

**FISHERMANS BEND PLANNING REVIEW PANEL: DRAFT AMENDMENT
GC81**

SUPPLEMENTARY INFORMATION NOTE

SIN NUMBER:	6
DATE:	28 March 2018
PRECINCT:	N/A
FRAMEWORK REFERENCE:	N/A
SUBJECT:	Floor Area Uplift (FAU) as considered under C270 controls.
NOTE:	N/A
REQUEST:	The Panel seeks information on the operation of the Floor Area Uplift (FAU) in the Melbourne Planning Scheme.

RESPONSE:

1. The Panel has sought information as to the nature of the public benefit secured by the FAU mechanism since the introduction of the FAU into the Melbourne Planning Scheme.
2. Amendment C270 to the Melbourne Planning Scheme was gazetted on 23 November 2016. Amendment C270 introduced an FAU in the Melbourne Planning Scheme.
3. Amendment C270 amended Schedules 1, 2 and 3 to the Capital City Zone and Design and Development Overlay, Schedule 10 (**DDO10**) to introduce FARs and also introduced the opportunity for an FAU with delivery of associated public benefit(s). **Attachment 1** to this SIN is a copy of the Capital City Zone, Schedule 1. **Attachment 2** is the Design and Development Overlay, Schedule 10.
4. Clause 4.0 of CCZ1 provides:

A permit must not be granted or amended (unless the amendment does not increase the extent of non-compliance) to construct a building or construct or carry out works with a floor area ratio in excess of 18:1 on land to which schedule 10 to the Design and Development Overlay applies unless:

- a. a public benefit as calculated and specified in a manner agreed to by the responsible authority is provided; and

- b. the permit includes a condition (or conditions) which requires the provision of a public benefit to be secured via an agreement made under section 173 of the *Planning and Environment Act 1987*.

For the purpose of this schedule the floor area ratio is the gross floor area above ground of all buildings on a site, including all enclosed areas, services, lifts, car stackers and covered balconies, divided by the area of the site. Voids associated with lifts, car stackers and similar service elements should be considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor.

5. All other planning controls, specifically, all the applicable built form requirements, must be met. The provision of an FAU does not justify or enable ‘relaxing’ of specified built form requirements. An application (including an amended permit) requirement within the schedules to the Capital City Zone requires the application to be accompanied by an assessment and report from an independent quantity surveyor which establishes the FAR for the proposal.
6. The requirements of the schedules to the Capital City Zone are clear in that a permit cannot be granted over 18:1 unless a public benefit is provided and is secured via a s173 agreement condition. The provision of an FAU is voluntary.
7. A local policy, Clause 22.03: Floor Area Uplift and Delivery of Public Benefits (**Clause 22.03**) (**Attachment 3**) was also inserted into the Planning Scheme by Amendment C270 and guides the exercise of discretion. Clause 22.03 requires that in considering any FAU the Responsible Authority, in consultation with the receiving agency of the proposed public benefit(s) must assess whether the FAU is appropriately matched by the public benefit(s) to be provided, by considering the following:
 - whether the public benefit(s) is consistent with state and local policy, strategic initiatives and relevant guidelines; and
 - whether the quantity and value of the Floor Area Uplift has been appropriately calculated and the proposed public benefit(s) is of a matching value; and
 - whether the proposed public benefit(s) can be realistically delivered and secured by a suitable legal agreement; and
 - whether the proposed public benefit is supported by the proposed receiving agency and can be maintained for a reasonable period of time.
8. Clause 22.03 references a guideline: ‘*How to Calculate Floor Area Uplifts and Public Benefits, Department of Environment, Land, Water and Planning (as amended from time to time)*’ (**the FAU Guideline**) The most recent version of that guideline is dated November 2016.
9. The FAU is that part of a building without which the building would not exceed a floor area ratio of 18:1. The value of an FAU is calculated in accordance with the Floor Area Uplift Calculation Schedule provided in the FAU Guideline.
10. A Public Benefit should be within a Public Benefit category listed in the Public Benefits Schedule, and will be valued in accordance with the Public Benefits Schedule. Public Benefits listed in the Schedule are:
 - Publicly accessible open space areas on site (additional to any public open space contribution under Clause 52.01 of the Planning Scheme).
 - Publicly accessible enclosed areas within proposed building.

