

IN PLANNING PANELS VICTORIA

**‘PART B’ SUBMISSION
ON BEHALF OF THE PLANNING AUTHORITY**

**AMENDMENT C223yara TO THE YARRA PLANNING
SCHEME**

15 May 2020



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INTRODUCTION

1. Yarra City Council (**Council**) is the Planning Authority for Amendment C223yara (**Amendment**) to the Yarra Planning Scheme (**Scheme**).
2. This 'Part B' submission is made in accordance with the Panel's Directions dated 27 April 2020 (**Directions**).
3. This submission addresses the following matters in accordance with direction #7 of the Directions:
 - 3.1 Council's response to issues raised in submissions and evidence;
 - 3.2 the outcome of any further discussion Council has had with submitters; and
 - 3.3 Council's final position on the Amendment.
4. As stated in Council's 'Part A' submission, Council pursues the Amendment as exhibited, save for text changes to the DPO15 including:
 - 4.1 the addition of a requirement for a Public Open Space Report to be prepared by a suitably qualified expert that demonstrates where and how open space can be increased to meet the demand associated with the development, as part of the preparation of the development plan; and
 - 4.2 minor changes which Council advances in response to submissions, with the support of its qualified and experienced experts.
5. In addition to its submission, Council relies on the expert evidence of:
 - 5.1 Mr Rob McGauran of MGS Architects in respect of urban design;
 - 5.2 Mr Jim Gardner of GJM Heritage in respect of heritage;
 - 5.3 Ms Charmaine Dunstan of Traffix Group in respect of traffic; and
 - 5.4 Ms Joanna Thompson of Thompson Berrill Landscape Design.

COUNCIL'S RESPONSE TO ISSUES RAISED IN SUBMISSIONS

6. Council observes a number of general themes emerge from the submissions received in response to the exhibition of the Amendment, including from those submitters seeking to be heard, broadly relating to:
 - 6.1 building heights;
 - 6.2 adverse impact on property values;
 - 6.3 impact on views;
 - 6.4 overshadowing of surrounding streets and buildings;
 - 6.5 overlooking and building separation;
 - 6.6 heritage;
 - 6.7 increased residential intensification;
 - 6.8 traffic and parking;

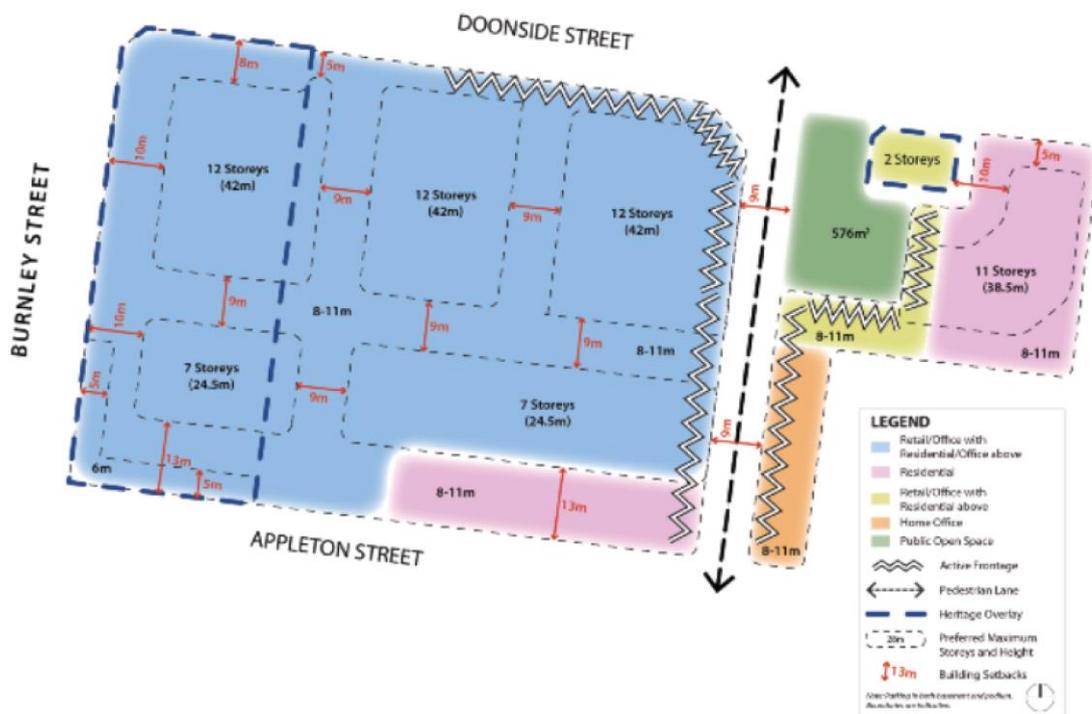
- 6.9 public open space;
- 6.10 rezoning;
- 6.11 affordable housing; and
- 6.12 building materials and design.

7. Council addresses each of these themes below.

Building heights

Summary of issues raised

8. The DPO15 contains an indicative framework plan (IFP) which, among other things, identifies building heights across the Land. The below IFP is extracted from Councils 'preferred' DPO15 which it pursues for the purpose of the hearing:¹



- 9. 35 submitters raise concerns about the building heights identified in the IFP, namely that a preferred maximum height of 12 storeys (42m) is too high on the Land.
- 10. Of the 35 submitters, approximately 88% were received from owners/occupiers of neighbouring apartment developments with one submission received from Appleton Street and two from North Street, one block south of the Land.
- 11. Some submitters recommended lowering the building heights – with recommendations ranging from two to seven storeys. Many of these submitters cite preserving views from the Embassy development (east) and reducing overshadowing of the common areas of that building as the rationale for reduced heights. Council will address these specific issues later in its submission.

¹ The IFP in Council's 'preferred' DPO15 identifies heights (in storeys) for the 26 Doonside Street heritage place. The heights otherwise remain unchanged from the exhibited version.

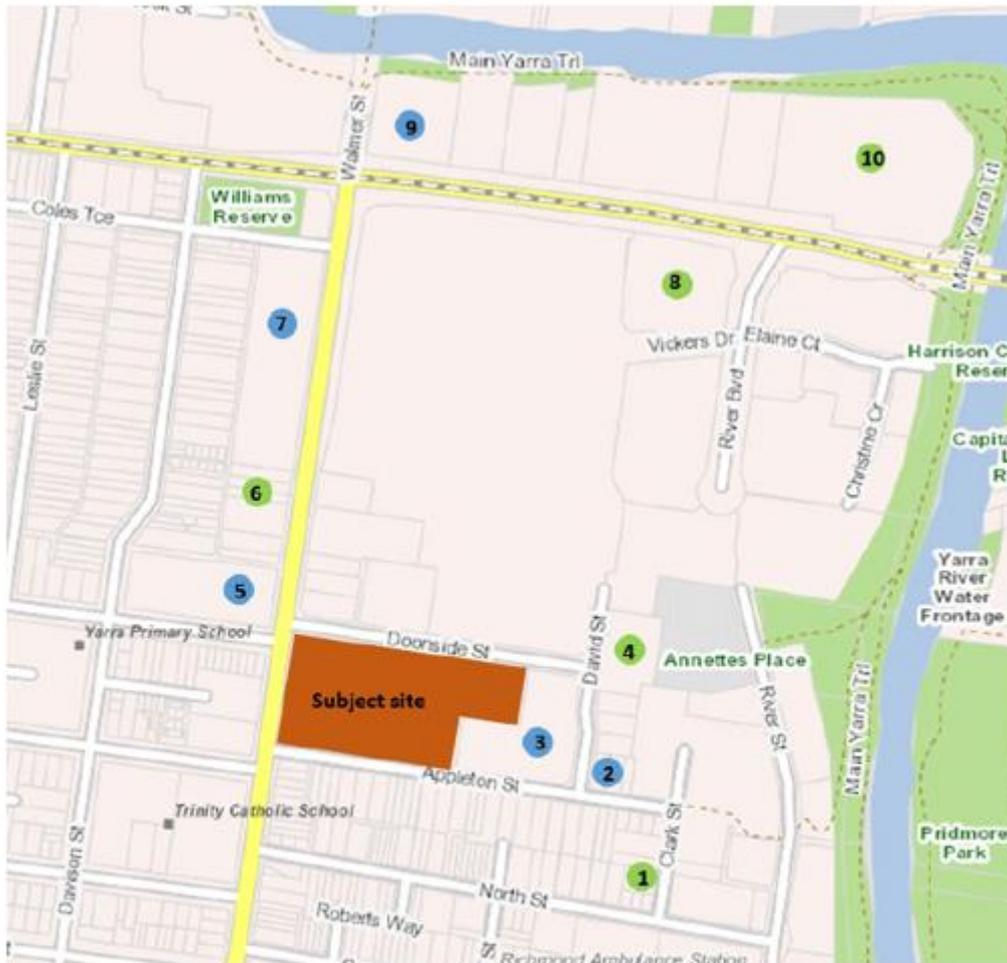
12. Many submissions received from the Richmond Heights Apartments on Burnley Street (west) state the prevailing height in the area, especially along Burnley Street, is seven storeys and recommend the height along Burnley Street be lowered to match apartment developments on the west side of Burnley Street.

Council's response to issues raised

13. Council does not consider reducing the heights identified in the IFP is warranted.
14. The Land is in a mixed area undergoing a high level of change as inner-urban industrial uses diminished during the second half of the twentieth century with retail, commercial and multi-unit residential developments being constructed, particularly following the construction of the Victoria Gardens Shopping Centre in the early 2000s.
15. The Land is bounded by residentially used land to the west, south and much of the east with a commercial centre to the north rapidly becoming mixed use in nature with retail, residential and employment forming complimentary roles.
16. The emergency context is one of taller built form around the core activity centre (up to 13 storeys) and robust scale of 4-8 storeys on larger transformation sites along the primary Burnley Street arterial corridor where development interfaces with lower rise hinterland areas.
17. Importantly the heights identified in the IFP are comparable to the adjacent and surrounding approved developments and reflect the nature of an area strategically identified as suitable for commercial activities at lower levels and higher density housing at upper levels. Importantly, the preferred heights transition from 12 storeys to 7 storeys from north to south, responding to the low-rise residential development to the south.
18. All in all, Council submits the proposed scale is comparable to development on Victoria, David and Doonside Streets to the north and east and Burnley Street to the west.
19. Surrounding approved since 1 January 2014 and constructed developments are set out in Council's e-panel book, the approved heights of which are summarised and shown below for the Panel's convenience:

	Address	Planning Permit No.	Approved building height
1	18 Clark Street, Richmond	PLN17/0542	6 storeys (22.8 metres)
2	53 Appleton Street, Richmond	PLN17/0344	5 storeys (15 metres)
3	36-44 Doonside Street and 27-41 Appleton Street, Richmond (known as the 'Embassy' apartment complex)	PLN10/0790	13 storeys (38.35 metres)
4	9-11 David Street, Richmond (known as the 'Supply Co' apartment complex)	PLN14/0538	11 storeys (34.48 metres)
5	171 Buckingham Street, Richmond	PLN16/1016	7 storeys (21 metres)
6	36 Burnley Street, Richmond	PLN14/0573	3 storeys (9.94 metres)
7	2A, 2-30 Burnley Street & 520	PLN11/0930	7 storeys (21.1 metres)

	Victoria Street, Richmond		
8	25-35 River Boulevard, Richmond	PL10/0151	8 storeys (25.3 metres)
9	647-649 Victoria Street, Abbotsford	PLN15/0643	10 storeys (32.42 metres)
10	677-679 Victoria Street, Abbotsford	PL09/0877	11 storeys (32.5 metres)



Recent development since the 1st of January 2014

- Council Decision
- VCAT Decision

20. As demonstrated in Council's 'Part A' submission, the Land enjoys considerable strategic support to accommodate higher density built form. This is demonstrated by (among other things):
- 20.1 the Yarra Housing Strategy identifying the Land as a site-specific area to be rezoned and a part of the City's future housing growth capacity;
 - 20.2 the Strategic Housing Framework Plan (forming part of the Yarra Housing Strategy) identifying the Land in a 'high change' area; and

20.3 the Victoria Street Structure Plan identifying the Land for 'substantial change'.

