

Amendment C220 Yarra Planning Scheme Johnston Street Activity Centre

Date of Inspection: various (most recent **02 October 2018**)

Date of Report: **09 October 2018**

Report prepared for **De Luca Property Group**

Report prepared by **Andrew Biacsi**



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Attachment 1 Expert Witness Declaration

Attachment 2 Figures and Maps

1 Introduction

- 1 I have been requested by **Rigby Cooke Lawyers**, on behalf of De Luca Property Group, to consider the planning implications of proposed Amendment C220 (**the Amendment**) to the Yarra Planning Scheme (**Planning Scheme**) as it relates to the land known as 196-202 Johnston Street, Abbotsford (**the Subject Land**).
- 2 Attachment 1 provides a summary of my professional qualifications and experience in accordance with the Planning Panels Victoria 'Guide to Expert Evidence'.
- 3 I received instructions from Rigby Cooke Lawyers in correspondence dated 25 September, 2018.
- 4 My instructions include to review the materials provided in my brief and to prepare an expert report considering planning matters.
- 5 In preparing this report, I have:
 - Familiarised myself with the Subject Land and surrounds (other land also affected by the Amendment);
 - Reviewed the provisions of the Planning Scheme;
 - Reviewed the Authorisation letter from the DELWP dated 8 March 2017;
 - Reviewed and considered the exhibited version of the Amendment and relevant background reports and material which informed the Amendment;
 - Reviewed the Council Officer Reports associated with the Amendment as contained in the Agendas to Council Meetings held on 17 May 2016 (seeking authorisation of Amendment) on 31 October 2017 (authorising exhibition of Amendment) and 21 August, 2018 (seeking appointment of a Panel);
 - Reviewed the submission from De Luca Property Group dated 18 December 2017;
 - Reviewed the summary of submissions to public exhibition of the Amendment contained at Attachment 2 of the 21 August 2018 Council meeting agenda;
 - Reviewed relevant Ministerial Directions and Practice Notes including PPN59 and 60;
 - Reviewed the Johnston Street Local Area Plan (**JSLAP**) including Appendix B – Built Form Analysis and Recommendations (September 2015) that are proposed to be listed as a reference document under Clauses 21.11 and 21.12 of the Amendment; and



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- Reviewed the Johnston Street Local Area Plan Amendment C220 Supporting Document dated October 2017 which was prepared in response to the authorisation letter of the Minister for Planning.

6 I note that separate urban design evidence is to be presented to the Panel in respect of the Subject Land.

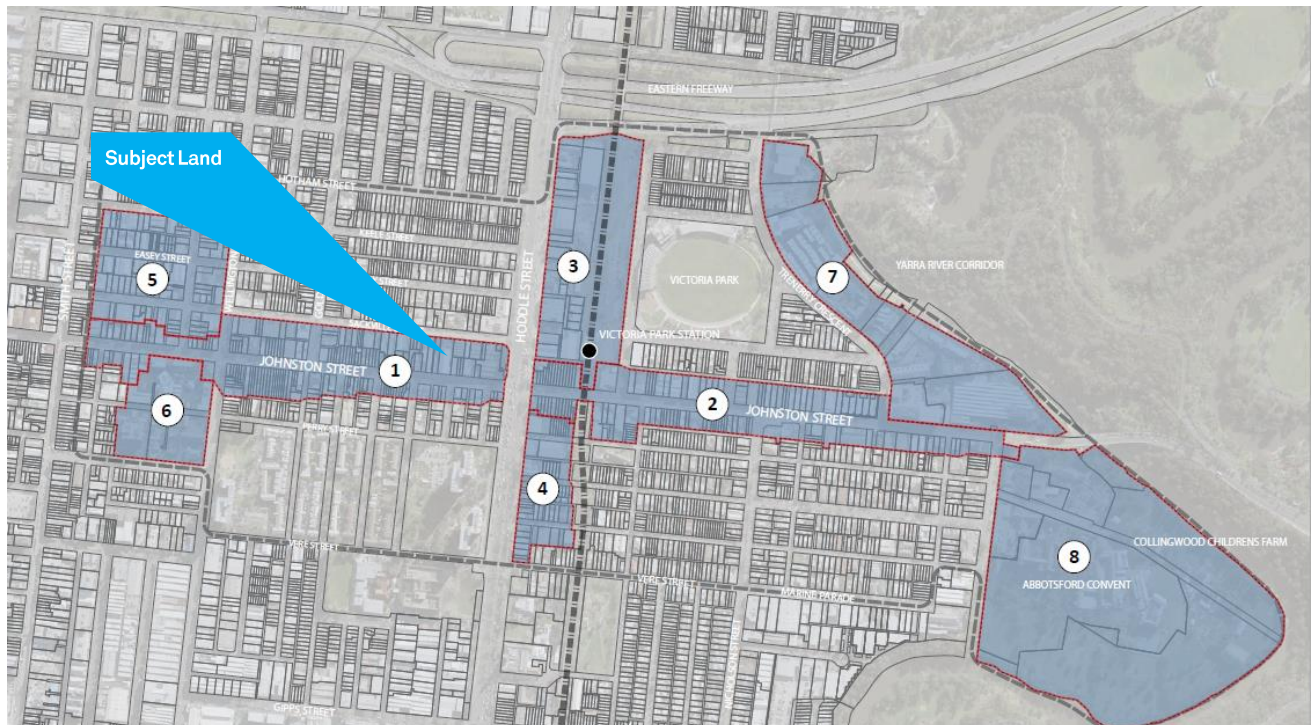
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2.1 Amendment Land

- 7 The Amendment affects land fronting Johnston Street extending east from Smith Street through to Trenerry Crescent/Clarke Street.
- 8 As outlined in the exhibited Explanatory Report for the Amendment, the Amendment applies to land in 'Precinct 1 – Johnston Street Central' and 'Precinct 2 – Johnston Street East' within the Johnston Street Activity Centre as identified by the JSLAP. (Refer to Figure 2.1)

Figure 2.1
LAND AFFECTED BY THE AMENDMENT

Image an extract of Figure 12: Study Area Precincts Plan obtained from pg. 30 of the JSLAP



- 9 Hoddle Street extends north-south between the Amendment Land and forms the boundary between Precincts 1 and 2.
- 10 The Amendment Land is characterised by a range of commercial activities and mix of service industries together with retail, offices, galleries, cafes and bars.
- 11 The Subject Land at 196-202 Johnston Street, Abbotsford is included within the Amendment Land. More specifically, the Subject Land forms part of Precinct 1 being located to the west of Hoddle Street with a frontage to Johnston Street and Sackville Street. (Refer to Figure 2.1)
- 12 The Subject Land is located on the north side of Johnston Street, between Gold Street and Hoddle Street. It is currently occupied in part by the (former) Austral Theatre Building (to the east) which is currently used for the purposes of retail/warehouse and in part by a two storey office building (to the west). The material supporting the Amendment identifies the Austral Theatre Building as having an 'individually significant' heritage grading. Heritage Overlay Schedule 324 relates to the 'Johnston Street Precinct' and affects most of the land in Precinct 1.



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2.2 The Amendment

- 13 The Explanatory Report outlines that the Amendment implements the land use and built form objectives and strategies within the JSLAP as they relate to Precinct 1 (Johnston Street Central) and Precinct 2 (Johnston Street East).
- 14 The Amendment proposes a number of changes to the Planning Scheme to implement the JSLAP, including:
- rezoning Commercial 2 Zone (C2Z) and General Residential Zone (GRZ) land to Commercial 1 Zone (C1Z);
 - insert and apply a new Schedule 15 to the Design and Development Overlay (DDO15);
 - introducing a new policy at Clause 21.12 'Local Areas' and a subsection relating to 'Johnston Street Activity Centre';
 - applying an Environment Audit Overlay (EAO) on sites rezoned from C2Z to C1Z;
 - amend the relevant Planning Scheme maps;
 - insert the 'Heritage Gap Study: Review of Johnston Street East' as a reference document at Clauses 21.11 and within Clause 22.02;
 - amend the existing incorporated document listed in the Schedule to Clause 81.01 to reflect the addresses and gradings of all new and revised places;
 - rename the incorporated document in Clauses 22.02 and Schedule to Clause 81.01 to reference a new date;
 - amend the Schedule to Clause 43.01 (Heritage Overlay);
 - insert the Johnston Street Local Area Plan (2015) as a reference document at Clause 21.11; and
 - Rezone part of the site at 67-71 Johnston Street to C1Z (from PUZ) to correct a mapping error.
- 15 As it relates to the Subject Land, the Amendment proposes to:
- Rezone the property from C2Z to C1Z, allowing for mixed use development opportunities including retail, commercial and higher density residential development, complementary to the intended role and scale of the commercial centre;
 - Apply the new DDO15, the requirements of which are discussed further below; and
 - Apply an EAO.

