

Date: 9 October 2018

Amendment C220 to the Yarra Planning Scheme

Johnston Street, Collingwood and Abbotsford

Part A Submission on behalf of Yarra City Council

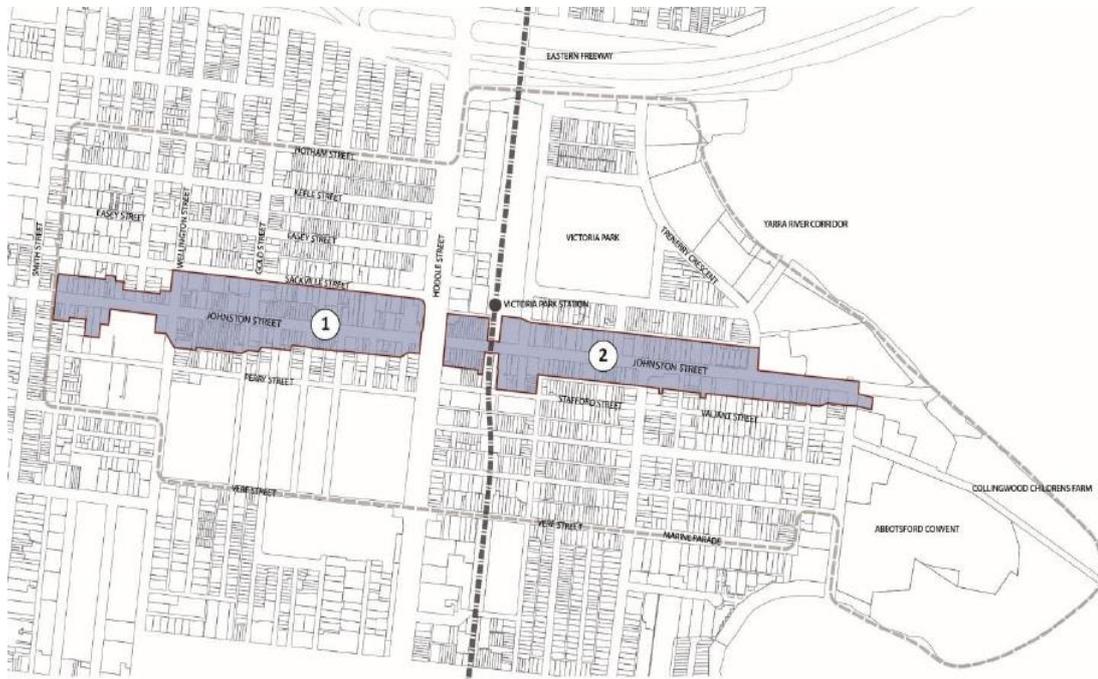
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Introduction

1. Yarra City Council (**Council**) has prepared Amendment C220 to the Yarra Planning Scheme (**Amendment**) which affects land in and around Johnston Street (Collingwood and Abbotsford), including Sackville Street in Collingwood.
2. The Amendment applies to land in Precincts 1 and 2 (**Subject Land**) as identified in the Johnston Street Local Area Plan (**the Plan**) (illustrated below):

Figure 1: Precincts 1 and 2 (Subject Land) as identified in the Plan



3. The Amendment introduces planning controls, including rezoning land to the Commercial 1 Zone, to implement the land use and built form objectives and strategies within the Plan.
4. The Plan was adopted by Council in 2015. As set out in the introduction to the Plan:

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

1. Land Use
2. Public Spaces
3. Access and Movement
4. Built Form

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

The Johnston Street Activity Centre has the potential to accommodate a greater mix of activities including residential, retail, offices and other commercial uses that enhance the character and amenity of the street and local area, as well as

the existing mix of activity. Johnston Street has the potential to play a more significant commercial role whilst accommodating a growing population and business community that has good access to areas of open space and public transport.

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

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

5. The Amendment proposes to make the following changes to the Yarra Planning Scheme (**Scheme**):
 - 5.1. Rezone land within the Commercial 2 Zone (**C2Z**) and General Residential Zone (**GRZ1**) to Commercial 1 Zone (**C1Z**);
 - 5.2. Rezone part of the site at 67-71 Johnston Street from Public Use Zone (**PUZ**) to Commercial 1 Zone (C1Z) to correct a mapping error;
 - 5.3. Apply the Design Development Overlay (**DDO15**) to the Subject Land (on a permanent basis);
 - 5.4. Insert a new DDO schedule 15 at Clause 43.02;
 - 5.5. Apply the Environmental Audit Overlay (**EAO**) to sites being rezoned from Commercial 2 Zone to the Commercial 1 Zone;
 - 5.6. Apply a new Heritage Overlay precinct (**HO505**) "Johnston Street East" to the properties at 219-241 Johnston Street, Abbotsford and 246-274 Johnston Street, Abbotsford (on a permanent basis);
 - 5.7. Amend the schedule to Clause 43.01 (Heritage Overlay) to include HO505;
 - 5.8. Insert a new section and policy at Clause 21.12 called "Local Areas" with a subsection at Clause 21.12-1 called "Johnston Street Activity Centre";
 - 5.9. Insert a new reference document *Johnston Street Local Area Plan – 2015* in Clause 21.11 Reference Documents and in Clause 21.12 Local Areas;
 - 5.10. Insert a new reference document *Heritage Gap Study: Review of Johnston Street East, March 2016* (Context Pty Ltd) in Clause 21.11 Reference Documents and in Clause 22.02 Development Guidelines for Sites Subject to the Heritage Overlay;
 - 5.11. Amend the existing incorporated document *City of Yarra Review of Heritage Overlay Areas 2007 Appendix 8*, listed in the schedule to clause 81.01 to include the addresses and gradings of all new and revised places and rename the incorporated document to *City of Yarra Review of Heritage Overlay Areas 2007 Appendix 8 revised November 2017*;
 - 5.12. Amend the Planning Scheme Maps.

