



Maddocks

Date 11 October 2024

Submission on behalf of the Planning Authority

Draft Amendment C273yara to the Yarra Planning Scheme

Council's submission: Part B



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INTRODUCTION

1. This submission is made on behalf of Yarra City Council (**Council**).
2. Council is the Planning Authority for Draft Amendment C273yara (**Amendment**) to the Yarra Planning Scheme (**Scheme**). Council has prepared and is the proponent of the Amendment.
3. The environs of Heidelberg Road corridor is currently experiencing significant transformation associated with redevelopment of the Alphington Paper Mills site. The Amendment seeks to build on that redevelopment and provide for a new character for the remainder of the commercial corridor along Heidelberg Road which seeks to develop a cohesive urban streetscape defined by mid-rise development.
4. The Amendment proposes to apply permanent built form controls for the commercial areas along the south side of Heidelberg Road within the City of Yarra, in the form of a permanent Schedule 18 to the Design and Development Overlay (**DDO18**) to replace the existing interim DDO18 that currently applies.
5. The Amendment Land (being the same land which is currently subject to the interim DDO18) comprises parts of the Heidelberg Road Neighbourhood Activity Centre in Alphington/Fairfield (**HNAC**) that are not the Alphington Paper Mill Site and the Commercial Land identified within Clause 2.04 Strategic Framework Plan (**Heidelberg Road Commercial Land**) (**Amendment Land**). The Amendment also seeks to apply two new permanent Heritage Overlays to land in the HNAC.
6. Council notes that Direction 11(g) sought an explanation about whether the boundary of the HNAC should be extended to include Precinct 1 and Precinct 2. Council's position is that Clause 11.03-1L and the *Activity Centres Roles and Boundaries* (City of Yarra, April 2022) background document do not include Precinct 1 and Precinct 2 in the HNAC.
7. The Amendment also updates policy and makes consequential changes to a number of clauses within the Scheme.
8. Together, these changes seek to facilitate the growth and development of commercial land along Heidelberg Road and the HNAC, consistent with its role as a Neighbourhood Activity Centre.
9. On 30 September 2024, Council circulated its 'Part A' submission (**Part A Submission**) in accordance with Direction 7 of the Committee Directions issued on 19 August 2024 (**Committee Directions**). The Part A Submission addressed a number of themes in accordance with the Committee Directions.
10. Council's Part A Submission is taken to be read and as forming a part of these submissions.

11. On 30 September 2024, Council circulated expert evidence of:
 - 11.1 Leanne Hodyl (Hodyl & Co) in relation to urban design;
 - 11.2 John Glossop (Glossop Town Planning Pty Ltd) in relation to planning;
 - 11.3 Leigh Furness (Traffix Group) in relation to traffic;
 - 11.4 Anthony Hemingway (RBA Architects and Consultants) in relation to heritage; and
 - 11.5 Julian Szafraniec (SGS Economics and Planning) in relation to economics.
12. Council's expert witnesses support the Amendment:
 - 12.1 In relation to urban design matters, Ms Hodyl is supportive of the Amendment and its approach to built form. She has however made a number of recommendations in relation to the heights in the proposed DDO18. Ms Hodyl has recommended that heights in the DDO18 be adjusted to accord with the BFF.
 - 12.2 In relation to planning matters, Mr Glossop is supportive of the Amendment and its approach to built form. He has however made a number of recommendations, in particular with respect to the use of mandatory controls for building height in Precinct 1.
 - 12.3 In relation to transport related matters, Mr Furness is supportive of the Amendment and its approach to traffic and transport matters. He has also made a number of recommendations which have been incorporated into the Day 1 DDO18 to further enhance its response to access and movement within the Amendment Land.
 - 12.4 In relation to heritage matters, Mr Hemingway is supportive of the Amendment and its approach to heritage matters.
 - 12.5 In relation to economic matters, Mr Szafraniec is supportive of the Amendment and its ability to deliver increased commercial, retail and residential capacity in the Heidelberg Road Commercial Land and the HNAC commensurate with the HNAC's designation as a Neighbourhood Activity Centre and the role of commercial zoned land.
13. This submission responds to Direction 11 of the Committee Directions requiring Council to address these issues through its 'Part B' submission:
 - 13.1 Council's justification for mandatory provisions (Direction 11(a));

- 13.2 Council's justification for the proposed height and setback provisions (Direction 11(b));
 - 13.3 an explanation about where overshadowing requirements were not achievable with the building heights specified in the proposed DDO18 (Direction 11(d));
 - 13.4 an explanation of the post-exhibition changes to landscape setbacks for Precinct 2 and 3B (Direction 11(e));
 - 13.5 an explanation about the impact of the draft Amendment on the growth and function of the centre across municipal boundaries (Direction 11(f), (g) and (h));
 - 13.6 the strategic justification for applying the Heritage Overlay to 730-734 Heidelberg Road, Alphington and 760-764 Heidelberg Road, Alphington (Directions 11(i) and (j));
 - 13.7 an explanation about the details of the permit application which was refused by Council for the Porta site (Direction 11(k));
 - 13.8 Council's response to submissions and evidence (Direction 11(l)); and
 - 13.9 Council's final position on the draft Amendment (Direction 11(j)).
14. In relation to Direction 11(b)(iii), Council notes that the explanation about how the topography has been taken into consideration in determining appropriate heights will be explained by Ms Hodyl.
15. This submission focuses on providing a detailed response to the issues raised in the submissions to the Amendment, as well as the evidence circulated on behalf of the parties.
16. Council has grouped the concerns raised by submitters into key issues consistent with the Committee's Directions and has responded to those key issues in this submission. This submission does not contain a direct response to each submission to the Amendment and except as otherwise described in this submission, Council adopts the Officer's response to each submission as contained in Attachment 3 to the Officer Report contained within the Council Meeting Agenda of 12 December 2023 (**Officer Report**) at Attachment 1 and Attachment 2.
17. In relation to Council's position on the Amendment, this is addressed throughout these submissions as relevant to the key issues, and having regard to Council's consideration of:
 - 17.1 the submissions to the Amendment; and
 - 17.2 the evidence prepared and circulated for the purposes of this hearing.

- ¹ Council notes that the land at 700-718 Heidelberg Road, Alphington is zoned Commercial 1 Zone and Neighbourhood Residential Zone Schedule 2 (on the south-eastern corner).

- ## COUNCIL'S FINAL POSITION ON THE AMENDMENT

24. At this stage, the Committee is yet to hear from other submitters. It is Council's current position that the Amendment should be recommended for approval with the changes set out in the Day 1 documentation.
25. That said, Council will consider further changes that other parties seek during the course of this hearing if those changes are consistent with the purpose of the Amendment.
26. Council envisages that by the conclusion of the hearing, it will put forward a Final day version of the Amendment as part of its Part C 'closing submission' picking up on certain other changes proposed by others and also proposed by Council in the course of this Part B submission.

27. Subject to these matters, Council's final day 1 position on the Amendment is addressed throughout these submissions as relevant to the key issues, and having regard to Council's consideration of:

27.1 the Committee's Directions;

27.2 the submissions to the Amendment (as summarised in the Council Meeting Agenda dated 23 December 2023); and

27.3 the evidence prepared and circulated for the purposes of this hearing.

28. A key threshold issue in the assessment of a planning scheme amendment is whether the proposed amendment is strategically justified. There can be little doubt about what is involved in approaching this analysis, having regard to the detailed list of considerations prescribed by *Ministerial Direction No.11 – Strategic Assessment of Amendments* (**Ministerial Direction No.11**). In essence, however, the Amendment is tested against all relevant aspects of the applicable legislation and planning policy (both State and local).
29. The strategic basis for the Amendment and various background documents and assessments that comprise the strategic basis for the Amendment is summarised in detail in the Explanatory Report and the Part A Submission.
30. Whilst that detail is not repeated here, Council takes the opportunity to make the following general observations about the Amendment.
31. The evolution of strategic planning for the HNAC and Heidelberg Road Commercial Land has been a long and comprehensive process. In 2019, Council commenced a program of strategic planning work in collaboration with Darebin City Council aimed at setting a common vision to be achieved through key coordinated land use and planning directions for the Heidelberg Road Corridor between Merri and Darebin Creek in the form of a local area plan.
32. Through this process, Council identified a need to develop stronger planning provisions for the southern side of Heidelberg Road to deliver certainty around built form and to balance the role an activity centre location for employment and residential growth, whilst protecting the important heritage character within the corridor and adjacent residential areas.
33. In light of the extensive work undertaken by Council (and more recent investigations in the areas of built form, planning, heritage, traffic and economics by Council's experts), Council submits that the Amendment and relevant documentation is sound, appropriately identifies areas for where an intensified development outcome can be achieved within the HNAC and the other commercially zone areas along Heidelberg Road and provides mechanisms to facilitate that change on a permanent basis.
34. The strategic assessments informing this Amendment are recent. They have addressed all key areas including:
 - 34.1 Housing and employment needs,
 - 34.2 Heritage;

34.3 Transportation; and

34.4 Built form.

35. Planning for places like the HNAC and Heidelberg Road Commercial Land evolves over time and the change facilitated by the proposed controls will also occur over time.
36. Council has identified a real opportunity in Precinct 1 and Precinct 2 to provide additional support for the growth of the HNAC. While not part of the HNAC described in clause 11.03-1L, the commercially zoned land in these precincts closely located to the HNAC and has been considered as part of a linear place or corridor. Those precincts possess physical and strategic attributes to evolve with the HNAC through the DDO18. Precincts 1 and 2 provide an opportunity to enhance the retail and residential offering in the corridor.
37. The DDO18 is not intended to revolutionise built form in the corridor to create substantial change. Rather the DDO18 is intended to compliment and build upon the natural evolution of the HNAC and Heidelberg Road Commercial Land, whilst encouraging and facilitating more of what is required, especially housing and employment opportunities. It also seeks to identify and respond to more sensitive parts of the centre and its adjacencies in a considered manner, taking into account the value and amenity that people place on the 'high street' experience of the HNAC and where there are development constraints arising from heritage considerations.
38. The Amendment achieves both of these objectives. It implements mandatory controls where necessary. Preferred building heights have been identified at realistic levels generally consistent with the findings of the BFF and overall vision for the future of the HNAC and Heidelberg Road Commercial Land. The DDO18 provides an opportunity for additional built form requirements where criteria for exceedance is met and seeks to temper built form with a heavier hand only where necessary.
39. The BFF outlines a number of strategic objectives to guide the overall scale of development along the Heidelberg Road corridor:
 1. Recognise that the development scale on the former Alphington Paper Mills site is strategically positioned as the highest scale of development intensification along the corridor.
 2. Recognise the sites to the immediate east and west of the former paper mills site as strategic sites given the proximity to this urban renewal area, access to multiple street frontages and site size.
 3. Recognise the Porta site as a strategic site due to its large size and capacity to support multiple buildings, housing diversity and new pedestrian connections to the park.

4. Support a 'moderate' scale of development intensification on all other sites within Precincts 1 and 3.
5. Support a 'moderate' scale of development intensification for commercial uses only in Precinct 2.
6. Deliver well-designed, durable and adaptable developments on all sites, including support for commercial uses in the lower floors of all buildings.²

40. The corridor wide considerations seek to:

Create a more welcoming and attractive street through the inclusion of a front setback control. This requires developers to setback new buildings from the street to create more pedestrian space, opportunities for additional tree planting and more streetbased activity....

Create liveable apartments and office buildings with good levels of natural light, outlook and privacy. Building setback and separation controls ensure that there is adequate distance between buildings on the same or adjacent properties....

Protect the amenity of adjacent residential areas, addressing potential impacts from overshadowing, visual bulk and reductions in privacy, through the inclusion of a rear interface control...³

41. Very clearly encapsulated in that vision is an emphasis on the way people living in and around the Amendment Land, and visiting the HNAC feel. The built form controls ultimately applied will shape the way people feel and experience this area including:

- 41.1 the experience along the main street;
- 41.2 wayfinding, view lines, visual bulk, massing and access to the sky;
- 41.3 the walkability of the place and ability to move to and from it, not necessarily with a car; and
- 41.4 the ability to move and navigate within the Amendment Land.

42. The DDO18 seeks to deliver a set of controls that will over time ensure development addresses and provides a positive response to each of these attributes, consistent with expectations for activity centre planning across metropolitan Melbourne.

² At page 4.

³ At page 5.

- To capture and to accommodate future growth opportunities activity centres will need greater flexibility in planning controls than surrounding residential areas. Local plans undertaken in consultation with the community will identify the scope and nature of future growth within each activity centre.

- Activity centres with the greatest potential to attract investment and support more medium- and higher density housing need to be identified. This should also include opportunities for the creation of new activity centres. Once identified, appropriate policies, provisions and guidelines must be developed and put in place to encourage and support planned growth.

45. The Amendment facilitates Policy 2.2.3 by establishing an appropriate built form framework in which growth in the HNAC can take place in a sustainable manner.
46. At Policy 5.1.2 of Plan Melbourne, it is policy to ‘support a network of vibrant neighbourhood activity centres’:

⁵ At page 50-51.

Where centres are well established or communities are seeking to protect the unique character of their centres (such as protecting heritage buildings or access to public land or open space to achieve community benefit), they should be assisted in determining the desired built form outcomes.⁶

52. In circumstances where the existing commercial zones within the Amendment Land already guide the types of uses which are intended for the area to which they apply, the added layer of a DDO acts as a complimentary tool for future planning decisions that identifies a preferred built form outcome.
53. *Planning Practice Note 60 (Activity Centres: Height and Setback Controls for Activity Centres) (PPN60)* is relevant to the application of a DDO to the HNAC. It identifies the DDO as the preferred planning instrument for implementing height and setbacks where the Activity Centre Zone is not used in an activity centre. The application of a permanent DDO to the HNAC is consistent with PPN60.
54. PPN60 states:

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.⁷
55. As outlined in the Part A submission, the Amendment Land comprises a mix of Commercial 1 Zone (**C1Z**) and Commercial 2 Zone (**C2Z**) land. This zoning reflects the types of uses found in those locations and also serves to accommodate these uses in an increased capacity in the future.
56. Some submissions received in response to the Amendment expressed concerns about the degree of change this Amendment will have. Of note, residents were particularly concerned about the impact of the proposed built form controls for Precinct 2.
57. Council recognises that neighbourhood activity centres like the HNAC are expected to carry a level of growth and housing consistent with its role as a neighbourhood activity centre. The Victorian Government's Housing Statement underlines the importance of this and the DDO18 aims to deliver on that objective.
58. Of course, the DDO18 is a built form tool, not a land use tool. The use of the DDO is not proposed to fundamentally alter the Scheme's designation of the HNAC, or its capacity to accommodate land use intensity and urban change. Equally, the Amendment does not

⁷ At page 4.

propose to fundamentally alter the character of the Heidelberg Road Commercial Land. As a whole, the Amendment Land already has the benefit of commercial zoning which save for the presence of the interim DDO18, does not impose any specific built form controls that might otherwise restrict building heights.

59. Council submits that the use of the DDO18 for the Heidelberg Road Commercial Land is equally appropriate for that land as it is for that part of the Amendment Land which is in the HNAC. It's application to the Heidelberg Road Commercial Land is consistent with the guidance in PPN59 (outlined below) and provides a real opportunity to deliver a coordinated approach to new built form along Heidelberg Road.
60. In applying the interim DDO18 to the Amendment Land, Council recognised that the physical characteristics of the HNAC and Heidelberg Road Commercial Land would benefit from the type of specific built form guidance that a DDO control can provide.
61. The DDO18 seeks to protect the valued parts of the existing character of the HNAC, whilst providing for a balanced degree of change. It also seeks to recognise the sensitive residential interfaces that the Amendment Land has to the private and public realm. It provides for different levels of potential development across the various precincts, ensuring new development is responsive to heritage fabric and minimises impacts on sensitive residential interfaces like backyards and public spaces like footpaths, kerb outstands and parklands. The need for economic and housing growth does not abrogate the importance of the residential surroundings, public realm, heritage and environmental values of the Amendment Land. Built form controls tailored to the characteristics of the identified precincts are a testament to this.
62. Council's aspiration for the Amendment Land is to facilitate growth in a way that is integrated, functional and pleasant for the existing and future residents and visitors. The DDO18 provides the framework within which this aspiration can be delivered.

