

PLANNING PANELS VICTORIA

IN THE MATTER OF AMENDMENT C376 TO THE MELBOURNE PLANNING SCHEME

PART C SUBMISSIONS ON BEHALF OF THE PLANNING AUTHORITY

INTRODUCTION

1. These Part C submissions are made on behalf of Melbourne City Council (Council).
2. They should be read together with:
 - a) the Part A submissions filed on 5 August 2024;
 - b) the Part B submissions filed on 21 August 2024; and
 - c) the ‘Final Day Version’ of the Amendment ordinance, filed with these submissions.
3. Defined terms in these submissions have the same meaning given to those terms in the Part A and B submissions, unless otherwise indicated.
4. These Part C submissions address the following matters:
 - a) a response to matters raised by other parties in submissions;
 - b) a response to matters raised by the Panel; and
 - c) Council officers’ final position on the Amendment.

RESPONSE TO PARTY SUBMISSIONS

Introductory

5. The following submissions respond to matters raised by Mr Talacko for Ark Resources, Mr McQuade for My Parcel Locker, and Mr Bartl.
6. Council would first like to address the question of how the submissions of Ark Resources should be taken by the Panel. It is important for the Panel to note that, notwithstanding Mr Talacko and Ms Dixon’s professional expertise, their opinions were provided by way of submissions, and not expert evidence. The experts called by COM, on the other hand, gave independent expert evidence,

circulated in advance, that could be, and was, tested through cross examination. Even Mr Ashley's live demonstration was pre-circulated. This is to be contrasted with the way in which the Ark Resources submission was presented. For example, Ms Dixon presented material in the hearing, using a subscriber-only online tool, that had not been pre-circulated and could not possibly be interrogated by the Panel or by COM in the circumstances. There were many matters upon which COM would have cross-examined Mr Talacko, had he been called by a party as an independent expert, including in relation to his recommendations. Even from the questions of clarification asked by the Panel, it is clear that many of his recommendations were clearly not well resolved.

7. As a matter of due process and procedural fairness, the opinions expressed by Mr Talacko and Ms Dixon must be taken as submissions only, and accordingly, be given less weight by the Panel than the expert evidence.

Quantitative analysis

8. Mr Talacko suggested that, in order to justify the use of the tools and scores as proposed by the Amendment in Tables 1 and 2 of the DDO73, detailed quantitative analysis by Council is required to demonstrate that the chosen ratings will achieve net zero by 2040. Mr Talacko expressed this as being a requirement, because of the first design objective in the DDO73, which is:

To ensure buildings are energy efficient and align with the City of Melbourne's target of net zero emissions by 2040.

9. There are three answers to this criticism.
 - a) First, it is a false premise. The policy is to align with the City of Melbourne's target of net zero emissions by 2040, not to single handedly meet that target by DDO73 alone.
 - b) Secondly, the Council is not at large to change the amendment at this stage of the process. The requirements for larger buildings will mean that such buildings attain net zero (by achieving the relevant Green Star Buildings standard). The market is ready for that change and has been for some time. However, as desirable as it would be having regard to the climate crisis, the market (and the available tools), were simply not ready at the time the amendment was exhibited for all new buildings to be net

zero. Mr Talacko conceded that it is perhaps still not quite there, notwithstanding the introduction of Whole of Home. The Council is constrained by what was exhibited. That said, if this amendment is adopted, it provides a very good framework for relatively simple adjustments to be made, as necessary, as the market changes.

- c) Third, sufficient quantitative analysis has been undertaken to support the amendment.
10. These three answers are further explained as follows.
 11. The strategic basis for the Amendment is set out in the background documents (in particular, the GOCAP, GOCSAP, and Hansen Report), and the content and drafting of the Amendment as proposed, including the DDO73, has been independently tested by independent experts as part of the hearing process.
 12. In relation to the use of the proposed ratings tools and scores, Mr Ritter in particular has closely considered those tools, and their status as industry best practice tools to use to further ESD goals, and wholly supports the use of the tools as proposed, and the scores required by the Day 1 Version of the DDO73 (other than his non-critical recommendation that the minimum (mandatory) 50% BESS score be increased to 60%).
 13. There is no doubt that the DDO73 will “ensure buildings are energy efficient”, as this is the exact effect of requiring the relevant typologies to meet the specified scores under Green Star, BESS, NatHERS and NABERS – because that is the purpose of those ratings tools. This is what is demonstrated by the SGS analysis and case studies – each of those approved proposals needed to be adjusted upwards in order to meet the C376 standards (noting that further changes would be needed to achieve all preferred standards).
 14. There is also no doubt that improving the sustainability and efficiency of buildings in the municipality is clearly “aligned with the City of Melbourne’s target of zero emissions by 2040”. That goal cannot be achieved without improving building performance about the current standards. But it is not necessary to quantitatively demonstrate that the DDO73 will achieve net zero by 2040. This is an impractical expectation as part of this Amendment.

