
Amendment C231 - Queens Parade - Response to submissions

Executive Summary**Purpose**

The purpose of the report is to:

- (a) outline officers' responses to submissions received following the exhibition of Amendment C231;
- (b) advise Council of the options under the *Planning and Environment Act 1987* on how to proceed with the amendment;
- (c) outline the key recommendations for amendments to the Exhibited Design and Development Overlay (**DDO**);
- (d) recommend that Council requests the appointment of an independent planning panel to consider all submissions; and
- (e) outline the next steps for advancing the amendment in accordance with the requirements of the *Planning and Environment Act 1987*.

Key Issues

Council exhibited Amendment C231 during October and November 2018. A total of 399 submissions were received. A number of the submissions seek competing changes to the amendment. Council cannot resolve these differences to the satisfaction of all submitters.

Under Section 23 of the *Planning and Environment Act 1987*(**the Act**), Council must either:

- (a) Change the amendment in the manner requested; or
- (b) Refer the submissions to an independent Planning Panel; or
- (c) Abandon the amendment or part of the amendment.

Under Section 23 of the Act, Council may refer to the Panel submissions which do not require a change to the amendment.

Officers recommend all submissions be referred to a planning panel for consideration and provide recommendations to back to Council.

Financial Implications

There are substantial costs associated with this panel process. They include planning panel costs and fees, legal representation and the engagement of urban design, heritage, planning, traffic and economic experts who provide evidence on behalf of Council.

PROPOSAL

In summary, that Council:

- (a) requests the appointment of an independent planning panel to consider all of the submissions;
- (b) refers all submissions, including late submissions, to an independent planning panel;
- (c) adopts a position of support for Amendment C231 generally in accordance with the officer's response to the submissions as contained in the officer's report and attachments; and
- (d) submits to the planning panel that Amendment C231 should be recommended for approval subject to the highlighted changes made to the exhibited DDO amendment.

Amendment C231 - Queens Parade - Response to submissions

Trim Record Number: D19/76352

Responsible Officer: Acting Director Planning and Place Making

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Purpose

1. The purpose of this report is to:
 - (a) outline officers' responses to submissions received following the exhibition of Amendment C231;
 - (b) advise Council of the options under the Planning and Environment Act 1987 for how to proceed with the amendment;
 - (c) outline the key recommendations for amendments to the Exhibited DDO;
 - (d) recommend that Council requests the appointment of an independent planning panel to consider all submissions; and
 - (e) outline the next steps for advancing the amendment in accordance with the requirements of the Act.

Background

2. Council prepared Amendment C231 to introduce built form controls for new development along Queens Parade, Fitzroy North. Council engaged Hansen Partnership to provide urban design advice and GJM Heritage to provide heritage advice which formed the basis of the controls in the amendment.
3. The timelines for the introduction of permanent built form controls can take between 1 – 2 years to progress through the statutory process. In order to provide built form controls in the interim, Council requested the Minister for Planning (**The Minister**) to introduce DDO16 and DDO20 into the Yarra Planning Scheme. The Minister approved both requests, with the interim controls expiring in January 2020.
4. Amendment C231 is intended to replace these interim controls with permanent ones.
5. Amendment C231 was publicly exhibited during October to November 2018. The amendment seeks to apply new built form controls and make other changes to planning provisions along Queens Parade.
6. A total of 399 submissions were received, including a late petition with 44 signatories.
7. Council is required under section 23 of the Act to consider all submissions, as part of the process of the amendment.
8. As part of this process, at a Special Council Meeting on 12 March 2019, Council heard from submitters. Approximately 30 people addressed the Council at that meeting.
9. Included within the officer report prepared for the special meeting on 12 March was the following information:
 - (a) A description of key elements of the amendment;
 - (b) An outline of the exhibition of the amendment;
 - (c) A description of the interim built form controls that currently apply in Queens Parade via DDOs 16 and 20 to the Yarra Planning Scheme;
 - (d) A breakdown of the submissions received; and
 - (e) The key issues raised by submitters.
10. The officer report from 12 March 2019 included:

- (a) A map of where submitters came from (refer Attachment 1);
 - (b) A summary of each individual submissions (refer Attachment 2);
 - (c) A summary of the issues raised (refer Attachment 3); and
 - (d) A summary of the issues raised by precinct (refer Attachment 4).
11. At its meeting on 28 May 2019, Council must now formally consider the officer response to submissions and *recommended* adjustments to the proposed amendment. Council must then resolve whether to refer the amendment and submissions to a planning panel.
 12. Council is not able to make changes to the exhibited amendment at this time. It will however be recommended that Council submit to the panel that it should recommend approval of Amendment C231 subject to the changes described in this report.

Section 23 of the Act – considering changes to the amendment

13. Under Section 23 of the Planning and Environment Act 1987, Council must either:
 - (a) Change the amendment in the manner requested; or
 - (b) Refer the submissions to an independent planning panel; or
 - (c) Abandon the amendment or part of the amendment.
14. Council received a total of 399 submissions to the amendment. As a consequence of the range of submissions received and the variety of suggested positions, it is not possible to suggest amendments in the manner promoted in the submissions due to the complexity and in some instances conflicting issues raised.
15. Accordingly, it is recommended that Council refers all submissions, including any late submissions to the planning panel and request that panel recommend approval of Amendment C231 with changes to the exhibited amendment consistent with Council's submissions as informed by the recommendations in this report.
16. In response to the various submissions, officers have outlined the changes which Council should submit for consideration by the panel. Then, assuming that the panel supports Council's submissions, Council can adopt those recommendations at the next stage of the amendment process when it considers the panel report.

