Planning and Environment Act 1987
Panel Report pursuant to section 25 of the Act
Bayside Planning Scheme Amendment C126
Bayside Small Activity Centres Strategy
7 February 2019

Dalia Cook, Chair

Ann Keddie, Member
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List of Abbreviations

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<tr>
<th>Abbreviation</th>
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<tr>
<td>C1Z</td>
<td>Commercial 1 Zone</td>
</tr>
<tr>
<td>DDO</td>
<td>Design and Development Overlay (Schedule No #)</td>
</tr>
<tr>
<td>DELWP</td>
<td>Department of Environment, Land, Water and Planning</td>
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<tr>
<td>Economic Review</td>
<td>Small Activity Centres Strategy - Economic Analysis, September 2017</td>
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<td>GRZ</td>
<td>General Residential Zone</td>
</tr>
<tr>
<td>Housing Strategy</td>
<td>Bayside Housing Strategy 2012</td>
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<td>MUZ</td>
<td>Mixed Use Zone</td>
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<td>NRZ</td>
<td>Neighbourhood Residential Zone</td>
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<td>PE Act</td>
<td>Planning and Environment Act 1987</td>
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<td>Planning Scheme</td>
<td>Bayside Planning Scheme</td>
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<td>PPF</td>
<td>Planning Policy Framework</td>
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<td>SAC Strategy</td>
<td>Bayside Small Activity Centres Strategy 2014</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
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<tr>
<td>SCAC</td>
<td>Small Commercial Activity Centre</td>
</tr>
<tr>
<td>SNAC</td>
<td>Small Neighbourhood Activity Centre</td>
</tr>
<tr>
<td>Urban Design and Built Form Review</td>
<td>Bayside Small Activity Centres Urban Design and Built Form Review, December 2017</td>
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<td>VCAT</td>
<td>Victorian Civil and Administrative Tribunal</td>
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Overview

Amendment summary

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<th>The Amendment</th>
<th>Bayside Planning Scheme Amendment C126</th>
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<tr>
<td>Common name</td>
<td>Bayside Small Activity Centres Strategy</td>
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<tr>
<td>Brief description</td>
<td>The Amendment seeks to give effect to the Bayside Small Activity Centres Strategy 2014 by introducing new planning scheme policies, replacement Design and Development Overlays and by undertaking specific rezoning.</td>
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<td>Subject land</td>
<td>Small Activity Centres within the City of Bayside identified in Figure 2</td>
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<td>The Proponent and Planning Authority</td>
<td>Bayside City Council</td>
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<td>Authorisation</td>
<td>15 July 2016</td>
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<tr>
<td>Exhibition and re-exhibition</td>
<td>16 March to 24 April 2017; and 7 June to 16 July 2018</td>
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<td>Submissions</td>
<td>Number of Submissions: 172 Submitters are listed in Appendix A</td>
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Panel process

| The Panel                     | Dalia Cook (Chair) and Ann Keddie |
| Directions Hearing            | Council Chambers, Brighton, 22 October 2018 |
| Panel Hearing                 | Council Chambers, Brighton, 29 and 30 November and 3 and 4 December 2018 |
| Site inspections              | Unaccompanied, November 2018, 28 December 2018 |
| Appearances                   | See Appendix B |
| Citation                      | Bayside PSA C126 [2019] PPV |
| Date of this Report           | 7 February 2019 |
Executive summary

(i) Summary

The City of Bayside provides a wide variety of activity centres, commonly interspersed with its residential areas. These centres generate economic and social benefits by supporting a range of uses including commercial, retail, employment and hospitality. Increasingly, they provide a focus for housing intensification in line with state planning policy.

Much strategic planning work to date has focused on larger activity centres within the City of Bayside. Council submitted that the current Amendment has sound strategic justification, being grounded in studies examining the economic, town planning and urban design aspects of activity centres at the lower end of its hierarchy, referred to as Small Activity Centres (SACs). The most influential study is the *Bayside Small Activity Centres Strategy 2014*. Council seeks to include this in the Bayside Planning Scheme (Planning Scheme) as a reference or background document through this Amendment.

The Amendment also proposes changes to policy and planning scheme controls to recognise and plan for the future of 33 nominated small activity centres. A corresponding new Design and Development Overlay (DDO) is proposed to apply to each centre retained as a SAC in place of the currently applicable DDO.

In response to submissions following initial exhibition, Council commissioned further studies including the *Small Activity Centres Strategy - Economic Analysis, September 2017, Bayside Small Activity Centres Urban Design Review, December 2017* and *Bayside Small Activity Centres Urban Built Form Review, December 2017*. Targeted changes were then made to the Amendment and it was re-exhibited. Subsequent refinements are now proposed by Council as addressed in the Panel Hearing and associated documents.

Some submitters, constituting both land owners within the activity centre and those representing community and residential interests beyond it, queried the strategic basis for various aspects of the Amendment.

The most controversial aspect of the Amendment was the content of the proposed DDO schedules. In many instances, they propose mandatory maximum building heights as well as other design requirements that came under scrutiny in the Panel process.

A number of submitters contended that mandatory maximum building heights as proposed in most DDO schedules were not warranted or consistent with planning policy and the current direction of the Victorian planning system. Others called for greater restraint on built form within activity centres to protect the character and amenity of surrounding areas, especially residential land.

Having considered all relevant documentation, submissions and evidence, the Panel concludes that, subject to changes proposed by Council as part of the Hearing process:

- In principle, the Amendment is justified strategically in so far as it seeks to supplement planning policy and introduce more detailed controls for Small Activity Centres.
- It is appropriate for the *Bayside Small Activity Centres Strategy 2014* to be updated and refined in line with reviews undertaken in 2017 and the
recommendations of the Panel before being introduced as a reference or background document to the Bayside Planning Scheme.

- Changes proposed to policy are generally acceptable, although the Panel suggests changes to reflect the capacity for change within the SACs and their relationship with surrounding areas. The Panel also suggests that a more streamlined approach could be taken to identifying the role and vision of Small Activity Centres within the Bayside Planning Scheme.
- Council should de-classify the Beach Street and Georgiana Street, Sandringham centre from the list of SACs encompassed by the Amendment.
- Site-specific or centre-specific recommendations are made in respect of proposed rezoning.
- Built form controls for each activity centre are warranted in the form of replacement Design and Development Overlays, and this would represent a more refined approach compared with existing Design and Development Overlays that apply to these centres.
- In some instances, the Panel supports the preferred building scale and other design measures proposed in the Design and Development Overlay controls. However, the Panel has identified greater potential for built form in other centres, and has recommended consequential modifications which either involve an uplift to the next ‘category’ of Design and Development Overlay or tailored modifications to the schedules as proposed.
- Notwithstanding a general level of support for proposed scale of built form for some centres, the approach taken by the Amendment to establishing mandatory maximum building heights in most Design and Development Overlay schedules has not been strategically justified except in respect of schedule 17, schedule 19 and for properties adjacent to a particular heritage property.
- The Panel also recommends changes to the wording of schedules to the Design and Development Overlay to improve their conciseness and functionality, with a view to achieving a balance that is representative of consolidated planning policy directions for activity centres, housing and neighbourhood character.
- The Amendment as proposed to be modified by Council proposes suitable additions to the Schedule to Clause 52.28 by nominating centres that constitute strip shopping centres where electronic gaming machines would be prohibited.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Bayside Planning Scheme Amendment C126 be adopted as exhibited with the changes proposed in the Panel version of the Amendment documentation and subject to the following:

Policy

1. Streamline amended policy provisions pertaining to the detailed classifications of individual centres as Small Neighbourhood Activity Centres or Small Commercial Activity Centres or their preferred future role.
2. Delete reference to the Beach Road and Georgiana Street centre in amended planning policies.

3. Change references to “shop top housing” in amended planning policies to “additional” housing.

4. Delete “and avoids materially altering the scale of the centre” from Clause 21.06 and change the reference to “maintaining the character of residential precincts” to “respond suitably” or similar.

5. Update and refine the Bayside Small Activity Centres Strategy 2014 having regard to the Bayside Small Activity Centres Urban Design Review, December 2017, Bayside Small Activity Centres Urban Built Form Review, December 2017 and Small Activity Centres Strategy - Economic Analysis, September 2017 in a way that is consistent with the Panel’s recommendations before introducing this as a background document in Clause 72.08 of the Bayside Planning Scheme.

Changes to zoning

6. Rezone all allotments from 81-89 Bay Street to 101 Bay Street, Brighton to Commercial 1 Zone and include them in the activity centre boundary subject to Design and Development Overlay Schedule 15.

7. Remove the Commercial 1 Zone from 307-309 and 311 New Street, Brighton, with this land to be retained in the Neighbourhood Residential Zone.

8. Rezone 298 New Street, Brighton to Commercial 1 Zone.

Nomination of centres

9. Change the applicable schedules to the Design and Development Overlay for listed centres as follows:
   a) Balcombe Park, Beaumaris - Design and Development Overlay Schedule 14
   b) Brighton Beach (Were Street), Brighton - Design and Development Overlay Schedule 14
   c) South Road Plaza, Hampton - Design and Development Overlay Schedule 15

10. Declassify the Beach Road and Georgiana Street Centre from the list of Small Activity Centres and remove it from Design and Development Overlay Schedule 17.

Wording of Design and Development Overlay schedules

11. In all schedules, in the design objectives include the words “preferred” before the words “urban form and building types”.

12. In all schedules, include an exemption from buildings and works in the form of the ‘Panel version’.

13. In all schedules, in design detail, replace “ensure developments are sympathetic in their design to the existing character of the centre and the surrounding residential community” with “ensure developments are sympathetic in their design to the emerging and preferred character of the centre and respond suitably to surrounding residential buildings”.
14. In all schedules, in decision guidelines, replace “whether the development provides the transitional setbacks to nearby sensitive uses” with “whether the development provides appropriate setbacks to nearby sensitive uses”.

Design and Development Overlay Schedule 13

15. Amend the building height to provide a preferred building height of 9 metres (2 storeys) and to delete the inability to grant a planning permit to vary this requirement.

16. Include criteria for an increase in building height above the preferred height using the wording in Figure 3 of this Report.

Design and Development Overlay Schedule 14

17. Amend the preferred building height to 11 metres (3 storeys).

18. Delete the provision preventing buildings above 11 metres (3 storeys).

19. Amend the criteria for buildings above the preferred height to the wording in Figure 3 of this Report.

Design and Development Overlay Schedule 15

20. Insert “in centres other than New Street and Bay Street” before “A 3 storey street wall” under the heading Setbacks.

21. Delete the preference for side and rear setbacks in line with Clause 55.04-1.

22. Amend the criteria for buildings above the preferred height to the wording in Figure 3 of this Report with the reinstatement of “whether the proposal retains the large ground floor floorplates for commercial development for Nepean Highway centres”.

Design and Development Overlay Schedule 16

23. Include criteria for an increase in building height above the preferred height using the wording in Figure 3 of this Report.

24. Remove the proposed inability to grant a planning permit to vary setbacks, except for properties in Area D.

Design and Development Overlay Schedule 17

25. Include a design objective “to respond to and enhance the foreshore environment of Port Phillip Bay” or similar.

26. Delete the component of building height seeking a preferred 2 storey (9 metre) building height.

27. Delete the criteria for buildings above the preferred height.

28. Include an exemption for architectural features and building services (wording to be nominated by Council) to be permitted above the mandatory maximum height.
Design and Development Overlay Schedule 19

29. Include criteria for an increase in building height above the preferred height using the wording in Figure 3 of this Report.

30. Delete the preference for side and rear setbacks in line with Clause 55.04-1 for land in Areas A, B and C.

31. Include an exemption for architectural features and building services (wording to be nominated by Council) to be permitted above the mandatory maximum height.

Changes to concept plans

Balcombe Park, Beaumaris

32. Council nominate this centre within Schedule 14 of the Design and Development Overlay Schedule subject to the following modifications to the concept plan:
   a) the street wall to Balcombe Road described as up to 3 storeys
   b) above the street wall, a preferred upper level setback of 5 metres from the street frontage
   c) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   d) replace new connections/extend laneway designation with ‘retain and enhance existing’
   e) the reference to transitional setbacks in the legend to the concept plan to be changed from ‘limit’ to ‘manage’.

Bluff Road and Edward Street, Black Rock/Sandringham (part)

33. The concept plan be amended to show the remainder of the centre in outline with a notation “subject to DDO14”.

34. Above the street wall, a preferred upper level setback of 5 metres from the street frontage.

Brighton Beach (Were Street) Centre, Brighton

35. Council nominate this centre within Design and Development Overlay Schedule 14 subject to the following modifications to the concept plan:
   a) nominated street walls for this centre described as up to 2 storeys, set back to existing lot line of commercial properties (that is, inset on the southern side of Were Street compared with the most recent version of the concept plan)
   b) above the street wall, a preferred upper level setback of 5 metres from the street frontage
   c) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   d) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’ to reflect existing laneway conditions
   e) consequential changes to the legend to the concept plan, including the identification of the lane as Davie Lane, and a note that dwelling entrances
can be provided from it, and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Weatherall Road and Morey Road, Beaumaris

36. Council adopt Design and Development Overlay Schedule 13 and the concept plan subject to the following modifications:
   a) a street wall described as up to 2 storeys
   b) above the street wall, a preferred upper level setback of 5 metres from the street frontage
   c) consequential changes to the legend to the concept plan and a wording change to delete the reference to Milano’s and amend the description of the transitional setbacks to ‘manage’ rather than ‘limit’ overlooking overshadowing and visual impact on adjoining residential areas

Balcombe Road and Charman Road, Beaumaris

37. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storeys
   b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   c) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
   d) consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Bay Road and Avoca Street, Cheltenham

38. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storeys
   b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   c) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
   d) consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Bay Road and Jack Road, Cheltenham

39. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 2 storeys
b) above the street wall, a preferred upper level setback of 5 metres from the street frontage

c) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback

d) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’

e) consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Bluff Road and Arranmore Avenue, Black Rock

40. Council adopt Design and Development Overlay Schedule and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storey
   b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   c) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
   d) consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Bluff Road and Bay Road, Sandringham

41. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storey
   b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   c) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
   d) consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Bluff Road and Edward Street, Black Rock/Sandringham (part)

42. Council adopt Design and Development Overlay Schedule 14 and the concept plan subject to the following modifications:
   a) a street wall described as up to 3 storey
   b) the notation for ‘transitional setbacks’ be deleted
   c) the eastern side of the centre be shown in outline only with a notation “subject to DDO13”.

Bluff Road and Highett Road Centre, Hampton (part)

43. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:
   a) along Bluff Road street frontage and returns, a street wall described as up to 3 storey
   b) identify 357-359 and 361-371 Bluff Road in outline “subject to DDO15”
   c) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   d) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
   e) consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Bluff Road and Love Street, Black Rock

44. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storey
   b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   c) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
   d) consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Bluff Road and Spring Street, Sandringham

45. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storey
   b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
   c) remove ‘passive surveillance’ shown to the south of the centre
   d) consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

Dendy Village, Brighton

46. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storey
b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback

c) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’

d) consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

_Hawthorn Road Shopping Centre, Brighton East_

47. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:

a) a street wall described as up to 3 storey

b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback

c) replace ‘new connections/extend laneway’ designation with ‘retain and enhance existing laneway’

d) consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

_New Street and Martin Street, Brighton_

48. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:

a) a street wall described as up to 3 storey

b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback

c) replace new connections/extend laneway designation with ‘retain and enhance existing laneway’

d) consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and the Neighbourhood Residential Zone.

_Seaview Shopping Centre, Beaumaris_

49. Council adopt Design and Development Overlay Schedule 14 and the concept plan, subject to the following modifications:

a) a street wall described as up to 3 storey

b) rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback

c) replace new connections/extend laneway designation with ‘retain and enhance existing laneways’

d) consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather
than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and
the Neighbourhood Residential Zone.

South Road Plaza, Hampton
50. Council nominate the centre within Design and Development Overlay Schedule
15 and adopt the concept plan, subject to the following modifications:
a) a street wall described as up to 3 storeys
b) replace new connections/extend laneway designation with ‘retain and
enhance existing laneways’
c) consequential changes to the legend to the concept plan and a wording
change to the description of the transitional setbacks to ‘manage’ rather
than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and
the Neighbourhood Residential Zone.

Thomas and Egan Street, Brighton East
51. Council adopt Design and Development Overlay Schedule 14 and the concept
plan, subject to the following modifications:
a) a street wall described as up to 3 storey
b) above the street wall, a preferred upper level setback of 5 metres from the
street frontage
c) rear and side setbacks to residentially zoned land generally in accordance
with B17 at Clause 55.04-1, with laneway width forming part of the setback
d) replace new connections/extend laneway designation with ‘retain and
enhance existing laneway’
e) consequential changes to the legend to the concept plan and a wording
change to the description of the transitional setbacks to ‘manage’ rather
than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and
the Neighbourhood Residential Zone.

Weatherall Road Shopping Centre, Cheltenham
52. Council adopt Design and Development Overlay Schedule 14 and the concept
plan, subject to the following modifications:
a) a street wall described as up to 3 storey
b) rear and side setbacks to residentially zoned land generally in accordance
with B17 at Clause 55.04-1, with laneway width forming part of the setback
c) replace new connections/extend laneway designation with ‘retain and
enhance existing laneway’
d) consequential changes to the legend to the concept plan and a wording
change to the description of the transitional setbacks to ‘manage’ rather
than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and
the Neighbourhood Residential Zone.

Nepean Highway and Centre Road, Brighton East
53. Council adopt Design and Development Overlay Schedule 15 and the concept
plan, subject to the following modifications:
a) identify a minimum lot size of 900 square metres to exceed 3 storeys in that part of the centre located north of Centre Road
b) along Nepean Highway a street wall of up to 3 storeys
c) delete the proposed ‘pedestrian thoroughfares’
d) consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and residential zones.

Nepean Highway and Milroy Street, Brighton East

54. Council adopt Design and Development Overlay Schedule 15 and the concept plan, subject to the following modifications:
   a) identify a minimum lot size of 600 square metres to 357-361 Nepean Highway in order to exceed 3 storeys in building height
   b) along Nepean Highway show a street wall of up to 3 storeys
   c) delete the ‘extended laneway’ along the east of the centre
   d) delete the proposed ‘pedestrian thoroughfare’ and pare back the ‘new connections/extend laneways’ to reflect existing conditions and realistic opportunities
   e) consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and residential zones.

Nepean Highway and Union Street, Brighton East

55. Council adopt Design and Development Overlay Schedule 15 and the concept plan, subject to the following modifications:
   a) a street wall of up to 3 storeys along Nepean Highway, returning into Milroy and Union Streets
   b) delete the ‘extended laneway’ along the east of the centre south of Union Street and the ‘pedestrian thoroughfares’.
   c) consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and residential zones.

New Street and Bay Street, Brighton

56. Council adopt Design and Development Overlay Schedule 15 and the concept plan, subject to the following modifications:
   a) the boundaries of the New Street and Bay Street centre to also include all allotments from 81-89 Bay Street to 101 Bay Street, rezoned to Commercial 1 Zone and subject to Design and Development Overlay Schedule 15, with transitional setbacks shown to the north and east edges of the enlarged centre
   b) along Barkly Street a street wall of up to 2 storeys
   c) along New and Bay Streets, a street wall of up to 3 storeys
d) along New and Bay Streets, above the street wall, a preferred setback of 5 metres

e) consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and residential zones.

**East Brighton Shopping Centre, Brighton East**

57. Council adopt the Design and Development Overlay Schedule 16 and the concept plan, subject to the following modifications:

a) identify 758-768 as Area ‘A’, with a preferred building height of 11.0 metres (3 storeys) and the remainder of the centre on the west side of Hawthorn Road as Area ‘B’ with a preferred building height of 9.0 metres (2 storeys). 778 Nepean Highway would be Area ‘C’ with a preferred building height of 11.0 metres (3 storeys) and a maximum building height of 13.5 metres for a confined potential fourth storey component. Identify land on the east side of Hawthorn Road as Area D with a mandatory maximum building height of 9.0 metres (2 storeys)

b) a primary street wall of up to 2 storeys for the centre excluding 778 Nepean Highway to have a street wall of up to 3 storeys

c) identify B17 setbacks from ResCode as mandatory for properties in Area D but discretionary for Areas A, B and C and include the laneway width within this setback

d) delete the ‘pedestrian thoroughfare’

e) consequential changes to the legend to the concept plan, to include a table of area heights, confirm mandatory and discretionary heights and setbacks in accordance with Panel recommendations, and the identification of the adjacent heritage property.

**Beach Road and Georgiana Street, Sandringham**

58. Declassify the Beach Road and Georgiana Street Centre from the list of Small Activity Centres and remove it from Design and Development Overlay Schedule 17.

Alternatively, if Council adopts Design and Development Overlay Schedule 17 and the concept plan, it should be subject to the following modifications:

a) a preferred height of 11 metres (3 storeys) with allowance for sloping land

b) criteria in line with other centres within this Amendment to justify building height beyond 11 metres (3 storeys)

c) remove street wall notation

d) side and rear setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback

e) consequential changes to the legend to the concept plan, and including identification of ‘passive surveillance’ and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’
amenity impacts at the interface of the Commercial 1 Zone and residential zone.

