

**Yarra Planning Scheme Amendment C280yara
32-68 Mollison Street, Abbotsford**

Panel Report

Planning and Environment Act 1987

1 November 2021

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment [section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Yarra Planning Scheme Amendment C280yara

32-68 Mollison Street, Abbotsford

1 November 2021



David Merrett, Chair

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Glossary and abbreviations

Council	Yarra City Council
Incorporated Plan	32-68 Mollison Street Abbotsford Incorporated Plan (March 2021)
IPO1	Schedule 1 to the Incorporated Plan Overlay

Overview

Amendment summary

The Amendment	Yarra Planning Scheme Amendment C280yara
Common name	32-68 Mollison Street, Abbotsford32-68 Mollison Street, Abbotsford32-68 Mollison Street, Abbotsford
Brief description	<p>The Amendment proposes to:</p> <ul style="list-style-type: none"> replace the existing Incorporated Plan Overlay - Schedule 1 delete the IPO1 from the property at 61-69 William Street, Abbotsford amend Clause 72.04 to replace the incorporated document "32-68 Mollison Street and 61-69 William Street, Abbotsford July 2013" with "32 – 68 Mollison Street Incorporated Plan (March 2021)"
Subject land	32-68 Mollison Street, Abbotsford
The Proponent	AH Meydan Pty Ltd
Planning Authority	Yarra City Council
Authorisation	19 February 2021
Exhibition	15 April to 17 May 2021
Submissions	<p>Number of Submissions: 11 Opposed: 9</p> <ol style="list-style-type: none"> Jack Skoblar Freeda Razmoski Joanne Ginn and Martin O’Byrne Wai Loon Winson Tan and Sie Wan Chai Gai Palmer Margot Foster Paul Lee and Dermot Sheridan Simon Perry Brendan Mitchell and Maryanne Coffey Kathleen Crowley AH Meydan Pty Ltd

Panel process

The Panel	David Merrett
Directions Hearing	Video conference, 6 September 2021
Panel Hearing	Video conference, 4 October 2021
Site inspections	Unaccompanied, 30 September 2021

Parties to the Hearing	<p>Yarra City Council represented by Terry Montebello of Maddocks Solicitors calling the following expert evidence:</p> <ul style="list-style-type: none">• Urban design from Leanne Hodyl of Hodyl and Co. <p>AH Meydan Pty Ltd represented by Carley Robertson of Counsel instructed by Gemma Robinson of Rigby Cooke Lawyers, calling the following expert evidence:</p> <ul style="list-style-type: none">• Urban design from Julia Bell of Kinetica
Citation	Yarra Planning Scheme PSA C280yara [2021] PPV
Date of this report	1 November 2021

Executive summary

Yarra Planning Scheme Amendment C280yara seeks to:

- replace the existing Incorporated Plan Overlay - Schedule 1
- delete the IPO1 from the property at 61-69 William Street, Abbotsford
- amend Clause 72.04 to replace the incorporated document “*32-68 Mollison Street and 61-69 William Street, Abbotsford July 2013*” with “*32 – 68 Mollison Street Incorporated Plan (March 2021)*”.

The existing Incorporated Plan allows for development up to 5 storeys or 23 metres. The Amendment would allow an increased building height to 32 metres or 7 storeys. It also includes new requirements that address overshadowing, setbacks, access, upper level setbacks, materiality and articulation and building separation.

Key issues raised in submissions included:

- Building height is excessive
- How building height should be expressed
- Overshadowing impacts
- Loss of character
- Traffic impacts
- Parking impacts.

Besides the Proponent (AH Meydan Pty Ltd), no submitters appeared at the Hearing, so the Panel relied upon their written submissions in response to the exhibition of the Amendment.

The Panel directed (Direction 3) the Proponent to circulate a preferred version of the planning controls prior to the Hearing. Despite lodging a submission to the Amendment, it was only in the preferred version of the Incorporated Plan that the Proponent sought to delete the reference to storeys for building height. The submitters that elected not to attend the Hearing did have to view this version and the Panel has taken this into account when considering the proposed change.

The subject land is in the Abbotsford employment precinct where significant redevelopment has and will continue to occur. Development has been approved on adjoining and nearby sites ranging between 4 and 9 storeys. The Panel found the Amendment to be strategically justified. From a strategic planning perspective it could not consider submissions that requested building height to be lower than that which currently exists as relevant to the Amendment. Similarly, it found that potential noise, construction impacts, traffic or parking impacts were not relevant as there is it was not considering a specific proposal for the land. These issues can be addressed when a planning application for the land is considered by Council.

The Panel concludes:

- The Amendment is strategically justified and introduces new provisions that ensure amenity and built form requirements are considered further.
- An additional 9 metres or 2 storeys in building height is generally consistent with the emerging character of the area.
- References to character be amended to ‘emerging character’ in Schedule 1 to the Incorporated Plan Overlay.
- Objective 1 in the Incorporated Plan should retain references to height in metrics.

- Building height should be expressed in metres and storeys to provide certainty for Council, the Proponent and the community and ensure a greater level of flexibility to provide floor plates for commercial uses.
- The new requirements in the Incorporated Document will ensure the interface with residential uses to the south can be addressed appropriately.
- Further clarity be provided by adding “*whichever is the lesser*” to building height references in the Incorporated Plan and confirm that the consideration of building height does not include basement levels.
- The new overshadowing requirements in the Incorporated Plan are appropriate and will restrict overshadowing the southern footpath of Mollison Street at the equinox.
- The deletion of vehicle access off Victoria Crescent, the widening of the western laneway to allow for two-way vehicle movements will result in improved traffic access and circulation around the site.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Yarra Planning Scheme Amendment C280yara be adopted as exhibited subject to the following:

- 1. Adopt the Hearing version of Schedule 1 to the Incorporated Plan Overlay (Document 11) as contained in Appendix B subject to changes made by the Panel in this report.**
- 2. Adopt the Hearing version of the 32-68 Mollison Street Abbotsford Incorporated Plan March 2021 (Document 12) as contained in Appendix C subject to changes made by the Panel in this report.**
- 3. Amend Schedule 1 to the Incorporated Plan Overlay at Clause 4.0 to refer to character as “emerging character”.**
- 4. Amend Table 1 of the 32-68 Mollison Street Abbotsford Incorporated Plan March 2021 to add “whichever is the lesser” and confirm basements are excluded from the assessment of building height.**
- 5. Amend Table 2 of the 32-68 Mollison Street Abbotsford Incorporated Plan March 2021 with a minor edit to the requirement for the widening of Little Nicholson Street.**

1 Introduction

1.1 Amendment description

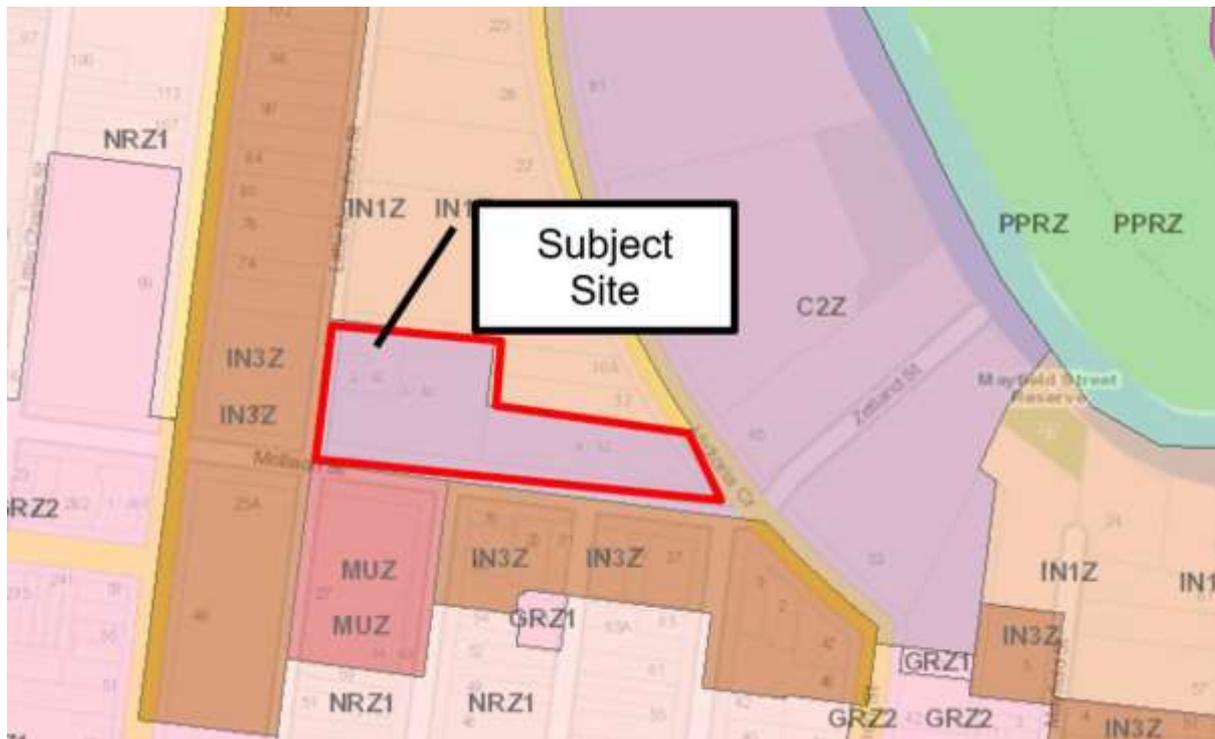
The Amendment applies to 32-68 Mollison Street, Abbotsford. It proposes to:

- replace the existing Incorporated Plan Overlay - Schedule 1 (IPO1)
- delete the IPO1 from the property at 61-69 William Street, Abbotsford
- amend Clause 72.04 to replace the incorporated document “32-68 Mollison Street and 61-69 William Street, Abbotsford July 2013” with “32 – 68 Mollison Street Incorporated Plan (March 2021)” (Incorporated Plan).

1.2 The subject land

The Amendment applies to land shown in Figures 1 and 2. It is located on the north-west corner of Mollison Street and Victoria Crescent, Abbotsford.

Figure 1 Location of the subject land



The site has an area of 4,360 sqm and a 147 metre frontage to Mollison Street. The site currently consists of an at-grade carpark at the western end and a 3 storey office building on the remainder of the site.

More broadly the site is part of an employment precinct generally bound by Mollison Street to the south, Gipps Street to the north, the Yarra River to the east and Nicholson Street to the west. The area generally comprises older one to three storey industrial and warehouse buildings.

The site is well located to the Victoria Street activity centre, two train stations and a tram line along Victoria Street.

