

*Planning and Environment Act 1987*

**Panel Report**

**Whitehorse Planning Scheme Amendment C175**

**Box Hill Metropolitan Activity Centre**

**6 October 2017**

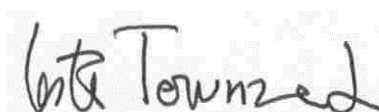
*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Whitehorse Planning Scheme Amendment C175

Box Hill Metropolitan Activity Centre

6 October 2017



Lester Townsend, Chair



Jennifer Fraser, Member



John Roney, Member

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## List of Abbreviations

ACZ	Activity Centre Zone
C1Z	Commercial 1 Zone
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
EPA	Environment Protection Authority
GRZ	General Residential Zone
Guidelines	Box Hill Metropolitan Activity Centre Built Form Guidelines, Hansen Partnership, 2016
LPPF	Local Planning Policy Framework
MAC	Metropolitan Activity Centre
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
NRZ	Neighbourhood Residential Zone
PDZ	Priority Development Zone
PUZ	Public Use Zone
RGZ	Residential Growth Zone
SPPF	State Planning Policy Framework
Structure Plan	Box Hill Transit City Activity Centre Structure Plan, June 2007
SUZ	Special Use Zone
VPP	Victoria Planning Provisions

## Overview

### Amendment summary

<b>The Amendment</b>	Whitehorse Planning Scheme Amendment C175
<b>Brief description</b>	The Amendment proposes to give effect to the <i>Box Hill Metropolitan Activity Centre Built Form Guidelines</i> (2016)
<b>Subject site</b>	Box Hill Metropolitan Activity Centre
<b>Planning Authority</b>	Whitehorse City Council
<b>Authorisation</b>	On 3 November 2016, a delegate of the Minister for Planning authorised Council to prepare the Amendment. The authorisation was subject to a number of conditions
<b>Exhibition</b>	16 February to 17 March 2017
<b>Submissions</b>	117 submissions were received together with 84 proforma submissions – See Appendix A

### Panel Process

<b>The Panel</b>	Lester Townsend (Chair), Jennifer Fraser and John Roney
<b>Directions Hearing</b>	Box Hill, 16 June 2017
<b>Panel Hearing</b>	Box Hill, 24, 25, 27, 28 and 31 July and 1 and 2 August 2017
<b>Site Inspections</b>	Unaccompanied, various dates
<b>Appearances</b>	See Appendix B
<b>Date of this Report</b>	6 October 2017

## Executive Summary

### (i) The Amendment

In June 2007, Council adopted the *Box Hill Transit City Activity Centre Structure Plan, June 2007* (the *Structure Plan*) to guide development in the Box Hill Metropolitan Activity Centre (the MAC). On 23 July 2009, Amendment C100 amended Clause 22.07 to implement the *Structure Plan*.

The strategic groundwork for Amendment C175 commenced in June 2016 when Council commissioned Hansen Partnership to prepare the *Box Hill Metropolitan Activity Centre Built Form Guidelines, Hansen Partnership, 2016* (the *Guidelines*).

Whitehorse Planning Scheme Amendment C175 (the Amendment) seeks to:

- update Clause 21.07 to reference the *Guidelines*
- update Clause 22.07 to reference the *Guidelines*
- rezone land
- apply a new DDO Schedule to parts of the activity centre to implement the *Guidelines*.

### The rezonings

The rezoning proposals were relatively uncontroversial and are supported by current policy in the scheme.

### Conflict between the *Structure Plan* and the *Guidelines*

A number of conflicts were identified between the *Structure Plan* and the *Guidelines*; and because both will remain referenced by the scheme and there are no plans to update the *Structure Plan*, this will result in inconsistency in planning requirements for some aspects of development on some land.

### The Design and Development Overlay

The harshest critics saw the Design and Development Overlay (DDO) as an arbitrary imposition of controls; in their view it was a poorly drafted product of a deficient process that had no strategic justification.

Others saw it as permitting a level of development that had no community support and would transform Box Hill into a 'hill of boxes'.

As a designated Metropolitan Activity Centre, Box Hill's stakeholders range from individual users of the centre, local community groups, land owners and developers, a TAFE and a hospital, shopping centre operators and government agencies. As might be expected there were a range of views on what constituted appropriate development in the centre. In its closing submission Council said that it had sought to 'balance' the competing views about the future of the centre.

### **Strategic justification: the need for controls**

The justification for introducing built form controls rested on two claims: first that there was a 'gap' in the built form controls in the *Structure Plan* in relation to Precinct F and second, the *Structure Plan* called for a DDO.

The notion that there was a gap in the *Structure Plan* is misconceived – the *Structure Plan* did not omit to form a view on heights in Precinct F: it explicitly concluded no height limits were necessary.

The claim that there is a gap in the *Structure Plan* is really a claim that the built form approach in the *Structure Plan* is now out-dated, in particular, it was now seen as appropriate to impose a height limit in Precinct F where the *Structure Plan* explicitly stated that no height limit was to be imposed. As far as the Panel can tell, the issue with the lack of height controls was that applicants were applying for tall buildings.

It is of course open to Council to review the *Structure Plan* and to completely change its approach, but it is not helpful to anyone for the planning scheme to list an explicit strategy at 21.07-4 to "*Facilitate development within the Box Hill MAC in accordance with the Box Hill Transit City Activity Centre Structure Plan, June 2007*", and then seek to introduce contradictory controls, in another part.

The Panel agrees that there is strategic support for application of a DDO with discretionary controls and that a well-crafted DDO may well assist in managing development in the centre. But no DDO is better than a flawed DDO; the central issue for the Panel is whether the specific controls in the DDO are justified and whether the DDO is a well-crafted implementation of that strategic justification.

### **Strategic justification for the proposed controls**

In terms of the work to develop the height controls, there are clear failings in the justification of particular height limits and built form controls. This is particularly troubling for the major sites:

- the Box Hill centro shopping centre and transport exchange
- the Epworth Hospital
- the TAFE.

The *Guidelines* do not document why certain design choices have been made, and the Panel could find no identifiable rationale for the heights proposed in the *Guidelines*.

The Panel concludes:

- The proposed preferred heights are not based on a well-founded understanding of the future urban form for the centre and the needs of key stakeholders in the activity centre.
- The *Guidelines* lack strategic rigour.
- The *Guidelines* are not an appropriate basis for an amendment.

It was suggested that a permit to exceed the discretionary heights in the DDO could be issued in return for a public benefit. There are a number of issues that emerge from such an approach, including:



- Ensuring any such requirement is clear and transparent in its meaning and outcome to be achieved.
- That the requirement is fair and equitable to all parties.
- That there is sound strategic justification for the requirement rather than as an arbitrary inclusion.
- There is a genuine nexus between the requirement and the objectives of the DDO.
- The implications for exercising discretion on sites not covered by such requirements are fully understood.

The Amendment did not address these issues.

### **Drafting of the DDO**

Finally, the drafting of the Amendment is poor. Leaving aside the inconsistencies and ambiguities in the numbers in the controls that need to be fixed, there is the fundamental wisdom of applying a control with:

- 51 general objectives
- 80 precinct objectives across nine sub-precincts
- 51 general requirements
- 108 precinct requirements across nine sub-precincts.

The DDO has been drafted by ‘translating’ the *Guidelines* into a DDO. It is not clear to the Panel why anyone tasked with preparing a DDO would first prepare a set of *Guidelines* and not simply commence with drafting a DDO. Some of the drafting issues may stem from the fact that the text in the DDO did not begin as purposely written planning controls suitable for inclusion in a planning scheme, with due care taken in the choice of language.

For example, taken at face value some requirements such as “*incorporate landscaping elements within the building facade where possible*” show a lack of understanding as to what is ‘possible’ as opposed to ‘practicable’ or ‘appropriate’.

The Panel has identified specific concerns with almost every aspect of the DDO that make it unsuitable for inclusion in the planning scheme without significant redrafting. These include:

- The four revised design objectives prepared by Council at the conclusion of the Hearing are inappropriate.
- The drafting of the buildings and works requirements do not make it clear whether a permit may be granted to construct a building or construct or carry out works that are not in accordance with any requirement of the schedule to the overlay.
- The general requirements in Clause 2 of the DDO schedule including Table 1 and Table 2 should not proceed in their current form.
- The Built Form Responses regarding Subdivision pattern should not proceed in their current form.
- Further work is required in order to explain any site coverage controls for the activity centre.
- Further work is required in order to justify and explain any plot ratio approach to development in the activity centre.
- The proposed preferred height controls should not proceed in their current form.

- The proposed street walls and setback controls should not proceed in their current form.
- The Built Form Responses regarding Heritage should not proceed in their current form.
- The Built Form Responses regarding Key views should not proceed in their current form.
- The Built Form Responses regarding 'Additional street/laneway address' should not proceed in their current form.
- The Objective regarding 'Amenity/access to daylight' should not proceed in its current form.
- It is unclear whether the controls are meant to relate to access to daylight or shadowing.
- The Objectives and Built Form Responses regarding 'Landscape' should not proceed in their current form.
- The Decision *Guidelines* contained in Clause 4.0 of DDO6 should not proceed in their current form.
- The exhibited version of the Amendment is not in accordance with the Ministerial Direction on The Form and Content of Planning Schemes.

Any future controls need to be drafted with a greater degree of care and precision to ensure the intended outcomes are achieved.

### **Process**

The process of developing the DDO did not engage with relevant stakeholders who control land uses that are specifically identified in metropolitan policy for change, and imposes height limits and other built form controls that would work against metropolitan policy.

The proposed controls were not subject to peer review though such a review had been suggested to Council before exhibition.

Council said that the Panel was the peer review. A Panel is not a 'peer review'. It is not an opportunity to massage poorly drafted controls: it is statutory process based around protecting peoples' rights.

In the absence of a clear rationale of what the DDO is trying to achieve, redrafting the Amendment as part of this Amendment process is simply not possible.

### **(ii) Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Whitehorse Planning Scheme Amendment C175 be adopted as exhibited subject to the following changes:

- 1. Abandon the changes to Clause 21.07 and Clause 22.07.**
- 2. Abandon the Design and Development Overlay.**

# 1 Introduction

## 1.1 Background to the Amendment

In 2002, Council adopted in principle two major studies to guide development of the MAC: the *Box Hill Transport Interchange Study* and the *Box Hill Urban Design Framework*. Council has also adopted a housing study, which nominates the area to the north of Whitehorse Road and south of Whitehorse Road and three areas to the south as areas for substantial growth.

### **Structure Plan**

Preparation of a structure plan began in mid-2004 and involved consultation with stakeholders, the broader community and project reference groups.

Eleven detailed working papers were produced to address a range of technical and contextual issues related to the *Structure Plan*, including land use activities, traffic and transport conditions, physical infrastructure, residential demand, office demand, retail demand, socioeconomic issues, economic development context, investment context, policy and statutory planning context and affordable housing options.

A draft Issues and Opportunities paper was made available for public comment in September 2005. Feedback on this draft was summarised and incorporated into the final Issues and Opportunities paper in April 2006.

The draft *Structure Plan* was placed on display from 27 November 2006 to 18 December 2006.

A total of 52 submissions were received in response to the display. At its meeting on 18 June 2007, Council resolved to:

- Adopt the Structure Plan.
- Seek authorisation from the Minister for Planning to prepare and exhibit an amendment to the Scheme to give effect to the recommendations from the *Structure Plan*.
- Note the valuable contribution to the structure planning project by all participants on the Partnership, Stakeholder Reference and Study Coordination Groups.

On 23 July 2009, Amendment C100 updated Clause 22.07 on an interim basis until 31 January 2010 to implement the policy component of the *Structure Plan*. Clause 22.07 has since been subject to a number of changes including removing the interim nature of the policy.

### **Preparation of the Guidelines**

The strategic groundwork for the Amendment commenced in June 2016 when Council commissioned Hansen Partnership to prepare the *Guidelines*. The proposed Amendment seeks to implement the *Guidelines* through the introduction of DDO6.

At its meeting on 19 September 2016, Council resolved to:

- Endorse the draft Box Hill Built Form *Guidelines* 2016 for the purposes of community consultation.

- Seek authorisation from the Minister for Planning to prepare and exhibit Amendment C175 to the Whitehorse Planning Scheme to implement the *Guidelines*.
- Rezone land within central Box Hill broadly as identified in the *Structure Plan*.
- Undertake community consultation on the draft *Guidelines* and statutory exhibition of Amendment C175 concurrently.
- Authorise Council officers to prepare relevant amendment documents.

## 1.2 The Amendment

The Amendment proposes to:

- update Clause 21.07
- update Clause 22.07
- rezone land
- apply a new DDO Schedule.

It is appropriate to document the three ‘versions’ of the DDO that the Panel has considered and comment on other broader issues before addressing the specific issues in DDO6.

- Exhibition version.
- Post exhibition version – Council considered all submissions following exhibition of the Amendment. As a result of the consideration of submissions, officers recommended changes to the *Guidelines* and consequential changes to DDO6.
- Post Panel Hearing version – At the invitation of the Panel, Council circulated a further revised version of DDO6 taking into account some of the comments made by the Panel and others during the Hearing. This version was largely about reformatting the content in a more legible way, correcting obvious errors and meeting the requirements of the updated Ministerial Direction on *The Form and Content of Planning Schemes*.

The Panel notes that it is required to consider the exhibited version of the Amendment and the submissions made to the Amendment. In doing so, the Panel has had regard to all submissions (including Council’s responses to those submissions) with respect to possible variations to DDO6.

## 1.3 Summary of issues raised in submissions

The key issues raised in the submissions of the various parties are as follows:

- the consultation process was inadequate, including that:
  - a referendum should have been held
  - the Amendment documents were difficult to understand
- the proposed boundaries of the sub-precincts and sites proposed for rezoning
- the preferred building heights and setbacks proposed in the *Guidelines* and DDO6
- the inadequacy and overcrowding of public transport infrastructure and its ability to withstand further population increase
- traffic congestion, the inadequacy of car parking and a perceived inability to cope with an increase in population
- the lack of provision of walking or cycle paths and lanes in the *Guidelines*
- the effects of the Amendment on amenity, claiming it will destroy, or result in a loss of, the amenity, integrity and character of the Box Hill MAC

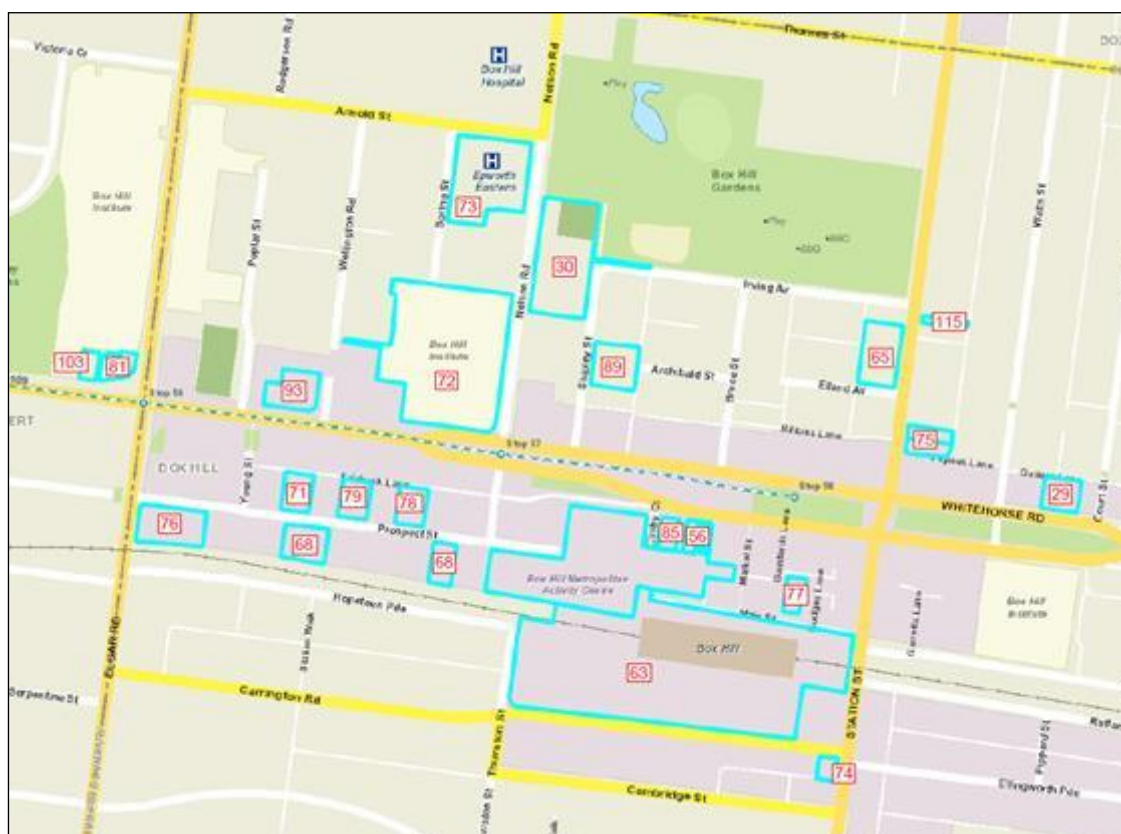
- a perceived inadequacy of open space and a lack of open space or green space provided for in the *Guidelines*
- the provision of community infrastructure such as schools and sporting facilities
- the effect of the heritage overlay on properties.

Two submitters raised concerns about the approval of current high rise buildings.

Eight submissions raised concerns about the culture of Box Hill, including racist sentiments.

Several submissions were received on behalf of individual sites, as shown in Figure 1.

**Figure 1: Location of site-specific submissions**



Source: Council minutes of meeting, p 29

## 1.4 Issues dealt with in this Report

The Panel considered all written submissions made in response to the exhibition of the Amendment; as well as further submissions, evidence and other material presented to it during the Hearing, and observations from site visits.

The Panel has reviewed a large volume of material. The Panel has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Strategic justification of the Amendment

- Strategic justification of the built form requirements
- Appropriateness of the proposed rezonings
- Appropriateness of the proposed changes to Clause 21.07 and Clause 22.07
- Issues with the DDO
  - what the preferred heights mean
  - design objectives
  - exemptions for permits
  - general requirements
  - sub-precinct requirements
  - decision guidelines
  - drafting issues.

## 2 Strategic justification of the Amendment

Council responded to the Minister's Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed Council's response and the policy context of the Amendment. When considering the strategic justification for the Amendment it identified relevant planning strategies.

### 2.1 State Planning Policy

#### (i) State Planning Policy Framework

Clauses most relevant to the Amendment are indicated below.

**Clause 11 – Settlement.** The objective of Clause 11.01-1 is:

*To promote the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements.*

**Clause 15 – Built Environment and Heritage.** The objectives of Clauses 15.01-1 and 15.01-2 are:

*To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.*

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

**Clause 16 – Housing.** The objectives of Clauses 16.01-2 and 16.01-3 are:

*To locate new housing in or close to activity centres and in urban renewal precincts and sites that offer good access to jobs, services and transport.*

*To identify areas that offer opportunities for medium and high density housing near employment and transport in Metropolitan Melbourne, in particular Metropolitan Activity Centres.*

**Clause 17 – Economic Development.** The objective of Clause 17.01-1 is:

*To encourage development which meets the community's needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.*

**Clause 18 – Transport.** The objectives of Clauses 18.01-1 and 18.02-3 are:

*To create a safe and sustainable transport system by integrating land use and transport.*

*To facilitate greater use of public transport and promote increased development close to high-quality public transport routes in Metropolitan Melbourne.*

## Plan Melbourne

*Plan Melbourne* is the Victorian Government's planning strategy to guide the development of Melbourne in the period to 2050. It continues Box Hill's strategic designation as an activity centre in key state planning documents since 1954.

**Policy 1.1.4** supports the significant employment and servicing role of health and education precincts. Box Hill is identified as one of only five health and education precincts.

**Policy 1.2.1** supports the development of a network of activity centres linked by transport. Box Hill is identified as one of nine metropolitan activity centres, the locations ideally placed to provide for growth in household numbers and to be the major focus for change in metropolitan Melbourne.

**Policy 1.3.2** requires planning for new development and investment opportunities on the existing and planned transport network. It emphasises the importance of maximising the benefits of existing transport infrastructure by identifying related land development and investment opportunities. It also emphasises maximising public value by taking a precinct wide approach that encourages land development around stations.

**Policy 2.2.3** supports new housing in activity centres and other places that offer good access to jobs, services and public transport.

**Direction 3.3** focuses on the improvement of local travel options to support 20 minute neighbourhoods through the creation of pedestrian-friendly neighbourhoods and the creation of a network of cycling links for local trips.

The *Whitehorse Planning Scheme* (the Scheme) gives effect to *Plan Melbourne* through Clause 11.06.

**Clause 11.06-1** outlines strategies to support the significant employment and servicing role of health and education precincts by:

- *focusing on improving access, particularly public transport access.*
- *encouraging co-location of facilities to better utilise existing infrastructure.*
- *supporting and facilitating growth of associated businesses and industries.*
- *reinforcing their specialised economic functions while also providing opportunities for ancillary retail, commercial, accommodation and supporting services.*

This clause also outlines strategies to focus investment and growth in MACs by ensuring they:

- *are able to accommodate significant growth for a broad range of land uses*
- *are supported with appropriate infrastructure*
- *provide high levels of amenity*
- *are hubs for public transport services and offer good connectivity for a regional catchment.*

It also seeks to “support the continued growth and diversification of activity centres to give communities access to a wide range of goods and services, provide local employment and support local economies”.

**Clause 11.06-2** includes the following strategies in relation to housing choice:



- *Facilitate increased housing in the established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport*
- *Deliver more housing closer to jobs and public transport*
- *Support new housing in activity centres ... which support good access to jobs, services and public transport.*

**Clause 11.06-3** requires planning for new development and investment opportunities on the existing and planned transport network through the following strategies for integrated transport:

- *Provide for increased density of development, particularly around transport nodes, to support the viability of services.*
- *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*
- *Create pedestrian-friendly neighbourhoods by supporting development of continuous, high-quality walking routes and streets that are safe, pleasant and attractive.*

**Clause 11.06-5** includes the following strategy for the development of neighbourhoods:

- *Create a city of 20 minute neighbourhoods, that give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip of their home.*

Box Hill is a Metropolitan Activity Centre, a health and education precinct and has a key transport interchange. The State Planning Policy Framework clearly requires investment and growth to be focused in Box Hill.

## **(ii) Transport Integration Act 2010**

In line with Ministerial Direction No 11 *Strategic Assessment of Amendments* and Planning Practice Note 46 - *Strategic Assessment Guidelines*, the Amendment considers the *Transport Integration Act 2010*. The Act requires planning authorities to have regard to a set of transport system objectives and decision-making principles where a planning scheme amendment is likely to have a “*significant impact on the transport system*”.

In its Explanatory Report, Council submitted that the Amendment would not have a significant impact on the transport system as its intention is to implement the *Structure Plan* and the *Guidelines*, and to rezone land. Council did not submit analysis of its potential impact on the future redevelopment of the Box Hill Interchange (the Interchange).

The Interchange is the busiest outside of the CBD and the train station is the ninth busiest on the network<sup>1</sup> and patronage levels of both bus and train stations are predicted to increase substantially in line with redevelopment of the MAC.

The Interchange is held by Vicinity Centres on a long term lease from VicTrack. The *Structure Plan* identifies many shortcomings in the configuration of the Interchange and that the precinct would be best served by a master planning exercise as the Interchange provides

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<sup>1</sup> Document 6, para.10

*“unparalleled opportunities to promote transit oriented development”*<sup>2</sup>. However, VicTrack submitted that it will take significant levels of investment to achieve the outcomes desired from the redevelopment and that the 15 storey limit proposed by the Amendment would be inadequate to realise the redevelopment opportunity.

Vicinity Centres submitted that:

- In line with Policy 1.3.2 of *Plan Melbourne*, it will seek to maximise the benefits of the Interchange’s redevelopment by identifying related land development and investment opportunities.
- It was participating in a Ministerial Advisory Group<sup>3</sup> convened to consider the future development of the Interchange. This group had not been informed of the Amendment.
- It has commenced preliminary master planning for the redevelopment.
- The Amendment lacks strategic justification, is premature<sup>4</sup> and it “seeks to pre-empt and even frustrate the site’s potential”<sup>5</sup>.

