



**Submission from**  
**Darebin City Council**  
**To**  
**The Parliament of Victoria**

**STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES**

**Inquiry into the Public Housing Renewal Program**

## **Introduction**

Darebin City Council welcomes the opportunity provided by the Standing Committee on Legal and Social Issues to make a submission to the Inquiry, and to further inform the Committee's review of the Public Housing Renewal Program. Council recognises there is a significant shortage of affordable housing stock throughout the municipality and broader metropolitan Melbourne, and strongly values the importance of investing in and delivering diverse, affordable, equitable and accessible housing for all residents.

Council is extremely concerned by the Victorian Government's approach and funding model to sell off State Government land to the private sector, as a means of renewing social housing estates, including the current proposal to redevelop the Walker Street estate in Northcote.

This submission has been informed by the information provided by the policies and data published by the Department of Health and Human Services (DHHS) with regards to;

1. Broad social and public housing Policy
2. The Public Housing Renewal Program (PHRP )
3. Local needs
4. Feedback from tenants and neighbours of the walker street public housing estate in Northcote.
5. Council's role as both a planning authority and responsible authority under the Planning & Environment Act (1987)

## **Broad social and public housing Policy**

Council's clear position is that it strongly endorses increased investment and delivery of additional public housing. Council recognises the social and economic importance of the basic need of shelter for our most disadvantaged population cohort. Well located public housing in our inner City is a valuable resource and enables vulnerable elements of our community to participate in the community and be best placed to break the cycle of welfare dependency..

With increasing house prices and levels of wealth in the City of Darebin, social disadvantage is increasing as low income households are being priced out of the inner city and are forced to seek alternative accommodation or homelessness. It is Council's view that the rising wealth and housing costs comes with a Government responsibility to house those 3085 households waiting for public housing in Darebin (Victorian Housing Register September 2017). Council acknowledges that whilst the PHRP represents much needed investment in public housing, it is short sighted and inadequate in its response to the housing crisis.

Given the short term thinking behind the PHRP, Council calls upon the Standing Committee to request an urgent suspension of the program until the Inquiry brings down its final recommendation. The main reason for this urgency is that through genuine engagement with public housing tenants from the Walker Street estate, genuine concern regarding the relocation of tenants has emerged as a reoccurring concern. Many residents have resided in the Walker Street estate for many years, some since 1976, are concerned that they will be relocated to housing estates which are located far from their local social connections, schools, medical and other familiar facilities. Despite their clear concerns expressed not only to Council, but also to State Government officers, many residents will be transferred from Walker Street with no practical right of return and no guarantee of security of tenure. This is despite Council offering viable alternatives to DHHS for residents to remain in the local community.

We encourage the committee in its consideration of "other relevant matter" to provide the opportunity to hear first- hand from affected residents.

Council submits that the premise behind PHRP in its current form is fundamentally flawed due to reliance on selling valuable inner city public land to private developers. Research from Shaw, Raisbeck, Chaplin and Hulse (2013) in evaluating the Kensington Banks project highlights the large gains achieved by the developers in contrast to the modest gains made to public housing stocks. The PHRP is short term in its thinking and its approach to selling off public land in the absence of a long term plan to closing the gap on public housing waiting lists is irresponsible. The State needs to re-think the current model and provide a plan that demonstrates how the growing housing need might be reduced prior to locking in decisions relating to the land that we would contend is needed to be part of a longer term solution.

Privatising this valuable land (i.e. the transfer of Title from the Director of Housing to the new owner), dilutes the protection for tenants currently enjoyed under the State Government as landlord. Council is concerned that this process sets up the legal and regulatory pre conditions for the eventual divesting of ALL public housing from these sites. Adding to this concern is the fact that the

he State Government have been unwilling to guarantee that public housing will be protected in perpetuity within public ownership despite numerous requests from Darebin Council.

The first order principle for government is that it must protect public assets for our most vulnerable citizens.

### Responding to relative need

The PHRP is not commensurate with the urgent need for public housing. On the assumption that people on the waiting list are generally 'worse off' than households in public housing, the \$185M PHRP should be invested in new additional housing.

Under stage 1 the PHRP is expected to deliver 110 new properties ('Homes for Victoria' Page 33)

Darebin Council supports improving the physical conditions of the existing public housing estates. As a first step this could be addressed by reinstating appropriate recurrent maintenance budgets which have been drastically cut by successive State Governments.

### Abrogation of Human Rights responsibilities

A critical concern for Council is the State Government's stated intention to remove third party appeal rights for tenants under the PHRP.

This is clear breach of the Charter of Human Rights and has contributed to a high level of unnecessary anxiety among tenants.

#### **1. The adequacy of a proposed 10 per cent increase in public housing (or 1,100 public unis) on the sites given the size of the waiting list for public housing Proposed 10 % uplift**

The notion of a 10% increase in public housing is misleading as there is a net reduction in accommodation of these planned redevelopments. An analysis of the proposed Walker Street redevelopment will demonstrate a reduced opportunity to house public tenants. Council contends that the post development capacity of the Walker Street-re-development will be reduce by at least 33%. This is based on a reduction in the total bedrooms available to public housing tenants from 204 to 138. Further compounding this is the pledge by the Minister for Housing to re-house all existing tenants which if undertaken due to the large family composition and use of the DHHS rationale of convertible dwellings would drop the dwelling yield from 95 to 58. Council has a strong understanding of the residents currently housed at the Walker Street estate, and therefore know that the re-housing options create the need for 52 three bedroom dwellings when only five are proposed. Converting 1 and 2 bedrooms as was stated recently by DHHS at their information sessions to residnets

requires the consumption of 37 dwellings to re-house the families currently living at Walker Street.

