

Planning and Environment Act 1987

Panel Report

Bayside Planning Scheme Amendment C151 Hampton East (Moorabbin) Structure Plan

Front page

29 June 2017

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Panel Report pursuant to section 25 of the Act

Bayside Planning Scheme Amendment C151

Hampton East (Moorabbin) Structure Plan

29 June 2017



Michael Kirsch, Chair



Michael Ballock, Member

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List of Abbreviations

ACZ	Activity Centre Zone
C1Z	Commercial 1 Zone
C2Z	Commercial 2 Zone
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
GRZ	General Residential Zone
LPPF	Local Planning Policy Framework
MAC	Major Activity Centre
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
PPN46	Planning Practice Note 46 Strategic Assessment Guidelines
PPN56	Planning Practice Note 56 Activity Centre Zone
PPN58	Planning Practice Note 58 Structure Planning for Activity Centres
PPN59	Planning Practice Note 59 The Role of Mandatory Provisions in Planning Schemes
PPN60	Planning Practice Note 60 Height and setback controls for Activity Centres
PTV	Public Transport Victoria
RGZ	Residential Growth Zone
SPPF	State Planning Policy Framework
the Activity Centre	Hampton East Activity Centre
the Background Report	Hampton East Structure Plan Background Report, July 2015
the Housing Strategy	Bayside Housing Strategy, 2012
the Structure Plan	Hampton East (Moorabbin) Structure Plan, February 2016
VPP	Victoria Planning Provisions

Executive Summary

(i) Summary

Bayside Planning Scheme Amendment C151 (the Amendment) seeks to implement the findings of the Hampton East (Moorabbin) Structure Plan, February 2016 (the Structure Plan). The key elements of the Amendment are:

- the application of the Activity Centre Zone Schedule 1 (ACZ1) to the Hampton East Activity Centre (the Activity Centre)
- the removal of the current Design and Development Overlay Schedule 2 (DDO2)
- the inclusion of various new material in the Municipal Strategic Statement (MSS).

The Structure Plan was prepared between 2012 and 2016, and was informed by various background studies and investigations, and included three rounds of consultation.

The Amendment was exhibited over July and August 2016 and attracted 31 submissions. These submissions raised a broad range of issues, many of which opposed the Amendment and expressed concerns about the extent of change that would occur in the area.

The Hampton East Activity Centre is part of the broader Moorabbin Major Activity Centre that is identified in State and local policy as an area for more intensive development, including higher density residential development.

The Structure Plan and Amendment recognise this important role and provide a considered framework that facilitates the ongoing development of the centre, while recognising and seeking to manage the impacts that will arise from this development. While the Panel understands the concerns of residents within and around the centre, it is satisfied that the Amendment provides an appropriate balance between these factors.

The Amendment applies the ACZ1 that includes a comprehensive set of provisions to guide future land use and development, including extensive built form provisions. Most of these provisions are 'discretionary' rather than 'mandatory', an approach that is consistent with how planning for activity centres is typically undertaken and accords with various planning practice notes and other guidance documents.

The Panel supports Council's use of discretionary controls and the general designation of preferred building heights, setbacks and other built form provisions within the centre.

However, the Panel shares the concerns of those submitters who opposed the use of mandatory controls relating to some of the building height and setback provisions. Most of these mandatory provisions are too inflexible, have not been adequately justified and are not consistent with the extent of change that should be facilitated in this Major Activity Centre.

For these reasons, the Panel recommends that the proposed building heights in Precincts 5 and 6, the upper storey building setbacks in Precincts 1 and 2, and the front setback in Precinct 6 be discretionary instead of mandatory controls. The Panel supports the mandatory laneway setbacks in Precincts 1 and 3, and agrees that they are necessary to achieve Council's urban design objectives for these areas.

Overall, the Panel is satisfied that the Amendment provides a considered and balanced framework for managing the future growth and development of the Activity Centre and recommends that it be adopted, subject to a limited number of changes.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Bayside Planning Scheme Amendment C151 be adopted as exhibited subject to the following:

- 1. Apply discretionary Maximum Building Heights of four storeys (14 metres) and three storeys (11 metres) in Precinct 5 of the Activity Centre Zone Schedule 1.**
- 2. Apply a discretionary Maximum Building Height of three storeys (11 metres) in Precinct 6 of the Activity Centre Zone Schedule 1.**
- 3. Apply discretionary upper storey Building Setbacks in Precincts 1 and 2 of the Activity Centre Zone Schedule 1, that applies to all levels above the third storey.**
- 4. Apply a discretionary Building Setback of six metres in Precinct 6 of the Activity Centre Zone Schedule 1.**
- 5. Include the following 'Precinct objective' in Clause 5.1-2 of the Activity Centre Zone Schedule 1:**

To improve pedestrian access to the Moorabbin Railway Station.

1 Introduction

1.1 The Amendment

Amendment C151 to the Bayside Planning Scheme (the Amendment) proposes to implement the Hampton East (Moorabbin) Structure Plan, February 2016 (the Structure Plan) by:

- amending Clause 21.02 to include the Structure Plan as a reference document
- amending Clause 21.03 to include Hampton East in the title of the Moorabbin Activity Centre and to include the Structure Plan as a reference document
- amending Clause 21.06 to include references to the Hampton East Activity Centre (the Activity Centre) and the implementation of the ACZ, and to include the Structure Plan as a reference document
- amending Clause 21.07 to include references to the Structure Plan and to include the Structure Plan as a reference document
- amending Clause 21.08 to update the 'further strategic work' list and to include references to the Activity Centre
- amending Clause 21.09 to update the 'further strategic work' list and to include the Structure Plan as a reference document
- rezoning land on Nepean Highway (near the corner of South Road) from Commercial Zone Schedule 1 (C1Z) to Road Zone Category 1
- rezoning land within the Activity Centre from C1Z, Public Use Zone Schedule 4, General Residential Zone Schedule 1 (GRZ1) and Residential Growth Zone Schedule 1 (RGZ1) to ACZ1
- removing the Design Development Overlay Schedule 2 (DDO2) from the Hampton East Activity Centre
- removing the Public Acquisition Overlay from the Nepean Highway and South Road intersection.

The area affected by the Structure Plan and Amendment is that part of the Moorabbin Major Activity Centre (MAC) within the City of Bayside. As shown in Figure 1, the MAC is split between the Cities of Bayside, Kingston and Glen Eira.

1.2 Panel process

The Amendment was prepared by Bayside City Council as Planning Authority.

The Amendment was authorised by the Department of Environment, Land, Water and Planning (DELWP) in a letter dated 7 June 2016. The authorisation required some minor drafting changes to the Activity Centre Zone schedule that were addressed in the exhibited schedule.

The Amendment was placed on public exhibition between 21 July 2016 and 19 August 2016 and attracted 31 submissions, including one late submission.

At its meeting of 18 February 2017, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 14 March 2017 and comprised Michael Kirsch (Chair) and Michael Ballock.

A Directions Hearing was held on 31 March 2017 and the Panel Hearing was held on 10 and 11 May 2017. Those in attendance at the Panel Hearing are listed in Table 1.

The Panel undertook unaccompanied inspections of the Activity centre, the surrounding area and specific sites referred to in submissions prior to the Panel Hearing.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Bayside City Council	Juliana Aya (Manager Urban Strategy)
GPD Group Pty Ltd and Reynolds Street Developments Pty Ltd	Mark McNaughton (Planning and Property Partners) who called planning evidence from Marco Negri (Contour)
South Road Medical Centre Pty Ltd	Emily Marson (Best Hooper Lawyers)
Uniting Church Australia	Gavin Faichney
Soula Lakrindis	
Rachel Lui	
David Hughes	
Bruno de Michelis	
Motoko Iida	
Noel Johnstone	
Adam Kraska	
Barbara Kraska	

1.3 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 and 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.

Council provided a comprehensive tabular response to submissions at Appendix 3 of its Part A submission. Although the Panel has had regard to this material, it has not repeated it at length in this report.

The Panel's report deals with the issues raised in submissions under the following headings:

- Planning context
- Mandatory and discretionary controls
- Activity centre boundary
- Infrastructure

- Building heights
- Setbacks
- Traffic, parking and movement
- Amenity
- Other issues

2 Background

2.1 The Moorabbin Major Activity Centre

The Hampton East Activity Centre (the Activity Centre) is part of the broader Moorabbin MAC identified in Plan Melbourne 2017 – 2050 (Plan Melbourne). The MAC straddles Bayside, Glen Eira and Kingston municipalities as shown in Figure 1. Moorabbin was also identified as a MAC in the predecessor strategies Melbourne 2030 and Plan Melbourne Metropolitan Planning Strategy. The Bayside Planning Scheme identifies the Moorabbin MAC on Map 1 at Clause 21.02-5. These documents do not identify the ‘boundaries’ of the MAC, relying instead on future structure planning to define the boundaries.

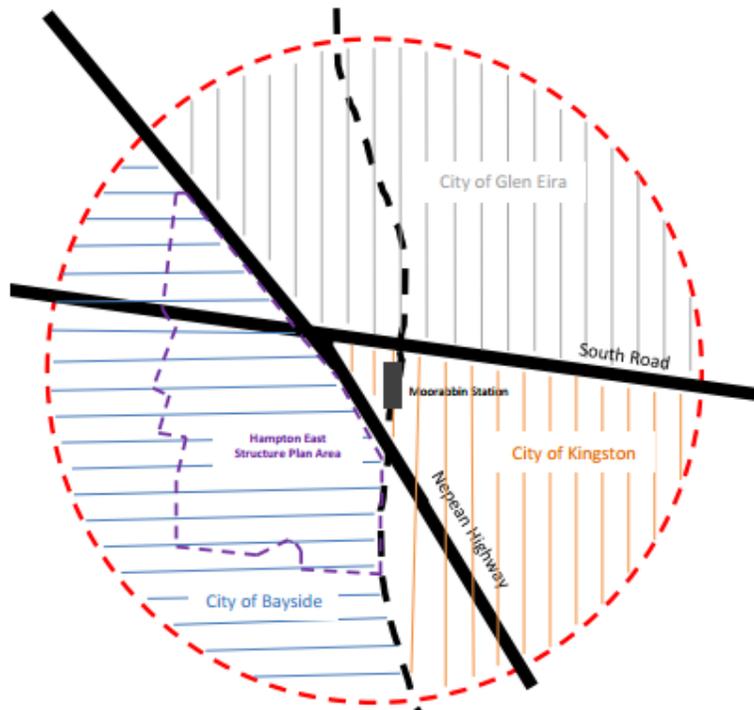


Figure 1 The area affected by the Structure Plan and Amendment

The Hampton East element of the MAC is currently zoned a mixture of C1Z, RGZ and GRZ. It is also subject to the DDO2 that contains various ‘character’ related design objectives and planning permit exemptions. It requires a permit for buildings greater than two storeys or 9 metres.