Officer approach to submissions

17. Council will be expected to respond to all the issues raised by submitters noting that they cover a variety of themes.
18. Additional analysis and modelling has been undertaken to investigate the issues raised in submissions including the following key issues:
 - (a) 3D modelling: A principal issue raised within the submissions is building heights and setbacks, particularly within precinct 4. In order to test the various submissions made in relation to heights and setbacks, officers engaged Ethos Urban to undertake 3D modelling to test a variety of options as outlined in the submissions. The modelling has informed the changes that officers recommend be proposed to the panel in relation to heights and setbacks within precinct 4 and other built form changes within other precincts;
 - (b) Capacity of the laneways: Another of the key issues raised was the impact of additional development on the laneways and the ability of these laneways to accommodate new development. To understand laneway capacity, officers engaged Traffix Group to examine whether the lanes can accommodate the anticipated level of traffic, whether the lanes are a constraint to development and whether there are any traffic engineering solutions to improve laneway access;
 - (c) Planning applications and approvals: Given the range of considerations raised in the submissions, officers have undertaken a detailed analysis of the development applications and approvals along Queens Parade which has provided another form of

testing of built form outcomes raised in submissions including assessments against the interim DDO to inform any changes required to the permanent control;

- (d) A review of DDOs in other planning schemes to inform recommended changes to the Queens Parade DDO in response to submissions; and
- (e) Grading of heritage buildings: Some submissions raised concerns about the grading of a number of heritage properties. Officers referred the submissions to GJM Heritage for further advice.

Important factors

19. There are a number of factors to be considered when submitting to the panel that it should recommend changes be made to the exhibited amendment.
 - (a) Any recommended change need to arise from the submissions or be in response to the submissions received;
 - (b) There needs to be a balance between heritage considerations and facilitating development and for the amendment to demonstrate a sound strategic basis to both the planning panel and the Department of Environment, Land, Water and Planning (DELWP). (The amendment is ultimately approved by the Minister for Planning then gazetted after which it is included in the Yarra Planning Scheme);
 - (c) The DDO is one part of the planning scheme which must be taken into account. It is not a defacto heritage control. It must focus on design and development and achieve acceptable outcomes in the context of the overall policy framework relevant to activity centres and housing. The DDO provides the built form parameters and is one of a number of planning controls in addition to policy which must be taken into account when determining a planning permit application; and
 - (d) Council must comply with the provisions of the *Planning and Environment Act 1987* to balance competing objectives in favour of net community benefit.

Proposed changes to the amendment recommended by officers

20. Officers are proposing that the Council submission regarding the amendment outline a number of changes for consideration by the panel in response to the submissions. The recommended changes would improve the amendment in response to submissions and built form outcomes being sought by the DDO.
21. Officers are also proposing to submit that two minor errors in the exhibition material should be addressed and corrected.
22. One is a mapping error that included the Aquila apartments at 496-500 included in the map of the area affected by the amendment; these apartments are not included in the amendment and should be deleted from the map.
23. The second error relates to the description of what the amendment does in the explanatory report. It states that the former Clifton Motors building at 201-217 Queens Parade and 10-12 Dummett Crescent is to be removed from HO330.
24. The former Clifton Motors garage was included on the Victorian Heritage Register (VHR) in May 2018. Ordinarily when a building is included on the State Heritage Register, it is given an individual Heritage Overlay number. Currently this is not the case as the building is included in HO330 which covers much of the Queens Parade precinct.
25. There is no need for this amendment to remove the former Clifton Hill Motors garage from HO330 at this stage. Heritage Victoria will prepare a planning scheme amendment in the coming months to include this site (former Clifton Motors garage) in an individual heritage overlay, concurrently, the amendment will also remove the site from HO330. The remainder of the land (201-203 and 213-217 Queens Parade and 10-12 Dummett Crescent) will remain within HO330.

26. Attachment 5 to this report includes a “track changes” version of the DDO in response to the issues raised in the submissions. It highlights the changes officers suggest that the Council submits that the panel should recommend be made to the exhibited DDO. Attachment 6 contains a clean version of the revised DDO without track changes. Attachment 6 to this report contains a detailed response to each of the submissions. It responds to both the key issues raised and those issues raised by precinct.

Response to key issues

Visibility, height and setbacks

Issue

27. Submitters expressed strong concerns that the amendment would undermine the heritage value of Queens Parade. Submitters considered that the significance of heritage buildings and the heritage streetscape would be lost; specifically the intact buildings and heritage skyline which are key features of Queens Parade.
28. Their concerns related to the appropriateness of building heights, particularly in precinct 4 and the adequacy of upper level building setbacks and their impact on visibility of new additions.
29. In particular, submitters want new development in precinct 4 to not be visible from the opposite side of Queens Parade, which has a 60 metre width.
30. Submitters argued that taller development at the former Gas Works site as well as in precincts 2 and 5 illustrate that Queens Parade is accommodating its share of new development. They argued that heritage protection should be prioritised in precinct 4 with a reduction in the development potential within this precinct.
31. The newly formed Coalition of Heritage Protection in Queens Parade (Coalition) (representing key resident and heritage groups) has proposed an alternative DDO which would allow new development to a height of 4 storeys but with larger upper level setbacks to ensure any new development is not visible from the street above existing parapets. Residents want to see sky retained behind the parapet of existing buildings.
32. In relation to this issue, residents submitted that the summary of issues (attached to the Council report on 12 March 2019) be amended to clarify that over half the submissions expressed the desire that there be sky visible behind the parapet and not built form. The summary of submissions has been amended to reflect that.
33. The Coalition also requested upper level setbacks protect the principal roof form based on the heritage grading of the buildings.
34. Concerns about heights and setbacks were expressed for other precincts but to a lesser extent. Submitters also wished to ensure that controls in the DDO were ‘mandatory’ to provide certainty and remove the need for lengthy and costly VCAT hearings arguing over discretionary controls.