2 Amendment C220**2.3
Schedule 15 to the DDO**

16 Schedule 15 to the DDO includes design objectives, building height and setback controls (including both discretionary and mandatory requirements) and decision guidelines.

17 The design objectives (of the adopted version) of DDO15 being:

- *To preserve the valued heritage character of the streetscape and ensure that the predominantly two storey heritage street-wall remains the visually prominent built form of Johnston Street west of the railway line bridge, ensuing that upper levels are visually recessive.*
- *To ensure that the overall scale and form of new buildings is mid-rise (5 to 10 storeys) and provides a suitable transition to low scale residential areas, protecting surrounding residential properties from unreasonable loss of amenity through visual bulk, overlooking and overshadowing.*
- *To ensure that new development does not compromise the operation of the state significant Collingwood Arts Precinct from unreasonable loss of amenity through visual bulk, overlooking, overshadowing of open space areas and vehicle access.*
- *To activate the street edge, provide passive surveillance opportunities and accommodate commercial activity at the lower levels of new development and enhance the public realm through high quality buildings and protect footpaths and public spaces on the southern side of Johnston Street from loss of amenity from overshadowing.*
- *To provide for equitable development outcomes through built form design that responds to the development opportunities of neighbouring properties, and through the consolidation of finer grain sites.*

18 The Subject Land falls within Precinct 1AA under the Johnston Street Sub-Precinct Plan included as Map 1 to DDO15. (Refer to Figure 5.1 in Attachment 2).

19 The below table lists the building height and setback requirements (based on the adopted version) that apply to Sub-Precinct 1AA under DDO15:

Building Height and Setback Requirement	Sub-Precinct 1AA
Preferred Maximum building height	28m
Mandatory Maximum Building Height	N/A
Preferred (minimum and maximum) street wall height (non-heritage frontage)	11m (max) (fronting Sackville Street)

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Mandatory Maximum Street Wall Height (non-heritage frontage)	11m (fronting Johnston Street) N/A to Subject Land due to Heritage
Preferred Minimum Setback (for upper levels from Street wall façade)	6m (fronting Sackville Street)
Mandatory Minimum Setback (for upper levels from Street wall façade)	6m (fronting Johnston Street)
Preferred Maximum Rear Interface Height (on boundary)	N/A
Mandatory Maximum Rear Interface Height (on boundary)	N/A

- 20 I acknowledge that there are variances in the Building Height and Setback Requirements set out in Table 2 between the exhibited and adopted versions of DDO15.
- 21 DDO15 (both exhibited and adopted version) outlines that a permit cannot be granted to vary the maximum street wall height and maximum upper level setback to Johnston Street.
- 22 Under the adopted version of DDO15, it is also a mandatory requirement that new development must not overshadow the southern footpath of Johnston Street, measured as 3.0m from the boundary of Johnston Street, between 10am and 2pm on September 22.
- 23 There are differences between the exhibited and adopted versions of Schedule 15 to the DDO. The differences are generally minor including as follows:
- **Design objectives.** The adopted version includes a reference to *‘ensuring upper levels are visually recessive’* and the introduction of an additional requirement relating to the impacts of development on the Collingwood Arts Precinct.
 - **Definitions.** The adopted version includes definitions for ‘heritage building’ and ‘street wall’ which were undefined in the exhibited version. In this case, the Austral Theatre Building is identified as having an ‘individually significant’ grading and therefore would be a ‘heritage building’ for the purposes of the DDO.
 - **Building height and setback requirements.** Although the drafting has varied between the two versions, the same general principle of a mix of discretionary and mandatory street wall and upper level setbacks apply. The maximum building height is discretionary and where building heights exceed the preferred height, a consideration of set criteria is required under both versions.

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- **Building Separation requirement.** In both versions, a minimum 4.5m setback is required from side boundaries where a habitable room window is proposed or minimum 3m setback is required from side boundaries where there is a non-habitable room window or commercial window. Where the common side boundary is a laneway, the setback is measured from the centre of the laneway. The adopted version includes a requirement for new development to expressly consider the future development opportunities of adjacent properties in terms of outlook, daylight and solar access to windows, as well as managing visual bulk.
 - **Overshadowing and solar access requirement.** Both versions include a requirement relating to shadow cast on the southern footpath of Johnston Street (between 10am and 2pm at September 22) measured at 3m from the boundary of Johnston Street. The adopted version goes on to state that this requirement is a mandatory requirement.
 - **Street frontage requirements.** The adopted version includes additional requirements for new development including to *‘ensure that heritage facades remain the visually prominent feature in the streetscape’*.
 - **Upper level development/design requirements.** Generally minor variations in the drafting between the two versions with an emphasis on providing a high standard of architecture with consideration of views of the building from the streetscape and oblique angles and managing the interface of new development with retained heritage building facades and on sites adjacent to heritage buildings.
- 24 The adopted version of DD015 also includes separate headings relating to ‘Building Envelope Requirement’ and ‘Corner Site Requirements’.
- 25 The adopted version of Schedule 15 also includes application requirements at Clause 5.0 stating that there are ‘none specified’.
- 26 The decision guidelines set out at Clause 6.0 of the DD015 (adopted version) require the responsible authority to consider, as appropriate:
- The extent to which the proposal satisfies the Design Objectives at Clause 1.0.
 - The architectural quality of the proposal, which includes the design, scale, height, materials, mass and visual bulk of the development in relation to the surrounding built form.

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Local Policy**

- 27 The proposed Local Areas policy at Clause 21.12 applies to the section of Johnston Street shown on Map 1 to the Clause, which includes the Subject Land. (Refer to Figure 5.2 at Attachment 2)
- 28 Clause 21.12-1 under the heading 'Local area implementation' also states that it is policy to ensure that any proposed use or development within the Johnston Street Activity Centre (including on the Subject Land) is generally consistent with the policy objectives outlined therein relating to Land Use and Character; Access and Amenity; and Equitable Development.
- 29 The JSLAP is also included as a reference document under Clause 21.12.

**2.5
Johnston Street Local Area
Plan**

- 30 The Amendment is said to implement the JSLAP. The exhibited Explanatory Report states that:
- The Amendment will ensure that the future development and land use change is in accordance with the vision, objectives and strategies outlined in the Johnston Street Local Area Plan.*
- 31 The Vision¹ expressed in Section 4.1 of JSLAP is as follows:
- Johnston Street will evolve into a vibrant and active neighbourhood centre that serves the day to day needs of the local community whilst maintaining a regional role in supporting employment and business opportunities.*
- The area will accommodate a growing population and be well connected by sustainable forms of transport, with activity focussed around Victoria Park.*
- 32 The objectives and strategies outlined in JSLAP are categorised as matters relating to:
- Land Use; (Section 4.4)
 - Public Spaces; (Section 4.5)
 - Access and Movement; and (Section 4.6)
 - Built Form; (Section 4.7).
- 33 JSLAP outlines that '*The built form objectives and strategies have been informed by an analysis of urban context and existing built form, which is included as Appendix B – Johnston Street Local Area Plan: Built Form Analysis and Recommendations.*'²
- 34 In addition to Objectives 4 and 5 and associated strategies contained in Section 4.7 of JSLAP, Section 4.9 provides more detailed built form

¹ See pg. 39 of the JSLAP

² See pg. 50 and Appendix B of JSLAP

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guidelines for each precinct.

- 35 As relevant to Precinct 1 – Johnston Street Central, the built form guidelines and principles outlined the preferred future character as one where:

The Central part of Johnston Street will become a vibrant, mixed use precinct which comprises medium scale buildings that relate to the busy footpaths. New buildings respect the heritage qualities of the precinct and reinforce a consistent street edge. Active street frontages are incorporated where the heritage fabric is not a constraint to new development. New buildings respect the heritage qualities of the precinct and reinforce a consistent street edge.

Cafes and retail shops provide activity on the street with offices and apartments above. Residential buildings behind and above the existing shopfronts add vibrancy to the area.

