

PLANNING PANELS VICTORIA

IN THE MATTER OF AMENDMENT C309 TO THE MELBOURNE PLANNING SCHEME

BETWEEN:

MELBOURNE CITY COUNCIL

Planning Authority

VARIOUS SUBMITTERS

PART A SUBMISSION OF THE PLANNING AUTHORITY

TABLE OF CONTENTS

OVERVIEW.....	3
DIRECTION 18	4
DIRECTION 9(a): BACKGROUND.....	4
Background to the Amendment	4
Chronology	6
How does the West Melbourne Structure Plan 2018 relate to the West Melbourne Structure Plan 2005?	11
DIRECTION 9(b): CONSULTATION	15
DIRECTION 9(c): CONSULTATION ON THE EAO	18
DIRECTION 9(d): CONDITIONS OF AUTHORISATION	18
DIRECTION 9(e): STRATEGIC CONTEXT	22
Amendment C258: Heritage Policies Review and West Melbourne Heritage Review	24
Amendment C308: Urban Design in the Central City and Southbank	26
Amendment C270: Central City Built Form Review	28
Amendment C305: Southbank Heritage.....	32
DIRECTION 9(f): VC148.....	33

DIRECTION 9(g).....	34
9(g)(i): strategic justification for population projections, dwelling numbers, job numbers and employment floor space calculations in proposed Clause 21.16-6.....	34
9(g)(ii): strategic justification for the Special Use Zone.....	34
9(g)(iii): strategic justification for the FARs	35
9(g)(iv): minimum floor areas for non-accommodation uses	35
9(g)(v): 6% affordable housing contribution.....	35
DIRECTION 9(h): RELATIONSHIP TO THE CENTRAL CITY AND ARDEN MACAULAY	36
Arden Macaulay.....	38
Central City	40
DIRECTION 9(i): SPECIAL CHARACTER BUILDINGS	42
DIRECTION 9(j): HOW THE SUZ6 WILL DELIVER THE SPENCER ST LOCAL ACTIVITY CENTRE	43
DIRECTION 9(k): DESIGN REVIEW PANEL.....	44
The Vision for West Melbourne	44
Built Form Controls	45
Incentivising Diversity and Character	45
Affordable Housing.....	46
West Melbourne Structure Plan 2018	46
DIRECTION 9(l): EAO AND MINISTERIAL DIRECTION NO. 1.....	47
DIRECTION 9(m): ISSUES RAISED IN SUBMISSIONS.....	47
DIRECTION 9(n): STRATEGIC MATERIAL.....	49
EXPERT WITNESS RECOMMENDATIONS.....	49
CONCLUSION	50
ATTACHMENTS	51

OVERVIEW

1. The Melbourne City Council (**Council**) has prepared Amendment C309 (**the Amendment**) to the Melbourne Planning Scheme (**Scheme**). This Part A submission is made in accordance with the Panel's Directions dated 6 June 2019.¹
2. In addition to this Part A submission, Council will:
 - a) accompany the Panel on a site inspection in the West Melbourne Structure Plan (**Structure Plan**) area;
 - b) provide a presentation on the background to Amendment C309 from Adam Mills, senior strategic planner at Council;
 - c) call evidence from the following witnesses:
 - i) Leanne Hodyl of Hodyl and Co (Urban Design);
 - ii) Ian Kluckow of Golder Associates (Contamination);
 - iii) Julian Szafraniec of SGS Economics and Planning (Economics);
 - iv) Andrew Spencer of SGS Economics and Planning (Economics);
 - v) David Barnes of Hansen Partnerships (Planning);
 - vi) Steve Hunt from Ratio (Parking); and
 - vii) Jeremy McLeod of Breathe Architecture (Architecture).
 - d) present a Part B submission at the conclusion of the Council's evidence; and
 - e) present a Part C submission in response to the submissions made and evidence called by submitters to the Amendment.
3. The Panel's directions require the Part A submission to address a range of issues. These submissions are structured to follow the list of issues raised in paragraph 9 of the Panel's directions.
4. Many of the issues that the Panel has raised are addressed in the Council's evidence or in other documents. This Part A submission seeks to provide a

¹ Panel Directions of 6 June 2019: Folder 5 Tab 5

roadmap to those other documents, rather than to repeat or summarise other material.

DIRECTION 18

5. Panel direction 18(a) requested a map or plan in the nature of a structure plan map, which shows the key features and land use and development directions for each precinct/place. Council has prepared a plan in response to this direction (Attachment 1). A map book will be produced for the hearing which will contain a series of plans which show, among other things, the Floor Area Ratios (**FARs**) in each precinct and the preferred maximum heights. Council is still considering which plans (if any) ought to be included in the local planning policy framework.

DIRECTION 9(a): BACKGROUND

Background to the Amendment

6. West Melbourne is an area undergoing rapid change due in part to its proximity to the central city, Queen Victoria Market, Flagstaff Gardens and Errol Street. Its growth and development will be managed by Amendment C309 so that the future of the area, as envisaged in the Structure Plan² and in response to community feedback, is implemented.
7. The Structure Plan identifies that West Melbourne has a distinct character with a dynamic mix of residential use, business and industry. It also identifies a number of precincts each with their own character, in terms of built form and the range of activities. Amendment C309 will foster the quality of each neighbourhood by introducing planning controls, including rezoning land to the Special Use Zone, to implement the land use and built form objectives and strategies within the Structure Plan.
8. The Amendment applies to the five distinct places in West Melbourne, identified in the Structure Plan as Spencer, Flagstaff, Adderley and Station Precincts and the Historic Hilltop (illustrated below):

² West Melbourne Structure Plan 2018: Folder 3 Tab 1



9. The Amendment proposes to make the following changes to the Scheme:
- a) Amend Clause 21.16 Other Local Areas in 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 and update Clause 21.16-5 to only refer to North Melbourne.
 - b) Amend Clause 21.17 Reference Documents to include the West Melbourne Structure Plan 2018.
 - c) Rezone most of the Mixed Use Zone in the Structure Plan area to a Special Use Zone (**SUZ6**) to deliver a true mix of uses. The SUZ6 includes provisions to:
 - d) Require a minimum proportion of the floor area be allocated to a use other than accommodation;
 - e) Provide for 6 per cent affordable housing in most areas; and
 - f) Require active ground floor uses along Spencer Street, between Hawke Street and Dudley Street to help deliver a new activity centre.

- g) Rezone recently expanded and existing new public open spaces to the Public Park and Recreation Zone (**PPRZ**).
- h) 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. The DDOs will include a mandatory floor area ratio (**FAR**) as well as provisions to encourage the retention of buildings identified as character buildings.
- i) Apply a new schedule to the Parking Overlay (**PO14**) to introduce a maximum parking rate of 0.3 spaces per dwelling.
- j) Delete Parking Overlay Schedule 12 (**PO12**) from the Structure Plan area.
- k) Apply an Environmental Audit Overlay (**EAO**) to parts of the Structure Plan area to ensure that potentially contaminated land is suitable for a sensitive use.
- l) Amend the schedule to clause 72.03 to include reference to the new EAO map in the Melbourne Planning Scheme.

Chronology

- 10. A table providing a chronology of key events in respect of Amendment C309 is contained in Attachment 2.
- 11. The Amendment was preceded by an extensive process developing the Structure Plan, which was adopted by Council on 6 February 2018.³ The consultation process for the Structure Plan is described below. The background documents supporting the Structure Plan are set out on page 31 of the Structure Plan.⁴ The same documents were exhibited as background documents to the Amendment,

³ Report and minutes of FMC meeting held on 6 February 2018: Resolution to adopt: Folder 1 Tab 2

⁴ All documents referenced are included in Panel Folder 3: Exhibited Reference/Background Documents except for the West Melbourne Heritage Review (Graeme Butler & Associates, 2016) which can be provided to the Panel on request.

- along with the West Melbourne Car Parking Plan prepared by Phillip Boyle & Associates,⁵ and the Structure Plan.
12. On 17 April 2018, Council resolved to seek authorisation to prepare and exhibit the Amendment from the Minister for Planning.⁶
 13. Prior to the authorisation request, two minor changes were made to the Amendment documentation that was sent to the Minister.
 14. The first change related to the MSS under Clause 21.16-5 - North Melbourne. With the preparation of the Structure Plan, the section in the MSS titled 'North and West Melbourne' was split. The North Melbourne railway station is located in the suburb of West Melbourne which is addressed in the MSS in Clause 21.16-6 – West Melbourne Structure Plan Area. In splitting the two suburbs, it was intended that all references to West Melbourne be removed from Clause 21.16-5 North Melbourne, however a reference to the North Melbourne station was overlooked. Prior to the authorisation, this issue was remedied.
 15. The second change is to the zoning map, which did not show the full extent of PPRZ that is proposed to be rezoned. The Department of Environment, Land, Water and Planning (**DELWP**) provided an updated map to reflect what is in the Structure Plan and to deliver Action 37 of the Structure Plan which is to, 'Rezone recently expanded, existing and proposed new public open spaces to PPRZ'. The City of Melbourne is currently, or is in the process of becoming, the designated land manager for all these parcels of land. No private landowners were affected by this change.
 16. On 25 May 2019, in accordance with the FMC resolution of 17 April 2018, a request for authorisation to prepare and exhibit the Amendment was submitted to the Minister.⁷

⁵ Included in Panel Folder 3: Exhibited Reference/Background Documents

⁶ [Report and minutes of FMC meeting held on 17 April 2018](#): Resolution to seek authorisation and exhibit Amendment C309: Folder 1 Tab 3

⁷ Request for Authorisation Documentation: Folder 1 Tab 4

17. On 19 October 2018, the Minister provided conditional authorisation to prepare the Amendment, subject to conditions.⁸ The conditions and recommendations are addressed below.
18. On 5 November 2018, a copy of the Amendment, including the amendment documentation and explanatory report, was provided to the Minister in accordance with Section 17 of the Act.⁹
19. The Amendment was exhibited between 22 November 2018 and 4 February 2019.
20. Public notification of the Amendment included:
 - a) Mailing out the statutory notice and a letter about Amendment C309 on 21 November 2018 to:
 - i) property owners and occupiers in the West Melbourne Structure Plan area;
 - ii) Prescribed Ministers under Section 19(1)(c) of the Planning and Environment Act 1987; and
 - iii) Transport for Victoria, Public Transport Victoria and VicRoads.
 - b) Emailing out the statutory notice and information about Amendment C309 to:
 - i) Targeted stakeholders, including developers and planning consultants, and key government departments such as the Environment Protection Authority (**EPA**) and the West Gate Tunnel Authority (**WGTA**);
 - ii) Community Groups; and
 - iii) Parties associated with the Structure Planning consultation process that expressed an interest in being kept up to date.

