

24 July 2019

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Dear Mr Mollison,

Peer Review of Amendment C247 to the Yarra Planning Scheme

SGS has been engaged by City of Yarra to undertake a peer review of material prepared by Essential Economics¹ and Urbis² in support of Amendment C247.

In undertaking this peer review SGS has been asked to address two key questions:

- Will the Amendment undermine the employment role of the Gipps Precinct?
- Would the Amendment be inconsistent with the Yarra Spatial Economic and Employment Strategy?

This review is in four sections:

- Background
- Review of the Essential Economics and Urbis reports
- Discussion
- Conclusion.

Background

The subject site

The subject site is comprised of the lots located at 26 Wellington Street and 21 Northumberland Street, Collingwood which are known as the Victorian Distillery and Silos (VDAS) site. The L-shaped site is 2,800 square metres in area and has modest frontages to both Wellington and Northumberland Streets.

The site is zoned Commercial 2 (C2Z) in the Yarra Planning Scheme. Accommodation uses, other than caretaker's house, motel and residential hotel, are prohibited in this zone. Dwellings do not therefore constitute a permissible use on the site.

The purpose of the Commercial 2 Zone is to encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services, as well as ensuring that uses do not affect the safety and amenity of adjacent, more sensitive uses (Clause 34.02). The existing dwellings on the subject site would be considered a sensitive use.

The site is also within the Gipps Street Precinct which has been identified in the Yarra Spatial Economic and Employment Strategy (SEES) as a mixed employment precinct. The land adjacent to the south is zoned Commercial 1 (C1Z) and to the west is zoned Mixed Use (MUZ).

Current land use

¹ Essential Economics (2019) Victorian Distillery and Silos, Economic Considerations, Amendment C247.

² Urbis (2019) Victorian Distillery and Silos Consortium, 26 Wellington Street and 21 Northumberland Street.

The Essential Economics report states that there are 29 units on the site with 28 separate owners. The 16 Distillery units were developed from 1994 and occupied from 1998. They host a variety of commercial and residential uses. The Silo buildings contain the remaining 12 units. These were developed from 2002 and are all dwellings.³

The Urbis report notes that copies of the original planning permits relating to the conversion of the buildings are missing (Appendix B of their report). At the time of writing, it is unclear how the existing dwellings were permitted. Their existence pre-dates the introduction of C2Z and it is likely the site was subject to an industrial zoning at the time the dwellings were established.

The proposed Amendment

The proposed Amendment seeks to make the dwellings a permissible use on the site. The proposal, prepared by Best Hooper Lawyers, suggests that the Planning Scheme be amended to include the subject site in the Schedule to Clause 51.01 (Specific Sites and Exclusions) of the Yarra Planning Scheme to allow the use of the land for the purpose of dwellings.

The proposed incorporated document includes the following site-specific control: “Use of the Land for the purpose of ‘dwellings’, generally within the building envelope of the existing building”. This provision would limit the extent of the use for dwellings to the existing built and, therefore, preclude the addition of further floor space for dwellings.

Review of Essential Economics and Urbis reports

Essential Economics assessment of economic considerations

Essential Economics were engaged by Best Hooper to provide advice on economic considerations to support Amendment C247. They considered Council’s relevant planning strategies and completed a land use survey of the area surrounding the subject site.

Essential Economics conclude that “the inclusion (of the dwellings) would not adversely affect the employment focus of the wider area described as the Gipps Street Precinct” (page 19).

The main arguments put forward in support on this conclusion include:

- Allowing dwellings on the site is “significant in contributing to economic innovation through business contacts and activity” (page 8), and, therefore aligns with the SEES aspiration to foster innovation.
- The presence of dwellings on the site “has not diminished the business and employment role of the zone” (page 8).
- If the 29 units on the subject site were converted to employment uses it would accommodate only a “negligible share” of the employment growth forecasts in the SEES (page 16).
- The “transformation of the VDAS buildings to residential uses is an appropriate form of redevelopment of the original buildings” (page 14) and the units are not suitable for office-type uses by virtue of their small floorspace and lack of a lifts (except in the Silos component) (page 16)

The report also notes that the construction of new office development at 2-16 Northumberland Street (immediately north of the VDAS site) will provide 15,100 square metres of lettable floorspace and would be expected to accommodate an estimated 760 to 1,000 office workers when complete. Essential Economics suggest, in contrast, the VDAS site were developed for office purposes, the 29 units would be expected to accommodate at most only 90 jobs (based on an average of 3 jobs per unit); a figure that is well below the likely job capacity at the adjacent site presently under-construction.

³ Information sourced from Economic Consideration report prepared by Essential Economics, February 2019.

