

PLANNING PANELS VICTORIA

IN MELBOURNE

**IN THE MATTER OF AMENDMENT C231 TO THE YARRA PLANNING
SCHEME**

BETWEEN:

YARRA CITY COUNCIL

Council

OTHERS

Submitters

PART B SUBMISSIONS ON BEHALF OF YARRA CITY COUNCIL

**IS THERE STRATEGIC JUSTIFICATION FOR THE AMENDMENT
GENERALLY?**

1. The strategic context for this Amendment includes:
 - a) State-wide strategic policy such as *Plan Melbourne 2017-2050*;
 - b) the Yarra Planning Scheme (**Yarra PS**) including state-wide strategic policy addressing residential and commercial land use and development, heritage and built form objectives, activity centre planning, traffic and parking found in Clauses 11, 15, 16, 17 and 18;
 - c) municipal planning policy in the MSS at Clause 21.04 Land Use, Clause 21.05 Built Form, Clause 21.08 Neighbourhoods and in local policies at Clause 22.02 Development Guidelines for Sites Subject to the Heritage Overlay, Clause 22.03 Landmarks and Tall Structures, Clause 22.07 Development abutting Laneways and Clause 22.10 Built Form and Design Policy;
 - d) various heritage studies including the *City of Yarra Review of Heritage Overlay Areas [Appendix 7 includes Statements of Significance and Appendix 8 includes gradings]*, Graeme Butler and Associates 2007 updated 2013;

- e) adopted documents such as the *Yarra Housing Strategy, September 2018*¹ (**Housing Strategy**) and *Yarra Spatial Economic and Employment Strategy, August 2018 (SEES)*; and
 - f) Council-commissioned studies and reports which most relevantly include:
 - i) *Queens Parade, Clifton Hill, Built Form Review, 15 December 2017* prepared by Hansen Partnership (**Built Form Analysis**); and
 - ii) *Queens Parade Built Form Heritage Analysis & Recommendations, 11 December 2017* prepared by GJM Heritage (**Heritage Analysis**).
2. Since exhibition, the modelling work undertaken by Ethos Urban provides further information to inform strategic thinking about the Queens Parade activity centre.²
 3. It is evident that there is a significant body of strategic work supporting this Amendment.
 4. In particular, the Built Form Analysis and Heritage Analysis completed in late 2017 provide specific and comprehensive analysis of Queens Parade and a strategic foundation for this Amendment.
 5. As outlined in the Part A submission and evident from participation in the Panel hearing, there has been considerable community interest in this Amendment from residents, traders, community groups and some land owners and developers.
 6. A review of the strategic context and the submissions to this Amendment reveals that there are competing considerations at work that affect the development of Queens Parade, Clifton Hill/Fitzroy North, now and in the future.

¹ Council is participating as a “group 1” Council in a Departmental pilot project for translation of the local section of the Yarra PS in accordance with VC148. As part of the rewriting of the local section, key components of the Housing Strategy will be included in the planning scheme; for example, it is intended that the framework plan and directions about the extent of change across the municipality will be included and the Housing Strategy will be a reference document. The request for authorisation of a planning scheme amendment for the rewriting of the local section is expected to be presented to Council in November 2019 with an expectation that the amendment will be progressed in the course of 2020.

² This submission adopts same approach as Ms Ancell to description of the land the subject of the Amendment: the activity centre refers to the totality of the Amendment area and the neighbourhood activity centre refers to the land in Precincts 3, 4 and 5, as depicted in clause 21.03 and in the Built Form Analysis.

7. The most pronounced tensions are found in the protection of the heritage significance and valued character of Queens Parade on the one hand and the role of a neighbourhood activity centre in the inner city of Melbourne only 2km from the CBD on the other. The need to preserve the historic values, character and amenity of Queens Parade and the need to grow and develop as Melbourne's population intensifies, communities change and land becomes more valuable as a scarce resource are both needs recognised by the Yarra PS.

8. These different considerations are reflected in the Design Objectives of the Exhibited DDO which state:

- *To recognise and respond to the distinct character, heritage streetscape and varying development opportunities defined by the five precincts along Queens Parade.*
- *To support a new mid rise character behind a consistent street wall in precincts 2-5.*
- *To ensure development respects the architectural form and qualities of heritage buildings and streetscapes and maintains the visual prominence of the St John the Baptist church belfry and spire, the former ANZ Bank building, the former United Kingdom Hotel and the former Clifton Motors garage.*
- *To ensure new development responds to the grand, tree-lined boulevard character of Queens Parade.*
- *To ensure that the overall scale and form of new buildings provides a suitable transition to low scale residential areas and protects these properties from unreasonable loss of amenity through visual bulk, overlooking and overshadowing.*

9. These considerations have been refined and recalibrated in the Design Objectives of the Preferred DDO which state:

- *To support:*
 - *the existing low-rise character in precincts 1, 4 and part of 5 abutting the former UK Hotel*
 - *a new mid rise character behind a consistent street wall in precincts 2, 3 and part of 5 abutting the former Clifton Motors*
 - *higher rise development in precinct 5, west of Dummett Crescent**while ensuring development responds appropriately to heritage character, heritage streetscapes, sensitive interfaces and varying development opportunities.*
- *To protect the integrity of historical streetscapes and clusters of heritage buildings of a similar scale and materiality by limiting new development.*

- *To ensure development respects the architectural form and qualities of heritage buildings and streetscapes and maintains the visual prominence of the St John the Baptist church belfry and spire, the former ANZ Bank building, the former United Kingdom Hotel and the former Clifton Motors garage.*
 - *To ensure new development respects the wide, open boulevard character of Queens Parade where historic trees remain the dominant visual feature.*
 - *To ensure that the overall scale and form of new buildings provides a suitable transition to low scale residential areas and protects these properties from unreasonable loss of amenity through visual bulk, overlooking and overshadowing.*
10. There is no question that Queens Parade will continue to experience development demand and that Council (as the Responsible Authority) and the Tribunal (on review) will be increasingly required to assess applications responding to clear policy directions to intensify activity centres for commercial and residential activity. It is to be expected that many of these applications will seek to optimise the development potential of the land, notwithstanding the existing heritage overlays over most of the land and the often-constrained nature of the land parcels.³
11. At present, as detailed in the statement of evidence of Ms Ancell, the existing statutory framework for decision making along Queens Parade in the Yarra PS includes heritage overlay provisions, most particularly Clause 43.01 and Clause 22.02, general built form guidance in policy, such as Clause 21.05 and Clause 22.10,⁴ and interim Design and Development Overlays (DDO16 and DDO20) that are set to expire on 12 January 2020.
12. Without a permanent DDO, the Yarra PS does not provide specific guidance for the built form outcomes for Queens Parade or give clear direction on the extent of change the Queens Parade activity centre (as compared to other activity centres in the municipality) is expected to absorb, including in relation to such parameters as street wall, height, setbacks and residential interfaces.
13. At present, other than the interim DDOs, the most specific built form provision is found in Strategy 17.2 in Clause 21.05 which provides:

³ Many parcels are small, narrow and relatively shallow, especially in precincts 1, 3 and 4. See figure 9, Built Form Analysis.

⁴ Clause 22.10 applies to land outside a heritage overlay and accordingly, will be relevant in the assessment of applications in the majority of Precinct 2 and part of Precinct 5 only.

Development within activity centres should generally be no more than 5-6 storeys unless it can be demonstrated that the proposal can achieve specific benefits such as: significant upper level setbacks, architectural design excellence, best practice environmental sustainability objectives in design and construction, high quality restoration and adaptive reuse of heritage buildings, positive contribution to the enhancement of the public domain, provision of affordable housing.

14. Whilst an instructive tool for decision-making, this policy applies across all activity centres within Yarra and does not take into account the size, strategic function and unique characteristics of each centre.
15. *Plan Melbourne 2017-2050*, Policy 2.1.4 directs planning schemes to provide certainty about the scale of growth in the suburbs:

Policy 2.1.4

Provide certainty about the scale of growth in the suburbs

There is a need to provide greater certainty and facilitate long-term growth and housing choice in the right locations.

Local government and the community also need confidence that the built form objectives they sign up to will be adhered to.

The review of residential zones will give greater certainty to the community by strengthening mandatory height provisions and site coverage requirements in each of the residential zones.

In areas where greater change is expected—such as urban renewal precincts and mixed-use and activity centre areas—requirements to adhere to preferred heights will also be strengthened. This will be achieved by improving the way height in strategic locations is managed and decisions are made.

16. Council has responded to this direction from *Plan Melbourne* by undertaking strategic planning work over the last few years for a number of its activity centres including Queens Parade, Johnston Street, Bridge Road, Victoria Street and Swan Street.
17. Of these, Johnston Street formed part of the State Government's *Activity Centre Pilot Program – Better height controls in activity centres (Pilot Program)*. The Pilot Program sought to investigate how planning controls could be improved to better reflect and support strategic work and provide a higher level of clarity and certainty for development in activity centres.

18. The Key Findings of the Pilot Program, released in September 2018, included amendments to Planning Practice Note 60: Height and Setback Controls for Activity Centres (**PPN60**).
19. Relevantly, Plan Melbourne and the Pilot Program recognise that clear, effective and soundly-based building heights and other built form parameters for activity centres, including neighbourhood activity centres, are appropriate.
20. Council submits that the preparation and implementation of specific built form controls to provide certainty and clarity for development along Queens Parade is wholly consistent with the expectations for activity centre planning across metropolitan Melbourne.
21. In assessing DDO15 for Johnston Street proposed by Amendment C220, the Panel found that it was legitimate to set a vision for the Johnston Street Neighbourhood Activity Centre. At page 16, the Panel stated:

The Panel agrees that a legitimate role for planning authority is to set a vision for an area. But this vision cannot be set at a whim, or without strategic justification. In considering whether a vision is appropriate it is important to consider (at least) whether the vision is:

- *capable of delivering a quality public environment*
- *capable of delivering quality private environments considering conventional amenity impacts such as overshadowing and visual bulk*
- *compatible with heritage (or natural) values*
- *neither an overdevelopment nor underdevelopment of the area in terms of local infrastructure capacity: on the one hand it can be serviced, and on the other it makes efficient use of infrastructure and location attributes and is economically viable*
- *appropriate given the metropolitan and local role expected of an area*
- *likely to be robust over time.*

Planning Schemes in Victoria must seek to achieve the objectives of planning in Victoria as set out in Section 4(1) of the Planning and Environment Act 1987. These objectives include:

To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.

Clearly many different types of area deliver on this objective and Victorians enjoy a range of living environments from high-rise central city apartments, through mixed-use areas to leafy suburbs, and beyond into a range of regional options.

Not only should new areas deliver a quality public environment, but new development should also ensure that it does not undermine those elements of adjoining areas that deliver a quality environment to such an extent that particular impacts are unacceptable or that broader impacts negate the community benefit of the development to such an extent that a net community benefit is not achieved.

The fact that some sites in Johnston Street could support increased height and hence provide more housing or commercial floor space and do this without unacceptable conventional amenity impacts is only part of the consideration that needs to be made.

22. The Panel also found that “the application of DDO to an activity centre is common practice. The Panel supports the use of this overlay.”⁵
23. Council submits that, similar to Johnston Street, it is legitimate to set a vision for Queens Parade and to apply a DDO to achieve the vision. Council submits that the body of work supporting this Amendment, most importantly, the Built Form Analysis and Heritage Analysis provides the strategic justification for the Amendment. Subsequent to preparation and exhibition of the Amendment, the further modelling by Ethos Urban provides information which has enabled analysis to support the “preferred DDO” arising from Council’s resolution of 28 May 2019 (**Preferred DDO16**).
24. The Built Form Analysis includes a thorough contextual analysis of policy, heritage values, landscape, subdivision, building heights, recent approvals and the road network; a detailed description of the built form character areas, which forms the basis for delineation into precincts; a series of framework principles and more detailed influences over the built form framework; a determination of levels of anticipated change;⁶ articulation of a preferred future character for each precinct; and the derivation of precinct guidelines accompanied by built form objectives and suggested metrics for various built form elements, supported by sectional analysis, selective model views of possible future development envelopes⁷ and a collection of case studies with commentary and discussion.

⁵ Johnston Street Built Form Controls, Amendment C220, Panel Report dated 22 Feb 2019, page 21.

⁶ These are found mapped and described at figures 16, 17 and 19 and at pages 43, 47 and 55.