⁸ Minister for Planning conditional authorisation to prepare the Amendment: Folder 1 Tab 5

⁹ City of Melbourne S.17 Notice letter to the Minister for Planning, 5 November 2018: Folder 2 Tab 1

- c) Publishing a public notice in The Age on 21 November 2018, and the Government Gazette on 22 November 2018.
 - d) Making a printed copy of the Amendment and supporting information available for public viewing from 22 November 2018 at the Melbourne Town Hall.
 - e) Making an online electronic copy of the Amendment and supporting information available for public viewing from 22 November 2018 at the Participate Melbourne website and on Planning Schemes Online (DELWP's website).
21. A consultation program was conducted during the exhibition period, including:
- a) Two public information sessions open to anyone who wished to attend on 3 December 2018 from 6pm to 7.30pm and 8 December 2018, 11am to 12.30pm; and
 - b) A development and professional stakeholder meeting, that was by invitation only, held on 12 December 2018 from 10.30am to 12pm.
22. In response to the exhibition of the Amendment, Council initially received 53 submissions.
23. On 7 May 2019 management submitted a report to the Future Melbourne Committee with the following management recommendation:¹⁰
- 10. That the Future Melbourne Committee:
 - 10.1 Notes management's assessment of the submissions as set out in Attachments 2 and 3.
 - 10.2 Requests the Minister for Planning appoint an Independent Panel to consider submissions to Melbourne Planning Scheme C309.
 - 10.3 Refers all submissions to the Independent Panel.
 - 10.4 Notes that the preferred form of the Amendment to be presented to the Independent Panel as part of the City of Melbourne Part A submission will be in accordance with Attachment 5.
 - 10.5 Notes that the final version of the preferred Amendment, which will be presented to the Independent Panel in response to expert evidence and submissions made during the Panel process, may suggest further changes

¹⁰ [Report and minutes of FMC meeting held on 7 May 2019](#): Resolution to appoint a Panel: Folder 5 Tab 1

to the Amendment, so long as any further changes are generally in accordance with the West Melbourne Structure Plan.

10.6 Authorises the Director City Strategy and Place to make any further minor editorial changes to the documents if required.

24. The management report contains a summary and response to submissions, proposed changes to the Amendment and a preferred form of the Amendment.
25. All submitters to the exhibition were notified and invited to attend the 7 May 2019 Future Melbourne Committee meeting.
26. Due to the number of Councillors declaring conflicts of interest, the quorum for the meeting was lost and the agenda item was dealt with by an officer delegation. The decision made under delegation was in accordance with the management recommendation printed in the agenda papers. This decision was published on the Amendment C309 Participate Melbourne webpage.
27. On 8 May 2019, Council requested that the Minister appoint an independent panel to hear submissions regarding the Amendment, and notified Planning Panels Victoria of this request.
28. On 17 May 2019, Council received advice from Planning Panels Victoria that the Minister had appointed a three person Panel to hear and consider submissions in respect of the Amendment.
29. On 30 May 2019, Council received a late submission to the Amendment from Planning & Property Partners on behalf of Multifield Constructions Pty Ltd (submission 54)¹¹. This submission was referred to the Panel. A summary and response to this submission has not been presented to Council's Future Melbourne Committee.
30. A total of 54 submissions have therefore been received for Amendment C309 and referred to the Panel.
31. On 4 June 2019, the Directions Hearing for Amendment C309 was held.

¹¹ Submission 54 from Multifield Constructions Pty Ltd: Folder 5 Tab 4

How does the West Melbourne Structure Plan 2018 relate to the West Melbourne Structure Plan 2005?

32. Prior to 5 July 2007, West Melbourne was affected by three DDO schedules (which broadly covered a similar area to the current DDO schedules with the same numbering):
 - a) DDO33 CBD Fringe Area did not have a specific height control but it did have a minimum building setback control to provide spacing between buildings to maximise light, air and outlook; and
 - b) DDO28 North Melbourne Station contained discretionary height controls and DDO32 North Melbourne Peripheral contained a mandatory height control.
33. The previous West Melbourne Structure Plan was completed in 2005 and informed the existing planning controls for the area through Amendment C96, which was gazetted on 5 July 2007.
34. Amendment C96 altered the Melbourne Planning Scheme by:
 - a) introducing a discretionary 40 metre height control to DDO33, amending the Design Objectives and Built Form Outcomes and introducing Design Guidelines for development of adjoining heritage buildings. The DDO aimed to provide a transition area in scale of development between the CBD and West Melbourne whilst respecting heritage buildings and amenity impacts and outlook from the Flagstaff Gardens;
 - b) extending the existing DDO28 (5 storey discretionary) height control to include the Laurens Street area, which had previously not been subject to a height control; and
 - c) extending the existing DDO32 (14 metre mandatory) height control to include the Munster Terrace area, which had not been subject to a height control.
35. At the time, Amendment C96 was intended to reinforce the Council's objective to ensure intense redevelopment in the municipality was generally confined to the Central City, Docklands and Southbank. The CBD Fringe area was one

where a ‘medium’ amount of residential growth could occur within a mixed use environment and an area where moderate change was envisaged.¹²

36. The Panel report for Amendment C96 (Attachment 3) considered whether the 40m height control should be a mandatory or discretionary one. The Panel stated at p33:

Some of those supporting the discretionary approach to height controls argued that discretion would allow relatively minor variations that would have to be justified on the specific merits of a particular design, its site and its immediate context. Those supporting the mandatory approach appeared to believe that the existence of any discretion would allow a virtual *carte blanche* to designers to ignore any stated height limit.

...

However, we consider it reasonable to conclude that, if clear objectives and performance outcomes can be expressed in relation to the desired building height, together with appropriate decision guidelines, any buildings approved in excess of the nominated height limit would either have to be justified on some special circumstance (i.e. not be a general case that could apply widely), or would make only minor incursions above the stated height. To conclude otherwise would be to also conclude that the whole performance-based tenet of the VPPs has been wrong.

37. As set out in the executive summary of the Built Form Strategy:

The discretionary nature of the height and setback controls in the current Design and Development Overlays (DDOs) has helped enable development to occur that significantly exceeds the levels of development envisaged when the controls were introduced. This has resulted in a number of issues with the current controls, including:

- Lack of clarity around wording and meaning of the current Design and Development Overlays.
- A ‘broad brush’ approach to the diverse and varied character of West Melbourne.
- A lack of mixed-use and commercial development.
- Developments delivering extremely high densities and a lack of supporting infrastructure.
- Insufficient building separation.
- Adverse impact of development on the streets of West Melbourne.

¹² Report of Planning Committee held on 7 August 2007: Reporting gazettal of Amendment C96

Since 2010, there has been over 15 permit applications in West Melbourne determined by VCAT. This is not a preferable or efficient outcome for applicants, the responsible authority or the community, particularly considering the significant time and costs involved in VCAT hearings.

38. As discussed on Page 18 of the 2018 Structure Plan, since Amendment C96 was introduced, a lot of change has occurred in and around West Melbourne and further change is expected into the future. A gradual shift away from industrial uses has seen a renewed interest in the development of land for higher value uses, particularly residential.
39. The 2018 Structure Plan is distinguished from the 2005 Structure Plan as it focuses on a different area of the municipality to that of the earlier Structure Plan. Specifically, the 2018 Structure Plan excludes parts of North Melbourne and the active 'industrial' part of West Melbourne located west of the railway yards and extending to the Maribyrnong River. The differences in the study area under the 2005 Structure Plan (red boundary) and 2018 Structure Plan (yellow boundary) are depicted in a diagram provided below.



40. Revising the study area for the 2018 Structure Plan has enabled the development of a targeted response to the unique pressures and demands experienced within the area of West Melbourne bounded by Railway Place and Adderley Street (east), Victoria Street (north), Peel Street (west) and La Trobe Street (south).
41. This area of West Melbourne is defined by its interfaces with several existing, proposed and potential urban renewal areas, and its close proximity to the Central City to the east, and has seen an accelerating shift away from industrial uses associated with mounting pressure for the development of land for higher value uses, particularly residential.
42. Broadly, the 2018 Structure Plan builds on the 2005 Structure Plan in the following key ways:
 - a) Emphasising community engagement as an essential part of the structure planning process. Whereas the 2005 Structure Plan did not include extensive community consultation, the 2018 Structure Plan has been prepared following three phases of community engagement, as explained in the Structure Plan and discussed in this submission.
 - b) Responding to the following drivers of change (amongst other) within the study area that emerged, or became increasingly pronounced, in the period following the preparation of the 2005 Structure Plan:
 - i) Significant growth in urban renewal areas adjacent to the study area (City North, Arden, and E-Gate), which will have a direct influence on the form of development, types of uses and urban context.
 - ii) The delivery of major transport infrastructure projects, including Melbourne Metro Rail and West Gate Tunnel.
 - iii) Significant and increasing interest in residential development, due to the close proximity of the Central City, Docklands, Queen Victoria Market, Melbourne's universities and innovation precincts.

