

*Planning and Environment Act 1987*

**Panel Report**

**Yarra Planning Scheme Amendment C191**

**Swan Street Activity Centre**

**15 October 2020**

### 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 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 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 Act]

*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Yarra Planning Scheme Amendment C191

Swan Street Activity Centre

15 October 2020



Con Tsotsoros, Chair



John Roney, Member

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**Appendix D2 Design and Development Overlay Schedule 26 (Precinct 2)**

**Appendix D3 Design and Development Overlay Schedule 27 (Precinct 3)**

**Appendix D4 Design and Development Overlay Schedule 28 (Precinct 4)**

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## Glossary and abbreviations

3D	Three dimensional
Act	<i>Planning and Environment Act 1987</i>
the Activity Centre	Swan Street Activity Centre
Council	Yarra City Council
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
Heritage Review	Swan Street Built Form Heritage Review, GJM Heritage, 27 September 2017
Heritage Study	Swan Street Built Form Study Heritage Assessments & Analysis, GJM Heritage, October 2017
Swan Street Framework	Swan Street Activity Centre Built Form Framework, Tract Consultants, September 2017
Swan Street Structure Plan	Swan Street Structure Plan, David Lock Associates, January 2014
Traffic Engineering Assessment	Traffic Engineering Assessment of the Swan Street Activity Centre, July 2017
VCAT	Victorian Civil and Administrative Tribunal
VHR	Victorian Heritage Register
YSEES	Yarra Spatial Economic and Employment Strategy

Note: Any number after a zone or schedule refers to the schedule number

## Overview

### Amendment summary

<b>The Amendment</b>	Yarra Planning Scheme Amendment C191
<b>Common name</b>	Swan Street Activity Centre
<b>Brief description</b>	Implements built form principles and objectives of the Swan Street Activity Centre Built Form Framework, September 2017 and recommendations of the Swan Street Built Form Study Heritage Assessments & Analysis, October 2017
<b>Subject land</b>	Swan Street Activity Centre, as shown in Figure 1
<b>Planning Authority</b>	Yarra City Council
<b>Authorisation</b>	13 September 2018, subject to conditions
<b>Exhibition</b>	28 February to 15 April 2019
<b>Submissions</b>	Number of Submissions: 37 (including five late submission)

### Panel process

<b>The Panel</b>	Con Tsotsoros (Chair), John Roney
<b>Assisted by</b>	Chris Brennan, Office of Planning Panels Victoria
<b>Directions Hearing</b>	8 November 2019 at Richmond Library 6 February 2020 at Planning Panels Victoria
<b>Panel Hearing</b>	2 and 5 December 2019 at Amora Hotel, Richmond 27, 28, 29, 30, 31 July and 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19 August and 2 September 2020 by video conference (Webex)
<b>Site inspections</b>	Unaccompanied, 25 November 2019
<b>Parties to the Hearing</b>	see Appendix B
<b>Citation</b>	Yarra PSA C191 [2020] PPV
<b>Date of this Report</b>	15 October 2020

## **Executive summary**

The Swan Street Activity Centre (Activity Centre) focuses around an approximately 2.1 kilometre commercial spine and is about 1.5 kilometres from Melbourne's Central City. It has three train stations and trams with access to Melbourne's central city, sports precinct and services including medical.

The Activity Centre has identified heritage buildings, though most are concentrated in the Swan Street Heritage Precinct (HO335) between the railway overpass and just past Church Street to the east. There is strong interest to develop larger scale development in the Activity Centre. This is evident through existing new developments, permits issued, permit applications and owner intentions.

The Swan Street Structure Plan is a high-level strategy document which does not consider detailed conditions in the study area. To progress a more detailed understanding, Council engaged consultants to concurrently prepare the Swan Street Activity Centre Built Form Framework, September 2017 (Swan Street Framework) and the Swan Street Built Form Study Heritage Assessments & Analysis, October 2017 (Heritage Study). The Heritage Study informed the built form assessment in the Swan Street Framework.

Yarra Planning Scheme Amendment C191 (the Amendment) seeks to implement the built form principles, objectives and recommendations of these reports.

The Amendment was exhibited from 28 February to 15 April 2019 and received 35 submissions, including five late submissions. Key issues raised in submissions related to heritage, development opportunity, building height, setbacks and other built form provisions, the modelling prepared for Council, land zoning, mandatory provisions, Swan Street Activity Centre capacity and growth, overshadowing, and vehicle and pedestrian access. Issues also related to the form and content of the Amendment including drafting and the Design and Design Overlay Schedule 17 structure.

### **Three dimensional modelling images**

Since exhibiting the Amendment, Council had consultants prepare three dimensional modelling, presented as images in reports. The images have issues, for example the street level perspective is not realistic, but provide useful context when considering the appropriateness of proposed built form provisions, subject to the limitations being kept in mind. They would have benefitted from a more realistic street level perspective.

### **Strategic justification**

The background studies form a sound basis for the Amendment. The policy to maintain 15-year residential land supply should be considered on a municipal basis. On that basis, the exhibited and preferred versions of the Amendment will contribute towards Yarra providing sufficient residential and commercial capacity across its municipality to meet future demand.

Council has clearly understood the complicated intersection of interrelated and contradictory objectives related to the Activity Centre. The Amendment recognises and appropriately balances policies which on the one hand seek growth in a major activity centre while on the other seek to protect existing heritage in the centre. The common thread between both policies is the need to plan for present and future generations.

The Amendment, based on its robust strategic justification, is supported by an extensive suite of planning policies. These include housing affordability and sustainability.

For the reasons set out in this report, the Panel finds 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. It will deliver net community benefit and sustainable development, as required by Planning Scheme Clause 71.02-3. The Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in this report.

### **Heritage**

The Panel concludes that the Yarra High Streets: Statements of significance have been prepared appropriately for heritage places in the Activity Centre. However, it should refer to 377 and 380 Burnley Street as individually significant places within precincts and should replace 413-15 Burnley Street with the correct address of 413-415 Swan Street.

Development opportunity is not relevant when assessing potential heritage significance but may be relevant during the planning permit application stage.

It is appropriate and justified to:

- reclassify 67 Docker Street from a contributory property in the Richmond Hill Precinct (HO332) to non-contributory
- apply the Heritage Overlay (HO524) to 30-40 Swan Street
- reclassify 218 Swan Street from a contributory property to non-contributory in the Swan Street Precinct (HO335).

The Corner Hotel site at 57-61 Swan Street does not achieve criteria A (historical) and G (social) significance to justify it as an individually significant place. It is appropriate and justified to apply the Heritage Overlay (HO335 – Swan Street Precinct) to 57-61 Swan Street excluding land currently being used as a car park. It should be categorised as a non-contributory property. The statement of significance for 57-61 Swan Street should be deleted and the City of Yarra Database of Heritage Significant Areas should be revised to better reflect the place.

### **Centre-wide issues**

The Swan Street Framework Plan appropriately applies the precinct boundaries. Figure 1 (Swan Street Framework Plan) in Clause 21.12 should be amended to redesignate the car park land to their envisaged use. Land north of Precincts 1 and 2 and land east of Precinct 4 needs further strategic work to better understand their relationship with the Activity Centre and should be designated accordingly.

It is appropriate and justified to rezone land in the Activity Centre, as exhibited, and to rezone further land. Specifically, 371 and 375-377 Punt Road, 2-16 and 14 Swan Street should be rezoned to the Commercial 1 Zone to reflect existing built form and to reduce the number of zones on individual lots. Land at 65 and 67 Docker Street should remain in the Commercial 1 Zone because it is inappropriate and unjustified to rezone them through the Amendment.

The methodology for applying the Environmental Audit Overlay is appropriate.

## **Design and Development Overlay**

The content in the exhibited Design and Development Overlay (DDO) Schedule 17 should be separated into four schedules relating to each of the precincts in the Activity Centre. Specifically, DDO25 for Precinct 1, DDO26 for Precinct 2, DDO27 for Precinct 3 and DDO28 for Precinct 4.

The mandatory provisions for specified building heights, street wall heights and setbacks, upper level setbacks and overshadowing are justified and necessary unless specified otherwise in this report.

It is appropriate for the DDO schedules to include requirements that specify the circumstances when it may be appropriate for a permit to be granted to construct a building or construct or carry out works that exceeds the preferred height.

The proposed building height requirements are generally appropriate and justified but should be revised to ensure that they apply to both residential and non-residential development.

Changes to the building height requirements proposed by Council in its closing submission are appropriate and are supported.

For typical Swan Street frontages, a minimum 6-metre upper level setback should be applied because a minimum 5 metre upper level setback is insufficient to respond to the heritage streetscape. The 6-metre upper level setback should be applied as a mandatory provision for all heritage properties and as a discretionary provision for all non-heritage properties.

It is appropriate to include building separation requirements and the proposed building separation requirements are generally satisfactory. They could be improved by providing for greater separation for taller buildings. It is not appropriate to introduce a specific provision to limit the height of a party wall.

The heritage design requirements at Clause 2.3 in the DDO schedules are not appropriate because they duplicate existing provisions in Clause 22.02 and should be deleted.

The amenity of identified footpaths should be protected through overshadowing requirements. Mandatory overshadowing requirements are appropriate and justified for the Swan Street southern footpath and discretionary requirements are justified and supported for all other nominated footpaths.

The metric for defining the area for solar access should be revised for all streets and should relate to the area between the property boundary and the existing kerb. The use of the equinox between 10.00am and 2.00pm as the measure for solar access is appropriate.

A desktop wind effects assessment should be required for a permit application proposing a building 15 metres or higher from natural ground level.

### **Precinct 1**

The design objectives for Precinct 1 are appropriate. It is appropriate to include a design quality requirement which seeks to ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape on land with the Heritage Overlay (HO524).

The preferred maximum building heights in Precinct 1 are generally appropriate and justified except for the land between Wellington Street and Cremorne Street. Land between Wellington Street and Cremorne Street should have a preferred maximum building height of 28 metres.

An additional provision should be added to the building height requirements for Precinct 1 to require upper levels in the Heritage Overlay that exceed the preferred maximum building height should have increased setbacks.

It is appropriate to apply Interface F to Jessie Street.

A discretionary boundary wall setback requirement should be applied to 40 Swan Street to require a minimum setback of 4.5 metres to the common boundary if a building is not built on a common boundary.

## **Precinct 2**

The Precinct 2 design objectives are appropriate.

The mandatory maximum building heights in Precinct 2 are generally appropriate and justified except for 57-61 and 187-189 Swan Street, land bounded by Little Lesney, Whiltshire and Brighton Streets, and 421-423 Church Street.

The part of 57-61 Swan Street currently being used as a car park should have a discretionary maximum building height of 28 metres. Land bounded by Little Lesney, Whiltshire and Brighton Streets should have a discretionary maximum building height of 28 metres. 187-189 Swan Street and 421-423 Church Street should have a mandatory maximum building height of 18 metres.

Interfaces C and I are generally appropriate for Precinct 2 and do not need to be amended. The discretionary Interface I provisions can be varied for individual circumstances such as the interface between the Activity Centre and 60 Stanley Street.

The Corner Hotel has unique circumstances which justify a new Interface K along Botherambo and Wangaratta Streets. Interface K should apply a discretionary maximum 11-metre street wall and a discretionary minimum 3-metre upper level setback. Stewart Street should be redesignated from Interface B to Interface F to recognise its robust interface opposite the elevated railway line including its concrete walls.

The southern elevation of 468 Church Street should be redesignated from Interface H to Interface F to protect the heritage fabric along its visible side elevation.

## **Precinct 3**

The Precinct 3 design objectives are appropriate.

It is appropriate and justified to require discretionary upper level building breaks on the south side of Swan Street in Precinct 3 in their proposed location. There should be no uplift in building height based on providing such a building break.

The side setback provisions for upper level building breaks as proposed in the Hearing version of DDO27 are appropriate.

The preferred maximum building heights in Precinct 3 are generally appropriate and justified except for 370-374 Swan Street and the land to its south. 370-374 Swan Street and land to its south should have a preferred maximum building height of 40 metres. The boundary between 34 metres and 40 metres should be the upper level building break opposite Lord Street shown on DDO27 Plan 1.

Interface E should include a provision in the 'preferred requirements' column of the street wall height to *"match the parapet height of the taller adjoining heritage building for a minimum length of 6 metres from the heritage building"*. It should also include a mandatory requirement in the upper level setback for a *"minimum 6 metres for heritage buildings"*.

Interface F should apply the discretionary minimum 6-metre upper level setback to all heritage buildings. Interface G on the eastern side of Bell Street should be replaced with Interface F whereas Interface G in front of 232-234 Coppin Street should be replaced with Interface C.

The vehicle and pedestrian access requirements in Precinct 3 are generally appropriate and should be changed to reflect left in-left out access. Plan 2 Access and Movement Plan – Precinct 3 Swan Street East should be revised to:

- replace 'new laneway required' with 'new laneway preferred' to reflect the intended outcome
- provide flexible left in-left out access between 356 and 408-442 Swan Street.

#### **Precinct 4**

The Precinct 4 design objectives are appropriate. It is appropriate to include a provision in the design quality requirements to ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape within land affected by the Heritage Overlay (HO474).

It is appropriate and justified to require upper level building breaks on the south side of Swan Street in Precinct 4. The location of the upper level building breaks are appropriate.

The side setback provisions for upper level building breaks in the Hearing version of DDO28 are appropriate.

The maximum building heights in Precinct 4 are generally appropriate and justified except for 487 Swan Street. Land at 487 Swan Street should have a mandatory maximum building height of 18 metres.

Interface F should be revised regarding upper level setbacks to ensure that the preferred 6 metres minimum setback applies to all heritage buildings. The interface type on the eastern side of 487 Swan Street should be revised by replacing Interface I with Interface H.

#### **General comments**

Council is commended on numerous fronts. Since the Swan Street Structure Plan, it has effectively assessed the issues through a comprehensive program of strategic work. Council has actively listened to, and continuously responded to issues raised by submitters, as evident through the evolving form and content of the Amendment since it was exhibited. It sought three-dimensional modelling as further context to inform its views.

The Hearing process was challenged by the large volume of evidence and different Amendment versions. Council's clearly presented submissions with their useful cross references has assisted the Panel.

Finally, the Panel acknowledges Council's support for the Hearing process, generally within short timeframes. While the Act requires a planning authority to support the process, Council went beyond the usual standards to respond to the challenges associated with the Novel Coronavirus Disease 2019 related government restrictions.

### **Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Yarra Planning Scheme Amendment C191 be adopted as exhibited subject to the following:

- 1. Amend the Yarra High Streets: Statements of Significance, October 2017 (GJM Heritage) to:**
  - a) add 377 and 380 Burnley Street as individually significant properties forming part of the Burnley Street Precinct in the 'Individually significant places within precincts' section of Appendix A**
  - b) replace 413-15 Burnley Street with 413-415 Swan Street under 'What is significant?'**
- 2. Amend the Heritage Overlay Planning Scheme Map to remove the part of 57-61 Swan Street comprising the car park abutting the Corner Hotel building.**
- 3. Amend the HO335 statement of significance to delete the Corner Hotel from 'Individually significant places within precincts'.**
- 4. Amend the City of Yarra Database of Heritage Significant Areas (January 2019) to recategorise 57-61 Swan Street from individually significant to non-contributory.**
- 5. Amend Clause 21.11 to delete the reference to 'Swan Street Activity Centre Built Form Framework (Tract, September 2017)', if the Framework's contents are not reconciled with the provisions proposed to be introduced through Yarra Planning Scheme Amendment C191.**
- 6. Amend Figure 1 (Swan Street Framework Plan) in Clause 21.12, as shown in Appendix D5, to:**
  - a) redesignate the car park land to 'potential future public park' and 'Mixed activity'**
  - b) redesignate land north of Precincts 1 and 2 and land east of Precinct 4 as 'Land subject to future strategic work'.**
- 7. Rezone 371 and 375-377 Punt Road and 2-16 Swan Street to the Commercial 1 Zone.**
- 8. Replace Design and Development Overlay Schedule 17 with:**
  - a) a new Design and Development Overlay Schedule 25, which includes planning provisions relevant to Precinct 1 (Richmond Station)**
  - b) a new Design and Development Overlay Schedule 26 which includes planning provisions relevant to Precinct 2 (Swan Street Retail Centre)**
  - c) a new Design and Development Overlay Schedule 27 which includes planning provisions relevant to Precinct 3 (Swan Street East)**

- d) a new Design and Development Overlay Schedule 28 which includes planning provisions relevant to Precinct 4 (Burnley Station).**
- 9. Amend Design and Development Overlay Schedule 25, as shown in Appendix D1.**
- 10. Amend Design and Development Overlay Schedule 26, as shown in Appendix D2.**
- 11. Amend Design and Development Overlay Schedule 27, as shown in Appendix D3.**
- 12. Amend Design and Development Overlay Schedule 28, as shown in Appendix D4.**

# 1 Introduction

## 1.1 The Amendment

Yarra Planning Scheme Amendment C191 (the Amendment) seeks to implement:

- built form principles and objectives of the Swan Street Activity Centre Built Form Framework, September 2017 (Swan Street Framework)
- recommendations of the Swan Street Built Form Study Heritage Assessments & Analysis, October 2017 (Heritage Study).

Specifically, the exhibited Amendment proposes to:

- amend Clause 21.12 to introduce a Swan Street Activity Centre Local Area Policy which implements the Swan Street Framework
- amend Clause 21.08 to make minor corrections and to reflect DDO17 and the new Swan Street Activity Centre Local Area Policy
- apply Design and Development Overlay Schedule 17 (DDO17) permanently to land in the Swan Street Activity Centre
- amend Clause 21.11 to reference:
  - the Swan Street Framework
  - the Heritage Study
  - Yarra High Streets: Statements of Significance October 2017 (GJM Heritage)
- amend Clause 22.02 to reference:
  - the Heritage Study
  - Yarra High Streets: Statements of Significance October 2017 (GJM Heritage)
- apply the Heritage Overlay permanently to 30-42, 223-239, 273A and 323-325 Swan Street Richmond.

The Amendment applies to land in the Swan Street Activity Centre shown in Figure 1.

**Figure 1** Subject land



The subject land focuses around an approximately 2.1 kilometre commercial spine and is about 1.5 kilometres from Melbourne's Central City. It has direct access to three train stations and trams.

This report refers to the following versions of the Amendment:

- **Exhibited** – DDO17 and other provisions exhibited between 28 February and 15 April 2019
- **Resolved** – DDO25, DDO26, DDO27, DDO28 and other provisions resolved at 10 September 2019 Council meeting after considering submissions

- **Hearing** – provided by Council to all parties on 20 August 2020 (Documents 181, 182, 183, 184, 185 and 186).

## 1.2 Background

17 December 2013	Council adopted the Swan Street Structure Plan
May 2014	State government released Plan Melbourne
17 October 2017	Council resolved to seek authorisation from the Minister for Planning to prepare the Amendment
5 December 2017	Council resolved to request the Minister for Planning to apply the Heritage Overlay on an interim basis to 15 properties (30 – 42, 223-239, 273A and 323-325 Swan Street, Richmond)
25 January 2018	462-482 Swan Street, Richmond was rezoned from the Commercial 2 Zone to the Commercial 1 Zone and DDO14 and EAO were applied to the land [Amendment C185]
4 September 2018	Council adopted the Yarra Spatial Economic and Employment Strategy and the Yarra Housing Strategy
13 September 2018	The Minister for Planning authorised the Amendment conditional to removing the requirement for a wider laneway in Precinct 2 and a laneway in Precinct 3 from DDO17
10 October 2018	The Minister for Planning issued Ministerial Direction 19
22 November 2018	An interim Heritage Overlay was applied to the 15 Swan Street properties with an expiry date of 30 December 2019 [Amendment C236]
28 February to 15 April 2019	Amendment C191 was formally exhibited for six weeks
June 2019	Council engaged Tract Consultants to prepare a 3D model of the four precincts along Swan Street
10 September 2019	At its meeting, Council considered 30 submissions and resolved to refer all submissions to a Panel
12 September 2019	Council requested the Minister for Planning to extend the interim Heritage Overlay on the 15 Swan Street properties for 12 months
12 November 2019	Council adopted the Yarra Heritage Strategy 2019-2030
24 December 2019	The interim Heritage Overlay for the 15 Swan Street properties was extended to 30 December 2020 [Amendment C268yara]
30 December 2019	The interim Heritage Overlay for 223-239 Swan Street was extended to 26 November 2020 due to a technical error with Amendment C268yara [Amendment C276yara]
30 December 2020	The interim Heritage Overlay for the 15 Swan Street properties will expire

## **1.3 Procedural matters**

### **(i) Access to 3D model information**

#### **Issue 1**

Loubeck Pty Ltd and Swancom Pty Ltd wrote to the Panel on 22 November 2019 requesting that the Panel:

- direct Council to provide the 3D model of Swan Street in SketchUp<sup>1</sup> format by close of business on 22 November 2019
- direct that any evidence which has regard to the three-dimensional model be circulated by midday on Thursday 28 November 2019.

The Panel referred to Council's invitation to make the 3D model information available through a report, videos and appointment from 13 November 2019. It encouraged parties to cooperate with each other regarding any further information requests. On the second request, the Panel upheld its direction for expert reports to be circulated by the specified date.

#### **Issue 2**

At the second Directions Hearing, Council advised that it was now able to offer the 3D model in SketchUp software format from 21 February 2020 to any party subject to a signed agreement. Council added that its urban design expert witness, Ms Hodyl, would present the model at the Hearing.

Cremorne Properties, Swan-Lennox and Loubeck sought further direction. Collectively, they requested that:

- the Panel direct Council to write to all parties to explain the process and attach the agreement to be signed
- the usage period be at least 30 days after the Panel's report is publicly released to align with the timeframe for procedural defects in section 39 of the Act.

Loubeck questioned why there should be any usage end date.

In its directions letter dated 10 February 2020, the Panel stated:

- the invitation to view the 3D model should attach the agreement which specifies:
  - the software and data can only be used for the purposes of the Hearing process
  - the ability for parties to use the software for up to 30 days after the Panel report is publicly released
- Council should arrange access to their interactive 3D model at the Hearing when explaining the Amendment to show perspectives from any vantage point.

### **(ii) Request for advanced notice of Council's response to evidence**

On 2 December 2019, Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd submitted that parties were entitled to know Council's position on Mr Parsons' urban design evidence before Mr Parsons was cross-examined. They considered it unsatisfactory and unfair to not know Council's position at that stage.

Council responded that:

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<sup>1</sup> Licensed software which enables 3D modelling to be viewed

- its preferred position reflects the position resolved at its 10 September 2019 meeting
- each party has an opportunity to cross-examine Mr Parson's evidence
- each party can raise any points of disagreement in their submission to the Panel.

Cremorne Properties and Swan-Lennox responded that:

- it is not the way the process always works or how it should work
- for procedural fairness, Council should have expressed its position to expert evidence.

The Panel acknowledged Council's position to the Amendment, and noted that it would be of assistance if Council explained any Council officer response to expert evidence before each expert witness appeared.

### **(iii) Urban design expert witness declaration**

Council originally called Mr Parsons of Ethos Urban as an urban design expert witness. At the beginning of his evidence-in-chief, he declared that he applied for, and was offered, a position as a Sessional Panel Member at Planning Panels Victoria. Mr Parsons explained that he had not accepted the offer from the Minister for Planning to become a member of Planning Panels Victoria. Council informed the Panel that neither its officers nor Ms Brennan SC representing Council were aware of this declaration before that morning.

Cremorne Properties and Swan-Lennox and Loubeck Pty Ltd raised issues regarding Mr Parsons' declaration. Cremorne Properties and Swan-Lennox submitted that Mr Parsons could not be called as an expert witness that day because there was an apprehension of bias. They add that this was an unfortunate circumstance which required further information before they could respond.

All three parties requested further information regarding the circumstances surrounding Mr Parsons' declaration and the Panel directed that their questions be provided in writing. Ms Davidov wrote to Planning Panels Victoria on 2 December 2019<sup>2</sup> with an extensive list of probing questions for Mr Parsons and each of the Panel members.

The Panel referred the questions to the Business Manager of Planning Panels Victoria because a considerable proportion of the information sought related to a selection process managed by him. Planning Panels Victoria provided all parties responses from the Business Manager<sup>3</sup> and from the Panel.<sup>4</sup>

### **(iv) Reserving costs**

On 2 December 2019, Loubeck submitted that:

- the Panel has the power to order costs associated with an adjournment
- if an adjournment is granted, there is a strong possibility that it would be requesting that Mr Parsons pay all or part of their costs.

On 5 December 2019, Swan Street Sales advised of its intent to request that the Panel reserve costs associated with the adjournment to the Hearing. It confirmed its request in writing through a letter dated 9 December 2019 to all parties and Planning Panels Victoria stating:

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<sup>2</sup> Document 25

<sup>3</sup> Document 29

<sup>4</sup> Document 30

At the hearing on 5 December 2019, Counsel on behalf of our client requested that the Panel make an order that costs relating to the adjournment are to be reserved. This request was supported by other parties at the hearing.

Section 165 of the *Planning and Environment Act 1987* states that:

*“A panel may from time to time adjourn a hearing to any times and places and for any purposes it thinks necessary and on any terms as to costs or otherwise which it thinks just in the circumstances.”*

We respectfully request that the Panel make an order that costs relating to the adjournment are reserved.

No party sought a specific order for payment of costs and the Panel made no order as to costs.

#### **(v) Revised Hearing dates and format**

At the Hearing on 5 December 2019, Council advised that it would:

- no longer call urban design evidence from Mr Parsons
- remove Mr Parsons’ evidence from its webpage and note that it would no longer be relying on his report.

On 5 December 2019, Council requested that the Hearing be adjourned to enable Council to engage another urban design expert witness and to circulate evidence by a reasonable timeframe. Most parties preferred to recommence the Hearing in the second half of 2020. The Panel provided some time during the Hearing to enable Council and parties to explore potential dates. After this discussion, Council advised that 12 October 2020 was the soonest possible date for the Hearing.

On 11 December, the Panel asked parties to provide detailed information regarding their availability beyond March 2020. This process identified an opportunity to recommence the Hearing on 27 July 2020.

The Panel held a second Directions Hearing on 6 February 2020 at Planning Panels Victoria where no party objected to the Hearing commencing on 27 July 2020. In March 2020, the Novel Coronavirus Disease 2019 (COVID-19) pandemic resulted in government restrictions which did not enable an in-person hearing.

The *COVID-19 Omnibus (Emergency Measures) Act 2020* was subsequently introduced on 25 April 2020. This Act, among many other sections, states that a *“panel is not required to hear the person in person, but may instead require the person or their representative to appear and be heard at a specified time by electronic means”*.

The Panel issued further directions to facilitate the electronic Hearing process.

#### **(vi) Request for Counsel assisting or a third panel member**

On 3 December 2019 Council wrote to Planning Panels Victoria<sup>5</sup> stating that, given the legal issues which had arisen, the Panel may wish to consider engaging Counsel assisting or requesting that it be reconstituted with a member with legal qualifications. There were varying views among several parties ranging from not seeing the need for either option to seeing some benefit in engaging Counsel assisting.

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<sup>5</sup> Document 27

Council later explained that it asked the Panel to consider a third member after experiencing the ‘mood’ in the room of the first day of the Hearing. It considered that the mood had somewhat calmed down since then.

On 5 December 2019, the Panel advised that it did not need Counsel assisting but would reserve the option of requesting a third member, if needed.

At the second Directions Hearing, there was repeated discussion about the possibility of a third member being added to the Panel. Loubeck again raised concern about this process and referred particularly to the Panel achieving a quorum. The Panel reiterated its previous response.

#### **(vii) Submission changes and late submissions requests**

On 23 July 2020, Crestall Nominees advised parties that it no longer sought to appear at the Hearing but instead relied on a further written submission.<sup>6</sup>

On 13 August 2020, Charter Hall advised parties that it no longer sought to appear at the Hearing but instead relied on its original submission to the Amendment.

Following Kellehers Australia appearing at the Hearing, the owners of 493 and 495 Swan Street sent correspondence with issues directly to Planning Panels Victoria addressed to the Panel. As the correspondence were not submissions formally referred to the Panel, they were forwarded to Council for its response. Council decided to not consider the correspondence as late submissions<sup>7</sup>, given the advanced stage of the Hearing. The Panel notes the issues raised in each owner’s correspondence were addressed through Kellehers Australia’s comprehensive submission.

### **1.4 3D modelling**

#### **(i) The issue**

The issue is whether the 3D modelling prepared for Council by Tract and Hodyl & Co is sufficiently reliable to inform the appropriate of proposed built form provisions.

#### **(ii) Background**

Council engaged Tract to develop modelling to test various height and setback related submissions made in response to the exhibited Amendment. GJM Consultants provided heritage advice to inform the testing. The modelling in the 3D Modelling Report:

- was presented on a precinct-by-precinct basis
- informed Council’s resolved version of DDO25, DDO26, DDO27 and DDO28
- included discussions and the evolution of Councils resolved DDO schedules
- was available on Council’s webpage since 14 November 2019.

Flyover videos of the model for each precinct were also available on the Council website since 14 November 2019.

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<sup>6</sup> Documents 59 and 60

<sup>7</sup> section 22(2) of the *Planning and Environment Act 1987*

### (iii) Submissions

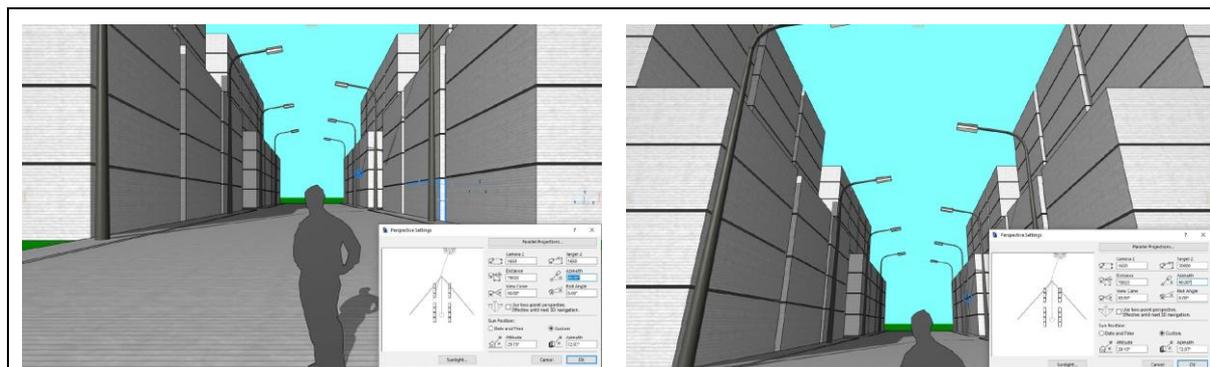
Loubeck, Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd were among parties with concerns about Council's 3D modelling. Collectively, they submitted:

- the 3D modelling is of little assistance, not available throughout the Hearing and its creator was not called to be cross-examined
- given the 3D model has not been tested, it should be given less weight when considering issues such as overshadowing
- the Panel was not given the opportunity to make its own assessment of the 3D images
- many of the selected 2D images are inaccurate, prone to significant visual distortion, or labelled in a misleading and inaccurate manner
- Council did not comply with the Panel direction to have the 3D model available.

Loubeck referred to the *Stonnington PSA C272 [2020] PPV* report which commented on modelling which informed the proposed mandatory provisions for Hawksburn Village.

Swan Street Sales submitted that Ms Hodyl's work sought to illustrate, influence and persuade the Panel about the appropriateness of her recommended built form outcomes through inappropriate and distorted perspectives. It presented two different perspectives to illustrate distortion. These are replicated in Figure 2.

**Figure 2 Comparison of perspectives from two different vantage point angles**



Source: Document 217

Swan Street Sales explained that the left image represents a two-point perspective looking at 1.65 metres to avoid any bias of dominance. The right image introduces a third perspective point by raising the viewer's focal point 30 metres above the vanishing point on the horizon.

Ms Hodyl explained that her images applied the same angle as the one used in Council's 3D modelling for comparison reasons.

Council accepted that tilting the camera impacts the verticality of the building by 'leaning' the building into the street. Council considered this to be a minor effect but not a significant flaw.

### (iv) Discussion

Parties which expressed concern about Council's 3D modelling presented their own modelling through expert witnesses. The Panel has benefited from being able to review different perspectives and scenarios.

The Panel has focussed primarily on the metrics specified in the proposed planning provisions and given weight to expert witness evidence. All modelling presented to the Panel provides additional context. Before 3D modelling, people relied on plans, elevations, and where

feasible, artist impressions. The rest was left to the imagination. Now computer generated 3D modelling can provide endless perspectives in an interactive environment.

Modelling can range from the more affordable and commonly seen building envelope perspectives, as presented by Council and all expert witness, through to a detailed version that more closely resembles the Activity Centre in its ultimate form. The latter generally costs more.

The building envelope modelling provided by all parties is sufficient to understand potential impacts associated with the planning framework proposed through the Amendment and with changes sought by submitters. This includes overshadowing and visual impacts. Further details will be relevant during a permit application when design details are known, and their impacts can be accurately measured.

The Panel agrees there were some issues associated with Council's modelling which informed the Swan Street Framework and errors with image labels in the Swan Street Activity Centre 3D modelling report issued 18 October 2019. However, when reviewed in combination with other modelling presented throughout the Hearing, it has assisted the Panel to consider issues regarding the Amendment.

The 3D modelling has limitations and it has been used cautiously by the Panel when assessing potential outcomes. Indeed, modelling of any type is often not perfect, however if read with care, it is a useful tool to help interpret and compare different scenarios. To that end, the Panel found the modelling presented by Council to be of general utility and it was augmented by a variety of other modelling presented by other parties and witnesses. The Panel notes that although useful, the modelling was not a critical factor in determining the appropriateness of applying mandatory provisions.

The Panel considers the time spent at the Hearing discussing Council's 3D modelling was disproportionate to the issues associated with it. It also considers the potential implications of identified issues to be generally overstated.

The Panel does not comment on *Stonnington PSA C272 [2020] PPV* because the Hawksburn Village 3D modelling was not presented to the C191 Panel to compare the differences. The Panel has considered the Swan Street 3D model on its own merits.

## **(v) Conclusions**

The Panel concludes that the 3D modelling images prepared for Council:

- have issues but can be relied on as context when considering the appropriateness of proposed built form provisions, subject to being conscious of these limitations
- would have benefitted from being captured at more realistic street level perspectives
- would have enabled a more exploratory process if available in its interactive form throughout the Hearing.

## **1.5 The Panel's approach**

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

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

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- Heritage
- Centre-wide issues
- Design and Development Overlay
- Precinct 1 – Richmond Station
- Precinct 2 – Swan Street Retail (Historic Core)
- Precinct 3 – Swan Street East
- Precinct 4 – Burnley Station
- Form and content of the Amendment.

## 2 Planning context

### 2.1 Planning policy framework

Table 1 summarises the Planning Policy Framework clauses relevant to the Amendment, as set out in the Explanatory Report.

**Table 1** Planning Policy Framework clauses

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#### State

##### 11 Settlement

Provides context and implements the key principles of Plan Melbourne 2017- 2050, which include providing for housing choice and affordability by planning for expected housing needs and providing for reduced ongoing living costs by increasing housing supply near public transport and services. It also encourages the consolidation of residential activities within existing urban areas and development in existing residential areas.

##### 15 Built Environment and Heritage

Seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity. This Clause also sets out the importance of ensuring the conservation of places, which have identified heritage significance.

##### 16 Housing

Emphasises the importance of providing enough quality and diverse housing that meets the growing diverse needs of Victorians in locations in or close to activity centres and sites that offer good access to jobs, services and transport. It requires councils to identify areas that offer opportunities for more medium and high-density housing near employment and transport in Metropolitan Melbourne.

##### 17 Economic development

Seeks to encourage development which meets the community's needs for retail, entertainment, office and other commercial services and provides a net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

##### 18 Transport

Promotes the creation of a safe and sustainable transport system and promotes the use of sustainable personal transport.

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#### Local

##### 21 Municipal Strategic Statement

###### 21.04

###### ► 21.04-1 Accommodation and housing

**Objective 1** - To accommodate forecast increases in population.

- Strategy 1.2 Direct higher density residential development to Strategic Redevelopment Sites identified at clause 21.08 and other sites identified through any structure plans or urban design frameworks.

###### 21.04-2 Activity centres

**Objective 4** - To maintain a balance between local convenience and regional retail roles in Yarra's activity centres.

- Strategy 4.1 Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.
- Strategy 4.3 Support the role of all activity centres, including Neighbourhood Activity Centres, in providing local day-to-day needs of residents of all abilities.

**Objective 5** - To maintain the long term viability of activity centres.

- Strategy 5.2 Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.

- Strategy 5.3 Discourage uses at street level in activity centres which create dead frontages during the day.
- Strategy 5.4 Permit residential development that does not compromise the business function of activity centres.

## 21.05

### ► 21.05-1 Heritage

**Objective 14** - To protect and enhance Yarra's heritage places.

- Strategy 14.1 Conserve, protect and enhance identified sites and areas of heritage significance including pre-settlement ecological heritage.
- Strategy 14.2 Support the restoration of heritage places.
- Strategy 14.3 Protect the heritage skyline of heritage precincts.
- Strategy 14.6 Protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas.

### 21.05-2 Urban design

**Objective 16** - To reinforce the existing urban framework of Yarra.

- Strategy 16.2 Maintain and strengthen the preferred character of each Built Form Character Type within Yarra.

**Objective 19** - To create an inner city environment with landscaped beauty.

- Strategy 19.1 Require well resolved landscape plans for all new development.
- Strategy 19.2 Encourage opportunities for planting suitable trees and landscape areas in new development.

**Objective 20** - To ensure that new development contributes positively to Yarra's urban fabric.

- Strategy 20.1 Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs.

**Objective 21** - To enhance the built form character of Yarra's activity centres.

- Strategy 21.1 Require development within Yarra's activity centres to respect and not dominate existing built form.
- Strategy 21.2 Require new development within an activity centre to consider the context of the whole centre recognising that activity centres may consist of sub-precincts, each of which may have a different land use and built form character.
- Strategy 21.3 Support new development that contributes to the consolidation and viability of existing activity centres.

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## 2.2 Relevant planning strategies and policies

### (i) Plan Melbourne 2017-2050

*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.

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. Directions relevant to the Amendment are:

- **Direction 1.1** – Create a city structure that strengthens Melbourne's competitiveness for jobs and investment, which seeks to strengthen the competitiveness of Melbourne's employment land.
- **Direction 5.1** – Create a city of 20-minute neighbourhoods which aims to cluster new housing in activity centres and other places that offer good access to jobs, services and public transport and includes a policy for local governments to prepare structure plans for activity centres to accommodate growth.

**(ii) Yarra Housing Strategy**

The Yarra Housing Strategy:

- is a housing growth framework that sets a preferred vision for Yarra over the next 15 years
- was prepared with regard to relevant planning strategies and policies, which set the parameters for what should be addressed through local strategic policy
- refers to the Swan Street Activity Centre with low estimated supply of new dwellings
- identifies land along Swan Street to be rezoned from Commercial 1 to Commercial 2 Zone to enable additional residential land supply through Amendment C191.

Council adopted the Housing Strategy on 4 September 2018.

**(iii) Yarra Spatial Economic and Employment Strategy**

The Yarra Spatial Economic and Employment Strategy (YSEES) seeks to understand and capitalise on Yarra's economic strengths and respond to key trends and economic drivers over the next 10 to 15 years. Relevant strategic directions of the YSEES are to:

- support employment growth in Yarra's Activity Centres, including major activity centres such as the Swan Street Activity Centre
- identify preferred locations for housing growth and demonstrate sufficient capacity to accommodate housing demand in those locations.

Council adopted the YSEES on 4 September 2018.

**(iv) Yarra Heritage Strategy 2019-2030**

The City of Yarra Heritage Strategy defines Council's strategic approach to managing heritage. It defines key priorities that are important for developing and promoting a greater understanding of heritage within the community and recommends key actions and measures intended to better protect and manage the City's heritage places and assets. It refers to the Swan Street Built Form Heritage Review, GJM, 2017, as one of Yarra's key heritage studies.

Council adopted the Heritage Strategy on 12 November 2019.

## **2.3 Planning scheme provisions**

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

**Table 2** Zone and overlay purposes

Zone and overlays	
<b>Zones</b>	
<b>Commercial 1</b>	To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. To provide for residential uses at densities complementary to the role and scale of the commercial centre.
<b>Commercial 2</b>	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.
<b>Overlays</b>	
<b>Design and development</b>	To identify areas which are affected by specific requirements relating to the design and built form of new development.
<b>Heritage</b>	To conserve and enhance heritage places of natural or cultural significance. To conserve and enhance those elements which contribute to the significance of heritage places. To ensure that development does not adversely affect the significance of heritage places. To conserve specified heritage places by allowing a use that would otherwise be prohibited if this. will demonstrably assist with the conservation of the significance of the heritage place.
<b>Environmental Audit</b>	To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.

## 2.4 Relevant planning scheme amendments

### Amendment VC148

Amendment VC148 was gazetted on 31 July 2018, after the Amendment was exhibited. VC148 made substantial changes to the structure and content of the Planning Policy Framework, as well as other provisions in the Planning Scheme. This includes:

- requiring the Heritage Overlay schedule to specify a statement of significance for each heritage place included in the schedule after Amendment VC148, except for a heritage place:
  - proposed through an amendment prepared or authorised by the Minister under section 8(1)(b) or section 8A(4) of the Act before or within three months after Amendment VC148 commenced
  - registered in the Victorian Heritage Register
  - included on an interim basis
- enabling heritage design guidelines for a heritage place included in the schedule to be incorporated into a planning scheme.

### **Yarra Amendment C185**

Amendment C185 rezoned 462-482 Swan Street from the Commercial 2 Zone to the Commercial 1 Zone on 25 January 2018, applied a site-specific DDO14 and the EAO on 25 January 2018.

### **Yarra Amendments C236 and C268**

Amendment C236 applied the planning provisions proposed through Amendment C191 to the Swan Street Activity Centre on an interim basis until 30 December 2019. They were extended until 30 December 2020 through Amendment C268.

### **Yarra Amendment C269yara**

Amendment C269yara seeks to rewrite local policy and was exhibited while this report was prepared, between 20 August to 20 November 2020.

## **2.5 Ministerial Directions and Practice Notes**

### **(i) Ministerial Directions**

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 (PPN46). That discussion is not repeated here.

Council submitted that the Amendment was prepared in accordance with:

- Ministerial Direction 1: Potentially Contaminated Land
- Ministerial Direction 9: Metropolitan Planning Strategy
- Ministerial Direction 11: Strategic Assessment of Planning Scheme Amendments
- Ministerial Direction 15: The Planning Scheme Amendment Process
- Ministerial Direction 19: The Preparation and Content of Amendments that may Significantly Impact the Environment, Amenity and Human Health and Ministerial Requirement for Information for Authorisation or Preparation of Amendments that may Significantly Impact the Environment, Amenity and Human Health.
- Ministerial Direction: The Form and Content of Planning Schemes. This numberless direction is referred to as Ministerial Direction 7(5) for the purposes of this report.

### **(ii) Planning Practice Notes**

Council submitted that the following planning practice notes are relevant to the Amendment:

- Planning Practice Note 1: Applying the Heritage Overlay (PPN1)
- Planning Practice Note 30: Potentially Contaminated Land (PPN30)
- Planning Practice Note 58: Structure Planning for Activity Centres (PPN58)
- Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes (PPN59)
- Planning Practice Note 60: Height and Setback Controls in Activity Centres (PPN60).

### **Planning Practice Note 1**

Planning Practice Note 1 provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

Planning Practice Note 1 specifies that documentation for each heritage place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

- Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).
- Criterion B: Possession of uncommon rare or endangered aspects of our cultural or natural history (rarity).
- Criterion C: Potential to yield information that will contribute to an understanding of our cultural or natural history (research potential).
- Criterion D: Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).
- Criterion E: Importance in exhibiting particular aesthetic characteristics (aesthetic significance).
- Criterion F: Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).
- Criterion G: Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).
- Criterion H: Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

### **Planning Practice Note 30: Potentially contaminated land, June 2005**

Planning Practice Note 30 guides on: how to identify if land is potentially contaminated; the appropriate level of assessment of contamination for a planning scheme amendment; and circumstances where the Environmental Audit Overlay should be applied or removed.

### **Planning Practice Note 59: The role of mandatory provisions in planning schemes, June 2015**

Planning Practice Note 59 sets out criteria that can be used to decide whether mandatory provisions may be appropriate in planning schemes.

### **Planning Practice Note 60: Height and setback controls for activity centres, June 2015**

Planning Practice Note 60 guidance on the department's preferred approach to applying height and setback controls for activity centres.

### 3 Strategic justification

Council submitted that:

- the Amendment is needed to manage and respond to increased development activity in the Activity Centre
- Plan Melbourne 2017-2050 designates Swan Street as a major activity centre and requires it to achieve housing and employment directions
- its recently adopted Housing Strategy seeks to:
  - direct new housing within or near activity areas with good access to public transport, open space, and other services
  - limit housing growth in established residential areas.

Council explained that the Activity Centre is a “*highly intact turn of the century ‘high street’ of consistent scale and architectural quality*”. It added:

Currently, the centre does not have permanent built form planning controls to ensure that new development has regard to the potential impacts on the heritage significance of Swan Street, or the surrounding low scale (heritage) residential neighbourhoods.

Since 2013, Council has engaged consultants to undertake strategic work which ultimately informed the planning provisions proposed through the Amendment. This work resulted in:

- Swan Street Structure Plan – high-level strategy
- Swan Street Framework – guidance for future development
- Swan Street Heritage Review – prepared concurrently with the Framework to inform the built form response.

#### 3.1 Background studies

##### (i) The issue

The issue is whether the background studies form a sound basis for the Amendment.

##### (ii) Swan Street Structure Plan

The Swan Street Structure Plan is a high-level strategy document which does not consider detailed conditions in the study area. The Structure Plan, prepared by David Lock Associates, defined a study area which goes beyond the area subject to the Swan Street Framework.

The Structure Plan applies seven urban design principles:

- Principle 1 – Walkability
- Principle 2 – Street wall
- Principle 3 – A consistent street wall
- Principle 4 – Visually recessive upper levels
- Principle 5 – Solar access
- Principle 6 – Residential interfaces
- Principle 7 – Building separation.

Council adopted the Structure Plan on 17 December 2013 (dated January 2014). The Structure Plan is not referenced in the Planning Scheme.

### (iii) Swan Street Framework

After adopting the Swan Street Structure Plan, Council engaged Tract Consultants to prepare the Swan Street Framework concurrently with the Swan Street Heritage Review. The Swan Street Framework sets out a preferred built form framework with supporting design principles to guide future development in the Swan Street Activity Centre. Council adopted the Framework in September 2017.

The Framework states that the following provide relevant strategic direction and guidance:

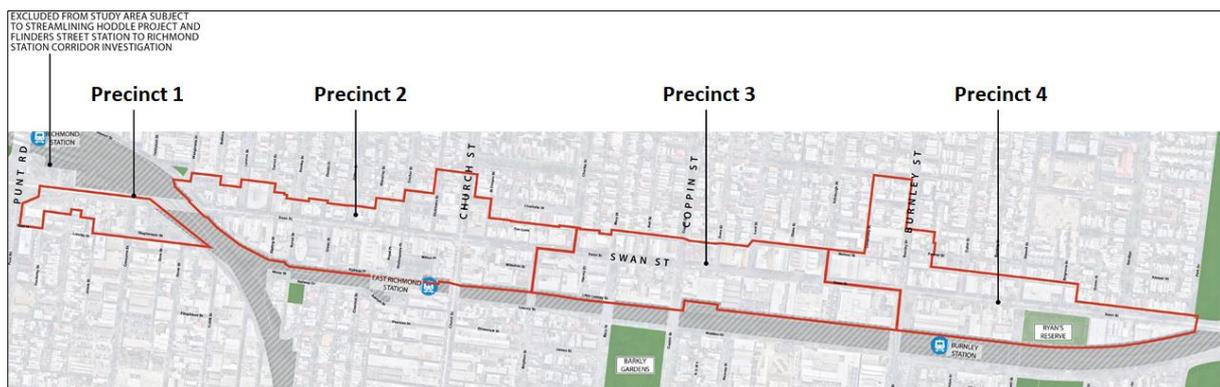
- Plan Melbourne 2017-2050: Directions 1.2 and 2.2
- Clauses 21.05, 22.02, 22.03 and 22.10 of the Planning Scheme.

The Swan Street Framework, like the exhibited planning provisions, designates Swan Street into four precincts:

- Precinct 1 – Richmond Station
- Precinct 2 – Swan Street Retail (Historic core)
- Precinct 3 – Swan Street East
- Precinct 4 – Burnley Station.

Figure 3 shows where these precincts apply within the Swan Street Activity Centre.

**Figure 3** Swan Street Framework study area and precincts



Source: based on Swan Street Framework, Figure 1, p5

To understand the built form implications and inform the built form framework, Swan Street Framework analysed:

- heritage
- built form character
- public realm and pedestrian access
- lot width and depth typologies
- development activity
- relevant Victorian Civil and Administrative Tribunal (VCAT) decisions
- access and servicing.

The Structure Plan's seven urban design principles were tested and resulted in three additional principles intended to guide built form in the Activity Centre:

- New Principle 1 – Mid-rise character
- New Principle 2 – Protect and enhance key views to the Dimmeys Tower
- New Principle 3 – Servicing of new development.

The built form framework establishes for each precinct:

- constraints and opportunities
- preferred character
- built form objectives with urban context and associated built form elements derived from the identified 10 principles.

Table 3 compares the built form requirements in the Swan Street Structure Plan and the Swan Street Framework.

**Table 3 Swan Street Structure Plan and Framework built form requirements**

Principle	Swan Street Structure Plan	Swan Street Framework
Street wall height	Preferred 10m maximum everywhere	Mix of mandatory and preferred maximum of 11m to 14m and a new minimum of 8m
Upper level setbacks	Preferred 6m setback everywhere	Mix of mandatory and preferred minimum setbacks of 0m, 3m, 5m, 10m and 20m
Visually recessive upper levels	one-third – two third rule everywhere	one-third – two third rule in heritage areas
Residential interface	One preferred approach for everywhere	Preferred approach to respond to direct abuttal and laneway abuttal
Building separation	Preferred setbacks of 12m to 24m	Preferred setback of 3m to 4.5m with greater setbacks in specified locations

Source: Council Part A submission

Table 4 compares the building heights in the Swan Street Structure Plan and the Swan Street Framework. (P) refers to a preferred (discretionary) provision and (M) refers to a mandatory provision.