Higher density housing establishes on larger sites, above and behind commercial activity.³

- 36 Section 4.8 (Built Form Precincts & Preferred Future Character) described the preferred future character of precincts based on the existing and emerging activities in Johnston Street as well as the evolving urban character of the precincts.
- 37 The objectives and strategies set out in JSLAP and in particular the specific built form guidelines and principles outlined for Precinct 1 together with the built form analysis and recommendations (Appendix B) provide a robust and considered piece of strategic work that seeks to guide and inform the development of the Johnston Street Activity Centre and delivery of the Vision for this Activity Centre.
- 38 I note that the adopted version of DDO15 proposes a number of requirements that are not found in JSLAP, in particular
- Building Envelope Requirement and more specifically the application of a 45 degree envelope as the preferred upper level setback/envelope from the property frontage (measured as the distance above ground level specified in Table 1). As relevant to Sub-Precinct 1AA that affects the Subject Land, the 45 degree angle is taken from a point at the top of an 11m mandatory street wall height.
 - Building Separation Requirement.
- 39 I discuss the drafting of DDO15 including the building envelope and building separation requirements in further detail in my assessment at Chapter 4 of this report.

³ See pg. 53 of JSLAP for the Precinct 1 – Johnston Street Central Future Character

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2.6 Amendment C220 Supporting Document

40 It appears that the principle of a Building Envelope Requirement referencing a 45 degree envelope taken from the street wall height first emerged through the *October 2017 Amendment C220 Supporting Document* that was prepared in response to the conditions and commentary contained within the authorisation letter received from the Minister for Planning in March 2017. I discuss this document as follows.

41 As outlined in the 21 August 2018 Council Meeting Agenda, following receipt of the conditional authorisation from the Minister in March 2017, Officers prepared a further built form analysis.

42 The further analysis prepared by Officers being the *Amendment C220 Supporting Document October 2017 (Supporting Document)*.

43 This analysis is said to ‘...identify where mandatory controls may meet the exceptional circumstances in Practice Note 60 – Height and setback controls for activity centres (PN60) and other comments within the conditional authorisation letter from the Minister for Planning.’⁴ Furthermore, ‘This work had close regard to the principles that underpin the JSLAP and regard to recently approved permits where the JSLAP and appropriate building heights have been closely considered. This informed changes to Amendment C220.’⁵

44 The three built form elements being tested in the Supporting Document are outlined in Section 3.1, more specifically:

- Street wall façade;
- Upper levels; and
- Residential interface.

45 The Supporting Document outlines that 4 (of the 10) principles referenced in the JSLAP Built Form Analysis form the basis for the testing undertaken in Section 7.⁶ These principles being:

- Human scale and street proportion;
- Taller development set back and visually recessive;
- Microclimate and sun access; and
- Fine grained residential interface.

46 Through the Supporting Document it is outlined that ‘in order to determine appropriate building heights, setbacks and interface

⁴ Refer to paragraph 6 on page 82 of the Agenda to the 21 August 2018 Council Meeting

⁵ Refer to paragraph 6 on page 82 of the Agenda to the 21 August 2018 Council Meeting

⁶ See page 3 of the Supporting Document

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heights, a more targeted analysis is required to address the various site conditions present in Precincts 1 and 2.' In this regard, it is said that:

*'The application of an angled envelope (in this case 45 degrees), as illustrated in Figures 8 and 9, is a simple and effective way to determine overall building height, in order to reduce amenity impacts...'*⁷

47 In analysing lot depth and interfaces to determine building height, the Supporting Document acknowledges that given the east-west orientation of Johnston Street '*...lot depth is considered to be a key determinant of building height, to enable sufficient set-backs (to upper levels) from both sensitive interfaces and heritage facades.*'⁸

48 The Supporting Document⁹ outlines '*The use of 45° angled envelopes to determine building envelopes is an effective way to address the following amenity and/or character concerns:*

- *Protecting the character of the heritage streetscape in terms of close-up and distant (oblique) views;*
- *Avoiding overshadowing of southern side footpaths and public spaces (during most months of the year);*
- *Avoiding overshadowing of private open space and north-facing windows of residential dwellings;*
- *Minimising the visual impact of taller buildings in close proximity to, and at the direct interface with, existing low-scale dwellings...*

49 The application of the 45° angled envelopes is tested in Figures 10 to 13 of the Supporting Document. These figures illustrate the gradual increase in building height as lot depths increase. The lot depths illustrated in these Figures being 25m, 30m, 40m and 50m. It is noted that the Subject Land has an approximate depth of 60m.

50 The analysis contained within the Supporting Document is said to draw upon work done by other Council's in the form of Amendments. Specifically, Amendment C134 to the Moreland Planning Scheme relating to the Brunswick Activity Centre and Amendment C136 to the Darebin Planning Scheme relating to the St Georges Road Strategic Corridor.

51 Section 7.0 of the Supporting Document¹⁰ analyses each sub-precinct in terms of the elements that will influence built form outcomes. These elements have been identified as:

⁷ Refer to page 4 of the Supporting Document

⁸ Refer to page 5 of the Supporting Document

⁹ Refer to page 5 of the Supporting Document

¹⁰ Refer to page 19 of the Supporting Document

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- Lot depth
- Key interfaces: North / South / Residential / Commercial
- Heritage streetscape

52 The sections prepared for each sub-precinct show the application of a 45° angled envelope to each interface condition in order to draw conclusions about building heights. (Refer to Figure 2.2)

Figure 2.2
FIGURE 34 –SUB-PRECINCT 1AA–SECTION

Image obtained from page 25 of the Supporting Document

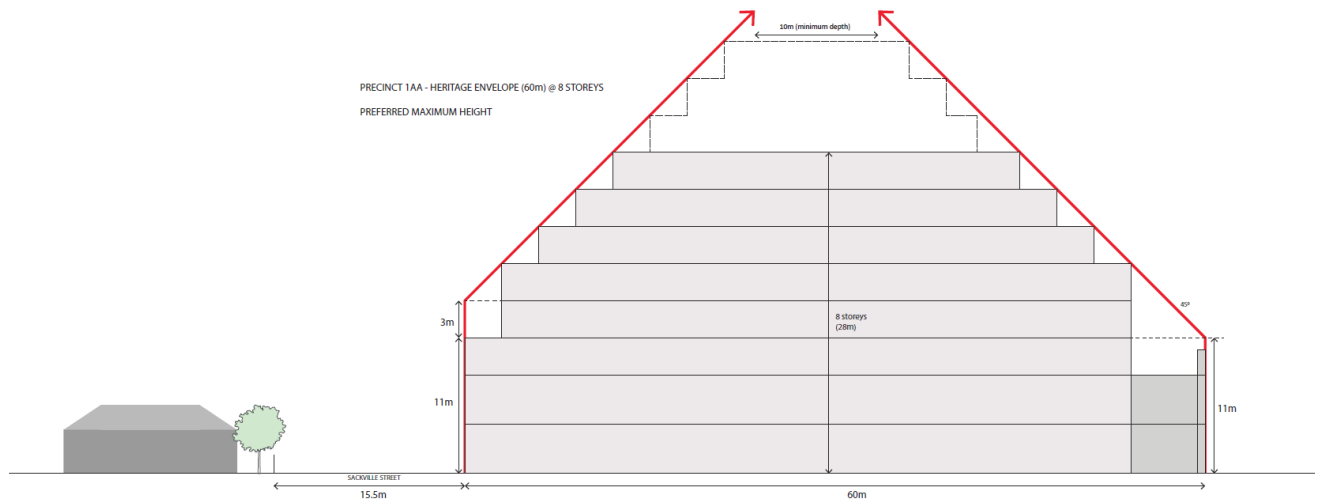


Figure 34. Sub-Precinct 1AA - Section

53 The Supporting Document is said to outline ‘the rationale for whether heights and setbacks should be mandatory is explained within the analysis and conclusions for each sub-precinct...’¹¹

54 The analysis for Sub-Precinct 1AA contained at Section 7.3 of the Supporting Document and as relevant to the Subject Land, identifies:

- ‘The site conditions for this sub-precinct are essentially a combination of 1A and 1B without the rear interface condition of those two sub-precincts ((for the sites that run between Johnston Street and Sackville Street)
- The heritage interface principles apply along Johnston Street, whilst the less sensitive interface principles apply along Sackville Street allowing the 45 degree envelope to be applied.
- Figure 34 illustrates a building envelope that extends to a depth of 60m set back within a 45 degree envelope between the front and rear interfaces

¹¹ Refer to page 19 of the Supporting Document

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- *If there were no other considerations, the overall height would be in the range of 11 storeys. However, there are the following considerations: visual impact of development from the residential properties along Sackville Street and the impact on the heritage streetscape as viewed along Johnston Street*

