

**MELBOURNE PLANNING SCHEME  
AMENDMENT C96**

**PANEL REPORT**

**APRIL 2006**

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*Helen M. Weston*

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**Helen Weston, Chair**

*M. Read*

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**Michael Read, Member**

**APRIL 2006**

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# 1 SUMMARY

The Panel was appointed on 26 September 2005 to hear and consider submissions in relation to Amendment C96 of the Melbourne Planning Scheme. This amendment, as exhibited, proposes:

- to alter the existing Design and Development Overlay (DDO) controls and to introduce new DDO controls over specific parts of the Mixed Use Zone in West Melbourne, namely CBD Fringe areas, St James Old Cathedral area, Laurens Street area, and Munster Terrace area;
- to make minor changes to the adopted Municipal Strategic Statement (MSS) in relation to Council's vision for the areas within the Mixed Use Zone in West Melbourne;
- to remove the DDO controls from roads affected by Schedules 28, 29, 31 32 and 33 within West Melbourne;
- to align the proposed and existing DDO controls with property boundaries;
- to make corresponding changes to the adopted MSS; and
- to make corresponding changes to the Planning Scheme Maps 6DDOPT3 and 5DDOPT3.

A total of 6 submissions was received on the proposed amendment and raised a variety of issues either in support of or opposing the amendment.

In relation to the strategic context, the Panel has found that the proposed amendment is acceptable from a planning perspective and is consistent with the Strategic Assessment Guidelines. There is strategic justification for the proposed amendment through the current provisions of the Municipal Strategic Statement, and the planning scheme in general.

The Panel has found that the proposed Amendment C96 to the Melbourne Planning Scheme, as exhibited, should be adopted with modifications to the wording of the design outcomes in the Schedule to DDO33 but that DDO56 should not be supported and the existing DDO33 (as modified in response to the Panel's recommendations) should apply to this area. The Panel also considers that the height controls should not apply to public roads.

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## 2 WHAT IS PROPOSED?

### 2.1 THE SUBJECT SITE AND SURROUNDS

Amendment C96 relates to several parcels of land in West Melbourne within the City of Melbourne as follows:

- land bounded by Latrobe Street, King Street, Adderley Street, Dudley Street, Spencer Street and Batman Street ('the CBD Fringe Area');
- land bounded by King Street, Dudley Street, Spencer Street and Batman Street ('the St James Old Cathedral Area');
- land bounded by Miller Street, Victoria Street, Dryburgh Street and Anderson Street and the two southern most blocks bounded by Anderson Street, Laurens Street and Miller Street ('the Laurens Street Area'); and
- land bounded by Victoria Street, Munster Terrace, Queensberry Street, Laurens Street, Arden Street, Dryburgh Street and Stawell Street ('the Munster Terrace Area').

These areas of land are located non-contiguously on and to the north-west of Melbourne's Central Business District (CBD). This land variously forms part of the physical and land use transition from the high density built form and high intensity land use of the CBD to the south and the lower rise, lower intensity areas to the north-west, north and north-east (the inner suburban areas of West Melbourne, North Melbourne and Carlton).

### 2.2 THE AMENDMENT

#### 2.2.1 Background to the amendment

The background to the preparation of the amendment was presented by Mr Tweedie on behalf of the Melbourne City Council (the Council) as follows:

*The new format Melbourne Planning Scheme was gazetted by the Minister in March 1999, conditional on the Council undertaking a review of the Heritage Overlay and Design and Development Overlay (height) controls within Mixed Use zoned areas of North and West Melbourne, Carlton, Southbank and Parkville. As a result of the review Council prepared a Built Form Review, which was to be implemented as Amendment C20.*

*Amendment C20 proposed changes to height controls within some areas that are also included within the Amendment C96 height review. The most notable changes related to the area covered by DDO33 (which at that stage included both the City Fringe and St James Old Cathedral Areas). An 8 storey height limit was proposed over these areas.*

*The C20 Panel was unable to be persuaded that that height limit was the most appropriate height for the area, and queried whether it was too restrictive. The Panel recommended that only podium controls be introduced and that further investigations be carried out by Council to determine the appropriate height controls for the area.*

*Amendment C20 was gazetted by the Minister for Planning on 19 December 2002 and the current DDO33 control was introduced with the podium only controls, as recommended by the Panel.*

*The approved form of Amendment C20 also included some eleven Design and Development Overlays with mandatory maximum height controls, some of which affected areas in West Melbourne. These controls were accepted as appropriate by the Minister of Planning notwithstanding a recommendation from the C20 Panel that such controls not be implemented.*

*On 20 December 2002, the Minister for Planning issued a Notice of Decision for a proposal within the City Fringe area, at 420 Spencer Street, West Melbourne (located on the eastern corner of Dudley and Spencer Streets), for a 26 storey, mixed use development. Council lodged an appeal to the Victorian Civil and Administrative Tribunal (VCAT) against this decision. VCAT overturned the Minister's decision and ordered that no permit issue for the development on the basis that, in addition to other concerns, there was an absence of detailed planning policy at that time to justify the height proposed.*

*In March 2005, a new application was lodged with the Minister for a 19 storey mixed use development at 420 Spencer Street, West Melbourne. This development was referred to Council and discussed at the May 2005 meeting of the Planning and Environment Committee. The Committee supported the recommendations of the Planning Officer to object to the development. The objection was based on the grounds that the building exceeded the height limits proposed within the West Melbourne Structure Plan and also proposed demolition of a graded heritage building. The application is currently on hold pending the outcome of Amendment C96.*

*In January 2006, the permit applicant submitted amended plans for plans for a 13 level, 45 metre development. Council has not yet assessed those plans.*

*Following the recommendations of the Amendment C20 Panel Report and the VCAT determination for 420 Spencer Street, Council prepared and adopted a Strategic Framework for West Melbourne titled the 'City West Plan' prepared by SGS Economics & Planning, in 2003. The Plan established strategic directions to guide land use and infrastructure development over a period of approximately 20 years.*

*One of the priority actions identified in the City West Plan was the preparation of a structure plan for mixed-use areas in North and West Melbourne, in part to provide a framework for future development in the CBD Fringe Area.*

*As a result of this Plan a draft plan entitled the 'West Melbourne Mixed Use Area Structure Plan – May 2004' was prepared by Hansen Partnership, Charter Keck Cramer, and Parsons Brinckerhoff. The draft West Melbourne Structure Plan was presented to Council at the meeting of its' Planning and Environment Committee on 11 November 2004. Council resolved to make certain changes to the draft plan which modified the proposed height limit for the City Fringe Area.*

*This draft plan was used as the basis for the 'West Melbourne Structure Plan – April 2005' ('the Structure Plan') which was then adopted by Council at the meeting of Council's Planning and Environment Committee on 3 May 2005.*

*At that meeting, Council also resolved to prepare an amendment to the Scheme to introduce new built form controls to give effect to the Structure Plan. The heights proposed within Amendment C96 are consistent with the height controls for the relevant areas as proposed in the Structure Plan.*

## 2.2.2 Scope of the amendment

Amendment C96 was prepared by the Melbourne City Council and, as exhibited, proposes:

- to alter the existing Design and Development Overlay (DDO) controls and to introduce new DDO controls over specific parts of the Mixed Use Zone in West Melbourne, namely CBD Fringe areas, St James Old Cathedral area, Laurens Street area, and Munster Terrace area;
- to make minor changes to the adopted Municipal Strategic Statement (MSS) in relation to Council's vision for the areas within the Mixed Use Zone in West Melbourne;
- to remove the DDO controls from roads affected by Schedules 28, 29, 31 32 and 33 within West Melbourne;
- to align the proposed and existing DDO controls with property boundaries;
- to make corresponding changes to the adopted MSS; and
- to make corresponding changes to the Planning Scheme Maps 6DDOPT3 and 5DDOPT3.

## 2.2.3 Exhibition of Amendment C96

Amendment C96 was exhibited from 19 May to 24 June 2005. Notices were published in the *Melbourne Times*, *Melbourne and Moonee Valley Leader* and the Government Gazette. A public notice was sent to each owner and occupier of land within areas covered by the amendment. Notices were also sent to relevant State Government Ministers, the DSE and key stakeholders. Appendix A3 contains a copy of the relevant parts of the exhibited Amendment C96, namely, the proposed DDO33 and DDO56 schedules and the related maps.

A total of 6 submissions were received – the content of these submissions is discussed in Section 4. Based on consideration of issues raised in submissions, Council's Planning and Environment Committee resolved on 6 September 2005 to accept certain changes as follows:

- Correct the Instruction Sheet to identify (3) included maps;
- Correct the format of the DDO Schedules to be in accordance with the DSE 'Style Sheets' and fix any typographical and font errors;
- Amend the second Design Objective of DDO33 and DDO56 to read 'To encourage active (e.g. commercial) uses, particularly at ground level'; and
- Amend the wording of the second Built Form Outcome within DDO56 to state 'New buildings adjacent to heritage building reflect the height and setbacks of heritage buildings and the typical streetscape patterns'.

but not to accept a recommendation to include the land at 404 and 420 Spencer Street within the DDO33 area (This latter recommendation would have the effect of including this site in an area with a mandatory 40 metre height limit rather than a mandatory 16 height limit).



As there were changes requested in submissions on the exhibited amendment to which the Council did not accede, the exhibited amendment and all submissions were referred to a Planning Panel (see Appendix A1).

## 3 STRATEGIC AND STATUTORY CONTEXT

### 3.1 STRATEGIC PLANNING FRAMEWORK

This section identifies the existing strategic context within which issues associated with Amendment C96 must be considered, together with any proposed changes to this context. The relevant documents that provide the context for considering Amendment C96 are:

- State Planning Policy Framework;
- Metropolitan Strategy – *Melbourne 2030*;
- Melbourne Planning Scheme – Local Planning Policy Framework including the recently gazetted amended Municipal Strategic Statement (MSS); and
- Relevant policy documents, namely the *West Melbourne Structure Plan* (April 2005).

The *Strategic Assessment Guidelines* are addressed in Appendix A2.

The relevant policies are summarised below.

#### 3.1.1 State Planning Policy Framework

The State Planning Policy Framework (SPPF) is presented in Clauses 11 to 19 of the Melbourne Planning Scheme. Clauses which are particularly relevant to Amendment C96 are presented and discussed below.

Clause 12 (Metropolitan Development) provides specific objectives and strategies for Metropolitan Melbourne which are in addition to the principles of land use and development planning and the relevant specific objectives and strategies included elsewhere in the SPPF. In relation to the direction of ‘**A more compact city**’, the Panel considers that the Amendment is consistent with the objective (Clause 12.01-1):

*To facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.*

and with the related strategy focussing development on Activity Centres:

*Concentrate new development at activity centres near current infrastructure and in areas best able to cope with change. Development is to respond to its landscape, valued built form and cultural context and achieve sustainable objectives.*

The Panel considers that the amendment is consistent with the direction ‘**A more prosperous city**’ (Clause 12.04-1) which has the objective *To create a strong and innovative economy* and the strategy for Central Melbourne to *strengthen Central Melbourne’s capital city functions and its role as the primary business, retail, sport, and entertainment hub for the metropolitan area* by a range of more specific strategies.

In relation to Housing, the following strategies in the SPPF are relevant to the amendment area:

### *Housing*

*Locate a substantial proportion of new housing in or close to activity centres and other strategic redevelopment sites that offer good access to services and transport by:*

- *Increasing the proportion of housing to be developed within the established urban area, particularly at activity centres and other strategic sites, and reduce the share of new dwellings in greenfield and dispersed development areas.*
- *Encouraging higher density housing development on sites that are well located in relation to activity centres and public transport.*

The Panel considers that the amendment is consistent with the direction ‘A great place to be’ (Clause 12.05-1) which has the objective *To create urban environments that are of better quality, safer and more functional, provide more open space and an easily recognisable sense of place and cultural identity* and the overall strategy in relation to urban design to *promote good urban design to make the environment more liveable and attractive.*

Clause 15.11 (Heritage) seeks to *assist the conservation of places that have natural, environmental, aesthetic, historic, cultural, scientific or social significance or other special value important for scientific and research purposes, as a means of understanding our past, as well as maintaining and enhancing Victoria’s image and making a contribution to the economic and cultural growth of the State.* As all the areas covered by the amendment include heritage items, the proposed DDOs would assist heritage conservation in the West Melbourne area through design objectives to ensure that any new development or redevelopment is compatible with the scale and character of heritage buildings in the area.

Clause 19.03 (Design and Built Form) seeks to *achieve high quality urban design and architecture that:*

- *Reflects the particular characteristics, aspirations and cultural identity of the community.*
- *Enhances liveability, diversity, amenity and safety of the public realm.*
- *Promotes attractiveness of towns and cities within broader strategic contexts.*

Development should achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.

Residential development not covered by ResCode and of four or more storeys must include an urban context report and design response explaining how the design responds to the existing urban context and preferred future development of the area, on the basis of the following principles:

- Context;
- The public realm;
- Landmarks, views and vistas;
- Pedestrian spaces;
- Heritage;

- Consolidation of sites and empty sites;
- Light and shade;
- Energy and resource efficiency;
- Architectural quality; and
- Landscape architecture.

The Panel finds that Amendment C96 is consistent with the metropolitan development direction of the SPPF, especially the need to reinforce emphasis on design quality and heritage conservation and to encourage housing.

### **3.1.2 Metropolitan Strategy**

The amendment is affected by Ministerial Direction No. 9 which requires that all planning scheme amendments have regard to *Melbourne 2030* (Metropolitan Strategy). *Melbourne 2030* proposes that Melbourne should become a more compact city by encouraging the concentration of new residential and commercial development close to existing activity centres and on strategic sites.

Direction 5 (A great place to be) is relevant to the amendment. The amendment is consistent with the following policies:

Policy 5.1 which proposes that Melbourne continues to be a great place to live. New development should be of high quality design that responds to its urban context and local character elements.

Policy Direction 5.2 which seeks to ensure that new development responds to, respects and contributes to the existing sense of place and cultural identity. It can do this by responding to the landscape of the site and its environs, including heritage buildings, while encouraging appropriate new development that respects these values.

Policy Direction 5.3 which seeks to improve community safety and encourage neighbourhood design that makes people feel safe.

Policy Direction 5.4 which confirms Melbourne is one of the great 19<sup>th</sup> century cities and the built form of an earlier period can be a source of economic prosperity for current generations as well as an expression of cultural history and identity.

Policy Direction 5.5 which promotes excellent neighbourhood design to create attractive, walkable and diverse communities.

**The Panel finds that Amendment C96 supports and responds to the relevant policy directions of *Melbourne 2030*.**

### 3.1.3 Local Planning Policy Framework

The original Melbourne Municipal Strategic Statement (MSS) comprised a document called the *City Plan* that was introduced with the new format Planning Scheme in March 1999. In December 2002, Council exhibited Amendment C60 which proposed to introduce a new restructured MSS and set of local planning policies. Melbourne City Council adopted the revised MSS in July 2004. Amendment C60 was gazetted on 8 December 2005 with the effect of substituting a new MSS and to make modifications to certain local planning policies.

The new MSS identifies the CBD Fringe Area of West Melbourne as part of the Mixed Use Zone which encircles the CBD as an area where both business and residential uses are encouraged.