The current demand for public and social housing in Darebin is;

1. A waiting list of 3085 ( Victorian Housing Register)and
2. To restore the loss of 1006 public and social housing properties between 2008 and 2016 (ABS Census 2016: 3301 properties in 2008 and 2235 properties in 2016)

Based on this need the redevelopment of any public housing sites should generate a maximum site yield (based on local planning schemes) made up of 100% public and social housing. It is important to highlight there is no evidence in an Australian context for sites such as those proposed to be developed in the inner suburbs to produce negative social impacts. Council's own experience with Walker Street suggests there is no stigma attached to this site being entirely public housing. DHHS should be asked to produce evidence to show the contrary and to demonstrate the social benefits achieved through private redevelopment being facilitated on this site.

## **2. Ability to cater for all demographics including families, couples and singles**

The housing mix on the Walker street estate has a provided the basis for a successful community over many decades. Based on this success, any redevelopment (based on 100% public and social housing) the current stock mix should be retained, which currently comprise:

- 60% 3 bedroom
- 14% 2 bedroom
- 26% 1 bedroom

There is however support for the adaptive model where the housing mix can be readily converted to support changing needs. Unlike what is currently proposed at Walker Street this needs to be undertaken to ensure the public housing capacity of redevelopments is not reduced. In the example of Walker Street, the Housing Minister's pledge to rehouse existing tenants back into the site presents a problem when the 3 bedroom composition is going from 53 to 5. Many of the residents at Walker Street are families that need 3 bedrooms. The response by DHHS is that many of the proposed dwellings will be convertible as was shown earlier results in a reduction in yield from 95 to 38 dwellings.

If adaptable dwellings are to be used to support then additional dwellings should be developed where 1 and 2 bedroom dwellings are proposed to be converted to family accommodation.

### **3. Effects on current Public Housing Tenants**

Based on extensive community consultation undertaken by Darebin City Council at both the Walker Street Estate and Penola Ave, Preston, the primary concerns from tenants continue to be;

1. A strong desire for assurance for security of tenure in perpetuity as public tenants.
2. A practical right of return to their community with no change to their lease.
3. The transfer of their lease to a social housing provider where their lease is not guaranteed and there is likely to be an increase in core rent from 25% to 30% of household income and higher service fees.
4. That DHHS will use this process to impose any downsizing provisions.
5. That DHHS pay for suitable private accommodation for those individual families who cannot be accommodated in alternative public / social housing that is deemed safe, stable fit for purpose or in proximity to health and social services needed by their household.

Darebin Council and residents continue to receive conflicting information from DHHS with regards to these issues providing little comfort to residents who are increasingly growing concerned and anxious about being dislocated from their local community.

In the context of gentrification in Darebin, Public housing and social housing are the only tenure types that contribute to an authentic social mix (4% of all housing stock in Darebin). Many of the public housing developments within the inner suburbs benefit from proximity to services and higher amenity. These developments are free of the stigma referred to in international research and are a testament to the inclusiveness of our communities.

Council is concerned that the sale of public land provides a point of no return for the Government and removes any future opportunity to make in-roads into growing public housing waiting lists. The PHRP should be placed on hold until the Government produce a long term plan that demonstrates that the sale of public land for private development will not impinge on the opportunity for Melbourne's growing public and social housing needs to be addressed.

In the absence of any Inclusionary zoning or other regulatory instruments, public housing land should be protected for public housing.

### **4. Increase in density and any local environmental impacts**

Based on Council's experience with the Walker Street estate redevelopment proposal, there is significant concern that developments are 'yield-led', rather than being site responsive. This concern was highlighted by DHHS's inflexibility in retaining a number of existing trees located around the perimeter of the site, based on the impact of reduced yield as a result of providing additional setbacks to retain the trees. Further concerns also exist on the failure of the initial design concept response to the Merri Creek with the alignment being fronted by a structured carpark rather than enhancing the passive recreation and walking opportunities along the creek reserve. As highlighted in Council's submission to the Standing Advisory Committee (Appendix 4)...

## **5. Planning Implications**

The removal of Planning Authority responsibilities and at the same time repealing third party appeal rights, the State Government is privileging the rights of developers over the protection of communities and disadvantaged groups. As has been argued in Council's submission (attached) before the Standing Advisory Committee in relation to the Walker Street re-redevelopment this process is a clear demonstration of policy on the run, with many errors and oversights being highlighted. Council's submission to the Standing Advisory Committee demonstrates the deficiencies in the process and draws out clear examples of issues with the proposed planning mechanisms. The issue with this process and then the handover of facilitated private development processes without further public notice and third party appeal opportunities is that the process of getting here has been sloppy and there is a genuine fear of the 'devil being in the detail'.

The issue here however is the community will not have the opportunity to view or participate in any way over the scrutiny of the detail that has been lacking in the process so far and likely to inform valid opinion on the merits of any redevelopment plans. It seems improper to offer private development such advantages with facilitated planning approvals where value is added to a proposal through removal of notice and review entitlements from the community that will be affected. There are insufficient tangible benefits for this outcome given the net loss of accommodation for public housing tenants.

### **Transparency and genuine community consultation with affected residents, neighbouring communities and the broader Victorian community**

A fundamental flaw in the whole process has been the community engagement process, which has not been an authentic community engagement process. DHHS undertook generic community consultation sessions which combined the technical planning consultation with the tenant and community consultation. This was confusing and particularly confronting for tenants. It is acknowledged that these stakeholders have inherently different issues and should be treated as such. Most of the tenants at Walker Street were fundamentally concerned about the basic needs of

shelter and social connectivity, and had limited understanding about the importance and relevance to them of the proposed planning controls for the site at Walker Street. Further to this many translators that with the best of intentions were made available to residents, were left struggling to interpret the technical information that was being presented at the information sessions. On the other hand, the community are typically concerned about amenity impacts and the built form outcomes of future development. These very different needs of tenants and the community were not acknowledged nor treated with due sensitivity.. It seemed somewhat inappropriate to have tenants sit through what was a very high level discussion on planning instruments, conceptual plans, drawings, designs and future planning processes, which ultimately had little relativity to their core concerns.