Figure 2 Aerial photo of site



1.3 Amendment detail

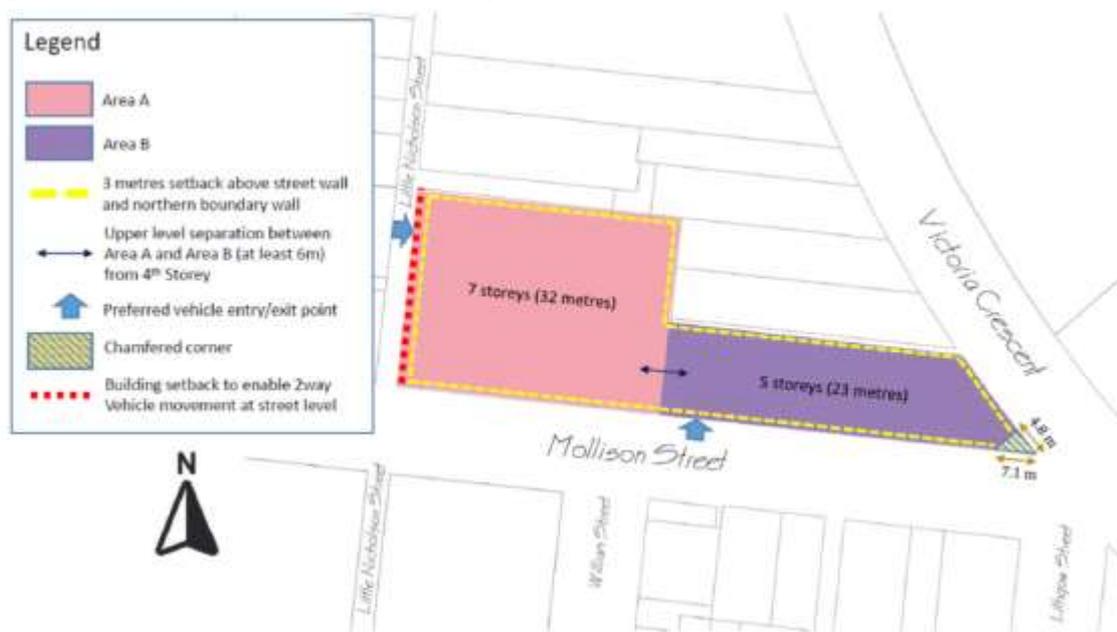
Council advised the proposed IPO1 and Incorporated Plan is required to:

- increase the allowable building height from 5 storeys (23 metres) to 7 storeys (32 metres) for the part of the western part of the subject site, while retaining the existing 5 storey limit on the eastern part
- increase the street wall height from 3 storeys to 4 storeys at the eastern end of the subject site
- increase the upper level setbacks from 2 metres to 3 metres
- introduce a ground level setback on Little Nicholson Lane to support two-way traffic
- introduce a requirement for a chamfer at the intersection of Mollison Street and Victoria Crescent
- introduce a requirement for upper building separation of 6 metres
- introduce a solar access requirement to the southern footpath on Mollison Street between 10am and 2pm at the September equinox
- introduce a requirement for a minimum of 80 per cent active frontages to Mollison Street and Victoria Crescent
- introduce a requirement for materials definition between lower and upper levels of buildings
- introduce a requirement that car parking is concealed from Victoria Crescent and Mollison Street
- introduce a requirement for bicycle parking
- limit vehicle access to Little Nicholson Street and Mollison Street and remove it from Victoria Crescent to increase pedestrian safety

- require pedestrian access to be from streets (with primary access from laneways to be avoided)
- require service cabinets to be appropriately located and integrated with the design of the building where possible.

Figure 3 contains Map 1 from the Incorporated Plan.

Figure 3 Proposed Incorporated Plan - Map 1



The Amendment maintains the exemption from notice and review if a permit application was generally in accordance with the incorporated plan.

A comparison between the existing and proposed IPO1 is outlined in Table 1.

Table 1 Comparison between existing and proposed Incorporated Plans

	Current Incorporated Plan (2013)	Proposed Incorporated Plan March 2021
Height	Building height for 32-68 Mollison Street, Abbotsford must not exceed 23 metres and 5 storeys	Building height in Area A is increased must not exceed 7 storeys (32 metres)
Street wall	Existing building street wall (three storey)	Street wall height should transition from 3 storeys (13.8 metres) at the western end of the site (Area A) to four storeys (18.4 metres) at the eastern end of the site (Area B)
Upper level setback from street wall and northern boundary	Manage edge to provide for continued industrial purposes on the northern side Two metre setback as shown on the Incorporated Plan	Above the street wall and northern boundary wall, upper levels should be setback a minimum of three metres from the northern boundary, Mollison Street, Victoria Crescent and Little Nicholson Street. Upper levels setbacks above the street wall and northern boundary should be contained within a maximum of two steps (including the setback

		above the boundary wall below as one step) to avoid repetitive stepping of individual levels
Ground level setback	No requirement	The building must be setback along the western boundary of the property to provide for two-way vehicle access on Little Nicholson Street
Corner treatment	No requirement	The corner of the development at the Mollison Street and Victoria Crescent intersection should be chamfered. No cantilevering at upper levels
Upper level building separation	No requirement	Upper level development (4 th storey and above) should be separated by a minimum of 6 metres between Area A and Area B to ensure proposed buildings on Area A and Area B do not appear as one building mass
Overshadowing	No requirement	New development must not overshadow the footpath on the southern side of Mollison Street between 10am and 2pm on 22 nd September
Active frontages	Active ground floor frontage at 32 Mollison Street	Active frontages should be provided to a minimum of 80 per cent of the Mollison Street and Victoria Crescent frontage, keeping inactive facades to a minimum
Material definition (podium and upper levels)	No requirement	Façade articulation and composition should achieve cohesive design including material definition between podium and upper levels that is responsive to local context and character. Podium materials should be detailed and robust with visually recessive materials used at upper levels
Car parking	Requirement for a car parking building on the western part of the site	Car parking should be concealed from Victoria Crescent and Mollison Street frontages
Bicycle parking	No requirement	Staff bicycle should be located and designed to be secure and conveniently accessible from the street and associated uses
Vehicle access	Three access points from Mollison Street and one from Victoria Crescent	Vehicular access must be limited to a maximum of one crossover from Little Nicholson Street and one crossover from Mollison Street
Pedestrian access	No requirement	Pedestrian access to buildings should be via Mollison Street and/or Victoria Crescent and primary access from laneways should be avoided. Where pedestrian access from a laneway is appropriate, it should include a pedestrian refuge or landing and include lighting

		Pedestrian entrances must be clearly visible, secure and have an identifiable sense of address
Service cabinets	No requirement	Service cabinets must be appropriately

1.4 Background

The existing IPO1 was introduced by Amendment C170 in 2013. In summary it:

- applies to the subject site, as well as 61-69 William Street, which has since been developed for a multi-storey building
- allows a mandatory building height of up to five storeys
- contains minimal urban design requirements to guide built form outcomes.