The Glen Eira element of the MAC is zoned C1Z, C2Z and GRZ.

The Kingston element of the MAC is zoned ACZ and GRZ.

2.2 The Hampton East Activity Centre

Council’s Part B submission included a useful description of the key characteristics of the Activity Centre, together with an overview of key policies relating to its role and future development.

The relevant elements are provided below as background and context for the subsequent chapters of this report.

The Hampton East (Moorabbin) Activity Centre area is comprised of a commercial precinct that spans the south-west side of the Nepean Highway/South Road intersection and a residential hinterland of approximately 3 square kilometres, which is characterised by detached houses and townhouses, intersected by tree lined local streets. The centre's location adjacent to both Nepean Highway and South Road attracts visitors from a wider area and is therefore less dependent upon expenditure from local residents. As a result it caters for a broad cross-section of businesses that may not be supported in less accessible locations. This includes the cluster of outdoor/adventure retailers that attract visitors from across a wide trade area. There is also a strong presence of health providers across the centre in both purpose built office buildings and ground floor retail.

In terms of existing built form, Council advised that:

The existing built form of the Hampton East (Moorabbin) Activity Centre is characterised by a one and two storey lineal commercial precinct running along Nepean Highway and South Road with detached houses, units and three storey town houses in the residential hinterland. Within the South Road Commercial Precinct there is a predominance of large office buildings with inactive ground floor uses which have large blank walls leading through the carpark and laneway network behind. The retail outlets on Nepean Highway have a fine grained traditional aspect to the street, some with a second storey above the shops. The centre has a number of oversized advertising signage adding overall building height and bulk.

The residential parts of the centre are characterised by detached dwellings, with large front setbacks of between 7 and 12 metres. Many dwellings sit within established gardens, including mature canopy trees.

In terms of the broader policy context, Council submitted that:

Plan Melbourne 2017-2050 identifies long and short term goals to address the following key challenges for Metropolitan Melbourne:

- *population growth from 4.5 to 8 million;*
- *demand for an additional 1.6 million homes;*
- *capacity to accommodate an estimated 10 million more trips a day on the city's transport network (currently 12.5 million trips); and*
- *an additional 1.5 million jobs in the local economy.*

For Bayside, based on Council's population forecast for 2036, the population is expected to grow to 118,650 (13.39%). During that same period the total number of dwellings to accommodate the population in Bayside is expected to grow by 16% which equates to a total of 49,564 dwellings.

From the challenges outlined by the Metropolitan Strategy it is clear that housing and jobs growth is a key outcome that the Hampton East (Moorabbin) Structure Plan should achieve.

Council also provided an overview of recent development trends in the Activity Centre.

Significant redevelopment and renewal of the existing housing stock is occurring, dominated by the replacement and/or renovation of existing single dwellings with larger buildings or medium density infill development that in its majority accommodate just an extra dwelling. There is a relative lack of diversity in housing sizes, with an increasing proportion of new housing being 3 and 4 bedrooms. Whilst there has been an increase in medium density housing typologies in the Hampton East Activity Centre, this has not resulted in a corresponding decrease in the number of bedrooms, with the overall number of dwellings with 3 and 4 bedrooms increasing at a significantly greater rate than smaller dwellings.

In relation to commercial land there has been relatively little commercial development within the study area, with the majority of planning and building approvals relating to minor changes of use or upgrades to existing buildings.

2.3 Bayside Housing Strategy, 2012

The Bayside Housing Strategy (the Housing Strategy) addressed, amongst other things, the role of activity centres (including MACS) in providing for future residential development. In relation to the Moorabbin MAC, the Housing Strategy provided the following 'vision':

The Moorabbin Major Activity Centre will be a major focus for future medium and high density residential development within Bayside, taking advantage of its location along the Frankston railway line and easy access to Southland. The area is to provide a wide diversity of housing types and sizes to meet the varied needs of the community.

At this time, it is envisaged that development will not be greater than three storeys in height within residential areas, although this may change depending on the outcomes of any future Structure Plan. Residential development is to adopt a high quality, innovative built form which provides an appropriate address to the street and incorporates high levels of environmental sustainability.

The Housing Strategy recommended that a Structure Plan be prepared for the Hampton East area of the MAC.

Council sought to implement the Housing Strategy through Amendment C140 that was the subject of a Panel hearing and report dated 11 May 2016. That Panel did not support the Amendment and it was subsequently abandoned by Council.

2.4 Hampton East (Moorabbin) Structure Plan, 2016

2.4.1 Background

The Structure Plan project commenced in 2012 and included the following key steps:

- November 2013 – January 2014, first round of consultation, approximately 100 responses
- February 2014, progress report to Council
- April 2014, Council presented with background report and other supporting documentation
- August 2014 – September 2014, second round of consultation
- July 2015, Council adopts draft structure plan
- September – October 2015, third round of consultation
- February 2016, Council adopts final Structure Plan, seeks authorisation to prepare Amendment C151 and resolves to exhibit the Amendment.

The project involved the preparation of various reports and investigations that addressed:

- traffic, parking and transport
- current and future economic trends
- urban design and built form.

These informed the preparation of the Hampton East Structure Plan Background Report, 2015 (the Background Report) and the final Structure Plan.

2.4.2 Content

The Structure Plan promotes the ‘vision’:

A well serviced and connected centre to work, live and play in with a range of housing choices, a diversity of services and facilities, and vibrant, well-connected public spaces that meet the ongoing needs of the Bayside community.

It includes ‘objectives’ and ‘strategies’ based around four key themes:

- land use
- built form
- access and movement
- landscape and environment.

It also divides the area into the four general ‘precincts’¹:

- The Residential Precincts
- The Mixed-Use Core
- The Nepean Highway Retail Precinct
- The South Road Commercial Precinct.

These are then divided into the six precincts that are carried over into the ACZ1.²

¹ Page 10 of the Structure Plan.

² Page 16 of the Structure Plan.

The main elements of the Structure Plan are shown on the Framework Plan at Figure 2.



Figure 2 Framework Plan (Hampton East [Moorabbin] Structure Plan)

Key strategies (particularly in relation to submissions about Amendment C151) include:

Land Use Strategies

- L1 – Encourage distinct residential areas with a range of typologies.
- L3 – Encourage health related uses in the South Road Commercial Precinct.
- L4 – Create a central public open space protected from Nepean Highway.
- L5 – Encourage active uses at ground levels of commercial development where adjoining any pedestrian areas (including pedestrian-focus laneways).

Built Form Strategies

- B1 – Encourage consolidated development of a central residential core (Precinct 3).

B2 – Create a connected medium scale residential development along Nepean Highway and South Road (Precincts 1 and 2).

B3 – Encourage residential consolidation surrounding the core (Precincts 4 and 5).

B4 – Residential transition at the periphery (Precinct 6).

B5 – Transition street wall heights at interfaces at the street level and to adjoining properties.

Access and Movement Strategies

A1 - Encourage development to provide on-site car parking.

A2 – Create a defined primary circulatory road from Keiller Street to King Street.

A5 – Improve pedestrian connection to Moorabbin Station.

A6 – Create a connected network of laneways.

Landscape and Environment Strategies

E1 – Create a centrally located public open space.

2.4.3 Assessment

The Panel is satisfied that the Structure Plan is a competently prepared and well-considered plan that it gives appropriate expression to the role of the area as part of the broader Moorabbin MAC. It also takes into account its broader residential setting and the need to ameliorate negative impacts on the character and amenity of this area that will result from more intensive development.

Although submissions raised various issues with the Structure Plan, including issues associated with its translation into the Amendment, the Panel is satisfied that it provides an appropriate framework for managing the development of the area and a sound basis for much of the Amendment.

2.5 Amendment C151

The key element of the Amendment is the proposed ACZ1 that provides the land use, development and design framework for the area.

The ACZ1 provisions are drawn from the Structure Plan and include a Framework Plan (Figure 3) and six Precinct Plans.

It includes ‘centre-wide provisions’ relating to subdivision, buildings and works, and design and development. The six precincts include objectives, requirements and guidelines.



Figure 3 Hampton East Activity Centre Framework Plan (ACZ1)

Most of the design provisions are discretionary, except for various building height and setback provisions. The Structure Plan provides some broad justification for the intent and type of the controls, but not for all of the ‘numbers’ applied in the ACZ1 and its precincts.

In the Panel’s view the, justification for the various building heights, setbacks and lot size minima would have benefited from another level of explanation in the Structure Plan or as part of the Amendment documentation to better explain the criteria and basis on which each requirement was determined. It would also have been useful for the Structure Plan to have included a discussion and assessment of whether these requirements should be mandatory or discretionary.

3 Planning context

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 planning strategies, provisions and guidance documents.

3.1 Policy framework

3.1.1 State Planning Policy Framework

The Panel has had regard to the following key elements of the State Planning Policy Framework (SPPF) when considering submissions.

- Clause 11.02-1 (Supply of urban land) that seeks to *'ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses'*
- Clause 11.02-2 (Structure planning) that supports *'the orderly development of urban areas'*
- Clause 11.03-2 (Activity Centre planning) that encourages *'the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into Activity Centres which provide a variety of land uses and are highly accessible to the community'*
- Clause 11.06-2 (Housing choice) that supports *'housing choice close to jobs and services'*
- Clause 15.01 (Urban environment) that supports *'urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity'* and *'architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties'*
- Clause 16.01-2 (Location of residential development) that supports *'new housing in or close to Activity Centres and in urban renewal precincts and sites that offer good access to jobs, services and transport'*
- Clause 16.01-3 (Housing opportunity areas) that supports identifying *'areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne, including major Activity Centres'*
- Clause 17.01-1 (Business) that encourages *'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'*
- Clause 18.02-3 (Principal Public Transport Network) that facilitates *'greater use of public transport and promotes increased development close to high-quality public transport routes in Metropolitan Melbourne'*.