**Esplanade and Grosvenor Street, Middle Brighton**

59. Council adopt Design and Development Overlay Schedule 17 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storey
   b) delete ‘new connections/extend laneways’
   c) delete ‘provide passive surveillance’
   d) consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and residential zone

**Keys Street Shopping Centre, Beaumaris**

60. Council adopt Design and Development Overlay Schedule 17 and the concept plan, subject to the following modifications:
   a) a street wall described as up to 3 storey
   b) delete hotel car park site designation as ‘potential redevelopment site’ (as it already been redeveloped)
   c) consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and residential zone.

**South Road and Esplanade Avenue, Brighton**

61. Council adopt Design and Development Overlay Schedule 19 and the concept plan, subject to the following modifications:
   a) mandatory building heights in Areas A and B up to 13.5 metres (4 storeys)
   b) mandatory building heights in Areas C and D up to 11 metres (3 storeys)
   c) describe the street wall as up to 3 storey
   d) delete the new connections/extend laneways shown on the railway land,
   e) delete ‘provide passive surveillance’ from between the railway tracks
   f) add a transitional setback to the northern edge of the commercially zoned land in the centre
   g) remove the ‘secondary active frontage’ from the ‘Milano’s’ car park edge
   h) consequential and other changes to the legend, applying the star notation to ‘landmark heritage building’ and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the Commercial 1 Zone and residential zone.

62. The concept plan be amended to show the remainder of the centre in outline with a notation “subject to DDO14”.

63. Above the street wall, a preferred upper level setback of 5 metres from the street frontage.
Schedule to Clause 52.28-4

64. Exclude the following centres from the schedule of strip shopping centres where electronic gaming machines are prohibited:
   a) New Street and Bay Street, Brighton
   b) Esplanade and Grosvenor Street, Brighton
   c) Bluff Road and Arranmore Avenue, Black Rock
1 Introduction

1.1 The Amendment

(i) Amendment description

Bayside Planning Scheme Amendment C126 (the Amendment) seeks to update the Bayside Planning Scheme to give effect to the Small Activity Centres Strategy June 2014 (SAC Strategy). Council also seeks to incorporate relevant recommendations of the Small Activity Centres Urban Design and Built Form Review, December 2017 and the Small Activity Centres Strategy - Economic Analysis September 2017.

To achieve this, the Amendment proposes to:

- amend the Municipal Strategic Statement at Clause 21.02 to include reference to Small Neighbourhood Activity Centres (SNACs) and Small Commercial Activity Centres (SCACs)
- amend the Municipal Strategic Statement at Clauses 21.06 and 21.07 to update the description of activity centres and include a list of SACs. It also introduces new objectives and strategies relevant to these centres
- amend the Municipal Strategic Statement at Clause 21.11 to introduce the role and vision for SACs
- insert a new reference or background document titled Bayside Small Activity Centre Strategy (June 2014)
- remove DDO Schedules 1, 2 or 3 from a number of SACs, to be substituted with one of DDO schedules 13, 14, 15, 16, 17 or 19 for each centre
- rezone a number of parcels of land to Commercial 1 Zone (C1Z), General Residential Zone (GRZ) schedules 1 and 7 or Neighbourhood Residential Zone (NRZ), respectively
- amend the schedule to Clause 52.28-4 to include additional strip shopping centres where gaming is prohibited.

Clause 21.02 currently contains the following Framework Plan identifying the location of all activity centres within the municipality, and their designated capacity for residential growth. Strategic redevelopment sites are also identified.

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1 Originally exhibited as a reference document, but changed to conform with change to terminology introduced by VC148
(ii) The subject land

The Amendment applies to 33 SACs identified in Figure 2, with proposed DDOs identified for each centre.
Figure 2  Centres included in Amendment C126

Source: Council Part A submission
1.2 Background to the proposal

Substantial strategic planning work has been undertaken for ‘higher order’ activity centres as part of earlier amendments to the Bayside Planning Scheme. The current Amendment was described by Mr Montebello on behalf of Council as “the final piece of the jigsaw puzzle in terms of activity centre planning”.

The Amendment is underpinned by several strategic planning reports produced on behalf of Council since 2012. Those relevant to the Amendment as initially exhibited are the Bayside Housing Strategy 2012 (Housing Strategy), the Retail, Commercial and Employment Strategy 2016 (RCE strategy) and the Small Activity Centres Strategy 2014.

Bayside Housing Strategy 2012

The Housing Strategy is a reference document in the Bayside Planning Scheme. It provides a strategic framework for housing and residential development in Bayside over a 20 year period from 2012. The Strategy outlines objectives and strategies for identified categories of residential growth and opportunity.

The Housing Strategy expressly recognises that:

Whilst there is an increased focus on providing residential development within Activity Centres, Activity Centres also perform a vital commercial role. It is important to ensure that increased residential development in commercial centres does not occur at the expense of the commercial activities.

To implement these strategies, Action 45 of the Implementation Plan identifies the following action:

Prepare Built Form Design Guidelines for all Small Neighbourhood Activity Centres and identified Strategic Redevelopment Sites.

The 2014 SAC Strategy was a direct outcome of this action.

The Housing Strategy characterises the centres addressed by the Amendment within ‘minimal’ or ‘moderate’ residential growth areas, with some sites identified as strategic redevelopment sites (including land within South Road and Esplanade Avenue, Brighton centre and Beach Road and Georgiana Street, Sandringham centre and Nepean Highway and Milroy Street centre).

For example, ‘minimal’ residential growth areas seek to maintain a predominantly residential scale of no more than 2 storeys, with medium and high-density development not supported within these areas. ‘Moderate’ residential growth areas are identified as areas where medium density residential development will occur and will provide a transition to differing extents of residential growth. Development should be sensitive to the existing residential context and amenity, with site coverage, height, scale and massing to correspond to relevant frameworks or other provisions.

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2 Through Amendment C134 in 2014.
3 The criteria for which is replicated at page 18 of Council’s Part A submission.
4 Page 74, Housing Strategy.
Council noted in its submissions that some of the centres within the Amendment already accommodate a “slightly different” level of growth compared with that outlined in the Housing Strategy.

**Small Activity Centres Strategy 2014**

The SAC Strategy was prepared to provide guidance for SACs throughout the municipality, which were not previously subject to any comprehensive strategic work. An assessment of each SAC was undertaken to identify key characteristics, opportunities and constraints.

Mr Montebello summarised the strategic work that informed the preparation of the SAC Strategy.\(^5\) This included:

- *Bayside Small Activity Centres Review, May 2013*\(^6\)
- Site visits and surveys of centres undertaken by Council staff
- *Bayside Small Neighbourhood Activity Centre Urban Design Assessments and Guidelines* 2012, Hansen Partnership - this document identified the overall development capacity of each centre based on its designation in the activity centre hierarchy, the arrangement of the centre and its setting

Urban design guidelines and economic assessments were commissioned for each centre, which produced classifications for each activity centre recognising its current function and projected capacity. This material underpinned the preparation of the final strategy considered by Council on 30 July 2013 at its meeting.

The SAC Strategy sets out a number of policy recommendations to achieve outcomes such as:

- retaining convenience retailing
- supporting local commercial and retail floor space provision
- retaining or creating active frontages
- setting parameters for housing above ground floor
- addressing residential amenity considerations.

The SAC Strategy made recommendations for the boundaries of each centre and consequential zoning changes. It also proposed draft urban design profiles and guidelines.

Public consultation on the draft SAC Strategy was undertaken between August and September 2013. 84 submissions were received in response, raising the following issues (in summary):

- the suitability of proposed building heights within DDOs for centres, with support for both greater and lesser heights than proposed
- adverse impacts on nearby residential amenity
- traffic and car parking related issues
- impacts on property values.

In response to submissions, further reports were produced and changes were made to the SAC Strategy. It was considered again in its updated form by Council at its 24 June 2014 meeting and further refined at its meeting on 22 March 2016.

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\(^5\) From paragraph 77 Council’s Part A submission onwards.

\(^6\) Updating *Bayside Local Neighbourhood Activity Centres Study 2002.*
Council adopted the SAC Strategy subject to:
- site specific rezoning in three centres
- amending the urban design assessment and guidelines for three identified centres
- making changes to the content or designation of DDOs to various centres.

**Retail, Commercial and Employment Strategy 2016**

The RCE Strategy provides policy directions for the evolution of activity centres and areas identified as contributing to employment within the municipality. It is proposed as a reference document through Amendment C150, which has been adopted by Council and awaits a Ministerial decision.

Twelve strategies are outlined by the RCE Strategy pertaining to broader economic issues in the City of Bayside accompanied by specific centre-based strategies. A policy direction seeks to maximise the use of existing assets by encouraging commercial floorspace in any activity centre expected to attract sufficient floorspace demand.

Council submitted that the Amendment builds on the RCE Strategy by encouraging the retention of ground floor commercial uses in SACs. It considered that this will not conflict with the role of larger activity centres given the local role most of the SACs are expected to play.

**Authorisation**

Ministerial Authorisation was granted to prepare the Amendment on 15 July 2016. The Department of Environment, Land, Water and Planning (DELWP) provided the following advice:

> Please note that [DELWP] has identified a need to make minor drafting changes to the Design and Development Overlay Schedules to provide greater clarity about which controls are intended to be mandatory and which are to be discretionary and to refine, as appropriate, the ‘Design and development requirements’ to ensure that they have a certain/measurable/qualitative meaning.

This advice identified two key issues that the Panel is required to consider when evaluating the Amendment, namely:

a. Whether controls have been appropriately identified as mandatory or discretionary in each instance.

b. Whether proposed design and development requirements or guidelines in the DDO schedules are sufficiently clear and appropriate.

**Initial exhibition and submissions**

The Amendment was first exhibited between 16 March and 24 April 2017, with Council receiving 92 submissions in total.

In response to submissions, Council determined that the SAC Strategy needed to be reviewed with further work to be undertaken in respect of Amendment C126 to implement it. This resulted in two further reports being commissioned by Council:

- *Small Activity Centres Strategy - Economic Analysis September 2017, SGS Economics (Economic Review)*
• Small Activity Centres Strategy - Urban Design and Built Form Analysis December 2017, Echelon Planning/Catalyst Development Services (Urban Design and Built Form Review).

The Urban Design and Built Form Review was commissioned to consider the context and role of each centre, the extent of residential development envisaged and issues raised in submissions. It had regard to existing characteristics, physical context, future intended role of each centre and its capacity to accommodate residential and commercial growth.

Special attention was given to the following overarching issues:7

- existing building heights and orderly planning (including an understanding of current approvals)
- mandatory versus discretionary height controls
- side and rear boundary setbacks
- site consolidation to realise more efficient outcomes
- lateral versus vertical growth
- building height versus amenity of arterial roads.

The Urban Design and Built Form Review led to changes being recommended for the Amendment, including the wording of proposed DDO schedules and changes/replacement of associated concept plans. In general, the built form component of the review considered that “a generic ‘two or three storey’ everywhere approach to managing future built form in Bayside’s small activity centres is too broad-brushed and fails to identify local opportunities to allow buildings of greater height, based on the analysis of the urban design characteristics of each centre”.8

Ms Sarah Ancell, Principal Urban Planner of Echelon Planning, was called by Council to give expert evidence at the Hearing. She had a substantial role in preparing the Urban Design and Built Form Review and outlined its key findings in her evidence, including:9

- the need to modify elements of the built form framework to balance centre redevelopment with respecting character of surrounding areas
- recommended changes to building heights for certain centres, with the use of mandatory controls to be changed to a mix of mandatory and discretionary provisions
- building setbacks proposed were considered overly restrictive and should be reconsidered10
- 15 of the 33 centres should allow for greater building heights than previously proposed by the Amendment.

Re-exhibition and submissions

This updated strategic work led to changes to the Amendment to incorporate most recommendations as resolved by Council at its 20 February 2018 meeting. Given the extent of the changes to both the strategic underpinning and content of the Amendment, it was re-exhibited between 7 June and 16 July 2018, attracting a further 80 submissions.

7 As recorded in Ms Ancell’s evidence at page 16.
8 Para 56 of her report.
9 Pages 17-21.
10 With suggestions to include adjacent laneways within setback calculations.
A response to submissions was set out in the officer’s report to Council at its meeting of 21 August 2018 and has been considered by each of the expert witnesses called by Council and recorded in their expert reports to the Panel.

Post exhibition changes proposed to the Amendment

In response to further submissions to re-exhibited Amendment, discrete changes were made to proposed policy, the status of individual centres, DDO schedule requirements and proposed rezoning. A new DDO Schedule 19 was provided specifically for the South Road and Esplanade Avenue centre.

On 14 November 2018, Council circulated revised Amendment documentation illustrating further proposed changes through ‘track changes’. These are referred to in this Report as the ‘Panel version’. These proposed changes represent Council’s current position on the content and wording of the Amendment, outlined in summary form in Table 1 in Chapter 2.2 in respect of each centre.

Council confirmed its position in respect of changes to policy as follows:

In anticipation of the translation of Clause 21 and 22 into the new Planning Policy Framework (PPF), Council was not intending to update the Local Planning Policy Framework (including the Municipal Strategic Statement) for the Panel hearing owing to its imminent translation into the PPF in January 2019. However, to alleviate any potential concerns or queries, Council has made the proposed adjustments to these clauses and attaches them to this Part A submission.

1.3 Summary of issues raised in submissions

Key issues raised in submissions of the various parties are summarised as follows:

- general support for the Amendment as it addresses a policy gap within the Planning Scheme and provides greater certainty for business owners and residents about the future of SACs
- whether the Amendment was strategically justified and aligns with State policy in relation to accommodating housing and population growth
- conflicting views on maximum building heights proposed to be introduced within DDO schedules and various proposed specifications or decision guidelines
- whether height controls should be mandatory or discretionary - with views on both expressed. As exhibited, 26 of the 33 centres are proposed to have mandatory height controls
- whether proposed centre boundaries were appropriate
- whether zone changes were necessary and appropriate
- impacts on residential amenity from accommodating growth within activity centres.
1.4 **Issues dealt with in this Report**

The Panel considered all written submissions in response to public exhibition of the Amendment, observations from multiple site visits to centres (including some private properties as requested) and submissions, evidence and other material presented to it during the Hearing.

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 its Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Proposed changes to policy
- Common issues
- Proposed Design and Development Overlays
- Wording of Design and Development Overlays
2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report and its Part A submission. The Panel has reviewed this response and the policy context of the Amendment, the proposed zone and overlay controls and other relevant strategies in light of evidence and submissions.

2.1 Planning Policy Framework

(i) State planning policies

Council submitted that the Amendment is supported by the following State planning policies:14

- Clause 11.01-1S (settlement)
- Clause 11.02-1S (supply of urban land) - which seeks to ensure sufficient supply of land for residential, commercial, retail, and other uses and facilitating orderly development.
- Clause 11.03-1S (activity centres) - which aims to encourage the concentration of services and facilities into activity centres that are highly accessible to the community.
- Clause 13.07-1S (land use compatibility) - which aims to “safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site impacts”.
- Clause 15.01-1S (urban design) - seeking to create high quality urban environments contributing to a sense of place, with building design to contribute positively to its context and the public realm.
- Clause 15.01-4S (healthy neighbourhoods)
- Clause 15.01-5S (neighbourhood character) - offering support and protection to valued elements of neighbourhoods.
- Clause 15.03-1S (heritage conservation)
- Clause 16.01-1S, 16.01-2S (integrated housing, location of residential development and housing diversity) - providing well located and designed housing to meet community needs.
- Clause 17.01-1S (diversified economy) - including providing local employment.
- Clause 17.02-1S (business) - which aims to “encourage development that meets the communities’ needs for retail, entertainment, office and other commercial services”.
- Clause 18.01-1S and 18.02-2S (land use and transport planning and public transport), Clause 18.02-2S (public transport) and Clause 18.02-4S (car parking).

(ii) Regional planning policies

Council submitted that the Amendment supports the following regional planning policies:

- Clause 15.01-1R (urban design - Metropolitan Melbourne)

14 This was supplemented by comparable evidence from Ms Ancell at the Panel Hearing.
• Clause 15.01-5R (healthy neighbourhoods - Metropolitan Melbourne) - which aims to "create a city of 20 minute neighbourhoods, that give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home".

• Clause 16.01-1R (integrated housing - Metropolitan Melbourne) - which includes strategies to “provide certainty about the scale of growth by prescribing appropriate height and site coverage provisions for different areas” and to “allow for a range of minimal, incremental and high change residential areas that balance the need to protect valued areas with the need to ensure choice and growth in housing”.

• Clause 18.02-1R (sustainable personal transport - Metropolitan Melbourne).

(iii) Local planning policies

Council submitted the following local planning policies are relevant to the Amendment:

• Clause 21.03-1 (Activity Centres) - objectives include directing new medium density housing to activity centres in line with the Residential Strategic Framework Plan and to deliver increased housing densities and diversity within those activity centres.

• Clause 21.06-1 (Character and Identity) - Bayside is characterised by low density and low-rise residential suburbs and a ‘village environment’.

• Clause 21.06-1.1 (Residential Areas) - objectives include quality design outcomes which contribute to a sense of place in line with Bayside’s character and to facilitate quality design outcomes.

• Clause 21.06-1.2 (Activity Centres) - objectives include achieving high-quality built form and public realm design which enhances urban character and heritage and to protect the amenity of dwellings within and adjacent to activity centres. Strategies include ensuring new development is compatible with vision for each centre, enhancing the village focus of the area, maintaining low scale landscaped character of residential precincts and ensuring appropriate transition between activity centres and adjacent areas.

• Clause 21.06-1.4 (Coastal Design) - the role of Beach Road/The Esplanade as a scenic boulevard is to be protected and enhanced.

• Clause 21.07-1 (Activity Centres) - objectives relate to the economic and social development of activity centres. Relevant strategies include recognising and strengthening strengths of individual centres and encouraging appropriate services to cater for social and economic needs.

• Clause 21.09-1 (Land use and transport planning) - seeks to integrate transport and land use to encourage alternatives to private vehicle use in the area. This is to be achieved by new land use and development which increases housing density, employment and visitation in accessible areas.

• Clause 21.09-4 (Car parking and loading) - seeks adequate car parking by improving parking provision and access, particularly around activity centres.

• Clause 22.06 (Neighbourhood Character Policy) - development is to be responsive to preferred future character, guided by relevant character statements. Objectives include responsive development to the preferred future character of the area as well as implementing the recommendations of the Bayside Neighbourhood Character Review 2004 and the Bayside Neighbourhood Character Review Stage 2.
(iv) **Plan Melbourne 2017-2050**

A number of outcomes are relevant to this Amendment, including:

- Outcome 1 - recognising Melbourne as a productive city, attracting investment, supporting innovation and creating jobs
- Outcome 2 - providing housing choice in locations close to jobs and services.
- Outcome 5 - a city of inclusive, vibrant and healthy neighbourhoods.

More specifically, Council advised that:

> *The application of mandatory controls in Neighbourhood Activity Centres is given a level of strategic support by directions and initiatives in Plan Melbourne (Policy 2.1.4).*

### 2.2 Planning Scheme provisions

The Council provided the following table of zone and overlay changes proposed by the Amendment:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Small Activity Centre</th>
<th>Centre Classification</th>
<th>Proposed Zoning</th>
<th>Proposed Overlay</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Balcombe Park, Beaumaris</td>
<td>SNAC</td>
<td>MUZ to C1Z</td>
<td>DDO13</td>
</tr>
<tr>
<td>2</td>
<td>Balcombe Road and Charman Road, Beaumaris</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>3</td>
<td>Bay Road and Avoca Street, Cheltenham</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>4</td>
<td>Bay Road and Jack Road, Cheltenham</td>
<td>SNAC</td>
<td>C1Z with an example of residential land to be zoned GRZ</td>
<td>DDO14</td>
</tr>
<tr>
<td>5</td>
<td>Beach Road and Georgiana Street, Sandringham</td>
<td>SNACMU</td>
<td>C1Z and NRZ to C1Z</td>
<td>DDO17</td>
</tr>
<tr>
<td>6</td>
<td>Bluff Road and Arranmore Avenue, Black Rock</td>
<td>SNAC</td>
<td>MUZ to C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>7</td>
<td>Bluff Road and Bay Road, Sandringham</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO14</td>
</tr>
</tbody>
</table>

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15 Council's submissions in reply.