- ...¹²

55 The conclusions from the analysis as relevant to Sub-Precinct 1AA being:

- *The conclusions for Sub-Precincts 1A and 1B apply to 1AA also in terms of the application of a 45 degree envelope to minimise visual impacts on the both the low-scale residential streetscape/interface and the heritage streetscape*
- *The ability to accommodate taller built form is acknowledged here but the visual impacts become far greater above the preferred height of 8 storeys*

56 The conclusions for Sub-Precinct 1A include (inter alia):¹³

- *Applying the 45 degree angle from a height of 11m along the heritage streetscape reduces the visual impact of the upper levels whilst still allowing for taller built form of approximately 7 storeys*
- *The 45 degree envelope also ensures that overshadowing of the southern side footpath is avoided from upper level development*

¹² Refer to page 25 of the Supporting Document

¹³ Refer to page 21 of the Supporting Document

3 Planning Context

3.1 Existing Zone and Overlays

57 The Amendment Land is various included within the C1Z, C2Z and GRZ. As noted previously, the Subject Land is currently included within the C2Z. (Refer to Zone Map at Figure 5.3 of Attachment 2)

58 The purpose of the C2Z is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.*
- *To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.*

59 Under the C2Z, use of the land for the purposes of ‘Accommodation’ is prohibited.

60 The purpose of the C1Z, as relevant to the Amendment is to:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*
- *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*

61 The Subject Land is also affected by the following overlays:

- Design and Development Overlay Schedule 15;
- Heritage Overlay Schedule 324 (H0324) that applies to the Johnston Street Precinct, Collingwood; and
- Special Building Overlay (SBO) (in part).

(Refer to Overlay maps at Figures 5.4-5.6 of Attachment 2)

62 Design and Development Overlay Schedule 15 was introduced on an interim basis until 31 December 2019 by Ministerial Amendment C237 to the Planning Scheme. This Amendment also applied a Heritage Overlay to the Johnston Street East Precinct (H0505).

63 The Explanatory Report for Amendment C237 notes:

Amendment C237 is required to provide a DDO with mandatory and discretionary built form provisions while permanent provisions undergo the full planning scheme amendment process via Amendment C220, including exhibition, planning panel, adoption, and approval. The new controls will apply to



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applications lodged prior to the introduction of the interim controls.

The amendment is also required to provide immediate heritage protection for properties that have been assessed as having heritage value but do not have any form of heritage protection and can be demolished under the current provisions.

The Amendment will ensure that future development is in accordance with the vision, objectives and strategies outlined in the Johnston Street Local Area Plan, 2015.

- 64 It is noted that an EAO and HO (both Schedule 324 and other Schedules) also affect a number of other properties also within the Amendment area. As noted above, the Subject Land is not currently affected by an EAO under the Planning Scheme.

3.2 Planning Policy

- 65 Relevant provisions of the Planning Policy Framework (PPF) include:

- Clause 11.01 – Victoria
 - Clause 11.01-1R – Settlement – Metropolitan Melbourne
- Clause 11.02 – Managing Growth
- Clause 11.03 – Planning for Places
 - Clause 11.03-1R – Activity Centres – Metropolitan Melbourne
- Clause 13 – Environmental Risks and Amenity
 - Clause 13.04 Soil Degradation
 - Clause 13.07 Amenity
- Clause 15.01 – Built Environment
- Clause 15.02 – Sustainable Development
- Clause 15.03 – Heritage
- Clause 16 – Housing
 - Clause 16.01 – Residential Development
 - Clause 16.01-3S Housing Diversity
 - Clause 16.01-3R Housing Diversity – Metropolitan Melbourne
 - Clause 16.01-1R Integrated housing – Metropolitan Melbourne

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- Clause 16.01-2R Housing Opportunity Areas – Metropolitan Melbourne
 - Clause 16.01-2S Location of residential Development
 - Clause 17 –Economic Development
 - Clause 18 –Transport
 - Clause 19 –Infrastructure

66 The following Clauses of the Local Planning Policy Framework (the LPPF) considered relevant to the Amendment include:

- Clause 21.03 –Vision
- Clause 21.04 –Land Use
- Clause 21.05 –Built Form
- Clause 21.06 –Transport
- Clause 21.08 –Neighbourhoods
 - Clause 21.08-5 Collingwood
- Clause 21.10 –Future Work
- Clause 21.11 –Reference Documents
- Clause 22.02 –Development guidelines for sites subject to the Heritage Overlay
- Clause 22.03 –Landmarks and Tall Structures
- Clause 22.12 –Public Open Space Contribution
- Clause 22.16 –Stormwater Management (Water Sensitive Urban Design)
- Clause 22.17 –Environmentally Sustainable Development
- Clause 23 –Operation of the Local Planning Policy Framework (Transitional)
 - Clause 23.01 –Relation to the Planning Policy Framework
 - Clause 23.02 –Operation of the Municipal Strategic Statement
 - Clause 23.03 –Operation of the Local Planning Policies

67 In terms of the LPPF, I note that the Planning Scheme identifies the Johnston Street Neighbourhood Activity Centre on the Strategic

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Framework Plan.¹⁴ (Refer to Strategic Framework Plan at Figure 5.7 of Attachment 2)

- 68 Clause 21.04-1 acknowledges that in order to protect Yarra's valued character, the majority of new housing development will be accommodated on strategic redevelopment sites located in, abutting, or close to activity centres, or in locations that offer good access to services and transport.
- 69 The LPPF¹⁵ supports land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres such as the Johnston Street NAC.
- 70 Clause 21.05-2 describes Yarra's built form character as having a clear picture of a low-rise urban form punctuated by pockets of higher development. Strategy 17.2 of Clause 21.05-2 acknowledges that development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless the proposal can achieve specific benefits such as those set out in the relevant clause.
- 71 Clause 22.02 applies to all land within a Heritage Overlay and this policy provides guidance for the protection and enhancement of the City's identified places of cultural and natural heritage significance.
- 72 The levels of significance referenced in Clause 22.02-3 of the policy are set out in the City of Yarra Review of Heritage Overlay Areas 2007 Appendix 8 (as updated from time to time). The eastern part of the Subject Land is identified in this document as being 'individually significant'.
- 73 The objectives of this policy as set out in Clause 22.02-4 being:
- *To conserve Yarra's natural and cultural heritage.*
 - *To conserve the historic fabric and maintain the integrity of places of cultural heritage significance.*
 - *To retain significant view lines to, and vistas of, heritage places.*
 - *To preserve the scale and pattern of streetscapes in heritage places.*
 - *To encourage the preservation, maintenance, restoration and where appropriate, reconstruction of heritage places.*
 - *To ensure the adaptation of heritage places is consistent with the principles of good conservation practice.*
 - *To ensure that additions and new works to a heritage place respect the significance of the place.*

¹⁴ See Clause 21.03 of the Planning Scheme

¹⁵ See Clause 21.04-2 of the Planning Scheme

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- *To encourage the retention of ‘individually significant’ and ‘contributory’ heritage places.*
- *To protect archaeological sites of cultural heritage significance.*

74 Clause 22.02-5 contains policy relating to the consideration of demolition (full or partial), original location, reconstruction and restoration, painting and surface treatments, culturally significant trees, subdivision and new development, alterations or additions.

75 Clause 22.02-5.7.2 sets out specific requirements (where there is a conflict or inconsistency between the general and specific requirements, the specific requirements prevail). In relation to industrial, commercial and retail heritage place or contributory elements it is policy to:

Encourage new upper level additions and works to:

- *Respect the scale and form of the existing heritage place or contributory elements to the heritage place by being set back from the lower built form elements. Each higher element should be set further back from lower heritage built forms.*
- *Incorporate treatments which make them less apparent.*

76 The decision guidelines at Clause 22.02-7 require that before deciding on an application the responsible authority consider:

- *Whether there should be an archival recording of the original building fabric or fabric on the site.*
- *The heritage significance of the place or element as cited in the relevant Statement of Significance or Building Citation.*

77 I have taken the above listed provisions of the Planning Policy Framework (including local policy) into account in the formulation of this report.

3.3 Other Provisions and Documents

78 A number of strategic documents are relevant in the background and consideration of the Amendment, including the following:

- Plan Melbourne 2017-2050: Metropolitan Planning Strategy (Department of Environment, Land Water and Planning, 2017);
- Urban Design Guidelines for Victoria (Department of Environment, Land, Water and Planning, 2017);
- City of Yarra Review of Heritage Overlay Areas 2007 (Graeme Butler and Associates);
- City of Yarra Heritage Gaps Review Two 2013; and
- City of Yarra Review of Heritage Overlay Areas 2007 Appendix 8.

