage buildings

Some submitters, including 355 Spencer Street and Gray Puksand on behalf of 363 King Street, noted that it seemed counterintuitive that uplift should be available for the retention of Special Character Buildings, but not heritage buildings. Mr Glossop also noted this in his evidence, stating that heritage is of more value and may be harder to retain or maintain. He stated:⁸⁶

To provide a 'reward' to those who possess a [special character] building, which is not sufficiently valuable to justify a Heritage Overlay, and not to recognise or support those responsible for maintaining and preserving heritage buildings, seems imbalanced.

Stadiums made similar submissions, arguing that the retention of highly valued heritage buildings such as Festival Hall (which is listed on the Victorian Heritage Register) should be encouraged through floor area uplift.

(iii) Commercial floorspace

Several submitters, including the Budokai and Kenshikan Dojo, 355 Spencer Street and others, submitted that floor area uplift should be available to incentivise employment floorspace. They submitted that an incentivised approach would be more appropriate than the mandatory minimum non-accommodation floor area requirements.

Council did not support uplift for commercial floorspace, submitting that *"except perhaps to a limited extent in Flagstaff, any floor area uplift for commercial would have unacceptable urban design and character implications"*. Nor did Ms Hodyl. She noted that several of the current applications and recent permits in West Melbourne provided for some amount of commercial floorspace, and considered that floor area uplift should be used to incentivise the delivery of *"demonstrable community benefits that will not otherwise be delivered by the free market"*.

(iv) Affordable housing

Several submitters, including the Urban Development Institute of Australia, the Property Council of Australia, the PPP clients and 355 Spencer Street, submitted that floor area uplift should be available to incentivise affordable housing. They submitted that an incentivised approach would be more appropriate and more effective to deliver the affordable housing outcomes sought. They noted that uplift is available in the central city and in Fishermans Bend for the delivery of affordable and social housing.

Ms Hodyl recommended that floor area uplift be available for social housing within the Flagstaff Precinct over and above the 6 per cent minimum affordable housing requirement, but not in other precincts as she thought that additional floor area in other precincts would

⁸⁶ Mr Glossop's expert witness statement at paragraph 102

compromise the character and built form outcomes sought by the Structure Plan and the controls.

The Affordable Housing Industry Advisory Group met with Council as part of the exhibition process. It advised the Panel that Council had indicated that it expects an uplift in the value of the land in West Melbourne as a result of the Amendment and government investment in infrastructure in the area, and that this (among other things) justifies the contribution.

Several submitters queried the Council's assertion that the rezoning of the land would result in value uplift. The Advisory Group generally supported Council's approach, but submitted that the question of whether the Amendment delivers value uplift is "*contentious*". It submitted that value uplift is "*a very important consideration*" when assessing whether the Amendment is likely to deliver the affordable housing outcomes sought.

The Property Council of Australia submitted that a broad range of incentives should be available to assist project feasibility and encourage uptake of affordable housing by the industry. Incentives could include:

- tax incentives, including land tax relief for dwellings offered for affordable housing
- a fast-tracked system for planning approvals in respect of projects that include a component of affordable housing, removing an element of risk for developers and minimising costs and delays associated with the planning process
- floor area ratio and other design incentives that reward developers prepared to offer a component of affordable housing with additional height, or that provide developers with flexibility in respect of the Better Apartment Design Standards.

(v) Other matters

Others submitted that there should be an 'open' uplift scheme, like the one place in the central city where floor area uplift is available for the delivery of various types of public benefit. Ms Graham submitted that uplift should be available for the provision of open space. Ms Hodyl recommended a floor area uplift to incentivise a large scale live music venue on the Festival Hall site. This is discussed in the Spencer Precinct chapter (Chapter 16).

(vi) Council response

Council responded in its Part C submissions. It did not support floor area uplift for anything other than the Bonus Floor Area available for the retention of a Special Character Building. It submitted that no submitter has tried to articulate how a floor area uplift scheme would work in practice, how it would be calculated, whether and at what level it should be capped, and what the urban design implications would be if additional floor area was allowed:⁸⁷

... The process of developing a FAU scheme is complex, as illustrated by the 'How to Calculate a Public Benefit Guidelines' published for the central city, and the detailed process that the State government went through to try to deliver an FAU scheme for affordable housing and community infrastructure at Fishermans Bend. Uplifts sound like a good idea, and can deliver excellent outcomes in the right circumstances.

⁸⁷ Council's Part C submission at paragraph 84

However, they are not part of this Amendment and it is very difficult to tack them on at the end of a process ...

11.4 Discussion

(i) Special character buildings

The Panel notes the general support for the Bonus Floor Area for retaining Special Character Buildings. The Panel supports this aspect of the controls, but agrees with Mr Glossop that there could be some drafting improvements to the controls to make them clearer and more workable. Council proposed some drafting changes to the bonus floor area provisions in response to Mr Glossop's evidence, in its Part C controls. The Panel largely supports these changes, as they provide additional clarity and improve the workability of the controls.

In the exhibited controls (and the Part B controls), the floor area ratio provisions excluded Bonus Floor Area from the floor area ratio cap:

An application to construct a building or carry out works must not exceed a floor area ratio of [#:1]. The calculation of the floor area ratio excludes any bonus floor area the development qualifies for, where the special character building has been successfully retained ...

The Part C controls were reworded as follows:

An application to construct a building or carry out works must not exceed a floor area ratio of [#:1].

A permit cannot be granted or amended to vary this requirement, unless:

- ...
- a Special Character Building has been successfully retained, in which case a permit may be granted to deliver up to the Bonus Floor Area in addition to the floor area ratio of [#:1].

This change effectively makes the entitlement to Bonus Floor Area a matter for the Responsible Authority's discretion, rather than an automatic entitlement. The reason for the change is unclear, as Council did not provide a direct explanation. The Panel prefers the exhibited (and Part B) version of the controls. Its preferred versions of the DDOs in Appendices D3 to D6 revert to the exhibited position.

(ii) Heritage buildings

Several submissions and experts considered that the Bonus Floor Area mechanism should be extended to heritage buildings as well as Special Character Buildings. The Panel agrees with Mr Glossop and others that it seems somewhat counterintuitive to allow uplift for less valued Special Character Buildings, and not for more valued heritage buildings.

However, in response to questions from the Panel, Council explained that there is already a well-established regime in place for the protection and retention of heritage buildings. On the other hand, there are no controls preventing the demolition of special character buildings, and some form of incentive is required to encourage their retention.

On balance, the Panel does not consider uplift should be offered for the retention of heritage buildings. While it agrees that the retention of heritage buildings is likely to deliver community benefit and contribute to the character outcomes sought in the Structure Plan, the Panel agrees with Council that there are existing protections for heritage buildings that will ensure their retention. Further, there are a number of heritage buildings in the West

Melbourne area. If uplift were available for their retention, this could potentially result in significant amounts of additional built form. The impacts of this have not been properly tested.

(iii) Commercial floorspace

There was strong support from submitters and experts for floor area uplift for commercial floorspace who argued that the delivery of commercial floorspace is critical to the success of West Melbourne as a mixed use precinct. They argued that it is better to incentivise commercial floorspace through floor area uplift rather than mandate it through the minimum non-accommodation floor area requirements.

Delivering commercial floorspace is a critical element of the Structure Plan. Mr Szafraniec's evidence was that the minimum non-accommodation floor area requirements are only likely to deliver about 6,500 jobs in total, well short of the 10,000 target. The Panel acknowledges that current applications indicate that the market is currently delivering at least some commercial floorspace in West Melbourne (including some commercial only development), but it considers that the target would be better supported with the incentive of floor area uplift.

For the reasons set out in Chapter 0, the Panel has recommended that the minimum non-accommodation floorspace requirements be converted from a mandatory to a discretionary requirement. Floor area uplift could work together with the discretionary requirements to better support the delivery of commercial floorspace.

The Panel considers that floor area uplift for commercial floorspace should be limited to the Flagstaff Precinct. The Flagstaff Precinct is particularly well suited to commercial development, given its proximity to the central city and Flagstaff Station. The built form testing undertaken to date, supported by evidence from both Ms Hodyl and Mr McLeod, demonstrates that there is a sufficiently loose fit between the floor area ratio and building envelope controls in Flagstaff to accommodate more built form without compromising on character and amenity outcomes. Further, setback controls are included for Flagstaff (unlike the other precincts), which will help to ensure that any additional floorspace does not detrimentally impact on internal amenity, development equity and the amenity of the public realm.

That said, the Panel considers that uplift should be discretionary, and should be limited to floorspace that exceeds the minimum non-accommodation requirements. This will temper the amount of additional floorspace that might be provided, and will allow Council to undertake a case by case assessment of whether the additional floorspace is justified.

The Panel does not consider that there is justification for floor area uplift in other precincts at this stage. The other precincts do not have as loose a fit between the floor area ratios and the preferred building envelopes, and (as noted above) the built form testing suggested that additional built form in precincts other than Flagstaff would have a greater impact on design objectives and character outcomes.

The Panel considers that Council should continue to monitor the delivery of commercial floorspace in West Melbourne, particularly in the Spencer Street activity centre. If in time it becomes clear that the policy settings, controls and other factors are not delivering the required employment floorspace in the other precincts, Council could revisit whether floor area uplift should be offered in other precincts.

(iv) Affordable and social housing

DELWP's affordable housing guidance highlights the importance of the planning process creating value, or value-creating incentives, where responsible authorities seek affordable housing outcomes from developers.

Several submitters queried whether the Amendment will deliver value uplift, given the introduction of mandatory floor area ratios. Both Mr Spencer and Mr McLeod acknowledged that the mandatory floor area ratios could have a dampening effect on land values, as they remove the tendency for developers to speculate about the possibility of higher yield development by exceeding the discretionary controls.

There is no statutory requirement for value uplift where affordable housing contributions are sought. Nor does the policy framework in the Planning Scheme require value uplift where affordable housing contributions are sought. For example, Clause 16.01-4S (Housing affordability) encourages a significant proportion of new development to be affordable for households on very low to moderate incomes, without any reference to value uplift.

That said, the State Government's *Homes for Victorians* Strategy (which is a reference document in Clause 16.01-4S) contemplates value capture:⁸⁸

Inclusionary housing in major developments

The responsibility for making sure we have more affordable homes should also belong to developers.

It's why there is growing appetite from local councils to apply affordable housing provisions as part of both rezoning, and permit applications for major developments.

Already a number of developers are offering packages that include the delivery of affordable housing, in exchange for rezoning approval or a permit uplift condition through a value capture style agreement ...

Plan Melbourne's Policy 2.3.4 also contemplates value uplift:⁸⁹

There is scope to capture some of the value created by the rezoning process for policy priorities such as social and affordable housing.

Urban renewal precincts and sites offer significant opportunities to deliver tangible broader public benefit through their rezoning for social or affordable housing, as well as local assets such as open space and community facilities.

Consideration needs to be given to developing a new requirement that when land is rezoned to allow for higher value uses, a proportion of the value uplift should be contributed to the delivery of broader public benefit outcomes such as social and affordable housing.

As discussed in Chapter 10.4, the affordable housing provisions in the SUZ6 are voluntary, and the Panel considers that they are more likely to be delivered, and potentially in greater numbers, if an incentive is offered.

However this must be balanced against the potential for additional floor area to compromise character and urban design outcomes. The Panel acknowledges Council's concerns in this regard, and Ms Hodyl's recommendation that uplift be limited to social housing in the

⁸⁸ *Homes for Victorians* at page 23

⁸⁹ Plan Melbourne at page 56

Flagstaff Precinct which, in her, view, is capable of accommodating a ‘modest’ increase in floor area. She did not consider uplift should be available in the other precincts (other than the Festival Hall site in the Spencer Precinct, where she recommended uplift be offered if a live music venue is retained on the site).

Affordable housing contributions are only sought in three of the five precincts, and only where residential development consists of 10 or more dwellings. The provisions are voluntary, and the Panel is not persuaded that there are likely to be so many applications providing affordable housing that uplift would necessarily result in unacceptable built form and character outcomes. The additional built form testing only considered a handful of sites, and did not consider any sites in the Station Precinct (refer to Figure 14). The Panel does not consider that the additional built form testing is sufficiently comprehensive to demonstrate that floor area uplift for affordable housing would result in unacceptable outcomes.

That said, in recognition of Council’s concerns, the Panel considers that uplift should be limited to:

- social housing contributions (in Flagstaff, Spencer and Station)
- other forms of affordable housing only where they exceed the 6 per cent requirement.

There is a clear and demonstrable need for social housing, recognised in the State Government’s *Homes for Victorians* policy and in Council’s *Homes for People* Housing Strategy. Social housing contributions may be harder to secure under the voluntary arrangements, as the requirement to gift the housing to a registered housing provider (or managed in a trust) at no cost has a greater financial impost than other forms of affordable housing (such as below market housing where a developer will get some form of return on the dwelling). Floor area uplift for social housing would also go some way to addressing the concerns raised by Mr Spencer’s feasibility analysis that suggests that a 6 per cent gifted contribution may make some developments either marginally feasible or unfeasible.

Uplift for other forms of affordable housing should only be available where contributions exceed the 6 per cent. Further, uplift (in both cases) should be discretionary, to allow a proper balanced assessment of whether (and how much) uplift is appropriate in each case. In some cases, it may be appropriate to accept some compromise on urban design or character outcomes in exchange for the community benefit arising from an affordable housing contribution. In others, for example where the additional floor area would impact adversely on highly valued heritage assets such as St James’ Cathedral, it may not.

In Chapter 10.5, the Panel suggests that Council consider developing guidance material that ensures that other forms of affordable housing (other than social housing) are assessed and managed in a clear, transparent and consistent manner, and preserved as affordable housing going forward. Council might also consider including some guidance around how uplift for social and affordable housing contributions are assessed. The more certainty there is regarding the likely level of uplift that could be expected, the greater the likelihood that developers will offer affordable housing contributions.

(v) Other matters

The Panel does not consider that an ‘open’ floor area uplift mechanism is appropriate for this Amendment. It agrees with Ms Hodyl that an uplift scheme should be targeted at real

and demonstrable forms of public benefit that are clearly defined, and that the market would otherwise be unlikely to deliver.

11.5 Conclusions

The Panel concludes:

- The Panel supports Bonus Floor Area where Special Character Buildings are retained. It considers that the provisions should operate as set out in the exhibited and Part B controls, rather than the Part C controls (which effectively made Bonus Floor Area discretionary).
- Floor area uplift should also be offered on a discretionary basis where:
 - the minimum non-accommodation floor area requirements are exceeded (but only in the Flagstaff Precinct)
 - social housing contributions are provided
 - affordable housing contributions that exceed the 6 per cent requirement are provided.

11.6 Recommendations

The Panel recommends:

Amend the Design and Development Overlay Schedule 33 to allow discretionary floor area uplift for the delivery of non-accommodation floor area that exceeds the minimum requirements specified in the Special Use Zone Schedule 6, as shown in Appendix D3.

Amend each of the Design and Development Overlay Schedules as shown in Appendices D3 to D6 to allow discretionary floor area uplift for:

- a) social housing contributions
- b) affordable housing contributions that exceed 6 per cent.

12 Car parking

12.1 Introduction

(i) The Structure Plan

The Structure Plan seeks to:

- prioritise more efficient transport modes, such as public transport, cycling and walking
- update parking management
- increase the proportion of the public realm for open space expansion and street greening.

Action 29 in the Structure Plan proposes that the Planning Scheme be amended to:

- minimise the unnecessary construction of car spaces in buildings by introducing a maximum parking rate of less than one space per dwelling
- encourage any new car parking to be provided through precinct-based facilities of over 50 spaces, which should be publicly accessible and include provision for car share
- support the retrofitting of existing buildings to add security systems and payment methods to allow public access to existing unused spaces.

(ii) The controls

Parking Overlay Schedule 14

The Amendment seeks to introduce a new schedule 14 to the Parking Overlay (PO14 – West Melbourne). The parking objectives of the overlay are:

- To support long term sustainable transport patterns and minimise road congestion in West Melbourne.
- To identify appropriate car parking rates within the West Melbourne Structure Plan 2018 area.
- To ensure parking facilities are provided efficiently and flexibly to meet changing community needs.
- To minimise the negative impacts of parking facilities on the public realm and transport networks.
- To provide for the future adaptation of car parking to other uses and innovations in transport technology.

The schedule sets out the parking rates for:

- dwelling – 0.3 spaces per dwelling
- all other uses – 0.005 spaces per net sqm floor area of building.

A permit is not required to reduce the spaces (including reducing to zero), however under Clause 52.06-3 a permit could be sought to provide more than the maximum parking rates.

Application requirements include:

- a Car Parking Demand Assessment which investigates current usage patterns of all parking facilities within a 400m radius of the site, including daytime, evening and night-time occupancy.

Decision guidelines include:

- considerations of parking for bicycles and motorcycles
- infrastructure or programs to incentivise transport modes other than private cars
- whether the development provides for a car parking arrangement on site which could be adapted to allow for other uses of car parking areas in the future.

Schedule 14 also includes requirements for a car parking plan including management arrangements detailing how communal spaces will operate to facilitate shared use arrangements, and design standards for car parking detailing how spaces can be used on a shared basis.

Special Use Zone Schedule 6

Car park is proposed to be a section 2, permit required use, subject to the following conditions (as reflected in the Part B version):

Must be located on land occupied by a land use other than a Car Park.

The overall number of car parking spaces on the land must not be increased.

If this condition is not met, the use becomes prohibited.

Clause 3.0 states that an application to subdivide land, whether or not in accordance with an approved development, must ensure that all car parking spaces are retained as common property (except for an enclosed garage forming part of a townhouse).

Application requirements include:

- a report addressing whether the subdivision provides for the transition of car parks and car spaces on common property to alternative uses over time.

Council's Part C controls included an additional application requirement in Clause 2.0 under the heading 'Use for Car Park':

- a document demonstrating that the car parking spaces to be re-purposed as a Car Park are not needed for the other uses conducted on the land.

Decision guidelines include:

- whether the proposed car parking area is designed for future adaptation or repurposing as an alternative use.

12.2 The issues

The issues are the appropriateness of:

- the proposed carparking rates
- the legibility of the controls
- the suitability of the application requirements and decision guidelines
- the requirement for carparking to be retained in common property
- the requirement for carparking area to be adaptable for alternative uses
- the suitability of the design standards.

12.3 Guidance

(i) Planning Practice Note 22: Using the Car Parking Provisions

Planning Practice Note 22: Using the Car Parking Provisions (PPN22) provides guidance about car parking provisions at Clause 52.06 (Car Parking) and Clause 45.09 (the Parking Overlay). These clauses must be read in conjunction, as Clause 52.06 sets out state standard planning scheme requirements about the number and design of car parking spaces, and Clause 45.09 enables variations to the standard requirements in Clause 52.06.

(ii) Planning Practice Note 57: The Parking Overlay

Planning Practice Note 57: The Parking Overlay (PPN57) provides guidance about the preparation and application of the Parking Overlay. It highlights that a car parking plan is generally required to justify the application of a Parking Overlay. The plan should identify car parking needs and issues and set out what car parking objectives the council wishes to achieve. The Parking Overlay then implements the car parking plan in a statutory form.

The basis of the proposed Parking Overlay Schedule 14 is the *West Melbourne Car Parking Plan*, prepared by Phillip Boyle & Associates, February 2018. This report identifies that based on the existing planning scheme requirements for car parking, there is a significant oversupply of off-street parking spaces across the municipality, that in turn leads to increased cost in housing, impacts on the public realm and increased traffic congestion.

The Parking Overlay's primary function is to manage car parking in a precinct, rather than on a site-by-site basis. PPN57 states that the characteristics of a precinct often change over time and that it is important that the Parking Overlay is regularly monitored and reviewed to ensure it continues to reflect the precinct's actual parking requirements and is consistent with future plans for the precinct.

(iii) Practitioner's Guide

The Practitioner's Guide includes nine rules for writing planning scheme provisions. Rule 3 is:

A provision must not conflict with or duplicate other legislation, instruments or planning scheme provisions.

12.4 Evidence and submissions

Mr Hunt provided expert evidence on behalf of Council in relation to the proposed car parking controls.

(i) Parking rates

Some submitters were concerned that the proposed rate of 0.3 spaces per dwelling did not represent the reality that people own cars in the inner city. They were concerned that this low rate would have flow on effects, such as making it difficult to sell apartments that did not have a dedicated carparking space.

Mr Hunt presented data from the 2016 census relating to car ownership by various dwelling types and sizes which found that overall, the average car ownership within the Structure Plan area was 0.84 cars per dwelling. This is considerably higher than the maximum rate of 0.3 spaces proposed by the exhibited Schedule 14 to the Parking Overlay. Mr Hunt also

presented data showing that there has been a decline in car ownership for flats and apartments between the 2011 and 2016 census, reducing from 0.98 cars per dwelling to 0.7 cars per dwelling.

Mr Hunt supported the objective of encouraging sustainable transport patterns and agreed that the generic rates in Clause 52.06 were not appropriate or necessary in areas such as West Melbourne that enjoy excellent access to public facilities and walkable neighbourhoods. He also accepted the appropriateness of a control that seeks to suppress supply, to redress the oversupply of car parking that has developed over time. However, he cautioned that the rates should not be overly onerous, as this may discourage appropriate development. His evidence was that the controls need to be mindful of impacts such as demand for on-street parking and disincentives to develop larger two and three bedroom apartments.

Mr Hunt recommended that there be a variable parking rate which reflects the marginally higher car ownership levels associated with larger apartments, while maintaining a consistent suppression rate of approximately 25 per cent of demand, to reduce the current oversupply. He recommended:

- 1 bedroom – 0.3 spaces per dwelling
- 2 bedrooms – 0.45 spaces per dwelling
- 3 or more bedrooms – 0.6 spaces per dwelling.

In relation to the rate for other uses (0.5 spaces/100 sqm of net floor area of a building), Mr Hunt's evidence was that the proposed rate would effectively limit onsite car spaces to staff parking, equivalent to one staff space for each 200sqm of floor area. There is no allowance for customer or visitor spaces. Mr Hunt was comfortable with the proposed rate, as he considered that it reflects current expectations and demand for shop and café uses in inner areas. He recognised that a larger supermarket may seek to provide a higher rate of parking, but noted that the controls allow for a permit to be granted to increase parking.

For office developments, Mr Hunt considered that in an unconstrained situation staff parking demands would typically be greater than 0.5 spaces per 100sqm, citing rates of around 1.5 spaces per 100sqm in areas of St Kilda Road, Collingwood and Fitzroy. However he considered the suppression appropriate and consistent with the objectives of the Structure Plan. Again, he noted that there is a mechanism to increase these rates with a permit if required.

Mr Hunt supported the recommendation that the rate be linked to net floor area, rather than floor area of a building, to align better with planning scheme terminology.

(ii) Legibility of the controls

Several submitters raised concerns with the wording of the Parking Overlay Schedule, submitting that it was unclear whether a permit could be sought to provide parking at a higher rate, and if so what the application requirements and decision requirements were.

Mr Hunt, who is a highly experienced traffic engineer with over 40 years experience, advised that he found the controls difficult and confusing. While the Practice Notes discourage duplicating requirements, he recommended that introductory wording be added to Schedule 14 stating:

The schedule to Clause 45.09 Parking Overlay must be read in conjunction with Clause 45.09 and Clause 52.06 of the Melbourne Planning Scheme, together with any other relevant section of the scheme.

Council advised that while they had no concern in principle with the additional words, the Schedule had been drafted in consultation with DELWP and is consistent with the Ministerial Direction on the Form and Content of Planning Schemes. To include Mr Hunt's recommended provision would be considered a duplication of the requirement at Clause 52.06-3 which states:

A permit is required to:

- Provide more than the maximum parking provision specified in a schedule to the Parking Overlay.

(iii) Application requirements and decision guidelines

Schedule 14 includes an application requirement for a Car Parking Demand Assessment when seeking to increase parking above the specified rates. The Assessment must investigate the current usage patterns of all car parking facilities within a 400m radius of the site, including daytime and evening occupancy rates (in addition to the other matters in Clause 52.06).

Mr Hunt considered this onerous and impractical, as it requires an applicant to have access to private car parks at various times of the day. He also questioned how this information would be used to assess an application to increase parking above the maximum rates. If the requirement was to be included, Mr Hunt recommended that an additional decision guideline be included in Schedule 14:

Whether the result of the Car Parking Demand Assessment of current usage pattern of all parking facilities within a 400m radius of the site demonstrates that additional spaces as sought by the application, cannot feasibly or practically be provided elsewhere.

Mr Hunt otherwise supported the decision guidelines proposed in Schedule 14, and recommended the following additional decision guidelines be considered:

- The Car Parking Demand Assessment
- The availability of alternative car parking in the locality of the land, including efficiencies gained from the consolidation of shared parking spaces
- The impact of additional car parking spaces on local amenity including pedestrian amenity
- The character of the surrounding area and whether increasing the car parking provision would result in a negative urban design outcome.

(iv) Parking areas in common property

The Structure Plan seeks to ensure that car parking provided as part of a development is managed by an owners corporation as communal parking and not sold to individual units. Clause 6.0 in Schedule 14 specifies that a car parking plan must contain (in addition to the matters at Clause 52.06-8):

- An indicative car park management framework detailing how communal car parking facilities will operate to facilitate shared use arrangements.

The SUZ6 also requires that all car spaces be retained as common property in a subdivision.

Mr Hunt supported the promotion of communal car parking and efficiencies gained through the sharing of spaces in traffic engineering terms.

Stadiums submitted that the concept of parking being required to be retained as common property discriminates against those not wanting a car space but having the cost of providing spaces built into the purchase price of the dwelling. Other submitters including the Urban Development Institute of Australia considered that the requirement was too onerous, would add to owners corporation fees for dwellings that did not own a car. It recommended that the provisions be discretionary rather than mandatory.

(v) Adaptable car parking requirements

The controls within the SUZ6 seek to preserve the opportunity in the future to allow for adaptable re-use of car parking areas for other uses, with the expectation that over time car parking demands will reduce. To achieve this the controls require car parking areas to be retained as common property and require a report to be submitted with an application outlining how spaces could be adapted over time. There was some confusion in the wording of these requirements as exhibited, including the condition associated with the use of land for 'car park' as a section 2 use within the zone.

Mr Hunt was comfortable with the intent of these provisions that allow for shared use of car parking spaces, and for new development to reduce or avoid providing new parking if suitable leasing arrangements can be provided on sites with identified car parking surpluses. He considered that the intent of the condition associated with car park use in the SUZ6 was to allow for 're-use' of existing spaces as a commercial car park, to allow for sharing of spaces between developments. He recommended that, to ensure spaces are utilised efficiently and that existing residents are not disadvantaged by such a commercial arrangement, additional application requirements be provided in Clause 2.0 of the SUZ6:

Use of Car Park

- An application to use land for a car park, must be accompanied by the following information:
 - Details of the intended use of the car park
 - Maximum or permitted parking provision associated with the existing use of the land where the proposed car park is located
 - Surveys of existing utilisation of the car park to demonstrate that the existing provision is surplus to demand
 - Details as to the number of spaces to be made available for external usage, and
 - If parking spaces sought to be made available are intended for use by a nearby development, how the number of spaces proposed within the car park relates to the maximum number of spaces required for the proposed development, under the provisions of the table to Clause 3 of Schedule 14 to Clause 45.09 Parking Overlay.

Mr Hunt also recommended an additional decision guideline:

- The extent that the proposed provision of car parking for external uses reduces the need for additional car parking to be provided in association with a nearby proposed development.

Mr Hunt supported the concept of ensuring that the design of car parking areas, including column grids and floor to ceiling heights, allows for the potential adaptation to alternate uses should parking demand diminish over time.

(vi) Design standards

Schedule 14 includes a number of detailed design standards for car parking. Mr Hunt agreed with many of these standards, however recommended the following changes:

- reword the third design standard to apply to all car parks and not just those with less than 50 spaces and to add consideration of shared spaces, as follows:

Any parking facility proposed must prioritise provision of spaces for disabled parking, car share scheme vehicles, motorcycles and bicycle facilities designed in accordance with the requirements of Clause 52.34, with the balance of spaces being available for use, on a shared basis, where possible.

- reword the last dot point under design standard 4 to simplify the control to read:

The remaining 85% of spaces be available for use on a shared basis under the management of the Body Corporate.

12.5 Discussion

Council accepted the majority of Mr Hunt's recommendations, which are included in its Part B and C controls. The Panel also supports these changes, as they improve the legibility and operation of the controls. They resolve most of the concerns raised by submitters, provide for a more appropriate rate of parking in the Structure Plan area, and clarify controls relating to shared use of parking areas and maintaining them in common property.

The Panel recommends that, in addition to updating the parking rate for 'all other uses' to relate to net floor area rather than building area, the rate be expressed 'per 100sqm of net floor area', to be consistent with other parking rates in the Planning Scheme. In other words, the rate should be expressed as 0.5 spaces per 100sqm of net floor area.

The Panel has concerns with the application requirement for a Car Parking Demand Assessment. It agrees with Mr Hunt that it is not practicable. It would potentially involve each applicant having to access privately owned parking spaces across at various times of the day, across a potentially a large number of sites. It also assumes that the applicant will be able to secure lease arrangements of existing spaces owned by others. The Panel considers it preferable that Council undertake its own surveys to provide this data (updated on a regular basis) that can then be used in exercising its discretion as to whether to grant a permit to increase the parking rates above the maximum.

The Panel acknowledges submitters' concerns about car parking spaces being required to be retained in common property and managed as communal spaces. Mr Hunt supported the requirement. The Panel consider that while it would change the usual model of selling car spaces with dwellings, it is consistent with the aims of the Structure Plan to redress the current oversupply and underutilisation of car parking spaces, and to encourage more sustainable transport. The Panel agrees with Council that a new approach is justified, particularly given West Melbourne's location adjacent to the central city and given that most parts of West Melbourne are relatively well serviced by public transport.

The only recommendation of Mr Hunt that Council did not adopt in its Part B and C controls was the recommendation to include an upfront provision that clarifies that both the parent parking overlay control at Clause 45.09 and Clause 52.06 should be read in conjunction with Schedule 14. Council did not object to this recommendation in principle, but noted that it is not consistent with the Ministerial Direction on the Form and Content of Planning Schemes.

The Panel accepts that the Ministerial Direction does not allow for duplication of controls. However it agrees with Mr Hunt that the provisions as currently worded are confusing in relation to whether a permit can be granted to increase the parking supply beyond the maximum rate specified in Schedule 14. This is particularly confusing given that other schedules to the Parking Overlay within the Melbourne Planning Scheme do explicitly state that *“a permit is required to provide car parking spaces in excess of the car parking rates at Clause 3.0 of this schedule”* or *“a permit is required to provide car parking spaces in excess of the maximum number specified in the Table below”* (refer PO1, PO6, PO7, PO8, PO9, PO10, PO11, PO12 and PO13).

Without words to this effect in Schedule 14, it could be interpreted that there was a distinction with other schedules and that there was no option to increase parking supply above the maximum rates with a permit. Therefore the Panel recommends the following provision is also included at Clause 2.0 of Schedule 14. The Table in Clause 3.0 should be shifted into Clause 2.0 (Permit requirement):

For a use specified in the Table below, a permit is required to exceed the maximum number of car parking spaces that can be provided for the use, calculated by multiplying the Rate specified for the use by the accompanying Measure.

12.6 Conclusions and recommendation

The Panel concludes:

- The parking provisions proposed in Schedule 14 to the Parking Overlay will assist in implementing the vision outlined in the Structure Plan.
- The Panel generally supports the changes to Schedule 14 recommended by Mr Hunt and outlined in Council’s Part B and Part C controls, save that:
 - instead of Mr Hunt’s recommended provision requiring the Schedule to be read together with Clause 45.09 and Clause 52.06, an additional provision should be included in Clause 2.0 stating “For a use specified in the Table below, a permit is required to exceed the maximum number of car parking spaces that can be provided for the use, calculated by multiplying the Rate specified for the use by the accompanying Measure”. The Table specifying the rates should be shifted from Clause 3.0 to Clause 2.0
 - the application requirement relating to a Car Parking Demand Assessment should be deleted, and the decision guideline re-worded to state “Consideration of current usage patterns of car parking facilities within a 400m radius of the site, including daytime, evening and night time occupancy rates”.
- The Panel supports the changes to the Special Use Zone Schedule 6 recommended by Mr Hunt and outlined in Council’s Part B and Part C controls.

The Panel recommends:

Amend Clause 2.0 to clarify that a permit is required to exceed the maximum parking rates specified in the Table, as shown in Appendix D7, and replace Clause 3.0 with ‘None specified’.

Delete the application requirement at Clause 4.0 for a Car Parking Demand Assessment, and reword the decision guideline for a Car Parking Demand Assessment at Clause 4.0 as follows:

Consideration of current usage patterns of car parking facilities within a 400m radius of the site, including daytime, evening and night time occupancy rates.

13 Environmental Audit Overlay

13.1 Introduction

(i) The Structure Plan

The Structure Plan is silent on how to address the issue of potentially contaminated land.

(ii) The exhibited Amendment

The exhibited Amendment proposed to apply the EAO to all land in West Melbourne, apart from public land.

(iii) Council's changed approach

In its authorisation letter, DELWP included the following condition:

The application of the EAO to the entire structure plan are requires adequate evidence and justification in accordance with the relevant Ministerial Direction and General Practice Note. The Council must either amend the application of the EAO to be consistent with the practice note, or satisfy itself that the application of the overlay is warranted.

The Environment Protection Authority should be consulted on the proposed application of the Environmental Audit Overlay.

The EPA provided a response to the draft Amendment before exhibition. The EPA was concerned with the blanket application of the EAO on the basis it was applied:

- without proper investigation and justification
- to land that had already been audited.

In response to this Council engaged Golder Associates to review the application of the EAO. The EPA submission to the Amendment referred to this further work and noted it would not be finalised until after exhibition closed and it would continue to provide Council with advice.

Golder Associates prepared a Preliminary Contamination Assessment that was finalised after exhibition of the Amendment. Of the 944 properties reviewed in West Melbourne that had the EAO applied in the exhibited Amendment, Golder Associates recommended it be retained on 292 properties and deleted from 652 properties. Figure 15 below shows the sites where the EAO is supported and not supported. Blue marks land where the EAO is not proposed to apply and red marks land where it is. Council has adopted Golder's recommendations as part of its proposed post-exhibition changes.

