

**Collingwood South Mixed Use Precinct  
Draft Yarra Planning Scheme Amendment C293yara**

**Yarra Activity Centres Standing Advisory Committee Report 2**

*Planning and Environment Act 1987*

**19 May 2022**

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*Planning and Environment Act 1987*

Yarra Activity Centres Standing Advisory Committee Report 2 pursuant to section 151 of the PE Act

Collingwood South Mixed Use Precinct

Draft Yarra Planning Scheme Amendment C293yara

**19 May 2022**



John Roney, Chair



Peter Boyle, Member

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## Glossary and abbreviations

Amendment	Draft Yarra Planning Scheme Amendment C293yara
Built Form Framework	<i>Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework</i> , June 2018
Committee	Yarra Activity Centres Standing Advisory Committee
Committee Report 1	Yarra Activity Centres Standing Advisory Committee Report 1 – Overarching Report
Council	Yarra City Council
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
Heritage Analysis Report	<i>Collingwood Mixed Use Pocket Heritage Analysis and Recommendations</i> , June 2018
MUZ	Mixed Use Zone
PE Act	<i>Planning and Environment Act 1987</i>
Plan Melbourne	<i>Plan Melbourne 2017-2050</i>
Precinct	Collingwood South Mixed Use Precinct
Supplementary Heritage Report	<i>Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct</i> , May 2021
Traffic Assessment Report	<i>Traffic Engineering Assessment: Brunswick Street and Smith Street Activity Centres</i> , November 2019
VCAT	Victorian Civil and Administrative Tribunal
VHR	Victorian Heritage Register

## Overview

### Amendment summary

The Amendment	Yarra Planning Scheme Draft Amendment C293yara
Common name	Collingwood South Mixed Use Precinct
Brief description	Draft Amendment C293yara proposes to implement permanent built form provisions to the Collingwood South Mixed Use Precinct through a Design and Development Overlay (DDO23)
Subject land	Land within the Collingwood South Mixed Use Precinct includes portions of Peel Street, Langridge Street, Cambridge Street, Oxford Street, Little Oxford Street, Derby Street, Mason Street and Wellington Street, Collingwood South
Council	Yarra City Council
Planning Authority	Minister for Planning
Authorisation	20 August 2021
Exhibition	14 to 27 September 2021
Submissions	103 submissions

### Committee process

The Committee	John Roney (Chair), Peter Boyle
Supported by	Chris Brennan, Project Officer, Planning Panels Victoria
Directions Hearing	Video conference Directions Hearing 25 February 2022
Committee Hearing	Video conference Hearing 28, 29, 30 March, 1 April 2022
Site inspections	23 March 2022
Parties to the Hearing	Refer to Appendix D
Citation	Yarra Activity Centres (SAC) [2022] PPV
Date of this report	19 May 2022

## Executive summary

Draft Yarra Planning Scheme Amendment C293yara (the Amendment) proposes to implement the recommendations of the following strategic planning work:

- *Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework*, June 2018 (Built Form Framework)
- *Collingwood Mixed Use Pocket Heritage Analysis and Recommendations*, June 2018 (Heritage Analysis Report)
- *Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct*, May 2021 (Supplementary Heritage Report)
- *Traffic Engineering Assessment: Brunswick Street and Smith Street Activity Centres*, November 2019 (Traffic Assessment Report).

The Amendment proposes to insert a new Schedule 23 to the Design and Development Overlay (DDO23) on a permanent basis to apply street wall and overall height controls, as well as setback and other requirements to the land.

The Amendment applies to land within the Collingwood South Mixed Use Precinct (the Precinct) and includes portions of Peel Street, Langridge Street, Cambridge Street, Oxford Street, Little Oxford Street, Derby Street, Mason Street and Wellington Street, Collingwood South.

A total of 103 submissions were received. Key issues raised in submissions include:

- urban consolidation and accommodating growth
- impact of COVID-19
- use of mandatory versus discretionary controls
- the importance of maintaining heritage fabric
- sensitivity of new development to heritage fabric
- the need for more public open space
- traffic and parking issues
- impacts of new development on the public realm
- overshadowing of public open space, footpaths and street trees
- blocking of light and sun
- increased noise
- landscaping within the private and public realm
- wind impacts
- impact of new development on neighbourhood character
- proposed metrics of building heights and setbacks.

The Committee accepts it is appropriate to apply a DDO to the area. The proposed DDO23 will provide specific policy guidance regarding appropriate heights, setbacks and other built form outcomes for the Precinct. This is consistent with the approach adopted in other Activity Centres in Yarra.

The Committee is satisfied that the proposed DDO23 is based on sound strategic planning. Council has completed a range of comprehensive studies regarding urban design, heritage and transport matters and there is a clear link between the provisions in DDO23 and the recommendations in these strategic planning studies.

The reports underpinning the Amendment have been based on contemporary analysis. Where necessary, reports have responded appropriately to the learnings and outcomes from other similar built form processes within Yarra and this has led to the evolution of a generally well-structured set of DDO23 provisions.

The Amendment has adequately considered the impacts of COVID-19, accepting that the impacts of the pandemic are still being understood and future adjustments may be required.

The Committee is satisfied that there is sufficient capacity within the Precinct and the broader Smith Street Activity Centre to facilitate expected residential and employment growth over the next 15 years. The proposed mandatory and preferred building height controls will not inappropriately compromise the future growth of the Precinct.

The Amendment strikes an appropriate balance in facilitating higher density development appropriate to its strategic location and providing built form certainty where there are heritage, amenity and public realm sensitivities.

The Committee is satisfied the Amendment is consistent with the principles of net community benefit and sustainable development.

The Committee concludes:

#### **Mandatory provisions**

- The mandatory provisions for specified building heights, street wall heights and setbacks, upper level setbacks and shadowing of specified footpaths are justified and supported.
- The mandatory provision regarding building separation, amenity and equitable development should be modified to a discretionary requirement.
- Clauses regarding 'Street wall height and front setback requirements' and 'Building height requirements' should be redrafted to clarify the application of discretionary and preferred requirements.

#### **Criteria for varying discretionary maximum building heights**

- There should be a nexus between criteria to exceed the preferred maximum building height and built form outcomes.
- The following criteria do not relate to built form outcomes:
  - the proposal will achieve each of the following:
    - excellence for environmentally sustainable design measured as a minimum BESS project score of 70%
    - provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms in excess of the requirements of Clause 52.34
  - where the proposal includes dwellings, it also achieves each of the following:
    - housing for diverse households types, including people with disability, older persons, and families, through the inclusion of varying dwelling sizes and configurations
    - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and/or 58 as relevant
    - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and/or 58, as relevant.
- Criteria regarding environmentally sustainable design, end of trip facilities, dwelling types and open space do not help to implement the objectives and other provisions in DDO23.
- Although these criteria may have merit to the extent that they are seeking good planning outcomes, they do not directly relate to built form outcomes resulting from a building that exceeds a preferred maximum building height.

## **Heritage**

- Council has completed extensive heritage analysis of the Precinct and this has been effectively translated into the exhibited DDO23.
- The exhibited DDO23 includes a comprehensive suite of objectives and specific requirements that appropriately manage built form outcomes that consider heritage issues.

## **Infrastructure capacity**

- The Amendment adequately protects the amenity of existing areas of public open space.
- The creation of additional areas of public open space is beyond the scope of the Amendment.
- The Amendment has appropriately considered a wide range of traffic and access issues associated with the further development of the Precinct.
- The DDO23 provisions to manage access and movement are generally appropriate.
- The construction of transport infrastructure is beyond the scope of the Amendment.

## **DDO23 requirements**

### **Design objectives**

- The 'Design objectives' are based on sound strategic planning and are appropriate, subject to a minor wording change to the second design objective.

### **Street wall height and front setback requirements**

- The street wall heights and front setback requirements are justified and appropriate.
- The street wall height metrics are appropriate except that the preferred maximum street wall height for land on the east side of the Oxford Street Reserve should be reduced from 14 metres to 11 metres.

### **Upper level setback requirements**

- The minimum metric requirements for upper level setbacks are appropriate.
- It is appropriate to include the land bound by the Oxford Street Reserve, Langridge, Cambridge and Derby Streets within 'Area 3'.
- The land shown on Map 1 as Area 1 and Area 2 should be combined to form 'Area A'.
- The land shown on Map 1 as Area 3 should be renamed 'Area B'.
- References in Clause 4.2 to Areas 1, 2 and 3 should be modified to Areas A and B.
- The drafting of Clause 4.2 should be modified to clearly distinguish the provisions applying to heritage and non-heritage buildings and to improve the clarity and intent of the provisions.

### **Building height requirements**

- The exhibited mandatory and preferred maximum building heights are justified and appropriate.
- The land bound by Oxford Street Reserve, Langridge, Cambridge and Derby Streets should have a preferred maximum building height of 27 metres.
- 23-31 Derby Street should have a preferred maximum building height of 20 metres.
- 64-66 Oxford Street should have a preferred maximum building height of 14 metres.
- The building height exemptions for 'architectural features' and 'service equipment' should relate to mandatory and preferred maximum building heights.

- It is appropriate to clarify that the term ‘architectural features’ does not include ‘service equipment or structures’.
- The exemption regarding service equipment is not discretionary.
- It is appropriate for service equipment and structures to exceed the mandatory or preferred maximum building heights provided that the equipment or structures are no higher than 2.6 metres above the maximum height and that a lift over-run can be adequately constructed within this dimension.

#### **Overshadowing and solar access requirements**

- The measure for shadowing should be at the equinox (22 September).
- The changes to the requirements for shadowing of public open space suggested by Council are supported because they improve the clarity and certainty of the provisions.
- The Peel Street Park should not be included in the list of open spaces to be protected by shadowing controls as part of this Amendment.
- The front yards of the properties on the south side of Mason Street do not require specific protection from shadowing as part of DDO23.

#### **Other design requirements**

- It is appropriate to include additional requirements regarding:
  - adaptable building structures, layouts and non-residential unit sizes on lower levels of buildings to allow for a variety of uses over time
  - landscaping.
- A variety of drafting changes should be made to several requirements to improve their clarity and intent.

#### **Access, parking and loading bay requirements**

- The access loading and parking bay requirements are generally acceptable.
- The requirement regarding ‘laneway headroom clearance’ should be reworded to improve its clarity and intent.

#### **Drafting issues**

- A range of minor drafting changes should be made to the text and Map 1 in DDO23 to improve the clarity and intent of the requirements.

#### **Background documents**

- The proposed Reference Documents should be located within Clause 21.11.
- Following implementation of the Planning Policy Framework translation the proposed Reference documents should be included in the Schedule to Clause 72.08 (Background documents).

#### **Amendment process**

- It is appropriate to progress Draft Amendment C293yara subject to the changes recommended by the Committee in accordance with section 20(4) of the *Planning and Environment Act 1987*.

#### **Recommendations**

Based on the reasons set out in this Report, the Committee recommends that Draft Yarra Planning Scheme Amendment C293yara be approved as exhibited subject to the following:

1. Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to:
  - a) replace the word 'must' with the word 'should' in the second paragraph of the 'Building separation, amenity and equitable development requirements'
  - b) to clarify the application of mandatory and preferred maximum street wall heights and mandatory and preferred maximum building heights
  - c) delete after the words *"the proposal will achieve each of the following:"*:
    - *"excellence for environmentally sustainable design measured as a minimum BESS project score of 70%"*
    - *"provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms in excess of the requirements of Clause 52.34"*
  - d) delete the words *"where a proposal includes dwellings, it also achieves each of the following:"*
    - *housing for diverse households types, including people with disability, older persons, and families, through the inclusion of varying dwelling sizes and configurations*
    - *accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and/or 58 as relevant*
    - *communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and/or 58, as relevant."*
  - e) to refer to 'low-rise to mid-rise' in the second design objective
  - f) to change Map 1 to show the preferred maximum street wall height for the land abutting the east side of the Oxford Street Reserve with a street wall height of 11 metres
  - g) to show on Map 1:
    - Area 1 and Area 2 combined to form Area A
    - Area 3 renamed Area B.
  - h) to clearly distinguish the upper level setback requirements applying to heritage and non-heritage buildings and to improve the clarity and intent of the provisions
  - i) modify 'Building height requirements' to state:
    - a) *"Architectural features (except service equipment or structures) may exceed the mandatory or preferred maximum building height."*
    - b) *"Service equipment and/or structures ... may exceed the mandatory or preferred maximum building height provided that: ..."*
  - j) to state *"Development should not increase the amount of overshadowing as caused by existing conditions measured between 10am and 2pm on 22 September for the following areas of open space and/or public realm: ..."*
  - k) to include an additional dot point that requires lower levels of development should *"incorporate adaptable building structures, layouts and non-residential unit sizes so as to allow for a variety of uses over time"*
  - l) to include an additional requirement that *"Development should provide for landscaping that provides a positive contribution to the public realm such as canopy trees where possible, green walls or planter boxes"*
  - m) to include a range of minor drafting changes to improve the clarity and intent of the 'Other design requirements'

- n) to modify the second last requirement to state *“Where a ground level setback is provided to achieve practicable vehicle access to a laneway, a minimum headroom clearance of 3.6 metres should be provided to any overhang of the first floor”*
  - o) include a range of drafting changes to improve the clarity and intent of some requirements.
  - p) show in Map 1:
    - greater differentiation between colours and consideration of other cartographic tools to improve the map’s legibility
    - reference to ‘Preferred maximum building heights’, ‘Mandatory maximum building heights’ and ‘Mandatory maximum street wall heights’ in the legend headings and text
    - the name ‘Little Oxford Street’ on the map
    - ‘Public Open Space’ on the legend
    - the extension of the Cambridge Street Reserve in a different colour green to ‘Public Open Space’ and adding ‘Potential future open space under investigation’ to the legend.
13. Following the implementation of the Planning Policy Framework translation process, the following documents should be included in the Schedule to Clause 72.08 (Background documents):
- a) *Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework, 2018*
  - b) *Collingwood Mixed Use Pocket Heritage Analysis and Recommendations, 2018*
  - c) *Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct, 2021.*
14. Draft Amendment C293yara should proceed subject to the changes recommended by the Committee without further notice and in accordance with section 20(4) of the *Planning and Environment Act 1987*.

# 1 Introduction

This Report must be read in conjunction with the *Yarra Activity Centres Standing Advisory Committee Report 1 – Overarching Report* (Committee Report 1).

## 1.1 Referral to the Committee

- 10 June 2021      The Minister for Planning appointed the Yarra Activity Centres Standing Advisory Committee (the Committee) to advise on referred planning matters and associated draft Yarra Planning Scheme provisions for activity centres and other areas of urban change. The Minister released Terms of Reference for the operation of the Committee. Further details are provided in Committee Report 1.
- 23 December 2021      Council wrote to the Minister for Planning to request that draft Amendment C293yara be referred to the Committee in accordance with the Terms of Reference.
- 6 February 2022      The Minister for Planning referred the draft amendment to the Committee. A copy of the letter of referral is included in Appendix A.

The letter of referral dated 6 February 2022 deals with draft Yarra Planning Scheme Amendments C291yara and C293yara.

At the Directions Hearing, officers from the Department of Environment, Land, Water and Planning (DELWP) clarified to the Committee that some aspects of the letter of referral did not apply to draft Amendment C293yara. These matters included:

- consideration of whether mandatory provisions on all properties on the south side of Victoria Street between Church Street and Johnson Street (DDO50) are strategically justified
- consideration of the following criteria to vary discretionary height controls:
  - referral to a design review panel
  - housing affordability.

These matters are to be addressed by the Committee considering draft Amendment C291yara.

Regarding draft Amendment C293yara, the Committee has considered the Terms of Reference and the matters in the letter of referral except as noted above.

## 1.2 Draft Amendment

### (i) Amendment description

Draft Yarra Planning Scheme Amendment C293yara (the Amendment) proposes to implement the recommendations of the following strategic planning work:

- *Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework*, June 2018 (Built Form Framework)
- *Collingwood Mixed Use Pocket Heritage Analysis and Recommendations*, June 2018 (Heritage Analysis Report)

- *Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct, May 2021* (Supplementary Heritage Report)
- *Traffic Engineering Assessment: Brunswick Street and Smith Street Activity Centres, November 2019* (Traffic Assessment Report).

Specifically, the Amendment proposes to:

- insert a new Schedule 23 to the Design and Development Overlay (DDO23) on a permanent basis to apply street wall and overall height controls, as well as setback and other requirements to the land
- amend Clause 21.11 (Reference Documents) to include the *Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework 2018, Collingwood Mixed Use Pocket Heritage Analysis and Recommendations 2018* and *Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct, 2021* as Reference Documents in the Planning Scheme
- amend Planning Scheme Map (Number 6 DDO) to remove the rear of the property at 32 Smith Street, Collingwood from DDO23
- amend Planning Scheme Map (Number 6 DDO) to remove Schedule 2 to the Design and Development Overlay from the western side of Wellington Street where the new DDO23 would apply.

Interim Design and Development Overlay Schedule 23 (interim DDO23) currently applies to the Collingwood South Mixed Use Precinct. The proposed DDO23 replaces the interim DDO23.

## **(ii) The subject land**

The Amendment applies to land within the Collingwood South Mixed Use Precinct (the Precinct) and includes portions of Peel Street, Langridge Street, Cambridge Street, Oxford Street, Little Oxford Street, Derby Street, Mason Street and Wellington Street, Collingwood South.

The Precinct forms part of a larger mixed use area that extends to Little Wellington Street to the north, however the northern portion of the area (generally between Peel Street and Little Wellington Street) comprises land covered by the Foy and Gibson heritage precinct and is not included in the Amendment.

The land subject to the Amendment is a robust and diverse inner urban area. Its urban fabric reflects its various phases of development, which has resulted in a very mixed built form character and varied land uses. A large proportion of the Precinct is of heritage significance which is typically defined by a finer grain residential and small-scale commercial fabric. Pockets of taller development are outside the Heritage Overlay. The street network is relatively permeable.

There is a fall across the site of approximately 15 metres from Smith Street to Wellington Street.

There are three small pocket parks within the Precinct including:

- the Peel Street Park on the corner of Peel Street and Oxford Street
- the Cambridge Street Reserve on Cambridge Street
- the Oxford Street Reserve between Langridge Street and Derby Street.

A walkway at the southern end of Oxford Street connects Mason Street to Victoria Parade.

The Amendment applies to land shown in Figure 1.

Figure 1 Subject land



Source: Explanatory Report

## 1.3 Background

### (i) Context

The Explanatory Report accompanying the Amendment states:

Draft Amendment C293yara is required to manage and respond to increased development activity in the Collingwood South Mixed Use Precinct.

The scale and density of development approved and currently being proposed within the area has increased substantially in recent years. In November 2018, the Minister for Planning approved Amendment C250 to the Yarra Planning Scheme to apply interim built form controls to the area. These interim controls have been used to manage development while permanent controls were progressed. Amendment C251yara introduced interim heritage overlays (HO) to the area and under C245yara these interim HOs were made permanent.

The Collingwood South Mixed-Use Precinct is part of Smith Street Major Activity Centre which has been identified as an area suitable for further development and housing growth as per Plan Melbourne 2017- 2050 and Council's Housing Strategy.

To ensure appropriate and orderly planning, these interim built form controls have been revised to better facilitate and guide the scale, massing and bulk of new development. Amongst other things, permanent built form planning controls would ensure that new development appropriately considers the impacts on the heritage qualities, streetscapes, public realm and amenity within the area.

## **(ii) Chronology of events**

Council provided a detailed chronology of events associated with the Amendment. This is reproduced in Appendix B.

## **(iii) Interim DDO23**

Amendment C250yara was gazetted by the Minister for Planning (with changes) on 22 November 2018. It inserted interim DDO23 into the Planning Scheme, applying a mix of mandatory and discretionary height, street wall height and setback requirements to land in the Precinct.

Interim DDO23 was informed by:

- the Built Form Framework
- the Heritage Analysis Report.

Interim DDO23 was not exhibited and has been extended multiple times through various further amendments (described in Appendix B) and is due to expire on 30 June 2022.

## **(iv) Exhibited DDO23**

In addition to the Built Form Framework and the Heritage Analysis, preparation of the exhibited DDO23 was also informed by further detailed investigations including:

- the Supplementary Heritage Report
- the Traffic Assessment Report
- a review of recent Planning Scheme amendments regarding DDO built form provisions, (including Panel Reports where relevant) regarding:
  - Amendment C191yara - Swan Street Activity Centre (final provisions gazetted 10 February 2022)
  - Amendment C220yara – Johnson Street Activity Centre (final provisions gazetted 18 June 2020)
  - Amendment C231yara – Queens Parade Activity Centre (final provisions for Parts 1 and 3 gazetted 1 October 2020)
  - Amendment C245yara – Heritage Overlay and Zone fix-up (gazetted 11 February 2021)
  - Amendment C270yara – Fitzroy /Collingwood Stage 1 (interim provisions gazetted 27 August 2021)

- Amendment C288yara – Alexandra Parade, Victoria Parade and Fitzroy West Mixed Use Precinct (interim provisions gazetted 22 October 2021)
- Amendment C291yara – Victoria Street and Bridge Road Activity Centres (interim provisions in place; exhibited provisions referred to Yarra Activity Centres Standing Advisory Committee)
- consideration of strategic planning work associated with the re-write of local policies (Amendment C269yara)
- a review of recent development applications in the Precinct
- comments from Council's statutory planning department and Heritage Advisory Committee
- a review of DDO2 where it overlaps with DDO23
- a review of Clause 21.11 (Reference Documents).

In broad terms, the differences between the interim DDO23 and the exhibited DDO23 can be summarised as including:

- minor adjustment to the DDO boundary to remove 32-34 Smith Street, Collingwood which is covered by both interim DDO23 and the requested interim DDO37 for Smith Street North and South
- refinement of objectives 2 and 4 and additions to objective 3 relating to the mixed built form character of Collingwood South (industrial, residential, institutional and heritage buildings with emerging contemporary form)
- deletion of the reference to storeys in the objectives
- changes to definitions
- clarification that a requirement expressed with the word 'must' is mandatory and cannot be varied with a permit, and a requirement expressed with the word 'should' is discretionary
- changes to street wall heights and front setbacks:
  - street wall heights for some infill properties adjoining heritage buildings have been reduced
  - a number of requirements relating to street wall heights and front setbacks have been inserted
- changes to upper level setbacks:
  - the sightline test has been removed and replaced with specified upper level setbacks
  - upper level setbacks above heritage buildings have been modified so they are now a mandatory minimum 6 metres
  - upper level guidance has been inserted to recognise specific needs of certain heritage buildings
- changes to overall building heights:
  - a mandatory maximum height of 11 metres has been applied to residential heritage buildings
  - the height for 54-56 Oxford Street has been reduced from 14 metres to 11 metres and a mandatory street wall height of 8 metres applied
  - requirements for development on some infill sites adjoining by heritage buildings have been lowered from 20 metres to 14 metres
- overshadowing requirements have been modified
- upper level setback requirements have been modified:

- for development that shares a common boundary within the overlay and/or adjoins a Commercial 1 Zone and/or Mixed Use Zone outside of the overlay
- where development consists of multiple buildings and/or separate upper levels
- other building design requirements have been inserted
- access, parking and loading bay requirements have been inserted
- a number of application requirements and decision guidelines have been modified and inserted
- specific heritage building design requirements have been deleted.

**(v) Council Day 1 version of DDO23**

After the Amendment was exhibited, Council proposed to modify the exhibited version of DDO23 to respond to submissions and improve the clarity and intent of the provisions.

These changes were confirmed at a Council meeting on 21 December 2021 and was the preferred version presented by Council to the Committee on Day 1 of the Hearing.

Table 1 summarises the key changes made to the exhibited version of DDO23. New text is shown underlined and deleted text shown with ~~strikethrough~~.