21. Together with the comprehensive policy support in the Planning Policy Framework and Local Planning Policy Framework detailed in Council's 'Part A' submission, Council submits the composition of heights strikes the right balance, having regard to the Land's existing context, future residential amenity, heritage, amenity of open space and avoiding amenity impacts on neighbouring properties.
22. Council notes while many submissions recommended heights of seven storeys to mirror the developments west of Burnley Street, those developments are 7 storeys with no upper level setbacks.
23. The IFP instead requires the upper level of buildings on the Land to be setback in order to mitigate the visual impact of the built form.
24. For example, the IFP identifies a minimum 10m setback for upper levels (above podiums) from Burnley Street and 13m setback for upper levels (above podiums) from Appleton Street resulting in a lower street wall to both Burnley and Appleton Streets than the developments west of Burnley Street.
25. Council considers these substantial setbacks appropriately mitigate the visibility and visual impact of taller forms from surrounding areas.
26. Council's view is supported by its urban design expert Mr McGauran who states in his preliminary opinion 'it is my view that the proposed scale sits within a family of related typologies and scales within the neighbourhood and is acceptable'.²
27. In his evidence statement, Mr McGauran goes on to opine:³

The development to the broader precinct has suggested that medium rise development can be accommodated on the site.

Development of the adjoining developments in David Street and the adjoining Embassy development have established a scale for this interface with the Victoria Gardens Activity Centre that in my view are acceptable and these are explored as the basis of the proposed DPO scale to these interfaces. Equally the adjoining Embassy apartments and development in the Burnley Street west area where direct abutment with hinterland housing is evident, has built the case for seven level development as suggested in this instance to the Appleton Street interface.

The development of built form between 7 to 12 levels is now an established scale of built form for much of the municipalities new mixed use precincts with many developments in Cremorne, South Collingwood and Fitzroy and Alphington and Clifton Hill built around these typologies that maintain a reasonable balance between podium and upper level form. Additionally they have demonstrated in their more compact scale higher likelihood of bankability than taller tower forms as explored in some other municipalities with land speculation less evident as a result.

28. In response to specific submissions seeking to reduce preferred heights at the Doonside and Appleton Street interfaces to 7 and 5 storeys (submission #35) and 7 and 4 storeys (submission #47) respectively, Mr McGauran says:⁴

The heights of the development at these interfaces [Doonside and Appleton Streets] have been previously discussed in my report. I do not support these suggested amendments for the following reasons:-

- a) The proposed development is of comparable level to the east in Doonside and Appleton Street.

² *Independent Urban Design Advice – Amendment C223 to the Yarra Planning Scheme*, January 2020 Page 4.

³ Evidence statement, paragraphs 253-255.

⁴ Evidence statement, paragraph 139.

b) The site size and island nature makes is a strategic site where taller built form can be readily accommodated.

c) Its location in immediate abutment to a growing Activity Hub and abutment to an area of change to the north,

d) When combined with the inclusion of the proposed setbacks, public linkages and open space the suggested reductions in height are not in my view warranted.

29. Council does not propose amending the Amendment in response to submissions concerning building heights.

Adverse impact on property values

Summary of issues raised

30. 17 submitters raises concerns the Amendment will negatively impact their property values, with 17 submitters located in the Embassy development and one in the Supply Co development.

Council's response to issues raised

31. Submissions on this topic are routinely raised in other panel scheme amendments. Some salient observations to assist this Panel are extracted from such decisions, below.
32. We direct the Panel to the panel's report in [Amendment C207 to the Melbourne Planning Scheme](#) where the relevance and extent of considering 'economic effects' in a planning scheme amendment context was examined.
33. The Panel constituted by Member Moles (Chair) and Member Tonkin distinguished between private and public costs and benefits. Public costs were regarded as a proper consideration in relation to planning scheme amendment matters while private economic impacts fell outside the scope for consideration. The panel said⁵

The Panel agrees with Mr Morris [who appeared for an objecting submitter], relying on *Gantidis*, that the social and economic effects most likely to be relevant at the Amendment stage are those of a broad community nature rather than of a personal kind. Personal economic and social impacts, as against effects for the community as a whole, are generally not matters taken into account in planning decisions. This is also recognised in the Panel report on Amendment C50 to the Campaspe Planning Scheme at Section 5.10

...

The Panel recognises that the changes to s.12(2)(c) of the Act in relation to preparing amendments have implications for the manner in which various social and economic matters raised in relation to heritage amendments are to be treated. **Where the social and economic effects raised in submissions are of a community nature, they may well be relevant matters. To meet the requirements of the Act, planning authorities and Panels will have to endeavour to consider those matters when preparing an amendment along with other relevant issues.**

[Emphasis added]

⁵ Pages 22, 27.

34. The Panel's report in Amendment C207 was considered by the Justice Garde in [Dustday Investments Pty Ltd v Minister for Planning](#)⁶ where Justice Garde determined the Plaintiff had failed to show any legal error on the part of the Panel hearing Amendment C207 to the Melbourne Planning Scheme. In relation to the question of social and economic effects, Justice Garde determined:⁷

Where planning authorities are directed to consider conservation or heritage matters, or social and economic effects, consideration must inevitably be given as to the stage in the planning process that has been reached, and the nature of the consideration that is to be given to these matters or effects at that stage. The nature and level of information available at the rezoning or amendment stage will often be significantly less than that available at the permit stage. By the time of a permit application, much more detail is likely to be available as to the proposed use and development including development plans, building specifications, site information, expert reports and the like. At the permit application stage, the considerations the responsible authority is required to take into account include the matters listed in s 60 of the Act, the decision and comments of referral authorities and the considerations relevant to the application under the operative planning scheme.

[Emphasis added]

35. In [Amendment C270 to the Stonnington Planning Scheme](#), the panel constituted by Member McRobert (Chair) and Member Hubbard said:⁸

This Panel maintains the consistent view adopted by other panels that broader community effects, rather than private economic effects such as impacts upon land values or the individual financial circumstances of the landowner, are of particular relevance at the Amendment stage. The Melbourne C207 Panel conclusions on social and economic effects maintained that these impacts relate to broader community, rather than personal impacts. Review by the Supreme Court in *Dustday Investments Pty Ltd v Minister for Planning* [2015] VSC101 (Dustday) did not find that the Melbourne C207 Panel had erred.

36. In [Amendment C294 to the Boroondara Planning Scheme](#), the panel constituted by Member Tsotsoros (Chair) and Member Peterson relevantly stated:⁹

The Act and Planning Scheme require social and economic matters and the principles of net community benefit and sustainable development to be considered. **They relate to the interests of the broader community and do not extend to individual impacts.**

[Emphasis added]

37. No submitter presents the panel with any evidence of probative value demonstrating the alleged adverse indirect social or economic effects likely to impact the affected properties nor the broader community.
38. Consistent with the above authorities, Council submits personal economic effects (not of a broader community) are irrelevant.
39. Council submits the Amendment will have positive economic and social effects resulting in a net community benefit achieved through (among other things):
- 39.1 achieving 10% of the total number of dwellings be provided as affordable housing;
 - 39.2 at least 9,000sqm of gross floor area provided for employment generating activities resulting in increased employment intensity;

⁶ [2015] VSC 101.

⁷ Paragraph 101.

⁸ Page 24.

⁹ Section 4.2

- 39.3 increased activity within the Victoria Road Activity Centre and providing local facilities for nearby residents including public open space;
 - 39.4 built form requirements protecting the amenity of residential properties on the south side of Appleton Street;
 - 39.5 creating a pedestrian link through the site and public realm improvements; and
 - 39.6 providing for the sensitive adaptive re-use of heritage buildings on the Land.
40. The Amendment was supported by an economic assessment prepared by Deep End Services. The assessment concludes the future mixed use development of the Land will generate the following potential economic outcomes (among others):¹⁰
- 40.1 a total construction investment of \$208m;
 - 40.2 265 direct full-time equivalent jobs created over the approximately 4 year construction period;
 - 40.3 795 jobs (FTE) created indirectly over the construction period;
 - 40.4 529 positions created on-site, equivalent to 415 FTE jobs;
 - 40.5 1,010 FTE jobs indirectly generated in the wider economy, bringing total employment creation to 1,425 FTE jobs;
 - 40.6 a net increase of around 319 FTE jobs;
 - 40.7 an injection of \$18.3m pa in retail spending by new residents, around \$13.7m pa of which would be captured by local retailers;
 - 40.8 approximately \$22m pa in other spending, some of which would support local providers of health, personal and business services
41. For the above reasons Council considers the Amendment will have positive social and economic effects thereby resulting in a net community benefit.
42. Council does not propose amending the Amendment in response to submissions concerning adverse impacts on property values.

Impacts on views

Summary of issues raised

- 43. 20 submissions raise concerns the future development of the Land will inhibit views from existing apartments, including from the Embassy complex and Supply Co building, being a 6-12 storey apartment complex at 9-11 David Street, Richmond.
- 44. It is inevitable developing the Land will limit views from the above apartments however neither the *Planning and Environment Act 1987 (Act)* nor the Scheme seeks to protect views (save for key skyline landmarks sought to be protected under clause 22.03 Landmarks and Structures or views from public areas of landmarks under recent DDOs introduced for activities centres).¹¹
- 45. More generally it is well established the planning system does not seek to preserve private realm views.¹²

¹⁰ Pages 18-9.

¹¹ See for example Schedules 21 and 22 to the Design and Development Overlay.

¹² See [Victoria Park Racing & Recreation Grounds Co Ltd v Taylor \[1937\] HCA 45](#).

46. It follows Council submits these assertions are unsubstantiated. Council adopts Mr McGauran's opinions where he says:¹³

It is not in my view reasonable to anticipate that the outcome achieved on the adjoining rezoned industrial land for medium, rise development might not in the course of time arise for land with similar characteristics, nor would it be reasonable to expect the adjoin Activity Centre not to be similarly redeveloped with greater height at some time in the future as the city changes.

It should in these circumstances not be the council's role to protect views from private property that are not specifically protected as important views to places of cultural significance in the planning scheme. Whilst the City of Yarra has named a number of these within the scheme in CI 22.03 Landmarks and Structures, and the points from which views should not be lost, unspecified city views from private accommodation has not been part of these local policies and typically the protection of view not a matter that urban policy has sought to protect.

The development of the adjoining development has further compromised the opportunities for views by electing particularly in the case of the southwestern building, to locate it in close proximity to its northern neighbour the subject site.

47. Council does not propose amending the Amendment in response to submissions concerning impacts on views.

Overshadowing of surrounding streets and buildings

Summary of issues raised

48. 16 submissions raise concerns about overshadowing resulting from the future development of the Land. Of the 16 submissions:
- 48.1 eight submissions were received from owners/occupiers of the Embassy development, raising particular concerns about the overshadowing impact on the level 7 common areas;
 - 48.2 three submissions were received from owners/occupiers of the Richmond Heights development raising concerns about their apartments being overshadowed and Burnley Street more generally; and
 - 48.3 two submissions were received from owners/occupiers on Appleton Street and North Street raising concerns about overshadowing of private property at the winter solstice.

Council's response to issues raised

Embassy building

49. The Embassy Building complex comprises:
- 49.1 a nine storey building at 35-39 Appleton Street;
 - 49.2 a 10 storey building at 14-16 David Street; and
 - 49.3 a 13 storey building at 36-44 Doonside Street.
50. The shadow diagrams prepared by Tract Consulting on behalf of the proponent¹⁴ (**Tract Shadow Diagrams**) demonstrate the extent of overshadowing from a potential design outcome on the Land (in accordance with the IFP) in respect of the common areas of the Embassy building.
51. Some concerns have arisen in respect of the accuracy of the Tract Shadow Diagrams.

¹³ Evidence statement, paragraphs 81-83.

¹⁴ Dated 18 December 2019.