The PHRP advisory committee terms of reference and membership reinforced the privileging of technical aspects of the program with no capacity or clear mechanisms for other legitimate community concerns, nor a social housing expert to sit on the advisory committee. Council submits that this unbundling of social considerations is contrary to the intentions of the Planning & Environment Act (1987) which through its objectives seeks to ensure social, economic and environmental considerations are integrated in decision making.

#### A typical case study

The community engagement sessions were attended by DHHS staff and consultants that were not senior enough, skilled enough or prepared enough to provide clear information about tenant concerns beyond the technical and regulatory aspects of the redevelopment.

At a community engagement process conducted by Council it became clear that Walker St residents and neighbours were still unaware of the proposal of a public / private mix, despite meeting 3 times with DHHS staff.

Further, despite promises from DHHS staff residents' concerns were not documented or reflected in any subsequent drafts of the concept plans.

When challenged DHHS staff was obfuscating and incomprehensible

#### Best practice models for Public Housing

Prior to 1980 Australia could proudly demonstrate a robust need based public housing system underpinned by Governments and broader community support.

This submission recommends a 'back to the future' approach to public housing.

#### Starting point

In an era of less wealth and great obstacles to overcome in terms of a housing shortage immediately after World War II, Australia built from 'scratch', a public housing system that by 1996 grew to 326 000 dwellings (or 5.2% of the total housing stock). Yet, by contrast, one-and-a-half decades later, and in a context of a long economic boom and considerably greater wealth, in 2011 dwelling numbers had fallen to 315 000 or about 4.1 per cent of the stock.

### What has changed?

Although there have been a complex array of global (indirect) and local factors, the two main factors in the continuing demise of public housing are;

1. A policy philosophy where public housing (social housing) is no longer valued as it was; and
2. A steady contraction in funding for social and public) housing from the 1980s onwards.

These factors have been created and built on by Governments of all political persuasions both Commonwealth and State.

Australia was one of the more enthusiastic nations to implement market liberalism. (Henderson 1995). It created new business opportunities, such as the growth of financial services following financial deregulation. But it has also meant a number of other changes, both intended and unintended.

Consistent with the emergent economic and social management philosophy of economic rationalism or market liberalism, direct housing provision has diminished in political support since the 1980s. There was the belief that indirect assistance through demand-side funding, for example Commonwealth Rent Assistance (CRA), was a more effective form of housing assistance than direct housing subsidy (Hulse, 2007). This was also reflected in Victoria with a shift from investment in bricks and mortar to targeted subsidies for individuals.

The major lever for the funding of social housing up until 2008 was the Commonwealth State Housing Agreement (CSHA). This saw, at each negotiation, a weakening of the funding base for social housing supply but at the same time initiated program reforms and performance measurements which unintentionally ramped up the cost of delivery of social housing, particularly for public housing which had less of a history of managing complex need households.

In the face of rising house prices in Melbourne the failure of successive Governments to invest in an adequate supply of social housing will produce indirect economic impacts, including difficulties to access key workers, the cost of social dislocation and reduced opportunity to address welfare dependency.

**Conclusion** Council welcomes the review by Standing Committee on Legal and Social Issues to make a submission to the Inquiry, and sees this as an opportunity to improve the outcomes of a well-intended but poorly planned program. Council is strongly in support of increasing the number of social housing dwellings, based on demand, however, are deeply concerned that the Program is focused more on the short term political gains, rather than forming a positive step towards a long term solution to Victoria's public housing and housing affordability crisis. Council requests that the Public Housing Renewal Program be placed on hold pending the delivery of a more concrete and evidence-based future plan for public housing renewal across metropolitan Melbourne. This long term approach must deliver a more genuine solution for Victoria's future public housing needs and place a stronger emphasis on ensuring Victorians retain a higher level of benefit from valuable publicly owned land.

**Attachment 1****Proportion of social housing (Public housing plus Community Housing) stock of all dwelling stock, states and territories, 2011**

<b>State</b>	<b>Proportion of social housing stock of all dwelling stock</b>
New South Wales	<b>5.2%</b>
Victoria	<b>3.4%</b>
Queensland	<b>4.1%</b>
South Australia	<b>7.4%</b>
Western Australia	<b>4.7%</b>
Tasmania	<b>6.2%</b>
Northern Territory	<b>14.7%</b>
ACT	<b>7.8%</b>
Australia	<b>4.1%</b>

Source: ABS Census of Population and Housing 2011

## Attachment 2

### Public rental housing as percentage of total housing stock, capital cities and Australia, 2011

<b>Capital City</b>	<b>Public rental housing as percentage of total housing stock</b>
Brisbane	<b>3.7%</b>
Sydney	<b>4.1%</b>
Melbourne	<b>2.5%</b>
Adelaide	<b>6%</b>
Perth	<b>3.1%</b>
Hobart	<b>5.9%</b>
Australia	<b>4.1%</b>

Source: ABS, Census of population and housing, 2011

### Attachment 3

#### Commonwealth expenditure on public housing, 1981–2011

Year Commonwealth / State Housing Agreement (CSHA)	Expenditure
1981	\$3.9B
1984	\$3.5B
1989	\$2.1B
1996	\$1.8B
2003	\$1.8B
2008	\$1.3B

Source: Advisory Council for Inter-Government Relations 1985, SCRGSP 2006–2013

Under the Commonwealth / State Housing Agreements (CSHA) the States provided matching funds for public housing. The CSHA was abolished in 2008.

