INDEPENDENT PLANNING PANEL APPOINTED BY THE MINISTER FOR PLANNING PLANNING PANELS VICTORIA

IN THE MATTER of Amendment C280yara to the Yarra Planning Scheme

BETWEEN:

YARRA CITY COUNCIL

Planning Authority

-and-

AH MEYDAN PTY LTD

Proponent

AFFECTED LAND: 32-68 Mollison Street, Abbotsford

SUBMISSION ON BEHALF OF AH MEYDAN PTY LTD

I. INTRODUCTION

- 1. These submissions are made on behalf of AH Meydan Pty Ltd, the proponent (the **Proponent**) for site-specific Amendment C280yara (the **Amendment**) to the Yarra Planning Scheme (the **Scheme**). The Amendment concerns land at 32-68 Mollison Street, Abbotsford (the **Site**).
- 2. In addition to these submissions the Proponent relies upon the expert evidence of Ms Julia Bell in relation to urban design.
- 3. These submissions do not seek to summarise the details of Amendment C170 which first introduced the Incorporated Plan Overlay to the Site, the totality of the details of this Amendment or the physical context of the Site, which are already well documented in the information before the Panel. Rather, these submissions will provide a brief overview of the Amendment, address the remaining issues outstanding between the Yarra City Council (the **Council**) and the Proponent and additional matters as appropriate.

- 4. Importantly, there are few remaining matters of dispute between the Proponent and Council. These matters are limited to:
 - a) Reference in the proposed Incorporated Plan Overlay Schedule 1 (**IPO1**) and the '32-68 Mollison Street Incorporated Plan (March 2021)' (the **Incorporated Plan**) to both building and street wall height in metres and storeys. It is the Proponent's position that reference to metres alone is both appropriate and preferable.
 - b) Specification of 80% active frontages in the proposed Incorporated Plan. The Proponent's view is that this metric is onerous, is not reflective of both existing and emerging built form in the area and would hinder the ability of a future proposal to appropriately respond to the industrial character of the area.
- 5. The Proponent also notes Ms Hodyl, the urban design expert called by Council, proposes the incorporation of a new pedestrian link, in the order of six metres in width, connecting William Street to the existing laneway to the north of the Site. While this proposal is not supported by Council¹, this matter will be addressed below.
- 6. Ten submissions were received in relation to the Amendment raising a number of matters including building height, overshadowing, traffic and car parking and neighbourhood character. The Proponent does not intend to provide a detailed response to each of these issues in this submission, but rather generally adopts the response provided by Council in its Part A submission, Attachment B.
- 7. To the extent the Proponent's proposed versions of both the IPO1 and the Incorporated Plan include further changes, these are considered minor in nature, and have been made to improve clarity and expression.

II. THE AMENDMENT

8. The Amendment seeks to replace the existing Incorporated Plan Overlay – Schedule 1 and incorporated document in the Scheme to facilitate an alteration in the anticipated built form outcome reasonably expected by future development of the Site.

¹ Council's Part A Submission, [58]-[59].

9. These changes are important to enable the Site to comprehensively respond to both the emerging character of the area and the location of the Site within a major employment precinct².

Figure 1 – Map 1, Incorporated Plan (exhibited)

Map 1: The Plan Legend Area A Area B 3 metres setback above street wall and northern boundary wall Upper level separation between Area A and Area B (at least 6m) from 4th Storey 7 storeys (32 metres) Preferred vehicle entry/exit poin Chamfered corner 5 storeys (23 metres) Building setback to enable 2way Mollison Street William Stered

- 10. The Amendment proposes the following alterations:
 - a) increase the allowable height from 5 storeys (23 metres) to 7 storeys (32 metres) in Area A, while retaining the 5 storeys (23 metres) height limit in Area B;
 - b) increase the street wall height from 3 to 4 storeys in Area A;
 - c) increase the upper-level setbacks from 2 to 3 metres;
 - d) introduce a number of permit requirements for the future development of the Site including:
 - i. a ground level setback to Little Nicholson Lane to facilitate widening of the laneway to allow two-way traffic movement;

² Table 2 – Yarra's Activity Centres and Employment Precincts of the Yarra Spatial Economic and Employment Strategy (August 2018) prepared by SGS Economics & Planning identifies the Abbotsford as a major, predominantly industrial employment precinct.

- ii. a solar access requirement to the southern footpath on Mollison Street between 10am and 2pm at the September equinox;
- iii. that new development incorporate the findings and recommendations of a car parking and traffic impact assessment demonstrating, inter alia, safe entry and exit of vehicles and minimising conflict with pedestrian and cycle links;
- iv. a chamfer at the intersection of Mollison Street and Victoria Crescent, with no cantilevering upper levels;
- v. active frontages to Mollison Street and Victoria Crescent.
- e) buildings and works requirements including:
 - i. a upper level building separation of 6 metres from the fourth storey;
 - ii. a minimum of 80% active frontages to Mollison Street and Victoria Crescent;
 - iii. materials definition between upper and lower levels; and
 - iv. that car parking be concealed from Victoria Crescent and Mollison Street and limited to Little Nicholson Street and Mollison Street.

11. The Explanatory Report for the Amendment provides:

The proposed IPO1 will provide certainty for the below built form outcome:

- a) Providing active frontages towards Mollison Street and Victoria Crescent and removing vehicle access from Victoria Crescent;
- b) Avoid overshadowing of the southern footpath of Mollison Street between 10 am and 2 pm on 22 September;
- c) Introducing a range in street wall height from three to four storeys: three storeys to Little Mollison Street and four storeys to the corner of Mollison Street and Victoria Crescent;
- d) Introducing a setback above the street wall of 3 metres from northern boundary, Mollison Street, Victoria Crescent and Little Nicholson Street to create a more distinctive break between the podium and upper levels and assist in managing visual bulk at upper levels;
- e) Continuing the chamfered corner of Mollison St and Victoria Crescent to mark corner and provide a generous pedestrian standing area;

- f) Providing for upper-level building separation (minimum 6m building separation from the 4th Storey and above) and design treatments so that the upper level forms to read as separate buildings;
- g) Varying height across the site that responds to the emerging heights of adjacent approvals, coupled with upper level building separation has the following benefits;
- h) Reduces visual bulk from adjacent buildings, Mollison St and streets to the south (low scale residential development) of the subject site; and
- i) Creates a perception of multiple buildings of varying heights rather than one large monolithic building.

The height is consistent with other surrounding recently approved development whilst ensuring better built form outcome.

. . .

The amended IPO provides quality outcome for the site which otherwise would have led to a mass of 5 storey building on the site with poor urban design outcome. Amending the current IPO allows Council to not only ensure that the development will be used for employment but also a preferred built form outcome to mark the entrance into the employment precinct of Abbotsford from Victoria Street.

The amendment will also facilitate more employment space on a site that is part of a key employment precinct in Yarra as identified in Spatial Economic and Employment Strategy 2018.

- 12. The Amendment will provide a number of distinct public realm benefits including:
 - a) improvements on the built form outcome authorised by Planning Permit PLN17/0679 by requiring, inter alia, building separation and use of materials that reflect existing and emerging character;
 - b) the widening of Little Nicholson Street to accommodate a two-way carriageway will increase its capacity for future redevelopment sites; and
 - c) development contributions for a raised pedestrian crossing on Mollison Street identified by the Local Area Place Making Plan 13 Abbotsford (**LAPM13**).
- 13. The Amendment will provide certainty for modified built form and amenity outcomes for the Site, enhance the existing amenity of the public realm and provide improved traffic access and movement outcomes. The increase in height facilitated by the Amendment, from 23 metres to 32 metres, will allow future development of the Site to more appropriately reflect recent development of the area, and allow the potential development of the Site to better respond to its location in a major employment precinct.

III. METRES VS METRES AND STOREYS

- 14. Table 1 of the Incorporated Plan specifies:
 - a) Building height in Area A must not exceed 7 storeys (32 metres);
 - b) Building height in Area B must not exceed 5 storeys (23 metres);
 - c) Street wall height should transition from 3 storeys (13.8 metres) at the western end of the site (Area A) to 4 (18.4 metres) storeys at the eastern end of the Site (Area B).
- 15. Importantly, there is <u>no dispute</u> between the Proponent and Council as to the proposed building and street wall height in metres. Both Council and the Proponent agree built form of this scale is appropriate. It is the Proponent's position that it is both an appropriate, and a preferable outcome, that overall building height and street wall height be specified in metres only.
- 16. As part of preparation of her evidence Ms Bell undertook a thorough review of the reference to metres and/or storeys within the Scheme and in other inner-city municipalities. Her review concluded that both Incorporated Plan Overlays and Design and Development Overlays more commonly reference building height in metres, with references to both metres and storeys far less common.
- 17. A review of relevant Practice Notes within Ms Bell's evidence reveals:
 - a) Planning Practice Note 13 (**PPN13**) *Incorporated and Background Documents*, references the importance of 'absolute clarity' with regard to both the role and function of an incorporated document.
 - b) Planning Practice Note 23 (**PPN23**) Applying the Incorporated Plan and Development Plan Overlays, provides no discussion as to the preferred approach when referencing height, but importantly, example incorporated plans within the PPN23 all reference building height in metres only.
 - c) Planning Practice Note 60 (**PPN60**) Height and setback controls for activity centres, discusses the statutory implementation of height and setback controls. It provides: "The preferred expression of heights and setbacks is in metres and should be in

reference to a defined point such as the footpath or Australian Height Datum. If height is measured in terms of storeys, this should be expressed in relation to a preferred height provision of metres as well."

- 18. A number of panel reports have discussed the appropriateness of referencing metres and/or storeys in planning schemes.
- 19. In Melbourne C190 (PSA) [2015] PPV 125, the Panel considered the Arden-Macaulay Structure Plan Implementation. The Panel Report provides at page 38:

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

- 20. The Panel ultimately found the use of storeys was appropriate in that circumstance, to provide the community and designers a visual impression of the height promoted in each sub-precinct of the Structure Plan.
- 21. In Darebin C161 (PSA) [2018] PPV 115, the Panel provided:

The Panel considers that DDO21 has not been constructed in a manner that meets the Ministerial Direction on the Form and Content of Planning Schemes or the Practitioner's Guide to the Victorian Planning Schemes. In part this to be expected with an Amendment that has been in development for some time and in the context of significant changes to the format of schemes and provisions during this time. Council have also had the advantage of engaging additional urban design advice in the lead up to the Panel Hearing. The Panel acknowledges this was a risk for Council but considers that it has provided the benefit of developing a tighter and more effective set of controls.

The Panel considers that the required document changes cannot be readily fixed by providing a tracked changes version. Considerable changes are required, and Council should take the time to recraft the schedule and consider what next steps it takes in relation to this aspect of the Amendment.

Some of the key issues with the current DDO21 (including the revised version) include:

. . .

- Expression of height in both metres and storeys does not make it clear what the primary measure is
- 22. In Whitehorse C143 (PSA) [2012] PPV 157, the Panel Report includes the following discussion of height and metres in relation to the incorporation of DDO8:

DDO8 has two ingredients with respect to its nomination of preferred maximum heights:

- A range of heights in metres, such as "9-11 metres" or "11-15 metres"; and
- A preferred number of storeys such as "1-2 storeys" or "2-3 storeys with recessed upper (third) level".

The Panel considers the various references result in a lack of certainty and clarity as to the intended outcome because:

- The maxima in terms of metres is a range, rather than one figure;
- The reference to storeys does not account for the fact that the definition of building height in Clause 72 of the Scheme includes a basement as a storey;
- The number of storeys that can be accommodated within the height maxima in metres will vary dependent on the land use, for example, residential storeys may typically be 3 metres between floor levels whereas commercial (office) and retail floors are generally higher (3.5 metres+) and basement levels are generally lower (say, 2.4 metres, though higher floor to floor levels may be required to accommodate services and if car stackers are used).

Consequently, the preference for 1-2 storeys in an area where the preferred height is 9 metres, in a residential setting, wrongly guides an outcome where three residential storeys, above ground, can fit. In a B1Z, where there are no sensitive abuttals, or other strategic design imperatives, an outcome of 1-2 storeys would be an under-development of land.

The Panel considers greater clarity and certainty is needed. It does not agree with submitters recommending a specific number of storeys, for the reason that storey heights can vary considerably as noted above. This is particularly an issue across the NAC where land is within a range of zones and consequently a range of land uses will be accommodated through new development, whether in single-use or mixed-use buildings.

The Panel recommends a single measure be specified, in metres.

- 23. The Proponent considers this review of common practice in both planning schemes generally and in the Scheme, planning practice notes and previous panel reports invite the conclusion that a reference to height in metres alone is a preferable approach.
- 24. It is important to note that the position of the Proponent with regard to the appropriateness of referencing both overall building and street wall height in metres has been made plain for some time. The Proponent's preferred version of the proposed Incorporated Document was circulated to the Panel and the Council on 16 September 2021 in accordance with Panel Direction 3, of the directions dated 7 September 2021. Accordingly, from this date at the latest Council was well aware of the Proponent's position. Further, this date was one clear week prior to the required circulation of expert evidence.
- 25. In this context, it is striking that the evidence of Ms Hodyl doesn't seek to engage with this issue <u>at all</u>.

- 26. Ms Hodyl's evidence provides no discussion regarding her view as to how building height should properly be expressed. She does however, reference the overall building heights proposed in metres only. While she references street wall height in terms of storeys, she makes no comment as to why this is properly to be regarded as a preferable or required approach in this case. Ms Hodyl's evidence does not conclude that it is appropriate that the Amendment reference both metres and storeys and she does not make a recommendation that the Amendment do so. Nor does her evidence explain the benefits of doing so, or conversely the detriment of failing to do so.
- 27. The Proponent considers the position of Council does not identify any evident difficulty with referencing building and street wall height in metres only, or any adverse impact that might reasonably be anticipated if this is not done. As the metric for both overall and street wall height is specified, there will be no impact to the proposal's ability to respond to the emerging character of the area. Further, given the future employment use of the Site and surrounding land uses, it is unclear how the absence of a reference to height in storeys could result in adverse impact to the public realm, or result in off-site amenity impacts. There will be no material difference with regard to perceived visual bulk or additional overshadowing whether the maximum height incorporates a building of 7 or 8 storeys.
- 28. The Proponent considers referencing height in metres has the clear benefit of providing clarity and certainty with regard to the primary measure and future built form outcomes. Further, referencing height in metres alone will appropriately guide the intended building form outcome while providing flexibility with regard to the number of storeys to be accommodated.

IV. REQUIREMENT FOR 80% ACTIVE FRONTAGES

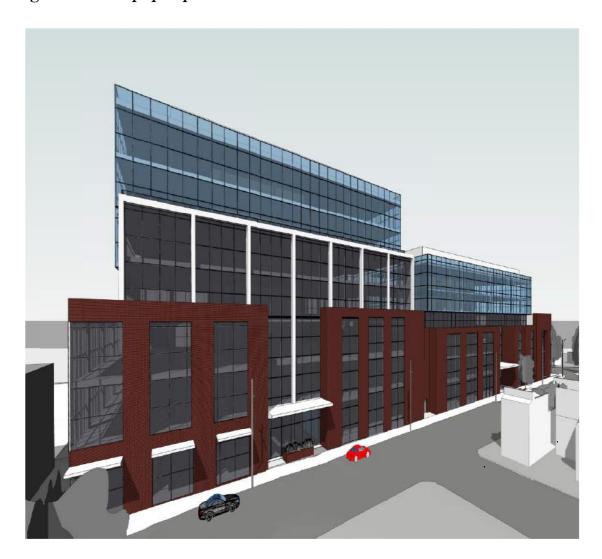
29. Table 1 of the Incorporated Plan provides the following requirement in relation to 'active frontages':

Active frontages should be provided to a minimum of 80% of the Mollison Street and Victoria Crescent frontage, keeping inactive facades to a minimum.

30. The Proponent does not question the improved public realm outcome that will be provided by active frontages, but considers the 80% requirement unduly onerous and not in keeping with either the existing or emerging built form of the area.

- 31. To put this requirement into some perspective, it is worth considering in the context of the Concept Plan submitted with the request for the Amendment.
- 32. 'Active frontage' is not defined within the Scheme, and is not proposed to be a defined term via this Amendment. Therefore it is difficult to ascertain what precisely ought be included as contributing to the active frontage for the purposes of achieving Council's metric of 80%.

Figure 2: Concept perspective



33. The Mollison Street elevation in this concept plan currently incorporates glass along 60% of the façade at ground level and 40% solid façade detailing. Assuming the glass would be determined to contribute to an active frontage, this concept plan falls well shy of the Council's metric, though in the Proponent's submission could not be properly considered as anything other than an active frontage in the general meaning of the phrase.

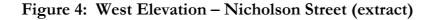
- 34. To achieve 80% active frontages a future proposal would require:
 - a) Mollison Street: The total façade length is approximately 142 metres at ground level. 60% active frontages includes 85 metres of glazing along this elevation.
 To achieve 80% it would require 113 metres of glazing.
 - b) **Victoria Crescent:** The total façade length is approximately 41 metres at ground level. 60% active frontages include 25 metres of glass along this elevation. To achieve 80% it would require 33 metres of glazing.
- 35. Further, any reduction in the solid detailing elements would have an impact in the degree to which any future proposal is able to effectively respond to its urban context in terms of the industrial warehouse character evident in the existing built form and referenced in emerging built form in the area.
- 36. It is also of assistance to consider this requirement in the context of both existing and recently approved development in the vicinity of the Site.

23-30 Mollison Street, Abbotsford

37. Plans were endorsed on 25 March 2021, pursuant to planning permit PLN17/0535. The land has two street frontages – Mollison Street and Nicholson Street.

Figure 3: South Elevation – Mollison Street (extract)





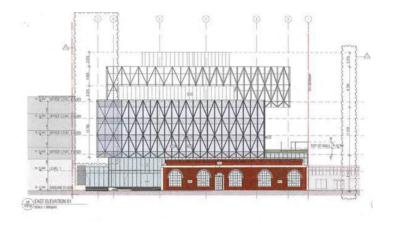


38. An estimate of the extent of active frontage can be calculated by measuring the length of the façade and subtracting service cupboards, brickwork and metal clad walls and doors. The Mollison Street frontage is approximately 31.8 metres in length. Subtracting service cupboards and brickwork the remaining active frontage would be 26.4 metres – or 69%. Plainly well shy of Council's proposed 80% metric. The Nicholson Street façade is approximately 42.3 metres in length. Subtracting brickwork and metal clad walls and doors the remaining active frontage would be 23.1 metres – or 55%.

12-20 Victoria Crescent

39. Plans were endorsed on 28 August 2019 pursuant to planning permit PLN18/0239.

Figure 5: East elevation 01 (extract)



- 40. Calculation of what might reasonably be regarded as active frontage on this site has included both glazing and the forecourt area of this development. The Victoria Crescent frontage is approximately 62.5 metres in length. Subtracting service cupboards and brick detailing this results in an active frontage of 40.1 metres or 64%. Again, well shy of Council's proposed metric of 80%.
- 41. It must further be acknowledged that Council's own urban design evidence does not support Council's proposed metric.
- 42. Ms Hodyl's paragraphs [28]-[34] provide:

Active frontages

- [28] The Incorporated Plan includes a requirement that 80% of frontages to Mollison Street and Victoria Crescent are active. This is typically interpreted as requiring an active use at ground level with full visibility between the interior of the ground level and the street. This is typically achieved through the inclusion of full height glass facades fronting the street.
- [29] I support the intent of this requirement, that is to create active, engaging and safe streets. I don't consider that this is the best method of regulating this outcome in this specific context.
- [30] The existing character of Nicholson Street and Mollison Street is defined by a mixture of residential and warehousing buildings. The residential buildings provide active engagement of the street through the inclusion of regular doorways, entrances and front gardens. The warehousing buildings provide a mixed level of activation, with some including doors and windows to the street while others do not provide activation of passive surveillance of the street.
- [31] The existing character of Victoria Crescent is defined by older warehouses (which include doors and roller door entrances), and newer commercial buildings, many of which include a continuous glass frontage at ground level.
- [32] Floor to ceiling glass facades at the ground floor are suitable in a retail context where the maximum level of visual permeability between the building's interior and the street is desirable. They do not typically suit commercial and industrial buildings where ground floor uses include office spaces or warehousing/production spaces. This is because there is often a desire or need for some visual privacy from the public street. This is evident in Victoria Crescent where many of the windows of many of these buildings have been covered with decals that block the view in from the street in order to provide privacy to building occupants.
- [33] I would recommend including a requirement in Table 1 of the Incorporated Plan that supports the creation of safe and engaging streets. In a commercial / industrial context, however, I consider that a more appropriate way of articulating this would be through a category of Building and Works titled 'Street activation and engagement' with a Requirement as follows:
 - New development should include multiple entrances and building openings along the extent of frontage to Mollison Street and Victoria Crescent. These should be sufficient in number and spacing to provide a high level of passive surveillance along Mollison Street and Victoria Crescent frontages.
- [34] The requirement for a minimum 80% frontage to both streets should be deleted.

- 43. Similarly, the evidence of Ms Bell also is not supportive of the metric proposed by Council:
 - "...due to the nature of the area and its industrial built form character, I consider the requirement for 80% activation to be both onerous and unnecessary. As per the Proponent preferred version of the Incorporated Plan, I consider 65% active frontage provision to be more responsive the nature and character of the area, while still contributing to the safety and liveliness of the public realm".
- 44. The Proponent endorses the approach and conclusions of both urban design experts as well considered and appropriate, and recommends both to the Panel.

V. ADDITIONAL MATTERS

- 45. Ms Hodyl's evidence at paragraph [36] recommends the Amendment include a north-south laneway link as identified in her Peer Review. As discussed, Council's Part A submission notes it does not support this recommendation.
- 46. The Proponent similarly does not support Ms Hodyl's recommendation for a number of reasons including:
 - a) the proposed link does not have any regard to the existing planning permit approved and the Proponent's intention to proceed with Stage 1 under that permit;
 - b) existing traffic and pedestrian conditions sought to be addressed by the link will be significantly improved via the proposed widening of Little Nicholson Street;
 - c) there is no identified 'desire line' of pedestrians that will be addressed via proposed laneway, which will in effect be a 'laneway to nowhere';
 - d) the Abbotsford LAPM13 already identifies pedestrian crossings proposed to the east and west of the Site. In this context an additional pedestrian link appears unnecessary; and
 - e) in consideration of the public realm contributions proposed by the Site, and in particular with widening of Little Nicholson Street, this additional pedestrian link and its width at 6 metres appear an unnecessary and onerous imposition on future development of the Site.

47. The Proponent does not consider the evidence establishes an additional pedestrian link is required and accordingly ought not be incorporated within the Amendment.

VI. CONCLUSION

- 48. The Proponent submits the Amendment will facilitate improved urban design outcomes for the future development of the Site and ensure the future development of the Site is appropriately responsive to the need for greater employment floorspace in this precinct. The Amendment, incorporating the changes identified in the Proponent's preferred version of the IPO1 and Incorporated Plan, will ensure future development of the Site provides an appropriate built form response to both the existing and emerging character of the area.
- 49. The Proponent respectfully requests that the Panel recommend adoption of the Amendment as exhibited, incorporating the Proponent's recommended changes.

Carly Robertson

Counsel for the AH Meydan Pty Ltd
Instructed by Rigby Cooke Lawyers
1 October 2021

RIGBY COOKE LAWYERS

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DOCUMENTS REFERRED TO IN SUBMISSIONS MADE ON BEHALF OF AH MEYDAN PTY LTD

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Applying the Incorporated Plan and Development Plan Overlays

Planning Practice Note 23

November 2018

This practice note:

- explains the functions of the Incorporated Plan Overlay (IPO) and the Development Plan Overlay (DPO)
- provides advice about when these tools should be used
- provides guidance on how to use these planning tools.

The IPO and DPO are flexible tools that can be used to implement a plan to guide the future use and development of the land, such as an outline development plan, detailed development plan or master plan.

The IPO and DPO are the preferred tools for supporting plans.

The overlays have two purposes:

- to identify areas that require the planning of future use or development to be shown on a plan before a permit can be granted
- to exempt a planning permit application from notice and review if it is generally in accordance with an approved plan.

Operation of the overlays

The IPO and DPO are used to:

- require a plan to be prepared to coordinate proposed use or development, before a permit under the zone can be granted
- guide the content of the plan by specifying that it should contain particular requirements
- provide certainty about the nature of the proposed use or development
- remove notice requirements and third-party review rights from planning permit applications for proposals that conform to plan requirements
- ensure that permits granted are in general conformity with the plan
- apply permit conditions that help to implement the plan
- provide statutory force to plans.

Requirement for a plan

Both overlays prevent the granting of permits under the zone before a plan has been approved, unless a schedule to the zone states that a permit may be granted. The purpose of this provision is to limit or allow consideration of use and development of the land until a plan has been prepared and ensure that future use and development of the land is carried out in accordance with that plan. The plan details the form and conditions that must be met by future use and development of the land.





Provision for use and development

Unlike most overlays, the IPO and DPO enable a plan to make provision for use as well as development. In drawing up a plan, it will almost always be necessary to think about relationships between future uses as well as future development. A plan that controls physical development without considering use may result in incompatible uses becoming established on adjacent sites.

No change to the scope of discretion

Neither the IPO nor the DPO can change the scope of the discretion provided in the zone applying to the land. They cannot be used to 'schedule in' or 'schedule out' a permit requirement. If a use is 'does not require a permit' in the zone, the overlay cannot introduce a permit requirement. If a use is prohibited in the zone, the overlay cannot remove that prohibition.

If the zone contains uses that do not require or prohibit a planning permit and this conflicts with the objectives of the plan a different zone will be necessary.

Permit requirement

The IPO and DPO do not set up a permit requirement, but prevent the granting of a permit until the relevant plan is prepared. However, a schedule to both overlays can allow permits to be granted before a plan is approved so long as it is in accordance with the development plan and includes any conditions or requirements specified in a schedule to the overlay. The zone or other provision still controls the need for a permit, while the overlay can constrain what a permit may be granted for.

No automatic approval of permit

A permit application under the zone which is generally in accordance with the plan does not mean that a permit should be granted if other relevant planning policies or considerations indicate that it should be refused. The plan may not identify all of the relevant planning considerations. For example, it may support residential development on a particular site and a business use on an adjacent site, while not identifying the residential amenity considerations that may result. However, the responsible authority can still take these relevant issues into account, even if they have not been specifically identified in the plan. If they give rise to valid planning concerns that cannot be remedied by a planning condition or agreement, the responsible authority can refuse a permit application, even if it is generally in accordance with the plan.

Permits for use and development

Once a plan is approved, both overlays require that all planning permits granted by the responsible authority must be 'generally in accordance' with the plan. To fulfil this requirement, the responsible authority must test each proposal against the use and development requirements of the plan. If it takes the view that a substantial provision of the plan has not been met, a planning permit cannot be granted. The schedule to the IPO may, however, provide for a permit to be granted that is not generally in accordance with the incorporated plan. The responsible authority should not grant a permit for use or development that is not 'generally in accordance' with the plan unless the schedule provides a clear basis to do so.

Exemption from notice and review

Both overlays exempt permit applications that are generally in accordance with the plan from notice and review.

Responsible authorities should not use non-statutory consultation practices to assist in deciding planning applications. Where notice is being served without a basis in the planning scheme or *Planning and Environment Act 1987*, it is possible that defects in the notice process can be judicially reviewed in the Supreme Court.

Strategic framework

Both overlays should be underpinned by a strategic framework that sets out the desired development outcomes and the overall layout of the land including, if relevant, the design principles for the development, major land uses, transport and open space networks.

The strategic framework should be prepared before the overlay is applied to:

- identify and address opportunities and constraints for the development of the land
- provide direction about development outcomes and the overall form of development
- provide certainty to landowners and third parties about the form of development
- assist in choosing the appropriate planning tools to achieve the desired development outcomes and form of development
- ensure the schedule to the overlay is drafted to achieve the desired development outcomes and facilitate the development.



The strategic framework should be set out in the planning scheme or form part of the amendment introducing the overlay into the planning scheme.

The development of the strategic framework provides an opportunity to engage property owners, the community and servicing authorities about the desired outcomes for the site and the future form of development before the overlay is applied and the plan is approved. Appropriate strategic planning and community consultation from the start also ensures that once the overlays are in place the council is able to make decisions on planning applications without the need to further consult.

Deciding which overlay to use

The differences between the overlays decide where they should be used.

- The IPO requirement for a planning scheme amendment to incorporate or change the plan enables third parties to be involved in the process of making or changing the plan. For this reason, the IPO should normally be used for sites that are likely to affect third-party interests and sites comprising multiple lots in different ownership. Most redevelopment of existing urban land will fall into this category, particularly where the surrounding land use is residential.
- Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third-party interests, self-contained sites where ownership is limited to one or two parties and sites that contain no existing residential population and do not adjoin established residential areas.

• In some situations on large self-contained sites, both overlays can be used. The IPO can be used to manage the strategic development framework, and the DPO can be used to specify the conditions and require a plan to specify the form for the detailed development of parts of the site or individual development stages.

Differences

Although both overlays have similar purposes, they are different. Before deciding which overlay to use, the key difference between them must be understood.

- If the planning authority uses an IPO, the plan will be an incorporated document, part of the planning scheme. A planning scheme amendment will be needed to introduce or change the plan.
- If the planning authority uses a DPO, the plan
 will be a development plan. A development plan
 is not incorporated into the planning scheme. It
 can be introduced or changed 'to the satisfaction
 of the responsible authority'. A planning scheme
 amendment is not needed.

The table shows the differences between the overlays.

Function	IPO	DPO
To enable the preparation and approval of a plan to guide use and development.	✓	✓
• Is an amendment needed to approve or change the plan?		
To enable the preparation and approval of a plan to guide use and development.	✓	×
• Is an amendment needed to approve or change the plan?		



Function	IPO	DPO
To enable the preparation and approval of a plan to guide use and development. Is an amendment needed to approve or change the plan?	The plan is incorporated into the planning scheme. A new or changed plan will normally be exhibited. Unresolved submissions will be referred to a panel. The Minister for Planning finally approves the plan.	The plan is prepared to the 'satisfaction of the responsible authority'. There are no processes for exhibiting the plan or making submissions. The responsible authority finally approves the plan. (Note: Although an amendment is not required to approve or change the plan, an amendment is still required to introduce, amend or remove the DPO and the schedule to the overlay.)
To determine the content of a plan providing for future use and development.	✓	✓
To determine the content of a plan providing for future use and development.	Both overlays require a plan to describe: • the land to which it applies • the proposed use and development of each part of the land • any other matters specified in a schedule.	Both overlays require a plan to describe: the land to which it applies the proposed use and development of each part of the land any other matters specified in a schedule.
To prevent planning permits being granted for development proposals until a plan has been approved. Can permits be granted before a plan is approved?	✓	✓
To prevent planning permits being granted for development proposals until a plan has been approved. Can permits be granted before a plan is approved?	✓	✓
To prevent planning permits being granted for development proposals until a plan has been approved. Can permits be granted before a plan is approved?	Schedules to both overlays can be drafted to allow permits to be granted before a plan is approved.	Schedules to both overlays can be drafted to allow permits to be granted before a plan is approved.
To require planning permits to be 'generally in accordance' with an approved plan. Can permits be granted for proposals that are not 'generally in accordance' with the plan?	✓	✓



Function	IPO	DPO
To require planning permits to be 'generally in accordance' with an approved plan.	✓	×
Can permits be granted for proposals that are not 'generally in accordance' with the plan?		
To require planning permits to be 'generally in accordance' with an approved plan. • Can permits be granted for proposals that are not 'generally in accordance' with the plan?	Schedules to the IPO can be drafted to enable such permits to be granted. Decision guidelines can also be introduced.	Under the DPO, permits cannot be granted unless proposals are 'generally in accordance'. The responsible authority determines what is 'generally in accordance'.
Where proposals are 'generally in accordance' with an approved plan, to exempt permits from statutory notice and review provisions where it is appropriate to do so.	✓	✓
Where proposals are 'generally in accordance' with an approved plan, to exempt permits from statutory notice and review provisions where it is appropriate to do so.	Conforming permits are exempt from: most notice requirements third-party review rights.	Conforming permits are exempt from: most notice requirements third-party review rights.
To set conditions and requirements that must be applied to permits granted in the overlay area.	✓	✓
To set conditions and requirements that must be applied to permits granted in the overlay area.	Permit conditions and requirements can be specified in the schedules to both overlays.	Permit conditions and requirements can be specified in the schedules to both overlays.
	Neither overlay can introduce a new permit requirement for use or development beyond that specified by the zone, nor can they prohibit use or development.	Neither overlay can introduce a new permit requirement for use or development beyond that specified by the zone, nor can they prohibit use or development.
To introduce new decision guidelines for applications in the overlay area that are not generally in accordance with the plan.	✓	×
To introduce new decision guidelines for applications in the overlay area that are not generally in accordance with the plan.	Schedules to the IPO can be drafted to introduce new decision guidelines.	Schedules to the DPO cannot introduce new decision guidelines (permits cannot be granted unless proposals are 'generally in accordance' with the plan).



Drafting the schedules

Both overlays enable the planning authority to draft a schedule that determines:

- whether the responsible authority can consider permit applications before a plan has been introduced
- requirements about the content of the plan
- conditions and requirements for permits.

An amendment is required to introduce or change a schedule. This process provides a good opportunity to establish ground rules for the site planning process in a publicly accountable way. Example IPO and DPO schedules are shown in Appendix A and Appendix B.

The form and content of the IPO and DPO must be consistent with *Ministerial Direction The Form and Content of Planning Schemes*.

Permit applications before the plan is introduced

The IPO and DPO prevent the granting of a permit until a plan has been approved. This has the potential to significantly limit development of land if a plan is not approved or never approved.

The schedules provide the ability to grant a planning permit before a plan has been approved. The planning authority should consider whether there is a need to provide this ability and whether it should be limited to particular uses or developments. Its unconstrained use could frustrate the planning authority's strategic intentions, through the establishment of non-conforming use or development before the plan is finalised.

A responsible authority cannot grant a permit for use or development before the approval of the plan unless the schedule provides a clear basis to do so.

The content of a plan

Both overlays require that a plan must describe:

- the land to which it applies
- the proposed use and development of each part of the land
- any other matters specified in a schedule.

The requirements for plan content provide the basic minimum of issues that a plan can address. Plan content is not limited by the schedule unless the schedule specifically restricts what the plan can contain. A plan must meet the schedule requirements.

The schedule provides the planning authority with

a valuable opportunity to establish a strategic framework for the content of a plan and provides developers and third parties with certainty about what the plan must contain. This is particularly valuable if the plan is to be introduced after the overlay, and for all DPO plans.

Conditions and requirements for permits

The schedules can set out conditions and requirements that must be applied to all permits or defined classes of permits.

If the plan objectives can be achieved by applying a standard condition to a permit, the schedule can require that the condition is always imposed. For example, a standard condition could require a frontage setback to allow for the construction of a road. Just as a normal permit condition must have a clear and certain meaning if it is to be applied and enforced, so conditions contained in a schedule must also be clear and certain.

If certainty is not possible at the time when the schedule is drafted, then its use to specify conditions should be avoided. It will be better to use the schedule to establish a requirement instead.

The 'requirements for permits' in both overlays can be used to set use or development objectives that address important issues but are less certain or prescriptive than a condition. For example, in a plan area with a river frontage, the schedule could require that all permit proposals must facilitate views to the river, while leaving the detail of how this is to be achieved to the applicant.

Permits for use or development not 'generally in accordance'

The IPO schedule enables the planning authority to provide for the consideration of permit applications by the responsible authority that are not 'generally in accordance' with the plan. The planning authority should consider whether the responsible authority needs this power and whether its use should be limited to the granting of permits for particular uses or developments. Its unconstrained use can frustrate the planning authority's strategic intentions through the establishment of non-conforming uses or developments. If a responsible authority regularly considers permit applications that are not 'generally in accordance' with the plan, the schedule or the plan may need to be reviewed.

The DPO schedule cannot provide for the consideration of permit applications that are not generally in accordance with the plan. This means that there are no circumstances in which such a permit can be granted unless the plan is changed.



Because an amendment is not needed to change the plan this process is relatively simple. However, before changing the plan to facilitate a permit application, the responsible authority should be clear that the change meets the plan objectives.

Decision guidelines

The schedule to the IPO also offers the planning authority the ability to define decision guidelines for permits that are not generally in accordance with the plan. These decision guidelines operate in addition to the general decision guidelines in Clause 65 of the scheme or any decision guidelines in the zone. Decision guidelines in the schedule should not duplicate the general or zone guidelines: they are most likely to relate closely to the particular circumstances or conditions of the site area.

Preparing a development or incorporated plan

Is a plan necessary when amending the scheme?

It is possible to introduce either overlay into the planning scheme before the plan is in place. However, if the overlay is approved without a plan, it is essential that a strategic framework is in place to provide direction and certainty about the future form of development of the land.

If the overlay is approved without a plan, then a proposal for which a permit is required cannot meet the overlay requirement unless the schedule has provided for it. The effect can be to blight the future use and development of the land until a plan is prepared.

Applying either overlay without a plan can have a significant impact on an individual's ability to use and develop their land. The explanatory report for the amendment introducing an overlay without a plan should explain the effects of not preparing a plan and the justification for taking this step. Care should be taken to ensure that the effects are understood by landowners. If necessary, the schedule to both overlays can be used to enable the responsible authority to consider defined classes of permit applications in the period before the plan is introduced. These should be necessary to the ongoing management of the land and should not prejudice the long-term proposed use or development.

For the IPO, not introducing the plan at the same time as the overlay will mean that a second amendment will be required to introduce it; a process that has time and cost implications. The DPO plan is to the satisfaction of the responsible

authority and its approval can be left to a later date more easily.

Can a plan be staged?

Both overlays provide for the possibility that the plan can be prepared and implemented in stages (Clause 43.03-4 of the IPO and Clause 43.04-4 of the DPO).

For the IPO, staged preparation will require a new amendment to incorporate each individual stage of the plan. Again, this has time and cost implications. Alternatively, the IPO plan can provide that certain provisions only come into effect at specified times or when specified conditions have been met.

For the DPO, the flexible plan-approval mechanism supports the implementation of the plan in stages. Where a large area of land is subject to the DPO and the development process is anticipated to take a number of years, the preparation, implementation and review of the plan in stages may be good practice. Stage 1 of the plan could enable the first phase of subdivision and development to go ahead while other areas are safeguarded. When Stage 1 is nearly complete, a Stage 2 plan can be prepared.

If both the IPO and DPO are used, the IPO plan can provide a broad strategic framework for the future development of a site and deal with major issues such as the location of roads or provision of public open space. The IPO plan remains in place while individual DPO 'stage plans' are prepared to regulate the detailed delivery of each part of the development. If necessary, these can be reviewed or replaced several times within the life of the IPO plan.

Plan form

There are no statutory requirements that govern the form of a plan. However, it is advised that the plan contains the following elements:

A map

- The map does not have to apply to the whole area within one schedule of the overlay. Several maps can be drafted within one schedule area.
- The map should show clearly the area that the plan applies to.
- The map should show clearly the proposed use and development of each part of the land to which the plan applies.

An ordinance

- The provisions of the plan should be set out in writing.
- The principles of writing plain English that apply to all statutory drafting should be used.



Objectives

- The plan should set out objectives for the plan area. If necessary, these should refer to the map.
- The objectives should underpin any use, development or staging provisions set out in the rest of the plan.
- In any case of dispute about the meaning of the plan, the objectives should make clear that they are to be read as providing the key to the meaning of all other plan provisions.

Criteria or performance measures

 The plan can include criteria or performance measures to assist the responsible authority to determine whether the objectives have been met.

Use provisions

- Uses that will be generally in accordance with
 the plan need to be identified. It may be that all
 uses not prohibited by the zone are generally in
 accordance, in which case the plan use provision
 can simply record this. However, if a smaller
 group of uses are supported by the plan, a more
 sophisticated list may be required. This may be in
 the form of a table that is similar to a zone table
 of uses.
- Wherever possible, the table should be drafted with reference to land use terms and nesting diagrams in Clause 73 of the planning scheme.
- Where the future use or development supported by the plan is entirely certain, the table can be drafted exclusively to prevent the consideration of non-complying permits unless the schedule provides otherwise. Where future intentions are less clear, inclusive drafting can be used to ensure that innominate section 2 uses are still generally in accordance. Where this approach is taken, the table can also specify those uses that are not considered to be generally in conformity with the plan.
- If the plan does not intend to affect the consideration of permits for use, the plan should specify that all uses in section 2 of the zone are generally in accordance with the plan.

Buildings and works provisions

- The plan will also need to set out the types of buildings and works that are generally in accordance with it.
- The starting point should always be the permit requirement for buildings and works in the zone and in any other overlays.
- Buildings and works provisions may be expressed as conditions in a plan table of uses. Alternatively, they may be expressed in a table of buildings and works.
- Buildings and works provisions should normally be drafted inclusively, to ensure that proposals not considered in the plan drafting process can still obtain a planning permit if warranted. Even in the best planned of developments, buildings and works proposals often need to change and adapt to meet unforeseen circumstances that arise once development is under way.
- If the plan does not intend to affect the consideration of permits for buildings and works, the table or ordinance should make this clear.

Staging provisions

- The plan may contain staging provisions. If it does so, it should incorporate an objective that the proposed staging is intended to serve.
- Staging can be indicated in several ways. A staging clause can refer to a map of defined development stages. It can provide for the order of commencement of stages or provide defined commencement dates for stages. It can also determine that a particular stage shall not commence until a particular condition or requirement has been met, such as the provision of reticulated water, the construction of a road or public transport link.

Plan content

Depending on the circumstances for which plan preparation has been proposed, the following subjects may be appropriate for inclusion.

The future distribution of built development

- · Location of new buildings.
- Maximum heights or building envelopes.
- Design objectives for the new building envelopes.
 These may include objectives such as daylight, overlooking, external appearance, materials and finishes.



The future distribution of open space

- Provision of open or landscaped areas and their location.
- Landscape objectives.
- The provision of hard or soft landscaping and performance measures for proposed landscape features.
- Requirement for boundary, screening or security structures.

The development of infrastructure, access and movement corridors

- Reservation of land required for future infrastructure development.
- Access to public transport.
- Vehicular and pedestrian access and movement on site
- The capacity of vehicular access points and impact on the surrounding road network.
- Parking provision.

Retention and development of existing environmental assets

- Existing buildings or features to be retained.
- Identification and retention of historic buildings and how they will be accommodated in the future development.
- Significant trees, landscape, vegetation or other natural environment interests and how these will be accommodated in future development.

Social and community issues

- Public facilities or features.
- New public facilities required to meet the needs of the development.

This list is not exhaustive. A plan may address more or less issues than those listed above. If it is to address more, it must remain a plan and address issues relevant to land use planning. The plan should

- be concise and flexible
- not be onerous for the proponent to prepare
- not be overly prescriptive
- contain objectives and performance measures to help the responsible authority determine if a proposal is generally in accordance with the plan.

Review

It is valuable for all overlays and plans to be reviewed on a regular basis. The purpose of the review is to ensure that the plan is still relevant to and supportive of the proposed use and development of the land. Key review considerations are outlined below.

- If the development has been substantially completed, the plan and the overlay may no longer be necessary.
- If the overlay was introduced but the plan has
 not been prepared, it may indicate the overlay is
 no longer necessary. It is not equitable or fair to
 a landowner to safeguard land for an intended
 use or development once it appears that there
 is no prospect of implementation. If the land was
 rezoned at the time the overlay was introduced,
 then the zone will also require a review.
- If the proposal anticipated by the plan is not complete or has not started, the plan and the overlay may need to be amended or removed.

The schedule can trigger a review by providing that the plan ceases to have effect on a given date – a 'sunset clause'. An amendment to the overlay is then needed before a new plan can be introduced. Alternatively, the plan itself can provide its own review period and 'sunset clause'.

Access to plans

The public should have access to the operational version of any plans supported by the IPO or DPO.

Providing public access to IPO plans is simple. Because they are incorporated documents, the approved plans must be kept available for public inspection by the planning authority.

Because the responsible authority can change DPO plans without an amendment, it may be difficult for interested parties to know whether and when any changes have been made to the plan. To avoid uncertainty and conflict about the content and application of DPO plans, the responsible authority should keep a full copy of the current 'endorsed' plan available for inspection. Any report recommending changes to the plan should include the existing endorsed plan and the proposed changes. It is also useful for the plan to contain a 'record sheet'. Like the list of amendments to a planning scheme, the record sheet tracks and summarises changes to the plan by document number, version number and approval date. If the plan consists of more than one document, each should include a copy of the sheet. It is also good practice for each page to show a version number and an approval date.



Examples

Example DPO and IPO schedules and Incorporated Plan are provided below.

1. Example schedule to the Development Plan Overlay

GUMNUT PLANNING SCHEME

30/7/2018

SCHEDULE 1 TO CLAUSE 43.04 THE DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as **DPO1**

GUMNUT PARK DEVELOPMENT PLAN

In this case, the Gumnut Park Development Plan has yet to be approved. The schedule aims to safeguard rural land for future residential development and establish requirements for the future emergence of the development plan.

1.0 Objectives

30/7/2018

The schedule identifies the overarching objectives for the plan area. Objectives should underpin any use, development or staging provisions set out in the plan. The plan itself may contain more specific objectives to expand on the overarching objectives.

- To develop Gumnut Park for residential purposes, with a range of residential densities and adequate transport links in accordance with the *Gumnut Strategy Plan*.
- To protect and enhance the natural landscape character of the Wombat Creek corridor.

2.0 Requirements before a permit is granted

30/7/2018

Because the Gumnut Park Development Plan has yet to be approved, the schedule prevents the consideration of permit applications for new uses. Permit applications for buildings and works can be considered, but only at the existing Health Centre in the plan area.

A permit may be granted to construct a building or construct or carry out works at the Gumnut Health Centre before a development plan has been prepared to the satisfaction of the responsible authority.

3.0 Conditions and requirements for permits

30/7/2018

The planning authority wishes to ensure that new buildings and works at the Health Centre do not affect the residential development potential of surrounding land. Applicants are required to demonstrate this as part of their proposal.

The following conditions and/or requirements apply to permits:

 All proposals to construct a building or construct or carry out works before the Gumnut Park Development Plan has been prepared must be accompanied by a report demonstrating that they will not prejudice the long term future of the land for residential development or give rise to significant residential amenity concerns.

4.0 Requirements for development plan

30/7/2018

Because the plan has yet to be drafted, the planning authority has used this opportunity to ensure that the plan meets the overall strategic objectives for the area set out in the Gumnut Strategy Plan.

A development plan must include the following requirements:

- A through traffic route connecting Eaton Way to the Waltham Boulevard Princes Highway intersection, constructed to a two land sub-arterial standard; and
- A public open space of not less than 15 ha, incorporating existing native vegetation and a frontage to Wombat Creek.



2. Example schedule to the Incorporated Plan Overlay

GUMNUT PLANNING SCHEME

30/7/2018

SCHEDULE 1 TO CLAUSE 43.03 INCORPORATED PLAN OVERLAY

Shown on the planning scheme map as IPO1

GUMNUT WATERFRONT INCORPORATED PLAN

The Gumnut Waterfront Incorporated Plan has already been approved and the schedule is designed to support its implementation. Under the heading Requirement before a permit is granted, there is 'None specified' because it is not necessary to consider permit applications before the plan is in place.

1.0 Permits not generally in accordance with incorporated plan

30/7/2018

The Gumnut Waterfront Incorporated Plan is very specific about use. The planning authority does not intend to enable permits that are not generally in accordance with the use provisions of the plan to be considered. However the plan is flexible about buildings and works. It includes height, siting and design requirements but recognises that these may not apply to all circumstances. The planning authority has decided to allow permits that do not meet these requirements to be considered.

A permit granted for the construction of a building or carrying out of buildings and works is not required to be in accordance with the incorporated plan.

2.0 Conditions and requirements for permits

30/7/2018

When drafting conditions and requirements it's important to use words that make clear which clause contains conditions and which clause contains requirements. The plan contains an objective to widen Albert Street. This clause contains standard conditions to be applied to permits and a requirement.

The following conditions and/or requirements apply to permits:

- All permits to construct a building or construct or carry out works on the north side of Albert Street between Baker Crescent and Claremont Court must include conditions:
 - providing for a setback of 15 metres from the front boundary of the lot to enable the future widening of Albert Street, and
 - providing for the submission of a landscape scheme showing native tree planting to the satisfaction of the responsible authority.
- All proposals to construct a building or construct or carry out works in the Gumnut Waterfront Incorporated Plan Area A must maintain a view to Gumnut Marina from The Esplanade.

The first condition requires a setback to safeguard land for the future widening. The second requires a landscape scheme to support streetscape objectives for Albert Street.

The requirement is included because the plan does not contain enough information to enable a permit condition to be imposed; the planning authority has a clear objective to maintain a view to Gumnut Marina from The Esplanade, that it requires all buildings and works to meet.

3.0 Decision guidelines

30/7/2018

This clause requires the responsible authority to seek a design enhancement when considering permits for buildings and works that are not generally in accordance with the plan.

The following decision guidelines apply to an application for a permit under Clause 43.03 which is not generally in accordance with the incorporated plan, in addition to those specified in Clause 43.03 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

• The responsible authority must consider the degree to which the proposed building or works will make a significant positive contribution to the existing or proposed streetscape.



3. Example Incorporated Plan

GUMNUT PLANNING SCHEME

GUMNUT MARINA INCORPORATED PLAN

THE LAND

It is important that the description of what the Gumnut Marina Incorporated Plan applies to is clear and accurate. Otherwise there may be disputes about which land or uses and development are affected by the plan.

The Gumnut Marina Incorporated Plan applies to land at 2 Beach Street, Gumnut, described as Lots A and S2 on plan of subdivision no 999999X, the foreshore and pier (shown on the Gumnut Marina Framework Plan).

The land is located on the north east corner of Beach Street or Sandy Point Road.

THE PLAN

The Gumnut Marina Incorporated Plan consists of this ordinance and the attached Gumnut Marina Framework Plan (Ref. No. 999/9999 October 2014).

OBJECTIVES

The objectives should be drafted with care, as they are the key to the interpretation and application of the requirements of any use, development or staging provisions set out in the rest of the plan.

Use, buildings and works and subdivision

- To support the use and development of the land for a marina, with associated residential and business uses.
- To achieve a vibrant and attractive activity centre node on the north east corner of Beach Street and Sandy Point road (area A on the Gumnut Marina Framework Plan) with active ground floor retail frontages.
- To achieve refurbishment and extension of the Old Pier and breakwater in association with the development of a marina (area B on the Gumnut Marina Framework Plan).
- To achieve a mix of dwellings on the land.

Design and appearance

- To develop the land in a way that is visually compatible with the surrounding beach environment.
- To protect strategic views from Gumnut City Centre to the foreshore.
- To develop attractive local views of the foreshore and marina within the land.

Residential amenity

- To achieve acceptable standards of private open space, daylight, visual and acoustic privacy for residents of dwellings on the site.
- To miminise any adverse impacts on existing adjoining residential properties.

Infrastructure and facilities

• To establish a network of open spaces and pedestrian and cycle paths on the land offering views to the sea.



GUMNUT PLANNING SCHEME

PERFORMANCE MEASURES

Any performance measures should flow logically from the objectives of the plan. They should be precise and unambiguous so it is clear what is needed to meet them. While in draft they should be tested against a number of possible development options to satisfy the planning authority that they can accommodate the desired range of appropriate responses to the plan objectives.

Use, buildings and works and subdivision

- The provisions of Table 1 will be applied to determine whether a permit application for a proposed use is generally in accordance with this plan.
- The provisions of Table 2 will be applied to determine whether a permit application for buildings and works is generally in accordance with this plan.
- The provisions of Table 3 will be applied to determine whether a permit application for subdivision is generally in accordance with this plan.

Design and appearance

- The development should encourage the establishment of a high quality new beachfront through the application of innovative contemporary urban design and architecture
- New development adjacent to existing built areas should respond positively to the location, height, materials and external appearance of existing development.
- New development should include the following elements in its design:
 - Timber or natural materials in preference to brick veneer.
 - Imaginative textures, colour combination and sculptural forms.
 - Shapes that convey images of natural features such as rolling waves, sand dunes, rugged cliff faces, rather than expanses of smooth walls and straight lines.
 - Disaggregated or discrete structure with interesting spaces and projections rather than solid bulky structures and blank walls.
 - Roof lines, proportions and architectural forms that are simple and distinctive without fussy detail and decoration.
- In the activity centre on the north east corner of Beach Street and Sandy Point Road colours should be used which assist in creating a vibrant and colourful streetscape. Generally it is envisaged these would be bright and vibrant conveying a feeling of beaches, sand, water and 'activity'



GUMNUT PLANNING SCHEME

TABLE 1: USE

The Gumnut Marina Incorporated Plan is very specific about use. This is why the table has been drafted exclusively to prevent the consideration of applications that do not comply with the plan. The exception to this is Shop: the schedule provides for the consideration of an application for a Shop even though it may not be in general conformity with the plan.

USE	REQUIREMENT
Industry	Must be located in area B on the Gumnut Marina Framework Plan.
	Must not occupy more than 2,000 square metres.
	Must be reasonably associated with the operation of a Pleasure boat facility on the land.
Office	Must be located in area A on the Gumnut Marina Framework Plan.
	Must not be located on the ground floor of a building unless reasonably associated with the incorporated plan.
Shop	The use is generally in accordance with the incorporated plan.
Trade Supplies Warehouse	Must be located in area B on the Gumnut Marina Framework Plan.
	Must not occupy more than 2,000 square metres net floor area.
	Must be reasonably associated with the operation of a Pleasure boat facility on the land.

TABLE 2: BUILDINGS AND WORKS

BUILDINGS AND WORKS	REQUIREMENT
Buildings and works in area A on the Gumnut Marina Framework Plan	Buildings and works should not exceed 25 metres in height.
	Buildings and works must be set back at least 3 metres from the elevation of any dwelling existing on the land or adjacent to the land before the approval of this plan.
	Buildings and works must be set back at least 15 metres from the most northerly elevation of any dwelling existing on the land or adjacent to the land before the approval of this plan.
Buildings and works in area B on the Gumnut Marina Framework Plan	Buildings and works should not exceed 6 metres in height.



BUILDINGS AND WORKS	REQUIREMENT
Tower in area B on the Gumnut Marina Framework Plan	Building should be located within the 'Old Pier Gateway Area' shown on the Gumnut Marina Framework Plan.
	Building should not exceed 6 metres in height.
All buildings and works	Buildings and works must not be constructed within the strategic view corridors shown on the Gumnut Marina Framework Plan.
	Buildings should have elevations externally finished in treated or painted timber and roofs externally finished in galvanised corrugated iron.
	Buildings should conform to any building envelope defined on the Gumnut Marina Framework Plan.

TABLE 3: SUBDIVISION

SUBDIVISION	REQUIREMENT
All subdivision	The subdivision must conform to the Gumnut Marina
	Framework Plan.

TABLE 4: STAGING

STAGE	REQUIREMENT
Proposals for use or development	A permit must not be issued until work has commenced
in area A on the Gumnut Marina	on a plan of refurbishment and redevelopment for the
Framework Plan	'Old Pier'.

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Height and setback controls for activity centres

Planning Practice Note 60

SEPTEMBER 2018

This practice note provides guidance on the department's preferred approach to the application of height and setback controls for activity centres

This practice note should be read in conjunction with Practice Note 58: Structure planning for activity centres and Planning Practice Note 59: The role of mandatory provisions in planning schemes.

Activity centres

Activity centres are a focus for commercial, retailing, employment, community, transport, entertainment and other services, and are places where people shop, work, meet, relax and live. State planning policy encourages the concentration of these services within activity centres, and recognises that activity centres are also ideally placed to provide for different types of housing, including higher density housing. As such, activity centres are a major focus for change in metropolitan Melbourne.

A key strategy of metropolitan planning policy in the *Victoria Planning Provisions* (VPP) is to build up activity centres as a focus for housing and economic growth by ensuring Metropolitan and Major Activity Centres:

- can accommodate ongoing investment and change in retail, office, service and residential markets
- provide for a mix of activities that generate high numbers of trips including business, retail, services and entertainment
- have the potential to grow sustainably and support more intensive housing developments without conflicting with surrounding land uses
- provide for services and infrastructure to support population growth
- identify areas for urban renewal.

To support how growth is managed, Clause 11.02 of the Planning Policy Framework includes strategies that seek to ensure that sufficient land is available to meet forecast demand, that planning to accommodate projected population growth over at least a 15-year period should occur and that clear direction on locations where that growth should occur is provided.

The role of structure planning for activity centres

Change in and around activity centres is anticipated and encouraged by state planning policy but needs to be managed carefully. This will ensure that new development maintains an appropriate level of amenity, and integrates with existing and proposed land uses and built forms. State policy seeks to manage change in and around activity centres through structure planning.

Structure planning is the process of developing a strategic framework for the integrated development of an activity centre and surrounds. Structure plans provide the foundation for activity centre change by clarifying preferred directions for future growth and articulating how this change will be managed.

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Structure plans should be formulated in a collaborative manner with the local community and landowners and should be informed and supported by a range of studies and background research. Planning Practice Note 58: Structure Planning for Activity Centres provides guidance to councils on the structure planning process, including the inputs and outputs required. Background research required to underpin a structure plan is outlined in the Ruby Town Structure Plan Background Report Outline (2010) and includes consideration of the following:

- Policy context Metropolitan Planning Strategy & Municipal Strategic Statement, other relevant Council policies
- Demographic, Housing and Economic Profile,
- Movement and Transport
- · Physical infrastructure
- Social Infrastructure
- · Built form
- Heritage
- Recreation facilities and needs
- · Community arts and cultural
- Open space
- Environment and sustainability

As part of the structure planning process preferred built form outcomes, including maximum building heights or setbacks, may be proposed.

Structure planning should be undertaken for all Metropolitan and Major Activity Centres. However, it may not always be necessary for councils to undertake detailed structure planning for smaller activity centres (eg. Neighbourhood Activity Centres). In these instances, a comprehensive built form analysis will need to be undertaken to identify preferred built form outcomes and provide the basis for any proposed controls.

Development of height and setback controls

Height and setback controls can be appropriate so long as they are not aimed at restricting the built form, but at facilitating good design outcomes.

Proposed height and setback controls must be soundly based on the outcomes of strategic research and background analysis that demonstrates consistency with state and regional policy and includes a comprehensive built form analysis.

Consistency with state and regional policy

A council will need to demonstrate that any proposed height and setback controls are consistent with state and regional policy and allow for an appropriate level of change over time.

Height controls must not encumber a centre's ability to accommodate community requirements for retail, commercial, housing, community, health, educational and other essential requirements, as consistent with state and regional development policy in the VPP.

A council will need to be able to demonstrate that there is sufficient land and capacity available to meet forecast demand and projected population growth over at least a 15-year period, and beyond this to a 30-year horizon, including how an activity centre contributes to this need.

Comprehensive built form analysis

A council will need to demonstrate that proposed height and setback controls are based on identifiable objectives or outcomes. Proposed height controls must be selected as a result of undertaking a comprehensive built form analysis that achieves the following:

- identifies significant opportunities for change within an activity centre and explores alternative built form objectives and outcomes to accommodate this change
- includes an analysis of visual and amenity impacts, solar access and overshadowing impacts and any impact on environmental conditions within the centre, including in respect of wind
- identifies any significant physical features, such as views to or from the activity centre or topography that needs to be considered
- identifies and articulates how new development should address street frontages and laneways or relate to adjacent residential areas
- selects appropriate heights and built form outcomes at a precinct level through evaluation of built form objectives, land use outcomes and economic growth consistent with state and regional policy.

A comprehensive built form analysis should be completed as part of the structure planning process.



How to deliver preferred built form outcomes at activity centres

Preferred built form outcomes identified in structure plans should be given effect in planning schemes either through local policy, or a zone or overlay control

Any built form controls introduced into a planning scheme should provide for development that is in line with a structure plan or comprehensive built form analysis for the activity centre. These controls could be discretionary or mandatory, or a combination of both.

In some instances mandatory height or setback controls may be appropriate in only particular sections of an activity centre and not the entire activity centre. In these instances, it may be appropriate to include a mix of discretionary and mandatory height and setback controls.

When to apply discretionary controls

The application of discretionary controls, combined with clear design objectives and decision guidelines is the preferred form of height and setback controls.

Discretionary controls are more likely to facilitate appropriate built form outcomes rather than mandatory controls by providing more flexibility to accommodate individual or unique circumstances. Innovative or exemplary design is not of itself reasonable justification to exceed discretionary building height and setback requirements. When appropriate height and setback controls are identified, they should be included in the relevant planning scheme as discretionary controls with clear design objectives and decision guidelines.

Councils may wish to include a range of heights across an activity centre or at individual sites. Where this is done, design objectives and decision guidelines need to be clear and easily understood to provide clarity as to how the range of heights are to be applied and assessed.

When to apply mandatory controls

Mandatory height and setback controls (that is, controls that cannot be exceeded under any circumstance) will only be considered where they are supported by robust and comprehensive strategic work or where exceptional circumstances warrant their introduction.

Mandatory height or setback controls should only be applied where:

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

In instances where a council is relying on its strategic work as a basis for mandatory height and setback controls they should be specifically reviewed every five years to ensure they are aligned to any updated census data or revisions to the metropolitan planning strategy. The review will need to assess whether the controls are still delivering on the outcomes and objectives for the centre and demonstrate that they are not undermining these going forward.

There may be instances where a time limit is applied to mandatory controls for an activity centre. This approach would allow for a more comprehensive review of the activity centre's role as part of the broader network and its ongoing ability to accommodate an appropriate level of growth. In these instances, a 15-year time limit should be applied.