16 Corrected as relevant and including updated zoning proposals in Council's Part B submission.
<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Small Activity Centre</th>
<th>Centre Classification</th>
<th>Proposed Zoning</th>
<th>Proposed Overlay</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Bluff Road and Edward Street, Black Rock/Sandringham</td>
<td>SNAC</td>
<td>no change - remains C1Z and NRZ</td>
<td>DDO13 / DDO14</td>
</tr>
<tr>
<td>9</td>
<td>Bluff Road and Highett Road Centre, Hampton</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO14 / DDO15</td>
</tr>
<tr>
<td>10</td>
<td>Bluff Road and Love Street, Black Rock</td>
<td>SNAC</td>
<td>MUZ to C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>11</td>
<td>Bluff Road and Spring Street, Sandringham</td>
<td>SNAC</td>
<td>MUZ to C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>12</td>
<td>Brighton Beach (Were Street) Centre, Brighton</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO13</td>
</tr>
<tr>
<td>13</td>
<td>Dendy Village, Brighton</td>
<td>SNAC</td>
<td>no change remains C1Z and NRZ</td>
<td>DDO14</td>
</tr>
<tr>
<td>14</td>
<td>East Brighton Shopping Centre, Brighton East</td>
<td>SNAC</td>
<td>No change - remains C1Z</td>
<td>DDO16</td>
</tr>
<tr>
<td>15</td>
<td>Esplanade and Grosvenor Street, Middle Brighton</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO17</td>
</tr>
<tr>
<td>16</td>
<td>Hampton Street and Durrant Street, Brighton</td>
<td>declassify</td>
<td>no change - remains NRZ</td>
<td>remains as DDO3</td>
</tr>
<tr>
<td>17</td>
<td>Hawthorn Road Shopping Centre, Brighton East</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>18</td>
<td>Highett and Spring Road (Little Highett Village), Highett</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO13</td>
</tr>
<tr>
<td>19</td>
<td>Keith Street and Widdop Crescent, Hampton East</td>
<td>SNAC</td>
<td>MUZ to C1Z</td>
<td>DDO13</td>
</tr>
<tr>
<td>20</td>
<td>Keys Street Shopping Centre, Beaumaris</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO17</td>
</tr>
<tr>
<td>21</td>
<td>Ludstone Street, Hampton</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO13</td>
</tr>
<tr>
<td>No.</td>
<td>Name of Small Activity Centre</td>
<td>Centre Classification</td>
<td>Proposed Zoning</td>
<td>Proposed Overlay</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------------------</td>
<td>-----------------------</td>
<td>----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>22</td>
<td>Nepean Highway and Centre Road, Brighton East</td>
<td>SCACHO</td>
<td>no change - remains C1Z</td>
<td>DDO15</td>
</tr>
<tr>
<td>23</td>
<td>Nepean Highway and Milroy Street, Brighton East</td>
<td>SCACHO</td>
<td>no change - remains C1Z</td>
<td>DDO15</td>
</tr>
<tr>
<td>24</td>
<td>Nepean Highway and North Road, Brighton</td>
<td>declassify</td>
<td>GRZ1 to GRZ7</td>
<td>remains as DDO2</td>
</tr>
<tr>
<td>25</td>
<td>Nepean Highway and Union Street, Brighton East</td>
<td>SCACHO</td>
<td>C1Z and NRZ to C1Z</td>
<td>DDO15</td>
</tr>
<tr>
<td>26</td>
<td>New Street and Bay Street, Brighton</td>
<td>SNAC</td>
<td>C1Z and NRZ to C1Z (excluding 307-309 and 311 New Street)</td>
<td>DDO15 (excluding 307-309 and 311 New Street)</td>
</tr>
<tr>
<td>27</td>
<td>New Street and Martin Street, Brighton</td>
<td>SCACMU</td>
<td>no change - remains C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>28</td>
<td>Seaview Shopping Centre, Beaumaris</td>
<td>SNAC</td>
<td>no change - remains C1Z and PUZ</td>
<td>DDO14</td>
</tr>
<tr>
<td>29</td>
<td>South Road and Esplanade Avenue, Brighton</td>
<td>SCACMU</td>
<td>no change - remains C1Z and MUZ</td>
<td>DDO19</td>
</tr>
<tr>
<td>30</td>
<td>South Road Plaza, Hampton</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>31</td>
<td>Thomas and Egan Street, Brighton East</td>
<td>SNAC</td>
<td>no change - remains C1Z</td>
<td>DDO14</td>
</tr>
<tr>
<td>32</td>
<td>Weatherall Road and Morey Road, Beaumaris</td>
<td>SCACMU</td>
<td>remains C1Z</td>
<td>DDO13</td>
</tr>
<tr>
<td>33</td>
<td>Weatherall Road Shopping Centre, Cheltenham</td>
<td>SNAC</td>
<td>MUZ to C1Z</td>
<td>DDO14</td>
</tr>
</tbody>
</table>

**Legend**

- SCACMU: Small Commercial Activity Centres - Mixed Use
- SCACHO: Small Commercial Activity Centres - Highway Oriented

*Source: Council’s Part A submission (Attachment 1)*
2.3 Ministerial Directions and Practice Notes

Ministerial Directions

Council submitted that the Amendment meets the relevant requirements of:

- Ministerial Direction 1 (Potentially Contaminated Land)
- Ministerial Direction 9 (Metropolitan Planning Strategy)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 15 (Planning Scheme Amendment Process)
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the PE Act.

2.4 Planning Practice Notes

Council did not address the Amendment’s consistency with Planning Practice Notes in the Explanatory Report, however Ms Ancell assessed the Amendment against:

- Planning Practice Note 59 (The Role of Mandatory Provisions in Planning Schemes)\(^\text{17}\)
- Planning Practice Note 60 (Heights and Setback Controls for Activity Centres).\(^\text{18}\)

This issue was enhanced by submissions on behalf of Council and parties at the Hearing, with further evidence from expert witnesses on behalf of submitters, as considered in Chapter 4.5 of this Report.

2.5 Conclusions

Existing state and local planning policies are layered, with consistent themes seeking to encourage increased commercial and residential development in activity centres, recognising their contribution to the economy, sense of place and functional neighbourhoods. In addition, planning of activity centres needs to be cognisant of neighbourhood character and the amenity of nearby residential areas.

The Panel considers that the Amendment properly seeks to provide up-to-date directions for Small Activity Centres. It has been underpinned by substantial detailed analysis, especially as re-exhibited.

The Panel acknowledges the ‘high level’ recommendations of these reviews and agrees with Ms Ancell that at that level, there is broad strategic justification for the Amendment in its aim to document the role of SACs and to provide future direction for their enhancement. The Panel supports the Amendment’s in-principle intention to provide direction about the scale of growth anticipated for individual centres and how this should manifest through built form parameters. As part of reaching a suitable balance, it is also reasonable for future development of SACs to take account of their predominantly residential context.

Further chapters in this Report consider aspects of the Amendment in more detail, and whether they are consistent with planning policy for activity centres and housing more broadly. At a detailed level, in summary, the Panel accepts submissions and evidence to the effect that the Amendment has not adequately justified certain elements of the design.

\(^{17}\) Amended September 2018.
\(^{18}\) Amended September 2018
controls proposed in the DDOs, especially in so far as mandatory building height provisions are proposed for most centres.

The Panel also makes recommendations later in this Report to improve consistency and functionality of the contents of the Amendment, guided by relevant planning policy aspirations.
3 Proposed changes to policy

3.1 The issue

The Explanatory Report observes that there is limited guidance in relation to SACs in the current Planning Scheme. The Amendment seeks to address this. Does the Amendment propose appropriate policy changes?

3.2 Evidence and submissions

In Council’s Part B submission, Mr Montebello prefaced the Amendments as:

... represent[ing] the Council’s endeavour to implement a clear and modern economic and built form policy direction for the future evolution of Bayside’s small activity centres.

Council submitted that the Amendment proposes to strengthen local planning policy pertaining to the function, role and appropriate built form for SACs, particularly recognising their role in convenience retailing and providing premises for small business.

The Amendment proposes changes to Clauses 21.02, 21.06, 21.07 and 21.11 to describe and list SACs and to outline their role and vision. Changes to policy also seek to identify key issues and new strategies for these centres.

Council regards SACs as providing an important local convenience, commercial and social role that complements higher order centres and major employment areas. The Economic Review classifies centres as follows, reflected in proposed policies:

- SAC - complementing the function of larger centres, having a localised role and providing local convenience retail and hospitality to service day-to-day needs. Their future role and scale is contingent on local population and expenditure growth.
- SCAC - Mixed Use - accommodating retail and commercial uses, providing small commercial office or specialised retail activity that does not rely on heavy foot traffic of higher order centres.
- SCAC - Highway Orientated - predominantly accommodating retail uses requiring large floorplates or having functions that benefit from highway exposure.

The economic analysis underpinning the Amendment included a review of relevant policies and documents and a quantitative analysis of various centres to assess current and future floorspace demand and gaps in provision. It found that the majority of SACs sufficiently serve local demands, but there was modest future demand across the network of SACs (consistent with the modest level of population growth anticipated in Bayside) that could mostly be accommodated through ground floor extensions or first floor commercial use rather than by expanding the current centre footprint significantly.

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19 Relevant catchments were calculated for each centre.
20 This work did not include a separate floorspace audit, rather, it relied on the business mix and indicative centre floorspace from Council survey data and satellite imagery.
This assessment led to SGS’s recommendations to Council regarding centre classifications which have been substantially reflected in the Amendment and revisions to it. Some centres were identified to generally retain their current size and function, with others identified with potential for small expansion. Two centres were recommended for reduction or rezoning (with potential de-classification).

Three centres were identified as having a strong case for expansion - Bluff Road and Highett Road Centre, Hampton East, Thomas Street and Egan Street, Brighton East and Weatherall Shopping Centre, Beaumaris. These were considered to have capacity to potentially transition to a Neighbourhood Activity Centre in the future.

Mr Szafraniec, Economist, SGS was the project director of the RCE Strategy and the Economic Review. He was called by Council and gave economic evidence that the Amendment properly considered the economic role and function of activity centres and that proposed changes to policy, zoning and overlays are justified from this perspective. Likewise, he supported the way the Amendment, as formulated, responded to submissions.

In particular, he supported Clauses 21.02 and 21.07 clarifying the role of SACs and SNACs within the broader centre hierarchy. He considered it material that their economic development was identified as “providing local employment, service and a meeting point for the community” and that their desire to accommodate ‘minimal to moderate’ housing growth for SNACs and ‘minimal’ housing growth for SACs was appropriate.

Mr Szafraniec emphasised the importance of an objective to ensure residential development does not compromise the economic vitality and vibrancy of activity centres. He explained that although appropriate levels of residential development within SNACs can support a more viable and vibrant centre, this should not undermine its core retail and commercial role. For example, he considered it appropriate that an associated strategy for SNACs is to support their local convenience retailing role by facilitating growth in commercial floorspace. Likewise, a new strategy for SCACs (Mixed Use) is to encourage the provision of local commercial and retail space for small businesses, specialist retail and local services.

Mr Pitt QC, representing Brandied Pty Ltd, submitted that it would not be reasonable for the SAC Strategy to be updated to reflect subsequent work that did not underpin the Amendment at least at first instance.

Submissions on this part of the Amendment were more nuanced and often did not raise substantial concerns with proposed changes to policy. For example, some commercial submitters and witnesses considered the proposed reference to “shop top housing” within activity centres outdated and inadequate to convey the development potential of land within these centres. Expert witnesses were questioned about this and generally preferred the term “additional housing”.

Some expert witnesses such as Mr McGurn, who was called by two submitters to give planning evidence, considered policy changes in more detail, principally by reference to whether changes to local policy would be consistent with the direction of state policy pertaining to

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21 Replicated in Table 2 of Mr Szafraniec’s expert evidence, pages 9 and 11. The differences between SGS recommendations and Council’s resolution of the role of these centres in the Amendment are reflected in Table 4 of his evidence at page 16.
activity centres and increasing housing diversity. He suggested that a more flexible approach be provided compared with ‘minimal to moderate growth’ in Clause 21.02. He regarded policies seeking “incremental increases in floorspace” and facilitating “commercial floorspace growth” as potentially too broad, especially since only a small number of centres were identified in relevant economic reviews for an increase in floorspace.

Mr McGurn also suggested a number of proposed modifications including deleting the words “and avoids materially altering the scale of the centre” from proposed Clause 21.06, since it is inevitable that the scale of most centres will uplift over time in line with broader planning policies and the recent growth of Metropolitan Melbourne. Ms McGurn pointed out that it was not appropriate for policy relating to activity centres in Clause 21.06 to seek to “maintain the spacious landscape character of residential precincts”.

Mr Pitt QC made more detailed submissions about the proposed classification of the New and Bay Street centre as a SCAC, suggesting that this was not reflected by recent land use. Mr Chiappi, representing Sandy Developments Pty Ltd, made submissions about the Beach Road and Georgiana Street centre and the encouragement of marine related commercial uses. Both are discussed in Chapter 5 of this Report.

### 3.3 Discussion

The Small Activity Centres encompassed by the Amendment have each been identified as SNACs or SCACs - either Mixed Use or Highway Oriented depending on location.

In reality, the size and function of these activity centres vary greatly, with capacity for growth within some centres vastly exceeding others. For example, some comprise sizeable lots with Nepean Highway frontage, while others have a more low-rise, conventional strip shopping centre format, often with narrow lots. However, for the purposes of the Amendment, the Panel accepts that it is reasonable that they be grouped together since they represent the lowest tier in the activity centre hierarchy for the municipality.

The Panel fundamentally agrees with Mr McGurn that SACs should not be ‘painted with the same brush’ as residential areas for the purpose of Clause 21.02; forecast for minimal change and maintaining their existing character. Rather, it would be preferable for policy on the extent of change for centres to correspond to the role of the centre, at a scale that can be absorbed by its physical context. This ties in with the notion that there should be flexibility provided for activity centres to change in scale, consistent with expectations to be set by the new suite of DDOs.

Council should consider how to respond to the Panel’s observations in Chapter 4.3 of this Report about applying ‘minimal’ and ‘moderate’ residential growth designations in policies pertaining to activity centres, noting that they provide a valid starting point but that more holistic projections for the capacity and growth of activity centres may be different.

Likewise, it is not vital or even appropriate in most cases for the current urban form and building types of each activity centre to be preserved. For example, the Planning Scheme refers to the preferred future role and character of activity centres such as Hampton in DDO12. It would be appropriate to adopt this approach in the Amendment.
The Panel does not consider other changes to policy suggested in evidence are essential, such as needing to make changes to the intention to seek incremental increases in commercial floorspace. Although floorspace increases may only be specifically proposed for only some centres, the theme remains generally consistent with the recommendations of economic studies underpinning the Amendment.

As mentioned, the distinction between a SNAC and SCAC is proposed to be enshrined in policy, which proposes a different role and vision for each. For example, it is conceivable that Council may seek to refuse permission for a wholly residential building in a SCAC (as it has sought to do in a recent permit application in the Beach Road and Georgiana Street centre) because no commercial component was proposed at ground level.

The Panel appreciates why it may be relevant in a document such as the SAC Strategy to distinguish between the types of activity centres. For example, the distinction between Neighbourhood Activity Centres and Commercial Activity Centres, and how this assessment has validly informed Council’s approach to the Amendment.

However, the Panel is not persuaded that the distinctions between SACs and SNACs should necessarily translate into separate policy provisions for each of these centres as proposed in Clause 21.11-9 relating to Local Areas (Small Activity Centres) and elsewhere.

For example, the Panel queries both the level of differentiation and detail proposed in the Planning Scheme, such as where provisions propose to corral the type of retailing as part of the vision for each centre. It is unclear why SACs could not be dealt with more globally for the purposes of policy, with more detailed strategies identified for specific centres such as in the case of highway-oriented centres. Moreover, there is minimal control over the types of commercial land use that eventuate on land within the C1Z since the vast majority do not require a permit.

This concern stems from the fact that activity centres are inherently dynamic and need to continue to respond to emerging commercial, retail and housing trends. Flexibility to allow change should be reflected in Planning Scheme policies. In the Panel’s opinion, it may be more appropriate for the contemporary vision for SACs to reflect their role in supporting 20-minute neighbourhoods, reducing car dependency and contributing to the local economic network.

The New and Bay Street centre is a case in point. The Panel does not feel obliged to form concluded views about the particular designation of the New and Bay Street centre by reference to its existing function within the SAC hierarchy. It is possible that emerging development within the centre will affect the type and mix of land use such that the nature of this centre could readily change over time.

That said, the Panel regards the proposed strategies to Clause 22.11-9 as well formulated and appropriate to achieve positive activity centre objectives more broadly.

The Panel supports the built form and land use strategies proposed for identified activity centres, such as in Clause 21.06-1.2, for example, ensuring that development within SNACs and SCACs reflects the role and vision for the centre and relevant urban design guidelines.

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22 Not yet resolved.
Other more specific strategies are considered reasonable ways to achieve the high-quality built form and public realm design such as:

- seeking to integrate the supermarket, car park and service station in the Bluff Road and Highett Road, Hampton East centre with the remainder of the centre
- encouraging the development of South Road and Esplanade Avenue Centre, Brighton as a ‘gateway’ to the iconic bathing boxes and improving connections with the surrounding MUZ
- ensuring proposals for highway orientated SACs achieve high standards of urban design and landscaping.

The Panel also generally supports the proposed inclusions to policies for economic development in Clause 21.07 such as key issues and objectives.

As a matter of detail, the Panel regards the reference to “shop top housing” as outdated. It downplays the anticipated role of future medium density housing above ground level that is likely to emerge within many SACs. It queries why this level of specification of housing typology is warranted in proposed Clause 21.02-4, given its more substantive (and proper) focus on categories of change for each type of activity centre.

The Panel sees no inherent inconsistency with the SAC Strategy being updated to reflect more current reviews, changes in Council’s position and recommendations of this Panel since there is strategic justification for the Amendment in the most recently exhibited Amendment. It accepts Council’s position that it is important for the SAC Strategy (to be introduced as a background or reference document) to be consistent with the final form of the provisions to be adopted. Otherwise, uncertainty may arise when they are applied.

In terms of timing, the Panel was advised that Council is short-listed as one of the first municipalities to convert its Planning Scheme into the new format under Amendment VC148, including a comprehensive Planning Policy Framework. This work is expected to occur in the near future. It is reasonable for the key changes proposed by Amendment C126 to be incorporated in a concise form, although the Panel suspects that the level of detail proposed in policy through this Amendment may not be fully included in the new format version of policy and would support its further editing as described.

3.4 Conclusions

The Panel agrees with Council that it is appropriate for the SAC Strategy and the Amendment that seeks to implement it to propose a strategic and statutory framework to define and facilitate the evolution of smaller order activity centres in Bayside. This aligns reasonably with state planning policy aspirations for activity centres. It has been developed following extensive strategy development and related work on behalf of Council.

To this extent, the overall basis for the Amendment is strategically sound.

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23 It is unclear to the Panel why it is vital for policies in the Municipal Strategic Statement or its equivalent to include the proposed level of detail in the overview to Clause 21.07. For example, it may not be appropriate long term to confine the role of SNACs to retail for ‘daily convenience or top up needs’. This element could also be removed from the proposed Strategy to Clause 21.07-1 to prioritise facilitation of commercial floorspace more generally.
The Amendment proposes more specific provisions pertaining to built form, reflected in tailored DDO schedules. Other chapters within this Report focus on whether the content of proposed DDO schedules is acceptable, addressing the implementation of policy in light of the characteristics of each particular centre.

The Panel concludes:

- At a broad level, the Amendment is generally supported by planning policies that seek to enhance and intensify the role of activity centres for commercial and residential land use in particular.
- It is reasonable for planning policy to provide more detailed guidance in respect of Small Activity Centres within Bayside. Changes to planning policy proposed by the Amendment are generally consistent with state planning policy although there is capacity for policy pertaining to different types of activity centre to be streamlined. This would provide improved opportunity for activity centres to evolve over time to meet emerging needs.
- It is appropriate for the SAC Strategy to be included in the Planning Scheme as a reference document (under earlier terminology) or a background document in the new format Planning Scheme, since it has informed the content of policy and Planning Scheme provisions.
- The Panel adopts Council’s suggested recommendation that the SAC Strategy be updated to reflect further strategic work undertaken as part of the Amendment, subject to responding to the recommendations of this Panel.
- Closer examination of the effect of proposed DDO schedules within this Amendment are warranted to ensure that they do not unduly hamper the achievement of policy initiatives for activity centres.

3.5 Recommendations

The Panel recommends:

Streamline amended policy provisions pertaining to the detailed classifications of individual centres as Small Neighbourhood Activity Centres or Small Commercial Activity Centres or their preferred future role.

Delete reference to the Beach Road and Georgiana Street centre in amended planning policies.

Change references to ‘shop top housing’ in amended planning policies to ‘additional’ housing.

Delete the words “and avoids materially altering the scale of the centre” from proposed Clause 21.06 and change the reference to “maintaining” the character of residential precincts to “respond suitably” or similar.

Delete the words “and avoids materially altering the scale of the centre” from proposed Clause 21.06.

Update and refine the Bayside Small Activity Centres Strategy 2014 having regard to the Bayside Small Activity Centres Urban Design Review, December 2017, Bayside Small Activity Centres Urban Built Form Review, December 2017 and Small Activity
Centres Strategy - Economic Analysis, September 2017 in a way that is consistent with the Panel’s recommendations before introducing this as a background document in Clause 72.08 of the Bayside Planning Scheme.
4 Common issues

This chapter discusses recurring common issues which emerged across the Amendment. The approach proposed to built form within individual SACs is examined in Chapter 5.