**Date: 10 October 2017**

## **APPENDIX 4**

**AMENDMENT C158 – DAREBIN PLANNING SCHEME**

**SOCIAL HOUSING RENEWAL STANDING ADVISORY COMMITTEE**

**WALKER STREET AND HIGH STREET, NORTHCOTE**

**SUBMISSION ON BEHALF OF DAREBIN CITY COUNCIL**

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## INTRODUCTION

1. This submission is made on behalf of Darebin City Council (**Council**) with respect to Amendment C158<sup>1</sup> to the Darebin Planning Scheme (**Amendment**). Council is the responsible for the administration and enforcement of the Darebin Planning Scheme (**Scheme**) and the good governance of the municipality of Darebin.
2. The Department of Health and Human Services (**DHHS**) has requested the Minister for Planning to amend the Scheme to facilitate the redevelopment of the Walker Street Public Housing Estate (**Walker Street Estate**).
3. The broad changes proposed by the Amendment will now be well understood by the Advisory Committee. In broad terms, the Amendment proposes to:
  - 3.1 rezone the Walker Street Estate from the Neighbourhood Residential Zone – Schedule 1 to the Mixed Use Zone – Schedule 3;
  - 3.2 apply Development Plan Overlay – Schedule 13;
  - 3.3 apply Parking Overlay – Schedule 1; and
  - 3.4 make various changes to the local planning policy framework (**LPPF**).
4. The Advisory Committee will be familiar with the Walker Street Estate, its surrounds and interfaces.
5. The key issues addressed by this submission relate to:
  - 5.1 Council's position with respect to the project and the Government's approach;
  - 5.2 the Amendment's response to the SPPF;
  - 5.3 the appropriateness of the proposed zoning;
  - 5.4 the issues and concerns regarding DPO13;
  - 5.5 the provision of community infrastructure;
  - 5.6 the Parking Overlay; and
  - 5.7 why the Minister for Planning should not be the Responsible Authority.

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<sup>1</sup> It is noted that the amendment number will change.

## **Council's position with respect to the project and the Government's approach**

6. Council strongly supports the objective of ensuring all of its residents have a safe place to live. After all, having a roof over your head is a basic human right.
7. Council strongly supports increasing and improving the provision of public housing at the Walker Street Estate and throughout the municipality. While Council strongly supports the State Government's decision to increase and improve the provision of social housing at the Walker Street Estate, Council strongly believes that the Government's approach to the project is misconceived as it is short sighted and fails to optimise this rare opportunity to make a significant public housing contribution within Darebin. While Council holds strong concerns about the State Government's approach, this should not in any way be interpreted as Council being opposed to public housing. Such a conclusion could not be further from the truth – Council remains an unequivocal supporter of public housing and believes that even more public housing needs to be provided within the Walker Street Estate and Darebin.
8. Despite Council's serious misgivings about the State Government's philosophical approach to delivery more public housing, it remains strongly committed to working closely with the State Government to secure more public housing within the municipality and within the Walker Street Estate. This is why Council supports some of the broad outcomes sought by the Amendment, but also feels compelled to speak out about the development model upon which the Amendment is based. Council does not want to see the community short changed in the long term.
9. DHHS has already advised the Advisory Committee that there are about 40,000 people on the waiting list for public housing with potential waiting times of up to two years.<sup>2</sup> Within Darebin, there is currently an estimated shortage of 3,085 dwellings.<sup>3</sup> Council is experiencing one of the highest increases in demand for public housing in Victoria, so this shortage of supply can only be expected to grow.
10. When faced with this reality, Council finds it very concerning that the State Government is not taking this very rare opportunity to deliver substantially more public housing at the Walker Street Estate and is proposing to hand over a substantial part of the site to the private sector. Once this happens, the land currently owned by the public will be lost forever and it is more than likely that the Government will be faced with trying to buy new land for public housing in the future.
11. Council can see history repeating itself.
12. No doubt the Advisory Committee will recall that many of Melbourne's schools were sold off during the 1990s and now, just 20 years later, the need has arisen to acquire land in these same areas to build new schools. While there may be a short-term accounting benefit

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<sup>2</sup> See paragraph 11 of DHHS' Part B Submission – Tranche A – undated.

<sup>3</sup> Victorian Housing Register March 2017.

(keeping the budget in surplus or to minimise debt), Council considers the Government's approach to be short-sighted – as to re-acquire a comparable asset will likely be impossible and will only come with a significantly greater financial burden.

13. Gentrification, and rising house prices and rents have made finding a place to live in Darebin increasingly difficult for many members of the community. Coupled with these economic forces, people, through no fault of their own, sometimes find themselves in dire circumstances and in need of public housing. This need becomes even greater for people who do not have an extended network of family and friends to call upon in hard times. Unfortunately, this has been the case for many of Darebin's residents.
14. Council agrees with DHHS that there is an urgent need for more public housing within Darebin. This is why when the State Government already owns an asset, the delivery of additional public housing ought to be maximised for that asset. In Council's view, one must ask the rhetorical question – if additional public housing cannot be funded without selling more than 50% of the proposed dwellings to the private sector, how does the government expect to have the funds to acquire more land to deliver the existing urgent need for more public housing within Darebin, or across metropolitan Melbourne for that matter?
15. The Walker Street Estate is currently home to a thriving community of about 250 people, including many children. The Estate is wonderfully located in terms of public transport, schools, open space areas and the like.
16. Council expects that the State Government will ensure that the Walker Street Estate community is not unnecessarily displaced from their homes, schools, friends, jobs and community. However, the arrangements have not been communicated clearly which has added angst within the resident population. One option would be to prioritise the construction of the Stokes/Penola Street precinct, which is 'development ready'. By fast tracking the redevelopment of the Stokes Street precinct, the State Government can minimise disruption to the lives of many vulnerable members of our community by relocating Walker Street residents to this nearby development.
17. Council maintains an open invitation to work cooperatively with the State Government to optimise the delivery of public housing (and not community housing) on the Walker Street Estate.
18. Council recognises that many of its concerns are strictly outside the scope of the Advisory Committee's terms of reference. However, they are matters of considerable economic and social importance and Council considers it is appropriate to explain its broader position with respect to the project.