Yarra City Council (Council) issued Planning Permit PLN17/0697 for the site that approved a 5 storey building and a change of use to shop and office and reduction in the associated parking requirement.

Since IPO1 was introduced, various permits have been granted for development to 4 to 9 storeys on several neighbouring properties.

1.5 Summary of issues raised in submissions

(i) Yarra City Council (Planning Authority)

The key issues for Council were:

- Support for the Amendment
- Height should be expressed in both metres and storeys
- Initially supported the use of the 80 per cent metric for active frontages however supported the revised text from Ms Hodyl who provided urban design advice for Council.

(ii) AH Meydan Pty Ltd (Proponent)

The key issues for the Proponent were:

- Support for Amendment
- Height should be expressed in metres only
- Initially objected to the use of the 80 per cent metric for active frontages but supported the revised text from Ms Hodyl.

The remaining unresolved issue is whether height should be expressed in metres and storeys.

(iii) Individual submitters

The key issues by submitters were:

- Building height is excessive
- Overshadowing impacts
- Loss of character
- Traffic impacts
- Parking impacts.

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 relied on the written submissions in response to the exhibition of the Amendment from the community as no submitters elected to attend the Hearing. 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:

- Planning context
- Building height, character and overshadowing
- Traffic and car parking.

1.6 Limitations

The Panel does not comment further on submissions relating to construction related noise impacts as the Panel is not considering a specific development proposal and this will be the subject of *State Environment Protection Policy – Control of noise from industry, commerce and trade No. 1 (SEPP N-1)* and the requirement for a Construction Management Plan as a condition of any future permit that is granted.

1.7 Hearing versions of Schedule 1 to the Incorporated Plan Overlay and Incorporated Document

The Panel requested Council and the Proponent to provide a Hearing version of the IPO1 (Document 11) and the Incorporated Document (Document 12). These versions of the documents contained agreed text and tracked text and comments for issues that remained unresolved between the parties. An opportunity was provided for final comment. Neither Council nor the Proponent provided any additional final comment.

Council and the Proponent agreed to the revised text that refers to active frontages along Mollison Street.

The Panel adopts these versions of the documents subject to any changes provided in this report.

1. **Adopt the Hearing version of Schedule 1 to the Incorporated Plan Overlay (Document 11) as contained in Appendix B subject to changes made by the Panel in this report.**
2. **Adopt the Hearing version of the 32-68 Mollison Street Abbotsford Incorporated Plan March 2021 (Document 12) as contained in Appendix C subject to changes made by the Panel in this report.**

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the PE Act by providing greater clarity regarding built form outcomes and expectations in Yarra's employment areas of Abbotsford. The proposed provisions will support more efficient and orderly planning processes.

The Amendment seeks to provide greater clarity as it will assist to achieve better built form and public realm outcomes and assist to improve public safety at local intersections.

Clause 11 (Settlement)

The Amendment supports Clause 11 by adding to the land supply of commercial office and retail floorspace in the Abbotsford employment area.

Clause 15 (Built environment and heritage)

The Amendment supports Clause 15.01 (Built environment) by:

- Creating safe and functional urban spaces
- Implementing built form guidance that contribute positively to the local context and enhance the public realm
- Facilitating 20-minute neighbourhoods.

Clause 17 (Economic development)

The Amendment supports Clause 17.01 (Employment) by:

- Strengthening and diversifying the local economy.

Clause 18 (Transport)

The Amendment supports Clause 18 by:

- Locating development in areas with good public transport
- Enhancing pedestrian and cycling.

Clause 21 (the Municipal Strategic Statement)

The Amendment supports the Municipal Strategic Statement by:

- Increasing retail and commercial uses in established employment centres (21.04-2)
- Redeveloping old industrial sites for new uses (21.04-3)
- Enhancing built form character in Yarra's activity centres (21.05-2).

2.2 Other relevant planning strategies and policies

(i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches

8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every 5 years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in Table 2.

Table 2: Relevant parts of Plan Melbourne

Outcome	Directions	Policies
Melbourne is a productive city that attracts investment, supports innovation and creates jobs	1.1 Create a city structure that strengthens Melbourne's competitiveness for jobs and investment	To strengthen the competitiveness of Melbourne's employment areas. The Amendment provides appropriate policy direction for the planning and development of the employment areas to ensure that it continues to meet community needs
Melbourne is a city of inclusive, vibrant and healthy neighbourhoods	5.1 Create a city of 20-minute neighbourhoods	To cluster new housing, access to jobs, services and public transport to accommodate growth.

2.3 Planning scheme provisions

A common zone and overlay purpose are to implement the Municipal Planning Strategy and the Planning Policy Framework.

(i) Zones

The land is in the Commercial 2 Zone. The purposes of the Zone are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.
- To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.

(ii) Overlays

The land is subject to the Incorporated Plan Overlay. The purposes of the Overlay are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify areas which require:
 - The form and conditions of future use and development to be shown on an incorporated plan before a permit can be granted to use or develop the land.
 - A planning scheme amendment before the incorporated plan can be changed.
- To exempt an application from notice and review if it is generally in accordance with an incorporated plan.

Changes to IPO1 are one of key foci of this Amendment.

The land is affected by the Environmental Audit Overlay and the Development Contributions Plan Overlay.

2.4 Ministerial Directions and Practice Notes

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018. That discussion is not repeated here.

Council submitted the Amendment complies with the Ministerial Direction for *'The form and content of Planning Scheme'* under Section 7(5) of the Planning and environment Act 1987 and Planning Practice Note 23: *Applying the Incorporated Plan and Development Plan Overlays* (November 2018).

2.5 Discussion and conclusion

The Panel notes that other submitters did not elect to be heard at the Hearing which did not provide the opportunity to further scrutinise their concerns. A review of all submissions did not suggest development of this site should not occur. Therefore, the Panel concludes the strategic direction for this area of Abbotsford to accommodate significant infill redevelopment was not an issue it considered further.