- c) Introducing a modern, ambitious and innovative planning regime that is tailored to the unique context and pressures facing the study area, including:
 - i) Reinforcing the economic function of the study area and the importance of employment generating non-accommodation uses for the future population, in addition to the availability of affordable housing, by seeking to rezone Mixed Use Zone land to the Special Use Zone.
 - ii) Adopting a character based approach to identify precincts within the West Melbourne study area, to elevate and protect the valued mix of building types and uses within these areas by defining a separate vision, design recommendations, and priority street improvement projects for each precinct.
 - iii) Seeking new density and built form controls to deliver the desired character within each identified precinct (with the exception of the Historic Hilltop Precinct) and to provide a sufficient level of certainty to enable the Council to plan and deliver community infrastructure, including open space.
 - iv) Establishing a new suite of planning requirements to suppress overreliance on the private vehicle, and encourage a transition to public and active transportation.

DIRECTION 9(b): CONSULTATION

43. In the first phase of community engagement (in 2015), prior to any plans for the area being proposed, the City of Melbourne asked the community and stakeholders to express their likes, concerns, priorities and visions for West Melbourne. The key messages from this first phase (see Attachment 4) were:
- a) A sense of community is important to the people of West Melbourne.
 - b) People were concerned about increased building heights but supported appropriate redevelopment in certain areas.
 - c) People were concerned about car parking and increased traffic.
 - d) People would like to see more certainty from the planning process.

- e) People would like more public transport, walking and cycling infrastructure.
 - f) People would like more parks, open spaces, trees and street greening.¹³
44. The key messages from the first phase of community engagement helped inform the next stage of the project, which was the discussion paper called 'Ideas for West Melbourne' (Attachments 5 and 6).¹⁴ The discussion paper brought emerging ideas and proposals for the area and presented them for the phase two community engagement (in early 2017). The key messages from the community that emerged from the engagement on the discussion paper were:
- a) Strong support for Spencer Street as a local centre.
 - b) Strong support for greening streets and creating linear parks.
 - c) Concern about the potential loss of on-street parking spaces.
 - d) General support for proposed built form strategy, but more detail required to properly respond - strong desire for mandatory building heights.
 - e) Strong support for mixed use and sustainable development.
 - f) Some confusion about proposed ways to deliver community benefit.
 - g) Support for walking, cycling and public transport improvements on Spencer Street.
 - h) Support for improved pedestrian access to Errol Street, North Melbourne (future West Melbourne) Station and Docklands via Dudley Street.
 - i) Concern about potential impacts of the West Gate Tunnel.

¹³ [Community Engagement Summary: Phase One, April – May 2015](#)

¹⁴ Ideas for West Melbourne: a discussion paper to inform a new structure plan [Part 1](#) and [Part 2](#)

45. This feedback from this engagement (Attachment 7)¹⁵ and the various pieces of concurrent background research and analysis ¹⁶ informed the drafting of the Structure Plan.
46. On 4 July 2017, the Future Melbourne Committee endorsed the Draft West Melbourne Structure plan for stakeholder consultation. ¹⁷ The draft plan was informed by the two previous phases of engagement and the range of supporting background studies.
47. Consultation on the draft Structure Plan was from 5 July to 20 August 2017. It included an information session for key businesses, landowners, industry professionals and government stakeholders, two community workshops, pop-up sessions on the streets of West Melbourne and an interactive Participate Melbourne page.
48. The draft plan was well received by residents, workers and visitors, with almost three quarters of the 157 respondents supporting all or most parts of the draft plan. This included support for the proposed FARs, and proposals to deliver affordable housing, new open space and green spaces, and proposed walking, cycling and public transport infrastructure.
49. Concerns from the community included not having mandatory height controls due to the quality and scale of development recently built, under construction or approved in West Melbourne, as well as concerns about the impacts of the West Gate Tunnel. Landowners and developers supported the clarity that the structure plan provides and many of its proposals and actions, but suggested the proposed FARs and discretionary height limits are too low and that the requirement for employment floor space may be too restrictive. Transport for Victoria also supported the draft plan.
50. Ongoing discussions and meetings with key stakeholders, residents' groups and others occurred throughout the development of the final plan. This included

¹⁵ [Community Engagement Summary, Phase Two: 'Ideas for West Melbourne discussion Paper', February-March 2017](#)

¹⁶ Included in Panel Folder 3: Exhibited Reference/Background Documents

¹⁷ [Report and minutes of FMC meeting held on 4 July 2017](#): Resolution to endorse Draft West Melbourne Structure Plan for Consultation: Folder 1 Tab 1

meetings with specific landowners, businesses and government stakeholders such as DELWP, Transport for Victoria and VicRoads.

51. As set out in the document “Changes to the final West Melbourne Structure Plan in response to engagement feedback” (Attachment 8):

The proposed changes to the final structure plan (the final plan) take into account the comments received on the draft plan as well as additional testing.

52. Consultation in relation to the Amendment following adoption of the Structure Plan has been addressed above.

DIRECTION 9(c): CONSULTATION ON THE EAO

53. There was no direct consultation with the community on the application of the EAO prior to the exhibition of the Amendment.

DIRECTION 9(d): CONDITIONS OF AUTHORISATION

54. On 22 October 2018, the Minister provided conditional authorisation to prepare the Amendment, subject to the following conditions:¹⁸

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 affordable housing.

Condition 2 – Revise the Extend of the Environmental Audit Overlay (EAO)

The application of the EAO to the entire structure plan area 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 Environmental Protection Agency should be consulted on the proposed application of the Environmental Audit Overlay (EAO).

¹⁸ Minister for Planning conditional authorisation to prepare the Amendment: Folder 1 Tab 5

Condition 3 – Other Drafting and Procedural Matters

All provisions must comply with the Ministerial Direction on the Form and Content of Planning Schemes

The application of the Parking Overlay should be removed from the amendment unless a finalised Car Parking Plan (refer to Planning Practice Note 57) is submitted to DELWP, which justifies the various elements of the proposed schedule, prior to exhibition.

The MSS should also be amended at Clause 21.08 Economic Development to reflect the proposed economic role of West Melbourne.

Clause 22.26 must be amended if its operation is proposed to change (i.e. when it applies to a planning permit application, such as an application for the use of land).

All background documents informing the structure plan and proposed controls be made available as part of the exhibition of the amendment and submitted to DELWP, if not already provided.

Notice of exhibition of the amendment is to be provided to Transport for Victoria, Public Transport Victoria and VicRoads.

The council should advise of the need for any transitional provisions within the controls for amendments to existing planning approvals.

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 objectives 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.

Recommendation 2 - Feasibility Testing

The feasibility and built form testing undertaken for the amendment would benefit from assessing the likely outcomes of all the proposed requirements applying in combination. The sensitivity testing in the Stage 2 Report, based on 20 per cent lower land values and a 10 per cent increase in revenues, may be overly favourable. Other scenarios, such as an increase in land values, have not been tested.

Consideration should be given to further sensitivity testing.

55. In response to Condition 1 and in consultation with DELWP officers, Council reworded the provision on page 3 of the SUZ6 to include the words, “unless otherwise agreed to by the Responsible Authority”, to emphasise that in

accordance with the Act, the affordable housing requirement is not a mandatory provision. Any affordable housing secured in West Melbourne 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. A further explanation of Council's position and response in relation to affordable housing is included in Council's letter to DELWP dated 26 September 2018 (Attachment 9).

56. In response to Condition 2 and in consultation with the EPA, Council engaged Golder Associates Pty Ltd to undertake a preliminary land contamination assessment to identify the risk of each site within the Structure Plan area being potentially contaminated and based on that risk determine whether the application of the EAO was strategically justified. As identified in the 7 May 2019 Future Melbourne Report,¹⁹ Council has proposed revising the extent of the proposed EAO so that it includes only those sites identified in the consultant's report as being potentially contaminated. Further to this in its 24 June 2019 letter to the Planning Panel, the EPA has expressed support for the Amendment and the methodology used to determine the application of the EAO in the Preliminary Contamination Assessment prepared by Golder Associates Pty Ltd and believe this adequately addresses the risk associated with potentially contaminated land.²⁰
57. In response to Condition 3 (a) and in consultation with DELWP officers, the proposed controls in the Amendment were amended to comply with the Ministerial Direction on the Form and Content of Planning Schemes.
58. In response to Condition 3 (b), the West Melbourne Car Parking Plan prepared by Phillip Boyle and Associates (February 2018) supports the proposed PO14 and provides a strategic basis for the various elements in proposed PO14.²¹
59. With respect to Condition 3 (c) Clause 21.08 Economic Development was not amended to reflect the proposed economic role of West Melbourne, as Clause

¹⁹ Folder 5 tab 1.2

²⁰ Document 20

²¹ West Melbourne Car Parking Plan prepared by Phillip Boyle and Associates, February 2018: Folder 3 Tab 11

21.16-6 – West Melbourne Structure Plan Area defines the economic role of West Melbourne as proposed by the Amendment to:

Retain and provide opportunities for the creation of employment through the application of the Special Use Zone.

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.

Enhance North Melbourne (future West Melbourne) Railway Station with active uses to reinforce this area as key gateway into West Melbourne.

60. In response to Condition 3 (d) Council agreed that there was a discrepancy in the application of the SUZ6 and Clause 22.06 (Open Space Contributions) and amended the SUZ to direct “all applications associated with the development of land” to comply with Clause 22.06 rather than applications for “development or use”.
61. In response to Condition 3 (e) all background documents informing the structure plan and proposed controls were made available as part of the exhibition of the amendment and submitted to DELWP. The exception to this is the Addendum to the West Melbourne Urban Character Analysis, discussed further below from paragraph 102, which was inadvertently not exhibited as a background document.
62. In response to Condition 3 (f) notice of exhibition of the amendment was provided to Transport for Victoria, Public Transport Victoria and VicRoads.
63. In response to Condition 3 (g) 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.