Background to the Amendment

6. The Plan was prepared by Council for the Johnston Street Activity Centre and adopted by Council in December 2015.¹ The Plan is a high-level strategy document with the purpose to provide a framework and future vision for the Johnston Street Activity Centre and wider study area. The Plan focusses on the key issues and opportunities affecting the study area which have been identified through analysis, research and consultation with the community and key stakeholders.
7. The following background documents were prepared which informed the Plan:
 - 7.1. Appendix A – Policy and Strategic Basis (November 2015);
 - 7.2. Appendix B – Built Form Analysis and Recommendations (December 2015);
 - 7.3. Appendix C – Trenerry Crescent Urban Design Analysis and Masterplan (September 2015); and
 - 7.4. Appendix D – Johnston Street Economic Advice (SGS Economics, August 2015).
8. Consultation preceding the adoption of the Plan went through three separate phases:
 - 8.1. October 2011 – February 2012 – Initial consultation in the form of workshops;
 - 8.2. June 2012 – July 2012 – Consultation on a draft plan; and
 - 8.3. Early 2015 – Consultation on a revised plan.
9. In May 2016, Council resolved to seek authorisation to prepare and exhibit the Amendment from the Minister for Planning.²
10. In March 2017, the Minister provided conditional authorisation which advised that the Amendment could be prepared and exhibited if particular conditions were met.³ These conditions included a requirement for Council to:

“limit the application of mandatory controls to confined locations where there are exceptional circumstances as outlined in Practice Note 60 – Height and Setback controls for Activity Centres.”
11. As outlined in the Council's ordinary meeting agenda on 31 October 2017,⁴ following receipt of the conditional authorisation, Council officers prepared further built form analysis documented in *Amendment C220 Supporting Document, October 2017*. The supporting document identified where mandatory controls may be appropriate having regard to the Minister's conditional authorisation and the Practice Note 60 – Height and setback controls for activity centres (**PN60**). This work took into account the principles underpinning the Plan and considered recently approved permits. As a result, Council officers prepared a revised Amendment which contained two key changes:

¹ Agenda and minutes of ordinary meeting of Council held on 1 December 2015 available at: <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committee-meetings/2015-council-meetings>.

² Agenda and minutes of ordinary meeting of Council held on 17 May 2016 available at: <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committee-meetings/2016-council-meetings>.

³ Letter from the Minister for Planning to Council's CEO dated 8 March 2017.

⁴ Agenda of ordinary meeting of Council held on 31 October 2017 available at: <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committee-meetings/2017-council-meetings>.

- 11.1. a revised Design and Development Overlay schedule which included both preferred and mandatory provisions; and
 - 11.2. a new Clause 21 Local Policy that replaced the proposed Clause 22 (to reflect the proposed structure of the Yarra Planning Scheme rewrite).
12. As set out in the 31 October 2017 agenda:
- Mandatory height controls have been applied to areas of intact heritage streetscapes and to areas that directly adjoin low scale residential areas. The sensitivity of these locations and the potential adverse impact that taller built form could have on their character and on the amenity of residents is considered to meet the tests of PN60.*
13. On 31 October 2017, Council resolved to authorise officers to exhibit the Amendment.⁵
14. The Amendment was subject to exhibition between 16 November to 18 December 2017. A total of 28 submissions were received.

Amendment C237 – Interim Controls

15. In 2016, Council engaged Context Pty Ltd to undertake a review of the streetscape between Hoddle Street and the railway line, east of Hoddle Street. Context concluded upon review that it was recommended a new precinct Heritage Overlay (HO505) should apply to that section of Johnston Street.⁶
16. In October 2017, Council resolved to lodge a request for interim controls in this area under section 20(4) of the Act.⁷
17. On 2 March 2018, Amendment C237 to the Scheme was gazetted to introduce HO505 and DDO15 on an interim basis until 31 December 2019.
18. The Minister's reasons for intervention state:⁸
 7. *Amendment C237 is required to respond to the increase in quantity and scale of development proposed and approved within the Johnston Street Activity Centre. A lack of existing built form controls has resulted in inappropriate built form outcomes.*
 8. *The Minister for Planning, facilitated by the Department of Environment, Land, Water and Planning, is undertaking an activity centre pilot program, with Johnston Street Activity Centre included as a pilot centre. The program will investigate how planning controls can be improved to provide greater certainty to the community.*
 9. *The interim controls are required to ensure that the Activity Centre is protected in the short term, and that planning controls provide certainty to the Yarra community while further work for the pilot program is undertaken.*

⁵ Minutes of ordinary meeting of Council held on 31 October 2017 available at: <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committee-meetings/2017-council-meetings>.