4.1 Activity centre hierarchy

(i) The issue

To what extent should parameters for development be influenced by those established for higher order activity centres in the municipality?

(ii) Evidence and submissions

A key element of Council’s submissions was that it was necessary to consider the capacity for growth of the smallest activity centres effectively as part of a ‘spectrum’, by reference to the potential for growth within higher order centres in the City of Bayside. As a general proposition, it suggested that there should be a reduction in building height and scale within lower order centres compared with higher order centres.

Council submitted that the Amendment represents a “balancing act”:

A fine balance is required between providing opportunities for growth and economic development with the need to respect the existing character and well valued streetscape enshrined within the Scheme relating to these small activity centres. The small activity centres are the lowest order centres in the municipality. Some are just a very small grouping of shops. As such, they cannot and should not be expected to do the ‘heavy lifting’ when it comes to accommodating additional housing opportunities and floorspace increases. Nevertheless, they have a role to play and Council acknowledges the same. By Council revisiting the planning controls as part of the Amendment’s re-exhibition, as proposed, it is considered this balance has been struck.24

Some commercial land owners contested the notion that use and development in SACs needed to be ‘pegged back’ by reference to higher order centres. They emphasised policy that seeks the efficient and intensive use of activity centres for a range of proposed uses and the community and commercial benefits this provides. They considered that, while there was a need to respond to the neighbourhood character of adjoining residential areas, this could be suitably addressed in site specific proposals, including by reference to the objectives of ResCode (Clause 55 of the Planning Scheme).

Land owners referred to a number of decisions of the Victorian Civil and Administrative Tribunal (VCAT) that suggest a greater capacity for change and development in certain activity centres compared with current policy designations for say, minimal housing growth.

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24 Council Part B Submission [57]
(iii) Discussion and conclusions

The Panel is aware of the controls that apply to high-order activity centres in the City of Bayside and their genesis from Planning Scheme amendments such as C100, C101, C102 and C103 as discussed further in Chapter 4.5. The Panel has seen recent development in some large activity centres during its site inspections in the range of 4-6 storeys such as in Church Street Brighton, integrating well within these streetscapes and settings, reflecting high quality design including suitable upper level setbacks.

Recently, in the case of Resling Pty Ltd v Bayside CC25 concerning land on the north east corner of the intersection of New and Bay Streets, Brighton, VCAT made detailed observations about the built form potential of an individual site within this small activity centre. It considered whether this potential is relative to sites within higher order activity centres (noting that the site under consideration was expressed as a strategic redevelopment opportunity site).

In considering the provisions of Amendment C126 (as then proposed), it observed that:

We also give no weight to Amendment C126. We were not taken to any strategic basis such as a design framework or strategic review that underpins its proposed mandatory control. It limits development to heights less than have been approved, contrary to both the prevailing built form and the emerging character and the planning assessment that underpins those approvals.

More specifically, VCAT held:

61 We are also not persuaded by the responsible authority’s proposition that the heights specified through DDOs in the major activity centres set a framework or upper limit for building heights in this centre. We do not think it necessarily follows that if building heights in the Bay Street MAC or Church Street MAC are limited to four or five storeys, that buildings in this centre must be lower because it is lower in the hierarchy of centres. The main reason why the height controls in a MAC should not limit the height of development in other places is that they have been tailored for the particular circumstances and context of the MAC. Those circumstances do not apply outside the MAC and other opportunities and constraints have to be considered in other places.

62 We are also not persuaded that the designation of the land and centre as minimal residential growth in the local planning policy framework at clause 21.02 has to limit development outside the higher order activity centres.

63 We think that such a blunt and inflexible approach ignores the elements in the planning policy framework that encourages larger sites to contribute to broader housing and compact city objectives, where the site’s features and its context make more intensive development acceptable.

25 (Corrected) [2017] VCAT 567.
The Panel generally supports the Members’ analysis of the Planning Scheme at that point in time. It accepts their findings in line with submissions on behalf of landowners to Amendment C126 that building heights for major activity centres do not necessarily set a framework or upper limit for building heights in smaller activity centres. It considers that similar principles can be applied to the current Amendment.

As a general observation, this Panel notes that higher order activity centres within the City of Bayside are in some cases confined by centre footprint, narrow lot sizes, heritage constraints, narrow roads and restricted areas for parking. In practice, this has resulted in some more major activity centres retaining a relatively low prevailing building height.

By contrast, the Panel observes that some of the SACs currently under consideration do not experience the same built form constraints, so it does not necessarily follow that their capacity for an increase in built form should be ‘pegged back’ in all instances by reference to these higher order activity centres. They may also experience greater functional separation from residential properties.

That said, the Panel is not suggesting that there should necessarily be a quantum shift in commercial intensity or the level of activation of small activity centres sufficient to displace or compete with higher order centres in terms of their commercial activity.

Rather, it considers that there does not necessarily need to be a direct linear correlation between maximum building heights and a centre’s position in the overall activity centre hierarchy. A centre-specific approach is warranted especially when establishing suitable built form parameters for each, having regard to that centre’s potential to contribute to integrated planning policy for activity centres.

4.2 Proposed rezoning

(i) The issue

Has the Amendment proposed suitable rezoning of identified land?

(ii) Evidence and submissions

A number of SACs are proposed to be rezoned from Mixed Use Zone to C1Z. In addition, some individual sites have been proposed for rezoning to better reflect existing conditions and to correct anomalies.

Some submissions resisted these proposed zoning changes. Others called for further inclusions in the C1Z. Specific objections have been considered in Chapter 5 in the context of particular centres.

Mr Szafraniec’s evidence lent support to the proposed rezoning in most instances. In particular, he considered that for those centres which retained their status as SNACs, the transition to Commercial 1 zoning would be consistent with the future strategic and economic role of these centres.

In his view, such zoning provides for a mix of retail, commercial and residential land use to ensure vibrant centres which are flexible to market demands, but that the C1Z ensures “the ground floor remains active and retail or commercially focused”. He believed that this is “likely
to create a more mixed-use outcome in these centres, compared to the application of the Mixed Use Zone (MUZ) which can often result in entirely residential outcomes in the current market environment”.

(iii) Discussion and conclusions

For the most part, the Panel supports the proposed rezoning as consistent with the function and layout of the centres concerned (including those that are being de-classified), but identifies specific sites or centres below where it considers further examination by Council is warranted.

The Panel queries why some of the more confined centres (such as those subject to DDO13 with what the Panel recommends as a 2 storey preferred height) do not retain their Mixed Use Zoning. It is not persuaded on the basis of the material and evidence before it that the proposed rezoning is strategically justified for centres such as Keith and Widdop Crescent, Hampton East and Weatherall Road and Morey Road, Beaumaris

In some ways, the Panel considers that the change to C1Z would ordinarily imply a potentially higher capacity for development, yet Council seeks to limit development potential within these centres.

Currently, there seems to be little economic impetus for providing more explicit commercial opportunities for these small centres, which may otherwise justify a shift to the C1Z. Unless there were strong reasons why the C1Z was preferable to encourage the types of commercial and employment uses within these centres, the Panel suggests that Council consider retaining the current MUZ. This would appear to be more in line with the economic assessment for these centres, such as the SGS evidence that the economic role of the Weatherall and Moray Street centre is marginal and it could potentially be declassified and transition to purely residential.

Therefore, the Panel concludes that most zoning changes proposed by the Amendment are justified but suggests that for certain confined centres it may be appropriate for Council to re-evaluate whether there is sufficient strategic justification to shift these centres to the C1Z.

4.3 Relationship with the Housing Strategy and other policies

(i) The issue

To what extent should maximum building heights or development potential within the SACs have regard to or align with growth designations emerging from the Housing Strategy?

(ii) Submissions

Council explained that the SAC Strategy was prepared as a direct result of an action contained in the Housing Strategy which provides guidance on how growth will be accommodated in the City of Bayside. It explained:

Whilst the SAC Strategy has undertaken its own individual analysis of each of the affected centres, the Housing Strategy informed Council’s broader expectations for new development in these locations. The SAC Strategy was
prepared having regard to the Objectives and Strategies from the Housing Strategy.

Council emphasised that the development of the SAC Strategy and associated policy and planning scheme provisions was influenced directly by the designation of the relevant centre in the Housing Strategy. This is grounded in the Planning Scheme in the Framework Plan at Clause 21.02. That is, where a centre had been designated within a ‘minimal’ Residential Growth Area, corresponding DDO schedules generally confined heights to a maximum height of 2 storeys. Centres identified for ‘moderate’ residential growth were more likely to translate to 3 or more storeys in proposed DDO schedules.

Mr Montebello emphasised that this was a starting point, there were instances where higher categories of DDO schedules were proposed for centres where Council considered there was greater scope for redevelopment than suggested by the Housing Strategy. It also undertook a ‘sifting’ and re-evaluation once the 2017 reviews were considered, leading to changes in DDO schedules to represent revised development capacity.

A high proportion of submitters suggested that the capacity for growth of particular activity centres was higher than identified in the Housing Strategy or than proposed in various DDO schedules. Many commercial submitters regarded the perceived dependence on the Housing Strategy designations as unreasonably confining the future potential growth of the small activity centres. They cautioned that the potential for growth within activity centres should not primarily be dictated by what occurs in residential areas outside the activity centre, perceiving that this had unreasonably influenced the approach to the Amendment taken by Council and its experts.

Council responded by confirming that it undertakes regular reviews of the Housing Strategy and that the capacity for change within these centres had been revisited recently and confirmed.

(iii) Discussion and conclusions

The Panel regards the zone purposes as an important starting point since the SACs are predominantly to be included in the C1Z. The second purpose is:

To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

Relevantly, the third purpose of the zone seeks:

To provide for residential uses at densities complementary to the role and scale of the commercial centre. [Panel emphasis.]

In the Panel’s opinion, it is reasonable in principle for the Amendment to deal with the desired scale of housing as part of the future planning for activity centres.

The Housing Strategy has a role to play in setting expectations for future housing growth within activity centres. It provides a reference point and general context for the likely scale of residential growth surrounding activity centres. It also properly encourages more intensive new medium density housing near major activity centres, large
neighbourhood centres and residential opportunity areas, especially those with good access to public transport routes.

However, it is clear to the Panel that in the case of the small activity centres, more direct consideration needs to be given to whether proposed residential densities are broadly consistent with the role and potential scale of each centre. The way in which ‘minimal’ or ‘moderate’ housing growth manifests itself in terms of scale and built form will reasonably vary between residential areas and commercial areas.\(^{26}\) For example, the notion that minimal housing growth in an activity centre could only reasonably encompass shop top housing, double storey built form and no medium density development (as outlined in the Housing Strategy) is simply too restrictive.\(^ {27}\)

The Panel considers that this does not constitute a balanced representation of the capacity for growth within these centres having regard to current state policy directions. For example, it would mean that similar expectations of residential growth are applied to land within the NRZ and the C1Z in many instances.

The need to proportionally adjust or ‘uplift’ expectations for commercial areas becomes particularly evident when considering larger and more diverse activity centres such as New and Bay Street that are identified for minimal residential growth. This is clearly in contrast to its recent development approvals.

Even if a centre is not specifically identified for any meaningful changes in terms of its future commercial role, that does not necessarily equate to it being retained at a low scale when all relevant policy imperatives are taken into account. An assessment of capacity for redevelopment having regard to context is still highly relevant.

On this approach, the Panel considers that the designation of residential growth areas has been used too rigidly to restrict the reasonable future growth of some SACs covered by the Amendment. This has translated to built form controls that are not fully aligned with the Panel’s views on the future capacity of these activity centres. This is discussed in Chapter 5 in respect of particular centres.

### 4.4 Formulation of design parameters for individual centres

(i) **The issue**

Have relevant considerations been identified and balanced to establish suitable design parameters for individual centres (as reflected in the DDO schedules and associated concept plans for each centre)?

(ii) **Evidence and submissions**

Council relied heavily on the reviews and evidence prepared by its experts. All evidence indicated a high level of consistency between earlier strategies or reviews and the detail of the Amendment.

\(^{26}\) Noting that the definition of the terms ‘minimal’ and ‘moderate’ is an element of the reference document and does not form part of the planning scheme per se.

\(^{27}\) Although this typology is probably still fitting for NRZ areas given current maximum heights in that zone.
Council accepted the majority of further recommendations made by Ms Cook28, Urban Designer of Catalyst and Ms Ancell29 and provided an explanation where the Amendment diverged from these.30 The Panel notes that although separate evidence statements were prepared, Ms Cook and Ms Ancell were of the view that their evidence was conjunctive.

Ms Cook provided a detailed analysis of the factors taken into account on her site inspections of relevant centres at pages 16 and 17 of her evidence. She expressly advised that her evidence did not take into consideration a number of factors including potential architectural responses on specific development sites, the potential future growth of centres, properties outside the SNAC or SCAC as defined for the purposes of the Amendment or traffic and parking issues.

Expert witnesses for land owners such as Mr McGurn and Mr Biacsi considered that the parameters specified in the DDO schedules were overly restrictive, unjustified and placed too great an emphasis on residential land around activity centres, rather than the inherent potential within these activity centres. Their evidence is considered in detail later in this report in respect of particular centres in Chapter 5.

**Proposed street walls and building setbacks**

There are a number of design parameters identified in each DDO schedule aside from building height, most of which are proposed to be discretionary. The concept plans for each centre typically include a designated street wall with a reference to a number of storeys. The DDO schedules also commonly include a preference to comply with setbacks specified in Standard B17 of ResCode.

Ms Cook recommended that the legend be altered for each concept plan to refer to ‘up to’, say, 2 storeys, to enable a street wall to be provided at a lesser height based on individual circumstances of each site (rather than give an unintended impression that a street wall of that height is required). Council agreed this was warranted.

Ms Ancell considered that discretionary setbacks would assist in increasing the capacity of centres by potentially facilitating additional floorspace within nominated building envelopes. She pointed out that there is a decision guideline in Clause 34.01-8 of the C1Z for residential development other than apartments to consider ResCode objectives, standards and decision guidelines.

**Laneways and other connections**

A common element of the concept plans for centres includes dashed yellow lines indicating either ‘new connections’ or ‘extensions to laneways’ or solid yellow lines indicating ‘new pedestrian thoroughfares’ (less common)31. The question is whether the concept plans make provision for this level of connectivity on a reasonable basis.

A number of submitters, especially local residents, pointed out what they regarded as discrepancies between current conditions and proposed connections, laneways or

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28 Pages 7 and 8 of her expert report.
29 Page 9 of her expert report.
30 Document 9.
31 Such as in the case of Bluff Road and Love Street Centre.
thoroughfares. In general, they sought to ensure that the concept plans were accurate and would not increase potential for commercial traffic adjacent to residential properties.

Council relied on the evidence of Ms Cook and Ms Ancell as delineating suitable through connections on the concept plans. Their site inspections in combination with satellite imaging indicated physical conditions, although it is unclear whether they were provided with detailed information about ownership status, issues concerning rights of way and Council’s future intentions for these through connections when formulating the concept plan recommendations. These matters are highly relevant to whether proposed connections can be achieved in practice.

(iii) Discussion and conclusions

In reality, the current heights of buildings within and adjacent to each activity centre have been fixed largely by maximum height restrictions or preferred heights in relevant zones and existing overlays. In the case of residential land, surrounding zoning is almost invariably NRZ where there is a 2 storey or 9 metre maximum building height. This has resulted in a largely 1 to 2 storey scale of dwellings.

In the case of land within nominated activity centres, all have been subject to the long-term application of a DDO (most commonly Schedule 1, but also Schedules 2 and 332) which also express a clear preference for 2 storey (9 metre) building height. This may be a reason why most landowners who made submissions support the Amendment in principle, since it would replace these provisions which are too broad brush.

It appears to the Panel that the experts engaged by Council gave a high degree of emphasis to both the existing character and heights of buildings within activity centres and adjacent residential areas at the expense of identifying future parameters for these centres having regard to current policy aspirations.

For example, as pointed out by some submitters and advocates that the proposed building heights within centres covered by DDO13 such as Brighton Beach (Were Street Centre) would be universally limited to the same maximum heights as surrounding residentially zoned land.

Likewise, the Panel considers that undue weight has been given to existing built form within activity centres as forming a base for future built form, whereas this was most likely constrained by existing DDO Schedules 1, 2 and 3 rather than responding to market forces or urban design and interface considerations.

An amendment such as this one needs to be forward focused, drawing together policy aspirations with possibilities for more intensive development within commercially zoned land, considering whether a larger scale of development could be suitably accommodated in its physical setting provided it does not generate unreasonable impact.

On the other hand, where there is uniform potential for unreasonable impact across a particular centre if taller buildings were permitted, this may provide support for mandatory controls for that centre.

32 Building Height Control – Coastal (DDO1), Inland Areas (DDO2), Non-Residential Buildings in the Minimal Residential Growth Area (DDO3).
In principle, the Panel agrees with Council that when an amendment to the Planning Scheme is being considered at a strategic level, this analysis should be undertaken on a centre-wide basis rather than a site-by-site analysis of capacity.

**Proposed street walls and building setbacks**

The Panel has considered whether it is desirable for the concept plan for each centre to indicate an alignment for the street wall. Generally, the Panel considers this has been reasonably included, provided that it is not unreasonably constrained by existing conditions within the centre.

There are a number of centres that have indented parking, with an effective zero lot line of buildings behind this. Where present, the Panel strongly recommends that this setback pattern be maintained, since it provides in effect the equivalent spacing of a residential landscaped setback, generally mirroring properties adjacent to the activity centre.

In some other centres identified in Chapter 5 below, the Panel considers that the notion of providing a street wall is not necessarily desirable given the character of the centre and its particular setting. For example, in the case of Beach Road and Georgiana Street (if it is to be retained as a SAC), a front setback would provide an improved interface with the streetscape and better transition to residential properties.

In other examples, the Panel has taken a midway point. Where it has supported a preferred height of buildings up to say, 3 storeys, it proposes an up to 2 storey street wall with the upper (third) level set back beyond this. This is often needed to ensure that buildings do not visually overwhelm the particular streetscape.

In terms of ResCode setbacks being preferred for these activity centres, the Panel notes that this is not unprecedented in existing Planning Scheme provisions pertaining to higher order activity centres. It considers this is a suitable starting point for smaller centres with direct interfaces to residentially zoned and developed land, noting that the C1Z references ResCode objectives for development in these centres. However, the Panel has not supported preferred setbacks in excess of ResCode provisions.

**Managing amenity impacts at zone interfaces**

Where the relevant notation is used, the Panel considers that consequential changes should be made to the legend to the concept plans to describe the purpose of nominated transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

This would be more consistent with a long line of decisions of VCAT which confirm that residential properties at the interface with commercially zoned land (especially within an activity centre) need to expect more robust built form and a varied level of amenity compared with abuttals to purely residential land.

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33 Council also advised that evidence of its appropriateness has been given by Mr Mark Sheppard and Mr Craig Czarny, Urban Designers, in Stonnington Planning Scheme Amendments for activity centres.
In addition, state planning policy objectives to maximise housing and commercial opportunities within activity centres would be unreasonably hampered if the benchmark was to limit amenity impacts rather than to manage them appropriately.

**Treatment of laneways and proposed network enhancement in concept plans**

The Panel’s inspections confirmed the disconnect identified by submitters between current conditions and the treatment of movement networks in many concept plans under the DDO schedules.

The Panel recognises that it is common practice for concept plans prepared by urban designers to depict intended network connections and through-block connections for pedestrians or vehicles. It is not essential for these to be physically in existence at the time the plan is prepared. They can provide an indication of preferred site and network circulation for centre redevelopment or an intention by Council to acquire land to facilitate movement.

It is not the role of the Panel to enquire into ownership or public use entitlements of laneways depicted within these centres. Notwithstanding, the Panel has concerns that this device is somewhat overused in the Amendment and tends to overstate realistic options for future connectivity. For example, in some instances, relatively recent Council decisions to discontinue rights of way and divest itself of ownership in favour of adjacent landowners may impact the likelihood of the connections identified on the concept plans being achievable.

While this may be legitimately aspirational in the case of large landholdings in growth areas for example, the Panel approaches this designation with greater reticence where multiple established private properties are involved and the pattern of development clearly does not support such linkages without compulsory acquisition or the like.

In Chapter 5, the Panel has made mention of specific instances that should be reconsidered by Council, stemming from its ‘first principles’ examination of through connections in particular centres.

### 4.5 Proposed use of mandatory provisions

**(i) The issue**

Has the Amendment made appropriate use of mandatory provisions in various Design and Development Overlay schedules?

**(ii) Evidence and submissions**

Some elements of the proposed overlay controls are discretionary while others are mandatory, depending on the centre. In general, mandatory controls are proposed in smaller centres where the surrounding neighbourhood character and growth requires (in Council’s view) development to be modest in scale or where coastal character requires protection. Greater flexibility is intended for some larger centres through discretionary controls to allow a range of development outcomes to be considered.