64. The recommendations related to matters that DELWP had queried previously with Council in a letter dated 18 September 2018 (Attachment 10).²² In that letter, DELWP requested further information prior to making a decision on the authorisation request. On 26 September 2018, City of Melbourne management provided a written response to each matter raised by DELWP (Attachment 9).²³
65. In response to Recommendation 1, Council advised that delivering non-accommodation floor space through the minimum employment requirement is both financially feasible as well as being strategically justified. Given the importance of the mix of uses in West Melbourne to both the economy and community and Plan Melbourne's policy direction for mixed use neighbourhoods, it is considered necessary to mandate the minimum employment floor area requirements given that current trends in the area are seeing predominantly residential development. The expert witness statement of Mr Szafraniec also addresses the desirability of mandatory controls to ensure the minimum amount of employment floorspace is provided in West Melbourne.²⁴
66. Council's response to Recommendation 2 can be found in the 26 September letter to DELWP. Council notes that further work consistent with DELWP's recommendations has been undertaken and can be found in the expert witness statement of Mr Spencer,²⁵ which provides revised feasibility testing that considers a range of existing use values (lower and higher) and sensitivity testing that considers the impact of development contributions.
67. The Planning Practice Note 59, The Role of Mandatory Provisions in Planning Schemes is provides as Attachment 11.

DIRECTION 9(e): STRATEGIC CONTEXT

68. The strategic context for the Amendment is set out and considered in, among other things:

²² DELWP Further Information letter sent to City of Melbourne 18 September 2018

²³ City of Melbourne response to Further Information letter send to DELWP 26 September 2018

²⁴ Expert evidence of Julian Szafraniec of SGS Economic and Planning, June 2019: Document 12

²⁵ Expert evidence of Andrew Spencer of SGS Economic and Planning, June 2019: Document 17

- a) the Structure Plan;²⁶
 - b) the West Melbourne Built Form Strategy (February 2018) (**Built Form Strategy**);²⁷ and
 - c) the expert witness report of Mr Barnes.²⁸
69. Amendment C309 West Melbourne Structure Plan is one of nine Planning Scheme Amendments currently being processed (i.e. pending approval by the Minister) by Melbourne City Council, and represents the only current Planning Scheme Amendment being prepared by Council that seeks to implement the recommendations of a Structure Plan (Attachment 12).²⁹
70. Of the nine Planning Scheme Amendments being processed by Council, three of these are municipal-wide, and are of varying degrees of relevance to Amendment C309:
- a) Amendment C258: Heritage Policies Review and West Melbourne Heritage Review (discussed in greater detail below);
 - b) Amendment C278: Sunlight to Public Open Spaces, which seeks to apply the Design and Development Overlay to land surrounding public open space, to limit the extent of additional overshadowing over public parks during a defined period of time on 21 June (the Winter Solstice). Amendment C278 has been authorised by the Minister for Planning and is being prepared for public exhibition.
 - c) Amendment C307: Gaming Policy Review, which seeks to introduce a revised gaming policy into Clause 22.12 of the Melbourne Planning Scheme. The independent Panel appointed to consider submissions received in respect of Amendment C307 issued its report on 26 April 2019, and it is expected that management will present a revised version

²⁶ Specifically Section 1.4 Drivers of Change which references Plan Melbourne 2017-2050, global influences, and the changing surrounding context around West Melbourne.

²⁷ Esp pp16-17 Folder 3, Tab 10

²⁸ Expert evidence of David Barnes from Hansen

²⁹ City of Melbourne Current Planning Scheme Amendments Update, June 2019.

of Amendment C307 including changes responding to the recommendations of the Panel to Council for adoption in July 2019.

71. With respect to the specific Planning Scheme Amendments identified in Direction 9(e) of the Panel's Directions of 6 June 2019, a summary of each amendment, its status, and relevance to Amendment C309 is provided below.

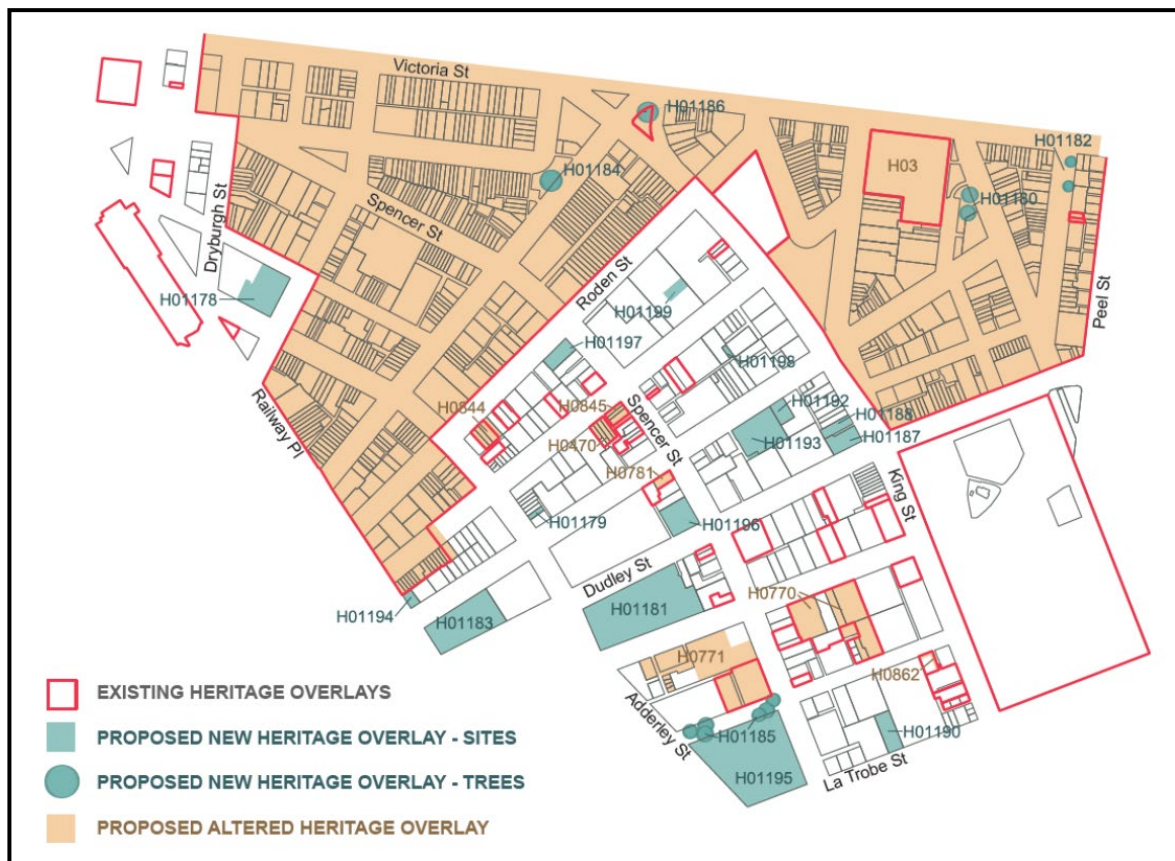
Amendment C258: Heritage Policies Review and West Melbourne Heritage Review

72. Amendment C258 was prepared by Council and applies to all land within the municipality affected by a Heritage Overlay, including land within the West Melbourne Structure Plan area (representing land within the scope of the West Melbourne Heritage Review 2016 per the below diagram).
73. As set out in the Built Form Strategy,³⁰ the development of the Structure Plan was informed by Amendment C258. Importantly, the West Melbourne Heritage Review 2016 documented the established heritage of the area. In turn, its heritage significance informs its character. The two amendments are complementary.
74. Broadly, Amendment C258 seeks to implement:
- a) The Heritage Policies Review, which includes a review of Council's local heritage policies, preparation of statements of significance for large precincts and conversion of the current A-D letter grading system to the contemporary Significant, Contributory and Non-Contributory classification system for heritage assets; and
 - b) The West Melbourne Heritage Review 2016, which made recommendations regarding the heritage significance, and appropriate degree of protection, of heritage places within the West Melbourne Structure Plan area.
75. Amendment C273, gazetted on 1 March 2018, introduced interim heritage overlays (which largely mirror the permanent controls that Council seeks through

³⁰ Folder 3, Tab 10, pages 14-15

Amendment C258).³¹ The interim controls have been extended twice under Amendment C321 and Amendment C348, so that they are now set to expire on 31 January 2020.

76. The following plan shows the heritage overlays (in red outline) which existed prior to the interim controls, and the new and extended areas of the heritage overlay that Amendment C258 proposes to introduce.



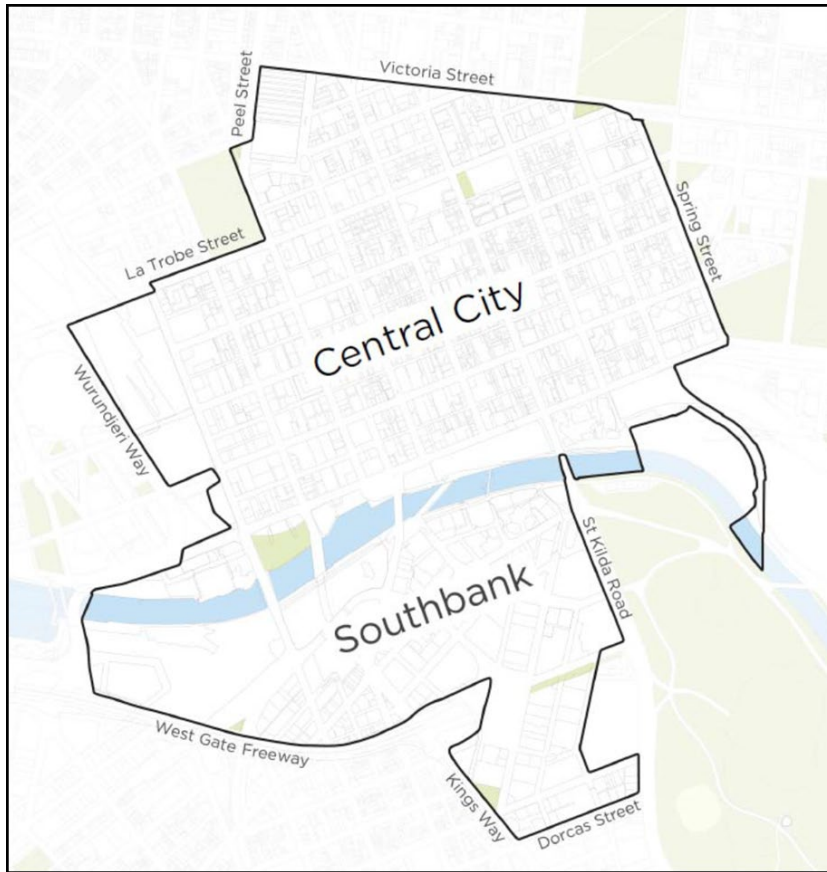
77. The Heritage Overlay (Schedule 3) (as per the interim controls, shown in brown in the plan above) applies to virtually all of the Historic Hilltop Precinct, the north-west half of Adderley Precinct, and the north-east part of Station Precinct. There are also pockets of land within the Flagstaff Precinct affected by precinct Heritage Overlays HO770 (Inter-war industrial precinct) and HO771 (Sands &

