



| **Date:** 1 October 2021

Submission on behalf of the Planning Authority
Amendment C280yara to the Yarra Planning Scheme

| **Council's submission: Part B**

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Introduction

1. This submission is made on behalf of Yarra City Council (Council), which is the Planning Authority for Amendment C280yara (Amendment) to the Yarra Planning Scheme (Scheme).
2. The Amendment relates to land at 32-68 Mollison Street, Abbotsford (**Subject Site**) and, broadly speaking, seeks to replace the Incorporated Plan Overlay (Schedule 1) (**IPO1**) and incorporated plan that applies to the Subject Site.
3. On 23 September 2021 Council circulated its Part A submission in accordance with direction 5 of the Panel Directions issued on 7 September 2021 (**Panel Directions**). The Part A submission includes:
 - 3.1 Background to the Amendment;
 - 3.2 Strategic context and assessment;
 - 3.3 Processing the amendment; and
 - 3.4 Overview of issues identified in submissions.
4. Those submissions are adopted for the purposes of this Panel hearing, and taken to be forming part of these submissions.
5. Together with Council's Part A submission, Council circulated the evidence of Ms Leanne Hodyl of Hodyl & Co.
6. AH Meyland Property Ltd, the proponent of the Amendment (**Proponent**), has circulated:
 - 6.1 its preferred version of the incorporated document; and
 - 6.2 the evidence of Ms Julia Bell, Kinetica Studio Pty Ltd.
7. This submission responds to direction 9 of the Panel Directions to set out Council's:
 - 7.1 response to submissions and evidence;
 - 7.2 suggested changes (if any) in response to the Proponent-preferred version of the incorporated document; and
 - 7.3 final position on the Amendment.
8. Council's suggested changes to IPO1 and the incorporated document are set out at **Appendices A and B**, respectively, to these submissions.

General observations

9. As set out in Council's Part A submission, the Amendment will:
- 9.1 increase the allowable building height from 5 storeys (23m) to 7 storeys (32m) for the part of the western part of the Subject Site, while retaining the existing 5 storey limit on the eastern part;
 - 9.2 increase the street wall height from 3 storeys to 4 storeys at the eastern end of the Subject Site;
 - 9.3 increase the upper level setbacks from 2 metres to 3 metres;
 - 9.4 introduce a ground level setback on Little Nicholson Lane to support two-way traffic;
 - 9.5 introduce a requirement for a chamfer at the intersection of Mollison Street and Victoria Crescent;
 - 9.6 introduce a requirement for upper building separation of 6 metres;
 - 9.7 introduce a solar access requirement to the southern footpath on Mollison Street between 10am and 2pm at the September equinox;
 - 9.8 introduce a requirement for a minimum of 80% active frontages to Mollison Street and Victoria Crescent;
 - 9.9 introduce a requirement for materials definition between lower and upper levels of buildings;
 - 9.10 introduce a requirement that car parking is concealed from Victoria Crescent and Mollison Street;
 - 9.11 introduce a requirement for bicycle parking;
 - 9.12 limit vehicle access to Little Nicholson Street and Mollison Street;
 - 9.13 require pedestrian access to be from streets (with primary access from laneways to be avoided); and
 - 9.14 require service cabinets to be appropriately located and integrated with the design of the building where possible.
10. The strategic basis of the Amendment in response to the PPF, relevant Ministerial directions and the *Planning and Environment Act 1987 (Act)* is also explained in Council's Part A submission. That detail is not repeated here, save to note that it is consistent with the following objectives of planning in Victoria:¹
- a) to provide for the fair, orderly, economic and suitable use, and development of the land;
 - ...

¹ Section 4(1) of the Act.

- c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
- d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
- f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);
- ...
- g) to balance the present and future interests of all Victorians.

11. The Amendment furthers those objectives by:

- 11.1 providing greater clarity regarding built form outcomes and expectations. In doing so, the proposed provisions will support more efficient and orderly planning processes;
- 11.2 achieving better built form and public realm outcomes and assisting to improve public safety at local intersections; and
- 11.3 achieving positive social and economic benefits through the facilitation of better built form outcomes, and accommodating office and commercial activity situated near an activity centre that is well served by public transport and other services.

