

Planning and Environment Act 1987

Panel Report

Bayside Planning Scheme Amendment C152

Martin Street Activity Centre

Front page

9 August 2017

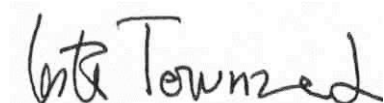
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Bayside Planning Scheme Amendment C152

Martin Street Activity Centre

9 August 2017

A handwritten signature in black ink that reads "Lester Townsend". The signature is written in a cursive style with a large initial "L" and "T".

Lester Townsend,

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List of Abbreviations

BHS	Bayside Housing Strategy
BPSR	Bayside Planning Scheme Review
DDO	Design and Development Overlay
GRZ	General Residential Zone
LPPF	Local Planning Policy Framework
NAC	Neighbourhood Activity Centre
NRZ	Neighbourhood Residential Zone
SPPF	State Planning Policy Framework
VCAT	Victorian Civil and Administrative Tribunal

Overview

Amendment Summary

The Amendment	Bayside Planning Scheme Amendment C152
Common name	Martin Street Activity Centre
Brief description	<p>The Amendment proposes to implement the <i>Martin Street Structure Plan</i> (March 2016) by:</p> <ul style="list-style-type: none"> - amending local policy clauses to reflect the <i>Martin Street Structure Plan</i> - rezoning some land in the Activity Centre to the General Residential Zone - replacing the Design and Development Overlay controls that apply to the Activity Centre
Planning Authority	Bayside City Council
Authorisation	Council received conditional authorisation from the Minister for Planning to prepare the Amendment on 9 August 2016
Exhibition	10 November 2016 and 16 January 2017
Submissions	Number of Submissions: 37 See Appendix A

Panel Process

The Panel	Lester Townsend
Directions Hearing	Bayside Council Chambers, 22 May 2017
Panel Hearing	Bayside Council Chambers, 19 and 20 June 2017
Site Inspections	Unaccompanied, 19 and 20 June 2017
Appearances	<ul style="list-style-type: none"> • Bayside Council represented by Juliana Aya and Tom Vercoe • Sonia Mizenmay and Peter McQueen • Clarence Mitchell • Susan Humphries • Kahrid Pty Ltd represented by Blanche Manuel of Ratio calling evidence in: <ul style="list-style-type: none"> - Heritage from David Helms • BS Stillwell Properties (Holdings) Pty Ltd represented by Elle Harrington of SJB Planning • Alla and Eduard Pudol represented by Emily Porter • MGTS Enterprises represented by Phillip Borelli of SJB Planning
Date of this Report	9 August 2017

Executive Summary

(i) Summary

Bayside Planning Scheme Amendment C152 (the Amendment) seeks to implement the *Martin Street Structure Plan* (March 2016) by:

- amending local policy clauses to reflect the *Martin Street Structure Plan*
- rezoning some land in the Activity Centre to the General Residential Zone (GRZ)
- replacing the Design and Development Overlay controls that apply to the Activity Centre.

The Activity Centre is located in the north of Brighton. The Activity Centre extends along Martin Street, from Hamilton Street in the west, to Nepean Highway in the east and includes the Gardenvale Railway Station. The Neighbourhood Activity Centre (NAC) is bisected by the Nepean Highway and the eastern section of the Activity Centre is in the City of Glen Eira.

The Activity Centre is enjoying commercial revitalisation and an intensification of land uses. Higher density developments have recently been approved and completed within the Activity Centre. Five-storey mixed use buildings have recently been completed.

The key objective in preparing the built form requirements for the centre has been the preservation of the heritage characteristics of the centre. Heights in the commercial area range from three to five storeys, and in the residential areas two to three storeys. Setback controls are also proposed.

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework. The Amendment is generally well founded and strategically justified.

The height proposed for a number of sites is less than what could reasonably be expected given the recently constructed development in the centre, and the Panel has recommended a number of changes in how the built form precincts are applied, and some refinements of the controls.

The Panel has found that mandating a 6-metre setback to the Nepean Highway is not warranted given the nature of development in the area.

Mandatory controls are proposed for a number of requirements including setbacks in residential zones. The Panel does not agree that these controls should be mandatory, because the relevant tests for applying mandatory controls have not been met.

There is a need to review the controls to ensure compliance with the *Ministerial Direction on the Form and Content of Planning Schemes* and to remove redundant requirements.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Bayside Planning Scheme Amendment C152 be adopted as exhibited subject to the following:

1. **Apply a schedule to the General Residential Zone to the areas in the Precinct D specifying a mandatory three-storey/11 metre height control, and:**

- specifying “None Specified” in the table next to Standards A10 and B17
 - specifying “None Specified” under Application requirements
 - ensuring compliance with the Ministerial Direction on the Form and Content of Planning Schemes.
2. Apply a schedule to the Neighbourhood Residential Zone to the areas in Precinct E specifying a mandatory two-storey/9 metre height control but:
- specifying “None Specified” in the table next to Standards A10 and B17
 - specifying “None Specified” under Application requirements
 - ensuring compliance with the Ministerial Direction on the Form and Content of Planning Schemes
- 3 In the Design and Development Overlay:
- 3.1 Amend first objective to read:
- To ensure the height, setbacks and design of new development is consistent with the vision of the Martin Street Structure Plan of ‘a friendly local hub for shopping, transport and a range of housing choices that respond to Martin Street’s neighbourhood scale and enhance its village atmosphere and heritage charm’.
- 3.2 Remove all mandatory requirements from the Design and Development Overlay.
- 3.3 Express all requirements using ‘should’.
- 3.4 Change the requirement for the upper level setback to apply to the fourth and higher storeys.
- 3.5 Delete the requirement to setback upper level balconies by 2 metres in commercial zones.
- 3.6 Apply Precinct A to the existing five-storey buildings.
- 3.7 Apply Precinct B to 2 to 10 Spink Street
- 3.8 Apply Precinct A to 20 Spink Street
- 3.9 Apply Precinct C to 75 Asling Street
- 3.10 Delete the ‘Key rear lane upgrade’ notation from the rear of 2 to 10 Spink Street.
- 3.11 Delete the requirement for a 6 metre setback to the Nepean Highway for land between North Road and Rose Street
- 3.12 Review the Design and Development Overlay to ensure compliance with the Ministerial Direction on the Form and Content of Planning Schemes and to remove redundant requirements.

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment affects all Commercial Zoned land within the Activity Centre and residential land north of North Road that is unencumbered by a Heritage Overlay and that is within walking distance (up to 500 metres) of Gardenvale Station.

The Amendment seeks to introduce specific built form requirements for development in the Activity Centre and principles guiding car parking provision, traffic management and landscaping associated with development of the area.

The vision for the Activity Centre is:

A friendly local hub for shopping, transport and a range of housing choices that respond to Martin Street's neighbourhood scale and enhance its village atmosphere and heritage charm.

(ii) Planning scheme changes

The Amendment proposes to:

- amend Clauses 21.03, 21.06, 21.07, 21.08, 21.09 and 21.11 to reflect the *Martin Street Structure Plan (March 2016)* and introduce it as a reference document
- introduce Schedule 9 to Clause 32.08 – General Residential Zone into the Bayside Planning Scheme and apply it to areas within the Activity Centre
- replace Design and Development Overlay (Schedule 3) that applies to the Activity Centre with a new Design and Development Overlay.

1.2 Strategic context and assessment

The Activity Centre is located in the north of Brighton. The Activity Centre extends along Martin Street, from Hamilton Street in the west, to Nepean Highway in the east and includes the Gardenvale Railway Station. The NAC is bisected by the Nepean Highway and the eastern section of the Activity Centre is located within the City of Glen Eira.

The *Structure Plan* boundary includes small pockets of surrounding residential land appropriately located to provide moderate redevelopment opportunities that will support the Activity Centre and promote pedestrian access to public transport and local services.

The Activity Centre has, in metropolitan terms, exceptional public transport access, well-established cycling access for both commuters and occasional riders and a very high degree of walkability. Bus services and the Gardenvale Railway Station link the Activity Centre to the Melbourne CBD and metropolitan destinations, and the Activity Centre has ready access also provided to the city's freeway network.

Martin Street – the central spine of the Activity Centre – runs east-west, with the eastern end of the street forming the gateway to the Activity Centre from Nepean Highway. Martin Street is a two-lane thoroughfare with an on-road cycling lane on either side, and footpaths along each side of the roadway.

Commercial land uses occupy the majority of sites fronting Martin Street and side streets such as Spink Street, with a few examples of shop top dwellings.

A large portion of the retail core of the Activity Centre along Martin Street is covered by a Heritage Overlay, and is occupied by single and double-storey buildings. Buildings generally have zero setbacks with active frontages, and awnings over Martin Street for increased pedestrian comfort. Buildings along Asling Street are predominantly one or two-storey dwellings, with some properties within the Heritage Overlay. Properties along Spink Street (northern and southern end) are predominantly one to three-storey commercial buildings, with a zero setback.

The Activity Centre is enjoying commercial revitalisation and an intensification of land uses. Higher density developments have recently been approved and completed within the Activity Centre. Five-storey mixed use buildings have recently been completed at:

- 116–120 Martin Street
- 79–81 Asling Street.

The residential neighbourhoods surrounding the Activity Centre are mainly comprised of single dwellings, but with some multidwelling developments.

1.3 Background to the proposal

(i) Background to the Amendment

The previous *Bayside Planning Scheme Review* (BPSR) – adopted by Council in September 2011 – examined the robustness of the Local Planning Policy Framework (LPPF) in relation to achieving the objectives of the Municipal Strategic Statement. The BPSR recommended preparing a structure plan for the Activity Centre. The Activity Centre was identified as a location which would benefit from greater direction in relation to appropriate land uses, development and built form.