## SUBMISSIONS

### Overview

19. Council recognises there is a compelling need to improve the quality of the housing currently provided by the State Government within the Walker Street Estate. Council would strongly support the redevelopment of the Estate for public housing.
20. In order to facilitate such a project, Council would support the changes proposed to the LPPF. In other words, Council has adopted a more flexible approach to built form and the interfaces with Merri Creek in order to facilitate the redevelopment of the Walker Street Estate for public housing.
21. Further, Council is conscious that the findings of the Advisory Committee will likely influence the built form and design response of 2A Cunningham Street which is currently being offered for sale.

### Response to the SPPF

22. Council acknowledges that the Amendment would implement a number of the broader housing objectives contained within the SPPF.
23. There has been much said in the submissions regarding the ability for the redevelopment to meet the needs of the existing residents. Based on the data known to Council there are 56 three bedroom dwellings within the Walker Street Estate and currently all but 4 of them are occupied by larger families needing three bedrooms. The Minister for Housing has pledged, as highlighted by the DHHS, that all tenants will be able to return after the redevelopment.
24. Given only 5 three bedroom dwellings are proposed as part of the redevelopment,<sup>4</sup> Council finds it difficult to understand how all of the residents will be able to return if they so desired.
25. Further, Council understands that there are currently 250 people residing at the Walker Street Estate. Given the project intends to primarily cater for 1 and 2 person households, adopting a very conservative approach by assuming each new social housing dwelling (95 dwellings in total) will be accommodated by 2 people, there will only be a public housing population of 190 people. If correct, the project is likely to displace public housing tenants and place additional pressure on waiting lists.
26. Returning to the SPPF, the objective of clause 16.01-1 is:
 

To promote a housing market that meets community needs.
27. One of the strategies include:
 

Facilitate the delivery of high quality social housing to meet the needs of Victorians.

[emphasis added]

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<sup>4</sup> According to the traffic assessment prepared by Traffix Group.

28. In terms of housing affordability, the objective to clause 16.01-5 is:

To deliver more affordable housing closer to jobs, transport and services.

29. Relevant strategies include:

Improve housing affordability by:

- Increasing choice in housing type, tenure and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.

...

- Encouraging a significant proportion of new development to be affordable for households on low to moderate incomes.

Increase the supply of well-located affordable housing by:

- Facilitating a mix of private, affordable and social housing in activity centres and urban renewal precincts.
- Ensuring the redevelopment and renewal of public housing stock better meets community needs.

[emphasis added]

30. In Council's view, these objectives and strategies would strongly support requiring an innovative approach to delivering a project which can meet both the current and future needs of the Darebin community. The State Government has a unique opportunity to show real leadership in delivering innovative and adaptable public housing.
31. Given the number of families currently calling the Walker Street Estate home, Council considers it is essential that they can return to the Estate if they so desire. Equally, Council is also cognisant that the DHHS expects that over time the demand for small dwelling sizes will increase.<sup>5</sup>
32. Council considers that an innovative approach to the current and expected future housing needs of the Darebin community can be accommodated. The State Government should be looking at adaptable housing designs where the number of bedrooms provided to a dwelling can be varied over time.
33. Such an approach would meet the immediate needs of the families living at the Walker Street Estate (and relieving considerable stress which has already been caused) and at the same time provide the opportunity to have public housing that can meet the needs of the community.

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<sup>5</sup> Although there may be a trend towards an increased demand for 1 and 2 bedroom dwellings, such a trend does not necessarily mean that the demand for number of 3 bedroom dwellings will actually reduce. This is an apparent short coming of the DHHS' rationale for reducing the number of 3 bedroom dwellings on the Walker Street Estate.

34. Council also questions how the Amendment will implement these parts of the SPPF when the Amendment will result in a fewer people being able to be accommodated within public housing on the Walker Street Estate.

### The proposed zoning

35. Council acknowledges that the Neighbourhood Residential Zone (**NRZ**) is restrictive. That said, on sites such as the Walker Street Estate, the NRZ provides considerable flexibility as a building which already exceeds the mandatory height limit may be replaced with a building which also exceeds the maximum building height and number of storeys. There is no express constraint on footprint of the replacement building.<sup>6</sup> It is arguable that a 4 storey built form would be permissible across the Estate. While a rezoning may be required to accommodate the proposed built form, the NRZ is not as restrictive as suggested by DHHS.
36. Council accepts that a zoning which better reflects the scale of the proposed development would be preferable.
37. Council submits that the proposed Mixed Use Zone (**MUZ**) is the wrong zone for the Walker Street Estate.
38. Planning Practice Note 78 – Applying the Residential Zones (**Practice Note 78**), provides guidance regarding the application of the residential zones. Although following Amendment VC110, Practice Note 78 was removed from the Department of Environment, Land, Water and Planning's (**DEWLP**) website, Practice Note 78 does not appear to have been formally revoked and would appear to remain in force. Although it could be argued that Practice Note 78 would have more limited relevance regarding the application of the Neighbourhood Residential Zone, General Residential Zone and Residential Growth Zone, it is important to acknowledge that Amendment VC110 did not change the MUZ in any material way.
39. The Practice Note 78 expressly identifies that the 'purpose' of the MUZ is a zone which 'enables new housing and jobs growth in mixed use areas' and will likely be applied:
- 39.1 'in areas with a mix of residential and non-residential development'; and
- 39.2 'in local neighbourhood centres undergoing renewal and around train stations, where appropriate'.
40. Council submits that the Walker Street Estate is located in a confined residential precinct bounded by Westgarth Street, High Street and the Merri Creek. Although there is land on the east side of High Street within the Commercial 1 Zone, Council considers from a land use perspective that the wide road reserve of High Street and High Street Close provides a strong physical separation from this land and High Street provides a clear physical boundary between the two areas from a land use perspective.

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<sup>6</sup> This would be consistent with the approach adopted by the Tribunal in *Keen v Bayside CC* [2011] VCAT 79.

