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Chair

Affordable Housing Industry Advisory Group

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City of Melbourne Amendment C309 (West Melbourne)

Submission by the Affordable Housing Industry Advisory Group

4 February 2019

The Affordable Housing Industry Advisory Group (the Advisory Group) welcomes the opportunity to provide comment on Amendment C309 (West Melbourne).

This feedback is made in relation to the Affordable Housing aspects of the proposed Amendment.

Overview of the Advisory Group

The Advisory Group comprises of representatives of Victoria's leading residential development and community housing peak bodies, private and not-for-profit development and financing organisations, as well as reputable industry advisers. A list of members is set out in Attachment 1.

The Advisory Group is committed to utilising its cross-industry expertise and experience to inform and influence government decision-making to ensure that Affordable Housing related policies are viable and sustainable in the long-term, underpinned by an understanding of the market context, community housing sector capacity, development economics and assessment of risk, and are structured to support industry co-investment.

The Advisory Group respects the individual views of its members and member organisations. The Members may make submissions to the Amendment process that provide other feedback and views for the City's consideration.

Land-use planning and Affordable Housing

The Advisory Group commends the City of Melbourne for recognising the importance of Affordable Housing to the sustainability and productivity of the city. Significant investment by Federal and State Governments is required to address this need.

The Advisory Group shares the view that land-use planning is one tool that can be drawn on to facilitate the delivery of Affordable Housing if the mechanisms are appropriately structured, cognisant of development economics and processes, and meet the requirements of key stakeholders to co-invest. It is expected that planning system approaches will only support a modest contribution towards meeting demand.

The Advisory Group is supportive of the State Government's Affordable Housing planning negotiation framework (<https://www.planning.vic.gov.au/policy-and-strategy/affordable-housing>) and was active in informing the development of this policy. The emphasis by the State on voluntarily negotiated planning approaches that clearly identify value generating outcomes that enhance site outcomes and in turn, the viability of delivering Affordable Housing is particularly noted.

Submission in relation to Amendment C309

The Advisory Group understands that the basis of the City of Melbourne's position in relation to Affordable Housing delivery is that:

- I. The delivery of 'up to 6 per cent' Affordable Housing is not a mandatory requirement, rather proponents 'should' deliver on this objective or provide Council with evidence as to why they cannot meet a 6 per cent inclusion (with the evidence subject to review by Council);
- II. The change in zoning to Special Use Zone in the Flagstaff, Spencer and Station Street precincts will, according to advice and testing undertaken for the Council by SGS Economics and Planning, result in a greater land use outcome (i.e. increased yield) and therefore improved land value, subject to the floor area ratio take-up by land owners;
- III. The City of Melbourne together with the State Government is committed to making significant investment in infrastructure in the West Melbourne area that is expected to further enhance the precinct and in turn, land values;
- IV. The gifting of 6 per cent Affordable Housing is considered to be viable in the areas nominated within the Schedule on the basis of the independent advice provided to the Council by SGS Economics and Planning;
- V. The 6 per cent Affordable Housing is expected to be delivered within the maximum Floor Area Ratio of a site as opposed to the Central City controls under C270, where it only operates within the Floor Area Uplift;
- VI. The City of Melbourne has elected to not put in place a Floor Area Uplift arrangement in West Melbourne as has occurred in the CBD and Fishermans Bend as additional yield is expected to be achieved through the new zoning and Floor Area Ratio provisions, and considers this provides the required certainty to all stakeholders on the development potential of a site; and
- VII. Registered housing providers are the intended recipient of dwellings generated and gifted or held under trust for an Affordable Housing purpose.

The Advisory Group provides the following submission that is focussed on the potential issues and challenges relating to the practical implementation of an Affordable Housing inclusion in the way that appears to be envisaged by the Schedule.

On a technical matter the Advisory Group recommend the terminology within the Schedule that refers to a 'Housing Provider' (Clause 2) is amended to read "a registered agency", being a "registered agency" under the Housing Act 1983 which means a registered housing association or a registered housing provider (Housing Act 1983, Section 4).