**Table 4 Swan Street Structure Plan and Framework building heights**

Precinct	Structure Plan	Framework	Exhibited provisions
<b>Precinct 1 – Richmond Station</b>			
South of Swan St:	3 to 6 storeys (P) (11.5 to 19m)	6 to 8 storeys (P) (20.8 to 27.2m)	21 to 27m (P)
<b>Precinct 2 – Swan Street Retail (Historic core)</b>			
North of Swan St:	4 storeys (P) (13m)	5 to 8 storeys (M) (17.6 to 27.2m)	18 to 27m (M)
South of Swan St:	5 to 10 storeys (P) (19 to 30m)	6 to 10 storeys (M) & (P) (20.8 to 33.6m)	21 to 34m (M) & (P)
<b>Precinct 3 – Swan Street East</b>			
North of Swan St:	4 storeys (P) (13m)	6 to 8 storeys (M) (20.8 to 27.2m)	21 to 27m (M)
South of Swan St:	5 to 10 storeys (P) (19 to 30m)	8 to 12 storeys (P) (27.2 to 40m)	27 to 40m (P)

Precinct	Structure Plan	Framework	Exhibited provisions
<b>Precinct 4 – Burnley Station</b>			
North of Swan St:	4 to 6 storeys (P) (13 to 19m)	5 to 8 storeys (M) (17.6 to 27.2m)	18 to 27m (M)
South of Swan St:	4 to 12 storeys (P) (13 to 36m)	6 to 12 storeys (P) (20.8 to 40m)	21 to 40m (P)

#### **(iv) Swan Street Heritage Review**

GJM Heritage prepared the Swan Street Built Form Heritage Review, September 2017 (Heritage Review) concurrently with the Swan Street Framework to provide specific heritage advice for the study area.

The Heritage Review is based on the Structure Plan, Framework Plan and relevant Statements of Significance and heritage studies for heritage places and precincts in the study area. GJM Heritage reviewed:

- Planning Practice Notes 1, 59 and 60
- relevant Planning Policy Framework clauses
- the Heritage Overlay and Schedule in the Planning Scheme
- Yarra Planning Scheme Amendments C149, C157 and C183
- selected Planning Panel Reports and VCAT decisions
- the extent of the Heritage Overlay cross-checked with online street views.

GJM Heritage inspected buildings and structures from the public realm between 17 and 24 October 2016, and between February and June 2017. The inspections sought to:

- review the suitability of the extent of the existing Heritage Overlay and identify any gaps
- review the suitability of existing Statements of Significance for heritage places and precincts against the heritage fabric and identify any updates needed to properly manage a proposal to change the place
- review the heritage buildings and streetscapes in the study area to identify the architectural and streetscape heritage features that are relevant when considering built form recommendations
- review the suitability of the preliminary built form recommendations against the heritage fabric of the study area, which was informed by the three-dimensional view shed analysis prepared by Tract Consultants.

Following the fieldwork, GJM Heritage:

- identified draft recommendations for updates to the Statements of Significance and the extent of the Heritage Overlay coverage
- formulated issues and options for the Heritage Study.

These were presented at a workshop on 27 October 2016, attended by representatives from GJM Heritage, Council and Tract Consultants. The proposed built form parameters were tested at a workshop and its outcomes informed the Heritage Review.

**(v) Swan Street Built Form Study Heritage Assessments and Analysis**

Council engaged GJM Heritage to conduct further heritage assessment and analysis in response to recommendations in the Heritage Review. This resulted in the Swan Street Built Form Study Heritage Assessments and Analysis report (October 2020) which made the following recommendations:

- Update the statements of significance for:
  - Swan Street Precinct
  - Bendigo Street Precinct
  - 60-62 Swan Street (Former Greyhound Hotel)
  - 365 Swan Street (Former Burnley Theatre)
  - 15 Wellington Street (House).
- Include 30-42 Swan Street as contributory properties in a new Swan Street West Precinct.
- Apply the Heritage Overlay to 273A and 323-325 Swan Street as individual places.
- Include nine properties at 223-239 Swan Street to the Swan Street Precinct (HO335).
- Identify 208 and 218 Swan Street and 67 Docker Street as non-contributory properties to the Swan Street Precinct.
- Remove 375-377 Punt Road from the Wellington Street Precinct.
- Remove 416-418 Church Street from the Church Street Precinct.
- Remove 57 Swan Street (The Corner Hotel) from the Richmond Hill Precinct (HO332) and include it as an individually significant place in the Swan Street Precinct (HO335).

**(vi) Discussion**

Council built upon the Swan Street Structure Plan by engaging consultants to further explore built form opportunities while better understanding the Activity Centre's heritage. The outcome of this process was the Swan Street Framework and Swan Street Heritage Review reports. The Swan Street Framework was informed by the Heritage Review and prepared within the context of planning policy, including those related to the public realm and amenity. It defined the additional built form that could be achieved without negatively affecting existing heritage.

The Amendment generally translates the Swan Street Framework and Swan Street Heritage Review into planning provisions proposed through the DDO schedules.

**(vii) Finding**

The Panel finds that the background studies form a sound basis for the Amendment.

**3.2 Population and economic forecasts****(i) The issue**

The issue is whether the exhibited and preferred versions of the Amendment will provide sufficient capacity to meet future demand.

**(ii) Background**

Planning Scheme Clause 11.02-1S seeks to “ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses”. Two relevant strategies include:

- Ensure that sufficient land is available to meet forecast demand.
- Plan to accommodate projected population growth over at least a 15 year period and provide clear direction on locations where growth should occur. Residential land supply will be considered on a municipal basis, rather than a town-by-town basis.

**(iii) Evidence and submissions**

Planning and economic experts stated that the Amendment would increase opportunities for residential development by rezoning land from the Commercial 2 Zone to the Commercial 1 Zone.

Council called evidence on capacity analysis from Mr Spencer of SGS Economics and Planning. Regarding residential development, Mr Spencer found:

- an additional 7,330 dwellings are projected for the Richmond SA2 area between 2016 and 2031<sup>8</sup>
- an estimated 34 per cent of this growth might be accommodated in the Activity Centre
- the preferred version of the Amendment provides capacity for an estimated 2,500 to 4,000 dwellings, which is likely to be sufficient for new dwellings in the Activity Centre
- there is considerable capacity for new dwellings across Yarra’s other activity centre to meet demand to 2031, if there is a shortfall in the Activity Centre.

Regarding commercial development, he found:

- an additional 30,300 square metres would be needed in the Activity Centre between 2016 and 2031, resulting in a net increase of 1,600 jobs
- the Activity Centre has capacity for 72,500 to 269,800 square metres, based on different scenarios
- Yarra has capacity for about 4.9 million square metres of employment land which exceeds:
  - the 3.59 million square metres of employment floor space in 2016
  - the need for 3.9 million square metres by 2031.

Mr Spencer considered the Amendment:

- is likely to provide greater certainty for property owners, developers and the community about the preferred built form outcomes through the DDO schedule provisions
- could reduce the realisation of commercial development, although this is difficult to determine.

Mr Spencer found that Council’s resolved version of the Amendment would result in 1 per cent less capacity than the exhibited version. He considered there was little reason to distinguish between both versions. He concluded that both the exhibited and resolved

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<sup>8</sup> Victoria in the Future 2019 forecast

versions of the Amendment provide sufficient capacity for dwelling and employment floorspace to meet demand by 2031.

Council accepted the findings in the YSEES and Mr Spencer's evidence that Yarra's activity centres, including the Swan Street Activity Centre, have sufficient capacity to meet demand for residential, commercial and retail demand over the next 15 years and beyond.

There were parties who were critical of Mr Spencer not presenting a more current 15-year timeframe because four years have already lapsed since the forecast baseline of 2016. He explained that he applied this baseline because it was readily available through existing Australian Bureau of Statistics Census figures and reports such as the YSEES.

Council submitted that Mr Spencer's demand and capacity figures were conservative because they:

- do not allow for any increase above preferred building heights
- include variable employment floorspace projections
- do not take into account COVID-19 implications for population growth.

Council added:

Council agrees and submits that planning for MACs on an assumption of infinite growth of every suburb is flawed. The consequence if the Swan Street Activity Centre nears or reaches capacity at or around 2041 is that residential and commercial growth will occur elsewhere, either in Yarra or other municipalities. This is not a bad outcome for Melbourne.

#### **(iv) Discussion**

Clause 11.02-1S seeks to consider residential land supply over a 15-year period on a municipal basis, rather than a smaller scale. The Activity Centre therefore forms part of the overall land supply throughout the municipality. Capacity would be an issue for the Activity Centre if Yarra was unable to achieve sufficient land to meet demand in 15 years.

The Panel is satisfied that Yarra has sufficient land in its municipality to accommodate additional dwellings and employment floorspace to satisfy future demand over the next 15 years. Generally, capacity is not a reflection of actual floorspace that will eventuate over time. However, the Activity Centre has been experiencing robust and larger scale developments and there is no sign of it slowing.

The evidence of Mr Spencer would have benefitted from his assumptions, estimates and forecasts being based on a more current baseline. The Panel understands that it is not always possible to find matching data sets across consistent timeframes to enable more current forecasts. Mr Spencer's conservative approach to his forecasts and the extent of capacity in other parts of the municipality has persuaded the Panel that Council can achieve sufficient residential and commercial capacity to meet demand in 15 years.

The Panel agrees with Council that space is finite and there may be a time when Yarra will no longer be able to achieve 15 years supply in its municipality. This is not the case now.

#### **(v) Finding**

The Panel finds:

- 15-year residential land supply should be considered on a municipal basis.

- The exhibited and preferred versions of the Amendment will contribute towards Yarra providing sufficient residential and commercial capacity across its municipality to meet future demand.

### **3.3 Policy support**

#### **(i) The issue**

The issue is whether there is sufficient policy support to strategically justify the Amendment.

#### **(ii) Evidence and submissions**

Referring to the clauses shown in Chapter 2, Council submitted that there is clear strategic justification to support the Amendment. This included its resolved DDO25, DDO26, DDO27, DDO28 and the rezoning resolved at its 10 September 2019 meeting.

Council explained that the Amendment is consistent with the Planning Policy Framework, including Plan Melbourne, because it would:

- facilitate opportunities for a mix of office, retail, and residential development in an activity centre well serviced by public transport to serve a growing population
- accommodate future housing growth at an appropriate scale and consolidated in an existing urban area
- reduce ongoing living costs by increasing housing supply near public transport and services
- develop sustainable communities by offering convenient access to jobs, services, infrastructure and community facilities
- reduce the number of private motorised trips by concentrating activities
- improve access by walking, cycling and public transport to services and facilities
- ensure the conservation of places of heritage significance
- ensure development responds appropriately to Swan Street's valued heritage character, its heritage streetscapes and other sensitive interfaces
- protect views to key heritage landmarks and the integrity of historical streetscapes
- provide a sound framework for the orderly planning of the Activity Centre, consistent with the directions of Plan Melbourne.

Council considered the Amendment strikes an appropriate balance between:

- achieving housing and overall development growth consistent with its major activity centre classification; and
- protecting the Activity Centre's valued heritage context and public realm.

No submitter requested the Amendment be abandoned due to insufficient policy support. Halastanis Nominees objected to the Amendment but did not explain why.

#### **(iii) Discussion**

The Amendment, based on its robust strategic justification, is supported by an extensive suite of planning policies. These policies have a complicated intersection of interrelated or contradictory objectives related to the Activity Centre. There are policies which seek growth in a major activity centre with three train stations and trams with access to Melbourne's central city, sports precinct and services including medical. There are also policies seeking to

protect an existing heritage precinct for present and future generations. These are intersected by other policies related to issues such as housing affordability and sustainability.

There are many State and local planning policies which support how and where the Heritage Overlay is proposed to be applied to properties with identified local significance. The proposed provisions strike an appropriate balance in achieving development growth in a major activity centre and protecting the Activity Centre's heritage context and public realm. The Amendment proposes changes to Clauses 21 and 22 to make them consistent with the strategic direction in the Swan Street Framework.

State policy and Ministerial Direction 1 support the Environmental Audit Overlay being applied to properties with potential land contamination.

The Amendment will provide the community, Council and permit applicants with a clear planning framework to assess future planning permit applicants. It will guide the Activity Centre to transform into its envisaged scale while making it a place for people to work, live, visit and recreate. The Amendment will deliver net community benefit and sustainable development as required by Clause 71.02-3.

#### **(iv) Finding**

The Panel finds that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework.

### **3.4 Conclusions**

For the reasons set out above, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- will deliver net community benefit and sustainable development, as required by Clause 71.02-3
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

## 4 Heritage

This chapter discusses heritage issues related to the statements of significance, development opportunity and individual places.

### 4.1 Statements of significance

#### (i) The issue

The issue is whether the Yarra High Streets: Statements of significance accurately reflects the Burnley Street Precinct (HO474).

#### (ii) Evidence and submissions

Mr Helms suggested changes to the Yarra High Streets: Statements of significance to better reflect the Burnley Street Precinct (HO474). He suggested that the Burnley Street Precinct:

- add 377 Burnley Street (former Bank of Australasia) and 380 Burnley Street (Shop) because they are individually significant places with an existing statement of significance
- refer to '413-415 Swan Street' rather than '413-15 Burnley Street' under 'What is significant'.

Council agreed to these changes.

#### (iii) Discussion

Like Council, the Panel agrees with Mr Helms' suggested changes.

The properties at 377 and 380 Burnley street have been previously identified as individually significant, have their own statements, and are referred to in the Burnley Street Precinct statement of significance. Acknowledging them in the 'Individually significant places within precincts' section of Appendix A would accurately reflect this.

The shops and residences at 413-415 Swan Street are correctly referenced in the 'Individually significant places within precincts' section but incorrectly referenced as Burnley Street in the Burnley Street Precinct statement of significance.

#### (iv) Conclusion and recommendation

The Panel concludes that the Yarra High Streets: Statements of significance has been prepared appropriately for considering heritage places in the Activity Centre but should:

- refer to 377 and 380 Burnley Street as individually significant places within precincts
- replace 413-15 Burnley Street with the correct address of 413-415 Swan Street.

The Panel recommends:

**Amend the Yarra High Streets: Statements of Significance, October 2017 (GJM Heritage) to:**

- a) **add 377 and 380 Burnley Street as individually significant properties forming part of the Burnley Street Precinct in the 'Individually significant places within precincts' section of Appendix A**

- b) **replace 413-15 Burnley Street with 413-415 Swan Street under ‘What is significant?’.**

## 4.2 Development opportunity

### (i) The issue

The issue is whether development opportunity is relevant when assessing potential heritage significance.

### (ii) Evidence and submissions

Several submissions were concerned that applying the Heritage Overlay would unreasonably impact development opportunity.

For example, Cremorne Properties submitted that the location of 30-40 Swan Street properties opposite Richmond Station and near the Punt Road and Swan Street intersection presented a development opportunity. It considered that this opportunity outweighed “*any potential benefit derived from the heritage nomination*”.

### (iii) Discussion

To consider how development opportunity is relevant to properties with identified heritage significance, the Panel has explored:

- how local heritage significance should be assessed to justify the Heritage Overlay
- if justified, whether the Heritage Overlay restricts development opportunities
- when taking into account the above, whether it is appropriate to consider development opportunity during the planning scheme amendment stage.

### Assessing heritage significance

Planning Practice Note 1 provides guidance on how to identify and assess properties with potential local heritage significance as candidates for the Heritage Overlay. The Heritage Review’s methodology is consistent with that guidance. The extent of assumed development opportunity does not form part of the practice note guidance or the review’s methodology.

There is a distinct difference between assessing the impact of proposed built form provisions and assessing whether a property has sufficient heritage significance to justify the Heritage Overlay. The Heritage Review may inform the built form response, however the extent of development opportunity in no way influences the heritage significance of the identified properties.

Applying development opportunity as a criterion for assessing heritage significance would result in inappropriate outcomes. Not applying the Heritage Overlay to such properties would be inconsistent with state planning policy which seeks to “*protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value*”.

### Does the Heritage Overlay prohibit development?

The Heritage Overlay does not prohibit development. Rather, it ensures that any new development sensitively responds to, and does not compromise the existing heritage fabric identified along and around Swan Street. It achieves this by requiring a planning permit to, among other things, demolish or remove a building, and construct a building or construct or

carry out works. This enables Council to assess development plans and details (forming part of the permit application) to determine whether it appropriately responds to the identified heritage.

#### **Is it appropriate to consider development opportunities at this stage?**

The Amendment seeks to apply the Heritage Overlay to properties with local heritage significance. Any discussion regarding development opportunity is hypothetical during the planning scheme amendment stage because a specific development would need to be assessed through a permit application process when all proposal details are known. It is not possible to determine the extent of development opportunity for each property in the Activity Centre at this stage. Like other properties in the Activity Centre, properties with the Heritage Overlay would be assessed against relevant planning policy and provisions during the permit application stage. This is when the interrelationship between heritage and development opportunity may be relevant.

#### **(iv) Conclusion**

The Panel concludes that development opportunity is not relevant when assessing potential heritage significance but may be relevant during the planning permit application stage.

### **4.3 67 Docker Street**

**Figure 4 67 Docker Street**



Source: Document 8

#### **(i) The issue**

The issue is whether it is appropriate to recategorise 67 Docker Street from a contributory property in the Richmond Hill Precinct (HO332) to non-contributory.

#### **(ii) Evidence and submissions**

Ms Wadsworth, who generally supported the Amendment, did not agree with recategorising 67 Docker Street from a contributory property in the Swan Street Precinct to a non-contributory property. One reason was because it forms part of the historic Docker subdivision. She submitted the building's alterations, while not preferred by many people, are of historic value. Ms Wadsworth added:

At the very least I would like to recommend it be subject to photographic essay, as perhaps should all our historic properties if they are unable to be protected or saved.

Mr Gard'ner supported the proposed categorisation of 65 and 67 Docker Street from contributory to non-contributory because they had been significantly altered. The near-identical alterations include:

- a low rendered wall, probably between the Inter-War and very early Post-War periods
- the verandah and front gardens being filled in with weatherboard cladding
- the original front doors perhaps being relocated to the new cladded frontage
- second storey additions set back about 8 metres from the front boundary, probably constructed in the 1990s
- roofs reclad when the rear additions were constructed.

Mr Gard'ner explained that both buildings had been altered to the point where they no longer demonstrated the contributory elements of the Richmond Hill Precinct defined in the HO332 statement of significance. He noted that the Heritage Overlay would continue to apply to the properties so if a planning permit proposed to demolish either building, Council could apply a permit condition requiring an archival photographic record of the extant fabric.

Council relied on Mr Gard'ner's evidence for this matter.

### **(iii) Discussion**

Whether a property contributes to a heritage precinct depends on whether it demonstrates the elements identified in the associated statement of significance. The scale and nature of alterations are a key determinant.

The Panel considers that 65 and 67 Docker Street have been altered to the point where they no longer contribute to the Richmond Hill Precinct. Their original facades, including the front windows, have been removed from the public realm. The buildings have lost their integrity as intact Victorian cottages.

The Panel notes that a planning permit can require an archival photographic record.

### **(iv) Conclusion**

The Panel concludes that it is appropriate to recategorise 67 Docker Street from a contributory property in the Richmond Hill Precinct (HO332) to non-contributory.

## **4.4 30-40 Swan Street**

**Figure 5** 30-40 Swan Street



### **(i) The issue**

The issue is whether it is appropriate and justified to apply the Heritage Overlay (HO524) to 30-40 Swan Street.

**(ii) Evidence and submissions**

Cremorne Properties which owns, among other properties, 36-46 Swan Street, objected to the Heritage Overlay being applied to 30-40 Swan Street. It submitted that the varying heights, scale and dates of construction of these buildings and their subsequent alterations limit their heritage significance. It considered the buildings to be separated from the balance of the Activity Centre.

Cremorne Properties called heritage evidence from Mr Raworth of Bryce Raworth Pty Ltd. Mr Raworth and Mr Gard'ner considered the proposed Swan Street West Precinct to be significant and intact, and found the inclusion of 36-42 Swan Street to be appropriate.

Mr Gard'ner referred to the Heritage Review which found the four buildings achieved criterion A (historical) and criterion D (representativeness). He explained that they demonstrate the principle characteristics of a major Victorian and Edwardian High Street through their use, visual form, architecture, and construction period. This is the same development period represented in the Swan Street Precinct (HO335).

Mr Gard'ner said that the four buildings varied by one storey. He considered this to be typical of street wall heights found in similar heritage streetscapes throughout the municipality.

After reviewing Mr Raworth's evidence, Cremorne Properties no longer objected to the Heritage Overlay being applied to 30-40 Swan Street.

**(iii) Discussion**

The Panel considers that 30-42 Swan Street form a highly intact heritage precinct. The precinct, while small, plays an important role in demonstrating the early phase of the Swan Street shopping strip's evolution. The Panel accepts the evidence of Mr Raworth and Mr Gard'ner on this matter.

Like most buildings in a predominantly Victorian era shopping strip, the ground level shop fronts have experienced considerable alterations. This is expected with approximately 100-year-old buildings that do not have the Heritage Overlay. The buildings' original first floor façade features, parapets and chimneys continue to enable them to be appreciated as representative examples of Victorian and Edwardian buildings forming part of a broader commercial strip.

The Panel notes that Cremorne Properties no longer objects to the Heritage Overlay being applied to 30-40 Swan Street.

**(iv) Conclusion**

The Panel concludes that it is appropriate and justified to apply the Heritage Overlay (HO524) to 30-40 Swan Street.

## 4.5 57-61 Swan Street (Corner Hotel)

Figure 6 Corner Hotel



### (i) The issues

The issues are:

- whether it is appropriate and justified to apply the Heritage Overlay (HO335) to 57-61 Swan Street (otherwise referred to as the Corner Hotel)
- whether the Corner Hotel should be categorised as an individually significant place
- whether the HO335 statement of significance appropriately reflects the place
- whether the Heritage Overlay should apply to the car park at the rear of the Corner Hotel.

### (ii) Background

The Corner Hotel is currently categorised as an individually significant place in the Richmond Hill Precinct (HO332). The Amendment proposes to remove the Corner Hotel from the Richmond Hill Precinct and include it as an individually significant place in the Swan Street Precinct (HO335).

### (iii) Evidence and submissions

Council submitted that there is documentation which unambiguously establishes that the Corner Hotel achieves criteria A (historical) and G (social) significance as a live music venue. It referred to Planning Practice Note 1 which defines criterion G as “*a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons*”. Council considered the Corner Hotel had a strong and special association with a particular community – its live performing musicians and their audiences.

Council referred to the Heritage Council publication ‘Guidance on identifying places and objects of state-level social value in Victoria’ (Heritage Council guidelines) which explains:

Places of public entertainment can often provide challenges when collecting evidence to demonstrate the existence of a community and the strength of their attachment as the groups who value these places are frequently large, diverse and dispersed. While in many cases strong attachment to a place might be considered self-evident by virtue of the community’s attendance at a regular event at the place, this should not be assumed and evidence in the form of some sort of commentary from the relevant community/s needs to be provided to show that it is the place and its association with the event and not just the event itself that the community values. The other types of evidence that can be presented to build the case that these types of places demonstrate

the three facets of social value could consist of newspaper articles (both archival and contemporary), event programs and attendance records, interviews with organisers and communities who attend the relevant events, oral histories and/or social media surveys or transcripts.

Council submitted that there are many places without built form fabric or architectural significance which satisfy criterion G. It referred to the former Benalla Migrant Camp, Bells Beach Surfing Recreation Reserve, Central Park Stawell, and Festival Hall as examples. Council could see no reason why this State level test could not be applied at the local level.

Council added that all Planning Practice Note 1 seeks is for *“something to be managed”*. It does not require that something to be of architectural significance.

Referring to the Heritage Review, Mr Gard’ner considered the Corner Hotel has historical and social value because it is an important live music venue.

Loubeck, as trustee for the owner and operator of the Corner Hotel at 57-61 Swan Street, was concerned with how the Heritage Overlay was to be applied on that property. It explained that the building is not individually significant because it was rebuilt in the mid-1960s and altered considerably since. Loubeck considered the Heritage Overlay to be inappropriate for protecting social value because it cannot regulate land uses.

Loubeck submitted that the impact of adding further regulation to a live music venue should be better understood before applying the Heritage Hotel to the Corner Hotel site. It added that, should the Heritage Overlay be applied, the statement of significance should provide guidance to not confuse the built fabric with the social significance.

Loubeck called heritage evidence from Mr Raworth of Bryce Raworth Pty Ltd. In his evidence, he considered the Corner Hotel should be included in the Swan Street Precinct, but recategorised as a non-contributory place. He explained:

- the building was built well after the Precinct’s identified period of significance and does not contribute to the heritage streetscape character
- the place is not individually significant because it has no architectural and aesthetic significance and insufficient social value.

Mr Raworth included images of the original hotel building, as shown in Figure 7 and Figure 8 of this report, before it was demolished in 1955 to make way for the current building. He disputed claims in the Heritage Review and by Mr Gard’ner that the building was constructed in the mid-1960s.

Mr Gard’ner and Council referred to the statement of significance which stated the Corner Hotel had live music in the 1980s. This included Pink Floyd guitarist Dave Gilmour with an all-star band known as The Fisherman in February 1988 and Mick Jagger in October 1988.

Several submissions referred to the Corner Hotel ceasing to operate a couple of times after that period. This is recognised in the statement of significance:

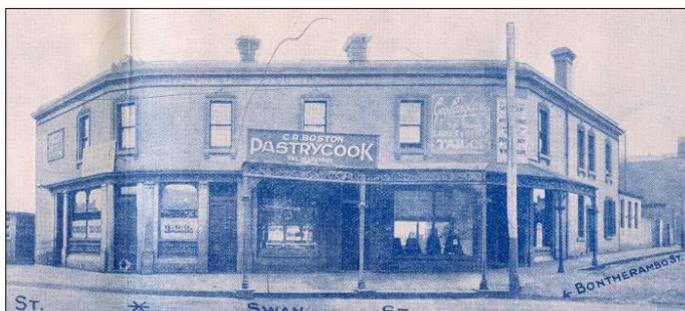
By 1993, The Corner was near-derelict. Biker gangs had claimed the smaller public bar as their own and it had turned into a no-go zone and eventually it was deserted. New owners swooped, and Michael Geoghagen bought the lease in late 1993. He found The Corner "wrecked". The cellars were flooded, he says, the bar was vandalised, the upstairs rooms were damaged and there was evidence of squatters. He spent \$14,000 on renovations, and tried to get the bands back. It worked, to a degree, but Geoghagen left The Corner after only a year, and it lay idle for another six months. Then the current

owners came in, Tim Northeast and Mat Everitt, who bought the place in 1995. The Corner is now universally considered the best medium-sized rock venue in town.

Mr Raworth explained that the Corner Hotel was significantly altered in the 1990s before being further altered in 2016. Alterations over time include:

- an extensive refurbishment of the roof top beer garden
- painting over the face brickwork
- new first floor wall to the Botherambo Street elevation
- most ground floor window openings to Stewart and Wangaratta Streets being infilled
- some windows to the Botherambo Street elevation being enlarged
- changes to a section of the Swan Street elevation where the bottle shop once existed.

**Figure 7** Original Corner Hotel building in its c1869 form



Source: Mr Raworth's evidence

**Figure 8** c1925-40 aerial photograph of Richmond showing the original Corner Hotel



Source: Mr Raworth's evidence

Mr Raworth considered the Amendment provided an opportunity to review the Corner Hotel's existing category as an individually significant place.

Mr Raworth said that the 1953 plans<sup>9</sup> shown in his evidence did not appear to provide for live music performances. He found one source which indicated live music performances from 1983. He acknowledged the Corner Hotel had social value as a live music venue to certain members of the community but considered it was too recent to be sufficiently significant.

At the Hearing, he explained that about 30 years of live music at the Corner is not sufficient to achieve historical association because the social value should be for a historic activity. It should not be for a current activity. Mr Raworth referred to the former Bennetts Lane venue

<sup>9</sup> Plans sourced from Public Records Victoria

which he said, hosted some of the finest jazz musicians. He added that nobody sought the Heritage Overlay for that property.

The Panel sought Mr Raworth's thoughts on the fact that the Precinct Hotel had 17,208 followers on Facebook whereas the Corner Hotel had 72,015 followers. He considered this to be an indication of communication rather than a measure of how people valued the Corner Hotel, as sought by criterion G.

During cross-examination, Mr Raworth cited Festival Hall and the former Commonwealth note printing office (now Australian Catholic University) as examples of places of social and historical significance without building fabric. He explained that these are state level examples and he could not think of any local level example.

Mr Raworth recommended that the Heritage Overlay exclude the car park behind the Corner Hotel. He found that it had no heritage value and forms part of the surrounding mixed industrial streetscape to the north.

Mr Gard'ner did not support the rear car park being excised from the Heritage Overlay. He explained that this would contradict established practice for mapping the Heritage Overlay. He referred to Planning Practice Note 1 which advises:

The Heritage Overlay applies to both the listed heritage item and its associated land. It is usually important to include land surrounding a building, structure, tree or feature of importance to ensure that any development, including subdivision, does not adversely affect the setting, context or significance of the heritage item.

...

In many cases, particularly in urban areas and townships, the extent of the curtilage will be the whole of the property (for example, a suburban dwelling and its allotment).

Mr Gard'ner added that, although it has no built form that contributes to the significance of the Swan Street (HO332) and Richmond Hill (HO334) heritage precincts, removing the car park would create a small island of land surrounded by Heritage Overlay but not included in it.

Mr Helms gave evidence<sup>10</sup> that the Corner Hotel:

- has unique characteristics which set it apart from the balance of Precinct 2
- is outside the identified period of the Swan Street Precinct's heritage significance
- makes like or no contribution to the historical, architectural or aesthetic values of the heritage precinct
- has existing and proposed statements which refer to it as an individual place with only historical and social values
- historical and social values are primarily associated with the use rather than the fabric
- is not in the viewsheds of any landmark or State significant buildings.

During cross-examination, Mr Helms agreed that the rear car park, which is on a separate property title, could be excised from the Heritage Overlay. He acknowledged the Amendment did not propose internal heritage controls and that the Heritage Overlay had no provision to compel the property to continue as a licensed venue. Mr Helms considered that there was insufficient evidence to understand whether and how people valued the building.

<sup>10</sup> Document 51

Council responded that the fact the Heritage Overlay does not regulate the land use is not the point. It added the Corner Hotel's fabric clearly communicates its use as a hotel. If the place meets the criteria and threshold for significance, then there is something to manage and the Heritage Overlay should be applied. Council added:

The social significance of the place then becomes a consideration in future decisions about management of the place: whether buildings and works facilitate the ongoing significance of the place as a live music venue; whether demolition and replacement development facilitates the ongoing significance of the place as a live music venue. Those are questions for another day, but ones which should be made having regard to the social significance of the Corner Hotel.

#### **(iv) Discussion**

The Panel was presented with considerable evidence and submission regarding the Corner Hotel. Consistent with this information, the Panel has reviewed:

- what is being assessed
- whether the building is sufficiently intact to be an individually significant place
- if intact, whether it achieves the threshold for historical and social significance as an individually significant place
- if it is not intact, whether it should be included in the Swan Street Precinct
- if included in the Precinct whether it contributes to the heritage streetscape
- whether the car park abutting the Corner Hotel's northern boundary should form part of the place.

#### **What is being assessed?**

The Panel disagrees with the place's statement of significance that the existing Corner Hotel building has made a strong contribution to the commercial and social life of Richmond since the early 1870s. The building fabric which demonstrated where members of the community once gathered and socialised has not existed since the original building was demolished. The Panel accepts Mr Raworth's evidence that the building was constructed in 1955, and not the mid-1960s, as specified in the statement of significance. The Panel has assessed the Corner Hotel as a post-war building constructed in 1955.

#### **Is the 1955 building sufficiently intact?**

The Panel is aware that the property is currently included as an individually significant place in the Richmond Hill Precinct. The Panel has not explored how or when its current categorisation was determined. Rather, it has assessed the property based on existing circumstances and in response to issues raised in submissions and evidence.

The threshold for an individually significant heritage place is higher than a contributory place in a heritage precinct. This includes a relatively higher level of intactness.

The 1955 building has been significantly altered through changes in the 1990s and in 2016. The existing external façade does not inform someone about how hotels were constructed during that era. Its original public bar area no longer exists so it does not represent how people used the hotel during that era. The current building is no longer sufficiently intact to represent its original form or altered 1980s form. The Panel notes that criteria D (representativeness) and E (aesthetic significant) are not proposed for the Corner Hotel, nor are internal controls through the Heritage Overlay Schedule.

The Panel then turned its mind to whether the Corner Hotel can have historical and social significance as an individual place without an intact building.

**Does the Corner Hotel have historical and social significance as an individually significant place?**

The Panel has explored whether the place has something else, other than built fabric, for the Heritage Overlay to manage. The Planning Policy Framework seeks to conserve and enhance only those places which have local heritage significance.

The statement of significance identifies live music on the property in the late 1980s and recognises the building lay derelict until late 1993, with limited success until 1995. Mr Raworth has measured live music at the venue from 1990s and considers that this timeframe is too short to consider the Corner Hotel for heritage. All properties older than today have a history. However, a place should be at least a generation old, or roughly 30 years, to have heritage significance. The Panel accepts the Corner Hotel has had live music for roughly a generation, though disrupted through two closures.

The statement of significance explains that the Corner Hotel is significant because it *“has made a strong contribution to the commercial and social life of Richmond”*. This could be said of any hotel in any local community. The Corner Hotel is different to most other hotels because it is regarded as an iconic live music venue. However, the question is whether this simply reflects its popularity or whether this contribution meets the threshold of local heritage significance.

Whether the Corner Hotel meets this threshold is complicated by:

- the building not being sufficiently intact to enable someone to interpret the original place
- the absence of work to:
  - inform future decisions about what needs to be managed through the Heritage Overlay, if it is not the built fabric
  - provide primary or secondary evidence to confirm that the relevant communities value the place and its association with live music events.

Regarding what needs to be managed, Planning Practice Note 1 advises:

An appropriate test for a potential heritage place to pass in order to apply the Heritage Overlay is that it has ‘something’ to be managed. This ‘something’ is usually tangible but it may, for example, be an absence of built form or the presence of some other special characteristic.

The Panel accepts that there may be unusual circumstances where a place may have a special and intangible characteristic to manage. Council referred to examples of State significance. The Heritage Review and the Amendment would have benefitted from clarifying the place’s special characteristic and its association with live music being sought to be managed.

Regarding evidence about relevant communities, research about whether, and how, patrons value the Corner Hotel building should have informed the citation in the Heritage Review. It would have confirmed:

- the proportion of patrons and musicians who reside within or outside the Yarra municipality
- whether either community value the Corner Hotel for its historical and social association as a place and its association with live music

- whether either community simply go where their favourite music is being played, with little regard to the venue itself.

Based on available information, the Panel considers that the Corner Hotel does not meet criteria A or G and therefore cannot be regarded as an individually significant place.

The Panel disagrees with Loubeck that applying the Heritage Overlay would have affected the ability to operate the venue. The Amendment does not propose to apply internal controls to the Corner Hotel.

### **Should the Corner Hotel be included in the Swan Street Precinct?**

Having found the Corner Hotel is not intact and does not have sufficient historical and social significance as an individually significant place, the Panel explores whether the property should be included in the Swan Street Precinct. Both Mr Raworth and Mr Gard'ner supported the Corner Hotel being included in the Precinct. The Panel agrees.

Mr Raworth believed it should be a non-contributory place while Ms Gard'ner opted for it to be an individually significant place. The Panel disagrees with Mr Gard'ner for reasons outlined above. The remaining categories are contributory and non-contributory.

As a heavily altered post-war 1955 building, the Corner Hotel does not contribute to Swan Street's Victorian or Edwardian era or architectural expression sought to be captured by the updated HO335 statement of significance. The Panel's view is consistent with the Heritage Review, where it found elsewhere that *"223-227 Swan Street are mid to late twentieth century facades which do not contribute to the Swan Street Precinct"*.

The Corner Hotel is surrounded by Victorian and Edwardian era buildings and opposite the former Richmond South Post Office which is on the Victorian Heritage Register. While the site itself does not contribute to the Precinct, any new development may negatively impact on the surrounding heritage fabric. The Panel considers that the Corner Hotel should be included in the Swan Street Precinct as a non-contributory property.

### **Should the car park be included?**

To determine whether the Heritage Overlay should apply to the car park, the Panel has explored:

- whether future built form may negatively affect either the heritage fabric in the Richmond Hill or Swan Street heritage precincts
- whether the car park forms part of the same property title as the Corner Hotel.

The Panel considers that the future built form on the car park is unlikely to negatively affect the heritage fabric in the Richmond Hill and Swan Street heritage precincts. The car park abuts a robust and transforming industrial area that is accommodating greater height. It is 30 metres from the finer grain heritage form along Swan Street.

The car park abutting the Corner Hotel's northern boundary is on a separate property title and does not contain any heritage fabric. The hotel building's blank rear walls along the car park boundary and recesses to enable windows demonstrate that this land did not form part of the original place.

Ministerial Direction 11 requires changes proposed for the Planning Scheme to be justified. The Panel cannot find good reason why the Heritage Overlay is needed to manage future development on the car park or to assess its potential impact on surrounding heritage fabric.

Filling a ‘gap’ between two heritage precincts on a Planning Scheme Map is inappropriate and insufficient justification.

The Panel is not persuaded that a separate abutting vacant property that has been later used as an asphalt patron car park can justify the Heritage Overlay or its inclusion in the Swan Street Precinct. It should not be used as curtilage to the Corner Hotel site simply because it is in the same ownership.

#### **(v) Conclusions and recommendations**

The Panel concludes:

- 57-61 Swan Street does not achieve criteria A (historical) and G (social) significance to justified it as an individually significant place.
- It is appropriate and justified to apply the Heritage Overlay (HO335) to 57-61 Swan Street excluding land currently being used as a car park.
- 57-61 Swan Street should be categorised as a non-contributory property.
- The statement of significance for 57-61 Swan Street should be deleted and the City of Yarra Database of Heritage Significant Areas should be revised to better reflect the place.

The Panel recommends:

**Amend the Heritage Overlay Planning Scheme Map to remove the part of 57-61 Swan Street comprising the car park abutting the Corner Hotel building.**

**Amend the HO335 statement of significance to delete the Corner Hotel from ‘Individually significant places within precincts’.**

**Amend the City of Yarra Database of Heritage Significant Areas (January 2019) to recategorise 57-61 Swan Street from individually significant to non-contributory.**

## **4.6 218 Swan Street**

**Figure 9 218 Swan Street**



#### **(i) The issue**

The issue is whether it is appropriate to recategorise 218 Swan Street (Berties Butcher) from contributory to non-contributory in the Precinct.

**(ii) Evidence and submissions**

Mr Verstoep, a local resident, objected to 218 Swan Street being recategorised from contributory to non-contributory. Reasons for her objection include:

- it was constructed about the 1850s, making it one of the oldest original buildings in Swan Street
- it was originally one of three attached houses (218-222 Swan Street) set back about 3.7 metres from the front property boundary
- the shopfront was added about the 1870s.

Mr Gard'ner referred to the Heritage Review, which assigns a broad construction date range of 1850 to 1890. He referred to the Sands & McDougall Directories which identified butchers occupying the building from 1893. Mr Gard'ner added that the property is proposed to be categorised from contributory to non-contributory because it cannot be appreciated as a reasonably intact Victorian shop. He explained that:

- the pitched roof form had been replaced with a flat roof
- the simple parapet had been partially over-cladded
- the original verandah evident in 1896 plans had been removed
- a cantilever canopy had been added
- the shopfront windows were replaced in the mid-twentieth century.

Mr Gard'ner considered this level of alteration to be more than what is evident of other contributory buildings in the Swan Street Precinct (HO335). He found the building had insufficient integrity to justify being categorised as a contributory element of the Precinct.

**(iii) Discussion**

The Panel agrees with Mr Verstoep that the property has a long history, as acknowledged by the Heritage Review. The building was constructed and altered during the Victorian era – within the timeframe sought to be captured in the Swan Street Precinct. This is evident in the building's brickwork when viewed from the rear.

Subsequent alterations have resulted in the building no longer presenting itself as a Victorian building. The Swan Street Precinct comprises properties which contribute to its theme and era and those which do not but may affect the surrounding heritage fabric. The building at 218 Swan Street has transformed into the latter.

The Panel agrees with the Heritage Review and Mr Gard'ner that 218 Swan Street should be recategorised to non-contributory to reflect its current circumstances.

**(iv) Conclusion**

The Panel concludes that it is appropriate to recategorise 218 Swan Street from contributory to non-contributory in the Precinct.

## 5 Centre-wide issues

This chapter discusses issues common to more than one precinct, related to Clause 21.12, rezonings and the Environmental Audit Overlay.

### 5.1 Swan Street Framework Plan (Clause 21.12)

#### (i) The issue

The issues related to Clause 21.12 are:

- whether the boundary between Precincts 1 and 2 has been appropriately aligned
- whether Precinct 1 should form part of the Richmond Station and broader Cremorne area
- whether there should be six precincts rather than four
- how car park land should be designated in Figure 1 (Swan Street Framework Plan)
- whether the Precinct 4 eastern boundary along the north side of Swan Street has been appropriately aligned.

#### (ii) Background

Figure 1 in the exhibited Clause 21.12:

- divides Precincts 1 and 2 along the Swan Street railway overpass, with 57-61 Swan Street (Corner Hotel) in Precinct 2
- defines the southern boundary of Precinct 1 along the rear of Punt Road and Swan Street properties and Jesse Street
- shows the existing use of car park land (shaded in yellow)
- shows land designated as 'Mixed activity' (shaded in blue):
  - north of the Precinct 1 boundary
  - east of the Precinct 4 boundary.

#### (iii) Evidence and submissions

Loubeck submitted that 57-61 Swan Street (Corner Hotel) should be in Precinct 1 because it considered the Precinct 2 built form provisions to be inappropriate for its property. Loubeck called urban design evidence from Ms Bell of Kinetica and planning evidence from Ms Horsfield of Urbis.

Ms Bell recommended that the Precinct 1 boundary be realigned to include 57-61 Swan Street. She explained the Swan Street Structure Plan included the site in Precinct 1 to articulate its relationship with the rail bridge, Richmond Station and scale and character of the Mixed Use Zone pocket directly north and west. She added:

From a contextual analysis, I consider the Corner Hotel poses a physical difference in character and capacity to the balance of Precinct 2. I also consider that the subject site was included in Precinct 2 not because of its contribution to the turn of the century High Street, but rather its location on the eastern side of the rail bridge, which forms a barrier or break between the two precincts.

Ms Horsfield also referred to the Swan Street Structure Plan which recognised that the Corner Hotel in the context of the Richmond Station Precinct which extended to the mixed use area to its north and west.

Ms Hodyl disagreed that 57-61 Swan Street should be in Precinct 1. She explained that the land is in a continuous frontage of buildings east of the Swan Street rail overpass. She considered the overpass to be a significant logical demarcation between Precincts 1 and 2.

Cremorne Properties called planning evidence from Mr McBride-Burgess of Contour. Mr McBride-Burgess considered there is opportunity for Precinct 1 to be the junction between Richmond Station and two important strategic commercial areas – the Activity Centre and Cremorne Enterprise Precinct to its south. He considered Precinct 1 to be an entranceway to the broader Cremorne area.

Mr McBride-Burgess explained that Cremorne has experienced significant change and is at the ‘front door’ to Richmond Station. He referred to numerous planning permits south of Precinct 1 which propose or have resulted in larger scale developments.

SZM Holdings Pty Ltd, which owns lands near but outside the Activity Centre, considered Richmond Station and the Activity Centre form the key northern gateway to the Cremorne precinct. It explained the Amendment *“has the potential to cement Cremorne’s role as a key location for creative production, employment and innovation in Melbourne”*.

Kellehers Australia requested that Clause 21.12 Figure 1 be changed to include 493-497 Swan Street within the Precinct 4 boundary. It explained that these properties are:

- designated Mixed activity in Figure 1
- in the Commercial 1 Zone
- included in the Swan Street Structure Plan.

Mr Daley considered there should be six precincts rather than four. He sought to use Swan Street as an alignment to separate the north and south sides of Precincts 3 and 4. He explained that the north side of these precincts adjoin low rise residential neighbourhoods which should be protected while the south side adjoins the railway line and can accommodate taller form.

During the Hearing and in relation to Clause 21.12, the Panel questioned how car park land should be depicted in Figure 1, the boundary between Precincts 1 and 2, and the Precinct 4 eastern boundary along the north side of Swan Street.

Council responded that the car park land in Figure 1 should be replaced with a blue shading to designate a future mixed activity role. It explained that the land is to remain in the DDO to guide its future development, even though it is currently in public ownership (VicTrack and Council).

Council proposed to introduce a new designation and colour for land currently designated Mixed activity and outside the precinct boundary. The Hearing version of Clause 21.12 Figure 1<sup>11</sup> designated:

- land north of Precincts 1 and 2 and land east of Precinct 4 ‘Land subject to future strategic work’
- the car park next to East Richmond Station as ‘Potential future public park’
- the other two car parks as Mixed activity.

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<sup>11</sup> Document 187

**(iv) Discussion**

The Panel considers that the Swan Street Framework Plan in Clause 21.12 should be forward looking and informed by the Swan Street Framework. Council's proposed changes achieved this by clarifying the envisaged use of three existing car parks. They also highlight that further strategic work is needed to better understand the relationship between land north of Precincts 1 and 2 and land east of Precinct 4 and the current Activity Centre area. Excluding land beyond the proposed Activity Centre boundary:

- does not affect the integrity of the provisions proposed to be introduced through the Amendment
- would not hinder any future strategic work for the Richmond Station and Cremorne areas.

The Panel considers that the precinct boundaries have been appropriately aligned across four precincts. Precincts 3 and 4 do not need to be further separated along Swan Street because the Swan Street Framework already applies different built form responses for land abutting lower rise residential land uses to the north and the railway line to the south.

The Corner Hotel is located within Precinct 2 boundary, with little relationship to Precinct 1. Whether driving or walking, the Swan Street railway overpass:

- is a significant visual physical barrier between both precincts
- obscures views between the two precincts through its approximately 100-metre long dark tunnel appearance.

The Panel agrees with Ms Hodyl that the railway overpass is a logical demarcation between Precincts 1 and 2.

The Panel does not support the Precinct 4 boundary being realigned to include 493-497 Swan Street through the Amendment because:

- there is insufficient strategic work to support the proposal
- the implications of applying the DDO28 provisions need to be clearly understood
- it is beyond the scope of the Amendment and should be reviewed through a separate process.

**(v) Conclusion and recommendations**

The Panel concludes:

- The Swan Street Framework Plan appropriately applies the precinct boundaries.
- Figure 1 (Swan Street Framework Plan) in Clause 21.12 should be amended to redesignate the car park land to their envisaged use.
- Land north of Precincts 1 and 2 and land east of Precinct 4 needs further strategic work to better understand their relationship with the Activity Centre and should be designated accordingly.

The Panel recommends:

**Amend Figure 1 (Swan Street Framework Plan) in Clause 21.12, as shown in Appendix D5, to:**

- redesignate the car park land to 'potential future public park' and 'Mixed activity'**

- b) redesignate land north of Precinct 1 and 2 and land east of Precinct 4 as ‘Land subject to future strategic work’.**

## **5.2 Rezoning**

### **5.2.1 Centrewide**

#### **(i) The issue**

The issue is whether it is appropriate and justified to rezone all remaining Commercial 2 Zone land in the Activity Centre to the Commercial 1 Zone, as exhibited.

#### **(ii) Evidence and submissions**

Council submitted that the Amendment proposed to rezone all remaining Commercial 2 Zone land in the Activity Centre to the Commercial 1 Zone to allow a greater range of land uses, including residential. It explained that the land proposed to be rezoned is suitable for residential development, based on policy and physical characteristics, and would achieve an employment outcome through the requirement for active ground floor uses. Council considered the rezonings are consistent with the Swan Street Structure Plan, the Yarra Spatial Economic and Employment Strategy and State and metropolitan planning policy.

Mr Armstrong and Ms Wadsworth each objected to the Commercial 2 Zone land being rezoned to the Commercial 1 Zone. Mr Armstrong considered the rezoning would enable apartment towers without respecting or considering the surrounding heritage houses. Ms Wadsworth said the needs of retail activity using the small lanes would clash with new residents accommodate potentially large buildings.

Mr Barnes, a town planner from Hansen Partnership, gave evidence that rezoning the Commercial 2 Zone land to the Commercial 1 Zone was appropriate. He explained that it would:

- provide mixed-use development, including residential, that is currently prohibited
- provide an incentive for further renewal and development in the central and western parts of the Activity Centre.

Mr Barnes said that the rezoning is supported by the Swan Street Structure Plan and YSEES and is consistent with the Yarra Housing Strategy.

Council did not support the Commercial 2 Zone being retained in the Activity Centre. It noted that this zone does not have permanent maximum building heights. Council added that the proposed planning provisions would give the community, Council and permit applicants greater certain and guidance on future built form.

#### **(iii) Discussion**

Rezoning the remaining Commercial 2 Zone land in the Activity Centre to the Commercial 1 Zone forms an important part of implementing the Swan Street Framework. It is consistent with how land is zoned in most of the Activity Centre. The Panel agrees with the evidence of Mr Barnes that the rezoning is appropriate and justified.

The Commercial 1 Zone would require commercial activity on the ground floor while enabling the Activity Centre to increase its housing capacity. The Commercial 1 and 2 Zones do not

specify any maximum building heights therefore any issues associated with potential maximum building heights relate to the DDO schedules. These are discussed further in Chapters 7, 8, 9 and 10.

**(iv) Conclusion**

The Panel concludes that it is appropriate and justified to rezone land in the Activity Centre, as exhibited.