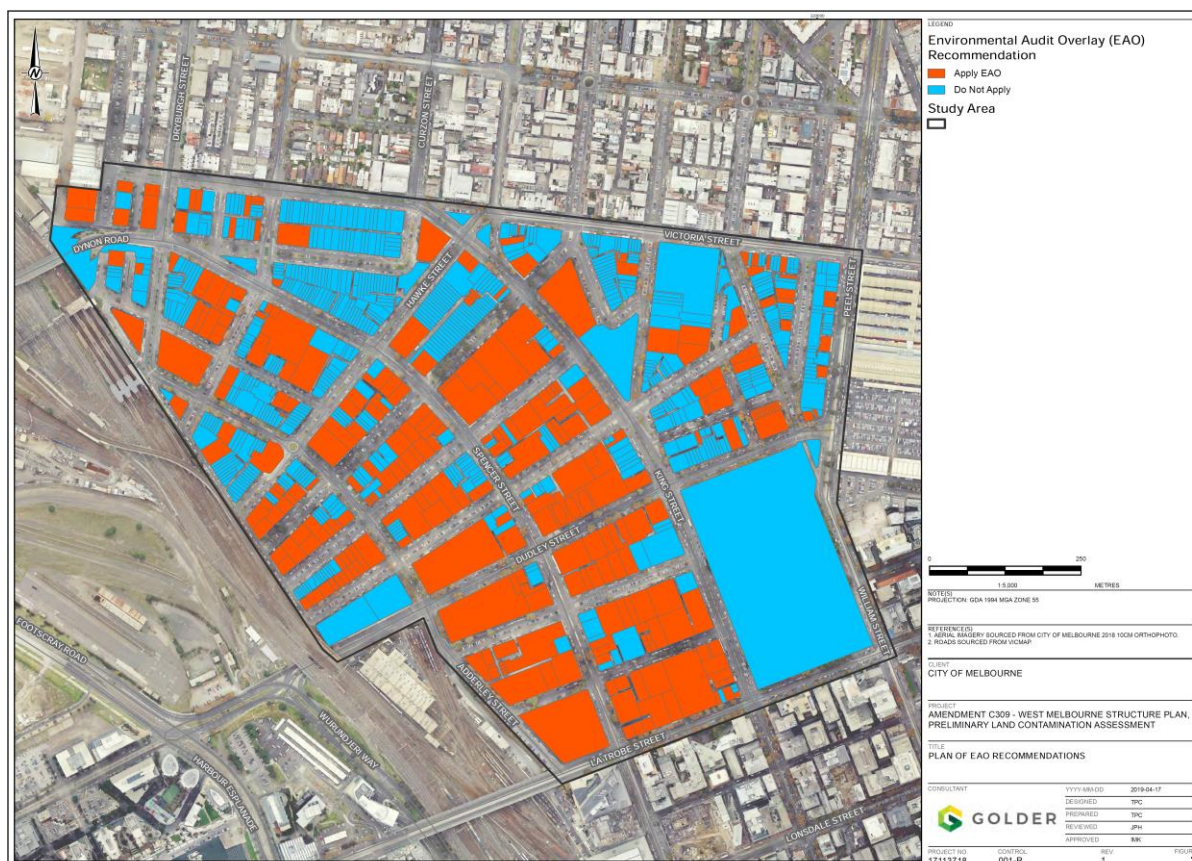


Figure 15 Revised application of the Environmental Audit Overlay

Source: Preliminary Contamination Assessment

13.2 The issue

The issue is whether the proposed application of the EAO is appropriate.

13.3 Guidance

(i) Clause 13.04-1 Contaminated Land and Potentially Contaminated land

Clause 13.04-1 seeks to “to ensure that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely.” It refers to Ministerial Direction 1 as a policy reference.

(ii) Ministerial Direction No. 1: Potentially Contaminated Land

Ministerial Direction 1 applies to land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel (if not ancillary to another use of the land). If Council cannot satisfy itself that the environmental conditions of the land are or will be suitable for the sensitive use then the Amendment must require a certificate of environmental audit, or a statement from an environmental auditor that the land is suitable for its intended use.

(iii) Planning Practice Note 30: Potentially Contaminated Land

PPN30 is consistent with Ministerial Direction 1 but “also deals with land that may have been contaminated by other means such as by ancillary activities, contamination from

surrounding land, fill using contaminated soil or agricultural uses.” It provides some direction as to how potentially contaminated land is identified, including information about potential contamination from surrounding land uses (for example, an adjacent service station known to be causing off-site contamination).

(iv) Practitioner’s Guide

Section 5.2.5 of the Practitioners’ Guide addresses the EAO and states:

By applying the overlay, the planning authority has made an assessment that the land is potentially contaminated land and is unlikely to be suitable for a sensitive use without more detailed assessment, remediation works or management ...

Applying the overlay also means that the planning authority has decided the requirements of Direction No. 1 may be deferred. The EAO is a statutory mechanism to provide for that deferment. The EAO is not simply a means of identifying land that is or might be contaminated and should not be used for that purpose. Previous zoning is not sufficient reason in itself to apply the EAO.

13.4 Evidence and submissions

Council relied on the evidence of Mr Kluckow in determining the proposed post-exhibition form of the EAO. Mr Kluckow conducted a screening assessment of available information from sources such as aerial photographs, Mahlstedt fire insurance maps, MMBW historic maps, Sands & McDougall business directories, environmental audits and EPA Groundwater Quality Restricted Use Zones.

If a site had no history of industrial use then a review of adjacent uses was considered to determine if contamination could have migrated to groundwater and present on the site via vapour. Factors considered were the type of the adjacent use, proximity of the potentially contaminating site and the likely groundwater flow direction (obtained via a review of audits in the locality). Mr Kluckow considered adjacency was defined by the property next door to the contaminating site, and no further.

Mr Kluckow found there was a consistent south west direction of groundwater flow in the 15 environmental audits that were reviewed for West Melbourne. This, he considered, provided a reasonable basis to apply the EAO in the direction of groundwater flow to adjacent properties.

Of the 110 properties considered for potential contamination from an adjacent site, seven were confirmed where there was reasonable basis that an adjoining use could be a source of potential contamination. The types of adjacent use were either automotive repairs or engine works, which PPN30 identifies as having a high potential for contamination.

R & M Holdings (135 Batman Street and 60-80 Adderley Street), G2 Urban Planning (328-348 Spencer Street) and Ms Graham (76 Railway Place) considered the EAO should not be applied to their land. In response to these submissions, Mr Kluckow confirmed there was historical industrial use of the land at 135 Batman Street and 60-80 Adderley Street and 328-348 Spencer Street which justified the application of the EAO. Land at 76 Railway Place had no such history and he recommended the EAO not be applied.

The EPA initially was to appear at the Hearing, however withdrew on the basis of the further work prepared by Golder Associates. It stated in its 24 June 2019 letter (Document 20) that it:

... is generally supportive of Melbourne Planning Scheme Amendment C309 and considers that the methodology used to determine the application of the EAO in the Preliminary Contamination Assessment prepared by Golder Associates Pty Ltd dated 17 April 2019 adequately addresses the risks associated with potentially contaminated land.

13.5 Discussion

The application of the EAO was not considered by the Structure Plan and was only included as part of the Amendment at a very late stage, just prior to exhibition. A number of submitters were concerned with the blanket application of the EAO across West Melbourne without sufficient justification. The Panel agrees and acknowledges the further work that has been done to refine the application of the EAO. This has led to a significant reduction in its application.

The Panel accepts that the EAO should be retained on the 285 properties where there is some evidence of potential contamination from previous on-site uses. This is an appropriate precautionary response to the provisions of Ministerial Direction 1 and goes beyond its application to land simply on the basis of previous zoning, consistent with the Practitioners' Guide.

On balance, the Panel supports the application of the EAO to land that is potentially impacted by an off-site contamination source, but with some reservations. Its application has the potential to significantly impact development on land that has had no role in its potential contamination. Irrespective of whether a small deck or larger site redevelopment is proposed, the EAO provides no exemptions (even if there is no direct soil contact) and requires a full environmental audit which Mr Kluckow estimated at a cost of at least \$25,000 to \$30,000.

Mr Kluckow confirmed that the potential for contamination from an off-site sources is not likely to arise through soil contact, but rather from vapour reaching the surface from contaminated groundwater. Mr Kluckow looked at a number of previous audits undertaken in the West Melbourne area to predict the direction of groundwater flow, and only considered sites that are down-gradient of a potential source of contamination. He only considered sites that are directly adjacent to a contaminating source. He confirmed in response to questions from the Panel that groundwater-borne contamination can disperse relatively effectively with distance from the source. Given the burden imposed on a landowner by the EAO, the Panel considers this approach to be appropriate.

The depth of groundwater, ascertained from completed environmental audits, varies considerably from 5 metres to 14 metres. The locations of the sampling points in those audits are in most instances some distance from the identified contaminating sites. Mr Kluckow confirmed in response to the Panel's questions that he had not undertaken any investigation of the soil strata to determine whether there was any 'mounding' in the strata that could divert groundwater flow. That said, the previous audits do seem to confirm a relatively consistent direction of groundwater flow.

On balance, the Panel considers there has been a reasonably rigorous assessment of potential off-site contamination and notes the EPA supports the methodology used in the Preliminary Contamination Assessment. While the Assessment is based on a range of assumptions that have not been verified, the Panel accepts that more detailed intrusive investigations or testing is impractical, and for that reason a precautionary approach should

be adopted. On this basis the Panel accepts that the application of the EAO to a handful of sites where the source of potential contamination is from an adjacent site is appropriate.

Consideration of this issue would have been more straightforward if the EAO included some exemptions that allowed for low risk forms of development to occur without the need for an environmental audit. This is a matter that should be considered further by the EPA and DELWP.

13.6 Conclusions and recommendation

The Panel concludes:

- The proposed reduction of the blanket application of the EAO to sites that have been identified through the Preliminary Contamination Assessment as potentially contaminated is appropriate.
- The methodology used by Golder Associates to reconsider the application of the EAO appears to be generally sound, and is supported by the EPA.
- On balance, the application of the EAO to seven properties that are adjacent to potentially contaminated sites is appropriate, although the Panel has some reservations relating to the impact it has on the landowners.
- The EPA and DELWP should consider introducing exemptions into the EAO to allow for buildings and works that have no soil contact or are modest proposals that pose little risk in terms of exposing occupants of the site to contamination.

The Panel recommends:

Delete the Environmental Audit Overlay from land that has not been identified as potentially contaminated by the report titled *“Amendment C309 West Melbourne Structure Plan - Preliminary Land Contamination Assessment - April 2019”*.

14 Other issues

14.1 The issues

The DDOs contain a range of Design Objectives in Clause 1.0, and a range of Built Form Outcomes and Built Form Requirements in Clause 2.0 relating to building heights, setbacks, active streets and laneways etc. The DDOs state that development:

- must meet the Design Objectives
- must achieve the Built Form Outcomes
- should achieve the Built Form Requirements.

In this sense, the Design Objectives and Built Form Outcomes are mandatory, and the Built Form Requirements are discretionary.

The issues are:

- the appropriateness of the proposed Built Form Outcomes and Built Form Requirements
- whether the Structure Plan and the controls appropriately deal with open space
- whether transitional provisions should be included.

14.2 Building heights

(i) The controls

The Amendment proposes preferred maximum building heights for each precinct, as shown on Figure 16 below.

With the realignment of the DDO boundaries, and heights variously expressed in storeys and metres, there is not a clear direct comparison of building heights between the existing and proposed controls for each precinct. However generally they seek to:

- increase the preferred heights in Flagstaff, Spencer and Station by between 3 and 6 storeys over the current preferred maximums
- retain the current preferred height of 4 storeys in Adderley, increased to 6 storeys for sites fronting Adderley Street between Hawke and Dudley Streets.

The proposed building heights are set out in Table 7, together with Council's proposed changes in response to Ms Hodyl's recommendations. Heights are all preferred maximums.

Table 7 Proposed building heights

Precinct	Exhibited building heights	Council proposed changes
Flagstaff (DDO33)	16 storeys	None
Spencer (DDO72)	<ul style="list-style-type: none"> - 10 storeys fronting Dudley Street - 8 storeys fronting Spencer or King Streets - 6 storeys in all other areas 	<ul style="list-style-type: none"> - 10 storeys fronting Dudley Street - 8 storeys fronting Spencer or King Streets - 7 storeys between Spencer, King, Dudley and Roden Streets - 6 storeys in all other areas

Precinct	Exhibited building heights	Council proposed changes
Adderley (DDO29)	<ul style="list-style-type: none"> - 6 storeys fronting Adderley Street between Hawke and Dudley Streets - 4 storeys in all other areas 	None
Station (DDO28)	8 storeys	None

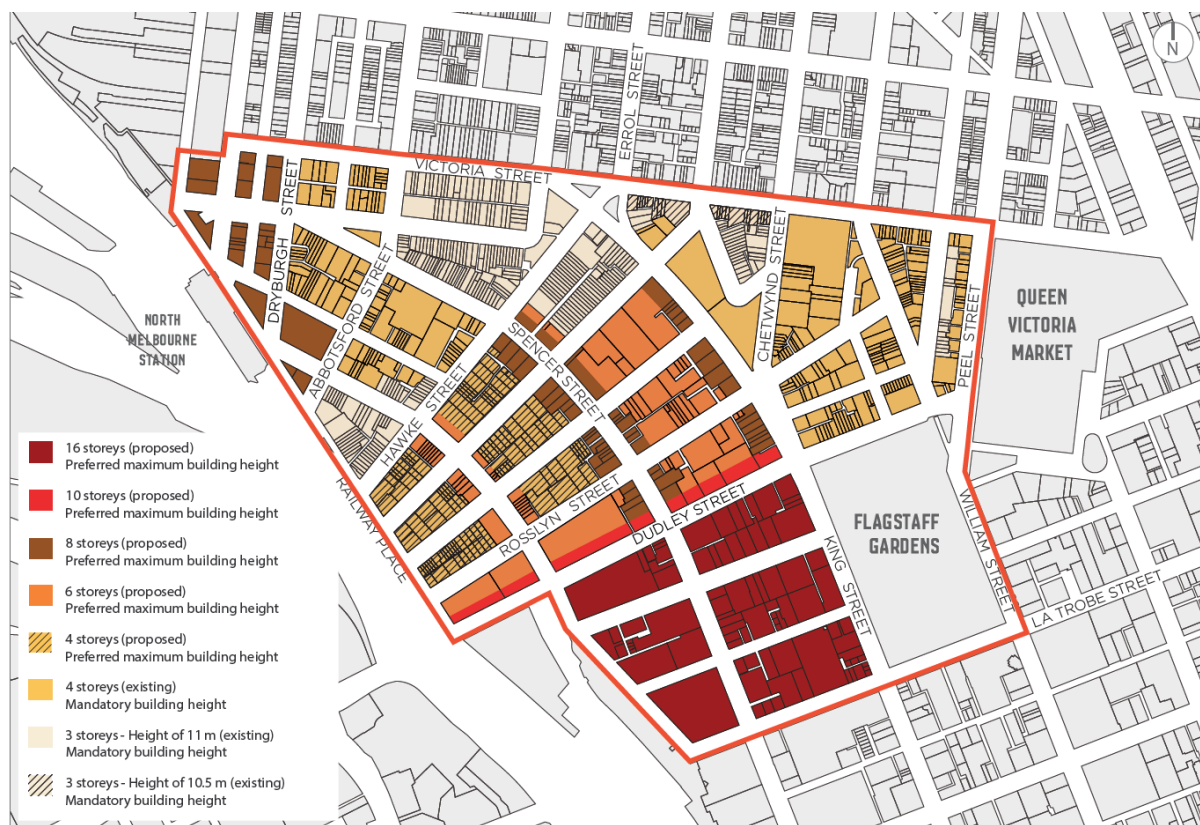


Figure 16 Existing and proposed heights

Source: Council map book (Document 41)

(ii) Evidence and submissions

Ms Hodyl generally supported the proposed building heights in all precincts, but recommended changes to the heights in parts of the Spencer Precinct (discussed below). Mr Barnes deferred to Ms Hodyl in relation to the appropriateness of the proposed building heights, but generally supported the proposed controls.

Flagstaff Precinct

UAG West Melbourne Pty Ltd submitted that the proposed heights should be more flexible.⁹⁰

Furthermore, the Built Form Outcome contained in the proposed DDO33 which specifically calls for buildings to be within the range of six and sixteen storeys in height

⁹⁰ Submission 15 to the Amendment, by SJB Planning on behalf of UAG West Melbourne

should be made more flexible (as is current the case), as not every site within the [Flagstaff Precinct] will be capable of achieving the 16 storey preferred height, and not every site should be limited to this height. Our client's land is a key example, where the Tribunal found that a 25 storey building would provide an appropriate visual transition between the taller buildings in the CBD and the lower scale buildings in West Melbourne (eg north of Dudley Street where the current preferred height is four storeys, albeit the 'Ikebana' development opposite our client's land is 8 to 9 storeys).

Spencer Precinct

Ms Hodyl recommended changes to the heights in parts of the Spencer Precinct. Her evidence was that the mid-block sites should have a greater height to better accommodate the floor area ratios, and that the properties fronting Spencer Street within the activity centre could accommodate greater floor areas within the proposed heights (which are higher than the mid-block heights). She recommended that mid-block height limits should be increased from 6 to 8 storeys (to match those along King and Spencer Streets), and that the floor area ratio for sites along Spencer and King Streets be increased from 4:1 to 5:1 (with the 8 storey height limit retained).

Mr Barnes supported the concept of increased building heights along the main streets throughout the Spencer Precinct with reduced heights away from main roads, and taller building heights and greater densities within the activity centre.

Council provided partial support for these recommendations, with the Part C controls providing for a preferred maximum building height of 7 storeys for mid-block properties, rather than 6 storeys as exhibited or 8 storeys as recommended by Ms Hodyl.

Some submitters considered that building heights along the north side of Dudley Street within the Spencer Precinct should be increased from 10 storeys to 16 storeys to reflect the height limit on the south side of Dudley Street. Neither Council nor Ms Hodyl supported this increase, considering that 10 storeys provides a better transition to the lower scale areas in the Adderley Precinct.

Station Precinct

Mr Tandora submitted that the preferred maximum building height of 8 storeys for the relatively small triangle block of land bounded by Abbotsford Street, Adderley Street and Railway Place is excessive. He was concerned that development at this height would reduce the amenity of the development at 9 Dryburgh Street and the Gadsden development.

Council's response was that the built form controls within the Station Precinct respond to the characteristics and context of this part of West Melbourne. Council did not consider that the entire triangular site would be built with 8 storeys given the floor area ratio.

Adderley Precinct

Mr Tandora considered that the mandatory 3 storey height control for the land bounded by Abbotsford, Adderley and Hawke Streets and Railway Place (which is in the General Residential Zone and is not proposed to change) should be amended to be consistent with the existing development of 4 storeys.

(iii) Discussion

Overall the Panel supports the preferred building heights proposed for each of the precincts. Council's planning, urban design and architectural evidence all generally supported the built

form controls, including the relationship between the floor area ratios and preferred building heights. Other planning experts, while being concerned with the mandatory floor area ratios (discussed in Chapter 8), were less concerned with the proposed building heights. The Panel assumes that this may be because of the generally increased preferred maximum building heights proposed across the Structure Plan area, as compared to the existing controls, and due to the discretionary nature of the proposed height controls.

The Panel agrees that for the majority of cases the proposed building heights will be appropriate. Given they are discretionary, there may be instances where the preferred maximum heights are exceeded. Equally, there may be some cases where the preferred heights are not able to be achieved. The discretionary height controls will allow for massing across a site to vary, and large sites may be able to accommodate varied heights depending on the interfaces and site conditions.

Spencer Precinct

The Panel agrees with Council that the preferred building height of 6 storeys in mid-block locations between Spencer, King, Dudley and Roden Streets should be increased to 7 storeys (rather than 8 storeys, as recommended by Ms Hodyl). The heights are discretionary. There may be some sites in this location that are appropriate at 8 storeys, however the Panel accepts that in these mid-block locations a slightly lower scale from the activity centre is appropriate. It also considers that 7 storeys along Roden Street provides a better transition to the lower scale development in the Historic Hilltop Precinct, on the north side of Roden Street, than 8 storeys.

Station Precinct

The Panel acknowledges Mr Tandora's submission, and notes that there is a quite significant change in heights between the Adderley and Station Precincts. However the need for transition, even within precincts, is acknowledged in the Structure Plan. The discussion relating to built form within the Station Precinct states:⁹¹

Developments will be required to adequately transition in height to neighbouring 14m DDO32 area.

The Panel agrees with Council that 8 storeys may not necessarily be achieved across the entire triangular site in the south-west corner of the Station Precinct, and that considerations of other matters including amenity impacts will be relevant. It does not consider that the heights in this location should be changed.

Adderley Precinct

The mandatory 3 storey height control for land on the south side of Abbotsford Street is contained in the GRZ, which is not proposed to be rezoned as part of this Amendment. The four storey building within this area referred to by Mr Tandora would appear to have been developed prior to the GRZ's mandatory height controls being introduced. The Panel does not consider that the heights in this location should be changed.

⁹¹ West Melbourne Structure Plan 2018, page 117

(iv) Conclusions

The Panel concludes:

- The preferred building height for properties between Spencer, King, Dudley and Roden Streets should be increased from 6 storeys to 7 storeys, as proposed in the Part C controls.
- The proposed heights are otherwise appropriate.

14.3 Setbacks**(i) The controls**

Setback controls are only proposed in the Flagstaff Precinct. The setbacks apply to upper levels of development (above the podium), and are discretionary:

- minimum setback from the front title boundary – 3 metres
- minimum setback from all laneways and all side and rear boundaries – 6 metres.

(ii) Evidence and submissions

Mr McLeod noted that there was little direction on preferred setbacks within the proposed controls. In his built form testing he had ensured building separation and light courts were provided. He used the Moreland Apartment Design Code as a guide. He had allowed for some discretion in relation to setbacks, street wall heights and building separation to allow an appropriate response to each site's unique context and conditions.

Ms Hodyl also noted that there is currently little or no guidance provided within the Amendment in relation to setbacks. She considered it a gap in the proposed controls. She recommended minimum side and rear setback requirements be included in all DDOs. She recommended that they be discretionary, and noted that with the moderate fit between floor area ratios and building heights, there would not be excessive pressure to compromise these preferred setbacks. She also considered that there should be guidance on the exercise of discretion in relation to matters such as internal amenity and development equity.

Ms Hodyl recommended the following setbacks below the street wall be included in all precincts (except the Historic Hilltop):

- 4.5 metres for buildings up to 4 storeys
- 6 metres for buildings over 4 storeys and up to 10 storeys.

Above the street wall she recommended that a minimum separation distance of 12 metres between buildings be introduced into the DDOs for the Flagstaff and Spencer precincts.

Council noted that while it had no objection to Ms Hodyl's recommendations in principle, as they were not part of the exhibited amendment, Council officers would not pursue it.

Gray Puksand made submissions on behalf of GHK No. 2 Pty Ltd raising concerns about the proposed setbacks in the Flagstaff Precinct, submitting that they would discourage commercial developments which require a larger floorplate, in favour of residential buildings that are better suited to the podium tower typology. They submitted that "*sites near public*

transport should have flexible planning controls to optimise commercial development near transport opportunity hub sites”.

355 Spencer Street called evidence from Mr Glossop. He briefly touched on the upper level setback controls for the Flagstaff Precinct, stating:⁹²

I note that the preferred laneway setback is being increased by the Amendment from 2 metres to 6 metres. The requirement for a 6 metre setback seems excessive, unless it was measured from the centre of the adjoining laneway, and thereby seeks a fair sharing of amenity and an equal separation to that sought to a private boundary. Also, I am not sure how this provision works in the context of other provisions that require a minimum amount of non-residential floor area to be provided.

R & M Holdings also raised concerns about the 6 metre setbacks above the podium for all laneways in Flagstaff. It submitted:⁹³

The use of the word “minimum” brings into contention an uncertain situation around what would be an acceptable setback. In this scenario where minimum is included we suspect that council would use the 6.0m as the starting point and then request setbacks which may be much greater than 6.0m.

It went on to submit:⁹⁴

In terms of our second suggested modification to this provision our client does not accept that a 6.0m setback to a laneway and side and rear boundary is an appropriate condition for a central city area such as the Flagstaff precinct of the West Melbourne area.

R & M Holdings submitted that the setbacks sought in the Flagstaff Precinct should be consistent with those that apply in City North, in which a 4m setback to laneways applies. It submitted that City North was similar to West Melbourne in that it was an established infill area with similar height controls. It submitted that Arden Macaulay or Fishermans Bend (which both require a 6m above-podium setback to laneways) are not suitable comparisons, as they are both urban renewal areas where a completely new form of development is anticipated.

(iii) Discussion

Building separation, internal amenity and impacts on neighbouring amenity are important considerations for new development. The Panel notes that the Structure Plan contains a range of design recommendations that, amongst other matters, include:⁹⁵

To ensure development appropriately considers the amenity impacts on neighbouring development and achieves a high standard of internal amenity within the development.

To require development to be set back from side and rear boundaries to ensure internal spaces receive adequate levels of daylight and privacy.

To ensure equitable development by ensuring primary outlook is secured to the street or within development sites.

⁹² Mr Glossop’s expert witness statement at paragraph 96

⁹³ Tract’s submission to the Panel (Document 89) at paragraph 34

⁹⁴ As above at paragraph 40

⁹⁵ Structure Plan at page 40

Design objectives and setback controls are commonly used to achieve these outcomes. There are many examples in the Melbourne Planning Scheme, including in Fishermans Bend (the Lorimer Precinct DDO67), the Macaulay Urban Renewal Area, Kensington and North Melbourne (DDO63) and City North (DDO61). It is unclear why the Amendment only proposes setback controls in DDO33 (Flagstaff). This may be because currently only DDO33 contains setback controls, whereas the existing DDO28, DDO32 and DDO29 relating to the remaining parts of the Structure Plan area do not.

The Panel agrees with Ms Hodyl that further guidance could be useful, however as her recommended setbacks were not actively supported by Council there was limited discussion on the appropriateness or otherwise of her recommended controls. The Moreland Apartment Design Code used in the built form testing is another useful guide, however again, the Panel does not consider that there has been proper consideration as to the appropriateness of these standards in the West Melbourne context.

In terms of amenity considerations, the Panel notes that the applicable Clause 54 and 55 (ResCode) and Clause 58 (Apartment developments) provisions are triggered under the SUZ6. These provisions include objectives and standards relating to internal amenity and amenity impacts on neighbouring development. However these provisions would not be triggered by commercial only development proposals that may be located next to dwellings.

In relation to building separation, the Structure Plan is seeking to achieve a mixed building typology. Building separation requirements will vary from site to site and will be dependent on whether the building is a podium tower development, or perimeter or other style of building. Therefore, a generic standard may not be appropriate.

On this basis the Panel is not convinced that further setback controls within the DDOs are warranted. However the additional Structure Plan objectives relating to amenity impacts, internal amenity and equitable access (quoted above) should be included in the DDOs to ensure proper consideration is given to these matters during the design and assessment of new development.

In relation to the setback controls in the Flagstaff Precinct, the controls propose to increase the current upper level setback from laneways from 2 metres to 6 metres. The Panel agrees with Mr Glossop that this is a significant increase, and that the justification for the increase is not overly clear. The Panel observed on its site visits that the existing context is one where development is generally sited on the laneway at lower levels, and upper level setbacks from laneways are not generally substantial. The Panel considers that the setback to laneways above a podium should be reduced to 4 metres (discretionary) as submitted by R & M Holdings.

The Panel accepts that a discretionary 6 metre upper level setback from other side and rear boundaries is appropriate in the Flagstaff Precinct to ensure appropriate building separation at upper levels, for equitable development and amenity reasons. This is because taller, more intensive built form is encouraged in the Flagstaff Precinct and with the larger lots there is more likely to be more podium tower developments. This is also consistent with the existing DDO33 controls.

The Panel considers that the term 'preferred minimum' setback should be used instead of 'minimum'. It agrees with R & M Holdings that the term minimum implies a starting point, and that only increases to the setback will be considered. The addition of 'preferred' makes

it clear that this is a discretionary control, and that setbacks can be reduced below the preferred minimum.

No issue was raised with the minimum 3 metre setback above the podium from the front title boundary. The Panel supports this control.

(iv) Conclusions and recommendations

The Panel concludes:

- The Panel generally supports the upper level setbacks proposed for Flagstaff, but considers that:
 - 'minimum' should be replaced with 'preferred minimum'
 - the setback to laneways should be 4 metres, rather than 6 metres.
- No further setback controls are required, but the design objectives from the Structure Plan should be included as Built Form Outcomes in all DDOs to ensure appropriate consideration of amenity and equitable development rights.

The Panel recommends:

Replace the Built Form Requirements relating to setbacks in the Design and Development Overlay Schedule 33 with the following, as shown in Appendix D3:

Preferred minimum setback above the podium:

- 3 metres from the front title boundary
- 4 metres from Laneways
- 6 metres to all other side and rear boundaries.

Add the following Built Form Outcomes to each of the Design and Development Overlay Schedules under the heading 'Building heights, street wall heights and amenity', as shown in Appendices D3 to D6:

- Development that appropriately considers the amenity impacts on neighbouring development and achieves a high standard of internal amenity within the development.
- Development that is set back from side and rear boundaries to ensure internal spaces receive adequate levels of daylight and privacy.
- Equitable development with primary outlook to the street or within development sites.

14.4 Floor to ceiling heights

(i) The controls

Each of the exhibited DDOs contain the following under the heading 'Floor to Ceiling Heights':

- Built Form Outcomes
 - Adequate floor-to-ceiling heights to ensure developments can be adapted to different uses.
 - Fine grain adaptable tenancies within the lower levels of the buildings.
- Built Form Requirements
 - Minimum floor to ceiling heights of:

- 4 metres for the ground floor
- 3.3 metres for all non-residential uses on other floors.

(ii) Evidence and submissions

Mr Glossop was critical of the proposed floor to ceiling heights, stating that:⁹⁶

I think this aspect of DDO33 misses an opportunity to ensure new buildings are suitable for a range of uses both now and in the future. It would seem more logical to me that minimum floor to ceiling heights be required within all lower building levels whether they are non-residential or not. This simple mechanism will allow building conversion in the future to suit whatever market is in demand.

His view was that to ensure adaptability and allow for future conversion of residential uses to non-residential uses, the preferred approach would be to allow larger 'as of right' floor areas for uses like office, shop and food and drink premises, allowing residential uses to be replaced with a non-residential use without a permit.

Mr Barnes supported the provision, but recommended that if the Panel supports discretionary (rather than mandatory) non-accommodation floor area requirements, there be a requirement for a minimum 3.3 floor to ceiling height in the lower levels of a building used for residential purposes, to allow the potential for conversion to commercial uses in the future.

Mr Barlow was critical of the Built Form Outcome relating to fine grain adaptable tenancies within the lower levels of buildings. He considered this overly restrictive and counter to the objective of attracting employment uses that may require larger floorplates. Council in its Part C controls removed this as a Built Form Outcome relating to floor to ceiling heights, but included it as a Built Form Requirement in relation to active street and laneway frontages.

(iii) Discussion

It is unclear to the Panel why the floor to ceiling heights as exhibited relate to only non-residential uses. The Panel agrees with Mr Glossop and Mr Barnes that the intent should be to allow for adaptable uses over time on lower levels of buildings. While the ground floor control would appear to allow for this outcome, only requiring non-residential uses on other floors to have a higher floor to ceiling height appears to be counter to the objective of allowing residential uses (which typically have a lower floor to ceiling height) to convert to commercial uses over time. Accordingly, the Panel recommends that the floor to ceiling height requirements relate to all land uses on lower levels, not just non-residential uses.

The Panel supports the deletion of the Built Form Requirement relating to fine grain adaptable tenancies within the lower levels of the buildings, agreeing with Mr Barlow that this is unnecessary. It does not support its relocation to a Built Form Requirement in relation to active street and laneway frontages. It is not clear how fine grained adaptable tenancies, as opposed to active uses, contribute to active streets and laneways.

⁹⁶ Mr Glossop's expert witness statement at paragraph 98

(iv) Conclusions and recommendations

The Panel concludes:

- The Built Form Outcomes and Requirements relating to floor to ceiling heights on lower levels should relate to all land uses, not just non-residential uses.
- The Panel does not support the requirement relating to fine grain adaptable tenancies, either as a Built Form Outcome or a Built Form Requirement. It should be deleted.

The Panel recommends:

Amend the Built Form Outcomes and Built Form Requirements relating to floor to ceiling heights in each of the Design and Development Overlay Schedules as shown in Appendices D3 to D6, to read:

Adaptable buildings

Built Form Outcomes

Developments with lower levels that can be adapted from residential uses to employment uses.

Built Form Requirements

Minimum floor-to-ceiling heights of:

- 4 metres for the ground floor.
- 3.3 metres for other floors up to the height of the street wall.

Delete the Built Form Requirement in each of the Design and Development Overlay Schedules relating to fine grain adaptable tenancies, as shown in Appendices D3 to D6.

14.5 Street wall heights and other built form controls**(i) The controls**

The preferred street wall heights are set out in Table 8.

Table 8 Preferred street wall heights

Precinct	Preferred maximum street wall height
Flagstaff (DDO33)	3 to 10 storeys
Spencer (DDO72)	<ul style="list-style-type: none"> - 10 storeys along Dudley Street - 3 to 8 storeys fronting Spencer and King Streets - 4 storeys along Roden Street - 3 to 6 storeys in all other areas
Adderley (DDO29)	N/A
Station (DDO28)	4 to 8 storeys

(ii) Evidence and submissions

Ms Hodyl recommended that more guidance be given on preferred street wall heights, with lower street walls encouraged on podium and tower developments and higher street walls encouraged on mid-rise developments. Council accepted this recommendation, and included it in its Part B and Part C controls. The Panel also supports this recommendation.

Gray Puksand (on behalf of GHK No. 2 Pty Ltd) raised concerns about how the street wall height controls would be interpreted and applied where a heritage building is retained. The GHK No. 2 site at 363 King Street contains a 3 storey heritage building. The controls in DDO33 (Flagstaff) seek a street wall height of between 3 and 10 storeys. Gray Puksand queried whether this would be interpreted to require a podium between 3 and 10 storeys immediately behind the retained heritage façade, or whether the full 16 storey preferred height could be constructed behind the heritage façade.

Mr Barlow raised concerns about the interpretation for owners and decision makers about the strategic intent of the following Built Form Outcomes listed under 'Building/Street Wall Height' (noting that Built Form Outcomes are mandatory):

- Building heights, including street wall heights, are variable to ensure a positive contribution to the specific character of the street
- Larger sites are broken up into a series of smaller building forms to ensure they relate and contribute positively to their context and their historic urban grain
- Development does not unreasonably reduce solar access to adjacent solar panels.