The Panel is concerned that the Amendment may limit the redevelopment potential of the Interchange and concludes that the relationship between the requirements of the *Transport Integration Act* and the Amendment warrant further consideration.

## 2.2 Local Planning Policy

### (i) Local Planning Policy Framework

Box Hill is recognised in the Whitehorse Local Planning Policy Framework as being of key importance to the Eastern region of Melbourne. Clause 21.01 recognises the Box Hill MAC for its provision of important education, health and commercial facilities playing a major service delivery role for the sub regional catchment.

**Clause 21.07-3** lists key objectives including:

- *To develop the Box Hill Metropolitan Activity Centre as a major focus for retail, commercial, health transport, education and entertainment facilities in Melbourne’s east.*
- *To recognise the important regional role that our tertiary education and health sectors fulfil and provide support for the ongoing viability of these vital institutions such that they are positioned as leading industry providers.*

The strategies to achieve these objectives include developing appropriate zoning, overlay and design guidelines. Specific zones and overlays are indicated.

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<sup>2</sup> Mr Chessell, Hearing Day 2

<sup>3</sup> The Ministerial Advisory Group was convened in 2015 to provide recommendations about a clear direction for the future of the Box Hill Transit Interchange for the consideration of the Minister for Public Transport. Its report *“Ministerial Advisory Group Box Hill Transit Interchange February 2017”* was released on 7 August 2017 after the Panel hearings concluded.

<sup>4</sup> Document 8, para 5a.

<sup>5</sup> Ibid para 11

**Clause 22.07** Box Hill Metropolitan Activity Centre gives strong policy support to the further development of Box Hill and the implementation of the *Structure Plan*, in particular the land use and Built Form Precincts.

## **2.3 The *Structure Plan***

Council adopted the *Structure Plan* in 2007. It is a reference document under Clause 22.07 of the planning scheme. The *Structure Plan* is comprehensive. Its vision includes:

- *Box Hill will continue to develop as the most significant urban centre in Melbourne's eastern suburbs.*
- *Box Hill will be a focus for regional health care, educational and community services.*
- *Box Hill will be accessible to all.*

The *Structure Plan* provides a planning framework, identifying public spaces to support recreational needs, a network of streets and laneways to encourage walking and cycling, activity precincts, and six Built Form Precincts. It includes strategies and actions to give effect to this vision.

There are actions calling for:

- the adoption of building heights for each Built Form Precinct and setback controls that eliminate side setbacks and minimise requirements for front setbacks – in the Major Development Precinct it requires front and side setbacks to be avoided.
- the redevelopment of landmark sites
- working with State Government in the detailed planning and upgrade of the Interchange
- changing land use zoning to support mixed-use development with educational and health facilities and complementary uses
- new linear linkages for pedestrians
- improving footpaths and laneways to improve public access and enhance the pedestrian experience
- improving bicycle access in Box Hill.

At 5.1, the *Structure Plan* provides desired outcomes for land uses, guidelines to achieve changes to the activities and zoning recommendations for each of the land use precincts.

At 5.2, the *Structure Plan* provides detailed outcomes and guidelines for each of the Built Form Precincts A-F, recommending implementation through a Design and Development Overlay.

## **2.4 Is a discretionary approach appropriate?**

The controls established by the *Guidelines*, and given effect by the DDO, are discretionary. Mr Czarny<sup>6</sup> gave evidence that:

*... the draft Guidelines identify parameters that are not absolute, but discretionary in order to form a baseline for assessment of applications ... the parameters set out a typical model for site development on a locational basis,*

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<sup>6</sup> Statement of urban design evidence by Craig Czarny p.10

*recognising that individual parcels can and may represent objectives and responses in different ways.*

The Panel notes Planning Practice Note 60 - *Height and setback controls for activity centres*<sup>7</sup> states that:

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

In his evidence statement, Mr Czarny said his:

*... evidence is confined to the relevant background and rationale of the draft Guidelines and does not address statutory translation or site-specific design matters.*<sup>8</sup>

Council did not call any other expert witnesses to review the *Guidelines* or the wording of the proposed DDO6.

The Panel acknowledges that Mr Czarny was not involved in the 'translation' of the *Guidelines* into DDO6. In this context, his evidence is only relevant to this Report by way of background to the 'logic' or rationale for the proposed built form controls rather than the specific wording of the controls in the DDO schedule.

The DDO generally includes 'preferred' heights and setbacks (although as this Report demonstrates in later chapters, this is not always articulated consistently or clearly in the text of the schedule). Many submissions from local residents argued that height controls should be mandatory rather than discretionary. On the other hand, many of the land owners within the activity centre supported the discretionary approach adopted in the Amendment.

Not everyone agreed with the discretionary approach, for example, Ms Harris said that height limits should be mandated, not discretionary. If heights were not mandated then she said that the proposed preferred heights should be reduced by at least 2 storeys.

The Panel acknowledges that the *Guidelines* and DDO6 are based around a discretionary rather than that mandatory approach. This is entirely consistent with Planning Practice Note 60 and in principle, this philosophy is generally supported. Having said that, the Panel does not reject the possibility that more detailed analysis of the activity centre could result in a potential case for mandatory controls across some (or all) of the centre. The Panel makes no comment about the type or location of mandatory controls that could be appropriate, only to flag the theoretical possibility of mandatory controls subject to appropriate strategic justification. This work would need to be rigorously tested and well-founded on the basis of very clear urban design outcomes that could only be achieved through mandatory controls while also having regard to broader strategic planning imperatives.

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<sup>7</sup> PPN60 p.2

<sup>8</sup> Para 3

## 2.5 Conclusion

The Panel concludes:

- The State Planning Policy Framework clearly requires investment and growth to be focused in Box Hill.
- The Amendment may limit the redevelopment potential of the Interchange and the relationship between the requirements of the *Transport Integration Act* and the Amendment warrant further consideration.
- Box Hill is recognised in the Whitehorse Local Planning Policy Framework as being of key importance to the Eastern region of Melbourne.
- The development of a DDO has significant strategic support, and is specifically recommended by the *Structure Plan*.
- There is strategic support for application of the DDO with discretionary controls.

### 3 Strategic justification of the built form requirements

#### 3.1 Issues with the built form vision

This Chapter examines whether the *Guidelines* present a sufficiently rigorous strategic justification for the controls in the DDO.

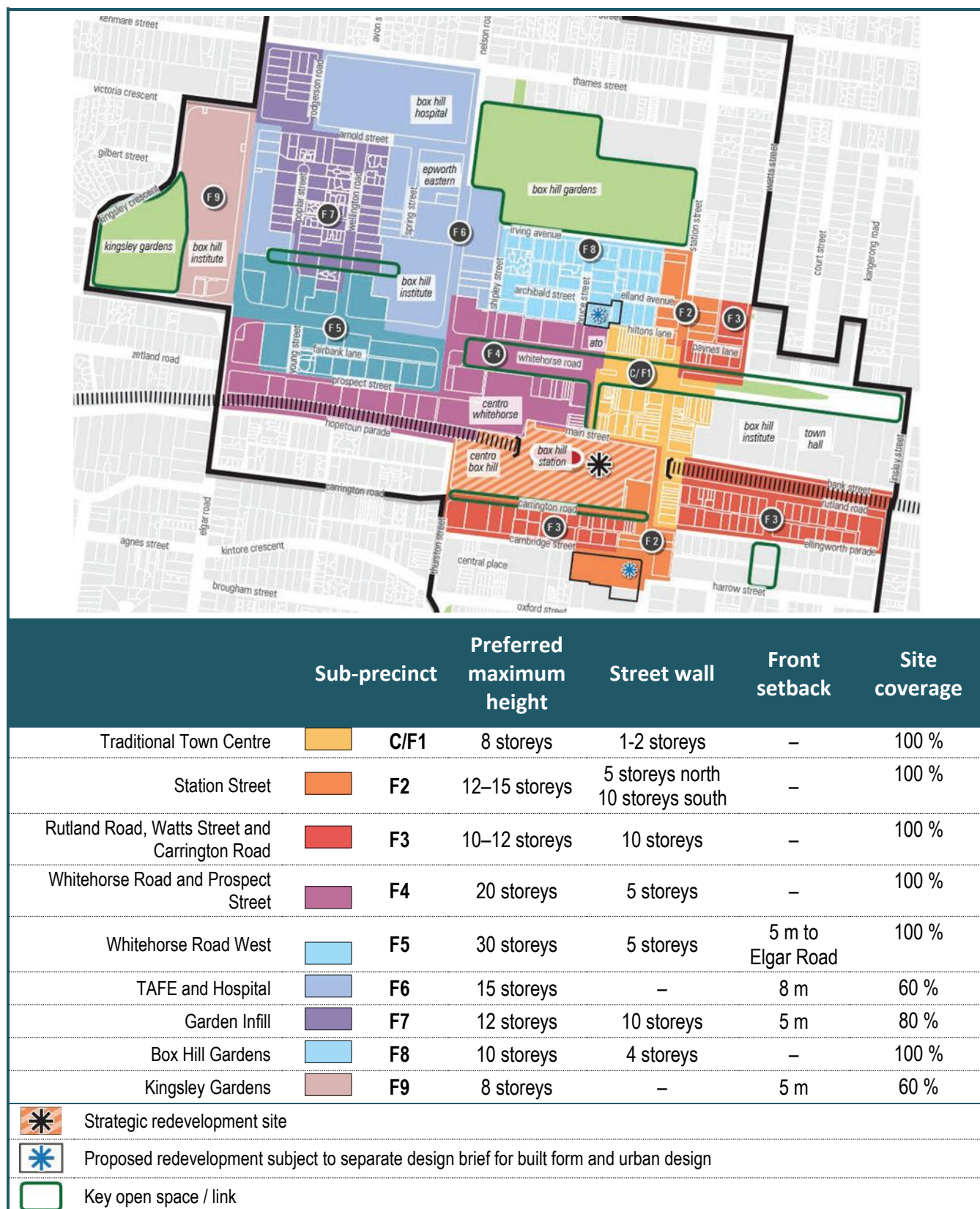
DDO6 is based on the *Guidelines*. The *Guidelines* and DDO6 identify nine sub-precincts within *Structure Plan* Precincts C and F and provide general and precinct-specific guidance or requirements under the headings shown in Table 1.

Figure 2 presents an overview of the *Guideline* controls.

**Table 1: General and precinct specific guidance headings**

<i>Guidelines</i>	Exhibited DDO general
Street Frontages	Street Frontages
Weather Protection, Awning & Verandahs	Weather Protection, Awning & Verandahs
Architecture and Building Articulation	Architecture and Building Articulation
Pedestrian Access	Pedestrian Access
Vehicle Access	Vehicle Access
Building depths	Building depths
Building separation	Building separation
Overshadowing	Overshadowing
Landscaping	Landscaping
Better Apartment Design Standards	

Figure 2: Overview of the Guideline controls

Source: Created by the Panel from information in the *Guidelines*



A number of issues were raised about the *Guidelines*, including:

- lack of consistency with the *Structure Plan*
- lack of a coherent vision
- treatment of the Box Hill Interchange
- lack of a rationale for the proposed heights.

### 3.2 Consistency with the *Structure Plan*

#### (i) What is the issue

Concerns were raised about inconsistencies between the *Structure Plan* and the *Guidelines*.

#### (ii) Submissions and evidence

It is proposed to keep the references to the *Structure Plan* in the planning scheme.

The *Structure Plan* identifies seven 'Built Form Precincts' as shown in Figure 3 and Council submitted that there is 'a gap' in Built Form Precinct F in the *Structure Plan* regarding height controls. The *Structure Plan* states that buildings in this precinct have "no specific height limit". A key plank of the DDO is to address this 'deficiency' and to introduce preferred height limits across all of Precinct F.

**Figure 3: *Structure Plan* precincts**





The *Structure Plan* states that Built Form Precinct C has a “3 storey preferred limit (11 metres approximately)” and that “any height above 11 metres should be set back from the street/lane to maintain consistency of the streetscape scale”.

For Precinct F the *Structure Plan* states:

***Structure Plan Built form guidance 5.1.F Southern and Eastern Precincts***

*A fine grain of attractive pedestrian-friendly streets, lanes and arcades lined by buildings and given a sense of vitality and safety through their activation by adjoining uses.*

*Significantly increased land use densities close to the railway station, and in the area between the station, hospitals and TAFE.*

*The amenity (including access to sunlight) of streetscapes and Key Public Spaces protected. Synergies between public parklands and uses at their edges, and enhanced community safety in parkland.*

*Amenity in surrounding low rise precincts protected.*

It was submitted that the built form controls proposed in the *Guidelines* (and hence the DDO) are not consistent with the *Structure Plan* and the existing policy at Clause 22.07. However the Panel has analysed these documents and the inconsistencies are provided in Table 2 below.

**Table 2: Inconsistencies between the *Structure Plan* and the *Guidelines***

<i>Structure Plan</i>	<i>Guidelines</i>
<b>Traditional Town Centre:</b>	
The Existing built form character and 2 to 3-storey scale of the precinct retained including listed heritage buildings as well as complementary buildings.	Height limit of 8 storeys
<b>Major Development Precinct:</b>	
No specific height limit.	Height limits of between 5 and 30 storeys
Avoid overshadowing of Key Public Spaces, Peripheral Residential Precincts or residential areas outside the activity centre between 11am and 2pm on <u>22 June, beyond what would result from an 11m building over the full extent of the site.</u>	<p>The <i>Guidelines</i> specify:</p> <ul style="list-style-type: none"> <li>- Buildings must not cast additional overshadow on key open spaces and plaza between 11.00-14.00 on 22 June.</li> <li>- Buildings should not overshadow front gardens/ balconies on allotments within Built Form Precinct A for <u>more than 3 consecutive hours between 10.00 – 15.00 on 22 September.</u></li> <li>- Buildings should not overshadow private open space on residential land outside the activity centre boundary for <u>more than 3 consecutive hours between 10.00-15.00 on 22 September.</u></li> </ul>

<i>Structure Plan</i>	<i>Guidelines</i>
Provide transitional heights within this precinct to respect low rise development in adjoining precincts (that is, along Thames Street, Thurston Crescent and William Street).	Not inconsistent, but the extent of transition varies
Along Market Street and Main Street any height above 3 storeys (12 m) should be set back from the street.	Street wall heights of 1-2, 5 or 10 storeys for different parts of the street.
Along Whitehorse Road any height above 6 storeys (24 m) should be set back above a podium.	Street wall heights unspecified or 1-2, 5 or 10 storeys for different parts of the street.
Along other streets any height above 4 storeys (16 m) should be set back above a podium.	Street wall heights unspecified or between 1-2 and 10 storeys.
Provide ample spacing between the upper levels of high rise buildings to ensure private amenity including access to sunlight and outlook.	Spacing specified.
Avoid front and side setbacks.	Front setbacks required in some locations.
No reliance on a singular vertical projection or gateway ... from the western approach.	Encourage the redevelopment of specified landmark sites including NW corner of Elgar and Whitehorse Roads.

Mr Bastone gave evidence regarding land in the southeast corner of sub-precinct F9. He stated that:

*There is no justification for why the Built Form Guidelines contradict the Structure Plan 2007 in the inclusion of the following 'Key Direction' - 'No reliance on a singular vertical projection, or 'gateway' designation on a particular site to announce the arrival point into Box Hill Metropolitan Activity Centre from the western approach'. Landmark buildings are a common and accepted urban design feature for entry points to activity centres, especially larger MACs such as Box Hill. I consider the site presents a key opportunity to provide this 'gateway' building as envisaged by the Structure Plan.*<sup>9</sup>

### (iii) Discussion

Council certainly has every right to seek to update the *Structure Plan*, but it also has an obligation to ensure that its planning scheme presents coherent policy settings. The inclusion of both the *Structure Plan* and the *Guidelines* as reference documents presents a muddled approach to the understanding of the basis for the proposed controls.

It seems to the Panel that Council is completely untroubled in providing contradictory policy advice for the activity centre. It is almost as if no one has cross checked the details of the *Guidelines* with the *Structure Plan*. If they made such a cross check, it is not clear how they

<sup>9</sup> Page 13

could have reached the conclusion that the *Structure Plan* did not need to be updated if they were serious about implementing the *Guidelines*.

While the Panel accepts that it is open to Council to contemplate height controls in the Box Hill Activity Centre, it does not share Council's view that there is a 'gap' in the *Structure Plan*. A gap suggests that there is an omission that needs 'fixing'.

It seems to the Panel that the *Structure Plan* deliberately included no specific height limits in the central portion of the activity centre (Precinct F) on the basis that it sought to encourage significant development with substantial height. This is a reasonable approach to take in an activity centre that has consistently been identified as a major focus for urban development. Within this context, the *Structure Plan* provides some performance based criteria with respect to shadowing of key places, but otherwise envisages high density development that could include very tall buildings.

Rather than no specific heights being a 'gap', it is a deliberate policy position. This is a position contrary to the requirements of the *Guidelines* and the DDO. It is simply not open to Council to rely on the *Structure Plan* and the *Guidelines* at the same time because on a number of critical issues they provide contradictory advice.

#### **(iv) Conclusion**

The Panel concludes:

- The *Structure Plan* and the *Guidelines* are contradictory on a number of key points and these contradictions would need to be addressed if the Amendment were to proceed.

### **3.3 Lack of a coherent vision**

#### **(i) What is the issue**

A number of submissions addressed what they saw as fundamental issues with the type of place the *Guidelines* sought to create or would facilitate.

#### **(ii) Submissions and evidence**

A number of submitters provided thoughtful submissions on their vision for the centre; these ranged from developers, through public and private institutions to community groups.

The Blackburn and District Tree Preservation Society raised a number of issues about and identified opportunities for open space and plantings. The Blackburn Village Residents Group provided a detailed analysis of the Amendment and in its view the "*interrelationships between built form and other strategies have not been fully analysed in [the Guidelines]*". Mr White supported the aim for a quality public realm but expressed concerns how that might be achieved. Whitehorse Active Transport Group put forward ideas about how bicycle and walking links could be improved.

The Panel benefited from slides of other cities that demonstrated qualities that submitters thought could be pursued in Box Hill.

Ms Rogers showed images of tertiary institutions, from different cities, built without a landscape setback, to illustrate that a tertiary education use did not require a campus style building as envisaged by the *Guidelines*.

Council, in cross examination, asked Ms Rogers whether the illustrations were suitable for Box Hill with the implication that it was not appropriate to copy building styles from another location.

### **(iii) Discussion**

There would seem to be some benefit in reflecting what lessons we might learn from successful areas in other cities, particularly higher density areas with an attractive public realm, given that is what is sought for Box Hill.

The *Guidelines* provide illustration of approved and constructed development, but do not provide any examples or illustrations of the type of place that is trying to be achieved.

The *Guidelines* say 'campus style' is the best fit for Box Hill. Ms Rogers evidence says we should turn our minds to other styles of development which we can see thriving in other areas that have similarities to Box Hill.

The Panel has no difficulty in reflecting on whether the buildings of the type shown by residents' groups or Ms Rogers might be suitable for Box Hill without simply wanting to uncritically replicate them. There is no harm, and a great deal of benefit, in reflecting what we, as a community, might learn from other places. Certainly it is true that 'one size does not fit all', but this hardly seems to be a relevant metaphor. Managing urban development is more like gardening than buying clothes, and good gardeners will look to see what grows well in other gardens with the same soil and aspect.

### **(iv) Conclusion**

The Panel concludes:

- The *Guidelines* do not document why certain design choices have been made.

## **3.4 Strategic sites**

### **(i) Submissions and evidence**

Sub-precinct F2 (Station Street) has a preferred maximum height of 12 storeys on sites up to 1,500 square metres and 15 storeys on sites greater than 1,500 square metres.

In the exhibited Amendment, sub-precinct F2 included Box Hill Central (south). Box Hill Central (north) was included within sub-precinct F4, with a preferred maximum height of 20 storeys). These two sites have a combined size of 5.5 hectares, or 36 1,500 square meters<sup>10</sup>.

Mr Czarny gave evidence regarding sub-precinct F2 that:

*While this precinct includes land accommodating the approved Sky One development (at 545 Station Street) to 35 storeys, further substantive tower or landmark forms are not in my view appropriate in this location. However, a*

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<sup>10</sup> Oral evidence from B Rogers Day 2

*site-specific (and preferred plot ratio) approach is suggested for the substantive Box Hill Central South site. This can in my view be warranted as an alternative to an oversimplified extrusion of 15 storey envelope across the entirety of the land. I have little doubt that the opportunities afforded to the Station Street precinct are considerable and representative of a transformative development approach.*<sup>11</sup>

The Box Hill Central (south) land was identified in the exhibited Amendment as a Strategic Development Site. Following exhibition of the Amendment, Council submitted that it is appropriate to extend this designation over the Box Hill Central (north) land. It also proposes to include the Box Hill Central (north) land within sub-precinct F2 – resulting in a height reduction from 20 storeys to 15 storeys for this portion of land.

Mr Czarny stated:

*Some submitters sought for particular sites to be included as Strategic Development Sites on the basis of size and location. On review, I believe that the designation of the principal Box Hill Central South site is the single parcel enjoying such definition. I note that clarification of land ownership and nomenclature of such land is appropriate. I believe that the adoption of a site-specific plot ratio approach to such land is consistent with the adopted position employed in Melbourne City in relation to Amendment C270.*<sup>12</sup>

Vicinity Centres agreed with Council that the site should be formally identified in any policy work as a Strategic Development Site within the context of the activity centre. It noted that:

*Any such designation must, however, amount to more than a statement of the obvious. It must mean that any policy or built form aspirations for the site properly reflect the Centre's strategic importance.*

*The current iteration of the proposed controls fails on this account. Indeed, notwithstanding that the Council recognises the site to be strategically significant, it then by the Amendment seeks to pre-empt, and even frustrate, the site's potential. It fails to incentivise real change and improved transit options for the centre; outcomes which must, on any proper analysis of the site's strategic and physical context, be of utmost importance to the activity centre.*<sup>13</sup>

Vicinity Centres submitted that to identify “urban design, built form, public accessibility and community benefit” as being the matters that might justify the ‘consideration’ of greater scale for the centre, is to pre-empt what should instead be an integrated assessment of these matters (along with the full range of other relevant planning considerations) as part of the design and assessment of any resolved redevelopment proposal.

It submitted that built form controls should not be linked to reward for so-called extra community benefit.

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<sup>11</sup> Para 34

<sup>12</sup> Para 49

<sup>13</sup> Document 8, para 10-11

*If this is to occur it should be limited where specific outcomes have been identified in the policy and where a strategic basis can be found for a link between the benefit and particular development sites. There is no such analysis here. The Amendment is framed as a crude broadside enabling Council to 'put its hand out'.<sup>14</sup>*

Vicinity Centres submitted that Box Hill Central (north and south) should:

- be included within a separate precinct
- be identified as a strategic redevelopment site
- not be allocated a preferred height or built form controls
- be identified as a candidate for targeted planning processes to determine these matters recognising the site's strategic and functional importance to the broader activity centre.

Mr Czarny generally accepted each of these propositions in cross examination as being an appropriate response to this site in the context of this Amendment.

Mr Czarny also acknowledged that sub-precinct F2 became very small when you took out the Vicinity Centres land, Sky One (which is under construction and will be 35 storeys) and Council site on Cambridge Street.

## **(ii) Discussion and conclusion**

The designation of a Strategic Development Site on the sub-precinct plan is confusing and not well considered. There is no definition anywhere about the intention for the Strategic Development Site other than reference in the sub-precinct controls that *"greater development scale can be considered subject to detailed analysis for urban design, built form, public accessibility and community benefit."*

It is not really contested that the transport interchange and shopping centre need to be subject to a separate detailed assessment.

The Panel agrees with Vicinity Centres that site warrants a comprehensive assessment and integrated development proposal, and shares the concerns of Vicinity Centres with respect to the lack of clarity about the Strategic Development Site designation. Given the importance of this site in the metropolitan context it is difficult to see how applying a 15 storey height limit – even if that limit is then essentially removed by reference to being a strategic site – demonstrates any strategic rigour.

The Panel does not, however, agree with Vicinity Centres that its holdings should be included in the DDO as a strategic site; rather, the Panel considers the land should be removed from the DDO. This would enable Vicinity Centres to work with a range of stakeholders, including Council, to develop a comprehensive proposal for its land and then prepare an appropriate suite of planning controls to facilitate and guide development. This ultimately may or may not include a DDO. It is possible that a more holistic development plan for the site will evolve that could mean built form controls are implemented through alternative planning provisions.