⁶ *Heritage Gap Study: Review of Johnston Street East Final Report* prepared by Context Pty Ltd dated April 2016.

⁷ Minutes of ordinary meeting of Council held on 31 October 2017 available at: <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committee-meetings/2017-council-meetings>.

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

19. The Minister for Planning introduced both overlays into the Scheme with one key change being a mandatory maximum height requirement applied to 23-33 Johnston Street to manage the impacts on the adjacent Collingwood Arts Precinct, and the sub-precinct designation was changed from 1AA to a new 1AAA.
20. Specifically, the interim controls for 23-33 Johnston Street include a mandatory maximum building height of 28 metres in addition to a mandatory setback of six metres for upper levels from a street wall façade that has a mandatory maximum wall height of 11 metres. The interim DDO15 also has a new design objective:

To ensure that new development does not compromise the operation of the state significant Collingwood Arts Precinct from unreasonable loss of amenity through visual bulk, overlooking, overshadowing and vehicle access.
21. At the time that the interim controls were gazetted, there was a permit application before VCAT for a development at 23-33 Johnston Street.⁹

Amendments VC148 and VC149

22. On 31 July 2018, Amendment VC148 was gazetted and introduced a new Planning Policy Framework (**PPF**) and enables the future introduction of a Municipal Planning Strategy (**MPS**).
23. On 4 October 2018, Amendment VC149 was gazetted which amends the Victoria Planning Provisions and introduces the new Commercial 3 Zone.
24. Amendments VC148 and VC149 have implications for the local policy framework and the use of zones and overlays, in terms of form and content. The Amendment has been drafted and exhibited in accordance with the Ministerial Direction on the Form and Content of Planning Schemes.
25. The introduction of the Commercial 3 Zone brings into effect an additional zone that promotes a more genuine form of mixed-use development. It is not being considered as part of this Amendment process.

Activity Centre Pilot Project – Better height controls in activity centres

26. In December 2016 the Minister for Planning announced the Activity Centre Pilot Program (**Pilot Program**). A key purpose of the Pilot Program was to identify how planning controls could be used to provide greater clarity and certainty about development heights in activity centres and to ensure the community and developers have a clearer understanding of the form of new development expected in activity centres.
27. In particular, the Pilot Program was to investigate how planning controls could be improved to better reflect and support strategic work undertaken by councils, and lessen the instances of proposals far exceeding preferred maximum heights and being out of step with community expectations.
28. This approach to strengthening how building heights are dealt with in areas identified for change was reiterated through policies in *Plan Melbourne 2017-2050* released by the Victorian Government in March 2017.¹⁰
29. Three activity centres were identified for inclusion as part of the Pilot Program – Moonee Ponds in the City of Moonee Valley, Ivanhoe in the City of Banyule and Johnston Street in the City of Yarra. According to the Department of Environment Water Land and Planning (**DELWP**), these centres were identified as they each offered characteristics and attributes considered helpful for the assessment of development in activity centres.

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

¹⁰ See, eg, *Plan Melbourne 2017-2050* at Policy 2.1.4: Provide certainty about the scale of growth in the suburbs.

30. In July 2017, Council was invited by DEWLP to participate in the Pilot Program. Council agreed to participate in the Pilot Program.
31. In late September 2018, DELWP updated the webpage 'Better height controls in activity centres'.¹¹
32. A Key Findings Report was released that details findings from the Pilot Program. With respect to Johnston Street, the Key Findings Report notes that:
 - 32.1. Johnston Street has a mix of mandatory and discretionary controls that were implemented on an interim basis, generally consistent with the recommendations of Council's Plan.¹²
 - 32.2. Johnston Street is a Neighbourhood Activity Centre, also characterised by its strip centre. It is well located and well supported by services and transport. Importantly, the centre has areas of heritage value needing appropriate planning to respond to these characteristics, in comparison to areas within the activity centre designated for change. The Amendment is scheduled for hearing for October 2018.¹³
33. The key findings of the Pilot Program include that:
 - 33.1. Strategic work underpinning controls needs to be sound and current;¹⁴
 - 33.2. Preferred maximum height controls are generally effective;¹⁵
 - 33.3. Mandatory height controls do not necessarily inhibit development;¹⁶
 - 33.4. Widespread application of mandatory maximum height controls across activity centres could have detrimental consequences;¹⁷
 - 33.5. Consistent terminology to specify heights should be used;¹⁸
 - 33.6. Preferred heights are more commonly exceeded on larger sites;¹⁹
 - 33.7. Precedents can be set by previous approvals;²⁰
 - 33.8. Consideration of off-site impacts can vary in decision making;²¹
 - 33.9. Use of subjective terminology can lead to uncertainty in outcomes;²²
 - 33.10. Floor area ratios can guide preferred built form outcomes in activity centres;²³
 - 33.11. Requirements for public benefits need to be unambiguous;²⁴

¹¹ See <https://www.planning.vic.gov.au/policy-and-strategy/activity-centres/height-controls>.