The Martin Street Neighbourhood Activity Centre, Local Area Plan at Clause 21.11-7 of the Bayside Planning Scheme, is underpinned by the existing Outline Development Plan for Martin Street adopted by the City of Brighton in 1991.

The Outline Development Plan is over 20 years' old and reflects neither current State Planning Policy nor current Council policy. A new structure plan was prepared for the Activity Centre based on current planning policy and a shared vision to manage the growth projected within the centre over time.

Structure Plan objectives

Council submitted that the main objectives of *Structure Plan* were:

To manage future housing growth within the ... Activity Centre in accordance with the Bayside Housing Strategy and State Planning Policy.

To ensure planning for future growth in the ... Activity Centre seeks community input and addresses the community's vision for the future of the centre.

To provide the framework and guiding principles for the consideration of planning permits for new development within the ... Activity Centre under the provisions of the Bayside Planning Scheme.

To identify the social and physical infrastructure needed to meet the requirements of the future population and businesses within the ... Activity Centre.

To provide developers, investors and the local community with certainty regarding the nature of future development within the ... Activity Centre.

Identify the size, land use mix, built form and landscape characteristics required to meet the community's aspirations for the ... Activity Centre and to meet the ... Activity Centre's designated social and economic role under state and local planning policy.

Promote optimal access to and from the ... Activity Centre by all forms of public and private transport.

1.4 What are the issues

Council received a total of 37 submissions.

The key issues and feedback raised in submissions were:

- Varied opinions on building heights and setbacks across the precincts, and their associated impacts on character. Some submissions sought greater height and reduced setbacks, other lesser heights and increased setbacks.
- A push to intensify land use east of the railway line due to the separation opportunities provided by the railway line, North Road and Brighton Road and a desire to amend the *Structure Plan* boundary to exclude land west of the railway line.
- Concerns about exacerbating the traffic and parking conditions for the centre.
- Impact of development on the heritage integrity of the area.
- Impact of development on the amenity of existing residential properties and concerns about potential overdevelopment of the centre.
- Suggestions for other changes to the Amendment, such as:
 - retain the Neighbourhood Residential Zone (NRZ) in the Activity Centre
 - the design requirements for roof decks and balconies should be removed for properties in a Commercial Zone.

Submitters and the Panel also identified a number of drafting issues.


















1.5 Proposed controls

The height and setback controls are shown in Figure 1.

Figure 1 Proposed controls



Legend

<ul style="list-style-type: none">  Structure Plan area boundary  Gardenvale Station  Key landmark redevelopment opportunity  Heritage Overlay  Rear of side vehicle access only  Key rear land upgrade 	<p>Commercial area (Preferred Heights)</p> <ul style="list-style-type: none">  Precinct A 5 storey – 17m height  Precinct B 4 storey – 14m height  Precinct C 3 storey – 11m height <p>Residential area (Mandatory maximum heights)</p> <ul style="list-style-type: none">  Precinct D 3 storey – 11m height  Precinct E 2 storey – 9m height 	<p>Setbacks (Preferred)</p> <ul style="list-style-type: none">  Active frontage – 0m front setback no vehicle access  Heritage building upper level setback – 5m  3 storeys and above set back – 3m  Front setback – 3m  Front setback – 6m  Side and rear setback in accordance with Clause 55 of the Bayside Planning Scheme
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1.6 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
- General issues
 - Location of growth in the centre
 - The proposed residential rezonings
 - Commercial building heights
 - Setbacks
 - Use of mandatory controls
 - Access
- Site specific issues
 - New apartments in Martin Street, Brighton
 - 20 Spink Street, Brighton
 - 129–135 Martin Street, Brighton
 - 115 Martin Street, Brighton
 - 10 Spink Street, Brighton
 - 14 Spink Street, Brighton
 - 75 Asling Street, Brighton
- Drafting issues.

2 Strategic justification

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed Council's response and the policy context of the Amendment, and has made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

(i) Settlement

SPPF Clause 11 – Settlement

Clause 11.01-2 (Activity Centre Planning) seeks to encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses. A strategy to achieve this includes encouraging a diversity of housing types at higher densities in and around activity centres.

Clause 11.06-2 (Housing Choice) seeks to provide housing choice close to jobs and services by facilitating increased housing in the established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport, to direct new housing to areas with appropriate infrastructure, to deliver more housing closer to jobs and public transport and to support new housing in activity centres and other places that offer good access to jobs, services and public transport.

Clause 11.06-5 (Neighbourhoods) seeks to create mixed use neighbourhoods at varying densities that offer more choice in housing, create opportunities for local business and jobs and deliver better access to services and facilities and to support a network of vibrant activity centres.

Plan Melbourne

Plan Melbourne 2017-2050 identifies the Metropolitan and Major Activity Centres. Bayside has no Metropolitan Activity Centre, but Major Activity Centres at Brighton–Bay Street, Brighton–Church Street, Cheltenham, Hampton, Sandringham.

Plan Melbourne presents a number of directions and policies supporting growth and development in activity centres.

The focus of planning for smaller centres such as the Activity Centre is through neighbourhood activity centre planning, based around directions for '20 minute neighbourhoods'. This continues long standing planning policy support for new housing in activity centres and other places that offer good access to jobs, services and public transport.

Bayside Housing Strategy

Under the Bayside Housing Strategy, the Activity Centre's potential for growth is based on the ability of a local neighbourhood level activity centre to provide for a variety of housing choices with access to shops, services and transport infrastructure.

LPPF Clause 21.11 Local areas

Clause 21.11 focuses on the local area implementation of the objectives and strategies for certain precincts and key strategic development sites within the municipality. The Amendment seeks to update the vision, objectives and strategies for the Activity Centre, to provide certainty for developers and the community of how the Activity Centre will develop.

(ii) Built environment

SPPF Clause 15 – Built environment and heritage

Clause 15.01-1 (Urban design) seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity. Strategies to achieve this include ensuring redevelopment contributes to community and cultural life by improving safety, diversity and choice, the quality of living and working environments, accessibility and inclusiveness and environmental sustainability.

Clause 15.03-2 (Heritage conservation) seeks to ensure the conservation of places of heritage significance. Strategies to achieve this include ensuring an appropriate setting and context for heritage places is maintained or enhances and supporting the adaptive reuse of heritage buildings whose use has become redundant.

LPPF Clause 21.06 – Built environment and heritage

Clause 21.06 seeks to provide certainty in relation to the preferred future character for residential areas. The Amendment supports this Clause by providing appropriate design guidance to ensure that residential development is site responsive and responds to the anticipated population growth in the area.

LPPF Clause 21.08 – Open space

Clause 21.08 seeks to provide and enhance open space and recreational opportunities within the municipality.

(iii) Housing

SPPF Clause 16 – Housing

Clause 16.02-1 (Location of Residential Development) states new housing should be located in or close to activity centres and at other strategic redevelopment sites that offer good access to services and transport. Strategies to achieve this include increasing the proportion of housing to be developed within activity centres, and encouraging higher density development on sites that are well located in relation to activity centres and public transport.

Clause 16.01-3 (Housing opportunity areas) seeks to identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne. Strategies to achieve this include identifying housing opportunity areas that are in or beside Neighbourhood Activity Centres that are served by public transport and areas near existing railway stations that can support transit-oriented development.

LPPF Clause 21.03 – Settlement and housing

Clause 21.03 seeks to direct population growth in appropriate locations and provide housing to meet the changing needs of the community. The *Bayside Housing Strategy 2012* identified the Activity Centre as one of Bayside's focus areas for future moderate residential growth as it provides good access to shops and public transport.

(iv) Economic Development

SPPF Clause 17 – Economic development

Clause 17 seeks to encourage development which meet the communities' 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.

(v) Transport

SPPF Clause 18 – Transport

Clause 18 seeks to encourage safe and sustainable transport systems that integrate land use with transport. In support of this objective, the Amendment concentrates higher density residential development close to Gardenvale Railway Station and several bus routes. In addition, the Amendment advocates for an improvement in the safety and amenity for railway users as well as improved pedestrian access to public transport services.

This Amendment encourages the use of walking and cycling by creating environments that are safe and attractive.

LPPF Clause 21.09 – Transport and access

Clause 21.09 seeks to promote an integrated approach to transport through clustering services in a convenient location that is accessible by foot, bicycle or public transport. The Amendment seeks to concentrate higher density residential development and a range of commercial uses, close to Gardenvale Railway Station and several bus routes.

2.2 Relevant VCAT decisions

Development opportunities afforded to Neighbourhood Activity Centres have been discussed within recent Victorian Civil and Administrative Tribunal (VCAT) decisions, including those for development within the Martin Street Activity Centre, as outlined below:

Glenhill Pty Ltd v Stonnington CC & Ors [2013] VCAT 488

In the Tribunal's conclusion in *Glenhill Pty Ltd v Stonnington CC & Ors [2013] VCAT 488* which discussed higher density development within a neighbourhood activity centre, Members Cimino and Keddie stated:

Our analysis of state policy is that higher density housing is specifically contemplated and encouraged not only within, but also around, a NAC. The notion of higher density housing within a NAC, particularly one where land is underutilised, comprising a centre which contains redevelopment opportunities, is well served by public transport and has a high level of accessibility given its

proximity to Melbourne's arterial road network is clearly in line with state policy.