1. The Group supports in-principle, the City's endeavours to take an evidence-based approach to developing policy that takes in to consideration development economics when considering the inclusion of Affordable Housing within a planning framework. The Advisory Group notes that this reflects the guidance set out by the State Government in relation to pursuing voluntary planning agreements.
2. The Advisory Group does not dispute there is a significant demand for Affordable Housing across Greater Melbourne but emphasises that the level of Affordable Housing need does not automatically equate to a percentage of housing that may be reasonably and viably delivered through the planning system. The Advisory Group emphasis that Commonwealth and State Government investment is critical if the expected level of need is to be adequately addressed.
3. The Advisory Group has not assessed whether a 6 per cent Affordable Housing inclusion (or any other percentage) will be feasible in the identified precincts or reviewed in detail the assumptions and modelling set out in the SGS Economics and Planning *Economic and Employment Study Part 2* (2017).
4. The Advisory Group emphasises that the delivery of Affordable Housing will only occur if it is economically viable for the land owner and in turn the developer to deliver the overall development and carry the costs of the Affordable Housing component, and for a registered housing agency to meet operating costs. It is critical that there is clarity as to how the inclusion is to be funded and certainty that these costs are not passed on to other purchasers during the development phase and that other costs such as body corporate fees are considered.
5. The inclusion of a 6 per cent requirement is recommended to be further assessed in light of other requirements proposed for the precincts, in particular the requirement for a mandatory commercial or retail floor space component. The Advisory Group recommends caution in mandating requirements that are predominantly market-led, and the potential consequences this can have on development progressing.
6. The Advisory Group recommends that further details on the feasibility underpinning the SGS Economic and Planning assumptions in relation to development viability and the proposed 6 per cent Affordable Housing inclusion is made available for land owners and the development industry to consider and assess. Specifically, the assumptions on development and financing costs and assumed rates of return and calculation methodology sitting behind the residual land valuation calculations need to be transparently set out for review. Further consideration and analysis is also recommended to be undertaken on the potential impact of the combined minimum non-residential use and Affordable Housing inclusion on feasibility and the impact of development contributions on viability depending on the acceptance of the assumptions underpinning the original assessment.
7. The Group is highly supportive that agreed and viable Affordable Housing outcomes are gifted to a registered housing agency and recommends the process provides for early engagement with registered housing agencies to support determination of the dwelling profile (bedroom mix), location within the building, and to ensure the gifting will be viable from a long-term operational and maintenance perspective.

8. This allocation will provide the required comfort that the dwelling will be appropriately managed and allocated to households in need of Affordable Housing without the need for the Council to set allocation requirements or impose ongoing restrictions on title through a Section 173 Agreement.
9. The Advisory Group recommends that a Section 173 agreement between the land owner and the responsible authority in relation to the development of an agreed percentage of Affordable Housing sunsets once the transfer of a dwelling to a registered housing agency occurs. The purpose and regulation of this sector ensure the intended Affordable Housing outcome are appropriately managed over time.
10. If the Council seeks for a Section 173 agreement to remain on title it is important it is not overly constrictive as to limit the capacity of the registered housing agency to manage the dwelling on a sustainable basis over time. Any conditions relating to the use of the property as Affordable Housing should have a term such as 'life of the building' and/or provide for the ability for the housing provider to seek the City's support for the dwelling to be sold if required, for example due to high operating or replacement costs or a change in Affordable Housing need.
11. The Advisory Group note that whilst draft Schedule states that the land owner "should" include 6 per cent Affordable Housing and has been advised by Council officers that it is not a mandatory requirement (a 'must'), the onus as currently set out in the Schedule sits with the land owner/developer to prove why it cannot deliver the outcome.
12. The Advisory Group note that the Amendment states "at least 6%" should be delivered and the proposed feasibility testing relates to any proposal that delivers under 6 per cent. Setting aside the question as to viability of this aspiration, clarification as to what test or process will be followed if the land owner proposes to deliver exactly 6 per cent is required within the Schedule or the words 'at least' removed to avoid uncertainty.
13. The Group's initial review of the proposal has highlighted a number of potential implementation challenges in relation to the testing of a development feasibility if a land owner does not put forward 'at least' 6 per cent Affordable Housing on a gifting basis. Of note:
 - I. There are a multitude of considerations as to what will constitute an acceptable cost and revenue assumptions and developer returns. For example, development margins vary considerably depending on a land owner's risk profile and their investor requirements, the later subject to volatile market conditions;
 - II. No current land owner will have factored in a 6 per cent gifting requirement which is not insignificant in cost. For these land owners, the cost of the Affordable Housing requirement could be transferred to the cost of other dwellings – pushing the cost of the balance of the stock up and thus potentially leading to perverse outcomes for the Affordable Housing objective, or the development will not proceed if market values can not be achieved;