As noted by Mr Tweedie (on behalf of Council):

*The new MSS does not radically alter the planning 'vision' for the area affected by Amendment C96. Rather, it repeats and reinforces existing themes, objectives and strategies for West Melbourne articulated in the old MSS.*

*The new MSS notes that the City of Melbourne contains a number of 'distinct local areas', including North and West Melbourne. Clause 22.02-3 provides that 'preserving the specific historical lay-out, character and ambience of these separate historic neighbourhoods is essential to the City's ongoing diversity and identity'.*

*Clause 21.04 of the MSS identifies areas such as Kensington and North and West Melbourne as areas where 'little growth is envisaged'.*

*Clause 21.04-1 notes that:*

*'The City of Melbourne offers a considerable range of opportunities for new housing development. The degree of opportunity varies generally from area to area, dependant on existing local characteristics, particularly the built form and character of areas'.*

*Figure 10 to Clause 21.05 identifies the majority of North and West Melbourne as an area where 'existing built form character is to be preserved'. The areas affected by the proposed DDO's 33 and 56 are identified as areas where 'a built form character change is envisaged – moderate change'. The Laurens Street Area is not marked.*

**The Panel finds that Amendment C96 supports and responds to the relevant policy directions of the MSS.**

### 3.1.4 Other Policy Headings

There are no other relevant policies.

## 3.2 STATUTORY PLANNING FRAMEWORK

### 3.2.1 Zone(s)

All the land affected by the amendment is zoned Mixed Use. This is the predominant zoning affecting land in the West Melbourne area. The purposes of the Mixed Use zone at clause 32.04 of the Melbourne Planning Scheme include:

- *to provide for a range of residential, commercial, industrial and other uses which compliment the mixed-use function of the locality;*
- *to encourage residential development that respects the neighbourhood character.*

The Panel considers that the amendment responds to and is consistent with the zone purposes.

### 3.2.2 Overlay(s)

#### Heritage Overlay

The Heritage Overlay applies to parts of the area covered by both DDO32 and DDO28 but not to the CBD Fringe area covered by DDO33 and DDO56.

There are a number of individually listed sites within the schedule of the Heritage Overlay particularly in the CBD Fringe area covered by DDO33 and DDO56. These sites include St James Old Cathedral, the Sands and McDougall Building, and 420 Spencer Street.

There are several buildings and land on the Victorian Heritage Register including St James Old Cathedral (VHR0011). A permit for development issued under the *Heritage Act 1995* excludes the need for a permit under the Heritage Overlay provisions.

The Heritage Overlay objectives are:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To conserve and enhance heritage places of natural or cultural significance.*
- *To conserve and enhance those elements which contribute to the significance of heritage places.*
- *To ensure that development does not adversely affect the significance of heritage places.*
- *To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.*

Amendment C96 will not change any aspect of the Heritage Overlay.

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### Existing Design and Development Overlay, Schedule 33

The current DDO33 was introduced with the new format Melbourne Planning Scheme on 4 March 1999 and essentially translated the height controls that were part of former planning schemes dating back to the early 1980s. This schedule titled 'CBD Fringe' contains podium height requirements between 16 and 20m and building setbacks for buildings above 40m up to 6m from all major streets for all land bounded by Latrobe, Spencer Dudley and King Streets.

The design objectives of this schedule are:

- *To provide for appropriate spacing between buildings so as to maximize light, air and outlook.*
- *To create a high quality mixed use with a high level of pedestrian amenity.*

An application to reduce the Minimum Building Setback must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.

Amendment C96 will change and arguably strengthen the provisions of DDO33 particularly through the introduction of a mandatory height limit of 40m as well as introduce DDO56 'St James Old Cathedral' to the block bounded by Spencer, Dudley, King and Batman Streets. DDO56 will also introduce a mandatory height limit of 16m.

#### 3.2.3 Particular and Other Provisions

Amendment C96 is not directly affected by any other Particular or General Provisions of the Planning Scheme.

#### 3.2.4 Conclusion

**The Panel finds that C96, while consistent with the existing statutory framework, would introduce more stringent controls for the CBD Fringe area as well as introducing DDO provisions to two areas where there are currently no such provisions.**

## 4 BACKGROUND TO THE AMENDMENT AND STRATEGIC ISSUES

### 4.1 NATURE OF SUBMISSIONS

The issues raised in submissions can be readily categorised as set out in Table 1, together with a summary of Council's position on each issue.

**Table 1: Issues Raised in Submissions**

Issue	Submitters
The mandatory nature of the 40m height limit proposed for DDO33	Opposed by Shell Company Ltd and Multiplex and, by implication, Australia Post.  Supported by the North and West Melbourne Association.  Council maintained its support.
The extent and provisions of DDO56	Opposed by Shell and Australia Post  Supported by the North and West Melbourne Association  Council maintained its support.
The proposed extension of DDO28 to an area north of Spencer Street/Millers Road, with its discretionary 5 storey height limit	Opposed by the North and West Melbourne Association  Council maintained its support.
The proposed removal of DDO33 from public roadways.	Opposed by the North and West Melbourne Association  Council did not oppose the objections to this provision.
Extension of one or other of the nearby overlays to include areas not affected by this amendment.	Raised by Mr Jose Dos Santos.  Council objected to an extension of overlays beyond the exhibited areas as being contrary to natural justice.

### 4.2 BACKGROUND

As indicated in Table 1, the substantive submissions to this amendment relate entirely to matters of built form. Consequently, it is useful to outline the strategic context in which the relevant built form strategy has been developed.

This amendment arises out of a strategic planning process that included, as an early stage, the preparation of the *West Melbourne Mixed Use Area Structure Plan* by Hansen Partnership with Charter Keck Cramer and Parsons Brinckerhoff (May 2004) (the *Strategy*). The *Strategy* related to the area of Mixed Use Zone south-west of King Street, West Melbourne, and west of Curzon Street, North Melbourne. Amongst other



matters, the *Strategy* proposed policies for land use and built form across the extent of the study area (Hansen Partnership et al, Figure 5, p31).

The *Strategy* was developed through a number of stages:

- *West Melbourne Mixed Use Area Structure Plan*, May 2004 (Hansen Partnership et al, 2004a);
- *West Melbourne Mixed Use Area Findings Report*, May 2004, which was accepted by Council's officers (Hansen Partnership et al 2004b); and
- Council's officers', Findings Report, April 2005, which was adopted by Council.

With respect to future building heights, the *Strategy* initially divided the Mixed Use Zone into several categories, with maximum building heights varying as follows:

- 3-4 storeys (to the north-west);
- 5 storeys (around North Melbourne Railway Station);
- 4-6 storeys for the West Melbourne Mixed use – the area between the North Melbourne Station and Dudley Street (and with the 6 storey limit applying to a strip close to Dudley Street); and
- 10-15 storeys for the Latrobe Street-Dudley Street Transition Area - with the 15 storey limit applying to a strip close to Latrobe Street.

The adopted *Strategy* (April 2005) modified this structure of building heights by:

- Adopting a height of 14 metres for the Mixed Use Zone west of Hawke Street and 14 metres east of Hawke Street;
- Providing a 4 storey height limit to the south-eastern portion of the West Melbourne Mixed Use area;
- Providing a 10 storey height limit to the Latrobe Street-Dudley Street Transition Area (now referred to as the CBD Fringe Area); and
- Introducing a 16 metre height limit to the area now proposed to be included in DDO56 (see Section 6).

The final strategy for the CBD Fringe Area also included proposals for podiums for buildings that would exceed a specified height, with the building below the podium level being constructed to the street frontage and, above the podium, being set back varying distances, depending on its street frontage and closeness to heritage buildings.

The main change that had occurred during the development of the *Strategy*, as adopted by Council, was the simplification of the areas of different height. The intention, as Mr Moore explained, was to reduce the areas outside the CBD of different height (basically, from four to two areas, ignoring the North Melbourne Railway Station and the 3-4 storey variations within North Melbourne). The intention is that the areas with different building heights, and the differences between them, would become more readily apparent.

### **4.3 STRATEGIC ISSUES – UTILITY OF HEIGHT CONTROLS**

Mr Tweedie (for Council) posed three questions as a test of the appropriateness of the amendment in relation to the control of building height:

- Are height controls necessary?

- Are the maximum proposed heights appropriate?
- Are mandatory controls appropriate?

These questions provide a useful structure for our assessment.

With respect to the first point, we accept that height controls are necessary. No submissions had questioned the basic premise of this urban design-based strategy. We accept that the general community has expressed continual concern about building heights as a matter of considerable importance in planning strategies and outcomes. The Melbourne Planning Scheme has extensive planning controls directed to managing building height. We therefore conclude that it is appropriate that Amendment C96 introduce further controls over building height.

The amendment specifies a number of building heights based on different strategic objectives. Submissions were, in large part, directed at contesting these proposed heights – some seeking to reduce permitted heights, others to substitute lower with higher height limits (e.g. by removing DDO56 and replacing it with DDO33) or replacing the mandatory controls of DDO33 by a discretionary control.

Consequently, the question of the proposed height limits is a matter for discussion in the sections that follow. Similarly, the question of whether building height control is mandatory or discretionary – relevant to the submissions about DDO33 – is also discussed in Section 5.3.1.

#### **4.4 LACK OF STRATEGIC BASIS FOR SOME CONTROLS**

Further submissions and evidence given on behalf of Shell referred to the absence of any strategic justification for, firstly, the introduction of DDO56 and, secondly, the stringency of the requirements relating to podium heights and building setbacks for buildings adjoining a heritage building.

Mr Townshend (for Shell) submitted that we should give less weight to planning policies and their related controls where these have been devised by Council through its committee process instead of through a strategic study (whether undertaken by consultants or Council staff). His argument seemed to be based on the proposition that a strategic study would produce results based on a transparent and rational process of research, continuing consultation with the various stakeholders, the development and then the testing of options to reach a preferred outcome. In comparison, Council's late adoption of a completely new provision such as DDO56 involved no demonstrably rational process of analysis, no transparency and, presumably, any consultation would have been much more selective.

In response, Mr Tweedie submitted that the process of accepting, evaluating and changing a consultant's recommendations is simply a case of Council exercising its responsibility as a planning authority.

In reflecting on these two approaches to the development of planning policy, we make the following observations. The former approach is one based on a rational and relatively transparent approach to the development of policy, whereby the various stakeholders are given a reasonable assurance of being heard and of being informed of the progress of the study and the rationale on which the final decision is based –

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including the weight given to the various interests – can be demonstrated. On the face of it, the latter approach is arbitrary and has little if any transparency.

While we do not argue against Council's entitlement or responsibility to make the final decisions about policy, the risk is that when, at the last stage, substantial changes are made to a rationally-developed policy, a substantial degree of opacity is created, together with, at least, the suspicion that the final policy may reflect factors such as the personal whim of particular councillors or a collective judgement based more on populism than rationality.

The Panel process itself is one based on the assumption that there should (and can) be a rational approach to the assessment of planning policy and its implementation. Consequently, we conclude that, in assessing the various submissions relating to specific elements of Amendment C96, it is appropriate for us to give some weight to proposals that can be supported by a rational assessment of outcomes against established criteria, taking account also of the larger, established policy framework, the relevant objectives of the *Planning and Environment Act 1987*, and our assessment of net public benefit.

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## 5 PROPOSED DDO56

### 5.1 BACKGROUND

Amendment C96 proposes to introduce a new schedule to the DDO, Schedule 56, and to substitute it for the existing Schedule 33 for all land in the block bounded by Dudley, King, Batman and Spencer Streets (which includes St James Old Cathedral on the corner of King and Batman Streets).

DDO56 contains the following key features:

**Building Height – 16m**

A permit cannot be granted to vary the building height [i.e. mandatory control].

The existing DDO33 has no height limit, but has requirements for the height of podiums and building setback requirements above podium level. The drafting of DDO33 clearly envisaged that buildings in this area might exceed 40 metres.

Consequently, the introduction of DDO56 with its mandatory height limit of 16m would remove, to a very substantial extent, reasonable development expectations that affected property owners presently enjoy.

As discussed in Section 4.2, the proposal to substantially reduce permissible building heights in the area affected by DDO56 was not canvassed in the first or second versions of the Hansen Partnership et al (2004a, 2004b) strategic study, but appears to have been introduced at the behest of Council itself, without any previous support from its consultants or officers.

DDO33 has existed since the inception of the City's new format planning scheme. Property owners will therefore have reasonable grounds for relying on the potential development opportunities pursuant to this DDO as part of their long-term planning and management of their property assets within this area. Furthermore, it also appears, from the submissions and evidence, that Council's desire to introduce DDO56 arises not from any significance change in the locality's objective planning context (e.g. changed development pressures or environmental issues) but, rather, from Council's desire to change the priority it gives different social outcomes – in this case, to social concerns relating to urban design and heritage. Although not raised directly in submissions, we believe, on reflection, that resolution of this issue bears on the objective of fairness in planning [*Planning and Environment Act 1987*, s.4(a)] in addition to the specific policy issues that were identified in the various submissions and evidence.

## 5.2 ISSUES

The three key issues that were identified by submitters can be directly encapsulated by paraphrasing three of the objectives of this overlay:

- Should development maintain the visual prominence and setting of St James Old Cathedral?
- Should development enable views to significant landmarks to be maintained from within the public realm of the area?
- Should the height of development be constrained in order to maintain an open outlook from elevated areas within the Flagstaff Gardens by ensuring the Gardens are not hemmed in by buildings?

## 5.3 DISCUSSION

### 5.3.1 Protecting the Prominence of St. James Old Cathedral

#### The Evidence – Facts and Opinion

Both Mr Tweedie and Mr Townshend relied on expert heritage evidence to support their submissions – by Ms Gould and Mr Lovell respectively. Both experts agreed in part and differed in part on their assessment of the effect of different potential development outcomes on the heritage significance of St James Old Cathedral.

In brief, St. James Old Cathedral is an ‘A’ classified building in Melbourne City Council’s heritage study and is included in the Victorian Heritage Register. Its heritage value is based on the following features. The church was constructed on a different site to the south (outside the DDO area) in 1839, was designed by Robert Russell, and was consecrated as a cathedral in 1848. The church was removed and rebuilt on its present site opposite the Flagstaff Gardens in 1913.

The key question to be resolved is what effect would be caused to the significance of St. James Old Cathedral if other buildings intruded into views of it. More specifically still, this relates to the intrusion of more distant buildings into views from particular points in the north-western portion of the Gardens, as it appears to be views from points in these Gardens that justify, in part, the stringency of the height controls to be introduced by DDO56. It is important to note that portions of the Flagstaff Gardens offer prominent views to the west because the Gardens are, at this point, elevated above King Street, with an escarpment being 5.5m above King Street (opposite the Old Cathedral) and the highest point in the Gardens being 7.2m above King Street (see Photos 1 and 2).

Ms Gould’s evidence was:

*One of the important views [of the Old Cathedral] is from the north western and western sectors of Flagstaff Gardens. Here the church is currently prominent within an open setting.*

Also:

*Maintaining an open aspect is an important part of maintaining the prominence of St. James Old Cathedral.*

Both Mr Lovell and Ms Gould agreed on the variety of views of the Old Cathedral and the varying prominence of the Old Cathedral in different views, with the best views (Mr Lovell's 'hero view' – see Photo 3) being the view diagonally towards the Old Cathedral from the western side of King Street, south of Batman Street.



**Photo 1 View of St James Old Cathedral from Flagstaff Gardens with no buildings to the west visible above nave**



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**Photo 2 View of St James Old Cathedral from Flagstaff Gardens with buildings in Docklands and Bolte Bridge pylons visible above nave**

Ms Gould pointed out that, in viewpoints within the Gardens, taller structures would form a backdrop to the Old Cathedral's tower and nave. Although not directly stated, it was clearly Ms Gould's opinion that any reduction in the visual prominence of St. James Old Cathedral, e.g. by having taller structures visible beyond it, would directly and adversely affect the Old Cathedral's heritage significance.

Mr Lovell had a different opinion. He considered that the most important views of the Old Cathedral are from ground level and, most importantly, from King Street, as this view mostly clearly reveals the whole structural concept and architectural features of the Old Cathedral. He also considered that the heritage significance of the Old Cathedral would not be affected by having buildings visible beyond it, though he agreed that it would be desirable that these buildings be set back somewhat from the Old Cathedral.