⁷ It is appropriate to acknowledge that the only modelled information provided in the Built Form Analysis is two shots in Precinct 3, three shots in Precinct 4 and three shots in Precinct 5. Although the Built Form Analysis and Heritage Analysis were informed by a 3D model, more up to date and comprehensive information was provided in the Ethos Urban 3D model, providing a more sophisticated and informative tool for analysis. Accordingly, a much more substantial body of modelled information has been made available to the Panel through the Ethos Urban modelling.

25. The Heritage Analysis provides relevant planning context; a summary of recent panels supporting DDOs underpinned by heritage character; a commentary on the principles applicable to mandatory controls as they were understood at the time of the report's preparation; a precinct by precinct analysis of heritage values by reference to existing heritage protection, planning controls, key views, significant streetscapes, potential future character considerations. From this analysis are derived recommended built form parameters for each precinct, also informed by a 'working' massing model. Specific built form requirements for height, street wall height, upper level setbacks and heritage interfaces are set out, with an explanatory rationale for each requirement.

IS THERE STRATEGIC JUSTIFICATION FOR THE "PREFERRED DDO"?

26. The key changes between the Exhibited DDO and the Preferred DDO are summarised in the Part A submission. These changes range from minor editing changes to more substantial matters such as lowering mandatory height limits and increasing mandatory upper level setbacks in Precinct 4.
27. These changes to the Exhibited DDO were informed by a number of important factors that occurred after the preparation and/or the exhibition of the Amendment:
- a) **Firstly**, in late September 2018 just before the Amendment was exhibited in October 2018, the *Key Findings of the Activity Centre Pilot Program* was released and Planning Practice Note 60 was amended. Page 25 of the Key Findings Report states:

Revisions to Planning Practice Note 60

The purpose of Planning Practice Note 60: Height and Setback Controls for Activity Centres is to provide guidance on the application of height and setback controls in activity centres.

The findings of the pilot program make no change to the preferred approach regarding height and setback controls in activity centres. That is, discretionary controls, combined with clear design objectives continue to be the preferred form of height and setback controls.

Planning Practice Note 60 details that mandatory height and setback controls will only be considered in 'exceptional circumstances', where they are absolutely necessary to achieve the built form objectives or outcomes identified within a comprehensive built form analysis. 'Exceptional circumstances' include sensitive coastal environments,

significant landscape precincts, significant heritage places, recognised sites of State significance, and helicopter and aeroplane flight paths.

Based on the findings from the pilot program, there is an opportunity to revise Planning Practice Note 60 to outline instances, in addition to the identified exceptional circumstances, where mandatory building height controls can be considered in activity centres subject to the fulfilment of clear criteria.

Councils should have an ability to seek greater certainty through the application of mandatory height controls where they have undertaken contemporary and robust strategic work, subject to significant consultation with allowance for growth and change consistent with state policy. (emphasis added)

- b) **Secondly**, there was an extraordinary community response to the exhibition of the Amendment and as is evident from most of the over 400 submissions, there was a high level of community dissatisfaction with the Exhibited DDO, especially in Precinct 4, and the impact that the proposed controls were perceived to have on the highly valued heritage character of Queens Parade and amenity of adjoining residential properties;
- c) **Thirdly**, 3D modelling by Ethos Urban was undertaken. This comprehensively modelled the exhibited controls across all five Precincts and demonstrated the cumulative impact of the exhibited built form metrics. Relevantly, this form of 3D modelling was considered to be an important tool in understanding the impact of controls for Johnston Street Amendment C220:⁸

The Panel accepts that 3D modelling has its limitations, but those limitations are well understood by experienced practitioners. The massing model cannot be compared with fully designed buildings, but it can be used to compare the relative impact of different metrics in the controls.

The 3D model was an important tool in understanding the impact of the controls and informed the views of most of the witnesses. The Panel commends Council for preparing the model.

While some parties have criticised the reliance on 3D modelling to inform decisions about the metrics of the DDO16, Council submits that in developing built form controls for a large precinct, 3D modelling is very

⁸ Johnston Street Built Form Controls, Amendment C220, Panel Report dated 22 Feb 2019, page 20; see also page ii

informative and useful in testing various scenarios. Council, of course, appreciates that built form with different materials, architectural detailing and variety in building envelopes creates a much more nuanced outcome in practice, but submits that in developing envelopes for the purposes of precinct wide built form controls, use of 3D modelling is both a common and widely accepted tool, regularly used by expert planners and urban designers to illustrate building height and setbacks.

- d) **Fourthly**, Mr Parsons reviewed the 3D modelling and expressed concern to Council that changes were needed to the built form requirements to achieve an acceptable outcome which addressed the built form objectives, particularly in Precincts 3, 4 and 5; and
- e) **Fifthly**, the Panel Report assessing Amendment C220 for Johnston Street Collingwood was published on 22 February 2019.⁹ This Panel Report comprehensively addressed the revised PPN60 and the amendments to the criteria for mandatory controls,¹⁰ and concluded that a balance of discretionary and mandatory controls was appropriate for Johnston Street on the basis of the strategic work that had been undertaken, including 3D modelling by Ethos Urban, and that the specific controls were “absolutely necessary.” The mandatory provisions supported by the Panel related to: street wall height, solar access protection, upper level setbacks and rear interface controls. These were supported for heritage, character and amenity reasons and to provide certainty to the community.

28. Council’s support of the Preferred DDO reflects its thorough review of the submissions, its willingness to consider changes to the exhibited provisions and its

⁹ Council adopted Amendment C220 with some changes on 14 May 2019. Council adopted the majority of the Panel’s recommendations. Amendment C220 has been submitted to the Minister for approval. Council expects a decision on C220 before the end of the year.

¹⁰ Johnston Street Built Form Controls, Amendment C220, Panel Report dated 22 Feb 2019, page 34 the Panel stated:
The ongoing debate about discretionary or mandatory control has sparked the production of a number of practice notes. However, the situation in relation to the Amendment changed with the Minister for Planning’s conditional authorisation of the Amendment which invited consideration of some mandatory controls.

The pilot project Better Height Controls in Activity Centres was completed in 2017 (see Chapter 1.2) and a number of relevant planning practice notes have been modified.

PPN60 has expanded the criteria and discussion on when mandatory building height controls can be considered in activity centres.

proactive approach to testing the provisions through the extensive 3D modelling process.

29. It is submitted that the Preferred DDO arrives at an appropriate balance between the protection of the heritage qualities and character of Queens Parade, the opportunity for development in the activity centre and the protection of residential amenity of surrounding properties.
30. The strategic justification for the Preferred DDO is found in the combination of the Built Form Analysis, the Heritage Analysis and the 3D modelling by Ethos Urban, as well as the supporting documentation, such as the SGS Spatial Economic and Employment Strategy, August 2018 and the Housing Strategy, August 2018¹¹ and the planning scheme provisions outlined in the Part A submission.
31. The strategic justification for the specific requirements of the Amendment, including whether requirements should be mandatory or discretionary is addressed below and through the evidence of Mr Parsons, Mr Gard'ner, Mr Helms and Ms Ancell.

RATIONALE FOR INCLUSION OF HERITAGE DESIGN CONTROLS IN DDO16

32. The Panel has sought an explanation of the rationale for inclusion of heritage design controls in DDO16. The Exhibited DDO16 at Clause 2.3 and the Preferred DDO16 at Clause 2.8 include heritage design requirements.
33. Council's rationale for inclusion of heritage design requirements in DDO16 is four-fold:
 - a) **Firstly**, it is appropriate for a DDO to include heritage objectives and requirements where the character of the area is strongly tied to its heritage fabric. Indeed, there are many examples of DDOs in various planning schemes that include heritage objectives and design requirements, such as:
 - i) DDO62 Bourke Hill, Melbourne Planning Scheme;

¹¹ The Panel in Amendment C220 stated at page ii:

The Panel has been impressed by the extent and nature of council's strategic work underpinning the amendment, including the more recent 3D modelling by Ethos Urban, the SGS Spatial Economic and Employment Study, August 2018 and Council's Housing Strategy, also of August 2018. This strategic work is demonstrably extensive, robust and up to date.

- ii) DDO8 -1 Clarendon Street, Port Phillip Planning Scheme;
 - iii) DDO18 – Sydney Road, Moreland Planning Scheme;
 - iv) DDO6 and DDO48 – Carlton Area, DDO46 – University East and DDO 48 – Central Carlton North, Melbourne Planning Scheme; and
 - v) The proposed DDO15 – Johnston Street, Yarra Planning Scheme;¹²
- b) **Secondly**, in the specific case of Queens Parade, its character is, for the most part, strongly derived from its heritage buildings and treed boulevard. The protection of this character including view-lines to significant buildings, the dominance of the trees and the provision of an appropriate setting for new development behind and beside heritage fabric is an important driver for this Amendment;
- c) **Thirdly**, it addresses a gap in the scheme provisions. Whilst the existing Yarra PS has several controls and policies that address heritage matters such as Clauses 43.01 and 22.02, these policies do not apply to buildings adjacent to but not in a heritage overlay area; and
- d) **Fourthly**, although Clause 22.02 applies to all buildings in a heritage overlay area, it is principally drafted to inform new development, alterations and additions in a residential setting (for example Figures 1, 2 and 3), rather than commercial and industrial buildings, and it does not address elements such as architectural features and glazing, as proposed in the Preferred DDO16.
34. Clause 22.02-5.7.1 provides general direction about new development, alterations and additions, including minimising visibility of new additions by siting them within an envelope defined in Figures 1, 2 and 3. Clause 22.02-5.7.2 provides specific requirements for industrial, commercial and retail places and provides that if there is a conflict or inconsistency between the general and specific requirements, the specific prevail. The specific requirements do not establish an envelope for upper level

¹² The first design objective of the proposed DDO15 is:

To preserve the valued heritage character of the streetscape and ensure that the predominantly two storey (heritage scale) street-wall remains the visually prominent built form of Johnston Street west of the railway line bridge, ensuring that upper levels are visually recessive.

additions but refer to being set back from lower forms with each higher element set further back and treatment to make upper levels less apparent.

35. The clause has consistently been interpreted and applied to allow visible upper level additions, often of a much greater scale than the lower commercial, retail and industrial heritage forms.¹³
36. For example, in *Zak Group Pty Ltd v Yarra CC* [2017] VCAT 1124, the Tribunal considered an application for an additional five levels of office building above a two storey heritage building in Smith Street, Collingwood. In assessing the heritage impacts of the proposal against Clause 22.02, the Tribunal stated at paragraphs 63 - 66:

The relationship between the general and specific requirements of Clause 22.02-5.7, and their application to the proposal, was a particular focus of submissions and evidence. We agree with Mr Rantino that the general and specific requirements should be read together and the general provisions only overridden if there is an inconsistency or conflict with the specific provisions. However, there appears to be a disconnect between the policy and the building typology we are considering. That is probably a result of the drafting of policy to apply to residential buildings, which comprise most of the heritage context of the City of Yarra. Although the general requirements purport to apply to all types of new development, the Figure 2 sightlines all relate to single storey dwellings.

The inclusion of specific requirements for industrial, commercial and retail heritage places seems to acknowledge that additions to such buildings will be different. However, it is questionable whether they are relevant to the type of building we are considering. It is arguable whether the proposal incorporates 'treatments' to make the upper level addition 'less apparent'. It does not have 'each higher element... set further back from lower heritage built forms', unless 'each higher element' is deemed to be a grouping of levels. In that case, Levels 3-6 and Level 7 could be said to be progressively set back. In any case, we agree with Mr Lovell that the requirement does not, or at least should not, call for what is commonly referred to as a 'wedding cake' envelope.

¹³ See for example *Cobild Pty Ltd v Yarra CC* [2017] VCAT 817; cited in *Pace Developments Pty Ltd v Yarra CC* [2017] VCAT 2121. See also the images of development approved at 157-177 Bridge Road, Richmond: *LPD Property Pty Ltd v Yarra CC* Final [2015] VCAT 1824; 172-174 Lennox Street, Richmond: *Rescom QOD Lennox Street Pty Ltd v Yarra CC* [2014] VCAT 92; at 247-259 Johnston Street and 36-40 Stafford Street, Abbotsford: *Pace Development Group Pty Ltd v Yarra CC* [2017] VCAT 1085; at 57-61 Johnston Street, Fitzroy: first application refused at VCAT (*Gurner 57 Johnston Street Developments Pty Ltd v Yarra CC* [2017] VCAT 333); fresh application was made and was settled at a compulsory conference; at 423-425 Smith Street, Fitzroy: *Zak Group Pty Ltd v Yarra CC* [2017] VCAT 1647; at 160-164 Argyle Street, Fitzroy: *Menico Pty Ltd v Yarra CC* [2012] VCAT 1334; at 42-44 Oxford Street, 61-63 Cambridge Street & 16 Langridge Street, Collingwood: first application refused at VCAT (*Langridge and Cambridge Funding Development Pty Ltd v Yarra CC* [2018] VCAT 703); fresh application was made and was settled at a compulsory conference. All of these examples are places in a heritage overlay with additions behind a graded heritage building where there was no expectation that policy required concealment of upper levels.

