

Planning and Environment Act 1987

Panel Report

Yarra Planning Scheme Amendment C220

Johnston Street Built Form Controls

22 February 2019

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

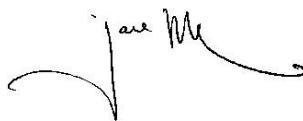
Yarra Planning Scheme Amendment C220

Johnston Street Built Form Controls

22 February 2019



Lester Townsend, Chair



Jane Monk, Member

Contents

	Page
1 Introduction.....	1
1.1 The Amendment.....	1
1.2 Background.....	5
1.3 Procedural issues.....	8
1.4 Issues raised in submissions and dealt with in this Report.....	9
2 Does the vision have strategic justification?	11
2.1 The vision for Johnston Street.....	11
2.2 Is it appropriate to set a vision?	14
2.3 Is there policy support for the vision?	15
2.4 Are the implications of the vision understood?.....	18
2.5 Does the local policy capture the vision?.....	19
2.6 Is there strategic support for the proposed planning scheme provisions?	19
2.7 Overall conclusion and recommendations.....	20
3 Is the extent of the Amendment appropriate?	22
3.1 Extending the controls	22
3.2 VicRoads land on the northwest corner of Johnston Street and Hoddle Street	25
3.3 The Heritage Overlay.....	28
4 Are mandatory controls justified?	31
4.1 The issue	31
4.2 What is proposed as mandatory and why?.....	31
4.3 Discussion	35
4.4 Conclusions.....	36
5 Sub precinct boundaries.....	37
5.1 The issues	37
5.2 Mapping the sub precincts.....	38
5.3 Aheron Investments – 220, 222 and 222A Johnston Street and 153–155 and 165 Sackville Street	38
5.4 288 Johnston Street.....	41
5.5 329 Johnston Street, 2, 36 Nicholson Street, and 37 Hunter Street, Abbotsford.....	42
5.6 424 Johnston Street, Abbotsford	43
6 Issues with the requirements	44
6.1 Introduction.....	44
6.2 Objectives	44
6.3 The need for built form objectives for sub precincts.....	46
6.4 Definitions	47
6.5 Wording of clause 2.0 – Amendment of permits.....	47
6.6 Building height.....	48

6.7	Overshadowing and Solar Access Requirements	55
6.8	Street wall height	57
6.9	Mid-level street setback above the street wall.....	62
6.10	Upper level setback envelope	67
6.11	Rear setbacks.....	70
6.12	Building separation requirement	73
6.13	Corner site requirements	75
6.14	Commercial floor space requirements.....	75
7	Drafting issues	77

Appendix A Submitters to the Amendment

Appendix B Parties to the Panel Hearing

Appendix C Document list

**Appendix D Panel preferred version of Design and Development Overlay
Schedule 15**

List of Tables

	Page
Table 1: Overview of the elements of DDO15 – final Council position	4
Table 2: Strategic Framework Plan – JSLAP Figure 13	12
Table 3: Land ownership details of land in Figure 5	26
Table 4: Building heights in DDO15 (Document 26 version with Aheron added).....	49
Table 5: Height – position of Council and the expert witnesses.....	49
Table 6: Solar access – position of Council and the expert witnesses.....	55
Table 7: Street wall heights in DDO15 (Document 26 version with Aheron added).....	57
Table 8: Street wall height – position of Council and the expert witnesses.....	58
Table 9: Mid level street setback above the street wall (Document 26 version with Aheron added).....	63
Table 10: Mid level street setback above the street wall – position of Council and the expert witnesses	63
Table 11: Upper level setbacks (Document 26 version with Aheron added)	67
Table 12: Upper level setback – position of Council and the expert witnesses	67
Table 13: Rear interface (Document 26 version with Aheron added).....	71
Table 14: Rear envelope – position of Council and the expert witnesses.....	71

Table 15: Building separation requirement – position of Council and the expert witnesses.....	74
---	----

List of Figures

	Page
Figure 1: Existing and proposed planning controls	1
Figure 2: Elements of DDO15	4
Figure 3: Built Form Framework Plan – JSLAP Figure 18.....	13
Figure 4: Illustration of modelling	19
Figure 5: Affected VicRoads land.....	26
Figure 6: Sites discussed in relation to sub precinct changes – revised sub precinct labels	37
Figure 7: Council Part B version preferred envelope	39
Figure 8: Aheron preferred envelope.....	39
Figure 9: Mr Sheppard’s assessment of mixed streetscapes	59
Figure 10: Example of view angle upper level setback control – Moreland DDO18	69

Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
C1Z	Commercial 1 Zone
C2Z	Commercial 2 Zone
CBD	Central Business District
Council	Yarra Council
DDO	Design and Development Overlay
DDO15	Design and Development Overlay Schedule 15
DELWP	Department of Environment, Land, Water and Planning
DLA	David Lock Associates
EAO	Environment Audit Overlay
GRZ	General Residential Zone
HO	Heritage Overlay
JSLAP	the Johnston Street Local Area Plan
LPPF	Local Planning Policy Framework
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
NAC	Neighbourhood Activity Centre
Pilot Program	Activity Centre Pilot Program
PPF	Planning Policy Framework
PPN59	Planning Practice Note 59 The role of mandatory provisions in planning schemes
PPN60	Planning Practice Note 60 Height and setback controls for activity centres
PUZ	Public Use Zone
SLO	Significant Landscape Overlay
SUZ6	Special Use Zone Schedule 6
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

Overview

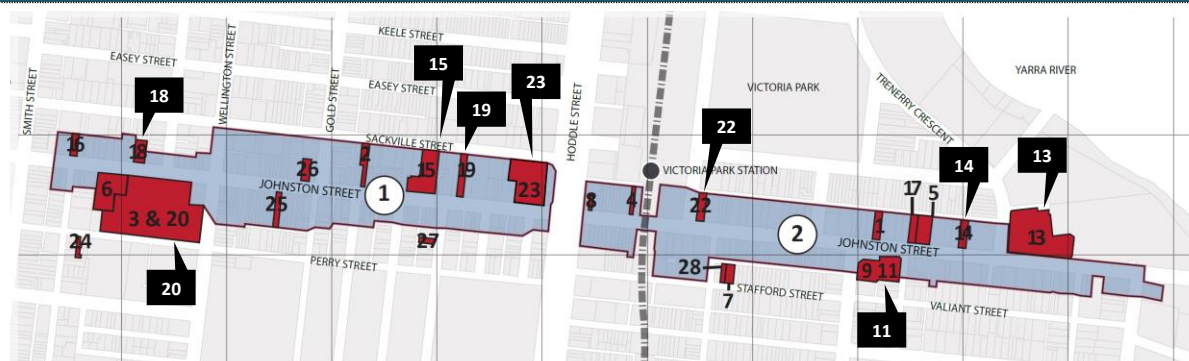
Amendment summary

The Amendment	Yarra Planning Scheme Amendment C220
Common name	Johnston Street Activity Centre
Brief description	The Amendment rezones land and implements built form and heritage controls for Precincts 1 and 2 of the Johnston Street Local Area Plan
Subject land	Precinct 1 is in Collingwood and extends east-west along Johnston Street, between Smith Street and Hoddle Street. It also includes parts of Sackville Street to the north. Precinct 2 is in Abbotsford and extends east-west along Johnston Street from Hoddle Street to Trenerry Crescent on the north side and Clarke Street to the south
The Proponent	Yarra City Council
Planning Authority	Yarra City Council
Authorisation	In March 2017 the Minister gave conditional authorisation which provided for mandatory controls to be confined to locations where there were 'exceptional circumstances' as provided for in PPN60.
Exhibition	Between 16 November and 18 December 2017.
Submissions	A total of 28 submissions were received. Refer to Appendix A

Panel process

The Panel	Lester Townsend, Chair, Jane Monk, Member
Directions Hearing	18 September 2018 at Richmond Town Hall
Panel Hearing	Nine days between Tuesday 16 October 2018 and Friday 26 October, at Fitzroy Town Hall and Planning Panels Victoria offices
Further submissions	Following the Hearing, written submissions were sought from VicRoads in relation to its land on the north west corner of Hoddle and Johnston Streets. After two draft submissions, a final submission was received on 4 December 2018. A submission in reply was subsequently received from the City of Yarra on 12 December 2018.
Site inspections	Unaccompanied on Friday 19 October 2018
Appearances	Refer to Appendix B
Citation	Yarra C220 (2019) PPV
Date of this Report	22 February 2019

Location of submitters



Location of submitters named in this Report

11	Pelican Capital	329, 329A Johnston Street, , 37 Hunter Street, & 236 Nicholson Street, Abbotsford
13	Shakespeare Property Group	436–438 Johnston Street, Abbotsford
14	M and C Jack	424 Johnston Street, Abbotsford
15	Titanium Property Investments	166–168, 174–176 Johnston Street, Abbotsford and 121 Sackville Street, Collingwood
18	AA Holdings	40 Johnston Street, Abbotsford & 35–37 Sackville Street, Collingwood
19	De Luca Property Group	196–202 Johnston Street, Collingwood
20	Collingwood Arts Precinct	35 Johnston Street, Collingwood
22	K7 Developments	288–296 Johnston Street, Collingwood
23	Aheron	220,222 & 222A Johnston Street, Abbotsford, 153–155 & 165 Sackville Street, Collingwood

Executive summary

The Johnston Street Local Area Plan (JSLAP) was prepared by Yarra City Council for the Johnston Street Activity Centre and adopted by Council in December 2015. The plan provides a high-level strategic framework and future vision for the Johnston Street Neighbourhood Activity Centre and a wider study area that extends across the suburbs of Abbotsford and Collingwood, from Smith Street, eastwards towards the Yarra River.

The plan focusses on issues and opportunities identified through analysis, research and consultation with the community and key stakeholders.

Yarra Planning Scheme Amendment C220 proposes to facilitate the land use and built form objectives and strategies for Precincts 1 and 2 (Johnston Street) of the Johnston Street Local Area Plan (JSLAP) by:

- rezoning properties within the Commercial 2 Zone (C2Z) and General Residential Zone (GRZ) to the Commercial 1 Zone (C1Z)
- applying a Design and Development Overlay (DDO)
- introducing a new Municipal Strategic Statement policy at Clause 21.12
- applying a new Heritage Overlay (HO) precinct
- applying the Environmental Audit Overlay (EAO) to sites being rezoned from the Commercial 2 Zone.

No submissions opposed the rezoning to Commercial 1 Zone. Some submitters asked for additional land to be included in the Commercial 1 Zone, to take advantage of this zone's wider range of land uses.

Some raised concerns in relation to certain properties being included in the expanded Heritage Overlay, and in the case of two submissions from local residents, opposed the scale of development that could be allowed under the DDO.

The proposition for Precincts 1 and 2 is to ensure consistent street wall heights and for higher built form to be setback and more recessive in the streetscape. Where a heritage character prevails, the ambition is for the street wall to remain at 2 to 3 storeys, with development of up to 6–7 storeys behind. East of the rail bridge, where heritage stock is less consistent, a new contemporary character is sought. The street wall preference is for 4–5 storeys with 6–7 storeys behind, rising to 8–10 storeys adjacent to Victoria Park Railway Station.

The concern was not so much about the need for a clear regime of built-form requirements – this was not in dispute – or even the general form and scale envisaged for the activity centre, rather, debate focussed on the metrics of various height, setback, overshadowing and sight-line controls and on the extent to which they should be either discretionary or mandatory. These concerns also extended to the detailed drafting of objectives and specific provisions in the DDO. The principal concerns, as expressed to the Panel, were that the proposed mandatory controls could stifle innovative design and prevent the centre from being able to optimise its redevelopment potential.

Following exhibition and in response to submissions received, Council made a number of suggested changes to the metrics of the DDO controls (Document 2) and some more minor

typographical changes to the supporting Clause 21 local policy. The DDO changes were further refined during the hearing (Document 26) at the suggestion of council officers and in response to material in the expert witness reports. The Document 26 version of the DDO formed the basis of most discussion at the Hearing.

The Panel has been impressed by the extent and nature of council's strategic work underpinning the amendment, including the more recent 3D modelling by Ethos Urban, the SGS Spatial Economic and Employment Study, August 2018 and Council's Housing Strategy, also of August 2018. This strategic work is demonstrably extensive, robust and up to date.

The Panel has concluded that for the most part the specific metrics and the balance between mandatory and discretionary built form controls, as put forward by Council in Document 26, will not prevent good design outcomes and can be supported, subject to some relatively modest drafting changes.

While there is clearly room for different opinions as to the precise metrics of a mandatory upper level setback or street wall height, those put forward by Council are well founded, as demonstrated by Ethos Urban's 3D modelling work. The east-west orientation of the street, coupled with the relatively shallow depth of many properties and their close abuttal to existing residential areas warrants a cautious approach. These constraints reduce the degree of 'wriggle room' for negotiating well designed outcomes.

Without the certainty provided by the mandatory street wall, sunlight and upper level setback metrics, JSLAP's future vision for Johnston Street could be jeopardised. The Panel accepts that the proposed controls provide a simple, user friendly frame on which the significant change envisaged for Johnston Street can be applied with greater confidence than would be the case if they were not in place.

An exception is the Aheron site at 220-222A Johnston Street and 153-165 Sackville Street, one of the two redevelopment sites depicted as sub precinct 1AA in DDO15. This site, other than for a strip of VicRoads owned land to the east, occupies the north-west corner of Johnston and Hoddle Streets. The JSLAP Built Form Framework Plan singles the site out for 'Corner Opportunity - High Quality Entry Buildings'. The 3D modelling, reinforced by the evidence of Messrs Barnes and de Keijzer and the persuasive submission of Mr Furness, demonstrates that a lesser upper level setback would provide a stronger corner treatment to Hoddle Street. Following VicRoads concession that its land abutting Aheron's site is not surplus and should therefore be in a Category 1 Road Zone, it is appropriate for DDO15 to allow a strong corner treatment at such a prominent location.

The totality of material before the Panel demonstrates a substantial body of well researched, thorough and carefully tested analysis which supports the Amendment.

At the end of the day, the principal issues in dispute have reduced to:

- requests for rezoning to C1Z
- objection to the use of mandatory controls
- debate about metrics, including for example whether: setbacks should be 5 or 6 metres; whether a 45 degree angle should be used above 11, 17, 21 or 24 metres; and whether preferred heights should be 28 metres or 34 metres.

The Panel concludes:

- a mid rise scale of development is supported by policy in this area.
- the post exhibition change in sub precinct 2rB for the K7 Developments land at 288 Johnston Street is appropriate
- the proposed change of the commercially zoned area of the Pelican Capital land – 329 Johnston Street – to sub precinct 2rD is appropriate
- there is no basis for a sub precinct change for 424 Johnston Street, Abbotsford
- the use of an indicative height range in the Design objectives is appropriate
- apart from the Aheron site, the proposed heights are appropriate
- the solar access provisions are appropriate
- it is not appropriate to require a greater setback above heritage buildings
- a 45 degree upper level set back is appropriate
- the rear interface controls are appropriate
- the building separation requirements are appropriate
- the corner provisions are appropriate.

The Panel concludes that sufficient strategic work has been carried out for Johnston Street to support mandatory controls in DDO15 and the specific controls are ‘absolutely necessary’.

The Panel has some concerns over the drafting of the Amendment and has prepared a version of DDO15 that shows the changes that the Panel thinks would improve its usability.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Yarra Planning Scheme Amendment C220 be adopted as exhibited with the changes proposed by:

- **Council when it referred the Amendment to the Panel (Document 1)**
- **the Council officers’ changes presented in Document 26**

and subject to the following further changes:

- 1 Change the application of zones and overlays to:**
 - a) Rezone the VicRoads land on the northwest corner of Johnston Street and Hoddle Street, to Road Zone Category 1 and delete Design and Development Overlay Schedule 15**
 - b) Rezone the CitiPower land near the northwest corner of Johnston Street and Hoddle Street, Abbotsford? to Public Use Zone Schedule 1 if compliant with the Ministerial Direction – The Form and Content of Planning Schemes, and delete Design and Development Overlay Schedule 15**
 - c) Retain the Heritage Overlay on road reserves.**
- 2 Change the Schedule to the Heritage Overlay to reclassify 270 Johnston Street, Abbotsford as ‘Not Contributory’.**
- 3 Use the Design and Development Overlay map in the planning scheme to identify sub precinct boundaries.**
- 4 Place the Aheron Investments land at 220, 222 and 222A Johnston Street, Collingwood and 153–155 and 165 Sackville Street, Collingwood in a new sub precinct, with the following applying:**

- a) increase the preferred overall height to 34 metres
- b) a mandatory 11.3 metre street wall height on Johnston Street
- c) a preferred 11.3 metre street wall on Sackville Street
- d) no street wall height or setback to Hoddle Street
- e) a discretionary 3 metre setback above the street wall to transition to a 6 metre setback to the east where the building meets sub precinct 1A on Johnston Street
- f) a preferred 6 metre setback above the street wall on Sackville Street
- g) exemption from 45 degree envelope requirement on Johnston Street but not on Sackville Street
- h) no rear interface height
- i) maintain the mandatory solar control.

5 Change Design and Development Overlay Schedule 15 to:

- a) Refine the drafting of Design and Development Overlay Schedule 15 generally as shown in Appendix D.
- b) Amend the Design objectives to delete 'overlooking' from the third objective.
- c) Refine the language of the 'Requirements to exceed preferred heights' to avoid an overly prescriptive interpretation.
- d) Increase street wall heights from 11 metres to 11.3 metres to allow for three commercial floors

The Panel further recommends:

Consider realigning the Precinct 1 boundary to the rail bridge in the planning scheme documentation.

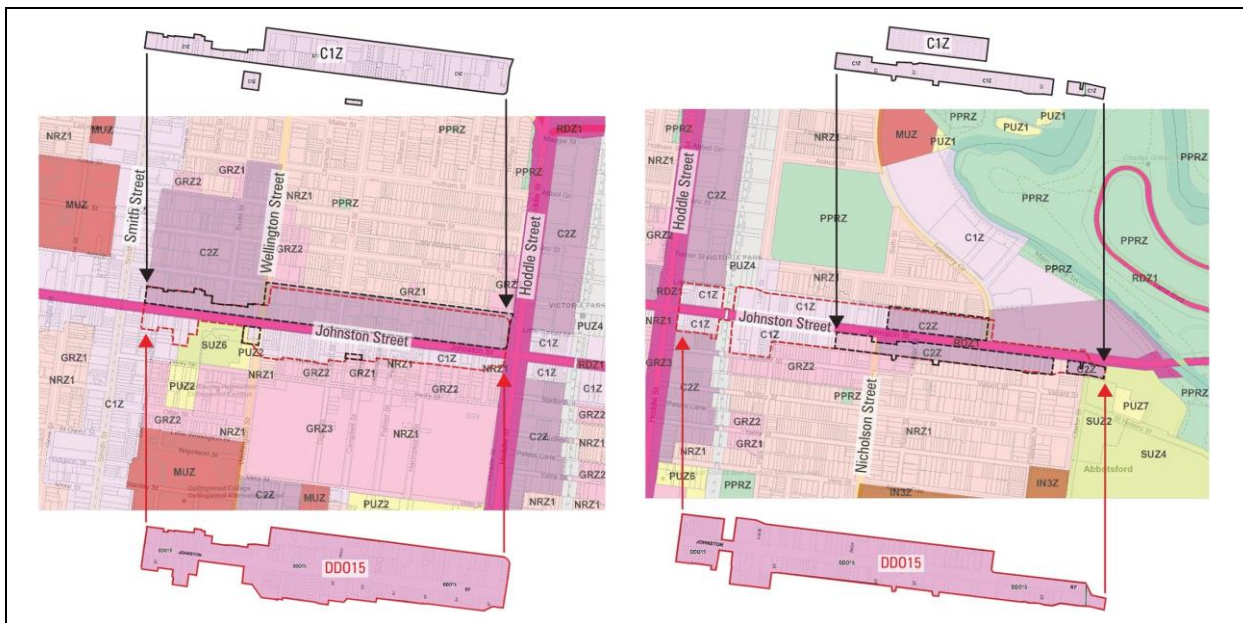
1 Introduction

1.1 The Amendment

The Amendment affects land in and around Johnston Street (Collingwood and Abbotsford), including Sackville Street in Collingwood. The Amendment proposes to rezone land and implement built form strategies in the Johnston Street Local Area Plan (JSLAP).

The Amendment applies to land in Precincts 1 and 2 as identified in the Johnston Street Local Area Plan. Figure 1 shows the existing zones, proposed Commercial 1 Zone and Design and Development Overlay Schedule 15. A Heritage Overlay is proposed for the area between the rail bridge and Hoddle Street and an Environmental Audit Overlay for land rezoned from the Commercial 2 Zone to the Commercial 1 Zone.

Figure 1: Existing and proposed planning controls



Source: Evidence of David Barnes

Johnston Street between Smith Street and the Yarra River is a neighbourhood activity centre with a traditional strip form. It is characterised by a range of commercial activities in mostly one and two storey buildings, including a mix of service industries, offices, studios, galleries, retail, cafes and bars.

Johnston Street is one of five activity centres in the City of Yarra for which strategic planning work is underway¹. As acknowledged in Council’s Part B Submission, this work builds on a long-standing objective² of Yarra’s Planning Scheme:

To retain Yarra’s identity as a low rise urban form with pockets of higher development.

and the accompanying strategy³ that:

Development within activity centres should generally be no more than 5–6 storeys unless it can be demonstrated that the proposal can achieve specific benefits. Such as significant upper level setbacks, architectural design excellence, best practice

¹ The others being Bridge Road, Victoria Street, Queens Parade and Swan Street

² Built Form Objective 17, Clause 21.05–2

³ Strategy 17.2, Clause 21.05–2

environmental sustainability objectives in design and construction, high quality restoration and adaptive reuse of heritage buildings, positive contribution to the enhancement to of the public domain and provision of affordable housing.

Amendment description

The Amendment proposes to make the following changes to the Yarra Planning Scheme:

- insert a new section and policy at Clause 21.12 'Local Areas' with a subsection at Clause 21.12–1 'Johnston Street Activity Centre'
- Rezone:
 - land in the Commercial 2 Zone (C2Z) and General Residential Zone (GRZ) to Commercial 1 Zone (C1Z)
 - part of the site at 67–71 Johnston Street from Public Use Zone (PUZ) to Commercial 1 Zone (C1Z) to correct a mapping error.
- Apply the Design Development Overlay (DDO15) on a permanent basis with a new schedule.
- Apply the Environmental Audit Overlay (EAO) to sites being rezoned from Commercial 2 Zone to the Commercial 1 Zone.
- Apply a new Heritage Overlay precinct (HO505) 'Johnston Street East' to the properties at 219–241 Johnston Street, and 246–274 Johnston Street, Abbotsford (on a permanent basis), with the consequential changes:
 - amend the schedule to Clause 43.01 (Heritage Overlay) to include HO505
 - amend the existing incorporated document *City of Yarra Review of Heritage Overlay Areas 2007 Appendix 8*, listed in the schedule to clause 81.01 to include the addresses and gradings of all new and revised places and rename the incorporated document to *City of Yarra Review of Heritage Overlay Areas 2007 Appendix 8 revised November 2017*.

At an ordinary meeting of Council on 21 August 2018, Council resolved⁴ to endorse officer recommended changes to the Amendment and request that the Minister for Planning appoint a panel. The officer recommended changes included:

- amend the indicative height range in the objectives to 5 to 10 storeys
- amend the controls for 220–222a Johnston Street; 153–155 and 165 Sackville Street to reflect that these sites are currently in common ownership and should reasonably have the same provisions applied to all the properties
- change 288–296 Johnston Street from sub precinct 2rC to sub precinct 2rB to reflect the recommendations in the JSLAP and to acknowledge that the site does not share the same level of sensitivity at the rear interface as properties to the east in sub precinct 2rC
- increase the setback above the street wall from a discretionary 3 metres to a discretionary 6 metres in sub precincts 2rB, 2rC, 2rD and 2rE
- minor changes to improve interpretation of requirements
- changes to require that the street wall height 'wrap' around corners into side streets in some situations, and include a requirement for a minimum 3 metre setback of upper levels above the street wall on side streets

⁴ Agenda of ordinary meeting of Council held on 21 August 2018 available at: <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committeemeetings/2018-council-meetings>.

- changes made when the interim DDO was introduced by the Minister for Planning
- minor changes to the proposed Local Policy at Clause 21.12
- changes have been made to the proposed planning scheme maps to remove both the HO and DDO from road space managed by VicRoads
- correction of a minor mapping error in the proposed HO map.

At the Hearing, Council presented further changes recommended by Council officers. The Panel adopts the 'clean' version of these changes (Document 26) for the purposes of discussion in this report.⁵

This version somewhat unhelpfully reassigned the precinct labels so that a reference to '2C' in this version of the controls is a reference to a different precinct to '2C' in the exhibited version. This runs the risk of misunderstanding submissions and evidence, and indeed Council's own Part C submission used an outdated precinct reference. To try to avoid confusion the Panel has adopted the latest precinct references in this report, that is the precinct references in Document 26, including in quotes from experts and Council. Where this change is made the revised sub precinct label has an 'r' inserted. In other words a reference to '2rC' is a reference to a relabelled precinct, in this case the exhibited '2D'. The Panel hopes this is clear.

DDO15 provides⁶ for:

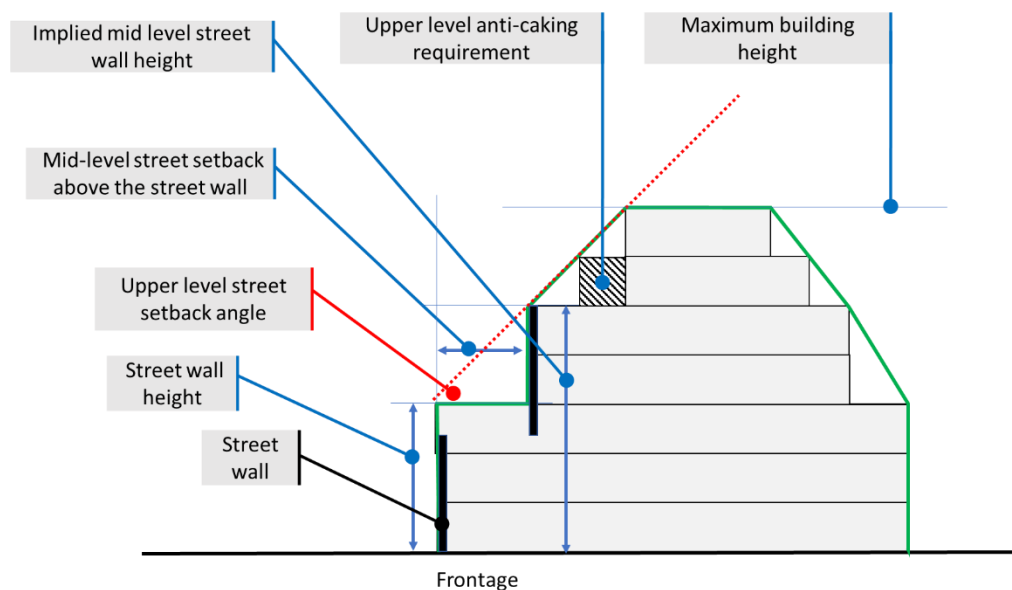
- preferred and maximum building heights, including requirements to be met when exceeding a preferred height
- overshadowing and solar access requirements to the southern footpath
- street wall height
- mid level set back above the street wall
- upper level setbacks specified by a setback angle
- corner site requirements
- building separation requirements
- street frontage requirements
- commercial floor space requirements
- upper level design requirements
- vehicle access and car parking.

The key elements of DDO15 are summarised in Figure 2 and Table 1. The combination of the street wall height, mid level setback and upper level setback angle combine to create an implied 'mid level street wall'.