³¹ A small number of sites were excluded: [Sites excluded from Amendment C273 \(West Melbourne Heritage Review Interim Heritage Protections\)](#)

- McDougall Precinct), and numerous scattered individually significant heritage places throughout the Structure Plan area.
78. The independent Panel appointed to consider submissions received in respect of Amendment C258 issued its report on 21 May 2019. Council officers expect that the recommendations of the Panel report, together with a version of Amendment C258 incorporating changes in response to the Panel's recommendations, will be presented to Melbourne City Council for adoption in Q2 Financial Year 2019-2020.
 79. The proposed new heritage policies have not been implemented on an interim basis. Broadly, the built form outcomes contemplated by the heritage policies proposed under Amendment C258 do not represent a significant departure from the expectations established under the existing regime provided in Clause 22.05 Heritage Policies outside the Capital City Zone. The primary point of difference between the existing heritage policy regime for West Melbourne, and the proposed regime under Amendment C258, is that the proposed new policies adopt a contemporary - Significant, Contributory and Non-Contributory - heritage classification system, replacing the pre-existing hierarchical system for assigning heritage significance using alphabetical gradings ranging from A-D.

Amendment C308: Urban Design in the Central City and Southbank

80. Amendment C308 was prepared by Council and affects land generally within the Central City and Southbank as depicted in the below diagram, and does not overlap the West Melbourne Structure Plan area.



81. For this reason, Amendment C308 is of limited direct relevance to Amendment C309, except that it will contribute to shaping the urban design interface shared between the Central City, and the Flagstaff and Historic Hilltop precincts within the West Melbourne Structure Plan area.
82. As stated in the executive summary of the Melbourne Planning Scheme Amendment C308 Central Melbourne Urban Design Panel Report:

The Amendment proposes a new schedule to the Design and Development Overlay that consolidates many urban design policies and controls to guide the delivery of a high standard of urban design, architecture and landscape architecture in Central Melbourne.

Specifically, the Amendment proposes to:

- replace the existing Schedule 1 to the Design and Development Overlay (Active Street Frontages) with a revised schedule
- delete the policy at Clause 22.01 'Urban Design in the Capital City Zone' and translate the policies of this clause into requirements in Schedule 1 to the Design and Development Overlay
- delete Schedule 4 (Weather Protection – Capital City Zone) of the Design and Development Overlay and incorporate the provisions of that schedule into Schedule 1.

83. Amendment C308 seeks to improve the quality of urban design in the Central City and Southbank by consolidating urban design planning policy in the Scheme and delivering an improved streamlined regulatory framework. Amendment C308 will support existing Council processes such as expert design reviews and operate alongside other Council initiatives to promote good urban design through advocacy, training and design competition.
84. The independent Panel appointed to consider submissions received in respect of Amendment C308 issued its report on 16 May 2019. Council officers anticipate that the recommendations of the Panel report, together with a version of Amendment C308 incorporating changes in response to the Panel's recommendations, will be presented to Melbourne City Council for adoption in Q2 Financial Year 2019-2020.

Amendment C270: Central City Built Form Review

85. DELWP led the Central City Built Form Review (**Built Form Review**), which was focused on understanding what permanent planning controls would be needed in the Central City and Southbank in order to maintain the liveability of these areas, and allow for sustainable growth and development in the longer term.
86. The key background report underpinning Amendment C270, the Central City Built Form Review Synthesis Report (April 2016) prepared by Hodyl and Co, drew on the findings of the technical reports prepared for the Central City Built Form Review to provide an integrated analysis of the proposed controls.
87. The report prepared by Hodyl and Co articulated the reasons for the review, considered the overarching urban design vision and strategic planning objectives for the Central City, and assessed the degree to which these matters were being compromised by the development outcomes that were a result of inadequate built form controls.
88. Of relevance to Amendment C309, the Central City Built Form Review Synthesis Report (April 2016) explored the value and reasons for adopting a Floor Area Ratio (FAR) planning tool. Use of the FAR as a planning tool was identified as contributing to one of the primary objectives of the Central City Built Form

Review, namely to provide much needed certainty and consistency of built form outcomes.

89. The discussion of the use of the FAR as a planning tool in the Central City Built Form Review Synthesis Report (April 2016) canvassed issues posed by the previous planning regime for the Central City (e.g. land speculation and pressures to compromise desired built form outcomes) that are equally salient within the West Melbourne Structure Plan context, and which ultimately contributed to the FAR being adopted as the preferred planning tool for Amendment C309. That report stated, among other things:

Provide much needed certainty and consistency of built form outcomes

Certainty and consistency in built form outcomes is realised through the provision of clear, easily understood and evidence-based planning controls that are focused on creating positive living and working environments. This in turn enables transparent and predictable decision-making, with all participants in the planning process clear of the intent of the controls and how they will be implemented.

This also minimises land speculation and avoids the escalation of land values which can result in increased pressure to compromise the desired built form outcomes to meet development yield targets necessary to make the development financially viable.

Recent research in Perth and Sydney has identified that almost all landowners have unrealistic expectations for the price of their land (Rowley & Phibbs, 2012). This is often based on a misunderstanding of the development process, the risks taken on by the developer and a belief that property prices never fall. Establishing a predictable potential yield from a site through a FAR, would help to set more realistic expectations from landowners and reduce speculation. This demonstrates that certainty is good for genuine developers, but not necessarily perceived as such for landowners or speculative developers.

Much of this speculation has been based on the scale of recent development approvals. Increasingly higher densities (yields) have been permitted on sites, raising the benchmark expectation for yield, with land prices increasing commensurately (as illustrated in Section 2). Cumulatively, this contributes to high degrees of uncertainty in terms of poor built form outcomes as increasingly high densities of development are reducing the capacity to deliver good design outcomes, shrinking setbacks and building separation, compromising privacy, limiting daylight and sunlight access and reducing sky views.

The deliberate intention is to break this cycle through the establishment of clear built form controls that enable feasibility assessments to be undertaken with relative predictability, and which reduce commercial risk

for the developer and provide greater certainty for the community about built form outcomes.

90. The key findings of the Built Form Review informed the preparation of the permanent controls forming part of Amendment C270.
91. Amendment C270 to the Scheme was prepared by the Minister and gazetted on 31 July 2017. Amendment C270 applies to land in the Central City (the Hoddle Grid) and Southbank, generally conforming to the area affected by Amendment C308 but excluding the Queen Victoria Market precinct, as depicted in the below diagram.



92. Amendment C270 does not overlap the West Melbourne Structure Plan area. Amendment C270 will contribute to shaping the built form interface shared between the Central City, and the Flagstaff Precincts within the West Melbourne Structure Plan area.
93. Amendment C270 made a number of significant and positive changes to the Melbourne Planning Scheme to regulate built form within the Central City and

- Southbank. It established two types of precincts, the Special Character Areas and the General Development Area. It also included building separation requirements, revised overshadowing and wind requirements and introduced a floor area ratio and uplift requirements as well as a number of mandatory and discretionary height controls.
94. Of relevance to Amendment C309, the Panel gave extensive consideration to the concept of the FAR as a planning tool and the mandatory nature of the control.³² It also endorsed intervention by the planning authority to curb the manner in which the city was developing - to ensure that livability and amenity were central to decision making rather than simply leaving those issues to the free market.
 95. The proposed controls under Amendment C270, as set out in the explanatory report, focus on maintaining Melbourne's Central City liveability and balancing short-term investment with the overarching primary objective which is to protect Melbourne's long-term value – as both a high amenity liveable place and as the generator of significant economic growth.
 96. Broadly, Amendment C270 was structured around two different categories of development areas:
 - a) the General Development Area; being areas affected by Schedule 10 (General Development Area) to the DDO, where the emphasis of the built form controls was on growth and more intensive development (including towers); and
 - b) Special Character Areas; being areas affected by Schedule 2 (Hoddle Grid), Schedule 40 (Yarra River Environs), Schedule 60 (Southbank) and Schedule 62 (Bourke Hill) to the DDO, where the emphasis of the built form controls was on protecting specific valued attributes, including a relatively lower built form scale appropriate to each area.
 97. The Panel that considered Amendment C270 noted, “the unparalleled amount of work undertaken in the preparation of this Amendment”, and concluded that:

³² Melbourne Planning Scheme Amendment C270 Panel Report, 28 October 2016, p.55

...the majority of elements in the proposed package of built form controls will contribute to an enhanced public realm, including the FAR [Floor Area Ratio] requirements and street wall, podium daylight, overshadowing and setback requirements. These items were vigorously tested throughout the Hearing. The Panel supports the use of SCAs [Special Character Area] and would encourage further analysis and possible expansion of these areas into the future. The Panel supports the FAR controls in the GDA [General Development Area] and SCA.