Table 2 outlines the distinction between these provisions in the ‘Panel version’ of the DDO schedules.
### Table 2: Main elements of DDO schedules pertaining to building height

<table>
<thead>
<tr>
<th>DDO Number</th>
<th>Provision for building heights</th>
</tr>
</thead>
<tbody>
<tr>
<td>DDO13</td>
<td>Mandatory maximum 2 storey (9 metre) building height*</td>
</tr>
</tbody>
</table>
| DDO14      | Preferred 2 storey (9 metre) building height*  
Mandatory maximum 3 storeys (11 metre) building height*, with proposals above 2 storeys (9 metres) to provide relevant justification for additional height |
| DDO15      | Preferred 4 storey (13.5 metre) building height*, with proposals above that to provide relevant justification for additional height  
Specific provisions are proposed for certain centres or nominated sites for a preferred 3 storey (11 metre) building height unless land is consolidated into larger allotments. |
| DDO16      | Area A (to north on western side of Hawthorn Road) - Mandatory maximum 4 storey (13.5 metre) building height*  
Area B (to south and west) - Mandatory maximum 2 storey (9 metre) building height* |
| DDO17      | Preferred 2 storey (9 metre) building height*  
Mandatory maximum 3 storeys (11 metre) building height*, with proposals above 2 storeys (9 metres) to provide relevant justification for additional height |
| DDO19      | Area A - Mandatory maximum 5 storey (16 metre) building height*  
(reflecting existing constructed building)  
Area B - Mandatory maximum 4 storey (13.5 metre) building height*  
Area C - Mandatory maximum 3 storey (11 metre) building height*  
Area D - Mandatory maximum 2 storey (9 metre) building height* |

* denotes an optional additional 1 metre in height if the slope of the natural ground level at any cross section of the site of the building wider than 8.0 metres is 2.5 degrees or more.

Ms Ancell considered that a mix of mandatory and discretionary controls proposed by the Amendment would “ensure that future development appropriately reflects the local context and surrounding neighbourhood character of each centre.” She considered that this suite of controls would have the benefit of providing certainty that neighbourhood character would be respected.\(^{34}\)

Factors influencing Ms Ancell’s support for mandatory provisions to these centres included:
- they are very small with limited scope for change (for example, being designated for minimal growth)
- they are predominantly surrounded by the NRZ with a 2 storey height limit
- they are located on a lower order road or have shallow lot depths
- they have no existing buildings above a certain number of storeys.

\(^{34}\) Para 51 of her report.
The proposal to apply mandatory provisions to some centres was a key issue addressed by submitters.

Affected land owners emphasised that the extent of mandatory provisions would deviate from the performance-based nature of the current planning scheme. Some submitters suggested that mandatory provisions governing building height were not justified or necessary and would restrict acceptable built form outcomes in these commercial centres. They queried whether a thorough built form analysis had been carried out for each individual site in each centre to determine that a greater height would be consistently inappropriate.

An alternative view was taken by other submitters to the Amendment, most commonly neighbouring residents, who supported proposed mandatory provisions as providing certainty about maximum heights in adjacent small activity centres. They sought a moderated transition to 2 storey building heights in adjacent residential areas. They emphasised that a significant community benefit of such provisions would be to prevent permits for higher proposals being applied for in the first place (with the accompanying risk of inappropriate development and associated pressures).

Council submitted that the choice to apply mandatory provisions within identified centres constituted a reasonable response to residents and ratepayers’ desires to protect the character and scale of areas adjacent to residential areas and to provide certainty in terms of future built form outcomes. It explained that nominated maximum heights derived from a professional analysis of the context and development potential of each activity centre, verified by independent professional analysis by Echelon and Catalyst in 2017 and generally supported by the economic analysis of SGS. For example, mandatory provisions were proposed to protect coastal values along parts of Beach Road in Sandringham and Brighton.

In Mr Montebello’s submissions for Council, he pointed out that Bayside City Council is one of few municipalities that have engaged in this level of urban design, economic and town planning analysis and concept planning for their smallest activity centres and that this has soundly paved the way for the proposed planning controls.

Role of Practice Notes

Parties to the Hearing made submissions about recently amended Practice Note 59 (The Role of Mandatory Provisions in Planning Schemes) and Practice Note 60 (Height and setback controls for activity centres), September 2018 as relevant to the proposed application of mandatory provisions.

Advocates and witnesses who appeared at the Hearing for private land owners emphasised recent changes in the wording of the Practice Notes, with particular emphasis on the intended use of mandatory provisions only in ‘exceptional circumstances’.

Council responded that the Panel should not apply the Practice Notes as if they were binding rules, since they sit outside the Planning Scheme and are only intended to provide guidance for planning authorities, as reflected in the introduction to Practice Note 60 which explains that it “provides guidance as to the department’s preferred approach”.
Content of Practice Notes

Practice Note 59 begins by outlining the performance-based nature of the Victorian planning system and the benefits that such a system can deliver. It explains that:

*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 requirements.*

*Nevertheless, there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome. Although these circumstances cannot be common practice, they may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast.*

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

Practice Note 59 confirms that mandatory height or setback controls should only be applied where:

- exceptional circumstances exist; or
- council has undertaken comprehensive strategic work and is able to demonstrate that mandatory controls are appropriate in the context; and
- they are absolutely necessary to achieve the preferred built form outcomes and it can be demonstrated that exceeding these development parameters would result in unacceptable built form outcomes.

*Examples of exceptional circumstances are provided in the Practice Note and (as relevant) include “sensitive coastal environments where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment”. They may also include “significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values”.*

Practice Note 59 accepts that the Design and Development Overlay is the most appropriate tool for the expression of mandatory built form requirements, but suggests that they will only be appropriate if it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes. The Practice Note provides criteria by way of guidance that are considered below.

Practice Note 60 is intended to be read in conjunction with Practice Note 59. It notes the clear potential for activity centres to achieve a concentration of services and provision of housing and their consequential identification as a “main focus for change in metropolitan Melbourne”. It acknowledges that change in and around activity centres needs to be managed carefully to ensure that new development maintains an appropriate level of amenity and integrates with existing and proposed land use and built form.

Practice Note 60 provides that “height and setback controls can be appropriate [for activity centres] so long as they are not aimed at restricting the build form, but at facilitating good design outcomes”. They must also be based on the outcomes of strategic research and
background analysis (including a comprehensive built form analysis) that is consistent with planning policy.\textsuperscript{35} In terms of consistency with policy, a planning authority proposing mandatory provisions should demonstrate that the relevant centre would not be unduly encumbered to meet community and commercial requirements and that forecast demand over a 15 to 30 year time period could be met.\textsuperscript{36}

(iii) Discussion

Guidance from previous Panel reports

Previous panels have considered the appropriateness of the use of mandatory provisions in the context of major activity centres within this municipality. On one occasion, in the Panel Report pertaining to Bayside Planning Scheme Amendments C100, C101, C102 and C103, the Panel considered whether it was appropriate to apply mandatory maximum heights for both the commercial core of major activity centres together with ‘residential hinterlands’ that are mapped within these centres. The Panel made an insightful comment about the ‘tests’ in the Practice Note at the time:

Many submissions referred to the ‘tests’ or ‘criteria’ included in these Practice Notes that can be used to assess whether mandatory provisions are justified and should be applied. While these criteria are useful, the overarching test is whether the provisions are strategically justified and, in particular, will assist in achieving the outcomes sought by State policy in relation to activity centres.

It had regard to a number of factors in determining that mandatory provisions were warranted for residential precincts of the major activity centres, including the fact that preferred maximums applied to the commercial core; the residential precincts were extensive and could accommodate demands for residential growth within the three storey height limit; and stakeholder certainty was desirable. It concluded that:

The Panel is satisfied that the residential precincts have significant capacity to accommodate future growth and that there will be a net community benefit resulting from the certainty that this approach will provide.

At the same time, it recommended the inclusion of an additional residential sub-precinct to include a limited number of sites with potential for greater than three storey height (in part recognised by taller existing development), where building heights would be preferred rather than maximum.

Notably, the Panel’s findings in respect of commercial areas was that mandatory provisions were not justified and would be at odds with Melbourne 2030 and the Planning Scheme. It concluded:

As a matter of principle, the Panel supports the use of preferred heights in the commercial precincts on the basis that they are quite different to the residential

\textsuperscript{35} A significant part of the Practice Note focuses on the desirability of a supporting built form analysis (especially as part of structure planning) and what this should contain.

\textsuperscript{36} There is also potential for a mix of mandatory and discretionary provisions to apply to a particular centre, with the prospect of nominating key sites for more intensive development.
precincts and should be treated differently. The commercial precincts have greater capacity for growth and are much more diverse - they can sustain a variety of design outcomes and building heights, potentially beyond the preferred heights (and other discretionary provisions) in the DDO schedules.

Ultimately, it regarded the proposed heights for commercial areas as unduly conservative and recommended a more contemporary assessment of building heights.

On the second occasion in the Panel Report for Bayside Planning Scheme Amendments C113, C114 and C115, the Panel confirmed that circumstances had not substantially changed since the analysis above, but independently confirmed that there was insufficient strategic justification to support mandatory maximum heights in the commercial zones of the three major activity centres.37

In terms of setting criteria for exceeding preferred maximum heights, the Panel noted existing provisions that “preferred maximum heights are not to be exceeded unless the proposal provides an exemplary response to the site, its context, design objectives and other policy in the planning scheme”. It also had regard to the effect of the Housing Strategy 2012 in its assessment, with the benefit of detailed modelling including building envelopes. It concluded that the strategy did not justify mandatory heights in commercial areas, especially when they were designated as ‘Key Focus Residential Growth Areas’ for medium and high-density housing.38 It therefore recommended that the Amendments be abandoned.

The Panel was faced with submissions that at that time (in 2015) the content of the relevant Practice Notes were ‘severely out of date’. It disagreed. This issue does not arise for the current Amendment which follows recent updates to the Practice Notes.

Application of principles to this Amendment

The Panel is assisted by the approach taken by previous Panels in respect of larger activity centres within the municipality where mandatory height provisions were not supported for commercial areas of activity centres.

At the same time, this Panel is cognisant that the argument for mandatory provisions is somewhat stronger in the case of small activity centres, especially where they almost uniformly interface directly with land in the NRZ with current 2 storey height limits.

There is still a question as to whether mandatory provisions (especially as extensive as proposed in this Amendment) are strategically justified for the nominated centres.

The Panel has approached this question with a number of underlying key policy directions in mind. In summary, these include the need to provide land for the intensification of commercial activity that provides economic and social benefit and supports self-sufficient local neighbourhoods and to accommodate a level of housing growth. This is to be balanced

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37 It made reference to other Panels and Advisory Committees that had considered mandatory provisions in Chapter 3.3 in residential, activity centres and other contexts.

38 Also, it called for a priority review of the existing Structure Plan.
with ensuring appropriate levels of amenity for residential areas, and a suitable built form character and interface.\(^{39}\)

At a ‘high level’, the Panel accepts that:

- The Housing Strategy is a policy document offering guidance as to the location of suitable housing development and the extent of change that may be affected in particular areas, while maintaining broader strategic objectives for the municipality as a whole. It may demonstrate that a proposal will not unreasonably constrain housing capacity as a threshold issue. It is not designed to establish a ‘top end’ of development and does not strategically justify mandatory controls in activity centres. One could ask, why prevent a greater contribution to the provision of housing if it could reasonably be made without undue built form, amenity or infrastructure impacts?

- Strategic planning for activity centres (as distinct from residential areas) should not necessarily constrain development potential on the basis that Council will continue to meet its housing targets if maximum building heights were applied. The provision of housing targets is a benchmark, not an ideal maximum or an indication of absolute capacity.

- Activity centres, however small, have a role to play in contributing to urban consolidation and as a focus for business, shopping, working, leisure and community facilities. This role is increasingly leading to higher density housing located within activity centres, especially when there is reduced scope in extensively distributed NRZ areas nearby.

- All elements of modern planning, including Plan Melbourne, contemplate the optimisation of activity centres subject to appropriate development constraints. Having regard to the purposes of zones, the default position is that there is greater capacity for intensive development in commercial areas that have an activity centre function compared with surrounding low scale residential areas. This leads the Panel to question the appropriateness of elements of the Amendment, such as DDO13 which seeks to limit building heights within the commercial area to those in the surrounding residential area.

- For many smaller activity centres, a DDO schedule could be drafted to provide a suitable framework for acceptable development. Absent uniform (or precinct-based characteristics) of any particular centre that warrant specific height protection, it is appropriate to allow permit applications to be considered on their merits taking a discretionary approach consistent with Victoria’s performance based planning system.

- The Amendment needs to be forward-thinking, starting with existing conditions but considering a range of possibilities for the future as contemplated by policy.

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\(^{39}\) To a large extent, these tensions as raised by Mr Canavan QC in submissions for relevant landowners and their resolution were recorded in the Panel Report for Amendments C113, C114 and C115 as raised by Mr Canavan QC in submissions for relevant landowners.
It is acknowledged that the Practice Notes do not have statutory weight, but operate as a useful guide. The Panel regards the considerations listed in the Practice Notes as a suitable starting point for its analysis of the Amendment.

The fact that the relevant Practice Notes have been amended subsequent to the two Panel Reports considered above is a further factor emphasising caution in the use of mandatory provisions in this setting.

**Are the mandatory provisions strategically justified?**

Council commissioned a detailed professional analysis of existing urban design, built form and potential economic opportunities for the 33 small activity centres under consideration.

The Panel notes the submissions from some private land owners that there has been no individual analysis of the development opportunities of individual sites within centres. Ultimately, it agrees with Council that this level of analysis is not essential or particularly feasible for an amendment of this type that focuses on key elements of built form within consolidated activity centres.

As will be evident from recommendations in Chapter 5, the Panel generally endorses Council’s projected capacity for vertical growth of many small activity centres, as expressed in height or metres. That is, it would support the numeric preferred building heights proposed by Council in some instances if they were expressed as discretionary preferred heights for these centres.

While this is an indication that the Amendment has generally provided suitable building heights in the first instance, this is not of itself tantamount to strategic justification for the proposed use of mandatory provisions.

Tying in with the second ‘criteria’, the more pertinent question is whether this is the only way that suitable built form outcomes could be achieved for areas proposed to be subject to the control, or whether this could reasonably be achieved through other means, such as by criteria for building heights above preferred heights through a permit application process.

The Panel does not consider it essential for a threshold as high as “extraordinary circumstances” in every case to apply to justify mandatory provisions. Ultimately, the main scenarios it has identified for the Amendment as strategically justifying mandatory controls are direct coastal sensitivity or the heritage significance of adjacent properties.

**Are mandatory provisions suitable or necessary for the majority of sites within the nominated areas? What would the consequences be of allowing greater height subject to a permit?**

Having formed the view that the numeric heights for some centres as endorsed by Council are in a range that would generally be appropriate, the question is whether these need to be expressed as mandatory for all small activity centres for which they are proposed.

The Panel agrees that the level of strategic analysis for these centres is proportionate to reasonable expectations for small activity centre planning. That is, a centre-wide built form analysis has been undertaken rather than more comprehensive structure planning.

In analysing this criterion, Ms Ancell refers to a number of developments in small activity centres that exceed discretionary 2 storey heights as indicating that in the absence of
mandatory provisions, it would be common for applicants to seek to exceed nominated height limits.

Significantly, the Panel shares Ms Ancell’s view that the majority of proposals not in accordance with proposed mandatory provisions would not necessarily be clearly unacceptable. She observed that a well designed development exceeding a discretionary height “by a single storey” is unlikely to be characterised as unacceptable. She expressed the view that “estimating mandatory controls for smaller centres in low-rise ‘neighbourhood residential’ areas is more about creating greater planning certainty to the local community and land areas.”

As an exception, the Panel observed that some of the existing buildings that were considered by Council’s experts to justify increased heights in parts of certain centres (such as the five storey building in the Milano’s centre or the ‘pop up’ fourth storey component of the building on Hawthorn Road, Brighton East) actually detract from the character or streetscape of those centres or their surrounds. In those circumstances, the Panel has asked itself, is this solely a function of their height? Could a more sensitively designed and located building of the same height be acceptable in these locations?

Putting aside more sensitive coastal locations, the Panel was generally not persuaded by Council that there is no real capacity for an individual, suitably designed development to extend at least in part above the proposed mandatory maximum heights in most nominated centres.

Notwithstanding, the reduced scale of the activity centres under consideration in the Amendment, the comments of the Panel in Amendments C113, C114 and C115 remain apposite:

> Centres such as Sandringham Village, Church Street and Bay Street may have clear visions supported by their community, however, it is unlikely that every foreseeable circumstance across the life of their structure plans will be evident at this stage.

Balancing the need for certainty with the potential for reasonable growth

In the Panel’s opinion, the proposed mandatory provisions are unlikely to reduce administrative costs since there is no known correlation between the costs of processing a permit application and building height (especially with a height differential of a small number of storeys).

While certainty in the planning system is desirable for both applicants and for surrounding land owners, the Panel considers that this is not an overriding consideration in the current circumstances that would justify the application of mandatory building heights in commercial areas in the proposed instances.

The design objectives across the various Design and Development Overlay schedules are virtually identical and include, in summary:

- to ensure consistency with the concept plan for the relevant centre
- to respect the urban form and typography within the activity centre
- for new development to provide an appropriate interface with adjoining land and nearby development (including heritage properties)
to interface with safe and active streets, with priority given to pedestrian environments

to incorporate environmentally sensitive design into development.

It is important to realise that all substantive buildings and works would require a planning permit to be obtained under the relevant DDO schedule. The design objectives and decision guidelines of each DDO schedule will guide the exercise of this discretion. Just because a discretion may exist to grant a permit above a preferred building height does not mean that there is an entitlement in favour of additional height. Its appropriateness will need to be demonstrated on the particular context of the proposal in its setting.

In these circumstances, where each particular proposal will be ‘tested’ for its appropriateness, the Panel has given relative priority to the potential for discretionary controls, properly applied, to set parameters for appropriate development outcomes while seeking to maximise the contribution that small activity centres can make to the commercial prosperity and provision of diverse housing within suitable areas.

This discretion would be exercised on the basis of an overarching concept plan for each centre, with tailored design objectives and criteria for exceeding preferred building heights. These are important operative components of the proposed DDO schedules.

This Panel emphasises that it is not necessarily its expectation or intention for all buildings within each centre to be built to preferred heights it has recommended – the preferred height is essentially up to the number of storeys or metres identified.

The inclusion of a preferred height is an important component of guiding the preferred future character and scale of the centre, such that higher departures would need to be evaluated critically to ensure that they do not detract from objectives for the centre. A planning permit will still be required by the DDO for buildings and works or for the construction of a building even for structures within the preferred height, therefore, all proposed heights would need to be justified in terms of a site analysis and design response, considered in the context of the new DDO schedule.

The Panel has compiled a table summarising its recommendations in terms of building heights for each centre, including whether they should be mandatory or discretionary in Appendix D of this Report. Its detailed reasoning in respect of each DDO schedule is set out in Chapter 5.

(iv) Conclusions

The Panel concludes:

- With the exception of DDO17 and DDO19, mandatory provisions have been overused in the Amendment to provide maximum building heights that are not justified.
- In limited instances, given the direct coastal sensitivity of the setting (such as in the case of Esplanade and Grosvenor Street centre) the use of mandatory provisions is demonstrated.

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40 As explicitly recognised by VCAT in Hampton Beach Pty Ltd v Bayside CC (Corrected) [2017] VCAT 962, [45].
• In all other instances, preferred building heights, setbacks and the like should be provided in the DDO schedule, with capacity for increased scale or height subject to meeting qualitative criteria.
• While significant increases in scale or height would not generally be supported by the Panel above preferred building setbacks, there is capacity for some increases above preferred settings to achieve an outcome that achieves net community benefit and sustainable development on particular sites within most centres. This defers to an assessment of each future application within a particular DDO schedule on its planning merit.

More detailed recommendations in respect of each DDO schedule will follow.

4.6 Gaming prohibition in strip shopping centres

(i) The issue

One aspect of the Amendment seeks to include additional centres in Clause 2.0 of the Schedule to Clause 52.28 which nominates strip shopping centres in which gaming machines are prohibited. Have these been nominated appropriately?

(ii) Submissions and evidence

Mr Szafraniec supported this component of the Amendment to ensure that the classification of these centres would not be influenced by “such a potentially significant land use such a gaming venue”.

This aspect of the Amendment was not given much direct emphasis in submissions, although it was raised as a concern by a landowner who operates existing gaming machines in the New and Bay Street Centre. This was elaborated on by Mr Pitt QC at the Hearing.

Essentially, its concern was that a prohibition for this centre would impact the operation of its business, such as by affecting its ability to continue or expand its existing land use.

Even if the New and Bay Street Centre was included in the schedule, Mr Montebello in response explained that the effect of the Amendment would not be to prevent existing gaming activities within the centre. This is presumably by application of Clause 52.28-5 which provides that gaming machines could not be installed or used in a nominated strip shopping centre unless the venue was approved under the Gambling Regulation Act 2003 before the specified date and the maximum number of gaming machines is not exceeded, but the Panel has not confirmed the extent of application to any particular premises.

Brandied Pty Ltd was more broadly concerned that the centre itself is not a ‘strip shopping centre’ given existing and approved land use. It suggested that this issue could be resolved in a practical way for the purpose of the amendment by changing the designation of the centre to a SCAC which is a type of centre that is not caught by the prohibition against gaming in strip shopping centres.