**Table 1 Comparison of exhibited and Day 1 versions of DDO23**

Clause	Exhibited DDO23	Day 1 version of DDO23
<b>2.1 Definitions</b>		Definition of 'Upper level' inserted: <u>Upper level means development above the height of the street wall</u>
<b>2.3 Street wall height and front setback requirements</b> <b>Requirement 1</b>	Development must not exceed the street wall heights as shown on Map 1	Development must not exceed the <u>mandatory maximum</u> building heights as shown on Map 1
<b>2.5 Building height requirements</b> <b>Requirement 1</b>	Development on sites shown as hatched on Map 1 must not exceed the building height shown on Map 1	Development on sites shown as hatched on Map 1 must not exceed the <u>mandatory maximum</u> building height shown on Map 1
<b>2.5 Building height requirements</b> <b>Requirement 2</b>	Development should not exceed the building heights shown on Map 1	Development should not exceed the <u>preferred maximum</u> building heights shown on Map 1
<b>Map 1</b> <b>Eastern boundary of Oxford Street Reserve</b>	Street wall height: 14 metres	Street wall height: 11 metres
<b>2.6 Overshadowing and solar access requirements</b> <b>Requirement 5</b>	Development should be designed to minimise overshadowing of the following areas of open space and/or public realm between 10am and 2pm on 22 September, to the satisfaction of the responsible authority: <ul style="list-style-type: none"> <li>• Cambridge Street Reserve</li> </ul>	Development should <u>not increase the amount of</u> <del>be designed to minimise</del> overshadowing <u>as caused by existing conditions, measured of the following areas of open space and/or public realm</u> between 10am and 2pm on 22 September, for the following areas of open space and/or public realm: <del>to the</del>

Clause	Exhibited DDO23	Day 1 version of DDO23
	<p>(including any future extension of the reserve)</p> <ul style="list-style-type: none"> <li>Oxford Street Reserve</li> <li>the outdoor space of the Collingwood English School</li> <li>any kerb outstands, seating or planting areas on the opposite side of the street, as applicable.</li> </ul>	<p><del>satisfaction of the responsible authority:</del></p> <ul style="list-style-type: none"> <li>Cambridge Street Reserve (including any future extension of the reserve)</li> <li>Oxford Street Reserve</li> <li>the outdoor space of the Collingwood English School</li> <li>any kerb outstands, seating or planting areas on the opposite side of the street, as applicable.</li> </ul>
<p><b>2.8 Other design requirements</b></p>		<p>Additional requirement inserted:</p> <p><a href="#">Development should provide for landscaping that provides a positive contribution to the public realm, such as canopy trees where possible, green walls or planter boxes.</a></p>
<p><b>2.8 Other design requirements</b></p>	<p>Lower levels of development should:</p> <ul style="list-style-type: none"> <li>be designed to accommodate commercial activity at the ground floor, incorporating a suitable commercial floor height of 4 metres floor to floor height</li> <li>avoid floor to ceiling glass with limited entries for large expanses of the ground floor</li> <li>...</li> </ul>	<p>Additional requirement inserted:</p> <p>Lower levels of development should:</p> <ul style="list-style-type: none"> <li>be designed to accommodate commercial activity at the ground floor, incorporating a suitable commercial floor height of 4 metres floor to floor height</li> <li><a href="#">building structures, layouts and non-residential unit sizes should be adaptable so as to allow for a variety of uses over time</a></li> <li>avoid floor to ceiling glass with limited entries for large expanses of the ground floor</li> <li>...</li> </ul>

Source: Council Part A Submission

The Committee has considered the exhibited version of DDO23 as well as the version presented by Council on Day 1 of the Hearing.

The recommended changes to the wording of DDO23 in the Committee preferred version of the controls (Appendix F) is based on the exhibited version of the provisions.

**(vi) Council Part C version of DDO23**

On the final day of the Hearing, Council submitted an updated version of DDO23 as part of its closing submission (Part C version).

The changes suggested by Council in its Part C version responded to further issues raised in submissions, evidence and by the Committee throughout the Hearing. These changes are discussed in this Report and have been applied, where appropriate, in the Committee preferred version of DDO23.

**1.4 Submissions and key issues**

Initially, there were 102 submissions made to the exhibited Amendment.

Following the Council meeting on 21 December 2021, notice of the Council resolution was issued to all submitters and relevant landowners. A further submission was received as part of this process.

A total of 103 submissions were made to the draft Amendment (Appendix C).

All submissions were referred to the Committee by the Minister for Planning including the supportive submissions.

A large number of submissions came from three locations:

- 55 submissions were from owners and occupiers at 68 Cambridge Street (the Holme Apartments)
- 10 submissions were from owners and occupiers at 27 Oxford Street (the XO Building)
- 7 submissions were from owners and occupiers at 88 Cambridge Street.

These submissions objected to the Amendment on various grounds, including:

- concerns about the proposed height of buildings on land bounded by the Oxford Street Reserve, Langridge Street, Cambridge Street and Derby Street and the impact of development on this site with respect to:
  - overshadowing of the Oxford Street Reserve, footpaths and the public realm
  - blocking of light and sun
  - loss of views, outlook and sky
  - increased noise
  - the 'facing off' of residents into nearby apartments
- concerns about the proposed height of buildings on the southeast corner of Oxford Street and Derby Street
- lack of public open space in the area
- concerns about increased traffic
- the need for infrastructure to keep pace with development in the area
- the poor quality of recent development
- concerns about disruption from construction works.

Table 2 includes a summary of all submissions against key themes or Amendment elements, and where these are addressed in this Report.

**Table 2** Summary of issues

Theme	Issues	Report section
Strategic issues	<ul style="list-style-type: none"> <li>• Urban consolidation</li> <li>• Accommodating growth</li> <li>• Impact of COVID-19</li> </ul>	Chapter 2
Mandatory provisions	<ul style="list-style-type: none"> <li>• Use of mandatory versus discretionary provisions</li> </ul>	Chapter 3.1
Heritage	<ul style="list-style-type: none"> <li>• The importance of maintaining heritage fabric</li> <li>• Sensitivity of new development to heritage fabric</li> </ul>	Chapter 3.2
Infrastructure capacity	<ul style="list-style-type: none"> <li>• The need for more public open space</li> <li>• Traffic and parking issues</li> </ul>	Chapter 3.3
Amenity considerations	<ul style="list-style-type: none"> <li>• Impacts on the public realm</li> <li>• Overshadowing of public open space, footpaths and street trees</li> <li>• Blocking of light and sun</li> <li>• Increased noise</li> <li>• Landscaping within the private and public realm</li> <li>• Wind impacts</li> <li>• Impact on neighbourhood character</li> </ul>	Chapter 4
Building heights and setbacks	<ul style="list-style-type: none"> <li>• Proposed metrics of building heights and setbacks</li> </ul>	Chapter 4

## 1.5 Procedural issues

### (i) Department of Environment, Land, Water and Planning

The Committee invited DELWP to make a brief statement at the beginning of the Hearing to inform all parties about the background and context for the establishment of the Yarra Activity Centres Standing Advisory Committee.

The Committee thanks Jason Close, Manager Planning Services in the Statutory Planning Services section of DELWP for attending and addressing the Committee on this issue.

DELWP did not make a submission about the content of the Amendment or express any view regarding the proposed provisions.

### (ii) Withdrawal of parties to the Hearing

The Committee was advised that three submitters who initially requested to be heard at the Hearing did not want to appear at the Hearing. The submitters indicated they wanted their original submissions to be considered by the Committee.

These submitters were:

- D Skitt (Submission 42)
- S Hughes and K Saunders (Submission 61)
- K Churchill (Submission 70).

## 1.6 The Committee's approach

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

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

This Report deals with the issues under the following headings:

- Strategic issues
  - Planning Scheme provisions
  - Background studies
  - Population and economic forecasts
  - Policy support
  - Associated changes to planning controls
- Precinct wide issues
  - Mandatory versus discretionary controls
  - Criteria for varying discretionary maximum building heights
  - Heritage
  - Infrastructure capacity
- Design and Development Overlay Schedule 23
  - Consideration of specific provisions
- Background documents
- The Amendment process.

Table 3 sets out the Committee's Terms of Reference and referral requirements for its report and the location in this Report where these matters are addressed.

**Table 3** How report addresses the Terms of Reference and referral requirements

Terms of Reference report requirements	Report section
An assessment of the proposed draft planning scheme amendment and any recommended changes to the proposed provisions	Chapter 4
An assessment of submissions to the Committee and any other relevant matters raised in the course of the Committee process	Chapters 2, 3 and 4
Advice on any relevant strategic planning matters	Chapter 2
A recommendation on whether the draft planning scheme amendment is strategically justified and could be approved by the Minister without notice, using his powers under section 20(4) of the Act	Chapter 6
A recommendation on whether the draft planning scheme amendment or any part of it should be subject to the requirements of sections 17, 18 and 19 and the regulations of the Act and processed as a 'standard' amendment	Chapter 6

Terms of Reference report requirements	Report section
Record of the date, location, attendees and purpose of any forum, meeting or workshop it held	Overview
A list of persons who made submissions to the Committee	Appendix C and D
Letter of referral report requirements	
Consideration of whether the capacity of the Activity Centre for further growth will be inappropriately compromised by the introduction of mandatory controls and whether a revised capacity analysis is required to support these provisions should form part of the Committee process	Chapter 2
Consideration of whether performance-based measures for the variation of discretionary height limits that do not have a nexus to built form outcomes are an appropriate use of planning tools or result in duplication of material in other parts of the Yarra Planning Scheme	Chapter 3.2
Consideration of where reference documents (Clause 21.11) will be located within the Yarra Planning Scheme when the Planning Policy Framework translation occurs	Chapter 5
Consideration of appropriate building heights	Chapter 4.4

## 1.7 Limitations

Many submissions raised issues that were beyond the scope of the Amendment, such as:

- loss of views to the city
- amenity impacts (such as noise, dust and traffic disruptions) associated with construction activity in the area
- greater emphasis on environmentally sustainable design
- the need for improved community consultation regarding planning scheme amendments
- impact on property values
- additional landscaping in public spaces.

The Committee has not addressed these issues in the Report. Many of these matters are dealt with in other parts of the Planning Scheme or as conditions on planning permits. No evidence was presented to justify claims that the Amendment would devalue properties. Other matters are beyond the planning process or are issues for Council to address.

## 2 Strategic issues

### 2.1 Planning Scheme provisions

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

#### (i) Zone

All of the land within the Precinct is in the Mixed Use Zone (MUZ). The Schedule to the MUZ is 'blank'. As a consequence, there is no specified maximum building height in the MUZ.

#### (ii) Overlays

All of the land is subject to:

- Development Contributions Plan Overlay Schedule 1 (DCPO1)
- Design and Development Overlay Schedule 23 (interim DDO23)

Part of the land is subject to:

- Design and Development Overlay Schedule 2 (DDO2)
- Environmental Audit Overlay (EAO)
- Heritage Overlay.

**Table 4** Zone and overlay purposes

Zones	
<b>Mixed Use</b>	<p>To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.</p> <p>To provide for housing at higher densities.</p> <p>To encourage development that responds to the existing or preferred neighbourhood character of the area.</p> <p>To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.</p>
Overlays	
<b>Development Contributions Plan</b>	To identify areas which require the preparation of a development contributions plan for the purpose of levying contributions for the provision of works, services and facilities before development can commence.
<b>Design and development</b>	To identify areas which are affected by specific requirements relating to the design and built form of new development.
<b>Heritage</b>	<p>To conserve and enhance heritage places of natural or cultural significance.</p> <p>To conserve and enhance those elements which contribute to the significance of heritage places.</p> <p>To ensure that development does not adversely affect the significance of heritage places.</p> <p>To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.</p>
<b>Environmental Audit</b>	To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.

DDO2 (Main Roads and Boulevards) applies to land along Wellington Street and includes a range of design objectives but does not include any specific design requirements.

The interim DDO23 will be replaced by the proposed DDO23.

The land includes various places included within the Heritage Overlay. Further details of these places are provided in Chapter 3.3.

## 2.2 Background studies

Council submitted the Amendment was based on a variety of Precinct based strategic planning investigations regarding built form, heritage and traffic issues. It was also consistent with broader strategic planning completed by Council regarding housing growth areas and activity centres.

### (i) Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework, June 2018

The Built Form Framework underpins the urban design approach for the Precinct and forms part of broader urban design analysis for the Brunswick Street and Smith Street areas.

The Built Form Framework includes a number of principles, influences and propositions for the future planning of the Precinct. These are intended to be realised through detailed controls and requirements relating to building heights, street wall heights, setbacks, solar access, and building design.

Preparation of the recommended controls included consideration of:

- State Planning Policy Framework
- Local Planning Policy Framework, including Zones and Overlays
- Practice Note No. 60 – Height and Setback Controls for Activity Centre
- Practice Note No. 59 – The Role of Mandatory Provisions in Planning Schemes
- Urban Design Guidelines for Victoria, 2017
- Anticipated scale and form of development outside the study area (i.e. within Residential and Employment Zones)
- Views to existing landmarks from the public realm
- Recognition of Yarra's heritage skyline
- Recent development approvals (including those currently under- construction)
- 3D computer modelling of built form testing for the study area
- Independent heritage advice and existing character considerations, consistent with the expert heritage advice provided by Council's heritage advisors (GJM Heritage)
- Extensive site inspections and workshops with Council's officers.<sup>1</sup>

The built form objectives for the Precinct include:

- To foster an emerging, contemporary, mixed use character whilst supporting redevelopment that defines the Wellington and Langridge Street junction with a gradual transition down towards Smith Street.
- To encourage sensitive infill and recessive upper level additions behind either retained heritage facades and new forms.

<sup>1</sup> Built Form Framework, page 22

- To respect and reinforce the heritage value of the precinct and support the retention of the traditional street frontages, including street setbacks, facades and subdivision pattern.
- To promote and encourage pedestrian activity through street activation and protection of solar access to southern footpaths and public open spaces.
- To ensure equitable development outcomes through building separation and gradual transitions to neighbouring heritage properties.<sup>2</sup>

The Built Form Framework breaks the Precinct into three distinct parts based on subdivision pattern, heritage and existing built form:

**Oxford/Cambridge Street (OC2)** – referred to in the Amendment as ‘**Area 1**’, is described as:

The most diverse sub-precinct with every street having a unique character and has experienced limited change to date. This area will continue to comprise a diverse built form character. Oxford Street and Peel Street contain moderate non-heritage properties abutting dispersed 1-2 storey residential heritage and the former Cordial factory. Development will need to ensure that it does not overwhelm and transitions in scale to heritage forms.

Cambridge Street presents predominantly non-heritage moderate lots. The properties with direct abuttal to residential properties need to provide transition in scale along the interfaces.

**Derby Street (D1)** – referred to in the Amendment as ‘**Area 2**’, is described as:

The urban block comprises the properties along the southern side of Derby Street, which present a predominantly consistent 2 storey presentation. A recent approval of 8 storeys, with a 4 storey street wall will introduce a higher street wall character. The block between Oxford and Cambridge Streets benefits from a rear laneway which separate it from the school grounds to the south and also comprises a number of heritage buildings which are not subject to heritage protection. Development on Derby Street will need to provide transition in scale at the interface of these heritage buildings. The sites on southern side of Derby Street also need to avoid unreasonably overshadowing on the existing outdoor play area of the school.

Mason Street and Oxford Street are narrow streets. To the south side of Mason Street are single storey attached cottages, set behind small front gardens. Development along Mason Street and Oxford Street will need to not overwhelm the fine grain heritage and the street. The northern side of Mason Street comprises warehouse forms, and the former St Saviour’s Church building.

**Wellington Street (W2)** – referred to in the Amendment as ‘**Area 3**’ is described as:

With the exceptions of the Peel and Vine Hotel buildings these urban blocks are devoid of heritage sensitives and comprise generally larger size lots. The Wellington Street frontage consists number of approvals ranging from 8-14 storey presenting an emerging new built form along the street and marking the junction of Wellington and Langridge Street movement corridors. The western ‘island’ block along Langridge Street presents a development opportunity that needs to respond sensitively to Derby Street and open space frontage.

Cambridge Street comprises approvals with street wall and upper form typology that provides a clear street definition without visually dominating the streetscape. Developments along this street will follow the emerging development pattern while giving consideration to equitable development and public realm amenities.

The Built Form Framework makes a range of recommendations regarding:

- building heights and setbacks
- solar access to public open space and footpaths
- transition in scale of development

<sup>2</sup> Built Form Framework, page 24

- street walls and upper level setbacks
- building separation, amenity and equitable development
- interfaces with low scale residential development, public open space and laneways
- a range of other built form issues
- development of heritage places and the properties adjoining heritage places (based on the Heritage Analysis Report).

**(ii) Collingwood Mixed Use Pocket Heritage Analysis and Recommendations, June 2018**

The Heritage Analysis Report provided expert heritage input into the Built Form Framework to ensure that the Built Form Framework took account of the heritage values of the recognised heritage precincts and buildings within the Precinct.

The Heritage Analysis Report for Collingwood South considered:

- the suitability and extent of Heritage Overlay on places and precincts within the Precinct
- the heritage grading of each property subject to the Heritage Overlay
- the currency of the existing statements of significance for places and/or precincts to ensure they provide adequate guidance for protection of heritage features
- places which were not included on the Victorian Heritage Register (VHR) but which may warrant nomination to the VHR
- built form parameters necessary to appropriately manage increased mixed use development within the context of heritage places or precincts.

The Heritage Analysis includes a number of built form parameters and recommendations that describe the outcomes for heritage buildings in the precinct, including ensuring that alterations and additions to heritage buildings are visually recessive, retain the primacy of the three-dimensional form of the heritage building as viewed from the public realm to avoid ‘facadism’, and retain the visual prominence of the return façades of buildings on corner sites.

**(iii) Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct, May 2021**

The Supplementary Heritage Report updates the recommendations in the Heritage Analysis Report and was informed by a variety of matters following the preparation of the original advice, including:

- the findings of planning panels considering the following Planning Scheme amendments:
  - C191yara–Swan Street Activity Centre
  - C220yara–Johnston Street Built Form Controls
  - C231yara–Queens Parade Built Form Review
- changes made to the relevant Planning Practice Notes (PPN):
  - PPN59: The Role of Mandatory Provisions in Planning Schemes (September 2018)
  - PPN60: Height and Setback Controls for Activity Centres (September 2018).
- the new proposed local policies at Clauses 15.01-1L – Urban Design and 15.03-1L – Heritage (Amendment C269yara)
- amendments to the application of the Heritage Overlay on land subject to DDO23 (Amendment C245yara)
- development recently constructed, under construction, approved or under assessment within the land subject to DDO23.

The Supplementary Heritage Report recommended a number of changes to the interim DDO23 controls including:

- the sightline test replaced with a consistent metric measure to determine appropriate upper level setbacks
- lowered overall building heights for pockets of consistent heritage character and most sites adjoining heritage buildings (infill sites)
- lowered mandatory street wall heights for infill sites adjoining heritage buildings
- mandatory provisions for upper level setbacks to all heritage places
- mandatory provisions for overall building heights to pockets of consistent heritage character.

**(iv) Traffic Engineering Assessment: Brunswick Street and Smith Street Activity Centres, November 2019 (Traffic Assessment Report)**

The Traffic Assessment Report was prepared to inform various DDO controls in Fitzroy and Collingwood. With respect to Collingwood South Precinct, it focussed on outcomes to achieve safe and efficient vehicular and pedestrian access in the area having regard to the anticipated level of change in accordance with the Built Form Framework.

This work involved:

- detailed site inspections of the study area
- reviewing and categorising laneways into 3 categories (unconstrained, partially constrained or highly constrained) in order to better understand their potential to accommodate additional traffic under their existing configurations and conditions
- reviewing (at a high level) the development changes forecast in the Built Form Framework in relation to traffic impacts and the intensity and circulation of traffic movements through the Activity Centres
- reviewing the capacity for laneways and local roads to accommodate the forecast level of traffic based on development potential and existing configurations
- considering what configurations or adjustments may be necessary to laneways or local roads in order to accommodate the expected increase in vehicle movements and to minimise potential for vehicle conflicts
- liaising with stakeholders, including representatives from Council to understand the relevant concerns relating to safety and efficiency
- recommendations as to the location and form of new, altered and retained access arrangements and laneways required to provide appropriate access to future developments
- preparing draft wording for traffic engineering aspects of future DDO provisions – including design objectives and outcomes, permit application requirements and decision guidelines for assessing future planning permit applications.

**(v) Yarra Housing Strategy**

An overview of the Yarra Housing Strategy is provided in Committee Report 1.

The Yarra Housing Strategy identifies the Precinct:

- within the Smith Street Major Activity Centre (page 52)
- having future Urban Development Program sites in the Precinct (page 61)

- containing areas of ‘High Change’ (around Langridge and Wellington Streets) and ‘Incremental Change’ (generally covering parts of the Precinct with heritage value) (page 69).

#### **(vi) Activity Centres Roles and Boundaries**

An overview of the Activity Centres Report is provided in Committee Report 1.

Under the current Clause 21.08 the Precinct is not located within the Smith Street Major Activity Centre.

The Activity Centres Report identifies the Precinct within the Smith Street Major Activity Centre. This is proposed to be formalised in the re-write of the Local Planning Policies in Amendment C269yara.

## **2.3 Population and economic forecasts**

An overview of the Yarra Spatial Economic and Employment Strategy (YSEES) is provided in Committee Report 1.

Submitters raised concerns that the COVID-19 pandemic may result in significantly altered demand for residential and commercial floor space in the Precinct. They said population projections and employment patterns based on pre-COVID-19 assumptions should be reviewed and the built form controls adjusted accordingly.

The referral letter to the Committee from the Minister for Planning requested consideration of whether the capacity of the Activity Centre for future growth will be inappropriately compromised by introducing the proposed mandatory provisions and whether a revised capacity analysis is required to support these provisions.

Mr Szafraniec, an experienced urban economist from SGS Economics and Planning, gave evidence for Council regarding:

- the impact of the proposed Amendment on residential and commercial development in the Precinct, the Smith Street Activity Centre and for the municipality as a whole
- the potential impact of the COVID-19 pandemic on population and employment growth forecasts.

With respect to the impact of COVID-19, Mr Szafraniec stated:

We are still very much within the influence of the COVID-19 pandemic and the final direct and lasting impacts on dwelling demand in the City of Yarra are still uncertain.

Current available data suggests the shift out of Melbourne to peri-urban communities, while significant for these small towns, has been relatively modest for the large cities and was primarily driven by people in the regions not migrating into the city – rather than large amounts of people leaving the city per se. In addition, it is currently unclear if this reflects a pause or lasting shift in behaviour. Post-pandemic, it is likely many workers (who are able to) will shift to a hybrid working model (i.e. not always in the office nor always working from home). This means work location will still be important to many, but it will be balanced against the quality and size of their home and the amenity and services in their local area.

Given this, Yarra still presents a compelling offer and will likely continue to be a place of high demand. However, these trends are also likely to shift dwelling type preferences toward larger forms, both in terms of additional bedrooms/space and away from apartments to (semi) detached forms. This may impact the capacity of areas and the distribution of housing.

Given these various competing trends, I believe it is reasonable to assume Yarra City Council's population growth (and associated housing demand) is likely to be reduced (compared to pre- COVID forecast) by a similar proportion as is projected for Greater Melbourne (-6 to -8 per cent at 2036). This will predominately be driven by the loss in population growth (largely from the loss of overseas migrants) during the pandemic period which is then never recovered. This effectively represents demand being 'paused' or 'pushed out' 3 to 4 years (i.e. demand previously projected in 2026 will now be realised by 2028 or 2029).<sup>3</sup>

In preparing his evidence, Mr Szafraniec:

- reviewed previous relevant work completed by his company regarding the YSEES and a variety of recent planning scheme amendments including C220yara (Johnston Street), C231yara (Queens Parade), C191yara (Swan Street) and C269yara (re-write of local policies)
- reviewed, updated and spatially disaggregated (to align with the Collingwood South Precinct) housing demand forecasts originally included in the Yarra Housing Strategy and which were revised in his evidence statement for Amendment C269yara
- estimated the total floor space capacity within the Amendment C293yara area – accounting for land available for development and relevant built form controls
- considered a range of development scenarios varying the average dwelling size and mix of floor space that might be realised for employment and residential uses
- compared the demand forecasts with the capacity estimates.

Mr Szafraniec said that that potential yield calculations were based on a model that took account of site coverage, setback, building heights, floor space mix (residential versus non-residential), net usable floor space ratios and average dwelling sizes. He said for the purposes of the capacity analysis, there was no numerical difference between preferred and mandatory height controls. That is, it was assumed that buildings were constructed to the nominated preferred height.

The analysis included various scenarios including:

- average dwelling sizes at 80 square metres
- average dwelling sizes at 100 square metres – resulting in a slightly lower overall dwelling yield but providing for possible demand for larger sized dwellings in response to increased work from home trends post-COVID-19
- new buildings consisting of entirely residential development
- new buildings consisting of ground floor employment uses and the balance as residential.

The application of these different assumptions resulted in a range of potential supply for residential dwellings and employment floor space.

In summary, Mr Szafraniec concluded:

- from 2016 to 2020, the 2020 Urban Development Program identified 331 new dwellings were built within the Collingwood South Precinct
- based on available forecasts, recent development trends and an understanding of the impacts of COVID-19, the Collingwood South Precinct will need to accommodate demand for between an additional 112 to 436 new dwellings over the period from 2021 to 2036
- total demand from 2016 to 2036 is estimated to be between 443 and 767 dwellings

<sup>3</sup> Mr Szafraniec's evidence statement, paragraphs 35-39

- revised housing capacity analysis which incorporates the proposed DDO23 controls indicate there is potential capacity for between 990 and 1,980 additional dwellings (depending on the average size of dwellings and the amount of non-residential employment uses included in developments)
- this represents a small increase in capacity in the Smith Street Activity Centre (between 340 and 430 dwellings) compared to previous estimates used for the Housing Strategy (which included broad height controls for the area based on strategic policy at that time)
- the Amendment will have minimal impact to the existing housing capacity of Yarra City Council and the 12 largest Activity Centres as a whole
- the Amendment provides sufficient housing capacity to accommodate housing demand over the next 15 years within the Collingwood South Precinct.

With respect to the impact of the Amendment on the supply and demand of employment land, Mr Szafraniec concluded:

- the Collingwood South Precinct is not identified as a significant employment area and is not required to accommodate significant amounts of new employment uses to support the local and broader economy
- most of the Smith Street Activity Centre employment floorspace will be accommodated in locations outside of the Collingwood South Precinct
- employment uses should still be supported within the Collingwood South Precinct
- the capacity for employment floor space in the Collingwood South Precinct is estimated as ranging from 0 to 39,800 square metres (depending on the balance between employment and residential floor space)
- employment uses may take the form of a number of small-scale ground floor shops within mixed use development and/or through purely commercial office developments on selected sites
- the proposed Amendment provides sufficient capacity to accommodate potential employment demand over the next 15 years within the Collingwood South Precinct.