The more that the setting of a heritage building conforms to its original context, the better may be one's ability to appreciate how it would have been seen at a time more closely related to the period associated with the building's significance. Often, for particularly significant buildings, and where the building's original setting is important to understanding the building, that setting is included in the statement of significance and the Heritage Overlay (e.g. Como House and Ripponlea Mansion).

Mr Lovell's evidence in chief was that buildings standing some distance behind the Old Cathedral – as would be the case with a future building on the Shell site – would not affect its heritage value. Under cross-examination, he agreed that it would be preferable to avoid having tall buildings on sites directly abutting the Old Cathedral.

**Effect of Amendment on Heritage Significance of St James Old Cathedral**

We have identified two tests that we consider appropriate to establish the importance of protecting the prominence of St. James Old Cathedral (referred to here as 'the place'):

- The effect of the loss of the Old Cathedral's prominence on its heritage values,
- The significance of the Old Cathedral's setting and, subject to that, the effect on that significance of any loss of prominence.

St. James Old Cathedral is listed on the Victorian Heritage Register. Its significance is set out in the statements of significance contained in that Register. This statement makes no reference to any importance that is derived from Old Cathedral's wider setting, its prominence or any landmark qualities it has. Its significance relates to the following:

- As the earliest surviving church in Victoria (the foundation stone being laid in 1839);
- As the first Cathedral in Victoria [we understand that this relates to its status in the Church of England's system of governance];
- As a rare example in Melbourne of Colonial Georgian style building;



**Photo 3 Example of the 'hero view' of St James Old Cathedral**

- As the only known example of the architectural design of Robert Russell, an eminent colonial architect;
- For the surviving important examples of ecclesiastical interior design and fittings, including a World War I honour board carved by a well known master carver, Robert Prenzel, together with its copy for a World War II honour board, as well as notable stained glass windows.

In discussing the nature of views from the Flagstaff Gardens in which St. James Old Cathedral is visible, it is clear that the relevant viewing area is quite limited. It is effectively limited to an area within the Gardens extending southwards about 150m along King Street from the corner of Dudley Street and back from King Street about 50m to the Caretakers Cottage and bowling greens. This area is bounded by paths and bisected by one path running diagonally from the corner of King and Dudley Streets. It is an area of lawn with a scatter of Eucalyptus trees.

We were presented with a number of photographs taken from the streets adjoining St. James Old Cathedral and the viewing area within the Gardens. Some of these photographs were quite nicely composed to demonstrate particular situations. However, in our view, these static images necessarily belie the awareness that the observer gains by moving through the area, which is how observers must necessarily see the Old Cathedral and its surroundings – by entering and leaving the viewing area and, in some cases, pausing – but in most of these cases, probably not at the photo-points used for evidence before us.

There is no reference in the Old Cathedral's Statement of Significance to the building's immediate or wider setting. Consequently, it seems to us that the Old Cathedral's wider setting has no relevance to whether the above features retain their value or not.



In summary, the following points are critical to our assessment:

- The significant and traditional views of St James Old Cathedral are those from the immediately surrounding streets, particularly King Street;
- The availability of views of St James Old Cathedral from Flagstaff Gardens is merely fortuitous and unrelated to the significance of this building, that is, the existence of such an elevated and privileged viewing point is the result of the chance relocation of the Old Cathedral to its present site. No one has suggested that there is any significance in St James Old Cathedral's relationship to the Flagstaff Gardens;
- The heritage place is limited to the area defined in the relevant Heritage Overlay; and
- There is no reference in St James Old Cathedral's Statement of Significance, either in the section 'what is significant' or 'why is it significant' that refers to this building's setting as relevant to its heritage value.

Consequently, we conclude that the controls proposed in DDO56 are not required to protect the heritage value of St. James Old Cathedral.

### **Requirements for an Appropriate Setting for the Significant Heritage Buildings**

The importance of the Old Cathedral's setting, however, seems to raise issues of a more general planning nature. Given that the building is of historic importance and that one of the relevant criteria is its architectural form, it is arguably relevant, in planning terms, to consider how that form should be displayed. Clearly, if a building of cultural importance can be seen in a historically congruent, rather than incongruent, urban setting, observers will be able to gain a better understanding of its original historic context.

For a number of reasons about which we can only speculate (though some seem fairly obvious), the boundary of heritage places for the purposes of their identification in heritage controls generally coincides with the title within which the heritage building stands (or in the case of very large sites, part of the title). It is generally only when a building's setting is considered to be an essential part of its heritage value that the heritage controls embrace both building and a much larger setting. Classic examples include Como House, South Yarra, and Ripponlea Mansion, Caulfield, though even in these cases, the garden setting is usually within the same title. The Panel is aware of examples where part of a heritage building's original garden setting has been subsequently subdivided off and sold, but has subsequently been placed in the same Heritage Overlay as its associated building, even though on a separate title. However, such examples are very rare.

Unfortunately, neither of the statements of evidence by Ms Gould and Mr Lovell clearly differentiated between a place's heritage value *per se* and the somewhat separate issue of the congruity of the Old Cathedral's setting. So, on reflection, we cannot see how the Old Cathedral's visual prominence has any connection with the basis of its heritage value.

On the basis of our conclusion that there are general planning benefits in providing an appropriate display of buildings of heritage significance, we can turn to consider the importance of the view across the Old Cathedral from the Flagstaff Gardens.

We can define an appropriate setting for an historic building in terms of either how **people of today** would like to see that building displayed and/or of how its original **designers and users** expected it to be displayed. Unfortunately, in respect to both questions we are obliged to indulge in a fair degree of speculation.

In this case, we know that the Old Cathedral was originally erected on a 2 hectare site on the south-western corner of Bourke and William Streets (extending through to Collins Street) and was rebuilt on its present site in 1913. We have not been given any explanation as to why the Old Cathedral was relocated to its present site. Nor have we been given any explanation of the expectations of the Old Cathedral's founders as to the future development that would occur around the original site or around its second site when this was selected. Certainly, those involved in relocating the church accepted a site that was quite constrained by comparison with the original site.

As Mr Lovell pointed out, this is not a particularly large building (in fact, its nave appears to be no higher than the two-storeyed Victorian terrace close by to its north). It seems to us its original setting did not offer the characteristics of site or scale one would expect of a building intended as a landmark (for example, St. Patrick's Cathedral, built in 1858 or St. Paul's Cathedral, 1891). At 2 hectares, the Old Cathedral's original site was much larger than its present site (less than 0.4 hectares), so that its original setting would have been quite different for that reason alone.

Furthermore, we accept Mr Lovell's evidence that public views of a building such as this would always have been from the street level. If we desire an appropriate setting for our heritage-value Old Cathedral, it seems appropriate that we should value those viewpoints that replicate the kind of views with which the building's designers and original users would have been most familiar. We also note that, from observations and evidence, there are many street level points from which a view of the Old Cathedral is either obscured or is clearly seen in the context of larger buildings – beyond it or close at hand.

We were also given no evidence to suggest that the Old Cathedral's present site was selected so that an overview from Flagstaff Gardens would be available. We consider that it is reasonable to conclude that the site's juxtaposition to the Garden's is merely fortuitous.

Finally, even if any one suggested that the present generation of viewers place great value on being able to view historic buildings from above, we would give greater weight to a setting that achieved a reasonable congruity with a building's earlier setting. After all, this reflects our suggestion that an appropriate setting of an historic building will assist a modern-day appreciation of its historic urban and cultural context. We do not see that a coincidentally available and atypical view from an elevated position (such as the view from parts of the Flagstaff Gardens) satisfies this requirement.

Given the extensive changes that have occurred to the Old Cathedral's context, it seems to us more appropriate that all we should seek for the Old Cathedral is a setting that is not overtly incongruous, rather than one that achieves a high degree of historic congruity.

If an appropriate setting for the Old Cathedral is based on views from street level, then, in our opinion, it is acceptable that buildings are visible in the background and, if they are seen above the Old Cathedral's outline, they should have a reasonable degree of distance. From our experience, distance has the effect of diminishing the visual impact of an object, even if it can be seen above a closer object.

Having reached this conclusion, we do not have to take account of the future development that is already impacting on views of the Old Cathedral. Nevertheless, we note the following points. There are already significant buildings visible behind St. James Old Cathedral, including the 22m high building at 2 Dudley Street, the Sands & McDougall building in Spencer Street and several tall building in Docklands to the west and the 'pylons' of Bolte Bridge beyond.

Some of the photos presented to us showed views across the Old Cathedral and across areas within DDO33 (for example, Figure 15 in Ms Gould's evidence). In the future, these views are likely to include buildings taller than the Old Cathedral. From the diagrams presented to us, development in DDO33 to the immediate west across Spencer Street will be visible above the Old Cathedral's nave. Furthermore, permissible building heights in Docklands, beyond the Old Cathedral, reach about 75m AHD. From a 30-35m high viewing point in the Gardens, and with the Old Cathedral nave's roof at about 36m AHD, we would expect additional buildings in Docklands to come into view in the future (see Photo 2).

We agree with Mr Lovell that it is appropriate that St. James Old Cathedral should be presented in a setting that is not crowded or overwhelmed by taller buildings. Mr Lovell nominated a number of sites that he considered should be affected by such a constraint on building height. These were limited to an approximate square area consisting abutting allotments, allotments extending to Dudley Street to the north and the allotment on the opposite (south) side of Batman Street.

On this basis, we reject the view that it is necessary to limit all buildings within the area affected by proposed DDO56 to 16m height. We consider that this degree of control is unjustified in relation to avoiding an incongruent setting for St James Old Cathedral.

We also make the following observation. If Council's intention really is to protect the dominance of St. James Old Cathedral as viewed from the Gardens (though, as stated previously, we have rejected the merits of this objective), then this could have been achieved without the same imposition on existing expectations of property owners in the affected area. Because the land falls to the west, it would have been more equitable to define the view-line to be protected as a plane extending across the top of St James Old Cathedral's nave from the nominated viewing elevation. This would have allowed buildings further away to be higher without prejudicing the intended objective.

### 5.3.2 Protecting the outlook from the Flagstaff Gardens

With respect to the importance of the view from the Flagstaff Gardens, we turn again to the relevant statements of significance. The Flagstaff Gardens are listed on the Victorian Heritage Register.

The Flagstaff Gardens are of ‘historic and scientific importance’, relating to:

- Use for early burials (6 or 7 burials have been reported);
- Use as a signal station to transmit to and receive signals from Point Gellibrand at Williamstown (for 17 years – 1840 to 1857);
- Use as a meteorological and magnetic observatory (for 5 years from 1857 to 1862); and
- As a social meeting place during this time, particularly during the period of its use as a signal station.

The Flagstaff Gardens are of ‘scientific (horticultural) and aesthetic significance’, relating to:

- Their designation as a public garden in 1862;
- Their gardenesque style; and
- Some fine specimens of trees.

As a further reason why the existing openness of view to the west should be retained, Ms Gould also emphasised the fact that the Gardens had been the site of the first of many beacons that were lit to celebrate the declaration of Victoria’s Statehood in 1851, with the suggestion that these included beacons to the west.

As with St. James Old Cathedral, we consider that appropriate tests of the importance of retaining an unfettered view to the west and north-west from the north-western portion of the Gardens are:

- The significance of any loss of this view on the Gardens’ heritage values; and
- The significance of any loss of this view on any other important aspect of the Gardens.

In turn, to answer these questions, we must establish the following:

- How much does any existing view contribute to the Garden’s significance?
- To what extent does an open view to the west exist, given existing development (or will remain, given other existing Planning Scheme commitments to development in nearby areas)?
- How widely available and appreciated is the existing open view?

An illustration of the Gardens, showing the original flagstaff (Meredith Gould Architects Pty Ltd, *Amendment C96 Heritage Review DDO56*, Feb 2006, Fig 3) indicates that, at that time, the Gardens were situated in a relatively open environment and, although the roofs of a few houses are visible, views of the Yarra River and more distant Port Phillip Bay, with their distant wharves and shipping, dominate the background scene.

Although the statement of significance mentions the fact of signals being sent between the Flagstaff Gardens and Point Gellibrand, no weight is given to the existence of this view. The Melbourne City Council's (2000) *Flagstaff Gardens Master Plan* makes a brief and fairly general reference to the desirability of protecting views to the west:

*..... King and Dudley Street edges should emphasis the elevation of the Gardens and retain views over the streets and buildings to the west. Although the historic view line to the time ball in Williamstown has been lost, the vista across to the west (taking in Appleton Dock, Swanston Docks and Coode Island) is still significant. Planning provision under the Melbourne Planning Scheme should be investigated to determine whether these views can be protected from future building development. (p30)*

The Gardens are now surrounded by buildings on all sides. These buildings are of various heights and creating varying senses of enclosure as viewed from the north-western portion of the Gardens:

- To the north<sup>1</sup>, the long row of two-storeyed Victorian terraces, but with the dominant buildings being a tall building at the eastern end of that row and further tall buildings directly behind the terrace;
- To the east, views of buildings of 10-12 storeys are largely screened by trees;
- To the south-east and south, the major buildings of the CBD dominate (Melbourne Central and others that extend across to King Street); and
- To the south-west, a number of tall buildings up to 10-12 storeys in King Street are clearly visible – No. 383 being the closest and largest (see Photo 4) as well as some lower buildings (see Photo 5).

From the maps in the report *Flagstaff Gardens Melbourne: Conservation Analysis* by John Patrick Pty Ltd, Allom Lovell & Associates and Hansen Partnership (1999), it appears that the original signal mast was situated on the western side of the Gardens, about 30-40m from King Street and about 170m south of Dudley Street, which would place it midway between Batman and Jeffcott Streets, opposite No. 383 King Street, a 10-12 storey building.

It was common ground that the most important view, in historic terms, would have been that from the original flagstaff's site to Point Gellibrand and that this view is no longer available. In fact, the best view we could find of anything connected to the Yarra River or Port Phillip is that of the 'pylons' of Bolte Bridge and various dock-side cranes looming above the intervening warehouses and industrial buildings and, turning more to the south, views of the high-rise residential towers along the far side of the Yarra River in Docklands. These views are relatively limited and available only along Batman and Jeffcott Streets.

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<sup>1</sup> To simplify this description, the Gardens are treated as if they have a north-south orientation, rather than being skewed slightly towards the NW-SE.



**Photo 4** View of building at 383 King Street to the west of the Flagstaff Gardens



**Photo 5** View from Flagstaff Gardens across DDO33 area to the west-south-west with dock cranes visible in background

So, we now have a public garden that was established as such in 1862 after a previous but short history where a small portion of its western side was associated with a few pioneer burials, 17 years as a signal point and then as an observatory. The proposition is, then, that because of the historic association of this part of the Gardens with the signal mast, it is important to maintain a sense of openness to the sky. The only section of garden from which a sense of openness is still available is the section close to the King Street frontage, north of Batman Street.

We believe that the issue of whether or not an open aspect should be retained for part of the Flagstaff Gardens is more a case of how we now want people to experience these Gardens, rather than as an attempt to retain some aspect of a bygone period with some historic significance. We agree with Mr Lovell's view that the Flagstaff Gardens are now contained in an urban setting and that this should be accepted as its future lot. We also agree with the opinion of Mr Rodda (for Shell Australia) that, in the context of the various functions that take place within the Flagstaff Gardens and the variety of people who attend for related purposes, these views are not prominent, unlikely to be highly valued and not likely to be an important reason for visitation to the Gardens.