15. It is also the case that the DDO73, by using external ratings tools, which are continually updated, will require buildings to incrementally further improve over time as those tools themselves advance – this will progressively advance the net zero goal.
16. It is in the background of the ratings tools themselves that quantitative analysis is required. That is the appropriate place for that work, and there is no question that the external tools are based on extensive quantitative analysis – the length of time that the tools have been in use, tested, improved, and adopted by the industry makes that apparent. It is noteworthy in that regard that Mr Talacko conceded that the suite of external tools were the right tools to use (subject to his comments about NatHERS Whole of Home). It is not reasonable to expect Council to do its own detailed quantitative analysis to demonstrate what is required to achieve net zero – that would be reinventing the wheel and is the precise reason to rely on industry standard external ratings tools in the DDO73.
17. This issue is a classic example of “Don’t let the perfect be the enemy of the good”. Mr Talacko clearly supports the intent of the controls, and did not suggest that the Amendment should not be implemented (Council notes that there is no party to the hearing that has made that suggestion); rather, he would like slightly different mandatory requirements for a couple of categories in Table 1 and 2. But, that is for a later time - if there are changes in the mandatory requirements that are demonstrated to be appropriate after further testing and assessment, that is a something that should be implemented through a future amendment.
18. The appropriate way for the Panel to address this issue is to support the implementation of the proposed controls, and recommend that Council monitor the outcomes, and as needed implement updates to the controls in order to ultimately achieve the net zero target. Given Council’s policies on ESD issues, the Panel can be confident that Council will seek to do so in any event.

Mandatory/preferred control approach

19. Mr Talacko suggested that it is unusual and undesirable for an ESD related control to take the approach of specifying minimum mandatory standards, and higher preferred standards. He submitted that the standards should be

mandatory with the “preferred” elements removed. The Panel ought to reject this submission for three reasons:

- a) The whole point of the approach is to set a base line but ask applicants to strive higher. The minimum mandatory standards have been determined based on what all buildings are able to, and should at a minimum, achieve. By necessary implication, there are buildings that, for one reason or another (including scale, site context, public ownership and so on) ought to be able to do better. It is entirely appropriate for Council to seek that buildings do better, where they are able to, in the context of the climate emergency. Specifying preferred targets better aligns with the policy objectives.
- b) Second, it is entirely orthodox for a built form control to specify mandatory standards and preferred discretionary standards directed to elevated aspirations or outcomes. Examples of this in the Scheme include the DDO10, DDO81, DDO82. While the DDO73 is directed to ESD outcomes, it is still a built form control.
- c) Third, the DDO73 provides the right balance between certainty and flexibility, in the context of the Victorian performance-based system.

Use of BESS and NatHERS Whole of Home

20. Mr Talacko has suggested that individual dwellings (NCC Class 1) should meet:
 - a) net zero emissions based on the NatHERS Whole of Home method; or
 - b) a minimum 60% score in the BESS Operational Energy category with the ‘Occupant to install’ option selected for clothes dryers.
21. Officers do not consider it appropriate to make either change, because:
 - a) they are not essential to the outcomes sought to be achieved (ie Council considers the BESS standard to be an appropriate one at this stage);
 - b) Council officers are not confident that the net zero emissions based on the NatHERS Whole of Home method is a comparable standard to what has been exhibited or tested as part of the assessment of the Amendment; and