This will ensure any mandatory controls implemented in this way remain contemporary and appropriate to the local circumstances. In order to continue the operation of the controls beyond this time, a council will need to review its strategic work and demonstrate it meets the criteria in order to have the controls retained.

Robust and comprehensive strategic work

Where mandatory controls are proposed, a council will be assessed against all of the following:

- Consistency with state and regional policy: A council will need to be able to demonstrate that any proposed controls are visionary in nature and propose a preferred future character for the activity centre that aligns with the aspirations of the metropolitan planning strategy and state and regional policies included in the VPP.
- Currency of work: Any supporting structure plan
 or comprehensive built form analysis should be
 no more than five years old. A council will need
 to be able to demonstrate that the built form
 analysis undertaken to support any proposal
 for mandatory height or setback controls is
 contemporary, takes account of recent trends
 and has been subject to a program of public
 consultation.



- Capacity to accommodate growth within the activity centre: Planning for the activity centre must ensure sufficient opportunity is provided for commercial (retailing, office, fringe retailing and other uses such as entertainment) activities needed over at least a 15-year time frame and then into the 30-year horizon as well as anticipated housing growth over the same timeframes. This should include:
 - The role of the activity centre in the broader activity centre network for the municipality.
 - The location of the centre and its access to services, such as public transport.
 - Potential for redevelopment having regard to urban form, lot sizes and topography.
 - Any existing and proposed land uses and identification and analysis of key sites within the activity centre that can accommodate more intense development when compared with the remainder of the activity centre.

In addition to this, where mandatory height and setback controls are proposed over most or the entire activity centre, rigorous strategic justification has to be provided and should include:

- a Housing Strategy which examines the city's future housing needs and the role of activity centres (including neighbourhood activity centres) in accommodating these needs
- an activity centre/economic strategy which examines the role of the activity centre as part of a network of centres.

Exceptional circumstances

Exceptional circumstances may be identified for individual locations or specific and confined precincts, and might include:

- sensitive coastal environments where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment
- significant landscape precincts such as natural waterways, regional parks and areas where dense tree canopies are the dominant feature
- significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values
- significant physical features, such as views to or from the activity centre or topography, where it can be demonstrated that discretionary controls would be inadequate to deliver the desired built form objectives or outcomes for the activity
- sites of recognised State significance where building heights can be shown to add to the significance of the place, for example views to the

Shrine of Remembrance and major waterways

helicopter and aeroplane flight paths and other aeronautical needs.

Where exceptional circumstances are identified, mandatory height and setback controls should only be applied where they are absolutely necessary to achieve the built form objectives or outcomes identified from the comprehensive built form analysis. Where mandatory controls are proposed, it will need to be demonstrated that discretionary controls could result in an unacceptable built form outcome.

Statutory implementation of height and setback controls

The Activity Centre Zone (ACZ) is the preferred tool to guide and facilitate the use and development of land in Metropolitan and Major activity centres with structure plans. In most instances, height and setback controls would be applied at the precinct level within the ACZ schedule.

The Design and Development Overlay (DDO) is the preferred planning instrument for implementing discretionary and mandatory building heights and setbacks in other situations.

The design objectives and decision guidelines contained within the ACZ or DDO must be well structured and carefully worded to provide clear guidance to both decision makers and designers. This will ensure that any proposal to depart from the nominated heights and setbacks will be able to be rigorously assessed against a clear set of criteria, thereby minimising the likelihood of approval of a proposal which does not implement the design objectives of the ACZ or DDO.

Consistency in language used to specify height controls

Clear and consistent terms should be used to distinguish between preferred and mandatory maximum building height controls as follows:

- 'Preferred maximum building height' should be used consistently for a performance-based provision in conjunction with 'should'.
- 'Mandatory maximum building height' should be used consistently for a mandatory provision in conjunction with the word 'must'.

The use of uncommon terms such as 'indicative' or use of mutually exclusive terms such as 'must' in conjunction with preferred heights should be avoided.

In instances where there is no identified preferred



height, the principles by which height should be determined for a given site or precinct should be identified, preferably in the form of a measurable performance requirement. Another conceptually stronger approach is the definition of a floor area ratio measurement to act as a benchmark target for a site or precinct.

Avoid subjective terms and language

The use of subjective terms in height guidelines should be avoided as they can be confusing and open to manipulation. Qualitative measures that rely on highly subjective assessments or the use of poorly defined criteria, such as "high standard of architecture", as a height guideline should be avoided and should not be seen as a way to achieve a 'bonus' in height.

In addition, the use of descriptive terms such as "landmark", "gateway" and "iconic" can result in a high degree of confusion over the strategic planning intent, particularly around intended height. Often the terms can be misinterpreted to mean that a site is effectively exempt from the range of considerations that would be acceptable on other sites that are not identified with these terms.

As a default position, terms such as "landmark", "gateway" and "iconic" should be avoided, and it should not be assumed that the meaning of these terms is generally known or easy to interpret. Where the terms are included clear guidance should be provided to identify what the intended objective should be for a nominated site. For example, if the site is intended to be clearly higher than its surroundings in order to make it visible from a wider

area then this should be identified.

References to building heights and setbacks

The preferred expression of heights and setbacks is in metres and should be in reference to a defined point such as the footpath at the frontage or Australian Height Datum or natural ground level. Reference can also be made to height in terms of storeys, however the definitive control should be in metres.

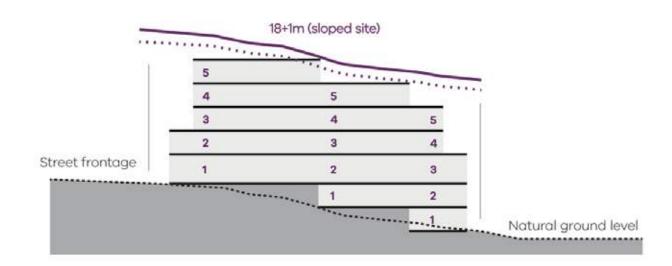
Where references to both metres and storeys are used, adequate allowance should be made for greater floor-to-floor heights needed to support employment uses where the zoning supports these uses.

Dealing with sloping blocks

The ordinary definition of building height used across Victoria is as set out at Clause 73.01 of the VPP and is the vertical distance from natural ground level to the roof or parapet at any point. This approach should be applied for sloping sites located within activity centres.

In order to allow for some flexibility on sloping sites, a mandatory maximum building height should allow for an exceedance by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

This approach will ensure that the built form responds to the underlying landform, usually by stepping down the built form.





Planning publications

The following publications provide best practice guidance on planning for new urban communities, statutory planning processes and drafting statutory documents (as relevant).

Planning for urban communities

- Ministerial Direction No. 9 Metropolitan Strategy
- Public Transport Guidelines for Land Use and Development (Department of Transport 2008)
- Victorian Cycling Strategy (VicRoads 2009)
- Structure Planning for Activity Centres Planning Practice Note 58 (Department of Environment, Land, Water and Planning 2018)
- Assessment and Response to the Report of the Advisory Committee on Activity Centre Boundaries (Minister for Planning June 2009)
- Activity Centre Zone Planning Practice Note 56
 (Department of Environment, Land, Water and Planning June 2015)
- Model Structure Plan Ruby Town Structure Plan (Department of Planning and Community Development, April 2010)
- Ruby Town Structure Plan Background Report
 Outline (Department of Planning and Community
 Development, April 2010)
- Urban Design Guidelines for Victoria (Department of Environment, Land, Water and Planning 2017)
- Apartment Design Guidelines for Victoria (Department of Environment, Land, Water and Planning 2017)

Statutory planning processes

- Using Victoria's Planning System (Department of Environment, Land, Water and Planning)
- Planning Practice Note 46: Strategic Assessment Guidelines (Department of Environment, Land, Water and Planning 2018)

Using VPP tools and statutory drafting

- Writing Schedules VPP Practice Note (Department of Infrastructure 2000)
- Incorporated and background documents
 Planning Practice Note 13: (Department of
 Environment, Water Land and Planning,
 September 2018)

Further information

All practice and advisory notes are available on the department's website:

www.planning.vic.gov.au

Further information in relation to planning for activity centres is available on the department's website: www.planning.vic.gov.au

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Incorporated and Background Documents

Planning Practice Note 13

March 2020

This practice note:

- explains the role of external documents in planning schemes
- explains the difference between incorporated documents and background documents
- provides guidance on when a document should be incorporated or be a background document.

The role of incorporated and background documents in the planning scheme

Planning schemes should be transparent and complete in terms of policies and provisions that are relied upon to make decisions about planning matters. Studies, strategies, guidelines and policies that inform the planning scheme, guide decision making or affect the operation of the planning scheme should be part of the planning scheme in some form. This can be achieved by incorporating documents into the planning scheme or using background documents.

The planning authority must carefully consider how different documents are treated in the planning scheme. The document may become an incorporated document or a background document.

The decision to incorporate or refer to a document in the planning scheme should be based on the role the document plays in decision making and the way in which the document will be used or relied upon.

Any document mentioned in the planning scheme must be publicly available.

Incorporated documents

Incorporated documents are essential to the proper functioning of the planning scheme and decision making. Examples of documents incorporated into all planning schemes in the Table to Clause 72.04 include the *Apiary Code of Practice*, 2011 and *A Code of Practice for Telecommunications Facilities in Victoria*, 2004. These incorporated documents must be considered by responsible authorities in decision making and can only be amended by the Minister.

At the local level, planning authorities may wish to incorporate their own documents. Development guidelines, incorporated plans or restructure plans are common types of local incorporated documents.

One of the benefits of incorporating documents into the planning scheme is that the document carries the same weight as other parts of the scheme. Being part of the planning scheme, the planning authority can only change an incorporated document by a planning scheme amendment.





When should a document be incorporated?

A document must be incorporated if it:

- is essential to the administration or enforcement of the planning scheme, that is, without the document the scheme cannot be properly understood (the Code of Practice for Timber Production is an example)
- is necessary to determine the extent of a planning control, or whether planning permission is required in a particular case, such as the Code of Practice for Telecommunications Facilities in Victoria (without using this document it is not possible to tell whether a permit is required for a telecommunications facility or not)
- is required to be incorporated under an Act, specific planning provision or Ministerial Direction, such as an incorporated plan under the Incorporated Plan Overlay, and the documents listed in the Ministerial Direction on the Form and Content of Planning Schemes
- will be used to guide the exercise of discretion by the responsible authority (except for a development plan under the Development Plan Overlay, which does not need to be incorporated).

How is a document incorporated into the planning scheme?

A document is only incorporated into the planning scheme if it is specifically listed in Clause 72.04 or in the schedule to the clause. If a document is not listed in Clause 72.04 or its schedule, it is not an incorporated document, even if it is mentioned elsewhere in the planning scheme. Incorporated documents, such as incorporated plans referenced in other clauses in the planning scheme (for example, the Incorporated Plan Overlay and the Heritage Overlay), must be listed in the schedule to Clause 72.04.

Where possible, the best approach is to extract the specific planning policy or decision requirements from a document and include them in the planning scheme as local planning policy or decision guidelines rather than incorporating the document. This is particularly useful when only parts of the document are relevant or where the document is not written in a way that expresses specific requirements for planning decisions.

Some documents may not have been prepared in a format suitable for incorporation. If this is the case, then the relevant sections will need to be extracted and incorporated into the planning scheme or be rewritten in an appropriate form that makes it easy to use in the context of the scheme. If the document is intended to provide guidance on the exercise of

discretion, then it should be prepared and written with this function in mind.

It is important that the planning scheme gives absolute clarity about the role and function of the particular incorporated document. What the document contains and how the document is referred to in the planning scheme will determine how it is used and interpreted. For example, the planning scheme must make it clear whether the document sets out a vision or framework for an area, provides design suggestions or serves some other function.

Background documents

Background documents provide information to assist in understanding the context within which a particular policy or provision has been framed. They are not listed in Clause 72.04 or its schedule. Different types of document may perform this role. They may be wide-ranging in their content and contain information not directly relevant to specific decisions under the planning scheme.

As with incorporated documents, background documents can be mentioned in the planning scheme in a state standard provision, or be introduced through a local provision. Examples of background documents at the state level include the State Environment Protection Policy (Waters of Victoria).

Background documents can be used in a number of ways. They can be used as a basis for preparing the Municipal Planning Strategy (MPS), local planning policies or requirements in the planning scheme, or can be mentioned in the planning scheme as a source of useful background information to a policy or control.

Background documents have only a limited role in decision making as they are not part of the planning scheme. They do not have the status of incorporated documents or carry the same weight.

When should a document be mentioned as a background document?

Many documents, while useful, may be too long or complex or cover too wide a subject matter to be suitable for inclusion as an incorporated document in the planning scheme. If they provide useful background information or general advice to applicants, or will assist in understanding the planning scheme, they may be suitable as background documents.

A background document may explain why particular requirements are in the planning scheme,



substantiate a specific issue or provide background to specific decision guidelines in local planning policies or schedules. The substantive planning elements of the background document will have been included in the planning scheme in either the MPS, a local planning policy or a schedule. For example, a flora and fauna study that provides the reason for an Environmental Significance Overlay may be usefully referenced as the basis for the statement of environmental significance.

How is a document made a background document?

A background document is one that is referred to in the planning scheme but has not been incorporated and is therefore not listed in Clause 72.04 or its schedule.

If a background document has directly informed the creation of a provision, then it may be referenced by that provision. An example of this is the Victorian Floodplain Management Strategy (DELWP, 2016) referenced in Clause 13.03-1 - Floodplain Management of the Planning Policy Framework (PPF). If a background document has informed several provisions (such as a regional growth plan or a housing strategy) it should instead be listed in the schedule to Clause 72.08 rather than being repetitively referenced throughout the PPF.

The schedule to Clause 72.08 should include a full list of the background documents relevant to the planning scheme.

It is important to consider the relevance of a document to the planning scheme before referencing it. For example, there is no point in referencing a document on the landscape or aesthetic qualities of an avenue of honour if the planning scheme does not contain any provisions that address its preservation.

When deciding to reference a document as a background versus an incorporated document, consideration should be given to how it will be used or relied upon.

The regular review of planning schemes provides an opportunity to incorporate an existing background document that is required for decision making.

There is no need to refer to a document in the planning scheme if the substantive elements of the document have been included in either the MPS, a local planning policy or a schedule, unless it contains additional useful information.

How much weight will be given to the different types of external documents?

If a document is incorporated into a planning scheme, its content or strategic basis is less likely to be capable of challenge when using it to make a planning decision. The decision-maker or VCAT is entitled to presume that the strategic basis for the document was considered at the time of its incorporation into the planning scheme and to give it due weight.

Where a document is only referred to as a background document or not mentioned at all, its relevance may be tested. Ministrial directions and legislative documents referenced in a planning scheme however maintain their status.

In practice, the test of how much weight is given to a document that is not incorporated when making a decision under the planning scheme will be based on:

- whether the planning authority has had the opportunity to incorporate the document
- the relationship and relevance between the objectives sought by the planning scheme and the objectives of the document
- the amount of public scrutiny the document has been subject to
- the strategic basis for the document
- the consistency with which the document has been applied in similar matters
- the availability of the document
- the currency of the document and whether it has been superseded by more recent studies or guidelines.

If a document is not mentioned in the planning scheme but is sufficiently advanced in the planning process, it should be given due weight in decision making.

Often, expert material prepared in accordance with application requirements or decision guidelines under the planning scheme will also be relevant to the exercise of discretion in particular matters, as will regulatory instruments which sit outside the planning scheme, such as State Environment Protection Policies.



What happens if a document needs to be changed?

An incorporated document can only be changed by an amendment to the planning scheme. The revised text of the document must be placed on exhibition in addition to any proposed changes to the planning scheme ordinance.

Any reference to a document by name within a planning scheme should be correct and up to date. The planning scheme and the document must remain in conformity.

An amendment is needed if the background document is no longer relevant, is consolidated into another document or its title is changed, even if the change does not result in any change to policy.

An amendment is not needed if the changes only serve to revise or update relevant background material in the light of changed circumstances or new knowledge and have no effect on the content of the planning scheme.

If an amendment to the background document is needed, the new background document should be available to the public so they can understand the basis for the amendment. The explanatory report should make clear that the document is not proposed to be incorporated into the planning scheme.

What are the planning authority's obligations with incorporated and background documents?

Both incorporated and background documents must be publicly available for inspection with the planning scheme. Planning authorities should maintain an indexed 'planning library' of all incorporated documents and background documents. The documents must be accessible on their website..

A list of all statewide incorporated and background documents is available from the department's website, with links to online documents.

Privacy, copyright and accessibility should be considered when preparing an incorporated or background document.

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Planning and Environment Act 1987

Panel Report

Melbourne Planning Scheme Amendment C190 Arden–Macaulay Structure Plan Implementation



23 October 2015

eBrief Ready 28 of 286

Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Melbourne Planning Scheme Amendment C190

Arden–Macaulay Structure Plan Implementation

23 October 2015

Lester Townsend, Chair

Ann Keddie

Ann Keddie, Member

Peter McEwan, Member

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List of Abbreviations

C1Z Commercial 1 Zone
C2Z Commercial 2 Zone

DDO Design and Development Overlay

DELWP Department of Environment, Land, Water and Planning

EAO Environmental Audit Overlay

ESD Environmentally Sustainable Development

IN1Z Industrial 1 Zone
IN3Z Industrial 3 Zone

LMA Linking Melbourne Authority

LPPF Local Planning Policy Framework

MSS Municipal Strategic Statement

MUZ Mixed Use Zone

PAO Public Acquisition Overlay

PPRZ Public Park and Recreation Zone

PUZ Public Use Zone
PUZ4 Public Use Zone 4

SPPF State Planning Policy Framework

Structure Arden–Macaulay Structure Plan 2012

Plan

VCAT Victorian Civil and Administrative Tribunal

VPP Victoria Planning Provisions

Overview

Amendment Summary	
The Amendment	Melbourne Planning Scheme Amendment C190
Common Name	Arden–Macaulay Structure Plan Implementation
Planning Authority	City of Melbourne
First Exhibition	1 November to 14 December 2012
Re-exhibition	The Amendment was placed on hold for two years pending resolution of the East West Link Project. 4 May to 5 June 2015
Submissions	A total of 209 submissions were received. See Appendix A

Panel Process				
The Panel	Lester Townsend (Chair), Ann Keddie, Peter McEwan			
Directions Hearings	8 July 2013, 26 August 2013, 27 August 2013, 5 September 2013, 19 May 2014, 15 June 2015. All at Planning Panels Victoria.			
Panel Hearing	Planning Panels Victoria 8–10, 13–15, 23, 24, 27, 28, 30, 31 July 2015			
Further submissions	Written submissions were received on proposed Council changes to the Amendment until 18 August 2015			
Site Inspections	The Panel made a number of unaccompanied site visits.			
Appearances	See Appendix A			
Date of this Report	23 October 2015			



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Executive Summary

The Amendment rezones land and applies built form controls to facilitate urban renewal in the Arden-Macaulay area. There is clear policy support for urban renewal in this area in existing State and local policies.

The Arden–Macaulay Structure Plan 2012 (Structure Plan) has been adopted by Council as the detailed strategic justification of the Amendment.

The Amendment was placed on hold for two years as the land it covered may have been affected by the now cancelled East West Link.

Issues with the Amendment are primarily in relation to built form.

The Amendment introduces a set of built form controls that:

- set an overall building height
- set a street wall height and setback above that height
- set 'interface controls' with existing residential areas
- identify new laneway links and introduce setbacks from those laneways.

Some controls are poorly drafted, and the suggested changes from Council during the course of the Hearing have not improved clarity or sense. For example, the latest version of the controls submitted by Council require, in parts, that 'the maximum height at street edge must be equal to 10.5 metres' which implies a positive obligation to construct part of a building at this height. Many aspects of the exhibited controls can only be understood by surveying adjoining properties to determine where buildings begin or determining relative ground levels.

A fundamental issue is that the controls have been prepared and justified in terms of broad and admirable aims, but will be experienced on a site-by-site basis. The application at this detailed level has not always been clear or appropriate.

While the overall design principles in the Amendment may be justified, their detailed application appears ad hoc. It is difficult to discern a systematic and rigorous approach to drafting many aspects of the built form controls.

Council has put forward various changes to the Amendment over its course and a number of these simply have no strategic justification. For example, Council and the *Structure Plan* make much of the aspirations for 'great streets' with a street wall height equal to the street width but arbitrarily departed from this principle in Macaulay Road.

Council has sought mandatory controls for overall height and street wall height and these are supported. The controls also remove all height restrictions on certain sites if development provides for a school or additional public open space. Some limited taller buildings in these areas could be accommodated while still achieving the identified built form vision, but not if all sites in these areas were developed for taller buildings. A developer is known to be willing to deliver land on one of these identified sites for a school and open space in return for a taller development. We think that this approach is a reasonable way of achieving broader community benefit while realising the limited opportunities for taller development.

There is broad support for the proposed rezoning, though there are some issues with the commercial buffer around Allied Mills and the rezoning of land to open space.

EG Funds contests the zoning and controls in the commercial buffer around Allied Mills. The policy for the buffer is part of the existing planning scheme. The commercial buffer needs to remain to avoid land use conflicts and the proposed Commercial 2 zone is appropriate.

Council proposes rezoning VicTrack land to public open space against the wishes of VicTrack. This cannot be justified. There is no general pool of 'government land' and no Council power unilaterally to zone the land of a state agency to a municipal purpose. If Council wants the VicTrack land for open space it will have to buy it.

Recommendations

Based on the reasons set out in this Report, we recommend:

Melbourne Planning Scheme Amendment C190 should be adopted subject to the following:

- Change the Growth Area Framework Plan at Clause 21.04 to correctly colour the Arden–Macaulay North area as an 'Existing Urban Renewal Area', as identified in the key to the Plan and Clause 21.04-1.2.
- 2 Apply the Mixed Use Zone (and overlay controls) to VicTrack owned land.
- 3 Amend the Map of DDO60 to rationalise the number and extent of areas:
 - A1 to replace Area 2, Area 4
 - A2 to replace Area 8
 - A3 to replace Area 5
 - A4 to replace Area 3, Area 12, Area 13
 - A5 to replace Area 7
 - A6 to replace Area 6 east of Boundary Road
 - A7 to replace Area 6 west of Boundary Road
 - A8 to replace Area 1, Area 9, Area 10, Area 11.
- 4 Amend DDO60 as shown in Appendix C.

In addition to the above recommendations, we recommend the Council:

- C1 Prepare an Amendment to update the text of MSS as it relates to Arden–Macaulay.
- C2 Review opportunities for open space provision in the renewal area as a matter of priority.
- C3 Specifically address east-west pedestrian links when preparing the proposed master plan for the Moonee Ponds Creek.
- C4 Commence negotiations with VicTrack for the purchase of their land.
- C5 Undertake a precinct wide review of contamination issues with the view to refining the application of the Environmental Audit Overlay.

1 Introduction

1.1 The Arden–Macaulay urban renewal area

The MSS identifies five types of areas:

- The original city centre (the Hoddle Grid)
- Urban renewal areas
- Proposed urban renewal areas
- Potential urban renewal areas
- Stable residential areas.

The clear intention of the policy framework is that structure plans will be prepared for proposed renewal areas and the zone and overlay controls revised to facilitate urban renewal.

The area covered by the Amendment is identified as a 'Proposed urban renewal area'. It is shown in Figure 1.

Figure 1: Area covered by the Amendment

NOTE

To reduce the electronic size of this document, Figure 1 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

The Amendment is required to facilitate redevelopment of the land in accordance with the objectives of the *Arden–Macaulay Structure Plan* 2012 (*Structure Plan*) adopted by Council in February 2012.

The *Structure Plan* has identified a sequence of development which will occur in two stages. The area generally north of Macaulay Road and parts of the south west quadrant of the *Structure Plan* area being considered for renewal in Stage 1. The area south of Macaulay Road and east of the creek will be considered for renewal in conjunction with the planning of the Melbourne Metro and has therefore been identified as Stage 2. Planning Scheme Amendment C190 implements the objectives and recommendation in relation to Stage 1.

The *Structure Plan* contains a number of key directions with strategies and an associated suite of short, medium and long term actions to implement the strategies. The key directions of the *Structure Plan* are:

- Develop Arden Central (an area in Stage 2 not covered by this Amendment) as a new extension of Melbourne's Central City
- Develop three new local centres within a mixed use neighbourhood
- Expand transport connectivity to and within Arden–Macaulay
- Upgrade the Moonee Ponds Creek parkland corridor and establish five new parks
- Make Arden–Macaulay energy, water and waste efficient.

1.2 What the Amendment does

The Amendment, as exhibited, proposes to:

- rezone land from the Industrial 1 and 3 Zones to the Mixed Use Zone, Business 1, 2 and 3 Zones (now the Commercial 1 and 2 Zones) and Public Park and Recreation Zone, and from the General Residential Zone to the Mixed Use Zone
- apply building design controls for heights, boundary setbacks, active street frontages, weather protection and through block access links through the introduction of a new Schedule 60 to Design and Development Overlay (DDO)¹
- apply Schedule 26 to the Design and Development Overlay to land being rezoned from industrial to a zone that allows residential and other sensitive uses this DDO will require new, refurbished or converted residential developments and other noise sensitive uses in the vicinity of existing industrial operations to include acoustic protection measures against noise arising from those existing industrial operations
- apply an Environmental Audit Overlay to manage potentially contaminated former industrial land where the rezoning will permit sensitive uses
- delete Incorporated Plan Overlays applying to the Hotham Estate and the north west corner of Mark and Melrose Streets because the requirements of these plans have been met.

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¹ This DDO Schedule will be given a different number if the Amendment proceeds. We have referred to it as DDO60 for consistency.

1.3 Process

This Amendment had a long adjournment as the result of the proposed East West Link project.

The Amendment was initially exhibited between 1 November 2012 and 14 December 2012. In response to the exhibition of the Amendment the Planning Authority received 180 submissions.

The Public Hearing was scheduled to commence on Monday 26 August 2013. The August 2013 Hearing did not proceed because of the potential for the Amendment to be impacted by the then newly announced East West Link project.

Following its election in 2014, the new State Government determined to not proceed with the East West Link project. Following re-exhibition a further 29 submissions were received and Hearings were held in July 2015.

In closing, Council tabled suggested changes to the MSS. Parties were given additional time to respond to these in writing.

A more complete history of the various Directions Hearings and Panel Directions is set out in Appendix B.

1.4 Issues raised in submissions

Taken as a whole, the issues from all 209 submissions can be grouped under the following themes:

- public open space
- community facilities
- **transport**
- heritage
- permeability and connectivity
- built form issues
- proposed Business 3 Zone.

Concerns were raised by some submissions about the consultation process.

Public open space submissions contended that:

- additional open space is needed and that it is important that the proposed residential apartments have good quality access to well-designed public open space
- the land alongside Moonee Ponds Creek earmarked as open space is unusable for open space use by residents due to the regular flooding and its location under CityLink.

Community facilities:

submissions queried whether the Amendment has been undertaken with a holistic view of community development and state that infrastructure and services must be available to support increased population density including schools, doctors and public transport.

Transport:

submitters raised concerns about the current overcrowding of trains, traffic congestion and on-street parking problems saying that while the area has

- access to multiple forms of public transport, these services are currently inadequate
- submitters were concerned about the increase in local traffic congestion arising from the Amendment
- it was said that Macaulay and Racecourse Roads are already experiencing grid-lock as a result of through traffic volumes and existing bottlenecks from the two train crossings and the amendment will result in additional traffic volume
- concerns were expressed about car parking.

Heritage:

submitters said the industrial and residential heritage must be protected via planning controls before any land is rezoned so the opportunity is not lost or left to the discretion of the developer².

Permeability and connectivity

some submitters said there is a need for greater permeability and connectivity, including pedestrian permeability within the area and within existing residential neighbourhoods and in links to Moonee Ponds Creek, other are concerned about the prescriptive nature of controls for new connections.

Built form issues:

- some submitters opposed the discretionary nature of the height controls and would like to see these heights being made mandatory, others opposed mandatory planning controls because they limit flexibility needed for good design
- the proposed setback and height control were contested
- submissions were made suggesting a 'canyon' effect will be created along Macaulay Road and Stubbs Street and detrimentally impact on properties at the boundary of C190 they said the proposed heights are inconsistent with the heritage buildings and streetscapes including industrial buildings.

Proposed Business 3 Zone:

a number of submitters requested the area proposed to be rezoned to 'Business 3 Zone' be rezoned instead to a 'Mixed Use Zone'.

1.5 Issues dealt with in this report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- The strategic vision
 - The suitability of the area for renewal
 - The commercial buffer
 - Built form vision
 - Proposed parks

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² This has happened by way of Amendment C207

- MSS changes
- Zoning changes
 - New zones
 - Zoning in the commercial buffer
 - Public Park and Recreation Zone
- DDO60 Built form
 - Threshold issues
 - Objectives and built form outcomes
 - Overall height
 - Street wall heights
 - Interfaces
 - Active street frontages
 - Weather protection and Facade articulation
 - New laneway connections
 - Development adjacent to heritage buildings
- Environmental Audit Overlay.

2 The strategic vision

2.1 What are the issues?

A number of submissions touched on the strategic vision of the Amendment. Issues included:

- the suitability of the area for renewal
- the commercial buffer
- built form vision
- proposed parks.

2.2 The suitability of the area for renewal

It is not at issue that the area is clearly identified for renewal in the MSS and in *Plan Melbourne*.

Clause 21.04–1.3 Proposed Urban Renewal Areas states:

Arden-Macaulay

Arden—Macaulay is an area in transition. Since the 1880's, Arden—Macaulay has been primarily an industrial area supporting the city's economy through manufacturing and production. The profile of business activity in the area has been changing with some degree of land underutilisation given its potential in relation to its proximity to the central City.

The Melbourne Metro station project to be located between CityLink and Laurens Street will lead to major change east of the Moonee Ponds Creek. The Arden–Macaulay Structure Plan 2012 has been prepared and adopted by the City of Melbourne and will be implemented into the planning scheme via a planning scheme amendment. The directions of this plan for this local area are still to be inserted into the planning scheme.

Planning controls will address the interface between on-going industrial and residential areas, and the interface between new development and existing residential areas and large manufacturing industry will be protected from sensitive uses by a land use buffer of non-residential development and/ or non-sensitive land uses (depicted within Figure [11] as 'Commercial and Industrial Buffer'). The new planning controls will be introduced in two stages.

This text is repeated at 21.14-2, where the following map is also presented.

Figure 2: Arden-Macaulay Local Area Plan from the MMS (Figure 11)

NOTE

To reduce the electronic size of this document, Figure 2 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

2.3 The commercial buffer

(i) The issue

Allied Mills is a long established industrial operation immediately to the south west of the area subject to the Amendment. Current policy identifies land abutting Allied Mills as a commercial buffer. This designation (and the zoning to implement it) were challenged in submissions.

(ii) The history

It is true that, with changing industrial circumstances, industrial land in inner Melbourne has been rezoned to other purposes over the past twenty to thirty years. But such rezoning of industrial land to allow residential development cannot be assumed. The transition from industrial to residential needs to be considered on a precinct-by-precinct basis.

The rezoning of land needs to be guided by the relevant polices in the planning scheme.

The area around Allied Mills is a long standing industrial area. The current zoning is industrial and it was identified as industrial in the maps presented as part of the 1954 Melbourne Metropolitan Planning Scheme Report³.

MMS before 2013 revision

Before Amendment C162 which introduced a revised the MSS in September 2013, Clause 21.04-5 contained the strategy:

Strategy 10.5 Facilitate the growth of industry in identified parts of Kensington, West Melbourne Industrial Area and in West and North Melbourne.

An extract of the relevant figure from the MSS at that time is shown in

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³ The houses between Chelmsford Street and Macaulay Road were also identified as industrial land.

NOTE

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Figure 3.

NOTE

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Figure 3: The MSS before 2013 revision\

Source: MSS before 2013, Figure 7: Non-residential Uses – Advanced Manufacturing and Industry

Revising the MSS as part of Amendment C162

As part of Amendment C162, which implemented a revised MSS, Council exhibited a new growth framework plan as shown in

Figure 4. Council received submissions opposed to framework plan as it applied to land around Allied Mills.

In response to submissions Council proposed changes to the exhibited growth framework plan, this change was exhibited during the panel process for the revised MSS. This is shown in

NOTE

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Figure 5.

Figure 4: The framework plan exhibited as part of the MSS review (Amendment C162) (extract)

NOTE

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Figure 5: Revised MSS exhibited as part of the MSS review (Amendment C162) (extract)

NOTE

To reduce the electronic size of this document, Figure 5 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

The panel for Amendment C162 said4:

Many written and verbal submissions questioned the specific designation of sites and how interfaces would be treated. This was highlighted in locations such as Kensington where 'urban renewal' sites directly abut or isolate 'stable' sites within the Arden–Macaulay area.

We agree with submissions ... that further detailed work through the structure plan process is required prior to making such site specific designations.

This appears to be reiterated in Council's own submissions. Mr O'Farrell put to us that "while the MSS identifies where change will be accommodated, the detailed planning for the needs of communities will occur at the next step of the planning process, being structure planning and urban design frameworks".

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⁴ Amendment C162 panel report, page 16.

Therefore, whilst we agree with the concept of identifying broad areas as urban renewal, we find these areas should be conceptual in shape and form ...

These can form the basis of further site renewal as addressed through existing or proposed structure plans. These structure plans, that include analysis of infrastructure capacity and service needs can lead to a more detailed spatial interpretation of what, where and how renewal should occur in these areas.

As part of its report the panel for Amendment C162 recommended significant changes to the growth framework plan; these are shown in Figure 6. Specifically it recommended that the renewal designation be deleted from the area.

Figure 6: The MSS review Panel recommendation

NOTE

To reduce the electronic size of this document, Figure 6 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

The current MSS

In response to the Amendment C162 panel recommendations Council substantially improved the growth framework plan. This progressed the Amendment C162 panel recommendation in a number of ways:

- general changes included:
 - including stable residential areas (the panel had recommended this but not depicted it graphically)

- refining boundaries of the urban renewal area
- distinguishing between 'proposed' and 'potential' urban renewal areas
- specific changes in relation to the area around Allied Mills were:
 - part of the area shown as proposed urban renewal
 - part of the area shown as a commercial and industrial buffer.

The approved version of the MSS also includes specific local area policy.

Figure 7: The current MSS (extract)

NOTE

To reduce the electronic size of this document, Figure 7 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

(iii) Evidence and submissions

The policy framework and its weight

Mr Wren for Allied Mills stated that:

... through Amendment C162, the Arden–Macaulay Structure Plan and this amendment there is a consistent intention that the Allied Mills site be protected from the establishment and encroachment of sensitive uses.

Mr Wren referred to clause 21.04-1.3:

Planning controls will address the interface between on-going industrial and residential areas, and the interface between new development and existing residential areas and large manufacturing industry will be protected from sensitive uses by a land use buffer of non-residential development and/or non-sensitive land uses (depicted within Figure 10 as 'Commercial and Industrial Buffer'). The new planning controls will be introduced in stages.

Mr Wren went on to detail support for the continued operation of industrial uses such as Allied Mills in the *Structure Plan*. In particular, he referred to statements in relation to the south west quadrant on Page 26, which refers to protection of the Allied Mills site from encroaching sensitive uses.

Mr Wren took the Panel through the objectives, principles, strategies and actions for mixed use development. He concluded that:

The strategy plan was predicated on the assumption that Allied mills would be protected from the possibility of exposure to expectations built upon such mixed-use aspirations.

Mr Monahan, for EG Funds, accepted that policy in the scheme carries weight, but submitted that policy that has not been tested carries less weight. He was referring to the introduction of a 'commercial and industrial buffer' area in clause 21.14-2 and Figure 11 and Figure 1, Growth Area Framework Plan, clause 21.04-1 by the Council after the panel hearing for Amendment C162. Mr Monahan maintained that:

... the policy carries less weight because the strategic justification for this policy has never been properly tested and it has not been applied following proper process.

Mr Monahan submitted that it was therefore open and indeed appropriate to take a wider look at the EG Funds sites and the south west quadrant and not be unduly constrained by the MSS. In his view the south west quadrant is identified in the planning scheme as an area of proposed urban renewal.

The matter for this panel is how to implement the next stage of the urban renewal policy for the south west quadrant through land use and development controls.

In relation to the weight that should be given to the *Structure Plan*, Mr Monahan acknowledged that it had been through public consultation, but:

... it is only adopted policy: it is not a reference or incorporated document in the planning scheme. The Structure Plan should of course carry weight, but this panel should not see its role as one of strict adherence to the Structure Plan.

Mr Clarke provided town planning evidence for EG Funds. He concluded that there are competing policy outcomes at both a State and municipal level between policy that seeks to encourage urban residential consolidation and policy that seeks the protection of remnant industry.

Managing interfaces

Mr Monahan submitted that the interface issues with Allied Mills can be effectively managed via the application of appropriate planning controls.

EG Funds fully accepts that the onus is on it, as agent of change, to demonstrate that the Sites are not required as buffers.

EG Funds relied upon the evidence of Mr Burton, Dr Bellair and Mr Maina in this regard. Dr Bellair was unable to attend the panel for cross-examination. His evidence is not a determining factor in our consideration.

Mr Burton in evidence submitted that the sites could be developed for residential purposes with a number of design techniques to attenuate noise from the Allied Mills, CityLink and the adjoining railway line.

Dr Bellair's evidence was that there was little risk of an increase in odour emissions because Allied Mills processes do not generate significant odours and there is no odour control equipment to fail. He recommended a number of design features to the southern facade of any residential apartments within 50 metres of the Allied Mills site.

Mr Maina gave evidence on traffic that the risk of interface traffic conflicts could be addressed through traffic management measures, including a Traffic Management Plan for the Allied Mills operations.

Mr Clarke, in planning evidence, submitted that land use separation techniques such as buffers are only one method of avoiding such conflicts and such a technique would normally need to be justified by empirical evidence. He considered that if the need for such a buffer could be avoided then it is preferable that it be avoided in favour of achievement of a higher and better use.

With respect to the 1-7 Elizabeth Street site, Mr Monahan submitted that this property has no direct sensitive interfaces in terms of amenity impacts.

Mr Henshall gave evidence about the opportunities that could be expected of properties in this inner city location.

Mr Wren submitted that Allied Mills is particularly concerned to protect its 24 hour, 7 day a week operation that is already subject to limitation pursuant to a s.173 Agreement. The company intends to consolidate its Victorian operations on this site, which it believes to be strategically well located with regard to road and rail access:

Allied Mills is acutely conscious of the implications associated with inappropriate sensitive uses being located within the sphere of influence of its current operation.

Mr Wren expressed a concern about gentrification of former industrial sites leading to increased expectations of future residents. He supported the concept of "reverse amenity" to protect existing businesses from sensitive uses causing complaints about the operation of the existing industry by new residents whose expectations are based on a residential paradigm inconsistent with the established industrial norm.

In particular, Mr Wren expressed opposition to the submission by EG Funds to allow for residential development and to exceed the DDO60 height limits:

New residents using Elizabeth Street to Arden Street will constantly come into contact with slow moving manoeuvring semi-trailers whose swept paths require virtually the entire width of Elizabeth Street to undertake their manoeuvres. This is not uncommon in industrial areas.

It is submitted that the Local Area Traffic Management (LATM) provisions are likely to cause traffic to prefer accessing south and east via Arden Street rather than attempting to navigate through to Macaulay Road. Should this be realised, the obvious conflicts that are likely to arise with Allied Mills traffic are self-evident.

Mr Wren explained that Allied Mills cannot change its current arrangement of truck movements into and out of the site.

The recommendations in the expert evidence on acoustic provisions by Mr Burton and air quality by Dr Bellair for EG Funds were also challenged by Mr Wren.

The effect of Mr Burton's recommendations will see future residents living in hermetically sealed dwellings reliant upon air conditioning with effectively no access to fresh air via normal window openings or balconies. Dr Bellair would equally enclose such residents to protect

them from fugitive emissions of dust and/or odour rather than adopt conventional techniques of separating sensitive uses from potential amenity problems.

Mr Wren referred to Mr Czarny's response to cross examination by Mr Monahan stating that:

Mr Czarny's view was that invariably such acoustic and like measures is not a great look and is not of a high quality in appearance. They are a second best response.

The exemplar projects by EG funds on other sites were challenged by Mr Wren as irrelevant since:

... they are all predicated on the collapse of major industries and the consequent dilapidation of an area's urban fabric. It fails to recognise the presence of the existing and still viable major manufacturer that hasn't collapsed and is not dilapidated.

Mr Wren concluded:

Given that Allied Mills is not proposing to move having only recently refurbished its premises at enormous cost, the problem has been correctly addressed by Council's proposal to adopt a C2Z as the buffer.

(iv) Discussion

The EG funds site in combination with the Allied Mills site would make a good redevelopment site (along the lines of the EG Funds Summer Hill development in Sydney), but by itself it is only part of the redevelopment opportunity to transform the area from its industrial past. Allied Mills is the other part, and this site is not available at this time.

The MSS clearly establishes a policy of a commercial buffer around Allied Mills.

Clause 21.14-2 states that large manufacturing industry will be protected from sensitive uses by a land use buffer of non-residential development and/ or non-sensitive land uses (depicted in Figure 11 in the MSS as 'Commercial and Industrial Buffer').

Furthermore, under the heading of 'Economic Development' the following policy intents are listed:

- Provide a buffer between the existing industrial use on the Allied Mills site and new residential uses to the east, and existing residential uses to the north (Precinct 5 on Figure 11).
- Support commercial and industrial uses generally south of Chelmsford Street, north of Arden Street and west of Barrett Street (Precinct 5 on Figure 11).

We reject the notion that how a policy entered the scheme is a relevant consideration as to its weight. In any case the site has always been zoned industrial, and a review of the Amendment C162 process shows that it is not so much the case that the current policy was not tested as part of Amendment C162, but that designating the site for renewal was tested and found wanting. It was also tested as part of the abandoned Amendment C177.

We accept that from time to time policies in planning schemes become outdated, but this is hardly the case here. The new policy is relatively fresh, and indeed this Amendment is seeking to implement it. It is clear from the evidence presented by Allied Mills that the operations of Allied Mill are such that a buffer is warranted.

The role of a panel is to provide advice to a planning authority on how it ought to respond to submissions. It is not the role of a panel to stand in the shoes of the authority and recommend a different strategic direction. It is one thing to challenge the application of a vision, it is another to challenge the vision itself. EG funds would need to show that the application of the strategic logic of the *Structure Plan* was flawed and that its site had the same characteristics as other sites to be rezoned as Mixed Use. Given the proximity to Allied Mills this is clearly not the case.

We accept that there are a number of dwellings in the commercial buffer area. We do not think that these dwellings undermine the buffer to such an extent that it no longer serves its purpose.

(v) Conclusion

We conclude:

A commercial buffer around Allied Mills has been part of the planning scheme since it was introduced and allowing further residential development in the buffer would be contrary to policy and sound planning practice.

2.4 Built form vision

(i) Evidence and submissions

Mr Townsend referred to the MSS which seeks to accommodate long-term worker and residential growth in urban renewal areas rather than in established residential areas where it seeks to largely maintain the existing residential character.

Amendment C190 is based on this principle in the MSS.

In urban renewal areas, development densities will be higher and will create compact walkable environments. This will generate sustainable communities that occupy less land and are within walking distance of good community and retail services, open space and public transport. A building height of 20m is generally proposed because:

- it is consistent with the vision for sunny, tree lined streets;
- it is generally in keeping with existing development in the precinct; and
- it can be modified at sensitive interfaces with existing residential development so that is does not affect the amenity of nearby dwellings.

The approach to determining heights in the C190 area has been localised, that is, each precinct has been reviewed in relation to its specific context, lot structure and abutting roads. Heights are performance-based to protect the amenity of adjoining low scale residential areas and create safe and well scaled streets with sunlight

and open sky views. This is particularly nuanced west of Stubbs Street where there is a variety of different circumstances and where the line between the C190 area and existing residential development is not as distinct as to the east. In assessing development proposals, the proposed new DDO60 (which sets the building envelope) and the existing Urban Design outside the Capital City Zone policy will be used. The former will set the building envelope to manage overshadowing and visual bulk. The latter will be used to manage issues related to the specific context and appearance of the building.

The proposed height controls will ensure that new development does not overshadow existing or proposed public open spaces between the hours of 11am and 2pm at the equinox (in accordance with the City of Melbourne's Sunlight to Public Places policy).

Mr Czarny gave strong support for the ambition of the *Structure Plan*:

... for a mid-rise urban renewal precinct that celebrates its former robust industrial character.

Mr Czarny considered that the overarching urban form concept "is a sound one". He found that it had emerged from a well-considered body of background research and analysis that responded to the built form character, infrastructure and landscape attributes of Arden–Macaulay's industrial and residential areas as well as an urban renewal area that is affected in part by sensitive low scale residential interfaces.

Mr Yeoman gave expert evidence on the process for, and assumptions underlying the population target of 20,300 people for the Arden–Macaulay precinct. The assumptions included:

- buildings were constrained by the height and setback controls
- no development of heritage sites
- built form on only 70 per cent of the available site
- no development of land subject to body corporate control.

Mr Yeoman concluded that the overall capacity enabled in the *Structure Plan* and the Amendment is not likely to be fully developed over the time frame analysed (2031). The level of supply provided in terms of capacity, is more than sufficient to provide for the expected demands of the community.

Mr Kiriakidas gave evidence on traffic and transport. He noted that in the initial exhibition of the Amendment, 73 submissions related to public transport, 89 related to traffic and 46 related to car parking. The further notification period resulted in an additional 11 submissions relating to transport.

Mr Kiriakidas concluded that the Principles, Objectives and Strategies set out in support of the *Structure Plan*:

... are considered appropriate and consistent with current day best practice.

He confirmed that research undertaken by GTA Consultants for the Integrated Transport and Access review found that 90 per cent of traffic has neither an origin nor destination in the Arden–Macaulay precinct. The research indicated that the proposed population and employment growth envisaged for the Arden–Macaulay can

be satisfactorily accommodated. He went on to conclude that the preparation of a car parking strategy and ultimately a car parking overlay is considered appropriate.

Mr Kiriakidas noted that VicRoads in its submission had flagged the importance of careful consideration and consultation for any changes or downgrading to the key arterial roads of Boundary Road and Macaulay Road. He noted that none of the matters raised cast any doubt over the adoption of the proposed amendment.

Mr Townsend informed the panel that in the light of submissions made throughout the Hearing and the winter overshadowing that is likely to be the result of the Haines Street developments, the planning authority is considering whether to adopt a different standard to ensure greater direct sunlight at mid-winter and at the equinox.

Mr Townsend concluded that there is a choice between:

- a) the coordinated and structured approach embraced by the Planning Authority in which built form outcomes match the demographic requirements of the Arden–Macaulay area and encourages development is a manner that safeguards the amenity and living standards of existing and future residents; and
- b) an ad hoc, site-specific approach in which development is more likely to be concentrated in hot-spots of urban renewal, but have the potential to deny the outcomes sought to be achieved in the Structure Plan.

(ii) Discussion

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

- capable of delivering a quality public environment and quality private environments
- neither an overdevelopment nor underdevelopment of the area in terms of local infrastructure capacity: on the one hand it can be serviced, and on the other it makes efficient use of infrastructure and location attributes and is economically viable
- appropriate given the metropolitan and local role expected of an area
- likely to be robust over time.

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

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

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

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

Unlike other renewal areas in Melbourne, this part of Arden–Macaulay is not an extension of the CBD. The area has a future as a mid-rise precinct that is part of the broader North Melbourne and Kennington areas. We do not think that the area lends itself to an intensity of renewal that one might find adjacent to the CBD:

- while well-located it is not adjacent to the Hoddle Grid and all the amenities and employment that offers
- the redevelopment areas (in Arden–Macaulay North) are not large enough to create a separate high-rise district we think that they would only ever be a few isolated towers on the edge of a low-rise suburb.

We think it is appropriate to seek to create a new development that fits with the existing highly valued character of the area. This can be achieved by limiting the built form so that it is not so different to the form of the existing area and that there is a transition to taller forms.

Connection with the existing area can also be achieved by delivering public facilities in association with taller development so that the connection between the old and the new is cemented with a shared use of community infrastructure.

It is important to draw a distinction between the character of a district and the form of isolated buildings within it. District character is set by the predominant form of buildings.

We think that within a mid-rise context there could (in theory) be a few high structures without changing the mid-rise feel of the area. This is in contrast to other cities with relatively flat topography and uniform building heights. This is particularly the case in Arden–Macaulay where there are already higher buildings with the housing estate towers.

It is not clear how much taller development could be built before the character started to be read as a higher-rise area. Part of the answer is how visible the higher forms are from the immediate streets around them, and from the wider context. We broadly agree with the evidence of Mr Milner and Mr Sheppard that there are locations that could accept taller structures without much, or any, visual impact on the immediate surrounds.

Critical to delivering a quality urban environment, particularly at higher densities, is a quality public realm with attractive and accessible public spaces and parks.

It almost goes without saying that local infrastructure should be able to meet the demands that development will place on it, but whether or not development is an 'overdevelopment' is often contested at panels or the Tribunal.

The *Structure Plan* examined the ability of local services to meet the demands placed upon them by the development it envisaged. It concluded that the services were capable of meeting the projected demand. A number of submitters thought that the number of dwellings would be higher than proposed, and some land owners seemed to favour more intensive development. The development envisaged in the *Structure Plan* is not an overdevelopment in terms of its ability to be serviced.

(iii) Conclusion

The vison of a mid-rise area that relates to the existing residential areas is a sound basis for development of the area.

2.5 Proposed parks

(i) What is the issue

The *Structure Plan* presents an approach to open space that has been superseded by more recent Council approaches.

(ii) Evidence and Submissions

Council advised that when it adopted the *Structure Plan* it also resolved not to use the public acquisitions controls in the planning scheme and instead would negotiate provision of open space through the development process and transfer of other public land.

Council also advised that it will prepare a master plan for land along the Moonee Ponds Creek to revitalise it as a recreational and environmental corridor.

Eamonn Fennessy provided evidence that:

Despite not having a compulsory acquisition approach to the acquisition of land, the City of Melbourne is pursuing a range of methods to secure additional open space to implement the Open Space Strategy. These include:

- Negotiated land contributions from the Victorian Government for new Capital City open space and Municipal open space.
- **Land contributions sought from developers at Council's discretion.**
- Re-purposing existing Council controlled public land to open space where appropriate, primarily road space.
- Purchase of additional land using open space contribution.
- **A** combination of the above.

Mr Fennessy gave examples of these approaches in his evidence.

(iii) Discussion

There is a tension between what the *Structure Plan* presents in terms of open space and Council's current approaches. The *Structure Plan* identifies specific land parcels and tailors controls based on these identified parcels. Council's current approach is more nimble, and seeks to identify cost effective opportunities as they arise.

If the nominated locations of open space in the *Structure Plan* are strategically important, then Council should move to acquire them; if open space can be provided by a range of other mechanisms, as was presented at the Hearing, then Council must accept that open space locations may change. It is not appropriate to introduce planning controls to restrict development of land to preserve the amenity of 'open space' that Council has not committed to buying. Council has the ability to compulsorily acquire land, and it is not right to set two standards: one for the private sector where the open space location is said to be fixed and landowner's development potential decreased; and another for Council where open space

location is flexible and it need not commit to purchase by applying a Public Acquisition Overlay.

We accept Council's current approach to open space delivery. On the basis of this approach, the open space planning for the area should be revisited to better refine needs and identify the pros and cons of a wider range of opportunities than are considered in the *Structure Plan*.

These opportunities could include:

- Better development of the current open space role of land in Alfred Street that is part of the public housing estate, but is not well developed for open space. The *Structure Plan* proposes building on this existing open space area. We are not sure that this is the most appropriate approach for this land.
- A review of open space planning around the North Melbourne Community Centre. Activities in buildings may able to be located on the lower levels of a mixed use building, or above grade or semi-basement parking proving an opportunity to improve the area for sporting use.
- Shared space in association with new schools.

We accept the *Structure Plan* and *Open Space Strategy* vision for improved open space along Moonee Ponds Creek. We note that the *Structure Plan* identifies access to the Moonee Ponds Creek from east of the rail line and a bridge over the creek at Sutton Street. Such a link will play an important part in the connectivity of the renewal area, but it is not obvious how the link can be achieved given the flood protection works in the area. We were told that Council will prepare a masterplan for the Moonee Ponds Creek in the near future. This plan should explicitly identify eastwest links, otherwise there is a risk that the open space along the creek will be effectively cut off from the new residents in the renewal area to the east of the rail line.

Open space is important in the renewal area and Council should review open space opportunities in light of its current approaches.

(iv) Conclusion

We conclude:

The parks shown in the *Structure Plan* may not eventuate and their depiction is likely to be a source of confusion.

There are a number of opportunities for open space improvement that the structure plan does not recognise including:

- Recognising the current open space role of land in Alfred Street as part of the public housing towers.
- Relocating the North Melbourne Community Hub into new mixed use buildings to create a larger unencumbered reserve.

We recommend Council:

Review opportunities for open space provision in the renewal area as a matter of priority.

Specifically address east-west pedestrian links when preparing the proposed master plan for the Moonee Ponds Creek.

3 MSS changes

(i) The issues

The Amendment did not propose any changes to the MSS. Some draft changes were mooted before the Hearing and Council submitted proposed changes during its closing submission.

(ii) Evidence and Submissions

Mr Townsend tabled a draft revised version of clause 21.4-2 Arden–Macaulay for the information of the panel. Mr Townsend noted that this was not part of the Amendment and would be subject to a separate process.

In closing Council presented a more detailed draft of proposed changes to the MSS. Parties were given an opportunity to provide further written comments on these changes.

Mr O'Farrell provided a useful submission on how we ought to view the procedural fairness of what had transpired:

It is submitted that the procedural unfairness caused by the Council's attempt to introduce new matters cannot be overcome through further written submissions. Such a step is not sufficient to afford natural justice in the context of the Amendment procedure under the Planning and Environment Act 1987, this Amendment and the procedure that the Panel adopted during the course of the hearing. In this respect, it is noted that the Panel allowed:

- **A** hearing to be conducted in an adversarial form
- An order of proceedings whereby the Council was to present its case ahead of other submitters so that other submitters could be made aware of the Council's case
- Expert evidence
- Cross-examination.

Further, the new items that the Council has sought to introduce would have been very significant matters in the hearing had they formed part of the Amendment. It is submitted that this adds a further layer to the importance of natural justice considerations here.

(iii) Discussion

The Melbourne Planning Scheme states at Clause 21.04–1.3:

The Proposed Urban Renewal Areas have been broadly identified as the locations for the next generation of the city's urban renewal. Once the structure plans for each of these areas are incorporated into the planning scheme the plan for the relevant local area will be updated with new objectives and strategies and the Growth Area Framework Plan will be updated to show the areas as 'Existing Urban Renewal Areas'

For consistency with the clear distinctions drawn in the MSS Arden–Macaulay Stage 1 should move from a 'proposed urban renewal areas' to a 'renewal area'.

We note that

- Amendment C228 changed the Growth Area Framework Plan at Clause 21.04 to correctly colour the Fishermans Bend area as an 'Existing Urban Renewal Area', as identified in the key to the Plan and Clause 21.04-1.2, but
- Amendment C196 which implements the City North Structure Plan did not propose to correctly colour the City North area as an 'Existing Urban Renewal Area'.

It would be desirable to update the text relating to the renewal area as part of this Amendment, but care would need to be taken that this is done properly. The draft presented at the close of the Hearing does not demonstrate the level of care or precision required. Particularly troubling, for example, are:

- the deletion of the identification of Allied Mills, so that here is a commercial buffer, but no indication of what use is being buffered
- statements about overshadowing Moonee Ponds Creek that may have significant impacts are unanalysed and untested.

While we accept the submissions made that any changes to the MSS should be properly advertised to all affected people and be subject to a full hearing; we do think that the framework plan should be updated to avoid confusion.

(iv) Conclusion

We conclude:

The MSS clearly states that local area policy will be updated as structure plans are introduced.

We recommend:

Change the Growth Area Framework Plan at Clause 21.04 to correctly colour the Arden–Macaulay North area as an 'Existing Urban Renewal Area', as identified in the key to the Plan and Clause 21.04-1.2.

We recommend Council:

Prepare an Amendment to update the text of MSS as it relates to Arden–Macaulay.

4 Zoning changes

4.1 New zones

Since the exhibition of the Amendment there have been changes to the VPP, with the number of commercial zones reduced and the Mixed use Zone updated:

- Business 1 has become Commercial 1
- Business 2 has become Commercial 1
- Business 3 has become Commercial 2.

These revised zones will apply in place of the exhibited Business Zones.

A potentially significant change is that the Commercial 2 Zone allows for motel or residential hotel subject to a permit whereas the Business 3 Zone did not. This affects the proposed buffer around Allied Mills.

4.2 Zoning in the commercial buffer

The Amendment would rezone properties bounded by Elizabeth Street, Chelmsford Street, Barrett Street, Bruce Street, Lloyd Street and Arden Street as well as the land at 2-50 Elizabeth Street from Industrial 1 Zone and Industrial 3 Zone to the Commercial 2 Zone (exhibited as Business 3 Zone).

The Commercial 2 Zone seeks to develop commercial areas for offices and appropriate manufacturing and industries and limited retail uses that do not affect the safety and amenity of adjacent, more sensitive uses.

(i) Evidence and Submissions

Mr Wren submitted that with the replacement of the Business 3 Zone by the Commercial 2 Zone (as a result of the introduction of the reformed zones):

... the thrust of Council's policy of prohibiting any form of residential development has been negated.

The Commercial 2 Zone allows limited residential land use in the form of a motel or residential hotel subject to a permit. Mr Wren sought an additional site specific provision to be inserted into the Amendment to remove the opportunity for a permit application for these uses. He suggested this be achieved by including reference to an incorporated document within the schedule at clause 52.03 that prohibits the accommodation uses within the Commercial 2 Zone.

A number of submitters requested the area proposed to be rezoned to Business 3 Zone be rezoned instead to a Mixed Use Zone. They believe that this zoning would better reflect the type of use that currently exists in the area which they say is predominately residential and that these existing uses have had no adverse effects on the operations of Allied Mills and other commercial businesses.

Mr Townsend explained to the Panel that the proposed zoning to Business 3 Zone was in accordance with Council's then adopted new MSS, which has since been gazetted, and the need to protect existing industry, particularly Allied Mills, from encroachment by residential uses which are sensitive to the impacts of industrial operations.

It is therefore an appropriate zone to use as a 'buffer' between industrial operations such as Allied Mills and both existing residential uses north of Chelmsford Street and proposed new residential uses east of Barrett Street.

Mr Townsend went on to explain that under the Commercial 2 Zone, all forms of accommodation uses are prohibited except for caretaker's house, residential hotel and motel, which are permit required uses.

In addition, to ensure residential uses and sensitive uses are prohibited under the Commercial 2 Zone, a planning scheme mechanism such as Clause 52.03 and Schedule to Clause 81.01 could be utilised as suggested by solicitors for Allied Mills.

However, should residential and other sensitive uses not be prohibited through the use of Clause 52.03 and the Schedule to Clause 81.01 or another planning scheme mechanism, the Environmental Audit Overlay (EAO) and Schedule 26 to the Design and Development Overlay (DDO26) should be applied to this area.

The Kensington Association supported the proposed Commercial 2 Zone for the YoungHusband Woolstore complex.

The Kensington Association expressed concern that existing residential properties in Bruce and Elizabeth Streets:

... are in the centre of the intended MSS buffer. To remove any conflict we ask that these homes be removed from the buffer by rezoning them to a conforming land use, thus removing the current inconsistencies in the application of the MSS.

Ms Ingram submitted that the Amendment overlooks a small residential precinct of 11 homes (3 of which have heritage overlays) in Bruce Street and Elizabeth Street directly opposite Allied Mills:

In seeking to bring a buffer into effect, the Planning Authority has been in error by simply applying a blanket zoning of Commercial 2 Zone to our area.

Ms Ingram sought a more refined approach so that a "granular and nuanced outcome can be achieved to realise the strategy".

In support Ms Ingram submitted that the Amendment has included sensitive uses in the buffer were in direct and material contradiction to the MSS requirements, quoting clause 21.04-1.3 and clause 21.14-2:

Planning controls will address the interface between ongoing industrial and residential areas ...

Ms Ingram sought for the existing houses to be rezoned to a conforming zone and also sought appropriate built form controls on the rear boundary and side setbacks of any new development to protect the amenity of existing residential properties in this precinct.

(ii) Discussion

We have concluded (in Section 0) that a Commercial buffer around Allied Mills is justified. In any reasonable interpretation of the appropriate planning tools this implies the use of an Industrial Zone or a Commercial 2 Zone. The Mixed Use Zone is recognised as a residential zone and so can hardly be used to deliver a commercial buffer.

We do not see the need to specifically exclude the few sensitive uses in the Commercial 2 Zone by way of a specific exclusions clause. To our mind this is coming close to trying to amend a standard zone in the VPP. For good or ill the Commercial 2 Zone is drafted as it is. There is clear policy support in the SPPF and MSS to refuse a permit for a sensitive use in this area.

We do not support the spot rezoning of individual properties. This is not accepted planning practice and would be contrary to policy.

(iii) Conclusion

We conclude:

The proposed zoning changes to Commercial and Mixed Use Zones are appropriate.

4.3 Public Park and Recreation Zone

The Amendment seeks to rezone VicTrack owned the land along the Moonee Ponds Creek to Public Park and Recreation Zone (PPRZ). The land is currently within the Industrial 1 Zone. It is indistinguishable from adjoining private land.