⁵ This was provided electronically to the Panel at 09:31 AM 23 October 2018 by way of an email from Harwood Andrews

⁶ In the Panel preferred version

Figure 2: Elements of DDO15



Source: Prepared by the Panel

Table 1: Overview of the elements of DDO15 – final Council position

Element	Proposed control
Maximum building height	Mandatory heights of between 21 metres and 31 metres where sub precincts abut residential zoned land Preferred heights of between 21 metres and 34 metres in all other sub precincts
Overshadowing	Mandatory requirement for buildings on the north side of Johnston Street to not overshadow the southern footpath between 10.00am and 2.00pm at the equinox (22 September)
Street wall height	In heritage streetscapes: mandatory height of 11 metres (other than where a heritage building is retained) East of the rail bridge: a preferred street-wall height of 15 metres with a mandatory height of 18 metres South side of Sackville Street: preferred height of 11 metres (not a heritage area)
Mid level set back above the street wall	In heritage areas: mandatory minimum of 6 metres In non-heritage streetscapes east of the rail line and to Sackville street: preferred minimum of 6 metres
Upper level setback angle	45 degree envelope above a specified height
Maximum rear boundary interface heights to residential areas	Mandatory 11 metres (or 9 metres in the case of Precinct 2rE). Preferred 11 metres to non-residential interfaces

1.2 Background

Johnston Street Local Area Plan

JSLAP is a high-level strategy document with the purpose to provide a framework and future vision for the Johnston Street Activity Centre and wider study area. The plan focusses on the key issues and opportunities affecting the study area which have been identified through analysis, research and consultation with the community and key stakeholders.

Consultation preceding the adoption of JSLAP went through three separate phases:

- October 2011 – February 2012 – Initial consultation in the form of workshops
- June 2012 – July 2012 – Consultation on a draft plan
- Early 2015 – Consultation on a revised plan.

JSLAP was informed by the following background documents which were presented as appendices to the plan:

- Appendix A – Policy and Strategic Basis (November 2015)
- Appendix B – Built Form Analysis and Recommendations (December 2015)
- Appendix C – Trenerry Crescent Urban Design Analysis and Masterplan (September 2015)
- Appendix D – Johnston Street Economic Advice (SGS Economics, August 2015).

JSLAP was adopted by Council in 2015. As set out in the introduction to the plan:

The Johnston Street Local Area Plan has been prepared by Yarra City Council for the Johnston Street Activity Centre. The plan is a high-level strategy document and has been arranged around the following four themes:

- Part A 1 Land Use
- Part A 2 Public Spaces
- Part A 3 Access and Movement
- Part A 4 Built Form

Over the past five to ten years, Johnston Street has experienced signs of revitalisation with changes in land use activity, increased development pressure and a number of planning permits issued as well as the construction of new buildings within the study area.

The Johnston Street Activity Centre has the potential to accommodate a greater mix of activities including residential, retail, offices and other commercial uses that enhance the character and amenity of the street and local area, as well as the existing mix of activity. Johnston Street has the potential to play a more significant commercial role whilst accommodating a growing population and business community that has good access to areas of open space and public transport.

The Abbotsford Convent towards the eastern end of Johnston Street and the emergence of both Circus Oz and the Collingwood Arts Precinct at 35 Johnston Street (former TAFE site) provide opportunities to anchor creative activities such as artist studios and galleries.

There is the opportunity to provide a stronger retail and commercial environment along the street, supported by a growing population. There are already a number of bars, cafes and restaurants that have created a sense of vibrancy at some locations along Johnston Street, as the street starts to create an identity as a vibrant, eclectic activity centre.

Amendment C237 – Interim controls

In 2016, Council engaged Context Pty Ltd to undertake a review of the streetscape between Hoddle Street and the railway line, east of Hoddle Street. Context concluded upon review

that a new precinct Heritage Overlay (HO505) should apply to that section of Johnston Street.⁷

In October 2017, Council resolved to lodge a request for interim controls in this area under section 20(4) of the Act.

On 2 March 2018, Amendment C237 to the Scheme was gazetted to introduce HO505 and DDO15 on an interim basis until 31 December 2019.⁸

The Minister for Planning introduced both overlays into the Scheme with one key change: a mandatory maximum height requirement applied to 23–33 Johnston Street to manage the impacts on the adjacent Collingwood Arts Precinct, and the sub precinct designation was changed from 1AA to a new 1AAA.

Specifically, the interim controls for 23–33 Johnston Street include a mandatory maximum building height of 28 metres in addition to a mandatory setback of six metres for upper levels from a street wall façade that has a mandatory maximum wall height of 11 metres. The interim DDO15 also has a new design objective:

To ensure that new development does not compromise the operation of the state significant Collingwood Arts Precinct from unreasonable loss of amenity through visual bulk, overlooking, overshadowing and vehicle access.

At the time that the interim controls were gazetted, there was a permit application before VCAT for a development at 23–33 Johnston Street.⁹

The Amendment

In May 2016, Council resolved to seek authorisation from the Minister for Planning to prepare and exhibit the Amendment.

In March 2017, the Minister provided conditional authorisation which advised that the Amendment could be prepared and exhibited if particular conditions were met.¹⁰ These conditions included a requirement for Council to:

... limit the application of mandatory controls to confined locations where there are exceptional circumstances as outlined in Practice Note 60 – Height and Setback controls for Activity Centres.

In July 2017, Council was invited by DELWP to participate in the Activity Centre Pilot Program (discussed below). Council agreed to participate in the Pilot Program.

Following receipt of the conditional authorisation, Council officers prepared further built form analysis documented in *Amendment C220 Supporting Document, October 2017*. The supporting document identified where mandatory controls may be appropriate having regard to the Minister's conditional authorisation and *Planning Practice Note 60 – Height and setback controls for activity centres* (PPN60). This work took into account the principles underpinning JSLAP and considered recently approved permits. As a result, Council officers prepared a revised Amendment which contained two key changes:

- a revised DDO schedule which included both preferred and mandatory provisions

⁷ Heritage Gap Study: Review of Johnston Street East Final Report prepared by Context Pty Ltd dated April 2016.

⁸ *Reasons for decision to exercise power of intervention under section 20(4) of the Planning and Environment Act 1987 Yarra Planning Scheme Amendment C237* dated 28 February 2018.

⁹ *Gurner 23–33 Johnston Street Pty Ltd v Yarra CC* [2018] VCAT 794.

¹⁰ Letter from the Minister for Planning to Council's CEO dated 8 March 2017.

- a new Clause 21 Local Policy that replaced the proposed Clause 22 (to reflect the proposed structure of the Yarra Planning Scheme rewrite).

As set out in the 31 October 2017 agenda:¹¹

Mandatory height controls have been applied to areas of intact heritage streetscapes and to areas that directly adjoin low scale residential areas. The sensitivity of these locations and the potential adverse impact that taller built form could have on their character and on the amenity of residents is considered to meet the tests of PPN60.

On 31 October 2017, Council resolved to authorise officers to exhibit the Amendment.¹²

The Amendment was exhibited between 16 November to 18 December 2017. A total of 28 submissions were received.

Activity Centre Pilot Project – Better height controls in activity centres

In December 2016 the Minister for Planning announced the Activity Centre Pilot Program ('Pilot Program'). A key purpose of the Pilot Program was to identify how planning controls could be used to provide greater clarity and certainty about development heights in activity centres and to ensure the community and developers have a clearer understanding of the form of new development expected in activity centres.

The Pilot Program investigated how planning controls could be improved to better reflect and support strategic work undertaken by councils, and lessen the instances of proposals far exceeding preferred maximum heights and being out of step with community expectations.¹³

This approach to strengthening how building heights are dealt with in areas identified for change was reiterated through policies in *Plan Melbourne 2017–2050* released by the Victorian Government in March 2017.¹⁴

In late September 2018, DELWP updated the webpage 'Better height controls in activity centres'.¹⁵ A Key Findings Report was released that details findings from the Pilot Program. Council submitted¹⁶ that the Key Findings Report said:

Johnston Street has a mix of mandatory and discretionary controls that were implemented on an interim basis, generally consistent with the recommendations of Council's Plan.

Johnston Street is a Neighbourhood Activity Centre, also characterised by its strip centre. It is well located and well supported by services and transport. Importantly, the centre has areas of heritage value needing appropriate planning to respond to these characteristics, in comparison to areas within the activity centre designated for change. The Amendment is scheduled for hearing for October 2018.

The key findings of the Pilot Program include that:

- strategic work underpinning controls needs to be sound and current
- preferred maximum height controls are generally effective

¹¹ Council Part A [1]

¹² Minutes of ordinary meeting of Council held on 31 October 2017 available at: <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committeemeetings/2017-council-meetings>.

¹³ Three activity centres were identified for inclusion as part of the Pilot Program – Moonee Ponds in the City of Moonee Valley, Ivanhoe in the City of Banyule and Johnston Street in the City of Yarra.

¹⁴ See *Plan Melbourne 2017–2050* at Policy 2.1.4: Provide certainty about the scale of growth in the suburbs.

¹⁵ See <https://www.planning.vic.gov.au/policy-and-strategy/activity-centres/height-controls>.

¹⁶ Part A [32]–[33]

- mandatory height controls do not necessarily inhibit development
- widespread application of mandatory maximum height controls across activity centres could have detrimental consequences
- consistent terminology to specify heights should be used
- preferred heights are more commonly exceeded on larger sites
- precedents can be set by previous approvals
- consideration of off-site impacts can vary in decision making
- use of subjective terminology can lead to uncertainty in outcomes
- floor area ratios can guide preferred built form outcomes in activity centres
- requirements for public benefits need to be unambiguous
- allowances should be made for sloping sites.

The Panel understands that the Pilot Program informed updates to *Planning Practice Note 60: Height and setback controls for activity centres* (PPN60).

Minor updates have also made to *Planning Practice Note 58: Structure planning for activity centres* and *Planning Practice Note 59: The role of mandatory provisions in planning schemes* (PPN59).

The Department's webpage also includes research undertaken and has made available the following supplementary studies:

The report entitled *Measurable criteria to assess development applications exceeding preferred heights: Analysis and Recommendations* prepared by MGS Architects and dated August 2018;

The report entitled *Viability of High Density Residential Development in Activity Centres, Refresh* prepared by Essential Economics Pty Ltd and dated September 2018;

The report entitled *Monitoring Land Use Planning Outcomes: Assessment of Local Economic Impacts of Increased Residential Development in Activity Centres* prepared by Essential Economics Pty Ltd dated February 2018.

1.3 Procedural issues

Conditional authorisation

The Amendment received conditional authorisation.

The Panel asked Council for submissions about how it should approach the conditional authorisation letter and in particular whether the Panel should consider itself bound by the condition in the authorisation relating to restricting a consideration of mandatory controls to "*exceptional circumstances*".

Council responded¹⁷ that the Panel "*is not confined in its consideration of the proposed mandatory controls to the 'exceptional circumstances' test*" for a number of reasons including:

The authorisation letter, after referring to the exceptional circumstances test, also says that "*in addition to that condition*", the Council may consider applying a formula of discretionary controls plus mandatory maximum height. It is not clear that that paragraph was confined by the exceptional circumstances test.

¹⁷ Part C [3]

The authorisation letter makes note of the pilot program and contemplates that the Amendment may be considered in light of that program.

The Panel should make its recommendations having regard the current version of Practice Note 60, as amended since authorisation of the Amendment.

Practice Note 60, although it provides useful guidance, is not a binding document.

The Panel notes this response and observes that even if the premise that a panel is not bound by a conditional authorisation is correct, it may be seen as unhelpful if a panel were to ignore such conditions in reporting its findings.

Amendments VC148 and VC149

Amendment VC148 was gazetted on 31 July 2018, after the Amendment was exhibited. VC148 made substantial changes to the structure and content of the planning policy framework, as well as other provisions in the Planning Scheme. VC148 introduced a new Planning Policy Framework (PPF) and enables the future introduction of a Municipal Planning Strategy (MPS).

VC149 was gazetted on 4 October 2018 and introduces the new Commercial 3 Zone.

Amendments VC148 and VC149 have implications for the form and content of zones and overlays. The Local Policy can progress under the current system and will be translated into the PPF format as part of a separate process.

The introduction of the Commercial 3 Zone brings into effect an additional zone that promotes a more genuine form of mixed-use development. It is not being considered as part of this Amendment process.

1.4 Issues raised in submissions and dealt with in this Report

Twenty-eight submissions were received in response to exhibition of the Amendment. Included within these submissions were:

- two submissions in support of the Amendment (with no changes)
- seventeen submissions in support of the Amendment (with changes)
- seven submissions objecting to the Amendment (with changes)
- two submission seeking changes.

By way of an overview:

- there was general support for the rezoning from C2Z to C1Z
- some submissions were in support of the DDO providing guidance to future built form
- some submissions opposed the use of mandatory controls and some submissions opposed requirements in the DDO in so far as they have been applied to their sites
- two submissions, from residents, submitted that the scale of development that could be allowed for in the DDO is too large.

The key issues raised in the submissions concerned:

- objection to mandatory controls
- objection to requirements to exceed preferred heights (with suggested changes)
- objection to a height limit at all (whether preferred or mandatory)
- interpretation of the height range for mid-rise development
- objection to taller buildings
- requests for a different sub precinct control to be applied

- requests from landowners to be included in the Amendment
- objection to 45 degree building envelope
- objection to upper level side setbacks (on all sites)
- request for greater setbacks for individually significant heritage buildings
- uncertainty on the requirements for corner sites
- objection to HO being applied
- objection to requirements for floor to floor ceiling heights at lower levels to support commercial development
- protection of the Collingwood Arts Precinct.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02–3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Does the vision have strategic justification?
- Is the extent of the Amendment appropriate?
- Are mandatory controls justified?
- Sub precinct boundaries
- Issues with the requirements:
 - Objectives
 - The need for built form objectives for sub precincts
 - Definitions
 - Wording of clause 2.0 – Amendment of permits
 - Building height
 - Overshadowing and solar access requirements
 - Street wall height
 - Mid level street setback above the street wall
 - Upper level setback above the street wall
 - Rear setbacks
 - Building separation requirement
 - Corner site requirements
 - Commercial floor space requirements
- Drafting issues.

2 Does the vision have strategic justification?

2.1 The vision for Johnston Street

(i) What is the vision?

The 'Vision' for Johnston Street is set out at p 39 of JSLAP. The Amendment, as exhibited, adapts these for inclusion at Clause 21.12–1 of the planning scheme as follows:

Vision

Johnston Street will continue to evolve into a vibrant activity centre that serves the day to day needs of the local community while supporting employment, business and creative opportunities. The area will accommodate a diverse and growing population, well connected by sustainable forms of transport, with activity focussed around Victoria Park Station.

High quality corner buildings at the intersection of Johnston and Hoddle Streets will create a point of entry into Precincts 1 and 2, complemented by streetscape improvements.

For Precinct 1, and for the section of Precinct 2 between the rail bridge and Hoddle Street, the Precinct Vision Statements in the proposed Table to Clause 21.12–1 includes:

The Victorian and Edwardian era heritage character will remain the prominent feature of the streetscape ... with taller built form setback from the street edge to provide separation between the heritage streetscape and newer built form.

For Precinct 2, east of the rail bridge, the proposed Vision Statement ¹⁸refers to:

... a more prominent, well designed and contemporary built form character will emerge with well-designed buildings with well activated ground floor frontages and articulated facades to break up the mass of buildings. Taller built form will be appropriately set back from the main facades.

At present all Johnston Street sites in Precinct 1 are protected by a Heritage Overlay; the Amendment proposes extending permanent heritage protection to all but one of the Johnston Street properties between the rail bridge and Hoddle Street.

(ii) Where does the vision come from?

The strategic justification for the Amendment is provided by JSLAP. JSLAP provides background information and a statement of the strategic land use and built form directions for the Johnston Street corridor and a wider study area that includes Hoddle Street, Trenerry Crescent, the Easy Street precinct, Abbotsford Convent and surrounding residential areas.

JSLAP identifies:¹⁹

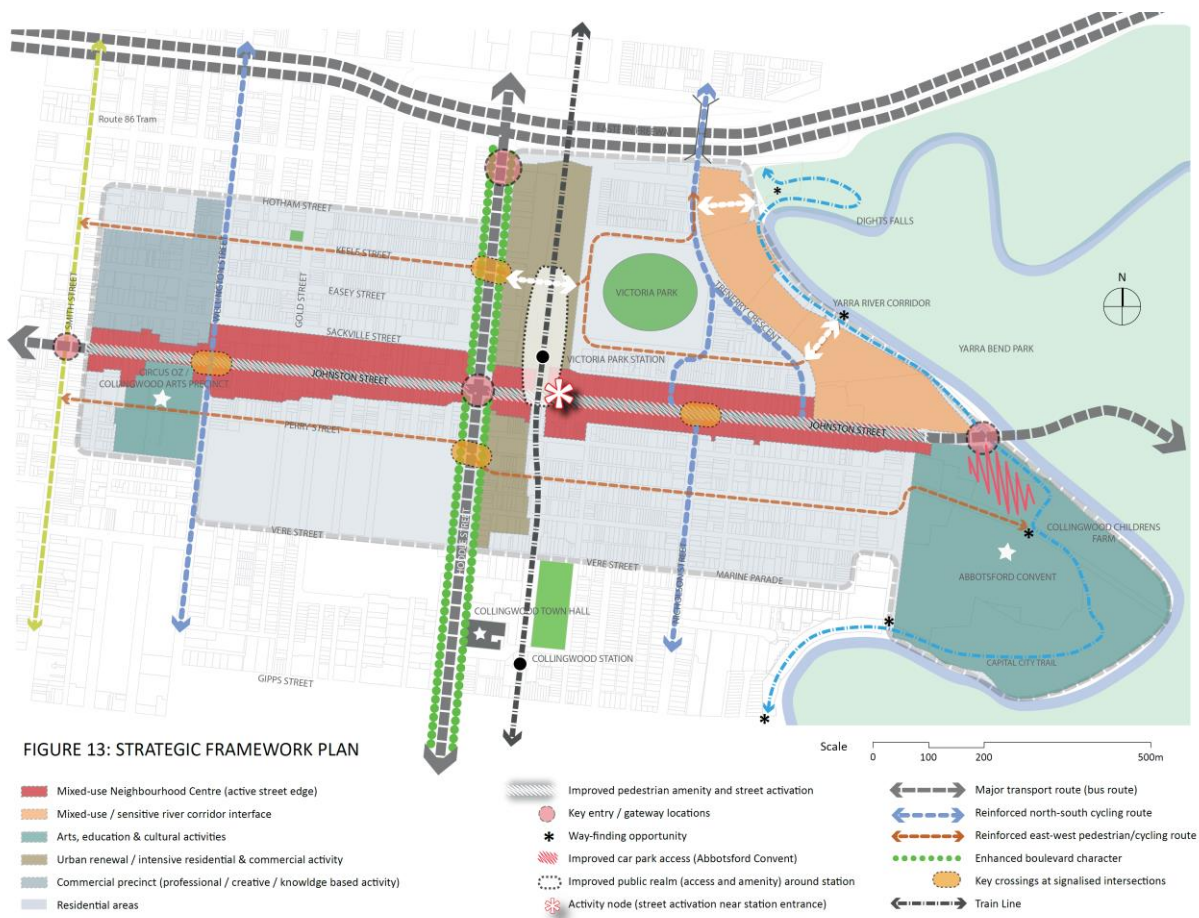
- That Hoddle Street is an urban renewal area under *Plan Melbourne* and has the potential for significant change.
- That VicTrack land adjacent to Victoria Park Station, as well as land to the west of the railway, also provides significant opportunities for redevelopment.
- That other precincts along Johnston Street will experience lower more moderate levels of change.

¹⁸ As edited in Council's post exhibition version at Tab 6 of Document 1

¹⁹ Page 42

- That the central section of Johnston Street (Smith Street to Hoddle Street) is subject to a heritage overlay and has the potential for moderate change that is respectful of the heritage qualities of the area.
- That the eastern end of Johnston Street is not subject to the same heritage values and has the potential for moderate change with a more contemporary character.
- The potential for an activity node and improved public realm, focussed on the area where the railway line crosses Johnston Street at Victoria Park Station, with the opportunity for a slightly higher built form in that location.
- Minimal change in the existing low rise residential areas surrounding the Hoddle Street and Johnston Street corridors.

Table 2: Strategic Framework Plan – JSLAP Figure 13



JSLAP includes objectives for land use, public spaces, access and movement, and built form. It divides the wider area into a number of built form precincts. For each precinct it provides a statement of future character, guidelines, principles, maximum building heights and setbacks.²⁰

It identifies Johnston Street as being within two general precincts, these are elaborated into 11 sub precincts in DDO15 (see Figure 6 on page 37 of this report).

JSLAP clearly sets out a hierarchy of ‘maximum’ heights, not just for precincts 1 and 2 (which are the subject of this Amendment), but for surrounding precincts including:

- Precinct 7 (Trenerry Crescent at 6–8 storeys)
- Precinct 4 (Hoddle Street South at 6–7 storeys)
- Precinct 3 (Hoddle Street North/Victoria Park Station at 10–12 storeys west of the railway line and 6–8 storeys east of the railway line).

Some submitters argued the inherent virtue of increased height to provide more housing or commercial floor space, provided it did not otherwise produce unacceptable impacts.

Council submitted²¹ that:

The hierarchy is supported by a sound strategic rationale. For example, the Hoddle Street/Victoria Park Station built form guidelines seek lower built form to the east of the railway to transition to lower built form at the interface with Lulie Street (which is a residential street incorporating heritage listed Victoria Park).

Figure 3: Built Form Framework Plan – JSLAP Figure 18

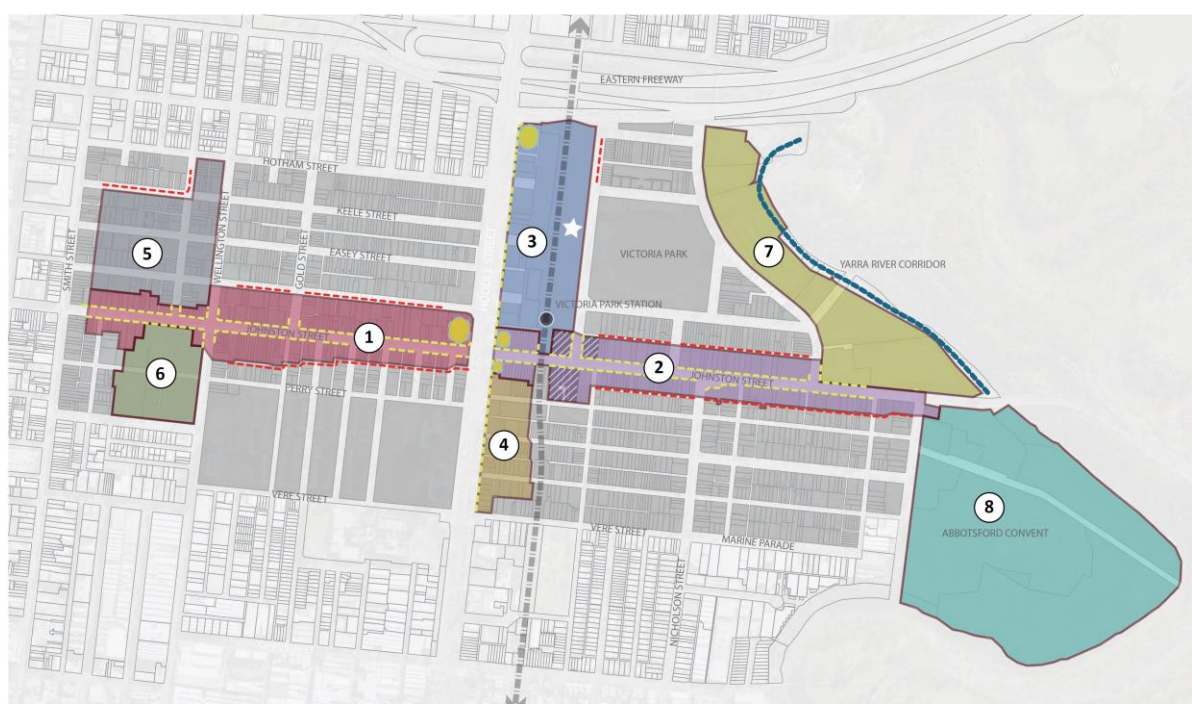


FIGURE 18: BUILT FORM FRAMEWORK PLAN

<ul style="list-style-type: none"> Existing Residential Areas <ul style="list-style-type: none"> - Existing low rise scale retained (not including Collingwood Housing Estate) Street Wall Facade <ul style="list-style-type: none"> - Consistent street wall facade (height) - Active ground level frontages Residential Interface <ul style="list-style-type: none"> - Scale transition to adjoining low rise residential areas River Corridor Interface <ul style="list-style-type: none"> - Buildings respect the Yarra River corridor - Maintain and Protect Natural Vegetation 	<ul style="list-style-type: none"> Corner Opportunity - High Quality Entry Buildings <ul style="list-style-type: none"> - Well designed corner/entry buildings Victoria Park Station Activity Node <ul style="list-style-type: none"> - Taller development (8-10 storeys) close to the station with public realm improvements - Active ground floor frontages Strategic Redevelopment Site (VicTrack Land) suitable for higher density residential uses incorporating pedestrian links and improved connections to the station (6-8 storeys) 	<ul style="list-style-type: none"> 1. Johnston Street Central <ul style="list-style-type: none"> - Maximum Height: 6-7 storeys - Street Facade Height: 2-3 storeys (consistent with existing heritage facades) 2. Johnston Street East <ul style="list-style-type: none"> - Maximum Height: 6-7 storeys - Street Facade Height: 4-5 storeys 3. Hoddle Street North / Victoria Park Station <ul style="list-style-type: none"> - Maximum Height: 10-12 storeys - Hoddle Street Facade Height: 6 storeys - East of railway line: 6-8 storeys 4. Hoddle Street South <ul style="list-style-type: none"> - Maximum Height: 6-7 storeys - Hoddle Street Facade Height: 6 storeys 	<ul style="list-style-type: none"> 5. Essey Street Precinct <ul style="list-style-type: none"> - Maximum Height: 5-6 storeys 6. Community Hub Precinct <ul style="list-style-type: none"> - Maximum Height: 6 storeys with respect to heritage - See DDO12 for design and built form guidance at 35 Johnston Street (former Collingwood TAFE site) 7. Trenerry Crescent <ul style="list-style-type: none"> - Maximum Height: 6-8 storeys - Street Facade Height: 3-4 storeys - DDO1 applies to river frontage (Council is currently preparing an Amendment in collaboration with DTPLU to replace the existing DDO1 schedule) 8. Abbotsford Convent <ul style="list-style-type: none"> - Subject to the Special Use Zone (SUZ 2 & 4)
---	--	--	---

David Barnes gave evidence that:²²

The buildings guidelines, heights and setbacks are generally consistent with those identified in the *Built Form Analysis and Recommendations* background report.

When compared to the built form requirements and controls that are proposed to be included in DDO15, I am satisfied that the overall built form intent has carried through

²¹ Part C [26]

²² Paragraphs [43] to [45]

from the background reports to the DDO. However, there are a number of subtle changes that have been made, as follows:

- Absolute heights and setbacks have been stated in the DDO, whereas the background reports referred to a range of heights and setbacks.
- Heights are expressed in metres rather than storeys.
- The Johnston Street corridor area has been divided into 11 sub precincts, rather than the two precincts referred to in the other report.
- Upper level setbacks above the street wall and about a rear boundary interface height have been expressed differently, by reference to a 45 degree building envelope.

Generally, JSLAP and the background reports prepared as part of the preparation of the plan, provide an appropriate level of detail and analysis to provide strategic justification for the Amendment.

De Luca Property Group criticised the strategic analysis behind the Amendment. Council made the following points in response to De Luca's written submissions:²³

- Council's experts did assess the Amendment against PPN60²⁴
- the Supporting Document (attachment 4 to the Council Agenda dated 31 October 2017) refers to the GJM advice ...
- the new PPN60 does bring about a change "*in substance*" for reasons the Council has already explained.
- Council did take the Panel to the *Pace Development Group* decision²⁵
- Council's experts have assessed where guidance is found on the same matters within the Scheme.