- Social housing within proposed building.
 - Competitive design process for design of proposed building.
 - Commercial office use on site or within proposed building.
11. The Guidelines provide detail on the requisite components of various categories and the valuation method to be applied. The public benefit must be provided on the permit site. The Public Benefit must be of equal or greater value than the value of the FAU that forms part of the proposed development. The value of the public benefit is determined by the Responsible Authority in line with specified Gross Realisation Values (**GRV**) per square metre in areas affected by DDO10 (see **Tables 1 and 2 of the FAU Guideline**)
 12. The GRV's inform the initial discussions with proponents and the value of the public benefit is indexed from the date the permit is issued. The agreed FAU is secured by way of permit condition requiring preparation of a legal agreement under Section 173 of the *Planning and Environment Act, 1987*.
 13. The specified GRV rates included within the reference document '*How to calculate floor area uplifts and public benefits*' is to be reviewed by the Minister for Planning in consultation with the Melbourne City Council annually by 1 July with any updates taking effect from 1 January following. A review was undertaken prior to 1 July 2017. No increases were made to the GRV rates at that time.

Operation of the FAU provision to date

14. To date there have been three planning permits granted which include an FAU. The Minister for Planning was the Responsible Authority for two of the permits granted. The Melbourne City Council was the Responsible Authority for granting one permit.
15. There is one other application which is currently the subject of a Notice of Decision to Refuse a Permit which is the subject of an Application for Review before the Victorian Civil and Administrative Tribunal relating to 97 Franklin Street.
16. See the Table below which sets out the relevant details of the permits issued which include an FAU and Public Benefit.

Permits issued within the City of Melbourne which include a Public Benefit

Address, Permit number and date of issue	Permit Allows	FAR	Nature of the Public Benefit and mechanism for securing its implementation
<p>263-283 Spencer Street, Docklands</p> <p>PA1600197 issued 21 June 2017 by the Minister for Planning</p>	<p>Construction of a building, development of the site for a helicopter landing, provide car parking in excess of the car parking rates in PO 1 vary an easement, waive visitor bicycle parking requirements, alter access to a road in a RZ1.</p>	<p>21.83:1 (112,123m² GFA above ground / 5,136m² site area)</p>	<p>Public benefit secured is 38,553 square metres of office with a s 173 Agreement with the Melbourne City Council to secure the office use for 30 years from the date of issue of the occupancy permit (which exceeds the 10 year minimum provided in the FAU Guidelines).</p>
<p>97 Franklin Street, Melbourne</p> <p>VCAT proceeding. No: P421/2018 Permit Application No. PA1700226 Hearing listed 6 August 2018</p>	<p>Demolition of the existing building and construction of a mixed use development comprising student accommodation, retail premises and office, display of business identification signage and a reduction in the visitor bicycle parking.</p>	<p>23.3:1 (46,653m² GFA above ground / 2,000 site area)</p>	<p>A Notice of Decision to Refuse a planning permit was issued on 5 March 2018.</p> <p>The application proposed provision of an Office and pedestrian link as a public benefit under the FAU.</p> <p>The application was considered unacceptable on built form grounds.</p>
<p>PA170207, issued 31 December 2017</p> <p>150 Lonsdale Street, Melbourne</p>	<p>Demolition of existing buildings, construction of a multi storey office building and reduction in the loading bay requirements in accordance with the endorsed plans.</p>	<p>23:1 (76,445m² GFA above ground / 3,375m² site area)</p>	<p>Public benefit secured is office of 20,090m²</p> <p>Permit requirement for a s 173 Agreement with the Melbourne City Council to secure the office use for 10 years from the date of issue of the occupancy permit.</p> <p>The office use is defined as 'land used for administration or clerical, technical, professional or other like business activity. No goods or materials intended for manufacture, sale or hire may be stored on the land' which must be physically separated and administratively independent of any other use within the building.</p>
<p>204-208 King Street, Melbourne</p> <p>TP-2016-1105/A granted 4 August 2017 (City of Melbourne, the Responsible Authority)</p>	<p>Partial demolition of the existing building, development of a multi-storey mixed use tower, and alteration of access to a Road Zone, Category 1, in accordance with the endorsed plans</p>	<p>20.6:1</p>	<p>Provision of offices. The permit includes a requirement for a section 173 Agreement which acknowledges the provision of a public benefit, namely the office use of Level 1 and Level 2 of the building which must be secured for a minimum of 10 years from the date of issue of a certificate of occupancy for the building.</p>

ATTACHMENTS:

- Attachment 1:** Capital City Zone, Schedule 1.
- Attachment 2:** Design and Development Overlay, Schedule 10.
- Attachment 3:** Clause 22.03: Floor Area Uplift and Delivery of Public Benefits
- Attachment 4:** *How to Calculate Floor Area Uplifts and Public Benefits, Department of Environment, Land, Water and Planning (the FAU Guideline) November 2016*
- Attachment 5:** *Guideline: Shaping Melbourne's Central City, Melbourne Amendment C270: Development that enhances Melbourne, November 2016.*