12. Further, the Amendment complies with:

- 12.1 Ministerial Direction – Form and Content of Planning Schemes;
- 12.2 Ministerial Direction No 9 – Metropolitan Planning Strategy;
- 12.3 Ministerial Direction No 11 – Strategic Assessments of Amendments;
- 12.4 Ministerial Direction No 15 – The Planning Scheme Amendment Process; and
- 12.5 A Practitioner’s Guide to Victorian Planning Schemes,

as relevant to the scope and content of this Amendment.

Submissions to the Amendment

13. As summarised in Council’s Part A submissions, eleven submission were received on the Amendment, including:

- 13.1 one neutral submission from submitter #1;
- 13.2 nine objecting submissions from surrounding residents (submitters #2 to #10); and
- 13.3 one submission from the proponent (submitter #11) in support of the Amendment.

14. This Part B submission responds to the common themes or concerns raised in submissions 2 to 10, followed by the property-specific issues raised by submitter #1. Submission #11 is generally supportive of the Amendment, and no response to it is made here.

Building height and loss of character

15. One of the purposes of the Amendment is to increase the allowable building height on the western part of the Subject Site to 7 storeys (32 metres) in Area A, to reflect other allowable heights in the employment area.
16. Many of the submissions raise concerns that a building of up to 7 storeys is too high, and will have adverse effects on amenity and character:
- 16.1 Submitter #2 notes that all neighbouring buildings are no higher than 4 levels,
 - 16.2 Submitters #3, #7, #8, #9 and #10 regard the scale of proposed development out of keeping with the character of the neighbourhood.
 - 16.3 Submitter #6 regards the scale of the contemplated development as offensive, dominating, and inappropriate adjacent to a residential zone.
17. The emerging character of the surrounding area can be seen in the 'Planning Permits and Development Status' summary prepared by Council and circulated on 16 September 2021:
- 17.1 Many of the submitters reside at 61-69 William Street, Abbotsford. Plans for a 4 storey (15.5 metre) development on that site were approved in May 2018.
 - 17.2 To the east of the Subject Site, across Little Nicholson Street, 20-30 Mollison Street is currently being developed to 8 storeys (29.62 metres), set back 5.3 metres from an 11.5 metre high street wall along Nicholson Street.
 - 17.3 To the north of the Subject Site, 12-20 Victoria Crescent is currently being developed to 9 storeys (35 metres) at its western end and 6 storeys (21.5 metres) along Victoria Crescent.
18. Council submits that the proposed height increase is appropriate in that context, while acknowledging this increase warrants additional controls to manage effects on urban design considerations and amenity acknowledging the fact that while the site is zoned Commercial 2, it is directly opposite and area that is zoned residential.
19. The Amendment includes various requirements that will, despite the increased height, provide a better strategy to manage bulk and form than the existing IPO. As summarised in Table 1 of Council's Part A submission, those improvements include:
- 19.1 Differentiation in street wall heights, to break up ground-level building form;
 - 19.2 Increased setbacks above the street wall;
 - 19.3 Ground-level setback from Little Mollison Street;

- 19.4 A requirement for upper level building separation;
 - 19.5 Building at the corner of Mollison Street and Victoria Crescent to be chamfered;
 - 19.6 Requirements for maximum overshadowing;
 - 19.7 Active frontage controls;
 - 19.8 Requirements for façade articulation and for material differentiation between the podium and upper levels;
 - 19.9 Carparking to be moved from the western part of the property to be concealed from street frontages;
 - 19.10 A reduction in vehicle accesses from 4 to 2, and with one moved onto Little Nicholson Street;
 - 19.11 A requirement for primary pedestrian accesses to be from Mollison and/or Victoria Crescent;
 - 19.12 Requirements for the location of service cabinets.
20. While not all of those controls relate specifically to building height, Council considers that the urban design effects of any development, including those relating to building height and bulk, will be better managed under the Amendment than would be possible under the existing IPO.
21. The new IPO control will also continue to give the same level of certainty as the old IPO Schedule and Incorporated Plan did in that the various height provisions continue to be mandatory through the way that the Incorporated Plan operates.