M & A Brighton Pty Ltd v Bayside CC [2013] VCAT 2113

In the Tribunal decision involving the development of the property at 79-81 Asling Street (within the Martin Street Activity Centre), in relation to more intensive forms of development concentrated in higher order centres, Member Taranto stated:

Rather, activity centres serve a variety of functions and their role in the hierarchy is not defined purely by reference to building height. The type and mix of land uses they accommodate, their physical size and their geographic location relative to other activities, infrastructure and development all play a part in defining the role of activity centres.

Thus, as the Tribunal went on to observe in Glenhill:

... It is not as simple as saying that to respect the Activity Centre hierarchy, buildings within NACs must be lower than those in higher order centres.

Double Yellow Dot Pty Ltd v Bayside CC [2014] VCAT 309

In the Tribunal decision involving the development of a five-storey building at 116-120 Martin Street, Brighton, also within the Martin Street Activity Centre, Members Deidun and Gray stated:

Having regard to the whole of policy, we consider that there is a clear and consistent message that large consolidated sites such as this within a large neighbourhood activity centre and an identified residential opportunity area, that is within 200 metres of a railway station, is suitable for higher density housing. We therefore consider that a building of the scale of five storeys, as proposed, is entirely consistent with this policy intent. Adding extra emphasis to the need to responsibly maximise the housing opportunity provided on the review site, is the fact that much of the land within the residential opportunity area that surrounds the Gardenvale Railway Station, including parts of the Martin Street Neighbourhood Activity Centre, are constrained by the Heritage Overlay. The land so covered by the Heritage Overlay may have difficulty contributing in a meaningful way to the increased and more diverse housing that the Bayside Municipal Strategic Statement so clearly calls out for. Those sites outside of the Heritage Overlay therefore need to undertake more of the 'heavy lifting' required to achieve the relevant policy. This only further clarifies for us the important role that the review site plays in providing additional and more diverse housing opportunities for this local community.

2.3 Conclusion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the SPPF and LPPF. The Amendment is not consistent with the relevant Ministerial Directions and Practice Notes, and these issues are addressed in the report. Generally, the Amendment is well founded and strategically justified, and the Amendment should proceed

subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

The Panel recommends:

Bayside Planning Scheme Amendment C152 be adopted as exhibited subject to the changes identified in this report.

Add consolidated conditions here to comply with template.

3 General issues

3.1 Location of growth in the centre

(i) What is the issue

A number of submissions suggested that growth should be redistributed from the west to the east of the railway line.

(ii) Submissions

Some submitters identified that residential precincts east of the railway line should have increased height beyond the three-storey mandatory maximum proposed. The trade-off proposed is that lesser growth would be accommodated in the western residential precincts of the centre.

(iii) Discussion and conclusion

The Panel agrees with Council that this redistributing growth from the west to the east of the railway line was not consistent with the moderate level of growth encouraged for the centre and is not consistent with the *Structure Plan*. Even if residential land west of the railway line were removed from the *Structure Plan* boundary, shifting the preference for development from this location does not prevent development from occurring in this location given its proximity to the centre.

The Panel concludes:

- there is no strategic logic in trying to redistribute growth from one side of the centre to another – each need to be considered on its merits.

3.2 The proposed residential rezonings

(i) What is the issue

The residential precincts in the *Structure Plan* are proposed to be rezoned to the GRZ from the NRZ, with both two- and three-storey mandatory height controls included.

Concerns were expressed about the removal of the NRZ3 and its replacement with the GRZ9 because it would allow more dwellings on the residential lots. The restriction of the number of dwellings in the NRZ has been amended.

(ii) Submissions

Council advised that as a result of the changes to the residential zones through Amendment VC110, Council's objectives for the two-storey areas can be achieved while retaining these properties within the NRZ.

VC110 amended the purpose of the NRZ to remove:

- *To limit opportunities for increased residential development.*
- *To implement neighbourhood character policy and adopted neighbourhood character guidelines.*

It was submitted that the deletion of these two purpose statements has lessened the emphasis on neighbourhood character and in limiting increases to the number of dwellings. The balance has been shifted in favour of allowing more dwellings in recognition of the necessity to provide additional housing in order to meet projected population growth.

Use of schedules to the Residential Zones

The General Residential Zone Schedule 9 was proposed for the residential areas within the precinct. Following the recent changes to the suite of residential zones, Council submitted it was appropriate to apply separate residential zones to the two residential precincts:

Schedule 9 to the GRZ would apply to the areas of the Activity Centre where a mandatory three-storey height control is proposed (Precinct D). This schedule would specify the mandatory three-storey/11 metre height control as well as the mandatory application of the side and rear setback provisions of Clauses 54 and 55. This schedule would also specify the front setback requirements outlined in the DDO18.

Schedule 4 to the NRZ would apply to the residential precincts proposed to have a two-storey mandatory height control (Precinct E) and would specify the heights and setback controls referred to in the DDO18.

Council submitted that as the height controls in the GRZ relate to residential buildings and land used for dwellings, the height control requirements would be retained in the DDO18 to ensure that any nonresidential uses in these precincts comply with to the built form objectives of the *Structure Plan*.

Council submitted that while this is a change from the exhibited documentation, it does not alter the *Structure Plan* vision for these areas and retains a number of properties within the NRZ instead of rezoning as proposed.

Council presented revised schedules as Appendices 18 and 19 to its part B submission.

(iii) Discussion and conclusion

The Panel generally agrees with Council's approach to the residential rezoning, but is troubled by the schedules that attempt to make current discretionary Standards A10 and B17 of Clauses mandatory.

The Panel finds the way this has been drafted to be confusing. In Tables to Clause 2 of the proposed schedules essentially imposes a mandatory requirement for a discretionary standard. It says "*Buildings must be setback in accordance with Standards ...*", but the Standards themselves are discretionary.

The draft says under 'Application requirements' in the proposed Schedule 9 to the GRZ that:

A permit cannot be granted to vary the setback requirements specified in Clause 2.0 of the Schedule.

The proposed NRZ Schedule 4 has similar wording.

The head clause of the relevant zone says:

Application requirements

An application must be accompanied by the following information, as appropriate:

...

- *Any other application requirements specified in a schedule to this zone.*

There appears to be no head of power in the 'Application requirements' section to impose a mandatory control.

The *Ministerial Direction on the Form and Content of Planning Schemes* sets out clear text for the Application requirement's Clause:

Where no application requirements are specified insert "None specified". or

Where application requirements are specified insert "The following application requirements apply to an application for a permit under Clause 32.08, in addition to those specified in Clause 32.08 and elsewhere in the Scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

□ ..."

In any case, the Panel cannot see why the specific sites identified in GRZ9 warrant a mandatory control that is discretionary elsewhere and no detailed analysis of the interfaces for the sites was provided to the Panel. Similarly, the Panel can see no justification for mandatory setback controls in the NRZ.

The Panel notes that the proposed schedules do not seem to follow the most recent *Ministerial Direction on the Form and Content of Planning Schemes*.

The Panel recommends:

Apply a schedule to the General Residential Zone to the areas in Precinct D, specifying a mandatory three-storey/11 metre height control, and:

- **specifying "None Specified" in the table next to Standards A10 and B17**
- **specifying "None Specified" under Application requirements**
- **ensuring compliance with the Ministerial Direction on the Form and Content of Planning Schemes.**

Apply a schedule to the Neighbourhood Residential Zone to the areas in Precinct E. specifying a mandatory two-storey/9 metre height control but:

- **specifying "None Specified" in the table next to Standards A10 and B17**
- **specifying "None Specified" under Application requirements**
- **ensuring compliance with the Ministerial Direction on the Form and Content of Planning Schemes.**

3.3 Commercial building heights

(i) What is the issue

The issue is whether the proposed heights in commercial areas are appropriate.

(ii) Submissions

Council submitted that the key objective in preparing the heights for the centre has been the preservation of the heritage characteristics of the centre. Discretionary controls have been proposed for the commercial precincts to ensure that flexibility exists for a taller built form if relevant policy objectives can still be met with a taller form.

Heights in the commercial area range from three to five storeys, and in the residential areas two to three storeys. A number of submissions from residents sought a two-storey height limit on commercial land abutting their dwelling. – property?

As exhibited, one area has the five-storey discretionary height limit applied – the triangular landmark site at the northeastern corner of the centre adjacent to the Nepean Highway. Council submitted This site is unconstrained by heritage controls and benefits from the taller form of the elevated railway station and Nepean Highway Overpass, allowing a taller building form to be recommended.

Discretionary four-storey height controls are proposed for two sites west of Asling Street, which since the commencement of the structure planning process have been developed with five-storey buildings. Despite the existing form, a four-storey discretionary control is proposed because, as Council submitted, *“this more clearly articulates Council’s expectations for built form in the centre”*.

Council submitted that the three-storey discretionary control proposed for the commercial core relates to the need to ensure the consistency, quality, rhythm and heritage elements of the streetscape are retained. There are several properties in Spink Street (south of Martin Street) within this precinct that are unencumbered by a Heritage Overlay. Council acknowledged that these properties benefit from generally having wider frontages than properties addressing Martin Street and may be suited to accommodating additional height.

Council noted the strong community view that the small scale historic feel of the Activity Centre was a highly valued and important characteristic to be retained. As a late Victorian building, it contributes to the identity of the Martin Street Activity Centre and surrounding area as a historic precinct.

(iii) Discussion and conclusion

Some heights differ from the original urban design assessment. The Panel accepts that heights and precinct boundaries might be refined throughout the development of the *Structure Plan* and the community consultation on the *Structure Plan*. The Panel notes that, some heights have been increased and others decreased reflecting Council’s response to community perceptions about where height should be accommodated in the centre.