41. Further, the Walker Street Estate is not located in a local neighbourhood activity centre or around a train station, and is not identified in the Darebin Economic Land Use Strategy or MSS as place where employment/business activity is to be encouraged.
42. For these reasons, the use of the MUZ is inconsistent with Practice Note 78 and the local policy framework, and is therefore the wrong zoning choice for the Walker Street Estate.
43. As Council understands the background reports (which are not referenced as part of the Amendment documentation), the DHHS seeks some opportunity for local business to establish and this represents one of the main reasons why the MUZ is proposed. However, the MUZ would allow too many uses, and sometimes as of right, which are considered to be inappropriate for this residential precinct. A nightclub, gaming premises and bottle shop are three examples.
44. In Council's view, the Residential Growth Zone (**RGZ**) represents the appropriate zone for the redevelopment of the Walker Street Estate. Unlike the MUZ, the RGZ places some constraints on the extent of retail and commercial activity which may take place, and would be more consistent with the Darebin Economic Land Use Strategy. Further, the MUZ does not place any limits on the floor area for shops, food and drink premise and offices. The proposed MUZ would not place any constraints on the scale of these commercial activities.
45. In circumstances where the DHHS is also proposing to introduce a DPO, Council considers such an outcome is completely inappropriate. Council forms this view because the DPO as drafted does not place any limit on the floor area such commercial uses and once the development plan has been approved by the Minister for Planning, there will be no public consultation or rights of review regarding any decisions to approve any uses on the land such as supermarket, tavern, gaming premises or nightclub.
46. Council acknowledges that the DPO, as drafted, provides that it will be consulted before a development plan is approved, however, the Minister for Planning does not appear to be required to consult on any amendments to the development plan. Council considers that this is necessary and appropriate.
47. Based on the controls as drafted, there is too much flexibility for too many different types of uses to be approved without notice to Council or the local community. Adopting the RGZ strikes the right balance and will provide some opportunity for some small retail and other uses without opening the flood gates.
48. Council expects that the DHHS will suggest that the purpose of the RGZ referencing four storeys will weigh heavily against applying the zone to the Walker Street Estate. Council acknowledges that the purpose is not a perfect fit, but finding a perfect fit is not always possible within the VPP regime. In assessing the appropriateness of the RGZ, it is critical to note that the maximum height of 13.5 metres is not a mandatory maximum height – there is discretion for higher buildings to be approved and there is no upper mandatory building height limit.

49. Importantly, given the Amendment also proposes to introduce a DPO, which should require maximum building heights to be specified, the approved development plan would provide specific support for buildings greater than four storeys, where appropriate, and would inevitably outweigh the weight that a decision maker would give to the general purpose of the RGZ. In any event, this concern is largely academic as the Minister for Planning would be making such a decision without any third party involvement, including any consultation with Council.
50. The C136, C137 and C138 Darebin Panel provides some useful guidance regarding the use of the MUZ and RGZ. At that Panel hearing, a similar debate arose regarding applying the RGZ to areas where a building height greater than 4 storeys was contemplated. The Panel, constituted by Lester Townsend, Suzanne Barker and Lynn Sweeney, observed:
- While the Panel understands Council's concerns in relation to the use of the MUZ2 to manage building height, the Panel does not share the view that it is necessary to apply this zone to deal with heights greater than four storeys.
- While the MUZ and RGZ are both from the suite of residential zones they have different purposes with different land use controls. The MUZ aims to provide a range of residential, commercial, industrial and other uses which complement the mixed-use function of the area. The RGZ is clearly more residentially focussed and so a better zone for areas where a residential use is intended.
- The Panel notes the head clause for the RGZ has a discretionary height of 13.5metres which can be amended to a mandatory height limit with the use of a schedule. No schedules to the RGZ are proposed as part of these Amendments.
- The Panel notes that using a schedule to the RGZ for heights greater than 13.5metres would set up mandatory height controls.
51. Council considers that arguments against using the RGZ on the basis of its stated purposes are too purist and academic, and overlook a zone which can deliver a practical and certain outcome for all parties particularly given Council and the local community will be locked out of the consideration of subsequent planning applications.
52. The RGZ is the appropriate zone as demonstrated by recent examples in Darebin where the RGZ has been applied to areas where buildings greater than four storeys are contemplated. The south side of Showers Street is one example and Kenwood Court is another where the RGZ and DPO have been used to achieve a six storey maximum building height. Kenwood Court is another public housing estate in need of renewal. There are also large areas along the St Georges Road corridor and the Plenty Road corridor which has land with the RGZ and a DDO with maximum building heights in excess of four storeys. These examples were all considered by the C136, C137 and C138 Darebin Panel.

### **The Development Plan Overlay**

53. Council broadly supports the use of a DPO. The critical aspect from Council's perspective is that the DPO is drafted so that both Council and the community can be provided with certainty around parameters set out in the provision. By reference to the 'provision', Council means the words and diagrams use in proposed schedule 13.

54. Council accepts that the DPO, or even the subsequent approval of a development, should not, and cannot, lock down every conceivable detail about a development. Such an approach would undermine the purpose of applying a DPO to land.
55. Applying a DPO to land in the present circumstances needs some give and take from all sides, particularly where there has been no development plan prepared and DHHS has made it abundantly clear that the material prepared in support of the Amendment cannot be relied upon. Notwithstanding, DHHS' position, it is abundantly clear that many of the witnesses have assessed the acceptability of the Amendment by reference to the parameters set out in the background material and on closer examination many of those matters are either missing altogether from DPO13 or are not drafted with an appropriate level of certainty.
56. Therefore, both Council and the community are left to rely upon the words and diagrams used in DPO13. Given the basis which DHHS' own witness have relied upon the background material, there appears to Council to be an overwhelming case to draw in aspects of the Design Framework.
57. In Council's view, if DHHS wishes to secure the benefit of a DPO, it needs to provide both Council and the community with some certainty about the parameters and extent of the redevelopment of the Walker Street Estate. This is entirely reasonable and does not hamper innovation or responsive design. In order to obtain the benefit of the DPO, DHHS needs to identify some core commitments that cannot be broken. This is the quid pro quo of gaining the benefit of a control which excludes third parties (and in this case, including Council) from future involvement in the planning process. If the Amendment is approved, the entire planning process will be undertaken between government departments.
58. At the very least, Council considers that it and community should have the benefit of knowing:
- 58.1 what will be the maximum building heights in the different parts of the Walker Street Estate;
  - 58.2 what will be the minimum setbacks to Walker Street, High Street and Merri Creek;
  - 58.3 which trees will be retained and which trees will be removed;
  - 58.4 what will be the rate of car parking provided;
  - 58.5 where will be the primary vehicle and pedestrian access to the Estate and the general location of the internal routes.
59. Based on the current drafting of DPO13, Council considers that no reliance or reference should be made to background reports which have supported the Amendment when assessing the acceptability of the DPO13. This is because none of these documents are