Generally, the proposed Incorporated Plan will result in a more balanced outcome that considers issues that were not addressed in the existing version. This will result in an improved net community benefit and the Panel supports this.

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 Planning Policy Framework, 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.

3 Building height, character and overshadowing

3.1 Building height and character

(i) The issue

The issues are whether:

- a building height of up to 32 metres is appropriate
- building height should be expressed in both metres and storeys.

(ii) Evidence and submissions

Building height and character

Submitters 2, 3, 6, 7, 8, 9 and 10 commented on the proposed building height and noted that surrounding development was limited to 4 storeys, were concerned that a height of 32 metres would be inconsistent with the character of the area and inappropriate next to a residential zone.

Council submitted that this area is undergoing significant change and the emerging character of the area can be appreciated in the following¹:

- Many of the submitters reside at 61-69 William Street, Abbotsford. Plans for a 4 storey (15.5 metre) development on that site were approved in May 2018.
- To the east of the Subject Site, across Little Nicholson Street, 20-30 Mollison Street is currently being developed to 8 storeys (29.62 metres), set back 5.3 metres from an 11.5 metre high street wall along Nicholson Street.
- To the north of the Subject Site, 12-20 Victoria Crescent is currently being developed to 9 storeys (35 metres) at its western end and 6 storeys (21.5 metres) along Victoria Crescent.

Council accepted that further controls were required to support the increased height:

Council submits that the proposed height increase is appropriate in that context, while acknowledging this increase warrants additional controls to manage effects on urban design considerations and amenity acknowledging the fact that while the site is zoned Commercial 2, it is directly opposite and area that is zoned residential.

The additional controls are outlined in Section 1.3 of this Report. The Proponent supported this submission of Council.

The Proponent sought the following further changes to the IPO1:

- refer to character in the IPO1 as 'emerging' character and referred to this use of the same term in Council's Part B submission in support of this. Council did not support this request.
- delete the reference to height in metres and storeys from Objective 1 and rely on the reference to mid-rise character as the reference to height in metres and storeys is contained in Table 1 of the IPO1. Council did not support this request.

¹ Council Part B submission, page 6, paragraph 17

How to express building height

The Proponent lodged a submission to the Amendment (11) which supported the Amendment and the increased building height proposed. There was no request for building height to be expressed in metres only. Urban design evidence was provided by Ms Bell on behalf of the Proponent. Ms Bell submitted that references to building height in planning schemes varied “depending on the purpose and circumstances.” Ms Bell completed a comparative analysis of other examples in Yarra and noted:

- IPO2 refers to building height in metres only
- Of the 26 DDO schedules, 17 reference height in metres only, five reference both metres and storeys and four have no reference to height.

For other inner-urban municipalities, where the IPO is used the most common building height reference is in metres with no reference to storeys.

Ms Bell submitted that Planning Practice Note 23 *Applying the Incorporated Plan and Development Plan Overlays* refers to height in metres only on the example incorporated plan used. Ms Bell considered Planning Practice Note 60 *Height and setbacks controls in activity centres* was relevant where it states²:

The preferred expression of heights and setbacks is in metres and should be in reference to a defined point such as the footpath or Australian Height Datum. If height is measured in terms of storeys, this should be expressed in relation to a preferred height provision of metres as well.

Ms Bell considered a height of 32 metres would comfortably fit an 8 storey mixed use development with retail at the ground level (4 metre floor to floor height) and office (3.5 metre floor to floor height) floorspace above.

She concluded “*the use of metres to reference building heights to be the most definitive approach to outlining the preferred built form character for a site.*”

Council considered the request to delete the reference to height in storeys was “*at the 11th hour of this Amendment and importantly without any other person or submitter having any foreknowledge of what is proposed, the Proponent has sought to vary the Amendment.*” Council submitted:

- the Amendment request was always predicated on increasing height to seven storeys or an additional two storeys
- the exhibited IPO and incorporated plan refer to building heights in metres and storeys
- no adjoining owners or submitters would be aware of this request
- when referencing height in metres and storeys “*adequate allowance should be made in the latter for greater floor-to-floor heights to support employment uses where the zoning supports these uses.*” The Commercial 2 Zone provides for a wide range of uses including offices, some manufacturing and industries, retailing and other commercial uses and that it was “*important that rather than the number of storeys being maximised, the extent of flexibility be maximised by having taller floor to ceiling heights.*”

Council concluded height should be expressed in both metres and storeys because³:

- A maximum height expressed in both metres and storeys provides more certainty as to the built form that will result on the site than a reference to metres alone, and certainty is the principal rationale for replacing the IPO in this case.

² Ms Bell expert evidence statement, page 10, paragraph 20

³ Council Part B submission, page 15, paragraph 69

- That increased level of certainty is appropriate in circumstances where 3rd party rights are to be removed upon a finding of general accordance.
- The provision of the number of storeys ensures that the floor to ceiling heights in the various levels are generous to enable the accommodation of a broad range of employment activities and not just, for example, office activities.
- The height limit in this case is not only to define the line of built form, but also to give the community a fair visual impression of the height of development that is promoted and the scale or intensity of the development that will occur on the site.
- This is consistent with the Minister for Planning's conditions on authorisation for preparation of the Amendment, which included a requirement to specify the maximum street wall height in metres as well as storeys.
- The Proponent's request for the Council to prepare the Amendment sought only the ability to increase the maximum height by two storeys. There has been limited opportunity for Council or submitters to consider the potential impacts of an additional three or more storeys above those allowed under the existing IPO.

Council recommended that the reference to height in metres and storeys should have the caveat of "*whichever is the lesser*" added and clarification that basement levels are excluded.

Ms Robertson, on behalf of the Proponent, noted Ms Hodyl's evidence did not address this issue and Council clarified this was because she had not been instructed to do so.