## 2.4 Policy support

Council submitted the Amendment was consistent with the policies and intent of the Planning Policy Framework and *Plan Melbourne 2017-2050* by:

- providing a sound framework for the orderly planning of this part of the Smith Street Activity Centre
- encouraging a diversity of housing types at higher densities in and around activity centres
- seeking to accommodate future housing growth at an appropriate scale
- facilitating opportunities for a mix of office, retail, and residential uses throughout the Precinct, consistent with its Mixed Use zoning
- introducing planning controls which seek to ensure development of a high quality, which responds appropriately to the valued social and physical character of the Precinct including its many sensitive heritage interfaces
- applying specific design requirements in order to achieve development outcomes that are respectful of the industrial, residential and commercial built heritage of the Precinct
- facilitating development outcomes underpinned by a comprehensive transport assessment, in an area well serviced by public transport.

Council also submitted that the Amendment was consistent with the Local Planning Policies:

- Clause 21.04 Land use
- Clause 21.05 Built form
- Clause 21.06 Transport
- Clause 21.08 Neighbourhoods.

Council said the Amendment was consistent with the proposed strategies in Clause 11.03-11L (as proposed in Amendment C269yara) with respect to the Smith Street Activity Centre:

...

Encourage development that responds to the different built form conditions in Collingwood South precinct, with taller built form towards Wellington St and south of Peel Street and retain the visual dominance and integrity of the existing industrial warehouse buildings north of Peel Street.

...

Retain the visual prominence of the Victorian and Edwardian heritage streetscape, including local landmarks, street corner sites and former department stores, particularly in the traditional retail core<sup>4</sup>

...

Council submitted that the DDO was the appropriate 'tool' within the Victoria Planning Provisions and said no submissions objected to the use of a DDO to manage built form outcomes.

## 2.5 Associated changes to planning provisions

The Amendment includes two minor changes associated with the introduction of DDO23.

Council submitted the portion of DDO2 that applies to the west side of Wellington Street is proposed to be deleted because the DDO23 provisions will apply to this land and they are more comprehensive than DDO2.

The property at 32 Smith Street, Collingwood is within two zones. The front part of the site is within the Commercial 1 Zone and the rear portion is within the Mixed Use Zone. Interim DDO23 currently applies to land at the rear of 32 Smith Street. Council submitted the Amendment proposes to exclude 32 Smith Street from DDO23 because the entire property should be included within the DDO that deals with the properties fronting Smith Street. It said the zoning of the property and the application of a future DDO to Smith Street would be addressed in a separate Planning Scheme amendment.

These were no submissions regarding these matters.

## 2.6 Discussion

The Committee accepts it is appropriate to apply a DDO to the area. Decision makers are currently exercising discretion within the context of fragmented and general policy settings that do provide an integrated strategy for the Precinct. The proposed DDO will provide specific policy guidance regarding appropriate heights, setbacks and other built form outcomes for the Precinct. This is consistent with the approach adopted in other Activity Centres in Yarra - for example, Johnston Street, Queens Parade and Swan Street. It is also consistent with the expectations of Amendment C269yara.

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<sup>4</sup> Yarra PSA C269yara [2022] PPV, page 241

The Committee is satisfied that the proposed DDO23 is based on sound strategic planning. Council has completed a range of comprehensive studies regarding urban design, heritage and transport matters and there is a clear link between the provisions in the proposed DDO23 and the recommendations in these strategic planning studies.

The reports underpinning the Amendment have been based on contemporary analysis. Where necessary reports have responded appropriately to the learnings and outcomes from other similar built form processes within Yarra and this has led to the evolution of a generally well-structured set of DDO provisions.

The Amendment has adequately considered the impacts of COVID-19, accepting that the impacts of the pandemic are still being understood and future adjustments may be required.

The Committee is satisfied that there is sufficient capacity within the Precinct and the broader Smith Street Activity Centre to facilitate expected residential and employment growth over the next 15 years. The evidence from Mr Szafraniec clearly shows that the application of the proposed mandatory and preferred building height provisions will not inappropriately compromise the future growth of the precinct.

The Committee considers the Amendment is consistent with the PE Act, Plan Melbourne, is supported by and implements the relevant sections of the PPF and has generally been prepared in accordance with relevant Ministerial Directions and Practice Notes.

It is appropriate to delete the portion of DDO2 from the west side of Wellington Street and to delete the rear of 32 Smith Street from DDO23, for the reasons put by Council.

The Amendment strikes an appropriate balance in facilitating higher density development appropriate to its strategic location and providing built form certainty where there are heritage, amenity and public realm sensitivities.

The Committee is satisfied the Amendment is consistent with the principles of net community benefit and sustainable development.

## 2.7 Conclusions

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

- is well founded and strategically justified
- is supported by, and implements, the relevant sections of the Planning Policy Framework including Plan Melbourne
- is generally consistent with the relevant Ministerial Directions and Practice Notes
- has appropriately considered the likely impact of the COVID-19 pandemic on population forecasts and demand for dwellings and employment floor space
- will provide sufficient capacity within the Precinct and the broader Smith Street Activity Centre to facilitate expected residential and employment growth over the next 15 years
- will deliver net community benefit and sustainable development, as required by Clause 71.02-3
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

## 3 Precinct wide issues

### 3.1 Mandatory provisions

#### (i) The issue

The issue is whether the proposed mandatory provisions are justified and appropriate.

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

The exhibited Amendment proposes to include a combination of discretionary and mandatory built form provisions. Mandatory provisions are distinguished by use of the word 'must' whereas discretionary provisions use the word 'should'.

The exhibited Amendment includes the following mandatory provisions:

Clause 2.3 - Development must not exceed the street wall heights as shown in Map 1

Clause 2.3 - Development at 54 and 56 Oxford St must match the front setback of the heritage building at 58 Oxford St

Clause 2.4 - Upper levels above the street wall...must be set back by a minimum of 6 metres for heritage buildings

Clause 2.5 - Development on sites shown as hatched on Map 1 must not exceed the building height shown on Map 1

Clause 2.6 - Development must not overshadow any part of the southern side footpath from property boundary to kerb of Peel, Langridge and Derby streets between 10am and 2pm on 22 September

Clause 2.6 - For streets that extend in a north- south direction (except for Little Oxford St), development must not overshadow any part of the opposite side footpath from property boundary to kerb between 10am and 2pm on 22 September

Clause 2.7 - Where development shares a common boundary within the overlay and/or adjoins a Commercial 1 Zone and/or Mixed Use Zone outside of the overlay, upper level development must:

- for buildings up to 27 metres, be setback a minimum of 4.5 metres from the common boundary, where a habitable window or balcony facing the common boundary is proposed on the subject site and/or exists on the adjoining property; and
- for buildings up to 27 metres, be setback a minimum of 3.0 metres from the common boundary where a commercial or non-habitable window facing the common boundary is proposed on the subject site and/or exists on the adjoining property; and
- where buildings exceed 27 metres in height, the development above 27 metres be set back a minimum of 6 metres from the common boundary, whether or not windows are proposed on the subject site

Clause 2.8 – Development at the rear of the properties at 10-22 Derby Street must be designed to address Langridge Street.

#### (iii) Evidence and submissions

Council submitted that mandatory provisions have been prepared having regard to previous Panel Reports, the Supplementary Heritage Report, PPN59 and PPN60. It stated:

- mandatory provisions are supported by comprehensive strategic analysis such as the Built Form Framework, the Heritage Analysis and the Supplementary Heritage Report
- the Heritage Analysis and Supplementary Heritage Report contain detailed assessments of previous Planning Scheme Amendments (both within the City of Yarra and in other

municipalities) which have proposed, and resulted in the gazettal of, mandatory requirements

- the mandatory provisions regarding building heights, street wall heights and upper level setbacks:
  - protect heritage streetscapes
  - ensure the significance of identified heritage places are not overwhelmed by inappropriate development
  - ensure that heritage places are able to be understood within a three-dimensional context and avoids facadism
  - address built form outcomes with sensitive interfaces
  - ensure that unacceptable outcomes are avoided
- not all heritage places are proposed to have mandatory requirements
- mandatory provisions have been applied selectively and most built form requirements are discretionary
- opposite footpaths have been protected with mandatory provisions to ensure the limited and valuable public space is free from additional overshadowing
- upper level building separation requirements are proposed to be mandatory in order to ensure sensitive residential interfaces are protected from overwhelming visual bulk and receive sufficient daylight.

Mr Gard'ner gave evidence that the mandatory provisions in Clauses 2.3, 2.4 and 2.5 related to ensuring the appropriate protection of heritage places. He said the requirements were consistent with the recommendations in the Supplementary Heritage Report and concluded that:

The provision of mandatory controls is informed thorough strategic work, is consistent with the guidance provided in PPN59 and PPN60 and is necessary to protect the heritage significance of small-scale heritage buildings within the land subject to DDO23.

Mr Campbell gave evidence regarding urban design and generally supported the application of the proposed mandatory requirements; however, he did not agree with the mandatory provision regarding side and rear upper level setback requirements within Clause 2.7 of DDO23. Mr Campbell said there was no basis for such a provision within the Built Form Framework and recommended that it be revised to refer to 'should' rather than 'must'.

Ms Rigo gave planning evidence and agreed with Mr Campbell that Clause 2.7 should be amended to refer to this provision as discretionary. She noted that although these setback requirements may be appropriate on consolidated or larger lots in the Precinct, no modelling had been prepared to provide an understanding of how these provisions can be applied on narrower sites. Ms Rigo recommended these requirements should be discretionary and said this would be consistent with the approach applied in Amendment C191yara (Swan Street Activity Centre).

Ms Rigo said there was clear strategic justification for the application of all other proposed mandatory provisions and provided a detailed assessment in her evidence statement addressing each of the requirements with respect to the issues in PPN60.

TAL GP Projects No. 1 Pty Ltd and Gurner objected to Clause 2.7 as a mandatory requirement but supported the provision if it was changed to a discretionary provision.

In response to evidence and submissions, Council agreed to change the mandatory requirement at Clause 2.7 to a discretionary provision.

Several submissions requested minor wording changes in various clauses to clarify the difference between mandatory and discretionary heights and setbacks. For example, in Clause 2.5 (building height requirements) the exhibited Amendment states:

Development on sites shown as hatched on Map 1 must not exceed the building height shown on Map 1.

Development should not exceed the building heights shown on Map 1.

Submissions said it is unclear from these clauses which building heights are discretionary and which are mandatory and recommended that the clause be amended to state:

Development on sites shown as hatched on Map 1 must not exceed the mandatory maximum building height shown on Map 1.

Development should not exceed the preferred maximum building heights shown on Map 1.

A similar modification was suggested for Clause 2.3 (street wall height and front setback requirements):

Development must not exceed the mandatory maximum street wall heights as shown in Map 1.

These changes were supported by Council in association with similar changes to the legend on Map 1.

Many other submitters wanted more mandatory provisions – especially mandatory building heights. They submitted that discretionary height requirements were too readily exceeded and that greater certainty would be provided if all height controls were mandatory.

Some submissions also wanted the mandatory shadowing provisions for footpaths to refer to the winter solstice (June 21) rather than the equinox.

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

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

The Committee notes that the exhibited Amendment includes a more selective use of mandatory requirements than the interim DDO23 and this is supported.

The Committee accepts that comprehensive strategic planning underpins the proposed mandatory building height, street wall and upper level setback provisions. It has given significant weight to the extensive heritage analysis associated with the Amendment. In particular, the Supplementary Heritage Report provides a compelling case for the introduction of the proposed mandatory provisions in Clauses 2.3, 2.4 and 2.5 of DDO23. The Committee is satisfied that these mandatory provisions are not aimed at restricting development. Rather, they aim to facilitate good design outcomes and sensitively respond to identified heritage.

The mandatory building height, street wall height and upper level setback provisions will enable an appropriate level of growth and change. The Precinct has experienced, and will continue to experience, substantial change and the provisions recognise and facilitate a high level of change in many parts of the centre. The application of selected mandatory height and setback provisions will not compromise the potential for significant growth and this was confirmed by a detailed capacity analysis.

Council has made an appropriate case for introducing selected mandatory height and setback provisions consistent with PPN59 and PPN60.

The Committee accepts that mandatory shadowing provisions for specified footpaths are appropriate and the Built Form Framework provides a reasonable basis for the introduction of these requirements.

That said, the Committee was surprised that more detailed shadow modelling was not presented in the documentation accompanying the Amendment or during the Hearing. The Committee was referred to various cross sections in the Built Form Framework that demonstrated the impact of shadowing on the street. This was fairly rudimentary and the Committee expected more detailed analysis for this issue.

Although it is more common for mandatory shadow provisions for footpaths to be applied in busy 'high streets' with substantial retail and hospitality uses, the Committee accepts there is a compelling need for mandatory shadow provisions of footpaths in this instance because:

- public places with solar access are a finite and highly valued resource and irreplaceable once lost
- the amenity of footpaths should be protected within the context of the area having limited public open space and, in these circumstances, footpaths will be important places for people to congregate and enjoy the outdoors
- walking is a stated priority mode of transport for the Precinct and the comfort of pedestrians should be acknowledged
- the land is within the Mixed Use Zone and a wide variety of non-residential uses are possible, including ground floor hospitality uses that can benefit from high quality footpath spaces for outdoor dining
- the mandatory shadowing controls should be seen within the context of largely discretionary building height and setback controls and the relationship between these provisions need to be considered as a whole
- footpaths are vulnerable to cumulative impacts where site specific planning applications are decided on an individual basis and any one proposal only results in a small amount of additional shadow
- the proposed date and time of the equinox and 10am to 2pm are reasonable and reflect when many people will be using the street for outdoor leisure.

The Committee agrees with the submissions and expert evidence regarding Clause 2.7 (building separation, amenity and equitable development requirements). Applying this as a mandatory provision is not strategically justified and may have significant unintended consequences for developing narrow lots. The Committee agrees that the proposed mandatory provision regarding side setbacks should be discretionary and notes that Council supported this change in its Part C version of DDO23<sup>5</sup>.

The various minor changes to clauses 2.3 and 2.5 raised in submissions and supported by Council that clarify the application of mandatory versus discretionary provisions are appropriate.

The Committee has considered the need for mandatory provisions in the Precinct based on its specific circumstances. It has reviewed the various other Panel Reports referred to by Council and

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<sup>5</sup> Document 40

expert witnesses, but notes that every circumstance is unique and built form provisions need to be carefully considered with respect to the nuanced differences and similarities between locations and the material presented to justify the requirements.

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

The Committee concludes:

- The mandatory provisions for specified building heights, street wall heights and setbacks and upper level setbacks are justified and supported.
- The mandatory provisions regarding shadowing of specified footpaths are justified and supported.
- The mandatory provision regarding building separation, amenity and equitable development should be modified to a discretionary requirement.
- The drafting of the clauses regarding ‘Street wall height and front setback requirements’ and ‘Building height requirements’ should be modified to clarify the application of discretionary and preferred requirements.

The Committee recommends:

1. **Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to:**
  - a) **replace the word ‘must’ with the word ‘should’ in the second paragraph of the ‘Building separation, amenity and equitable development requirements’**
  - b) **clarify the application of mandatory and preferred maximum street wall heights and mandatory and preferred maximum building heights.**

### **3.2 Criteria for varying discretionary maximum building heights**

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

The issue is whether the criteria for exceeding the discretionary maximum building heights are appropriate.

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

The Minister for Planning has asked the Committee to consider:

...whether performance-based measures for the variation of discretionary height limits that do not have a nexus to built form outcomes are an appropriate use of planning tools or result in duplication of material in other parts of the Yarra Planning Scheme.<sup>6</sup>

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

The Amendment includes a range of criteria to be met when an application to construct a building or construct or carry out works exceeds the preferred maximum building height. Clause 2.5 (Building height requirements) states:

A permit should only be granted to construct a building or construct or carry out works which exceeds the building height shown in Map 1 where all the following requirements are met to the satisfaction of the responsible authority:

- the built form outcome as a result of the proposed variation satisfies:
  - the Design Objectives in Clause 1.0;

<sup>6</sup> Refer Appendix A – Letter of referral

- the Overshadowing and Solar Access Requirements in Clause 2.6;
- the proposal will achieve each of the following:
  - greater building separation than the minimum requirement in this schedule;
  - excellence for environmental sustainable design measured as a minimum BESS project score of 70%.
  - no additional overshadowing impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height;
  - provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms in excess of the requirements of Clause 52.34.
- where the proposal includes dwellings, it also achieves each of the following:
  - housing for diverse households types, including people with disability, older persons, and families, through the inclusion of varying dwelling sizes and configurations;
  - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and/or 58m as relevant; and
  - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and/or 58, as relevant.

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

Council acknowledged that not all of the criteria in Clause 2.5 relate to built form and that some of these matters are addressed elsewhere in the Planning Scheme. It submitted:

The additional criteria here appropriately support the provision of taller built forms which exceed minimum requirements of the planning scheme or meet identified criteria. This approach is an appropriate way to ensure that the provisions of the planning scheme work together to both clearly guide development but also ensure those elements of proposed developments which are highly valued in the City of Yarra and within this area are reflected in developments which exceed discretionary height limits.<sup>7</sup>

Council said planning panels have considered arguments in relation to similar provisions in previous amendments. It referred to other examples where similar provisions exist, including:

- Amendment C191yara (Swan Street Activity Centre)
- Amendment C220yara (Johnson Street Neighbourhood Activity Centre)
- Stonnington Planning Scheme Activity Centre Zone
- Moreland Planning Scheme Activity Centre Zone
- Melbourne Planning Scheme, DDO63 (Macaulay Urban Renewal Area, Kensington and North Melbourne).

Council submitted that the differentiation between residential and non-residential development referred to in the Amendment C191yara Panel Report (and ultimately gazetted) was not applied in the interim DDO23 but it has been in the exhibited DDO23. It noted that with respect to a proposal that included dwellings:

- the Amendment C191yara Panel Report recommended the requirement include *“housing for diverse household types”*
- the gazetted version of Amendment C191yara does not include that requirement (or any similar wording)
- the interim and exhibited DDO23 include wording that specify *“housing for diverse households types, including people with disability, older persons, and families, through the inclusion of varying dwelling sizes and configurations.”*

<sup>7</sup> Document 25, Council Part B Submission, paragraph 39

Council said it has not sought to amend or remove the requirement regarding housing diversity on the basis that promoting such diversity is considered appropriate and in line with the Council's strategic vision.

Council noted VCAT considered the criteria in the interim DDO23 in *S & Giggles Pty Ltd v Yarra CC* [2019] VCAT 181 in respect of a proposed development at 33 Peel Street, Collingwood. It said the Tribunal considered the tests and allowed the approval of a building exceeding the preferred height finding that it met the relevant criteria. Council said this was a practical example of the application of the criteria and demonstrated that the controls (in interim DDO23) have not been interpreted in a way that has precluded development exceeding the preferred maximum height in an overly restrictive manner.

Ms Rigo gave evidence that:

Performance-based measures for the variation of discretionary height that reference other provisions already in the Planning Scheme are appropriately used because they seek to exceed the minimum requirements rather than repeat them. They seek to elevate the built form outcomes to demonstrate design excellence and assist in understanding what high quality urban design outcomes means for this Precinct and thus have a nexus with the Design objectives of DDO23.<sup>8</sup>

Some submissions said that the criteria should be applied to all development – not just those that seek to exceed the preferred building height.

TAL GP Projects No. 1 Pty Ltd supported the refinement of the criteria from the interim DDO23 to the exhibited version with respect to:

- requirements to be met to the satisfaction of the responsible authority
- the differentiation of requirements for residential compared to non-residential development.

It objected to the wording of the requirement that states:

- no additional overshadowing impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height

It was submitted that if the intention of the requirement is to consider residentially zoned land within DDO23 then the future development opportunity of the potentially impacted property or properties must also be considered. It recommended the requirement be varied to state:

- no additional overshadowing impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height. The future development opportunity of residentially zoned property within DDO23 and the shadow cast by the resultant built form is to be considered as part of the proposed design response.

Ms Rigo considered the issue raised in this submission:

is inconsistent with the manner in which overshadowing of adjoining residential zoned land is currently considered in the Planning Scheme. That is, overshadowing of adjoining land is considered on the basis of what exists on adjoining land, rather what may (or may not) exist in the future. On this basis, I do not support the suggested change to this requirement.<sup>9</sup>

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<sup>8</sup> Document 18, Rigo Evidence Statement, paragraph 9

<sup>9</sup> Document 18, Rigo Evidence statement, paragraph 137

**(v) Discussion**

In accordance with the letter of referral, the Committee has considered whether performance-based measures for the variation of discretionary height limits that do not have a nexus to built form outcomes:

- are an appropriate use of planning tools, or
- result in duplication of material in other parts of the Planning Scheme.

The Committee has reviewed the various examples of similar provisions referred to by Council and acknowledges that VCAT has applied the criteria in interim DDO23.

After careful analysis, the Committee considers there should be a nexus between criteria to exceed the preferred maximum building height and built form outcomes.

All provisions in the Planning Scheme should have a sound strategic foundation. This is consistent with various published Victorian planning guides, Practice Notes and numerous reports prepared by Planning Panels Victoria over a long period. Importantly, this approach ensures that the Planning Scheme requirements are not conceived on a whim or include matters that are not relevant to the use or development of a site.

Within this context, it is appropriate for requirements in the Planning Scheme to ensure that a building above the preferred maximum height does not significantly impact the amenity of the surrounding area. For example, this might include requirements to limit further overshadowing or the need for increased setbacks to help minimise the visual bulk of a building. These types of requirements provide guidance to ensure the amenity impacts of taller buildings are appropriately managed. They should explicitly ensure that a building should only exceed the preferred maximum building height if the identified performance criteria to minimise amenity impacts are met.

In this case, the Committee considers the following exhibited criteria relate to built form outcomes:

- the built form outcome as a result of the proposed variation satisfies:
  - the Design Objectives in Clause 1.0;
  - the Overshadowing and Solar Access Requirements in Clause 2.6.
- the proposal will achieve each of the following:
  - greater building separation than the minimum requirement in this schedule
  - no additional overshadowing impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height.

Criteria to exceed the preferred maximum building height that do not relate to built form outcomes associated with an increase in building height are inconsistent with a transparent and evidence based planning scheme. For example, there is no strategic justification for permitting a taller building provided that the proposal includes more end of trip facilities for cyclists than would ordinarily be required. Although provision of more end of trip facilities may be a positive outcome, there is no direct link with the impact of a taller building. A taller building should provide the amount of end of trip facilities specified in Clause 52.34 of the Planning Scheme.

The Committee notes this is different from circumstances where decision makers need to consider competing policies within a planning scheme and net community benefit. For example, it may be appropriate to consider the reduction in the number of car parking spaces for a particular site in order to facilitate the development of a renewable energy facility. That is, without a reduction in the number of car parks then the renewable energy facility could not fit on the site and could not

proceed. This is distinct from a requirement that states, for example, that a reduction in car parking will only be considered if the proposal includes a renewable energy facility. The balancing of competing policies is different to requiring a development to include specified matters.

In this case, the Committee considers the following criteria do not relate to built form outcomes:

- the proposal will achieve each of the following:
  - excellence for environmentally sustainable design measured as a minimum BESS project score of 70%
  - provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms in excess of the requirements of Clause 52.34
- where the proposal includes dwellings, it also achieves each of the following:
  - housing for diverse household types, including people with disability, older persons, and families, through the inclusion of varying dwelling sizes and configurations
  - accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and/or 58 as relevant
  - communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and/or 58, as relevant.

The Committee was not presented with any compelling reason to include these criteria in DDO23 Clause 2.5. It is unclear how these criteria help to implement the objectives and other provisions in DDO23.

Although these criteria may have merit to the extent that they are seeking good planning outcomes, they do not directly relate to built form outcomes resulting from a building that exceeds a preferred maximum building height. The intent to achieve greater environmentally sustainable design, more end of trip facilities, increased housing diversity, greater accessibility and open space may be noble, however there is no nexus with these matters and a taller building.

If Council wants to pursue these matters, they should be implemented in other parts of the Planning Scheme. As worthy as some of these matters may be in their own right, it is inappropriate to conflate them with the construction of a building that exceeds a specified preferred maximum building height.

The Committee is concerned about the broader implications of having ‘unlinked criteria’ as requirements in discretionary provisions. This approach has potential to undermine sound planning and to provide an opaque and inconsistent planning framework. All provisions in the Planning Scheme should have a strong strategic justification and be based on a logical nexus between the requirement and the outcome. They should not be used as a ‘backdoor’ way to implement unrelated planning matters.

In response to the second part of the Minister’s question, the proposed criteria generally do not duplicate other requirements in the Planning Scheme. The Committee accepts that many of the provisions in Clause 2.5 require a proposal to *exceed* the measures specified in other Clauses and this is different to meeting the minimum requirement. The exception to this is the requirement to provide housing for diverse household types. The Committee considers this requirement is a duplication of other policy and detailed provisions and for this reason is of limited utility.