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<sup>14</sup> Document 8, para 25b

Similar comments are made with respect to the sites at 519-521 Station Street, 2-4 Bruce Street and 7 Elland Avenue. The Panel sees no point in having these sites included in a DDO if they are the subject of separate planning processes that will introduce built form controls for those sites. It is, at best, unnecessary to have built form outcomes managed through duplicated provisions and, at worst, has potential to create significant confusion and misunderstanding.

**(iii) Conclusion**

The Panel concludes:

- The *Guidelines* are confusing in respect to strategic sites.

### **3.5 Rationale for the proposed heights**

**(i) What is the issue?**

The preferred maximum building heights proposed in DDO6 was the key issue raised in submissions during the exhibition of the Amendment. Many submissions from local residents thought that the building heights were too high and should be reduced. On the other hand, many of the landowners in the activity centre submitted that the height controls were too restrictive and should be increased, particularly for their land.

**(ii) What does the DDO say?**

Figure 2 gives an overview of the proposed heights, but within this framework there are a number of potential variations.

**(iii) Evidence and submissions**

Mr Czarny said that the preferred maximum height was really a “starting point” when determining the ultimate height for buildings in this area.

Mr Czarny also gave evidence that height should vary with the use of the building:

*I note that [sub-precinct 5] is largely confined to lots that front Whitehorse Road, however it excludes the large corner parcel accommodating the Box Hill Institute at Nelson Road which forms part of the larger TAFE and Hospital designation leading downhill towards the north. Given precinct boundaries follow property alignments, it is in my opinion appropriate to maintain such a distinction when the parcel is completely within institutional ownership, however I accept that the land fronting Whitehorse Road (forming part of the Institute) could well be assessed differently at an application stage in light of the immediately abutting conditions.<sup>15</sup>*

The potential variation in preferred maximum heights is shown in Table 3.

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<sup>15</sup> Para 39

**Table 3: Variations to the preferred maximum building heights**

Built Form Response	
<b>F2: Station Street</b>	
sites up to 1,500sqm	Preferred maximum height of 12 storeys
sites greater than 1,500sqm	Preferred maximum height of 15 storeys
Box Hill Central (North) and Box Hill Central (South)	... are Strategic Development Sites where greater development scale can be considered, subject to future detailed analysis for urban design, built form, public accessibility and community benefit
519-521 Station Street	... subject to a separate design brief for built form and urban design
<b>F3: Rutland Road, Watts Street and Carrington Road</b>	
sites up to 1,500sqm	Preferred maximum height of 10 storeys
sites greater than 1,500sqm	Preferred maximum height of 12 storeys
<b>F8: Box Hill Gardens</b>	
	Preferred maximum height of 10 storeys
2-4 Bruce Street and 7 Elland Avenue	... subject to a separate design brief for built form and urban design

Sub-precinct F5 (Whitehorse Road West) has a preferred maximum height of 30 storeys and is located at the western extent of the activity centre, including properties to either side of Whitehorse Road east of Elgar Road and parcels on the northern side of Prospect Street. The land includes the most substantial existing podium and tower form, notably the 26-36 storey buildings constructed at 850 Whitehorse Road.

Mr Czarny acknowledged that the sub-precinct already has a taller building (36 storeys) than the preferred maximum height (30 storeys).

In response to this issue, Ms Roberts said:

*It is clear to me that the existing land use and assumed character has influenced the development of the height controls. This is most obvious along Whitehorse Road where Precinct F5, directly west of Precinct F6, has a preferred height limit of 30 storeys and Precinct F4, directly to the east of Precinct F6, has a preferred height limit of 20 storeys. Precinct F6, in between yet on the same street frontage has a preferred height limit of 15 storeys; half of its immediate neighbour and three-quarters of the other.*

*There is, in my opinion, no urban justification for this change in height guidance, hence my assumption that the existing land use (institutional) and the existing built form has led to a character assumption that is lower in height than the surrounding city.*

*The height of buildings, podium setbacks and side and rear setbacks, in my opinion, should also be considered in their capacity to meet other standards including access to light and natural ventilation, impact on the streetscape*



*and street ratio and how they provide a transition from high to medium to low scale development.*

*In summary, I would suggest a more nuanced and transitional height control would be more appropriate for Precinct F6 and would allow the Health and Education Precinct to become an integrated part of the city form.<sup>16</sup>*

Sub-precinct F6 (TAFE and Hospital) has a preferred maximum height of 15 storeys. Epworth Eastern considered the proposed discretionary height control of 15 storeys is acceptable for sub-precinct F6 provided that the setback, site coverage and landscaping controls were removed. The hospital submitted that flexible footprints and interconnected floorplates were more critical to the hospital than building height. If, however, the setback and other controls were not relaxed, then additional height may be required in order to achieve the same floor area.

The Box Hill Institute has buildings in both sub-precinct F6 and sub-precinct F9 (Kingsley Gardens). It submitted that the rationale for constraining development to 15 storeys in sub-precinct F6 appears to be based on existing conditions and assumptions about the 'function and use' of land within the area. Mr Czarny's evidence affirmed this approach.

The Box Hill Institute submitted that neither Council nor its expert engaged in any consultation with the Institute about how development within the education precinct should respond to future educational requirements. It said that the Institute's approach to its Spring Street development site highlights this point. This new development represents a departure in scale and form when compared with existing buildings on the campus and embraces the concept of value capture. It said a development plan for the site (Revision 4 – June 2017) depicts a proposed high density tower arrangement that can be easily absorbed into the activity centre.

The Institute submitted:

*The built form outcomes sought for the Precinct, and the Institute land in particular, are out-dated and do not reflect the Institute's intention with respect to education delivery in this Metropolitan Activity Centre. Building footprint efficiencies and servicing requirements for institutional uses are commensurate with the commercial, residential and mixed-use development expected within an activity centre context. If a 'campus style' is the aspiration, it should be for a city campus.*

*Mr Czarny's acknowledgment that he would treat Precinct F6 differently if it was in private ownership demonstrates a lack of understanding about the opportunities for public / private partnerships in the development of the activity centre and undermines that potential.<sup>17</sup>*

The Institute also made submissions with respect to sub-precinct F9. While it understood that buildings should not overshadow key open spaces such as the Kingsley Gardens, it said land within Precinct F9 that is located along Elgar Road (rather than near the Kingsley

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<sup>16</sup> Para 99-103

<sup>17</sup> Document 44, para 46-47

Gardens) could be developed to greater heights than 8 storeys without overshadowing the gardens or residential land. It concluded that an 8 storey height limit was a blunt approach to planning for this sub-precinct that was neither well considered nor justified in strategic or policy terms.

Mr Bastone gave evidence regarding land in the southeast corner of sub-precinct F9 (on the northwest corner of Whitehorse Road and Elgar Road). He said that an 8 storey building on this corner would result in an undesirable built form outcome that is inconsistent with both the *Structure Plan* and the strong strategic support for increased height densities. Mr Bastone thought that this corner site had potential to accommodate a landmark building that would announce the entry point to the activity centre. He said this was envisaged in the *Structure Plan* as the site was specifically identified as a location for a landmark building.

In her evidence regarding land in the southeast corner of sub-precinct F9 (on the northwest corner of Whitehorse Road and Elgar Road), Ms Bell agreed with Mr Bastone that there was no strategic rationale for an 8 storey height limit. She said shadow diagrams prepared by BHA Architects presented with her evidence demonstrated that a 20 storey building could be developed on the site without any shadow impacts on residential land when applying the shadow tests (using the equinox) proposed in the *Guidelines* and DDO6. She said even applying the stricter shadow tests in the *Structure Plan* (the winter solstice), a 16 storey building could be built without detrimentally affecting the amenity of the residential land to the south.

On the other hand, Mrs Wilkinson said all buildings in the activity centre should not be more than 5 storeys with mandatory setbacks and “*decent landscaping*”.

Ms Tescher also wanted “*much lower*” building heights, but did not specify what the heights should be. She said:

*People purchased properties in the area for the surrounding landscape and not to be faced with towers looming in their backyards. This is not the CBD. It is suburbia and that is what people living in the area want.*<sup>18</sup>

Ms Ross drew the Panel’s attention to an inconsistency with how the DDO had been applied to 716-724 Station Street where land is in the Mixed Use Zone, but is still within Precinct B in the *Structure Plan* and not covered by the *Guidelines* or DDO. This could potentially create policy uncertainty for these sites.

Concerns were also expressed about the increase in building heights in the traditional town centre.

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

The introduction of height controls within the activity centre needs to be based on sound strategic planning.

The Panel notes the various anomalies identified in various submissions and evidence, including Ms Roberts, Ms Bell, Mr Bastone and others. The proposed heights don’t seem to

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<sup>18</sup> Document 16, page 3

make obvious sense, and so some coherent rationale needs to be put forward for their justification.

The *Guidelines* provide a range of potential explanations for the proposed height controls. On page 27, the *Guidelines* provide 'Urban Form Proposition Key Directions' (the Key Directions), 'Character Precincts' and a series of cross sections. The *Guidelines* (at page 29) also provide Urban Design Objectives for Built Form Controls.

This section documents the Panel's assessment of these elements of the *Guidelines* to provide strategic justification for the DDO.

### **Do the 'Urban Form Proposition Key Directions' explain the proposed heights?**

Page 27 of the *Guidelines* sets out the Key Directions, together with three diagrams. These are:

1. *No reliance on a singular vertical projection, or 'gateway' designation on a particular site to announce the arrival point into Box Hill Metropolitan Activity Centre from the western approach.*
2. *Acknowledgment of the Box Hill Traditional Town Centre as the soft urban 'core' without diminishing its potential for growth.*
3. *Clearly defined roles and characters of distinctive precincts.*
4. *Encourage a range of building scales and types to reinforce the natural topography and urban structure ambition.*
5. *Enhanced amenity and permeability of existing key open spaces through successful management of development interface.*

It is not entirely clear how these Key Directions lead to a specific height.

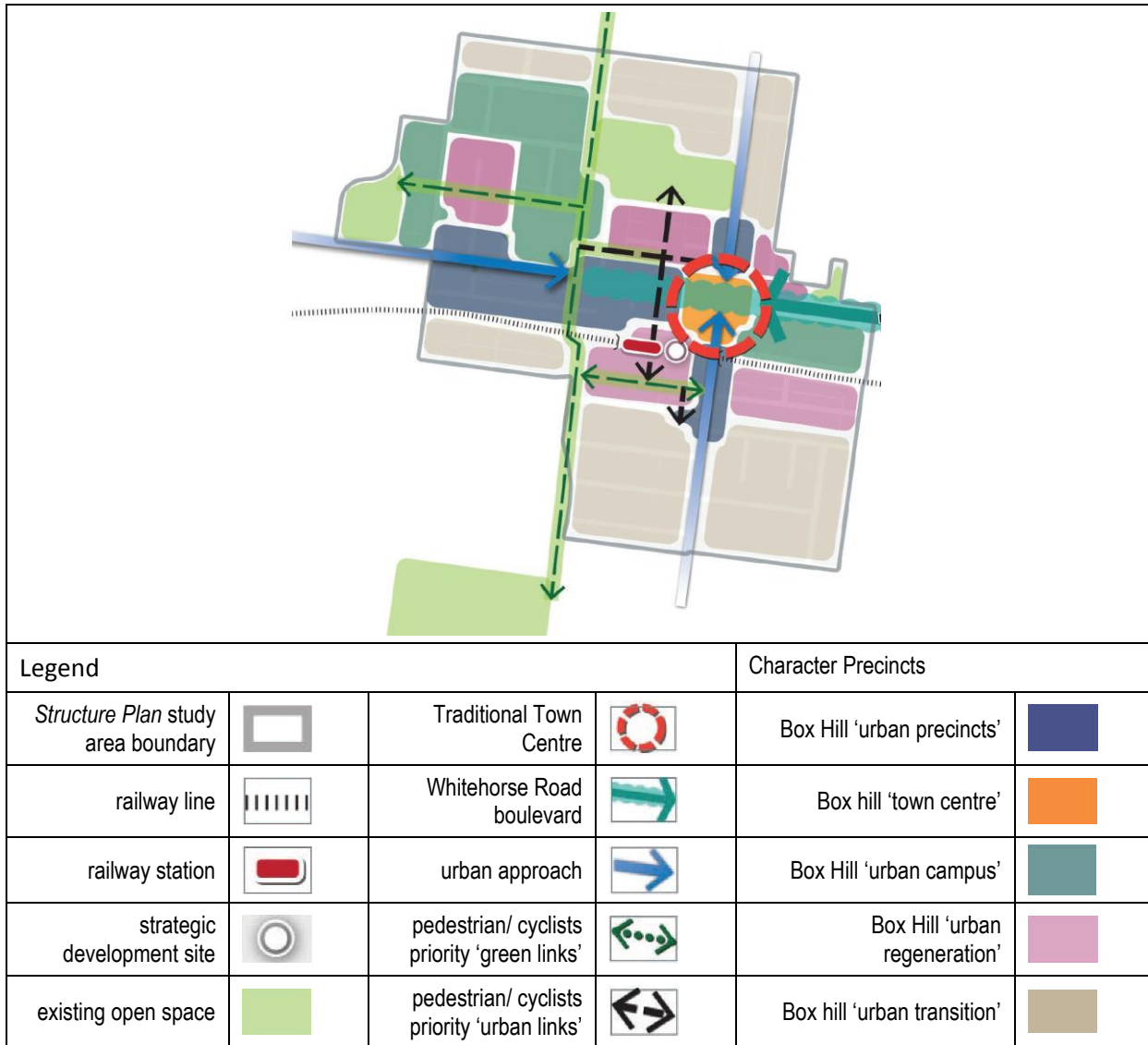
For example, protection of the Traditional Town Centre (Key Direction 2) is part of both the *Structure Plan* and the *Guidelines* but different heights are proposed in these documents to achieve what seem to be the same outcome: the *Structure Plan* says 3 storeys and the *Guidelines* says 8 storeys. The Panel was told the justification for the greater height in by the *Guidelines* was based on advice from Council's heritage consultant.

Perhaps it is desirable to "*Encourage a range of building scales and types*" (Key Direction 4) but this does not give any guidance on what this range should be. However, Key Direction 4 does seem to give guidance about how any range of building scales and types might be distributed over the activity centre: "*to reinforce the natural topography and urban structure ambition*". The problem is that the taller forms are simply not on the highest part of the centre.

It is clear that the Key Directions are not sufficiently specific to derive a set of building heights, and so cannot inform the height limits proposed.

### **Do the precincts explain the proposed heights?**

Page 27 of the *Guidelines* also sets out 'Character Precincts'. These are shown in Figure 4.

**Figure 4: Extract of Character Precincts from Built Form Guidelines**

There is no clear relationship between the Character Precincts and the heights specified in the sub-precincts as shown in Figure 2; Table 4 shows the relationship between the character precincts and the sub-precincts that specify the built form controls.

The Character Precincts have the following height ranges:

- Box Hill 'urban precincts' ranges from 8 to 30 storeys
- Box Hill 'urban regeneration' ranges from 4 to 12 storeys
- Box Hill 'urban campus' ranges from 8 to 15 storeys.

It is clear that the Character Precincts identified on page 27 do not inform the height limits proposed.

**Table 4: The relationship between Character precincts and sub-precincts**

Character precincts	Sub-precincts	Preferred maximum height
Box hill 'town centre'	C/F1: Traditional Town Centre (Part)	8 storeys
Box Hill 'urban precincts'	C/F1: Traditional Town Centre (Part)	8 storeys
	F2: Station Street	12–15 storeys
	F4: Whitehorse Road and Prospect Street	20 storeys
	F5: Whitehorse Road West	30 storeys
Box Hill 'urban regeneration'	F3: Rutland Road, Watts Street and Carrington Road	10–12 storeys
	F7: Garden Infill (Part)	12 storeys
	F8: Box Hill Gardens	4 storeys
Box Hill 'urban campus'	F6: TAFE and Hospital	15 storeys
	F7: Garden Infill (Part)	12 storeys
	F9: Kingsley Gardens	8 storeys
Box Hill 'urban transition'		

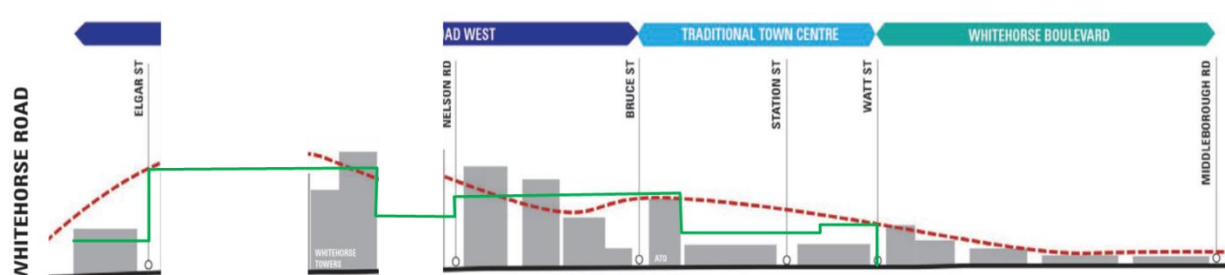
### Do the cross-sections explain the proposed heights?

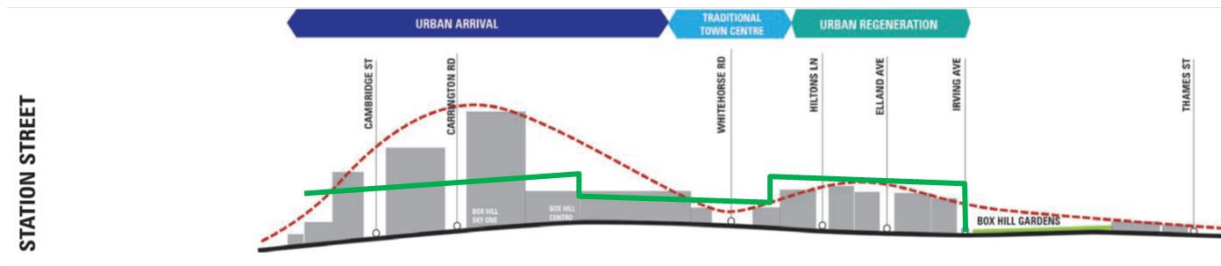
Page 27 of the *Guidelines* presents two cross-sections of the centre. These are shown in Figure 5 and Figure 6, with the proposed height controls superimposed.

Comparing the proposed height limits to the cross-sections in the *Guidelines* reveals that:

- there is an error in Whitehorse Road with part of the cross-section missing, (or not drawn to scale)
- there is no discernible connection between what has been approved and the proposed heights
- there is no connection between the sweeping red line and the proposed heights.

It is clear that the cross-sections identified on page 27 do not relate to current approvals and do not inform the height limits proposed.

**Figure 5: Cross-section with height limits (approximately only) in green – Whitehorse Road**

**Figure 6: Cross-section with height limits (approximately only) in green – Station Street****Do the Urban Design Objectives for Built Form Controls explain the proposed heights?**

The *Guidelines* (page 29) present eight 'Urban Design Objectives for Built Form Controls' under four headings:

**Street wall profile**

- *Establish pedestrian scaled public spaces.*
- *Encourage consistent street wall definition that responds to its street width.*
- *Limit maximum street wall to street width ratio to 2:1 to ensure that taller buildings do not dominate the street, compromising pedestrian experience.*

**Heritage**

- *Determine the appropriate extent of new 'insertion' behind and above without dominating the traditional street wall and heritage forms.*
- *Discourage lot consolidation where traditional fine grain allotments are highly valued and should be protected.*

**View lines**

- *Protect and frame valued viewline to the Dandenong Ranges.*
- *Frame viewline to existing individual significant heritage buildings and to key open spaces.*

**Shadow**

- *Retain high level of amenity by reducing the impact of overshadowing onto key open spaces.*

A number of these could potentially provide some basis for the proposed height controls, or elements of them.

"Limit maximum street wall to street width ratio to 2:1" gives a clear standard, but this is clearly not the complete explanation: Station Street has a 5 storey limit proposed in one section and a 10 storey limit in another, but appears to be roughly the same width throughout its length. It is not immediately clear that the streets in the sub-precinct F7 (10 storey street wall) are two and half times as wide as those in Box Hill Gardens (4 storey street wall), or twice as wide as Whitehorse Road in its widest part (5 storey street wall). This issue is discussed in more detail in section 6.6.3 of this Report.

"Protect and frame valued viewline to the Dandenong Ranges" might impose some height limits. The Panel was told that this was only meant to apply to the view from Whitehorse

Road. As pointed out by some submitters, and confirmed by the Panel, there appear to be no views to the Dandenong Ranges from Whitehorse Road from within the study area.

It is clear that the Urban Design Objectives for Built Form Controls on page 29 do not inform the height limits proposed.

**Does the general guidance explain the proposed heights?**

The *Guidelines* present 'General Built Form *Guidelines*'. The Panel has reviewed these and can only identify three that could inform the height limits proposed in the DDO<sup>19</sup>:

*Buildings must not cast additional overshadow on key open spaces and plaza (as shown on page 24) between 11.00-14.00 on 22 June.*

*Buildings should not overshadow front gardens/ balconies on allotments within Built Form Precinct A for more than 3 consecutive hours between 10.00-15.00 on 22 September.*

*Buildings should not overshadow private open space on residential land outside the activity centre boundary for more than 3 consecutive hours between 10.00-15.00 on 22 September.*

The plan on page 24 of the *Guidelines* that specifies "key open spaces and plaza" has the legend notation "key open space / link". The issue is that it is not possible to tell from the plan on page 24 what is open space, and hence subject to protection from overshadowing, and what is a link, and so not subject to protection.

Aside from issues about overshadowing there is no advice in the general guidelines that informs the height limits proposed.

**Do the sub-precinct objectives and controls explain the proposed heights?**

Section 5 of the *Guidelines* provides sub-precinct specific objectives under the headings:

- Subdivision Pattern
- Street walls and preferred maximum heights
- Heritage
- Key Views
- Additional street/laneway address
- Amenity/access to daylight
- Landscape.

The Panel has undertaken a reasonably detailed examination of these sub-precinct objectives.

The sub-precinct objectives that might drive an overall urban design proposition in relation to height are:

- To retain a sense of openness:
  - along Whitehorse Road
  - in the Traditional Town Centre
  - around the listed heritage buildings in the Traditional Town Centre

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<sup>19</sup> Page 34

- with consistent front garden presentation along street frontage in the Garden Infill precinct
- with local streets in the Box Hill Gardens precinct
- To establish a proportionate relationship between the low scale street wall and potential future addition above/ to the rear
- To establish a consistent:
  - datum of robust infill street wall with recessive upper level/s along Station Street south of Whitehorse Road
  - urban presentation along Whitehorse Road
- To establish a distinctive entry:
  - from the north and south along Station Street
  - into Box Hill Activity Centre from the west
- To avoid additional overshadowing of key open space and pedestrian plaza (as shown on page 24)
- To establish a sense of transition:
  - between Whitehorse Road West (Precinct F5) and the Traditional Town Centre (Precinct C/F1)
  - on sites with a direct residential interface (outside the activity centre)

It is difficult to reconcile these objectives with:

- the 'Key Directions'
- the proposed Built Form Responses to the sub-precinct objectives in section 5 of the *Guidelines*
- recently approved development.

The Panel could not identify any clear relationship between the sub-precinct objectives and the heights proposed that could inform the height limits proposed in a systematic and easily understood way.

### **Do existing or approved developments explain the proposed heights?**

The *Guidelines* present examples of emerging development patterns, and there was some suggestion that these could form the basis of the controls.

In some places in Melbourne existing development can provide the basis for planning controls. These are areas where the policy setting seeks to preserve the existing character. Box Hill is not one of these areas, in fact the reverse applies. Since there has been a planning scheme in Melbourne there has been a policy to support development in Box Hill that is different to what is currently there.

There can be no justification for simply trying to preserve what currently exists across the centre as a whole or for trying to reinforce 'emerging built form'.

Current or emerging built form should not inform the height limits in Box Hill.

### **Do community submissions explain the proposed heights?**

The Panel recognises that many residents do not accept the recent changes to the urban form of Box Hill. It is, however, critical to metropolitan planning policy that Box Hill is encouraged to develop with significant further growth, including high density development.



