



Planning Evidence Statement

Amendment C309 to the Melbourne Planning Scheme

Statement prepared by John Glossop, Director
Glossop Town Planning Pty Ltd
June 2019





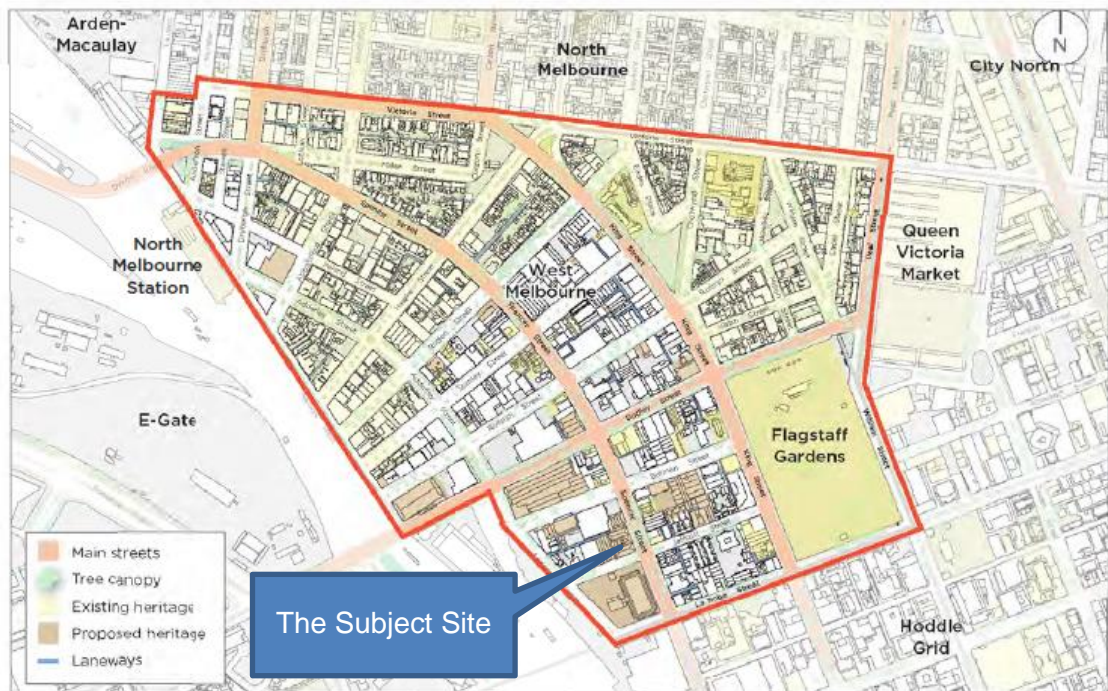
Table of Contents

1. INTRODUCTION.....	2
2. THE PHYSICAL AND STRATEGIC CONTEXT	6
3. AMENDMENT C309	15
4. OPINION	17
What is the West Melbourne Structure Plan (the WMSP) seeking to achieve?	18
Special Use Zone – Schedule 6 (West Melbourne)	22
Design and Development Overlay – Schedule 33 (West Melbourne – Flagstaff Precinct)	35
5. CONCLUSION	40
6. REQUIREMENTS UNDER PPV’S GUIDE TO EXPERT EVIDENCE	42
APPENDIX A: POLICY CONTEXT	44
Other Relevant Documents	45
APPENDIX B – LIST OF SPECIAL USE ZONES	46
APPENDIX C – LETTER OF INSTRUCTIONS	51



1. INTRODUCTION

1. Amendment C309 (the Amendment) to the Melbourne Planning Scheme (the Planning Scheme) proposes to implement the built form and land use directions of the *West Melbourne Structure Plan 2018*. The Amendment affects the area shown on the map below.



Excerpt from the West Melbourne Structure Plan 2018

2. I received instructions from Best Hooper Lawyers acting on behalf of 355 Spencer Street Pty Ltd, who is the owner of, or has an interest in the properties at 102-108 Jeffcott Street, 355-369 & 371-383 Spencer Street, West Melbourne (the subject site). These properties generally occupy the northwest corner of the intersection of Spencer Street and Jeffcott Street, and are immediately north of the Melbourne Assessment Prison.





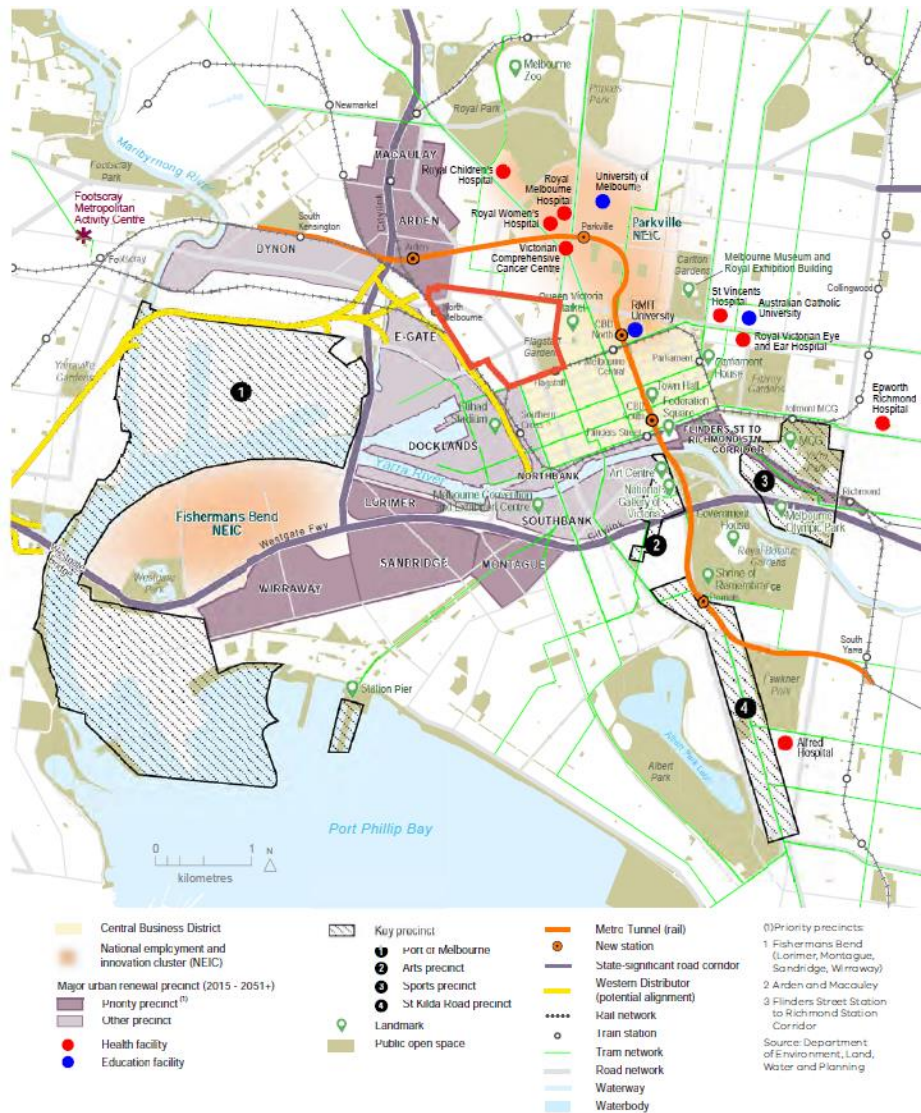
3. I have been asked to review the Amendment and prepare expert planning evidence at the Panel Hearing, which addresses:
 - The matters referred to in the submission prepared by Best Hooper Lawyers on behalf of 355 Spencer Street Pty Ltd; and
 - The strategic merit of the Amendment having regard to my expertise as a town planner.
4. I was not involved in the preparation of the Amendment nor was I involved in the planning permit process for the proposal described in paragraph 2. I was engaged following the referral of submissions to a Panel.
5. I have not been asked to review the wording of the controls or to comment on whether the amendment meets 'form and content' considerations. Although that task is not the focus of this evidence, I have made some observations where appropriate, within my evidence.
6. Where I comment on built form provisions, I do that through a town planning 'lens' and not as an urban designer.
7. In preparing this statement, I have:
 - Read the *West Melbourne Structure Plan 2018*;
 - Reviewed the exhibited Amendment documentation;
 - Inspected the site and surrounds;
 - Considered relevant aspects of the Melbourne Planning Scheme, including the Planning Policy Framework, Plan Melbourne (2017–2050) and other relevant policy, reference and incorporated documents;