Response

35. Officers understand the submitters’ view but consider that an approach which seeks to ensure there is no visibility of upper levels is unreasonable, especially given the 60 metre width of Queens Parade (substantially wider than other “high streets” in Yarra’s activity centres). A ‘no visibility’ test is not supported in planning or heritage policy; neither is it a usual test in activity centres or applied to residential areas. Officers also note that there are already a number of 4 and 5 storey approvals which do not produce this outcome.
36. However, officers do support a number of recommended changes to the amendment which, in combination, would reduce the scale and visibility of development while still providing for reasonable development capacity.
37. Following further analysis and modelling, officers consider that there is strategic justification to recommend changes to the amendment, in precinct 4.

Precinct 4Height

38. In response to the submission and the further testing undertaken, it is recommended that building heights are reduced from 6 storeys mandatory to 4 storeys mandatory as illustrated in the table below.
39. Officers note that 6 storeys was intended as an overall building height 'cap' to prevent excessive development and it was not intended to indicate that every site could be built to 6 storeys. Given the mix of property sizes and constraints, buildings would most likely range in height from 4-6 storey. However, officers consider that the additional testing that has been undertaken for this precinct shows that a 4 storey height can be justified as it reduces the visual impact of new development and better respects the heritage significance of the building façades as they present to Queens Parade. It is considered that the height reduction would not substantially reduce the development capacity of the wider Queens Parade activity centre (given larger scale development is occurring in precincts 2 and 5 and on the Gasworks sites). The recommended changes would give greater weight to heritage, but balance this with reasonable development capacity.

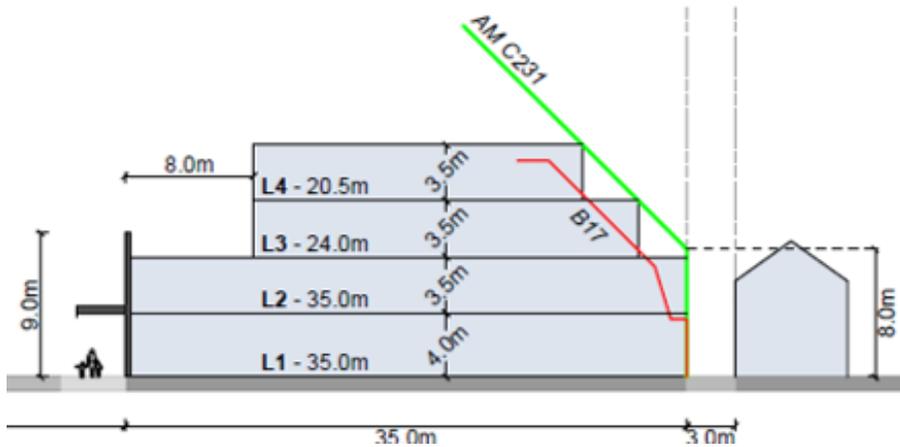
Setbacks

40. It is recommended that setbacks proposed are increased from 6 to 8 metres to make the upper levels of new development more recessive and maintain the character of the existing heritage streetscape.
41. An 8 metre minimum is an improved heritage outcome ensuring a larger proportion of the principal building roof is retained. The outcome also ensures that the parapets / silhouettes of buildings remain prominent with the greater retention of key building elements including chimneys.
42. Officers do not support the Coalition's proposal to vary upper level setbacks further. The proposed new 8 metre setback as a mandatory minimum requirement appropriately responds to the heritage context of the Queens Parade precinct.
43. Officers suggest that a reduction in height and an increasing of the setbacks requirements as outlined above strikes an acceptable balance between providing good heritage protection and reasonable development capacity within the activity centre.
44. Officers note that even lower heights and greater setbacks than those recommended would make the pursuit of mandatory controls more difficult.
45. As outlined above, to pursue a test of no visibility above the existing buildings would not be necessary or appropriate in all cases and therefore it would be unlikely to be reasonable to apply mandatory controls in this way. It is suggested that in any event a control drafted in this way is unlikely to meet the guidelines set out in the Practice Note for height and setback controls in activity centres.