Built form controls should not be used to stymie development but used to manage high-quality design outcomes that will improve the amenity of the area. The challenge is to ensure that growth is well managed rather than prohibited.

In no sense can the proforma submissions be taken to be a reliable indication of community views: but the same can be said of any submissions. The Panel deals with the submissions before it, and the Panel has made a brief analysis of the proforma submissions to see if they have a consistent message.

The proforma submissions shows a preference for buildings in the 5 to 9 storey range for all precincts, but with some acceptance of higher forms in Precinct F4 and F6.

There is no relationship between the heights in the *Guidelines* and the preferences of the proforma submitters. Community expectations (as expressed by those people who submitted a proforma submission) cannot serve as a rationale for the heights in the *Guidelines*.

**Table 5: Analysis of proforma responses**

	Precinct C/F1	Precinct F2	Precinct F3	Precinct F4	Precinct F5	Precinct F6	Precinct F7	Precinct 8	Precinct F9
DDO	8	15	12	20	30	15	12	10	8
2	3	3	4	1	2	4	6	6	8
3	5	6	5	2	2	3	3	3	3
4	14	9	13	4	5	6	11	12	18
5 to 9	39	36	32	29	23	28	31	32	33
10 to 14	4	15	13	19	19	24	15	12	3
15 to 19	0	3	0	11	10	3	1	0	0
20 to 24	0	0	0	4	9	0	0	1	0
25 to 29	0	0	0	0	1	1	1	0	0
30	14	9	13	4	5	6	11	12	18

Source: Panel analysis of proposal data supplied by Council. Heat mapping applied by Excel.

#### **(v) Conclusion**

The proposed heights don't seem to make obvious sense, and some coherent rationale needs to be put forward for their justification. The Panel cannot find such a rationale and nor could any of the submitters.

The Panel concludes:

- There is no identifiable rationale for the heights proposed in the *Guidelines*
- The proposed preferred heights are not based on a well-founded understanding of the future urban form for the centre and the needs of key stakeholders in the activity centre.

### 3.6 Conclusion

The Panel cannot find the strategic justification for the Amendment in the *Guidelines* or the material presented to the Panel. It is not the role of the Panel to invent such a justification (if that were even possible) nor to change the proposed controls to something entirely different as proposed by the proforma submissions: that would in effect be a different amendment.

The Panel concludes:

- The *Guidelines* lack strategic rigour
- The *Guidelines* are not an appropriate basis for an amendment.

## 4 Appropriateness of the proposed rezonings

### 4.1 What is proposed?

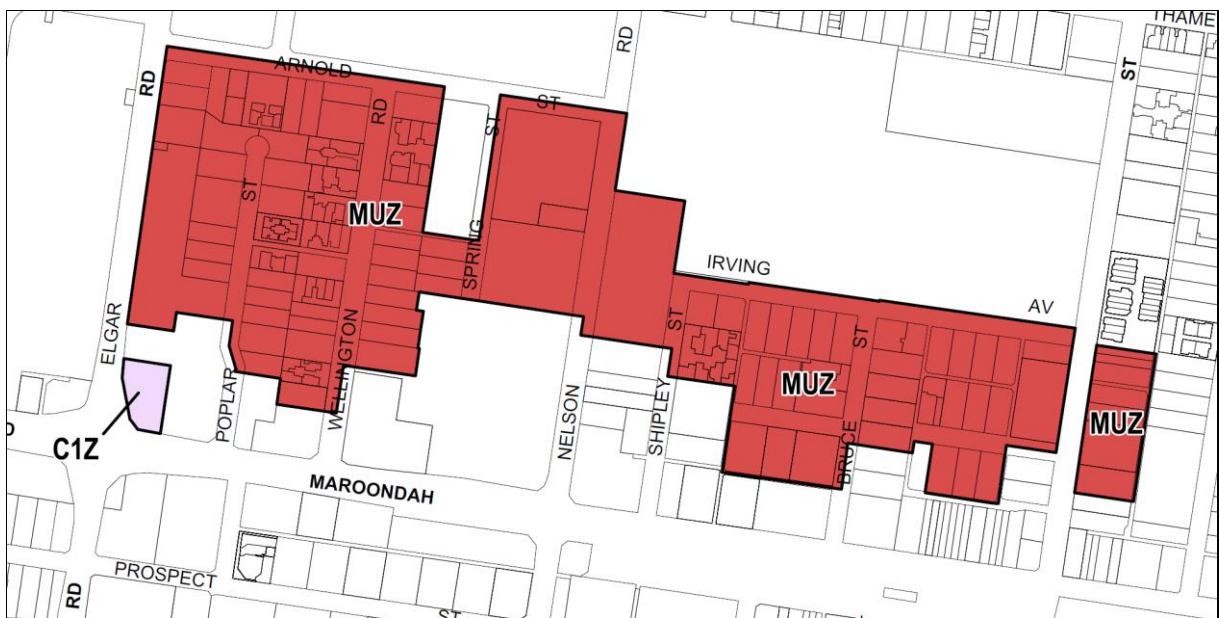
The Amendment proposes to amend Planning Scheme Map 1 to rezone various parcels of land to the Mixed Use Zone (MUZ) and a single parcel to the Commercial 1 Zone (C1Z). This is shown in Figure 7.

The MUZ seeks to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.

The C1Z seeks to create vibrant mixed-use commercial centres for retail, office, business, entertainment and community uses, with complementary residential uses.

There are no height restrictions contained in either zone.

**Figure 7: The proposed rezonings**



### 4.2 Mixed Use Zone

#### (i) What is the issue?

Land on the north side of Whitehorse Road is generally zoned C1Z, and the land immediately to the north of the C1Z is currently zoned RGZ or PUZ.

To give effect to the desired land use outcomes the *Structure Plan* recommended rezonings for the various land use precincts.

The *Structure Plan* recommended zones for Land use Precinct D Hospital and Western TAFE. The recommended zones were Public Use Zone (PUZ) for various institutional sites and the Priority Development Zone (PDZ) for the area between Whitehorse Road, Nelson Road, Arnold Street and Elgar Road. The PUZ has already been applied to various institutional sites. The Amendment proposes rezoning this land from RGZ to MUZ.

For Land use Precinct E Box Hill Gardens, the *Structure Plan* also recommended MUZ. In line with the *Structure Plan* the Amendment proposes rezoning this land from RGZ to MUZ.

## **(ii) Evidence and submissions**

Council submitted that these sites need rezoning from RGZ to MUZ as they are located in an area designated for a greater level of change in built form and use than currently envisaged under the RGZ.

Apart from Council there were few submissions about the rezonings. Submission 30 was supportive of the application of the MUZ in Nelson Road.

Epworth Healthcare and Vitalhealth Australian Property Trust (Epworth) supported the rezoning of its land from RGZ arguing that RGZ was not appropriate for DDO6 Precinct F6 Hospital and Western TAFE where a mix of uses and a much larger scale and density of new development exists. However, Epworth questioned the appropriateness of its inclusion in the MUZ.

The purposes of the MUZ are:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
- *To provide for housing at higher densities.*
- *To encourage development that responds to the existing or preferred neighbourhood character of the area.*
- *To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.*

Under the MUZ a planning permit is required (section 2 use) for Hospital and Medical Centre uses. Yet Epworth is located in Precinct F6 Hospital and Western TAFE and it is part of only five health and education precincts designated under *Plan Melbourne*. As indicated above, Policy 1.1.4 of *Plan Melbourne* is to “Support the significant employment and servicing role of health and education precincts across Melbourne.”

Ms Macklin for Epworth gave evidence that it did “*not seem orderly or efficient to require a permit for a land use in a Precinct that has been specifically earmarked for its health and educational uses*”.<sup>20</sup>

Ms Macklin gave evidence that inclusion of Epworth’s site in a Special Use Zone (SUZ) would have been preferred, as a SUZ would have allowed the tailoring of a specific schedule enabling the use and development of the land to proceed in an orderly manner. A SUZ has been used for both the Epworth Hospital at Waurin Ponds and for the Epworth in Richmond.

Nevertheless, Epworth concluded that the MUZ was acceptable on the basis that a SUZ had not been exhibited.

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<sup>20</sup> Oral evidence Day 6

**(iii) Discussion**

While the application of the MUZ is largely supported by submitters the Panel considers that in failing to consult Epworth about the rezoning Council has missed an opportunity for efficient development within Precinct F6 and an opportunity to “*support the employment and servicing role of health and education precincts*”.

**(iv) Conclusion**

The Panel concludes that:

- The proposed rezoning to MUZ is appropriate.
- Council should give future consideration to rezoning the Epworth site to a SUZ.

### **4.3 Commercial 1 Zone**

**(i) What is the issue?**

Currently land in the *Structure Plan* Built Form Precinct F along the north side of Whitehorse Road is zoned either C1Z, or PUZ for institutional uses. The exception is the site on the north east corner of Whitehorse and Elgar Roads at 450 Elgar Road.

Currently 450 Elgar Road is zoned RGZ. The *Structure Plan* recommended rezoning this site to PDZ. The Amendment proposes rezoning this site to C1Z.

**(ii) Evidence and submissions**

Council submitted that this site should be rezoned from RGZ to C1Z as it is located in an area designated for a greater level of change in built form and use than currently envisaged under the RGZ.

Apart from Council there were no submissions about the rezoning of 450 Elgar Road.

**(iii) Discussion**

450 Elgar Road is located on the north east corner of Whitehorse and Elgar Roads in Built Form Precinct F. It is the only site on the northern side of Whitehorse Road that is not C1Z or PUZ. Its current zone is anomalous and it is appropriate that it be included in C1Z.

**(iv) Conclusion**

The Panel concludes that:

- The proposed rezoning to Commercial 1 is appropriate.

## 5 Appropriateness of the proposed changes to Clause 21.07 and Clause 22.07

### (i) What changes are proposed?

Clause 21.07 Economic Development and Clause 22.07 Box Hill Metropolitan Activity Centre provide additional guidance about the development of Box Hill. The Amendment proposes to amend both of these clauses to include the *Guidelines* as a reference document.

The proposed text change to Clause 21.07 are:

*Plan Melbourne identifies **Box Hill** as a Metropolitan Activity Centre (MAC) which provides significant opportunities for investment in terms of retail, public transport, health, justice, education, entertainment and medium and higher density residential development. It is essential that the Box Hill MAC develops as a major regional activity centre through the development of appropriate retail and office activities. It is also vital that the centre develops more residential and entertainment facilities to strengthen this role. Council will support new commercial, residential and retail development in this Activity Centre consistent with the role of the centre, ~~and~~ the Box Hill Structure Plan which ~~also~~ seeks to guide the preferred location of investment and the Box Hill Metropolitan Activity Centre Built Form Guidelines 2016 which ~~and~~ seeks to guide the urban form of the new investment in the centre.*

#### **21.07-4 Strategies**

*Strategies to achieve these objectives include:*

- *Facilitate development within the Box Hill MAC in accordance with the Box Hill Transit City Activity Centre Structure Plan, June 2007.*
- *Encourage new development within the Box Hill MAC to have regard to the principles of the Box Hill Metropolitan Activity Centre Built Form Guidelines, 2016.*

Changes also refer to applying the DDO to the activity centre and including *the Guidelines* as a reference document.

The proposed text change to Clause 22.07 are:

#### **22.07-3 Policy**

*It is policy that use and development of land is consistent with the vision for the centre, ~~and~~ the activity and built form precincts in the Box Hill Transit City Activity Centre Structure Plan (2007) and the principles of the Box Hill Metropolitan Activity Centre Built Form Guidelines (2016).*

#### **General**

*New use and development should have regard to the vision and principles of the Box Hill Transit City Activity Centre Structure Plan 2007 and the Box Hill Transport Interchange Concept Design March 2002, ~~and~~ the Site Development*

*Framework – 545 Station Street, Box Hill, April 2011* [and the Box Hill Metropolitan Activity Centre Built Form Guidelines, 2016.](#)

Changes also include the *Guidelines* as a reference document.

**(ii) What is the issue?**

The proposed changes to Clauses 21.07 and 22.07 will embed the *Guidelines* in the planning scheme as a reference document. Reference documents provide background information to assist understanding the context within which a policy has been framed. Inclusion of the *Guidelines* as a reference document in the Whitehorse Planning Scheme should only occur if the *Guidelines* support decision-making and demonstrate consistency with the *Structure Plan*.

**(iii) Evidence and submissions**

Parties' evidence focused on the impacts of the Amendment on their individual sites, pointing to the discrepancies between the *Structure Plan* and the *Guidelines*. Submissions from the community more generally did the same. No submission specifically addressed Clauses 21.07 and 22.07.

**(iv) Discussion**

As is detailed in Chapter 2.4 the *Guidelines* depart from the *Structure Plan* without seeking to amend it or identify exceptions to it. They lack strategic rigour and are not considered an appropriate basis for an amendment. It follows that the Panel does not support the proposed changes to Clauses 21.07 and 22.07.

**(v) Conclusion**

The Panel recommends:

- 1. Abandon the changes to Clause 21.07 and Clause 22.07.**

## 6 Issues with the DDO

### 6.1 Introduction

#### (i) The purpose of this Chapter

The *Guidelines* are the basis of the built form controls contained within DDO6. Having concluded that the *Guidelines* are not soundly based, it follows that the content of DDO6 is not supported.

Notwithstanding this overarching conclusion, the Panel makes a variety of comments on some of the specific provisions referred to in DDO6. It will be clear from these comments that the DDO suffers from a range of issues that would need to be addressed if it were to proceed.

#### (ii) The versions of the DDO

It is appropriate to document the various 'versions' of the DDO that the Panel has considered before addressing the specific issues in DDO6.

##### **Exhibition version**

On 3 November 2016, a delegate of the Minister for Planning authorised Council to prepare the Amendment. The authorisation was subject to a number of conditions.

Council advised the Panel that it amended the wording of DDO6 in accordance with the requirements of authorisation in all but two respects.

Condition 2, dot point 2 stated:

*Consider deleting Table 2 Building Heights and Separation, as the requirements are a duplication of Tables 3-11.*

Council initially submitted to the Panel that Table 2 Building Heights and Separation is appropriate as it provides a high level overview of the heights and setbacks and precedes the more detailed tables.

Condition 2, dot point 5 stated:

*In Table 4, provide clarification on what would be a 'positive contribution' to allow for additional building height on sites over 1500sqm and provide further detail on the specific location of Station Street 'south' and 'north'.*

Council submitted that it was desirable to assess the nature of a 'positive contribution' on an individual basis, rather than to prescribe examples.

##### **Post exhibition version**

Council considered all submissions following exhibition of the Amendment. As a result of the consideration of submissions, officers recommended changes to the *Guidelines* and consequential changes to DDO6, including:

- grammatical and spelling corrections
- acknowledgment of the Better Apartment Design Standards status



- amendments to the *Guidelines* to be consistent with Better Apartment Design Standards relating to cross ventilation
- sub-precinct F2 – amendments to *Guidelines* to reflect ownership of Box Hill Central and inclusion of both properties in sub-precinct F2
- sub-precinct F2 – amendments to mapping to include the entire property at 712 Station Street in the sub-precinct
- sub-precinct F2 – clarification of the requirement for a separate design brief for built form and urban design for 519-521 Station Street only
- sub-precinct F2 – Subdivision pattern – Built Form Response – delete reference to ‘plot ratio approach’ and ‘positive contribution’ and replace it with ‘Box Hill Central Site as a Strategic Development Site where greater development scale can be considered and subject to future detailed analysis for urban design, built form, public accessibility and community benefit’
- sub-precinct F6 and sub-precinct F9 – Subdivision pattern – Precinct Objective – delete reference to ‘campus style’
- sub-precinct F6 – Street Walls and preferred maximum heights – Precinct Objectives – delete ‘to establish continuous belt of landscaping along all street frontages’ and replace it with ‘to encourage continuous belt of landscaping along all street frontages’
- sub-precinct F9 – changes to setback guidelines to ensure consistent setback of 8 metres and to correct an inconsistency
- all sub-precincts – delete reference to ‘positive contribution to its local context’ and replace with ‘design excellence’.

In accordance with the Panel’s direction dated 28 June 2017, Council circulated a ‘tracked changes’ version of DDO6 on 7 July 2017 identifying these changes to the exhibited version.

### **Post Panel Hearing version**

At the invitation of the Panel, Council circulated a further revised version of DDO6 taking into account some of the comments made by the Panel and others during the Hearing. This version was largely about reformatting the content in a more legible way, correcting obvious errors and to meet the requirements of the updated Ministerial Direction on *The Form and Content of Planning Schemes*.

Key changes included:

- the deletion of 51 objectives in Clause 1 and replacement with four new objectives in accordance with the requirements under the Ministerial Direction on *The Form and Content of Planning Schemes* that there be no more than 5 objectives
- the deletion of one requirement under the ‘Street Frontages’ heading in Clause 2
- the relabelling of ‘Building Separation’ in Clause 2 to ‘Building Height and Separation’ and several changes to the wording of two of the dot points under this heading
- a repurposing of Table 2 to relate to ‘Building Setbacks’ and correcting multiple typographical errors in the table
- the extensive reorganisation of Tables 3 to 11 to refine Urban Design Attributes, Precinct Objectives and Built Form Responses

- the deletion of all graphics associated with Tables 3 to 11
- the modification of the introduction to Clause 4 (*Decision Guidelines*) to ensure it complies with the Ministerial Direction on *The Form and Content of Planning Schemes*.

Council submitted this version to the Panel as part of its closing submission on the final day of the Hearing and made it clear it was for discussion purposes only and it did not represent Council's position with respect to the Amendment.

All parties to the Hearing were provided with an opportunity to comment in writing on the Post Panel Hearing version of DDO6 within 7 days of the close of the Hearing.

The Panel notes that it is required to consider the exhibited version of Amendment C175 and the submissions made to the Amendment. In doing so, the Panel has had regard to all submissions (including Council's responses to those submissions) with respect to possible variations to DDO6.

## **6.2 What the preferred heights mean**

### **(i) What is the issue**

It is not clear precisely what the preferred heights mean in the context of:

- a notion that there can be uplift for public benefit
- variation due to land size
- site specific considerations.

### **(ii) Evidence and submissions**

The Amendment was presented on the basis that additional height or form may be delivered in return for public benefits. Mr Czarny also noted in his evidence that:

*While I have indicated that the prospect of achieving additional height or form may be subject to a measurement of tangible public benefits, there have been regular calls for a clearer indication of the test that would enable such. I have no hesitation in supporting a list of relevant and tangible public benefits to assist in this regard.<sup>21</sup>*

The letter from the Minister's delegate authorising the Amendment also asked Council to provide clarification on what would be a 'positive contribution' to allow for additional building height on sites over 1,500 square metres.

The exhibited Amendment included a number of provisions in various sub-precincts that 'exempted' the 'standard' controls. This was expressed in a variety of ways, including:

- the nomination of a site as "*subject to a separate design brief for built form and urban design*" (such as for 519-521 Station Street in sub-precinct F2 and 2-4 Bruce Street and 7 Elland Avenue in sub-precinct F8)
- in sub-precinct F2 and F3 "*Additional building height is possible on sites which are greater than 1,500 square metres subject to positive contribution to its local*

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<sup>21</sup> Para 49

*context*” (which following exhibition was changed to “...subject to design excellence” and then in the Post Panel Hearing version was deleted altogether).

- in sub-precinct F2, reference to a *“plot ratio approach to support greater development scale is applicable on Strategic Development Sites (to be determined) subject to positive contribution to its local context”* which following exhibition was replaced with *“Box Hill Central (North) and Box Hill Central (South) are Strategic Development Sites where greater development scale can be considered, subject to future detailed analysis for urban design, built form, public accessibility and community benefit”*.
- in sub-precincts F6 and F9 reference to *“a plot ratio approach is applicable on extra-large sites”*.

Several sub-precincts included different preferred heights based on the size of the lot. A threshold of 1,500 square metres was adopted.

### **(iii) Discussion**

The Panel has a number of concerns with the lack of specificity around heights and the notion of ‘uplift’ for public benefit in a DDO control.

The inclusion of fetters in discretionary controls that limit the exercising of that discretion to special circumstances such as ‘providing a positive contribution to the local context’ or ‘design excellence’, or providing some form of ‘community benefit’ need to be applied with caution. There are a number of issues that emerge from such an approach, including:

- ensuring the requirement is clear and transparent in its meaning and outcome to be achieved
- that the requirement is fair and equitable to all parties
- that there is sound strategic justification for the requirement rather than as an arbitrary inclusion
- there is a genuine nexus between the requirement and the objectives of the DDO
- the implications for exercising discretion on sites not covered by such requirements are fully understood.

The Panel makes no specific conclusions regarding these matters and notes that there may also be other relevant issues to consider. It raises these matters for Council to consider in further work it may complete in the activity centre, as it is important to have a consistent and coherent approach to these types of ‘special’ provisions.

It is not clear to the Panel why a lot size of 1,500 square metres was the threshold figure that enabled greater height in some areas. Although the *Guidelines* included some analysis of lot sizes, this needs to be investigated with greater rigour in order to justify the proposal. How such a control works with any future ‘plot ratio approach’ also needs to be considered.

## **6.3 Design objectives**

### **(i) What is the issue?**

The issue is whether the design objectives in Clause 1 of DDO6 are appropriate to inform decision makers about the purpose of the DDO and the intent of the built form outcomes.

**(ii) What does the DDO say?**

The DDO was exhibited with 51 design objectives.

The Post Panel Hearing version presented by Council includes four design objectives:

*To provide guidance in achieving the desired built form outcomes for the Box Hill Metropolitan Activity Centre (Centre) as provided for in the Box Hill Activity Centre Transit City Structure Plan (Structure Plan).*

*To build upon the built form policies and objectives for the Centre set out in Clause 22.07 in line with the role of the Centre as a Metropolitan Activity Centre of State significance.*

*To identify redevelopment sites which should be the subject of separate design briefs for built form and urban design.*

*To enhance the safety and amenity of those who live or work in or visit the Centre in an environmentally sustainable manner.*

It is a requirement of the latest version of the Ministerial Direction on *The Form and Content of Planning Schemes* that there be no more than five design objectives in a DDO schedule.

**(iii) Evidence and submissions**

Several expert witnesses noted that the exhibited objectives were heavily focused on residential development outcomes. For example, Ms Macklin noted that the Building Depths section referred to avoiding the practice of using borrowed light for internal rooms. She said that this was not relevant to institutional settings such as hospitals and that the requirements needed to be clearer about what applied to residential versus non-residential development.

Mr Sheppard said that:

*It appears that DDO6 has been drafted with a primary focus on residential development. This residential-centric approach is illustrated by the objectives relating to building depths, building separation and overshadowing. This is a key shortcoming of proposed DDO6, given the significance of the Hospital and TAFE Precinct.<sup>22</sup>*

A number of submissions were made with respect to the Post Panel Hearing version of Clause 1.

The Blackburn Village Residents Group suggested that the first objective should be extended to include the words:

*... with particular regard to the needs of active transport modes and public transport having a proportionately much greater role in movement of people through the Box Hill Metropolitan Activity Centre.*

Vicinity Centres submitted that the third objective should be modified with the following words underlined added:

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<sup>22</sup> Para 40

*To identify strategic development sites for which desired built form outcomes are not specified in this control (and which should be determined by separate planning processes) and other redevelopment sites which should be the subject of separate design briefs for built form and urban design.*

The Blackburn and District Tree Preservation Society supported the change suggested by the Blackburn Village Residents Group and also suggested that the final dot point should be extended to say:

*... with particular reference to enhancing the public realm (active transport thoroughfares, streetscapes, plazas, parks and open spaces) to accommodate for the anticipated massive population increase in the Box Hill Metropolitan Activity Centre.*

On the other hand, Ms Kopecek wanted the exhibited design objectives reinstated “*in some manner*”.

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

The Panel acknowledges that there is a need to simplify the 51 exhibited design objectives in Clause 1. This is necessary in order to comply with the Ministerial Direction on *The Form and Content of Planning Schemes*, which was updated after the exhibition of the Amendment.

Notwithstanding this, the Panel has concerns about the content of the exhibited design objectives. Many of the exhibited objectives deal with matters covered elsewhere in the planning scheme or are generic good design principles that are applicable to any site. Some of the objectives are vague and lack clarity of thought. For example, “*to provide opportunity to create street landscape character*”.