52. Having reviewed these diagrams, Council is satisfied the building heights adopted for the purpose of the proponent's shadow diagrams are based on the preferred maximum number of storeys shown on the IFP (and not the building heights specific in metres).
53. The overshadowing impacts from a potential development on the Land on the Embassy development at each of 10am, midday and 2pm are shown in blue in the below extract together. The existing shadows, including from the Embassy building itself are shown in orange:





54. The diagrams demonstrate the overshadowing of the Embassy building the common areas (labelled '1', '2' and '3') is in fact caused by the building itself.

Richmond Heights building

55. Council obtained independent preliminary advice in respect of the overshadowing concerns (including preparation of shadow diagrams) from Mr McGauran of MGS Architects. Mr McGauran adopts the building heights specified in metres for the purpose of preparing his shadow diagrams.

56. Mr McGauran's analysis accompanying his preliminary advice demonstrates 'very modest' overshadowing impacts to the Richmond Heights building at 10am with no impacts at or after 11am. He states:¹⁵

The submitter's building is over 30m from the taller 42m built form of the NW tower itself with a western façade length of comparable dimension to that of the submitter.

In this instance the morning 10am and 11 am times at the equinox are key determinants.

At 10am the shadow length maximum would have a length a little over 48m at approximately 45 degrees to the street.

At 11am, 36m length with an azimuth of 28 degrees.

These suggest very modest impacts at 10am given the elevation of the submitters building and its solid concrete balustrades to projecting balconies at this elevated level creating an effective 2m street wall. No impacts exist at or after 11am.

¹⁵ Page 6.

Burnley Street western footpath

57. Turning to the Burnley Street western footpath, in his preliminary advice Mr McGauran recommends:¹⁶

...it would be my view that the provisions of the Development Plan should ensure that the western footpath of Burnley Street is protected from overshadowing in the morning after 10am at the September Equinox to promote a walkable neighbourhood. (Such a provision is consistent with many activity centre guidelines for primary walking street networks.)

58. Ensuring sunlight access to the Burnley Street footpath is supported by strategic work informing the implementation of the interim Design and Development Overlays (DDO21 and DDO21) relating respectively to Burnley Street and the Victoria Street Activity Centres.

59. Clauses 2.2 of both the DDO21 and DDO22 require under the heading 'Overshadowing requirements':

Development must not overshadow any part of the following:

...

- the opposite footpath of Burnley Street to a distance of 2.0 metres from the kerb between 11am and 2pm at 22nd September.

60. Preventing overshadowing of footpaths in activity centres is consistently sought in DDOs across the municipality.

61. Council's 'preferred' DPO15 inserts a provision precluding overshadowing of the western side of the Burnley Street footpath from 11am onwards at the September Equinox, comparable to the requirement contained in both the DDO21 and DDO22.

62. Under the heading 'Built form guidelines' the 'preferred' DPO15 requires shadow diagrams demonstrating:

no overshadowing of the footpath on the western side of Burnley Street at 11 am at the September Equinox

63. In his evidence statement, Mr McGauran recommends amending the built form guideline to operate at 10am and not 11am.¹⁷ Council invites the Panel's comments as to whether this a more appropriate measure.

Appleton Street and North Street

64. Clause 4.1 of the exhibited DPO15 (Development Plan Vision) expressly aims to protect the amenity of residential properties on the south side of Appleton Street, stating:

To protect the amenity of residential properties on the south side of Appleton Street.

65. This is consistent with the DDO9 (Doonside Precinct) applying to the adjoining land to the east and prohibiting overshadowing of Appleton Street insofar as:

Development above 15.5m:

...

¹⁶ Page 6.

¹⁷ See paragraph 283 of Mr McGauran's expert statement.

- Should not overshadow adjoining streets, public spaces or private properties beyond that caused by a building of 11m when measured between the hours of 10.00am and 2.00pm at the Equinox.

66. It is well established overshadowing impacts are assessed in the Victorian planning system having regard to the September equinox and not at the winter solstice. Council submits using the winter solstice in determining the acceptability of overshadowing is highly restrictive in the absence of strong strategic justification for its use (i.e. land fulfilling a specific public purpose to provide public access to daylight such as a park), should not be done.

67. Council submits no such justification exists here.

68. This is consistent with Mr McGauran's views:¹⁸

The winter solstice is frequently used for areas of key public value such as shared open space and it may well be a consideration for Victoria Gardens north of the proposed parkland should there be development propositions in the future therein and for development abutting the Yarra River open space corridor.

In a residential street network context I am satisfied with and have advocated for Equinox provisions to apply in areas where intensification are sought.

69. The IFP identifies a preferred maximum height of 7 storeys for buildings fronting Appleton Street. together with 13m building setbacks for upper levels (above podiums), fronting Appleton Street. This is consistent with the approved development on the adjoining lot and appropriately mitigating overshadowing impacts.

70. Council submits the DPO15 appropriately protects residential properties on the south side of Appleton Street from overshadowing. Under the heading 'Built form guidelines' the DPO15 requires shadow diagrams demonstrating:

no overshadowing of private properties on the southern side of Appleton Street beyond that caused by a building of 11m when measured between the hours of 10:00am and 2:00pm at the September Equinox

71. The Tract Shadow Diagrams demonstrate no overshadowing impacts on the Supply Co building nor the Appleton Street and North Street properties at the equinox.

72. Council's view accords with Mr McGauran's preliminary advice and expert evidence stating in respect of Appleton Street:¹⁹

In my view the standard established for the amendment is an appropriate measure in this context and the imposition of greater controls to an area of immediate abutment to an activity centre is in my view unwarranted with the amenity outcome achieved acceptable in my view.

Other matters

73. More broadly Council submits clause 22.10-3.8 of the Scheme establishes design objectives and guidelines specifically seeking to manage off-site amenity impacts of development proposals in assessing permit applications.

74. Relevant design objectives include ensuring 'new development does not prejudice the rights of adjoining and/or nearby land users (especially residents) to enjoy solar access, privacy, and acceptable noise levels'.

75. Relevant design guidelines state:

The location, length and height of any wall built to a side or rear boundary should not adversely impact on the amenity of any adjoining residential properties in

¹⁸ Evidence statement, paragraphs 135-136.

¹⁹ Preliminary advice, page 4 and expert statement, paragraph 119.

terms of overshadowing of private open space, visual bulk or daylighting to habitable room windows.

Where private open space and/ or windows to adjacent uses are affected, additional setbacks from side boundaries are required to address loss of daylight, overshadowing and visual bulk impacts on neighbouring properties, especially residential properties.

Overlooking and building separation

Summary of issues raised

76. Many submitters arise concerns the future development of the Land will result in overlooking of their properties and a loss of privacy. The majority of submitters are owners/occupiers of the Embassy or Supply Co developments (both developments being in the MUZ) with two submitters residing in North Street (zoned Neighbourhood Residential Zone).
77. Submission #44 specifically raises the issue of building separation, recommending the north-east tower on the Land be setback 9m from the boundary.

Council's response to submissions

78. Council submits proposed apartment developments of 5 or more storeys on the Land will be subject to the clause 58 provisions.
79. The purpose of clause 58 includes encouraging apartment development that provide reasonable standards of amenity for existing and new residents and encouraging apartment developments that are responsive to their site and the surrounding area.
80. While clause 58 does not specify a numeric preferred separation distance between buildings (in the same way ResCode does),²⁰ clause 58.04-1 sets out a series of 'building setback objectives' including to 'limit views into habitable room windows and private open space of new and existing dwellings'.
81. Standard D14 under clause 58.04-1 states:
- Buildings should be set back from side and rear boundaries, and other buildings within the site to:
- Avoid direct views into habitable room windows and private open space of new and existing dwellings. Developments should avoid relying on screening to reduce views.
82. Clause 58.04-2 also establishes the following 'internal views objective':
- Limit views into habitable room windows and private open space of new and existing dwellings
83. In response to submissions, Council observed the IFP sets out guidance on upper level separations from neighbouring sites (in the form of minimum upper level (above podium) setbacks but not in respect of the Embassy development.
84. In his preliminary advice, Mr McGauran states:
- The adjoining Embassy Apartments addresses this new eastern most form with an abutting pedestrian laneway inter-block link to the east and a ground level carpark to the south. West facing apartments at upper levels are configured to align with this laneway with a 9m setback from living areas to this interface in most instances at levels 1 to 6 for the eastern block and to rely on equitable development setbacks to the south for reasonable access to light and amenity with setbacks of only 4.5m to this interface.

²⁰ Clauses 54 and 55 of the Scheme.

...

Whilst the adjoin [sic] proposal has developed the western interface without setbacks the setbacks have nevertheless been more generous in scale and provide important points of access for development to principle entrances. Hence the preservation of the amenity of this zone is crucial and the shared aspect implied by the development footprints proposed eastern building and its longitudinal alignment to this pedestrian lane suggests that development principles need to have regard for this interface and should ensure that the interface is managed as a street aspect rather than a back of house with podium setbacks to **ensure that a minimum of 9m is established above podium between built form and that podium levels are attractively managed when viewed from this pedestrian walk and desirably provide additional informal aspect and surveillance to this area.**

[Emphasis added]

85. Council's 'preferred' DPO15 seeks to respond to these concerns by inserting a minimum upper level (above podium) setback of 9m between development on the Land and habitable room windows or balconies of the Embassy development (east and south).

86. This is also reflected in the updated clause 4.2 stating:

BUILT FORM GUIDELINES

Built form guidelines which provide the following:

...

- Minimum upper level (above podium) setbacks of:
 - 9m from habitable room windows or balconies of the Embassy building directly to the east and south.

87. In response to submissions, the 'development plan vision' is also amended in the 'preferred' DPO15 to read:

To protect the amenity of residential properties on the south side of Appleton Street **and to the east of the subject site.**

88. More broadly, Council adopts Mr McGauran opinion where he says in his evidence statement:²¹

The concerns about loss of privacy into backyards is mitigated by upper level setbacks, intervening streets and fences and vegetation and is not a position that can be reasonably sustained against established assessment benchmarks.

Heritage

89. The two heritage places on the Land are:

89.1 the building at 81-85 Burnley Street, Richmond formerly used by the Russell Manufacturing Company Pty Ltd (later Repco) (**Russell Manufacturing Company buildings**) (HO375); and

89.2 the former Repco Offices at 26 Doonside Street, Richmond (HO252).

²¹ Evidence statement, paragraph 70.



Source: Mr Gard'ner's expert evidence statement

Summary of issues raised

90. Submission #1 regards the retention of the façade of the Russell Manufacturing Company buildings as 'tokenistic'.
91. Three submissions raise concerns the proposed heights and setbacks will overwhelm and detract from the heritage significance of the two heritage places shown in the IFP.
92. Submission #44 seeks increased setbacks to the proposed 12 storey building envelope to the west and that the 11 storey 'L' shaped building envelope (HO252) should be set back to ensure it does not compete with the former Repco Offices at 26 Doonside Street, Richmond.

Council's response to submissions

93. In response to submissions, Council engaged independent heritage advice from Mr Jim Gard'ner.²² Mr Gard'ner has also prepared expert evidence for Council for the purpose of the hearing.
94. From the outset Mr Gard'ner is satisfied the heritage values of both the Former Repco Office and the Russell Manufacturing Company buildings are appropriately recognised in the Heritage Overlay under the Scheme with each individual statement of significance adequately describing the heritage values of the two places.²³

Retention of façade of the Russell Manufacturing Company Pty Ltd (later Repco) is 'tokenistic'

95. Consistent with Council's heritage policies at clause 22.02-5.1, Council regards it as appropriate to retain those building elements which contribute to the significance of the heritage place and visible from the public realm.²⁴
96. The statement of significance identifies the interwar Moderne styling of the factory building as being a key element of its significance stating 'Built in stages for the Russell Manufacturing Company Pty Ltd, the brick (overpainted) building has a strong Moderne styling, with horizontal banding on the main elevations'.
97. The IFP includes upper level setbacks of 8m to Doonside Street, 10m to Burnley Street and 13m to Appleton Street to ensure the three-dimensional form of the original factory form remains legible.
98. Consistent with Mr Gard'ner's opinion, Council regards the setbacks proposed as sufficient to retain the key heritage values of the building and the visual prominence and legibility of the three-dimensional form of the building when viewed from street level.²⁵

²² Memorandum of advice in relation to Yarra Amendment C223 dated 8 March 2017.

