



Department of Transport and Planning

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Ms Alison Leighton
Chief Executive Officer
Melbourne City Council

Attention: Sarah Lowcock, Team Leader, City Planning, City Strategy
Email address: Sarah.Lowcock@melbourne.vic.gov.au

Dear Ms Leighton

PROPOSED MELBOURNE PLANNING SCHEME AMENDMENT C417melb – MACAULAY STRUCTURE PLAN IMPLEMENTATION

I refer to your council's application for authorisation to prepare the above amendment to the Melbourne Planning Scheme. The amendment proposes to implement the *Macauley Structure Plan* and *Macauley Development Contributions Plan* by rezoning land to the Special Use Zone, introducing new schedules to the Design and Development Overlay, Development Contributions Plan Overlay and Parking Overlay, and making consequential changes to the Melbourne Planning Scheme.

On 5 September 2022, your council was advised that the authorisation application required further review in accordance with section 8A of the *Planning and Environment Act 1987* (PE Act). The Department of Transport and Planning (DTP) requested further information on 14 September 2023 with a response received from council officers on 22 December 2023.

I acknowledge the delay in a decision on your authorisation application. The proposed amendment raises significant and complex policy issues which have required careful consideration and continued discussion with council officers. These issues include, but are not limited to, mandatory affordable housing requirements including cash-in-lieu provisions, conditions and requirements on land use and development relating to flood mitigation, the approach to land required for public purposes, minimum non-accommodation floorspace requirements and the proposed use of the Special Use Zone.

Following further review and consideration of the further information provided by council officers, under delegation from the Minister for Planning, in accordance with section 8A of PE Act, I authorise your council as planning authority to prepare the amendment subject to the following conditions:

1. Amend the proposed schedule to the Special Use Zone to make changes, as appropriate, having regard to the marked up version provided by council officers dated 22 December 2023 and the *Practitioner's Guide to Victoria's Planning Schemes*. Specifically to:
 - a. Amend the proposed minimum non-accommodation floorspace requirements on the use of land to be discretionary, as intended and confirmed by council officers.
 - b. Remove the proposed conditions in the table of uses and requirements on the use of land within the Land Subject to Inundation Overlay and Special Building Overlay, including the definition of high risk land uses.
 - c. Remove the proposed buildings and works requirement to make an affordable housing contribution including cash-in-lieu provisions and any associated application requirements and decision guidelines.

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Privacy and Data Protection Act 2014*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorized by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.



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- d. Amend the proposed subdivision requirement to retain car parking on a single title as common property to include transitional arrangements, as proposed by council officers, for the subdivision of land that is undertaken in accordance with a planning permit issued before the commencement of the proposed amendment.
 - e. Remove proposed classes of VicSmart application, noting that classes of VicSmart application are prescribed at Clause 37.01 (Special Use Zone).
 - f. Amend Plan 1 to remove or revise the 'site setback (open space)' shown on private land along Moonee Ponds Creek, noting that a Public Acquisition Overlay is not proposed to provide for the acquisition of the land by council.
2. Amend proposed schedules 75 and 77 to the Design and Development Overlay, including Maps 1-6, to remove or revise the 'site setback (open space)' shown on private land along Moonee Ponds Creek and references to delivering a linear setback as publicly accessible open space, noting that a Public Acquisition Overlay is not proposed to provide for the acquisition of the land by council.
 3. Amend the Municipal Planning Strategy, Planning Policy Framework and schedule to Clause 42.02 (Further strategic work) to remove or revise redundant and outdated context, objectives, strategies and further strategic work actions relating to the Macaulay Urban Renewal Area.
 4. Amend the Planning Policy Framework at Clause 11.03-6S (Regional and local places) to include local planning policy for the Macaulay Urban Renewal Area based on that proposed as part of Amendment C432melb having regard to the marked up version provided by council officers dated 5 March 2024 and the *Practitioner's Guide to Victoria's Planning Schemes*. The proposed local planning policy may include objectives, strategies and policy guidelines to support and encourage the delivery of affordable housing in residential development.
 5. Review the proposed Development Contributions Plan and schedule to the Development Contributions Plan Overlay, as appropriate, having regard to the marked up version provided by council officers dated 22 December 2023, and to:
 - a. Index the land values and construction costs in accordance with the method of adjustment specified in the DCP, noting the costs and values listed are in July 2021 dollars.
 - b. Update the list of land and development excluded from the requirement to pay a development contribution to include a small second dwelling as required by the *Ministerial Direction on the Preparation and Content and Reporting Requirements for Development Contributions Plans* dated 15 January 2024.
 6. Amend the Explanatory Report to provide a level of justification for each consideration that is proportional to the substantial change proposed to the planning scheme. Specifically to:
 - a. Address the requirements of *Ministerial Direction 19: Preparation and Content of Amendments that may Significantly Impact the Environment, Amenity and Human Health*, in consultation with the Environment Protection Authority, noting land is affected by the Buffer Area Overlay applying to the Citywide Asphalt Plant in North Melbourne and likely within buffer distances existing for industry in Kensington.
 - b. Provide a comprehensive assessment of how the amendment makes proper use of the Victoria Planning Provisions with specific discussion about the application of the Special Use Zone having regard to *Planning Practice Note 3: Applying the Special Use Zone*.
 - c. Address the criteria for when mandatory controls may be appropriate, outlined in *Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes*, noting proposed mandatory Floor Area Ratios, setbacks and solar protection requirements.
 - d. Provide a comprehensive assessment of how the amendment addresses the relevant requirements of the *Transport Integration Act 2010* noting that proposed maximum zero parking rates are likely to result in an immediate and substantial impact on the surrounding transport network.