We therefore also agree with the views of Hansen Partnership et al (2004):

*In a central city or fringe CAD location the issues of the outlook from gardens is a strategic planning issues. It is not necessarily an appropriate objective to preserve an open view to the sky from inner city gardens.*

Having reviewed the evidence and examined the view from various points along the western edge of the Gardens, we find that the proposition that it is important for historic reasons to maintain a sense of openness to be tenuous. The open view towards the west is, today, very much a poor remnant of that which existed between about 1840 to 1857 (as evidenced by the etching referred to previously). We do not consider that these remnant views provide much in the way of a reminder of, or connection with, the Gardens' original setting and activities undertaken there. Any views outwards are now of distant, new commercial and residential development at Docklands or of dockside activities. The views from within the Gardens of anything that could be classed as a distant and low-level skyline appear, to us, to be very limited.

If we draw on our earlier comments about the value of an historic place's setting as a means of helping us appreciate its earlier social or other context, we conclude that this benefit cannot be provided by the remnant views of distant buildings or lowered skyline available from a limited portion of the Flagstaff Gardens.

We therefore do not consider that this argument provides any justification for the introduction of DDO56.

## **5.4 CONCLUSION**

For the reasons set out above, we conclude that the objectives which DDO56 has been designed to achieve, namely:

- To protect the heritage value or setting of St. James Old Cathedral or
- To protect the openness of view from the Flagstaff Gardens

do not justify the introduction of this new schedule to the DDO.

On the basis of the above analysis:

The Panel recommends that the introduction of DDO56 is not supported and the affected area should remain in DDO33.

On the basis that DDO56 is abandoned, we do not consider that we need comment on the wording of the Objectives or Built Form Outcomes. However, in principle, our comments in relation to these aspects of the proposed amendment to DDO33 (see Section 6.5) are equally applicable to our views on the equivalent details of Schedule 56 to the DDO.



## 6 PROPOSED AMENDMENT TO DDO33

### 6.1 BACKGROUND

The existing Schedule 33 to the DDO provides for a podium height for buildings of between 16 and 28 metres, but does not contain a maximum building height. The amended Schedule 33 contains the following two related provisions:

**Maximum Buldig** (sic) **Height:** 40 metres  
A permit cannot be granted to vary the *Maximum Building Height*.

The amended schedule would also introduce new controls over podiums and the building setbacks above the podium-level (refer later discussion).

The land use outcome that relates to the scale of building bulk that is permissible within DDO33 is supported by a number of strategic statements in Council's MSS.

Clause 21.05 (gazetted 8 December 2005) currently identifies the whole of the Latrobe Street and Dudley Street Transition Area as 'Areas where a built form character change is envisaged – moderate change' (Figure 10: Built Form Character).

Figure 20, in Clause 21.08-9 North and West Melbourne, identifies the area affected by DDO33 with the number '6' and the notation:

Encourage higher built forms adjacent to the Central City, support increased residential densities as well as small to medium enterprises that support the Central City and Docklands.

Policy 1.298 states

Ensure the area bounded by Latrobe Street, south west of the Flagstaff Gardens [identified with the numeral '6' in Figure 20] provides a contrast in scale between the lower built form of West Melbourne and the higher scale of the Hoddle Grid.

Policy 1.304 states

Support higher building forms in West Melbourne in the area adjacent to the Central City [identified with the numeral '6' in Figure 20].

However, the only changes that Amendment C96 would make to Clause 21 would be to vary a number of maps that indicate the geographic extent of particular policies (e.g. Clause 21.05, Figures 5 and 10 and Clause 21.08-9, Figure 20). These changes are limited to those required to ensure consistency with the introduction of DDO56 and the extension of DDO28 to include areas north of Miller/Spencer Streets.

It is therefore clear that Council considers that the land use changes arising from changes to the control of building bulk in the area of DDO33 will remain consistent with the relevant strategies of its MSS.

## 6.2 ISSUES

Issues raised by submitters in relation to the provisions of DDO33 were:

- Whether the height control should be mandatory or discretionary;
- Poor drafting of the Built Form Outcomes; and
- A desire for greater flexibility and less stringency in the application of controls over podium heights and building setbacks above the podium level.

## 6.3 DISCUSSION

### 6.3.1 Mandatory vs Discretionary Building Heights

Mr Townshend sought a discretionary height control for DDO33 on the basis of good planning principles and in order that the planning control:

‘...should accommodate the best architecture on a case by case basis. ....[this] is best achieved by a discretionary height control accompanied by objectives expressed in direct language to emphasis the importance of the maximum height limit’.

Mr Townshend relied on the support for his position that was provided by correspondence to Council from the DSE (refer later) and evidence from, and oral responses to questions by Mr Rodda, Mr Barnes and Mr Moore. He also referred us to the comments of the Amendment C20 Panel.

As the C20 Panel pointed out (p.72):

*Objective based, strategic decision-making is a fundamental tenet of the planning system in Victoria and is embodied in the VPPs. An over-reliance on mandatory building requirements in Design and Development Overlays is a departure from this system and undermines it.*

The C20 Panel set out a number of tests as to the circumstances where a mandatory control would be appropriate. We have extracted the following tests for circumstances where a mandatory height control would, in the view of the C20 Panel, be appropriate:

- It can be established that, in the vast majority of cases, an application not in accordance with the building requirements would be contrary to the design objectives set out in the schedule;
- A strategic assessment or study has identified that in the vast majority of cases buildings not in accordance with the building height or other requirements would detract from the essential character of the area or other built form outcome the design objectives are seeking to achieve; and
- In the vast majority of cases such buildings would not be supported by Council after application of its design objectives and any relevant guidelines.

The submission from Multiplex supported a discretionary, rather than the mandatory, building height of 40m. Australia Post’s submission seemed to argue against the imposition of any height limit for DDO33, noting:

*... the changes to DDO33 do not recognise the potential of the area to absorb and accommodate greater development than is implied by the proposed controls.*

We note that, in correspondence to the Melbourne City Council about Amendment C96, the Department of Sustainability and Environment had expressed the view that a discretionary control of heights would be more appropriate for this area.

The principal arguments against provision for discretion that was put by Mr Tweedie were:

- The recommendation of the C20 Panel, which supported discretionary height controls rather than mandatory controls, was not adopted by the Minister;
- A mandatory height control would create greater certainty and consistency;
- A discretionary control would result in substantial costs being expended in negotiating building form outcomes with Council and in pursuing reviews at the VCAT; and
- There are already a number of DDOs within the Melbourne Planning Scheme that contain mandatory height limits (e.g. the 40m maximum height limit in the CBD Retail Area, and the height limits in DDO31, 32 and 34).

However, the second and third dot-points apply in all situations of performance-based controls and are a critique of the VPPs in general. With respect to the first dot-point, the Minister gave no reason for rejecting the C20 Panel's recommendation. With respect to the final dot-point, we were not given any explanation as to why some DDOs in the Melbourne Planning Scheme have discretionary, and some non-discretionary, height controls, so we cannot know what circumstances may have influenced the outcome in relation to different DDOs.

Mr Tweedie also referred us to two sets of minutes of the Melbourne City Council's Planning and Development Committee (11 November 2004 and 6 September 2005) where the officers, in responding to objections to the proposed mandatory height, had outlined arguments supporting mandatory height limits.

Mr Tweedie submitted

*(the) vast majority, if not all, development applications for heights which exceed the mandatory maximum building heights proposed in this amendment would be unacceptable and would detract from the essential built form character of the area, and the built form outcomes sought to be achieved.*

However, if there were to be a stated maximum building height with some flexibility to exceed it, we cannot see the basis of this conclusion. We certainly do not consider it to be self-evident. In contrast, we would accept as reasonably self-evident that an additional storey height in an area with predominantly 2 or 3 storeyed development could detract substantially from the essential quality of that area's built form.

Certainly, if we thought that the final outcome within DDO33 would be a series of 60m buildings, we would agree with Mr Tweedie. However, we see no reason in principle (refer later discussion) why the introduction of discretion into the control of building heights in DDO33 should lead to any substantial divergence, overall, from the preferred height limit of 40m.

It is clear that the issue of concern in relation to discretionary vs mandatory height controls for DDO33 relates to Council's desire to ensure a clear visual differentiation between the CBD Proper and the CBD Fringe. In considering the various submissions

and evidence, we believe it is helpful to consider the likely future built form of the CBD Fringe area and areas to its north-west (West Melbourne) and east (the CBD).

The planning strategy proposed by Hansen Partnership et al (2004a, 2004b), Council's adopted strategy (2005) and the controls proposed for DDO33 suggest a fairly clear-cut urban form outcome for this Study Area – a phalanx of high buildings in the CBD, a further swathe of medium height (40m) buildings in the CBD Fringe area (DDO33) and then an extensive area of mainly 4-storeyed buildings extending across to the hilltop on which is sited the North Melbourne Town Hall, with the only significant variation being a small cluster of 5-storeyed buildings close to the North Melbourne Railway Station and limited areas of 3-storey development.

However, we suspect that the actual eventuality is less clear. We envisage that the CBD will increasingly consist of random clusters and isolated tall buildings of varying height. Within the DDO33 area, buildings of up to 40m height will occur, also randomly located, with their number and location depending on site size, proximity to other features and market opportunities. It is not at all clear to us how visually distinct the area of DDO33 will be from the CBD, though it will probably be quite distinct from the lower-rise areas to its north and north-west, as there is substantial difference between the (generally) 4 storey development of DDO29 and the proposed 10 storey height proposed for DDO33.

The difficulty we have in analysing this aspect of Amendment C96 is that there has been no rigorous analysis that explains or justifies the proposed 40m height limit for DDO33. For example, there is no analysis of the visual character of the nearer portions of the CBD in terms of emerging building height, or of how the desired development outcomes in the CBD-Fringe area would appear when viewed from the west (or anywhere else).

It seems to us that the proposed 10 storey or 40m height limit for the DDO33 area is quite arbitrary. Certainly, different Panels have, in the past, put forward various views on this matter but, again, these do not seem to have been based on any demonstrable urban design (i.e. visual) analysis.

However, given the necessarily random and rather chaotic nature of development outcomes within the CBD, or likely development outcomes within the area of DDO33, it seems to us that Council's strategic approach is appropriate, which is:

- To establish the general character that is sought (e.g. in this case, one intermediate step in building height between the lower-rise development in North Melbourne and the high-rise development in the CBD);and
- To then arbitrarily select a building height limit between the lower-scale height controls to the west and the actual or expected high-rise outcomes of the CBD.

The key question that follows is whether discretionary controls could be used to achieve development of about 40m but with some variations, or whether the existence of any discretion would amount to a waiver of any height control, however hedged with clearly stated objectives and 'Built Form Outcomes'.

The change sought by Mr Townshend to Schedule 33 to the DDO simply involves removing the provision that prevents a permit being granted for a building to exceed 40m.

Some of those supporting the discretionary approach to height controls argued that discretion would allow relatively minor variations that would have to be justified on the specific merits of a particular design, its site and its immediate context. Those supporting the mandatory approach appeared to believe that the existence of any discretion would allow a virtual *carte blanche* to designers to ignore any stated height limit.

For example, in the analysis provided in Council's Committee reports and minutes, the officers' comments rejecting any discretionary height control appear to assume that adoption of discretionary height controls would remove any height constraint (for instance, they referred to arguments that would only have meaning if there were effectively no height control; some arguments also appeared speculative at best, e.g. that mandatory height controls would, to a useful degree, reduce speculative redevelopment of valued older buildings).

However, we consider it reasonable to conclude that, if clear objectives and performance outcomes can be expressed in relation to the desired building height, together with appropriate decision guidelines, any buildings approved in excess of the nominated height limit would either have to be justified on some special circumstance (i.e. not be a general case that could apply widely), or would make only minor incursions above the stated height. To conclude otherwise would be to also conclude that the whole performance-based tenet of the VPPs has been wrong.

The one qualification we have to our above conclusion is our earlier reference (and Mr Townshend's equivalent qualification) to the need for a clear statement of objectives and desired outcomes. As discussed later, we have concluded that the objectives and Built Form Outcomes proposed for DDO33 lack the adequate clarity required to support a discretionary height control. This is one problem that was referred to by the C20 Panel, which was concerned that mandatory height controls would merely be used to avoid the need for more rigorous drafting of policies.

In conclusion, we do not consider that Council has demonstrated that discretion to permit buildings in excess of 40m height in proposed DDO33 would be inimical to the objectives and built form outcomes of its strategy, as set out in Clause 21.05 and 21.08-9 of the MSS and Schedule 33 to the DDO.

### **6.3.2 Specific provisions of the proposed new Schedule 33**

Mr Townshend submitted that the Built Form Outcomes of DDO33 are poorly drafted, do not provide any additional information beyond that provided in the schedule's Objectives, are vague and do not provide any useful support to developers, residents or Council officers in interpreting the objectives of the schedule.

The proposed amended Schedule 33 to the DDO sets out eight Design Objectives. A table within the schedule also sets out 8 Built Form Outcomes, a number of which have an obvious correlation with a particular Design Objective. We have illustrated these correlations in Table 2. We have used our own judgement in matching, where it seems appropriate, Built Form Outcomes against an appropriate Objective.

**Table 2: Correlation - DDO33 Design Objectives and Built Form Outcomes**

<b>Design Objective</b>	<b>Built Form Outcome</b>
To provide for buildings of a height that responds to the transition between the taller built form of the central city and the lower built form of West Melbourne.	Maintenance of a clear contrast in built form scale between the central city and the lower built form scale of West Melbourne.
To ensure that new development respects the scale, and provides an appropriate transition to, adjacent lower scale heritage buildings.	Respect for the heritage characteristics of the area.
To provide for appropriate spacing between higher buildings.	(no corresponding BFO)
To maintain an open outlook from Flagstaff Gardens by ensuring the Gardens are not hemmed in by buildings.	Maintenance of an open outlook from Flagstaff Gardens by ensuring that the Gardens are not hemmed in by buildings.
To encourage new development to reflect the grain of the existing area.	On larger and consolidated sites building forms respect the original lot pattern and grain of the area.
To ensure that development supports high levels of pedestrian amenity related to access to sunlight and sky views at a pedestrian friendly scale.	Built form that respects and strengthens the pedestrian scale and focus of the area.  Development that does not overshadow Flagstaff Gardens between 11am and 2 pm on 22 September and 22 June.
To encourage active (commercial) uses, particularly at ground level.	Buildings designed to have active frontages, contributing to high levels of pedestrian amenity at street level.
To create a high quality mixed use area and encourage reuse of existing building stock.	(no corresponding BFO).
(no corresponding Objective)	Strong urban edge with zero front setbacks at street level.

There are two Design Objectives with no apparent corresponding Built Form Outcomes and one Built Form Outcome with no apparently related Design Objective.

At this point, because there is no Practice Note relating to the use of the DDO, we consider it useful to consider the guidance provided by DSE in writing planning policy. The Practice Note: *Writing a Local Planning Policy* describes, amongst other matters, how a policy's objectives and the policies themselves should be framed. Without repeating these guidelines, we believe that, generally, the above Design Objectives of Schedule 33 satisfy the guidelines of the Practice Note. The Built Form Outcomes seem to us to be very equivalent to the Policies described in that practice note and, using that comparison, we conclude that they fail this reasonable test.

The Practice Note has this to say about the drafting of policies:

The actual policy should ..... state .....

- .....
- the responsible authority's expectation of what should happen.

LPPs ..... may contain decision guidelines for the responsible authority, and/or criteria or performance measures against which an individual application will be tested.

[The] ..... LPP can give guidance on how a responsible authority will exercise a discretion or what its expectations are:

- .....
- by providing criteria, performance measures and sometimes techniques for assessing applications
- by providing decision guidelines or providing a link to more detailed guidelines or design frameworks.