²³ Evidence statement, paragraph 45.

²⁴ Evidence statement, paragraph 71.

²⁵ Evidence statement, paragraph 72.

99. Mr Gard'ner also considers the following objectives of the built form guidelines in the DPO15 appropriately avoid a built form outcome that may be regarded as 'facadism':²⁶

- Building setbacks from street boundaries that ensure that new future development does not overwhelm the scale of the heritage buildings on the site or on heritage places in the vicinity of the site, including dwellings on the south side of Appleton Street;
 - Building setbacks from the facades of 81-95 Burnley Street that ensure the heritage building can be understood as having a three dimensional form;
 - Minimum upper level (above podium) setbacks of:
 - 13 metres from the Appleton Street site boundary.
 - 10 metres from the Burnley Street site boundary.
 - 8 and 5 metres from the Doonside Street site boundary.
 - 9m from habitable room windows or balconies of the Embassy building directly to the east and south.
- ...
- Ensure new buildings are well spaced (minimum 9 metres between buildings above podium);
 - Buildings set back a minimum of 10 metres (above podium) from the heritage building at 26-34 Doonside Street;
 - Inter-floor heights within the heritage buildings on the site to ensure they relate to the existing floor levels and/or fenestration patterns.

Proposed heights and setbacks will overwhelm and detract from the heritage significance of the two heritage places shown in the IFP

100. Council regards the heights and setbacks as appropriate. Council adopts Mr Gard'ner's opinion where he says:²⁷

Taking into account other planning objectives, it is my view that the construction of medium-rise development of up to 24.5m (7 storeys) and 42m (12 storeys) in height (partially within the extent of HO375) can be accommodated while retaining the integrity of heritage buildings where adequate setbacks are provided and design objectives ensure the legibility of the three-dimensional form of heritage places is maintained.

101. Specifically in relation to setbacks, Mr Gard'ner opines:²⁸

Having considered the setbacks proposed within the Council preferred version of DPO15, **I consider that these are an appropriate minimum to protect the legibility of the three dimensional form of the retained heritage fabric.** While up to 2m less than that recommended in GJM Heritage's advice to Council on 24 July 2017, I agree the setbacks to Burnley Street included within Council's preferred version of DDO15 will achieve a similar outcome. **I am of the view that the heights identified in DPO15, when combined with the required setbacks and considering the existing and emerging built form of the area, are appropriate and therefore it is not necessary to limit development to 5-6 storeys on heritage grounds.** I remain of the view that it is necessary to

²⁶ Evidence statement, paragraph 73.

²⁷ Evidence statement paragraph 76.

²⁸ Evidence statement, paragraph 80.

maintain a lower height of built form 24.5m (7 storeys) on the southern side of the site to transition to the single storey Late-Victorian and Edwardian-era dwellings on Appleton Street that are subject to HO369, HO370, HO374 and HO450.

[Emphasis added]

102. Mr Gard'ner made the following recommendations in his preliminary advice in respect of the former Repco Offices at 26 Doonside Street, Richmond:

The proposed Indicative Framework Plan colours the Former Repco Offices building at 26 Doonside Street yellow, which is described in the legend to the plan as "Retail/Office with Residential above". The Former Repco Office building (unlike 85-91 Burnley Street) is a modestly scaled structure and any development above its historic form is going to adversely affect its cultural heritage significance and it should remain legible as a largely free-standing building. The subject land offers ample opportunity for development without building on (or cantilevering over) 26 Doonside Street and it is our recommendation that the Indicative Framework Plan be amended to clarify that this building as being conserved and adaptively reused without any development (residential or otherwise) above its existing built form or, alternatively, stating a height limit on the plan equal to the existing height of the heritage building.

It is recommended that DPO15 be more explicit in relation to the retention of heritage fabric...

103. Turning to submission #44's concern there is insufficient setback between the future built form and the former Repco Offices at 26 Doonside Street, Richmond, Council adopts Mr Gard'ner opinion where he says:²⁹

The Indicative Framework Plan within the Council preferred version of DPO15 shows upper level setbacks of generally 9m from heritage built form and between tower elements. Where this differs is the 8m upper level setback to Doonside Street, 10m to Burnley Street and 13m to Appleton Street within HO375. These amended setbacks should achieve the outcome sought by Submitter 44. Likewise, the Indicative Framework Plan shows public open space to the immediate west and (part) south of 26 Doonside Street with a 9m wide pedestrian lane beyond this. This will, in my view, achieve adequate separation between the Former Repco Offices building and new development to the west and south. The Indicative Framework Plan shows an 8m-11m podium height to the east and (part) south of the heritage building with a 10m upper level setback, which will achieve an acceptable separation of new built form between the heritage building and the new 38.5m (11-storey) tall tower.

104. In response to submissions, Council seeks to:

- 104.1 clarify the former Repco Offices is to be conserved and adaptively reused without any development above its existing built form; and
- 104.2 ensure the DPO15 is more explicit in respect of retaining heritage fabric.

105. This is reflected in the updated clause 4.2 of the 'preferred' DPO15 stating:

BUILT FORM GUIDELINES

Built form guidelines which provide the following:

...

- Ensure the retention of heritage fabric of:
 - the Appleton Street, Burnley Street and Doonside Street elevations of 81-95 Burnley Street (former Repco Factory) for the extent of the building within in heritage overlay; and

²⁹ Evidence statement, paragraph 88.

- external form of 21 Doonside Street (former Repco and Laboratories).

...

- Provide for high quality architecture and spaces throughout the site and respond to heritage places through, as appropriate:

...

- Discouraging highly articulated facades with recessed and projecting elements above retained heritage buildings.

106. Additionally, the 'preferred' DPO15 identifies a height of 2 storeys above the former Repco Offices at 26 Doonside Street, Richmond. Mr Gard'ner supports this change stating:³⁰

This removes any ambiguity in relation to the potential to build above or cantilever over the former Repco Offices and Laboratory, which I consider would be an unacceptable heritage outcome. I support this amendment to the DPO and consider it necessary to ensure the retention of the three-dimensional form of the heritage building.

107. Mr Gard'ner makes a number of further recommendations in his evidence statement. These are set out later in Council's submission.

Increased residential intensification

Summary of issues raised

108. Some submitters raise concern with the extent of development occurring in the surrounding area and ability to maintain residential amenity. Many submissions raise the 'strain' caused on education facilities, public transport, traffic and other services.

Council's response to issues raised

109. Council does not intend to restate the extensive strategic support for more intensive development of the Land detailed in its 'Part A' submission (under the heading 'Strategic Context and Assessment').

110. While Council appreciates the Land is transitioning between land uses resulting in a change to its existing character, the area more broadly is one transiting from low rise industrial uses to mixed uses with medium-high intensity development.

111. Accommodating Melbourne's growing population in and around activity centres in close proximity to public transport and a variety of local services accords precisely with the Planning Policy Framework and vision espoused in Plan Melbourne 2017-2050, together with Council's local vision espoused in strategically justified and adopted documents including the Victoria Street Structure Plan and Yarra Housing Strategy.

112. Council submits the level of growth associated with redeveloping the Land in the manner envisaged in the IFP, including in the form of increased residential densities and employment growth through office/retail opportunities responds appropriately to the strategic context of the Land.

113. Council's view is supported by Mr McGauran who states in his preliminary advice:³¹

...the case for urban intensification is clear in Local & State policy & the site characteristics given its adjacencies to services, public transport, and growing jobs markets is a sound one in my view.

³⁰ Evidence statement, paragraph 52.

³¹ Page 7.

The site is logically included in a broader activity centre transformation for the Victoria Gardens Precinct.

The site is also one that can accommodate more housing diversity and greater density arising from its [sic] largely island nature and abutments to taller built form to the east and north.

The area has demonstrably been a popular destination for new apartment occupiers as born [sic] out by the transformation of the river corridor over the past 2 decades.

114. Council does not propose amending the Amendment in response to submissions concerning the extent of future development.

Traffic and car parking

Summary of issues raised

115. A number of submissions raise concerns:
- 115.1 traffic congestion on Appleton/Burnley/David/Doonside Streets;
 - 115.2 availability of on-street parking on Appleton, Doonside and David Streets;
 - 115.3 capacity of the existing public transport network to accommodate the anticipated residents and workers;
 - 115.4 safety of roads and footpaths (especially in respect of schools);
 - 115.5 reliability of data used in the Traffic Impact Assessment Report (TIAR) prepared by Ratio Consultants;
 - 115.6 adequacy of dwelling and visitor car parking rates outlined in the traffic impact report; and
 - 115.7 the reference to 'secondary access points' is unclear.

Council's response to submissions

116. Council engaged Traffix Group to review submissions raising traffic and car parking issues. Traffix Group did not recommend any changes to the Amendment in response to submissions.³²

Traffic congestion on Appleton/Burnley/David/Doonside Streets

117. Council submits the majority of traffic and car parking issues raised are appropriately dealt with at the development plan approval and planning permit application stages where there is greater certainty about potential traffic generations, the number of dwellings and/or commercial floor space and applicable statutory car parking rates.
118. The majority of development traffic associated with the development will access the Land via the Burnley/Doonside Street intersection.
119. Council considers the additional development traffic resulting from developing the Land cannot be accommodated at this intersection in its present form as an unsignalised intersection.
120. This is consistent with the TIAR accompanying the Amendment request stating:

Based on the analysis undertaken above, it is considered that the intersection of Burnley Street/Doonside Street will require signalisation to facilitate vehicle movements in and out of Doonside Street and improve the safety of these movements.

³² Letter by Traffix Group reviewing the submissions to the amendment (Ref: 22270L01C) dated 12 February 2020).

121. The provision of traffic signals at the intersection of Burnley Street/Doonside Street is required.
122. Council's position is supported by its traffic expert Ms Dunstan who opines 'I am satisfied that this is an entirely logical outcome given the characteristics of this intersection and scale of development in the nearby area.'³³
123. Turning to the timing of the mitigation works and detailed design of traffic signals (including whether Buckingham Street ought be signalled too), the DPO15 under the heading 'Components of the Development Plan' includes a series of provisions addressing traffic issues including the requirement to prepare an updated TIAR to Council's and VicRoads' satisfaction, including (among other things):
- 123.1 identifying mitigation works required for each development stage in the Development Plan;
 - 123.2 assessing whether a two way or a four way signalised intersection between Burnley Street/Doonside Street/Buckingham Street is required and the trigger for providing the signalised intersection to the satisfaction of VicRoads, and
 - 123.3 identifying a new intersection layout and operation, if required, approved by VicRoads in consultation with the Responsible Authority.
124. Ms Dunstan relevantly opines:³⁴
- I am satisfied that the DPO requirements set the framework of how these issues around the mitigating works are addressed in an appropriate manner. These key questions are most appropriately addressed as part of a future DPO submission once the scale and staging of the proposal is known and updated traffic data can be collected.
125. Clause 2.3 of the DPO15 also requires the owner to enter into a section 173 agreement with Council and VicRoads to secure the provision of works identified in the TIAR before Council grants a planning permit in accordance with the approved development plan.
126. To this end, Ms Dunstan says:³⁵
- The provision of a Section 173 agreement ensures that suitable mitigating works are delivered by a redevelopment of the subject site. This agreement explicitly acknowledges that there are issues to work through around the staging of development, the configuration of a future signalised intersection at Burnley Street/Doonside Street/Buckingham Street and that VicRoads and Council need to approve the TIAR and the mitigating works.
127. Additionally, the DPO15 requires the owner to prepare a green travel plan demonstrating the development supports sustainable transport alternatives to the motor car, provides on site car share spaces and provides bicycle parking. Ms Dunstan regards this requirement as 'appropriate and important to achieving sustainable transport outcomes'.³⁶

Availability of on-street parking on Appleton, Doonside and David Streets

128. In preparing her expert evidence statement, Ms Dunstan undertook an inventory of on-street parking for an area of up to 200m around the Land.³⁷

³³ Evidence statement, paragraph 62.