A recurring theme in these policies is the need to focus residential development within and around activity centres.

3.1.2 Local Planning Policy Framework

The Panel has had regard to the following elements of the Local Planning Policy Framework (LPPF):

- Clause 21.02-3 (Key issues – settlement and housing)
 - *The need to manage growth associated with population growth and its impacts.*
 - *The need to direct population growth into appropriate locations.*
 - *The provision of housing to meet the changing needs of the community.*
- Clause 21.02-5 (Strategic framework thematic plans – maps 1 and 2) that identifies the Moorabbin MAC and designates ‘*future moderate residential growth*’ in the area
- Clause 21.03-1 (Activity Centre) that directs ‘*new medium density housing to Major Activity Centres, large Neighbourhood Activity Centres and residential opportunity areas, particularly those with good access to public transport routes as identified in the Residential Strategic Framework Plan*’ and supports ‘*increased housing densities and diversity of dwellings within Activity Centres*’
- Clause 21.06-1.2 (Activity Centres) that supports ‘*high quality built form and public realm design that conserves and enhances valued urban character and heritage places*’, ‘*vibrant, attractive pedestrian environments that are safe and accessible*’ and ‘*protect the amenity of dwellings within and adjacent to Activity Centres*’
- Clause 21.07-1 that supports ‘*the economic and social sustainability of Activity Centres*’ and encourages ‘*new economic development which maintains and enhances the supply of and access to a range of employment and training opportunities*’.

The LPPF recognises the need to provide higher density housing and housing diversity within activity centres, including Hampton East, but also promotes high quality urban design and the protection of character and amenity.

3.1.3 Assessment

The Panel is satisfied that the Amendment is generally consistent with and implements the relevant elements of the SPPF and LPPF. In particular, the Amendment recognises the role of the area as part of a MAC and provides a planning framework that facilitates more intensive commercial and residential development. It also encourages a high standard of urban design and development that responds to character and amenity issues.

3.2 Planning scheme provisions

3.2.1 Activity Centre Zone

The purposes of the ACZ are:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To encourage a mixture of uses and the intensive development of the activity centre:*

- *As a focus for business, shopping, working, housing, leisure, transport and community facilities.*
- *To support sustainable urban outcomes that maximise the use of infrastructure and public transport.*
- *To deliver a diversity of housing at higher densities to make optimum use of the facilities and services.*
- *To create through good urban design an attractive, pleasant, walkable, safe and stimulating environment.*
- *To facilitate use and development of land in accordance with the Development Framework for the activity centre.*

The ACZ is an appropriate zone to apply in MACs and its use is consistent with Planning Practice Note 56 Activity Centre Zone (PPN56).

3.3 Ministerial Directions and Practice Notes

The Panel has reviewed the Amendment against the following Ministerial Directions and Planning Practice Notes and provides its overall conclusions.

3.3.1 Ministerial Directions

(i) Ministerial Direction No 11 – Strategic Assessment of Amendments

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments) and Planning Practice Note 46 Strategic Assessment Guidelines (PPN46).

(ii) The Form and Content of Planning Schemes (s7(5))

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

3.3.2 Planning Practice Notes

(i) Planning Practice Note 56 Activity Centre Zone (PPN56)

PPN56 explains the function of the ACZ, provides guidance on how to apply the zone and guides the drafting of schedules. It also provides guidance on preparing structure plans and defining activity centre boundaries. The ACZ is typically used to implement an activity centre structure plan and overcomes the need to apply multiple zones and overlays.

The Panel is satisfied that the use of the ACZ in Amendment C151 is consistent with PPN56 which establishes that the ACZ *“is the preferred tool to guide and facilitate the use and development of land in Activity Centres”*. The Panel also notes that the ACZ is applied to that part of the Moorabbin MAC that is in Kingston.

Issues associated with the Activity Centre boundary are discussed in section 4.2 of this report.

(ii) Planning Practice Note 58 Structure Planning for Activity Centres (PPN58)

PPN58 provides guidance on the activity centre structure planning process, the reasons for structure planning in activity centres, the policy context, and possible inputs and outputs of the process.

PPN58 includes the following description of activity centres:

Activity Centres are a focus for housing, commercial, retailing, community, employment, transport, leisure, open space, entertainment and other services and are places where people shop, work, meet, relax and live.

State planning policy directs the further expansion of these services into Activity Centres, and recognises that Activity Centres are ideally placed to provide for growth in household numbers. As such, Activity Centres will be a major focus for change in metropolitan Melbourne.

The Panel is satisfied that the structure planning process followed by Council was consistent with PPN58 and that the Structure Plan is based on the level of analysis and contains the type of material anticipated in PPN58.

(iii) Planning Practice Note 59 The Role of Mandatory Provisions in Planning Schemes (PPN59)

PPN59 sets out criteria to decide whether mandatory provisions might be appropriate and includes the general observation:

Mandatory provisions in the VPP are the exception. The VPP process is primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than merely prescriptive mandatory requirements.

As discussed in relation to PPN60 (see below) the Amendment principally relies on 'discretionary' rather than 'mandatory' controls and for this reason is generally consistent with PPN59.

The use of mandatory controls is discussed in section 4.1 of this report.

(iv) Planning Practice Note 60 Height and setback controls for Activity Centres (PPN60)

PPN60 describes the preferred approach to applying height and setback controls within activity centres.

In relation to the 'form of height and setback controls', PPN60 includes:

The application of discretionary controls, combined with clear design objectives is the preferred form of height and setback controls. Discretionary controls are more likely to facilitate appropriate built form outcomes than mandatory controls by providing more flexibility to accommodate contextual variations and innovative design. This preferred form of height control has been supported through a number of planning panels, more so than mandatory controls.

...

Mandatory height and setback controls (that is, controls that cannot be exceeded under any circumstance) will only be considered in exceptional circumstances.

As discussed in relation to PPN59, most of the height and setback controls in the Amendment are 'discretionary' and therefore consistent with the preferred approach in PPN60.

Issues related to the use of mandatory provisions are discussed in chapter 4 of this report.

3.4 Conclusion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Frameworks, and is generally consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and should proceed subject to addressing the more specific issues raised in submissions and discussed in the following chapter.

4 Issues

4.1 Mandatory and discretionary built form controls

4.1.1 The issue

The issue is when mandatory or discretionary built form controls should be applied in a MAC.

Most of the provisions in the exhibited ACZ1 are discretionary (they can be varied), however, it contains some mandatory provisions (that cannot be varied), including:

- upper level street setbacks in Precincts 1 and 2
- upper level laneway setbacks in Precincts 1 and 3
- street level setbacks in Precincts 5 and 6
- building heights in Precincts 5 and 6.

4.1.2 Evidence and submissions

Council noted that most of the ACZ1 built form controls were discretionary and were typically applied “*where the bulk of the higher density development and growth is desired to take place*”. Mandatory controls were proposed “*in areas that have been specifically designated as being medium density and providing an appropriate transition to the residential hinterland outside the Activity centre*”.

Council added:

The application of mandatory heights to these residential areas is informed by a number of influences including:

- *The need to ensure that a diversity of housing types is delivered within the Activity Centre to accommodate the specific housing needs for the area as outlined in previous section in this submission;*
- *The need to provide a sensitive transition from a higher density development in the centre of a site to a lower density at the periphery;*
- *The need to respond to the community liveability values and housing aspirations as expressed in submissions; and*
- *The certainty that through the mix of discretionary and mandatory controls the housing demand projections for the Activity Centre will be met past 2051, based on ‘the Inner South West Region aspirational projections outlined in Plan Melbourne 2017- 2050.*

Council submitted that, for these reasons, the inclusion of these mandatory provisions was consistent with PPN59 and 60.

Mark Naughton on behalf of Reynolds Street Development Pty Ltd made specific submissions about mandatory upper storey setbacks in Precinct 3 (discussed in section 4.5.3 of this report), within a broader context of supporting discretionary controls in activity centres. He referred to PPN60 and highlighted the following reference:

Mandatory height and setback controls (that is, controls that cannot be exceeded under any circumstance) will only be considered in exceptional circumstances.

Mr Naughton submitted that the mandatory controls in the Amendment were inconsistent with PPN60 and he relied on the planning evidence of Mr Negri who provided evidence about this issue. He questioned, for example, whether mandatory maximum building heights were appropriate *'within an Activity Centre location where more intensive development should be promoted'*.

Emily Marson (Best Hooper Lawyers) on behalf of South Road Medical Pty Ltd also provided some overarching comments on the use of mandatory controls, referring to PPN59 and 60. She submitted that planning *"should predominantly be performance based and primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than prescriptive mandatory requirements"*.

Other submitters also opposed the use of mandatory heights in some precincts, including Thanh Ly and Mat Konrad.

The Panel acknowledges that many submitters implicitly supported the use of mandatory controls because of the certainty that they provide and in response to their concerns about the impacts of taller building forms and higher density development.

4.1.3 Discussion and conclusions

Activity centres are designated as locations for commercial, retail, employment and community activities as well as higher density residential development and are usually based around a transport node or nodes. State planning policy identifies activity centres as areas for directed growth in these activities. In other words, activity centres are a focus for change.

Planning for large activity centres, such as Moorabbin, has typically been undertaken on the basis that discretionary, rather than mandatory, controls are preferred³. This is consistent with PPN56, 58, 59 and 60, and recognises the 'performance' based approach to planning in Victoria outlined by Mr Naughton, Mr Negri and Ms Marson. It also recognises the role of these centres to accommodate growth and development, and the extent of change that is anticipated, including intensive housing development and housing diversity.

PPN60 states that discretionary controls are *"more likely to facilitate appropriate built form outcomes"* and that mandatory controls should only be applied in *"exceptional circumstances"*. It also provides the following examples of exceptional circumstances:

- sensitive coastal environments
- significant landscape precincts
- significant heritage places
- sites of recognised state significance
- helicopter and aeroplane flight paths.

³ The role of Major Activity Centres in relation to mandatory controls was discussed in the Panel reports for Bayside Amendments C100, C101, C102 and C103, and Amendments C113, C114 and C115.

Similarly, PPN59 advocates the use of discretionary controls and states that mandatory provisions should only be used in exceptional circumstances “*where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes*”.