(i) Evidence and submissions

Mr Townsend for the Council submitted that:

As it is not possible to rezone land in private ownership to PPRZ only the land along the Moonee Ponds Creek which is in public ownership has been rezoned. The City of Melbourne will prepare a master plan for this land to:

- revitalise the Moonee Ponds Creek environs as a recreational and environmental corridor; and
- rovide improved pedestrian and cycle connections between the northern suburbs, E-Gate, Docklands and the CBD.

Mr Cicero for VicTrack noted that the two parcels of VicTrack land measure 10,719 square metres. Since VicTrack is a self-funded statutory corporation he confirmed the land is not Crown Land and that VicTrack:

... cannot gift land. Government Land Monitor Guidelines stipulate that public land cannot be sold at less than the market value as determined by the Valuer General.

If it was rezoned to PPRZ the Council could then seek to impose a Public Acquisition Overlay in circumstances where the value of the land would have significantly been impacted by the rezoning.

Mr Cicero went on to examine the purposes of the Public Use Zone and submitted that if there was to be a change in zone to a public land zone, "it ought to be PUZ4". He said:

However, the position of VicTrack is that if there is to be a change in zone, it should be to the Mixed Use Zone (MUZ) ... the same zone as the land immediately to the west of its land holding.

Mr Cicero made reference to Planning Practice Note No 2 (June 2015): Public land Zones, quoting the test for considering whether a public land zone is appropriate. He submitted that the northern parcel which is developed with relatively recently constructed buildings on land deemed in 2011 to be surplus does not warrant any public land zone:

In relation to the balance of its holdings, VicTrack does not need any level of flexibility protection or exemption, different from the surrounding zone provisions.

(ii) Discussion

Council's approach in this matter is wrongheaded. We can only imagine what Council's approach would be if VicTrack sought to rezone some Council land for transport purposes but did not seek to acquire it. There is no generic pool of 'government land' that makes land owned by a state government entity available for municipal purposes without acquisition. There has been the case for at least 25 years, and probably much longer.

If the City of Melbourne wants the land for open space it will need to acquire it. If the land is strategically important Council can apply a Public Acquisition Overlay. Until Council buys the land or applies a PAO the land should be treated the same as adjoining land.

A rezoning to Mixed Use Zone was not exhibited, and so caution must be taken in what changes can be made to the Amendment. For this land there is a strong case for rezoning to Mixed Use:

- there is clear policy support for the rezoning
- it would be an inconsistent application of the strategic work not to rezone the land
- the land is indistinguishable from the adjoining private land
- leaving the land in the Industrial 1 Zone would create two site-specific zones based only on ownership
- it would be inequitable to VicTrack not to rezone the land
- there is no credible alternative zone for the land, unless it is purchased by Council.

(iii) Conclusion

We recommend the Amendment be changed to:

Apply the Mixed Use Zone (and overlay controls) to VicTrack owned land.

We recommend Council:

Commence negotiations with VicTrack for the purchase of their land.

5 DDO60 Built form

5.1 Threshold issues

5.1.1 Further changes to DDO60

During the Hearing Council suggested a number of changes to DDO60 including requirements that:

Public and Private Open Space

Public open space must receive a minimum of 3 hours of direct sunlight between 9am and 3pm during mid-winter and at least 5 hours of direct sunlight between 9am and 3pm on September 22. Where this minimum is not currently met, the development must not create additional overshadowing of the open space.

Development must include pervious area, which is as large as possible but no less than 30 per cent of the site area.

These are significant changes and should have been considered in the original drafting. Open space is a critical part of the planning any area and one would expect it to have been considered as part of preparing DDO60. The 'pervious area' requirement was part of material in the *Structure Plan*, and so again, ought to have been considered.

We conclude:

A number of the changes proposed by Council at the hearing would have far reaching ramifications for some land owners and if they were to be pursued should only be done so through a transparent process with notice to all affected parties.

5.1.2 Mandatory or discretionary requirements

(i) Policy context of the issue

Mandatory controls in Victorian Planning Schemes are an exception. They need to be explicitly justified.

Practice Note 59: The role of mandatory provisions in planning schemes (September 2010) observes:

Planning schemes based on the Victoria Planning Provisions (VPP) are predominantly performance based. Planning schemes specify the objective that needs to be achieved and provide a degree of freedom on how it is achieved. Mandatory provisions in the VPP are the exception. The VPP process is primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than merely prescriptive mandatory requirements.

Nevertheless, there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome.

This practice note sets out criteria that can be used to decide whether mandatory provisions may be appropriate:

- Is the mandatory provision strategically supported?
 - X Does the proposed measure have a sound strategic basis having regard to the planning objective to be achieved and the planning policy framework generally?
 - X Does the proposed mandatory measure clearly implement a policy or achieve an objective rather than just being a prescriptive tool?
- Is the mandatory provision appropriate to the majority of proposals?
 - X Has the scope of the proposed mandatory provision been carefully considered to ensure that it will be appropriate in the vast majority of cases to limit the unnecessary loss of the flexibility and opportunity available in a performance based system?
 - X Will the considered application of planning policy to be implemented by the proposed measure lead to the outcome prescribed by the measure in the vast majority of cases or is it merely one of a number of possible outcomes?
- Does the mandatory provision provide for the preferred outcome?
 - **X** Does a proposed mandatory provision resolve divergent opinions within the community as to a preferred outcome when a consistent outcome is necessary?
 - **X** Does a proposed mandatory provision avoid the risk of adverse outcomes in circumstances where there is likely to be constant pressure for development inconsistent with planning policy?
 - % Is there real evidence of development exceeding the proposed control?
- Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?
 - **X** Will the majority of proposals not in accordance with the requirements fail to meet the objectives of the control?
 - **X** Will the majority of proposals not in accordance with the requirements lead to unacceptable planning outcomes?
 - X Will the mandatory provision reduce administrative costs?
 - X Will the proposed mandatory provision reduce costs imposed on councils, applicants and the community to the extent that it significantly outweighs the benefit of a performance based provision?

(ii) Evidence and submissions

Mr Townsend submitted that:

The proposed overall building heights are proposed to be mandatory in that a permit cannot be granted to increase the heights by more than 30 per cent of the preferred maximum building heights nominated in the table in DDO60.

Any increase above the nominated preferred height must be visually recessive and must not increase shadowing above that of the preferred height.

As Amendment C190 will enable infill development on a large scale the contextual issues are important. It is for this reason that height limits should be set. The proposed heights are generous and provide an envelope in which exemplary buildings are more likely.

Mr Townsend submitted that:

... the depth of analysis underpinning the Amendment and the cohesion of its constituent parts comprises an exception contemplated by Practice Note 59.

Mr Townsend went on to argue that the proposed mandatory height controls will assist in the even spread of development across the Arden–Macaulay precinct:

If these larger sites are able to draw too much oxygen from other parts of the precinct, it may mean that parts remain undeveloped for many years.

Mr Townsend submitted that Practice Note 59 contemplates the use of mandatory building controls where there are strong and consistent character themes:

... there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome. Although these circumstances cannot be common practice, they may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast.

Mr Townsend submitted that there is nothing to suggest that this is limited to circumstances in which character has already been established. He said:

Rather, it is submitted that this reference to strong and consistent character themes can readily be applied to a situation such as in Arden–Macaulay in which the Planning Authority has articulated a clear and cohesive vision for an area of urban renewal.

Mr Townsend went on to list the following benefits:

- helping ensure that development matches the supply of open space and other infrastructure that can be reasonably be provided by the planning authority
- b) helping achieve the high standard of amenity foreshadowed in the Structure Plan by preventing overshadowing of windows, open space, and the public realm
- helping spread development over the entirety of the Arden– Macaulay area rather than concentrated in a smaller number of larger sites.

Mr Townsend detailed numerous examples in the CBD and in West Melbourne where discretionary controls had been ineffective in achieving the built form desired by the planning authority:

Council's experience with discretionary height controls has not always been a happy one. Generally in the more stable parts of the municipality, applicants consider the discretionary height as a starting point and approvals are within two to three storeys of the preferred height. In areas with large land parcels such as West Melbourne or where there is development pressure such as close to the Queen Victoria Markets, the discretionary heights are often largely ignored.

Ms Hodyl in expert evidence submitted that mandatory controls for street walls were essential because:

... the quality of the public realm is foremost determined by the quality of the street.

She illustrated the subsequent loss of sky views if the 1:1 ratio is exceeded. Ms Hodyl went onto demonstrate compromised solar access to lower building levels and the reduction of natural light within buildings.

Mr Czarny considered that:

While the basis of the VPPs has by no means changed, I believe that the thinking in relation to the application of mandatory controls has shifted somewhat.

Mr Czarny noted the adoption of mandatory height controls in the Neighbourhood Residential Zone to protect neighbourhood character and in specific locations in the General Residential Zone in relation to height, number of storeys and related measures. Selected Neighbourhood Activity Centres in metropolitan Melbourne have mandatory height controls to achieve a balance between the achievement of moderate change while reinforcing prevailing character and image attributes. He also referred to Fishermans Bend, which has interim mandatory height controls, and the Bourke Hill precinct in the CBD, and said:

As long as the proposed (mandatory) parameters are generous enough to accommodate capacity, I believe that there is real benefit in providing confidence to landowners, stakeholders and decision-makers. This is my view preferential to an adversarial system of assessment.

While the Structure Plan seeks a combination of discretionary and mandatory measures (and some flexibility with respect to preferred and absolute heights) it is important ... that there should be locations where greater flexibility and scale may be realised.

Some submitters opposed the discretionary nature of the height controls and would like to see these heights being made mandatory. They feel that six storeys (and most likely eight given the discretion) is too high in already established residential areas of Kensington. They say there is no detail on how the discretionary heights of an additional 30 per cent will be handled.

Other submitters opposed mandatory planning controls because they limit flexibility needed for good design.

Ms Oddie submitted that the preferred maximum heights and setbacks and the 30 per cent allowance should be abandoned in favour of lower and more mandatory built form controls, particularly at the interfaces with existing residential areas and public open spaces, and proposed open spaces, such as the Moonee Ponds Creek Corridor.

The Kensington Association was strongly in support of mandatory height controls in order to provide certainty to existing residents.

Mr Little for B A Glen Investments and Haines Street Holdings Pty Ltd strongly opposed the mandatory street wall and building height controls for their property and across the Arden–Macaulay precinct.

Mandatory built form controls of this nature limit the redevelopment of the urban renewal area, and are submitted to be contrary to Plan Melbourne and the appropriate Planning Practice Note 59.

Ms Schroor for Chubb Properties Pty Ltd submitted that:

...the Flemington Bridge local centre is a good example of an area where mandatory controls are inappropriate. This area has a diverse site and urban context. The size of the land (5,620 square metres) provides an excellent opportunity for a wholly integrated design approach ... it is unlikely that a traditional 'block building' typology would be appropriate.

Mr Peake submitted that mandatory height and setback controls are inappropriate in what is generally a brownfield urban renewal precinct. In support of his position he cited the panel report for Amendment C171 – Southbank *Structure Plan*, which recommended that the proposed mandatory controls not be included in that Amendment:

It is submitted that the built form outcome should be supported by policy but that the heights both in terms of street walls and building height should be discretionary.

Mr Peake went on to add that should the panel decide to recommend mandatory height limits then there need to be exceptions for parapets, antennas, lift overruns, structure associated with rooftop open space, plant and equipment and architectural features.

(iii) Discussion

There are numerous aspects of the controls that are drafted to imply a mandatory control. In the version tendered in its closing submission Council proposed mandatory controls for:

- maximum building height
- maximum street wall height
- precise street wall height in some area
- active street frontage
- open space overshadowing
- impervious areas.

There has been no explicit justification for a number of the mandatory aspects proposed by Council and some may simply be the result of poor drafting; it can make no sense to require streets walls to be a precise height, and not say 1 metre lower, in the Arden–Macaulay context.

There is no doubt that mandatory provisions are the exception rather than the rule in the Victorian planning system, but this does not mean there is no place for them. Practice Note 59 sets out the grounds for when they are appropriate.

The proposed mandatory controls relating to overshadowing of open space seem to be a knee jerk reaction to some recent planning applications. We have no difficulty with controls to protect sunlight to open space, but this should have been considered as part of the *Structure Plan*. Council cannot have it both ways: they cannot claim on the one hand that the depth of analysis justifies mandatory controls, but on the other seek to introduce late changes to the Amendment in relation to overshadowing open space implying that this factor had been overlooked in the analysis.

Two aspects of the controls have been subject to significant scrutiny: overall building height and street wall height. These are the two aspects that are unambiguously mandatory in the proposed DDO.

We note that other Panels have not accepted mandatory controls where they apply to urban renewal areas in the Capital City Zone. We also note that mandatory controls have been applied in a number of schemes notably a DDO in Port Phillip that applies mandatory controls to achieve a consistent street wall.

We think that this part of the Arden–Macaulay renewal area can justify some mandatory controls in relation to overall height and street wall height in some locations. A detailed case was not presented for why other aspects of the Amendment justified mandatory controls and our preliminary assessment against the Practice Note indicates that they are not likely to be justified.

We note the number of examples in other parts of the City of Melbourne of buildings exceeding discretionary height control, and recognise that in some settings in Melbourne if height controls are to mean anything over the longer term they may need to contain mandatory component.

We have recommended mandatory provisions for overall height and street wall height and a detailed assessment against the Practice Note is presented as part of the discussion on the controls themselves.

(iv) Conclusion

We conclude:

Mandatory controls have not been justified for:

- Active street frontage
- Open space overshadowing
- Impervious areas.

5.1.3 Clearly defined controls

A number of controls have been drafted with reference to an existing street width and 45 degree angle. This might be acceptable as a design principle, but it presents a number of obvious issues in its practical application:

- a designer will need to determine the street width, when this could simply be specified in the control
- it is not clear whether the 45 degree angle shown in the diagrams is at the same level as the subject site or the level of the site opposite.

Interface controls have been constructed with reference to a line of line of sight from an unspecified location in adjoining properties.

We recommend:

Amend DDO60 as shown in Appendix C.

Table 1 shows the various controls and our calculations of what they might mean in practice.

The lack of clear specification as to what the controls mean in actual setbacks in the control is significant. These controls should really be rejected solely on the basis that they do not specify with any precision what requirement a developer is supposed to meet. On face value they require a designer (and then presumably the assessing planner) to survey the private spaces of adjoining properties (building location and presumably height).

This rear line of site control depends on knowing where the rear of an adjoining dwelling is, and presumably its natural ground level. As exhibited the controls will be difficult to apply in practice and the precise controls will change over time if adjoining dwellings construct or demolish buildings.

Ms Hodyl recommended a specific measurement of 6 metres from the rear boundary of low-scale residential development from which the view line should be generated. No compelling evidence was presented as to how this figure was delivered.

Council adopted Ms Hodyl's suggestion in its closing submission and while this would make the relevant setback angle more or less precisely defined, it still leaves the basic geometry calculations to be carried out for each application.

As exhibited, the controls will require measurement and calculations each time they are to be applied. If they were to proceed, they would need be reduced to a conventional expression of height and set back that refers only the subject site making the application of the controls clear and not subject to variation over time.

(i) Conclusion

DDO60 should be changed to:

Express any proposed setbacks in a clearly defined way that does not require on-site measurement to know what controls apply.

We recommend:

Amend DDO60 as shown in Appendix C.

Table 1: Rear and side setback controls

NOTE

To reduce the electronic size of this document, Table 1 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

5.1.4 Storeys or metres

(i) Evidence and Submissions

There was considerable discussion at the hearing about how the controls expressed in metres translated into a buildable number of storeys.

Mr Peake, for Vision Australia, noted the 1:1 relationship for street wall heights did not work for streets 15 metres in width. He submitted that heights should be expressed as a number of storeys:

... being generally 6 to 8 storeys in areas where the preferred height is 20 metres.

In [areas with 15 mete wide streets] the height control should be 5 storeys (if the panel decides to recommend mandatory height limits).

(ii) Discussion

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

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

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

Storey is defined in the VPP:

That part of a building between floor levels. If there is no floor above, it is the part between the floor level and ceiling. It may include an attic, basement, built over car parking area, and mezzanine.

A control expressed in storeys needs to be careful that it does not count basements in the permitted height and allows for service floors that are not habitable. We think any reasonable reading of the controls will allow for roof structures and architectural features above the top floor but this could be made clear in the controls. Setback controls need to expressed in metres simply because one cannot setback a building a number of storeys.

(iii) Conclusion

DDO60 should be changed to:

Express the proposed heights in storeys.

We recommend:

Amend DDO60 as shown in Appendix C.

5.1.5 Structure of DDO60

DDO60 combines overall height, street wall, interface setbacks and built form outcomes in one table.

It is not clear from the controls where the various street wall controls apply. The application of the controls is presented verbally under the different areas of DDO60. This means there is no 'overall picture' of what is trying to be achieved.

At our request Council produced a plan (Document 4) that mapped where the various street wall controls apply. We think that this plan could form the basis of the application of controls without the need to list individual streets.

Separating out the various components of DDO60 will make it easier to use.

By restructuring DDO60, the number of areas identified can be rationalised and the two components of Area 6 placed in their own defined area.

DDO60 should be changed to:

Present built form outcomes and height controls in separate tables.

Present street wall and interface control by reference to a plan.

We recommend:

Amend the Map of DDO60 to rationalise the number and extent of areas:

- A1 to replace Area 2, Area 4
- A2 to replace Area 8
- **A3** to replace Area 5
- A4 to replace Area 3, Area 12, Area 13
- A5 to replace Area 7
- A6 to replace Area 6 east of Boundary Road
- A7 to replace Area 6 west of Boundary Road
- A8 to replace Area 1, Area 9, Area 10, Area 11.

Amend DDO60 as shown in Appendix C.

5.1.6 Other technical issues

Council proposed introducing text relating to the definition of height:

Building height is the vertical distance between the footpath or, if no footpath, the natural surface level at the centre of the site frontage and the highest point of the building, with the exception of architectural features and building services.

We do not see the need to specify where height is measured from. Height is defined in the VPP and there is no need to specify a point from which it is measured. For the land between Shiel Street and Macaulay Road this definition would undermine the explicit justification for the height in this area that the land falls away from the frontage. There is a need to exclude architectural features and building services.

In closing Council sought to add a specific reference to the *Structure Plan* and Housing Strategy in the text of DDO60:

... otherwise achieves exemplary compliance with the Objectives and Strategies of the Structure Plan, including the provision of: affordable housing (as defined by the City of Melbourne's housing strategy); public open space beyond minimum statutory requirements; and, through block connections

This drafting is contrary to the Practice Note on Incorporated and Reference Documents, and contrary to consistent advice from panels over many years that references to external documents in policy and controls should be avoided.

A number of requirements in DDO60 repeat other aspects of the Planning Scheme including material found in Clause: 22.17 Urban Design Outside the Capital City Zone.

We conclude:

There is no need to specify a point from which height is measured.

References to external documents should be avoided unless they are incorporated.

DDO60 should be changed to:

Remove requirements that are covered in other parts of the planning scheme.

We recommend:

Amend DDO60 as shown in Appendix C.

5.2 Objectives and built form outcomes

5.2.1 Objectives

(i) Evidence and Submissions

Ms Hodyl used recent permit applications in the Haines Streets to highlight what she said were some limitations of the Amendment as currently worded. These included:

- Issues with the height, mass and insufficient setbacks from side and rear boundaries which compromise the internal amenity of apartments, particularly at lower floors.
- Upper level street setbacks that are not visually recessive, particularly on streets adjacent to low scale residential areas.
- Inappropriate levels of internal amenity for future occupants of proposed developments and potentially constraining the delivery (of) good levels of internal apartment amenity in the future development of adjacent sites.

Ms Hodyl recommended additional objectives to DDO60:

- To deliver building separation that ensures daylight and sunlight penetrate to the lower levels of existing and future residential development.
- To ensure that proposed built form elements taller than the street wall height are visually recessive and do not contribute to visual bulk.

Mr Peake queried how this second objective could be assessed.

Mr Czarny recommended that the design objectives be reviewed to ensure they are more directly tied to the *Structure Plan*. As an example he cited the lack of reference to public open spaces:

Several of the objectives are of a generic nature and have the capacity to duplicate existing local policy.

Mr Sheppard considered that some of the objectives to be inappropriately specific, unnecessarily reducing the flexibility for creative design responses. In particular the specification of:

- smaller vertical sections in wide frontages (which is anyway repeated more appropriately as a discretionary requirement in clause 2.0
- A visual link between the public realm and the first five levels of a building

These prescriptions are only one way of achieving the objective and should not be specified in clause 1.0.

Mr Milner submitted that the design objectives as they reference to heritage should be amended to delete reference to new development respecting the character, form, massing and scale of heritage buildings and be replaced with an emphasis upon integration of land use, development and movements networks.

Residents About Integrated Development @ 3051 Inc (RAID 3051) supported urban consolidation but submitted that the preferred model for built form should be 4 to 6 storeys (nominally 12 to 20 metres high). Development in excess of 6 storeys should be confined to limited areas and rejected out of hand when in close proximity to existing low-rise areas and parks. In particular, the group detailed the negative impact of overshadowing from current development applications in Haines Street, which the group submits are consistent with what is proposed in the *Structure Plan*.

Mr Govenlock in expert evidence recommended a minor modification to the last Design Objective in relation visual links with the public realm to provide greater clarity.

(ii) Discussion

The objectives are in some ways the most fundamental aspect of the DOO; they set out what the controls are intended to achieve.

We do not think it is appropriate to contemplate wholesale changes to the objectives, or introduce objectives dealing with new issues, even if these were matters addressed in the *Structure Plan*. In preparing the Amendment, Council had every opportunity to cross check its drafting against its strategic documents, and major changes to such a fundamental part of the Amendment should not be made.

Only refinements to the exhibited controls should be contemplated.

The first objective reads:

To ensure the preferred character of Arden–Macaulay develops as a compact, high density, mid-rise, walkable and high amenity neighbourhood.

We agree with qualifying the preferred character as a predominately mid-rise neighbourhood. As discussed in Section 2.4 we think that some higher buildings in some locations may be acceptable. A separate objective should be added to make this clear and to reflect Council's current position that some sites could accommodate higher buildings if a school or additional open space is provided. The first objective says "ensure the preferred character of Arden–Macaulay develops as", this could simply be replaced with 'create' for clarity.

The reference to 6 - 12 storeys in the second objective could be made in the first objective when mid-rise is first mentioned.

We do not agree with Council's suggestion that the second objective should refer to development stepping down to Moonee Ponds Creek. The *Structure Plan* does not present this as an approach to heights.

The third objective refers to the interface with existing area in terms of scale and context, and amenity. We think these are two separate issues: scale and context are important on the interface streets and amenity is important where development backs onto existing residential development. These separate issues would be clearer if amenity was addressed in a separate objective.

The modified objectives would read:

To <u>create</u> ensure the preferred character of Arden Macaulay develops as a compact, high density, <u>predominantly</u> mid-rise, 6 - 12 storey, walkable and high amenity neighbourhood.

To provide for higher development that delivers identified public benefits on large sites that do not interface with the low scale surrounding established residential neighbourhoods.

To provide for mid-rise 6 — 12 storey development, that steps stepping down at the interface with the low scale surrounding established residential neighbourhoods.

To ensure the scale, height and setbacks of new development buildings at the interface with the surrounding established existing residential neighbourhoods is compatible with the scale, amenity and context of these areas.

To improve the provide a highly walkable neighbourhood walkability by introducing a fine-grain network of laneways/through links, which is integrated with the pattern of development of adjacent areas, maximises permeability for pedestrian movement and accommodates vehicular and service access to developments.

To create urban streetscapes within the area that are defined by a generally consistent plane of building facades that collectively enclose the sides of the streetscapes whilst but allowing good levels of daylight and sunlight to penetrate to the streets and to lower building levels.

To create streetscapes that have a high level of pedestrian comfort in terms of their scale, access to sunlight, daylight and sky views.

To ensure the scale, height and setback of new development on existing residential streets is compatible with the scale and context of these streets.

We agree with Council that the objective about walkability can be shortened as explicit guidance is included in the body of DDO60 about what is to be achieved with the laneways.

To <u>provide a highly walkable</u> the neighbourhood walkability by introducing a fine-grain network of laneways/through links, which is integrated with the pattern of development of adjacent areas, maximises permeability for pedestrian movement and accommodates vehicular and service access to developments.

We also agree that the objective on passive surveillance is too specific and should be changed to:

To promote a visual link of the public realm with the first five levels of the building and facilitate the passive surveillance of the public realm.

Though the controls require a setback above the street edge there is no specific objective on what is trying to be achieved. A specific objective should be added:

To ensure that built form elements above the street wall are visually recessive and do not contribute to visual bulk.

The quality of the internal amenity of apartments is an issue across all of Melbourne and needs to be tackled systematically, not by tacking on objectives to a local DDO on an opportunistic basis.

(iii) Conclusion

DDO60 should be changed to:

Update the objectives.

We recommend:

Amend DDO60 as shown in Appendix C.

5.2.2 Built form outcomes

The built form outcomes of each precinct were not subject to much contentious discussion at the Hearing and are generally consistent with the controls and Structure Plan.

Examining all the outcomes together reveals variations between different areas that seem to have no strategic basis. For example:

- Area 3 A scale of development that provides street definition as well as a pedestrian friendly scale and appropriate access to sunlight and daylight.
- Area 9 Deliver a scale of development that provides street definition and a <u>high level of pedestrian amenity</u>, having regard to access to sunlight, <u>appropriate sky views</u> and a pedestrian friendly scale.
- Area 10 Deliver a scale of development that provides street definition and a <u>very high level of pedestrian amenity</u> suitable for a local activity centre, including access to sunlight to ground floor, sky views and a pedestrian friendly scale.

These outcomes have several minor variations:

- 'having regard to' in some areas as opposed to 'including' in others
- 'access to sunlight' in some areas as opposed to 'access to sunlight to ground floors' in others
- 'high level of pedestrian amenity' as opposed to 'very high level of pedestrian amenity'
- 'sky views' in some as opposed to 'appropriate sky views' in others.

We think that the minor variations should be removed and the outcomes edited for clarity. Table 2 shows these changes.

Redundant objectives relating to open space and laneways should also be deleted.

In Area 7, Mr Czarny recommended additional built form outcomes be specified in DDO60 to address the type of built form outcomes that are preferred on the perimeter of the Office of Housing Estate. We agree with this.

DDO60 should be changed to:

Update the built form outcomes.

We recommend:

Amend DDO60 as shown in Appendix C.

(i) Evidence and submissions

Table 2: Panel changes to built form outcomes

Revised Area	Exhibited Area	Built form outcomes Note: Changes to minor variations between areas are not tracked.	
A1	Area 2, Area 4	Deliver a scale of development that complements the established low-scale residential area	
		Protect the amenity of existing residential areas to the west and north/south of Little Hardiman Street by avoiding overlooking and overshadowing of private open space and minimising the visual impact of upper levels.	
	Area 4	Deliver a scale of development that responds appropriately to the existing context	
A2	Area 8	Set back of higher building form along Melrose Street to deliver scale of development that responds appropriately to the existing context.	
A3	Area 5	<u>Deliver</u> a scale of development that provides street definition <u>as well as and</u> a pedestrian friendly scale	
		<u>Deliver</u> a scale of development that provides appropriate access to sunlight and daylight.	
		Protect the amenity of existing residential development by avoiding overlooking and overshadowing of private open space and minimising the visual impact of upper levels.	
A4, A5	Area 3, Area 7, Area 12, Area 13	<u>Deliver</u> a scale of development that provides street definition <u>as well as and</u> a pedestrian friendly scale	
		<u>Deliver</u> a scale of development that provides appropriate access to sunlight and daylight.	
		Deliver a scale of development at the interface with established low-scale residential <u>development</u> that respects the existing context, provides an appropriate transition in height and minimises the visual impact of upper levels.	
		Solar access is maintained to ground floors on western side of Thompson Street and southern side of Scarborough Place.	
		<u>Deliver the reintegration of Office of Housing estates into the surrounding urban fabric.</u>	
A6, A7	Area 6,	<u>Deliver</u> a scale of development that provides street definition <u>as well as and</u> a pedestrian friendly scale	
		<u>Deliver</u> a scale of development that provides appropriate access to sunlight and daylight.	
		Provide limited opportunities for taller buildings that deliver significant public benefit outcomes.	
A8	Area 1, Area 9, Area 10, Area 11	<u>Deliver</u> a scale of development that provides street definition as well as and a pedestrian friendly scale	
		<u>Deliver</u> a scale of development that provides appropriate access to sunlight and daylight.	
		Deliver a scale of development at the interface with established low-scale residential <u>development</u> that respects the existing context, provides an appropriate transition in height and minimises the visual impact of upper levels.	
		Provide increased density <u>in local centres compared to</u> relation to surrounding development within local centres .	
	Area 1	Protect the amenity of existing and future development to the south by avoiding unreasonable overlooking and overshadowing.	
	Area 10	Development does not unreasonably overshadow public open space.	

All areas

Ensures new through connections and existing laneways have appropriate levels of access to daylight and sunlight.

5.3 Overall height

(i) What are the issues

Submissions raised concerns about:

- the overall height
- the proposal for a 30 per cent bonus
- the proposal for unlimited height in certain circumstances
- mandatory controls.

(ii) Evidence and submissions

The overall height

The Amendment sets up four height levels:

- **10.5** metres
- 14 metres
- 20 metres
- 28/30 metres.

A number of submitters considered that the proposed 20m and 30m heights are excessive and out of context with established Kensington neighbourhood. They oppose uniform height limits over wide areas. A more appropriate approach they say would be buildings with a variety of heights, varied street set-backs and other measures to produce an articulated and interesting built form.

The Kensington Association submitted:

Increases in the height of the site above 20 metres would be vigorously opposed.

The proposal for a 30 per cent bonus

The exhibited version specified a 'maximum building height' and set the requirement:

A permit cannot be granted to increase the maximum building height by more than 30 per cent of the maximum building height specified.

Ms Hodyl explained that the introduction of a 30 per cent cap on additional height on the preferred maximum height was introduced in order to meet one of primary objectives of the *Structure Plan* to ensure the development of a mid-rise precinct.

Without clarification on the extent of discretion suitable to achieve a mid-rise suburb, development proposals that significantly exceeded the preferred height controls could be considered.

Mr Czarny recommended that we consider the designation of selected key strategic development sites in Areas 3 and 6 of DDO60 where marginal increases in scale above the 30 per cent cap may be acceptable, "subject to additional design objectives and parameters". He said:

This is as much as acknowledged in the Council's suggestion in Area 6 for greater capacity on a site that can accommodate a Government School.

The Kensington Association submitted that the 30 per cent allowance in height is acceptable in non-interfacing areas; however, it sought a more subtle and lower approach where new development interfaces with existing residential properties.

Criteria to be used in considering a 30 per cent increase in building heights

The exhibited version of DDO60 did not set criteria around accessing the 30 per cent additional height. Council's post exhibition version of DDO60 stated:

A permit cannot be granted to increase the preferred maximum building height by more than 30 per cent. A permit can only be granted to increase the preferred maximum building height if it can be demonstrated that the development:

- (1) provides a demonstrable benefit to the broader community beyond the requirements in this scheme (for example but not limited to a public open space contribution greater than that prescribed, affordable housing, etc.)
- (2) will not increase overshadowing of the public realm between 11am and 2pm at the equinox, and
- (3) the upper storeys will be visually recessive when viewed from the adjoining public realm and private open space of adjoining low scale residential development.

In exercising this discretion Ms Hodyl recommended that the definition of affordable housing be clarified by reference to the City of Melbourne Housing Strategy.

Mr Little for B A Glen Investments queried the criteria to be used in considering a 30 per cent increase in building heights. He submitted that the requirement for a demonstrating community benefit is not in the *Structure Plan*:

... and therefore there is a lack of strategic analysis to underpin what demonstrated community benefit is required and how it should be provided.

He said this lack of clarity:

... creates confusion and does not assist the decision making process.

Mr Little described it as a:

... pseudo development contribution.

Mr Chamberlain on behalf of the owners of 89-96 Stubbs Street submitted that the proposed 30 per cent limit is not supported as the criteria set up a de facto mandatory control that has not been substantiated.

Mr Chamberlain submitted that the specific tests under the criteria are flawed. He argued that the post-exhibition change which introduced 'demonstrable benefit' has no logical strategic basis. Mr Chamberlain went onto challenge the achievability of affordable housing in the absence of some form of national affordable housing

scheme and applicability of the additional open space contribution, which would only work in areas with an identified need for public open space.

The proposal for unlimited height in certain circumstances

Mr Sheppard considered that the two EG Funds sites were Strategic Redevelopment Sites appropriate for large residential developments in accordance with clause 16.03-3. He submitted that the large areas also created the opportunity for taller development than envisaged by DDO60 because the sites are more able to contain the impacts of such development within the property.

Mr Milner, in expert evidence, in relation to a large site abutting CityLink between Sutton Street and Mark Street, noted that the area between Boundary Road and CityLink differed in strategic context from the reminder of the *Structure Plan* area. The strategic context of the height provisions in the *Structure Plan*, he submitted, has been influenced by the principle "to integrate new development with the surrounding character". He argued that the urban context this corridor of land was different. It is devoid of small scale housing and was characterised by an urban context of free standing structures between 14 and 20 storeys, mostly Office of Housing towers.

Mr Milner suggested that DDO60 provisions should be amended to:

- Encourage buildings that make a positive and considered response to the entrance of the capital city. This might take the form of taller structures.
- ■ Vary the upper level setback above the street wall to 5 metres for land or developments that abut City Link.
- Provide for medium to higher rise development between CityLink and Boundary Road.

Given the site area of 3,986 square metres for 89-96 Stubbs Street, Mr Chamberlain argued for 'exceptional circumstances' in relation to building height quoting Mr Czarny's evidence.

The site is large enough to accommodate additional height without causing additional impacts – then guite simply this ought to be enough.

Mr O'Farrell submitted that this height could be more flexible and submitted that the following tests would be appropriate in considering additional height:

A permit can be granted to increase the preferred maximum building height by more than 30 per cent if the development responds appropriately to the objectives of this Schedule and any of the following can be demonstrated:

- that the development provides a demonstrable benefit to the community (for example but not limited to a public open space contribution greater than that prescribed, provision of affordable housing, provision of other community infrastructure, architectural excellence, heritage restoration etc); or
- That the development is located on a site with an area greater than 1 hectare and the site does not adjoin the low scale surrounding established neighbourhoods; or

- That the development is located on a site with an interface to the CityLink viaduct and does not adjoin the low scale surrounding established neighbourhoods; or
- that the development respects the public realm and provides for reasonable access to sunlight throughout the year; or
- The development incorporates a high level of ESD;
- that the upper storeys of the development will be appropriately recessive to the context of the site.

Buildings or works at street level should be built to street edge to provide a clearly delineated and fronted public realm.

(iii) Discussion

We have previously concluded that a built form vision of a mid-rise area that relates to the existing residential areas is a sound basis for development of the area.

As stated above, the Amendment sets up four height levels:

- **10.5** metres
- 14 metres
- 20 metres
- **28/30** metres.

Area 6 west of Boundary Road has a preferred maximum height limit of 28 metres; areas 11 and 10 set a preferred maximum height of 30 metres. There appears to be no justification for setting a height difference of 2 metres (about half a storey) between these areas. The 30 per cent increase adds to range of different height levels specified. Table 3 shows the heights.

Table 3: Proposed heights post-exhibition

Area	Preferred maximum height	Preferred height plus 30 per cent
Area 2, Area 4	10.5 metres	14 metres
Area 8, Area 13	14 metres	18.2 metres
Area 3, Area 5, Area 7, Area 9, Area 12	20 metres	26 metres
Area 6 – All land east of Boundary Road	20 metres	26 metres – This does not apply if the development contains a school
Area 6 – All land west of Boundary Road	28 metres	36.4 metres – This does not apply if the development contains a school
Area 1, Area 10, Area 11	30 metres	39 metres

Figure 8: DDO areas

NOTE

To reduce the electronic size of this document, Figure 8 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Accessing the 30 per cent additional height

We agree with submissions that DDO60 should not be used to extract de facto development contributions. We also have concerns about its potential use as a de facto method of 'inclusionary zoning'. Whether buildings should exceed the preferred maximum height should be assessed on built form issues. The controls that apply to all the sites should not be used to try to lever broader development contributions.

As set out in Section 2.4, we think Arden–Macaulay can be distinguished from other renewal areas that have a stronger relationship with the CBD and hence lend themselves to a higher built form and development controls that apply in to land covered by the Capital City Zone.

We accept the broad approach of setting controls for this renewal area that:

Set a 'preferred height' such that development up to the 'preferred height' will be acceptable on character grounds (provided other requirements including street wall setbacks are met) and in keeping with the strategic vision for the area

Allows development 30 per cent above the preferred height recognising that care needs to be taken to ensure that the character (and amenity) objectives are achieved and achievement of broader planning policy can balance the downsides (even though these may not be great) of building above the preferred height.

We think that the criteria for exceeding the preferred maximum height need to be clearly articulated and relate solely to the critical deign issue the renewal area is likely to face:

- the broader need for renewal area to deliver community benefit
- design quality
- the quality of the public realm
- igh quality pedestrian links where needed
- solar access to the public realm.

We accept that some of these issues are not clearly defined and will be the subject of debate in relation to individual projects. We think such debate is part and parcel of a discretionary system. What is important is the criteria provide incentives for increased design quality.

Development above the 30 per cent additional height

We agree that some sites could support higher development that the 30 per cent cap without undermining the built form vision. The difficulty is that if this development opportunity were taken on all such suitable sites then the overall vision for a mid-rise extension to the existing residential areas would be lost. While there are opportunities for a few higher buildings within the context of a mid-rise neighbourhood, there needs to be an effective way to limit the extent of such development. Such a limit is required to:

- avoid development at a density not supported by the infrastructure and traffic investigations carried out as part of the structure planning process
- avoid the development of too many taller structures such that the area is no longer mid-rise but takes on a higher characteristic
- foster orderly development setting clear expectation for all developers in the area about the nature and pace of change expected.

Rather than restrict all higher development, or try to precisely identify specific sites favouring one land owner over another, we accept the general proposition that the limited opportunities for the higher development should be delivered to developments that make a specific positive contribution to the area.

All development is ultimately a partnership between private investors, government who provide necessary infrastructure and local communities who absorb new development and new community members. In this case we see it reasonable to set controls such that limited opportunities for more intensive private development are delivered to development that contributes more to this collaborative effort by the delivery of a new local school or additional public open space.

Amendment C209 seeks to introduce a public open space contribution requirement under the schedule to Clause 52.01 Public Open Space Contributions and Subdivision, and a new local policy (Public Open Space Contributions) at Clause 22.54. The Amendment was adopted by Council on 26 May 2015 and has been

submitted to the Minister for approval. The Amendment proposes a contribution of 7.06 per cent for the Arden–Macaulay area.

If open space is to be the test for exceeding the mandatory height limit than a precise figure should be set. This should be more than the proposed contribution under Clause 52.01. We think a contribution total of 10 per cent would be the minimum for a consideration of extra height based on an open space contribution.

Specific sites

We are also concerned about the detailed application of some controls and whether they are justified for the specific sites. A number of these were raised during the Hearing.

It is not clear why land in Area 9 has a 20 metre height limit applied:

- the land opposite has a 30 metre height limit
- the land is on the south side of Macaulay Road, and so overshadowing the footpath is not an issue
- the land will be zoned Commercial 1
- land to the south is currently zones industrial and will be part of the stage 2 renewal area.

We are concerned about applying mandatory limits to the Office of Housing towers. These areas do not relate well to the existing urban fabric and were built to a now defunct design philosophy. There is great scope to incorporate these areas back into the urban fabric of the area. This has been done on other estates.

Such a reincorporation should be driven be a master planning process that can balance all relevant considerations, and not be locked in at this stage.

The height of Area 13 appears to have been set to protect 'open space' that Council has not committed to acquiring. It should be treated the same as Area 12.

(iv) Should overall heights be mandatory

We have assessed whether mandatory controls are applicable in terms of the tests set out under the Practice Note.

Is the mandatory provision strategically supported?

The exhibited overall height controls flow from a comprehensive structure planning process, that has been adjusted in response to submissions. We note that the height in Area 6 of 28 metres is higher than that proposed in the *Structure Plan* and that an even higher form is contemplated again if a school is provided.

Is the mandatory provision appropriate to the majority of proposals?

The proposed mandatory overall height controls will be appropriate, except in the area between Boundary road and CityLink where a limited number of taller buildings could be supported. As discussed above, the controls anticipate that these limited opportunities will be dependent on the provision of public facilities.

The proposed mandatory street wall height controls will be appropriate in the vast majority of cases, noting however, that an exemption in height should be made for architectural features and building services.

Does the mandatory provision provide for the preferred outcome?

The controls will resolve divergent opinions and ensure that a coherent built form outcome is achieved over time that may not be achieved with a site by site approach.

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

While a limited number of taller buildings would be appropriate in certain areas if the majority of proposals did not in accord with the requirements this would lead to the unacceptable planning outcome of the area failing to deliver the agreed built form vision.

Will the mandatory provision reduce administrative costs?

The mandatory provisions will reduce administrative costs imposed on Council, applicants and the community.

(v) Conclusion

We have previously concluded building height should be expressed in storeys.

We think a height regime that sets a discretionary limit with its inherent flexibility, but with a higher mandatory would provide the right balance in this area between allowing for renewal while creating an attractive outcome that will integrate well with the existing areas. Table 4 shows recommend heights expressed in storeys.

In providing for limited higher buildings and linking this with the provision of a public use that will serve existing and renewal areas the objective of integrating the new area with the existing areas will be achieved from a physical point of view (there will not be too many taller forms) and a social point of view.

Table 4: Recommended heights in storeys

Revise d Area	Exhibited Area	Preferred maximu m height	Absolute maximum height
A1	Area 2, Area 4	3 storeys 10.5 metres	4 storeys 14 metres
A2	Area 8, Area 13	4 storeys 14 metres	6 storeys 18.2 metres
A3, A4	Area 3, Area 5, Area 9, Area 12, <u>Area 13</u>	6 storeys 20 metres	8 storeys 26 metres
A5	Area 7	6 storeys 20 metres	8 storeys 26 metres This does not apply if the development is part of a master plan for the whole of Area 7 aimed at the reintegration of the area with the surrounding urban fabric.
A6	Area 6 All land east of Boundary Road	6 storeys 20 metres	8 storeys 26 metres This does not apply if the development contains a Victorian State primary or secondary school of 200 places or more which carries the support of the Victorian Department of Education or provides more than 10 per cent of the site area as public open space
A7	Area 6 All land west of Boundary Road	9 storeys 28 metres	12 storeys 36.4 metres This does not apply if the development contains a Victorian State primary or secondary school of 200 places or more which carries the support of the Victorian Department of Education or provides more than 10 per cent of the site area as public open space
A8	Area 1, Area 9, Area 10, Area 11	9 storeys 30 metres	12 storeys 39 metres

DDO60 should be changed to:

Specify that a permit should only be granted to exceed the Preferred Maximum Height up to the Absolute Maximum Height if the development clearly demonstrates each of the following:

- Provides a demonstrable benefit to the broader community beyond the requirements in this scheme.
- Displays exceptional quality of design.
- Makes a positive contribution to the quality of the public realm
- Achieves the Design objectives of this clause and built form outcomes for the area.
- Provides high quality pedestrian links where needed
- Maintains good solar access to the public realm.

Apply a Preferred Maximum Height of:

- 9 Storeys in Area 9
- **6** storeys in Area 13.

Allow buildings to exceed the Absolute Maximum Height in Area 6 if a school or open space is provided, and in Area 7 if it is to implement a master plan that reintegrates the estate with the surrounding urban fabric.

We recommend:

Amend DDO60 as shown in Appendix C.

5.4 Street wall heights

We have already recommended (Section 5.1.5) that the street wall heights should be depicted by reference to a plan.

5.4.1 'Great Streets'

(i) Evidence and submissions

Mr Townsend submitted that the Amendment aims to create 'great streets' where the buildings make a positive streetscape for the people and so that the people in the buildings are close to the street which makes streets feel safer and more engaging:

Zero metre setbacks at ground floor level and the design guidelines in Amendment C190 which promote multiple entries and window facing the street will help provide this outcome.

Mr Czarny strongly supported the 1:1 street wall height, he submitted that it was important for the public realm providing excellent opportunities for solar access to street and open spaces and would provide a strong sense of enclosure and definition of the street form:

I support the mandatory nature of the street edge controls that will achieve the presentation of a clear (and uniform) street wall that reflects a human–scale and a good sense of enclosure.

Ms Hodyl proposed that built form provisions should more directly reflect the *Structure Plan* to enable the adaptable reuse of buildings by requiring a minimum ground floor height of 4 metres in all areas, with building levels above ground floor having a floor to floor height of 3.2 metres.

Mr Czarny considered it important to establish a consistent street wall:

... given the presently poorly defined streetscapes of the precinct.

A common building line creates continuity of frontage and provides definition and enclosure to the public realm. The proposed building height to street width ratio of up to 1:1 will in my opinion provide a good sense of enclosure and definition without being overbearing within the pedestrian field of vision.

Mr Czarny noted the potential to maintain solar access to public spaces:

... in particular to the south sides of many of Arden–Macaulay's wide streets.

He noted the preference for uniform 'mid-scale' building heights as a commonly accepted city planning approach in many successful international cities such as Paris, Barcelona and Washington DC:

I consider it to be a sound basis from which to set development parameters that will be used to guide the evolution of the Arden–Macaulay precinct.

Mr Milner also supported the 1:1 street wall to street width ratio.

While acknowledging the relationship between street width and street edge height as a sensible urban design principle, Mr Chamberlain submitted that:

... the inflexibility of a mandatory provision provides no opportunity for a performance or merits based assessment.

DDO60 does not specify from where the building or street edge height is to be taken, nor does it include any reference to 'exceptions' for architectural features and building services.

Mr Chamberlain went on to query the calculation of a street wall height of 20 metres, given the modern construction techniques and likelihood in many areas of no ground floor retail component. He recommended wider flexibility and for the height to be nominated in storeys.

Mr Chamberlain took the panel through an analysis of the application of a 45 degree angle above the 10.5 metre street height to Thompson Street, and said:

It would be a significantly more onerous requirement than the proposed treatment for narrower connections elsewhere in the precinct and there does not appear to be any strategic justification for this approach.

Mr Chamberlain on behalf of the owners of 89-96 Stubbs Street submitted that Thompson Street, which forms the western boundary of the site is not characterised by low-scale development. It is currently in the Industrial 3 Zone, but there is one existing dwelling opposite the site. It is a non-conforming land use. Mr Chamberlain submitted that the more stringent height and setback provisions set out in Figure 9 of DDO60 should not apply to this interface.

Mr Czarny expressed concerns that 'stepped' envelopes above will result in undesirable building profiles. Such tapering also impacts on the viability of 6-9 storey floor plates, although Mr Czarny noted that the intended building setbacks are discretionary and therefore specific site constraints and opportunities can be adequately addressed:

I would emphasise the need to avoid staggered upper levels in favour of single setbacks.

Mr Govenlock in giving his expert evidence for a large site in Alfred Street, North Melbourne queried the mandatory requirement for a 45 degree setback above the street wall height in favour of flexibility and discretion in relation to the final design outcome.

Submissions were made suggesting a 'canyon' effect will be created along Macaulay Road and Stubbs Street and detrimentally impact on adjoining properties. Submitters said the proposed heights are inconsistent with the heritage buildings and streetscapes including industrial buildings.

The Kensington Association submitted that:

The requirement that buildings are built to the street edge at ground level in all streets will not promote articulated built form and active pedestrian friendly streets. It is not accepted that because existing

factories often have nil street setbacks, this condition should apply to urban renewal areas.

Mr Peake submitted that all built form controls should be discretionary, with the exercise of discretion guided by appropriate policy. Of particular concern to Vision Australia is the street wall height of 10.5 metres and the line of sight control proposed for Macaulay Road.

Mr Peake submitted that appropriate setbacks above street wall should be:

... to allow an acceptable level of solar penetration to the opposite side of the street having regard to the orientation of the street on the existing or likely uses on the opposite side. ... straight jacketing development into mandatory dimensions will stifle development that is otherwise in accordance with the structure plan.

(ii) Discussion

The majority of streets within the renewal area set a street wall height equal to the width of the street. We agree that this an appropriate approach given the nature of the area and the overall intensity of development proposed.

While the majority of the streets north of Macaulay Road are 20 metres wide, to the south a number are 15 metres wide.

We think that 1:1 ratio should generally be applied consistently to the streets that have renewal on both sides, but the controls should specify a defined height.

It is not clear why a different approach to setbacks above the street wall has been taken for Canning Street, and part of Boundary Road. These street sections should have a street wall the same as the 20 more wide streets. We recognise that Canning Street is wider in parts, but a consistent approach will help crate the stronger and more consistent street wall.

For Haines Street DDO60 specifies that any part of building above 14 metres should have a setback of 14 metres. For practical purposes the 14 metres street wall will be the same as the 15 metre street wall in other parts of DDO60, namely 4 storeys. It is not clear why development on this street should have a different upper level setback to other renewal streets. Bringing the controls for this street into line with the other renewal streets will help reinforce the controls and address issues of solar access to open space.

We do not accept Council's approach to street wall height in Macaulay Road. The changes that Council is seeking to the Amendment post-exhibition are contrary to whole premise of the 1:1 street wall and the benefits it will deliver.

We accept the 45 degree setback above the street wall as a discretionary requirement.

(iii) Conclusion

DDO60 should be changed to:

Apply two explicit controls to renewal streets:

Development at the frontage must not exceed a height of 6 storeys.

Development should be set back 1 metre for every metre of height above 20 metres

15 metre wide renewal street', where

Development at the frontage must not exceed 4 storeys Development should be set back 1 metre for every metre of height above 15 metres

Apply '20 and 30 metre wide renewal street' requirements to all of Macaulay Road.

Apply the '15 metre wide renewal street' requirements to Haines Street.

We recommend:

Amend DDO60 as shown in Appendix C.

5.4.2 Interface streets

(i) Evidence and Submissions

Ms Oddie submitted that recent applications in Shiel Street and Haines Street in DDO60 – Area 11, the objectives of DDO60 and the built from provisions do not lead to the desired outcomes expressed in the *Structure Plan*. She cited a number of current applications in this area.

In relation to 3-15 Shiel Street, Ms Oddie submitted that the development fails to respond to the existing context of the surrounding, established low-scale, heritage neighbourhood and does not meet the DDO60 – Area 11 built form outcome:

A 7-storey blank wall on the western side of the development will face Shiel Street and will be highly visible to most of the street.

Ms Oddie reiterated the importance of public open space in existing residential areas and submitted that the June solstice should be made the applicable measure for sunlight in public places.

The RAID 3051 group called for a review of the Council's Sunlight to Public Open Spaces policy citing it as:

... wholly inadequate and has failed to protect Gardiner Reserve.

In response to concerns from residents in Shiel Street about the form of development being proposed in Haines Street, Ms Hodyl suggested that DDO60 provisions should be updated to make it clear that upper level setbacks apply on streets adjacent to existing low-scale residential within that view, not just development fronting that street.

Mr Sheppard, while accepting the purpose appears to be to respond appropriately to low-rise context, provide a transition in height and minimise the visual impact of the upper levels, could not accept that upper levels must be completely hidden from view:

No rationale is provided in the Structure Plan or the Amendment material to justify why additional levels above the street wall should be completely hidden from view. The employment of noticeable upper level setbacks and a distinct and more lightweight architectural treatment is an alternative way of accommodating greater height within a low-rise streetscape that is commonly accepted eve in areas that contain sensitive heritage buildings.

Mr Sheppard recommended that this provision be deleted in favour of a requirement that additional built form above the street wall height be visually recessive in views from the street.

(ii) Discussion

We accept the basic principle that new development fronting existing established residential areas should provide a frontage that relates to the existing development.

The exhibited control the control proposes a built form envelope at an angle of about 20 degrees for a 20 metre wide street and lower if the street is wider. It means that the fourth floor would be setback about 7 metres from the frontage. We have considered the applicability of the control to the various streets where it is applied. It is an onerous control for an area where redevelopment is sought.

We agree with Mr Sheppard that setback and architectural treatment could achieve the desired built form objectives.

We think a requirement to set back development above the street wall by a set amount, coupled with a requirement that these upper levels be visually recessive would strike a good balance between maintaining the valued characteristics of the area without placing arbitrary restrictions on the new development. We think a setback for upper floors of 10 metres would ensure development met the objectives of the clause.

(iii) Should street wall controls be mandatory

Is the mandatory provision strategically supported?

The exhibited street wall height controls flow from a comprehensive structure planning process.

Is the mandatory provision appropriate to the majority of proposals?

The proposed mandatory street wall height controls (but not the setbacks above the street wall) will be appropriate in the vast majority of cases, noting however, that an exemption in height should be made for architectural features.

Does the mandatory provision provide for the preferred outcome?

The controls will resolve divergent opinions and ensure that a coherent built form outcome is achieved overtime that may not be achieved with a site by site approach.

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

The majority of proposals not in accordance with the requirements will fail to meet the objectives of the control of creating a defined street edge.

Will the mandatory provision reduce administrative costs?

The mandatory provisions will reduce administrative costs imposed on Council, applicants and the community to the extent that it significantly outweighs the benefit of a performance based provision?

(iv) Conclusion

We conclude:

Application of mandatory street wall controls is justified, but mandatory controls for setback above the street wall are not.

The proposed street wall of 3 storeys in interface areas is appropriate, but the setback above the street wall to a line of sight is too onerous.

DDO60 should be changed to:

Apply the following controls to interface streets:

'Residential interface streets', where:

Development at the frontage must not exceed 3 storeys Development above the street wall should be setback at least 10 metres and be visually recessive.

We recommend:

Amend DDO60 as shown in Appendix C.

5.5 Interfaces

(i) Evidence and submissions

Ms Hodyl explained the rationale for building heights at the interfaces with low scale residential development. Upper level setbacks for new development are proposed so that these upper levels are visually recessive when viewed from a position at the rear wall of existing houses. This evolved over the various drafts of the *Structure Plan* into the principle that setback controls should ensure that the upper levels of new development are not visible within private spaces of low-scale residential development.

Mr Czarny noted that:

... this particular approach appears to be more onerous than the Requirements of ResCode.

He preferred the use of ResCode provision as an appropriate measure to address residential amenity in Areas 2, 3, 4, 5 and in parts of Area 8.

Mr Little submitted that the site at 135-137 Racecourse Road was subject to a site specific preferred setback on its southern boundary in response to the proposed PPRZ land. Given the VicTrack submission in relation to the proposed PPRZ, Mr Little submitted that:

... the land owned by B A Glen Investments should not be burdened by built form provisions that otherwise restrict the reasonable redevelopment potential of our clients land.

(ii) Discussion

There are interface height and setbacks specified for:

- rear boundaries with lanes
- rear boundaries without lanes
- Little Hardiman Street east of Abermarle Street, and the lane north of Bruce Street
- side boundaries
- side boundaries with lanes.

The lack of clear specification as to what the controls mean in actual setbacks is discussed in Section 5.1.3.

Rear boundaries

A reoccurring issue in planning is the appropriate interface between existing residential development and new higher forms to the rear.

The default setback in Clause 55.04-1 is:

1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.

In effect this gives a 45 degree angle setback above 6.9 metres. The controls in the Amendment are more onerous than ResCode for an area in which Council seeks renewal, imposing a setback angle of just over 32 degrees for rear setbacks.

The exhibited Amendment did not specify the setback in defined terms and people looking at the Amendment might have simply interpreted the diagrams visually. The diagram does not appear to be to scale, so this is potentially misleading.

For land in the Mixed Use Zone or a commercial zone it is difficult to see the justification for a 30 degree setback requirement. We have struggled to understand the logic of supporting higher development as part of a renewal area, but then constraining development with a 30 degree setback rule that is more onerous than would apply with a residential zone.

We can see no justification for departing from ResCode provisions in terms of rear interfaces.

Side boundaries

There is no logic for the differences in angle for side setbacks for a laneway and without a laneway.

Again, we cannot see the justification for departing from the accepted ResCode standards for residentially zoned land, certainly not a requirement that would create a more restrictive environment in an area identified for change.

Adjoining open space

As discussed in Section 2.5 we do not support applying setback control on land that Council has not committed to purchase for open space.

(iii) Conclusion

DDO60 should be changed to:

Delete the interface requirements at the rear of 135-137 Racecourse Road.

Apply the following controls to replace the proposed interfaces with existing low scale residential areas:

'ResCode Applies', with the requirement that:

A new building not on or within 200mm of a boundary should be set back from the boundaries 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.

We recommend:

Amend DDO60 as shown in Appendix C.

5.6 Active street frontages

(i) Evidence and Submissions

Ms Hodyl supported the Active Street Frontage controls:

.... that require well designed facades that consider the pedestrian experience [and] ... the requirement for active street frontages on primary streets.

Mr Peake submitted that the active street frontage control is unworkable and should be replaced by an appropriate policy:

The primary difficulty with this control is that it applies equally in both the Business 1 Zone within the proposed Macaulay Activity Centre east of Moonee Ponds Creek as it does to Macaulay Road, west of Moonee Ponds Creek which is proposed to be Mixed Use Zoning.

Mr Peake submitted that three large property holdings fronting the north side of Macaulay Road had a combined frontage of approximately 220 metres meaning that 176 metres would have to comply with the policy:

Whether this can be achieved in the Mixed Use Zone outside the activity centre, and having regard to the limited range of uses that are generally located in a MUZ is unknown. It is submitted that this is unlikely to be achievable in this location.

The Design Standards in DDO60 were sufficient in Mr Peake's view and proposed that for Macaulay Road west of Moonee Ponds Creek there should be a general rather than prescriptive policy.

(ii) Discussion

We agree with Mr Peake that the controls are not appropriate in a mandatory form. It is one thing to seek active frontages in an established retail setting or a Commercial Zone. It is another thing entirely to seek it in a mixed use zone in an area that does not have active frontages at present.

With regard to the Vision Australia site on Macaulay Road: assuming that this site could support a degree of commercial use, even the 176 metres of active frontage required by the Amendment, it is not clear that putting this frontage along Macaulay Road would always be a better outcome than some of this frontage activating a new midblock laneway, or along Stubbs Street which already displays an interesting and vibrant mix of uses.

(iii) Conclusion

We recommend the Amendment be changed to:

In DDO60 update the active street frontages controls to distinguish between:

- Streets in a Commercial Zone
- 'Primary streets' as identified in the plan in the DDO
- Other streets.

5.7 Weather protection and facade articulation

(i) Evidence and Submissions

Ms Hodyl recommended alternative wording to the requirement under Building Works and Requirements: Facade Articulation, to better meet the overall aim of creating visually interesting streets fronted by well-designed buildings:

The articulation of a building facade should express a fine grain variety and modulation that assists in reducing the visual dominance of buildings, particularly a wide street frontage. Expressing the vertical elements is encouraged to further minimise the dominance of wide building frontages.

(ii) Discussion

We agree that wording in the exhibited amendment provided only a limited response to facade articulation. The wording suggested by Ms Hodyl provides a better, more flexible response to this objective.

(iii) Conclusion

We recommend the Amendment be changed to:

In DDO60 update the weather protection and facade treatment as shown in Appendix C.

5.8 New laneway connections

(i) Evidence and submissions

Mr Townsend noted that Clause 11.02-3 Structure planning includes the following as one of its strategies:

Facilitate the preparation of a hierarchy of structure plans or precinct structure plans that:

Take into account the strategic and physical context of the location.

- Frovide the broad planning framework for an area as well as the more detailed planning requirements for neighbourhoods and precincts, where appropriate.
- Provide for the development of sustainable and liveable urban areas in an integrated manner.
- Assist the development of walkable neighbourhoods.

Mr Townsend submitted that the Structure Plan:

... identifies the need to improve the neighbourhood walkability by introducing a fine-grain network of laneways and other through connections, integrated with the pattern of development of adjacent areas and maximising permeability for pedestrian movement whilst also providing vehicular and service access to developments. The Structure Plan lists the criteria against which the location of new through connections were determined and the characteristics against which the design and role of these through connections were determined. The proposed Design and Development Overlay 60 (DDO60) in C190 implements the Structure Plan's recommendations by identifying the location and required design of new through-connections.

Ms Hodyl provided the justification for the preferred locations of laneways.

Mr Townsend clarified the locations of laneways:

Where the location is on a property boundary (except for property boundaries with low-rise residential neighbourhoods), it is intended to be 50 per cent on each property and therefore has a precise location. Other laneways are not as precise, but are intended to be reasonably accurate – to say within a few metres.

Mr Townsend quoted from the panel report for Amendment C171. He noted that panel had concluded it was preferable to negotiate the outcome, rather than to mandate:

However, the reality is that in many cases, the council lacks the capacity to negotiate such outcomes and finds itself a bystander as an applicant appeals directly to VCAT and avoids the provision of a laneway by reference to site specific factors.

In relation to a large site abutting CityLink between Sutton Street and Mark Street, Mr Milner recommended that the midblock east west connection should be removed because the connection has marginal functionality:

A high level of accessibility and more generous attractive open spaces and routes can be created along the street frontage rather than by a narrow, back lane that serves no other purpose.

Mr Milner supported the mid-block north-south connections between Sutton Street and Mark Street.

In relation to another large site in Alfred Street, North Melbourne, Mr Govenlock in gave evidence that:

... three north-south pedestrian through links across the subject site would lead to an undesired dispersal of pedestrians.

He called for removal of the mandatory requirement for pedestrian through links in favour of a more discretionary provision in relation to their location and design.