¹² Key Findings Report, p 9.

¹³ Key Findings Report, p 11.

¹⁴ Key Findings Report, p 15.

¹⁵ Key Findings Report, p 15.

¹⁶ Key Findings Report, p 16.

¹⁷ Key Findings Report, p 17.

¹⁸ Key Findings Report, p 17.

¹⁹ Key Findings Report, p 18.

²⁰ Key Findings Report, p 19.

²¹ Key Findings Report, p 20.

²² Key Findings Report, p 21.

²³ Key Findings Report, p 22.

²⁴ Key Findings Report, p 23.

- 33.12. Allowances should be made for sloping sites.²⁵
34. The Pilot Program has informed updates to Planning Practice Note 60: Height and setback controls for activity centres (**Attachment 1**).
35. Minor updates have also been made to Planning Practice Note 58: Structure planning for activity centres and Planning Practice Note 59: The role of mandatory provisions in planning schemes. (**Attachments 2 and 3 respectively**).
36. The Department's webpage also includes research undertaken and has made available the following supplementary studies:
- 36.1. The report entitled *Measurable criteria to assess development applications exceeding preferred heights: Analysis and Recommendations* prepared by MGS Architects and dated August 2018;
- 36.2. The report entitled *Viability of High Density Residential Development in Activity Centres, Refresh* prepared by Essential Economics Pty Ltd and dated September 2018;
- 36.3. The report entitled *Monitoring Land Use Planning Outcomes: Assessment of Local Economic Impacts of Increased Residential Development in Activity Centres* prepared by Essential Economics Pty Ltd dated February 2018.

Chronology of events

37. The following table provides a chronology of key events in respect of the Amendment:

Description	Date
Johnston Street Local Area Plan (Plan) released	December 2015
Council meeting regarding the Plan - consideration of submissions and adoption of the final version of the Plan	1 December 2015
Heritage Gap Study: Johnston Street East Heritage Study released	April 2016
Council meeting regarding Plan implementation and proposed Amendment and Council resolution that, among other things: <ul style="list-style-type: none"> • Council seek authorisation from the Minister for Planning to prepare Amendment C220 to the Yarra Planning Scheme in accordance with section 8A of the <i>Planning and Environment Act 1987 (the Act)</i>; and • if authorisation is received from the Minister for Planning, Council exhibit the Amendment in accordance with section 19 of the Act. 	17 May 2016
Minister for Planning authorisation to prepare the Amendment	8 March 2017
DELWP letter to Council with invitation to participate in Activity Centre Pilot Program	12 July 2017
Council meeting regarding the Amendment - Johnston Street Rezoning and DDO Proposal (Revised Amendment for Exhibition) and Council resolution that, among other things: <ul style="list-style-type: none"> • authorised officers to exhibit the revised Amendment in accordance with section 19 of the Act; and 	31 October 2017

²⁵ Key Findings Report, p 24.

Description	Date
<ul style="list-style-type: none"> Council request the Minister for Planning, in accordance with sections 8(1)(b) and 20(4) of the Act, to introduce the revised DDO15 on an interim basis. 	
Exhibition of Amendment	16 November 2017 – 18 December 2017
Submissions made in response to the Amendment	November & December 2017
Yarra Amendment C237 (Interim Controls) approved	2 March 2018
Yarra Spatial Economic and Employment Strategy endorsed	August 2018
Yarra Housing Strategy endorsed	August 2018
<p>Council meeting regarding the Amendment, consideration of submissions and Council's preferred DDO15 and Council resolution to, among other things:</p> <ul style="list-style-type: none"> note the submissions received in respect to the exhibition period of the Amendment; endorse the recommended changes to the Amendment (Council's Preferred Version of the Amendment); having considered the submissions received in relation to the Amendment: <ul style="list-style-type: none"> request that the Minister for Planning appoints a panel to consider the Amendment in accordance with section 23 of the Act; and notify the submitters of the post-exhibition changes to the Amendment outlined in the report. 	21 August 2018
Letter from Panels to Council confirming appointment of Panel	28 August 2018
Panel Directions Hearing Held	18 September 2018
Panel Directions Letter	26 September 2018
Activity Centre Pilot Program: Key findings report released	September 2018
Planning Practice Note 60: Height and setback controls for activity centres released	September 2018
Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes released	September 2018
Planning Practice Note 58: Structure planning for activity centres released	September 2018
3D model inspection by parties and experts	3 October 2018
Expert evidence to be circulated	9 October 2018
Part A submission to be circulated	9 October 2018
Panel Hearing scheduled to commence	16 October 2018
Yarra Amendment C237 (Interim Controls) expire	31 December 2019

Strategic context and assessment

38. The Explanatory Report for the Amendment contains an analysis and assessment of the strategic context pre VC148.

39. The expert witness report of David Barnes contains a current analysis and assessment of the strategic context.²⁶ Council refers to and relies on this analysis and assessment.