We believe that Table 2 readily demonstrates and supports Mr Townshend's point. In many cases, the Built Form Outcome simply repeats, with minor rephrasing, the corresponding objective. Most Built Form Outcomes provide little further guidance as to how any particular objective is to be achieved or a design is to be assessed.

To illustrate this point – consider the first Objective and Built Form Outcome. The latter certainly helps clarify the intent of the former, but only in a small way. There is no reference to the prevailing heights or visual character of the CBD or West Melbourne, or what constitutes a clear contrast. While observers might readily agree on the characteristics of the built form of West Melbourne, we do not believe that the same can be said for the built form of the CBD (refer earlier discussion). This problem is exacerbated by the lack of any visual analysis or description of this built form anywhere else, including the Hansen Partnership et al (2004a and 2004b) *Strategy*.

The same problem occurs with the next Objective and Built Form Outcome, which relate to heritage issues. In fact, this pair of statements would be better reversed, as the Objective seems to provide more specific guidance than does the Built Form Outcome.

In addition to setting out Built Form Outcomes that would provide a more objective test of the Schedule's Objectives, it could be useful to include in DDO33 a number of Decision Guidelines to help focus the assessment process on the critical issues. The only Built Form Outcome that we consider provides an objective test is that referring to the requirements for avoiding shade on the Flagstaff Gardens.

We also consider it undesirable for control documents such as the DDO to use words that have complex and vague interpretations, as such words are more likely to confuse than clarify any assessment process (which is where they will ultimately be tested). For example, while terms such as 'active frontage' may be useful in discussions between like-minded urban designers, they do not provide any help to designers who are trying to balance a number of competing demands, as they seem to encapsulate

several concepts which themselves are not readily defined or measured. Terms which we consider to be most inappropriate in the Built Form Outcomes include:

- Hemmed in by buildings;
- Lot pattern and grain;
- Active frontages [the Objective's reference to 'active (commercial) uses, particularly at ground level' implies that 'active uses' can occur above ground floor, which confuses the issue further];
- Strong urban edge;
- Respect for (as in 'Respect for the heritage characteristics of the area').

While Council's proposal for a mandatory height limit means that some of these Built Form Outcomes can be vaguely expressed without creating any risk (simply because they would have no real applicability), others are important to the exercise of Council's discretion.

On this basis, we consider that the Objectives and, in particular, the Built Form Outcomes, together with other components of Schedule 33 to the DDO, should be thoroughly reviewed and redrafted in a more precise manner in the light of other changes to the discretion of this schedule.

### 6.3.3 Podium levels and above-podium building setbacks

As set out in Table 3, the existing and amended Schedule 33 provide the requirements for building setbacks:

**Table 3: Provisions of Existing and Amended Schedule 33 (DDO)**

Existing Schedule 33 provisions	Amended Schedule 33 provisions
<p>Podium height between 16 metres and 28 metres or which responds to the dominant streetscape.</p> <p>Tower setback up to 6 metres from all major streets.</p> <p>For towers up to 40 metres, a setback from the side and rear boundary of at least 6 metres.</p> <p>For towers above 40 metres, a setback of 24 metres from an adjoining tower of similar height.</p> <p>Side, rear and tower separation setbacks may be reduced where it can be demonstrated that towers are offset and habitable room windows do not directly face one another.</p>	<p>Podium height of 16 metres or the height of an adjoining heritage building, whichever is the lesser.</p> <p>Setbacks above podium:</p> <ul style="list-style-type: none"> <li>▪ 10 metres from front boundary fronting Jeffcott Street and Batman Street.</li> <li>▪ 10 metres from front boundary adjoining a heritage building</li> <li>▪ 2 metres from laneways.</li> <li>▪ 6 metres from all other front, side and rear boundaries</li> </ul>

On the basis that the Panel would conclude that DDO33 should apply to the Shell site, Mr Townshend submitted that these setbacks are onerous. The Shell site adjoins an identified two-storeyed heritage building in Spencer Street and is situated on the corner of Batman Street. Consequently, its podium level would have to be substantially lower than 16m and, above the podium level, the building would have to be set back 10m on two frontages and 6m on the other two boundaries, leaving a substantially reduced floor area.



In considering the issue of the control of podium heights, we have the problem that submissions to the Panel did not clarify the question of whether Schedule 33 provides any discretion to allow variations in height to the podium level.

The DDO states:

*A permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise.*

The proposed Schedule 33 specifies that a permit cannot be granted to increase the 'maximum building height'. However, this term occurs only in the heading row to the relevant column in the table to Schedule 33. Below the heading row there are two sub-headings: 'Height' and 'Setbacks'. Under 'Height' is the term '40 metres', which must logically refer to the highest part of the building. Under the heading 'Setbacks', in addition to the various specified setbacks, is the stated upper limit for a podium's height. In addition to the statement that 'A permit **cannot** be granted to vary the maximum building height', there is a second statement 'Buildings and works **should not** reduce the minimum building setback' [Panel's emphasis]. There is no specific reference, either way, to the height of a podium. We note that the term 'Maximum building height' is used in the singular, so it might be argued that it only refers to the height relating to the highest part of the building, i.e. 40m. However, the term 'Minimum building setback' also occurs in the singular, even though several different setback circumstances are specified. Consequently, we do not consider that any inference can be drawn from the fact that the term 'height' is used in the singular.

In our view, a decision as to whether the 'maximum building height' refers to the podium of a building in addition to its highest part is a matter of legal interpretation, which is not within this Panel's provenance. However, we believe that it is arguable that the Schedule is drafted so that a permit cannot be granted to increase the height of a podium, including allowing it to be higher than an adjoining heritage building. Consequently, we have based our following discussion on this assumption as we believe that we should deal with the most conservative interpretation of the amendment.

Mr Townshend submitted that the 16m height limit for podiums was unreasonable. However, while any given variation to the proposed 16m height of the podium would be more critical than the same variation to the proposed 40m maximum building height, we also consider that our earlier comments in relation to overall building height are equally applicable.

The issue of greater importance, however, is that of the maximum height of a podium when the site adjoins a site in a Heritage Overlay.

Mr Lovell pointed out that the heritage significance of most buildings which DDO33 (and DDO56) seek to enhance by controlling the height of adjoining building podiums is not particularly great. The only 'A' graded buildings are St. James Old Cathedral and the Sands & McDougall building in Spencer /Jeffcott Streets (together with an adjoining building to the west). There is one 'B' graded building (33-47 Batman Street, the 'W. O'Donnell Engineer' building), a number of 'C' graded buildings, one 'D' and one 'E' graded. Mr Townshend submitted that, in these circumstances, it would be onerous to impose the arbitrary height control on podiums that is proposed.

With respect to the issue of podium height in relation to adjoining heritage buildings, we refer back to our earlier conclusions about the appropriate basis for constraining the siting and bulk of buildings that are close to, though not within, a heritage place (see Section 5.3.1). We have concluded that the purpose of constraining development around a heritage building is to allow observers the opportunity to better understand a building through seeing it in a context more congruent with its original setting than might otherwise occur. This is presumably the intention of the proposed control of podium heights on sites adjoining heritage buildings. However, while the proposed device has the advantage of simplicity and certainty, it also seems to us relatively crude and thereby likely to impose harsh constraints with little public benefit. It may well impose constraints in many situations that are not merited by the particular circumstances.

In our view, matters that would be relevant in determining appropriate development constraints on sites adjoining a heritage building could include:

- The degree of heritage significance of the adjoining building (e.g. it would be more important to impose more stringent height controls in relation to an 'A' graded than a 'D' graded building);
- The basis of the building's heritage significance (e.g. if a building is significant for its interiors, or its association with a particular person or event, its setting might be of little or no importance); and
- The heritage building's original or potential historic context (e.g. if a historic building is of a type which would often have been located amongst much taller buildings – even if not the case with the particular example – then it would be unreasonable to impose greater constraints on adjoining development).

The relevant Design Objective refers to new development respecting heritage buildings; the Built Form Outcome, as discussed earlier, is even vaguer. We consider that there are a number of ways that greater flexibility could be applied. Merely to illustrate one opportunity, we have set out the following example:

- Replace the phrase '*or the height of an adjoining heritage building, whichever is the lesser*' from the schedule with the phrase '*or an appropriate lesser height, where the site adjoins a heritage building*'; and
- Include a new section to the Schedule titled 'Decision Guidelines' and set out therein a number of matters that should be considered '*if it is proposed to construct a podium on a site adjoining a site in a Heritage Overlay so that the podium is higher than the adjoining heritage building*' (and we have set out earlier, as examples, a number of such matters).

We now turn to the question of whether the required building setbacks above podium level, and the specified podium heights, are in principle, appropriate and reasonable.

Firstly, the only Design Objective that appears relevant to building setbacks is the following:

- *To provide for appropriate spacing between higher buildings*

We consider that this objective actually reflects the outcome of an underlying objective which would more appropriately worded (based on our best assumption as to what purpose this objective actually serves): '*to ensure that taller buildings appear as independent structures*'. This objective could then be satisfied by the performance

requirement: *‘(provide) appropriate spacing between higher buildings’* – though this also needs further clarification as to what would be an appropriate outcome.

The purpose of requiring some degree of building setback above the podium level is, presumably, to create a greater sense of openness for pedestrians or perhaps to avoid a canyon effect at pedestrian level by ensuring that building structures above podium level are setback and relatively free standing (somewhat like chessmen on a chessboard, in contrast to a high wall). (We do not consider that one approach has any greater merit than the other, but that is not a relevant issue here; council’s strategic view has been to adopt the former position.)

In order to compare the present and proposed effects of DDO33 on building setbacks above podium level, we have recast Table 3 in the form presented in Table 4.

**Table 4: Comparison of Outcomes of Existing and Amended Schedule 33 (DDO)**

<b>Existing Schedule 33 setback requirements above podium level (for buildings not exceeding 40m)</b>	<b>Amended Schedule 33 setback requirements above podium level</b>
<p><u>From major streets:</u></p> <ul style="list-style-type: none"> <li>▪ 6 metres.</li> </ul> <p><u>From side and rear boundaries</u></p> <ul style="list-style-type: none"> <li>▪ 6 metres.</li> </ul> <p><u>Qualification to above</u></p> <ul style="list-style-type: none"> <li>▪ Side, rear and tower separation setbacks may be reduced where it can be demonstrated that towers are offset and habitable room windows do not directly face one another.</li> </ul>	<p><u>From major streets:</u></p> <ul style="list-style-type: none"> <li>▪ 10 metres from Jeffcott and Batman Streets if the building has a frontage to those streets<sup>2</sup></li> <li>▪ 10 metres from front boundary where it adjoins a heritage building</li> <li>▪ 6 metres from any other street.</li> </ul> <p><u>From all other front<sup>3</sup>, side and rear boundaries</u></p> <ul style="list-style-type: none"> <li>▪ 6 metres</li> </ul> <p><u>From laneways</u></p> <ul style="list-style-type: none"> <li>▪ 2 metres</li> </ul> <p><u>All other front, side and rear boundaries</u></p> <ul style="list-style-type: none"> <li>▪ 6 metres</li> </ul>

The significant changes therefore are:

- Increase the setbacks from Jeffcott and Batman Streets from 6 to 10m;
- Increase the setbacks from any other front boundary adjoining a heritage building from 6 to 10m; and
- Reduce the setback from laneways from 6m to 2m.

The Hansen Partnership et al (2004a, 2004b) strategy sets out some of these criteria, though often in more general terms, e.g. the height of a podium in relation to a heritage building ‘should reflect the adjoining (heritage) building’. Although Hansen Partnership et al (2004b) propose a 10m setback for buildings above podium level and adjoining a heritage building, it also acknowledges the difficulty that arbitrary

<sup>2</sup> We consider that the concept of the street to which a building ‘fronts’ is not appropriate as a control criteria, as a building’s sideage could well be of greater visual significance than its frontage. It seems to us that the question of the street to which a building has its address is a matter of historic accident, rather than one of urban design.

<sup>3</sup> It is not clear to us what ‘other’ front boundaries might exist.

setbacks would cause for corner buildings, and propose that ‘on corner sites abutting heritage sites, a podium of one additional storey above the adjoining heritage building is permitted’<sup>4</sup> (subject to a number of other qualifications).

Council’s adopted form of Findings Report (2005) included the setback provisions that were also included in the exhibited amendment.

The Hansen Partnership et al (2004b) setback recommendations appear to have been based on two principal objectives:

- To provide a more open view to the west from Flagstaff Gardens; and
- To provide an appropriate setting for heritage buildings.

The provision of a more open view from the Gardens is a strategic consideration and, given achievement of this objective requires that reasonable consistency should be achieved in building setbacks along Jeffcott and Batman Streets (at least, for those parts of buildings within the important view-lines from the Gardens, which applies most strongly to those parts of Jeffcott and Batman Streets that are closer to the gardens in either or both distance and height), we see no reason why this provision should not be supported, subject to the last-mentioned qualifications.

However, we refer again to our comments (see Section 6.3.1) about the appropriateness of applying arbitrary height controls in order to provide an appropriate setting for heritage buildings. We consider that these comments apply equally to building setbacks as to podium heights.

Mr Tweedie drew our attention to the use of DDOs to provide constraints on development of sites adjoining a heritage place, using Moreland Planning Scheme as one example of such a DDO. However, we note that the Moreland Planning Scheme’s DDO1 – Heritage Protection uses performance-based criteria for assessing the requirements for height constraints on buildings on sites adjoining a heritage place. Panel Member Read, acting as Tribunal Member, reviewed one Council decision and set aside any requirement for the limitation on the height of a building adjoining a heritage place on the ground that the nature of the heritage building’s significance would be affected by allowing an adjoining building to be of greater height.<sup>5</sup>

On this basis, we conclude that the provisions of Schedule 33 to the DDO should be amended to remove the arbitrary requirement for buildings above podium level to be setback 10 metres. This provision should be replaced by a more flexible performance requirement and appropriate Decision Guidelines.

#### **6.3.4 Change to height control west of Spencer Street**

As we have previously concluded that there is no justification in replacing DDO33 with DDO56 (see Section 5.4), we do not need to consider the question of the further control of building heights west of Spencer Street.

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<sup>4</sup> Which also implies that the reference to ‘reflect the adjoining (heritage) building’ should be interpreted as ‘the same height as.....’.

<sup>5</sup> Carlos Constructions Pty Ltd v Moreland CC [2003] VCAT 1865 (28 November 2003)

## 6.4 FINDINGS AND CONCLUSIONS

On the basis of the above discussion and analysis, we have concluded that it is appropriate to amend Schedule 33 to the DDO to provide for the following:

- To remove the mandatory requirement relating to building height, though retaining the requirement for further consideration to be given to the grant of a permit for a building in excess of 40 metres height;
- To remove any mandatory effect of the requirements relating to maximum podium height not exceeding the height of an adjoining heritage building;
- To reduce the requirement for an increased building setback adjoining a heritage building; and
- To clarify the wording of the Built Form Outcomes to provide much clearer criteria by which a design can be assessed.

## 6.5 RECOMMENDATION

**The Panel recommends that the Table in Schedule 33 to the DDO should be reworded to achieve the following outcomes:**

- **The provision that a permit cannot be granted to increase a building's maximum height should be deleted;**
- **Provision should be made to ensure that, in appropriate circumstances, a permit may be granted for the height of a podium to exceed 16 metres or, if adjoining a heritage building, to be of height greater than that heritage building;**
- **The provision of a minimum building setback above podium level of 10 metres where the site adjoins a heritage building should be deleted and substituted by a more flexible, performance-based requirement;**
- **The Built Form Outcomes to be amended to provide a much clearer interpretation of the Schedule's Objectives, with particular clarification of what is required to enhance an adjoining heritage building; and**
- **Additional information to be included in the Schedule to clarify the application of the above matters including, if appropriate, Decision Guidelines.**

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## **7 PROPOSED AMENDMENT TO DDO28 – LAURENS STREET AREA**

### **7.1 BACKGROUND**

The area affected by the proposed DDO28 consists of the two small blocks bounded by Miller/Spencer, Anderson, Victoria and Dryburgh Streets, together with the two most southerly allotments within the block bounded by Miller, Laurens and Anderson Streets.