**5.2.2 371 and 375-377 Punt Road and 2-16 Swan Street (Precinct 1)**

**(i) The issue**

The issue is whether it is appropriate and justified to rezone 371 and 375-377 Punt Road and 2-16 Swan Street from the General Residential Zone to the Commercial 1 Zone.

**(ii) Evidence and submissions**

Crestall Nominees Pty Ltd requested that its property at 375-377 Punt Road be rezoned from the General Residential Zone to the Commercial 1 Zone to better reflect its current conditions, use and strategic intent.

Council officers supported the rezoning because:

- the current General Residential Zone does not enable the 27-metre (8 storeys) maximum building height sought through the Amendment
- the properties are in the Activity Centre with good access to the Monash Freeway, services, open space and public transport
- the streets at the rear buffer sensitive residential interfaces to the south
- the properties provide redevelopment opportunities and do not have the Heritage Overlay
- the Yarra Housing Strategy identifies the area as moderate change, suitable for increased residential density and housing diversity.

At its 10 September 2019 meeting, Council resolved to rezone 371 and 375-377 Punt Road and 2-16 Swan Street to the Commercial 1 Zone and notified affected owners of its resolved changes. This included all properties along Punt Road and Swan Street between Rout and Wellington Streets.

Council did not receive any objecting submission to the proposed rezoning.

**(iii) Discussion, conclusion and recommendation**

Rezoning 375-377 Punt Road to the Commercial 1 Zone is clearly logical. The General Residential Zone provisions may have once been appropriate for the site, however its current mandatory maximum building height does not reflect the existing and relatively new building built form.

Rezoning 371 and 375-377 Punt Road and 2-16 Swan Street to the Commercial 1 Zone would address the issue of multiple zones on individual lots. From a procedural perspective, submitters had an opportunity to express their views on these proposed rezonings.

The Panel concludes that 371 and 375-377 Punt Road, 2-16, and 14 Swan Street should be rezoned to the Commercial 1 Zone.

The Panel recommends:

**Rezone 371 and 375-377 Punt Road and 2-16 Swan Street to the Commercial 1 Zone.**

### **5.2.3 65 and 67 Docker Street (Precinct 2)**

#### **(i) The issue**

The issue is whether it is appropriate and justified to rezone 65 and 67 Docker Street from the Commercial 1 Zone to the Neighbourhood Residential Zone.

#### **(ii) Evidence and submissions**

In his heritage evidence, Mr Gard'ner commented that the Commercial 1 Zone applied to 65 and 67 Docker Street whereas the Neighbourhood Residential Zone applied to properties immediately to the north. In his view, he considered the zoning for 65 and 67 Docker Street to be an anomaly and suggested they be rezoned to the Neighbourhood Residential Zone.

Council provided no view on the suggested rezoning in its closing submission.

#### **(iii) Discussion**

There may be strategic and fundamental reasons why the Commercial 1 Zone applies to 65 and 67 Docker Street. Ministerial Direction 11 requires a planning authority to comprehensively evaluate the strategic basis for changes proposed in the Planning Scheme and the outcomes it produces. For fairness, directly affected owners need to be notified and notified of something as serious as rezoning their property.

The Panel does not support rezoning 65 and 67 Docker Street through the Amendment because:

- it needs to be strategically justified
- the Swan Street Framework did not recommend this change
- the change is beyond the scope of the Amendment
- affected owners have not been notified and provided with an opportunity to respond.

#### **(iv) Conclusion**

The Panel concludes that 65 and 67 Docker Street should remain in the Commercial 1 Zone because it is inappropriate to rezone them through the Amendment.

### **5.2.4 493-497 Swan Street (Precinct 4)**

At its 10 September 2019 meeting, Council noted that in preparing the Amendment, it acknowledged that there was strategic justification to maintain the Commercial 1 Zone at 493-497 Swan Street.

The Panel acknowledges that Kellehers Australia did not seek to rezone 493-497 Swan Street and considers this matter to be outside the scope of the Amendment.

## 5.3 Environmental Audit Overlay

### (i) The issue

The issue is whether the methodology for applying Environmental Audit Overlay (EAO) is appropriate.

### (ii) Evidence and submissions

Council sought the views of the Environment Protection Authority (EPA) when preparing the Amendment. In January 2019, EPA responded with:

... EPA has concerns with the broad application of the EAO to all land parcels subject to the current rezoning, without adequate justification that individual parcels are potentially contaminated.

Later that month, Council advised EPA that it had amended the application of the EAO. In early February 2019, EPA responded that it was satisfied and sought no further changes. The Amendment was exhibited accordingly. EPA prepared a submission, confirming that its changes appear to have been made and that Council had conducted a *“rigorous process to determine the EAO extent in accordance with the planning policy as outlined in Ministerial Direction 1 and the General Practice Note – Potentially Contaminated Land (DSE, 2005)”*.

Zagame Group, which owns 408-442 Swan Street, submitted:

It is proposed to apply an EAO to the subject site. A review of the appropriateness of this proposal is being undertaken by a contaminated land specialist. This should be completed within the next two weeks. We reserve the right to challenge the application of the EAO, pending the outcome of this review.

### (iii) Discussion

The Panel has reviewed how the EAO is proposed to be applied to properties in the Activity Centre against Ministerial Direction 1 and Planning Practice Note 30. The Amendment appropriately proposes to apply the EAO to properties which will introduce sensitive land uses and may have potential land contamination. This is consistent with the matrix in Planning Practice Note 30 and is consistent with Ministerial Direction 1.

The Panel notes that Zagame Group did not pursue its potential issue any further.

### (iv) Conclusion

The Panel concludes that the methodology for applying the Environmental Audit Overlay is appropriate.

## 6 Design and Development Overlay

This chapter addresses the following key centre-wide issues common to the Design and Development Overlay:

- Schedule structure
- Mandatory provisions
- Building height requirements
- Upper level setbacks
- Building separation requirements
- Heritage design requirements
- Overshadowing provisions
- Application requirements.

### 6.1 Schedule structure

#### (i) The issue

The issue is whether the Amendment should proceed on the basis of a single DDO schedule or four separate DDO schedules.

#### (ii) Background

The exhibited Amendment proposed a single DDO schedule (DDO 17) to apply to the entire Activity Centre. DDO17 divided the Activity Centre into four separate precincts and included separate built form requirements for each precinct.

After exhibiting the Amendment, Council proposed to divide DDO17 into four separate DDO schedules (DDO25, DDO26, DDO27 and DDO28). Each DDO schedule relates to a separate precinct designated in the exhibited DDO17.

#### (iii) Evidence and submissions

Several submissions criticised the form and drafting of DDO17 on the basis that it was poorly structured, vague, complex and repetitive. For example, Icon Developments Australia Pty Ltd considered DDO17 to be *“poorly drafted, cumbersome and difficult to interpret”*.

In response, Council redrafted DDO17 into four separate DDO schedules and simplified the structure of the provisions. Council submitted this approach was ‘policy neutral’ as DDO17 had four distinct sections for each precinct. It explained the revised schedules took account of recommendations and outcomes from the Yarra Planning Scheme Amendments C220 and C231 panel reports.

The four separate DDO schedules were prepared as Council’s resolved DDO schedules.

Changes to DDO17 included:

- replacing the word ‘must’ with the word ‘should’ where the design requirement is preferred (discretionary)
- amending section 1.0 (Design objective) to ensure they are precinct specific and translated from the Swan Street Built Form Framework
- amending section 2.2 (Design requirements) to include:
  - a new theme heading ‘Building separation requirements’

- a new theme heading 'Design quality requirements' locating all the discretionary, design-based requirements together
- the following discretionary requirement under the theme, Street wall and setback requirements: *"On corner sites where two different street wall heights are nominated, buildings should 'turn the corner' and apply the Swan Street wall height. If the Swan Street wall is higher it should transition to the lower nominated street wall height on the side street"*
- deleting section 2.3 Precinct design requirements and relocating content elsewhere
- amending Interface I to round down from 11.5 metres to 11 metres
- amending Plan 1: Height and Interface Plan to increase the designated height of some sites from 27 metres to 28 metres, where relevant
- amending Figure 1 to round down the rear boundary wall height from 11.5 metres to 11 metres.
- amending Interface B, C and J to replace the words *"match the parapet height of the taller adjoining heritage building"* with the words *"match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building"*
- amending the Height and Interface Plans to shift the upper-level building breaks to align with title boundaries or with the north-south vehicle access points.

DDO26 (Precinct 2) Section 2.3 (Building Separation) included the following requirement:

Development above 21 metres should provide an appropriate side setback to provide spacing between buildings in order to maintain views to the sky from Swan Street and from resident properties adjacent to the development.

Further specific changes are identified in Chapters 7 to 10 of this report.

Council notified all submitters, landowners and occupiers directly affected by the Amendment of its resolved DDO schedules and provided opportunities for further submissions on the redrafted documents. There were no submissions objecting to the revised format of the DDO schedules.

Council called planning evidence from Mr Barnes of Hansen Partnership. He gave evidence that:

In my opinion the use of four DDOs rather than one is an improved outcome for the Amendment. It simplifies the wording of the Amendment and clarifies where controls are discretionary or mandatory.

The application of four DDOs has the benefit of allowing specific 'design objectives' to be set out for each precinct. However, it does result in added duplication within the planning scheme, as definitions, permit requirements etc, have to be restated in each DDO. However, in my mind, the simplicity of the Amendment in relation to each precinct, overcomes that disadvantage.<sup>12</sup>

#### **(iv) Discussion**

The Panel agrees that the structure of the resolved DDO schedules is a significant improvement on the exhibited DDO17. A separate DDO schedule for each precinct provides the opportunity for precinct specific design objectives and provisions. This strengthens the design objectives and provides greater clarity and certainty regarding the intent of outcomes.

<sup>12</sup> Document 6, para 118-119

The Panel commends Council for:

- proactively responding to submissions and the learnings from recent planning scheme amendments with similar issues
- notifying all submitters and affected landowners and occupiers of its resolved DDO schedules, which resulted in no objection.

The Panel agrees with Mr Barnes that separating DDO17 into four separate DDO schedules is a sound approach and improves the Amendment. This approach provides a more consistent approach to the drafting of provisions in the Planning Scheme. The various refinements to each schedule's drafting have generally helped improve the readability, clarity and efficiency of the provisions. The Panel recommends further minor drafting changes in Chapter 11. No expert witness considered the restricted DDO schedules to be inappropriate.

Council's resolved version of the DDO schedules include various changes to the exhibited DDO17 but does not transform the Amendment into a different planning scheme amendment.

#### **(v) Conclusion and recommendations**

The Panel concludes that content in the exhibited DDO17 should be separated into four schedules relating to each of the precincts in the Activity Centre.

The Panel recommends:

**Replace Design and Development Overlay Schedule 17 with:**

- a new Design and Development Overlay Schedule 25, which includes planning provisions relevant to Precinct 1 (Richmond Station)**
- a new Design and Development Overlay Schedule 26 which includes planning provisions relevant to Precinct 2 (Swan Street Retail Centre)**
- a new Design and Development Overlay Schedule 27 which includes planning provisions relevant to Precinct 3 (Swan Street East)**
- a new Design and Development Overlay Schedule 28 which includes planning provisions relevant to Precinct 4 (Burnley Station).**

## **6.2 Mandatory provisions**

### **(i) The issue**

The issue is whether the proposed mandatory provisions for specified building heights, street wall heights and setbacks, upper level setbacks and overshadowing are appropriate and justified.

### **(ii) What does the Amendment propose?**

The Amendment proposes to apply a combination of discretionary and mandatory built form provisions in the Activity Centre.

Mandatory provisions are generally proposed:

- in locations with intact heritage buildings and streetscapes
- in locations with a sensitive interface with low scale residential properties
- to protect the footpaths of designated streets from overshadowing.

Specifically, mandatory provisions have been proposed for:

- upper level setbacks for heritage buildings in Interfaces B, C, D and J in Precincts 1, 3 and 4
- street wall heights in Interfaces B and D in Precinct 2
- upper level setbacks in Interfaces B, C and D in Precinct 2
- building heights on the north and south side of Swan Street in Precinct 2, and on the north side in Precincts 3 and 4
- solar access to footpaths along Swan Street, Church Street and Burnley Streets.

### **(iii) Background**

Planning Practice Notes 59 and 60 are relevant when considering mandatory provisions.

#### **Planning Practice Note 59**

Planning Practice Note 59 (The Role of Mandatory Provisions in Planning Schemes) applies to all locations, including activity centres. It notes that:

- Victorian planning schemes are predominately performance based
- a performance based provision provides for flexibility in the approaches or variation in the measure to achieve the required outcome
- performance based provisions require a judgement to be made to assess and decide whether a proposal meets the relevant objectives or achieves an appropriate balance between competing planning policies
- mandatory provisions are the exception
- a mandatory provision must be met and provides for no opportunity to vary the requirement
- there will be circumstances where mandatory requirements will provide certainty and ensure preferable and efficient outcomes (these cannot be common practice)
- some examples where mandatory provisions may be appropriate include areas of high heritage value, and strong and consistent character themes.

Planning Practice Note 59 specifically refers to built form provisions such as building heights and setbacks, and sets out the following criteria to assist in determining whether mandatory provisions are justified:

- Is the mandatory provision strategically supported?
- Is the mandatory provision appropriate to the majority of proposals?
- Does the mandatory provision provide for the preferred outcome?
- Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?
- Will the mandatory provision reduce administrative costs?

Planning Practice Note 59 notes that the DDO is the most appropriate tool for expressing mandatory built form requirements.

#### **Planning Practice Note 60**

Planning Practice Note 60 (Height and Setback Controls for Activity Centres) provides guidance about built form provisions in activity centres. It notes that:

- height and setback provisions can be appropriate so long as they are not aimed at restricting the built form, but at facilitating good design outcomes

- proposed height and setback provisions must be soundly based on the outcomes of strategic research and background analysis that demonstrates consistency with state and regional policy and includes a comprehensive built form analysis
- a council will need to demonstrate that any proposed height and setback provisions allow for an appropriate level of change over time
- height provisions must not encumber a centre's ability to accommodate community requirements for retail, commercial, housing, community, health, educational and other essential requirements.

Planning Practice Note 60 advises:

A council will need to demonstrate that proposed height and setback controls are based on identifiable objectives or outcomes. Proposed height controls must be selected as a result of undertaking a comprehensive built form analysis that achieves the following:

- identifies significant opportunities for change within an activity centre and explores alternative built form objectives and outcomes to accommodate this change
- includes an analysis of visual and amenity impacts, solar access and overshadowing impacts and any impact on environmental conditions within the centre, including in respect of wind
- identifies any significant physical features, such as views to or from the activity centre or topography that needs to be considered
- identifies and articulates how new development should address street frontages and laneways or relate to adjacent residential areas
- selects appropriate heights and built form outcomes at a precinct level through evaluation of built form objectives, land use outcomes and economic growth consistent with state and regional policy.

Planning Practice Note 60 confirms that the application of discretionary provisions, combined with clear design objectives and decision guidelines is the preferred form of height and setback provisions. It states that built form provisions can be discretionary or mandatory or a combination of both.

Consistent with Planning Practice Note 59, Planning Practice Note 60 states:

Mandatory height and setback controls ... will only be considered where they are supported by robust and comprehensive strategic work or where exceptional circumstances warrant their introduction.

Mandatory height or setback controls should only be applied where:

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

Where mandatory provisions are proposed a council will be assessed against all of the following:

- Consistency with state and regional policy
- Currency of work
- Capacity to accommodate growth in the activity centre.

Where mandatory provisions are proposed over most or all of the entire activity centre, rigorous strategic justification should include a housing strategy and an activity

centre/economic strategy which examines the role of the centre as part of a network of centres.

Planning Practice Note 60 also discusses what is meant by ‘exceptional circumstances’:

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

...

- significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values
- significant physical features, such as views to or from the activity centre or topography, where it can be demonstrated that discretionary controls would be inadequate to deliver the desired built form objectives or outcomes for the activity centre
- sites of recognised State significance where building heights can be shown to add to the significance of the place, for example views to the Shrine of Remembrance and major waterways.

Where exceptional circumstances are identified, mandatory height and setback controls should only be applied where they are absolutely necessary to achieve the built form objectives or outcomes identified from the comprehensive built form analysis. Where mandatory controls are proposed, it will need to be demonstrated that discretionary controls could result in an unacceptable built form outcome.

#### **(iv) Evidence and submissions**

Council submitted that the Amendment included a combination of mandatory and discretionary provisions to address specific elements of the character of the Activity Centre. It said most of the proposed provisions were discretionary and included:

- street wall heights in all precincts except Precinct 2
- heights adjacent to the railway corridor in Precincts 2 and on south side of Swan Street in Precincts 3 and 4
- street wall setback in interfaces A, F, G, H, I
- upper level setbacks in interfaces A, E, F, H, I
- corner site requirements
- residential interface requirements
- building separation requirements
- vehicle and pedestrian access arrangements
- design quality requirements.

Council submitted that mandatory provisions were only applied in limited circumstances and in accordance with the guidelines set out in Planning Practice Notes 59 and 60. It considered that the Amendment meets all of the ‘tests’ outlined in Planning Practice Note 60. That is:

- exceptional circumstances exist
- Council has undertaken comprehensive strategic work and has demonstrated that mandatory provisions are appropriate in the context
- mandatory provisions are absolutely necessary to achieve the preferred built form outcomes and exceeding these development parameters would result in unacceptable built form outcomes.

Council said that exceptional circumstances existed in the Activity Centre because of the heritage qualities of the area generally, the setting and views to the local landmark of the

Dimmeys building including its clock tower and ball, and the sensitive residential abutments to the north.

Council explained that the heritage qualities were recognised through the existing Heritage Overlay and the Victorian Heritage Register (VHR) registration of three important buildings:

- the Former Richmond Post Office at 90-92 Swan Street (VHR H0082, HO357)
- Dimmeys at 140- 160 Swan Street (VHR H2184, HO360)
- Former State Bank at 216 Swan Street (VHR H732, HO288).

Council noted the Activity Centre's heritage significance is documented through:

- the Statement of Significance for the Swan Street Precinct (HO335) which refers to the 'highly intact streetscape'
- the Heritage Study
- evidence of Mr Gardner and Mr Helms
- submissions of the Royal Historical Society of Victoria and National Trust of Australia (Victoria).

Council submitted that its robust and comprehensive strategic work justified the proposed mandatory provisions. This included the Swan Street Structure Plan, Swan Street Framework, extensive heritage analysis and assessment and detailed modelling. Council added the Housing Strategy, the SEES and the capacity analysis evidence provided by Mr Spencer provided appropriate and supporting contextual assessment of how the Activity Centre fitted in with the broader network of activity centres. Council submitted that:

- the strategic work was consistent with State and regional policy to intensify Swan Street as an inner city major activity centre while balancing the protection of the heritage character of the centre, the quality of the public realm and the amenity of adjoining residential areas
- the Built Form Framework involved a detailed review of the Structure Plan
- there will be sufficient capacity in the Activity Centre and in Yarra's activity centres more generally to accommodate residential and commercial demand for a 15 year horizon and beyond.

Council submitted that achieving certain and consistent built form outcomes was necessary to protect the unique heritage and streetscape characteristics of the Activity Centre and the amenity of its immediately abutting properties. It added, when tested by 3D modelling, the design objectives of the DDO schedules which relate to sensitive heritage buildings, residential interfaces and public realm considerations will only be achieved through the selected application of mandatory provisions for building height, street wall, upper level setbacks and overshadowing.

Council referred to the recent 5-storey development at 125-133 Swan as an example of a site with a relatively shallow lot depth, excessive overall new building height and insufficient upper level setbacks to the Swan Street heritage street wall. This was an example why the proposed mandatory provisions in Precinct 2 were "*absolutely necessary*".

Council submitted that if development of this height and upper level setback were reproduced for the four blocks between Carroll and Waverley Streets, flanked by even taller forms to its east and west, that the prominence of the heritage street wall would be irretrievably lost. The heritage character of the historic high street would be overtaken by new, tall development that would diminish the special and distinct qualities of this significant place.

Council acknowledged that Planning Practice Notes 59 requires demonstration that exceeding mandatory provisions would result in unacceptable built form outcomes. It considered:

- this should not be treated as an inflexible 'rule' that must be satisfied without exception for all land in every precinct before mandatory provisions can be applied
- a broader assessment is required, otherwise there would be no precinct-wide mandatory provisions in any planning scheme.

Council referred to a wide range of other recent planning scheme amendments in the City of Yarra and elsewhere in metropolitan Melbourne that introduced a combination of mandatory and discretionary built form provisions in activity centres. It submitted:

- mandatory provisions are not incompatible with intensifying the highest order activity area in Victoria
- mandatory provisions have been approved for other major activity centres, notwithstanding their important strategic role
- the criterion of 'absolute necessity' has been satisfied in other cases without demonstrating a site-by-site or case-by-case basis that any other outcome would be unacceptable
- the threshold for approval of mandatory provisions is high, but not out of reach when a suitable body of recent, thorough and informed analysis has been undertaken
- comparable settings in terms of heritage values and sensitive interfaces have been regarded as suitable for mandatory provisions.

Council also referred to the DELWP Activity Centre Pilot Project (Better Height Controls in Activity Centres 2017-2018), in which Council participated with the Johnston Street Neighbourhood Activity Centre. It said although the 'Key Findings Report' affirmed that preferred maximum height provisions are generally effective, the report also noted:

- precedents can be set by previous approvals
- consideration of off-site impacts can vary in decision making
- mandatory height provisions do not necessarily inhibit development.

Council explained the Pilot Project resulted in:

- permanent mandatory provisions for Johnston Street and interim mandatory provisions for Moonee Ponds
- broadening the criteria for introducing mandatory provisions in activity centres in Planning Practice Note 60.

Mr Barnes, Mr Gard'ner, Mr Helms and Ms Hodyl all agreed that the proposed mandatory provisions were justified and appropriate.

Mr Barnes considered the Amendment to be consistent with Planning Practice Notes 59 and 60 and explained:

- Council has undertaken comprehensive strategic work and is able to demonstrate that mandatory controls are appropriate in parts of Swan Street and they are strategically supported.
- Mandatory controls are necessary in some parts of Swan Street to ensure acceptable built form outcomes.
- Mandatory controls will be appropriate for the majority of proposals.
- Mandatory provisions will reduce administrative costs.
- There is a clear logic and rationale as to those parts of Swan Street where mandatory controls have been applied. Mandatory controls generally relate to heritage areas

and to land along the north side of Swan Street, where greater building height or lesser setbacks would either overshadow the footpath on the southern side of the street, or unreasonably impact on the amenity of adjoining residential areas.

- Discretionary controls have been applied to those parts of Swan Street which are less sensitive.<sup>13</sup>

Mr Gard'ner considered the proposed mandatory provisions had a sound strategic basis and would:

- clearly implement a policy of protecting the consistent streetscapes in Swan Street, particularly within Precinct 2
- respond to views to, and the setting of, landmark and State significant buildings including the Dimmeys Clocktower.

Mr Gard'ner noted the Dimmeys Clocktower is recognised in the 'Landmarks and Tall Structures Policy' at Clause 22.03 of the Planning Scheme.

Mr Helms peer reviewed the Heritage Review completed by GJM Heritage and stated:

- there is a sound strategic basis for the proposed mandatory provisions having regard to the planning policy framework
- the provisions will implement a policy of protecting the consistent streetscapes in Swan Street, and views to and the setting of landmark and State significant buildings
- the provisions are appropriate and will lead to the outcomes prescribed in the vast majority of cases (such as consistency of street wall, visually recessive development and protection of views to landmarks) and will avoid the risk of adverse outcomes
- the provisions will resolve divergent views when a consistent outcome is required, and will avoid the risk of adverse outcomes due to development pressure
- development applications in the Activity Centre provide evidence of development exceeding the proposed provisions resulting in inappropriate outcomes
- having regard to the heritage significance of Swan Street and the above matters, the proposed mandatory provisions qualify for the 'exceptional circumstances' cited in Planning Practice Note 60.

Ms Hodyl supported the strategic rationale for applying the mandatory provisions because:

- they applied to most of Precinct 2 where the existing heritage streetscape is largely intact
- they applied to the northern side of Swan Street in Precincts 3 and 4 to protect the amenity of adjoining low-scale areas
- they were applied as an upper level setback from the street above the street wall in all precincts
- they were applied to overshadowing provisions to protect solar access to the southern footpath along Swan Street
- discretionary provisions were used outside the Heritage Overlay and away from sensitive interfaces.

Many submissions objected to the mandatory provisions. They consider the provisions should be discretionary with respect to their land. Many of these same submissions also objected to the proposed metric.

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<sup>13</sup> Document 6, para 113

Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd submitted:

- the Victorian planning system is built on the assumption that discretionary provisions are, in all but the most exceptional circumstances, the preferred method of planning regulation
- discretionary provisions allow for flexibility to respond to the individual constraints and opportunities of land, and to deliver tailored outcomes that maximise net community benefit
- the fact that mandatory provisions have been approved in another activity centre tells us nothing about whether they are justified in the Swan Street Activity Centre
- Amendment C220 and C231 Panel Reports relate to radically different strategic and physical contexts and in lower order activity centres which are very different to the Swan Street major activity centre
- achieving a net community benefit in a major activity centre must commence with an expectation that the centre will accommodate significantly increased densities beyond the densities proposed in lower order centres and any reduction in that density should be rigorously scrutinised to ensure it is absolutely necessary
- allowing more people to live and work in and around Swan Street will deliver all the numerous benefits that flow from urban consolidation in a higher order, inner urban activity centre
- the community costs of underdevelopment are extremely high and these costs must be properly accounted for, and measured against, the costs of built form impacts that are said to flow from allowing for higher buildings, or lesser setbacks
- there was no evidence that discretionary provisions have, to date, led to unacceptable outcomes in Swan Street
- the most definitive study of mandatory provisions in activity centres (the Activity Centre Pilot Program) found that discretionary heights were generally effective
- where mandatory provisions are proposed, the burden of persuasion that those provisions are absolutely necessary lies upon those who propose them, in this case the Council
- the requirement to demonstrate that a mandatory provision is absolutely necessary extends not just to the nature of the control itself, but to the specific metric that is proposed
- the Tract modelling is problematic and should not be relied upon
- expert evidence called by Council is inconsistent, lack rigour and detailed analysis
- Mr Spencer's capacity analysis is superficial and inadequate
- the proposed mandatory provisions are inconsistent with Planning Practice Note 60.

Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd called Mr Raworth, who gave heritage evidence that the upper level setback in Precinct 1 should be discretionary. They also called Mr McBride-Burgess who did not support the mandatory building heights and setback provisions in Precinct 2. He considered that discretionary provisions coupled with appropriate objectives, requirements and decision guidelines along with performance based tests would be sufficient to guide future development in this location.

Pelligra Build Pty Ltd owns land on the north side of Swan Street between Stawell Street and Belgravia Street, in Precinct 4. It submitted that:

- the Heritage Overlay does not apply to the land and the area has no consistent built form character
- the justification for any mandatory built form control is limited to:
  - managing the amenity impacts at the residential interface and providing for a scale that is compatible with the adjoining one and two storeys residential context
  - achieving solar penetration to the southern footpath of Swan Street
- the residential interface in the vicinity of the subject land is robust
- Council does not seek a mandatory rear interface control, which undermines any justification for a mandatory height control based on the need to preserve residential amenity
- development of the subject land (and other sites) above the 24 metre proposed mandatory height control can occur without any unreasonable adverse amenity consequences
- mandatory provisions for this site are contrary to State planning policy supporting higher density development in and around major activity centres.

Pelligra Build called expert evidence from Mr Linke and Ms Roberts, who both agreed that mandatory provisions were not appropriate for 471-473 Swan Street.

Killara Quest Pty Ltd did not support mandatory height or overshadowing provisions for its properties in Precinct 4 because they would result in development constraints and missed opportunities. It said discretionary provisions would ensure creative design solutions and architectural freedom can be contemplated and full development potential can be realised for each site. Killara Quest referred to the approval at 484-486 Swan Street as evidence for applying the discretionary provisions.

Swan Street Sales Pty Ltd objected to the proposed mandatory height, setback and overshadowing provisions proposed to various properties on the north side of Swan Street in Precinct 4. It adopted the position of Cremorne Properties, Swan-Lennox and Pelligra Build but emphasised:

- the bar is set high in terms of the justification required to demonstrate that mandatory height provisions are appropriate
- Council needs to demonstrate that exceptional circumstances exist, or that the mandatory provisions are both absolutely necessary to achieve the objectives that are sought by them and that exceeding the mandatory height would result in acceptable outcomes
- Council needs to demonstrate the need for such provisions for large sites and why they should not be developed to their full potential according to performance based outcomes
- mandatory height provisions are illegitimate and unjustified if they are aimed at restricting the built form, rather than facilitating good design outcomes
- consideration of applying mandatory provisions needs to balance of the full suite of competing policies in favour of net community benefit
- it is appropriate to factor into this balancing exercise the strategic designation of the relevant activity centre – the higher order the activity centre the greater weight should be placed on optimising development capacity and minimising built form constraints

- the eastern end of Swan Street is mixed and variable and does not exhibit a strong heritage or other cohesive character
- there are no exceptional circumstances that warrant mandatory provisions on the Swan Street Sales land.

**(v) Discussion**

The Panel agrees with Council, submitters and expert witnesses that discretionary provisions are the preferred tool in the Victorian planning system. Although a principal focus during the Hearing was on mandatory provisions, the Panel notes that the majority of the proposed requirements are discretionary.

Council has generally applied an acceptable combination of discretionary and mandatory built form provisions to manage the future growth of the Activity Centre. Council has applied a range of discretionary provisions where appropriate and the use of mandatory provisions in circumstances where absolutely necessary having regard to heritage fabric, streetscape amenity and residential interfaces.

The Panel agrees that the Activity Centre exhibits an exceptional character as an inner-city high street shopping and entertainment strip, with important VHR buildings and an acknowledged and recognisable consistency in heritage fabric, particularly within its intact historic core (Precinct 2).

Mandatory provisions have been based on a comprehensive built form analysis that has considered a range of matters including:

- detailed heritage assessments, including peer review
- a multi-disciplinary approach to formulating the provisions
- the desire for high quality urban design outcomes
- 3D modelling (noting the issues discussed in Chapter 1.4).

The Panel is satisfied that this work has been completed to a satisfactory standard sufficient to warrant and justify the proposed mandatory provisions. It acknowledges that some of this work was criticised by various parties throughout the course of the Hearing, however the Panel considers that Council should be commended for what has been a generally thorough and comprehensive approach to the formulation of the provisions.

The proposed mandatory provisions are aimed primarily at addressing:

- the minimum metrics required to protect heritage buildings and the heritage streetscape, as appropriate
- the adequate protection of the residential amenity of adjoining residential areas within the context of site constraints
- the protection of solar access to the southern footpath along Swan Street to ensure a high-quality pedestrian environment and opportunities for comfortable outdoor dining and associated experiences.

The various discretionary and mandatory provisions combine to facilitate specific outcomes and the Panel is convinced that, where applied, the mandatory provisions are absolutely necessary to achieve these outcomes. The Panel is satisfied that the mandatory provisions are not aimed at restricting development; rather they are aimed at facilitating good design and heritage outcomes.

The mandatory height and setback provisions will enable an appropriate level of growth and change in the Activity Centre over time. The Activity Centre has the potential for significant growth, consistent with its status as a Major Activity Centre and this was confirmed by a detailed capacity analysis. Over time, it will experience substantial change and the provisions recognise and facilitate a high level of change in many parts of the centre.

Submissions and evidence that promote growth in the Activity Centre with no or few limitations fail to give appropriate weight to the policy directions of Plan Melbourne and the Planning Scheme that support the creation of distinctive, attractive, liveable places. Planning has an important role in facilitating high growth and high-quality design outcomes. As has been demonstrated by Council, the Swan Street Activity Centre is an example where some mandatory provisions are required to ensure acceptable outcomes.

There is a very real risk that the existing high-quality heritage buildings and streetscapes in Swan Street could be overwhelmed by new development and debased without careful planning. The sensitive residential interface to the north also requires special consideration given the likely pressure for increased height in these areas as the Activity Centre grows. Similarly, solar access to the footpath on the southern side is appropriately controlled by mandatory provisions and further discussion on this issue is provided in Chapter 6.7 of this report.

The Panel agrees with Council that planning for these issues needs to be considered on a precinct basis. It is concerned that discretionary provisions alone would reduce the quality of the heritage streetscape, amenity of the residential interface and solar access to the south side of Swan Street through a series of piecemeal and cumulative planning decisions.

The Panel has considered the need for mandatory provisions in the Activity Centre based on its specific circumstances. The Panel has reviewed the various other panel reports referred to by parties, but notes that every activity centre is unique and built form provisions need to be carefully considered with respect to the nuanced differences and similarities between centres.

Council has made an appropriate case for introducing mandatory provisions, consistent with Planning Practice Notes 59 and 60.

Discussion regarding the specific metrics for various provisions is provided in later sections of this report.

#### **(vi) Conclusion**

The Panel concludes that the mandatory provisions for specified building heights, street wall heights and setbacks, upper level setbacks and overshadowing are justified and necessary unless specified otherwise in this report.

### **6.3 Building height requirements**

#### **(i) The issue**

The issue is whether the building height requirements are appropriate and justified.

## **(ii) Background**

Clause 2.3 of the DDO schedules include 'Building height requirements' that provide guidance when exercising discretion to exceed the preferred building height specified on the 'Height and Interface Plan'.

Council's resolved version of the building height requirements stated:

A permit should only be granted to construct a building or construct or carry out works, which exceeds the preferred building height shown in the Height and Interface Plan 1 of this schedule where all the following requirements are met to the satisfaction of the responsible authority:

- the built form outcomes that result of the proposed variation satisfies the design objectives in Clause 1.0 of this schedule, the relevant design requirements specified in this schedule; and
- the proposal achieves each of the following:
  - greater building separation than the minimum requirement in this schedule;
  - housing for diverse households types;
  - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58;
  - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58;
  - excellence for environmentally sustainable design measured as a minimum BESS project score of 70%;
  - no additional amenity impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height; and
  - provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms.

Additional provisions specify exemptions for architectural features, service equipment and other similar matters where structures may exceed the preferred or mandatory height.

At the Hearing, Council proposed several changes to the building height requirements.

## **(iii) Evidence and submissions**

Council submitted that:

- the building height requirements are discretionary and are not pre-conditions to approving height over the preferred height
- all the requirements should be met in order for a building to exceed the preferred building height
- not all requirements have a direct nexus with building height.

Council added that, in circumstances where a permit application seeks to exceed the preferred height, it is reasonable and commonplace that additional benefits are provided either for the benefit of the development itself (such as building separation, communal open space, end-of-trip facilities) or for the community more broadly (such as diverse housing, Environmentally Sustainable Design, no additional amenity impacts).

Council submitted that the proposed provisions were consistent with Strategy 17.2 of the planning scheme and cited a range of other examples where similar provisions exist, including:

- Stonnington Planning Scheme Activity Centre Zone
- Moreland Planning Scheme Activity Centre Zone

- Melbourne Planning Scheme, DDO63 (Macaulay Urban Renewal Area, Kensington and North Melbourne).

Council noted that similar provisions were considered and supported for the Johnson Street Neighbourhood Activity Centre in the Amendment C220 panel report.

Ms Hodyl gave evidence that:

- the requirements lack clarity on their strategic rationale
- the proposed provisions do not define specific quantities of each requirement
- high design quality should not be seen as a ‘bonus’
- any uplift scheme should be defensible, transparent and fair
- the proposed provisions could lead to unintended consequences.

Ms Hodyl recommended that the provisions be replaced with the following requirements:

- the proposal leads to an improved overall design outcome that cannot be achieved by complying with the preferred maximum building height
- the proposal does not introduce additional amenity impacts to adjacent properties or the pedestrian experience within the public realm.<sup>14</sup>

Mr Biles identified several issues with the Council resolved provisions, including that:

- they apply to different land uses
- some of the requirements are easily assessed while others are very subjective
- there is only one test (the second last dot point dealing with amenity impacts) that deals with the impacts of additional height.

Mr Biles concluded that the test for exceeding a preferred height should require:

- minimal additional amenity impacts to residentially zoned properties or the public realm, beyond that which would be generated by a proposal that complies with the preferred building height.<sup>15</sup>

In response to questions from the Panel, Mr Biles indicated that he intended that only the text of the second last building height requirement be revised (from “*no additional amenity impacts..*” to “*minimal additional amenity impacts..*”) and that he was happy for all of the other requirements to remain.

Mr McBride-Burgess stated that, having regard to the content of the provisions, it appeared as though only residential buildings could exceed the preferred height. For example, he noted that a non-residential building would have difficulty in providing ‘housing for diverse household types’.

Council responded that the building height requirements are intended to apply to residential and non-residential development. In its closing submission, Council provided an updated version of the provisions that addressed the issue raised by Mr McBride-Burgess. The revised structure and wording differentiate which provisions are applicable to all development and which are specific to residential development. It states:

A permit should only be granted to construct a building or construct or carry out works, which exceeds the preferred building height shown in the Height and Interface Plan 1 of this schedule where all the following requirements are met to the satisfaction of the responsible authority:

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<sup>14</sup> Document 43, para 188

<sup>15</sup> Document 20, Para 37

- the built form outcome that results from the proposed variation satisfies the design objectives in Clause 1.0 of this schedule and the relevant design requirements specified in this schedule; and
- the proposal achieves each of the following:
  - greater building separation than the minimum requirement in this schedule;
  - excellence for environmentally sustainable design measured as a minimum BESS project score of 70%;
  - no additional amenity impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height; and
  - provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms; and
- where the proposal includes dwellings, it also achieves each of the following:
  - housing for diverse households types;
  - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58; and
  - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58.

Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd submitted that all the requirements should not need to be met and that the wording should be revised to refer to a proposal achieving one or more of the specified dot points.

#### **(iv) Discussion**

The Panel supports the broad approach of the building height requirements. Consistent with the Amendment C220 panel conclusions, the Panel considers that higher built form should not be a reward for meeting a requirement. If a development is to exceed the preferred maximum height, it should be a good development and the requirement should specify what a good development is in this context.

Some of the requirements are not clearly defined and would be the subject of debate in relation to each permit application. Although it might be desirable to be more specific regarding these matters, it is noted that all these matters are discretionary. It will always be a matter of balancing up a wide variety of factors when it comes to determining whether a specific proposal should exceed the preferred height.

Importantly, the Panel notes that the building height requirements ensure that built form outcomes that exceed the preferred height should continue to meet the design objectives and the other design requirements in each DDO schedule.

The Panel does not support the recommendations of Ms Hodyl or Mr Biles with respect to this issue. It considers that the proposed provisions are satisfactory.

The Panel agrees with the comments of Mr McBride-Burgess with respect to non-residential uses and supports the changes proposed by Council in its closing submission. These modifications are sensible and ensure that residential and non-residential developments are considered under criteria relevant to their circumstance.

The Panel accepts Council's view that all the building height requirements should be met in order to exceed the preferred height. The Panel emphasises 'should' because they are discretionary. This provides some potential flexibility, if required.

**(v) Conclusions and recommendation**

The Panel concludes:

- It is appropriate for the DDO schedules to include requirements that specify the circumstances when it may be appropriate for a permit to be granted to construct a building or construct or carry out works that exceeds the preferred height.
- The proposed building height requirements are appropriate and justified.
- The building height requirements should be revised to ensure that they apply to residential and non-residential development.

The Panel recommends:

**Amend the building height requirements in the Design and Development Overlay schedules, as shown in Appendices D1, D2, D3 and D4.**

**6.4 Upper level setback****(i) The issue**

The issue is whether the centre-wide approach to upper level setbacks is appropriate and justified in the Activity Centre.

**(ii) Background**

The DDO schedules include provisions regarding the minimum setbacks for upper levels (where 'upper levels' means development above the height of the street wall). The upper level setbacks were exhibited at 5 metres and then varied in the Council resolved version to 6 metres. The upper level setbacks for properties with the Heritage Overlay were proposed as mandatory requirements, while non-heritage properties are discretionary provisions.

The chapter relates to typical upper level setbacks. Specialised site-specific upper level setbacks are generally dealt with in the precinct chapters.

**(iii) Evidence and submissions**

Council submitted that upper level setbacks were a key feature of the Amendment. It explained that a core principle of the Swan Street Structure Plan and the Swan Street Framework was to ensure visually recessive upper levels. This is particularly important in the heritage parts of the streetscape to ensure that heritage buildings are not overwhelmed by new built form.

Council submitted that this was initially translated into the DDO schedules in the heritage design requirements and then later transferred into the design quality requirements with the provision:

Upper level development on land within a Heritage Overlay and on land immediately adjoining a heritage overlay should be visually recessive and not visually dominate the heritage building and the heritage streetscape.<sup>16</sup>

Specific metrics for upper level setbacks were also formulated. This was implemented in the exhibited DDO17 through a 'one-third – two third rule' in conjunction with mandatory and discretionary heights, street wall heights and upper level setbacks of 5 metres.

<sup>16</sup> This issue is dealt with by the Panel in Chapter 6.3

The resolved DDO schedules removed the one-third – two third rule and replaced it with an increased upper level setback (from 5 metres to 6 metres) and some reduced mandatory building heights.

Council submitted that, for visually recessive upper levels behind heritage buildings to be achieved along Swan Street, it was important that the balance sought to be achieved by the resolved DDOs was retained. It explained the mandatory street wall height, 6 metres upper level setback and mandatory heights (except in Precinct 1) work together to ensure that behind and above the heritage street wall, the allowable built form (which will be considerably taller than the existing form) does not overly dominate the streetscape. Council submitted that eroding one or other of the provisions or replacing mandatory provisions with discretionary ones would lead to unacceptable outcomes for all of Precinct 2 if each property development sought to “*push the envelope*”.

Council relied on the evidence of Mr Gard’ner, who explained that:

The 5 metres upper level setback was originally established in the 2014 Swan Street Structure Plan which preceded both the Built Form Framework prepared by Tract and the Heritage Review. Having considered modelling undertaken of other comparable commercial high streets in the City of Yarra, the recommendations included in the Panel Report into Yarra C220 and C231, and the revised modelling for Swan Street using more accurate and realistic base data, I consider that a 6 metres setback is necessary to achieve a satisfactory outcome that retains the visual prominence of the heritage street wall.<sup>17</sup>

Mr Gard’ner was extensively cross-examined about the 6 metres upper level setback metric and maintained it was necessary because:

- it avoids ‘facadism’
- it retains the legibility of the heritage building as being part of a three-dimensional form
- it is typical of the approximate depth of the front room of the shop/residence nineteenth century building type
- approximately 75 per cent of the front chimneys are set back 6 metres or less.

Mr Gard’ner noted that in Precinct 2, the mean depth of the rear face of 50 chimneys that he measured was 5 metres. He said that a 6-metre setback would enable sufficient space around the chimney to ensure that it was retained in a meaningful setting.

Under cross-examination, Mr Gard’ner said that the proposed upper level setbacks were the minimum required to achieve an acceptable outcome. He acknowledged that other submitters thought that the setbacks should be greater (and lesser) but his view was based on detailed consideration of multiple factors. He said there was a significant difference between a 5 and 6 metres upper level setback on heritage buildings given the future potential building heights envisaged in Swan Street. He said a 6-metre upper level setback retained the visual prominence of the street wall.

Mr Gard’ner explained that Swan Street has a very diverse linear streetscape. Although Precinct 2 was a generally consistent and intact heritage streetscape, the other precincts included scattered heritage buildings or small groups of heritage buildings among mid to late twentieth century and more contemporary architecture. Despite these differences, Mr

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<sup>17</sup> Document 8, page 54

Gard'ner said that Swan Street generally demonstrated a consistent 'High Street' typology that needed to be respected. He noted the proposed provisions addressed the cumulative effects of development along the length of Swan Street through the adoption of consistent metrics and conditions.

Mr Gard'ner highlighted the importance of the Dimmeys Tower and how the upper level setbacks had been designed to ensure that the tower retained its prominence and role as a significant landmark. Special upper level setback provisions were proposed on the south side of Swan Street to ensure the views to this site were protected.

Mr Gard'ner also noted that the design of the former Burnley Theatre meant that an upper level setback of 6 metres was inappropriate and it required a setback of 10 metres to ensure the front portion of the building was readily understood in a three dimensional form.

Mr Gard'ner's opined that for development above 18 metres in height, it was desirable to adopt a 45-degree plane sightline test similar to that applied in the Johnson Street Neighbourhood Activity Centre. He said this would ensure that upper levels were recessive to the heritage building. In his view, Mr Gard'ner noted that upper level setbacks were often more important to achieve an acceptable outcome than the building height. He acknowledged that both worked together.

Mr Gard'ner did not accept that alternative treatments such as building colour or materials could substitute for upper level setbacks as it was important to ensure that a heritage building was 'legible' and in context. He pointed to the example at 129 Swan Street where he said despite the retention of architectural decoration, the facade of the building very clearly presents as a thin surface appended to a new development rather than a heritage building with a three dimensional form. He said the loss of context for this facade was an "*unfortunate outcome*" and in his view it meant the property no longer contributed to the significance of the Swan Street precinct. As such, he recommended that the property be re-graded to non-contributory.

Mr Gard'ner (and Council) referred to the Amendment C220 panel report finding regarding the Johnson Street activity centre and concluded:

- a 3-metre upper level setback is unlikely to create a distinct enough street wall
- whether the upper level setback should be a minimum of 5 or 6 metres is a somewhat arbitrary choice
- the Panel preferred a 6-metre setback because:
  - it would better protect heritage buildings
  - it would retain the 'human scale' of Johnston Street
  - the distinction between the street wall and upper levels and would reduce the potential for overshadowing and adverse wind conditions.

Mr Helms supported the overall approach to upper level setbacks adopted by Mr Gard'ner. He supported the 6-metre upper level setback (combined with the reduced building height in Precinct 2) and gave evidence that it achieves a distinct historic street wall with a second wall behind. He said that the combined 5 metre upper level setback and the 'one-third – two third rule' as exhibited in DDO17 had the potential to result in inconsistent outcomes compared to the 'straight' 6 metres upper level approach in the resolved DDO schedules. Mr Helms said this resulted in a 'cleaner' built form, avoided a 'wedding cake' typology and simplified the provisions.

Mr Barnes gave evidence that a key difference between the exhibited DDO and resolved DDO schedules was that the proposed height had been reduced by one storey for some sections along the north side of Swan Street, and that this appeared to be a result of an increased upper level setback from 5 metres to 6 metres and the shallow depth of properties. Mr Barnes did not consider that there was a meaningful difference between an upper level setback of 5 metres or 6 metres from a planning perspective. He had no issue with the exhibited DDO heights.

Mr Barnes supported the distinction of mandatory upper level setbacks in heritage areas and discretionary upper level setbacks in non-heritage areas. He noted that:

From a planning perspective I would normally suggest that consideration be given to a lesser upper level setback in non-heritage areas. However, I understand the depth of urban design testing and modelling that has been undertaken as background to the proposed controls. I understand and am supportive of the need to moderate the impacts of significant and continuous taller built form along the southern side of Swan Street, in the central and western parts of the street. The discretionary nature of the requirement in these locations provides flexibility and distinguishes the requirement compared to heritage areas.<sup>18</sup>

Ms Bell acknowledged that the exhibited 5-metre setback was intended to operate with the one-third – two third principle. She added this combination has since been replaced with a 6-metre setback without an evident rationale. She referred to her experience in preparing the Built Form Framework for Bridge Road and Victoria Streets which applied the following rationale for upper level setbacks:

Where significant heritage fabric is retained or within a significant heritage streetscape, a mandatory upper level setback of 6 metres is recommended to maintain a clear distinction between the heritage fabric and the addition.

Based on this rationale, Ms Bell accepted that the 6-metre upper level setback should be applied to create a clear distinction between the heritage fabric and new additions.

Many submitters contested the proposed upper level setbacks along the Swan Street frontage. Several submitters including the Royal Historical Society of Victoria and the National Trust of Australia (Victoria) considered the proposed upper level setbacks to be insufficient. They said upper level setbacks of 5 or 6 metres did not adequately protect a heritage building and would result in unacceptable facadism. The Royal Historical Society of Victoria submitted that an upper level setback of at least 10 metres was needed to retain the significance of heritage buildings.

Mr Gard'ner responded to this submission in his evidence:

The setting back of new built form a minimum of 6 metres from the retained street frontage will not in my view result in facadism. It is my view that facadism is appropriately defined as occurring when only the principal façade (or façades) of a building are retained while constructing a completely new building behind. The retention of a minimum 6 metres depth behind the front of the building will, in the majority of cases, avoid 'facadism' and will retain the legibility of the façade as being part of a three-dimensional form.

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<sup>18</sup> Document 6, para 143

While a 10 metres (or greater) setback may achieve a 'better' heritage outcome, I consider 6 metres to be an acceptable minimum setback to enable the prominence of the heritage streetscape to be retained.<sup>19</sup>

Council submitted that retaining the entire original building fabric would be inconsistent with the Activity Centre's strategic objectives.

Many other submitters expressed the view that the proposed upper level setbacks were excessive. Some submitted that the metric should remain as the exhibited 5 metres and some also said that the upper level setbacks should be discretionary in heritage areas.

Cremorne Properties sought a 5-metre discretionary upper level setback. It called heritage evidence from Mr Raworth, whose evidence statement indicated support for a 6 metres discretionary provision. At the Hearing, Mr Raworth indicated that he supported a 5 metres discretionary provision as "*a reasonable alternative*". While Mr Raworth did not place as much importance on retaining chimneys as Mr Gard'ner, he agreed in cross-examination and in questions from the Panel that, from a heritage perspective, the greater a setback, the better. He agreed that the taller a building is behind the street wall, then the greater the required setback.

Swan-Lennox Pty Ltd relied on the evidence of Mr McBride-Burgess, who said that in heritage areas in Precinct 2, a discretionary 5-metre upper level setback was appropriate. He said this would provide sufficient separation between retained heritage fabric and new built form above.

Swan Street Sales Pty Ltd submitted that the proposed mandatory 10 metres upper level setback to the former Burnley theatre is a "*blunt tool*" that does not recognise the particular characteristics of the theatre and will impede innovative and flexible design outcomes for the future development of the site.

Pelligra Build Pty Ltd objected to a 6-metre discretionary upper level setback and wanted a 5 metres discretionary provision. It relied on the evidence of Ms Roberts and Mr Linke who said that a 5 metres setback was, in their view, sufficient to distinguish the podium level. Ms Roberts thought upper level setbacks of only 3 metres could be sufficient in some circumstances.