The specific requirements call for upper level additions 'to respect the scale and form of the existing heritage place by being set back'. That does not mean the addition will necessarily be visually recessive (which is a general requirement). Furthermore, while the provisions of Clause 22.02-5.7 are stated to be 'requirements', they are phrased in terms of encouragement and they are certainly not mandatory or prescriptive. They are policy provisions to guide the exercise of discretion under the permit trigger at Clause 43.01-1. They need to be applied sensibly and in the context of strategic considerations that encourage a building with at least 5-6 storeys in this activity centre location.

Impact on the heritage building

It goes without saying that five levels of built form rising above a two storey heritage building will change the context of the heritage building and will not be in any way concealed. The issue is not about visibility, per se, but whether the addition will adversely affect the significance of the heritage building. That involves a consideration of whether the addition will dominate, overwhelm or distract from the heritage building, such that it diminishes an understanding of its significance.

37. Council notes the evidence of Mr Gard'ner and Mr Helms who both support the inclusion of heritage design requirements in the DDO16, provided there is no duplication or conflicting objectives.¹⁴ Both suggest adjustments to the drafting. Council accepts that the some of the text in the table could be simplified. Council also agrees that specific reference to chimneys should be included in the heritage design requirements.
38. Council does not consider that the heritage design requirements are “over-cluttering” the planning scheme in this case. Council submits that it is very important that heritage design requirements are included in the DDO16 to guide decision-making for commercially-zoned buildings in Queens Parade, at least until such time as Clause 22.02 is amended to more comprehensively address industrial, commercial and retail places.¹⁵

PREFERRED CHARACTER STATEMENTS

39. An important change in the Preferred DDO16 is the introduction of preferred character statements for each precinct. These are intended to guide decision making for each precinct by recognising that each precinct is different, with distinct preferred outcomes.

¹⁴ Statement of evidence of Mr Gard'ner, page 30; statement of evidence of Mr Helms, pages 14 and 15.

¹⁵ As explained above, the process of redrafting the MSS and local policies, in accordance with Amendment VC148 is currently underway and Council is anticipating that an amendment will be exhibited early next year. Clause 22.02 will be redrafted to include more detailed guidelines regarding industrial, commercial and retail premises. GJM has provided advice to Council about appropriate redevelopment parameters for former industrial sites.

40. Whilst Mr Helms comments that the character statements may be repetitive and possibly should be removed,¹⁶ Council submits that they will be very informative and helpful for decision-makers and although they may require some re-drafting, they should remain in the DDO16 provisions.
41. Mr Parsons and Ms Ancell support their inclusion in the DDO16.¹⁷

DRAFTING OF MANDATORY AND DISCRETIONARY CONTROLS

42. The Preferred DDO16 uses the term “must” throughout, with the exception of the overshadowing provisions which use “should”. However, not all provisions are intended to operate as mandatory requirements which cannot be varied.
43. In summary, the mandatory requirements of the Preferred DDO are:
- a) The requirements found in the Precinct Tables in the column “Mandatory requirement” which includes (variously for the different precincts):
 - i) mandatory maximum building height;
 - ii) mandatory maximum street wall height;
 - iii) mandatory maximum street wall setback;
 - iv) mandatory minimum upper level setbacks;
 - b) Precinct 3A: *“maintain views of the belfry and spire of St John’s church and maintain clear sky between the belfry and spire and new development when viewed from the pedestrian refuge on the south-west corner of the intersection with Queens Parade and Smith Street”*; and
 - c) Precinct 4: *“Development must protect and maintain key view lines and visual prominence of the former ANZ Building from the south-west and north-east, in particular to the upper floor, roof form and chimneys.”*
44. In summary, the discretionary requirements of the Preferred DDO are:
- a) The requirements found in the Precinct Tables in the column “Preferred requirement”¹⁸ which includes (variously for the different precincts):
 - i) maximum building height;

¹⁶ Statement of evidence of Mr Helms, pages 14 and 15.

¹⁷ Statements of evidence of Mr Parsons, page 19; statement of evidence of Ms Ancell pages 29-33 in which she assesses each precinct against its preferred character statement.

¹⁸ Noting the error in Table 3 which uses the word “discretionary”. This is to be corrected to “preferred”.

- ii) maximum street wall height;
- iii) maximum street wall setback;
- iv) minimum upper level setbacks;
- v) minimum side setbacks;
- vi) minimum rear or rear setbacks;
- b) Clause 2.3: Street wall requirements;
- c) Clause 2.4 Upper level requirements;
- d) Clause 2.5 Corner site requirements;
- e) Clause 2.6 Ground floor design requirements;
- f) Clause 2.7 Vehicular access, car parking, and loading areas requirements;
- g) Clause 2.8 Heritage design requirements;
- h) All precinct design requirements (except as noted above); and
- i) Application requirements.

45. In preparing the Preferred DDO, Council took legal advice about the appropriate terminology to employ in referring to discretionary requirements. In accordance with advice that consistency with the language of the head clause of 43.02 requires all “requirements” to use the word “must”, this term was used, even in the context of discretionary requirements. Where a provision was intended to operate as a mandatory provision, the words “This requirement cannot be varied with a permit” were added. For example, Clause 2.2 states:

A permit must not be granted or amended (unless the amendment would not increase the extent of non-compliance) to construct a building or construct or carry out works which exceed the mandatory maximum building height, mandatory maximum street wall height, mandatory maximum street wall setback or are less than the mandatory minimum upper level setbacks, mandatory minimum side setbacks or mandatory minimum rear setbacks specified in the relevant Precinct Tables. A permit cannot be granted to vary this requirement.

46. However, in Amendment C220, the Panel recommended a different approach:

The Panel has adopted drafting advice to use ‘must’ for mandatory control and ‘should’ for discretionary controls. In common with a number of recent DDOs the Panel thinks it is

better to specify upfront that for controls expressed with ‘must’, or in the mandatory column of a table, a permit cannot be granted to exceed the control.¹⁹

47. In light of the recommendations of the C220 Panel²⁰ and A Practitioners Guide to Victorian Planning Schemes Version 1.2 August 2019,²¹ and in the interests of clarity for all users, Council is proposing to replace the word “must” with “should” where a discretionary control is intended.

MANDATORY AND DISCRETIONARY CONTROLS

48. Amendment C231 is not unusual in seeking to include a combination of mandatory and discretionary controls to address specific elements of the character of the Queens Parade Activity Centre that it wishes to protect.
49. A host of examples from Darebin,²² Moreland,²³ Boroondara,²⁴ Port Philip,²⁵ Arden Macaulay,²⁶ and even the Capital City,²⁷ demonstrate that a hybrid of mandatory and discretionary controls can be suitable to govern urban development in response to State and local policy for intensification.
50. In Amendment C220, the Panel made the following comments about the provision of mandatory controls in Johnston Street:²⁸

4.3 Discussion

All submitters had ample opportunity to demonstrate how the proposed controls would prevent or frustrate quality design or reasonable development opportunities on their sites. The Panel agrees with Council^[63] that “None has done so”.

The purpose for applying DDO15 to this part of Johnston Street is to provide greater certainty in the face of current and future development pressure and to ensure appropriate built form outcomes for both heritage and non-heritage parts of the street.

¹⁹ Page 77

²⁰ DDO15 for Johnston Street submitted to the Minister uses “should” instead of “must” to designate discretionary provisions.

²¹ See pages 51 and 52.

²² DDO16 and DDO17.

²³ DDO18.

²⁴ DDO16.

²⁵ DDO8.

²⁶ DDO63.

²⁷ DDO2 and DDO10.

²⁸ Page 37.

The Panel acknowledges that there is an expectation from sections of the community for greater certainty in the Scheme regarding future development outcomes, particularly in Council's heritage rich activity centres. Mandatory controls offer an opportunity to provide that certainty, provided the controls are justified. Justification requires:

- *comprehensive strategic work or exceptional circumstance*
- *a judgement that the controls are 'absolutely necessary'.*

DDO15 is underpinned by comprehensive strategic work that meets the requirements of PPN60. In particular this work:

- *Is consistent with state and regional policy – DDO15 proposes a preferred future character for Johnston Street that aligns with the aspirations of Plan Melbourne and state policies.*
- *Is current and takes account of recent trends and approvals, and has been subject to a program of public consultation.*
- *Provides capacity to accommodate growth within Johnston Street consistent with:*
 - *the role of Johnston Street in the broader activity centre network for Yarra*
 - *the location of the centre and its access to services, such as public transport*
 - *potential for redevelopment having regard to urban form, lot sizes and topography*
 - *key sites that can accommodate more intense development when compared with the remainder of the activity centre.*

The Panel is satisfied that the controls are appropriate considering the housing needs of Yarra and the economic development of the street.

The Panel shares Council's faith in the ability of designers to conceive of high quality projects that fit within the proposed mandatory controls. Clearly mandatory controls will affect the amount of development that can be included on a site, but within those limits they do not constrain the creativity of the designer.

The Panel also considers that Johnston Street is exceptional in a metropolitan context. While typical in many ways of strip commercial development associated with Melbourne's cable car and tramway network, Johnston Street did not develop at the same intensity as other inner urban commercial strips. This makes the street more susceptible to development undermining its heritage character.

Chapter 6 considers specific mandatory controls for street wall height, setback and solar protection are necessary as part of the discussion on those elements of DDO15.

51. Similar to Johnston Street, a blanket approach to mandatory controls is not sought for Queens Parade, and as is clear from the evidence of all the relevant witnesses

being called by Council, it is not appropriate for all elements of this Amendment to be mandatory.

52. In summary, mandatory controls in the Preferred DDO16 are sought in the the following precincts for the following reasons:
- a) **Precinct 1** – 460 Brunswick St where there is an individually significant heritage building and low scale heritage properties;
 - b) **Precinct 1** – Lot 1 TP806921 where there is a sensitive interface and where the Victorian Civil and Administrative Tribunal (**VCAT**) determined that a 9m height was appropriate for the site;²⁹
 - c) **Precinct 2A** – where development above the mandatory maximum 31m height would impact on the Queens Parade boulevard trees and interfere with long range views from the Edinburgh Gardens and where the VCAT determined that a 31m height was appropriate for the site;³⁰
 - d) **Precinct 2B** – where the Elizabeth Terraces warrant a sensitive streetscape response;
 - e) **Precinct 3A** – where views and the prominence of the St John’s spire and belfry are to be protected,³¹ where Council seeks to create a consistent street wall and where dwellings in the Neighbourhood Residential Zone directly adjoin to the south and would be impacted by overshadowing and the visual dominance of built form;
 - f) **Precinct 3B** – where there is an intact heritage streetscape and a sensitive NRZ interface;

²⁹ *Gurner 26-56 Queens Parade Pty Ltd v Yarra CC* [2017] VCAT 1745 and *Gurner 26-56 Queens Parade Pty Ltd v Yarra CC* [2018] VCAT 1047.

³⁰ *Ibid.*

³¹ Council recognises that there are discrepancies between the key views to the spire and belfry depicted in the Built Form Analysis, the Heritage Analysis and the exhibited DDO. In cross examination, Mr Gard’ner identified figure 34 as a key view, which is inconsistent with the location selected in the preferred DDO. Council has prepared a summary showing the views from the southeast, southwest and pedestrian refuge of the Queens Parade and Smith Street intersection. The closer the viewer gets to the southwest corner of the intersection, the narrower the gap of sky between the spire and belfry and the preferred DDO envelope; at the southeast corner, no view is available. Council selected the pedestrian refuge as the nominated location to avoid dispute. All of the street wall height, the upper level setback and the overall height in precinct 3A assist to maintain the prominence of the spire and belfry in views from the nominated location.

- g) **Precinct 4** – where there is an intact heritage streetscape and where there is a heritage building listed on the Victorian Heritage Register, with protected view lines;
- h) **Precinct 5A** – where there is a heritage building listed on the Victorian Heritage Register and the views to, and the setting of, the landmark building from Precinct 4 is important; and
- i) **Precinct 5B** – where there is a heritage building listed on the Victorian Heritage Register and an adjoining VHR landmark building and the views to, and the setting of, this landmark building from Precinct 4 is important.