7. Make consequential changes to the *Macaulay Structure Plan* and other associated amendment documents, as appropriate, to reflect the above conditions.

DTP officers also provide commentary on the following substantive issues for consideration by your council through the amendment process:

Use of the Special Use Zone

DTP officers acknowledge the Special Use Zone has been applied in Arden and West Melbourne. However, as the council is aware, and consistent with previous DTP advice, its use must be strategically justified in each circumstance having regard to *Planning Practice Note 3: Applying the Special Use Zone*, and specifically in relation to how the intended land use and development outcomes are unable to be achieved through standard zoning and overlays.

Minimum non-accommodation floorspace requirements and supporting local activity centres

The Structure Plan identifies three proposed local activity centres on Macaulay Road, Boundary Road and near Racecourse Road to support local access to goods, services and jobs. The proposed Special Use Zone schedule does not provide for different minimum non-accommodation requirements for these areas. DTP officers consider that there may be a benefit in refining the minimum non-accommodation floorspace requirement having regard to the role and function of the local activity centres as well as the locational characteristics, transport connections and existing and preferred character of the four proposed sub-precincts.

Flooding requirements

DTP officers acknowledge that council considers that flooding is a significant issue in Macaulay due to proximity to Moonee Ponds Creek and the Structure Plan includes an action to manage land use and built form in flood affected areas. The Victoria Planning Provisions (VPP) and the Planning Policy Framework provide consistent state-wide planning strategies, requirements and guidance for vulnerable, flood-sensitive land uses. The VPP enable consideration of land use through floodplain management authority referral requirements and state floodplain guidance. DTP is continuously reviewing the effectiveness of state planning requirements, tools and the VPP.

Affordable housing requirements

As your council is aware, the PE Act was amended in 2018 to facilitate the provision of affordable housing in Victoria and enable section 173 agreements to be used to secure affordable housing outcomes on a voluntary basis. DTP officers note previous planning panel and advisory committee commentary that the legislative framework currently supports voluntary contributions. Where site or precinct specific mandatory provisions have been implemented, the planning authority has obtained agreement from all affected landowners.

DTP officers notes that the cash-in-lieu provisions are not included in any other planning scheme and previous planning panels have acknowledged the complexities associated with applying and administering such requirements.

Land identified for future public open space

The Structure Plan and map in the proposed Special Use Zone schedule show the expansion of open space on private land along Moonee Ponds Creek. The potential open space is also identified in maps to the proposed Design and Development Overlay schedules.

Applying a Public Acquisition Overlay is the most transparent way of securing land for public purposes, as it provides certainty as to what land is required and allows the balance of a partially affected site to be redeveloped with certainty that the redevelopment would not prejudice the future public use. This may provide greater certainty at the planning permit stage. It also provides certainty as to which authority is liable for compensation and creates a right to interim compensation under Part 5 of the PE Act in certain circumstances.

Sustainable transport requirements

Specifying alternative bicycle requirements will result in inconsistency with state standard requirements at Clause 52.34. I understand that your council was consulted on proposed reforms to state planning requirements for car parking, bicycle parking and bicycle facilities in October 2023. Should these reforms be implemented during the amendment process, it will be necessary for the proposed requirements to be revised or removed.

All relevant supporting background and technical reports must be exhibited with the amendment.

A copy of this letter should be published on council's website as part of exhibition of the amendment and provided to Planning Panels Victoria should a planning panel be appointed to consider submissions to the amendment.

The amendment must be submitted to the Minister for approval.

The authorisation to prepare the amendment is not an indication of whether or not the amendment will ultimately be supported.

Please note that [Ministerial Direction No. 15](#) sets times for completing steps in the planning scheme amendment process. This includes council:

- giving notice of the amendment within 40 business days of receiving authorisation; and
- before notice of the amendment is given, setting Directions Hearing and Panel Hearing dates with the agreement of Planning Panels Victoria. These dates should be included in the Explanatory Report ([Practice Note 77: Pre-setting panel hearing dates](#) provides information about this step).

The Direction also sets out times for subsequent steps of the process following exhibition of the amendment.

The Minister may grant an exemption from requirements of this Direction. Each exemption request will be considered on its merits. Circumstances in which an exemption may be appropriate are outlined in [Advisory Note 48: Ministerial Direction No.15 – the planning scheme amendment process](#).

In accordance with sections 17(3) and (4) of the Act, the amendment must be submitted to the Minister **at least 10 business days** before council first gives notice of the amendment.

Please submit the amendment electronically using the Amendment Tracking System (ATS).

If you have any further queries in relation to this matter, please contact Steven Cox, Manager, State Planning Services, Department of Transport and Planning, via email at steven.cox@delwp.vic.gov.au.

Yours sincerely



David Kirkland
Acting Director, State Planning Services

Dated: 30 May 2024

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