- Reviewed the Amendment submission prepared by Best Hooper Lawyers on behalf of 355 Spencer Street Pty Ltd;
- Considered relevant Practice Notes (including PPN03: Applying the Special Use Zone, PPN10: Writing Schedules, PPN13: Incorporated and Reference Documents, PPN22: Using the Car Parking Provisions: PPN30: Potentially Contaminated Land, PPN17: Urban Design Frameworks, PPN46: Strategic Assessment Guidelines, PPN57: The Parking Overlay and PPN59: The Role of Mandatory Provisions in Planning Schemes.
- Considered the document 'A Practitioner's Guide to Victorian Planning Schemes' Version 2.0 (2019) (DELWP).
- Considered the Planning Panels Victoria Guide to Expert Evidence (April 2019).
- Considered relevant Ministerial Directions (including the Ministerial Direction - The Form and Content of Planning Schemes, Direction No. 1 – Potentially Contaminated Land, Direction No. 9 – Metropolitan Planning Strategy and Direction No. 11 – Strategic Assessment of Amendments).

2. THE PHYSICAL AND STRATEGIC CONTEXT

8. The Amendment affects the suburb of West Melbourne, which is strategically located between Melbourne's CBD and North Melbourne / Arden.



Excerpt from the West Melbourne Structure Plan 2018 (taken from Plan Melbourne)



9. The West Melbourne Structure Plan area is not within:
- The Capital City Zone or the Central Business District.
 - A listed priority precinct (such as Fishermans Bend, Arden Macauley) or 'other' precinct.
 - An urban renewal precinct.
 - A listed key precinct.
 - A National Employment and innovation cluster.
10. The subject site is located towards the southern end of West Melbourne, at the intersection of Spencer Street and Jeffcott Street.



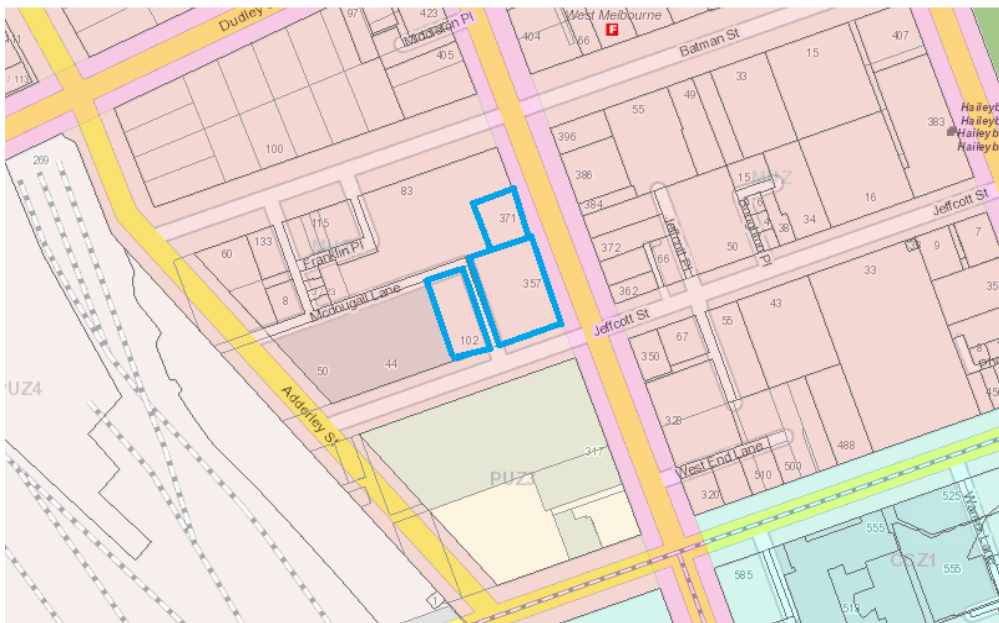
Location Plan

11. Specifically, the site comprises three separate addresses (102-108 Jeffcott Street, 355-369 & 371-383 Spencer Street, West Melbourne) as shown on the diagram below. McDougall Lane separates 355 Spencer Street from 102 Jeffcott Street.

p.7

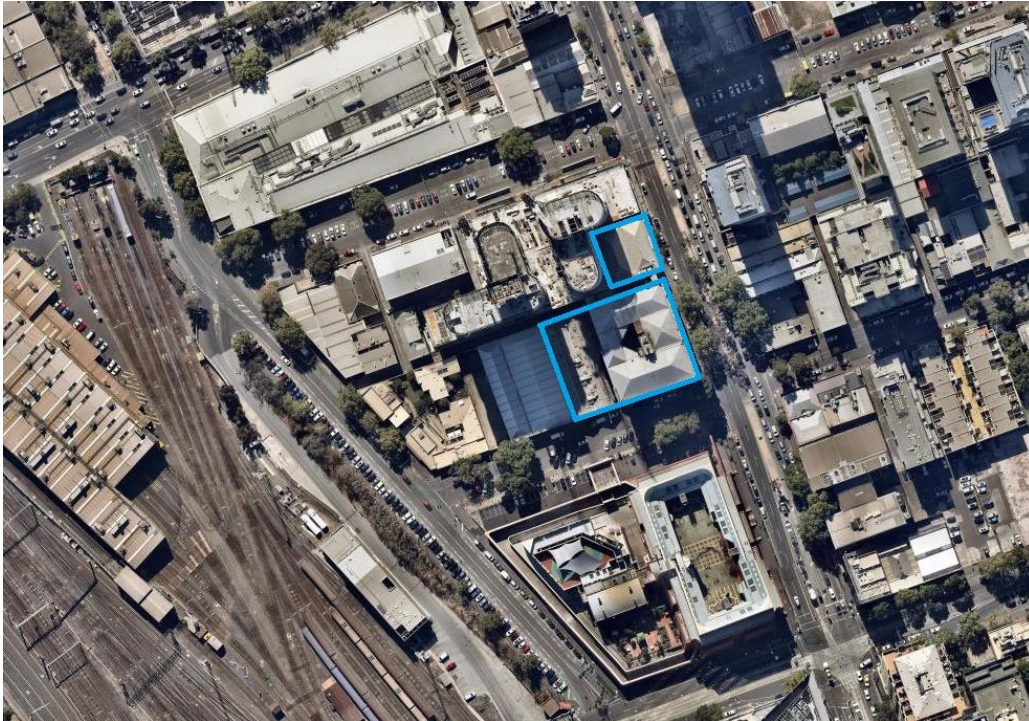


Site Plan



Cadastral Plan ([Source: mapshare.maps.vic.gov.au](https://mapshare.maps.vic.gov.au))

12. The site is developed with three separate buildings. The building at the intersection (on the largest site) is six storeys in height in used as an office. The building to its north is a three-storey office and to its west, a two-storey warehouse.
13. An aerial photograph and site photographs have been provided below.