Overshadowing

22. It is clear that a primary concern of the majority of submitters relates to the shadows that will be cast from a 7 storey building:
- 22.1 Submitters #3, #7, #9 and #10 raise similar concerns about loss of light, in addition to loss of views of the sky.
 - 22.2 Submitter #4 requests that the performance measure be amended to refer to the winter solstice.
 - 22.3 Submitters #2, #5, #6 and #8 raise objections relating to shading and amenity.
23. Council also notes that the existing IPO1 does not include any controls specifically in relation to shading effects. In contrast, each of the proposed IPO1 and incorporated plan include a permit requirement that:

A new development must not overshadow the southern footpath of Mollison Street between 10am and 2pm on the 22nd of September.

24. The proposed incorporated plan also includes a requirement that any application for a permit be accompanied by a detailed shadow analysis demonstrating compliance with this permit requirement.
25. Council submits that the Amendment includes appropriate controls on overshadowing effects. These controls are consistent with those Council has imposed in similar circumstances, including Design and Development Overlays 15 (Johnston Street Activity Centre), 17 (Swan Street Activity Centre) and 23 (Collingwood South Mixed Use Precinct).
26. There is no basis in the policy framework of the Planning Scheme or even by reference to the Urban Design Guidelines for Victoria for example, for more stringent requirements (such as, for example, to avoid overshadowing at the winter solstice), which would be unreasonably onerous in an important urban area intended to provide for industrial, commercial and employment activities.
27. For these reasons Council considers the Amendment as proposed by Council will ensure an appropriate level of amenity for neighbouring residents, and will provide increased certainty as to the form and effects of any development that might occur.
28. To the extent that concerns regarding views of the sky are materially different from those regarding overshadowing effects, Council's position is as set out above.

Traffic impacts

29. The following submitters raised concerns relating to traffic and parking issues:
 - 29.1 Submitters #3, #7 and #9 are concerned that increasing development capacity on the subject site by two storeys will worsen congestion and reduce amenity.
 - 29.2 Submitters #6, #8 and #10 object to relocation of traffic from Victoria Crescent onto Mollison Street. Each submitter also raises concerns about the future availability of on-street parking.
 - 29.3 Submitter #4 seeks that Council undertake a safety audit any recommended improvement works, and supports the recommendations of the Urban Design Peer Review for:
 - (a) a pedestrian link should be created between William Street and the existing laneway to the North of the Site; and
 - (b) vehicle access to the subject site to occur off a new service laneway within the site.
 - 29.4 Submitter #4 also seeks a new two-way loop linking Mollison, Little Nicholson, an existing service laneway and a new service laneway within the subject site.
30. Council is satisfied that the traffic impacts of any development can be appropriately managed in the usual way, through the planning permit process, when there is more information about a specific development proposal. There is nothing in the present case

that, in Council's submission, requires additional controls to those that apply more generally, including Clauses 22.07, 22.10 and 22.17.

31. In relation to on-street parking, Council notes that this is something it manages and will continue to manage as the area develops. An on-street parking permit requirement is possible and, if this is required to be imposed, any development on the Subject Site would not be entitled to any such permits.

Architectural and design treatment

32. The following submitters raised concerns relating to architectural and design treatment:
- 32.1 Submitters # 3, #7 and #9 express the view that the architectural and design outcomes sought through the Amendment should be applied without the Amendment. Each submitter also raises a concern about loss of character, and in particular loss of the existing example of the existing saw tooth roof form.
 - 32.2 Submitter #6 seeks that green space be provided along the Mollison Street road frontage of the subject site. Submitter #8 also proposes that the subject site be used as green open space.
 - 32.3 Submitter #8 questions what is meant by 'active frontages', and whether that is synonymous with driveways.
33. Council notes that, as set out in the Hodyl Peer Review report, the existing IPO provides only limited means through which Council can achieve urban design outcomes, as demonstrated by the permit previously granted for the site. The Amendment will result in a significantly better architectural and design outcome.
34. Council does not support additional green space at the ground level along Mollison Street, which would be inconsistent with its commercial and warehouse character.
35. Active frontages are discussed below, in response to the evidence filed.

Property-specific submissions

36. Submitter #1 is the owner of a business located to the north of the subject site, and has expressed the view that they are the owners of "the tunnel at the rear" of the subject site, including the air space above.
37. As set out in Appendix B to Council's Part A submission, Council has been advised by the Proponent that Submitter #1 has an easement over the rear accessway in question, providing access to a nominated RL, and that this access will be incorporated into any new building.