PPN59 poses the following tests:

- *Is the mandatory provision strategically supported?*
- *Is the mandatory provision appropriate to the majority of proposals?*
- *Does the mandatory provision provide for the preferred outcome?*
- *Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?*
- *Will the mandatory provision reduce administrative costs?*

In this context, the Panel supports Council’s focus on using discretionary controls throughout much of the Activity Centre, while limiting the use of mandatory controls. There is a strong presumption in activity centre planning that discretionary controls should be applied, particularly in MACs, and that mandatory controls will only be appropriate where there is clear and compelling justification.

This view has informed the Panel’s consideration of the various mandatory controls in the ACZ1 that are discussed later in this chapter.

4.2 Activity Centre boundary

4.2.1 The issue

The issue is whether the Activity Centre boundary is appropriate.

The Activity Centre Boundary defines the extent of ACZ1 and is shown on the Framework Plan at Clause 1.0 of the ACZ1 (refer to Figure 3).

4.2.2 Submissions

Some submissions questioned whether the area north of South Road should be part of the Activity Centre. Rachel Lui submitted that South Road created a “*large divide*” between the residential area to the north and the commercial area to the south. She argued that Hemming Street was not part of the Activity Centre until recently, and that three storey development would be inappropriate in this area. Ms Lui also submitted that Hemming Street is unsuitable for higher density development given the existing low-rise character and narrow street width.

Noel Johnstone submitted that both Hemming Street and Glennifer Avenue should be excluded from the Activity Centre because they were too far away from the main commercial areas and the Moorabbin Train Station. He added that the character of Hemming Street and Glennifer Avenue was one of predominantly single storey housing and that these streets were effectively not part of the Activity Centre.

Council submitted that the Activity Centre boundary had been identified as part of the structure planning process and was consistent with the relevant planning practice notes. In relation to the area to the north of South Road, Council submitted that it:

... meets the considerations for inclusion within the Activity Centre Boundary. Whilst recognising the residential nature of the area the land included within

the boundary has been recognised for some time as an area where a diversity of housing types and housing growth is encouraged as a result of its good access to services and transport. The area is located within a 400m radius of the Moorabbin Railway Station and the Nepean Hwy retail strip both of which are key destinations within the Centre. Council accepts that South Road is a busy arterial road, which provides some separation between the concerned residential area and the commercial area of the Activity Centre. However, this separation alone does not justify the exclusion of this area from the Activity Centre, particularly because there are a range of other attributes that warrant the inclusion of this area within the boundary.

4.2.3 Discussion and conclusions

The Moorabbin MAC has been identified as a key strategic location in State government policy and metropolitan strategies for many years. In these strategic documents, the Moorabbin MAC is delineated in a schematic form such as shown in Figure 1. The task of delineating an activity centre boundary is part of the structure planning process.

The Background Report outlines the basis for the Structure Plan (Activity Centre) boundary as follows:

One of the key outputs of the background analysis is to define the boundary for the Structure Plan, which clearly identifies the extent of the Activity Centre and the specific properties to which the Structure Plan would apply. Planning Practice Note 58 – Structure Planning for Activity Centres outlines a number of considerations which need to be taken into account when determining a structure plan boundary. These can generally be summarised as follows:

- *The location of existing land uses within the area, and physical/functional relationships between them;*
- *Ease of access and ‘walkability’ to key destinations within the centre (defined as 400 - 800 metre walking distance, as measured by road);*
- *Proximity to public transport;*
- *Consistency with the requirements and directions of existing State and Local Planning Policies;*
- *Provision of sufficient land to meet commercial and residential development needs in the medium-long term (20 – 30 years); and*
- *Any physical or built form constraints (for example identified heritage or neighbourhood character values).*

Based on an assessment against the above points, a boundary has been developed for the Structure Plan. The key elements which informed this boundary are as follows:

- *All commercially zoned land located on the South Road and Nepean Highway frontages;*
- *Residential land located within convenient walking distance (400 metres, or a 5 minute walk) of both the Moorabbin Railway Station and the Nepean Highway retail strip, which are the key destinations within the Centre;*

- Land where the built form character is already in transition, indicating that change can be more readily accommodated and there is demonstrated market demand for the increases in development being encouraged by this structure plan;
- Land where the configuration of the road network allows for relatively direct access to, from and within the Centre by car, foot and bicycle; and
- The directions of the Bayside Housing Strategy 2012 and proposed implementation of the New Residential Zones.

The Panel accepts that the structure planning process satisfied the criteria contained in PPN56 and 58, and that the boundary for delineating the Activity Centre and ACZ1 boundaries are appropriate.

The area to the north of South Road is within proposed Precincts 4 (Residential Redevelopment Triangle), 5 (Residential Consolidation Precinct) and 6 (Residential Transition Precinct) (refer to Figure 4). This area has been identified for more intensive residential development, while providing a transition to the abutting residential area zoned Neighbourhood Residential Zone 3 (NRZ3) to the west.



Figure 4 Area to the north of South Road (extract from the Hampton East Activity Centre Framework Plan)

Precinct 4 and this area of Precinct 5 front South Road and are suitably located for the density and scale of development that is anticipated in the ACZ1. They should be included in the Activity Centre because of their proximity to the commercial areas in the centre and the Moorabbin Railway Station, as outlined by Council.

The area to the north (that was the subject of submissions) is within Precinct 6. This area is also in proximity to the range of services and facilities that assist in defining an activity centre boundary, and the Panel agrees with Council that including this area would be

consistent with PPN56 and 58. The Nepean Highway (to the north) and Glennifer Avenue (to the west) provide suitable boundaries for this part of the Activity Centre. The Panel is also satisfied that Glennifer Avenue and Hemming Street will be able to accommodate the level of traffic that will be generated by development in this area.

The Panel also notes that the ACZ1 applies a mandatory maximum building height of three storeys (11 metres) in Precinct 6⁴. This is consistent with the current GRZ1 that applies to this area. Even if the Amendment does not proceed, the type of development (in terms of building height) opposed by submitters will continue to be permissible under the current zone.

If the three story height limit is adopted as a discretionary, rather than a mandatory control (as recommended by the Panel), it is unlikely that the possible increase in dwellings and density would be significant.

4.3 Infrastructure

4.3.1 The issue

The issue is whether the scale, nature or density of development anticipated in the Structure Plan and the ACZ1 are limited by infrastructure constraints.

4.3.2 Submissions

Soula and Peter Lakrindis submitted that the extent of development envisaged by the Amendment would increase the strain on existing infrastructure and services. Erik Rathmayr submitted that the existing infrastructure cannot cope at present and the Amendment does not propose any improvements. Motoko Iida raised similar concerns, citing the need to upgrade various services.

Council submitted that the ACZ1 would implement the directions of the Structure Plan and was intended to maximise the use of infrastructure. In its part A submission, Council advised that copies of the Amendment were sent to all referral authorities (including servicing providers) affected by the Amendment. This process did not identify any constraints or limitations that would preclude the Amendment proceeding.

4.3.3 Discussion and conclusions

Infrastructure issues and capacity were assessed in the Background Report which noted that parts of the electricity and drainage networks will require upgrading. Council and the infrastructure providers are aware of these issues and the Panel accepts that they will be addressed as required. Similarly, traffic and parking issues identified in the Traffic and Transport Background Report, July 2015 and raised by some submitters will need to be addressed as the centre develops (refer to section 4.6 of this report)

The Panel also notes that all relevant infrastructure providers were notified of the Amendment, and that Public Transport Victoria and VicRoads were the only authorities to respond and raise any issues.

⁴ In section 4.4.6 of this report the Panel recommends that this be a discretionary rather than mandatory maximum.

While the Panel acknowledges the concerns of submitters, it was not provided with any evidence or detailed material in support of the contention that perceived infrastructure constraints will preclude the extent of development anticipated in the Structure Plan and Amendment. Although various infrastructure upgrades will be necessary as the centre develops, this is a usual process, particularly in activity centres, and is not a reason to abandon the Amendment or reduce the anticipated extent of development.

4.4 Building heights

4.4.1 The issues

The issues relate to:

- whether the general arrangement of maximum building heights in the ACZ1 is strategically sound
- the proposed discretionary maximum building height in Precinct 2
- the proposed discretionary maximum building height in Precinct 3
- the proposed discretionary lot consolidation provision in Precinct 3
- the proposed mandatory maximum building heights in Precincts 5 and 6.

The exhibited ACZ1 includes the following maximum building heights:

- Precinct 1: five storeys (17 metres), discretionary
- Precinct 2: five storeys (17 metres), discretionary
- Precinct 3: four to six storeys (14 - 20 metres), discretionary
- Precinct 4: five storeys (17 metres), discretionary
- Precinct 5: three to four storeys (11 - 14 metres), mandatory
- Precinct 6: three storeys (11 metres), mandatory.

4.4.2 Overall approach to building heights

(i) Submissions

Many submitters including Kerry Gilbert, Kylie Smith, Ivan Lakatos, Noel Johnstone, Erik Rathmayr, Adam Kraska, Bruno De Michelis and Motoko Iida opposed the proposed building heights in various areas of the Activity Centre. They raised a range of amenity concerns including overlooking, noise, traffic and parking, lack of vegetation and open space, access to sunlight and privacy, and submitted that higher buildings were inappropriate in what they described as a 'residential' area. Some submitters preferred that residential development be restricted to one or two storeys.

Barbra Kraska opposed the general layout of building heights within the centre, submitting that taller buildings (up to six to seven storeys) should be focussed on the Nepean Highway frontage, stepping down from four to two storeys approaching the existing residential areas.

Other submitters supported the proposed building heights. These included Thanh Ly, National Sterling, Reynolds Street Developments Pty Ltd and Mat Konrad who submitted that they were consistent with the role of a MAC and provided an appropriate opportunity for more intensive development.

Council submitted that the building heights included in the ACZ1 were an appropriate response to the 'vision' in the Structure Plan and implemented various findings and recommendations of that document, particularly the 'built form' objectives and strategies.

Key elements of these include:

- encouraging a consolidated residential core with taller building forms (Precinct 3)
- providing for medium scale development along the Nepean Highway and South Road frontages (Precincts 1, 2, 4 and 5)
- providing a transition to the residential hinterland (Precincts 5 and 6)
- limiting impacts on the amenity of streetscapes.

Council added that while most of the heights were discretionary, the application of mandatory controls only occurred in designated medium density residential areas to ensure an appropriate transition to the residential hinterland.