The Panel notes Council’s submission that, as the heights in the commercial areas are discretionary, taller forms could be permitted. The Panel thinks that, as this centre has been

identified for growth, heights should be set to permit the maximum amount of development that can be appropriately accommodated – accepting of course that individual sites might have specific constraints.

The Panel broadly accepts that the proposed heights represent an appropriate balance between the economic role of the centre, the level of growth encouraged in the centre and the built form objectives designed to respect the character of the centre. However, the Panel thinks that for a number of sites the proposed heights are too restrictive.

The Panel concludes:

- the overall scale of development proposed is generally appropriate.

3.4 Setbacks

(i) What is the issue

Concerns were expressed about the proposed setbacks.

(ii) Submissions

A range of building setbacks are proposed to respect the character and amenity of the nearby heritage and residential precincts. The setbacks nominated differ depending on the height of buildings and the location of development within the various precincts of the centre.

Front setbacks

Council advised:

- Discretionary setback controls are proposed for the commercial precincts to provide flexibility for alternative design treatments which may meet design objectives.
- Mandatory setback controls are proposed for residential precincts to provide certainty as to the future residential character to be achieved.

Proposed setbacks vary from zero to 6 metres:

- A zero front setback is required for buildings within the commercial core to encourage active ground floor uses.
- A 3 metre mandatory front setback is proposed for Precinct D (except where the precinct addresses North Road) to provide a small landscaped area in the front setback of these precincts consistent with Bayside's garden character referenced in the Scheme. A 3 metre setback is also nominated for the section of Precinct E addressing Nepean Highway/Sargon Grove.
- A 6 metre mandatory front setback is nominated for Precinct E as well as the section of Precinct D addressing North Road as this will balance infill objectives while respecting the landscape character of the broader North Road streetscape.

Upper floor front setbacks

Council submitted that the intent of requiring upper floor setbacks is to reduce the visual impact of new development and to ensure that when visible, architectural treatments are proposed rather than contributing to the building mass.

Proposed setbacks vary from 3 to 5 metres:

- A 3 metre upper floor setback is proposed in the mixed use core for “*three storeys and above*” to maintain the 9 metre street wall throughout the centre and create the opportunity for a change in architectural design of building mass above this level.
- A 5 metre upper floor front setback is proposed for heritage buildings within the centre to minimise the appearance of upper levels in order to display the prominence of the heritage building. These setbacks can be used for balconies and can contribute to the open space provided for new dwellings on upper floors.

Side and rear setbacks

A number of submissions raised concerns about the impact of new development on existing amenity in terms of solar access, overshadowing and more.

Side and rear setbacks are nominated as being subject to Clauses 54 and 55 requirements of the Scheme. This is of particular relevance for land in a Commercial Zone where it interfaces with land outside the *Structure Plan* boundary.

Council submitted that Clauses 54, 55 and 58 of the Scheme provide greater design guidance for new residential development within the centre. Where no specific requirements are specified in the proposed controls, any impacts relating to overshadowing, overlooking, bulk, noise, access to daylight and internal amenity can be considered as part of the individual planning permit applications.

(iii) Roof garden setbacks

The Design and Development Overlay (DDO) proposes:

In a Commercial Zone, a roof deck or balcony should be set back at least two metres from the wall of the storey below which faces the front or rear of the site. It is submitted that these controls and requirements are unreasonably restrictive and will inhibit the achievement of the objectives of the Structure Plan and, indeed, the objectives of the Planning Scheme.

(iv) Discussion and conclusion

The zero setback is appropriate for commercial streets in the Activity Centre.

The Panel does not agree with the need to set back the third storey of buildings. The recently constructed development has the fourth floor level set back. This has achieved a good result in maintaining reasonably consistent street wall and reducing the visual impact of the upper levels. It is not clear why the third level also needs to be setback.

The setback in the Heritage Overlay makes sense in giving guidance on how new development can sit behind a retained heritage frontage.

The Panel agrees, in general, that the proposed height and setback controls accompanied with the ResCode provisions will strike an appropriate balance between the character and amenity objectives sought and provides a reasonable framework for growth.

There are a many examples of buildings – some in the Activity Centre itself – where upper level balconies are flush with the facade. Setting upper level balconies back from the street

wall would seem to impose a poor urban design outcome, potentially reducing casual surveillance of the street below, while adding nothing of value in design terms.

The Panel recommends:

Change the requirement for the upper level setback to apply to the fourth and higher storeys.

Delete the requirement to setback upper level balconies by 2 metres in commercial zones.

3.5 Use of mandatory controls

Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes guides the use of mandatory controls. A number of setbacks proposed are mandatory rather than performance based provisions. Mandatory provisions are only to be used in circumstances where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes.

Council's assessment of mandatory setback controls against Planning Practice Note 59 requirement

Council presented a detailed consideration of the requirements of the Practice Note:

Is the mandatory provision strategically supported?

Does the proposed measure have a sound strategic basis having regard to the planning objective to be achieved and the planning policy framework generally?

Does the proposed mandatory measure clearly implement a policy or achieve an objective rather than just being a prescriptive tool?

Yes. The use of mandatory front setback controls is consistent with the objectives of the Structure Plan as it provides an important distinction between the different precincts within the centre. This provides the landscaping objectives sought for the residential areas and ensures appropriate transitions from the higher density commercial core to the residential areas outside the Structure Plan boundary.

The mandatory application of the Clause 55.04 side and rear setback requirements will ensure that the transition is provided to the 'Minimal Growth Areas' outside the Structure Plan boundary.

Is the mandatory provision appropriate to the majority of proposals?

Has the scope of the proposed mandatory provision been carefully considered to ensure that it will be appropriate in the vast majority of cases to limit the unnecessary loss of the flexibility and opportunity available in a performance based system?

Will the considered application of planning policy to be implemented by the proposed measure lead to the outcome prescribed by the measure in the vast majority of cases or is it merely on of a number of possible outcomes?

Yes. Mandatory front setbacks will allow clear differentiation between the preferred character of the different precincts within the Structure Plan boundary. Given the level of growth anticipated for the centre, and the focus on protecting amenity and the heritage buildings within nearby areas, a mandatory application of the Clause 55.04-1 requirements will ensure that this interface is appropriately managed with certainty provided as to how the built form will be transitioned.

Does the mandatory provision provide for the preferred outcome?

Does a proposed mandatory provision resolve divergent opinions within the community as to a preferred outcome when a consistent outcome is necessary?

Does a proposed mandatory provision avoid the risk of adverse outcomes in circumstances where there is likely to be constant pressure for development inconsistent with planning policy?

Is there real evidence of development exceeding the proposed control?

Yes. This is particularly the case in relation to the proposed mandatory side and rear setback requirements being in accordance with Clause 55.04-1. This will provide certainty for residents outside the Structure Plan boundary as to what to expect from future development to ensure that an appropriate transition is provided. Throughout the community consultation processes, the interface between the activity centre and moderate growth area was raised as a significant concern. As such, the application of Clause 55.04-1 as a mandatory control will provide the certainty required to appropriately manage sensitive interfaces.

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

Will the majority of proposals not in accordance with the requirements fail to meet the objectives of the control?

Will the majority of proposals not in accordance with the requirements lead to unacceptable planning outcomes?

Yes. If the front setbacks are not provided, it undermines the preferred built form objectives for each precinct and can result in commercial uses extending into residential precincts within the Activity Centre. Requiring that setbacks are provided to create landscaping buffers will achieve the objectives for each precinct.

Will the mandatory provision reduce administrative costs?

Will the proposed mandatory provision reduce costs imposed on Councils, applicants and the community to the extent that it significantly outweighs the benefit of a performance based system?

There is unlikely to be any noticeable impact in terms of administrative costs as a result of mandatory setbacks being introduced.

Planning Practice Note 60: *Height and Setback Controls for Activity Centres*, states:

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

The Panel is concerned that the Amendment is seeking to make mandatory requirements that are otherwise discretionary. It is not clear why the Activity Centre should have mandatory controls applied that elsewhere in the municipality would be discretionary. The Panel has reviewed Council's justification for mandatory controls but does not find that the case from departing from discretionary controls is supported.

The Panel recommends:

Remove mandatory requirements from the DDO.

3.6 Access

3.6.1 Traffic and parking

Council submitted that as part of the research and analysis undertaken during the preparation of the *Structure Plan*, Council commissioned Traffix Group to prepare an assessment of existing traffic, parking and transport conditions in the Activity Centre.

A number of submissions raised concerns about the lack of car parking and traffic congestion in the area due to the increased population growth. The Traffix Group analysis considered the existing traffic and parking conditions of the centre, pedestrian and bicycle facilities, previous background studies and findings to assist the development of policies and actions for the Activity Centre.

The quantum of development permitted by the controls will not materially alter the amount of traffic in the area.

The Panel agrees with Council that the Planning Scheme already provides sufficient guidance in relation to car parking associated with development and no precinct specific car parking requirements are required at this time.

3.6.2 Laneways

(i) What is the issue

The Amendment seeks to widen key laneways to 5.5 metres as part of site redevelopment, to improve access and car parking within the Activity Centre. A number of submitters objected to this requirement.

(ii) Submissions

The *Traffic and Transport Analysis* prepared by Traffix Group which informed the Amendment concluded that:

... all the laneways within the Activity Centre are currently approximately only 3.0 metres wide which is less than the desirable width of 5.5 metres described in the Bayside Planning Scheme to enable the two vehicles to pass. However, due to the low existing traffic volumes estimated to use the laneways, the existing laneway width is considered sufficient to meet current demand.