(iii) Discussion

Building height and character

The current provisions of the Incorporated Plan and the approved planning permit provide for a mixed use development up to 5 storeys. Whether height should be lower than this is not an issue the Panel can consider. It is evident to the Panel that the existing controls will result in a significant change to the area. The Panel has reviewed the approvals in place for surrounding development and considers an additional 9 metres or 2 storeys is generally consistent with the emerging character of the area.

The Panel supports the new requirements in the Incorporated Plan that relate to setbacks, building separation, materials and façade articulation and pedestrian improvements. These assist in addressing the residential interface to the south. This land is in the Mixed Use Zone and directly opposite the site has 3 levels of residential apartments above ground floor. Most of the submitters reside in this building.

Council has referred to the 'emerging' character in its Part B submission and the Panel supports the reference to this in the IPO1. The Panel considers the retention of the height metrics in Objective 1 of the Incorporated Plan provides added clarity for the mandatory heights in the control. The Panel has agreed with the Proponent on a minor edit to Table 2 of the Incorporated Plan.

How to express building height

The Proponent lodged a submission (11) which supported the Amendment and the increased building height proposed. There was no indication in its original submission that it sought to refer to building height only in metres. This became apparent when a proponent preferred version of the Incorporated Plan was circulated in response to a Panel direction.

The expression of height in planning controls has been addressed by various planning panels and committees. A key part of this consideration is an understanding of what type of uses are likely in

the zone. The land is in the Commercial 2 Zone which provides for a wide variety of retail, commercial, and limited manufacturing and industrial uses. The Panel does not consider this area would be appropriate for the latter uses where there is a residential interface to the south. Council supports the need for greater flexibility in the provision of floor plates for employment growth in this area. The Panel understands that the need for flexibility is reduced if considered residential uses and does not wish to unduly constrain potential commercial and retail uses from this employment precinct. On this basis, the Panel supports the reference to building height in metres and storeys to avoid the temptation of squeezing in another storey with reduced floor to floor heights.

The other factor the Panel has considered is the Proponents proposal to delete storeys from the proposed provisions. The Panel is concerned that the community has responded to a clear reference to height in storeys and metres in the Incorporated Plan and it would be arguable that further notification would have been required if the Panel were to support this request. The Panel is reluctant to do this, particularly as there was a consistent reference in Amendment documents and supporting material for two additional storeys from the Proponent.

The Panel supports the addition of “*whichever is the lesser*” in referring to building heights in metres and storeys.

Clause 73.01 defines building height as:

- The vertical distance from natural ground level to the roof or parapet at any point.

Clause 73.01 defines storey as:

- That part of a building between floor levels. If there is no floor above, it is the part between the floor level and ceiling. It may include an attic, basement, built over car parking area, and mezzanine.

As building height is to refer to storeys in part Council has requested it be confirmed that it does not include a basement. The Panel supports this request.

(iv) Conclusions and recommendations

The Panel concludes:

- An additional 9 metres or 2 storeys in building height is generally consistent with the emerging character of the area.
- References to character be amended to ‘emerging character’ in the IPO1.
- Objective 1 in the IPO1 should retain references to height metrics.
- The new requirements in the Incorporated Document will ensure the interface with residential uses to the south can be addressed appropriately.
- Building height should be expressed in metres and storeys to provide certainty for Council, the Proponent and the community and ensure a greater level of flexibility to provide floor plates for commercial uses.
- Further clarity be provided by adding “*whichever is the lesser*” and confirm that the consideration of building height does not include basement levels.

The Panel recommends:

- 3. Amend Schedule 1 to the Incorporated Plan Overlay at Clause 4.0 to refer to character as “emerging character”.**

4. **Amend Table 1 of the 32-68 Mollison Street, Abbotsford Incorporated Plan March 2021 to add “whichever is the lesser” and confirm basements are excluded from the assessment of building height.**
5. **Amend Table 2 of the 32-68 Mollison Street, Abbotsford Incorporated Plan March 2021 with a minor edit to the requirement for the widening of Little Nicholson Street.**

3.2 Overshadowing

(i) The issue

The issue is whether the proposed changes to the IPO1 and Incorporated Plan will create unintended overshadowing impacts.

(ii) Evidence and submissions

Submitters 2, 3, 4, 6, 7, 8, 9 and 10 raised concerns the increased building height would overshadow the building they reside in at 61-69 William Street.

Ms Hodyl conducted a peer review of the development approved under Planning Permit PLN17/0697 and noted in her evidence that the introduction of overshadowing requirements to protect solar access to the south side of Mollison Street at the equinox was a significant improvement. This is expressed in the Incorporated Plan as:

New development must not overshadow the footpath on the southern side of Mollison Street between 10 am and 2 pm on the 22nd of September.

This, combined with additional upper level setbacks, would in her opinion result in a proposal that would not overshadow the residential building to the south at the equinox.

(iii) Discussion and conclusion

The Panel notes that the existing provisions of the IPO1 and Incorporated Plan do not contain any provisions to address overshadowing. The submitters who are residents of the 4 storey building to the south are justified in their concern on potential overshadowing. As a matter of principle, the Panel endorses new controls to address overshadowing and increased upper level setbacks.

The use of the equinox for overshadowing provisions is generally accepted in areas where significant redevelopment is anticipated. The use of the solstice is generally used where there is an area of public open space that should be protected from shadow, which is not the case here.

The Panel supports the additional overshadowing requirements in the Incorporated Plan.

4 Traffic and car parking

4.1 The issue

The issue is whether the proposed changes will result in unintended traffic impacts on the local street network.

4.2 Submissions

Submitters 3, 7 and 9 were concerned the increase in height by two storeys would make traffic congestion worse. Submitters 6, 8 and 10 objected to the relocation of traffic from Victoria Crescent to Mollison Street and the loss of on street parking.

Submitter 4 considered a traffic safety audit was required and supported the recommendations of Ms Hodyl's peer review for a pedestrian link between William Street and the existing laneway. Submitter 4 requested a new two-way loop linking Mollison, Little Nicholson, an existing service laneway and a new service laneway within the subject site.