The application of the Heritage Overlay

63. Council is seeking to apply the HO to the land at:
 - 63.1 730-734 Heidelberg Road; and
 - 63.2 760-764 Heidelberg Road, Alphington.
64. The Heritage Review has identified that the buildings on these sites should be protected by the application of the HO in conjunction with the prescription of built form controls in the DDO18.



65. The combination of the HO and DDO18 on these sites will ensure that important heritage characteristics of the HNAC are protected whilst allowing new development to occur in an activity centre location as directed by the State and local policy in the Scheme.
66. Council submits that the application of the HO to these properties is based on sound analysis and advice in the Heritage Review and is supported by Council's Heritage Expert, Mr Hemingway.
67. Council addresses the appropriateness of the HO in more detail as requested by the Committee below.

STRATEGIC JUSTIFICATION FOR MANDATORY CONTROLS

68. This part of the submission response to Direction #11(a) and (b).
69. The Committee has asked Council to explain the approach to preparing the Amendment with reference to *Planning Practice Note 59 (The role of mandatory provisions in planning schemes)* (**PPN59**) and PPN60.
70. A number of submissions have also questioned the use of mandatory controls as part of the Amendment, whilst some submissions suggested that the use of mandatory controls was supported.
71. Council has approached this Amendment with a combination of mandatory and discretionary controls. It has applied mandatory controls where it is necessary to minimise impacts on sensitive residential interfaces and the public realm, to deliver a uniform street edge and enhance the pedestrian experience along Heidelberg Road.
72. As for heritage considerations, the Committee will have noted the extensive analysis in the Heritage Review which was conducted **prior** to Council considering the implementation of mandatory controls. Through the Heritage Review and BFF, Council's consultants were able to ascertain whether the built form controls should be discretionary or mandatory to be effective in the context of the Amendment Land.
73. The use of a combination of discretionary and mandatory controls in Activity Centre DDOs across Planning Schemes in Victoria is increasingly common and particularly so in the City of Yarra. There are numerous examples which demonstrate that a hybrid of mandatory and discretionary controls is appropriate in the context of responding to State and local policy that calls for intensification in and around activity centres and on the other hand consideration of the valued characteristics of the centre.⁸
74. The mandatory controls in the DDO18 are not aimed at restricting development. Rather, they seek to protect valued elements whilst enabling development that can still achieve good land use and urban design outcomes while being sensitive to heritage, residential interfaces and high valued areas of public open spaces.
75. Council accepts that mandatory controls are more restrictive than performance based discretionary controls, but submits that in the context of the Amendment Land, such an

⁸ See for examples DDO16 and DDO17 of the Darebin Planning Scheme, DDO18 of the Moreland Planning Scheme, DDO16 of the Boroondara Planning Scheme, DDO8 of the Port Phillip Planning Scheme and DDO21 of the Yarra Planning Scheme (*Bridge Road*).

approach is necessary and balanced and provides a level of certainty for both owners of land affected by the controls as well as the owners and occupiers of adjacent residential and sensitive land.

PPN59 and PPN60

76. PPN59 and PPN60 emphasise the need to demonstrate that a mandatory provision is necessary to achieve the desired built form outcome and that if development were to exceed these built form parameters, it would result in unacceptable planning outcomes.
77. PPN59 is relevant to the consideration of applying the DDO18 to the Heidelberg Road Commercial Land and the HNAC, whilst PPN60 provides specific guidance about the appropriateness of its use more specifically for neighbourhood activity centres.
78. In both instances, Council submits that the application of the DDO18 achieves the objectives and is consistent with the guidance of these practice notes.
79. Council is not proposing to apply mandatory controls across all of the precincts. Neither is it proposed to apply mandatory controls to all aspects of the built form parameters in the proposed DDO18. This is consistent with PPN59 and PPN60.
80. Council is satisfied that the mandatory controls which are proposed will not unduly restrict built form. The built form sought by the mandatory controls is commonly found in centres such as these. The clear step back above the street wall is a common tool used for the protection of the dominance of the street wall and to ensure upper built form is not overbearing. Similarly, the DDO18 encourages the provision of a relatively consistent street wall height which is consistent with this intended outcome.
81. Council considers this approach to be strategically justified and relies on the evidence of its urban design, planning and heritage experts.
82. Mr Glossop has considered whether the adoption of mandatory controls is appropriate, having reviewed the strategic context of the Amendment land, the BFF proposed planning controls and PPN59 and PPN60.
83. Council relies on the following observations of Mr Glossop in relation to the use of mandatory controls:

[38] [...] Firstly, when drafting planning controls, it is necessary to understand where a provision sits within the broader planning system.

The application of mandatory built form controls in the form of DDOs is a typical and unremarkable implementation statutory response in situations where a planning authority wishes to

achieve a higher level of certainty and control. That said, the use of mandatory controls must be properly justified.

- [39] The VPPs have evolved since their advent in the mid-1990s to include the use of mandatory controls in planning schemes more often and in more ways. **The VPPs have progressively moved away from a uniformly performance-based approach to a system that where mandatory controls are commonplace. The move towards greater prescription is not confined to ‘sensitive’ areas, such as heritage precincts, coastal locations or in areas of high landscape value.** The use of mandatory controls has become so ubiquitous that we now see the state-wide ‘blanket’ applications of mandatory controls...

[...]

- [41] In terms of systems design alone, the application of mandatory controls in 2024 is simply no longer the issue it was in 2018. In this planning scheme, mandatory provisions currently apply to the Johnston Street east of Smith Street¹¹ and Queens Parade¹² NACs. There are other metropolitan examples where NACs contain mandatory height and/ or setback controls including Hawksburn Village NAC (see DDO²¹ to the Stonnington Planning Scheme) Caulfield Park Neighbourhood Activity Centre (see DDO¹² to the Glen Eira planning Scheme).

84. In relation to the use of mandatory controls in a neighbourhood activity centre context for the HNAC, it is Mr Glossop’s expert opinion that:

- [44] **In a neighbourhood activity centre context like this, there will be circumstances where a mandatory provision may be preferred over a discretionary control. A good example of this is (in my view) is the application of mandatory interface controls.** While, ultimately, the urban design evidence may well need to establish the justification in each individual circumstance, there is nothing inherently wrong from a town planning perspective with the principle of applying mandatory controls in lower order centres.

- [45] **Another relevant consideration is the role played by this centre and the extent of change that is envisaged by policy.** While there are examples of mandatory provisions in higher order centres, it is relevant that Heidelberg Road is in a moderate change area; that the extent of change here is limited by other factors (like the presence of small lots) and that the centre has edge conditions and built form characteristics that limit change.

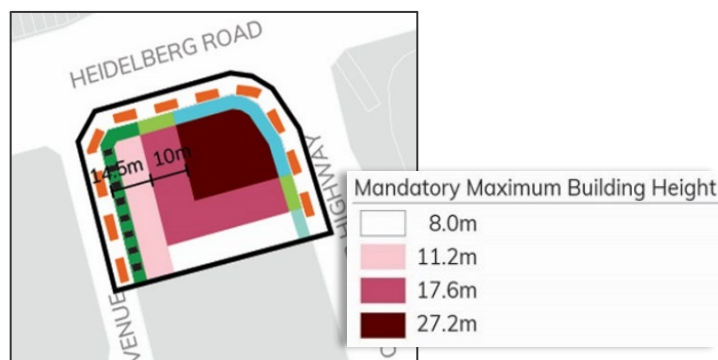
[46] From a town planning perspective, I find that mandatory controls (in concept) can be supported.

85. Council submits that the physical attributes of the HNAC and the Heidelberg Road Commercial Land necessitate the application of mandatory controls. Both the HNAC and Heidelberg Road Commercial Land are areas where Council has identified a need to effect moderate change. The extent of new built form is limited by the presence of small lots, sensitive residential and parkland interfaces and heritage characteristics for the whole of the Amendment Land. The characteristics described by Mr Glossop are not restricted only to the HNAC. The application of mandatory controls is therefore necessary and appropriate in the context of both the HNAC and Heidelberg Road Commercial Land.

86. The mandatory controls which are sought under the Exhibited DDO18 are:

86.1 For building height:

86.1.1 Precinct 3A has mandatory maximum building heights as follows:



Source: Exhibited DDO18 Map 3A Building and Street Wall Heights for Precinct 3A

86.2 For ground level setback:

86.2.1 Precinct 1 has a mandatory:

- (a) 3m ground floor setback to Heidelberg Road (except for heritage buildings);
- (b) 3m ground floor setback to Yarra Bend Road;

86.2.2 Precinct 2 has a mandatory:

- (a) 3m ground floor setback to Heidelberg Road;
- (b) 3m ground floor setback to Park Crescent;

86.4.2 upper levels above Coate Avenue must be setback by a minimum of 10 metres in Precinct 3A and must be set back an additional minimum of 10 metres above the secondary step;

86.5 For interface and rear setbacks:

86.5.1 development adjoining a residential property outside the DDO18 must not exceed a maximum boundary wall height of 8m;

86.5.2 development along the parkland interface in Precinct 1 must not exceed a maximum building height of 14.4m;

86.5.3 Upper levels above a rear boundary wall must be set back from the rear boundary and be contained within a 45 degree setback envelope

86.5.4 Development must provide minimum ground floor setbacks to the rear boundary as follows:

- (a) Precinct 1: a minimum of 3 metres (as shown on Map 1);
- (b) Precinct 3A: a minimum of 4.5 metres;
- (c) All other areas: a minimum of 3 metres if the dwelling on the adjacent residential property is located less than 15 metres from the property boundary.

87. At its Council meeting dated 12 December 2023, Council considered the significant public interest in the proposed mandatory controls. In response to submissions that were received, in particular submissions which were concerned about the interface of new development with existing residential land, Council made some changes to the proposed mandatory controls. The scope of those changes was to increase the setback at ground floor for Precinct 2 and Precinct 3A. Whilst the setbacks were increased, t no changes were made to the locations where the mandatory controls were proposed and these remain consistent with the locations as exhibited with the Amendment.

88. The Council's preferred version of DDO18 now requires a 'landscape' (ground floor) setback as follows:

- Precinct 1: a minimum of 3 metres (as shown on Map 1);
- Precinct 3A: a minimum of 4.5 metres;
- Precinct 2 and Precinct 3B: All other areas: a minimum of 3 metres if the dwelling on the adjacent residential property is located less than 15 metres from the property boundary.
 - 5 metres where a development site directly abuts a rear boundary of an adjacent residential lot.
 - 3 metres where a development site directly abuts a side boundary of an adjacent residential lot.

89. The combination of this increased setback and requirement that it now be a 'landscaped' setback is a positive step to achieving a successful amenity outcome at the interface to residential properties in Precinct 2 and 3B. It will ensure that potential negative impacts that might arise as a result of visual bulk and overlooking will be ameliorated.

90. Council's heritage expert is supportive of the 'mandatory' DDO response to heritage fabric concluding:

[119] Upper-level setbacks in the heritage zones are to be broadly 6 metres, though **'must be' in Precinct 3B between Parkview Road and Yarralea Street** and **'should be' in Precinct 1**. The smaller, most sensitive heritage sites located in the section in Precinct 3B

between Park Avenue and Yarralea Street so that a mandatory setback is appropriate there whereas at the larger Porta site in Precinct 1 there is less need to be as prescriptive.

91. Council's urban design expert has raised concerns about the use of mandatory controls for the land at 224-256 Heidelberg Road, commonly referred to as the 'Porta Site', in particular Ms Hodyl raises the following concerns:

- The extent of mandatory controls that limits alternate design outcomes
- The justification for mandatory controls
- The specific use of mandatory controls for the park and street setbacks, the 14.4m building height along the park interface and the upper level setbacks within a 45 degree envelope⁹

92. Ms Hodyl concludes:

[66] [...] I do not think that the 4 storey street wall interfacing the park needs to be a mandatory control. The intention of this control is to manage both potential overshadowing impacts and visual bulk. This is achieved through the combination of the 4 storey wall height and the 45 degree setback envelope for upper floors. This setback profile has been demonstrated to achieve the precinct objectives and should be retained, however, alternate massing strategies could be explored through further design resolution. This would be precluded by a mandatory control.

93. Both Ms Hodyl and Mr Glossop query the use of a mandatory height control for Precinct 3A.

94. With respect to each of these recommendations in so far as they challenge the use mandatory controls, Council does not propose to make any changes to the DDO18. It submits that the use of mandatory controls is appropriately justified and is as a result of a considered and sound body of strategic work.

95. Council refers to the further submissions below in relation to its position on a mandatory height control for Precinct 3A.

96. These mandatory controls address the height (in relation to Precinct 3A), street wall and setbacks of new buildings along the Heidelberg Road streetscape and the more sensitive interfaces to residential areas and important public open space.

⁹ At 3.4, paragraph 61.

- Mandatory height or setback controls should only be applied where:

- 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.¹⁰

- ### Exceptional circumstances

100. The Amendment Land warrants mandatory controls because of exceptional circumstances which includes the heritage qualities (at Precinct 1 and Precinct 3B) and the importance of protecting the public and private realm, having regard to its sensitive residential interfaces and parkland surrounds. The targeted approach to mandatory controls demonstrates that Council is not applying them to sites which do not necessitate a mandatory approach or in a blanket way.
101. A similarly targeted approach has been adopted by Council on a number of occasions across its various activity centres including C191yara (Swan Street), C220yara (Johnston

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Street), C231yara (Queens Parade) and C291yara (Bridge Road and Victoria Street), with approval by a number of Planning Panels and/or Standing Advisory Committees.

102. The Amendment Land warrants mandatory controls based on exceptional circumstances because of:

102.1 the heritage qualities evident in the corridor;

102.2 the consistency of the street wall along Heidelberg Road; and

102.3 the protection of existing amenity of the Amendment Land and its adjacent land in terms of overshadowing to the streetscape, private and public realm.

Robust and comprehensive strategic work

103. As set out in Council's Part A submission, and in keeping with the challenge and criteria set out in the practice note, Council has undertaken a robust and comprehensive program of strategic work in the form of the BFF and Heritage Review.

104. Importantly, this included a comprehensive program of 3D modelling, the results and recommendations of which are outlined in the BFF.

105. The controls in the DDO18 are also supported in the Draft Heidelberg Road Corridor Local Area Plan (**HRCLAP**) which was developed in conjunction with Darebin City Council for the wider area along the Heidelberg Road Corridor generally between the Merri and Darebin Creeks and the Hurstbridge Railway Line and the Yarra River, and seeks to provide a common strategic basis for planning provisions in the area.

106. In response to Direction 11(f) and as outlined in the Part A Submission, the HRCLAP has been prepared in conjunction with City of Darebin. On 4 February 2020, Council resolved to 'endorse, for the purposes of informing Amendment C272 and for future public consultation' the October 2019 version of the HRCLAP.¹¹ At that meeting, Council also noted that a further report will be prepared for Council's future consideration of the HRCLAP once it has been finalised. At this stage, the HRCLAP requires further input from Darebin City Council before it can be finalised. At this point in time, Council is not able to confirm the extent of any inconsistencies with the HRCLAP as whilst it has been endorsed by Council it is unfinished as at the date of this submission and may therefore be subject to further change.¹²

107. Included in the HRCLAP is a strategic framework for the Heidelberg Road corridor which proposes the introduction of an interim DDO18 (which has already been implemented) for

¹¹ Council notes that it's Part A Submission referred to this being an adopted document and corrects that reference as part of this Part B Submission. See Council Meeting Minutes dated 4 February 2020.