This assessment has informed the proposed DDO18 through the incorporation of a proposed design and built form requirement which states:

... widen key laneways to 5.5 metres as part of redevelopment.

A decision guideline asks the Responsible Authority to consider:

... whether the development impacts on the potential to widen or enhance existing key laneways.

It was submitted that the requirement to upgrade key laneways is unclear and ambiguous, and is considered to unreasonably limit redevelopment particularly sites abutting two laneways. It was noted that a Public Acquisition Overlay has not been proposed (or recommended), therefore it is unclear how any certainty will be provided that all sites abutting a key laneway will relinquish land for the purpose of laneway widening and upgrading.

It was submitted that the requirement:

... is inappropriate for inclusion as a control within the DDO as it does not relate to design and built form outcomes and is better suited to be managed by an alternative planning control, such as the Public Acquisition Overlay.

It was suggested alternative approach might involve laneway upgrading at an 'as needs' basis. This way, future development adjacent to a laneway would provide a traffic assessment outlining whether the existing laneway has the capacity to accommodate the anticipated traffic as a result of the proposed development, and if upgrades are required, this would be factored into the decision-making process of the proposed development.

(iii) Discussion and conclusion

The Panel generally supports the requirement to widen laneways. The proposal is based on a clear outcome, the facilitation of two-way traffic. Proving access from the rear of properties is clearly desirable in an activity centre. This requirement, which applies to key laneways, will help facilitate this. Comments on the laneway behind 2 to 10 Spink Street is discussed in Chapter 4.

4 Site specific issues

4.1 Existing five-storey buildings

Council is proposing to apply a four-storey height limit to sites that have recently been developed with five-storey buildings.

These sites provide a good test as to whether the height limits proposed by Council make sense. If the five-story building had clearly demonstrable shortcomings related to their height, then it might be possible to conclude that a four-storey limit was the correct approach and approving the five-storey development was, in hindsight, a poor decision. Neither Council, nor other submitters were able to identify any specific issue with the new development.

The fact that Council says that a four-storey limit is appropriate where perfectly acceptable five-story buildings have been constructed seem to indicate that Council is under estimating how tall buildings should be.

The Panel can see no logic in applying a four-storey height limit to building that are already constructed at five storeys, especially when these buildings seem to make a positive contribution to the centre. This approach has the potential to imply the 'four' really means 'five' undermining orderly planning.

The Panel recommends:

Apply Precinct A to the existing five-storey buildings.

4.2 20 Spink Street, Brighton

(i) What is the issue

Mr McQueen raised concerns regarding the proposed five-storey limit on the neighbouring property 20 Spink Street, where the Bingo Club is currently situated.

(ii) Submissions

Mr McQueen submitted:

As this is the North facing boundary of my unit, an increase from the present 3 (I believe 12 metre) to a five-storey limit would have a detrimental impact in relation to natural light and privacy and my property in general.

As a result of the proposal, I highlight in particular:

- a balcony, clear bedroom and bathroom windows facing the north side that would be forever covered by shade*
- third bedroom window on first floor's only light source comes from small north facing balcony*
- privacy issues if windows from neighbouring floors above are not opaque or are able to be opened*
- reduced liveability in kitchen and living areas due to skylights therein suffering from a lack of natural light*

- *west facing balcony and living area depend on and would be deprived of incoming sun from the north for most of the day*
- *first floor lobby area which leads to all units also depends on north facing glass brick wall and large skylight for natural light*
- *possible mould and mildew in any of those areas mentioned above currently receiving unobscured sunlight and heat*
- *the unsightliness of a probable 17 metre brick or concrete wall directly in front of one balcony, clear north facing windows, and directly next to main balcony*
- *increased noise levels to a largely residential building as five rather than three storeys would obviously create a greater amount of activity next door*
- *lack of car parking should the bingo site become commercial in what is already an area extremely 'tight' for parking.*

Council submitted:

Any planning application made in the proposed five-storey location would need to be assessed against the Bayside Planning Scheme. Specifically, any development would need to be considered against the Commercial 1 Zone, Car Parking Provisions (Clause 52.06), Design and Development Overlay Schedule 18 and the 'Guidelines for Higher Density Residential Development'. These policies and guidelines require consideration of the amenity impacts on adjoining properties and require new developments to be designed in a way that limits these impacts.

A five-storey limit is acceptable in terms of overall height for the centre. The Panel accepts that development at that height may impact on the submitters' dwelling, but that would be a matter to be determined at the development approval stage. It is not clear to the Panel that all five-story development on this site would have unacceptable off site impacts.

The Panel concludes:

- Precinct A is appropriate for 20 Spink Street, Brighton, is appropriate.

4.3 129–135 Martin Street, Brighton

(i) What is the issue

The site owner considered the height controls too restrictive for 129–135 Martin Street.

The submitter pointed out that there was (at the time of the submission) a current application for a four-storey mixed use development at 123–127 Martin Street. The Panel was not been advised of the outcome of this application.

The site is opposite a new five-story development and is covered by a Heritage Overlay.

A three-storey limit has been proposed across all of the heritage core of the centre. It is not clear how this site is different to other similar sites in the centre and a consistent approach should be applied to similar land. Considering the nature of development and the development potential of the bulk of the sites in the heritage core a three-storey limit is considered appropriate.

4.4 115 Martin Street, Brighton

The site owner considered the height controls too restrictive.

Table 1 Changes requested for 115 Martin Street

What was exhibited	What is requested
Preferred maximum 11 metres (3 storeys)	Four or more storeys

The site, located at the northeastern corner of the Hamilton Street and Martin Street intersection, is included within this precinct despite not being affected by a Heritage Overlay. Council advised that this site has been included in this precinct as the rest of this block is within the Heritage Overlay. It is proposed to apply the controls affecting the rest of these fine grain shop fronts to 115 Martin Street to ensure a consistent streetscape and built form.

The site is opposite newly developed five-story development and is covered by a Heritage Overlay.

A three-storey limit has been proposed across all of the heritage core of the centre. The site itself is not within the Heritage Overlay but is a single allotment between Hamilton Street ns the Heritage Overlay. A two-storey limit is proposed on the opposite side of Hamilton Street.

Although not with a Heritage Overlay the site is similar to other similar sites in the centre and a consistent approach should be applied to similar land. Considering the nature of development and the development potential of the bulk of the sites in the heritage core a three-storey limit is considered appropriate.

4.5 10 Spink Street, Brighton

(i) What is the issue

The site owner broadly supports the planning objectives guiding the Amendment, but objected to a number of specific elements in the DDO.

Table 2 Changes requested for 10 Spink Street

What was exhibited	What is requested
Preferred maximum 11 metres (3 storeys)	Include a new Precinct 'Precinct F': 4 storeys (14 metres)
A three metre upper level setback at third level and above	3 metres setback above four storeys
the requirement to widen key laneways to 5.5 metres as part of the precinct redevelopment	Removal of the requirement to widen the laneway

(ii) Submissions

The submitter argued that there was no strategic justification for the imposition of unreasonable built form controls within an existing large neighbourhood activity centre proximate to public transport and major highways. He added that the proposed controls would unreasonably stifle rather than enhance the revitalisation of the Activity Centre.

In relation to laneways, it was submitted that recent developments such as that at 2-4 Spink Street have been constructed against the laneway boundary and it is highly unlikely the laneway will be widened within this area in the future. It was submitted that the proposed approach also relies on all adjacent property owners redeveloping their land within the near future and relinquishing the same amount of land (to ensure a consistent laneway width and boundary), which is also highly unlikely.

(iii) Discussion and conclusion

Properties along Spink Street are currently developed with a mix of commercial and residential buildings, ranging in height from one to three storeys. All buildings along Spink Street have been constructed with a zero setback, and the building forms vary from older building stock to more contemporary developments such as that at the southernmost corner of Spink Street. Land uses within Spink Street include offices, a cafe, a former scout hall and dwellings.

In the nearby residential streets of Rose Street and Montclair Avenue residential allotments generally comprise single or double-storey dwellings, with some examples of multidwelling developments within the area. These areas are not affected by a Heritage Overlay, and there is no distinct built form pattern.

There does not seem to be any reason why sensitively designed four-storey building would not be appropriate for this site. Buildings at this height would still provide a transition to nearby lower forms.

A street wall of three storeys would be still be in keeping with character of the Activity Centre, and the new development on Martin Street demonstrates how development at this scale can fit within the centre.

In relation to laneways, the Panel does not accept that upgrading of key laneways is inappropriate control for a DDO. Provided the rationale for the widening is clearly spelled out and it is not applied blindly it could be an effective tool for providing improved access to properties. The Panel does agree that the laneways behind 2 to 10 Spink Street has no realistic prospect of being widened.

The Panel does not see the need to create a new precinct to address this submission.

The Panel recommends:

Apply precinct B to 2 to 10 Spink Street.

Delete the 'Key rear lane upgrade' notation from the rear of 2 to 10 Spink Street.

4.6 14 Spink Street, Brighton

(i) What is the issue

The site owner objected to a number of specific elements in the DDO.

Table 3 Changes requested for 14 Spink Street

What was exhibited	What is requested
Preferred maximum 11 metres (3 storeys)	Include in Precinct A: 5 storeys (17 metres)
At the third floor level, a building should be set back 3 metres from the front street boundary (that is, from Spink Street)	Balconies should be permitted to street wall
Key laneways should be widened to 5.5 metres	Removal of the requirement to widen the laneway

(ii) Submissions

14 Spink Street is in the Commercial 1 Zone and is not currently affected by any overlays. In the *Structure Plan*, the land (and the land surrounding it) is within the ‘core commercial’ area of the Activity Centre and an active street frontage is encouraged.