Identification of issues raised in submissions and Council's response

40. A total of 28 submissions were received in response to exhibition of the Amendment. Included within these submissions were:
- 40.1. 2 submissions in support of the Amendment (with no changes);
 - 40.2. 17 submissions in support of the Amendment (with changes);
 - 40.3. 7 submissions objecting to the Amendment (with changes); and
 - 40.4. 2 submission seeking changes.
41. A summary of all submissions and Council's response is included as Attachment 2 to the Council agenda dated 21 August 2018.²⁷
42. A map of all submitters is included as **Attachment 4**.
43. The submitter type can be categorised as follows:
- 43.1. 15 submissions from planning consultants;
 - 43.2. 8 submissions from land owners with an interest within the area;
 - 43.3. 3 submissions from residents from the area;
 - 43.4. A submission from the Collingwood Historical Society (community group); and
 - 43.5. A submission from VicRoads.
44. There was general support for the rezoning from C2Z to C1Z.
45. Some submissions were in support of the DDO providing guidance to future built form.
46. Some submissions opposed the use of mandatory controls and some submissions opposed requirements in the DDO in so far as they have been applied to their sites.
47. Two submissions, from residents, submitted that the scale of development that could be allowed for in the DDO is too large.
48. The key issues raised in the submissions concerned the following topics:
- 48.1. Objection to mandatory controls;
 - 48.2. Objection to requirements to exceed preferred heights (with suggested changes);
 - 48.3. Objection to a height limit at all (whether preferred or mandatory);
 - 48.4. Interpretation of the height range for mid-rise development;
 - 48.5. Objection to taller buildings;

²⁶ David Barnes Expert Statement.

²⁷ See Attachment 2 to agenda of ordinary meeting of Council held on 21 August 2018 available at <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committee-meetings/2018-council-meetings>.

- 48.6. Requests for a different sub-precinct control to be applied;
- 48.7. Requests from landowners to be included in the amendment;
- 48.8. Objection to 45 degree building envelope;
- 48.9. Upper level side setbacks (on all sites);
- 48.10. Request for greater setbacks for individually significant heritage buildings;
- 48.11. Uncertainty on the requirements for corner sites;
- 48.12. Objection to HO being applied;
- 48.13. Objection to requirements for floor to floor ceiling heights at lower levels to support commercial development; and
- 48.14. Protection of the Collingwood Arts Precinct.

Proposed changes in response to issues raised in submissions

- 49. At an ordinary meeting of Council held on 21 August 2018, a report was presented to Council regarding the consideration of submissions made in the Amendment. The following section outlines the potential changes in response to issues raised in submissions as included in this report.²⁸ Council is continuing to consider the submissions and potential changes in light of expert evidence to be circulated in the Amendment.

Objection to mandatory controls

- 50. The most significant theme in submissions is an objection to the inclusion of mandatory requirements in DDO15, particularly mandatory maximum overall building height requirements.
- 51. Submissions request that some or all of the mandatory controls be removed and replaced with discretionary controls. Submitters provide a range of reasons in support of their objection to the mandatory controls as follows:
 - 51.1. The lack of exceptional circumstances to justify the use of mandatory controls;
 - 51.2. The need for mandatory controls has not been demonstrated to be necessary to prevent unacceptable built form outcomes;
 - 51.3. Mandatory controls do not allow contextual design opportunities that respond to policy;
 - 51.4. Mandatory controls do not allow design flexibility and ensure optimum development outcomes can be achieved; and
 - 51.5. Mandatory controls are too inflexible and do not recognise differences in site context, design response and land use requirements.

Council response (21 August 2018)

- 52. The purpose for applying a Design and Development Overlay (DDO) to this part of Johnston Street is to provide a greater certainty in the face of current and future development pressure

²⁸ Agenda of ordinary meeting of Council held on 21 August 2018 available at: <https://www.yarracity.vic.gov.au/about-us/council-information/past-council-and-committee-meetings/2018-council-meetings>.

and to ensure appropriate built form outcomes for both heritage and non-heritage parts of the street.