¹² Direction 11(f)(iii).

the C1Z and C2Z areas. In addition to the BFF and Heritage Review, the HRCLAP was also informed by:

- 107.1 Heidelberg Road Corridor: Background Issues and Discussion Paper prepared by Yarra City Council (Background Issues and Discussion Paper);
 - 107.2 24.2 Heidelberg Road Heritage Review (Stage 1 and 2) (2019), prepared by RBA Architects Conservation Consultants (Heritage Review);
 - 107.3 24.3 Part 1: Heidelberg Road Built Form Framework – Urban Context Analysis (July 2019), prepared by Hodyl & Co (Urban Context Analysis);
 - 107.4 24.4 Part 2: Heidelberg Road Built Form Framework – Design Strategy and Recommendations (November 2019), prepared by Hodyl & Co (Built Form Framework); and
 - 107.5 24.5 Traffic and Vehicle Access Assessment, Heidelberg Road, Fairfield/Alphington (November 2019), prepared by Traffix Group, (Traffic Assessment).
108. In *Porta Investments Pty Ltd v Yarra CC* [2022] VCAT 336, the Tribunal (in considering a permit application for the Porta Site) considered the BFF and described this strategic work as follows:
- [31] [...] We consider that these site constraints have been thoroughly explored in the Part 2: Heidelberg Road Built Form Framework (Hodyl & Co, November 2019), which has then informed the content of DDO18 as it applies to the review site. It is the depth and strength of that analysis that gives us confidence to rely on the content of DDO18 as representing an appropriate set of built form controls that should guide the future development of the review site.
109. Overall, the body of strategic work satisfies the PPN60 criteria for the application of mandatory controls because:
- 109.1 it is consistent with State and local policy which seeks to provide intensified development outcomes in HNAC as a middle ring suburb activity centre, whilst balancing the protection of heritage character and the quality of the public and private realm. This will deliver future growth commensurate with the scale of the HNAC; and
 - 109.2 the strategic work is current, having been completed in the last 5 years and has been the subject of extensive consultation through this Amendment process.

110. The economic work completed by Mr Szafraniec in his expert witness statement builds on the existing strategic work and demonstrates that the Amendment Land has capacity to accommodate more commercial, retail and residential demand.

Absolutely necessary/unacceptable built form outcomes

111. PPN60 states that mandatory built form controls should only be applied where they are 'absolutely necessary to achieve the preferred built form outcomes' and 'it can be demonstrated that exceeding these development parameters would result in unacceptable built form outcomes'.
112. Council submits that mandatory provisions have been applied sparingly where necessary achieve the preferred built form outcome in the HNAC, in particular at the ground floor along Heidelberg Road and at the sensitive residential interfaces.
113. Council submits that the application of mandatory controls to Precinct 1 and 2 is necessary to achieve an acceptable built form outcome. These precincts have similar physical characteristics to those precincts in the HNAC that warrant the application of a mandatory built form control.
114. Having regard to PPN59, Council acknowledges that mandatory provisions are the 'exception' and that mandatory controls must be balanced against the loss of opportunity and flexibility inherent in the performance based system. PPN59 recognises that a combination of discretionary and mandatory controls may be appropriate. Council has followed the guidance in PPN59 and implemented a mix of discretionary and mandatory controls in the DDO18. Whilst mandatory controls may be the 'exception', Council submits they are necessary in the DDO18 to:
- 114.1 deliver a well resolved interface to the Yarra River Corridor environs in Precinct 1;
 - 114.2 guarantee that the interface between the NRZ land to the rear of Precinct 2 is responded to in an appropriately sensitive manner;
 - 114.3 ensure that the street wall throughout the Amendment Land is consistent, which will in turn enhance the pedestrian experience and ensure that the existing character of the Amendment Land is retained.
115. With respect to the application of mandatory controls, PPN59 states:
- While mandatory provisions only provide fixed planning outcomes, there are circumstances where they are warranted. Mandatory provisions provide greater certainty and ensure a preferred outcome and more efficient process. Although mandatory provisions are the exception, they may be used to manage:

- A balance must be struck between the benefits of a mandatory provision in the achievement of an objective against any resulting loss of opportunity for flexibility in achieving the objective.**

Mandatory provisions may be considered if it can be demonstrated, through a detailed assessment and evidence-base, that discretionary provisions are insufficient to achieve desired outcomes.

STRATEGICALLY SUPPORTED

Is the mandatory provision strategically supported?

- Does the proposed mandatory provision have a solid strategic objective while having regard to the planning objective?
- Does the proposed mandatory provision implement planning policy (state, regional or local)?

APPROPRIATENESS OF DEPARTING FROM PERFORMANCE-BASED APPROACH

Is the mandatory provision an appropriate substitute for a performance-based provision?

- Will most proposals that contravene the proposed mandatory provision lead to unacceptable planning outcomes?
- Has the proposed mandatory provision been drafted to limit any unnecessary loss of the flexibility and opportunity available through a performance-based approach?
- Have all other relevant performance-based provision options been explored?
- Would policy or performance-based measures lead to the outcome prescribed by the proposed measure in most cases?
- Is there evidence of adverse existing or proposed use or development that justifies the proposed control?

FACILITATES REQUIRED OUTCOME

Does the mandatory provision provide for the preferred outcome?

- Is the proposed mandatory provision limiting? Does it only lead to one outcome from a number of suitable ones that would deliver on related planning policy?
- Does the proposed mandatory provision avoid the risk of adverse outcomes in a way that a performance-based approach cannot?

117. Precinct 1, which contains the Porta Site is a site which undeniably has a high heritage value. It is also a sensitive environmental location, being adjacent to the Yarra River Corridor area and abuts the associated parklands to the south and south east and west across Yarra Bend Road. Similarly, Precinct 2 is an area that demonstrates a consistent character,

especially in relation to the consistency of the street wall to Heidelberg Road, lot configuration and interfaces to the residential and public realm.

118. Council submits that the built form and shadow modelling informing the Amendment supports the application of mandatory controls in the DDO18. As identified in the BFF, mandatory controls provide an efficient outcome when considering the interface between commercial and sensitive residential precincts. In those contexts, and as demonstrated in the shadow modelling and visual impact assessment at Appendix A and B respectively, a proposal which is not in accordance with a mandatory control would not provide an acceptable outcome. Council relies on the BFF which states:

The mandatory controls support strategic objectives for development intensification.

- The rear interface controls for all development have been rigorously tested, are appropriate for the majority of proposals and provide for the preferred balance between development intensification and protection of amenity.
- The mandatory controls provide an efficient outcome - considering the interface between commercial and sensitive residential precincts, without certainty there will continue to be a significant number of objections and lack of clarity on the preferred development outcome. This has already been demonstrated through 3 recent VCAT cases.
- The majority of proposals not in accordance with the mandatory provisions will be clearly unacceptable. Considering the combination of a poor quality, heavily trafficked arterial and sensitive residential interfaces, the detailed testing in this report demonstrates the limited range of circumstances that provide Sa positive outcome to both interfaces

119. The application of mandatory controls proposed through this Amendment has been carefully considered having regard to this noting:

- 119.1 the strategic support behind the mandatory controls is generally contained in the BFF, Heritage Review and evidence of Leanne Hodyl, John Glossop and Anthony Hemingway;
- 119.2 the application of mandatory controls is appropriate having regard to the built form outcomes sought to be achieved including a consistent streetscape along Heidelberg Road, retention of heritage fabric and public amenity outcomes;



- 119.3 the provisions have been thoroughly tested and modelled through the preparation of the BFF to ensure the built form controls that are proposed to be applied achieve an appropriate outcome for the Amendment Land;
- 119.4 performance based measures have been used where appropriate and where they are not appropriate should be avoided to ensure proposals do not significantly exceed the built form parameters which are necessary to deliver acceptable planning outcomes; and
- 119.5 administrative costs of processing permit applications may potentially be reduced.

120. The Committee needs to be satisfied that the exceptional circumstances and sufficiency of the strategic work is such that it supports mandatory controls. But the exercise does not finish there. It must also be satisfied that the quantitative measures that are proposed in both the mandatory and discretionary controls are appropriate.
121. The Committee needs to satisfy itself that the parameters prescribed by the controls on future built form strikes the right balance.
122. In this regard, Council relies primarily on the rigorous assessment that has been undertaken by its experts and their evidence statements.

123. This part of Council's submission responds to Direction 11(b) and (c).
124. With the exception of matters raised by Ms Hodyl and Mr Glossop with respect to the Porta Site and the balance of Precinct 1 and 700-718 Heidelberg Road and some of the heights which are proposed, the Amendment is supported by Council's experts as outlined in their earlier work through the BFF and Heritage Review and their respective reports.
125. Council does not agree with the recommendations of Ms Hodyl and Mr Glossop in so far as they consider the heights in the proposed DDO18 should be precisely commensurate with the BFF.
126. The development of the DDO18 has been a long and comprehensive process. Importantly, the BFF was prepared as the foundation upon which the DDO18 control could then be developed.
127. An important part of a planning scheme amendment process is for Council to take into consideration the submissions of persons affected by the Amendment. As can be seen in the Attachment 1 to the Officer Report, appropriate height was a concern for many submitters. In preparing the DDO18, Council has been very cognisant of the impact of height on the public and private realm and has therefore decided to adopt a slightly lower height than what was proposed in the BFF, but which still achieves the necessary growth of the Amendment Land.
128. Council submits the height and setback controls that are proposed are necessary to ensure the Amendment Land as a whole achieves a future character that continues to respect the valued heritage characteristics and provides an appropriate setting.

129. The lowering of heights in some of the precincts will not have a negative impact on the delivery of built form commensurate with the level of growth expected in a neighbourhood activity centre. Council submits the lower heights proposed in the DDO18 are necessary to ensure future development achieves a considered approach to building height and public and private realm interfaces.

Building heights

130. A number of submissions received in response to the exhibition of the Amendment raised concerns about the proposed heights in the DDO18. Submitters were critical of the proposed heights in the context of the residential surroundings of the HNAC, raising concerns that the increased building heights will have a negative impact on the existing character and the increased development yield associated with these heights would in turn have negative impacts in terms of traffic and movement within the HNAC and Heidelberg Road Commercial Land.
131. In relation to submissions which seek to decrease the height and other built form metrics, those submissions generally state that the Amendment represents potential for overdevelopment because:
- 131.1 the proposed maximum building heights are too tall;
 - 131.2 the proposed setbacks are insufficient;
 - 131.3 the built form controls will result in unreasonable amenity impacts such as overshadowing and overlooking to the residential properties to the south;
 - 131.4 the increase in anticipated development permitted by the DDO18 will put pressure on the traffic network; and
 - 131.5 the approach of Council to mandatory and discretionary heights is not appropriate.
132. Council's response to these broad issues regarding the proposed building heights is provided below.
133. As outlined above, and in Council's Part A Submission, the Amendment has been informed by the built form analysis in the BFF and the Heritage Review. From this analysis, Council has sought to identify proposed heights and complimentary built form controls that strike the right balance between facilitating growth in a neighbourhood activity centre, whilst recognising the valued characteristics and amenity outcomes.
134. Importantly, the BFF sought to provide recommendations for future built form and development within the Amendment Land and carried out:

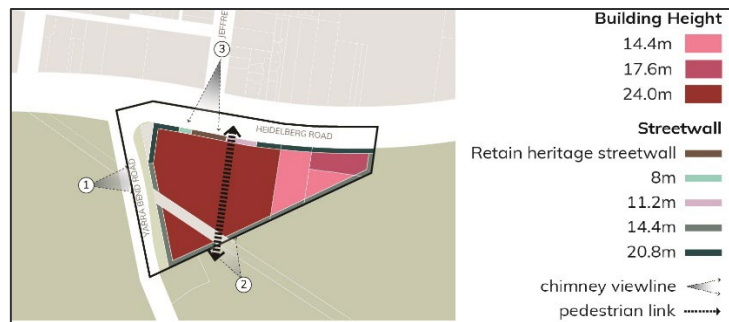
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page 34

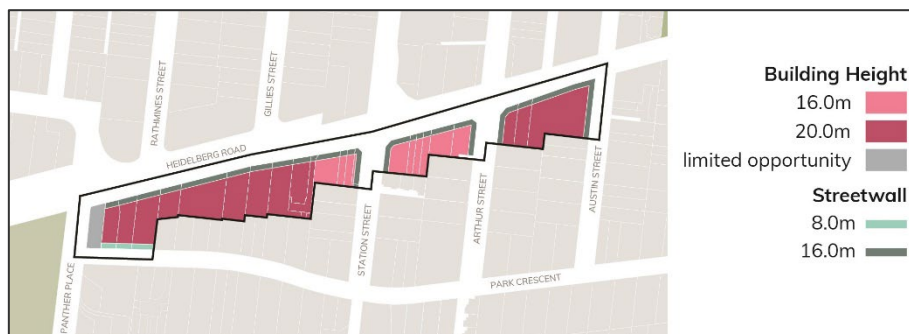
139. Interim DDO18 sets discretionary built form controls, which include maximum building height limits and minimum setbacks.

140. The preferred maximum building (and street wall) heights that currently apply in the interim DDO18 are shown below. In particular, the building heights range from:

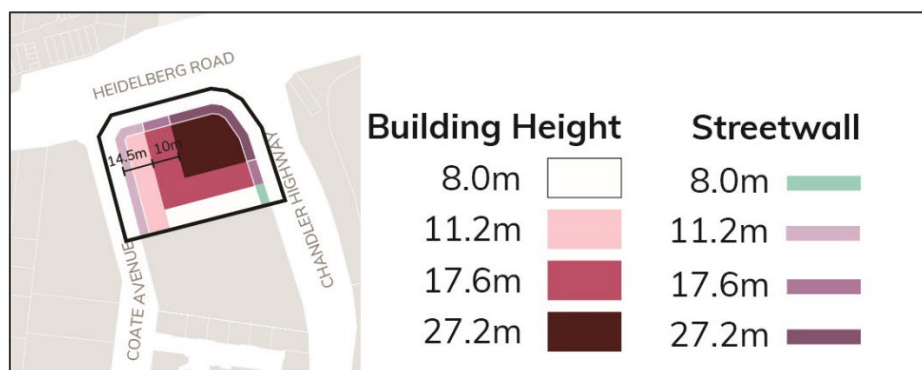
140.1 14.4m to 24m for Precinct 1:



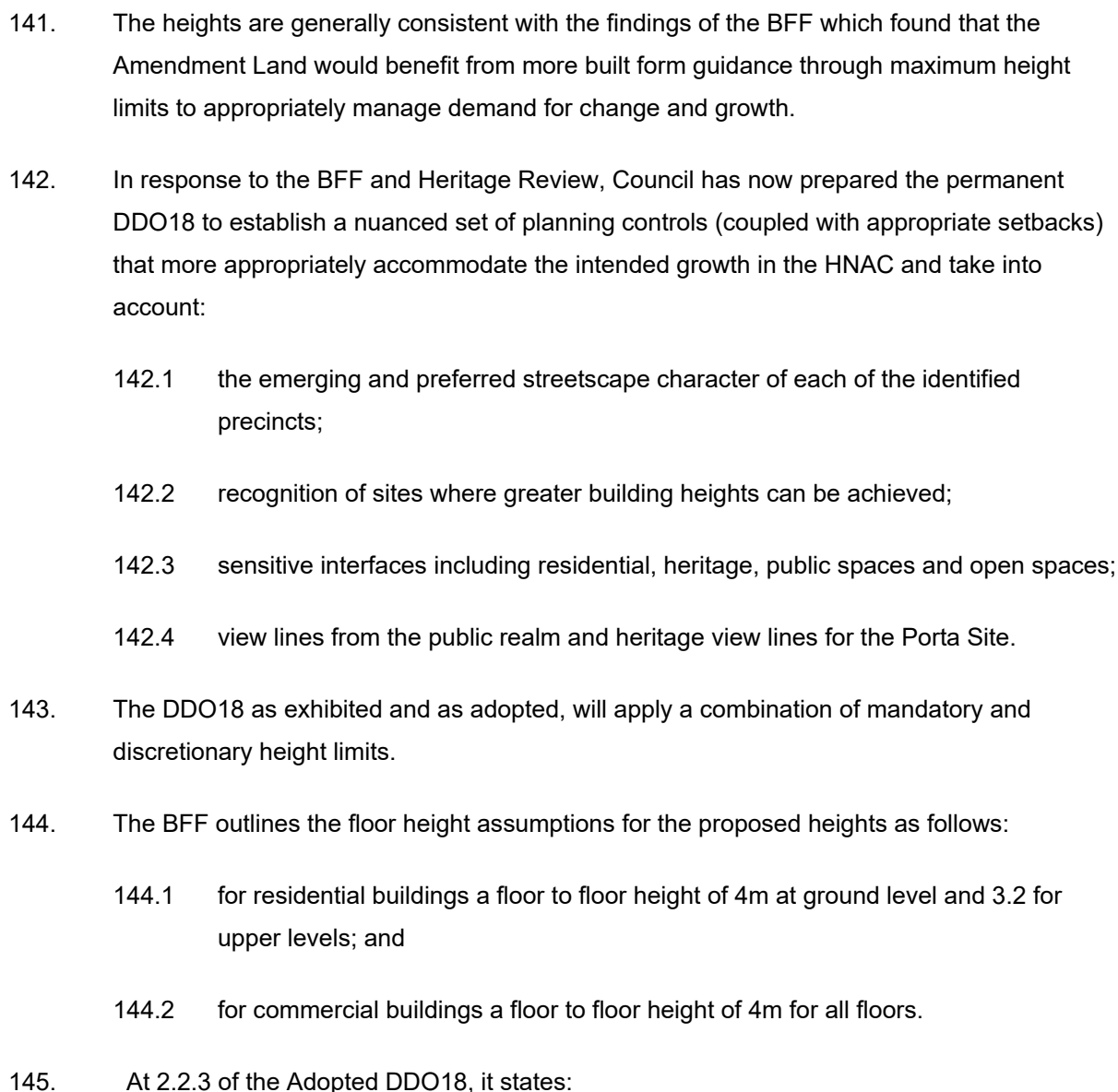
140.2 16m to 20m for Precinct 2:



140.3 8m to 27.2m for Precinct 3A:



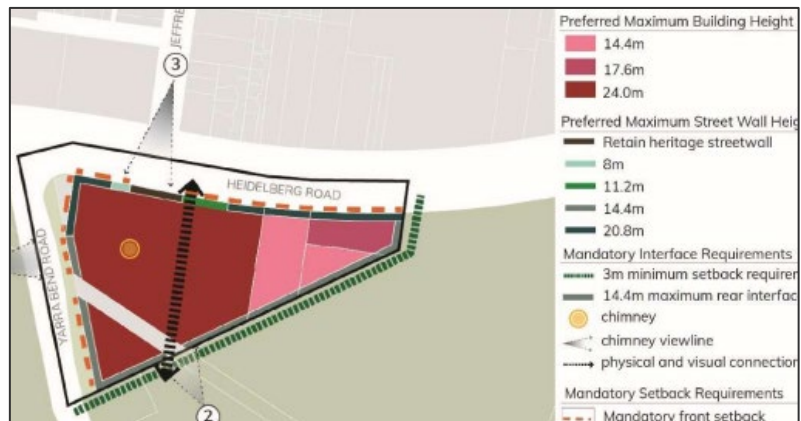
140.4 11.2m to 17.6m for Precinct 3B:



Development must not exceed the mandatory maximum building heights shown on Map 3A.
Development should not exceed the preferred maximum building heights shown on Maps 1, 2, and 3B.

146. The maximum building heights that currently apply in the Adopted DDO18 range from:

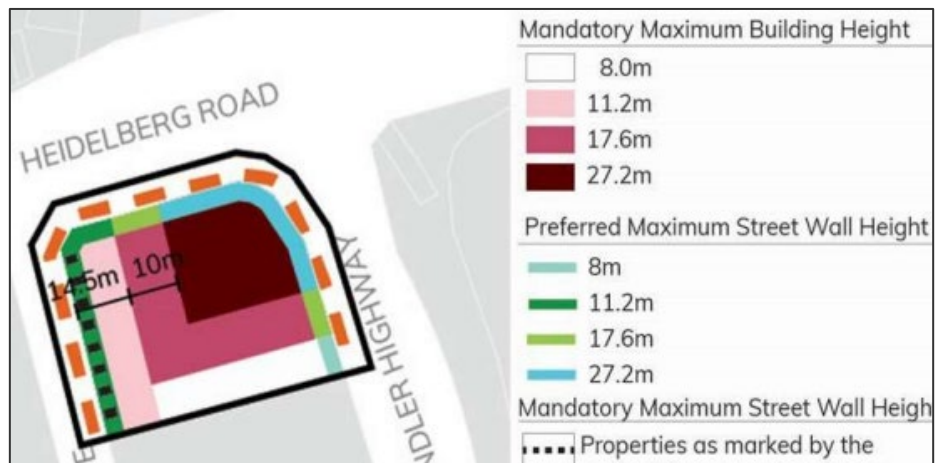
146.1 14.4m to 24m for Precinct 1:



146.2 16m to 20m for Precinct 2:



146.3 8m to 27.2m for Precinct 3A:



146.4 11.2m to 17.6m for Precinct 3B:



147. As identified in the Explanatory Report:

Permanent DDO18 aims to provide a balanced approach by guiding different levels of potential development across the Heidelberg Road Precincts. It aims to ensure that new buildings will respond to heritage fabric and minimise impacts on sensitive residential interfaces such as backyards, and public spaces like footpaths, kerb outstands and parklands.

The built form and design requirements are split into 'General Requirements' that apply across the Precincts and 'Precinct Design Requirements' that are specific to each Precinct. The requirements cover elements such as street wall height, upper level front and side street setbacks, building height, interface and rear setbacks, overshadowing and daylight access, front setbacks to street(s), building separation, building layout and access, parking and loading bay requirements.

Permanent DDO18 includes a mix of mandatory maximum requirements and preferred maximum requirements.

The permanent provision is required to ensure that new development within the commercial areas along Heidelberg Road is appropriately guided and that certainty on planning outcomes is increased. The provision is based on sound strategic background work and learnings from recent amendments.

Precinct 1 – Porta Site

148. The DDO18 proposes a preferred maximum height of 24m to the land at 224-256 Heidelberg Road, Fairfield (Porta Site) (in Precinct 1). Submitter no. 30 objected to the application of mandatory setback in this location on the basis that they are overly restrictive and instead should be preferred controls with an increased maximum building height.

149. The approach to height in Precinct 1 is a response to the specific heritage character of the land and the influence of the Yarra River corridor and adjacent parklands to the immediate south. Whilst the Porta site is a large site which is capable of accommodating a greater built form than other examples in the HNAC and balance of the Heidelberg Road Commercial Land, the future built form outcome is also tempered by heritage and interface constraints.

150. The proposed DDO18 controls have been developed in response to this important interface and the heritage character. The precinct specific design strategy for Precinct 1 in the BFF is:

Creation of a mid-rise precinct that frames Heidelberg Road and steps down towards the adjacent parks to maintain the prominence of the landscape setting. The Porta heritage building is retained, views to the brick chimney are enhanced through sensitive redevelopment and a new north-south pedestrian connection links Heidelberg Road to the park.¹³

151. Precinct specific design objectives in the BFF include:

Respect and enhance the setting of the Porta heritage building and brick chimney by framing the building with mid-rise development (4-8 storeys) - Location 1.

Improve the pedestrian experience on Heidelberg Road and Yarra Bend Road through a 3 metre front setback - Location 2.

Provide a positive interface (visual interest and passive overlooking) to the park edges in a building scale that does not visually dominate or unreasonably overshadow TH Westfield Reserve and Yarra Bend Park Oval - Location 3.

Provide a diverse range of housing types on the strategic development site (Porta site) - Location 4.

Improve the character of Heidelberg Road by creating a comfortable sense of enclosure and definition to the street - Location 5.

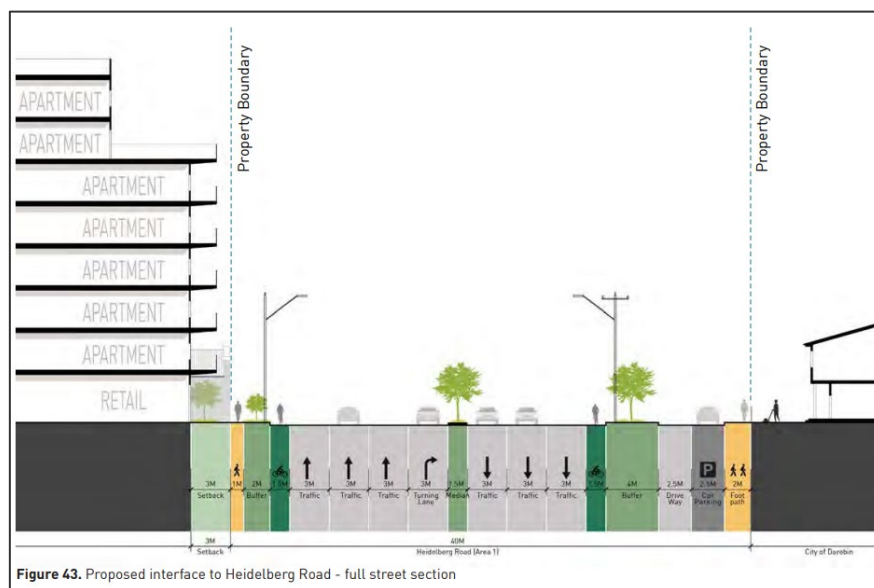
Minimise the impact of vehicular crossovers to Heidelberg Road and Yarra Bend Road - Location 6.

152. The BFF considered a number of development scale alternatives for Precinct 1 for the Porta Site and the interface to Heidelberg Road. Through built form testing, it was found that a maximum height of 8 storeys with a street wall of 4-6 storeys and upper level setback of 6m would deliver an acceptable development outcome:

¹³ At page 23.



153. The BFF found that a 6 storey street wall is appropriate in this location due to the width of Heidelberg Road adjacent to the site. At 40m wide, this taller street wall would be balanced against the street width and would not result in the cavernous feeling that the DDO18 seeks to avoid in Precinct 2 and 3B.
154. The BFF also found that the inclusion of 4 storey elements would deliver a more appropriate integration with the existing apartment building and an upper level setback of 6m would cement the prominence of the lower built form thus reducing the visibility of the upper levels.
155. The benefit of the 6m upper level setback is demonstrated in Figure 43 extracted below, where the Committee will observe that a 3m landscape setback at the ground floor enhances the ground floor presentation, with the upper levels recessed which ensures that the taller built form on the Yarra side of Heidelberg Road does not overwhelm the lower character found on the northern side in City of Darebin:



Source: BFF at page 26

156. As outlined above, Precinct 1 also has an important interface to the parklands across Yarra Bend Road and to the south and south-east:

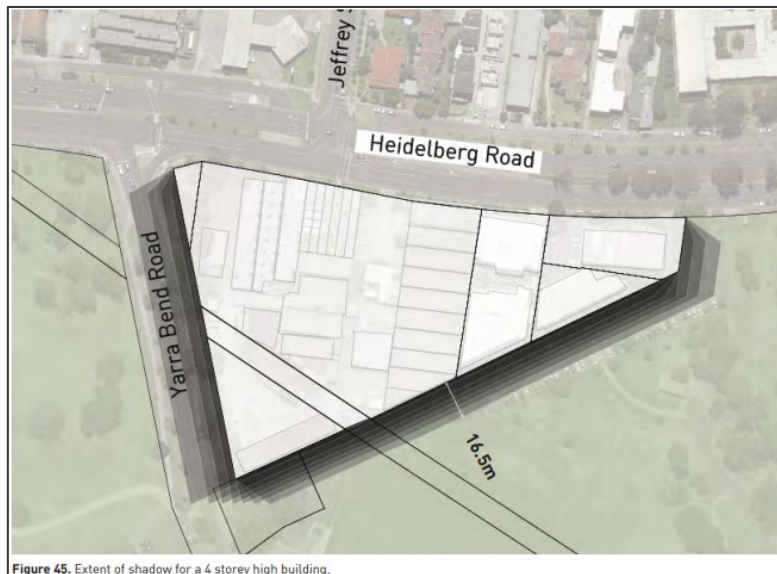


Figure 45. Extent of shadow for a 4 storey high building.

Source: BFF at page 27

157. The Subject Land is currently covered by the DDO1-J – Yarra (Birrarung River Corridor). Design objectives at clause 1.0 of the DDO1 include:

To ensure new buildings, tennis courts, swimming pools and other structures are appropriately set back from the banks of the Yarra River and adjacent public open space.

To ensure buildings are presented at a variety of heights, avoid visual bulk, are stepped back from the frontage of the Yarra River and adjacent public open space and use colours and finishes which do not contrast with the natural landscape setting.

To avoid additional light spill and overshadowing from buildings on the banks and water of the Yarra River, its adjacent public open space, pedestrian and bicycle paths.

To ensure sufficient space is provided between buildings to maintain views to the Yarra River and allow for the planting and growth of vegetation, including large canopy trees.

To minimise impervious surfaces to allow for the filtration of water and retention and establishment of vegetation and canopy trees.

158. Clause 12.03-1R also seeks to maintain and enhance the natural landscape character of the Yarra River corridor and seeks to:

- Minimising the visual intrusion of development when viewed from major roads, bridge crossings, public open space, recreation trails and the river itself.
- Ensuring that the siting and design of buildings avoids conflicting with the local natural landscape and environmental character.
- Ensuring building height is below the natural tree canopy and all development is set back a minimum of 30 metres from the banks of the river.

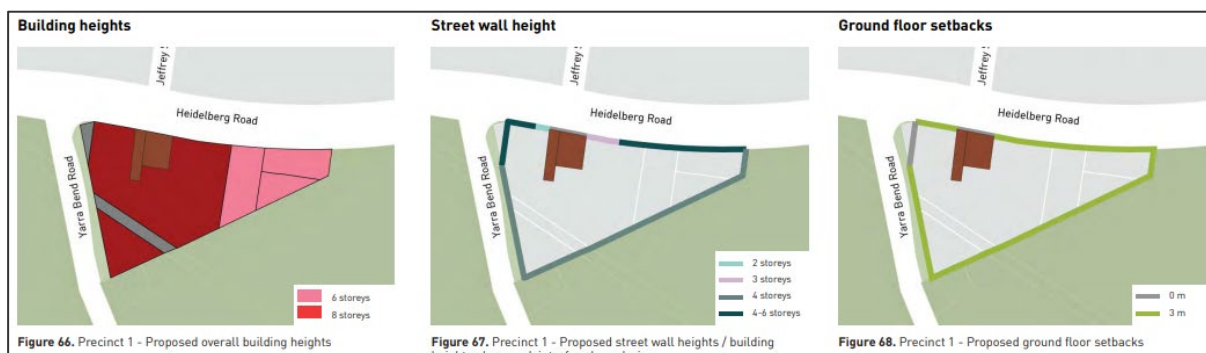
159. Clause 12.03-1L also seeks to 'recognise the strategic importance of the Yarra River and Darebin and Merri Creek corridors as multi-functional open spaces and protecting and enhancing their environments.
160. The importance of the interface to the parklands is clearly important and requires a considered approach to visual bulk and mass and the overshadowing impacts of new development.
161. The BFF proposed a preferred maximum building height of 27.2m (8 storeys) for the Porta Site and 20.8m or 6 storeys for the balance of Precinct 1:

- Discretionary**

 - Overall height limits
 - Street wall heights to Heidelberg and Yarra Bend Road
 - Upper level setbacks from Heidelberg Road and Yarra Bend Road

Mandatory

 - 3 metre front setback to Heidelberg Road, Yarra Bend Road and the park.
 - 4 storey building height at the park interface with all upper levels setback with a 45 degree angle.