Mr Little for Haines Street Holdings Pty Ltd, queried the requirement for provision of a laneway on its north-western boundary. Mr Little submitted that such a laneway was not feasible given the existence of an historic wall (VHR HO810) at the Macaulay Road end, the steep gradient along the route to Shiel Street and the design of the proposal for 3-5 Shiel Street which does not allow for a laneway:

In any event Haines Street will continue to be used by pedestrian and vehicles, which is located just 60 metres south of the proposed laneway.

Setbacks from lanes

Ms Burnett for Real Estate Prosperity Pty Ltd. submitted that Figure 4 of DDO60 should apply only to laneways and through connections which warrant pedestrian amenity controls. The property of 476 square metres at 114-116 Haines Street contains a 4-59 metre service laneway which Ms Burnett submitted does not contribute to the overall connectivity of the broader area and is not identified within the Structure Plan.

Ms Burnett submitted that the exhibited version of DDO60 includes Figure 4, but:

... the setback controls were not broadly applied to every existing and new laneway within Arden–Macaulay, but where a laneway/through connection is nominated as being required to provide for increased walkability and connectivity.

This has changed in the adopted version which:

... has unintentionally invoked setbacks requirements to every single laneway, accessway, easement or driveway, and that this approach deviates from the intention of the Structure Plan, suffers from a lack of strategic justification and undermines the original intent of the new through connections objective.

Ms Burnett noted that clause 22.20 of the Melbourne Planning Scheme provides for different built form outcomes for different classes of laneway, responding to the laneway usability and amenity expectations.

Ms Burnett submitted that the wording DDO60 should be refined to avoid amenity controls being applied to areas where pedestrians are not encouraged such as service laneways.

Ms Schroor on behalf of Chubb Properties Pty Ltd submitted that the DDO60 requirement for 'publicly accessible' laneways on private land without compensation is inequitable.

Chubb submits that the location of laneways and new through connections has not been optimised and would result in poorer urban design outcomes for the land than a more performance based approach.

Ms Schroor submitted that In relation to the Flemington Bridge local activity centre the proposed laneways do not logically connect places of interest, follow desire lines or reflect logical movement patterns. In relation to the Chubb site, Ms Schroor submitted that residential development is unlikely to occur uniformly throughout the local precinct (A1 of DDO60) given the proposed commercial 1 zoning.

Mr Peake submitted that new laneway connections should not be prescribed in DDO60 but should evolve as sites are developed. Of particular concern is the proposed east-west laneway to the rear of 346 Macaulay Road:

It is submitted that there is no demonstrated need to have rear laneway access to small shops and food and drink premises in a Mixed use Zone... Whether an east-west laneway specifically to service access to any commercial uses fronting Macaulay Road is a matter for detailed design and should not be included in the structure plan.

Mr Peake also questioned the proposed link between Bent Street and Bruce Street adjacent to the Moonee Ponds Creek, submitting that whether such a direct link is either "desirable or necessary" has not been established. He went onto query a proposed laneway directly opposite the Vision Australia site, which he submitted was most unlikely to be redeveloped in the foreseeable future:

This laneway, if it is to be shown on a plan, should be relocated on the north or south of the Vision Australia land.

(ii) Discussion

A number of recent panels (e.g. Melbourne Southbank Structure Plan - C171, Melbourne City North Structure Plan - C196) have dealt extensively with the use of plans to mandate the location of pedestrian links. In both of these cases, the Panel was critical of their use because the links were not strategically targeted.

The new connections shown in DDO60 are identified as part of the overall character or type of development being sought. The links are not addressing obvious gaps in an existing network or providing dramatically improved pedestrian access to public transport or local facilities. In this regard it doesn't really matter where precisely the links are, provided sufficient links are created. The exception to this is the link to the immediate east of the rail line which would shorten the distance to Macaulay Station for land west of Macaulay Road as new residents would not have to walk out to Boundary Road to get to the station.

The Amendment specifies:

Developments which are required to provide a new laneway/ through connection, as shown on Map 2 should provide laneway connections which are:

- Safe, direct and attractive.
- Publicly accessible.
- Aligned with other lanes or pedestrian connections to provide direct routes through Kensington.
- At least 6 metres wide, to accommodate vehicular movements (including turning into private properties), waste collection and landscaping opportunities.

Open to the sky.

There is no need to specify a width in terms of accommodating vehicles, because if the lane is required to accommodate vehicles this can be assessed a technical traffic engineering grounds.

There was a degree of discussion at the Hearing as to whether connections had to open to the sky. We can see no imperative to be open to the sky apart from connections being more attractive when they are. There are many functional pedestrian links in Melbourne that are not open to the sky, or not open to the sky for their whole length.

We do not see the need to specify setbacks from laneways for all lanes. Some will have a purely service function and so setbacks are not needed. If the issue is sufficient spacing between buildings then this should have been specifically addressed in the controls.

The setback controls, as they are drafted, have only relatively narrow laneways in mind, if wider connections were to be provided such as in the award-winning Tip Top development in Brunswick East, then the controls would potentially work against good design outcome.

(iii) Conclusion

We conclude:

New pedestrian connections are important but their precise location does not need to be specified except for a north-south connection giving access to Macaulay and Flemington Bridge Stations.

DDO60 should be changed to:

Delete the map of proposed laneways.

Specify:

- Development must provide for a high quality pedestrian link generally along the eastern side of CityLink to provide direct pedestrian connection to Macaulay and Flemington Bridge Stations for land between Macaulay Road and Racecourse Road.
- Development should provide for a fine-grained system of laneways and pedestrian connections that are:

Safe, direct and attractive.

Publicly accessible.

Aligned with other lanes or pedestrian connections to provide direct through routes.

We recommend:

Amend DDO60 as shown in Appendix C.

5.9 Development adjacent to heritage buildings

(i) Evidence and submissions

Some submitters say the industrial and residential heritage must be protected via planning controls before any land is rezoned so the opportunity is not lost or left to the discretion of the developer. An example is the YoungHusband Building, which is of State historic and cultural significance.

Further submitters suggest:

- development is a threat to the ambience and fabric of the heritage area and that the Amendment ignores Kensington's history and heritage. Kensington has a long history of coexisting residential and industrial uses and there is a rejuvenation of space currently happening with small workshops next to new 2-3 storey apartments
- the Amendment proposes a framework for land use change and growth in Kensington the scale, height and density of which is out of character with the neighbourhood
- buildings need to suit the heritage of the area and developments must be sympathetic to surroundings to protect character and heritage.

Mt Townsend submitted that both the *Structure Plan* and the Amendment recognise the importance of heritage to the character of the area:

The Structure Plan includes an action to investigate additional buildings for inclusion in heritage overlay to protect Arden–Macaulay's industrial heritage. To this effect, a heritage review has been completed and was implemented in the Melbourne Planning Scheme as Amendment C207, which has been adopted by Council.

An additional heritage review of the part of Kensington, which was formerly in the City of Moonee Valley and for which buildings were not afforded the same heritage protection as in the City of Melbourne, was also undertaken and implemented into the Melbourne Planning Scheme through Amendment C215, which has been adopted.

To ensure that new buildings do not undermine the heritage values of a site, Mr Townsend noted that the following requirement is included in Amendment C190:

When new developments adjoin heritage buildings located in a Heritage Overlay, the design of new buildings should have regard to the height, scale, rhythm of and proportions of the heritage buildings.

In response to submissions, Ms Hodyl suggested the introduction of a setback control on the rear boundary of new development within the Elizabeth/Fink/ Barrett/ Bruce Street block to protect the amenity of adjacent residential properties currently within a Heritage Overlay. She recommended a control similar to the one proposed in the Amendment for properties along Little Hardiman Street.

Mr Peake submitted that:

... the suggestion for further controls to protect isolated dwellings in an existing IN1Z and to extend sightline controls over multiple streets is extreme and unnecessary.

Mr Czarny in expert evidence noted submissions 183, 189 and 190 in relation to remnant residential stock in Bruce Street submitted that:

I accept that respect for existing traditional housing stock and tenure needs to be given due regard ... sensitivity to relevant Bruce Street properties should be assured and Amendment documentation modified accordingly.

Mr Czarny was:

generally satisfied that the Amendment adequately deals with the redevelopment of heritage sites as well as development of properties adjoining heritage places.

Mr Milner stated that where heritage places are to be retained it is desirable that they be integrated into the land use and functional context of their setting:

However there is no need or justification that they should overly influence the scale and form of development on adjoining sites.

The RAID 3051 group submitted that current development applications in Haines Street:

... will clumsily abut a fine grained historic area, making a mockery of the aspiration and ideals of the heritage principles in the Structure Plan.

(ii) Discussion

We agree it is important to protect the amenity of residences within the Commercial 2 Zone (currently Industrial 1 Zone). While these properties cannot expect the same level of amenity that would apply in a residential zone, they are heritage dwellings and so the planning system applies competing policy objectives.

It would be appropriate to specify that ResCode applies at the rear boundary of the dwellings in Bruce Street.

(iii) Conclusion

DDO60 should be changed to:

Apply the 'ResCode Applies' interface requirement to the rear of residential properties in Bruce Street.

We recommend:

Amend DDO60 as shown in Appendix C.

6 Environmental Audit Overlay

Mr Chamberlain on behalf of the owners of 89-96 Stubbs Street submitted that the blanket application of the EAO is both unnecessary and onerous:

The current mechanism that the City of Melbourne adopts to deal with this across North and West Melbourne (where the EAO has historically not been applied), is to require a preliminary assessment upfront, and to require (by permit condition) a more comprehensive assessment. This is a sensible and practical approach to potential site contamination that is working in practice.

The effect of an EAO would be to require, on each and every site, a certificate or a statement of environmental audit. These are issued subject to strict statutory requirements, are expensive to obtain, and will not be necessary for many sites within the Arden–Macaulay precinct.

We understand the difficulties associated with the Environmental Audit Overlay, but can see no other way forward at this stage to ensure contamination is properly managed. A precinct wide assessment by Council would help progress the redevelopment of the renewal area.

We conclude:

It is appropriate to apply the Environmental Audit Overlay to land being rezoned to Mixed Use.

The Environmental Audit Overlay is a very blunt planning tool and there will be broad benefits in undertaking a precinct wide analysis, not least for identifying land unsuitable for open space.

We recommend Council:

Undertake a precinct wide review of contamination issues with the view to refining the application of the Environmental Audit Overlay.

Appendix A Submitters and appearances

List of Submitters

No.	Submitter			
1.	Irene Barberis			
2.	Lisa Ingram			
3.	Hadyn Sharples			
4.	Michael Paszylka			
5.	Andrew Thomas			
6.	Francesca Bate			
7.	Ian Urquhart and Alison			
	Chapman			
8.	Jarrod Sawers			
9.	Paul and Andrea McAlpine			
10.	Nikki Liddell and Yvonne			
	Ericksson			
11.	City West Water			
12.	John Eldridge & Karen			
	McKenzie			
13.	Barrie Read			
14.	Alberto DiMaggio			
15.	Phil Quayle			
16.	Pamela Frost			
17.	Corin Warhurst			
18.	Frank Golding			
19.	Kate Greenwood			
20.	DSE (Minister for			
20.	Environment)			
21.	Dennis Tongs			
22.	Cyrille Darrigrand			
23.	Clarrie Pryor			
24.	Adam Terrill			
25.	Sarah Lauren			
26.	Kymaree Raverty			
27.	Bianca Schirripa			
28.	Contour Consultants, on behalf			
	of EG Funds Management Pty			
	Ltd			
29.	Tania Hunt			
30.	Meg Dunley			
31.	City of Moonee Valley			
32.	Peta Murray			
33.	Anne Anderson			
34.	Meagan Walker			
35.	Jason D'Cruz			
36.	Carmelo Monsone			
37.	Nigel Jones			
38.	Michael Vernon Hughes			
39.	Trieu Huynh & Bronwyn			
	Thomas			

No.	Submitter				
40.	Hamish Head				
41.	Sian Harris & Paul Cassar				
42.	Naomi Fennell				
43.	Bernard Stahr				
44.	Rick Clarke				
45.	Fiona Parkinson				
46.	Andrew Mealor & Reannon				
	Ryan				
47.	Lexie Walker				
48.	Jane Liefman & Stuart Tait				
49.	Tanja Luckins				
50.	Duncan Harrington				
51.	Kate Harrigan				
52.	Comdain Property				
53.	Jan Lacey				
54.	Neil & Veronica Matheson				
55.	Vision Australia				
56.	Margaret Baynes				
57.	Ben and Momoko McCartney				
58.	Anna Saalmans				
59.	Julie Walsh				
60.	Dr Ruth Sutherland				
61.	Stan Jamce Cooke				
62.	Sharon Brown				
63.	Yvonne Ericksson				
64.	Petra Muhlfait				
65.	Mairead Hannan				
66.	Antonio Tiganis				
67.	Rory Tonkin				
68.	Brent Hooley				
69.	Michael Gunter				
70.	Gabrielle Wilson				
71.	Narelle Glynn				
72.	Andrew McSweeney				
73.	Scott Fraser				
74.	David Wood				
75.	Paul Kippin				
76.	Ann Hood				
76. 77.	Jesson Tan				
78.	Stephen Alomes				
79.	Justine Kippin				
80.	Fran Sciarretta				
81.	Margaret Bradbeer				
82.	Francis Mezzatesta				
83.	Neil and Joss Tonkin				
84.	Dr Lucy Firth				

No.	Submitter			
85.	Tony Dare			
86.	Anna Dare			
87.	Guy Sendy-Smithers			
88.	Janice and Neville Keogh			
89.	Rory Hannan			
90.	Michelle Tonissen			
91.	Peter Vogl			
92.	Jenni Niggl			
93.	Kathryn Boin			
94.	Kylie Saxon			
95.	Fiona Cubitt			
96.	Tze Hao Lee			
97.	Anne Badenhorst & David			
	Coxsedge			
98.	Sujata Joshi			
99.	Leigh and Scott Stuckey			
100.	Matthew Ritchie			
101.	Darragh O'Brien			
102.	Chris Dwyer			
103.	Theo and Jacqui Byard			
104.	Maritza Araneda			
105.	Frances Lamb			
106.	Gabriella Salmon			
107.	Colleen and John Mitchell			
108.	Tall Storey Partnerships			
	c/- Sweett (Australia) Pty Ltd			
109.	David Burnett			
110.	Alexandra Lazarides			
111.	Francisca Araneda			
112.	Jonathan Stone			
113.	James McInnes			
114.	Anthony Hall and Julie Heller			
115.	Despina Lazarides			
116.	Luke Chamberlain and			
110.	Elisabeth Hoebartner			
117.	Matthew Leahy			
118.	Jayne Connors			
119.	Charlotte Gillam			
120.	Teresa Chala			
120.				
	Enid Hookey Ian Young			
122. 123.	Carmel T. O'Keeffe			
124.	Susan Rushworth			
125.	Jenn Kilby			
126.	Ruth Baird			
127.	Bronwen Harries and Brad			
120	Page			
128.	VicRoads Poter Vernen			
129.	Peter Vernon			
130.	Julie Pavlovic			

131. Kelly Brodie 132. Brad Priest and Jane Whyment 133. Allied Mills c/ Gadens Lawyers 134. Robert Niggl 135. Geoff Cox 136. Therese Fitzgerald 137. Barbara Ward 138. Nikki Gaskell 139. Alex Swain 140. Marina J Slifirski 141. North & West Melbourne Association 142. Jane Murphy 143. Natalie Spark 144. Kensington Association 145. Kerry Stuart 146. Urbis on behalf of Fabcot Pty Ltd 147. Andrew Hollow and Anna Grayson 148. Andrea Carr and Tim Richter 149. Glossop Town Planning on behalf of Clock Pty Ltd 150. Gina Perry 151. Daniel Firth 152. Friends of Moonee Ponds Creek and Kaye Oddie 153. Georgia Firth 154. Deborah Cole 155. Dr Kate Shaw 156. Angela Weir 157. Shara Berriman 158. Dawn Lowery 159. Chris Mackenzie 160. Carol Clark 161. Neil Spark 162. Alison and Geoff Eaton 163. Marg Leser 164. Janet Graham 165. Sarah Harrison 166. HWD Alfred Street Developments Pty Ltd 167. John Widmer 168. Urbis on behalf of 64-90 Sutton Street Pty Ltd 169. VicTrack 170. Angela Williams	131. Kelly Brodie 132. Brad Priest and Jane Whyment 133. Allied Mills c/ Gadens Lawyers 134. Robert Niggl 135. Geoff Cox 136. Therese Fitzgerald 137. Barbara Ward 138. Nikki Gaskell 139. Alex Swain 140. Marina J Slifirski 141. North & West Melbourne Association 142. Jane Murphy 143. Natalie Spark 144. Kensington Association 145. Kerry Stuart 146. Urbis on behalf of Fabcot Pty Ltd 147. Andrew Hollow and Anna Grayson 148. Andrea Carr and Tim Richter 149. Glossop Town Planning on behalf of Clock Pty Ltd 150. Gina Perry 151. Daniel Firth 152. Friends of Moonee Ponds Creek and Kaye Oddie 153. Georgia Firth 154. Deborah Cole 155. Dr Kate Shaw 156. Angela Weir 157. Shara Berriman 158. Dawn Lowery 159. Chris Mackenzie 160. Carol Clark 161. Neil Spark 162. Alison and Geoff Eaton 163. Marg Leser 164. Janet Graham 165. Sarah Harrison 166. HWD Alfred Street Developments Pty Ltd 167. John Widmer 168. Urbis on behalf of 64-90 Sutton Street Pty Ltd 169. VicTrack					
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No.	Submitter			
173.	Glenn Cotter			
174.	A. Goetz			
175.	No name provided			
176.	Nadine Goetz			
177.	Melbourne Water			
178.	Cazz Redding			
179.	RAID@3051			
180.	Paul Kippin			
181.	Andrew Gurney			
182.	Helen Cooney			
183.	Adam Lewis			
184.	Gordon White			
185.	Graeme Dobson			
186.	Chris Buchanan			
187.	David Rhodes			
188.	David Payton			
189.	Michael and Lisa Ingram			
190.	Kerrin Rattray			
191.	Kensington Association			
192.	Department of Economic			
	Development, Jobs, Transport			
	and Resources			
193.	Department of Treasury and			
	Finance			
194.	Gadens on behalf of Allied			
	Mills			

No.	Submitter		
195.	John Widmer		
196.	Joe Manariti		
197.	Tract Consultants on behalf of		
	Pierina Marini		
198.	Meinhardt, for 114-116 Haines		
	Street, North Melbourne		
199.	Megan and Ben Cusack		
200.	Juin Choo, SBA Law, on		
	behalf of Dustday Investments		
	Pty Ltd and Binrell Investments		
	Pty Ltd		
201.	SJB Planning on behalf of		
	Chubb Properties Pty		
202.	EG Funds		
203.	Planning & Property Partners,		
	c/o Haines Street Holdings P/L		
204.	Planning & Property Partners,		
	c/o B A Glen Investments P/L		
205.	VicRoads		
206.	James Hunt		
207.	Peter Quattro		
208.	City West Water		
209.	Cera Stribley Architects for		
	369-399 Macaulay Road		

Appearances

Porty	Denue control by	
Party	Represented by	
Melbourne City Council	 Matthew Townsend of Counsel, calling evidence from: Craig Czarny in urban design Leanne Hodyl in urban design Rodney Yeoman in development capacity and future growth potential John Kiriakidas in transport planning Eamonn Fennessy in open space planning 	
VicTrack	John Cicero of Best Hooper Lawyers	
Friends of Moonee Ponds Creek	Kaye Oddie	
Kaye Oddie		
Allied Mills	Chris Wren QC instructed by Gadens Lawyers, calling evidence from: - Stuart McGurn of ERM in town planning	
	 Tim Pollock of GHD in air quality Charmaine Dunstan of Traffix in traffic engineering 	
EG Funds Management	Joseph Monaghan of Holding Redlich, calling evidence from: - Andrew Clarke of Matrix Planning in town planning - John Henshall of Essential Economics in economics - Mark Sheppard of David Lock Associates in urban design - Peter Lovell of Lovell Chen in heritage - Robert Burton of Burton Acoustic Group in acoustics - John-Paul Maina of Cardno in traffic - Terry Bellair of Environmental Science Associates in air quality (not called)	
Kensington Association	Francisca Araneda	
Lisa and Michael Ingram		
Enid Hookey		
John Widmer		
Resident About Integrated Development @ 3051 (RAID 3051)	Peter Hogg	

Party	Represented by
Dustday Investments and Binrell Investments	Peter O'Farrell of Counsel instructed by SBA Law calling evidence from: - Rob Milner in town planning
HWD Alfred Street Developments	Peter O'Farrell of counsel calling evidence from: - Jamie Govenlock in town planning
BA Glen Investments	Paul Little of Planning and Property Partners
Haines Street Holdings	Paul Little of Planning and Property Partners
Real Estate Prosperity	Alicia Burnett of Meinhardt
Chubb properties	Megan Schroor of Rigby Cooke Lawyers
James Hunt	Luke Chamberlain of Tract
Vision Australia	Graeme Peake of Counsel
North and West Melbourne Association	Geoff Leach

Appendix B Amendment timeline

1 November 2012 to 14 December 2012	•				
4 June 2013	The Planning Authority changed the Amendment in response to submissions				
6 June 2013	Planning Authority referred the Amendment to a planning panel				
20 June 2013	This Panel to consider the Amendment was appointed pursuant to sections 153 and 155 of the <i>Planning and Environment</i> 1987 under delegation from the Minister for Planning				
8 July 2013	Directions Hearing				
9 August 2013	The Panel received a copy of a letter dated 5 August 2013 from Linking Melbourne Authority to the City of Melbourne seeking a deferral for that part of the Amendment west of CityLink and south of Macaulay Road and west of CityLink and east of Stubbs Street.				
13 August 2013	Planning Panels Victoria emailed the Linking Melbourne Authority letter and the following directions to parties to the Hearing				
	The Panel will consider issues regarding the possible deferral of part of the Amendment at the beginning of the Hearing on 26 August 2013.				
	The Panel will hear from any party with respect to the merit in proceeding with the Amendment as it applies:				
	 west of CityLink between Racecourse Road and Macaulay Road, 				
	 west of CityLink south of Macaulay Road, 				
	 east of CityLink, this area does not appear to be directly affected by the East West Link. 				
	The Panel has formed a preliminary view that, at the least, it should proceed with the Amendment as it relates to the land east of CityLink				
26 August 2013	The Panel considered possible deferral of part of the Amendment following submissions from a number of parties. The Panel found that:				
	It would be premature to consider the Amendment as it relates to land west of CityLink before finalisation of the Comprehensive Impact Statement process for East West Link.				
	This was anticipated to be August 2014.				
	The Panel also directed that:				
	Submitters to the Hearing do not need to make further submissions on matters specific to land west of CityLink.				
	This advice was sent to Parties in writing with the Direction:				
	The Panel will reconvene at 2:15 pm, 27 August 2013 and consider responses to this Direction and determine how best to proceed.				

27 August 2013

The Panel reconvened to consider responses to Directions and determine how to proceed with the Amendment. Concerns were raised about procedural fairness.

Following submissions and discussion the Panel made oral Directions

Submissions relating to land west of CityLink be deferred until a date to be fixed, being in approximately one month. At that date further submissions from parties will be considered as to how the Panel can meet its obligations with respect to submissions about land west of CityLink.

The Hearing will commence with the City of Melbourne's submission on 28 August 2013.

28 August 2013 The City of Melbourne tabled a Council resolution requesting a deferral of all of the Amendment. The Panel decided to adjourn until 10:00 am Thursday 5 September 2013 and at that date consider how it can properly discharge its obligations.

5 September 2013 Following submissions from Parties the Panel directed:

The Hearing for Amendment C190 is adjourned to a 1. Directions Hearing on Monday, 19 May 2014. All parties have liberty to apply for an earlier Directions Hearing if circumstances warrant this.

19 May 2014 A meeting of parties and the Panel Chair was held

The purpose of the meeting was to identify and address any issues that would prevent the Hearing for Amendment C190 recommencing in August 2014. A number of issues were identified. The Amendment is potentially affected by the release of *Plan Melbourne*, changes to public transport plans and release of decisions on East West Link. Appropriate dates for the progress of Amendment C190 were discussed, and parties agreed to dates to progress this matter.

2 September 2104 The Future Melbourne Committee of the City of Melbourne resolved:

- 1. That the Future Melbourne Committee:
- 1.1. authorises management to work with the Victorian Government and the Linking Melbourne Authority to influence the detailed resolution of the East West Link (Eastern Section) project in accordance with City of Melbourne's position outlined in its response to the Comprehensive Impact Statement
- 1.2. requests the Panel appointed to assess submissions on Amendment C190 to defer hearings until Council has had the opportunity to assess the impact of part B of the Project on the Amendment
- 1.3. request management to forward the SNRP interchange option ... to the LMA for its consideration.

Given resolution 1.2 of Council, the panel advised parties that there was little to be gained by conducting another Directions Hearing in this matter at this time. Consideration of the Amendment will need to wait until the City of Melbourne as the planning authority is ready to proceed. The Panel directed:

The Hearing for Amendment C190 is adjourned to a date to be

1 May, 2015

2015

The Panel advised parties that the City of Melbourne wished to reconvene the Hearings.

4 May to 5 June

The Amendment was re-exhibited.

Given the time that had elapsed in this matter, an opportunity was provided from 4 May to 5 June 2015 for owners and occupiers of directly and indirectly affected properties to make a submission. Previous submitters were also notified that the panel hearing was to be reconvened and invited to make a submission.

Twenty nine further submissions have been received, of which 22 were new submitters, while the others added to their earlier submissions. These submissions were provided to the Panel.

15 June 2015

Directions hearing.

8 July to 31 July 2015

Panel Hearings.

18 August 2015

Closing date for further submissions of material presented in Council's closing.

Appendix CDDO60 Panel version

This revised DDO is based on revised areas as follows:

Exhibited area	Revised Area
Area 1	A8
Area 2	A1
Area 3	A4
Area 4	A1
Area 5	A3
Area 6 east of Boundary Road	A6
Area 6 west of Boundary Road	A7
Area 7	A5
Area 8	A2
Area 9	A8
Area 10	A8
Area 11	A8
Area 12	A4
Area 13	A4

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SCHEDULE 63 TO THE DESIGN AND DEVELOPMENT OVERLAY

--/--/201-C190

Shown on the planning scheme map as **DDO63**

ARDEN-MACAULAY AREA, KENSINGTON AND NORTH MELBOURNE

1.0 Design objectives

--/--/201-C190

- ☐ To create a compact, high density, predominantly mid-rise, 6 12 storey, walkable and high amenity neighbourhood.
- To provide for higher development that delivers identified public benefits on large sites that do not interface with the low scale surrounding established residential neighbourhoods.
- To provide for development, that steps down at the interface with the low scale surrounding established residential neighbourhoods.
- To ensure the height and setback of new development at the interface with existing residential neighbourhoods is compatible with the amenity of these areas.
- To provide a highly walkable neighbourhood.
- To create urban streetscapes that are defined by a generally consistent plane of building facades that enclose streets but allow daylight and sunlight to penetrate to the streets and to lower building levels.
- To ensure the scale, height and setback of new development on existing residential streets is compatible with the scale and context of these streets.
- To ensure buildings align to the street edge.
- To ensure that built form elements above the street wall are visually recessive and do not contribute to visual bulk.
- To provide shelter for pedestrians from the rain, wind and sun without causing detriment to building or streetscape integrity.
- To encourage the ground floor of buildings to be designed so that they can be used for a variety of uses over time.
- To ensure new development respects the character, form, massing and scale of adjoining heritage buildings and places.
- To ensure that development provides a high level of amenity for building occupants.
- To promote passive surveillance of the public realm.

Table 1: Built form outcomes

Area	To be deleted	Built Form Outcomes
A1	Area 2, Area 4	Deliver a scale of development that complements the established low-scale residential area
		Protect the amenity of existing residential areas by avoiding overlooking and overshadowing of private open space and minimising the visual impact of upper levels.
A2	Area 8	Set back higher building form along Melrose Street to deliver scale of development that responds appropriately to the existing context.
A3	Area 5	Deliver a scale of development that provides street definition and a pedestrian friendly scale
		Deliver a scale of development that provides appropriate access to sunlight and daylight.
		Protect the amenity of existing residential development by avoiding overlooking and overshadowing of private open space and minimising the visual impact of upper levels.
A4, A5	Area 3, Area 7,	Deliver a scale of development that provides street definition and a pedestrian friendly scale.
	Area 12, Area 13	Deliver a scale of development that provides appropriate access to sunlight and daylight.
		Deliver a scale of development at the interface with established low-scale residential development provides an appropriate transition in height and minimises the visual impact of upper levels.
		Solar access is maintained to ground floors on western side of Thompson Street and southern side of Scarborough Place.
		Deliver the reintegration of Office of Housing estates into the surrounding urban fabric.
A6, A7	Area 6,	Deliver a scale of development that provides street definition and a pedestrian friendly scale
		Deliver a scale of development that provides appropriate access to sunlight and daylight.
		Provide limited opportunities for taller buildings that deliver significant public benefit outcomes.
A8	Area 1, Area 9,	Deliver a scale of development that provides street definition and a pedestrian friendly scale
	Area 10, Area 11	Deliver a scale of development that provides appropriate access to sunlight and daylight.
		Deliver a scale of development at the interface with established low-scale residential development provides an appropriate transition in height and minimises the visual impact of upper levels.
		Provide increased density in local centres compared to surrounding development.

2.0 Buildings and works

--/--/201-C190

A permit is not required for buildings and works that do not alter the height or setback of an existing building.

An application must be accompanied by a site analysis and urban context report which demonstrates how the proposed building or works achieve each of the Design Objectives and Built Form Outcomes of this schedule, and any local planning policy requirements.

Architectural features and building services may exceed specified heights. Where a height is expressed in storeys this does not include floors used only to house or access plant and equipment; roof structures and a parapet may exceed the specified height limit.

Building Heights

Development should not exceed the Preferred maximum height in Table 2.

A permit cannot be granted to exceed the Absolute maximum height in Table 2.

Development that exceeds the Preferred maximum height in Table 2 must demonstrate each of the following:

- Provides a demonstrable benefit to the broader community beyond the requirements in this scheme.
- Displays exceptional quality of design.
- makes a positive contribution to the quality of the public realm.
- Achieves the objectives of this clause and built form outcomes for the area.
- Provides high quality pedestrian links where needed.
- Maintains good solar access to the public realm.

Table 2: Building heights

Area	To be deleted	Preferred maximum height	Absolute maximum height
A1	Area 2, Area 4	3 storeys	4 storeys
A2	Area 8,	4 storeys	6 storeys
A3, A4	Area 3, Area 5, Area 12, Area 13	6 storeys	8 storeys
A5	Area 7	6 storeys	8 storeys
			This does not apply if the development is part of a master plan for the whole of Area 5 aimed at the reintegration of the area with the surrounding urban fabric.
A6	Area 6 All land east of Boundary Road	6 storeys	8 storeys This does not apply if the development contains a Victorian State primary or secondary school of 200 places or more which carries the support of the Victorian Department of Education or provides more than 10 per cent of the site area as public open space.
A7	Area 6 All land west of Boundary Road	9 storeys	12 storeys This does not apply if the development contains a Victorian State primary or secondary school of 200 places or more which carries the support of the Victorian Department of Education or provides more than 10 per cent of the site area as public open space.
A8	Area 1, Area 9, Area 10, Area 11	9 storeys	12 storeys

Street wall and setbacks

A permit cannot be granted to increase the Street Wall Height in Table 3.

Development should be set back from all streets identified in Map 1 in accordance with Table 3. This apples even if the site does not have frontage to the identified street.

Buildings should be built to street edge at ground level to provide a clearly delineated and fronted public realm.

Buildings should be set back from existing low scale residential development in accordance with Table 3.

Table 3: Street wall height and setbacks

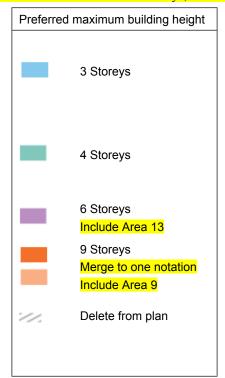
Interface type shown on Plan	Street wall height Set back of buildings above street wall
20 and 30 metre wide renewal street	Development at the frontage must not exceed a height of 6 storeys. Development should be set back 1 metre for every
15 metre wide renewal street	metre of height above 20 metres
15 metre wide renewar street	Development at the frontage must not exceed a height of 4 storeys.
	Should be set back 1 metre for every metre of height above 15 metres.
Residential interface street	Development at the frontage must not exceed a height of 3 storeys.
	Development above the street wall should be setback at least 10 metres and be visually recessive.
Interface type shown on Plan	Set back from boundary with low scale residential development
ResCode Applies	A new building not on or within 200mm of a boundary should be set back from the boundaries 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.

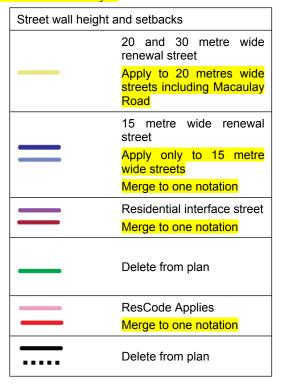
NOTE

To reduce the electronic size of this document, Map 1 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

COUNCIL TO REDRAW:

- Plan based on the following legend.
- Macaulay Road to be shown as a '20 and 30 metre wide renewal street'
- Area 9 to be shown as 9 storeys, Area 13 to be shown as 6 Storeys





Map 1 – Street wall heights and setbacks

Connectivity and laneways

Development must provide for a high quality pedestrian link generally along the eastern side of CityLink to provide direct pedestrian connection to Macaulay and Flemington Bridge Stations for land between Macaulay Road and Racecourse Road.

Development should provide for a fine-grained system of laneways and pedestrian connections that are:

- △ Safe, direct and attractive.
- Publicly accessible.
- Aligned with other lanes or pedestrian connections to provide direct through routes.

Active Street Frontages

A building in a Commercial Zone, with ground-level frontage should provide:

- At least 5 metres or 80 per cent of the street frontage (whichever is the greater) as an entry or display window to a shop and/or a food and drink premises, or as other uses, customer service areas and activities, which provide pedestrian interest and interaction.
- Clear glazing (security grilles should be transparent).

A buildings with ground-level frontage to a street identified on the Map 2, should present an attractive pedestrian oriented frontage with commercial uses where practical.

Buildings with ground-level frontage to all other streets, should provide an active and physically connected street interface, for example by providing multiple entrances off the street.

Weather protection and facade treatment

A building with a frontage to a street identified on Map 2, should provide a veranda for weather protection over the footpath unless this would cause detriment to the integrity of a heritage building or streetscape.

The articulation of a building facade should express a fine grain variety and modulation that assists in reducing the visual dominance of buildings, particularly a wide street frontage. Expressing the vertical elements is encouraged to further minimise the dominance of wide building frontages.

NOTE

To reduce the electronic size of this document, Map 2 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Map 2 – Frontages to primary streets

3.0 Heritage

--/--/201-C190 When new developments adjoin heritage buildings located in a Heritage Overlay, the design of new buildings should have regard to the height, scale, rhythm of and proportions of the heritage buildings.

5.0 Reference documents

--/--/201-C190 △ The Arden–Macaulay Structure Plan 2012

Planning and Environment Act 1987

Panel Report

Darebin Planning Scheme Amendment C161 Fairfield Village

3 December 2018



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Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Darebin Planning Scheme Amendment C161

Fairfield Village

3 December 2018

Tim Hellsten, Chair

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List of Abbreviations

C1Z Commercial 1 Zone

DDO Design and Development Overlay

DELWP Department of Environment, Land, Water and Planning

GRZ General Residential Zone

HO Heritage Overlay

LPPF Local Planning Policy Framework

MSS Municipal Strategic Statement

PPF Planning Policy Framework

PUZ4 Public Use Zone 4 (Transport)

TfV Transport for Victoria

VCAT Victorian Civil and Administrative Tribunal



Overview

Amendment summary		
The Amendment	Darebin Planning Scheme Amendment C161	
Common name	Fairfield Village	
Brief description	Application of a Heritage Overlay to land within the Fairfield Village Neighbourhood Centre (HO313) and to St Andrew's Alphington and Fairfield Uniting Church (HO314). Application of a Design and Development Overlay (DDO21) to Commercial 1 zoned land within Fairfield Village Neighbourhood Centre. Correct zoning and overlay anomalies. Make consequential policy changes and corrections. Introduce a new Incorporated Plan and reference document.	
Subject land	Land located in Fairfield Village Neighbourhood Centre, namely: ■ 66 – 152 and 75 – 157 Station Street, Fairfield ■ 1 - 31 and 36 Railway Place, Fairfield ■ 254 – 294 Wingrove Street, Fairfield ■ 41 Hanslope Avenue, Fairfield (Fairfield Railway Station and surrounding reserve) ■ 50, 61, 85-87 Gillies Street, Fairfield ■ 86 Arthur Street, Fairfield.	
The Proponent	Darebin City Council	
Planning Authority	Darebin City Council	
Authorisation	30 April 2018	
Exhibition	15 May to 18 June 2018	
Submissions	Number of Submissions: 11 (including late submission) Number of submissions opposed: 7 Submitters are listed in Appendix A	

Panel process		
The Panel	Tim Hellsten	
Directions Hearing	Council Chamber, 350 High Street, Preston 22 August 2018	
Panel Hearing	Planning Panels Victoria, 15 – 17 October 2018	
Site inspections	Unaccompanied, 22 August 2018	
Appearances	Refer Appendix B	
Citation	Darebin PSA C161 [2018] PPV	
Date of this Report	3 December 2018	



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Executive summary

(i) Summary

The Fairfield Village is located along Station Street, Wingrove Street and Railway Terrace, Fairfield in the south-east of the City of Darebin.

Fairfield Village is a vibrant, well performing neighbourhood activity centre focused along Station Street and around Fairfield Station. The Fairfield Village commercial area displays an ecletic mix of building styles, but with a predominance of modest inter-war period, one and two storey buildings. The subdivision pattern of narrow lots and lack of vehicle crossing points provides for continuity of fine-grain built form that provide a strong built form setting to the Centre. The Fairfield Village shopping area has a distinct edge and abuttal to residential areas generally characterised by detached single storey dwellings set within landscaped gardens. St Andrew's Alphington is located in this residential area.

This built form character provides the setting for Fairfield Station, the associated station forecourt, St Paul's Anglican Church and community centre which together establishes a strong sense of community focus and activity.

Fairfield Village is identified in Council's retail hierarchy as a Primary Neighbourhood Activity Area and one of the focus points for commercial activity and substantial housing change in the municipality. The residential area adjoining the village shopping area is generally identified for incremental housing change, although areas to the south of the precinct are identified for substantial housing change. There is evidence of this emerging character appearing in response to state and local planning policy through the recent development of four and five storey mixed use buildings, generally clustered to the south of the station.

Darebin Planning Scheme Amendment C161 (the Amendment) seeks to apply two Heritage Overlays as identified in the *Fairfield Village Heritage Assessment, 2017*, one to a portion of the Fairfield Village (HO313), and the other to St Andrew's Alphington and Fairfield Uniting Church (HO314) in Gillies Street, Fairfield. An updated Incorporated Plan is proposed to be introduced to extend a range of planning permit exemptions to the Fairfield Village precinct, Fairfield Station and St Andrew's Church.

The Amendment proposes to apply a Design and Development Overlay (DDO21) to the Fairfield Village precinct which encompasses all Commercial 1 zoned land and the Fairfield Railway Station. The proposed application of DDO21 is supported by the Fairfield Village Built Form Design Guidelines to be introduced as a background document (reference document).

In addition, the Amendment makes related policy changes and corrects a zoning and overlay anomaly.

Following exhibition of the Amendment, 11 submissions were received. The key issues raised in submissions related to:

- the application and extent of HO313 including its application to noncontributory buildings
- the application of HO314

- the extent and provisions of DDO21 in terms of height and setbacks provisions and identification of valued street facades
- impact of controls on property values and development opportunity.

The Panel considered all submissions as well as heritage and urban design evidence in reaching its conclusions.

Overall, the Panel concludes:

- that there is discernible and tangible heritage value within the Fairfield Village heritage precinct that warrants the application of HO313
- the application of HO314 to St Andrew's Alphington and Fairfield Uniting Church is sound and reflects the identified heritage values of the place
- DDO21 is an appropriate tool to respond to the identified built form character values of Fairfield Village and works and compliments the application of HO313
- DDO21 as exhibited however, requires substantial redrafting and modification to ensure it can operate effectively to achieve Council's broader objectives for Fairfield Village
- subject to changes to DDO21, the Amendment provides an appropriate balance between recognising, protecting and enhancing the heritage and built form values of the Fairfield Village precinct while ensuring the centre can play its identified strategic role as a substantial housing change area and in accommodating economic activity.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Darebin Planning Scheme Amendment C161 be adopted as exhibited subject to the following:

- 1. Review the Fairfield Village Heritage Precinct Statement of Significance before finalisation of the Amendment.
- 2. Amend the City of Darebin Heritage Study Incorporated Plan Permit Exemptions (2011, amended 2018) as shown in Table 3.
- 3. Substantial redraft DDO21 based on the version in Appendix D and the Panel's suggested changes identified in Chapter 5.
- 4. Amend the Fairfield Village Built Form Design Guidelines, 2017 to align with the final form and content of DDO21.

1 Introduction

1.1 The Amendment

Amendment C161 to the Darebin Planning Scheme seeks to implement the *Fairfield Village Heritage Assessment*, 2017 (Heritage Assessment) and apply the *Fairfield Village Built Form Guidelines*, 2017 (Built Form Guidelines) within the Fairfield Village precinct through the application of two Heritage Overlays and a Design and Development Overlay and other consequential policy and planning scheme changes.

The Amendment as exhibited proposes to:

- amend Clause 21.02-3 (Built Environment) and Clause 21.03-2 (Housing Development) to introduce the Fairfield Village Built Form Guidelines, 2017 as a reference document
- amend Clause 21.02-4 (Heritage) to introduce the *Fairfield Village Heritage*Assessment, 2017 as a reference document
- remove Heritage Overlay No 106 (HO106) from the North and South Platform Building and Signal Box at Fairfield Station, Wingrove Street
- remove Heritage Overlay No 112 (HO112) from the right-of-way at the rear of 129-135 Station Street
- apply the Heritage Overlay No 313 (HO313) to the Fairfield Village Heritage Precinct as identified in the Fairfield Village Heritage Assessment, 2017
- apply the Heritage Overlay No 314 (HO314) and apply it to St Andrew's Alphington and Fairfield Uniting Church, 85-87 Gillies Street
- amend the Schedule to Clause 43.01 Heritage Overlay to delete the incorporated plan City of Darebin Heritage Study Incorporated Plan Permit Exemptions (2011) and introduce a revised incorporated document City of Darebin Heritage Study Incorporated Plan Permit Exemptions (2011, amended 2018)
- apply a Design and Development Overlay Schedule 21: Fairfield Village (DDO21) to land zoned Commercial 1 (C1Z) and Public Use 4 (PUZ4) within the Fairfield Village Neighbourhood Centre.

The Amendment proposes to address minor zoning anomalies and:

- rezone part of the land at 72A Station Street, Fairfield from Public Use Zone Schedule 4 (PUZ4) to Commercial 1 Zone (C1Z)
- rezone land comprising the right-of-way at the rear of 129-135 Station Street, Fairfield from General Residential Zone Schedule 2 (GRZ2) to C1Z.

The Amendment makes related consequential changes to the Schedule to Clause 81.01 (Incorporated documents) and policy changes at Clause 21.02-3 and Clause 21.03-2 to remove reference to 'further strategic work' for Fairfield Village and to refer to the application of DDO21. The Amendment proposes to update a range of other reference document titles in Clause 21.02-3, Clause 21.02-4 and Clause 22.06 (Multi-Residential and Mixed Use Development). Clause 22.06-3.9 is amended to cross reference Clauses 58.03-2 to 58.03-4 and Clauses 58.05-1 to 58.05-4 'as applicable'.

1.2 The subject land

The Amendment generally applies to land within and adjacent to the Fairfield Village Neighbourhood Centre as shown in Figure 1, with the area shaded blue included within proposed DDO21 and the land within the dashed red line within a Heritage Overlay (HO). More specifically the Amendment applies to land at:

- 66 152 and 75 157 Station Street, Fairfield
- 1 31 and 36 Railway Place, Fairfield
- ≤ 254 294 Wingrove Street, Fairfield
- 41 Hanslope Avenue, Fairfield (Fairfield Railway Station and surrounding reserve)
- 50, 61, 85-87 Gillies Street, Fairfield
- 86 Arthur Street, Fairfield.

Figure 1 The subject land



The land affected by the Amendment has the following characteristics:

- a contained commercial precinct with a diversity of commercial land uses along Station and Wingrove Streets and Railway Terrace. These buildings display a fine-grain built form, an eclectic mix of predominantly one and two storey structures with a range of intact and moderately intact facades punctuated by more recent structures and a number of larger scale buildings representing an element of emerging change
- the Fairfield Community Centre
- the Fairfield Railway Station which has retained extensive original heritage fabric and character and has a forecourt setting to Railway Place and Wingrove Streets
- a distinct edge to the adjoining residential area which comprises a mix of period styles and more recent additions or development. St Andrew's Alphington and Fairfield Uniting Church (St Andrew's Church) sits within this residential area adjacent to the commercial precinct.

1.3 Background to the Amendment

(i) Development of Fairfield Village Heritage Assessment and Built Form Guidelines

Council in its Part B submission provided the Panel with an overview of the planning and engagement processes involved in the development of the Fairfield Village Heritage Assessment, 2017 (Heritage assessment) and Fairfield Village Built Form Guidelines, 2017 (Built form Guidelines) which included:

- Hansen Partnership engaged in 2008 to prepare design guidelines for Fairfield Village to inform a permanent DDO to replace interim DDO8 (which provided a 9.0m height limit over Business 1 zoned land in Station Street and Railway Place). A Background Report and draft design guidelines proposing three and four storey height limits (10.5m – 13.5m) were released for informal consultation in early 2009, receiving 10 submissions. The guidelines were not adopted and DDO8 expired in March 2010.
- November 2015, Hansen Partnership prepared the *Fairfield Action Plan* to provide a framework for Council to improve Fairfield Activity Centre including through the development of built form controls.
- Council commenced preparation of new design guidelines in July 2016 which included engaging a heritage consultant (Heritage Intelligence) to review whether there were heritage values in the village to be protected.
- Council engaged Codesign Studio in November 2016 to undertake consultation on the preparation of a streetscape masterplan and draft built form guidelines.
- Fairfield Village Community Reference Group was established to provide feedback on the draft Built Form Guidelines and other work.
- Council undertook informal consultation on draft Built Form Guidelines and Heritage Assessment in September – October 2017. Consultation involved extensive mail outs, drop in information sessions and other engagement techniques. An analysis of the engagement was released in a Community Engagement Summary Final Report which identified broad community sentiment supporting controls on height, upper level setbacks, retention of

valued street facades and protecting the 'village feel' from being overwhelmed.

(ii) Fairfield Village Heritage Assessment 2017

Prepared for Council by Heritage Intelligence in 2017, the Heritage Assessment formed the basis of the proposed HO313 and HO314, the revised Incorporated Plan and the proposed Built Form Guidelines.

The Heritage Assessment included:

- a methodology outlining assessment criteria, levels of integrity and significance, fieldwork, historical research, documentation and mapping, preparation of statements of significance, and design guidelines
- assessment findings including historic themes
- citations for individual places and the Fairfield Village precinct including statements of significance
- design guidelines which included cross section diagrams that were largely identical to those at Figures 1, 2 and 3 in DDO21, and included other drawings and guidance included in the proposed Built Form Guidelines
- recommendations
- appendices including a revised Incorporated Plan.

The assessment process refined the heritage precinct boundaries around the Fairfield Village Activity Centre based on research and field surveys supplemented in a later stage by more detailed research and assessment of the precinct and individual sites.

The key elements of the Heritage Assessment relating to Fairfield Village precinct and the St Andrew's Church are discussed in Chapter 4 of this Report.

(iii) Fairfield Village Built Form Guidelines and Background Report

Produced for Council in 2017 by Hansen Partnership as an update to the 2008 centre design guidelines (not incorporated), the Built Form Guidelines identified the existing character of Fairfield Village and a future built form outcome sought for the Centre. The guidelines comprised objectives and standards relating to height, valued street facades, setbacks, façade detailing and materials, landscaping and carparking that were largely translated into the proposed DDO21. The guidelines included useful images and examples to support interpretation of the DDO.

The Fairfield Village Built Form Guidelines Background Report, February 2017 identified the scale and form of the centre including both the traditional and emerging forms, the latter comprised of new development completed, under construction or approved, ranging from four to six storeys along Station Street and Railway Place including the 'Nightingale 2' site (72A Station Street), RSL site (5 – 7 Railway Place) and 149-153 Station Street.

The Report identified a commercial centre with a strong 'village' character and sense of place particularly along Station Street which at casual view was not so apparent given a profusion of signage and mix of built forms characterised by elements such as:

decorative cornicing

- single and double storey parapets with concealed pitched roofs
- large shop windows at ground floor
- some balconies and window seats at second floor levels, some with curved window forms
- awnings and strong horizontal features
- facade features defined in render or distinctive brickwork
- canopies extending to kerb line
- strong horizontal connection despite a staggering of one and two storey heights.

Station Street was described as featuring consistent attached facades with traditional built form characteristics with development representative of the 1910s and 1930s, particularly between Wingrove and Duncan Streets noting it makes "a strong and valued contribution to local character and should be retained and enhanced". It is noted that this strong parapet form diminishes north of Duncan Street to one characterised by modest single storey profiles. Railway Place was identified has having a cluster "of traditional building forms with strong parapets that create a sense of place".

The Report identified that the Centre performed well, with a diversity of offer, low vacancy rates, relatively high property values and a demand for housing, high level of walkability and public transport access and a "medium propensity" for change, tempered by typically small, deep and narrow sites with limited rear access for parking and a flood risk.

The Report identified the challenge of managing building scale and the relationship between new and old development while retaining the village character of the centre.

2 Approach of the Panel and issues

2.1 Preliminary matters

(i) Late submission

A Directions Hearing was held in relation to the Amendment on 22 August 2018. During that Hearing, Mr Biviano sought to be a party to the Amendment although he had not at the time made a submission to C161. Council at the Directions Hearing acknowledged that Mr Biviano had an interest in several sites in Station Street affected by the Amendment and were open to receiving a late submission. A Direction was issued by the Panel that this would need to be lodged by close of business 27 August 2018. A subsequent submission (submission 11) was received by both the Council and Planning Panels Victoria on 27 August 2018.

(ii) Amendment documentation

The Panel's Directions sought further information from Council to be addressed through its Part A and B submissions including:

- clarification of properties affected by the Amendment
- rationale for all suggested changes identified in the Authorisation letter to the proposed DDO21 not being applied in the exhibited document
- consistency in referencing the *Darebin Housing Strategy* at Clauses 21.02, 21.03 and 22.06 and whether this anomaly could be reflected in revised amendment documents
- the necessity of referring to state government guidelines in local policy particularly in the context of VC148 changes.

The Panel noted the Explanatory Reports written description of land affected by the Amendment was different from the map forming part of the Explanatory Report. Council identified in its Part A submission that while the map was correct, the written description was not, with the exclusion of 86 Arthur Street, Fairfield (to be included in the HO313 and DDO21) and 50 and 61 Gillies Street, Fairfield (to be included in the DDO21). On the basis that these sites were clearly identified in the map and land owners were notified with no submissions received from them, the Panel does not consider this error to be fatal to the Amendment.

The Amendment was authorised for preparation under delegation on the 30 April 2018 subject to the condition that an edited version of the DDO be considered based on changes identified by Department of Environment, Land, Water and Planning (DELWP in the form of a tracked change document. Council in its Part A submission provided a comparison document which identified that the majority of DELWP's suggested edits had been accommodated. The Panel is satisfied that Council has responded appropriately to the direction, with specific DDO content detail discussed further in Chapter 5.

(iii) Post exhibition changes

In response to submissions, Council made no changes to the Amendment other than introducing two minor and inconsequential alterations unrelated to submissions to deal with amendment errors in:

- Clause 21.02-4, by correcting the date of the *Darebin Heritage Review* from 2002 to 2000.
- DDO Schedule 21, by correcting the title of Figure 4 to Figure 4: front setbacks with retained valued street façade in Area 2 (Panel's emphasis).

These changes were included in the 23 July 2018 Council report considering submissions and is the version (Day 1 version) upon which the Panel's report and recommendations are based.

2.2 Amendment VC148

Amendment VC148 (VC148) was gazetted on 31 July 2018. Among other things, it changes the structure and content of the planning policy framework in all planning schemes. The Panel requested Council to provide a response to VC148 as it relates to transition provisions and the consequential impacts of the proposed Heritage Overlay changes which include a reformatted schedule.

Council identified several changes required, which are largely inconsequential. The key changes and potential implications on the Amendment are summarised in Table 1.

Table 1 VC148 changes

VC148 provision	Summary of change	Implications
Planning Policy Framework	Local Planning Policy Framework to transition over time to new format	This transition is yet to take place for the Darebin Planning Scheme and presents no particular consequence for the Amendment at this point in time
Heritage Overlay	Schedules restructured to include a Statement of Significance and alternate arrangements for identifying Incorporated Plans	Statement of Significance not required as Amendment was authorised within VC148 transition period Reformatted HO Schedule required to identify revised Incorporated Plan
Incorporated documents	Clause 72.04 replaces Clause 81.01	This translation has taken place New Schedule to be prepared to include the revised Incorporated Plan
Reference documents	Identified as 'background documents' under consolidated Planning Policy Framework and listed in a Schedule to a new Clause 72.08	This translation has yet to occur New Schedule to be prepared to include the Fairfield Village Heritage Assessment, 2017 and the Fairfield Village Built Form Guidelines, 2017 in consultation with DELWP

The identified changes to the Amendment required to respond to VC148 have generally been acknowledged by Council. The Panel considers that the changes are largely inconsequential as they do not change the intent of the Amendment or the application of the proposed policy and controls, and were not matters raised in submissions. The Panel agrees with Council's submission that a statement of

significance is not required to be included in the HO Schedule for the two proposed heritage places as the Amendment was authorised three months before gazettal of Amendment VC148. The required Amendment changes can be addressed with DELWP if Council adopts the Amendment.

2.3 Summary of issues raised in submissions

The key issues raised in submissions of the various parties are briefly summarised as follows:

- the application and extent of HO313 including its application to noncontributory buildings
- the application of HO314
- the extent and provisions of DDO21 in terms of height and setbacks provisions and identification of valued facades
- impact of controls on property values and development opportunity.

2.4 Matters not dealt with in this Report

(i) Property values

Some submissions raised concerns about the Amendment potentially decreasing property values. There is no evidence to suggest that this is the case. Panel reports have repeatedly concluded that such issues are not material to this stage of the planning process, a position supported by Planning Practice Notes and numerous VCAT decisions. Accordingly, this aspect of submissions has not been further considered in this Report.

(ii) Zoning anomalies

There were no submissions made or evidence led in response to this component of the Amendment. The Panel considers that the proposed zoning changes as exhibited appropriately reflect the underlying land use and relationship to adjoining lots and zoning.

(iii) Deletion of Heritage Overlays

The submission from Transport for Victoria (TfV) supported the Amendment which involved the removal of HO106 from Fairfield Station structures and its inclusion in HO313 supported by the application of planning permit exemptions for the Fairfield Station precinct in the Incorporated Plan. No other submissions were received to the deletion of HO106.

No submissions were received to the removal of HO112 from the right-of-way at the rear of 129-135 Station Street, Fairfield.

These matters have not been further considered in this Report and the Panel supports the changes as exhibited.

(iv) Policy changes

Aside from Council's Part A submission, no submissions were made to the policy change aspects of the Amendment. In the main these changes are minor and largely inconsequential to the Amendment but are important to support the functionality of

the HO and DDO21. In the case of the *Darebin Heritage Study* title corrections, the proposed changes are opportune.

The Panel notes that the Amendment seeks to replace and introduce several state-based design guideline documents in Clause 21.02-3, Clause 21.02-4 and Clause 22.06. The Panel is of the view that these reference document changes represent unnecessary duplication and are largely superfluous given the consequential changes of Amendment VC148 to the PPF and the role and identification of background documents. This is also the case for the proposed changes to Clause 22.06-3.9 to include references to several Clause 58 provisions.

Council anticipates that the referencing of background documents in policy, DDO21 and Clause 72.08 the will be resolved through DELWP's consideration of the Amendment and post Amendment VC148 LPPF transition implementation.

The Panel supports Council's position to either correct the reference inconsistencies to the Darebin Housing Strategy 2013-2033 in its next anomalies amendment, or to make this change as part of the Amendment.

The proposed Policy changes are not generally discussed in this Report and are supported as exhibited in addition to the Clause 21.02-4 post-exhibition change proposed by Council, subject to changes recommended in Chapters 4 and 5.

2.5 Issues dealt with in this Report

The Panel has reviewed a large volume of material from submissions, evidence and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the key issues to be resolved under the following headings:

- Planning context
- Heritage Overlay
- Design and Development Overlay.

3 Planning context

3.1 Policy framework

(i) Planning and Environment Act 1987

Section 4 of the Act lists the objectives of planning in Victoria. The Panel considers the Amendment implements these objectives through:

- roviding for the fair, orderly, economic and sustainable use and development of land in Fairfield Village
- securing a pleasant, efficient and safe work, living and recreational environment
- balancing the present and future interests of local residents and those who might wish to live in and adjacent to Fairfield Village
- conserving and enhancing those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value in Fairfield Village
- enabling land use and development planning and policy to be integrated with environmental, social, economic policies at the State and municipal levels
- ensuring the effects on the environment provide for balanced consideration of social and economic effects about the future use and development of Fairfield Village.

The Amendment balances these objectives by recognising, protecting and enhancing the heritage and built form values of Fairfield Village which is important to the local community while ensuring the Centre can continue to fulfil its strategic role as a Principal Neighbourhood Centre and a Substantial Change Housing Area.

(ii) Planning Policy Framework

Council submitted that the Amendment takes account of and is supported by the following clauses in the PPF:

- Clause 11 (Settlement) the Amendment supports creation of a network of diverse and vibrant activity centres of varying role and function and mixed use neighbourhoods at varying densities and housing choice offer.
- Clause 15 (Built Environment and Heritage) the Amendment provides for built form outcomes that contribute positively to Fairfield Village's sense of place, community life and cultural identity and manages the impact on the public realm and amenity neighbouring properties. The Amendment provides for the identification and protection of heritage places, respectful development of heritage places including contributory elements.
- Clause 16 (Housing) the Amendment ensures that Fairfield Village can support Melbourne's and Darebin's housing needs by providing opportunities for an appropriate level of housing diversity and choice within the Centre consistent with Plan Melbourne and Council's Housing Strategy.
- Clause 17 (Economic Development) the Amendment provides flexibility within DDO21 to ensure that Fairfield Village can accommodate further retail activity and investment that supports its role as a Principal Neighbourhood Centre.

Clause 18 (Transport) – the Amendment appropriately responds to the availability of public transport to the Centre including Fairfield Station and the creation of built form that encourages walking.

(iii) Local Planning Policy Framework

The Amendment supports the following elements of the LPPF:

- Clause 21.02-3 (Built Environment) by encouraging high quality design and buildings that promote an urban scale and character appropriate to the role and function of the activity centre.
- Clause 21.02-4 (Heritage) by:
 - ensuring that places of heritage significance are conserved and enhanced.
 - promoting sympathetic infill and redevelopment of heritage places by providing clear policy parameters to ensure redevelopment of heritage buildings is sympathetic and visually compatible with existing forms, while not discouraging innovation in design.
- Clause 21.03-2 (Housing Development) by:
 - supporting a variety of housing typologies at increased densities as sought for Substantial Change Areas, at a scale appropriate to precinct characteristics.
 - providing guidance on how heritage places in Fairfield Village can be sensitively developed.
 - facilitating higher density development in Fairfield Village at a scale that is consistent with a neighbourhood centre.
 - supporting a diversity of housing and facilitate increase densities and efficient use of land in Substantial Change Areas, with above ground floor level housing in retail precincts. The Amendment contains provisions which ensure the degree of change is appropriate and responsive to conditions.
 - facilitating residential and mixed use developments that display a high standard of design, limit off-site amenity impacts and provide appropriate internal amenity.
- Clause 21.03-3 (Housing Diversity and Equity) by increasing the diversity of housing types, sizes, design and configurations available in a Substantial Housing Change area.
- Clause 21.04-3 (Commercial and Retail Activity) by:
 - facilitating a higher intensity of activity in and around neighbourhood centres and promoting mixed use development which can support complementary uses. The HO will enhance the viability of Fairfield Village by facilitating investment that will conserve key heritage places and features which are highly valued and distinguish the Centre.
 - encouraging the consolidation of retail, business, employment, community and leisure facilities and higher density housing in and around activity centres.
- Clause 21.05-2 (Integrated and Sustainable Transport) by:
 - facilitating a mix of land uses and greater housing densities in and around activity centres and train stations to reduce trip length to employment, shops and services and support the use of public transport.

- encouraging good urban design standards in built environments to support walkability and pedestrian amenity, including prioritisation of street frontage areas for pedestrians rather than vehicles.
- Clause 22.06 (Multi Residential and Mixed Use Development) by providing detailed design objectives and requirements through DDO21 to achieve improved design quality and interface with and amenity of the public realm.

3.2 Strategies

(i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which describe how the Outcomes will be achieved. Outcomes 2, 4 and 5 are particularly relevant to the Amendment, and are summarised in Table 2. The Panel considers that the application of a HO and DDO to Fairfield Village are appropriate tools to achieve appropriate built form outcomes for the centre while still accommodating housing opportunities to meet the growth needs of Melbourne and the municipality.