Mr Parsons and Mr de Keijzer were clear that they did not consider that the *Better Apartment Design Standards* dealt with building separation and equitable development sufficiently. Mr Barnes also assessed the existing policy provisions.²⁶

Council submitted:²⁷

The exercise that Mr O'Farrell went through by taking the Panel to the existing heritage policy and urban design policy demonstrated why it is so important for the DDO to deal with the matters it does. Mr O'Farrell undertook no substantive exercise of identifying where a particular requirement in the DDO15 was simply duplicating another control.

2.2 Is it appropriate to set a vision?

(i) The issue

Is it appropriate for Council to set a vision for the area?

(ii) Evidence and submissions

Council put forward a number of propositions, which Mr Biacsi fairly accepted:

- it is legitimate and appropriate for the Council to seek a preferred character, including preferred scale, for the Johnston Street activity centre

²³ Part C [65]

²⁴ see for example, Mr Barnes' evidence at [94]–[98] and Mr Parsons' evidence at [61] onwards

²⁵ See [67] of Council's Part B submission

²⁶ For example, at [57]–[63]

²⁷ Part C [65]

- the suitability of any proposal should be judged by its responsiveness to that preferred character, including preferred scale
- that it was desirable to define that preferred character including by reference to the intended scale.

(iii) Discussion and conclusion

The Panel agrees that a legitimate role for planning authority is to set a vision for an area. But this vision cannot be set at a whim, or without strategic justification. In considering whether a vision is appropriate it is important to consider (at least) whether the vision is:

- capable of delivering a quality public environment
- capable of delivering quality private environments considering conventional amenity impacts such as overshadowing and visual bulk
- compatible with heritage (or natural) values
- neither an overdevelopment nor underdevelopment of the area in terms of local infrastructure capacity: on the one hand it can be serviced, and on the other it makes efficient use of infrastructure and location attributes and is economically viable
- appropriate given the metropolitan and local role expected of an area
- likely to be robust over time.

Planning Schemes in Victoria must seek to achieve the objectives of planning in Victoria as set out in Section 4(1) of the *Planning and Environment Act 1987*. These objectives include:

To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.

Clearly many different types of area deliver on this objective and Victorians enjoy a range of living environments from high-rise central city apartments, through mixed-use areas to leafy suburbs, and beyond into a range of regional options.

Not only should new areas deliver a quality public environment, but new development should also ensure that it does not undermine those elements of adjoining areas that deliver a quality environment to such an extent that particular impacts are unacceptable or that broader impacts negate the community benefit of the development to such an extent that a net community benefit is not achieved.

The fact that some sites in Johnston Street could support increased height and hence provide more housing or commercial floor space and do this without unacceptable conventional amenity impacts is only part of the consideration that needs to be made.

2.3 Is there policy support for the vision?

The Explanatory Report briefly discusses how the Amendment meets relevant policies. A strategic planning policy analysis was undertaken as part of the preparation of JSALP and summarised relevant policies that applied in 2015.²⁸

David Barnes gave evidence²⁹ that:

²⁸ (Johnston Street Local Area Plan Appendix A – Policy and Strategic Basis November 2015

²⁹ Barnes Evidence 53

The review was undertaken prior to the latest release of *Plan Melbourne 2017–2050*. However, the policy review generally remains a sound analysis of State and local planning policy implications for Johnston Street.

(i) Plan Melbourne and State policy

When *Plan Melbourne* was first released in 2014 it showed Hoddle Street and the Collingwood industrial area as urban renewal areas. That is not now the case under *Plan Melbourne 2017–2050*.

Mr Barnes gave evidence³⁰ that despite this change there was in his view still a strong policy direction to:

- Concentrate investment and jobs in the Central City area.
- Deliver more housing close to jobs and transport.
- Recognise the importance of neighbourhood activity centres in supporting the significant growth anticipated in higher order metropolitan and major activity centres, especially where they have good access to public transport.
- Recognise the need for greater flexibility in planning controls in activity centres than in surrounding residential areas to facilitate growth.
- Recognise the need to prepare local plans in consultation with the community to identify the scope and nature of future growth within activity centres.
- Recognise the importance of neighbourhood activity centres to the 20 minute neighbourhood concept.

These policy directions from *Plan Melbourne* are generally embedded into the following sections of the State section of the Yarra Planning Scheme:

- 16.01–1S Integrated housing
- 16.01–1R Integrated housing – Metropolitan Melbourne
- 11.03–1S Activity Centres
- 11.03–1R Activity Centres – Metropolitan Melbourne
- 16.01–2S Location of residential development
- 16.01–2R Housing opportunity areas – Metropolitan Melbourne.

(ii) Local planning policies

Local planning policy in the City of Yarra is structured along the following themes:

- Land use (21.04)
- Built form (21.05)
- Transport (21.06)
- Environmental sustainability (21.07).

Clause 21.4–2 includes policies for activity centres. Policies seek to maintain the balance between the local convenience and the regional retail roles of Yarra’s activity centres. They also place emphasis on maintaining the business function of activity centres and ensuring that housing does not compromise that function.

The Strategic Framework Plan (Figure 9) identifies Johnston Street, extending from Nicholson Street in the west to the Yarra River in the east, as a Neighbourhood Activity Centre. It also identifies:

³⁰ Barnes Evidence 55

- Major activity centres in the municipality as being Brunswick Street, Smith Street, Victoria Street, Bridge Road and Swan Street.
- The Easy Street precinct is identified as a Commercial and Industrial Area. Municipal wide urban design policies are contained in Clause 21.05–2. They include the following:
 - Retaining Yarra’s identity as a low rise urban form with pockets of higher development.
 - Development on strategic sites and within activity centres to be generally no more than 5 to 6 storeys unless demonstrated that a greater height can be accommodated.
 - Development outside activity centres and not on strategic redevelopment sites to reflect prevailing low-rise urban form.

The MSS provides policies for each ‘neighbourhood’ in the municipality (Clause 21.08). Johnston Street east of Smith Street is split between the neighbourhoods of Collingwood (west of Hoddle Street) and Abbotsford (east of Hoddle Street). Key neighbourhood policies relevant to the Abbotsford part of Johnston Street identify:

- Victoria Park Station and land along the east side of the railway line north of Johnston Street as a strategic redevelopment site.
- Residential land to the south of Johnston Street between the railway and the river as Inner Suburban Residential.
- Residential land to the south of Johnston Street between Smith Street and Hoddle Street as Urban Residential.
- Johnston Street East as a main road with the aim to maintain a hard urban edge and reflect the fine grain of subdivision in building design where it exists.
- Land to the north of Johnston Street along Sackville Street as ‘Non Residential’.

(iii) Discussion and conclusion

The Neighbourhood Activity Centre (NAC) status previously given to Johnston Street in the Yarra Planning Scheme meant that there was an expectation through State Planning Policy objectives that future growth in dwellings would occur in areas able to accommodate change (in terms of land use, built form and character). This has not changed under *Plan Melbourne* and higher density development is expected to be supported by local planning policies and local area plans.

The current C2Z prevents the achievement of this policy. The critical issue is the balancing of housing supply against built form outcomes. In broad terms is it appropriate to designate the area for mid rise development. The precise parameters around that mid rise development is a matter for detailed consideration in Chapter 6.6.

The proposed controls follow a comprehensive built form analysis that:

- identifies the opportunities for change and explores alternative built form outcomes to accommodate that change
- includes an analysis of visual and amenity impacts, solar access, overshadowing impacts and any wind impacts
- identifies any significant physical features
- identifies and articulates how new development should address street frontages and relate to adjacent residential areas

Johnston Street has several larger sites that can accommodate more intense development. The Amendment cannot be divorced from the wider JSLAP which identifies development opportunities across a wider area.

The Panel concludes:

- a mid rise scale of development is supported by policy in this area.

2.4 Are the implications of the vision understood?

(i) The issue

If a vision is effective it will, by way of more detailed controls, shape the outcomes in an area. It is important that the built form implications of the vision are properly understood.

(ii) Evidence and submissions

3D modelling has been prepared of the Precinct areas. Council explained³¹ the detail of the model as follows:

The basic detail of facades and roofs has been modelled to assist identification and provide the relevant context for the built form controls proposed. Approved permits were specifically modelled from the latest submitted or approved plans available Council. Several parties and experts have inspected the 3D modelling following the Panel directions hearing.

A fly-through and walk-through of the 3D model of both the exhibited and Council's Preferred Version of the Amendment was prepared by Ethos Urban and presented to the Panel. Submitters had an opportunity before the Hearing to view the model.

The Council maintained³² that the 3D modelling provided a substantial additional tool for analysis which supplements the earlier work of sections, perspectives and artist's impressions contained in JSLAP and the *Supporting Document* prepared as part of the Amendment documentation. It said that the model enables street level views which move through the street corridor gaining an appreciation of the maximum massing envelope enabled by the proposed controls.

Mr Sheppard, Mr de Keijzer and Mr Furness acknowledged the 3D modelling as a useful tool of analysis. In particular Mr Sheppard agreed that the virtue of a 3D computer model enables a more fulsome appreciation of the impact in the street than do sections and that the 3D model is the best tool to understand the recessiveness of built form.

The model also provides a 3D analysis of the effect of shadow, which Mr de Keijzer used to understand the shadow impact of a street wall that is higher than 18 metres on the buildings to the south of Johnston Street.

³¹ Council Part A [114]

³² Part C [16]

Figure 4: Illustration of modelling

Source: Parsons Evidence Figure 8.8

(iii) Discussion and conclusions

The Panel accepts that 3D modelling has its limitations, but those limitations are well understood by experienced practitioners. The massing model cannot be compared with fully designed buildings, but it can be used to compare the relative impact of different metrics in the controls.

The 3D model was an important tool in understanding the impact of the controls and informed the views of most of the witnesses. The Panel commends Council for preparing the model.

The Panel agrees with Council that the modelling work confirms the importance of the 45 degree requirement in achieving visually recessive upper levels and the use of a 6 metre setback in preference to a 3 metre setback above the street wall east of Johnston Street.

2.5 Does the local policy capture the vision?

The Panel has reviewed the local policy at Clause 21.12 and concluded that it reflects the proposed vision.

Contemporary Arts Precinct requested a change in the policy to add the underlined words:

Foster and support education, arts and community based activities at 35 Johnston Street (Collingwood Arts Precinct) including through the protection of its outdoor space from any additional overshadowing.

The Panel does not support this change. Overshadowing is dealt with in DDO15 and does not need to be repeated in the policy

The Panel notes that with the inclusion of land west of the rail bridge in a Heritage Overlay it may make sense to shift the Precinct 1 boundary from Hoddle Street to the rail bridge.

The Panel suggests:

Consider realigning the Precinct 1 boundary to the rail bridge in the planning scheme documentation.

2.6 Is there strategic support for the proposed planning scheme provisions?

(i) Zones

Submitters generally supported the proposed rezoning of the land from C2Z to the C1Z for the following reasons:

- the current zoning is too restrictive

- it will increase land use and development opportunities for both the site and broader Johnston Street area
- it will facilitate the rejuvenation and revitalisation of the area as envisaged by the Johnston Street Local Area Plan
- it will increase residential development that will help commercial uses in the street including, shops and restaurants and give a new feel to the area
- it will allow the first floor areas above shops to be utilised to provide much needed residences close to the CBD.

Submitter 26 commended Council for taking action to inject life into Johnston Street, which is underutilised given its proximity to the university and to the city.

Mr Barnes gave evidence that the existing pattern of commercial zonings in the Johnston Street area is largely derived from the *Yarra Business and Industrial Land Strategy 2012*. The Panel notes that the land currently in C2Z was placed in the then Business 3 Zone (B3Z) with the new format planning scheme; this zone had a purpose to:

To encourage the integrated development of offices and manufacturing industries and associated commercial and industrial uses.

Accommodation was prohibited in the B3Z apart from a caretaker's house. The B3Z was converted to the C2Z when the new commercial zones were introduced.

As part of the preparation of JSLAP, SGS Economics and Planning was engaged to review the economic trends and outlook for the Johnston Street area, to assist Council in making land use planning decisions in Precincts 1 and 2. The report recommended that all properties fronting Johnston Street that are in the C2Z be rezoned to C1Z.

The report concludes that rezoning existing C2Z land was the best way to encourage new investment and redevelopment, and to reactivate ground level uses along Johnston Street.

(ii) Overlays

The application of DDO to an activity centre is common practice. The Panel supports the use of this overlay. Chapter 7 identifies a number of drafting issues with the controls. These are more in the way of refinements and are not critical to the operation of DDO15.

The application of the EAO to land being rezoned to a zone that allows for residential development will ensure land contamination issues are considered. The Panel observes that the EAO is a blunt tool and will place requirements on even relatively minor development.

2.7 Overall conclusion and recommendations

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

The Panel recommends:

Based on the reasons set out in this Report, the Panel recommends that Yarra Planning Scheme Amendment C220 be adopted as exhibited subject to:

- a) The changes proposed by Council when it referred the Amendment to the Panel (Document 1)**

- b) The Council officers' changes presented in Document 26**
- c) Changes to refine the drafting of Design and Development Overlay Schedule 15 generally as shown in Appendix D.**
- d) The further changes set out in this report.**

3 Is the extent of the Amendment appropriate?

3.1 Extending the controls

(i) The issue

A number of submitters asked for their land to be included in the Amendment or for the proposed rezoning to Commercial 2 to apply to more land.

(ii) General issues

Evidence and submissions

Council's primary position³³ was that the question of 'whether this land should be rezoned' is not a submission 'about the Amendment' and therefore is not a matter that is properly before the Panel.

Council explained that while all submissions were referred to the Panel out of an abundance of caution, the Panel still needs to turn its own mind to the question of whether each submission (or part of a submission) is 'about the Amendment'.

Council, submitted that as the planning authority, it is the body responsible for determining whether to seek authorisation for a planning scheme amendment, and which land is included in any such amendment.

Council submitted that while landowners are often frustrated that a council will not progress amendments on their behalf, or include their land in an amendment, that is the nature of the system provided for in the Act.

In flagging the potential for further notice to contemplate further rezoning, the Panel drew Council's attention to Darebin C136 where further notice was given and further land included in that amendment. Council responded:³⁴

The present situation can be distinguished from the C136 Darebin panel for Saint Georges Road and Plenty Road. That panel report records the submissions of landowners and the planning authority that certain sites were "*clear anomalies*" for which strategic work had been undertaken to support rezoning but rezoning had not been progressed as part of the amendments before the panel. The planning authority indicated its support for the provision of further notice to relevant neighbouring properties in relation to the planning authority's willingness to rezone the sites to Mixed Use.

In addition to the reasons of principle, Council gave site specific reasons (discussed below) why it is not appropriate for the Panel to entertain the submissions about rezoning land outside the Amendment:

Discussion

The Panel heard submissions and evidence in relation to the proposed re-zonings. This was primarily on the basis of section 24 of the Act which states:

The panel must consider all submissions referred to it and give a reasonable opportunity to be heard to:

³³ Part C [67]

³⁴ Part C [110]

(a) any person who has made a submission referred to it ...

Council referred the submissions “*out of an abundance of caution*” – the Panel heard them for the same reason.

The Panel agrees that as a general principle it not the role of a panel to go beyond the exhibited Amendment and ‘to stand in the shoes’ of the planning authority. However, the Panel is aware of other amendments (not in the City of Yarra) where the strategic work that underpins the amendment has not been applied in a consistent fashion, and essentially identical parcels of land have been treated differently for no explicit reason. In these cases the Panel thinks it may be appropriate for a panel to consider land that might not have been covered by the exhibited amendment.³⁵

But none of this is relevant here: for this Amendment Council has applied the strategic work consistently and the strategic work is well-founded. The Panel does support any further rezoning of private land as part of the Amendment

(iii) Site specific reasons why land should not be rezoned

For completeness the Panel records the site specific reason identified by Council that militate against an inclusion of specific sites in the C1Z. The Panel endorses these reasons.

73 Harmsworth Street

Submitter 27 requested 73 Harmsworth Street to be rezoned from the General Residential Zone to the Commercial 1 Zone.

Council responded that the property sits outside of the area subject to the Amendment. The JSLAP seeks to protect the low-scale residential areas north and south of Johnston Street.

Land with Sackville Street frontages

AA Holdings, 40 Johnston Street and 35–37 Sackville Street, requested the following:

- amend the Precinct 1 boundary to include all of Sackville Street
- rezone Sackville Street to C1Z so that development in the area can be maximised
- undertake an assessment of ownership on all properties within Precinct 1.

At the Hearing AA Holdings acknowledged its submission calling for rezoning of the Sackville Street property was “*beyond the scope of the Panel hearing*”. The Council agreed.

Submitter 16 supported rezoning 8–10 Johnston Street to C1Z and sought to also rezone sites to the rear (north) of the site, fronting Sackville Street, to C1Z for the following reasons:

- there is no planning reason why the southern side of Sackville is not included as part of the proposed changes as the immediate interface to the north are non-sensitive commercial properties
- there is also no strategic basis for splitting the block with an artificial mid-block
- current rezoning proposal does not encourage future consolidation of land for improved planning outcomes and more comprehensive developments options.

The JSLAP adopted this rationale as the basis for the rezoning of Johnston Street in order to activate the activity centre whilst retaining the commercial precinct to the north.

³⁵ This might involve further notice

Council submitted that the Easey Street Precinct functions as a viable commercial precinct and the activities occurring along Johnston Street are considered separate to that activity. It is logical to retain as much of the economic component of this precinct as possible.

The rationale for the boundary between Precinct 1 and Precinct 5 within the JSLAP can be found³⁶ in Yarra's *Business and Industrial Land Strategy*, where it states:

The interface ... may involve conflicts between future housing and industry. The future zone/precinct boundary should be the property boundaries midway between Sackville and Johnston Streets rather than Sackville Street.

This logic was also expressed in the *Yarra Industrial and Business Land Strategy Review* (2004) which stated:

Between Smith Street and Wellington Street a more extensive concentration of business uses exist to the north of Johnston Street, extending through to Keele Street. It is not the intention to introduce the opportunity for residential uses into this precinct.

Accordingly between Smith Street and Wellington Street, any rezoning to Business 1 should only apply to properties fronting Johnston Street, and should not extend through to Sackville Street.

329 Johnston Street, 236 Nicholson Street and 37 Hunter Street

Pelican Capital supported the rezoning of 329 Johnston Street to the C1Z and also sought for 236 Nicholson Street and 37 Hunter Street to be rezoned from General Residential Zone (GRZ) to C1Z for the following reasons:

- all of the above sites are within single ownership
- if rezoned, the whole landholding can be efficiently redeveloped (appropriate to the role and function of the activity centre) and will become available for a wide range of uses in accordance with provisions of the zone.

The Council did not support rezoning the land at 236 Nicholson Street and 37 Hunter Street from GRZ to C1Z on the basis that:

- no strategic work has been undertaken by the Council to support such a rezoning
- the happenstance of common ownership of these parcels with 329 Nicholson Street is not a strategic reason
- Pelican Capital bought land in two zones:
 - it applied for and secure a permit for land in two zones
 - it has at all times been fully informed of the zone conditions
 - the attempt to rezone the residential land is entirely opportunistic
- Pelican Capital secured a permit in February 2018 but it has not submitted plans for endorsement – in the context of the rezoning of 329 Nicholson Street to C1Z, there is a real question whether it will pursue development of the land in accordance with the permit.

Council noted that the permit application was hotly contested: the decision records that the Council would have refused the application, and that residents actively participated in the Tribunal hearing, including by calling expert evidence. A number of these residents have lodged submissions to the Amendment relating to the Pelican Capital land.

436–438 Johnston Street

Shakespeare Property Group sought to include 436–438 Johnston Street in the proposed rezoning from C2Z to C1Z for the following reasons:

- the site’s major frontage presentation is to Johnston Street
- the site has been redeveloped for the purposes of an office building therefore the economic vitality of the activity centre is assured without needing the limitations of the C2Z to control land use
- all properties in Trenerry Crescent have, or are in the process of being rezoned to the C1Z
- maintaining the eastern properties within the C2Z does not reflect:
 - the evolution of the Johnston Street area
 - nor the Council’s strategic planning for this centre, which is otherwise providing for the rezoning of all other surrounding commercial land to the Commercial 1 Zone.

The JSLAP identifies the site as sitting within Precinct 7: the Trenerry Crescent Precinct³⁷. The JSLAP notes that the sites located to the east of Trenerry Crescent on the northern side of Johnston Street are well utilised in terms of commercial uses and should remain as C2Z to maintain their commercial and employment focus.³⁸

Council submitted³⁹ that as is often the case with ‘edge of precinct’ sites, a judgment needs to be made about where to draw the boundary, and that it had made a strategic decision that this site fits within the Trenerry Crescent precinct, as reflected in the JSLAP. That designation is logical and accords with the Planisphere report of 2003.

Mr Barnes’ evidence (under cross examination) was that the built form for this site needed to respond to the Significant Landscape Overlay (SLO), and that if there is to be a DDO that applies to the site, it should not be DDO15 but rather a DDO that ‘ties in with’ the SLO.

The SLO (schedule 1) was not referred to in Mr Twite's evidence and Mr Twite's evidence says⁴⁰ that the only built form controls over the site are those in the C2Z and cl 22.10, which is incorrect if SLO is taken as built form control.

3.2 VicRoads land on the northwest corner of Johnston Street and Hoddle Street

(i) The issues

During the Hearing it became clear that it was not certain whether land forming part of the road reserve on the corner of Johnston Street and Hoddle Street was capable of development. This has implications as to whether the adjoining Aheron land is on a corner or not.

³⁷ Page 52

³⁸ Page 17

³⁹ Part C [75]

⁴⁰ at [152]

(ii) What land is affected?

VicRoads advised that the land comprises seven separate parcels (Figure 5 and Table 3), two of which are owned by CitiPower and occupied by an active substation. It is noted that parcel 22A (also known as 165 Sackville Street) was sold by VicRoads in 2017 and is currently owned by Aheron.

Figure 5: Affected VicRoads land

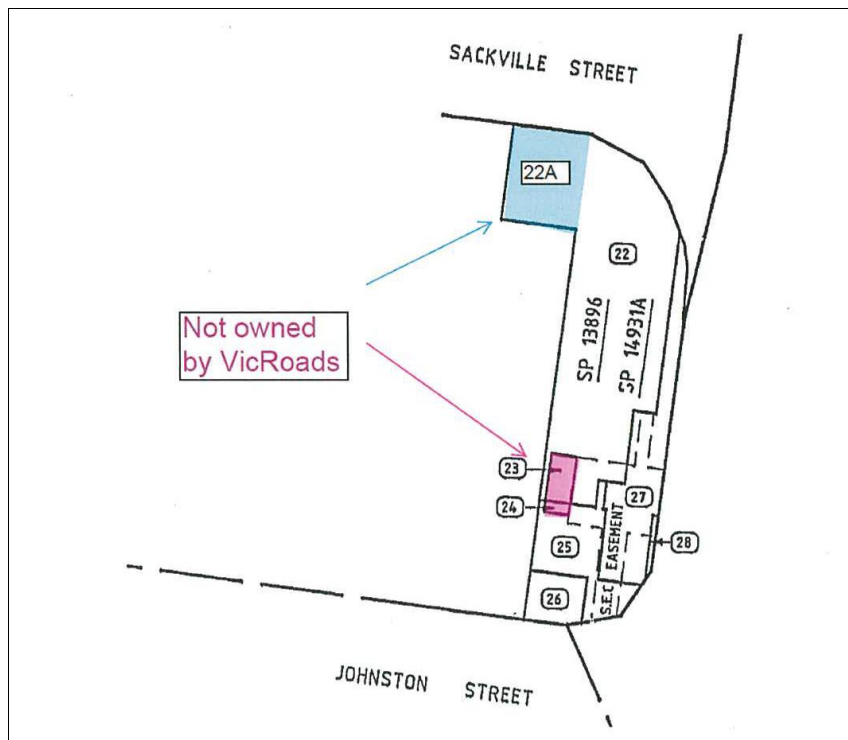


Table 3: Land ownership details of land in Figure 5

Street No	Land Owner	Certificate of Title	Size
22	Roads Corporation	C/T 11096/789	–
23	CitiPower Ltd	C/T 9533/836	22 sqm
24	CitiPower Ltd	C/T 9533/837	
25	Roads Corporation	C/T 8354/704	99 sqm
26	Roads Corporation	C/T 0354/688	43 sqm
27	Roads Corporation	C/T 8260/997	150 sqm
28	Roads Corporation	C/T 8410/601	3 sqm
22A	Aheron Investments Pty Ltd	C/T 11096/787	–

Source: VicRoads advice

(iii) Evidence and submissions

Submissions from VicRoads were sought after the close of the Hearing. VicRoads advice involved several letters and settled as:⁴¹

⁴¹ 21 November 2018

It is recognised that ‘the land’ is currently commercially zoned (CZ2) and is affected by various overlays including Design and Development Overlays (DDO2, DDO15) and Environmental Audit Overlay despite being a declared arterial road by the Roads Corporation.

Further investigation of various titles and surveys indicates that the remaining area owned by VicRoads ... is a declared arterial road under the Road Management Act 2004.⁴² ...

VicRoads regional metropolitan north west office has not identified this land as surplus, despite acknowledging Council did approach VicRoads Commercial Enterprises department in mid-September 2018 to enquire whether the land could potentially be identified as surplus. To date no further investigation has been undertaken by VicRoads to dispose of this land in the medium to long term.

VicRoads in consultation with Transport for Victoria seek to retain this land for future public transport connectivity including pedestrian and cycling upgrades ...

Having regard to the above, VicRoads in consultation with Transport for Victoria, CitiPower Pty and Powercor Australia Ltd requested the anomalies in the planning scheme map be corrected to:

- show the relevant parcels of land as a Road Zone Category 1
- correctly identify CitiPower's land as a Public Use Zone 1 or Public Use Zone 7.

VicRoads also noted that the title alignment in the southeast corner of 222A Johnston Street, Collingwood where it intersects with Hoddle Street incorrectly incorporates VicRoads parcels 25 (in part) and 26. This anomaly should be corrected on all relevant maps numbered Map 6 (affecting C1Z, DDO, EAO) to reflect Road Zone Category 1 and Public Use for CitiPower's land.

After reviewing correspondence from VicRoads, Council advised⁴³ that it had revised its position in its Part C submission, which recommended that the land on the corner of Hoddle Street and Johnston Street should be included within a sub precinct and therefore subject to specific built form controls.

Council agreed with the December submission of VicRoads which requests that the VicRoads land:

- be shown as Road Zone, Category 1 on the Yarra Planning Scheme maps
- that DDO15 be removed.

Council considered that the CitiPower land should be zoned Public Use Zone (PUZ1 – Service & Utility) to recognise the public land use for public utility and community services and facilities. Council advised that this anomaly could be addressed by Council after receiving the Panel's report to enable appropriate consultation with CitiPower.

(iv) Discussion

The Panel notes the *Ministerial Direction – The Form and Content of Planning Schemes* states:

22. A road which is declared as a freeway or an arterial road under the Road Management Act 2004 must be shown as a Road Zone – Category 1 on the planning scheme maps.

⁴² The notice/declaration was published in the Victorian Government Gazette on 26 January 1995. Hoddle Street is a State Highway pursuant to the Transport Act 1983 and is treated as a declared arterial road under Schedule 9(1) (2) of the Road Management Act 2004.

⁴³ Letter of 12 December 2018.

The planning scheme does not currently conform with the Ministerial Direction in relation to VicRoads land. The Panel understands that the CitiPower site could remain in a commercial zone, but agrees with submissions that the Public Use Zone is preferable to reduce planning uncertainty in an area with a complex cadastre, provided the Public Use Zone can be applied to CitiPower land.⁴⁴

The Panel accepts that this rezoning was not exhibited as part of the Amendment but thinks it would be efficient for it to be dealt with as part of this Amendment.

(v) Recommendations

The Panel recommends:

Rezone the VicRoads land on the northwest corner of Johnston Street and Hoddle Street, Collingwood to Road Zone Category 1 and delete Design and Development Overlay Schedule 15.

Rezone the CitiPower land near the northwest corner of Johnston Street and Hoddle Street, Collingwood to Public Use Zone (PUZ1) if compliant with the Ministerial Direction – *The Form and Content of Planning Schemes* and delete Design and Development Overlay Schedule 15.