Urbis strategic land use assessment

Urbis were engaged by Best Hooper to provide a strategic land use assessment to support Amendment C247. Urbis also considered Council's relevant strategic planning policies and documents, as well as reviewed the current zoning and overlay provisions of the site, the history of the zoning, urban development and land use patterns in the surrounding area, the certificate of title, the planning and building permit history, and the ministerial guidelines for the strategic assessment of planning scheme amendments.

Urbis conclude that:

site specific exemption is an appropriate outcome that will isolate the limited residential uses on site to the periphery of the C2Z. Moreover, this will minimise the potential land use conflicts, allow Council to limit the intensification or 'spread' of residential uses within the area, and ensure the longevity of this strategically important employment precinct (page 24).

The arguments put forward in support of this conclusion include:

- Part of the subject site has been utilised for residential purposes (dwellings) since at least 1997 without any reported land use conflicts.
- The site-specific exemption is an appropriate mechanism to allow the continued use of the site for dwellings, will limit residential uses to the periphery of the precinct and will minimise any perceived risk of land use creep.
- The site is strategically located between two activity centres and has good access to a range of public transport services, employment opportunities and facilities. These characteristics make the site well suited to continued residential land uses.
- The proposal is consistent with the Planning Policy Framework and Municipal Planning Strategy, the purpose of the C2Z and its decision guidelines by limiting residential uses to the periphery of the Gipps Precinct and ensuring that no adverse land use conflicts arise. Further, the site appropriately responds to Yarra's key strategic documents.
- The proposal affects a small portion of C2Z land within the City of Yarra and will not compromise the vitality of this employment precinct nor Yarra's ability to meet forecasted employment growth.
- The Gipps Precinct has shifted away from intensive industrial uses and comprises a mix of commercial, office and creative industry uses. These types of uses can readily co-exist with residential uses.
- The location of the site on the periphery of the C2Z land, adjacent to the C1Z and MUZ further reiterates that residential uses in this location is appropriate and will not result compromise the operations of existing commercial uses.
- There are no existing uses in the study area that will adversely impact on the amenity of the residential dwellings.
- The presence of residential uses in this location will not prohibit or unreasonably constrain the redevelopment of surrounding properties for higher density commercial buildings.
- The buildings on the subject site are well suited to residential uses and provide high levels of internal amenity for residents.

Urbis' review of Council's relevant strategic planning policies and documents reiterates Council's intention to retain the Gipps Street precinct as an employment precinct.

Summary

The following table summarises the key arguments put forward by the Consultants and SGS’s responses.

Key arguments in consultant reports	SGS comment
The site is well located and well suited for continued residential land uses	Agree the location is generally suited for residential use, as are many locations that have been designated for employment. This argument does not constitute a strong justification.
The existing floor space is not suited to employment uses	Difficult to verify without inspecting the floor space. Given the potential diversity of employment use that might locate in the Gipps Street precinct, it is hard to accept that the floor space within the development is not suitable for some form of employment uses (e.g. small offices or studios) or that is could not be adapted, if required.
That the loss of employment floor space as a result of permitting dwellings on the site would be insignificant	SGS agrees that the loss of employment floorspace as a result of the Amendment would be modest.
Allowing dwellings on the site will contribute to economic innovation through business contacts and activity	The likely impact of allowing dwellings on the site on ‘economic innovation’ would be negligible.
No existing uses in the study area that will adversely impact on the amenity of the residential dwellings	The Urbis report suggest there is a bakery within 60m of the VDAS site which it therefore <i>within</i> the Clause 53.10 threshold distance of 100m. (However, at page 31, the Urban report appears to erroneously concludes that the buffer distance <i>exceeds</i> the requirements of the clause.)
The presence of residential development has not impacted adjacent employment use <i>in the past</i>	The lack of past ‘conflict’ may reflect the fact that the last 20 year period has seem limited change around the VDAS site. Given the prospect of multi-level employment developments on nearby sites, this happy co-existence may not continue.
The continued presence of dwellings on the site will not impact employment activity beyond the site <i>in the future</i>	A purpose of the C2Z is “To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses”. It follows that allowing dwellings on the site will mean that future proposals adjacent to the subject site must consider the effects on these residents. This may have the potential to undermine employment development on adjacent sites or in the broader precinct if objections concerning impacts on residential amenity become material considerations in future planning decisions.

Discussion

Will the Amendment undermine the employment role of the Gipps Precinct?

This question has been addressed at three scales: that of the site, the locality immediately around the site, and for the broader Gipps Street precinct.

The impact of the Amendment for this particular site would be the effective conversion to housing of land that has been nominally set aside for employment. From the information provided it is unclear what share of floor space on the site is currently used for employment or dwellings. Regardless, permitting dwellings on the site would remove any barrier to the complete conversion of all floor space on the site to housing. That said, it is also possible that individual units within the development could revert to employment uses at some point in future.