As discussed above, however, it is the lack of nexus between the performance-based measures and the built form outcome that most concerns the Committee and it is for this reason that they are not supported. The provision regarding housing for diverse household types fails on both counts.

The Committee is satisfied the recommended criteria do not duplicate other requirements in the Planning Scheme.

The Committee does not accept the submission requesting changes to the wording of the 'no additional overshadowing' provision. It agrees with the assessment of Ms Rigo and considers the exhibited wording appropriate.

**(vi) Conclusions and recommendations**

The Committee concludes:

- There should be a nexus between criteria to exceed the preferred maximum building height and built form outcomes.
- Criteria regarding environmentally sustainable design, end of trip facilities, dwelling types and open space do not help to implement the objectives and other provisions in DDO23.
- Although these criteria may have merit to the extent that they are seeking good planning outcomes, they do not directly relate to built form outcomes resulting from a building that exceeds a preferred maximum building height.
- It is inappropriate to conflate unrelated planning provisions with a building that exceeds a specified preferred maximum building height.
- Planning Scheme provisions should have a strong strategic justification and should not be used as a 'backdoor' way to implement unrelated planning matters.
- The proposed criteria generally do not duplicate other requirements in the Planning Scheme except for the requirement to provide housing for diverse household types.
- The requirement regarding no additional overshadowing impacts to residentially zoned properties is acceptable.

The Committee recommends:

2. **Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to:**
  - a) **delete after the words "*the proposal will achieve each of the following:*":**
    - ***"excellence for environmentally sustainable design measured as a minimum BESS project score of 70%"***
    - ***"provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms in excess of the requirements of Clause 52.34"***
  - b) **delete the words "*where a proposal includes dwellings, it also achieves each of the following:***
    - ***housing for diverse households types, including people with disability, older persons, and families, through the inclusion of varying dwelling sizes and configurations***
    - ***accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and/or 58 as relevant***
    - ***communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and/or 58, as relevant."***

### 3.3 Heritage

#### (i) The issues

The issue is whether DDO23 recognises and protects the valued heritage places in the Precinct.

#### (ii) Evidence and submissions

Many submissions considered the unique character of the Precinct needed to be protected, especially the variety of heritage buildings that are generally of low scale. They noted the area included a mix of residential and commercial buildings within Heritage Overlays and said the planning controls should protect those places from inappropriate development that would overwhelm those sites and the heritage streetscapes.

Submissions said the existing built form enhances the liveability and unique character which brings in visitors and tourists and it was important to retain this character. They were concerned that heritage buildings were at risk of ‘facadism’ without strict controls.

Submissions pointed to various examples within the Precinct where inappropriate development had occurred and that the proposed building heights should be lower to ensure the protection of these valued places. Many submitters said the impact of the ‘excessive’ height of buildings along Wellington Street demonstrated the need for lower building heights to ensure the character of the area was not ‘destroyed’. They said DDO23 should require new development to enhance the character of the area through ‘respectful and careful design additions’.

Submitters said there was a need for clearer objectives and mandatory provisions to protect and enhance all heritage buildings in the area. This included preparation of a neighbourhood character study for the Precinct and a ‘statement of intent’ to clearly define the area and describe its unique features that must be conserved and the type of development needed to ensure this occurs.

Council responded that the Amendment has been prepared having regard to extensive heritage analysis. It said the detailed built form requirements address the unique typologies, heritage and character of the Precinct and was informed by the Built Form Framework, Heritage Analysis and Supplementary Heritage Report.

The Precinct includes a large number of heritage places within a variety of existing individual and precinct Heritage Overlays. Mr Gard’ner provided a summary of these places, including a map showing their location, in his evidence statement.

**Table 5** Heritage Overlays within the Collingwood South Mixed Use Precinct

Individual Heritage Places				
HO Map Reference	Name	Address	Grading	Date
HO98	Derby House	1 Derby Street	Individually significant	1876
HO100	Terrace	3-7 Derby Street	Individually significant	1876
HO101	Johnston House	8 Derby Street	Individually significant	1871
HO121	House	37 Oxford Street	Individually significant	1869
HO122	Crisp House	39-41 Oxford Street	Individually significant	1869
HO123	Terrace	50-52 Oxford Street	Individually significant	1864-77

HO124	Terrace	51-55 Oxford Street	Individually significant	1858-64
HO125	Terraces	57-63 Oxford Street	Individually significant	1873-78
HO126	Terrace	58-62 Oxford Street	Individually significant	1858-64
HO140	The Vine Hotel	59 Wellington Street	Individually significant	1915-25
HO142	Sir Robert Peel Hotel	125 Wellington Street	Individually significant	1912
HO417	Former Dyason and Co Cordial factory	63 Cambridge Street and 44 Oxford Street	Individually significant	1889

### Heritage Precincts

HO Map Reference	Name	Address	Grading	Date
HO102	Terrace	10-22 Derby Street and 7 Langridge Street	Various	1868-72
HO318	Collingwood Slope Precinct	Cambridge, Little Oxford, Oxford and Peel Streets	Various	1850-1940
HO336	Victoria Parade Precinct	Cambridge, Derby and Mason Streets	Various	1850-1940

Source: Gard'ner evidence statement, paragraph 28

Figure 2 Location of Heritage Overlays within the Collingwood South Mixed Use Precinct



Source: Gard'ner evidence statement, paragraph 28

Mr Gard'ner provided extensive discussion regarding the heritage significance of the Precinct and this is not repeated here. It is beyond dispute that the Precinct represents an important period in the settlement of Collingwood and the broader Melbourne area.

Mr Gard'ner noted:

- the Precinct is not a ‘pristine’ heritage area, but it has important heritage values that should be protected
- the built form character of the area is changing but this should be seen within the context of an area that has traditionally had a mixed built form character consisting of fine grain terrace housing on small lots sitting next to a variety of larger commercial and industrial buildings on larger lots
- there are a large number of ‘individually significant’ heritage places within the Precinct and most of these are small-scale residential buildings
- many of the larger industrial sites were developed in the 20<sup>th</sup> century and are not of heritage significance
- many former industrial and commercial sites have been redeveloped for residential use in the 21<sup>st</sup> century
- the residential buildings of heritage significance are particularly vulnerable to the impact of new development because of their scale and justify specific controls (including some mandatory provisions) to ensure they are not overwhelmed by new development on or adjacent to those sites.

Mr Gard’ner said the exhibited DDO23 provisions appropriately addressed relevant heritage issues. He said these requirements were consistent with the heritage advice in the Heritage Analysis Report and the Supplementary Heritage Report and included provisions relating to:

- design objectives
- street wall height and front setbacks
- upper level setbacks
- building heights
- other design requirements.

Mr Gard’ner concluded that:

The exhibited version of DDO23 appropriately addresses the character, appearance and significance of the identified heritage places within the proposed extent of land affected by Amendment C293yara.

The built form controls provided in the preferred version of DDO23 will encourage improved heritage and built form outcomes in comparison with Interim DDO23 and reflect the advice provided in the Supplementary Heritage Report prepared by GJM Heritage in May 2021.

The provision of mandatory controls is informed by thorough strategic work, is consistent with the guidance provided in PPN59 and PPN60 and is necessary to protect the heritage significance of small-scale heritage buildings within the land subject to DDO23.<sup>10</sup>

In its Part C submission, Council suggested a number of minor changes to the wording of several heritage related provisions. Mr Gard’ner supported these changes.

### **(iii) Discussion**

The Committee acknowledges the concerns expressed by submitters and agrees that development of, and adjacent to, places of heritage significance should be carefully managed. It is important that heritage places are protected and that suitable site specific built form requirements guide development to ensure acceptable design outcomes are achieved.

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<sup>10</sup> Document 14, Gardner evidence statement , paragraph 24

Council has completed extensive heritage assessment and analysis of the Precinct and the Committee accepts that this work has been thorough and has had regard to contemporary best practice. The Precinct has a complex urban structure and the proposed requirements reflect an appropriate balance between the protection of heritage and the opportunities for further development.

The Committee considers the detailed provisions in the exhibited DDO23 are an acceptable and appropriate response to the heritage issues within the Precinct. Many of the requirements address the concerns expressed by submitters. In response to these submissions, the Committee notes:

- detailed built form character elements were identified in the strategic work and were translated into the exhibited DDO23
- the exhibited DDO23 includes requirements to ensure new development responds sensitively towards heritage places
- the majority of taller buildings within the Precinct were approved before the Supplementary Heritage Report was prepared and interim DDO23 was in place
- the Supplementary Heritage Report recommended lower overall heights for heritage places in more consistent heritage settings (mandatory maximum height of 11 metres) and adjoining infill sites (ranging between 14 metres to 20 metres)
- the exhibited DDO23 includes reduced mandatory heights, mandatory upper level setbacks and design requirements to ensure new development respects heritage places in terms of built form transition and design
- a mandatory minimum 6-metre upper level setback behind the heritage building façade will help avoid facadism, assist to retain the key heritage elements and architectural features and to maintain the legibility of the three-dimensional form of the heritage place
- the exhibited DDO23 includes maximum building heights that moderate built form adjacent to heritage places
- the DDO23 provisions should be read in conjunction with other policy and design requirements in the Planning Scheme, including the heritage strategies in Clause 15.03 and the Heritage Overlay.

The minor wording changes to heritage related provisions are explained in further detail in Chapter 4. The Committee is satisfied that these changes improve the clarity of the requirements and do not change the intent or outcome of the exhibited provisions.

#### **(iv) Conclusions**

The Committee concludes:

- Council has completed extensive heritage analysis of the Precinct and this has been effectively translated into the exhibited DDO23.
- The exhibited DDO23 includes a comprehensive suite of objectives and specific requirements that appropriately manage built form outcomes that consider heritage issues.

## 3.4 Infrastructure capacity

### (i) The issues

The issues are:

- whether there is sufficient public open space in the Precinct to meet the needs of the future population
- whether there is sufficient transport infrastructure to meet future demand.

### (ii) Evidence and submissions

#### Public open space

Many submissions expressed concern that the Precinct has insufficient public open space to meet the needs of existing residents and employees. They noted that there were only three small parks within the Precinct and these were already heavily used. Larger areas of open space were located too far away to be of practical benefit.

Submitters considered:

- DDO23 would facilitate further substantial population growth and this would exacerbate the shortage of open space in the area
- there was a need for Council to increase the amount of public open space in Precinct
- the Oxford Street Reserve should be extended to the east.

In response, Council submitted that:

- the three small parks within the Precinct serve the immediate local area and are identified in Council's Open Space Strategy
- it is currently considering options to increase the size of the Cambridge Street Reserve by extending it into part of the Cambridge Street road reserve
- there are a number of larger open space areas within 400 metres of the Precinct, including:
  - Atherton Reserve and Condell Street Reserve to the northwest
  - Fitzroy Gardens and Powlett Reserve to the south
- it is currently pursuing Amendment C286yara which seeks to increase the public open space contributions associated with future developments from 4.5 percent to 10.1 percent
- the need for more public open space within the area is acknowledged but this is a matter for separate processes and is not able to be addressed through DDO23.

Council stated:

... it would not be appropriate to constrain growth within an activity centre on the basis of open space without clear and compelling evidence that existing provision is unable to accommodate reasonable localised demand. There is no such evidence before the SAC, and it is submitted that the Council's measured and considered approach to open space should be supported by the [Committee] at a high level and does not constitute a reason to alter the Amendment.<sup>11</sup>

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<sup>11</sup> Document 25, Council Part B submission, paragraph 100

## Transport

Many submissions were concerned that a range of transport infrastructure was insufficient to cope with expected future demand, including:

- increased traffic generation associated with further intensive development of the area would create unacceptable impacts on the area
- on-street car parking was already in limited supply and future development would make this even worse
- public transport services were already 'at capacity' and would be further impacted by increases in population or employment in the area
- there is a need for improvements to bicycle and pedestrian infrastructure to meet the needs of increased population density.

In response to these issues, Council submitted:

- it was working on a revised Transport Action Plan which will identify key capacity issues and outline how these could be addressed
- the management of on-street parking cannot be addressed through a DDO schedule
- all new developments since 2003 are not entitled to on-street car parking permits
- the provision of car parking in new developments is guided by Clause 52.06 as well as Local Transport Policy at Clause 18 of the Planning Scheme, which encourages the prioritisation of sustainable modes of transport including cycling and public transport
- it continues to advocate for more frequent public transport services as part of its ongoing discussions with the Department of Transport
- it completed separated bike lanes (Copenhagen-style) along Wellington Street in 2019 and these works have improved cyclist safety and capacity between Victoria Parade and Johnston Street
- it is outside the scope of the Amendment to require wider public footpaths
- the exhibited DDO23 includes requirements for development to enhance and support the public realm
- the exhibited DDO23 includes a number of built form provisions and design guidelines which would ensure the street network (including laneways) enables appropriate vehicle access and circulation.

Ms Dunstan gave traffic evidence and stated that:

- the Traffic Assessment Report provides a thorough review of the transport context of the study area and the likely transport impacts of the Amendment
- the additional traffic generated by additional development within the area (vehicular, public transport, walking and cycling demand) can be accommodated by the nearby transport network
- sustainable transport options (walking, cycling and public transport) will be the predominate travel modes that will accommodate these additional trips
- the Amendment focuses on how the built form provisions can assist in managing the impacts of vehicle access to new developments within the Precinct and how this can benefit sustainable transport outcomes, particularly pedestrians and cyclists
- most pedestrians and cyclists (aside from those specifically accessing properties) should be encouraged to travel through the higher order road network (Wellington Street and Langridge Street), where the level of safety and amenity will be higher and travel paths more legible and direct

- Wellington Street and Langridge Street are Strategic Cycling Corridors and provide high quality cycling infrastructure
- the primary purpose of the laneways in the wider Fitzroy/Collingwood area should be to provide rear vehicle access to abutting properties
- the focus on using lower order roads for vehicle access protects the pedestrian safety/amenity on the footpath and protecting cyclists on the road
- the exhibited DDO23 includes appropriate traffic engineering controls and ensures the safety and operation of laneways are adequately addressed.

Having reviewed the submissions, Ms Dunstan said no changes were necessary to the proposed DDO23 provisions.

### **(iii) Discussion**

#### **Public open space**

The Committee acknowledges that there is limited public open space within the Precinct. Council has indicated it is exploring opportunities for additional open space, although the details of these initiatives have not been finalised. It is also noted there are several additional areas of open space within a reasonable walking distance of the Precinct.

The adequate provision of public open space is a complex issue and should be seen within the context of the location of the area. The provision of additional areas of open space is beyond the scope of the Amendment.

That said, the Committee is satisfied that the Amendment includes planning provisions that protect the amenity of the existing areas of public open space. These provisions are appropriate and are supported.

The future growth of the Precinct should not be limited because of the extent of existing public open space. The future needs of residents, visitors and employees in the Precinct are matters that should be addressed as part of separate processes having regard to the intended future for the Precinct and the surrounding area.

#### **Transport**

The Committee is satisfied that Council has considered a wide range of transport issues associated with the development of the Precinct. The Traffic Assessment Report provides a comprehensive assessment of traffic and access constraints and opportunities. It appropriately balances the needs of vehicles, cyclists and pedestrians and these recommendations have been translated into numerous design guidelines in DDO23.

The Traffic Assessment Report emphasises sustainable transport options and prioritises cyclist and pedestrian movements above the motor vehicle. This is an appropriate response and the built form design requirements are generally reasonable. The detailed wording of provisions in Clause 2.9 (access, parking and loading bay requirements) are discussed in Chapter 4.7.

The Committee considers the Amendment emphasises walking and cycling as important modes of transport. This is consistent with the broader vision for sustainable transport and should help to provide further support for the expansion and enhancement of walking and cycling infrastructure in the area. The construction of transport infrastructure is beyond the scope of the Amendment.

**(iv) Conclusions**

The Committee concludes:

- The Amendment adequately protects the amenity of existing areas of public open space.
- The creation of additional areas of public open space is beyond the scope of the Amendment.
- The Amendment has appropriately considered a wide range of traffic and access issues associated with the further development of the Precinct.
- The DDO23 provisions to manage access and movement are generally appropriate.
- The construction of transport infrastructure is beyond the scope of the Amendment.

## 4 Design and Development Overlay Schedule 23

### 4.1 Design objectives

#### (i) The issue

The issue is whether the 'Design objectives' in Clause 1 of DDO23 are appropriate.

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

The exhibited Amendment includes the following 'Design objectives':

To foster an emerging, contemporary, mixed-use form on infill sites with a prominent street-wall edge, incorporating upper level setbacks and high-quality design features that create a distinction between lower and upper levels.

To ensure that the overall scale and form of new buildings is low- to mid-rise and responds to the topography of the precinct, by providing a suitable transition in height as the land slopes upwards, whilst minimising amenity impacts on existing residential properties, including visual bulk, overlooking and overshadowing.

To protect the industrial, residential and institutional built heritage of the precinct through maintaining the prominence of the corner heritage buildings on Wellington Street, and respecting both individual and groups of low-scale heritage buildings through recessive upper level development and a transition in scale from taller form towards the interface with heritage buildings.

To promote and encourage pedestrian-oriented, high quality urban design outcomes through street edge activation and the protection of footpaths and public open spaces from loss of amenity through overshadowing.

To ensure that development provides for equitable development outcomes through building separation and a design response that considers the development opportunities of neighbouring properties.

#### (iii) Evidence and submissions

Regarding the design objectives, there were submissions that said:

- the second objective was unlikely to be achieved because the proposed maximum heights would not enable a suitable transition in height between new development in the north and east and heritage properties in the south and west
- the aim should be to preserve the unique character of the Precinct with low rise development to enhance heritage of the area
- adaptive re-use of heritage places is very important and should be encouraged
- the design objectives should include a broader statement about protection of open space, including not allowing any additional overshadowing of the existing open space during the winter solstice
- the equitable development principle should be expanded to include the effect of any new proposal on adjoining developments already constructed
- there needs to be greater emphasis given to the fourth objective.

Mr Gard'ner, Mr Campbell and Ms Dunstan supported the proposed objectives. Ms Rigo supported the objectives and suggested a minor wording change to the second objective to refer to "... *low-rise* to *mid-rise* ...". Council supported this change.

**(iv) Discussion**

The Committee is satisfied that the design objectives are appropriate. They are based on sound strategic work and reflect the extensive background analysis associated with the preparation of the Amendment.

Ministerial Direction 7(5) limits the number of objectives in a DDO schedule to no more than five. Within this context, the proposed objectives cover important issues dealing with overall built form, transition in building heights, heritage considerations, public amenity and equitable development. These are relevant and appropriate matters to be included in design objectives.

There is a clear nexus between the design objectives and the detailed provisions in DDO23. The objectives reflect the key intent of DDO23 and they will be useful in assisting decision makers in exercising discretion.

The various suggestions expressed in submissions are either not required or are not justified. For example, other provisions within the Planning Scheme deal adequately with the re-use of heritage buildings. The strategic work completed by Council does not support limiting all development to low-rise or requiring no shadowing of public open space at the winter solstice.

The Committee supports the proposed design objectives subject to the minor wording change to the second objective as proposed by Council in its closing submission.

**(v) Conclusion and recommendation**

The Committee concludes:

- The 'Design objectives' are based on sound strategic planning and are appropriate, subject to a minor wording change to the second design objective.

The Committee recommends:

- 3. Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to refer to 'low-rise to mid-rise' in the second design objective.**

**4.2 Street wall height and front setback requirements****(i) The issues**

The exhibited DDO23 includes mandatory provisions regarding street wall height and front setbacks. These issues have been discussed in chapter 3.1 and are not repeated here.

This chapter deals with the other provisions in Clause 2.3 (Street wall heights and front setbacks).

The issues are:

- whether the street wall heights and front setback requirements are justified and appropriate
- whether the street wall height metrics for several sites are appropriate.

**(ii) Evidence and submissions**

Council submitted that street wall height and setback requirements were based on the analysis and recommendations in the Built Form Framework and the Supplementary Heritage Report. It said the requirements dealt with matters such as:

- specified mandatory and preferred maximum street wall heights

- criteria to be met for proposals that exceed the preferred maximum street wall height
- street walls of infill development adjoining a heritage building
- street walls on corner buildings.

Mr Gard'ner noted the Supplementary Heritage Report included recommendations to modify the interim DDO23 by:

- reducing some maximum street wall heights to ensure new built form responds to the heritage context to avoid visually dominating heritage places
- the application of mandatory street wall height requirements for infill development between heritage sites.

Ms Rigo supported the exhibited requirements.

Some submissions supported the reduction of street wall heights recommended in the Supplementary Heritage Report.

A submission objected to the requirement that:

Development should have no front or side street setback, unless an immediately adjoining heritage building is set back from the street, in which case infill development should match the front setback of the adjoining heritage building from the same street, excluding lane way frontages.

The submission said that *“if new developments have lane way frontages that face a residential property or business, they should be setback to preserve the privacy of the adjacent occupant.”*

In response, Mr Gard'ner said:

- there are a very small number of laneways within the land affected by DDO23
- the character of the unnamed laneway located between Cambridge and Wellington Streets has already been irrevocably altered by the 11 storey Wellington and Vine development
- maximum street wall heights (and minimum upper level setbacks and maximum building heights) are provided along the 'little' streets that have a laneway-like character to moderate new built form - including Mason Street, Little Oxford Street and the southern part of Oxford Street.

A submission suggested that street wall heights on sloping sites such as 53-57 Cambridge Street have the potential to exceed the preferred maximum heights due to the change in level across the site. It said the street wall heights of future buildings should not exceed the existing street wall heights.

Several submissions objected to the proposed street wall heights on specific sites. These are discussed below.

### **Land bound by Oxford Street Reserve, Langridge, Cambridge and Derby Streets**

The exhibited DDO23 proposes a preferred street wall height of 14 metres on the eastern side of the Oxford Street Reserve. Many submissions were concerned about the impact this height (and the proposed building height on the land to the east of the park) will have on the amenity of the Oxford Street Reserve.

In response to these submissions, Council completed further shadow testing of the impact of different development scenarios on the Oxford Street Reserve. Council supported the preferred street wall height being reduced from 14 metres to 11 metres in association with other changes to the shadowing provisions (discussed in chapter 4.5).

Mr Campbell and Ms Rigo supported the changes. Ms Rigo said:

In my opinion, the reduction in street wall height should be supported given the existing low scale built form along the eastern boundary of the Reserve and it complements the requirements regarding overshadowing of the Reserve, providing clarity and certainty around the future built form of this interface. It also highlights the important amenity value of this space in the public realm of the Precinct and for its residents, as reflected in many submissions which raise concerns about the inadequacy of public open space in the area.<sup>12</sup>

Mr Gard'ner did not disagree with the change and noted that the site is not of heritage significance.

### **64-66 Oxford Street**

64-66 Oxford Street is on the southeast corner of Oxford Street and Derby Street. The land is within a Heritage Overlay (part of a heritage precinct) but the buildings at 64-66 Oxford Street are not of heritage significance. Land to the east and south contain heritage buildings.

The exhibited DDO23 shows 64-66 Oxford Street having a preferred maximum street wall height of 14 metres. No submissions objected to this metric.

Mr Campbell gave evidence that although the site abuts heritage terraces to either side:

I believe it could successfully accommodate a 6 storey contemporary form, much like the development opposite (to its north at 20 Peel Street) and still be able to appropriately step down and transition its mass to its abutting lower scale heritage neighbours.

I also believe it could accommodate a higher street wall height to 'mark' and 'hold' its corner position and broadly reflect the contemporary profile to its north, across Peel Street. A relatively small portion of a 6 storey (20m) street wall could be contemplated at the corner, before stepping down to 4 storeys (14m) on transition to abutting heritage forms.<sup>13</sup>

Mr Gard'ner did not agree with Mr Campbell's recommendation because the site was flanked by heritage buildings and the street wall should be moderated in height to provide an appropriate transition to places of heritage significance. He said there was a change in the character of Oxford Street south of Peel Street and this is reflected in the proposed metrics for the site.

Council did not support the view of Mr Campbell and preferred to rely on the evidence of Mr Gard'ner with respect to this issue.

### **23-31 Derby Street**

23-31 Derby Street is located on the southeast corner of Derby Street and Oxford Street. The buildings on the land are not of heritage significance, however the Heritage Overlay applies to land to the east. The Collingwood English Language School is to the south.

The exhibited DDO23 shows 23-31 Derby Street having a preferred maximum street wall height of 14 metres.

Some of the residents living in the 'XO Building' on the southwest corner of Derby Street and Oxford Street objected to the proposed street wall height and noted:

- Oxford Street is a very narrow street and their apartments would be overshadowed by development to the east
- a street wall height of 14 metres would be inconsistent with the low street wall of the heritage buildings to the east

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<sup>12</sup> Document 18, Evidence statement of Ms Rigo, paragraph 121

<sup>13</sup> Document 15, Evidence statement of Mr Campbell, paragraphs 149 and 150

- a street wall height of 14 metres on the corner would spoil the look of the streetscape.

Council advised the Committee that the 'XO Building' has a street wall 13.8 metres high on Oxford Street and 14.2 metres high on Derby Street.