3.3 The Heritage Overlay

3.3.1 Objection to introduction of Heritage Overlay

(i) The issue

The inclusion of properties east of Hoddle Street to the railway bridge was recommended in a report prepared by Context (expert heritage consultants).

One submission objected to the introduction of a new Heritage Overlay (HO505) east of Hoddle Street to the railway bridge due to the impact on the development potential of their property.

(ii) What the Amendment provides?

The Amendment applies a new Heritage Overlay precinct (HO505) 'Johnston Street East' to the properties at 219–241 Johnston Street, and 246–274 Johnston Street, Abbotsford (on a permanent basis).

(iii) Evidence and submissions

Submitter 4 stated that 272 Johnston Street is the one of the owner's main sources of income (rental income) and strongly opposed the application of the Heritage Overlay for the following reasons:

- it would devalue the property, as its use will be limited
- the owner will gain nothing in return for the place's inclusion in the overlay

⁴⁴ The Ministerial Direction – The Form and Content of Planning Schemes states:

19. A planning scheme may only include land in a Public Use Zone ... if the land is Crown land, or is owned by, vested in or controlled by a Minister, government department, public authority or municipal council.

- buildings in the Heritage Overlay are dilapidated and the owners should be encouraged to extend, renovate or demolish and rebuild without needing to seek a planning permit
- facades of the buildings have no consistency or theme and are nothing special and as such, they should not be preserved.

Submitter 8, sub precinct 2A, 248 Johnston Street, supported the intent of the Amendment to preserve the Victorian and Edwardian era heritage of Johnston Street.

Submitter 8 requested the following changes to the Amendment, to ensure that the structural integrity of the heritage buildings is maintained:

- reduce the preferred maximum building height for sub precinct 2A [21 metres (with basement car parking)]
- update the Amendment to prevent disturbance of sub-soils in sub precinct 2A, possibly making alternative options available for the provision of car parking to minimise the potential for disruptive excavation works.

The submission also requested that, if the above were unachievable, Council should not apply the HO to sub precinct 2A.

Council responded that the Amendment and DDO do not require that proposals provide basement car parking. The impact of any proposed car parking on the heritage place would be considered against the provisions of the HO and Clause 22.02. Entries from Johnston Street are strongly discouraged and would generally be unachievable for heritage frontages.

(iv) Discussion

The heritage qualities have been assessed by Context (heritage consultants) and found to comprise a number of contributory buildings that warrant application of a precinct overlay, in addition to the overlays recently applied to individually significant buildings in this section of Johnston Street.

The background report (*Heritage Gap Study: Review of Johnston Street East*, May 2016) by Context assessed the buildings between Hoddle Street and the railway bridge and supported the proposed Heritage Overlay.

The Panel supports the application of the HO. This section of the street is similar to the street west of Hoddle Street. The Panel accepts that this section of the street contains a number of contributory buildings.

The Panel notes that 270 Johnston Street has been demolished in the absence of a Heritage overlay and an older permit application has allowed demolition.

(v) Recommendation

The Panel recommends:

Re-classify 270 Johnston Street, Abbotsford as ‘Not Contributory’.

3.3.2 Road reserves

VicRoads objects to the requirement for planning permits for routine works and maintenance to the road reserve of Johnston Street.

As exhibited the Amendment applied to road reserves.

VicRoads requested the following changes to the Amendment:

- alter the alignment of the HO and DDO15 so they no longer apply to the arterial road reserve with the exception of the Railway Bridge which has identified heritage significance
- modify the provisions, overlay or schedules to provide planning permit exemptions for:
 - crossovers
 - roadworks other than traffic signals or signs
 - bicycle paths and trails
 - maintenance, which changes the appearance of the heritage place or uses different materials to the existing conditions.

Council noted the submission from VicRoads and proposed as part of its post exhibition changes to amend the HO and DDO maps to exclude the road reserve.

Excluding the road reserve from the HO will exclude any private works in the road reserve, such as a veranda from the HO. Other overlays in Yarra seem to apply the HO to the road reserve but not the DDO.

(i) Recommendation

The Panel recommends:

Retain the Heritage Overlay on road reserves.

4 Are mandatory controls justified?

4.1 The issue

The most significant theme in submissions was an objection to the inclusion of mandatory requirements in DDO15, particularly mandatory maximum overall building height and minimum upper level setback requirement requirements.

Council has sought to pursue community aspirations for certainty, while managing opposition to mandatory controls, by targeting mandatory controls to the following specific locations:

- in locations of intact heritage streetscape
- in locations with a sensitive interface with low scale residential properties where taller form could have adverse visual bulk and overshadowing impacts.

The issue is whether mandatory controls are justified.

4.2 What is proposed as mandatory and why?

(i) Evidence and submissions

Council's submission, which it said⁴⁵ was supported overwhelmingly by its experts appearing before the Panel, was that the following controls ought to be mandatory:

- the street wall height
- the setback above the street wall to the west of the rail bridge
- building heights in precincts with sensitive interfaces
- residential interface street wall heights.

Submissions requested that some or all of the mandatory controls be removed and replaced with discretionary controls. Submitters provided a range of reasons in support of their objection to the mandatory controls as follows:

- the lack of exceptional circumstances to justify use of mandatory controls
- the need for mandatory controls has not been demonstrated as necessary to prevent unacceptable built form outcomes
- mandatory controls do not allow contextual design opportunities that respond to policy
- mandatory controls do not allow sufficient design flexibility to ensure optimum development outcomes can be achieved
- mandatory controls are too inflexible and do not recognise differences in site context, design response and land use requirements.

M and C Jack submitted:⁴⁶

We advocate 'preferred' building criteria, in each instance, over 'mandatory' maximum criteria. This is consistent with the thrust of the VPP and planning schemes which are predominantly performance based.

De Luca Property Group, 196–202 Johnston Street, made an extensive submission at the Hearing on mandatory controls.⁴⁷ The site is subject to only three mandatory controls:

⁴⁵ Part B [76]

⁴⁶ [9]

- street wall
- setback above the street wall
- solar access.

200 Johnston Street contains the Austral Theatre, an individually significant heritage building. 196 Johnston Street is an office building. Both sites are in precinct 1AA, extending through to Sackville Street.

The sites will be affected by the mandatory solar access control and the mandatory setback above the street wall control on Johnston Street. The site at 196 Johnston Street is also subject to the mandatory maximum 11 metres street wall and the further discretionary requirement to match its street wall height with the height of the retained heritage building for a length of 6 metres.

Otherwise, the sites are subject to discretionary controls, including a discretionary preferred height of 28 metres (8 storeys), a discretionary 11 metre street wall height on Sackville Street, a discretionary 6 metre setback above the street wall for Sackville Street and a discretionary 45 degree envelope control on both Johnston and Sackville Streets.

Council submitted⁴⁸ that a number of submissions “miss ... the important point that the Council has been very selective in its application of mandatory controls”.

In seeking to establish the preferred character, including in relation to scale, the Council applied mandatory maximum heights in precincts with a residential interface. Council submitted:⁴⁹

- The need to mitigate development pressure was recognised as an exceptional circumstance by each of Melbourne C240, Melbourne C245 and Melbourne C270 panels.
- Both Melbourne C245 and Melbourne C270 panels found that the need to address sustained development pressure in the inner city and its consequential adverse amenity impacts (including inequitable development, increased overshadowing, and pressure on available infrastructure) gave rise to exceptional circumstances.

The Melbourne C240 panel stated:⁵⁰

With regard to the question ‘Are mandatory controls necessary?’, perhaps they have not been so in the past, as was asserted by Mr Pitt, Mr Jackson and others, but as development pressures mount, mandatory controls will set clear parameters around acceptable development outcomes. In this respect, the Panel is mindful that the initial redevelopment proposal for the Palace Theatre site was for a 99 metre building – many times higher than the 15 metre discretionary control. The Panel agrees with the National Trust submission that it is appropriate that a pro-active approach be taken to managing change in this precinct rather than leaving it to ‘after the horse has bolted’.

Council submitted⁵¹ that It is manifestly clear that there will be sustained pressure to exceed the preferred heights in the Johnston Street NAC. The analysis of the VCAT cases, as well as the submissions made by property owners to this Panel only affirm that proposition.

⁴⁷ [6]–[14] of a 20 page submission

⁴⁸ Part C [61]

⁴⁹ Part C [27] onwards

⁵⁰ Page 97

⁵¹ Part C [30]

Council had concerns about ‘creep’ which it said⁵² were well-founded. It gave the example of Mr Biacsi’s answers to questions about the cluster of towers around Spencer Street in West Melbourne which are significantly in excess of the 40 metre preferred height of the DDO, being upwards of 60 metres in most cases, and as high as 130 metres at 420 Spencer Street.⁵³

Notably in *Yarrabank Developments Pty Ltd v Melbourne CC* [2017] VCAT 888, the Tribunal stated:⁵⁴

The applicant says that the combination of strategic support for more intensive development, and the presence of existing and approved buildings that are at least twice DDO33’s preferred maximum height suggest that this 69 metre high building is acceptable. They rely on the discretionary nature of DDO33’s requirements, submitting that these allow greater heights and lesser setbacks based on an assessment of a proposal’s merits.

...

Mr Biacsi shares this view. He says that it is a logical response given the existing and approved heights of nearby buildings, and says that these approvals show a tolerance for variations in height.

...

With regard to the proposed development’s height, we are persuaded that the existing and approved heights of nearby buildings show the tolerance for variations in height that Mr Biacsi describes. We acknowledge Ms Hodyl’s massing studies and agree that buildings of 40–50 metres in height have a different visual impact than those of 70 metres, yet we are not persuaded that the proposed development’s height offends DDO33’s design objectives. Rather, we accept that it will be viewed as part of a ‘field’ of higher buildings on this part of Spencer Street as the applicant suggests.

(ii) Planning Practice Note 60: Height and setback controls for activity centres

The ongoing debate about discretionary or mandatory control has sparked the production of a number of practice notes. However, the situation in relation to the Amendment changed with the Minister for Planning’s conditional authorisation of the Amendment which invited consideration of some mandatory controls.

The pilot project *Better Height Controls in Activity Centres* was completed in 2017 (see Chapter 1.2) and a number of relevant planning practice notes have been modified.

PPN60 has expanded the criteria and discussion on when mandatory building height controls can be considered in activity centres.⁵⁵

The 2015 version of PPN60 said:

Mandatory height and setback controls ... will only be considered in exceptional circumstances.

...

Even where exceptional circumstances are identified, mandatory height and setback controls should only be applied where they are absolutely necessary.

⁵² Part C [31]

⁵³ See eg *Melbourne CC v Minister for Planning* [2015] VCAT 412 which concerned 371 Spencer Street and *Yarrabank Developments Pty Ltd v Melbourne CC* [2017] VCAT 888 which concerned 405 Spencer Street.

⁵⁴ At [103], [106] and [108]:

⁵⁵ (<https://www.planning.vic.gov.au/policy-and-strategy/activity-centres/height-controls>)

An additional justification for controls based on ‘comprehensive strategic work’ has been added and PPN60 now reads:

Mandatory height or setback controls should only be applied where:

- [Either:⁵⁶]
 - Exceptional circumstances exist; or
 - council has undertaken comprehensive strategic work and is able to demonstrate that mandatory controls are appropriate in the context, and
- they are absolutely necessary to achieve the preferred built form outcomes and it can be demonstrated that exceeding these development parameters would result in unacceptable built form outcomes.

In relation to exceptional circumstances PPN60 states:

Exceptional circumstances may be identified for individual locations or specific and confined precincts, and might include:

... significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values.

Mr Barnes gave evidence that:⁵⁷

Council has undertaken comprehensive strategic work in responding to land use and built form issues along the Johnston Street corridor. From a planning perspective, I believe that mandatory controls are likely to be necessary to achieve preferred built form outcomes in two key situations:

- Sensitive heritage areas.
- Sensitive lower rise residential areas adjoining precincts within activity centres, especially where those precincts expected to experience a significantly different and higher built form.

Such situations are common place along Johnston Street, given the heritage qualities of the street and the narrow depth of the commercially zoned strip along each side of the street, and its abuttal to residential areas in many places.

Examples of more specific situations in which I believe merit exists to consider mandatory height or setback controls in activity centres include the following:

- Direct abuttal to properties in a residential zone – In most situations where the proposed height difference is considerable.
- Abuttal to a residential laneway – In some situations where the proposed height difference is considerable.
- Abuttal to a residential street – On few occasions, depending on the streetscape qualities of the street to be maintained or promoted.
- In heritage areas – In situations where redevelopment is likely to occur above and behind the heritage façades and the heritage streetscape is a valued element.
- Adjacent to public places, parks, facilities etc.

Mr Biaci was extremely reluctant to accept the role of mandatory controls in activity centres except in very limited circumstances (for example, where there is a specific strategic direction to that effect in Plan Melbourne. Council pointed out⁵⁸ that this runs counter to

⁵⁶ The Panel has added the ‘either’ to make it clear that the intention is:
(exceptional circumstances **OR** comprehensive work) **AND** (absolutely necessary)
and not:

(exceptional circumstances) **OR** (comprehensive work **AND** absolutely necessary)

This interpretation is consistent with other language in PPN60 and the earlier version of the PPN.

⁵⁷ Barnes [100] onwards

⁵⁸ Part C [33]

the approach envisaged by PPN60 which, the Panel observed in the Hearing, is directed explicitly and specifically to activity centres.

(iii) Relationship between mandatory controls and good architecture

Concerns were expressed that mandatory built form controls would restrict site responsive design.

Council adopted⁵⁹ the evidence of Mr de Keijzer, namely that it is part of an architect's skill to work within the constraint of the controls that they are given, and that where mandatory controls are necessary, they do not affect quality.

Mr de Keijzer's evidence is consistent with the observations of the Melbourne C240 panel:

So far as the argument that mandatory height controls inappropriately restrict site responsive design is concerned, it is acknowledged that site responsive design is a desirable approach to development and one which is complementary to performance based decision making such as underpins the VPP. Site responsive design should be fostered wherever possible. The Panel considers, however, that where an absolute height is strategically justified and is applied, that height limit is capable of being viewed as another site constraint to be taken into account by a designer.⁶⁰

The Panel notes that similar concerns about stifling the creativity of designers were expressed by submitters to the Melbourne C270 panel. In its Report, that panel recorded:

While some submitters ... and witnesses ... supported discretionary controls on the basis that they would enable more site responsive and creative designs by architects, other designers indicated that they could work within set built form controls. Indeed, the Australian Institute of Architects ... supported defined mandatory limits on the basis that it would assist a designer in persuading a client not to overdevelop a site. Professor Rob Adams in his evidence for the Minister expressed the opinion under cross examination that mandatory controls would not stifle architectural creativity. Rather, he said, "*most creative architecture comes from the most constrained environments*".⁶¹

De Luca Property Group devoted much their submission to an appeal to the talent of designers and planners to deliver good planning outcomes without the unnecessary fetter of prescriptive planning controls and an inference that the Council doubted these talents.

The Council submitted⁶² that it has faith:

... in the ability of designers and planners to conceive of high quality projects which fit within the proposed mandatory controls and realise the outcomes sought for Johnston Street.

4.3 Discussion

All submitters had ample opportunity to demonstrate how the proposed controls would prevent or frustrate quality design or reasonable development opportunities on their sites. The Panel agrees with Council⁶³ that "*None has done so*".

⁵⁹ Part C [12]

⁶⁰ Melbourne C270 panel report, 1 June 2015, page 98

⁶¹ Melbourne C270 panel report, 26 October 2016, page 78

⁶² Part C [66]

⁶³ Part C [15]

The purpose for applying DDO15 to this part of Johnston Street is to provide greater certainty in the face of current and future development pressure and to ensure appropriate built form outcomes for both heritage and non-heritage parts of the street.

The Panel acknowledges that there is an expectation from sections of the community for greater certainty in the Scheme regarding future development outcomes, particularly in Council's heritage rich activity centres. Mandatory controls offer an opportunity to provide that certainty, provided the controls are justified. Justification requires:

- comprehensive strategic work or exceptional circumstance
- a judgement that the controls are 'absolutely necessary'.

DDO15 is underpinned by comprehensive strategic work that meets the requirements of PPN60. In particular this work:

- Is consistent with state and regional policy – DDO15 proposes a preferred future character for Johnston Street that aligns with the aspirations of *Plan Melbourne* and state policies.
- Is current and takes account of recent trends and approvals, and has been subject to a program of public consultation.
- Provides capacity to accommodate growth within Johnston Street consistent with:
 - the role of Johnston Street in the broader activity centre network for Yarra
 - the location of the centre and its access to services, such as public transport
 - potential for redevelopment having regard to urban form, lot sizes and topography
 - key sites that can accommodate more intense development when compared with the remainder of the activity centre.

The Panel is satisfied that the controls are appropriate considering the housing needs of Yarra and the economic development of the street.

The Panel shares Council's faith in the ability of designers to conceive of high quality projects that fit within the proposed mandatory controls. Clearly mandatory controls will affect the amount of development that can be included on a site, but within those limits they do not constrain the creativity of the designer.

The Panel also considers that Johnston Street is exceptional in a metropolitan context. While typical in many ways of strip commercial development associated with Melbourne's cable car and tramway network, Johnston Street did not develop at the same intensity as other inner urban commercial strips. This makes the street more susceptible to development undermining its heritage character.

Chapter 6 considers specific mandatory controls for street wall height, setback and solar protection are necessary as part of the discussion on those elements of DDO15.

4.4 Conclusions

The Panel concludes:

- sufficient strategic work has been carried out for Johnston Street to support mandatory controls in DDO15 provided the specific controls are 'absolutely necessary'.

5 Sub precinct boundaries

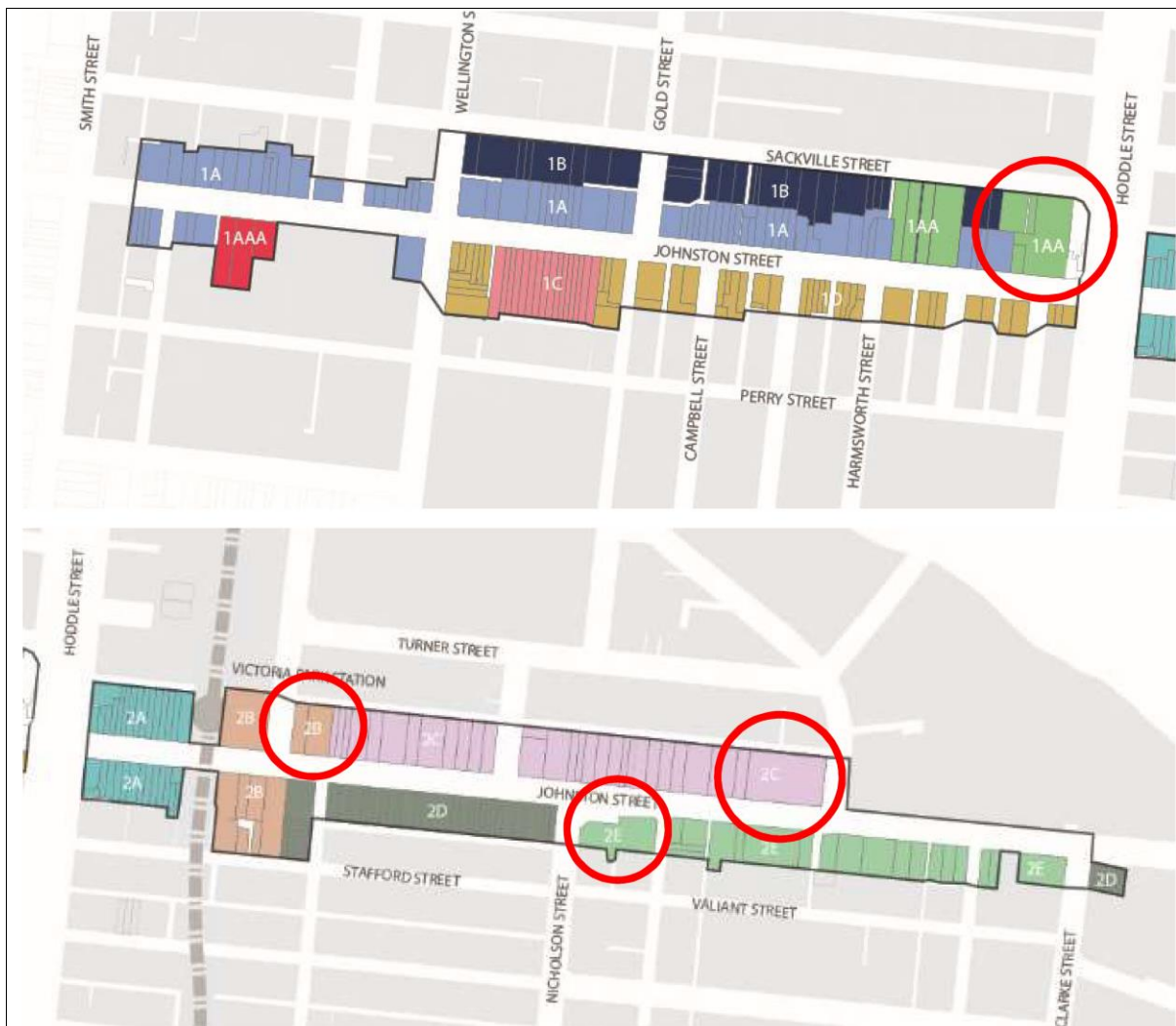
5.1 The issues

DDO15 has different controls for different sub precincts along Johnston Street to reflect the current qualities and the preferred future character of the different parts of Johnston Street.

Several submissions request that an alternative sub precinct control apply to their site owing to their interpretation of the existing qualities or preferred future character. Often, these submissions sought changes that would allow them to develop to a greater height.

As discussed in Chapter 1.1 the version of DDO15 tendered at the Hearing (Document 26) reassigned the precinct labels so that a reference to '2C' in this version of the controls refers to a different precinct than the precinct labelled '2C' in the exhibited version. The Panel has adopted the revised precinct references in this report, but has inserted an 'r'. Figure 6 shows the revised labels (but without the inserted 'r')

Figure 6: Sites discussed in relation to sub precinct changes – revised sub precinct labels



Source: Base map: Document 26. The sub precinct labels in this map are different to the exhibited labels. Red circles: the Panel

5.2 Mapping the sub precincts

DDO15 presents the sub precinct boundaries as part of the DDO schedule. The Panel thinks it would be better if the sub precincts were recorded on the planning scheme overlay maps. This is a feature of many DDOs across Melbourne and makes it more certain as to which sub precinct applies.

In applying sub precincts there is no need to use 1A, 1AA and 1AAA, these can be given single letter codes.

The Panel recommends:

Use the overlay map in the planning scheme to identify sub precinct boundaries

5.3 Aheron Investments – 220, 222 and 222A Johnston Street and 153–155 and 165 Sackville Street

(i) Evidence and submissions

Aheron initially requested that its whole landholding be contained within a single sub precinct rather than a mix of Sub precincts (1A, 1AA and 1B) to facilitate a coherent and comprehensive built form outcome for the area and avoid a compromised design response.

Council responded to this initial submission by acknowledging that the consolidation of a number of various sized parcels makes up a significant redevelopment opportunity for the corner of Johnston, Sackville and Hoddle Streets. The site was designated as sub precinct 1AA in the post exhibition version, with a preferred height limit of 8 storeys.

At the Hearing Aheron submitted that it supports the strategic intent of the Amendment and the implementation of the vision outlined in JSLAP. It considered the proposed rezoning to C1Z to be strategically sound. The application of the EAO as a consequence of its rezoning to a zone which contemplates sensitive uses (such as residential) and was not contested.

In relation to the management of built form change, it acknowledged that JSLAP was based on a comprehensive analysis of the existing context and how this could be evolved into a higher density precinct.

As part of this work, JSLAP identified⁶⁴ the importance and role of ‘entry buildings’ at the corner of Hoddle Street and Johnston Street, as well as the need for a high quality entry building on Aheron’s land.⁶⁵

The key issue was that in the subsequent translation of JSLAP into DDO15, the recognition of the Aheron land as an identified entry and gateway site had been eroded.

The built form controls proposed as part of the Amendment, both in the exhibited version and Council’s subsequent ‘preferred version’ – see Figure 7 – have a strong focus on matters of street wall height and upper level setbacks along Johnston Street as well as Sackville Street to the north. However, they have little to say about how a building form should be resolved on an important corner to a major arterial road.

⁶⁴ In JSLAP Appendix B

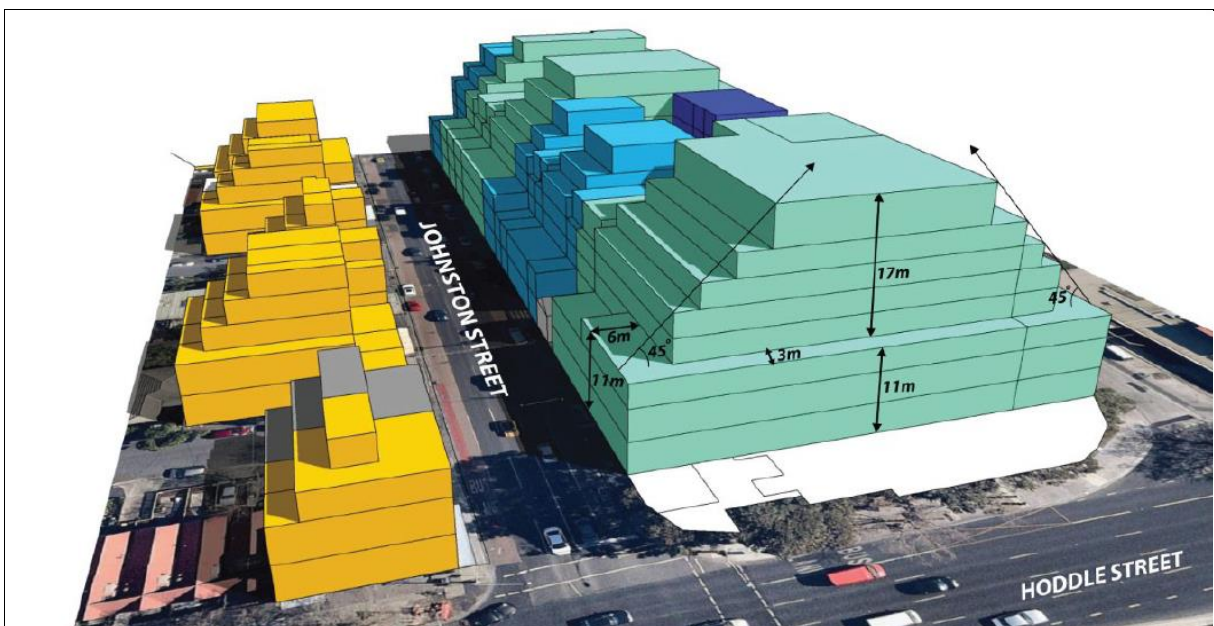
⁶⁵ JSLAP Built Form Framework Plan, page 52

It was submitted that, further refinements are required to the DDO15 provisions to provide greater design flexibility for a building on this site to fulfil its role in defining an important corner and entry point to Johnston Street and allow for development to address the entry to the western section of Johnston Street from Hoddle street.