38. Council submits that it is not generally the role of planning authorities under the P&E Act to arbitrate property issues as between private individuals, except where real and significant property issues mean that the grant of a permit (or approval of an amendment) will be futile.²
39. There appears to be nothing in the present circumstances case that come close to raising futility arguments, and so the question of property rights is not relevant, for reasons including that:
- 39.1 the Amendment does not contemplate or provide for any development that is necessarily inconsistent with the property right in question;
 - 39.2 the submission in question is neutral, rather than opposed to the Amendment.

Evidence

40. The only evidence filed has been prepared by:
- 40.1 Ms Leanne Hodyl, on behalf of Council; and
 - 40.2 Ms Julia Bell, on behalf of the Proponent.
41. Rather than addressing each brief of evidence in turn, these submissions address the issues or themes raised in the evidence, including those relating to:
- 41.1 The measurement of maximum height;
 - 41.2 Active frontage requirements;
 - 41.3 Setbacks above the podium;
 - 41.4 A possible extension of William Street into a new service lane off Mollison St.
42. Before dealing with the matters, it is important to acknowledge how the IPO and its associated schedule operate under the planning scheme. Under the IPO parent clause, the operative provision states:

43.03-1
19/01/2006
VC37

Requirement before a permit is granted

A permit must not be granted to use or subdivide land, construct a building or construct or carry out works until an incorporated plan has been incorporated into this scheme.

This does not apply if a schedule to this overlay specifically states that a permit may be granted before an incorporated plan has been incorporated into this scheme.

A permit granted must:

- Be generally in accordance with the incorporated plan, unless a schedule to this overlay specifies otherwise.
- Include any conditions or requirements specified in a schedule to this overlay.

² As discussed in the comments of Senior Member Byard in *Shire of Mount Alexander v Ariss* (1997) 18 AATR 247 at 255-260; and *Port Phillip City Council v Hickey & Ors* [2001] VSC 129. These cases concerned permit applications, but the principles appear similarly applicable to this Amendment.

43. The Amendment puts the required Incorporated Plan in place. So after it is in place, a permit application which is generally in accordance with the incorporated plan is exempt from public notification and participation. This is clear from clause 43.03-2:

43.03-2

31/07/2018
VC148

Exemption from notice and review

An application under any provision of this planning scheme which is generally in accordance with the incorporated plan is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

44. Under the current iteration of Schedule 1 of the IPO, it is very clear that the way the planning control operates is that it is not possible to grant a planning permit which is not generally in accordance with the Incorporated Plan. This is because the schedule does not specify that a permit can be granted where it is not generally in accordance with the Incorporated Plan.

45. At no stage in the process has it ever been suggested or proposed that this methodology be changed. That is to say, as it is under the existing IPO Schedule 1, under the proposed IPO Schedule 1, the height and setback provisions of the Incorporated Plan will continue to be mandatory. We understand this not to be in issue.

46. The only scope for deviation from what is set out in the Incorporated Plan is that limited extent to which an application can be considered to be generally in accordance with the Incorporated Plan.

47. Whether something is generally in accordance with a document like an Incorporated Plan is a question of fact. That much is clear from all of the case law. General accordance does not require specific accordance with. So, if a proposal is not exactly as per the incorporated plan, but is successfully argued to be generally in accordance with it, then third parties are excluded from participation. As noted earlier, there is no scope to consider entertaining a planning permit where it is not generally in accordance with the Incorporated Plan.

48. In the expert evidence of the Proponent, and having regard to some of the changes sought to the planning scheme documents, it has almost at the 11th hour of this Amendment and importantly without any other person or submitter having any foreknowledge of what is proposed, the Proponent has sought to vary the Amendment. They want to remove the reference to the number of stories from the Incorporated Plan.

49. Council strongly opposes this change.

50. The change was not discussed in the progression of the Amendment. The change has never been discussed with the public and the change would result in significant change to what the amendment facilitates in terms of provision of flexible floor layouts and use. We deal with these issues below.

Measurement of maximum height

51. The Proponent’s 2019 request that Council prepare the Amendment was specifically “to have the height that may be permitted on the site increased to seven storeys”.³ While the Proponent also requested that references to storeys be deleted, that same request continued to describe height in both storeys and metres.⁴ At no point did the Proponent raise the possibility that it might seek additional storeys beyond those seven. To the contrary, the Proponent’s expressed intention was to begin design on a seven storey building.⁵

52. The exhibited IPO and incorporated plan each refer to building heights in both metres and storeys. As set out in the Explanatory Report, the purpose of the Amendment was, relevantly, to enable an additional two storeys of development.