Mr Gard'ner supported the exhibited street wall heights and said:

Any proposed new built form at 23-31 Derby Street will be moderated to step down towards the two-storey heritage fabric through the application of the street wall height and setback requirements in Section 2.3 of DDO23 and the policy at Clause 22.10-3.3 and this is considered sufficient to address the adjacent heritage fabric.<sup>14</sup>

Council submitted that the exhibited street wall heights were appropriate.

### **10-22 Derby Street**

A submission did not support the proposed 11 metres maximum street wall height at the rear of 10-22 Derby Street and wanted a maximum street wall height of no more than two storeys.

Mr Gard'ner supported the exhibited street wall heights and said:

The proposed street wall height in both the interim and exhibited versions of DDO23 at the rear of 10-22 Derby Street is shown as 11m. The maximum building height of 14m (preferred) included in the interim DDO has been reduced to 11m (mandatory) in the exhibited version. In my view this addresses this submitter's concerns and will ensure that the two-storey Victorian-era buildings at 10-22 Derby Street will retain their heritage values and character.

Council submitted that the exhibited street wall heights were appropriate.

### **(iii) Discussion**

The Committee considers the proposed street wall height requirements are based on sound analysis and it supports the exhibited requirements. The evidence of Mr Gard'ner was compelling and the Committee is satisfied that the issues raised in submissions are adequately addressed through the detailed provisions in DDO23.

The Committee supports the change to the street wall height on the east side of the Oxford Street Reserve as recommended by Council. A preferred maximum street wall height of 11 metres will ensure the amenity of the park is better protected.

The Committee does not support the change to the street wall heights to 64-66 Oxford Street recommended by Mr Campbell. In this instance, the Committee prefers the evidence of Mr Gard'ner and agrees that the exhibited heights are appropriate.

The Committee does not see any compelling reason to modify the street wall heights for 10-22 Derby Street and 23-31 Derby Street. It considers the exhibited street wall heights are appropriate having regard to the location of the sites and their context. Appropriate protection of heritage places is provided in various requirements in DDO23 dealing with transitional heights. The Committee fails to understand how a street wall of 14 metres would 'spoil' the streetscape when the 'XO Building' (opposite 23-31 Derby Street) has a similar street wall. It considers the street wall of the 'XO Building' does not diminish the Derby Street streetscape.

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<sup>14</sup> Document 14, Evidence statement of Mr Gard'ner, paragraph 101

**(iv) Conclusions and recommendation**

The Committee concludes:

- The street wall heights and front setback requirements are justified and appropriate.
- The street wall height metrics are generally appropriate.
- The preferred maximum street wall height for land on the east side of the Oxford Street Reserve should be reduced from 14 metres to 11 metres.

The Committee recommends:

- 4. Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to change Map 1 to show the preferred maximum street wall height for the land abutting the east side of the Oxford Street Reserve with a street wall height of 11 metres.**

**4.3 Upper level setback requirements****(i) The issues**

The issues are:

- whether the upper level setback metric requirements are sufficient
- whether the upper level and setback requirements clearly distinguish between heritage and non-heritage buildings
- whether Map 1 should be modified to show the block east of Oxford Street Reserve and bounded by Langridge, Cambridge and Derby Streets within 'Area 2' rather than 'Area 3'
- whether it is necessary to distinguish between 'Area 1 and 'Area 2'.

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

In the exhibited Amendment, Clause 2.4 (Upper level setback requirements) proposes:

Upper levels above the street wall:

- must be set back by a minimum of 6 metres for heritage buildings;
- should be placed behind the front two rooms and/or principle roof form, whichever is the greater, for properties at 50-52 Oxford Street, 57-63 Oxford Street, 13-15 Peel Street and 14- 34 Cambridge Street, Collingwood;
- should be placed behind the heritage fabric of 58-62 Oxford Street, Collingwood, as identified in the relevant Statement of Significance;
- should be set back by a minimum of 6 metres for other development sites in Areas 1 and 2 as shown on Map 1;
- should be set back by a minimum of 3 metres for other development sites in Area 3 as shown on Map 1.

Upper levels should:

- be visually recessive when viewed from the public realm to ensure development does not overwhelm the streetscape and minimises upper level bulk;
- contain upper level setbacks above the street wall within a maximum of two steps (including the setback above the street wall below as one step) to avoid repetitive steps in the built form.

For heritage buildings, upper level setbacks in excess of the minimum upper level setback requirements should be provided where:

- it would facilitate the retention of a roof form and/or chimneys that are visible from the public realm, or a roof or any feature that the relevant statement of significance identifies as contributing to the significance of the heritage building or streetscape;
- it would maintain the perception of the three-dimensional form and depth of the building;

- a lesser setback would detract from the character of the streetscape when viewed directly or obliquely along the street.

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

A few submissions questioned the metrics associated with the upper level setback requirements.

The Yarra Planning Coalition said upper levels should be setback a minimum of 10 metres from the street wall.

Another submission supported the requirement for a 6-metre upper level setback above the street wall, but queried why there is no specified distance for any further upper level setbacks.

Mr Gard'ner gave evidence that a 6-metre minimum upper level setback was appropriate for heritage buildings. He said this would ensure a clear distinction between lower and upper levels, retain the key heritage elements and architectural features and maintain the legibility of the three-dimensional form of heritage places.

Mr Gard'ner noted that a number of heritage-listed residential buildings within the Precinct require setbacks that exceed 6 metres to achieve acceptable heritage outcomes and the provisions make specific reference to these circumstances. Mr Campbell and Mr Gard'ner supported a discretionary upper level minimum setback of 3 metres for non-heritage buildings and noted a general requirement that upper levels should be setback above the street wall within a maximum of two steps to avoid repetitive steps in the built form.

Ms Rigo generally supported the approach to upper level setbacks, however she was concerned that there may be some confusion regarding the application of the controls because of ambiguous wording. For example, she noted that the first dot point required a mandatory 6-metre upper level setback for heritage buildings and then the second and third points were discretionary requirements that did not clearly express these setbacks were greater than 6 metres. Ms Rigo also suggested that there be a re-ordering of the provisions to ensure a clearer distinction between requirements for heritage and non-heritage buildings.

Many submissions requested that Map 1 should be modified to show the block east of Oxford Street Reserve and bounded by Langridge, Cambridge and Derby Streets within 'Area 2' rather than 'Area 3'.

In response to questions from the Committee, Mr Campbell and Ms Rigo agreed that the only difference in the three 'Areas' shown on Map 1 in DDO23 relate to upper level setbacks. They understood the intent is that non-heritage buildings in Areas 1 and 2 should have an upper level setback of 6 metres and non-heritage buildings in Area 3 should have an upper level setback of 3 metres.

There is no other reference in DDO23 to any of the three nominated Areas.

Mr Campbell explained that the designation and boundaries of the three 'Areas' originate from the Built Form Framework.

Mr Gard'ner, Mr Campbell and Ms Rigo all considered that the land bound by the Oxford Street Reserve, Langridge, Cambridge and Derby Streets should remain within Area 3. They noted that the land is not within a Heritage Overlay and said a 3-metre upper level setback was appropriate.

Mr Campbell agreed that as there was no distinction between Area 1 and Area 2 (they both have a discretionary upper level setback of 6 metres) there would be some logic to combine these two Areas into a single Area.

In its closing submission, Council agreed that combining Area 1 and Area 2 into a single Area “*may aid legibility of the DDO*”.

In its closing submission, Council proposed the following rewording of Clause 2.4 (Upper level setback requirements):

Upper levels above the street wall:

Heritage buildings

- must be set back by a minimum of 6 metres ~~for heritage buildings~~;
- should be setback more than 6 metres so as to be placed behind the front two rooms and/or principle roof form, whichever is the greater, for properties at 50-52 Oxford Street, 57-63 Oxford Street, 13-15 Peel Street and 14-34 Cambridge Street, Collingwood
- should be setback more than 6 metres so as to be placed behind the heritage fabric of 58-62 Oxford Street, Collingwood, as identified in the relevant Statement of Significance;

Other Buildings

- should be setback by a minimum of 6 metres for ~~other development~~ sites in Areas 1 and 2 as shown on Map 1;
- should be setback by a minimum of 3 metres for ~~other development~~ sites in Area 3 as shown on Map 1.

Upper levels should:

- be visually recessive when viewed from the public realm to ensure development does not overwhelm the streetscape and minimises upper level bulk;
- contain upper level setbacks above the street wall within a maximum of two steps (including the setback above the street wall below as one step) to avoid repetitive steps in the built form.

For heritage buildings, upper level setbacks in excess of the minimum upper level setback requirements should be provided where:

- it would facilitate the retention of a roof form and/or chimneys that are visible from the public realm, or a roof or any feature that the relevant statement of significance identifies as contributing to the significance of the heritage building or streetscape;
- it would maintain the perception of the three-dimensional form and depth of the building;
- a lesser setback would detract from the character of the streetscape when viewed directly or obliquely along the street.

In response to questions from the Committee, Council acknowledged the clause could be further refined to make it clearer that:

- the two dot points under the words ‘Upper levels should:’ apply to both heritage and non-heritage buildings
- the last three dot points under the words ‘For heritage buildings, upper level setbacks in excess of the minimum ...’ could be relocated to sit under the ‘Heritage buildings’ provisions.

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

The Committee considers the proposed metrics for upper level setbacks are appropriate. It agrees with Mr Gard’ner that a mandatory minimum upper level setback of 6 metres for heritage buildings will ensure a clear distinction between lower and upper levels and retain key heritage elements. A 6-metre setback will avoid facadism by maintaining the legibility of the three-

dimensional form of heritage places. There are a few places where an upper level setback greater than 6 metres may be required and these are appropriately identified in the provisions.

A discretionary 6-metre minimum upper level setback for non-heritage buildings in Areas 1 and 2 is appropriate having regard to the heritage streetscapes in these areas.

A 3-metre minimum upper level setback is appropriate in Area 3 because this area has few heritage places and the rationale for the upper level setback is different.

The provisions include a discretionary requirement for all buildings to contain upper level setbacks above the street wall within a maximum of two steps (including the setback above the street wall below as one step) to avoid repetitive steps in the built form. This is an appropriate guideline to avoid 'wedding cake' outcomes.

The Committee considers it is appropriate for the land bound by the Oxford Street Reserve, Langridge, Cambridge and Derby Streets to remain within Area 3. There is no compelling reason to include the land within Area 2. The only reason to include the land in Area 2 would be to require a minimum 6-metre upper level setback. The land is not within a Heritage Overlay and a minimum 3-metre upper level setback is appropriate having regard to its location and site context. This approach is consistent with other similar areas in the Precinct.

As there is no difference in the controls between Area 1 and Area 2 in DDO23, the Committee considers there is merit in modifying Map 1 to combine Area 1 and Area 2 into a single area. This would be simpler and avoid misleading users of the Planning Scheme. To avoid confusion with the areas described in the Built Form Framework, Areas 1 and 2 should be combined into a new 'Area A' and Area 3 should be renamed 'Area B'. These changes should be made to Map 1 and the relevant parts of Clause 2.4.

The Committee agrees with Council and Ms Rigo that the drafting of Clause 4.2 should be modified to improve its clarity and intent. The version of the clause presented by Council in its closing submission addressed some, but not all, of the drafting issues. The Committee considers the following version is appropriate:

Upper levels above the street wall:

Heritage buildings:

- must be set back by a minimum of 6 metres ~~for heritage buildings~~;
- should be setback more than 6 metres so as to be placed behind the front two rooms and/or ~~principle principal~~ roof form, whichever is the greater, for properties at 50-52 Oxford Street, 57-63 Oxford Street, 13-15 Peel Street and 14-34 Cambridge Street, Collingwood
- should be setback more than 6 metres so as to be placed behind the heritage fabric of 58-62 Oxford Street, Collingwood, as identified in the relevant Statement of Significance;
- should be setback in excess of the minimum upper level setback requirement where:
  - it would facilitate the retention of a roof form and/or chimneys that are visible from the public realm, or a roof or any feature that the relevant statement of significance identifies as contributing to the significance of the heritage building or streetscape;
  - it would maintain the perception of the three-dimensional form and depth of the building;
  - a lesser setback would detract from the character of the streetscape when viewed directly or obliquely along the street.

Other buildings:

- should be setback by a minimum of 6 metres for ~~other development~~ sites in Areas A 1 and 2 as shown on Map 1;

- should be setback by a minimum of 3 metres for ~~other development~~ sites in Area ~~B3~~ as shown on Map 1.

#### Heritage and Other buildings:

##### ~~Upper levels should:~~

- ~~should~~ be visually recessive when viewed from the public realm to ensure development does not overwhelm the streetscape and minimises upper level bulk;
- ~~should~~ contain upper level setbacks above the street wall within a maximum of two steps (including the setback above the street wall below as one step) to avoid repetitive steps in the built form.

~~For heritage buildings, upper level setbacks in excess of the minimum upper level setback requirements should be provided where:~~

- ~~it would facilitate the retention of a roof form and/or chimneys that are visible from the public realm, or a roof or any feature that the relevant statement of significance identifies as contributing to the significance of the heritage building or streetscape;~~
- ~~it would maintain the perception of the three-dimensional form and depth of the building;~~
- ~~a lesser setback would detract from the character of the streetscape when viewed directly or obliquely along the street.~~

## (v) Conclusions and recommendations

The Committee concludes:

- The minimum metric requirements for upper level setbacks are appropriate.
- It is appropriate to include the land bound by the Oxford Street Reserve, Langridge, Cambridge and Derby Streets within 'Area 3'.
- The land shown on Map 1 as Area 1 and Area 2 should be combined to form 'Area A'.
- The land shown on Map 1 as Area 3 should be renamed 'Area B'.
- References in Clause 4.2 to Areas 1, 2 and 3 should be modified to Areas A and B.
- The drafting of Clause 4.2 should be modified to clearly distinguish the provisions applying to heritage and non-heritage buildings and to improve the clarity and intent of the provisions.

The Committee recommends:

5. **Amend Design and Development Overlay Schedule 23, to:**
  - a) **show on Map 1:**
    - **Area 1 and Area 2 combined to form Area A**
    - **Area 3 renamed Area B**
  - b) **clearly distinguish the upper level setback requirements applying to heritage and non-heritage buildings and to improve the clarity and intent of the provisions.**

## 4.4 Building height requirements

### (i) The issues

The exhibited DDO23 includes mandatory provisions regarding building heights and criteria for varying preferred maximum building heights. These issues have been discussed in chapter 3.1 and 3.2 and are not repeated here.

This chapter deals with the other provisions in Clause 2.5 (Building height requirements).

The issues are:

- whether the proposed metrics for maximum building heights are appropriate

- whether exemptions for architectural features, service structures and equipment to exceed the nominated building heights are appropriate.

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

The proposed building heights are included on Map 1 in DDO23 and sites are designated with either mandatory or preferred maximum heights.

**Figure 3 Exhibited DDO23 Map 1**



As exhibited, Clause 2.5 (Building height requirements) states:

Architectural features may exceed the building height.

Service equipment and/or structures including balustrades, unenclosed pergolas for communal areas, roof terraces, shading devices, plant rooms, lift overruns, stair wells, structures associated with pedestrian access, green roof areas and other such equipment may exceed the height provided that:

- the equipment/structures do not cause additional overshadowing of secluded private open space to residential land, opposite footpaths, kerb outstands or planting areas in the public realm; and
- the equipment/structures are no higher than 2.6 metres above the proposed building height; and
- the equipment/structures occupy less than 50 per cent of the roof area (solar panels and green roof excepted).

**(iii) Evidence and submissions**

Council submitted the proposed maximum building heights were based on the extensive assessment and analysis completed in the Built Form Framework and the heritage studies.

Mr Gard'ner gave evidence that the Supplementary Heritage Report made a number of recommendations regarding building heights that varied interim DDO23, including:

- a mandatory maximum height of 11 metres for residential heritage buildings
- reducing the discretionary maximum height for the following infill sites south of Peel Street from 20 metres to 14 metres:
  - 4-6 Derby Street
  - 43-49 Oxford Street
  - 64-66 Oxford Street
  - the vacant land on Cambridge Street at the rear of 1-35 Wellington Street.

Mr Gard'ner noted that DDO23 includes a range of design requirements in addition to the specified maximum building heights and these needed to be read together to understand the full suite of controls that apply to a particular site. In addition, the Heritage Policy at Clause 22.02 (and proposed Clause 15.03-1L) encourages new development that respects the scale of existing heritage buildings and streetscapes.

Mr Gard'ner said the majority of taller buildings subject to DDO23 were approved before the preparation of the Supplementary Heritage Report and interim DDO23 was in place. The strategic work since the introduction of interim DDO23 has resulted in lower proposed building heights and strengthened height requirements.

Ms Rigo supported the proposed building height provisions in the Precinct given the background reports prepared and the nature and scale of redevelopment occurring in the Precinct. She was satisfied that the range and application of preferred building heights will facilitate a built form outcome consistent with the objectives sought and the valued characteristics of the area.

Building heights were the most contested issue with the Amendment. Many submissions wanted lower building heights and stated a range of views including:

- new buildings should be built no higher than the ones they replace
- Area 1 and Area 2 should have maximum heights of 3-5 storeys
- Area 3 should have a maximum height of 8 storeys
- maximum building heights should be reduced across all areas
- the maximum building height should preferably be 3 storeys and an absolute maximum of 6 storeys
- Derby Street should have maximum building heights of 14 metres (4 storeys)
- there are too many 10-12 storey buildings in the area
- the maximum height controls are irrelevant because they are too late and they should have been in place many years ago.

Some submissions wanted lower heights specified on sites that had already been developed such as the northeast corner of Oxford and Peel Street and the west side of Wellington Street.

Other submissions supported the proposed heights and were *“fully supportive of Council’s goals of creating higher density living in the area”*. One submission said Council had *“struck the right balance”* and another said it was *“deeply hypocritical”* for residents who live in the tallest building

in the Precinct (the Holme Apartments building is 14 storeys) to object to preferred maximum building heights that were lower than their own building.

Many submissions objected to the proposed maximum building heights on specific sites. These are discussed below.

### **Land bound by Oxford Street Reserve, Langridge, Cambridge and Derby Streets**

This site is an 'island' of over 1500 square metres and includes multiple titles bounded on all sides by 20 metre wide road reserves. The Heritage Overlay does not apply to the land.

Buildings have recently been built to the north (11 storeys), north-east (10 storeys), east (14 storeys) and south-west (8 storeys).

The exhibited DDO23 proposes a preferred maximum building height of 27 metres (8 storeys).

There were no submissions from the owners of land within this site.

Many submissions objecting to the proposed height came from residents at 68 Cambridge Street (the Holme Apartments), 88 Cambridge Street and 27 Oxford Street (the XO Building).

Submissions objected to the proposed maximum building height and expressed concerns including:

- the height is out of character with nearby heritage streetscapes and buildings
- a building at a height of 27 metres will overshadow the heritage buildings on the opposite (south) side of Derby Street
- the maximum height should be reduced to allow a transition to the lower scale pocket park and adjoining heritage areas
- a building 27 metres tall would cause shadowing of open space, wind tunnelling, a loss of privacy and would block sunlight and impact views to the city from 68 Cambridge Street (the Holme Apartments).

Most submissions wanted the maximum building height reduced to 14 metres (4 storeys). Some submissions said a height of 20 metres (6 storeys) would be acceptable.

In response to these submissions, Mr Campbell said the preferred maximum height of 27 metres was appropriate and consistent with the recommendations in the Built Form Framework. He said the concerns expressed in submissions can be suitably addressed by existing provisions within the Planning Scheme, in addition to those proposed within DDO23, which protect the amenity of existing residents. In Mr Campbell's view, submissions that sought *"to limit built form to a maximum of 14 metres, when living in a recently constructed 42.6 metres building (above Wellington Street) and 39.7 metres (above Cambridge Street) on the other side of a street, with the same Zone and Overlay controls have no planning basis"*.<sup>15</sup>

Ms Rigo stated that planning policy encourages this island site to contribute to the growth of the Precinct, whilst responding to its sensitive interface with the Oxford Street Reserve, the scale of existing built form and the amenity of existing residents on the opposite side of the streets. She concluded:

The proposed preferred building height of 27 metres equates to an approximate 8 storey building which sits comfortably between the 14 storeys to its east and the 11 storeys to the north.

<sup>15</sup> Document 15, Evidence statement of Mr Campbell, paragraph 134

In my opinion, this island site provides a key opportunity for new development in the Precinct given its physical separation from adjoining land, provided a design response is sensitive to its interface with the Reserve. In my opinion, the extensive requirements under Section 2.0 of DDO23 gives me confidence that the future built form of this land will be appropriately managed, particularly in relation to its interface with Derby Street and the Oxford Street Reserve, overshadowing and residential amenity.

I do not support a reduction to the preferred maximum building height for this land.<sup>16</sup>

Mr Gard'ner gave evidence that:

This land is separated from identified heritage fabric by the approximately 20m wide Oxford Street Reserve to the west and Derby Street to the south. Further, there are no sensitive heritage interfaces to the north or east. It is therefore my view that development on these sites of the scale envisaged in the proposed DDO can be accommodated without unreasonably adversely affecting the heritage values of nearby heritage places.<sup>17</sup>

Council supported the evidence of Ms Rigo and Mr Gard'ner. It also supported the evidence of Mr Campbell but defended the rights of residents in the Holme Apartments to make submissions regarding the Amendment.

### **64-66 Oxford Street**

This land is on the southeast corner of Oxford and Peel Streets and currently comprises a 1-2 storey brick warehouse building with undercroft car parking fronting Peel Street. The land is within a Heritage Overlay (part of a heritage precinct) but the buildings at 64-66 Oxford Street are not of heritage significance. Land to the east and south contain heritage buildings.

Interim DDO23 shows a preferred height of 20 metres (6 storeys) for the site. In response to recommendations in the Supplementary Heritage Report, the preferred maximum height in the exhibited DDO23 was reduced to 14 metres (4 storeys) to better protect the abutting heritage properties and to reflect the distinct built form character south of Peel Street.

Mr Campbell gave evidence that, in his opinion, it was appropriate to retain a preferred maximum height of 20 metres for this site. He said this was consistent with the recommendations of the Built Form Framework and reflected the height of existing development on the northeast corner of Oxford and Peel Streets (20.2 metres) opposite 60-64 Oxford Street. In his view, a 6 storey contemporary building on the site could "*step down and transition its mass*" to the abutting lower scale heritage buildings.

Mr Gard'ner did not agree with Mr Campbell's recommendation because the site was flanked by heritage buildings and building height should be moderated to provide an appropriate transition to places of heritage significance. He said this was consistent with the recommendations in the Supplementary Heritage Report which was based on a more detailed analysis on the impact of development on the adjoining heritage sites.

Mr Gard'ner acknowledged the existing development on the northeast corner of Oxford and Peel Street, however he said there was a change in the character of Oxford Street south of Peel Street and this is reflected in the proposed metrics for the site.

There were no submissions from the owners of this site.

<sup>16</sup> Document 18, Evidence statement of Ms Rigo, paragraphs 131-133

<sup>17</sup> Document 14, Evidence statement of Mr Gard'ner, paragraph 99

Council did not support the view of Mr Campbell and preferred to rely on the evidence of Mr Gard'ner with respect to this issue.

### 23-31 Derby Street

This land is on the southeast corner of Oxford and Derby Streets and contains a row of non-heritage commercial buildings fronting Derby Street. A rear lane separates the site from the Collingwood English Language School to the south.

The exhibited DDO23 shows the site with a preferred maximum height of 20 metres (6 storeys).

The Heritage Overlay applies to a range of commercial buildings to the east of the site. This land has a preferred maximum building height of 14 metres (4 storeys).

To the west of the site is a recently constructed 8 storey (26.2 metres) apartment building known as the 'XO Building' located on the southwest corner of Oxford and Peel Street (27-29 Oxford Street and 15-21 Derby Street).

To the north of the site is the Oxford Street Reserve and to the east of the park the land is proposed to have a preferred maximum building height of 27 metres.

Submissions objected to the proposed preferred maximum building height for 23-31 Derby Street and stated a building height of 20 metres:

- would *"totally destroy"* the amenity and liveability for residents in the 'XO Building'
- would overshadow the adjacent school playground
- should be lowered to reflect the preferred building heights for heritage sites in Derby Street west of Cambridge Street.

Many of the objections came from residents in the 'XO Building'.

Submissions generally wanted the maximum building height lowered to 14 metres.

The owner of 29-31 Derby Street made a submission in response to the notification of the Council resolution on 21 December 2021. This submission supported the exhibited preferred maximum building height of 20 metres and objected to any consideration of lowering the building height to 14 metres. It said a lower maximum building height would be inconsistent with the 8 storey 'XO Building' to the west.