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79 I have considered the above outlined strategic documents as appropriate in preparing this report.

3.4 Ministerial Directions

80 The following Ministerial Directions and Practice Notes are relevant to the consideration of the proposed Amendment:

- Ministerial Direction – Form and Content of Planning Schemes
- Direction No.9 Metropolitan Planning Strategy
- Direction No. 11 Strategic Assessment of Amendments;
- Direction No. 15 The Planning Scheme Amendment Process
- Practice Note No. 13 Incorporated and Reference Documents
- Practice Note No. 46 Strategic Assessment Guidelines; and
- Practice Note No. 59 The Role of Mandatory Provisions in Planning Schemes
- Practice Note No. 60 Height and setback controls for activity centres

81 I have considered the above mentioned Ministerial Directions and Planning Practice Notes as appropriate in the preparation of this report.

4 Assessment of the Amendment

4.1 Overview

- 82 In general terms, given locational and strategic policy considerations, I believe the zone and overlays proposed as part of the Amendment are appropriate and support the outcomes sought by the Planning Scheme.
- 83 The present zoning of the Subject Land does not enable the full potential of the Subject Land or the Precinct within which it sits to be realised, in part because residential use is prohibited in the C2Z. The proposed C1Z will remedy this as well as provide the framework to allow for higher order retail and commercial uses to locate in proximity to established services and in an area where residential growth and mixed-use is encouraged to locate.
- 84 State policy under the Planning Scheme and through various policy documents such as Plan Melbourne endorse the need for targeted development in appropriate locations such as the Subject Land.
- 85 Plan Melbourne together with local policies of the Planning Policy Framework endorse activity centres and strategic redevelopment sites as important locations where high density housing, employment generating activities including retail, commercial and community uses should be directed to locate.
- 86 In this context and having regard to the background to the Amendment, my assessment of the matters before the Panel takes the form of three parts, namely:
- The strategic basis for the Amendment having regard to the Planning Scheme and relevant Ministerial Directions and Practice Notes;
 - The appropriateness of the proposed application of the Victorian Planning Provisions; and
 - The implications of Schedule 15 to the DDO and its drafting as it specifically relates to the Subject Land.
- 87 The remainder of my report addresses the above considerations.



4 Assessment of the Amendment

4.2 Strategic Justification

- 88 Ministerial Direction No. 11 Strategic Assessment Guidelines requires a planning authority to evaluate and discuss how an amendment addresses a number of strategic considerations in order for it to be justified.
- 89 The Explanatory Report for the Amendment provides justification for the Amendment when assessed against the Strategic Assessment Guidelines, relevant Ministerial Directions and the provisions of the Planning Policy Framework including the LPPF of the Planning Scheme.
- 90 I am of the view that the strategic justification given by the Council in support of the Amendment is generally sound and the Amendment will give effect to the vision, objectives and strategies of JSLAP together with policies and strategies of the Planning Scheme and on this basis is well founded.
- 91 The purpose of Ministerial Direction No.9 is to require planning authorities to have regard to Metropolitan Planning Strategy in the preparation of planning scheme amendments.
- 92 The Council acknowledges both Plan Melbourne and its adopted JSLAP as providing the strategic support for the Amendment. In this regard:
- The existing C2Z applying to the Amendment Land is not aligned with guidance expressed for activity centres in Plan Melbourne or the strategic directions expressed in JSLAP.
 - The introduction of a C1Z would encourage a wider variety of land uses enhancing longer term viability of the centre and encourage increased activation of Johnston Street. Furthermore, residential land use is permitted under the C1Z but prohibited under the provisions of the C2Z thereby preventing the realisation of the strategic opportunities presented by the location.
 - The Amendment Land is identified in 'Precinct 1 —Johnston Street Central' in JSLAP where the desired future character includes *'higher density housing on larger sites, above and behind commercial activity.'*¹⁶
 - A rezoning of the Subject Land from C2Z to C1Z would allow for the land to be appropriately developed in line with the strategic vision for the area, including the specific future character of the Johnston Street Central Precinct.
 - Redevelopment of the Subject Land as a large site, has the potential to act as a catalyst for change and regeneration on the northern side of Johnston Street.
- 93 The outcomes envisaged by JSLAP and proposed to be implemented through the C1Z, DDO15 and local policy seek to transform the Johnston Street Activity Centre (which includes the Subject Land) into a

¹⁶ See pg. 53 of the JSLAP

4 Assessment of the Amendment

vibrant mixed use precinct that:

- Encourages regeneration of the immediate environment and enhances the public realm along Johnston Street;
- Strengthens the role of business activity including ground floor retail and land uses that generate street activity and engagement;
- Accommodates a growing population within an identified change area by integrating higher density residential and commercial uses as part of new mixed use developments;
- Facilitates new residential uses above and behind commercial activity that is encouraged along Johnston Street;
- Promotes sustainable built form outcomes that contribute to and enhance the human scale and amenity of the public domain; and
- Utilises good design to strengthen the built form character and identity of the activity centre, while respecting the existing heritage fabric and sensitive interfaces.

- 94 From a high-level strategic policy viewpoint, I consider that the Amendment aligns with and advances the Planning Policy Framework, including Plan Melbourne. The importance of activity centres as areas where a diverse mix of land uses, including higher density residential, and where built form change is encouraged to locate supported by excellent access to transport, is clearly aligned with strategic policy.
- 95 The Amendment for the most part delivers on the objectives, strategies and vision expressed through the JSLAP however, as discussed further in Section 4.4, I consider that there are some shortcomings in the current drafting of DDO15 that require further consideration.

4.3 Proposed Victorian Planning Provisions Tools

- 96 I have considered the outcomes sought by the Amendment and the appropriateness of the VPP tools proposed for Amendment area generally and more particularly, the Subject Land. The key changes being to:

- Rezone the Subject Land from C2Z to C1Z;
- Apply a new DDO - Schedule 15; and
- Apply an EAO to the Subject Land.

- 97 The VPP tools selected as part of the Amendment including the proposed DDO15 provide a detailed set of parameters including design objectives, permit requirements, buildings and works requirements and decision guidelines to guide the future use and development of the Precinct, including the Subject Land.

4 Assessment of the Amendment

4.4 Drafting of Proposed Schedule 15 to the DDO

-
- 98 In my opinion, the Amendment has generally made proper use of the VPP tools available including the selection of the C1Z and the accompanying overlays to guide development outcomes for the Subject Land. The following section of my report explores the specific drafting of the proposed new DDO15 provisions.
-
- 99 Based on the supporting documentation that underpins the Amendment, the principal built form changes being advocated through DDO15 are in general terms, reasonable. The strategic work which preceded the Council's request of the Minister for authorisation to prepare and exhibit the Amendment included at Appendix B the Built Form Analysis and Recommendations of the JSLAP (dated December 2015) (**JSLAP Built Form Analysis**).
- 100 That Analysis references the principles which would in turn form the basis for the supporting significant built form change in the activity centre. They include principles relevant to the assessment of visual impact, micro-climate considerations, heritage, sites for taller scale buildings and areas of fine grain.
- 101 The JSLAP Built Form Analysis references '*modelling techniques*' used to test the built form outcome of development envelopes including building heights and setbacks.¹⁷ Appendix 1 of the document includes studies that focussed on the street wall, visual recessive-ness of upper levels, overshadowing of key public spaces, and impact on adjacent residential areas. These studies in turn assisted in the refinement of the guidelines advanced as part of the JSLAP.¹⁸
- 102 In terms of Precincts 1 & 2, the analysis contained in the JSLAP acknowledges that that while there are sites within these areas that could potentially accommodate taller development, the analysis undertaken (i.e. sections and 3D views) indicates that 6-7 storeys is generally acceptable and meets the relevant built form principles.
- 103 That analysis also observes that once development reaches 8 storeys the upper levels become more dominant and are therefore less likely to meet the relevant built form principles, unless of course greater setbacks are provided, which sites such as the Subject Land are clearly able to accommodate.
- 104 The Subject Land extends from Johnston Street through to Sackville Street, is in the order of 60m in depth and approx. 1,900m² in area. It is a site which is clearly capable of accommodating greater height than more constrained sites, even allowing for the existence of a Heritage Building on part of the Subject Land.
- 105 However, it appears that Council's response to the Minister's conditional authorisation of the Amendment in March 2017 led to redrafting of the controls based on the work contained in the Supporting Document.