Table 2 Plan Melbourne Outcomes, Directions and Policies

Table 2 Tall Melbourne Gateomes, Directions and Folicies				
Outcome	Directions and policies			
Outcome 2 - Melbourne provides housing choice in locations close to jobs and services	 manage the supply of new housing in the right locations to meet population growth and create a sustainable city support new housing in activity centres and other places that offer good access to jobs, services and public transport facilitate an increased percentage of new housing in established areas to create a city of 20-minute neighbourhoods (neighbourhoods in which people can meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home) provide certainty about the scale of growth in the suburbs provide greater choice and diversity of housing, and facilitate housing that offers choice and meets changing household needs 			
Outcome 4 – Melbourne is a distinctive and liveable city with quality design and amenity	 promote urban design excellence in every aspect of the built environment recognise the value of heritage when managing growth and change 			
Outcome 5 - Melbourne is a city of inclusive, vibrant and healthy neighbourhoods	 create a city of 20-minute neighbourhoods create mixed-use neighbourhoods at varying densities support a network of vibrant neighbourhood activity centres 			

(ii) Darebin Housing Strategy

The *Darebin Housing Strategy*, 2013 (Revised 2015) is a reference document in Clause 21.02 and Clause 21.03.

The Strategy seeks to address the challenges of housing a growing, ageing community and smaller households. The Strategy identifies Major and Principal Activity Areas as well as Neighbourhood Centres (such as Fairfield Village) with good access to the Principal Public Transport Network as 'substantial change areas', discouraging underdevelopment and providing for a variety of housing typologies including medium to high density apartments, townhouses and shop top dwellings with the scale dependent on specific precinct characteristics and context. It notes:

Principal and Major Activity Areas should encourage higher density development with diverse apartment configuration. Lower order centres such as Neighbourhood Activity Areas and other identified Substantial Change precincts should encourage a more modest scale of change.

Station Street, Fairfield (generally from the northern extent of the C1Z south to Heidelberg Road) is identified as a Substantial Housing Change Area in the Darebin Housing Change Framework Map included in Figure 2.

(iii) Darebin Economic Land Use Strategy 2014

The *Darebin Economic Land Use Strategy*, 2014 is a reference document in Clause 21.04 and Clause 22.04.

The Strategy supports the strengthening of City of Darebin Retail Activity Centre Hierarchy (identified in the *City of Darebin Retail Activity Centres Strategy*, 2005) in which Fairfield Village is identified as a Primary Neighbourhood Activity Area and a vibrant centre that is performing well as the retail focal point for the south-east of the municipality. Capacity to support a full line supermarket in the Centre is identified although acknowledges the challenges of land assembly. A Structure Plan process is identified as being required to support any potential expansion.

The Strategy encourages a high intensity of development in and around designated activity areas including focusing future retail expansion around Primary Neighbourhood Activity Areas.

The *Retail Activity Centres Strategy*, 2005 identifies the role of a Primary Neighbourhood Activity Centre as:

Major neighbourhood shopping locations providing weekly grocery shopping and, in some cases, limited specialty store shopping.

The Strategy identifies that the higher order centres within the municipality closest to Fairfield Village include Northcote Plaza to the north west (Major Activity Centre) and the Northland Shopping Centre to the north (Principal Activity Centre). The Panel notes these centre terms are no longer in use since Plan Melbourne was updated.

Figure 2 Darebin Housing Change Framework Map

NOTE

To reduce the electronic size of this document, Figure 2 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

The 2005 *Retail Activity Centre Strategy* also identified the importance of the visual quality of centres on the attractiveness and vibrancy of centres, the contribution made by urban design to the functional role of centres and of maximising density of urban development within character and amenity constraints.

The key elements of Strategy are included in the Strategic Economic Development Framework Plan included in Clause 21.04 and reproduced in Figure 3.

Figure 3 Strategic Economic Development Framework Plan

NOTE

To reduce the electronic size of this document, Figure 3 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

3.3 Planning scheme provisions

(i) Zones

With the exception of St Andrew's Church (GRZ2) and Fairfield Station (PUZ4), all land within the Amendment area is zoned C1Z. The Amendment area primarily adjoins the GRZ2 and pockets of the Residential Growth Zone along Station Street to the south of the Amendment area.

The purpose of the C1Z includes:

To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

To provide for residential uses at densities complimentary to the role and scale of the commercial centre.

(ii) Overlays

Heritage Overlays currently extend over four places/objects within the Amendment area, HO190 St Paul's Anglican Church at 84 Station Street and HO106 Fairfield Railway Station platform buildings and signal box. The Amendment removes the individual listing of these railway and station structures and includes them generally within proposed HO313.

The purpose of the HO includes:

To conserve and enhance heritage places of natural or cultural significance.

To conserve or enhance those elements which contribute to the significance of heritage places.

To ensure that development does not adversely affect the significance of heritage places.

The HO requires a planning permit for subdivision, demolition, and a range of buildings and works and alterations. A range of application types can be considered under VicSmart provisions. Permit exemptions can be extended to anything done in accordance with an incorporated plan identified in a schedule to the HO.

The Amendment proposes to introduce a new updated Incorporated Plan which will extend specified permit exemptions to the Fairfield Village Heritage Precinct, Fairfield Railway Reserve and the St Andrew's Church.

The Special Building Overlay extends over extensive areas of Station Street and adjoining properties reflecting areas subject to inundation because of urban drainage network overflow in major rainfall events. The proposed DDO21 accounts for the establishment of flood levels within the identification of street wall height measurements.

3.4 Ministerial Directions and Practice Notes

Council submitted that the Amendment meets the relevant requirements of:

- Ministerial Direction 9 (Metropolitan Planning Strategy)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 15 (The Planning Scheme Amendment Process)
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

Council submitted that the Amendment is consistent with:

- Planning Practice Note 1 (PPN01) Applying the Heritage Overlay, August 2018
- Planning Practice Note 10 (PPN10) Writing Schedules, September 2018
- Planning Practice Note 46 (PPN46) Strategic Assessment Guidelines, August 2018
- Planning Practice Note 59 (PPN59) The Role of Mandatory Provisions in Planning Schemes, September 2018
- Planning Practice Note 60 (PPN60) Height and setback controls for activity centres, September 2018.

The Panel considers that the Amendment is consistent with the identified Ministerial Directions and Planning Practice Notes in relation to the application of HO313 and HO314 and the use of the DDO tool. PPN10 was replaced with *A Practitioner's Guide to the Victorian Planning Schemes* in September 2018 and provides significant guidance for the appropriate format, content and language to be used for preparing schedules. PPN01 was updated in August 2018.

3.5 Discussion and conclusion

The Panel considers that the application of HO313 and DDO21 to Fairfield Village as proposed in the Amendment is consistent with the objectives of planning in Victoria, the PPF and LPPF, Ministerial Directions and Planning Practice Notes. However for reasons expressed in Chapter 5, the Panel considers that the DDO21 is not well crafted. It is overly complex and requires significant alteration to ensure it is consistent with the *Ministerial Direction on the Form and Content of Planning Schemes* and *A Practitioner's Guide to the Victorian Planning Schemes* to achieve the desired built form outcomes and provide a sufficient level of flexibility warranted for this precinct.

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF and LPPF and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is generally well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

The Panel acknowledges the work undertaken by Council in establishing a vision for Fairfield Village, investing in the Centre it and undertaking the strategic work to provide a basis for implementing that vision via the Darebin Planning Scheme. The broader policy context for the Amendment was largely unchallenged.

4 Heritage Overlay

4.1 The issues

The issues relate to:

- Whether there is sufficient heritage value to warrant the application of the Heritage Overlay (HO) to St Andrew's Church and Fairfield Village?
- Whether the application of the HO compromises other strategic outcomes being achieved?
- Content and application of the Incorporated Plan.

4.2 Context

(i) Applying the Heritage Overlay Practice Note

PPN01 is relevant in the consideration of the application of the HO. Amendment provides guidance around the role of a local heritage study in justifying the application of the overlay, heritage assessment criteria, writing a statement of significance, drafting schedules, use of incorporated pans and design guidelines and mapping.

(ii) Fairfield Village Heritage Assessment

The Heritage Assessment identifies that the Fairfield Village Heritage Precinct contains 90 places of which 60 are significant or contributory heritage places with the remaining properties designated as not significant. The extent of the precinct and levels of significance is shown in Figure 4.

The Fairfield Village Heritage Precinct Statement of Significance identifies:

What is significant?

The Fairfield Village Heritage Precinct, comprising the Federation and Inter-war commercial buildings, the church and the railway reserve and station buildings, platforms, footbridge and signal box, and its spacious setting in the precinct as shown on the precinct map, is significant. The original form, materials and details of the heritage places as shown in the schedule, are significant as are views to and from the station. Other buildings and non-original alterations are not significant.

How is it significant?

The Fairfield Village Heritage Precinct is locally significant for its historical, social and aesthetic values.

The Statement of Significance identifies the role the Fairfield Railway Station and associated village square plays in "the evolution of the modest working man's commercial precinct". In relation to the Station Street inter-war streetscapes the Statement of Significance identifies that:

Station Street is aesthetically significant for the streetscapes of predominantly Inter-war historic commercial buildings of low rise one or two storey structure, the articulation of the building facades, the

moderately Inter-war decorative elements, varying pediments and broken skyline, they provide an interesting and diverse streetscape that is divided into narrow allotments and buildings which have a human scale.

Figure 4 Fairfield Village Heritage Precinct Map

NOTE

To reduce the electronic size of this document, Figure 4 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

The Statement of Significance for St Andrew's Church identifies:

What is significant?

St Andrew's Alphington and Fairfield Uniting Church at, 85 Gillies St, Fairfield, is significant. The original form, materials and details of the building as constructed c1950 are significant, The Empire Roll, Alphington Methodist Church (First World War) and St Andrew's Presbyterian Church Honour Roll (First World War), are also significant. Later buildings and alterations to the earlier building are not significant.

How is it significant?

St Andrew's Alphington and Fairfield Uniting Church at, 85 Gillies St, Fairfield, is locally significant for its historical, social, spiritual and aesthetic values.

The Panel considers that the Heritage Assessment and Statements of Significance have been prepared in a manner consistent with PPN01.

(iii) Incorporated Plan

The proposed updated Incorporated Plan was produced as part of the Heritage Assessment and:

- inserts St Andrew's Church and the Fairfield Railway reserve as places to which the permit exemptions apply
- inserts a revised and updated Definitions Table
- inserts 'Fairfield Village' (HO313) into the table of Heritage precincts
- inserts a new section relating to St Andrew's Church which identifies significant and non-significant features and a range of interior and exterior buildings and works that will not require a planning permit under the HO
- inserts a new section relating to Fairfield Railway Reserve which identifies significant and non-significant features and a range of demolition and buildings and works that will not require a planning permit under the HO
- inserts a Fairfield Village Heritage Precinct, Fairfield Map which identifies significant, contributory and not significant/not contributory places.

The inclusion of Fairfield Village into the list of Heritage precincts in 'business zones' will result in the application of HO permit exemptions for Non-contributory and Not significant places including demolition and routine maintenance, below and above verandah (conditional) signage, façade alterations (conditional), installation of ATM's and awnings (conditional).

The "business zone" exemptions apply to four other centres namely High Street and Plenty Road, Preston; High Street, Reservoir; and High Street, Thornbury which have a range of neighbourhood or activity centre roles.

The Panel considers that the Incorporated Plan has been prepared in a manner consistent with PPN01, however the Panel identified an error in the Plan's reference to the blue polygon area associated with St Andrew's Church which designates external demolition and routine maintenance no-permit required areas and non-significant features. The Panel also noted that the Fairfield Village Heritage Precinct map key was inconsistent with the other precinct maps in the Incorporated Plan. These matters are discussed briefly in Chapter 4.6.

4.3 Heritage values St Andrew's Alphington and Fairfield Uniting Church

(i) Evidence and submissions

The submission from the Council of St Andrews Uniting Church Fairfield (Submission 6) raises concerns about the level of the significance of St Andrew's Church and its relative architectural and aesthetic merit in the context of other church buildings across Melbourne and because of the extent of internal and external changes. The submission identified concerns about the possible restrictions the overlay places on future alterations.

Evidence from Ms Huddle cited the primary research documented as part of the Heritage Assessment study identified that St Andrew's Church:

is an accomplished transitional modernist/traditionalist design. Furthermore, the work is a fine example of a creative design by

Victorian architect F Bruce Kemp, a highly accomplished architect. The clinker brick details are typical of Arts and Crafts preferences, but the minimalist and modernist aspect of the design is typical of designs that deliberately pare down the use of architectural decorative detailing, as does this building, but this may be read, by some, as 'not outstanding'.

The evidence from Ms Huddle indicated St Andrew's Church to be significant for the local Fairfield community with examples of other modernist churches on the Victorian Heritage Register including the All Saints Anglican Church, Mitcham (1958) and St Andrews Church, Brighton (1962). The evidence identified that St Andrew's Church is significant at the local level for its historical and social values.

(ii) Discussion

No contrary heritage evidence was provided to the Panel about the Church's heritage values and level of significance. The Panel notes Ms Huddle's qualifications and experience as an architectural historian and concludes that the Heritage Assessment's historical research, comparative analysis and Statement of Significance for St Andrew's Church to be compelling.

The Panel considers that the updated Incorporated Plan provides an appropriate and practical range of permit exemptions for internal alterations and identifies an extensive external area for accommodating future additions or new development. This appropriately to allows St Andrew's Church to continue to meet the needs of its local community.

(iii) Conclusion

The Panel concludes:

That the application of HO314 is appropriate and should be applied as exhibited.

4.4 Heritage values of Fairfield Village

(i) Submissions and evidence

The key issues raised in submissions not supporting HO313 relate to:

- whether the HO should include non-contributory buildings (Submissions 1, 3, 4 and 10)
- the extent of building change (new buildings and alterations, including alterations to contributory buildings) and small proportion of significant buildings within the identified Heritage place (Submissions 3, 10 and 11)
- the area not being identified in previous 2011 Heritage Study (Submission 7).

In relation to the application of the HO, Council relied on the statements of significance and evidence of Ms Huddle, which included a specific response to each of the submissions not supporting its application. Council submitted that the Heritage Assessment provided a sound strategic basis for the proposed HOs and:

In the absence of any independent evidence challenging Ms Huddle's assessment of the threshold significance of the St Andrew's Uniting

Church or the precinct the Panel is entitled to consider no such evidence exists.

Council pointed to the discretion used by Ms Huddle in determining the boundaries of the Fairfield Village precinct reducing the overall precinct area and removing several properties that were either too visually disconnected or altered to meet threshold criteria or where there were too many non-contributory buildings.

Council further submitted that:

- places identified as individually significant or contributory were identified using appropriate criteria
- to remove non-contributory places from the HO would be contrary to established principles and frameworks which contemplate non-contributory places being located within a heritage place
- non-contributory places need to be included "to ensure that their development does not impact on the heritage values of the precinct as a whole".

Ms Huddle's evidence indicated that:

It is important for the historic integrity of the precinct to [be] protected and enhanced, and this includes new development behind and between the significant/contributory places within the precinct.

All the non contributory/non significant places are included within the precinct Heritage Overlay in order to protect and enhance the valued heritage character of the streetscape as a whole, rather than only the individual/contributory historic buildings.

The main difference in the management of non contributory/non significant places and contributory/significant places is that the complete demolition of a non contributory/non significant pace would not diminish the integrity of the heritage precinct whereas the complete demolition of contributory/significant places that are visible from the public realm would.

Ms Huddle indicated that methodology used for the assessment of the places in the study area for important heritage values included:

Criteria (see page 12), thresholds and integrity (see page 21), definitions (see page 22) and the Statement of significance (see page 17). This is an accepted professional approach to precinct Heritage Overlays which is in accordance with the principals and practices of the Burra Charter 2013.

In response to the level of change and alteration present in the precinct Ms Huddle's evidence identified that:

Large numbers of alterations are typically part of precinct HO, as the HO is not to turn the place into a museum, and it is not to stop development, rather it is to manage the process of change.

Mr Walker for Mr Pateras, De Petro Trading Pty Ltd and Mr Biviano (Submissions 3,7 and 11) who collectively have significant holdings in the Fairfield Village Neighbourhood Centre, presented an extensive submission on these matters.

Mr Walker submitted that the imposition of a HO posed serious consequences for landowners and potentially on the ability to achieve other strategic objectives such as urban consolidation. He argued it required clear justification established through rigorous analysis. Consequently, he said it was for the Panel to establish whether the proposed precinct "makes the grade" and "passes the appropriate threshold required to establish heritage significance" and to err on the side of caution. He urged the Panel not to support the application of the HO to the precinct "unless its significance is clear, or fully justified".

In the context of HO313, he submitted that:

Put simply, the proposed precinct is not exceptional, except perhaps, for a precinct which is said to exhibit exceptionally valued character, in the extent of diversity in built form, and significant gaps in the form of unsympathetic post-war additions.

This position was based on many of the buildings within the proposed precinct having no heritage value, resulting in extensive gaps in the streetscape where there are "poor buildings capable of being demolished" (up to 50% of streetscape on eastern side of Station Street).

Mr Walker submitted that it must be concluded that the proposed precinct was at "the lower end of the spectrum of significance" particularly given that the Fairfield Village area had not been identified in previous heritage studies including the Darebin Heritage Review 2000 and the Thematic Environmental History which collectively identified 41 new precincts. He submitted that while there was no magic number for the ratio of significant and contributory to non-contributory buildings, in this instance it was "considerably below 80% referred to in the Monash L51 Panel Report".

Mr Walker contended that the application of the Heritage Overlay "does not meet the threshold test for local heritage significance, on any one of the criterion" pointing to flaws in the Heritage Assessment including:

- the heritage significance assessment criteria being set so low as to make it impossible to fail regardless of the level of integrity and intactness
- the lack of comparative analysis.

Mr Walker referred to criteria limitations that included listing all inter-war buildings in Station Street as being contributory or significant regardless of state or that they were "typical" examples of the period thereby limiting the class of buildings the place is said to represent.

Setting such a low threshold, he submitted, diminished the integrity of the municipality's heritage stock. Mr Walker agreed that rarity itself will not translate to heritage significance and an area must still meet the threshold for significance. He submitted that inter-war commercial precincts are not rare and were in fact common, yet Council was proposing controls similar to precincts of much greater built form consistency.

In relation to the lack of comparative analysis Mr Walker contended in relation to the Heritage Assessment and Ms Huddle's evidence that:

Ms Huddle, despite conceding that there were many, many examples of interwar commercial precincts in Melbourne and regional Victoria, did not undertake any comparative analysis of these precincts. Instead for her, it was sufficient that the precinct was of significance for the "Fairfield Village"

Mr Walker concluded that the heritage evidence and analysis was flawed and should not be accepted.

In response to cross examination about whether the precinct was "at the lower end of the spectrum of heritage across the municipality", Ms Huddle indicated that from an architectural quality and level of elaboration it was, but as a working-class area the level of architectural finesse would be expected to be less and was significant in the context of Fairfield's heritage.

Council's submission acknowledged that Fairfield Village is low scale and modest:

It is a 'working man's commercial shopping area'. This means that one should not expect to see overly grand or ornate buildings lining Station Street as one does along Sydney Road, Brunswick or Glenferrie Road, Malvern. These more humble buildings are not necessarily any less important or should not necessarily be valued any less.

In relation to the non-contributory building gaps, Ms Huddle indicated that there was enough historic fabric present to allow it to be read as a historic area and the gaps mostly comprised one and two storey buildings that don't dominate the heritage buildings. Ms Huddle indicated under cross-examination that the range of architectural styles present was reflective of the inter-war era of architecture.

The use of guidelines was identified by Ms Huddle as a way of managing this process to provide a level of development certainty and restoration providing "win-win outcomes".

Mr Walker's submission included positions on the Heritage Assessment's Design Guidelines, particularly those elements relating to height and setbacks. These aspects of submissions are discussed in more detail in Chapter 5 of this Report.

(ii) Discussion

In considering whether the application of HO313 is warranted the Panel has to consider whether there is sufficient evidence that the precinct has the appropriate level of heritage value and significance. The robustness of the Heritage Assessment and associated Statement of Significance form the basis of that justification. The Panel accepts the submission that in applying a HO, the Panel needs to be satisfied that the place is of sufficient importance and that its heritage values should be recognised in the planning scheme or put another way, it "makes the grade".

A focus of Mr Walker's submission related to the level of the threshold criteria used to assess the significance of potential heritage places. The Panel notes that the Heritage Assessment uses five criteria rated from high priority to low priority to assess historic places that best represent the historic themes of the Fairfield

commercial area. While a heritage place needed to include one or more of these criteria, the place having a prima facie case for rarity, aesthetic or architectural significance whose extant fabric is suitable for protection was of the highest priority, while a place representing an important historic era (inter-war) in the development of the Fairfield commercial area was of the lowest priority.

Mr Walker pointed to a number of Panel reports including Monash L51 where the proportion of non-contributory to contributory places in a precinct was a factor in the application of a HO. In Monash L51 the Panel considered an 80 per cent level of intactness demonstrated genuine heritage significance and that more careful consideration was required where the proportion is much lower. The Panel is of the view that such a consideration should be based on the Heritage Assessment and the local circumstances.

There was considerable discussion during the Hearing through submissions, evidence and cross-examination around the level of significance of the proposed heritage precinct and its relative intactness in the context of the ratio of significant/contributory and non-contributory places. The Heritage Assessment identified that there are 90 places in the precinct, 60 of which are significant or contributory. The Panel was not able to reconcile this number with either the Schedule of Places in Appendix 7 of the Heritage Assessment or by using the cadastra map. The Heritage Assessment identified that "these figures are approximate as it depends on whether they are counted according to the allotments".

Using the street number and building sub-tenancy addresses in Appendix 7 of the Heritage Assessment there appears to be close to 90 places identified, with eight significant places (including one building with four ground floor tenancies), 46 contributory and 32 non-significant places. On the Precinct Map the most spatially dominant place is the Railway Reserve with only one significant place in Railway Place and in Wingrove Street and one significant place on each side of Station Street.

The sites on the south side of Railway Place are all identified as being of significance or contributory value and have a strong visual relationship to the Railway Reserve heritage place. Land on the north side of Wingrove Street has around 50 per cent of sites identified as being of contributory value, although again this area has a strong visual connection with the Railway Reserve heritage place.

The Station Street portion of the proposed precinct has approximately 60 to 70 per cent of street frontage comprised of significant or contributory places, the overwhelming majority of these contributory. While there are continuous groupings of contributory buildings there are distinct one or two building breaks on both sides of Station Street. The southern portion of Station Street however has a strong visual relationship with the Railway Reserve heritage place.

While the proposed heritage precinct is dominated in spatial proportion by the Railway Reserve heritage place and contributory buildings (many of the latter altered), a visual analysis of the street and the review of the significant features for the contributory sites identified in the Heritage Assessment confirms a level of consistency in original fabric still readily apparent. This includes parapets, stall

boards, metal shop window frames, recessed entries, verandahs, brick and rendered facades.

While many of the contributory buildings have altered shop fronts, have been painted, had fabric removed or obscured and more modern awning forms added, much of this is superficial and can be recovered or reinstated where appropriate. The Panel considers that the level of intrusion of non-significant buildings or alterations to contributory buildings in the precinct has not been compromised the extent to which the inter-war architectural and heritage values can be readily observed and appreciated.

The visible and cohesive heritage character is further enhanced by the lack of vehicle crossovers which has resulted in a continuity of buildings built to the street edge and the narrow lot arrangement which has maintained a regular fine-grain form and rhythm. It is considered that the precinct extent is appropriate and that the Heritage Assessment has applied a sufficiently rigorous analysis to confine it.

The Panel considers that these values cannot be readily managed with another planning tool such as a Neighbourhood Character Overlay or a DDO alone. The loss of these heritage elements within Fairfield Village would visually transform it, and substantially impact on its character and sense of place.

In terms of a comparative analysis the Heritage Assessment identifies that:

while a place may be of less architectural significant than a comparable place within the City, they remain of very high historical and social significance to the local Fairfield community and architecturally representative of the Heritage Village.

The Panel does not consider it fatal to the rigour of the Heritage Assessment that it had not included a comparative analysis with other inter-war heritage places. The focus of the assessment was on Fairfield Village. The Panel is satisfied that the Heritage Assessment has established that the Fairfield Village Heritage Precinct is of local level significance to Fairfield.

The Panel was asked by submitters to review a series of previous Panel Reports and the *Review of Heritage Provisions in Planning Schemes Advisory Committee Report*, August 2007 (Advisory Committee Report) in its consideration of the Amendment. The Panel has done this, noting however the circumstances and context are always different. Some of the salient elements from the Advisory Committee Report relating to heritage assessments include:

- assessment criteria at the local level should be based on the HERCON criteria, modified to suit local area analysis and allow each of the values to be assessed
- thresholds have the potential to vary from place to place responding to particular history and cultural fabric of the area
- the inability to see elements of significance from outside the site does not detract from their significance
- while intactness is relevant in an assessment of significance, condition or structural integrity should not influence the inclusion of a place in a HO.

The Panel considers that the methodology adopted in the preparation of the Heritage Assessment has applied well established and recognised criteria for identifying

integrity and levels of significance and is consistent with the Advisory Committee Report and PPN01. The Panel notes that the Statement of Significance for Fairfield Village is strongly focused on Fairfield Station and the associated village square and immediate surrounds and less so on the Station Street component of the heritage place. While the Panel understands that this appropriately relates to the level of local significance associated with the railway station heritage fabric and its role in the growth of the Fairfield Village commercial area, it limits the significance of Station Street to an aesthetic one. This may have implications later if Council's objective is to retain substantial heritage fabric in Fairfield Village. It is recommended that Council consider reviewing the Statement of Significance before finalisation of the Amendment.

(iii) Conclusion

The Panel concludes that:

- The Fairfield Village Heritage Assessment, 2017 assessment methodology uses well established and recognised criteria for identifying integrity and levels of significance consistent with PPN01.
- The Fairfield Village Heritage Assessment, 2017 provides sufficient support for the identification and protection of heritage fabric in the Fairfield Village Neighbourhood Centre.
- There is sufficient discernible heritage fabric and heritage values associated the Fairfield Village Neighbourhood Centre to warrant the application of HO313 as exhibited.
- The Fairfield Village Heritage Assessment, 2017 provides useful information in terms of understanding the development of the Heritage Overlay and identifies the significant features of significant and contributory buildings and as such is an appropriate document to identify in the Darebin Planning Scheme as a background document.
- A tighter Statement of Significance for Station Street would provide better guidance for the administration of the HO and Council should review it in relation to Station Street before finalisation of the Amendment.

(iv) Recommendations

The Panel recommends:

1. Review the Fairfield Village Heritage Precinct Statement of Significance before finalisation of the Amendment.

4.5 Strategic policy implications

(i) Evidence and submissions

Submissions 7 and 11 indicated the application of HO313 and DDO21 was inconsistent with the housing and economic development objectives of the PPF and LPPF. Accordingly, it would compromise development opportunities and outcomes.

Mr Walker described the "perfect storm" of circumstances relating to population growth, demand for housing and infrastructure, that state and local planning policy

were seeking to address and that the application of heritage and mandatory design controls effectively curtailed.

Submissions from Council and Mr Walker discussed the strategic intent of:

- Flanning policy Framework including Clause 11: Settlement
- The Municipal Strategic Framework
- The Darebin Housing Strategy.

Council's submission acknowledged that:

the HO introduces another layer of control for property owners. Council concedes that a planning control which imports additional permit triggers and relevant considerations will add to the planning controls for these submitters' properties.

Council further submitted that:

given the lack of evidence presented to the Panel on heritage matters by the submitters, there is no basis to suggest the Amendment precludes the 'fair, orderly, economic and sustainable use, and development of the land' through the application of the HO. The Act is clear that 'as with many other aspects of societal regulation, the application of heritage and other planning controls is intended principally to confer a wider net community benefit than an individual benefit ...'

When balancing the merits of heritage protection against other issues raised in the submissions, it is important to remember that heritage significance is an enduring and long term concern, whereas matters of development potential, building condition, economic matters or current or mooted planning approvals are by contrast short-term in nature.

In discussing the role of Fairfield Village in the hierarchy of activity centres, Council identified a shift in the role played by Fairfield Village including its likely accommodation of a larger supermarket. This position was based on the nearby development of the Alphington Paper Mills site in the City of Yarra which provided for 13,500 sqm retail and commercial floor space and on the *Fairfield Village Action Plan*, 2015 which identified that the Centre's role and function was stable and that:

Fairfield village should play to its strengths as a traditional strip, based Centre and seek to enhance its 'point of difference' from the new Amcor centre. In particular, this highlights its role and image as a generous 'public' place with a particular diverse range of food convenience and local produce in tandem with civic and community destinations.

(ii) Discussion

The relevant PPF and LPPF provisions have been identified in Chapter 3. While this policy framework supports the role of activity centres such as Fairfield Village in meeting future housing needs and supporting economic activity, this is to be part of a municipal wide response and tempered by local circumstances.

The Panel considers the *Darebin Housing Strategy* seeks to address its growth and housing provisions in a balanced manner. The identification of Fairfield Village as a

substantial change area is not compromised by the application of the HO. Clause 21.03 envisages that the scale and intensity of development will vary across substantial change areas (with Neighbourhood centres having a mid-hierarchy role). The application of the HO does not inhibit the ability for Fairfield Village to support a variety of housing typologies at increased densities, particularly when read with DDO21 which anticipates four and five storey high development in the precinct.

Importantly the HO has not been applied to the entirety of the Fairfield Village Neighbourhood Centre and does not prevent development, demolition or alteration. The application of the HO will enable better management of signage, façade treatments and awnings and new building forms that respect the existing heritage character and contribute to the sense of place consistent with Council's vision for the precinct.

The question of personal economic impact or potential constraint on development are matters for the next stage of the planning process, that is, at the time a permit is applied for.

Specific issues regarding policy objectives being achieved through the proposed mandatory provisions in DDO21 is discussed further in Chapter 5.

(iii) Conclusions

The Panel concludes that:

- The application of HO313 is consistent with Council's broader vision and aspirations for the Fairfield Village Neighbourhood Centre.
- The application of HO313 to the Fairfield Village Neighbourhood Centre will not compromise the achievement of housing and economic strategies and objectives for the Centre.

4.6 Incorporated Plan

(i) Discussion

Only the submission from TfV discussed the content or role of the revised Incorporated Plan. The TfV submission noted that the permit exemptions alleviate concerns regarding ease of future maintenance and improvement of buildings and structures.

The Panel considers the updated Incorporated Plan provides appropriate permit exemption provisions for Fairfield Station and St Andrew's Church.

Council provided a response to the Panel's identification of two document errors or inconsistencies relating to St Andrew's Church permit exemption areas and the Fairfield Village Heritage Precinct Map. The appropriate changes to the Incorporated Plan are identified in Table 3.

The Panel considers these to be minor and inconsequential changes that should be included in the final Incorporated Plan at adoption to support legibility and consistency.

The policy changes relating to the inclusion of the Fairfield Village Heritage Assessment as a reference or background document while minor, is operationally important to support the application of the HO.

Table 3 Incorporated Plan changes

Incorporated plan item	Issue	Recommended change
Section 3.9 St Andrew's Alphington and Fairfield Uniting Church	Makes two different references to the "blue polygon" used to identify non-significant features (Attachment B) and Demolition and routine maintenance (Figure 2)	Replace reference to Appendix B with Figure 2
Fairfield Village Heritage Precinct map	Inconsistencies in the Key on the Fairfield Village Heritage Precinct Map utilising longer form descriptions of places than all other precinct maps in Attachment A, which use the simplified categories of Contributory, Noncontributory and Significant	Amend the Fairfield Village Heritage Precinct Map so that it uses the same key as other Incorporated Plan precinct maps

(ii) Conclusion

The Panel concludes that:

- the Heritage Assessment is suitable to be identified as a Background document.
- the strengthening of the Fairfield Village Statement of Significance relating to the Station Street inter-war streetscape is warranted.

(iii) Recommendation

The Panel recommends:

2. Amend the City of Darebin Heritage Study Incorporated Plan - Permit Exemptions (2011, amended 2018) as shown in Table 3.

5 Design and Development Overlay

5.1 The issues

The issues relate to whether:

- Fairfield Village has an identifiable built form character that supports the application of a DDO?
- DDO21 compromise other strategic policy priorities?
- DDO21 operates effectively with the proposed HO?
- the DDO21 provisions are appropriate, particularly:
 - building heights
 - valued street facades
 - street walls and front setbacks
 - side and rear setbacks
 - design detail
- DDO21 will appropriately implement the vision for Fairfield Village?

During its submission on Day 1, Council produced a revised version of the DDO21 (see Appendix D) for consideration by the Panel. Council advised that this version incorporated suggested changes (those accepted by Council) recommended in Ms Bell's urban design evidence for street wall heights and setbacks, and Ms Huddle's heritage evidence relating to materials and finishes, and a number of minor matters recommended in Mr Blades' Urban Design evidence relating to materiality.

The key changes in this version:

- deleted references to 'should' or replaced them with 'must' throughout the documents to ensure they are expressed as requirements
- amended street wall and front setback requirement by replacing Figure 4 to remove staggered setbacks between second and fourth storey levels and replace them with a uniform 4.0m setback behind valued street facades
- amended side setback requirements so that any part of a building that exceeds 4 storeys be setback 3.0m from a side boundary (permit cannot be granted to vary requirement)
- amended street façade form and detailing requirements to clarify meaning and intent
- amended materials and finishes requirements by providing a link to heritage considerations.

These changes are discussed in context within the relevant issue sub-chapters of this Report.

The Practice Notes relevant to the application, form and content of DDO21 are:

- A Practitioner's Guide to the Victorian Planning Schemes (Practitioners Guide)
- Planning Practice Note 59 (PPN59) The Role of Mandatory Provisions in Planning Schemes, September 2018
- Planning Practice Note 60 (PPN60) Height and setback controls for activity centres, September 2018.

PPN59 describes the criteria used to determine whether mandatory provisions are appropriate, including the level of strategic support. PPN59 is read in conjunction with PPN60 in relation to height.

PPN60 requires that mandatory height and setback controls be applied only in exceptional circumstances or where Council has undertaken comprehensive strategic work to justify they are appropriate in context, further they are absolutely necessary to achieve the built form outcomes and it can be demonstrated that unacceptable outcomes would result from exceeding them. PPN60 outlines the strategic work required to justify the application of mandatory provisions including consistency with the PPF, currency and the role of the activity centre to accommodate growth based on its role, location and potential for development.

5.2 Does Fairfield Village have an identifiable built form character?

(i) What is proposed?

DDO21 seeks to apply controls over two sub-precincts, Area 1 aligning with proposed HO313 and Area 2, the balance of Fairfield Village Neighbourhood Centre.

DUNCAN ST

GORDON ST

Area 1 (Falffield Vilage Herhage Precinct)

Area 2

Area 3

Area 5

Area 5

Area 5

Area 6

Area 1 (Falffield Vilage Herhage Precinct)

Figure 5 DDO21 Areas

(ii) Evidence and submissions

Ms Bell provided urban design evidence and described the existing character of Fairfield Village as follows:

[3] Station Street has a 'village' character, comprising a traditional main street environment of fine grain shop fronts generally of 1 to 2 storeys forming a fairly consistent streetscape elevation, excluding some isolated more recently developed higher built form. Station Street consists of a mix of considerable amount of old and moderately detailed building facades, which are interspersed with more contemporary forms. Generally, the facades include parapets that vary in height and style and add to the distinct eclecticism of the village. Refer to photos 1-8.

[4] Land to the south of the railway station on Railway Place also contains some older buildings and varies between 1-2 storeys with a fine grain, hard edge character. Newer built form of up to 5 storeys is emerging within the streetscape and in peripheral residential zones. Refer to photos 9-16.

Wingrove Street contains a row of commercial buildings lining the northern side of the street, with the railway line and historic Station buildings on the southern side. Lots are generally of a fine grain and 1-2 storeys in height. Some built form variation consists due to previously residential properties that have been converted to commercial uses. These properties generally include small front setbacks rather than a hard edge. The historic railway station buildings and wide native vegetation strip form part of the distinct Wingrove Street character. Refer to photos 17-24.

[1] Lots within the study area are consistently at 36m-40m in depth. Many lots have narrow frontages, reinforcing the fine grain character. Larger parcels are interspersed throughout but are generally located closer to the periphery of the study area.

Both Ms Bell's and Mr Blade's evidence acknowledged an emerging character of taller building forms towards the southern end of the precinct.

Mr Blades' evidence was generally in accordance with this analysis, although he included additional precinct-based analysis. Mr Blades' evidence suggested that Council's precinct distinction was based primarily on heritage considerations and did not recognise the distinct character differences between Station Street and streets adjacent to the station. Mr Blades' analysis identified two distinct character precincts (Figure 6):

- Station Street with its prevailing one and two storey building height, wider road reserve, fine-grained subdivision pattern, eclectic building mix and sense of intimacy created by canopies
- Fairfield Station with its greater diversity of street wall height and overall building height, diversity of architectural styles, public realm landscape character and inconsistency between streets on either side of the station.

Mr Blades considered this precinct distinction would be a more appropriate basis of design controls, including height, as the two areas essentially had different capacity to absorb height. Mr Blades' evidence and Mr Walker's submission refer to the 2008 version of the *Fairfield Village Design Guidelines* which showed a four-storey height response adjacent to Fairfield Station and three storey height provision in Station Street was anticipated, supporting this precinct distinction.

Council did not support this position. Ms Bell indicated in that Mr Blades' precinct assessment did not respond to key character elements or heritage. Ms Bell's evidence did however recommend the inclusion of the properties at 129-135 Station Street in Area 1 to create a distinct edge to the two areas and to ensure that different sides of Station Street south of Duncan Street did not have different height provisions. Council indicated its acceptance of this recommendation in its revised DDO21.



Figure 6 Alternate Fairfield Village DDO precincts

Mr Walker indicated that this Area change potentially represented a transformation to the Amendment and that affected land-owners had not had the opportunity to consider the potential impacts of this change.

The evidence of both Ms Bell and Mr Blades supported the strategic intent of providing greater built form and certainty through DDO21. Mr Blades qualified this with concerns about specific content and the design aspirations of DDO21. Mr Walker identified that the submitters were not requesting much in the form of changes to the Amendment that could not be addressed by removing mandatory height and setback provisions and allowing greater height consistent with Mr Blades' precinct approach.

(iii) Discussion

The Panel considers that there is discernible built form character within the proposed DDO21 area. This is supported by the evidence of Ms Bell and Mr Blades. Council supported by Ms Bell's evidence, have aligned the sub-precinct areas with the heritage values identified in the Heritage Assessment and the gaps in contributory buildings and valued street facades in Area 2. Mr Blades' approach is more focused on the spatial relationship with the station, across streets and height characteristics. The Panel considers that neither approach is incorrect per se from a first-principles perspective. The difference of approach is more marked when used as a basis of height controls.

In this instance, the DDO controls and response have been developed cognisant of the heritage values of the precinct and as discussed elsewhere in this Report, the identified heritage values and architectural characteristics are closely aligned with the identified built form character of Fairfield Village. This is not to say that the two controls are doing the same job.

On balance the Panel supports the recognition of the built form characteristics of Fairfield Village through the application of a DDO. The Panel supports the two area approach as proposed in the exhibited version of DDO21.

The Panel agrees with Ms Bell's evidence that Area 1 should be extended to Duncan Street on the east side of Station Street. This is logical for the reasons identified by Ms Bell however the Panel acknowledges that affected land owners have not had the opportunity to make a submission to this change. The change could be perceived as a minor transformation of the Amendment particularly given that DDO21 proposes lower street wall and building heights in Area 1. This change could be addressed by splitting the Amendment into two parts and pursuing further changes to the DDO through re-exhibition. This might be an appropriate action given other concerns with the form and content of the DDO discussed in Chapter 5.10 of this Report. An alternate option is to leave the extent of areas as exhibited and further review the DDO21 at a later time.

(iv) Conclusion

The Panel concludes that:

- The application of a DDO to Fairfield Village is supported.
- The two-area designation in DDO21 is appropriate.
- There is value in Area 1 being extended to Duncan Street on the east side of Station Street, however this may represent a transformation of the Amendment.

5.3 Strategic policy implications

(i) Submissions and evidence

As identified in Chapter 4.5 several submissions raised concerns with the application of the HO and DDO21 and the ability for centres like Fairfield Village to pull their weight in accommodating housing growth and economic activity. These submissions identified that application of mandatory controls in particular, are excessive given the eclectic architectural character, lack of exceptional character and more recent

modern, taller building intrusions. Some noted it may stifle innovation and design excellence and constrain the ability to achieve broader policy objectives. Mr Walker submitted this was particularly the case for centres such as Fairfield that are close to public transport and identified for substantial change.

(ii) Discussion

The relevant PPF and LPPF considerations identified in Chapter 4.5 are not repeated here.

The two-area approach to controls appropriately reflects that the northern portion of the precinct (Area 2) has a different character than Area 1 given its greater mix of building typologies.

The application of DDOs (and HOs) in activity centres is common to ensure the key character and built form elements are considered in new built form responses. Further, these maintain the sense of place and a level of distinctiveness.

The Panel considers that the application of DDO21 provides a trigger for permit applications and an appropriate design response. Given the narrow lot subdivision pattern, modest lot area, and lack of rear access and the focus of major retail and commercial floor space activity in other centres, it is considered that the application of a DDO with the appropriate balance of controls would not stifle the level of development activity anticipated for the Centre. The proposed DDO21, mandatory provisions aside, anticipates and provides for substantial development opportunity well above the existing heritage façade heights to accommodate future housing and commercial floor space provision. The level of development activity anticipated by DDO21 provides for what is a level of substantial change for a Centre of this size and its place in the retail hierarchy and could not be said to be encouraging underdevelopment. DDO21 supports site consolidation.

The Panel agrees with Mr Walker's proposition that where there is a lower level of heritage significance, and significant stretches of the streetscape which do not have any heritage value, there is greater scope for flexibility in the design response. Issues relating to mandatory controls are particularly relevant in considering the appropriate level of development control that should apply in Fairfield Village and are discussed further.

(iii) Conclusion

The Panel concludes that:

- The application of DDO21 is consistent with Council's broader vision and strategic aspirations for the Fairfield Village Neighbourhood Centre.
- The application of DDO21 to the Fairfield Village Neighbourhood Centre will not compromise the achievement of housing and economic policies and strategies for the Centre.

5.4 Design objectives and relationship to the Heritage Overlay

(i) What is proposed?

DDO21 as exhibited includes five design objectives:

To encourage high quality urban development that achieves moderate intensification while being responsive to the valued character and amenity of the centre.

To ensure development complements the established traditional streetscape of the centre by contributing to consistency of form, scale and facade articulation.

To ensure development respects and enhances identified heritage buildings and precincts.

To ensure development makes a positive contribution to the public realm.

To ensure development provides an appropriate transition to and limits adverse amenity impacts on residential zoned properties.

(ii) Evidence and submissions

The key concerns arising out of submissions and evidence related to the reference to heritage buildings and whether DDO21 and the identified built form character elements of Fairfield Village are more focused on heritage.

Mr Blades identified that the DDO is primarily a built form tool to articulate a preferred future character while the HO is the primary tool "for the consideration existing heritage fabric makes to preferred heritage outcomes". Mr Blades' evidence acknowledged that "there is a nexus between urban design and heritage insofar as considerations such as streetscape character are concerned" but suggested that the DDO was based primarily on heritage considerations. He said it consequently "dilutes the effectiveness of the DDO as a principle design-based tool for the articulation of best practice built form outcomes".

Council considered that it was critical that development of DDO21 considered the built form outcomes that would "maintain the existing village feel and be acceptable under the HO". Council submitted that the critical language in the design objectives was "respects and enhances identified heritage buildings and precincts" rather than protects. Council referred to DDO19 (Glenferrie Road and High Street Activity Centre) in the Stonnington Planning Scheme which included in the design objectives the encouragement of development which "complements the existing heritage fabric".

Council's submission identified that to prepare a DDO in isolation to a HO would create a hostile situation where the two controls would be in conflict and that Council had worked actively to ensure the two tools worked together.

(iii) Discussion

The Panel considers that it is not unusual to have both a DDO and a HO applying to an activity centre. Depending on the context, these controls might apply to the same

precinct or cover different parts of an activity centre depending on the heritage or built form character present.

HOs and DDOs have distinct roles and purposes. The HO seeks to identify places of heritage significance through demolition and building alteration permit triggers and require development responses to consider the impacts on the significance of a place. While a HO can include design guidelines, these cannot include mandatory provisions and will generally be focused on appropriate heritage place responses rather than preferred design or character aspirations for the whole centre.

The Panel considers the conclusions of the Panel in Moreland C134 which also considered this issue are relevant to the Amendment:

The Panel agrees with Council and its experts that heritage is an appropriate issue which DDOs can provide guidance on. The head clause of the DDO identifies this. The Heritage Overlay informs decision makers what is significant, but not how development should respond to that significance by way of a built form response. This is an obvious role for the DDO, and in the case of Sydney Road and parts of Lygon Street where heritage does form part of the character and existing built form, DDO18 and DDO19 can appropriately provide guidance. This guidance is important, not only for listed properties, but also for properties which sit next to or could impact on the significance of a listed place.

The Panel in Melbourne C240 (PSA) [2015] PPV 37 considered this issue and concluded that while it was not appropriate for a DDO to solely look to protect heritage considerations and that the HO is the tool for preservation, particularly in a precinct wide HO.

... notwithstanding this level of control in a precinct HO, guided as it is by the Statement of Significance and the policy framework of the Planning Scheme, it may be beneficial as it is in the present case, to layer the HO with another planning tool which sharpens the understanding of, or places parameters around, acceptable design outcomes.

The Panel notes that in the case of DDO62, the design objectives, correctly, are not expressed in terms of retaining the heritage elements of significance in the Precinct per se. Instead they seek to 'protect character'...

In the Panel's view all of these matters are a legitimate purpose for applying DDO controls.

The general decision guidelines of the DDO referred to by Ms Porritt, also make it clear that seeking to achieve development outcomes consistent with the heritage characteristics of a place would not fall outside the proper use of a DDO.

The Panel considers that this is the case here. DDO21 seeks to ensure the design objectives and built form responses recognise the heritage significance of Fairfield Village. The design objectives extend beyond respecting and enhancing heritage

buildings and precincts and anticipates and accommodates significant built form change throughout Fairfield Village. DDO21 manages and tempers the extent of new built form envisioned for the Centre in a manner that allows the heritage place to be identified and understood but does not unreasonably fetter change.

Council in preparing this Amendment have developed the HO and DDO21 side by side in a precinct where the built form character and heritage values are strongly aligned. This is a reasonable approach in the context of this Centre.

Importantly the HO is the only mechanism where the valued street facades identified in DDO21 can practically be retained (their demolition requiring a permit) and incorporated into development in the manner anticipated.

(iv) Conclusion

The Panel concludes that:

- The design objectives of DDO21 are appropriate.
- HO313 and DDO21 work effectively together.

5.5 Building height

(i) What is proposed?

DDO21 proposes maximum height requirements (which cannot be varied with a permit) based on land area as summarised in Table 4.

Table 4 Building height requirements

Area	Maximum height limit
Land under 1000 sqm	14.5m and 4 storeys
Land 1000 sqm or greater	17.5m and 5 storeys

(ii) Submissions and evidence

Submissions 3 and 11 raised concerns about the application of mandatory heights and using land area as a basis of height differentiation. These submissions raised concerns about the effect mandatory provisions would have on the Centre fulfilling its strategic growth role.

Mr Walker referred to PPN60 and submitted that the case for mandatory controls had not been based on the necessary level comprehensive analysis required. Mr Walker referred to earlier versions of the Hansen Partnership design guidelines which identified higher height opportunities. It did not nominate the application of mandatory provisions identifying that this was added later in the Council officer prepared version. Mr Walker submitted that:

Mandatory controls stifle innovation and design excellence, and encourage mediocrity in the form of development that builds to a box. The Nightingale project is a prime example of this. It is an innovative project which delivers in spades on sustainability and affordability objectives. It would be prohibited under DDO21.

Mr Blades' evidence, which is based on his character analysis, recommended the removal of the mandatory height provisions and applying discretionary preferred building heights of five storeys (17.5m) to his identified Station Street Precinct and six storeys (20.5m) to his identified Station Precinct. Mr Blades recommended the removal of minimum land size prerequisite. These changes were considered to reflect the emerging character of the precinct and its role as a substantial change area.

Ms Huddle supported the application of mandatory height provisions although they were not expressed this way in the Heritage Assessment. She acknowledged that the building heights were a compromise and that from a purely heritage perspective, lower height forms were more appropriate.

Ms Bell's evidence supported the application of the proposed heights based on the level of strategic work undertaken to inform the controls. Ms Bell however recommended two changes:

- applying the mandatory height provisions to Area 1 only
- using a lot width trigger (24m) for height rather than minimum lot area supported with a mandatory 3m side setback at the fifth floor level.

Ms Bell indicated that the recommendation not to apply mandatory height limits to Area 2 was due to the built form analysis not being compelling enough. She considered that this area had less heritage and character value than Area 1. Ms Bell considered that there was a "higher imperative to respond to the valued character in Area 1". Ms Bell concluded that removing the mandatory height provision from Area 2 would provide allowance for more design flexibility.

In relation to the minimum land area trigger, Ms Bell's evidence suggested that this was an inappropriate tool and that minimum widths were more likely to stimulate lot amalgamation and was already used within Darebin (DDO3, DDO16 and DDO17). Ms Bell identified that side setback provisions were more likely to retain the openness of the streetscape and moderate scale.

Council's submission did not support Ms Bell's evidence regarding the proposed height triggers. Council referred to Clause 21.03 that identifies 1000sqm sites as strategic opportunity sites as a basis for using the minimum lot area criteria for height. It was Council's view that nominating mandatory height provisions was critical to respond to the identified character and to rely on preferred heights inevitably meant that this was the starting point for development proposals. Council indicated that the proposed heights were well above the heights that existed under former DDO8 and that it had worked closely with the community to accept more intensive and higher built form in their village.

(iii) Discussion

Consistent with PPN60 the Panel agrees that mandatory provisions should only be applied where strategically justified. The Panel considers that sufficient strategic analysis was undertaken by Council to support mandatory controls in Area 1. The Panel considers that a mandatory control is necessary to provide an appropriate response to the established character of Fairfield which has a greater level of consistency and heritage character than Area 2.

Heights of five and six storeys as a consistent height outcome would, in the Panel's opinion, significantly overwhelm the established character and heritage values of Fairfield Village to the point where it is no longer appreciable.

The Panel considers that DDO21 and the HO in this instance need to be read together to ensure that Council's aspirations for the centre are realised. The Panel believes this requires a balanced approach to be taken in respecting the heritage elements of the place, enhancing the Centres urban design characteristics and encouraging an appropriate level of development that is appropriate to the strategic role of Fairfield Village Neighbourhood Centre. This means that a mix of mandatory and non-mandatory requirements is necessary.

The Panel agrees with Ms Bell's evidence however that the built form analysis does not justify the application of mandatory height provisions in Area 2 and the characteristics of this area means it could accommodate greater flexibility.

The Panel is of the view that the 1000sqm minimum land area trigger for height is somewhat arbitrary. This lot size is larger than the majority of lots in the centre and will work to effectively limit height to 14.5m or four storeys. The Panel agrees with Ms Bell's evidence that width would be a better trigger as it reflects the predominant lot width and land area in the Centre. The Panel agrees however with Mr Walker's submission that the addition of a 3m side setback potentially represents a transformation of the Amendment as it is expressed as a mandatory provision and potentially changes the anticipated built form opportunities proposed in the exhibited version.

(iv) Conclusion

The Panel concludes that:

- The 8.5m and 11.5m (four and five storey) maximum height limits are appropriate.
- The mandatory height limit provision should apply to Area 1 only as proposed by Ms Bell's evidence.
- The minimum land area trigger should be replaced with a lot width trigger as proposed by Ms Bell's evidence.

5.6 Valued Street facades

(i) What is proposed?

DDO21 proposes that development should retain and incorporate the Valued Street Facades identified in the Map 1 forming part of the Schedule. These facades are depicted with street numbers and the identified sites hatched.

(ii) Submissions and evidence

A number of submissions questioned how the value of these sites was identified, why some of these sites were included given they were identified in the Heritage Assessment as non-contributory and the whether the DDO was the appropriate tool for their inclusion.

The source of the identification of valued street facades appears to have been the *Design Guidelines Station Street Fairfield*, 2008 and associated Background Report prepared by Hansen Partnership. This document provides limited explanation as to how these sites were identified although generally they contain buildings which display the façade features and built form characteristics of Station Street sought to be retained in the Heritage Assessment.

Mr Blades' evidence questioned why these facades are valued over other existing facades that identify similar qualities and by whom are they valued? Mr Blades concluded that their inclusion operates as a defacto heritage control and is therefore inappropriate with the purpose of a DDO.

Council's Amended DDO21 proposed to change the provision of "Development should retain and incorporate" valued street facades with "Development must retain and incorporate".

Council indicated in its closing submission that there were several valued street façade sites that were non-contributory and could be deleted. These were 88B - 88E Station Street, 115-115A Station Street and 116 Station Street.

(iii) Discussion

The Panel notes that other than the sites identified by Council as non-contributory, all valued street facades are identified in the Heritage Assessment as contributory. Several of these sites are also located outside HO313.

The Panel is not convinced that a DDO can be structured to require the retention or incorporation of a building. This is typically the role and purpose of a HO. The requirement however appropriately excludes the words this "requirement cannot be varied with a permit" as to do so would be inconsistent with the provisions of Clause 43.01. The Panel agrees with Council's submission to delete the valued street façade sites in Area 1 that are not identified as contributory or significant in the Heritage Assessment to avoid future misinterpretation.

Based on the largely arbitrary nature of their identification and lack of urban design advice justifying their inclusion the Panel considers that they should be removed from Area 2 which is not in the HO as there is no guidance to establish what is valued about them relative to other sites. The Panel is of the view that Council should review this element to see if it is able to work as intended or whether reference to them is removed in totality. The Panel acknowledges that their removal would have some consequence to the effectiveness of the proposed DDO21 given the street wall and front setback provisions are largely predicated on their retention. An alternate approach could be to include a definition for them and using alternate requirement language that identifies them as a significant or contributory building.

(iv) Conclusion

The Panel concludes:

That the Valued Street Facade identified in Map 1 of DDO21 be deleted from Area 2 and from 88B - 88E Station Street, 115-115A Station Street and 116 Station Street.

The Valued Street façade provisions should be reviewed before finalisation of the Amendment.

5.7 Street wall and front setbacks

(i) What is proposed?

DDO21 proposes maximum street wall heights and front setbacks for Areas 1 and 2 as generally summarised in Table 5. Five Figures are included in the DDO providing street cross section view line drawings to support the interpretation of setback provisions. Street wall heights cannot be varied with a permit. Criteria are included for considering variations to front setbacks.

 Table 5
 Street wall and front setback requirements

Area	Maximum Street wall Height	Minimum front setbacks
Area 1	Greater of 8.5 m or adjacent street wall	 4.0m for second storey and 8.0m for third and fourth storey where single storey building (or part) retained 4.0m for third storey and 8.0m for fourth storey where double storey building (or part) retained 0m for first two storeys and 4.0m for third storey and 8.0m for fourth storey where new building proposed Reduced 2.0m at third and 4.0m fourth storey setbacks for Duncan Street corner sites Specific 'bookend' setbacks for 85 Station Street
Area 2	11.5m	 2.0m for second storey and third storey and 4.0m for fourth storey where single or double storey Valued Street façade retained 4.0m for third storey and 8.0m for fourth storey where double storey building (or part) retained 0m for first two storeys and 4.0m for third storey and 8.0m for fourth storey where new building proposed Reduced 2.0m at fourth storey setbacks for Duncan Street corner sites

(ii) Submissions and evidence

Mr Blades proposed, that rather than the stepped setback approach adopted by Council, a quarter/ three-quarter upper level setback be applied to Station Street with a minimum upper level setback of 4m and a minimum 4m upper level street level for all sites adjacent of the station and rail corridor (refer Figure 7). Mr Blades suggested this was a superior approach to the sight-line approach used by Council.

Figure 7 Blade recommendations for Street wall height and setbacks

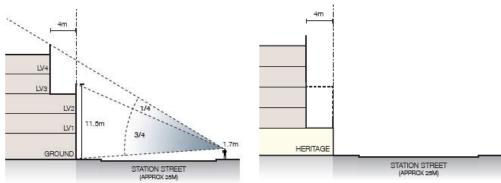


Figure 35: Recommended Station Street Precinct Setbacks

Figure 36: Possible Setback Response to Heritage Fabric

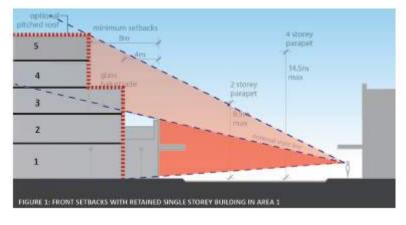
Ms Bell's evidence supported the discretionary nature of the controls and considered that the generous upper level setbacks ensures that the heritage values and streetscape character of Fairfield Village isn't compromised. Ms Bell considered they will achieve consistent built form outcomes relative to the street, ensure new development respects and emphasises heritage places and valued facades, and limits the prominence of new buildings from the oblique view. Ms Bell considered however that:

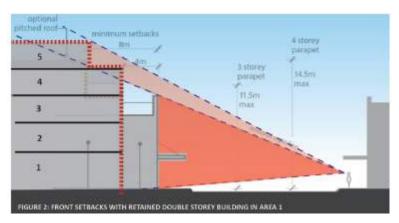
- the different minimum setbacks created unnecessary stepping and complicated building composition
- the upper setback of 8m is unnecessarily large considering the overall modest height and depth of heritage building retention
- upper levels will be visible in oblique views regardless stepping.

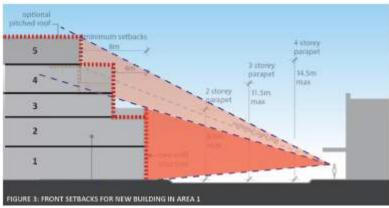
Ms Bell recommended changes to the wall height and setback requirements (refer Figure 8):

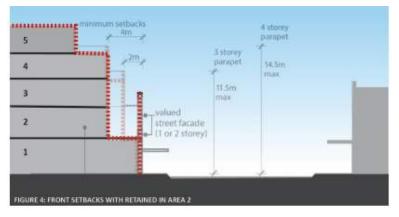
- for single storey buildings retained in Area 1 a 4m setback up to the third storey and 8m up to the fifth storey
- for double storey buildings retained in Area 1 a 4m setback up to the fourth storey and 8m at the fifth storey
- for a new building with a 8.5m street wall in Area 1 a 4m setback up to the fourth storey and 8m at the fifth storey
- for a building retained in Area 2 a 4m setback for the second, third and fourth storey and 8m at the fifth storey
- retaining the existing upper level setbacks for new buildings in Area 2.

Figure 8 Bell recommendations for street wall and setbacks









(iii) Discussion

The Panel considers that the DDO provisions relating to street wall height and setbacks are generally appropriate but are overly complicated and require simplification to support interpretation, application and avoid unnecessary built form responses which limit usable floor plate or good design outcomes.

The Panel considers that the street wall heights proposed are an appropriate response to the prevailing, modest built form height within the precinct and will enable the introduction of taller building elements at street level that do not dominate this character.

The Panel considers that a 4.0m setback for upper levels provides a good built form balance that enables the new to not overwhelm the heritage or desired character elements. The Panel considers that Mr Blades' recommended requirements, while

achieving simplification, will result in design outcomes that will be severe and dominant of the heritage values of Fairfield Village and Council's built form aspirations for it.

The Panel broadly support Ms Bell's recommendations to replace the Figures 1 to 4 in DDO21 with the those included in her evidence. The Panel notes that the street wall height and setback requirements as proposed in DDO21 can be varied with a permit. This is appropriate to enable a contextual response to site size and location.

The Panel notes that the removal of valued street facades from Area 2 as recommended would result in DDO21 Figure 4 being obsolete.

(iv) Conclusion

The Panel concludes that:

- The street wall height requirements as exhibited are appropriate.
- The front setback requirements as exhibited should be replaced with those included in Ms Bell's evidence.
- Figure 4 for Area 2 should be deleted if the valued street facades sites are removed from Area 2.

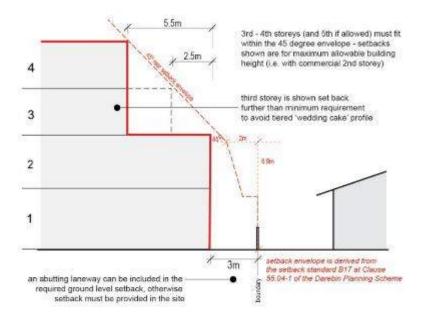
5.8 Side and rear setbacks

(i) What is proposed?

No side setbacks are required for mid-block developments where adjoining sites can be built to a similar scale. The requirement provides arrangements for mid-block light wells.

The rear setbacks and interface requirements provide for a 3m rear setback at first and second floors and further setback at higher storeys within a 45 degree envelope as shown in Figure 9.

Figure 9 Rear setback requirement



(ii) Submissions and evidence

Mr Blades' evidence in relation to side setbacks supported the proposed setback provisions and focused on the requirements relating to dwelling orientation and outlook. He recommended nuancing the primary dwelling orientation provisions. In this context Mr Blades outlined an equitable development approach whereby the light and separation above the base level is shared between developments as an efficient approach to redevelopment.