162. The proposed DDO18 does not directly translate the findings of the BFF into the building heights for Precinct 1.
163. The reason for this is that Precinct 1 was subject to additional testing in the permit application review of (discussed below) [*Porta Investments Pty Ltd v Yarra CC \[2022\] VCAT 336*](#). In *Porta*, the Tribunal recognised that the site has the potential to significantly influence the built form outcomes in the area and highlighted the need for the proposed planning provisions to be clearer, more focussed in what they are seeking and arguably stronger. In *Porta*, the Applicant sought to exceed the preferred maximum heights in the DDO18 by approximately 10m which illustrates that permit applications seek additional height to what the planning controls indicate.
164. Council submits that the preferred position of a lower discretionary height in the proposed DDO18 for the Porta Site in particular is appropriate.
165. Notwithstanding the lower heights, Council submits that the proposed permanent DDO18 still achieves the design specific strategy and objectives identified in the BFF. Council also submits that the 3m reduction in height when compared to the BFF is not a significant reduction in the overall height.
166. Council has retained the discretionary nature of the control and sought to ensure that where proposals seek to exceed the maximum height, they are able to demonstrate that no additional offsite impacts such as overshadowing, will occur across the areas of public open space to the immediate south and perceived visual bulk from the open space area to both the south and west across Yarra Bend Road.
167. In *Porta*, the Tribunal observed that the interim DDO18 did not prescribe any specific criteria for proposals that seek to exceed the preferred maximum height. In response to this Council considers it appropriate that criteria for height exceedances are included in the proposed permanent DDO18.
168. Council submits that such an approach is consistent with other DDOs.
169. It recognises the sensitive interface of the Porta Site to the parklands and the need to reduce and alleviate visual bulk amenity impacts. A lower discretionary height is therefore appropriate.
170. Mr Hemingway recognises that:

130	Across the Porta site, the preferred maximum building height would be 24 metres (7 storeys), which is one storey less than that recommended in the BFF. In the BFF however only options for 8, 10 and 12 storeys were depicted (that is, not 7 storeys).
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- Precinct 2*

174. Precinct 2 comprises a series of finer grain lots zoned Commercial 2 Zone interspersed with some large format showrooms and residential side streets with mature street trees and significant setbacks.
175. The BFF identifies the design strategy for the Precinct 2 as follows:

Creation of a mid-rise, commercial precinct that frames Heidelberg Road with active uses and additional greening opportunities¹⁴

176. The design objectives for Precinct 2 are:

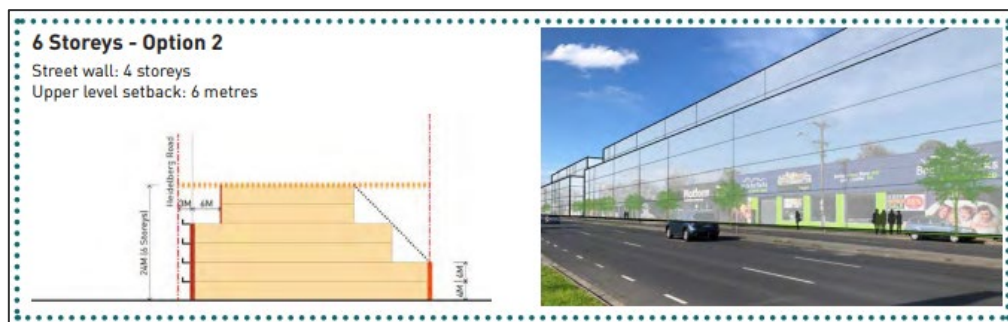
Improve the pedestrian experience on Heidelberg Road through a 3 metre front setback - Location 1.

Improve the character of Heidelberg Road by creating a comfortable sense of enclosure and definition to the street - Location 2.

Ensure development does not visually dominate or unreasonably overshadow private open space in adjacent residential areas - Location 3.

Minimise the impact of vehicular crossovers to Heidelberg Road and Yarra Bend Road - Location 4.¹⁵

177. As a result of the built form testing, the BFF identifies a preferred development outcome of 6 storeys with a 4 storey street wall and an upper level setback of 6m:



Source: BFF at page 36

178. The key recommendation of the BFF was:

Key recommendation

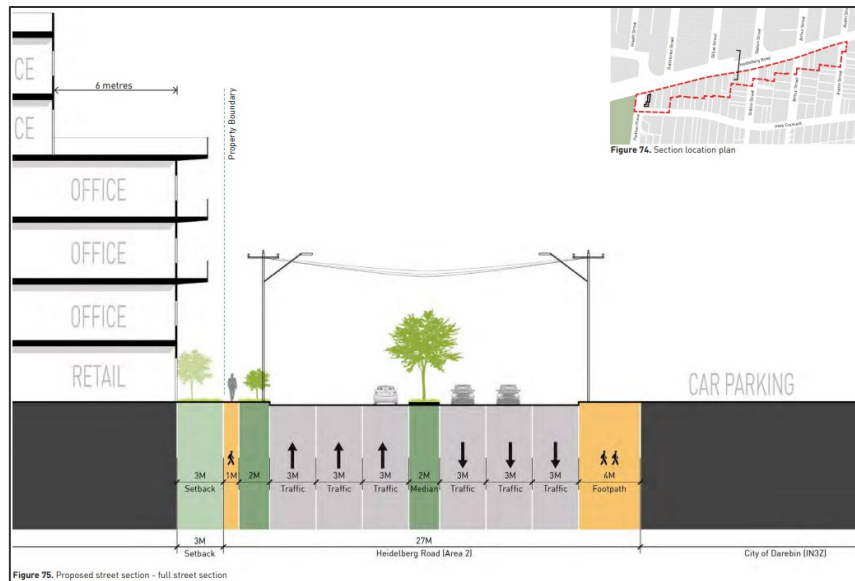
Introduce a 6-storey building height control in Precinct 2 with a 4-storey street wall height and upper 2 levels to be setback 6 metres.

179. The relationship between precinct 2 and Heidelberg Road in this location calls for a more considered response than what is found at Precinct 1, in terms of the overall heights. In this location, Precinct 2 has a carriageway width of 27m which increases the potential for taller built form to visually dominate the public realm and enclose the streetscape.

¹⁴ At page 35.

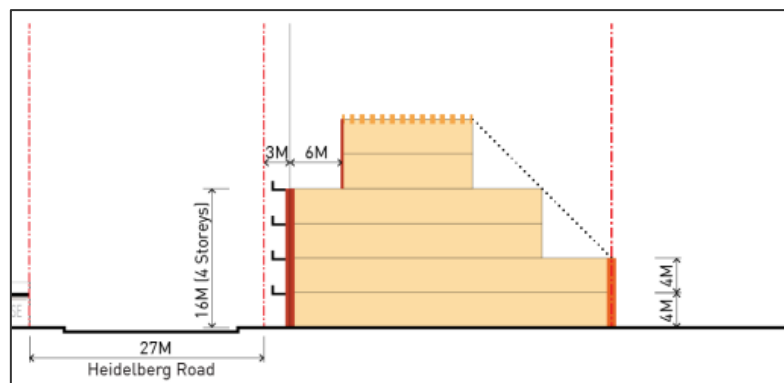
¹⁵ At page 35.

180. The BFF identified that additional height could be achieved in this location, so long as it is paired with an appropriate setback control. It recommended a 3m ground floor setback (which has been translated into the DDO18 through the 3m landscape setback) and a 6m upper level setback to pull back the upper levels from Heidelberg Road, reducing the visual bulk and ameliorating shadow impacts at ground level to the public realm.
181. The cross section below shows the result of these controls:



Source: BFF at page 38

182. In conjunction with the preferred height, the BFF also considered the application of building envelope controls to reduce the impacts of building height at the rear interfaces to the residential buildings to the south.
183. The effect of the building envelope is that the preferred maximum heights could be achieved but that the upper levels would need to be set back from the southern boundary to make sure they fit within the 45 degree sight line:



184. The massing diagrams demonstrate that the built form envelopes on these sites will reduce at the upper levels as the development is pulled in from the sensitive interfaces, however this will not unnecessarily constrain new development. It ensures that heights of 6 storeys are achievable, and it will result in buildings that are appropriately setback so that access to daylight and a transition from the low rise residential area to the south can be achieved:



185. The testing above demonstrates that heights of 5 or 6 storeys are achievable on the selected testing sites whilst complying with the rear interface, street wall and setback requirements.
186. The proposed permanent DDO18 incorporates a preferred maximum height of 16m – 20m or between 4 and storeys for Precinct 2. This is a minor departure from the recommended heights in the BFF.
187. As outlined above, the lots in Precinct 2 are characterised by a fine grain subdivision pattern, as is the residential area to the south of this precinct. It is also intersected by a number of side streets which are residential and low-scale in character. In this context Council considered it appropriate for the DDO18 to incorporate a lower, but still discretionary, height than that recommended in the BFF.
188. Council reiterates that the adoption of a discretionary height control, as opposed to a mandatory height control in this location ensures that flexibility in terms of height is retained for future built form outcomes. The heights which Council has incorporated into the proposed DDO18 are consistent with the design objective in the BFF to create a low to mid-rise commercial precinct that does not visually dominate or unreasonably overshadow the private open spaces in adjacent residential areas.
189. Council submits that a lower discretionary height is an appropriate outcome.

Precinct 3A

190. DDO18 applies a mandatory height limit to Precinct 3A.
191. Precinct 3A comprises a single lot at 582 Heidelberg Road. This site is a prominent corner location with an interface to the recently redeveloped Alphington Paper Mills site.
192. Council has identified that this Precinct is an appropriate location for taller built form and provides an opportunity for a development that 'holds the corner' and provides an appropriate transition down into the HNAC from the Alphington Paper Mills site where there is a 17 storey approval opposite the Subject Land.¹⁶
193. Whilst it is clear that this site is well placed to accommodate a taller built form, it is also apparent that the site has a direct interface to low rise residential land to the west. The DDO18 which is proposed in this Amendment seeks to balance the interplay between these two interfaces by delivering a mandatory height control that transitions down towards the single storey existing character to the west across Coate Avenue.
194. The design strategy in the BFF is:

Provide a well-designed mid-rise, mixed-use building that marks the prominent corner location and respects the character of the neighbourhoods to the south and west. Incorporate a landscape setback to all boundaries to provide an attractive, garden setting to Coate Avenue and the southern boundary and to significantly improve the pedestrian experience to Heidelberg Road and Chandler Highway.¹⁷

195. The design objectives in the BFF are:

Improve the pedestrian experience on Heidelberg Road and Chandler Highway through a 3 metre front setback - Location 1

Ensure the development integrates with the existing character of Coate Avenue through inclusion of a 4.5 metre setback and 3 storey street wall height - Location 2

Respond to the prominent intersection with a taller form located at the corner that transitions in height down towards the west and south - Location 3

Ensure development does not visually dominate or unreasonably overshadow private open space in adjacent residential areas - Location 4

Locate vehicular crossover from Coate Avenue - Location 5

¹⁶ See *CP Alphington Development Pty Ltd v Yarra CC* [2018] VCAT 1725.

¹⁷ At page 47.

196. The built form testing in the BFF confirmed that an overall height in the order of 8 storeys that steps down to 5 and then 3 storeys at the Coate Avenue interface would achieve these objectives. It would provide the balance between delivering a key building on a corner site that accommodates the intensification sought in activity centre locations whilst managing the potential negative impacts of visual bulk and overshadowing to the low rise residential area.
197. In *the Churches of Christ Vic/Tas v Yarra CC* [2019] VCAT 842 (**The Churches**), the Tribunal considered an application for a 13 storey mixed use building on the land in Precinct 3A. In that decision, the Tribunal identified that the review site was a relatively large parcel with wide frontage to three roads thus providing a strategic opportunity to achieve the policy objectives supporting urban consolidation.¹⁸
198. However, the Tribunal did not agree that the future development on Precinct 3A should be treated as a 'landmark' building. The Tribunal considered the approval in *CP Alphington Pty Ltd v Yarra CC* [2018] VCAT 1725 at 17 storeys within the Alphington Paper Mill Site should be treated as achieving this objective. The Tribunal said:

23 However, we have not been persuaded that the future development of the review site should form part of the landmark built form specifically sought for the north-western corner of the former Amcor Paper Mill site. The Alphington Paper Mill Development Plan is clear that the intent of the landmark is to provide a more prominent visual form on that site, to assist with wayfinding and orientation to the former Amcor Paper Mill site. We do not consider that these objectives from the Alphington Paper Mill Development Plan are achieved by the construction of another very tall building on the review site adding to the landmark

199. The Tribunal also took specific note of the residential interfaces which necessarily called for a more considered outcome:

[25] **Setting aside the Alphington Paper Mill Development Plan, there are also other very good reasons why a development on the review site should not necessarily reflect the height of the landmark building.** That includes the comparative size of the two sites, and the ability within the former Amcor Paper Mill site to manage their own interfaces and the ability to step down the built form over a large area, as proposed southwards from Heidelberg Road along the Chandler Highway. The presence of an interface between the review site and land within the Neighbourhood Residential Zone, an interface which is absent from the adjacent part of the former Amcor Paper Mill site, is another relevant factor which we explore in more detail below.

¹⁸ See [8].

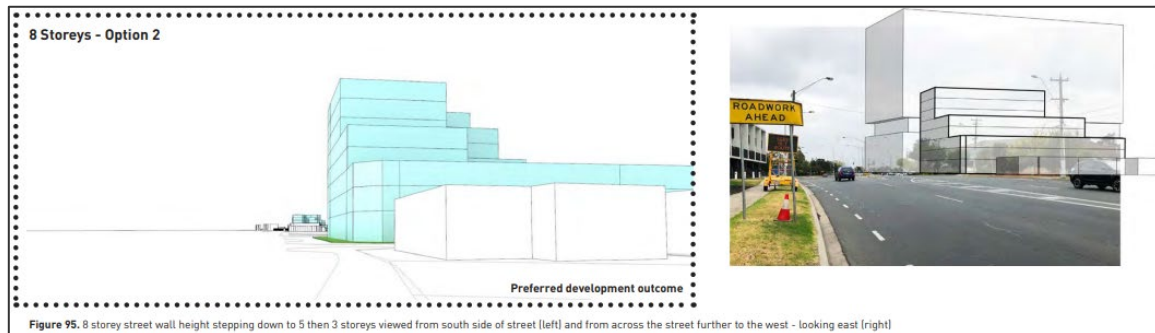
$$[\dots]$$

200. The BFF shows the relationship between the proposed height for Precinct 3A in that decision, compared to the expert evidence of Ms Hodyl on behalf of Council. It is clear from these extracts that the lower built form will provide a transitioning across the site toward Coate Avenue, whilst still framing the intersection between Chandler Highway and Heidelberg Road:

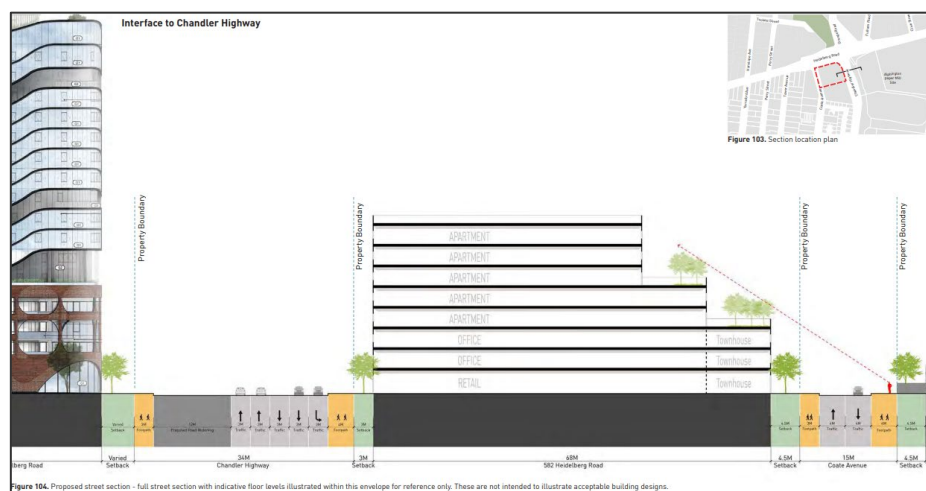


Source: Figure 92 (Alternate proposal supported by Applicant) and Figure 93 (alternate proposed height of Ms Hodyl)

201. The preferred outcome in the BFF for this site is an 8 storey street wall that steps down to 5 storeys and then 3 storeys across to Coate Avenue:



Source: BFF at page 49



Source: BFF at page 52

202. The key recommendation for Precinct 3A was:

Key recommendation

Introduce a discretionary 8 storey height control, requiring the building to step down to 3 storeys at Coate Avenue and to 2 storeys on the southern boundary.