Council explained the method it had undertaken to determine whether a centre would constitute a ‘strip shopping centre’ for the purpose of Clause 52.28. This involved an audit of current land use and a calculation of the proportion of shops within the buildings comprising
the centre within the boundaries proposed by the Amendment. Council confirmed in its closing submissions that the New and Bay Street Centre would not currently be characterised as a strip shopping centre given existing land use, but was concerned that if the approved building on the south east corner was constructed, this would add 1800 square metres of ground floor area for shop as an as-of-right use (referencing the endorsed plans), and this would be likely to suffice.

Having regard to current conditions, it conceded that it would be appropriate to remove three centres from the schedule as exhibited since they no longer met the planning scheme proportion for a strip shopping centre:

- New and Bay Street, Brighton
- Esplanade and Grosvenor Street, Brighton
- Bluff Road and Arranmore Avenue, Black Rock

(iii) Discussion and conclusions

The Panel supports Council’s post-exhibition change to exclude these three centres. It also accepts the analysis undertaken to include the other nominated centres in the schedule to Clause 52.28 and broadly considers that the prohibition on gaming in these centres would be appropriate. On the issue of the characterisation of the New and Bay Street centre, the Panel appreciates that this centre is rapidly re-developing with the recent completion of a 4 storey apartment building on the north western corner, the other substantial approval on the north eastern corner and the potential for redevelopment of sizeable properties such as the former pop up art gallery and Brighton Receptions.

On balance, the Panel considers that it is conceivable that new floor area, especially at ground floor may support increased commercial opportunity for this centre and that it is therefore premature to shift the designation of this centre to a Small Neighbourhood Activity Centre at this stage.

Recommendations

Exclude the following centres from the schedule of strip shopping centres where electronic gaming machines are prohibited:

a) New Street and Bay Street, Brighton
b) Esplanade and Grosvenor Street, Brighton
c) Bluff Road and Arranmore Avenue, Black Rock.

41 Undertaken in 2017. Buildings constructed as shops but not necessarily used as shops were counted as shops.
42 By reference to reasoning in VCAT decisions such as Melkat v Campaspe SC (Red Dot) [2012] VCAT 657, Shimmerbridge v Bayside CC (Red Dot) [2008] VCAT 1428. It sought to distinguish the decision of Bright Newbay Pty Ltd v Bayside CC [2010] VCAT 1347 which gave priority to actual use of premises since shops were prohibited in the zone at that time.
5 Proposed Design and Development Overlay schedules

The proposed DDO schedules seek to manage built form within SACs. The Amendment would apply one of six new DDOs to each SAC, with an associated concept plan for each forming part of the Planning Scheme.

Consistent design objectives are provided for the suite of DDO schedules comprising this Amendment, focusing on ensuring consistency with the applicable concept plan; development that is respectful of the urban form and building types within the activity centre; ensuring an appropriate transition to and interface with nearby residential development; contributing to safe and active streets with prioritised pedestrian environments and incorporating environmentally sustainable design.

5.1 Design and Development Overlay 13

Key elements of the re-exhibited version of DDO13 comprise:

- a mandatory building height of 9 metres (2 storeys) with an allowance for sloping land
- a preferred 2 storey street wall height at zero setback to the front boundary
- preferred ResCode B17 side and rear setbacks to residentially zoned land.

Post-exhibition changes proposed by Council (adopting the recommendation of its urban design consultant) include describing the street wall height as ‘up to’ 2 storeys.

5.1.1 Balcombe Park, Beaumaris

This centre is classified as a SNAC, with its zoning proposed to be changed from MUZ to C1Z.

Submissions and evidence

Submissions queried the change from residential to commercial zoning and generally supported a 2 storey height.

This centre was not discussed in detail in submissions at the Hearing by Council or any other party.

Discussion and conclusions

The proposed change from the current residential (mixed use) zoning to a commercial zone in the Panel’s view implies that more intensive commercial activity can be sustained for this particular centre.

The Panel notes that this centre is designated for moderate residential growth in the Housing Strategy and consistent with this, the Mixed Use Zone currently provides a purpose to “provide for housing at higher densities”. However, the proposed DDO13 would only allow development of a maximum 2 storeys, akin to the NRZ. The Panel feels obliged to comment on this potential mismatch.

This is effectively an island centre without direct residential abuttals. It also has the benefit of indented parking in front of tenancies, with the centre separated visually from the reserve
opposite. It is over twice the size of, say, the Balcombe Road and Charman Road centre and, in the Panel’s opinion, could comfortably accommodate 3 storeys without adverse amenity impacts on adjacent residential areas which contain buildings of 1 to 2 storeys.

The Panel suggests that Council consider shifting this centre to DDO14 since a preferred 3 storey height with capacity for higher built form elements set back from the lot frontages would represent appropriate built form. A preferred setback above the third storey of 5 metres should be included in the Setbacks sub-heading within the schedule although this could be varied based on the design response. This should be reflected in the concept plan accordingly.

The Panel also queries the description of Waiora Avenue (which it acknowledges presents as a laneway) as a ‘new connection/extend laneway,’ as it currently runs unobstructed between two streets. To the south it presents with side or rear fences to large residential properties, which, like land within the centre, also have the potential for future development (albeit more modest). The Panel considers that a description in the concept plan to ‘retain and enhance existing road/laneway’ is a more appropriate description.

In these circumstances, the Panel supports the approach taken by Council post exhibition, where the preferred rear setback to residentially zoned land is to be generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the ground floor setback. Subject to consideration of a site-specific design, this is likely to continue to provide an adequate level of separation and protection of amenity whilst enabling an efficient use of land within the centre.

Retaining the existing building setback to Balcombe Road beyond the indented parking (which appears to be proposed, although the concept plan is somewhat unclear) would align the centre with the existing built form to the west, while retaining the open aspect to the east where the centre adjoins Sandringham Secondary College. It would also be helpful to outline lot boundaries of properties on the west side of Haydens Road to clarify the setback of the centre’s frontage (as per the concept plan for Weatherall Road, Cheltenham).

Recommendation

Council nominate this centre within Schedule 14 of the DDO subject to the following modifications to the concept plan:

- the street wall to Balcombe Road described as up to 3 storeys
- above the street wall, a preferred upper level setback of 5 metres from the street frontage
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing’
- the reference to transitional setbacks in the legend to the concept plan to be changed from ‘limit’ to ‘manage’.
5.1.2 Bluff Road and Edward Street, Black Rock/Sandringham (part)

The centre is classified as a SNAC and is divided into two parts. The part to the west of Bluff Road is zoned C1Z and is proposed to be included in DDO14, with the part to the east (essentially one large tenancy) zoned NRZ to be included in DDO13.

Submissions and evidence

A submission by Mr Umbers on behalf of the owner of 184 Bluff Road, Black Rock contended that this property should be included in the centre and zoned C1Z, or alternatively MUZ, to reflect its increased development potential. This was said to reflect the site’s longstanding provision of commercial services as well as its location as part of a larger activity centre.

Mr Szafraniec gave evidence that it would be reasonable to include that land within the centre boundary and accordingly rezone it to C1Z since it is functionally part of the SNAC even though it is across the road. The economic gap analysis also identifies incremental growth in local demand. The site is proximate to Sandringham Hospital and a substantial aged care facility.

Ms Ancell considered that a maximum 2 storey building height was warranted for that site if it was to be included given the size of the allotment and its direct proximity to NRZ land.

Discussion and conclusions

The Amendment does not propose rezoning the submitter’s land. In any case, the Panel is not persuaded that a change in zoning of 184 Bluff Road would be appropriate prior to Council’s proposed review of the boundaries of this centre. This issue should be considered more holistically rather than automatically including a single site that has been redeveloped for commercial use.

In terms of built form, the Panel would support the proposed maximum 2 storey height for the property on the corner of Tulip Street and Bluff Road (which is included in the activity centre), recognising its close visual relationship with the residentially zoned properties abutting it that are subject to a 2 storey height limit.

For improved clarity, the Panel suggests that the remainder of the centre is shown in outline in the concept plan with a notation “subject to DDO14”.

Recommendations

The concept plan be amended to show the remainder of the centre in outline with a notation “subject to DDO14”.

Above the street wall, a preferred upper level setback of 5 metres from the street frontage.

5.1.3 Brighton Beach (Were Street) Centre, Brighton

This centre is classified as a SNAC, retaining its C1Z.

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43 It compared this site to the recently rezoned property at 201-236 Bluff Road to the north.
Submissions and evidence

In summary, Ms Ancell’s evidence was that mandatory heights for this centre were justified because the centre is classified for minimal growth, adjoins a NRZ and is not on a main road.

A submission on behalf of Barkley Glen Pty Ltd and Corchel Enterprises Pty Ltd contended that:

- a mandatory 9 metre (2 storey) height is not justified on land in a commercial zone, as it essentially replicates the controls on the surrounding residential area
- the proposed DDO13 is inconsistent with key objectives of planning policy which seek to encourage more efficient use of infrastructure, intense development of activity centres and ‘20 minute neighbourhoods’
- the controls fail to consider the Planning Practice Note 59 which states that discretionary provisions will only be considered in circumstances where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes
- there is no valid strategic reason to limit redevelopment opportunity in this centre.

The submission also pointed out that the northern section of the centre has lots over 50 metres deep, sufficient to allow a transition in height at either end. Some properties also back onto a 4.9 metre wide lane and are therefore well separated from residential development which has included recent reinvigoration. The submission notes that there are two dwellings that already gain access from the lane.

Ms Ancell supported a change to the wording of DDO13 so that access could be gained from the laneway where appropriate.

Discussion and conclusions

The Panel visited this centre on two occasions and found it to be well used and lively. At the same time, if recent development is any indication, anything more than minimal housing growth on the northern side of the centre is unlikely.

However, the Panel is not persuaded that development in this commercially zoned centre should necessarily be restricted to 2 storeys. The northern portion of the centre has handsome period buildings at either corner, one protected by the Heritage Overlay. It accepts the submission that the deep allotments mean that higher built form set back from the frontage would have the potential for little impact on the surrounding residential areas. The Panel also notes the emerging more imposing character of the majority of new development in the residential area around this centre.

The Panel also agrees that a 4.9 metre wide lane can potentially provide an appropriate sense of address. However, the extension of the lane to Arthur Street as indicated on the concept plan appears to be problematic, as the right of way which may have previously existed now forms part of two private properties, both of which support recent built form.

Sites are substantially larger on the portion of the centre south of Were Street. The Panel concludes that there is comfortable scope for 3 storey building elements where they can be set back from the frontage. This would result in preferred built form up to one storey higher than the maximum height of adjoining residences, which would be warranted by the centre’s zoning and lot dimensions. Subject to suitable design and setbacks, 3 storey built form could be accommodated without negative amenity impacts.
For this reason, the Panel considers that Council should consider shifting the centre to DDO14 notwithstanding its current designation for minimal housing growth.

The Panel’s observations of this portion of the centre has also led it to conclude that the existing front setback on the south side of the street, which allows parking in front of the shops, should be retained (noting that a lesser setback appears to be shown for some southern lots on the proposed concept plan). This would be particularly important considering the likely future development of the large private car park adjacent to the existing grocer and the ability to continue the setback in the future across the two unit development on the eastern end of the centre. Maintaining the existing indented setback would align the street wall with the setbacks of adjoining residential built form and would not disrupt the character of the neighbourhood.

**Recommendation**

Council nominate this centre within DDO14 subject to the following modifications to the concept plan:

- nominated street walls for this centre described as up to 2 storeys, set back to existing lot line of commercial properties (that is, inset on the southern side of Were Street compared with the most recent version of the concept plan)
- above the street wall, a preferred upper level setback of 5 metres from the street frontage
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’ to reflect existing laneway conditions
- consequential changes to the legend to the concept plan, including the identification of the lane as Davie Lane, and a note that dwelling entrances can be provided from it, and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.1.4 Highett and Spring Road (Little Highett Village), Highett

The centre is classified as a SNAC and no change is proposed to its existing C1Z.

(i) Discussion

The Panel is conscious that there were no submissions made about this centre (and a limited number of others), although evidence was presented about them and they were addressed in relevant reviews undertaken on behalf of Council. Mr Montebello on behalf of Council encouraged the Panel to “look at” all centres encompassed by the Amendment although his view was that centres without submissions are not centres expressly before this Panel for recommendation. Notwithstanding, he submitted that the process undertaken by Council should instil a level of confidence in the Panel.
The Panel has turned its mind to this centre in the context of a suite of DDO schedules that are intended to provide a consistent and strategic approach to all small activity centres, although it has held off making express recommendations given the absence of submissions.

In the Panel’s opinion, this is a relatively large ‘island’ centre within the C1Z and could comfortably accommodate 3 storey built form, preferably with a set back from the street wall. This is also confirmed by the scale of more recent building additions opposite St Agnes Primary School.

The Panel cannot see any strategic justification to limit heights in this centre to that of the surrounding residential area, as has been proposed by Council. For this reason, the Panel would suggest that Council consider shifting this centre to DDO14, albeit with a preferred street wall of up to 2 storeys with a preferred upper level setback of 5 metres above the street wall.

The Panel also queries the description of the rear laneway as a ‘new connection/extend laneway,’ running between two streets. To the south it presents as side boundaries of large residential properties, which, like the centre, also have the potential for future development. The Panel considers that ‘retain and enhance existing laneway’ is a more appropriate description given existing conditions.

5.1.5 Ludstone Street, Hampton

The centre is classified as a SNAC and no change is proposed to its existing C1Z

Discussion

The Panel’s comments about its approach to centres where no submissions were made are reiterated here.

This is a small seven lot centre, but it could potentially accommodate 3 storey built form set back from the street wall. As with certain centres above, the Panel cannot see any strategic justification to limit heights in this commercially zoned centre to that of the surrounding residential area. Contextually, this centre has a lot of similarities with the Bay Road and Jack Road centre that is proposed within DDO14 and the Panel suggests Council consider whether this centre be uplifted.

This would be contingent on its suggestion that a preferred street wall of up to 2 storeys be nominated, with a preferred upper level setback of 5 metres above the street wall.

The Panel also queries the description of the rear laneway as a ‘new connection/extend laneway,’ as it currently runs between two streets. To the north and east, the centre presents as side boundaries of large residential properties, which also have the potential for future development. The Panel considers that ‘retain and enhance existing laneway’ would be a more appropriate description.

The centre and other properties between Kingston and Princes Street are currently set back from Ludstone Street with indented parking. Retaining the existing setback as proposed prevents disruption to the character of the immediate neighbourhood, in addition to maintaining the open corner to Castlefield Reserve. However, this is not clearly delineated on the concept plan but the Panel suggests it should be.
5.1.6 Keith Street and Widdop Crescent, Hampton East

The centre is classified as a SNAC and a change in zoning is proposed from MUZ to C1Z.

Discussion

The Panel’s comments about its approach to centres where no submissions were made are reiterated here.

Existing built form to date, consistent with the MUZ, has consisted of dwellings on the first floor, taking advantage of the attractive outlook over Widdop Reserve to the west. The two allotments to the north of the centre are also in the MUZ and their future redevelopment can be expected.

This is a centre where the Panel considers there is strategic justification for a preferred 2 storey limit, albeit it falls short of warranting this height as a mandatory maximum. It would suggest a preferred street wall of up to 2 storeys be nominated, with a preferred upper level setback of 5 metres above the street wall.

The Panel also queries the description of the rear laneway as a ‘new connection/extend laneway,’ as it currently runs unobstructed along the west and north of the centre. To the north is the side fence of a property in the MUZ, and to the west the treed interface with the reserve. The Panel considers that ‘retain and enhance existing laneway’ is a more appropriate description.

5.1.7 Weatherall Road and Morey Road, Beaumaris

The centre is classified as a SNAC (Mixed Use) and the re-exhibited Amendment proposed a change from C1Z to MUZ, due to its very small size and character of the neighbourhood. Post exhibition, Council confirmed that no change from C1Z is now proposed.

Submissions and evidence

Submissions supported the application of DDO13 to the site and the continuance of the C1Z as the rezoning would have the potential to impede future commercial opportunities.

Mr Szafraniec supported Council’s decision to retain the C1Z given existing employment uses in particular.

Discussion and conclusions

This is another centre where the Panel accepts the evidence there is strategic justification for a preferred 2 storey limit on built form, especially given the very confined footprint of the centre and its residential abuttals.

The Panel observes that the method of depicting the indented parking and building or lot lines in this concept plan should be adopted for other centres with similar layouts.

Recommendation

Council adopt DDO13 and the concept plan subject to the following modifications:

- a street wall described as up to 2 storeys
- above the street wall, a preferred upper level setback of 5 metres from the street frontage
• consequential changes to the legend to the concept plan and a wording change to delete the reference to Milano’s and amend the description of the transitional setbacks to ‘manage’ rather than ‘limit’ overlooking overshadowing and visual impact on adjoining residential areas

5.1.8 DDO13 conclusions and recommendations

Many of the smallest activity centres encompassed by this Amendment have characteristics and settings that lend themselves to heights that are generally comparable to surrounding residential neighbourhoods. These have been identified by Council for mandatory heights of 2 storeys (9 metres). The Panel supports this proposed scale of development for such centres but for reasons outlined above, recommends that this be expressed as a preferred height.

Given the discretionary form of the control the Panel is proposing, the Panel supports the inclusion of qualitative criteria to guide the exercise of discretion if taller buildings are proposed.

Other centres that are considered to have capacity for greater built form have been nominated by the Panel for uplift to the next DDO schedule.

Recommendations

Amend the building height to provide a preferred building height of 9 metres (2 storeys) and to delete the inability to grant a planning permit to vary this requirement.

Include criteria for an increase in building height above the preferred height using the wording in Figure 3 of this Report.

5.2 Design and Development Overlay 14

Key elements of the re-exhibited version of DDO14 comprise:
• a discretionary height of 9 metres (2 storeys) with an allowance for sloping land, with a mandatory height limit of 11 metres (3 storeys)
• criteria to justify additional height above 9 metres including whether adjoining amenity can be protected, if the site is large, whether the proposal represents design excellence and the like
• preferred 3 storey zero lot line street wall (where a 3 storey building is proposed)
• ResCode B17 side and rear setbacks to residentially zoned land.

Post-exhibition Council proposed changes to the overlay include describing the street wall height as ‘up to’ 3 storeys and allowing the width of a laneway to form part of the ground floor setback from residentially zoned properties.

Ms Ancell supported a combination of mandatory and discretionary provisions for these centres since they:
• adjoin sites in zones where taller buildings exist or could be permitted
• include land with larger lot depths
• are generally located on main or wider roads
• are generally larger and identified for ‘moderate growth’.
5.2.1 Balcombe Road and Charman Road, Beaumaris

This small centre is classified as a SNAC, with no change to its existing C1Z.

Submissions and evidence

There were no submissions about this centre.

Discussion and conclusions

This six lot centre has a laneway to its western boundary. It is almost fully built out at an existing height of 2 storeys although it is identified for moderate future housing growth and has potential for higher built form. The interface to the north is currently developed with a dental clinic and recent multi-unit housing to the west.

The Panel notes the designation of the unobstructed existing laneway as ‘new connections/extend laneways’ and suggests that a more helpful emphasis may be on ‘retention and enhancement’ of the existing laneway.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:

• a street wall described as up to 3 storey
• rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
• replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
• consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.2 Bay Road and Avoca Street, Cheltenham

This centre is classified as a SNAC, with its zoning proposed to remain C1Z.

Submissions and evidence

No submissions were made about this centre. It has been identified for moderate residential growth.

Discussion and conclusions

This centre is almost fully built out at an existing height of 1 to 2 storeys but has confined capacity for greater height upon redevelopment. To the north across a laneway are side fences and driveways to rear garages of dwellings facing Avoca Street and Tibrockney Streets. The centre sits within the broader context of the Brighton Business Employment Area to the east, west and south. The Panel supports C1Z remaining.

The Panel notes the designation of the existing laneway as ‘new connections/extend laneways’ and suggests that a more helpful emphasis may be on retention and enhancement of existing laneways.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:
- a street wall described as up to 3 storeys
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the residential zone to the north.

5.2.3 Bay Road and Jack Road, Cheltenham

This centre is classified as a SNAC and principally to be retained C1Z.

Submissions and evidence

Submissions about this centre resulting from the exhibition process sought greater building height and focused on upper level setbacks.

Ms Boileau’s submission supported the view that capacity for increased housing in this centre was limited due to poor pedestrian access and lack of adequate public transport.

Ms Ancell supported the mandatory maximum 3 storey height limit for this centre. Although it is within an area identified for moderate housing growth, she saw little opportunity to contribute to taller buildings due to shallow site depths. Land within the centre also adjoins a NRZ to the south with potential for overshadowing. Her evidence supports a recessed third storey, based on her observation of redevelopment that has already occurred within the centre.