³⁴ Evidence statement, paragraph 63.

³⁵ Evidence statement, paragraph 66.

³⁶ Evidence statement, paragraph 102.

³⁷ Monday 27 April 2020 at 11am, see page 22.

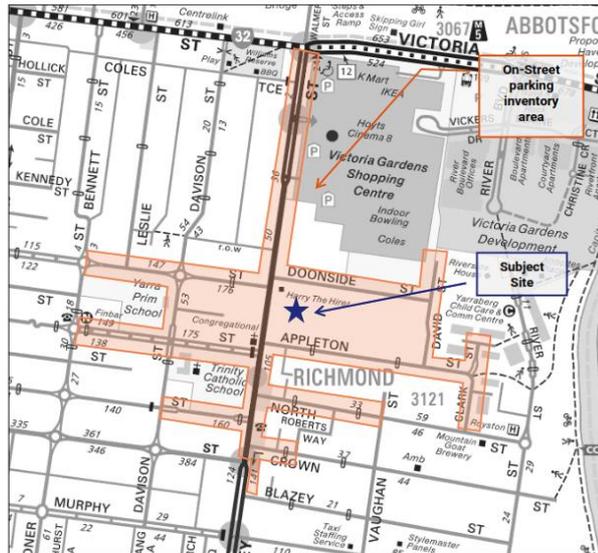


Figure 15: Parking Inventory Area

129. The inventory revealed 302 on-street car spaces within the identified area. Of these spaces, 130 are long term (8P) or unrestricted car spaces. The remainder of which are a combination of short-term restrictions and Permit Zones.
130. Additionally, there are 48 car spaces along the subject site's frontages to Burnley Street, Appleton Street and Doonside Street all of which are unrestricted.
131. Council submits managing on-street car parking is an issue outside the planning process and managed by Council's parking management unit.
132. Council's policy, the City of Yarra's *Parking Restrictions Guidelines, March 2020*, seeks to provide an equitable process for the management of on-street parking restrictions considering the need of all stakeholders. This includes through short-term parking restrictions and permit zone parking areas to be implemented by Council as required.
133. Despite this, Council is satisfied as to the amount of on-street car parking available in the area surrounding the Land.

Capacity of the existing public transport network to accommodate the anticipated residents and workers

134. The Land is in the Principal Public Transport Network and well serviced by public transport services including the following services within convenient walking distance of the Land:
 - 134.1 tram routes 12 and 109 on Victoria Street, approximately 350m north of the Land; and
 - 134.2 tram routes 48 and 75 on Bridge Road, approximately 500m south of the site.
135. Council respectfully rejects assertions the transport network is incapable of accommodating the rezoning and development of the Land. There is no reason to believe the existing public transport services cannot be improved to provide additional capacity as demand for these services increases over time.
136. Accommodating Melbourne's growing population in and around areas in close proximity to public transport and a variety of local services accords with the Planning Policy Framework and vision espoused in Plan Melbourne 2017-2050, together with Council's local vision espoused in strategically justified and adopted documents including the Victoria Street Structure Plan and Yarra Housing Strategy.
137. Council submits provision of public transport services is the responsibility of the State government and relevant agencies and not Council.

Safety of roads and footpaths (especially in respect of schools)

138. Mr Furness of Traffix Group undertook a review of road casualty crash statistics for the past five years (1 January 2014 – 31 December 2018) in his preliminary advice dated 12 February 2020, concluding:³⁸

There were no casualty crashes recorded at the Burnley Street/Doonside Street or Burnley Street/Buckingham Street intersections within the last 5 years of available data. Accordingly, there is no identifiable road safety issue based on the history of the nearby area.

139. The review area is shown below:³⁹

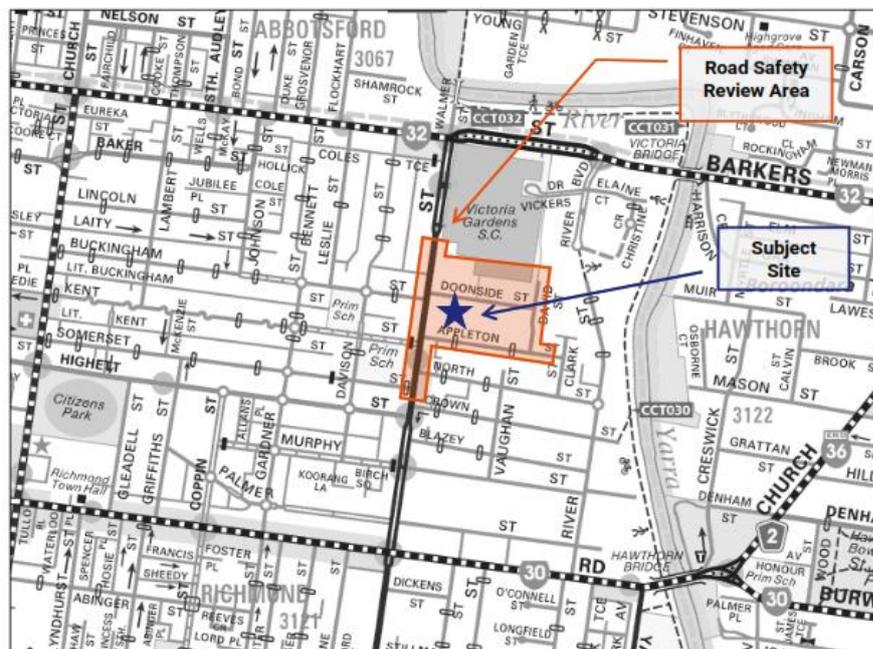


Figure 14: Road Safety Review Area

Source: Melway Publishing

140. Despite this, Council submits the signalisation of Burnley Street/Doonside Street is a positive outcome for pedestrians and cyclists by providing a new opportunity to cross Burnley Street safely.

141. Finally Council submits Trinity Catholic School is already served by a signalised pedestrian crossing and the level of traffic generated by the rezoning will not significantly alter traffic conditions on Burnley Street in the context of the high volumes this road already carries.

Reliability of data used in TIAR prepared by Ratio Consultants

142. Some submitters raise concerns about the reliability of data used in the TIAR, including the reliance on 2016 data and the impacts of additional apartments since constructed.

143. Ms Dunstan acknowledges this in her evidence statement, stating:⁴⁰

The Ratio traffic report completed in December, 2018 relies on traffic data collected by Ratio in April, 2016. This data is now 4 years old. While there are no firm guidelines about how recent traffic counts need to be in order to complete a robust traffic analysis, in my view this data is somewhat outdated.

³⁸ Page 2.

³⁹ Expert statement, page 21.

⁴⁰ Evidence statement, paragraph 71.

144. Despite this, Ms Dunstan states traffic volumes on arterial roads within established urban areas such as Richmond do not tend to change substantially over time (including a 4-year period), demonstrated by the negligible difference in traffic volume on Burnley Street between the April 2016 surveys and those undertaken in late 2018.⁴¹
145. Ms Dunstan has reviewed VicRoads open source data for arterial road volumes for Burnley Street,⁴² observing the annual growth rate of traffic on Burnley Street is +0.7% per annum southbound and -0.8% northbound which Ms Dunstan regards illustrating an established arterial road where traffic conditions are essentially stable.⁴³
146. Ms Dunstan considers what is more likely to have changed is the traffic accessing local roads in the area (being Doonside, Appleton and Buckingham Street) as a result of the following substantial developments in the area since the 2016 data collection:
- 146.1 36-44 Doonside & 27-41 Appleton Street, a mixed use development providing 335 car parking spaces;⁴⁴
 - 146.2 9-15 David Street,⁴⁵ a residential development with ground floor café/retail providing 172 car parking spaces; and
 - 146.3 171 Buckingham Street, a residential development with ground floor café providing 222 car parking spaces (currently under construction).
147. Ms Dunstan opines:⁴⁶
- These developments are now complete, which will enable a more accurate base case to be established to assess the future development on the subject site. This allows an assessment of actual (as compared to theoretical) traffic volumes using the local road network taking into the specific traffic generation and distribution of these development.
148. Clause 2.3 of the DPO15 calls for an updated TIAR to Council's and VicRoads' satisfaction.
149. In accordance with Ms Dunstan's expectations,⁴⁷ Council regards the requirement for an updated assessment of existing conditions and traffic counts a necessary component of any updated TIAR.

Adequacy of dwelling and visitor car parking rates outlined in the traffic impact report

150. The TIAR accompanying the Amendment relies on the ABS 2016 Census data for 'flats, units or apartments' in Richmond to support lower car parking rates for residents than those outlined in Clause 52.06-5. Specifically, the ABS data reveals:
- 150.1 0.7 car spaces to each one-bedroom dwelling
 - 150.2 1.0 car spaces to each two-bedroom dwelling
 - 150.3 1.5 car spaces to each three-bedroom dwelling
151. The TIAR proposes the following rates:
- 151.1 0.5-0.7 car spaces to each one-bedroom dwelling
 - 151.2 0.7-0.9 car spaces to each two-bedroom dwelling

⁴¹ Evidence statement, paragraph 72.

⁴² <https://vicroadsopendata-vicroadsmaps.opendata.arcgis.com/datasets>.

⁴³ Evidence statement, paragraph 74.

⁴⁴ PLN10/0790.

⁴⁵ PLN14/0538.

⁴⁶ Evidence statement, paragraph 80.

⁴⁷ Evidence statement, paragraph 80.

151.3 1.0-1.5 car spaces to each three-bedroom dwelling

152. Council acknowledges the recommended rates in the TIAR are lower than the above ABS rates however Council supports the proposed rates having regard to the close proximity of the Land to public transport and local services. Council also considers the reduced rates encourage sustainable travel options sought to be achieved by State and local policy.
153. Important the Amendment does not include any revised parking rates to those set out under clause 52.06 of the Scheme.
154. There is no statutory requirement to provide visitor car parking on the Land given its location in the Principal Public Transport Network. The absence of visitor car parking conforms with the requirements of clause 52.06-5 of the Scheme.

Reference to 'secondary access points' is unclear

155. As a result of signalling the Burnley/Doonside Street intersection, the majority of development traffic will be limited to Burnley Street (an arterial road) and Doonside Street, a wide local street for most of its length (approximately 10m wide and providing parking on both sides of the road with a traffic lane in each direction) and capable of accommodating the level of traffic.
156. Council regards the identification of Appleton Street as a 'secondary access' point will appropriately ensure the impact of traffic on this street will be limited. While the term 'secondary access' is not defined in the DPO15 it considers the street's designation coupled with its one-way nature will naturally be less convenient and appropriate for primary access in the context of future permit applications.

Public open space

Summary of issues raised

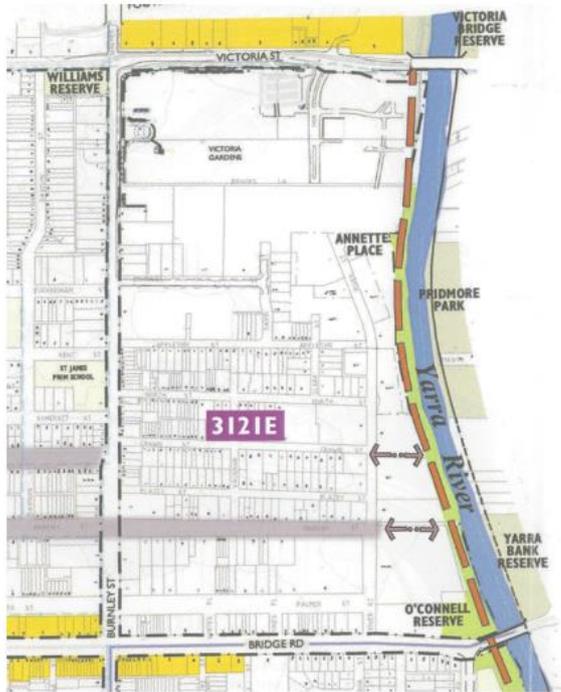
157. While many submitters support the provision of public open space, some submitters raise concern a greater amount of public open space ought be provided in response to increasing dwellings numbers.