53. Council recognises that there is an expectation from sections of the community for greater certainty in the Scheme regarding future development outcomes, particularly in Council's heritage rich activity centres. Mandatory controls offer the best opportunity to provide this certainty.
54. Throughout the preparation of DDOs across the City of Yarra, Council has identified the likelihood of strong opposition to mandatory controls, particularly from developers, and the barriers presented by the previous Planning Practice Notes 59 and 60.
55. Council has sought to pursue community aspirations for certainty, whilst managing opposition to mandatory controls, by targeting mandatory controls to the following specific locations:
 - 55.1. In locations of intact heritage streetscape; and
 - 55.2. In locations with a sensitive interface with low scale residential properties where taller form could have adverse visual bulk and overshadowing impacts.
56. These are the locations where it is considered that the requirements of the Planning Practice Notes could be met and where the loss of flexibility in building design could be justified.
57. Mandatory controls for streetwall height, setback and solar protection are necessary to support the preferred character of parts of Johnston Street outside the heritage areas.
58. Council remains of the view that the locations in Johnston Street that have been specified for mandatory controls in DDO15 remain suitable and can be justified.
59. Council's considers that it should continue to pursue mandatory controls at this time in Johnston Street given:
 - 59.1. the known community desire for greater certainty in planning controls in the City of Yarra;
 - 59.2. the conditional authorisation identified that Council could consider a mix of mandatory and discretionary controls; and
 - 59.3. the findings of the Pilot Program and recent changes to the Planning Practice Notes.
60. Council's preferred version of the DDO15, adopted on 21 August 2018 did not propose any changes to DDO15 in response to submissions objecting to the use of mandatory controls. However, minor changes were recommended to DDO15 to increase the setback above the street wall from a discretionary 3m to a discretionary 6m in Sub-precincts 2C, 2D, 2E and 2F.

Requirements to exceed preferred heights

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

Council response (21 August 2018)

62. Criteria has been included in DDO15 to incentivise development to comply with the preferred maximum building heights and to ensure that taller development achieves a high standard of design outcome, including housing diversity, environmental sustainability and amenity. This approach of seeking improved design outcomes and community benefit when the preferred building height is exceeded is consistent with Strategy 17.2 of the current Scheme.

63. The interim DDO15 approved by the Minister for Planning includes the criteria suggesting an acceptance of this form of control. Similar criteria were supported by the planning which considered the DDO for Arden Macaulay in the City of Melbourne.
64. Council's preferred DDO15 as adopted on 21 August 2018 proposed changes to the wording of the criteria to be applied.

Objection to height limits

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

Council response (21 August 2018)

66. One of the key purposes of the Amendment is to provide clarity on the preferred and/or mandatory maximum overall building heights of development that would be supported. The overall preferred and maximum building heights proposed in the Amendment have been based on thorough technical analysis and are an appropriate response to the context of the centre and future development opportunities.
67. Council's preferred DDO15 as adopted on 21 August 2018 proposed changes to the height limit and will be the subject of expert evidence.

Mid-rise interpretation

68. Some submissions identify varying interpretations of the term "mid-rise" within the objectives in DDO15 and the implications it has for future maximum building heights. Submissions suggested that the indicative height range of 5 to 12 storeys could potentially be used to justify buildings up to 12 storeys throughout the centre.
69. One submission recommended that the height range be amended to 10 storeys given this is the maximum height identified in the DDO.

Council response (21 August 2018)

70. The term 'mid-rise' has been used consistently across DDOs in the City of Yarra to indicate the preferred scale and form of new development, and particularly to distinguish it from a 'high rise' development typology.
71. Including an indicative height range assists to provide certainty about the preferred scale of development. It reflects the Plan and supporting background documents that demonstrate that properties could be developed to different heights owing to their attributes and their context.
72. Council does not agree that this allows development to go to the upper limit of the indicative height range. If this were the case, there would be no lower scale suggested and there would be no mandatory heights included in the DDO that would limit development below this height.
73. Council agrees with the submission that the indicative height range should be lowered to 10 storeys. Council proposes changes to DDO15 to amend the indicative height range in the objectives to 5 to 10 storeys.

Objection to taller buildings

74. Several submissions object to the requirements relating to the street wall height and overall building height of development. One submission objected to the height of development owing to its potential impact on their property, particularly solar access to their property in winter months. The other considered that the scale of recent development and the proposed heights was creating an extreme change to the current scale.

Council response (21 August 2018)

75. Council acknowledges that proposed heights of new development would represent a significant change from the current scale of buildings in the area. However, the heights in DDO15 are consistent with the Plan that was subject to three rounds of consultation. They are consistent with the scale of development being planned for across other centres in Yarra and more broadly across inner Melbourne.
76. DDO15 includes objectives and requirements to minimise impacts on the adjoining residential properties, including overshadowing impacts. Current standards for solar access to adjoining residential properties are based on the equinox.
77. Council does not support changes to DDO15 in response to submissions objecting to the proposed maximum street wall or overall building heights.

Requests for different sub-precinct designation

78. DDO15 has different controls for different Sub-precincts along Johnston Street to reflect the current qualities and the preferred future character of the different parts of Johnston Street. Several submissions request that an alternative Sub-precinct control apply to their site owing to their interpretation of the existing qualities or preferred future character. Often, these submissions seek changes that would allow them to develop to a greater height.

Council response (21 August 2018)

79. Council supports the following changes to DDO15 in response to submissions:
 - 79.1. For 220-222A Johnston Street; 153-155 and 165 Sackville Street (Submission 23) – to allocate all parcels to Sub-precinct 1AA. These sites are currently in common ownership and should reasonably have the same provisions applied. Council acknowledges that the consolidation of various sized parcels makes up a significant redevelopment opportunity for the corner of Johnston, Sackville and Hoddle Streets. For this reason, the site has been appropriately designated as Sub-precinct 1AA with a preferred height limit of 8 storeys; and
 - 79.2. For 288-296 Johnston Street (Submission 22) – to change the designation from Sub-precinct 2D to Sub-precinct 2C. This reflects recommendations in the Plan and acknowledges that the site does not share the same level of sensitivity at the rear interface as properties to the east in Sub-precinct 2D.