Council explained that it did not adopt this element of Ms Ancell’s evidence, as the local community endorsed a zero front setback for the centre after extensive consultation in return for greater setbacks in the residential section of Bay Road. Council submitted that “the apartment typology at this location is a key element of the Structure Plan [to meet Council’s] requirements for growth in this area of Cheltenham. Recessing the third storey will affect the commercial viability of this typology.” It also considered that passive surveillance opportunities would be reduced by a recessed upper level, and that this setback was not required to preserve the streetscape quality given the width of the road reserve.

Discussion and conclusions

The Panel queries why the residentially zoned and developed land to the West of Jack Road is proposed to be included within the commercial activity centre. This should be explored further by Council.

More broadly, this centre is on the edge of the Southland major activity centre, identified in the Housing Strategy as a key focus for residential growth. The centre’s character, however, is quite different. The Panel notes the atypical typology of the 2 storey apartment building to the west of Jack Road, and supports Ms Ancell’s opinion that the limited additional upper level development possible on the centre’s narrow allotments would present as more appropriate built form if it had upper level setbacks, as adopted by recent 3 storey development.
The Panel fails to understand the relationship or ‘trade off’ between strategic support for increased residential setbacks in other areas of Bay Road and the street wall height proposed for this centre, since they have different built form impacts. Preferring a relatively confined upper level setback for this centre is unlikely to materially affect the provision of new housing.

The Panel also queries the description of the rear laneway as a ‘new connection/extend laneway,’ as it currently runs unobstructed between Jack Road and Mernda Avenue. To the south it presents as side boundaries of residential properties, which, like the centre, also have the potential for future development. The panel considers that ‘retain and enhance existing laneway’ is a more appropriate description.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:

- a street wall described as up to 2 storey
- above the street wall, a preferred upper level setback of 5 metres from the street frontage
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.4 Bluff Road and Arranmore Avenue, Black Rock

This centre is classified as a SNAC, with its zoning proposed to be changed from MUZ to C1Z. Post re-exhibition of the amendment, the overlay for the centre was proposed to be changed from DDO13 to DDO14 to reflect a higher capacity for redevelopment.

Submissions and evidence

A number of submitters objected to the proposed rezoning from MUZ to C1Z, commenting that:

- many current properties are residential and are not configured for commercial use
- the location is inappropriate for commercial development
- Black Rock Village nearby is underutilised, with increasing vacancies.

Mr Szafraniec gave evidence supporting the rezoning. He considered that from an economic perspective, the C1Z best supports the role and vision for this centre. He responded that rezoning will not change residential or existing use rights and the C1Z would support existing commercial uses while enabling the introduction of local convenience retail and hospitality functions if market demand exists. He also confirmed that nearby Black Rock Village has standard vacancies and is identified for modest future growth.

Ms Ancell took a similar position on the rezoning, noting that the C1Z provides for a wide range of activities not just retail.
Submissions made in response to the initially proposed application of DDO13 pointed out the existence of 3 storey form in the centre, and the potential to inhibit development potential. Council has now changed the overlay to allow for this to continue.

**Discussion and conclusions**

The Panel supports the proposed rezoning since it will foster the continued mix of commercial, employment and other services that now characterise this centre. Likewise, the Panel observed that the existing 3 storey components within this centre represent a suitable fit in neighbourhood character and amenity terms. These exhibit upper level setbacks that assist in mitigating visual bulk, especially where lots are narrow.

The Panel accepts that shallow sites within this largely redeveloped centre will be assisted by the absence of an upper level setback to the frontage.

It notes that there is little chance that the existing laneways will have the opportunity to extend through adjacent private, residually zoned land, and suggests amending the legend to ‘retain and enhance existing laneways’.

**Recommendation**

Council adopt DDO14 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan, including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

### 5.2.5 Bluff Road and Bay Road, Sandringham

This centre is classified as a SNAC with C1Z to be retained.

**Submissions and evidence**

No submissions were made about this centre.

**Discussion and conclusions**

This centre spans both sides of the road and already exhibits 3 storey built form elements that are reasonably well absorbed by the centre in its physical context. The Panel cannot easily reconcile the frontages shown on the concept plan with existing conditions and this should be confirmed.

Laneways exist to the east and west of the centre. To the east, the laneway runs uninterrupted between Bay Road and Frances Street, on the west it terminates at 265 Bluff Road. Both have little possibility of new connections or extension. The Panel suggests the description be altered accordingly.

**Recommendation**

Council adopt DDO14 and the concept plan, subject to the following modifications:
5.2.6 Bluff Road and Edward Street, Black Rock/Sandringham (part)

The centre is classified as a SNAC and, as explained above, is divided into two parts. This part to the west of Bluff Road is zoned C1Z and proposed to be included in DDO14.

Submissions and evidence

There were no submissions relating to this part of the centre.

Discussion and conclusions

The Panel supports Council’s proposal to remove the ‘transitional setbacks’ designation along Edward Street, given the non-sensitive interface with the Sandringham Hospital which presents with a robust built form with substantial car parking areas.

It also recommends that the eastern side of the centre be shown in outline only with a notation that it is subject to DDO13.

Recommendation

Council adopt DDO14 and the concept plan subject to the following modifications:

- a street wall described as up to 3 storey
- the notation for ‘transitional setbacks’ be deleted
- the eastern side of the centre be shown in outline only with a notation “subject to DDO13”.

5.2.7 Bluff Road and Highett Road Centre, Hampton (part)

The centre is proposed to retain its existing C1Z. It is classified as a SNAC and is divided into two parts. To the west of Bluff Road, 361-371 and (post re-exhibition) 357-359 Bluff Road would be covered by DDO15, with the remainder of the centre to the west and all of the part east of Bluff Road under proposed overlay DDO14.

Submissions and evidence

Ms Ancell supported a 4 storey discretionary height control for the Coles supermarket site since it is a large site with deep lots and a wide frontage to Bluff Road. She considered that submitters’ properties were suitably separated such that they would not experience adverse amenity impacts. Ms Ancell also supported the extension of the boundary to DDO15 to include the BP petrol station site since it is also large and deep.

She considered that a mandatory 3 storey height was justified for the remainder of the centre proposed within DDO14 since it already contains some 3 storey development and many remaining lots are shallower.
Submissions raised the issues of building height and the potential amenity consequences of higher development.

Mr D’Oliverya on behalf of the owner of the Coles site submitted that it was important to allow flexibility in terms of maximum building heights since commercial tenancies such as supermarkets may need high floor to ceiling capacity.

Discussion and conclusions

The Panel supports the nominated parts of this centre as having a preferred 3 storey height. The centre has a relatively sizeable footprint, with more sizeable built form emerging towards the intersection. The Panel also accepts the evidence of Ms Ancell that the provisions as drafted will enable a suitable response to the amenity of surrounding properties.

In principle, the Panel considers that where a centre comes under two separate overlays, a concept plan for each part should be prepared, as Council has done for the Bluff Road and Edward Street Centre, with each showing the centre outline of that part under the relevant overlay (such as ‘subject to DDO14’) but the remainder of the notations on the legend to apply only to the concept plan under the relevant overlay.

The Panel also notes the designation of the existing laneway as ‘new connections/extend laneways’ and suggests that a more helpful emphasis may be on ‘retention and enhancement’ of the existing laneway.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:

- along Bluff Road street frontage and returns, a street wall described as up to 3 storey
- identify 357-359 and 361-371 Bluff Road in outline “subject to DDO15”
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.8 Bluff Road and Love Street, Black Rock

This centre is classified as a SNAC, with its zoning proposed to be changed from MUZ to C1Z. This centre was re-exhibited as under DDO13 but was uplifted to DDO14 post-exhibition.

Submissions and evidence

A submission queried the exhibited zoning. The proposed overlay has been changed in response (post exhibition).

Mr Szafraniec supported the rezoning as appropriate across all SNACs, enabling existing uses to continue and a small local convenience offer to potentially establish.
Discussion and conclusions

This is a relatively large SNAC, with streets on three sides and a lane to the rear. Around half the main frontage faces F G Tricks Reserve. The Panel regards this centre as having good potential for increased development and supports the rezoning in line with Mr Szafraniec’s evidence.

The Panel also notes the designation of the existing laneway as ‘new connections/extend laneways’ and suggests that a more helpful emphasis may be on ‘retention and enhancement’ of the existing laneway.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.9 Bluff Road and Spring Street, Sandringham

This centre is classified as a SNAC, with its zoning proposed to be changed from MUZ to C1Z. In the re-exhibited Amendment, the overlay for this centre was changed from DDO13 to DDO14.

Submissions and evidence

There were no submissions relating to this centre.

Discussion and conclusions

The Panel accepts the currently proposed overlay is appropriate, including the potential for extending the laneway connection should the car park to the north of the centre be redeveloped. However, the requirement for passive surveillance shown on the concept plan to the south is unnecessary because it is over the rear yard of a private house. Council proposes to delete it and the Panel agrees.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- remove ‘passive surveillance’ shown to the south of the centre
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.
5.2.10 Dendy Village, Brighton

The centre is classified as a SNAC and no change is proposed to its existing C1Z and NRZ.

**Submissions and evidence**

Submissions to the re-exhibited amendment queried the imposition of a mandatory height limit and supported the inclusion of laneway width in calculating setbacks.

Ms Ancell acknowledged that although the centre is larger than others, it is surrounded by land in the NRZ where “neighbourhood character will have a greater influence on development outcomes”. Council relied on the evidence of Ms Cook that a maximum height of 3 storeys is justified having regard to surrounding residential development and the existing height of the centre, the visibility of the centre as one approaches along Hampton Road and her view that the 3 storey building on the corner of Marriage Road ‘feels quite large and overwhelming from a pedestrian perspective’.

Mr Hoffman on behalf of Lowe Group Holding Pty Ltd supported the implementation of the recommendations of the 2014 SAC Strategy, but submitted that the inclusion of a preferred building height of 9 metres was not justified, neither was the mandatory building height of 11 metres. This submitter relied on the evidence of Mr Biacsi, submitting that the height limit should be a preferred discretionary maximum, providing the potential for a fourth level in larger centres such as this one.

Mr Biacsi considered that imposing a residential low-rise character would be inappropriate, noting that recent residential developments in the neighbourhood present prominent built form. As a centre identified for moderate housing growth, he says that on any reasonable expectation, built form will differ from surrounding residential areas in both massing and height. With an expressed preference for 2 storeys, there would be no transition to surrounding residential areas.

Mr Hoffman further submitted that the proposed height controls would conflict with the preferred heights for this centre in the Urban Design Profiles and Guidelines in the SAC Strategy, and that Ms Ancell’s analysis was flawed by virtue of its excessive weight on existing built form and the desirability of community certainty about built form outcomes. He submitted that Ms Ancell’s evidence overstated the impact of potential 3 and 4 storey development on the surrounding NRZ, with the proposed DDO14 not even commensurate with the 3 storey mandatory height of the GRZ. The submission suggested that a preferable approach was to place this centre under DDO15 with a preferred maximum 13.5 metres (4 storeys) and no maximum height.

In his evidence, Mr Biacsi also made a number of suggested changes to the amendment more generally, and to the wording of DDO14 specifically. These are discussed in Chapter 6.

**Discussion and conclusions**

The Panel accepts Lowe Group’s submission that it is incongruous that a SNAC identified for moderate growth should have the same preferred height of 2 storeys as the minimal change residential areas of Bayside.

It also considers that a reasonable degree of certainty can be provided for the community by having an expectation of 3 storey built form with criteria by which higher built form would
need to be justified. As the submission points out, this is a commercially zoned centre that state and local policy identify as contributing to ‘20 minute neighbourhoods’ and providing opportunities for housing growth.

The Panel is not persuaded that visibility of potentially higher built form as one approaches along Hampton Street is a reason to reduce the development potential of a centre identified for increased retail growth, including perhaps a small supermarket. Nor does it find the recent built form along Marriage Road much more overwhelming than nearby recent residential development, for example in Pine Street.

However, the Panel does not regard the built form and commercial capacity of this centre in the order of centres included in DDO15 and considers that the centre spans both side of a narrow road that clearly has a residential setting, which reduces its comparative ability to absorb additional height without visual impact. The preferable way to address this centre is to retain it within DDO14, to enable a street wall of up to 3 storeys and to express a preferred height of 4 storeys with capacity to exceed this within a particular proposal subject to meeting certain qualitative criteria.

The concept plan for this centre shows a ‘new connection/extend laneway’, roughly along the east side, two thirds of which falls within private land, apart from small section providing rear access to four allotments facing Hampton Street, although the Panel is unsure as to the status of the L-shaped land which appears to be a council car park. Without further information, this connection is an aspirational one, with no exit to the street to the north. So too does the ‘pedestrian thoroughfare’ shown through the car park to the south of the adjacent terrace houses. Council should re-evaluate whether what is depicted is achievable for this centre.

There also seems to be a residual issue with the zoning of the car park (zoned NRZ) and the Panel would support zoning the entire centre as C1Z to reflect its role and potential. This should be explored by Council.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.11 Hawthorn Road Shopping Centre, Brighton East

The centre is classified as a SNAC and no change is proposed to its existing C1Z.

Submissions and evidence

There were no submissions relating to this centre.
**Discussion and conclusions**

In the Panel’s view, there is no strategic or built form reason to limit this centre to a maximum of 3 storey built form. Contextually, the centre adjoins the wide and busy arterial road (North Road) and a number of lots within the centre are wide and deep. This could potentially sustain taller built form if suitably designed to its street interface and so as not to be overbearing on residential properties.

In these circumstances, the identification of this centre within DDO14 should be contingent on the deletion of maximum building heights, with capacity to increase building heights within this centre subject to site specific consideration in line with the proposed criteria.

Like other centres where laneways have been subsumed into private land, the Panel considers the notation on the concept plan is better expressed as retained and enhance existing laneways.

**Recommendation**

Council adopt DDO14 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace ‘new connections/extend laneway’ designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

**5.2.12 New Street and Martin Street, Brighton**

The centre is classified as a SNAC (Mixed Use) and no change is proposed to its existing C1Z. The overlay was changed from DDO13 to DDO14 in the re-exhibited Amendment.

**Submissions and evidence**

Issues raised in submissions were the appropriateness of the proposed building height and the mandatory nature of the controls.

Ms Ancell considered that a 3 storey mandatory maximum was appropriate since it is a small centre designated for ‘minimal’ growth but was upgraded in terms of its DDO schedule because of its main road frontage and rear lane access. She considered the mandatory height warranted because it is surrounded by land in the NRZ.

**Discussion and conclusions**

Based on the configuration of the allotments and the size of this centre, the Panel agrees with the expert evidence that there is limited potential for built form greater than 3 storeys in this centre. At 3 storeys, built form within the centre would sit comfortably within the large two storey period dwellings in landscaped settings that characterise the surrounding neighbourhood, few of which are likely to be redeveloped in the short term.

The Panel notes that the existing laneway is also an unlikely candidate for extension or new connections and the legend should refer to its retention and enhancement.
Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:
- a street wall described as up to 3 storey
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.13 Seaview Shopping Centre, Beaumaris

The centre is classified as a SNAC and no change is proposed to its existing C1Z and PUZ. The overlay was changed from DDO13 to DDO14 in the re-exhibited amendment.

Submissions and evidence

There were no submissions relating to this centre.

Discussion and conclusions

The Panel observed that this is a lively and well-used centre. It comprises 1 and 2 storey shops, with good potential for further development. The surrounding neighbourhood has an open, landscaped character in which a 3 storey building would be a comfortable fit.

The centre is defined by laneways to both the north and south, which the Panel observed are unobstructed and unlikely to be extended.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:
- a street wall described as up to 3 storey
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneways’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.14 South Road Plaza, Hampton

The centre is classified as a SNAC and no change is proposed to its existing C1Z.

Submissions and evidence

There were no submissions relating to this centre.

Discussion and conclusions

This centre sits at the south-west corner of a wide, traffic dominated intersection, adjacent to an isolated and somewhat neglected piece of public open space. It is separated from its low
rise multi-unit surroundings by what were once laneways. Ms Ancell’s opinion is that 2-3 storeys would represent appropriate built form.

However, the Panel considers that the centre has the potential for greater growth including building height without adverse amenity impacts and with a focus on repairing the public realm. There is a clear opportunity for higher built form, set to the frontages as council proposes, with the potential to incorporate basement parking and enhance the currently isolated open space.

In the Panel’s opinion, the centre shares many of the characteristics of the centres to which DDO15 has been applied and a discretionary 4 storey height applies. Council should consider uplifting this centre accordingly.

The aspiration for a through pedestrian connection appears to be ambitious, as it would involve the use of an existing driveway servicing two blocks of flats. It also appears that the laneway shown along the western boundary has been subsumed into the existing development and thus its designation may also prove aspirational.

The Panel also notes the potential for the open space area to the east to provide a high level of public amenity were it better linked to the centre. It encourages Council to consider integrating it more directly with the centre into the future.

Recommendation

Council nominate the centre within DDO15 and adopt the concept plan, subject to the following modifications:

- A street wall described as up to 3 storeys
- replace new connections/extend laneway designation with ‘retain and enhance existing laneways’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.15 Thomas and Egan Street, Brighton East

The centre is classified as a SNAC and no change is proposed to its existing C1Z. The overlay was changed from DDO13 to DDO14 in the re-exhibited amendment.

Submissions and evidence

Submissions concerned whether building heights should be mandatory or discretionary.

Discussion and conclusions

The Panel considers that this is another centre whose physical characteristics lend themselves to upper level setbacks being set back from the street wall to moderate the transition between higher building forms and surrounding properties.

In respect of the concept plan, the Panel notes that the laneway to the west gives access to adjacent dwellings and is unlikely to be extended. For that reason, the designation ‘retain and enhance’ should be applied.
Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- above the street wall, a preferred upper level setback of 5 metres from the street frontage
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.16 Weatherall Road Shopping Centre, Cheltenham

This centre is classified as a SNAC, with its zoning proposed to be changed from MUZ to C1Z. The overlay was changed from DDO13 to DDO14 in the re-exhibited Amendment.

Submissions and evidence

Council relied on Ms Ancell’s evidence that the mandatory height for the centre is justified by its relatively small size and minimal growth potential. It also relied on Ms Cook’s opinion that smaller centres should not be developed to a height that will impact on the character of the centre and its intended role. Post exhibition, Council proposed to include the laneway within the rear setback calculation as suggested by its consultants.

Mr Luo supported the rezoning, but opposed the mandatory 3 storey height limit and preferred setback proposed. He submitted that the imposition of a mandatory height control would restrict the development potential of the centre and its ability to advance social and economic policies. It pointed to the fact that SGS identified this centre in its economic analysis as one of only three out of 33 centres to have a strong case for expansion. In this centre, he considered this that can only be achieved with increased height because there is no real opportunity for lateral expansion.

Mr Luo further submitted that the ‘exceptional circumstances’ called for by PPN 59 are not met for this centre. The submission argued that the mandatory controls would not stem from a comprehensive built form analysis, and that his larger site, with two street frontages and a rear lane has the most potential for redevelopment. He considered there is no evidence that a mandatory control of 3 storeys is ‘absolutely necessary’ to achieve the preferred built form outcomes, and would unreasonably limit the centres ability to respond to community needs. For example, a consolidated site could provide basement parking, ground floor retail and residential upper levels, and a 4 storey height limit (only achieved when performance criteria are met) would justify the cost of basement parking. The submission suggests a requirement for consolidation of sites, as has been suggested in other centres, in order to qualify for increased height.
Discussion and conclusions

The Panel considers that weight should be given to the fact that the centre has been identified for expansion. In principle, it queries the ongoing appropriateness of its classification for minimal residential growth especially since it sits near the edge of the Southland major activity centre.

This centre would clearly be able to provide diverse housing types in an area with high amenity. Likewise, the Panel considers that the impacts of such development, including taller heights are unlikely to have a material impact on neighbourhood character as confirmed by rapid increases in medium density housing in the area.

The Panel agrees that lot amalgamation may be a factor justifying additional height, but this does not need to be separately specified for this centre beyond the general criteria to be included in this schedule.

Overall, the Panel would be satisfied with the retention of the centre in DDO14 on the basis of its recommendation that it have a preferred height of 3 storeys, with capacity for higher development to be assessed on its merits.

Recommendation

Council adopt DDO14 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- rear and side setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- replace new connections/extend laneway designation with ‘retain and enhance existing laneway’
- consequential changes to the legend to the concept plan and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and the NRZ.

5.2.17 DDO14 conclusions and recommendation

The Panel considers that the maximum preferred building height of 3 storeys (9 metres) for buildings in this centre represents an appropriate preferred building height, with the content of the schedule to be adjusted accordingly.

A number of centres recommended by Council for inclusion in DDO13 have been proposed for uplift by the Panel to this schedule. The Panel accepts that these centres have not specifically been identified in economic terms as candidates for increased commercial floorspace or a change in their current role. Notwithstanding, the Panel regards their physical characteristics, zoning, interfaces and the like as justifying an increase in built form in line with broader planning policies.

To a large extent, this has resulted in the Panel further differentiating the street wall heights for each centre (to be reflected on the concept plan), as well as identifying whether setbacks above the street wall are preferred to achieve a suitable built form and streetscape presentation for that centre. Where applied, this has been expressed as a preferred 5 metre
setback although there is scope to depart from this given site, design and interface characteristics.