The Aheron submission – see Figure 8 – sought:

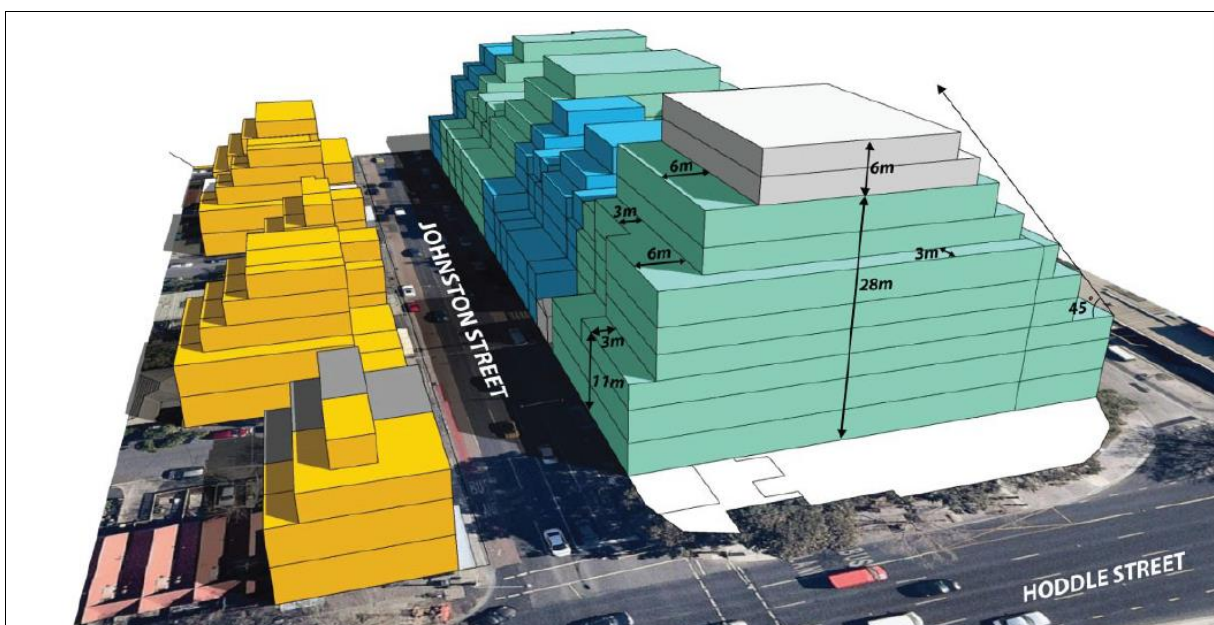
- a stand-alone precinct
- an exemption from the (discretionary) 45 degree envelope
- discretion to allow the 6 metre setback above the street wall to reduce at the eastern end
- a greater preferred height (34 metres rather than 28 metres)
- to enable the site's 'gateway role' to be recognised.

Figure 7: Council Part B version preferred envelope



Source: Extract of Aheron submission

Figure 8: Aheron preferred envelope



Source: Extract of Aheron submission

At the Hearing it was not clear whether the site was in fact on the corner of Hoddle Street, with Council submitting⁶⁶ that the site is near the corner of Johnston, Hoddle and Sackville Streets:

The site is not strictly on the corner of Hoddle and Johnston Streets. There is a parcel of land, owned by VicRoads, that is approximately 20 metre wide, and is therefore potentially separately developable.

The post Hearing submissions confirmed that the VicRoads land is road reserve and will need to be placed in the Road Zone Category 1 (see Chapter 3.2)

Council's position⁶⁷ was to generally accept the submissions of Aheron, with a few qualifications.

Council officers suggested⁶⁸ that the Aheron land ought to be placed into a new sub precinct 1E, with the following built form controls applying:

- mandatory 11 metre street wall on Johnston Street
- discretionary 3 m setback above the street wall to transition to a 6 metre setback to the east where the building meets sub precinct 1A
- preferred 11 metre street wall on Sackville
- preferred 6 metre setback above the street wall on Sackville
- exemption from 45 degree envelope requirement on Johnston Street but not on Sackville Street
- retain preferred overall height of 28 metres
- no rear interface height
- maintain mandatory solar control.

(ii) Discussion and recommendation

The Aheron submission was concise, clear and made good use of illustrative material.

The critical outstanding issue is whether the height should be increased to 34 metres. Given the location on this key intersection the Panel thinks that an increase in height is warranted. The Panel also thinks that no street wall height needs to be specified for Hoddle Street, but expects that some upper level setback would be required as part of any future design. The Panel notes that the overshadowing control will still apply. The extra height will be most visible from Hoddle Street which is a wide arterial road with a different character to Johnston Street.

The Panel discusses changing the 11 metre street wall requirement to 11.3 metres in Chapter 6.8.

The Panel recommends:

Place the Aheron Investments land at 220, 222 and 222A Johnston Street, Collingwood and 153–155 and 165 Sackville Street, Collingwood in a new sub precinct, with the following applying:

- a) increase the preferred overall height to 34 metres**
- b) a mandatory 11.3 metre street wall height on Johnston Street**

⁶⁶ Part C [96]

⁶⁷ Part C [97]

⁶⁸ Part C [101]

- c) a preferred 11.3 metre street wall on Sackville Street
- d) no street wall height or setback to Hoddle Street
- e) a discretionary 3 metre setback above the street wall to transition to a 6 metre setback to the east where the building meets sub precinct 1A on Johnston Street
- f) a preferred 6 metre setback above the street wall on Sackville Street
- g) exemption from 45 degree envelope requirement on Johnston Street but not on Sackville Street
- h) no rear interface height
- i) maintain the mandatory solar control.

5.4 288 Johnston Street

(i) Evidence and submissions

This site is on the north east corner of Johnston and Lulie Streets. It is opposite the service station site (to the west), the St Crispin site (to the south) and has an interface to Little Turner Street to the north, across from which is a recently developed 4 storey building.⁶⁹

The site is subject to two mandatory controls: a mandatory maximum street wall height and the solar access control. It has a preferred height of 34 metres (which equates to 10 storeys), based on its location in proximity to the railway station.

The site has the benefit of an existing permit for an 8 storey building (granted in the *Strathelie* decision) and is the subject of an application for a 12 storey building. The proposed plans appear to depict a development which complies with the two mandatory controls which apply to that site, with the exception of the corner element of the street wall which rises to 6 storeys and just over 19 metres.

Council submitted⁷⁰ that if the height of this street wall were to be reduced to comply with the mandatory street wall height, the distinctive corner treatment in terms of form and materials could be maintained.

In its Part A submission⁷¹ Council supported changing the designation from sub precinct 2rC to sub precinct 2rB. This reflected recommendations in JSLAP and acknowledges that the site does not share the same level of sensitivity at the rear interface as properties to the east in sub precinct 2rC.

K7 Developments requested:

- a discretionary street wall height
- a preferred height of 40 metres, not 34 metres
- an exemption from the solar access control
- a discretionary rear interface wall height of 15 metres, not an 11 metre rear interface wall.

Submissions addressed the appropriate height for this land based in part on the development potential of land proposals to the north. The Council noted⁷² that, despite K7

⁶⁹ See doc 42 for the endorsed plans for the 4 storey development.

⁷⁰ Part C [89]

⁷¹ [79]

⁷² Part C [94]

Developments's contentions, the precinct to the north of the site is not contemplated in JSLAP as having a maximum 10–12 storey height but rather a 6–8 storey height, recognising the area is a residential area around Victoria Park.⁷³

(ii) Discussion and conclusions

The Panel agrees that even if 288 Johnston Street may be able to accommodate greater height than the preferred 34 metres whilst still meeting the solar access requirements and adequately protecting the residential amenity to the north,⁷⁴ this should be tested against the criteria in clause 2 rather than automatically substituting a higher preferred height in Table 1. The Panel does not see the need for a new sub precinct. Other issues with the built form control are discussed in Chapter 6.

The Panel concludes:

- the post exhibition change in sub precinct 2rB for the K7 Developments land at 288 Johnston Street is appropriate.

5.5 329 Johnston Street, 2, 36 Nicholson Street, and 37 Hunter Street, Abbotsford

Pelican Capital objected to the inclusion of the site at 329 Johnston Street in sub precinct 2rE and the application of mandatory requirements, for the following reasons:

- the landholding is one of the largest in the Johnston Street area, which provides a unique redevelopment opportunity
- the landholding can accommodate larger heights and smaller setbacks without affecting residential amenity or compromising the character of any of the streetscapes
- the landholding does not abut sensitive interfaces
- JSLAP nominates a preferred height of 6–7 storeys or 23 metres for this part of Johnston Street while DDO15 nominates a mandatory height of 21 metres.

Council submitted⁷⁵ that the reason for placing this site in 2rE rather than 2rD⁷⁶ was because it has a direct residential abuttal, rather than being separated from the residential area by a laneway. This logic, it said, continues to apply to the site notwithstanding the common ownership.

However, the Council acknowledged that there are particular circumstances which would make this site a better fit in new sub precinct 2rD, which would change the mandatory height to 24 metres, rather than 21 metres (consistent with the permit that issued for the site).

The Panel agrees with Council that a change in sub precinct is appropriate.

The Panel concludes:

- The proposed change of the commercially zoned area of the Pelican Capital land – 329 Johnston Street – to sub precinct 2rD is appropriate.

⁷³ See the indicative section in JSLAP, Appendix B, page 34.

⁷⁴ Although the Council's Supporting Document suggests this may be challenging given the depth of the site.

⁷⁵ Part C [114] and [115]

⁷⁶ Council rather unhelpfully changed the sub precinct notations in Document 26. The Panel has revised submissions to match the new sub precincts.

5.6 424 Johnston Street, Abbotsford

M and C Jack are the owners of 424 Johnston Street, Abbotsford. 424 Johnston Street is on the north side and is one of five similar properties which, it was submitted⁷⁷ together form a substantial development site bounded on three sides by roads (Johnston Street, Trenerry Crescent, and Little Turner Street).

This site is located on the north side of Johnston Street to the east of the railway line, in the eastern end of sub precinct 2. The submission was made on the basis that the site, combined with another 4 sites, was a strategic redevelopment site. The submitter advised that he had the support of the other owners of the Owners Corporation.

The initial submission of M and C Jack, sought a change in building heights or setbacks for sub precinct 2rC and part of sub precinct 2rB on the north side of Johnston Street.

If these changes were not supported, the submission requested that 422–430 Johnston Street be removed from sub precinct 2rC and included in sub precinct 2rB. The submission said that sub precinct 2rB and 424 Johnston Street, Abbotsford have sufficiently similar characteristics to warrant the height limits and setbacks being the same.

At the Hearing M and C Jack submitted:⁷⁸

We wish to comment on two main issues. Firstly, to strongly support the proposed rezoning the land to the Commercial 1 Zone, and to advocate the absence of mandatory building envelope controls, in favour of only discretionary controls

Council responded that the majority of properties in sub precinct 2rC have the same characteristics and do not share the same circumstances as 2rB which has less sensitive interfaces to the north, and the properties on the south side are considerably deeper lots, with an approved permit at 247–259 Johnston Street.

The submitters argued⁷⁹ that their site has similar characteristics to the Caltex site (in precinct 2rB, originally 2C). Council said⁸⁰ there is a major differentiating factor:

One site is adjacent to the station; the other is approximately 450 metres from the station.

While the site at 424 Johnston Street may be part of a common Owners Corporation with another for sites, it cannot be assumed that those 5 sites will be redeveloped as a single development site. The Panel is aware of the difficulties with consolidating subdivided sites, with different owners being constrained by their tenancy arrangements and other matters.

The Panel concludes:

- there is no basis for a sub precinct change for 424 Johnston Street, Abbotsford.

⁷⁷ [1]

⁷⁸ [3]

⁷⁹ [15]

⁸⁰ Part C [120]

6 Issues with the requirements

6.1 Introduction

This Chapter addresses the:

- metrics presented in the controls
- a more detailed assessment of whether controls ought to be mandatory.

6.2 Objectives

6.2.1 The issues

Issues were raised about:

- the use of an indicative height range in objectives
- overlooking of the Collingwood Arts Precinct.

6.2.2 What does DDO15 provide?

DDO15 (Part B version) sets out five objectives:

To preserve the valued heritage character of the streetscape and ensure that the predominantly two storey (heritage scale) street-wall remains the visually prominent built form of Johnston Street west of the railway line bridge, ensuring that upper levels are visually recessive.

To ensure that the overall scale and form of new buildings is mid-rise (5 to 10 storeys) and provides a suitable transition to low scale residential areas, protecting surrounding residential properties from unreasonable loss of amenity through visual bulk, overlooking and overshadowing.

To ensure that new development does not compromise the operation of the state significant Collingwood Arts Precinct from unreasonable loss of amenity through visual bulk, overlooking, overshadowing of open space areas and vehicle access.

To activate the street edge, provide passive surveillance opportunities and accommodate commercial activity at the lower levels of new development and enhance the public realm through high quality buildings and protect footpaths and public spaces on the southern side of Johnston Street from loss of amenity from overshadowing.

To provide for equitable development outcomes through built form design that responds to the development opportunities of neighbouring properties, and through the consolidation of finer grain sites.

6.2.3 Indicative height range

(i) The issues

Submissions said that it was not appropriate to specify an indicative height range in the second objective.

(ii) What does DDO15 provide?

The exhibited version of DDO15 specified a range of 5 to 12 storeys. The Document 26 version specified 5 to 10 storeys.

(iii) Evidence and submissions

Some submissions identified varying interpretations of the term “*mid-rise*” within the objectives in DDO15 and the implications it has for future maximum building heights. Submissions suggested that the exhibited indicative height range of 5 to 12 storeys could potentially be used to justify buildings up to 12 storeys throughout the centre.

One submission recommended that the height range be amended to 10 storeys given this is the maximum height identified in the DDO.

The Collingwood Historical Society recommended that DDO15 is altered to define mid-rise as “*5 to 7 storeys*” and not “*5 to 12 storeys*,” as none of the building heights requirements extend to 12 storeys.

Council submitted that⁸¹ the term ‘mid-rise’ has been used consistently across DDOs in the City of Yarra to indicate the preferred scale and form of new development, and particularly to distinguish it from a ‘high rise’ development typology.

Council agreed with the submission that the indicative height range should be lowered to 10 storeys.

Mr Sheppard’s reluctance to accept a definition of ‘mid rise’ was concerning.

(iv) Discussion and conclusion

‘Mid rise’ means different things to different people. And different things in different DDOs:

- Melbourne DDO67 (Lorimer): “*For the purpose of this schedule ... Mid-rise is development of 7 storeys to 15 storeys*”.
- Melbourne DDO63 (Macaulay Urban Renewal Area, Kensington and North Melbourne) has as a design objective: “*To create a compact, high density, predominantly mid-rise, 6 – 12 storey walkable neighbourhood ...*”.

Including an indicative height range assists to provide certainty about the preferred scale of development. This is a feature of a number of other DDOs across Melbourne. The proposed heights reflect JSLAP and supporting background documents which demonstrate that properties could be developed to different heights owing to their attributes and their context.

Including a height range does not allow all development on all sites to go to the upper limit of the indicative height range. If this were the case, there would be no lower scale suggested and there would be no mandatory heights included in the DDO that would limit development below this height.

The Panel concludes:

- the use of an indicative height range in the Design objectives is appropriate.

6.2.4 Overlooking Collingwood Arts precinct**(i) The issue**

The ‘Contemporary Arts Precinct’, is the body that manages the Collingwood Arts Precinct site at 35 Johnston Street. The Contemporary Arts Precinct requested changes to DDO15

⁸¹ Part A [70]

and local policy (Clause 22.12) to protect the site from potential impacts (mainly overshadowing, as well as visual dominance) of future built form on neighbouring properties.

(ii) Evidence and submissions

The primary concern was the potential for new development to overshadow particular outdoor areas on the site that are proposed to accommodate community and public events related to the creative activities occurring on the site.

The Collingwood Arts Precinct was rezoned to the Special Use Zone (SUZ6) in 2017, as part of a Government Land Standing Advisory Committee process, to facilitate the desired activities on the site by making a number of uses ‘as of right’, and identifying the site as being of ‘State significance’.

When the interim DDO15 was introduced, a mandatory maximum height limit of 28 metres (8 storeys) at 23–33 Johnston Street was applied and a new objective was added:

To ensure that new development does not compromise the operation of the state significant Collingwood Arts Precinct from unreasonable loss of amenity through visual bulk, overlooking, overshadowing and vehicle access.

Council recommended that the changes should be made to DDO15 to reflect the changes introduced within the interim DDO15 to ensure new development does not overshadow particular outdoor areas on the Collingwood Arts Precinct.

(iii) Discussion and recommendation

The Panel notes that because SUZ6 allows Accommodation it is not a non-sensitive commercial interface.

The Panel supports an objective to ensure development does not compromise the amenity of the Collingwood Arts Precinct, but does not think overlooking of the precinct would compromise its amenity. The reverse may be true – for the same reasons that active frontages and casual surveillance supports the amenity of streets casual surveillance into the courtyard of the arts centre may add to its ambience.

The Panel recommends:

Amend the Design objectives to delete ‘overlooking’ from the third objective.

6.3 The need for built form objectives for sub precincts

It was suggested that there may be need for sub precinct objectives or built form outcomes.

Council submitted⁸² that there is sufficient guidance in the DDO15 and clause 21.12 to guide the exercise of discretion without the need for additional built form outcomes for sub precincts.

The Panel agrees with Council.

⁸² Part C [41]

6.4 Definitions

Some definitions include exemptions as part of the definition rather than as a requirement. This is poor drafting practice.

DDO15 provides an exemption to the height control requirements for architectural features as part of the definition:

Building height is measured as the vertical distance between the footpath at the centre of the frontage and the highest point of the building. It does not include architectural features and service equipment including plant rooms, lift overruns, structures associated with green roof areas and other such equipment provided that each of the following criteria are met for the equipment or structure:

- Less than 50% of the roof area is occupied by the equipment (other than solar panels).
- Any equipment is located in a position on the roof so as to avoid additional overshadowing.
- Any equipment does not extend higher than 3.6 metres above the maximum building height.

Street wall height is measured as the vertical distance between the footpath at the centre of the frontage and the highest point of the building at the street edge, with the exception of architectural features.

Using Victoria's planning system, Chapter 9 – Plain English, specifically cautions against this approach. These issues might have limited impact on the usability of these controls but they make the planning system as a whole more difficult to use, when potentially every DDO has its own definition of height.

The Panel has made an earlier recommendation to refine the drafting of DDO15. Specific refinement in the Definitions are:

- redraft the control so that the building elements that can exceed a specified height are dealt with in the relevant requirement not as part of the definition
- do not define 'setback' as it defined in the Victoria Planning Provisions.

6.5 Wording of clause 2.0 – Amendment of permits

(i) The issue

The issue is the need to guard against the possibility that a person could obtain a permit that complies with the mandatory provisions, and then seek to amend that permit to exceed the mandatory controls arguing that they do not apply to a permit amendment.

(ii) What does DDO15 provide?

Clause 2.0 of DDO15 proposes inclusion of the following underlined words:

A permit must not be granted or amended (unless the amendment would not increase the extent of non-compliance) ...

(iii) Evidence and submissions

Council advised⁸³ that as far as it was aware, the effect of the wording has not been tested by a Court or the Tribunal.

⁸³ Part C [5]

Section 28(2)(e) of the *Interpretation of Legislation Act 1984* operates to protect an accrued right, such as a permit, if the planning scheme under which the permit was granted is amended as follows:

- (2) Where a subordinate instrument or a provision of a subordinate instrument—
 - (a) is repealed or amended; or
 - (b) expires, lapses or otherwise ceases to have effect— the repeal, amendment, expiry, lapsing or ceasing to have effect of that subordinate instrument or provision shall not, unless the contrary intention expressly appears—
 - ...
 - (e) affect any right, privilege, obligation or liability acquired, accrued or incurred under that subordinate instrument or provision.

VCAT in *Alkero Development Pty Ltd v Stonnington CC* (Red Dot) [2018] VCAT 1120 explained:

43 Just as section 28(2) of the Interpretation of Legislation Act 1984 can create an accrued right to use land under a permit in a way that is now prohibited, so it may create an accrued right to develop land in a way that is now prohibited.

45 For example, the planning scheme may include a mandatory height control of 10 metres. A permit may allow a development with a height of 15 metres. We consider that the permit could be amended to change the height of the development so that it does not exceed 15 metres even though the height exceeds 10 metres and would be prohibited under the planning scheme if a new planning permit was applied for.

The words in DDO15 are consistent with the VCAT’s interpretation of the protection of accrued rights.

The proposed words will assist permit holders who need to make amendments to their permits. The proposed words make it clear (without permit holders needing to inform themselves of the principles of accrued rights) that the mandatory provisions only apply if the amendment seeks to increase the extent of non-compliance. In that way, they provide certainty and clarity.

The Panel notes that the wording proposed in DDO15 is the same as that in DDO10 of the Melbourne Planning Scheme.

6.6 Building height

6.6.1 Objection to height limits

(i) The issue

Several submissions objected to a height limit being applied at all in DDO15.

(ii) What does DDO15 provide?

Table 4 shows the proposed maximum building heights.

Table 4: Building heights in DDO15 (Document 26 version with Aheron added)

Sub precinct	Preferred maximum building height	Mandatory maximum building height
1A	24 metres	–
1AA	28 metres	–
1AAA	–	28 metres
1B	24 metres	–
1C	21 metres	28 metres
1D	–	21 metres
Aheron land	28 metres (Council view)	–
2A	21 metres	–
2rB	34 metres	–
2rC	24 metres	31 metres
2rD	21 metres	24 metres
2rE	–	21 metres

(iii) Evidence and submissions

While some submitters sought higher development, others were concerned that the proposed scale was excessive. One submitter objected to the height of development owing to its potential impact on their property, particularly solar access to their property in winter months. Another considered that the scale of recent development and the proposed heights was creating an extreme change to the current scale.

Table 5 summarises the position of Council and the expert witnesses.

Table 5: Height – position of Council and the expert witnesses

	Overall height heritage areas	Overall height non heritage areas
Council	Mandatory in 1 AAA, 1C, 1D	Mandatory in 2rC, 2rD, 2rE
Hansen advice	Mandatory 6 storey (20 metres) for lots <30 metres (Matrix p 5)	Mandatory 6 storey (20 metres) for lots <30 metres (Matrix p5)
Parsons	All discretionary if other metrics are mandatory [114], [116]	All discretionary if other metrics are mandatory [114], [116]
Barnes	Same as Council [104] – [111]	Same as Council [104] – [111]
Trethowan	Same as Council	N/A
de Keijzer	Same as Council (eg p16) (oral evidence)	Same as Council (oral evidence)

	Overall height heritage areas	Overall height non heritage areas
Sheppard	All discretionary [81] Same preferred height as Council for precinct 1 except for 'mixed streetscapes' where height should be 28 metres [70]. Sites that extend from Johnston to Sackville where height should be 34 metres [75]–[76]	Increase height in 2rB from 34 m to 40 m [104]
Biacsi re 196–202 Johnston Street	Preferred height 34 metres. [110] (same as Mr Sheppard)	N/A

Source: Extract of Document 19

Submitter 7 raised concerns about height saying:

- If the south side of Johnston Street were developed to the heights, and with the setbacks proposed, 54 Stafford Street and other properties on the north side of Stafford Street would be permanently in shadow for weeks in the depths of winter.
- It is not reasonable to exercise planning powers to compel residents to live in darkness for weeks on end at the coldest and darkest time of the year.

Council responded that ResCode standards in the Planning Scheme for overshadowing of private open space are measured at the equinox (22 September) only and not winter. The building height and rear interface requirements have been developed with regard to minimising overshadowing of private open space at the equinox.

DDO15 sets stricter parameters where height limits are currently not specified in the Yarra Planning Scheme, as well as applying rear interface requirements to reduce visual bulk and overshadowing.

Criticisms that the heights were too low included that the preferred maximum height of sub precinct 1AA does not go far enough in implementing policy settings for Activity Centres in the State Planning Policy Framework and *Plan Melbourne 2017–2050*.

AA Holdings (40 Johnston Street and 35–37 Sackville Street) sought an increase of the preferred height from 24 metres to 28 metres. Council submitted that the change is unwarranted. The DDO15 seeks a preferred 7 storey scale in this section of relatively shallow lots to the north of Johnston Street, stepping down to 6 storeys on the south side, with 8 storeys preferred in the deeper lots to the east. There is discretion to go higher if the nominated criteria are met.

Council said⁸⁴ that the 7 storeys sits comfortably with the hierarchy of height contemplated by the DDO15, and provides an appropriate scale for this activity centre, which is identified for moderate change in JSLAP and the Housing Strategy.⁸⁵

De Luca Property Group (196–202 Johnston Street) argued that that the preferred height was too low to deliver a sufficient level of residential intensity for their site. De Luca Property Group sought 40 metres preferred height in place of 34 metres. Council rejected this.

⁸⁴ Council Part C [52]

⁸⁵ Housing Strategy p 69.

Council submitted that the preferred 8 storeys is at the upper end of the heights nominated for this activity centre, recognising the extra development potential of the site as it extends through to Sackville Street and its lack of direct residential abuttals. Mr Biacsi and Mr Sheppard gave evidence that the preferred maximum height in sub precinct 1AA should be 34 metres.

Council did not support this increase. It said that this would directly compete with the preferred height nominated for 2rB around the station, it substantially exceeds the height proposed for the corridor by JSLAP and it represents a 10 metre (or 3 storey) increase in preferred height over the immediately adjoining sub precinct 1A. While some sites in precinct 1AA may be able to accommodate height above the preferred heights (as the Supporting Document shows), this additional height should be tested against the criteria in clause 2 rather than substituted as a greater preferred height in DDO15.

Mr Barnes observed⁸⁶ that building height is only one of the controls contained in the planning scheme amendment:

There are a number of other controls such as upper level setbacks from the front and rear of properties, overshadowing requirements for the footpath on the south side of Johnston Street etc. Given the shallow depth of many lots along Johnston Street, such requirements mean that the maximum buildings heights identified may not be able to be achieved in some cases.

Council submitted that one of the key purposes of the Amendment was to provide clarity on the preferred and mandatory maximum overall building heights that would be supported. Council submitted that:⁸⁷

The overall preferred and maximum building heights proposed in the Amendment have been based on thorough technical analysis and are an appropriate response to the context of the centre and future development opportunities.

Council acknowledged⁸⁸ that proposed heights of new development would represent a significant change from the current scale of buildings in the area. However, the heights in DDO15 are consistent with JSLAP that was subject to three rounds of consultation. They are consistent with the scale of development being planned for across other centres in Yarra and more broadly across inner Melbourne.

Council did not support changes to DDO15 in response to submissions objecting to the proposed maximum overall building heights.

(iv) Is a mandatory control justified?

Mr Barnes gave evidence⁸⁹ in relation to mandatory controls:

- West of Hoddle Street:
 - Discretionary maximum building heights are proposed for all land on the north side of Johnston Street between Smith and Hoddle. This is entirely appropriate as lots abut land that will remain in either a Commercial 2 Zone, or run through to Sackville Street and will not have direct abuttals to sensitive residential boundaries.

⁸⁶ Barnes [104]

⁸⁷ Part A [66]

⁸⁸ Part A [75]

⁸⁹ Barnes Evidence [105] to [111]

- A mandatory height is proposed for land along the south side of Hoddle Street in precincts 1C and 1D. Mr Barnes believed that this was appropriate as these properties have either a direct abuttal to properties in a residential zone or are separated from residential zoned land by a laneway.
- Precinct 1AAA applies to properties adjoining the Collingwood Arts Centre to the west. It identifies a mandatory height. Mr Barnes believed that a mandatory height was appropriate for that site, as it has considerable redevelopment potential and is located adjacent to an internal courtyard on the Arts Centre site.
- East of Hoddle Street:
 - Land on both sides of Johnston Street around Victoria Park Station have discretionary height limits (Precincts 2A and 2rB). Mr Barnes said that was appropriate to reflect the increased development potential identified in that area in JSLAP.
 - Further east, land on both sides of Johnston Street is proposed to have mandatory heights. Mr Barnes had no issue at all with this in relation to land in Precinct 2rE, on the south side of Johnston Street, which has direct abuttal to residential zoned land.
 - Land on the north side of the street (Precinct 2rC) does not directly abut residential zoned land but is separated from housing by Little Turner Street. Given that the maximum mandatory height proposed for the precinct is 31 metres (9 storeys), which is one of the greater heights identified along Johnston Street, Mr Barnes believed there was merit in applying a mandatory height to that land. He noted that it was proposed to state both a preferred and a mandatory maximum building height for this precinct, consistent with the Minister's conditional authorisation.
 - Land in Precinct 2rD (on the south side of the street) also has a mandatory height specified (24 metres). That precinct is also separated from dwellings by a laneway. He believed there was merit in applying a mandatory height to that land for similar reasons to the above.

(v) Discussion

In response to concerns about development being too high it is correct that greater scale and intensity of development can be expected on sites in Johnston Street which are rezoned from C2Z to C1Z. The Panel notes that the C1Z purpose no longer refers to intensification but to residential densities complementary to the role and scale of the commercial centre and the expectation of residential development has already been taken into account in JSLAP and the proposed height controls in the DDO15.