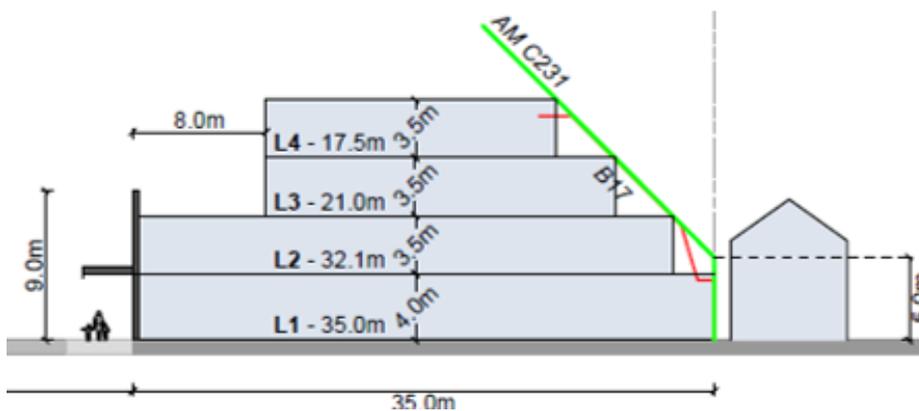
Rear interfaces with residentialIssue:

46. A number of submitters, particularly in Hodgkinson and McKean Streets that directly adjoin the centre expressed concerns about the impacts of 6 storey development on their amenity. Key concerns were overlooking, building bulk and overshadowing.
47. The exhibited amendment proposed the following rear setbacks:
 - (a) In the case of a (commercial) property with a laneway to the rear: the building can be built to a height of 8 metres on the boundary and then is set back at 45°; and
 - (b) In the case of a (commercial) property with no laneway to the rear: the building can be built to a height of 5 metres on the boundary and then is set back at 45°.

48. A number of submissions suggested that the ResCode B17 setback is a better alternative. In the case where there is a laneway that separates the commercial and residential land, the B17 setback line would set development back further (see diagram below). Officers are persuaded that rear setbacks could be amended in a manner similar to B17 to provide improved residential amenity to the rear.



49. In the case where there is no laneway separating the residential and commercial land, there is virtually no difference between the exhibited amendment and B17 setback line (see diagram below). In this circumstance however, as there is no laneway separating the two land uses, development is set closer to existing residential uses which provides less amenity protection than in the case of there being a laneway.



Response:

50. Officers support recommending changes to the rear setbacks and consider a standard similar to the setback requirement of B17 would provide improved residential amenity to the rear. Officers also consider that there is a need to provide greater protection for residential amenity in the case where there is no laneway separating the new development on the Commercial 1 land from existing residential development.
51. In the case where there is a laneway separating the residential and commercial land, a modified ResCode Standard B17 setback is proposed. This would enable development up to 4 metres in height to be built on the boundary with the lane. The building would then step back in height away from the boundary. The key change from ResCode is the modified standard provides for a 4 metre commercial ground floor rather than a 3.6 metre ground floor.
52. In the case where there is no laneway, officers recommend a three metre setback at ground level. The modified B17 standard as described above is then applied. The three metre setback would provide the same level of protection provided by a 3 metre laneway.

53. Residents have expressed a preference to have this control mandatory, however B17 is not a mandatory control when it is applied in residential zones and consequently could not be applied as mandatory in this situation.
54. In addition to changes to the rear setback, officers are proposing to include a specific overshadowing control in precincts 3 and 4 to protect adjoining residential properties from additional overshadowing at the equinox, which is the accepted urban design standard to apply when assessing overshadowing.

Access via lanes

Issue:

55. As outlined in paragraph 19, the impact of additional development on the laneways and the ability of the laneways to accommodate new development was raised as an issue by submitters.

Response:

56. Traffix Group (consultants) has advised that while some of the laneways are narrow, they are not a substantial constraint to development and access can be managed.
57. They note that some are more suited to carry additional traffic than others. Laneways that have a dead end or are not continuous are more limited in their development potential. Some lack splays at critical corners that limit their functionality or capacity. These constraints, however, do not mean that any additional traffic in the laneways is unacceptable.
58. These issues can be readily dealt with at the planning permit stage. For example, an applicant can apply for a reduction in car parking, including a reduction to zero. Additionally where an applicant wants to provide parking, at permit stage an applicant could be required to provide a setback at the rear that accommodates turning vehicles. The way each site deals with parking based on the physical context of each site and is best dealt with at the planning permit stage.

Viability of retail

Issue:

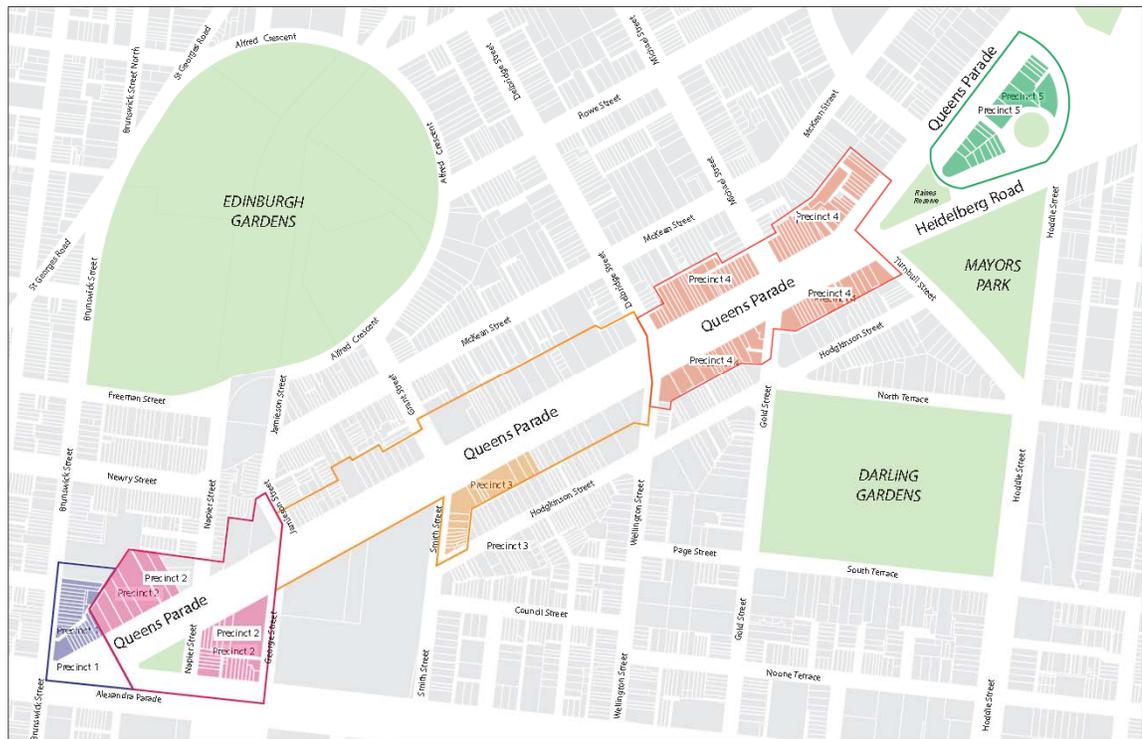
59. Submitters, especially traders expressed concerns about the impacts of the DDO on the size of retail spaces that may be created, construction impacts and the ability to access retail premises from the rear. Some traders also expressed concern about the financial investment they had made in buildings without being the owner of the building.

Response:

60. Officers note the traders concerns about potential changes to the centre, however construction issues are not a specific planning issue and are dealt with at the building phase (through various processes). Issues associated with land tenure and commercial leases are not planning issues either. These issues exist with or without a DDO and are not impacted by this amendment.

Specific changes by precinct

61. Officers have prepared a Preferred Version of the DDO to reflect the changes that are recommended to the exhibited DDO in response to the submissions received. The table below summarises the main changes officers recommend be made to the amendment and which are reflected in the Preferred Version of the DDO forming an attachments to this report. The map below illustrates the precincts.



Map 1: Queens Parade precincts in Amendment C231

Table outlining specific changes

Precinct	Exhibited amendment	Description of recommended change
1		No substantive changes proposed
2A		No substantive changes proposed
2B	Includes NRZ land in NE corner of precinct. DDO does not apply to this land.	Deleted reference to this land and renamed precinct 2D to 2B.
2C	<p><u>Upper level setback</u> 5 metres (preferred)</p> <p><u>Street wall height</u> 18 metres (preferred)</p> <p><u>Side and rear setbacks</u> B17</p>	<p><u>Upper level setback</u> 6 metres (preferred)</p> <p><u>Street wall height</u> Reduced to 10 metres in Napier Street (mandatory) No other changes to street wall</p> <p><u>Side and rear setbacks</u> B17 to be replaced with building separation requirements (see below)</p> <p><u>Side setbacks (preferred)</u> Apply side setbacks above the street wall where windows are proposed.</p> <p>For habitable room windows, a 4.5m setback to the boundary applies. For a commercial or non-habitable room window, a 3m setback to the boundary applies.</p>

		<p><u>Rear setbacks (preferred)</u></p> <p>At ground level, set back 4.5 metres from the centre of the lane.</p>
2D	<p><u>Rear setbacks</u></p> <p>None exhibited</p>	<p><u>Re named 2B</u></p> <p><u>Rear setbacks</u></p> <p>Building to set back 4.5 metres from the centre of the lane (preferred).</p>
3	<p><u>Height</u></p> <p>18 metres (5 storeys) (preferred)</p> <p><u>Street wall height (mandatory)</u></p> <p>11m at 15-33 Queens Parade 14 metres elsewhere</p> <p><u>View to St John's (mandatory)</u></p> <p>View line from the centre of the footpath</p> <p><u>Rear setbacks (preferred)</u></p> <p>45° above 8 metres from rear boundary to a laneway 45° above 5 metres from rear boundary (no laneway)</p>	<p><u>Height</u></p> <p>Reduced height of 14m (4 storeys) (mandatory) for heritage shops at 652-662 Smith Street. Created new precinct – precinct 3B.</p> <p>Height in precinct 3A remains at 18m but proposed to be mandatory.</p> <p><u>Street wall height (mandatory)</u></p> <p>11m at 15-33 Queens Parade 35-37 Queens Parade – retain existing 14 metres elsewhere in precinct 3A</p> <p>Retain height of existing heritage façade in precinct 3B</p> <p><u>View to St John's (mandatory)</u></p> <p>Viewpoint to St John's clarified and moved from footpath to pedestrian island at lights as intended in GJM report.</p> <p><u>Rear setbacks (preferred)</u></p> <p>Modified Standard B17 where there is a laneway 3 metre setback at ground level then modified Standard B17 where there is no laneway</p> <p><u>Overshadowing (preferred)</u></p> <p>ResCode Standard limiting overshadowing of private open space to be applied</p>
4	<p><u>Height</u></p> <p>21.5 metres (6 storeys) mandatory</p> <p><u>Upper level setbacks (preferred and mandatory)</u></p> <p>6 metres, mandatory in significant streetscape area. Preferred elsewhere.</p> <p><u>Side and rear setbacks (preferred)</u></p>	<p><u>Height</u></p> <p>14 metres (4 storeys) mandatory</p> <p><u>Upper level setbacks (mandatory)</u></p> <p>8 metres, all mandatory.</p> <p>Removed reference to significant streetscape.</p> <p><u>Rear setbacks (preferred)</u></p> <p>Modified Standard B17 where there is a laneway</p>