(ii) Discussion and conclusions

The Structure Plan identified several built form opportunities and issues which were then developed into objectives and finally strategies:

- in Precincts 1 and 2, the five storey limit is intended to encourage shop top development whilst retaining ground floor retail and office functions
- in Precinct 3, the six storey height was established to protect solar access and the three storey street wall height to ensure a pedestrian scale
- Precincts 4 and 5 were identified as transitional areas between the core (Precinct 3) and residential areas, and consequently a three storey street wall height was proposed with a similar limit where these precincts interface with Precinct 6.
- Precinct 6 was identified as providing a transition to the NRZ in the Activity Centre hinterland.

This analysis formed the basis of the proposed built form controls in the ACZ1, although some elements (such as the lot consolidation requirements in Precincts 3 and 5) have been developed further since the completion of the Structure Plan.

The Structure Plan provides general justification for the proposed heights and their arrangement within the Activity Centre and the Panel is satisfied that the gradation of heights from the commercial core (Precincts 1, 2 and 3) to the periphery (Precincts 5 and 6) is an appropriate design approach given the characteristics of the area. The Panel is also satisfied that the proposed heights are a reasonable response to the role of the centre as part of a MAC and the need to provide for more intensive development and greater housing diversity, while having appropriate regard to amenity issues within the centre and interfaces with adjoining residential areas.

As discussed in section 2.5, however, the Amendment would have benefited from a more detailed explanation of how some of these 'numbers' were derived.

4.4.3 Precinct 2 (South Road Commercial Precinct) – Building height

The ACZ1 applies a discretionary maximum building height of five storeys (17 metres) to Precinct 2.

(i) Submissions

The written submission from Keen Planning on behalf of Dr David Badov (the owner of 336-338 South Road, Hampton East) advised that the site has an existing planning permit for a five storey development, including a medical centre and 28 dwellings. The submission supported the five storey height limit, but opposed the 17 metre height limit on the basis that is unduly restrictive because of the slope of the land and the need to make allowance for medical uses which require high ceiling heights and cannot accommodate split levels. The submission sought an increase in the maximum height to 19 metres.

Council noted that *'the proposed height is discretionary and a planning permit can be sought to vary this requirement'*.

(ii) Discussion and conclusions

The proposed five storey (17 metres) discretionary height is drawn from the Structure Plan that included the following discussion:

In Precinct 2 (South Road), the amenity is currently fairly poor with inactive street frontages and limited weather protection for pedestrians. This will be addressed by encouraging office and residential development up to 5 storeys with a consolidated frontage to South Road. This will create a consistency of built form along the main road spines, while creating an appropriate transition from the commercial area to the residential areas of the centre.

The Panel is satisfied that a discretionary five storey maximum building height is appropriate in this area, and is consistent with the overall vision of building heights in the Activity Centre.

If there is a need for a taller building form within the five storey limit, as suggested in the submission, the discretionary nature of the control provides Council with the opportunity to consider such circumstances. For this reason, the Panel does not agree that the reference to 17 metres need be increased to 19 metres.

4.4.4 Precinct 3 (Mixed Use Core) – Building heights

The ACZ1 applies a discretionary maximum building height of six storeys (20 metres) to Precinct 3. If the lot is less than 1,500 square metres the maximum building height is four storeys (14 metres).

(i) Submissions

Many submitters raised concerns about the impacts of six storey development in this precinct and advocated a lower building height.

Martin and Anne Fawke submitted that a six storey height would mean overshadowing of their property from 3:00 pm onwards and that it would result in a loss of privacy. They proposed a four storey limit with a 6 metre setback in this precinct.

Madeline Hogan submitted that six storey development would result in overlooking and overshadowing of the existing apartments in Keiller Street. She added that the height would be “*excessively protuberant*” in the context of the local surroundings and not provide a sufficient transition between intensive use and development and areas of restricted housing growth. Ms Hogan submitted that the maximum building height should be reduced to four storeys.

Soula and Peter Lakrindis submitted that the Precinct should remain residential with a three storey limit. They expressed concerns about the loss of privacy, overshadowing and the inappropriate density of development.

Con and Effie Bakas raised similar concerns and submitted that buildings should be limited to three storeys, or two storeys on lots less than 1,500 square metres.

Bruno De Michelis and Motoko Iida expressed concern about overshadowing of their solar panels and the potential financial impact that higher electricity bills would have on their situation.

Adam Kraska opposed six storey development in the precinct and submitted that the “*residential area within Katoomba St, Keiller St, Reynolds St and Highbury Ave*” should be excluded from Precinct 3 and remain “*residential with density increased only by 3 storey dwellings*”.

Council submitted that the six storey building height in this precinct was consistent with the Structure Plan objectives and strategies, particularly built form strategy B1:

B1 – Encourage consolidated development of a central residential core (Precinct 3).

The central core of the activity centre, located directly behind the commercial areas is currently used inefficiently as an at-grade carpark. The area is protected from Nepean Highway and South Road, is close to transport and services and could support a consolidated apartment redevelopment of up to 6 storeys with basement carparking. In order to protect solar access and amenity to the street a maximum streetwall height of 3 storeys is recommended. As shown in Figure 6, the upper levels of the buildings in Precinct 3 will be setback at the upper levels to ensure a pedestrian scale at the interface to the open space and the active laneways.

(ii) Discussion and conclusions

The Panel is satisfied that a six storey building form is appropriate in this precinct given its central location and separation from residential areas outside the Activity Centre. While the Panel acknowledges the concerns of residents within and abutting this precinct, it is mindful that the Hampton East centre is part of the broader Moorabbin MAC that has been identified for intensification and change.

The structure planning process has reflected the need to accommodate this change, while responding to local character and amenity issues that will necessarily arise from that growth. In developing the ACZ1 to implement the Structure Plan, Council has been mindful of the

potential impacts on surrounding uses and has included comprehensive design and land use provisions intended to ameliorate these impacts.

The Panel also notes that Precinct 3 is partly zoned RGZ1 that includes the purpose:

To provide housing at increased densities in buildings up to and including four storey buildings.

Even if Amendment C151 did not proceed, the scale of development opposed by some submitters would still be permissible under this zone.

4.4.5 Precinct 3 (Mixed Use Core) – Minimum lot size

The ACZ1 applies a discretionary maximum building height of six storeys (20 metres) to Precinct 3. If the lot is less than 1,500 square metres the maximum building height is four storeys (14 metres). A similar provision is included in Precinct 5, although the building heights and lot size are smaller.

(i) Evidence and submissions

Mr Naughton represented GPD Group Pty Ltd and opposed the lot size requirement, submitting that it lacked justification. Mr Naughton submitted that the 1,500-square metre minimum was inconsistent with PPN56 and that a six storey development could occur on a smaller lot.

Mr Naughton relied on the evidence of Mr Negri who submitted that:

For a precinct, where higher density residential and mixed use development is strategically supported and where the height preference is 6 storeys, the planning controls should not seek to diminish the opportunity by establishing a lesser height preference based on an arbitrary lot size.

He added that the *“inability to consolidate does not necessarily inhibit the opportunity for development”* and that in his view establishing a minimum lot size would limit rather than create opportunities for consolidation. Mr Negri concluded that the ACZ1 should promote site consolidation without a minimum lot size provision and provided the Panel with a redrafted ACZ1 that included this and other changes.

Mr Naughton concluded that the consolidation provision should be removed.

Thanh Ly submitted that this requirement was not specified in the Structure Plan and was an arbitrary and overly restrictive limit.

Con and Effie Bakas submitted that the maximum building height should be storeys, or two storeys on lots less than 1,500 square metres.

Council submitted that the 1,500 square metre minimum was intended *“to facilitate best practice urban design principles”* and achieve a 20 metre lot frontage. Council added that a key issue was to ensure adequate building spacing for cross-ventilation, privacy and access to sunlight and daylight. Council submitted that the condition would assist in ensuring that the *“best setting is provided to facilitate the application of the 16 new apartment*

*standards*⁵. Council added that 1,500 square metres was chosen because it would require at least two average sized lots to achieve the threshold.

Council noted that it was a discretionary provision and that:

A planning permit may be granted to vary the proposed minimum lot size in this precinct. Any application to vary the minimum lot size will need to provide sufficient justification for the variation and will be assessed against the relevant objectives, precinct guidelines and decision guidelines to determine if a variation is acceptable.

Council also advised that a similar provision is included in the Design and Development Overlay Schedule 5 that applies to preferred medium density residential areas in Highett.

(ii) Discussion and conclusions

The Structure Plan contains the following statements about lot consolidation in Precinct 3 under the 'Built form issues and opportunities':

- *There is capacity for residential consolidation at the centre's core to achieve increased residential density.*
- *There is an opportunity for consolidation of smaller lots in the central core to allow for consolidated mixed use redevelopment that remains active at street level.*

The Panel accepts that the Structure Plan does not specify a minimum lot size, but it does promote consolidation. If a minimum is to be specified, it is the role of the built form controls in the ACZ1 to specify an appropriate minimum. The Panel accepts Council's submission that larger lots are better able to accommodate more intensive development and ensure adequate building setbacks and spacing for cross-ventilation, privacy and access to sunlight and daylight for a six storey development. The Panel acknowledges that it is possible to build a six storey development on a smaller lot, but questions whether the outcome would achieve the design and development provisions of Clause 4.3 of the ACZ1 to an acceptable standard. The Panel also agrees with Ms Kraska's observation that providing vehicular access to lots with narrow frontages potentially provides poor streetscape and urban design outcomes.

Although the 1,500 square metre limit is somewhat arbitrary, the Panel accepts Council's explanation that it is intended to create a threshold requiring the consolidation of at least two lots.

The Panel also agrees that the discretionary nature of this provision provides Council with the flexibility to consider alternative design responses to the Precinct's objectives and guidelines.

For these reasons, the Panel is satisfied that 'consolidation of lots' provision in Precinct 3 (and Precinct 5⁶) is appropriate. It follows that the Panel does not support the related revisions proposed by Mr Negri.

⁵ Better Apartment Design Standards, December 2016

⁶ This is discussed further in section 4.4.6 of this report.

4.4.6 Precincts 5 (Residential Consolidation Precinct) and 6 (Residential Transition Precinct) – Mandatory maximum building heights

The ACZ1 applies mandatory maximum building heights of four storeys (14 metres) to Precinct 5 and three storeys (11 metres) to Precinct 6. Precinct 5 also includes a lot consolidation provision whereby the mandatory maximum building height is reduced to three storeys (11 metres) if the lot is less than 1,200 square metres.