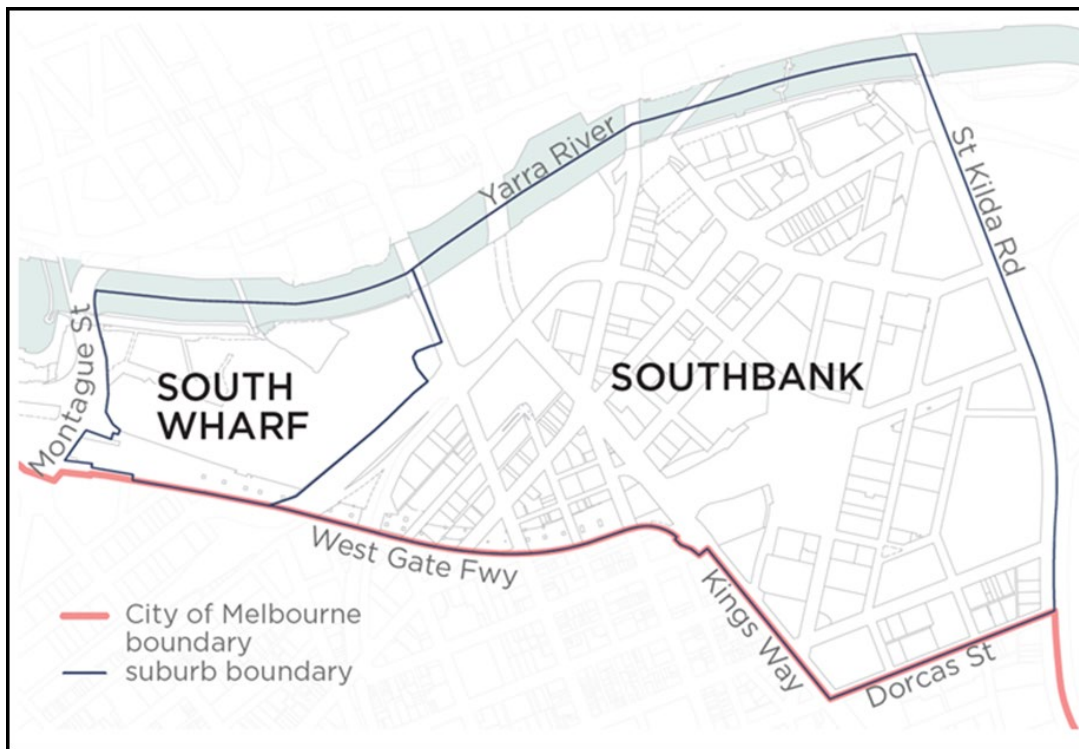
98. The expert witness statement of Ms Leanne Hodyl discusses the relationship between Amendment C270 and Amendment C309 (from paragraph 84).³³

Amendment C305: Southbank Heritage

99. Amendment C305 was prepared by Council, and applies to various sites within the suburbs of Southbank and South Wharf as depicted in the below diagram, and does not overlap the West Melbourne Structure Plan area. Amendment C305 is of no relevance to Amendment C309, and does not incorporate any shared boundaries with the West Melbourne Structure Plan area.
100. Amendment C305 implements the recommendations of the Southbank and Fishermans Bend Heritage Review June 2017, which made recommendations regarding the heritage significance, and appropriate degree of protection, of heritage places within the study area (generally corresponding to the area of Southbank and South Wharf).
101. Public exhibition of the amendment was undertaken between 24 May 2018 and 29 July 2018.
102. Interim heritage protection to sites considered in the Southbank and Fishermans Bend Heritage Review June 2017 was introduced by Amendments C276 and C304 on 8 February 2018 and 18 October 2018 respectively, and have been extended under Amendment C348, so that they are now set to expire on 31 January 2020.

³³ Document 11

103. The independent Panel appointed to consider submissions received in respect of Amendment C305 recently deferred the Panel Hearing for Amendment C305 until February 2020 at a Directions Hearing held on 26 June 2019.



DIRECTION 9(f): VC148

104. Amendment VC148 was prepared by the Minister for Planning (Minister) and gazetted on 31 July 2018. Amendment VC148 deleted the State Planning Policy Framework (SPPF) from the Victorian Planning Provisions in all planning schemes across Victoria and replaced it with a new integrated Planning Policy Framework (PPF) in Clauses 10 to 19. It is intended that, over time, the Local Planning Policy Framework (LPPF) in each planning scheme will also be updated.³⁴
105. Proposed new Clause 21.16-6 West Melbourne, which will be inserted into Clause 21.16 Other Local Areas of the MSS, 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

³⁴ Planning Advisory Note 71 – Amendment VC148, July 2018

consistent with the intention that integration of existing LPPFs into the PPF will take place as a further, future stage of reform.

106. The proposed local policies are, consistent with the intent behind Amendment VC148, tailored to the local context with locally specific content. This is demonstrated by the extensive, place-based approach to the development of the local policies, as explained in detail in the Built Form Strategy,³⁵ particularly section 1.5.

DIRECTION 9(g)

9(g)(i): strategic justification for population projections, dwelling numbers, job numbers and employment floor space calculations in proposed Clause 21.16-6

107. Council has prepared documents ‘West Melbourne Residential Population Forecast Memo (31 May 2019)’ and ‘Amendment C309, West Melbourne Structure Plan, Capacity Modelling Outline, June 2019’, which are attached to Mr Szafraniec’s expert witness statement³⁶. These provide detailed analysis of current population forecasts and capacity analysis (population and jobs), and how and why the current numbers differ from those in the Structure Plan.
108. The expert witness reports of Mr Szafraniec³⁷ and Mr Spencer³⁸ also consider the population projections, dwelling numbers, job numbers and employment floor space calculations underlying the Amendment.

9(g)(ii): strategic justification for the Special Use Zone

109. The expert witness report of Mr Barnes addresses the strategic justification for the Special Use Zone, including the application of the Planning Practice Note (Attachment 13). The expert witness report of Ms Hodyl³⁹ also addresses the justification for the use of the Special Use Zone.

³⁵ Folder 3, Tab 10

³⁶ Document 12

³⁷ Document 12

³⁸ Document 17

³⁹ Document 11

9(g)(iii): strategic justification for the FARs

110. The rationale for the use of FARs and the process of developing the FARs included in the Amendment are set out in the Built Form Strategy⁴⁰ and have been the subject of extensive testing by Breathe Architecture.⁴¹
111. The expert witness report of Ms Hodyl⁴² addresses the strategic justification for the use of floor area ratios, and the appropriateness of the ratios proposed in Amendment C309.

9(g)(iv): minimum floor areas for non-accommodation uses

112. The justification for minimum floor areas for non-accommodation uses is discussed in the Built Form Strategy.⁴³ This issue is also discussed in management's response to submissions provided in Attachment 3 of management's report to Future Melbourne Committee 7 May 2019.⁴⁴
113. The expert witness report of Mr Szafraniec⁴⁵ also considers the justification for minimum floor areas for non-accommodation uses.

9(g)(v): 6% affordable housing contribution

114. Management's response to submissions provided in Attachment 3 of management's report to Future Melbourne Committee 7 May 2019⁴⁶ discusses the strategic justification for the 6% affordable housing contribution, including:
- a) The decision to include an affordable housing requirement in the Special Use Zone (Schedule 6);
 - b) The adopted measure of 6% affordable housing within the West Melbourne Structure Plan; and

⁴⁰ Folder 3, Tab 10, particularly section 2 – developing the new controls

⁴¹ Built Form Testing, Folder 3, tab 9; Expert witness statement of Jeremy McLeod, Document 14

⁴² Document 11

⁴³ Folder 3, Tab 10, particularly section 2 – developing the new controls

⁴⁴ Folder 5, Tab 1.4

⁴⁵ Document 12

⁴⁶ Folder 5, Tab 1.4

- c) The interpretation of this measure as 1 dwelling in 16, and the reason for adopting a threshold of 10 dwellings as the point at which the affordable housing requirement in the Special Use Zone (Schedule 6) is introduced.

115. The expert witness statement of Ms Hodyl also addresses the strategic justification for the affordable housing contribution (paras 71-74).⁴⁷
116. Council will make further submissions about the 6% affordable housing requirement in its part B submissions and will take the Panel to Council's Homes For People Housing Strategy (Attachment 14), in addition to recent panel reports which have considered the inclusion of affordable housing provisions.

DIRECTION 9(h): RELATIONSHIP TO THE CENTRAL CITY AND ARDEN MACAULAY

117. The relationship between Arden, Macaulay, City North, North Melbourne and the Central City is shown on the following plan:



⁴⁷ Document 11

118. As outlined in the West Melbourne Built Form Strategy February 2018 at p 12:

Arden-Macaulay and City North urban renewal areas

Arden-Macaulay and City North are urban renewal areas identified for significant change over the next 10-15 years [and] overlap the West Melbourne study area. Arden-Macaulay will become a mixed use, commercial and residential precinct. City North will become an extension of the central city, supporting the Parkville health, medical and education sectors.

Intensive development of the central city

The central city, including the Hoddle Grid, Southbank and Docklands has undergone significant high density residential and commercial growth in the last two decades, increasing development pressure on adjacent areas.

Redevelopment of the Queen Victoria Market

On the doorstep of West Melbourne, the City of Melbourne's Queen Victoria Market Precinct Renewal is a \$250 million investment over five years to create a world-class market precinct, with better facilities and new public open spaces.

E-Gate urban renewal area

E-Gate is an identified urban renewal area owned by the Victorian Government between the railway yards and Docklands. The timing of the renewal of E-Gate is uncertain and is likely to be impacted by the West Gate Tunnel.

Dynon urban renewal area

Freight and industrial land to the north of Dynon Road is identified as a potential urban renewal area in the Melbourne Planning Scheme.

Innovation districts

Emerging innovation districts in Fishermans Bend and City North will provide high quality city spaces and infrastructure. They will support new enterprise development and job creation, enable experimentation and testing for new interventions, and be places for people to connect to each other and the city.

119. The above quote illustrates the place-making approach to planning that is supported by the Melbourne Planning Scheme. Council's precinct based approach seeks to ensure that different precincts in and around the central city provide a distinctive role.