intended to be referenced or incorporated into the DPO13. DHHS would seem to agree this proposition.

60. Therefore, and by way of example, when the Design Framework makes reference to a maximum building height of 3 storeys to Walker Street, no weight can be given to such a reference unless it is translated into the DPO to provide certainty that this will be in fact the maximum building height along this interface.
61. In this regard, Council notes the language used in clause 3.0 of DPO13. The purported requirements use the word 'should'. No doubt the Advisory Committee will readily appreciate the non-binding nature of the chosen language.
62. Clause 3.0 sets out the 'requirements' for a development plan. As Council understands the term 'requirement' in clause 3.0, it is something which must be included in a development plan. Therefore, it is curious that under the heading 'Built Form', the clause uses the words 'the development plan should show or make provision for'. In Council's view, the word 'should' must be replaced with the word 'must' and phrase 'make provision for' must be deleted. Otherwise the language will be incapable of creating a 'requirement' for a development plan, which is the only matter which a schedule may lawfully include.
63. If the word 'should' is replaced with the word 'must', the nature of the provision would be a requirement. A matter that 'should' be done is not a requirement – it is something else, perhaps it would be a consideration or a guideline. And that something else does not have an express power to be included in a schedule to a DPO.
64. The Victorian Civil and Administrative Tribunal has also specifically considered this type of drafting in relation to a 'requirement' arising under the Design and Development Overlay.
65. In *Stokes v Melbourne CC* [2009] VCAT 364 (**Stokes**), Senior Member Byard (an experienced legal member) observed:

34 The terms of clause 2.1 in relation to building height requirements read as follows:

Buildings or works should not exceed the maximum building height...specified in the table to this schedule.

An application to exceed the maximum building height...must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the specific design objectives and outcomes of this schedule.

The height of a building or works is the height of its highest point above the permanent footpath at the centre of the site frontage. If there is no footpath, the natural surface level at the centre of the site frontage is the base level.

35 There is something I find a little odd about the wording of the foregoing quotation. It purports to relate to requirements as to building height, but a "Requirement" is normally something which must be done or satisfied. In this case, the wording is not the language of a requirement as it admits of some option. The fourth word in the first line is "should", not "must". A requirement

would say that something “must” be. “Should” admits of something other than a requirement.

66. The Advisory Committee will be aware that the head provision of the DPO provides that a schedule can only include ‘requirements for a development plan’. In Council’s submission, where the schedule uses the word ‘should’, it falls short of creating a requirement and the word needs to be replaced with the word ‘must’. To adopt any less certain form of drafting will fail to achieve a ‘requirement’ and the Tribunal’s criticisms in *Stokes* will apply.

### *Consistency with Practice Note 23*

67. Council considers that DPO13 does not sit comfortably with Practice Note 23 – Applying the Incorporated Plan and Development Plan Overlays – August 2105 (**Practice Note 23**) and that some changes are required.
68. The starting point is to recognise that the purpose of Practice Note 23 is to provide advice about when the DPO and IPO should be used. Under the heading ‘Deciding which overlay to use’, Practice Note 23 explains:

The IPO requirement for a planning scheme amendment to incorporate or change the plan enables third parties to be involved in the process of making or changing the plan. For this reason, the IPO should normally be used for sites that are likely to affect third-party interests and sites comprising multiple lots in different ownership. Most redevelopment of existing urban land will fall into this category, particularly where the surrounding land use is residential.

Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third-party interests, self contained sites where ownership is limited to one or two parties and sites that contain no existing residential population and do not adjoin established residential areas.

[emphasis added]

69. In Council’s view, the use of the DPO is not a neat fit into the guidance provided by Practice Note 23. In particular, the Walker Street Estate has a long and exposed interface to an established residential area which is unlikely to change, the proposed built form at the interfaces is likely to significantly affect third parties if it is not carefully managed, and the Estate is not self-contained. According to Practice Note 23, the IPO would seem to be a better fit.
70. Although Council does not oppose the use of the DPO, as a matter of principle, its concerns give rise to a need to ensure that both Council and the local community are provided with a clear framework for future development. By a clear framework, Council means that there is certainty as to which trees will be retained, how tall buildings will be on each part of the Estate and the minimum setbacks of the buildings. Council understands that not every piece of detail can be provided at this point in time and it is not asking for this to be provided. What Council is asking for is that the parameters or the ‘ground rules’ are clearly set out which will govern the framework within which the future development will take place.

71. If the DHHS seeks flexibility with the future development, Council submits that an acceptable level of flexibility is already built into the control. Any future permit applications will not be required to be strictly in compliance with the approved development plan but rather they will only need to be generally in accordance with it. If the DHHS seeks flexibility about these broad parameters then the DPO is submitted to be the wrong planning tool. A Design and Development Overlay would be a more appropriate control.

72. In terms of a DPO schedule establishing a framework, Practice Note 23 states:

The requirements for plan content provide the basic minimum of issues that a plan can address. Plan content is not limited by the schedule unless the schedule specifically restricts what the plan can contain. A plan must meet the schedule requirements.