Ms Bell recommended the application of a 3m side setback be applied to buildings five storeys and over to:

help retain the openness of the streetscape and moderate scale as viewed from the street. It will provide spacing between the upper levels and therefore views to the sky. The spacing will also reduce the upper levels potential to dominate the heritage.

Council supported this recommended change.

Ms Bell's evidence supported the rear setback requirement but suggested that Figure 7 of DDO21 identify the fifth floor.

Mr Blades recommended this provision be deleted and replaced with a requirement to respond to the provisions of Standard B17 of Clause 55 on the basis that the interface between the C1Z and GRZ2 should not be treated any differently to other area.

(iii) Discussion

The Panel acknowledges there is merit in Mr Blades' identification of an equitable development response in relation to the arrangement of light wells. The Panel considers however, that this approach should be considered holistically through a consistent municipal approach rather than attempting to massage it into DDO21.

The side setback provisions are not mandatory and can be varied by a permit where a better design outcome can be achieved. This is also the case for Mr Blade's recommendations relating to dwelling orientation. These suggestions have merit and should be considered by Council in any drafting changes to DDO21, however the requirements again can be varied in response to a well-designed and considered proposal.

The Panel supports the application of a 3m side setback at the fifth-floor level. Such a provision would work in tandem with the lot width height trigger and ensure new built form does not dominate the heritage and character values or create a dominating wall of development along the Station Street. The Panel has previously acknowledged Mr Walker's submission that could potentially transform the Amendment, particularly if the provision is expressed as a mandatory one.

The Panel supports the exhibited rear setback provisions as a way of managing the interface between the changing and emerging form of Station Street and the incremental housing role played by the adjoining residential area. Again, the provisions are not mandatory and can be varied with a permit. Clause 55 will be a relevant consideration in any case.

(iv) Conclusion

The Panel concludes that:

- The side setback requirements as proposed are supported.
- The additional requirement of a 3m side setback at and above the fifth-floor level would enhance the control, but potentially represents a transformation of the Amendment where expressed as a mandatory provision.
- The side set back provisions would be enhanced by reviewing the dwelling orientation provisions as identified in Mr Blades' evidence.
- The rear setback requirements as proposed are supported.

5.9 Design detail

(i) What is proposed

DDO21 includes requirements for façade detailing including balustrade treatments, materials and finishes, landscaping and carparking and access.

(ii) Submissions and evidence

Council's amended version of DDO21 included changes recommended by Ms Huddle and Ms Bell to provide acceptable heritage outcomes and reduce the prominence of upper levels.

Mr Blades recommended the deletion of the landscaping requirements and update the balustrade material guidance to:

articulate that glazed balustrades are expressly preferential in situations in which providing a solid balustrade would result in an unnecessary departure from the preferred street wall and maximum height aspirations.

(iii) Discussion

The Panel considers that Council's amended version of DDO21 (Appendix D) provides an appropriate response to the evidence regarding materials and finishes. The Panel accepts that generally a glass balustrade will be preferable to a solid balustrade but considers this to be reasonably accommodated within the existing wording of the schedule without needing to expressly require it.

The Panel considers that the landscaping requirements relate to existing LPPF aspirations, however they would need to be reworded if land area is no longer a basis for height differentiation. It is suggested that building height should be the criteria for differentiating landscaping requirements.

(iv) Conclusion

The Panel concludes that:

The street façade form and detailing requirements and the materials and finishes requirements proposed in Council's amended version of DDO21 as included in Appendix D are generally supported.

5.10 Will DDO21 appropriately implement the vision for Fairfield Village?

(i) Discussion

The Panel considers that while the DDO21 is an appropriate tool to manage built form outcomes in Fairfield Village and that building height, street wall height and setback requirements are necessary, as constructed it has several failings. In part this is because it is overly complex and has not in the Panel's view, struck the right balance between mandatory and non-mandatory provisions.

The Panel has identified several recommended changes to the requirements of the DDO21 that will require significant redrafting and consideration.

The Panel considers that DDO21 has not been constructed in a manner that meets the Ministerial Direction on the *Form and Content of Planning Schemes* or the *Practitioner's Guide to the Victorian Planning Schemes*. In part this to be expected with an Amendment that has been in development for some time and in the context of significant changes to the format of schemes and provisions during this time. Council have also had the advantage of engaging additional urban design advice in the lead up to the Panel Hearing. The Panel acknowledges this was a risk for Council but considers that it has provided the benefit of developing a tighter and more effective set of controls.

The Panel considers that the required document changes cannot be readily fixed by providing a tracked changes version. Considerable changes are required, and Council should take the time to recraft the schedule and consider what next steps it takes in relation to this aspect of the Amendment.

Some of the key issues with the current DDO21 (including the revised version) include:

- grammatical styles and use of linking words, commas and semi colons between provisions
- definitions terms already defined should not be used or re-expressed. Terms used such as valued street façade and street wall should be defined. All proposed definitions should be reviewed, and the language improved as some of them simply don't make sense o aren't easily interpreted
- the need to remove unnecessary words. For example, the phrase 'The overall height of any new building must not exceed the maximum height ...' is better expressed as 'A building must not exceed the maximum height ...'
- requirement provisions must start with a capital. Where there is a list of things a requirement must demonstrate, the lead in provision should seek to demonstrate how the development 'achieves all the following' things
- Expression of height in both metres and storeys does not make it clear what the primary measure is
- Table 1 includes reference to a 'visual study' but this is not included in the application requirements. The reference to front façade is not clear, nor is it defined
- the content of Table 2 is difficult to determine what applies, and is open to interpretation. It may be represented in separate tables for street wall and front setbacks

- any text in figures should be expressed in the requirements
- not using parallel language for example in the street façade and detailing requirements. The word 'should' is appropriate 'Should use', 'Should avoid', Should maintain' and so on
- use of conflicting words. For example, 'materials and finishes must <u>maintain</u> and enhance' (Panel's emphasis).
- including provisions which have no head of power under the DDO such as alternative arrangements for car parking requirements that cannot be met
- referencing external documents in decision guidelines
- referring to matters 'prescribed in this schedule' when they are not.

The Panel considers that the DDO21 intent is largely clear but requires a major edit and review. The DDO would benefit from a professional edit and redrafting. To this end a comparison with other DDO's that apply to similar neighbourhood activity centres would be beneficial as would an analysis of the *Practitioner's Guide to the Victorian Planning Schemes.* The Panel suggests that Chapter 16 Structure and language of the *Fishermans Bend Planning Review Panel Report No.1 – Volume 1 Overview, 19 July 2018* provides useful instruction on the drafting principles which could apply to this Amendment.

The Panel notes that the Built Form Guidelines are proposed to be introduced as a background document (reference document), which will provide minimal value to the interpretation of the proposed DDO. However they will provide useful additional guidance around building design response elements such as street facade form and detailing, materials and finishes and landscaping.

The Built Form Guidelines reflect the exhibited DDO21 and require significant alterations to align with the final version of DDO21.

The Panel acknowledges that the redrafting of DDO21 as recommended will potentially transform the Amendment. As identified elsewhere in this Report, Council will need to consider how best to proceed with this element of the Amendment.

(ii) Conclusions

The Panel concludes that:

- Council's amended version of DDO21 included in Appendix D contains the core elements of an appropriate tool.
- DDO21 in its current form however is not supported for the reasons identified in this Report.
- DDO21 requires substantial redrafting to respond to the Panel's suggested changes and to meet Ministerial Direction and Practice Note provisions.
- The Fairfield Village Built Form Design Guidelines, 2017 are an appropriate document to identify in the Darebin Planning Scheme as a background document but require substantial alteration to align with the final content of DDO21.

(iii) Recommendations

The Panel recommends:

- 3. Substantial redraft DDO21 based on the version in Appendix D and the Panel's suggested changes identified in Chapter 5.
- 4. Amend the Fairfield Village Built Form Design Guidelines, 2017 to align with the final form and content of DDO21.

5.11 How to take this Amendment forward

The Panel recognises the strategic work undertaken and time invested by Council through community engagement to develop the proposed planning tools to guide the future development of Fairfield Village. If Council accepts the Panel's recommendations to redraft DDO21, the question arises as to how Council maintains the momentum of the Amendment and avoids undertaking a further Amendment process.

The Panel considers there are several approaches open to Council:

- progress the Amendment to the approval stage with an amended DDO21 based on the Appendix D version and other formatting changes identified in Chapter 5.11
- roceed with the HO component of the Amendment only and further develop DDO21 as identified in this Report through a Part 2 amendment process
- undertake the further review of the DDO21 as identified in this Report and bring the matter back to the Panel to consider further submissions on the amended DDO.

To assist Council, the Panel is prepared to keep the matter open and allow parties to make further submissions on DDO21 <u>only</u> for an additional Hearing Day(s).

If Council elect to pursue this option, once the revised DDO21 has been prepared it should renotify submitters to the Amendment and any other parties Council sees as appropriate. If Council seeks to extend Area 1, those land owners should be notified.

Appendix A Submitters to the Amendment

No.	Submitter
1	Daniel Pongrac
2	Transport for Victoria
3	Joseph and Kay De Petro, De Petro Trading Company P/L
4	George Vlahogiannis
5	Paul Mariager
6	Council of St Andrews Unity Church of Fairfield
7	Thomas Pateras
8	Level Crossing Removal Authority
9	Banyule City Council
10	Theo Krambias, Floyd (Vic) P/L
_11	Domenic Biviano (late submission)

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Appendix B Parties to the Panel Hearing

Submitter	Represented by
Darebin City Council	Mr Darren Wong, who called the following expert witnesses:
	 Lorraine Huddle, Heritage, Heritage Intelligence Pty Ltd
	- Julia Bell, Urban Design, David Lock & Associates
Thomas Pateras	Mr Andrew Walker, instructed by Paul Dellios of
Joseph De Petro (De Petro Trading Co P/L)	Dellios, West and Co Solicitors who called the following expert witness:
Domenic Biviano	- Brodie Blades of SJB Urban Pty Ltd on Urban Design

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Appendix C Document list

No	Date	Description	Provided by
1	15/10/18	List of properties in Biviano trust	Mr Walker
2	15/10/18	Council Part B Submission	Council
3	15/10/18	Location of submitters	Council
4	16/10/18	Revised DDO21 schedule	Council
5	16/10/18	DDO6 Schedule, Stonnington Planning Scheme	Council
6	16/10/18	Plan showing clients properties	Mr Walker
7	16/10/18	Photos of Station Street (1)	Mr Walker
8	16/10/18	Photos of Station Street (2)	Mr Walker
9	16/10/18	Photo of High Street and Westgarth	Mr Walker
10	16/10/18	Northcote Rickers Hill Heritage Review map	Mr Walker
11	16/10/18	Northcote-Westgarth Heritage Review map	Mr Walker
12	16/10/18	Design Guidelines Station Street, Fairfield	Council
13	16/10/18	Urban Design evidence PowerPoint slides Julie Bell	Council
14	17/10/18	Urban Design evidence PowerPoint slides Brodie Blade	Mr Walker
15	17/10/18	DDO18 Moreland Planning Scheme	Council
16	17/10/18	Mr Walker submission	Mr Walker
17	17/10/18	VCAT P1228/2016	Mr Walker
18	17/10/18	VCAT P782/2017	Mr Walker
19	17/10/18	Panel Report C37 and 38	Mr Walker
20	17/10/18	Appendix 2B to Design Guide	Mr Walker
21	17/10/18	Dwelling capacity analysis 17.10.2018	Council
22	17/10/18	Photos of Station Street (3)	Council

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Appendix D Council version of Design and Development Overlay Schedule 21

--/--/20--Proposed C161

SCHEDULE 21 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT **OVERLAY**

Shown on the planning scheme map as **DDO21**.

FAIRFIELD VILLAGE NEIGHBOURHOOD CENTRE

1.0 **Design objectives**

--/--/20--Proposed C161

- To encourage high quality urban development that achieves moderate intensification while being responsive to the valued character and amenity of the centre.
- To ensure development complements the established traditional streetscape of the æ centre by contributing to consistency of form, scale and facade articulation.
- To ensure development respects and enhances identified heritage buildings and æ precincts.
- To ensure development makes a positive contribution to the public realm. æ
- To ensure development provides an appropriate transition to and limits adverse æ amenity impacts on residential zoned properties.

2.0 **Buildings and works**

-/--/20--Proposed C161

A permit is not required to:

- Install an automatic teller machine. æ
- Alter an existing building facade provided that: æ
- The alteration does not include the installation of an external roller shutter; and
- At least 80 per cent of the building facade at ground floor level is maintained as a an entry or window with clear glazing for development in the Commercial 1 Zone.

Definitions

- If the land is in a Special Building Overlay, the maximum building height is the vertical distance from the minimum floor level determined by the relevant drainage authority to the roof or parapet at any point.
- A basement, attic or a mezzanine is not a storey for the purposes of calculating the number of storeys contained in a building.
- The street wall is the front facade of a building along all street frontages. 69
- Street wall height is measured from natural ground level to the top of the parapet, m unless the land is in a Special Building Overlay or is land liable to inundation, where the maximum height is the vertical distance from the minimum floor level determined by the relevant drainage authority to top of the parapet.
- Front setback is measured from the boundary of the land with the street and applies to both front and side street boundaries of corner sites.

Building Height Requirements

The overall height of any new building must not exceed the maximum height limit and must meet built form objectives specified in Table 1 to this schedule. The maximum height limit cannot be varied with a permit.

The maximum building height does not include:

- lifts, stairs, rooftop plant, solar panels designed to the satisfaction of the responsible authority
- structures and equipment associated with communal or green roof areas that occupy 50% or less of the roof area, and are designed to minimise views to any adjacent residential zoned property, to the satisfaction of the responsible authority
- a hip or gabled pitched roof within Area 1 (Fairfield Village Heritage Precinct) as shown on Map 1 at Subclause 7.0 of this schedule.

Table 1: Building height

Area	Maximum height limit	Built form objectives outcome
Land under 1000sqm	14.5m and 4 storeys	
Land 1000sqm or greater (may comprise multiple consolidated lots)	17.5m and 5 storeys	Additional height is sufficiently recessed to be unobtrusive from surrounding streets and adjacent residential zoned properties, as evidenced by a visual study.
		Overall building form is designed to integrate with the streetscape and will not detract from the prominence and character of the existing street wall.
		Where an existing front facade is removed, the replacement building is articulated to respect the fine grain character of the street.
		There is an appropriate transition in form to lower rise adjacent buildings.

Valued Street Facade Requirements

Development should <u>must</u> retain and incorporate Valued Street Facades shown in Map 1 at Subclause 7.0 to this schedule, <u>with new building components set behind and above the retained facade in accordance with the requirements of this schedule</u>.

Street Wall and Front Setback Requirements

The street wall of any development must not exceed the maximum height specified in Table 2 and should be constructed to the boundary along all street frontages to maintain a consistent street edge. The maximum street wall height limit cannot be varied with a permit.

Development must comply with the minimum front setbacks specified in Table 2.

Table 2: Street Wall and Front Setback Requirements

Area (refer to Map 1 in Subclause 7.0 of this schedule)	Maximum Street Wall Height	Minimum Front Setbacks
1	8.5m, or height of adjacent street wall, whichever is greater.	Where development retains a single storey building (or part thereof), set back upper storey additions a minimum of 4 metres at the second storey and 8 metres at the third and fourth storeys, as shown in Figure 1.
		Where development retains a double storey building (or part thereof), set back upper storey additions a minimum of 4 metres at the third storey and 8 metres at the fourth storey, as shown in Figure 2.
		Where a new building is proposed, 0m front setback up to the maximum street wall height (two storeys), with minimum setbacks of 4 metres at the third storey and 8 metres at the fourth storey, as shown in Figure 3.
		Corner sites abutting Duncan Street, may have a reduced setback to Duncan Street of 2 metres at the third storey and 4 metres at the fourth storey.
		Development on the north east corner of Station Street and Wingrove Street (85 Station Street) may adopt a 'bookend' form incorporating the existing heritage building with consolidated minimum 4 metre front setbacks at the second and third storeys. In addition, a single storey parapet should be extended along Wingrove Street to a length of approximately 13 metres to match the width of the existing single storey Station Street frontage, as per the Fairfield Village Built Form Guidelines, 2017
2	11.5m	Where development retains a Valued Street Facade (single or double storey) set back upper storey additions a minimum of 2 metres up to the third storey, and 4 metres to the fourth storey, as shown in Figure 4.
		Where a new building is proposed, 0m front setback is required up to the maximum street wall height (containing no more than 3 storeys) with the fourth storey set back a minimum of 4 metres, as shown in Figure 5.
		Corner sites abutting Duncan Street may have a reduced setback to Duncan Street of 2 metres at the 4th storey.

The front setback of a fifth storey, where permitted, <u>should must</u> satisfy the requirements for exceeding the maximum building height requirements as specified in this schedule.

An application to reduce the minimum front setback requirements must demonstrate how the development:

- meets the design objectives of this schedule;
- achieves a consistent building form and scale to the street;
- integrates with the streetscape and does not detract from the prominence of the street wall;
- respects and emphasises heritage places and other retained Valued Street Facades; and
- limits new built form in oblique views along the street.

Front setback areas behind the street wall may be encroached by the following built form elements:

- a balcony or terrace that does not project forward of the level below, as shown in Figures 1-5.
- by minor projections of functional or design elements including:
- awnings or sunshades projecting up to 1.5 metres forward;
- architectural detailing or artworks projecting up to 300mm forward; and
- vertical screens between balconies or terraces up to 1.7 metres high.

Balustrades to balconies or terraces which are visible behind retained historic street parapets from the street should must be of clear glass, as shown in Figure 1.

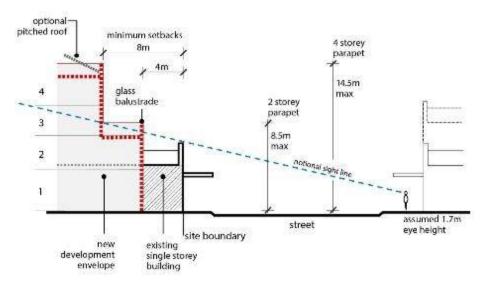


Figure 1: Front setbacks with retained single storey building in Area 1

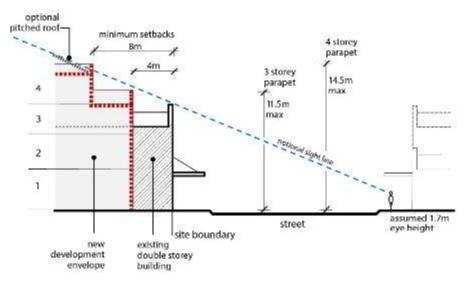


Figure 2: Front setbacks with retained double storey building in Area 1

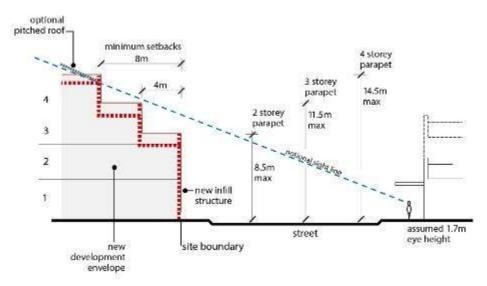


Figure 3: Front setbacks for new building in Area 1

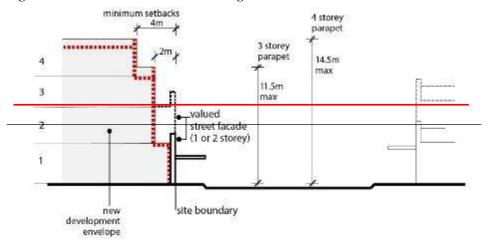


Figure 4 to be updated to Julia Bell's recommendation

Figure 4: Front setbacks with retained valued street facade in Area 2

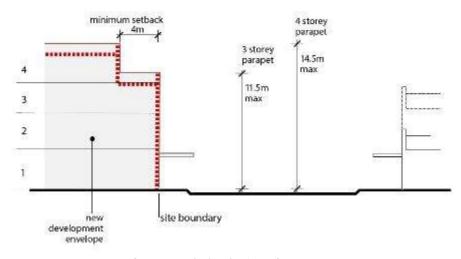


Figure 5: Front setbacks for new building in Area 2

Side Setback Requirements

No side setbacks are required in mid-block developments where adjoining sites to both sides can be built to similar scale.

Any part of a building that exceeds 4 storeys, must be setback a minimum of 3 metres from the side boundaries. This requirement cannot be varied with a permit.

Mid-block light wells <u>should_must_provide</u> solar access, daylight and ventilation to buildings, as shown in Figure 6. A mid-block light well <u>should_must_provide</u> a minimum width of 1.5 metres at its base (or larger as required to create a usable courtyard) and gradually widen at upper levels to provide sufficient light and ventilation.

Side setbacks should must not be relied upon to provide the primary outlook for a dwelling in a mid-block development. The primary outlook of dwellings should must be to the front and rear site boundaries, with side setbacks providing opportunity for additional daylight access and amenity. Where orientation to side boundaries cannot be avoided, increased side setbacks should must be provided for adequate daylight access and outlook for residential amenity.

Where a side boundary is shared with a property in a residential zone, a 2 storey (maximum 8.5 metre) wall is generally permissible on the side boundary. The extent of boundary wall and layout must have regard to the location, scale and amenity of adjacent dwellings, particularly the location of secluded private open spaces and proximity of habitable room windows. Upper levels should must be set back from the common side boundary as appropriate to address unreasonable visual bulk impacts and if applicable, overshadowing. Development should must be designed to limit views to the residential zoned property.

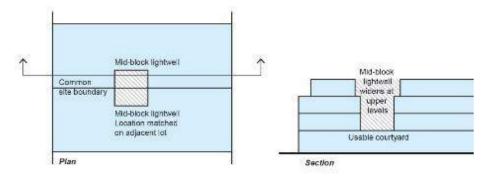


Figure 6: Mid-block light wells

Rear Setbacks and Interface Requirements

Development should <u>must</u> be set back from the rear boundary, where adjoining a residential zoned property, a minimum of 3 metres at the first (i.e. ground level) and second storeys, and within the 45 degree rear setback envelope thereafter as shown in Figure 7.

Where a laneway separates a rear boundary from a property in a residential zone, the rear setback requirement is measured from the boundary of the adjoining residential property.

Consolidate rear setbacks to avoid 'wedding cake' profiles as shown in Figure 7.

Balconies and terraces must not extend outside the rear setback envelope; however balustrades and screens to these spaces can extend vertically outside the envelope by up to 1 metre, provided the space is not enclosed via side walls and/or solid roof fixtures.

Sunshading devices may extend outside the rear setback envelope.

Overlooking from the rear of developments should must be limited through design techniques which provide outlook from the new development but block downward views into secluded private open spaces and habitable rooms, such as:

- setbacks which use the building edge below to block downward views;
- permanent, fixed elements such as planter boxes; and/or
- horizontal louvre screens that block view down but allows longer range vistas.

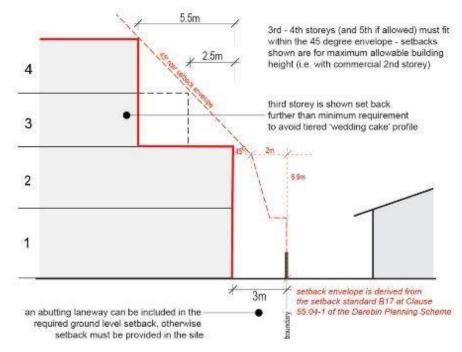


Figure 7: Rear Setback Requirements

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Street Façade Form and Detailing Requirements

Development should must reflect the proportions and features of existing Valued Street Facades, maintain the prominence of the street wall and achieve a degree of complexity in new building forms which provide a modern interpretation of traditional design. This should be achieved by, as appropriate:

- Use of similar proportions of solid and transparent building material as used in existing Valued Street Facades, particularly in new street wall elements.
- Avoiding floor to ceiling windows in new shop fronts. Provide stall risers with a minimum height of 500mm above the footpath.
- Maintaining the solidity of the street wall by incorporating fenestration with deep reveals, inset balconies and 'framing' elements rather than open, cantilevered or projecting elements.
- Use of architectural detailing, materials and colours to distinguish the street wall from development set back above and to minimise the 'wedding cake' appearance of progressive upper level setbacks.
- Street facades which reflect the fine-grained rhythm of the traditional streetscape. On larger sites, typical building widths (approximately 6-8 metres) should be expressed through the use of symmetrical vertical definition.
- Modern interpretation of decorative features seen in historic facades to emphasise a fine-grain frontage.
- Detailing on facades and parapets to reflect a balance of vertical and horizontal lines found in the traditional streetscape. Long horizontal building components and visually unbroken expanses of solid, transparent or reflective materials should be avoided.
- Avoiding blank facades on street frontages and side elevations and ensuring that buildings on corner sites address both street interfaces.
- Use of articulating elements such as verandahs, balconies, balustrades, sunshading canopies and architectural detailing.

Use of clear glass balustrades behind retained historical street parapets to enclose a terrace space to building regulation height requirements without compromising the design of the parapet.

Development in Area 1 (Fairfield Village Heritage Precinct) as shown on Map 1 at Subclause 7.0 of this schedule may incorporate a light grey coloured hipped or gabled roof if the top of the building will be visible from across the street.

Development should must enhance pedestrian amenity and street safety through design techniques as follows:

- Providingsion of a minimum of 65% clear glazing to ground floor frontages.
- Providing visually transparent wWindows, entry points and balconies which facinge the street to provide a high degree of visibility and passive surveillance of the street.
- Limiting rResidential entries should not exceed to no more than 2 metres of the frontage width to ensure they do not dominate the frontages of buildings.
- Providing sion of cantilevered verandahs and awnings for weather protection, subject to heritage considerations. These should, as far as practicable, match the underside height and fascia height of adjoining verandahs and extend over the footpath up to 750mm from the kerb.

Materials and Finishes Requirements

The materials and finishes must maintain and enhance the character of the area. Subject to heritage considerations, dDevelopment mustshould:

- mMaintain and enhance the character of the area though the innovative use of materials and finishes.
- Use durable, traditional materials such as brick, painted brickwork, timber and transparent glass for the main body of a building and. Render and metalother materials should only be used as secondary or highlight finishes.
- Use mMaterials should be selected to suit their application on the building (for example, street wall or recessed upper levels) and provide an appropriate level of detailing and visual interest.
- Use contrasting materials to distinguish between retained street facades and new building additions.
- Incorporate bBuilding features and details that are should be highlighted and enhanced through the use of materials (for example, metal and timber sunshading devices and architectural features).

Landscaping Requirements

Development should must provide a minimum level of landscaping as follows:

- Where the area of a development site is less than 1000 square metres, provide planter boxes to balconies and terraces, which may also include climbing plants to create a green facade. Alternatively, provide a green roof to the development.
- Where the area of a development site is 1000sqm or greater, provide landscaping as per requirements for sites less than 1000sqm, plus roof top landscaping, which may include a green roof, or communal roof top garden area, or a combination of both.

On corner sites, use landscaping features (green facade, green wall or other suitable techniques) on the secondary street facade to enhance visual amenity and thermal efficiency of the building.

Ensure landscaping features, including selection of plants, are fit for purpose, with consideration to access, cost and overall practicality for upkeep and long term maintenance.

Car Parking and Vehicular Access Requirements

Vehicle access and parking to a development must meet the following requirements:

- Locate car parking access points to the side or rear of sites where possible, utilising a side or rear street, lane or right-of-way.
- Avoid any vehicle access via frontages to Station Street, Railway Place and Wingrove Street within Area 1 (Fairfield Village Heritage Precinct) as shown on Map 1 at Subclause 7.0 of this schedule. In these areas, retention of heritage buildings, active frontages and pedestrian amenity are prioritised.
- In other locations where access to car parking from the street frontage is unavoidable, limit the width of the access point to a maximum of 5.5 metres and no more than a third of the overall site's frontage width.

Where site conditions do not allow for any car parking to be provided on site, it must be demonstrated that the likely demand for car parking to be generated by the proposed development will not have an adverse impact on the locality. Alternative arrangements such as provision of parking spaces on another site, and initiatives which will reliably achieve a low rate of private vehicle ownership in the development may be considered in an application.

3.0 Subdivision

--/--/20--Proposed C161

None specified

4.0 Advertising signs

--/--/20--Proposed C161

None specified

5.0 Decision guidelines

--/--/20--Proposed C161

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:

- The extent to which the development achieves the design objectives at Subclause 1.0 and requirements of Subclause 2.0 of this schedule.
- Whether the development is consistent with the *Fairfield Village Built Form Guidelines*, 2017, *Fairfield Heritage Assessment*, 2017 and any other policy or planning provision applying to the area.
- Whether the development is of high architectural quality and makes a positive contribution to the streetscape and pedestrian environment as prescribed in this schedule.
- Whether the development provides an appropriate transition to properties in an adjoining zone and limits adverse amenity impacts on residential zoned properties.

6.0 References

--/--/20--Proposed

Fairfield Village Built Form Guidelines, 2017 Fairfield Village Heritage Assessment, 2017

7.0 Map (Amend Area 1 as per Julia Bell's recommendation)



Map 1: Fairfield Village Neighbourhood Centre











Planning and Environment Act 1987

Panel Report

Whitehorse Planning Scheme
Amendment C143

MegaMile (West) Major Activity Centre and Blackburn Neighbourhood Activity Centre

24 December 2012

200 of 286

Planning and Environment Act 1987

Panel Report pursuant to Sections 153 and 155

Amendment C143 to the Whitehorse Planning Scheme

MegaMile (West) Major Activity Centre and Blackburn Neighbourhood Activity Centre

Margaret Baird, Chair

Chris McNeill, Member

@ HKiell



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Appendices

Appendix A List of Submitters

Appendix B **Document List**

Appendix C **Exhibited DDO8**

Appendix D **Authorisation of Amendment C143**



Abbreviations

Act Planning and Environment Act 1987

B₁Z **Business 1 Zone** B2Z **Business 2 Zone** B3Z **Business 3 Zone** B4Z **Business 4 Zone**

BVRG Blackburn Village Residents Group Inc.

Whitehorse City Council Council

DDO Design and Development Overlay

Proposed Design and Development Overlay Schedule 8 DDO8 Department of Planning and Community Development **DPCD**

LPPF Local Planning Policy Framework

MAC Major Activity Centre

MSS Municipal Strategic Statement NAC Neighbourhood Activity Centre NCO Neighbourhood Character Overlay

R1Z Residential 1 Zone

Significant Landscape Overlay **SLO SPPF** State Planning Policy Framework

MegaMile (West) and Blackburn Activity Centres Urban Design UDF/Framewo

Framework (adopted July 2010) rk

VPP Victoria Planning Provisions

Summary

Amendment

Amendment	Amendment C143 to the Whitehorse Planning Scheme.
Purpose of Amendment	The exhibited Amendment proposes to: ■ Rezone land in the Blackburn Neighbourhood Activity Centre; ■ Introduce and apply the Design and Development Overlay Schedule 8 to the Blackburn Neighbourhood Activity Centre & MegaMile (West) Major Activity Centre; ■ Make consequential changes to Clause 22.11 (Queen and Albert Street Area) and Clause 22.12 (Blackburn Station Shopping Centre); ■ Introduce the MegaMile (West) & Blackburn Activity Centres Urban Design Framework as a permanent reference document in the Scheme.
Proponent and Planning Authority	Whitehorse City Council.
Exhibition	19 April and 22 May 2012.
Submissions	The Council received 33 submissions in response to the Amendment. Submitters are listed in Appendix A. All written submissions have been considered by the Panel in addition to submissions presented at the Hearing.

Panel Process

Directions Hearing	18 October 2012 at the Whitehorse Civic Centre.
Panel Hearing	26, 27 and 28 November 2012 at the Whitehorse Civic Centre.
Hearing Appearances	Ms A Skraba, Strategic Planner, & Ms A Egan, Co-ordinator Strategic Planning. Expert evidence was called from Mr M Scott, Planisphere.
	Mr C Taylor of Planning & Property Partners for Samuel Property Pty Ltd. Expert evidence was called from Mr M Sheppard, David Lock & Associates.
	Mr R Milner of 10 Consulting Group for Dolce Developments. Expert evidence was called from Mr T Biles, Message Consultants.
	Ms M Withers of Meredith Withers & Associates with Mr S Frid for Brandsmart (Commercial Property Corporation Pty Ltd).
	Mr D Morrison for the Blackburn Village Residents Group Inc. with Messrs R Summers, M Taafe, C Jacobson and I Swann. Ms Atkinson was also in attendance on Day 1 of the Hearing.
	■ Ms S O'Connell.
	Mr M Ellenbroek of SJB Planning for Sandy Lake Pty Ltd.

After the Directions Hearing as well as on 27 and 28 November 2012.

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Site Inspections

1 Background

1.1 MegaMile (West) and Blackburn Activity Centres

Several activity centres extend along, around, or near to, Whitehorse Road in Blackburn, Nunawading and Mitcham:

- The Blackburn Neighbourhood Activity Centre (NAC), focused around the Blackburn Railway Station, has 8,000 square metres of retail floorspace with 156 businesses.¹
- The MegaMile Major Activity Centre (MAC) extends along Whitehorse Road and comprises homemaker and bulky goods uses. The western section of the MAC is located to the west of Springvale Road (Varman Court). MegaMile continues to the east of Springvale Road. In total, in 2010, MegaMile had 159,000 square metres of retail floorspace.²
- The Mitcham NAC, around Mitcham Road and Mitcham Railway Station.

1.2 Planning for the Activity Centres

These activity centres have been the subject of multiple planning studies over several decades as described in the Council's submission to the Panel.³ Most recently, the Council divided MegaMile into two parts for planning purposes (for funding reasons).

The Nunawading MegaMile Major Activity Centre and Mitcham Neighbourhood Activity Centre Structure Plan (Structure Plan)⁴ was prepared for MegaMile (East) and the Mitcham NAC. That culminated in Amendment C94 being exhibited, considered by a Panel⁵, and gazetted. The Amendment introduced the Design and Development Overlay (Schedule 5 Mitcham Neighbourhood Activity Centre) (DDO5) into the Scheme. There has been no Amendment to introduce design controls into the Scheme with respect to the MegaMile (East) area but implementation has progressed in other ways, such as through the removal of the at-grade rail crossing at Springvale Road, funding for the removal of the rail crossing at Mitcham, other public works and rezoning. The Structure Plan is referenced in the Scheme.

The Council embarked on an urban design framework for MegaMile (West) MAC and Blackburn NAC in 2009 to complete comprehensive plans for MegaMile and the Mitcham and Blackburn NACs.⁶ The *Whitehorse MegaMile [West] and Blackburn Activity Centres Urban Design Framework* (UDF/Framework) was prepared by Planisphere with advice from a Reference/Partnership Group and extensive community consultation. The study process included identifying opportunities and constraints in the study area and establishing strategic directions and design guidelines for the two centres. The purpose of the Framework is to guide change and development in the study area over the next 15 years.

Nunawading MegaMile Major Activity Centre and Mitcham Neighbourhood Activity Centre Structure Plan by MGS Architects, Adopted by the Council on 21 April 2008.

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¹ Blackburn Station Village Business Plan, June 2009, at page 6.

² Document no. 3 at page 18. The Document List from the Panel's Hearing is included in Appendix B.

³ Appendix 1 in Document no. 3.

⁵ Whitehorse Planning Scheme Amendment C94, Panel Report, 31 March 2011.

⁶ Page 2 of the Whitehorse MegaMile [West] and Blackburn Activity Centres Urban Design Framework, by Planisphere. Adopted by the Council July 2010.

The vision statements for each centre are⁷:

MegaMile [West] Major Activity Centre

The MegaMile [West] Major Activity Centre (MAC) will strengthen its regional role as a bulky goods retailing destination with consolidation of bulky goods retailing along Whitehorse Road, linking with the MegaMile [East]. Small offices, generally at upper levels, will locate along Whitehorse Road as a secondary activity focus.

The consistent streetscape and design themes developed for MegaMile [East] will be extended and applied to MegaMile [West].

Access and movement within the centre will recognise the nature of bulky goods retailing with its reliance in part on private vehicle access. Improvements to the pedestrian environment and consolidation of car parking areas will increase pedestrian activity throughout the MegaMile and encourage more sustainable transport options.

Blackburn Neighbourhood Activity Centre

The Blackburn Neighbourhood Activity Centre (NAC) will strengthen its role as an urban village focused around the Blackburn Railway Station as a high quality transport hub.

The Blackburn Station Shopping Centre will remain as the heart of the area, with its strong sense of place and identity as a local shopping village and community meeting place.

This will be complemented by a mix of retail, office, community and higher density residential uses adding to its vibrancy and activity. Improvements to connections between the north and south sides of the railway line and northern parts of Whitehorse Road, and surrounding residential areas will promote walking and cycling to and within the Activity Centre.

Figure 1 shows the boundaries of the two centres.

NOTE

To reduce the electronic size of this document, Figure 1 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Figure 1: Location of the Blackburn NAC (blue) and MegaMile (West) MAC (red). Sub-precincts referred to in the UDF are also shown.

⁷ Ibid at page 6.

1.3 Proposed Amendment C143

Amendment C143 to the Whitehorse Planning Scheme (Scheme) was prepared by Council officers to implement the findings of the UDF. It comprises four elements:

- Rezoning land in the Blackburn NAC from Business 1, Business 3 and Business 4 Zones to Business 2 Zone;
- Introducing and applying a Design and Development Overlay (Schedule 8 MegaMile (West) Major Activity Centre (Nunawading) and Blackburn Neighbourhood Activity Centre) (DDO8) to both activity centres with specific design objectives and controls by sub-precinct including heights and setbacks;
- Updating Clause 21.07, Clause 22.06 (Activity Centres), Clause 22.11 (Queen and Albert Street Area) and Clause 22.12 (Blackburn Station Shopping Centre); and
- Introducing the UDF as a permanent reference document in the Local Planning Policy Framework.

The Schedule (Appendix C) has 13 design objectives applying to both centres.

Figure 2 shows the proposed extent of DDO8 and the sub-precincts within it.

A table in DDO8 identifies six precincts DDO8-A to DDO8-F (Appendix C). All of the DDO8 precincts are further subdivided into smaller precincts. For each precinct, the table nominates a preferred maximum height in metres, a preferred number of storeys and preferred street setbacks, and specifies built form outcomes for each precinct. The sub-precincts have different preferred street setbacks and some different built form outcomes. Buildings and works requirements in the table are discretionary.

NOTE

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Figure 2: Proposed DDO8.

1.4 Authorisation of the Amendment

When authorisation was given for the Amendment to be exhibited, a number of suggestions were made by the Department of Planning and Community Development (DPCD) as to how the Amendment could be improved (Appendix D). The Council's submission explained why the Amendment was, or was not, amended in response to the matters set out in the authorisation. In summary, prior to exhibition of the Amendment, the Council:

- Made changes to reduce repetition between DDO8 and the local policy at Clause 22.11 that applies to the Queen and Albert Street Area (which is part of the Blackburn NAC) but did not combine local policies at Clauses 22.11 and 22.12 (Blackburn Station Shopping Centre), add decision guidelines into Clause 22.11, or give a stronger emphasis to residential uses as the primary focus of Clause 22.11 is commercial use;
- Amended the 8 metre height control in DDO8 to 9 metres to be consistent with ResCode and changed the reference to underground car parking;
- Varied the wording in DDO8 relating to upper level setbacks but did not accept that recessed upper levels should only apply to the front setbacks, rather, the Council seeks upper level setbacks on all sides to reduce building bulk;
- Did not amend the proposed revisions with respect to the land at the corner of Russell Street and Whitehorse Road or No 160 Whitehorse Road; and
- Did include the UDF as a reference document.

1.5 Post-Exhibition Changes to Amendment C143

Following exhibition, and over the course of the Panel Hearing, the Council accepted additional changes to the Amendment that the Panel summarises as follows:

- Changes resulting from the gazettal of Amendment C134 (a corrections amendment);
- Amending Planning Scheme Map No 2 to address an error in the UDF incorrectly proposing the rezoning of the Pope Road Kindergarten at Nos 52-54 Pope Road, Blackburn, from Public Park and Recreation Zone to Business 2 Zone:
- Correcting the mapped DDO8 applying to No 28-30 Blackburn Road (DDO8-F rather than DDO8-E to be consistent with the table to the Schedule);
- Accepting changes recommended by Public Transport Victoria (PTV) in its submission; and
- Varying some wording in Schedule 8 by:
- Clarifying the design objective relating to gateways.
- o Amending references in DDO8-B and DDO8-F to "an adjoining residential zone" (rather than "residential use").
- o Reducing the area of DDO8-E to the rear of Brandsmart.
- Merging the DDO8-B precincts on the basis that Council accepted Mr Scott's evidence that front setbacks should be 3-5 metres not based on ResCode.
- o Potentially deleting the reference to how building height would be measured.
- o Potentially amending Clauses 21.04 (map) and 22.03 to confirm that the Queen/Vine/Albert Street Area is one of "substantial change" for consistency.
- o Modifying the wording of Clause 22.06-3 to "have regard to" the UDF.

The Council did not agree to a number of submissions made about the wording of the Amendment raised in written submissions and at the Hearing, as discussed in this report.

2 Existing Planning Context

2.1 State Planning Policy Framework

Various parts of the State Planning Policy Framework (SPPF) are relevant to the Panel's consideration of submissions in relation to Amendment C143. Of particular note are:

- Clause 10.04 Integrated decision making;
- Clause 11.01-2 (Activity centre planning) To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community. Clause 11.02 distinguishes between the role of a major activity centre and a neighbourhood activity centre;
- Clause 11.04-3 (Employment corridors) To provide opportunities for substantial employment creation linked by high capacity public transport and connected to Central Activities Districts and growing outer areas. Ringwood to Box Hill is highlighted as an employment corridor to be developed;
- Clause 15.01-2 (Urban design principles) To achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties;
- Clause 15.01-5 (Cultural identity and neighbourhood character) To recognise and protect cultural identity, neighbourhood character and sense of place;
- Clause 16.01-2 (Location of residential development) To locate new housing in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport; and
- Clause 17.01-1 (Business) To encourage development which meet (sic) the communities' (sic) needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

Melbourne 2030 and Melbourne 2030: A planning update Melbourne @ 5 million are part of metropolitan policy as contained within the Scheme. In 2002, Melbourne 2030 nominated Blackburn as a NAC and the Nunawading MegaMile as a MAC.

2.2 Local Planning Policy Framework

The Local Planning Policy Framework (LPPF), through the Municipal Strategic Statement (MSS), builds on these themes in a local context. Of particular note are:

- Clause 21.05 Environment;
- Clause 21.06 Housing where residential areas are nominated as being within "minimal", "natural" or "substantial" change areas;
- Clause 21.07 Economic Development;
- Clause 22.06 Activity Centres;
- Clause 22.11 Queen and Albert Street Area. This policy relates to a mapped area that corresponds with the Business 2 Zone; and
- Clause 22.12 Blackburn Station Shopping Centre. This policy applies to a mapped area that corresponds with the existing Business 1 Zone and some – but not all – of the existing Business 3 Zone.

The areas to which the two local policies apply are shown in Figures 3 and 4.

NOTE

To reduce the electronic size of this document, Figure 3 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Figure 3: Map to Clause 22.11 Queen and Albert Street Area. This includes land fronting Whitehorse Road between Chapel and Station Streets, both sides of Albert Street, west side of Chapel Street and part of the north side of Railway

NOTE

To reduce the electronic size of this document, Figure 4 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Figure 4: Map to Clause 22.12 Blackburn Station Shopping Centre.

The two policies do not cover all of the land in the Blackburn NAC, as can be seen when comparing Figure 1 with Figures 2 and 3.

The "MegaMile (west) and Blackburn Activity Centres Urban Design Framework (2010)" (sic) was inserted into the Scheme on an interim basis until 31 January 2013 via Amendment C109 which was gazetted on 24 February 2011. This Amendment was approved by the Minister under Section 20(4) of the Planning and Environment Act 1987 (the Act).

2.3 Zones and Overlays

Existing zones in the Amendment area include Business 1 (B1Z), Business 2 (B2Z), Business 3 (B3Z), Business 4 (B4Z), Residential 1 (R1Z), Public Use 2, Public Use 4, Mixed Use, Industrial 1, Public Park and Recreation Zone and Road Zone 1 (Figure 5).

Existing Overlays, such as the Heritage Overlay, Significant Landscape Overlay (SLO) and Neighbourhood Character Overlay (NCO) that apply to some land are not proposed to be amended through Amendment C143.

NOTE

To reduce the electronic size of this document, Figure 5 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Figure 5: Existing Zones.

2.4 Ministerial Directions and Practice Notes

The Panel has considered relevant Ministerial Directions and Practice Notes including:

- Direction No 7 The Form and Content of Planning Schemes;
- Direction No 9 Metropolitan Strategy;
- Direction No 11 Strategic Assessment of Amendments;
- Practice Note 08 Writing A Local Policy;
- Practice Note 10 Writing Schedules;
- Practice Note 46 Strategic Assessment Guidelines;
- Practice Note 59 The Role of Mandatory Provisions in Planning Schemes;
- Practice Note Incorporated and Reference Documents.

2.5 Other Strategic Work

The Panel was referred to other recent studies by the Council including the *Whitehorse Industrial Strategy* (which is the subject of an adopted Amendment C135) and the *City of Whitehorse Housing Study* 2003 which is currently under review.

3 Strategic and Policy Issues

This section addresses broad policy considerations relating to the Amendment, and some "in principle" or location-based issues raised in submissions that are relevant to both the MegaMile (West) MAC and Blackburn NAC.

3.1 Role of the Activity Centres

Does the Amendment accord with and give effect to the identified roles of the Blackburn NAC and MegaMile (West) MAC?

(i) Submissions and Evidence

Few submissions raised any concerns with respect to the identified roles of the Blackburn NAC and MegaMile (West) MAC except that two submitters expressed the view that the MegaMile has few of the accepted attributes of a Major Activity Centre and it is distant from public transport services.

Several submissions sought removal of a residential area from the MAC, referred to the intended role of this area, or sought to expand the MAC through rezonings, as discussed later in this report.

(ii) Discussion and Findings

State planning policy advocates structure planning for activity centres and the Amendment is proposed to implement the UDF for the two activity centres as part of a wider project involving the whole of the MegaMile MAC.

The vision statements for the two centres were not expressly challenged in submissions and evidence. The Panel considers these statements assist to clarify the identified differences between the roles of the two activity centres. Further, the vision for the MegaMile MAC explains its bulky goods role, distinguishing it from many other MACs that do not have such a specialised function. While the Panel is aware that MegaMile is not designated as a Specialised Activity Centre, it notes that Specialised Activity Centres are described in Clause 11.04-2 as areas where complementary mixed use functions are supported in addition to reinforcing the specialised economic function. They are not, therefore, single-use precincts.

Amendments proposing urban design and development controls in and around activity centres have typically caused tension between allowing growth, in a managed way, and respecting the community's valued components of existing character.

State policy sets ambitions for activity centres that involve a concentration of activities and more intensive residential development. MACs are to "accommodate ongoing investment and change in retail, office, service and residential markets" and they "have the potential to grow and support intensive housing developments without conflicting with surrounding land-uses".

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⁸ Clause 11.04.

The ambition for NACs is qualified in a manner than does not apply to MACs. NACs are centres where higher density housing is encouraged in and around the NAC "that is designed to fit the context and enhance the character of the area while providing a variety of housing options for different types of households". (Panel's emphasis). This is an important underlying policy theme and distinction between the MAC and the NAC. It is relevant to the Panel's consideration of submissions with respect to the Amendment.

Another theme to which the Panel has had regard is that the Amendment complements planning for the balance of the MegaMile.

The Panel appreciates that the Council has had to endeavour to manage the expectations and ambitions of residents and landowners whose perspectives can vary considerably with the directions set by State planning policy that guide different levels of change to the two activity centres. The tensions are evident in the submissions considered by the Panel in the balance of this report.

3.2 MAC and NAC Boundaries

- Are the MAC and NAC boundaries delineated in a manner that is consistent with Practice Note 58: Structure Planning for Activity Centres?
- Are the boundaries between the Blackburn NAC and MegaMile (West) MAC appropriate?
- Does the Amendment give sufficient recognition to the distinction sought between the MAC and NAC?

(i) Submissions and Evidence

Submissions Nos 2 and 7 sought a stronger distinction between MegaMile (West) and the Blackburn NAC. They submitted:

- MegaMile should extend west only as far as Peacedale Grove;
- Cottage Street should mark the eastern edge of Blackburn NAC; and
- The separate section of Whitehorse Road between the two centres should serve as a transition area.

The BVRG elaborated on these submissions at the Hearing, commenting:

- In the mind of the local community, MegaMile (West) commences with the service road at Peacedale Grove when proceeding east. It is characterised by commercial development alongside service roads from Springvale Road, Nunawading, to Peacedale Grove. Cottage Street, at just over 500 metres radius from the Blackburn Railway Station, marks the eastern edge of the NAC; and
- The area between Cottage Street and Peacedale Grove is in reality a transition zone between the two activity centres and should retain its transition-defining characteristics. This area does not meet the performance criteria of an activity centre and, without service roads, the type of development suggested in Amendment C143 will enclose that section of Whitehorse Road resulting in canyoning and overshadowing if appropriate setbacks and upper level step back are not enforced.

These submitters were critical of a lack of distinction between the centres in the Amendment documentation.

The BVRG stated that the two centres have been morphed into one without any clear delineation between the two. The Group's concern, reiterated by other submitters, was that, over time and through incremental processes, the NAC will be regarded as part of the MAC and its distinctive characteristics will be eroded. The need for the boundary of the NAC and MegaMile (West) to be defined within the Scheme was said to be even more critical in light of the proposed Victoria Planning Provision (VPP) zone reform process that will potentially see as-of-right commercial development up to 150 metres from existing business or commercial zoned land.

In reply, the Council submitted that the MegaMile is a unique bulky goods retailing centre that extends along Whitehorse Road from Mitcham to Blackburn. The MegaMile has been identified and marketed as such by Council and has an extensive regional catchment. Proximity to public transport is one consideration when defining an activity centre, but not the only one. The area that the submitters propose to be omitted from the MegaMile is characteristic in terms of use and built form to other areas of the MegaMile on its south side. The Council also submitted that the proposed rezonings around Blackburn would better distinguish the MegaMile from Blackburn and achieve different built form outcomes. Inclusion of a transition zone was considered to be unnecessary by the Council and was said to potentially undermine the vision to clearly define the two activity centres.

Mr Scott's evidence, for the Council, was that the UDF study area boundary, the activity centre boundary, and the DDO boundary deliberately follow the same alignment. He noted that some submissions propose a change to a boundary to allow more intense development; others wish to bring sites under the protective umbrella of the DDO, because it is perceived to provide greater control than ResCode. Mr Scott responded to these matters on a case-by-case basis (refer sections 4 and 5 of this report).

Mr Biles, in evidence for Dolce Development, considered that the DDO8 map should be amended to distinguish between the two activity centres and sub-precincts. He said that it would be helpful to simplify the precincts and sub-precincts by identifying on the DDO map:

- The two activity centre boundaries to clearly distinguish the areas; and
- The sub-precincts to eliminate the need to describe the areas and instead simply list "DDO8-D1", "DDO8-D2" and so on.

(ii) Discussion and Findings

The Panel addresses some specific boundary issues in sections 4 and 5 of this report (section 4.2 deals with the requested "transition area") and accepts the boundaries for the two centres. None of the submissions demonstrated that there were fundamental weaknesses or errors in the boundaries in the Panel's view, or that another approach would necessarily be better than Council's to achieve the directions of State and local policies.

Generally, the boundaries appear to accord with the thrust of Practice Note 58 to allow for future growth and manage impacts beyond the centre.

The Panel acknowledges that wider boundaries to the south of the NAC would be constrained by the outcomes being pursued in the NCO and SLO areas whereas the residential area fronting Whitehorse Road, west of the NAC, would be a candidate for consideration for some growth in the Housing Strategy review given its main road location and its relationship areas of potential or adopted "substantial change".

The Panel agrees with the submitters that the vision and distinction between the MAC and NAC may be "lost", mis-understood or diluted because of the combination of the following:

- The lack of a map defining the boundaries of the two activity centres in the Amendment:
- The shared design objectives for both centres in DDO8 and the fact that some DDO8 sub-precincts straddle both activity centres;
- The complexity of the controls relating to sub-precincts;
- Clauses 21.07-5 and Clause 22.06 do not make reference to the application of zones and the DDO8 in a manner that distinguishes the vision for the two centres; and
- Clauses 22.11 and 22.12 cover only part of the NAC and none of the MAC.

These matters will, the Panel believes, have the potential to give rise to differing interpretations and thus disputes in implementing the Scheme.

Consequently, the Panel agrees with the intention of some of the suggestions in the letter of authorisation such as combining policies. In the Panel's view, it would be preferable to have one policy (in Clause 22 given the manner in which the Scheme is currently structured), referring to the vision for the two centres (in land use and development terms consistent with the UDF) and then policies for sub-precincts to the extent that these matters are not covered by DDO8. In time, the policy could include the balance of the MegaMile.

The Panel recommends that:

- **Clause 21.07-5 be amended under "Application of zones and overlays" to:**
- Distinguish land within R1Z, B1Z and B2Z west of Cottage Street and Surrey Road as the Blackburn NAC and land within B4Z and R1Z east of Cottage Street and Surrey Road as MegaMile (West) MAC.
- Streamline land use and development policies including deleting matters that are dealt with in DDO8 (such as performance standards for setbacks) and development policy that is addressed by the design objectives in DDO8.
- Clause 22.11 and 22.12 be amalgamated into one local policy that addresses the MegaMile (West) MAC and Blackburn NAC including:
- Adding a map outlining the boundary of the two centres (that accords with the modified DDO8 boundary as recommended in section 5.7 of this Panel report).
- Adding the vision statements for the two centres (varied for the MAC as recommended in section 4.2 of this Panel report).

3.3 Land Use and Rezoning

- Is the approach to the proposed rezoning acceptable?
- What is the relevance of the potential outcomes of the zone reform process?

(i) Submissions

Ms Skraba and Mr Scott explained the approach to rezoning in the Amendment. As alluded to above, that is for all B3Z and B4Z land in the Blackburn NAC to be rezoned to B2Z to discourage bulky goods retailing in the area and to support a mix of office, commercial, secondary retail and upper level residential land use. No

change to the B4Z applying to the MAC is proposed as this is well suited to bulky goods retailing of the kind that has established along Whitehorse Road.

No submission opposed that approach, or the proposed rezonings, other than site specific requests for additional land to be included in the B4Z applied to the MegaMile (West) MAC. The Panel addresses specific requests for rezoning in section 4 of this report. One submission (No 5) opposed rezoning of community space as B2Z but the Council explained that there is no such rezoning proposed in the Amendment.

At the Panel's invitation, some parties presenting at the Hearing addressed the implications of the current zone reform process. The Panel does not detail the full suite of responses, but records that submitters addressing this matter were generally of the view that, if adopted in the draft form, the changes to commercial zones would have significant implications and it was generally common ground that the intent of Amendment C143 would be undermined even if some positive outcomes would be achieved. As Mr Scott summarised, some of the changes would:

... make it difficult or impossible for the Responsible Authority to enforce the differentiation in retail role between Blackburn NAC and MegaMile MAC that is central to the recommendations of the UDF.

As noted above, the ability to retain separate and defined roles between the centres was a concern raised in the context of Amendment documentation that does not, in the views of the BVRG and Mr Grainger, achieve the required distinction and transition.

(ii) Discussion and Findings

Land to be rezoned to B2Z is shown in Figure 6.

NOTE

To reduce the electronic size of this document, Figure 6 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Figure 6: Extract from Amendment C143 showing land to be rezoned to B2Z. All of this land is currently B3Z or B4Z as shown in Figure 5.

The rezoning of land within the NAC from B3Z and B4Z to B2Z is appropriate to confirm the different role that land in the NAC has compared with the MegaMile (West) MAC. None of the sites involving rezoning were the subject of objection from land owners on that ground.

3.4 Approach to Built Form Controls

Does the Amendment sufficiently support or implement the State policy with respect to development in Major and Neighbourhood Activity Centres?

(i) Submissions

One of the main points of tension in submissions focuses on this question.

A number of submitters opposed all or part of the Amendment because they believed it does not achieve various objectives and strategies of the Scheme (such as Clauses 21.07-3 and 21.07-4 relating to Economic Development). They submitted the Amendment will not develop, manage and promote the MegaMile as one of Melbourne's largest shopping districts and support its bulky goods retail focus. Others submitted that the Amendment fails to respond sufficiently to State planning policy which expects a significant degree of change in the NAC and MAC.

More specifically, submissions raised concerns that the proposed heights within DDO8 are too conservative and too restrictive (submission Nos 8, 9, 26, 27 and 33). Submission Nos 9, 27, 29 and 33 argued that the preferred maximum heights in DDO8-A, DDO8-B, DDO8-C and DDO8-F conflict with State planning policy, *Melbourne 2030* and *Melbourne @ 5 Million*, that seek to encourage higher built form outcomes in existing areas to facilitate a more compact city. These same points were made by these four submissions in the context of specific sites and locations that were the subject of their submissions (and are discussed in detail in sections 4 and 5 of this report).

The opposing positions are evident in the following comments made by submitters. Those against the Amendment said:

- The proposed amendment decimates the municipality's character and aims to enable high rise and high density buildings;
- DDO8 shows a clear intention to enable widespread, long term development of high density residential and business projects; and
- The character of Whitehorse is at risk; the change is not desired by residents and is not sensitive to the environment where residential zones can abut business, and industrial zones and co-exist to create a great commercial and living environment.

These can be contrasted with other submissions that the Amendment:

- Is "Undercooked" as it restricts rather than encourages development in a MAC and NAC and allows very limited development in areas that are well placed with respect to services and facilities including public transport;
- Does not clearly identify the real opportunities for intensifying and diversifying housing opportunities in the MAC and NAC; and
- Seeks to limit development to a degree that directly contradicts State planning policy with respect to the intensification of development in activity centres and ignores the opportunity presented by development sites within the MAC and NAC.

Mr Biles' commented on these matters in more detail, stating Amendment C143 requires modifications because:

It restricts rather than encourages development in the NAC and MAC;

- It duplicates ResCode's height and setback controls as set down at Standard A4 (Clause 54.03-2) and Standard B7 (Clause 55.03-2);
- It does not facilitate major change in the MAC;
- It does not clearly identify the real opportunities for intensifying and diversifying housing opportunities in the MAC and NAC; and
- The preferred height maxima in DDO8 over the B4Z are redundant because the zoning provisions severely restrict office use and prohibit residential uses, limiting realistic development opportunities to such heights. "It is improbable that display based retailers will sell their goods in buildings of 6 storeys".

Mr Sheppard made similar observations although the scope of his evidence was confined to the Blackburn NAC and specifically the north side of Railway Road as set out in section 5.2.

The Council's position was that the Amendment achieves a fair balance between guiding more intensive development to appropriate locations and reinforcing the commitment (already evident in the Scheme) to respecting neighbourhood character where change is of a lower order. It submitted the UDF, and Amendment, provide a well-considered response to future built form that looks for opportunities to balance the protection and enhancement of residential and community attributes while allowing suitable growth locations. The recommended controls will assist in promoting the MegaMile as a key bulky goods location.

Ms Skraba submitted that the heights in the UDF, translated by the Council into the Amendment, provide a considered and appropriate response for preferred development in the study area. The intention is to guide appropriate and realistic residential and business development to suitable locations. Ms Skraba emphasised that *Melbourne 2030* envisages a more compact city but also respects the need to "Promote good urban design to make the environment more liveable and attractive" (Policy 5.1) and "Recognise and protect cultural identity, neighbourhood character and sense of place" (Policy 5.2). She also relied on State policy where different ambitions are given to NACs and MACs. She referred to DDO5 for Mitcham as an example where the Council's approach had been supported and included in the Scheme and observed that Boroondara's neighbourhood activity centres are now covered by mandatory height controls.

The Council relied on the evidence of Mr Scott who described the UDF's approach to built form controls, including the application of low scale controls for finer grain areas with the aim to achieve some consistency in scale; a similar scale for the majority of the residential areas immediately abutting the main commercial areas or on the edge of the study area; transitional heights/upper level setbacks along residential interfaces; higher forms associated with the Whitehorse Road frontages; the potential to go higher on key sites; and consistent front setbacks to create a coherent and attractive street environment. Mr Scott explained that the precincts were identified within the study area, based on common land uses, built form character and potential strategic direction.

Ms Skraba also stated that the Council did not agree that the heights proposed for the B4Z land are inappropriate or unrealistic given the approach by the market can vary, the zone reform process may bring change, and there are examples of twolevel bulky goods premises in Whitehorse and other locations.

(ii) Discussion and Findings

The Amendment must give effect to, support, or implement the State policy with respect to development in major and neighbourhood activity centres. Differing views can be expected when considering whether an Amendment goes far enough in terms of allowing for growth or whether it is too restrictive. As noted in section 3.1, several important themes underlie the consideration of the Amendment and assist the Panel to reach its conclusion.

The extent of development provided for in the MAC is significant. The Panel doubts that bulky goods retailing will evolve into a preference for multi-level formats in the immediate future, based on existing market preferences, but that may change over time. The zone reform process could also bring significant change. Consequently, the Panel does not dismiss proposed height controls over B4Z land although it acknowledges and agrees with Mr Biles' evidence that the prospect of diversification may be limited until such time as the market or land use controls change.

The Panel also accepts that the outcome for the NAC can be more restrictive than is the case for the MAC given State policy gives weight to the relevance of the existing context and character in planning for NACs. While significant development opportunities are provided for, the ability to realise redevelopment opportunities will be constrained by the fragmented lot pattern, as discussed in section 5.6 of this report with respect to Station Street. Given this difficulty, it is important that other opportunities are available and this is a reason why discretionary heights are desirable (refer section 3.5 below) and why the Panel does not support the preferred height maxima being the lower of the exhibited figures (section 3.6).