- c) the DDO73 is flexible enough to enable an applicant to use the Whole of Home tool to establish equivalence with the specified 60% BESS energy standard, should they wish to do so.
22. The NatHERS Whole of Home tool is an example of the addition of, and transition in, external tools over time. The Whole of Home tool covers additional components of energy use that were not previously captured by the NatHERS. Whole of Home does not displace the NatHERS star ratings but provides an extra dimension of information and targets for energy use and consumption.
 23. A 'whole of home' concept has been added into the minimum standards for Class 1 dwellings under the NCC 2022, and NatHERS Whole of Home is one way of verifying compliance with those new standards, but not the only way. A 'deemed-to-satisfy' pathway exists, as does the option to use alternative modelling other than NatHERS software compared to a reference building to demonstrate compliance with NCC.
 24. Additionally, Council notes that BESS was developed and introduced in 2015 and has worked well for the CASBE councils in delivering a high standard of sustainably designed buildings across a range of categories via the planning system. It has set a benchmark above minimum mandatory standards contained in the NCC, which for the most part are specific to energy.
 25. Since the inception of BESS, the NatHERS ratings, which have only historically targeted building fabric, have been able to be considered in the BESS calculations, including the NatHERS star ratings and related heating and cooling loads – so there has always been interaction between those two tools. BESS allows multiple pathways for demonstrating compliance with the NCC for building fabric requirements (including NatHERS star ratings, a reference building comparison, and the NCC 'deemed-to-satisfy' provisions). Any of those options can currently be entered into the BESS energy section as part of the BESS assessment.
 26. BESS energy also requires the input of mechanical and electric components, the form of energy used, including renewable energy options, and more recently has aligned to state requirements for fully electric residential developments.

27. Essentially, BESS provides a ‘whole of building’ consideration (for both residential and non-residential buildings) under the energy category, which evaluates a designed building at the planning stage and rewards applicants for making smart and energy efficient decisions. As such, BESS has been effectively assessing ‘whole of building’ well before the ‘whole of home’ standards were introduced into the NCC.
28. Ultimately, Council is comfortable that the use of BESS as proposed in the DDO73 is appropriate. Mr Ritter agrees. That is not to say that a future amendment may not adopt Whole of Home in the future, but that is a matter for another day. In the end, Mr Talacko appeared to concede this to be the case, notwithstanding that he ended up including it in his recommended changes to the DDO73.

4 Star Green Star Buildings

29. In relation to allowing an alternative 4 star Green Star approach for the minimum (mandatory) standard in Table 1, as suggested by Mr Talacko (and in the University of Melbourne submission), Council’s primary position is that the drafting of the DDO73 (by allowing the use of an equivalent tool) would enable an applicant to use Green Star 4 Star as an alternative to the 50% BESS score in any event. Council considers that there is sufficient equivalence between those two standards to allow this to occur, without an express change to Table 2.
30. However, officers are not averse to explicitly allowing the use of Green Star 4 Star, but the change is not as simple as adding a reference to Green Star 4 Star in Table 1. There are broader consequences for other parts of the DDO73.
31. If the Panel considers this to be a desirable change, Council can prepare a revised version of the DDO73 that sets out that cascading changes that would be needed to address that issue.

PV panel area specification

32. Mr Talacko initially suggested a target of PV renewable generation be added to Table 3. However, he did not ultimately press that suggestion, and has not proposed a drafting change to that effect.

33. Council does not consider it practical to mandate a particular PV target in Table 3 and prefers that it remain as discretionary as proposed. This includes because the renewable energy generation and greening targets are equally important, and mandating a PV target risks conflict between these requirements.

Embodied carbon

34. As for Mr Ritter's recommendation, Council does not object to the inclusion of an embodied carbon reduction target in a future update of the DDO73, but as a matter that has not been exhibited, does not consider appropriate to include in the Amendment as this time.

Mandatory WC flush requirement

35. Mr Talacko proposed changes to rows 3 and 4 to Table 7 to insert the words "Must install a rainwater tank *to support potable water reduction through toilet flushing* and support on-site green cover". Mr Ritter, in a similar vein, proposed amending the third row of Table 7 to say 'Should use alternative sources *such as recycled water or rainwater* for all non-potable uses on site, *including consideration of WC flush.*'
36. Council says the changes are not necessary given that the use of non-potable water for WC flushing is not precluded by the requirements in Table 7. While the Council's initial response to Mr Ritter's recommendation was that it was not suitable to make this change at this stage of the amendment process, on reflection, that is a change that would not require further advertising or re-exhibition and is well within the scope of the Panel to recommend. His wording is to be preferred over that of Mr Talacko, as it provides greater flexibility and covers all development.
37. In considering Table 7, officers realized that an exhibition requirement for water tanks for smaller developments was accidentally dropped off in a drafting exercise, this will be reinstated.

My Parcel Locker

38. Mr McQuade for My Parcel Locker has suggested that a new policy statement be included to the effect that for developments that exceed 55 residences a 24/7 parcel delivery facility be required.

39. Council does not consider that this is an appropriate addition to be made at this stage of the process, including because that concept has not been exhibited, and nor has the impact of such as change been properly assessed. Further, similar design guidance exists in the Apartment Design Guidelines for Victoria to: “Locate apartment intercoms, mailboxes and *parcel post facilities* close to the building entry/lobby where they are visible from the street and convenient and safe to access for residents and service providers.”