53. Whilst the detail of each control is addressed in the evidence of the relevant witnesses and in submissions below, it is submitted that, in general, there is a sound basis for all mandatory controls in this Amendment.

54. Having regard having regard to Planning Practice Note 60 (**PPN60**), Council draws attention to the amendments to PPN60 last year which expand the criteria included within the practice note as follows:

Mandatory height or setback controls should only be applied where:

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

55. Council submits that all three criteria are met as follows.

Exceptional Circumstances

56. Council maintains that the Queens Parade activity centre warrants mandatory controls based upon exceptional circumstances, these being the heritage qualities of the centre and the sensitive residential abutments.³²

³² See statements of evidence of Mr Gardner, Mr Helms, Mr Parsons and Ms Ancell.

57. In particular, Council submits that the centre is an 'exception' to the norm given the extensive number of heritage buildings, the consistent streetscape in Precinct 4 in particular, the VHR individually significant buildings and the setting of the activity centre along the very wide central boulevard of Queens Parade and the consequential open views available through and between the precincts.
58. The heritage qualities of the Queens Parade are recognised by the existing heritage overlays and the VHR registration of three of the important buildings: the Former ANZ Bank, Former United Kingdom Hotel and Former Clifton Motors building. The Heritage Analysis and statements of evidence of Mr Gard'ner and Mr Helms together with many of the submissions and the evidence of Mr Lewis detail the heritage qualities of Queens Parade.

Robust and comprehensive strategic work

59. As set out in the Part A submission, there should be no doubt that the Council has undertaken robust and comprehensive strategic work in the form of the Built Form Analysis and Heritage Analysis, supported by the Housing Strategy and the SEES. This work has been further tested through the Ethos Urban 3D modelling and the proposed controls amended as a result.
60. This body of work fulfils the criteria outlined in PPN60, namely:
- a) The strategic work is consistent with State and regional policy by seeking to provide for intensification of Queens Parade as an inner city activity centre, whilst reaching a balance with the protection of the heritage character of the centre;
 - b) The Built Form Analysis is up-to-date and has been the subject of extensive consultation through this Amendment process;
 - c) The SGS work prepared by Mr Spencer demonstrates that there is ample capacity in the Queens Parade activity centre and in Yarra's activity centres more generally to accommodate residential demand (and commercial and retail demand) for the 15 year horizon, the 30 year horizon and beyond. This has been addressed through the provisions of the Preferred DDO which provide for two "nodes" of intensive development in Precincts 2 and 5 (as

well as the Gasworks Site which, although not within this Amendment area, is clearly part of the Queens Parade activity centre and is projected to accommodate up to 1100 dwellings)³³ with lower scale form in the heritage sensitive areas.

Absolutely necessary / unacceptable built form outcomes

61. The third dot point at the top of page 3 of the Practice Note, suggests that mandatory controls should only be applied where they are 'absolutely necessary to achieve the preferred built form outcomes' and 'it can be demonstrated that exceeding these development parameters would result in unacceptable built form outcomes'.
62. Whilst a strict reading of these guidelines may suggest that even if a minor variation to a control would be acceptable, then a control should not be mandatory, it is submitted that neither the Practice Note nor this specific criteria should be applied as if they were an inflexible, literal “rule” that must be satisfied *without* exception for *every* property in a precinct. If they were interpreted in this way, there would be no mandatory provisions for precinct-wide controls in any planning scheme.
63. For Queens Parade, it is important to place considerable weight on the benefits of having clear and consistent built form outcomes in this special streetscape where part of the heritage character is created by a general consistency of built form.³⁴
64. In this regard, Precinct 4 in particular, is, to a notable extent, quite uniform in terms of street setbacks, heights, layout and age of buildings. Further, long range views to the streetscape made available by the width of Queens Parade allow for consistency (and inconsistencies) in built form outcomes to be visible and appreciable.³⁵ The mandatory application of controls that achieve a consistency in built form outcome is highly desirable.

³³ The source of the dwelling numbers is the Fitzroy Gasworks Master Plan Design Report (November 2017) which was a background document for Amendment C243 which introduced the DPO for the Gasworks site.

³⁴ Page 20 Heritage Analysis, Statements of evidence Mr Helms (page 16 and 17).

³⁵ Statements of evidence Mr Helms (page 16 and 17).

65. In terms of the individual metrics proposed, Council relies on the evidence of its witnesses, but in broad terms, Council submits that the nomination of mandatory provisions in this case has been carefully considered, and when tested by 3D modelling has led to a conclusion that the design objectives of the DDO will only be achieved through the mandatory controls in the Preferred DDO particularly as they apply to building height, including in response to sensitive residential interfaces, upper level setbacks and street walls along Queens Parade.

THE DETAIL OF THE CONTROLS

66. As well as being satisfied of exceptional circumstances and a body of strategic work to support mandatory controls, the Panel must undertake the more detailed assessment of the quantitative measures proposed and whether they should be mandatory or discretionary.
67. Council has proposed controls that provide for a high degree of protection for the heritage streetscape and sensitive residential interfaces with a higher degree of flexibility in the eastern and western ends of the centre where a much greater level of intensification can occur.
68. This submission addresses the substance of the most important or contentious built form requirements; it does not purport to be an exhaustive assessment of each requirement, or a response to every issue raised. It is to be read in conjunction with the statements of Council's witnesses.
69. Additional matters that arise during submissions and evidence from other parties will be addressed in Part C submissions.

Street wall heights

70. The Amendment proposes mandatory street wall heights in all Precincts with some discretionary provisions in Precincts 1, 2 and 5.
71. The specific mandatory requirement varies between the different precincts but is generally drafted either "to match [or retain] the parapet height of the existing heritage building", as a specified height or height range depending on the surrounding heritage fabric or views, such as 10m in Precinct 2A and for Napier Street in Precinct 2C, 11m or 14m in Precinct 3A and between 8m – 11m in Precinct 4.

72. The controls also include discretionary requirements for street walls in Precincts 1, 2C (excepting Napier Street), 5B (Dummett Crescent) and 5C.
73. The proposed mandatory application of street wall heights where proposed is generally supported by Mr Gard'ner, Mr Helms, Mr Parsons and Ms Ancell and it is submitted, is a fairly well-accepted approach to traditional streetscapes throughout Melbourne.³⁶ For example, in Amendment C220, the Panel recommended that a mandatory street wall height along Johnston Street apply to heritage and non-heritage fabric to achieve the vision for the street,³⁷ namely a consistent street wall height which respects heritage scale and protects solar access to the street.
74. Some changes are recommended by the witnesses as follows:
- a) Mr Gard'ner suggests drafting changes to the provisions to remove the words “retain existing street wall” in Precinct 1, 2A, 3A and 4 as this is a demolition control which is addressed through Clause 43.01 and Clause 22.02.³⁸ Council supports retention of the text in order to meet the design objective of the DDO16 to “protect the integrity of historical streetscapes” and to ensure that the controls holistically guide built form regardless of the level of heritage significance of individual properties.³⁹ Whilst a permit for demolition would be required under Clause 43.01 not the DDO16, it is important that the DDO16 specify the precincts and properties in which the retention of the existing street wall is particularly important.
 - b) Mr Gard'ner also suggests that there is no need for a mandatory street wall to “match” 460 Brunswick Street, provided that the street wall is no higher than 460 Brunswick Street.⁴⁰ Council agrees that the word “match” could be replaced with “must not exceed” to allow for the possibility of a street wall

³⁶ For example DD018, Moreland; DDO16, Boroondara; DDO8 and DDO18, Port Phillip; DDO 10 and 63, Melbourne; DDO15, Yarra.

³⁷ Pages 61-63.

³⁸ Statement of evidence Mr Gard'ner pages 21, 22, 25 and 27.

³⁹ In *Gurner 26-56 Queens Parade Pty Ltd v Yarra CC* [2017] VCAT 1745 and *Gurner 26-56 Queens Parade Pty Ltd v Yarra CC* [2018] VCAT 1047, the Tribunal referred to and relied upon the provision requiring retention of the existing heritage façade in requiring the full extent of the heritage façade to be retained, even though part of it was (erroneously) outside the Heritage Overlay.

⁴⁰ *Ibid*, page 21.

height lower than the existing height of 460 Brunswick Street. This will achieve a respectful relationship with 460 Brunswick Street.

- c) Mr Gard'ner also considers that the reasoning behind the maximum 10m street wall in Precinct 2A is unclear given the preferred requirement in Table 2.⁴¹ Council considers that the mandatory street wall height is appropriate for Precinct 2A given that the site and its development potential were extensively considered by VCAT⁴² and a 10m maximum will ensure a new street wall does not overwhelm the heritage parapet. Council considers that rather than delete the mandatory requirement, the preferred requirement should be deleted as it has no work to do.
- d) In Precinct 2C, Mr Gard'ner⁴³ and Mr Parsons⁴⁴ support the mandatory 10m to Napier Street however Mr Helms⁴⁵ and Ms Ancell⁴⁶ raise the question of how the transition to a preferred 18m street wall on Queens Parade is dealt with. Consistent with the oral evidence of Mr Parsons and Mr Helms, Council submits that the transition between the street wall heights should not occur on Napier Street but on Queens Parade. Clause 2.5 deals with corner sites and should be amended to exclude Precinct 2C.
- e) Mr Gard'ner recommends minor drafting changes to the street wall provisions in Precinct 3A to provide that, rather than match an adjoining heritage street wall, the new street wall should not exceed an adjoining heritage street wall.⁴⁷ Council accepts this recommendation.
- f) In Precinct 3A, Mr Gard'ner⁴⁸ and Mr Parsons⁴⁹ support the mandatory street wall provisions to provide a consistent streetscape to the east (11m), to mark the corner of Smith Street and Queens Parade (14m) and to maintain views to and clear sky around the spire and belfry of St John's. Mr Parsons questions

⁴¹ Statement of evidence of Mr Gard'ner, page 22.

⁴² *Gurner 26-56 Queens Parade Pty Ltd v Yarra CC* [2017] VCAT 1745 and *Gurner 26-56 Queens Parade Pty Ltd v Yarra CC* [2018] VCAT 1047.

⁴³ Statement of evidence of Mr Gard'ner, page 24.

⁴⁴ Statement of evidence of Mr Parsons, page 22.

⁴⁵ Statement of evidence of Mr Helms, page 17.

⁴⁶ Statement of evidence of Ms Ancell, page 30.

⁴⁷ Statement of evidence of Mr Gard'ner, page 25.

⁴⁸ Statement of evidence of Mr Gard'ner, page 25.

⁴⁹ Statement of evidence of Mr Parsons, page 26.

whether the mandatory view protection is necessary in light of the mandatory 11m street wall.⁵⁰ Council submits that the mandatory street wall heights will ensure a consistent street wall when looking north along Queens Parade towards St John’s Church particularly in proximity to the heritage buildings at 35-37 Queens Parade as well as a stepping down in height eastwards to the lower scale NRZ land along Queens Parade. Ms Bell on behalf of Pabas Mad Property Pty Ltd and Tope Lane Pty Ltd also supports a mandatory 11m street wall in Precinct 3A and states at paragraph 53:

I support the introduction of a mandatory street wall height as it will ensure future built form responds appropriately to the existing and preferred street wall character. From my assessment of views to the belfry and spire of St John’s church, I found that restricting the street wall height particularly effective. The 3D modelling below (Figure 9) provided by Yarra City Council demonstrates the 11m street wall height applied to the subject site and demonstrates its appropriateness.

- g) In Precinct 4, all witnesses⁵¹ support a mandatory street wall height between 8 and 11 metres although Mr Gard’ner is concerned that the current drafting allows for a street wall of any height between 8 – 11m without reference to the adjoining heritage parapet.⁵² Council considers that the mandatory requirement should be redrafted to reflect Mr Gard’ner’s concern.
- h) Mr Parsons also considers that in Precinct 4 the mandatory return height of street walls to side streets should be mandatory.⁵³ Council does not agree that this is necessary.
- i) In Precinct 5, the mandatory application of street wall heights to match existing parapets for Precinct 5A (the UK Hotel) and Precinct 5B (for 201-215 Queens Parade) Clifton Motors is supported by Mr Parsons⁵⁴ due to the heritage significance of the buildings. Mr Gard’ner considers it should refer to “eaves” only in Precinct 5A.⁵⁵ Council agrees.

⁵⁰ Statement of evidence of Mr Parsons, page 25.

⁵¹ Statement of evidence of Mr Helms, page 17; statement of evidence of Mr Parsons, page 31.