Upper levels to be set back at a 45 degree angle from the southern boundary.

Upper levels to be set back 10 metres above the 3rd floor on Coate Avenue, with an additional setback of 10 metres about the 5th floor.

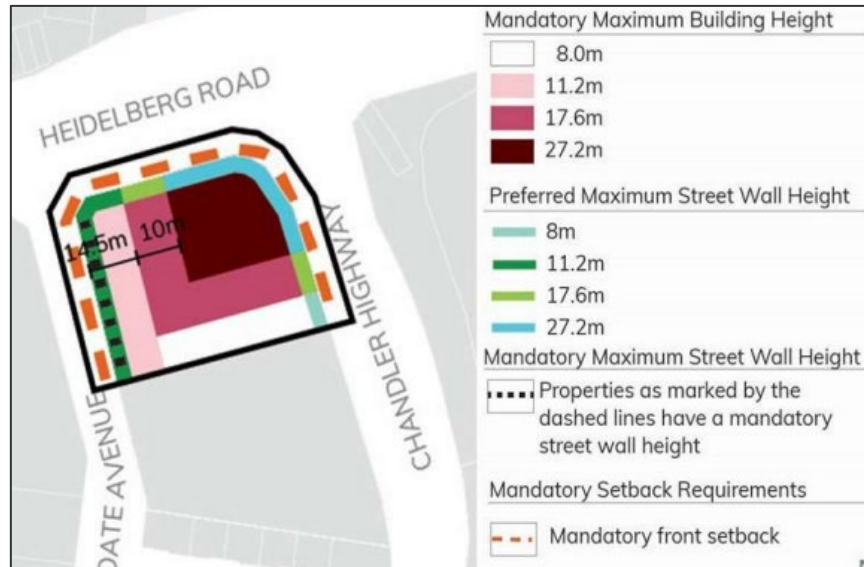
203. In preparing the proposed permanent building height, Council as identified a need to ensure that future development strikes the balance between providing an appropriate response to

204. In Council's submission, as was the case in *The Churches* decision, it is not appropriate for this site to borrow from the height approved on the Alphington Paper Mill Site. Unlike the Alphington Paper Mill Site, this property is not identified as a 'high change area' in the Strategic Housing Framework Plan.

205. The BFF recommended discretionary height, streetwall and upper level setbacks with a mandatory front setback to all streets as follows:



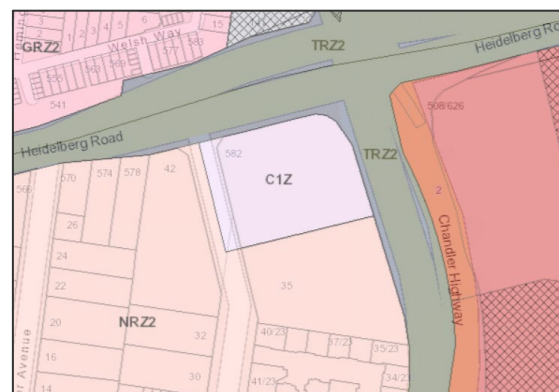
¹⁹ See para 64.



208. In addition to Council's submissions above, it is Council's position that mandatory building heights are necessary in Precinct 3A to achieve the precinct objective:

A new contemporary mid-rise development in Precinct 3A that addresses the prominent corner location, without competing with the adjacent high-rise development on the east side of Chandler Highway, and which provides perimeter landscape setbacks as well as street wall and building heights that transition down in scale to the adjacent low rise forms in Coate Avenue.

209. Precinct 3A comprises a singular large property at 582 Heidelberg Road which is bound by Chandler Highway, Heidelberg Road and Coate Avenue. It has an immediate interface to residential properties to the south.
210. Precinct 3A is bound by Chandler Highway to the east and Coate Avenue to the west. Most importantly, the land surrounding Precinct 3A is characterised by residential uses and is governed by the Neighbourhood Residential Zone Schedule 2 (**NRZ2**):



Source: VicPlan

211. The surrounding NRZ2 land was an important factor in determining an appropriate height in this location *and* determining whether the height that is specified should be applied on a mandatory basis. The NRZ2 land can be characterised as nothing other than a low scale residential area. The NRZ2 prescribes a mandatory 2 storey (or 9m/9.5m if on a sloped site) height limit. Clause 16.01-2L generally identifies land which is in the NRZ as minimal or incremental change areas.
212. This is a location that necessitates certainty.
213. In this context, when compared to other precincts, Council submits that a mandatory height control is absolutely necessary to respond to the existing low rise character of land to the west, south and north (observing that land to the north is in the General Residential Zone Schedule 2, where taller built form may be permitted, but which at this point in time is overwhelmingly characterised by single and double storey residential buildings).
214. The gradual fall in the proposed mandatory heights on Precinct 3A will ensure that new development provides a transition from the Alphington Paper Mills Site down to the low rise residential context to the west along Heidelberg Road, where it has been identified that a building of 17 storeys was appropriate on the corner of Chandler Highway and Heidelberg Road to provide a landmark building.
215. Importantly, Council has not imposed mandatory requirements on this site for all of the built form controls. The DDO18 still retains a significant degree of flexibility for Precinct 3A through the discretionary street wall and upper level setbacks.
216. With respect to Ms Hodyl and Mr Glossop's specific recommendation about the use of a mandatory height control for Precinct 3A, Council submits that the use of a mandatory height in this location is necessary to deliver a built form outcome commensurate with the site's location in the HNAC.
217. *Precinct 3B – 700-718 Heidelberg Road* Precinct 3B comprises a mix of lot sizes ranging from some fine grain lots to larger sites capable of increased capacity. It is characterised by some existing and potential heritage buildings with fine grain shopfronts contributing to a pedestrian-friendly environment.
218. The design strategy for Precinct 3B is:

Develop a new mid-rise character for the existing neighbourhood centre which complements the scale and facilities in the former Alphington Paper Mills site.

Enhance the setting of heritage buildings and the fine-grain development patterns through a low-street wall height.²⁰

²⁰ At page 58.

- Minimise the impact of vehicular crossovers - Location 5.
- ²¹

220. An important consideration in determining the appropriate heights that can be achieved in Precinct 3B was the presence of existing and potential heritage buildings and the sensitive interface at the rear with residential land.
221. The BFF recommended that the height, street wall and upper level setback be discretionary but the front setback and rear interface control which specified a maximum rear interface height and ground/upper level setbacks should be mandatory.
222. Council has received a submission from the owner of the land at 700-718 Heidelberg Road, Alphington (**700-718 HR**). In summary, this submission states that the proposed height should be consistent with the 8 storey development approval for that site. The submitter is concerned that lower height limits on this site are inconsistent with the mid to higher-rise commercial conditions along Heidelberg Road.
223. The BFF specifically considered the appropriate development scale on 700-718 HR. The preferred development outcome was a 7 storey building with a 4 storey street wall and 6m upper level setback;



²¹ At page 58.

224. The proposed permanent DDO18 applies a discretionary height of 17.6m (5 storeys) to 700-718 HR. Council accepts that this is lower than the BFF's recommended height in this location. However, Council is of the view that the sensitive interface to the rear necessitates a more considered approach in terms of building height.
225. In *Aleks Nominees Pty Ltd v Yarra CC* [2018] VCAT 1315, the Tribunal considered an application to develop the site with an eight storey mixed use building with a maximum height of 26.2m to the roof. An important factor in this decision was that it is necessary for development on this site to respond to the residential interfaces.
226. At the hearing, Council advocated for the deletion of 3 storeys which would result in a proposal of 5 storeys. The Tribunal concluded that at 8 storeys, the design of the building would visually dominate when viewed from the side streets and south at an unacceptable level.
227. Most recently, in [*LX Nominees Pty Ltd v Yarra CC* \[2021\] VCAT 69](#), the Tribunal considered an application to construct an eight storey mixed use building with a height of 26.97m on 700-718 Heidelberg Road. In that decision, as a result of a more resolved proposal, the Tribunal found that a building of 8 storeys was appropriate for this site.
228. Importantly, and as noted above the DDO18 prescribes a discretionary height in this location. It is clear from the more recent Tribunal decision that an acceptable planning outcome can be achieved at a greater height, provided the proposal is well resolved and sufficiently responds to the individual characteristics of the site.
229. Council submits that a discretionary height of 5 storeys is appropriate as it will still provide an opportunity for flexibility that was considered appropriate in LX Nominees.
230. The BFF also considered the land between Park Avenue and Yarralea Street and Yarralea Street and Como Street and found that heights of 6 storeys was appropriate in the context of heritage buildings present in this location.
231. The proposed permanent DDO18 applies a discretionary height of 17.6m (5 storeys) to that part of Precinct 3B. Council accepts that this lower than the BFF's recommended height in this location. However, as identified above in relation to other parts of the Amendment Land, Council is of the view that the sensitive interface to the rear necessitates a more considered approach in terms of building height.

232. Council relies on the evidence of Mr Hemingway who states:

143 **The preferred maximum (mandatory) street wall heights would appropriately be 8 metres (2 storeys) so that the existing and proposed heritage overlays in this block would not be overwhelmed.**

144 The preferred maximum building height would be generally 17.6 metres (5 storeys) except at the east end near Como Street, providing a sympathetic outcome from a heritage perspective. The opportunity for a recessed 6th storey (at 45 degrees) was however allowed for in the BFF for the central block. Six storeys were recommended for the eastern block (between Como Street and Yarralea Street) and 7 storeys for the smaller western block (between Park Avenue and Parkview Road).

233. The proposed permanent DDO18 applies a discretionary height of 17.6m (5 storeys) to that part of Precinct 3B. Council accepts that this lower than the BFF's recommended height in this location. However, Council is of the view that the sensitive interface to the rear necessitates a more considered approach in terms of building height.

234. The building heights in the DDO18 seek to create a mid-rise character for the existing HNAC which complements the scale and facilities of new development in the Alphington Paper Mill site. Careful consideration has been given to maintaining the prominence and visibility of heritage places and providing a legible transition to the residential areas located to the south, protecting these properties from an unreasonable loss of amenity.

235. The DDO18 proposes to apply a discretionary height limit to the land at 750-754 Heidelberg Road, Alphington.²² Submitter no. 32 objected to the imposition of a preferred height to this site.

236. Council relies on the evidence of Mr Hemingway who states:

160 The modelling for the section of Precinct 3B between Park Avenue and Yarralea Street in the BFF depicts the impacts of various scenarios (differing setbacks and building height) with Option 4 being the recommended development outcome. **It would consist of a 1-2 storey street, upper-level setback of 6 metres, and 5 storey building height, and a recessed (largely concealed) 6th storey at 45 degrees.**

161 **This option would balance the various considerations – both heritage and non-heritage – and represents the tipping point**

²² This site abuts HO71 on its eastern side.

between a responsive and less responsive/overwhelming

outcome. A 3-metre setback would be overwhelming on any of the heritage sites. Similarly, 4 upper storeys rather than 3 upper levels with a potential recessed 6th level would not sympathetically respond to the significant existing local scale building fabric.

- 162 It is noted that the preferred maximum street wall height does not preclude the possibility of a recessed 6th level as indicated in the BFF.

Conclusion on heights

237. The position of Council's witnesses is:

237.1 Mr Hemingway considers the proposed building heights for Precinct 1 and Precinct 3B as shown in the Adopted DDO18 are an appropriate response that would improve the clarity of the design requirements;

237.2 Ms Hodyl also considers the proposed overall heights are generally consistent with the BFF and are appropriate to meet the desired urban design outcomes and overshadowing provisions are appropriate to address the key concerns that might otherwise transpire with respect to shadow impacts to the public realm, parklands and private open spaces. Ms Hodyl does consider some of the heights that have been lowered through their translation into the DDO18 should be increased commensurate with the BFF.

237.3 Mr Glossop is generally supportive of the use of a mix of mandatory and discretionary height controls but has raised questions about the justification for mandatory controls in Precinct 3A and the justification for reducing the heights that are translated into the DDO18 when compared with the BFF.

238. As outlined above, with respect to each of these recommendations in so far as they challenge the use mandatory controls, Council does not propose to make any changes to the DDO18 in response to these recommendations.

239. Taking into consideration the matrix of submissions that were received, some advocating for taller built form and some advocating for a lowering of the heights, Council says:

239.1 the heights proposed as sufficient to retain the heritage integrity of those parts of the HNAC which are covered by the Heritage Overlay;

239.2 the heights will retain the integrity and consistency of the low-scale street wall along Heidelberg Road;

239.3 lower heights are not necessary for amenity impact reasons to the public realm;
and

239.4 reducing the heights would only serve to unreasonably limit development opportunities within the HNAC.

240. The preferred building heights are consistent with State and local policy for taller built form and intensification of land use to be concentrated in activity centre locations. These building heights have been the subject of built form testing which confirms that these heights are appropriate.

Building setbacks

Post exhibition changes to 'landscape setbacks' for Precinct 2 and Precinct 3B

241. This part of Council's submission responds to Direction 11(e).

242. As exhibited, the DDO18²³ required:

Development must provide minimum ground floor setbacks to the rear boundary as follows:

- Precinct 1: a minimum of 3 metres (as shown on Map 1);
- Precinct 3A: a minimum of 4.5 metres;
- All other areas: a minimum of 3 metres if the dwelling on the adjacent residential property is located less than 15 metres from the property boundary.

243. In response to exhibition, submitters 5, 34, 54 and 117 raised concerns regarding the rear interface controls. In particular, some submitters were not supportive of the 45 degree setback envelope applied to the rear of properties, finding instead that this control should only be applied to residential interfaces.

244. In response to these submissions, Council proposed to increase the landscape setback from 3m to 5m where development interfaces with the rear boundary of an adjacent residential lot. This rear interface applies to all rear interfaces, regardless of the distance between the adjacent house and the boundary.

245. Council adopted the following changes to the ground floor setbacks for Precinct 2 and Precinct 3B in the Adopted DDO18:

²³ Council observes that this requirement is the same as is included in the interim DDO18.

Development must provide minimum landscape-ground-floor setbacks to the rear boundary as follows:

- Precinct 1: a minimum of 3 metres (as shown on Map 1);
- Precinct 3A: a minimum of 4.5 metres;
- Precinct 2 and Precinct 3B: All other areas: a minimum of 3 metres if the dwelling on the adjacent residential property is located less than 15 metres from the property boundary.
 - 5 metres where a development site directly abuts a rear boundary of an adjacent residential lot.
 - 3 metres where a development site directly abuts a side boundary of an adjacent residential lot.