Aerial photograph of the site dated 7 April 2019 (Source: [Nearmap.com](https://nearmap.com))



102-105 Jeffcott Street (June 2019)



355-369 Spencer Street viewed from Jeffcott Street (June 2019)



355-369 Spencer Street (June 2019)



371-383 Spencer Street (June 2019)



**McDougall Lane viewed from Jeffcott Street
(June 2019)**

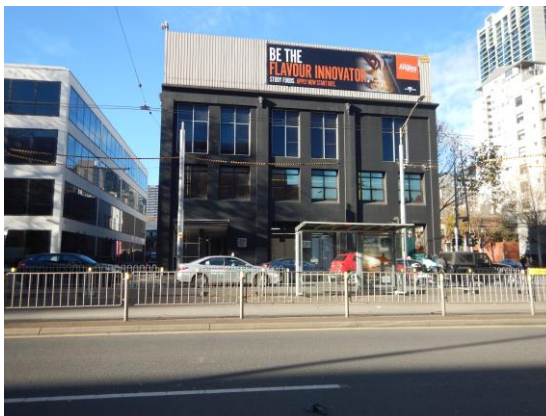
14. The following photographs provide a snapshot of use and development in proximity to the site.



**Melbourne Assessment Prison 317-353
Spencer Street, West Melbourne (June 2019)**



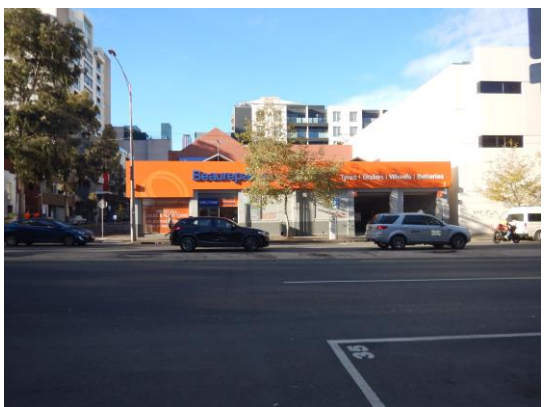
**Melbourne Assessment Prison from Jeffcott
Street (June 2019)**



**320 Spencer Street, West Melbourne (June
2019)**



**328-348 Spencer Street, West Melbourne (June
2019)**



**350 Spencer Street, West Melbourne (June
2019)**



**83-113 Batman Street, West Melbourne (June
2019)**



396 Spencer Street, West Melbourne (June 2019)



392 Spencer Street, West Melbourne (June 2019)



384 Spencer Street, West Melbourne (June 2019)



378 Spencer Street, West Melbourne (June 2019)



372 Spencer Street, West Melbourne (June 2019)



366 Spencer Street, West Melbourne (June 2019)



76 Jeffcott Street, West Melbourne (June 2019)



Looking north down Spencer Street from Latrobe Street (June 2019)



44-58 Adderley Street, West Melbourne viewed from Jeffcott Street (June 2019)



44-58 Adderley Street, West Melbourne viewed from Jeffcott Street (June 2019)



44-58 Adderley Street, West Melbourne viewed from Jeffcott Street (June 2019)

15. The site is currently subject to the following planning controls:
- Mixed Use Zone.
 - Design and Development Overlay – Schedule 12 (Noise Attenuation Area).
 - Design and Development Overlay – Schedule 33 (City Fringe).
 - Heritage Overlay – Schedule 771 (Sands & McDougall precinct 115, 133-137 Batman Street, 23 Franklin Place, 102 Jeffcott Street, 355 & 371 Spencer Street, West Melbourne).
16. A summary of the relevant planning policy context is provided in **Appendix A**. I have considered these policies in preparing my evidence which follows.
17. Planning Permit Application No. PA1800480 is currently before the Department of Environment, Land, Water and Planning (DWELP), which proposes to redevelop the site with a residential hotel. The proposal principally retains the existing heritage buildings and proposes a 22 storey tower at the rear of 102-108 Jeffcott Street, as well as a bridge across McDougalls Lane.

3. AMENDMENT C309

18. Amendment C309 seeks to implement the West Melbourne Structure Plan 2018. The Structure Plan divides West Melbourne into five precincts. The site is located within the Flagstaff Precinct.



Excerpt from Explanatory Report

19. In relation to the subject site, the Amendment proposes to:
- Rezone the land from the Mixed Use Zone (MUZ) to the Special Use Zone (SUZ).
 - Delete the existing Design and Development Overlay – Schedule 33 (CBD Fringe).
 - Apply a new Design and Development Overlay – Schedule 33 (West Melbourne – Flagstaff Precinct).



- Apply a new Parking Overlay – Schedule 14 (West Melbourne).
 - Apply the Environmental Audit Overlay¹.
20. The Amendment also proposes to introduce new Local Area policy at Clause 21.16, specifically for West Melbourne and makes consequential changes to Clause 21.16-5 (North and West Melbourne).
21. The Amendment does not propose to alter the Heritage Overlay – Schedule 771 (Sands & McDougall precinct 115, 133-137 Batman Street, 23 Franklin Place, 102 Jeffcott Street, 355 & 371 Spencer Street, West Melbourne) or Design and Development Overlay – Schedule 12 (Noise Attenuation Area).

¹ Although a note that Council has resolved post exhibition to only apply the EAO to part of the site



4. OPINION

22. From my review of the Amendment material, it is evident that it primarily seeks to achieve the following outcomes for West Melbourne:

- A mix of uses, in particular employment generating uses;
- An increase in affordable housing;
- Distinctive built form, which respects the area's history and context;
- Enhanced public spaces;
- Reduced car dependence; and.
- Manage environmental contamination.

23. These are all worthy objectives, which are embedded in broader planning policy.

24. The question then to consider, is whether the Amendment documentation presents an acceptable means of achieving these good planning outcomes. In this regard, Clause 71.02-3 of the Melbourne Planning Scheme is direct in stating that:

Society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

Planning and responsible authorities should endeavor 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.



25. In this regard, there is a need to consider whether this Amendment strikes the right balance in its selection of controls and policy in order to achieve a net community benefit and sustainable development.
26. The Amendment proposes a Special Use Zone as the primary implementation measure to deliver the West Melbourne Structure Plan's land use objectives and several different Design and Development Overlays to achieve its built form objectives. It also proposes to introduce a Parking Overlay, to reduce car dependence and an Environmental Audit Overlay to manage site contamination. Matters concerning car parking and site contamination are outside my realm of expertise although I consider the SUZ and DDO in my assessment to follow.

What is the West Melbourne Structure Plan (the WMSP) seeking to achieve?

27. The vision for West Melbourne is set out in the Structure Plan as follows²:

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 green streets will provide excellent connections and a network of local places and space to rest and play with Spencer Street as a vibrant high street.

28. The choice of the word 'counterpoint' is interesting. As a noun, a possible definition of 'counterpoint' is:

² Page 10.



A thing that forms pleasing or notable contrast to something else.

29. The planning authority has taken this approach to heart in its drafting of the amendment as it contains a range of statutory implementation measures that are in fact, discernibly different to the approaches found in the Capital City Zone and other parts of the City.

30. For the Flagstaff precinct, which is the subject of my evidence, the vision is:

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 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 trees³.

31. The outcomes put forward in the WMSP are visionary and aspirational. Key land use and development outcomes for West Melbourne include:

- Accommodate a forecast residential population of 8,000-9,000 and a further 5,500 new dwellings (in addition to the existing 2,600 dwellings in the area and the 3,250 dwellings in approved applications) by 2037⁴.
- Accommodate a workforce of approximately 10,000 jobs by creating a further 100,000-200,000 m² of employment floor space by 2036⁵.

³ Page 96.

⁴ Page 44.

⁵ Pages 44 and 52.