Namreh Properties Pty Ltd objected to the 6-metre discretionary provision. It submitted that the exhibited 5 metre discretionary control should be retained and noted that:

- there is no justification for increasing the upper level setbacks in non-heritage areas
- there is no appreciable urban design difference between a 5 or 6 metres upper level setback in non-heritage areas and therefore the lower setback should be applied
- a discretionary 5 metres upper level setback is appropriate for non-heritage areas.

The Panel was presented with numerous 3D computer models and other images from a variety of submitters and expert witnesses. These covered a range of precincts and purported to show the implications of various metrics on a site or block.

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<sup>19</sup> Document 8, pages 53-54

**(iv) Discussion**

Council has completed a thorough and comprehensive strategic assessment with respect to applying upper level setbacks across all precincts. The Panel understands that this was an iterative process based on factors including:

- the Swan Street Structure Plan
- the Swan Street Framework
- expert heritage advice from Mr Gard'ner
- a peer review of heritage considerations from Mr Helms
- planning panel reports associated with Amendment C220 and C231
- a review of submissions received to the exhibited Amendment
- extensive modelling completed by Tract
- consideration of Planning Practice Notes 59 and 60
- input from the Council's planning department.

Council is commended for a very thorough review of multiple issues and for considering various alternatives and options. The Panel agrees with Council's general approach for upper level setbacks. Council has prepared a reasonable and balanced set of provisions having regard to all of the competing issues.

The Panel has reached its conclusion based on several factors. No single issue has been determinative; rather, it has been the sum of the parts that has been important in ultimately concluding to accept the metrics and the distinction between mandatory and discretionary provisions.

The proposed building heights in the DDO schedules envisage significant growth in the Activity Centre so future growth needs to be carefully managed. Without appropriate care, the impact of new built form on existing heritage buildings has the potential to negatively change the character of the streetscape. The Panel agrees that upper level setbacks are necessary to ensure that the streetscape (in heritage and non-heritage areas) retains a human scale and that upper levels do not overwhelm the public realm.

Good strategic planning takes account of the broader context beyond an individual site and considers the cumulative effect of development on the long linear streetscape and surrounding area. This is an important consideration even in areas that may have relatively modest future heights proposed. The Panel considers that the proposed provisions address this issue with appropriate balance having regard to:

- the status of the Swan Street Activity Centre as a Major Activity Centre, which clearly identifies the need for significant growth
- the need to protect heritage significance
- the need to protect the reasonable amenity of the residential areas to the north of Swan Street from the impacts of growth in the Activity Centre
- the need to retain and enhance the pedestrian scale and comfort of Swan Street in heritage and non-heritage areas
- avoiding a long and narrow 'canyon' of tall development built close to the street wall.

The Panel agrees with Mr Gard'ner that a mandatory 6-metre minimum upper level setback is appropriate in typical areas in Swan Street with heritage buildings. This is the minimum setback to achieve an acceptable outcome for these areas. Having regard to all the information provided and inspections of numerous properties along the full length of Swan

Street, the Panel considers that there is a difference between a 5-metre and 6-metre upper level setback. A 6-metre setback would ensure that the front of the building will be read in a three-dimensional form and retain sufficient heritage features and meaning.

The Panel does not consider that a 6-metre upper level setback will result in facadism. Although a 10-metre setback would ensure retention of more of a heritage building, planning provisions should ensure the minimum needed to ensure an acceptable outcome. The Panel agrees that outcomes like at 129 Swan Street are not acceptable and are an example of why a 6-metre upper level setback is warranted.

The Panel notes that increasing the setback from 5 metres (in DDO17) to 6 metres was in part a function of the removal of the 'one-third – two third rule'. It is important to recognise that the 'one-third – two third rule' had significant implications for the setbacks of upper levels and that it is erroneous to simply compare 5 metres to 6 metres without recognising this. Indeed, if Council was of the view that it should revert back to a 5-metre upper level setback then it should consider the need to also reinstate the 'one-third – two third rule' (or similar) as well.

However, replacing the 'one-third – two third rule' with a simple 6-metre upper level setback will simplify the provisions and continue to result in acceptable outcomes. The Panel does not agree with Mr Gardner that an additional 45-degree sight line test is required for buildings greater than 18 metres.

The Panel considers that a minimum 6-metre discretionary upper level setback is appropriate for non-heritage places. It will ensure a greater potential for consistency in the streetscape while recognising that there may be some circumstances that may warrant a lesser setback. Non-heritage areas have potential for significant additional growth and from an urban design perspective, a 6-metre upper level setback will enhance the rhythm of the built form in a high growth environment. The exhibited DDO17 included the same metric for heritage and non-heritage areas (although at 5 metres) and there is a logic in continuing this principle to maximise the potential for greater consistency in the streetscape.

The findings made by other panels (such as Amendments C220 and C231) provide interesting context. However, the Panel has applied a 'first principles' approach to considering the upper level setbacks for Swan Street and concludes that they are appropriate in the circumstances.

Where relevant, further consideration of site-specific upper level setbacks are provided in the precinct chapters of this report.

#### **(v) Conclusions and recommendation**

The Panel concludes that for typical Swan Street frontages:

- a minimum 5-metre upper level setback is insufficient
- a minimum 6-metre upper level setback is appropriate
- a mandatory minimum 6-metre upper level setback for all heritage properties is appropriate
- a discretionary minimum 6-metre upper level setback for all non-heritage properties is appropriate.

The Panel recommends:

**Amend the upper level setbacks in the Design and Development Overlay schedules, as shown in Appendices D1, D2, D3 and D4.**

## 6.5 Building separation requirements

### (i) The issue

The issue is whether the building separation requirements for all precincts are appropriate and justified.

### (ii) Background

All precincts include a provision that where development shares a common boundary and no interface treatment is shown on Plan 1, setbacks should be provided at a minimum of:

- 4.5 metres where a habitable room window or balcony is proposed
- 3 metres where a commercial or non-habitable room window is proposed.

These provisions are discretionary.

The resolved DDO27 and DDO28 (Precincts 3 and 4) include 'Upper Level Building Breaks' provisions (shown on Plan 1) which require buildings to have side setbacks of at least 4.5 metres from the common boundary where a habitable window is proposed and at least 3 metres where a non-habitable window is proposed. These precinct-specific issues are discussed in further detail in Chapters 9 and 10.

### (iii) Evidence and submissions

Ms Hodyl considered that the building separation requirements:

- ensure that development does not present as a 'wall' of continuous development
- provide adequate internal amenity to the occupants of the buildings.

Ms Hodyl stated that it is a generally accepted urban design principle that as the building height increased, the building separation distance should also increase. She observed that the resolved provisions did not make this distinction and recommended that all buildings taller than 28 metres should be setback a minimum of 6 metres from the boundary (above the street wall). She recommended that:

Where development shares a common boundary and no interface is shown in Plan 1, upper level development should:

- for buildings up to 28 metres (8 storeys), be set back a minimum of 4.5 metres from the common boundary where a habitable window or balcony is proposed
- for buildings up to 28 metres (8 storeys), be setback a minimum of 3.0 metres from the common boundary where a commercial or non-habitable window is proposed.
- for buildings taller than 28 metres (8 storeys), be setback a minimum of 6 metres (this is not dependent on internal use).

These separation requirements should be a preferred outcome, not a mandatory control.<sup>20</sup>

<sup>20</sup> Doc 43, Recommendation 1, para 105

In response to questions from the Panel, Ms Hodyl explained she intended to apply additional setback for buildings taller than 28 metres to all the upper levels of the building, not just that portion above 28 metres.

Council generally supported Mr Hodyl's recommendation, subject to the increased setback only applying to the portion taller than 28 metres.

370 Swan Street Pty Ltd, LPC 10 Nominee Pty Ltd and Mr Zois opposed the changes proposed by Ms Hodyl and submitted that the building separation requirements should remain as shown in Council's resolved version.

Ms Hodyl said greater consideration should be given to the visual impact of high single sided party walls when viewed from the street. She noted that party walls were typically blank concrete that have low visual interest and that once party walls were taller than 6 storeys they became particularly unappealing. She recommended a new discretionary maximum party wall height of 6 storeys in all precincts.

Council did not support Ms Hodyl's party wall recommendation. It submitted that the internal and external amenity impacts of party walls were satisfactorily addressed in other DDO schedule provisions, through other changes recommended by Ms Hodyl regarding greater building separation above 28 metres in height, and the Planning Scheme more generally.

Mr Barnes generally supported the building separation requirements proposed in the resolved versions of the DDO schedules.

No party objected to including building separation requirements.

#### **(iv) Discussion**

The Panel agrees with Ms Hodyl that building separation requirements play an important role in breaking up the visual 'wall' of buildings and also assist in providing appropriate amenity to the occupants of the buildings. The resolved requirements are generally satisfactory, however there should be greater setbacks for taller buildings.

The Panel supports Ms Hodyl's recommended 6 metre setback and threshold of 28 metres, however prefers Council's approach to apply the increased setback to only the portion of a building taller than 28 metres. This is a more balanced approach that will continue to deliver good outcomes.

There is no apparent need to introduce a new requirement to manage the height of party walls through the Amendment.

#### **(v) Conclusions and recommendations**

The Panel concludes:

- It is appropriate to include building separation requirements.
- The proposed building separation requirements are generally satisfactory although they could be improved by providing for greater separation for taller buildings.
- It is not appropriate to introduce a specific provision to limit the height of a party wall.
- Changes to the building height requirements proposed by Council in its closing submission are appropriate and are supported.

The Panel recommends:

**Amend the building separation requirements in the Design and Development Overlay schedules, as shown in Appendices D1, D2, D3 and D4.**

## **6.6 Heritage design requirements**

### **(i) The issue**

The issue is whether it is appropriate and justified to apply the heritage design requirements.

### **(ii) Background**

The exhibited and resolved DDO schedules include heritage design requirements that relate to:

- building facades and street frontages
- upper level setbacks (above street wall height).

The requirements specify general architectural design guidance and apply to land with a Heritage Overlay or land immediately adjoining a Heritage Overlay.

Planning Scheme Clause 22.02 deals with 'Development guidelines for sites subject to the Heritage Overlay'.

### **(iii) Evidence and submissions**

At the Hearing, Council submitted it no longer sought to pursue the heritage design requirements as exhibited or as shown in its resolved version of the DDO schedules. Council said it supported deleting these requirements because:

- it accepted the Panel's findings in Amendment C231 that the heritage design requirements in the proposed DDO16 for Queens Parade duplicate existing provisions in Clause 22.02
- the heritage design requirements for Swan Street duplicate the provisions in Clause 22.02
- Clause 22.02 will be replaced by a new Heritage Policy (Clause 15.03-1L) as part of the rewrite of the Yarra Planning Scheme Local Policies review currently underway through Amendment C269.

The Hearing version of the DDO schedules (Documents 181-184) did not include heritage design requirements.

Mr Gard'ner gave evidence that despite the Amendment C231 panel, there was value in including heritage design guidelines where they augment but do not duplicate existing provisions. He said this was particularly the case while the review of Clause 22.02 and its integration into Clause 15.03-1L was underway.

Mr Helms initially considered the heritage design requirements were not essential, for the reasons outlined by Council. He said this was based on the imminent introduction of the new heritage policy in the Planning Scheme. In his supplementary evidence, he retained his view but noted that as an alternative, the heritage design requirements could be retained in the DDO schedules until Amendment C269 is finalised.

Mr Barnes gave evidence that it was *“somewhat unusual, but not necessarily inappropriate or incorrect, to include requirements in a DDO that relate to land in a heritage overlay”*. Although he said he had *“no issue”* with the heritage design requirements, he acknowledged that the Amendment C231 panel had recommended that similar provisions not be included in that instance.

During the Hearing, Council proposed to relocate two provisions from the heritage design requirements to the design quality requirements. This included a provision in the heritage design requirements that stated:

Upper level development on land within a Heritage Overlay and on land immediately adjoining a heritage building should be visually recessive and not visually dominate the heritage building and the heritage streetscape.

Council submitted that visually recessive upper levels was a core principle of the Swan Street Framework (Principle 4) and that no expert witness disagreed with this key issue.

Mr Gard’ner gave evidence that an additional dot point in the heritage design requirements should be included to encourage the upper level (or levels) of any new development to be set further back from the secondary street wall to encourage a greater level of concealment of ‘penthouse’ or ‘roof top’ elements. He said such a requirement should read:

The top-most level (or levels) of new development should be set further back from the principal heritage frontage and secondary street wall and treated as a penthouse or roof top element.<sup>21</sup>

Council did not support Mr Gard’ner’s recommendation and did not consider it necessary to modify either the heritage design requirements or the design quality requirements with respect to this issue.

Ms Hodyl gave evidence that the heritage design requirement to *“avoid large expanses of glazing with a horizontal emphasis except to ground floor shopfronts”* could inadvertently deliver poor design outcomes that are not complementary to the heritage fabric.

Ms Hodyl said the current character of Swan Street consists of a mix of materials and includes a variety of solids and voids to create a highly articulated and visually interesting streetscape. She said the streetscape does not include large expanses of glass fronting the street.

Ms Hodyl recommended the provision be modified to say:

Avoid large expanses of glazing with a horizontal emphasis in the upper levels of development.<sup>22</sup>

Council supported this slight modification and proposed a new design quality requirement that integrated both heritage related design issues:

Upper level development on land within a Heritage Overlay or on land immediately adjoining a heritage building should:

- be visually recessive and not visually dominate the heritage building and the heritage streetscape
- avoid large expanses of glazing with a horizontal emphasis in the upper levels of development.

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<sup>21</sup> Document 8, para 99

<sup>22</sup> Document 43, para 218

**(iv) Discussion**

The Panel agrees that the heritage design requirements should be deleted from the DDO schedules for the reasons expressed by Council.

The existing Clause 22.02 provisions provide appropriate guidance for developing land with the Heritage Overlay. Many of the provisions in the DDO schedules have been prepared through the lens of a detailed heritage assessment. The combination of the DDO schedules and Clause 22.02 provide a comprehensive set of design requirements for heritage properties.

The broader review of the Planning Scheme associated with Amendment C269 will afford a further opportunity to update municipal-wide heritage guidelines. There is no need to include heritage design requirements in the DDO schedules before Amendment C269 is finalised.

That said, the Panel accepts it is appropriate to transfer the two provisions identified by Council from the Heritage design requirements to the Design quality requirements.

The requirement that upper level development be visually recessive and not dominate the heritage building or the streetscape is a fundamental design principle that is supported. The Panel supports the inclusion of Council's revised requirement and considers that this should sufficiently address the concerns of Mr Gard'ner. The Panel considers that Mr Gard'ner's additional provision is not necessary.

The Panel agrees with Ms Hodyl's subtle change to the wording of the requirement regarding glazing and agrees with Council that this improves the clarity of the intent of the provision.

**(v) Conclusions and recommendations**

The Panel concludes that the heritage design requirements at Clause 2.3 in the DDO schedules are not appropriate and should be deleted.

Two provisions from the Heritage design requirements should be modified and transferred to the Design quality requirements. These provisions should require upper level development within a Heritage Overlay or on land immediately adjoining a heritage building to:

- be visually recessive and not visually dominate the heritage building and the heritage streetscape
- avoid large expanses of glazing with a horizontal emphasis.

The Panel recommends:

**Delete the Heritage design requirements in the Design and Development Overlay schedules, as shown in Appendices D1, D2, D3 and D4.**

**Amend the Design quality requirements in the Design and Development Overlay schedules in accordance with the Panel preferred versions in Appendices D1, D2, D3 and D4.**

**6.7 Overshadowing provisions****(i) The issues**

The issues are:

- whether it is appropriate and justified to apply a mandatory provision which seeks to not overshadow footpaths during specified times at the equinox

- how the overshadowing provisions should be measured.

## **(ii) Background**

The Amendment proposes mandatory overshadowing requirements to the southern side of Swan Street and the eastern and western sides of Church and Burnley Streets. It requires no shadowing within an area 4 metres from the relevant road boundary.

Other overshadowing provisions are required for a range of nominated 'side streets', including Cremorne Street, Lennox Street, Stanley Street, Clifton Street, Docker Street, Mary Street, Coppin Street and Stawell Street. These provisions are discretionary and require no shadowing within an area 2 metres from the relevant kerb.

There are also site-specific discretionary shadowing requirements for two public open spaces – Ryans Reserve in Precinct 4 and a future potential open space near the East Richmond Station in Precinct 2.

All overshadowing requirements relate to between 10.00am and 2.00pm on 22 September.

## **(iii) Evidence and submissions**

Council submitted that protecting the footpath on the southern side of Swan Street was a fundamental planning outcome from the Swan Street Structure Plan. This principle was tested during the formulation of the Swan Street Framework, which states:

This principle is strongly supported in the Built Form Framework Study. Solar access to footpaths is critical to the success of the centre, particularly as retail and hospitality uses intensify. The absence of dedicated public open spaces in the centre means that the footpaths are particularly important.

...

The southern footpath of Swan Street is a key public space in the Activity Centre that will become even more important as the population increases. New development on the north side of Swan Street has potential to overshadow this footpath and will need to be carefully controlled. The Built Form Framework recommends that buildings do not overshadow the southern footpath of Swan Street from 10am at the equinox (22 September).

A footpath width of 4m is identified for Swan Street. Although the existing footpath is narrower in some locations, the 4m width ensures that sunlight is provided to the footpath if it is widened into the future.

...

A number of north-south streets are also identified ... as locations for solar access. These include Church Street, Burnley Street and local streets. The recommendation ensures sunlight is maintained to either the eastern or western footpath between 10am and 2pm at the equinox (22 September). This is applied as a discretionary requirement because of the lower order pedestrian role these streets play.

For Church Street and Burnley Street, a 3m footpath width is identified and for local streets a 2m footpath width is identified.

In addition to the footpaths, two other spaces are recommended for solar access including Ryans Reserve and the potential park adjacent to East Richmond Station.<sup>23</sup>

<sup>23</sup> Swan Street Framework, page 32

Council submitted that the importance of public streets and maintenance of the quality of the streets is, in principle, not a controversial objective or indeed, a particularly unusual one. It said that there was a very real risk that the southern footpath could be continuously shadowed because:

- it has an east-west orientation
- of the length of blocks along Swan Street and the narrowness of side streets
- of the intensity of development anticipated for the Activity Centre.

Council submitted that public places with solar access are a finite and highly valued resource and irreplaceable once lost. It said these places were very vulnerable to cumulative impacts where site specific planning applications are decided on an individual basis and any one proposal only results in a small amount of additional shadow. It submitted that:

Unless one applies the “first in best dressed” principle and only the first few applications are permitted to cast shadow, solar access to public places is very vulnerable to “death by a thousand cuts”. There is no clear threshold at which a tipping point is reached and shadow which was deemed acceptable in a previous application is regarded as unacceptable in a subsequent application.<sup>24</sup>

Council added that for this reason, it was critical that the southern footpath is protected by mandatory overshadowing provisions. It referred to other main east-west streets in inner urban activity centres which have been protected by mandatory solar access provisions, including:

- Coventry Street and York Street, South Melbourne Major Activity Centre (DDO8, Port Phillip Planning Scheme)
- Johnston Street Neighbourhood Activity Centre (DDO15, Yarra Planning Scheme)
- Fitzroy Street, St Kilda (DDO6, Port Phillip Planning Scheme – 6 metres deep and a winter solstice measure).

Ms Hodyl supported the proposed overshadowing provisions and considered the approach to be common and necessary. She noted that same approach has been adopted by numerous Councils. She said that the southern footpath is an important component of the public realm that needs to be protected from overshadowing that detrimentally affects the amenity of pedestrians and outdoor diners.

Mr Barnes supported the overshadowing requirements because:

- streets are the primary public spaces throughout much of the Activity Centre
- their amenity is fundamental to the attractiveness and character of the Activity Centre
- as Swan Street is an east-west street, increased building heights on the northern side can result in a loss or reduction of sunlight
- the proposed date and time of the equinox and 10am to 2pm are reasonable and reflect when many people will be using the street for outdoor leisure
- the use of the street will change over time in accordance with policy directions
- the southern side of Swan Street is the only side of the street that has the potential to receive meaningful levels of sunlight.

He considered the mandatory provisions for the southern footpath to be justified.

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<sup>24</sup> Document 193, para 53

Most of the planning and urban design expert witness supported mandatory solar protection to the southern footpath. Mr Linke, who had a contrary view, did not identify when it would be appropriate to a cast shadow on the footpath without diminishing the quality of the pedestrian realm.

Submitters were concerned with the mandatory nature and metrics of the overshadowing provisions. Pelligra Group, Killara Quest and Swan Street Sales considered the overshadowing provisions should be discretionary.

Numerous submitters were concerned that measuring overshadowing at 4 metres from the southern road boundary did not reflect the width of the existing footpath.

Council submitted that the 4 metres metric originated from the Swan Street Framework. It acknowledged that the footpath width along Swan Street varies in dimension and provided the following examples:

- Precinct 2 – between 2.72 and 3.84 metres
- Precinct 3 – between 2.8 and 5.3 metres
- Precinct 4 – between 1.78 and 2.91 metres.

Council maintained that, although the existing footpath is less than 4 metres wide in some locations, a requirement to protect a width of 4 metres ensures that sunlight is provided to the footpath if it is widened in the future. It also allows for a generous thoroughfare for the clear passage of pedestrians, and space for tables and chairs, street furniture and planting.

Council acknowledged that it had not prepared a comprehensive study into the existing footpath widths and the potential for expansion but submitted that safe-guarding the amenity of the southern side of Swan Street having regard to its future potential was an appropriate strategic objective.

Council submitted that preserving the amenity of footpaths is a common strategic objective across Melbourne and in some instances is combined with the potential widening of footpaths.

Several expert witnesses and submitters considered the existing conditions of Swan Street make it very unlikely that the footpath will be widened to 4 metres. There were submissions that:

- footpath widening would need either private land to be acquired or the carriageway to be narrowed
- footpath widening is extremely unlikely given the existing parking, vehicle movement and tram routes that extend the length of the street
- works associated with footpath widening would involve the substantial and costly relocation of utility services and reconfiguration of kerb, channel and other infrastructure
- in some places, such as the section under the rail overpass at the western end of Swan Street, it is "*fanciful*" to contemplate footpath widening given the existing road reserve and carriageway widths.
- a metric of 4 metres was too onerous and lacked proper justification.

Alternative approaches to the metric were recommended. For example, Ms Roberts stated:

I support the protection of Ryan's Reserve and the footpath from overshadowing however I consider the 'blanket' 4 metres resulting in the potential protection of on-street

car parking to be excessive. I therefore recommend that the overshadowing requirement over the southern footpath of Swan Street (where adjoining Ryan's Reserve) be reworded to define the footpath as 2.5m from the property boundary (or the accurate measured distance averaged across the front of Ryan Reserve if the footpath meanders from a straight course parallel with the property boundary).<sup>25</sup>

In response to questions from the Panel, Ms Roberts conceded that her figure of 2.5 metres related only to the width of the existing footpath and she conceded that in this part of Swan Street there was also a grassy verge between the footpath and the kerb. She did not know the precise measurement of the verge. At the Hearing, Mr Linke acknowledged he had not measured that section of Swan Street but estimated the total width of the footpath and verge to be approximately 3 metres.

Ms Bell gave evidence that at the western end of Swan Street opposite the Corner Hotel the footpath was approximately 3.6 metres wide and that it narrowed as it went under the railway overpass. She recommended that the requirement relate to *"any part of the southern footpath of Swan Street measured from the property boundary to 1 metre from the kerb"*.<sup>26</sup> She said this was acceptable because if a person stood at the kerb, only their ankles would be in shadow. In response to questions from the Panel, she was not able to identify where this metric had been used in other locations.

In her evidence statement, Ms Hodyl recommended deleting the words *"unless the overshadowing would not unreasonably prejudice the amenity of the public space"* from the overshadowing provisions. Ms Hodyl explained this would remove a subjective assessment criterion that did not sufficiently consider that the design and use of public space changes over time.

Council did not support Ms Hodyl's recommendation and submitted that the resolved DDO provisions will assist in guiding discretion.

Council further submitted that if the Panel was not satisfied that protection of a 4-metre future footpath width was required as part of this Amendment, then:

- the overshadowing provision should nonetheless remain mandatory
- the period of 10am to 2pm on the equinox should remain the designated time and date for protection
- at the very least, the existing footpath width should be protected as measured from the boundary of the footpath to the existing kerb.

#### **(iv) Discussion**

The Panel agrees that solar access to footpaths is critical to the success of the Activity Centre, particularly as retail, hospitality and residential uses intensify. Limited dedicated open spaces near the centre means that the footpaths are particularly important.

The Panel agrees that it is important to protect the amenity of the southern footpath. Overshadowing from tall development on the north side of Swan Street would have a significant and irreversible impact on the southern footpath.

The Panel considers the equinox to be reasonable for measuring solar access for footpaths in the Activity Centre.

<sup>25</sup> Document 22, para 62

<sup>26</sup> Document 17, para 144

The Swan Street Framework provides a satisfactory justification for applying mandatory provisions on the southern footpath. The Panel considers it is appropriate to apply a consistent mandatory overshadowing provision across the entire length of Swan Street. Mandatory provisions will help avoid the ‘death by a thousand cuts’ scenario discussed by Council. It is clear to the Panel that mandatory provisions are absolutely necessary along Swan Street.

The Panel does not support overshadowing being measured within 4 metres of the southern road reserve boundary of Swan Street. Council has not provided sufficient justification for this metric. Although it is mentioned in the Swan Street Framework, there is no technical analysis to justify 4 metres.

It became apparent at the Hearing that Council has not completed any detailed analysis of the existing footpath conditions and it has no strategic plan to progressively widen the footpaths. The Swan Street footpath widening may be an aspirational goal of Council, but it needs to complete a more comprehensive assessment of the opportunities, constraints and viability of these works before mandatory provisions purporting to implement such a goal are introduced into the Planning Scheme.

The Panel agrees that widening the Swan Street southern footpath to 4 metres is likely to be problematic. It is unrealistic to assume that, at this stage, any footpath widening will occur. On this basis, the Panel prefers an alternative metric.

The Panel supports the extent of shadowing avoiding the area defined from the property boundary to the existing kerb. This protects the existing footpath (and any verge) from shadowing. If Council extends the width of the footpath in the future, the extent of the ‘protected area’ will, by definition, also be extended.

For consistency, the Panel considers it is appropriate to adopt the ‘kerb’ measure across all the overshadowing requirements in the DDO schedules.

The Panel does not support Ms Hodyl’s recommended changes to the discretionary provisions. It agrees with Council that it is appropriate to have some level of guidance as to when discretion may be exercised.

The Panel has considered all built form provisions in the DDO schedules based on mandatory overshadowing provisions to the footpath on the south side of Swan Street.

The Swan Street Framework states that discretionary provisions are appropriate for Burnley Street and Church Street “*because of the lower order pedestrian role these streets play*”. The Panel considers there is no strategic basis for mandatory overshadowing provisions for Burnley Street and Church Street. These streets should have discretionary provisions.

#### **(v) Conclusions and recommendations**

The Panel concludes:

- The amenity of identified footpaths should be protected through overshadowing requirements.
- Mandatory overshadowing requirements are appropriate and justified for the Swan Street southern footpath.
- Discretionary overshadowing requirements are appropriate and justified for all other identified footpaths.

- The metric for defining the area for solar access should be revised for all streets and should relate to the area between the property boundary and the existing kerb.
- The use of the equinox between 10.00am and 2.00pm as the measure for solar access is appropriate.

The Panel recommends:

**Revise the overshadowing requirements in the Design and Development Overlay schedules, as shown in Appendices D1, D2, D3 and D4.**

## **6.8 Application requirements**

### **(i) The issue**

The issue is whether it is appropriate and justified to require a desktop wind effects assessment for a permit application proposing a building taller than 15 metres.

### **(ii) Evidence and submissions**

Council called evidence on wind engineering from Mr Eaddy of MEL Consultants. He gave evidence regarding 'environmental wind conditions' in the area subject to the Amendment.

Mr Eaddy stated:

- he supported the DDO schedule decision guideline for a permit application relating to "*the wind effects created by the development*"
- wind conditions have a significant influence in the success of streetscapes as safe and attractive places
- a performance assessment of the wind conditions should be completed at the time of a development application
- the DDO schedules do not require a permit application to include a desktop or wind tunnel study wind effects assessment
- a desktop wind effects assessment should be required for all permit applications proposing a building 15 metres or taller
- the assessment should be undertaken by a suitably qualified person and a report provided that assesses the wind conditions in the surrounding streetscapes against recognised pedestrian wind comfort criteria
- if the proposed development does not achieve the relevant criteria, then Council can manage the process through the 'request for further information' process and require the applicant to undertake wind tunnel model measurements to quantify the environmental wind conditions and the effectiveness of wind mitigation strategies.

Mr Eaddy recommended an Application requirement in all DDO schedules that states:

A desktop wind effects assessment for the proposed development when the building is 15 metres or higher from natural ground level.<sup>27</sup>

Council supported the conclusions of Mr Eaddy and agreed to include the application requirement. No party objected to this recommendation.

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<sup>27</sup> Document 12, page 17

**(iii) Discussion**

The parent DDO enables specific application requirements to be included in its schedule. There were no application requirements included in any of the exhibited or resolved DDO schedules.

The Panel accepts the evidence of Mr Eaddy and agrees that wind can play a significant role in the safety, comfort and enjoyment of outdoor spaces. Given the expected level of development in the Activity Centre, it is appropriate to consider the effects how new buildings will affect wind patterns.

Mr Eaddy's recommendation is measured and proportionate to addressing the effects of wind on development. A desktop wind assessment is an appropriate starting point and further information can be provided during the permit application process, depending on the results of the desk-top assessment.

**(iv) Conclusion and recommendation**

The Panel concludes that it is appropriate and justified to require a desktop wind effects assessment for a permit application proposing a building 15 metres or higher from natural ground level.

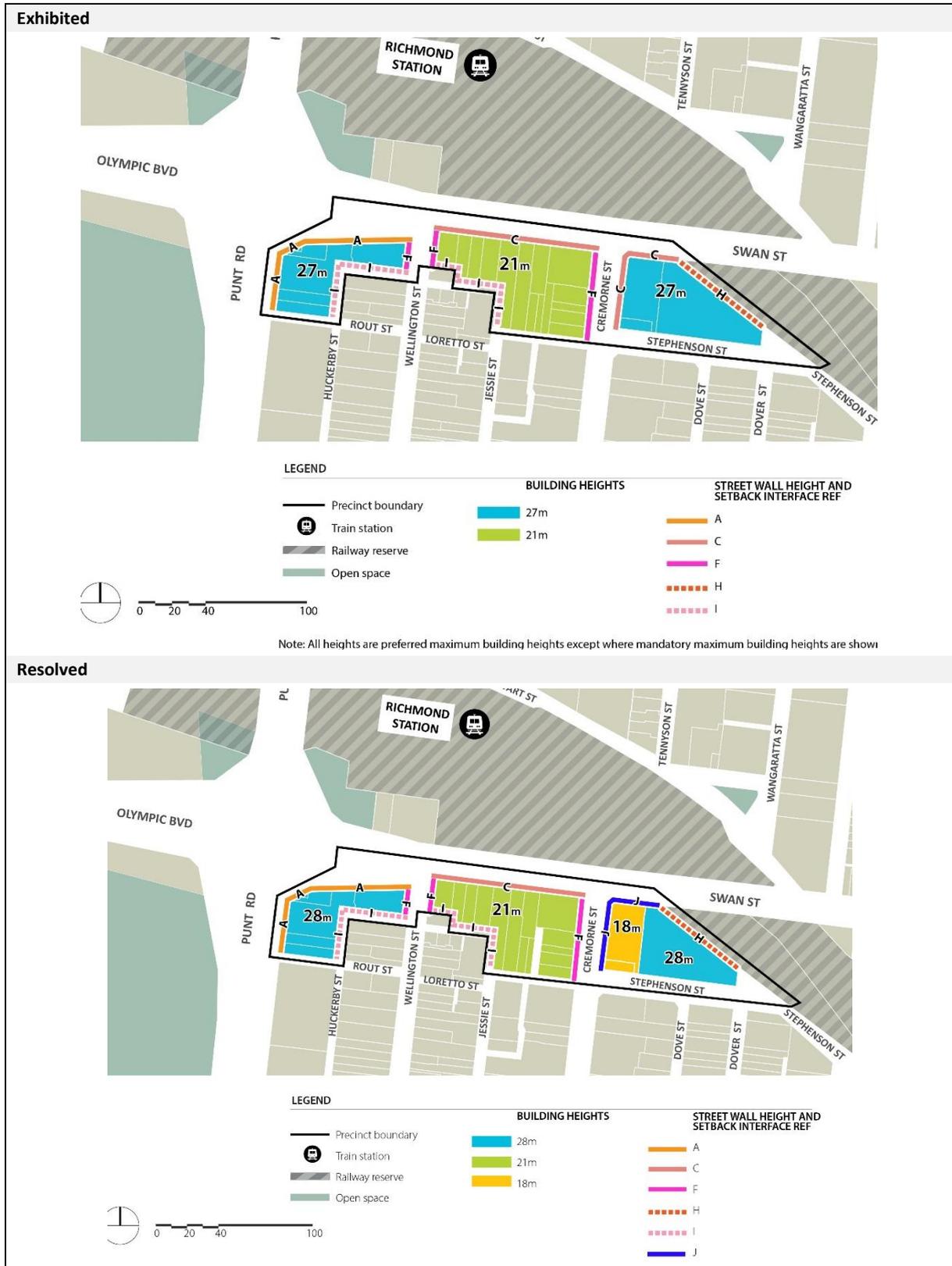
The Panel recommends:

**Include an 'Application requirement' in the Design and Development Overlay schedules that requires a desktop wind assessment for a permit application for a development at 15 metres or higher, as shown in Appendices D1, D2, D3 and D4.**

# 7 Precinct 1 – Richmond Station

## 7.1 What is proposed?

Figure 10 Precinct 1 exhibited and resolved building heights and street wall interfaces



**Table 5** Precinct 1 exhibited and resolved planning provisions

Height and interface plan and street wall heights and setbacks			
IR	Design Element	DDO17 exhibited requirements	DDO25 requirements
A	Street wall height	<b>Preferred:</b> 21m maximum	<b>Preferred:</b> 21m maximum
	Street wall setback	<b>Preferred:</b> 0m	<b>Preferred:</b> 0m
	Upper level setback	<b>Preferred:</b> 5m minimum	<b>Preferred:</b> 6m minimum
C	Street wall Height	<b>Preferred:</b> 11m maximum or the parapet height of the adjoining individually significant or contributory building if higher than 11m. 8m minimum. Match the parapet height of the taller adjoining heritage building.	<b>Preferred:</b> 11m maximum. 8m minimum. Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	<b>Mandatory:</b> 0m	<b>Mandatory:</b> 0m
	Upper level setback	<b>Mandatory:</b> Minimum 5m for individually significant heritage buildings.	<b>Preferred:</b> Minimum 5m elsewhere. Any part of a building above the street wall must be designed to ensure that it occupies no more than one third of the vertical angle defined by the whole building in the view from a sight line of 1.7m (on the opposite side of the street).
F	Street wall height	<b>Preferred:</b> 11m minimum.	<b>Preferred:</b> 11m minimum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 3m minimum.	<b>Preferred:</b> 3m minimum.
H	Street wall height	<b>Preferred:</b> N/A.	<b>Preferred:</b> N/A.
	Street wall setback	<b>Preferred:</b> 0m minimum unless setback is identified on Plan 2.	<b>Preferred:</b> 0m minimum unless setback is identified on Plan 2.
	Upper level setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
I	Side and rear wall height	<b>Preferred:</b> 8m maximum on a common boundary with a property in a residential zone. 11.5m maximum if boundary abuts a laneway.	<b>Preferred:</b> 8m maximum on a common boundary with a property in a residential zone. 11.5m maximum if boundary abuts a laneway.
	Upper level setback	<b>Preferred:</b> Development must be setback in accordance with Figure 1 and Figure 2. Development must minimise repetitive stepped form.	<b>Preferred:</b> Development must be setback in accordance with Figure 1 and Figure 2. Development must minimise repetitive stepped form.

### What is sought for Precinct 1?

The exhibited preferred future character for Precinct 1 at Clause 21.12 states:

Precinct 1 – is an exciting place anchored by the Richmond Train Station with shops, entertainment uses and alfresco dining areas that is a destination for visitors and the workers and students from the surrounding employment and education uses in Cremorne. The entry to the centre is more defined with high quality contemporary buildings that wrap the corner with Hoddle Street. Looking east the Precinct Hotel and other heritage buildings sit comfortably next to more contemporary buildings that reflect a similar scale at street level with new development above and behind a well defined street wall.

## 7.2 Design objectives

### (i) The issue

The issue is whether the Precinct 1 design objectives proposed since exhibiting the Amendment are appropriate.

## (ii) Background

The exhibited DDO17 included 'General Design Objectives' for all of the Activity Centre. After DDO17 was restructured into four separate schedules, Council prepared specific objectives for each precinct.

The Precinct 1 design objectives seek:

- To create an entry to the activity centre, anchored by Richmond Station, that is defined by high quality, contemporary buildings that wrap around the corner from Hoddle Street into Swan Street.
- To provide taller street walls on Swan Street, west of Wellington Street to define the entry to the Activity Centre.
- To maintain the prominence of the Precinct Hotel on the corner of Cremorne Street and Swan Street within the streetscape.
- To improve the pedestrian environment and amenity of the streetscape along Swan Street and the streets leading to Cremorne through activated ground floor frontages and improvements to the public realm.
- To support a new mid rise scale built form character with lower built form at the interfaces with streets and the adjoining low rise residential areas.

## (iii) Evidence and submissions

Council submitted that the design objectives were based on and are consistent with the Swan Street Framework, which conveys the intention for the corner of Punt Road and Swan Street to support "*higher change required to deliver new future character*" and for properties east of Wellington Street to support a "*higher change responding to existing character*".

Council submitted that the intent was to have two distinct areas of change.

Ms Roberts and Mr McBride Burgess considered that the land between Wellington Street and Cremorne Street should be treated as part of the western entry to the Activity Centre, although they did not recommend any specific changes to the design objectives.

Ms Roberts said that it would be more appropriate to have taller buildings and street walls in the central portion of Precinct 1, consistent with the land on the corner of Punt Road and Swan Street.

## (iv) Discussion

The Panel accepts that the design objectives are satisfactory and based on a sound strategic base.

The Swan Street Framework identifies Precinct 1 as an area of 'higher change'. The key difference is that the western portion is to deliver a 'new future character', while new development in the central and eastern portions are to respond to the 'existing character'. The Panel considers the distinction based on the heritage buildings in the central and eastern sections of the precinct to be a reasonable proposition.

The Panel notes that a design response to the existing character of an area does not in and of itself require a lower height than in an area where a new character is preferred. This is demonstrated in the far eastern end of the precinct where there is a preferred maximum building height of 28 metres in an area required to respond to existing character, which is the same preferred height for the western end of Precinct 1 (which is located in a new future character area).

It is important to note that the design objectives do not call for building height to define the entry to Precinct 1. Indeed, the design objectives are silent about building height or the need for different building heights to be achieved in any part of the precinct to distinguish an entry to the area.

The second objective refers to “*taller street walls on Swan Street, west of Wellington Street to define the entry to the Activity Centre*”. The objective clearly relates to street walls. In this respect, the Panel notes this objective is translated into the DDO schedule with Interface A having a maximum street wall height of 21 metres, which is significantly greater than any other interface type in the precinct.

Further discussion regarding building height is provided in Chapter 7.4.

#### **(v) Conclusion**

The Panel concludes the design objectives for Precinct 1 are appropriate.

### **7.3 Design quality requirements**

#### **(i) The issue**

The issue is whether it is appropriate to include a specific design quality requirement for land within the Heritage Overlay (HO524).

The broader issue of heritage design requirements is addressed in Chapter 6.6.

#### **(ii) Evidence and submissions**

The Swan Street West Precinct (HO524) includes 30-42 Swan Street.

In his evidence statement, Mr Helms noted the exhibited DDO17 included the following design objective that applied to the whole of the Activity Centre:

To ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape.

In the Council resolved version of the DDO schedules, this objective is retained for Precinct 2 but deleted in Precincts 1, 3 and 4. Mr Helms stated, although this objective was not required in Precinct 3 (as it does not have a defined heritage street wall), it is required in Precinct 1 and Precinct 4 because they have heritage street walls. He explained that in Precinct 1, these areas correlate with the Heritage Overlay (HO524).

Mr Helms recommended that the following design objective be reinserted for Precinct 1:

To ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape within land affected by HO524.

Council supported Mr Helm’s recommendation in principle, however given that there are already five design objectives in DDO25 (the maximum number permitted in a DDO schedule<sup>28</sup>), it recommended that this provision be included in the design quality requirements.

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<sup>28</sup> Ministerial Direction 7(5)

No party objected to including this provision as a design quality requirement.

**(iii) Discussion**

The Panel supports the requirement recommended by Mr Helms to ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape on land affected by the Heritage Overlay (HO524). It is appropriate to include this provision as a design quality requirement for Precinct 1.

**(iv) Conclusion and recommendation**

The Panel concludes that it is appropriate to include a design quality requirement which seeks to ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape on land with the Heritage Overlay (HO524).

The Panel recommends:

**Amend Design and Development Overlay Schedule 25, as shown in Appendix D1, to include a heritage related provision in the ‘Design quality requirements’.**

## **7.4 Building height**

**(i) The issue**

The issue is whether the proposed maximum building heights in Precinct 1 are appropriate and justified.

**(ii) Evidence and submissions**

Council submitted the proposed building heights in Precinct 1 seek to emphasise the sites on the corner of Punt Road with a 28-metre discretionary height (and 21-metre street wall). A lower discretionary building height of 21 metres is between Wellington and Cremorne Streets. An 18-metre discretionary height is proposed on the Precinct Hotel site and a discretionary 28-metre building height is proposed for land adjacent to the railway overpass.

Precinct 1 includes two Heritage Overlays:

- HO524 Swan Street West Precinct (30-42 Swan Street) with a discretionary building height of 21 metres
- HO405 (Precinct Hotel, 60-62 Swan Street) with a discretionary height of 18 metres.

Council submitted that the exhibited DDO17 showed the Precinct Hotel with a discretionary height of 27 metres, however this was reduced to 18 metres in the resolved DDO25 following further advice from Mr Gard’ner after testing several development scenarios. Mr Gard’ner said the reduced discretionary height (and increased upper level setbacks) were introduced to retain the prominence and three-dimensional form of the Precinct Hotel, which is an individually significant heritage building.

Mr Helms agreed with the changes to the Precinct Hotel recommended by Mr Gard’ner.

There was no submission from the Precinct Hotel.

Council submitted the land is, to some degree, connected to the Cremorne Enterprise Precinct to the south and is removed from the rest of Swan Street by the railway overpass. It said while the land on the corner of Punt Road is intended to deliver a new future character, the balance of the street is expected to respond to existing character, including the lower scale and heritage fabric between Wellington Street and the railway. Council submitted that a height limit in the centre of Precinct 1 which is the same or higher than the east and west ends will dilute the “bookend” intention recorded in the design objectives.

Mr Gard’ner gave evidence that the maximum building height for land with the Heritage Overlay (HO524 – 30-42 Swan Street) should be 18 metres “to avoid visually dominating the heritage buildings”. Council responded that the discretionary 21-metre maximum building height achieved an acceptable balance between protection of the heritage significance of the buildings in the block and the opportunity for redevelopment, given the size and location of the land. It added it was appropriate to have a consistent height control across the block between Wellington and Cremorne Streets.

Ms Hodyl considered that 21 metres represented an acceptable starting point which established an appropriate proportionate relationship between the street wall and new higher development behind. She stated:

A taller building can be considered on this site as the height control is discretionary. A taller building would need to be respectful of the heritage building and be a site-specific response that met all of the design objectives. This could best be considered through detail design.<sup>29</sup>

Ms Hodyl and Mr Helms supported the proposed discretionary maximum building heights for Precinct 1.

Cremorne Properties owns land at 36-46 Swan Street and 2 and 4 Jessie Street. This land is identified as having a discretionary height of 21 metres. Cremorne Properties submitted that Precinct 1:

- is dominated by the Richmond Station immediately north of the Cremorne Properties land, and it has been identified as a significant redevelopment site within Plan Melbourne
- is physically and visually separated from the high street heritage character in Precinct 2 by the existing railway overpass which creates a strong barrier
- is an architecturally diverse and robust area
- has undergone substantial change in the twentieth century
- does not have a contiguous or substantial heritage character and the heritage places in Precinct 1 are limited to those proposed to be included in the Heritage Overlay (HO524) which are contributory heritage buildings, and the Precinct Hotel, which is an isolated, individually significant heritage building
- should be seen in the context of the Cremorne area to the south and south east, which is a commercial enterprise precinct undergoing significant growth and renewal with many approved and constructed buildings of 8 storeys and higher.

Cremorne Properties submitted that the location and physical characteristics of Precinct 1 warranted a “*fundamentally different approach*” to building height compared to other parts

<sup>29</sup> Document 43, para 150 – corrected during Hearing

of the Activity Centre. It considered the preferred building height should be no less than 28 metres and relied on the evidence of Mr Raworth, Ms Roberts and Mr McBride-Burgess.

Mr Raworth said that greater height could be achieved on the Cremorne Properties site without harming the heritage values of the streetscape, although he did not specify a preferred maximum height. In cross-examination, he agreed that greater heights may require increased upper level setbacks.

Ms Roberts gave evidence that, from an urban design perspective, there was no reason to restrict building heights to 21 metres and she recommended a discretionary 28 metres. Ms Roberts presented modelling to show her concerns with Council's resolved height provisions for Precinct 1. She opined that all of Precinct 1 should be considered as the 'entry' to the Activity Centre.

Mr McBride-Burgess gave evidence that the maximum building heights proposed in DDO25 were "*too modest*" and fail to have proper regard to the strategic context of Precinct 1, including the fact that it is located in Cremorne. He said high quality medium scale buildings of up to 10 storeys (34 metres) should be encouraged in this location, consistent with an emerging character in Cremorne.

In response, Council provided a detailed assessment of building heights in Cremorne and submitted that proper analysis of development in the wider Cremorne area shows an emerging character of 7-8 storeys interspersed with lower scale traditional workers' cottages. It found 10 storeys to be the exception. It said taller development in Cremorne was typically on larger sites unencumbered by heritage constraints.

Council submitted that, if the Panel was inclined to increase the discretionary building height on the land between Wellington Street and Cremorne Street, then an additional provision should be added to the building height requirements that states:

Where the proposal is on land within a Heritage Overlay, it also achieves the following:

- Upper level development above the preferred building height on land within a Heritage Overlay should have increased setbacks to minimise its visibility above the heritage building and from the heritage streetscape.<sup>30</sup>

Crestall Nominees Pty Ltd owns land at 375-377 Punt Road and supported the discretionary maximum height of 28 metres for its land.

### **(iii) Discussion**

The Panel generally supports the maximum building heights specified in DDO25. The building heights are based on thorough research and appropriate testing and Council has considered a variety of competing issues to achieve a well-balanced outcome. However, the Panel accepts the views of Cremorne Properties that the preferred maximum height for the land between Wellington Street and Cremorne Street is too low. This land should have a discretionary maximum height of 28 metres for the following reasons.

First, the site is opposite an important strategic location. Richmond Station is a key railway station in the Metropolitan network and although redevelopment of the site has had a long history and plans are yet to be finalised, good planning should anticipate a significant future development on the station land. Developing the land on the south side of Swan Street should

<sup>30</sup> Document 181

be seen in this context. The Panel considers that a maximum height of 28 metres will sit comfortably in this robust future streetscape.

Second, the Cremorne precinct to the south is clearly undergoing significant growth and renewal and it is reasonable to assume that this growth will continue into the future. The Panel accepts that the emerging character for this area is typically a little greater than what is proposed in DDO25, although not as great as thought by Mr McBride-Burgess. A preferred maximum building height of 28 metres will be consistent with many developments to the south. Much of the land to the immediate south is currently in the Commercial 2 Zone so interfaces are less sensitive in these locations.

Third, the land between Wellington and Cremorne Street is generally deep, particularly in some portions of the eastern half. The deeper sections of the block provide greater opportunities for increased height. The Panel notes that just because a site has a designation of a preferred maximum height of 28 metres does not mean that a development can 'automatically' achieve an acceptable outcome for a development at that height. It is not the 'preferred height'; it is a preferred maximum height. All development is required to meet a range of other parameters in addition to height provisions.

Fourth, all maximum building heights in Precinct 1 are discretionary, so any permit application to exceed the preferred height will be assessed against the Precinct 1 design objectives (among other things). As noted in Chapter 7.2, the design objectives are silent on building height; rather, they discuss taller street walls on Swan Street, west of Wellington Street, to define the entry to the Activity Centre. The Panel considers that it is the taller street walls on the Punt Road – Swan Street corner that are important to define the entry to Precinct 1 and the Activity Centre. Additional building height in the central portion of the precinct will not undermine the design objectives.

Finally, the Panel is satisfied that heritage considerations can be appropriately managed. The land within HO524 has a mandatory minimum 6 metres upper level setback and the Panel considers this is appropriate (refer Chapter 6.4). The detailed design of a specific development proposal may necessitate a greater upper level setback, particularly at the highest levels of the building. This is a common occurrence and would often be expected in a building of 28 metres in height.

The Panel notes a preferred 28-metre maximum building height is consistent with the recommendations of Ms Roberts, although the Panel does not accept all of her recommendations.

The Panel supports an additional provision in the building height requirements in Precinct 1 suggested by Council. A proposal on land with the Heritage Overlay seeking to increase the building height above the preferred maximum height would have increased upper level setbacks at levels that exceed the preferred maximum height. The Panel agrees with the wording of this provision provided by Council.

The Panel considers that buildings of 28 metres in height can be appropriately designed to ensure that the prominence of the Precinct Hotel is retained. This is a design objective for Precinct 1.