¹⁷ See page 23 JSLAP – Built Form Analysis and Recommendations

¹⁸ See page 55 JSLAP – Built Form Analysis and Recommendations (Appendix 1)

4 Assessment of the Amendment

106 The Supporting Document was said to be prepared ‘*specifically in response to the authorisation letter, to determine if and where mandatory heights are warranted.*’¹⁹ The document however appears to have led to the introduction of provisions in the exhibited Amendment that have had other potentially unintended consequences and this is a concern.

107 For example, the application of an angled envelope (in this case 45°) was advanced as ‘*a simple and effective way to determine overall building height, in order to reduce amenity impacts.*’²⁰ The principle was extended to address the following amenity and/or character concerns:²¹

- *Protecting the character of the heritage streetscape in terms of close-up and distant (oblique) views;*
- *Avoiding overshadowing of southern side footpaths and public spaces (during most months of the year);*
- *Avoiding overshadowing private open space and north-facing windows of residential dwellings;*
- *Minimising the visual impact of taller buildings in close proximity to, and at the direct interface with, low-scale dwellings.*

108 Rather than exploring and/or validating the analysis of JSLAP in terms of the use of mandatory provisions, the Supporting Document appears to have been used to establish the basis for introducing the 45° building envelope as a provision in the DDO. A consequence of this is to introduce a control that is more restrictive and therefore potentially less flexible in terms of enabling development in the Precinct, and certainly on larger sites such as the Subject Land.

109 To the extent that the 45° tool was used initially as a testing mechanism in the Supporting Document is not the issue. Its value in my view was to largely validate the analysis that had already been undertaken in the JSLAP Built Form Analysis. This is particularly the case with deep sites such as the Subject Land where:

- Heritage outcomes are able to be readily accommodated given the width and depth of the land;
- Overshadowing of the southern footpath is able to be avoided;
- There is no directly affected sensitive residential interface; and
- Visual impacts can be managed by a sensible application of

¹⁹ See page 3 of the Supporting Document, October 2017

²⁰ See page 4 of the Supporting Document, October 2017

²¹ See page 5 of the Supporting Document, October 2017

4 Assessment of the Amendment

height and setback controls.

110 In terms of the Subject Land, I am supportive of the following nominal provisions:

- Preferred maximum building height of 34m (taking account of the depth of the Subject Land its dual frontage to Johnston Street and Sackville Street);
- Preferred maximum street wall height to Johnston Street and Sackville Street of 11m;
- Preferred setback above the street wall of 5m to Johnston Street (up to a height of 21m);
- Preferred setback above the street wall of 3m to Sackville Street in accordance with JSLAP (up to a height of 21m);
- For development above a height of 21m:
 - the front setback to Johnston Street and Sackville Street should be increased by a dimension equivalent to the additional building height;
 - appropriate side setbacks should be provided taking into account the future development opportunities of adjacent properties.

111 Based on the above stated provisions, the resultant envelope is one that:

- Maintains solar access to the southern footpath of Johnston Street (per the requirements of the DDO);
- Maintains the recommended street wall heights of the DDO for Johnston Street and Sackville Street;
- Provides for reduced front setbacks of the DDO above the street wall to Johnston Street and Sackville Street of 5m and 3m respectively (up to 21m height);
- Maintains the requirement that development should provide incremental setbacks of at least two storeys to avoid repetitive stepped form and 'wedding cake' outcomes; and
- Increases the potential of the preferred envelope by recognising the size and depth of the Subject Land and allowing for increased height.

112 I believe that the above strikes a reasonable balance without undermining the broad principles of JSLAP or the Amendment.

113 I believe that the analysis contained in JSLAP in terms of street wall,

4 Assessment of the Amendment

setback and overall building height largely got it right and I see no basis for introducing the 45° building envelope control as has been proposed. I believe discretionary height/setback provisions should be applied that allow for the circumstances of the particular sites to be determined from a design-lead perspective.

114 As is commonly the case in Panel proceedings, I anticipate that there will be an opportunity to ‘workshop’ appropriate refinements to the DDO provisions in response to the evidence and submissions. I envisage that my comments will be used to aid that process from the view point of the owner of the Subject Land.

115 Finally, as a general proposition, I do not support mandatory building heights/setbacks or solar access provisions in circumstances where:

- the Amendment Land is located in a an activity centre context;
- there is diversity of built form and redevelopment opportunity;
- there is an expectation of substantial built form intensification;
- there is excellent access to transport and other services that contribute to the richness of the location as an area of urban renewal opportunity; and
- where issues such as heritage, streetscape character and interface can be appropriately managed.

116 I would regard the application of mandatory provisions to the Amendment Land in this case as being unnecessary and unjustified.

117 In terms of the provisions contained in the proposed local policy at Clause 21.12-1, I have no particular concerns and regard it as acceptable.

5 Conclusion

- 118 I consider that the Amendment generally makes proper use of the Victoria Planning Provisions in terms of the tools selected and the general thrust of the provisions.
- 119 The Amendment generally acknowledges and responds to the locational and strategic policy context of the Johnston Street Activity Centre, allowing future redevelopment to occur in an integrated manner in line with the outcomes, objectives and directions of the Planning Policy Framework, including Plan Melbourne. I have concluded that the Amendment has a sound strategic basis with particular regard for the work undertaken by Council through the JSLAP.
- 120 The application of the C1Z to the Subject Land (and wider Precinct 1) will facilitate the possibility of mixed use development being achieved with a particular emphasis on higher density housing and employment, whilst also enhancing public amenity along Johnston Street through improved opportunities for activation and engagement with the streetscape.
- 121 The use of a DDO will ensure that the future built form outcomes for the Amendment Land is subject to a framework which acknowledges the strategic opportunity presented by the location, its context and the limitations to be applied to any future built form.
- 122 The proposed DDO15 should be critically reviewed particularly in terms of the use of mandatory controls together with the underlying basis for the 45° envelope and setback requirements.
- 123 The EAO is clearly logical and necessary and in line with Ministers Direction No. 1 - Potentially Contaminated Land.
- 124 For the above reasons, I consider that the Amendment should be supported with some refinement to the proposed DDO15 provisions to address its shortcomings.

5



ANDREW BIACSI
DIRECTOR
CONTOUR CONSULTANTS AUST PTY LTD

Attachment 1

Expert Witness Declaration

A1

Attachment 1 - Expert Witness Declaration

Name and Address	Andrew Biacsi is a Director of Contour Consultants Australia Pty Ltd, Town Planners and practices from Level 1, 283 Drummond Street, Carlton Victoria, 3053
Professional Qualifications	<ul style="list-style-type: none"> → Bachelor of Applied Science (Planning) → Graduate Diploma in Urban and Regional Planning → Director –Contour Consultants Australia Pty Ltd → Member of Planning Institute of Australia (PIA)
Professional Experience	First employed as a town planner in 1980. I have been employed in both public and private practice for a period of more than 35 years in Victoria, the A.C.T. and New South Wales. I have been in private practice since 1989 and at Contour Consultants since 1991.
Areas of Expertise	<ul style="list-style-type: none"> → Statutory and strategic planning and urban design. → Advice and assessment of land use and development proposals to planning authorities, government agencies, corporations and developers (including major residential, retail, commercial, industrial, institutional and mixed use projects). → Preparation and presentation of evidence before VCAT, Supreme Court of Victoria, the Magistrates Court, Liquor Licensing Commission, Building Referees Board and various government appointed independent panels and advisory committees.
Expertise to Prepare this Report	My training and experience including involvement with many forms of housing and mixed use developments over a period of approximately 35 years qualifies me to comment on the town planning and strategic policy implications of the proposal.
Instructions which Define the Scope of this Report	I received instructions from Rigby Cooke Lawyers, on behalf of De Luca Property Group, to consider the town planning implications of proposed Amendment C220 to the Yarra Planning Scheme.
Facts, Matters and Assumptions Relied Upon	<ul style="list-style-type: none"> • Familiarised myself with the Subject Land and surrounds (other land also affected by the Amendment); • Reviewed the provisions of the Planning Scheme; • Reviewed the Authorisation letter from the DELWP dated 8 March