Ms Rigo gave evidence that:

... I am of the opinion that the proposed preferred height of 20 metres, together with the design requirements in DDO23 regarding setbacks and interfaces with heritage buildings and laneways, as well as overshadowing requirements, is appropriate in this context. At the proposed preferred building height, I would anticipate a built form that appropriately transitions up from the lower scale heritage buildings to its east to the new 8 storey building at 15-21 Derby Street. This recent building visually breaks the continuity of finer grain buildings along the southern side of Derby St (west of Cambridge Street) to Smith Street. An infill development of 23- 31 Derby Street should have the capacity to transition between these two built forms along this part of Derby Street, subject to satisfying the requirements of Section 2.0 of DDO23. I am of the opinion that a further reduction in preferred building height along this part of Derby Street is not necessary.<sup>18</sup>

Mr Gard'ner noted that:

- 23-31 Derby Street are not subject to the Heritage Overlay

<sup>18</sup> Document 18, Evidence statement of Ms Rigo, paragraph 126

- while a lower maximum height limit would be consistent with the land subject to the Heritage Overlay to the east, this should also be seen within the context of the recently constructed 8 storey 'XO Building' to the west
- a proposed 20 metres maximum height is consistent with existing and emerging built form within the area
- any proposed new built form at 23-31 Derby Street will be moderated to step down towards the 2 storey heritage fabric through the application of other requirements in Section 2.3 of DDO23 and the policy at Clause 22.10-3.3 and this is considered sufficient to address the adjacent heritage fabric.

Council supported the expert evidence presented and did not propose any variation to building heights for this site.

### **9-13 Derby Street**

The land at 9-13 Derby Street is to the west of the 'XO Building' and is occupied by three, 2 storey dwellings. The Heritage Overlay does not apply to these properties.

The exhibited DDO23 shows this land with a preferred maximum building height of 20 metres (6 storeys).

The owners of these properties did not make a submission.

A submission from residents to the south (rear) of the properties objected to the proposed maximum building height because a building 20 metres tall would reduce the amount of northern sunlight they currently enjoy and impact on their privacy. The submission wanted to maintain a 2 storey maximum height for any new building at 9-13 Derby Street.

Council did not propose any change to the exhibited heights for 9-13 Derby Street.

### **Oxford Street and Cambridge Street (between Peel Street and Langridge Street)**

Submissions objected to a range of sites in Oxford Street and Cambridge Street between Peel Street and Langridge Street. They were concerned about the number of sites identified with a preferred maximum building height of 20 metres. They wanted a maximum building height of 14 metres to apply and said this would be more sympathetic to the lower scale heritage buildings, particularly in Oxford Street. It was also suggested that building heights in Cambridge Street should transition from 14 metres at the northern end (near Peel Street) to 20 metres at the southern end (near Langridge Street).

In response, Mr Gard'ner noted:

- the Heritage Overlay does not apply to a substantial part of this area
- the areas containing heritage fabric have a mandatory maximum building height of 11 metres
- the southern parts of Cambridge Street have been developed with heights of 10 and 11 storeys
- a maximum preferred height of 20 metres will provide for a transition between the taller built form to the south and the heritage fabric to the north
- this transition will also be moderated through the design requirements in DDO23 and the policy at Clause 22.10-3.3 (or proposed Clause 15.01-1L).

Council supported the exhibited provisions and did not propose to vary building heights in this area.

## North side of Mason Street

The section of Mason Street within DDO23 contains a number of narrow fronted, low scale heritage properties on the south side. The Amendment proposes a mandatory maximum building height of 11 metres for almost all of these properties. The balance of the properties on the south side have preferred maximum building height of 11 metres.

Land on the north side of Mason Street consists of 1-2 storey commercial buildings on larger lots that are not within a Heritage Overlay. They have a proposed preferred maximum building height of 14 metres. A single parcel further north has a maximum height of 20 metres.

Several submissions expressed concerns that tall buildings on the north side of Mason Street would overwhelm the heritage buildings to the south and create a sense of enclosure within the streetscape. They were concerned about the impact of visual bulk and the potential for overlooking.

The submissions sought a maximum building height of 11 metres on the north side of Mason Street.

Mr Gard'ner was comfortable the suite of requirements in DDO23 and elsewhere in the Planning Scheme would provide sufficient protection for the heritage buildings on the south side of Mason Street. He saw no reason to lower the proposed heights on the north side of Mason Street.

Council did not propose any change to the exhibited heights for Mason Street.

## Building height exceptions

Ms Rigo questioned whether there should be a definition of '*architectural features*' permitted to exceed height limits under the proposed DDO23 and sought clarification as to when they are intended to apply. She said it was unclear if this exception and the exception relating to service equipment applies to preferred and mandatory maximum building heights.

Council submitted the intention of the exhibited DDO23 was that the exception for architectural features and service equipment are intended to apply to both mandatory and discretionary height requirements. It included revised wording in its closing submission to clarify this point:

Architectural features (except service equipment or structures) may exceed the mandatory or preferred building height.

Service equipment and/or structures including balustrades, unenclosed pergolas for communal areas, roof terraces, shading devices, plant rooms, lift overruns, stair wells, structures associated with pedestrian access, green roof areas and other such equipment may exceed the mandatory or preferred height provided that:

- the equipment/structures do not cause additional overshadowing of secluded private open space to residential land, opposite footpaths, kerb outstands or planting areas in the public realm; and
- the equipment/structures are no higher than 2.6 metres above the proposed building height; and
- the equipment/structures occupy less than 50 per cent of the roof area (solar panels and green roof excepted).

A submission objected to the height of service equipment limited to 2.6 metres above the proposed building height. It said a height of 2.6 metres would be insufficient for a lift inclusive of its over-run to carry passengers to a roof terrace or similar roof top destination. A height of 3.6 to 4 metres was submitted to be "*more realistic and achievable*". The submission noted that interim DDO23 nominates a height of 3.6 metres in the equivalent provision.

Ms Rigo responded to this submission by stating that in her opinion:

- ... the requirement is discretionary in its language and does not exclude the consideration of additional height for a specific purpose.
- ... no change is required to this requirement per se, other than consideration of the word 'generally' no higher than 2.6 metres or 'preferably' not higher than 2.6 metres to acknowledge there may be genuine circumstances where additional height is necessary.<sup>19</sup>

Council submitted the interaction of the terms 'building', 'building height' and 'architectural features' are complex and have been considered in various VCAT and Supreme Court decisions. It referred the Committee to *Aitken Properties Pty Ltd v Hobsons Bay CC* [2016] VCAT 1484 and *SGRC Pty Ltd v Melbourne City Council* [2014] VSC 238. Council concluded with respect to this issue:

In view of the form in which the Amendment has been advertised and its consistency with other DDOs approved, it is submitted that it would not be appropriate to make significant changes to this Amendment without careful consideration and notice of a particular form of words. This is particularly so where a submission has been received in relation to whether the 2.6m "proviso" is appropriate.<sup>20</sup>

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

##### **Building heights in general**

The Committee acknowledges that the proposed DDO23 building heights is a highly contentious issue in the local community. This issue attracted passionate debate from many residents in the area and the Committee appreciates and understands the concerns of the submitters. It was clear from the content of many submissions that local residents have a keen interest in their neighbourhood and a desire to protect and enhance the amenity of the area.

The Committee is, however, satisfied that the proposed building heights are appropriate and are based on sound strategic planning. It has come to this view having considered a range of matters.

First, Plan Melbourne is clear about the role of activity centres and strategic locations in consolidating housing growth in areas well served by services and facilities, economic development and employment and community infrastructure. The Collingwood South Mixed Use Precinct is a location that is, in principle, well suited to more intensive housing growth and this is reflected in the Housing Strategy and other high level strategic planning documents prepared by Council.

Second, Council has completed a detailed assessment of the Precinct and this work has informed the proposed heights in the area. The range of proposed building heights are underpinned by urban design and heritage expertise, which has sought to balance the broad policy framework for growth in the Precinct with other policies which call for new development to be sensitive to the heritage and identified character of the area, high quality urban design outcomes and amenity considerations.

The Built Form Framework articulates a clear strategy of directing taller buildings to larger lots at locations without heritage buildings or heritage interfaces and on relatively lower topography. This has resulted in taller buildings generally directed towards the east of the Precinct and generally stepping down in height to the east. Lower heights are also proposed on sites of

<sup>19</sup> Document 18, Evidence statement of Ms Rigo, paragraph 137

<sup>20</sup> Document 41, Council Part C submission, paragraph 28

heritage significance and adjacent to sites of heritage significance. The Committee considers this is a sound approach.

Third, the Precinct has historically had a mixed use and mixed built form and the character of the Precinct is defined by a range of building heights and types. For example, single storey narrow fronted heritage houses sit next to larger warehouses and factories. The proposed building heights have been considered within this context and maintain this mixed built form, although at a different scale. This difference in scale has been carefully analysed in the detailed assessment of the Precinct and has resulted in a nuanced application of building heights across the Precinct.

Fourth, DDO23 is much more than just maximum building heights, and the full suite of requirements in the overlay should be read as a 'package'. The Committee notes a key purpose of DDO23 is to ensure the policy imperative for growth is managed so that new development is sensitive to the valued built form character of the Precinct, its heritage and its amenity. The building heights are complemented with design requirements and guidelines that address building design and amenity related matters. A range of provisions address matters such as overshadowing, development adjacent to heritage properties, building separation and a wide range of detailed design considerations. Importantly, some of these provisions are mandatory requirements. The Committee is satisfied that the detailed content of DDO23 addresses many of the concerns expressed by residents with respect to the proposed building heights.

Fifth, many submissions advocated lower building heights without articulating a sound basis for change. In many cases, submissions wanted the building height for a specific location to be significantly less than the height of the building where the submitter lived. The Committee sees no compelling reason to accept this approach. It notes the Holme Apartments are designated the tallest preferred maximum building height (40 metres) in the Precinct.

The Precinct has experienced extensive development in recent years and pressure for further development is expected to continue in the future. The frustrations expressed in submissions about the built form outcomes in the area, including building heights, should be seen within the context that a large proportion of this development occurred prior to interim DDO23. In addition, the exhibited Amendment makes further changes to interim DDO23 and these changes generally strengthen the requirements and lower building heights in sensitive locations. The Committee supports the application of DDO23 and considers that it has an important role to play in the implementation of good built form outcomes, including the management of building height, for the further development of the Precinct.

### **Land bound by Oxford Street Reserve, Langridge, Cambridge and Derby Streets**

The Committee considers the size and location of this site distinguish it with potential to support more intensive development without adversely impacting nearby development. The land has no heritage constraints, is surrounded by wide road reserves and has substantial existing development to the east (14 storeys), north (11 storeys) and southwest (8 storeys). Within this context, the Committee accepts that a preferred maximum building height of 27 metres (8 Storeys) is appropriate.

The Committee notes design objectives require development to:

- incorporate upper level setbacks and high quality design features that create a distinction between lower and upper levels
- ensure that the overall scale and form of new buildings is low-rise to mid-rise and responds to the topography of the precinct

- provide a suitable transition in height as the land slopes upwards
- minimise amenity impacts on existing residential properties, including visual bulk, overlooking and overshadowing
- promote and encourage pedestrian-oriented, high quality urban design outcomes through street edge activation
- protect footpaths and public open spaces from loss of amenity through overshadowing.

The interface with the Oxford Street Reserve has been appropriately managed by reducing the preferred maximum street wall height on the west side of the site from 14 metres to 11 metres. Additional requirements in DDO23 ensure that development should not increase the amount of overshadowing that currently exist at the park at the equinox and a wide range of other design requirements should ensure that the built form in this location does not impact the amenity of the park. The Committee notes the provision in Clause 2.8 that states:

Development interfacing with areas of public open space should:

- provide a suitable transition in scale to the interface with the public open space;
- ensure that development does not visually dominate the public open space;
- provide passive surveillance from lower and upper levels of the building.

The Committee is satisfied that the suite of design controls can appropriately manage the impact of development with a preferred maximum height of 27 metres on the surrounding area. This was the view of all of the relevant expert witnesses and Mr Gard'ner was satisfied there would be no impact on any surrounding heritage fabric.

Having regard to all of the above, the Committee does not consider there is a need to reduce the building height for this site and supports the application of a preferred maximum building height of 27 metres.

### **64-66 Oxford Street**

The Committee does not agree with Mr Campbell that the preferred maximum building height for this site should be increased to 20 metres. It prefers to rely on the evidence of Mr Gardner, who considered a preferred maximum height of 14 metres sat more comfortably within the context of the surrounding heritage buildings south of Peel Street.

That said, the detailed design of a future building on this site may have potential for some part of the building to exceed 14 metres in height. A preferred maximum building height of 14 metres provides sufficient flexibility for this to occur subject to achieving the acceptable design outcomes described in DDO23.

### **23-31 Derby Street**

The Committee supports a preferred maximum building height of 20 metres for this site. It sees no compelling reason to lower the preferred building height to 14 metres.

The proposed maximum building height for land at 23-31 Derby Street should be seen within the context of the site. The land is not within a Heritage Overlay and there is a 26 metres tall building to the west of the site. Land to the north has a preferred maximum building height of 27 metres. Although the Heritage Overlay applies to buildings to the east, they have a preferred maximum building height of 14 metres. The Committee is satisfied that a building height of 20 metres will sit comfortably within the existing and emerging built form character.

The Committee considers that the variety of amenity concerns expressed by submitters such as shadowing, building bulk and overlooking can be appropriately managed. It agrees with Mr Gard'ner that any proposed new built form will be moderated to step down towards the two-storey heritage fabric through the application of various requirements in DDO23 (and other parts of the Planning Scheme).

### **Other sites**

The Committee considers that the exhibited preferred maximum building heights for the following sites are appropriate:

- 9-13 Derby Street
- Oxford Street and Cambridge Street (between Peel Street and Langridge Street)
- north side of Mason Street.

The Committee is satisfied the proposed heights reflect the existing and emerging character of the area, the significance of heritage buildings and amenity considerations. The off-site impact of development on these sites is appropriately managed through a range of requirements in DDO23 and other parts of the Planning Scheme.

### **Building height exemptions**

The Committee generally accepts the submissions from Council with respect to the building height exemptions in Clause 2.5. It agrees that the exemptions should relate to mandatory and preferred maximum building heights and the wording regarding 'architectural features' and 'service equipment' should be changed to reflect this intent. The Council version of these clauses in its closing submission (Document 40) referred to "... *mandatory or preferred building height* ...". The Committee considers this should be modified to refer to "... *mandatory or preferred maximum building height* ...".

The Committee supports clarification that the term 'architectural features' does not include 'service equipment or structures'.

The Committee considers the exemption regarding service equipment is not discretionary. The provision states that service equipment and structures may exceed the mandatory and preferred maximum building height "*provided that*" three criteria are met. It is not clear how discretion could be exercised to permit service equipment or structures that do not comply with all of the criteria.

Within this context, the metric of the second criteria becomes very important. Service equipment and structures are limited to a maximum of 2.6 metres above the building height. The Committee is satisfied with this metric provided that a lift over-run can be adequately constructed within this dimension. No evidence was presented to the Committee to verify or contradict this assertion. If it can be established that a height of 2.6 metres is insufficient to adequately cater for a lift over-run then consideration should be given to including a modification to the wording to provide for the minimum additional height necessary for this purpose. Any further exemption should be limited to lift over-runs.

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

The Committee concludes:

- The exhibited mandatory and preferred maximum building heights are justified and appropriate.

- The land bound by Oxford Street Reserve, Langridge, Cambridge and Derby Streets should have a preferred maximum building height of 27 metres.
- 23-31 Derby Street should have a preferred maximum building height of 20 metres.
- 64-66 Oxford Street should have a preferred maximum building height of 14 metres.
- The building height exemptions for ‘architectural features’ and ‘service equipment’ should relate to mandatory and preferred maximum building heights.
- It is appropriate to clarify that the term ‘architectural features’ does not include ‘service equipment or structures’.
- The exemption regarding service equipment is not discretionary.
- It is appropriate for service equipment and structures to exceed the mandatory or preferred maximum building heights provided that the equipment or structures are no higher than 2.6 metres above the maximum height and that a lift over-run can be adequately constructed within this dimension.

The Committee recommends:

- 6. Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to modify ‘Building height requirements’ to state:**
- “Architectural features (except service equipment or structures) may exceed the mandatory or preferred maximum building height.”***
  - “Service equipment and/or structures ... may exceed the mandatory or preferred maximum building height provided that: ...”***

## 4.5 Overshadowing and solar access requirements

### (i) The issues

The exhibited DDO23 includes mandatory provisions regarding shadowing of specified footpaths. These issues have been discussed in chapter 3.1 and are not repeated here.

This chapter deals with the other provisions in Clause 2.6 (Overshadowing and solar access requirements).

The issues are:

- whether the measure for shadowing should be at the equinox (22 September) or the winter solstice (21 June)
- whether new development should increase the amount of overshadowing of public open space
- whether the Peel Street Park should be included in the list of open spaces to be protected by shadowing controls
- whether properties on the south side of Mason Street should be protected by shadowing controls.

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

Among other shadowing provisions, the exhibited DDO23 included the following:

Development should be designed to minimise overshadowing of the following areas of open space and/or public realm between 10am and 2pm on 22 September, to the satisfaction of the Responsible Authority:

- Cambridge Street Reserve (incl. any future extension of the reserve); • Oxford Street Reserve;

- The outdoor space of the Collingwood English Language School;
- Any kerb outstands, seating or planting areas on the opposite side of the street, as applicable.

### (iii) Evidence and submissions

Many submissions raised concerns about future development unreasonably overshadowing existing public open space. Some submissions also noted that developments that have been recently constructed, recently approved or are currently under construction will result in unreasonable shadowing of open space areas.

The Yarra Planning Coalition submitted that “*no increased overshadowing of public parks should be allowed*”.

Many submissions said the overshadowing provisions should be measured at the winter solstice rather than at the equinox.

In response, Council submitted that the purpose of the overshadowing controls was to ensure a reasonable balance between facilitating development that is consistent with the emerging built form in an activity centre and preserving amenity to parks and key street locations for important parts of the day.

Council noted that the *Urban Design Guidelines for Victoria* contain the following relevant Objective and associated guideline:

Objective 5.1.3 To ensure buildings in activity centres provide equitable access to daylight and sunlight.

5.1.3a Locate and arrange the building to allow daylight and winter sun access to key public spaces and key established street spaces.

Council said the exhibited DDO23 and the *Yarra Open Space Strategy (Amendment C286yara)* do not identify any of the open space areas in the Precinct as ‘key public spaces’.

The proposed policy in Clause 22.12-4 as part of C286yara states that built form:

Must have no additional overshadowing beyond any 9 metre built form height between 10am and 3pm on June 21.

Council said this is only applicable to new public open spaces.

Council submitted the equinox is proposed because:

- this is consistent with the recommendations in the Built Form Framework and other recent planning scheme amendments
- additional testing showed that the public open spaces are already subject to overshadowing from existing buildings (or approvals)
- application of the winter solstice would significantly constrain development in locations where development expectations are set at a significantly higher level by existing built form and having regard to the site context
- the open space to be protected is neither new open space nor identified as ‘key’ open space.

In response to submissions and its own further testing, Council submitted that the provision regarding the protection of open space from overshadowing should be modified to state:

Development should be designed to minimise not increase the amount of overshadowing as caused by existing conditions, measured between 10am and 2pm on 22 September of for

the following areas of open space and/or public realm ~~between 10am and 2pm on 22 September, to the satisfaction of the Responsible Authority:~~

- Cambridge Street Reserve (incl. any future extension of the reserve);
- Oxford Street Reserve
- The outdoor space of Collingwood English Language School
- Any kerb outstands, seating or planting areas on the opposite side of the street, as applicable.”

Mr Campbell and Ms Rigo supported the overshadowing provisions, including the proposed changes by Council.

Mr Campbell also suggested that:

- the Peel Street Park should be added to the list of open spaces to be protected by the shadowing provisions
- properties on the south side of Mason Street should be protected by shadowing provisions.

Council did not support the inclusion of the Peel Street Park because the buildings that have any potential to overshadow the park are outside the DDO23 boundary. It said any protection of the Peel Street Park should be achieved through a separate Planning Scheme amendment.

In response to questions from the Committee, Mr Campbell retracted his concerns regarding the shadowing impacts on Mason Street once he realised that he had misread the proposed maximum heights for the northern side of the street.

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

The Committee accepts the need for overshadowing provisions for footpaths and public open spaces and considers that the proposed requirements are consistent with the recommendations of the Built Form Framework. The detailed provisions are supported by the design objectives in the clause and this helps in the exercise of discretion.

Council has struck the right balance with respect to applying these provisions. In this instance, it is appropriate to apply the shadowing provisions based on the equinox. Further strategic work would be required to justify the application of the winter solstice.

The Committee considers the minor changes suggested by Council are acceptable. The changes provide greater clarity to the provisions and will result in more certain outcomes.

The Committee agrees with Council that it is inappropriate to include overshadowing provisions for the Peel Street Park as part of this Amendment because shadowing provisions for this park would need to be applied to buildings that are outside the boundary of DDO23. Any shadowing controls for the Peel Street Park should be considered as part of a separate Planning Scheme amendment process.

The Committee does not support the inclusion of shadow provisions for properties on the south side of Mason Street and notes that ultimately Mr Campbell did not support his own idea either.

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

The Committee concludes:

- The measure for shadowing should be at the equinox (22 September).

- The changes to the requirements for shadowing of public open space suggested by Council are supported because they improve the clarity and certainty of the provisions.
- The Peel Street Park should not be included in the list of open spaces to be protected by shadowing controls as part of this Amendment.
- The front yards of the properties on the south side of Mason Street do not require specific protection from shadowing as part of DDO23.

The Committee recommends:

7. **Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to state *“Development should not increase the amount of overshadowing as caused by existing conditions measured between 10am and 2pm on 22 September for the following areas of open space and/or public realm: ...”***

## 4.6 Other design requirements

### (i) The issues

The issues are:

- whether there should be an additional requirement regarding adaptable building structures, layouts and non-residential unit sizes on lower levels of buildings to allow for a variety of uses over time
- whether there should be an additional requirement regarding landscaping.

### (ii) Evidence and submissions

Some submissions raised concern about loss of economic diversity and small businesses which attracts creative uses and local businesses.

In response, Council noted that the purpose of a DDO is to guide the built form and design of new development. Land use is controlled through the zoning of the land (which in this case is the Mixed Use Zone) and cannot be controlled through a DDO.

The exhibited DDO23 includes the following requirement in Clause 2.8 (Other Design Requirements) to ensure new development supports commercial activity in the Precinct:

Lower levels of development should:

- be designed to accommodate commercial activity at the ground floor, incorporating a suitable commercial floor height of 4 metres floor to floor height
- ...

Council proposed an additional requirement to complement this provision. It said this helped ensure new development has greater potential to accommodate different uses over time. Ms Rigo supported the principle of the additional control but suggested a slight rewording to improve clarity. Council supported the changes proposed by Ms Rigo:

Lower levels of development should:

- ...
- incorporate adaptable building structures, layouts and non-residential unit sizes so as to allow for a variety of uses over time
- ...

No party objected to including the new requirement.

Some submissions suggested that a landscaping requirement should be included that provides for landscape setbacks for deep tree planting, green frontages and roof tops.

In response, Council said that although historically the Precinct has had limited opportunities for substantial areas of landscaping within the private realm, new development should provide for landscaping where possible to soften the built form. It proposed an additional requirement in Clause 2.8 that states:

Development should provide for landscaping that provides a positive contribution to the public realm, such as canopy trees where possible, green walls or planter boxes.

This requirement was supported by Mr Campbell and Ms Rigo.

No party objected to including the requirement.

Ms Rigo recommended a number of minor drafting changes to improve the clarity and intent of several requirements in Clause 2.8. Mr Campbell and Mr Gard'ner supported these changes and they were also supported by Council in its closing submission.<sup>21</sup>

### **(iii) Discussion**

The Committee accepts the additional requirement that ensures lower levels of buildings have adaptable structures to accommodate a range of uses over time. This is a sensible approach that provides for flexibility and change. It is noted that this is a discretionary requirement and this approach is supported.

The Committee agrees the inclusion of an additional requirement regarding landscaping is appropriate. It is a discretionary requirement and does not prescribe how the landscaping is to be provided. This approach is supported.

The Committee supports the various drafting changes to the requirements in Clause 2.8 recommended by Council in its closing submission. These changes are sensible and provide greater clarity and understanding of the provisions without changing their intent.

### **(iv) Conclusions and recommendations**

The Committee concludes:

- It is appropriate to include an additional requirement regarding adaptable building structures, layouts and non-residential unit sizes on lower levels of buildings to allow for a variety of uses over time.
- It is appropriate to include an additional requirement regarding landscaping.
- A variety of drafting changes should be made to several requirements to improve their clarity and intent.

The Committee recommends:

**8. Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to include:**

- a) **an additional dot point that requires lower levels of development should *“incorporate adaptable building structures, layouts and non-residential unit sizes so as to allow for a variety of uses over time”***

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<sup>21</sup> Document 40

- b) an additional requirement that *“Development should provide for landscaping that provides a positive contribution to the public realm such as canopy trees where possible, green walls or planter boxes”*.
- c) a range of minor drafting changes to improve the clarity and intent of the ‘Other design requirements’.

## 4.7 Access, parking and loading bay requirements

### (i) The issues

A consideration of a range of general transport issues is discussed in chapter 3.4.

This chapter deals with the specific wording of several requirements.

The issue is whether the wording of the requirements in Clause 2.9 (Access, parking and loading bay requirements) are appropriate.

### (ii) Evidence and submissions

Ms Rigo suggested changes to two requirements:

The common pedestrian areas of new buildings should be designed with legible and convenient access, with hallway and lobby areas of a size that reflects the quantity of apartments serviced and which can be naturally lit and ventilated [where practicable](#).