The Panel has previously concluded that a mid rise scale is appropriate for Johnston Street given its location and role. The 3D modelling allows for a clear visualisation of the controls proposed, and by extension, an understanding of what higher building form might mean. The Panel is satisfied that (except where noted for Aheron) the heights represent an appropriate level of development.

In respect of mandatory controls the Panel accepts the considered and thoughtful evidence of Mr Barnes. Mandatory maximum building heights are only proposed where sites abut land zoned for residential use. In these cases the maximum heights range between 21 metres and 31 metres (6 and 9 storeys) depending on local conditions, for example, if separated by a laneway or with potential to overshadow residential properties. There is

sense in mandatory heights adjacent to these particular residential areas. Council has demonstrated the heights are reasonable, are supported by existing policy and do not prejudice reasonable levels of redevelopment consistent with the future growth and capacity modelling. The Panel accepts the heights are necessary to maintain appropriate interfaces with adjoining land in the context of significant redevelopment.

(vi) Conclusions

The Panel concludes that:

- apart from the Aheron site, the proposed heights are appropriate
- the mandatory heights are necessary.

6.6.2 Requirements to exceed preferred heights

(i) The issue

Submissions from developers and landowners challenged the inclusion of criteria for exceeding the preferred maximum overall building height. Some submissions object in principle to the criteria; others object to specific criteria; and some submissions seek to add new criteria. Generally, the submissions consider that the criteria are too onerous.

(ii) What does DDO15 provide?

DDO15 sets out criteria to be achieved if a building is to gain a permit above the preferred maximum height

A permit may only be granted to exceed the preferred maximum building height ... if the following criteria are met to the satisfaction of the responsible authority:

- The built form outcome as a result of the proposed variation satisfies the design objectives of Clause 1.0 and the provisions of Clause 21.12–1.
- The proposed building height will not prejudice the preferred future mid rise character within Johnston Street for the sub precinct.
- The proposal will achieve each of the following:
 - Housing for diverse households types, including people with disability, older persons, and families with children, through the inclusion of varying dwelling sizes and configurations.
 - Universal access.
 - Communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58.
 - Excellence for environmental sustainable design measured as a minimum BESS project score of 70% or 5 Star Green Star Standard.
 - Greater building separation than the minimum requirement in this schedule.
 - No additional amenity impacts to residential zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height.
 - For *Heritage Buildings*, the proposed development enhances the heritage fabric of the building (primarily through restoration or reinstatement of the front façade and external features visible from Johnston Street).

(iii) Evidence and submissions

Criteria have been included in DDO15 to incentivise development to comply with the preferred maximum building heights and to ensure that taller development achieves a high standard of design outcome, including housing diversity, environmental sustainability and amenity. This approach of seeking improved design outcomes and community benefit when

the preferred building height is exceeded is consistent with Strategy 17.2 of the current Scheme.

Mr Barnes questioned⁹⁰ the application of such criteria. In his opinion, all development should comply with most of the criteria listed. The nature of the criteria identified were not in his opinion sufficient to justify additional height. For that to occur the criteria should relate to matters aligned with a public benefit, such as affordable housing, public open space, or community facilities etc.

Council submitted⁹¹ that:

The interim DDO15 approved by the Minister for Planning includes the criteria suggesting an acceptance of this form of control. Similar criteria were supported by the planning which considered the DDO for Arden Macaulay in the City of Melbourne.

Pelican Capital requested the following changes to the specific design requirements:

- amend phrase *“the proposal will achieve each of the following”* to read, *“the proposal can achieve specific benefits, such as”*
- delete the fourth dot point as *“minimal”* is not a quantifiable measure of amenity impacts and will cause confusion.

Submitter 5 considered that the specific design requirements in DDO15 were too rigid because all the requirements need to be achieved to exceed preferred maximum height limit. The submitter thought it would be better if the design requirements allowed a proponent to put forward an alternative solution for achieving net community benefit. The submitter recommends a sixth design requirement:

Or other design features or elements that deliver a net community benefit to the satisfaction of the Responsible Authority.

(iv) Discussion and recommendation

The Panel supports the broad approach of the requirements. The Panel does not see higher built form as a reward for meeting the criteria, rather, if a development is to exceed the preferred maximum height it should be a ‘good’ development. The criteria help specify what a good development is in this context.

The Panel notes that in the criteria:

- There is no need to repeat the reference to ‘mid rise’ as this is now in the Objectives.
- In respect to the elaboration of diverse housing types, it is not clear precisely how the housing needs of older people differ from the general population. What design features would be specifically required beyond universal access? It is not clear how much of a range of dwelling types is appropriate. The Panel is concerned that this criterion could be applied in an overly prescriptive way with no real benefit for anyone.

The Panel recommends:

Refine the language of the ‘Requirements to exceed preferred heights’ to avoid an overly prescriptive interpretation.

⁹⁰ Barnes Evidence [127]

⁹¹ Council Part A [63]

6.7 Overshadowing and Solar Access Requirements

(i) The issues

The issue is whether the overshadowing control is warranted.

(ii) What does DDO15 provide?

DDO15 (Document 26 version) says:

New development must not overshadow the southern footpath of Johnston Street, measured as 3.0 metres from the property frontage on Johnston Street, between 10am and 2pm at September 22. A permit must not be granted to vary this requirement.

Development in Sub precincts 1C, 1D, 2rB, 2rD and 2rE should be designed to avoid additional overshadowing of residential zoned properties to the south measured from 10am to 2pm at the equinox (September 22).

(iii) Evidence and submissions

Table 6 summarises the position of Council and the expert witnesses

Table 6: Solar access – position of Council and the expert witnesses

Solar access	
Council	Mandatory to southern footpath
GJM advice	N/A
Hansen advice	Johnston Street southern footpath: mandatory maintain solar access at equinox between 9am- 3pm. Overshadowing of private space: discretionary maintain solar access at equinox between 9–3pm. (Matrix p5)
Parsons	Same as Council (evidence in chief)
Barnes	Same as Council (evidence in chief)
Trethowan	N/A
de Keijzer	Same as Council on Johnston Street but solar access control to rear should be mandatory (pp18–19)
Sheppard	Discretionary requirement and reference to 3 metres be removed [125]
Biacsi re 196–202 Johnston Street	Not mandatory [115]

There did not appear to be any substantial submission about the desirability of sunlight to footpaths and Council⁹² drew the Panel's attention to other work of Mr Sheppard's firm that supported mandatory overshadowing controls.

The mandatory street wall height to the east of the railway ties in neatly with the mandatory solar access requirement. Mr Parsons, Mr de Keijzer and Mr Barnes all agree that the solar

⁹² Part B [98]

access requirement to the southern Johnston Street footpath along its length should be mandatory. Mr Sheppard and Mr Biacsi say it ought to be discretionary.

Council submitted⁹³ that:

- Johnston Street will require a range of measures to make sure it becomes a vibrant and high quality place to be.
- Solar access at least between each equinox is critically important to place-making in Johnston Street, and as an east west corridor, there is a need for vigilance to ensure that development along the northern side does not irreparably prejudice the quality of the place.
- There is a need for the control to be mandatory as it is critically important to the success of Johnston Street and it is too easy for solar access to be eroded on a 'death by a thousand cuts' basis.

Council did not⁹⁴ accept the proposition that 288 Johnston Street should be exempt from the solar access requirement. To the contrary, it said that this part of the street is a place that is likely to have larger numbers of people congregating, and it is also possible that the St Crispin site will host a café with outdoor seating (even if only a modest number), possibly even a coffee 'window'.

Council provided an assessment of the mandatory control against PPN59.

(iv) Discussion and conclusion

The Panel agrees that sunlight to the footpath is a desirable outcome in an Activity Centre, especially around a station where there is likely to be a higher level of pedestrian activity.

Southern side footpaths are an important component of the public realm and the sun currently reaches the southern footpath throughout the year. Taller development will inevitably reduce the amount of sun during winter months and restricting the amount of overshadowing to the September equinox is a common measure to reduce the overall impact of taller buildings.

The Panel supports the use of the equinox as the right measure for solar access for a footpath in an Activity Centre. This is in contrast to some open space areas that warrant protection all year round.

The Panel agrees with the Fishermans Bend Planning Review Panel (Advisory Committee) which discussed the 'death by a thousand cuts' dilemma in Fishermans Bend (in relation to overshadowing of parks), where Mr Sheppard had opposed mandatory controls. The Advisory Committee stated:⁹⁵

Mr Sheppard suggested that the 'death by a thousand cuts' problem could be overcome by introducing decision guidelines requiring cumulative shadow impacts to be considered. The Review Panel is not entirely satisfied with this solution. It creates the potential for a 'first in best dressed' scenario that would not, in the Review Panel's view, represent fair and orderly planning. ...

On balance, and having considered the principles outlined in Practice Note 59, the Review Panel considers that mandatory winter solstice controls are justified for the key open spaces in each Precinct, given their importance in the open space hierarchy.

⁹³ Part B [99] onwards

⁹⁴ Part C [91]

⁹⁵ At pages 110–111.

Given the vision of a relatively consistent street wall and overall height it seems to the Panel that each site can be treated in a similar fashion. This implies avoiding a ‘first in best dressed’ approach to overshadowing. Considering the overall suite of controls, the extra quantum of development that could be delivered with a building that overshadowed the footpath is not so great as to trade off the solar access.

Clearly the control is ‘absolutely necessary’ if you want to ensure sun access.

The Panel concludes:

- the solar access provisions are appropriate
- the mandatory solar access control is necessary.

6.8 Street wall height

(i) The issue

The issue is the maximum street wall height where a heritage building is not retained.

(ii) What does DDO15 provide?

Both the exhibited version of the control and the Council's preferred control propose an 8 metre preferred minimum and an 11 metre mandatory maximum street wall height (where heritage fabric is not retained).

The post Hearing version proposes to amend the structure of the DDO to ensure there is no confusion about the 8 metres minimum preferred street wall height and the reference to heritage.

Table 7 shows the proposed maximum building heights.

Table 7: Street wall heights in DDO15 (Document 26 version with Aheron added)

Sub precinct	Preferred maximum Street wall height	Mandatory maximum Street wall height
1A	–	11 metres
1AA	11 metres fronting Sackville Street	11 metres fronting Johnston Street
1AAA	–	11 metres fronting Johnston Street
1B	11 metres	–
1C	–	11 metres
1D	–	11 metres
Aheron land	11 metres fronting Sackville Street	11 metres fronting Johnston Street
2A	–	11 metres
2rB	15 metres	18 metres
2rC	15 metres	18 metres
2rD	15 metres	18 metres
2rE	15 metres	18 metres

(iii) Evidence and submissions

Table 8 summarises the position of Council and the expert witnesses

Table 8: Street wall height – position of Council and the expert witnesses

	Street wall height	Street wall adjacent to heritage buildings
Council	Heritage area: Mandatory max 11 metres Preferred min 8 metres. Non heritage area: Discretionary 15 metres Mandatory 18 metres	West of railway: match facade height for length of 6 metres for heritage building, minimum 8 metres. East of railway: one storey higher for length of 6 metres for heritage building, minimum 8 metres
GJM advice	Heritage area: Same as Council (s 4.3.1)	On sites adjoining a HO, preferred street wall that adopts the parapet or roof ridgeline height of adjacent heritage place (s4.3.1)
Hansen advice	Heritage area: Mandatory 11 metres for significant streetscapes, significant or contributory buildings (Matrix p5) Non heritage area: Discretionary except for Johnston Street (north side) which is a mandatory maximum 20 metres (for solar access) (Matrix p5)	New development should reference adjacent parapet height of contributory and individually significant buildings (p2)
Parsons	Heritage area: Same as Council [69] Non heritage area: Same as Council [77]	Same as Council [70] and [77]
Barnes	Heritage area: Same as Council [113] Non heritage area: Defer to urban design expert on whether it needs to be mandatory [113]	N/A
Trethowan	Heritage area: Same as Council (p5)	Same as Council (p8)
de Keijzer	Heritage area: Same as Council (p 9) Non heritage area: 18 metre street wall is too high (north side of Johnston Street) (p22) Should be mandatory 15 metres on north side (oral evidence)	N/A
Sheppard	Heritage area: 8–11 metres. Mandatory 11 metres for significant streetscapes [23], discretionary [143(2)] in other areas. Non heritage area: Discretionary 18 metres maximum [86]	Match for length of 6 metres adjacent to individually significant buildings [28].

	Street wall height	Street wall adjacent to heritage buildings
Biacsire 196–202 Johnston Street	Heritage area: Discretionary 11 metres [110]	N/A

Source: Extract of Document 19

Street wall height west of railway bridge

Mr Sheppard agreed with a mandatory 11 metre street wall height for ‘significant streetscapes’ but advocates a discretionary street wall height for what he describes as the ‘mixed streetscapes’ west of the railway line.

The Council considered that the built form controls west of the railway line should be consistent for the length and opposite sides of the street, thereby reflecting the predominant scale of the street notwithstanding that there are a number of buildings which are not of heritage significance interspersed in some sections of the street.

The Heritage Overlay has been applied to the whole of Johnston Street west of the rail bridge.

Mr Sheppard described parts of the street west of the rail bridge as ‘mixed’.

The dark blue line, shown in Figure 9 below, is Mr Sheppard’s “*interpretation of the consistency of heritage fabric*”. This suggests that the balance of the Heritage Overlay area is not ‘mixed’ and would warrant the higher protection appropriate for intact heritage areas.

Figure 9: Mr Sheppard’s assessment of mixed streetscapes



Council said⁹⁶ that Mr Sheppard’s evidence was inconsistent with the approach advocated by DLA in the *Bridge Road Victoria Street Built Form Framework* (June 2018) which recommends a mandatory maximum 11 metre street wall height for significant streetscapes and 12 metres mandatory maximum street wall height “*where there is a valued low-rise street wall character (but with little or no significant heritage fabric)*”.⁹⁷

Council also submitted⁹⁸ that the approach taken in Sydney Road, supported by Mr Sheppard, was for a consistent mandatory maximum 11 metre street wall height to be applied to all sections of the street, even those parts without heritage buildings due to the

⁹⁶ Part B [89]

⁹⁷ DLA, *Bridge Road Victoria Street Built Form Framework* (June 2018) p 70.

⁹⁸ Part B [90]

strong, two storey existing character exhibited in that street. That situation also applies in Johnston Street west of the rail bridge, which exhibits a two storey scale, interspersed with single storey buildings, and only limited 3 storey buildings.

AA Holdings (40 Johnston St and 35–37 Sackville Street) argued that the Panel should accept many of Mr Sheppard's recommendations.

De Luca Property Group (196–202 Johnston Street) argued that the exhibited and preferred version of the DDO did not propose a street wall height or setback above the street wall for properties in the Heritage Overlay. Council submitted that no one could read the proposed controls or the JSLAP or the Supporting Document and form the view that no street wall height was proposed for infill buildings in Precinct 1.

Street wall height east of railway bridge

Mr Parsons, Mr de Keijzer and Mr Barnes agreed with the Council that the preferred street wall height should be 15 metres to the east of the railway bridge. Mr Parsons agreed with the Council that it should be a mandatory maximum of 18 metres to prevent a canyon effect. Mr de Keijzer was of the opinion that the street wall ought to be 15 metres mandatory on the north side of the street to prevent the footpath and (north facing) buildings on the south side of Johnston Street from being in shade between each equinox. Mr Barnes deferred to the urban design experts as to whether it should be mandatory or discretionary.

Mr Sheppard argued in favour of an 18 metre discretionary maximum street wall.

Council noted⁹⁹ that the *Bridge Road – Victoria Street Built Form Framework* re-affirms Council's position that a preferred 15 metre street wall will provide an appropriate relationship to the street and avoid an overwhelming sense of enclosure. When referring to the street wall in Victoria Street between Church Street and Burnley Street, the report states:

A 15 metres street wall will maintain a comfortable relationship with a 20 metre wide street, avoiding an uncharacteristic sense of enclosure.

Council's position was that 15 metres will provide a good urban design outcome. While there is discretion to go to 18 metres, that is the absolute maximum that ought to be permissible.

(iv) Is a mandatory control justified?

Mr Parsons, Mr de Keijzer, Mr Barnes, Mr Trethowan and the author of the GJM advice all agree that the street wall of 11 metres in HO324 and new HO 505 ought to be mandatory.

The GJM report says:

4.3.1 Street wall

Having regard to recent Planning Panel Reports into Moreland C134 and Boroondara C108, we consider that mandatory street wall heights of 8–11 metres with a zero setback from Johnston Street are likely to be appropriate within HO324 along the Johnston Street corridor and in the proposed Heritage Overlay between Hoddle Street and the railway line given the dominance and consistency of the two-storey Victorian/Edwardian-era street wall in these areas.

⁹⁹ Part B [95]

For new development on sites adjoining a Heritage Overlay or on the side streets of Johnston Street within HO324, we recommend that a preferred street wall height be applied that adopts the parapet or roof ridgeline height of the adjacent heritage place to ensure that new infill development is sensitively integrated with existing heritage fabric.

The Amendment C134 Panel accepted the 11 metre mandatory street wall height on the basis that it was generally higher than most of the existing two storey heritage parapets and accommodated a contemporary 3 storey building with commercial floor heights for two of the three levels.

Council provided an assessment against PPN59.

Mr Biacsi was isolated in the view that the street wall height should be discretionary in all parts of the activity centre. He did accept the 11 metre metric. Mr Barnes gave evidence that:¹⁰⁰

In most cases the Amendment has adopted the approach suggested in the Minister's conditional authorisation, of providing a preferred maximum street wall height and then a higher mandatory maximum street wall height. For this reason, I generally support a mandatory street wall height, especially in the heritage areas to the west of the railway bridge. ...

(v) Discussion and recommendations

The preferred 8 metre minimum street wall height is non-contentious and where a heritage street wall is retained, the street wall will simply be the height of the retained heritage street wall.

The Panel does not accept that Mr Shepperd's concept of a mixed streetscape west of the rail bridge makes sense in the Johnston Street context. With the exception of the building on the north east corner of Gold Street, the gap between graded buildings is only 40 metres. This represents a relatively small break between heritage buildings and is not a large enough 'gap' to warrant breaking up the street in the way that Mr Sheppard has sought to do. Breaking up the street would undermine the fundamental vision for the street.

The HO west of the rail bridge did not proceed on the basis that the street could be broken up. The Panel is not inclined to substitute Mr Sheppard's opinions on the heritage value of the streetscape for the clear statement in the planning scheme of the value of the heritage place (through the application of the HO) and the heritage evidence of Mr Trethowan.

The Panel is, however, concerned that 11 metres may not allow for a three storey commercial building and accepts that a maximum street wall height of 11.3 metres is more appropriate.

East of the rail bridge a 15 metre preferred street wall will provide a good urban design outcome. While there is discretion to go to 18 metres, that is the absolute maximum that ought to be permissible. Anything greater will significantly compromise the vision for the future for this part of Johnston Street. That is particularly the case near the railway station where large numbers of pedestrians are likely to congregate, whether it be walking to the station or having a coffee outside the existing space outside the heritage building on the corner of Park Street or the proposed new spaces within the Street Crispin building.

¹⁰⁰ Barnes evidence [113]

The Panel concludes:

- the mandatory street wall heights are necessary.

The Panel recommends:

Increase street wall heights from 11 metres to 11.3 metres to allow for three commercial floors

6.9 Mid-level street setback above the street wall

6.9.1 Request for greater setbacks for individually significant heritage buildings

A submission from the Collingwood Historical Society requested that the setbacks for individually significant buildings be increased from 6 metres to 8 metres to reflect the version of DDO15 that was originally submitted for authorisation in May 2016.

Council received a conditional authorisation that required a comprehensive review of the proposed DDO15 and a scaling back of the mandatory provisions was required to comply with the authorisation. Reflecting this authorisation, Council reviewed the adopted JSLAP.

JSLAP's Appendix B, *Built Form Analysis and Recommendations*, sets out Principle 6,¹⁰¹ for taller development to be set back and visually recessive, "when viewed from across the street and when looking obliquely along the street". Principle 6 also states; "Upper levels should be setback a minimum of 3–6 metres from the street façade, dependent on the height of the taller element". However, Principle 8 provides that for heritage buildings "New upper levels may need to be setback further from heritage facades to ensure they remain dominant in the streetscape".

Council said¹⁰² that a 6 metre setback for heritage buildings was an appropriate control to achieve the necessary balance between heritage protection and enable new development. Importantly, the control is a minimum setback so does not prevent a greater setback being provided or required if considered necessary, having regard to the heritage values in the Statement of Significance for the heritage place and the first objective of the DDO:

To preserve the valued heritage character of the streetscape and ensure that the predominantly two storey Victorian and Edwardian-era heritage street-wall remains the visually prominent built form of Johnston Street west of the railway line bridge.

The Panel thinks that a consistent mid level setback is appropriate west of the rail line to create a consistent 'secondary street wall' behind the heritage fabric. In any case it is not clear how much an additional setback would achieve when viewed obliquely if the adjoining buildings are built to a lesser setback.

The Panel concludes:

- it is not appropriate to require a greater setback above heritage buildings.

6.9.2 What setback is appropriate

(i) The issue

The issue is what mid level set back behind the street wall is appropriate.

¹⁰¹ Page 21

¹⁰² Council Part A [92]

(ii) What does DDO15 provide?

Table 9 shows the proposed minimum mid level street setback above the street wall.

Table 9: Mid level street setback above the street wall (Document 26 version with Aheron added)

Sub precinct	Preferred minimum setback for upper levels from street wall facade	Mandatory minimum setback for upper levels from street wall facade
1A	None specified	6 metres
1AA	6 metres (fronting Sackville Street)	6 metres (fronting Johnston Street)
1AAA	None specified	6 metres (fronting Johnston Street)
1B	6 metres	None specified
1C	None specified	6 metres
1D	None specified	6 metres
Aheron	3 metres fronting Johnston Street with transition to property to the west 6 metres fronting Sackville Street	None specified
2A	None specified	6 metres
2rB	6 metres	None specified
2rC	6 metres	None specified
2rD	6 metres	6 metres (293 and 323–325 Johnston Street)
2rE	6 metres	None specified

(iii) Evidence and submissions

Table 10 summarises the position of Council and the expert witnesses

Table 10: Mid level street setback above the street wall – position of Council and the expert witnesses

	Setback above street wall Heritage areas	Setback above street wall Non heritage areas	Setback above street wall Sackville
Council	Mandatory 6 metres	Discretionary 6 metres	Discretionary 6 metres
GJM advice	Mandatory 5 metres only for significant streetscape or significant building. 6 metres subject to testing through modelling (s4.3.2).	N/A	N/A
Hansen advice	Mandatory 6 metres in HO for contributory and individually significant buildings; and significant streetscapes (Matrix_p5)	Discretionary 6 metres (Matrix p 5)	N/A
Parsons	Same as Council [84]	Mandatory 6 metres [88]	Mandatory 6 metres [85]

	Setback above street wall Heritage areas	Setback above street wall Non heritage areas	Setback above street wall Sackville
Barnes	Same as Council [114]	Defer to urban design to justify 6 metre setback [116]	N/A
Trethowan	Same as Council (p5)	N/A	N/A
de Keijzer	Same as Council (oral evidence)	Same as Council (p20) even on corner sites (oral evidence)	
Sheppard	Mandatory 6 metres for significant streetscapes [32] and individually significant heritage buildings [33]. Discretionary 5 metres in 'mixed' streetscapes.	Discretionary 5 metres in precinct 1 [35] and discretionary 3 metres in precinct 2 [92] except for precinct 2rB (which should have a 5 metres setback but increased height ([102]))	Discretionary 5 metres [38]
Biacsi re 196–202 Johnston Street	Discretionary 5 metres [110]	N/A	Discretionary 3 metres [11]

Source: Based on extract of Document 19

There was some debate about whether a 3 metre, 5 metre or 6 metre setback was more appropriate. Submissions and evidence did not present an overwhelming argument for 5 metres over 6 metres. The critical issue is whether the requirement should be mandatory.

Mr Sheppard and the GJM report say the setback should be mandatory for significant streetscapes and individually significant heritage buildings but discretionary for 'mixed' streetscapes. Mr Sheppard adopts 6 metres for significant streetscapes and individually significant heritage buildings but 5 metres for other sites. The GJM report adopted 5 metres but flagged the possibility of 6 metres – to be tested through modelling.

The *Bridge Road – Victoria Street Built Form Framework*, prepared by Mr Sheppard's firm, suggests a 6 metre mandatory setback is appropriate within a significant heritage streetscape to maintain a clear distinction between the heritage fabric and the addition but adopts a discretionary setback for other sites.

Council maintained¹⁰³ that the 6 metres setback is necessary to distinguish the heritage scale street wall from the upper levels, and to retain the prominence of street wall, as an urban design tool not just a heritage protection tool.

Council also sought consistent controls along the length of the street, and was concerned that a variation on 5 metre and 6 metre setbacks and a combination of mandatory and discretionary controls will lead to a proliferation of blank side walls and further complexity in the controls.

East of the railway bridge Council supported a discretionary setback above the street wall of 6 metres. The exhibited version of the control proposed a 3 metre discretionary setback.

¹⁰³ Part B 110

The Council Agenda dated 21 August 2018, noted that the reason behind the change in position, namely Mr Parsons' advice:

Officers recommend that no changes are made to DDO15 in response to submissions objecting to the use of mandatory controls. However, minor changes are recommended to be made to DDO15 to increase the setback above the street wall from a discretionary 3 metres to a discretionary 6 metres in precincts 2rB, 2rC, 2rD and 2rE ... This change is recommended by the expert urban designer.

Mr Parsons' expert witness statement explains:¹⁰⁴

As discussed above, this eastern precinct has a higher street wall of 18 metres mandatory maximum and lesser heritage significance. However, this does not mean that reducing shadowing and visual impacts above this height is unimportant, potentially quite the opposite given the already substantial scale of permitted frontage structures. The eastern sub precinct is still an area where pedestrian activity is to be promoted and an improvement of pedestrian amenity is a big part of this strategy, including an appropriate scale of frontage development. The Exhibited DDO15 contains a minimum setback above the street wall of just 3 metres preferred. As discussed above, I consider this inadequate to secure a meaningful distinction between upper and lower levels, particularly when viewed at an angle along the street, and potentially insufficient to deflect wind down draughts. I consider a mandatory 6 metres setback is required to secure these important aspects. I note Council's amended DDO15 now proposes a 6 metres setback in this sub precinct, but preferred rather than mandatory. In my view, the visual separation and wind aspects demand a mandatory treatment.

Mr Sheppard's view was that the setback should be a discretionary 3 metres in Precinct 2 except for sub precinct 2rB (which should have a 5 metre setback but increased height).

The Council supported¹⁰⁵ a 6 metre discretionary setback to ensure that the separation between the street wall and upper levels is maintained, thereby increasing the amenity of Johnston Street. The Council deferred to Mr Parsons' recommendation in that regard, given that he had done extensive modelling. However, the Council still thought that the control should be discretionary, which would allow shallower setbacks to be considered in appropriate circumstances.

A wind report attached to Mr Parsons' evidence supported a 6 metre setback as a default position for wind, noting that a lesser setback may be acceptable depending upon the design of the building.¹⁰⁶

(iv) Is a mandatory control justified?

Council made an assessment against PPN59.

Mr Parsons, Mr de Keijzer, Mr Barnes and Mr Trethowan all agree with Council that there should be a mandatory 6 metre setback above the street wall.

In terms of the heritage buildings:

- the rationale for the control is to ensure that the mid level is 'distinguishable' from the street wall and a recessive element within the streetscape
- the 6 metres represents a typical 'room depth' in heritage terms and will enable the heritage buildings to retain their three dimensional form to avoid facadism.¹⁰⁷

¹⁰⁴ At [88]

¹⁰⁵ Part B 117

¹⁰⁶ Mel Consultants, Amendment C220 Wind Report p 13

(v) Discussion

In urban design terms, the 6 metre setback will retain the ‘human scale’ of Johnston Street, secure the distinction between the street wall and upper levels and will reduce the potential for overshadowing and adverse wind conditions.