Requests to be included in the Amendment

80. Several submissions were made from properties that sit outside of the area affected by the Amendment and who wish to be included in the Amendment to have their property rezoned to C1Z.

Council response (21 August 2018)

81. The boundary of the Amendment reflects the recommendations of the Plan. There is no strategic justification to include the additional properties and in some cases, this would have adverse impacts.

Objection to 45 degree envelope

82. DDO15 includes a requirement for development above the front street wall and above the rear wall to be set back and not protrude outside of a '45 degree envelope'.
83. Several submissions object to this requirement and contend that it is not necessary to manage amenity impacts. The submissions contend that the requirement is too restrictive and stifles flexibility and design innovation.

Council response (21 August 2018)

84. The '45 degree envelope' requirement is necessary to ensure development achieves the preferred future character and principles outlined in the Plan, notably:
- 84.1. a prominent (heritage) street wall;
 - 84.2. recessive upper levels;
 - 84.3. a human scale to development;
 - 84.4. solar access to the street; and
 - 84.5. a transition in setbacks and heights to low scale residential properties.
85. The requirement is a discretionary one and not mandatory. Development that does not completely comply with the requirement may be permitted if key design objectives and the preferred character are met. Council considers that this gives flexibility and potential design innovation for developers while at the same time providing clear direction on the form of development that is needed to achieve the preferred character.

Upper level side setbacks (on all sites)

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

Council response (21 August 2018)

87. The setbacks from the side boundary are proposed to provide breaks between buildings at upper levels to avoid development overwhelming the street and to provide views to the sky from the street level. The setbacks also avoid the need for screening where two windows face each other, help to provide daylight to apartments and offices, and help to achieve equitable development outcomes.
88. The requirements may make development unviable on a very small number of sites unless they are consolidated however Council considers that this is justified given the importance and value of the setbacks and provides greater certainty to future developers to find solution notably through site consolidation.
89. Council's response (21 August 2018) is that the requirements for upper level side setbacks be retained in DDO15 and minor changes should be made to ensure that these are consistently provided to minimise the visual bulk of developments.

Request for greater setbacks for individually significant heritage buildings

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

Council response (21 August 2018)

91. Council received a conditional authorisation that required a comprehensive review of the proposed DDO15 and a scaling back of the mandatory provisions was required to comply with the authorisation. Reflecting this authorisation, Council reviewed the adopted Plan. The Plan specifies a 6 metre setback for heritage buildings.

92. This is an appropriate control that achieves the necessary balance between heritage protection and enabling new development. Importantly, the control is a minimum setback so the controls do not prevent a greater setback being provided or required if considered necessary having regard to the heritage values in the Statement of Significance for the heritage place and to achieve the first objective of the DDO:

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

93. Council proposes that no changes are made to DDO15 to address submissions seeking an 8 metre upper level setback to individually significant buildings.

Uncertainty on the requirements for corner sites

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

Council response (21 August 2018)

95. Council recognises that there is ambiguity in how the requirements in DDO15 would apply to corner sites and also how the 45-degree is applied as the exhibited DDO only requires this from the front and rear of sites.
96. To address this, Council proposes that changes should be made to DDO15 to require that the street wall height “wrap” around corners into side streets in some situations and include a discretionary requirement for a minimum 3 metre setback of upper levels above the street wall on side streets.

Objection to introduction of heritage overlay

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

Council response (21 August 2018)

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

Floor to floor ceiling heights at lower levels to support commercial development

99. One submission objects to the policies and DDO floor to ceiling height requirements that discourage residential development in the lower two floors of developments in order to support commercial development. The submitter argues that the policy and floor height requirements should only apply to the ground floor of Johnston Street and contend that they are not necessary or appropriate along Sackville Street which does not exhibit the same commercial character as Johnston Street.

Council response (21 August 2018)

100. Council has included the floor to ceiling requirements across the DDOs in the City of Yarra to promote commercial development in the immediate term and to ensure that buildings are designed with the flexibility to support commercial development in the future.
101. While Sackville Street does have a different character, its proximity to Johnston Street and the Easey Street Employment Precinct makes it a suitable location for commercial development.
102. The requirement is discretionary and can therefore be varied if necessary to support viability of developments.

103. No changes are proposed to DDO15 to address submissions seeking changes to the requirements relating to the provision of commercial space.

Collingwood Arts Precinct Protection

104. Submission 20 on behalf of the “Contemporary Arts Precinct”, the body that manages the Collingwood Arts Precinct site at 35 Johnston Street, requests changes to the proposed DDO and local policy (Clause 22.12) to protect the site from potential impacts (mainly overshadowing, as well as visual dominance) of future built form on neighbouring properties.
105. The primary concern is the potential for new development to overshadow particular outdoor areas on the site that are proposed to accommodate community and public events related to the creative activities occurring on the site.