- Provide for decreasing household sizes and a generally younger population compared to Greater Melbourne.
 - Achieve a 6% affordable housing 'target' and provide around 200 new affordable homes⁶.
32. The outcomes described above are not unusual, and I note that the recent Fishermans Bend Amendment GC118 sought to deliver land use and built form outcomes in the areas of employment floor area, dwelling diversity and affordable housing (at least 6% of dwellings permitted above a dwelling per hectare density), design excellence and carbon adept development (among other things).
33. That said, there are some key implementation differences between GC118 and those proposed by C309. These differences include:
- The selection of the Special Use Zone (SUZ) as the primary implementation mechanism by which goals such as employment floor space and affordable housing will be realised.
 - The use of mandatory controls in the SUZ to affect floor area mix (residential / employment).
 - The use of a statutory control (the SUZ) and not a policy to deliver outcomes in relation to affordable housing. The delivery of affordable housing is not mandatory, however, the SUZ sets out a process by which an applicant must demonstrate that a proposal would be 'rendered economically non-viable' if the required rate of affordable housing was provided.
34. 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

⁶ Pages 56 and 57.



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.

35. 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 '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.
36. The WMSP says that the existing statutory mechanisms including the Mixed Use Zone are not capable of delivering the outcomes sought by the Council. It says:

The current mixed use zone (sic) in West Melbourne is currently delivering predominantly residential development. Therefore, it is proposed to rezone areas of West Melbourne to a Special Use Zone (or an equivalent zoning)⁷.

37. The reason for this is as follows:

The Special Use Zone would enable the requirement for a minimum proportion of the maximum floor area ratio to be dedicated to a non-residential use (commercial and, where appropriate, retail uses) in the areas of Spencer, Flagstaff, Station Precinct and Adderley

This will help retain and attract the types of business appropriate to West Melbourne, supporting the delivery of the projected new jobs and employment floor space and ensuring it remains as a true mixed use neighbourhood helping to implement the State Planning Policy Framework and policies in Plan Melbourne⁸.

38. The approach taken by the planning authority to zone selection seems to reflect:

⁷ Page 52.

⁸ Page 52.



- A dissatisfaction with the 'usual' tools available in the Victoria Planning Provisions (VPP) to achieve the WMSP's stated objectives.
 - A desire to create a mixed use neighbourhood through delivering a neighbourhood of mixed use buildings (by controlling the amount of residential floor space in new buildings).
 - A greater agency for the Council to control land use outcomes on a site-by-site basis and away from an (arguably) more flexible market-led model.
 - An attempt to push the boundaries in terms of zone selection (i.e. the use of the SUZ as opposed to other available zones such as the Mixed Use Zone (MUZ).
39. In my view, the approach taken by the planning authority in respect of zone selection is certainly contrary to the way in which the zone has been applied in the past and its application in this context is probably without precedent.
40. The fact that it has not happened before is perhaps not determinative, but the systemic consequences of approving such an approach here require rigorous examination as it has consequences that extend beyond the City of Melbourne's boundaries. For reasons I go onto articulate, the application of the SUZ here is arguably a misuse of the VPP.
41. I consider the application of the SUZ in the following section.

Special Use Zone – Schedule 6 (West Melbourne)

42. As part of preparing my evidence, my office conducted research on the number of times the SUZ has been used in Victorian planning schemes. I have also reviewed the schedules to those zones. A list of those controls is attached **at Appendix B**.
43. My findings in relation to that research are as follows:
- The SUZ has been used 367 times.



- The SUZ forms part of 72 Victorian planning schemes.
- The SUZ is typically used for one-off or standalone purposes. Common applications include site for golf courses, educational facilities, harbours and marinas, industrial complexes, airfields, electricity easements, correctional facilities, motor, horse and greyhound racing tracks, hospitals and infrastructure assets (like power stations).
- Less frequently, the zone is applied to 'precincts'. Examples of that include SUZ8 to the Surf Coast Planning Scheme (Anglesea Tourism Precinct); SUZ6 to the Wangaratta Planning Scheme (Wangaratta Civic Precinct) or SUZ14 to the Ballarat Planning Scheme (Ballarat West Employment Zone). In all of these cases, these precincts are not of a suburban scale.
- I have not seen an example of the application of the SUZ to a large, urban area like West Melbourne before.

44. The Purpose of the SUZ is as follows:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.*

45. In relation to these purposes, it would seem that the specific purpose is to create a mixed use area.

46. Planning Practice Note 3 (May 2017) (PPN3) provides guidance about the appropriate use of the SUZ in planning schemes. Pursuant to PPN3, the principles applying to the SUZ are:

When considering the application of the Special Use Zone, the following principles need to be understood:



- *The complexity of planning requirements is reduced by keeping the number of zones used to a minimum.*
- *Planning scheme maps identify the statutory requirements which apply to land, not the particular land uses which happen to exist there.*
- *Detailed and complex site specific zones are discouraged in preference for clear policy guidelines as the primary tool for decision making on planning matters.*
- *The planning permit should be the principal method for land use or development approval.*

47. The SUZ is grouped in the VPP under the category of Special Purposes Zones.

48. The Planning Practitioner's Guide says this about Special Purpose Zones at Section 5.1.2:

Where the strategic intent of a site is unknown or the application of a combination of zones, overlays and local policies is not able to achieve the desired planning outcomes, a special purpose zone may be used. These zones include the Special Use Zone, the Comprehensive Development Zone, the Urban Growth Zone and the Activity Centre Zone.

Maintaining consistency of planning controls across Victoria is a VPP principle. Using a special purpose zone is therefore discouraged unless there is clearly no suitable alternative.

49. Generally, this means, that the SUZ is a zone of 'last resort', which is appropriately used in limited circumstances. Specifically, PPN3 identifies two circumstances, stating:

A Special Use Zone 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*

Application of the Special Use Zone is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays.

50. The second dot point is not relevant in this case, meaning the first hurdle to overcome is; can Council achieve its objectives by way of a different application of zoning and local policy? The answer to this question is directly referable to the sorts of outcomes that the Council is seeking to achieve for West Melbourne.
51. The Explanatory Report accompanying the Amendment describes the purpose of the selection of the SUZ as follows:

Rezoning of some areas to a specifically crafted Special Use Zone to help support a genuine mix of uses in West Melbourne. Minimum employment floor space requirements are included in the Special Use Zone to support a greater mix of commercial/retail uses in West Melbourne. Employment floor space requirements will help to deliver the projected 10,000 jobs in West Melbourne by 2036.

52. Proposed SUZ6 includes a mandatory control regarding minimum floor areas for non-residential land uses. 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).
53. Since the floor space provision is proposed to be mandatory, this outcome cannot be achieved by way of a local policy. The schedule to the existing MUZ also would not allow such an outcome to be introduced. The Capital City Zone or the Comprehensive Development Zone may provide an alternative, although I think the more important question to ask, is whether the mandatory requirement is appropriate in any event. If



they are not, which is my view; there is then no need for the SUZ and another VPP zone (or zones) can be selected.

54. Pursuant to proposed SUZ6, within the Flagstaff Precinct, a minimum of 16.6 per cent of the gross floor area of a development is to be allocated to a use other than Accommodation. This amount equates to a ratio of 1:6 of a building's floor area. The purpose of this control is to achieve a mix of local uses and increase local employment. In addition, proposed SUZ6 includes a requirement that one in every sixteen dwellings within a development is to be affordable housing. The objective is to provide 200 affordable housing dwellings in West Melbourne over time. This requirement is not mandatory, but it has been drafted in such a way as to significantly limit discretion.
55. A key question for the Panel is whether the floor space mix provision should be mandatory. If it should be mandatory, has it been drafted appropriately to prevent poor outcomes from occurring (like we often see with other mandatory provisions). In relation to the affordable housing provision – is it necessary at all and if it is, is it drafted appropriately? Alternatively, could a local policy achieve the outcome sought in relation to affordable housing? I consider these questions below.

The Mandatory Floor Space Mix Provision

56. Planning Practice Note 59 (The Role of Mandatory Provisions in Planning Schemes) (PPN59) states that planning schemes are intended to be primarily performance based, allowing for variation, innovation and unforeseen circumstance and to not prevent outcomes deemed otherwise appropriate. PPN59 includes criteria, which are used to assess whether the benefits of a mandatory provision outweigh any losses of opportunity. I address these criteria below.