The Panel agrees that in this context a 3 metre setback is unlikely to create a distinct enough street wall.

In urban design terms, whether the setback should be a minimum of 5 metres (Sheppard) or 6 metres (Parsons) is a somewhat arbitrary choice. This doesn’t mean a choice should not be made. Some arbitrary choices are important, for example which side of the road to drive on. On balance the Panel prefers a 6 metre setback because:

- this will better protect heritage buildings
- a 6 metre setback fits better with the 45 degree upper level set back requirement – a 5 metre set back would potentially give only 5 metres to fit two additional floors within the 45 degree envelope leading to a greater setback at the mid level and hence breaking a consistent mid level street wall.

As noted by Parsons, east of the rail bridge it boils down to a simple set of provisions where sunlight becomes the key influencer.

A mandatory minimum upper level setback of 6 metres is only proposed in heritage overlay areas west of the rail bridge. In this area both sides of the street are in the heritage overlay. Further, within HO324, graded buildings comprise 780 metres out of the total 1,200 metres,¹⁰⁸ with only small sections of the street (the widest being 40 metres) that do not contain heritage buildings. In all cases, the objective is to retain the street wall as the prominent element.

There is a clear justification for a strong second tier of development and the 3D modelling demonstrates that 6 metres gives a greater sense of separation plus a more recessive effect, allowing the street wall to retain its prominence.

The Panel does not agree that less significant sections warrant a different treatment. Less significant areas equally deserve to exhibit the overall urban design outcome: a strong street wall with a distinct setback to the mid level form. It is an urban design outcome as much as a heritage one. The Panel is not persuaded that 6 metres should be discretionary. This would certainly prejudice the idea of a strong urban design frame and could lead to lengthy debates trying to reach no setback with differentiation limited solely to a change of materials. The benefits of certainty should prevail here, and the Panel is confident that design solutions for economically sound development can be achieved by competent architects.

The Panel concludes:

- the mid level set backs are appropriate
- the mandatory mid level setback controls are necessary.

¹⁰⁷ As per Mr Trethowan's evidence and see also p133 GJM report Victoria Street and Bridge Road Built Form Review – Heritage Analysis and Recommendations p133 and 134. ⁶⁶ Mr Parsons' evidence [80] ⁶⁷ At p 73.

¹⁰⁸ Mr Parsons PowerPoint.

6.10 Upper level setback envelope

(i) The issue

The issue is whether the upper level setback envelopes are appropriate.

(ii) What does DDO15 provide?

DDO15 includes a requirement for development above the street wall to be contained within a 45 degree envelope. The mid level setback requirement creates in effect a 'secondary street wall' 6 metres higher and set back 6 metres from the maximum street wall, and the 45 degree envelope takes effect from this secondary street wall.

Table 11 shows the preferred minimum upper level setback.

Table 11: Upper level setbacks (Document 26 version with Aheron added)

Sub precinct	Preferred upper level setback/envelope from property frontage (measured as the distance above ground level as specified below)
1A	45° above 11 metres
1AA	45° above 11 metres
1AAA	45° above 11 metres
1B	45° above 11 metres
1C	45° above 11 metres
1D	45° above 11 metres
Aheron	45° above 11 metres Sackville Street only
2A	45° above 11 metres
2rB	45° above 18 metres
2rC	45° above 18 metres
2rD	45° above 18 metres
2rE	45° above 18 metres

(iii) Evidence and submissions

Table 12 summarises the position of Council and the expert witnesses

Table 12: Upper level setback – position of Council and the expert witnesses

	45 degrees Johnston Street	45 degrees Sackville Street
Council	Discretionary above street wall	Discretionary above street wall
GJM advice	$\frac{\text{one third}}{\text{two thirds}}$ ratio (s4.3.2 p14)	N/A
Hansen advice	N/A	N/A
Parsons	Same as Council [84]	Same as Council [84]
Barnes	Does not support for every application	Not explicitly stated
Trethowan	Same as Council	N/A

	45 degrees Johnston Street	45 degrees Sackville Street
de Keijzer	Same as Council with consideration to be given to nominated corners (pp 20 and 23)	Same as Council (oral evidence)
Sheppard	Precinct 1: 45 degree above 24 metres [62] Precinct 2: supports the 45 degree rule with the exception of precinct 2rB [98] [99]	45 degrees above 14 metres [67]
Biacsi re 196–202 Johnston Street	45 degree above 21 metres [110]	45 degree above 21 metres [110]

Source: Extract of Document 19

Several submissions object to this requirement and contend that it is not necessary to manage amenity impacts. The submissions contend that the requirement is too restrictive and stifles flexibility and design innovation.

Pelican Capital objected to the 45 degree setback envelope as prescribed in DDO15 for the following reasons:

- amenity impacts can be managed without the need to conform to a 45 degree angle measurement
- blanket approach to all designs, and does not allow for design variation for individual site circumstances and interfaces.

Submitter 17 did not support application of the 45 degree setback envelope, particularly at the Johnston Street interface as it is not based on sound principles and is inflexible. The 45 degree setback envelope should be removed and replaced with broader, performance-based objectives.

De Luca Property Group objected to application of a 45 degree setback envelope for new developments on sites with a north–south orientation, including 196–202 Johnston Street, Abbotsford as there is little strategic justification for the uses of this principle and it precludes site-specific innovative design.

Submission 25, 105–107 Johnston Street, Collingwood said the proposed 45 degree upper level setbacks is not suitable in this context.

Council submitted¹⁰⁹ that the ‘45 degree envelope’ requirement is necessary to ensure development achieves the preferred future character and principles outlined in JSLAP, notably:

- a prominent (heritage) street wall
- recessive upper levels
- a human scale to development
- solar access to the street; and
- a transition in setbacks and heights to low scale residential properties.

The requirement is discretionary, not mandatory. Development that does not comply with the requirement may be permitted if key design objectives and the preferred character are

¹⁰⁹ Council Part A [84]

met. Council submitted that this gives flexibility and potential design innovation for developers while at the same time providing clear direction on the form of development that is needed to achieve the preferred character.

Pelican Capital submitted that the upper level 45 degree setback envelope is a departure from JSLAP 2015. The Supporting Document sets out the rationale for the 45 degree envelope.¹¹⁰

It is generally agreed that there should be a metric to provide some certainty about upper level built form. It is also agreed (other than the minimum setback above the street wall) that the control should be discretionary.

The dispute between the Council on the one hand (supported by Mr Parsons, Mr Trethowan and Mr de Keijzer) and Mr Biacsi and Mr Sheppard on the other hand is whether a 45 degree building envelope is appropriate or whether a less recessive control ought be adopted.

Mr Sheppard advocates what he describes as a $\frac{\text{one third}}{\text{two thirds}}$ ratio of upper level visibility to street wall.

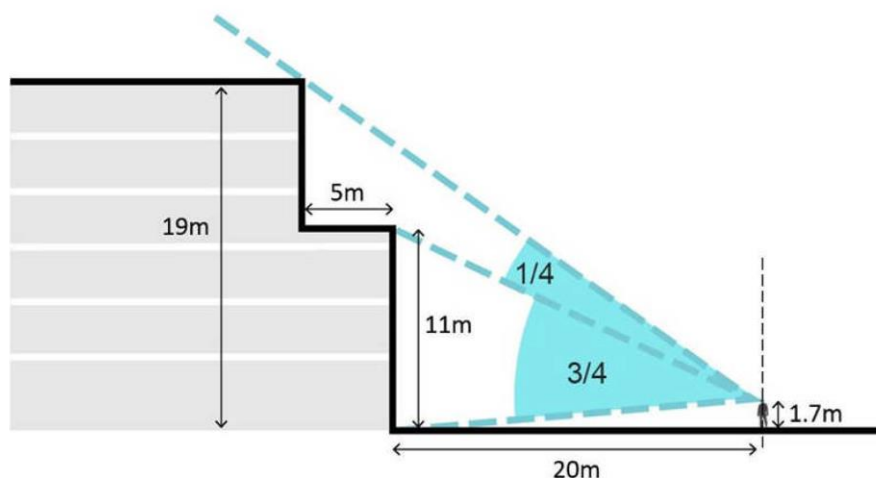
Mr Biacsi advocated a similar built form outcome to Mr Sheppard on Johnston Street, all be it a more recessive one. It was not clear what analysis underpinned Mr Biacsi's opinion, and he declined repeated questions from Council to explain how cross sections prepared by other supported his view. The Panel was not assisted by his evidence.

Mr Parsons, Mr de Keijzer and Mr Trethowan explained why the 6 metres setback from the street wall, combined with a 45 degree envelope, is an appropriate control to apply.

Mr Sheppard suggested a $\frac{\text{one third}}{\text{two thirds}}$ ratio comparing upper level visibility with street wall visibility would be appropriate west of the railway line. This is notwithstanding that a ratio of $\frac{\text{one quarter}}{\text{three quarters}}$ has been applied by him or his firm in hertiage areas elsewhere (including Sydney Road – see Figure 10, Hawksburn Village and most relevantly proposed by him for parts of Bridge Road and Victoria Street.

He also agreed that the formula needs to be translated to something simpler in the DDO, and suggests a 1 to 1 setback (in other words a 45 degree angle) above 24 metres.

Figure 10: Example of view angle upper level setback control – Moreland DDO18



¹¹⁰ See eg pages 4, 10–11.

(iv) Discussion and conclusion

The utility of the 45 degrees – for relieving visual bulk, protecting solar access and simplicity of application – is demonstrated by its use by both Mr Sheppard and Mr Biacsi, albeit starting from a higher point.

The Panel agrees with Council, that document 37 demonstrates that if the $\frac{\text{one quarter}}{\text{three quarters}}$ ratio of upper level visibility to street wall is to be achieved west of the railway line, a 45 degree angle above a nominal 11 metres high street wall represents the best fit.

This is because most of the heritage fabric street wall heights are below 11 metres, typically ranging between 8–9 metres but also as low as single storey development.

The projection of Mr Biacsi’s preferred upper level envelope beyond the 45 degree angle proposed by the Council is not great and falls within the bounds likely to be able to be considered by way of the exercise of discretion.

The issue the Panel has with the use of a street wall to upper level visibility ratio of upper level visibility to street wall is that the quantum of upper level development that is possible is highly dependent on the height of the street wall. In Johnston Street where a lower scale heritage street wall may be retained the approach is unlikely to deliver an equitable outcome.

The Panel concludes:

- a 45 degree upper level set back is appropriate.

6.11 Rear setbacks**(i) The issue**

The issue is whether the proposed rear setback is appropriate.

(ii) What does DDO15 provide?

DDO15 specifies either a 4.5 metre setback or 45 degree setback above 11 metres (or 9 metres in sub precinct 2rE).

Table 13 shows the proposed rear interface requirements.

Table 13: Rear interface (Document 26 version with Aheron added)

Sub precinct	Preferred maximum rear boundary height	Maximum rear boundary height	Minimum setback or envelope from rear property boundary (measured from 11 metres above ground level, (above 9 metres for sub precinct 2rE))
1A	11 metres	None specified	4.5 metres
1AA	11 metres	None specified	4.5 metres
1AAA	11 metres	None specified	4.5 metres
1B	11 metres	None specified	4.5 metres
1C	None specified	11 metres	45 ⁰
1D	None specified	11 metres	45 ⁰
Aheron	None specified	None specified	None specified
2A	11 metres	None specified	4.5 metres
2rB	11 metres	None specified	4.5 metres / 45 ⁰ (Stafford Street)
2rC	None specified	11 metres	45 ⁰
2rD	None specified	11 metres	45 ⁰
2rE	None specified	9 metres	45 ⁰ above 9 metres (mandatory)

(iii) Evidence and submissions

Table 14 summarises the position of Council and the expert witnesses

Table 14: Rear envelope – position of Council and the expert witnesses

	Rear interface height	Rear envelope
Council	Mandatory 11 metres in 1C, 1D, 2rC , 2rD Mandatory 9 metres in 2rE	Discretionary 45 degree above rear wall where interface is residential Discretionary 4.5 metres where interface is commercial
GJM advice	N/A	N/A
Hansen advice	Mandatory 8 metres where: <ul style="list-style-type: none"> - adjacent to NRZ; or - adjoining a perpendicular property. - Otherwise 8 metres discretionary. (Matrix p 4 and 5) 	Mandatory 45 degree to perpendicular residential interfaces and NRZ residential interfaces. Discretionary 45 degree to parallel interface or GRZ. [Matrix p5]
Parsons	Same as Council [92], [94]	Same as Council but mandatory [96] and [98]
Barnes	Mandatory 11 metres in 1D [118] Mandatory 9 metres in 2rE [118] Discretionary 11 metres in 1C, 2rD and 2rE [119]	Mandatory 45 degree to direct residential abuttal (precincts 1D and 2rE) [132] Discretionary 45 degree with intervening laneway in 1C, 2rD and 2rE [132]
Trethowan	N/A	N/A

	Rear interface height	Rear envelope
de Keijzer	Same as Council (p 21) Rear wall should be 9 metres in 2rD(p19) (agrees with submission 28 (p20) Agrees with Mr Sheppard that 15 metres is appropriate in 2rB (cross examination)	Same as Council (p 16)
Sheppard	Same as Council except for 11 metres in 2rB (which should be 15 metres as per exhibition version) [131]	4.5 metres discretionary except where there is the potential to consolidate a site [127].
Biacsi re 196–202 Johnston Street	N/A	N/A

One submission argued that it is not clear how the mandatory rear interface control would apply to their site in particular, whether the control would apply where a development had both a north-south and an east-west orientation given the words

... with a north-south orientation fronting Johnston Street, Sackville Street or Stafford Street

Council said¹¹¹ that it is intended that the 45 degree rear interface control only apply on north or south property boundaries, not east or west property boundaries. Council said it would accept additional words being added to the DDO to clarify this approach if necessary.

The critical site where this issue was contested was the K7 Developments land at 288 Johnston Street that backs onto Little Turner street.

Mr Sheppard's presented sections showing a building on this site which would present as a very substantial form on Johnston Street, Council said that this was simply not of the scale contemplated by Council for this precinct.

Council rejected¹¹² the notion that Little Turner Street should be treated as a "*back of house*" or "*service road*" location, and seeks to preserve the discretionary rear interface control of a 4.5 metres setback above an 11 metre wall.

The controls propose mandatory rear interface wall heights in precincts adjacent to established residential areas with preferred rear interface heights adjacent to commercial areas.

This approach was generally accepted by Mr Barnes, Mr de Keijzer, Mr Parsons and Mr Sheppard. Mr Barnes suggests the control ought to be discretionary where the site is opposite a laneway, but is more conservative on the built form controls for direct abuttals, calling for the 45 degree envelope to be mandatory. The Council adopted¹¹³ a middle ground, combining a mandatory rear wall and a discretionary upper level envelope.

One of the concerns raised by De Luca was that the rear interface control would prevent them from achieving a consolidated development of their site.

¹¹¹ Part C [116]

¹¹² Part C [93]

¹¹³ Part B [120]

In relation to the operation of the rear interface controls on consolidated sites, the Council submitted¹¹⁴ that any integrated development across a property with frontages to both Johnston Street and Sackville Street will **not** have an applicable “*rear interface*” height requirement because it does not have a “*rear wall*”, instead it will have two street wall height requirements to meet.

In the case of an integrated development comprising separate buildings, one fronting onto Johnston Street and one on to Sackville Street each with “*rear walls*”, the rear interface provisions will apply; however, the discretion available in relation to the rear interface height and 4.5 metre setback above the rear interface height would allow the particular circumstances of that development to be taken into account. Whether separation between buildings would be required at the property boundary will depend upon amenity within the development and the equitable development considerations of adjoining properties called up by the design objectives, the application requirements and the policy at 21.12.

(iv) Discussion and conclusions

The Panel agrees with Council that it is appropriate to make the rear height mandatory to protect established areas. The amount of development that will be permissible under the proposed controls errs on the generous side compared with ResCode. As the B17 envelopes demonstrate, the 11 metres rear interface combined with a 45 degree envelope (discretionary control) provides an outcome that results in an envelope similar to the B17 envelope when across a laneway and much more substantial built form where no laneway exists.

As the development at 109 Dight Street shows a higher rear wall height can be very imposing, even when opposite a laneway. Council officers advised that the overall height is in the order of 17 metres, with a scale of approximately 14 metres abutting the laneway. This approved and built development has the potential to set a precedent along this laneway, which would result in unacceptable outcomes for the rear yards of the properties located to the south. The same situation applies to the laneway in precinct 2rE.

It is important to protect the amenity of Little Turner Street, as it has the potential to develop into a highly used pedestrian environment, with a low scale built form to the north and with front entrances as well as rear gardens facing the laneway.

The Panel concludes:

- the rear interface controls are appropriate
- the mandatory rear interface control is necessary.

6.12 Building separation requirement

(i) The issue

Concerns were raised about the building separation requirements

(ii) What does DDO15 provide?

DDO15 provides:

¹¹⁴ Part C 63

Where development shares a common boundary with a private property or a laneway, upper level development should:

- be set back a minimum of 4.5 metres from the common boundary or 4.5 metres from the centre line of the laneway where a habitable room window is proposed;
- be set back a minimum of 3 metres from the common boundary or 3 metres from the centre line of the laneway (on a laneway less than 6 metres wide) where a non-habitable room window or commercial window is proposed.

Development above 21 metres should provide an appropriate side setback to provide spacing between buildings in order to maintain views to the sky from Johnston and Sackville Streets and from residential properties adjacent to the development.

(iii) Evidence and submissions

Table 15 summarises the position of Council and the expert witnesses

Table 15: Building separation requirement – position of Council and the expert witnesses

Upper and lower level side setback	
Council	All discretionary: - 4.5 metres habitable room - 3 metres non-habitable room - no metric above 21 metres DDO silent on lightwells below street wall.
GJM advice	N/A
Hansen advice	N/A
Parsons	Lower levels: 4.5 metres to habitable windows for 1 metre either side of window [102] Upper levels: mandatory 4.5 metres setback from neighboring boundaries above 18 metres [107].
Barnes	N/A
Trethowan	N/A
de Keijzer	Same as Council except should be a further metric above the street wall that a building not be longer than 30 metres or setback 4.5 metres from one boundary only (pp10 and 22)
Sheppard	Same as Council except add metric: development above 21 metres should provide side setbacks totaling one third the of width of property [143].
Biacsi re 196–202 Johnston Street	N/A

Some submissions objected to the requirement for setbacks from the side boundary where windows are proposed. The submissions contend that these setback requirements are unnecessary and would make some sites undevelopable as they are not of sufficient width to accommodate these setbacks.

(iv) Discussion and conclusions

The setbacks from the side boundary are proposed to provide breaks between buildings at upper levels to avoid development overwhelming the street and to provide views to the sky from street level. The Panel thinks this is a reasonable aim.

The setbacks also avoid the need for screening where two windows face each other, help to provide daylight to apartments and offices, and help to achieve equitable development outcomes.

The Panel acknowledges that the requirements may make development unviable on a small number of sites unless they are consolidated. However, Council considers that this is justified given the importance and value of the setbacks and provides greater certainty to future developers to find solutions notably through site consolidation.

The Panel concludes:

- the building separation requirements are appropriate.

6.13 Corner site requirements

Some submissions expressed uncertainty about how the requirements for upper level setbacks would apply on corner sites.

Council¹¹⁵ recognised that there is ambiguity in how the requirements in DDO15 would apply to corner sites and also how the 45 degree is applied as the exhibited DDO only requires this from the front and rear of sites.

To address this, Council proposed changes that require the street wall height to “wrap” around corners into side streets in some situations and include a discretionary requirement for a minimum 3 metre setback above the street wall on side streets.

The Panel concludes:

- the corner provisions are appropriate.

6.14 Commercial floor space requirements

One submitter objected to the floor to ceiling height requirements that support commercial development in the lower two floors of new buildings. The submitter argued that the policy and floor height requirements should only apply to the ground floor of Johnston Street and contend that they are not necessary or appropriate along Sackville Street which does not exhibit the same commercial character as Johnston Street.

Council advised¹¹⁶ that it has included the floor to ceiling requirements across DDOs in the City of Yarra to promote commercial development in the immediate term and to ensure that buildings are designed with the flexibility to support commercial development in the future.

While Sackville Street does have a different character, its proximity to Johnston Street and the Easey Street Employment Precinct makes it a suitable location for commercial development.

The Panel understands that research shows there is increasing demand for office space within the inner city, beyond the CBD. Collingwood and Cremorne are emerging as two of Yarra’s most important employment areas with a number of recently approved office applications in both areas.

¹¹⁵ Part A 95 – 96

¹¹⁶ Council Part A [100]

The Panel agrees that there is a need to facilitate a diversity of office spaces for future demand and thinks there is a need to ensure activity centres have scope to cater for a wide range of activities.

The Panel has previously recommended a change in street wall height to accommodate commercial development.

7 Drafting issues

The drafting of the controls is clear. However, the drafting does not always conform to published advice. The Panel understands that the published advice is extensive and when focussing on content, drafting conventions may be overlooked.

In reviewing the controls the Panel has been mindful of the Department's published guidance including:

- the Ministerial Direction on *The Form and Content of Planning Schemes*, which includes a requirement to draft in plain English
- *Using Victoria's planning system, Chapter 9 – Plain English*, which provides specific guidance on drafting for planning schemes as well as more general plain English advice
- relevant Planning Practice Notes
- *A Practitioner's Guide to Victorian Planning Schemes*.

The Panel includes the following commentary to explain why it has made the drafting changes it has. The Panel has formally recommended some specific changes in controls and has recommended that the drafting be refined. The changes the Panel has made are by way of illustration: further changes may be appropriate, or alternatively there may be good reasons to reject some of the Panel's suggestions.

(i) Are definitions needed?

Using Victoria's planning system, Chapter 9 – Plain English, cautions against adding definitions or changing existing VPP definitions.

In preparing its track change version of the controls, the Panel has sought to:

- use already defined VPP terms where they exist and are directly relevant
- reduce, and preferably eliminate definitions in schedules.

(ii) Making mandatory controls clear

The Panel has adopted drafting advice to use 'must' for mandatory control and 'should' for discretionary controls. In common with a number of recent DDOs the Panel thinks it is better to specify upfront that for controls expressed with 'must', or in the mandatory column of a table, a permit cannot be granted to exceed the control.

In preparing its track change version of the controls, the Panel has sought to:

- make it clear when controls are mandatory.

(iii) Making discretion clear

The construction:

A permit may only be granted to exceed the preferred maximum building height specified in Table 2 if the following criteria are met to the satisfaction of the responsible authority:

can be replaced with:

Development that exceeds the preferred maximum building height specified in Table 2 should meet the following criteria:

The provision is to the satisfaction of the responsible authority – the Panel understands that this makes it discretionary – and can be expressed in simpler language using 'should'.

In preparing its track change version of the controls, the Panel has sought to:

- express discretionary controls with 'should'.

(iv) Headings and their numbering

The Panel thinks that additional more specific heading (with numbers) would make the DDO easier to navigate.

In preparing its track change version of the controls, the Panel has sought to:

- develop a more useful heading structure.

(v) The order of controls

The mandatory overshadowing control is potentially a significant constraint. It should be presented earlier in DDO15.

In preparing its track change version of the controls, the Panel has sought to:

- place more significant matters earlier.

(vi) Use of the table in the graphic

Many of the controls are presented in the table that is part of a graphic. The Panel considers these requirements would be clearer if this critical information was presented in the body of the controls.

In preparing its track change version of the controls, the Panel has sought to:

- present requirements in the body of the DDO.

(vii) Avoiding controls in table headings

Some of the table headings elaborate upon the control. The Panel thinks the control would be easier to use if this material was in the text and table headings were kept as simple as possible.

In preparing its track change version of the controls, the Panel has sought to:

- simplify table headings.

(viii) Active voice

Using Victoria's planning system, Chapter 9 – Plain English, says:

Use the active voice.

In preparing its track change version of the controls, the Panel has sought to:

- use the active voice.

(ix) Parallel structures

Using Victoria's planning system, Chapter 9 – Plain English, says:

If two or more coordinated elements (words, phrases or clauses) occur together, they should have the same grammatical structure.

In preparing its track change version of the controls, the Panel has sought to:

- use parallel grammatical structures.

(x) 'If-then' or 'this-if'

In places DDO15 has adopted the practice of presenting information in a 'this-if' form; that is, presenting the height or setback that applies and then telling the reader where this applies. The control would be easier to use if the conditions that determined the height or setback (location, overall building height and the like – that is, the 'if') were presented first, and the actual metric to be achieved last.

In preparing its track change version the Panel has sought to:

- present conditional requirements in an 'if-then' order.

(xi) Choosing between 'which' and 'that'

The draft Amendment typically uses 'which' to introduce essential qualifications in the controls. *Using Victoria's planning system, Chapter 9 – Plain English*, says:

When making an essential qualification use 'that'; use 'which' when providing additional information about something being discussed.

In preparing its track change version of the controls, the Panel has sought to:

- use 'that' when making an essential qualification.

(xii) Using fewer, simpler words

The simplest English words have not always been used in the drafting.

In preparing its track change version of the controls, the Panel has sought to:

- avoid unnecessary words.

(xiii) Bulleted lists

Using Victoria's planning system, Chapter 9 – Plain English, says:

9.6.5 Using bulleted lists

... In bulleted lists neither 'and' nor 'or' should be used. The introduction to the list must make it clear whether all the requirements specified need to be met or just one of them.

The draft Amendment generally follows this advice, but not in every list. In planning schemes bulleted lists start each point with a capital letter and end each point with a full stop.

In preparing its track change version of the controls, the Panel has sought to:

- avoid 'and' or 'or' in bulleted lists, and use standard VPP punctuation.

(xiv) Use of diagrams

The Panel considers that the diagram could be expanded to give a clearer reference to how the different elements of DDO15 fit together.

In preparing its track change version of the controls, the Panel has sought to:

- improve the diagram.

(xv) Use of symbols

The authors of the DDO have used a superscript ⁰ in place of the degree symbol. Give the vagaries of computer systems and the unknown qualities of ATS the Panel thinks it would be

safer just to type out 'degrees' in full. The % symbol needs to be spelt out in text as does 'metres' to comply with the practitioner guide.

(xvi) Conformity with directions on styles

The revised versions of the controls look like a standard planning scheme schedule but do not conform to the Ministerial Direction on the Form and Content of Planning Schemes in terms of the use of word styles to format text. Nothing turns on this, but the Panel understands that these formatting issues can cause problems during the approval process.