53. The Proponent’s submission on the exhibited documents did not request that references to storeys be deleted, and said nothing of any desire to seek additional storeys. Submitters can be taken to have approached this matter on the basis that no more than seven storeys were being sought.

54. In its preferred version of the IPO1 and the incorporated plan, the Proponent resurrected its request that references to storeys be deleted.

55. Ms Bell’s evidence suggests that references to height in storeys should be deleted, so that an additional storey might be constructed in each of Area A and Area B, within the height limits specified in metres.⁶ That additional storey would fit within the 32 metre height specified by the IPO but would come with materially lower floor to ceiling heights for each of the floors than might otherwise be the case.

56. In support of that suggestion, Ms Bell refers to:
 - 56.1 Planning Practice Note 13 (Incorporated and Background documents), which notes the importance of clarity;
 - 56.2 Planning Practice Note 23 (Applying the Incorporated Plan and Development Plan Overlays), which describes an IPO as a flexible tool; and
 - 56.3 Planning Practice Note 60 (Height and Setback Controls for Activity Centres), which says that if height limits are measured in storeys, they should be measured in metres as well;
 - 56.4 examples of other IPOs and DPOs, some of which measure height in metres and storeys, and some of which refer only to meters.

³ Page 1.

⁴ For example at pages 40 and 55.

⁵ At page 52.

⁶ At [12] to [35],

57. While noting the different approaches described above, Ms Bell opines that reference solely to height in metres:

57.1 will accommodate a 4 metre floor-to-floor ground floor retail offering, and “will give clarity on what the primary measure is and more certainty in relation to the eventual built form”;⁷

57.2 “provide flexibility” as to the number of storeys.⁸

58. In contrast, Ms Bell considers that including reference to a maximum number of storeys “will lead to ambiguity in terms of the desired built form outcome”.⁹

59. Council acknowledges that the maximum height as expressed in the exhibited documents could be clarified by making it clear that the height is to be the lesser of the 32 metres or the number of storeys described. This would then be directly consistent with the manner described in the *Practitioner’s Guide to Victoria Planning Schemes*, April 2020.

60. The [Practitioner’s Guide](#) explains a hypothetical requirement:¹⁰

The maximum building height in this precinct should not exceed 21 metres (6 storeys) ... should rather be redrafted as:

Building height should not exceed 21 metres **or** 6 storeys (not including a basement), **whichever is the lesser.** ...

(emphasis added)

61. This is to avoid ambiguity as to whether the height requirements are cumulative or alternatives. Basements should be specifically addressed, because the definition of storeys in the planning scheme includes any basement or built over car parking area.

62. Council supports the change recommended by the Practitioners Guide. Council does not support the deletion of reference to a maximum height expressed in storeys, as well as metres.

63. Acknowledging the review conducted by Ms Bell, there are other more relevant considerations than consistency across all planning provisions.

64. Council notes in [Amendment C190](#) to the Melbourne Planning Scheme, the Panel commented:¹¹

⁷ At [23].

⁸ At [24].

⁹ At [28].

¹⁰ At [6.1.4].

¹¹ Report dated 23 October 2015, page 38.

There is considerable debate about whether heights should be expressed in metres or storeys. Part of the debate stems from the fact that a different floor to ceiling height might be appropriate in different circumstances, depending on use. Where protection of views or the creation of a consistent built edge is required then specification in metres is appropriate. When the issue is one of pedestrian-friendliness or maintaining low scale development, then perhaps specification in storeys is appropriate. **In some cases, it may be necessary to specify both.**

The use of storeys to give the community and designers a visual impression of the height of development that is promoted in each sub-precinct is appropriate.

These height levels are proposed based on character and broad strategic issues, as opposed, to say, the Shrine vista controls that are set on a more precise basis of a view line. Given that the controls are aimed primarily at achieving a character outcome we believe the controls could be expressed in storeys.