Council responded to these concerns in its Part C controls by:

- modifying the provision to require 'buildings within larger sites', rather than 'larger sites', to be broken up into a series of smaller forms with variable heights
- deleting the outcome relating to impact on solar panels, and replacing it with a decision guideline requiring the responsible authority to consider the impact of overshadowing on existing rooftop solar panels.

(iii) Discussion

The Built Form Outcome seeking variation in street wall heights is somewhat unusual. Usually, consistency and responsiveness to an existing or a preferred built form outcome is sought within DDO controls. However West Melbourne is different, in that a variety of building heights, including street wall heights, and a variety in building typologies is actively sought as part of the character of West Melbourne. The Panel considers that the proposed Built Form Outcomes signal to owners and decision makers that a range of outcomes can be acceptable, and that a consistency of street walls or overall building heights is not what the DDOs (or the Structure Plan) are trying to achieve.

The Panel notes Gray Puksand's submissions, but does not consider that the controls need to be amended. Any proposal to step the built form up behind a retained heritage façade (or part of the heritage building) would be assessed on its merits, but the Panel does not consider that the controls would be interpreted to require a further podium element to be included between a retained heritage façade and a taller tower element behind.

The Panel supports the changes made in the Part C controls in response to Mr Barlow's concerns about other Built Form Outcomes, and agrees that the intent should not be to break up large sites, but rather to encourage variety and interest in built form within larger sites.

(iv) Conclusions

The Panel concludes:

- The additional provision in DDO33 (Flagstaff) and DDO72 (Spencer) that lower street walls are encouraged on podium and tower developments and higher street

walls are encouraged on perimeter-block form developments, as shown in the Part C controls are appropriate.

- The changes made to the Built Form Outcomes in the Part C controls to address concerns about breaking up large sites are appropriate.

14.6 Active street and laneway frontages

(i) The controls

Each DDO contains a series of Built Form Outcomes and Requirements directed at creating a hierarchy of main streets, streets and laneways within each precinct, and ensuring active frontages. Of note, the Outcomes in DDO72 (Spencer) seek to reinforce the role of Spencer Street as the local high street of West Melbourne.

(ii) Discussion

The Panel generally supports the proposed Built Form Outcomes and Requirements, in particular those that seek to minimise the impacts of building services and carpark entries on the public realm. While it supports active frontages at ground floor levels, this may not be appropriate in all situations, or on all frontages. For example, where a building has frontages to, say, a street and a laneway which is used for access and services, active uses should be directed to the street in preference to the laneway. This better reinforces the hierarchy of streets and laneways sought. The Panel has made some drafting changes to the Built Form Outcomes and Requirements in Appendices D3 to D6 to better reflect what it understands to be Council's intent.

(iii) Conclusion and recommendation

The Panel concludes:

- With some minor drafting changes to clarify and improve the operation of the Built Form Outcomes and Built Form Requirements relating to Active Streets and Laneways, the provisions are appropriate.

The Panel recommends:

Amend the Built Form Outcomes and Built Form Requirements in each of the Design and Development Overlay Schedules relating to Active Streets and Laneways as shown in Appendices D3 to D6, to clarify and improve their operation.

14.7 Laneways, pedestrian and cycling connections

(i) The controls

The Built Form Outcomes and Requirements relating to laneways, pedestrian and cycling connections seek to provide for new, direct and convenient connections where appropriate, including through large sites.

The Built Form Requirements include requiring:

- new pedestrian connections where the average length of a street block exceeds 100 metres and more frequently within 200 metres of a train station
- street connections to be located centrally within the block and where possible less than 70 metres from the next connection

- new laneways, pedestrian and cycling connections to adhere to certain standards including providing a line of sight from one end to the other, being at least 6 metres wide, publicly accessible, open to the sky and lined with active frontages.

(ii) Evidence and submissions

Mr Barnes considered that these requirements reflect good urban design principles that are derived from the Built Form Strategy. He supported the requirements being discretionary. No other expert made specific reference to these requirements.

The PPP clients were concerned with the requirements being overly prescriptive, including requirements that new connections provide a line of sight from one end of the connection to the other. They submitted that this would impact on some sites over others, depending on a site's location within a street block or when it was developed in relation to surrounding land.

(iii) Discussion

The Panel agrees that the provision of new pedestrian and cycling connections and new laneways through large sites where appropriate reflect good urban design principles. They add to the accessibility and convenience of navigating a precinct, particularly where greater reliance on sustainable transport is encouraged. While the Built Form Requirements are fairly detailed, these are discretionary requirements, and are only to be provided where appropriate. On this basis the Panel supports these controls and does not recommend any changes.

(iv) Conclusion

The Panel concludes:

- The Built Form Outcomes and associated Built Form Requirements relating to laneways, pedestrian and cycling connections are appropriate.

14.8 Open space

(i) The Structure Plan

The Structure Plan notes that the 30m wide road reservations for most streets within the West Melbourne area provide opportunities to create linear open space linkages through West Melbourne. The masterplan at pages 16 and 17 identifies a linear park along the length of Hawke Street, and new open space along Adderley and Batman Streets, and in Stanley and Rosslyn Streets. The Structure Plan states:⁹⁷

Interfaces with open spaces

The interfaces of new development with existing and proposed open space is important in West Melbourne to ensure that development limits the impact on the amenity and outlook of these spaces, particularly Flagstaff Gardens given the scale of development proposed in the Flagstaff area.

⁹⁷ Structure Plan at page 41

New buildings fronting existing or proposed open spaces should offer positive definition to the space and offer active interfaces to help ensure a safe and attractive public realm.

(ii) The controls

Clause 21.16-6 includes the following:

Open Space

- Support the creation of linear open spaces through West Melbourne to enhance pedestrian connectivity with surrounding areas.
- Improve the function, usability, safety and access of existing open spaces.
- Deliver new open spaces in Flagstaff, Spencer and Adderley to meet the needs of the growing community.
- Create high quality green streets.

The DDOs include specific Built Form Outcomes and Requirements relating to existing and proposed open spaces in the relevant precinct, including the Flagstaff Gardens, open space around North Melbourne (future West Melbourne) Station, Eades Park, and the proposed Hawke Street linear park and the potential open space along Batman Street.

All DDOs include the following application requirement:

- Analysis of the relationship between the proposal and adjacent buildings (including likely adjacent development envelopes) and open space in order to maximise the amenity of the public and private realm.

and the following decision guideline:

- Whether the development enables sunlight to reach into the parks, streets and lower levels of buildings.

(iii) Submissions

Submissions supported the rezoning of existing open space areas to Public Park and Recreation Zone, acknowledging that this would protect the open space going forward. Cristopher Lee (Submission 2) submitted that mandatory height controls should apply to development on the north of Batman Street to prevent overshadowing of the green space envisaged by the Structure Plan along Batman Street. Some submissions (for example Ms Graham) called for private or communal open space in developments to be landscaped and treed to provide passive recreation opportunities and to reduce urban heat island effects. North West Patch Inc Community Gardens indicated in its submission a willingness to “*open a conversation*” with Council about allocating land in West Melbourne for a community garden.

The submission from R & M Holdings Pty Ltd (Submission 23) supported the provision of more open space in West Melbourne, and the greening of streets, but was concerned that the language in the Structure Plan may impact on the development of sites on Adderley and Dudley Streets. It submitted that the Structure Plan should acknowledge the development potential of those sites, and ensure that restrictions on overshadowing of open space in Adderley Street do not compromise the development potential of the sites fronting Adderley Street.

(iv) Discussion

West Melbourne has some significant open space assets (including Flagstaff Gardens) which are locally and regionally important, and the Panel is satisfied that the proposed controls appropriately recognise and protect those assets. The Panel supports the Structure Plan's vision for linear open space along Hawke and other streets, and encourages Council to implement these outcomes as they will contribute significantly to the character outcomes sought for West Melbourne, and to the amenity of the area for residents, workers and visitors. While it acknowledges submissions both for and against restricting heights to prevent overshadowing of open space along green streets, no evidence was presented to the Panel suggesting that the proposed heights are inappropriate in terms of overshadowing. The DDOs contain application requirements and decision guidelines to ensure that overshadowing is properly considered through the permit application process.

(v) Conclusion

The Panel concludes:

- The Amendment appropriately deals with open space.

14.9 Transitional provisions**(i) The conditions of authorisation**

The conditions of authorisation for the Amendment include:

Condition 3 – Other Drafting and Procedural Matters

- (g) The council should advise of the need for any transitional provisions within the controls for amendments to existing planning approvals.

(ii) The controls

The DDOs include the following transitional provision in Clause 2.0, in relation to the floor area ratio requirements:

A permit cannot be granted or amended to vary this requirement, unless the amendment does not increase the extent of non-compliance.

(iii) Evidence and submissions

Some submitters, including 355 Spencer Street, called for broader transitional provisions to be included. 355 Spencer Street submitted:⁹⁸

If Amendment C309 is approved, it must be approved with the inclusion of transitional provisions. Those transitional provisions should seek to protect:

- Those sites which already benefit from an existing planning permit for development.
- Those properties which may be the subject of an existing planning permit application.

⁹⁸ 355 Spencer Street submission at paragraph 42

- Those properties which may be the subject of further development in the future and which are non-compliant with any aspects of the built form controls which are implemented on a mandatory basis.
- Any amendments proposed to existing permits.

UAG West Melbourne submitted that the new controls should not apply to an application lodged before the Amendment is approved, or an application to amend a permit if the original permit application was lodged before the Amendment is approved.

Council's Part A submission stated:

In response to Condition 3(g) [of authorisation] Council considered the need to include transitional provisions in the DDO and SUZ controls and decided that it was not necessary to do so as the market will have ample time between development of the Structure Plan and exhibition and approval of the Amendment to adjust.

The Panel asked DELWP whether it considered that transitional provisions were appropriate. DELWP responded that it often asks a planning authority to turn its mind to whether transitional provisions should be included when mandatory provisions are being introduced, and that it will further consider the need for transitional provisions when the Amendment is submitted for approval.

UAG also submitted that transitional provisions were required to deal with the situation where a landowner has a permit for buildings and works for a use that does not require permission under the current controls, but will require use permission under the new controls. Under the current MUZ, dwelling is as of right. Accordingly, an existing permit to construct dwellings does not confer a right to use the land for dwellings. The permit would only confer accrued rights for the buildings and works. Once the Amendment takes effect, development of 10 or more dwellings will become a section 2 use. Unless transitional provisions are included, landowners who hold a buildings and works permit to construct 10 or more dwellings will need to apply for a separate use permit. The affordable housing requirements and the minimum non-accommodation floor area requirements would then apply.

Council agreed that transitional provisions should be included in the SUZ6 to deal with this issue. It included the following provision in the Part B (and Part C) versions:

The first condition to the use Dwelling and Clause 2.0 to this Schedule do not apply to the use of land for Dwelling if that use is in accordance with a planning permit for the construction of a building for a purpose comprising Dwelling granted before the approval date of Amendment C309.

The PPP clients argued that cl 2.0 of the DDO (that allows existing permits to be amended provided the amendment does not increase the extent of non-compliance) is contrary to law. They submitted that the Act sets out the scope of powers to amend a permit, and that the proviso to the clause (provided that the amendment does not increase the extent of non-compliance) unlawfully seeks to curtail those powers.

In response, Council submitted that it was not aware of the provision having been tested by a Court or Tribunal, although similarly worded provisions have been accepted in other cases (by DELWP in the Fishermans Bend and central city built form controls amendments, and by

the Yarra C220 panel considering the Johnson Street Local Area Plan controls). Council submitted:⁹⁹

It is a common sense provision. Without it, as far as we are aware, there would be nothing to stop a person from adopting a deliberate strategy to obtain a permit that complies with the mandatory provisions, and then seeking to amend that permit to exceed the mandatory controls (arguing that they do not apply to a permit amendment). That outcome would be very unfortunate. The proposed words would prevent that mischief.

(iv) Discussion

The Panel agrees that a transitional provision is required in the SUZ6 to deal with the situation where a buildings and works permit has issued in connection with a use that was previously as of right, and will become permit required. However it considers that the provision could be more simply and clearly worded than the provision included in Council's Part B and C controls (which was based on wording provided by UAG). The Panel has included alternative wording in its preferred version of the SUZ6 in Appendix D2.

In relation to the DDO provision allowing an existing permit that exceeds the mandatory floor area ratio cap to be amended provided the amendment does not increase the extent of non-compliance, the Panel notes that there is legislation (section 28(2)(e) of the *Interpretation of Legislation Act 1984*) and case law (*Alkero Development Pty Ltd v Stonnington CC (Red Dot)* [2018] VCAT 1120) that suggests the permit holder may have accrued rights that would allow the permit to be amended without transitional provisions, provided the extent of non-compliance was not increased. Nevertheless, it agrees with Council that a provision which puts this beyond doubt is helpful and useful. It also accepts Council's argument that without the proviso, there is a risk that a landowner could get a permit that meets the floor area ratios, and then immediately seek to amend it to exceed those ratios.

The Panel was not persuaded that transitional provisions should be included for current applications. The development of the Structure Plan has been underway for some years, and was subject to extensive community consultation. The Amendment reflects the Structure Plan, and potentially affected parties have had considerable notice of the likely changes. No examples were brought to the Panel's attention of situations where applicants had spent significant amounts of time or money on live applications that meet the current controls, but that could not proceed when the Amendment comes into force. The Panel acknowledges that some of the live applications brought to its attention would require minor amendments to comply with the new controls, but this does not justify broadly applicable transitional provisions.

⁹⁹ Council Part C submission at paragraph 111

(v) Conclusions and recommendation

The Panel concludes:

- It supports the outcome sought to be achieved by the transitional provision in the Part B and C versions of the SUZ6, but considers that the provision should be reworded for clarity.
- It supports the transitional provision in the DDOs allowing an existing permit to be amended provided it does not increase the extent of non-compliance with the mandatory floor area ratios.

The Panel recommends:

Replace the transitional provision in Clause 2.0 of the Special Use Zone Schedule 6 with the following, as shown in Appendix D2:

These requirements do not apply to the use of land in accordance with a planning permit for buildings and works granted before the approval date of Amendment C309.

PART C – PRECINCTS

The following precinct chapters deal with precinct-specific issues. Many of the submissions from landowners within the precincts included general matters, such as the suitability of the floor area ratios, the minimum non-accommodation floor area requirements and the affordable housing requirements. Others raised issues about the built form controls for the precincts. These matters are dealt with in Part B of this report.

15 Flagstaff Precinct

15.1 Introduction

(i) The vision

The vision for the Flagstaff Precinct is set out on page 96 of the Structure Plan:

Flagstaff will be a busy, diverse area of mostly residential and commercial buildings that is well connected to the iconic Flagstaff Gardens. The area will be distinct from the central city, characterised by large historic brick buildings, contemporary developments and warehouse restorations.

Local streets will be home to small parks, recreation spaces and broad canopy trees, while a variety of shops and services will be found on Spencer, King and La Trobe Streets. A sense of proximity to Flagstaff Gardens permeates the area and streets are sheltered and green at pedestrian level due to the avenues of canopy trees.

(ii) The current context

The Flagstaff Precinct is bound by Dudley, Adderley, La Trobe and King Streets. It is directly adjacent to the Flagstaff Gardens and the central city.

The Structure Plan describes the current character and features of the Flagstaff Precinct on page 95. Of note:

- it has a more intensive built form than other parts of West Melbourne
- it contains a significant proportion of larger sites (between 1,500 and 3,000sqm)
- it includes the Melbourne Assessment Prison, the Judy Lazarus Transition Centre (the justice facilities) and the Australian Red Cross headquarters
- it includes several heritage buildings, including the Sands & McDougall buildings on Spencer Street, St James' Cathedral on King Street and several other buildings along King Street fronting the Flagstaff Gardens
- Spencer, King and Dudley Streets are heavily trafficked, making access to Flagstaff Gardens difficult.



Figure 17 Sands & McDougall buildings



St James' Cathedral

Source: Structure Plan

The Flagstaff Precinct currently has a discretionary height limit of 40 metres (which equates to between 10 and 12 storeys). Thirteen buildings have been identified as special character buildings.

Flagstaff is the most active of the West Melbourne precincts in terms of permit and construction activity. It (along with the Spencer Precinct) has also generated the majority of the VCAT determinations relating to West Melbourne since 2006.¹⁰⁰ Data from Council's Development Activity Monitor (Document 107) shows that recently approved developments are between:

- 5 and 15 storeys above the current discretionary heights
- 1 and 11 storeys above the proposed heights.

This excludes the development at 420 Spencer Street, which is 26 storeys above the current height limit (22 storeys above the proposed height limit). The Structure Plan describes 420 Spencer Street as an 'anomaly'.

15.2 The issues

The issues are:

- the appropriate location of the northern precinct boundary
- protection of the justice facilities
- site specific issues.

Note that the Panel has recommended floor area uplift be available for commercial floorspace in Flagstaff that exceeds the minimum requirements under the SUZ6. This is dealt with in Chapter 11.4.

15.3 Precinct boundary

(i) Evidence and submissions

Mr Barlow provided an extract from the Panel report for Amendment C20 (in Figure 18 below), which shows the precincts in West Melbourne at the time (2001). Mr Barlow noted that the northern boundary of the CBD Fringe Precinct (which largely reflects the Flagstaff Precinct) was at Rosslyn Street, not Dudley Street. In oral evidence and in response to questions from the Panel, he considered that the northern boundary of the Flagstaff Precinct should be realigned from Dudley Street to Rosslyn Street.

Stadiums submitted that the Festival Hall site, given its location and characteristics, should be included in the Flagstaff Precinct rather than the Spencer Precinct, and zoned Capital City Zone and subject to DDO10 in the Melbourne Planning Scheme, rather than the proposed SUZ6 and DDO72. It submitted that it is more appropriate to be included in the Flagstaff Precinct given the lack of function or character tying it to the Spencer Precinct and its remoteness to the proposed Spencer Street activity centre. It submitted that the site shared characteristics of the more intensive built form in the Flagstaff Precinct.

¹⁰⁰ Shown by various maps in the map book provided by Council at the Hearing (Document 41)

Council did not support the inclusion of the Festival Hall site in the Flagstaff Precinct given the relative distance from public transport and the lower built form interface with the Adderley Precinct on the north side of Rosslyn Street. Council also did not support the special character building bonus floor area mechanism being applied to the site, given the existing planning framework for heritage controls (this is discussed in more detail in Chapter 11).

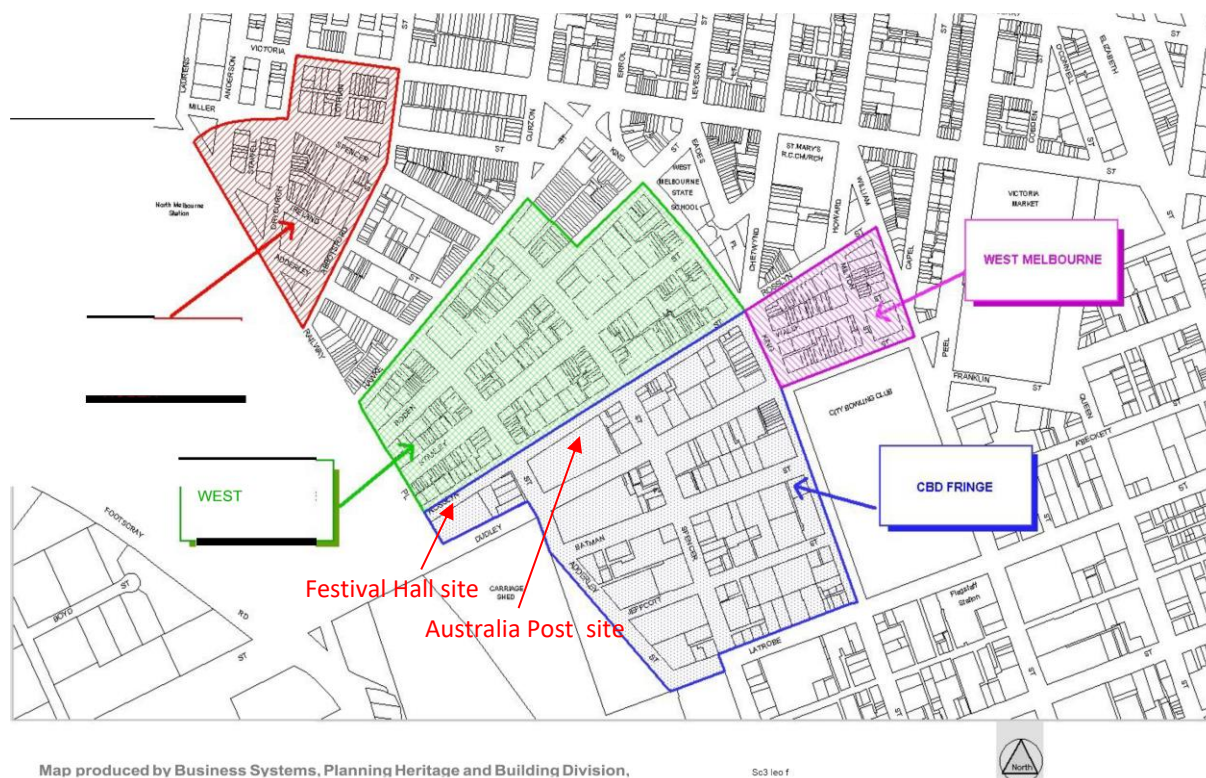


Figure 18 Precinct boundaries from the C20 panel report

Source: Mr Barlow's expert witness statement, annotated by the Panel

(ii) Discussion

The precinct boundaries within the Structure Plan area have been largely aligned along major roads, with Dudley Street forming the boundary between the Spencer and Flagstaff Precincts. The Spencer Precinct includes a 'tongue' of land between Spencer, King and Rosslyn Streets and Wren Lane that includes the Festival Hall site and the nearby former Australia Post site. In the Panel's view, these large strategic sites share features and development opportunities that are more akin to the Flagstaff Precinct than the Spencer Precinct.

The Panel recognises the distinguishing features of the Festival Hall site, including its large size and building and state heritage significance. However it does not support zoning the site Capital City Zone. The site is currently separated from land within the Capital City Zone and it has not been identified in planning policy as having a separate and distinct capital city or national function. However, as a consequence of the realignment of the precinct boundary, DDO33 (rather than DDO72) will apply to the land, and the site will have a preferred height limit of 16 storeys and a floor area ratio of 6:1. The Panel notes that Ms Hodyl was comfortable with a floor area ratio of in the order of 6:1 (albeit on the basis of the retention of a live music function on the site).

It is unclear how the Festival Hall site will be redeveloped, the extent of building fabric (if any) that will be required to be retained given its Heritage Victoria registration, and its future use(s). However, as a significant site, with a large site area, on a major arterial road and interface to the railway line, the Panel considers that the site is capable of accommodating a relatively large building. The Panel agrees with Council that the interface with the lower scale Adderley Precinct is a key consideration, however considers that this interface can be respectfully responded to in a careful design.

The Minister for Planning has issued a permit for the redevelopment of the Australia Post site for a mixed use development comprising dwellings, serviced apartments, a supermarket, retail premises and open space within a series of buildings. The permit was later amended (on 28 June 2019) to include a childcare centre, gymnasium and bottle shop, with consequential changes to parking, and minor changes to the built form. The development is under construction.

The three buildings on the Rosslyn Street frontage are 8, 9 and 13 storeys respectively – significantly in excess of the 6 storey height limit proposed for Rosslyn Street under the DDO72 (Spencer Precinct). The two buildings on the Dudley Street frontage are 13 storeys – three storeys over the 10 storey height limit proposed under the DDO72, and three storeys under the preferred height limit of 16 storeys that is proposed in the Flagstaff Precinct (DDO33). The approved development has a floor area ratio of 6.2:1, which significantly exceeds the proposed floor area ratio for the Spencer Precinct (4:1), and is aligned with the proposed floor area ratio of the Flagstaff Precinct (6:1).

It is unclear at this stage how the Festival Hall site will be redeveloped. However, as a significant site, with a large site area, on a major arterial road and interface to the railway line, and with few sensitive interfaces other than the Rosslyn Street interface, the Panel considers that the site could accommodate a relatively large building.

On this basis the Panel supports a realignment of the precinct boundaries, to include the Festival Hall site and the former Australia Post site within the Flagstaff Precinct rather than Spencer Precinct. This land would then be subject to a mandatory floor area ratio of 6:1 and a discretionary height of 16 storeys, pursuant to the DDO33.

The Panel was less persuaded that the properties in the block between Rosslyn, Spencer, King and Dudley Streets should form part of the Flagstaff Precinct rather than the Spencer Precinct, as suggested by Mr Barlow. Sites within this block are not as large as the Festival Hall and Australia Post sites, and the properties fronting King Street interface with the lower scale Historic Hilltop Precinct. The Panel was not persuaded that the proposed heights in this block (of 6 to 10 storeys, with higher heights fronting major roads) and the proposed floor area ratio of 4:1 were inappropriate.

The precinct boundary between the Flagstaff and Spencer Precincts should therefore follow Rosslyn Street (rather than Dudley Street) between Wren Lane and Spencer Street, then Spencer Street to Dudley Street, and along Dudley Street to King Street.

(iii) Conclusions and recommendation

The Panel concludes:

- The Flagstaff Precinct should be extended to incorporate the land between Wren Lane, Dudley Street, Rosslyn Street and Spencer Street, including the Festival Hall site and the Australia Post site.

The Panel recommends:

Amend Figure 1 of Special Use Zone Schedule 6 and the map in Clause 21.16-6 to realign the boundary of the Flagstaff Precinct to include the land between Wren Lane, Dudley Street, Rosslyn Street and Spencer Street that is currently proposed to be part of the Spencer Precinct.

15.4 Protection of the justice facilities

(i) Submissions

The Department of Justice and Community Safety was generally supportive of the Amendment, but requested several changes to ensure that the new controls do not impact on the operation of the Melbourne Assessment Prison and the Judy Lazarus Transition Centre:

- rezoning the Judy Lazarus Transition Centre (50 Adderley Street, West Melbourne) to Public Use Zone Schedule 3, rather than SUZ6 as exhibited
- strengthening the wording of the Built Form Requirements in DDO33 seeking to consider lines of sight, privacy and security issues associated with the justice facilities
- including an additional decision guideline in DDO33 requiring the responsible authority to consider the views of the Department of Justice and Community Safety in relation to development in proximity to the facilities.

The Department highlighted concerns about the proposed parking rates under the Parking Overlay Schedule 14, noting that both facilities require large numbers of staff 24 hours per day. It also noted that the Structure Plan proposes to make changes to land use to the west of the Melbourne Assessment Prison, including road closures and additional open space that could potentially impact on prisoner transportation, security and operational requirements. It indicated that it would like to continue to work with Council to address any potential parking issues, and requested to be included as a key stakeholder for any proposed changes to the road network or land use surrounding the justice facilities.

Council agreed to rezone the Judy Lazarus Transition Centre to Public Use Zone Schedule 3, and to make the requested changes to the Built Form Requirement in DDO33. The changes to DDO33 were incorporated into Council's Part B and Part C controls.

(ii) Discussion

The Panel supports the rezoning of the Judy Lazarus Transition Centre to Public Use Zone Schedule 3, which brings it into alignment with the current zoning for the Melbourne Assessment Prison. The Panel also supports Council's proposed changes to the Built Form Requirement in DDO33 relating to lines of sight, privacy and security issues associated with the justice facilities, which were incorporated into Council's Part B and Part C controls. It considers that the decision guideline sought by the Department should also be included, to support the Built Form Requirement.

The Panel notes the Department's submissions in relation to the high numbers of staff required to operate the justice facilities, and that the parking rates proposed in the Parking Overlay Schedule 14 will not be appropriate. The Amendment as exhibited does not proposed to apply the Parking Overlay Schedule 14 to the Melbourne Assessment Prison. It

does, however, propose to apply it to the Judy Lazarus Transition Centre. The Panel does not consider this to be appropriate.

The Panel notes the Department's submissions about being consulted on road closures and land uses changes that might impact on the justice facilities. It agrees that any impacts will need to be carefully managed. This can occur through the normal statutory notification processes for permit applications and road closures.

(iii) Conclusions and recommendations

The Panel concludes:

- The Judy Lazarus Transition Centre should be rezoned to Public Use Zone Schedule 3, to reflect the zoning of the Melbourne Assessment Prison.
- It supports the changes in Council's Part B and Part C controls to the Built Form Requirement in DDO33 relating to the justice facilities, to better reflect the need for proposed development to consider lines of sight, privacy and security issues.
- A decision guideline should be added to DDO33 requiring the responsible authority to consider the views of the Department of Justice and Community Safety for development in proximity to the justice facilities.
- The Parking Overlay Schedule 14 should not be applied to the Judy Lazarus Transition Centre.

The Panel recommends:

Rezone 50 Adderley Street, West Melbourne (the Judy Lazarus Transition Centre) to Public Use Zone Schedule 3.

Insert the following decision guideline into Design and Development Overlay Schedule 33:

The views of the Department of Justice and Community Safety in relation to development in proximity to the Melbourne Assessment Prison and the Judy Lazarus Transition Centre.

Delete the Parking Overlay Schedule 14 from 50 Adderley Street, West Melbourne (the Judy Lazarus Transition Centre).

15.5 Site specific issues

(i) 484-494 La Trobe Street

This site is owned by Spacious Property Development Group Pty Ltd. Tract made a submission to the Amendment on behalf of Spacious Property Development Group, pointing out that the special character building on the site has been demolished. Council agreed to remove this building from the list of special character buildings as part of its post-exhibition changes. The Panel supports this change.

(ii) 500 La Trobe Street

This site is owned by Holder East Pty Ltd. Holder East is in the pre-lodgement stage for a commercial building of around 16 storeys and a floor area ratio of around 13:1 – significantly higher than the mandatory 6:1 proposed.

Urbis made a submission to the Amendment on behalf of Holder East (Submission 45), and Holder East was represented by PPP at the Hearing.

Holder East's submission to the Amendment raised concerns that the controls do not support commercial only development, and submitted that the floor area ratio should be abandoned, or uplift should be available for the delivery of commercial floorspace. These issues, along with those raised in the PPP submission to the Hearing (Document 84), relate largely to overarching issues and are dealt with in Part B of this report.

Holder East further submitted that the SUZ6 should be revised to make commercial office and educational use as of right along key routes including La Trobe Street, given its direct interface with the central city. The Panel agrees that the La Trobe street interface with the central city is less sensitive, but is not persuaded that the 6:1 floor area ratio or preferred height of 16 storeys are inappropriate. Refer to Chapters 8.6 and 14.2 for more detail.

The Panel supports Council's removal of the cap on as of right office floorspace from the SUZ6 table of uses. It also supports Council's position that education uses can generate off-site amenity impacts, and should be subject to a permit trigger to allow those impacts to be considered and managed through permit conditions. Refer to Chapter 7 for more detail.

(iii) 363 King Street

This site is located opposite Flagstaff Gardens, approximately 250 metres from Flagstaff Station. The site is just over 1,000sqm, and contains NCO House, a 3 storey brick warehouse/office constructed in the 1920s and subject to a Heritage Overlay.

Gray Puksand made submissions on behalf of the owner of the site (Submission 19), indicating that it was currently preparing to lodge an application to redevelop the site, seeking to partially retain the existing 3 storey heritage building and construct a mid-rise building above, likely to be used for commercial offices.

Gray Puksand broadly supported the diversity of built form outcomes sought by the proposed height and setback controls, and the discretionary nature of those controls, but were concerned that the floor area ratio was too restrictive and would result in an underutilisation of this well located site which is close to the central city and Flagstaff Station. It was concerned that the setbacks would limit the size of the floorplate achievable on the site, and submitted that a 10 storey sheer wall to most boundaries on the site *"is unlikely to be supported given the surrounding uses and the equitable development rights of adjoining buildings"*, further impacting on the achievable floorplate and development potential of the site. It submitted:¹⁰¹

By way of practical application, on our client's site, the mandatory FAR of 6:1 would enable a circa 6 storey building, or a circa 12 storey building, with 50% of the site undevelopable. This does not provide a feasible development opportunity for the site or allow the site to be developed in accordance with the vision for the Flagstaff Precinct.

The Panel considers that the 6:1 floor area ratio proposed for the Flagstaff Precinct is appropriate, for the reasons set out in Chapter 8.6. While it acknowledges Gray Puksand's

¹⁰¹ Submission 19 to the Amendment, prepared by Gray Puksand on behalf of the owners of 363 King Street

submission that the 16 storey height limit may be difficult to achieve on this site within the floor area ratio, the Panel has recommended uplift be available for the retention of heritage buildings and for commercial floorspace that exceeds the minimum requirements (refer to Chapter 11.4). This would allow some flexibility to exceed the 6:1 floor area ratio on this site. Further, as noted in Chapter 8.5, some lower built form in the Flagstaff Precinct is not, in itself, a bad thing. The Structure Plan envisages a mix of building typologies and building heights across the West Melbourne area, including in the Flagstaff Precinct, which will help to distinguish it as its own place, separate from the central city.

The Panel acknowledges Gray Puksand's concerns about the setbacks, but notes that the setback controls only apply to upper levels (above the podium), and are discretionary. DDO33 contemplates street wall heights of up to 10 storeys in Flagstaff, which is generous. It also encourages development that delivers appropriate street enclosure having regard to the width of the street (King Street is wide, and can accommodate higher street walls).

Ultimately, the Panel was not persuaded that the proposed floor area ratio and built form controls would be inappropriate for this site, or would render it unfeasible to develop.

(iv) 45-55 Dudley Street

UAG West Melbourne Pty Ltd owns the site, which is currently occupied by the Flagstaff City Inn. In December 2018, a permit issued at the direction of VCAT for a 25 storey mixed-use building consisting of 144 residential apartments (a mix of 1, 2 and 3 bedrooms), a 212 room residential hotel, and 990sqm of office. The approved development has a floor area ratio of 12.7:1 and provides close to 6 per cent non-accommodation floorspace.

SJB Planning made a submission to the Amendment on behalf of UAG (Submission 15), and UAG were represented by Best Hooper at the Hearing (Document 60). UAG's submission to the Amendment submitted that the floor area ratio of 6:1 is "*unreasonable*", the preferred maximum building height of 16 storeys is "*arbitrary*", and that both fail to "*appropriately take into account the context of our client's land and the wider Flagstaff Precinct, the opportunity for urban consolidation and the opportunity for architectural excellence to be achieved with taller and more intensive built form*".