Council submitted these issues *"can appropriately be managed in the usual way, through the planning permit process, when there is more information about a specific development proposal."* Council referred to the following existing policies that provide guidance on these issues:

- Clause 22.07 Development abutting laneways
- Clause 22.10 Built form and design
- Clause 22.17 Environmentally sustainable development.

The Proponent supported Council's position.

4.3 Discussion and conclusions

The Panel is considering new provisions to guide the future development of the land. It does not have the benefit of a specific development proposal on which to consider specific traffic and parking impacts.

The Panel supports the deletion of vehicle access off Victoria Crescent, the widening of the western laneway to allow for two-way vehicle movements.

There was no evidence that a traffic safety audit was required in this area. The Panel's inspection did not suggest there was a significant issue, but this did occur during the COVID-19 lockdown period. Council confirmed this was not required, which the Panel accepts.

Appendix A Document list

No.	Date	Description	Provided by
1	16/9/2021	Adjoining approvals and submitter map	Maddocks on behalf of Council
2	16/9/2021	Proponent preferred version of Incorporated. Document and Incorporated Plan Overlay Schedule 1	Rigby Cooke on behalf of AH Meydan Pty Ltd
3	23/9/2021	Council Part A submission	Maddocks
4	23/9/2021	Leanne Hodyl expert evidence	Maddocks
5	23/9/2021	Julia Bell expert evidence	Rigby Cooke
6	1/10/2021	Council Part B submission	Maddocks
7	1/10/2021	Part B Appendix A and B	Maddocks
8	1/10/2021	Proponent submission and appendices	Rigby Cooke
9	4/10/2021	Email between Proponent and Council	Maddocks
10	4/10/2021	Letter of authorisation	Maddocks
11	4/10/2021	Hearing version of Schedule 1 to the Incorporated Plan Overlay	Maddocks
12	4/10/2021	Hearing version of the Incorporated Plan	Maddocks
13	6/10/2021	Email with response to Hearing versions of documents	Rigby Cooke
14	7/10/2021	Email with response to Hearing versions of documents	Maddocks

Appendix B Panel preferred version of Schedule 1 to the Incorporated Plan Overlay

Proposed
C280yara**SCHEDULE 1 TO CLAUSE 43.03 INCORPORATED PLAN OVERLAY**Shown on the planning scheme map as **IPO1****32-68 MOLLISON STREET, ABBOTSFORD INCORPORATED PLAN (MARCH 2021)****1.0 Requirement before a permit is granted**Proposed
C280yara

None specified

2.0 Permits not generally in accordance with incorporated planProposed
C280yara

A permit granted for the following is not required to be generally in accordance with the incorporated plan:

- use of an existing building;
- construction or carrying out of minor works to or associated with existing buildings;
- subdivision of land, provided that the subdivision is the result of a consolidation of all or part of the land or the re-subdivision of the land and the number of lots is not increased;
- removal or creation of easements or restrictions; or
- construction or carrying out of buildings or works associated with the remediation of land in accordance with or for the purpose of obtaining a Certificate or Statement of Environmental Audit under the *Environment Protection Act 1970*.

Before granting a permit the responsible authority must be satisfied that the issue of the permit will not prejudice the ability to use and develop the land generally in accordance with the Incorporated

3.0 Conditions and requirements for permitsProposed
C280yara

The following conditions and/or requirements apply to permits (except the works mentioned in Clause 2 of this Schedule):

Permit requirements

- A new development that requires access from Little Nicholson Street must provide a laneway widening of Little Nicholson Street to allow two-way traffic to the satisfaction of the responsible authority.
- A new development must not overshadow the southern footpath of Mollison Street between 10 am and 2 pm on the 22nd of September.
- The proposed development must incorporate the findings and recommendations of a car parking and traffic impact assessment that demonstrates:
 - the safe entry and exit of vehicles to and from the land and that these movements minimise conflict with any existing pedestrian and cycle links; and
 - the provision of car parking, appropriate circulation and layout of car parking, and the recommended bicycle parking provision rates.
- A new development must chamfer the corner of the development at the Mollison Street and Victoria Crescent intersection, with no cantilevering at upper levels;
- A new development must provide active frontages towards Mollison Street and Victoria Crescent.

Permit conditions

- A permit to construct a building or construct or carry out works must include conditions that require the widening of Little Nicholson Street to be designed and constructed to the satisfaction of the Responsible Authority.

4.0 Decision guidelinesProposed
C280yara

The following decision guidelines apply to an application for a permit described at clause 2 of this Schedule which is not generally in accordance with the incorporated plan, in addition to those

specified in Clause 43.03 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the proposed development provides façade articulation;
- Whether the layout and appearance of areas set aside for vehicular access, loading and unloading and the location of any proposed car parking is practicable, safe and supports a pedestrian-oriented design outcome.
- The impact of traffic generated by the development on the capacity of the surrounding road network, including the functionality of the intersection of Mollison Street and Victoria Crescent; and
- Whether the development provides opportunities for active frontages and engaging edges to the public realm through landscaping and/or architectural design features;
- The impact of the design and appearance of the building or works in relation to the surrounding built form and [emerging](#) character.

5.0 Preparation of the incorporated plan

Proposed
C280yara

An incorporated plan must include the following requirements:

- Objectives for the future use and development of the site;
- A plan showing:
 - maximum building heights for each area in metres and storeys;
 - setbacks from Little Nicholson Street to enable two-way vehicle movement at street level;
 - upper level separation between the eastern and western part of the proposed building(s);
 - retention of the corner splay (chamfered corner) at the intersection of Mollison Street and Victoria Crescent; and
 - the preferred location of vehicle entry and exit points for the land.

Appendix C Panel preferred version of *32-68 Mollison Street Abbotsford Incorporated Plan March 2021*

32-68 MOLLISON STREET INCORPORATED PLAN (March 2021)

THE LAND

The 32-68 Mollison Street Incorporated Plan applies to the land at 32-68 Mollison Street, Abbotsford, described as Lots 1 and 2, and part of Lots 4 and 5, on Plan of Subdivision 208064F; Lot 1 on Title Plan 10831L; Lot 1 on Title Plan 900661X.