Essential Economics estimate that the site could accommodate 90 jobs based on an average of 3 jobs per unit (page 16). In our view this estimate is relatively low. Given the form and scale of buildings of the site (see Figure 2 and Figure 3) it would seem likely the site has an average floor area ratio (FAR) of say 2:1 across the site. This FAR would equate to total floor space in the order of 5,600 square metres. Assuming 20 square metres per job, the existing floor space might have the potential to accommodate 280 jobs – a somewhat higher figure than the Essential Economics' estimate.

Regardless, it would be difficult to argue that the loss of this quantum of land, floor space or jobs would undermine the employment role of the Gipps Precinct.

The site is 2,800 square metres in area, which accounts for approximately 1.1% of the total 24.6 ha of Commercial 2 zoned land in the Gipps Street precinct.

Based on the estimates in the SEES, the Gipps Street precinct currently accommodates in the order of 196,000 square metres of employment floor space and is forecast to accommodate 271,000 square metres by 2031. The total capacity for employment floor space is 496,000 square metres. The loss of 5,800 square metres would be only 1.2% of this capacity estimate.

The removal of the site from the designated reserve of employment land would appear to be a relatively minor loss.

Notwithstanding the modest impact of the loss of employment floor space from the site itself, consideration should be given to the potential impact of the Amendment on the use and development of land in the immediately locality. If the use for dwellings is legitimised, will the residents of the VDAS have the ability to affect the redevelopment of adjoining land for employment use through objections and/or appeals? This issue is not addressed in the Essential Economics or Urbis report.

Many dwellings in the VDAS site are likely to enjoy views over the existing lower-scale development to the east and west. However, these views and access to sunlight would be affected by the development of sites immediately adjacent and in the immediate vicinity. Views to the north will be curtailed by the redevelopment of 2-16 Northumberland Street and this loss of amenity may encourage residents of the VDAS to site object to further redevelopment activity that is likely to further reduce the amenity they current enjoy.

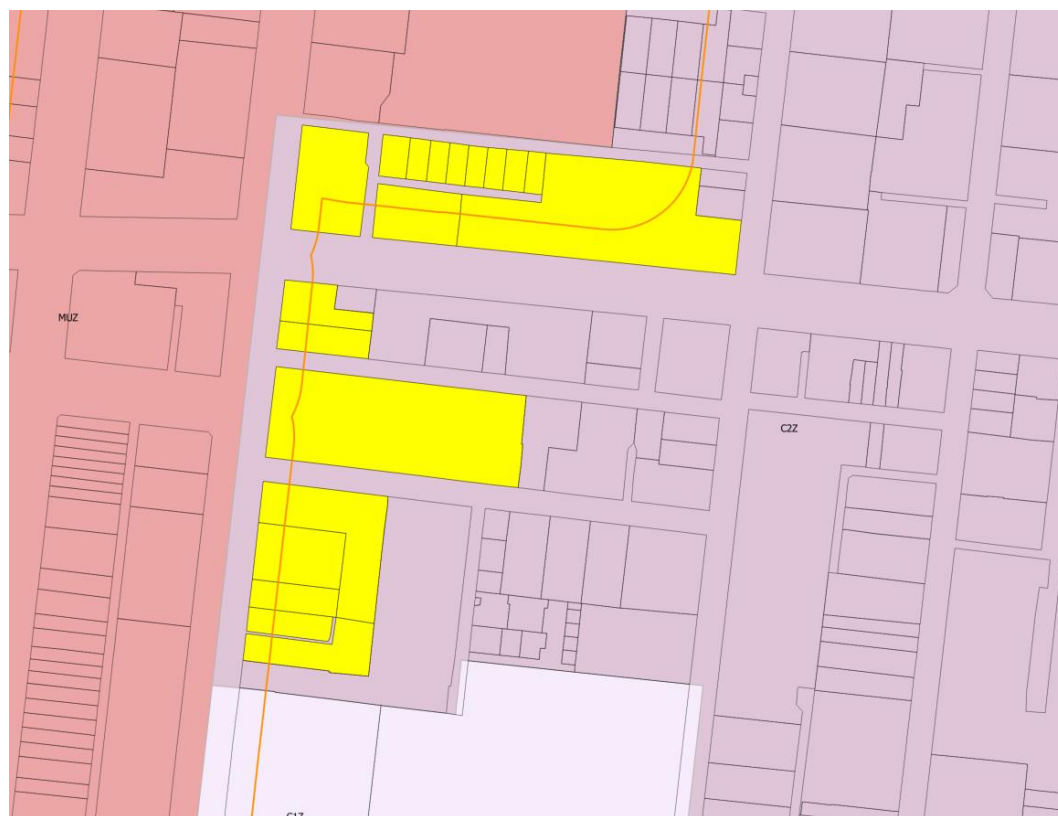
Development in C2 zoned land in Yarra is generally exempt from notice and review (i.e. the notice requirements of section 52(1)(a), (b) and (d); the decision requirements of section 64(1), (2) and (3); and the review rights of section 82(1)). However, these exemptions do not apply to land within 30 metres of a residential zone, which includes the Mixed Use zone.