Arden Macaulay

120. Arden Macaulay is identified as a proposed urban renewal area in cl 21.14-2 of the MSS and as a major urban renewal area and priority precinct in Plan Melbourne.⁴⁸
121. Following the identification of Stage 1 and Stage 2 in the development of Arden Macaulay in the Arden Macaulay Structure Plan 2012 and the subsequent introduction of Amendment C190, the Arden Macaulay urban renewal area is now often identified as two urban renewal areas of Macaulay and Arden, rather than being combined in one.
122. As summarized on the Participate Melbourne webpage, Amendment C190 has introduced new land use controls for the Macaulay urban renewal area (primarily the Mixed Use Zone, with some commercial zones and Design and Development Overlay schedule 63) to:
 - a) encourage residential development by rezoning much of the existing industrial area to the Mixed Use Zone. Other uses such as shops, offices, education and entertainment may be permitted.
 - b) encourage a new local shopping centre along Macaulay Road from the Moonee Ponds Creek to Melrose Street by rezoning the land to a commercial zone that encourages shops, restaurants, cafes.
 - c) encourage a new business centre on Racecourse Road near Flemington Bridge Station by rezoning the land along Racecourse Road between Boundary Road and Lambeth Street to a commercial zone that encourages offices and associated commercial uses.
 - d) provide a buffer between Allied Mills and new residential uses to its north and east by rezoning the area to the south of Chelmsford Street as far as Barrett Street to a commercial zone that prohibits residential uses and encourages offices and industry.
123. DO63 is an interim control and expires on 30 September 2019.

⁴⁸ Eg at p 26 Map 4.

124. The design objectives of DDO63 are:

Design objectives

To create a compact, high density, predominantly mid-rise, 6 – 12 storey walkable neighbourhood that steps down at the interface with the low scale surrounding established residential neighbourhoods.

To provide for higher development that delivers identified demonstratable benefits on large sites that do not interface with the low scale surrounding established residential neighbourhoods.

To create urban streetscapes that are defined by a generally consistent plane of building facades that enclose streets but allow daylight and sunlight to penetrate to the streets and to lower building levels.

To ensure that built form elements above the street wall are visually recessive and do not contribute to visual bulk.

To encourage the ground floor of buildings to be designed so that they can be used for a variety of uses over time.

125. Ms Hodyl's expert report states:⁴⁹

The recent Amendment in Arden-Macaulay (C190) proposed an alternative approach which did not include a density control, but rather proposed a preferred height limit in combination with a height bonus if community benefit was delivered. The Amendment was approved but with an expiry date of 30 September 2019. This recognised that the Arden- Macaulay approach was not in alignment with the approach to use a density control being progressed at the time for the Central City and Fishermans Bend.

126. It has been recognised, in a letter from the Minister for Planning dated 21 September 2017 (Attachment 15) that since the preparation of Amendment C190, there has been a change to the policy context affecting the Macaulay Urban Renewal Area. The letter identifies that a number of improvements could be made to strengthen land use and built form policy for the precinct, one of which is the better management of density through development of a Floor Area Ratio control. This control to better manage density is proposed in West Melbourne.
127. West Melbourne is adjacent, and slightly overlaps with, the Arden urban renewal area to the north-west. Arden (as with Macaulay) is identified as a Priority

⁴⁹ Document 11

Precinct in Plan Melbourne and is consistent with the identification of Arden Macaulay as proposed urban renewal area in the Municipal Strategic Statement.

128. The Arden Vision document was released in 2018 and sets out the future vision of Arden as a new destination for Melbourne, setting the standard for urban renewal. Arden is identified as an area of national significance and ideally placed to be an international innovation and technology precinct. The projected growth in Arden identified in the Vision is for approximately 34,000 jobs and 15,000 residents by 2051. This growth is significant and reflects the character and context of Arden as an area of significant opportunity with large swathes of land available for redevelopment in the short to medium term following the construction and opening of North Melbourne Metro Station in 2025. This is a very different context to that of the more established area of West Melbourne.
129. The Vision identifies three sub-precincts of Arden; Arden North, Arden Central and Laurens Street. West Melbourne is adjacent to Arden Central and overlaps with Laurens Street. The opportunities for Laurens Street sub-precinct include a significant potential as a transitional zone for smaller scale residential and commercial development. This is consistent with the vision and planning for West Melbourne.

Central City

130. Land within the Central City and Southbank is located within a complex layering of Design and Development Overlay (DDO) Schedules, including Schedules 1, 2, 3, 4, 10, 14, 27, 40, 56, 58, 60, 62 and 70. Other overlays affecting land within the Central City and Southbank, include:
 - a) Heritage Overlay;
 - b) Public Acquisition Overlay;
 - c) Environmental Audit Overlay;
 - d) Road Closure Overlay;
 - e) Land Subject to Inundation Overlay;
 - f) Special Building Overlay;
 - g) Environmental Significance Overlay; and

- h) Parking Overlay
131. With the exception of the Heritage Overlay, the primary planning control used to regulate broad built form outcomes above street level in the Central City and Southbank (i.e. through building heights, floor area ratios, setbacks and massing) is the Design and Development Overlay. The Schedules to the Design and Development Overlay that implement these controls were primarily introduced through Amendment C270 (all areas within the Central City and Southbank excluding QVM), and Amendment C245 (QVM).
 132. The Amendment C270 built form controls divide the Central City and Southbank into 'Special Character Areas' and the 'General Development Area'.
 133. The 'Special Character Areas' (Schedules 2, 40, 60, 62) are generally highly programmed, with each DDO Schedule incorporating a mixed suite of mandatory and discretionary height, floor area ratio, street wall height and setback requirements apply, which distinguish discrete character-based areas within the land affected by each respective DDO Schedule.
 134. The 'General Development Areas' (Schedule 10), are subject to a standardised set of mandatory and discretionary height, street wall height and setback requirements. Where land is included in the Capital City Zone (Schedule 2), and affected by DDO10, a mandatory floor area requirement of 18:1 applies, which can be exceeded subject to an agreed public benefit being provided.
 135. In addition to built form requirements that seek to mitigate wind effects and overshadowing, standard requirements are included in each DDO Schedule introduced under Amendment C270 to mitigate wind effects and overshadowing.
 136. The Amendment C245 built form controls include a range of discretionary height requirements that apply to four discrete areas within the QVM area..
 137. The central city, consisting of the Hoddle Grid, Southbank and Docklands has undergone significant high density residential and commercial growth in the last two decades.
 138. The central city is recognised for significant commercial and residential growth as the hub of a global city in Plan Melbourne and the Municipal Strategic

Statement identifies the Hoddle Grid, Southbank and Docklands as existing Urban Renewal areas. While West Melbourne is adjacent to the central city, it is not considered strategically to be an area of significant intensification or urban renewal within Plan Melbourne or the Municipal Strategic Statement, the latter of which identifies the area as one for incremental growth.

139. 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. This is supported through principles, outcomes, directions and policies within Plan Melbourne, particularly Principle 1 A distinctive Melbourne and Outcomes 3 and 5 that ‘Melbourne is a distinctive and liveable city with quality design and amenity’ and that ‘Melbourne is a city of inclusive, vibrant and healthy neighbourhoods’. West Melbourne is one of these neighbourhoods.

DIRECTION 9(i): SPECIAL CHARACTER BUILDINGS

140. Following the completion of the West Melbourne Urban Character Analysis report,⁵⁰ Claire Scott Planning was engaged by the City of Melbourne to prepare an addendum to the report, identifying the buildings of ‘special character’ within the West Melbourne Structure Plan study area (Attachment 16).⁵¹
141. The special character buildings addendum (October 2017) was inadvertently not exhibited as a background document by appending it to the West Melbourne Urban Character Analysis. However, Council relied on the addendum to identify

⁵⁰ [West Melbourne Urban Character Analysis](#), Claire Scott Planning June 2017: Folder 3 Tab 8

⁵¹ Addendum Building of Special Character, Claire Scott Planning October 2017, Attachment 15. While the addendum, dated October 2017, states it is “*draft*”, Council required no further changes to this document and it can be taken as final.

the Special Character Buildings and to draft the related provisions in the DDOs, and the addendum is reflected in the Structure Plan, pages 48-49.

142. The addendum identifies that the following criteria were used to select the buildings of special character:
- a) The building is distinctive architecturally.
 - b) The building is an older brick warehouse that demonstrates a link to the industrial history of the area.
 - c) The warehouse / building is located adjacent to a laneway, the side elevation is intact and the three dimensional form of the building can be seen from the public domain.
 - d) The front elevation of the warehouse / building contains interesting detailing and provides visual interest at street level.
 - e) The warehouse / building has large window openings, with potential for a positive interface with the public domain.
 - f) The warehouse / building has a large floorplate.

DIRECTION 9(j): HOW THE SUZ6 WILL DELIVER THE SPENCER ST LOCAL ACTIVITY CENTRE

143. Objective 5 of proposed SUZ schedule 6 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 function.

144. It is intended that the Special Use Zone Schedule 6 will assist in delivering the local activity centre along Spencer Street by the requirement for developments to provide non-accommodation uses, the prohibition on dwellings with a ground floor frontage on Spencer Street between Hawke Street and Dudley Street, and the facilitation of certain uses (such as larger food and drink premises) in this area.

145. Objective 8 of the Structure Plan is:

Transform Spencer Street to become a local centre and high mobility street at the heart of the West Melbourne neighbourhood.

146. The following additional actions set out in the Structure Plan will assist in delivering the local activity centre along Spencer Street:
- a) Action 14: Deliver short term works to improve pedestrian priority and safety on Spencer Street.
 - b) 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.
 - c) Action 16: Install bicycle parking along Spencer Street, at North Melbourne (future West Melbourne) Station and other suitable locations.
 - d) Action 17: Strongly advocate to Transport for Victoria to change the status of Spencer Street from an arterial to local road.