14 Spink Street is located on the eastern side of Spink Street, 30 metres south of Martin Street. It is almost an ‘island’ site, separated from other properties by laneways on both sides, and abutting vacant land at the rear. Opposite the front of the property, is an embankment above which runs the elevated Sandringham rail line.

A two-storey commercial building occupies the whole of 14 Spink Street. The ground floor level of this building contains a cafe lounge bar: ‘Sons of Mary’. At the rear of this premises is a car parking area, accessed from the laneway along the southern side of the building. The upper floor level is used for commercial purposes, primarily offices. The building has been refurbished and upgraded to allow for additional upper storeys to be added to the existing structure.

Beyond the laneway to the north, are the rear yards of one and two-storey retail premises that front onto Martin Street. These premises have rear access for parking and loading activities via the carriageway easement between them and 14 Spink Street. The building on the corner of Martin Street and Spink Street fronts onto Martin Street and has a side wall abutting Spink Street. The building does not extend to the rear part of the lot.

Immediately beyond the laneway to the south of 14 Spink Street are two properties occupied by single-storey buildings that abut the street. The Panel recommends a four-storey height limit for these properties.

(iii) Discussion

The Panel agrees that a five-storey development at 14 Spink Street could be acceptable in its context, and there is no policy justification for imposing a lower height. Impacts on adjoining

properties would need to be assessed, but the development in Martin Street shows that this centre can comfortably contain a five-storey building.

(iv) Recommendation

The Panel recommends:

Apply Precinct A to 20 Spink Street.

4.7 75 Asling Street, Brighton

(i) What is the issue

The site owner objected to a number of specific elements in the DDO.

Table 4 Changes requested for 75 Asling Street

What was exhibited	What is requested
Precinct E: which identifies the site as being in a 'Residential Area' 9 metre (2 storey) height limit	Precinct C: 11 metre (3 storey) height limit

(ii) Evidence and submissions

The site contains a late Victorian bi-chrome brick house of typical form and detailing, which is currently used as offices.

Asling Street is zoned Commercial 1, the same zoning that applies to the properties immediately to the north along Martin Street in the Activity Centre.

The site is in the Westley Avenue heritage precinct and covered by the Heritage Overlay (HO663). The land within the balance of HO663 to the south and opposite is zoned Neighbourhood Residential. There are no individual heritage citations or statements of significance for the subject site.

The site is identified as a 'Contributory' place within the heritage precinct. The statement of significance for the HO663 precinct is:

As a speculative development, comprising almost entirely detached single-storey Edwardian red brick Queen Anne style villas, the Westley Avenue Precinct displays a high level of integrity and cohesion of scale, materials and setbacks, the villas having been constructed within a year and by the same builder.

Contributory Buildings

- Westley Avenue, Nos – 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14
- Asling Street, Nos – 69, 71, 73, **74**, 75, 76, 78, 80, 82, 84, 86, 88

David Helms gave evidence for the owners; he concluded:

- *A mandatory height control is not justified having regard to the heritage significance of the subject site and the HO663 precinct. The proposed change to a preferred height limit as resolved by Council is supported.*

- *A discretionary preferred maximum height of three stories (the is, the same as proposed for the site immediately to the north) is appropriate for the subject site.*

This opinion is based upon the following considerations:

- *The subject site is of lesser significance, as it is only late Victorian villa within the precinct and it is also located at the edge of the precinct and has a different built form context.*
- *There is no strategic justification for a mandatory height control having regard to the heritage significance of the subject site as a Contributory place within the HO663 precinct.*
- *A two-storey preferred height limit would unnecessarily constrain the development potential of the site and would create an unrealistic expectation of future development potential.*
- *There is opportunity to incorporate three-storey building forms on the subject site without affecting the significance of the HO663 precinct due to the land size and built form context.*
- *The proposed DDO18 in conjunction with the existing heritage controls and policy will provide clear guidance to ensure that any development will provide an appropriate transition in built form, and to decide whether variations to the preferred height controls are appropriate having regard to the heritage significance of the subject site and the HO663 precinct.*

Council submitted: that this property is incorrectly shown in the Amendment documentation as being within a residential precinct. As such, the exhibited controls for this site sought to apply the GRZ and a mandatory two-storey height control. Given the site is within a commercial precinct, Council considers that the Amendment documents can be corrected to nominate the property as being within a commercial precinct rather than a residential precinct.

Council maintained that although the site is not characteristic of the Edwardian period indicated within the Westley Street Heritage Precinct, the building is historic in nature and adds to the overall historic feel and character of the area which the *Structure Plan* has sought to retain.

Council submitted that a two-storey discretionary control was appropriate because:

It is a contributory building within a heritage precinct and guidance regarding an appropriate built form is required to retain the historic character of the precinct and maintain its visual appeal.

Although the building is within the Commercial 1 Zone, it is located on the periphery of the Activity Centre with a residential built form more consistent with the adjoining residential area.

It enables a suitable transition in building bulk and height between the commercial buildings to the north and the residential buildings to the south.

The two-storey height limit is a discretionary control and would allow for a third storey element if designed in a site responsive manner. This would be consistent

with the expert evidence that a third storey could be proposed at the rear of the site.

The subject site has a relatively narrow width of 15.4 metres. Council has concerns that a higher built form than that designated in the Structure Plan will unreasonably impact on the amenity of the adjoining residential property to the south. Unlike other commercial areas in the Structure Plan, there is no laneway or buffer provided to manage the transition. The property immediately to the north has a width of 16.5 metres, a commercial built form and abuts commercial properties on all sides.

Council submitted that the DDO18 will need to be amended to apply a new commercial precinct which solely applies to this property and provides a discretionary two-storey height control.

Council conceded that while there is benefit in having a consistent approach to heights for heritage protected commercial buildings, this site requires a sensitive transition to be provided to the adjoining properties which is suited to a two-storey discretionary height control.

(iii) Discussion and conclusion

There are potentially two reasons why a two-storey limit might be applied to this site:

- interface issues
- heritage issues.

In terms of interface issues, in other locations a three or four-storey height is identified for land abutting existing heritage residential areas. The Panel can see no reason why this site should be restricted to two storeys. Such a restriction would be inconsistent with how controls have been applied elsewhere.

If the site did not contain a heritage building, the Panel can see no reason why a three-storey height limit would not apply. This would be consistent with other interfaces. Such a limit does not imply that all three-storey development would be appropriate. The height limit is not required from a character point of view.

In term of heritage, the objective of heritage protection is not to prevent or prohibit new development but rather to ensure that alterations or additions, demolition or new development does not adversely impact upon the identified significance of the precinct. In short, to ensure an appropriate balance is struck between conservation and development.

The Panel accepts that there may be heritage or amenity impacts from a three-storey building as opposed to a two-storey building, but these can be examined in the light a specific proposal. There does not seem to be a general urban structure reason why this site (or part of it) could not support an appropriately designed three-storey building.

It does not seem to be the case that the heritage constraints rule out a three-storey building in all circumstances.

The Panel recommends:

Apply Precinct C to 75 Asling Street.

4.8 161 North Road, Brighton

(i) What is the issue

The site owner objected to a number of specific elements in the controls.

Table 5 Changes requested for 161 North Road

What was exhibited	What is requested
6 metre set back to Nepean Highway	No setback requirement

The submitters objected to the Amendment in its current form for the following reasons:

- The existing and future use of the site is not accurately recognised or provided for in either the *Structure Plan* or the proposed Municipal Strategic Statement.
- Development of the site would be significantly and unreasonably constrained by the proposed mandatory Gm street setback.

(ii) Submissions

The site is on the northwestern corner of North Road and Nepean Highway. It is approximately 821 square metres in area and roughly triangular in shape.

North Road and Nepean Highway are major arterial roads carrying significant traffic volumes.

On the northeastern corner of North Road and Nepean Highway, land at 233 Nepean Highway is currently being developed with a four-storey apartment building built hard to the Nepean Highway boundary.

The site is currently zoned Neighbourhood Residential Zone Schedule 3 and affected by Design and Development Overlay 3, which creates a permit trigger for development of a nonresidential building greater than two storeys or 8 metres in height (9 metres with slope).

The site is currently developed with a two-storey building used as a medical centre, which allows for one medical practitioner to operate from the site at any one time from 5am to 7pm Monday to Friday, and 8am to 1pm Saturday. More than 3,000 of the patients who have attended the existing clinic are residents of suburbs within the City of Bayside, and the current waiting list for new patients is three months' long. The medical centre use is not identified in any of the mapping of the centre.

It was submitted that the existing building is affected by rising damp and narrow corridor widths, has no lift and is unable to be sound-proofed for audiology tests. In order to replace the existing building with a purpose-built medical centre that complies with disabled access requirements and responds to community demand, the owners have lodged a planning permit application for development of the land with a new two-storey medical centre building.

It was submitted that the 6 metre setback would limit the development potential of the site for no clear urban design benefit.

Council submitted:

There is a current application before the Victorian Civil and Administrative Tribunal to redevelop the medical centre on this site with a different built form, scheduled to be heard in August 2017.

It is noted that the building on the site has a 6 metre setback from North Road and the proposed plans increase the front setback of the building to 7.9 metres.

Council has had opportunity to review the impacts of the setbacks for this site to the Nepean Highway in detail. The intention is not to limit development as the site is within a moderate growth area, but aims to ensure that a sufficient setback to the Nepean Highway is provided.