⁵² Statement of evidence of Mr Gard’ner, page 27.

⁵³ Statement of evidence of Mr Parsons, page 31.

⁵⁴ Statement of evidence of Mr Parsons, page 37.

⁵⁵ Statement of evidence of Mr Gard’ner, page 29.

- j) Mr Gard'ner also contends that the provisions should only apply to land outside the VHR in Precincts 5A and 5B as the statutory discretion for heritage buildings on the VHR lies with the Executive Director of the VHR.⁵⁶ Council does not agree with Mr Gard'ner's opinion on this issue, and submits that:
- i) The DDO16 is intended to be a precinct-wide control that covers more than the heritage significance of an individual building;
 - ii) It is important that a holistic and precinct-wide approach is taken to decision-making in this activity centre, which the application of a DDO ensures but VHR site specific decision making under the Heritage Act does not guarantee;
 - iii) Because precinct objectives include retaining the prominence of the interwar buildings in their wider context and the heritage values of the wider HO330 area include views to the former UK Hotel from within the HO area,⁵⁷ it is important for the planning controls to govern not only adjoining sites but also the VHR sites themselves in order to ensure these precinct objectives are achieved;
 - iv) The mandatory application of street wall heights for buildings on the VHR reinforces the heritage significance of the buildings and ensures development is appropriate in terms of the streetscape and views to these buildings;
 - v) Whilst the application of the DDO16 may result in multiple controls over parcels of land, this is not uncommon under the planning scheme (for example, vegetation removal controls can be found under multiple permit requirements in the planning scheme). Further, the requirement for permission under the *Planning and Environment Act* as well as another Act of Parliament is not uncommon (for example, a liquor licence requires permission under the *Liquor Control Act 1988* and Clause 52.27 of the planning scheme and installation of gaming machines requires

⁵⁶ Statement of evidence of Mr Gard'ner, pages 28 and 29.

⁵⁷ Statement of significance references to the UK Hotel as a "primary foci in the precinct" and a "prominent landmark".

permission under the *Gaming Control Act 1993* and Clause 52.28 of the planning scheme);

- vi) Lastly, the issue of a VHR permit is not required *before* a planning application is made for a development; therefore the DDO controls will ensure that a planning decision is not made in a vacuum before any VHR permit is issued.

75. Most recommendations by the witnesses are minor or drafting matters and in substance the mandatory street walls are supported by all witnesses. Council submits that the mandatory street wall provisions in the Preferred DDO16 meet the criteria of PPN59 as follows:

- a) Are the mandatory provisions strategically supported?

Yes. See above and the evidence of Mr Parsons, Mr Gard'ner and Mr Helms.

- b) The mandatory application of street wall heights achieves the Design Objectives of the DDO16:

- *To support*
 - *the existing low-rise character in precincts 1, 4 and part of 5 abutting the former UK Hotel*
 - *a new mid rise character behind a consistent street wall in Precincts 2, 3 and part of 5 abutting the former Clifton Motors*

- c) Are the mandatory provisions appropriate to the majority of proposals?

Yes. They create consistency in the streetscape and respect the existing heritage fabric.

- d) Do the mandatory provisions provide for the preferred outcome?

The mandatory provisions provide a consistent street wall which is a desirable design objective for an important boulevard with recognised heritage significance.

- e) Will the majority of proposals not in accordance with the mandatory provisions be clearly unacceptable?

Yes. Street walls that do not retain consistency in the streetscape or respect important heritage fabric would undermine the design objectives of DDO16.

- f) Will the mandatory provisions reduce administrative costs?

Yes. They will provide clarity and certainty. In this regard, the application of mandatory requirements for street wall heights to match the street wall of adjacent heritage parapets (such as in Precinct 1 and 3A) removes debate about the issue and provides certainty for the parameters for future development.

Building Heights

76. The mandatory application of building heights across Precincts 1 (460 Brunswick Road and Lot 1 on Title Plan TP806921), 2A, 3A, 3B, 4, 5A and parts of 5B (201-215 Queens Parade) is proposed.
77. In summary, the mandatory heights proposed are as follows:
- a) Precinct 1 (460 Brunswick Road and Lot 1 on Title Plan TP806921) proposes 9m which is supported by all witnesses due to the heritage significance of 460 Brunswick Road and the heritage protected residential setting surrounding Lot 1.⁵⁸
 - b) Precinct 2A is proposed to be 31m which reflects the interim DDO16 provisions for the KG Luke site and informed the grant of a planning permit for a substantial redevelopment of that site.
 - c) Precinct 3A is proposed to be 18m which is supported by all Council's witnesses (although Mr Helms questions whether heritage significance alone warrants the mandatory provision) in order to protect the prominence of the spire and belfry of St John's Church and the amenity of the residential properties to the south.⁵⁹ Ms Bell supports the 18m height but considers that it should be a discretionary requirement.

⁵⁸ Statement of evidence of Mr Gard'ner, page 21; statement of evidence of Mr Helms, page 16; statement of evidence of Mr Parsons, page 19; statement of evidence of Ms Ancell, page 30.

⁵⁹ Statement of evidence of Mr Gard'ner, page 24; statement of evidence of Mr Helms, page 18; statement of evidence of Mr Parsons, page 27 and 30; statement of evidence of Ms Ancell, page 31.

- d) Precinct 3B is proposed to be 14m in order to protect the integrity of the heritage street wall and the amenity of residential properties to the east, having regard to the narrow and shallow lots in the sub precinct. This was supported by the evidence of Mr Helms and Mr Gard'ner.
- e) Precinct 4 is proposed to be 14m in order to respect the consistent low-scale, fine-grain heritage streetscape and to protect the dominance of the ANZ Bank heritage landmark.
- f) Precincts 5A and 5B are 11m and 18m respectively in order to retain the visual prominence of the VHR buildings within the wider precinct and activity centre as a whole.

78. In general terms, mandatory building heights are supported by Council's witnesses as outlined in their respective statements of evidence.

79. The position of Council's witnesses is:

- a) Mr Gard'ner considers that a mandatory building height should not apply to buildings on the VHR (Precincts 5A and 5B).⁶⁰ Mr Helms does not agree.⁶¹ For the reasons set out above, Council submits that the mandatory height control on these properties is necessary to ensure that the precinct as a whole achieves a future character strongly influenced by the valued heritage buildings and provides an appropriate setting.
- b) Mr Parsons considers that the 18m preferred height in Precinct 2B should be made mandatory given its adjacency to a heritage frontage and potential overshadowing of Napier Gardens.⁶² Mr Gard'ner considers that the height should be reduced to a mandatory maximum height of 14m to "*achieve a similar level of concealment to that sought by Clause 22.02-5.7.1*"⁶³ Council considers a 18m preferred height is appropriate given the Commercial 2 zoning of the land, the relative isolation nature of the heritage fabric, its adjacency to a high change

⁶⁰ Statement of evidence of Mr Gard'ner, pages 27 and 30.

⁶¹ Statement of evidence of Mr Helms, pages 18 and 19.

⁶² Statement of evidence of Mr Parsons, page 22.

⁶³ Statement of evidence of Mr Gard'ner, page 23

area and the protection provided to Napier Reserve from overshadowing by the precinct design requirements;

- c) Mr Gard'ner observes that whilst the mandatory height of 14m in Precinct 4 will provide a better heritage outcome than the Exhibited DDO16 as demonstrated through the 3D modelling by Ethos Urban, there are a number of sites in Precinct 4 which are deeper in size (over 40m) and which could support an additional roof-top or penthouse level.⁶⁴ He nonetheless supports a mandatory 14m height as it is appropriate for the overwhelming majority of cases in Precinct 4.

80. Council acknowledges that the proposed mandatory 14m building height for Precincts 3B and 4 was not recommended in the Built Form Analysis or Heritage Analysis and is a material reduction compared to the Exhibited DDO16. It also acknowledges that the proposed mandatory 18m building height for Precinct 3A was exhibited as a preferred control and was not recommended as a mandatory control in the Built Form Analysis or Heritage Analysis.
81. The change was a result of community feedback to the Exhibited DDO16 and extensive 3D modelling by Ethos Urban. The 3D modelling has been highly instructive and has helped inform parties of the impact of the proposed controls.⁶⁵
82. The reduction in height in Precincts 3B and 4 is considered by Council to be a positive outcome of the consultation process, which better achieves the built form balance articulated in the design objectives of the Preferred DDO16:

- To support:
 - the existing low-rise character in precincts 1, 4 and part of 5 abutting the former UK Hotel
 - a new mid rise character behind a consistent street wall in precincts 2, 3 and part of 5 abutting the former Clifton Motors
 - higher rise development in precinct 5, west of Dummett Crescent

⁶⁴ Statement of evidence of Mr Gard'ner, pages 26 and 27.

⁶⁵ Refer to pages ii and 20 of the panel report to Amendment C220 in which the panel commented the 3D modelling was impressive and was an important tool in understanding the impact of the controls and informed the views of most of the witnesses.

while ensuring development responds appropriately to heritage character, heritage streetscapes, sensitive interfaces and varying development opportunities.

- *To protect the integrity of historical streetscapes and clusters of heritage buildings of a similar scale and materiality by limiting new development.*
- *To ensure development respects the architectural form and qualities of heritage buildings and streetscapes and maintains the visual prominence of the St John the Baptist church belfry and spire, the former ANZ Bank building, the former United Kingdom Hotel and the former Clifton Motors garage.*
- *To ensure new development respects the wide, open boulevard character of Queens Parade where historic trees remain the dominant visual feature.*
- *To ensure that the overall scale and form of new buildings provides a suitable transition to low scale residential areas and protects these properties from unreasonable loss of amenity through visual bulk, overlooking and overshadowing.*

83. Council does not support any increase to the mandatory 14m building height in the Preferred DDO16 for Precinct 4 on the basis that:

- a) The 3D modelling demonstrates that height greater than 14m overwhelms the heritage streetscape and the open character of the boulevard;
- b) Consistency in the height of upper level form is highly desirable given the long-range views along Queens Parade;
- c) Consistency in the height of the upper level form will minimise the potential for views of upper level side blank walls;
- d) A preferred building height or a control that allows for structures above the 14m building height will lead to uncertainty about acceptable outcomes and potentially, lengthy and conflicting heritage advice and debate;
- e) The mandatory 14m building height is the maximum height that is appropriate for the majority of sites in Precinct 4; and
- f) The mandatory 14m height limit provides certainty around the amenity expectations of surrounding residential properties.

84. Likewise, Council does not support a reduction in the mandatory height for Precinct 4. In response to submissions and the evidence of Mr Lewis and Mr Holdsworth

that the maximum building height in Precinct 4 should be 3 storeys or 10.5m, Council says:

- a) 14m is sufficient to retain the heritage integrity of the low-scale street wall;
- b) 14m is sufficient to allow for the retention of views to important heritage buildings such as the ANZ bank;
- c) 14m is adequate to retain the setting of the heritage streetscape and the open character of the boulevard;
- d) A lower height is not necessary for amenity impact reasons;
- e) A reduction to 10.5m unreasonably limits the development opportunity for properties along Queens Parade; and
- f) Whilst the Preferred DDO16 would allow for some visible built form behind the street wall, concealment of new building behind the street wall is not directed by existing heritage policy, not the established pattern in Yarra's activity centres generally, not a reasonable outcome in terms of providing limited opportunities for redevelopment and not necessary to protect the heritage values and character of Queens Parade, as the development at 137 Queens Parade (at 4 storeys and 13m with a 6m upper level setback) illustrates. In *Intellect Projects Pty Ltd v Yarra CC* [2012] VCAT 537, the Tribunal refused a proposal for a four-storey building at 137 Queens Parade, Clifton Hill, and stated at paragraphs 21 and 22:

The hotel is an important building within the context of the Queens Parade Heritage Overlay. This is recognised by its classification as 'individually significant'. It is a highly visible structure, and like other corner buildings, has an obvious prominence due to its corner location and the width of Queens Parade, in particular. The upper level, which wraps around the hotel, is not sufficiently recessed to allow this prominence to be retained. It is too close to the Queens Parade frontage, the Gold Street sideage, and the hotel building itself. It needs to be reduced in size and set back further from all these interfaces. This is to minimise the impacts of the built form on the streetscapes, and to ensure that the contribution of the hotel building to the heritage precinct is not compromised.

