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Australia's property industry

Creating for Generations

5 September 2019

Robyn Hellman
Planning Policy Coordinator
City of Melbourne
GPO Box 1603
Melbourne VIC 3001

By email: planningpolicy@melbourne.vic.gov.au

Dear Robyn,

Amendment C278

Summary of Issues

The Property Council of Australia (Victorian Division) (**Property Council**) welcomes the opportunity to make a submission on Amendment C278, which proposes to introduce a new Design and Development Overlay schedule (DDO8) to protect sunlight access to all parks across the municipality (excluding the Hoddle Grid and Southbank).

For the reasons set out in this submission, the Property Council **does not support** Melbourne Planning Scheme C278 and recommends that the City of Melbourne does not proceed with it, in its current form.

Our primary concerns are:

- The accumulative impacts of the bluntness of the planning mechanism and **the mandatory nature of the controls**, including the application of the amendment to parks in their entirety.
- The **appropriateness of the testing times** and hours proposed.
- **The drafting of the amendment documentation, in particular DDO8**, in which we believe transitional provisions should apply.

The Property Council of Australia

The Property Council is the leading advocate for Australia's property industry — the economy's largest sector and employer.

In Victoria, the property industry contributes \$45.1 billion to Gross State Product (12.4 per cent), employs more than 331,000 people and supports more than 400,000 workers in related fields. It pays more than \$21 billion in total wages and salaries per year, employs one in four of

the state's workers either directly or indirectly, and accounts for 57.5 per cent of Victorian tax revenue.

In Victoria, the Property Council has more than 500 members. They are architects, urban designers, town planners, builders, investors and developers. These members conceive of, invest in, design, build and manage the places that matter most — our homes, shopping centres, office buildings, education, research and health precincts, tourism and hospitality venues.

This submission is informed by many of the Property Council's key member representatives and expert committee members.

Impact on future development

Melbourne is experiencing a period of rapid population growth, propelled by a thriving workforce. The spike in population is driving a larger share of people and jobs into the boundaries of the City of Melbourne.

This period of growth coincides with sustained record low vacancy in office markets in Melbourne's CBD and surrounds.

Currently, the existing built form controls for sites surrounding the nominated public parks are, for the most part, discretionary and require a performance-based assessment approach to development applications, the majority of which are predicated on an equinox shadow test. The proposed controls seek to apply a mandatory 'no additional overshadowing' control for all parks, based on a far more onerous winter shadowing test.

This is of particular concern for Type 2 parks that are essentially located in areas earmarked in state planning policy as areas for substantial urban change and renewal. The amendment will remove the current discretionary performance-based measures that apply to sites adjacent to Type 2 parks, severely impacting the ability to develop the surrounding areas.

With population pressures continuing to require growth throughout Metropolitan Melbourne, the converting discretionary built form controls to mandatory controls, will have significant impact on the viability of new commercial and residential projects.

The Property Council is also concerned with the broad definition of 'park' adopted for the amendment, which has captured spaces such as the Haymarket roundabout as a Type 1 park. Even though Haymarket is not accessible for pedestrians, has extensive infrastructure within it and acts as a traffic calming device and a divider for vehicle and tram traffic, it is defined as a 'park' under the control and will severely restrict development around it as a result.

Discretionary controls that allow for the amenity and the actual utility of the land as a 'park' to be considered would ensure that the site's context, economic and social value can be measure in conjunction with public benefit and need.

Appropriateness of testing times

The proposal to revise the current policy position to shift from protecting sunlight access at the equinox to the winter solstice brings with it a significant opportunity cost – namely in preventing future development capacity in many parts of the city where policy explicitly encourages further densification.

We note that the proposal was based on park usage data and times collected in August 2017, while the recommendation proposes changes aimed at increasing park usage during the winter solstice in June.

For Type 2 parks the allowable shadow will be assessed as "the shadow that would be cast on the park by a building on land abutting a park between 10am and 3pm on June 21". The 21st of June correlates with the winter solstice which in terms of daylight, is 5 hours, 15 minutes shorter than the summer solstice, and two hours shorter than the same day in August, the month which park usage data was collected.

The data used to determine key times for park usage do not reflect actual usage figures at the winter solstice. The data measure also fails to acknowledge the high level of cloud cover during the winter months where sun trajectory makes shadowing most significant. June is amongst the cloudiest month of the year, hence implementing stricter height controls to facilitate additional sun access to parks in this month is considered cumbersome and unlikely to yield significant social benefit.

The existing policy which generally provides for sunlight protection within the study area between 11am and 2pm at the equinox is sufficient to ensure opportunities for people to access sunlight throughout the day for a variety of uses, without compromising opportunities for development.

It is our view the proposed controls should have a discretionary element within them to allow for architectural innovation. The current wording of DDO8 allows no discretion for minor overshadowing within all park types during the prohibited shadowing times on June 21.

We also consider there should also be an assessment of the actual shadow impact as presently exists in some current controls in the Melbourne Planning Scheme (such as DDO10) and whether the overshadowing would 'unreasonably prejudice the amenity of the space.'

Lack of transitional provisions

The current drafting of DDO8 contains no transitional provisions. If the controls are approved as is, any application in the system that has not been issued a permit at the date of gazettal would need to be amended to comply with the mandatory nature of the DDO8.

This is not considered a fair or just introduction of a planning control. Our view is applications which have been lodged with the Responsible Authority should be assessed under the Planning Scheme at the time of lodgement, which reflects current best practice in Planning Scheme amendments.

Next Steps

If you require further information or clarification, please contact Emily Young, Senior Communications and Policy Advisor, on 0447 020 329 and eyoung@propertycouncil.com.au.

Yours sincerely,



Cressida Wall
Executive Director, Victoria
Property Council of Australia