32 Mollison Street or 'Area A' is described as Lot 1 and part of Lots 2, 4 and 5 on Plan of Subdivision 208064F; Lot 1 on Title Plan 10831L; Lot 1 on Title Plan 900661X.

38-68 Mollison Street or 'Area B' is described as part of Lot 2 on Plan of Subdivision 208064F.

THE PLAN

The 32-68 Mollison Street Incorporated Plan consists of this ordinance and the attached Plan as Map 1.

OBJECTIVES

To ensure that development responds to a mid-rise character along Mollison Street of 5 storeys (23 metres) to 7 storeys (32 metres) behind a lower street wall of 4 storeys (18.4 metres) to 3 storeys (13.8 metres).

To facilitate the use and development of the land for office, commercial and other compatible uses that will stimulate employment opportunities and business activity within the local area.

To encourage development design that promotes pedestrian activity and passive surveillance, contributes to a high-quality public realm, and avoids overshadowing of the southern footpaths on Mollison Street and the eastern footpath on Victoria Crescent.

To ensure development responds to sensitive use to the south of Mollison Street by requiring that the overall scale and form of development on the Land protects these properties from an unreasonable loss of amenity through visual bulk and overshadowing.

PERFORMANCE MEASURES

Building and works and subdivision

- The provisions of Table 1 will be applied to determine whether a permit application for buildings and works is generally in accordance with this plan.
- The provisions of Table 2 will be applied to determine whether a permit application for subdivision is generally in accordance with this plan.

TABLE 1: BUILDINGS AND WORKS

BULDINGS AND WORKS	REQUIREMENT
Height	Building height in Area A must not exceed 7 storeys <u>or</u> 32 metres (<u>not including a basement, whichever is the lesser</u>). Building height in Area B must not exceed 5 storeys <u>or</u> 23 metres (<u>not including a basement, whichever is the lesser</u>).
Street wall	Street wall height should transition from 3 storeys <u>or</u> 13.8 metres at the western end of the site (Area A) to 4 <u>storeys or</u> 18.4 metres <u>storeys</u> at the eastern end of the site (Area B).
Upper level setback from street wall and northern boundary	Above the street wall and northern boundary wall, upper levels should be setback a minimum of 3 metres from the northern boundary, Mollison Street, Victoria Crescent and Little Nicholson Street. Upper level setbacks above the street wall and northern boundary should be contained within a maximum of two steps (including the setback above the boundary wall below as one step) to avoid repetitivestepping of individual levels.

Ground Level Setback	The building must be setback along the western boundary of the property to provide for two-way vehicle access on Little Nicholson Street.
Corner treatment	Built form at the corner of Mollison Street and Victoria Crescent intersection should be chamfered as shown on Map 1. No cantilevering should occur at the upper levels.
Upper Level building separation	Upper level development (4 th storey and above) should be separated by a minimum of 6 metres between the upper levels of Area A and Area B (as shown on Map1) to ensure proposed buildings on Area A and Area B do not appear as one building mass.
Overshadowing	New development must not overshadow the footpath on the southern side of Mollison Street between 10 am and 2 pm on 22 nd of September.
Active frontages	New development should include multiple entrances and building openings along the extent of frontage to Mollison Street and Victoria Crescent. These should be sufficient in number and spacing to provide a high level of passive surveillance along Mollison Street and Victoria Crescent frontages.
Material definition (podium / lower level and upper levels)	Façade articulation and composition should achieve cohesive design including material definition between podium and upper levels that is responsive to local context and character. Podium materials should be detailed and robust with visually recessive materials used at upper levels.
Car Parking	Car parking should be concealed from the Victoria Crescent and Mollison Street frontages.
Bicycle Parking	Bicycle parking should be located and designed to be secure and conveniently accessible from the street and associated uses (e.g. changing facilities).
Vehicular access	Vehicular access must be limited to a maximum of one crossover from Little Nicholson Street and one crossover from Mollison Street as shown on Map 1. Vehicular access must not be provided from Victoria Crescent.
Pedestrian Access	Pedestrian access to buildings should be via Mollison Street and/or Victoria Crescent and primary access from laneways should be avoided. Where pedestrian access from a laneway is appropriate, it should include a pedestrian refuge or landing and include lighting. Pedestrian entrances must be clearly visible, secure and have an identifiable sense of address.
Service cabinets	Service cabinets must be appropriately located and integrated with the design of the building utilising the laneway where possible.

TABLE 2: SUBDIVISION

SUBDIVISION	REQUIREMENT
Widening of Little Nicholson Street	The subdivision of land along Little Nicholson Street to widen the laneway must be in accordance with the Plan as shown that shown on Map 1.

PERMIT APPLICATION REQUIREMENTS

The following application requirements apply to an application for a planning permit, in addition to those specified elsewhere in the planning scheme, and must accompany an application as appropriate to the satisfaction of the responsible authority:

- a site analysis and urban design context report which demonstrates how the proposal achieves the Objectives and Performance Measures of this Plan.
- development proposals for buildings including detailed shadow analysis to demonstrate no overshadowing of the southern footpath along Mollison Street on September 22nd from 10am to 2pm.

- a traffic engineering report prepared by a suitably qualified traffic engineer that demonstrates how the development:
 - minimises impacts on the level of service, safety and amenity of the surrounding road network; and
 - reduces car dependence and promotes sustainable transport modes, and

which includes an assessment of the cumulative impacts of traffic and parking within the development including an assessment of the ongoing functionality of laneway; and

responds to the access requirements above; and

- detailed engineering drawings for the widening of Little Nicholson Street in accordance with the Plan.

If in the opinion of the responsible authority an application requirement listed above is not relevant to the assessment of an application, the responsible authority may waive or reduce the requirement.

Map 1: The Plan