65. There is no presumption that a development should be able to construct the maximum number of storeys within an acceptable height measured in metres. To the contrary, where a limit on storeys is appropriate, the corresponding maximum height in metres should be set to enable some flexibility in use and design of the development; not simply to enable additional storeys. In deciding to measure height in both metres and storeys, the Panel considering [Amendment C173](#) to the Stonnington Planning Scheme acknowledged that need to enable variation within each limit, so as to achieve a realistic built form.¹²
66. That is reflected in [Planning Practice Note 60](#), which states that where a height limit refers to both storeys and metres, adequate allowance should be made in the latter for greater floor-to-floor heights to support employment uses where the zoning supports these uses.
67. That approach was adopted by the Panel's decision in relation to [Amendment C323](#) to the Melbourne Planning Scheme, where it decided to measure height in both storeys and metres, with the latter set high enough to enable floor-to-floor heights that would support the uses provided for in the relevant zone.¹³
68. The Commercial 2 Zone, which applies to the Subject Site, provides for a wide range of activities including offices, some manufacturing and industries, retailing and other business and commercial activities. It is important that rather than the number of storeys being maximised, the extent of flexibility be maximised by having taller floor to ceiling heights.
69. Council submits that it is appropriate to refer to both storeys and metres because:

¹² [2013] PPV 105 (20 August 2013) at page 34.

¹³ (PSA) [2019] PPV 67 (16 December 2019) at page 19.

- 69.1 A maximum height expressed in both metres and storeys provides more certainty as to the built form that will result on the site than a reference to metres alone, and certainty is the principal rationale for replacing the IPO in this case.
- 69.2 That increased level of certainty is appropriate in circumstances where 3rd party rights are to be removed upon a finding of general accordance.
- 69.3 The provision of the number of storeys ensures that the floor to ceiling heights in the various levels are generous to enable the accommodation of a broad range of employment activities and not just, for example, office activities.
- 69.4 The height limit in this case is not only to define the line of built form, but also to give the community a fair visual impression of the height of development that is promoted and the scale or intensity of the development that will occur on the site.
- 69.5 This is consistent with the Minister for Planning's conditions on authorisation for preparation of the Amendment, which included a requirement to specify the maximum street wall height in metres as well as storeys.¹⁴
- 69.6 The Proponent's request for the Council to prepare the Amendment sought only the ability to increase the maximum height by two storeys. There has been limited opportunity for Council or submitters to consider the potential impacts of an additional three or more storeys above those allowed under the existing IPO.
70. For these reasons, Council does not support the removal of the reference to storeys. It is not the basis upon which the Amendment was drafted or exhibited and represents a significant change to the Amendment. Council supports retaining references to maximum heights in both storeys and metres whichever is the lesser and with clarification that basement levels are excluded.

Active frontage requirement

71. Table 1 of the exhibited Incorporated Plan includes are requirement for active frontages to a minimum of 80% of the Mollison Street and Victoria Crescent frontage.
72. Ms Bell considers that requirement to be onerous and unnecessary, and supports the proponent's suggestion to reduce this to a 65% minimum, which she considers adequately responsive to the nature and character of the area.¹⁵
73. Ms Hodyl notes that the intent of active frontage controls is to provide active, engaging and safe streets.¹⁶ She also notes that the most common ways of achieving activation (active uses at ground level and full visibility between interior and exterior spaces, along a distance measured as a percentage) may not be the best method in this context. Instead, Ms Hodyl recommends that the requirement for 80% active frontage be replaced with requirement in Table 1 that:

¹⁴ See Part A submissions at [61].

¹⁵ At [37].

¹⁶ Evidence of Ms Hodyl at [28]-[34].

New development should include multiple entrances and building openings along the extent of frontage to Mollison Street and Victoria Crescent. These should be sufficient in number and spacing to provide a high level of passive surveillance along Mollison Street and Victoria Crescent frontages.

74. Council supports the recommendation of Ms Hodyl, which will achieve activation of the street while retaining flexibility as to the means through which this is achieved.

Setbacks above the podium

75. The Subject Site has street frontages along its eastern, southern and western boundaries. Along its northern boundary, the Subject Site adjoins:

75.1 10 and 10A Victoria Crescent, which contain a single storey building; and

75.2 12-18 Victoria Crescent, which is under construction with an office building that is in part 21.5 metres (6 storeys) and part 35 metres (9 storeys).

76. The exhibited Incorporated Plan requires a setback of 3 metres above the street wall and the northern boundary wall.

77. The proponent-preferred version of the Incorporated Plan suggests deletion of the words “and northern boundary wall” from Map 1. Council does not interpret this as a request that the Proponent seeks to remove the requirement for a setback above the street wall on the northern boundary, noting that the yellow dotted line on Map one continues to suggest a setback along the northern boundary, as does the requirement of Table 1. Ms Bell’s evidence for the Proponent is also silent on the question of setbacks above the podium.