Council considers that reducing this setback to a mandatory 3 metre setback is reasonable.

(iii) Discussion and conclusion

Council has conceded that the 6 metre setback is excessive.

The Panel notes that the *Martin Street Neighbourhood Activity Centre Urban Design Framework* notes the potential for improving the landscape quality of the Nepean Highway in section 9 under 'Public spaces and landscape'.

Section 7 explains the rationale for setbacks:

7.3 Front Setbacks

Setbacks to the street define not just the character of the street but also how buildings can be used. The importance for Martin Street is to ensure a clear distinction between buildings and streets that are part of the mixed use core and those that are predominantly residential. The three front setback arrangements are as follows: Active frontage:

- *0 metre setback with no front vehicle access throughout the mixed use core. This facilitates ground floor retail uses that are open to the street with maximum glazing. Landscape setback.*
- *3 metre setback for residential areas immediately adjacent to the mixed use core. This provides a transition to more generous front setbacks in surrounding streets whilst increasing natural surveillance on the streets that approach the centre. Landscape setback.*
- *6 metre setback for residential areas further from the mixed use core. This provides further transition to the traditional setbacks of single dwellings in surrounding neighbourhood streets whilst creating more privacy for dwellings.*

It is not clear that a 6 metre setback to the Nepean Highway is relevant in achieving the transitions sought. In fact it is not clear why any setback from the Nepean Highway is needed at this particular location.

Building without setbacks occur from time to time in residential areas. The issue is what impact do they have on the character of an area. The Panel accepts that a setback along a

residential street is reasonable to maintain a consistent garden setback, but this does not seem to apply to the Nepean Highway frontage of this land.

The Panel notes that the residential blocks to the north do not have the setback from the Nepean Highway specified.

While a more sophisticated documentation of existing conditions might be desirable, recognising the nonresidential use of the land, this has not been done. If the nonresidential use on this site were to be recognised it would be appropriate to resurvey the entire residential area of the *Structure Plan* to identify any other nonresidential use. It is not clear what this extra work would achieve, because the existence of a nonresidential use does not influence what controls are applied.

The Panel concludes:

- it is not necessary to record the existing use in background documents.

The Panel recommends:

Delete the requirement for a 6 metre setback to the Nepean Highway for land between North Road and Rose Street.

4.9 VicTrack submission

The submission from VicTrack sought an exemption in DDO18 for “*any work required under the Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002*”.

Council considered that a specific exemption for was not appropriate in the DDO18, as this would be the only control in the Bayside Planning Scheme which provides such an exemption. No justification or reason has been provided as to why this precinct should have a specific exemption for these works compared with all other areas of Bayside.

Council submitted that if the State Government considers that such an exemption is warranted in the Scheme, a case should be made to Planning Services in the Department of Environment Land Water and Planning to provide for such an exemption in all areas.

While the VicTrack submission makes sense, it is entirely unclear what such works might be, or to what standards they would be completed.

The Panel agrees with Council, if such an exemption is warranted in the Scheme, a case should be made to provide for such an exemption in all areas.

5 Drafting issues

(i) What is the issue

Some submitters expressed concerns about the DDO and the “*vague and inconsistent terminology contained within*”.

(ii) Evidence and submissions

It was submitted that the drafting of DDO18 is cumbersome and somewhat unclear. Concerns included:

- a number of general design objectives do not specifically act as performance measures against which the proposed built form controls can be assessed
- the vision of the Activity Centre should be explicitly stated within the DDO, rather than referenced
- some design objectives relate to land use and are inappropriate for inclusion in a DDO, and the inclusion of these design objectives within the control has the potential to dilute and confuse its purpose of prescribing targeted built form outcomes for the precinct
- there are a number of inefficiencies with the wording of the ‘variations to the requirements of this schedule’.

(iii) Discussion and conclusion

There are features of the drafting which the Panel considers do follow best practice, but the DDO generally follows other DDOs in Brighton. The Panel is caught between supporting the admirable aim of having consistency of control within the one scheme and consistency with broader drafting conventions.

On balance, the Panel thinks broad consistency of DDOs in the one scheme is likely to cause fewer issues of interpretation than trying to ‘improve’ one DDO while leaving the others as they are.

The Panel is not convinced that many of the detailed changes made submissions made about the drafting are warranted, or are, in fact, improvements to the wording. The Panel has reviewed these suggestions (helpfully presented in track changes) but does not propose to document its view on each specific change. The Panel considers that other improvements could be made, in terms of streamlining the controls.

The Panel notes that drafting was subject to detailed advice at authorisation. Ultimately it not clear that the role of this Panel ought to be to make drafting changes where the Department has already provided advice on drafting, and which were not the subject of specific submissions. The changes proposed go to issues of clarity an operation of the controls. As observed above, the controls follow others used in Bayside. The Panel presumes that the planning authority is broadly satisfied with how those controls are operating in practice, or it would not have used them as a model.

The Panel does agree that incorporating the vision into the relevant objective will make using the control easier.

The Panel also considers that all requirements should be expressed using 'must' or 'should' as suggested by the plain English guidelines in *Using Victoria's Planning System*.

The Panel notes that the *Ministerial Direction on the Form and Content of Planning Schemes* has recently been updated and the DDO should be reviewed to ensure it complies with this Direction.

The Panel recommends:

Amend first objective to read:

- **To ensure the height, setbacks and design of new development is consistent with the vision of the Martin Street Structure Plan of 'a friendly local hub for shopping, transport and a range of housing choices that respond to Martin Street's neighbourhood scale and enhance its village atmosphere and heritage charm'.**

Express all requirements using 'should'.

Review the Design and Development Overlay to ensure compliance with the Ministerial Direction on the Form and Content of Planning Schemes and to remove redundant requirements.

Appendix A Submitters to the Amendment

No.	Submitter
1	Mr P J McQueen
2	Ms M M Naughton
3	Mr and Mrs Sanderson
4	Luella Nominees Pty Ltd
5	Pudel Family Trust
6	Anon
7	Mr W A Lagerberg
8	Ms J Budji
9	Mr B J Lazarides
10	Axani Pty Ltd
11	Mr and Mrs Callus
12	Mr and Mrs Purbrick
13	Bigadd Concepts Pty Ltd
14	Mr S P Webster
15	Mr and Mrs McLachlan
16	R A Geddes
17	Ms M P Smith
18	Mr and Mrs Scott
19	SJB Planning on behalf of BS Stillwell Holdings
20	Spink St Investments
21	Ratio Consultants on behalf of Kahrid Pty Ltd
22	Mr C Mitchell
23	Ms Charleston
24	Mr A Shenfield
25	SJB Planning on behalf of Mr Smith
26	Mr Smith
27	MGTS Enterprises Pty Ltd
28	SJB Planning on behalf of Ms Humphries
29	Essar Property Pty Ltd
30	SJB Planning on behalf of Ms Humphries

No.	Submitter
31	Mr S Tanner
32	Mr j Mouchaileh
33	Environment Protection Authority South Metropolitan Region
34	Department of Economic Development, Jobs, Transport and Resources
35	South East Water
36	VicTrack
37	VicRoads, Metropolitan South East Region

Appendix B Document list

No.	Date	Description	Tabled by
1	19 June 2017	Council submission	Council
2	19 June 2017	Council submission Appendices	Council
3	19 June 2017	Building plans of Lot 7, 18 Spink Street	Peter McQueen
4	19 June 2017	Extract of <i>Martin Street NAC Traffic and Transport Analysis</i> by Traffix Group	Clarence Mitchell
5	19 June 2017	Photos of local area	Clarence Mitchell
6	19 June 2017	Submission for Spink Street Investments	Elle Harrington
7	19 June 2017	Track changes version of DDO18	Elle Harrington
8	19 June 2017	Aerial photo	Elle Harrington
9	19 June 2017	Submission for Alla and Eduard Pudel	Emily Porter
10	19 June 2017	Submission for Kahrid Pty Ltd	Blanche Manuel
11	20 June 2017	Submission for MGTS Enterprises	Phillip Borelli
12	20 June 2017	Photos of local area	Phillip Borelli

Appendix C Panel preferred Design and Development Overlay Schedule 18

SCHEDULE 18 TO [CLAUSE 43.02](#) THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO18**.

BUILT FORM STANDARDS FOR MARTIN STREET STRUCTURE PLAN AREA

1.0 Design objectives

To ensure the height, setbacks and design of new development is consistent with the vision of the Martin Street Structure Plan of [‘a friendly local hub for shopping, transport and a range of housing choices that respond to Martin Street’s neighbourhood scale and enhance its village atmosphere and heritage charm’](#).

To retain the amenity of existing low density residential areas that adjoin the activity centre.

To ensure that new development respects the heritage significance and character of the activity centre.

To provide greater housing growth and diversity within the Activity Centre.

To ensure new development contributes to safe and active streets with an enhanced pedestrian environment.

2.0 Buildings and works

Meaning of terms

For the purposes of this schedule, a ‘storey’ excludes a basement, but includes an attic, mezzanine or built-over car parking area

For the purposes of this schedule, an ‘attic’ means a space within a building contained wholly within the roof pitch, which is not immediately enclosed by vertical external walls and may contain dormer windows, recessed windows, or skylights and does not contribute materially to the scale and mass of the building form. The following factors are indicative of an attic:

- A space which is wholly contained / enclosed within a roof space.
- A space which is not bordered by any external walls except gable walls.
- A space which is relatively small in scale in relation to the scale of the remaining built form.
- The presence of dormer style windows or skylights.
- A space that does not contribute significantly to the building form.
- A space or series of spaces which in total occupy an area no greater than half the floor of the storey below

For the purposes of this schedule, a ‘dormer style window’ is defined as a projecting construction designed to provide natural lighting to attic spaces, comprising a vertical window with its own pitched roof, gable and side walls, framed into a larger sloping roof. Usually several dormers are used for balanced design.