Appendix A Submitters to the Amendment

Submission No	Submitter	Site
1	Ikeys Pty Ltd	378–380 Johnston Street, Abbotsford
2	Shane Short and Shortrack Constructions Pty Ltd	140A Johnston Street, and 95–97 Sackville Street, Collingwood
3	Collingwood Historical Society	Collingwood Arts Precinct – 35 Johnston Street, Collingwood
4	Ilias Gouletsas	272 Johnston Street, Abbotsford
5	Grange Development Consulting	400 Johnston Street, Abbotsford
6	Gurner 23–33 Johnston Street Pty Ltd	23–33 Johnston Street, Collingwood
7	Resident	54 Stafford Street, Abbotsford
8	Catherine Hales, Brendan Hales and Patrick Guinness	248 Johnston Street, Abbotsford
9	Resident	329, 329A Johnston Street, 37 Hunter Street and 236 Nicholson Street, Abbotsford
10	Resident	329, 329A Johnston Street, 37 Hunter Street and 236 Nicholson Street, Abbotsford
11	Pelican Capital Pty Ltd	329 Johnston Street, 236 Nicholson Street, and 37 Hunter Street, Abbotsford
12	VicRoads	–
13	Yarra Central Property Trust	436–438 Johnston Street, Abbotsford
14	Malcolm, and Carrolyn Jack	424 Johnston Street, Abbotsford
15	Titanium Property Investments	166–168, 174–176 Johnston Street, Collingwood and 121 Sackville Street, Collingwood
16	Land owner	8–10 Johnston Street, Collingwood
17	Land owner	398 Johnston Street, Abbotsford
18	AA Holdings Pty Ltd	40 Johnston Street and 35–37 Sackville Street, Collingwood
19	De Luca Property Group	196–202 Johnston Street, Collingwood
20	Contemporary Arts Precinct	Collingwood Arts Precinct – 35 Johnston Street, Collingwood
21	Land Owner	Easey Street, Collingwood

Submission No	Submitter	Site
22	K7 Developments	288–296 Johnston Street Collingwood
23	Aheron Pty Ltd	220, 222 and 222A Johnston Street, and 153-155 and 165 Sackville Street, Collingwood
24	Land Owners	13 Perry Street, Collingwood
25	Zero Nine Pty Ltd / land owner	105–107 Johnston Street, Collingwood
26	Land Owner	116–120 Johnston Street, Collingwood
27	Land Owner	73 Harmsworth Street Collingwood
28	Resident	Stafford Street, Abbotsford

Appendix B Parties to the Panel Hearing

Party	Represented by
Yarra City Council	Ms Susan Brennan QC with Ms Juliet Forsyth SC (Counsel), instructed by Harwood Andrews Lawyers called evidence from: <ul style="list-style-type: none"> - Larry Parsons of Ethos Urban, in urban design - David Barnes of Hansen Partnership Pty Ltd in urban planning - Koos de Keijzer of DKO Architecture, in urban design - Andrew Spencer of SGS Economics and Planning in urban economics - Bruce Trethowan of Trethowan Architecture in heritage and urban conservation
Shakespeare Property Group Pty Ltd	Mr Dominic Scally of Best Hooper Lawyers called evidence from: <ul style="list-style-type: none"> - Kel Twite of SJB Planning, in urban planning
K7 Developments Pty Ltd	Mr Dominic Scally of Best Hooper Lawyers called evidence from: <ul style="list-style-type: none"> - Mark Sheppard of David Lock and Associates, in urban design
De Luca Property Group	Mr Peter O'Farrell of Counsel, with Reto Hoffman of Rigby Cooke Lawyers called evidence from: <ul style="list-style-type: none"> - Mark Sheppard of David Lock and Associates, in urban design - Andrew Biacsi of Contour Consultants, in urban planning
AA Holdings Pty Ltd	Mr Matthew Townsend of Counsel, instructed by Norton Rose Fulbright, called evidence from: <ul style="list-style-type: none"> - Mark Sheppard of David Lock and Associates, in urban design
Aheron Pty Ltd	Mr Mathew Furness of Message Consultants
Titanium Property Investments	Mr David Hicky of SJB Planning
Pelican Capital Pty Ltd	Mr Jarryd Gray of Minter Ellison Lawyers
Malcolm and Carrolyn Jack	In person

Appendix C Document list

No.	Date	Description	Provided by
1	18/09/2018	Folder: supporting documents including the Amendment as exhibited (Tab 3) and a version showing recommended changes endorsed by Council on 21 August 2018 (Tab 6)	S Brennan
2	16/10/2018	DELWP Letter to PPV dated 12/10/2018 advising of updates to Practice Notes following Activity Centre Pilot Program	S Brennan
3		Folder: including Council Part A Submission and additional supporting documents	S Brennan
4		Letter to owners of 262–264 Johnston Street	
5a		Ethos Urban – Witness Statement Larry Parsons	L Parsons
5b		Ethos Urban PowerPoint presentation	
6	17/10/2018	Summary Table comparing exhibited, revised 21 August 2018 and Parsons recommended versions of DDO15	L Parsons
7a-f		Screen shots from Urban Circus 3D Model commissioned by Ethos Urban	S Brennan
8a		Various height, setback and lot depth diagrams	S Brennan
8b		Extracts from Supporting Document – sections and shadows for sub precincts 1A, 1B, 1C, 1D, 2A, 2B, 2rD	
9a		Google Earth aerial key map of photo locations	S Brennan
9b		Photos of various locations	
10		Extracts from Supporting Document – sections through sub precincts 1C and 2rC with ResCode Standard B17 overlaid	D Barnes
11	18/10/2018	Revisions to part 9 of David Barnes witness statement	D Barnes
12		3D Urban Circus DDO images overlaid with approved and proposed permit plans for 288–296 Johnston Street	S Brennan
13		Context P/L Heritage Gap Study – Review of Johnston Street – Final Report April 2016, covers proposed HO505	S Brennan
14		Extract from G Butler and Assoc City Yarra Review of Heritage Overlay Areas 2007. HO324 statement of Significance	S Brennan
15		Bruce Trethowan photos of Johnston Street	B Trethowan
16	19/10/2018	Koos de Keijzer PowerPoint presentation	K de Keijzer
17	22/10/2018	Set back formula prepared by Mark Sheppard	D Scally
18		Council Part B submission	
19		Table comparing built form requirements of Council’s consultants and witnesses and of M Shepard and A Biacsi	S Brennan
20		DD015 Track changes version (without comments) of Council officer’s preferred changes	S Brennan
20A		Further track changes refinement of Doc 20 provided 23/10/2018	

No.	Date	Description	Provided by
21		DDO15 Track changes version (with comments) of Council officer's preferred changes	S Brennan
22		Activity Centre Pilot Program – Key findings report (DELWP 2018)	S Brennan
23		Measurable Criteria to assess development applications exceeding preferred heights – Analysis and Recommendations (MGS Architects August 2018)	S Brennan
24		Practice Note 60 (September 2018) track changes version	S Brennan
25		Calculating Height (or angle) to edge of upper level with formula : using tangents (S Brennan)	S Brennan
26	23/10/2018	Clean copy of Doc 20A	S Brennan
27		Submission AA Holdings	M Townsend
28		Mark Sheppard slides of presentation	M Townsend
29		Extracts from Bridge Road and Victoria Street Built Form Framework – June 2018 pages 70 and 104	M Townsend
30		Extract from Yarra Housing Strategy – page 69	S Brennan
31		Extract from Mark Sheppard witness statement to Moreland C134 (Sydney Road, Moreland) Panel – pages 28–36	S Brennan
32		247–259 Johnston Street – Pace Developments project-ground floor Plan	S Brennan
33		Photo of restaurant at 265 Johnston Street	S Brennan
34		Extracts from DLA Sydney Road and Upfield Corridor Strategic Framework Plan – Draft October 2014	S Brennan
35		Photo – Little Turner Street	S Brennan
36		Extracts from DLA Hawksburn Village Structure Plan – Final July 2016	S Brennan
37		Series of Johnston Street view-line angles with different street-wall heights	S Brennan
38	24/10/2018	Submission on behalf of De Luca Property Group	P O'Farrell
39		June 2015 version of Planning Practice Note 60	P O'Farrell
40		Yarra Planning Scheme Clause 22.02 Development Guidelines for sites subject to the Heritage Overlay	P O'Farrell
41		Yarra Planning Scheme Clause 22.10 Built Form Design Policy	P O'Farrell
42		Endorsed planning permit plans for 1–5 Turner Street apartments	S Brennan
43		Site classification in council documents/reports for 436–438 Johnston Street	K Twite
44		News article from Sydney Morning Herald	J Forsyth
45		Extracts from Yarra Spatial Economic and Employment Strategy – Final Report Aug 2018	J Forsyth

No.	Date	Description	Provided by
46		Extracts Yarra Housing Strategy – October 2018	J Forsyth
47		Planning Property Report 436–438 Johnston Street	J Forsyth
48		Yarra Planning Scheme- Schedule 1 to the Significant Landscape Overlay	J Forsyth
49		Planning Advisory Note 65 – Yarra River Protection Controls Feb 2017	J Forsyth
50		Yarra C218 – Explanatory Report	J Forsyth
51		Yarra C219 – Explanatory Report	J Forsyth
52		Folder of submissions and supporting documents on behalf of K7 Developments Abbotsford Pty Ltd and Shakespeare Property Group	D Scally
53		City of Yarra Footpath trading Policy – June 2013	D Scally
54		Suggested drafting changes to proposed Clause 21.12–1 Local Areas	D Scally
55		Moda Armadale v Stonnington CC [2018] VCAT 1581	D Scally
56	25/10/2018	Submission of behalf of Aheron Pty Ltd	M Furness
57		Submission on behalf of Titanium Property Investments	D Hicky
58		Submission on behalf of Pelican Capital Pty Ltd	J Gray
59		Submission of behalf of Malcolm and Caroline Jack	M Jack
60	26/10/2018	Marked up copy of Document 20A	P O’Farrell
61		Extract from Melbourne C270 Panel Report -October 2016 – pages 101–104	P O’Farrell
62		City of Yarra Part C Submission	S Brennan
63		Melbourne CC v Minister for Planning [2015] VCAT 412	S Brennan
64		Yarrabank Developments Pty Ltd v Melbourne CC [2017] VCAT 888	S Brennan
65		Series of photos of cantilevered buildings referred to in Panel Hearing for Melbourne C258	S Brennan
66		Extracts from Darebin C136, C137 and C138 – Panel Report July 2014	S Brennan
67		Table of Council responses to Recommendations of Mr Biacsi and Mr Sheppard	S Brennan
68	21/11/2018	VicRoads submission	Raymond Dicker
69	23/11/2018	VicRoads amended submission	Raymond Dicker
70	4/12/2018	VicRoads submission	Gillian Menegas
71	12/12/18	City of Yarra submission	

Appendix D Panel preferred version of Design and Development Overlay Schedule 15

This version shows Panel suggest changes based on Document 20A. Moved text is not tracked. Other changes are marked as [Tracked Added](#) and ~~Tracked Deleted~~.

A clean version of this appendix has been sent to Council as a separate document

SCHEDULE 15 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

~~1.0~~
C--

Shown on the planning scheme map as **DDO15**.

JOHNSTON STREET ACTIVITY CENTRE

1.0 Design objectives

~~1.0~~
C--

- To preserve the valued heritage character of the streetscape and ensure that the predominantly two storey (~~heritage scale~~) street-wall remains the visually prominent built form of Johnston Street west of the railway line bridge, ~~ensuring that upper levels are visually recessive.~~

It is not clear what scale adds to the objective. Heritage buildings come in a variety of scales.

- To ~~ensure that the overall scale and form of new buildings is~~ [provide for new](#) mid-rise (5 to 10 storeys) [buildings](#) and provides a suitable transition to low scale residential areas, ~~protecting surrounding residential properties from unreasonable loss of amenity through visual bulk, overlooking and overshadowing.~~
- To ~~ensure that new development does not compromise~~ [protect](#) the operation of the state significant Collingwood Arts Precinct from unreasonable loss of amenity through visual bulk, ~~overlooking,~~ overshadowing of open space areas and vehicle access.

The public spaces on the Collingwood Arts Precinct might benefit from casual surveillance.

- To activate the street edge, provide passive surveillance opportunities, [and](#) accommodate commercial activity at the lower levels of [buildings](#) ~~new development and enhance the public realm through high quality buildings~~ and protect footpaths and public spaces on the southern side of Johnston Street from loss of amenity from overshadowing.
- To provide for equitable development outcomes through built form design that responds to the development opportunities of neighbouring properties, and through the consolidation of finer grain sites.

2.0 Buildings and works

~~2.0~~
C--

2.1 Definitions

~~2.1~~
C--

Building height ~~is measured as~~ [means](#) the vertical distance between the footpath at the centre of the frontage and the highest point of the building.

Architectural feature exemption moved from definitions to requirements.

Heritage Building ~~refers to~~ [means](#) any building subject to a heritage overlay, graded as either *Contributory* or *Individually Significant*.

Laneway means a road reserve of a public highway 9 metres or less wide.

Rear interface ~~is~~ [means](#) the rear wall of any proposed building or structure at any level, whether on the property boundary or set back from the property boundary.

~~Setback is the shortest horizontal distance from a building, including projections such as balconies, building services and architectural features, to the property boundary.~~

The VPP define **Setback** as “The minimum distance from any allotment boundary to a building.”
Projections moved to requirements.

Street wall ~~is means~~ the facade of a building at the street boundary.

Street wall height ~~is measured as means~~ the vertical distance between the footpath at the centre of the frontage and the highest point of the building at the street edge, ~~with the exception of architectural features.~~

~~Upper Level Development refers to the levels of buildings that are above the street wall.~~

2.2

~~1/20~~
C--

Requirements

A permit cannot be granted to vary a requirement expressed with the term ‘must’ or listed in a ‘Mandatory’ column of a table.

A permit must not be granted or amended (unless the amendment would not increase the extent of non-compliance) for buildings and works which exceed the mandatory maximum ~~building height, mandatory maximum street wall height, mandatory maximum rear interface height~~ requirement or are less than the mandatory minimum ~~upper level setback for a relevant sub precinct specified in Table 2 to this Schedule~~ requirement.

~~It does not include~~ Architectural features may exceed the preferred or mandatory height.

~~and~~ Service equipment including plant rooms, lift overruns, structures associated with green roof areas and other such equipment may exceed the preferred or mandatory height provided that each of the following criteria are met for the equipment or structure:

- Less than 50 ~~per cent~~% of the roof area is occupied by the equipment (other than solar panels).
- ~~Any~~ The equipment ~~is located in a position on the roof so as to avoid~~ does not cause additional overshadowing.
- ~~Any~~ The equipment does not extend higher than 3.6 metres above the maximum building height.

Projections such as balconies, building services and architectural features must not intrude into a setback.

2.3

~~1/20~~
C--

Building height

~~The maximum building height, street wall height, rear interface height and minimum setback requirements are set out at Table 2 of this schedule.~~

Buildings should not exceed the preferred maximum building height and must not exceed the mandatory maximum building height specified in Table 1.

Requirements on permit amendments moved to Requirements

Table 1: Building heights

Sub precinct	Preferred maximum building height	Mandatory maximum building height
1A	24 metres	None specified
1AA	28 metres	None specified
1AAA	None specified	28 metres
1B	24 metres	None specified
1C	21 metres	28 metres
1D	None specified	21 metres
Aheron land	34 metres	None specified
2A	21 metres	None specified
2rB	34 metres	None specified
2rC	24 metres	31 metres

Sub precinct	Preferred maximum building height	Mandatory maximum building height
2rD	21 metres	24 metres
2rE	None specified	21 metres

A permit ~~may~~should only be granted to exceed the preferred maximum building height specified in Table 2-1 if the following criteria are ~~met to the satisfaction of the responsible authority~~:

- the ~~built form outcome as a result of the~~ building elements permitted by the proposed variation satisfy ~~satisfies~~ the design objectives of Clause 1.0 and the provisions of Clause 21.12-1.
- ~~the proposed building height will not prejudice the preferred future mid-rise character within Johnston Street for the sub-precinct.~~

This seems redundant. The objectives seek mid rise development.

- the proposal will achieve each of the following:
 - housing for diverse households types, ~~including people with disability, older persons, and families with children, through the inclusion of varying dwelling sizes and configurations~~

It is not clear precisely how the housing needs of older people differ from the general population. What design features would be specifically required beyond universal access? It is not clear how much of a range of dwelling types is appropriate.

- universal access.
- communal ~~and~~/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58.
- excellence for environmental sustainable design measured as a minimum BESS project score of 70 per cent% or 5 Star Green Star Standard.
- greater building separation than the minimum requirement in this schedule.

This is reasonable consideration for taller buildings than specified

- no additional amenity impacts to residential zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height.

This is reasonable consideration for taller buildings than specified

- for *Heritage Buildings*, the proposed development enhances the heritage fabric of the building (primarily through restoration or reinstatement of the front facade and external features visible from Johnston Street).

This is reasonable consideration to support heritage restoration

2.4 Overshadowing and solar access requirements

--/20--
C--

New development must not overshadow the southern footpath of Johnston Street, measured as 3.0 metres from the property frontage on Johnston Street, between 10am and 2pm at 22 September~~22~~. ~~A permit must not be granted to vary this requirement.~~

Development in Sub precincts 1C, 1D, 2rB, 2rD and 2rE should ~~be designed to~~ avoid additional overshadowing of residential zoned properties to the south measured from 10am to 2pm at ~~the~~ equinox (22 September~~22~~).

2.5 Street Wall Height

--/20--
C--

A new street wall should not exceed the preferred maximum street wall height and must not exceed the mandatory maximum street wall height specified in Table 2. This does not apply to a heritage building.

Buildings should achieve the street wall transition specified in Table 3.

This is original requirement repeated for street wall height.

Except where a heritage building (or part of a heritage building) is to be retained along the street frontage, new development should provide a minimum street wall height of 8 metres.

Table 2: Street wall height

Sub precinct	Preferred maximum Street wall height (non-heritage frontage)	Mandatory maximum Street wall height (non-heritage frontage)
1A	None specified	11.3 metres
1AA	11.3 (fronting Sackville Street)	11.3 metres (fronting Johnston Street)
1AAA	None specified	11.3 metres (fronting Johnston Street)
1B	11.3 metres	None specified
1C	None specified	11.3 metres
1D	None specified	11.3 metres
Aheron	11.3 fronting Sackville Street	11.3 metres fronting Johnston Street
2A	None specified	11.3 metres
2rB	15 metres	18 metres
2rC	15 metres	18 metres
2rD	15 metres	18 metres
2rE	15 metres	18 metres

Table 3: Street wall transition

Area	Street wall transition
East of the railway bridge	New development should provide a transitional street wall height (maximum one storey higher, but not less than <u>8 metres</u>) on sites that are adjacent to Individually Significant heritage buildings for a minimum length of <u>6 metres</u> from the heritage building.
West of the railway bridge	The street-wall height should match the parapet height of a neighbouring heritage building, where present, for a minimum length of <u>6 metres</u> from the heritage building. If the parapet height of the neighbouring heritage building is less than <u>8 metres</u> , the street wall height of new development should be <u>8 metres</u> for a minimum length of <u>6 metres</u> from the heritage building.

Requirements placed in table for ease of use

2.6

--/20--
C--

Mid level set back above the street wall Building Envelope Requirement

Development should be set back from the street wall at least the preferred minimum mid level setback and must be set back from the street wall at least the mandatory minimum mid level setback specified in Table 4.

Table 4: Mid level setback above the street wall

Sub precinct	Preferred mid level minimum setback for upper levels from street-wall facade	Mandatory mid level minimum setback for upper levels from street-wall facade
1A	None specified	6 metres
1AA	6 metres (fronting Sackville Street)	6 metres (fronting Johnston Street)
1AAA	None specified	6 metres (fronting Johnston Street)
1B	6 metres	None specified

Sub precinct	Preferred mid level minimum setback for upper levels from street-wall facade	Mandatory mid level minimum setback for upper levels from street-wall facade
1C	None specified	6 metres
1D	None specified	6 metres
Aheron	3 metres fronting Johnston Street with a transition to 6 metres to the west of the sub precinct 6 metres fronting Sackville Street	None specified
2A	None specified	6 metres
2rB	6 metres	None specified
2rC	6 metres	None specified
2rD	6 metres	6 metres (293 and 323–325 Johnston Street)
2rE	6 metres	None specified

2.7

--/20--
C--

Upper level setbacks ~~Building Envelope Requirement~~

New development on sites ~~with a north-south orientation~~ fronting Johnston Street, Sackville Street or Stafford Street, should be setback from the front and rear property boundary, ~~as illustrated in Figure 1 and~~ as specified in Table 45.

In complying with the 45 degree envelope requirement, development should provide incremental setbacks of at least two storeys to avoid repetitive stepped form and ‘wedding cake’ outcomes.

A permit must not be granted for buildings and works which exceed the mandatory 45^o ~~degree~~ envelope from rear property boundary in Sub precinct 2rE.

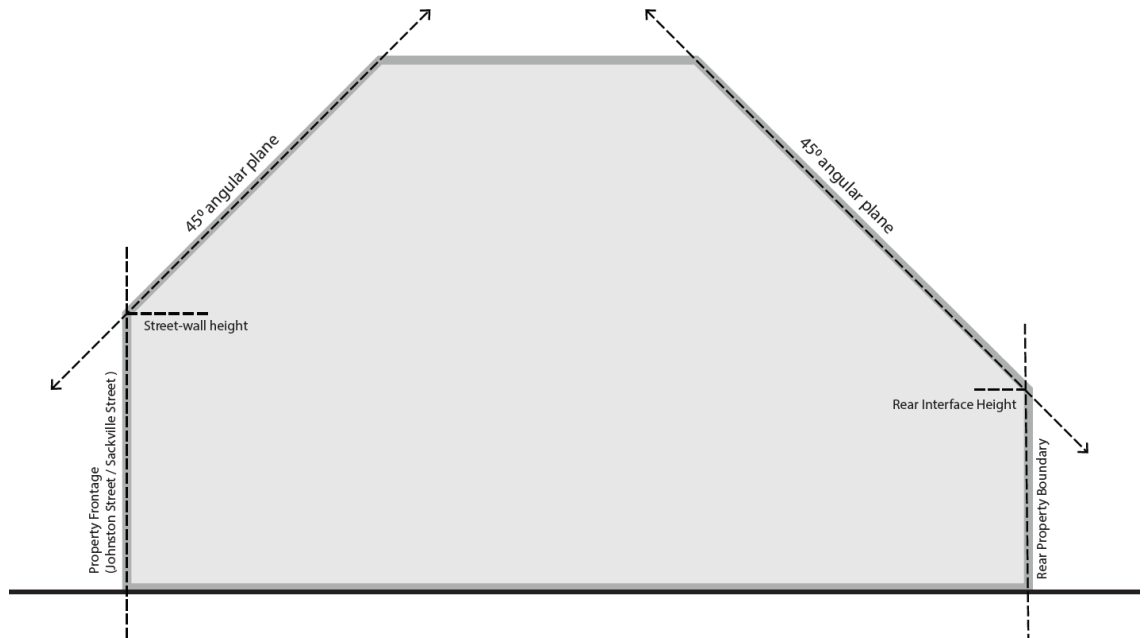
Table 45: 45^o Rear Setback Upper level setback requirements

Sub precinct	Preferred front upper level setback/envelope from property frontage (measured as the distance above ground level as specified below)	Preferred (except where stated as mandatory) rear minimum setback/envelope from rear property boundary (measured from 1.1 m above ground level, above 0 m for Mandatory rear minimum setback for Sub precinct 2rE)
1A	45 ^o degrees above 11.3 metres	4.5 metres above 11.3 metres
1AA	45 ^o degrees above 11.3 metres	4.5 metres above 11.3 metres
1AAA	45 ^o degrees above 11.3 metres	4.5 metres above 11.3 metres
1B	45 ^o degrees above 11.3 metres	4.5 metres above 11.3 metres
1C	45 ^o degrees above 11.3 metres	45 ^o degrees above 11.3 metres
1D	45 ^o degrees above 11.3 metres	45 ^o degrees above 11.3 metres
Aheron	45 degrees above 11.3 metres for Sackville Street	None specified
2A	45 ^o degrees above 11.3 metres	4.5 metres above 11.3 metres
2rrB	45 ^o degrees above 18 metres	4.5 metres above 11.3 metres but 45^o degrees above 11.3 metres for (Stafford Street)
2rC	45 ^o degrees above 18 metres	45 ^o degrees above 11.3 metres
2rD	45 ^o degrees above 18 metres	45 ^o degrees above 11.3 metres
2rE	45 ^o degrees above 18 metres	45 ^o degrees above 9 metres

	(mandatory)
--	-------------

Figure 1: Building envelope requirement

UPDATE DIAGRAM TO SHOW MID LEVEL SETBACKS ABOVE THE STREET WALL



2.8 Corner site requirements

-/-/20-
C--

New development on a corner site with a frontage to Johnston Street or Sackville Street should:

- Continue the street wall height established at the Johnston Street or Sackville Street frontage along the side street, with a transition in height to ~~match~~ the rear interface where required.
- Setback ~~upper level development~~ buildings above the street wall from the side street a minimum of 3 metres.

This requirement does not apply to new development on the corner of either:

- Hoddle Street and Johnston Street,
- A laneway.

2.9 Building separation requirement

-/-/20-
C--

Where development shares a common boundary with a private property or a laneway, ~~upper level development~~ buildings above the street wall should be set back as follows:

- Where a habitable room window is proposed:
 - ~~be set back a minimum of~~ 4.5 metres from the common boundary, ~~or~~
 - 4.5 metres from the centre line of the laneway, ~~where a habitable room window is proposed;~~
- Where a non-habitable room window or commercial window is proposed:
 - ~~be set back a minimum of~~ 3 metres from the common boundary ~~or~~
 - 3 metres from the centre line of the laneway (~~on a~~ where the laneway is less than 6 metres wide) ~~where a non-habitable room window or commercial window is proposed.~~

Development above 21 metres should provide an appropriate side setback to provide spacing between buildings in order to maintain views to the sky from Johnston and Sackville Streets and from residential properties adjacent to the development.

2.10 Street frontage requirements

~~2.10~~
C--

New development should:

- Be built to the front property boundary on ~~in-fill (non-heritage)~~ sites without a heritage building along Johnston Street and Sackville street.
- To the west of the railway bridge, ~~ensure that~~ maintain the visual prominence of heritage buildings ~~remain the visually prominent feature in Johnston Street.~~
- To the east of the railway bridge, contribute to a new, well-designed, contemporary urban character that provides articulation in building facades, reinforcing a finer grain street pattern.
- Address the primary street frontage and, where heritage elements are not a constraint, incorporate design elements that contribute to the provision of a continuous, visible and active frontage at ground level.
- Provide for passive surveillance, ~~and~~
- Provide an active ~~or~~ visually interesting interface(s) with the public realm, including areas of public open space and public transport stops.
- ~~be designed to~~ Locate service entries/access doors away from the primary street frontage, or where not possible, be sensitively designed to integrate into the facade of the building.

2.11 Commercial floor space requirements

~~2.11~~
C--

~~New development~~ Buildings should:

- Be designed to accommodate commercial activity at the lowest two levels
- Incorporate floor to floor heights suitable for commercial activity of at least 4 metres at the lowest two levels, where heritage elements are not a constraint.

2.12 Upper level design requirements

~~2.12~~
C--

~~Upper level development~~ Facades above the street wall, ~~should be designed so that all facades,~~ including side walls, should:

- Employ a high standard of architectural design ~~and~~
- ~~are~~ Be well-articulated,;
- ~~to be~~ Be designed to be read as part of the overall building ~~design and~~
- ~~do Not~~ detract from the character of the streetscape when viewed ~~from directly or and~~ obliquely views along either Johnston Street or Sackville Street.

~~Upper level development~~ Buildings above the facade of retained heritage buildings and on sites adjacent to a heritage building should:

- Ensure that heritage buildings remain the visually prominent feature within Johnston Street when viewed from ground level.
- Be visually recessive in mass, scale and materiality, incorporating materials and finishes that are sympathetic and in keeping with the character of the heritage streetscape.

2.13 Vehicle access and car parking

~~2.13~~
C--

New development should ~~be designed to~~:

- Avoid providing vehicle access from Johnston Street and provide access from a side street or laneway where practical.
- Conceal the provision of car parking within the building or by providing basement car parking.
- Avoid providing recessed parking spaces at the ground floor level of buildings and onsite parking spaces at the front of properties.

3.0 Subdivision

~~1-1-20-~~
C-- None specified.

4.0 Advertising signs

~~1-1-20-~~
C-- None specified

5.0 Application requirements

~~1-1-20-~~
C-- An application for development must be accompanied by a design response that considers the future development opportunities of adjacent properties in terms of outlook, daylight and solar access to windows, as well as managing visual bulk.

6.0 Decision guidelines

~~1-1-20-~~
C-- The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

~~• The extent to which the proposal satisfies the Design Objectives at Clause 1.0.~~

- The architectural quality of the proposal, which includes the design, scale, height, materials, mass and visual bulk of the development in relation to the surrounding built form.
- The profile and impact of development on the vista along Johnston Street.
- How the proposal responds to the presence of heritage buildings either on, or in close proximity to the site and whether an increased upper level setback is required having regard to the heritage significance and contributory features of the site.
- The design response at the interface with existing low-scale residential properties and the potential amenity impacts to neighbouring residential properties.
- Whether the proposal provides an active street interface to Johnston Street and contributes positively to the pedestrian environment and other areas of the public realm.

~~• The wind impacts of the proposed development.~~

It is not clear how this can be considered on a site-by-site basis with the form of development proposed.