I am not suggesting that this level will need to be invisible. Indeed this could not be achieved given the width of Queens Parade. I am also not suggesting that a fourth level could not be supported on the land. Its activity centre context makes such a scale a possibility, but the way in which it is achieved must be strongly influenced, by heritage considerations. If a fourth level is to be accommodated on the land, it should

be positioned toward the south-west portion of the site, where it will be well set back from the streets and from the hotel. It needs to have a meaningful recessive appearance and be a genuine minor element of the overall development. As proposed, it is too large. I agree with Mr Lovell that modifying the top level is not something that can be achieved successfully by conditions that require the deletion of selected units. It needs to be approached in a holistic manner that considers not only its presentation to the public realm, but also its integration with the remainder of the development, and the amenity of the dwellings on this level.

85. In terms of the mandatory nature of the 18m height for Precinct 3A, Council submits that this building height achieves an appropriate balance between permitting development behind the street wall (which has varying levels of heritage significance), respecting the prominence of St John's Church and protecting the amenity of properties to the rear. The mandatory provision will ensure that there is certainty and consistency in the built form outcome.
86. Council notes that Ms Bell does not support the mandatory 18m height in Precinct 3A and considers that the heritage and character values do not warrant a mandatory control. Council does not support her view and submits that:
- a) The mandatory building height protects the amenity of properties to the south which are located in the Neighbourhood Residential Zone;
 - b) Clear viewing space to St John's spire and belfry is an important consideration that should not be open to debate in the future, particularly given key views to these elements of the church vary along Queens Parade and Smith Street and the viewing location has already been debated by submitters during this hearing; and
 - c) Consistency and certainty of the building height in Precinct 3A is important as this is a precinct that is likely to experience significant development pressure but is earmarked for moderate not high change.
87. During cross-examination, Mr Gardner agreed that a mandatory 18m maximum height in Precinct 3A was not necessary to protect views of St John's spire and belfry or to retain the visual prominence of St John's Church. However, the modelling shows that at 18m the building envelope sits below the spire and belfry and suggests that a higher building would compete with and displace the prominence of these elements. Moreover, an important factor justifying the proposed mandatory 18m

height in Precinct 3A is the amenity protection for the residents in Hodgkinson Street to the south.

88. This is explained in the evidence of Ms Ancell who states at paragraph 97:⁶⁶

This precinct was exhibited with a preferred height of 18m for the entire precinct, and Council's Preferred DDO16 has a mandatory 18m maximum height for Precinct 3A and a mandatory 14m maximum height for Precinct 3B. For the latter, the height reflects the heritage character of the sub-precinct. For Precinct 3A, the height control seeks to avoid adverse impacts on the Neighbourhood Residential Zoned land to the south. These residential sites and those directly to the south of the southern boundary of Precinct 4 are the most sensitive to visual bulk and overshadowing impacts from developments within from the Queens Parade Activity Centre.

And at paragraph 138:

Precinct 3A includes detailed 3D modelling to consider the impacts on land in the Neighbourhood Residential Zone to the south.

PPN60 refers to the need for Councils to demonstrate that there is sufficient land capacity available to meet forecast demand and projected population growth over at least a 15 years – the proposed controls will still enable a reasonable level of growth.

PPN60 also refers to the need for a comprehensive built form analysis to have been completed to inform the proposed controls. I am satisfied that this has been undertaken.

89. Whilst Ms Ancell was criticised by some parties for her reliance on the expertise of Mr Parsons on urban design matters and Mr Gard'ner and Mr Helms on heritage matters (and Mr Spencer on economics), Council submits this is entirely appropriate given the level of experience of these witnesses and their expertise. Indeed, it is common practice for town planners to defer to and rely upon the evidence of other experts in forming their opinion on the acceptability of a planning proposal, or in this case, a series of planning controls. In this case, it is submitted that it is entirely appropriate for Ms Ancell to rely upon the expertise of Mr Parsons who prepared the 3D modelling and gave advice and evidence about the urban design outcomes and upon the expertise of Mr Gard'ner and Mr Helms who have advised on the heritage impacts of the Amendment.
90. Council notes that the application of mandatory height control to protect the amenity of adjoining residential land abutting a NAC (in circumstances where the land was to

⁶⁶ See also Statement of evidence of Ms Ancell at paragraph 126

be rezoned from C2Z to C1Z) was recognised as an appropriate application of mandatory provisions by the Panel in Amendment C220 which stated at page 53:

In response to concerns about development being too high it is correct that greater scale and intensity of development can be expected on sites in Johnston Street which are rezoned from C2Z to C1Z. The Panel notes that the C1Z purpose no longer refers to intensification but to residential densities complementary to the role and scale of the commercial centre and the expectation of residential development has already been taken into account in JSLAP and the proposed height controls in the DDO15.

The Panel has previously concluded that a mid rise scale is appropriate for Johnston Street given its location and role. The 3D modelling allows for a clear visualisation of the controls proposed, and by extension, an understanding of what higher building form might mean. The Panel is satisfied that (except where noted for Aheron) the heights represent an appropriate level of development.

In respect of mandatory controls the Panel accepts the considered and thoughtful evidence of Mr Barnes. Mandatory maximum building heights are only proposed where sites abut land zoned for residential use. In these cases the maximum heights range between 21 metres and 31 metres (6 and 9 storeys) depending on local conditions, for example, if separated by a laneway or with potential to overshadow residential properties. There is sense in mandatory heights adjacent to these particular residential areas. Council has demonstrated the heights are reasonable, are supported by existing policy and do not prejudice reasonable levels of redevelopment consistent with the future growth and capacity modelling. The Panel accepts the heights are necessary to maintain appropriate interfaces with adjoining land in the context of significant redevelopment.

91. Although the heights mandated in Johnston Street were higher than that proposed for Precinct 3A, most of the Johnston Street interfaces were to land in the GRZ and not to land in the NRZ governed by a heritage overlay.

92. Applying the criteria in PPN59 to the mandatory 14m height for Precincts 3B and 4 Council submits:

a) Is the mandatory provision strategically supported?

Yes. The mandatory height is strategically supported by Mr Helms, Mr Gard'ner (subject to the qualification noted above), Mr Parsons and Ms Ancell.

All these witnesses have viewed the 3D modelling and consider that the 21.5m / 18m mandatory heights in the Exhibited DDO is unacceptable and that the 14m in the Preferred DDO for both Precincts 3B and 4 is a better heritage outcome which more reliably achieves the design objectives of the DDO16.

- b) Is the mandatory provision appropriate to the majority of proposals?

Yes. Having viewed the 3D modelling, all witnesses consider that for the majority of proposals, the 14m is appropriate and would allow for upper level development behind the heritage façade whilst ensuring that the visual prominence and setting of Queens Parade is not unreasonably adversely impacted.

- c) Does the mandatory provision provide for the preferred outcome?

The mandatory provision represents the minimum acceptable position; the 3D modelling demonstrates that building height any higher than 14m will have a detrimental impact on Queens Parade.

- d) Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?

Yes. All witnesses consider that the majority of proposals not in accordance with the 14m height would undermine the design objective of DDO16 including the visual prominence of the heritage street wall, views and the setting of important heritage buildings, and the amenity of adjoining residents particularly to the south and east.

- e) Will the mandatory provision reduce administrative costs?

Yes. They will provide clarity and certainty. In this regard, it is relevant to note that the mandatory building height provisions would resolve the clear difference in opinion as between heritage experts and members of the community.

93. Council submits that the mandatory 18m building height in Precinct 3A meets the criteria of PPN59 as follows:

- a) Are the mandatory provisions strategically supported?

Yes. The evidence of Mr Parsons and Ms Ancell supports the mandatory 18m height on the basis of:

- i) The impact of development on the Neighbourhood Residential Zone to the south; and
 - ii) The retention of the prominence of St John's spire and belfry.
- b) The mandatory application of street wall heights achieves the Design Objectives of the DDO16:
- *To ensure development respects the architectural form and qualities of heritage buildings and streetscapes and maintains the visual prominence of the St John the Baptist Church belfry and spire*
 - *To ensure that the overall scale and form of new buildings provides a suitable transition to low scale residential areas and protects these properties from unreasonable loss of amenity through visual bulk, overlooking and overshadowing.*
- c) Is the mandatory provision appropriate to the majority of proposals?

Yes. The application of a mandatory height limit will ensure that St John's church remains the prominent built form in the Precinct. It will ensure that new development does not compete with or visually dominate St John's church. It will provide consistency and certainty in the built form outcome for properties to the south in the NRZ and ensure an acceptable amenity outcome.

- d) Do the mandatory provisions provide for the preferred outcome?

The mandatory provision will provide for the preferred outcome with regard to the prominence of St John's church and the amenity of the residential interface.

- e) Will the majority of proposals not in accordance with the mandatory provisions be clearly unacceptable?

Yes. Buildings that exceed 18m will challenge the prominence of St John's Church and create an unacceptable impact on properties to the south by way of visual bulk and loss of sky view.

- f) Will the mandatory provisions reduce administrative costs?

Yes. They will provide clarity and certainty. In this regard, the application of mandatory requirements for building height in Precinct 3A removes debate

about the issue, provides unambiguous parameters for future development, and gives certainty for residents in the properties to the south.

94. In Council's submission, the Preferred DDO16 mandatory heights have been carefully considered for all precincts and represent an appropriate balance between the various considerations of heritage, character, amenity and development potential.

Upper Level Setbacks

95. Mandatory minimum 6m upper level setbacks are proposed for Precincts 1 (460 Brunswick Road), 2B, 2C (Napier Street), 3A (15-41 Queens Parade) and 3B.
96. Mandatory minimum 8m upper level setbacks are proposed for Precincts 4 and 5B (201-215 Queens Parade).
97. These proposed mandatory controls are generally supported by all Council's witnesses noting that:
- a) Mr Gardner⁶⁷ and Mr Parsons⁶⁸ consider that a consistent and mandatory 6m setback in Precincts 1 and 3A should be applied regardless of the heritage grading of the existing buildings in order to achieve consistency and a clear visual separation between the street wall and building behind. Council agrees and notes the findings of the Panel in Amendment C220 at page 67:

In urban design terms, the 6 metre setback will retain the 'human scale' of Johnston Street, secure the distinction between the street wall and upper levels and will reduce the potential for overshadowing and adverse wind conditions.

The Panel agrees that in this context a 3 metre setback is unlikely to create a distinct enough street wall.

In urban design terms, whether the setback should be a minimum of 5 metres (Sheppard) or 6 metres (Parsons) is a somewhat arbitrary choice. This doesn't mean a choice should not be made. Some arbitrary choices are important, for example which side of the road to drive on. On balance the Panel prefers a 6 metre setback because:

- *this will better protect heritage buildings*
- *a 6 metre setback fits better with the 45 degree upper level set back requirement – a 5 metre set back would potentially give only 5 metres to fit two additional*

⁶⁷ Statement of evidence of Mr Gardner, pages 22 and 25.

⁶⁸ Statement of evidence of Mr Parsons, pages 19 and 26.

floors within the 45 degree envelope leading to a greater setback at the mid level and hence breaking a consistent mid level street wall.

As noted by Parsons, east of the rail bridge it boils down to a simple set of provisions where sunlight becomes the key influencer.

A mandatory minimum upper level setback of 6 metres is only proposed in heritage overlay areas west of the rail bridge. In this area both sides of the street are in the heritage overlay. Further, within HO324, graded buildings comprise 780 metres out of the total 1,200 metres,[108] with only small sections of the street (the widest being 40 metres) that do not contain heritage buildings. In all cases, the objective is to retain the street wall as the prominent element.

There is a clear justification for a strong second tier of development and the 3D modelling demonstrates that 6 metres gives a greater sense of separation plus a more recessive effect, allowing the street wall to retain its prominence.

The Panel does not agree that less significant sections warrant a different treatment. Less significant areas equally deserve to exhibit the overall urban design outcome: a strong street wall with a distinct setback to the mid level form. It is an urban design outcome as much as a heritage one. The Panel is not persuaded that 6 metres should be discretionary. This would certainly prejudice the idea of a strong urban design frame and could lead to lengthy debates trying to reach no setback with differentiation limited solely to a change of materials. The benefits of certainty should prevail here, and the Panel is confident that design solutions for economically sound development can be achieved by competent architects.

The Panel concludes:

- *the mid level set backs are appropriate*
- *the mandatory mid level setback controls are necessary.*

- b) Mr Parsons considers that a mandatory 6m setback in Precinct 2C should apply across the whole of the precinct.⁶⁹ Council does not agree and submits that a mandatory 6m is only warranted on Napier Street buildings given the Commercial 2 zoning, the isolated nature of the terraces and the greater intensification opportunities and expectations for this precinct, noting that the Gas Works site contemplates upper level setbacks generally in accordance with 8m to a higher street wall of 6 storeys along Queens Parade and Smith Street.⁷⁰

⁶⁹ Statement of evidence of Mr Parsons, page 23.