The Panel has not reviewed each of the exhibited objectives on the basis that there cannot be more than five objectives in a DDO schedule. This recent requirement creates new challenges for the drafting of a DDO.

The Panel considered the possibility of including some of the exhibited objectives in Clause 22.07 (Box Hill Metropolitan Activity Centre). It would, however, be inappropriate to simply ‘cut and paste’ the exhibited objectives into Clause 22.07 when the Panel has already concluded that the *Guidelines* which were the fundamental basis for the Amendment (and the exhibited design objectives in Clause 1) were not soundly based. The Panel is of the view that extensive work is required to articulate a comprehensive set of built form objectives and that Clause 22.07 should not be amended until that work has been completed.

The Panel makes the following observations with respect to each of the four Post Panel Hearing objectives.

The first objective appears misguided on at least two fronts. It seems strange that the objective refers to achieving the desired built form outcomes for the Box Hill Metropolitan Activity Centre as provided for in the *Box Hill Activity Centre Transit City Structure Plan*. Reference to the *Structure Plan* creates significant confusion as the policies and requirements of the *Structure Plan* and the *Guidelines* do not always align. As the Amendment was purported to implement the built form outcomes of the *Guidelines*, it is baffling as to why the design objective refers to the *Structure Plan*.

In addition, the Panel is concerned that the *Structure Plan* is only a reference document in the Whitehorse Planning Scheme and it should not be cited in such a way as to infer that the document has a role beyond that status. This comment would also apply if the objective referred to the *Guidelines*.

The second objective refers to another part of the planning scheme (Clause 22.07). This is unnecessary, as a decision maker is required to have consideration to Clause 22.07 whether or not it is referred to in DDO6. The objective also appears to articulate a planning process when it refers to building upon the built form policies and objectives for the centre as set out in Clause 22.07. A design objective should reflect a specific design outcome to be achieved rather than a planning process.

The third objective is incongruous with the need for a DDO. It is not clear why a DDO should be applied to a site and for then an objective to say that the site should somehow be quarantined from the DDO controls. If the intent of this objective is to exclude certain parts of the Box Hill Metropolitan Activity Centre from the DDO controls because they are 'special sites' that warrant separate urban design considerations then it would make more sense to exclude the site from the DDO altogether. Unless the DDO provides some form of guidance about the type of development on a land parcel there is no point including the site within a DDO.

It therefore follows that the Panel does not support the approach suggested by Vicinity. It would be more appropriate to excise the Vicinity Centres land from the DDO map rather than create a new sub-precinct (F10) and have that sub-precinct exempt from the DDO controls.

The final objective is vague and unhelpful. Enhancing the safety and amenity of a place in an environmentally sustainable manner should be an objective for all development anywhere in Victoria. This is a fundamental remit of planning and it need not be restated as a specific design objective for the Box Hill Activity Centre.

## **(v) Conclusion**

The Panel concludes that:

- The 51 exhibited design objectives in Clause 1 are not in accordance with the Ministerial Direction on *The Form and Content of Planning Schemes*.
- Irrespective of the requirements of the Ministerial Direction on *The Form and Content of Planning Schemes*, the 51 exhibited design objectives lack rigour and are inappropriate.
- The four revised design objectives prepared by Council at the conclusion of the Hearing are inappropriate.
- Further work is required to prepare a revised set of design objectives based on sound strategic planning.

## **6.4 Exemptions for permits**

### **(i) What is the issue?**

The issue is whether it is appropriate for DDO6 to include any specified buildings and works that do not require a permit in accordance with the DDO.

**(ii) What does the DDO say?**

Clause 43.02-2 (Design and Development Overlay) states that:

*A permit is required to:*

- *Construct a building or construct or carry out works. This does not apply:*
  - *If a schedule to this overlay specifically states that a permit is not required.*
  - *To the construction of an outdoor swimming pool associated with a dwelling unless a specific requirement for this matter is specified in a schedule to this overlay.*
- *Construct a fence if specified in a schedule to this overlay.*

This clause provides an opportunity for specified buildings and works to be exempt from the need to obtain a planning permit pursuant to a DDO.

The proposed DDO6 does not exempt any specified buildings and works from the need to obtain a planning permit.

The proposed DDO6 does not specifically state that a permit is required to construct a fence.

**(iii) Evidence and submissions**

VicTrack submitted that, as a minimum, the overlay control should include specific transport operation exclusions to ensure essential transport works are excluded from requiring a permit. It suggested that words be added to the introduction of Clause 2 of the schedule to say:

*A permit is not required to construct a building or to construct or carry out works associated with a railway, railway station, and railway infrastructure including signals (and related control buildings), new tracks, track works and realignment, overhead power lines, gantries, stabling (excluding buildings) and any other work required under the Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002.<sup>23</sup>*

Box Hill Institute requested the maintenance of the status quo concerning the Institute's development rights. Currently, its holdings are within a PUZ2 and a permit is not required to construct a building or carry out works for a section one use. No development permission is required for buildings or works associated with the relevant public land use (education) that is carried out by or on behalf of the public land manager. The Institute submitted that this was a sensible exemption to facilitate a worthy public use.

The Institute requested an exemption in DDO6 for minor buildings and works associated with the Institute's land (going beyond the scope of Clause 62) including among other things, works associated with hard and soft landscaping, minor internal road works, construction of car parks and the like.

In her evidence statement, Ms Macklin said:

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<sup>23</sup> Document 6, para 55

*Further, at Clause 2.0 Buildings and Works, the Ministerial Direction identifies that specific permit requirements should be included and that the control should outline where no permit is required. Having regard to the draft DDO6, Clause 2.0 is primarily a list of further Objectives and Built Form Responses. I recommend these are simplified, and that clear permit triggers and exemptions are defined, in line with the Direction.<sup>24</sup>*

**(iv) Discussion**

The Panel was somewhat surprised that there were no permit exemptions specified in the proposed DDO6 as it is common to exempt relatively minor buildings and works that have no material impact on the urban form. The inclusion of exemptions for minor prescribed buildings and works also simplifies the administration of the planning scheme for Council. To that end, the Panel prompted Council to consider the need for any exemptions but Council did not respond with any proposed changes.

The Panel supports the thrust of the wording suggested by VicTrack. It would seem entirely appropriate to exempt the need for works directly associated with the operation of rail infrastructure from the need for a permit under the DDO.

It may also be appropriate that other institutions are not unreasonably constrained though the planning process for minor buildings and works where there are clear operational imperatives. The Panel does not attempt to document the scope or extent of these exemptions, however, it encourages Council in any future planning scheme amendment of this type to engage with the key stakeholders to determine mutually beneficial outcomes.

The Panel agrees with Ms Macklin that the DDO schedule should clearly state the permit triggers for buildings and works. Clause 43.02-2 states that *“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.”* Although Council submitted that the essence of the built form controls was based around a discretionary approach, the drafting of some of the provisions within DDO6 could be misconstrued as mandatory. This has some potential to create confusion as to whether a permit can be granted to vary a requirement if it is not met. Compliance with the latest Ministerial Direction on *The Form and Content of Planning Schemes* may also assist in providing the necessary clarity.

The Panel also notes that Clause 43.02-2 provides opportunity for a schedule to the overlay to specify that an application is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the *Planning and Environment Act 1987*.

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<sup>24</sup> Para 110



**(v) Conclusion**

The Panel concludes that:

- The DDO schedule could be improved through the inclusion of exemptions for minor buildings and works, particularly having regard to the operational requirements of key authorities and institutions.
- Further consideration should be given to the scope and extent of the permit exemptions following consultation with the key stakeholders.
- The drafting of the buildings and works requirements do not make it clear whether a permit may be granted to construct a building or construct or carry out works that are not in accordance with any requirement of the schedule to the overlay.

## **6.5 General requirements**

**(i) What is the issue?**

The issue is whether the proposed general requirements in Clause 2 are appropriate.

**(ii) What does the DDO say?**

Clause 2 of DDO6 is headed Buildings and works and states “*buildings and works should be developed in accordance with the following requirements.*” The exhibited Amendment lists a variety of requirements under sub-headings including:

- street frontages
- weather protection, awnings and verandas
- architecture and building articulation
- pedestrian Access
- vehicle access
- building separation
- overshadowing
- landscaping.

It also includes two tables regarding:

- light wells (Table 1)
- building heights and separation (Table 2).

These controls apply to the entire DDO area and may be thought of as ‘general requirements’ compared to the more specific sub-precinct controls that are within the balance of Clause 2. The exhibited version of Table 2 refers to individual sub-precincts and is essentially a summary of some of the content of the sub-precinct controls.

**(iii) Evidence and submissions**

The content of the general requirements is heavily based upon the *Guidelines*.

Council submitted that the *Guidelines* were prepared in the knowledge of the then draft Better Apartment Design Standards. Those standards have since been finalised and brought into the planning scheme through Amendment VC136, including the introduction of Clause 58 to the Whitehorse Planning Scheme. Council submitted that:

*A number of witnesses have mentioned that some of DDO6's design objectives and requirements address a number of the more prescriptive aspects of Clause 58. 'Building depth' is an example of this.*

*Council does not, of course, want DDO6 to conflict with Clause 58 (or even if not conflict, unnecessarily duplicate Clause 58) and, to that end, Council will, prior to adoption of the Amendment, review the DDO6 objectives and requirements for inconsistency with, or duplication of, Clause 58.*

*That said, it needs to be remembered that Clause 58 only applies to 'apartment developments' and does not, for example, apply to commercial office buildings. In undertaking the above review, this needs to be recognised.*

*Further, Clause 58 is not prescriptive with regard to its building setback objectives. Guidance with respect to this aspect in line with the Guidelines and DDO6, is therefore appropriate and warranted.<sup>25</sup>*

Ms Roberts gave evidence that the requirement for awnings and verandas to indicate entries to buildings or shops and to provide protection from the sun and rain for pedestrians using footpaths, was not relevant or appropriate in sub-precinct F6 and was problematic when combined with other requirements to set buildings back 8 metres from the street. In her opinion, these requirements were in direct or indirect conflict with the following elements of Clause 2 of DDO6:

- Buildings should be sited close to the street boundary and with buildings fronting streets, creating a clear separation between public 'fronts' and private 'backs'.
- Direct visual access from the street to the lift lobby should be provided.
- Within Precincts C and F, building separation at the rear and side boundaries should follow the *Guidelines* in 'Table 2 – Building Separation', which then refers to 'Sub-Precinct Guidelines' which do not contain side and rear setback guidelines, only building separation of 10 metres and street setbacks of 8 metres.

There was significant debate around the overshadowing requirements, which state:

- *Buildings should not cast additional overshadow on key open spaces and plazas between 11.00 – 14.00 on 22 June.*
- *Buildings should not overshadow front gardens/balconies on allotments within Built Form Precinct A for more than three consecutive hours between 10.00 – 15.00 on 22 September.*
- *Buildings should not overshadow private open space on residential land outside the activity centre boundary for more than three consecutive hours between 10.00-15.00 on 22 September.*

This requirement is in contrast to the built form controls in the *Structure Plan*, which state:

- for Precincts B, D and F – *"Avoid overshadowing of Key Public Spaces, Peripheral Residential Precincts or residential areas outside the activity centre boundary between 11 am and 2 pm on 22 June, beyond what would result from an 11 metres building over the full extent of the site"*

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<sup>25</sup> Part B, Para 22-25

- for Precinct C – “Avoid overshadowing of Key Public Spaces between 11 am and 2 pm on 22 June, beyond what would result from an 11 metres building over the full extent of the site”.

In his evidence, Mr Czarny stated:

*I note that the adjusted tests are relaxed in part to apply the solstice to key open spaces and plazas only, with the more conventional equinox measure applicable [to] residential interfaces. I consider this approach to be appropriate in the context of the increased capacity of the centre.<sup>26</sup>*

Mr Czarny did not provide any shadow diagrams or analysis to the Panel to explain how he came to that conclusion.

Vicinity Centres submitted that the winter solstice overshadowing requirement applying to Carrington Street should be deleted on the basis that they are unreasonably onerous.

Mr Sheppard said that Carrington Street is identified on Map 2 as a ‘key open space / link’. He said it was unclear whether it is a ‘key open space’ for the purpose of the overshadowing control. He noted that:

*If it is intended that solar access to Carrington Street at the winter solstice is to be protected, then the implications of this requirement need to be understood. Even a single-storey building will overshadow the northern footpath of Carrington Street at the winter solstice. If winter sun to the southern footpath is to be protected, building height on the Central South site would be limited to approximately 6.5 m at the Carrington Street frontage and approximately 40 m in the middle of the site. Given that the DDO contemplates a ‘base definition’ of 5 storeys and a street wall height of 10 storeys in this sub-precinct, I query whether this overshadowing requirement is intended to be applied to Carrington Street.<sup>27</sup>*

Doyen Towers noted that the land on the southwest corner of the Whitehorse Road and Elgar Road intersection is within Residential Growth Zone 2 and is occupied by a service station. It said even adopting a “conservative approach” that assumed the service station was developed with residential land use to a height of 13.5 metres, a 20 storey building built boundary to boundary on the northwest corner of the intersection (opposite the service station) would cast a shadow that complies with ResCode Standard B21, in that it moves across the land relatively quickly. Doyen Towers argued that it was inappropriate to adopt a shadowing test that was more restrictive than ResCode given that the land was within a designated activity centre and that, in the circumstances, a departure from the shadowing test outlined in the *Structure Plan* was warranted.

Haels Developments Pty Ltd and Antsville Pty Ltd also submitted that the shadowing test should be ‘relaxed’ for Hopetoun Parade because the land on the south side of that street is now within a Residential Growth Zone whereas at the time of the *Structure Plan* it was within a Residential 1 Zone.

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<sup>26</sup> Para 49

<sup>27</sup> Para 48

Mr White said there was no shadow diagrams or modelling of the impacts of the proposed heights for the activity centre. He thought that there ought to be more detailed analysis about the impact of shadowing on public spaces based on the proposed heights for the centre. He lamented the impact of tall buildings on Carrington Street and the impact on outdoor dining in this area. He also noted there were three heritage properties on the south side of Hopetoun Parade that also should be considered. Mr White wondered whether the activity centre was 'Box Hill' or becoming 'a hill of boxes'?

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

Many of the general design requirements repeat generic good design principles rather than specific built form requirements unique to the Box Hill Activity Centre. While it might be said that this helps to reinforce a desired outcome, the Panel is also concerned that the DDO requirements lack focus and they contain too many vague statements. For example, the requirement that *"pedestrian entries to buildings should be well lit during the night and entry lobbies should not contain places for concealment or entrapment in their design"* is just good general design. The Panel queries whether it is necessary to include these types of requirements in a DDO.

The requirements regarding Vehicle access are generally already covered to a large extent by Clause 52.06 (and in particular, Clause 52.06-9). Again, it is unnecessary to restate provisions that are covered elsewhere in the planning scheme.

It is also unclear why *"buildings which face in two directions (such as a street and a lane) should provide direct access to the lift lobby from both directions"*. While this may be an appropriate design response in some circumstances, there is no justification for its inclusion as a general requirement.

The Panel is concerned at some of the language used in the Architecture and Building Articulation section. For example, stating that *"...the design of a building should be three dimensional..."* and building articulation should *"...reflect the structural logic of the building..."* is architectural jargon that does not help explain the intended outcome. A more thoughtful set of requirements is needed. Having said that, the Panel acknowledges that the text in the DDO schedule is a marked improvement on the almost unintelligible language used in the corresponding section of the *Guidelines*.

There are several references in the general requirements relating to areas beyond the study area of the *Guidelines*. It appears that selected parts of the built form controls from the *Structure Plan* for Built Form Precincts B, D and E are included in the general requirements. It is unclear to the Panel why only some of these controls have been included and why a more holistic approach to these precincts was not adopted.

The Panel agrees with Council that a detailed review of the requirements is needed in order to ensure there is no inconsistency or overlap with respect to the Better Apartment Design Standards. The Panel flagged this issue at the Directions Hearing and it was disappointing that Council did not respond with marked-up changes to the schedule. This is a matter that will require further consideration if Council decides to proceed in the future with some form of built form controls for the activity centre.

There was no evidence presented by Council to the Panel with respect to shadowing. This makes it difficult to determine the extent of shadowing over various open spaces, plazas and important pedestrian links. Moreover, the use of different terminology between these places makes it difficult to understand which specific locations are required to be protected from shadowing.

The Panel was not presented with a satisfactory explanation as to why the shadowing tests included within the *Structure Plan* are proposed to be varied. While there may be good reasons to potentially vary these requirements, they were not explained to the Panel. This requires further detailed assessment.

The Panel notes that although the *Structure Plan* refers to shadowing at the winter solstice, it also refers to shadowing “...beyond what would result from an 11 metres building over the full extent of the site”. This is an important point that is omitted from the DDO6 requirements and would go some way to address the concerns expressed by Mr Sheppard regarding Carrington Street. The Panel makes no conclusion one way or the other about what test and conditions ought to apply; rather, this again highlights the lack of analysis that underpins the Amendment.

Table 1 relates to light wells and the Panel is concerned that this appears to relate more directly to residential development. The Better Apartment Design Standards are appropriate in this respect. In addition, light wells may be appropriate in non-residential circumstances, such as was discussed at the Hearing for the Epworth Eastern development. In addition, the drafting of this table requires further work to remove duplication and clarify the requirements for an 8 storey building.

The authorisation letter from the Minister’s delegate flagged that Table 2 should be removed. During the Hearing, the Panel pointed out a number of errors in the exhibited version of the table that needed to be clarified or corrected. Council responded in the Post Panel Hearing version of DDO6 by repurposing this table to relate to ‘Building Setbacks’ and re-working several aspects of its structure. The Panel notes, however, that in this latest version of DDO6 Precincts B, D and E have no specified minimum setbacks from side and rear boundaries, yet seem to be included in the table in order to introduce building height controls for these precincts. This is confusing and needs a complete rethink.

## **(v) Conclusion**

The Panel concludes that:

- The general requirements in Clause 2 of the DDO schedule including Table 1 and Table 2 should not proceed in their current form.
- Further work is required to prepare appropriate general built form controls for the activity centre.

## **6.6 Sub-Precinct requirements**

Clause 2 of DDO6 includes a series of sub-precinct requirements for buildings and works. These requirements are grouped on a precinct basis and each precinct includes controls under variety of Urban Design Attributes headings, such as:

- Subdivision pattern

- Street walls, front setbacks and preferred maximum heights
- Heritage
- Key views
- Additional street/laneway address
- Amenity/access to daylight
- Landscape.

To enable a clearer comparison between different precincts, the analysis below has reorganised the requirements based on each Urban Design Attribute.

The analysis in this section has been based on the revised Post Panel Hearing version of DDO6. This is because the exhibited version of the sub-precinct requirements contained multiple errors and a confusing layout. Council acknowledged in the Hearing that many of the provisions were located in wrong parts of the table or were not required. The Post Panel Hearing version of the provisions is largely 'policy neutral' compared to the exhibited version. Where necessary, commentary on the exhibited version is also provided.

### 6.6.1 Subdivision pattern

#### (i) What is the issue?

The issue is whether the proposed Built Form Responses for 'Subdivision pattern' are appropriate.

#### (ii) What does the DDO say?

A summary of the 'Subdivision pattern' Built Form Responses is presented below.

**Table 6: Subdivision pattern**

Built Form Response
<b>C/F1: Traditional Town Centre</b>
100% Site coverage.
<b>F2: Station Street</b>
100% Site coverage.
The site at 519-521 Station Street is subject to a separate design brief for built form and urban design.
<b>F3: Rutland Road, Watts Street and Carrington Road</b>
100% Site coverage.
<b>F4: Whitehorse Road and Prospect Street</b>
100% site coverage.
<b>F5: Whitehorse Road West</b>
100% site coverage.

**Built Form Response****F6: TAFE and Hospital**

60% site coverage.

Preferred minimum 10 m separation between buildings.

A plot ratio approach is applicable on extra-large sites.

**F7: Garden Infill**

80% site coverage.

**F8: Box Hill Gardens**

100% site coverage.

**F9: Kingsley Gardens**

60% site coverage.

A plot ratio approach is applicable on extra-large sites.

**(iii) Evidence and submissions**

Most of the submissions and evidence on this issue focused on the site coverage requirements for sub-precincts F6 (TAFE and Hospital) and F9 (Kingsley Gardens). The Kingsley Gardens sub-precinct is occupied predominantly (but not exclusively) by the Box Hill TAFE.

Mr Czarny explained his rationale for 60 per cent site coverage in sub-precincts F6 and F9 as follows:

*Site coverage and height have typically been determined as important factors in the design of campus settings of this kind. To this end, I note that the Box Hill Hospital form rises to around 10 storeys, the Epworth Hospital exhibits a site coverage of around 55% and the Box Hill TAFE has site coverage of approximately 45 per cent. On this basis, and given the support for a 'campus' setting for the collection of institutional functions, a recommended site coverage of around 60 per cent is appropriate, coupled with a height parameter of around 15 storeys. This represents a suitable transition from the higher Whitehorse Road profile and a shift from a highly urban 'confined' urban condition into a more generous 'campus' context interconnected to the Box Hill Gardens surrounds with good pedestrian access and landscape setbacks. Given the particularly substantial nature of some such sites, that is the Box Hill Hospital and Institute, a plot ratio approach may again be effective. While I accept that some institutional functions may seek to occupy traditional podium and tower buildings, I believe that the development pattern of this precinct needs to be firmly grounded in the notion of the 'landscaped campus' and as such, street setback and site coverage parameters as indicated*

*are appropriate. These will not in my opinion substantially hamper substantive redevelopment of this precinct.<sup>28</sup>*

Mr Czarny said that site coverage of 60 per cent was not “hard and fast”. He reiterated that it was not a mandatory requirement and it should be seen as a “starting point” in any discussion regarding development in these sub-precincts. Having said that, he also thought that institutions benefited from reduced site coverage through improved amenity as a result of increased landscaping across the site. He acknowledged that there had been no consultation with any of the landowners regarding the controls in these sub-precincts.

Ms Macklin is a town planner with extensive experience in the planning for hospitals and hospital redevelopment. She is also a member of the Australian Health Design Council.

Ms Macklin said that there appeared to be no clear policy basis or strategic rationale within the Amendment documentation for aspirations of the future character of sub-precinct F6 to include 60 per cent site coverage. She noted that 60 per cent site coverage is the lowest site coverage nominated within the controls, whereas the majority of other sub-precincts have 100 per cent site coverage. She said that many of the sites in the F6 sub-precinct were already above 60 per cent site coverage.

She said:

*The objective of ‘encouraging taller forms with smaller footprints with a generous separation between buildings’ is not consistent with the building typology and operational requirements of hospital uses. To facilitate hospital use requires connected building forms to allow efficient functionality, innovation and research opportunities through integrated and interconnected floorplates. The advancements in health services and surgical and treatment facilities require specific building standards, dimensional requirements and access arrangements which strongly influence the building form. The Built Form Guidelines proposed fail to recognise the functional requirements of hospital uses in the very precinct where they are specifically encouraged to enhance the health and education precinct.<sup>29</sup>*

This view was shared by Ms O’Connor, Executive Director of Epworth Eastern, who gave evidence regarding the principles of ‘best practice’ hospital layout and a range of other operational matters.

Ms Macklin recommended that the subdivision pattern objectives for sub-precinct F6 be modified as follows:

*To support high density education/institutional development with landscaping at street frontages.*

*To support innovation and provide flexibility for health, education and employment uses.<sup>30</sup>*

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<sup>28</sup> Para 42

<sup>29</sup> Para 87

<sup>30</sup> Para 89



She further suggested that the requirement for 60 per cent site coverage and plot ratio approach in the built form response should be deleted and replaced with:

*Where possible, opportunities for building separation between non-residential buildings should be explored to provide for view lines and to accommodate landscaping<sup>31</sup>.*

Ms Roberts gave evidence that building footprint efficiencies and servicing requirements for institutional uses are changing and no longer differ from commercial, residential and mixed-use development expected within the large activity centres.

She said the proposed controls present a dramatic departure from the *Structure Plan* – which seeks “*minimised front and side setbacks and increased heights to enable significantly increased densities in the activity centre*”.