DIRECTION 9(k): DESIGN REVIEW PANEL

147. On 18 October 2017 an independent review of the draft Structure Plan was undertaken by the Office of the Victorian Government Architects, Victorian Design Review Panel (**VDRP**) (Attachment 17).⁵²

The Vision for West Melbourne

148. The VDRP suggested strengthening the vision of West Melbourne in the context of the city, as a ‘counterpoint’ to the adjacent high growth areas of the Central City and Arden. In particular the VDRP suggested that a broader scale map or diagram demonstrating West Melbourne’s contextual relationship to surrounding areas as that of an evolving and complex area of respite, relief and special character would be quite powerful and was encouraged. The VDRP recommended that further content from the character study⁵³ be brought forward, teased out and articulated more strongly within the vision and framework.

⁵² Victorian Design Review Panel, West Melbourne Structure Plan, October 2017

⁵³ Claire Scott Character Study [improve reference – main report or addendum?]

149. In response, the overall vision for West Melbourne was updated to strengthen the understanding of West Melbourne as a distinct neighbourhood with its own identity as distinct from the Hoddle Grid and future renewal area of Arden. The visions for each of the five places in West Melbourne and the specific qualities of each place were also strengthened in the Structure Plan.⁵⁴

Built Form Controls

150. The VDRP suggested there is a need for contextual information and modelling on a range of sites and streets to avoid ‘cliffs’ of marked difference in built form between precincts and that the variation in street wall heights (between 3 and 10 storeys) doesn't give a clear message about how the streetscape relationship works.
151. In response to this feedback (and as a result of further testing in the Spencer and Adderley areas of West Melbourne) the proposed preferred maximum height controls along Adderley Street (from Dudley Street to Hawke Street) were increased from 4 to 6 storeys and fronting Dudley Street (the northern side, in the Spencer area) from 8 to 10 storeys. The increased height controls were seen to provide a better urban design outcome along these streets and help to ensure that development can respond better to a site’s context (for example, by stepping down building heights closer to existing lower scale or heritage buildings).

Incentivising Diversity and Character

152. The VDRP recommended that built form testing should be undertaken on large footprint re-use sites to demonstrate the volume advantage for heritage or character sites. The VDRP further highlighted that to maintain character you must not only protect built form and streetscape but also plot size, materiality and mix and that more work needed to go into addressing the risk of site consolidation and how to maintain character on consolidated sites.
153. In response to this recommendation, further testing of Character Building sites was undertaken by Breathe Architecture,⁵⁵ and a new action was included in the

⁵⁴ See the vision on page 11, diagram on page 21 and ‘Part 3: Places’ from page 80 of the West Melbourne Structure Plan for further information

⁵⁵ Reference the actual pages in the Breathe report

Structure Plan to investigate the use of the floor area ratio controls to help incentivise the retention of character buildings to ensure that the distinctive visual identity of West Melbourne is celebrated and retained.⁵⁶

Affordable Housing

154. The VDRP suggested that the specific wording of the action in the structure plan which, in the draft Structure Plan (Action 7.1), required applicants ‘to consider 6% affordable housing on development sites’, required more potency in terms of mandating outcomes and that the wording of the action needs to be bolder and more robust.
155. In response to this recommendation, the wording in the Structure Plan changed from requiring applicants to consider providing 6 per cent affordable housing on development sites in Flagstaff, Spencer and Station Precinct to “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”. Additional references were included in the accompanying text to state that, if applicants propose not to provide affordable housing, they will need to prove why, through a more rigorous ‘open book’ approach to demonstrate their concerns.⁵⁷

West Melbourne Structure Plan 2018

156. The final Structure Plan took into account the above comments received from the VDRP on the draft Structure Plan. These include providing further clarity in terms of the vision statements for each neighbourhood; removing basements from the FAR calculation, to be consistent with the central city and Fishermans Bend; increasing the discretionary height controls in particular locations; proposing an approach to further support retention and adaptive reuse of character buildings by excluding bonus floor area in the FAR calculation;

⁵⁶ See Objective 3 on page 49 of the West Melbourne Structure Plan for further information.

⁵⁷ See further Objective 7 on page 57 of the Structure Plan

strengthening the evidence base for the employment requirement; and including further information and rationale from Plan Melbourne 2017–2050.

DIRECTION 9(l): EAO AND MINISTERIAL DIRECTION NO. 1

157. Council’s proposed application of the Environmental Audit Overlay is supported by EPA and explained in:

- a) management’s response to submissions provided in Attachment 3 of management’s report to Future Melbourne Committee 7 May 2019;⁵⁸
- b) the preliminary land contamination assessment prepared by Mr Kluckow;⁵⁹ and
- c) the expert witness statement of Mr Kluckow.⁶⁰

158. The EPA's letter to the Panel dated 24 June 2019 states:⁶¹

EPA 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.

159. For completeness, the Ministerial Direction No. 1 Potentially Contaminated Land is provided as Attachment 18. Should the Panel have any further questions on the application of the EPA, Council would be pleased to address them in its Part B or Part C submissions.

DIRECTION 9(m): ISSUES RAISED IN SUBMISSIONS

160. All of the submissions have been referred to this Panel for consideration including the late submission received.

161. A total of 54 submissions were received in response to exhibition of the Amendment.

⁵⁸ [Report and minutes of FMC meeting held on 7 May 2019](#), attachment 3: management response to issues, section 9; Folder 5, Tab 1.4

⁵⁹ [Report and minutes of FMC meeting held on 7 May 2019](#), attachment 6: Preliminary Land Contamination Assessment, Golder Associates, 2019; Folder 5, Tab 6

⁶⁰ Document 15

⁶¹ Document 20

162. The 53 submissions that were received during the exhibition period were the subject of a report considered by the Future Melbourne Committee on 7 May 2019. The issues raised by the late submission are consistent with those raised by earlier submitters.
163. A summary of all submissions is included in Attachment 2 of Council management's report to Future Melbourne Committee 7 May 2019, with management's response to submissions provided in Attachment 3 of that document.
164. Over half of the submissions supported the Amendment in full or in part, with the West Melbourne community in particular supporting the provisions which provide increased certainty of development outcomes such as the mandatory floor area ratios and the preferred building heights. Some community submitters considered that the affordable housing percentage was not high enough and most were generally supportive of the provisions which enabled continuing mixed use in the area.
165. Those submitters with concerns questioned the requirement for affordable housing in the Special Use Zone (Schedule 6) (SUZ6) and the mandatory requirement that a minimum proportion of uses within a development not comprise accommodation and must be employment generating. Some submitters did not support mandatory floor area ratios; suggested the preferred building heights were too high or too low; had concerns with the designation of 'special character buildings' in the Design and Development Overlays (DDOs); believed the car parking requirements were too restrictive; and thought the application of the Environmental Audit Overlay (EAO) was too extensive. Some of these issues were raised also by industry peak bodies including the UDIA and Property Council of Australia.
166. Following consideration of the issues raised in these submissions, limited changes were made to the Amendment, as set out in Attachment 4 of Council management's report to Future Melbourne Committee 7 May 2019.

DIRECTION 9(n): STRATEGIC MATERIAL

167. Council has prepared a document – the E-Policy Book – that extracts existing planning policies and controls of relevance to the Amendment and provides in-text hyperlinks to enable quick navigation. The document includes a section for Plan Melbourne and a section for each of the following from the Melbourne Planning Scheme: the Planning Policy Framework; the Municipal Strategic Statement and Local Planning Policies; Zones; and Overlays. Within each section, there are links to relevant provisions. At the end of the E-Policy Book, there are full-text extracts of the relevant provisions of the Planning Scheme. Due to the size of Plan Melbourne it was not included in the e-policy book.
168. The E-Policy Book also includes maps of existing zones and existing overlays that show the boundaries of the five precincts/places within the Structure Plan area, as required by direction 3 of the Panel’s directions of 6 June 2019. These maps have been distributed previously (as required by the Panel’s directions) but are included in the E-Policy Book for ease of reference.
169. The E-Policy Book is comprehensively bookmarked and the table of contents includes hyperlinks. The E-Policy Book is being circulated in electronic format with these Part A Submissions, but will not be provided in hard copy unless it is specifically requested.
170. As noted above, Council is preparing a book of maps which will be provided to the Panel and parties in hard copy at the commencement of the hearing. The map book will contain all of the maps referred to in the Panel’s directions of 6 June 2019 and other maps that Council has prepared or identified or as being useful to understanding the Amendment.
171. Some of the attachments to these submissions also include strategic material. Council intends to provide the Panel will a separate folder of VCAT decisions and Panel reports as part of the presentation of its case.

EXPERT WITNESS RECOMMENDATIONS

172. Council officers are currently considering the various recommendations of its expert witnesses. Council is unlikely to be in a position to formally resolve on

those recommendations prior to the end of the Panel hearings. Nevertheless, the Panel will be informed (during the presentation of Council's case) whether council officers support those recommendations.

CONCLUSION

173. Council will make further, Part B, submissions at the conclusion of its evidence.

Juliet Forsyth

Owen Dixon Chambers West

Alexandra Guild

Isaacs Chambers

Assisted by Council officers

ATTACHMENTS

1. West Melbourne Structure Plan figure (response to Panel direction 18(a))
2. Chronology
3. Amendment C96 Panel Report
4. West Melbourne Structure Plan Phase One Community Engagement Report April-May 2015
5. Ideas for West Melbourne Discussion Paper February 2016 Part One
6. Ideas for West Melbourne Discussion Paper February 2016 Part Two
7. West Melbourne Structure Plan Phase Two Community Engagement Report Feb-March 2017
8. West Melbourne – changes to final plan
9. Council's letter to DELWP dated 26 September 2018
10. DELWP's letter to Council dated 18 September 2018
11. PPN59-The-role-of-mandatory-provisions-in-planning-schemes
12. City of Melbourne Current Planning Scheme Amendments Update, June 2019
13. PPN3-Applying-the-Special-Use-Zone
14. Homes-for-people-housing-strategy
15. Letter from Minister for Planning - Macaulay - 21 September 2017
16. Addendum Building of Special Character, Claire Scott Planning October 2017
17. OVGA VDRP Report - West Melbourne Structure Plan
18. Ministerial Direction No.1 Potentially contaminated land