CRITERIA - Is the mandatory provision strategically supported?

Does the proposed measure have a sound strategic basis having regard to the planning objective to be achieved and the planning policy framework generally?

Does the proposed mandatory measure clearly implement a policy or achieve an objective rather than just being a prescriptive tool?

57. Council has commissioned employment and economic studies, which provides the basis for the provision of future local employment in the WMSP. What has not been demonstrated however, is that the outcomes sought by these studies should be delivered by way of a statutory control and whether this should be a mandatory provision.
58. There are numerous areas in Melbourne where a land use mix has been achieved to create sustainable and high quality environments, without prescription by Council. While a mandatory requirement could increase the supply of these uses, it might just as likely discourage development and investment in the area.
59. Councils have grappled with the concept of encouraging a mixture of uses given the limitations imposed by the VPP. One approach employed by the Stonnington Planning Scheme⁹ is through vertical zoning and by seeking to 'future proof' buildings by requiring minimum ceiling clearances, which can allow future building conversion. In this context, I see this as a far more attractive way of delivering on a mixed use outcome than by imposing (inflexibly and without consideration of the circumstances) a prescribed split of uses within a building. I discuss this further under my assessment of DDO33 below.
60. I also note that a different approach has been adopted in the Fishermans Bend Urban Renewal Area. I consider this later in my assessment.

⁹ See Schedule 1 to the Activity Centre Zone.



61.

CRITERIA - Is the mandatory provision appropriate to the majority of proposals?

Has the scope of the proposed mandatory provision been carefully considered to ensure that it will be appropriate in the vast majority of cases to limit the unnecessary loss of the flexibility and opportunity available in a performance-based system?

Will the considered application of planning policy to be implemented by the proposed measure lead to the outcome prescribed by the measure in the vast majority of cases or is it merely one of a number of possible outcomes?

62. The floor space area requirement does not incorporate flexibility, rather it mandates that each individual development must be made up in one way: with a portion of non-residential and a portion of dwellings. It also strongly encourages a further portion of the development to contain affordable housing. It does not acknowledge that three separate development applications on separate sites could make up the same yield for each use, or that there are various options in between.
63. C309 does not examine or resolve the inherent challenges in having residential and non-residential uses sharing the one building. One challenge is around security, meaning that different areas are usually required for entry, circulation and car parking. Another is that businesses and residents may prefer to share their quarters with like users. For businesses, this allows the co-location of similar uses within a building who might work cooperatively, while for residents, an all-residential building may provide a greater feeling of domesticity, privacy and safety.
64. It is also noted that the blanket trigger to provide non-residential uses when a permit for Accommodation is sought, fails to recognise that many land uses that are listed under Accommodation at Clause 73.04 (Nesting Diagrams), are employment generating uses. This includes motel, residential hotel, corrective institution and residential aged care facility. Many are also beneficial uses which are encouraged by planning policy and are needed in their own right (such as community care accommodation, a rooming house

p.28



and a residential aged care facility). Indeed, this diverges from the Fishermans Bend approach, where the requirement related to the use of land for dwellings, in favour of floor space provision for “employment generating uses”.

65. Perhaps one of the greatest challenges with the approach preferred by the planning authority is the control’s inability to flexibly respond to market conditions. While the market has favoured residential development for the past several decades, I have observed that this preference is starting to change, and planning permit applications proposing office accommodation, in particular, are becoming more common. This is a positive development, and it is not known how far the market will turn in this direction. The approach taken by SUZ6 may represent recent history, but for it to have any longevity, it needs to be flexible and useful into the foreseeable future. I do not believe that the proposed SUZ is suitable for the majority of proposals either now or in the future.
66. The inherent risk in SUZ6 is that it has been crafted to address ‘legacy’ issues reflected in past approvals and is in that sense ‘reactive’. I also wonder whether it would be more prudent to consider other, less restrictive approaches first (and in different market conditions) before proceeding to the sort of mandatory approach proposed here?

CRITERIA - Does the mandatory provision provide for the preferred outcome?

Does a proposed mandatory provision resolve divergent opinions within the community as to a preferred outcome when a consistent outcome is necessary?

Does a proposed mandatory provision avoid the risk of adverse outcomes in circumstances where there is likely to be constant pressure for development inconsistent with planning policy?

Is there real evidence of development exceeding the proposed control?

67. This is not a case where a consistent outcome is required for each and every site in the precinct. It is also not necessarily the case that the land use mix proposed by SUZ6 is the preferred outcome for the majority of sites. As I have noted already, there does not seem to be any evidence put forward by Council that mandatory requirements are the



only way to achieve its preferred outcomes of mixed use. I also do not know why West Melbourne specifically, warrants such prescription, when (for example) Fishermans Bend, did not.

68. In any event, I think it is far too early in the 'Fishermans Bend' approach to conclude that approach to be a failure.

CRITERIA - Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?

Will the majority of proposals not in accordance with the requirements fail to meet the objectives of the control?

Will the majority of proposals not in accordance with the requirements lead to unacceptable planning outcomes?

69. The SUZ does not meet this test. There are numerous reasons why a proposal that is not in accordance with the mandatory requirement could remain acceptable. It may have a significant public space component, it may have exemplar environmental sustainability, it may pose substantial heritage gains, or it may be architecturally significant. As I have identified above, it may too include a beneficial and employment generating use, such as residential aged care facility, yet still be required to provide non-residential floor area.
70. In the Fishermans Bend approach, it was recognised that not every site needed to provide for employment generating uses for an acceptable planning outcome to be achieved. Indeed, that requirement only applied to land within an identified 'core area'. Even then, there was wide discretion available, given that the requirement to provide employment floor area was embedded in policy.
71. Within the Capital City Zone schedule for Fishermans Bend, application requirements include:



An application to use land for a Dwelling, Residential village or Retirement village must be accompanied by a report that addresses:

...

- *How the proposal contributes to the job growth targets and employment floor area set out in the Fishermans Bend Urban Renewal Area Local Policy.*

72. The local policy at Clause 22.27 then provides that it is policy for development in a core area in the Capital City Zone to provide floor area for employment generating uses at a set ratio to the provision of dwellings (rather than accommodation). The policy logically sets out how Council will exercise its discretion in relation to these proposals, considering (as appropriate):

- *Whether the built form envelope available on the site makes it impractical to provide the minimum plot ratios.*
- *Whether the application is associated with the continued operation or expansion of an existing employment or residential use on site.*
- *Whether the buildings floor to floor heights, layout and design will facilitate future conversion from residential to employment generating uses or from car parking areas to other employment generating uses.*
- *Whether the development can demonstrate that it is contributing the employment objectives of this policy while providing less than the minimum plot ratio.*

73. I think that this approach is more appropriate and provides relevant considerations for the responsible authority to exercise discretion to vary the requirement in appropriate circumstances.

CRITERIA - Will the mandatory provision reduce administrative costs?

Will the proposed mandatory provision reduce costs imposed on councils, applicants and the community to the extent that it significantly outweighs the benefit of a performance-based provision?

74. The mandatory provisions would be unlikely to reduce administrative costs. Interestingly, in the proposed SUZ the required non-residential space would in most cases require a planning permit. For example, an office over 250sqm and a shop or food and drink premises over 150sqm require planning approval. The mandatory requirement does not reduce the number of factors Council must consider in assessing an application. One way Council could genuinely encourage commercial land uses is to remove the permit triggers for them.
75. Proposed SUZ6 also states that where the total number of dwellings exceeds nine a permit is required for a dwelling. I cannot find where the number nine derives from. It would seem more logical if a permit was required for 16 or more dwellings to match the proposed affordable housing trigger.
76. Overall, the mandatory control set out in proposed SUZ6 cannot be favourably assessed against PPN59 and is not warranted. Having reached this conclusion, given the SUZ was selected as a means of incorporating mandatory requirements, it follows that the SUZ is not required to be applied to the subject area.