⁷⁰ DPO16.

- c) Mr Gard'ner is concerned that the 6m upper level setback in Precinct 2B does not retain all the front chimneys and that a mandatory 8m setback is required.⁷¹ Council does not agree and submits that given the Commercial 2 zoning of the land, the Heritage Design Requirements (that are to be amended to specifically refer to chimneys) and the isolated nature of the terraces on Napier Street (not on Queens Parade), an 8m requirement does not need to be mandated
- d) Following review of the 3D modelling of Ethos Urban, there is unanimity amongst Council's witnesses that in Precinct 4, the 8m setback coupled with the maximum building height of 14m is a substantial improvement over the 6m setback and 21.5m building height and that it results in a better urban design and heritage outcome.⁷²
- e) In Precinct 5B, Mr Gard'ner and Mr Parsons consider that the 8m setback along Queens Parade is consistent with Precinct 4 and is therefore appropriate.⁷³ Council submits the 8m setback will protect the heritage significance of the VHR Clifton Motors building and is necessary.
98. Council notes that Ms Bell does not support a mandatory minimum 6m upper level setback in Precinct 3A as she considers that it is unnecessary to achieve the visual prominence of St Johns and that a 4-5m setback would be acceptable. Council does not agree, and submits that the consistency in upper level setback is an important aspect of this precinct. Council notes the comments of the panel in Amendment C220 that recognised the value of a consistent street setback even where the heritage value of the existing buildings varied.⁷⁴
99. Mr Lewis,⁷⁵ Mr Holdsworth⁷⁶ and many submitters consider that a 10m setback is necessary in Precinct 4 to ensure "visibility is minimised". Other submitters and Mr Lewis also consider that for some buildings, the whole of the principal roof should be

⁷¹ Statement of evidence of Mr Gard'ner, pages 23 and 24.

⁷² Statement of evidence of Mr Gard'ner, page 27; statement of evidence of Mr Helms, page 18; statement of evidence of Mr Parsons, page 31; statement of evidence of Ms Ansell, page 31.

⁷³ Statement of evidence of Mr Parsons, page 39.

⁷⁴ Panel Report Amendment C220, page 66.

⁷⁵ Statement of evidence of Mr Lewis, page 13.

⁷⁶ Statement of evidence of Mr Holdsworth, page 10.

retained.⁷⁷ Other submitters⁷⁸ consider that development should not be visible above the street wall height, relying on the current Statement of Significance for HO330 which applies to the shopping strip and states that this section of Queens Parade is significant (amongst other things) “for the picturesque shop-row skyline, visible from across Queens Parade, with its gabled or hipped roof forms and many original chimneys”.

100. Mr Gard’ner, Mr Helms and Mr Parsons do not consider that an increase to the 8m minimum upper level setback is warranted on the basis that:

- a) The 8m setback generally coincides with the depth of the original heritage roofs and if applied, 60% of roofs would be protected without further assessment;⁷⁹
- b) Where the roofs are greater than 8m in depth, the heritage design requirements in the Preferred DDO16 provide a decision-making framework for a case by case assessment;⁸⁰
- c) The roofs of over 10m in depth are generally full-gabled and if retained in their entirety, would prevent development altogether;⁸¹
- d) A 10m setback would create a “gap” for roofs with an 8m heritage roof;⁸²
- e) The 8m setback is sufficient to ensure the visual pre-eminence of the ANZ Bank in Precinct 4;⁸³
- f) There is no need for upper level extensions to be invisible above the street wall and would be inconsistent with Clause 22.02 which requires upper level development to be visually recessive, not invisible;⁸⁴

⁷⁷ Statement of evidence of Mr Lewis, page 13.

⁷⁸ Such as submitters 90, 147, 262.

⁷⁹ Statement of evidence of Mr Parsons, pages 32 and 33.

⁸⁰ Statement of evidence of Mr Parsons, page 33.

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ *ibid.*

⁸⁴ Statement of evidence of Mr Gard’ner, page 37.

- g) The retention of the clear sky silhouette of the parapet line of the shop rows is not critical to retaining the significance of the heritage place;⁸⁵
- h) The 8m setback will protect the heritage integrity of Queens Parade even if new building is visible, but recessive, above the existing street wall;⁸⁶ and
- i) Despite the fact that long range views are available along and across Queens Parade, the provisions ensure that the heritage streetscape remains legible and the heritage values maintained;⁸⁷
- j) Based on a review of document #17 which contains modelled images requested by submitters of 3 storeys and 10m upper level setbacks, all agree that an increase to 10m makes only a marginal difference in the extent of visibility of the upper levels.

101. Applying the criteria in PPN59 to the mandatory upper level setbacks in the Preferred DDO including the recommendations by Council's witnesses that the 6m setback be mandatory for the whole of Precincts 1, 2C and 3A and the 6m setback be increased to 8m setback for Precinct 2B, the following is submitted:

- a) Is the mandatory provision strategically supported?

Yes. See the evidence of Mr Parsons, Mr Gard'ner, Mr Helms and Ms Ancell.

- b) Are the mandatory provisions appropriate to the majority of proposals?

Yes. The mandatory provisions are appropriate to the majority of proposals at 460 Brunswick Street, behind Elizabeth Terrace and on Napier Street, beyond the corner in Precinct 3A, in Smith Street behind the heritage buildings, in all of Precinct 4 and on the Queens Parade frontage of Precinct 5B, to ensure the upper level built form is recessive to heritage fabric or a new street wall, to protect view-lines and to achieve a consistent built form outcome.

- c) Does the mandatory provision provide for the preferred outcome?

⁸⁵ Statement of evidence of Mr Gard'ner, page 33.

⁸⁶ Statement of evidence of Mr Gard'ner, page 33.

⁸⁷ Statement of evidence of Mr Gard'ner, page 35.

The mandatory provisions provide the minimum acceptable position; there are no other preferred outcomes that are supported by Council.

- d) Will the majority of proposals not in accordance with the mandatory provisions be clearly unacceptable?

Yes. A reduced upper level setback in the nominated areas will be clearly unacceptable as demonstrated by the 3D Ethos Urban modelling.

- e) Will the mandatory provision reduce administrative costs?

Yes. They will provide clarity and certainty.

Summary on height, street wall height and upper level setbacks

102. In summary, Council submits that the hybrid mandatory and discretionary provisions proposed in the Preferred DDO16 have been thoughtfully analysed, thoroughly modelled and carefully re-drafted to achieve a built form outcome that meets the design objectives of DDO16.
103. Council accepts that the Exhibited DDO16 did not achieve an acceptable heritage outcome and has responded to the overwhelming community concern.
104. Whilst there are still issues and submissions to be considered in the assessment of the Preferred DDO16, Council submits that the Preferred DDO16 requirements have achieved an appropriate balance.
105. Council notes the changes to the preferred controls in Precinct 5C. These changes reduced the height of the street wall from 35m to 18m, principally to achieve a more pedestrian scale in the street wall and to reduce the significant risk of adverse wind impacts.⁸⁸ Accordingly the extent of upper level setback was reduced from 10m to 6m and the overall height of the building was also dropped to 43m to facilitate a progressive transition across Precinct 5C from the constructed buildings in the west to the application site in the west.

⁸⁸ See document #23, confirming that the proposed street wall of 35m would create undesirable wind effects.

106. Council does not support submissions that require invisibility of upper level form or a further reduced level of built form behind the heritage façade because it is satisfied, supported by the evidence of its witnesses, that the Preferred DDO16, subject to minor changes, achieves the correct balance between retaining the dominance of the heritage street wall, providing for views and prominence of important heritage buildings, creating a consistency in built form outcome, protecting the amenity of surrounding residential properties and allowing for a moderate degree of change in precincts 3 and 4 in this inner city NAC.

Side and Rear Setbacks

107. Whilst not proposed to be mandatory controls, the Preferred DDO16 includes minimum rear setbacks which include ResCode B17 (Precinct 1), a range of requirements in accordance with the interim DDO16 (Precinct 2A), 4.5m from the centre of laneway (Precinct 2B),⁸⁹ modified ResCode Standard B17 (Precincts 3 and 4)⁹⁰ and 4.5m for habitable room windows and 3m for non-habitable room windows measured from a common boundary or the centre line of a laneway (Precincts 2C, 5B and 5C).⁹¹

108. Mr Parsons generally supports the controls subject to:

- a) Precincts 1 and 2A should refer to the modified B17 for consistency across the DDO16;⁹²
- b) The 3m setback in Precincts 2C, 5B and 5C for commercial or non-habitable rooms should be increased to 4.5m and should be mandatory to ensure consistency of alignments between lots and to accommodate a potential change of the use in the future (ie commercial to residential);⁹³
- c) The modified ResCode B17 in Precincts 3 and 4 should be mandatory as the neighbouring residential amenity is a critical issue;⁹⁴ and

⁸⁹ in the Commercial 2 zone.

⁹⁰ adjacent to the NRZ.

⁹¹ in the Mixed Use Zone.

⁹² Statement of evidence of Mr Parsons, pages 19 and 22.

⁹³ Statement of evidence of Mr Parsons, pages 22, 39 and 40.

⁹⁴ Statement of evidence of Mr Parsons, pages 27 and 34.

- d) The B17 *side* setback in Precinct 3A only affects 41 Queens Parade and should be replaced with an 8m height and 45⁰ angle setback to avoid a break in the street facade.⁹⁵
109. Ms Ancell prefers to retain the discretionary nature of the side and rear setback requirements in the Preferred DDO16.⁹⁶ Council agrees and submits that the amenity impact of development on adjoining properties and the internal amenity of new development is frequently assessed by planners who correctly take into account the individual circumstances of each application and site context. Further, the mandatory height limits in Precincts 3 and 4 are in place to ensure the interface conditions are acceptable by limiting the scale of buildings at the residential interface to 5 and 4 storeys respectively.
110. Having regard to criticisms of the inclusion of rear or side setback provisions to address the interface between a DDO area (such as an activity centre) and abutting residential properties, Council submits it is appropriate and desirable to establish a set of parameters based on the individual circumstances of the activity centre, particularly when growth and additional height is encouraged within the DDO area. Council does not consider that the provisions of Clause 58, the C1Z decision guideline references to overshadowing and overlooking in Rescode or the provisions of clause 22.10 provide enough certainty, specificity or protection for residential properties abutting this activity centre given the heights proposed and the existing character of the residential areas surrounding the activity centre.
111. This is not an uncommon approach to the interface conditions of an activity centre noting that many DDOs across Melbourne include such parameters such as:
- a) Design and Development Overlay 10 and 19, Stonnington Planning Scheme;
 - b) Design and Development Overlay 16 and 17, Darebin Planning Scheme; and
 - c) Design and Development 24, Moreland Planning Scheme.

⁹⁵ Statement of evidence of Ms Ancell, page 29.

⁹⁶ Statement of evidence of Ms Ancell, page 44.

112. Relevantly, all of these DDOs include provisions seeking at least a 3m ground level setback for development abutting residentially zoned land in certain circumstances.
113. Whilst Ms Bell does not support the modified B17 envelope, Council submits that given the sensitivity of the residential interfaces, a more generous setback is appropriate – particularly when there is no lane interface between the properties - to provide a visual and physical buffer and to assist in mitigating shadow impacts. The 3m setback in the modified B17 at Figure 2 appropriately provides for this outcome.
114. Given the discretionary nature of the provisions, should the individual property interfaces allow for a lesser setback based on existing site conditions, such as buildings on boundaries, this can be considered at the planning application stage.
115. Finally, with regard to Mr Holdsworth’s opinion that upper level side setbacks are required to protect the amenity and daylight to those properties, Council submits that each individual property and application should be assessed on its own merits and if necessary, a setback can be required as part of the planning approval. However, given the narrowness of sites in Precinct 4 it is reasonable to anticipate that much development will be built to the boundary with primary orientation to the street and rear lane and lightcourts employed to provide daylight to secondary rooms.

ZONE AND HERITAGE OVERLAY CHANGES

116. With regard to the re-zoning of the land within Precinct 3A from Commercial 2 to Commercial 1, Council submits this is consistent with a neighbourhood activity centre and will facilitate the renewal of this area of Queens Parade and Smith Street. The rezoning is consistent with the SEES, retains the historic active frontages and provides scope for commercial and retail uses at ground level with residential development above. Application of an alternative zone such as the Mixed Use zone could result in the totality of the site used for residential purposes, losing the scope for activity at ground level. Commercial activity at ground level is a better match for the Gasworks site which presently proposes live/work units on the Smith Street frontage.
117. The Environmental Audit Overlay is appropriate to provide for residential use.