UAG's submission to the Hearing stated that the existing and approved built form south of Batman Street "*has been altered so as to make the aspirations of built form for that area largely unachievable*". It submitted that the VCAT approval of the permit for a 25 storey mixed-use building on the site was:¹⁰²

... yet another example where the Council has been unable to satisfy an independent assessor that it should ignore the existing built form context in favour of a mythical urban morphology or establish a net community benefit by applying parameters which are effectively a density control without establishing any inadequacy in available infrastructure, undue imposition of public infrastructure or any identified unacceptable amenity impact.

The Panel acknowledges that this site, like many parts of the Flagstaff Precinct, is well located to the central city and public transport services, and that recent construction and

¹⁰² UAG written submission (Document 60) at paragraph 1.3

approvals in the Precinct have started to alter the built form such that a character somewhat closer to that of the central city is starting to emerge. It acknowledges that the site is located on a heavily trafficked main road (Dudley Street), and appears capable of accommodating more intensive built form.

However, for the reasons discussed elsewhere in this report, it is not persuaded that the floor area ratio of 6:1 is unjustified, or is too low. Nor is it persuaded that the 16 storey height limit is inappropriate. The Panel accepts the fundamental proposition that West Melbourne, including the Flagstaff Precinct, should maintain a separate and distinct identity to that of the central city. One way of achieving that is to apply a lower floor area ratio than those that apply in the central city, and to apply height limits that restrict built form in the precinct to a lower scale than the central city. While more intensive development that is of good design quality and architectural excellence would not necessarily result in compromises to amenity of surrounding properties and the neighbourhood more broadly, the Panel is satisfied that the combination of the floor area ratio and built form controls in the Flagstaff Precinct will deliver substantial benefits, including those outlined by Ms Hodyl and Mr McLeod discussed in Chapter 8.

Further, the Panel's recommendation that floor area uplift be available for commercial floorspace above the minimum requirements provides some flexibility to allow more intensive built form on this site.

(v) 328-348 Spencer Street

This site is toward the southern end of the precinct, close to La Trobe Street and the central city. It is currently occupied by a 3-4 storey commercial building used to store electronic data, shown in Figure 19 below.

G2 Urban Planning submitted on behalf of 328-348 Spencer Street that the current building on the site has a floor area ratio of 3.5:1 which it submitted was a gross under-development of the site given its location. It submitted that under the proposed controls, only 2-3 additional storeys would be able to be achieved with a similar floorplate, which is significantly less than the 16 storeys allowed under the proposed height limits. It submitted that the controls effectively discourage redevelopment of the site.



Figure 19 Current development on 328-348 Spencer Street

Source: G2 Urban Planning submission

The Panel's response to these submissions is consistent with its response to Gray Puksand's submissions in relation to 363 King Street and UAG's submissions in relation to 45-55 Dudley Street, discussed in Chapters 15.5(iii) and (iv) above.

(vi) 28 Batman Street (Haileybury)

Haileybury made submissions that focussed on the use of land within West Melbourne for education purposes. It noted the support in the Structure Plan for educational facilities and schools and higher education colleges, and sought changes to the controls to better reflect these aspirations in the Structure Plan. In response, Council agreed to:

- include an additional objective/direction in Clause 21.16-6 to support the functioning and growth of education uses in West Melbourne
- include a reference to educational uses in the SUZ6 purposes in the Schedule.

Haileybury also raised concerns in relation to the floor area ratio (both the 6:1 rate and the mandatory nature of the controls) and submitted that the built form controls are “*overly restrictive*” having regard to the design objectives of DDO33 and the type of development recently supported by Council within the precinct such as the recently approved development at 407 – 415 King Street (TP-2017-931). The Panel's response to these submissions is consistent with its response to Gray Puksand's submissions in relation to 363 King Street and UAG's submissions in relation to 45-55 Dudley Street, discussed in Chapters 15.5(iii) and (iv) above.

(vii) 135 Batman Street and 60-80 Adderley Street

These two sites are owned by R & M Holdings. 135 Batman Street contains a single storey red brick warehouse that is subject to a Heritage Overlay. 60-80 Adderley Street contains red brick warehouse/industrial buildings housing a refrigeration business.

The further built form testing undertaken by Breathe Architects included the site at 60-80 Adderley Street. Breathe tested floor area ratios of 6:1, 9:1 and 10:1 (based on the site area

of 60-80 Adderley Street alone, excluding the site area of 135 Batman Street). The results are shown in Figure 20 below.

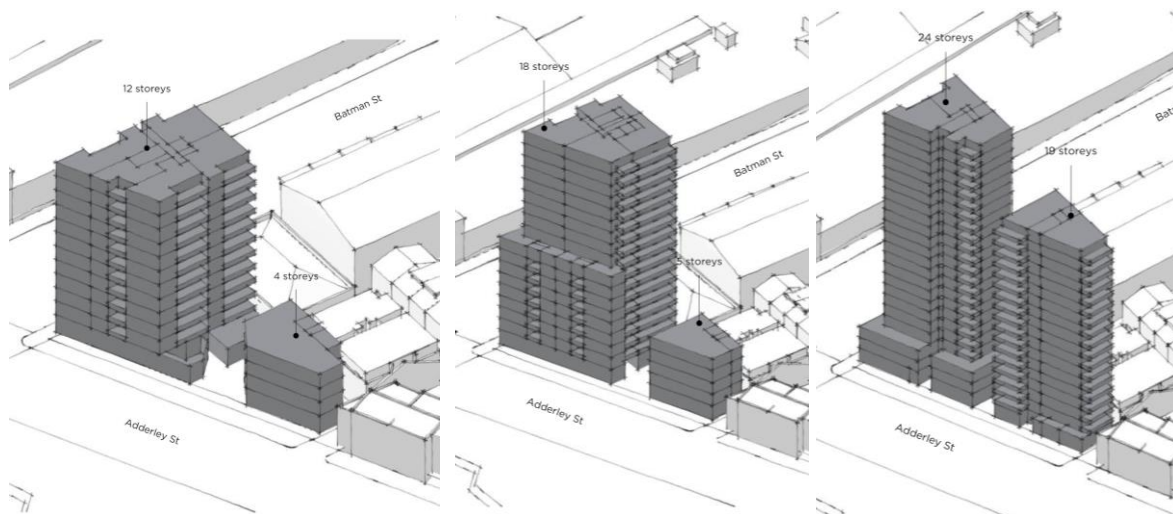


Figure 20 Built form testing, 60-80 Adderley Street at 6:1, 9:1 and 10:1

Source: Mr McLeod's expert witness statement

R & M Holdings submitted that the built form testing demonstrated that compliant buildings could be delivered on the site at significantly higher floor area ratios than the proposed 6:1. It submitted that the floor area ratio should be removed, or alternatively increased and made discretionary.

The Panel has found in Chapter 8 that the proposed floor area ratio of 6:1 for the Flagstaff Precinct is appropriate. R & M Holdings' submissions otherwise largely raised overarching issues, or general issues in relation to the built form controls for the Flagstaff Precinct, which are dealt with in Part B of this report. The Panel's response to R & M Holdings' submissions is otherwise consistent with its response to Gray Puksand's submissions in relation to 363 King Street and UAG's submissions in relation to 45-55 Dudley Street, discussed in Chapters 15.5(iii) and (iv) above.

(viii) 355-369 and 371-383 Spencer Street (the Sands & McDougall site)

The Sands & McDougall site is made up of three separate parcels on the corner of Jeffcott and Spencer Streets. It is subject to Heritage Overlay 771 (Sands & McDougall Precinct). The main 6 storey Sands & McDougall building and the adjacent 2 storey red brick building in Spencer Street are currently used as offices, while the 2 storey building in Jeffcott Street is used as a warehouse.

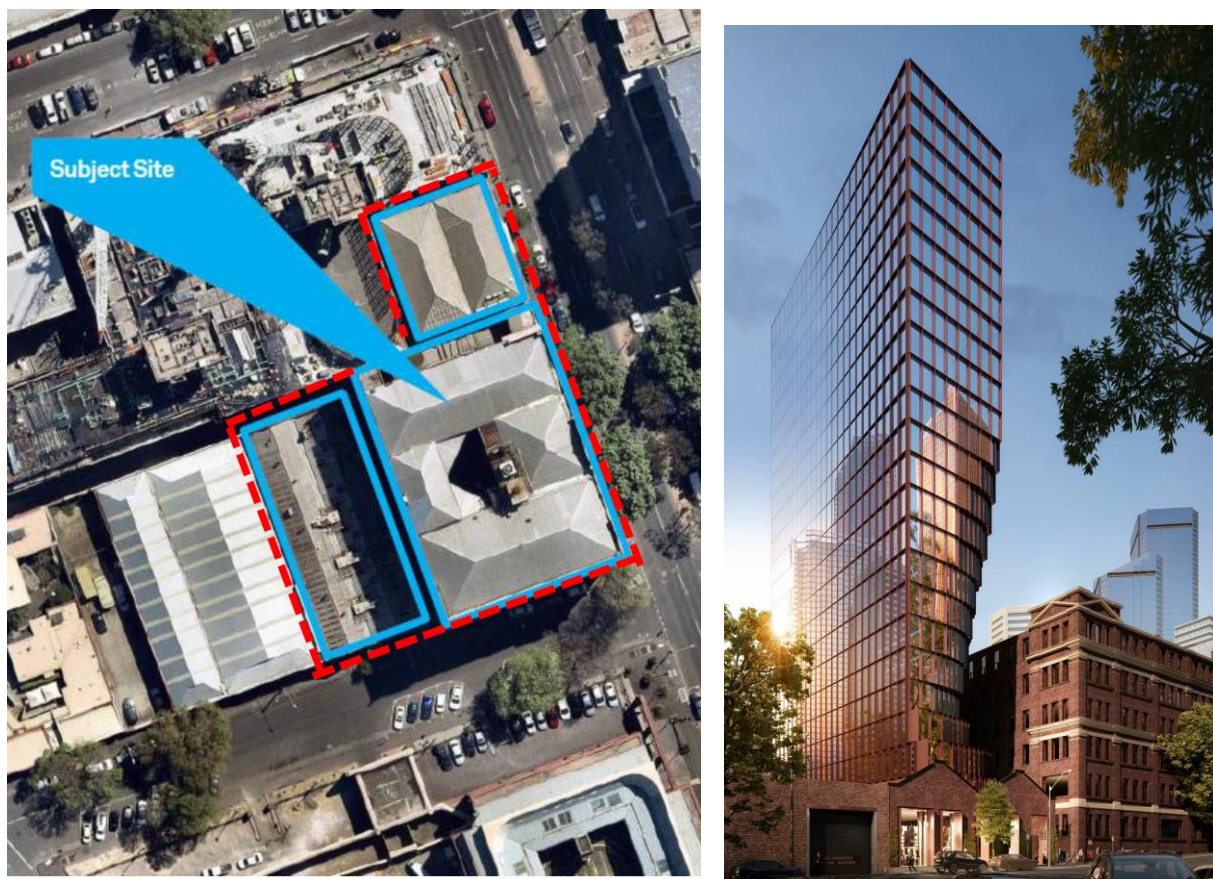


Figure 21 Sands & McDougall site and proposed development

Source: 355 Spencer Street submission

The site has a current permit application for part demolition of the existing buildings, and development of a new 22 storey 190 room residential hotel, with restaurant, retail and office uses, as shown in **Error! Reference source not found.** The heritage façade is proposed to be retained. The proposal has a floor area ratio of 5.81:1 (based on the total site area of all three parcels). As the proposal does not include dwellings, it will not attract the affordable housing requirements. Given residential hotel is nested within Accommodation, the minimum non-accommodation floor area requirements would apply.

As the proposed floorspace is over 25,000sqm, the responsible authority for the application is the Minister for Planning. The application is currently before VCAT on a failure to determine appeal.

Press reports published after the Hearing concluded indicate that Council's Future Melbourne Committee considered the application (referred by DELWP) at its 3 September 2019 meeting. The Committee resolved to advise VCAT that Council did not object to the application, subject to conditions. The agenda papers included a report that stated:¹⁰³

¹⁰³ Agenda papers available at <https://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/MeetingAgendaItemAttachments/870/15512/SEP19%20FMC1%20AGENDA%20ITEM%206.2>, at paragraphs 8 to 10

The proposal is considered to appropriately respond to the existing and preferred future built form character of the area. The proposal is considered to achieve the built form outcomes sought by Clause 22.17 (Urban Design outside the Capital City Zone), the Design and Development Overlay Schedule 33 and subject to conditions, Clause 22.05 Heritage Places Outside of the Capital City Zone.

Broadly it is considered that the proposal is highly responsive to the heritage context, and will ensure the retention, ongoing protection and adaptive re-use of the significant heritage places. The development will ensure the Sands and McDougall Historic Precinct remains intact, with breathing space from tall built form and continues to inform the strong industrial brick heritage character of the Flagstaff Precinct.

The proposal has also had regard to The West Melbourne Structure Plan 2018, adopted by Council, and will contribute meaningfully to the employment generating land uses sought by the Structure Plan in addition to the built form outcomes desired for the Flagstaff Precinct (in particular by achieving a floor area ratio generally consistent with the floor area ratio sought in the Structure Plan).

355 Spencer Street's submissions, and the evidence of Mr Glossop, raised concerns about overarching issues, including the appropriateness of the built form controls for the Flagstaff Precinct. These issues are dealt with in Part B of this report.

16 Spencer Precinct

16.1 Introduction

(i) The vision

The vision for the Spencer Precinct is set out on page 84 of the Structure Plan:

Spencer will be a vibrant, inner-city, mid-rise area with a mix of retail, commercial, residential, community and creative uses spilling out onto its streets. Anchored by the Spencer Street high street, this neighbourhood will be distinct from the central city and North Melbourne with its mix of converted warehouses, contemporary developments, heritage corner pubs and Victorian shop fronts.

Older buildings have been incorporated into new developments, with the retention of more than just facades adding integrity and retaining a sense of history of the precinct. Tree planting throughout is well established and consistent, and includes large canopy trees in all streets. Views towards Eades Park and St Marys Church are retained and enhanced by these green avenues.

(ii) The current context

The Spencer Precinct is located in the centre of West Melbourne and is bound by Roden, King, Dudley, Rosslyn and Spencer Streets. The precinct boundaries are generally defined by major roads, although the boundary follows the rear boundary of the properties on the south side of Spencer Street between Hawke and Stanley Streets, to ensure that the whole of the Spencer Street activity centre is included within the Spencer Precinct.

The Structure Plan describes the current character and features of the Spencer Precinct on page 83. Of note:

- it has a distinct area based on its industrial history, generally large allotment sizes, relatively limited heritage and likelihood of significant change into the future
- Spencer Street forms the central spine of West Melbourne with several shops, offices and corner pubs
- the precinct has a mixed commercial character with the majority of lots greater than 1500sqm and several sites greater than 3000sqm, with some fine-grained residential
- built form varies and includes former industrial brick buildings (mostly two to four storeys), smaller warehouse and Victorian terraces
- Festival Hall is significant historically and socially to West Melbourne as a major event, sport and music venue and was used in the 1956 Olympics
- many of the streets are characterised by limited trees, on-street car parking, narrow footpaths and no nature strips.

The Spencer Precinct currently has a discretionary height limit of 4 storeys. Twelve buildings have been identified as special character buildings.

Spencer is one of the more active of the West Melbourne precincts in terms of permit and construction activity, second only to Flagstaff. It has generated a significant number of VCAT determinations since 2006. Data from Council's Development Activity Monitor (Document 107) shows that recently approved developments are between:

- 3 and 12 storeys above the current discretionary heights
- 1 and 4 storeys above the proposed heights.

16.2 The issues

The issues are:

- appropriateness and effectiveness of the controls for the Spencer Street local activity centre
- site specific issues.

16.3 Spencer Street local activity centre

(i) The Structure Plan

The Structure Plan seeks to create a new activity centre on Spencer Street between Hawke and Dudley Streets. It states that Spencer Street will become a vibrant and mixed-use street that will accommodate local business to provide residents with their everyday needs within walking distance. The Structure Plan envisages tram and priority bus services being extended along Spencer Street to connect with Footscray and/or Arden in the medium to long term.

The Structure Plan outlines a number of other actions that are intended to supplement the controls to deliver the activity centre:

- Action 14. Deliver short term works to improve the pedestrian priority and safety on Spencer Street.
- Action 15. Prepare and implement a Spencer Street Masterplan that achieves a high quality street design to support an economically thriving heart for the West Melbourne neighbourhood.
- Action 16. Install bicycle parking on Spencer Street, at North Melbourne (future West Melbourne) Station and other suitable locations.
- Action 17. Strongly advocate to Transport Victoria to change the status of Spencer Street from an arterial to local road.

(ii) The controls

Clause 21.16-6 references the establishment of Spencer Street as a vibrant local high street and an economic centre for West Melbourne. In response to submissions and the evidence of Mr Barnes, the Part C controls included Figure 21 within the local policy that clearly identifies the location and extent of the proposed Spencer Street activity centre.

Objective 5 of the SUZ6 is:

To develop the Spencer Street Village as a local activity centre with a mix of commercial, retail, residential and community uses to complement its activity centre functions.

The land use controls within the SUZ6 require active uses at the ground floor of buildings within the activity centre, limiting accommodation uses to above ground level (with the exception of entries) and no floor area limitation on food and drink premises as a Section 1 use.

DDO72 provides for a preferred maximum building height of 8 storeys for properties within the activity centre (and properties fronting King Street). This is two storeys higher than the rest of the precinct, although only 1 storey higher than Council's proposed change to the mid-block heights, which the Panel supports (see Chapter 14.2). The exhibited controls provided a floor area ratio of 4:1 across the precinct. Council has accepted Ms Hodyl's

recommendation that this be increased to 5:1 in the activity centre, which the Panel supports (see Chapter 8.6).

(iii) Evidence and submissions

There was general support for the concept of the Spencer Street spine (between Hawke and Dudley Streets) being the focus for new retail and commercial development, however some submitters were concerned that the requirement for non-accommodation floor area throughout the Structure Plan area may reduce the demand within the activity centre and lead to vacancies. Mr Quick gave economic evidence that the combination of dispersed retail activity and oversupply will impact on retailers and is likely to lead to excessive vacancies in the activity centre.

Mr Barnes was concerned that the SUZ6 does not provide any visual cue on zoning maps about the location of the activity centre. He contemplated whether a separate schedule to the SUZ should be used for this part of the Precinct, however on balance considered that a map in Clause 21.16-6 that clearly shows the location of the activity centre would be sufficient. Council supported this recommendation and the Part B and C controls included Figure 21 in the Part C version of Clause 21.16 (refer to Figure 3).

Ms Hodyl recommended that the requirement for non-accommodation floor area within the Spencer Street activity centre (and around the North Melbourne station) be replaced with a requirement to preclude residential uses from the lowest two floors of buildings within these areas. Mr Barlow gave evidence that this 'vertical zoning' approach has been used in the Chapel Street activity centre. His evidence was that the approach has not been successful and had led to vacancies in Chapel Street.

Mr McLeod supported the non-accommodation floor area requirements, and noted that having employment uses (such as office) above retail uses at ground floor creates a demand for the retail uses during the day, which is a positive outcome for an activity centre.

Council did not support Ms Hodyl's recommendation. It considered the controls as exhibited achieve the intent of creating active spaces within the activity centre.

(iv) Discussion

The Panel supports the inclusion of Map 21 within Clause 21.16 as providing visual information about the location of the activity centre, as well as other features of the Structure Plan area. The Panel notes however that there should be consistency of language when describing this centre, with various references in the controls and Structure Plan to 'local activity centre', 'high street' and 'village'. The Panel prefers 'activity centre' given this is a commonly accepted term within the planning system and considers that the various references in the zone, overlays and local policy should be re-worded accordingly.

The Panel supports the table of uses in the SUZ6 allowing for larger food and drink premises and shops to establish as of right within the activity centre, and restricting accommodation uses (other than entries) to above ground level. The Panel also supports the increased heights and revised floor area ratio of 5:1 for properties within the activity centre, accepting that a greater intensity of use and built form is appropriate for an activity centre. Refer to Chapters 8.6 and 14.2 for more detail.

The Panel has considered Mr Quick's concerns about the potential for dispersed retail and commercial uses to impact on the success of the activity centre. However, outside the activity centre, both 'shop' and 'food and drink premises' are restricted to 150sqm as section 1 uses. Larger premises require a permit. Further, the minimum non-accommodation floor area requirements only apply to the land zoned SUZ6, and only apply to developments with 10 or more dwellings. There was no evidence that a spread of smaller commercial tenancies across the Structure Plan area would impact adversely on the activity centre. Mr Szafraniec's evidence was that a scattering of retail across the Structure Plan area would be unlikely to impact on the timing or success of the activity centre.

On balance, the Panel considers that the policy and controls appropriately encourage a concentration of commercial and retail activity in the activity centre. The policy should work with the uncapped floor area for retail and food and drink premises in the activity centre to encourage a concentration of these uses within the activity centre. These, in combination with the requirements for active ground floor uses within the activity centre, minimum non-accommodation floor area requirements and other initiatives in the Structure Plan, should deliver the Structure Plan's vision for the Spencer Street activity centre.

That said, Council acknowledged in the Hearing that the success of the activity centre will depend on more than just the planning controls. The Panel observed on its site visits that Spencer Street is currently heavily trafficked and is an uninviting pedestrian environment. Council has recently received funding (in connection with the Westgate Tunnel project) to carry out improvements along the length of Spencer Street, including upgrading footpaths and improving street plantings. These improvements will be an important catalyst for the activity centre. The other initiatives outlined in the Structure Plan will also be critical to the success of the activity centre.

(v) Conclusions

The Panel concludes:

- Map 21 should be included within Clause 21.16 to provide visual information about the location of the activity centre.
- The activity centre should be consistently referred to an 'activity centre' throughout the controls, rather than a high street or village.
- The table of uses in the SUZ6 is appropriate to encourage the activation of the activity centre, and a concentration of retail and food and drink premises within the activity centre.
- The additional height and higher (5:1) floor area ratio for properties within the activity centre, as provided for in the Part C controls, are appropriate.

16.4 Site specific issues

(i) Festival Hall

Evidence and submissions

Festival Hall is a utilitarian building that occupies almost the entire Festival Hall site (approximately 4,150sqm). It is located in the south-western corner of the Spencer Precinct, included in what Stadiums described as an *"isolated tongue of land"* at the western end of Dudley Street. It interfaces with the Adderley Precinct to the north (north side of Rosslyn

Street), the Flagstaff Precinct to the south (south of Dudley Street) and the railway line to the west.

Festival Hall was included on the Heritage Victoria register (VHR Number H2386) as a site of historical and social significance in November 2018, for its use as a boxing and wrestling venue and subsequently as a venue for large scale live music performances. Stadiums submitted that while some music performances still occur within the building, Festival Hall is no longer a viable music venue given the shortcomings of the building itself (poor acoustics, dated seating and so on) and government investment in alternative venues such as Rod Laver Arena.

Stadiums submitted that the proposed floor area ratio for the site does not take account of the special characteristics of the land including site context and the consequences of its heritage registration. It submitted that given the site's significant heritage value, it should be eligible for floor area uplift in much the same way as special character buildings are eligible for floor area uplift.

Ms Hodyl recognised the pivotal role Festival Hall has played in the culture of Melbourne and considered that opportunities to retain or deliver a new music venue on the site should be explored to recognise the importance of the venue. She recommended a floor area uplift on the Festival Hall site to incentivise the delivery of a large scale live music venue if the site was redeveloped. She considered that the uplift should operate in accordance with the central city floor area uplift mechanism approved under Amendment C270. Through built form testing Ms Hodyl supported an outcome of up to 10 storeys with a 2 storey street wall, a floor area ratio of 6:1 (being an uplift of 2:1), and a mix of residential and commercial uses on the Festival Hall site. Council did not support this recommendation.

Discussion and conclusions

Many of Stadiums submissions in relation to the Festival Hall site are dealt with in the Panel's recommendation to include the site in the Flagstaff Precinct rather than the Spencer Precinct (see the discussion in Chapter 15.3).

In terms of floor area uplift, the Panel has recommended in Chapter 11.4 that uplift should be available in the Flagstaff Precinct for commercial floorspace above the minimum requirements. While Ms Hodyl's suggestion for uplift for incorporating a live music venue in any redevelopment has some appeal, Stadiums were unclear as to whether the site could return to a large scale music venue, and there would clearly be some design challenges with a live music venue and residential land use within the same site. Given this, the Panel does not support additional uplift for replacing or retaining a live music venue on the site.

(ii) 474-486 Spencer Street

The site at 474-486 Spencer Street is currently occupied by Fort Knox Self Storage, with 3 and 4 storey buildings. It has frontages to Spencer and Rosslyn Streets and Mansion House Lane, with an overall site area of approximately 2,772sqm. There is no planning permit or application currently before Council.

PPP represented this submitter, supported by evidence from Mr Barlow and Mr Quick. No site-specific submissions or evidence were made in relation to this site. The overarching issues raised in their submissions are dealt with in Part B of this report.

(iii) 501-525 King Street

The land at 501-525 King Street is owned by Holder East, also one of the PPP clients. A permit application was lodged on 5 January 2019 for a development comprising a mix of commercial uses including retail, food and drink premises, medical centre, office and education uses within buildings with a maximum height of 8 storeys. There are no dwellings or accommodation uses proposed as part of the development, and accordingly the affordable housing requirements and minimum commercial floor area requirements will not apply. The building is intended to be a 5 star green star building.

The Panel was advised that the development as proposed has a floor area ratio of 5.2:1. This is within the part of the precinct where Ms Hodyl has recommended a floor area ratio of 5:1 along King Street (and Spencer Street). Council and the Panel support this recommendation.

Holder East submitted that the proposed development delivers on the aspirations of the Structure Plan, including an increase of employment generating uses, significant activation of the street and pedestrian links through the site from King Street to Mansion House Lane, and from Stanley Street to Rosslyn Street. It submitted that, notwithstanding that the proposed development is closely aligned with the Structure Plan and the vision, it would be prohibited under both the exhibited floor area ratio of 4:1, and under the 5:1 recommended by Ms Hodyl.

The Panel considers that the proposed development would be largely compliant with the Structure Plan and the controls. The uses are all encouraged by the Structure Plan and are all section 1 or 2 uses under the proposed controls. The height of the building at 8 storeys is consistent with the preferred maximum building height for buildings fronting King Street, and the floor area ratio is only slightly over the 5:1 proposed ratio.

The Panel considers that this application provides good evidence that the proposed controls are feasible, and also suggests that commercial only buildings can be delivered within West Melbourne. The Panel considers that while the design of the development would require slight amendments to reduce the floor area ratio from 5.2:1 to 5:1, this is not likely to have a significant impact on the feasibility of the project.

(iv) 512-544 Spencer Street

The land at 512-544 Spencer Street is within the Spencer Street activity centre. It is currently developed with a one to two storey building occupied by Rose Office furniture, which is a special character building. A planning permit has been issued by DELWP for a development that includes demolition of the existing building and construction of an 8 storey building including 3 levels of basement car parking, a supermarket (Aldi) and four retail tenancies at ground floor, and apartments at levels 1 to 7 above. PPP represented the owner of the site.

PPP advised the Panel that the floor area ratio for the approved development would be 5.28:1, which is just over the proposed 5:1 floor area ratio for buildings fronting Spencer Street. The 8 storey height limit is also consistent with the proposed DDO72 controls. The development would not however retain the special character building, nor does it include affordable housing.

Council noted that the owner has a permit which can be acted on. Alternatively a new permit could be sought under the proposed controls that would allow for a greater floor area ratio if the special character building were successfully retained.

The Panel considers that this is another case that provides evidence that the floor area ratio controls and proposed discretionary height limits in the Spencer Precinct can deliver feasible development and are appropriate for this area. Again, while the design would need to be modified to meet the 5:1 floor area ratio (if the permit had not already been issued), the Panel does not anticipate that the modifications would need to be substantial. The approved development is a mixed use proposal incorporating both employment generating uses as well as residential development, and is the type of development that is encouraged by the proposed controls (albeit lacking an affordable housing component).

The proposed controls do not prevent the demolition of the identified special character building as contemplated by the permit, however the site could benefit from greater floor area it was to be retained.

17 Adderley Precinct

17.1 Introduction

(i) The Vision

The vision for the Adderley Precinct is set out on page 106 of the Structure Plan:

Adderley will have an eclectic mix of uses, tucked away from the busy thoroughfares of West Melbourne but with great views of the city and Docklands. It will be recognisable by its mix of heritage cottages and terraces, contemporary buildings and restored warehouses and factories.

The retention and renovation of buildings from all eras, including workers' cottages and Victorian terraces, together with more recent apartment buildings visually reveal the layers of history and provide eyes and people on the street at all times of the day and night. Its leafy streets connect to the Hawke Street green spine and new pedestrian and cycle route over to Docklands, providing excellent walking and cycling access to surrounding areas. No vehicular through traffic and large established street trees and pocket parks add to the 'urban oasis' character.

A key public realm objective is to create a linear park along Hawke Street with grade separated and dedicated bike paths with connections into Docklands and E-Gate.

(ii) The current context

The Adderley Precinct is located in the western part of West Melbourne, bounded by Spencer Street, Railway Place, Abbotsford and Rosslyn Streets.

The Structure Plan describes the current character and features of the Adderley Precinct on page 105. Of note, it has:

- a mixed and diverse urban character undergoing change with former industrial buildings being adapted for residential use
- a context that is distinct and relatively remote from the central city, despite its proximity
- buildings generally one to five storeys in height, and smaller lots sizes than other precincts
- topography that affords panoramic and expansive views over the railway lines to Docklands
- limited connections to other areas due to the railway cutting and low traffic levels on wide east-west streets.

There are two areas of MUZ that are separated by an area in the GRZ. The northern MUZ area is contiguous with the MUZ area in the Station Precinct. The southern MUZ area is contiguous with its application in the Spencer Precinct. The southern area is where the zone and overlay changes are proposed for the Adderley Precinct. Nine buildings have been identified as special character buildings.

The Adderley Precinct currently has a discretionary height limit of 4 storeys (in the DDO29 south of Hawke Street), a mandatory height limit of 14 metres in the MUZ area covered by DDO32 (not to be changed) and a mandatory height limit of 11 metres in the GRZ area (not to be changed). The Amendment proposes changes to the area covered by the DDO29 that retain the discretionary 4 storey height limit, apply a mandatory floor area ratio of 3:1 and apply a minimum non-accommodation floor area requirement of 16.6 per cent.

Data from Council's Development Activity Monitor (Document 107) shows that there have been two applications with heights in excess of 4 storeys. At 13-37 Abbotsford Street a ten storey development is proposed and at 172-184 Roden Street an 8 storey development is proposed.

17.2 Submissions

Ms Sweeting and Mr Rogers considered the 4 storey height limit should be mandatory, but accepted that a discretionary height combined with a mandatory floor area ratio might be appropriate.

Mr Cottrill supported the 3:1 floor area ratio but considered it should apply more broadly to the other precincts of West Melbourne.

Mr Vella considered the height should be increased to 6 storeys to accommodate non-residential components or an exemption for non-residential uses where townhouse development is proposed.

17.3 Discussion

The issues raised by submitters have been considered more generally in Chapters 8, 9 and 14.2.

The proposed controls are generally consistent with the current controls, but provide more certainty in regard to expected heights and built form massing with the use of a mandatory floor area ratio in association with a discretionary height limit. The Adderley Precinct has a strong residential context, lower building heights and a lack of frontage to the major roads through West Melbourne, and the Panel considers that development should be restricted to a level that matches this context. The Panel is satisfied that the proposed controls do this and are appropriate for this area.

18 Station Precinct

18.1 Introduction

(i) The Vision

The vision for the Station Precinct is set out on page 116 of the Structure Plan:

Station precinct will be a thriving area of converted warehouse apartments and new mid-rise residential buildings defined by the edge of the railway escarpment, views towards the industrial heritage to the west and busy transport nodes at station entrances.

North Melbourne (future West Melbourne) station will be emphasised as the focal point of the precinct by green avenues that extend to the north and east and new pedestrian and cycling bridges linking south and west to E-gate and Docklands. A mix of retail, commercial and office buildings will encourage people to linger in the precinct rather than just pass through.

(ii) The current context

The Station Precinct is bound by Abbotsford, Spencer, Lothian, Victoria and Laurens Streets and Railway Place.

The Structure Plan describes the current character and features of the Station Precinct on page 115. Of note:

- the area is undergoing significant change, with a number of developments underway or recently completed
- the irregular street grid includes a mix of 20 and 30 metre wide streets with many sites having frontages to multiple streets
- there is a mix of residential, industrial and commercial uses, and lot sizes vary from 500sqm to 3000sqm
- buildings are typically up to six or seven storeys tall, and there is a recently completed 10 storey building adjacent to the North Melbourne (future West Melbourne) station
- in the west of the precinct, the existing Railway and Miller Reserve is currently being expanded into the road reserve to create more green space for the community.

The Station Precinct is currently predominately contained within the Mixed Use Zone, with Spencer Street and part of Dryburgh Street contained within the Road Zone and the open space contained within the Public Park and Recreation Zone. One building has been identified as a special character building.

The eastern part of the precinct is currently contained within the DDO32 (North Melbourne Peripheral area), that has a mandatory maximum building height of 14 metres (between 3 and 4 storeys). The western part of the precinct is currently contained within the DDO28 (North Melbourne Station) that has a discretionary maximum building height of 5 storeys.

Data from Council's Development Activity Monitor (Document 107) shows that recently approved development immediately surrounding the train station is 10 storeys, being 5 storeys higher than the existing DDO28 and 2 storeys above the proposed height control.

18.2 Discussion

Mr Tandora raised concerns with the appropriateness of the built form controls for the Station Precinct, which are dealt with in Chapter 14. There were no other site specific submissions within the Station Precinct and limited general submissions. General submissions raised issues relating to zoning, non-accommodation floor area requirements, and affordable housing, which have all been dealt with in Part B of this report.

Council noted that most of the Station Precinct has been built out with development that generally accords with the proposed controls, and that may be the reason there were limited submissions for this precinct.

Council took the Panel to the VCAT decision in *CBUS Property West Melbourne Pty Ltd v Melbourne CC* [2015] VCAT 1653, relating to the land at 9 Dryburgh Street, being an island site bound by Ireland and Dryburgh Streets and Railway Place directly opposite the train station. This decision allowed for the 10 storey building to develop on the site. It found that the proposed 14 storeys was too high, however that 10 storeys was appropriate in recognising the site as a 'marker' for the area, above the emerging character of the surrounds.