The Affordable Housing Provision

77. There is also the question in my mind about whether the affordable housing provision is appropriate in a statutory control, rather than expressed as a policy requirement.
78. I accept that there is demand for more affordable housing across Melbourne (and this presumably also affects the WMSP area).



79. There are many examples of successful affordable housing projects in metropolitan Melbourne, which have been achieved without a blanket prescription of a control.
80. While I acknowledge that the requirement in the Special Use Zone does not appear to be mandatory¹⁰, there appears to be limited discretion available to vary that requirement, given that the application requirement is for a report prepared by a Quantity Surveyor to demonstrate that the project would be economically unviable.
81. The decision guidelines then require a consideration of:
- *The extent to which the proposal contributes to the provision of at least 6% affordable housing in West Melbourne.*
 - *The views of the relevant housing provider.*
82. It appears to me that this is a relatively high threshold of burden on an applicant to provide for affordable housing, with limited discretion to vary this requirement.
83. There may be factors other than economic viability (amount of affordable housing nearby, scale of the project, the constraints of the site, the mixture of uses proposed etc.) that might also be relevant to the Council's exercise of discretion. If the provisions are to be retained, I recommend that the control be amended to allow for broader discretion.
84. I also note that the proposed approach here varies from other accepted approaches to affordable housing.
85. In the Fishermans Bend Urban Renewal Area (which is subject to the Capital City Zone – Schedule 4) affordable and social housing is only required to be provided when the dwelling density within the precinct exceeded certain thresholds (i.e. 339 dwellings per

¹⁰ The requirement is expressed as a "should", unless otherwise agreed by the Responsible Authority.



hectare). Where the requirement is triggered, the following Application Requirement applies:

An application to construct a building or to construct or carry out works for a Dwelling must be accompanied by the following information, to the satisfaction of the responsible authority:

- *A report that addresses how the proposal contributes to the Affordable housing objectives and targets of the Fishermans Bend Urban Renewal Local Policy, and identifies:*
 - *The number and location of Affordable housing dwellings proposed to be provided.*
 - *The proportion of total dwellings that are proposed to be Affordable housing dwellings.*
 - *The mix of one, two and three-bedroom Affordable housing dwellings that reflects the overall dwelling composition of the building.*

86. Clause 21.13-3 (Fishermans Bend Urban Renewal Area) specifies that the Fishermans Bend Urban Renewal Area should seek to achieve an affordable housing target of 6%. This policy works in conjunction with policy at Clause 22.27 (Fishermans Bend Urban Renewal Area Policy). This mechanism works on a policy of discretion.

87. For instance, the policy at Clause 22.27-4.3 seeks to provide affordable housing at 6%, unless any of the following apply:

- *The built form envelope available on the site makes it impractical to do so.*
- *It can be demonstrated that the development will contribute to the Affordable housing objectives of this policy while providing less than the minimum amount.*



- *It can be demonstrated that meeting the Affordable housing objectives of this policy would render the proposed development economically unviable.*

88. Notably, this broadens the discretion available to the responsible authority beyond the economic viability, which is set out in SUZ6.
89. Within the CBD, the Floor Area Uplift and Delivery of Public Benefits Policy at Clause 22.03 uses an incentive mechanism, to allow floor area uplift (above floor area ratios for development) where public benefits such as affordable housing are provided.
90. I consider that the use of policy in both of these cases is more appropriate than the sole reliance on a statutory control as an implementation mechanism.

Design and Development Overlay – Schedule 33 (West Melbourne – Flagstaff Precinct)

91. Proposed DDO33 applies to the Flagstaff Precinct of West Melbourne, which is the precinct with an immediate interface to the CBD. DDO33 sets out new built form controls for this area, replacing the existing DDO33.
92. The existing DDO33 includes the following preferred design parameters.



AREA	MAXIMUM BUILDING HEIGHT, PODIUM HEIGHT AND MINIMUM BUILDING SETBACK	BUILT FORM OUTCOMES
DDO 33	<p>Height 40 metres</p> <p>Podium Height Podium height of 16 metres or an appropriate lesser height where the site is adjacent to a heritage building.</p> <p>Setbacks Setbacks above podium:</p> <ul style="list-style-type: none">▪ 6 metres from all front, side and rear boundaries.▪ 2 metres from laneways.	<p>Built form which provides a visual transition between the taller prevailing heights of the CBD and the lower scale built form of West Melbourne.</p> <p>Development provides a transition to adjoining lower scale heritage buildings by the use of podiums and upper level setbacks.</p> <p>Development that does not overshadow Flagstaff Gardens between 11am and 2 pm on 22 September and 22 June.</p> <p>Building setbacks that strengthen the pedestrian scale and focus of the area and maintain a sense of open outlook from the Flagstaff Gardens.</p>

Excerpt from DDO33 (existing)

93. These controls are proposed to be replaced, in the new DDO with the following key built form controls:
- A mandatory floor area ratio of 6:1;
 - A preferred maximum building height of 16 storeys;
 - A preferred street wall height of between 3 storeys and 10 storeys;
 - A preferred minimum setback above the podium from the street wall of 3 metres; and
 - A preferred minimum setback above the podium from laneways and side and rear boundaries of 6 metres.
94. 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.

95. I do not support the inclusion of a mandatory floor area ratio in this context and recommend that this be deleted from DDO33.

96. 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.

97. Proposed DDO33 also includes the following built form outcome and discretionary built form requirement relating to floor to ceiling heights:

Floor to Ceiling Heights Adequate floor-to-ceiling heights to ensure developments can be adapted to different uses. Fine grain adaptable tenancies within the lower levels of buildings.	Minimum floor-to-ceiling heights: <ul style="list-style-type: none">■ 4 metres for the ground floor.■ 3.3 metres for all non-residential uses on other floors.
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98. 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.
99. This point ties in with my earlier suggestion that to encourage commercial land uses it would be preferable to allow larger floor areas for uses like office, shop and food and drink as Section 1 uses. This would allow a residential use to be replaced with a use without the need for a permit. These types of incentive based planning responses may represent a more appropriate, responsive and less interventionist involvement of Council in market forces.
100. DDO33 includes the interesting concept of 'bonus floor areas'. The concept allows for an increased yield above the prescribed 1:6 ratio when identified character buildings are being retained. Specifically, the bonus floor area amounts to 50% of the gross floor area of the building to be retained. I support this concept in theory but make the following observations.
101. Firstly, it is not clear whether the 50% applies to the existing, pre-development gross floor area or the gross floor area to be retained. Secondly, it is not clear how much of the character building needs to be retained. The policy refers to the 'three dimensional form and details' when viewed from the street. This could amount to any manner of volume and given the plot ratio is mandatory this needs to be far clearer. If it means the front 5-6 metres, as sometimes occurs in commercial heritage streetscapes, the result could easily be a relatively small floor area. If half of this area represents the 'bonus', it would seem unlikely to entice retention.
102. I also question why this development advantage is being given to landowners with a special character building, while no benefit is given to landowners who possess a heritage asset, contained in a Heritage Overlay, when obviously the latter is of more



value and may be harder to retain / maintain. Heritage buildings are expensive to maintain and can be financially burdensome to landowners. To provide a 'reward' to those who possess a 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.

103. Since I do not support the mandatory ratio, the question of bonus floor area is somewhat moot, yet I am of the view that if the retention of special character warrants some additional benefit for landowners that benefit should be shared also with those who possess heritage assets.