The amendment proposes to apply existing DDO28 to this area, which is currently not subject to any DDO control. The overlay will have the effect of creating a discretionary 5 storey height control. The DDO also includes the following objectives:

- To acknowledge the transitional nature of the area;
- To encourage development of the area as a distinctive urban activity node;
- To encourage the development of a new built form character and the retention of the mixed use nature of the area; and
- To acknowledge the potential for higher density development near the North Melbourne railway station.

Land to the immediate south of the area of proposed DDO28 (i.e. south of Miller/Spencer Streets) is already affected by an existing DDO28. Land to the east is within an area of DDO32, together with the land north of Victoria Street, east of Stawell Street. The two most southerly allotments within the block bounded by Miller, Laurens and Anderson Streets are already each affected by a separate Heritage Overlay (HO305, HO405) and the easternmost block (between Miller/Spencer, Stawell, Victoria and Dryburgh Streets) is situated on the edge of a larger Heritage Overlay that extends northwards and eastwards (HO3).

These blocks are currently developed with two-three storeyed buildings of varying age and used for a variety of uses. The only exceptions are some taller buildings within the two most southerly allotments between Laurens and Anderson Streets. A permit has also been granted for a 5-storey building at 152-160 Miller Street (this building has not yet been constructed).

Council considered that the discretionary 5-storey height limit would provide further opportunities for development that would be close to the North Melbourne Railway Station, which has been designated as a Local Activity Centre

## 7.2 ISSUES

The North & West Melbourne Association was the only party objecting to the introduction of this overlay. The Association objected to the 5-storey height limit on the basis that:

- It is not appropriate that this area be considered as part of the North Melbourne Station activity centre, as it is divided from that area by the Miller/Spencer Streets thoroughfare; and
- The area's urban character is more appropriately related to the lower-rise areas to the north.

The Association submitted that this area should be more appropriately included in the alternative DDO29, which has a discretionary 4-storey height limit.

Melbourne City Council is seeking to provide for a greater amount of development close to the North Melbourne railway station activity centre by taking advantage of the proximity of areas north of Spencer Street which also contain unusually large allotments.

## 7.3 DISCUSSION

The key issues in this matter relate to

- The reasonableness of treating this area as a functional extension of the railway station precinct; and
- The acceptability of the urban design outcome in terms of slightly higher buildings to the north of Spencer Street (i.e. 5-storey rather than 4-storey).

We concede that any retail component of the North Melbourne railway station activity centre is unlikely to extend to both sides of the Miller/Spencer Street thoroughfare, due to the functional gap that this thoroughfare would create. However, an activity centre should include a much more extensive range of uses including, in the case of a centre based on a railway line, substantial housing and/or business components.

From Council's submissions and our inspections, we accept that there are reasonably practical pedestrian links between the areas north of Miller/Spencer Street and the North Melbourne railway station. We see no reason why this area could not contribute to the functionality of an adjoining activity centre.

With respect to the issues of increased building heights – by one storey – for three blocks on the northern side of Miller/Spencer Streets, we consider that there are at least two different approaches that can be adopted as a basis for evaluating urban design changes, paraphrased as:

- The 'don't make any avoidable change' philosophy; and
- The 'its acceptable if it creates an interesting urban image' philosophy.

In this case, the outcome of this amendment would be a slightly higher (by one storey) urban design form on the northern side of Spencer Street thoroughfare, which should reflect the permissible height to the south, while the N&WMA's position is that any

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redevelopment on the northern side of Spencer Street should remain in character with the more extensive areas to its north and west, which have a discretionary 4-storey limit.

In our view, there are sound functional reasons to support increased development close to the North Melbourne railway station, including the area affected by DDO28. We consider that the two urban design options – that proposed in the amendment and that sought by the N&WMA – provide equally acceptable urban design outcomes. However, the former provides better support for the development of an activity centre based on the railway station. This also supports a number of other policies of the Melbourne Planning Scheme's SPPF, LPPF, including various policies of *Melbourne 2030* (see Section -).

## **7.4 RECOMMENDATION**

**The Panel recommends that the application of existing DDO28 to the nominated area, as exhibited, is supported.**



## **8 PROPOSED AMENDMENT TO DDO32 – MUNSTER TERRACE**

### **8.1 INTRODUCTION**

Amendment C96 includes a proposal to extend the existing DDO32 to an area bounded by Victoria, Queensberry, Laurens, Arden, Dryburgh and Stawell Streets and Munster Terrace. No height controls presently apply to this area. DDO31 and DDO32 apply to the adjoining areas to the east.

### **8.2 KEY ISSUES**

No objections were made to this section of the amendment.

### **8.3 RECOMMENDATION**

**The Panel recommends that the application of existing DDO32 to the nominated area, as exhibited, is supported.**

## 9 MISCELLANEOUS ISSUES

### 9.1 INTRODUCTION

In addition to the extensive submissions relating to DDO56, DDO33 and DDO28, a number of other submissions were received by Council dealing with other, less critical aspects of the amendment. These were:

- The proposal to remove those parts of the various DDOs that affect public roads;
- Submissions relating to land not included in the amendment;
- Consequential changes to figures in Council's MSS; and
- Corrections to other mapping.

### 9.2 HEIGHT CONTROLS ON ROADS

The exhibited amendment proposed to remove the DDO controls from roads affected by Schedules 28, 29, 31, 32 and 33 within West Melbourne. Council's intention was to limit permit 'triggers' for works unrelated to the purpose of the DDOs (e.g. for works relating to tram shelters). Roads would continue to be covered by controls contained within the zone and applicable Heritage Overlays and other relevant provisions of the Scheme.

The North and West Melbourne Association, while understanding Council's rationale for this proposal, submitted that:

*a more consistent planning approach should be undertaken for all DDO areas and across the municipality, rather than the piecemeal approach taken in Amendment C96 for only part of the zones, in only part of the several DDOs areas and in only parts of the North and West Melbourne area. This would achieve a greater transparency and understanding for all stakeholders involved in the planning process.*

Mr Tweedie, in his submission, acknowledged that Council would not now support this aspect of the amendment as it accepts that there may well be other, more appropriate means of achieving the same result, for example by amending clause 62 of the Scheme to exempt such works from the need for a permit.

The Panel concurs with this view.

### 9.3 SUBMISSIONS ABOUT LAND NOT INCLUDED IN THE AMENDMENT

One submission sought the Panel's support for the application of DDO28 to an area that had not been included in the amendment. This submission related to land at 17-27 Laurens Street, North Melbourne, which is situated in an industrial zone and is reasonably close to the North Melbourne railway station. Mr Brennan, on behalf of the owner of this property, Mr Dos Santos, sought the Panel's support for his site's rezoning to a Mixed Use Zone.

Mr Brennan submitted that it is no longer feasible to use the land for industrial purposes because of its closeness to dwellings in converted industrial buildings. There

appears to have been protracted and to-date unsuccessful (from Mr Dos Santos' point of view) discussions between Mr Dos Santos and Council as to the rezoning of this land.

Because the land at 17-27 Laurens Street is not part of the exhibited amendment, this Panel is not able to make any recommendations in relation to its zoning.

## **9.4 CHANGES TO THE MUNICIPAL STRATEGIC STATEMENT**

Amendment C96 proposes to make the following changes to Council's MSS:

- Amendments to Figures 5 (Housing Opportunities) Clause 21.04 to reflect the following:
  - change the area affected by proposed DDO56 from one supporting medium housing opportunities to one of low housing opportunity; and
  - change the area affected by the proposed extension of DDO28 in a manner that is the converse of the above.
- Amendments to Figure 10, Clause and 21.05:
  - change the area affected by proposed DDO56 from one supporting moderate urban farm change to one where the built-form character is to be preserved; and
  - change the area affected by the proposed extension of DDO28 in a manner that is the converse of the above.
- Amendment to Figure 20, Clause 21.08-9 to reflect the following:
  - Change the area affected by DDO56 from Precinct 6 to Precinct 3 and the affected by the extension of DDO28 from Precinct 2 to Precinct 7.

These maps reflect the municipal strategy and are necessary to ensure that Council's strategies correlate with the changes proposed in this amendment by way of introduction of DDO56 and the extension of DDO28 to include areas north of Miller/Spencer Streets.

On the basis of this Panel's recommendations that the DDO56 should not proceed and that the proposed extension of DDO28 is supported, the above figures would need to be appropriately varied to ensure that strategic policy maps maintained consistency with the relevant overlays that are used to implement them.

## **9.5 ALIGNING PROPOSED AND EXISTING DDO CONTROLS WITH PROPERTY BOUNDARIES**

The amendment proposes to 'align the new DDO and existing controls with property boundaries'<sup>6</sup>. No submissions were made in respect to these provisions. The Panel was not provided with any information as to the areas that would be affected.

In the absence of any submissions in relation to this aspect of the amendment, the Panel concludes that, as the proposal is logical, these changes should be supported.

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<sup>6</sup> Amendment's Explanatory Statement

## **9.6 RECOMMENDATIONS**

The Panel recommends that:

- **The proposed removal of DDO controls from public roads is not supported;**
- **Inclusion in Amendment C96 of the property at Nos. 17-21 Laurens Street, North Melbourne is not supported;**
- **The proposed changes to Figure 5 (Clause 21.04), Figure 10 (Clause 21.05) and Figure 20 (Clause 21.08) in the Municipal Strategic Statement should be varied to ensure consistency with the Panel's other recommendations; and**
- **The proposed realignment of the new DDO and existing controls with property boundaries is supported.**

## 10 CONCLUSIONS/FINDINGS AND RECOMMENDATIONS

Based on the reasons set out in this report, the Panel makes the following recommendations to the planning authority:

1. **The Panel recommends that Amendment C96 to the Melbourne Planning Scheme should be adopted with modifications as set out in the following recommendations.**
2. **The Panel recommends that the introduction of DDO56 is not supported and the affected area should remain in DDO33.**
3. **The Panel recommends that the Table in Schedule 33 to the DDO should be reworded to achieve the following outcomes:**
  - **The provision that a permit cannot be granted to increase a building's maximum height should be deleted;**
  - **Provision should be made to ensure that, in appropriate circumstances, a permit may be granted for the height of a podium to exceed 16 metres or, if adjoining a heritage building, to be of height greater than that heritage building;**
  - **The provision of a minimum building setback above podium level of 10 metres where the site adjoins a heritage building should be deleted and substituted by a more flexible, performance-based requirement;**
  - **The Built Form Outcomes to be amended to provide a much clearer interpretation of the Schedule's Objectives, with particular clarification of what is required to enhance an adjoining heritage building; and**
  - **Additional information to be included in the Schedule to clarify the application of the above matters including, if appropriate, Decision Guidelines.**
4. **The Panel recommends that the application of existing DDO28 to the nominated area, as exhibited, is supported.**
5. **The Panel recommends that the application of existing DDO32 to the nominated area, as exhibited, is supported.**
6. **The Panel recommends that:**
  - **The proposed removal of DDO controls from public roads is not supported;**
  - **Inclusion in Amendment C96 of the property at Nos. 17-21 Laurens Street, North Melbourne is not supported;**
  - **The proposed changes to Figure 5 (Clause 21.04), Figure 10 (Clause 21.05) and Figure 20 (Clause 21.08) in the Municipal Strategic Statement should be varied to ensure consistency with the Panel's other recommendations; and**
  - **The proposed realignment of the new DDO and existing controls with property boundaries is supported.**

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# APPENDICES

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## **A THE PANEL PROCESS**

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### **A1 THE PANEL**

This Panel was appointed under delegation on the 26 September 2005 pursuant to Sections 153 and 155 of the *Planning and Environment Act 1987* to hear and consider submissions in respect of Amendment C96. This amendment proposes:

- to alter the existing Design and Development Overlay (DDO) controls and to introduce new DDO controls over specific parts of the Mixed Use Zone in West Melbourne, namely CBD Fringe areas, St James Old Cathedral area, Laurens Street area, and Munster Terrace area;
- to make minor changes to the adopted Municipal Strategic Statement (MSS) in relation to Council's vision for the areas within the Mixed Use Zone in West Melbourne;
- to remove the DDO controls from roads affected by Schedules 28, 29, 31 32 and 33 within West Melbourne;
- to align the proposed and existing DDO controls with property boundaries;
- to make corresponding changes to the adopted MSS; and
- to make corresponding changes to the Planning Scheme Maps 6DDOPT3 and 5DDOPT3.

The planning authority is the City of Melbourne.

The Panel consisted of:

- Chairperson: Helen Weston
- Member: Michael Read.

### **A2 HEARINGS, DIRECTIONS AND INSPECTIONS**

A Directions Hearing was held on 12 December 2005 at Planning Panels Victoria, 80 Collins Street, Melbourne. A number of standard directions were made, which provided guidance for the conduct of the hearing. All directions were complied with and, to this extent, their function has been discharged. They are not reiterated here.

The Panel Hearings were held on 13, 15 and 20 February 2006 at Planning Panels Victoria, 80 Collins Street, Melbourne.

The Panel members inspected the areas subject to the four DDOs and surrounding areas, making several unaccompanied visits to these areas. Comprehensive tour notes prepared by the Council assisted the Panel in these inspections.

### A3 SUBMISSIONS

A list of all written submissions to Amendment C96 is included in Table A.1 below.

The Panel has considered all written and oral submissions and all material presented to it in connection with this matter.

The Panel heard the parties listed in Table A.2 below.

**Table A.1 List of written submissions**

<b>Submitter</b>	<b>Organisation (if any)</b>
Contour Consultants Pty Ltd	On behalf of Shell Australia re land at 404 Spencer Street, West Melbourne
Jewell Partnership Pty Ltd	On behalf of Australia Post re land at 224 Dudley Street, West Melbourne
Mr Jose Dos Santos	Owner, 17-21 Laurens Street, North Melbourne
Mr Bill Cook, Chairperson	North and West Melbourne Association
Mr Nkechi Ogbonnaya, Planning Engineer, Land Use & Traffic Management	VicRoads
Mr John Phillips	Manager Development Approvals, Department of Sustainability and Environment.
<b>Late submissions:</b>	
Ms Meredith Withers, Meredith Withers and Associates Pty Ltd.	On behalf of Multiplex Developments (Vic) Pty Ltd re land in the area bound by Spencer, Jeffcott, Adderley and Dudley Streets, West Melbourne.
Mr Chris Schulz, Allens Arthur Robinson	On behalf of Shell Australia re land at 404 Spencer Street, West Melbourne.



**Table A.2 Presenters to the Hearing**

<b>Party</b>	<b>Appearance</b>
Melbourne City Council	Mr Nick Tweedie of Counsel. He called as expert witnesses: <ul style="list-style-type: none"> <li>▪ Mr David Barnes, town planner, of Hansen Partnership;</li> <li>▪ Ms Meredith Gould, Heritage Architect of Meredith Gould and Associates; and</li> <li>▪ Mr Robert Moore, Manager Urban Design, City of Melbourne.</li> </ul>
Shell Company of Australia	Mr Chris Townshend of Counsel instructed by Allens Arthur Robinson, lawyers. Mr Townshend called as expert witnesses: <ul style="list-style-type: none"> <li>▪ Mr Peter Lovell of Lovell Chen Pty Ltd, heritage consultants.</li> <li>▪ Mr Andrew Rodda, town planner, of Contour Consultants Australia.</li> </ul>
North & West Melbourne Association Inc.	Ms Kaye Oddie.
Australia Post	Mr Peter Jewell, town planner, of Jewell Partnership Pty Ltd.
Multiplex Developments (Vic) Pty Ltd	Meredith Withers, town planner, of Meredith Withers and Associates Pty Ltd.
Mr Jose Dos Santos	Mr Martin Brennan.