She said:

*It is noted that the General Built Form Guidelines – Key Directions (page 27) describe Precinct F6 as being the Box Hill ‘urban campus’. However there appears to be minimal, if any, description or understanding of what an ‘urban campus’ could be.*

*If we are to take local examples of urban campuses including RMIT and parts of the University of Melbourne, they are largely indistinguishable from the surrounding, mixed-use, city development. This integration and ‘blending’ is considered a positive outcome for these institutions and is part of ensuring the institution is considered an integral and integrated part of the community.*

*I strongly encourage this model of integration of our institutions when they are located within our cities as it achieves a number of beneficial urban outcomes including but not limited to:*

- *Efficient land use in Activity Centres.*
- *Promoting mixed- use development that supports activity throughout the day and night, which in turn supports active, safe streets.*
- *Promoting a shared knowledge economy where students, educators and others can interact and engage in the public realm.*
- *Ensuring that institutions are an embedded part of their community and positively contribute to these communities.*
- *Allowing institutions to provide amenities and accommodation for their staff and students that are also available to and integrated with the local community.*
- *Allowing the institutions to maximise the value of their landholding to further contribute to the viability and resilience of their business and contribute to the local economy.*

*In summary, I consider the role of the Health and Education Precinct to be integral to the current and future success and resilience of the Box Hill*

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<sup>31</sup> Para 90

*Metropolitan Activity Centre. As such the notion of a traditional 'campus style' development within the city centre is out-dated and inappropriate.*

*In my opinion, the physical presence of institutions should be integrated with the community they serve and contribute to safe, active, vibrant streets and high-quality built form outcomes. Unencumbered by excessive landscape setbacks, building separation distances and restricted heights that visually distinguish the 'learning' from the 'living' realms.<sup>32</sup>*

Ms Roberts noted that although reference to 'campus style' has been removed in the post exhibition version of DDO6, the *Guidelines* themselves have not changed and still reflect this 'campus' outcome of separated buildings in a landscape setting and disengaged from streetscapes.

Mr Bastone noted that the land in the southeast corner of sub-precinct F9 is not part of the Box Hill Institute campus and is in private ownership.

He said that a requirement for 60 per cent site coverage is inappropriate for this land having regard to:

- The strategic location of the site.
- The policy in the *Structure Plan* where the focus is to:
  - facilitate 'Major Development' by "*significantly increased land use densities close to the railway station, and in the area between the station, hospitals and TAFE*"
  - encourage "*minimised front and side setbacks to enable significantly increased densities in the activity centre*".
- The Commercial 1 zoning, which generally anticipates and encourages high site coverage and boundary to boundary construction.
- The adjacent precinct to the east (Precinct F5), which seeks zero setbacks to Whitehorse Road and 100 per cent site coverage.

Ms Macklin, Ms Roberts, Mr Sheppard and Mr Rogers all criticised the inclusion of the built form response that stated "*a plot ratio-approach is applicable on extra-large sites*". They were unanimously of the view that the concept was poorly conceived. There was no background and context provided in the *Guidelines* for a plot ratio approach and there was no indication of what the plot ratio should be or how it should be derived.

Council submitted that in sub-precinct F2, "*the site at 519-521 Station Street is subject to a separate design brief for built form and urban design*". Council explained that this meant that the site coverage requirement did not apply to that site because it was subject to the separate planning scheme amendment: Whitehorse C194.

Mr Orange and Mr White were concerned that the controls emphasised 100 per cent site coverage across most of the activity centre to the detriment of tree protection. They thought that there should be greater priority to tree protection and landscaping. The Blackburn and District Tree Preservation Society also shared this view.

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<sup>32</sup> Para 85-89

**(iv) Discussion**

The Panel observes that while the Urban Design Attribute refers to 'Subdivision pattern', the 'Built Form Response' does not include any requirements with respect to subdivision. This is most curious. Rather, the Built Form Response refers to a site coverage requirement, which does not in itself relate to subdivision. It is therefore unclear what specific *subdivision* outcome is intended for each of the sub-precincts.

Further, each site coverage requirement is not specified as a maximum, minimum or a preferred percentage. This results in a confusing parameter that is open to varied interpretations and potential misunderstanding. The Panel views this as symptomatic of a poorly drafted control that it cannot support.

The Panel generally agrees with the evidence of Ms Macklin, Ms Roberts and Mr Bastone with respect to their concerns regarding 60 per cent site coverage in sub-precincts F6 and F9. The Panel finds their evidence compelling; it demonstrates the lack of rigour and expertise in the formulation of the proposed controls for these sub-precincts. Consultation with the landowners in these sub-precincts would likely have resulted in a more informed approach to the built form requirements.

The Panel also shares their concerns regarding the inclusion of the 'plot ratio approach'. Notwithstanding that it is unclear how such an approach might relate to subdivision, the concept appears to be no more than a 'thought bubble' and lacks a sound basis upon which to proceed. Although some form of plot ratio approach may be appropriate for the development of land within the activity centre, the *Guidelines* and DDO6 do not explain any rationale for such a development control and does not explain how it could work in Box Hill. If a plot ratio approach is to be pursued by Council then it needs to complete significantly more work to justify and explain the method and the relevant plot ratio to be achieved. The Panel is strongly of the view that Council should not proceed with the inclusion of this requirement until this work is completed.

Moreover, the Panel notes that it is also unclear what is meant by an 'extra-large lot'. If a plot ratio approach is only to apply to certain lot sizes then this needs to be clearly discussed in the schedule to the DDO. At present, the requirement is vague and open to wide interpretation.

The Panel believes that the nominated exclusion of a particular site in sub-precinct F2 is confusing. Although Council submitted that the intent of the control is to exempt the nominated site from a specific control (site coverage), the Panel is concerned that it could be construed more broadly to exempt the site from all other controls in the DDO. The schedule would benefit from more explicit explanation in this regard. Alternatively, the entire site could be excised from the DDO.

Finally, the Panel notes that Council attempted to 'clean up' the exhibited version of the controls in the various amended versions of DDO6. The Panel has reviewed all of the changes and believes that, while some aspects may have been improved they do not address its fundamental concerns.

In summary, the Panel cannot support any of the Built Form Responses with respect to 'Subdivision pattern'. Further work is required in order to justify the controls and this needs to be translated into an appropriate form within a coherent statutory framework.

**(v) Conclusion**

The Panel concludes that:

- The Built Form Responses regarding Subdivision pattern should not proceed in their current form.
- Further work is required in order to justify any subdivision controls in the activity centre.
- Further work is required in order to explain any site coverage controls for the activity centre.
- Further work is required in order to justify and explain any plot ratio approach to development in the activity centre.
- Any future controls need to be drafted with a greater degree of care and precision to ensure the intended outcomes are achieved.

**6.6.2 Heights**

**(i) What is the issue?**

The Panel has already detailed its concerns regarding the methodology applied to arrive at the proposed building heights for each sub-precinct. It does not intend to repeat that analysis.

The focus of this chapter of the Report is on the detail of the height provisions.

**(ii) Evidence and submissions**

The preferred maximum building heights in DDO6 are expressed in 'storeys' rather than in 'metres'. There were a variety of submissions commenting on the problematic consequences of using this unit of measurement.

Mr Czarny explained that:

*The measurement of building heights has been raised in submissions relating to the use of the term 'storeys' versus the measurement of height in metres. While this is principally a statutory translation matter, the draft Guidelines (as set out on page 29 Summary Built Form Controls) identifies the typical formula, including a retail/commercial level at 4.5 metres and a residential level at 3 metres – which is widely acknowledged as an appropriate measure.<sup>33</sup>*

He said that the unit of measurement could be recalculated in 'metres', if that was the preferred approach.

Ms Roberts gave evidence that a height control that uses storeys as opposed to metres ensures a degree of flexibility, however, it may also produce an outcome that lacks rigour

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<sup>33</sup> Para 49

and consideration. She noted that the preferred maximum building height applied to Precinct F6 was 15 storeys. Adopting the floor-to-floor height assumptions in the *Guidelines* results in a variation in potential height of 22.5 metres ( $15 \times 4.5 = 67.5$  metres versus  $15 \times 3.0 = 45.0$  metres).

Epworth Eastern noted that the heights were expressed as either 'retail/commercial' or 'residential' and queried what the height might be for an institutional use like a hospital. Mr Czarny responded that in his view a hospital was probably more akin to a commercial use.

Epworth Eastern submitted it was important that the floor-to-floor heights be confirmed for institutional uses as being the same as for commercial (namely 4.5 metres), rather than the 3.0 metres for residential due to the significant in-ceiling services required for hospitals such as:

- bariatric tracking and motors for lifting obese patients
- pendant services
- modern hospital patient amenity expectations.

### **(iii) Discussion**

The Panel agrees with Ms Roberts that using 'storeys' as the unit of measurement could produce unintended outcomes. Ms Roberts demonstrated the significant height difference that could eventuate between a 15 storey commercial building and a 15 storey residential development. This example could be repeated throughout the activity centre and has the potential to undermine any strategic model for the urban form of the centre.

The use of storeys having different floor-to-floor heights is further complicated by the high likelihood that buildings may increasingly consist of mixed uses and, as highlighted by Epworth Eastern, uses that are neither strictly 'retail/commercial' or 'residential'. The Panel also observes that a 'commercial' land use is not defined within the planning scheme.

The Panel is of the view that height should preferably be described in 'metres' where the expected development might be commercial or residential. This provides a consistent approach to building height and should result in a more certain built form outcome. From the material presented to the Panel, it is not possible to 'translate' the proposed number of storeys into height in metres. Further, more detailed analysis and review is required to determine any appropriate height controls for a given precinct.

### **(iv) Conclusion**

The Panel concludes that:

- The proposed preferred height controls should not proceed in their current form.
- Further work is required in order to justify any height controls in the activity centre.

### 6.6.3 Street walls and setbacks

#### (i) What does the DDO say?

A summary of the 'Street walls and setbacks' requirements is presented below.

**Table 7: Street walls and setbacks**

Built Form Response
<b>C/F1: Traditional Town Centre</b>
<p>1-2 storey street wall along Whitehorse Road and Station Street.</p> <p>Preferred minimum 10 m front setback above the street wall.</p> <p>A distinction to the building 'base' design of up to 4 storeys.</p>
<b>F2: Station Street</b>
<p>10 storey street wall along Station Street south of Whitehorse Road.</p> <p>5 storey street wall along Station Street north of Whitehorse Road.</p> <p>Preferred front setback of 5 m above the street wall.</p> <p>A distinction to the building 'base' design of up to 5 storeys.</p> <p>Box Hill Central (North) and Box Hill Central (South) are Strategic Development Sites where greater development scale can be considered, subject to future detailed analysis for urban design, built form, public accessibility and community benefit.</p> <p>The site at 519-521 Station Street is subject to a separate design brief for built form and urban design.</p>
<b>F3: Rutland Road, Watts Street and Carrington Road</b>
<p>10 storey street wall along local streets.</p> <p>4 storey street walls along residential interface.</p> <p>A distinction to the building 'base' design of up to 4 storeys.</p>
<b>F4: Whitehorse Road and Prospect Street</b>
<p>5 storey street wall.</p> <p>Preferred front setback of 5 metres above street wall.</p> <p>A minimum 30 degrees angled setback profile above 15 storeys for allotments with sensitive residential interface to Hopetoun Parade, Thurston Street and Elgar Road.</p>
<b>F5: Whitehorse Road West</b>
<p>5 storey street wall.</p> <p>Preferred front setback of 5 metres above street wall.</p>
<b>F6: TAFE and Hospital</b>
<p>Preferred maximum height of 15 storeys.</p> <p>Preferred minimum 10 m separation between buildings.</p>

## Built Form Response

### F7: Garden Infill

10 storey street wall.

Preferred setback of 3 m above the street wall.

Encourage party wall construction for up to 10 storeys.

### F8: Box Hill Gardens

4 storey street wall.

Preferred setback of 3 m above the street wall from the street wall.

The sites at 2-4 Bruce Street and 7 Elland Avenue are subject to a separate design brief for built form and urban design.

### F9: Kingsley Gardens

Minimum 8 m landscape setback from all street frontages.

## (ii) What is the issue?

The issue is whether the proposed Built Form Responses for 'Street walls and setbacks' are appropriate.

## (iii) Evidence and submissions

Council submitted that the *Structure Plan* included a number of 'actions' to help building design within a high density context. These actions include:

- *adopt building height and setback controls for development to support efficient construction and use of land, including:*
  - *eliminate requirements for side setbacks, encourage party wall construction and prohibit side facing windows, and*
  - *minimise requirements for front setbacks where these are of ornamental value only.*
- *apply the ... Guidelines for Higher Density Residential Development within the activity centre instead of ResCode.*
- *develop a process to audit the amenity impacts of development proposals including benchmarks for acceptable and superior design, and use these in the application of any discretionary development controls, and*
- *evaluate development proposals to ensure protection of adjoining sites' development potential.*<sup>34</sup>

Mr Czarny gave evidence regarding street walls and said:

*It is common urban design practice to consider the relationship between a site's street width (as a horizontal measure) and its potential height (as a vertical measure), including a definition of either an overall height in the case of an infill building, or a podium behind which a tower form by may rise.*

<sup>34</sup> *Structure Plan*, page 49

*Many urban precincts in Melbourne (and others internationally) support a street wall to building height proportion of 1:1. This is well acknowledged as supporting a positive 'pedestrian' experience at ground level, reinforcing a degree of consistency in the streetscape. This principle is recommended in Box Hill with a typical convention of a 1:1 ratio and a maximum ratio of 2:1 in particular Main Street conditions. This is not dissimilar to urban condition found within the Capital City Zone with 40 metre street walls (ie Flinders Lane, Little Collins Street).<sup>35</sup>*

Council submitted that variation in street wall expectation (up to 10 storey in sub-precincts F2, F3 and F7) reinforces the distinction between sub-precincts where a 'podium- tower' response is appropriate and where the contextual attributes are more supportive of 'infill' response.

Ms Bell gave evidence that the exhibited Amendment included Urban Design Objectives to *"limit maximum street wall to street width ratio to 2:1 to ensure taller buildings do not dominate the street, compromising the pedestrian experience"*. She noted that in sub-precinct F9 there is a preferred minimum 8 metres setback at the frontage and a preferred maximum height of 8 storeys. She observed that Whitehorse Road has a width of approximately 30 metres, which gives a *street wall height* of approximately 20 storeys. This was well above the preferred maximum height for buildings in this precinct and led her to conclude that the basis of the preferred heights on the corner of Whitehorse Road and Elgar Road was inappropriate.

Ms Roberts thought that the application of street wall to street width ratio of 2:1 was problematic in sub-precinct F6, where an 8 metres front setback is required. As an example, she said Spring Street was 15.5 metres wide and when an 8 metres setback was added to each side of the street it created a street width of 31.3 metres. Applying a street wall to street width ratio of 2:1 would allow a street wall of 62.6 metres, which she said was over the preferred maximum building height in the sub-precinct.

Sub-precincts C/F1, F2 and F3 include a requirement that there be *"a distinction to the building 'base' design of up to 4 storeys"*. Mr Sheppard said that this term was confusing as a graphic in the exhibited DDO schedule also referred to a '4 storey base definition'. He said 'building base' and 'base definition' was not defined in the DDO.

Sub-precinct F4 (Whitehorse Road and Prospect Street) requires:

*A minimum 30 degrees angled setback profile above 15 storeys for allotments with sensitive residential interface to Hopetoun Parade, Thurston Street and Elgar Road.*

Mr Czarny said that this requirement was designed to ensure that properties on the south side of the railway line along Hopetoun Parade were adequately protected from shadowing. He said that shadow diagrams prepared as part of the *Guidelines* confirmed this was the correct angle, although no shadow diagrams were presented to the Panel.

Haels Developments Pty Ltd and Antsville submitted that:

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<sup>35</sup> Para 28



- the modelling work of Mr Czarny was not included in any of the materials circulated as part of the Amendment and has not been independently reviewed or assessed
- the land on the south side of Prospect Street varies in size, depth and topography and that this would create significant differences in the impacts of shadowing
- a difference in 'retail/commercial' versus 'residential' floor-to-floor heights would create significant differences in outcomes and therefore a '15 storey' threshold is inappropriate
- if the control is accepted then at the very least it should state that *"a preferred minimum 30 degrees..."* is required rather than *"a minimum 30 degrees..."*
- it is more appropriate to impose a performance based approach to deal with shadowing rather than a prescriptive measure.

In sub-precinct F6 (TAFE and Hospital) there is a requirement for *"a preferred minimum 10 metres separation between buildings"*. In response to questioning from the Panel, Mr Czarny said that it was his interpretation that there should be a 10 metres separation between buildings on different sites.

Epworth Eastern submitted that the proposed minimum 10 metre separation between buildings is more appropriate for protecting residential amenity. It noted there was an inconsistency between the *Structure Plan* (which is retained as a reference document as Clause 21.07, Clause 22.07 and within proposed DDO6) and the DDO6 controls because the *Structure Plan* proposed *"minimised front and side setbacks and increased heights to enable significantly increased densities in the activity centre"* and stated an objective to *"avoid front and side setbacks"*, which is a very different built form outcome compared to the one now sought for Sub- Precinct F6 under the Amendment.

Ms Roberts' evidence for Box Hill Institute was also critical of the minimum 10 metre separation between buildings. She said that the requirement was *"a broad brush approach lacking in analysis, justification and appreciation of the resulting urban outcome, for a prominent city precinct"*.<sup>36</sup>

Ms O'Connor's evidence regarding 'best practice' hospital design stated that this requires interconnectivity between buildings and large floor plates so as to minimise patient transport distances, reduce clinical risk/adverse events, exposure to germs and limit the time spent in uncontrolled outdoor environments. She was concerned that the required setbacks and wide landscaped edges does not support an efficient use of land for a hospital as these requirements would inevitably lead to greater heights to achieve the same floor space.

The Blackburn Village Residents Group submitted that street setbacks should be included for development sites that currently have a zero setback to allow for wider footpaths in the public realm and landscape planting where appropriate. It also submitted that there be greater setbacks on lanes to provide for wider lanes and that development should front laneways to help activate the *"iconic"* Box Hill lanes.

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<sup>36</sup> Para 66

**(iv) Discussion**

The proposed setbacks represent a significant departure from the setback controls in the *Structure Plan*. While it is open to Council to consider changes to these requirements, this should be done within the context of sound strategic planning and a detailed analysis of the built form outcomes. The *Guidelines* do not represent such an approach and therefore the Panel does not support the proposed changes. As noted in section 3.2 it is also inappropriate to introduce conflicting controls into the planning scheme.

The Panel notes that it is an 'action' of the *Structure Plan* to:

- *develop a process to audit the amenity impacts of development proposals including benchmarks for acceptable and superior design, and use these in the application of any discretionary development controls.*

In response to questions from the Panel, Mr Czarny said that no audit of existing developments was completed as part of the preparation of the *Guidelines* and that he was not aware of any audit that had been completed by Council. The Panel suggests that a detailed investigation of the amenity impacts resulting from existing development in the activity centre should be completed. This data and analysis should help inform any future built form controls so that "*acceptable and superior design*" is facilitated.

The Panel agrees with Mr Sheppard that if the term 'building base' or 'base definition' is used then there should be consistency in its application. The phrase should also be defined within the DDO to provide clarity regarding its meaning and intent.

The Panel also notes that there are a variety of other places within the sub-precinct setback controls where language is used inconsistently. For example, in sub-precinct F5, one requirement states "*5 storey street wall*" whereas in the same sub-precinct there are requirements for "*preferred front setback of 5 metres above street wall*" and "*preferred maximum height of 30 storeys*". It is unclear whether the 5 storey street wall is meant to be a *preferred* requirement. There are many example of this type of inconsistency throughout the DDO and no material was presented to the Panel to suggest this drafting was a deliberate intention.

The Panel shares the concerns of submissions regarding the requirement for buildings in sub-precinct F4 to have a minimum 30 degrees angled setback profile above 15 storeys for allotments with sensitive residential interface to Hopetoun Parade, Thurston Street and Elgar Road. This is a prescriptive approach that does not take into account the attributes of a particular site and the design of a building. It is compounded by the fact that there could be a significant difference in height between a 15 storey retail/commercial building compared to a 15 storey residential building, resulting in outcomes that may not reflect the intention of the control. The shadowing of properties in this circumstance would be more appropriately controlled through a performance based test rather than a prescriptive measure like the one proposed.

The Panel agrees with the concerns expressed by submitters in sub-precincts F6 and F9 regarding the requirement for an 8 metres front setback. This should be deleted. For the same reasons, the Panel also agrees that there should not be a requirement for a 10 metres separation between buildings in sub-precinct F6. The justification for these requirements is

flawed and does not accord with the *Structure Plan*, existing conditions or the needs of two large and important stakeholders in the area (the TAFE and Epworth Eastern). The Panel encourages Council to engage with these stakeholders before preparing any further design controls for these areas.

Three sub-precincts (F2, F3 and F7) encourage 10 storey street walls. The Panel has walked these sub-precincts and is concerned that the height of these street walls in some streets may result in adverse outcomes. It does not conclude that these controls should necessarily be deleted or amended, however, it suggests that more detailed streetscape analysis is required before they are considered. Indeed, the entire suite of setback controls would benefit from a thorough modelling of the proposed setbacks in 3 dimensional form to help illustrate how the setbacks interrelate with existing (recently completed) development, adjacent sub-precincts, topography, street trees and so on. This work might also highlight deficiencies in landscaping within the public and private realms and help to establish front setbacks within residential sub-precincts to provide tree canopies for shade and visual screening. It was unfortunate that no such analysis was completed as part of this Amendment.

#### (v) Conclusion

The Panel concludes that:

- The proposed street walls and setback controls should not proceed in their current form.
- Further work is required in order to justify any street wall and setback controls in the activity centre.

### 6.6.4 Heritage

#### (i) What does the DDO say?

A summary of the 'Heritage' Built Form Responses is presented below.

**Table 8: Heritage**

Precinct Objectives	Built Form Response
<b>C/F1: Traditional Town Centre</b>	
To ensure consistency of low scale street wall presentation along Whitehorse Road.	1-2 storey street wall along Whitehorse Road and Station Street.
To recognise the presence of individual significant heritage building.	Preferred minimum 10 metres front setback above the street wall. Preferred maximum building height of 8 storeys. A distinction to the building 'base' design of up to 4 storeys.
<b>F4: Whitehorse Road and Prospect Street</b>	
To recognise the presence of an individually significant heritage building.	

**(ii) What is the issue?**

The issue is whether the proposed Built Form Responses for 'Heritage' are appropriate.

**(iii) Evidence and submissions**

Council submitted that it was very conscious of the need to treat heritage as a key consideration when preparing the *Guidelines* and heritage forms one of the urban design objectives for the built form controls. The *Guidelines* seek to determine the appropriate extent of new development behind and above the existing heritage properties in sub-precinct C/F1, so that such development does not dominate the traditional street wall and heritage forms.

The *Guidelines* discourage lot consolidation where transitional fine grain allotments are highly valued and should be protected. Within the sub-precinct *Guidelines*, the objectives of the precinct are to recognise the presence of the individually significant heritage buildings, to maintain a sense of openness around the identified heritage buildings and to frame view lines to heritage forms along Whitehorse Road and Station Street.

The heritage-identified buildings are included in the Commercial 1 Zone and are not currently subject to a mandatory height limit.

The *Structure Plan* identifies Precinct C as the Traditional Town Centre with a 3 storey preferred height limit. The extent of Precinct C in the *Structure Plan* is different (smaller) than the extent of sub-precinct C/F1 in DDO6. Sub-precinct C/F1 includes additional properties on the east side of Station Street, south of Bank Street and properties on the north side of Whitehorse Road, opposite Precinct C.

Council submitted that DDO6 proposes preferred height limits in the heritage precinct and does not remove height limits from the heritage precinct.

Mr Czarny gave evidence that the principal guide for development opportunity in Precinct C/F1 has been shaped by the existing traditional buildings and heritage assets as advised by Council's heritage officer. He stated that:

*Heritage advice determined that a 10 metre setback behind a 2 storey (traditional) street wall is warranted in order to ensure continuity of the parapet along the Whitehorse Road, Station, Market and Main Street frontages with a recessive rising form behind (I note a 1:2 visibility ratio between the heritage and setback facade was recommended). While I accept that a suite of taller buildings occupy the periphery, the fine-grained nature of subdivision and the important pedestrian qualities of the Whitehorse Road junction, and Station, Market and Main Streets indicate that a more modest response is required. Given the typical lot depths of between 40 to 45 metres in this area, there is an adequate basis for a rising form to 8 storeys as a notable shift in development form. I believe these measures as discretionary controls are appropriate.<sup>37</sup>*

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<sup>37</sup> Para 32

The Box Hill Historical Society did not support the preferred height limit in the Precinct C/F1 (Traditional Town Centre) and saw it as a substantial and excessive departure from the current controls.