In this report, the Panel also comments on several parts of the NAC and MAC where it considers that more intensive development outcomes could reasonably be contemplated because of the land's context. For example, in DDO8-A, on the north side of Whitehorse Road on land zoned B1Z, a height limit of 9-11 metres (2-3 storeys) is proposed in an area where three storey development is part of the context and the land is opposite properties on the south side of the main road where development is contemplated up to 15 metres (DDO8-C).

3.5 Mandatory or Discretionary Provisions in DDO8

- Is the approach to the built form controls in DDO8 acceptable?
- Should mandatory heights and setbacks be applied?

(i) Submissions and Evidence

Submitters appearing at the Hearing did not argue that the proposed discretionary controls in DDO8 should be mandatory. However, this issue was raised in written submissions where mandatory controls were felt to be justified (for example, submission No 2) with respect to the Blackburn NAC or opposed in principle (such as by Brandsmart in submission No 26).

The BVRG was concerned that the preferred maximum height would be used "as the starting point" for development proposals which would then seek to justify a proposal that goes above the preferred maximum. That point was reinforced in Brandsmart's submission which stated that the six storeys referred to in DDO8 for its land would be regarded by the submitter as "the base case".

The Council noted in its officer report to the Council⁹ that mandatory controls have been applied in some locations, such as Boroondara, but that advice to the Council from DPCD was that mandatory controls would generally not be supported.

(ii) Discussion and Findings

This is another matter that often arises where specific design controls are proposed. The *Practice Note 59: The Role of Mandatory Provisions in Planning Schemes* establishes when mandatory provisions (including building heights) are appropriate, noting that:

...they will only be considered in circumstances where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes".

It sets out criteria that "should be used to assess whether or not the benefits of any proposed mandatory provision outweigh any loss of opportunity and the flexibility inherent in a performance based system".

The Panel has considered the criteria mindful that none of the submissions addressed the matters in the Practice Note in detail to support their argument for mandatory controls. In the absence of any compelling argument, the Panel does not find grounds for any or all of the proposed DDO8 provisions to be mandatory notwithstanding there are plainly divergent views in the community and between land owners as to what the preferred outcome should be.

The Panel addresses the heights and setbacks in the NAC in section 5.1.

3.6 Articulating Preferred Height Maxima

- Should a range be identified in DDO8 for preferred maximum heights?
- Should a preferred number of storeys be included in DDO8?

(i) Submissions and Evidence

Several submissions expressed concern about the way in which preferred heights are articulated in DDO8. For example, the BVRG submitted there should be a single figure, rather than the range proposed, and that the lower number should be adopted. Mr Biles agreed that one number should be used but did not support the lower figure being adopted for reasons identified in his evidence and referred to earlier in this report.

In its closing submission, the Council said it was comfortable with "metres being the driver of height" but felt that the number of storeys is a useful guide.

The Council submitted that the range in storeys can be read to reflect an appreciation of residential versus commercial storeys and opportunities for mixed use in various built form configurations.

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⁹ 17 September 2012, Attachment 3.

(ii) Discussion and Findings

DDO8 has two ingredients with respect to its nomination of preferred maximum heights¹⁰:

- A range of heights in metres, such as "9-11 metres" or "11-15 metres"; and
- A preferred number of storeys such as "1-2 storeys" or "2-3 storeys with recessed upper (third) level".

The Panel considers the various references result in a lack of certainty and clarity as to the intended outcome because:

- The maxima in terms of metres is a range, rather than one figure;
- The reference to storeys does not account for the fact that the definition of building height in Clause 72 of the Scheme includes a basement as a storey;
- The number of storeys that can be accommodated within the height maxima in metres will vary dependent on the land use, for example, residential storeys may typically be 3 metres between floor levels whereas commercial (office) and retail floors are generally higher (3.5 metres+) and basement levels are generally lower (say, 2.4 metres, though higher floor to floor levels may be required to accommodate services and if car stackers are used).

Consequently, the preference for 1-2 storeys in an area where the preferred height is 9 metres, in a residential setting, wrongly guides an outcome where three residential storeys, above ground, can fit. In a B1Z, where there are no sensitive abuttals, or other strategic design imperatives, an outcome of 1-2 storeys would be an underdevelopment of land.

The Panel considers greater clarity and certainty is needed. It does not agree with submitters recommending a specific number of storeys, for the reason that storey heights can vary considerably as noted above. This is particularly an issue across the NAC where land is within a range of zones and consequently a range of land uses will be accommodated through new development, whether in single-use or mixed-use buildings.

The Panel recommends a single measure be specified, in metres. Further, the Panel does not consider this should be the lower of the two figures referred to in the table to DDO8 but the upper figure as this has been assessed through the UDF as an appropriate potential height. If a street wall response is sought in local residential streets (contrasting with Whitehorse and Railway Roads that are roads/business areas), then the lower height included in the exhibited DDO8 could be identified as that for the street wall (in a similar manner as adopted through Amendment C107 to the Boroondara Planning Scheme).

The Panel is conscious of the fact that this matter was not addressed in Amendment C94 and consequently DDO5, which is in the Scheme, is partly formatted in the same manner as is proposed for DDO8. It is not identical, however, with the preferred height nominated and the number of storeys in brackets after the measure in metres. Moreover, many of the preferred maxima are single figures.

The Panel recommends that the table in DDO8 be amended to:

Refer to a single preferred maximum height, which should be the higher of the two figures shown in the exhibited document.

¹⁰ Even though Clause 2.0 "Building heights" does not specifically refer to the column describing a preferred number of storeys.

- Consider adopting the lower exhibited height as a preferred street wall height where the DDO refers to a preference for recessed upper levels in DDO8-A and DDO8-C for local streets such as Vine Street.
- Delete the column "Preferred number of storeys" and any reference to a preferred number of storeys.

3.7 Administering Discretion in DDO8

Should DDO8 provide guidance to assist in identifying whether a preferred height or setback should be varied?

(i) Submissions and Evidence

This issue arose through the letter of authorisation (Appendix D). It was also raised in Ms Wither's submission on behalf of Brandsmart and the evidence of Mr Biles for Dolce Development.

Ms Withers suggested that the built form outcomes for DDO8-D and DDO8-E should be re-worked to more clearly articulate the built form outcomes to assess an application to exceed the preferred building height.

Mr Biles recommended "a set of decision guidelines on how heights higher than identified will be assessed".

(ii) Discussion and Conclusions

Clause 43.02 sets out decision guidelines as follows:

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The design objectives of the relevant schedule to this overlay.
- The provisions of any relevant policies and urban design quidelines.
- Whether the bulk, location and appearance of any proposed buildings and works will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- Whether the design, form, layout, proportion and scale of any proposed buildings and works is compatible with the period, style, form, proportion, and scale of any identified heritage places surrounding the site.
- Whether any proposed landscaping or removal of vegetation will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- The layout and appearance of areas set aside for car parking, access and egress, loading and unloading and the location of any proposed off street car parking.
- Whether subdivision will result in development which is not in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- Any other matters specified in a schedule to this overlay.

These must be considered, as appropriate, in assessing a permit application that is triggered under the Overlay.

Other matters specified within the proposed Schedule include the following under "Building heights" in Clause 2.0 "Buildings and works" 11:

An application to exceed the preferred maximum building height must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.

There is no equivalent with respect to "Building setbacks" proposed in DDO8.

There is no more detailed guidance of the type being suggested in submissions and evidence. Only limited assistance may be provided by the design objectives and built form outcomes in DDO8 where it is proposed to exceed the maximum height. Moreover, as an example, DDO8-A and DDO8-C both apply to Whitehorse Road, and draw a link to Clause 22.11, but the map to that policy only addresses the south side of the main road. The Clause includes a policy that "Buildings fronting Whitehorse Road be designed to fulfil a 'landmark' role with building entry points that provide a strong sense of address ...". While "landmark" may have a specific context, the point underscores an inconsistency when the same regard has not be given to lots on the north side of Whitehorse Road, that are also part of the NAC within B1Z, to be rezoned B2Z or Mixed Use, where the "Built form outcome" includes active frontages. DDO8-A has been applied to address the interface with residential areas to the rear but, the Panel's view, that does not mean a more substantive or prominent role is impossible along both sides (rather than one side) of the main road frontage.

There are examples in other Schemes such as Melbourne, Yarra and Stonnington where guidance is given for departures from the preferred height maxima¹². The approach relies on the specific circumstances of a site or where specific benefits can be demonstrated. Some common and apparent themes include:

- Achieving high or superior architectural quality;
- Achieving innovation with respect to environmental sustainability;
- Involving innovative approaches to heritage fabric;
- Achieving an equivalent or better design outcome;
- Minimising impacts on amenity; and
- Achieving specific urban design outcomes such as vista retention, protecting the public realm from excessive shadowing, transitioning to other land, or achieving specific land use outcomes.

Given the level of contention around the question of height demonstrated in submissions, and the commonality in the design objectives and built form outcomes across the DDO8 Schedule, the Panel considers guidance in DDO8 would be beneficial to supplement the matters contained in Clause 43.02 and to reflect the circumstances identified through the UDF and submissions and evidence before the Panel. The list, above, could provide a basis for an additional clause in the DDO8 relating to heights, to supplement the second dot point in Clause 2.0 of DDO8.

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DDO5 (Mitcham Activity Centre) has the same text as proposed in DDO8. The same matter does not appear, from the Panel's report, to have been raised in submissions.

 $^{^{12}}$ For example, DDO57 in the Melbourne Planning Scheme, Clause 22.02 in the Stonnington Planning Scheme and DDO4 in the Yarra Planning Scheme.

The Panel recommends that DDO8, dot point 2 in Clause 2.0, be supplemented to provide additional guidance for any proposal when an application seeks to exceed the preferred maximum height in circumstances such as:

- Achieving high or superior architectural quality;
- Achieving innovation with respect to environmental sustainability;
- Involving innovative approaches to heritage fabric;
- Achieving an equivalent or better design outcome;
- Minimising impacts on amenity;
- Achieving specific urban design outcomes such as vista retention, protection of the public realm from excessive shadowing, or transition to other land, or achieving specific land use outcomes.

The "Building setbacks" clause would also be assisted by an additional point for similar reasons and the wording from "Building heights" could be used:

An application to vary the preferred street setbacks must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.

The Panel also recommends the "Building setbacks" be amended to include this provision.

3.8 Measuring Height

How should building height be measured?

(i) Submissions

Ms Withers raised the issue of how heights would be measured at the Directions Hearing. This was in response to the Council officer's report of 17 September 2012 that had indicated that the preferred maximum building height would include service installations, as "building" is defined under the Act as including service installations.

The Panel asked for the Council's clarification prior to the Hearing and some parties addressed this matter at the Hearing.

The Council maintained its preference for building height to include service installations and questioned whether the following point in Clause 2.0 of DDO8 should be deleted:

The preferred maximum building height excludes rooftop building services (such as lift shafts, plant or other roof mounted equipment) which should be located to minimise visibility, to the satisfaction of the responsible authority.

The Council explained that it adopted the definition of "building" under the Act which includes service installations.

This follows practice by Council's Statutory Planning Unit which considers that, based on the definition provided under Clause 72 of the Scheme, building height is measured to the roof, or what is reasonably considered to be a roof. While some elements are excluded from this measurement as they have a small footprint in relation to the overall development footprint, there may be some service installations which cause an undesirable level of building bulk and therefore need to be considered as a significant part of the building.

The Council considered that maintaining discretion in this area is important to enable its Statutory Planners to consider applications on their merit. Ms Skraba submitted "Building height is one element in a suite of discretionary considerations ... and defining building height may create an unnecessary cause of contention during the planning permit process".

The BVRG submitted that roof top services should be within the building height envelope on the basis that services can be visually intrusive and noise can carry for considerable distances.

Ms Withers sought to apply the definition of building height at Clause 72 of the Scheme and suggested a design objective could seek to minimise the visibility and dominance of roof mounted equipment.

(ii) Discussion and Findings

"Building" is defined in section 3 of the Act. "Building height" is defined in Clause 72 as:

The vertical distance from natural ground level to the roof or parapet at any point.

The Panel finds no reason to depart from the standard requirements of the Scheme and notes that no particular provision is included in DDO5 regarding roof top elements. Having said that, the Panel agrees that roof top equipment can be intrusive and is often an after-thought, rather than a considered part of a design. Given the manner in which buildings may be viewed in the Blackburn NAC and MegaMile (West) MAC, the Panel agrees with Ms Withers' suggestion for this matter to be explicitly referred to in DDO8. The Panel prefers the exhibited dot point in Clause 2.0 be varied rather than a design objective being added. The Panel recommends that exhibited dot point be amended to make clear from where visibility is to be minimised and to clarify what roof top services might include, in a similar manner as Boroondara C107 has introduced into that Scheme.

The Panel recommends the dot point be redrafted as follows:

The preferred maximum building height excludes rooftop services (such as lift shafts, plant or other roof mounted equipment) which should be hidden from view from any adjoining public space or designed as architectural roof top features. Roof top services includes but is not limited to plant rooms, air conditioning and lift overruns.

3.9 Heights along the South Side of Whitehorse Road

Are the proposed heights along the south side of Whitehorse Road inappropriate?

(i) Submissions and Evidence

Submission Nos 10, 15 and 29 opposed the scale of development proposed along the south side of Whitehorse Road from Varman Court to Vine Street. The submitters were of the view that the Amendment does not achieve the policy directions such as:

- Melbourne 2030 (Direction 5, Policy 5.1 Promote good urban design to make the environment more liveable and attractive, and Policy 5.2 Recognise and protect cultural identity, neighbourhood character and sense of place).
- Objectives listed in Clause 21.07-3 which include safe and attractive shopping centres and civic spaces, managing sensitive interfaces, facilitating environmentally sustainable development and facilitating redevelopment in association with the community.
- Clause 21.07-4 which includes appropriate development and use in shopping centres, appropriate zoning and overlays and appropriate treatments to existing residential areas.

Mr Scott explained the basis of the proposed built form controls. Three to four storeys (11-15 metres) are proposed for commercial properties fronting the south side of Whitehorse Road because:

- For the larger bulky goods sites, this height represents a reasonable expectation of the maximum to which the market is likely to want to build for example, by adding offices above a retail outlet, or building a two-level bulky goods store. The potential to go higher is indicated in the UDF report for several larger properties on the basis that a greater site area allows for more efficient site planning, and for the visual impact of higher levels to be hidden or placed well away from any sensitive interfaces.
- Within the Blackburn NAC, the proposed height is congruent with recent developments (the Leader and Salvation Army), and represents an increase in scale that will not overwhelm the valued village character of much of the NAC. In addition, lots are adjacent to a residential area that is not anticipated to stay low scale into the foreseeable future.

(ii) Discussion and Findings

The Panel accepts Mr Scott's evidence on this issue. The scale of development proposed along the south side of Whitehorse Road addresses land that is entirely within business zones. The scale proposed, of 11-15 metres, is acceptable when taking into account the main road frontage, the existing built form associated with many of the existing businesses, and the location of the land in a MAC or NAC. No change is required to the Amendment. Larger sites have a greater potential for more intensive development, with an ability to graduate to sensitive abuttals, as is accepted planning and design practice.

No change is required to the Amendment in response to the submissions.

3.10 Interface with Railway Line

- Should DDO8 be varied with respect to the interface of buildings with the railway line?
- Should a new sub-precinct DDO8-G be created for the land bounded by Whitehorse Road/Surrey Road/Maple Street?

Submissions (i)

While generally supportive of the Amendment and its approach to improve public transport, walking and cycling, PTV requested changes to DDO8-A, DDO8-C and DDO-F that involve land abutting the railway line (submission No 3). The authority's submissions were as follows:

- That blank walls be discouraged on the rail corridor boundary, unless appropriate arrangements are made for maintenance, ie to facilitate removal of graffiti. PTV suggested adding the following requirements in the "Built form outcome" column for Precincts DDO8-A, DDO8-C and DDO8-F:
 - Development abutting or located close to the railway line that propose dwelling(s) to address the amenity impacts associated with railway operations, such as siting, setbacks, noise and vibration attenuation, or the locating of bedrooms/living areas away from the railway boundary.
 - The siting of buildings or facade treatments (for walls facing/abutting the railway line) to prevent or reduce the potential for graffiti.
- Frecincts DDO8-E (Remaining areas) applies to some land zoned B4Z. The statement "apply setback requirements in accordance with ResCode" does not apply to developments in a B4Z. The three properties it affects actually abut the railway line. Given that residential uses are prohibited in the B4Z, amenity impacts associated with railway operations are of less concern. However, graffiti management should be taken into account. The following new requirement should be added in the "Built form outcome" column:
 - Siting of buildings or facade treatments (for walls facing/abutting the railway line) to prevent or reduce the potential for graffiti.
- DDO8-E (land bounded by Whitehorse Road/Surrey Road/Maple Street) should be given its own identifier (DDO8-G) as a specific site/location.

The Council supported the first requested change but not the creation of a new DDO8-G. It opposed modifications to controls proposed for the land bounded by Whitehorse Road/Surrey Road/Maple Street because DDO8-E applies to a number of areas north of Whitehorse Road, south of Blackburn Station Village, and to the three properties highlighted in PTV's submission that share common height and development characteristics.

Ms Withers referred to the built form outcome about blank walls as being more about good design outcomes than a relevant matter when deciding if an application should exceed a height of more than 9 metres.

(ii) Discussion and Findings

While the tenor of the submissions is the same, the issue for the Panel is whether this detail should be part of the prescribed built form outcomes or, as Ms Withers suggested, it is simply a matter of good design. There is also the matter of consistency in approach mindful of the linear nature of the abuttals to the railway beyond proposed DDO8.

Designing in response to a railway abuttal requires careful consideration and more than one solution is possible. In the Panel's view, these types of considerations are addressed through the design guidelines that are required to be considered under Clause 15.01-2 *Safer Design Guidelines* (refer Objective 3.5) (for applications not covered by Clauses 54, 55 and 56).

There may be a gap with respect to Clause 54, 55 and 56 applications but the three DDO8 precincts with land abutting the railway are all within non-residential zones and the decision guidelines of the B1Z and B2Z (not B4Z) direct consideration of the objectives, standards and decision guidelines of Clauses 54 and 56 as appropriate but not to development of four or more storeys, excluding a basement.

The Panel considers the text proposed by PTV includes elements of a design response rather than a broader built form outcome. The desired design objective is to achieve an acceptable interface between a new development and the railway.

Given the above, the Panel considers it appropriate for a new design objective to be included in DDO8 with respect to the interface with the railway given the extent of land with an interface with the railway corridor included in the DDO8.

The Panel therefore recommends that a new design objective be added into DDO8:

To ensure an acceptable interface is achieved between new development and the railway corridor.

3.11Traffic and Parking

- Should the Amendment address traffic and car parking?
- Has sufficient consideration been given to the capacity of the activity centres to accommodate more intensive use and development with respect to traffic and parking?
- Should VicRoads' policies be referred to in the UDF or Amendment?

(i) Submissions

Submissions Nos 2, 7 and 21 referred to the parking situation within the Blackburn NAC and recent examples where buildings have been approved without recognising that residents require car spaces for themselves and visitors even though the sites may be close to rail and bus services. Existing parking issues were referred to by the submitters including difficulties in accessing their own parking or parking on-street in front of their house.

They submitted the Amendment does not address this matter or apply strategies to minimise overflow car parking. Approaches suggested included incorporating a new parking rate for residential uses in the area, minimising dispensations, parking provision for commuters, and managing increasing congestion.

Mr Morrison and Mr Taafe elaborated on these matters at the Hearing. They presented ABS data showing increasing motor vehicle ownership for residents living within 150 metres of Blackburn Station. The BVRG submitted that the ABS statistics:

... confirm what is being experienced on the ground in Blackburn that parking is becoming difficult around the centre and all day parking spills into nearby residential streets due to parking dispensation granted to new developments and increasing commuter demand for all day parking.

The BVRG described the solution as being multi-pronged, with the Scheme needing to recognise the reality of car ownership and ensure developments accommodate residents' cars discretely within the development.

In response, the Council submitted that the UDF provides some guidance on car parking in Theme 3 (Access) by ensuring that new uses and/or developments provide sufficient car parking to meet demand. However, parking is not specifically addressed as part of this Amendment. Ms Skraba noted that car parking requirements are set under the VPP (Clause 52.06 of the Scheme).

On a different theme, in submission No 20, VicRoads submitted its SmartRoads Network Operating Plans (which indicate the arterial roads hierarchy of priority) and Access Management Policies should be included in the UDF/Amendment.

(ii) Discussion and Findings

There is no doubt that the activity centres will continue to experience increased traffic and parking demands in the context of the expectation set by State and local planning policy that they will accommodate growth. In any residential area, a resident is not "entitled" to the kerbside in front of their house – parking is a shared resource and one that is not easy to manage given competing pressures.

The Panel notes the data presented but has not been persuaded that there are particular traffic and/or parking impediments that mean the level of growth provided for by the preferred building envelopes contained in the DDO8 cannot be accommodated. Parking dispensations are considered in the context of the decision guidelines of Clause 52.06 where appropriate and local policies are included in Clauses 22.11 and 22.12 addressing parts of the NAC.

Traffic and parking pressures may continue and further investigation and review may be required over time. Clause 21.08 of the Scheme sets out the Council's strategies in broad terms. Management tools are available to the Council to address these matters through the planning system (such as the local policy that already applies and the opportunity to prepare a Parking Overlay as referred to in Clause 52.06) and in traffic management and on-street parking supply.

With respect to VicRoads' position, the Panel has not been persuaded that the plans and policies to which VicRoads referred should be referenced (SmartRoads Network Operating Plans and Access Management Policies). The Panel was not provided with the documents and they have not been tested by this Panel. Moreover, they are likely to be policies that have broader implications than to the area of this Amendment alone and consequently, may better be considered for inclusion in planning schemes through a broader-based amendment. This is a matter for VicRoads to take up with DPCD. For reasons outlined in section 6, the Panel does not recommend amendments to the UDF.

3.12Removal of At-Grade Railway Crossing

Should the UDF and/or Amendment make reference to any future grade separation of the Blackburn railway line and Blackburn Road?

(i) **Submissions**

Several submissions referred to the potential grade separation of the Blackburn railway line and Blackburn Road.

Mr Grainger acknowledged that the UDF cannot anticipate the form of such works but submitted that the UDF should not dismiss it as a long term prospect. He suggested some indication should be given of the general preference for heights and alternative vehicular and pedestrian access routes should grade separation occur.

The BVRG submitted that major infrastructure projects such as rail separation or an extension of Surrey Road should be factored into the final version of the Amendment. The Group submitted that the stress point will move from the railway crossing to the roundabout with grade separation. Higher speed traffic makes crossing Blackburn Amendment C143 should anticipate this Road more difficult for pedestrians. likelihood, the Group said, and ensure that decisions are taken protect amenity and pedestrian permeability.

In submission No 20, VicRoads submitted that certain circumstances have changed since adoption of the UDF, and that the UDF should be updated accordingly prior to its incorporation into the Scheme.

VicRoads' submission referred to the UDF's identification of the removal of the Blackburn Road railway level crossing as a long term proposition, however VicRoads is planning for its removal. VicRoads suggested that the UDF (page 36) infers a lowering of the rail line and expressed concern about such an inference. It submitted that the UDF can state a Council preference, but should also state that the final design treatment will be determined by State Government following the consideration of VicRoads' recommendations. In the context of planning for the crossings' removal, VicRoads submitted the Amendment is premature. But, if the Amendment does proceed, VicRoads' submitted the UDF should be amended to acknowledge planning for the removal of the railway crossing at Blackburn Road, and clearly state that the final design treatment will be determined by the State Government following consideration of VicRoads' recommendations.

Discussion and Findings (ii)

The future grade separation is acknowledged in the UDF¹³, supported in the Implementation Plan¹⁴, and is noted as a long term prospect¹⁵. This important major project will require detailed investigations through a new planning process, which appears to have been initiated, and may change elements of the strategic directions for the Blackburn NAC. The outcome could result in a different strategic direction for the Blackburn NAC dependent on the adopted form of grade separation. Amendment should not potentially pre-empt that process and outcomes that have not been the subject of any material or investigations in association with the UDF and Amendment. Mindful of the Panel's overall conclusions with respect to the

At pages 48 and 54.

¹³ At page 3.

¹⁵ At page 14.

Amendment, the planning process for grade separation provides the potential to revisit some of the issues identified by the Panel in this report.

4 MegaMile (West) Major Activity Centre

This section of the report discusses the MegaMile (West) MAC and addresses the issues raised in submissions and evidence about specific sites and locations within this Centre.

4.1 Nos 200-206 Whitehorse Road & 2-8 Ashburn Place, Nunawading (Early Settler)

Should the land at Nos 2-8 Ashburn Place be rezoned to Business 4?

(i) Site and Locality

Location	South-west corner of Whitehorse Road and Ashburn Place. West side of Ashburn Place.
Features and Use	Land in two titles occupied by retail premises (Early Settler) fronting the main road and warehouse/offices to the rear fronting Ashburn Place.
Surrounding Land Uses	Commercial to the west, south and east and residential to the north.
Current Zoning and Overlays	B4Z for Nos 200-206 Whitehorse Road and Industrial 1 for the balance.
Surrounding Zoning and Overlays	B4Z for lots fronting Whitehorse Road and Industrial 1 for the balance. R1Z to the north.
Proposed Controls in DDO8	No change to zoning. DDO8-D applied to Nos 200-206 Whitehorse Road.

NOTE

To reduce the electronic size of this document, this Figure has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

(ii) Submissions and Evidence

Mr Ellenbroek appeared on behalf of the owner of this land in support of the written submission (No 23). He referred to his client's ownership of both lots and the logic of including all of the land in the UDF, B4Z and DDO8-D. He submitted this would facilitate an outcome whereby better use would be made of the existing building within the B4Z given its constraints in terms of floorspace and on-site parking. This modification to the Amendment would provide a cohesive set of planning controls should the two sites be consolidated.

Mr Ellenbroek submitted rezoning of Nos 2-8 Ashburn Place would not impede the ongoing use of the property for warehouse purposes as it is as-of-right in both the Industrial 1 Zone and B4Z. Rezoning would provide greater flexibility for future development options (including consolidation), which could assist in realising the

objectives of the UDF. Rezoning as part of Amendment C143 would avoid a lengthy and costly spot rezoning process and:

...in absence of any compelling reason why the merits of the rezoning cannot be considered now, we submit that the approach suggested in these submissions represents a sensible and efficient use of resources.

The written submission (No 23) contended that the rezoning of Ashburn Place is unlikely to undermine or threaten the viability of the industrial area as suggested on the basis that bulky goods retail relies on street exposure, and Ashburn Place is a cul-de-sac.

In response, the Council stated that the potential for a consolidated approach to the future development of this land is positive, however, although in single ownership, the land is in separate titles. The different zoning is not a barrier to redevelopment, but rather a permit would need to be granted in consideration of the two zonings. Should the site be consolidated, the Council may then consider rezoning.

Mr Scott's evidence was that rezoning of this land would support the expansion of the bulky goods retail role of the MegaMile, but would reduce the amount of industrially zoned land, which is seen as a pressure to be resisted in the Council's *Industrial Strategy*. Restricted retail is allowable in the Industrial 1 Zone with a permit. The arguments for and against replacing industrial uses with expanded bulky goods retailing would need to be considered in any permit approval process. Mr Scott's evidence was that rezoning in advance of a firm development proposal and consolidation of titles would appear to be premature. He also said that an expansion of DDO8 would appear to be premature for the same reasons.

(iii) Discussion and Findings

The Panel does not support rezoning of the land as requested by the submitter. No assessment of the proposal has been provided against the Strategic Assessment Guidelines nor having regard to the *Industrial Strategy*. The land that is proposed to be rezoned is not identified within the UDF and rezoning has not been exhibited. Restricted retail is allowable in Industrial 1 Zone with a permit.

Site consolidation is a reasonable pre-requisite to consideration of a rezoning request. The submitter's view that rezoning as part of this Amendment would be efficient is noted but that expediency cannot override the need for the request to be considered through a proper process underpinned by a strategic assessment.

4.2 Residential 1 Zone East of the Primary School to Peacedale Grove, Nunawading

- Does the Amendment lack direction with respect to the future development of this land?
- Should the Amendment remove this land from the Major Activity Centre and proposed DDO8-B and instead acknowledge that the area abuts the Major Activity Centre?
- Does the Amendment unduly emphasise existing character rather than future housing outcomes that are expected for land in a Major Activity Centre?
- Should the Amendment articulate a new preferred character?

(i) Locality

The area is on the north side of Whitehorse Road and is zoned R1Z. It is an established, low rise, residential area with a limited number of non-residential uses, notably a petrol station and car wash and a motel that is discussed in section 4.3 below. As shown in Figure 2 of this report, the Amendment would include land fronting Whitehorse Road within DDO8-B and other residential lots, within the DDO8, as DDO-E:

- DDO8-B (Whitehorse Road residential uses) Preferred height of 9 11 metres, preferred number of storeys as 2 3 with recessed upper (third) level and setbacks based on ResCode.
- DDO8-E (Remaining areas) Preferred height of 9 metres, preferred number of storeys as 1 – 2 and setbacks based on ResCode.

Figure 7 shows these areas generally with Figure 2 defining the DDO8 area specifically.

NOTE

To reduce the electronic size of this document, Figure 7 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Figure 7: General location of the residential area within the MegaMile MAC and included in DDO8-B and DDO8-E.

(ii) Submissions and Evidence

The submissions present very different perspectives about the future of this land.

Three submissions (Nos 15, 17 and 22) opposed the Amendment's preferred height provisions. They submitted that allowing up to three storeys would lead to more high density housing, overdevelopment, and would not be respected by applications that will ask for even higher development (refer section 4.3 below with respect to the Motor Inn site).

Ms O'Connell elaborated on the concerns at the Hearing, stating that residents were not aware that the land has been regarded as being part on the MAC and opposed being part of (rather than abutting) the MAC. In addition, she described MegaMile as having very distinct boundaries with a specific purpose relating to bulky goods and

that is the vision included in the UDF. Residential areas are not part of the vision, she submitted, emphasised by the fact that the UDF includes the area as A2 – residential/community and the implementation plan seeks to retain the land as a "predominantly residential area". Ms O'Connell highlighted the area's character and identity which are valued by residents and are under threat of being eroded by overdevelopment. She also observed the lack of a service road in this part of Whitehorse Road, unlike the area within Mitcham, where a four storey apartment building has been built.

Contrasting these submissions were the arguments presented by Mr Milner on behalf of the owner of Nos 245-253 Whitehorse Road & 59 Goodwin Street, Nunawading (Nunawading Motor Inn Site). Mr Milner, and Mr Biles who presented expert evidence in support of the submission, referred to the role of the land within the MAC as an area where expectations are for significant change, a broadening of land use activities, and higher densities of residential development. The key points of the submission and evidence were that the Amendment (and UDF) fail to realise the expectations of State policy; there has been insufficient policy and site context analysis, or urban design studies, to justify and lead to the recommendations regarding heights and setbacks; and the Amendment should be varied to more effectively achieve the policy expectations. The proposed provisions fail to acknowledge the number of bus routes and public transport opportunities as well as the existing built form and massing of the southern side of Whitehorse Road.

More particularly, Mr Milner submitted that there is a vacuum with respect to articulated outcomes for the R1Z land and protection of the existing character is not an appropriate vision for land within the MAC. He referred to the lack of detailed assessment, such as sightlines and cross-sections, in support of the proposed preferred heights and submitted the UDF fails to acknowledge the different character, amenity, opportunities and constraints for land fronting the main road. Moreover, the proposed provisions do not recognise that larger sites can and will be assembled, ResCode setbacks could discourage some forms of development, height limits of 2 - 3 storeys will discourage basement parking as the cost will be unjustified, and access problems for mid-block sites are not acknowledged in terms of VicRoads' position about new crossovers. Mr Milner submitted that the inclusion of 9 metres as a preferred height is likely to result in two storey development and fails to acknowledge slope and other needs such as inundation that may require floor levels to be raised.

Mr Milner proposed various revisions to the Amendment consistent with his submissions including amending Clause 22.03 to identify the area as one of "substantial change" rather than "natural change".

Mr Biles' evidence included the following conclusions:

- In the R1Z of the MegaMile (West) MAC, being the north side of Whitehorse Road, the proposed building heights are no different to ResCode. "In short, it makes no difference to the "policy setting" (or physical setting) in terms of height for sites fronting Whitehorse Road opposite the display based retail precinct."
- In a location where the Blackburn NAC abuts the MegaMile (West) MAC, between two rail stations, the very limited amount of land identified for increased residential densities has been unnecessarily fettered by the preferred heights of the DDO8.

The Council submitted that the area sought to be omitted from the MegaMile is characteristic in terms of its use and built form with other areas of the MegaMile on

its south side. Ms Skraba stated that the proposed rezonings around Blackburn are also intended to better distinguish the MegaMile from Blackburn and to achieve different built form outcomes. Inclusion of a transition zone is considered to be unnecessary and may undermine the vision to clearly define the two activity centres.

The Council acknowledged the role of the MAC and an aim to achieve higher densities than currently seen but not at the level of intensity suggested as being appropriate in the submissions for the Nunawading Motor Inn land. One of the Council's concerns was that the land in this area is not well located to train stations and shops and is currently within an area of "natural change".

Mr Scott's evidence referred to the abutting residential areas that are anticipated to stay low scale into the foreseeable future. He said:

Much of Whitehorse Road within the study area runs along a low ridge, which gradually falls away into the surrounding residential areas. Therefore higher built form on sites fronting Whitehorse Road will have a greater impact in terms of perceived bulk than would otherwise be the case. VicRoads has advised that additional crossovers for access to Whitehorse Road would not be allowed, thus limiting the capacity for sites, apart from corner sites that are able to gain access from side streets, to accommodate many more dwellings per site.

DDO8-B requires setbacks in accordance with ResCode for residential uses, but a 3-5 metre landscaped front setback for non-residential uses. Mr Scott's opinion was that the 3-5 metre landscaped front setback should apply to any use, including residential, within the area delineated on the Buildings Map opposite page 12 of the UDF.

The BVRG supported, at a minimum, the setbacks suggested for DDO8-B and DDO8-D for the "transition zone along Whitehorse Road". However, it submitted that each upper level of any development should be recessed from the level below for both DDO8-B and DDO8-D to retain visual consistency. The wording for DDO8-D preferred number of storeys should read "3-4 storeys with recessed upper levels".

VicRoads' submission noted that access would be an issue for lots that do not front a service road and do not have alternative access available to them (such as from a side street).

(iii) Discussion and Findings

In the Panel's view, the Amendment does not assist to provide sufficient certainty about the future use and development of this area. Unless rectified, there will be ongoing debates when the land is within the MAC and DDO8 as well as within an area of "natural change" through Clauses 21.04 and 22.03.

The Panel considers there are two main issues relating to this area of land:

- There is no specific reference to the future land use in the vision or in local policy to articulate its role as a residential/community area; and
- The land is within the MAC and part of DDO8 but Clause 21.04 and 22.03 have not been amended to remove the land from an area of "natural change" or to identify all or part of the land as being appropriate for "substantial change", such as along the main road. Being part of the MAC, albeit with a more specialised role with respect to bulky goods retailing, State policy directs more intensive

development than currently exists. The preservation of existing character is not the primary driver.

The UDF and Amendment appear to have a focus on retention of character but, despite this, resident submitters oppose the land being included in the MAC.

The Panel considers access issues will be resolved on a site by site basis and that basements may be needed to achieve a single access point for mid-block land. Corner sites, and other sites with alternative access such as off a side street, will typically need to use the side street rather than the main road based on VicRoads' preferred access arrangements. This may lead to more consolidated lots along this row of properties, a scenario that has not been regarded as a significant possibility in the UDF. There are, however, few multi-units along the main road today and consolidation is a genuine prospect particularly if encouraged by the identification of the area for higher densities consistent with the role of a MAC.

The Panel does not consider that the policy imperatives guide an outcome of one and two storey units and townhouses. Being part of the MAC, more intensive development is reasonable, provided that a sufficient transition is achieved to abutting residences as provided by DDO8-E. That sub-precinct serves a purpose in this regard, by identifying the role of land adjacent to the more intensive main road frontage and assisting to manage expectations of higher forms on land in DDO8-B.

Similarly, while appreciating that residents prefer a lower scale of development, the Panel does not consider that the area should be removed from the MAC. The UDF and Amendment have been based on its inclusion within the activity centre and the retention of the R1Z will assist to separate the bulky goods area (B4Z) from land within the Blackburn NAC. The land serves a function in broader planning terms and is important that it remains as part of the activity centre but with an articulated role identified in the local policy. The Panel notes that, even without its inclusion in the MAC, the land would be likely to be subject to development pressures given its main road location and position opposite larger buildings on the south side of Whitehorse Road. It is preferable for that pressure to be managed in a way that supports the MAC and NAC and provides some certainty for land owners within the area as well as residents to the north.

Consistent with the Panel's findings in section 3.4 and section 4.2, the Panel recommends the preferred maxima for the two sub-precincts DDO8-B and DDO8-E be 11 metres and 9 metres respectively. The front setback for DDO8-B should be "3-5 metres landscaped front setback" for the reasons recommended by Mr Scott. The Panel does not consider ResCode setbacks are required when viewing the main road corridor more fully. Nor does the Panel consider that all upper levels should be recessed as suggested by the BVRG, as visual uniformity/consistency is not the key aim set by the UDF – the concern is about excessive visual bulk and transitions to existing dwellings to the north.

These recommendations will see proposals for three storeys (plus basement) buildings along the north side of Whitehorse Road and there may be scope for fourth levels in roof forms or with a relatively minor variation from the preferred maximum height if that can be justified on a case by case basis.

That outcome can, the Panel considers, be accommodated and is consistent with the direction of the UDF and exhibited Amendment. This revised preferred envelope would, subject to detailed design including transitional elements, allow for a

substantial development when related to the established housing. While residents may believe that to be "substantial change" when compared with the existing dwellings than "natural change", it would retain the upper preferred figure specified in the exhibited DDO8.

The Panel does not consider supplanting a higher preferred maximum can be contemplated without exhibition and without more detailed analysis along the corridor. Sightlines and other detailed analysis have not been presented to the Panel to justify a departure on a single site (such as the Motor Inn) or for the balance of the R1Z. Nor has the analysis been done to support a specific figure or figures. The topographic considerations to which Mr Scott referred are not uniform and this is where a case by case assessment will be required to determine acceptable transitional forms in the context of a permit application.

Moreover, while reference was made to a four storey apartment building further east along Whitehorse Road in Mitcham, that site does not have the same features as land in this part of Whitehorse Road (such as a service road) and therefore the outcome cannot be simply accepted as transferable to the location that is the subject of submissions.

The future of this area should be further assessed as part of the current review of the Housing Strategy wherein its inclusion as an area of "substantial change", or its removal from the standard housing policy altogether given its location in the MAC, could be some of the options considered and exhibited in a future amendment.

The Panel therefore recommends that:

- Consistent with the Panel's findings and recommendations in sections 3.4 and 4.2, two sub-precincts DDO8-B and DDO8-E should have a preferred maximum height of 11 metres and 9 metres respectively. The front setback should be "3-5 metres landscaped front setback" for DDO8-B in this residential area.
- The vision for MegaMile West MAC should make reference to the land as being for residential/community uses consistent with its zoning and the role identified in the UDF. The vision should be included in local policy, as discussed in section 3.2 of this report.
- Clauses 21 and 22.03 should be amended to refer to this land being affected by DDO8 given its role as part of the MegaMile (West) MAC.
- The future of the R1Z between the primary school and Peacedale Grove should be reviewed to further consider its inclusion as an area of "substantial change", its removal from the standard housing policy altogether given its location in the MAC, or other options to articulate its role within the MAC.

4.3 Nos 245-253 Whitehorse Road & No 59 Goodwin Street, Nunawading (Nunawading Motor Inn Site)

Should DDO8 be modified as it applies to this land?

(i) Site and Locality

Location	South-east corner of Whitehorse Road and Goodwin Street.
Features and Use	Land in multiple titles with an area of 3,825 square metres, occupied by a motel and dwelling.
Surrounding Land Uses	Residential to the north and east, service station to the west, commercial opposite.
Current Zoning and Overlays	R1Z.
Surrounding Zoning and Overlays	R1Z to the west, north and east. B4Z on the south side of Whitehorse Road.
Proposed Controls in DDO8	No change to R1Z. DDO8-B applied to land fronting Whitehorse Road (9-11 metres preferred height, 2-3 storeys with recessed third level, setbacks as per ResCode). DDO8-E applied to No 59 Goodwin Street (9 metres preferred height, 1-2 storeys, setbacks as per ResCode).

NOTE

To reduce the electronic size of this document, this Figure has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

(ii) Submissions and Evidence

The submissions referred to above by Mr Milner were relevant to this submission, and the evidence of Mr Biles, with respect to the land at Nos 245-253 Whitehorse Road and No 59 Goodwin Street (Nunawading Motor Inn Site). Mr Milner described the site's features and two proposals for redevelopment of the property involving four and six storey apartment buildings. He described the site as a case study to more fully inform the appropriateness of the Amendment. He was critical of the Amendment on the basis that it is not flexible or responsive to the existing characteristics of the MegaMile MAC and would not fulfil its development potential in line with the directions and policies of *Melbourne 2030* and *Melbourne @ 5 million*.

In his expert evidence, Mr Biles also elaborated on the site, and its immediate and wider contexts, in support of his opinions that Amendment C143 requires modification. In addition to the matters referred to in section 3.4, Mr Biles said the Amendment does not acknowledge the breadth of the road corridor, ready access to

services including by bus along Whitehorse Road, the petrol station next door that could provide for some daily needs, does not allow for consolidation of lots, and does not recognise the more robust building forms on the opposite side of Whitehorse Road.

In reply, the Council submitted the controls for this residential/community area respond to the existing residential development to its north and the topography that falls to the north. The level of use, development and heights needs to respect these areas. It was noted that two permit applications have been made for the site, one involving a six storey apartment building that was refused by the Council and is the subject of review before the Tribunal, and a four storey proposal that was recently advertised.

Mr Scott's evidence was the proposed preferred height in DDO8-B responds to the following:

- Most sites covered by this Schedule abut residential areas anticipated to stay low scale into the foreseeable future.
- Many sites covered by this Schedule are topographically higher than the residential areas they abut.
- The VicRoads limitation on additional crossovers for access to Whitehorse Road limits the capacity for intensification of sites, apart from corner sites.
- The UDF and Amendment C143 provide ample opportunities for intensification of development across the two activity centres.

He concluded that the provisions of Amendment C143 for Nos 245-253 Whitehorse Road and No 59 Goodwin Street should remain unchanged, except in relation to the front setback, as discussed in section 4.2.

(iii) Discussion and Findings

The Panel has substantially addressed this area in section 4.2. It notes the land's access to public transport. Ongoing development at Brandsmart would also provide some food options.

Having regard to the specific issues raised with respect to the submitter's land, the Panel finds that the boundaries of DDO8-B and DDO8-E should not be varied as they relate to this site, which is in two titles.

Further, consistent with the Panel's findings in section 3.4 and section 4.2, it recommends the preferred maxima for these two sub-precincts be 11 metres and 9 metres respectively, with the front setback to be "3-5 metres landscaped front setback".

This revised preferred envelope would, subject to detailed design including transitional elements, allow for a substantial development when related to the established housing. While that could be considered to be more akin to "substantial change" in relative terms than "natural change", it would retain the upper preferred figure specified in the exhibited DDO8. The Panel does not consider supplanting a significantly higher preferred maximum can be contemplated without exhibition and more detailed analysis along the corridor.

Sightlines and other detailed analyses have not been presented to the Panel to justify a significantly higher figure on this site.

The future of this area should be assessed as part of the current review of the Housing Strategy. Its inclusion as an area of "substantial change", or its removal from the standard housing policy altogether given its location in the MAC, could be some of the options considered and exhibited in a future amendment. Other than amendments already recommended for DDO8-B and DDO8-E earlier in this report, no further modification of the Amendment is proposed in response to this submission.

4.4 No 250 Whitehorse Road & Nos 10, 12, 18, 20 & 22 Metropolitan Avenue, Nunawading (Bunnings)

Should the land at Nos 10, 12, 18, 20 & 22 Metropolitan Avenue be rezoned to Business 4?

(i) Site and Locality

Location	South side of Whitehorse Road and west side of Metropolitan Avenue.
Features and Use	Bunnings store to the Whitehorse Road frontage on 3,841 square metre site. Industrial uses for the balance of the land.
Surrounding Land Uses	Commercial and industrial.
Current Zoning and Overlays	B4Z for Whitehorse Road site and Industrial 1 for Metropolitan Avenue lots.
Surrounding Zoning and Overlays	B4 for land fronting Whitehorse Road and to the south. Industrial 1 for other land to the east and west.
Proposed Controls in DDO8	Bunnings (250 Whitehorse Road) in DDO8-D (160 Whitehorse Road & sites over 10,000m²). Preferred maximum 21 metres, 6 storeys (with recessed upper levels). 3-5 metre landscaped front and side setback streets.

NOTE

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(ii) Submissions and Evidence

The submission on behalf of Bunnings (No 24) requested that land at Nos 10, 12, 18, 20 & 22 Metropolitan Avenue, which is in the same ownership as No 250 Whitehorse Road, be rezoned to Business 4 and included in DDO8-D. That would provide consistency in the controls relating to the submitter's land holdings and facilitate an expansion of the business.

The submission noted a current planning permit application for expansion into Metropolitan Avenue that would advance many Scheme objectives, accommodate a large format building, provide new landscaping and allow more parking.

Ms Skraba advised that the planning permit has been approved. The site remains on separate titles, with the permit tied to all seven titles. She said there would be no benefit to rezoning any parcels as the approved activities are permitted in both zones. The Council said the site should be consolidated before it would advance any rezoning proposal. Mr Scott agreed and noted that No 14 Metropolitan Avenue is not owned by Bunnings.

(iii) Discussion and Findings

The Panel does not support rezoning of this land. No strategic assessment has been provided in support of the request. The issue of a permit demonstrates that expansion of the business is possible under the existing controls. Site consolidation is a reasonable pre-requisite to consideration of a rezoning request here.

4.5 No 288 Whitehorse Road, Nunawading (Brandsmart Site)

- Should the land be rezoned Business 1?
- Should the DDO8 be applied to this site? If DDO8 is applied, it be modified?

(i) Site and Locality

Location	South side of Whitehorse Road east of Moncrieff Road.
Features and Use	Retail premises undergoing works to include a fresh food market. Land over 2.5 hectares.
Surrounding Land Uses	Bulky good stores to the east and west fronting Whitehorse Road. Industrial uses in industrial zones to the east and west. Railway to the rear. Residential further south.
Current Zoning and Overlays	B4Z.
Surrounding Zoning and Overlays	B4Z and Industrial 1 Zone to the east and west. Public Use 4 applies to the railway with R1Z to the south.
Proposed Controls in DDO8	No change to the B4Z. DDO8-D is applied to most of the site with DDO8-E applied to the rear. Preferred maximum 21 metres (6 storeys with recessed upper levels) to the front and 9 metres (1-2 storeys) to the rear. 3-5 metre landscaped front and side setbacks.

NOTE

To reduce the electronic size of this document, this Figure has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

(ii) Submissions and Evidence

Ms Withers' submission (No 26) on behalf of Brandsmart, relating to the land upon which the Brandsmart retail centre operates, sought rezoning of the land from B4Z to B1Z and removal of the DDO8 from the land. If the DDO8 is retained, changes were requested to reduce the extent of the site affected by DDO8-E.

The submission contended that Brandsmart provides a unique retail offer in the MegaMile, complementing traditional bulky goods retail outlets. Ms Withers explained the planning background including site specific provisions within the Scheme and permit approvals. She submitted the retail centre is more traditionally a Business 1 Zone use rather than a Business 4 Zone use. The submission was that rezoning to B1Z would encourage a broader mix of uses beyond bulky goods, including fresh food and accommodation, as some of these uses are limited in the B4Z. That would add to activity and patronage, such as at night. Further, rezoning would correct an "anomaly" and would capitalise on the opportunity to broaden the retail mix.

DDO8-D (Large sites) was said to provide a "base case" for 6 storeys on the land but this was still regarded as unduly restrictive given the size of the Brandsmart site. The submitter was particularly concerned that the Amendment includes the southern part of the site in DDO8-E, where the preferred maximum building height is 9 metres (1-2 storeys) and application of ResCode setbacks, on the basis of respecting the amenity of adjoining residential developments. The lack of analysis to support the boundary and height limits were key arguments in support of the submission that the whole of the land should be within DDO8-D if an Overlay is to be applied. Separation provided by the railway to the nearest residential properties, of around 20 metres, was a further reason given in support of the submission by Ms Withers.

The Council did not support the changes being requested by the submitter. Ms Skraba submitted that the vision for MegaMile is for a bulky goods area, and these activities are encouraged in centre. While Brandsmart has achieved a "smaller format retail offer", the B4Z reflects the vision for the strip. The Council submitted that the UDF has achieved a responsible and appropriate balance between competing objectives within the Scheme. The intention to apply DDO8-E in the southern part of the site is, Ms Skraba submitted, to provide an interface with residential areas on the other side of the railway line. A consistent approach to properties in the study area that run along the railway line has been applied. As the Brandsmart site is in the B4Z, ResCode is not applicable to this site, but the ResCode measure is proposed in the Amendment to achieve an acceptable interface.

Mr Scott's evidence was that introducing a B1Z onto a single site in the MegaMile strip would be contrary to the intent of the UDF. It would create a precedent that could lead to further requests to rezone land to B1Z which, if approved, would dilute the mainstream retail offer of the NACs in and around MegaMile (East) and MegaMile (West) and threaten the viability and vibrancy of these, and perhaps other centres. He said that the submitter's comment about six storeys providing a "base case" height for the site is hard to understand and respond to, given that DDO8 refers to this as the preferred height for most of the site.

Mr Scott explained that the intent behind applying DDO8-E to the southern extremity of the site is to provide a sensitive interface with residential areas to the south. While noting the Belgrave/Lilydale railway line intervenes between the subject site and the

residential area, he referred to level differences that give rise to the potential for visual bulk that needs to be anticipated in the DDO. The Brandsmart land slopes marginally towards the rail line, but is elevated considerably above adjoining properties and drops abruptly to the rail line, and the residential area lies below the level of the railway. Mr Scott's evidence was that a large and bulky building – up to six storeys or more – extending to the southern boundary of the Brandsmart land, would tower over the dwellings on the north side of Laughlin Avenue.

In cross-examination by Ms Withers, Mr Scott could not recall how the boundary of the DDO8-D and DDO8-E as it applies to this land was designated. No sightlines or similar assessments were undertaken.

Having regard to the submissions and evidence, in its closing submission, the Council agreed to DDO8-E being reduced in area, to 30 metres from the southern site boundary not from the boundary with the residential zone.

(iii) Discussion and Findings

The Panel does not support rezoning to B1Z for this land. The use can continue to operate under the provisions of the Scheme and current permits. Rezoning has not been the subject of exhibition. No evidence or argument was presented to justify the requested rezoning on strategic grounds or through an assessment under the Strategic Assessment Guidelines. No assessment of economic impacts was provided to appreciate how such a proposal on such a large land parcel would affect activity centres and support the vision for the MegaMile MAC.

The retail complex is an anomaly and, on one view, because of the land's size, has the potential to expand its retail offer to a scale that would result in it containing more floorspace than the whole of the Blackburn NAC. Indeed, the current works approved by the Council to introduce a fresh food market could be said to be curious given the policies relating to activity centres in the Scheme notwithstanding that the land is within a MAC.

The Panel has also not been provided within any strategic justification to remove DDO8 over this land. The site is essentially mid-block in a bulky goods precinct. Creating a gap in the DDO8 would give rise to potential outcomes that could undermine the design objectives being pursued. That is particularly the case given the substantial size of this property.

The principle of applying a transitional DDO8 provision to the rear of the site has logic taking into account the physical circumstances even with the railway intervening between the rear of the Brandsmart property and residences in Laughlin Avenue.

The adjacent batching plant shows the potential visual impact of structures north of the railway. Moreover, exemptions from notice and review rights apply in the B4Z where a subdivision, buildings and works are more than 30 metres from R1Z. Thus, it is reasonable to provide some guidance, with discretion, along this interface.

Having said that, the application of ResCode setbacks in the B4Z is not appropriate mindful of the separation provided by the railway and the MAC location.

Further, the depth of the DDO8-E to the rear of the property seems arbitrary and could not readily be explained at the Hearing.

Consequently, the Panel requested a sightline diagram be prepared to appreciate the relationship, which was tendered on the second day of the Hearing. Ms Withers commented on the diagram at the Hearing and, when asked by the Panel, did not request additional time to review the diagram. She suggested it had some flaws.

The Panel's inspection and the sightline sketch, as well as the exemptions under the B4Z, persuade the Panel that DDO8-E is appropriate to facilitate a transitional response, mindful that it is a discretionary control. Dwellings are lower in the landform and often on modest-sized lots. That is also the case with the school at the western end of Laughlin Avenue. Fencing constructed to the rear of dwellings would provide a visual barrier in part but the scale of development would potentially still be very significant within the MAC without a transitional element. The Panel does not consider the depth of the DDO8-E should be 30 metres from the rear of the land. It proposes a depth of 30 metres from the rear of the R1Z to reflect the notice and review exemptions under the B4Z.

The Panel therefore recommends that:

- The boundary of DDO8-E be redrawn, measured 30 metres from the northern boundary of the R1Z to the south. The same measure should be considered for the two other lots that have the same DDO8-E abutting the railway corridor.
- **■** DDO8-E exclude the application of ResCode setbacks for the three large lots abutting the railway line.

4.6 Setbacks in the Business 4 Zone

Should DDO8-D be modified to delete a preferred street setback of 3-5 metres?

(i) Submissions and Evidence

Submission No 26 (Brandsmart) opposed the introduction of 3-5 metres landscaped front and side preferred street setbacks in DDO8-D (Large sites). It submitted that a more appropriate design response would be to build to the street front boundary and activate the frontage to Whitehorse Road. Ms Withers submitted that, in the case of Brandsmart, the proposed landscape setbacks are not required to create a good design outcome for the public realm. She suggested that the level differences between the public realm and property line would "undermine any benefit derived from a landscaped setback". She noted the service road and public realm improvements adjacent to the site. Ms Withers suggested that a requirement for the front setback would reduce the connection to the public realm and activated street frontage.

The Council described a landscape setback as a characteristic of a majority of the MegaMile which the UDF supports through DDO8-D. Mr Scott's evidence was that consistent front setbacks are particularly important in creating a coherent and attractive street environment. The principles embedded in the UDF include:

Maintaining zero setback with active frontages for traditional street-based retail and commercial areas.

A consistent 3-5m landscaped setback for the bulky goods retail area; also for the former Leader corner site, the Blackburn Primary School and the

former Motor Inn and associated land on the north side of Whitehorse Road.

A consistent 3m landscaped setback for the south side of Railway Road, where most buildings are already setback.

Active edges to the Blackburn Village laneways and car parks.

Ms O'Connell also commented on this matter at the Hearing, observing the role of setbacks as a feature of the locale.

(ii) Discussion and Findings

The preferred setbacks are an appropriate design approach having regard to the established development pattern for bulky goods premises, a pattern that also applies to MegaMile (East) and for which continuity is sought through the aims of the UDF. Removal of the preferred street setback would have implications for the urban design outcomes for the whole of the south side of Whitehorse Road from Varman Court to beyond Railway Road and those implications have not been the subject of any detailed evaluation that was presented to the Panel.

Brandsmart is currently being redeveloped under approvals issued by the Council. The Panel agrees with the Council's position mindful that the setbacks are not mandatory and thus departures may be considered where the design objectives are met.

No change is required to the Amendment in response to the submissions on these issues.

5 Blackburn Neighbourhood Activity Centre

This section of the report discusses the Blackburn NAC and addresses the issues raised in submissions and evidence about sites and areas within the NAC. Not all parts of the NAC were the subject of detailed submissions or objections, such as the properties fronting South Parade and Precinct B1 (shown in Figure 1) as it extends along Railway Road generally east of Chapel Street.

5.1 Heights and Setbacks in the NAC

- Should the heights and setbacks referred to in DDO8 vary from the existing policy in Clauses 22.11 and 22.12?
- Should street setbacks be required throughout the NAC (except South Parade)?

(i) Submissions and Evidence

Mr Grainger's submission (No 2) referred to the character and scale of the Blackburn NAC that are desired to be respected including elements such as vistas, landscaped backdrops, and sunlight access. The same outcome was described through the written and oral submissions for the BVRG.

Mr Grainger submitted:

- Heights should be mandatory (at 11 metres) with appropriate transitions to the residential interfaces similar to those set out currently in the Scheme at Clauses 22.11 and 22.12;
- The removal of the existing height references in these Clauses was opposed; the references to heights should be reinstated and metric height measures added into the local policies;
- The modification of references in the UDF for an 8 metre height on boundaries with 9 metres should be reversed:
- With respect to DDO8-A, DDO8-C and DDO8-F:
- Front setbacks along Whitehorse Road and Railway Road should be required because buildings of 9-11 metres without setbacks would impact on sunlight access and contribute to a canyon effect.
- No setbacks in South Parade are appropriate and consistent with the existing built form but that contrasts with Whitehorse Road and Railway Road.
- Amendments to the local policies and DDO8 should be made accordingly.

The BVRG submitted that it would be preferable to have consistent setbacks along all DDO8 street frontages to provide for a sense of openness and harmony in the precinct and enhance the public realm. The Group submitted that setbacks promote on-street and private planting of trees that will enhance streetscapes, provide passive cooling during summer and a sense of open space that fits with the Spaces theme of the UDF. "Building to boundary where footpaths are already narrow guarantees that streetscapes will be hard edged and the northern side of east west streets the paving and roadways will be overshadowed" (sic).

The BVRG also sought graduated heights to respect residential amenity and the retention of the existing local policies.

The Group submitted that if Amendment C143 is adopted as advertised (with BVRG suggestions included) the vistas and the human scale of the NAC will generally be maintained. "The policy pressures of consolidation will also be met with higher density residential development permitted in strategically appropriate central locations". The Group submitted that increased permissible heights particularly south of the railway line at residential interfaces for the sake of ResCode consistency would ignore local policies which apply for areas on both sides of the railway line, Blackburn Station Shopping Centre (22.12) and Queen and Albert Street (22.11). Both policies refer to height limits and to reductions where significant differences between new developments and adjacent buildings arise and acknowledge the importance of tall trees to soften edges and maintain vistas.

Notwithstanding its concern about the dual preferred height maxima, as discussed in section 3.6, the BVRG submitted that the heights in DDO8-E and DDO8-F should remain at 1-2 storeys and strongly opposed higher forms to at least six storeys. The Group submitted:

BVRG in other panel hearings (L26 Blackburn Office Zone, C46 Blackburn Lake Surrounds Study, C40 Blackburn Station Shopping Centre) has consistently advocated the strength of Blackburn as an activity centre is that it is not stereotypical of most other local centres, but is distinguished by characteristics which are 'human scale' in built environment and the vistas in which buildings do not dominate trees.

Mr Scott explained the rationale for the proposed controls. The Council did not agree with further changes to the Amendment in response to the submissions. It noted that the increase from 8 to 9 metres was on advice from DPCD and because preferred maximum heights in this activity centre should not be lower than 9 metres allowed by ResCode. The Council said that the two local policies, Clauses 22.11 and 22.12, should be retained because they apply to different areas and have different aims. The amendments to those Clauses are appropriate to accord with DDO8, in the Council's submission.

(ii) Discussion and Findings

The Panel does not consider a uniform height of 11 metres should be applied across the NAC, that the existing numeric performance standards in local policy relating to height should be retained, or that the 8 metre height on boundaries should be reinstated.

DDO8 will provide a specific level of control that is stronger than the local policy. The Panel finds the upper limits proposed as preferred height maxima would achieve the vision that involves a more modest development form within and around the heart of the Blackburn Station area and higher forms to the north and along Whitehorse Road.

The approach is based on an articulated built form outcome. Other approaches may be favoured by submitters addressing specific sites, such as higher forms around the railway and shopping area, rather than this central location being lower than the growth area around Queen and Albert Streets. However, no submitter presented any detailed strategic analysis across the NAC as a whole to enable the Panel to reach a conclusion that the approach is fundamentally flawed or without a strategic base. Rather, the submissions and evidence for the NAC, such as discussed in section 5.2,

were essentially based on site-specific evaluation. The Panel does consider 11 metres would be preferable for DDO8-F on the north side of Railway Road to match DDO8-A and to accommodate three levels, as discussed next.

5.2 No 55 – 65 Railway Road, Blackburn

Should DDO8 be modified as it applies to this land?

(i) Site and Locality

Land Location	North-east corner of Railway Road and Albert Street.
Land Features and Use	Four lots of 1,473 square metres with single storey commercial premises.
Surrounding Land Uses	Dwelling to the north of a rear lane. One and two storey commercial premises to the north-east and south.
Zoning and Overlays	B1Z.
Surrounding Zoning and Overlays	B1Z to the north-east and B2Z to the north, west and south.
Proposed Controls in DDO8	DDO8-F preferred height of 10 metres or 9 metres if adjoining a residential use.