Council's response to submissions

158. The 576sqm area of public open space shown in the IFP equates to 4.5% of the total size of the Land.
159. This accords with the 4.5% specified in the Schedule to clause 53.01 of the Scheme for 'land or buildings intended to be used for residential purposes'.
160. In its resolution on 3 March 2020, Council considered the submissions together with the Council officers' response to submissions and the 'preferred version' of the DPO15, resolving to (among other things) in its submission to Panel, adopt an advocacy position to increase the provision of open space proposed in the exhibited DDO15.
161. As stated in Council's 'Part A' submission, Council proposes inserting the following text under the heading 'Open Space and Landscape' in clause 4.2 of the 'preferred' DPO15:

A Public Open Space Report must be prepared by a suitably qualified expert that demonstrates where and how open space can be increased to meet the demand associated with the development, as part of the development plan.

162. The Land is identified in Council's [2006 Open Space Strategy](#) in 'Sub-Precinct 3121E':

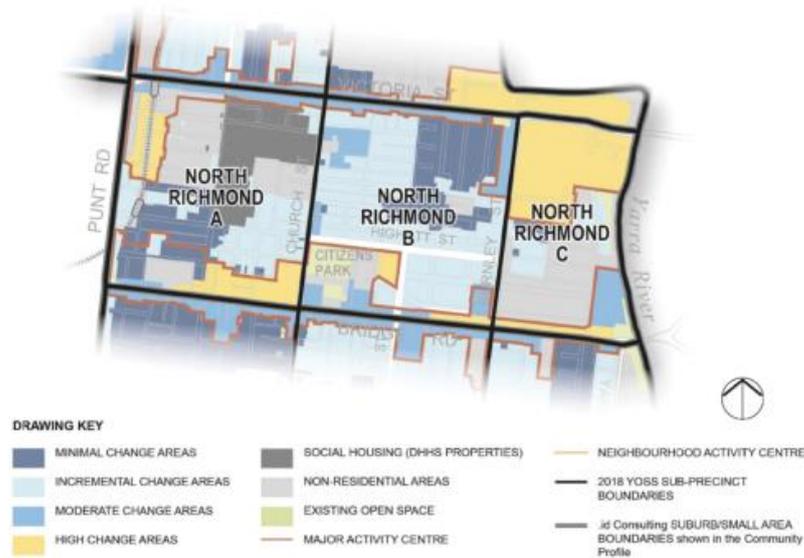


163. A summary of findings relating to 'Sub-Precinct 3121E' follows, stating:⁴⁸
- It is anticipated minimal residential growth will occur in this sub-precinct and the open space needs of the new population will be met through the provision of additional local open space.
164. The following recommendation (6.7.4.1i) is made in respect of 'Sub-Precinct 3121E':⁴⁹
- Investigate provision of a new Small Local open space to primarily meet future open space needs and preferably adjoining the Yarra River open space corridor. Once location is confirmed prepare a Landscape Concept Plan and implement the works.
165. There can be no doubt that the proposed development of the Land in line with the Amendment was not anticipated at the time the 2006 Open Space Strategy was prepared.
166. Council has engaged Thompson Berrill Landscape Design Pty Ltd and Environment & Land Management Pty Ltd to prepare a draft Open Space Strategy, in conjunction with Council, to guide how Council manages the City's open spaces over the next 15 years.
167. Public consultation of a draft Open Space Strategy took place between 20 January to 15 March 2020. Council is currently reviewing feedback received during the public consultation period and will prepare a final Strategy.
168. Council anticipates adopting the final Strategy in the third quarter of 2020.
169. Council's [draft Open Space Strategy](#) has had regard to population forecasts from 2016-2031. Council's Housing Strategy and Spatial Economic and Employment Strategy (**SEES**) form the growth framework used to understand the magnitude of forecast growth and changes across the municipality.

⁴⁸ Page 160.

⁴⁹ Page 164.

170. The Land is identified in the 'North Richmond C' precinct in the draft Open Space Strategy, being the same extent as 'Sub-Precinct 3121E' in the 2006 Open Space Strategy.
171. The 'North Richmond C' precinct is located in the catchment of two Major Activity Centres - the Victoria Street Major Activity Centre to the north and the Bridge Road Major Activity Centre to the south. It comprises a combination of 'high change areas' and 'moderate change areas' identified in the Housing Strategy:⁵⁰



172. The forecast population growth for the 'North Richmond C' precinct is significant, representing a 235% increase from 2016 to 2031, with the residential population is forecast to change from 1,531 in 2016 to 5,131 in 2031.⁵¹ The 'North Richmond C' precinct has the highest level of forecast change within North Richmond.
173. Additionally, there is also a significant increase forecast in the worker population in the 'North Richmond C' precinct (calculated on the basis of the floor area growth forecasts in the SEES).
174. The worker population is forecast to change from 2,974 workers in 2016 to 4,208 in 2031, representing a 41% increase.⁵²
175. The draft Open Space Strategy recommends a 'Small Neighbourhood open space' for 'North Richmond C', being between 0.5 and 0.99 ha in size and its purpose described in the following terms:⁵³
- Located within easy safe walking distance of home or workplace and large enough to provide at least three activities in the open space - for example a multi-use half court, medium to large play area and a picnic facility. Examples include Smith Reserve in Fitzroy, Golden Square Park in Burnley and Rudder Grange in Fairfield.
176. The 'easy and safe walking distance' for a Small Neighbourhood open space' is 300m without crossing arterial roads, major roads or railways.⁵⁴
177. The proposed open space identified for the 'North Richmond C' precinct is larger than the 2006 Open Space Strategy because of the substantial increase in forecast change.

⁵⁰ Page 334, Figure 7.10D.

⁵¹ See Table 7.10-4, page 333.

⁵² See Table 7.10-5, page 233.

⁵³ [Draft 2019 Strategy Technical Report](#), Table 3-1, page 51.

⁵⁴ Draft 2019 Strategy Technical Report, Table 3-1, page 51.

178. Council relies on the expert evidence of Ms Joanna Thompson of Thompson Berrill Landscape Design. In her evidence statement, Ms Thompson relevantly opines:⁵⁵

With the medium to high density residential and commercial development, the residents and workers have none or limited private open space and will therefore rely more on public open space to meet all their open space needs. For residents includes undertaking activities in the open space that would typically have been undertaken in their own backyard. For example having a barbecue with friends and family, relaxing outdoors, fitness, exercising pets, playing with children and growing vegetables. For workers this means taking a break from work, socialising with colleagues and exercising to keep fit and manage stress. Public open space in high density precincts needs to accommodate a wider range of uses and activities, particularly on a frequent basis.

In addition to catering to an increased diversity of uses and more people using the space more often, green public open space contributes to mitigating urban heat island effect and has a positive influence on the community's mental health and wellbeing. This is particularly important in medium and high density precincts as is forecast to continue to occur in North Richmond C.

179. It is Ms Thompson's opinion, based on the work she is undertaking in respect of the draft Open Space Strategy that 'an increased level of provision of open space beyond the 4.5 per cent of the total land area as currently proposed in the Amendment C223 in my opinion is justified'.⁵⁶

180. Additionally, Mr McGauran supports Council's position stating:⁵⁷

Equally I note councillor resolutions regarding a view they would like to see the scale of the footprint increased if possible and have recommended in their amendment the provision Public Realm Plan as outlined in the draft DPO.

The resolution of this ambition as suggested by Council is supported.

Rezoning

Summary of issues raised

181. Nine submitters oppose rezoning the Land, either questioning its strategic basis or highlighting the success of existing businesses within the nearby IN3Z zoned land to justify the current zone.

Council's response to submissions

182. Council respectfully rejects these assertions, directing the Panel to the comprehensive strategic basis this Amendment is pursued set out in its 'Part A' submission.

183. Council's view is supported by Mr McGauran in his preliminary advice stating:⁵⁸

The site sits in a location that is bounded by residential to the west, south and much of the east with a commercial centre to the north that is rapidly also becoming mixed use in nature with retail, residential and employment forming complimentary roles.

In my view the site is a logical location for Mixed-use development and a better interface outcome in zoning and land use terms to that currently provided for by the zone.

⁵⁵ Page 12-13.

⁵⁶ Page 14.

⁵⁷ Paragraphs 261-262.

⁵⁸ Page 4.

184. Council agrees with Mr McGauran where he opines:⁵⁹

Whilst I appreciate that the nature of views and built form will change as a result of the proposal, it in my view that this renewal forms part of a broader transformation of the Victoria Street East precinct from a largely late 19th and early 20th century industrial manufacturing history to its 20th and 21st century medium rise urban village transition. I do not accept that these changes or the changing visual, logistical and environmental impacts are unreasonable.

185. Council does not propose amending the Amendment in response to these submissions regarding rezoning.

Affordable housing

Summary of issues raised

186. Submission #5 supports the affordable housing commitment in the DPO15.

187. Submission #46 raised concern about the mandatory requirement to provide affordable housing at a quantity equivalent to 10% of the total number of dwellings proposed.

Council's response to submissions

188. The proponent has agreed to the provision of 10% of the total number dwellings to be allocated as affordable housing. Council is satisfied with the mandatory nature of this provision, it having been agreed to by both parties before proceeding with the Amendment.

189. The proponent's commitment to provide 10% of the total number of dwellings as affordable housing enjoys comprehensive strategic support including in (among other thing):

189.1 the objective under s 4(1)(fa) of the *Planning Environment Act 1987* to 'facilitate the provision of affordable housing in Victoria';

189.2 Plan Melbourne 2017-2050, specifically the directions and strategies under outcome 2 dealing with the supply of affordable housing

189.3 clause 16.01-4S (Housing affordability) of the Scheme including the strategy to 'increase the supply of well-located affordable housing by... facilitating a mix of private, affordable and social housing in suburbs, activity centres and urban renewal precincts';

189.4 clause 21.04-1 of Council's local policy seeking to ensure a 'continued supply of good quality affordable housing' and associated objectives;

189.5 Council's Housing Strategy, including Strategic Direction 4 seeking to facilitate the provision of more affordable housing;

189.6 Council's Policy Guidance Note: Affordable Housing at Significant Redevelopments 2017, Section 1.2 of which states:

As part of significant rezonings, provisions will be sought by Council for the new zone or overlay to require any development proponent to provide for at least 10% affordable housing at significant redevelopment sites once constructed and into the future.

190. As the Panel is aware, in granting condition authorisation on 19 February 2018, the Minister required a housing diversity report be prepared before exhibiting the Amendment to justify the 10% affordable housing contribution.

⁵⁹ Evidence statement, paragraph 152.

191. In response, the proponent prepared the *Housing Diversity and Adaptability (Stage 1 Report) (Housing Diversity Report)* updated most recently on 3 May 2019.
192. The Housing Diversity Report acknowledges the proponent agrees to delivering 10% of the total number of dwellings as affordable housing on the basis the commitment (among other things):⁶⁰
- 192.1 positively enhances the development proposition;
 - 192.2 responds to the evidence of local affordable housing need, including a need for a diversity of affordable rental and purchase options for low to moderate income households (in accordance with State Government policy), while acknowledging this need cannot be purely addressed through voluntary planning negotiations alone;
 - 192.3 enables a degree of flexibility as to the delivery model which will be based on an assessment of a range of models that could meet the agreed objectives and requirements to be accepted as Affordable Housing in accordance with the DPO15; and
 - 192.4 is supported by any third-party partner, investor or housing manager and does not impede on the development progressing.
193. The Housing Diversity Report sets out a preliminary analysis of various options by which the Land owner may meet the proposed requirement in accordance with the State Government framework.
194. The Housing Diversity Report acknowledges at the point of detailed schematics and costings, detailed feasibility analysis and modelling and engagement with potential partners will be undertaken to determine the final delivery model.
195. To this end, clause 4.2 of the DPO15 calls for a housing diversity report, stating:
- A Housing Diversity and Adaptability Report must be prepared to the satisfaction of the Responsible Authority which provides the following information:
- A demographic analysis of the types of people and households anticipated to live within the development based on the proposed dwelling design and bedroom mix.
 - The model to provide 10% of the overall housing stock as affordable housing.
 - Demonstrate how the development plan responds to the particular housing needs of future residents across their lifetime.
196. Additionally, clause 2.1 of the DPO15 requires the owner enter into a section 173 agreement before a planning permit is issued in accordance with the approved development plan requiring it to facilitate the provision of 10% of the total number of dwellings (being the total number of dwellings provided within the DPO15 area) as affordable housing by:
- Entering into an arrangement with a Registered Agency under the Housing Act 1983 for the provision of the affordable housing within the DPO15 area to a Registered Agency; and/or
 - Making other arrangements for the provision of affordable housing in conjunction with a Not for Profit (registered with the Australian Charities and Not-for-profits Commission) to the satisfaction of the Responsible Authority; and/or
 - Making other arrangements for the provision of for the provision of Affordable Housing as defined at Section 3AA of the Planning and Environment Act 1987, to the satisfaction of the Responsible Authority.