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

The Panel acknowledges the concerns expressed by the Box Hill Historical Society and agrees that the proposed controls are a significant departure from the preferred maximum heights expressed for Precinct C in the *Structure Plan*.

The evidence of Mr Czarny noted that the proposed preferred maximum heights were based on the advice of Council's heritage adviser. No detailed analysis was presented to the Panel to explain or justify the proposed heights and setbacks. As such, the Panel has not been able to test the views expressed by Mr Czarny or the heritage adviser regarding the basis for the 8 storey preferred limit or the 10 metre setback above the street wall.

The Panel would have benefited from a more sophisticated analysis of the heritage precinct that utilised three-dimensional modelling, sight lines and view-sheds to help understand the rationale for the proposed heritage related controls. Without this basic information, it is difficult to determine whether the proposed controls are appropriate and the Panel is surprised that such fundamental analysis was not completed as part of this project.

The Panel also notes that sub-precinct F4 is identified as having the 'Heritage' Urban Design Attribute. To that extent, it includes a heritage objective, but there is no corresponding Built Form Response. This would appear to be an error, an oversight or a poorly drafted control.

#### **(v) Conclusion**

The Panel concludes that:

- The Built Form Responses regarding Heritage should not proceed in their current form.
- Further work is required in order to justify any heritage related built form controls in the activity centre.

### **6.6.5 Key views**

#### **(i) What does the DDO say?**

A summary of the 'Key views' Built Form Responses is presented below.

**Table 9: Key Views**

Built Form Response
<b>C/F1: Traditional Town Centre</b>
1-2 storey street wall along Whitehorse Road and Station Street.
Preferred minimum 10 metres front setback above the street wall.
Preferred maximum building height of 8 storeys.
A distinction to the building 'base' design of up to 4 storeys.

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## Built Form Response

### F4: Whitehorse Road and Prospect Street

[No response specified]

### F6: TAFE and Hospital

A minimum 10 m separation between buildings.  
Align key view lines with priority pedestrian links.

### F9: Kingsley Gardens

Preferred minimum 10 m separation between buildings.  
Align key view lines with priority pedestrian links.

## (ii) What is the issue?

The issue is whether the proposed Built Form Responses for 'Key views' are appropriate.

## (iii) Evidence and submissions

Mr Czarny gave evidence that:

*The identified view lines or terminal vistas towards critical vantage points readily serve as a basis for urban form management. This is a well acknowledged feature within the City of Melbourne and a factor that has shaped development envelopes in both urban and natural contexts. In Box Hill, views along Whitehorse Road in particular towards the environmental assets of the central median and the more distant Dandenong Ranges are important. Furthermore, visual connections to open space assets such as the Box Hill and Kingsley Gardens and other more discrete open spaces help to improve visual access and way finding within the centre.<sup>38</sup>*

In her evidence, Ms Bell noted that the exhibited DDO6 included design objectives under the heading of 'Viewlines' as follows:

- To protect and frame valued viewlines to the Dandenong Ranges
- To frame viewlines to existing individual significant heritage buildings and to key open spaces.

This is expanded on further under 'Key Views' within the Sub-Precinct F9, of which the objectives are:

- To ensure building orientation provides a positive relationship to the open space network and usable open space
- To ensure buildings 'frame' key viewlines.

The built form response required is a minimum 10 metre separation between buildings, along with aligning key view lines with priority pedestrian links.

With respect to sub-precinct F9, Ms Bell said:

<sup>38</sup> Para 28

*I support the principle of setting separation between buildings to manage amenity and equitable development outcomes. It is unclear however, how the 10 metre minimum separation was arrived at, and how it relates to any key view lines or the open space. I recommend the proposed control is more clearly defined in terms of what conditions it applies to. For example, interfaces with existing non-residential built form, laneways, or side or rear residential interfaces.*

*In relation to the key view lines, there is no clear analysis of the view lines to the Dandenongs that are to be protected and framed. Planning Practice Note 60 provides guidance on the Department's preferred approach to the application of height and setback controls for activity centres. With regards to built form analysis, a Council will need to demonstrate that proposed height controls are based on identifiable objectives and outcomes. Proposed height controls must be selected through a comprehensive built form analysis that achieves the following:*

- Identifies significant opportunities for change within an activity centre*
- Explores alternative built form objectives and outcomes to accommodate this change. This should include an analysis of visual and amenity impacts.*

*From a review of the Planning Practice Note, I do not believe the key view lines have been properly determined or articulated in the built form controls and DDO6.<sup>39</sup>*

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

The proposed controls appear to be very simplistic and are not supported by detailed analysis. For example, at a basic level, the objectives state that views to the Dandenong Ranges should be protected. This statement is vague and ambiguous as it fails to identify from where these views are taken. Read literally, the Panel has concerns that some parties could use this objective to argue that they have a right to a view of the Dandenong Ranges from their apartment (which may be quite distant from Whitehorse Road), which could result in possible unintended consequences for the future development t potential for many sites.

Mr Czarny assured the Panel that the views were intended to be from Whitehorse Road, yet, as reported, the Panel could not see the Dandenong Ranges from Whitehorse Road anywhere within the boundaries of DDO6. Views to the Dandenong Ranges along Whitehorse Road are available from much further to the east and west of the Box Hill centre.

The Panel agrees with Ms Bell that the built form controls relating to view lines lacks appropriate strategic justification and should not be supported.

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<sup>39</sup> Para 40-41

**(v) Conclusion**

The Panel concludes that:

- The Built Form Responses regarding Key views should not proceed in their current form.
- Further work is required in order to justify any built form controls relating to the protection of view lines in the activity centre.

**6.6.6 Additional street/ laneway address****(i) What does the DDO say?**

A summary of the 'Additional street/laneway address' Built Form Responses is presented below.

**Table 10: Additional street/laneway address**

Precinct Objectives	Built Form Response
<b>C/F1: Traditional Town Centre</b> <b>F2: Station Street</b> <b>F3: Rutland Road, Watts Street and Carrington Road</b> <b>F4: Whitehorse Road and Prospect Street</b>	Set back ground level and level 1 from rear boundary by 1.5 m to facilitate vehicular/ service access from rear laneways as required.
<b>F5: Whitehorse Road West</b> Additional pedestrian connections between Elgar and Wellington Road consistent with those identified within the <i>Structure Plan</i> . To ensure priority pedestrian links, as shown on the Access Framework Map in Clause 22.07, are provided with active frontages.	Set back ground level and level 1 from rear boundary by 1.5 m to facilitate vehicular/ service access from rear laneways as required.
<b>F6: TAFE and Hospital</b> To ensure building orientation provides a positive relationship to the open space network and usable open space. To ensure buildings 'frame' key viewlines.	At grade pedestrian links that are open to the sky. Encourage active frontages along pedestrian priority link.
<b>F7: Garden Infill</b>	Preferred minimum 5 metre setback to the rear to achieve a consistent 10 metre separation between forms (up to 10 storey).



Precinct Objectives	Built Form Response
<b>F8: Box Hill Gardens</b>	
To maximise opportunities for outlook onto the public realm.	Provide communal open space should be within each development.
To ensure future amenity is provided for on site.	
<b>F9: Kingsley Gardens</b>	
To improve pedestrian permeability.	Provide active frontages along Kingsley Gardens at the ground level.
To maximise opportunities for outlook onto the public realm.	Provide ground level east – west connection at regular intervals between Elgar Road and Kingsley Gardens.
	Provide at grade pedestrian links that are open to the sky.

**(ii) What is the issue?**

The issue is whether the proposed Built Form Responses for 'Additional street/laneway address' are appropriate.

**(iii) Evidence and submissions**

There were few submissions regarding this issue and comments were generally minor.

**(iv) Discussion**

The Panel makes the following comments regarding the proposed controls:

- It is not expressly clear to the Panel what is meant by 'Additional street/laneway address' and without an explanation of when it is relevant, the Panel is concerned that it could be misinterpreted.
- The requirement to provide a 1.5 metre setback from the rear boundary to help facilitate vehicular access from the rear lane needs to be considered further to ensure that this does not result in the public acquisition of land without appropriate compensation.
- If required, the 1.5 metres setback requirement could be included in general requirements rather than in each sub-precinct.
- In sub-precinct F5, the land referred to in the objectives should be clearly marked on a plan within DDO6 and the Built Form Response should relate to the objectives.
- In sub-precinct F6 and F8, the Objectives and Built Form Responses do not appear to relate to the Urban Design Attribute.
- In sub-precinct F7, there is no Objective and the rationale for the Built Form Response is unclear.

**(v) Conclusion**

The Panel concludes that:

- The Built Form Responses regarding ‘Additional street/laneway address’ should not proceed in their current form.
- Further work is required in order to justify any built form controls relating to development adjacent to additional street/laneway address in the activity centre.

**6.6.7 Amenity/access to daylight****(i) What does the DDO say?**

A summary of the ‘Amenity/access to daylight’ Objectives and Built Form Responses is presented below.

**Table 11: Amenity/access to daylight**

Precinct Objectives	Built Form Response
<b>C/F1: Traditional Town Centre</b>	
To avoid additional overshadowing of key open space areas and pedestrian plazas, as shown in Figure 8 (Public Realm and Environment) on page 24 of the <i>Guidelines</i> .	

**(ii) What is the issue?**

The issue is whether the proposed Objectives and Built Form Responses for ‘Amenity/access to daylight’ are appropriate.

**(iii) Evidence and submissions**

Various submissions made reference to the shadowing requirements in Clause 2 of the DDO. These comments have been addressed in chapter 6.5 of this Report.

Mr Richardson gave evidence regarding daylight amenity. He modelled various scenarios for a site at 874-878 Whitehorse Road (within sub-precinct F4) and demonstrated that good internal daylight amenity can be provided without compliance with the specified preferred maximum heights or minimum setbacks above a podium. He acknowledged that good building design principles needed to be followed to achieve this outcome.

Mr Richardson said that daylight amenity objectives were already sufficiently covered by other clauses in the Whitehorse Planning Scheme and that flexibility in the maximum height and minimum setback above a podium will not be detrimental to the internal daylight amenity outcomes achieved.

**(iv) Discussion**

The Panel makes the following comments with respect to the specific provision in sub-precinct C/F1:

- The Urban Design Attribute refers to ‘Amenity/access to daylight’, whereas the objective deals with overshadowing.
- The Panel notes that there is a distinct difference between access to daylight versus overshadowing and the two issues appear to have been confused in the wording of either the Urban Design Attribute or the Objective.
- It is unclear to the Panel whether the intent of the control is to deal with access to daylight or overshadowing.
- The objective makes reference to a specified figure in the *Guidelines*, which is a reference document and this is contrary to good statutory planning practice.
- The designated ‘key open space areas and pedestrian plazas’ should be identified on a plan included within DDO6 rather than referred to in a reference document.
- The phrase ‘key open space areas and pedestrian plazas’ is different to:
  - the wording in Clause 2, which refers to ‘key open spaces and plazas’
  - the wording on the specified plan on page 24 of the *Guidelines*, which refers to ‘key open space/link’
  - the wording in the *Structure Plan*, which refers to ‘key open spaces’ (figure 5) and ‘key public spaces’ (Section 5.2.G).
- In this context, it is unclear precisely which ‘key open space areas and pedestrian plazas’ are to be protected from ‘additional overshadowing’.
- The objective has no associated specific Built Form Response.
- The test of what constitutes ‘additional overshadowing’ referred to in the objective is unclear.
- The Panel agrees with Mr Richardson that there are already sufficient requirements in the Whitehorse Planning Scheme that deal with internal daylight amenity and that this has recently been enhanced through the introduction of Amendment VC136 and the Better Apartment Design Standards.

**(v) Conclusion**

The Panel concludes that:

- The Objective regarding ‘Amenity/access to daylight’ should not proceed in its current form.
- It is unclear whether the controls are meant to relate to access to daylight or shadowing.
- Further work is required in order to justify any built form controls relating to daylight or shadowing in the activity centre and they should duplicate existing controls within the planning scheme.

## 6.6.8 Landscape

### (i) What does the DDO say?

A summary of the 'Landscape' Objectives and Built Form Responses is presented below.

**Table 12: Landscape**

Precinct Objectives	Built Form Response
<b>F2: Station Street</b>	
	Establish green walls, or landscape elements within the building facade to benefit from northern orientation.
	Establish landscaped roof top gardens.
<b>F3: Rutland Road, Watts Street and Carrington Road</b>	
	Establish green walls, or landscape elements within the building facade to benefit from northern orientation.
	Establish a sense of address onto areas identified as key open space.
	Improve urban presence along Rutland Road (railway line) and Carrington Road.
<b>F4: Whitehorse Road and Prospect Street</b>	
	Encourage establishment of green walls, or landscape elements within the building facade.
	Incorporate landscaped gardens on podium roof top.
<b>F5: Whitehorse Road West</b>	
Improve pedestrian amenity along Elgar Road.	Preferred minimum 5 metres setback to street wall along Elgar Road for landscaping.
	Incorporate landscaped gardens on podium roof top.
	Incorporate landscaping elements within the building facades, where possible.
<b>F6: TAFE and Hospital</b>	
	Preferred minimum 8 metre setback to street wall for landscaping.
	Incorporate landscaping elements within the building facades where possible.
	Incorporate public spaces at the ground level where possible.
<b>F7: Garden Infill</b>	
	Preferred ground level setback of 5 metre from the street frontage (landscape zone).
	Accommodate a minimum 5 metre setback to the rear to achieve a consistent 10 metre separation between forms (up to 10 storeys).

Precinct Objectives	Built Form Response
<b>F8: Box Hill Gardens</b>	
To encourage positive landscape contributions to the public realm.	Incorporate landscaping elements within the building facades where possible.
<b>F9: Kingsley Gardens</b>	
To encourage positive landscape contribution to the public realm.	Preferred minimum 8 metre setback to street wall for landscaping.
	Incorporate landscaping elements within the building facades where possible.
	Incorporate public spaces at the ground level where possible.

**(ii) What is the issue?**

The issue is whether the proposed Objectives and Built Form Responses for 'Landscape' are appropriate.

**(iii) Evidence and submissions**

Epworth Eastern submitted that the F6 sub-precinct landscape requirements are inconsistent with the *Structure Plan*, which seeks to create "*minimised front and side setbacks*".

Ms Roberts' urban design evidence for Box Hill Institute noted that the proposed controls were problematic in their application and would result in a highly eroded streetscape with no defined street edge or street scale.

The landscaping and setback requirements were also addressed in the evidence of Ms Macklin, Mr Sheppard and Ms O'Connor including questions in relation to the ability to construct basement car parking under the setback area, maintenance, access and security issues for employees and users of Epworth Eastern and associated medical facilities.

Ms O'Connor's statement noted a specific concern regarding the 8 metres landscape setback requirement and that Epworth Eastern was undertaking a security review following the tragic death of a cardio-thoracic surgeon who died following an assault in the entry foyer of Box Hill Hospital. She said that dense landscaping around entry areas was inconsistent with good surveillance and was therefore a security concern in a hospital environment.

Ms Roberts' also expressed similar concerns and asked how the setback requirement can avoid landscape outcomes that create dangerous hiding spots and prevents obscuring views from the building to the public realm (therefore obscuring passive surveillance).

Epworth Eastern submitted that reference to a minimum 8 metres landscape setback be deleted from the sub-Precinct F6 Landscape Built Form Response and replaced with "*landscape at ground level to priority pedestrian street edges. Cross-over and drop offs may be included within landscape setbacks where possible*".

Mr Bastone gave evidence with respect to sub-precinct F9 that:

- An 8 metre landscaped setback is not characteristic of the area and is also inconsistent with the *Structure Plan* 2007 which seeks that redevelopment should provide for minimised front and side setbacks and increased heights to enable significantly increased densities in the activity centre.
- An 8 metre setback to both Whitehorse Road and Elgar Road would render a large proportion of the site undevelopable and this would be contrary to the overarching aim of planning policy to fully utilise sites in activity centres where amenity impacts can be appropriately managed.
- The development potential of Commercial 1 zoned land should be optimised to reduce pressure for development on more established residential areas and greenfield land.
- The *Guidelines* encourage zero setbacks to the east of sub-precinct F9 along Whitehorse Road and it makes contextual sense to continue a hard street frontage along Whitehorse Road.
- The corner of Whitehorse Road and Elgar Road presents the opportunity for development to 'hold' the street corner and create a strong presence in the streetscape.
- A building constructed to the street boundary with active street frontage and canopy for weather protection would improve pedestrian amenity at this location.

Ms Bell gave evidence that generally supported the views of Mr Bastone with respect to sub-precinct F9. She also noted that:

- The *Guidelines* state that a 2:1 maximum street wall to street width ratio will ensure that taller buildings do not dominate the street, however, by pushing the street wall back a further 8 metres, the built form is unable to deliver the presence, enclosure and legibility a street of the nature of Whitehorse Road deserves.
- Developments approved along Whitehorse Road (37, 30 & 17, 19, and 26- 34 Whitehorse Road) have all been constructed without 8 metre landscape setbacks and therefore applying an 8 metre landscape setback following the approval/ construction of these developments would be inconsistent and a contradiction of the design objectives.

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

The Panel makes the following comments with respect to the proposed landscape controls for the sub-precincts.

First, there are no objectives for sub-precincts F2, F3, F4, F6 and F7. It is important that in circumstances where there are discretionary controls there are appropriate objectives to help manage the exercise of any discretion. Without objectives it is difficult for decision makers (and other parties) to determine the intended outcome in the event that an application does not meet the Built Form Response. The Panel views this omission as a serious flaw in the drafting of the controls.

Second, the controls have different wording regarding the establishment of green walls or landscape elements within building facades. For example:

- *Establish green walls, or landscape elements within the building facade to benefit from northern orientation* (Sub-precinct F2)

- *Encourage establishment of green walls, or landscape elements within the building facade* (Sub-precinct F4)
- *Incorporate landscaping elements within the building facades, where possible* (Sub-precinct F5, F6, F8 and F9)

A close reading of each of these requirements could result in meaning something slightly different in each case. It is unclear to the Panel why there is such a distinction between these sub-precincts and there was no justification for these variations in the *Guidelines*. It would make more sense to have a consistent phrasing for this requirement. In addition, as almost all sub-precincts have this type of requirement, it is unclear to the Panel why it was not included within the general requirements of Clause 2.

Third, the reference to the provision of rooftop gardens in the sub-precinct controls is a duplication of the general requirements in Clause 2. It is unnecessary to have controls repeated in both sections.

In sub-precinct F3, a Built Form Response is *“Improve urban presence along Rutland Road (railway line) and Carrington Road”*. The Panel does not understand this vague and unhelpful statement. A requirement to ‘improve the urban presence’ of a place is meaningless and arguably impossible to measure. It is difficult to see how an applicant or a decision maker could ever assess whether this requirement has been met and it is made all the more confusing when there is no associated objective for this provision in sub-precinct F3. Moreover, it is uncertain how *landscaping* is meant to improve the ‘urban presence’ (whatever that term may mean) of the specified area.

In sub-precinct F5, it is an objective of ‘Landscape’ to *“Improve pedestrian amenity along Elgar Road”*. A Built Form Response to that objective is *“Incorporate landscaped gardens on podium roof top”*. The Panel does not see how the provision of a landscaped garden on a podium rooftop is ever likely to enhance the pedestrian amenity along Elgar Road.

The Panel agrees with the various expert statements and submissions objecting to the 8 metres landscaped setback in sub-precincts F6 and F9. The Panel sees no justification for the requirement and particularly shares the concerns expressed by Epworth Eastern with respect to potential safety issues.

Finally, the objectives in sub-precincts F8 and F9 are so vague they are effectively useless. It is simply trite *“to encourage positive landscape contributions to the public realm”*. A more sophisticated and nuanced approach is required if specific landscape controls are proposed for an activity centre.

The Panel has identified the above issues as indicative of the range of concerns it has regarding the landscape provisions. It is not an exhaustive list and the Panel does not believe that the controls are even close to being acceptable.

## **(v) Conclusion**

The Panel concludes that:

- The Objectives and Built Form Responses regarding ‘Landscape’ should not proceed in their current form.

- Further work is required in order to justify any built form controls relating to landscaping in the activity centre.

## **6.7 Decision guidelines**

### **(i) What does the DDO say?**

Clause 4 of DDO6 states:

*The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:*

- *The Design Objectives and Buildings and Works requirements included in this Schedule.*
- *The attributes, precinct objectives and built form response guidelines for each precinct and sub-precinct, as contained within the Box Hill Metropolitan Activity Centre Built Form Guidelines, Hansen Partnership, 2016.*
- *For Precincts B, D and E, the attributes, precinct objectives and built form response guidelines for each precinct, as contained within the Box Hill Transit City Activity Centre Structure Plan, 2007.*

Council varied the introductory text preceding the three dot points in the Post Panel Hearing version of DDO6 to accord with the requirements in the new DDO template pursuant to the Ministerial Direction on *The Form and Content of Planning Schemes*.

### **(ii) What is the issue?**

The issue is whether the proposed decision guidelines are appropriate.

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

Council submitted:

*DDO6 seeks to include the 'attributes, precinct objectives and built form response' in both the Structure Plan and Guidelines as matters to be considered in deciding on an application for permit.*

*This is not an uncommon 'use' of reference documents, although it is acknowledged that this is not encouraged by PPN13 and it has not been encouraged by various Planning Panels.*

*PPN13 describes reference documents as having 'only a limited role in decision-making as they are not part of the planning scheme. They do not have the status of incorporated documents or carry the same weight'.*

*That might be so, but that does not mean they cannot or should not be utilised by decision makers and designers in assessing a proposal, not the least of which is to understand the basis for the buildings and works requirements*



*and/or to clarify the meaning of words or terms in the DDO (such as, for example, the meaning of 'key open spaces').*

*Council's preference is that the two referenced documents (the Structure Plan and the Guidelines) remain as part of the matters to be considered in assessing an application for permit – bearing in mind that it is already a policy within Clause 22.07 that 'use and development of land is consistent with the vision of the centre and the activity and Built Form Precincts in the [Structure Plan]'.<sup>40</sup>*

**(iv) Discussion**

The Panel makes the following observations about each of the three dot points included in the proposed decision guidelines.

The first dot point is arguably not necessary as Clause 43.02-5 includes a range of decision guidelines that a responsible authority must consider, including *"the design objectives of the relevant schedule to this overlay"*. The Panel considers that the first dot point duplicates the provisions of Clause 43.02-5 and is not necessary.

The second dot point refers to the attributes, precinct objectives and built form response guidelines for each precinct and sub-precinct within the *Guidelines* document. The *Guidelines* are proposed to be a reference document in the Whitehorse Planning Scheme.

A reference document in a planning scheme provides background information to assist in understanding the context within which a particular policy or provision has been framed. The Planning Practice Note 13 - *'Incorporated and Reference Documents'* states that:

*Reference documents can be used in a number of ways. They can be used as a basis for preparing the Municipal Strategic Statement (MSS), local planning policies or requirements in the planning scheme, or can be mentioned in the planning scheme as a source of useful background information.*

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

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

*A reference document may explain why particular requirements are in the scheme, substantiate a specific issue or provide background to specific decision guidelines in local planning policies or schedules. Generally, the substantive planning elements of the reference document will have been included in the scheme in either the MSS, a local planning policy or a schedule.*

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<sup>40</sup> Part B, para 41-44

Planning Practice Note 10 – *Writing Schedules* also comments on when to refer to incorporated and reference documents in schedules. It states that:

*Where possible, the provisions set out in a schedule should be self-contained. They should be capable of being understood without having to refer to any other documents.*

*Incorporated and reference documents can be used in schedules where:*

- *A map to a schedule is too large to be included in the schedule. This map can be an incorporated document instead.*
- *A study that provides the justification for a statement of significance used in a schedule needs to be cited as a reference document. Where possible the conditions or assumptions used in such a study are subject to change, the responsible authority should bear in mind that this will imply the need to review the study and to review any overlay that has been based on its findings.*
- *Decision guidelines refer to strategy documents where the document is clearly relevant to the implementation of the provision. The document should be an incorporated document. The document should be a published and publicly available document and preferably should be subject to an approval process that takes public comments into consideration.*

Within this context, the Panel does not support the inclusion of a reference document (the *Guidelines*) within the decisions guidelines. To do so would be giving the *Guidelines* a status beyond which it is appropriate.