(i) Submissions

Matthew and Melinda Denham submitted that a line of three storey development along Warland Road would block out all morning sun and the backyard views of dwellings on the east side of Carrington Street. They recommended that Precinct 6 be limited to two storeys and that the northern end of Carrington Street and the southern end of Highbury Avenue should be in Precinct 6. Alexandra and Konstandina Kanellos made a similar submission.

Council submitted that the built form objectives were intended to limit the impact of streetscapes by transitioning building heights and providing setbacks.

In its closing submission, Council submitted that:

... the use of mandatory height controls and mandatory setback requirements applying to precincts 5 and 6 are justified. This controls seek to ensure that a mix of housing types is provided within the activity centre to accommodate the future demographic mix forecasted for this area. The mandatory controls will allow the retention of key valued neighbourhood character elements into the future and transitioning character of the area.

(ii) Discussion and conclusions

The proposed building heights in these Precincts were drawn from the Structure Plan and the Panel is satisfied that they are appropriate given the need to accommodate residential growth in these precincts and in recognition of the role of the Activity Centre. They are also part of a gradation of building heights that provides an appropriate transition from taller building forms to lower scale residential areas within and around the centre. In relation to submissions that sought a two storey height limit in Precinct 6, the Panel notes that this area is currently subject to the GRZ1 that applies a mandatory maximum three storey height limit. Reducing the scope for residential development in this area would be inconsistent with the activity centre planning principles that underpin the Structure Plan and the Amendment.

As discussed earlier in relation to the use of mandatory controls, there is a general presumption that discretionary built form controls should be applied in activity centres, except in exceptional circumstances. The greater flexibility and opportunity provided by discretionary controls are more suitable in areas such as this part of Hampton East where intensification and change are sought.

In relation to Precinct 5, the Panel accepts that a maximum four storey building form will assist in achieving the urban design outcomes sought by Council, but believes that there may be sites that can sustain a higher building form. This may become more evident as the adjoining Precincts 1, 2 and 3 are developed, potentially with buildings that are taller than

the discretionary heights identified for those precincts in the ACZ1. The Panel is also not satisfied that Council has adequately demonstrated that the characteristics of this area meet any of the 'exceptions' described in PPN60.

Precinct 5 includes a 'minimum land size' condition similar to Precinct 3, except that it is a mandatory rather than discretionary control. Changing the building height provision to a discretionary control will also change the land size provision to a discretionary control, an outcome that the Panel supports.

For these reasons, the Panel believes that the maximum building heights in Precinct 5 should be discretionary and not mandatory.

In relation to Precinct 6, the maximum three storey building height is likely to be appropriate on the periphery of the centre where it abuts the NRZ3 which has a maximum two storey building height. The Panel agrees with Council that the transition to these NRZ3 areas needs to be managed and that building height controls are a relevant factor. However, there may be sites in this precinct that can sustain a higher building form without compromising this transition. Providing greater flexibility through a discretionary maximum would be consistent with the centre's broader role and the policy support for intensification and change. As noted earlier, the existing GRZ1 that currently applies to this area includes a mandatory maximum three storey building height and, as Mr Negri noted, carrying over the same height limit would ignore the role of this area as part of an activity centre.

For these reasons, the Panel believes that the three storey building height in Precinct 6 should be discretionary and not mandatory.

In forming its views about discretionary controls in these Precincts, the Panel has also been mindful that the ACZ1 includes comprehensive objectives and guidelines that will provide a detailed framework for informing future decisions about building heights.

(iii) Recommendation

The Panel recommends:

- 1. Apply discretionary Maximum Building Heights of four storeys (14 metres) and three storeys (11 metres) in Precinct 5 of the Activity Centre Zone Schedule 1.**
- 2. Apply a discretionary Maximum Building Height of three storeys (11 metres) in Precinct 6 of the Activity Centre Zone Schedule 1.**

4.5 Setbacks

4.5.1 The issues

The issues relate to the building setbacks in Precincts 2, 3 and 6.

4.5.2 Precinct 2 (South Road Commercial Precinct) – Building setback

The ACZ1 applies the following mandatory 'Building Setback' to Precinct 2:

The 4th and 5th storeys must be setback a minimum of 5 metres from the street. A planning permit cannot be granted to vary this requirement.

(i) Submissions

Ms Emily Marson (Best Hooper Lawyers) represented South Road Medical Pty Ltd which generally supported the Amendment but opposed the mandatory setbacks for the 4th and 5th levels of the basis that the controls lack strategic justification. Ms Marson referred the Panel to PPN59 and 60, and submitted that the Structure Plan did not provide any justification for making these setbacks mandatory.

Ms Marson also referred the Panel to a recent decision of VCAT (South Road Medical Pty Ltd v Bayside CC [2017] VCAT 148.) which approved a six storey development within the Precinct at 312-326 South Road Hampton East - the South Road Medical site.

Council's table of responses to submissions indicated that:

The 5m setback of the upper levels was introduced in order to protect the pedestrian amenity along South Road (as well as other streets in the Activity Centre where this provision applies). An upper level setback of 5 metres will reduce visual impacts of new developments within the streetscape, whilst still allowing for higher density development to occur on these sites. Strategy B5 of the Structure Plan seeks to achieve a 3 storey podium to protect pedestrian amenity. The provision of a 5 metre setback of the upper levels will achieve the outcome that Strategy B5 seeks to create.

In its closing submission, Council added that:

The mandatory nature of the requirement seeks to ensure that the street wall height has a maximum of 3 storeys at interfaces with pedestrian areas. If we are to achieve the intent of the structure plan to create a high quality consolidated mixed use area that provides active frontages and inviting pedestrian- friendly laneways we must provide the appropriate planning provisions to facilitate this outcome to occur.

(ii) Discussion and conclusions

As discussed in section 4.1 of this report, the Panel believes that there should be strong strategic justification for mandatory requirements. The Panel accepts that a three storey street wall height is an appropriate scale and that it would be desirable to set back any upper levels. However, the Panel believes the extent of this setback should be part of the design response to the Precinct's objectives and guidelines rather than a mandatory control. In forming this view, the Panel notes that 5 metres is a significant setback and that Council's design objective might be achievable with a reduced setback in combination with other design features. The Panel also believes that the need for such a significant setback should have regard to the width of South Road and the separation this provides from development on its northern side.

The Panel also notes that, as drafted, the mandatory setback of the fourth and fifth levels would not provide for buildings taller than five storeys that are permissible in this precinct.

For these reasons, the Panel recommends that the setbacks be discretionary instead of mandatory and that the provision be revised to accommodate buildings above five storeys.

A similar mandatory setback provision is proposed for Precinct 1 (Nepean Highway Retail Precinct). For the reasons discussed in relation to Precinct 2, the Panel also believes that the setback in this precinct should be discretionary instead of mandatory.

(iii) Recommendations

The Panel recommends:

- 3. Apply discretionary upper storey Building Setbacks in Precincts 1 and 2 of the Activity Centre Zone Schedule 1, that applies to all levels above the third storey.**

4.5.3 Precinct 3 (Mixed Use Core) – Building setbacks

The ACZ1 applies the following mandatory building setback in Precinct 3:

4th, 5th and 6th storeys must be setback a minimum 2 metres from laneways. A planning permit cannot be granted to vary this requirement.

(i) Evidence and submissions

Mr Naughton advised that his client, Reynold Street Developments Pty Ltd, had lodged an application to develop 1-5 Reynolds Street. He added that the owner does not necessarily oppose the provision of laneway setbacks but opposed the mandatory minimum laneway setbacks for levels 4, 5 and 6 of a six storey development. Mr Naughton referred to the ‘tests’ for applying mandatory controls (including PPN59) and the findings of the Panel for Stonington Planning Scheme Amendment C172.

Mr Naughton relied on the planning evidence of Mr Negri who supported this view. He argued that this control restricts development and the change envisioned for this Precinct, and was not consistent with PPN59. Mr Negri submitted that his preference was for discretionary controls. He provided the Panel with a tracked change version of the ACZ1 which set out his suggested modifications.

Mr Naughton concluded that a *“discretionary laneway setback control should only be considered in circumstances where the Panel forms the view that a laneway control is required at all”*.

Council submitted that one of the strategies developed in the Structure Plan was to create a connected network of laneways to encourage pedestrian movement through the centre:

The amenity of the streets and laneways must be protected to ensure that they are comfortable and have a human scale.

In its closing submission, Council added that:

Council’s view is that the mandatory setback requirement of 2 metres in precinct 6 is not onerous and will result in a positive outcome in achieving the overall vision of the centre in providing vibrant and well connected spaces that encourage community interaction and walkability.

(ii) Discussion and conclusions

The Panel supports the inclusion of laneway setbacks within Precinct 3 and is satisfied that they will assist in achieving the “*human scale*” referred to by Council. The proposed setbacks are a legitimate planning response to the narrow width and extent of the laneways in this precinct.

The Panel also believes that the two metre setback should be mandatory because it is satisfied that this is the minimum setback that would be necessary to achieve the ‘human scale’ design outcome sought by Council. This is in contrast to the Panel’s views about the Precinct 2 setback to South Road (and the Precinct 1 setback to the Nepean Highway) discussed earlier, for which there might be other options to achieve Council’s design outcome.

For these reasons, the Panel supports this requirement being mandatory rather than discretionary.

A similar mandatory setback provision is proposed for Precinct 1 (Nepean Highway Retail Precinct). For the reasons discussed in relation to Precinct 3, the Panel believes that the setback in this precinct should also be mandatory.

4.5.4 Precinct 6 (Residential Transition Precinct)

The ACZ1 applies the following mandatory building setback in Precinct 6:

A building must be setback a minimum of 6 metres from street frontages. A planning permit cannot be granted to vary this requirement.

(i) Submissions

Matthew and Melinda Denham submitted that the 6-metre front setback was inappropriate for lots that have an irregular shape and wide frontages. They submitted that there needed to be an ability to modify this requirement.

Council’s table of responses to submissions indicated that this setback is intended to provide a ‘*front yard character in the residential areas*’ (Precincts 5 and 6) and the provision of canopy trees.

(ii) Discussion and conclusions

The Panel believes that applying this setback as a mandatory requirement is potentially excessive and may not be appropriate or necessary in all situations. The Panel believes that this provision should be discretionary and not mandatory.