	<p>45° above 8 metres from rear boundary to a laneway</p> <p>45° above 5 metres from rear boundary (no laneway)</p> <p><u>245 Gold Street</u></p> <p>Zoned Commercial 1 Zone, no rezoning proposed.</p>	<p>3 metre setback at ground level then modified Standard B17 where there is no laneway</p> <p><u>245 Gold Street</u></p> <p>Rezone to Neighbourhood Residential Zone as requested by property owner.</p>
5A	<p><u>Height</u></p> <p>18 metres (preferred) (applies to the car park of the former UK Hotel only)</p> <p><u>Extent of UK Hotel land on DDO precinct 5 map</u></p> <p>Map incorrectly shows land at 2 Dummett Crescent in precinct 5B but should be in precinct 5A.</p>	<p><u>Height</u></p> <p>Reduced from 18m to 11m to match the height of the parapet or eaves of the former UK Hotel. Height now to be mandatory.</p> <p><u>Extent of UK Hotel land on DDO precinct 5 map</u></p> <p>Map amended to include land at 2 Dummett Crescent in precinct 5A (precinct extended to match land ownership)</p>
5B	<p><u>Height</u></p> <p>1:1 heritage street wall to new built form behind Clifton Motors and 203 Queens Parade, visible from the opposite side of Queens Parade (preferred)</p> <p>28m elsewhere (preferred)</p> <p><u>Street wall (mandatory)</u></p> <p>Match parapet height of former Clifton Motor Garage and eaves line of former UK Hotel</p> <p>11m elsewhere</p> <p>Upper level setback</p> <p>6m mandatory at Clifton Motors</p> <p>6m preferred elsewhere</p> <p><u>Side and rear setbacks</u></p> <p>0m</p>	<p><u>Height</u></p> <p>1:1 street wall requirement deleted but translated into building height</p> <p>201-215 Queens Parade – 18m (mandatory)</p> <p>28m preferred elsewhere (preferred)</p> <p><u>Street wall (mandatory)</u></p> <p>Street wall height now applies to all Queens Parade frontage in precinct 5B</p> <p>4-10 Dummett Cres – remains at 11m</p> <p><u>Upper level setback</u></p> <p>8m mandatory at Clifton Motors</p> <p>6m preferred elsewhere</p> <p><u>Side and rear setbacks</u></p> <p>Apply side setbacks above the street wall where windows are proposed:</p> <p>For habitable room windows, a 4.5m setback to the boundary applies.</p> <p>For a commercial or non-habitable room window, a 3m setback to the boundary applies.</p>
5C	<p><u>Street wall height</u></p> <p>36 metres</p> <p><u>Height</u></p> <p>49 metres (preferred)</p> <p><u>Upper level setback</u></p>	<p><u>Street wall height</u></p> <p>18 metres (reduced to provide a better relationship to the street and reduce wind impacts)</p> <p><u>Height</u></p> <p>43 metres preferred</p>

	<p>10 metres preferred</p> <p><u>Side and rear setbacks</u> None proposed</p>	<p><u>Upper level setback</u> 6 metres preferred</p> <p><u>Side and rear setbacks</u> Apply side setbacks above the street wall where windows are proposed:</p> <p>For habitable room windows, a 4.5m setback to the boundary applies. For a commercial or non-habitable room window, a 3m setback to the boundary applies.</p>
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62. An explanation of the changes proposed is outlined below:

Changes to precinct 1

63. There are no substantive changes proposed.

Changes to precinct 2

64. Reference to precinct 2B has been deleted as the site was erroneously included within the DDO map. Land in this precinct is within the Neighbourhood Residential Zone which has an existing height limit of 8 metres.

65. Precinct 2D has been renamed precinct 2B.

66. In Precinct 2C, the upper level setback has been increased from 5 metres to 6 metres to make upper level setbacks within the Queens Parade DDO more consistent.

67. The exhibited DDO requires that the street wall in Napier Street appropriately reflects the two storey heritage terraces on Napier Street. Consequently, the street wall height in Napier Street has been reduced from 18 metres (preferred) to 10 metres (mandatory) to create an appropriate transition to the heritage terraces and to ensure taller development does undermine the heritage values of the streetscape and the existing terraces. To provide more certainty and strengthen the heritage outcomes, both the street wall height and the upper level setback of 6 metres is proposed to be mandatory for Napier Street.

68. The exhibited Side and rear setbacks used ResCode Standard B17. The land is zoned Commercial 2 and the ResCode setbacks are not appropriate in this commercial context. As an alternative, new side and rear setbacks have been included in the preferred DDO. A 3 metre setback for non-habitable room windows and a 4.5 metre setback from habitable room windows from the centre of the lane is proposed.

69. Rear setbacks of 4.5 metres from the centre of the lane are proposed. This would provide a 2-3 metre setback from the property boundary (depending on the width of the existing lane) and would provide a transition of scale and provide a building separation of 9 metres which would avoid the need for screening of windows.