The Panel also notes that:

- The proposed decision guidelines refer to a 2016 version of the *Guidelines*, whereas the version exhibited as part of Amendment was labelled ‘Draft – version for Exhibition 6 January 2017’.
- The Panel was not presented with a copy of the 2016 version of the *Guidelines*.
- There are multiple inconsistencies between the *Guidelines* and the content of DDO6 including but not limited to:
  - The content of Table 2
  - The diagrams included in the *Guidelines* associated with each sub-precinct
  - Terminology used, such as the designation of open space areas and pedestrian links
  - Differences in the wording of the general requirements
  - The deletion of many of the objectives in the latest version of the DDO schedule (and the inconsistent wording between the objectives in the *Guidelines* compared to the DDO schedule).

The third dot point refers to Precincts B, D and E. These precincts were beyond the scope of the *Guidelines* (which related only to Precincts C and F). The Panel is concerned with the inclusion of this dot point in the decision guidelines for the following reasons:

- The *Structure Plan* is a reference document and as explained above, it is inappropriate to include a reference document in the decision guidelines.

- The *Structure Plan* does not have ‘attributes, precinct Objectives and Built Form Responses’ (this is the format used in the *Guidelines*) so it would be impossible to decipher the intent of these requirements from the *Structure Plan*.
- It is unclear whether the decision guidelines are referring to the Activity Precincts or the Built Form Precincts in the *Structure Plan*.
- It is unclear why Precincts B, D and E have been added to the decision guidelines when there is very little content in DDO6 specifically regarding these precincts.
- If Council wants to implement the built form outcomes from the *Structure Plan* for these precincts it should consider doing so in a more comprehensive manner rather than a piecemeal ‘add-on’ to the *Guidelines*.
- It is unclear precisely what built form controls are intended to be applicable to these precincts.
- It is unclear why the remaining precinct (Built Form Precinct A) has been omitted.

**(v) Conclusion**

The Panel concludes that:

- The Decision *Guidelines* contained in Clause 4.0 of DDO6 should not proceed in their current form.

## **6.8 Drafting issues**

### **6.8.1 Form and content of planning schemes**

**(i) What is the issue?**

A revised version of the Ministerial Direction on *The Form and Content of Planning Schemes* was gazetted in April 2017. This followed the exhibition of Amendment C175.

The issue is whether the exhibited Amendment is in accordance with the requirements of the Ministerial Direction on *The Form and Content of Planning Schemes*.

**(ii) Evidence and submissions**

Council acknowledged that the proposed Amendment should be assessed against the new version of the Ministerial Direction on *The Form and Content of Planning Schemes*.

Council submitted that, as presented, DDO6 does not accord with some aspects of the ‘style guide’ annexed to the Direction. These matters include:

- there are more than five design objectives contained in Clause 1.0 to DDO6
- no exemptions from the need for a permit are specified.

Council suggested that these issues could be best addressed as part of the Panel Hearing. It submitted:

*They can be easily attended to without changing the intent or substance of the DDO or the implementation of the Guidelines through the DDO. There are*

*obvious overlaps between the 'design objectives' and the 'building and works requirements' that can be addressed through a re-working of the DDO.<sup>41</sup>*

Council provided an updated version of DDO6 on the last day of the Hearing as part of its closing submission.

### **(iii) Discussion**

Council highlighted that the exhibited Amendment is not consistent with the Ministerial Direction on *The Form and Content of Planning Schemes* under section 7(5) of the Act. The Panel agrees with this assessment.

Although Council's updated version of the DDO schedule is an improvement on the exhibited version, the Panel has significant reservations about the content of the DDO schedule. These concerns have been discussed extensively in this Report.

It is the substantive content of DDO6 rather than the layout and format of the content that is the major concern of the Panel. It is not simply that some minor editing and reformatting is required in order to address these deficiencies. The major flaws in the content of the Amendment need to be addressed as the highest priority.

The Panel encourages Council to consider the Ministerial Direction on *The Form and Content of Planning Schemes* prior to the preparation of any further planning scheme amendment that might introduce built form controls for the Box Hill Activity Centre.

### **(iv) Conclusion**

The Panel concludes that:

- The exhibited version of the Amendment is not in accordance with the Ministerial Direction on *The Form and Content of Planning Schemes*.
- The substantive faults with the content of the Amendment are such that it is not possible to edit the exhibited version of the Amendment to accord with the Ministerial Direction on *The Form and Content of Planning Schemes* without substantially transforming the Amendment.

## **6.8.2 Maps**

### **(i) What is the issue?**

The Amendment includes a number of maps, including:

- the DDO6 map
- in the DDO6 schedule, Map 1 – Box Hill Transit City Built Form Precincts
- in the DDO6 schedule, Map 2 – Sub-precinct boundaries.

The issue is whether these maps are appropriate.

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<sup>41</sup> Document 4, para 40

**(ii) Evidence and submissions**

The proposed DDO6 map covers an extensive area within the Box Hill Activity Centre. It includes land covered by the Box Hill Transit City Built Form Precincts B, C, D, E and F.

Council submitted that:

*The effect of the introduction of DDO6 is to require any development of the sites affected by the overlay to be constructed in accordance with design objectives and development requirements contained in the schedule, including in relation to heights, setbacks, street frontages, building articulation, pedestrian access, building separation and depths, landscaping and overshadowing.*<sup>42</sup>

VicTrack submitted that the rail corridor east of Station Street and west of Thurston Street should be excluded from the proposed DDO and sub-precinct plan (F3 and F4) as the land is required for transport purposes.

Council submitted a number of minor drafting changes to Map 2 in the DDO schedule, such as:

- including the entire property at 712 Station Street in sub-precinct F2
- including Box Hill Central North and Box Hill Central South in sub-precinct F2 and marked both as Strategic Development Sites
- changing the shopping centre labels from Centro Whitehorse and Centro Box Hill to Box Hill Central North and Box Hill Central South respectively.

The Blackburn Village Residents Group submitted that the sub-precinct plan should also show:

- the Nelson Street–Thurston Street link as a key link identified in the *Guidelines*
- the Box Hill–Ringwood Rail Trail link as identified in the City of Whitehorse Bicycle Strategy 2016.

**(iii) Discussion**

The Panel notes that the extent of the DDO6 map includes land well beyond the study area of the *Guidelines*. The focus of the *Guidelines* was limited to Built Form Precincts C and F and the sub-precincts defined on Map 2 in the DDO relates to these areas only. It is, therefore, inconsistent to include Built Form Precincts B, D and E within the DDO6 map. The Panel acknowledges that there are some minor references to these precincts in the DDO6 schedule, however, they are not defined as sub-precincts and they seem an incoherent adjunct to the rest of the Amendment.

The Panel suggests that either the land in Built Form Precincts B, D and E should be deleted from the DDO6 map or these precincts should have more well developed built form requirements akin to Precincts C and F.

The Panel supports the exclusion of the VicTrack land (as described by VicTrack) from the DDO. The excluded land should only relate to land associated with rail transport.

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<sup>42</sup> Part A submission, para 7

Alternatively, the land could be included within the DDO but with an exemption in the DDO6 text that eliminates the need for a planning permit for all buildings and works associated with rail infrastructure along the lines referred to in chapter 6.4 of this Report.

The Panel notes that the exclusion or exemption of VicTrack land from DDO controls is a recurring theme in various planning scheme amendments beyond the City of Whitehorse. The Panel encourages VicTrack to have further discussions with DELWP to try and negotiate a consistent approach for similar future planning scheme amendments. This could help streamline debate and the drafting of other DDO maps and schedules.

The Panel also observes that many other DDO maps have precincts or sub-precincts labelled on the DDO map. For example, each sub-precinct could be identified on the DDO map as DDO6-1, DDO6-2 and so on. This would make it very easy to identify a relevant precinct or sub-precinct.

The Panel also observes that it is not necessary to include Map 1 (Box Hill Transit City Built Form Precincts) because it is already included in Clause 22.07 of the planning scheme. The duplication of maps in the planning scheme adds unnecessary volume to the document.

Finally, the Panel notes that Map 2 in the DDO schedule (sub-precinct boundaries) should:

- refer to the shopping centres by their correct names
- be drafted to ensure it is easier to read (including consideration of the sub-precincts identified on the DDO map)
- have a thorough review of all open spaces and links shown on the plan.

#### **(iv) Conclusion**

The Panel concludes that:

- The DDO map needs to be reviewed to delete Built Form Precincts B, D and E or alternatively these precincts require greater consideration of relevant built form controls included within the DDO6 schedule.
- Map 1 in the DDO6 schedule should be deleted.
- Map 2 in the DDO6 schedule is not supported in its current form and requires a number of drafting changes.

### **6.8.3 Graphics in Tables 3 to 11**

#### **(i) What is the issue?**

The *Guidelines* and the exhibited Amendment included a number of diagrams associated with each sub-precinct. These diagrams showed in graphical form an “*illustrative cross-section*” of a building representing some of the key built form controls with respect to heights and setbacks.

The exhibited Amendment included a diagram for each of Tables 3 to 11, except for Table 8 and 11.

The issue is whether it is appropriate to include these diagrams in the DDO schedule.

**(ii) Evidence and submissions**

The Panel noticed a number of inconsistencies between various diagrams and the content of the relevant tables. These inconsistencies were in both the *Guidelines* and the DDO6 schedule and the Panel brought these matters to the attention of Council during the Hearing. Council said it would either correct the diagrams to make them consistent with the text in the tables or it may delete the diagrams from the DDO6 schedule.

In its closing submission, Council submitted a revised version of the DDO6 schedule without the diagrams.

**(iii) Discussion**

The Panel notes that Council appears to now support the deletion of the diagrams from the DDO6 schedule. Having said that, this version of the schedule was presented on behalf of Council for discussion purposes only and it does not represent Council's position with regard to Amendment C175.

The Panel suggests that either:

- the diagrams are included in DDO6 and are modified to match the requirements in the text in each of the relevant tables; or
- the diagrams are deleted from the DDO6 schedule.

Although diagrams such as the ones exhibited in the Amendment can be useful to help explain the meaning of built form requirements, they should be consistent in every way with the text. To do otherwise is to create potential confusion and misunderstanding of the controls.

The Panel notes that the inconsistencies appear to have originated in the same diagrams included in the *Guidelines* document.

**(iv) Conclusions**

The Panel concludes:

- The diagrams included in Tables 3 to 11 in the DDO6 schedule should be either deleted or modified to accord with the text in the schedule.

## **6.9 Recommendation**

In Chapter 2.4 the Panel concluded that:

- The *Guidelines* lack strategic rigour
- The *Guidelines* are not appropriate basis for an amendment.

This Chapter has identified a number of specific issues with the DDO that make it unsuitable for inclusion in the planning scheme without significant redrafting. In the absence of a clear rationale for what it is trying to achieve such redrafting is simply not possible.

The Panel recommends:

- 2. Abandon the Design and Development Overlay.**

## Appendix A Submitters to the Amendment

### Proforma submissions

No.	Submission
1	Xiao Liu
2	Rex and Bev Cathcart
3	Margot Serch
4	Simon and Louise Seear
5	M and M Salisbury
6	H V Wright
7	Alan and Pauline Vivian
8	Frank Tang and Symone Ye
9	Zena Goodman
10	Guek Tan
11	Margaret and James Rundle
12	Kristine Tsutsulis
13	Tony Tsourdarlakis
14	Cathy McCormick
15	Trevor Rodgers
16	Lou Cicchelli
17	Scott Hillberg
18	Pam Hill
19	Maureen Joel
20	Rita Battaglini
21	Yoges Vadiveloo
22	Helena Dunn
23	B W Pardon
24	Jean and Peter Chester
25	Peter Gogoll
26	H Y Wu, Deborah Chung, Angela Chung
27	F Clark
28	Joanna Buckley
29	John Wright
30	William Finlay
31	C Tulloch
32	George and Lyn Jones
33	Julie McKenna
34	Angelo Donald
35	Margaret Watson
36	Heather Masterman
37	Margaret Charlesworth
38	Homiar and Benaifer Sabavala
39	Rowan Ebbels
40	Margaret Castle
41	Maxine Conheady
42	Steve Tsutsulis
43	Megan Cassidy-Welch
44	Crozier
45	Stella Clark

No.	Submission
46	Elizabeth Foster and Michael Scott
47	Millie Robb
48	Ian and Rosemary Morgan
49	Simone Whaling
50	Jennifer Davison
51	Michael Kaczynski
52	J Palmer
53	Tommy Hong
54	Stacey Warren-Smith
55	Christine and Noel Clough
56	Bronwen Baird
57	Bruce Dix
58	Anna Youngwood, Wai and Ying Ho, Enwu P Zhang, David Ernst
59	Carla Reid
60	Peter Meikle
61	Deidre Steain
62	Anne Smyth
63	Greg Smyth
64	Kevin Earle
65	Peter and Pauline Moncrieff
66	Ian Harrison
67	Dasha Kopecek
68	Lorraine Ashton
69	Noni and David Garrett
70	Xiao Hua Tan
71	George and Nia Kyranakis
72	Elaine Read
73	Margaret Hook
74	Sylvia Robson
75	Robert Hayward
76	John Wallace
77	Huy Tan Nguyen
78	Ronald Francis
79	A & W Edwards
80	Diana Whitfort
81	Betty Tatterson
82	Mr and Mrs Campbell
83	Wendy and Charles Dickeson
84	Barbara Beames



## Submissions

No.	Submitter
1	Robert Cooper and Helene Ferrer
2	Linda Graham
3	Paul Tierney
4	Richard Whitebrook
5	Susan Colville
6	Martin Friendship
7	Sarah and Sam Salem
8	Robert and Mary Lou Friday
9	Sally Dugan
10	Susan Pierotti
11	Geoffrey Ross
12	J Andrew Binns
13	Sam Magee
14	Kate and Michael de Josselin
15	Pat Tan
16	George Coop
17	Kate Vaux
18	Christina Moore
19	David Kaye
20	Pamela and Kaylene Broad
21	Michael Ryan
22	Maryrose Theuma and John Klabbers
23	Terrance Share
24	Gary Liu
25	Bruce Gibson
26	W Neil Wilkinson
27	Joan Wilkinson
28	Sonia Spiropoulos
29	Freemasons Victoria
30	Box Hill RSL
31	Pamela Carter
32	Annette Scott
33	Sylvia and Steve Robertson
34	Sarah Cliff
35	Adrienne and Paul Wiebusch
36	Pamela Newlan
37	Eve Pakarinen
38	Jenny Spiropoulos
39	Golden Age Station Development Pty Ltd
40	Elizabeth Meredith
41	John Boddington
42	Alan Tonkin
43	Terry Allen
44	Graeme Davison
45	Karen and John MacFarlane
46	Diana Evans and Sally Miller
47	Tracey and Graham Clark
48	Robert Cooper and Helene Ferrer

No.	Submitter
49	Brian Pell
50	Fiona McKinnon
51	Blackburn Village Residents Group
52	Martin Strandgard
53	Merilyn Voigt
54	Dean Newlan
55	Peter Carter
56	Manors Gate Group
57	Janet Dods
58	Belinda McDonald
59	Warren Earl
60	Lucy and Patrick McLay
61	Janie Gibson
62	Greg and Kay Hooke
63	Vicinity Centres
64	Diana Yallop
65	St Pauls Lutheran Church
66	Gail Latchford and Stanley Barker
67	Jan and Philip DeGruchy
68	Haels Developments Pty Ltd and Antsville Pty Ltd
69	Van Chen
70	Natalie Nelson
71	ZL Prospect Pty Ltd
72	Box Hill Institute
73	Vital Healthcare Australian Property Trust
74	Choo Teong Yeoh
75	Austone International Pty Ltd
76	Garda Capital Group
77	Jariw Pty Ltd
78	Diversified Number Two Pty Ltd
79	26-28 Prospect St Pty Ltd
80	Epworth HealthCare
81	Doyen Tower Pty Ltd
82	Australia Jinjia Investments Pty Ltd
83	Judy Sharples
84	Helen Harris
85	Longriver Developments Pty Ltd
86	Box Hill Historical Society Inc
87	Russell and Catherine Costello
88	Ying Ni
89	Victor Tadros
90	Ken Hudson
91	Libby Crowe
92	Whitehorse Active Transport Action Group Inc.
93	Bredix Pty Ltd
94	Geoff White
95	Blackburn and District Tree Preservation Society

No.	Submitter
96	Lucian Melville and Lorraine Stephanie Fernando
97	Helen Rozet
98	Jennifer Bennie
99	Tim Dally
100	Feng Guo and Lili Shi
101	Eva and Bernie Millane
102	Suzanne Cavell
103	Long Term Investment Group
104	Anne T McCoy
105	Angela Babari
106	Teena D'Agostino

No.	Submitter
107	Gwenda Hicks
108	Carol and George Ellul
109	Mr and Mrs G Deason
110	Helen Bardsley
111	Dorothy Slater
112	Elizabeth Millar
113	Dianne Morrison
114	William Orange
115	Wan Lin Liao
116	Ada Cheng
117	Jenny Mather

## Appendix B Parties to the Panel Hearing

Submitter	Represented by
Whitehorse City Council	John Rantino of Maddocks and Vanessa McLean of Council and calling evidence from: - Craig Czarny of Hansen Partnership in Urban Design
William Neil Wilkinson	
Joan Wilkinson	
VicTrack	Barnaby Chessell of Counsel
Vicinity Centres	Chris Townshend QC and Barnaby Chessell of Counsel and Victoria Vilagosh of Norton Rose Fulbright and calling evidence from: - Brendan Rogers, Urbis in Town Planning - Mark Sheppard of David Lock Associates in Urban Design.
Box Hill Society	William Orange
William Orange	
Geoffrey Ross	Coral Ross
Anne T McCoy AM	
Pamela Carter	
Geoff White	
Eve Pakarinen	
Tanya Tescher	
Helen D Harris OAM	
Haels Developments and Antsville	David Vorchheimer of HWL Ebsworth
Blackburn and District Tree Preservation	David Berry
Victor Tawfik Tadros	Dominic Scally of Best Hooper Lawyers calling evidence from: - Tim McBride Burgess of Contour in Planning
Kate de Josselin	
Dasha Kopecek	
Doyen Tower Pty Ltd	Nicola Collingwood calling evidence from: - Maugan Bastone of Urbis in Planning - Julia Bell of DLA in Urban Design.

Submitter	Represented by
Epworth Health Care and Vital Health Care Australian Property Trust	Michelle Quigley briefed by Meg Lee and Linda Choi of Gadens calling evidence from: <ul style="list-style-type: none"> <li>- Sarah Macklin of Urbis in Planning</li> <li>- Louise O’Conner (lay witness) of Epworth Eastern in hospital planning</li> <li>- Mark Sheppard of DLA in Urban Design.</li> </ul>
Longriver Investment Pty Ltd	John Carey of Minter Ellison calling evidence from: <ul style="list-style-type: none"> <li>- Lindsay Richards of Sustainable development Consultants in Daylight</li> <li>- Harvey Male of the Buchan Group in Design.</li> </ul>
Golden Age Station Street Box Hill Development Pty Ltd	Paul Connor QC, and Nicola Collingwood briefed by Minter Ellison
Box Hill Institute	Paul Connor QC calling evidence from: <ul style="list-style-type: none"> <li>- Amanda Roberts of SJB Urban in urban design</li> </ul>
Manors Gate Group Pty Ltd	Scott Stewart of Brian Ward and Partners with Ricky Poon
Freemasons Victoria	Simon Martin of Ratio Consultants
Blackburn Village Residents Group	David Morrison
Whitehorse Active Transport Action Group Inc.	Peter Carter
St Paul’s Lutherans Church	Paul McAleer of Meinhardt
Austone International Pty Ltd & Dingjiu Group Pty Ltd	Tim Retrot of ProUrban

## Appendix C Document list

No.	Date	Description	Presented by
1	16/06/2017	Suggested Directions re Confidentiality	Ms Quigley
2	24/07/2017	Part A Whitehorse Planning Authority documents	Mr Rantino
3	24/07/2017	Statement of Urban Design Evidence	Mr Czarny
4	24/07/2017	Council Submission Part B	Mr Rantino
5	25/07/2107	Submission from Mr Neil Wilkinson	Mr Wilkinson
6	25/07/2107	Submission from VicTrack	Mr Chessell
7	25/07/2107	Building a Better Box Hill	Mr Chessell
8	25/07/2107	Submission from Vicinity Centres	Mr Townshend
9	27/07/2017	Submission from Mrs Wilkinson	Mrs Wilkinson
10	27/07/2017	Submission from Dr Geoffrey Ross	Ms Ross
11	27/07/2017	Submission from Ms McCoy AM	Ms McCoy
12	27/07/2017	Submission from Ms Pam Carter	Ms Carter
13	27/07/2017	Submission from Mr White	Mr White
14	27/07/2017	Submission from Ms Pakarinen	Ms Pakarinen
15	27/07/2017	Photographs from Ms Tescher	Ms Tescher
16	27/07/2017	Submission from Ms Tescher	Ms Tescher
17	27/07/2017	Images to accompany evidence from Mr Rogers	Mr Chessell
18	27/07/2017	Submission from Haels Developments Pty Ltd and Antsville Pty Ltd	Mr Vorchheimer
19	27/07/2017	Delegate Report 9-11 Prospect Street, Box Hill	Mr Vorchheimer
20	27/07/2017	Photographs to accompany document 18	Mr Vorchheimer
21	27/07/2017	Extract from Panel Report Port Phillip Planning Scheme Amendment C107	Mr Vorchheimer
22	27/07/2017	Topographic Map	Mr Vorchheimer
23	27/07/2017	Satellite Map	Mr Vorchheimer
24	28/07/2017	Submission from Mrs Helen Harris	Mrs Harris
25	28/07/2017	Submission from Blackburn & District Tree Preservation Society Inc.	Mr Berry
26	28/07/2017	Slides to accompany document 25	Mr Berry
27	28/07/2017	Submissions from Mr Tawfik Tadros	Mr Scally
28	28/07/2017	Submission from Ms Dasha Kopacek	Ms Kopacek
29	31/07/2017	Slides: Presentation for Vicinity Centres	Mr Sheppard

No.	Date	Description	Presented by
30	31/07/2017	Slides: Presentation for Epworth Health Care and Vital Health Care Australian Property Trust	Mr Sheppard
31	31/07/2017	Slides: Presentation for Doyen Tower Pty Ltd	Ms Bell
32	31/07/2017	Submission from Doyen Tower Pty Ltd	Ms Collingwood
33	31/07/2017	Map: Sub-precinct F9 Boundaries to accompany document 32	Ms Collingwood
34	01/08/2017	Revision to DDO6 proposed by Epworth Health	Ms Quigley
35	01/08/2017	Notice of Decision to Refuse to Grant a Planning Permit for 1 Arnold Street and 25 Nelson Road, Box Hill	Ms Quigley
36	01/08/2017	Document associated with confidential evidence	Ms Quigley
37	01/08/2017	Document associated with confidential evidence	Ms Quigley
38	01/08/2017	Submissions from Epworth Healthcare and Vital Health Australian Property Trust	Ms Quigley
39	02/08/2017	Submission from Longriver Group Pty Ltd re 874-878 Whitehorse Road, Box Hill	Mr Carey
40	02/08/2017	Extract Panel Report Stonnington Amendment C58	Mr Carey
41	02/08/2017	VCAT Decision South Yarra Pinnacle Pty Ltd v Stonnington CC	Mr Carey
42	02/08/2017	Submission from Longriver Group Pty Ltd re 843 Whitehorse Road, Box Hill	Mr Carey
43	02/08/2017	Submission Golden Age Station Street Box Hill Pty Ltd	Mr Connor
44	02/08/2017	Submission from Box Hill Institute	Mr Connor
45	02/08/2017	Map: Preferred maximum building heights in sub-precincts	Mr Connor
46	02/08/2017	Map: Site coverage and set back arrangements in sub-precincts	Mr Connor
47	02/08/2017	Map: Box Hill Institute campuses	Mr Connor
48	02/08/2017	Map: Box Hill Institute Spring Street development site	Ms Collingwood