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## **B STRATEGIC ASSESSMENT GUIDELINES**

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Pursuant to Ministerial Direction No 11, as part of its assessment of Amendment C96 to the Melbourne Planning Scheme, both the Panel and the planning authority are required to assess the amendment against the Strategic Assessment Guidelines.

*Strategic Assessment Guidelines for Planning Scheme Amendments* (revised in August 2004) are included as a General Practice Note in the VPPs and are to be used by Councils and Panel during the consideration of amendments. The Strategic Assessment Guidelines include a number of matters that are to be considered to ensure that planning is strategic and policy based. The broad issues to be considered in assessing an amendment are set out below and each of these matters is briefly addressed in the following sections:

1. Why is an amendment required?
2. Does the amendment comply with the requirements of the *Planning and Environment Act*?
3. Does the amendment support or implement the State Planning Policy Framework?
4. How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?
5. Does the amendment make proper use of the Victoria Planning Provisions?
6. How does the amendment address the views of any relevant agency?

In addition, the planning authority must assess the impact of the new planning provision on the resource and administration costs of the responsible authority.

The following brief comments are drawn from the detailed strategic analysis of the proposal in Sections 3 and 5 of this report and from Council's *Explanatory Report* and respond, as appropriate, to comments made in submissions in relation to the amendment's consistency with the Guidelines.

### **WHY IS THE AMENDMENT REQUIRED?**

In addition to the reasons put forward by the Council in its *Explanatory Report*, the Panel considers that an amendment to the Melbourne Planning Scheme is required to introduce appropriate height controls to the subject area because of issues raised in the assessment of several development proposals in the CBD Fringe area and to ensure development outcomes that are consistent with the surrounding areas – both the CBD Proper to the south and the lower rise areas of North Melbourne to the north.

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## **DOES THE AMENDMENT COMPLY WITH THE REQUIREMENTS OF THE PLANNING AND ENVIRONMENT ACT?**

The strategic basis for the amendment is to provide appropriate height controls and related built form outcomes, based on investigations including a *Built Form Review* (as subsequently developed into the Strategy adopted by Council) and stakeholder consultation for the West Melbourne area.

As discussed in the Council's *Explanatory Report*, the proposed controls would implement relevant objectives of planning in Victoria. The Panel finds that proposed amendment is also consistent with State planning objectives and policies.

### **Consideration of environmental, social and economic effects**

The Panel considers that the amendment is consistent with the provisions of the *Planning and Environment Act 1987*. As noted in Council's *Explanatory Report*, it would not result in any adverse environmental in nearby areas in West Melbourne or the adjacent Flagstaff Gardens and addresses the relevant social and economic effects including the promotion of high quality design and greater certainty of built form outcomes.

### **Ministerial Directions**

Ministerial Direction No. 9 requires that planning scheme amendments must have regard to the Metropolitan Strategy (*Melbourne 2030*). This issue is discussed in Section 3.1.2 of this report. The Panel concurs with the Council's view that the amendment is consistent with *Melbourne 2030* as it will encourage built form outcomes which are consistent with strengthening the capital city role of central Melbourne. It will also encourage the concentration of new residential and commercial development close to existing activity centres and on strategic sites.

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act. The amendment complies with *Ministerial Direction 11 – Strategic Assessment of Amendments*.

## **DOES THE AMENDMENT SUPPORT OR IMPLEMENT THE STATE PLANNING POLICY FRAMEWORK?**

The Panel considers that the amendment, subject to revisions based on the Panel's recommendations, would support and implement the relevant provisions of the SPPF (see Section 4.1.3). The Panel considers that the proposed DDO33 controls should be amended as recommended in Section 6 and that the draft wording for DDO33 (as exhibited) should be amended to ensure that appropriate and consistent built form and amenity outcomes are achieved by proposed building and works (as discussed in Section 6 of this Report).

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## **HOW DOES THE AMENDMENT SUPPORT OR IMPLEMENT THE LOCAL PLANNING POLICY FRAMEWORK, AND SPECIFICALLY THE MUNICIPAL STRATEGIC STATEMENT?**

As there are only minor proposed or necessary changes to the MSS or local planning policies, there will not be any consequences for other aspects of the policy framework.

## **DOES THE AMENDMENT MAKE PROPER USE OF THE VICTORIA PLANNING PROVISIONS?**

The Panel considers that the amendment makes proper use of the VPPs.

## **HOW DOES THE AMENDMENT ADDRESS THE VIEWS OF ANY RELEVANT AGENCY?**

Two agencies made submissions on the amendment and were not opposed to the proposed amendment and did not appear at the Hearing. Council noted in its Explanatory Report that during the preparation of the *Built Form Review* that preceded the preparation of the amendment, the views of relevant agencies and stakeholders were sought and considered.

## **IMPACT ON THE RESOURCE AND ADMINISTRATION COSTS OF THE RESPONSIBLE AUTHORITY**

The Council noted that the new planning provisions will have a limited impact on its resource and administrative costs and that the proposed amendment will provide greater certainty of the built form outcomes and future character of this part of West Melbourne is assured.

The Panel concurs with this assessment.

## **OUTCOME OF THE AMENDMENT**

With the incorporation of the area covered by proposed DDO56 in the DDO33 and changes to the wording of Schedule 33 of the proposed Design and Development Overlay recommended by the Panel, the implementation of the amendment should facilitate development in the subject area with greater certainty about built form outcomes and without adverse or significant environmental or amenity impacts on the adjacent development or heritage character of this part of West Melbourne.

# C EXHIBITED AMENDMENT

LOCAL  
PROVISION

## SCHEDULE 33 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO33**

### CBD FRINGE

#### 1.0 Design Objectives

- To provide for buildings of a height that responds to the transition between the taller built form of the central city and the lower built form of West Melbourne
- To ensure that new development respects the scale, and provides an appropriate transition to, adjacent lower scale heritage buildings
- To provide for appropriate spacing between higher buildings
- To maintain an open outlook from Flagstaff Gardens by ensuring the Gardens are not hemmed in by buildings
- To encourage new development to reflect the grain of the existing area
- To ensure that development supports high levels of pedestrian amenity related to access to sunlight and sky views at a pedestrian friendly scale
- To encourage active (commercial) uses, particularly at ground level
- To create a high quality mixed use area and encourage reuse of existing building stock

#### 2.0 Buildings and works

An application must be accompanied by a site analysis and urban context report which demonstrates how the proposed building or works achieve each of the Design Objectives and Built Form Outcomes of this schedule, and any local planning policy requirements.

A permit cannot be granted to vary the *Maximum Building Height*.

A permit may be granted to replace or alter a building or works existing at the approval date but which do not comply with the *Maximum Building Height* specified in Table 1, only if the responsible authority is satisfied an increased height improves the amenity and enhances the urban character of the area.

Buildings or works should not reduce the *Minimum Building Setback* specified in the table to this schedule.

An application to reduce the *Minimum Building Setback* must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.

Building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building, with the exception of architectural features and building services.

Table to Schedule 33

AREA	MAXIMUM BUILDING HEIGHT AND MINIMUM BUILDING SETBACK	BUILT FORM OUTCOMES
DDO 33	<p style="text-align: center;"><b>Height</b></p> <p style="text-align: center;">40 metres</p> <p style="text-align: center;"><b>Setbacks</b></p> <p>Podium height of 16 metres or the height of an adjoining heritage building, whichever is the lesser.</p> <p>Setbacks above podium:</p> <ul style="list-style-type: none"> <li>• 10 metres from front boundary fronting Jeffcott Street and Batman Street.</li> <li>• 10 metres from front boundary adjoining a heritage building.</li> <li>• 2 metres from laneways.</li> <li>• 6 metres from all other front, side and rear boundaries.</li> </ul>	<p>Maintenance of a clear contrast in built form scale between the central city and the lower built form scale of West Melbourne.</p> <p>Built form that respects and strengthens the pedestrian scale and focus of the area.</p> <p>Development that does not overshadow Flagstaff Gardens between 11am and 2 pm on 22 September and 22 June.</p> <p>Maintenance of an open outlook from Flagstaff Gardens by ensuring that the Gardens are not hemmed in by buildings</p> <p>Buildings designed to have active frontages, contributing to high levels of pedestrian amenity at street level.</p> <p>Respect for the heritage characteristics of the area.</p> <p>Strong urban edge with zero front setbacks at street level.</p> <p>On larger and consolidated sites building forms respect the original lot pattern and grain of the area</p>

## SCHEDULE 56 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO56**

### ST JAMES OLD CATHEDRAL

#### 1.0 Design Objectives

- To maintain the predominately low scale nature of the area
- To consolidate a lower building height within the area
- To ensure that development maintains the visual prominence and setting of St James Old Cathedral
- To ensure development maintains views to significant landmarks from within the public realm of the area
- To ensure that new development respects the scale, and provides an appropriate transition to, adjoining lower scale heritage buildings.
- To maintain an open outlook from Flagstaff Gardens by ensuring the Gardens are not hemmed in by buildings
- To encourage new development to reflect the fine grain of the existing area
- To ensure development supports high levels of pedestrian amenity related to access to sunlight and sky views and a pedestrian friendly scale.
- To create a high quality mixed use area and encourage adaptive reuse of existing building stock.
- To encourage active (commercial) uses, particularly at ground level.

#### 2.0 Buildings and works

An application must be accompanied by a site analysis and urban context report which demonstrates how the proposed building or works achieve each of the Design Objectives and Built Form Outcomes of this schedule, and any local planning policy requirements.

A permit cannot be granted to vary the *Maximum Building Height*.

A permit may be granted to replace or alter a building or works existing at the approval date but which do not comply with the *Maximum Building Height* specified in Table 1, only if the responsible authority is satisfied an increased height improves the amenity and enhances the urban character of the area.

Buildings or works should not reduce the *Minimum Building Setback* specified in the table to this schedule.

An application to reduce the *Minimum Building Setback* must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.

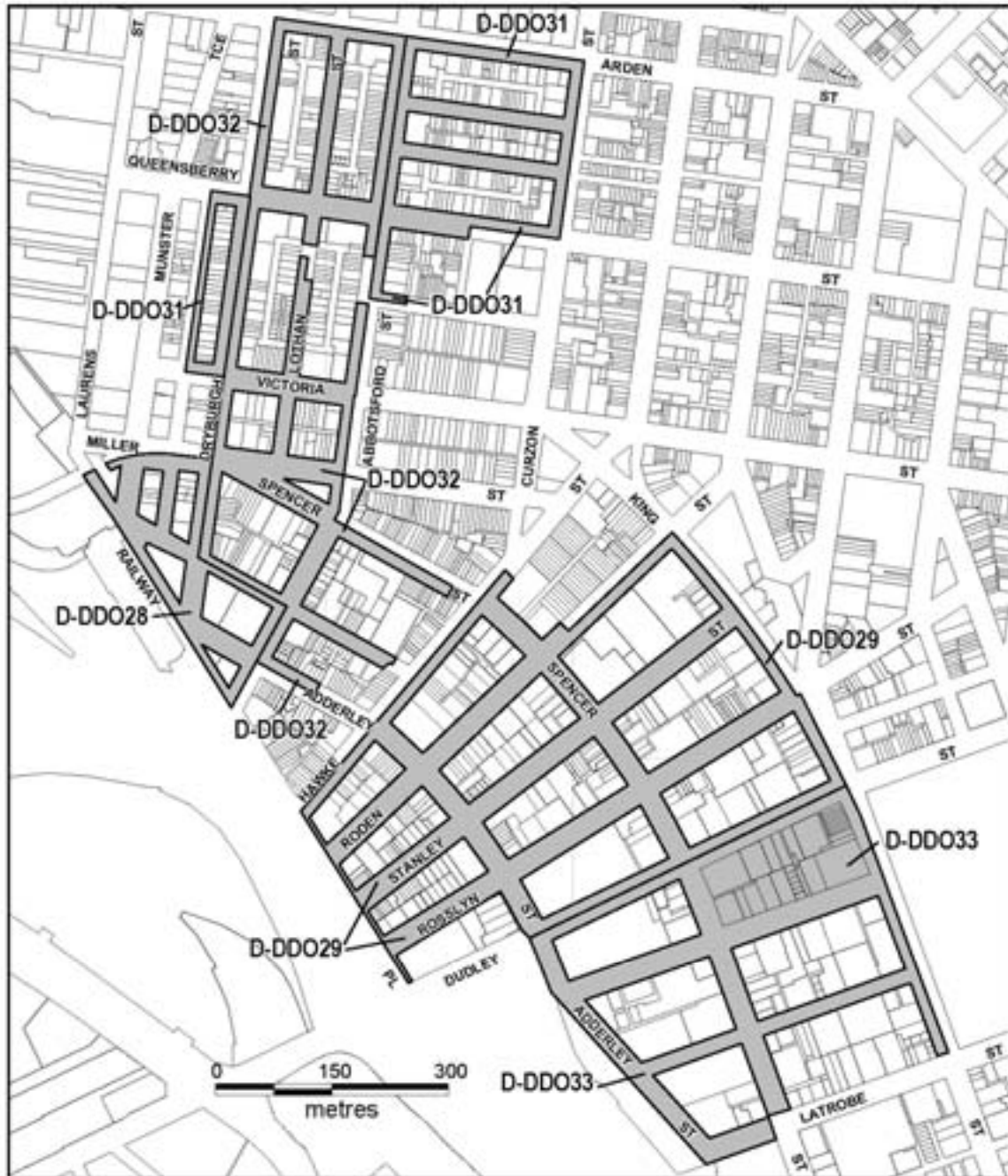
Building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building, with the exception of architectural features and building services.