⁶⁰ Page 4.

197. Mr McGauran supports the clauses of the DPO15 dealing with affordable housing. He opines:⁶¹

The purpose of the Planning and Environment Act to provide for affordable housing is clear and the evidence of an absence of adequate affordable housing in the City also well evidenced.

Recent re-zonings of the East Village in Glen Eira and West Melbourne have supported similar benchmarks and I understand that the East Village development is well on track to exceed this benchmark.

...

The applicant his being provided with considerable uplift in value and capacity and it is reasonable that this benefit is shared to deliver sustainable long term communities and housing that is affordable to the bulk of staff working ng in nearby service retail, education and creative sector economies.

198. He goes on to say:⁶²

In this case, the subject site is one where a mix of community betterments have been reached between the proponent and the council that have led to Council being in a position to support the amendment with the necessary agreements as templated by Government in place to secure this outcome.

The mix is tailored to the unique attributes of the location which include the ongoing high concentration of low paid key workers, shortage of open space of an urban nature, and continued value attributed to on-site heritage.

The applicant has determined the business case and determined that the conditions for support of the amendment are ones with which they are prepared to accord.

...

Hence I support the 10% provision in its current form as an essential part of the strategic support justifying the Amendment.

199. Council does not propose amending the Amendment in response to these submissions.

Building materials and design

Summary of issues raised

200. Submission nos. 41 and 44 made recommendations relating to the design outcome for new development on the Land, including recommendations:

- 200.1 the new development exhibit a variety of building heights to create visual diversity and interest;
- 200.2 the DPO15 provide for high quality treatments to building facades facing the pedestrian lane;
- 200.3 high quality tactile design response for the podium and public interfaces should be sort; and
- 200.4 wording to guide the design of building services and loading areas.

⁶¹ Evidence statement, paragraphs 229, 230 and 232.

⁶² Evidence statement, paragraphs 278-280.

Council's response to submissions

201. In response to submissions and in accordance with Mr McGauran's preliminary advice,⁶³ Council's 'preferred' DPO15 seeks to clarify Council's intent for:

201.1 a visually interesting and diverse skyline;

201.2 high quality treatments to building facades facing the pedestrian lane and podiums; and

201.3 integrate services and loading areas into building design.

202. This is reflected in the updated clause 4.2 stating:

BUILT FORM GUIDELINES

Built form guidelines which provide the following:

...

- Provide for high quality architecture and spaces throughout the site and respond to heritage places through as appropriate:

- Create an interesting and varied street wall and podium which is reinforced through the contemporary use of common historic industrial materials, a range of parapet heights and rebates of sufficient depth and texture to provide modulation in the street façade.

- At upper levels use lightweight materials and detailing that compliments the significant elements of heritage buildings.

...

- Providing high quality treatments to the building facades facing the pedestrian lane and streets.

...

- Ensure buildings are designed and spaced to create a visually interesting skyline, streetscape and coherent precinct.

- Ensure that site services and loading areas are carefully designed to minimised impacts on streetscapes, shared spaces and pedestrian footpaths and laneways.

203. In his evidence statement, Mr McGauran indicates he supports the above amendments.⁶⁴

OUTCOME OF FURTHER DISCUSSION COUNCIL HAS HAD WITH SUBMITTERS

204. Council has not engaged in any further discussions with submitters, besides some limited discussion with the Proponent's legal representatives and planning consultants (Tract Consulting).

205. Following receipt of the Panel's directions, Council's legal representatives requested the Proponent's legal representatives to indicate the Proponent's position on the 'preferred' DPO15 for Panel and confirm the understanding of Council's officers that the Proponent opposed that part of Council's resolution of 3 March 2020 to adopt an advocacy position to increase the provision of open space proposed in the exhibited DPO15.

⁶³ See recommendations 7, 8 and 10.

⁶⁴ Evidence statement, paragraphs 176, 192 and 215.

206. The Proponent's legal representatives confirmed that the Proponent did not support an increase in the provision of open space in line with Council's 3 March 2020 resolution.⁶⁵ Council's legal representatives were also advised that while some aspects of the 'preferred' DPO15 were supported, the Proponent's expert witnesses would be advancing 'refinements' to the text of the DPO15 and to IFP figure as exhibited on behalf of the Proponent.
207. In response to a request for further details of the 'refinements', Council's legal representatives were advised the detail was not known at that time and would not be available until the expert report of Ms Heggen, prepared on behalf of the Proponent was finalised.

COUNCIL'S RESPONSE TO EVIDENCE

Council's evidence

Mr Gard'ner's recommendations

208. Mr Gard'ner makes a series of recommendations at paragraphs 54-55 and 65-67 his evidence statement. Council supports these recommendations save for the built form guideline discussed below. The recommendations Council's officers are agreeable to are set out below under the heading 'Council's final position on the Amendment'.
209. Council's officers do not support Mr Gard'ner's recommendation to amend the built form guideline in the manner proposed below:

BUILT FORM GUIDELINES

Built form guidelines which provide the following:

...

- Provide for high quality architecture and spaces throughout the site and respond to heritage places through, as appropriate:

...

- Discouraging highly articulated facades with recessed and projecting elements above **and immediately adjacent to** retained heritage buildings.

210. Council's officers are respectfully of the view that the inserted words unduly extend the reach of the guideline beyond facades above the retained heritage buildings to those associated with immediately adjacent buildings. Council considers the following existing guidelines appropriately and sufficiently regulate facades of immediately adjacent buildings:

At upper levels use lightweight materials and detailing that compliments the significant elements of heritage buildings.

Simple architectural detail so as not to detract from significant elements of heritage buildings.

211. Additionally, Mr Gard'ner makes further recommendations in his evidence statement in respect of:
- 211.1 the requirement for a conservation management plan at clause 3.2 of the DPO15 (at paragraphs 62-62); and
- 211.2 requirements for a heritage impact statement at clauses 3.2 and 4.2 of the DPO15 (at paragraph 64)

⁶⁵ This is consistent with Tract Consulting's orals comments to Council's officers shortly after Council's meeting of 3 March 2020.

212. Again Council's officers are of the view that these changes are not necessary because they feel the requirements contained in the DPO15 appropriately and aptly manage the heritage issues in conjunction with the application of the Heritage Overlay. Council invites the Panel's comments in respect of these recommendations.

Mr McGauran's recommendations

213. Mr McGauran too makes a series of recommendations in his evidence statement.

214. At paragraph 199, Mr McGauran seeks to address the issue of wind impacts by inserting the following requirements into the DPO15:

- a) Public Open Space, the pedestrian laneway and the north facing Doonside Street frontage must achieve the wind speed amenity criteria "Generally acceptable for stationary, long-exposure activities (outdoor restaurants, theatres), if the annual maximum gust does not exceed 10 m/s".
- b) The remaining street and laneway interfaces must achieve "generally acceptable for stationary short-exposure activities (window shopping, standing or sitting in plazas), if the annual maximum gust does not exceed 13 m/s".
- c) Common area shared amenity recreational and landscape podium and upper level zones must achieve the wind speed amenity criteria "Generally acceptable for stationary, long- exposure activities (outdoor restaurants, theatres), if the annual maximum gust does not exceed 10 m/s".
- d) Private open space podium zones must achieve the wind speed amenity criteria "Generally acceptable for stationary, long-exposure activities (outdoor restaurants, theatres), if the annual maximum gust does not exceed 10 m/s

215. Mr McGauran addressed the issue of wind impacts in his preliminary advice but Council did not pursue his recommendation given Council did not have sufficient technical justification (i.e. engineering). Council has included three built form guidelines to deal with wind impacts but accepts more prescriptive guidance could be inserted. To this end, Council invites the Panel's comments and recommendations on this issue.

216. At paragraph 207 of his evidence statement, Mr McGauran makes a series of recommendations to the following built form guidelines under the DPO15:

- b) ~~Use of~~ At upper levels use predominantly lightweight materials and detailing that compliments the significant elements of heritage buildings.
- d) Invest upper levels, landscapes and the public spaces with measures that enhance environmental and ecological performance, climate adaptation and resilience. ~~Discouraging highly articulated facades with recessed and projecting elements.~~
- e) Ensuring the retention of integrating built form behind retained facades ~~and avoiding balconies behind existing openings.~~

217. Council observes the 'preferred' DPO15 does not contain the words 'use of'.

218. Council's officers do not support recommendation d) for heritage reasons.

219. Following advice from GJM Heritage, Council amended the guideline in the 'preferred' DPO15 from '*Discourage highly articulated facades with recessed and projecting elements*' to '*Discourage highly articulated facades with recessed and projecting elements above retained heritage buildings*'. Council does not seek to preclude highly articulated facades on buildings throughout the Land generally, but Council does wish to do so specifically above heritage buildings in order to avoid facades visually 'competing' with the original heritage fabric.

220. Similarly, Council's officers do not support Mr McGauran's recommendation e), for heritage reasons. Council observes this guideline was also refined in consultation with GJM Heritage on the basis balconies behind existing openings is not a positive outcome in heritage terms.
221. Council's officers do not support Mr McGauran's recommendation at paragraph 143 that:
- ...the Panel consider the inclusion within the Development Plan of a requirement for a Retail and Commercial Workplace Plan for the site that demonstrates alignment of the scaling, expression, rental expectations and positioning of commercial and retail space with emerging needs and demand...
222. Respectfully, while Council's officers understand the benefits such information can deliver in improving speculative designs for end users, Council does not consider this an appropriate provision in a planning control particularly where its role in assisting the assessment of permit applications is subject to change.
223. At paragraph 285, Mr McGauran states:
- I would support the requirement that all sensitive land uses demonstrate measures in the specification and design response that ensure the amenity of internal sleeping and living areas are not undermined by the continued and growing role of the adjoin Activity Centre and on site commercial uses in providing a vital extended hour focus of amenity and services, hospitality and entertainment and retail choice for the precinct.
224. In order to avoid unnecessary repetition in the Scheme, Council's officers do not support this recommendation, observing clause 22.05 (Interfaces Policy) of the Scheme adequately address this issue through the following objectives:
- 224.1 To enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these areas as service, economic and employment nodes.
- 224.2 To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.
225. Council's officers support the remainder of Mr McGauran's recommendations and these are set out below under the heading 'Council's final position on the Amendment'.

Proponent's evidence

226. The proponent relies on the expert evidence of:
- 226.1 Ms Catherine Heggen of Ratio Consultants in respect of urban design;
- 226.2 Ms Sophie Jordan of Sophie Jordan Consulting in respect of planning;
- 226.3 Mr Michael Barlow of Urbis in respect of planning;
- 226.4 Ms Hilary Marshall of Ratio Consultants in respect of traffic; and
- 226.5 Mr Peter Lovell of Lovell Chen in respect of heritage; and
- 226.6 Mr Bryce Raworth of Bryce Raworth Pty Ltd in respect of heritage.
227. No other submitter relies on expert evidence.
228. In a number of respects the Proponent's expert witnesses do not wholly support the Amendment as exhibited.