5. CONCLUSION

104. The Amendment seeks to achieve a number of important planning outcomes, and I support the underpinning objectives.

105. Despite this, there are aspects of the proposed approach that I do not support, namely:

- The application of the Special Use Zone in this context is an improper use of the Victoria Planning Provisions.
- The application of the floor space area requirement. If the Panel supports that conclusion, there is no need to apply the Special Use Zone.
- The proposed mandatory requirements are unreasonably burdensome and prescriptive. It is premature to adopt this approach and other, more flexible responses should be pursued.
- If the mandatory floor space area ratio is to be retained, the control should be limited to only apply to Dwellings and to include other forms of accommodation to be included in the gross floor area ratio at clause 2.0 Use of land.

106. I also find that:

- The rationale for providing a bonus floor area is an interesting idea but it is not properly resolved.
- There is merit in applying the bonus floor area approach in some form to heritage buildings.

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



John Glossop (B.A Hons.) MPIA
Director
Glossop Town Planning Pty Ltd
June 2019



6. REQUIREMENTS UNDER PPV'S GUIDE TO EXPERT EVIDENCE

108. This statement is prepared by John Glossop, Glossop Town Planning Pty Ltd, 1/182 Capel Street, North Melbourne. I am a Director of the firm. The firm has been in business since 1997.
109. I have a Bachelor of Arts (Urban Studies) Hons. I have been engaged in the following positions and roles in my career as a planner including:
- Former planner with the Shire of Newham and Woodend (prior to its amalgamation with the Macedon Ranges Shire).
 - Strategic and Social Planning Manager, Shire of Melton until 1997.
 - Sessional member, Planning Panels Victoria between 1997-2012.
 - Member of the ResCode Advisory Committee 2000.
110. I have sat as a Chairman or member on a number of planning scheme amendments, dealing with a broad range of issues from high-rise housing in Williamstown, the redevelopment of Pentridge Prison and the application of flooding overlays in the Mornington Peninsula Shire.
111. I was a sessional lecturer and tutor in strategic, statutory planning and urban studies at Victoria University of Technology (1996-99) and lecturer in statutory planning Latrobe University Bendigo (2000- 02). I am currently a sessional lecturer in Statutory Planning and Environment at the Royal Melbourne Institute of Technology University.
112. I have considerable experience in statutory and strategic planning and new format planning schemes.
113. My expertise to make this statement is based on a combination of my experience working in metropolitan Melbourne and regional Victoria, an understanding of the site and my experience as a planner in both the private and public sectors. I have been instructed by Best Hooper Lawyers to provide an opinion on the planning merits of Amendment C309.



114. I have relied on the documents referred to in the introduction section of my statement.
There were no tests undertaken in the preparation of this statement.
115. I have been assisted in the preparation of this statement by Edwina Laidlaw, Town Planner.



APPENDIX A: POLICY CONTEXT

116. In preparing this Statement, I have considered the policy context as set out in the Planning Scheme and principally those clauses listed below.

- Clause 10 Planning Policy Framework.
- Clause 11 Settlement.
- Clause 15 Built Environment and Heritage.
- Clause 16 Housing.
- Clause 17 Economic Development.
- Clause 18 Transport.
- Clause 19 Infrastructure.
- Clause 21.02 Municipal Profile.
- Clause 21.03 Vision.
- Clause 21.04 Settlement.
- Clause 21.06 Built Environment and Heritage.
- Clause 21.07 Housing.
- Clause 21.08 Economic Development.
- Clause 21.09 Transport.
- Clause 21.10 Infrastructure.
- Clause 21.16 Other Local Areas, specifically:



- Clause 21.16-5 North and West Melbourne.
- Clause 21.17 Reference Documents.
- Clause 22.03 Floor Area Uplift and Delivery of Public Benefits
- Clause 22.05 Heritage Places outside the Capital City Zone.
- Clause 22.17 Urban Design outside the Capital City Zone.
- Clause 22.19 Energy, Water and Waste Efficiency.
- Clause 22.23 Stormwater Management (Water Sensitive Urban Design).

Other Relevant Documents

- Plan Melbourne (2017-2050).
- Homes for Victorians (2017).
- Urban Design Guidelines for Victoria (2017).
- Urban Character Charter for Victoria (2017).



APPENDIX B: LIST OF SPECIAL USE ZONES

Planning Schemes	Clause 37.01 Special Use Zone Schedules
Alpine	5
Alpine Resorts	
Ararat	3
Ballarat	16
Banyule	3
Bass Coast	5
Baw Baw	4
Bayside	
Benalla	4
Boroondara	2
Brimbank	6
Buloke	
Campaspe	3
Cardinia	6
Casey	6



Central Goldfields	2
Colac Otway	4
Corangamite	10
Darebin	
East Gippsland	4
Frankston	4
French Island and Sandstone Island	
Gannawarra	4
Glen Eira	1
Glenelg	5
Golden Plains	4
Greater Bendigo	12
Greater Dandenong	6
Greater Geelong	13
Greater Shepparton	10
Hepburn	3
Hindmarsh	



Hobsons Bay	6
Horsham	9
Hume	9
Indigo	2
Kingston	5
Knox	3
Latrobe	6
Loddon	
Macedon Ranges	6
Manningham	3
Mansfield	1
Maribyrnong	3
Maroondah	
Melbourne	5
Melton	9
Mildura	10
Mitchell	4
Moir	1
Monash	5



Moonee Valley	2
Moorabool	5
Moreland	2
Mornington Peninsula	7
Mount Alexander	
Moyne	6
Murrindindi	2
Nillumbik	4
Northern Grampians	2
Port of Melbourne	4
Port Phillip	3
Pyrenees	2
Queenscliffe	3
Southern Grampians	7
South Gippsland	7
Stonnington	1
Strathbogie	3
Surf Coast	9
Swan Hill	5



Towong	
Wangaratta	7
Warrnambool	3
Wellington	6
West Wimmera	3
Whitehorse	3
Whittlesea	9
Wodonga	2
Wyndham	8
Yarra	6
Yarra Ranges	11
Yarriambiack	3
Total	367



APPENDIX C: LETTER OF INSTRUCTIONS

Contact: Dominic Scally
Direct line: (03) 9691 0219
Email: dscally@besthooper.com.au
Principal: Dominic Scally
Our Ref: DHS:180622



4 February 2019

BY EXPRESS POST

Team Leader – Planning Policy
City of Melbourne
GPO Box 1603
MELBOURNE VIC 3001

And also by email: planningpolicy@melbourne.vic.gov.au

Dear Sir/Madam,

**Submission to Melbourne Planning Scheme Amendment C309
102-108 Jeffcott Street, 355-369 & 371-383 Spencer Street, West Melbourne**

We thank Council for the opportunity to make this submission to Amendment C309 to the Melbourne Planning Scheme.

We act on behalf of 355 Spencer Street Pty Ltd which is the owner of the properties at 102-108 Jeffcott Street, 355-369 & 371-383 Spencer Street, West Melbourne.

Having reviewed the exhibited amendment documentation, and sought advice on the proposal, we provide the following submissions.

Subject Site

The subject site is a large site made up of three land parcels and is generally located at the corner of Jeffcott Street and Spencer Street in West Melbourne.



Figure 1 – Aerial Photograph 19/10/2018 (nearmap.com.au)

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The combined site is approximately 3,352 square metres in area and it includes a frontage to Spencer Street of approximately 75.80 metres and a frontage to Jeffcott Street of approximately 61.46 metres (including McDougall Lane which is 4.54 metres wide and separates 355 Spencer Street and 102 Jeffcott Street below a height of RL 21.15 above this height the area forms part of the 355 Spencer Street title).

The land is comprised of three parcels of which are formally described as follows:

- Lot 1 on Plan of Subdivision 744960S (102 Jeffcott Street);
- Lot 2 on Plan of Subdivision 744960S (355 Spencer Street and includes the area above RL 21.15 of McDougall Lane); and
- Lot 2 on Plan of Subdivision 744961Q (371 Spencer Street).