The proposed 8 storey preferred maximum height control now proposed under DDO28 fits comfortably with this decision, and the Panel is satisfied that the proposed controls are appropriate for this area.

19 Historic Hilltop Precinct

19.1 Introduction

(i) The vision

The vision for the Historic Hilltop Precinct is set out on page 126 of the Structure Plan:

Historic Hilltop will retain its valued heritage character, clustered around the shopping strips on Errol, Victoria and Peel Streets. The fine grained residential area with intact rows of workers' cottages, two storey terraces and Federation homes, retrofitted warehouses and larger institutional buildings represent the diversity of architectural eras that have shaped this precinct.

Historic Hilltop's wide green streets and open spaces will continue to evolve with improvements to the Hawke and King intersection and Hawke Street linear park and regular avenues of street trees reinforcing the visual links to the green canopies of Flagstaff Gardens. Views to the central city and access to Flagstaff Gardens and Queen Victoria Market will accentuate the area's proximity to the central city.

(ii) The current context

The Historic Hilltop Precinct is bound by Victoria, Peel and Lothian Streets. Its southern boundary follows Spencer Street from Lothian to Hawke Streets, then the rear boundaries of properties on the north side of Spencer Street between Hawke and Roden Streets, and then King Street and Dudley Street.

The Structure Plan describes the current character and features of the Historic Hilltop Precinct on page 126. Of note:

- the precinct is a mostly residential area with retail along Victoria and Peel Streets and a mix of commercial and community uses east of Chetwynd Street
- the residential streets have a uniform character provided by rows of workers cottages, Victorian terraces and Federation homes
- it includes the landmark building of St Mary's Church
- the current height limits will help maintain the low scale nature of the precinct and views to significant landmarks including the Meat Market and North Melbourne Town Hall
- the precinct has good access to walking, cycling and public transport routes
- existing open spaces include Eades Park and Flagstaff Gardens, and the Hawke Street linear park will extend into the precinct providing additional open space and amenity.

The Historic Hilltop Precinct is currently zoned GRZ and MUZ. The zoning is not proposed to change. A mandatory height limit of 11 metres applies to the GRZ areas. The eastern part of the precinct (that is zoned MUZ) is subject to the DDO32, which has a mandatory height limit of 4 storeys. The height limits are not proposed to change.

Six sites within the precinct have been redeveloped within the past 5 years, including an 8 storey development on the north-west corner of Hawke and King Streets, opposite the Miami Hotel site.

19.2 The issues

Council referred five submissions from landowners in the Historic Hilltop Precinct to the Panel:

- the Roman Catholic Trusts Corporation (Submission 9)
- Flagstaff Views Owners Corporation (Submission 17)
- Echo Links Holdings Pty Ltd (Submission 28)
- Miami Hotel Group (Submission 36)
- King Street Investments Pty Ltd (Submission 42).

The Roman Catholic Trusts Corporation did not make any substantive submissions, and requested that Council keep it informed of impacts to the St Mary Star of the Sea site arising from the implementation of the Structure Plan.

The other four submissions sought site-specific changes to the current controls that applied to their land. Council submitted that these submissions were beyond the scope of the Amendment. The Panel disagrees, for the reasons set out in Chapter 1.4(ii).

The issues are:

- zoning and height controls for the Miami Hotel site
- height controls for the King Street Investments and Echo Link Holdings sites
- zoning for the block between Dudley, Milton, Walsh and William Streets (Flagstaff Views).

19.3 The Miami Hotel site

The Miami Hotel site consists of five separate titles, as shown on Figure 22:

- 'A' is the main hotel building site, at 13-25 Hawke Street
- 'B' is a single storey terrace at 27 Hawke Street
- 'C' is a currently vacant site at 605-609 King Street
- 'D' and 'E' are a pair of double storey terraces at 599 and 601 King Street.

All are currently used for different forms of accommodation, except the vacant site which has a permit for a three storey serviced apartment development.

Land abutting to the north-west (at 613 King Street) is a corner site containing a double-storey rendered brick office building known as the Goldsmiths Building. The building was built in the 19th century although its external appearance has been altered since.

Opposite the site, on the triangular site at 643 King Street, is a recently constructed six-storey mixed use development with apartments and community facilities. The building abuts Hawke Street and King Street with no ground level setbacks. It is shown as under construction in Figure 22.



Figure 22 Miami Hotel site

Source: Miami Hotel Group submission, Document 101

(i) Evidence and submissions

Miami Hotel Group submitted that the Structure Plan and controls should “*give due recognition to particular urban context of its land holdings and also to the pressing need for the landowners to redevelop the existing site in order to sustain its ongoing use as a hotel operation*”. It sought rezoning of the site to MUZ.

It submitted that the site sits in a context of a mix of commercial and residential development, and has a high level of exposure given the frontage to King Street and the busy junction with Hawke Street. The recently constructed six-storey building at 643 King Street, including its height and massing, “*influences neighbourhood character and provides an indication of the level of development that could be achieved at the subject site with amended controls*”.

Miami Hotel Group commenced work in early 2017 on a proposal to redevelop the site for a 100 room hotel with 25 serviced apartments, which it submitted represents a minimum viable scale for the project in today’s market. It has engaged Jackson Clements Burrows Architects to prepared development concepts, but has not yet lodged a permit application, or requested a planning scheme amendment to facilitate the development. The concept design shows a development of up to 6 storeys, with a floor area ratio of 3:1 that includes:

- a shared adaptive community centre, incorporating flexible meeting spaces that can be used by a wide variety of local groups and a yoga/meditation/wellbeing studio
- a café on the Hawke Street frontage
- a generous open space area on-site that will provide amenity for hotel and café guests and the wider community.

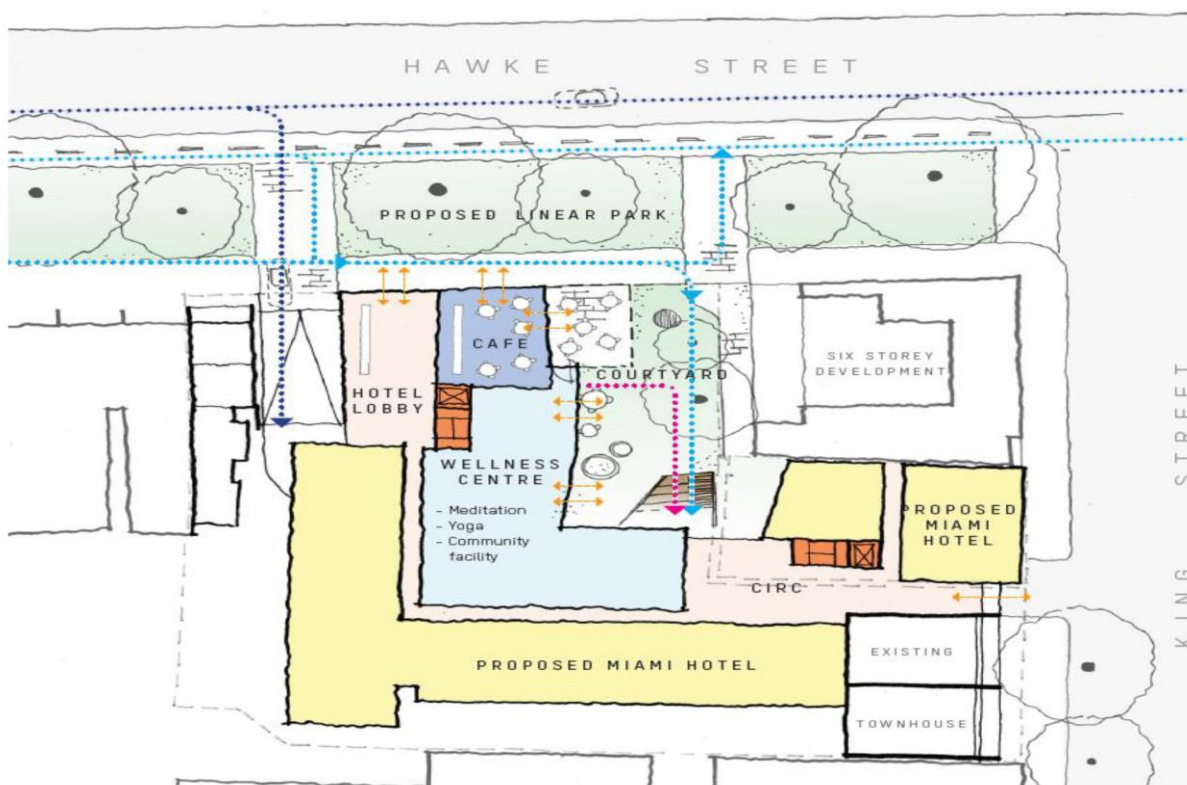


Figure 23 Concept design for the Miami Hotel redevelopment

Source: Miami Hotel Group submission, Document 101

Miami Hotel Group submitted that the site is in a strategic location, a short walk from the Errol Street shops and the No. 57 tram route. It submitted that the site is large, and can appropriately respond to the heritage context of the single storey Victorian terraces along Hawke Street, and the double storey terraces along King Street while accommodating a building that is taller and more substantial than the current main hotel building.

Miami Hotel Group sought advice from GJM Heritage Advisors about how to distribute floorspace across the site to appropriately respond to the surrounding heritage context. Their advice was:¹⁰⁴

It is our view that the prominent corner nature of the Miami Hotel site and the emerging built form of its context means that development up to the height of the proposed development at 611-615 King Street (six storeys) can be achieved without an unreasonable adverse impact on the heritage significance of the North and West Melbourne Precinct.

Miami Hotel Group called urban design evidence from Mr Blades, and heritage evidence from Ms Riddett.

Mr Blades undertook an urban design analysis of the site and surrounding area, and prepared massing diagrams to demonstrate the level of built form that could be accommodated on the site assuming the setback, overshadowing and other requirements in Clause 55 were met. His evidence was that the site could readily accommodate 6 storeys

¹⁰⁴ Miami Hotel Group submission at paragraph 38

(possibly higher) while complying with Clause 55, and without impacting on the urban design qualities of the streetscape or surrounding area.

Ms Riddett's evidence was that there was no heritage reason why a building of up to 6 storeys could not be accommodated on the site. She noted that the site's context did not present visually as residential given the different nature and appearance of the buildings, the open context and the busy intersection of Hawke and King Streets. She provided examples of 6 storey buildings being constructed immediately adjacent to heritage buildings in Fitzroy, and stated that a number of architectural approaches can be applied to ensure that the new development responds appropriately to the heritage context.

Ms Hodyl agreed that the site *"represents an opportunity for greater development intensification than the GRZ allows"*. She noted the 6 storey building on the opposite side of Hawke Street, and the proximity to Errol Street. Her evidence was that any intensification of built form on the site would need to respond appropriately to the adjoining sensitive low-scale uses. She undertook some built form testing on the site, and recommended that it be rezoned SUZ6 with a floor area ratio of 1.5:1, discretionary height limit of 4 storeys and discretionary 6 metre side and rear setbacks. Council did not support these recommendations.

Miami Hotel Group objected to the SUZ6 applying to the site, noting that hotel would be a permit required use and the affordable housing and non-accommodation floor area requirements would apply. It considered that a floor area ratio was not necessary, as the planning scheme already provides sufficient provisions to ensure that good design outcomes are achieved. It submitted that Ms Hodyl's proposed floor area ratio of 1.5:1 was *"manifestly inadequate"* and *"ill-conceived"*, and would only allow 7.5 per cent more floorspace than the current buildings. Ms Hodyl conceded in cross examination that a floor area ratio of greater than 1.5:1 could be achieved under the current controls.

(ii) Discussion

All experts agreed that the Miami Hotel Group site is a strategic site in a good location that is capable of accommodating more intensive built form than currently exists on the site, or that would be allowed under the existing GRZ.

The Panel agrees that more intensive built form could be accommodated. The surrounding context is somewhat mixed in character, and a more intensive built form would respond well to the recently constructed 6 storey development opposite. The existing buildings on the site are somewhat outdated, and do not significantly contribute to the character of the area. The site has good access to transport and services, and is well located to the Errol Street shops. While the Panel has some reservations about an island of either MUZ or SUZ in this otherwise GRZ area, on balance it considers that the GRZ (or at least the mandatory height restrictions in the GRZ) may not be appropriate for the site.

The Panel is not satisfied that sufficient strategic work has been undertaken at this stage to inform a decision about what controls should apply to the site. If Ms Hodyl's recommendation was adopted, this would be the only site in the Historic Hilltop Precinct to be zoned SUZ. The rest of the precinct is a mix of the MUZ and the GRZ, with an area of Commercial 1 Zone along Victoria Street. Rezoning the site to SUZ (or indeed MUZ as proposed by Miami Hotel Group) would introduce a range of alternative uses, many without

the need for a permit. The Panel is not satisfied that this has been sufficiently thought through.

While the site's location and context lend it to a more intensive form of development, there are a number of sensitivities that need to be taken into account, including the heritage context of the surrounding properties and the Hawke Street streetscape, the open space in Curzon Street and north of King Street, views along Hawke Street to Errol Street and the Town Hall, and the direct interfaces with low scale residential uses. The Panel acknowledges the work undertaken by Mr Blades and Ms Riddett, but further consideration needs to be given to an appropriate suite of controls that adequately responds to the Structure Plan, the site's context and its sensitive interfaces. Ms Hodyl's recommendation for a floor area ratio of 1.5:1 seems overly restrictive, and the need for (and amount of) a floor area ratio should be further considered.

For example, a more appropriate response may be to retain the existing zoning and apply site specific controls under Clause 45.12 to allow the existing business to be redeveloped in accordance with a more resolved design based on the Jackson Clements Burrows concept design.

Any change to the controls that apply to the Miami Hotel site should be the subject of a separate amendment. The changes could potentially have a significant impact on third parties, particularly neighbours. A separate amendment process would ensure that potentially affected parties are fully notified of the changes, and provide them with the opportunity to make submissions.

(iii) Conclusions

The Panel concludes:

- The site is capable of accommodating more intensive built form than what would be allowed under the GRZ.
- Further work should be undertaken to inform the selection of an appropriate suite of controls that suitably responds to the Structure Plan, the site's context and its sensitive interfaces.
- Any change to the controls that apply to the site should be the subject of a separate amendment, to allow participation from potentially affected third parties.

19.4 346-352 King Street and 55 Walsh Street

The sites are adjacent to one another, and are located on the corner of King Street and Walsh Street, at the southern end of the Historic Hilltop Precinct. The King Street site contains a two storey office building, and the Walsh Street site contains a three storey office building. Each site contains a number of separate titles.



Figure 24 55 Walsh Street (left) and 346-352 King Street (right)

Source: Urbis PowerPoint Presentation (Document 109)

(i) Evidence and submissions

Ms Kelly of Urbis appeared for King Street Investments and Echo Link Holdings at the Hearing. She presented a PowerPoint presentation and verbal submissions that built on the extensive written submissions made by both submitters to the Amendment.

The thrust of the submissions was that the existing 14 metre mandatory height limit that applies under the existing DDO32 should be increased. Urbis provided an explanation of the surrounding context, including a number of photographs that demonstrate a mix of lot sizes, land uses and built form scale. It submitted that the Amendment C20 Panel did not support the application of a DDO to West Melbourne, and was not persuaded that the need for a height limit had been established. That panel considered that there are other, better tools available to achieve contextually responsive development outcomes, such as the combination of Heritage Overlay and Clause 22.17 (Urban Design Policy Outside the Capital City Zone). It submitted:¹⁰⁵

The Panel also recognised that:

- the locational advantages this area possesses relevant to the CBD, public transport and the like, might otherwise support the area's exploitation for more intensive development.
- In the areas of North and West Melbourne which do not display the same degree of heritage significance (and those that have experienced a greater degree of change over time) the locational factors, which make the Mixed Use Zone in North and West Melbourne valuable in a metropolitan context, should be recognised and development promoted.

Urbis provided an analysis of the mandatory height controls in DDO32 against the principles of PPN59, and submitted that mandatory controls were not justified in this instance. It provided built form modelling that, in its submission, demonstrated that the sites could comfortably accommodate development of up to 5 storeys, albeit with the upper two storeys recessed. It concluded:

¹⁰⁵ Urbis PowerPoint presentation, slide 26

- A greater building height can be comfortably contemplated on the subject sites whilst achieving the overall objectives and built form outcomes for the area.
- The relevant objectives and built form outcomes need to be balanced with the overarching objectives for West Melbourne to accommodate forecast employment growth.
- Whilst the majority of employment growth is expected to be accommodated in other parts of West Melbourne, smaller business owners should not be overlooked.
- The considerations and requirements required under HO3 continue to apply to the site and will ensure an appropriate built form outcome is achieved from a heritage perspective.

(ii) Discussion

While the Panel appreciates the built form analysis undertaken by Urbis, it was not persuaded that the existing heights under DDO32 are inappropriate. The analysis was site specific, and the Panel does not consider that it would be appropriate to take a site-specific approach to varying the height controls in this part of the Historic Hilltop Precinct. It considers that the strategic analysis undertaken as part of the Structure Plan process has not resulted in any suggestion that the existing height controls on this site, or in the precinct more broadly, should be changed.

(iii) Conclusion

The Panel concludes:

- It does not support a site-specific variation to the existing height controls that apply to the Echo Link Holdings and King Street Investments sites.

19.5 Flagstaff Views

(i) Submissions

Submission 17 was from the Owners Corporation of Flagstaff Views, a complex consisting of 40 apartments in a 6 storey building fronting Dudley Street between William and Milton Streets. To the rear of the apartments is a communal private open space area with a pool and gardens, behind which sit eight townhouses fronting Walsh Street. The apartments were constructed in the mid 1990s. The block containing the apartments and townhouses is zoned MUZ, and subject to a mandatory 14 metre height limit under the existing DDO32.

Flagstaff Views submitted that the block (including the apartments and the adjacent townhouses) should be rezoned GRZ, to protect the residential character of the south-eastern corner of the Historic Hilltop Precinct. It noted that there is a strip of GRZ in nearby Capel Street, and that under the current MUZ the Owners Corporation has no power to veto the use of the ground floor apartments for retail purposes. It noted that the townhouses could also be used for retail under the MUZ. It submitted:

Having the whole block being rezoned as Residential instead of Mixed Use would avoid us and our neighbours having to go through the [VCAT] appeal process.

Council did not support rezoning the block to GRZ. The Management Response to Submissions attached to the Future Melbourne Committee agenda for 7 May 2019 explained that the Structure Plan analysed existing and proposed land use for this area (at page 125), and found that the current zoning adequately supports the vision for the precinct.

(ii) Discussion

The Panel acknowledges that under the current MUZ, some non-residential uses would be allowed on the land without a permit. That said, floorspace caps apply to shops and food and drink premises, above which a permit must be sought. Other forms of retail premises require a permit. The apartments and townhouses are well established, and are not generally suitable in their design for conversion to retail uses.

The Panel agrees with Council that retaining the existing MUZ on the land is consistent with the vision for the Historic Hilltop Precinct set out in the Structure Plan, and that rezoning the land would not be appropriate.

(iii) Conclusion

The Panel concludes:

- It does not support the rezoning of the block between Dudley, Milton, Walsh and William Streets from the existing MUZ to GRZ.

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Kieran Nelson	28	Echo Links Holdings Pty Ltd
2	Positive Energy Places	29	Fort Knox Self Storage
3	Vincent Cattermole	30	Anthony McKee
4	Andrew Kovacs	31	North West Patch Inc – Community Gardens
5	Christopher Lee	32	Peter and Helen Wilson
6	Richard Hamilton	33	Spacious Property Development Group Pty Ltd
7	Shana Besanko	34	Annie and Paul Moloney
8	Paul McLeod	35	Richard Cottrill
9	The Roman Catholic Trusts Corporation	36	Miami Hotel Group
10	Daniel Huynh	37	Budokai & Kenshikan Dojo
11	Ray Cowling	38	328-348 Spencer Street West Melbourne
12	Richard George and Margaret Ely	39	Janet Graham
13	Michael Tandora	40	Haileybury
14	Bella Freeman	41	Assets, Infrastructure and Major Projects
15	UAG West Melbourne Pty Ltd	42	King Street Investments Pty Ltd
16	Environment Protection Authority	43	Tim Watts
17	Owners Corporation- Flagstaff Views at 321 William Street, West Melbourne	44	Emily Grinton
18	Community Housing Industry Association (CHIA Vic)	45	Holder East Pty Ltd
19	Gray Puksand	46	Simon Mitchell-Wong
20	Urban Development Institute of Australia (UDIA)	47	Marshall Waters
21	Affordable Housing Industry Advisory Group (AHIAG)	48	Central Equity
22	Helen Sweeting and Gerard Rodgers	49	Stadiums Pty Ltd and Floton Pty Ltd
23	Ray Livori and R & M Holdings (VIC) Pty Ltd	50	355 Spencer Street Pty Ltd
24	June Senyard	51	Paul Vella
25	Spencer Street West Melbourne Pty Ltd	52	Property Council of Australia (PCA)
26	Nupur Nag	53	Stephen Farrell and Anthula Ralph
27	Catalina Zylberberg	54	Multifield Constructions Pty Ltd

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Melbourne City Council	<p>Juliet Forsyth SC and Alexandra Guild of Counsel, who called expert evidence on:</p> <ul style="list-style-type: none"> - Urban Design from Leanne Hodyl of Hodyl + Co - Economics from Julian Szafraniec of SGS Economics and Planning - Economics from Andrew Spencer of SGS Economics and Planning - Planning from David Barnes of Hansen Partnership - Traffic from Steven Hunt of Ratio Consultants - Urban Design from Jeremy McLeod of Breathe Architects - Contamination from Ian Kluckow of Golder Associates - Urban Design from Mark Sheppard of David Lock and Associates
Stadiums Pty Ltd and Floton Pty Ltd	Ian Pitt of Best Hooper Solicitors
UAG West Melbourne Pty Ltd	Ian Pitt of Best Hooper Solicitors
Spencer Street West Melbourne, Fort Knox Self Storage and Holder East Pty Ltd	<p>Peter O'Farrell and Carly Robertson of Counsel, instructed by Planning & Property Partners, calling the following expert evidence:</p> <ul style="list-style-type: none"> - Planning from Michael Barlow of Urbis - Economics from Reece Quick of Urbis
R & M Holdings	Liam Riordan of Tract Consultants
355 Spencer Street Pty Ltd	<p>Dominic Scally and Lucy Eastoe of Best Hooper Lawyers</p> <ul style="list-style-type: none"> - Planning from John Glossop of Glossop Town Planning
Property Council of Australia	Cressida Wall
Affordable Housing Industry Advisory Group	Nicola Foxworthy
GHK No.2 Pty Ltd	Robert Puksand of Gray Puksand Architects
Miami Hotel Group	<p>Mark Woodland of Echelon Planning and calling the following expert evidence:</p> <ul style="list-style-type: none"> - Urban Design from Brodie Blades of SJB Urban - Heritage from Robyn Riddett of Anthemion Group
328 – 348 Spencer Street West Melbourne	Giovanni Gattini of G2 Urban Planning
King Street Investments and Echo Links Holdings	Jane Kelly of Urbis
Marshall Waters	

Helen Sweeting and Gerard Rodgers

Simon Mitchell-Wong

Appendix C Document list

No.	Date	Description	Provided by
1	06/06/2019	Panel Directions and Timetable (v1)	PPV
2	"	Letter inviting DELWP to Panel Hearing	"
3	12/06/2019	Correspondence from PPP requesting extension for EWS on planning	Planning and Property Partners
4	13/06/2019	Panel response to request for extension	PPV
5	14/06/2019	City of Melbourne response to Directions <ul style="list-style-type: none"> a) Direction 1 – confirmation of experts b) Direction 3a – details of notice provided to owners and occupiers of 91-99 Dudley Street, West Melbourne c) Direction 3b – Social Infrastructure Overview for West Melbourne d) Direction 3c – Zoning maps e) Direction 3d – DDO maps f) Direction 3e – Copy of index of information provided to the Panel 	Council
6	17/06/2019	Request from Miami Hotel for extension on circulation of heritage evidence	Echelon Planning
7	"	Panel response to Miami Hotel	PPV
8	"	Request for Directions from PPP for production by Council of CLUE data	Planning and Property Partners
9	20/06/19	<ul style="list-style-type: none"> a) Council email to Panel re Request from PPP b) PPP letter to Council (18/06/19) c) Council email response to PPP (19/06/19) d) PPP letter to Council (19/06/19) 	Council
10	21/06/19	Correspondence from City of Melbourne advising change to expert witnesses – withdrawal of Mark Sheppard (urban design)	"
11	"	Evidence statement on urban design from Leanne Hodyl	"
12	"	Evidence statement on economics from Julian Szafraniec	"
13	"	Evidence statement on traffic from Steven Hunt	"
14	"	Evidence statement on architecture from Jeremy McLeod	"
15	"	Evidence statement on contamination from Ian Kluckow	"
16	"	Evidence statement on economics from Rhys Quick	Planning and Property Partners
17	24/06/19	Evidence statement on economics from Andrew Spencer	Council

No.	Date	Description	Provided by
18	"	Proposed site visit route	"
19	"	Evidence statement on urban design from Brodie Blades	Echelon Planning
20	"	EPA correspondence advising of withdrawal from the Hearing	EPA
21	25/06/19	Proposed site inspection map and itinerary	Council
22	"	Revised Hearing Timetable and Distribution List (v2)	PPV
23	"	DELWP response to Panel request for DELWP presentation at Hearing	Mr Cox, DELWP
24	"	Email from PPV advising of DELWP's submission time to the Panel	PPV
25	28/06/19	Email advising of delay in circulation of Michael Barlow's evidence	Planning and Property Partners
26	"	Email: a) advising of delay in circulation of Part A submission and evidence of David Barnes b) attaching email from Council to Leanne Hodyl requesting addendum to evidence statement	Council
27	"	Email advising of delay in circulation of Robyn Riddett's evidence	Echelon Planning
28	01/07/2019	Request for site inspection to include 480 La Trobe Street	Mr Mitchell
29	"	Evidence statement on planning from John Glossop	Ms Eastoe, Best Hooper
30	"	Curriculum Vitae of Rhys Quick	Planning and Property Partners
31	"	Evidence statement on planning from Robyn Riddett	Echelon Planning
32	"	Evidence statement on planning from David Barnes	Council
33	"	Addendum to evidence statement of Leanne Hodyl	"
34	"	Part A submission and attachments	"
35	"	City of Melbourne E-Policy Book	"
36	"	Evidence statement on planning from Michael Barlow	Planning and Property Partners
37	"	Updated site walking tour itinerary: a) map b) notes to accompany site walking tour itinerary c) confirmation of consent to access 480 La Trobe Street	Council
38	01/07/2019	Council confirmation re provision of CLUE data to Mr Quick and Mr Barlow	Council

No.	Date	Description	Provided by
39	“	Revised Hearing Timetable (v3) and Document List (v1)	PPV
40	5/07/19	Correspondence from PPP advising of case structure	Planning and Property Partners
41	8/07/149	C309 Map Book	Council
42	“	Submission from DELWP	DELWP
43	“	PowerPoint presentation, Leanne Hodyl	Council
44	“	Memo, Leanne Hodyl, addendum to expert witness statement	“
45	“	Table of expert recommendations and Council responses	“
46	“	PowerPoint presentation, Adam Mills	“
47	“	Folder of VCAT decisions	“
48	“	Substitute pages correcting images from Ms Hodyl's expert witness statement	Ms Hodyl
49	9/7/19	Addendum to expert witness statement, Rhys Quick	Planning and Property Partners
50	“	PowerPoint presentation, Julian Szafraniec	Council
51	“	PowerPoint presentation, Adam Spencer	“
52	“	Permit and endorsed plans for 185 Rosslyn Street West Melbourne	“
53	10/7/19	Echelon diagrams of floor area allowable on Miami Hotel site	Echelon Planning
54	“	Revised Hearing Timetable (v5) and Document List (v4)	PPV
55	“	Addendum to evidence statement of Mr Quick	Planning and Property Partners
56	11/07/19	Expert witness presentation Jeremy McLeod	Mr McLeod
57	“	Mr Spencer response to Mr Quick addendum to evidence	Council
58	“	Mr Szafraniec response to Mr Quick addendum to evidence	“
59	“	Submission on behalf of Stadiums	Mr Pitt, Best Hooper
60	“	Submission on behalf of UAG West Melbourne Pty Ltd	“
61	12/07/19	Planning application plans and report, 500 La Trobe Street	Planning and Property Partners
62	“	Planning application report and plans, 501-525 King Street	“
63	“	Planning permit and application plans, 512-544 Spencer Street	“

No.	Date	Description	Provided by
64	"	Mixed Use Zone	Council
65	"	Presentation of Mr Kluckow	Mr Kluckow, Golder Associates
66	"	Future Melbourne Committee Minutes 19/4/16 re 185 Rosslyn Street	Council
67	"	Planning officer report, 185 Rosslyn Street	"
68	"	Summary of s.72 changes. 185 Rosslyn Street	"
69	"	Statement of Significance Festival Hall and decision of Heritage Council	"
70	"	DTPLI Planning Report, Amendment to planning permit 420 Spencer Street	"
71	"	Future Melbourne Committee minutes and plans 512-542 & 544 Spencer Street	"
72	"	Planning Practice Note 30 – Potentially Contaminated Land	"
73	"	<i>Sale Elderly Citizens Village Inc v EPA</i> (Supreme Court decision)	"
74	15/07/19	Presentation of Mr Quick	Mr Quick
75	"	Photo Spencer Street properties	Council
76	16/07/19	Update Mr Kluckow	"
77	"	Urban Green Streets and recent park developments	"
78	"	Presentation of Mr Barlow	Mr Barlow
79	"	Zoning Map, Fishermans Bend	Council
80	"	Extract of Arden Vision p.13	"
81	"	Extract Arden-Macaulay Structure Plan	"
82	"	Macaulay Development Activity Analysis	"
83	"	Comparison Table MUZ and SUZ	"
84	"	Written submission on behalf of PPP clients (Spencer Street West Melbourne P/L; Fort Knox Self Storage (Vic) P/L; and Holder East P/L)	Mr O'Farrell
85	"	Strategic Assessment Guidelines	"
86	17/07/19	Part B Controls (tracked and clean versions)	Council
87	"	Clause 22.27 Fishermans Bend local policy	"
88	"	Panel Report Yarra C220, Johnston Street Local Area Plan	"
89	"	Tract submission re 135 Batman Street and 60-80 Adderley Street	Mr Riordan, Tract Consultants

No.	Date	Description	Provided by
90	19/07/19	Explanatory Report Amendment C173 (Carlton Connect), Melbourne PS	Council
91	"	Further Information Response, 355 Spencer Street	Mr Scally, Best Hooper
92	"	Submission re 355 Spencer Street	"
93	"	Plans 355 Spencer Street	"
94	"	Part B controls from PPP and accompanying letter from Mr Barlow	Planning and Property Partners
95	22/07/19	Property Council submission	Ms Wall
96	"	Affordable Housing Industry Advisory Group submission	Ms Foxworthy
97	"	Gray Puksand Architects presentation on behalf of GHK No. 2 P/L	Mr Puksand
98	"	Simon Mitchell-Wong presentation	Mr Mitchell-Wong
99	"	Helen Sweeting & Gerard Rodgers presentation	Ms Sweeting
100	"	Marshall Waters presentation	Mr Waters
101	"	Submission on behalf of Miami Hotel Group	Echelon Planning
102	"	Endorsed elevation of 609 King Street	"
103	"	Presentation of Mr Brodie Blades, SJB Urban	Mr Blades
104	"	Moreland Planning Scheme Clause 22.07 Apartment Policy	Echelon Planning
105	"	Permit & Plans for 611-617 King Street (Goldsmith property)	Council
106	23/07/19	355 Spencer Street P/L Part B Controls	Best Hooper
107	"	3D Development Activity Model Updated (August 2017)	Council
108	"	G2 Urban Planning submission, 328-348 Spencer Street	Mr Gattini, G2 Urban Planning
109	"	Submission by King Street Investments P/L and Echo Links Holdings P/L	Ms Kelly, Urbis
110	24/07/19	FAR Calculation for 512-544 Spencer Street (based on application plans)	Echelon Planning
111	"	Echelon request for Panel Directions re Miami Hotel site	"
112	"	Panel email response to Echelon request	PPV
113	"	Council's Part C Submission	Council
114	"	Clause 22.03 Floor Area Uplift and Delivery of Public Benefits, Melbourne Planning Scheme	"

No.	Date	Description	Provided by
115	“	<i>How to calculate floor area uplifts and public benefits</i> , DELWP November 2016	“
116	“	Part C Controls	“
117	“	Further transitional provisions for CCZ and DDOs from PPP	Planning and Property Partners
118	“	Email from Mr Mitchell-Wong responding to questions	Mr Mitchell-Wong
119	“	Melbourne C270 Panel report – Central City Built Form review	Planning and Property Partners
120	“	Supreme Court decision, <i>Seventh Columbo Pty Ltd v Melbourne City Council</i>	“
121	25/07/19	Further Panel Directions	PPV
122	1/08/19	Table of Panel’s drafting queries	PPV
123	9/08/19	Further submissions on behalf of Miami Hotel Group on whether submissions are within scope of Amendment	Echelon Planning
124	12/08/19	Council response to further submissions of Miami Hotel Group	Council
125	15/08/19	Council response to Panel’s drafting queries	Council

Appendix D1 Panel preferred version of Clause 21.16-6

Note: Tracked against Part C version. Only substantive changes are tracked. Text that has been re-ordered or general restructuring has not been tracked.

~~Panel delete~~

Panel add

21.16 OTHER LOCAL AREAS

05/10/2018
GC81

The following local area plans provide spatial and built form directions for the remaining neighbourhoods of the municipality.

...

21.16–5 North Melbourne

29/01/2015
Proposed C309

North Melbourne has a strong residential base as well as commercial and industrial uses. Many of the area's streetscapes and buildings have been recognised for their heritage significance. Flemington Road is a key tree-lined boulevard entry into the City.

North Melbourne should provide a balance of residential and commercial uses that maintains an emphasis on local community and liveability. There should be a clear distinction in scale from the Central City with higher scales of development expected along Flemington Road. In all other areas, a lower scale of development should be maintained.

The role and character of the Errol Street and Victoria Street shopping area should be strengthened, as local community centres.