118. The Minister has made a direction under Section 12(2) (a) that contains the following requirement:

Direction No 1 Potentially Contaminated Land

In preparing an amendment which would have the effect of allowing (whether or not subject to the grant of a permit) potentially contaminated land to be used for a sensitive use, agriculture or public open space, a planning authority must satisfy itself that the environmental conditions of that land are or will be suitable for that use.

119. In this case, Council has employed the EAO to satisfy itself that the environmental conditions of the C2 zoned land will be suitable for a sensitive use. It also sought advice from the EPA in relation to the suitability of the use of the EAO as part of the Amendment and received an affirmative response.
120. The EAO was applied to C2 zoned land proposed for rezoning to C1 in Johnston Street as part of Amendment C220.
121. With regard to the addition of, or changes to, the Heritage Overlay for St John's Church,, 472-484 Napier Street, 26 Queens Parade (KG Luke Factory site) and Raines Reserve, Council relies on the evidence of Mr Gard'ner. Likewise, his evidence supports the various changes to the gradings in Appendix 8.
122. With regard to submissions that additional properties or places should be included within the Amendment area or within HO330, Council relies on the evidence of Mr Gard'ner and submits that the scope of the Amendment is appropriate.
123. In relation to the suggested re-zoning of 245 Gold Street to the NRZ, this change was included in the officer's table of changes in response to submissions and this table was the subject of Council's resolution of 28 May 2019. Nonetheless, this rezoning is not part of the Amendment and has not been exhibited, and so cannot be entertained by the Panel.⁹⁷ Council is willing to progress such a rezoning at a later time.

⁹⁷ For an extensive discussion on the suitability of rezoning which was not part of a exhibited planning scheme amendment, see the C220 Panel Report at section 3.1, page 22-25.

PROPERTIES THAT HAVE BEEN SPECIFIED FOR GRADING CHANGES

124. The properties that have been specified for grading changes are listed in the explanatory report and Part A submission and in the statement of evidence of Mr Gard'ner.
125. The explanation for the changes is included in Mr Gard'ner's evidence and was tested during cross-examination. Council does not consider any amendments to the recommendations of Heritage Analysis are warranted.

LANEWAYS

126. A large number of submissions raise concerns about the laneways at the rear of Queens Parade in terms of traffic impact, safety, pedestrians and bicycle use, emergency vehicle access and the scale of development abutting the laneways.
127. With regard to traffic-related issues, Council engaged Traffix Group to provide a comprehensive assessment of the laneways in terms of access, capacity, safety and the provisions of the DDO16.
128. Ms Dunstan provided evidence to this Panel and considers that:⁹⁸
- a) The level of additional traffic generated by the additional development within Queens Parade can be accommodated by the nearby transport network;
 - b) The use of laneways for access should be encouraged, particularly in order to avoid new access to Queens Parade;
 - c) Although some laneways may be limited to some degree, that does not mean they cannot accommodate some form of additional vehicle access;
 - d) Suitable building setbacks along laneways and additional splays may be necessary to allow for access;
 - e) Not all laneways are suitable for rear access and in those cases, either vehicle access off the service road or a waiver of car parking should be considered;

⁹⁸ Statement of evidence of Ms Dunstan, pages 6-9.

- f) Loading and unloading from the laneways is not possible for almost all of the laneways but this is an acceptable outcome;
- g) Emergency vehicle access is not possible and will need to occur from street frontages. This is an issue for building fire safety assessment at the time of development;⁹⁹ and
- h) The Preferred DDO16 should be amended to include a provision that vehicle access to laneways should be provided “where possible” and that the cumulative traffic and parking assessment accompanying permit applications should include abutting laneways.

129. Figure 2: Summary of recommended laneway changes and Table 15 included in the Traffic Engineering Review dated August 2019 includes six specific recommendations as follows:

- a) Precinct 1: Provide passing area at entrance to laneway off Brunswick Road;
- b) Precinct 2: George St – Alexandra Parade:
 - i) The laneway should be widened to 7m in width by 81- 89 Queens Parade, in accordance with its current planning permit:
 - ii) The bends require 3m x 3m splays.
 - iii) Vehicle access can be granted to Napier Street or the Queens Parade service road.
- c) Precinct 3: Hodgkinson St – dead end:
 - i) Consider allowing 1-5 and 15-35 Queens Parade direct access to Queens Parade.
- d) Precinct 4: Hodgkinson St – Gold St:
 - i) Allow access to Queens Parade service road where appropriate;

⁹⁹ See *Ciullo v Yarra CC* [2016] VCAT 912 paragraphs 23-25 in which the Tribunal held that emergency access requirements sit outside the planning scheme and are a matter for a specialist body.

- ii) Encourage development with little or no car parking;
 - iii) Encourage setbacks at the bends in the laneway to improve vehicle access around the bends.
 - iv) Encourage 3m setbacks at ground floor for new development to provide a functional increase in laneway width and informal passing opportunities.
- e) Precinct 4: Koormiel Lane / Barruth Lane:
- i) Encourage developments of properties fronting Queens Parade to setback at ground floor to the laneway to gradually widen the laneway over time (recognising that these setbacks are likely to be required for vehicle access in any event).
 - ii) Council encourage low parking rates within this area.
- f) Precinct 4: Gold St (east side) – End:
- i) Council encourage low parking rates within this area.
 - ii) Permit 169-171 Queens Parade to have direct access to the service road, in the event that development scale and use of the laneway meant use of the laneway was impractical.
 - iii) If there is a new planning application 141-147 Queen Street (at the entrance to the laneway) consider allowing for a vehicle passing area at the entrance to the laneway and directly vehicle access to be from the laneway.
- g) Precinct 4: Queens Parade – Howe St:
- i) Ensure new developments provide adequate splays at corners of laneways
 - ii) Ensure building setbacks from the laneway are unobstructed to functionally widen the laneway.

130. In accordance with Ms Dunstan’s evidence, it is not appropriate to designate precisely on a map or in text within the DDO the exact location where splays or widenings are necessary or desirable. However, Council proposes to include specific reference to the laneways in the application requirements, the precinct specific design requirements and the general decision guidelines.
131. With regard to submissions that the scale of development will overwhelm the laneways which are an important part of the heritage fabric, Council submits that although laneways are part of the character of the area, the principal heritage fabric is found fronting Queens Parade.¹⁰⁰
132. Further, in terms of the scale of development adjacent to laneways, Council submits that the mandatory heights, together with the application of the discretionary side and rear setback provisions and design requirements in Precincts 1, 2, 3 and 4 will ensure that the amenity of surrounding residential properties is appropriately addressed.
133. In this regard, although the DDO16 will allow for the scale of development along the laneways to be increased, it is an appropriate outcome in an activity centre where intensification of land use is to be expected and encouraged.

CLARITY OF TERMINOLOGY

134. The Panel seeks clarity regarding a number of terms in the DDO provisions. A number of the witnesses also make comments regarding the drafting of the provisions.
135. Whilst many drafting issues have been addressed through the Preferred DDO16 and any further issues identified during the course of the hearing will be addressed at its conclusion in the proposed “drafting session”, the Panel has sought clarification regarding a number of terms. These are addressed below.
136. **Preferred Maximum building heights:** This term is not found in the Preferred DDO16.

¹⁰⁰ Noting that the Queens Parade Statement of Significance does not expressly refer to the rear laneways although they are listed as a contributory element in the North Fitzroy Statement of Significance and in the Clifton Hill Statement of Significance.

137. **Minimum preferred setback:** This term is not found in the Preferred DDO16.
138. **Mandatory minimum:** This term is found three times in Clause 2.2 General Requirements. It is intended to describe the requirements in Tables 1 – 5 which are to be mandatory and which apply minimum setback requirements to upper levels, side setbacks or rear setbacks. A permit cannot be granted to reduce the applicable setbacks stated in the various tables. By specifying a mandatory “minimum”, there is scope to have a greater setback than that mandated by the table.
139. **Maximum:** This term is found numerous times in the DDO, both in the text and in the tables. Where it falls within the “Mandatory requirement” column in the tables, it is the upper-most height that a building or street wall can be built. No permit can be issued to allow a building or street wall to be above this height, noting that a lower building or street wall is permissible. Where it applies to a street wall setback and is in the mandatory column to the table (as in “maximum street wall setback”), a permit cannot be granted for a street wall that is setback further than the specified distance. Where the table nominates a “preferred requirement”, a permit can be issued to vary the maximum height or setback.
140. **Mix of preferred and mandatory:** These two terms are used for built form elements in the tables to designate circumstances where a requirement is preferred but can be varied with a permit and those where a requirement must be met and cannot be departed from.
141. **Preferred:** This term is found three times in Clause 2.2, in all the Tables and in the term “preferred character statement”. It is intended to express a desire for a particular metric to be applied or an outcome to be sought. Where it is found in the tables, it is a discretionary requirement. Where it is found in the text, it is an objective that is seeking an outcome.
142. **Discretionary:** Table 3 mistakenly refers to “discretionary requirement”. This should be amended to say “Preferred requirement” consistent with all other tables.
143. **Storeys:** This is found once in Clause 2.9.5 in the design requirements for Precinct 5C. For consistency, this term should be replaced with a height range.

144. **Mid rise:** This term is found five times in the Preferred DDO16. Whilst it is not defined, it is intended to describe development in Precincts 2 and 3 that fall within the height ranges of 14m – 31m, noting that in Precincts 2B, 2C and 5B, building heights of 18m and 28m respectively are preferred so arguably buildings higher than those heights are permissible. Council considers that further clarification of the scale considered appropriate for each sub-precinct could be provided in the precinct character statements.
145. **Low-rise:** This term is found once in the design objectives of the Preferred DDO16. Whilst it is not defined, it is intended to describe development in Precinct 1, 4 and 5 (5A) which has mandatory and discretionary maximum heights of 9m, 11m and 14m. Again, further clarification of the scale considered appropriate for each precinct could be provided in the precinct character statements.
146. **Low-scale:** This term is not found in the Preferred DDO16.
147. **Wind-effects:** This term is found twice in the Preferred DDO16; in Clause 2.9.5 and Clause 6.0. Whilst it is not defined, it is intended to refer to the impact on the pedestrian experience as a result of building height and design resulting in windy conditions. Council agrees that more specific guidelines regarding wind impact should be included which could refer to safe and comfortable standing, sitting and walking conditions.

STATUS OF REFERENCE DOCUMENTS

148. Council acknowledges that some of the recommendations of the Built Form Analysis and Heritage Analysis have not been strictly implemented as a consequence of subsequent modelling by Ethos Urban. In the circumstances, it is necessary to either update or supplement these documents if they are to be included as reference documents in the Yarra PS or alternatively, not to include them as reference documents.
149. This issue arose in C103, Yarra Ranges Planning Scheme in which there was a significant dispute about the contents of a proposed reference document to be implemented into the planning scheme and a question arose about amendment of the proposed reference document. The planning authority's submissions that the reference document could not be amended were recorded as follows:

Mr Montebello submitted that the Master Plan does not form part of the Planning Scheme however, as a Reference document, it has 'informed', but not dictated, the provisions in the Amendment.

Mr Montebello was of the view that as the Master Plan is a document prepared by consultants it should not be amended. He went on to say that if the Panel had concerns in relation to any matter it could note this in its report or suggest an addendum be prepared to note that the Planning Scheme may differ from the provisions of the Master Plan.

150. In response, the C103 panel said at section 6.4.1:

To avoid on-going debate in relation this matter the Panel is of the opinion that the diagram to Principle Two should be amended to reflect what was in the Consultant's final draft of the Master Plan document.

151. By analogy in this case, the Built Form Analysis could be amended to reflect the draft February 2017 version in relation to Precinct 4 and the mandatory height and setback. Alternatively, the documents could be updated or accompanied by a supplementary statement summarising the analysis from the Ethos Urban modelling or recording that the recommendations have been refined by further modelling and are reflected in the built form requirements of the DDO control.

RESPONSE TO SUBMISSIONS

152. A detailed response to submissions was provided in the Council report of 28 May 2019. In particular, Appendix 7 to the report of 28 May sets out a response to precinct wide issues and precinct specific controls.

153. Relevant submissions have been referred to the witnesses who have addressed the submissions in their evidence.

154. A final response to further submissions made during the Panel hearing will be included in the Part C submissions.

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20 August 2019