Mr Bartl

40. Council similarly does not consider that the concepts raised by Mr Bartl can appropriately be addressed through this Amendment.

RESPONSE TO MATTERS RAISED BY THE PANEL

41. The Panel has raised numerous questions in the course of the hearing about the DDO73 in particular. Council appreciates those questions, and the attention that the Panel has given to the detail of the critical control that the Amendment seeks to introduce. Council has sought to respond to all of those questions in the Part B submissions and in oral submissions, and would be happy to answer any additional questions that the Panel has about those matters.
42. Member Bell also raised a question about whether local policy should address productive planting as a priority, given the way in which the Green Factor Tool scoring addresses productive planting.
43. It is appropriate to first explain how the GF Tool addresses productive planting. As the Panel is aware, there are seven ecosystem services used in the GF Tool. These are:
- a) Urban temperature regulation (cooling).
 - b) Habitat for biodiversity.
 - c) Runoff mitigation.
 - d) Food supply.
 - e) Recreation.
 - f) Place values and social cohesion.
 - g) Aesthetic benefits.

44. When a proponent processes a landscape proposal through the GF Tool, the Tool assigns points to that proposal, based on how the planting scheme achieves each of the seven ecosystem services, and using a weighting system, arrives at a Green Factor score.
45. In summary, that score is given based on a number of factors, including things like where the vegetation is located, the size and type of vegetation, how accessible it is, whether it can be seen, and whether it is productive.
46. For the seven ecosystem services, productive vegetation is the only type of vegetation that is capable of achieving points across all seven ecosystem services, but only where the scheme for that vegetation is 'optimised', in the sense that it is of the right type, in the right location, and providing habitat (etc). By contrast, indigenous (non-productive) vegetation cannot achieve points for 'food production', but could achieve points in the other six ecosystem service categories.
47. For example, a productive garden at ground level, in a location that is accessible to residents, visible to the public, and providing habitat supportive of biodiversity will score more highly, than a productive garden that is elevated and not accessible, or that is not visible.
48. In that sense, it is not the case that the GF Tool gives elevated priority to productive gardens, and nor does Council seek to prioritise productive gardens over indigenous planting – rather, the GF Tool recognises that productive gardens have an additional benefit that other types of greening cannot provide; but that benefit is derived by planting productive gardens where they can actually be used by residents, rather than a whole greening scheme being based around productive plants. There may be circumstances where a productive garden is the main landscape theme (perhaps most likely for a single dwelling), however it is very unlikely that a larger development would seek to only adopt a productive garden approach to achieving the Green Factor score, as that would be difficult to maintain.
49. However, the Panel's observation was a very good one, and identified a gap in the local policy drafting. To address this, Council proposes the following additions to the policies:

- a) to clause 02.03-2:

Encourage the use of indigenous vegetation in the delivery of open spaces and green cover for buildings, while also recognising the value of productive landscapes within the private realm.

- b) to clause 15.01-2L-01 as follows (addition underlined):

Ensure building design integrates green infrastructure to ~~reduce the urban heat island effect, support biodiversity and increase occupant amenity~~ provide the following ecosystem services:

Urban temperature regulation (cooling)

Habitat for biodiversity

Runoff mitigation

Food supply

Recreation

Place values and social cohesion

Aesthetic benefits.

50. Council has also proposed some amendments to the decision guidelines in the zones to respond to a question raised by the Panel about the differences between the decision guidelines relating to above ground and below ground car parks in the context of adaptability. The proposed new decision guidelines are as follows:

- If the car parking facility is provided above ground, ~~the ability of~~ **whether** the car parking areas **have been designed** to be adapted to alternative uses over time, including whether appropriate floor to ceiling clearances are provided.
- If the car parking facility is provided below ground, ~~the suitability of~~ **whether** the car parking areas **are appropriate for to be adapted to** alternative uses over time, and if so, **whether they have been designed to facilitate adaptation, including** whether appropriate floor to ceiling clearances are provided.

CONCLUSION

51. Council has provided a 'Final Version' of the following Amendment documents with amendments since the Day 1 Version:

- a) clause 02.03-2;
- b) clause 15.01-2L-01;

- c) all zone schedules (adaptable buildings); and
 - d) the DDO73.
52. Council respectfully requests that the Panel recommend that the Amendment proceed, on the basis of those Final Versions, and otherwise the Day 1 Version. Council proposes to provide the Panel with a consolidated set of the ordinance following completion of the hearing which will identify the changes between the Exhibited Version and the Council's preferred final version.

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