Vehicle access should be achieved from laneways or side streets (in that order of preference). Vehicle access from Wellington Street and Langridge Street should be avoided [where alternative access exists](#).

Council did not support these changes. It said it relied on the evidence of Ms Dunstan who supported the exhibited version of the requirements.

Clause 2.9 includes the following requirement:

Development with laneway access may require a ground level set back in order to achieve practicable vehicle access. Between ground level and first floor, a headroom clearance of 3.5 metres minimum should be achieved.

In response to questions from the Committee, Ms Dunstan agreed that the requirement could be reworded to improve its clarity. Council submitted a revised version of this requirement in its closing submission. It said it had consulted Ms Dunstan and she had supported the revised wording:

Where a ground level setback is provided to achieve practicable vehicle access to the laneway; a headroom clearance of 3.6 metres minimum should be provided to any overhang of the first floor.

No other parties made submissions on these issues.

### (iii) Discussion

The Committee does not see a compelling need to include the additional qualifications proposed by Ms Rigo. It notes the exhibited requirements are discretionary and so there is already some flexibility should circumstances arise where it is not practicable to meet the requirements.

Although the revised ‘laneway headroom clearance’ requirement submitted by Council in its closing submission improves the exhibited version, the Committee considers there is still some fine tuning required, as follows:

Where a ground level setback is provided to achieve practicable vehicle access to ~~the~~ a laneway, a minimum headroom clearance of 3.6 metres ~~minimum~~ should be provided to any overhang of the first floor.

The Committee supports the remaining requirements in Clause 2.9 and notes they were not contested at the Hearing.

#### (iv) Conclusions and recommendation

The Committee concludes:

- The access loading and parking bay requirements are generally acceptable.
- The requirement regarding ‘laneway headroom clearance’ should be reworded to improve its clarity and intent.

The Committee recommends:

9. **Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to modify the second last requirement to state “Where a ground level setback is provided to achieve practicable vehicle access to a laneway, a minimum headroom clearance of 3.6 metres should be provided to any overhang of the first floor”.**

## 4.8 Drafting issues

### (i) Discussion

In addition to changes already discussed in this report, the Day 1 version of DDO23 included a number of drafting changes to the exhibited DDO23 such as:

- Clause 2.1 (Definitions) - the inclusion of a definition for ‘Upper level’
- Clause 2.7 (Building separation, amenity and equitable development) – the addition of the word ‘site’ to the third dot point of the second requirement
- Clause 2.9 (Access, parking and loading bay requirements) – the addition of the word ‘metres’ to the second last dot point
- Map 1: reference to ‘Preferred maximum building heights’, ‘Mandatory maximum building heights’ and ‘Mandatory maximum street wall heights’ in the legend.

At the Hearing, many further drafting changes were proposed. Many of these were recommended by Ms Rigo and were included in her evidence statement.<sup>22</sup> Council supported many of these drafting changes and they were included in the version of DDO23 presented in Council’s closing submission. No parties objected to these drafting changes.

The Committee supports the drafting changes recommended by Council unless otherwise discussed in this report. These minor changes help to clarify expression and provide greater certainty to the intent of the requirements. The Committee is satisfied that the drafting changes do not transform the requirements or add new provisions.

These various drafting changes are included in the Committee preferred version of DDO23 in Appendix F.

The Committee has considered the drafting of DDO23 Map 1. Ms Rigo noted that the colour tones indicating 14 metres, 20 metres and 27 metres preferred maximum building heights were difficult

<sup>22</sup> Document 32

to distinguish. The Committee agrees with her observation and it also had some difficulty in matching the colour on the map with the colour on the legend. This issue was highlighted in the Hearing when Mr Campbell confused the colours on the map and legend in his evidence statement.

The Committee considers the colours in Map 1 should be reviewed to make sure there is greater distinction between different colours. At the Hearing, Council referred to DDO27 for the Swan Street Activity Centre. The Committee observes that the map in DDO27 benefits from the use of numbers and letters (as well as colours) to help readers understand the control. The Committee encourages Council to consider a similar approach to DDO23, noting and accepting that the structure of DDO27 is different to DDO23.

A number of other minor changes to Map 1 were suggested by Council in response to evidence from Mr Campbell. These include:

- adding the label 'Little Oxford Street'
- adding 'Public Open Space' to the legend
- showing the extension of the Cambridge Street Reserve in a different colour green to 'Public Open Space' and adding 'Potential future open space under investigation' to the legend.

The Committee supports these changes to Map 1.

The Committee notes that the text under two of the headings in the legend should be modified to ensure consistency with the heading and avoid any misunderstanding that they are mandatory heights rather than mandatory maximum heights:

Mandatory Maximum Building Heights

Properties as marked by the dotted diagonal lines have a 11m mandatory maximum building height

Mandatory Maximum Street Wall heights

Properties as marked by the dashed lines have a mandatory maximum street wall height

The changes to Map 1 described above (and elsewhere in the report) have not been shown in Appendix F.

## **(ii) Conclusion and recommendations**

The Committee concludes:

- A range of minor drafting changes should be made to the text and Map 1 in DDO23 to improve the clarity and intent of the requirements.

The Committee recommends:

### **10. Amend Design and Development Overlay Schedule 23, as shown in Appendix F, to:**

- a) include a range of drafting changes to improve the clarity and intent of some requirements.**
- b) show in Map 1:**
  - **greater differentiation between colours and consideration of other cartographic tools to improve the map's legibility**
  - **reference to 'Preferred maximum building heights', 'Mandatory maximum building heights' and 'Mandatory maximum street wall heights' in the legend headings and text**
  - **the name 'Little Oxford Street' on the map**

- **'Public Open Space' on the legend**
- **the extension of the Cambridge Street Reserve in a different colour green to 'Public Open Space' and adding 'Potential future open space under investigation' to the legend.**

## 5 Background documents

### (i) Minister's referral

The letter of referral from the Minister for Planning included a request that the Committee give:

Consideration of where reference documents (Clause 21.11) will be located within the Yarra Planning Scheme when the Planning Policy Framework translation occurs.

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

The Explanatory Report accompanying the exhibited Amendment states that:

Draft Amendment C293yara seeks to:

- ...
- Amend Clause 21.11 Reference Documents to include the Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework 2018, Collingwood Mixed Use Pocket Heritage Analysis and Recommendations 2018 and Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct, 2021 as reference documents in the planning scheme
- ...

The Committee notes that:

- the *Collingwood Mixed Use Pocket Heritage Analysis and Recommendations, 2018* appears to already be listed as a Reference document in Clause 21.11 (Reference Documents)
- the exhibited version of Clause 21.11 shows the inclusion of two new documents:
  - under the heading 'Heritage' - *Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct, 2021*
  - under the heading 'Built form character' - *Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework 2018*.

### (iii) Submissions

Council submitted that:

... the appropriate location for the documents proposed to be included as Reference Documents is now in the schedule to LPP 72.08 – Schedule to Background Documents.<sup>23</sup>

No other party made submissions with respect to this matter.

### (iv) Discussion

The Committee accepts it is appropriate to include the Built Form Framework and the Supplementary Heritage Report as Reference Documents in Clause 21.11. It assumes that the Heritage Analysis Report is already listed as a Reference document in Clause 21.11, however if for some reason this is not the case, then it accepts that it should be.

The Committee understands that in accordance with Amendment VC148, implementation of the Planning Policy Framework translation process will involve the deletion of Clause 21.11. This is expected to occur with the approval of Amendment C269yara.

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<sup>23</sup> Document 25, Council Part B submission, paragraph 50

Amendment C269yara proposes to include various Reference documents currently within Clause 21.11 in a Schedule to Clause 72.08 (Background documents). The Committee understands this is consistent with the approach recommended in Amendment VC148.

In this context, the Committee considers that until such time as the Planning Policy Framework translation occurs it is appropriate to include the proposed Reference Documents in Clause 21.11. Once the Planning Policy translation occurs (through the approval of Amendment C269yara or some other process) then it is appropriate to include the proposed reference documents as background documents in the Schedule to Clause 72.08.

**(v) Conclusions and recommendations**

The Committee concludes:

- The proposed Reference Documents should be located within Clause 21.11.
- Following implementation of the Planning Policy Framework translation the proposed Reference Documents should be included in the Schedule to Clause 72.08 (Background documents).

The Committee recommends:

- 11. Following the implementation of the Planning Policy Framework translation process, the following documents should be included in the Schedule to Clause 72.08 (Background documents):**
  - a) *Brunswick Street and Smith Street Built Form Review: Collingwood Built Form Framework, 2018***
  - b) *Collingwood Mixed Use Pocket Heritage Analysis and Recommendations, 2018***
  - c) *Supplementary Heritage Report: Collingwood South (Mixed Use) Precinct, 2021***

## 6 The Amendment process

### (i) Terms of Reference and letter of referral

The Terms of Reference issued by the Minister for Planning state that the report must include:

A recommendation on whether the draft planning scheme amendment is strategically justified and could be approved by the Minister without notice, using his powers under section 20(4) of the Act.

A recommendation on whether the draft planning scheme amendment or any part of it should be subject to the requirements of sections 17, 18 and 19 and the regulations of the Act and processed as a 'standard' amendment.

The letter of referral also seeks the advice of the Committee with respect to whether the Minister:

... should proceed with the Council's preferred version of the draft Amendment to the Yarra Planning Scheme under section 20(4) of the *Planning and Environment Act 1987*.

### (ii) Discussion

No party made submissions with respect to this issue.

The Committee has considered this issue having regard to the following:

- The 'Draft Amendment' was exhibited and all of the relevant documentation was made available to the community for review.
- The exhibition process resulted in 102 submissions from the community, including local residents inside and outside of the Precinct, community groups and developers.
- Following Council's consideration of submissions, Council resolved to recommend a number of changes to DDO23 and then wrote to all landowners and occupiers directly affected by the recommended changes and gave them an opportunity to provide comments.
- The process of further notification resulted in one additional submission.
- The Committee generally supports the Council preferred version of the Amendment (as expressed in the Day 1 version) subject to a number of changes that respond to submissions and evidence and some drafting changes to improve the clarity and intent of the requirements and to correct minor errors.

In these circumstances, there is little utility in processing the Draft Amendment as a 'standard' Planning Scheme Amendment involving notification, consideration of submissions and potentially a Panel Hearing to consider submissions. Following a 'standard' process from this point would be an unnecessary duplication of procedure that is unlikely to change the ultimate outcome or be of any significant benefit.

### (iii) Conclusions and recommendation

The Committee concludes:

- It is appropriate to progress Draft Amendment C293yara subject to the changes recommended by the Committee in accordance with section 20(4) of the *Planning and Environment Act 1987*.

The Committee recommends:

- 12. Draft Yarra Planning Scheme Amendment C293yara should proceed subject to the changes recommended by the Committee without further notice and in accordance with section 20(4) of the *Planning and Environment Act 1987*.**

## Appendix A Letter of referral



Hon Richard Wynne MP

Minister for Planning  
Minister for Housing

8 Nicholson Street  
East Melbourne, Victoria 3002

Mr Con Tsotsoros  
Lead Chair, Yarra Activity Centres Standing Advisory Committee  
Planning Panels Victoria  
Level 5, 1 Spring Street  
MELBOURNE VIC 3000  
[planning\\_panels@delwp.vic.gov.au](mailto:planning_panels@delwp.vic.gov.au)

Ref: [REDACTED]  
[Barcode]

Dear Mr Tsotsoros

**REFERAL OF DRAFT YARRA PLANNING SCHEME AMENDMENTS C291 AND C293 TO THE YARRA ACTIVITY CENTRES STANDING ADVISORY COMMITTEE**

On 21 December 2021, Yarra City Council requested that I refer draft Planning Scheme Amendments C291 and C293 to the Yarra Activity Centres Standing Advisory Committee (SAC) for consideration and advice. Draft Amendment C291 seeks to implement permanent built form controls along the Bridge Road and Victoria Street Activity Centres and draft Amendment C293 seeks to implement permanent built form provisions to the Collingwood South Mixed Use Precinct. Interim built form controls currently apply to both draft amendment areas and are due to expire on 30 June 2022.

The council has requested that I refer the draft amendments, the associated submissions, the council's response to those submissions and the preferred versions of the draft amendments to the Yarra Activity Centres SAC in accordance with Stage 2 of the Yarra Activity Centres SAC Terms of Reference (10 June 2021). Stage 1 of the process included the preparation and notification of the draft amendments.

The council received 118 submissions for draft Amendment C291 and 102 submissions for draft Amendment C293.

I have decided to refer the draft amendments to the Yarra Activity Centres SAC to consider the submissions and make recommendations on whether I should proceed with the council's preferred version of the draft amendment to the Yarra Planning Scheme under section 20(4) of the *Planning and Environment Act 1987*. I request your specific advice on the following matters for the draft amendments:

1. The draft amendments include a number of additional mandatory provisions when compared to the interim controls: consideration of whether the capacity of the Activity Centre for future growth will be inappropriately compromised by the introduction of these controls and whether a revised capacity analysis is required to support these provisions should form part of the SAC process.
2. Consideration of whether the proposed changes as part of draft Amendment C291 to implement mandatory controls to all properties on the south side of Victoria Street, between Church and Johnson Streets (DDO50) are strategically justified.
3. Consideration of whether performance-based measures for the variation of discretionary height limits that do not have a nexus to built form outcomes are an appropriate use of planning tools or result in duplication of material in other parts of the Yarra Planning Scheme.
4. Consideration of where reference documents (Clause 21.11) will be located within the Yarra Planning Scheme when the Planning Policy Framework translation occurs.

I have also decided to refer the councils' request that the SAC consider the means of establishing greater clarity of what must be facilitated when preferred heights are exceeded and the appropriateness of the following criteria to vary discretionary height limits:

1. Require or encourage applications that are a significant departure from the preferred height to be subject to the Office of the Victorian Government Architect (OVGA) State Design Review Panel or a council design review panel; and
2. Address housing affordability.

The council also seeks your attention to issues raised in many submissions relating to building heights as part of draft Amendment C293. I believe that these matters could be considered in conjunction with the SACs consideration of the appropriateness of measures for the variation of discretionary height limits.

Should the SAC see merit in introducing additional requirements relating to OVGA or council design review and housing affordability, the council would need to form a view about whether it wishes to proceed with these types of changes to its preferred form of the draft amendments. Before making a decision on whether to approve the draft amendments using my powers under section 20(4) of the *Planning and Environment Act 1987*, I would need to consider how landowners and occupiers may be affected by such inclusions which did not form part of the exhibition of the draft amendments. I would appreciate the SAC's views on this.

I note that in response to the submissions received, the council resolved to recommend changes to some elements of the draft amendments before requesting that I refer the draft amendments to the SAC. The council decided to write again to all landowners and occupiers directly affected by the recommended changes and has requested that any submissions be lodged by 4 February 2022.

Any new or varied submissions received will be referred to the SAC by the Department of Environment, Land, Water and Planning (DELWP) before the directions hearing scheduled for 4 March 2022. The submissions received and the council's response to those submissions will be provided to you, along with the draft amendment documents.

If you would like more information, please contact Dr Jane Homewood, Executive Director, Statutory Planning Services, DELWP, on email [REDACTED]

Yours sincerely



HON RICHARD WYNNE MP  
Minister for Planning

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## Appendix B Chronology of events

Date	Event / Description
March 2017	The State Government releases <i>Plan Melbourne 2017-2050</i>
6 June 2018	<i>Collingwood Mixed Use Pocket Heritage Analysis and Recommendations</i> issued by GJM Heritage
7 June 2018	<i>Brunswick Street and Smith Street Built Form Review Collingwood Built Form Framework</i> issued by Hansen Partnership
25 June 2018	Council requests a Ministerial amendment (Amendment C250yara) under 20(4) of the <i>Planning and Environment Act 1987</i> to introduce: <ul style="list-style-type: none"> <li>• Schedule 21 to the Design and Development Overlay (DDO21) – Bridge Road</li> <li>• Schedule 22 to the Design and Development Overlay (DDO22) – Victoria Street</li> <li>• Schedule 23 to the Design and Development Overlay (DDO23) – Collingwood South</li> </ul>
4 September 2018	<i>Yarra Spatial Economic and Employment Strategy</i> adopted by Council
4 September 2018	<i>Yarra Housing Strategy</i> adopted by Council
10 October 2018	The Minister for Planning issues new <i>Ministerial Direction No 19</i> and a new Ministerial Requirement for information to ensure that a planning authority seeks early advice from the EPA
30 October 2018	The Minister for Planning advises Council that Amendment C250yara has been approved under section 20(4) of the <i>Planning and Environment Act 1987</i>
22 November 2018	Amendment C250yara gazetted by the Minister for Planning, introducing DDO23 into the Yarra Planning Scheme on an interim basis
19 November 2019	<i>Traffic Engineering Assessment</i> issued by Traffix Group (relates to Brunswick Street and Smith Street Activity Centres but also includes Collingwood South Precinct)
13 August 2020	Council requests a prescribed amendment (Amendment C284yara) under section 20(4) of the <i>Planning and Environment Act 1987</i> to extend the controls of the interim DDO23 for an additional 12 months from 16 October 2020
29 September 2020	The Minister for Planning writes to Council confirming that the interim DDO23 has been extended from the original expiry date (November 2020) to a new expiry date of 30 June 2021
2 March 2021	At the Ordinary Council meeting, Council resolves to request the appointment “of an Advisory Committee to assist Council formalise necessary planning scheme amendments to best manage the development pressure currently occurring and likely to continue into the foreseeable future” and provide a draft Terms of Reference
5 May 2021	<i>Supplementary Heritage Report</i> issued by GJM Heritage
18 May 2021	Council resolves to refer proposed Amendment C293yara to an Advisory Committee under Part 7, section 151 of the <i>Planning and Environment Act 1987</i>

24 May 2021	Council requests to refer the proposed Amendment C293yara (implementing the permanent built form provisions for the Collingwood South Mixed Use Precinct), to an Advisory Committee under Part 7, section 151 of the <i>Planning and Environment Act 1987</i>
24 May 2021	Council requests a prescribed amendment (Amendment C292yara) under section 20(4) of the <i>Planning and Environment Act 1987</i> to extend the controls of interim DDO23 for an additional 12 months from 30 June 2021 (This request was made following the associated Council resolution made at the Ordinary Council Meeting of 18 May 2021)
10 June 2021	Terms of Reference were issued by the Minister for Planning which outlines the process for the Yarra Activity Centres Standing Advisory Committee
24 June 2021	Amendment C292yara was gazetted, extending the operation of interim DDO23 to June 2022
9 August 2021	Minister for Planning appoints the Yarra Activity Centres Standing Advisory Committee (SAC)
20 August 2021	Minister for Planning consents to notice of the Amendment being given subject to a number of conditions
14 September 2021	Notice of the Amendment is given for six weeks from 14 September to 27 October 2021
21 December 2021	Council considers 102 submissions (received by Council at that time) to the Amendment and hears from submitters. At its ordinary meeting, Council resolves that it: <ul style="list-style-type: none"> <li>• endorses the officer response to the issues raised by submissions</li> <li>• adopts the recommended changes to draft Amendment C293yara for the purposes of Council's advocacy position before the SAC</li> <li>• refers all submissions, responses to those submissions and preferred draft Amendment C293yara to the Minister for Planning with a request to refer the draft Amendment to the SAC</li> </ul>
22 December 2021	Submitters were notified of the Council's resolution from 21 December 2021
23 December 2021	Council formally requests referral of the Amendment to the SAC
24 December 2021	Letters were sent to owners and occupiers to notify them of Council resolution 1e), which requested the SAC's attention to the issues raised in submissions regarding height reductions along the south side of Derby Street and between Oxford Street Reserve and Cambridge Street
3 February 2022	One additional submission was received due to the additional notification from 24 December 2021
8 February 2022	Council receives the formal referral of the Amendment to the SAC, signed by the Minister for Planning on 6 February 2022
25 February 2022	Directions Hearing is held for Amendment C293yara
28 March 2022	Committee Hearing commences

Source: Council Part A submission, Attachment A

## Appendix C Submitters to the Amendment

No.	Submitter	No.	Submitter
1	M Vitellone	31	P Hastings
2	J Trounce and E Bolger	32	D Smith
3	A Hardeman	33	V Fazio
4	M Landvogt	34	S Cummins
5	E Ozyaba	35	V Korjarunchit
6	R Marsh	36	G Bond
7	J and A Burkhardt	37	Dr H Chan
8	A Zuccala	38	J Doria
9	J Schillier	39	S and N Keogh
10	M Smith	40	G Johnson
11	M Adams and B Cunningham	41	M Matthews
12	J Callahan	42	D Skitt
13	B Jiwa	43	J Gwee
14	P Carter	44	Z Mai
15	D Meares	45	M Fowler
16	C and I Carthew	46	S Killmister
17	A David	47	C O'Neill
18	A Zadoyanov	48	I Weissmann
19	F and A Fiume	49	W Grace
20	P Callaghan	50	S Jones
21	M Gleeson	51	D Clayton-Chubb
22	A Coles	52	D and M Ling Goode
23	R Anderson	53	M Maasdijk
24	E Dimitropoulos	54	A Young
25	Name unknown	55	D Murray and J Edwards
26	E Tsagros	56	A and M Grant
27	D Guy	57	M D'Abaco
28	G Fleming and M Loheni	58	B Reay and A Tsoulis
29	J Vincent and H Shale	59	T Louw and C Easton
30	B Jones	60	R Hogg

No.	Submitter	No.	Submitter
61	S Hughes and K Saunders	84	S Taylor
62	A Radonic	85	J DeSilva
63	Dr A Andrasek	86	S Semmens
64	B Diep and K Chi-Ong	87	J Rizzo
65	X Zhu	88	D Di Sebastiano
66	A and A Lander	89	K McLay
67	C Dennis / South Smith Street Action Group	90	S Banker
68	C Hebard and D Anderson	91	P Viani
69	R Stratford	92	M Vitellone and others
70	C Mackay	93	J Scantlebury and K McKinna
71	K Churchill	94	A Robson
72	S Ellinghaus	95	D Larsson
73	B Davies	96	S Vivian
74	A Mayne	97	Yarra Planning Coalition
75	M Kay	98	Queens Parade Heritage Planning and Traders Group
76	Gurner	99	M Smith and J Hill
77	M Cox	100	TAL GP Projects No 1 Pty Ltd
78	H Rybak	101	V Noonan
79	L Clarke	102	J Wood
80	G Taylor	103	S Gration
81	The 3068 Group		
82	N Bemrose		
83	S-M Hwang		

## Appendix D Parties to the Committee Hearing

Submitter	Represented by
Yarra City Council	Ms Sarah Poritt, Counsel instructed by Kristin Richardson of Maddocks Lawyers, who called expert evidence on: <ul style="list-style-type: none"> <li>- heritage from Jim Gard'ner of GJM Heritage</li> <li>- traffic from Charmaine Dunstan of Traffix Group</li> <li>- capacity analysis from Julian Szafraniec of SGS Economics</li> <li>- urban design from Alastair Campbell of Hansen Partnership</li> <li>- planning from Sandra Rigo of Hansen Partnership</li> </ul>
Department of Environment, Land, Water and Planning (DELWP)*	Jason Close, Manager Planning Services, Statutory Planning Services, DELWP
J and A Burkhardt	John Burkhardt
Andrew Coles	
Virginia Fazio	
Heather Shale	

\*DELWP was invited by the Committee to provide a brief overview at the beginning of the Hearing regarding the background and context of the establishment of the Yarra Activity Centres Standing Advisory Committee. It did not make a submission regarding the Amendment.