229. Ms Heggen's report sets out a number of recommended changes to DPO15, most significantly by way of a new IFP. The sum of the recommendations result in a quite altered overlay instrument and development outcome from that preferred by Council.
230. It is clear from reading the reports of the Proponent's other experts called on behalf of the Proponents⁶⁶ (save for Ms Marshall) that those experts have had the benefit of considering Ms Heggen's recommended changes to DPO15 (**recommended changes**) at the point of the preparation of their expert opinions.
231. The other experts agree with Ms Heggen's recommended changes in the opinions expressed within the field of their professional qualification and expertise.
232. Council has not considered the recommended changes to DPO15. Council's officers do not support the revised IFP and DPO15 advanced by Ms Heggen (and as is otherwise through the Proponent's expert reports) for reasons set out below.
233. Obviously enough, Council's expert witnesses' reports do not comment on the recommended changes.
234. Council submits the Panel should give no more than limited weight to the recommended changes.
235. It would be inappropriate to give the recommended changes more than limited weight given there has been a thorough process of public consultation about the Amendment generally and about the DPO15 specifically both prior to and as part of the formal statutory processing of the Amendment.
236. While Council's 'preferred' DPO15 is a response to submissions received in response to exhibiting the Amendment and would result in relatively minor changes to the DPO15, the recommended changes by the Proponent's experts do not respond to submissions received in response to the exhibition of the Amendment⁶⁷ and would result in a quite altered overlay instrument.
237. By way of introduction to that part of her evidence outlining her recommendation of a different IFP, Ms Heggen states⁶⁸:
- In my experience DPO schedules are most effective when they articulate the required context and key principles to be carried through in the Development Plan, as opposed to prescribing specific responses to more detailed design matters.
238. The import of aspects of Ms Heggen's recommended new IFP (and where stated to the text of the DPO15) is to reduce the level of certainty achieved through the exhibited IFP and DPO15 text, with examples including the location of the north-south public link and the public open space. The locations of these features in the exhibited IFP have been the subject of considerable careful planning and testing over, without exaggeration, more than a year and are clearly shown as separate spaces (in terms of quantum not design). Ms Heggen's recommended new IFP blurs this distinction.
239. The import of aspects of Ms Heggen's new IFP is to remove all reference to storeys, substantially change the nominated preferred heights and strip out the preferred location of the building envelopes shown in the exhibited IFP. Ms Heggen's new IFP reduces nominated preferred setbacks to upper level tower forms, and to significantly increase the overall height of anticipated built form.
240. One of the important attributes of the DPO making it notable within the VPP suite of provisions is the fact that it removes notice requirements and third-party review rights from planning permit applications for proposals that conform to development plan requirements.

⁶⁶ Ms Jordan, paragraph 6; Mr Barlow, paragraph 5; Mr Lovell, page 3; and Mr Raworth, paragraph 60.

⁶⁷ Noting the Proponent's submission, submission #5, received in response to the exhibition of the Amendment expresses full support for the exhibited Amendment and does not seek any change to any aspect of the exhibited Amendment.

⁶⁸ Paragraph 065.

241. In order for this shift in the 'usual' statutory processes applying under the Act to meet the overarching objectives of the planning framework established by the Act⁶⁹, it is expected that a given schedule to the DPO will provide certainty about the nature of the proposed use and development of land to which the overlay is applied.
242. Ms Heggen does not refer to third party notice and review rights in her evidence.
243. In the report of the Panel appointed to consider submissions made in respect of [Amendments C218 and C219 to the Yarra Planning Scheme](#)⁷⁰ (**Report**), the Panel considered those parts of the amendments proposing the application of overlay controls that exempted third party notice and review rights, starting with a discussion of submissions made about exemption of such rights.
244. At section 3.3.3 of the Report, the Panel states:

Third party rights

The IPO and DPO parent provisions provide exemption from notice and review of any application under any provision of this scheme which is generally in accordance with the incorporated plan or development plan respectively.

Submissions 6, 8 and 14 (Collingwood Historical Society, Collingwood and Abbotsford Residents' Association Inc., and Yarra Riverkeepers Association) expressed the view that the Council should not apply an IPO and DPO to the sites because they exempt notice and review rights for third parties at the permit application stage.

Council submitted that the relevant question is whether sufficient community consultation has been undertaken in relation to the Amendments to justify the exemptions. This includes the level of detail made available for the community to consider and the degree of specificity in the planning controls.

Council's submission noted the comments of the Panel in Amendment C185 to the Ballarat Planning Scheme, which considered the introduction of a Special Use Zone that effectively removed third party notice and review rights. The Panel concluded that:

... the rigorous controls and planning undertaken for SUZ15 as part of this Amendment, including the community consultation undertaken, justifies the exemption applying.

Council submitted that the Amendments have provided an appropriate opportunity for the community and affected parties to make submissions about future development on the sites and provide input into the content and detail of the proposed provisions.

Council stated that it ensured that the absence of future notification and review rights was clearly communicated when providing notice of the Amendments. The letters sent to owners and occupiers in the surrounding area included a factsheet that stated:

It is important to note that this is [a] critical stage in the planning process as there would be no requirement for the community to be notified about future planning permit applications on the sites.

Council submitted that the proposed planning controls provide sufficient specificity and certainty to manage future development outcomes in conjunction with the planning controls that already apply to the Amendment sites.

The Collingwood Historical Society submitted that an IPO and a DPO are not appropriate. They stated that the owners benefit by fast tracking future development without further third party input but there is no clear benefit to Yarra

⁶⁹ Set out at section 4(2) of the Act.

⁷⁰ (PSA) [2017] PPV 118.

City Council, its residents and ratepayers or to other Melbournians who enjoy the Yarra River and its surrounds.

245. Further, at section 5.6.3, the Panel states:

Discussion

...

The evidence from the witnesses about desired changes to the form of Amendment C218 was put on two main grounds: first, making the documents compliant with government directions. Second, to create a scenario where the proponent can design a development concept with flexibility arising from the discretionary application of controls in DDO1, as far as they can be discretionary, and with IPO2, and its indicative framework plan, as the guiding controls.

The Panel accepts the genuine approach of the proponent. However, the Panel also considers one of the benefits of the controls as exhibited as allowing the later drafting of a concept and its consideration without the usual level of advertising or third party participation. One of the reasons given by the planning authority for its advocacy of the nature of the controls was that there had been substantial notification and awareness of the type of development that may result from the controls. **The Panel is not prepared to divert far from the form of the controls as exhibited and which third parties are entitled to expect will lead to an outcome that is substantially similar to that anticipated under the exhibited form of the controls.**

[Emphasis added]

246. Council submits the ambit of the recommended changes exceeds what could be countenanced by way of a recommendation from the Panel in this process, bearing in mind the substantial notification and awareness of the type of development the exhibited and 'preferred' DPO15 control envisages.
247. As a good example of the types of changes proposed by Ms Heggen's new IFP, as noted above in this submission 35 submitters raised concerns about the building heights identified in the IFP, namely that a preferred maximum height of 12 storeys (42m) is too high on the Land.
248. Council's submission is the preferred heights in the exhibited IFP are comparable to development on Victoria and Doonside Streets to the north and east and Burnley Street to the south.
249. Ms Heggen's new IFP shows a preferred maximum height in metres only, at 59m. There are no buildings of such height in the activity centre.
250. Turning to traffic, surprisingly Ms Marshall disagrees with the conclusions of the traffic analysis and TIAR prepared by Ratio Consultants on behalf of the Proponent in support of the Amendment at all the earlier stages of the Amendment.
251. Ms Marshall expresses disagreement with the requirement in the DPO15 for the owner to enter into a section 173 agreement that could result in the owner works in the form of a two or four way signalised intersection between Burnley Street/Doonside Street/Buckingham Street. In this respect Ms Marshall says⁷¹:

Based on the analysis undertaken within this report, I am not convinced that traffic signals are warranted by this development and that if they are it will be associated with one of the last stages of the works.

252. Council relies on Ms Dunstan's analysis of the need for signal works consequential on the demands on the external road network expected to flow from the type of development the

⁷¹ Page 50.

Amendment will facilitate. Council submits the exhibited section 173 requirement is warranted and appropriate. The provision does not, after all, mandate any particular roadworks.

253. Finally, Council notes it is curious Ms Marshall has not been provided with Ms Heggen's report in the same manner as all other expert witnesses called to offer opinions supportive of Ms Heggen's recommended changes. Council observes that the additional built mass shown in Ms Heggen's IFP logically results an increase in the density of land use and, with it, traffic impacts.

COUNCIL'S FINAL POSITION ON THE AMENDMENT

254. As stated in Council's 'Part A' submission, Council pursues the Amendment as exhibited, save for the DPO15 control.
255. Council pursues the DPO15 in its 'preferred' form prepared by Council's officers in response to submissions received during exhibition of the Amendment and endorsed by Council at its ordinary meeting on 3 March 2020 subject to the following changes:

- 255.1 Inserting the following text under the heading 'Open Space and Landscape' in clause 4.2 of the 'preferred' DPO15 in response to Council's resolution⁷² to increase the provision of public open space to be provided through DPO15:

A Public Open Space Report must be prepared by a suitably qualified expert that demonstrates where and how open space can be increased to meet the demand associated with the development, as part of the development plan.

- 255.2 The following minor amendments to the following built form guidelines in clause 4.2 of the 'preferred' DPO15 in accordance with Mr Gard'ner's recommendations:⁷³

- 255.2.1 amending the following built form guidelines:

BUILT FORM GUIDELINES

Built form guidelines which provide the following:

...

- Ensure the retention of heritage fabric of:

...

- external form of 246 Doonside Street (former Repco and Laboratories).

...

- Provide for high quality architecture and spaces throughout the site and respond to heritage places through, as appropriate:

...

- Create an interesting and varied street wall and podium which is reinforced through the contemporary use of ~~common~~ typical historic industrial materials a range of parapet heights and rebates of sufficient depth and texture to provide modulation in the street façade.

⁷² Also made on 3 March 2020.

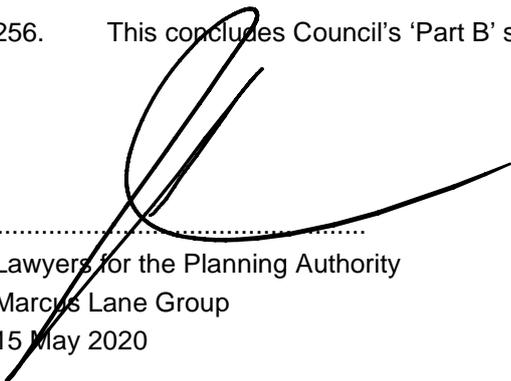
⁷³ Evidence statement, paragraphs 54-55 and 65-67.

- 255.2.2 replacing the reference to 'siteline analysis' with 'sightline analysis' in clause 3.2 of the 'preferred' DPO15;
 - 255.2.3 correcting the spelling of 'dwellings' in the second dot point under the heading 'Built Form Guidelines' under clause 4.2; and
 - 255.2.4 correcting the spelling of 'Doonside Street' in the sixth dot points under the heading 'Built Form Guidelines' under clause 4.2.
- 255.3 The following amendments to the following built form guidelines in clause 4.2 of the 'preferred' DPO15 in accordance with Mr McGauran's recommendations:
- 255.3.1 Insert the following built form guideline in clause 4.2 of the DPO15:⁷⁴

Access to the ground level of the south and eastern interfaces of the park to occur in minimum 4m wide circulation zone in addition to the park.
 - 255.3.2 Inserting the following dot-point under the built form guideline in clause 4.2 of the DPO15 stating 'Shadow diagrams that demonstrate':⁷⁵

At least 65% of the proposed park has access to sunlight at all times between the hours of 10am and 2pm at the September Equinox excluding the area of park overshadowed by the existing heritage building at 26 Doonside Street, Richmond.

256. This concludes Council's 'Part B' submission.



.....
Lawyers for the Planning Authority
Marcus Lane Group
15 May 2020

⁷⁴ See paragraph 264 of Mr McGauran's expert statement.

⁷⁵ See paragraph 224 and 284 of Mr McGauran's expert statement.