The site is currently occupied by a single building on each parcel of land comprising a two-storey warehouse at 102-108 Jeffcott Street, a six-storey building used for office at 355-369 Spencer Street known as the Sands and McDougall building and a three storey building used for office at 371-383 Spencer Street. The buildings are built to the property boundaries at all levels.

Vehicle access is provided to 102-108 Jeffcott Street and 355-369 Spencer Street via McDougall Lane. There is no provision for vehicle access to the building at 371-383 Spencer Street.

Background

An application for planning permit on the subject site was lodged with the Department of Environment, Land, Water and Planning (DELWP) on 19 December, 2018 (Ref: PA1800480). The proposal includes:

- Partial demolition of the heritage building at 102-108 Jeffcott Street and development of the site for a residential hotel (22 storeys) with retail at ground floor over a basement;
- Partial demolition of the Sands and McDougall heritage building at 355-369 Spencer Street (limited to minor external building works) and development of Level 3 as an extension to the proposed hotel and a tavern (including sale and consumption of liquor), a licensed restaurant at basement and at ground floor, and use of the building remainder as office;
- A bridge connection over McDougall Lane between Level 4 of the proposed hotel at 102-108 Jeffcott Street and Level 3 of 355-369 Spencer Street; and
- Partial demolition of the heritage building at 371-383 Spencer Street, including external works at Level 3 and partial removal of the roof structure, and extension of the tavern at Level 3 of 355-369 Spencer Street on the 371-383 Spencer Street building rooftop.

A Request for Further Information letter dated 16 January, 2019 has been received and a response to the letter is being prepared. A meeting to discuss the proposal was held between DELWP, the City of Melbourne and the applicant on 30 January, 2019.

Current Planning Controls

The site is currently located within a Mixed Use Zone (MUZ) pursuant to the provisions of the Melbourne Planning Scheme.

The subject site is affected by the following overlays pursuant to the provisions of the Melbourne Planning Scheme:

- Design and Development Overlay – Schedule 12 'Noise Attenuation Area'
- Design and Development Overlay – Schedule 33 'CBD Fringe'

- Heritage Overlay – Schedule 771 – ‘Sands & McDougall precinct 115, 133-137 Batman Street, 23 Franklin Place, 102 Jeffcott Street, 355 & 371 Spencer Street, West Melbourne’

Proposed Planning Controls (Amendment C309)

The following planning controls are proposed for the subject land as part of Amendment C309 to the Melbourne Planning Scheme:

- Special Use Zone – Schedule 6 ‘West Melbourne’
- Design and Development Overlay – Schedule 33 ‘West Melbourne – Flagstaff Precinct’
- Parking Overlay – Schedule 14 ‘West Melbourne’

The following overlays continue to affect the subject land and no changes are proposed:

- Design and Development Overlay – Schedule 12 ‘Noise Attenuation Area’
- Heritage Overlay – Schedule 771 – ‘Sands & McDougall precinct 115, 133-137 Batman Street, 23 Franklin Place, 102 Jeffcott Street, 355 & 371 Spencer Street, West Melbourne’

A summary of the key provisions of Amendment C309 relevant to this submission being proposed to apply to the subject site is provided below.

Special Use Zone – Schedule 6 ‘West Melbourne’

Use:

- A permit is required for use of the land as a **dwelling** where the total number of dwellings exceeds 9.
- Except for properties fronting Spencer Street between Hawke Street and Dudley Street, a permit is required for use of the land as an **office** where the leasable floor area exceeds 150 square metres.
- Except for properties fronting Spencer Street between Hawke Street and Dudley Street, a permit is required for use of the land as a **shop** where the leasable floor area exceeds 150 square metres.

Affordable Housing:

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

Mandatory Minimum Non-Residential Uses:

- A permit cannot be granted for accommodation unless the specified minimum gross floor area of a development is allocated to a **use other than accommodation** is met. For land in the Flagstaff precinct, a minimum of 16.6% applies.

Design and Development Overlay – Schedule 33 ‘West Melbourne – Flagstaff Precinct’

Mandatory Floor Area Ratio Requirement:

- A permit must not be granted or amended (unless the amendment does not increase the extent of non-compliance) to construct a building or construct or carry out works with a floor area ratio in excess of 6:1. Bonus floor area applies where a “special character building” has been successfully retained.

Discretionary Built Form requirements:

- Maximum building height: 16 storeys.
- Street wall heights: between 3 and 10 storeys.
- Minimum setback above the podium from all laneways and all side and rear boundaries: 6 metres.
- Minimum setback above the podium from the front title boundary: 3 metres.

Minimum floor-to-ceiling heights:

- 4 metres for the ground floor.
- 3.3 metres for all non-residential uses on other floors.

Melbourne Assessment Prison:

- Development adjacent to the Melbourne Assessment Prison must consider any potential lines of sight, privacy and security issues.

Flagstaff Gardens – Overshadowing:

- Development must not overshadow Flagstaff Gardens between 11am and 2pm on 22 September and 22 June.

Special Character Building:

- None of the buildings on the subject site are listed as a "Special Character Building".
- Bonus floor area applies where a "special character building" has been successfully retained.
- ☐ 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 has been successfully retained.

Parking Overlay – Schedule 14 'West Melbourne'

Maximum Number of Car Parking Spaces:

- Dwelling: 0.3 car parking spaces per dwelling.
- All other uses: 0.005 per net square metre of building floor area.

Submissions

A summary of our submissions to Amendment C309 are as follows:

- The proposed Special Use Zone (SUZ) is an inappropriate zone designation. A purpose of the SUZ is "To recognise or provide for the use and development of land for specific purposes as identified in the schedule to this zone". The purpose of the proposed SUZ6 is not "specific" and the provisions within the SUZ6 could be implemented through a combination of a customary planning zone and local planning policy.
- While the requirement under the SUZ to provide affordable housing is a discretionary control, the "application requirements" proposed suggest that the discretion is limited to that which

would render the project economically unviable. It is submitted that the requirement to provide affordable housing should be replaced with an incentive provision to provide affordable housing, such as the "bonus floor area" proposed within Design and Development Overlay – Schedule 33 'West Melbourne – Flagstaff Precinct' for the retention of "special character buildings".

- The mandatory floor area ratio control of the proposed Design and Development Overlay – Schedule 33 'West Melbourne – Flagstaff Precinct' (DDO33) is not supported. More particularly, mandatory provision cannot be justified in the circumstances as it would be inconsistent with Planning Practice Note 59 'The role of mandatory provisions in planning schemes'. In addition, West Melbourne is an area undergoing significant change and renewal. The proposed overlapping controls of the DDO33, including the floor area ratio against the building envelope height and setback provisions, has the potential to render appropriate opportunities unrealised for the precinct. A discretionary floor area ratio is the more appropriate control.
- While the discretionary nature of the remaining built form controls of the proposed DDO33 are supported, the preferred height and setbacks controls are considered too conservative having regard to those controls for land within the Hoddle Grid. The notion of achieving a lower scale of development from land within the Hoddle Grid is supported, but a design objective to achieve a transition in height between the Central City and West Melbourne is more appropriate than the proposed design objective to create a "clear differentiation".
- The provision relating to "bonus floor area" to encourage the retention of "special character" buildings, is supported. It is submitted that this should be extended to include 'A' graded heritage buildings identified in the City of Melbourne 'Heritage Places Outside the Capital City Zone' Local Planning Policy.
- Finally, our client supports consideration of "any potential lines of sight, privacy and security issues" for development adjacent to the Melbourne Assessment Prison on the basis that this need not compromise the development aspirations of Amendment C309. Relevantly, development planning permit application no. PA1800480 can deal with these issues by permit condition.

Conclusion

Please confirm receipt of this submission, and liaise with our client care of the writer in respect to it, and Amendment C309.

Yours faithfully
BEST HOOPER



Dominic Scally
Principal