- III. Land owners or developers will have invested significantly in gathering evidence and data to support their assumptions in preparing their planning application which will be based on multiple market factors, financier requirements and their risk / return profile;
 - IV. The Council or its advisers would not be privy to the commercial structures and financier requirements that drive the land owner or developer's hurdle rates;
 - V. A review could be a very costly and timely exercise if not carefully managed and may not lead to any shared agreement on assumptions and therefore agreement to viability or otherwise of the Affordable Housing requirement.
14. It is not clear what will occur if the Council did not accept the land owner's viability argument and whether the expectation is that the developer then needs to provide 6 per cent Affordable Housing as gifted stock or they will not achieve permit approval. Further, should a review of any such decision be sought by an applicant, how a review of commercial matters could be undertaken by VCAT, where it is established that VCAT does not consider commercial considerations in their reviews. The need for a timely negotiation and determination will be critical to ensuring further costs are not incurred as a result of the requirement.
15. The Advisory Group note that the achievement of a 6 per cent Affordable Housing component may depend on availability of other funding mechanisms such as Federal or State Government grants and so allowance for non-gifting models may be required and should be allowed for in any negotiation.
16. The Advisory Group recommends that should the requirement for an applicant to prove why 6 per cent gifting (or a lower rate) arrangement is not feasible be retained within the Schedule, the City of Melbourne develop and publish a clear set of guidelines and process by which the feasibility testing will occur. This is recommended to include consideration and guidance on:
- I. The level of feasibility detail required to be presented in a feasibility report;
 - II. Generally accepted assumption parameters (see point 14 below);
 - III. Dispensations that the Council may allow in order to achieve the Affordable Housing objective to ensure the costs are not passed on;
 - IV. The timeframe by which the City will test and determine the validity or otherwise of the proposition;
 - V. Parameters of the costs that may be reasonably incurred to review the developer feasibility noting the Council costs are proposed to be met by the land owner and could be significant if not managed;
 - VI. Guidance on the selection of the reviewer and the rights of the developer in informing the selection;
 - VII. Details on the process of assumption testing, for example, what setting a scope of works for any independent assessor so that all parties understand the approach to the review;
 - VIII. A process of mediation should there not be agreement to assumptions within a defined time frame.

17. As part of setting out this guidance it is recommended the Council consider publishing in advance the benchmark assumptions that it will accept and not require further validation. These should be based on robust market evidence and support from more than one independent adviser. If this occurred, then assumptions put forward by the land owner that are within agreed benchmarks would be expected to be accepted without question. Where a land owner proposes an alternative assumption, the land owner could then be required to provide the evidence that informs that assumption.
18. It will be critical that there is a clear process and timeframe for a resolution should the Council advice and the land owner's position not be resolved. This could include appointment of an independent arbitrator.
19. The Group also questions whether it is reasonable to expect the land owner/developer to be required to also meet the costs of any feasibility review undertaken by Council in a voluntary planning negotiation that is challenged by the Council.
20. The Group recommends the City of Melbourne also consider how it may support the attraction of State Government funds to meet any gap between a percentage of Affordable Housing the developer may be viably able to provide and the Council's 6 per cent aspiration.

The Advisory Group trusts these comments are useful in reviewing and considering refinements to the policy and planning approach and would welcome the opportunity to meet with the Council to discuss.

Yours sincerely



Nicola Foxworthy, Chair

Attachment 1 – Affordable Housing Industry Advisory Group Membership, January 2019

1. Common Equity Housing Limited (Chair)
2. Urban Development Institute of Australia – Victorian Division
3. Property Council of Australia
4. Planning Institute of Australia
5. Community Housing Industry Association Victoria
6. ISPT
7. Community Sector Banking
8. Bank Australia
9. Grocon
10. Frasers Property Services
11. Burbank Group
12. Stockland
13. HousingFirst
14. Housing Choices Australia
15. Haven; Home Safe
16. Unison
17. National Affordable Housing Consortium
18. MGS Architects
19. Tract Planning