**(iv) Conclusions and recommendations**

The Panel concludes:

- The preferred maximum building heights in Precinct 1 are generally appropriate and justified except for the land between Wellington Street and Cremorne Street.
- Land between Wellington Street and Cremorne Street should have a preferred maximum building height of 28 metres.
- An additional provision should be added to the building height requirements for Precinct 1 to require upper levels in the Heritage Overlay that exceed the preferred maximum building height should have increased setbacks.

The Panel recommends:

**Amend Design and Development Overlay Schedule 25, as shown in Appendix D1, to:**

- specify a preferred maximum building height of 28 metres for land between Wellington Street and Cremorne Street in 'Plan 1: Height and Interface Plan'**
- add a provision in the 'Building height requirements' for upper levels in the Heritage Overlay.**

**7.5 Street wall heights and setbacks****(i) The issues**

The issues are:

- whether Jessie Street should have specified interface provisions.
- whether boundary wall setback requirements are appropriate.

**(ii) Evidence and submissions**

Ms Hodyl gave evidence that the resolved version of DDO25 did not include specified interface provisions for Jessie Street. Having regard to the recent development of land on the south side of Jessie Street, she recommended that Interface F be applied to Jessie Street.

Council agreed with Ms Hodyl and included this change in the Hearing version of DDO25.<sup>31</sup>

Ms Hodyl recommended additional guidance for building setbacks when buildings are not built on the common property boundary (below the street wall). She said this would ensure the amenity of surrounding residential properties was appropriately protected.

Ms Hodyl considered there should be a requirement that development not built on a common boundary (below the street wall) should provide a minimum setback distance of 4.5 metres to that common boundary. She recommended this be a preferred development outcome; not a mandatory provision. Council supported this for 40 Swan Street only, and proposed including this requirement in a new design element called 'Boundary wall setback' in Interface I.<sup>32</sup>

No party objected to these changes.

<sup>31</sup> Document 185

<sup>32</sup> Document 181

**(iii) Discussion, conclusions and recommendations**

The Panel agrees with the changes recommended by Ms Hodyl and finalised by Council in Documents 181 and 185. They are appropriate changes that will enhance the protection of the amenity of adjoining properties.

The Panel concludes:

- It is appropriate to apply Interface F to Jessie Street.
- It is appropriate to apply a discretionary boundary wall setback requirement to 40 Swan Street that requires a minimum setback of 4.5 metres to the common boundary if a building is not built on a common boundary.

The Panel recommends:

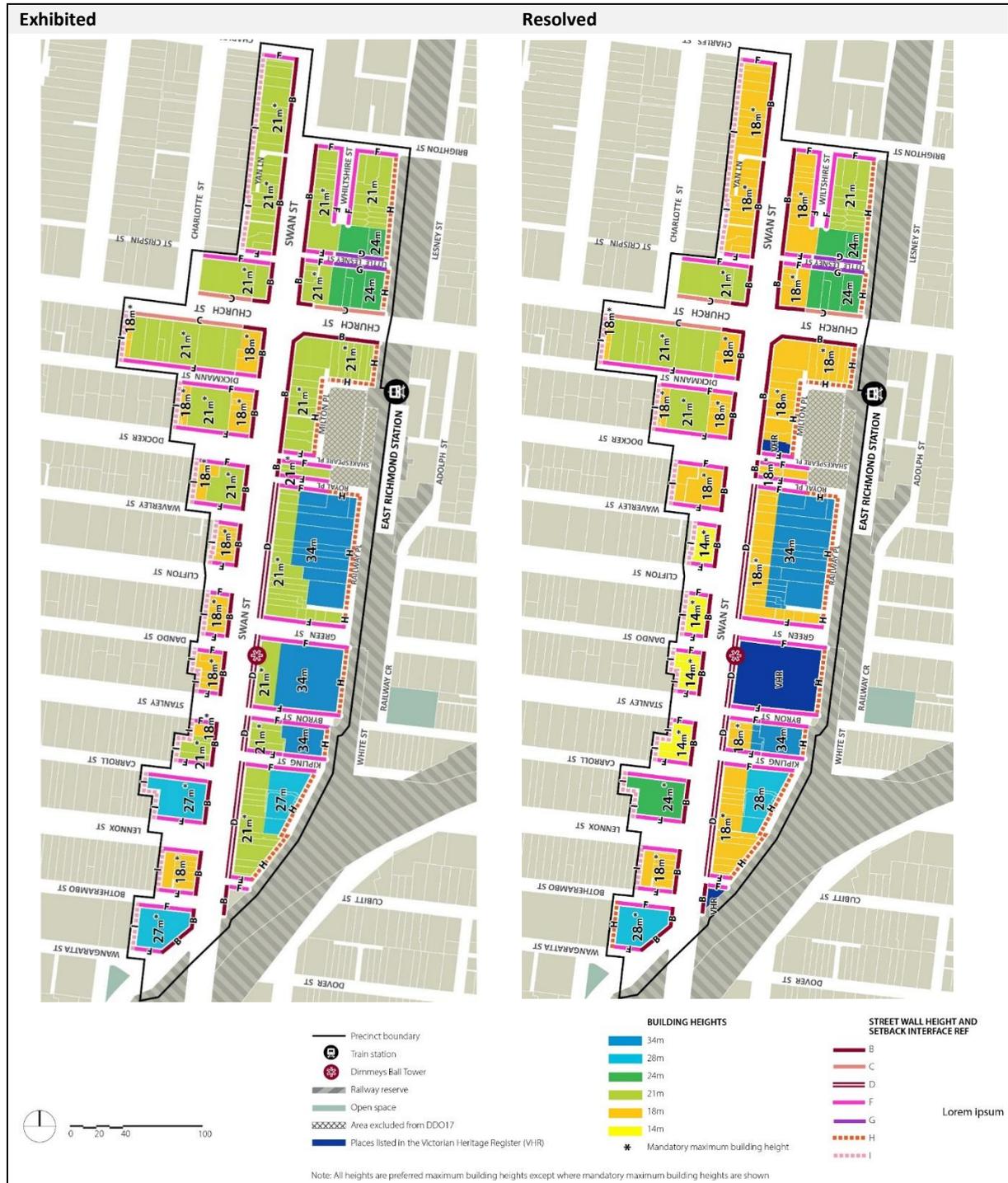
**Amend Design and Development Overlay Schedule 25, as shown in Appendix D1, to:**

- a) specify Interface F to Jessie Street in 'Plan 1: Height and Interface Plan'**
- b) specify a 'Boundary wall setback' for Interface I in 'Table 1 - Street Wall Heights and Setbacks for Precinct 1 Richmond Station'.**

# 8 Precinct 2 – Swan Street Retail (Historic core)

## 8.1 What is proposed?

Figure 11 Precinct 1 exhibited and resolved building heights and street wall interfaces



**Table 6** Precinct 2 exhibited and resolved planning provisions

IR	Design Element	Exhibited DDO17 requirements	DDO26 requirements
B	Street wall height	<b>Mandatory:</b> 11m maximum or the parapet height of the adjoining individually significant or contributory building if higher than 11m.	<b>Mandatory:</b> 11m maximum. 8m minimum. <b>Preferred:</b> Match the parapet height of the adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	<b>Mandatory:</b> 0m.	<b>Mandatory:</b> 0m.
	Upper level setback	<b>Mandatory:</b> 5m minimum setback. <b>Preferred:</b> For all development in a heritage overlay, any part of the building above the heritage street wall should be designed to ensure that it occupies no more than one third of the vertical angle defined by the whole building in the view from a sight line of 1.7m (on the opposite side of the street).	<b>Mandatory:</b> 6m minimum setback.
C	Street wall Height	<b>Preferred:</b> 11m maximum or the parapet height of the adjoining individually significant or contributory building if higher than 11m. 8m minimum. Match the parapet height of the taller adjoining heritage building.	<b>Preferred:</b> 11m maximum. 8m minimum. Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	<b>Mandatory:</b> 0m.	<b>Mandatory:</b> 0m.
	Upper level setback	<b>Mandatory:</b> 5m minimum for individually significant heritage buildings. <b>Preferred:</b> Minimum 5m elsewhere. Any part of a building above the street wall should be designed to ensure that it occupies no more than one third of the vertical angle defined by the whole building in the view from a sight line of 1.7m (on the opposite side of the street).	<b>Mandatory:</b> 6m minimum for heritage buildings. <b>Preferred:</b> Minimum 6m elsewhere.
D	Street wall height	<b>Mandatory:</b> 11m maximum or the parapet height of the adjoining individually significant or contributory building if higher than 11m.	<b>Mandatory:</b> 11m maximum. 8m minimum. <b>Preferred:</b> Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	<b>Mandatory:</b> 8m minimum.	<b>Preferred:</b> Match the parapet height of the taller adjoining heritage building.
	Upper level setback	<b>Mandatory:</b> 0m.	<b>Mandatory:</b> 10m minimum for development up to 21m. 20m minimum for any height above 21m.
F	Street wall height	<b>Preferred:</b> 11m maximum.	<b>Preferred:</b> 11m maximum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 5m minimum for land affected by HO335 and individually significant buildings.	<b>Preferred:</b> 6m minimum for land affected by HO335 and individually significant buildings. 3m minimum elsewhere.

IR	Design Element	Exhibited DDO17 requirements	DDO26 requirements
G	Street wall height	<b>Preferred:</b> 14.5m maximum.	<b>Preferred:</b> 14m maximum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 3m minimum.	<b>Preferred:</b> 3m minimum.
H	Street wall height	<b>Preferred:</b> N/A.	<b>Preferred:</b> N/A.
	Street wall setback	<b>Preferred:</b> 0m minimum unless setback is identified on the Plan 4.	<b>Preferred:</b> 0m minimum unless setback is identified on the Plan 2.
	Upper level setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
I	Side and rear wall height	<b>Preferred:</b> 8m maximum on a common boundary with a property in a residential zone. 11.5m maximum if boundary abuts a laneway.	<b>Preferred:</b> 8m maximum on a common boundary with a property in a residential zone. 11.5m maximum if boundary abuts a laneway.
	Upper level setback	<b>Preferred:</b> Development must be setback in accordance with Figure 1 and Figure 2. Development should minimise stepped form.	<b>Preferred:</b> Development must be setback in accordance with Figure 1 and Figure 2. Development should minimise stepped form.

## What is sought for Precinct 2?

The exhibited preferred future character for Precinct 2 at Clause 21.12 states:

Precinct 2 – is the major focus for retail and entertainment uses located within existing fine grain heritage shop fronts. The footpaths are the key public spaces providing opportunities for outdoor dining and public engagement. Activated linkages connect people to East Richmond Station and a potential new public park. Looking along Swan Street, the intact heritage buildings remain prominent defining a valued heritage streetscape where new development above and behind the street wall is visually recessive. The Dimmey's Tower remains a clear focal point in the street standing out from surrounding buildings. Taller development along the railway line is visible and provides a greater sense of enclosure along side streets and laneways but is designed and spaced to contribute to a varied skyline that remains subservient to the heritage streetscape.

## 8.2 Design objectives

### (i) The issue

The issue is whether the Precinct 2 design objectives proposed since exhibiting the Amendment are appropriate.

### (ii) Background

The exhibited DDO17 included a series of General Design Objectives for all the Activity Centre. After DDO17 was restructured into four separate schedules, Council prepared specific objectives for each precinct. The design objectives for Precinct 2 are:

- To ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscapes.

- To ensure development, on the south side of Swan Street, maintains the Dimmeys Tower as the prominent landmark in the streetscape when viewed from the northern footpath of Swan Street east of the rail bridge and west of Church Street.
- To support a new mid-rise scale built form character with lower built form at the interfaces with streets and the adjoining low-rise residential areas that supports the fine grain, compact retail and entertainment focus of the precinct.
- To ensure development enhances the pedestrian experience through improved activation at ground floor and promoting a sense of enclosure and continuity in built form along Swan Street, Church Street, side streets and laneways.
- To ensure taller development on the south side of Swan Street, close to the railway line, is designed and spaced to contribute to an varied skyline and provides street walls that create a stronger sense of enclosure to the streets.

### **(iii) Evidence and submissions**

Council submitted that Precinct 2 is the retail heart of the Activity Centre where it is important to protect the public realm's amenity. It added that this includes minimising overshadowing on the southern Swan Street footpath for the growing number of pedestrians expected from additional residential and commercial uses.

Council explained that Precinct 2 has the most intact heritage streetscape in the Activity Centre, comprising buildings from the late nineteenth and early twentieth centuries, of which most are either individually significant or contributory. The Heritage Overlay (HO335) applies to these properties. The former Richmond South Post Office (90-92 Swan Street), Dimmeys (140-160 Swan Street), and former State Bank (216 Swan Street) are in the Victorian Heritage Register.

No submitter or witness took issue with the Precinct 2 design objectives.

### **(iv) Discussion and conclusion**

The Panel considers the design objectives to be satisfactory and based on sound strategic planning. They are generally consistent with the outcomes in the Swan Street Framework and provide an appropriate platform to help manage the future growth of the area.

The Panel concludes that the Precinct 2 design objectives are appropriate.

## **8.3 Building heights**

### **(i) The issue**

The issue is whether the proposed maximum building heights in Precinct 2 are appropriate.

### **(ii) Evidence and submissions**

Council submitted that the exhibited building heights in DDO17 were about 1 storey higher than those in the resolved DDO26. It explained the resolved DDO26 specifies heights of:

- generally 14 to 18 metres on the northern side of Swan Street
- 21, 24, 28 and 34 metres on deeper sites on both sides.

Council explained that the revised DDO26 heights were informed by:

- Mr Gard'ner's opinion after he:
  - reviewed 3D modelling prepared by Tract on 26 July 2019

- further analysed roof forms, as recorded in his 30 August 2019 report attached to his evidence
- a review of the recommendations in the Yarra PSA C220 [2020] PPV report (Johnson Street) which recommended a 6 metre setback above the heritage street wall
- a review of the potential building envelope with regard to a typical depth of a residential floorplate increased from 8 to 10 metres, the upper level setback requirements and the residential interface requirements to the rear.

Council referred to its 10 September 2019 meeting report, where it acknowledged that increasing the upper level setback to 6 metres would result in the heights of some sites on the north side of Swan Street being lowered by one storey. Mr Helms and Ms Hodyl supported the reduced heights. Mr Helms stated:

The combination of an increased upper level setback with reduced building heights will ensure that new development is recessive, allowing the street wall to retain its prominence.

Ms Hodyl noted the building height provisions progressed through extensive built form testing and the integration of urban design, architectural and heritage considerations.

Mr Gard'ner supported the maximum mandatory building height of 18 metres (5 storeys) being generally applied to properties facing Swan Street in Precinct 2. He said this was consistent with the advice provided in the Preliminary Heritage Advice on 30 August 2019. He considered the Precinct 2 building heights should be informed by a 45-degree sight-line test which would lower the building height in some parts of the precinct. Council did not accept the sight-line test and submitted the heights in DDO26 strike a suitable balance.

The Royal Historical Society of Victoria acknowledged that the reduced DDO26 building heights:

- substantially contribute to easing the impact on heritage buildings and streetscape compared to the exhibited heights
- continue to be excessive and will "*seriously damage*" the Swan Street Precinct's heritage fabric.

The Society sought heights which did not overwhelm the heritage buildings and a requirement that no development to the rear of shops be visible from the footpath on the opposite side of Swan Street. It considered that Swan Street's 20-metre width enabled this outcome. The Society referred to the Yarra C231 (Queens Parade) Panel Hearing where the Society made a similar submission and the C231 Panel supported an 8-metre setback and a reduced building height. The Society sought to direct significant development outside of Precinct 2.

Ms Thomson submitted that:

- building height along the north side of Swan Street should be restricted to a maximum of four storeys to ensure connectivity to the abutting residential areas
- building height for new development between heritage properties which has a street frontage should blend with the adjacent existing heritage facades
- development should be restricted to seven storeys on the south side of Swan Street where there is greater distance between the street and the railway line.

### **57-61 Swan Street (Corner Hotel)**

Loubeck objected to the mandatory maximum building height of 28 metres proposed for its site at 57-61 Swan Street.

Ms Bell and Ms Horsfield relied on Mr Raworth's evidence that the Corner Hotel building did not contribute to the Swan Street Precinct heritage streetscape when assessing preferred built form provisions for the site.

Ms Bell supported the 28-metre maximum building height specified in DDO26 but sought to have it applied as a discretionary provision. Ms Bell considered the mandatory nature of the provision to be inappropriate because the site:

- does not contribute to the heritage streetscape, as stated by Mr Raworth
- has greater opportunity for increased height and scale through its size, width, depth and least constraints
- has no sensitive interfaces to the west, northwest and north.

Ms Bell presented 3D modelling which showed built form consistent with DDO26 and another with 10 storeys (about 35 metres). The latter modelling showed that the site could achieve about 35 metres without overshadowing the southern footpath at the equinox between 10.00am and 2.00pm.

Council responded that the site's size and development potential are acknowledged by the Swan Street Framework and through DDO26. Both provide 57-61 Swan Street the highest maximum building height of all land along the north side of Swan Street. Council supported the building height for the car park behind the Corner Hotel building to be applied as a discretionary provision. The Hearing Version of DDO26 notated this as "*Mandatory maximum building height applies to land up to 30m from Swan Street*".

### **79-89, 161-165, 173-179 and 191-197 Swan Street**

Swan-Lennox owns 79-89, 161-165, 173-179 and 191-197 Swan Street.

Mr McBride-Burgess reviewed Council's 3D modelling and other modelling, plans and sections prepared by Jackson Clements Burrows Architects to inform his planning evidence. The latter modelling and plans, as appended to his evidence, shows:

- 79-89 Swan Street at 27 metres and 161-165, 173-179 and 191-197 Swan Street at 24 metres
- no overshadowing to the southern Swan Street footpath based on these building heights.

Mr McBride-Burgess found the building heights for the four properties to be too conservative and recommended the following heights:

- the exhibited 27 metres for 79-89 Swan Street rather than the 24 metres proposed through DDO26
- 24 metres for 161-165, 173-179 and 191-197 Swan Street rather than the exhibited and resolved 18 metres.

Having also reviewed Planning Practice Notes 59 and 60, he considered the building heights for the Swan-Lennox properties should be applied as discretionary provisions.

Council asked the Panel to prefer Mr Gard'ner's recommended 24-metre maximum building height for 79-89 Swan Street because it was informed by heritage advice. It explained the new development exceeding 24 metres would:

- have a negative visual impact to heritage properties to the rear
- dominate the heritage fabric of Swan Street, including oblique views from the east and west.

### **Land bounded by Little Lesney, Wiltshire and Brighton Streets**

The same consultants prepared separate submissions for Icon Developments Australia Pty Ltd and LPC Nominee 10 Pty Ltd.

Icon Developments Australia is the developer for 2-8 Brighton, 1-3 Wiltshire and 5 Little Lesney Streets. Since preparing its submission, a planning permit was issued to develop on 1 August 2019. LPC Nominee 10 Pty Ltd owns 1 Little Lesney and 9 Wiltshire Streets with a total area of 914 square metres. A planning permit was issued on 28 August 2017 for a 10 storey building with a ground floor food and drink premises.

Icon Developments and LPC Nominee 10 were critical of the building height requirements but did not request a change to the building height.

At the Hearing, LPC Nominee 10 made new submissions that the exhibited discretionary maximum building height of 24 metres on its land should be increased to 34 metres. It sought to apply this increased height across the entire area bound by its land, Little Lesney Street, Wiltshire Street and Brighton Street which includes land owned by Icon Developments.

LPC Nominee 10 explained that its predominantly Mixed Use Zone land represents a viable future redevelopment opportunity, is located near East Richmond Station and the corner of Swan and Church Streets, has no sensitive interfaces, and has no valuable heritage fabric. It considered the discretionary height of 6 and 7 storeys to be too low and submitted the emerging character in this pocket was 8 to 10 storeys. This includes permits issued for Icon Developments and LPC Nominee 10.

LPC Nominee 10 called planning evidence from Mr Biles of Ratio Consultants. He recommended:

Change the height provision at 1 Little Lesney and 9 Wiltshire Street to 34m.

The extent of this modified sub-precinct could also be placed over the consolidated parcel on the corner of Little Lesney and Brighton Street.

Mr Biles explained the DDO26 building heights have been constrained by lot size and do not account for lot consolidation. He added that the permit approval for 32.2 metres for the Icon Developments land recognises that the LPC Nominee 10 land can accommodate higher built form.

Mr Barnes stated that there should be consideration for increasing the Icon Developments land height from 21 to 24 metres, consistent with land to the west. He noted the Icon land does not abut residential zoned land, abuts the railway and is located behind land with a mandatory maximum 18-metre building height.

Council did not support the LPC Nominee 10 submission and Mr Bile's recommendation to increase the height to 34 metres because it was not considered to be a suitable benchmark for development in Precinct 2. Reasons for its response included the relatively small lot sizes,

the desire for building separation to enable internal amenity, and the need to mitigate negative impacts on the public realm. Council supported the maximum building height being increased to 28 metres.<sup>33</sup>

### **187-189 Swan Street and 421-423 Church Street**

Mr Gard'ner and Mr Helms considered the maximum building height for 187-189 Swan Street and 421-423 Church Street should be reduced from 21 to 18 metres. They explained that this would enable a consistent building height at the north-east corner of Church Street and Swan Street while retaining the Swan Hotel and M Ball building as the dominant landmarks on the opposite corners. Council agreed to this change.

#### **(iii) Discussion**

The Panel generally supports the maximum building heights specified in DDO26. The Swan Street Framework has comprehensively considered the heritage fabric in the Swan Street Precinct. The Heritage Review and Heritage Built Form Study informed the Framework, enabling it to carefully respond to the interrelationship between:

- heritage buildings including their existing features, overall heights and street wall heights
- building height, street wall heights, and upper level setbacks from the heritage parapets of new built form
- the amenity of the public realm.

The Panel considers that the building heights specified in DDO26 were thoroughly tested to achieve a generally well-balanced outcome. Testing, including a post-exhibition assessment which recommended revised building heights, resulted in a sound understanding of interrelated issues and was partly informed by 3D modelling.

The Panel explores 57-91, 79-89 and 187-189 Swan Street and 421-423 Church Street in further detail.

### **57-61 Swan Street**

The property at 57-61 Swan Street has frontage to four streets and comprises the Corner Hotel building and a car park to the rear. The Panel has already found that the site, except the rear car park, should be included as a non-contributory property in the Swan Street Precinct (HO335).

The entire site is one of the largest sites on the northern side of Swan Street in the Activity Centre and can accommodate greater building height than other parts of this section of Precinct 2. It has a robust northern interface to a Mixed Use Zone area where lower scale industrial buildings are transforming into taller and predominantly residential developments. The site's built form will have no overshadowing impacts to the evolving mixed use area to its north.

The question of building height relates to its visual impact to its surrounds, particularly the Swan Street heritage streetscape, and overshadowing to the southern Swan Street footpath. The mandatory overshadowing provisions, which the Panel supports, provide an evidence

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base to establishing the appropriate building height for the site. The impact on surrounding heritage fabric is another consideration.

The Panel considers the mandatory maximum 28-metre building height on the Corner Hotel building part of the site to be necessary to respond to overshadowing and heritage. This would result in development not exceeding 28 metres within a 30-metre deep parallel to Swan Street. It may not be possible to achieve this height on all parts of the site but it is appropriate for considering any future permit application.

The Panel was persuaded through modelling presented by Ms Bell that the rear car park can accommodate greater height without negative impacts on the Swan Street heritage streetscape and without overshadowing the southern footpath. Any further height should be assessed on a proposal by proposal basis. The Panel considers the specific 28-metre building height to be the appropriate measure for the discretionary provision.

### **79-89, 161-165, 173-179 and 191-197 Swan Street**

The modelling, plans and elevations in the evidence of Mr McBride-Burgess were useful in understanding his position regarding taller built form on the Swan-Lennox properties. The modelling was based on the exhibited 5 metre upper level setback which the Panel has found to be insufficient for Swan Street's heritage streetscape.

The Panel agrees that the sites can accommodate taller form without overshadowing the southern Swan Street footpath. However, it is concerned that the taller built form will negatively dominate the surrounding heritage fabric.

The Panel agrees that 79-89 Swan Street is relatively large and can accommodate greater height than other parts of Precinct 2. This is reflected in both the exhibited and resolved versions of DDO26 which provide the site the second tallest building height along Swan Street in the precinct. The site has a similar depth to 57-61 Swan Street, however it has a sensitive northern interface with properties subject to the Neighbourhood Residential Zone and Heritage Overlay (HO332 – Richmond Hill Precinct).

The sites at 161-165 and 173-179 Swan Street are about 20 metres deep and with a six-metre mandatory upper level setback from the Swan Street heritage parapets and do not have the same sensitive interface affecting 79-89 Swan Street. However, the Panel considers that built form above 18-metres across a 14-metre deep floorplate would not sensitively respond to its surrounding heritage fabric.

The site at 191-197 Swan Street is about 27 metres deep, in the Swan Street Heritage Precinct (HO335) and has a sensitive northern interface with properties subject to the Neighbourhood Residential Zone and Heritage Overlay (HO319 – Elm Grove Precinct). This site has similar attributes of other land in Precinct 2 where it was found that exceeding 18 metres would negatively affect the heritage fabric along Swan Street.

The Panel was not persuaded that the specific heights for these sites should depart from those tested and recommended by the Swan Street Framework.

### **Land bounded by Little Lesney, Whiltshire and Brighton Streets**

The Panel notes that exhibited DDO17 and resolved DDO26 both consistently propose to apply a discretionary 24-metre maximum building height to the LPC Nominee 10 land and 21 metres to the remaining pocket bounded by Little Lesney, Wiltshire and Brighton Streets. Like other

land in Precinct 2 with less constraints, DDO26 acknowledges that higher built form will be considered subject to responding to other clauses in the Planning Scheme.

The Panel agrees with Council that the DDO26 sets an appropriate framework for assessing future permit applications. The discretionary heights can be exceeded subject to further scrutiny. Like Council, the Panel considers that a 28-metre building height continues to be appropriate for this pocket and more realistically reflects heights approved through recent permits. Any heights beyond this measure should be more closely scrutinised through the permit application process.

Icon Developments and LPC Nominee 10 have approved planning permits which enables them to develop at greater heights.

### **187-189 Swan Street and 421-423 Church Street**

The Panel supports an 18-metre maximum building height 187-189 Swan Street and 421-423 Church Street. It would enable the Swan Hotel to retain its landmark presentation.

Applying a mandatory maximum building height of 18 metres to land fronting the north side of Swan Street between Waverley Street (west of Church Street) and Charles Street (east of Church Street) would result in a consistent built form rhythm. This consistency is entrenched in the Victorian heritage streetscape.

#### **(iv) Conclusions and recommendations**

The Panel concludes:

- The mandatory maximum building heights in Precinct 2 are generally appropriate and justified except for 57-61 and 187-189 Swan Street, land bounded by Little Lesney, Whiltshire and Brighton Streets, and 421-423 Church Street.
- The part of 57-61 Swan Street currently being used as a car park should have a discretionary maximum building height of 28 metres.
- Land bounded by Little Lesney, Whiltshire and Brighton Streets should have a discretionary maximum building height of 28 metres.
- 187-189 Swan Street and 421-423 Church Street should have a mandatory maximum building height of 18 metres.

The Panel recommends:

**Amend Design and Development Overlay Schedule 26, as shown in Appendix D2, to:**

- a) apply the building heights shown in the resolved version in Figure 11 of this report except for 57-61 and 187-189 Swan Street, land bounded by Little Lesney, Whiltshire and Brighton Streets, and 421-423 Church Street**
- b) apply a discretionary maximum building height of 28 metres to the part of 57-61 Swan Street currently being used as a car park**
- c) apply a discretionary maximum building height of 28 metres to land bounded by Little Lesney, Whiltshire and Brighton Streets**
- d) apply a mandatory maximum building height of 18 metres to 187-189 Swan Street and 421-423 Church Street.**

## 8.4 Street wall heights and setbacks

### (i) The issue

The issue is whether the street wall heights, setbacks and interface types for Precinct 2 in Table 1 of DDO26 are appropriate and justified.

### (ii) Evidence and submissions

Mr Gard'ner stated that the heritage streetscape in Precinct 2 along Swan Street remains predominantly two-storey. He supported the DDO26 Table 1 interface provisions and noted:

- the Interface B and D mandatory street wall heights are appropriate in the Heritage Overlay
- the Interface I side and rear wall heights would moderate built form down to the low scale Heritage Overlay places.

### Interface C

Mr Helms recommended that the Interface C street wall height specify that the preferred requirement to match the parapet height of the taller adjoining heritage buildings only applied to the north side of Swan Street.

### Corner Hotel site interfaces

Ms Horsfield recommended a discretionary 3-metre side street upper level setback from the street walls of 57-61 Swan Street. This includes land accommodating the Corner Hotel building and car park. She considered this measure to be the starting point rather than the 6 metres specified in DDO26 for preparing future permit applications. Ms Horsfield noted the approved development at 45 Wangaratta Street has a 3-metre upper level setback.

Ms Horsfield considered the site could accommodate additional development because of its distance to existing dwellings and its interface with:

- garages on the opposite side of Botherambo Street
- the railway overpass solid walls and small reserve on Stewart Street
- 51 Wangaratta Street (non-contributory building) which she expected would be developed.

Ms Horsfield included a shadow analysis in her evidence showing 3 and 6 metre upper level side street setbacks at 2.00pm and 3.00pm. She found the 3-metre setback did not cause unreasonable overshadowing impacts at the lower levels of the tower.

Ms Hodyl supported the upper level setback for 57-61 Swan Street along the Botherambo Street frontage being reduced from 6 metres to 3 metres subject to it being retained as a mandatory provision. Council agreed to this change. In its Hearing version of DDO26, Council:

- redesignated Stewart Street from Interface B to Interface F
- redesignated Botherambo and Wangaratta Streets from Interface F to a new Interface K which:
  - applied a discretionary maximum 11-metre street wall
  - applied a discretionary minimum 3-metre upper level setback
  - replicated several Interface F requirements.

**Little Lesney Street interface**

Mr Biles considered the Interface G maximum 14-metre street wall height (he referred to as 4 storeys) and minimum 3-metre preferred upper level setback to be appropriate along Little Lesney Street. He explained that these provisions adequately separate built form from properties to the west.

Mr Biles supported the 0-metre street wall setback, noting that it recognises the minimal potential amenity impacts associated with the rail cutting to the south. He added greater building volume should provide sufficient articulation to limit the visual presentation of the building when viewed south of the rail reserve.

**60 Stanley Street interface**

The owners of 60 Stanley Street were concerned that the extent of development enabled by the Amendment would create excessive visual bulk and block their view of the sky from ground floor living areas.

Ms Hodyl noted that 60 Stanley Street is outside the Activity Centre but would be surrounded by increased development scale to the west and south. She considered the proposed interface provisions to the south of this land to be insufficient after reviewing 3D modelling prepared by Hodyl & Co that showed DDO26 Interface I (2:1 setback (64 degrees). Ms Hodyl tested an alternative model which showed an additional 3 metre setback above the maximum 8 metre boundary wall height. She recommended that this new interface be applied to 60 Stanley Street.

Council did not support Ms Hodyl's recommendation. It considered that DDO26 Figure 2 adequately addresses the interface along the north side of the Activity Centre. Council added that each permit application would be assessed on its merits and specific context having regard to the discretionary interface provisions and design quality requirements. These both seek to protect the amenity of existing residential properties.

**468 Church Street southern interface**

Mr Gard'ner noted that Interface H, which specifies a 0-metre upper level setback, is proposed for the southern elevation of 468 Church Street. This building interfaces the railway reserve and its southern elevation is visually exposed. He recommended a discretionary 6-metre upper level setback to protect the primacy of the extant heritage fabric. Mr Gard'ner stated that Interface F provided this built form response.

Council agreed with Mr Gard'ner and the Hearing version of DDO26 redesignated the 468 Church Street southern interface from Interface H to Interface F.

**(iii) Discussion****Interface C**

Interface C is generally appropriate for Precinct 2. Interface C includes a discretionary provision to match the parapet height of the taller building adjoining the heritage building for a minimum length of 6 metres.

**Corner Hotel site interfaces**

The Corner Hotel site has unique circumstances. Unlike most parts of the precinct, it interfaces with a robust industrial area which continues to transform into a higher density

taller form. The site interfaces with an open area comprising a street junction and the Stewart Street Reserve along Wangaratta Street. In some respects, a reduced upper level setback may better define this space.

Stewart Street has a robust interface opposite the elevated railway line including its concrete walls. Stewart Street Interface B is intended for Swan Street's more sensitive heritage streetscape and is not warranted for Stewart Street. The Panel supports redesignating Stewart Street from Interface B to Interface F.

Interface F is not appropriate or justified for the Corner Hotel site along Wangaratta and Botherambo Streets. The Panel supports a new Interface K with a discretionary upper level setback of 3 metres combined with a discretionary maximum street wall height of 11 metres along these two streets.

#### **Little Lesney Street interface**

The Panel notes that no submission sought to amend Interface G along Little Lesney Street.

#### **60 Stanley Street interface**

Interface I is generally appropriate along the boundary of residential properties. It is a discretionary provision that can be varied to respond to individual circumstances such as the interface between the Activity Centre and 60 Stanley Street.

#### **468 Church Street southern interface**

The Panel agrees with the 468 Church Street southern interface being redesignated from Interface H to Interface F. The building's southern elevation is clearly visible from different vantage points so its heritage fabric should be protected. Interface F provides an appropriate built form response and the discretionary 6-metre upper level side setback can be varied to suit individual circumstances.

### **(iv) Conclusions and recommendations**

The Panel concludes:

- Interfaces C and I are generally appropriate for Precinct 2 and do not need to be amended.
- The Corner Hotel has unique circumstances which justify:
  - redesignating Stewart Street from Interface B to Interface F
  - a new Interface K along Botherambo and Wangaratta Streets with a discretionary maximum 11-metre street wall and a discretionary minimum 3-metre upper level setback.
- The southern elevation of 468 Church Street should be redesignated from Interface H to Interface F.

The Panel recommends:

**Amend Design and Development Overlay Schedule 26, as shown in Appendix D2, to:**

- a) **redesignate Stewart Street from Interface B to Interface F**
- b) **redesignate Botherambo and Wangaratta Streets to a new Interface K**
- c) **redesignate the southern elevation of 468 Church Street from Interface H to Interface F.**

# 9 Precinct 3 – Swan Street East

## 9.1 What is proposed?

Figure 12 Precinct 3 exhibited and resolved building heights and street wall interfaces



**Table 7** Precinct 3 exhibited and resolved planning provisions

IR	Design Element	Exhibited DDO17 requirements	DDO27 requirements
C	Street wall height	<b>Preferred:</b> 11m maximum or the parapet height of the adjoining individually significant or contributory building if higher than 11m. 8m minimum. Match the parapet height of the taller adjoining heritage building.	<b>Preferred:</b> 11m maximum. 8m minimum. Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	<b>Mandatory:</b> 0m.	<b>Mandatory:</b> 0m.
	Upper level setback	<b>Preferred:</b> Minimum 5m elsewhere. Any part of a building above the street wall should be designed to ensure that it occupies no more than one third of the vertical angle defined by the whole building in the view from a sight line of 1.7m (on the opposite side of the street).	<b>Mandatory:</b> Minimum 6m for heritage buildings. <b>Preferred:</b> Minimum 6m elsewhere.
E	Street wall Height	<b>Preferred:</b> 14.5m maximum.	<b>Preferred:</b> 14m maximum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 5m minimum.	<b>Preferred:</b> 6m minimum.
F	Street wall height	<b>Preferred:</b> 11m minimum.	<b>Preferred:</b> 11m minimum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 5m minimum for individually significant buildings. 3m minimum elsewhere.	<b>Preferred:</b> 6m minimum for individually significant buildings. 3m minimum elsewhere.
G	Street wall height	<b>Preferred:</b> 14.5m maximum.	<b>Preferred:</b> 14m maximum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 3m minimum.	<b>Preferred:</b> 3m minimum.
H	Street wall height	<b>Preferred:</b> N/A.	<b>Preferred:</b> N/A.
	Street wall setback	<b>Preferred:</b> 0m minimum unless setback is identified on the Plan 6.	<b>Preferred:</b> 0m minimum unless setback is identified on the Plan 2.
	Upper level setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
I	Side and rear wall height	<b>Preferred:</b> 8m maximum on a common boundary with a property in a residential zone. 11.5m maximum if boundary abuts a laneway.	<b>Preferred:</b> 8m maximum on a common boundary with a property in a residential zone. 11m maximum if boundary abuts a laneway.
	Upper level setback	<b>Preferred:</b> Development should be setback in accordance with Figure 1 and Figure 2. Development should minimise stepped form.	<b>Preferred:</b> Development should be setback in accordance with Figure 1 and Figure 2. Development should minimise stepped form.

### What is sought for Precinct 3?

The exhibited preferred future character for Precinct 3 at Clause 21.12 states:

Precinct 3 - is a true mixed use precinct providing for a range of retail, commercial and residential uses within new mid rise developments of varying heights, widths and character. The consistent front setback and continuation of the broad scale of the street

wall of Precinct 2 provides a continuity with the balance of the centre and an improved pedestrian experience at street level. On the north side of Swan Street, the heritage buildings remain visually prominent in the streetscape and development is scaled and sited sensitively to the adjoining low scale residential area. On the south side of Swan Street high quality taller buildings gradually scale up to Burnley Street denoting the importance of the station. Breaks between these buildings maintain views to the sky from street level and create a varied skyline and backdrop to the shopping strip when viewed from surrounding residential and commercial areas. New and improved laneways connecting to Swan Street offer opportunities for interesting public spaces that complement improvements to the public realm along Swan Street.

## 9.2 Design objectives

### (i) The issue

The issue is whether the Precinct 3 design objectives proposed since exhibiting the Amendment are appropriate.

### (ii) Background

The exhibited DDO17 included a series of General Design Objectives for all the Activity Centre. After DDO17 was restructured into four separate schedules, Council prepared specific objectives for each precinct. The design objectives for Precinct 3 are:

- To support a new mid rise scale built form character with lower built form at the interfaces with streets and the adjoining low rise residential areas that maintains an active, high quality and pedestrian friendly environment.
- To support taller development on the south side of Swan Street that has regard to the north side of Swan Street and gradually scales up to Burnley Street, denoting the importance of the station.
- To create a safe and attractive pedestrian environment that protects solar access, enhances ground floor activation along Swan Street and side streets and limits vehicle access from Swan Street to new development.
- To reinforce a consistent built form edge to Swan Street while supporting physical and visual permeability through breaks in built form on the south side of Swan Street.
- To ensure that, along the north side of Swan Street, the heritage buildings remain visually prominent in the streetscape.

### (iii) Evidence and submissions

Council submitted the Swan Street Framework conveys the intention for the north side of Swan Street to support a 'higher change responding to existing character' and for the south side of the street to accommodate both 'higher and 'significant' change required to deliver 'a new future character'. It added that the objectives reflected this intent.

Regarding Precinct 3, Council explained that:

- the northern side of Swan Street generally comprises smaller, finer-grain lots that abut residential properties, with some separated by laneways
- Neighbourhood Residential Zone Schedule 1 and General Residential Zone Schedule 4 apply to residential properties to the north and the Heritage Overlay is generally not applied
- there are heritage properties on the northern side of Swan Street, except for 234 Coppin Street to the south, scattered throughout a mixed area

- the southern side of Swan Street comprises generally larger, deeper lots located between Swan Street and the railway reserve with smaller lots along Harvey and Mary Streets in the western part of the Precinct.

Council submitted that these characteristics of Precinct 3 present different opportunities and constraints for the future development of the area and this has been reflected in the design objectives (and the detailed built form provisions). It considered the resolved DDO27 provides scope for redevelopment in Precinct 3, particularly on the southern side of Swan Street where there were fewer constraints.

Council submitted that it applied a more constrained approach to the more sensitive northern side of Swan Street, where individual heritage properties and residential interfaces required protection. It considered the impact of development on the north side of Swan Street needed to be moderated to protect the footpath on the south side of Swan Street from being overshadowed. Council added that the Amendment still provided significant opportunities for future growth on the north side of Swan Street, however mandatory maximum building heights were needed to manage greater certainty of the built form outcome.

Council submitted that all these factors were reflected in the design objectives for Precinct 3. No submitter or expert witness took issue with the Precinct 3 design objectives.

#### **(iv) Discussion and conclusion**

The Panel considers the design objectives to be satisfactory and based on sound strategic planning. They are generally consistent with the outcomes in the Swan Street Framework and provide an appropriate platform to help manage the future growth of the area.

The Panel concludes that the Precinct 3 design objectives are appropriate.

### **9.3 Building separation requirements**

Chapter 6.5 discussed building separation requirements applicable across all of the precincts. This section discusses special building separation requirements applicable to Precinct 3.

#### **(i) The issues**

The issues are:

- whether 'Upper Level Building Breaks' are appropriate
- whether the side setbacks associated with the 'Upper Level Building Breaks' are appropriate.

#### **(ii) Background**

The resolved DDO27 provisions require that 'Upper Level Building Breaks' be provided to enable clear views to the sky between buildings along Swan Street when viewed from the opposite side of Swan Street and along Lord Street and Edinburgh Street. This is a discretionary requirement.

The required upper level building breaks are shown on Plan 1 in DDO27. There are two upper level building breaks shown on Plan 1 – one is nearly opposite Lord Street and another is opposite Edinburgh Street.

**(iii) Evidence and submissions**

Council submitted that the upper level building break in the exhibited DDO17 was directly opposite Lord Street. Council explained that in DDO27, it moved the location of the break slightly to the west to align with a property boundary in response to submissions. It added that this provided a more practical outcome while maintaining the intent of the provision.

Council referred to the clause which requires:

Development of properties in the locations shown as 'Upper Level Building Breaks' on Plan 1 should incorporate side setbacks greater than:

- a minimum of 4.5 metres from the common boundary, where a habitable window or balcony is proposed
- a minimum of 3 metres from the common boundary where a commercial or non-habitable window is proposed.

The two requirements related to setback distances applicable to upper level development on common boundaries, which was a separate provision in the same clause. At the Hearing, the Panel questioned Council about whether the wording "*greater than a minimum of ...*" should be simplified.

In response, Council proposed to reword the provision:

Development of properties in the locations shown as 'Upper Level Building Breaks' on Plan 1 should incorporate side setbacks greater than the setback distances required for upper level development on common boundaries set out above.<sup>34</sup>

370 Swan Street Pty Ltd objected to the revised upper level setback requirements. It said the requirements in the preferred version of DDO27 should be retained.

Council submitted that the revised requirements were in response to the expert evidence of Ms Hodyl regarding upper level development on common boundaries. It considered building breaks and separation requirements necessary for public realm and internal amenity purposes, given the intensity and height of development that is encouraged along the southern side of Swan Street in Precinct 3.

Council submitted that as a discretionary provision, there will be scope to vary the metric in appropriate circumstances.

Zagame Group Pty Ltd objected to the upper level building break shown south of Edinburgh Street because it aligns through the centre of its land holdings at 408-442 Swan Street. It submitted that, although the planning rationale for including a building break in this location was recognised, the imposition of such a requirement through its land was "*not ideal*".

Zagame Group sought a provision in DDO27 that enabled the preferred maximum building height for the property (which was exhibited at 40 metres) to be exceeded if a building break is provided.

In response, Council did not support Zagame Group's change and noted the requirement for the upper level building break was directly responsive to the design objective:

To reinforce a consistent built form edge to Swan Street while supporting physical and visual permeability through breaks in built form on the south side of Swan Street.

<sup>34</sup> Document 183

Council submitted the large size of the Zagame Group land holding (approximately 7,860 square metres with a frontage to Swan Street of approximately 136 metres) means that a break in upper level building form will inevitably be required to achieve appropriate levels of internal amenity. It said the indicative location of the building break allows flexibility in the precise delivery of building separation.

#### **(iv) Discussion**

The Panel agrees there is a sound justification to provide upper level building breaks in Precinct 3. This is consistent with the DDO27 design objective to support physical and visual permeability through the built form edge along Swan Street by providing breaks in the built form. The Panel accepts this is appropriate in the circumstances of the characteristics of the area.

The Panel agrees with the locations of the upper level building breaks as shown in the resolved version of DDO27. Although the alignment of the breaks shown on DDO27 Plan 1 are indicative, it is logical to realign the break along a property boundary.

The Panel does not support a provision that enables a building height uplift if an upper level building break is provided. The Panel agrees with Council that it would be unrealistic to expect there would be no breaks on a site that has over 130 metres of frontage to Swan Street. The proposed location of the upper level building break is central to the site and can be readily accommodated in the future development of the land. The Panel notes that the upper level building break also coincides with a future vehicle access route shown on DDO27 Plan 2.

The Panel agrees with Council's proposed side setbacks associated with the upper level setbacks. These changes are consistent with the approach in the resolved DDO27 with adjusted metrics based on the recommendations by Ms Hodyl (where development shares a common boundary). The Panel supports the simplified language of the provision in the Hearing version of DDO27.<sup>35</sup>

#### **(v) Conclusion and recommendation**

The Panel concludes:

- It is appropriate and justified to require discretionary upper level building breaks on the south side of Swan Street in Precinct 3.
- The location of the upper level building breaks are appropriate.
- There should be no uplift in building height based on providing an upper level building break.
- The side setback provisions for upper level building breaks as proposed in the Hearing version of DDO27 are appropriate.

The Panel recommends:

**Amend Design and Development Overlay Schedule 27, as shown in Appendix D3, to revise the 'Building separation requirements'.**

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<sup>35</sup> Document 183

## 9.4 Building heights

### (i) The issue

The issue is whether the proposed maximum building heights in Precinct 3 are appropriate.

### (ii) Evidence and submissions

Council submitted that the maximum building heights between the exhibited DDO17 and resolved DDO27 did not change in any material sense with the exception of the northern side of Swan Street between Coppin Street and Lord Street (255-309 Swan Street). These properties have been reduced from a maximum height of 24 metres (mandatory) to 21 metres (remaining mandatory) in response to more detailed assessment and consideration of the heritage fabric of the Central Club Hotel and the Drill Hall.

Mongomero Pty Ltd, owner of the Central Club Hotel, objected to the proposed mandatory height provision in the exhibited DDO17. Council submitted that it notified Mongomero of the resolved DDO27 changes and it did not provide any further submission and did not seek to be heard at the Hearing. Council considered the reduced building height from 24 to 21 metres was justified because of the existing heritage fabric.

Mr Gard'ner and Mr Helms accepted the maximum building heights in the resolved DDO27. Mr Gard'ner considered that the maximum building heights for heritage properties in Precinct 3 should be informed by a 45-degree angular plane. Council did not support this approach and preferred to rely on the combination of building heights, street wall heights and upper level setbacks to moderate built form outcomes.

Ms Hodyl considered the proposed heights on the north side of Swan Street to be appropriate and the mandatory provisions warranted. She stated:

While heritage is not a significant driver of height along Swan Street in these precincts, as with Precinct 2, the shallow depth of sites immediately adjacent to low-scale residential areas means that the potential for taller buildings is highly constrained without compromising visual amenity for these low-scale properties

Ms Hodyl was concerned that the proposed building heights on the south side of Swan Street were too high for the 20-metre width of Swan Street and would dominate the streetscape. She recommended:

In DDO27 ... reduce the 40 metre building height proposed along the southern side of Swan Street in Precinct 3 ... to 34 metres for the first 24 metres of the property depth. This should be a preferred development outcome, not a mandatory control.

Council did not support Ms Hodyl's recommendation on the basis that:

- the heights proposed along the southern side of Swan Street would not create overshadowing
- there would be no adverse impact on abutting residential properties
- a 6-metre upper level setback would acceptably reduce the impact of visual bulk to the street
- there is no heritage building on the south side of Swan Street in Precinct 3 that would be affected by development.

Council referred to the DDO27 ‘Design Quality Requirements’ which require urban design and architectural excellence, well-spaced and sited development to avoid visual bulk, equitable access to an outlook and daylight, street activation, and detail on all facades.

370 Swan Street Pty Ltd owns 370-374 Swan Street. In November 2017, a planning permit (PLN16/0915) was issued for a 10-storey (37 metres to the top of the parapet) mixed use office building for the site. The Amendment proposes a discretionary maximum building height of 34 metres. 370 Swan Street Pty Ltd objected to the proposed building height provisions and submitted the maximum preferred building height should be 40 metres. It explained that this is consistent with the adjoining land to the east and the planning permit for the site.

Mr Barnes supported the 40-metre maximum building height area being extended to the west to include 370-374 Swan Street. He considered this relatively minor adjustment would retain the design principle of development stepping up in height towards Burnley Station, to the east.

Mr Biles supported a discretionary 40-metre maximum building height for 370-374 Swan Street and noted:

- the Swan Street Framework refers to development gradually scaling up to Burnley Street from west to east
- preferred maximum building heights transition 12 metres (3-4 storeys) over a distance of more than 600 metres
- the transition in height will be mainly seen in oblique perspective along Swan Street and most noticeably where height changes at an intersecting street
- the location of the proposed upper level building break opposite Lord Street is an appropriate place to transition in height
- street interface provisions such as upper level setbacks will moderate any impact of building height on the streetscape
- there is no heritage consideration to limit building height in this location.

Ms Hodyl accepted the logic in extending the 40-metre height to the west, although she did not support a height of 40 metres on the street frontage to Swan Street.

Council submitted that extending the 40-metre height to the west up to the proposed upper level building break will have a minimal impact on the streetscape and it supported the change requested by 370 Swan Street Pty Ltd.

Council noted that 370-374 Swan Street did not extend all the way south to the railway reserve. A smaller section of land associated with the lot further to the west sits between 370-374 Swan Street and the railway line. Council submitted that:

- the section of land immediately to the south of 370-374 Swan Street should also be included in the 40-metre height provision
- the part of the lot west of the upper level building break should remain in the 34-metre height provision.

Zagame Group owns 408-442 Swan Street, which is proposed to have a discretionary 40-metre maximum building height. It “*strongly supported*” the proposed discretionary maximum building height for the site.