Council response (21 August 2018)

106. Council acknowledges the aspirations of the Collingwood Arts Precinct and the significant investment that has occurred in refurbishing the heritage buildings on the site, which is ongoing.
107. The site was rezoned to the Special Use Zone (SUZ6) in 2017, as part of a Government Land Standing Advisory Committee process, in order to facilitate the desired activities on the site by making a number of uses “as of right” under the Section 1 uses within the zone schedule, and identifying the site as being of “state significance”.
108. When the interim DDO15 was introduced, a mandatory maximum height limit of 28m (8 storeys) at 23-33 Johnston Street was applied and a new objective was added:

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

109. Council considers that these changes address the submission and should be supported.
110. Council recommends that changes should be made to DDO15 to reflect the changes introduced within the interim DDO15 to ensure new development does not overshadow particular outdoor areas on the Collingwood Arts Precinct.

VicRoads submission

111. In response to the submission from VicRoads, changes have been made to the proposed planning scheme maps to remove both the Heritage Overlay and Design Development Overlay from road space managed by VicRoads.

Council’s preferred DDO15

112. In response to submissions, Council’s preferred version of DDO15 is provided in **Attachment 5** (clean version) and in **Attachment 6** (track changes version).

Further changes to preferred DDO15 identified since 21 August 2018

113. Council officers are currently considering whether any further changes ought to be made in response to the recommendations of the various expert witnesses appearing before the Panel.

3D modelling

114. 3D modelling has been prepared of the Precinct area. The basic detail of facades and roofs has been modelled to assist identification and provide the relevant context for the built form controls proposed. Approved permits were specifically modelled from the latest submitted or approved plans available Council. Several parties and experts have inspected the 3D modelling following the Panel directions hearing.

115. A fly-through and walk-through of the 3D model of both the exhibited and Council's Preferred Version of the Amendment have been prepared by Ethos Urban and included as **Attachment 7**.

VCAT decisions

116. Several VCAT decisions have considered the Amendment. In these decisions, the Tribunal has ordered that a permit be granted and directed to be issued in accordance with endorsed plans and the conditions set out in Appendix A of the reasons:

Case Name	Subject Land	Description of Proposal Considered by Tribunal	Relevant Submissions to this Amendment
<i>Gurner 23-33 Johnston Street Pty Ltd v Yarra CC</i> [2018] VCAT 794	23-33 Johnston Street, Collingwood	As depicted in the plans substituted by the Tribunal the proposal comprises an eight storey building to be constructed in an L shape, above and behind a retained two storey heritage façade to Johnston Street, following the L shape of the site around the north and west sides of a courtyard of the CAP site. The building includes ground floor retail space, and an access to a new basement car park from Johnston Street. Dwellings will face Johnston Street, above and behind the first floor façade across most of the 42 metre long property frontage, and along the west and north sides of the CAP courtyard. The building abuts a lane that forms the western boundary of the site.	Submission No 3 Submission No 6
<i>Pelican Capital 5 Pty Ltd v Yarra CC</i> (Corrected) [2018] VCAT 12	329-329A Johnston Street, 236 Nicholson Street and 37 Hunter Street, Abbotsford	The proposal is for a contemporary mixed use development comprising: <ul style="list-style-type: none"> • Three basement car parking levels accessed off Hunter Street; • Eight levels of building above; • Food and drink premises (cafés) at ground level fronting Nicholson and Johnston Streets; • A shop at ground level on the corner of Nicholson and Johnston Streets; • A childcare centre for 120 children accessed off Hunter Street extending to level 1; and • Six levels of office development above. 	Submission No 9 Submission No 11
<i>Zero Nine JV (Abbotsford) Pty Ltd v Yarra CC</i> [2017] VCAT 2121	312-314 Johnston Street, Abbotsford	Seven storey mixed-use development comprising 18 dwellings, an art gallery and four car spaces. The design adopts a five storey street wall to Johnston Street and reaches a maximum height of 24.2 metres (with a lift overrun of 1.9 metres). The top two floors are setback from Johnston Street by 3 metres and then 5 metres. A three storey street wall is proposed to Little Turner Street. The upper levels are then setback 3 metres for several levels	N/A

		before increasing to 6 metres for the top two floors.	
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Conclusion

- 117. The Amendment is required to implement the built form and land use recommendations of the Plan.
- 118. The Amendment will ensure that future development and land use change is in accordance with the vision, objectives and strategies outlined in the Plan.
- 119. Council's proposed preferred changes to the Amendment have been made in response to submissions received and are considered strategically appropriate.

9 October 2018

HARWOOD ANDREWS
on behalf of Yarra City Council

List of attachments

Attachment 1: Planning Practice Note 60: Height and setback controls for activity centres

Attachment 2: Planning Practice Note 58: Structure planning for activity centres

Attachment 3: Planning Practice Note 59: The role of mandatory provisions in planning schemes

Attachment 4: Map of submitters

Attachment 5: Council's preferred version of DDO15 (clean version)

Attachment 6: Council's preferred version of DDO15 (track changes version)

Attachment 7: Fly-through and walk-through of 3D model