NOTE

To reduce the electronic size of this document, this Figure has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

(ii) Submissions and Evidence

Mr Taylor submitted the preferred height and setbacks for this land are inappropriate having regard to the size, strategic location and controls proposed for land to the He relied on the expert evidence of Mr Sheppard in support of his submissions. Mr Taylor drew attention to a Tribunal decision allowing a three storey mixed use development on the land. 16 In that decision, Member Sibonis referred to the local policies such as Clause 22.12 and referred to the aims of the proposed DDO8. For example, he found that they "seek to maintain a relatively low-rise scale for this part of the activity centre". In addition, he had regard to a preferred height of 10 metres and found that the height of the proposed building under consideration was of that order, varying by 0.35 - 1.3 metres or less than half a storey. Side setbacks were not required by the Tribunal in the manner recommended by the Council along Albert Street given the area to the north would be the subject of development up to four storeys into the future. Having considered all relevant material, the Tribunal found that the three storey form would be adequately respectful of the context and would not detract from the "village" feel or the "pedestrian-friendly" scale. No case can be made, Mr Taylor submitted, to support the Council's view that the Tribunal supported the heights and setbacks in the UDF or Amendment because the Tribunal was addressing the controls and policies as contained in the Scheme.

¹⁶ Samuel Property Pty Ltd v Whitehorse CC [2012] VCAT 1504.

Expert evidence from Mr Sheppard supported that view. The Council's submission disagreed with Mr Taylor's interpretation.

In his evidence, Mr Sheppard described the area as having many of the attributes that would support urban consolidation. However, it also has an existing low rise character. Therefore, Mr Sheppard stated that in order to respond appropriately to State and local policy, a new built form character needs to be defined that will contribute to urban consolidation while complementing the existing urban character.

Mr Sheppard referred to the proposed controls for the site and surrounding lands:

- Land to the north is zoned B2Z and the DDO promotes development on this land up to 15 metres in height. Therefore, although it is currently residential, this land has a different future role; and
- The proposed height limit is 3-7 metres lower than the maximum height preferred in the remainder of Railway Road. It is unclear why these properties are treated differently.

He was critical of the proposed DDO8-F's preferred height that matches the existing built form scale in this part of Railway Road. "In other words, it only seeks to maintain the existing character rather than making a contribution to urban consolidation". Further, the preferred height in storeys remains at 1-2 storeys. "It is difficult to understand how 10m relates to a height of 1-2 storeys". He noted the Tribunal's recent decision and a comment by the Tribunal that "There are no particular sensitivities within this area that would act to render the three-storey scale inappropriate" 17.

Mr Sheppard was critical of the second built form outcome in DDO8-F "New buildings designed to reflect the form and scale of existing heritage and older contributory buildings along South Parade." He said this is ambiguous as the intention is not clear — is it to apply to the whole of area F or only to new development in South Parade? He said it would be difficult to justify such a restriction in other parts of DDO8-F although it may be warranted in South Parade. He suggested that the outcome be reworded to: "New buildings designed to complement the form and scale of the existing heritage and older contributory buildings along South Parade."

Mr Sheppard recommended a street wall of three storeys, consistent with the existing low rise form with one and two storey buildings, and upper level setbacks for two or three further levels. He explained that this is a common way of allowing urban consolidation while complementing low rise built form and also avoiding an overwhelming feel, excessive shadowing of the south side of Railway Road and an unreasonable sense of enclosure.

He also referred to the site's role as a node in the street network that, he considered, warrants a modest increase in height. "A taller building here would mark the bend in the main road network and terminate the vista from Blackburn Road". Mr Sheppard recommended the DDO8-F be amended, or a new sub-precinct created, for the area north of the railway line (including land on the south side of Railway Road) to allow for a 3 storey street wall up to 10 metres in height, with additional levels up to discretionary maximum height of 20 metres, set back a discretionary minimum of 5 metres. He stated that 20 metres allows for six levels, including a higher floor-to-floor dimension at ground level to allow for commercial uses and a parapet.

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¹⁷ Ibid at paragraph 21.

Mr Sheppard also recommended an additional built form outcome in Precinct F (Remaining Areas) to recognise the appropriateness of an emphasis on built form at Nos 55-65 Railway Road to mark this important junction.

In cross-examination by Ms O'Connell, Mr Sheppard agreed that the type of form he recommended would create a new character but he regarded that as acceptable given the street wall would respond to the existing lower rise forms and would be acceptable in terms of its impact on the public realm. A transition could be achieved to the north within the site by stepping down, if required, at the rear.

Mr Sheppard did not agree with Mr Scott's evidence that a transition is required from the higher forms to the north to the lower rise shopping area to the south of the railway. He saw little link between the site in question and the more consistent form of the shopping strip south of the railway.

The submission by the BVRG opposed a development of the scale and form being recommended by Mr Sheppard. The Group emphasised the importance of the vista along Blackburn Road and the desire to achieve a landscaped presence in this and other important vistas in the shopping centre. In addition to a scale of development that was regarded as failing to complement the character and vision for the NAC, the Group was concerned about impacts such as overshadowing of the public realm.

The Council was also strongly opposed to the outcome being recommended by, and on behalf of, the submitter. Ms Skraba stated that the UDF provides a considered and appropriate response for preferred development in the NAC. She stated that higher density development is accommodated within designated areas of the activity centre to achieve State planning goals. She submitted that there are more suitable locations within the NAC which allow for increased heights and that views in the village and the height scaling up from Railway Road to the north was a determinant of height, rather than interface issues.

Ms Skraba said that the site in question is already subject to Clause 22.12 which imposes a 10 metre height limit. This policy aims to preserve the village area, with its human scale and finer grain of subdivision. The UDF highlights more suitable locations for increased height. In addition, residential uses can already be accommodated at upper levels.

Mr Scott's evidence was that the Blackburn Station Village (Precinct B2) is seen as very much the heart of the Blackburn NAC, in terms of land use and built form. Opportunities for higher, more intensive development are provided in extensive areas to the north and east of the Blackburn Station Village, such as land immediately to the north of Nos 55-65 Railway Road that is a residential area slated for development up to 3-4 storeys in the UDF, and separated from Nos 55-65 Railway Road by a laneway. Mr Scott said that, in other circumstances, it would have made sense for the Albert Street to Chapel Street block of Railway Road to be a similar height. In this instance, his evidence was that this consideration is overridden in the UDF by the rationale of creating a consistent 1-2 storey character for the central part of the Blackburn Station Village. Maintaining a village character and scale for the central part of the Blackburn Station Village has been a long standing concern of the Council and community.

Mr Taylor did not agree with Mr Scott's assessment or conclusions. He said that a NAC is not to be removed from the urban consolidation process and the overwhelming thrust of State policy is for consolidation on sites such as Nos 55-65

Railway Road that are well located with respect to public transport, are large, and have no particular sensitivities such as with respect to heritage values. He did not agree with Mr Scott that a transition is required from the B2Z (15 metres) to the B1Z and railway station environs. Rather, he said the key issue is the impact on, and relationship to, the Railway Road streetscape. He submitted that a 10 metre height limit is not the only means by which the village feel can be retained. An example was a 3 storey street wall with upper level setbacks as described in Mr Sheppard's evidence.

Mr Taylor submitted that, at minimum, DDO8-C should apply to the site (15 metres) not DDO8-F. He submitted that the site is large enough for a transition to be achieved within the site rather than requiring the whole of the site to be lower than DDO8-C to the north.

(iii) Discussion and Findings

The aim of the existing policy in the Scheme, at Clause 22.12, is for this land and other properties around the railway line and along Railway Road and Chapel Street to be managed as part of the Blackburn Village Shopping Centre. There was no submission that the land should be excluded from Clause 22.12 where it is identified in the Centre (see Figure 8).

NOTE

To reduce the electronic size of this document, Figure 8 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Figure 8: Location of Nos 55-65 Railway Road in relation to the Map at Clause 22.12.

DDO8 includes the land affected by Clause 22.12 in multiple precincts with varying preferred maximum heights – 9-11 metres in DDO8-A, 11-15 metres in DDO8-C and 10 metres (or 9 metres if adjoining land in a residential use) in DDO8-F, although it was agreed at the Hearing that the latter should be adjoining residential "zone" not "use".

The ability to achieve the desired aims for the shopping centre is challenged by several physical elements:

- The separation provided by the railway line there is the physical expanse of the railway as well as planting that limits visibility between the southern and northern sides of the centre; and
- The bend at the intersection of Blackburn Road/Railway Road that further limits views across the centre.

Adopting a preferred maximum height of 10 metres for DDO8-F potentially enables three storeys dependent on the design, slope and context. That can be assessed on a case by case basis. However, the Panel considers that 11 metres, rather than 10 metres, represents a more realistic preferred maximum height to make clear that three levels would be acceptable consistent with the findings of the Tribunal, with which we agree. This scale will fit with the context and character of the NAC. It would also be consistent with the upper limit proposed for the balance of the north side of the Railway Road frontage in DDO8-A and would complement the higher forms, with a three storey street wall, in DDO8-C. Any proposal for buildings higher than 11 metres would be considered on merit and in their individual context.

Further, the Panel finds that reference to 1-2 storeys is not appropriate, as discussed in section 3.2; that indication conflicts with the height in metres that is proposed for this area which can readily achieve more than 1-2 storeys within the strategic framework that is being implemented by the Amendment.

The Panel does not support 20 metres as the preferred height for this site or other lots to the north of the railway in DDO8-F. In addition to the fact that this is a significant departure from what has been exhibited, and would require re-exhibition if contemplated, the Panel finds this height would change the vision for the centre based on an assessment that is substantially focused on one property. It would not accord with State policy for NACs where higher density housing is (inter alia) "designed to fit the context and enhance the character of the area" as discussed in section 3.1, and the site is not identified in the UDF as a landmark or node. The concept of a street wall with upper level setbacks may be acceptable in principle, and is not precluded by the DDO. The need for, and depth, of setbacks associated with any higher structure should be informed by the specific circumstances of a site including impacts on the public realm, such as overshadowing.

The nodes identified in the UDF do not include Nos 55-65 Blackburn Road and were not challenged. While a building on this site would be visible in views along Blackburn Road looking north, the land is also offset in that viewing corridor. The Panel agrees that guidance to exceed preferred height maxima should be provided, as discussed in section 3.7, but it does not find there to be specific justification for the recommended changes to DDO8 relating to this land.

The Panel agrees with the submitter that transitional elements for the land along this part of Railway Road in DDO8-F, are not as crucial as the area to the south of South Parade given land to the north is in DDO8-C where development up to 15 metres is the upper limit of the exhibited preferred height maxima. In the case of other land in DDO8-F, on the north side of the railway, there are no abutting residential zones and thus the inclusion of a 9 metres transition serves no purpose. The Panel considers this could be amended in DDO8-F.

The Panel recommends that DDO8-F, as it applies to land north of the railway line, be amended to:

- Increase the preferred maximum height to 11 metres; and
- Delete the preferred maximum height of 9 metres if adjoining residential land use.

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The Panel notes that 11 metres has also been used in Boroondara Amendment C107 across a number of NACs, as a mandatory requirement.

5.3 Nos 77 - 83 Whitehorse Road, Blackburn

Should DDO8 be applied to this land?

(i) Site and Locality

Land Location	North side of Whitehorse Road immediately abutting the UDF/DDO8 western boundary.
Land Features and Use	2,757 square metre area across four titles. Land used for dwellings and commercial uses.
Surrounding Land Uses	Residential to the north, west and south and commercial to the east. Two and three storey re-development in the B1Z.
Zoning and Overlays	R1Z
Surrounding Zoning and Overlays	B1Z to the east. R1Z to the balance of surrounding sites and land opposite.
Proposed Controls in DDO8	None as the land is outside the UDF/DDO8 area.

NOTE

To reduce the electronic size of this document, this Figure has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

(ii) Submissions and Evidence

Submission (No 29) argued that the omission of this land from the UDF and Amendment is a fundamental flaw as activity centre boundaries do not finish at the commercial zone. The submitter sought acknowledgement of the role of this area as a gateway from the west into the NAC and MAC. Given this role, and the width of Whitehorse Road, the submitter said that a building of four to five storeys should be able to be accommodated. Submission No 13, conversely, requested that DDO8-E be extended to cover No 83 Whitehorse Road.

The Council did not support inclusion of this land in the Amendment. It submitted that the NAC boundary commences at No 85 Whitehorse Road (B1Z) and opposite Vine Street. The four properties, while on Whitehorse Road, are beyond this boundary and are surrounded by conventional residential development. Use of ResCode is regarded by the Council as an appropriate development response to these properties. Such development would need to be mindful of the low rise residential interfaces to the west and north. In addition, Ms Skraba stated that the heights in the UDF are based on research and analysis in order to best meet future growth needs while maintaining the character and integrity of the area. Increased heights up to five storeys are not supported by Council. She also referred to a recent decision of the Tribunal¹⁹ in relation to this site, with plans being tendered by Mr Milner (as Mr Biles had given evidence in that matter). A modulated four storey apartment building was approved.

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Dekas One Pty Ltd v Whitehorse CC [2012] VCAT 1755.

Mr Scott stated that the arguments for applying the provisions of DDO8-A to Nos 77-83 Whitehorse Road rely on its proximity to the NAC. He stated that the activity centre boundary in this vicinity is essentially an extension of the boundary along the Vine Street alignment, an alignment "I do not recall being questioned during the study process". He said that there are arguments for and against applying the provisions of DDO8-E to No 83 Whitehorse Road, similar to those discussed in relation to Nos 12, 14, 16 and 18 John Street (refer section 4.4) and Mr Scott's conclusion was that DDO8 should not be extended to cover Nos 77-83 Whitehorse Road.

Mr Biles also commented on this area. He noted the Tribunal's comments that a three storey apartment building was advocated by the Council and supported by neighbours. He also noted that the Tribunal found that the 12.3 metre high, stepped, building would not be a significant departure from the UDF's proposed heights mindful that the land is adjacent to the activity centre. He referred to the Tribunal's remarks about the inconsistency of a reference to 1-2 storeys with a height allowable under Clause 55 up to 9 metres or three storeys.

(iii) Discussion and Findings

The Panel has not been provided with strategic justification to recommend the NAC/DDO8 boundary be moved. The argument advanced in the submission could be applied to any land abutting an activity centre boundary. The land is within the influence of the Blackburn NAC by virtue of its location but the submission provides no assessment as to how the request responds to the Strategic Assessment Guidelines or how it fits with the housing policy in Clauses 21.04/22.03. The future of the area could be re-considered in the Council's review of its Housing Strategy.

The Panel does, however, observe that DDO8-A is applied to the business zoned land to the east. The Panel is concerned that 9-11 metres in this sub-precinct is restrictive in the context which includes the main road and higher forms on the south side of the main road.

Many of the lots may have sufficient depth to ensure a transition to the dwellings to the north. Further, there is already three storey development being constructed in this location and approval for a four storey, stepped, building to the west as discussed above.

The Panel recommends that DDO8-A on the north side of Whitehorse Road should be reconsidered in light of these considerations with the intent to nominate a higher preferred maximum height.

5.4 No 160 Whitehorse Road, Blackburn (Former Leader, now Lexus Site)

■ Should DDO8 be modified as it applies to this land?

Site Locality (i)

Location	Western corner of Railway Road and Whitehorse Road.	
Features and Use	Vacant/car parking with an area of 8,749 square metres.	NOTE
Surrounding Land Uses	Commercial.	To reduce the electronic size
Current Zoning and Overlays	B3Z.	of this document, this Figure has been removed from this
Surrounding Zoning and Overlays	B3Z and B4Z.	version of the report. Contact Planning Panels Victoria to obtain a complete copy of the
Proposed Controls in DDO8	B2Z with adjacent B4Z also to be rezoned B2Z. DDO8-D with a preferred height of 21 metres, 6 storeys with recessed upper levels, and 3-5 metre landscaped front and side street setbacks.	report.

Submissions and Evidence (ii)

Submission No 8, on behalf of the landowner, acknowledged and supported the rezoning of the land from B3Z to B2Z, and its status as a landmark site. However, the submitter opposed the proposed DDO8-D as it links development opportunities, in terms of additional height on the land to 21 metres, with the future extension of Surrey Road. The conditional basis of the preferred height was said to be unfair. The extension of the road would be unnecessary for the development of the land. It would reduce the development potential of the site and achievement of the landmark status sought by the UDF. The submitter also noted the lack of a Public Acquisition Overlay.

The submitter opposed a preferred maximum height of 21 metres stating that a higher form could be achieved, mindful of the size of the land and its location relative to the Blackburn Railway Station. Conversely, submission Nos 2 and 7 considered that a nomination of 21 metres should be lowered to a preferred maximum height of 11-15 metres with the potential to increase to 21 metres subject to design conditions.

VicRoads' submission referred to a planning permit application for the land which it did not oppose. It stated that the UDF should be amended to accord with any determination the Council makes in relation to the planning application for No 160 Whitehorse Road. VicRoads did not object to the proposed development for the site because it does not intend to extend Surrey Road.

In response, Ms Skraba explained that the proposed extension of Surrey Road is an aspiration of the Council which is embodied in its resolution of 12 October 2009. The project remains as Council's aspiration. However, the Council's submission also stated that it would not be the acquiring authority, rather, the link would be the responsibility of VicRoads.

Ms Skraba submitted that it is fair that a six storey limit is conditional on the extension of Surrey Road. Without provision of this land, the Council said, the expectation for heights would be 11-15 metres (3-4 storeys with recessed fourth storey) given that Blackburn is a neighbourhood centre with a village feel. The designation of the site as a landmark site does not equate to more height, rather that its architectural qualities must reflect its status.

Mr Scott explained that the UDF denotes the eastern half of this land as a prominent gateway/corner site. The whole site is as a key development site and proposed DDO8-D specifies that six storeys for the whole of the land at No 160 Whitehorse Road. He described Surrey Road as aspirational and "therefore I see no reason why reference to it should be removed from either or both" (the UDF and DDO8-D). He noted a history of development bonuses to achieve planning gains (such as plot ratios) in support of a nexus between allowable height and provision of the land for the road link. However, Mr Scott also stated that:

Setting aside the question of the link road, the UDF states that a height of six storeys is appropriate for the eastern part of 160 Whitehorse Road. Looking purely at the urban design merits, I regard six storeys as appropriate for the corner site, provided the building is of an architectural standard that justifies this prominence.

(iii) Discussion and Findings

It is clear from the submissions of the Council and VicRoads that neither body seeks to acquire the site to provide for an extension of Surrey Road. Moreover, there is little analysis to which the Panel could be directed to justify the extension in traffic terms or to demonstrate that the broader impacts associated with such a proposal have been assessed. Consequently, the Panel is not persuaded that the built form outcome for this land under DDO8 must direct a road link and, moreover, no accompanying provision has been included to provide for its acquisition. The Panel finds the condition should be deleted.

The site is identified as a gateway location and that principle has not been disputed in submissions. The Panel is not persuaded to the view that an 11-15 metre maximum is appropriate when the evidence for the Council is that a six storey form up to 21 metres is potentially acceptable subject to the specific consideration of the design response. This is provided for in the built form outcome for DDO8-D (160 Whitehorse Road).

The Panel also comments that the text of this DDO8 is problematic insofar as it adopts a preferred height of six storeys but the outcome "*Increased height up to six storeys...*" begs the question in interpreting the Scheme, increase from which figure?

The Panel therefore recommends that DDO8-D (160 Whitehorse Road) be amended to remove the sentence "Increased height up to six storeys up to 6 storeys is conditional on the extension of Surrey Road through the site".

5.5 Sikh Temple and Nos 12, 14, 16 & 18 John Street, Blackburn

Should DDO8-E be extended over Nos 12, 14, 16 & 18 John Street?

(i) Site and Locality

Land Location	North side of Whitehorse Road to the north and west of the existing Sikh Temple and Blackburn Hotel.
Land Features and Use	Residential.
Surrounding Land Uses	Residential to the north, east and west and commercial along the Whitehorse Road frontage.
Zoning and Overlays	John Street properties R1Z. Temple and Hotel are in the Mixed Use Zone.
Surrounding Zoning and Overlays	R1Z for surrounding residential areas.
Proposed Controls in DDO8	No change to John Street properties. DDO8-E to adjoining properties along Pope Road to the east of the Sikh Temple. DDO8-A (Railway and Whitehorse Roads) to the Sikh Temple and Blackburn Hotel sites. Preferred height of 9-11 metres, 2-3 storeys with recessed upper levels, and no front street setbacks.

NOTE

To reduce the electronic size of this document, this Figure has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

(ii) Submissions and Evidence

Multiple submissions requested that DDO8-E be applied over dwellings to the rear of the Sikh Temple that front John Street and the rear of the Blackburn Hotel (submission Nos 4, 5, 11, 13, 14, 16, 19, 30 and 32). It was submitted that this would "bring the scheme in line with the balance of properties surrounding DDO8-A on the northern side of Whitehorse Road". Submission No 13 elaborated on this saying that other properties north of Whitehorse Road abutting DDO8-A and DDO8-B are designated DDO8-E to give a wide buffer from future developments and the same should apply here where dwellings would abut the large Temple and Hotel properties.

Another submitter (No 32) suggested amending the northern section of the Temple land from DDO8-A to DDO8-E to recognise the relationship to existing dwellings.

In response, the Council acknowledged that the Temple and Blackburn Hotel sites are particularly long parcels. Ms Skraba explained that DDO8-E corresponds with the interface to residential areas around the core of the Blackburn NAC and MegaMile (West) MAC. The aim is to provide a transition between the cores of the centres and the surrounding residential zones. It is also intended to discourage creep of inappropriate built forms into residential areas behind. Ms Skraba said that, in effect, there is little difference between what is specified for DDO8-E compared with areas that are outside the MAC and NAC, except to ensure these interfaces respect the amenity of adjoining residential developments.

Ms Skraba said the Temple is proposed to be located within DDO8-A. A built form objective for this site is that "The scale and design of new development should respect the amenity of adjoining residential uses". On this basis, the Council submitted that any development of the Temple site needs to consider adjoining residential properties. Therefore, including additional properties within DDO8-E will not achieve a different outcome to what is already proposed. No change to DDO8-E was recommended by the Council.

Mr Scott's evidence described the established character of the residential streets, such as John Street, and the relationship to the Temple and Hotel. He said the Temple and Hotel are included in an area envisaged for peripheral retail and commercial land uses. He felt that the submitters were concerned about the built form interface implications arising from any future expansion of the Sikh Temple. He noted that DDO8 follows the activity centre boundary. Mr Scott concluded that:

One view is that the DDO might offer an additional layer of protection to the John Street properties. Another is that the John Street properties would be less susceptible to redevelopment or change of use if they are kept outside the activity centre boundary, as proposed. On balance my view is that it is better to leave these properties outside the boundary of the activity centre, and outside the boundary of proposed DDO8.

(iii) Discussion and Findings

On one view it may seem inconsistent for some land abutting DDO8-A to be buffered from the R1Z by the DDO8-E, and other areas to not be treated in the same way, but the implication of the suggested modification to the Amendment would be to add these properties into the activity centre. It would change their status and the implications have not been addressed more broadly or been exhibited in this Amendment process. Moreover, the lots are well removed from the main road and, although within the influence of the NAC, have a very different context to, for example, Nos 77-83 Railway Road.

Any development proposals for the land in DDO8-A will be required to respect the amenity of adjoining properties based on the specified built form outcomes for DDO8-A (Railway and Whitehorse Roads).

The Panel does not recommend any change to the Amendment in response to these submissions (except that references to residential uses should be changed to zones as discussed in section 5.2).

5.6 Queen Street/Station Street/Vine Street Residential Area

■ Are the proposed DDO8-A and DDO8-C over this area appropriate?

(i) Locality

The area is on the north side of the railway line and immediately to the north of the Blackburn Station. As shown in Figure 2 of this report, the Amendment would include the area, and commercial strip generally along the north side of Railway Road, in:

- DDO8-A fronting Railway Road and along much of the east side of Vine Street with two sub-precincts (described as relevant to the issue):
- o Railway Road²⁰ Preferred height of 9-11 metres, preferred number of storeys as 2-3 with recessed upper (third) level and no front setbacks.
- Vine Street Preferred height of 9-11 metres, preferred number of storeys as 2-3 with recessed upper (third) level and setbacks based on ResCode.
- Different built form outcomes for the two sub-precincts including reference to Clause 22.11.
- DDO8-C for the balance of the area with two sub-precincts:
- North side of Railway Road²¹ Preferred height of 11-15 metres, preferred number of storeys as 3-4 with recessed upper (fourth) level and setbacks based on ResCode.
- o Albert/Chapel Streets²² Preferred height of 11-15 metres, preferred number of storeys as 3-4 with recessed upper (fourth) level and no front setbacks.
- o Different built form outcomes for the two sub-precincts including reference to Clause 22.11.

Clause 22.11 (Queen and Albert Street Area) applies to land zoned B2Z not land that is R1Z. Local policy relating to the R1Z in Queen, Station and Vine Street at Clause 21.04 (map) refers to this land as a "proposed area of substantial change subject to the development of implementation plans".

(ii) Submissions and Evidence

This is another situation where submissions present very different perspectives about acceptable levels of future growth. In submission No 18, followed by a supplementary submission, Mr Miers explained that, as a resident of Vine Street, he wishes to ensure that the character of the existing street is preserved. He described the existing built form including one and two storey houses. Mr Miers expressed concern that three storeys on the east side of the Street would allow buildings higher than the unique Date Palm trees and also referred to the scale of proposed buildings contemplated by DDO8 in the neighbouring area. He recommended that the maximum height be two storeys on both sides of Vine Street.

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²⁰ This also applies to Whitehorse Road.

²¹ This also applies to Whitehorse Road.

²² This also applies to the south side of Railway Road.

Conversely, submission No 27 addressing Nos 17-21 Queen Street, described the preferred maximum heights as too conservative and failing to acknowledge the recent (and future) changes taking place along Queen Street. Two recent approvals were said to already exceed the preferred number of storeys. The submitter stated that the sites are not affected by heritage, landscape or environmental overlays which would otherwise impose additional requirements on any future development, yet their locational attributes provide an opportunity to construct more intensive built form, as encouraged by State planning policy. The suggested heights therefore represent a lost opportunity to provide increased density at the periphery of an activity centre. The submitter also stated that with the exception of reference to a landscaped setback without car parking, the "built form objectives" contained in the schedule to the DDO provide little direction or guidance when assessing the appropriateness of a new development proposal along Queen Street.

Similar comments were made through Mr Biles' evidence.

The Council's position was that the DDO specifies as a built form outcome that "well designed development which has regard to potential heritage and character in the scale and design of new buildings" is envisaged for Vine Street, recognising its transitional role. It also advocates for reducing building bulk. These elements will help to ensure the character of the existing street is preserved, Ms Skraba submitted. The more substantial change area is around Station and Queen Streets. The Council stated that developments which exceed the preferred heights in the UDF have been approved by the Tribunal, not Council.

Mr Scott's evidence was that Clause 22.03 Residential Development provides policy for land in this R1Z where it is identified for substantial change. Queen Street is denoted for higher built form and more intense development, at 3-4 storey/11-15 metres. Mr Scott stated that recent VCAT decisions are apparently creating an expectation that apartment blocks up to five storeys will be approved in Queen Street. He said that debates about whether to approve five storeys or more are likely to occur in VCAT, and are likely to centre on arguments about character, design sensitivity, height transitions and so on. If the preferred height were to be changed now to five storeys, this would be likely to accelerate this trend, or even to raise the bar to allow developments higher than five storeys. In response to questions from the Panel, Mr Scott acknowledged that 15 metres would fit a five storey residential form.

If, on the other hand, the preferred height is retained at 3-4 storeys, the Council has a stronger prospect of having a refusal of a taller building upheld, where this is judged to be justified by particular circumstances. Pre-application negotiations would also be assisted.

On balance, Mr Scott stated that he would "stand by the preferred heights established by the UDF and incorporated into Am C143, despite the tendency for development proposals to breach the preferred limit".

(iii) Discussion and Findings

The new direction for this area has been a prospect for some years by being designated a proposed "substantial change" area in Clause 21.04. While advocating 3-4 storeys for this area in DDO8, 11-15 metres can physically accommodate a five storey residential outcome at 15 metres. This is an obvious example of the mismatch

between the preferred heights in metres and the preferred number of storeys as discussed in section 3.6.

Change is progressing quickly in Queen Street where there are fewer existing multiunit developments. Consequently, site acquisition and consolidation will be much easier than in a street such as Station Street which has many multi-unit developments that appear to be in separate titles.

The Amendment provides for a transition on the east side of Vine Street through the application of DDO8-A. The Panel finds this to be reasonable given the confined street width, the form of development on the west side of the street, and the street's local function in terms of access. That contrasts with Station Street which carries more traffic (as there are traffic signals at its northern end) and has a different character and presence.

The Date Palms are an impressive feature and assist to unify the streetscape. There is, however, a reasonable basis to accept 9-11 metres along the east side of the street through DDO8-A, with ResCode front setbacks, and reduced upper level building bulk, as sought in the built form outcomes, to achieve a transition to the west side of Vine Street. This scale of development would not be intrusive to the Palm rows. Rather, the Palms would provide a setting for such development. It is suggested that retention and protection of the Palms, which are street trees, in any development proposal should be advocated. This could potentially be added into the table to DDO8. It would not be desirable to see extensive pruning, or the trees removed and/or gaps in the rows created to provide new driveways/crossovers.

The Panel recommends that:

- Clause 21.04 (map) and Clause 22.03 be amended to identify the Vine Street and Station Street area as for "substantial change".
- Consideration be given to adding an outcome in DDO8-A (Vine Street) regarding protection of the Date Palms.

5.7 Residential Area South of South Parade, Blackburn

Is the DDO8-E applying to the residential south of South Parade in conflict with existing planning controls relating to some of the residential area?

(i) Site and Locality

This residential area adjoins the commercial strip on the south side of South Parade. It comprises residential properties in Main Street and Gardenia Street within the R1Z, much of which comprises multi-unit development. Several of the properties in the southern part of the proposed DDO8 are also within the Neighbourhood Character Overlay (NCO1 – Blackburn Early Settlement Neighbourhood Character) and the Significant Landscape Overlay (SLO4 – Blackburn Early Settlement Neighbourhood Character – Vegetation Retention).

The overlap is shown in the UDF Precinct B5 on page 43, a section of which is replicated below in Figure 9.

NOTE

To reduce the electronic size of this document, Figure 9 has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.

Figure 9: DDO8-E south of South Parade

(ii) Submissions and Evidence

This area was referred to by the BVRG. The Group observed that the land is affected by the NCO1 and SLO4 which were the subject of considerable effort to gain Scheme recognition. The Group was concerned that the proposed controls would result in different development outcomes for this land.

No other submissions addressed this topic.

(iii) Discussion and Findings

The Amendment does not seek to remove the NCO1 or SLO4 from these properties.

The NCO has a specific set of design parameters modifying ResCode standards from Clauses 54 and 55 including a maximum height of 7.5 metres. SLO4 relates to vegetation removal. Clause 22.03 refers to the wider NCO and SLO areas as for "minimal change" given their special vegetation and landscape qualities.

The proposed DDO8-E would set a preferred maximum height of 9 metres and apply ResCode with respect to setbacks. It is consistent with the controls within the NCO. It would add another layer of development controls and lead to confusion as to what is the desired outcome for the area. The Panel has not been provided with sufficient justification to conclude that the current controls should be overridden and it does not appear that removal of these few properties would impact significantly on the Amendment's desired outcomes.

The Panel therefore recommends that DDO8-E should be deleted from land that is affected by the SLO4 and NCO1 in Main and Gardenia Streets, Blackburn.

5.8 Other Matters

The BVRG submitted the Panel should provide guidance on a number of other matters that have not been addressed in earlier sections of this report. The Panel comments on these issues below.

Application of strong Environmental Sustainability principles and actions.

The design objectives of DDO8 refer to sustainability and proposed changes to Clauses 22.11 as part of Amendment C143 also refer to water sensitive urban design. The Panel was advised by the Council that it has drafted an ESD policy which includes energy and resource efficiency. sustainable transport, pollution reduction, waste management, water resources stormwater quality and management objectives. An authorisation request for a separate amendment to introduce the ESD Policy has been with the Minister for Planning since July 2010.

Adequate contribution to and provision of open space. Council Open Space Strategy should be a reference document.

This matter is dealt with through individual applications having regard to the applicable provisions of the Scheme as relevant to the permit application, such as Clauses 52.01, 55 and 56. Clause 22.17 also addresses public open space contributions. The Open Space Strategy is a reference document in Clauses 21.05 and 21.08. This was introduced via Amendment C99.

Consistent landscaping of developments and streets so that UDF 'Spaces' objectives are met. This should at the very least include the protection of existing significant trees at the front and rear of development sites where it is practical to do so and a requirement that adequate space is provided for tall trees in landscape plans of all new developments.

The DDO8 provisions include preferred street setbacks, which, in some locations, involve no front setback. Landscaping is referred to in the local policies at Clauses 22.11 and 22.12. Vegetation must be assessed as part of an application and its retention is a matter to be considered in any design response having regard to all of the objectives and outcomes that are relevant to the permit application. Where new landscaping is required, such as by a permit condition, the Council usually would endorse a landscape plan. The desire for new planting with tall trees must be balanced with the practicalities of large trees in relatively small spaces.

Strategies that develop pedestrian links and permeability as envisioned in the UDF.

The design objectives of DDO8 refer to the pedestrian environment in addition to the local policies at Clause 22.12. The implementation actions in the UDF also address these matters.

6 Role of the Reference Document

- What is the role of the UDF given the proposed references to it in the Scheme?
- Should the UDF be amended to reflect the Panel's findings?

6.1 Submissions

Several submitters, and expert witnesses, opposed the inclusion of the UDF as a reference document or a document to have regard to or implement. Other submitters sought changes to the UDF to accord with their submissions (eg submission Nos 3 and 20).

The Panel was also referred to the fact that the UDF is currently a reference document in the Scheme and, from the perspective of some submitters, carries weight in decision making for that reason. The Council also noted that the Scheme requires a decision maker to have regard to the vision and principles in the UDF (through Clause 22.06) although Mr Milner made the point that there is no list of principles. The Council acknowledged that point in its closing submission and suggested that Clause 22.06-3 be amended to read "New use and development should have regard to the MegaMile (West) and Blackburn Activity Centres Urban Design Framework 2010".

6.2 Discussion and Findings

The Practice Note – Incorporated and Reference Documents states that:

When should a document be mentioned as a reference document?

Many documents, while useful, may be too long or complex or cover too wide a subject matter to be suitable for inclusion as an incorporated document in the scheme. If they provide useful background information or general advice to applicants, or will assist in understanding the scheme, they may be suitable as reference documents. A reference document may explain why particular requirements are in the scheme, substantiate a specific issue or provide background to specific decision guidelines in local planning policies or schedules. For example, a flora and fauna study that provides the reason for an Environmental Significance Overlay may be usefully referenced as the basis for the statement of environmental significance.

The Panel is satisfied that the UDF is appropriately included as a reference document as it assists to explain the basis for Amendment C143.

The Panel does not consider the report should be updated to reflect its findings as set out in this report. A number of Panel reports have addressed this question, and not necessarily reached the same conclusion.²³ The situation in the case of Amendment C143 is that reference is sought to be made to a document that was adopted, as a final document, in 2010.

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²³ Ballarat Amendment C151 which refers to a number of other Panel reports in section 7.

That contrasts with the circumstances in Ballarat C151 where the relevant document was evolving to some extent through the Panel process. The Ballarat C151 Panel recommended the document should be clarified to address some particular matters of consistency rather than modified to accord with its findings.

More significant to the matters arising in Amendment C143 is the desire by the Council to retain policy, and design objectives, that seek consistency with the document or require a decision maker to "have regard to" the document and/or its vision/principles. In the Panel's view, the document serves as a useful reference but the purpose of the Amendment is to give effect to its findings. The relevant aspects from the UDF should be in the Scheme, such as local policy and DDO8, without reference back to the document for the purpose of giving it weight in decisions.

The Panel raised this matter at the Hearing and was advised that the same technique has been used in other parts of the Whitehorse Planning Scheme. The Panel has subsequently examined these references²⁴ but remains uncomfortable with the intent to use the document in this way given the direction of the Practice Note. In addition, the *Practice Note Writing a Local Planning Policy* states:

Incorporated and reference documents

A good LPP should be user-friendly and self-contained. The reader should not need to refer to other documents to understand it. For this reason, it is preferable to strictly limit the use of incorporated and reference documents. They should only be used in circumstances where the material in them is essential to support the LPP but cannot be drawn into the LPP itself.

Consequently, the Panel considers that reference to a local policy for the two activity centres, as discussed in section 3.2, would be more appropriate where that policy embodies the vision and key outcomes to be achieved.

The Panel recommends references in Clauses 22.06 that "New use and development should have regard to the vision and principles of the MegaMile (West) and Blackburn Activity Centres Urban Design Framework, July 2010" should be deleted in association with the Panel's recommendation in section 3.2 to amalgamate and expand existing local policies in Clauses 22.11 and 22.12 to create a local policy for the MegaMile (West) MAC and Blackburn NAC.

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Such as Clause 22.07 "New use and development should have regard to the vision and principles of the Box Hill Transit City Activity Centre Structure Plan 2007 the Box Hill Transport Interchange Concept Design March 2002 and the Site Development Framework - 545 Station Street, Box Hill, April 2011" and Clause 22.08 "New use and development should have regard to the vision and principles of the Tally Ho Major Activity Centre Urban Design Framework 2007."

7 Statutory Drafting

- Are changes required to Clause 21?
- Are changes are required to Clauses 22.03, 22.11 and 22.12?

7.1 Submissions and Evidence

Other than matters addressed in earlier sections of this report, additional changes to the Amendment requested through submissions and evidence were as follows:

- Submission No 29 stated that the reference to Queen Street in Clause 22.11 is confusing as only lots with sideages to that street are within the mapped area.
- Submission No 31 (Melbourne Water) requested a number of changes with respect to a stronger emphasis on stormwater management including changes to Clause 22.11-3 referring to:
- Overland flows in a storm event and issues relating to the flood-prone nature of some properties;
- Setting a requirement that there be no net increase in impervious areas within the subject catchment as a result of the changes proposed, unless it is ascertained that the additional runoff due to increased impervious surfaces is to be retained onsite:
- Potential impacts on Melbourne Water's South Parade Main Drain which is located within the proposed DDO. The inappropriate siting of any new/modified land use or development that would adversely impact upon the underground drain should be avoided. Such impacts may arise from the construction of below ground floors or construction activity that involves pile driving/ground anchors.
- Mr Sheppard's evidence raised a number of issues with respect to DDO8-F (refer section 5.2) including the interpretation of built form outcomes as discussed above and recommended the second point be re-worded as "New buildings designed to complement the form and scale of the existing heritage and older contributory buildings along South Parade." Mr Scott said this outcome is to apply to all of the DDO8-F area not just South Parade and the Council suggested the words "along South Parade" to achieve that aim. The Panel also questioned the use of the phrase "contributory building" which has a meaning in heritage terms but in this case this is no Heritage Overlay or NCO over the length of South Parade.
- Mr Biles recommended a series of changes to the design objectives consistent with his evidence including:
- o Acknowledging more clearly the purpose of the MegaMile (West) MAC and the Blackburn NAC especially in relation to housing.
- Avoiding car parking in front setbacks.
- o Creating a consistent landscape theme to establish an identity for the MAC.
- Considering exemptions some matters from permits where there would be no material detriment.
- Ms Withers was critical of some of the design objectives in DDO8 which she said were land use objectives and should be deleted.

In response to questions from the Panel and the submissions and evidence, the Council:

- Agreed that greater clarity with respect to gateway sites would be of assistance in the design objectives consistent with the evidence of Mr Scott. It agreed to the phrase "modest building form accentuation" referred to by Mr Sheppard (but opposed by the Council on Nos 55-65 Railway Road);
- Noted the complexity of the translation of the UDF's heights and setbacks and noted its intent to achieve consistency with DDO5 which is now within the Scheme;
- Sought to retain DDO8-E even though the controls are effectively similar to ResCode;
- Sought to adopt a consistent approach to South Parade and the north side of Railway Road in the shopping centre area;
- Recognised that the phrase "contributory buildings" may have some ambiguity but it has been used in its common meaning of how older buildings give a sense of character and place;
- Acknowledged that Clauses 21 and 22.03 need to show the Queen/Vine/Station Streets area as for "substantial change";
- Did not consider the changes requested by Melbourne Water were necessary; and
- Did not agree to design objectives being deleted as requested by Ms Withers.

7.2 Discussion and Findings

In response to the above submissions, and in addition to the recommendations set out elsewhere in this report, the Panel comments as follows:

- Consolidating the local policies, as referred to by the Panel in section 3.2, gives the opportunity to amend the names to which the policies apply;
- Rewording DDO8 to refer to "residential zones" not "residential uses" where referring to transitional built form. The same point needs to be considered for other parts of the current local policy at Clause 22.11 when they are translated into a consolidated local policy;
- Adding changes recommended by Mr Sheppard and Mr Biles, as set out in section 7.1, with the matters identified by Mr Biles being accommodated in a consolidated local policy;
- Including nominated gateway and potential opportunity sites into the local policy, consistent with the locations identified in the UDF. An allowance for a modest built form accentuated should be added into DDO8 as part of an expanded provision to assist the exercise of discretion when an application is made to exceed preferred height maxima;
- Adopting revised wording for DDO8-F as it relates to built form in the Blackburn Shopping Centre (South Parade/Railway Road north side); and
- Moving the second, third and fourth design objectives from the exhibited DDO8 into a consolidated local policy as they are land use, rather than development, based outcomes (even though there are development implications arising from them).

Changes proposed by Melbourne Water are not required as the matters are dealt with elsewhere or in other ways.

With respect to matters referred to in the letter of authorisation, but not addressed elsewhere in this report, the Panel's findings are:

- Corner Russell Street and Whitehorse Road the site is identified in the UDF as a key redevelopment site but not expressly advocated as a site where there is "potential to go higher". As indicated above, the Panel recommends that DDO8-B be amended to provide clarity and guidance where an application proposes to exceed the preferred maximum height. The Panel also recommends that gateway and potential opportunity sites should be added into the local policy, with the sites nominated consistent with the UDF;
- Clause 22.12 reference to encourage residential uses on upper floors. The Panel agrees with the Council that the area that is the subject of this policy is encouraged for office uses and thus residential uses can be allowed but the focus is on encouraging offices for employment reasons. The Panel therefore does not recommend any change to the Amendment in this regard; and
- Other changes agreed by the Council (such as amending 8 metres to 9 metres and the reference to underground car parking) are accepted by the Panel.

The Panel expects that the changes it recommends to the Amendment, as set out in section 8, can be made without re-exhibition other than, potentially, the recommendation to reconsider the preferred maximum height applied to DDO8-A on the north side of Whitehorse Road with a view to increasing the height.

8 Recommendations

For the reasons set out in this report, the Panel recommends that Amendment C143 should be adopted, as exhibited, subject to the following modifications:

Corrections/updating:

- o Make necessary changes as a consequence of the gazettal of Amendment C134.
- Amend Planning Scheme Map No 2 to address an error in the UDF incorrectly proposing the rezoning of the Pope Road Kindergarten at 52-54 Pope Road, Blackburn from Public Park and Recreation Zone to Business 2 Zone.
- o Correct the mapped DDO8 applying to Nos 28-30 Blackburn Road (DDO8-F rather than DDO8-E to be consistent with the table to the Schedule).

Clause 21:

- Amend Clause 21.04 to confirm land within the Station/Vine Street area as "substantial change".
- Amend Clauses 21.06 and 21.07:
- To identify DDO8 as being applied to land that is located within the MegaMile (West) MAC and Blackburn NAC.
- Amend Clause 21.07-5 under "Application of zones and overlays" to:
- Distinguish land as follows:
- Within B4Z and R1Z east of Cottage Street and Surrey Road as MegaMile (West) MAC.

Clause 22.03:

Amend this Clause to show land within the Station/Vine Street area as "substantial change".

Clause 22.06:

 Delete the words "New use and development should have regard to the vision and principles of the MegaMile (west) and Blackburn Activity Centres Urban Design Framework, July 2010".

Clause 22.11 and 22.12:

- Amalgamate these Clauses into one consolidated local policy that addresses the MegaMile (West) MAC and Blackburn NAC and:
- Add a map outlining the boundary of the two centres (that accords with DDO8 boundary recommended by the Panel).
- Add vision statements for the two centres from the UDF and, for MegaMile (West)
 MAC, refer to the land R1Z between the primary school and Peacedale Grove,
 on the north side of Whitehorse Road, as for residential/community uses
 consistent with its zoning and the role identified in the UDF.
- Streamline land use and development policies including deleting matters that are dealt with in DDO8 (such as performance standards for setbacks) and development policy that is covered by the design objectives in DDO8.
- o Nominate the potential opportunity and gateway sites from the UDF.
- Move the second, third and fourth design objectives from the exhibited DDO8 into this consolidated local policy as they are land use, rather than development, based outcomes.

o Refer to "adjoining residential zones" (rather than "uses"), as appropriate, consistent with other recommendations made by the Panel.

DDO8:

Maps:

- Delete DDO8-E from properties in Main Street and Gardenia Street, Blackburn, that are currently within Neighbourhood Character Overlay Schedule 1 and Significant Landscape Overlay Schedule 4.
- Redraw the boundary of DDO8-E as it applies to the rear of No 288 Whitehorse Road so that it is 30 metres from the northern boundary of the R1Z to the south. Consider the same modification for the other two sites that have the same DDO8-E abutting the railway corridor.

Design objectives:

o Add a new design objective:

To ensure an acceptable interface is achieved between new development and the railway corridor.

In Clause 2.0:

- Under "Building height":
- Delete the third dot point under "Building heights" and replace it with the following:

The preferred maximum building height excludes rooftop services (such as lift shafts, plant or other roof mounted equipment) which should be hidden from view from any adjoining public space or designed as architectural roof top features. Roof top services includes but is not limited to plant rooms, air conditioning and lift overruns.

- Provide additional guidance for any proposal when an application seeks to exceed the preferred maximum height in circumstances such as:
- Achieving high or superior architectural quality;
- Achieving modest building form accentuation on potential opportunity and gateway sites:
- Achieving innovation with respect to environmental sustainability;
- Involving innovative approaches to heritage fabric;
- Achieving an equivalent or better design outcome;
- Minimising impacts on amenity;
- Achieving specific urban design outcomes such as vista retention, protection of the public realm from excessive shadowing, or transition to other land, or achieving specific land use outcomes.
- o Under "Building setbacks":
- ☐ In the second dot point, delete the words "residential use" and replace them with "residential zone".
- Add the following dot point:

An application to vary the preferred street setbacks must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.

Amend the table to:

- Use a single number for the preferred maximum height, which should be the higher of the two numbers shown in the exhibited DDO8.
- Consider adopting the lower exhibited height as a preferred street wall height where the DDO refers to a preference for recessed upper levels in DDO8-A and DDO8-C as those Overlays apply to local streets (such as Vine Street).
- o Delete the column "*Preferred number of storeys*" and any reference to a preferred number of storeys.
- Reconsider the preferred maximum height applied to DDO8-A on the north side of Whitehorse Road with a view to increasing the height.
- Consider adding an outcome in DDO8-A (Vine Street) regarding protection of the Date Palms.
- Adopt a preferred maximum height in sub-precincts DDO8-B and DDO8-E of 11 metres and 9 metres respectively. Adopt a front setback of "3-5 metres landscaped front setback" for DDO8-B in the residential area.
- o In DDO8-D (160 Whitehorse Road), delete the sentence "Increased height up to six storeys up to 6 storeys is conditional on the extension of Surrey Road through the site".
- In DDO8-E, exclude the application of ResCode setbacks for the three large lots abutting the railway line.
- o In DDO8-F, as it applies to land north of the railway line:
- Increase the preferred maximum height to 11 metres; and
- Delete the preferred maximum height of 9 metres if adjoining residential land use.
- In DDO8-F (Remaining areas), delete the second built form outcome and replace it with "New buildings designed to complement the fine grain built form and generally low scale of the shopping centre".
- o Change references "adjoining residential uses" to "adjoining residential zones".

The Panel also recommends that the Council:

Review the future of the R1Z between the primary school and Peacedale Grove, on the north side of Whitehorse Road, to consider its inclusion as an area of "substantial change" or to remove from the standard housing policy given its location in the MAC.

Appendix A List of Submitters

Submission No	Name					
1	Ms E Kyriacou, Senior Statutory Planner, Statutory Planning Services – Box Hill, Department of Sustainability and Environment					
2	Mr R D Grainger					
3	Mr R McAliece, Manager Land Use and Planning Referrals, Public Transport Victoria					
4	Mr S Nankervis					
5	Ms J & Mr P Brosnan					
6	Ms J Mansell					
7	Mr D Morrison, President, on behalf of the Blackburn Village Residents Group					
8	Ms F Murray, Consultant, Urbis, for owner of No 160 Whitehorse Road					
9	Mr N Baker, Planning & Property Partners for Samuel Property Pty Ltd					
10	Ms S Newnham					
11	Mr P & Ms D Gill					
12	Ms G Morrow					
13	Ms S & Mr P Fraser					
14	J B Gauntlett					
15	Ms S O'Connell					
16	Mr P Laydin					
17	Ms L & Mr P Demos					
18	Mr D Miers					
19	Ms B Treseder					
20	Mr G Michaux, Team Leader Regional Strategies, VicRoads					
21	Mr K & Ms E Goh					
22	Mr B Currie					
23	Mr M Ellenbroek, Associate, SJB Planning, for Sandy Lake Pty Ltd					
24	Ms C Pearl, Associate, SJB Planning, for Bunnings					
25	Ms J Yang					
26	Ms M Withers, Meredith Withers & Associates, for Commercial Property Corporation Pty Ltd					
27	Mr S Marty, Fulcrum Urban Planning, for Golden Prospect Pty Ltd					
28	Mr W Gribble					
29	Mr S D'Amico, Ratio Consultants, for Dekas One Pty Ltd					
30	Mr A & Ms A Fearn-Wannan					
31	Ms A Maudsley, Urban Planner, Melbourne Water					
32	Ms B Brownlie					
33	Mr D Drum, Urban and Regional Planner, 10 Consulting Group, for Dolce Development Pty Ltd					

Appendix B Document List

No	Document Tile	Tendered By
1 2	Written submission by Mr R D Grainger Written submission by Mr D Miers	Received by Planning Panels Victoria and tabled by the Panel
3	Submission on behalf of the Whitehorse City Council	Ms Skraba
4	Plans and maps relevant to the Council's submission	Ms Skraba
5	VCAT decision Dekas One Pty Ltd v Whitehorse CC	Ms Skraba
6	VCAT decision Samuel Property Pty Ltd v Whitehorse CC	Ms Skraba
7	City of Whitehorse Housing Study, February 2003	Ms Skraba
8	UDF Background Report, November 2009	Ms Skraba
9	Whitehorse Industrial Strategy, February 2011	Ms Skraba
10	Plans considered by VCAT in document No 6.	Mr Taylor
11	Plans considered by VCAT in document No 7.	Ms Skraba
12(a) (b)	Submission on behalf of the Blackburn Village Residents Group Inc. and attachment	Mr Morrison
13	Submission on behalf of Samuel Property Pty Ltd	Mr Taylor
14	Mr Sheppard's statement of evidence in relation to VCAT proceeding referred to in document No 6	Ms Skraba
15	Submission on behalf of Dolce Development Pty Ltd	Mr Milner
16	Submission on behalf of Brandsmart	Ms Withers
17(a)(b)	Sightline diagram prepared by Planisphere relating to Brandsmart site and explanatory email	Ms Skraba
18	Submission on behalf of Sandy Lake Pty Ltd	Mr Ellenbroek
19	Submission by Ms S O'Connell	Ms O'Connell
20	Closing submission/notes on behalf of the Whitehorse City Council	Ms Skraba
21	Council report 30 May 2011 relating to Amendment C94 to the Whitehorse Planning Scheme	Ms Skraba
22	Blackburn Station Village Business Plan, June 2012	Ms Skraba
23	Council resolution 19/10/09 regarding Surrey Road extension	
24	Council resolution 9/11/09 regarding grade separation at Springvale Road/Nunawading activity centre	Ms Skraba

Appendix C Exhibited DDO8

-/-/20- SCHEDULE 8 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO8**.

MEGAMILE (WEST) MAJOR ACTIVITY CENTRE (NUNAWADING) AND BLACKBURN NEIGHBOURHOOD ACTIVITY CENTRE

1.0 DESIGN OBJECTIVES

--/--/20--C143 To ensure development is consistent with the *MegaMile [west]* and *Blackburn Activity Centres Urban Design Framework 2010* and *Clauses 22.11 Queen and Albert Street Area* and 22.12 Blackburn Station Shopping Centre.

To consolidate and strengthen the role of the MegaMile as a key bulky goods retail destination serving a regional catchment.

To strengthen the local neighbourhood role and continue to support a mix of activities within the Blackburn Neighbourhood Activity Centre as an urban village.

To provide for more housing choice and diversity within the MegaMile [west] and Blackburn Activity Centres.

To create a strong and distinct image for both the MegaMile [west] and Blackburn Activity Centres.

To facilitate the redevelopment of potential opportunity sites and key gateway sites.

To ensure that new development is sensitively designed and complements or enhances the existing character of the area including the protection of heritage buildings.

To encourage an appropriate transition in building heights to the residential areas adjoining the activity centres.

To ensure that Environmentally Sustainable Development principles are incorporated into the design of new development.

To ensure that buildings within core retail areas and along key pedestrian streets create a well defined and 'active' street edge.

To ensure the new development makes best use of available space, achieving a more compact and sustainable urban form.

To ensure access for all levels of mobility and for all forms of travel.

To create a high quality pedestrian environment to encourage walking around the centres.

2.0 BUILDINGS AND WORKS

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Buildings and works must be developed in accordance with the following requirements:

BUILDING HEIGHTS

- Buildings and works should not exceed the preferred maximum building height specified in the table to this schedule.
- An application to exceed the preferred maximum building height must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.

The preferred maximum building height excludes rooftop building services (such as lift shafts, plant or other roof mounted equipment) which should be located to minimise visibility, to the satisfaction of the responsible authority.

Building setbacks

- Buildings and works should be in accordance with the preferred street setbacks specified in the table to this clause.
- Properties abutting a residential use must provide transitional upper level setbacks at the residential interface to maintain the amenity of adjoining residential properties.
- Built form for non-residential uses at ground level should provide active frontages to streetscapes.
- Recessed upper levels are preferred to reduce the appearance of building bulk.

TABLE TO SCHEDULE 8 3.0

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Precinct	Preferred maximum height	Preferred number of storeys	Preferred street setbacks	Built form outcome
DDO8-A (Railway and Whitehorse Roads)	9-11 metres	2-3 storeys with recessed upper (third) level	No front setbacks	To allow for development in accordance with Clause 22.11 <i>Queen and Albert Street Area.</i> Active frontages along Railway Road and Whitehorse Road. The scale and design of new development should respect the amenity of adjoining residential uses.
DDO8-A (Vine Street)	9-11 metres	2-3 storeys with recessed upper (third) level	Apply setback requirements in accordance with ResCode	Well designed development which has regard to potential heritage and character in the scale and design of new buildings. Upper levels are setback to reduce building bulk, and to allow for a transition in height to adjoining residential areas and maintain residential amenity.
DDO8-B (Whitehorse Road – non- residential uses)	9-11 metres	2-3 storeys with recessed upper (third) level	3-5 metre landscaped front setback	High quality streetscapes with landscaping. The scale and design of new development should respect the amenity of adjoining residential developments. Active frontages along Whitehorse Road. Car parking in front setbacks should be avoided.

DDO8-B	9-11	2-3	Annly gother at-	Well designed higher density
(Whitehorse Road – residential uses)	metres	storeys with recessed upper (third) level	Apply setback requirements in accordance with ResCode	development which has regard to potential heritage and character in the scale and design of new buildings. The scale and design of new development should respect the amenity of adjoining residential uses.
DDO8-C (Properties fronting Albert St, Chapel St, and on the	11-15 metres	3-4 storeys with recessed upper (fourth)	3 metre landscaped setback	To allow for development in accordance with Clause 22.11 <i>Queen and Albert Street Area.</i> To incorporate landscaping, including canopy trees where
south side of Railway Road)		level		appropriate. Active frontages along Albert Street, Chapel Street and Railway Road. Car parking in front setbacks should be avoided.
DDO8-C (Properties fronting Whitehorse Road and on the north side of Railway Road)	11-15 3-4 storeys with recessed upper (fourth) level	storeys with recessed upper	No front setbacks	To allow for development in accordance with Clause 22.11 <i>Queen and Albert Street Area.</i> Active frontages along
			Whitehorse Road and Railway Road with weather protection where possible.	
				Upper levels are setback to reduce building bulk, and to allow for a transition in height to adjoining residential areas and maintain residential amenity.
DDO8-C (Remaining areas)	11-15 metres	3-4 storeys with recessed	Apply setback requirements in accordance with ResCode	To allow for development in accordance with Clause 22.11 <i>Queen and Albert Street Area.</i>
	upper (fourth) level		Well designed higher density residential development which has regard to potential heritage and character in the scale and design of new buildings.	
DDO8-D (160 Whitehorse Road, Blackburn, and sites over 10,000m ²)	21 metres	6 storeys with recessed upper levels	3-5 metre landscaped front and side street setbacks	160 Whitehorse Road is a gateway site to the Blackburn Neighbourhood Activity Centre and MegaMile, and its built form should reflect this status as a visually prominent landmark. Increased height up to 6 storeys is conditional on the extension of Surrey Road through the site.

				Create a high quality design of the public and private realms to provide a strong and consistent image for the MegaMile, including landscaping. Avoid subdivision and support consolidation of sites to accommodate larger format buildings. These sites should have customer and delivery vehicular access, landscaping, and car parking that is not visually obtrusive when viewed from the street
				(preferably underground). Car parking in front setbacks should be avoided.
DDO8-D (Remaining areas)	11-15 metres	3-4 storeys with recessed upper (fourth)	3-5 metre landscaped front and side street setbacks	Improve the quality of streetscape treatment and landscaping, particularly along Whitehorse Road between Ceylon and Cottage Streets.
		level		Create a high quality design of the public and private realms to provide a strong and consistent image for the MegaMile.
				Avoid subdivision and support consolidation of sites to accommodate larger format buildings.
				These sites should have customer and delivery vehicular access, landscaping, and car parking that is not visually obtrusive when viewed from the street (preferably underground).
				Car parking in front setbacks should be avoided.
DDO8-E (Land bounded by Surrey Road, Maple Street and	9 metres	1-2 storeys	3-5 metre landscaped front setback	High quality streetscapes incorporating landscaping. Active frontages along Surrey Road, Maple Street and Whitehorse Road. Car parking in front setbacks
Whitehorse Road)				should be avoided.
DDO8-E (Remaining areas)	9 metres	1-2 storeys	Apply setback requirements in accordance with ResCode	The scale and design of new development should respect the amenity of adjoining residential developments. Discourage blank and

				inactive facades on built forms adjoining pedestrian walkways, footpaths, carparks and laneways, where applicable.
DDO8-F (28-30 Blackburn Road)	10 metres or 9 metres if adjoining residential land use	1-2 storeys	3-5 metre landscaped front setback	Improved streetscape interface and active frontage.
DDO8-F (Remaining areas)	10 metres or 9 metres if adjoining residential land use	1-2 storeys	No setback	To allow for development in accordance with Clause 22.12 Blackburn Station Shopping Centre. New buildings designed to reflect the form and scale of existing heritage and older contributory buildings along South Parade. Active frontages along all roads with weather protection where possible. Discourage blank and inactive facades on built forms adjoining pedestrian walkways, including footpaths, carparks and laneways, where applicable.

4.0 **SUBDIVISION**

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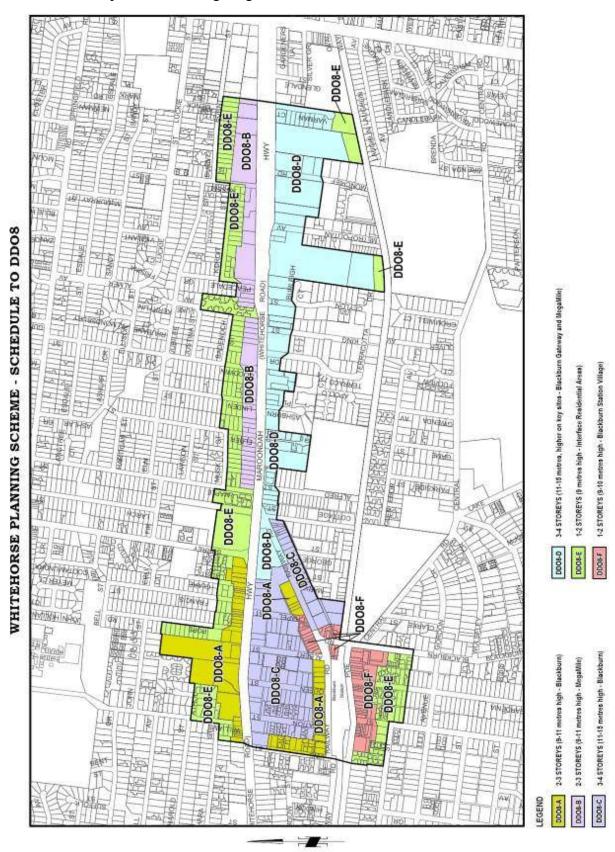
A permit is not required to subdivide land.

5.0 **REFERENCE DOCUMENTS**

--/--/20--C143

MegaMile [west] & Blackburn Activity Centres Urban Design Framework, July 2010

Blackburn Neighbourhood Activity Centre and MegaMile (west) Major Activity Centre Building Height and Setback Precinct Plan



Appendix D Authorisation of Amendment C143

NOTE

To reduce the electronic size of this document, Appendix D has been removed from this version of the report. Contact Planning Panels Victoria to obtain a complete copy of the report.