Swan Street Sales Pty Ltd owns land at 349-363 Swan Street and 80 Edinburgh Street on the north side of Swan Street and west of Edinburgh Street. This land is proposed to have a

mandatory 28-metre maximum building height. Swan Street Sales submitted the land is a development opportunity site and is suitable for taller development because:

- it is 1,501 square metres
- it is near Burnley Station and is opposite land identified for development with a height of 12 storeys (40 metres) so development on part of the site at a height taller than 28 metres would still result in a balanced streetscape
- there is no overshadowing issue or other direct amenity impacts to nearby residential land, or the south side of Swan Street
- the land is relatively deep, allowing for flexibility and variation in setbacks and overall form without the need for a 'wedding cake' typology
- three development sites in the near vicinity are either developed with or have approvals for 6 to 7 storey development
- if development exceeded 28 metres in height, it would be far enough from the residential land to the north to not be visually overwhelming
- the capacity to increase height in this location should be realised given there is no material adverse impact
- greater development on the site would be consistent with the vision and aspiration for a Major Activity Centre with such strategic importance.

Swan Street Sales submitted that the height provision should be discretionary.

Regarding the Swan Street Sales land, Mr Linke gave evidence that:

I do not think that the amenity considerations of a development proposal on the residential properties to the north is assisted by mandating a maximum building height. To the contrary, I think that for some sites, particularly large sites, it will impose an unnecessary constraint on development.<sup>36</sup>

Council maintained that the proposed provisions had been carefully considered and modelled to achieve a balance between development potential and public realm impacts.

The Panel notes Swan Street Sales also owns land in Precinct 4 and those land holdings are discussed in Chapter 10.

### **(iii) Discussion**

The Panel finds the proposed DDO27 building heights to be consistent with the design objectives for Precinct 3. The heights have been informed by extensive analysis of a variety of relevant opportunities and constraints affecting the development of the area. This analysis has been reviewed and refined and has resulted in a coherent and logical approach to building heights in the precinct.

The sophisticated interrelationship between the building heights, street wall heights, upper level setbacks and rear interface provisions for residential properties to the north is appropriate for achieving the design objectives. This approach does not need any additional provisions such as the 45-degree plane test.

The Panel agrees with Mr Biles and Mr Barnes that 370-374 Swan Street should be included in the area designated with a discretionary 40-metre maximum building height. This is a logical and relatively minor extension to the area exhibited in DDO17 with a preferred

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<sup>36</sup> Document 21, para 108

maximum 40-metre height and it will have no material impact on surrounding properties. The Panel considers the proposed upper level building break is an appropriate point to transition height and this matches the western boundary of 370-374 Swan Street. It is logical and appropriate to include the small section of land south of 370-374 Swan Street and north of the railway reserve in the 40-metre height area. Council supported these changes in the Hearing version of DDO27 Plan 1.

The Panel does not support a maximum building height greater than 28 metres for 349-363 Swan Street and 80 Edinburgh Street. It considers the proposed DDO27 height provisions:

- will facilitate significant development opportunities of up to 8 storeys, consistent with the expectations for growth in a Major Activity Centre
- do not unreasonably or unnecessarily restrict development
- are necessary to reasonably protect the amenity of the residential land to the north
- form part of a suite of provisions needed to address building bulk and visual impact
- are generally consistent with the maximum heights in recent development approvals on the north side of Swan Street in Precinct 3.

The Built Form Framework clearly envisages different building heights on the north and south side of Swan Street for sound reasons. DDO27 provides for significantly greater building heights on the south side of Swan Street (for example, discretionary heights of 34 and 40 metres) in large parts of Precinct 3. This important differentiation needs to be carefully managed to ensure that a series of discretionary planning decisions do not undermine the strategic intent for the area. The Panel considers that without mandatory height provisions on the north side of Swan Street, there is a real risk that development proposals will seek to leverage additional height on the basis of the significant heights on the south side of Swan Street. The Panel considers the cumulative effects of 'height creep' would present a significant threat to implementing Built Form Framework's strategic vision for the area. This reaffirms the Panel's earlier conclusion that mandatory provisions are necessary and appropriate on the north side of Swan Street in Precinct 3.

#### **(iv) Conclusions and recommendations**

The Panel concludes:

- The preferred maximum building heights in Precinct 3 are generally appropriate and justified except for 370-374 Swan Street and the land to its south.
- 370-374 Swan Street and land to its south should have a preferred maximum building height of 40 metres.
- The boundary between 34 metres and 40 metres should be the upper level building break opposite Lord Street shown on DDO27 Plan 1.

The Panel recommends:

**Amend Design and Development Overlay Schedule 27, as shown in Appendix D3, to specify a preferred maximum building height of 40 metres for land at 370-374 Swan Street and the section of land to its south in 'Plan 1: Height and Interface Plan'.**

## 9.5 Street wall heights and setbacks

### (i) The issue

The issue is whether the street wall heights, setbacks and interface types for Precinct 3 in Table 1 of DDO27 are appropriate and justified.

### Evidence and submissions

Mr Gard'ner gave evidence that minor changes should be made to DDO27 Table 1 and Plan 1:

- Interface E should be revised regarding:
  - Street wall height – a provision should be added under the 'preferred requirements' to require development abutting a heritage building to match the parapet height of the taller adjoining heritage building for a minimum 6 metres from the heritage building.
  - Upper level setback – a mandatory 6-metre setback should apply to heritage buildings.
- Interface F upper level setback should be revised so that the preferred 6-metre minimum setback applies to all heritage buildings (not just individually significant buildings)
- on the eastern side of Bell Street, Interface G should be replaced with Interface F to protect the visual prominence of 273A Swan Street (HO522)
- 232-234 Coppin Street (HO245) should have a 6-metre mandatory upper level setback.

Mr Gard'ner said these changes were necessary to correct minor errors or oversights.

Council accepted all changes and included them in the Hearing version of DDO27. Council proposed to change the interface type for 232-234 Coppin Street from 'G' to 'C' to implement Mr Gard'ner's recommendation regarding those properties. Interface C has been applied more broadly to other heritage buildings in this precinct and has a mandatory 6 metres upper level setback.

Mr Helms recommended changes to Interface E Street wall height, Interface F upper level setback and the eastern side of Bell Street in Table 1, consistent with Ms Gardner's recommendations.

Mr Helms recommended that the Central Club Hotel at 291 Swan Street (HO285) have minimum upper level setbacks, similar to those proposed for the Precinct Hotel in DDO25 and the parapet of new development should not match the parapet of the Central Club Hotel. He considered these changes were necessary to protect and maintain the visual prominence and three-dimensional form of the hotel.

Mr Helms opined the unique characteristics of the former Drill Hall at 309 Swan Street (HO440) meant that more site-specific provisions should be considered for this site. He added this could include a preferred (rather than mandatory) street wall setback, removing the requirement for the street wall to match the parapet and increasing the upper level setbacks.

Council did not support Mr Helm's recommendations for the Central Club Hotel or the former Drill Hall. It considered them to be unnecessary to achieve an acceptable heritage outcome.

**(ii) Discussion**

The Panel accepts the recommendations of Mr Gard'ner as expressed in the Hearing version of DDO27 regarding changes to 'Table 1 – Street Wall Heights and Setbacks for Precinct 3' and 'Plan 1: Height and Interface Plan – Precinct 3 Swan Street East' for DDO27.

The Panel agrees these are appropriate minor changes that enhance future built form outcomes and improve the protection of heritage places.

The Panel agrees with Council that the changes recommended by Mr Helms regarding the Central Club Hotel and the former Drill Hall are not needed to achieve an acceptable heritage outcome.

**(iii) Conclusions and recommendations**

The Panel concludes:

- Interface E should:
  - include a provision in the 'preferred requirements' column of the street wall height to *"match the parapet height of the taller adjoining heritage building for a minimum length of 6 metres from the heritage building"*
  - include a mandatory requirement in the upper level setback for a *"minimum 6 metres for heritage buildings"*
- Interface F should apply the discretionary minimum 6-metre upper level setback to all heritage buildings.
- Interface G on the eastern side of Bell Street should be replaced with Interface F.
- Interface G in front of 232-234 Coppin Street should be replaced with Interface C.

The Panel recommends:

**Amend Design and Development Overlay Schedule 27, as shown in Appendix D3, to:**

- a) revise 'Plan 1: Height and Interface Plan – Precinct 3 Swan Street East'
- b) revise 'Table 1 - Street Wall Heights and Setbacks for Precinct 3'.

**9.6 Vehicle and pedestrian access****(i) The issue**

The issue is whether the vehicle and pedestrian access requirements are appropriate in Precinct 3.

**(ii) Evidence and submissions**

Traffix Group prepared a report titled 'Traffic Engineering Assessment of the Swan Street Activity Centre' (Traffic Engineering Assessment) in July 2017. Council submitted the report formed the basis of the transport engineering related requirements included in the proposed provisions.

Ms Dunstan, a traffic engineer from Traffix Group, gave evidence that a key finding of the report was that the traffic impacts of increased development on Swan Street can be accommodated by the arterial road network. She said this was based on a case study of Victoria Street, Richmond, where the transport demand associated with increased development was taken up by combination of alternative transport modes and suppression

of through traffic, instead of increased traffic volumes on Victoria Street. Ms Dunstan expected similar outcomes in Swan Street.

Ms Dunstan explained a focus of the Traffic Engineering Assessment report and the proposed DDO provisions was to avoid using Swan Street for vehicle access to individual properties. Instead, there was a preference for using rear and side access points to local streets and laneways. Ms Dunstan considered limiting vehicle access to Swan Street to be beneficial because it would:

- reduce barriers and conflicts to pedestrian movements along Swan Street
- reduce impediments to creating future accessible tram stops
- limit vehicle access to Swan Street to public road intersections, which improves the efficiency and safety of the road network for all users
- reduce the number of locations where right turn movements occur, thereby potentially reduce delays to trams and improving road safety
- potentially reduce the number of conflict with cyclists travelling along the roads from vehicles entering or leaving private property
- have non-traffic engineering benefits including increased active building frontages and minimised impact on heritage streetscapes.

Ms Dunstan considered the DDO schedules had appropriately translated the intent and recommendations of the Traffic Engineering Assessment.

The vehicle and pedestrian access requirements for Precinct 3 are expressed in DDO27, including that:

Development should provide vehicular access from rear lanes or from side streets in the preferred locations in the Access and Movement Plan 2 of this schedule.

...

Vehicle ingress and egress into development, including loading facilities and building servicing, should be designed to ensure a high quality pedestrian amenity and limit potential conflict between vehicle movements and pedestrian activity.

...

Development should include north-south access in the locations shown on the Access and Movement Plan 2 to allow for building services and car park access.

The DDO27 'Access and Movement Plan 2' shows:

- a 'new laneway required' extending along the southern boundary of the precinct from Burnley Street to a point east of Duke Street (but not extending through to Coppin Street)
- three 'north-south access' lanes generally aligning with Edinburgh Street, Glass Street and Lord Street extending from Swan Street south to the 'new laneway required' on the southern boundary of Precinct 3.

The location of the 'north-south access' opposite Edinburgh Street and Lord Street generally align with the 'upper level building breaks'.

Ms Dunstan preferred that:

- the 'new laneway required' be extended from Burnley Street to Coppin Street to help spread traffic through the area
- turning movements in and out of the north-south accessways and any other vehicle entrances in this section of Swan Street should be limited to 'left in-left out' only.

Zagame Group Pty Ltd owns 408-442 Swan Street and is affected by the eastern 'north-south access' and the 'new laneway' at the rear. It objected to the requirement for the new laneway behind its property and considered it would be "*unachievable*" because:

- it requires all landowners to coordinate the creation of the laneway in an area where development will be fragmented
- the laneway is only beneficial if all landowners are involved
- the entire laneway is reliant on the property at 446 Swan Street who will not necessarily benefit from the laneway given that they have direct frontage to Burnley Street
- the laneway is not proposed to extend the full length of the block (noting that this is unachievable given the existing metro office building which is built to the boundary of the rail corridor).<sup>37</sup>

Zagame Group submitted that if the laneway was to be realised then:

- the laneway should be acquired by applying the Public Acquisition Overlay on the land, or
- Council should purchase a portion of the VicTrack land for the laneway without impacting the private land abutting the railway land.

In response, Council submitted that:

- the new laneway is not subject to the Public Acquisition Overlay
- there is no requirement for development to be generally in accordance with that aspect of Plan 2
- the new laneway has been identified as a strategic objective for consideration when the parcels of land abutting the new laneway are redeveloped
- the new laneway is identified as a discretionary element in the vehicle and pedestrian access requirements.

Council added:

The depiction of the proposed laneway in Plan 2 creates no obligation on a land owner to set aside land for the laneway or to construct a laneway, but it does signal to prospective permit applicants the clear benefit of making provision for a rear laneway for access, consistent with the preference expressed for this outcome in the vehicle and pedestrian access requirements. The provision of a new laneway condition voluntarily by a permit applicant would be a relevant consideration weighing in favour of approval of a proposal in any net community benefit assessment.<sup>38</sup>

Regarding the 'north-south access' shown on Plan 2, Council submitted:

- these accessways would provide vehicle access to these properties in the short-term
- 6 metre wide accessways will be initially required
- the accessways will be shared between adjoining properties
- over time, as the east-west laneway at the rear is established, the function of the north-south accessways would be reduced
- the accessways would be left in-left out only
- the accessways are identified as a discretionary element in the vehicle and pedestrian access requirements.

<sup>37</sup> Document 99, para 32

<sup>38</sup> Document 193, para 87

Council acknowledged the difficulty with extending the rear laneway from Burnley Street to Coppin Street.

In the Hearing version of DDO27, Council proposed to:

- show all of the land from 356 Swan Street to 408-442 Swan Street as 'left in- left out access permitted'
- add the following underlined words to one of the DDO27 requirements:

Development should provide vehicular access from rear lanes or from side streets in the preferred locations in the Access and Movement Plan 2 of this schedule except in locations identified as "Left in - Left Out Access Permitted" in the Access and Movement Plan 2 of this schedule.<sup>39</sup>

- add a new requirement:

Development identified as "Left in - Left Out Access Permitted" in the Access and Movement Plan should limit the width of vehicle crossovers and incorporate 'Left in' and 'Left out' only vehicle access.

### **(iii) Discussion**

The Panel accepts that the DDO27 vehicle and pedestrian access requirements are generally based on sound planning principles. The Traffic Engineering Assessment appropriately justifies the proposed provisions.

The Panel acknowledges and shares concerns expressed by Zagame Group regarding the implementation of the rear laneway. Council advised the laneway is more aspirational than necessary, however, it is expressed in DDO27 as 'new laneway required'. This should be expressed as 'new laneway preferred' to align with Council's submission.

The Panel supports additional flexibility for left in-left out access between 356 and 408-442 Swan Street. The Panel agrees with the additional laneway related provisions set out in the Hearing version of DDO27.

The Panel accepts that the locations of the three north-south accessways are indicative and are a discretionary requirement. Co-locating two of the accessways with upper level building breaks into a central accessway will provide a useful additional break to the building form along Swan Street. The Panel is satisfied that there is sufficient flexibility in the provisions to ensure a range of possibilities to achieve appropriate access to the properties in this section of Swan Street.

### **(iv) Conclusions and recommendations**

The Panel concludes:

- The vehicle and pedestrian access requirements in Precinct 3 are generally appropriate.
- The notation in the legend on 'Plan 2 Access and Movement Plan – Precinct 3 Swan Street East' that states 'new laneway required' should be revised to state 'new laneway preferred'.
- 'Plan 2 Access and Movement Plan – Precinct 3 Swan Street East' should be changed to provide flexible left in-left out access between 356 and 408-442 Swan Street.

<sup>39</sup> Document 183

- Vehicle and pedestrian access requirements should be changed to reflect left in-left out access.

The Panel recommends:

**Amend Design and Development Overlay Schedule 27, as shown in Appendix D3, to:**

- a) revise 'Plan 2: Access and Movement Plan - Precinct 3 Swan Street East**
- b) revise 'Vehicle and pedestrian access requirements'.**

# 10 Precinct 4 – Burnley Station

## 10.1 What is proposed?

Figure 13 Precinct 4 exhibited and resolved building heights and street wall interfaces



**Table 8** Precinct 4 exhibited and resolved planning provisions

IR	Design Element	Exhibited DDO17 requirements	DDO28 requirements
C	Street wall height	<b>Preferred:</b> 11m maximum or the parapet height of the adjoining individually significant or contributory building if higher than 11m. 8m minimum. Match the parapet height of the taller adjoining heritage building	<b>Preferred:</b> 11m maximum. 8m minimum. Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	<b>Mandatory:</b> 0m.	<b>Mandatory:</b> 0m.
	Upper level setback	<b>Mandatory:</b> 10m minimum from Swan Street setback for land affected by HO286 (365 Swan Street). Minimum 5m for other individually significant heritage buildings. <b>Preferred:</b> Minimum 5m elsewhere. Any part of a building above the street wall should be designed to ensure that it occupies no more than one third of the vertical angle defined by the whole building in the view from a sight line of 1.7m (on the opposite side of the street).	<b>Mandatory:</b> 10m minimum from Swan Street setback for land affected by HO286 (365 Swan Street). Minimum 6m for other heritage buildings. <b>Preferred:</b> Minimum 6m elsewhere.
E	Street wall Height	<b>Preferred:</b> 14.5m maximum.	<b>Preferred:</b> 14m maximum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 5m minimum.	<b>Preferred:</b> 6m minimum.
F	Street wall height	<b>Preferred:</b> 11m minimum.	<b>Preferred:</b> 11m minimum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 5m minimum for individually significant buildings. 3m minimum elsewhere.	<b>Preferred:</b> 6m minimum for individually significant buildings. 3m minimum elsewhere.
G	Street wall height	<b>Preferred:</b> 14.5m maximum.	<b>Preferred:</b> 14m maximum.
	Street wall setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
	Upper level setback	<b>Preferred:</b> 3m minimum.	<b>Preferred:</b> 3 metre minimum.
H	Street wall height	<b>Preferred:</b> N/A	<b>Preferred:</b> N/A
	Street wall setback	<b>Preferred:</b> 0m minimum unless setback is identified on the Plan 8.	<b>Preferred:</b> 0m minimum unless setback is identified on the Plan 2.
	Upper level setback	<b>Preferred:</b> 0m.	<b>Preferred:</b> 0m.
I	Side and rear wall height	<b>Preferred:</b> 8m maximum on a common boundary with a property in a residential zone. 11.5m maximum if boundary abuts a laneway.	<b>Preferred:</b> 8m maximum on a common boundary with a property in a residential zone. 11m maximum if boundary abuts a laneway.
	Upper level setback	<b>Preferred:</b> Development should be setback in accordance with Figure 1 and Figure 2. Development should minimise stepped form.	<b>Preferred:</b> Development should be setback in accordance with Figure 1 and Figure 2. Development must minimise stepped form.

## What is sought for Precinct 4?

The exhibited preferred future character for Precinct 4 at Clause 21.12 states:

Precinct 4 - is anchored around Burnley Station and the Burnley Street Village. High quality new buildings adjoining Burnley Station with a range of retail, office, hospitality, residential and personal services activate new and improved pedestrian connections to the station. Along Burnley Street, the heritage buildings remain prominent with new infill development integrating as a cohesive part of the streetscape. Buildings behind Burnley Street and along the north side of Swan Street scale sensitively to the adjoining low scale residential area. Breaks between buildings at upper levels maintain views to the sky from street level and create a varied skyline when viewed from surrounding residential areas.

## 10.2 Design objectives

### (i) The issues

The issue is whether the Precinct 4 design objectives proposed since exhibiting the Amendment are appropriate.

### (ii) Background

The exhibited DDO17 included 'General Design Objectives' for the Activity Centre. After DDO17 was restructured into four separate schedules, Council prepared specific objectives for each precinct. The design objectives for Precinct 4 are:

To ensure development respects the scale, rhythm, and architectural detail of the streetscape and the heritage buildings in the Burnley Street Heritage Precinct.

To support a new mid rise scale built form character with lower built form at the interfaces with streets and the adjoining low rise residential areas that maintains an active, high quality and pedestrian friendly environment.

To reinforce the corners of Swan Street and Burnley Street as a vibrant commercial, retail and residential location.

To provide for taller development on the south side of Swan Street that delivers significant public realm outcomes and ensure development on both side of Swan Street maintains the amenity of Ryan's Reserve.

To support high quality new buildings adjoining Burnley Station with mixed uses that activate and improve pedestrian connections to the station.

### (iii) Evidence and submissions

Council submitted the Swan Street Framework conveys the intention for the north side of Swan Street to support a 'higher change responding to existing character' and for the south side of the street to accommodate both 'higher' and 'significant' change required to deliver a 'new future character'. The properties in Burnley Street were designated for 'moderate change responding to existing character'. Council explained the design objectives reflected the intent of the Swan Street Framework.

Precinct 4 includes properties centred around the Burnley Street Station and Burnley Street Heritage Precinct (HO474). It extends to 491 Swan Street (one property beyond Belgravia Street) on the northern side, and to the far eastern end of Swan Street on the south.

The exclusion of the properties at 493-499 Swan Street from Precinct 4 is discussed in Chapter 5.1.

The former Burnley Theatre at 365 Swan Street on the corner of Edinburgh Street is an individually significant heritage place (HO286) in DDO28.

Mr Gard'ner recommended that the following design objective be added:

To maintain the prominence of the former Burnley Theatre on the corner of Edinburgh Street and Swan Street within the streetscape.

Council did not consider it was necessary to include this design objective.

No submitter or witness took issue with the design objectives articulated for Precinct 4.

#### **(iv) Discussion**

The Panel accepts that the design objectives are satisfactory and are based on sound strategic planning. The design objectives are generally consistent with the outcomes from the Swan Street Framework and provide an appropriate platform to help manage the future growth of the area.

The Panel agrees with Council that it is not necessary to include the design objective suggested by Mr Gard'ner. It notes that there are already five design objectives (the maximum number permitted in a DDO schedule<sup>40</sup>) and that other proposed changes to the design quality requirements outlined adequately address this issue.

The Panel supports the proposed design objectives.

#### **(v) Conclusions**

The Panel concludes the Precinct 4 design objectives are appropriate.

### **10.3 Design quality requirements**

#### **(i) The issue**

The issue is whether it is appropriate to include a specific design quality requirement relating to HO474.

#### **(ii) Evidence and submissions**

HO474 (Burnley Street Precinct) includes a range of properties in Burnley Street and Swan Street. Mr Helms noted the exhibited DDO17 included the following design objective that applied to the Activity Centre:

To ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape.

In the resolved version of the DDO schedules, this objective is retained for Precinct 2 but deleted in Precincts 1, 3 and 4. Mr Helms considered that, although this objective was not required in Precinct 3 (as it does not have a defined heritage street wall), it was required in Precinct 1 and Precinct 4 as there are heritage street walls in these areas. These areas correlate with the Heritage Overlay (HO474) in Precinct 4.

Mr Helms recommended that the following design objective be reinserted for Precinct 4:

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<sup>40</sup> Ministerial Direction 7(5)

To ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape within land affected by HO474.

Council supported this in principle, however given that there are already five design objectives in DDO28, it recommended that this provision be included within the design quality requirements.

No party objected to including this provision as a design quality requirement.

### **(iii) Discussion**

The Panel supports the requirement recommended by Mr Helms to ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape in land affected by the Heritage Overlay (HO474).

It is appropriate to include this provision as a design quality requirement for Precinct 4.

### **(iv) Conclusions and recommendations**

The Panel concludes that it is appropriate to include a provision in the design quality requirements to ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape within land affected by the Heritage Overlay (HO474).

The Panel recommends:

**Amend Design and Development Overlay Schedule 25, as shown in Appendix D4, to include a heritage related provision in the 'Design quality requirements'.**

## **10.4 Building separation requirements**

Chapter 6.5 discussed building separation requirements applicable across all precincts. This chapter discusses special building separation requirements applicable to Precinct 4.

### **(i) The issues**

The issues are:

- whether the 'Upper Level Building Breaks' are appropriate
- whether the side setbacks associated with the Upper Level Building Breaks are appropriate.

### **(ii) Evidence and submissions**

The resolved DDO28 provisions require 'Upper Level Building Breaks' to enable clear views to the sky between buildings along Swan Street when viewed from the opposite side of Swan Street and along Cutter Street and Bendigo Street. This is a discretionary requirement.

The location of the required upper level building breaks are shown in DDO28 Plan 1. There are two upper level building breaks shown on Plan 1 on the south side of Swan Street – one is opposite Cutter Street and the other is near Bendigo Street.

No submission objected to the location of the upper level breaks in Precinct 4.

At the Hearing, the Panel questioned Council about whether the clause wording “*greater than a minimum of ...*” should be simplified. This is detailed in Chapter 9.3 and not repeated here.

Mr Zois objected to the revised upper level setback requirements. He submitted the requirements in the resolved version of DDO28 should be retained.

Council submitted that the revised requirements were in response to the expert evidence of Ms Hodyl regarding upper level development on common boundaries (see Chapter 6.5). Council added that building breaks and separation requirements were needed for public realm and internal amenity purposes, given the intensity and height of development that is encouraged along the southern side of Swan Street in Precinct 4.

Council submitted that as a discretionary provision, there will be scope to vary the metric in appropriate circumstances.

### **(iii) Discussion**

There is sound justification to provide upper level building breaks in Precinct 4. The location of the upper level building breaks shown in the resolved version of DDO28 are appropriate.

The Panel agrees with the side setbacks proposed by Council associated with the upper level setbacks. The changes are consistent with the approach in the resolved DDO28 with adjusted metrics based on Ms Hodyl’s recommendations (where development shares a common boundary). The Panel supports the simplified language of the Hearing version of the provision.

The Panel notes that this approach is consistent with the building separation requirements in Precinct 3 discussed in Chapter 9.3.

### **(iv) Conclusion and recommendation**

The Panel concludes:

- It is appropriate and justified to require upper level building breaks on the south side of Swan Street in Precinct 4.
- The location of the upper level building breaks are appropriate.
- The side setback provisions for upper level building breaks in the Hearing version of DDO28 are appropriate.

The Panel recommends:

**Amend Design and Development Overlay Schedule 28, as shown in Appendix D4, to revise the ‘Building separation requirements’.**

## **10.5 Building height**

### **(i) The issues**

The issue is whether the proposed maximum building heights in Precinct 4 are appropriate.

### **(ii) Evidence and submissions**

The resolved DDO28 building heights consist of mandatory maximums on the north side of Swan Street, including:

- 28 metres in Swan Street west of Burnley Street
- 24 metres in Swan Street between Burnley Street and Belgravia Street

- 21 metres in Burnley Street
- 14 metres east of Belgravia Street.

On the south side of Swan Street, discretionary maximum heights are generally 28 metres except for:

- 40 metres applied to three lots at the west end
- 21 metres applied to an irregular shaped lot at the east end.

Council submitted the proposed heights from the Swan Street Framework were translated into the exhibited DDO17 and have remained in the resolved DDO28, except for a reduction in height from 18 metres to 14 metres east of Belgravia Street.

Council acknowledged that the DDO28 heights for the north side of Swan Street and in Burnley Street have been converted from discretionary provisions in the Built Form Framework to mandatory provisions.

Mr Gard'ner gave evidence that the mandatory 21 metres, 24 metres and 28 metres building heights on the northern side of Swan Street and along Burnley Street *"are likely to be excessive in the context of the modestly scaled single and two-storey buildings within HO474."* He recommended the maximum height for the areas with heritage buildings be reduced to 14 metres or 18 metres, depending on property depth. He explained this would avoid new development visually dominating the heritage fabric.

Mr Gard'ner recommended that the building height on land subject to the Heritage Overlay in Precinct 4 should be informed by a 45 degree angular plane to avoid visually dominating the heritage street wall in the Heritage Overlay (HO474) and the former Burnley Theatre.

Mr Helms considered the proposed building heights in the Heritage Overlay should be reduced. He explained a maximum height of 18 metres was needed to achieve acceptable heritage outcomes and this would be consistent with heights applied to similar streetscapes in the Heritage Overlay (HO335) in Precinct 2. He was concerned that heights of 21 metres in Burnley Street and 24 metres in Swan Street (east of Burnley Street) would result in overly dominant upper level development.

Council disagreed with the recommendations of Mr Gard'ner and Mr Helms regarding the reduced building heights.

Ms Hodyl generally agreed with the proposed maximum building heights in Precinct 4. She noted that on the north side of Swan Street, the shallow depth of sites immediately adjacent to low-scale residential areas meant that the potential for taller buildings was highly constrained without compromising visual amenity for these properties.

Ms Hodyl recommended that the area designated for a maximum height of 40 metres on the south side of Swan Street should be reduced to 34 metres in height for a distance of 24 metres from the frontage (with the balance of the site having a 40-metre height provision). Council did not support her recommendation and noted that this was consistent with its response to Ms Hodyl's similar recommendation in Precinct 3.

### **365-387 Swan Street**

Ms Hodyl gave evidence regarding the former Burnley Theatre at 365-387 Swan Street (on the east corner of Edinburgh Street). It has a site-specific Heritage Overlay (HO286) and is proposed to have:

- a 28-metre mandatory building height
- an 8-11-metre discretionary street wall height on Swan Street
- an 11-metre discretionary minimum street wall height on Edinburgh Street
- a 10-metre mandatory minimum upper level setback on Swan Street
- a 6-metre discretionary upper level setback on Edinburgh Street.

Ms Hodyl recommended that the site's mandatory maximum height be reduced from 28 metres to 18 metres. She said this should be in conjunction with a 0-metre setback to Edinburgh Street and an 18-metre mandatory maximum street wall height on Edinburgh Street. This was to retain the internal building space for use as a theatre and to ensure that the overall building height did not become visually dominant. Ms Hodyl acknowledged that she had not inspect the building's interior.

The owner of the former Burnley Theatre, Swan Street Sales, submitted that Ms Hodyl's intent to facilitate the reuse of the former theatre building was "*academic, purist and unrealistic*". It said Ms Hodyl:

- did not present any evidence regarding the demand for a theatre use in this location
- had no understanding of whether the reuse of the theatre is a viable or attractive commercial proposition
- had not inspected the theatre before making these recommendations
- had no appreciation of the structural condition of the theatre and whether it could be retained whilst accommodating new development
- gave a rationale for the significant reduction in the height of the building, which was both difficult to follow and illogical.

Swan Street Sales submitted that Ms Hodyl is not qualified to assess the structural composition of the building and its likely impact on the development potential of the site, with or without an upper level setbacks from Edinburgh Street. It added that her recommendation to reduce the mandatory maximum building height should be dismissed as lacking any sound rational or strategic basis.

Swan Street Sales called planning evidence from Mr Linke, who stated:

- mandatory height and setback provisions are not necessary and have the potential to unnecessarily limit development potential
- DDO28 should not apply to the former Burnley Theatre site
- any redevelopment proposal for the site should be assessed against the provisions of Clause 22.02 (Development guidelines for sites subject to the Heritage Overlay).

Council did not agree with Ms Hodyl or Mr Linke and submitted that applying DDO28 to the site is entirely appropriate for a precinct-wide overlay, where a suite of provisions is proposed to address heritage, urban design and amenity considerations. It noted that no other individually significant building with the Heritage Overlay had been excluded from DDO28.

Council submitted that the heritage significance of the former Burnley Theatre required a conservative approach to its upper level form to not dominate or overwhelm the heritage fabric. It noted that there had been a range of heights recommended by various witnesses at the Hearing and considered the proposed 28 metres building height should be the maximum building height permitted, balancing the heritage and urban design issues against the development potential for the land.

### **471-473 Swan Street**

Pelligra Build Pty Ltd (Pelligra) owns 471-473 Swan Street (between Belgravia and Stawell Streets). The resolved DDO28 applies a mandatory 24 metres building height to the land with discretionary street wall and upper level setbacks.

Pelligra objected to the mandatory maximum building height and called urban design and planning evidence from Ms Roberts and Mr Linke respectively. They considered the mandatory application of the proposed building height was unjustified on streetscape, amenity and overshadowing grounds. Ms Roberts stated that an additional level (to at least 8 storeys) could be achieved on the site if the Swan Street upper level setback and the rear interface setbacks were reduced. She added that this demonstrates a mandatory 24 metres (7 storey) height limit “*suffocates contextual design outcomes*”.

Ms Hodyl reviewed Ms Robert’s evidence and considered that the modelling attached to the statement of evidence showed an unacceptable residential interface to the rear, and that without Ms Robert’s proposed rear interface, a building higher than 24 metres was not possible.

Council agreed Ms Hodyl’s assessment and submitted that the DDO28 building heights were consistent with the emerging character on the north side of Swan Street at around 6 to 7 storeys (demonstrated in Council’s Development Analysis<sup>41</sup>).

### **487 Swan Street**

Namreh Properties Pty Ltd (Namreh) owns 487 Swan Street. The Heritage Overlay does not apply to the site, and the exhibited DDO17 specifies an 18-metre mandatory maximum building height. The resolved version of DDO28 reduces it to 14 metres. Namreh objected to the reduced height and submitted that Council had justified this change based on an increase to the upper level setback from 5 to 6 metres. Council explained the lot depth and other setback requirements reduced the potential height by one storey.

Namreh submitted that:

- the depth of 487 Swan Street was similar to the depth of the lots to the west all the way to Burnley Street, yet their heights were not reduced
- the eastern interface of the site has been identified as Type I (Residential Interface) in DDO28 Plan 1, however the land to the east is in the C1 Zone and the interface should be amended
- the original mandatory 18-metre maximum building height should be reinstated.

Namreh noted that Ms Hodyl had identified the inconsistency with applying Interface I and she had recommended it be revised.

At the Hearing, Council proposed to change the eastern interface to Interface H and this was supported by Namreh. Council submitted that, as a consequence of this change to the setback, it was appropriate to reinstate the 18-metre mandatory maximum height to the site.

### **389-393 and 484-486 Swan Street**

Killara Quest Pty Ltd owns two separate parcels of land in Precinct 4.

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<sup>41</sup> Document 65 Folder A, Item 3

389-393 Swan Street is approximately 515 square metres and is on the northern side of Swan Street, west of the intersection of Swan and Burnley Streets. The Amendment proposes a mandatory maximum building height of 28 metres.

484-486 Swan Street is approximately 2,300 square metres and is on the southern side of Swan Street, east of the intersection of Swan and Burnley Streets. The Amendment proposes a discretionary building height of 40 metres.

Killara submitted that discretionary heights on the north side would provide greater flexibility and realise the full development potential for the site.

In response, Council submitted that this proposition assumes that all parts of Precinct 4 have similar development potential and it overlooks the intentional differentiation between the north and south sides of Swan Street in Precinct 4. It said lower heights were needed on the north side because of the sensitive interface conditions, the presence of heritage fabric and typically smaller lot sizes.

### **(iii) Discussion**

The Panel generally accepts the proposed DDO28 building heights are consistent with the design objectives for the precinct. The Panel is satisfied that the proposed heights have been determined following detailed analysis of a variety of relevant factors affecting the development of the area.

The Panel does not accept that changes are required to any of the proposed heights in Precinct 4 other than 487 Swan Street. It does not agree with Mr Gard'ner or Mr Helms that reducing building heights on land with the Heritage Overlay is required. The Panel is satisfied that the current suite of height and setback provisions will ensure the acceptable protection of heritage buildings. For the reasons outlined in Chapter 9, the Panel does not support a 24-metre upper level setback on Swan Street for development taller than 34 metres.

#### **365-387 Swan Street**

The Panel accepts the proposed DDO28 building height provisions for the former Burnley Theatre are appropriate. It does not agree with Ms Hodyl or Mr Linke that the height should be varied. Council has achieved an acceptable balance. A maximum height of 28 metres will provide for significant redevelopment opportunity while appropriately protecting the heritage fabric and public realm.

The Panel does not agree with Mr Linke that DDO28 should not be applied to the former Burnley Theatre site. This would be entirely inconsistent with every other individually significant heritage site in the Activity Centre. DDO28 appropriately integrates heritage and urban design provisions.

#### **389-393, 471-473 and 484-486 Swan Street**

The Panel does not support the submissions of Pelligra or Killara Quest regarding the proposed heights for these properties. The Panel is satisfied that the proposed heights on the north side of Swan Street in DDO28:

- will generally facilitate significant development opportunities of 7 to 8 storeys in height consistent with the expectations for growth in a MAC
- do not impose unreasonable or unnecessary restrictions on the development of the land

- are necessary to ensure that the cumulative impact of development along the north side of Swan Street does not detrimentally affect the residential areas to the north with respect to building bulk and visual impacts
- are generally consistent with the maximum heights in recent development approvals on the north side of Swan Street in Precinct 4.

The Panel agrees with Ms Hodyl that the examples of additional height in Ms Roberts' evidence was contingent on a significant relaxation of the rear interface provisions. This would present an unacceptable outcome for the residents to the north and is demonstrative of the need for the proposed provisions.

#### **487 Swan Street**

The Panel agrees with Namreh and Council that the mandatory maximum height for 487 Swan Street should remain at the original exhibited height of 18 metres. This is an appropriate height having regard to the revised setbacks and the context of the site.

#### **(iv) Conclusions and recommendations**

The Panel concludes:

- The maximum building heights in Precinct 4 are generally appropriate and justified except for 487 Swan Street.
- 487 Swan Street should have a mandatory maximum building height of 18 metres.

The Panel recommends:

**Amend Design and Development Overlay Schedule 28, as shown in Appendix D4, to specify a mandatory maximum building height of 18 metres for land at 487 Swan Street in 'Plan 1: Height and Interface Plan'.**

## **10.6 Street wall heights and setbacks**

### **(i) The issues**

The issues are:

- whether the content of 'Table 1 - Street wall heights and setbacks for Precinct 4 in DDO28 is appropriate.
- whether the interface types in 'Plan 1: Height and Interface Plan - Precinct 4 Burnley Station' in DDO28 are appropriate.

### **(ii) Evidence and submissions**

Mr Gardner and Mr Helms gave evidence that the upper level setback for Interface F should be revised to ensure that the preferred 6-metre minimum setback applies to all heritage buildings (not just individually significant buildings). Council supported this change.

Council and Mr Gardner considered the mandatory 10-metre upper level setback for the former Burnley Theatre (HO286) necessary to ensure upper level development does not overwhelm the heritage frontage to Swan Street and allows for the retention of the original foyer and the upper level parapet.

Swan Street Sales opposed the application of a mandatory upper level setback. It considered it to be a blunt tool that does not recognise the particular characteristics of the theatre and

will foreclose the opportunity to adopt an innovative design approach that appropriately responds to all of the theatre's characteristics. It added that this would constitute a serious development constraint where design flexibility should be maintained.

Mr Gard'ner considered there was no need for an upper level setback to Edinburgh Street on heritage grounds. He supported no upper level setback. Ms Hodyl also expressed the view that no upper level setback was required, although she proposed that in the context of a lower building height.

Swan Street Sales supported either no upper level setback requirement, or if one was to be applied, a discretionary upper level setback of 3 metres above the street wall.

Ms Roberts gave evidence that for 471-473 Swan Street, the rear Interface I has a discretionary rear wall height of 8 metres on a common boundary or 11 metres abutting a laneway. Discretionary upper level setbacks are defined in Figure 1 and Figure 2 of DDO28. She recommended a 14-metre boundary wall requirement with a 2:1 upper level setback.

Ms Hodyl disagreed with Ms Roberts and stated these changes:

would create a significant scale of building immediately adjacent to the low-scale residential areas. The views of these upper levels would be unacceptable as they would significantly reduce the visual amenity within the rear private open space of these properties.<sup>42</sup>

Ms Hodyl noted that, without a change to the rear interface provisions, a taller building on the site was not possible. Council agreed with Ms Hodyl and considered Ms Robert's revised provisions had no precedent in commercial/residential interface provisions in other activity centres.

Namreh Properties considered Interface I to be inappropriate for the eastern boundary of 487 Swan Street. It said this was not a residential interface and a different interface type should apply. Council agreed and proposed to revise it to Interface H. Namreh agreed with this change.

The Panel queried the application of Interface C to the Swan Street frontage, having regard to the mandatory requirement for the street wall to have a 0-metre setback and the adjoining heritage properties to the east were set back from the street. Council submitted that the value of creating a strong street edge was more important than a setback to align with the adjoining heritage buildings.

Mr Zois (Submission 36) is the applicant for Planning Permit Application PLN19/0655 for 413 Swan Street. He submitted, among other things, that a transitional provision should be included to consider current permit applications complying with the mandatory 5-metre upper level setback provision of Interface C in DDO17. He submitted that a transitional clause could be included in Table 1 that states:

The mandatory minimum 6 metres upper level setback for Interface C does not apply to an application made prior to the approval of Amendment C191 to this Planning Scheme.<sup>43</sup>

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<sup>42</sup> Document 43, para 203

<sup>43</sup> Document 205

**(iii) Discussion**

The Panel agrees with Mr Gardner regarding upper level setbacks in Interface F, as expressed in changes to the Hearing version of DDO28 'Table 1 – Street Wall Heights and Setbacks for Precinct 4'.<sup>44</sup> These are appropriate minor changes that enhance future built form outcomes and improve the protection of heritage places.

The Panel agrees with the changes to the east interface type for the property at 487 Swan Street. Interface H is an appropriate treatment and the Panel notes that this was accepted by Council and Namreh at the Hearing.

The Panel does not agree with the other changes to street wall heights, street wall setbacks or upper level setbacks requested by submitters or expert witnesses. It considers that the proposed provisions are appropriate and will result in acceptable outcomes.

The Panel notes:

- a 10-metre mandatory upper level setback for the front of the former Burnley Theatre will ensure the retention of sufficient fabric to enable the heritage components to be read in three-dimensional form
- a discretionary 6-metre upper level setback in Edinburgh Street will minimise the building bulk along this interface but will provide opportunities for a lesser setback if a particular proposal can demonstrate a better outcome can be achieved
- the rear interface provisions recommended by Ms Roberts are based on a flawed assessment and analysis and would result in demonstrably poor urban design outcomes
- there are no transition provisions proposed as part of the Amendment and there is no justification for transition provisions to apply to one element in a single interface type (upper level setbacks in Interface C) in the built form provisions.

**(iv) Conclusions and recommendations**

The Panel concludes:

- Interface F should be revised regarding upper level setback to ensure that the preferred 6 metres minimum setback applies to all heritage buildings.
- The interface type on the eastern side of 487 Swan Street should be revised by replacing Interface I and with Interface H.

The Panel recommends:

**Amend Design and Development Overlay Schedule 28, as shown in Appendix D4, to:**

- a) **revise 'Plan 1: Height and Interface Plan – Precinct 4 Burnley Station'**
- b) **revise 'Table 1 - Street Wall Heights and Setbacks for Precinct 4'.**

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<sup>44</sup> Document 184

## 11 Form and content of the Amendment

The Panel provided an opportunity for parties to make ‘without prejudice’ drafting comments regarding the planning provisions. Towards the end of the Hearing, suggested drafting changes were explored further.

### (i) Background document

The Amendment proposes to reference the Swan Street Framework through Clause 21.11. The Panel considers the Swan Street Framework in its current form no longer accurately reflects the proposed provisions sought to be introduced through the considerably refined version of the Amendment. The version which the Panel supports has departed from the exhibited version which more faithfully translated the Swan Street Framework.

Consistent with guidance in Planning Practice Note 1, a background document referenced in the Planning Scheme is intended to provide further context about the basis for relevant planning provisions. They are not used to exercise discretion when assessing a permit application. Referring to the Swan Street Framework would not explain the many changes proposed to be introduced since exhibiting the Amendment and it should not be referenced in the Planning Scheme.

Having said that, the Panel notes:

- the most important elements from the Framework have been translated across into the Amendment
- the Swan Street Framework can still be made available through Council’s webpage even though it is not referenced in the Planning Scheme.

### (ii) Other drafting changes

Having reviewed drafting related comments, the Panel considers the DDO schedules should:

- redefine a Laneway to mean “*a road reserve, public highway or right of way 9 metres or less wide*”
- redefine Heritage building to mean “*any building subject to a Heritage Overlay, graded as either Contributory or Individually Significant (including properties on the Victorian Heritage Register)*”
- replace ‘must’ with ‘should’ for any provision in the ‘preferred requirements’ column of Table 1
- replace the Interface I ‘upper level setback’ terminology with ‘side and rear setbacks’
- replace the Figures 1 and 2 ‘residential interface’ terminology with ‘Interface with an existing laneway’ in Figure 1 and ‘Interface direct abuttal’ in Figure 2
- delete ‘existing residential’ in the Figure 1 and 2 cross-sections
- not include text under ‘Building heights requirements’ noting the preferred height may not be exceeded on every site because it is unnecessary
- not include a decision guideline regarding adaptable floor heights because it is commonly accepted that discretionary provisions such as the proposed street wall heights are sufficiently flexible to respond to individual circumstances

- ensure the punctuation of dot points follows prescribed practice<sup>45</sup>, including avoiding the use of ‘and’ and ‘or’
- not define terms which are already defined in the Yarra Planning Scheme<sup>46</sup>, such as ‘Building height’
- correct minor typographical errors and language refinements which would improve their clarity and operation.

In addition to substantive changes referred to in Appendices D1 to D4, Council identified minor drafting changes to Plans 1 and 2 in Documents 181, 182, 183 and 184. The Panel finds these changes to be appropriate, but they are not shown in the Appendices.

The Panel has also not shown some drafting changes such as dot list format and duplicated definitions. Council with DELWP are best placed to progress these drafting matters.