For the purposes of this schedule, a ‘roof deck’ means an area designed and used as private open space that is located above the upper storey of a building.

Operation of overlay provisions

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with the mandatory requirements (those preceded by the verb ‘must/must not’ set out in this schedule).

Permit not required

A permit is not required to construct a building or construct or carry out works for any of the following:

- Navigational aids.
- A radio mast.
- A television mast associated with a building.
- Construct or carry out works for rail infrastructure (including rails, overhead electric power lines, structures to accommodate railway signals and associated ancillary works) on the land zoned Public Use Zone 4.
- An alteration to an existing building facade provided:
 - The alteration does not include the installation of an external roller shutter.
 - At least 80 per cent of the building facade at ground floor level is maintained as an entry or window with clear glazing.
 - An awning that projects over a road if it is authorised by the relevant public land manager.

On land within a Residential Zone, except for a roof deck, a permit is not required to construct or extend one dwelling on a lot or construct or carry out works associated with one dwelling on a lot with a building height of not more than:

- 9 metres overall height; or
- 10 metres overall height where the slope of the natural ground level at any cross section of the site of the building wider than 8 metres is 2.5 degrees or more.

Design and built form requirements

[The following building and works requirements apply to an application to construct a building or construct or carry out works](#)

Design response

All applications must be accompanied by a neighbourhood and site description and a design response which demonstrates how the proposed building achieves the relevant design objectives.

Building heights

A building should not exceed the preferred building heights (in metres and storeys) specified in the built form precinct provisions of this schedule.

~~A building must not exceed the maximum mandatory building heights (in metres and storeys) specified in the built form precinct provisions of this schedule.~~

Development should be designed to achieve a transition in height and building form at sensitive interfaces.

Building set backs

On land in a Commercial Zone:

- A building should not be set back from the front or side boundaries except as follows:
- At the ~~third~~ [fourth](#) storey and above, buildings should be set back 3 [metres](#) from the front street boundary.
- Where the site is within a Heritage Overlay, a setback of 5 [metres](#) from the front street boundary should be provided:
- At second storey and above for existing single storey buildings.
- At third storey and above for existing double storey buildings.
- Where the site abuts a Residential Zone, rear setbacks should be provided in accordance with Clause 55.04-1.

Land in a Residential Zone ~~must~~ should be set back in accordance with the Built Form Plan shown at subclause 5 of this schedule.

Building frontages

On land in a Commercial Zone any new building should be designed to:

- Present a fine grained, human scale to streets.
- Provide active street frontages with shopfronts at street level.
- Protect and enhance the heritage significance of commercial areas by recessing upper levels and ensuring that the design detail and materials.
- Ensure corner sites are designed to address both street frontages with shopfront windows at street level.

Access ~~and carparking~~

- ~~Ensure an appropriate level of car parking is provided for visitors, residents and traders without compromising the streetscape.~~
- ~~Locate and design~~ Vehicle access should be designed and located to avoid or minimise disruption of pedestrian movement along a street.
- Where available, ~~locate~~ vehicle access to a property should be located from an existing laneway or a secondary street frontage.
- ~~Widen~~ Key laneways should be widened to 5.5 metres ~~as part of redevelopment if new buildings are constructed abutting the laneway.~~

Landscape and environment

- ~~Ensure that the design of landmark buildings and other new developments~~ Development should contribute to an improved streetscape and pedestrian amenity along Martin Street and Nepean Highway.
- ~~Ensure that~~ Signage should respects the building style and scale and the character of the street.
- Ensure that signage fits within architectural forms along the street and is appropriately integrated with the design of the building.

Amenity impacts

Where the site abuts the boundary of a property in a Residential Zone that contains an existing dwelling, the objectives ~~of Clause 55 must be met,~~ and Standards of ~~this~~ Clause 55 should be met.

Roof decks

Roof decks and their associated structures should not exceed the Preferred Building Heights specified in the built form precinct provisions of this schedule.

~~Roof decks and their associated structures must not exceed the Maximum Mandatory Building Heights specified in the built form precinct provisions of this schedule.~~

In a Residential Zone a roof deck should:

- Be designed and constructed of materials that integrate with the architectural style and form of the building.
- Not include any permanent or moveable structure or element that will increase the visual bulk of the building, including pergolas, verandahs, shelters and storage areas.
- Be set back on all sides at least 2 metres from the roof edge of the storey immediately below to minimise the visual impact on the street and adjoining properties.
- Be designed to limit views into secluded private open space and habitable room windows of adjacent dwellings.
- Not include any structures or elements that exceed a height of 1.7 metres, apart from an access structure (measured from floor level at the point of access onto the roof deck).

- Be accessed by a structure that is designed and located to have minimal impact on the street and adjoining properties, does not enclose any useable floor space and does not exceed 2.4 metres in height (measured from floor level at the point of access onto the roof deck).
- Be constructed so that the deck floor level is no greater than 1 metre above the lower ceiling face of the storey immediately below.

In a Commercial Zone a roof deck or balcony should be set back ~~at least 2 metres from the wall of the storey below which faces the front or the rear of the site, or~~ a minimum of 5 metres from any residential property boundary.

Built form precinct provisions

Refer to Built Form Precinct Map at Map 1.

Table to build form precinct provisions

Precinct	Preferred building height	Maximum mandatory building height
Commercial / Mixed use Areas		
A	17.0m (5 storeys)	-
B	14.0m (4 storeys)	-
C	11.0m (3 storeys)	-
Residential Areas		
D	11.0m (3 storeys); or 12.0m (3 storeys) where the slope of the natural ground level at any cross section of the site of the building wider than 8m is 2.5 degrees or more	11.0m (3 storeys); or 12.0m (3 storeys) where the slope of the natural ground level at any cross section of the site of the building wider than 8m is 2.5 degrees or more
E	9.0m (2 storeys) 10.0m (2 storeys) where the slope of the natural ground level at any cross section of the site of the building wider than 8m is 2.5 degrees or more.	9.0m (2 storeys) 10.0m (2 storeys) where the slope of the natural ground level at any cross section of the site of the building wider than 8m is 2.5 degrees or more.

Variations to the requirements of this schedule

An application to vary the requirements in this schedule (including preferred building heights) ~~must~~ should:

- ~~Identify the design objectives, design requirements and outcomes to be achieved for the proposal as specified in this schedule.~~
- ~~Include an assessment of how any departure from a preferred building height or building set back specified in this schedule assists in achieving the design objectives and built form outcomes to be achieved.~~
- Demonstrate that the proposal will achieve the following outcomes (as appropriate):
 - A high standard of architectural design and an exemplary design response to the site context and design objectives of this Clause.
 - Innovative Environmental design.
 - Minimal overshadowing of adjoining streets, public spaces and residential properties.
 - Minimal impacts on the amenity of adjoining residential properties, including limiting impacts from visual bulk, overlooking and loss of daylight and solar access to windows on adjoining properties.
 - Respect for places subject to the Heritage Overlay.
 - Transitions in scale to lower building forms.

3.0 Decision guidelines

Before deciding on an application, the Responsible Authority must consider:

- ~~The neighbourhood and site description.~~
- ~~The design response.~~
- ~~The vision of the Martin Street Activity Centre as identified in Clause 21.11~~
- ~~Whether the objectives and design and development requirements of this schedule are met.~~
- Whether the design and layout of a building supports provision of shop top housing above ground floor level.
- The impact on the amenity of any existing dwelling on an abutting property in a Residential Zone and/or Heritage Overlay, particularly with regard to daylight access, solar access, overshadowing, overlooking and visual bulk.
- The impact of upper levels of the building on surrounding residential land.
- The impact of development on the heritage significance of the area.
- Whether the development provides the required level of car parking and bicycle facilities without compromising the streetscape.
- Whether the development impacts on the potential to widen or enhance existing key laneways.

4.0 Reference documents















Martin Street Structure Plan (March 2016)

Map 1 Built Form Precinct Map

Amend the map to:

- Apply Precinct A to the exiting five-storey buildings
- Apply Precinct B to 2 to 10 Spink Street
- Apply Precinct A to 20 Spink Street
- Apply Precinct C to 75 Asling Street
- Delete the 'Key rear lane upgrade' notation from the rear of 2 to 10 Spink Street.
- Delete the requirement for a 6 metre setback to the Nepean Highway for land between North Road and Rose Street.

Legend

<ul style="list-style-type: none">  Structure Plan area boundary  Gardenvale Station  Key landmark redevelopment opportunity  Heritage Overlay  Rear of side vehicle access only  Key rear lane upgrade 	<p>Commercial area (Preferred Heights)</p> <ul style="list-style-type: none">  Precinct A 5 storey – 17m height  Precinct B 4 storey – 14m height  Precinct C 3 storey – 11m height <p>Residential area (Mandatory maximum heights Preferred Heights)</p> <ul style="list-style-type: none">  Precinct D 3 storey – 11m height  Precinct E 2 storey – 9m height 	<p>Setbacks (Preferred)</p> <ul style="list-style-type: none">  Active frontage – 0m front setback no vehicle access  Heritage building upper level setback – 5m  3 Four storeys and above setback – 3m  Front setback – 3m  Front setback – 6m  Side and rear setback in accordance with Clause 55 of the Bayside Planning Scheme
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