## Appendix E Document list

No.	Date	Description	Provided by
1	9 Feb 2022	Letter – From Committee to all submitters regarding Directions Hearing	Planning Panels Victoria (PPV)
2	“	Yarra Activity Centres Standing Advisory Committee Terms of Reference dated 10 June 2021	“
3	“	Letter – Referral of Draft Amendment C293yara from Minister for Planning to Yarra Activity Centres Standing Advisory Committee dated 6 February 2022	“
4	“	Email – From Ms Semmens to PPV advising she does not wish to appear at Hearing	Ms Semmens
5	1 Mar 2022	Letter – From Maddocks on behalf of Council to PPV confirming expert witness details	Maddocks
6	2 Mar 2022	Letter from Committee to all parties confirming Hearing arrangements including Directions, Timetable and Distribution List	PPV
7	4 Mar 2022	Day 1 version of DDO23 (as attached to the Officer Report of 21 December 2022) in track changes	Maddocks
8	“	Day 1 version of Clause 21.11 (Reference Documents) (in track-change)	“
9	“	Planning Scheme map, with area for deletion of interim DDO23 and DDO2 (as exhibited)	“
10	“	Planning Scheme map, with area for permanent DDO23 to be applied (as exhibited)	“
11	18 Mar 2022	Council Part A Submission	“
12	“	Email - From Maddocks on behalf of Council requesting extension of time for circulation of evidence statement	“
13	21 Mar 2022	Email - Committee response to extension request	PPV
14	“	Evidence Statement of Jim Gardner of GJM Heritage on heritage	Maddocks
15	“	Evidence Statement of Alastair Campbell of Hansen Partnership on urban design	“
16	“	Evidence Statement of Julian Szafraniec of SGS Economics on economics and capacity analysis	“
17	“	Evidence Statement of Charmaine Dunstan of Traffix Group on traffic and transport	“
18	“	Evidence Statement of Sandra Rigo of Hansen Partnership on planning	“

No.	Date	Description	Provided by
19	22 Mar 2022	Letter – from Maddocks on behalf of Council regarding access to Maddocks Digital	“
20	24 Mar 2022	Email – from Submitter 71 advising she does not wish to appear at the Hearing	Ms Churchill
21	25 Mar 2022	DELWP Background Submission	Department of Environment, Land, Water and Planning (DELWP)
22	“	Attachment 1 – Terms of Reference	“
23	“	Attachment 2 – Consent Letter	“
24	“	Attachment 3 – Referral Letter	“
25	“	Council Part B Submission	Maddocks
26	“	Attachment A - DDO23 Development Booklet - 24 March 2022	“
27	“	Attachment B - Table of constructed and approved development in DDO23 area	“
28	“	Attachment C – Yarra Open Space Strategy 2020 extracts	“
29	“	Attachment D - Public Open Space in Collingwood (map)	“
30	“	Attachment E – Yarra Planning Scheme extract – DDO27 (Swan Street Activity Centre – Precinct 3 Swan Street East)	“
31	28 Mar 2022	PowerPoint presentation by Jim Gard’ner, GJM Heritage to accompany his evidence	“
32	29 Mar 2022	Evidence Statement of Sarah Rigo Hansen Partnership- Attachment 6	“
33	30 Mar 2022	Evidence Statement of Sarah Rigo Hansen Partnership Appendix 4- Context Map- corrected	“
34	“	Evidence Statement of Sarah Rigo Hansen Partnership Appendix 5 – Building Heights Map- corrected	“
35	“	Evidence Statement of Sarah Rigo Hansen Partnership Appendix 2- Aerial image- corrected	“
36	“	Email- Advising that Mr Hughes and Ms Saunders do not wish to be heard	Mr Hughes
37	31 Mar 2022	VCAT Decision- Langridge and Cambridge v Yarra CC [2018] VCAT 703	Maddocks
38	“	VCAT Decision- Oxford Mason Pty Ltd v Yarra CC [2022] VCAT 170	“
39	“	VCAT Decision – S and Giggles Pty Ltd v Yarra CC [2019] VCAT 181	“
40	1 April 2022	Email- from Yarra CC, Preferred DDDO23 with tracked	“

No.	Date	Description	Provided by
		changes- 1 April 2022	
41	“	Council Part C Submission	“
42	“	VCAT Decision- Aitken Properties v Hobsons Bay CC [2016] VCAT 1484	“
43	“	Supreme Court Decision- SGRC v Melbourne CC and Ors [2014] VSC238	“
44	“	Speaking notes for Day 4 submission- Mr Coles	Mr Coles
45	“	Speaking notes for Day 4 submission- Ms Burkhardt	Ms Burkhardt
46	“	Speaking notes for Day 4 submission- Ms Fazio	Ms Fazio

## Appendix F Committee preferred version of the Design and Development Overlay Schedule 23

[Tracked Added](#)

~~Tracked Deleted~~

The changes shown on the following Committee preferred version of DDO23:

- uses the exhibited version of DDO23 as the base document
- does not include the changes to Map 1 (map or legend) described in the report.

## **SCHEDULE 23 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY**

Shown on the planning scheme map as **DDO23**

### **COLLINGWOOD SOUTH (MIXED-USE) PRECINCT**

#### **1.0 Design objectives**

To foster an emerging, contemporary, mixed-use form on infill sites with a prominent street-wall edge, incorporating upper level setbacks and high-quality design features that create a distinction between lower and upper levels.

To ensure that the overall scale and form of new buildings is low-[rise](#) to mid-rise and responds to the topography of the precinct, by providing a suitable transition in height as the land slopes upwards, whilst minimising amenity impacts on existing residential properties, including visual bulk, overlooking and overshadowing.

To protect the industrial, residential and institutional built heritage of the precinct through maintaining the prominence of the corner heritage buildings on Wellington Street, and respecting both individual and groups of low-scale heritage buildings through recessive upper level development and a transition in scale from taller form towards the interface with heritage buildings.

To promote and encourage pedestrian-oriented, high quality urban design outcomes through street edge activation and the protection of footpaths and public open spaces from loss of amenity through overshadowing.

To ensure that development provides for equitable development outcomes through building separation and a design response that considers the development opportunities of neighbouring properties.

#### **2.0 Buildings and works**

A permit is required to construct a building or construct or carry out works.

#### **2.1 Definitions**

**Street-wall** means the facade of a building at the street boundary, or, if the existing heritage building is set back from the street boundary, the front of the existing building. Street wall height is measured at the vertical distance between the footpath at the centre of the frontage and the highest point of the building at the street edge, with the exception of architectural features and building services.

**Laneway** means a road reserve, public highway or right of way 9 metres or less in width.

**Rear interface** is the rear wall of any proposed building or structure whether on the property boundary or set back from the property boundary.

**Parapet height** does not include features such as brackets, pediments, urns, finials or other decorative elements.

**Street boundary** means the boundary between the public street and the private property.

**Upper level** means development above the height of the street wall.

**Upper level setback** means the minimum distance from development above the height of the street wall to the property boundary, including projections such as balconies, building services and architectural features.

**Heritage building** means any building subject to a Heritage Overlay, graded as either Contributory or Individually Significant (including properties on the Victorian Heritage Register).

## 2.2 General Requirements

The requirements below apply to an application to construct a building or construct or carry out works.

A permit cannot be granted to vary a requirement expressed with the term 'must'.

## 2.3 Street wall height and front setback requirements

Development must not exceed the [mandatory maximum](#) street wall heights as shown in Map 1.

Development should not exceed other street wall heights as shown in Map 1, unless all the following requirements are met, to the satisfaction of the Responsible Authority:

- the built form outcome as a result of the proposed variation satisfies the Design Objectives at Clause 1.0 of this schedule;
- the proposed street wall height provides an [appropriate](#) transition, scaling down to the interface with a heritage building; and
- the proposed street wall height does not [visually](#) overwhelm the adjoining heritage building ~~and provides for an adequate transition towards it.~~

The street wall of infill development adjoining a heritage building should not be higher than the parapet height of the adjoining heritage building to the width of the property boundary or 6m, whichever is the lesser.

Development should have no front or side street setback, unless an immediately adjoining heritage building is set back from the street, in which case infill development should match the front setback of the adjoining heritage building from the same street, excluding laneway frontages.

Development at 54 and 56 Oxford Street must match the front setback of the heritage building at 58 Oxford Street.

The street wall on corner buildings should continue the main frontage street wall height for a minimum of 8 metres to the side street, with a transition in height to match the rear or side interface as required.

Development of non-heritage buildings on street corners should provide a corner splay at minimum of 1 x 1 metre at the site's corner boundaries.

## 2.4 Upper level setback requirements

Upper levels above the street wall:

### Heritage buildings:

- must be set back by a minimum of 6 metres ~~for heritage buildings;~~
- should be setback more than 6 metres so as to be placed behind the front two rooms and/or ~~principle~~ principal roof form, whichever is the greater, for properties at 50-52 Oxford Street, 57-63 Oxford Street, 13-15 Peel Street and 14-34 Cambridge Street, Collingwood;
- should be setback more than 6 metres so as to be placed behind the heritage fabric of 58-62 Oxford Street, Collingwood, as identified in the relevant Statement of Significance;
- should be setback in excess of the minimum upper level setback requirement where:
  - it would facilitate the retention of a roof form and/or chimneys that are visible from the public realm, or a roof or any feature that the relevant statement of significance identifies as contributing to the significance of the heritage building or streetscape;
  - it would maintain the perception of the three-dimensional form and depth of the building;
  - a lesser setback would detract from the character of the streetscape when viewed directly or obliquely along the street.

### Other buildings:

- should be set back by a minimum of 6 metres for ~~other development~~ sites in Areas ~~1 and 2~~ A as shown on Map 1;
- should be set back by a minimum of 3 metres for ~~other development~~ sites in Area ~~3~~ B as shown on Map 1.

### Heritage and Other buildings:

#### ~~Upper levels should:~~

- should be visually recessive when viewed from the public realm to ensure development does not overwhelm the streetscape and minimises upper level bulk;
- should contain upper level setbacks above the street wall within a maximum of two steps (including the setback above the street wall below as one step) to avoid repetitive steps in the built form.

~~For heritage buildings, upper level setbacks in excess of the minimum upper level setback requirements should be provided where:~~

- ~~it would facilitate the retention of a roof form and/or chimneys that are visible from the public realm, or a roof or any feature that the relevant statement of significance identifies as contributing to the significance of the heritage building or streetscape;~~
- ~~it would maintain the perception of the three-dimensional form and depth of the building;~~
- ~~a lesser setback would detract from the character of the streetscape when viewed directly or obliquely along the street.~~

## 2.5 Building height requirements

Development on sites shown as hatched on Map 1 must not exceed the [mandatory maximum](#) building height shown on Map 1.

Development should not exceed the [preferred maximum](#) building heights shown on Map 1.

A permit should only be granted to construct a building or construct or carry out works which exceeds the [preferred maximum](#) building height shown in Map 1 where all the following requirements are met to the satisfaction of the responsible authority:

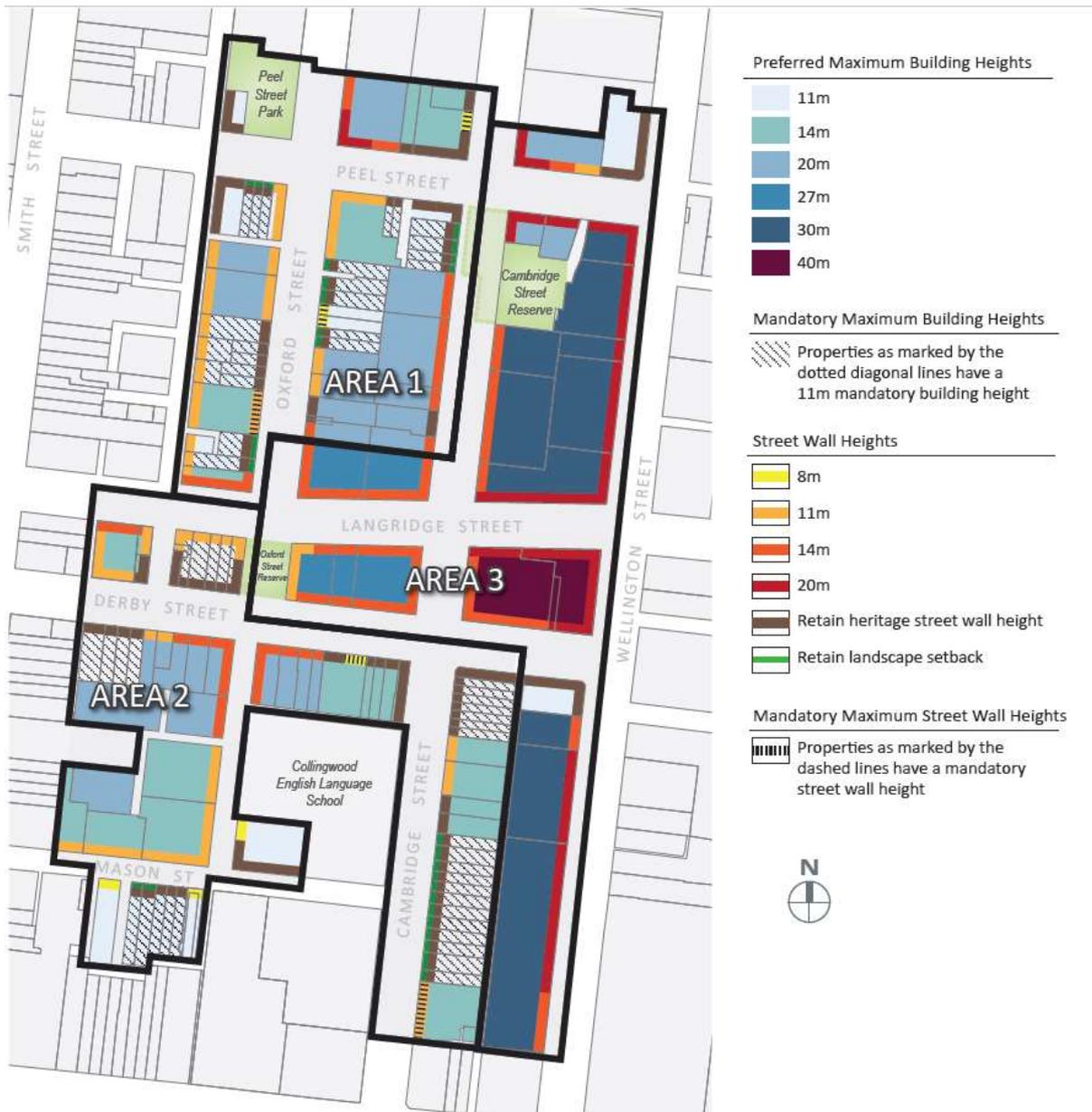
- the built form outcome as a result of the proposed variation satisfies:
  - the Design Objectives in Clause 1.0;
  - the Overshadowing and Solar Access Requirements in Clause 2.6;
- the proposal will achieve each of the following:
  - greater building separation than the minimum requirement in this schedule;
  - ~~excellence for environmental sustainable design measured as a minimum BESS project score of 70%.~~
  - no additional overshadowing impacts to residentially zoned properties, beyond that which would be generated by a proposal that complies with the preferred building height;
  - ~~provision of end-of-trip facilities, including secure bicycle parking, locker and shower facilities and change rooms in excess of the requirements of Clause 52.34.~~
  - ~~where the proposal includes dwellings, it also achieves each of the following:
 
    - ~~housing for diverse households types, including people with disability, older persons, and families, through the inclusion of varying dwelling sizes and configurations;~~
    - ~~accessibility provision objective that exceeds the minimum standards in Clauses 55.07 and/or 58m as relevant; and~~
    - ~~communal and/or private open space provision that exceeds the minimum standards in Clauses 55.07 and/or 58, as relevant.~~~~

Architectural features ([except service equipment or structures](#)) may exceed the [mandatory or preferred maximum](#) building height.

Service equipment and/or structures including balustrades, unenclosed pergolas for communal areas, roof terraces, shading devices, plant rooms, lift overruns, stair wells, structures associated with pedestrian access, green roof areas and other such equipment may exceed the [mandatory or preferred maximum](#) height provided that:

- the equipment/structures do not cause additional overshadowing of secluded private open space to residential land, opposite footpaths, kerb outstands or planting areas in the public realm; and
- the equipment/structures are no higher than 2.6 metres above the proposed building height; and
- the equipment/structures occupy less than 50 per cent of the roof area (solar panels and green roof excepted).

**Map 1: Building and Street Wall Heights**



**2.6 Overshadowing and solar access requirements**

Development should meet the objective of Clause 55.04-5 Overshadowing for adjoining land within a residential zone, including where separated by a laneway.

Development must not overshadow any part of the southern side footpath from property boundary to kerb of Peel, Langridge and Derby Streets between 10am and 2pm on 22 September.

For streets that extend in a north-south direction (except for Little Oxford Street), development must not overshadow any part of the opposite side footpath from property boundary to kerb between 10am and 2pm on 22 September.

Development along Little Oxford Street should not overshadow parts of building that are above the ground floor between 10am and 2pm on 22 September.

Development should ~~be designed to minimise~~ not increase the amount of overshadowing as caused by existing conditions, measured between 10am and 2pm on 22 September ~~of for~~ the following areas of open space and/or public realm ~~between 10am and 2pm on 22 September, to the satisfaction of the Responsible Authority:~~

- Cambridge Street Reserve (incl. any future extension of the reserve);
- Oxford Street Reserve;
- The outdoor space of the Collingwood English Language School;
- Any kerb outstands, seating or planting areas on the opposite side of the street, as applicable.

## 2.7 Building separation, amenity and equitable development requirements

An application for development should provide a design response that considers the future development opportunities of adjacent properties in terms of outlook, daylight and solar access to windows, as well as managing visual bulk.

Where development shares a common boundary within the overlay and/or adjoins a Commercial 1 Zone and/or Mixed Use Zone outside of the overlay, upper level development ~~must~~ should:

- for buildings up to 27 metres, be setback a minimum of 4.5 metres from the common boundary, where a habitable window or balcony facing the common boundary is proposed on the subject site and/or exists on the adjoining property; and
- for buildings up to 27 metres, be setback a minimum of 3.0 metres from the common boundary where a commercial or non-habitable window facing the common boundary is proposed on the subject site and/or exists on the adjoining property; and
- where buildings exceed 27 metres in height, the development above 27 metres be set back a minimum of 6 metres from the common boundary, whether or not windows are proposed on the subject site.

Where the common boundary is a laneway, the setback is measured from the centre of the laneway.

Where development consists of multiple buildings and/or separate upper levels, upper level development should:

- be set back a minimum of 9 metres from each other, where a habitable window or balcony is proposed; and
- be set back a minimum of 6 metres from each other where a commercial or non-habitable window is proposed.

## 2.8 Other design requirements

Development at the rear of the properties at 10 - 22 Derby Street must be designed to address Langridge Street.

The rear interface of a development abutting a laneway should not exceed a preferred height of 11 metres.

Development should provide for landscaping that provides a positive contribution to the public realm, such as canopy trees where possible, green walls or planter boxes.

Development should achieve good urban design outcomes and architectural excellence by including, but not being limited to:

- achieving active, fine grain design to create a pedestrian-oriented environment and passive surveillance towards the public realm;
- creating ~~a suitable~~ an appropriate ratio of solid and void elements that resemble the industrial past of the area;
- creating visual interest through the arrangement of fenestration, balconies and the application of architectural features ~~such as~~ including external shading devices, windowsills;
- maintaining an appropriate level of design simplicity by avoiding overly busy façades that rely on a multitude of materials and colours;
- avoiding large expanses of glazing with a horizontal emphasis;
- not competing with the more elaborate detailing of the heritage building(s) on the subject site or ~~an adjoining site~~ adjoining land;
- avoiding highly reflective glazing in openings of heritage buildings;
- maintaining existing openings and the inter-floor height of a heritage building and avoid new floor plates and walls cutting through historic openings;
- encouraging the retention of solid built form behind retained heritage façades and avoid balconies behind ~~existing~~ openings so as to avoid facadism; and
- ensuring projections such as balconies, building services, architectural features (other than shading devices, mouldings etc.) do not intrude into a setback and ~~not dominate the façade~~ do not visually dominate the facade.

Lower levels of development should:

- be designed to accommodate commercial activity at the ground floor, incorporating a suitable commercial floor height of 4 metres floor to floor height;
- incorporate adaptable building structures, layouts and non-residential unit sizes so as to allow for a variety of uses over time;
- avoid floor to ceiling glass with limited entries for large expanses of the ground floor;
- allow unobstructed views through openings into the ground floor of buildings;

- include fine grain design that engages the pedestrian and provides detail, articulation, depth, materiality and rhythm that contributes to a high-quality street interface and where appropriate integrates seating perches into street facades;
- on sites abutting narrow footpaths of less than 1.8 metres, provide for front setbacks and/or generous, recessed building entrances to provide space for pedestrian circulation and include space for landscaping, outdoor trading, seating and/or visitor bicycle parking;
- locate building service entries/access doors and cabinets away from the primary street frontage, or where not possible, they should be sensitively designed to integrate into the façade of the building and complement the street frontage and character;
- respond to the topography of the east-west oriented streets through transition and “stepping” of the ground floor to appropriately address the street.

The design of upper levels of development should:

- be well-designed and articulated and where appropriate utilize design techniques such as architectural rebates of sufficient depth and / or a range of parapet heights to break up the building mass across ~~sites with a~~ wide frontages;
- distinguish between the lower and upper levels through materials and articulation, with visually lightweight materials and colours applied above the street wall;
- be designed so that side walls are articulated and read as part of the overall building design and not detract from the streetscape when viewed from direct and oblique views along the streetscape.

Development should avoid blank walls visible to the public realm, including on side street frontages.

Side walls in a mid-block location which are visible permanently or temporarily from adjoining residential sites and/or the public realm should be designed to provide visual interest to passing pedestrians through colour, texture, [materials and/or finishes](#).

Projections such as building services and architectural features (other than shading devices, mouldings etc.), balconies and balustrades should not protrude into a street wall and upper level setback, as applicable.

Development interfacing with areas of public open space should:

- provide a suitable transition in scale to the interface with the public open space;
- ensure that development does not visually dominate the public open space;
- provide passive surveillance from lower and upper levels [of the building](#).

## 2.9 Access, parking and loading bay requirements

Pedestrian access to buildings should be achieved via streets and avoid primary access from laneways. Where pedestrian access from a laneway is appropriate, it should include a pedestrian refuge or landing.

Ensure pedestrian entrances are clearly visible, secure, ~~be~~-well lit and have an identifiable sense of address.

Residential and commercial pedestrian entrances should be distinguishable from each other.

The common pedestrian areas of new buildings should be designed with legible and convenient access, with hallway and lobby areas of a size that reflects the quantity of apartments serviced and which can be naturally lit and ventilated.

Resident and staff bicycle parking should be located and designed to be secure and conveniently accessible from the street and associated uses.

Vehicle access should be achieved from laneways or side streets (in that order of preference). Vehicle access from Wellington Street and Langridge Street should be avoided.

At the intersection of laneways and footpaths, development to non-heritage buildings should provide a minimum 1 x 1 metre splay to ensure pedestrian safety.

Car parking should be located within a basement or concealed from the public realm.

Avoid separate entries for car parking entries and loading bays.

Vehicle ingress and egress into development, including loading facilities and building servicing, should be designed to ensure a high standard of pedestrian amenity and limit potential conflict between vehicle movements and pedestrian activity and avoid adversely impacting the continuity of the public realm.

Vehicle ingress/egress points should be spaced apart from other existing and/or proposed ingress/egress points to avoid wide crossover points.

Development with redundant vehicle access points should reinstate the kerb, line-marked parking bays, and relocate any parking signs.

~~Development with laneway access may require a ground level set back in order to achieve practicable vehicle access. Between ground level and first floor, a headroom clearance of 3.5 metres minimum should be achieved.~~

Where a ground level setback is provided to achieve practicable vehicle access to a laneway, a minimum headroom clearance of 3.6 metres should be provided to any overhang of the first floor.

Properties on the inside corner of bends in laneways or at intersections between two laneways should provide a minimum 3 metre x 3 metre splay to facilitate vehicle access.

### **3.0 Subdivision**

None specified.

### **4.0 Advertising Signs**

None specified.

## 5.0 Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and should accompany an application, as appropriate, to the satisfaction of the responsible authority:

- a site analysis and urban design context report which demonstrates how the proposal achieves the Design Objectives and requirements of this schedule;
- a desktop wind effects assessment for the proposed development to assess the impact of wind on:
  - the safety and comfort of the pedestrian environment on footpaths and other public spaces while walking, sitting and standing; and
  - the safety and effects on cyclists travelling along bicycle routes that are ~~next to~~ [adjacent to the](#) development.
- a Traffic Engineering Report prepared by a suitably qualified traffic engineer that demonstrates how the development:
  - minimises impacts on the level of service, safety and amenity of the arterial road network (including tram services);
  - reduces car dependence and promotes sustainable transport modes; and
  - which includes an assessment of the impacts of traffic and parking in the Precinct including an assessment of the ongoing functionality of laneway/s, where applicable.

## 6.0 Decision Guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- whether the requirements in Clauses 2.2-2.9 are met;
- Whether the proposal provides a high-quality public realm interface that either activates the street edge or provides an engaging and well-designed street interface, and contributes positively to the pedestrian environment and other areas of the public realm;
- whether development retains the prominence of the heritage street wall in the vistas along the main street frontage within the precinct;
- whether heritage buildings on street corners retain their prominence when viewed from the opposite side of the primary and secondary street;
- whether heritage buildings retain their three-dimensional form as viewed from the public realm;
- whether upper level development above the heritage street wall is visually recessive and does not visually overwhelm the heritage buildings;
- whether a strong sense of separation between upper levels and street walls is achieved when viewed from the opposite side of the street;

- whether the proposal responds to the presence of heritage buildings either on, or in close proximity to the site through a suitable transition in scale of street-wall, upper level setbacks and building height;
- whether the development delivers design excellence, including but not limited to building siting, scale, massing, articulation and materials;
- how the proposal responds in terms of scale and transition to the sloping topography of the area;
- whether proposed roof decks are set back from lower levels and are recessive in appearance;
- whether upper side and rear setbacks are sufficient to limit the impact on the amenity of existing dwellings;
- does the design respond to the interface with existing low-scale residential properties, including ~~the~~ [avoiding additional](#) overshadowing of secluded private open space;
- ~~W~~[w](#)hether proposed buildings and works will avoid overshadowing of footpaths and public open spaces;
- ~~W~~[w](#)hether the proposal has considered the equitable development [opportunities](#) ~~rights~~ of neighbouring properties in terms of achieving good internal amenity for future proposals through building separation and design;
- whether the ~~development~~ [proposed built form](#) mitigates negative wind effects created by the development;
- the impact of development on traffic and parking in the nearby area, including on the functionality of laneways; and
- whether the layout and appearance of areas set aside for vehicular access, loading and unloading and the location of any proposed car parking is practicable, safe and supports a pedestrian-oriented design outcome.