Precinct 3

70. Precinct 3 has been divided into two sub-precincts. Precinct 3A contains the properties orientated to Queens Parade and on the corner of Smith Street. The heritage shops including the former fire station in Smith Street have been included in a newly created sub precinct 3B which seeks to recognise the heritage values of this part of the precinct.

71. Building heights in 3A remain at 18 metres but the height is proposed to be mandatory instead of the preferred height exhibited. Building heights in 3B have been reduced to 14 metres (mandatory) which is the same height as the shops in precinct 4. Upper level setbacks in 3B remain at 6 metres but have been changed from a preferred to a mandatory control.

72. The DDO has restructured the street wall height control to make the exhibited controls clearer.
73. Side and rear setbacks have also been replaced with the side and rear setbacks described in paragraphs 66 and 67 above.

Precinct 4

74. Heights have been reduced from 21.5 metres to 14 metres – a reduction of two storeys. They remain mandatory.
75. Upper level setbacks have been increased from 6 metres to 8 metres and will all now be mandatory.
76. In the exhibited amendment, the mandatory upper level setbacks pertained to the significant streetscape area which has now been removed. This change would not diminish the outcomes sought for the street but aligns with a recommendation from the Johnston Street Panel (Amendment C220) which recommended the upper level setback controls should apply equally to all properties in the Heritage Overlay

Precinct 5

77. In precinct 5A, the height has been reduced from 18 metres preferred to 11 metres mandatory. The height will match the height of the eaves of the former UK Hotel and recognise it as a significant local landmark which is on the Victorian Heritage Register.
78. The extent of the precinct on the DDO map does not match the extent of the property boundary. Land in 2 Dummett Crescent is in the same ownership as the former UK Hotel and is used as the drive through for the fast food restaurant that occupies the site. This land will be removed from precinct 5B on the map and included in precinct 5A.
79. In precinct 5B, the preferred 1:1 building wall requirement (which is complex to interpret) has been replaced with the 18 metre mandatory height. The 18m height reflects the maximum height which could be achieved using the 1:1 ratio. The exhibited preferred height of 28m would continue to apply to lots at 4-10 Dummett Crescent.
80. The street wall height which seeks to match the height of the eaves of the former Clifton Motors garage (mandatory), now applies to the whole Queens Parade frontage in precinct 5B. The street wall height on Dummett Crescent remains unchanged at 11 metres (preferred).
81. The upper level setback has been increased from 6 metres to 8 metres at the former Clifton Motor garage. These requirements will retain it as a significant heritage building in the streetscape.
82. Side and rear setbacks have also been replaced with the side and rear setbacks described in paragraphs 66 and 67 above.
83. In precinct 5C the street wall has been reduced from 36 metres to 18 metres. Officers consider that a street wall of 36 metres would likely have caused wind down drafts in this exposed location and consequently have reduced the street wall height accordingly. It will also provide new buildings with a better relationship to the street. The upper level setbacks have seen a corresponding reduction from 10 metres to 6 metres (preferred).
84. The building height has been reduced from 49 metres to 43 metres. This reflects a recalibration of the floor to floor heights which were used as the basis of the amendment. The exhibited amendment calculated residential floor to floor heights of 3.5 metres. A more realistic floor to floor height of 3 metres has been used.
85. Side and rear setbacks have also been replaced with the side and rear setbacks described in paragraphs 66 and 67 above.

External ConsultationAdditional consultation with the community since exhibition

86. Following the Special Council Meeting of 12 March 2019, the Coalition was formed by a collection of resident and heritage groups. The Coalition has prepared alternative DDOs for precincts 4 and 5 and has also undertaken heritage investigations and additional consultation with traders.
87. Officers met with members of the Coalition on 6 May 2019 to foreshadow changes recommended to the amendment in response to submissions and to hear from the Coalition.
88. Further consultation was also undertaken with traders in precinct 4, with an officer from Council's Economic Development team visited the centre and spoke with a number of traders. (Noting several premises were closed or the business owner was not present.)
89. As outlined above, traders expressed concerns about construction, viability of new retail spaces and their commercial tenure. A number of traders, however, have recognised that more people in and around Queens Parade would be beneficial to their businesses.

Advising of proposed changes to the amendment for consideration by the panel in response to submissions

90. If Council is of a mind to support the amendment subject to the recommended changes as described in this report, Council should write to all affected land owners and submitters to advise them of the position Council proposes to take to panel.
91. The letter would provide a link to the meeting agenda where the recommended changes would be outlined in detail and where a copy of the Preferred Version of the DDO to be recommended to the panel could be viewed. The letter would advise that any further or new submissions on the Preferred Version of the DDO will be referred to the panel along with all submissions received to the amendment so far.
92. It is important to maintain progression of the amendment through the statutory process and pursue the pre-set panel hearing dates in mid-August. This would assist in achieving the approval of the permanent controls for the area prior to the expiry of the current interim DDOs in January 2020.

Internal Consultation (One Yarra)

93. The amendment was prepared with assistance from statutory planning, open space, economic development, urban design and Council's heritage advisor.

Financial Implications

94. There are substantial costs associated with this panel process. They include planning panel costs and fees, legal representation and the engagement of urban design, heritage, planning, traffic and economic experts who provide evidence on behalf of Council.