Attachment 1 - Expert Witness Declaration

	<p>2017;</p> <ul style="list-style-type: none"> • Reviewed and considered the exhibited version of the Amendment and relevant background reports and material which informed the Amendment; • Reviewed the Council Officer Reports associated with the Amendment as contained in the Agendas to Council Meetings held on 17 May 2016 (seeking authorisation of Amendment) on 31 October 2017 (authorising exhibition of Amendment) and 21 August, 2018 (seeking appointment of a Panel); • Reviewed the submission from De Luca Property Group dated 18 December 2017; • Reviewed the summary of submissions to public exhibition of the Amendment contained at Attachment 2 of the 21 August 2018 Council meeting agenda; • Reviewed relevant Ministerial Directions and Practice Notes including PPN59 and 60; • Reviewed the JSLAP including Appendix B – Built Form Analysis and Recommendations (September 2015) that are proposed to be listed as a reference document under Clauses 21.11 and 21.12 of the Amendment; and • Reviewed the Johnston Street Local Area Plan Amendment C220 Supporting Document dated October 2017 which was prepared in response to the authorisation letter of the Minister for Planning.
Documents Taken into Account	Refer to documents described above and in report.
Identity of Persons Undertaking the Work	Report prepared by Andrew Biacsi with assistance of Angela Ash, Associate of Contour.
Relationship with Proponent	I personally have no private or business relationship with the Proponent, other than being engaged to prepare this report although my firm has worked on other projects for De Luca Property Group and continue to do so.
Summary of Opinions	Refer to Report

Attachment 1 - Expert Witness Declaration

I have made all enquiries that I believe are desirable and appropriate and that no matter of significance which I regard as relevant have to my knowledge been withheld from the Panel.



Andrew Biacsi
Director
Contour Consultants Australia Pty Ltd

Attachment 2

Figures and Maps

A2

Attachment 2 - Figures and Maps

Figure 5.1
JOHNSTON STREET SUB-PRECINCT PLAN

Image obtained from Attachment 4 of the 21 August 2018 Council Meeting Agenda containing Map 1 of DDO15 (adopted version) proposed as part of the Amendment

Map 1: Johnston Street Sub-Precincts Plan

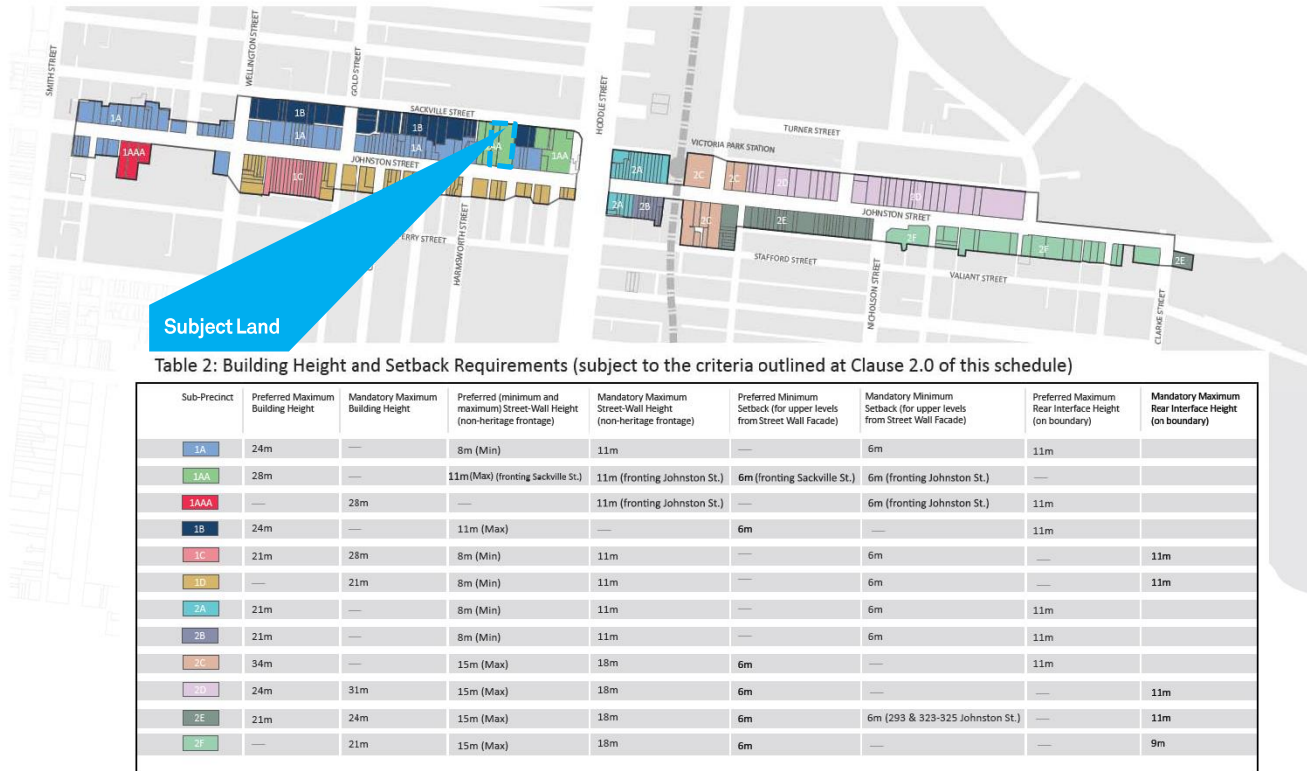


Figure 5.2
MAP 1 TO PROPOSED CLAUSE 21.12

Image obtained from Attachment 5 of the 21 August 2018 Council Meeting Agenda containing proposed Clause 21.12 (adopted version) forming part of the Amendment

Map 1 – Johnston Street Local Area Plan (Precincts 1 and 2)



Figure5.3
EXISTING ZONE MAP

Image obtained from Planning Scheme http://planning-schemes.delwp.vic.gov.au/_data/assets/pdf_file/0008/484082/yarra06zn.pdf

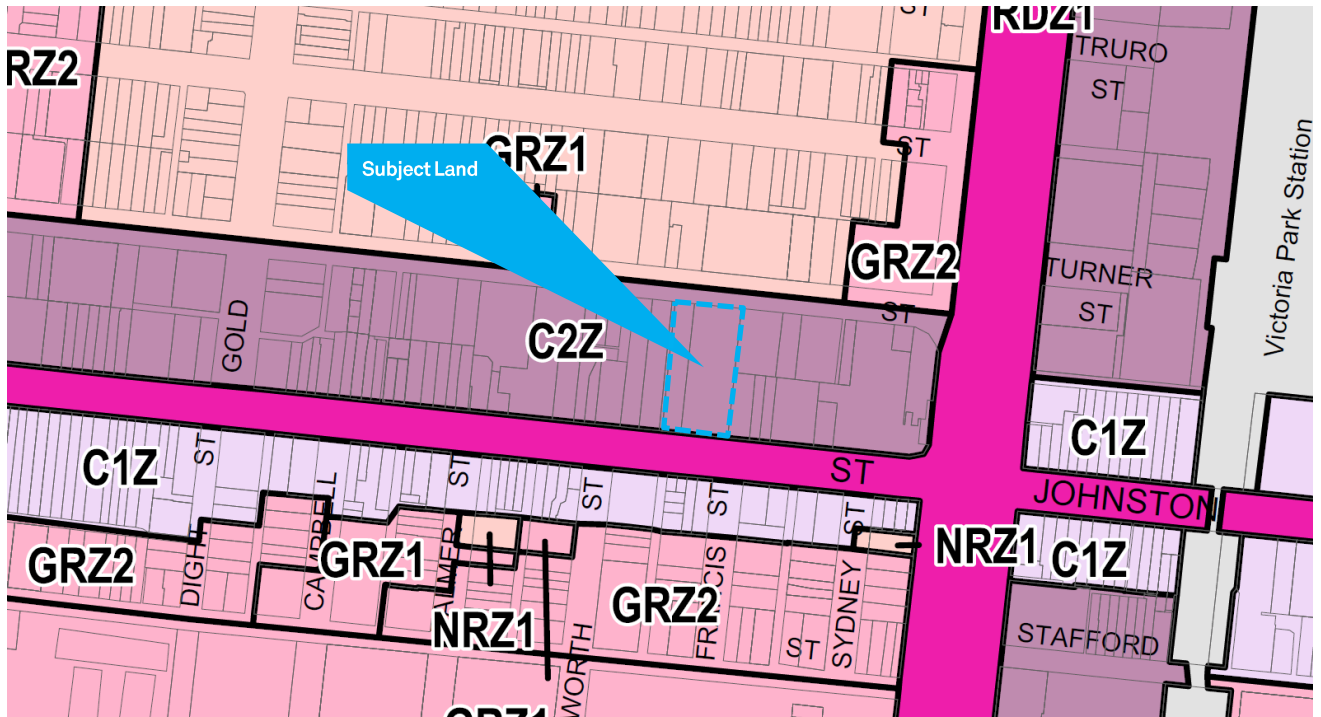


Figure5.4
EXISTING DDO MAP

Image obtained from Planning Scheme http://planning-schemes.delwp.vic.gov.au/_data/assets/pdf_file/0009/490248/yarra06ddo.pdf