78. In case we are wrong on this, and some change to the northern setback is suggested, Council relies on the evidence of Ms Hodyl that setbacks should remain at 3 metres.¹⁷ The setback from the northern boundary, in particular, is required to create adequate building separation at the upper levels.

Proposed new laneway / William Street extension

79. Ms Hodyl’s evidence suggests that a new service lane extending to the north of William Street would reduce visual bulk, provide a carpark entrance, increase outlook from any new buildings, and connect to the existing laneway to the north of the subject site.¹⁸

80. This proposal was considered by Council when preparing the Amendment for exhibition, but not included in the exhibited documents for the reasons that:

¹⁷ See Hodyl Peer review report at [39]-[40] and evidence of Ms Hodyl at [27].

¹⁸ Evidence of Ms Hodyl at [25] and Peer Review report at [27].

- 80.1 Council's internal review suggests that the proposed widening of Little Nicholson Street, to be achieved through this Amendment, will adequately provide for vehicle and pedestrian access.
- 80.2 The Proponent holds an existing permit for development of the Subject Site, which does not require widening of Little Nicholson Street, and was proposing to proceed with Stage 1 of that Permit (including the land adjacent to Little Nicholson Street and to the north of William Street). Securing the Proponent's agreement that it would widen Little Nicholson Street satisfied Council's traffic concerns and provided certainty for the Stage 1 works to commence.
81. Council remains of the view that widening of Little Nicholson Street as described in the Amendment would be a better outcome than would result under the existing IPO, or if the existing permit (PLN17/0679) was exercised. Again, we do not understand this to be in issue.

Separation above the podium

82. The existing permit and existing IPO do not require any building separation above the podium.
83. In her Peer Review Report, Ms Hodyl expressed the view that the building above the podium should be separated into three separate forms.¹⁹ That recommendation was related to Ms Hodyl's proposed new laneway (discussed above), which would create the additional break in building form.
84. As noted above in relation to the possible new laneway, Council understood that the proponent was prepared to act on its existing permit, which would have led to a much inferior urban design outcome. In that event, Council considered that a single separation in the upper floors, rather than two, provided a reasonable outcome for the Subject Site.

Suggested changes to the Proponent-preferred document

85. Council's proposed amendments are recorded in the documents set out in Appendices A and B. Where the Proponent's amendments have been retained, these are acceptable to Council.
86. In addition to the matters addressed in the submissions above, Council makes the following comments on the amendments:
- 86.1 The addition of the word "generally" in each of clause 2 of IPO1 and the incorporated plan, is considered appropriate.
- 86.2 In clause 2 of IPO1, Council agrees with the Proponent that some of the exhibited text is unnecessary, given the matters in question are set out in the objectives of the incorporated plan.

¹⁹ At [55].

- 86.3 In clause 4 of IPO1, Council has deleted the Proponent’s suggested addition of the word “emerging”, which would introduce unnecessary uncertainty as to the nature of the character to be assessed.
- 86.4 In the third objective of the Incorporated Plan, Council does not agree to replace a reference to “opposite footpaths on” with “on the southern side” of Mollison Street, as the amendment would be less certain as to the point of measurement.
- 86.5 In Table 1 of the Incorporated Plan, the maximum street wall height should reference metres and storeys, but does not need to specify “whichever is the lesser”.
- 86.6 Council does not support proposed amendments to the Upper Level building separation requirement, which would remove the exhibited requirement for separation of the fourth storey, for which no reason has been given.
- 86.7 Council does not support proposed amendments to the material definition (podium / lower level and upper levels) requirement, which would diminish the level of guidance to no obvious benefit.

Council’s final position on the Amendment

- 87. For the reasons given above Council continues to support the Amendment, subject to the changes described above and in Appendices A and B.

CONCLUSION

- 88. This completes Council’s opening submissions.
- 89. Council reserves its right to respond to any additional matters raised in submissions and evidence either verbally during the hearing or by way of an addendum submission.

Maddocks.....

Per Terry Montebello
Maddocks Lawyers
Solicitors for the Planning Authority

1 October 2021