Economic Implications

95. The amendment may provide further stimulus to the retail precinct. No other economic implications are apparent.

Sustainability Implications

96. There are no known sustainability implications.

Social Implications

97. There are no significant social implications. The recommended changes being considered respond to community submissions and improve built form outcomes for the centre while providing certainty in relation to future development potential of the centre.

Human Rights Implications

98. There are no known human rights implications.

Communications with CALD Communities Implications

99. Statutory notification was provided to all land owners and occupiers.
100. Information sessions were held and information about the amendment was available on Council's website.
101. Notification and consultation about the amendment included advice about the use of interpreter service by residents. This was available to help affected parties understand the proposal and associated processes. The amendment process involved the steps outlined in Council's strategy to engage and assist CALD communities.

Council Plan, Strategy and Policy Implications

102. The amendment supports the following strategy in the Council Plan:
 - (a) *Manage change in Yarra's built form and activity centres through community engagement, land use planning and appropriate structure planning processes.*

Legal Implications

103. The approach outlined in this report accords with the requirements of the *Planning and Environment Act 1987*.

Other Issues

104. At the meeting of the Coalition on 6 May the 'community value' and 'sense of place' was highlighted as a major attribute of the shopping centre. The views expressed referred to the wider aspects of this matter than simply the planning controls applying to the precinct.
105. There are no other issues associated with Council considering and responding to submissions.

Options

106. Where submissions have been received to an amendment, Council has three options under Section 23 of the *Planning and Environment Act 1987*:
 - (a) Change the amendment in the manner requested; or
 - (b) Refer the submissions to an independent planning panel to consider the submissions and to provide recommendations to Council; or
 - (c) Abandon the amendment or part of the amendment.
107. Given the submissions present a range of different views, Council will not be able to fully resolve the amendment and change it in the manner requested by all submitters. Therefore, Council must refer the amendment to a panel or abandon it.
108. At the same time as referring all submissions about the amendment to a panel, Council can resolve that subject to the further amendments to the DDO outlined within this report that Council requests the appointment of an independent planning panel to consider all submissions;
109. To ensure that all potentially affected landowners and occupiers are aware of the changes that Council will recommend to the panel, Council should write to all affected land owners, occupiers and submitters to advise them of the recommended changes that Council will present to the panel for its consideration. This written notice would give three weeks for any person to make a submission and any submissions received would then be referred directly to the panel.
110. When submissions are referred to the planning panel, all submitters would be given the opportunity to outline their submission to the panel which would then make recommendations in a report to Council. The panel considers all submissions when making recommendations to Council about whether Council should approve the amendment (with or without changes) or abandon the amendment.

111. The panel's recommendations would then be provided to Council with an officer report for its consideration. At that time, Council would then have three options under the *Planning and Environment Act 1987*:
 - (a) adopt the amendment as exhibited;
 - (b) adopt the amendment with changes; or
 - (c) abandon the amendment or part of the amendment.
112. Council can choose to accept or reject the panel's recommendations. Where it chooses not to accept the panel's recommendation, it must provide justification.
113. If Council chooses to adopt the amendment (with or without changes), it would then be sent to the Minister for Planning for approval.

Conclusion

114. Council exhibited Amendment C231 and received a total of 399 submissions.
115. Submitters, almost universally were seeking a variety of changes to the amendment; in particular, a reduction in the height of future buildings and increased upper level setbacks to protect the heritage character of Queens Parade.
116. In response to submissions, officers have analysed the changes sought, modelled the various changes sought and now recommend certain changes to the exhibited amendment. These are explained in table format in this report and also in the form of a Preferred Version of the DDO Schedule attached to this report.
117. The submissions received adopt a variety of alternative positions which Council cannot reconcile, therefore all submissions should be referred to the panel.

RECOMMENDATION:

1. That Council:
 - (a) receives and notes submissions received following the exhibition of Amendment C231;
 - (b) notes that there is/will be considerable development growth in precincts 2 and 5 of the DDO and at the former Gas Works site;
 - (c) notes the officer report and attachments in response to submissions on Amendment C231 and endorses the recommended changes to the amendment including the Preferred Version of the DDO schedule;
 - (d) adopts as its submission to the panel the position of support for Amendment C231 with changes as identified in (c) above;
 - (e) requests the Minister for Planning to appoint an independent planning panel to consider all submissions referred to in relation to Amendment C231 in accordance with Section 23 of the Planning and Environment Act 1987;
 - (f) refer all submissions, including late submissions and new or modified submissions in response to the further notice as in paragraph (g) below to the panel;
 - (i) writes to all landowners and occupiers directly affected by the revised DDO schedule and to all submitters to:
 - (ii) advise of Council's decision to proceed to panel;
 - (iii) advise of Council's position in support of the Preferred Version of the DDO; and
 - (iv) advise that if they make a submission in relation to the recommended changes, the new or varied submission will be referred directly to the panel; and
 - (g) notes that officers will provide a further report to Council after the planning panel report is received from Panels Victoria to enable further consideration of Amendment C231 by Council.

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Attachments

- 1 Attachment 1 - Map of submitters
- 2 Attachment 2 - Summary of individual submissions
- 3 Attachment 3 - Key and precinct wide issues raised in submissions
- 4 Attachment 4 - Precinct specific summary
- 5 Attachment 5 - Track changes version of DDO
- 6 Attachment 6 - Clean version of revised DDO