### **(iii) Recommendations**

The Panel recommends:

**Amend Clause 21.11 to delete the reference to ‘Swan Street Activity Centre Built Form Framework (Tract, September 2017)’, if the Framework’s contents are not reconciled with the provisions proposed to be introduced through Yarra Planning Scheme Amendment C191.**

**Amend Design and Development Overlay Schedule 25, as shown in Appendix D1.**

**Amend Design and Development Overlay Schedule 26, as shown in Appendix D2.**

**Amend Design and Development Overlay Schedule 27, as shown in Appendix D3.**

**Amend Design and Development Overlay Schedule 28, as shown in Appendix D4.**

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<sup>45</sup> A Practitioner’s Guide to Victorian Planning Schemes (Version 1.4), April 2020

<sup>46</sup> Clause 73.01

## Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Siddharth Prakash	20	Environment Protection Authority Victoria
2	Luke Wigley	21	Kellehers Australia
3	Crestall Nominees Pty Ltd	22	Terri Stynes
4	Andrew Bromley	23	Zagame Group
5	Paula De Angelis	24	AA Holdings Pty Ltd
6	Margo Sheahan and Marcus Weyland	25	Yoland Wadsworth
7	Graham Karutz	26	Killara Quest Pty Ltd (1)
8	Belinda Hanneberry	27	Dr Judith Smart
9	Mitchell Investment Holdings Pty Ltd	28	SZM Holdings Pty Ltd
10	Icon Developments Australia Pty Ltd	29	National Trust of Australia (Victoria)
11	Stephen Daley	30	Mongomero Pty Ltd
12	370 Swan Street Pty Ltd	<b>Late submissions:</b>	
13	Kirsteen Thomson	31	Swan Street Sales Pty Ltd
14	Nick Armstrong	32	Charter Hall
15	Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd	33	Namreh Properties Pty Ltd
16	Royal Historical Society of Victoria Inc	34	Halastanis Nominees
17	Nelly Verstoep	35	LPC Nominee 10 Pty Ltd
18	Loubeck Pty Ltd	36	John Zois
19	Pelligra Build Pty Ltd	37	Killara Quest Pty Ltd (2)

## Appendix B Parties to the Hearing

Submitter	Represented by
Yarra City Council	Susan Brennan SC and Jane Sharp of Counsel, instructed by Kristin Richardson of Maddocks, with Alayna Chapman, Senior Strategic Planner, and Fiona Van der Hoeven, Assistant Manager City Strategy, who called expert evidence on: <ul style="list-style-type: none"> <li>- heritage from Jim Gard'ner of GJM Heritage</li> <li>- heritage from David Helms of David Helms Heritage Planning</li> <li>- wind engineering from Michael Eaddy of MEL Consultants</li> <li>- urban design from Leanne Hodyl from Hodyl &amp; Co</li> <li>- capacity analysis from Andrew Spencer of SGS Economics</li> <li>- planning from David Barnes of Hansen Partnership</li> <li>- traffic from Charmaine Dunstan of Traffix Group</li> </ul>
370 Swan Street Pty Ltd   LPC Nominee 10 Pty Ltd   Namreh Properties Pty Ltd	Chris Taylor of Planning & Property Partners, who called expert evidence on planning from Tim Biles of Contour Planning
Cremorne Properties Pty Ltd   Swan-Lennox Pty Ltd	Nick Tweedie SC and Jennifer Trewhella of Counsel, instructed by Romy Davidov of Best Hooper, who called the expert evidence on: <ul style="list-style-type: none"> <li>- heritage from Bryce Raworth of Bryce Raworth Pty Ltd</li> <li>- urban design from Amanda Roberts of SJB Urban</li> <li>- planning from Tim McBride Burgess of Contour Consultants</li> </ul>
Crestall Nominees Pty Ltd	Sebastien Delamare of Hellier McFarland through written submission (Document 61)
Kellehers Australia	Hubert Algie of Kellehers Australia
Loubeck Pty Ltd (trustee for the Everett Family Trust and Swancom Pty Ltd)	Peter O'Farrell of Counsel, instructed by Jessica Kaczmarek of Norton Rose Fulbright, who called expert evidence on: <ul style="list-style-type: none"> <li>- heritage from Bryce Raworth of Bryce Raworth Pty Ltd</li> <li>- planning from Sarah Horsfield of Urbis</li> <li>- urban design from Julia Bell of Kinetica</li> </ul>
Mitchell Investment Holdings Pty Ltd	Kris Wilson of Wilcon Projects Pty Ltd
National Trust of Australia (Victoria)	Caitlin Mitropoulos
Pelligra Build Pty Ltd	Andrew Walker of Counsel, instructed by David Passarella of Mills Oakley, calling the following expert evidence on: <ul style="list-style-type: none"> <li>- planning from Amanda Roberts of SJB Urban</li> <li>- urban design from Shayne Linke of Contour Consultants</li> </ul>

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Killara Quest Pty Ltd	Madison Sztefek of Urbis
Royal Historical Society of Victoria	Ian Wight of Ian Wight Planning and Heritage Strategies
Swan Street Sales Pty Ltd	Nicola Collingwood of Counsel, instructed by Norton Rose Fulbright, who called expert evidence on planning from Shayne Linke of Contour Consultants
Zagame Group	Tim Retrot of proUrban
Namreh Properties Pty Ltd	Grant Logan of Ratio Consultants

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## Appendix C Document list

No.	Description	Provided by
<b>8 November 2019</b>		
1	Map – Planning Panel Member Site Inspection	Council
<b>12 November 2019</b>		
2	Letter – from Mr Montebello regarding 3D modelling and expert witnesses, as emailed to all parties	Council
<b>22 November 2019</b>		
3	Letter – from Ms Kaczmarek to the Panel Chair and all parties regarding 3D modelling and timing of expert evidence – with attachments including letter dated 21 November 2019 from Mr Montebello to Ms Kaczmarek	Ms Kaczmarek
4	Letter – from Mr Montebello to Planning Panels Victoria (PPV) regarding Document 3	Council
<b>26 November 2019</b>		
5	Part A Submission	Council
6	Evidence – David Barnes	Council
7	Evidence – Larry Parsons	Council
8	Evidence – Jim Gard’ner	Council
9	Evidence – David Helms	Council
10	Evidence – Charmaine Dunstan	Council
11	Evidence – Andrew Spencer	Council
12	Evidence – Dr Michael Eaddy	Council
13	Evidence – Tim McBride-Burgess (36-42 Swan St and 2 & 4 Jesse St)	Ms Minney, Best Hooper
14	Evidence – Amanda Roberts (36-42 Swan St and 2 & 4 Jesse St)	Ms Minney
15	Evidence – Bryce Raworth (36-42 Swan St and 2 & 4 Jesse St)	Ms Minney
16	Evidence – Sarah Horsfield (57-61 Swan St)	Ms Kaczmarek
17	Evidence – Julia Bell (57-61 Swan St)	Ms Kaczmarek
18	Evidence – Bryce Raworth (57-61 Swan St)	Ms Kaczmarek
19	Evidence – Tim McBride-Burgess (79-89 and 161-165 and 173-179 and 191-197 Swan St)	Ms Minney
20	Evidence – Tim Biles (370 Swan St, 1 Lesney St and 9 Wiltshire St)	Mr Hughes, Planning and Property Partners

No.	Description	Provided by
21	Evidence – Shayne Linke (349-363 and 365-387 Swan St and 75-77 Canterbury St)	Ms Vilagosh, Norton Rose Fulbright
22	Evidence – Amanda Roberts (471-473 Swan St)	Mr Passarella
23	Evidence – Shayne Linke (471-473 Swan St)	Mr Passarella
<b>2 December 2019</b>		
24	Additional Panel Documents	Council
25	Letter – Ms Davidov to PPV	Ms Minney
<b>3 December 2019</b>		
26	Letter – Ms Davidov to PPV	Ms Minney
27	Letter – Mr Montebello to PPV	Council
<b>4 December 2019</b>		
28	Email – Mr Bryce to the Panel Chair	Mr Bryce, Norton Rose Fulbright
29	Panel response to Document 25 with attached response from PPV Business Manager	Mr Brennan, PPV
30	PPV response to Document 25 with attachments	Mr Brennan
31	Letter – Mr Montebello to PPV	Council
<b>5 December 2019</b>		
32	Letter – Ms Davidov of Best Hooper to PPV	Ms Minney
33	Letter – Mr Rantino of Maddocks to PPV clarifying Document 31 and in response to Document 29 and 30	Council
34	Letter – Panel to all parties advising of Hearing adjournment and next steps	Mr Brennan
<b>9 December 2019</b>		
35	Letter – Ms Vilagosh of Norton Rose Fulbright to PPV	Ms Vilagosh
<b>11 December 2019</b>		
36	Letter – Requesting parties to detail preferred dates with reasons	Mr Brennan
<b>16 December 2019</b>		
37	Letter – Mr Montebello to PPV	Council
<b>23 December 2019</b>		
38	Letter – Confirming 2020 Hearing timeframe based on party- preferred dates, with attached draft timetable	Mr Brennan
<b>10 February 2020</b>		
39	Panel Directions, Distribution List and Timetable Version 5 (Reissued)	Mr Brennan

No.	Description	Provided by
<b>28 February 2020</b>		
40	Letter – Mr Montebello to PPV	Council
<b>1 April 2020</b>		
41	Letter – Mr Montebello to PPV	Council
42	Revised Part A Submission and relevant attachments	Council
43	Evidence – Leanne Hodyl	Council
<b>16 June 2020</b>		
44	Letter – Mr Montebello to PPV	Council
<b>16 June 2020</b>		
45	Letter – Panel response to Document 44 regarding Hearing venue	Mr Brennan
<b>9 July 2020</b>		
46	Draft Panel Directions, Distribution List and Timetable Version 6	Mr Brennan
<b>13 July 2020</b>		
47	Letter – Mr Montebello to PPV enclosing supplementary evidence	Council
48	Supplementary evidence – Jim Gard’ner	Council
49	Supplementary evidence – David Barnes	Council
50	Supplementary evidence – Andrew Spencer	Council
51	Supplementary evidence – David Helms	Council
<b>15 July 2020</b>		
52	Letter – Mr Montebello to PPV	Council
53	Draft index of documents for electronic hearing book	Council
<b>17 July 2020</b>		
54	Final Panel Directions, Distribution List and Timetable Version 6	Mr Brennan
<b>20 July 2020</b>		
55	Letter – Mr Montebello to PPV dated 8 July 2020 attaching post exhibition Submission 37 from Killara Quest Pty Ltd and formal referral letter from Council	Council
56	Distribution List Version 6a	Mr Brennan
57	Letter – Best Hooper to Panel on behalf of Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd	Ms Davidov
<b>21 July 2020</b>		
58	Email – PPV to all parties in response to Document 57	Mr Brennan
<b>23 July 2020</b>		
59	Email – Planning Panels Victoria to all parties regarding ‘Test run’ with attached IT tips and guidelines	Mr Brennan

No.	Description	Provided by
60	Letter – Hellier McFarland on behalf of Crestall Nominees Pty Ltd withdrawing from Hearing dated 23 July 2020	Mr Delamare
61	Supplementary submission – Crestall Nominees Pty Ltd dated 15 October 2019	Mr Delamare
<b>24 July 2020</b>		
62	Final Panel Directions, Distribution List and Timetable Version 7 and circulation of Documents 60 and 61	Mr Brennan
<b>27 July 2020</b>		
63	Email – Suggested Expert Witness Declaration prepared by Council	Council
64	Council Part B (1) submission, 27 July 2020	Council
65	Council Electronic Document Folder	Council
66	PowerPoint presentation - Mr Gard'ner	Council
<b>29 July 2020</b>		
67	PowerPoint presentation – Mr Spencer	Council
68	City of Yarra Population Forecast, id, August 2018	Mr Tweedie SC
69	Plan 1 extract of DDO26 with hand mark-up identifying land in Little Lesney Street	Mr Taylor
70	Page 38 extract of Mr Gard'ner evidence statement with hand mark-ups	Mr Taylor
71	Page 13 extract of Tract 3D Modelling Report (18 October 2019) with hand mark-ups	Mr Taylor
72	Extract from Council 3D model with hand mark-ups	Mr Taylor
73	Table - Dwelling Capacity vs Demand Analysis	Mr Tweedie SC
74	Table – Dwelling Supply vs Demand in Yarra Activity Centres	Mr Tweedie SC
75	Table – Shortfall of Dwellings in Yarra	Mr Tweedie SC
76	Photo – Nearmap image outside Domino's at 189A Swan Street looking west	Mr O'Farrell
77	Photo – Nearmap image from the middle of Swan Street (corner Docker Street) looking west	Mr O'Farrell
<b>30 July 2020</b>		
78	PowerPoint presentation – Ms Hodyl	Council
79	Swan Street cadastral map with street numbers	Council
80	Shadow diagrams – Corner Hotel and properties to the north	Mr O'Farrell
81	Human field of view – vertical and horizontal	Mr O'Farrell
82	Perspective- extract from Ms Hodyl's evidence statement (page 28) with red line mark-up	Mr O'Farrell

No.	Description	Provided by
83	Line drawing describing perspective	Mr O'Farrell
84	Planning Property Report, 51 Wangaratta Street, Richmond	Mr O'Farrell
85	Oblique aerial photo – Stewart Street Reserve	Mr O'Farrell
<b>3 August 2020</b>		
86	Planning Permit PLN18/0658, 2-8 Brighton Street, 5 Little Lesney Street and 1-3 Wiltshire Street	Council
87	Extracts of plans regarding Condition 1 Planning Permit PLN16/0915, 370-374 Swan Street	Mr Taylor
88	3D image extract from approved plans regarding Planning Permit PLN/1000, 1 Little Lesney Street and 9 Wiltshire Street	Mr Taylor
89	NearMap images of 1 Little Lesney Street/9 Wiltshire Street and 2-8 Brighton Street/5 Little Lesney Street/1-3 Wiltshire Street	Mr Taylor
90	Summary of substantive differences – Development Analysis	Council
91	Annotated Index to Council Document Folder	Council
92	Endorsed Plans for 140-160 Swan Street (Dimmeys) PLN 10/0734, endorsed 17/01/14	Council
<b>4 August 2020</b>		
93	Submission – Council Part B (2), 4 August 2020	Council
94	Memorandum – Mr Spencer, 4 August 2020, regarding preliminary advice	Council
95	Clause 21.12-2 with mark-ups put to Mr Barnes	Mr O'Farrell
96	Response by Council to three Panel questions	Council
<b>5 August 2020</b>		
97	Submission – Royal Historical Society of Victoria	Mr Wight
98	PowerPoint presentation – Royal Historical Society of Victoria	Mr Wight
99	Submission – Zagame Group Pty Ltd	Mr Retrot
100	Plans – 171-173 Swan Street (not endorsed)	Council
101	Plans – 45 Wangaratta Street (endorsed)	Council
102	Plans – 25-43 Wangaratta Street (application)	Council
103	Plans – 497 Swan Street (endorsed)	Council
104	Plans – 17-23 Wangaratta Street/68 Tanner Street (application)	Council
105	Figures – from Built Form Framework	Council
106	Submission – Killara Quest Pty Ltd	Ms Sztefek
<b>6 August 2020</b>		
107	PowerPoint presentation – Ms Horsfield	Mr Bryce

No.	Description	Provided by
<b>7 August 2020</b>		
108	Evidence Statement – Mr Raworth, Stonnington C172, Chapel Street Activity Centre	Council
109	Evidence Statement – Mr Raworth, Stonnington Am C272, Hawksburn Village	Council
110	Glen Eira DDO10	Council
111	Stonnington DDO19	Council
112	Stonnington DDO21 (exhibited)	Council
113	Swancom v Yarra CC [2009] VCAT 923	Council
114	Yarra DDO21	Council
115	Photo 1 - Mural	Council
116	Photo 2 - Mural	Council
117	Heritage Grading Map extract	Council
118	Stonnington C272 Panel Report	Mr Bryce
119	PowerPoint presentation – Ms Bell, 57-61 Swan Street	Mr Bryce
<b>10 August 2020</b>		
120	Submission – Swan-Lennox Pty Ltd and Cremorne Properties Pty Ltd	Ms Davidov
121	PowerPoint presentation- Ms Roberts	Ms Davidov
122	Table – Ms Roberts response to Ms Hodyl’s recommendations	Ms Davidov
123	Aerial Photo – Mr McBride-Burgess with annotations	Ms Davidov
124	Table – Mr McBride-Burgess response to Ms Hodyl’s recommendations	Ms Davidov
125	Victoria Street and Bridge Road Activity Centres Built Form Framework, June 2018	Council
126	3D Computer Modelling – Ms Roberts	Ms Davidov
<b>11 August 2020</b>		
127	Plan extracts – endorsed plans for PLN180328, 459-471 Church Street, Richmond	Mr Taylor
128	Photos – aerial and ground photos prepared by Mr Biles	Mr Taylor
129	PowerPoint presentation 1 -Mr Biles, plans and diagrams from circulated evidence	Mr Taylor
130	PowerPoint presentation 2 – Mr Biles, dimensions, photos and sections	Mr Taylor
131	Submission – 370 Swan Street Pty Ltd	Mr Taylor
132	Submission – LPC Nominee 10 Pty Ltd	Mr Taylor

No.	Description	Provided by
133	Letter – from Norton Rose Fulbright to Panel on behalf of Drill family (Swan Street Sales) requesting rescheduling of presentation to Panel	Ms Vilagosh
134	Plan of subdivision – 43 Exhibition Street, Melbourne	Mr Taylor
<b>12 August 2020</b>		
135	Aerial photographs – 36-46 Swan Street and 2-4 Jessie Street	Ms Davidov
136	Aerial photographs – Precinct 2	Ms Davidov
137	Ground photographs – Cremorne Properties Pty Ltd	Ms Davidov
138	Ground photographs – Group 1 – Swan-Lennox Pty Ltd	Ms Davidov
139	Ground photographs – Group 2 – Swan-Lennox Pty Ltd	Ms Davidov
140	Letter – from Norton Rose Fulbright to Panel on behalf of Loubeck Pty Ltd regarding Timetable Version 10 issued 12 August 2020	Ms Kaczmarek
141	Email – from Best Hooper to Panel on behalf of Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd regarding scheduling issues	Ms Davidov
142	Plan – Cremorne development analysis	Council
<b>13 August 2020</b>		
143	Letter – from Panel to all parties – Further Directions	Panel
144	Submission – Namreh Properties Pty Ltd	Ms Noble, Cadre
145	Letter – from Human Habitats to Panel on behalf of Charter Hall, including attached letter from Minister for Planning	Mr Pearce, Human Habitats
<b>14 August 2020</b>		
146	Submission – Pelligra Build Pty Ltd	Ms Wilson
147	PowerPoint presentation – Mr Linke (471-473 Swan Street)	Ms Wilson
148	PowerPoint presentation – Ms Roberts (471-473 Swan Street)	Ms Wilson
149	Modelling Process notes – Ms Roberts	Ms Wilson
150	Sightline Section, Swan Street-Farmer Street	Ms Wilson
151	Photos – 471-473 Swan Street	Ms Wilson
<b>17 August 2020</b>		
152	Table – Precinct 2 sites (put to Mr McBride Burgess during cross examination)	Council
153	Table – Cremorne sites (put to Mr McBride Burgess during cross examination)	Council
154	Footpath widths - Swan Street (south side), selected locations	Council
155	Submission – Loubeck Pty Ltd	Mr Bryce
156	DDO26 Plan 1 - Corner Hotel Image – recommendations sought	Mr Bryce
157	Annotated photo – Swan Street /Punt Road looking east	Mr Bryce

No.	Description	Provided by
158	Panel Report – Stonnington C172, Chapel Street Activity Centre – Bookmarked by Mr O’Farrell	Mr Bryce
159	Panel Report – Stonnington C272, Hawksburn Village – Bookmarked by Mr O’Farrell	Mr Bryce
160	Submission – Kellehers Australia	Mr Algie
161	Plans – 497 Swan Street, Revision J, July 2020	Mr Algie
162	VCAT decision – LPD Property Pty Ltd v Yarra CC [2015] VCAT 1409	Mr Bryce
<b>18 August 2020</b>		
163	Plan and Section (revised) – 471-473 Swan Street – Farmer Street	Ms Wilson
164	Submission – Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd	Ms Davidov
165	Activity Centre Pilot Program – Key Findings Report, DELWP, 2018	Ms Davidov
166	Table – Building Height Analysis – Cremorne/Richmond Office Developments	Ms Davidov
167	Link – Corner Hotel – ‘Corner Mag’ referenced by Mr Raworth	Mr Bryce
168	Statement – Ms Bell, regarding dimensions in her modelling	Mr Bryce
<b>19 August 2020</b>		
169	Aerial photo – Precinct 2 (put to Mr Biles during cross-examination)	Council
170	Aerial photo – Precinct 4 (put to Mr Linke during cross-examination)	Council
171	Yarra Planning Scheme extract - Clause 22.09 - Licensed Premises (put to Ms Horsfield during cross-examination)	Council
172	Cremorne and Church Street Precinct Urban Design Framework, September 2007 (put to Mr McBride-Burgess during cross-examination)	Council
173	Cremorne Issues and Opportunities Paper, November 2007 (put to Mr McBride-Burgess during cross-examination)	Council
174	Yarra Planning Scheme extract Heritage Overlay Map Number 8HO	Council
175	Photo – Aerial view of Johnson Street showing average lot depths and precincts	Council
176	VCAT decision – Liodakis v Yarra CC [2012] VCAT 1394 (put to Ms Horsfield during cross-examination)	Council
177	Photos – 429 Swan Street (put to Ms Roberts during cross-examination)	Council
178	Photos - Street view and aerials of Precinct 1 (put to Ms Roberts during cross-examination)	Council
179	Witness statement of Mr McGurn – Application for Review of Amendment to Permit, August 2012 (put to Ms Horsfield during cross-examination)	Council

No.	Description	Provided by
180	Witness statement of Mr Northeast (address and DOB redacted) – VCAT No 3101/2011, August 2012 (put to Ms Horsfield during cross-examination)	Council
<b>20 August 2020</b>		
181	DDO25 Precinct 1 – Part C version, 20 August 2020	Council
182	DDO26 Precinct 2 – Part C version, 20 August 2020	Council
183	DDO27 Precinct 3 – Part C version, 20 August 2020	Council
184	DDO28 Precinct 4 – Part C version, 20 August 2020	Council
185	Statement of Proposed Changes – DDO25-28, Plan 1 Height and Interface Plans, Part C version, 20 August 2020	Council
186	Statement of Proposed Changes – DDO25-28, Plan 2 Access and Movement Plans, Part C version, 20 August 2020	Council
187	Clause 21.12 Swan Street Activity Centre Framework Figure 1 – Part C version, 20 August 2020	Council
<b>27 August 2020</b>		
188	Email – from Panel to all parties in response to attached email from Ms Richardson of Maddocks requesting extension of time to circulate closing submission	Mr Brennan
189	Email – from Best Hooper to Panel requesting extension of time to provide comments to Council drafting documents	Ms Davidov
<b>28 August 2020</b>		
190	Email – from Panel to all parties in response to Document 189	Mr Brennan
191	Email – from Kellehers Australia to Panel supporting extension of time requested by Best Hooper (Document 189)	Mr Algie
192	Email – from Panel to all parties in response to Document 191	Mr Brennan
193	Submission – Council closing submission	Council
194	Upper level setback analysis	Council
195	Plans – 79 Swan Street (application)	Council
196	Plans – 345 Swan Street (advertised application)	Council
197	Plans - 2-8 Brighton Street and 1-3 Wiltshire Street and 5 Little Lesney Street (submitted for endorsement)	Council
198	Plans – 389-393 Swan Street (advertised application)	Council
199	Plans - 395 Swan Street (advertised application)	Council
200	Plans – 439 Swan Street (advertised application)	Council
201	Plans – 9-11 Cremorne Street (endorsed)	Council
202	Report – ‘Assessing the cultural heritage significance of places and objects for possible state heritage listing: The Victorian Heritage	Council

No.	Description	Provided by
	Register Criteria and Threshold Guidelines', Heritage Council, of Victoria, April 2019	
203	Report – 'Guidance on Identifying Place and Objects of State-Level Social Value in Victoria', Heritage Council of Victoria, July 2019	Council
204	Report – 'Assessing and Managing Social Value -Report and recommendations', prepared for Heritage Council of Victoria, June 2018	Council
205	Letter – response from Planning and Property Partners on behalf of 370 Swan Street Pty Ltd, LPC 10 Nominee Pty Ltd and Mr Zois regarding Council Part C drafting changes issued 20 August 2020	Mr Taylor
206	DDO26 - Tracked changes version on behalf of LPC 10 Nominee Pty Ltd	Mr Taylor
207	DDO27 - Tracked changes version on behalf of 370 Swan Street Pty Ltd	Mr Taylor
208	DDO28 - Tracked changes version on behalf of Mr Zois	Mr Taylor
209	DDO25 – Tracked changes version on behalf of Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd	Ms Davidov
210	DDO26 – Tracked changes version on behalf of Cremorne Properties Pty Ltd and Swan-Lennox Pty Ltd	Ms Davidov
211	Letter – from Kellehers Australia in response to Council Part C drafting changes issued 20 August 2020	Mr Algie
212	Section – enlargement of page 7 Council closing submission	Council
213	Letter – from Norton Rose Fulbright on behalf of Drill family (Swan Street Sales) regarding block modelling prepared by SJB Urban	Ms Vilagosh
214	Block modelling prepared by SJB Urban on behalf of Drill family	Ms Vilagosh
215	Technical memorandum regarding SJB Urban block modelling	Ms Vilagosh
<b>1 September 2020</b>		
216	Letter – from Mr Montebello to PPV regarding Council's decision not to consider two late submissions	Council
<b>2 September 2020</b>		
217	Submission – Swan Street Sales	Ms Vilagosh
218	Photographs – Former Burnley Theatre	Ms Vilagosh
219	Email – from Norton Rose Fulbright to Panel on behalf of Loubeck Pty Ltd in response to Council closing submission (Document 193)	Mr Bryce
220	Letter – from Kellehers Australia to Panel with attachments	Mr Algie
221	Letter – from Maddocks to Panel on behalf of Council in response to SJB block modelling provided by Ms Vilagosh (Document 214)	Council
222	Presentation – Mr Linke (amended version)	Ms Vilagosh

No.	Description	Provided by
223	Email – from Norton Rose Fulbright to Panel on behalf of Loubeck Pty Ltd making correction to Document 219	Mr Bryce
<b>3 September 2020</b>		
224	Letter – From Panel to all parties regarding further directions for Council right of reply	Panel
<b>10 September 2020</b>		
225	Letter – from Maddocks to Panel on behalf of Council in response to Document 224	Council

## Appendix D Panel preferred version of the planning provisions

[Tracked Added](#)

~~Tracked Deleted~~

For legibility, changes in the resolved version of the DDO schedules are not tracked.

Heritage related changes referred to in Chapter 4 are not included in Appendix D.

# Appendix D1 Design and Development Overlay Schedule 25 (Precinct 1)

## SCHEDULE 25 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO25**.

### SWAN STREET ACTIVITY CENTRE - PRECINCT 1 RICHMOND STATION

#### 1.0 Design objectives

- To create an entry to the activity centre, anchored by Richmond Station, that is defined by high quality, contemporary buildings that wrap around the corner from Hoddle Street into Swan Street.
- To provide taller street walls on Swan Street, west of Wellington Street to define the entry to the Activity Centre.
- To maintain the prominence of the Precinct Hotel on the corner of Cremorne Street and Swan Street within the streetscape.
- To improve the pedestrian environment and amenity of the streetscape along Swan Street and the streets leading to Cremorne through activated ground floor frontages and improvements to the public realm.
- To support a new mid rise scale built form character with lower built form at the interfaces with streets and the adjoining low rise residential areas.

#### 2.0 Buildings and works

A permit is required to construct a building or construct or carry out works.

#### 2.1 Definitions

**Street-wall** means the facade of a building at the street boundary, or, if the existing heritage building is set back from the street boundary, the front of the existing building. Street wall height is measured at the vertical distance between the footpath at the centre of the frontage and the highest point of the building at the street edge, with the exception of architectural features and building services.

**Heritage building** means any building subject to a Heritage Overlay, graded as either Contributory or Individually Significant [\(including properties on the Victorian Heritage Register\)](#).

**Laneway** means a road reserve, ~~of a~~ public highway [or right of way](#) 9 metres or less wide.

**Building height** means the vertical distance from *natural ground level* to the roof or parapet at any point.

**Parapet height** does not include features such as brackets, pediments, urns, finials or other decorative elements.

**Road boundary** means the boundary between the public road and the private property.

**Shared zone** means a road or network of roads where pedestrians, cyclists, and vehicles share the roadway.

**Upper level** means development above the height of the street wall.

#### 2.2 Requirements

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

A permit cannot be granted to construct a building or construct or carry out works, which:

- exceeds the mandatory maximum building height and street wall height requirements shown in the Height and Interface Plan 1 of this schedule.
- reduces the mandatory minimum street wall height and upper level setback requirements shown in the Height and Interface Plan 1 of this schedule.

### 2.3 Design requirements

The following design requirements apply to an application to construct a building or construct or carry out works.

#### Design quality requirements

Development should achieve urban design and architectural excellence.

Development should be well spaced and sited to avoid visual bulk and provide equitable access to an outlook and good daylight.

Development should provide for street activation at ground levels.

Development should be designed to avoid repetitive stepped form at upper levels.

Upper level development should be designed to ensure buildings provide detail on all facades when viewed from all directions.

Frontages at ground floor should incorporate verandahs, consistent with the form and scale of adjoining verandahs, into the façade design.

Protect the amenity of existing residential properties in terms of visual bulk, overshadowing of private open space, overlooking and vehicle access.

Development should maintain the prominence of the heritage street wall and respect the architectural form and qualities of heritage buildings and the heritage streetscape within land affected by HO524.

Upper level development on land within a Heritage Overlay or on land immediately adjoining a heritage building should:

- be visually recessive and not visually dominate the heritage building and the heritage streetscape; and
- avoid large expanses of glazing with a horizontal emphasis in the upper levels of development.

#### Building heights requirements

A permit should only be granted to construct a building or construct or carry out works, which exceeds the preferred building height shown in the Height and Interface Plan 1 of this schedule where all the following requirements are met to the satisfaction of the responsible authority:

- the built form outcomes that results ~~ef-from~~ the proposed variation satisfies the design objectives in Clause 1.0 of this schedule, ~~and~~ the relevant design requirements specified in this schedule; and
- the proposal achieves each of the following:
  - greater building separation than the minimum requirement in this schedule;
  - ~~housing for diverse households types;~~
  - ~~accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58;~~
  - ~~communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58;~~
  - excellence for environmentally sustainable design measured as a minimum BESS project score of 70%;
  - no additional amenity impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height; and

- provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms; ~~and~~
- where the proposal includes dwellings, it also achieves each of the following:
  - housing for diverse households types;
  - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58; and
  - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58; and
- where the proposal is on land within a Heritage Overlay, it also achieves the following:
  - Upper level development above the preferred building height on land within a Heritage Overlay should have increased setbacks to minimise its visibility above the heritage building and from the heritage streetscape.

Architectural features may exceed the preferred or mandatory height.

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

- Less than 50 per cent of the roof area is occupied by the equipment /structures (other than solar panels);
- The equipment/structures does not cause additional overshadowing of adjoining properties; and
- The equipment/structures does not extend higher than 3.6 metres above the maximum building height.

#### Street wall and setbacks requirements

A permit should not be granted to construct a building or construct or carry out works, which exceeds the relevant preferred maximum street wall height and/or reduces the relevant preferred ~~mandatory~~ minimum setback requirements specified in this schedule unless the following are met, to the satisfaction of the responsible authority:

- The built form outcomes ~~s~~ that results ~~s~~ from the proposed variation satisfies the design objectives in Clause 1.0 of this schedule.
- The built form outcome ~~as a~~ that results ~~of~~ from the proposed variation satisfies the relevant design requirements specified in this schedule.
- The street wall at ground floor level is designed to allow floor to floor ceiling heights suitable to accommodate commercial activity.

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

On corner sites where two different street wall heights are nominated, buildings should 'turn the corner' and apply the Swan Street wall height. If the Swan Street wall is higher it should transition to the lower nominated street wall height on the side street.

#### Building separation requirements

Where development shares a common boundary and no interface treatment is shown in Plan 1, upper level development should:

- ~~▪ be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed~~
- ~~▪ be setback a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.~~

- For buildings up to 28 metres, be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed.
- For buildings up to 28 metres, be setback a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.
- For buildings taller than 28 metres, be setback a minimum of 6 metres above 28 metres.

Where the common boundary is a laneway, the setback is measured from the centre of the laneway.

### Heritage design requirements

The following design requirements apply on land within a Heritage Overlay or immediately adjoining a Heritage Overlay.

Design Element	Design Requirement
Building facades and street frontages	<p>Facade treatments and the articulation of infill buildings and of new buildings adjoining a heritage building should:</p> <ul style="list-style-type: none"> <li>▪ Be simple and do not compete with the more elaborate detailing of the adjoining heritage building(s)</li> <li>▪ respect the vertical proportions of the nineteenth and early twentieth century facades of the heritage streetscape and/or adjoining heritage building(s)</li> <li>▪ avoid large expanses of glazing with a horizontal emphasis except to ground floor shopfronts</li> <li>▪ maintain the existing canopy/verandah height of the heritage streetscape and/or adjoining heritage building.</li> </ul> <p><b>Adaptation and reuse of contributory or individually significant buildings should:</b></p> <ul style="list-style-type: none"> <li>▪ maintain existing openings and avoid highly reflective glazing in historic openings</li> <li>▪ encourage the retention of solid built form behind retained facades and avoid balconies behind existing openings</li> <li>▪ maintain the inter-floor height of the existing building and avoid new floor plates and walls cutting through historic openings.</li> </ul>
Upper level setbacks (above street wall height)	<p><b>Upper level development on land within a Heritage Overlay and on land immediately adjoining a heritage building should:</b></p> <ul style="list-style-type: none"> <li>▪ be visually recessive and not visually dominate the heritage building and the heritage streetscape</li> <li>▪ retain the primacy of the three-dimensional form of the heritage building as viewed from the public realm to avoid 'facadism'</li> <li>▪ utilise visually lightweight materials and finishes that are recessive in texture and colour and provide a juxtaposition with the heavier masonry of the heritage facades</li> <li>▪ incorporate simple architectural detailing that does not detract from significant elements of the heritage building and the heritage streetscape</li> <li>▪ reflect the fine grained character and subdivision pattern of the wider streetscape, especially on larger sites.</li> </ul>

### Overshadowing requirements

A permit should not be granted to construct a building or construct or carry out works that would overshadow part of the opposite footpath of Cremorne Street (measured from the property boundary to the existing as 2.0 metres from the kerb of Cremorne Street between 10 am and 2 pm at 22nd September), unless the overshadowing would not unreasonably prejudice the amenity of the public space.

### Vehicle and pedestrian access requirements

Development should provide vehicular access from rear lanes or from side streets in the preferred locations in the Access and Movement Plan 2 of this schedule.

Development with redundant vehicle access points to Swan Street should reinstate the kerb, linemarked parking bays, and relocate any parking signs.

Vehicle ingress and egress into development, including loading facilities and building servicing, should be designed to ensure a high quality pedestrian amenity and limit potential conflict between vehicle movements and pedestrian activity.

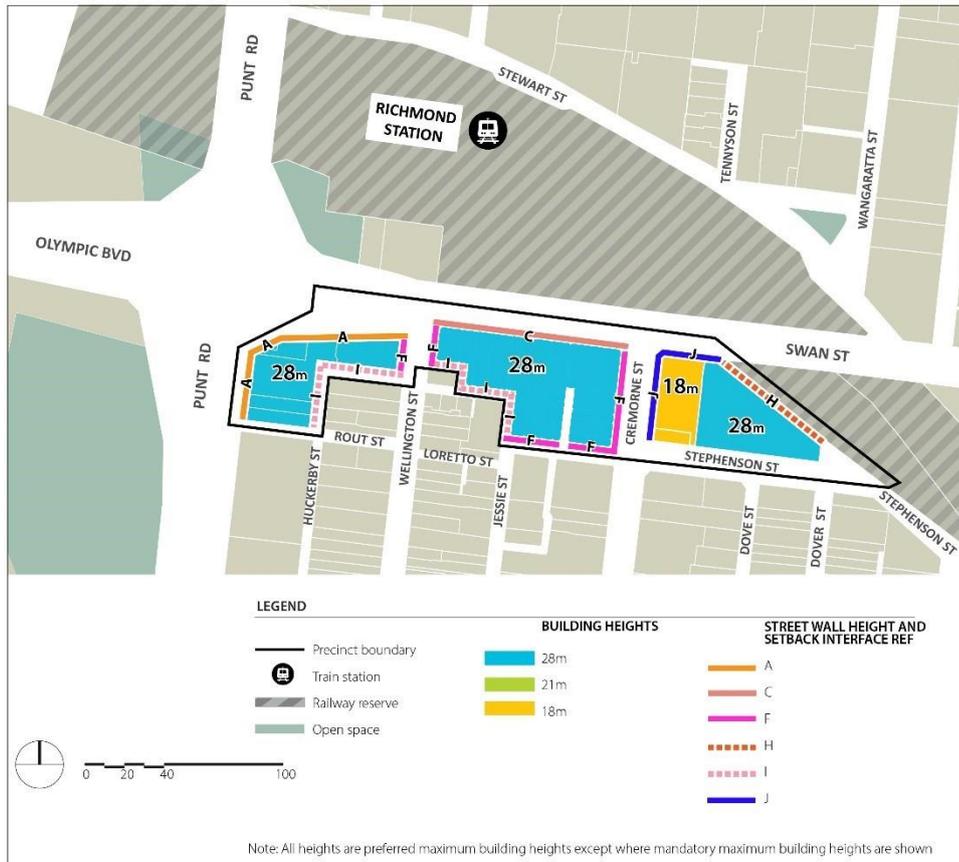
Pedestrian access to buildings, including upper level apartments, should be from a street or a shared zone shown on the Access and Movement Plan 2 of this schedule. Where pedestrian access can only be provided from a laneway at the rear of buildings the pedestrian entrance should be setback from the rear laneway and well-lit to enable safe access.

**Table 1 – Street Wall Heights and Setbacks for Precinct 1 Richmond Station**

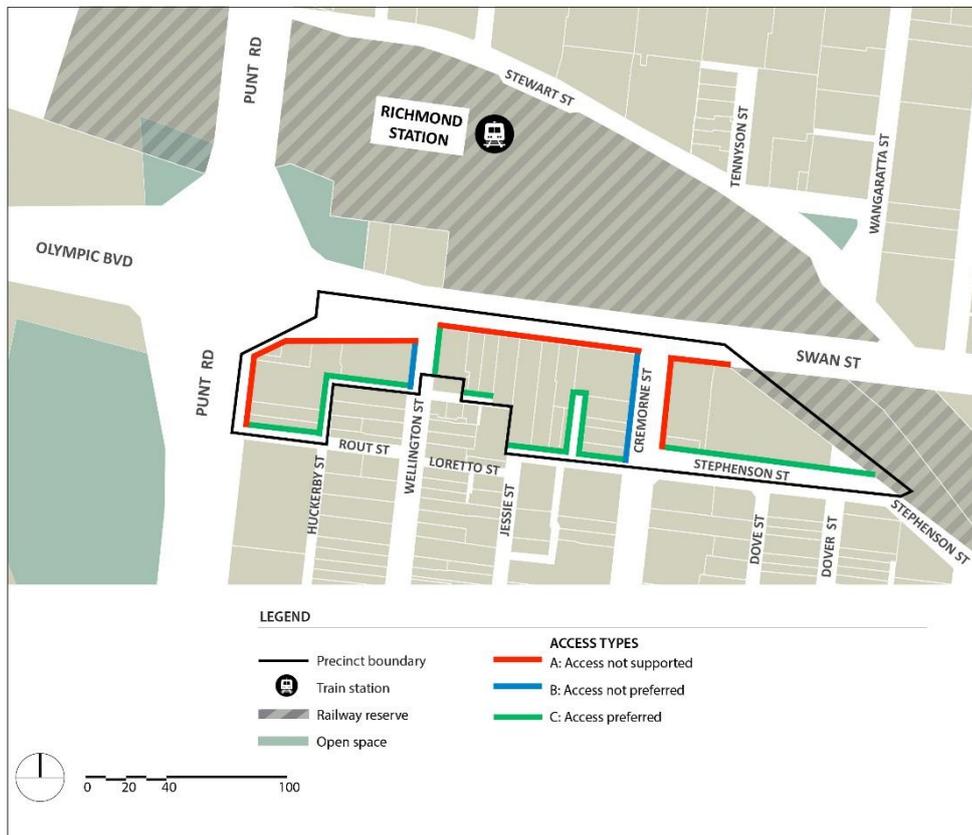
Interface Ref	Design Element	Mandatory Requirements	Preferred Requirements
A	Street wall height		21m maximum.
	Street wall setback		0m.
	Upper level setback		6m minimum.
C	Street wall Height		11m maximum. 8m minimum. Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	0m.	
	Upper level setback	Minimum 6m for heritage buildings.	Minimum 6m elsewhere.
F	Street wall height		11m <del>minimum</del> <u>maximum</u> .
	Street wall setback		0m.
	Upper level setback		3m minimum.
H	Street wall height		N/A.
	Street wall setback		0m minimum unless setback is identified on Plan 2.
	Upper level setback		0m.
I	Side and rear wall height		8m maximum on a common boundary with a property in a residential zone. 11m maximum if boundary abuts a laneway.
	<del>Upper level setback</del> <u>Side and rear setback</u>		Development <del>must</del> <u>should</u> be setback in accordance with Figure 1 and Figure 2. Development <del>must</del> <u>should</u> minimise repetitive stepped form.
	<u>Boundary wall setback</u>		<u>At 40 Swan Street only, development not built on a common boundary should provide a minimum setback of 4.5 metres to the common boundary.</u>

Interface Ref	Design Element	Mandatory Requirements	Preferred Requirements
J	Street wall Height		11m maximum 8m minimum Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	0m.	
	Upper level setback	Minimum 10m from Swan Street setback. Minimum 8.5m from Cremorne Street setback.	

**Plan 1: Height and Interface Plan – Precinct 1 Richmond Station**



**Plan 2: Access and Movement Plan – Precinct 1 Richmond Station**



### 3.0 Subdivision

None specified.

### 4.0 Advertising

None specified.

### 5.0 Application requirements

An application must be accompanied by:

- [A desktop wind effects assessment for the proposed development when the building height is 15m or higher from natural ground level.](#)

### ~~5~~6.0 Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the ~~General~~ Design Requirements in Clause 2.03 are met.
- Whether design excellence is achieved (in terms of building siting, scale, massing, articulation and materials).
- The design of the streetscape interface and its contribution to an active street environment.
- Whether the proposal contributes to and improves the pedestrian connectivity and amenity of the public realm.
- The shadowing impacts of the development on footpaths and public spaces.
- The wind effects created by the development.
- The separation between buildings at upper levels when viewed from the opposite side of Swan Street and from local streets.
- The prominence of the heritage street wall in the vistas along Swan Street, and local streets.
- Whether heritage buildings on street corners retain their prominence when viewed on both streets.
- Whether heritage buildings retain their three-dimensional form as viewed from the public realm.
- Whether upper level development above the heritage street wall is visually recessive and does not overwhelm the heritage buildings.
- The impact of development on the operation of the tram routes along Swan Street.

Figure 1 to schedule 25 – Residential – Interface with an existing laneway

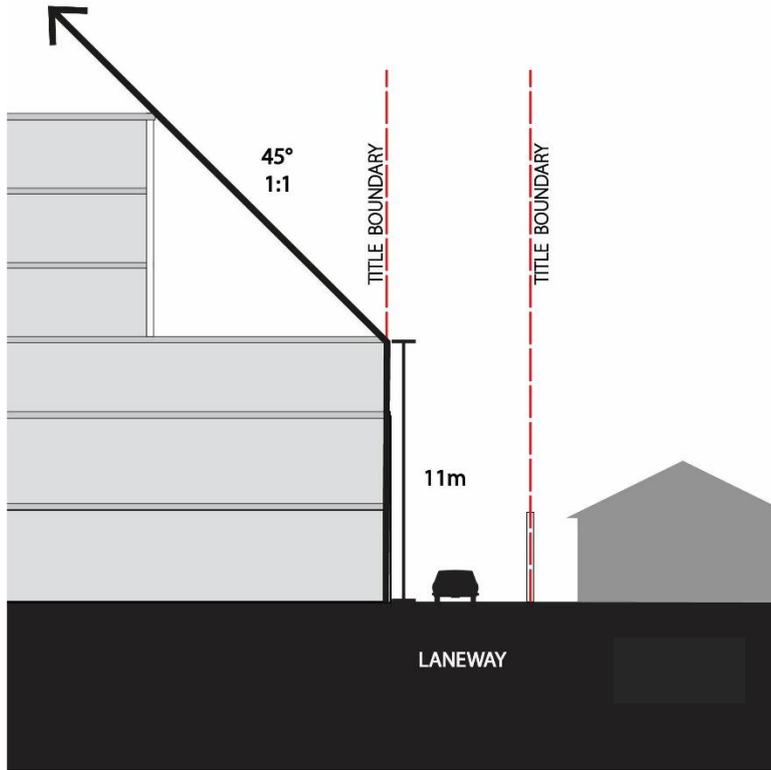
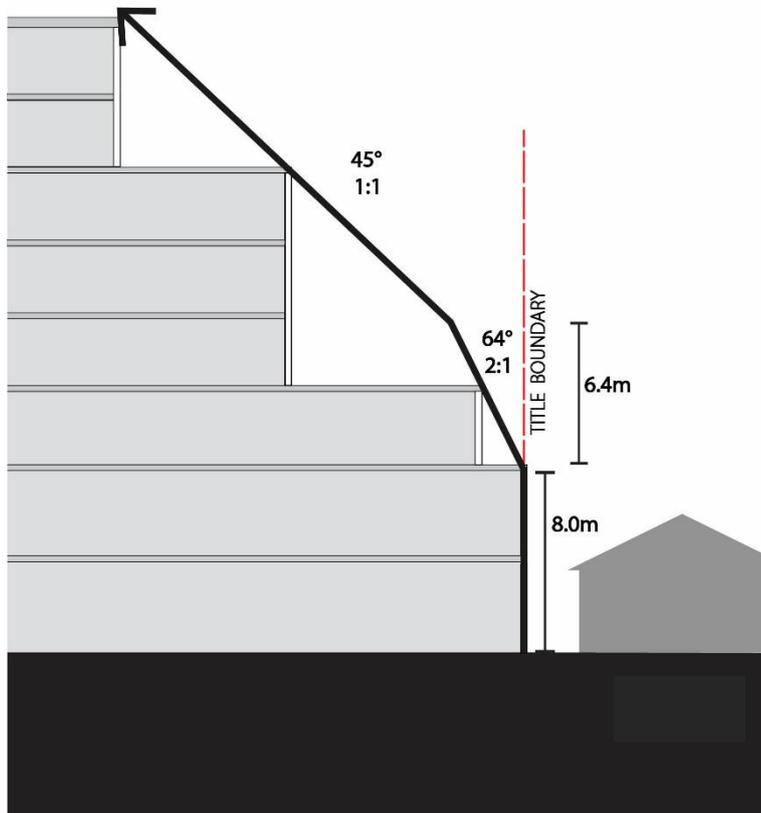


Figure 2 to schedule 25 – Residential – Interface direct abuttal



## Appendix D2 Design and Development Overlay Schedule 26 (Precinct 2)

### SCHEDULE 26 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO26**.

#### SWAN STREET ACTIVITY CENTRE - PRECINCT 2 SWAN STREET RETAIL CENTRE

##### 1.0 Design objectives

- To ensure development maintains the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscapes.
- To ensure development, on the south side of Swan Street, maintains the Dimmeys Tower as the prominent landmark in the streetscape when viewed from the northern footpath of Swan Street east of the rail bridge and west of Church Street.
- To support a new mid-rise scale built form character with lower built form at the interfaces with streets and the adjoining low-rise residential areas that supports the fine grain, compact retail and entertainment focus of the precinct.
- To ensure development enhances the pedestrian experience through improved activation at ground floor and promoting a sense of enclosure and continuity in built form along Swan Street, Church Street, side streets and laneways.
- To ensure taller development on the south side of Swan Street, close to the railway line, is designed and spaced to contribute to a varied skyline and provides street walls that create a stronger sense of enclosure to the streets.

##### 2.0 Buildings and works

A permit is required to construct a building or construct or carry out works.

##### 2.1 Definitions

**Street-wall** means the facade of a building at the street boundary, or, if the existing heritage building is set back from the street boundary, the front of the existing building. Street wall height is measured at the vertical distance between the footpath at the centre of the frontage and the highest point of the building at the street edge, with the exception of architectural features and building services.

**Heritage building** means any building subject to a Heritage Overlay, graded as either Contributory or Individually Significant ([including properties on the Victorian Heritage Register](#)).

**Laneway** means a road reserve ~~of a~~ public highway [or right of way](#) 9 metres or less wide.

**Building height** means the vertical distance from *natural ground level* to the roof or parapet at any point.

**Parapet height** does not include features such as brackets, pediments, urns, finials or other decorative elements.

**Road boundary** means the boundary between the public road and the private property.

**Shared zone** means a road or network of roads where pedestrians, cyclists, and vehicles share the roadway.

**Upper level** means ~~development~~ above the height of the street wall.

## 2.2 Requirements

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

A permit cannot be granted to construct a building or construct or carry out works, which:

- exceeds the mandatory maximum building height and street wall height requirements shown in the Height and Interface Plan 1 of this schedule.
- reduces the mandatory minimum street wall height and upper level setback requirements shown in the Height and Interface Plan 1 of this schedule.

## 2.3 Design requirements

The following design requirements apply to an application to construct a building or construct or carry out works.

### Design quality requirements

Development should achieve urban design and architectural excellence.

Development should be well spaced and sited to avoid visual bulk and provide equitable access to an outlook and good daylight.

Development should provide for street activation at ground levels.

Development should be designed to avoid repetitive stepped form at upper levels.

Upper level development should be designed to ensure buildings provide detail on all facades when viewed from all directions.

Frontages at ground floor should incorporate verandahs, consistent with the form and scale of adjoining verandahs, into the façade design.

Protect the amenity of existing residential properties in terms of visual bulk, overshadowing of private open space, overlooking and vehicle access.

Development adjoining Milton Place should be designed to address the potential future public park adjoining East Richmond Railway Station.

Upper level development on land within a Heritage Overlay or on land immediately adjoining a heritage building should:

- be visually recessive and not visually dominate the heritage building and the heritage streetscape;  
and
- avoid large expanses of glazing with a horizontal emphasis in the upper levels of development.

### Building heights requirements

A permit should only be granted to construct a building or construct or carry out works, which exceeds the preferred building height shown in the Height and Interface Plan 1 of this schedule where all the following requirements are met to the satisfaction of the responsible authority:

- the building elements permitted by the proposed variation satisfies the general design objectives in Clause 1.0 of this schedule, the relevant precinct design requirements specified in this schedule; and
- the proposal achieves each of the following:
  - greater building separation than the minimum requirement in this schedule;
  - ~~housing for diverse households types;~~

- ~~• Accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58;~~
- ~~• communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58;~~
- excellence for environmentally sustainable design measured as a minimum BESS project score of 70%;
- no additional amenity impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height; ~~and~~
- provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms; ~~and~~
- where the proposal includes dwellings, it also achieves each of the following:
  - housing for diverse households types;
  - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58; and
  - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58.

Architectural features may exceed the preferred or mandatory height.

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

- Less than 50 per cent of the roof area is occupied by the equipment (other than solar panels);
- The equipment does not cause additional overshadowing of adjoining properties; and
- The equipment does not extend higher than 3.6 metres above the maximum building height.

#### Street wall and setbacks requirements

A permit should not be granted to construct a building or construct or carry out works, which exceeds the relevant preferred maximum street wall height and/or reduces the relevant preferred ~~mandatory~~ minimum setback requirements specified in this schedule unless the following are met, to the satisfaction of the responsible authority:

- The built form outcomes ~~that~~ results from the proposed variation satisfies the design objectives in Clause 1.0 of this schedule;
- The built form outcome ~~as that~~ results from of the proposed variation satisfies the relevant design requirements specified in this schedule; and
- The street wall at ground floor level is designed to allow floor to floor ceiling heights suitable to accommodate commercial activity.

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

On corner sites where two different street wall heights are nominated, buildings should 'turn the corner' and apply the Swan Street wall height. If the Swan Street wall is higher it should transition to the lower nominated street wall height on the side street.

#### Building separation requirements

Where development shares a common boundary and no interface treatment is shown in Plan 1, upper level development should:

- ~~▪ be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed~~

- ~~be setback a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.~~
- For buildings up to 28 metres, be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed.
- For buildings up to 28 metres, be setback a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.
- For buildings taller than 28 metres, be setback a minimum of 6 metres above 28 metres.

Where the common boundary is a laneway, the setback is measured from the centre of the laneway.

Development along the rail corridor must avoid a continuous wall of taller development when viewed from local streets south of the rail corridor.

~~Development above 21 metres should provide an appropriate side setback to provide spacing between buildings in order to maintain views to the sky from Swan Street, residential properties adjacent to the development and local streets south of the rail corridor.~~

### Heritage design requirements

~~The following design requirements apply on land within a Heritage Overlay or immediately adjoining a Heritage Overlay.~~

Design Element	Design Requirement
Building facades and street frontages	<p>Façade treatments and the articulation of infill buildings and of new buildings adjoining a heritage building should:</p> <ul style="list-style-type: none"> <li>▪ <del>Be simple and do not compete with the more elaborate detailing of the adjoining heritage building(s)</del></li> <li>▪ <del>respect the vertical proportions of the nineteenth and early twentieth century facades of the heritage streetscape and/or adjoining heritage building(s)</del></li> <li>▪ <del>avoid large expanses of glazing with a horizontal emphasis except to ground floor shopfronts</del></li> <li>▪ <del>maintain the existing canopy/verandah height of the heritage streetscape and/or adjoining heritage building.</del></li> </ul> <p><b>Adaptation and reuse of contributory or individually significant buildings should:</b></p> <ul style="list-style-type: none"> <li>▪ <del>maintain existing openings and avoid highly reflective glazing in historic openings</del></li> <li>▪ <del>encourage the retention of solid built form behind retained facades and avoid balconies behind existing openings</del></li> <li>▪ <del>maintain the inter-floor height of the existing building and avoid new floor plates and walls cutting through historic openings.</del></li> </ul>
Upper level setbacks (above street wall height)	<p><b>Upper level development on land within a Heritage Overlay and on land immediately adjoining a heritage building should:</b></p> <ul style="list-style-type: none"> <li>▪ <del>be visually recessive and not visually dominate the heritage building and the heritage streetscape</del></li> <li>▪ <del>retain the primacy of the three-dimensional form of the heritage building as viewed from the public realm to avoid 'facadism'</del></li> <li>▪ <del>utilise visually lightweight materials and finishes that are recessive in texture and colour and provide a juxtaposition with the heavier masonry of the heritage facades</del></li> <li>▪ <del>incorporate simple architectural detailing that does not detract from significant elements of the heritage building and the heritage streetscape</del></li> <li>▪ <del>reflect the fine grained character and subdivision pattern of the wider streetscape, especially on larger sites.</del></li> </ul>

### Overshadowing requirements

A permit must not be granted to construct a building or construct or carry out works that would overshadow any of the following spaces between 10 am and 2 pm at 22nd September:

- any part of the southern footpath of Swan Street, ~~as 4.0m from the southern road boundary of Swan Street,~~ measured from the property boundary to the existing kerb.
- ~~any part of the opposite footpath of Church Street, measured as 4.0 metres from the road boundary of Church Street,~~

A permit should not be granted to construct a building or construct or carry out works that would overshadow any of the following spaces between 10 am and 2 pm at 22nd September, unless the overshadowing would not unreasonably prejudice the amenity of the public space, to the satisfaction of the responsible authority:

- any part of the opposite footpath of Church Street, measured from the property boundary to the existing kerb
- any part of the opposite footpath of Lennox Street, Stanley Street, Clifton Street, and Docker Street, measured ~~as 2.0 metres from the kerb of the street~~ from the property boundary to the existing kerb.
- any part of the potential future open space adjacent to the East Richmond Station, measured as beyond 7.0m from the eastern kerb of Milton Place and beyond 10.0m from the southern kerb of Milton Place.