Housing

- Support residential development in the Hoddle Grid fringe. In this area, increased residential densities should be balanced with the strategic role of this area in providing for small to medium enterprises that support the Hoddle Grid and Docklands.
- Promote the retention and refurbishment of existing public housing estates.
- Support limited residential development that maintains the low scale nature of heritage buildings and streetscapes in the Residential Zone (stable residential areas).

Economic Development

- Support a mix of uses with retail and small scale business uses and some light industrial uses in the Mixed Use Zone in North Melbourne.
- Support commercial development in the Hoddle Grid fringe.
- Strengthen the role of the Errol and Victoria Streets shopping area for convenience shopping, neighbourhood facilities and as a neighbourhood focus.
- Support the ongoing operation and establishment of small to medium enterprises and businesses that provide professional and business support services to the Capital City Zone in the Mixed Use Zone of North Melbourne adjacent to the Hoddle Grid.
- Support home business, small to medium offices and other commercial developments in the Mixed Use Zone of North Melbourne.
- Support light and service industry in the Mixed Use Zone in North Melbourne.

Built Environment and Heritage

- Maintain the predominantly low scale of residential areas and the Mixed Use Zone in North Melbourne.
- Maintain lower scale streetscapes in other parts of North Melbourne. Ensure that development is sympathetic to the architecture, scale and heritage character of the lower scale areas.

PANEL PREFERRED VERSION (TRACKED AGAINST PART C VERSION)

- Encourage the re-use of existing warehouse and industrial buildings with efficient recycling potential where these contribute to the traditional mixed use character of the area.
- Ensure infill redevelopment and extensions complement the architecture, scale and heritage values of the residential area, especially where it is in a Heritage Overlay.
- Maintain the existing two storey scale in the Errol and Victoria Street shopping precinct consistent with the area's heritage buildings.
- Reinforce Flemington Road as a key tree lined boulevard entry to the Central City.

Transport

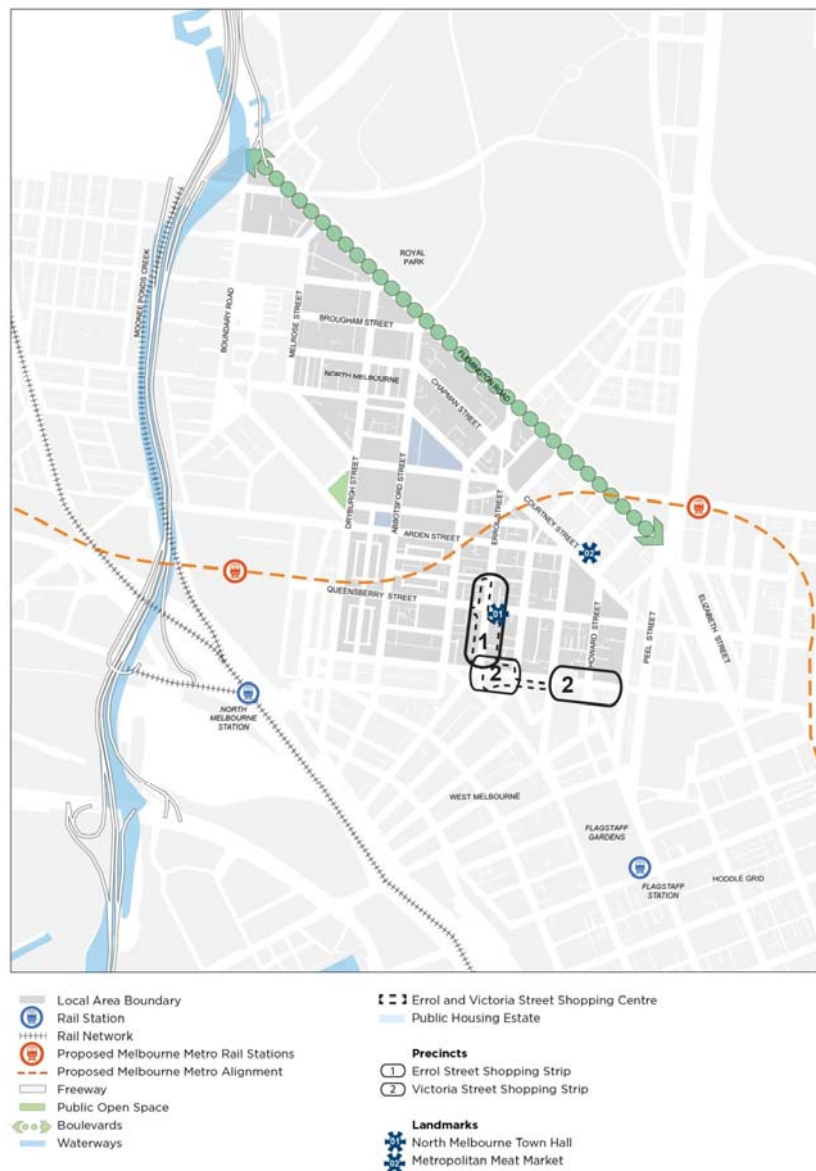
- Strengthen public open space and pedestrian and cycle connections in North Melbourne, across the Moonee Ponds Creek and with the Capital City trails.
- Strengthen pedestrian, cycle and visual connections to Royal Park.
- Encourage better links between existing transport modes in North Melbourne and between key precincts, e.g. Errol Street shopping precinct.

Infrastructure

- Support the role of the North Melbourne Town Hall arts precinct, including the Metropolitan Meat Market.
- Support the provision of open space and recreational facilities for the local resident and working community.
- Facilitate opportunities for the creation of new open space in North Melbourne.

MELBOURNE PLANNING SCHEME
 PANEL PREFERRED VERSION (TRACKED AGAINST PART C VERSION)

Figure 20: North Melbourne



21.16—6 West Melbourne

Proposed
C309

West Melbourne accommodates a mix of residential, commercial and industrial uses, along with the major regional open space of Flagstaff Gardens and North Melbourne (future West Melbourne) Station - a major interchange station connecting six train lines to the north-west of Melbourne.

The area now known as West Melbourne has been the country of the Wurundjeri (Woiwurrung) and Boon wurrung (Bunurong) people of the Kulin nation for tens of thousands of years. The hills of West Melbourne were once covered in grasslands and eucalypt woodland leading down to salt marshes, billabongs and floodplains to the west. The hill now occupied by Flagstaff Gardens was a meeting place for local clans, with expansive views across the salt lakes, flats and lagoons to the You Yangs in the west.

West Melbourne's distinctive variety of uses and rich cultural and architectural heritage has long been shaped by its adjacency to the central city, nearby industrial areas, proximity to the port and good road and rail connections. Many of the area's streetscapes and buildings have been recognised for their heritage significance.

The projected population of West Melbourne is around 19,000 by 18,687 to 2036 and around 21,500 by 21,498 to 2041. It is predicted that there will be the need for between-around 10,000 jobs in total (4,500 to 6,500 additional jobs) in West Melbourne by 2036.

West Melbourne will retain its unique identity, varied areas of character and mix of uses as it evolves into one of Melbourne's distinct inner urban neighbourhoods. West Melbourne will remain and a counterpoint to the central city. Retention and adaptive reuse of its heritage and other characterful buildings will provide opportunity for a diverse range of uses be encouraged. New mixed use development of the highest design quality will bring high amenity for residents, workers and visitors. Its wide green streets will provide excellent connections and a network of local spaces to rest and play. The establishment of Spencer Street between Dudley and Hawke Streets will become as a vibrant local high street activity centre, will create an economic centre for West Melbourne (see Figure 21).

West Melbourne is made up of five distinct places-precincts (see Figure 21), each with its own character and qualities and each with its own vision, as set out in the *West Melbourne Structure Plan 2018*.

Housing

- Encourage the provision of affordable housing in the Flagstaff, Spencer, and Station precincts.
- Provide for residential development in appropriate locations in order to support West Melbourne as a mixed use area, through the application of the Special Use Zone.
- Deliver approximately 6,673 6,700 additional dwellings to meet the projected population growth.

Economic Development

- Retain existing employment, and provide opportunities for the creation of new employment through the application of the Special Use Zone.
- Prepare and implement a Spencer Street Masterplan that achieves a high quality street design to support an economically thriving heart for the West Melbourne neighbourhood Support the development of Spencer Street into an economically thriving local activity centre through the application of the Special Use Zone and Design and Development Overlay.
- Support mixed use development to facilitate a range of business and employment opportunities throughout West Melbourne.
- Support the delivery of the projected 10,000 jobs (4,500 to 6,500 additional jobs) by 2036.

Commented [A1]: Refer to Chapter 6.2. Population projections should be rounded given inherent uncertainties

Commented [A2]: Refer to Chapter 16.3. Panel recommends activity centre instead of high street, as it is a recognised planning concept.

Commented [A3]: The SUZ6 seeks to do more than providing for a mixed use area and retaining and creating employment. The reference to the SUZ is not necessary in local policy

Commented [A4]: Figure is rounded, consistent with recommendations in Chapter 6.2

Commented [A5]: Replaced with Action 15 from the Structure Plan, as it is more direct and action-based

MELBOURNE PLANNING SCHEME
PANEL PREFERRED VERSION (TRACKED AGAINST PART C VERSION)

- Enhance the area around North Melbourne (future West Melbourne) Railway Station with active uses to reinforce this area as key gateway into West Melbourne (see Figure 21).

Built Environment and Heritage

- ~~Ensure that built form positively responds to a site, its context and the public realm, through the application of Design and Development Overlays for each precinct.~~
- ~~Ensure all new development responds sympathetically to, and enhances the valued heritage character of West Melbourne.~~
 - Support the development of West Melbourne as a predominantly mid-rise, human scaled neighbourhood with a diverse range of building types and some higher built form in specified locations.
 - Ensure that new development is of the highest design quality, and is responsive to the local context, varied subdivision patterns and site sizes in West Melbourne.
 - Provide for a highly walkable neighbourhood with increased permeability and laneways through blocks.
- ~~Ensure new development enables sunlight and daylight to reach into the parks, streets and lower levels of buildings.~~
- Encourage the retention and adaptive re-use of existing buildings, particularly special character buildings and heritage buildings.
- ~~Support equitable development by ensuring primary outlook is secured to the street or within development sites.~~
- ~~Provide for fine grain adaptable tenancies within the lower levels of buildings.~~
- Encourage development that responds to the scale of the street hierarchy, and that delivers active frontages along streets and laneways and creates pedestrian friendly environments. ~~Deliver a lower scale of development along the laneways and the activation of the laneway interface.~~
- Provide streets that are to be sheltered and green at pedestrian level due to ~~the~~ avenues of canopy trees.
- In the Spencer Precinct, encourage:
 - a vibrant, inner-city area with a mix of retail, commercial, residential, community and creative uses.
 - ~~this a~~ neighbourhood that is to be distinct from the central city and North Melbourne
 - the development of Spencer Street (between Dudley and Hawke Streets) as a vibrant local activity centre serving West Melbourne, where commercial and retail activity is concentrated
 - a mix of converted warehouses, contemporary developments, heritage corner pubs and Victorian shop fronts.
 - the incorporation of older existing heritage and special character buildings into new developments
 - well established and consistent ~~(Tree planting throughout to be well established and consistent, and to include large canopy trees in all streets.~~
 - the retention and enhancement of views towards Eades Park and St Mary's Cathedral.
- In the Flagstaff Precinct encourage:
 - a diverse area of mostly residential and commercial buildings that is well connected to ~~the~~ Flagstaff Station and Flagstaff Gardens.
 - ~~the area to be a~~ neighbourhood that is distinct from the central city, characterized by large historic brick buildings, contemporary developments and warehouse restorations

Commented [A6]: Several of these objectives/outcomes are repeated elsewhere in the Scheme, and have been deleted to avoid unnecessary repetition

Commented [A7]: Varied typologies and heights are being sought, not a uniform mid-rise neighbourhood

Commented [A8]: The Panel considers that this objective should be more targeted, and has reworded it accordingly

Commented [A9]: Refer to Chapter 14.4. The Panel does not support this objective in the DDOs, and the same reasoning applies to Clause 21.16-6

Commented [A10]: Redrafted to more directly reflect what the Structure Plan is seeking

Commented [A11]: Relocated from Flagstaff Precinct objectives, as this is a common objective for all precincts (as per the Structure Plan)

Commented [A12]: As the Spencer Street activity centre is a key feature of the Spencer Precinct, it is appropriate to restate this objective here

Commented [A13]: Redrafted to be more specific and targeted

Commented [A14]: Repeated in other objectives

MELBOURNE PLANNING SCHEME
PANEL PREFERRED VERSION (TRACKED AGAINST PART C VERSION)

- local streets ~~to be~~ that are home to small parks, recreation spaces and broad canopy trees
- a variety of shops and services on Spencer, King and La Trobe Streets.
- In the Adderley Precinct, encourage:
 - an eclectic mix of uses, tucked away from busy thoroughfares of West Melbourne, ~~but~~ with great views of the city and Docklands
 - the retention of a mix of heritage cottages and terraces, contemporary buildings and restored warehouses and factories
 - ~~the retention and renovation of buildings from all eras, including workers' cottages and Victorian terraces, together with more recent apartment buildings~~
 - retention of the existing leafy streets, providing high quality pedestrian connections to a new linear park along ~~to connect to the~~ Hawke Street ~~green spine~~ (see Figure 21)
 - a new pedestrian and cycle route ~~over~~ connecting to Docklands (see Figure 21) and excellent walking and cycling access to surrounding areas.
- In the Historic Hilltop Precinct, retain and enhance:
 - the valued heritage character, clustered around the shopping strips on ~~Errol~~ Victoria and Peel Streets.
 - the fine grained residential area with intact rows of workers' cottages, two storey terraces and Federation homes, and the retrofitted warehouses and larger institutional buildings
 - the wide green streets and open spaces
 - pedestrian amenity in the Hawke and King intersection and the Hawke Street linear park
 - ~~and~~ regular avenues of street trees that reinforce the visual links to Flagstaff Gardens.
 - views to the central city and access to Flagstaff Gardens and Queen Victoria Market.
- In the Station Precinct, encourage:
 - a thriving area of converted warehouse apartments and new mid-rise ~~residential~~ mixed use and commercial buildings
 - North Melbourne ~~Station~~ (future West Melbourne) Railway Station to be become the focal point of the precinct by providing green avenues that extend to the north and east of the Station and new pedestrian and cycling bridges to link ~~the south and west~~ to E-Gate and Docklands (see Figure 21).
 - ~~a~~ A mix of retail, commercial and residential buildings for people to ~~to encourage~~ people to linger in the precinct rather than just pass through.

Transport

- Advocate for, and help deliver, public transport that meets the needs of the West Melbourne population, including the extension of tram services along Spencer Street to Arden.
- ~~Expand and upgrade the cycling network in West Melbourne.~~
- Upgrade the public and private realm in the area around North Melbourne (future West Melbourne) Railway Station including Railway Place, including through ensuring that new development is of the highest design quality.
- ~~Support~~ Encourage a less car dependent transport system through the application of the Parking Overlay.
- Develop high quality and feasible options to connect West Melbourne with Docklands and E-Gate via pedestrian and cycling bridges.

Commented [A15]: Largely repeats the previous dot point

Commented [A16]: Errol Street is beyond the Structure Plan area

Commented [A17]: Structure Plan and DDOs seek mixed use rather than residential buildings. Commercial buildings should be encouraged in Station due to excellent transport connections

Commented [A18]: Taken from Objective 11 and Action 26 of the Structure Plan. The Spencer Street improvements are important to the success of the Spencer Street activity centre

Commented [A19]: Repeats other objectives in Clause 21.16-6

MELBOURNE PLANNING SCHEME
PANEL PREFERRED VERSION (TRACKED AGAINST PART C VERSION)

- Strengthen public open space and pedestrian and cycle connections ~~through in the North and West Melbourne to neighbouring areas, including connections to area, across the~~ Moonee Ponds Creek and ~~with~~ the Capital City trails.
- Strengthen pedestrian, cycle and visual connections to Royal Park.

Infrastructure

- Ensure good access to community and creative infrastructure within and around West Melbourne ~~that helps people meet their social needs and enhances community wellbeing.~~
- ~~Support the provision of recreational facilities for the local resident and working community.~~
- Support the functioning and growth of education uses in West Melbourne, in particular Primary Schools.

Open Space

- Support the creation of linear ~~open spaces~~ parks through West Melbourne to enhance pedestrian connectivity with surrounding areas (see Figure 21).
- Improve ~~access to, and~~ the function, usability ~~and~~ safety ~~and access of~~ existing open spaces.
- Deliver new open spaces in ~~the~~ Flagstaff, Spencer and Adderley ~~Precincts~~ to meet the needs of the growing community.
- ~~Create high quality green streets.~~

~~Sustainability~~

~~Implement clause 22.23 Stormwater Management (Water Sensitive Urban Design) and clause 22.19 Energy, Water and Waste Efficiency to support a resilient and liveable neighbourhood.~~

Panel recommended changes to Figure 21:

- rename 'local area boundary' to 'West Melbourne Structure Plan area'
- add '(refer to page 120 of the West Melbourne Structure Plan)' to 'Enhanced Activity in Station Precinct'
- rename 'Spencer High Street Activity Centre' to 'Spencer Street local activity centre'
- add '(refer to page 75 of the West Melbourne Structure Plan)' to 'Future open space Priority Area', and remove the green shading from the area north of Roden Street (for consistency with the Structure Plan).

Commented [A20]: Taken from Objective 6 in the Structure Plan

Commented [A21]: Repeated elsewhere in the Scheme

Commented [A22]: Repeats other objectives in Clause 21.16-6

Commented [A23]: Repeated elsewhere in the Scheme

Commented [A24]: These recommendations are for consistency with the Structure Plan and/or consistent with other recommendations of the Panel

Figure 21: West Melbourne Structure Plan area and precincts



- Local area boundary
 - Public open space
 - Train Stations
 - Spencer High Street Activity Centre
 - Enhanced Activity in Station Precinct
 - Metro Tunnel and future North Melbourne Station
 - Future open space Priority Area
 - Opportunity for new open space in streets
 - Proposed linear park along Hawke Street
 - Proposed walking and cycling bridge
 - Proposed Spencer Street improvements and potential tram extension
- Precincts**
- ① Spencer Precinct
 - ② Flagstaff Precinct
 - ③ Adderley Precinct
 - ④ Station Precinct
 - ⑤ Historic Hilltop Precinct
- Landmarks**
- ✳ St Mary's Star of the Sea Church
 - ✳ St James' Old Cathedral

05/10/2018
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Appendix D2 Panel preferred version of Special Use Zone Schedule 6

Note: Tracked against Part C version. Only substantive changes are tracked. Text that has been re-ordered or general restructuring has not been tracked.

~~Panel delete~~

Panel add

Proposed
C309

SCHEDULE 6 TO CLAUSE 37.01 SPECIAL USE ZONE

Shown on the planning scheme map as **SUZ6**.

WEST MELBOURNE

Purpose

To implement the West Melbourne Structure Plan 2018 and support the development of West Melbourne as a vibrant, mixed use inner city neighbourhood with a genuine mix of retail, commercial, education and residential uses and affordable housing.

To retain and increase employment and facilitate an increase in jobs in West Melbourne.

To ~~support~~ encourage a less car dependent transport system by facilitating the adoption of sustainable transport alternatives, and ensuring that opportunities to adapt and repurpose car parks are protected, ~~and to facilitate the adoption of sustainable transport alternatives~~.

To encourage provision of new public open spaces throughout West Melbourne to meet the different needs of the growing community.

To develop ~~the~~ Spencer Street ~~Village (between Dudley and Hawke Streets)~~ as a local activity centre with a mix of commercial, retail, residential and community uses ~~to complement its activity centre function~~.

1.0

Proposed
C309

Table of uses

Section 1 - Permit not required

Use	Condition
Animal Keeping (other than Animal Boarding)	Must be no more than 2 animals
Art Gallery	
Bed and Breakfast	No more than 10 persons may be accommodated away from their normal place of residence
Community Care a Accommodation	Must meet the requirements of Clause 52.22-2-2 <u>Must not have a ground floor frontage to Spencer Street between Hawke Street and Dudley Street that exceeds 2 metres</u>
Dependent person's unit	Must be the only D ependent person's unit on the lot
Dwelling (other than Bed and breakfast)	The total number of dwellings must not exceed 9 <u>(this does not apply to the use of land in accordance with a planning permit for buildings and works granted before the approval date of Amendment C309)</u> Must not have a ground floor frontage to Spencer Street between Hawke Street and Dudley Street <u>that exceeds 2 metres</u> (this does not include a shared residential entry providing access to a dwelling)
Food and drink premises	<u>The leasable floor area must not exceed 150 square metres</u> Except for (this does not apply to properties fronting Spencer Street between Hawke Street and Dudley Street) the leasable floor area must not exceed 150 square metres

Commented [A1]: For uses introduced as section 1 uses by VC152, the Panel has presumed that Council's intent is to restrict ground floor frontages in the activity centre in the same way as for Dwelling and Residential aged care facility. The Panel considers that the condition should be worded consistently with the Commercial 1 zone (by reference to frontages no more than 2m), rather than shared residential entries, for consistency

Commented [A2]: Refer to Chapter 14.9

Home based business

Informal outdoor recreation

Medical centre	The gross floor area must not exceed 250 square metres
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Museum

Office (other than Medical centre)

Place of worship	The gross floor area of all buildings must not exceed 250 square metres
-------------------------	---

Railway

Residential aged care facility	<u>Must not have a ground floor frontage to Spencer Street between Hawke Street and Dudley Street that exceeds 2 metres</u> For properties fronting Spencer Street, between Hawke Street and Dudley Street that exceeds 2 metres must not be located at the ground floor
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Rooming House	Must meet the requirements of Clause 52.23-2 <u>Must not have a ground floor frontage to Spencer Street between Hawke Street and Dudley Street that exceeds 2 metres</u>
----------------------	---

Shop (other than Adult sex product shop)	<u>The leasable floor area must not exceed 150 square metres (this does not apply to properties fronting Spencer Street between Hawke Street and Dudley Street)</u> Except for properties fronting Spencer Street between Hawke Street and Dudley Street, the leasable floor area must not exceed 150 square metres
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Tramway

Any use listed in Clause 62.01	Must meet the requirements of Clause 62.01
---------------------------------------	--

Section 2 - Permit required

Use	Condition
Accommodation (other than Community Care Accommodation, Dependent person's unit, Dwelling, Residential aged care facility and Rooming house)	Must not have a ground floor frontage to Spencer Street between Hawke Street and Dudley Street <u>that exceeds 2 metres</u> (this does not include a shared residential entry)
Agriculture (other than Animal keeping and Apiculture)	
Animal boarding	
Animal keeping (other than Animal boarding) – if the Section 1 condition is not met	Must be no more than 5 animals.
Car Park	Must be <u>co-</u> located on land occupied by a land use other than Car Park The overall number of car parking spaces on the land must not be increased
Industry (other than Materials recycling and Transfer station)	Must not be a purpose listed in the table to Clause 53.10.

Leisure and recreation (other than
Informal outdoor recreation)

Place of assembly (other than Art
Gallery, Carnival, Circus, Museum and
Place of worship)

Retail premises (other than Food and
drink premises and Shop)

Utility installation (other than Minor
utility installation and
Telecommunications facility)

Warehouse	Must not be a purpose listed in the table to Clause 53.10.
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Any other use not in Section 1 or 3

Section 3 - Prohibited

Use

Adult sex bookshop

Brothel

Materials recycling

Transfer station

Stone extraction

2.0

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C309

Use of land

Use for Dwellings – Affordable Housing

These requirements apply to ~~For~~ land located in the Flagstaff, Spencer and Station Precincts, as shown on Figure 1.

~~E~~ for a development of 10 or more dwellings, at least one in sixteen dwellings within the development (at least 6%) should be an ~~A~~affordable ~~H~~ousing dwelling unless otherwise agreed to by the Responsible Authority.

If in calculating the number of Affordable Housing dwellings requirement the result is not a whole number, the affordable housing requirement number is to be rounded up to the nearest whole number.

Unless otherwise agreed to by the Responsible Authority, the ~~A~~affordable ~~H~~ousing dwellings should be Social Housing.

Social Housing means a dwelling provided at no cost and either:

- ~~provided~~ ~~transferred~~ to an Affordable Housing Provider; or
- held in an affordable housing trust and managed for the sole purpose of affordable housing.

Affordable Housing has the meaning set out in the Planning and Environment Act 1987.

Affordable Housing Provider means an agency, a body or a person which provides affordable housing, including but not limited to Registered Housing Agencies, Rental Housing Agencies and other bodies established or recognised under the *Housing Act 1983*.

Commented [A3]: Refer to Chapter 10

These requirements do not apply to the use of land in accordance with a planning permit for buildings and works granted before the approval date of Amendment C309.

Use for Accommodation – Minimum Floor Area Requirement for Use Other than Accommodation

Commented [A4]: Refer to Chapter 9

Where a permit is required to use A permit cannot be granted to use land for Accommodation unless, the development should include the minimum percentage of gross floor area allocated to a use other than Accommodation specified in Table 1. For this purpose, gross floor area excludes:

- Gross floor area used for car parking, bicycle and loading and unloading facilities
- Band any bonus F floor A area or floor area uplift under an applicable Design and Development Overlay.

Table 1 Minimum percentage of non-Accommodation floor area

<u>Precinct</u>	<u>Minimum percentage</u>
<u>Flagstaff Precinct</u>	<u>XX percent.</u>
<u>Station Precinct</u>	<u>XX percent.</u>
<u>Spencer Precinct</u>	<u>For properties fronting King Street or Spencer Street – XX percent.</u> <u>In all other locations – XX percent.</u>
<u>Adderley Precinct</u>	<u>XX percent.</u>

Commented [A5]: The Panel considers that the percentage requirements are easier to read and follow in a table format, rather than as text. Specify percentages in accordance with the principles outlined in the Panel's recommendations in Chapter 10.3.

For land located in the Flagstaff Precinct as shown in Figure 1:

- A minimum of XX per cent of the gross floor area of a development is allocated to a use other than Accommodation.

For land located in the Station Precinct as shown on Figure 1:

- A minimum of 20XX per cent of the gross floor area of a development is allocated to a use other than Accommodation.

For land located in the Spencer Precinct as shown on Figure 1:

- A minimum of 20 XX per cent of the gross floor area of a development is allocated to a use other than Accommodation for those properties fronting King Street and Spencer Street and for all other properties it will be 25XX per cent.

For land located in the Flagstaff and Adderley Precincts as shown on Figure 1:

- A minimum of 16.6XX per cent of the gross floor area of a development is allocated to a use other than Accommodation.

These above requirements does not apply to:

- An application that seeks to increase the gross floor area of an existing development where the increase in floor area is solely to be allocated solely to a use other than Accommodation.
- The use of land in accordance with a planning permit for buildings and works granted before the approval date of Amendment C309.

Commented [A6]: Refer to Chapter 14.9

~~A permit can be granted to reduce or waive the requirement in relation to an application for Affordable Housing, Residential Hotel, Motel, Corrective Institution or Residential Aged Care Facility.~~

Commented [A7]: No longer required, as all minimum non-Accommodation floor area requirements are discretionary



Figure 1 - Special Use Zone Schedule 6 and West Melbourne Structure Plan 2018 Precincts

Commented [A8]: Realign precinct boundaries as per Panel recommendations in Chapter 15.3

Transitional Provision

Commented [A9]: Refer to Chapter 14.9

~~The first condition to the use Dwelling and clause 2.0 to this Schedule do not apply to the use of land for Dwelling if that use is in accordance with a planning permit for the construction of a building for a purpose comprising Dwellings granted before the approval date of Amendment C309.~~

Use for industry, service station and warehouse - Amenity of the neighbourhood

The use of land for an industry, service station or warehouse must not adversely affect the amenity of the neighbourhood, including through:

- The transport of materials or goods to or from the land.
- The appearance of any stored materials or goods.
- Traffic generated by the use.
- Emissions from the land.

Application Requirements

~~The following application requirements apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and must accompany an application.~~
~~An application for a permit under this schedule must be~~

Commented [A10]: Redrafted in accordance with Council's response to the Panel's drafting queries (Document 125)

accompanied by the following, as appropriate, to the satisfaction of the responsible authority:

Non Accommodation Floorspace Requirement

An application to use land for Accommodation must be accompanied by a report that addresses:

- whether (and to what extent) the proposal meets the minimum non-accommodation floor area requirements specified in Table 1 in this schedule
- how the proposal contributes to the job growth targets set out in Clause 21.16-6.

Commented [A11]: Refer to Chapter 9

Use for Dwellings

An application to use land for Dwellings must be accompanied by a report ~~which~~ that addresses:

- whether (and to what extent) the proposal meets the affordable housing requirements specified in this schedule
- how the proposal contributes to the goal of delivering 6% of housing as affordable housing in West Melbourne.
- ~~An application to use land for a Dwelling that does not achieve at least 6% affordable housing either:~~
 - ~~provided at no cost to an affordable housing provider~~
 - ~~held in an affordable housing trust and managed for the sole purpose of affordable housing~~

Commented [A12]: Refer to Chapter 10

~~must be accompanied by a detailed report prepared by a suitably qualified professional that demonstrates, to the satisfaction of the Responsible Authority why the requirement, cannot be delivered without rendering the project economically non-viable. The report must set out details of all project revenues and costs including profit margins. The Responsible Authority will assess this information in the report against current industry benchmarks. The Responsible Authority may require this report to be reviewed by a suitably qualified independent third party at the applicant's cost.~~

Commented [A13]: Replaced with a decision guideline, as per the recommendations in Chapter 10.6

Use for industry, service station or warehouse

An application to use land for ~~an~~ industry, service station or warehouse must be accompanied by the following information:

- The purpose of the use and the types of activities to be carried out.
- The type and quantity of materials and goods to be stored, processed or produced.
- Whether a Works Approval or Waste Discharge Licence is required from the Environment Protection Authority.
- Whether a notification under the Occupational Health and Safety (Major Hazard Facilities) Regulations 2000 is required, a licence under the Dangerous Goods Act 1985 is required, or a fire protection quantity under the Dangerous Goods (Storage and Handling) Regulations 2000 is exceeded.
- How land not required for immediate use is to be maintained.
- The likely effects, if any, on the neighbourhood, including noise levels, traffic, air-borne emissions, emissions to land and water, light spill, glare, solar access and hours of operation (including the hours of delivery and dispatch of materials and goods).

Use for Car Park

An application to use land for a Car Park must be accompanied by ~~the following information:~~

a document demonstrating that ~~the any existing~~ car parking spaces to be re-purposed as a Car Park are not needed for the other uses conducted on the land.

Decision Guidelines

~~The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered. Before deciding on a permit application under this schedule the responsible authority must consider the following, as appropriate, by the responsible authority:~~

Commented [A14]: Redrafted in accordance with Council's response to the Panel's drafting queries (Document 125)

~~**Non-accommodation Floorspace Requirement** — Use for Affordable Housing, Residential Hotel, Motel, Corrective Institution or Residential Aged Care Facility~~

Commented [A15]: Refer to Chapter 9

Where the development proposes to provide a lower percentage of non-accommodation floor area than specified in Table 1 of this schedule:

- The extent of employment opportunities provided by the proposal.
- The community benefit associated with the use, for example provision of Affordable Housing, Community care accommodation, Residential aged care facility or Rooming house.
- Whether the development can demonstrate that it is contributing to the employment targets contained in Clause 21.16-6 while providing less than the minimum non-accommodation floor area requirement.
- Whether the provision of the minimum non-accommodation floor area requirement results in a negligible proportion of the required floor area being splintered onto a separate floor, resulting in an impractical building design.
- Whether there are any site constraints that limit the ability to accommodate the minimum non-accommodation floor area requirement.
- Whether the variation to the minimum non-accommodation floor area requirement will lead to non-active frontages in a location where active frontages are desirable.

Use for Dwellings

- The extent to which the proposal provides floor space for uses other than dwellings.
- ~~Whether the proposal delivers an activated ground floor~~ For properties along Spencer Street between Hawke Street and Dudley Street, whether the proposal delivers an activated ground floor.
- The extent to which the proposal contributes to the provision of at least 6% ~~A~~ Affordable Housing in West Melbourne.
- Where development does not meet the Affordable Housing requirements of this schedule:
 - The amount of Affordable Housing available in West Melbourne and nearby areas.
 - Whether it can be demonstrated that the Affordable Housing contribution would render the proposed development economically unviable.
 - Whether the scale of the project, the constraints of the site or the built form envelope available on the site makes it impractical to do so.
- The views of the relevant Affordable Housing Provider (where applicable).

Commented [A16]: Refer to Chapter 10

Use for industry, service station or warehouse

- Whether the use is compatible with adjoining and nearby land uses.
- The effect that existing uses on adjoining or nearby land may have on the proposed use.
- The design of buildings, including provision for solar access.
- The availability and provision of utility services.
- The effect of traffic to be generated by the use.
- The interim use of those parts of the land not required for the proposed use.

- For non-residential uses, the proposed hours of operation, noise and any other likely off-site amenity impacts.

Use for Car Park

Whether the existing car parking spaces to be re-purposed are no longer needed for the other uses conducted on the land.

3.0

Proposed
C309

Subdivision

An application to subdivide land, whether or not in accordance with an approved development, must ensure that all car parking spaces are retained as common property. This requirement does not apply to an enclosed garage forming part of a townhouse.

An application to subdivide land, other than an application to subdivide land into lots each containing an existing dwelling or car parking space, must meet the requirements of Clause 56 and:

- Must meet all of the objectives included in the clauses specified in the following table.
- Should meet all of the standards included in the clauses specified in the following table.

Class of subdivision	Objectives and standards to be met
60 or more lots	All except Clause 56.03-5.
16 – 59 lots	All except Clauses 56.03-1 to 56.03-3, 56.03-5, 56.06-1 and 56.06-3.
3 – 15 lots	All except Clauses 56.02-1, 56.03-1 to 56.03-4, 56.05-2, 56.06-1, 56.06-3 and 56.06-6.
2 lots	Clauses 56.03-5, 56.04-2, 56.04-3, 56.04-5, 56.06-8 to 56.09-2

Application Requirements

The following application requirements apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and must accompany an application. An application for a permit under this schedule must be accompanied by the following, as appropriate, to the satisfaction of the responsible authority:

- A report which addresses whether the subdivision provides for the transition of car parks and car spaces on common property to alternative uses over time.

Exemption from notice and review

An application for subdivision of the land is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

Decision Guidelines

The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered before deciding on a permit application under this schedule the responsible authority must consider, as appropriate, by the responsible authority:

- The pattern of subdivision and its effect on the spacing of buildings.
- For subdivision of land for residential development, the objectives and standards of Clause 56.
- The contribution the proposed subdivision makes to a fine grain precinct, and pedestrian and bicycle permeability.