Although Precinct 5 also includes a mandatory front setback, it is significantly less (3 metres) than the Precinct 6 setback and is a justifiable approach to the design outcomes sought by Council.

(iii) Recommendation

The Panel recommends:

4. **Apply a discretionary Building Setback of six metres in Precinct 6 of the Activity Centre Zone Schedule 1.**

4.6 Traffic, parking and movement**4.6.1 The issues**

The issues are related to:

- the adequacy of traffic and parking infrastructure to accommodate future development
- the desirability of improving connections to the Moorabbin Railway Station
- the provision of pedestrian links through Precinct 2.

The ACZ1 includes the following 'Access and Movement' objectives:

- *Improve walkability within the centre to provide easier access and increase liveability.*
- *Improve traffic flows through and around the centre to reduce congestion and improve general streetscape amenity.*
- *Provide cycling facilities to improve sustainable transport to and through the centre.*
- *Increase safety for vehicles, cyclists and pedestrians using the centre.*

Clause 4.3 also includes 'Design and development' guidance for 'Car parking'.

The Framework Plan (refer to Figure 3) identifies a 'Proposed circulatory road from Keiller Street to King Street', designates sites as 'Potential for Underground Parking', identifies 'Proposed Pedestrian Footpaths', 'Improved Pedestrian Connections' and 'Activated Pedestrian Laneways', and nominates intersections where Council will 'Investigate Traffic Improvements'.

The precinct provisions provide more detailed objectives and guidelines about these matters.

These elements of the Amendment and Structure Plan were informed by the Traffic and Transport Background Report, July 2015 prepared by Traffix Group Pty Ltd.

4.6.2 General concerns about traffic and parking**(i) Submissions**

Soula and Peter Lakrindis, and Con and Effie Bakas submitted that the road network had been designed to service the existing level of development and is already congested. They submitted that the Amendment would only exacerbate this situation. David and Kathleen Hughes submitted that the development envisaged in the Activity Centre would result in more on-street car parking which would make vehicle movement through the area more difficult. They argued that the proposed circulatory road was problematic and that traffic lights should be installed at the intersection of Charming Street and South Road. Kylie Smith

submitted that movement through the route designated as the primary circulatory road was already difficult and the Amendment would not improve the situation.

Martin and Anne Fawke submitted that the density of development would cause traffic and parking problems and that parking was already at capacity. They recommended the provision of additional parking, various traffic control measures and capacity upgrades. Madeline Hogan submitted that there was insufficient parking in the surrounding streets and car parks to accommodate households with two or more cars. Motoko Iida and Adam Kraska raised concerns about parking issues and the capacity of the road network to accommodate future traffic.

Alexandra and Konstandina Kanellos (in relation to Precinct 6) submitted that the Amendment would result in increased noise, traffic and car parking in the streets which will cause a disturbance to other residents.

VicRoads supported the Amendment but expressed concern that the intensification of land uses within the Activity Centre had not been adequately assessed. VicRoads submitted that the transport impact analysis should be undertaken at the Structure Planning stage rather than at the planning permit stage.

Council acknowledged that it would need to undertake additional road works to deal with the expected level of development envisioned by the Structure Plan:

Council will need to monitor the local road network as development continues to occur and make upgrades to the road as required. Council will determine what measures would be required in order to create this connector road, but it is likely that the removal of the existing on street car parking would be required in order to allow for the required flow of traffic in this area. The works may also include the implementation of a signalised traffic intersection where Gleniffer Avenue, South Road and Charming Street meet.

Council also noted that Clause 21.09 reflected its intention to undertake further investigations and that these issues would be informed by existing Council policies such as the Integrated Transport Strategy and Managing On-Street Car Parking Demand Policy.

Council submitted that the proposed circulatory road would improve traffic flow and accommodate increased population with minimal impacts on amenity. Council referred to the Traffic and Transport Background Report which concluded that the Structure Plan area could accommodate up to 1,504 dwellings (at full build out) and that:

Subject to upgrading sections of Highbury Avenue and Keiller Street to 'Connector Streets' with kerbside parking removed from the traffic lanes, each of the roads within the Structure Plan area are anticipated to have sufficient capacity to accommodate the additional traffic generated by the proposed development.

Council also outlined a number of possible works that might be required and noted that VicRoads is responsible for managing and maintaining the Nepean Highway and South Road. Council also advised that Council had commenced discussions with VicRoads about these issues.

Council acknowledged the concerns of submitters about car parking, especially the removal of the Council car park on Katoomba Street to make way for the public open space:

As identified in the Traffix Group report, there is currently a surplus of parking within Hampton East, with parking occupancy only being at a rate of approximately 53% during peak times. The trends as identified in this report is that the majority of parking occurs within private carparks as opposed to on-street or public parking spaces.

In relation to the VicRoads submission, Council noted that although transport modelling had not been undertaken as part of the Traffic and Transport Background Report, the analysis in that report had concluded that the anticipated population growth would not result in the local roads exceeding their environmental capacities. This analysis included three stages:

- Stage 1: an analysis of existing conditions
- Stage 2: a strengths, weaknesses, opportunities and threats assessment
- Stage 3: an assessment against the proposed Structure Plan.

(ii) Discussion and conclusions

Submissions identified existing issues with vehicle movement through the Activity Centre and on-street parking. The Panel acknowledges that traffic and parking will be issues as increased development occurs and that improvements to the road network will be necessary to accommodate this growth. This is reflected in the Traffic and Transport Background Report, which concluded that the road network within the centre could accommodate the predicted level of development, but would require various upgrades and changes. That report also concluded that parking demand could be accommodated in conjunction with new development.

The Panel accepts Council's position that further works to the traffic and parking networks will be undertaken as development progresses in the centre. Council will need to monitor the performance of the local road network and parking availability to ensure these changes occur in a timely manner and do not lag behind development.

On the basis that these works are undertaken, the Panel concludes that there are no fundamental traffic or parking impediments that will preclude the level of development anticipated in the Structure Plan and the Amendment. The Panel also notes that Council's commitment to monitoring these issues is reflected in the proposed additions to Clause 21.09.

In terms of specific suggestions by submitters about what works might be necessary, these decisions would need to be informed by more a comprehensive analysis in the future.

4.6.3 Connection to the Moorabbin Railway Station

(i) Submissions

Public Transport Victoria (PTV) did not oppose the Amendment, but submitted that an additional objective should be included in the ACZ1 under 'Access and Movement':

Enhance pedestrian accessibility to Moorabbin Railway Station by improving the pedestrian environment through the use of way finding signage, lighting, improved pavement treatments and other possible landscaping treatments.

In addition, the Framework Plan in the ACZ1 should include a notation that:

... an enhanced pedestrian environment should be provided to improve pedestrian access to the Moorabbin Railway Station, in addition to investigating traffic improvements at the intersection of Keiller Street and Nepean Highway.

Adam and Barbara Kraska submitted that the potential and need to improve the connection between the Moorabbin Railway Station and Hampton East had not been addressed in the Structure Plan. Con and Effie Bakas submitted that a connection would be better achieved by an overpass. David and Kathleen Hughes submitted that the Nepean Highway was a significant barrier to accessing the Station and that this should be factored in to the extent of residential development that is planned for the Activity Centre.

Council noted that Precinct 1 in the ACZ1 includes the 'guideline':

- *Improve the pedestrian environment crossing the Nepean Highway connecting to the Moorabbin Railway Station.*

Council also noted that this was one of a number of 'guidelines' to achieve the access and movement objectives.

(ii) Discussion and conclusions

The proximity of the Moorabbin Railway Station to Hampton East is a key reason why the Activity Centre is part of the broader Moorabbin MAC. However, the Panel agrees with submitters that the Nepean Highway is a considerable obstacle that divides the MAC and is a matter that will need to be addressed. It is not, however, a reason for limiting future residential development within this area.

The need to improve the access arrangements is reflected by the Precinct 1 'guideline' referred to by Council, but it should also be referenced as a specific 'objective' in Precinct 1 as sought by PTV.

The Panel does not have a view about how this connection might be improved or whether an overpass would be appropriate. This issue will require further consideration by Council in conjunction with other stakeholders.

(iii) Recommendation

The Panel recommends:

- 5. Include the following 'Precinct objective' in Clause 5.1-2 of the Activity Centre Zone Schedule 1:**

To improve pedestrian access to the Moorabbin Railway Station.

4.6.4 336 and 338 South Road

(i) Submissions

Keen Planning advised that an existing planning permit for this site (referred to in section 4.4.4 of this report) consolidated 336 and 338 South Road, and that the proposed pedestrian link between these two lots in the Structure Plan was strongly opposed.

Council's table of responses to submissions included:

Council has proposed pedestrian links in this location in order to provide links to the laneway. These aspects form part of the vision for the site, but are not statutory requirements. The exact location and the details of how the proposed pedestrian pathways will be created may be flexible.

(ii) Discussion and conclusions

The Structure Plan includes a "concept plan: access and movement" that shows two north-south pedestrian connections from South Road to the laneway behind these properties. The annotation in the legend is "improve existing pedestrian links". This reference is not included in the ACZ1.

In the Panel's view this is, as the title suggests, a concept plan in a structure plan and simply highlights that the retention or provision of links in this area should be considered in any redevelopment of the sites.

The Panel also notes that the reference is only included in the Structure Plan and has not been carried over into the ACZ1. The Structure Plan (as a Reference Document) will not have the statutory 'weight' of the ACZ1.

For these reasons, the Panel does not agree that this reference need be deleted from the Structure Plan.

4.7 Amenity

(i) The issue

The issue is the impact that development will have on the amenity of the area, particularly residential amenity within and around the Activity Centre.

(ii) Submissions

Submitters raised a broad range of amenity concerns resulting from anticipated development and intensification of activity in the Activity Centre, particularly associated with building heights, more intensive activity, traffic movement, parking, lack of vegetation and open space.

Council highlighted the various provisions in the ACZ1 and additions to Clause 21 that seek to address the amenity issues raised in submissions.

(iii) Discussion and conclusions

As discussed earlier, Hampton East is part of a MAC where change is invited and the intensification of activity is encouraged. Consequently, the amenity of the centre will change, consistent with this role.