The figure below highlights those properties that are within 30 metre of the Mixed Use zone and are therefore *not* be exempt from notice and review. Any application to subdivide land, construct a building, or carry out work would be subject to notice requirements and the attendant third party appeal rights. It is possible that residents of the VDAS site might invoke

these appeal rights and could therefore affect the development on these sites for employment purposes. Businesses located on the VDAS site might also invoke these rights. However, the extent to which appeals raised by business as opposed to residents might be treated differently in planning assessments is not entirely clear. However, if the Amendment were to result in additional grounds for appeal that might negatively impact the redevelopment of the broader precinct for more intensive employment development, this would constitute a more serious concern.

The Urbis report notes that there is limited land within a 9 metre buffer of the site. It is not clear how this particular choice of buffer distance is relevant to the consideration of impacts between adjoining development in the C2 Zone.

FIGURE 1: SITES IN THE VICINITY OF THE VDAS SITE THAT ARE NOT EXEMPT FROM NOTICE AND REVIEW



In terms of potential impacts on the broader precinct, the main issue for consideration is whether the Amendment could result in similar approaches from other property owners seeking to similar site-specific exemptions for dwellings. We have no evidence to determine whether this is likely or unlikely in the Gipps Street precinct, on Yarra's employment areas more broadly. However, in a location where residential uses are likely to be more profitable than employment uses, Council should consider whether a potential risk in approving the Amendment is that it will encourage other land owners to lobby for a site-specific exemption or zone change.

Would the Amendment be inconsistent with the Yarra SEES?

The Yarra Spatial Economic and Employment Strategy (SEES) was prepared by SGS for Council and finalised in 2018. One of the strategies in the Strategy is to retain and grow Yarra's Major Employment precincts (Strategy 2). The Gipps Street precinct is one of two major employment areas in Yarra that hosts a diverse range of activities including traditional industrial uses, commercial offices and creative industries (SEES, page 63). The SEES recommend that these precincts be retained for employment uses for the following reasons:

- There is insufficient capacity to accommodate all projected employment growth in Yarra's activity centres
- The diversity of lot size and building stock in these precincts provides a unique environment for established and emerging businesses that are unlike the majority of existing employment lands in Inner Metropolitan Melbourne
- The precinct is already transitioning from lower-value to higher-value employment uses and this transition is likely to be interrupted by allowing residential uses.

The SEES is clear in its position that the C2 zoned Gipps Street precinct be retained for employment uses, at the exclusion of residential. A strict interpretation of the SEES would suggest that the proposed Amendment is thus inconsistent with the SEES.

However, provided the impact of the Amendment is relatively minor (i.e. confined to the site itself and has no impact on the future redevelopment of adjoin sites for employment uses) this inconsistency could be overlooked and would not fundamentally undermining the intent of Strategy 2 in the SEES.

Conclusion

Both the Essential Economics and Urbis reports argue that dwellings have existed on the VDAS site for several decades and their presence has not impacted on employment uses on adjacent land. However, it could also be argued that the lack of conflict between dwellings and employment uses is due to the very limited change that has occurred in this particular location in recent decades. As the area attracts more new development, the harmonious co-existence of the past may not continue into the future.

It is also possible that residents of the VDAS site have been cautious in raising concerns about nearby development given the legality of their use of the site for dwellings is legally questionable.

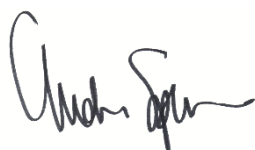
In considering whether the Amendment should be approved, Council should consider the extent to which allowing dwellings on the VDAS site could have a negative impact on the development of adjoining land parcels through objections or appeals from current or future residents of those dwellings.

While the site-scale impacts of the amendment on employment are modest, it may have the potential to undermine employment development on adjacent sites or in the broader precinct if objections concerning impacts on residential amenity impact future in planning decisions.

If Council can curtail the ability of occupants on the VDAS site to object to new development or appeal planning decisions, the potential impact of the Amendment on the future employment role of the precinct would be substantially mitigated.

Consideration might also be given to limiting the exemption for dwellings to the lifespan of the current building so that the exemption would be extinguished should the site be redeveloped in future.

Kind regards,



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FIGURE 2: VDAS SITE VIEWED FROM SOUTH EAST



FIGURE 3: VDAS SITE VIEWED FROM NORTH WEST