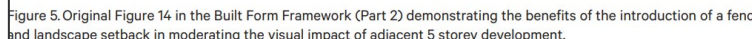
246. Council submits that these increased setbacks provide an opportunity for adequate landscaping between the rear of new development and residential boundaries to the rear. This is an appropriate outcome. It will also assist development to achieve the treed landscape character of the area, which in turn alleviates the impacts of visual bulk and building mass.
247. The effect of the change in the Adopted DDO18 is that 4 properties in Precinct 2 and 3B may not be able to achieve the maximum preferred height in the DDO18. Despite this, Council is confident that the changes to the landscape setback are an improvement on the exhibited DDO18 and relies on the evidence of Ms Hodv| who states:

[40] ...I consider that these changes are generally an improvement on the original rear setback profile approach as they:

- Result in a landscaped buffer between the rear of development on Heidelberg Road and existing residences. The landscape buffer of 5 metres provides sufficient space for significant canopy trees which would be difficult to achieve within the 3m buffer.
- Result in more opportunities for urban greening contributing to treed urban 'leafy' character. Remove the reference to the 15 metre distance from adjacent houses which on reflection was creating an overcomplicated method of managing potential impacts on amenity.

[41] The proposed changes would have a marginal impact on the amount of yield that could be delivered on each site due to the increased setback from 3 to 5 metres for the bottom two floors, and the fact that the 45 degree angle which applies to the upper level setbacks above the bottom two floors, would also be shifted 2 metres further into the site. It does not result, however, in any additional impact on the potential for sites to reach the preferred maximum height limit. 42 All sites that could previously reach the preferred height limits exhibited in the Amendment can still do so.

248. The positive effect of the changes are demonstrated in the figures below. The Committee will observe that by pulling the upper built form away from the residential interface, not only are the visual amenity effects of the upper levels ameliorated, so too are the effects at ground level of the street wall at that interface. The 'landscape' setback provides a meaningful opportunity to soften the presentation of the building to the south.



249. Direction 11(e)(i) asks Council to address what is meant by ‘tailored setbacks’ with an explanation about how these differ from the approach proposed in Precinct 2 and Precinct 3B.

250. In Precinct 1 and Precinct 3A, the BFF identifies that the building envelope controls have been prepared in response to very site specific characteristics.

251. In relation to Precinct 1, the BFF states:

page 61

252. In the context of Precinct 1, and in particular the Porta Site, Council agreed with the findings of the BFF that the existing heritage building warranted a street wall condition which specifically seeks to respect the existing qualities of the Porta Site.
253. In the context of Precinct 3A, the DDO18 similarly seeks to deliver a more specific built form response through the application of more detailed street wall and setback controls.
254. Council's approach to a more tailored setback control for Precinct 1 and Precinct 3A is consistent with the findings and recommendations of the BFF. Council submits this is necessary on these precincts to deliver an appropriate built form outcome that has regard to the unique physical characteristics of those sites.
255. As can be seen from reviewing the proposed DDO18, the character of Precinct 2 and 3B is more of a 'high street' where it is desirable to have a relatively uniform street wall and setback condition applied. Along the Heidelberg Road in Precinct 2 and 3B, the DDO18 tries to deliver a uniform response that retains the predominance of the street wall, resulting in a uniform streetscape response at this interface.

256. The Amendment proposes a mix of mandatory and discretionary upper level setbacks.

257. A **mandatory** setback control is applied in:

257.1 Precinct 3A above Coate Avenue of **10m** with an additional **10m** setback above the secondary step;

257.2 Precinct 3B above Heidelberg Road, Yarra Bend Road, Park Crescent, Chandler Highway and Coate Avenue between Parkview Road and Yarralea Street of **6m**.

258. A **discretionary 6m** setback control is applied in:

258.1 Precinct 1 and Precinct 2;

258.2 Precinct 3A from Heidelberg Road and Chandler Highway; and

258.3 Precinct 3B from Heidelberg Road between Yarralea Street and Como Street.

[9076902:45681607 1]

259. A number of submissions raised concerns about the use of a 6m upper level setback, in particular its use towards Heidelberg Road, submitting it was excessive and would limit future development.
260. Dealing first with the 6m upper level setback, Council submits this is necessary in both its discretionary and mandatory forms to deliver an appropriate heritage *and* urban design response. The use of a 6m upper level setback as a means of delivering on both heritage and urban design outcomes was recognised by the Panel in Amendment C220yara, where the Panel said:

In urban design terms, the 6 metre setback will retain the ‘human scale’ of Johnston Street, secure the distinction between the street wall and upper levels and will reduce the potential for overshadowing and adverse wind conditions. The Panel agrees that in this context a 3 metre setback is unlikely to create a distinct enough street wall. In urban design terms, whether the setback should be a minimum of 5 metres (Sheppard) or 6 metres (Parsons) is a somewhat arbitrary choice. This doesn’t mean a choice should not be made. Some arbitrary choices are important, for example which side of the road to drive on. On balance the Panel prefers a 6 metre setback because:

- this will better protect heritage buildings
- a 6 metre setback fits better with the 45 degree upper level set back requirement:
 - a 5 metre set back would potentially give only 5 metres to fit two additional floors within the 45 degree envelope leading to a greater setback at the mid level and hence breaking a consistent mid level street wall.

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

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

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

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

The Panel concludes:

- the mid level set backs are appropriate
- the mandatory mid level setback controls are necessary.²⁵

261. The imposition of a mandatory, and in some places discretionary 6m upper level setback will ensure the sense of openness currently experienced in the Heidelberg Road corridor is retained. It is Council's position that the 6m upper level setback balances the street wall height and will deliver well proportioned buildings with recessed upper levels providing clear differentiation between the lower and upper levels.

262. In relation to the mandatory 6m upper level setback for Precinct 3B, Council submits that this part of the HNAC is characterised by existing fine grain shopfronts which provide a pedestrian-friendly environment. The smaller frontages, narrow footpath and verandahs in this precinct contribute to a greater sense of enclosure.

263. The BFF outlines the design strategy for Precinct 3B as follows:

Develop a new mid-rise character for the existing neighbourhood centre which complements the scale and facilities in the former Alphington Paper Mills site.
Enhance the setting of heritage buildings and the fine-grain development patterns through a low-street wall height.

264. Design objectives include to 'improve the quality of Heidelberg Road by creating a comfortable sense of enclosure and definition to the street'.

265. The preferred development outcome for Precinct 3B in the BFF incorporates an upper level setback of 6m for each sub-precinct:

²⁵ At page 67.

Introduce a 6-storey building height control with a 4 storey street wall and 6 metre setback.

- 119 Upper-level setbacks in the heritage zones are to be broadly 6 metres, though 'must be' in Precinct 3B between Parkview Road and Yarralea Street and 'should be' in Precinct 1. The smaller, most sensitive heritage sites located in the section in Precinct 3B between Park Avenue and Yarralea Street so that a mandatory setback is appropriate there whereas at the larger Porta site in Precinct 1 there is less need to be as prescriptive.

272. In relation to the mandatory 10m upper level setback for Precinct 3A, the BFF recommended a discretionary upper level setback of 10m above the 3rd floor on Coate Avenue with an additional 10m setback above the 5th floor.²⁷

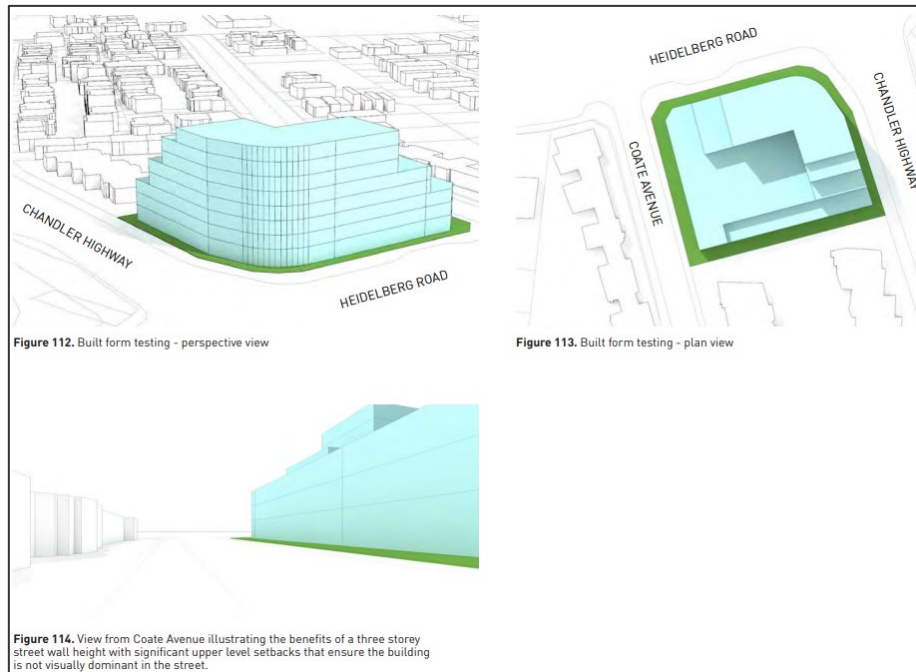
273. The built form testing in the BFF demonstrates the benefits of a 10m setback below. It shows how increased development yield can still be achieved whilst creating separation from the residential interface across Coate Avenue and to the south.

274. The increased upper level setback in this location successfully tempers the visual impact of the upper levels creating clear demarcation between the street wall and tower form that sits above it.



Source: Figure 104 of the BFF

²⁷ At page 51.



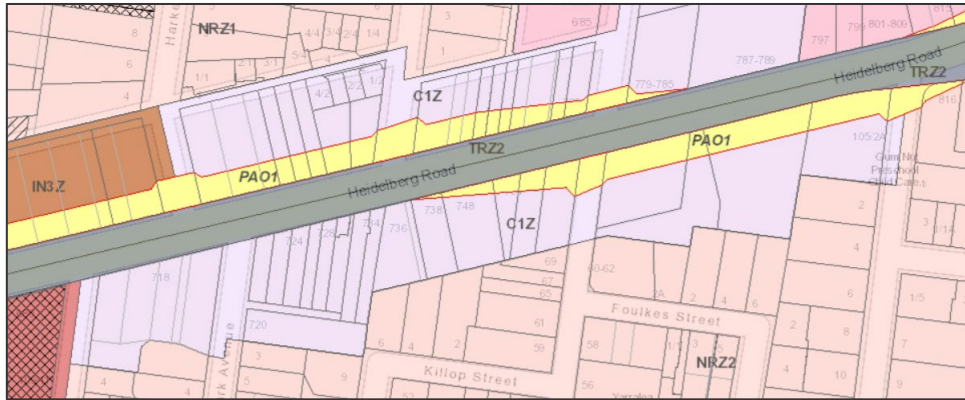
Source: Page 55 of the BFF part 2

275. Council has received a number of submissions which express concerns about the impacts of new development in Precinct 3A on the adjoining residential areas.
276. Council considers an appropriate upper level setback is crucial to ensure there is clear definition between the lower and podium levels, but also to reduce visual bulk and retain a pedestrian scale street edge.
277. In order to achieve these outcomes, and to mitigate the negative impacts of new development in Precinct 3A, Council has included a 10m mandatory setback to Coate Avenue. Council submits this is a necessary setback to achieve a sensitive interface to the residential environs. Council notes that this mandatory 10m setback has been consistent through the interim DDO18, Exhibited DDO18 and Adopted DDO18.
278. Council relies on its earlier submissions in relation to the use of mandatory controls with respect to the justification for this mandatory control.
279. In *The Churches* decision, Council strongly advocated for a sensitive treatment to development at this interface. The imposition of a 10m setback control in this location builds on the outcome of that decision and Council's position in that proceeding. The concentration of building height on this site towards the Alphington Paper Mill Site through a 10m setback from the western boundary will compliment the preferred height control and will result in a considered development outcome.
280. The application of this mandatory control is the minimum acceptable position for Council.

Implications of the Public Acquisition Overlay on setbacks in Precinct 3B

281. This part of Council's submission responds to Direction 11(h).

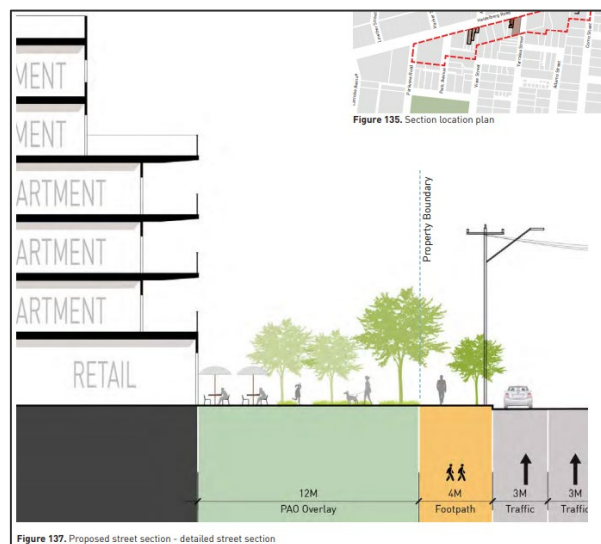
282. Precinct 3B is partly affected by an existing Public Acquisition Overlay (**PAO**):



Source: VicPlan

283. The PAO requires a building setback in the order of 12m (east of Yarralea Street) but narrows to the west of Yarralea Street.

284. As identified in the BFF, this provides an opportunity to create a landscape setback. The relationship between Heidelberg Road and future development on land covered by the PAO is shown in the cross sections in the BFF:



Source: BFF at page 64

285. The BFF tested the proposed built form controls on sites affected by the PAO to demonstrate the built form envelope that could be achieved on this sites, notwithstanding the greater

ground floor setback. As can be seen in the BFF, these sites are generally larger than those in other parts of the HNAC and Heidelberg Road Commercial Land. This means they have greater capacity to achieve taller built form all whilst complying with the setback at ground floor required by the PAO.

286. As identified by Mr Glossop:

A planning permit is required to demolish a building and to construct a building or carry out works in a PAO. The grant of a permit under the Overlay is at the discretion of the acquiring authority, in this case VicRoads (now the Department of Transport and Planning). Practically, the construction of new buildings is rarely permitted within a PAO. The presence of the PAO will necessarily influence the siting of new buildings in Precinct 3B in the future.²⁸

287. Mr Glossop queried whether the setback to Heidelberg Road of 3m in precinct 3B is inclusive of the PAO. In response, Council notes the setbacks which have been applied by the DDO18 are to be measured from the property boundary and are not measured on top of any setback required as a result of the PAO.

Relationship between overshadowing requirements and building heights

288. This part of Council's submission responds to Direction 11(d).

289. The BFF carefully considered the shadow impacts that could arise as a result of the proposed new built form controls. Council submits that the shadow controls proposed in the DDO18 are necessary to achieve an acceptable amenity outcome in the Amendment Land, both with respect to the public and private realm.

290. Overshadowing controls are often contested by landowners where they have been applied. The Amendment has sought to balance the controversy of overshadowing controls in its DDO18 by applying these on a discretionary basis. In an activity centre context, open space is often limited, and it is necessary therefore to protect the existing public spaces from the negative amenity impacts of a poor overshadowing outcome.

291. The importance of protecting the sunlight access on adjacent residential properties cannot be overstated. The BFF demonstrated that overshadowing requirements of Clauses 54 and 55 could be achieved on the adjacent residential properties where an 8m high wall was built on the boundary of a site.

292. Through this Amendment, Council has sought to implement shadowing controls in the DDO18 that reflect the importance of sunlight in private open spaces and secure an amenity

²⁸ At paragraph 58.

outcome in terms of daylight access on the ground along the Heidelberg Road corridor, which will in turn enhance the amenity outcome achieved in the public realm.

293. The overshadowing controls that have been proposed will reduce the negative impacts of reduced daylight access. Council urges the Committee to support the controls proposed in the DDO18 because:

293.1 public spaces with sufficient solar access are a finite and highly valued resource and once lost, are not easily able to be replaced once they are lost;

293.2 the amenity along Heidelberg Road should be protected. As the HNAC and Heidelberg Road Commercial Land evolves over time, the sunlight access at the ground level will be an important factor contributing to the walkability of the area, which in turn supports a mode shift to more sustainable transport modes;

293.3 the discretionary shadow controls have been set in the context of largely preferred building height and setback controls which will deliver flexible built form parameters;

293.4 the proposed timing of between 10am to 2pm reflects the busiest periods of the day when people are likely to be outside in the HNAC.