The schedule provides the planning authority with a valuable opportunity to establish a strategic framework for the content of a plan and provides developers and third parties with certainty about what the plan must contain. This is particularly valuable if the plan is to be introduced after the overlay, and for all DPO plans.

[emphasis added]

73. And under the heading 'Drafting the schedules', Practice Note 23 states:

An amendment is required to introduce or change a schedule. This process provides a good opportunity to establish ground rules for the site planning process in a publicly accountable way. Example IPO and DPO schedules are shown at the end of this practice note.

[emphasis added]

74. Council agrees with DHHS that the providing a clear framework for the redevelopment of the Walker Street Estate is essential. Although the DHHS makes this broad statement, the detailed drafting of DPO13 does not reflect this proposition. This is because of the discretionary nature of the purported 'requirements' which have been included in DPO13. Although there may remain some difference between where Council and DHHS say the parameters should be drawn in this case, it is important that parameters are clearly articulated particularly given:

74.1 DHHS says the documents prepared in support of the Amendment reflect just one possible redevelopment option;

74.2 there has been no development plan which has been prepared and exhibited as part of the Amendment documentation; and

74.3 third parties, including Council, will be deprived of any formal notice and review rights relating to the approval of the plan and subsequent planning applications.

75. In these circumstances, Council and the community are entitled to know, at this stage, the actual parameters which are being proposed, particularly given this is their only opportunity to participate. Further, the development plan, once approved by the Minister for Planning can be changed at any time without the need for any notice or consultation.

76. In order to assist the Advisory Committee with responding to Council's concerns, a tracked changes version of DPO13 has been prepared. Council has also endeavoured to incorporate those changes recommended by the expert evidence which would be acceptable to Council.

### **Community Infrastructure**

77. Council considers that the proposed redevelopment of the Walker Street Estate is flawed in terms of its community outcomes. Any suggestion that the provision of social housing on the Walker Estate is an acceptable contribution to social infrastructure misses the point about providing community infrastructure. Providing community infrastructure is not the provision of a basic human right. Community infrastructure is the other infrastructure such as a maternal child and health centre, kindergarten, child care centre or the like that improve the quality of our lives.
78. There has been no commitment in DPO13 include or make a contribution to these services. Based on the drafting of DPO13, the mere opportunity to provide such services within the Walker Street Estate, falls well short of delivering such infrastructure. A commitment to delivering or contributing to such infrastructure is required.
79. Council considers that the argument presented by DHHS that the proposed construction of the social housing is the contribution towards to community infrastructure is counterintuitive. At its core, the redevelopment of the Walker Street Estate is to renew and increase the public housing currently being provided. DHHS says that private housing is necessary to subsidise this social housing project. However, to then turn the proposal into a private housing development to say that it is contributing social housing needs to be treated with caution. The argument might have some legitimacy if the project was a private development which included social housing. But this is not that case, so the asserted contribution of social housing should be treated with come caution.

### **The Parking Overlay**

80. The proposed use of the PO is curious and its utility is not obvious. This is because any application for a planning permit, whether under clause 52.06 or the PO, would be exempt from public notice by virtue of the DPO. Further, DHHS has given no undertaking that the car parking rates proposed under the PO will not be further reduced.
81. Given the concerns raised about the provision of car parking, it would be reasonable to specify the proposed car parking rates in the DPO as the applicable rate to be provided with any planning permit.

### **The Minister for Planning should not be the Responsible Authority**

82. Council denies that the Minister for Planning is best placed assess the development plan and permit applications.

83. Council is highly experienced with dealing with complex residential developments and has clear assessment and reporting processes in place that respect the community's desire to be kept informed and updated on any new or changes proposed for significant development sites. Further, Council has the in-house expertise (traffic engineering, arboriculture, urban design, planning, landscape architecture and environmental sustainability) to professionally and objectively assess the development plan and permit applications in a timely manner.
84. Further, it is said that the Minister for Planning needs to be the responsible authority so 'all aspects of the social housing renewal' can be considered. If the Minister for Planning, like Council, properly executes its role as the responsible authority, the only relevant matters that can be taken into account when assessing the proposed development plan and permit applications are planning matters. As the Minister for Planning would have no greater powers than Council when acting as the responsible authority, it is difficult to understand why there would be any advantage making the Minister for Planning the responsible authority.
85. A proposal for about 220 apartments is not a significant residential application for Darebin. Given the type of development Council has experienced over the past 10 years, Council's processes can readily deal with such an application and its officers have the necessary skills and expertise. Such an application would not be a burden on its resources as demonstrated in the recent proposals approved for Stokes and Penola Streets in Preston.

### **Terms of Reference**

86. Council considers that the Terms of Reference are too narrow. The matters raised by the SPPF clearly give rise to considerations which have been excluded from the Terms of Reference.
87. For example, the DHHS relies on the urgent and growing need for more social housing within Darebin however the Terms of Reference have effectively excluded consideration as to whether a 10% increase in dwellings will meet the housing needs of the community. Further, given the population within the Walker Street Estate that the proposed social housing is likely to support will be reduced, there is a real question as to whether the 10% number is the right number in this case and whether a different metric should have been adopted.

### **CONCLUSION**

88. Council absolutely agrees that the Walker Street Estate needs urgent investment from the State Government which has been neglected for many years. However, Council urges the State Government to immediately cease the project and revisit their philosophical approach to the redevelopment of the Walker Street Estate so the long-term needs of the Darebin and the broader Victorian community are not jeopardised in an attempt to meet short term financial targets.

89. Council urges the Advisory Committee to carefully consider the matters raised in this submission. Council requests that the Advisory Committee recommends that the Amendment be modified in accordance with these submissions and Council's marked up version of DPO13.

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Darren Wong

Planology

Lawyers for the Darebin City Council

10 October 2017