Commented [A17]: Redrafted in accordance with Council's response to the Panel's drafting queries (Document 125)

Commented [A18]: Redrafted in accordance with Council's response to the Panel's drafting queries (Document 125)

- Whether ~~the~~ any proposed car parking area is designed for future adaptation or repurposing ~~as~~ an alternative use.

4.0

~~and/or~~
Proposed
C309

Buildings and works

Construction and extension of one dwelling on a lot

No permit is required to construct or carry out works for the following:

- Construct or extend one dwelling on a lot of greater than 300 square metres.
- Construct or carry out works normal to a dwelling.
- Construct or extend an out-building (other than a garage or carport) on a lot provided the gross floor area of the out-building does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.
- Make structural changes to a dwelling provided the size of the dwelling is not increased or the number of dwellings is not increased.

The following requirements apply to the construction and extension of one dwelling on a lot:

- A development must meet the requirements of Clause 54.

Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings

No permit is required to construct or carry out works for the following:

- To construct one Dependent person's unit on a lot.

The following requirements apply to the construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings:

- A development must meet the requirements of Clause 55. This does not apply to a development of five or more storeys, excluding a basement.
- An apartment development of five or more storeys, excluding a basement, must meet the requirements of Clause 58.

Motorcycle parking

The following requirements apply to the construction of a building or ~~construct or the~~ carrying out of works:

- All buildings that provide on-site car parking must provide motorcycle parking for the use of occupants and visitors, at a minimum rate of one motor cycle parking space for every 100 car parking spaces, unless the responsible authority is satisfied that a lesser number is sufficient.

Commented [A19]: Consider whether this requirement is necessary given the carparking rates in PO14 – unlikely that more than 100 spaces will be provided.

Buildings on lots that abut another residential zone

The following requirements apply to the construction of a building or ~~construct or the~~ carrying out of works on a lot that abuts ~~another a~~ residential zone:

- Any buildings or works constructed on a lot that abuts land which is in a General Residential Zone, Residential Growth Zone, Neighbourhood Residential Zone or Township Zone must meet the requirements of Clauses 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04- 6 along that boundary.

Application Requirements

~~The following application requirements apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and must accompany an application.~~ An application for a permit must be accompanied by the following information, as appropriate, to the satisfaction of the responsible authority:

- A site analysis and descriptive statement explaining how the proposal responds to the site and its context.
- Plans drawn to scale and dimensioned which show:

Commented [A20]: Redrafted in accordance with Council's response to the Panel's drafting queries (Document 125)

- The layout of proposed buildings and works.
- An elevation of the building design and height.
- Setbacks to property boundaries.
- All proposed access and pedestrian areas.
- All proposed driveway, car parking and loading areas.
- Existing vegetation and proposed landscape areas.
- The location of easements and services.

Decision Guidelines

~~The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered. Before deciding on a permit application under this schedule the responsible authority must consider, as appropriate, by the responsible authority:~~

Commented [A21]: Redrafted in accordance with Council's response to the Panel's drafting queries (Document 125)

Construction and extension of one dwelling on a lot

- The objectives, standards and decision guidelines of Clause 54.

Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings

- For two or more dwellings on a lot, dwellings on common property and residential buildings, the objectives, standards and decision guidelines of Clause 55. This does not apply to an apartment development of five or more storeys, excluding a basement.
- For an apartment development of five or more storeys, excluding a basement, the objectives, standards and decisions guidelines of Clause 58.

5.0

Signs

~~Proposed~~
C309

Sign requirements are at Clause 52.05. All land located within SUZ6 is in Category 3.

Appendix D3 Panel preferred version of Design and Development Overlay Schedule 33 (Flagstaff Precinct)

Note: Tracked against Part C version. Only substantive changes are tracked. Text that has been re-ordered or general restructuring has not been tracked.

~~Panel delete~~

[Panel add](#)

Proposed
C309

SCHEDULE 33 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as DDO33

WEST MELBOURNE – FLAGSTAFF PRECINCT

1.0

Proposed
C309

Design Objectives

- To create a precinct with variable building heights (generally between six and sixteen storeys), with a lower scale of development to Laneways, and activated Laneway interfaces, and a clear differentiation from the Hoddle Grid.
- To ensure development does not impact on the amenity of, ~~and outlook from,~~ Flagstaff Gardens and St James Old Cathedral, outlook from Flagstaff Gardens and outlook to St James Old Cathedral.
- ~~To ensure new development is adaptable and can accommodate different uses over time.~~
- To reference the industrial history of the precinct by supporting the adaptive reuse of Special Character Buildings and encourage contemporary use of common industrial materials.
- To increase permeability and connectivity for pedestrians and cyclists, ~~and ensuring~~ that development supports the provision of Laneways and frames them as positive additions to the public realm.
- To ensure that development responds to the characteristic hierarchy of Main Streets, Streets and Laneways through the arrangement of fronts and backs.

Commented [SAC(1)]: This objective has been deleted to meet the requirements of the Ministerial Direction on Form and Content (no more than 5 objectives). The Panel considers that the Built Form Outcomes and Requirements suffice

Commented [SAC(2)]: Modified from DDO1 (to be introduced by Amendment C308), as per Council's response to the Panel's drafting queries (Document 125). The remainder of the DDO1 objective is already dealt with in the previous objective about increasing permeability and connectivity for pedestrians and cyclists.

2.0

Buildings and works

2.1

Definitions

Proposed
C309

For the purposes of this schedule:

- Affordable Housing has the meaning set out in Schedule 6 of the Special Use Zone.
- Bonus Floor Area** means ~~up to~~ 50% of the pre-demolition gross floor area of a Special Character Building that is Successfully Retained.
- Floor Area Ratio** means the gross floor area above ground of all buildings on a site, ~~including all enclosed areas, services, lifts, car stackers and covered balconies, minus any bonus floor area the development qualifies for,~~ divided by the area of the site. For the purposes of this calculation:
 - gross floor area includes all enclosed areas, services, lifts, car stackers and covered balconies
 - gross floor area excludes Bonus Floor Area
 - ~~Voids associated with lifts, car stackers and similar service elements should be considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor.~~
 - the area of the site includes all contiguous titles in the same ownership that form part of the proposed development.
- Laneway means a road reserve of a public highway 9 metres or less wide.
- Main Street means a road reserve of a public highway more than 20 metres wide.
- Social Housing has the meaning set out in Schedule 6 of the Special Use Zone.
- Special Character Building** means any of the buildings listed below (and identified as a Special Character Building in the *West Melbourne Structure Plan 2018*):
 - 97-99 Dudley Street, West Melbourne (single storey brick building)

Commented [SAC(3)]: Refer to Chapter 10.5

Commented [SAC(4)]: Refer to the discussion in Chapter 11.4(i) – Bonus Floor Area has been redrafted to operate as per the exhibited and Part B controls (ie excluded from the Floor Area Ratio) rather than a discretionary entitlement above Floor Area Ratio cap

Commented [SAC(5)]: The Panel considers that this is overly complex and confusing

Commented [SAC(6)]: Added in accordance with Council's response to the Panel's drafting queries (Document 125)

Commented [SAC(7)]: Definitions of Laneway, Street and Main Street added for consistency with the recommendations of the C308 panel (DDO1), as per Council's response to the Panel's drafting queries (Document 125).

Commented [SAC(8)]: Refer to Chapter 10.5

- 91-95 Dudley Street, West Melbourne (single-storey brick building)
- 419-421 Spencer Street, West Melbourne (single-storey brick building)
- 405-407 Spencer Street, West Melbourne (single-storey brick buildings)
- 60 Batman Street, West Melbourne (three-storey brick building)
- 50 Batman Street, West Melbourne (single-storey brick building)
- 42-48 Batman Street, West Melbourne (two-storey brick building)
- 2-24 Batman Street, West Melbourne (three-storey concrete building)
- 66-68 Jeffcott Street, West Melbourne (three-storey brick building)
- 510-516 La Trobe Street, West Melbourne (two-storey brick building)
- 460-462 La Trobe Street, West Melbourne (two-storey rendered brick building)
- 456 La Trobe Street, West Melbourne (two-storey bluestone building)
- 33-35 Dudley Street, West Melbourne (single & two-storey brick building)
- Street means a road reserve of a public highway more than 9 metres wide.
- **Successfully Retained** means that to the satisfaction of the responsible authority:
 - all or a substantial part ~~of the three dimensional form and details~~ of a Special Character Building, as viewed from the street, ~~have~~ has been preserved, ~~and incorporated into the development~~ and
 - when viewed from the street, the existing (pre-demolition) interior finished floor and ceiling levels of the Special Character Building have been ~~adopted to maintain~~ the functional appearance of the building from the street.

Commented [SAC(9)]: The Panel considers that this is overly complex and confusing

2.2 Buildings and works for which no permit is required

A permit is not required to construct a building or carry out works at ground level to provide access for persons with disabilities that comply with all legislative requirements.

2.3 Requirements

~~The following buildings and works requirements apply to an application to construct a building or construct or carry out works:~~

Commented [DM10]: Deleted as unnecessary

An application to construct a building or carry out works:

- ~~must~~ meet the Design Objectives specified in this schedule.
- ~~An application to construct a building or carry out works~~ must achieve the Built Form Outcomes in ~~Table 1~~ to this schedule.
- ~~An application to construct a building or carry out works~~ should meet the Built Form Requirements ~~specified in Table 1~~ to this schedule.

An application which does not meet the Built Form Requirements ~~specified in Table 1 to this schedule~~ must demonstrate how the development will meet the ~~relevant~~ Design Objectives, and achieve the ~~relevant~~ Built Form Outcomes.

Floor Area Ratio

An application to construct a building or carry out works must not exceed a Floor Area Ratio of 6:1, ~~excluding Bonus Floor Area.~~

A permit cannot be granted or amended to vary this requirement, unless:

- any of the following apply, in which case a permit may be granted to deliver additional floor area up to an amount determined to the satisfaction of the responsible authority:
 - an agreement under section 173 of the Planning and Environment Act 1987 has been entered into between the landowner, the responsible authority and the local

Commented [SAC(11)]: for the avoidance of doubt – see also amended definition of Floor Area Ratio and discussion in Chapter 11.4(i)

Commented [SAC(12)]: Refer to recommendations in Chapter 11.6

council (if not the responsible authority) that requires the landowner to provide either of the following as part of the development:

- Social Housing
- Affordable Housing in excess of the 6% Affordable Housing requirement set out in Schedule 6 of the Special Use Zone
- the proposed development includes non-accommodation floorspace in excess of the minimum non-accommodation floorspace requirements set out in Schedule 6 to the Special Use Zone
- ~~a Special Character Building has been Successfully Retained, in which case a permit may be granted to deliver up to the Bonus Floor Area in addition to the Floor Area Ratio of 6:1.~~
- in the case of an amendment, the amendment does not increase the extent of non-compliance.

Commented [SAC(13)]: Refer to Chapter 11.4(i)

Where the site includes contiguous titles in the same ownership, a section 173 agreement must be entered into and registered on each title which records the amount of Floor Area Ratio developed across the entire site, and the amount (if any) of remaining Floor Area Ratio able to be developed on each title should it be individually redeveloped in future.

Commented [SAC(14)]: Added in accordance with Council's response to the Panel's drafting queries (Document 125)

Building heights, Street Wall Heights and Setbacks

Built Form Outcomes

- A mix of building typologies and variable building heights, including street wall heights, ~~to ensure that makes~~ a positive contribution to the specific character of the ~~street precinct.~~
- ~~Taller The tallest buildings will be around 16 storeys on large sites, Main Streets and prominent street corners, with and lower built form on smaller sites, and mid-block sites and Laneways accommodating a lower built form, to ensure that the Flagstaff precinct remains part of West Melbourne and distinct from the central city.~~
- Street walls that:
 - ~~D~~deliver a distinct human scale.
 - ~~D~~deliver appropriate street enclosure having regard to the width of the street.
 - ~~P~~provide an appropriate transition to adjoining heritage places.
 - ~~Are lower where tower podiums typologies are proposed~~
 - ~~Are higher where appropriate to deliver a building typology other than tower podium.~~
- Development that respects ~~and does not dominate~~ St James Old Cathedral, allowing the Cathedral to continue to be a landmark and focus in the skyline, particularly when viewed from Flagstaff Gardens, ~~and from~~ Batman Street and King Street.
- Development that respects the scale of adjoining residential development and heritage buildings.
- Development that appropriately considers the amenity impacts on neighbouring development and achieves a high standard of internal amenity within the development.
- Development that is set back from side and rear boundaries to ensure internal spaces receive adequate levels of daylight and privacy.
- Equitable development with primary outlook to the street or within development sites.

Commented [SAC(15)]: This repeats a design objective and is unnecessary repetition

Commented [SAC(16)]: Relocated to Requirements

Commented [SAC(17)]: Relocated to Requirements

Commented [SAC(18)]: Refer to recommendations in Chapter 14.3 in relation to this and the next two Requirements

Built Form Requirements

- Preferred maximum building height of 16 storeys.

- Street wall heights between 3 and 10 storeys, with:
 - lower street wall heights where tower-podiums typologies are proposed
 - higher street wall heights where appropriate to deliver a building typology other than tower-podium.
- ~~Minimum Preferred~~ setbacks above the podium:
 - 3 metres from the front title boundary ~~—3 metres~~
 - 4 metres from all Laneways ~~—6 metres~~
 - 6 metres from ~~and~~ all other side and rear boundaries ~~—6 metres.~~

~~Floor to Ceiling Heights~~ Adaptable buildings

Built Form Outcomes

- ~~Adequate floor-to-ceiling heights to ensure~~ Developments with lower levels that can be adapted from non-employment uses to employment uses ~~to different uses.~~

Built Form Requirements

- Minimum floor-to-ceiling heights of:
 - 4 metres for the ground floor.
 - 3.3 metres for ~~all non-residential uses on~~ other floors up to the height of the street wall.

Melbourne Assessment Prison and Judy Lazarus Transition Centre

Built Form Outcomes

- Development ~~to that~~ recognises the sensitivity of the Melbourne Assessment Prison and the Judy Lazarus Transition Centre.

Built Form Requirements

- Development adjacent to, or with potential lines of sight into the recreation yards of, the Melbourne Assessment Prison ~~and or the Judy Lazarus Transition Centre,~~ must consider any privacy, operational and security ~~issues of justice facilities~~ requirements of those facilities.

Flagstaff Gardens and Open Space

Built Form Outcomes

- Development that does not unreasonably ~~is designed to limit~~ overshadow ~~ing over~~ Flagstaff Gardens.
- Development that maintains Ensure an open, broad outlook ~~to the open sky is retained~~ from Flagstaff Gardens, particularly from the eastern edge, including outlook to the open sky between buildings.
- Development that maintains ~~t~~ The historic vista from Flagstaff Gardens to the west towards Swanston Dock ~~is retained.~~

Commented [SAC(19): The Panel presumes that the outcome being sought is residential development that can be adapted to non-residential uses in future. The Panel has taken the approach in the Fishermans Bend DDO of specifying floor to ceiling heights in the lower levels of a building (where commercial uses are more likely to locate), rather than by reference to the use. Refer to the discussion in Chapter 14.4

MELBOURNE PLANNING SCHEME
PANEL PREFERRED VERSION (TRACKED AGAINST PART C VERSION)

- Development [that](#) positively frames the open space ~~and significant views and vistas~~ in the precinct.
- Development on the north side of Batman Street [that](#) allows for solar access to ~~new~~ [linear](#) open spaces [that may be developed along Batman Street](#).

Commented [SAC(20): Deleted as per Council's response to the Panel's drafting queries (Document 125)

Built Form Requirements

- Development does not overshadow Flagstaff Gardens between 11am and 2pm on 22 September and 22 June.

Active Streets [and](#) /Laneways [Frontages](#)

Built Form Outcomes

- [Development that m](#)Maximises [the quality and](#) activation of ~~the public realm within~~ [Main S](#)streets, [S](#)streets and [L](#)laneways [and other public realm areas](#).
- [Development that m](#)Minimises the impact of building services on the public realm.

Built Form Requirements

- [Provide](#) ~~Development should incorporate~~ active frontages at the ground floor [where appropriate](#), particularly along Spencer, King, Dudley and La Trobe Streets.
- [In d](#)Development with more than one street frontage, [vehicle access and loading bays](#):
 - [should be located on the street or laneway that is lower in the street hierarchy](#).
 - [where possible, should not be located on Laneways that demonstrate at least three of the following characteristics](#):
 - [a connection through a street block](#)
 - [active frontages](#)
 - [an architectural character that provides aesthetic and spatial interest to the public realm](#)
 - [should minimise impacts on the pedestrian network, positions entries, circulation and services to respond to the function of adjoining main streets, streets and laneways](#).
- ~~Locate~~ [Service](#) ~~and back of house~~ areas [should be located](#) away from [Main S](#)streets, [Streets](#), ~~local streets~~ and public spaces, ~~or~~ within basement or upper levels.
- Co-locate service cabinets internal to loading, waste or parking areas where possible to avoid impact on the public realm.
- ~~Fine grain adaptable tenancies within the lower levels of buildings~~

Commented [SAC(21): Not all frontages will be appropriate to be activated – eg laneways providing access to carparking or service areas

Commented [SAC(22): Modified from the C308 panel's recommendations (DDO1), as per Council's response to the Panel's drafting queries (Document 125)

Commented [SAC(23): Reworded in accordance with the C308 panel's recommendations, as per Council's response to the Panel's drafting queries (Document 125)

Commented [SAC(24): Refer to the discussion in Chapter 14.4.

Laneways, pedestrian and cycling connections

Built Form Outcomes

- ~~Development to provide new, Safe,~~ direct, [attractive](#) and convenient pedestrian and cycling connections [that are appropriately spaced and](#) ~~where appropriate, that are~~ aligned with other [L](#)laneways or pedestrian and cycling connections [through West Melbourne on nearby sites](#).
- New [L](#)laneways ~~are provided~~ through large sites where appropriate.

Built Form Requirements

- Provide at least one new pedestrian connections ~~where the average length of a through street blocks exceedings 100 metres, except within 200 metres of a rail station where more frequent connections are desirable to manage high pedestrian volumes.~~
- Provide at least two pedestrian connections through ~~For~~ street blocks exceeding 200 metres ~~in length, at least two pedestrian connections are provided.~~
- Within 200 metres of a rail station, provide pedestrian connections at an average spacing of ## metres between connections.
- Locate p ~~edestrian connections are located~~ centrally within the street block and where possible, less than 70 metres from the next intersection or pedestrian connection.
- ~~N~~Ensure new Laneways, pedestrian and cycling connections are:
 - ~~Safe, direct, attractive, w~~ell-lit and provide a line of sight from one end of the connection to the other.
 - Publicly accessible and appropriately secured with a legal agreement.
 - At least ~~six~~ 6 metres wide.
 - Open to the sky.
 - Lined by active frontages where appropriate.

Commented [SAC(25)]: Built form requirements should be specified in measurable metrics wherever possible

Commented [SAC(26)]: Not all frontages will be appropriate to be activated – eg laneways providing access to carparking or service areas

3.0

Proposed
C309

Subdivision

None specified.

4.0

Proposed
C309

Advertising signs

None specified

5.0

Proposed
C309

Application Requirements

An application for a permit under this schedule must be accompanied by the following information~~The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:~~

- A site analysis and urban context report that:
 - documentsing the key contextual influences on the development
 - ~~and demonstrates (including through diagrams where appropriate) how the development addresses the Design Objectives, Built Form Outcomes and Built Form Requirements of in this schedule.~~
 - ~~Diagrammatic demonstration of how the development addresses the Design Objectives, Built Form Requirements and Built Form Outcomes of this Schedule.~~
- Photographie and/or diagramsmatic study of prevailing materiality and architectural elements in the surrounding streetscape including any heritage elements.
- Photomontage studies of the proposal within its streetscape context from pedestrian eye level ~~from at~~ street level, ~~(including relevant proposals and approvals for approved developments).~~
- Analysis of ~~the how the amenity of the public and private realm is maximised given the relationship between the proposal and adjacent buildings (including likely adjacent development envelopes) and open space in order to maximise the amenity of the public and private realm.~~

Commented [SAC(27)]: It is not reasonable to require an applicant to provide photomontages of development proposals that have not been (and may not be) approved

MELBOURNE PLANNING SCHEME
PANEL PREFERRED VERSION (TRACKED AGAINST PART C VERSION)

- Street elevations of the block showing how the development proposal sits within and contributes to its context.
- Plan, elevation and section drawings (1:50 or 1:20) and a written statement, showing ~~and describing~~, the design of the lower levels of the building including entries, shop front design, service areas, weather protection canopies and integrated signage elements.
- Where a Special Character Building (or part thereof) is proposed to be Successfully Retained:
 - ~~a~~ retention and refurbishment plan, detailing all the building fabric to be retained and/or refurbished
 - ~~as part of a development. Diagrams, photomontages or three-dimensional renders should be used to that~~ demonstrate those elements of the Special Character Building ~~to be retained~~ that will be visible from the street.
- Where buildings and works above 20 metres in height are proposed, a three-dimensional model of the proposed development in accordance with relevant City of Melbourne guidelines.
- A concept landscape plan for any ~~Where~~ publicly accessible podium and rooftop spaces ~~are proposed, landscape plans~~ detailing proposed hard and soft landscape elements, plant schedule, plant container details and ~~detail of any deep soil planting areas~~ maintenance and irrigation systems.
- Where car parking is proposed at or above ground level, a car parking adaptation strategy prepared by a qualified structural engineer or architect to demonstrate the capacity to adapt the car parking areas to alternate uses in future.
- Where student housing, residential hotel or serviced apartments are proposed, an adaptation strategy demonstrating the potential for conversion to conventional apartments that would meet the requirements of Clause 58, or other alternative uses.

Commented [SAC(28): Reworded as per C308 panel recommendations, in accordance with Council's response to the Panel's drafting queries (Document 125)

6.0

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Proposed
C309

Decision Guidelines

Before deciding on a permit application under this schedule ~~The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by~~ the responsible authority must consider the following, as appropriate:

- The extent to which the development addresses the Design Objectives, Built Form Outcomes and Built Form Requirements ~~of in~~ this schedule.
- The impact of overshadowing on existing rooftop solar panels.
- Whether the development enables sunlight to reach into parks, streets and lower levels of buildings.
- Whether the development is responsive to the local context, varied subdivision patterns, ~~and~~ site sizes and other characteristics of the Flagstaff precinct.
- Whether the development supports a high quality public realm and high levels of pedestrian amenity ~~in the public realm~~.
- Whether the development allows for the adaptive re-use of existing buildings.
- The views of the Department of Justice and Community Safety in relation to development in proximity to the Melbourne Assessment Prison and the Judy Lazarus Transition Centre. ~~The extent of retention of a Special Character Building~~

Commented [SAC(29): Refer to recommendations in Chapter 15.4

Appendix D4 Panel preferred version of Design and Development Overlay Schedule 28 (Station Precinct)

Note: Tracked against Part C version. Only substantive changes are tracked. Text that has been re-ordered or general restructuring has not been tracked.

~~Panel delete~~

Panel add

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Proposed
C309

SCHEDULE 28 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO28**

WEST MELBOURNE - STATION PRECINCT

1.0 Design Objectives

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Proposed
C309

- To create a medium density precinct (generally between four and eight storeys).
- To generate activity and to create a welcoming arrival point around North Melbourne (future West Melbourne) Station, with passive surveillance maximised around North Melbourne (future West Melbourne) Station and Railway and Miller Reserves.
- ~~▪ To ensure new development is adaptable and can accommodate different uses over time.~~
- To reference the industrial history of the precinct by supporting the adaptive reuse of Special Character Buildings and encourage contemporary use of common industrial materials.
- To increase permeability and connectivity for pedestrians and cyclists, including links to Arden, North Melbourne, Docklands, E-Gate, and ensure development supports the provision of Laneways and frames them as positive additions to the public realm.
- To ensure that development responds to the characteristic hierarchy of Main Streets, Streets and Laneways through the arrangement of fronts and backs.

2.0 Buildings and works

2.1 Definitions

For the purposes of this schedule:

---/---
Proposed
C309

- Affordable Housing has the meaning set out in Schedule 6 of the Special Use Zone.
- **Bonus Floor Area** means 50% of the pre-demolition gross floor area of a Special Character Building that is Successfully Retained.
- **Floor Area Ratio** means the gross floor area above ground of all buildings on a site, divided by the area of the site. For the purposes of this calculation:
 - gross floor area includes all enclosed areas, services, lifts, car stackers and covered balconies
 - gross floor area excludes Bonus Floor Area
 - the area of the site includes all contiguous titles in the same ownership that form part of the proposed development.

~~including all enclosed areas, services, lifts, car stackers and covered balconies, minus any bonus floor area the development qualifies for, divided by the area of the site. Voids associated with lifts, car stackers and similar service elements should be considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor.~~

Laneway means a road reserve of a public highway 9 metres or less wide.

Main Street means a road reserve of a public highway of more than 20 metres.

Social Housing has the meaning set out in Schedule 6 of the Special Use Zone.

- **Special Character Building** means any of the buildings listed below (and identified as a Special Character Building in the *West Melbourne Structure Plan 2018*):
 - 47 Dryburgh Street, West Melbourne (two-storey brick building).
- Street means a road reserve of a public highway more than 9 metres wide.

- **Successfully Retained** means that to the satisfaction of the responsible authority:
 - all or a substantial part of ~~the three dimensional form and details of~~ a Special Character Building, as viewed from the street, ~~have~~ has been preserved, ~~and incorporated into the development~~ and
 - when viewed from the street, the existing (pre-demolition) interior finished floor and ceiling levels of the Special Character Building have been ~~adopted to maintain~~ ed ~~the functional appearance of the building from the street.~~

2.2 Buildings and works for which no permit is required

A permit is not required to construct a building or carry out works at ground level to provide access for persons with disabilities that comply with all legislative requirements.

2.3 Requirements

~~The following buildings and works requirements apply to an application to construct a building or construct or carry out works:~~

An application to construct a building or carry out works:

- ~~must~~ meet the Design Objectives specified in this schedule.
- ~~An application to construct a building or carry out works~~ must achieve the Built Form Outcomes in ~~Table 1 to~~ this schedule.
- ~~An application to construct a building or carry out works~~ should meet the Built Form Requirements specified in ~~Table 1 to~~ this schedule.

An application which does not meet the Built Form Requirements ~~specified in Table 1 to this schedule~~ must demonstrate how the development will meet the relevant Design Objectives, and achieve the ~~relevant~~ Built Form Outcomes.

Floor Area Ratio

An application to construct a building or carry out works must not exceed a floor area ratio of 5:1, excluding Bonus Floor Area.

A permit cannot be granted or amended to vary this requirement, unless:

- any of the following apply, in which case a permit may be granted to deliver additional floor area up to the amount determined to the satisfaction of the responsible authority:
 - an agreement under section 173 of the Planning and Environment Act 1987 has been entered into between the landowner, the responsible authority and the local council (if not the responsible authority) that requires the landowner to provide either of the following as part of the development:
 - Social Housing
 - Affordable Housing in excess of the 6% Affordable Housing requirement set out in the Schedule 6 of the Special Use Zone
 - in the case of an amendment, the amendment does not increase the extent of non-compliance.

Where the site includes contiguous titles in the same ownership, a section 173 agreement must be entered into and registered on each title which records the amount of Floor Area Ratio developed across the entire site, and the amount (if any) of remaining Floor Area Ratio able to be developed on each title should it be individually redeveloped in future. a ~~Special Character Building has been Successfully Retained, in which case a permit may be granted to deliver up to the Bonus Floor Area in addition to the Floor Area Ratio of 5:1.~~

Building heights, and ~~s~~Street Wall wall Height heights and amenity

Built Form Outcomes

- ~~Building~~ A mix of building typologies and variable building heights, including street wall heights, ~~are variable to ensure that makes a~~ positive contribution to the specific character of the ~~street~~ precinct.
- Buildings within larger sites that are broken up into a series of smaller building forms where appropriate to ensure they relate and contribute positively to their context and their historic urban grain.
- Taller built form is located immediately adjacent to the station, stepping down to the 14m (DDO32) height control area, and to interfaces with lower scale and heritage buildings, particularly those to the south of Abbotsford Street.
- ~~Ensure~~ Development that ensures the Station remains a focal point.
- Development that respects the scale of adjoining residential development and heritage buildings.
- Development that appropriately considers the amenity impacts on neighbouring development and achieves a high standard of internal amenity within the development.
- Development that is set back from side and rear boundaries to ensure internal spaces receive adequate levels of daylight and privacy.
- Equitable development with primary outlook to the street or within development sites.

Built Form Requirements

- Preferred maximum building height of 8 storeys.
- Street wall heights between 4 and 8 storeys.

~~Floor to Ceiling Heights~~ Adaptable Buildings

Built Form Outcomes

- ~~Developments with lower levels that can Adequate floor-to-ceiling heights to ensure developments can~~ be adapted ~~to different uses from non-employment uses to employment uses.~~

Built Form Requirements

- Minimum floor-to-ceiling heights:
 - 4 metres for the ground floor.
 - 3.3 metres ~~for all non-residential uses~~ on other ~~floors~~ floors up to the height of the street wall.

Active Street/s and Laneways ~~Frontages~~

Built Form Outcomes

- ~~Maximise~~ Development that maximises the quality and activation of Main Streets, Streets and Laneways and other the public realm ~~within main streets, streets and laneways areas.~~
- Development ~~to that~~ positively frames the the open space outside the station.
- Development that mMinimises the impact of building services on the public realm.

Built Form Requirements

- Provide active frontages on streets leading to the station, particularly along Dryburgh Street and Adderley Street.
- Development along Anderson Street to address the interface with Railway Place and Miller Street Reserve with active frontages.
- In dDevelopment with more than one street frontage, vehicle access and loading bays:
 - should be located on the street or laneway that is lower in the street hierarchy.

- where possible, should not be located on Laneways that demonstrate at least three of the following characteristics:
 - a connection through a street block
 - active frontages
 - an architectural character that provides aesthetic and spatial interest to the public realm
 - should minimise impacts on the pedestrian network.
 - ~~Service and back of house areas should be located positions entries, circulation and services to respond to the function of adjoining main streets, streets and laneways.~~
 - ~~Locate service areas~~ away from ~~main~~ Main streets Streets, Streets, local streets and public spaces, ~~or~~ within basement or upper levels.
 - Co-locate service cabinets internal to loading, waste or parking areas where possible to avoid impact on the public realm.
- ~~Fine grain adaptable tenancies within the lower levels of buildings.~~

Laneways, pedestrian and cycling connections

Built Form Outcomes

- Safe, direct, attractive ~~Development to provide new, direct~~ and convenient pedestrian and cycling connections ~~where that are appropriately spaced appropriate, that and are~~ aligned with other ~~lanes~~ Laneways or pedestrian and cycling connections ~~on nearby sites~~ through West Melbourne.
- New Laneways ~~are provided~~ through large sites where appropriate.

Built Form Requirements

- Provide at least one new pedestrian connections through street blocks exceeding where the average length of a street block exceeds 100 metres,
- Provide at least two pedestrian connections through street blocks exceeding 200 metres.
- Within except within 200 metres of ~~the a rail s~~ Station, provide pedestrian connections at an average spacing of ## metres between connections. where more frequent connections are desirable to manage high pedestrian volumes.
- ~~For street blocks exceeding 200 metres in length, at least two pedestrian connections are provided.~~
- Locate p ~~Pedestrian connections are located~~ centrally within the street block and where possible, less than 70 metres from the next intersection or pedestrian connection.
- Ensure n ~~New laneways~~ Laneways, pedestrian and cycling connections are:
 - ~~Safe, direct, attractive, W~~ well-lit and provide a line of sight from one end of the connection to the other.
 - Publicly accessible and appropriately secured with a legal agreement.
 - At least ~~six~~ 6 metres wide.
 - Open to the sky.
 - Lined by active frontages where appropriate.
- ~~Special character building means any of the buildings listed below (and identified in the West Melbourne Structure Plan 2018):~~
 - ~~47 Dryburgh Street, West Melbourne (two storey brick building).~~

- ~~Successfully retained means that the three dimensional form and details of a special character building, as viewed from the street, have been preserved and incorporated into the development, and the existing interior finished floor and ceiling levels have been adopted to maintain the functional appearance of the building.~~
- ~~Bonus floor area means 50% of the gross floor area of a special character building, where the special character building (or part thereof) has been successfully retained.~~
- ~~Floor area ratio means the gross floor area above ground of all buildings on a site, including all enclosed areas, services, lifts, car stackers and covered balconies, minus any bonus floor area the development qualifies for, divided by the area of the site. Voids associated with lifts, car stackers and similar service elements should be considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor.~~

3.0

~~---/---~~
Proposed
C309

Subdivision

None specified.

4.0

~~---/---~~
Proposed
C309

Advertising signs

None specified

5.0

~~---/---~~
Proposed
C309

Application Requirements

~~The following application requirements apply to an application for a permit under Clause 43. 02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the~~
An application for a permit under this schedule must be accompanied by the following information, as appropriate, to the satisfaction of the responsible authority:

- A site analysis and urban context report that:
 - ~~documenting documents~~ the key contextual influences on the development
 - ~~and how the development addresses the Design Objectives, Built Form Outcomes and Built Form Requirements of this schedule.~~
 - demonstrates (including through diagrams where appropriate) Diagrammatic demonstration of how the development addresses the Design Objectives, Built Form Requirements and Built Form Outcomes ~~of in~~ this Schedule.
- ~~Photographic~~ Photographs and/or ~~diagrammatic diagrams study~~ of prevailing materiality and architectural elements in the surrounding streetscape including any heritage elements.
- Photomontage studies of the proposal within its streetscape context from pedestrian eye level ~~from at~~ street level. ~~(Including relevant proposals and approvals for developments).~~
- Analysis of how the amenity of the public and private realm is maximised given the relationship between the proposal and adjacent buildings (including likely adjacent development envelopes) and open space. ~~in order to maximise the amenity of the public and private realm.~~
- Street elevations of the block showing how the development proposal sits within and contributes to its context.
- Plan, elevation and section drawings (1:50 or 1:20) and a written statement, showing ~~and describing~~ the design of the lower levels of the building including entries, shop front design, service areas, weather protection canopies and integrated signage elements.
- Where a Special Character Building (or part thereof) is proposed to be successfully retained:
 - ~~, a retention and refurbishment plan;~~ detailing all the building fabric to be retained and/or refurbished

- ~~as part of a development.~~ Diagrams, photomontages or three-dimensional renders should be used to demonstrate those elements of the Special Character Building that will be visible from the street.
- Where buildings and works above 20 metres in height are proposed, a three-dimensional model of the proposed development in accordance with relevant City of Melbourne guidelines.
- A concept landscape plan for any ~~Where publicly accessible podium and rooftop spaces are proposed, landscape plans~~ detailing proposed hard and soft landscape elements, plant schedule, plant container details and ~~detail of any deep soil planting areas~~ maintenance and irrigation systems.
- Where car parking is proposed at or above ground level, a car parking adaptation strategy prepared by a qualified structural engineer or architect to demonstrate the capacity to adapt ~~to the car parking areas to~~ alternate uses in future.
- Where student housing, residential hotel or serviced apartments are proposed, an adaptation strategy demonstrating the potential for conversion to conventional apartments that would meet the requirements of Clause 58, or other alternative uses.