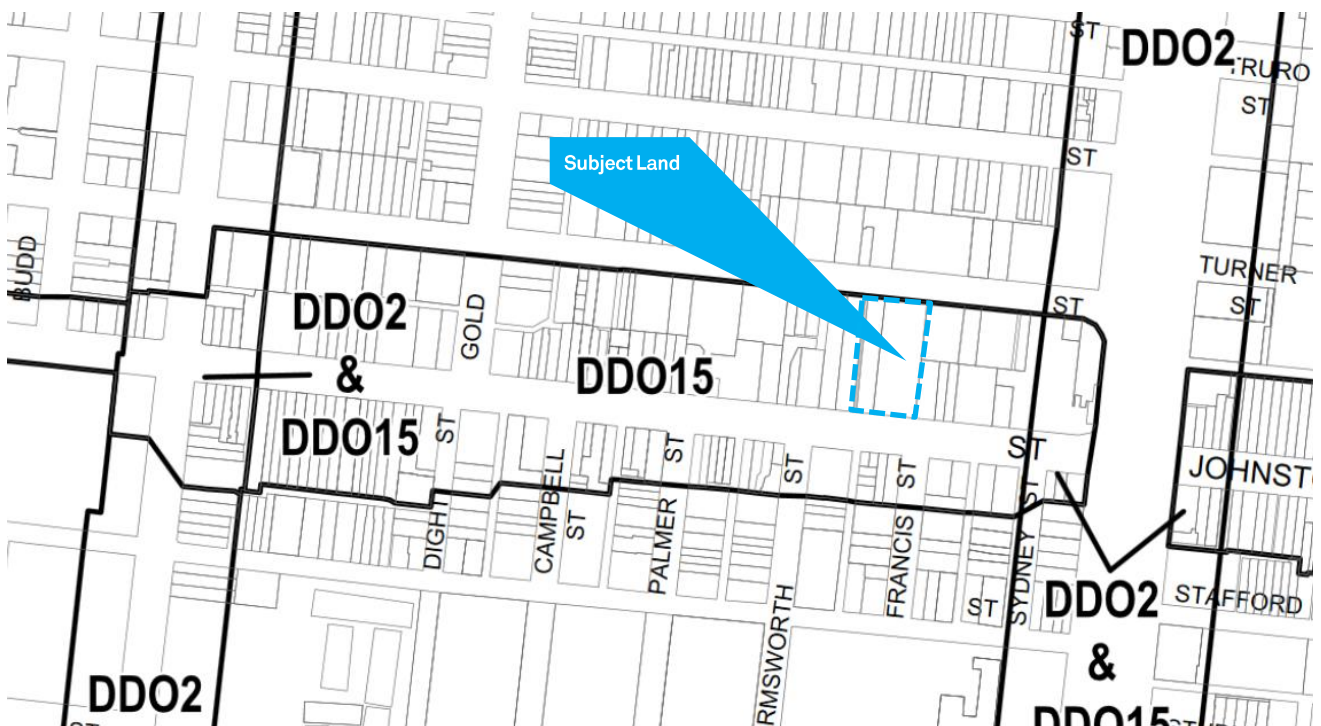


Image obtained from Planning Scheme http://planning-schemes.delwp.vic.gov.au/_data/assets/pdf_file/0004/484078/yarra06ho.pdf

The map displays the Gold Street Precinct (HO321) and surrounding areas. A blue arrow points to a specific lot labeled 'Subject Land' within the Gold Street Precinct. Other lots are labeled with codes like HO134, HO324, HO505, HO411, HO409, HO410, and HO4. The map also shows the location of Victoria Park Station.

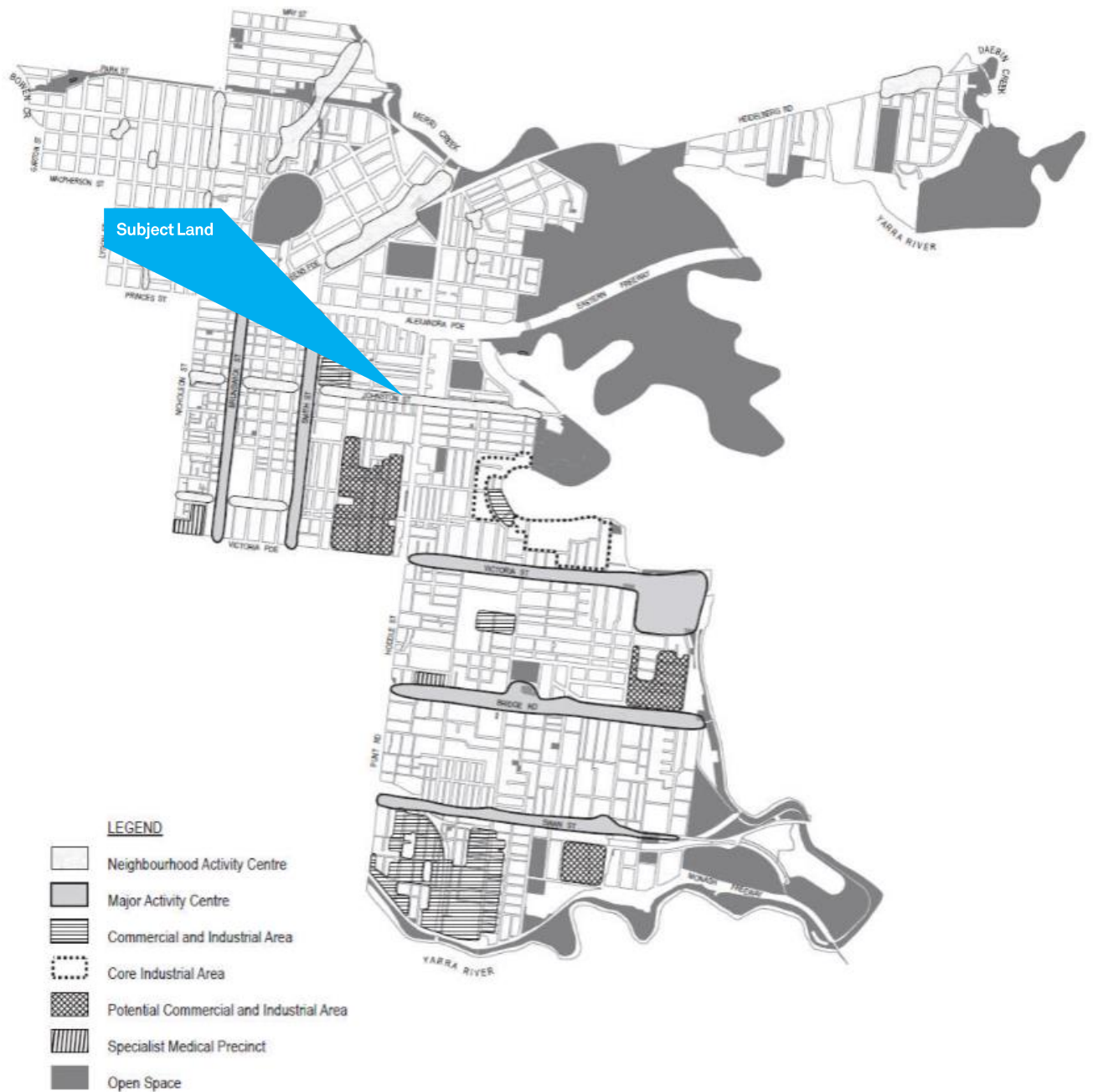
Image obtained from Planning Scheme http://planning-schemes.delwp.vic.gov.au/_data/assets/pdf_file/0007/484081/yarra06sbo.pdf



Attachment 2 - Figures and Maps

Figure 5.7
STRATEGIC FRAMEWORK PLAN

Obtained from Clause 21.03 of the Planning Scheme http://planning-schemes.delwp.vic.gov.au/schemes/yarra/ordinance/21_mss03_yarra.pdf



Notes:
This map is indicative only.