### Vehicle and pedestrian access requirements

Development should provide vehicular access from rear lanes or from side streets in the preferred locations in the Access and Movement Plan 2 of this schedule except in locations identified as “Left in - Left Out Access Permitted” in the Access and Movement Plan 2 of this schedule.

Development identified as “Left in - Left Out Access Permitted” in the Access and Movement Plan should limit the width of vehicle crossovers and incorporate ‘Left in’ and ‘Left out’ only vehicle access.

Development with redundant vehicle access points to Swan Street and Church Street should reinstate the kerb, linemarked parking bays, and relocate any parking signs.

Vehicle ingress and egress into development, including loading facilities and building servicing, should be designed to ensure a high quality pedestrian amenity and limit potential conflict between vehicle movements and pedestrian activity.

Pedestrian access to buildings, including upper level apartments, should be from a street or a shared zone shown on the Access and Movement Plan 2 of this schedule. Where pedestrian access can only be provided from a laneway at the rear of buildings the pedestrian entrance should be setback from the rear laneway and well-lit to enable safe access.

Development at 108-120 Swan Street and 2 Kipling Street, as shown in Plan 2, should include a rear setback, at ground floor, to facilitate the ongoing function of the laneway and allow for building services and car park access. The setback and laneway should be a minimum width of 6m in total.

Development of 94-98 Swan Street, as shown in Plan 2, should include a rear setback, at ground floor, to allow for building services and car park access. The setback and laneway should be a minimum width of 3m in total.

Development should facilitate the creation of a shared zone where properties abut a future shared zone as shown on Plan 2.

Development should improve the pedestrian environment and amenity of streets and laneways that provide a pedestrian connection to Swan Street, Church Street, East Richmond Train Station, and entrances to buildings.

**Table 1 – Street Wall Heights and Setbacks for Precinct 2**

Interface Ref	Design Element	Mandatory Requirements	Preferred Requirements
B	Street wall height	11m maximum. 8m minimum.	Match the parapet height of the adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	0m.	
	Upper level setback	6m minimum setback.	
C	Street wall Height		11m maximum. 8m minimum. Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	0m	
	Upper level setback	6m minimum for heritage buildings.	Minimum 6m elsewhere.
D	Street wall height	11m maximum 8m minimum.	Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	0m.	
	Upper level setback	10m minimum for development up to 21m. 20m minimum for any height above 21m.	
F	Street wall height		11m maximum
	Street wall setback		0m.
	Upper level setback		6m minimum for land affected by HO335 <del>and or individually significant</del> heritage buildings. 3m minimum elsewhere.
G	Street wall height		14m maximum.
	Street wall setback		0m.
	Upper level setback		3m minimum.
H	Street wall height		N/A.
	Street wall setback		0m minimum unless setback is identified on the Plan 2.
	Upper level setback		0m.
I	Side and rear wall height		8m maximum on a common boundary with a property in a residential zone.

Interface Ref	Design Element	Mandatory Requirements	Preferred Requirements
			11m maximum if boundary abuts a laneway.
	<del>Upper level setback</del> <a href="#">Side and rear setback</a>		Development should be setback in accordance with Figure 1 and Figure 2. Development should minimise stepped form.
<a href="#">K</a>	<a href="#">Street wall height</a>		<a href="#">11m maximum.</a>
	<a href="#">Street wall setback</a>		<a href="#">0m.</a>
	<a href="#">Upper level setback</a>		<a href="#">3m minimum.</a>

**Plan 1: Height and Interface Plan – Precinct 2 Swan Street Retail Centre**



**Plan 2: Access and Movement Plan – Precinct 2 Swan Street Retail Centre**



**3.0 Subdivision**

None specified.

**4.0 Advertising**

None specified.

**5.0 Application requirements**

An application must be accompanied by:

- A desktop wind effects assessment for the proposed development when the building height is 15m or higher from natural ground level.

**6.5.0 Decision guidelines**

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the ~~General~~ Design Requirements in Clause 2.30 are met.
- Whether design excellence is achieved (in terms of building siting, scale, massing, articulation and materials).
- The design of the streetscape interface and its contribution to an active street environment.
- Whether the proposal contributes to and improves the pedestrian connectivity and amenity of the public realm.
- The shadowing impacts of the development on footpaths and public spaces.
- The wind effects created by the development.
- The separation between buildings at upper levels when viewed from the opposite side of Swan Street and from local streets.
- The prominence of the heritage street wall in the vistas along Swan Street, Church Street, and local streets.
- Whether heritage buildings on street corners retain their prominence when viewed on both streets.
- Whether heritage buildings retain their three-dimensional form as viewed from the public realm.
- Whether upper level development above the heritage street wall is visually recessive and does not overwhelm the heritage buildings.
- The impact of development on view lines to the Dimmeys Clock Tower.
- The impact of development on the operation of the tram routes along Swan Street and Church Street.

Figure 1 to schedule 26 – Residential – Interface with an existing laneway

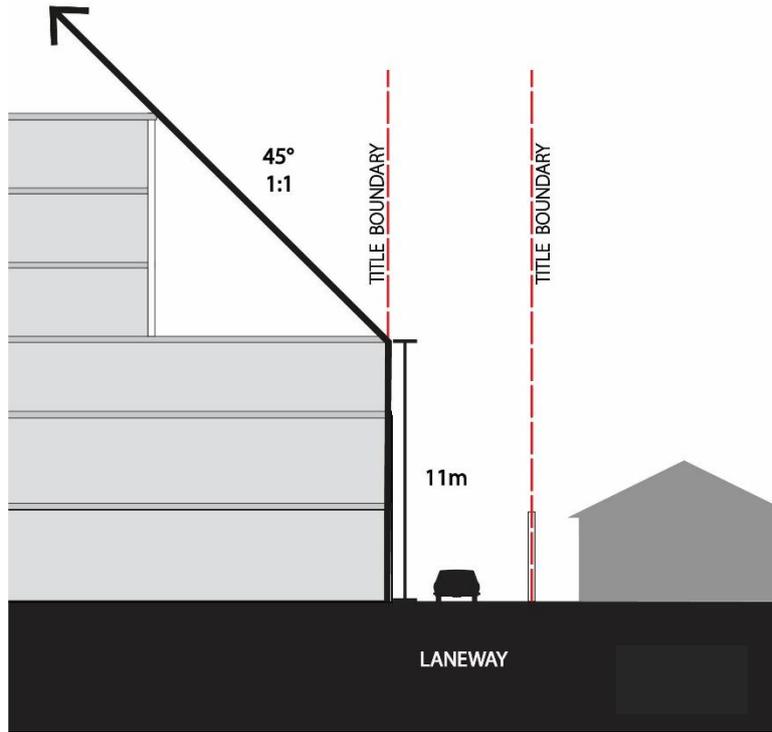
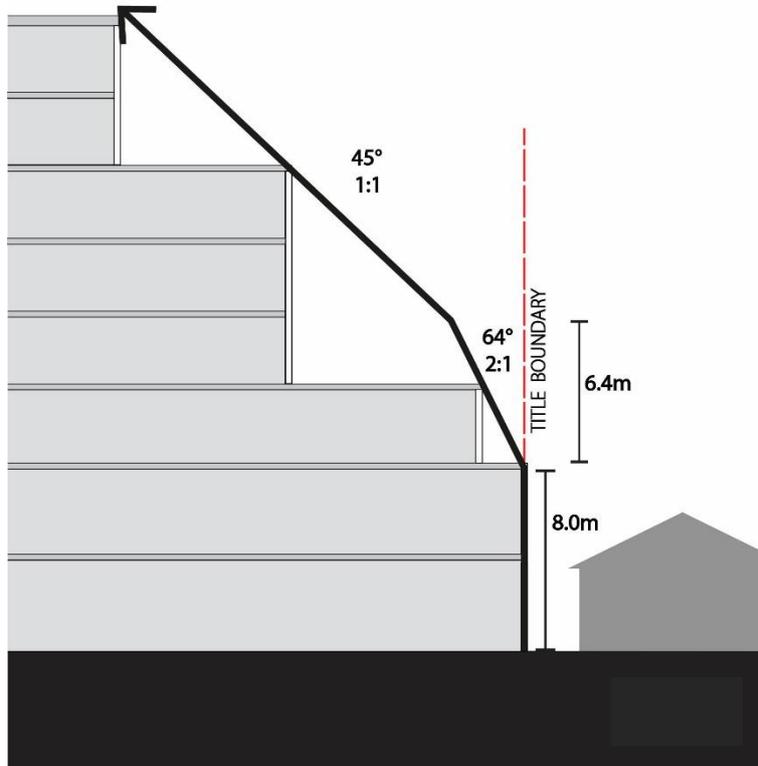


Figure 2 to schedule 26 – Residential – Interface direct abuttal



## Appendix D3 Design and Development Overlay Schedule 27 (Precinct 3)

### SCHEDULE 27 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO27**.

#### SWAN STREET ACTIVITY CENTRE - PRECINCT 3 SWAN STREET EAST

##### 1.0 Design objectives

- To support a new mid rise scale built form character with lower built form at the interfaces with streets and the adjoining low rise residential areas that maintains an active, high quality and pedestrian friendly environment.
- To support taller development on the south side of Swan Street that has regard to the north side of Swan Street and gradually scales up to Burnley Street, denoting the importance of the station.
- To create a safe and attractive pedestrian environment that protects solar access, enhances ground floor activation along Swan Street and side streets and limits vehicle access from Swan Street to new development.
- To reinforce a consistent built form edge to Swan Street while supporting physical and visual permeability through breaks in built form on the south side of Swan Street.
- To ensure that, along the north side of Swan Street, the heritage buildings remain visually prominent in the streetscape.

##### 2.0 Buildings and works

A permit is required to construct a building or construct or carry out works.

##### 2.1 Definitions

**Street-wall** means the facade of a building at the street boundary, or, if the existing heritage building is set back from the street boundary, the front of the existing building. Street wall height is measured at the vertical distance between the footpath at the centre of the frontage and the highest point of the building at the street edge, with the exception of architectural features and building services.

**Heritage building** means any building subject to a Heritage Overlay, graded as either Contributory or Individually Significant ([including properties on the Victorian Heritage Register](#)).

**Laneway** means a road reserve, ~~of a~~ public highway [or right of way](#) 9 metres or less wide.

**Building height** means the vertical distance from *natural ground level* to the roof or parapet at any point.

**Parapet height** does not include features such as brackets, pediments, urns, finials or other decorative elements.

**Road boundary** means the boundary between the public road and the private property.

**Shared zone** means a road or network of roads where pedestrians, cyclists, and vehicles share the roadway.

**Upper level** means development above the height of the street wall.

##### 2.2 Requirements

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

A permit cannot be granted to construct a building or construct or carry out works, which:

- exceeds the mandatory maximum building height and street wall height requirements shown in the Height and Interface Plan 1 of this schedule.
- reduces the mandatory minimum street wall height and upper level setback requirements shown in the Height and Interface Plan 1 of this schedule.

### 2.3 Design requirements

The following design requirements apply to an application to construct a building or construct or carry out works.

#### Design quality requirements

Development should achieve urban design and architectural excellence, demonstrating improved streetscape outcomes.

Development should be well spaced and sited to avoid visual bulk and provide equitable access to an outlook and good daylight.

Development should provide for street activation at ground levels.

Development should be designed to avoid repetitive stepped form at upper levels.

Upper level development should be designed to ensure buildings provide detail on all facades when viewed from all directions.

Frontages at ground floor should incorporate verandahs, consistent with the form and scale of adjoining verandahs, into the façade design.

Protect the amenity of existing residential properties in terms of visual bulk, overshadowing of private open space, overlooking and vehicle access.

Upper level development on land within a Heritage Overlay or on land immediately adjoining a heritage building should:

- be visually recessive and not visually dominate the heritage building and the heritage streetscape; and
- avoid large expanses of glazing with a horizontal emphasis in the upper levels of development.

#### Building height requirements

A permit should only be granted to construct a building or construct or carry out works, which exceeds the preferred building height shown in the Height and Interface Plan 1 of this schedule where all the following requirements are met to the satisfaction of the responsible authority:

- the building elements permitted by the proposed variation satisfies the general design objectives in Clause 1.0 of this schedule, the relevant precinct design requirements specified in this schedule; and
- the proposal will achieve each of the following:
  - greater building separation than the minimum requirement in this schedule;
  - ~~housing for diverse households types;~~
  - ~~Accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58;~~
  - ~~communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58;~~
  - excellence for environmentally sustainable design measured as a minimum BESS project score of 70%;
  - no additional amenity impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height;

- provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms; ~~and~~
- where the proposal includes dwellings, it also achieves each of the following:
  - housing for diverse households types;
  - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58; and
  - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58.

Architectural features may exceed the preferred or mandatory height.

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

- Less than 50 per cent of the roof area is occupied by the equipment (other than solar panels); and
- The equipment does not cause additional overshadowing; and
- The equipment does not extend higher than 3.6 metres above the maximum building height.

#### Street wall and setbacks requirements

A permit should not be granted to construct a building or construct or carry out works, which exceeds the relevant preferred maximum street wall height and/or reduces the relevant preferred ~~mandatory~~ minimum setback requirements specified in this schedule unless the following are met, to the satisfaction of the responsible authority:

- The built form outcomes ~~that as a result from of~~ the proposed variation satisfies the ~~general~~ design objectives in Clause 1.0 of this schedule,
- The built form outcome ~~as a that~~ results ~~from of~~ the proposed variation satisfies the relevant design requirements specified in this schedule
- The street wall at ground floor level is designed to allow floor to floor ceiling heights suitable to accommodate commercial activity.

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

On corner sites where two different street wall heights are nominated, buildings should 'turn the corner' and apply the Swan Street wall height. If the Swan Street wall is higher it should transition to the lower nominated street wall height on the side street.

Development should create a sense of enclosure to Swan Street through the height and setback of its street wall.

#### Building separation requirements

Where development shares a common boundary and no interface treatment is shown in Plan 1, upper level development should:

- ~~▪ be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed~~
- ~~▪ be setback a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.~~
- For buildings up to 28 metres, be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed.
- For buildings up to 28 metres, be setback a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.

- For buildings taller than 28 metres, be setback a minimum of 6 metres above 28 metres.

Where the common boundary is a laneway, the setback is measured from the centre of the laneway.

Development of properties in the locations shown as “Upper Level Building Breaks” on Plan 1 should incorporate side setbacks greater than the setback distances required for upper level development on common boundaries set out above. ~~greater than:~~

~~a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed  
a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.~~

Development of properties in the locations shown as “Upper Level Building Breaks” on Plan 1 should enable clear views to the sky between buildings along Swan Street when viewed from the opposite side of Swan Street and along Lord Street and Edinburgh Street.

### Heritage design requirements

The following design requirements apply on land within a Heritage Overlay or immediately adjoining a Heritage Overlay.

Design Element	Design Requirement
Building facades and street frontages	<p>Facade treatments and the articulation of infill buildings and of new buildings adjoining a heritage building should:</p> <ul style="list-style-type: none"> <li>▪ <del>Be simple and do not compete with the more elaborate detailing of the adjoining heritage building(s)</del></li> <li>▪ <del>respect the vertical proportions of the nineteenth and early twentieth century facades of the heritage streetscape and/or adjoining heritage building(s)</del></li> <li>▪ <del>avoid large expanses of glazing with a horizontal emphasis except to ground floor shopfronts</del></li> <li>▪ <del>maintain the existing canopy/verandah height of the heritage streetscape and/or adjoining heritage building.</del></li> </ul> <p><b>Adaptation and reuse of contributory or individually significant buildings should:</b></p> <ul style="list-style-type: none"> <li>▪ <del>maintain existing openings and avoid highly reflective glazing in historic openings</del></li> <li>▪ <del>encourage the retention of solid built form behind retained facades and avoid balconies behind existing openings</del></li> <li>▪ <del>maintain the inter-floor height of the existing building and avoid new floor plates and walls cutting through historic openings.</del></li> </ul>
Upper level setbacks (above street wall height)	<p><b>Upper level development on land within a Heritage Overlay and on land immediately adjoining a heritage building should:</b></p> <ul style="list-style-type: none"> <li>▪ <del>be visually recessive and not visually dominate the heritage building and the heritage streetscape</del></li> <li>▪ <del>retain the primacy of the three-dimensional form of the heritage building as viewed from the public realm to avoid ‘facadism’</del></li> <li>▪ <del>utilise visually lightweight materials and finishes that are recessive in texture and colour and provide a juxtaposition with the heavier masonry of the heritage facades</del></li> <li>▪ <del>incorporate simple architectural detailing that does not detract from significant elements of the heritage building and the heritage streetscape</del></li> <li>▪ <del>reflect the rhythm of the wider streetscape, fine-grained character and subdivision pattern of the streetscape, especially on larger sites.</del></li> </ul>

### Overshadowing requirements

A permit must not be granted to construct a building or construct or carry out works that would overshadow any of the following spaces between 10 am and 2 pm at 22nd September:-

- any part of the southern footpath of Swan Street, measured ~~as 4.0m from the southern road boundary of Swan Street~~ from the property boundary to the existing kerb.
- ~~any part of the opposite footpath of Burnley Street, measured as 4.0 metres from the road boundary of Burnley Street.~~

A permit should not be granted to construct a building or construct or carry out works that would overshadow part of the opposite footpath of Burnley Street, Mary Street and Coppin Street (measured ~~as 2.0m from the~~ from the property boundary to the existing kerb between 10 am and 2 pm at 22nd September) unless the overshadowing would not unreasonably prejudice the amenity of the public space, to the satisfaction of the responsible authority.

#### Vehicle and pedestrian access requirements

Development should provide vehicular access from rear lanes or from side streets in the preferred locations in the Access and Movement Plan 2 of this schedule ~~- except in locations identified as “Left in - Left Out Access Permitted” in the Access and Movement Plan 2 of this schedule.~~

Development identified as “Left in - Left Out Access Permitted” in the Access and Movement Plan should limit the width of vehicle crossovers and incorporate ‘Left in’ and ‘Left out’ only vehicle access.

Development with redundant vehicle access points to Swan Street and Burnley Street should reinstate the kerb, linemarked parking bays, and relocate any parking signs.

Vehicle ingress and egress into development, including loading facilities and building servicing, should be designed to ensure a high quality pedestrian amenity and limit potential conflict between vehicle movements and pedestrian activity.

Pedestrian access to buildings, including upper level apartments, should be from a street or a shared zone shown on the Access and Movement Plan 2 of this schedule. Where pedestrian access can only be provided from a laneway at the rear of buildings the pedestrian entrance should be setback from the rear laneway and well-lit to enable safe access.

Development should be designed to enhance, activate, and provide passive surveillance to the pedestrian connection between Glass Street and Swan Street as shown on Plan 2.

Development should include north-south access in the locations shown on the Access and Movement Plan 2 to allow for building services and car park access.

**Table 1 – Street Wall Heights and Setbacks for Precinct 3**

Interface Ref	Design Element	Mandatory Requirements	Preferred Requirements
C	Street wall Height		11m maximum. 8m minimum. Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	0m.	
	Upper level setback	Minimum 6m for heritage buildings.	Minimum 6m elsewhere.
E	Street wall height		14m maximum. <u>Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.</u>

Interface Ref	Design Element	Mandatory Requirements	Preferred Requirements
	Street wall setback		0m.
	Upper level setback	<a href="#">Minimum 6m for heritage buildings.</a>	6m minimum.
F	Street wall height		11m <del>minimum</del> <a href="#">maximum</a> .
	Street wall setback		0m.
	Upper level setback		6m minimum for <del>individually significant</del> <a href="#">heritage</a> buildings. 3m minimum elsewhere.
G	Street wall height		14m maximum.
	Street wall setback		0m.
	Upper level setback		3m minimum.
H	Street wall height		N/A.
	Street wall setback		0m minimum unless setback is identified on the Plan 2.
	Upper level setback		0m.
I	Side and rear wall height		8m maximum on a common boundary with a property in a residential zone. 11m maximum if boundary abuts a laneway.
	<del>Upper level setback</del> <a href="#">Side and rear setback</a>		Development should be setback in accordance with Figure 1 and Figure 2. Development should minimise stepped form.

**Plan 1: Height and Interface Plan – Precinct 3 Swan Street East**



**Plan 2: Access and Movement Plan – Precinct 3 Swan Street East**



### 3.0 Subdivision

None specified.

### 4.0 Advertising

None specified.

### 5.0 Application requirements

An application must be accompanied by:

- A desktop wind effects assessment for the proposed development when the building height is 15m or higher from natural ground level.

### ~~5.0~~ 6.0 Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the ~~General~~ Design Requirements in Clause 2.03 are met.
- Whether design excellence is achieved (in terms of building siting, scale, massing, articulation and materials).
- The design of the streetscape interface and its contribution to an active street environment.
- Whether the proposal contributes to and improves the pedestrian connectivity and amenity of the public realm.
- The shadowing impacts of the development on footpaths and public spaces.
- The wind effects created by the development.
- The separation between buildings at upper levels when viewed from the opposite side of Swan Street and from local streets.
- The prominence of the heritage street wall in the vistas along Swan Street, Burnley Street, and local streets.
- Whether heritage buildings on street corners retain their prominence when viewed on both streets.
- Whether heritage buildings retain their three-dimensional form as viewed from the public realm.
- Whether upper level development above the heritage street wall is visually recessive and does not overwhelm the heritage buildings.
- The impact of development on the operation of the tram routes along Swan Street.

Figure 1 to schedule 27 – Residential Interface with an existing laneway

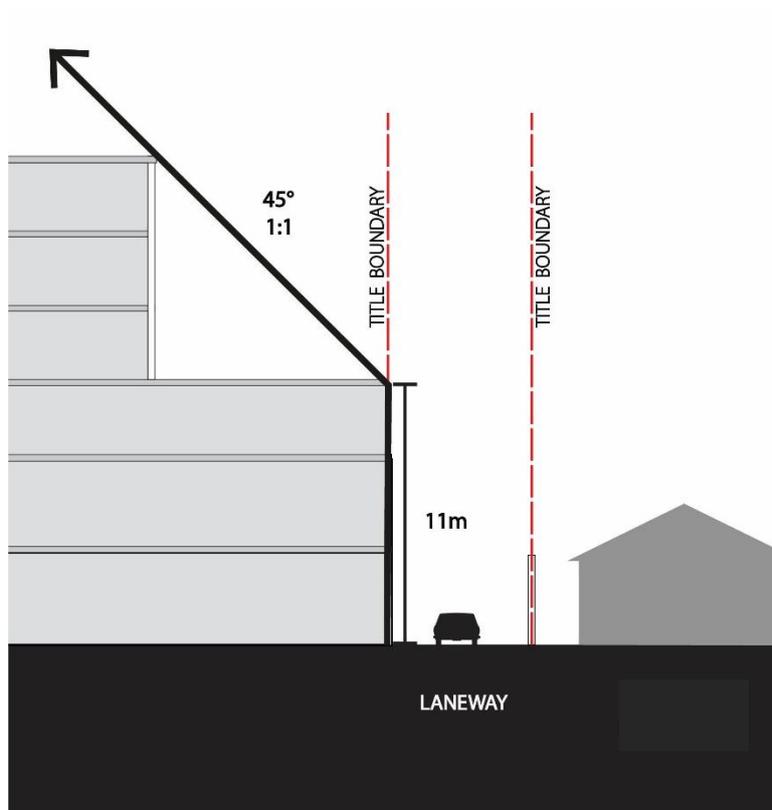
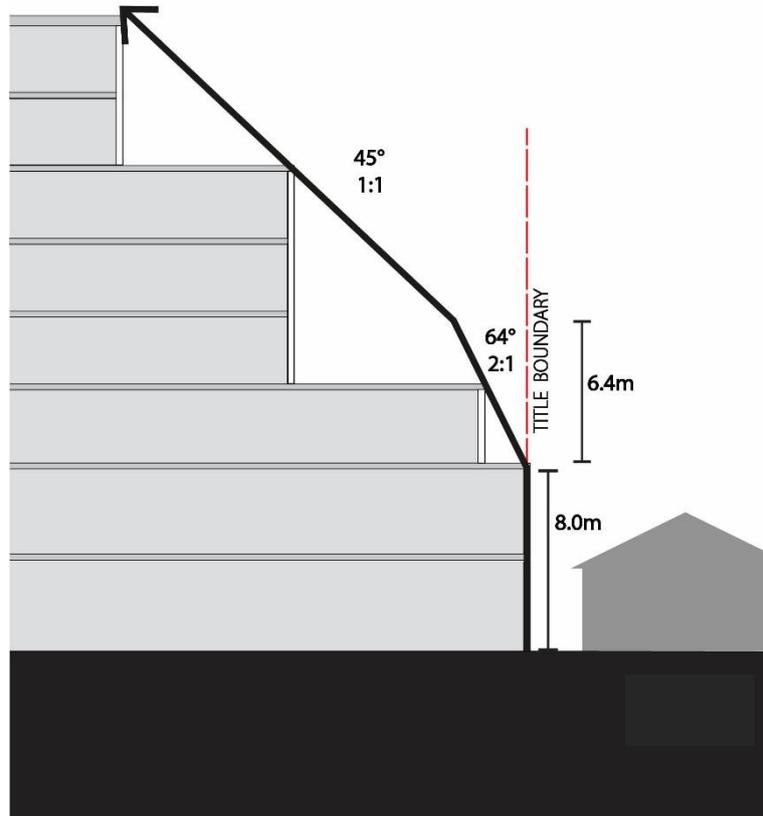


Figure 2 to schedule 27 – Residential Interface direct abuttal



## Appendix D4 Design and Development Overlay Schedule 28 (Precinct 4)

### SCHEDULE 28 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO28**.

#### SWAN STREET ACTIVITY CENTRE - PRECINCT 4 BURNLEY STATION

##### 1.0 Design objectives

- To ensure development respects the scale, rhythm, and architectural detail of the streetscape and the heritage buildings in the Burnley Street Heritage Precinct.
- To support a new mid rise scale built form character with lower built form at the interfaces with streets and the adjoining low rise residential areas that maintains an active, high quality and pedestrian friendly environment.
- To reinforce the corners of Swan Street and Burnley Street as a vibrant commercial, retail and residential location.
- To provide for taller development on the south side of Swan Street that delivers significant public realm outcomes and ensure development on both side of Swan Street maintains the amenity of Ryan's Reserve.
- To support high quality new buildings adjoining Burnley Station with mixed uses that activate and improve pedestrian connections to the station.

##### 2.0 Buildings and works

A permit is required to construct a building or construct or carry out works.

##### 2.1 Definitions

**Street-wall** means the facade of a building at the street boundary, or, if the existing heritage building is set back from the street boundary, the front of the existing building. Street wall height is measured at the vertical distance between the footpath at the centre of the frontage and the highest point of the building at the street edge, with the exception of architectural features and building services.

**Heritage building** means any building subject to a Heritage Overlay, graded as either Contributory or Individually Significant ([including properties on the Victorian Heritage Register](#)).

**Laneway** means a road reserve, ~~of a~~ public highway [or right of way](#) 9 metres or less wide.

**Building height** means the vertical distance from *natural ground level* to the roof or parapet at any point.

**Parapet height** does not include features such as brackets, pediments, urns, finials or other decorative elements.

**Road boundary** means the boundary between the public road and the private property.

**Shared zone** means a road or network of roads where pedestrians, cyclists, and vehicles share the roadway.

**Upper level** means development above the height of the street wall.

##### 2.2 Requirements

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

A permit cannot be granted to construct a building or construct or carry out works, which:

- exceeds the mandatory maximum building height and street wall height requirements shown in the Height and Interface Plan 1 of this schedule.
- reduces the mandatory minimum street wall height and upper level setback requirements shown in the Height and Interface Plan 1 of this schedule.

### 2.3 ~~General~~ Design requirements

The following ~~general~~ design requirements apply to an application to construct a building or construct or carry out works.

#### Design quality requirements

Development should achieve urban design and architectural excellence.

Development should be well spaced and sited to avoid visual bulk and provide equitable access to an outlook and good daylight.

Development should provide for street activation at ground levels.

Development should be designed to avoid repetitive stepped form at upper levels.

Upper level development should be designed to ensure buildings provide detail on all facades when viewed from all directions.

Frontages at ground floor should incorporate verandahs, consistent with the form and scale of adjoining verandahs, into the façade design.

Protect the amenity of existing residential properties in terms of visual bulk, overshadowing of private open space, overlooking and vehicle access.

Development should maintain the prominence of the heritage street wall and respects the architectural form and qualities of heritage buildings and the heritage streetscape within land affected by HO474.

Upper level development on land within a Heritage Overlay or on land immediately adjoining a heritage building should:

- be visually recessive and not visually dominate the heritage building and the heritage streetscape; and
- avoid large expanses of glazing with a horizontal emphasis in the upper levels of development.

#### Building heights requirements

A permit should only be granted to construct a building or construct or carry out works, which exceeds the preferred building height shown in the Height and Interface Plan 1 of this schedule where all the following requirements are met to the satisfaction of the responsible authority:

- the built form outcome that results from the proposed variation ~~and elements permitted by the proposed variation~~ satisfies the ~~general~~ design objectives in Clause 1.0 of this schedule, and the relevant ~~precinct~~ design requirements specified in this schedule; and
- the proposal ~~will~~ achieves each of the following:
  - greater building separation than the minimum requirement in this schedule;
  - ~~housing for diverse households types;~~
  - ~~Accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58;~~
  - ~~communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58;~~
  - excellence for environmentally sustainable design measured as a minimum BESS project score of 70%;

- no additional amenity impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height;
- provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms; ~~and~~
- where the proposal includes dwellings, it also achieves each of the following:
  - housing for diverse households types;
  - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and 58; and
  - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58.

Architectural features may exceed the preferred or mandatory height.

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

- Less than 50 per cent of the roof area is occupied by the equipment (other than solar panels); and
- The equipment does not cause additional overshadowing; and
- The equipment does not extend higher than 3.6 metres above the maximum building height.

#### **Street wall and setbacks requirements**

Development along Swan Street must achieve a prominent street wall and provide an appropriate transition in the street wall height to the Burnley Street and Bendigo Street heritage precincts.

A permit should not be granted to construct a building or construct or carry out works, which exceeds the relevant preferred maximum street wall height and/or reduces the relevant preferred ~~mandatory~~ minimum setback requirements specified in this schedule unless the following are met, to the satisfaction of the responsible authority:

- The built form outcome ~~that as a result of~~ the proposed variation satisfies the ~~general~~ design objectives in Clause 1.0 of this schedule,
- The built form outcome ~~that as a result of~~ the proposed variation satisfies the relevant ~~design~~ requirements specified in this schedule.
- -The street wall at ground floor level is designed to allow floor to floor ceiling heights suitable to accommodate commercial activity.

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

On corner sites where two different street wall heights are nominated, buildings should 'turn the corner' and apply the Swan Street wall height. If the Swan Street wall is higher it should transition to the lower nominated street wall height on the side street.

#### **Building separation requirements**

Where development shares a common boundary and no interface treatment is shown in Plan 1, upper level development should:

- ~~be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed~~
- ~~be setback a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.~~

- For buildings up to 28 metres, be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed.
- For buildings up to 28 metres, be setback a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.
- For buildings taller than 28 metres, be setback a minimum of 6 metres above 28 metres.

Where the common boundary is a laneway, the setback is measured from the centre of the laneway.

Development of properties in the locations shown as “Upper Level Building Breaks” on Plan 1 should incorporate side setbacks greater than the setback distances required for upper level development on common boundaries set out above.

greater than:

- ~~a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed~~
- ~~a minimum of 3.0m from the common boundary where a commercial or non-habitable window is proposed.~~

Development of properties in the locations shown as “Upper Level Building Breaks” on Plan 1 should enable clear views to the sky between buildings along Swan Street when viewed from the opposite side of Swan Street and along Cutter Street and Bendigo Street.

### Heritage design requirements

~~The following design requirements apply on land within a Heritage Overlay or immediately adjoining a Heritage Overlay.~~

Design Element	Design Requirement
<p>Building facades and street frontages</p>	<p><del>Facade treatments and the articulation of infill buildings and of new buildings adjoining a heritage building should:</del></p> <ul style="list-style-type: none"> <li>▪ <del>Be simple and do not compete with the more elaborate detailing of the adjoining heritage building(s)</del></li> <li>▪ <del>respect the vertical proportions of the nineteenth and early twentieth century facades of the heritage streetscape and/or adjoining heritage building(s)</del></li> <li>▪ <del>avoid large expanses of glazing with a horizontal emphasis except to ground floor shopfronts</del></li> <li>▪ <del>maintain the existing canopy/verandah height of the heritage streetscape and/or adjoining heritage building.</del></li> </ul> <p><del><b>Adaptation and reuse of contributory or individually significant buildings should:</b></del></p> <ul style="list-style-type: none"> <li>▪ <del>maintain existing openings and avoid highly reflective glazing in historic openings</del></li> <li>▪ <del>encourage the retention of solid built form behind retained facades and avoid balconies behind existing openings</del></li> <li>▪ <del>maintain the inter-floor height of the existing building and avoid new floor plates and walls cutting through historic openings.</del></li> </ul>
<p>Upper level setbacks (above street wall height)</p>	<p><del><b>Upper level development on land within a Heritage Overlay and on land immediately adjoining a heritage building should:</b></del></p> <ul style="list-style-type: none"> <li>▪ <del>be visually recessive and not visually dominate the heritage building and the heritage streetscape</del></li> <li>▪ <del>retain the primacy of the three-dimensional form of the heritage building as viewed from the public realm to avoid ‘facadism’</del></li> <li>▪ <del>utilise visually lightweight materials and finishes that are recessive in texture and colour and provide a juxtaposition with the heavier masonry of the heritage facades</del></li> <li>▪ <del>incorporate simple architectural detailing that does not detract from significant elements of the heritage building and the heritage streetscape</del></li> </ul>

Design Element	Design Requirement
	<ul style="list-style-type: none"> <li>▪ <del>reflect the rhythm of the wider streetscape, fine grained character and subdivision pattern of the streetscape, especially on larger sites.</del></li> </ul>

### Overshadowing requirements

A permit must not be granted to construct a building or construct or carry out works that would overshadow any of the following spaces between 10 am and 2 pm at 22nd September.

- any part of the southern footpath of Swan Street, measured ~~as 4.0m from the southern road boundary of Swan Street, from the property boundary to the existing kerb.~~
- ~~any part of the opposite footpath of Burnley Street, measured as 4.0 metres from the road boundary of Burnley Street~~

A permit should not be granted to construct a building or construct or carry out works that would overshadow part of the opposite footpath of [Burnley Street or Stawell Street](#) (measured ~~as 2.0m from the~~ [from the property boundary to the existing](#) kerb between 10 am and 2 pm at 22nd September), unless the overshadowing would not unreasonably prejudice the amenity of the public space, to the satisfaction of the responsible authority.

Development should maintain solar access to Ryan’s Reserve as follows:

- Beyond 16m of the eastern boundary of the reserve from 10 am onwards on 22 September
- At the western boundary of the reserve until 2 pm on 22 September.

### Vehicle and pedestrian access requirements

Development should provide vehicular access from rear lanes or from side streets in the preferred locations in the Access and Movement Plan 2 of this schedule except in locations identified as “Left in - Left Out Access Permitted”. ~~in the Access and Movement Plans (Plan 2, 4, 6 and 8) of this schedule.~~

Development identified as “Left in - Left Out Access Permitted” in the Access and Movement Plan must limit the width of vehicle crossovers and incorporate ‘Left in’ and ‘Left out’ only vehicle access.

Development with redundant vehicle access points to Swan Street and Burnley Street should reinstate the kerb, linemarked parking bays, and relocate any parking signs.

Vehicle ingress and egress into development, including loading facilities and building servicing, should be designed to ensure a high quality pedestrian amenity and limit potential conflict between vehicle movements and pedestrian activity.

Pedestrian access to buildings, including upper level apartments, should be from a street or a shared zone shown on the Access and Movement Plan 2 of this schedule. Where pedestrian access can only be provided from a laneway at the rear of buildings the pedestrian entrance should be setback from the rear laneway and well-lit to enable safe access.

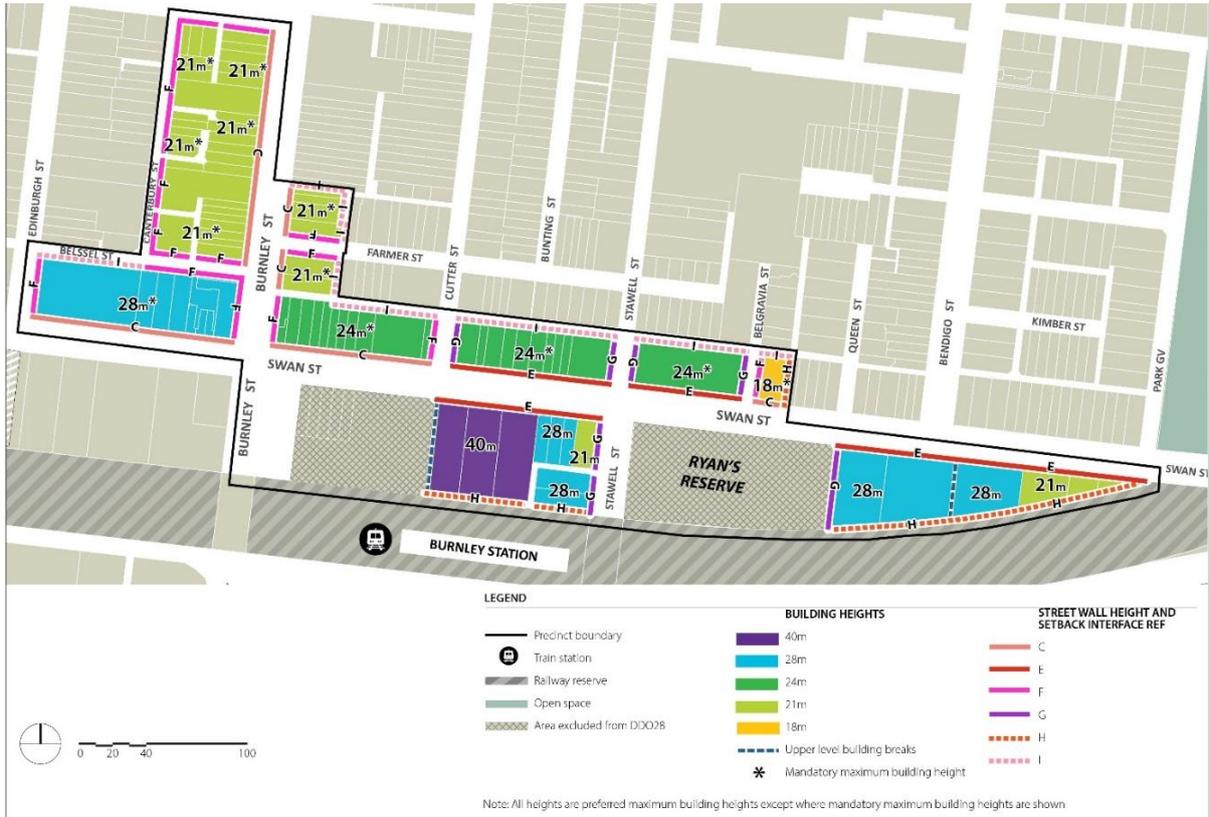
Development of 500 to 506 Swan Street, as shown in Plan 2, should include a rear setback, at ground floor, to facilitate the ongoing function of the laneway and allow for building services and car park access. The setback and laneway should be a minimum width of 6m in total.

Development of 130 to 136 Stawell [Street](#), as shown in Plan 2, should include a rear setback, at ground floor, to facilitate the ongoing function of the laneway and allow for building services and car park access. The setback and laneway should be a minimum width of 3m in total.

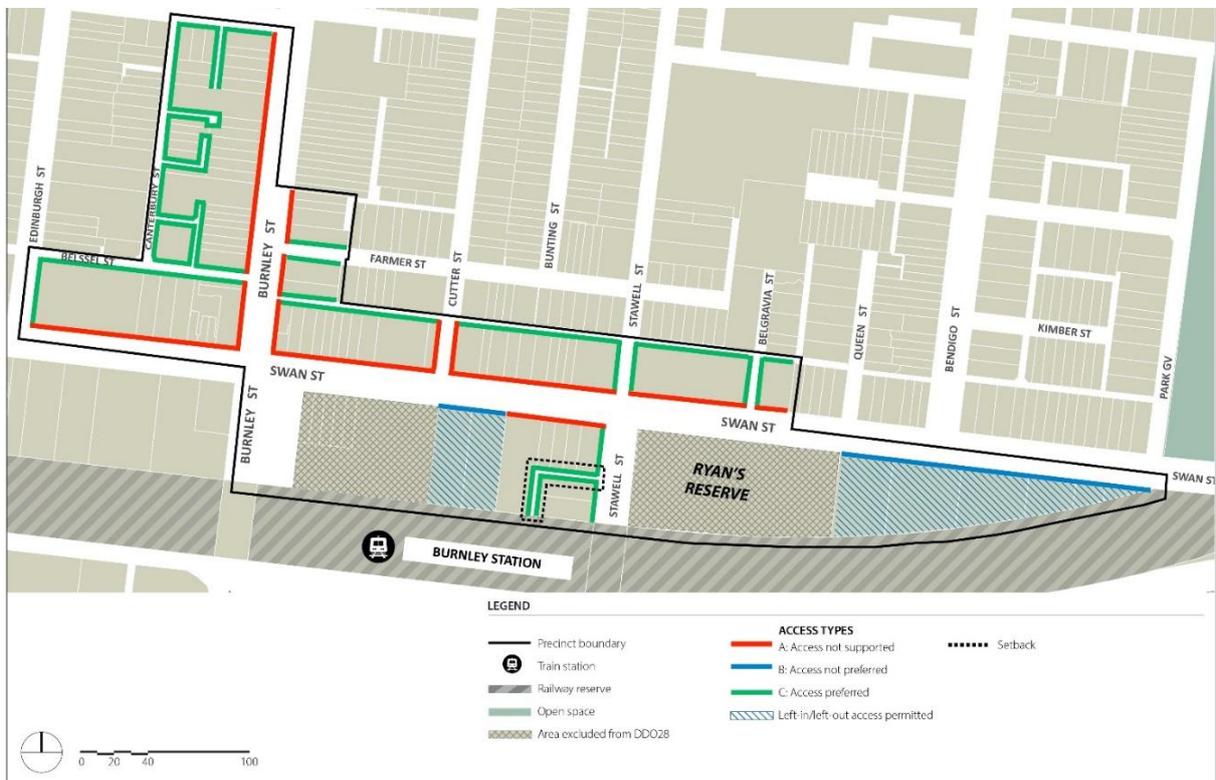
Table 1 – Street Wall Heights and Setbacks for Precinct 4

Interface Ref	Design Element	Mandatory Requirements	Preferred Requirements
C	Street wall Height		11m maximum. 8m minimum. Match the parapet height of the taller adjoining heritage building, for a minimum length of 6m from the heritage building.
	Street wall setback	0m.	
	Upper level setback	10m minimum from Swan Street setback for land affected by HO 286 (365 Swan Street). Minimum 6m for other heritage buildings.	Minimum 6m elsewhere.
E	Street wall height		14m maximum.
	Street wall setback		0m.
	Upper level setback		6m minimum.
F	Street wall height		11m <del>minimum</del> maximum.
	Street wall setback		0m.
	Upper level setback		6m minimum for <del>individually significant</del> heritage-buildings. 3m minimum elsewhere.
G	Street wall height		14m maximum.
	Street wall setback		0m.
	Upper level setback		3m minimum.
H	Street wall height		N/A.
	Street wall setback		0m minimum unless setback is identified on the Plan 2.
	Upper level setback		0m.
I	Side and rear wall height		8m maximum on a common boundary with a property in a residential zone. 11m maximum if boundary abuts a laneway.
	<del>Upper level setback</del> <u>Side and rear setback</u>		Development <del>must</del> should be setback in accordance with Figure 1 and Figure 2. Development <del>must</del> should minimise stepped form.

**Plan 1: Height and Interface Plan – Precinct 4 Burnley Station**



**Plan 2: Access and Movement Plan – Precinct 4 Burnley Station**



### 3.0 Subdivision

None specified.

### 4.0 Advertising

None specified.

### 5.0 Application requirements

An application must be accompanied by:

- A desktop wind effects assessment for the proposed development when the building height is 15m or higher from natural ground level.

### **5.6.0 Decision guidelines**

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the ~~General~~ Design Requirements in Clause 2.03 are met.
- Whether design excellence is achieved (in terms of building siting, scale, massing, articulation and materials).
- The design of the streetscape interface and its contribution to an active street environment.
- Whether the proposal contributes to and improves the pedestrian connectivity and amenity of the public realm.
- The shadowing impacts of the development on footpaths and public spaces.
- The wind effects created by the development.
- The separation between buildings at upper levels when viewed from the opposite side of Swan Street and from local streets.
- The prominence of the heritage street wall in the vistas along Swan Street, Burnley Street, and local streets.
- Whether heritage buildings on street corners retain their prominence when viewed on both streets.
- Whether heritage buildings retain their three-dimensional form as viewed from the public realm.
- Whether upper level development above the heritage street wall is visually recessive and does not overwhelm the heritage buildings.
- The impact of development on the operation of the tram routes along Swan Street.

Figure 1 to schedule 28 – Residential Interface with an existing laneway

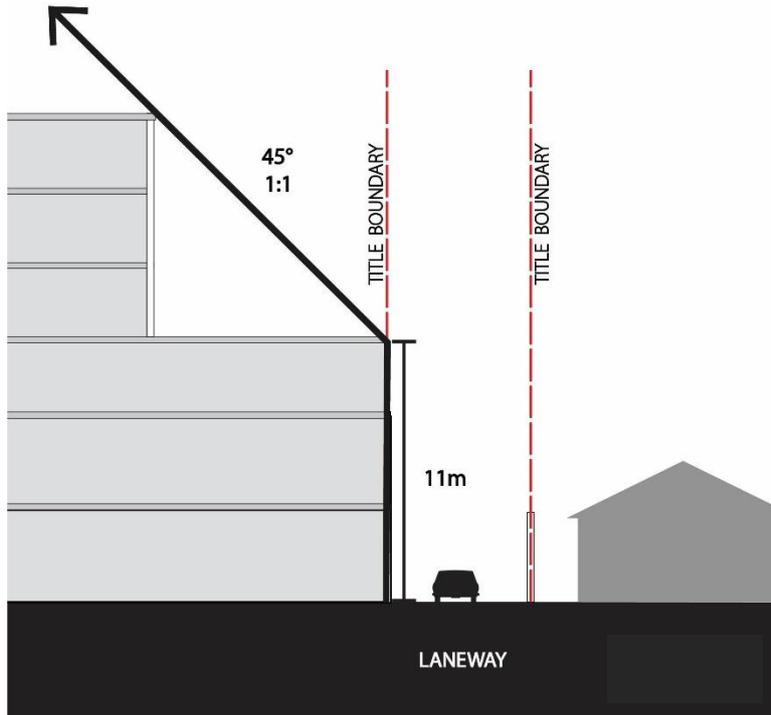
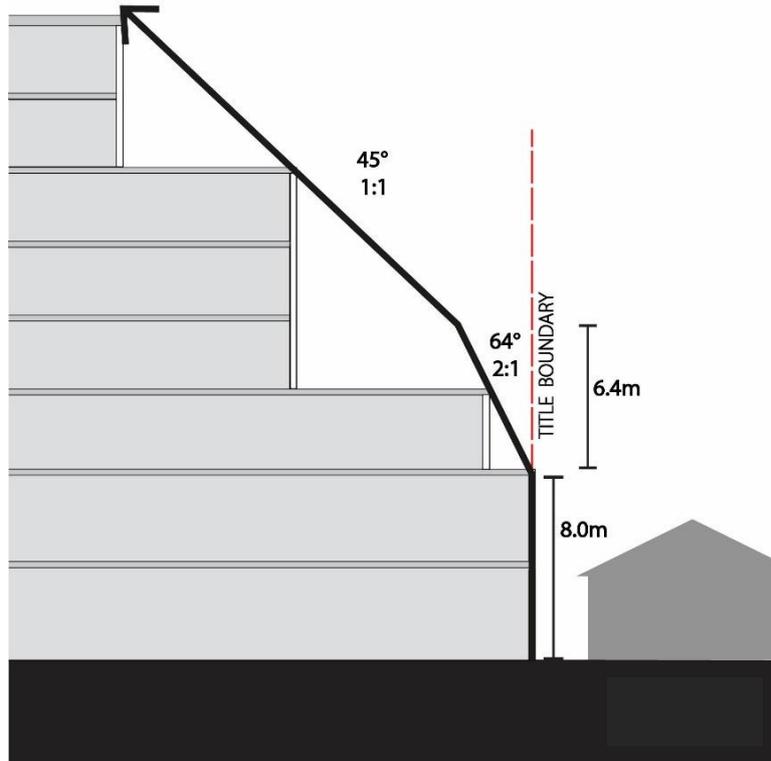


Figure 2 to schedule 28 – Residential Interface direct abuttal



# Appendix D5 Clause 21.12 Figure 1 (Framework Plan)