6.0

Proposed
C309

Decision Guidelines

~~The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority.~~ Before deciding on a permit under this schedule the responsible authority must consider the following, as appropriate:

- The extent to which the development addresses the Design Objectives, Built Form Outcomes and Built Form Requirements ~~of~~ in this schedule.
- The impact of overshadowing on existing rooftop solar panels.
- Whether the development enables sunlight ~~to reach into the parks, streets and lower levels of buildings.~~
- Whether the development is responsive to the local context, ~~street hierarchy,~~ varied subdivision patterns, ~~and~~ site sizes and other characteristics of the Station precinct.
- Whether the development supports a high quality ~~of pedestrian amenity in the public realm,~~ public realm and high levels of pedestrian amenity.
- Whether the development allows for the adaptive re-use of existing buildings.
- ~~The extent of retention of a Special Character Building.~~

Appendix D5 Panel preferred version of Design and Development Overlay Schedule 29 (Adderley Precinct)

Note: Tracked against Part C version. Only substantive changes are tracked. Text that has been re-ordered or general restructuring has not been tracked.

~~Panel delete~~

[Panel add](#)

Proposed
C309

SCHEDULE 29 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO29**

WEST MELBOURNE – ADDERLEY PRECINCT

1.0

Proposed
C309

Design Objectives

- To create a low to mid-scale precinct (generally between two and six storeys) with the taller development fronting Adderley Street between Hawke Street and Rosslyn Street.
- To reinforce the role of Railway Place as an important pedestrian link between North Melbourne Station and Docklands, and Arden and the City.
- ~~To ensure new development is adaptable and can accommodate different uses over time.~~
- To reference the industrial history of the precinct by supporting the adaptive reuse of Special Character Buildings and encourage contemporary use of common industrial materials.
- To increase permeability and connectivity for pedestrians and cyclists, and ensuring that development supports the provision of Laneways and frames them as positive additions to the public realm.
- To ensure that development responds to the characteristic hierarchy of Main Streets, Streets and Laneways through the arrangement of fronts and backs.

Commented [SAC(1): Modified from DDO1 (to be introduced by Amendment C308), as per Council's response to the Panel's drafting queries (Document 125). The remainder of the DDO1 objective is already dealt with in the previous objective about increasing permeability and connectivity for pedestrians and cyclists.

2.0

Buildings and works

2.1

Definitions

For the purposes of this schedule:

Proposed
C309

- **Bonus Floor Area** means 50% of the gross floor area of a Special Character Building.
- **Floor Area Ratio** means the gross floor area above ground of all buildings on a site, ~~including all enclosed areas, services, lifts, car stackers and covered balconies, minus any bonus floor area the development qualifies for,~~ divided by the area of the site.
For the purposes of this calculation:
 - gross floor area includes all enclosed areas, services, lifts, car stackers and covered balconies
 - gross floor area excludes Bonus Floor Area
 - the area of the site includes all contiguous titles in the same ownership that form part of the proposed development.
- ~~Voids associated with lifts, car stackers and similar service elements should be considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor.~~
- Laneway means a road reserve of a public highway 9 metres or less wide.
- Main Street means a road reserve of a public highway more than 20 metres wide.
- **Special eCharacter bBuilding** means any of the buildings listed below (and identified as a Special Character Buildings in the *West Melbourne Structure Plan 2018*):
 - 280 Rosslyn Street, West Melbourne (single-storey brick building).
 - 278 Rosslyn Street, West Melbourne (single-storey brick building).
 - 260 Rosslyn Street, West Melbourne (single-storey brick building).

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- 252 Rosslyn Street, West Melbourne (single-storey brick building).
- 179 Stanley Street, West Melbourne (single-storey brick building).
- 127-153 Stanley Street, West Melbourne (Cnr Adderley Street) (single-storey rendered brick building).
- 210-224 Rosslyn Street, West Melbourne (two-storey brick building with a tiled/rendered front facade).
- 154-160 Stanley Street, West Melbourne (single-storey brick building).
- 124-128 Stanley Street, West Melbourne (single-storey brick building with a rendered front facade).
- [Street means a road reserve of a public highway more than 9 metres wide.](#)
- **Successfully Retained** means that to the satisfaction of the responsible authority:
 - all or a substantial part ~~of the three dimensional form and details~~ of a Special Character Building, as viewed from the street, has ~~ve~~ been preserved ~~and incorporated into the development~~ and
 - [when viewed from the street](#), the existing [\(pre-demolition\)](#) interior finished floor and ceiling levels of the Special Character Building have been adopted to maintain ~~ed. the functional appearance of the building from the street.~~

2.2 Buildings and works for which no permit is required

A permit is not required to construct a building or carry out works at ground level to provide access for persons with disabilities that comply with all legislative requirements.

2.3 Requirements

~~The following buildings and works requirements apply to an application to construct a building or construct or carry out works:~~

An application to construct a building or carry out works

- ~~must~~ meet the Design Objectives specified in this schedule.
- ~~An application to construct a building or carry out works~~ must achieve the Built Form Outcomes in ~~Table 1 to~~ this schedule.
- ~~An application to construct a building or carry out works~~ should meet the Built Form Requirements specified in ~~Table 1 to~~ this schedule.

An application which does not meet the Built Form Requirements specified in ~~Table 1 to~~ this schedule must demonstrate how the development will meet the ~~relevant~~ Design Objectives, and achieve the ~~relevant~~ Built Form Outcomes.

Floor Area Ratio

An application to construct a building or carry out works must not exceed a floor area ratio of 3:1, [excluding Bonus Floor Area](#).

A permit cannot be ~~granted or~~ amended to vary this requirement, unless:

- ~~in the case of an amendment~~, the amendment does not increase the extent of non-compliance.
- ~~a Special Character Building has been Successfully Retained, in which case a permit may be granted to deliver up to the Bonus Floor Area in addition to the Floor Area Ratio of 3:1.~~

[Where the site includes contiguous titles in the same ownership, a section 173 agreement must be entered into and registered on each title which records the amount of Floor Area Ratio developed across the entire site, and the amount \(if any\) of remaining Floor Area Ratio able to be developed on each title should it be individually redeveloped in future.](#)

Building heights, s/Street Wall Hheights and amenity

Built Form Outcomes

- Generally low to mid-rise buildings with taller built form along Adderley Street that will contribute to defining the street interface.
- Development stepping down from Adderley Street, to the lower rise heritage buildings along Hawke Street (west of Spencer Street).
- ~~Variable b~~Building heights, including street wall heights, ~~are variable~~ to ensure a positive contribution to the specific character of the street.
- Buildings within larger sites ~~that~~ are broken up into a series of smaller building forms where appropriate to ensure they relate and contribute positively to their context and their historic urban grain.
- Development ~~that~~ respects the scale of adjoining residential development and heritage buildings.
- Lower scale of development to a ~~L~~aneway interface.
- Development that appropriately considers the amenity impacts on neighbouring development and achieves a high standard of internal amenity within the development.
- Development that is set back from side and rear boundaries to ensure internal spaces receive adequate levels of daylight and privacy.
- Equitable development with primary outlook to the street or within development sites.

Built Form Requirements

- Preferred maximum building height of 4 storeys, unless fronting Adderley Street between Hawke Street and Rosslyn Street where the preferred maximum building height is 6 storeys.

Floor to Ceiling Heights Adaptable buildings

Built Form Outcomes

- ~~Adequate floor-to-ceiling heights to ensure D~~developments can be adapted from non-employment uses to employment uses ~~to different uses.~~

Built Form Requirements

- Minimum floor-to-ceiling heights of:
 - 4 metres for the ground floor.
 - 3.3 metres ~~for all non-residential uses~~ on other floors up to the height of the street wall (where applicable).

Active Streets s and /Laneways ~~Frontages~~

Built Form Outcomes

- Development that mMaximises the quality and activation of ~~the public realm within m~~Main ~~s~~Streets, ~~s~~Streets and ~~L~~aneways and other public realm areas.
- Development that mMinimises the impact of building services on the public realm.

Built Form Requirements

- Provide active frontages at the ground floor where appropriate, particularly:
 - along a ~~L~~aneway interface;
 - along the interface with the proposed linear park on Hawke Street; and
 - along Adderley Street.
- In dDevelopment with more than one street frontage, vehicle access and loading bays.

- should be located on the street or laneway that is lower in the street hierarchy.
- where possible, should not be located on Laneways that demonstrate at least three of the following characteristics:
 - a connection through a street block
 - active frontages
 - an architectural character that provides aesthetic and spatial interest to the public realm
- should minimise impacts on the pedestrian network.
- ~~positions entries, circulation and services to respond to the function of adjoining mMain sStreets, sStreets and lLaneways.~~
- ~~Locate sService and back of house areas~~ should be located away from ~~mMain sStreets, local sStreets~~ and public spaces, ~~or~~ within basement or upper levels.
- Co-locate service cabinets internal to loading, waste or parking areas where possible to avoid impact on the public realm.

~~Fine-grain adaptable tenancies within the lower levels of buildings.~~

Laneways, pedestrian and cycling connections

Built Form Outcomes

- ~~Safe, Development to provide new, direct, attractive~~ and convenient pedestrian and cycling connections that are appropriately spaced and where appropriate, that are aligned with other lLaneways or pedestrian and cycling connections through West Melbourne on nearby sites.
- New ~~lLaneways~~ are provided through large sites where appropriate.

Built Form Requirements

- Provide at least one new pedestrian connection through s where the average length of a street blocks exceedings 100 metres, except within 200 metres of a rail station where more frequent connections are desirable to manage high pedestrian volumes.
- ~~ProvideFor at least two pedestrian connections through~~ street blocks exceeding 200 metres in length, ~~at least two pedestrian connections are provided.~~
- Within 200 metres of a rail station, provide pedestrian connections at an average spacing of ## metres between connections.
- ~~Locate P~~ pedestrian connections ~~are located~~ centrally within the street block and where possible, less than 70 metres from the next intersection or pedestrian connection.
- ~~Ensure N~~ new ~~lLaneways~~, pedestrian and cycling connections are:
 - ~~Safe, direct, attractive, w~~ Well-lit and provide a line of sight from one end of the connection to the other.
 - Publicly accessible and appropriately secured with a legal agreement.
 - At least ~~6 six~~ metres wide.
 - Open to the sky.
 - Lined by active frontages, where appropriate.

3.0
~~Proposed~~
C309

Subdivision

None specified.

4.0
~~Proposed~~
C309

Advertising signs

None specified

5.0

~~Adopted~~
Proposed
C309

Application Requirements

An application for a permit under this schedule must be accompanied by the following information~~The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application,~~ as appropriate, to the satisfaction of the responsible authority:

- A site analysis and urban context report that:
 - documents ~~ing~~ the key contextual influences on the development
 - demonstrates (through diagrams where appropriate) ~~and~~ how the development addresses the Design Objectives, Built Form Outcomes and Built Form Requirements ~~of~~ in this schedule.
- ~~Diagrammatic demonstration of how the development addresses the Design Objectives, Built Form Requirements and Built Form Outcomes of this Schedule.~~
- Photographs ~~ie~~ and or diagrams ~~matic study~~ of prevailing materiality and architectural elements in the surrounding streetscape including any heritage elements.
- Photomontage studies of the proposal within its streetscape context from pedestrian eye level at ~~from~~ street level. ~~(including relevant proposals and approvals for development).~~
- Analysis of how the amenity of the public and private realm is maximised given the relationship between the proposal and adjacent buildings (including likely adjacent development envelopes) and open space ~~in order to maximise the amenity of the public and private realm.~~
- Street elevations of the block showing how the development proposal sits within and contributes to its context.
- Plan, elevation and section drawings (1:50 or 1:20) and a written statement, showing ~~and describing~~ the design of the lower levels of the building including entries, shop front design, service areas, weather protection canopies and integrated signage elements.
- Where a Special Character Building (or part thereof) is proposed to be ~~Successfully~~ Retained:
 - ~~a retention and refurbishment plan,~~ detailing all the building fabric to be retained and/or refurbished ~~as part of a development.~~
 - ~~Diagrams, photomontages or three-dimensional renders that should be used to~~ demonstrate those elements of the Special Character Building ~~to be retained~~ that will be visible from the street.
- Where buildings and works above 20 metres in height are proposed, a three-dimensional model of the proposed development in accordance with relevant City of Melbourne guidelines.
- A concept landscape plan for any ~~Where~~ publicly accessible podium and rooftop spaces ~~are proposed, landscape plans detailing proposed~~ hard and soft landscape elements, plant schedule, plant container details and maintenance and irrigation systems ~~detail of any deep soil planting areas.~~
- Where car parking is proposed at or above ground level, a car parking adaptation strategy prepared by a qualified structural engineer or architect to demonstrate the capacity to adapt the car parking areas to alternate uses in future.
- Where student housing, residential hotel or serviced apartments are proposed, an adaptation strategy demonstrating the potential for conversion to conventional apartments that would meet the requirements of Clause 58, or other alternative uses.

6.0

~~Adopted~~
Proposed
C309

Decision Guidelines

Before deciding on a permit application under this schedule ~~The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those~~

MELBOURNE PLANNING SCHEME
PANEL PREFERRED VERSION (TRACKED AGAINST PART C VERSION)

~~specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by~~ the responsible authority must consider the following, as appropriate:

- The extent to which the development addresses the Design Objectives, Built Form Outcomes and Built Form Requirements ~~in~~of this schedule.
- The impact of overshadowing on existing rooftop solar panels.
- Whether the development enables sunlight to reach into parks, streets and lower levels of buildings.
- Whether the development is responsive to the local context, varied subdivision patterns, ~~and~~ site sizes and other characteristics of the Adderley precinct.
- Whether the development supports a high quality public realm and high levels of pedestrian amenity ~~in the public realm~~.
- Whether the development allows for the adaptive re-use of existing buildings.
- ~~The extent of retention of a Special Character Building.~~

Appendix D6 Panel preferred version of Design and Development Overlay Schedule 72 (Spencer Precinct)

Note: Tracked against Part C version. Only substantive changes are tracked. Text that has been re-ordered or general restructuring has not been tracked.

~~Panel delete~~

[Panel add](#)

--/20--
C309

SCHEDULE 72 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO72**

WEST MELBOURNE – SPENCER PRECINCT

1.0 Design Objectives

--/20--
C309

- To create a mid-rise precinct (generally between three and eight storeys) with variable building heights, including taller built form fronting Spencer Street, King Street and Dudley Street, lower built form on ~~local streets~~ Laneways and other Streets and building typologies that respond to the characteristics of individual sites that is in contrast to the tower and podium built form character of the central city.
- To ~~emphasise the character of~~ improve the amenity of Dudley and King Streets as important boulevards into the City and to Docklands, and to ~~create an active interface along Dudley Street and improve its amenity and connections with Docklands~~ support active uses and public realm improvements within the Spencer Street Activity Centre, and the development of the Activity Centre as a vibrant local activity centre serving West Melbourne, where commercial and retail activity is concentrated.
- ~~To ensure new development is adaptable and can accommodate different uses over time.~~
- To reference the industrial history of the precinct by supporting the adaptive reuse of Special Character Buildings and encourage contemporary use of common industrial materials.
- To increase permeability and connectivity for pedestrians and cyclists, and ensuring ensure that development supports the provision of ~~laneways~~ Laneways and frames them as positive additions to the public realm.
- To ensure that development responds to the characteristic hierarchy of Main Streets, Streets and Laneways through the arrangement of fronts and backs.

Commented [A1]: Reworded for clarity, and to mention the Spencer Street activity centre as it is a key element of the precinct

2.0 Buildings and works

2.1 Definitions

--/20--
C309

For the purposes of this schedule:

- Affordable Housing has the meaning set out in Schedule 6 of the Special Use Zone.
- **Bonus Floor Area** means 50% of the pre-demolition gross floor area of a Special Character Building that is Successfully Retained.
- **Floor Area Ratio** means the gross floor area above ground of all buildings on a site, ~~including all enclosed areas, services, lifts, car stackers and covered balconies, minus any bonus floor area the development qualifies for,~~ divided by the area of the site. For the purposes of this calculation:
 - gross floor area includes all enclosed areas, services, lifts, car stackers and covered balconies
 - gross floor area excludes Bonus Floor Area
 - the area of the site includes all contiguous titles in the same ownership that form part of the proposed development.
- ~~Voids associated with lifts, car stackers and similar service elements should be considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor.~~
- Laneway means a road reserve of a public highway 9 metres or less wide.
- Main Street means a road reserve of a public highway more than 20 metres wide.

- Social Housing has the meaning set out in Schedule 6 of the Special Use Zone.
- **Special Character Building** means any of the buildings listed below (and identified as a Special Character Building in the West Melbourne Structure Plan 2018):
 - 512-542 Spencer Street, West Melbourne (two-storey brick building)
 - 82-86 Stanley Street, West Melbourne (single-storey brick building)
 - 67-85 Roden Street, West Melbourne (single-storey brick building)
 - 506 Spencer Street, West Melbourne (two-storey brick building)
 - Mansion House Lane, rear 67-69 Stanley Street, West Melbourne- (single-storey brick building)
 - Mansion House Lane, 126 Rosslyn Street, West Melbourne (two-storey brick building)
 - 17 Stanley Street, West Melbourne (single-storey brick building)
 - Laneway off Stanley Street, rear 31-47 Stanley Street, West Melbourne (single-storey brick building).
 - 116-118 Rosslyn Street, West Melbourne (single-storey brick building)
 - 112 Rosslyn Street, West Melbourne (two-storey brick building)
 - 96-110 Rosslyn Street, West Melbourne (single-storey brick building)
 - The Keshikan, 93-99 Rosslyn Street, West Melbourne (single-storey brick building)
- Street means a road reserve of a public highway more than 9 metres wide.
- **Successfully Retained** means that to the satisfaction of the responsible authority:
 - all or a substantial part of ~~the three dimensional form and details of a~~ Special Character Building, as viewed from the street, ~~have~~ has been preserved, and ~~incorporated into the development and~~
 - ~~When viewed from the street, the existing (pre-demolition) interior finished floor and ceiling levels of the Special Character Building have been adopted to maintain~~ the functional appearance of the building from the street.

2.2 Buildings and works for which no permit is required

A permit is not required to construct a building or carry out works s at ground level to provide access for persons with disabilities that comply with all legislative requirements.

2.3 Requirements

~~The following buildings and works requirements apply to an application to construct a building or construct or carry out works:~~

An application to construct a building or carry out works:

- must meet the Design Objectives specified in this schedule.
- ~~An application to construct a building or carry out works~~ must achieve the Built Form Outcomes in ~~Table 1 to~~ this schedule.
- ~~An application to construct a building or carry out works~~ should meet the Built Form Requirements specified in ~~Table 1 to~~ this schedule.

An application which does not meet the Built Form Requirements ~~specified in Table 1 to this schedule~~ must demonstrate how the development will meet the ~~relevant~~ Design Objectives, and achieve the ~~relevant~~ Built Form Outcomes.

Floor Area Ratio

An application to construct a building or carry out works must not exceed a Floor Area Ratio of 4:1 except for properties with a direct frontage to Spencer Street or King Street which must not exceed a floor area ratio of 5:1. This does not include Bonus Floor Area.

A permit cannot be granted or amended to vary this requirement, unless:

- any of the following apply, in which case a permit may be granted to deliver additional floor area up to an amount determined to the satisfaction of the responsible authority:
 - an agreement under section 173 of the Planning and Environment Act 1987 has been entered into between the landowner, the responsible authority and the local council (if not the responsible authority) that requires the landowner to provide either of the following as part of the development:
 - Social Housing
 - Affordable Housing in excess of the 6% Affordable Housing requirement set out in Schedule 6 of the Special Use Zone
- ~~a Special Character Building has been Successfully Retained, in which case a permit may be granted to deliver up to the Bonus Floor Area in addition to the Floor Area Ratio of 5:1 or 4:1 (whichever is applicable).~~
- ~~in the case of an amendment, the amendment does not increase the extent of non-compliance.~~

Where the site includes contiguous titles in the same ownership, a section 173 agreement must be entered into and registered on each title which records the amount of Floor Area Ratio developed across the entire site, and the amount (if any) of remaining Floor Area Ratio able to be developed on each title should it be individually redeveloped in future.

Building/ heights, and sStreet wWall hHeights and amenity

Built Form Outcomes

- ~~Building-A mix of building typologies and variable building heights, including street wall heights, are variable to ensure that makes~~ a positive contribution to the specific character of the ~~streetprecinct.~~
- Taller buildings on large sites, Main Streets and prominent street corners, and lower built form on smaller sites, mid-block sites and Laneways.
- Buildings within larger sites that are broken up into a series of smaller building forms where appropriate and with variable heights to ensure they relate and contribute positively to their context and their historic urban grain.
- Development respects the scale of adjoining residential development and heritage buildings.
- Development that appropriately considers the amenity impacts on neighbouring development and achieves a high standard of internal amenity within the development.
- Development that is set back from side and rear boundaries to ensure internal spaces receive adequate levels of daylight and privacy.
- Equitable development with primary outlook to the street or within development sites.

Built Form Requirements

- Preferred maximum building height of 7 storeys between Spencer, King, Dudley and Roden Streets, unless:
 - fronting Dudley Street where the preferred maximum building height is 10 storeys

- o fronting Spencer Street or King Street where the preferred maximum building height is 8 storeys.

~~In all other areas, preferred maximum building height of 6 storeys, unless:~~

- ~~fronting Dudley Street where the preferred maximum building height is 10 storeys~~
- ~~fronting Spencer Street or King Street where the preferred maximum building height is 8 storeys.~~

- Street wall heights between 3 and 6 storeys unless:
 - o fronting Spencer Street or King Street where the street wall height range is between 3 and 8 storeys
 - o fronting Dudley Street, where the street wall height range is a maximum of 10 storeys
 - o fronting Roden Street where the preferred maximum street wall height is 4 storeys.

Commented [A2]: Repeated in the Part C controls, presumably inadvertently

Floor-to-Ceiling Heights Adaptable buildings

Built form outcomes

- Developments with lower levels that can be adapted from non-employment uses to employment uses.

~~Adequate floor-to-ceiling heights to ensure developments can be adapted to different uses.~~

Built Form Requirements

- Minimum floor-to-ceiling heights of:
 - o 4 metres for the ground floor.
 - o 3.3 metres ~~for all non-residential uses~~ on other floors up to the height of the street wall.

Eades Park

Built Form Outcomes

- Development positively frames the open space in Eades Park.

Built Form Requirements

- Provide active frontages on streets interfacing with Eades Park, particularly along King Street.

Active Street/s and Laneways ~~Frontages~~

Built Form Outcomes

- Reinforce the role of Spencer Street (between Dudley and Hawke Streets) as the active, safe and well-designed local ~~high street~~ activity centre of West Melbourne.
- Development that maximises the quality and activation of Main Streams, Streets and Laneways and other public realm areas.
- Development that minimises the impact of building services on the public realm.

Commented [A3]: Refer to Chapter 16.3

Built Form Requirements

- Provide active frontages at the ground floor where appropriate, particularly within the Spencer Street Activity Centre.
- In development with more than one street frontage, vehicle access and loading bays:
 - should be located on the street or laneway that is lower in the street hierarchy.

- where possible, should not be located on Laneways that demonstrate at least three of the following characteristics:
 - a connection through a street block
 - active frontages
 - an architectural character that provides aesthetic and spatial interest to the public realm
- should minimise impacts on the pedestrian network.
- ~~Development with more than one street frontage positions entries, circulation and services to respond to the function of adjoining main streets, streets and laneways.~~
- ~~Locate S~~service and back of house areas should be located away from Mmain Sstreets, ~~local S~~streets and public spaces, ~~or~~ within basement or upper levels.
- Co-locate service cabinets internal to loading, waste or parking areas where possible to avoid impact on the public realm.
 - ~~Fine grain adaptable tenancies within the lower levels of buildings.~~

Laneways, pedestrian and cycling connections

Built Form Outcomes

- ~~Safe, Development to provide new, direct, attractive~~ and convenient pedestrian and cycling connections that are appropriately spaced where appropriate, that are and aligned with other lanes-Laneways or pedestrian and cycling connections ~~on nearby sites~~through West Melbourne.
- New ~~laneways-Laneways~~ are provided through large sites where appropriate.

Built Form Requirements

- Provide at least one new pedestrian connection through street blocks exceeding ~~where the average length of a street block exceeds 100 metres, except within 200 metres of a rail station where more frequent connections are desirable to manage high pedestrian volumes.~~
- Provide at least two pedestrian connections through ~~For~~ street blocks exceeding 200 metres ~~in length, at least two pedestrian connections are provided.~~
- Locate pPedestrian connections ~~are located~~ centrally within the street block and where possible, less than 70 metres from the next intersection or pedestrian connection.
- Ensure nNew ~~laneways-Laneways~~, pedestrian and cycling connections are:
 - ~~Safe, direct, attractive, Well-lit~~ and provide a line of sight from one end of the connection to the other.
 - Publicly accessible and appropriately secured with a legal agreement.
 - At least ~~six~~ 6 metres wide.
 - Open to the sky.
 - Lined by active frontages where appropriate.

3.0
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C309

Subdivision

None specified.

4.0
--/20--
C309

Advertising signs

None specified

5.0
--/20--
C309

Application Requirements

~~The following application requirements apply to an~~ An application for a permit under ~~Clause 43.02 this schedule~~, in addition to those specified elsewhere in the scheme and ~~must be accompanied by the following information~~ an application, as appropriate, to the satisfaction of the responsible authority:

- A site analysis and urban context report ~~that:~~
 - ~~documenting documents~~ the key contextual influences on the development and how the development addresses the Design Objectives, Built Form Outcomes and Built Form Requirements of this schedule.
 - ~~Diagrammatic demonstrations (including through diagrams where appropriate) of~~ how the development addresses the Design Objectives, Built Form Requirements and Built Form Outcomes ~~of in this Schedule.~~
- ~~Photographic Photographs~~ and/or ~~diagrammatic diagrams~~ study of prevailing materiality and architectural elements in the surrounding streetscape including any heritage elements.
- Photomontage studies of the proposal within its streetscape context from pedestrian eye level ~~from at street level~~. ~~1. (Including relevant proposals and approvals~~ ed for developments).
- Analysis of ~~how the amenity of the public and private realm is maximised given~~ the relationship between the proposal and adjacent buildings (including likely adjacent development envelopes) and open space, ~~in order to maximise the amenity of the public and private realm.~~
- Street elevations of the block showing how the development proposal sits ~~within~~ and contributes to its context.
- Plan, elevation and section drawings (1:50 or 1:20) and ~~a~~ written statement, showing and describing the design of the lower levels of the building including entries, shop front design, service areas, weather protection canopies and integrated signage elements.
- Where a Special Character Building (or part thereof) is proposed to be Successfully Retained, ~~;~~
 - a retention and refurbishment plan, detailing all the building fabric to be retained and/or refurbished
 - ~~as part of a development. d~~Diagrams, photomontages or three-dimensional renders ~~should be used to that~~ demonstrate those elements of the Special Character Building ~~to be retained~~ that will be visible from the street.
- Where buildings and works above 20 metres in height are proposed, a three-dimensional model of the proposed development in accordance with relevant City of Melbourne guidelines.
- ~~A concept landscape plan for any~~ Where publicly accessible podium and rooftop spaces ~~are detailing~~ proposed, ~~hard and soft~~ landscape ~~plans elements, plant schedule, plant container details and maintenance and irrigation systems.~~ detailing hard and soft landscape elements and detail of any deep soil planting areas.
- Where on-site car parking is proposed at or above ground level, a car parking adaptation strategy prepared by a qualified structural engineer or architect to demonstrate the capacity to adapt ~~the car parking areas~~ to alternate uses ~~in future.~~
- Where student housing, residential hotel or serviced apartments are proposed, an adaptation strategy demonstrating the potential for conversion to conventional apartments that would meet the requirements of Clause 58, or other alternative uses.

6.0 Decision Guidelines

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C309

~~Before deciding on a permit application under this schedule~~ The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those

~~specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by~~ the responsible authority must consider the following, as appropriate:

- The extent to which the development addresses the Design Objectives, Built Form Outcomes and Built Form Requirements ~~of~~ in this schedule.
- The impact of overshadowing on existing rooftop solar panels.
- Whether the development enables sunlight to reach into parks, streets and lower levels of buildings.
- Whether the development is responsive to the local context, street hierarchy, varied subdivision patterns and site sizes and other characteristics of the Spencer precinct.
- Whether the development supports a high quality ~~of~~ public realm and high levels of pedestrian amenity ~~in the public realm.~~
- Whether the development allows for the adaptive re-use of existing buildings.
- ~~The extent of retention of a Special Character Building~~

Appendix D7 Panel preferred version of Parking Overlay Schedule 14

Note: Tracked against Part B version. Only substantive changes are tracked. Text that has been re-ordered or general restructuring has not been tracked.

~~Panel delete~~

Panel add

SCHEDULE 14 TO CLAUSE 45.09 PARKING OVERLAY

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Proposed
C309

Shown on the planning scheme map as **PO14**.

WEST MELBOURNE

1.0 Parking objectives to be achieved

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Proposed
C309

To support long term sustainable transport patterns and minimise road congestion in West Melbourne.

To identify appropriate car parking rates within the *West Melbourne Structure Plan 2018* area.

To ensure parking facilities are provided efficiently and flexibly to meet changing community needs.

To minimise the negative impacts of parking facilities on the public realm and transport networks.

To provide for the future adaptation of car parking to other uses and innovations in transport technology.

2.0 Permit requirement

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Proposed
C309

A permit is not required to reduce (including reduce to zero) the number of car parking spaces required under Clause 52.06-5 or in the Table to this schedule.

[A permit is required to provide car parking spaces in excess of the car parking ratios at clause 3.0 of this schedule.](#)

3.0 Number of car parking spaces required

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Proposed
C309

If a use is specified in the Table below, the maximum number of car parking spaces that can be provided for the use is calculated by multiplying the *Rate* specified for the use by the accompanying *Measure*.

Table: Car parking spaces

Use	Rate	Measure
Dwelling	0.3	Per 1 bedroom dwelling
	0.45	Per 2 bedroom dwelling
	0.60	Per 3 or more bedroom dwelling
All other uses	0.5	Per 100 sqm net floor area

4.0 Application requirements and decision guidelines for permit applications

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Proposed
C309

The following application requirements apply to an application for a permit under Clause 45.09, in addition to those specified in Clause 45.09 and elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- ~~A car parking demand assessment, which investigates the~~[consideration of](#) current usage patterns, of ~~all~~ [car](#) parking facilities within a 400m radius of the site, including daytime, evening and nighttime occupancy rates.

The following decision guidelines apply to an application for a permit under Clause 45.09, in addition to those specified in Clause 45.09 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the development provides parking facilities for bicycles and motorcycles.
- Whether the development provides infrastructure or programs to incentivise the use of transport modes other than private cars within the development.

- The extent to which the development provides for a car parking arrangement on site which could be adapted to allow for other uses of car parking areas in future.
- Whether the ~~car parking demand assessment of~~ current usage patterns of ~~all~~ car parking facilities within a 400m radius of the site demonstrates that additional spaces as sought by the application, cannot feasibly or practically be provided elsewhere.

5.0

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Proposed
C309

Financial contribution requirement

None specified.

6.0

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C309

Requirements for a car parking plan

In addition to the requirements of Clause 52.06-8, a car parking plan must contain the following:

- An indicative car park management framework detailing how communal car parking facilities will operate to facilitate shared use arrangements.

7.0

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Proposed
C309

Design standards for car parking

In addition to the Design Standards of Clause 52.06-9, car parking facilities must be designed in accordance with the following Design Standards:

- Car parking spaces designated for disabled permit holders, delivery vehicles and car share vehicles must be provided in the most convenient location for each user group.
- Security systems must be designed to cater to 24-hour access to the car park by off-site users for a mixed use development and in the event that a car park within a residential development is made publicly accessible in future, without compromising the security of the main building.
- Any parking facility proposed must prioritise provision of spaces for disabled parking, car share scheme vehicles, motorcycles and bicycle facilities designed in accordance with the requirements of Clause 52.34 with the balance of spaces being available for use, on a shared basis, where possible.
- Where a facility is proposed with 50 car parking spaces or more, the design, layout (including secure areas) and marking must allow for:
 - At least 5% of the total number of car parking spaces must be set aside for use by irregular visitors to the building including service and delivery vehicles;
 - At least 5% of the total number of car parking spaces must be set aside for use by people with a disability.
 - At least 5% of the total number of car parking spaces must be set aside for the storage of car share scheme vehicles.
 - The remaining 85% of spaces must be available for use on a shared basis under the management of the Body Corporate.

8.0

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Proposed
C309

Decision guidelines for car parking plans

The following decision guidelines apply to car parking plans under Clause 45.09, in addition to those specified in Clause 45.09, and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The safety and convenience of pedestrians moving to, from and within the car parking facility, including lighting levels, surveillance systems, signage, ease of orientation and visibility.
- Whether any new vehicular access points are limited to the minimum size necessary to facilitate the safe access requirements of the development.

- Any impacts posed by the number, width, location and design of new vehicular access points on the safety and quality of the pedestrian environment, pedestrian amenity and kerbside space for outdoor seating areas.
- Any impacts posed by the number, width, location and design of new vehicular access points on the cycling, public transport networks and traffic movement. This includes the impact of car park access points on existing bicycle infrastructure, public transport infrastructure, on-street parking and loading and unloading facilities.
- The extent to which the proposed access points would conflict with any proposal to limit or prohibit traffic in certain roads.

9.0

Reference document

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- *West Melbourne Car Parking Plan February 2018*