Nevertheless, the Structure Plan and Amendment are focussed on managing this change to achieve positive urban design outcomes and to ameliorate amenity impacts associated with more intensive development. This is reflected in the Structure Plan 'vision' for the area:

A well serviced and connected centre to work, live and play in with a range of housing choices, a diversity of services and facilities, and vibrant, well-connected public spaces that meet the ongoing needs of the Bayside community.

These concerns have influenced the built form layout shown in the Framework Plan and the designation of building heights and setbacks in the ACZ1. They also underpin many of the more general objectives and guidelines in Clause 4.3 of the ACZ1, particularly in relation to 'Built form' and 'Landscape and environment'. Further, more detailed guidance is provided in the precinct objectives and guidelines, that have a strong focus on amenity and character issues.

The Panel is satisfied that these provisions provide a sound framework for Council to manage amenity impacts within and around the Activity Centre, as it develops into a more intensive commercial area with higher density residential development. Nevertheless, the current level of amenity enjoyed by some residents will necessarily change over time as the centre develops and fulfils its role as part of a MAC.

On balance, the Panel is satisfied that the Amendment provides an appropriate response to the amenity concerns raised by submitters and strikes a reasonable balance between protecting residential amenity, encouraging high quality urban design and facilitating the development of the centre.

4.8 Other issues

4.8.1 21 Katoomba Street

(i) Submissions

This property is owned by the Uniting Church and is currently zoned GRZ1. The lot is approximately 1,200 square metres, is within Precinct 6 (Residential Transition Precinct) and is bordered by Precinct 5 (Residential Consolidation Precinct) to the north. The exhibited ACZ1 includes mandatory maximum building heights for Precincts 5 and 6 of four and three storeys respectively. The Panel has recommended that these controls be discretionary instead of mandatory.

Gavin Faichney on behalf of the Uniting Church advised that the building was used as a manse and was now surplus to the Church's needs. He submitted that the site should be in Precinct 5 "*in recognition of its location and unique characteristics including large size*".

Council's table of responses to submissions recommended that this submission "*be discussed as part of the Planning Panel process*".

(ii) Discussion and conclusions

The relatively large size of this property and its location adjoining Precinct 5 are factors that support its inclusion in Precinct 5, rather than Precinct 6. However, including it within Precinct 5 might raise interface issues for abutting properties to the south and west that would be retained within Precinct 6.

In balancing these issues, the Panel is mindful of its recommendation⁷ that the three storey building height in Precinct 6 be discretionary rather than mandatory. It based that recommendation on various factors, including the flexibility that discretionary controls provide, particularly in responding to unusual or exceptional circumstances, such as the size and location of this property.

The Panel is satisfied that this property should be retained in in Precinct 6, but with a discretionary maximum building height. This will provide a suitable level of flexibility and at least partly address the submission by Mr Faichney.

4.8.2 Central Public Open space**(i) Submissions**

Soula and Peter Lakrindis submitted that the Structure Plan should provide for more and vibrant open space.

Barbara Kraska identified a number of factors that might impact on the utility and success of the proposed open space area in Precinct 3.

David and Kathleen Hughes submitted that the provision of open space in Precinct 3 might not achieve the desired outcome and recommended that the proposal be further researched.

Council observed that the Activity Centre does not currently contain any public open space. Council submitted that the landscape and environment provisions of the ACZ1 sought to rectify this shortcoming and the Framework Plan identified a future 'Central Public Open Space Area' in Precinct 3 (refer to figure 3). Council submitted that this public space is intended to be accessible for all, provide a central focus for the area and be protected from the amenity issues associated with the Nepean Highway.

Council also noted that Clause 21.06 includes a commitment to investigating statutory mechanisms to deliver the open space and Clause 21.08 includes a commitment to prepare a masterplan for the open space area.

In addition to providing this central space in Precinct 3, Council submitted that the Amendment would also:

- *Regenerate the Nepean Highway and South Road pedestrian areas to create a positive shopping, dining and walking experience to visitors and residents*
- *Preserve public open space at the rear of properties in residential transition areas to ensure landscaping and amenity benefits.*

⁷ Refer to section 4.4.6 of this report.

(ii) Discussion and conclusions

The Panel agrees with Council that the proposed open space area will provide a central focus within the Activity Centre and be an important public asset once developed.

The Panel also notes that the ACZ1 includes various objectives and guidelines about how this space should be developed, including the need to provide appropriate linkages. The proposed additions to Clause 21 also reflect Council's commitment to address the funding, delivery and planning issues raised by some submitters.

The Panel supports these references and is satisfied that they address the concerns raised in submissions.

4.8.3 Consistency with the Structure Plan**(i) Submitters**

Some submitters expressed concerns about the lack of consistency between some elements of the Structure Plan and the Amendment, and whether the Amendment accurately implements the Structure Plan's findings and recommendations. Mr Naughton, for example, highlighted that some of the ACZ1 provisions (such as the lot consolidation provision) went beyond the findings and recommendations of the Structure Plan. On this basis, he submitted that they had not been justified and should not proceed.

(ii) Discussion and conclusions

As a general observation, it is not unusual that the translation of strategic work into a planning scheme amendment results in refinements and additional material based on the further analysis often undertaken during this process. In the case of the Structure Plan and Amendment C151, the Panel is satisfied that they are generally consistent and that any departures from the Structure Plan represent a reasonable development of its vision and strategies.

However, the Panel also believes that those elements of the ACZ1 that were not directly drawn from the Structure Plan should have been more fully documented during the development of the Amendment and that this material should have been available to stakeholders and the Panel. This issue was discussed in section 2.5 of this report.

4.8.4 Coordinated planning of the Moorabbin MAC**(i) Submissions**

Peter and Soula Lakrindis submitted that planning for the Hampton East element of the Moorabbin MAC was being undertaken in isolation from the other two elements (in Kingston and Glen Eira) and that this could "*undermine*" the viability of the centre, particularly if it led to a duplication of shops and services. Similar concerns about a lack of coordination were raised by Barbara Kraska.

Council's table of responses to submissions indicated that the drafting of the ACZ1 had regard to the Kingston ACZ3 and that there was an intention to achieve consistent outcomes where possible.

(ii) Discussion and conclusions

Although there might be some advantages in a 'joint' or coordinated plan for the Moorabbin MAC, the Panel is satisfied that Bayside Council's approach to planning for the Hampton East element is an appropriate response to the challenges associated with the MAC being located within three municipalities.

4.8.5 Property values**(i) Submissions**

Submitters, including Soula Lakrindis, Billy Loizou and Lisa Treloar submitted that the Amendment would diminish property values in the area.

Council submitted that *"the impact of planning scheme changes on property values are not a relevant planning consideration when preparing Amendments"*.

(ii) Discussion and conclusions

The Panel agrees with Council that possible impacts on property values is not a relevant factor in assessing the Amendment. This has been a consistent position adopted by various Panels and there is no reason to depart from that approach in relation to this Amendment.

4.8.6 Consultation**(i) Submissions**

Some submitters raised issues about the extent and adequacy of the consultation undertaken as part of the structure planning process and the preparation of the Amendment.

Council provided a detailed response to this matter in its closing submission that described the extent of consultation undertaken during the development of the Structure Plan and the notification of the Amendment.

The key elements of these processes are discussed in sections 1.2 and 2.4 of this report.

(ii) Discussion and conclusions

The Panel accepts Council's advice on these matters and is satisfied that Council's consultation and notification processes have been appropriate.

4.8.7 Revisions to the Activity Centre Zone Schedule 1

Mr Negri provided a tracked change version of the ACZ1 in which he proposed various revisions consistent with his evidence. He also included other changes that were intended to improve the general clarity and performance of the schedule, without changing the intent of the provisions.

As discussed in sections 4.4.6 and 4.5.3 of this report, the Panel does not support Mr Negri's proposed changes to the setback and lot consolidation provisions that apply in Precinct 3.

The Panel has reviewed his other proposed changes and does not believe that they need be included in the schedule. Nevertheless, Council should review these additional changes to

identify whether they might improve the clarity of the provisions and should therefore be adopted.

Appendix A Submitters to the Amendment

No.	Submitter
1	Kasum Jayaratne
2	Neil Kelly
3	Thanh Ly
4	Adam and Barbara Kraska
5	Kerry Gilbert
6	Kylie Smith
7	Martin and Anne Fawke
8	National Sterling on behalf of South Road Medical Pty Ltd
9	Planning and Property Partners on behalf of GPD Group Pty Ltd
10	Matthew and Melinda Denham
11	Public Transport Victoria
12	Madeline Hogan
13	Soula Lakrindis
14	David and Kathleen Hughes
15	Simon Benzvi
16	Ofer Benzvi
17	Con and Effie Bakas
18	Peter Lakrindis
19	Billy Loizou and Lisa Treloar
20	Planning and Property Partners on behalf of Reynolds Street Developments Pty Ltd
21	The Uniting Church in Australia
22	Alexandra and Konstandina Kanellos
23	Ivan Lakatosh
24	Keen Planning on behalf of David Badov
25	Natalie Reid
26	Rachel Lui
27	Noel Johnstone
28	Vic Roads
29	Erik Rathmayr
30	Bruno de Michalis
31	Mat Konrad

Appendix B Document list

No.	Date	Description	Presented by
1	10/5/17	Submission on behalf of Bayside City Council	Ms Aya
2	10/5/17	Bayside Council meeting agenda 22 February 2017	Mr Naughton
3	10/5/17	Submission on behalf of GPD Group Pty Ltd and Reynolds Street Developments Pty Ltd	Mr Naughton
4	11/5/17	Submission on behalf of South Road Medical Pty Ltd	Ms Marson
5	11/5/17	Approved development plans 318-326 South Road Hampton East	Ms Marson
6	11/5/17	Submission on behalf of Peter and Soula Lakrindis	Ms Lakrindis
7	11/5/17	Submission on behalf of Rachel Lui	Ms Lui
8	11/5/17	Submission on behalf of David and Kathleen Hughes	Mr Hughes
9	11/5/17	Submission on behalf of Bruno De Michelis	Mr Michelis
10	11/5/17	Submission on behalf of Motoko Ilda	Ms Ilda
11	11/5/17	Submission on behalf of Noel Johnstone	Mr Johnstone
12	11/5/17	Submission on behalf of Adam Kraska	Mr Kraska
13	11/5/17	Submission on behalf of Barbara Kraska	Ms Kraska
14	11/5/17	Closing submission on behalf of Bayside City Council	Ms Aya