294. The recommendations of the BFF have generally been translated into the DDO18. Mr Glossop is supportive of the basis upon which the overshadowing controls have been prepared. Council relies on his expert evidence, in particular:

96 Proposed DDO18 introduces shadowing requirements for land in the adjoining residential zones and for the public realm. The inclusion of shadowing considerations alone will have an impact on built form and will provide a level of protection for residential land abutting the Amendment land. I support these requirements in general terms.

95 For dwellings in the adjacent residential zones, DDO18 states that the objective of Clause 55.04-5 'should' be achieved. The Framework includes detailed shadowing studies which tested the impact of an 8m wall on the residential / commercial interface²¹. It appears to find most adjacent dwellings would continue to achieve the standard of Clause 55.04-5 however, I am not necessarily convinced of this²². Nevertheless, given that the rear interface requirements have been altered since this testing was carried out, shadowing conditions will be reduced. It is perhaps simpler if new overshadowing impacts are managed in the future by reference to Clause 55.04-5, which is what is currently drafted in DDO18.

295. Council relies on the evidence of Ms Hodyl who observes:

Overshadowing impacts were carefully assessed for every adjacent residential property through the development of the Built Form Framework. **The built form testing illustrated that the overshadowing requirements of Clause 54 and 55 could be met on adjacent residential properties when an 8m high wall was built on the boundary. Upper level setbacks that align with a 45 degree envelope will largely retain this sunlight access (see Figure 3). This means that these properties will receive an amount of sunlight that is deemed acceptable in a suburban context.**

296. The proposed DDO18 introduces overshadowing requirements for the residentially zoned land and for the public realm, in particular along Heidelberg Road. DDO18 also seeks to avoid the increase of shadow across either Yarra Bend Park or TH Westfield Reserve above the existing conditions between 10am and 2pm on 22 September.

297. In particular, the Adopted DDO18 requires:

2.2.3 Building height requirements

A permit should only be granted to construct a building or construct or carry out works which exceeds the preferred maximum building height shown on Maps 1, 2 and 3B where, in addition to other requirements of this DDO, all the following requirements are met to the satisfaction of the responsible authority:

the built form outcome satisfies the Overshadowing and Daylight Access Requirements in Clause 2.2.5;

the proposal will achieve each of the following:

- greater building separation than the minimum requirements in this schedule; and
- **no additional overshadowing impacts on secluded private open space to residentially zoned properties or adjacent parkland or reserves, beyond that which would be generated by a proposal that complies with the preferred building height.**

2.2.5 Overshadowing requirements

Development should meet the objective of Clause 55.04-5 Overshadowing for adjoining land within a residential zone, including where separated by a laneway. Development should not overshadow:

- the opposite footpath of a side street, from property boundary to kerb between 10 am and 2 pm on 22nd September; and

- any opposite kerb outstands, seating and/or planting areas (as applicable), between 10am and 2pm on 22 September.

Development should not increase the amount of overshadowing to Yarra Bend Park, TH Westfield Reserve and surrounding open space, as caused by existing conditions, measured between 10am and 2pm on 22 September.

298. Council submits that overshadowing requirements are one of the most crucial and easy to quantify elements of creating places where people can thrive.
299. The premise behind the overshadow control is that it seeks to protect the status quo, whilst still allowing increased development opportunities. Council submits this is a just and fair approach where new development may cast shadow which is greater than that which currently exists.
300. The discretion built into this control through the use of 'should' as opposed to must, covers circumstances where it may be appropriate, by virtue of individual site characteristics or the like, for additional shadow to encroach on the 10-2pm shadow control. This achieves the appropriate balance of new development whilst protecting public amenity. It does not totally restrict development, rather it creates an appropriate balance for protecting the greater public amenity.
301. The measure of existing shadow is clear. It is the shadow cast from existing buildings and infrastructure. The practical effect of this control is that, with respect to existing shadows, development is able to reach the preferred heights, but in certain identified areas, will be required to provide greater upper level setbacks in order to do so.
302. The shadow requirements were tested in the BFF, and it was found that the preferred building heights are generally achievable. In circumstances where a proposal seeks to exceed the preferred height, the shadow control 'kicks in' and requires no additional overshadowing to occur in the secluded private open spaces or adjacent parkland and reserves, beyond that which would be generated by a proposal that complies with the preferred building height. It simply requires development to be setback at the upper levels in order to achieve the preferred building heights.
303. The southern location of residential properties means that some shadow is unavoidable. For example, the BFF showed that in winter an 8m and 12m building (2 or 3 storeys) at the boundary would have some impact on southern located properties.
304. The use of these types of controls are common place in planning schemes across Victoria.
305. In C293yara, the Standing Advisory Committee made the following relevant observations:

306. Other examples of similar controls in the Yarra Planning Scheme include DDO1, DDO15 and DDO26.

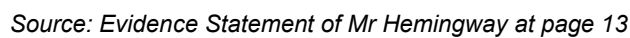
307. Council submits the DDO18 is consistent with the approach taken in the past and will result in an acceptable outcome. The implementation of a shadow control which acknowledges existing shadows, rather than outright prohibiting overshadowing, the Amendment will retain some flexibility.

308. This part of Council's submission responds to Direction 11(i) and (j).

310. As part of the Amendment, it is proposed to apply the heritage overlay to the land at:

- 310.1 730-734 Heidelberg Road, Alphington (HO451); and
- 310.2 760-764 Heidelberg Road, Alphington (HO455).

[9076902:45681607 1]



Source: Evidence Statement of Mr Hemingway at page 14

- 02.01-3 Yarra's major and neighbourhood activity centres are predominantly along and around the main retail shopping streets. They feature highly intact heritage streetscapes and heritage places which are valued by the community.

314. Heritage is an important feature of Yarra's identity which comprises historic buildings, landscape and streetscapes. Groups of heritage buildings are an important part of the character of Yarra's activity centres (see 02.01-6). In short, the MPS highlights the importance of heritage identity and heritage character across the municipality, in particular in activity centre and 'high street' locations.

315. One of the key objectives in the PPF is to protect and enhance the City's heritage places and ensure the conservation of places of heritage significance.³⁰
316. In applying the Heritage Overlay, it is important that it is applied accurately and that places of cultural and aesthetic value are properly represented in the Scheme and relevant material, such as incorporated documents and statements of significance. The protection of these places through the HO, ensures Council is delivering on its responsibility to protect heritage places and ensure new development integrates, respects and contributes to that heritage.
317. The HO also provides a greater level of certainty for owners, permit applicants and Council as the responsible authority in making decisions about appropriate built form outcomes for a particular site.
318. Observing that the DDO is not necessarily a 'heritage' tool, Council identified a need to apply the HO to the two additional properties to ensure an acceptable heritage response can be achieved in the future.
319. *Planning Practice Note 01 – Applying the Heritage Overlay (PPN1)* sets out the guidelines and criteria for the application of the Heritage Overlay. The criteria used for the assessment of the heritage value of a place are:

Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).

Criterion B: Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).

Criterion C: Potential to yield information that will contribute to understanding our cultural or natural history (research potential).

Criterion D: Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).

Criterion E: Importance in exhibiting particular aesthetic characteristics (aesthetic significance).

Criterion F: Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).

Criterion G: Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).

³⁰ Clause 15.03.1L.

Criterion H: Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

320. The Heritage Review identified 730-734 Heidelberg Road, Alphington and 760-764 Heidelberg Road, Alphington as having the strong potential to meet the threshold for local heritage significance.³¹

321. In relation to 730-734, the Heritage Review observes:

Existing Conditions

The group of three shops maintain intact parapets that are visible from Heidelberg Road. The single storey post office building at no. 730 has an original square pediment and capped brick piers, which have been painted. The original hipped roof to the rear of the parapet is visible from Heidelberg Road. Nos 732 and 734 have original plain parapets that have also been painted. A narrow walkway between no. 730 and no. 732 enables visibility of the east parapet return of no. 730 and the west parapet return of no. 732. The original red brick walls are also evident.

The shopfront of no. 730 is highly intact and retains the original shopfront and symmetrical configuration. This consists of the original recessed entry floor tiles with pressed metal ceiling above, dark green wall tiles and mouldings to the lower section, copper-finish shopfronts and toplight windows with textured/patterned glass.

Nos 732 and 734 retain original shopfronts bearing the name of the manufacturer (Duff) however these have been overpainted. A section of the original horizontal moulding to the west end of no. 732 also survives.³²

322. In relation to 760-764, The Heritage Review observes:

Existing Conditions

The former factory building is located adjacent to the former Butcher Shop (HO71), in the south-west corner of the intersection of Heidelberg Road and Yarralea Street. The original brick parapet of the former factory building has been painted and consists of capped brick piers and small sections of roughcast render. Sections of original soldier course detailing have been retained below the parapet edge. A remnant section of an early brick wall to the front of the site is visible from Yarralea Street.

³¹ See page 9.

³² At page 17.

The original eastern plane of the narrow, gable roof beyond is also visible from street level.

The Heidelberg Road façade retains the original chamfered entrance in the north-east corner, three original window openings and timber frames to the east and west window. An original moulding at the west end also survives.

The Yarralea Street façade retains original concrete lintels and door and window openings, although three windows at the south end have been truncated and glass bricks added. The timber windows and doors are either original or early additions.³³

323. Council submits that it is evidence from the Heritage Review that these buildings have been assessed as being of local historical and aesthetic significance. The application of the HO to these properties is necessary to protect the highly intact shopfronts which is indicative of the Interwar period.
324. The statements of significance titled *HO451: Post Office and the group of shops, 730-734 Heidelberg Road, Alphington* and *HO455: Cooper Kitting Factory (Former), 760-764 Heidelberg Road, Alphington* prepared by RBA Architects should be the relevant statement of significance incorporated into the Scheme for purposes of this Amendment.
325. Council relies on the recommendation of Mr Hemingway whose opinion is that the proposed HO451 and HO455 be applied, and the corresponding Statement of Significance be included as an incorporated document:

165 I recommend that the following two proposed heritage places be included in the Schedule to the Heritage Overlay in the Yarra Planning Scheme and the proposed Statements of Significance be included as incorporated documents:

- HO451 - Post Office and group of shops, 730-734 Heidelberg Road, Alphington
- HO455 – Copper Knitting Factory (former), 760-764 Heidelberg Road, Alphington.

Planning Permit for the Porta Site

326. This part of Council's submission responds to Direction 11(k).

³³ At page 19.

327. The Porta Site is located at 224-256 Heidelberg Road, Alphington, and is identified as Precinct 1 in the proposed DDO18. Under the proposed DDO18, the Porta Site would have a maximum height of 7 storeys (or 24m) (preferred).
328. The Porta Site is characterised by a significant heritage warehouse building and brick chimney which are covered by HO421. It is recognised as a key development site by this Amendment and the DDO18 seeks to create a mid-rise development outcome which frames Heidelberg Road, stepping down toward the more sensitive interface with the adjacent park. The DDO18.
329. In response to the Amendment, the Owner of the Porta Site opposed the application of mandatory setback and streetwall controls and submitted that the proposed maximum building height of 24m was insufficient in the context of the site's physical attributes and submitted that the 45 degree angle control should only apply to residential interfaces.
330. Council does not accept these submissions. In Council's view:
 - 330.1 a mandatory street wall and upper level setback control is necessary to retain the visual prominence of the heritage characteristics of the site;
 - 330.2 whilst there are additional criteria that must be met where a proposal seeks to exceed the preferred maximum building heights, the practical effect of these criteria are the design of the building can exceed the preferred height in circumstances where it is demonstrated that visual bulk and additional overshadowing to secluded private open space is minimised.
331. In [*Porta Investments Pty Ltd v Yarra CC \[2022\] VCAT 336*](#), the Tribunal considered an application to construct a mixed use development, comprising office and retail floorspace and 253 apartments within 4 separate buildings that ranged between 7 and 12 storeys in height.
332. At the time of that application, the interim DDO18 applied to the site, imposing a preferred maximum height of 24m for the Porta Site.
333. In that proceeding, Council had decided to refuse to grant a planning permit on grounds related to the scale and height of the proposed built form and its impact on the surrounding context, particularly the adjacent Yarra River Corridor and the impact on the heritage place located on the site.
334. The proposal as shown in the amended plans that were circulated for the hearing proposed a maximum building height of 33.7m (including services) which exceeded the preferred maximum height in the interim DDO18 by 9.7m.

335. In terms of the street wall that was proposed, the amended plans depicted a street wall of:

335.1 14.2m to Heidelberg Road (*which complied with the interim DDO18*);

335.2 24.5m to Yarra Bend Road (*which exceeded the interim DDO18 by 10.01m*);

335.3 12m to the corner of Heidelberg Road and Yarra Bend Road of 12m (*which was 8.8m lower than the interim DDO18*).

336. The Tribunal upheld Council's decision and decided to refuse to grant a planning permit. In reaching this decision, the Tribunal observed:

28 The site is covered by Schedule 18 to the Design and Development Overlay (DDO18), which is an interim DDO introduced as a result of Amendment C272 to the Yarra Planning Scheme, which was gazetted on 22 October 2021.

We are not persuaded by the evidence of Mr Biles that we should view this DDO18 as deficient or ill-informed, simply because it is an interim control that has not been through the usual planning scheme amendment process, including review by other parties and their experts.

Instead, we adopt the submissions of Mr Montebello that the provision must be given the weight that would be given to any other part of the planning scheme. In making this submission Mr Montebello partly relied on the following content from the Tribunal decision of *Oxdra Pty Ltd v Stonnington CC* [2012] VCAT 312:

[60] Design and Development Overlays are inherently quite prescriptive. Commonly, they articulate expectations in respect to the siting and form of buildings. They represent an additional layer of control on development, and are included to achieve a specific policy objective. In other words, they exist for a reason.

[61] Generally speaking, the built form requirements of the Overlay should not be departed from lightly. In our view, this applies equally to interim controls as it does to permanent controls. We can find no basis in DDO7 or in Clause 22.13 to support an argument that greater flexibility should be exercised in the assessment of applications under this interim DDO. While the interim control forms part of the Planning Scheme, it is for all intents and purposes the same as a permanent control and, we think, must be given the same weight. Of course, discretion is still able to be exercised in respect of the application of the nominated heights and setbacks, but the analysis that leads to any

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We find that the discretionary height limit of 24.0 metres, along with the Design objective that seeks a transition in building scale on the review site towards the adjacent parklands, encourages a more tempered built form interface to the Yarra River corridor. To this end, we find that the intent of DDO18 works hand in hand with the matrix of policy and provisions that apply to the Yarra River corridor, which seek to minimise the visual intrusion of development into the Yarra River corridor. Having regard to the heights of buildings proposed on the review site, the scale of the adjacent three and four storey buildings, and the open viewing locations from the parkland and Main Yarra Trail towards the review site, we find that the proposal comprises buildings of an inappropriate height, that fail to achieve the outcomes sought at DDO1, DDO18, and Clause 12.03-1R, as set out above. It is our finding that the proposed heights of Buildings D and E are an inappropriate response to the context of the review site, and the guidance from the Yarra Planning Scheme, and that both of these buildings should be significantly reduced in height.

340. Direction 11(g) requires Council to identify the changes proposed to the draft Amendment as endorsed on 12 December 2023, and any further changes proposed by Council.

341. Council has prepared a Day 1 DDO18 to be filed with this Part B submission which outlines the further changes and includes comments that reference the reason and source of those changes.

342. This completes Council's 'Part B' submission.

Maddocks
Per Maria Marshall
Maddocks, lawyers for the Planning Authority
11 October 2024