Table to Schedule 56

AREA	MAXIMUM BUILDING HEIGHT AND MINIMUM BUILDING SETBACK	BUILT FORM OUTCOMES
DDO 56	<p><b>Height</b> 16 metres</p>	<p>New development respects the existing built form, especially the low scale of older building stock in the area by providing a transition to the lower scale heritage buildings</p> <p>New buildings adjacent to heritage buildings reflect the height and setback of heritage buildings and the typical streetscape pattern</p> <p>Development in the vicinity of St James Old Cathedral enhances and respects the visual prominence and setting and general low scale environs of the Cathedral as a heritage place</p> <p>Development which retains views to the landmark St James Old Cathedral from within the public realm</p> <p>Maintenance of an open outlook from Flagstaff Gardens by ensuring that the Gardens are not hemmed in by buildings</p> <p>On larger and consolidated sites building forms respect the original lot pattern and grain of the area</p> <p>Strong urban edge with zero front setbacks at street level.</p> <p>Built form that respects and strengthens the pedestrian scale of the area</p> <p>Development that does not overshadow Flagstaff Gardens between 11 am and 2 pm on 22 September and 22 June.</p>



### MELBOURNE PLANNING SCHEME LOCAL PROVISION



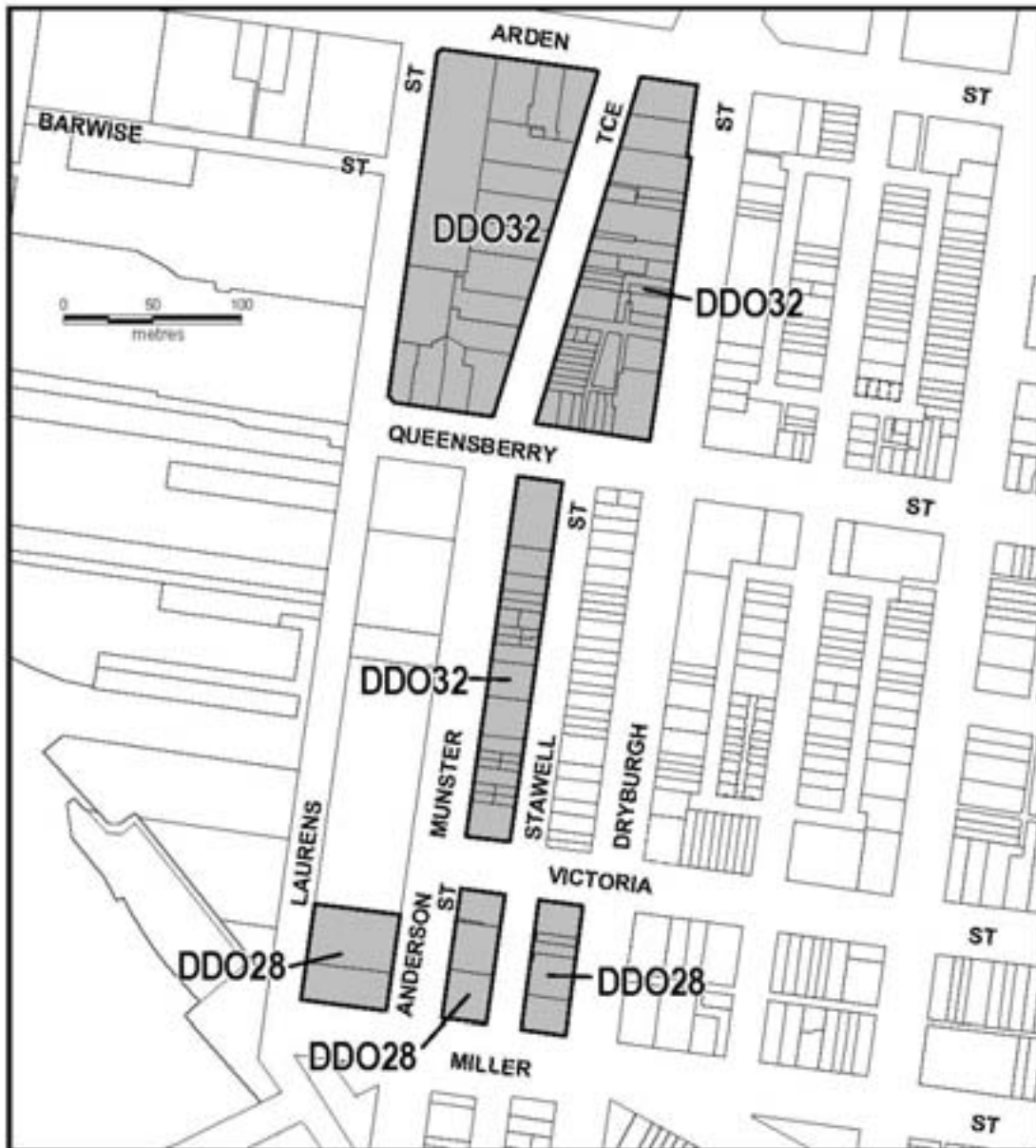
Part of Planning Scheme Maps 5DDOPT3 & 6DDOPT3

**LEGEND**

**D-DDO** AREA TO BE DELETED FROM A DESIGN AND DEVELOPMENT OVERLAY

### AMENDMENT C96

## MELBOURNE PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 5DDOPT3

### LEGEND

DD028	DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 28
DD032	DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 32

## AMENDMENT C96

PREPARED BY: STATUTORY SERVICES AND INFORMATION TEAM  
Geographical Information System

DEPARTMENT OF SUSTAINABILITY AND ENVIRONMENT



# MELBOURNE PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 6DDOPT3

## LEGEND

DDO56	DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 56
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## AMENDMENT C96

PREPARED BY: STATUTORY SERVICES AND INFORMATION TEAM  
Geographical Information System

DEPARTMENT OF SUSTAINABILITY AND ENVIRONMENT



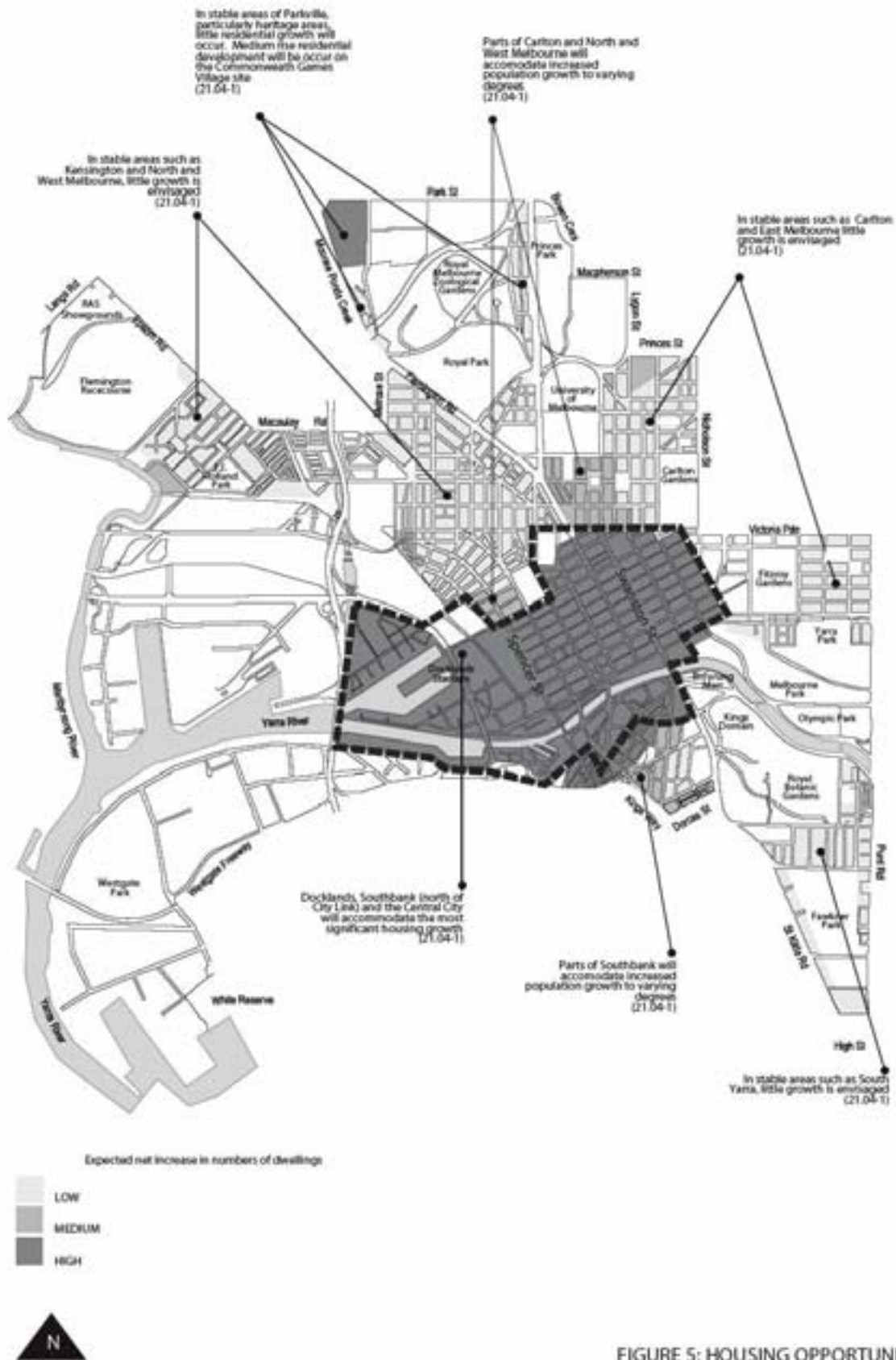


FIGURE 5: HOUSING OPPORTUNITIES

(Map from Adopted version of the Municipal Strategic Statement – Amendment C60)

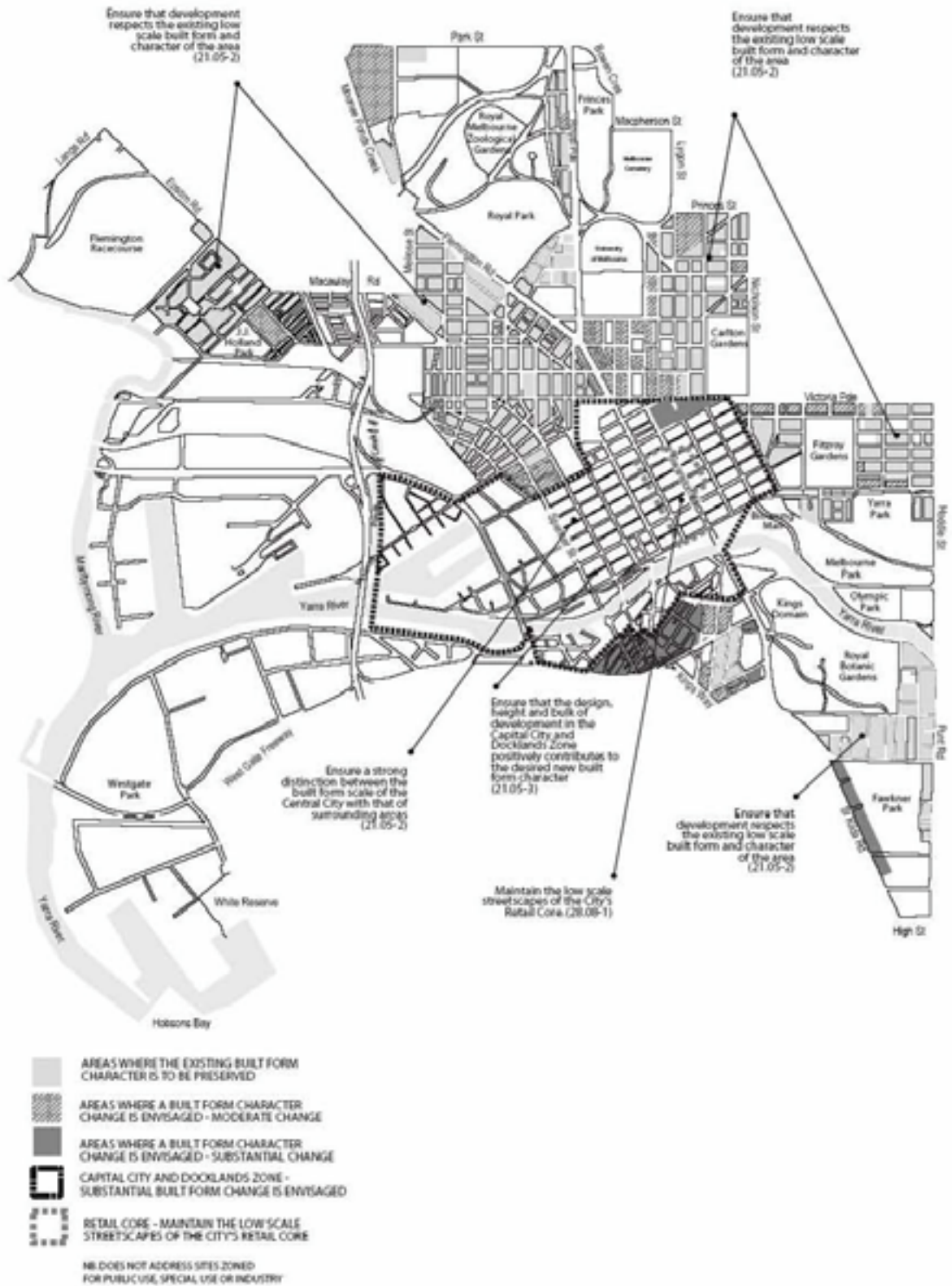


FIGURE 10: BUILT FORM CHARACTER

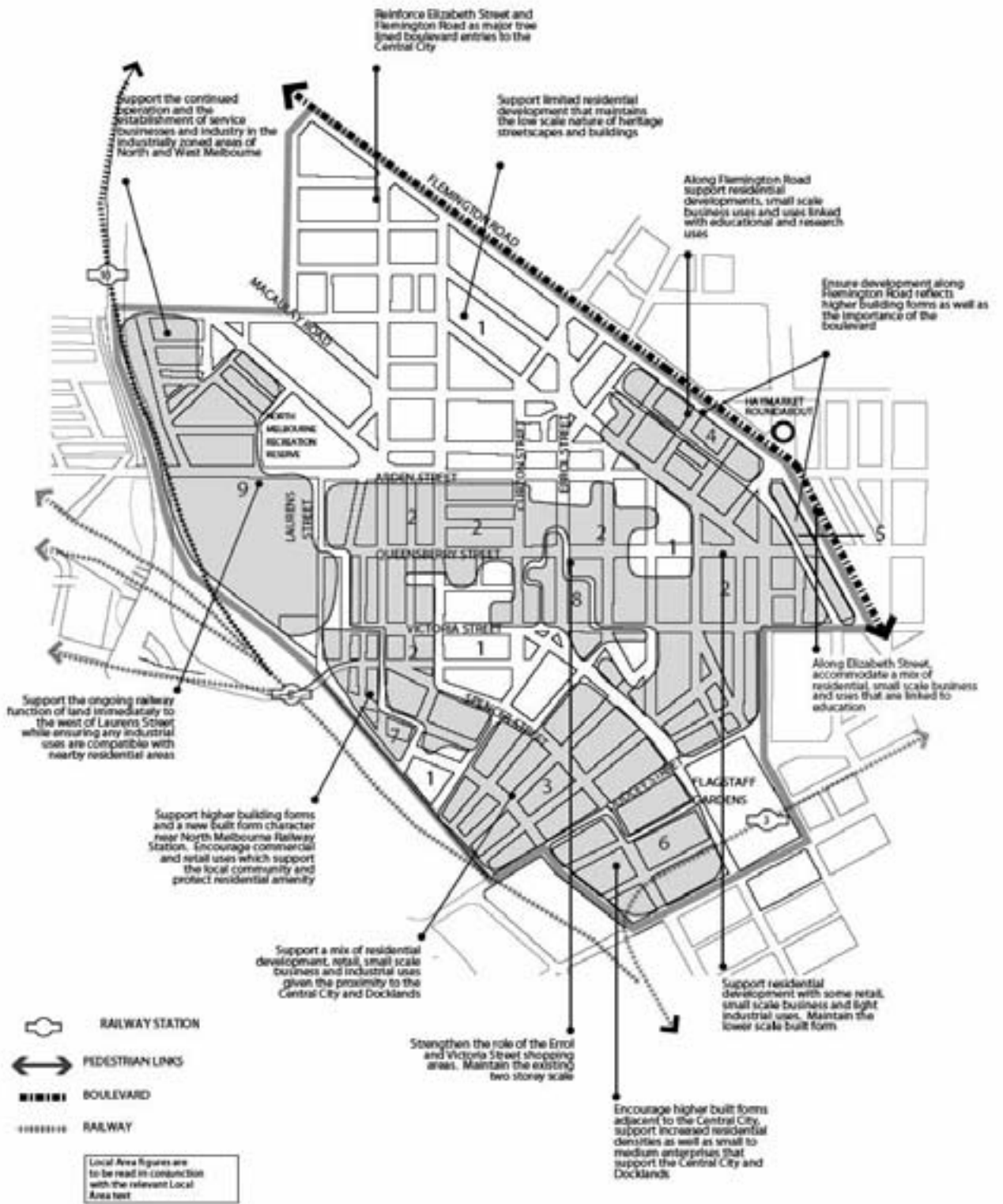


FIGURE 20: LOCAL AREA MAP - NORTH AND WEST MELBOURNE