If no express upper level setbacks are recommended, the Panel sees some scope for taller buildings to come closer to the street frontage, subject to the exercise of discretion for a particular proposal.

**Recommendation**

- Amend the preferred building height to 11 metres (3 storeys).
- Delete the provision preventing buildings above 11 metres (3 storeys).
- Amend the criteria for buildings above the preferred height to the wording in Figure 3 of this Report

### 5.3 Design and Development Overlay 15

Key elements of the re-exhibited version of DDO15 comprise:

- a discretionary height of 13.5 metres with an allowance for sloping land, with exceptions proposed for the New and Bay Street Centre, Nepean Highway and Milroy Street Centre and the Nepean Highway and Centre Road Centre
- criteria to justify additional height (unlimited)
- 3 storey zero lot line street walls with a recessed 4th storey, apart from New Street where a 4 storey street wall is sought
- side and rear setbacks to residentially zoned land

Ms Ancell supported discretionary provisions within this schedule since it applies to larger centres or sites with large lot depths and main road frontages. She considered that development of up to 4 storeys could “comfortably” be accommodated on these sites, with potential for additional height in some parts where this minimises adverse impacts.

#### 5.3.1 Bluff Road and Highett Road Centre, Hampton (part)

Refer to Panel’s comments in Chapter 5.2.7 above. It is especially important in strategic planning terms to accommodate change that is anticipated in the future role and scale of this centre, in light of economic analysis that it is expected to experience an approximate 6,500 square metre increase in retail and hospitality floorspace.

As confirmed by the Panel, the characteristics and context of this centre could readily sustain more intensive development as contemplated by DDO15.

#### 5.3.2 Nepean Highway and Centre Road, Brighton East

This centre is classified as a SCAC (Highway Orientated) and remains C1Z. The overlay was changed from DDO13 to DDO15 in the re-exhibited amendment. The centre comprises two parts to the north and south of Centre Road.

**Submissions and evidence**

Submissions to the exhibited amendments focussed on appropriate building heights and whether they should be mandatory, the difference between the north and south segments of the centre, and potential off site amenity issues.
Ms Ancell supported the requirement for sites in the northern part to be consolidated before additional height is contemplated. Her evidence was that this allows for development to achieve additional height whilst providing sufficient setbacks.

Discussion and conclusions

The Panel supports the imposition of a minimum allotment size in the northern part of the centre before discretion to exceed 3 storeys can be exercised. It is reasonable for an amalgamated site of 900 square metres to be assembled given the existing subdivision pattern and lot sizes.

The Panel observed on its site visits that the new connection shown to the east on the concept plan already exists and forms a useful break between the commercial and residential zones. However, the ‘pedestrian thoroughfares’ shown at the northern end of the northern part of the centre, and through the centre of the southern part are aspirational. The purpose, it would appear, is to separate the commercial built form from the dwelling to the north and to potentially break up the building mass on the large southern site. Connecting the service lane to the rear lane, the thoroughfare serves no discernible purpose in addition to being located on private land.

Recommendation

Council adopt DDO15 and the concept plan, subject to the following modifications:

- identify a minimum lot size of 900 square metres to exceed 3 storeys in that part of the centre located north of Centre Road
- along Nepean Highway a street wall of up to 3 storeys
- delete the proposed ‘pedestrian thoroughfares’
- consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and residential zones.

5.3.3 Nepean Highway and Milroy Street, Brighton East

This centre is classified as a SCAC (Highway Orientated) and would remain C1Z. The centre comprises three narrow lots to the north and a large former car yard.

Submissions and evidence

Submissions were particularly concerned about building height and whether maximum height and setbacks should be mandatory.

Ms Ancell considered that the centre could sustain 4 storey discretionary heights for larger lots which are deep and front Nepean Highway. Her recommendation resulted in an increase in height for this centre compared with the Amendment as first exhibited.
In response to a submission by Ms Elsass, the owner of a dwelling immediately to the rear of 357 Nepean Highway at the northern edge of the centre, Council proposed to require a minimum consolidated lot size of 600 square metres before any proposal above 3 storeys could be considered. Ms Elsass was concerned about potential impacts on the amenity of her property of taller buildings that may come close to the common boundary and considered that the smaller lots on the corner of Milroy Street should have a maximum height of 2 storeys. Her dwelling relies heavily on solar access from the west, and has its only private open spaces orientated in this direction.

Stillwell Motor Group submitted in relation to the ‘pedestrian thoroughfares’ and ‘new connections/extend laneways’ proposed on the concept plan that the notion of a pedestrian thoroughfare through the middle of the centre may prejudice its development potential, and that it was unclear as to the intention of the link proposed through 363-369 Nepean Highway.

The submission on behalf of Stillwell Motor Group noted that it is unclear whether or not consolidation of titles would be required prior to an application for a planning permit. This could be clarified by Council or could potentially be dealt with by permit condition.

**Discussion and conclusions**

The Panel understands Ms Elsass’ desire to protect the currently high amenity of her residential property by seeking to ensure suitable parameters are put in place for adjacent development fronting Nepean Highway. At the same time, her residential amenity is not absolute since her property is within the C1Z where residential expectations need to be tempered.

In the Panel’s opinion, Council has struck an appropriate balance by requiring site consolidation (generally equivalent to three lots) to enable a building height above 3 storeys at the northern end of the centre. It agrees with Council that any redevelopment of these narrow northern lots should be performance based. Likewise, considerations of amenity for abutting properties, including ResCode objectives will be assessed on a site by site basis when a planning permit is sought for buildings and works in the C1Z.

Beyond this, the Panel considers that it would not be appropriate to confine what it regards as the reasonable future intensification of this highway orientated activity centre by reference to residential properties, especially those within the C1Z.

The Panel observed on its site visit that the proposed new connection shown to the east on the concept plan falls within private land, apart from small sections providing rear access to dwellings facing Milroy and Cambridge Streets and to the rear of 359 and 361 Nepean Highway. It appears that the mapping of this centre may be in error.

What was formally a Council lane appears to have been long incorporated into private dwellings. This being so, such a connection is aspirational, and so too is the ‘pedestrian thoroughfare’ shown through 407 Nepean Highway. This thoroughfare serves no discernible purpose, connecting to a vehicular rear access and the south traffic lanes of the highway. Milroy Street to the south provides a nearby crossing point for pedestrians wishing to traverse the highway. This element should probably be deleted from the concept plan.
Recommendation

Council adopt DDO15 and the concept plan, subject to the following modifications:

- identify a minimum lot size of 600 square metres to 357-361 Nepean Highway in order to exceed 3 storeys in building height
- along Nepean Highway show a street wall of up to 3 storeys
- delete the ‘extended laneway’ along the east of the centre
- delete the proposed ‘pedestrian thoroughfare’ and pare back the ‘new connections/extend laneways’ to reflect existing conditions and realistic opportunities
- consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and residential zones.

5.3.4 Nepean Highway and Union Street, Brighton East

This centre is classified as a SCAC (Highway Orientated) and there would be specific rezoning from NRZ to C1Z so that the centre is all C1Z. The overlay was changed from DDO14 to DDO15 in the re-exhibited Amendment.

Submissions and evidence

Council addressed concerns about unnecessarily limiting building height raised in a submission made in response to the initially exhibited concept plan. It accepted Ms Ancell’s recommendation that a discretionary height of 4 storeys proposed in DDO15 would provide a suitable benchmark but allow for higher built form where it can be justified.

Discussion and conclusions

The Panel supports the current proposal to include the centre within DDO15 and to undertake targeted rezoning given the centre’s potential for more intensive development.

A laneway connection exists between Hope Street and Milroy Street. The Panel observes that, although outside the scope of this Amendment, there is potential for the excluded residential allotment adjacent to the north end of this lane to be included in the centre.

South of Union Street, there appears to be potential access to the east edge of the centre through an existing carpark, but any lane to this edge of the centre would be on private land and appears to be unachievable. The two designated ‘pedestrian thoroughfares’ are also aspirational.

Recommendation

Council adopt DDO15 and the concept plan, subject to the following modifications:

- a street wall of up to 3 storeys along Nepean Highway, returning into Milroy and Union Streets
- delete the ‘extended laneway’ along the east of the centre south of Union Street and the ‘pedestrian thoroughfares’.
- consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’
rather than ‘limit’ amenity impacts at the interface of the C1Z and residential zones.

5.3.5 New Street and Bay Street, Brighton

This centre is currently classified as a SNAC and is to be rezoned C1Z. The overlay was changed from DDO13 to DDO15 in the re-exhibited amendment.

Submissions and evidence

Key matters in dispute in this centre arising in submissions are:
• whether heights should be mandatory or discretionary
• the boundaries of the centre
• the designation of the centre
• whether the prohibition on gaming is appropriate
• the zoning of particular properties
• the height of the proposed street wall
• whether changes are required to the drafting of the schedule

In response to submissions received from the re-exhibited amendment, Council proposed the following changes:
• Retaining 307-309 and 311 New Street within the NRZ, as these sites are unlikely to be redeveloped for commercial purposes, and will thus not contribute substantially to the viability of the commercial elements of the centre.
• Including the property at 298 New Street within the New Street and Bay Street centre boundary, as this site has been granted planning permission for a child-care centre.
• Correcting the zone at 300 New Street to be entirely within the C1Z, rather than the split zoning which presently exists.

Submissions and evidence at the hearing

Ms Ancell’s gave evidence in response to submissions objecting to including laneways in determining setbacks that their inclusion facilitates greater development opportunities whilst providing adequate separation. In regard to overlooking and overshadowing, her evidence was that Clauses 54, 55 and 58.04-1 provide consideration of these matters and that it is unreasonable to expressly apply these provisions of ResCode to apartment buildings for example. Council relies on her evidence.

Should preferred heights be mandatory or discretionary?

For the Panel’s discussion on mandatory or discretionary heights, see Chapter 4.5.

In DDO15 a discretionary height of 13.5 metres is proposed. Ms Cook supported a 4 storey preferred height with allowance for greater height in particular circumstances.

Are the boundaries of the centre appropriate?

A submission on behalf of the owner of a newly approved child care centre at 298 New Street Brighton supported the proposed inclusion of the land into the C1Z, saying that the use of the
land is entirely compatible with the amendment and supports the application of the C1Z to 300 New Street and its inclusion in the centre.

L and V Brighton own 81-89 Bay Street, the long standing ‘Brighton Receptions’ venue, which includes a landlocked portion within the NRZ, currently used as a car park. The submission made on its behalf by Mr Bisset notes that both Ms Ancell and Mr McGurn support the rezoning of this parcel to the C1Z, as does Council. Council now intends to apply DDO15 to the land and to include it in a revised concept plan, a marked up version of which was given to the Panel on the last day of the hearing.

L and V Brighton further submitted that the boundaries of the centre should be extended to include the land on the northern side of Bay Street to Berwick Street, reconfiguring the proposed edge conditions to also apply to this land. Council disagreed, submitting that only the properties up to and including 99 Bay Street should be included in the centre.

Is the designation of the centre appropriate?

A submission by Mr Pitt for the owners of land at 329 and 335 New Street (Brandied Pty Ltd) queried the identification of the centre as a SNAC, as it provides no convenience retail at present.

Mr Szafraniec, Council’s expert economic witness, provided supplementary evidence that he considered the centre was properly classified.45 He agreed that currently it plays a very small convenience role but is in transition. However, although the land use mix identified in the 2017 land audit indicated that it was just under the threshold used in the analysis, the centre is in transition and could in the near future complement the Bay Street MAC. He said it is reasonable to assume that local convenience retail will form part of new developments in the centre. This outcome could be reinforced by its designation as a SNAC. Further, it fills a gap in the network of proposed SCACs and does not undermine other non-convenience functions of the centre. Based on his evidence, Council proposed to maintain the designation. As to whether it qualifies as a ‘strip shopping centre’ under clause 52.28 within which gaming could be prohibited, Council submitted that it does not yet qualify as such, but is likely to do so when the permit granted for 316 New Street is acted upon.

Is the prohibition on gaming appropriate?

Mr Pitt queried the identification of 329 and 335 New Street within the centre and the consequential prohibition on gaming, when the hotel already has 50 gaming machines, there is at present only one shop (an interior decorator) in the centre and 1,474m2 of restricted retail and 420m2 retail has been approved in the development proposal at 316 New Street. He submitted it should therefore be deleted from those centres where gaming is prohibited and clause 22.09 be amended accordingly, or be reclassified as a Small Commercial Activity Centre - Mixed Use, where there is no prohibition on gaming.

Council originally maintained that it was appropriate to include the centre in the schedule to clause 52.28-4, where other SNACs, such as Dendy Village, are already listed. In its closing submissions, it conceded that the centre would not currently meet the definition of a strip

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45 By email, as tendered at the Panel Hearing by Mr Montebello.
shopping centre and should be excluded for the time being (unless the land use mix changed before adoption of the Amendment).

Is the zoning of particular properties appropriate?

Council agreed to rezone of the land-locked portion of 81-89 Bay Street. It disagreed with the submission from L and V Brighton that the commercial zoning should extend to Berwick Street, arguing that as the large site at 103 Bay Street has recently been redeveloped as multi-storey residential, the existing residential zoning is appropriate and should not change.

Ms Ancell considered there was a need to resolve the anomalies between the post exhibition zoning map and DDO15. Council should explore this with the benefit of the Panel’s recommendations.

Is a 4-storey street wall appropriate?

In light of an approval (not yet acted upon) of a building with a 4 storey street wall at 322 New Street, Council has accepted Ms Cook’s recommendation that the concept plan be updated to reflect this height. Ms Cook also recommended that street wall heights be described as ‘up to’ in order to reflect the urban design intent that a lower street wall may be appropriate in some circumstances. The revised concept plan for this centre, submitted by Council as part of its concluding submissions proposes this change.

Ms Ancell noted in her evidence that almost all centres are located near minimal or moderate housing growth areas, which the planning scheme designates as 2 or 3 storeys respectively. Having now considered PPN60, she changed her mind about the height controls applying in this centre. She now supports an ‘up to’ 4 storey street wall along the New and Bay Street frontages of the centre suggested by Ms Cook, reflecting the urban design intent that 3-4 storey street walls are appropriate.

Are amendments required to the drafting of DDO15?

Ms Cook had prepared the concept plans forming part of DDO15. Post exhibition, Council accepted her recommendations of changes to the wording of the schedule, describing heights as ‘up to’ a number of storeys.

Mr Moutzouris’ submission does not oppose the proposed built form controls within DDO15, but suggests that allowing discretionary setbacks abutting a residential zone would allow for site responsive outcomes.

L and V Brighton suggested that there are a number of drafting amendments to DDO15 required in order to appropriately recognise the role of larger SNACs. Under the existing planning scheme, buildings of between 3 and 5 storeys have been approved, and it noted the Echelon commentary that the development potential is ‘high due to the large lot sizing, favourable orientation and numerous corner or dual frontage sites’.

It also relied on the evidence of Mr McGurn that:
• specifying a 13.5 metre height limit will work against increased floor to ceiling heights - Ms Cook agreed with Mr McGurn that identification of storeys rather than a particular height would provide for increased floor to ceiling heights. Council’s response is that it is appropriate to have a consistent approach across all centres
• a discretionary height of 4-6 storeys with appropriate tests to dictate its applicability is preferable to a 4 storey discretionary height limit - Council maintains that a discretionary height of 4 storeys can accommodate a form of up to 6 storeys where the site has appropriate attributes
• applying ResCode to side and rear setbacks is onerous - Ms Cook said that it is a good starting point for commercial and higher density developments adjacent to residential properties. Likewise, Council said that it strikes an appropriate balance and meets community expectations for managing growth.
• as all development should seek design excellence, this should not be identified as a reason to exercise discretion to allow greater height
• the design objective seeking development that ‘respects the urban form and building types within the activity centre’, should be clarified to refer to new development respecting the ‘preferred future character’ as the centre has little worthy existing character. Ms Cook agreed.
• a number of design detail and decision guidelines should be reworded for clarity.

L and V Brighton also suggested that the note explaining transitional setbacks should be modified to replace the word ‘limit’ with ‘manage’, and add the words ‘and allow appropriate equitable development opportunities’.

Discussion and conclusions

In response to submissions, Council made changes to the wording of the schedule and agrees that the SAC Strategy be updated at the time of adoption of the Amendment to reflect changes made since its completion. The update is to include the work undertaken to inform the Strategy as part of the Economic Review and Built Form and Urban Design Review. The Panel supports this proposal, and in general the changes proposed.

It also supports Council’s proposed boundary changes. Acknowledging Council’s submission that the extent of centres is not a matter before the Panel, it would support Council’s view that 103 Bay Street should retain its existing zoning since it has been almost entirely redeveloped as a 4 storey apartment building.

As mentioned earlier in this Report, the Panel supports a change to the explanation of transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts for this and all concept plans, because it distinguishes the outcomes sought for activity centres in a commercial zone from those sought within purely residential areas.

The concept plan for the centre proposes a street wall height of up to 4 storeys with zero setback to maintain a consistent commercial frontage at ground level. The Panel gives little weight to the yet to be commenced approved development on the north-east corner of the New Street/Bay Street intersection as a basis for increasing the street wall height proposed. Its role is to determine whether or not there is a strategic basis for the proposed overlay.

The Panel’s observations confirmed submissions that the centre is dispersed and close to the Bay Street major activity centre. The Panel also has difficulty reconciling council’s submissions about hierarchy of built form between higher and lower order centres with the proposed street wall height of up to 4 storeys. Both in the major activity centre and in this centre there are examples of contemporary buildings with 3 storey street walls with upper levels set back
which fit comfortably into existing built form whilst clearly demonstrating a future built character for the area.

The Panel is not persuaded that a 4 storey street wall would continue this comfortable built form outcome. It has concluded that requiring a 3 storey discretionary street wall is a more appropriate outcome than one which increases the height of the street wall because of a yet to commence approved building on the corner of New and Bay Streets.

The Panel accepts that potential developments on large and/or consolidated sites in this centre could achieve 6 storeys in some locations, but considers that the role of the street wall in defining the street and helping to absorb higher built form can be more appropriately achieved in this centre, for example, by increasing upper level setbacks.

**Recommendation**

**In respect of zoning:**

- **Rezone all allotments from 81-89 Bay Street to 101 Bay Street, Brighton to Commercial 1 Zone and include them in the activity centre boundary subject to Design and Development Overlay Schedule 15.**

- **Remove the Commercial 1 Zone from 307-309 and 311 New Street, Brighton, with this land to be retained in the Neighbourhood Residential Zone.**

- **Rezone 298 New Street, Brighton to Commercial 1 Zone.**

Council adopt DDO15 and the concept plan, subject to the following modifications:

- the boundaries of the New Street and Bay Street centre to also include all allotments from 81-89 Bay Street to 101 Bay Street, rezoned to C1Z and subject to DDO15, with transitional setbacks shown to the north and east edges of the enlarged centre
- along Barkly Street a street wall of up to 2 storeys
- along New and Bay Streets, a street wall of up to 3 storeys
- along New and Bay Streets, above the street wall, a preferred setback of 5 metres
- consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and residential zones.

**5.3.6 DDO15 conclusions and recommendations**

The Panel’s recommendations reflect an agglomeration of matters agreed to at the Hearing and its position that ResCode setbacks are not an appropriate starting point for these centres, which have capacity for more substantial change than other centres within the Amendment.

**Recommendations**

- Insert the words “in centres other than New Street and Bay Street” before the words “A 3 storey street wall” under the heading Setbacks.

- Delete the preference for side and rear setbacks in line with Clause 55.04-1.
Amend the criteria for buildings above the preferred height to the wording in Figure 3 of this Report with the reinstatement of “whether the proposal retains the large ground floor floorplates for commercial development for Nepean Highway centres”.

5.4 Design and Development Overlay 16

Key elements of the re-exhibited version of DDO16 comprise:
- a mandatory height of 9 metres (2 storeys), with an allowance for sloping land
- a mandatory height of 11 metres (3 storeys) to the northernmost six allotments of the centre to the west (758-768 Hawthorn Road), with an allowance for sloping land
- 2 storey zero lot line street walls to primary frontage
- mandatory side and rear setbacks to residentially zoned land in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- mandatory minimum setbacks to the eastern boundary of the heritage residence ‘Otley’ of 3.5 metres at ground floor level and 5.5 metres at first floor level

Post exhibition, Council proposed to divide the centre into two built form precincts:
- a mandatory height of 13.5 metres applying to the northernmost six allotments of the centre to the west (758-768 Hawthorn Road)
- a mandatory height of 9 metres applying to the remainder of the centre.

Some submitters were concerned about a lack of fairness and transparency in suggesting these changes to the concept plans post exhibition.

Changes to the text of DDO16 are discussed in Chapter 6.

5.4.1 East Brighton Shopping Centre, Brighton East

This is the only centre under DDO16 and remains C1Z.

Submissions and evidence

Submissions to the exhibited versions of DDO16 focused on the issues of height, amenity impacts and the protection of the adjacent heritage property known as Otley (which is within an individual Heritage Overlay).

Council supported the provisions of DDO16 as exhibited. It sought to justify the imposition of mandatory controls by adopting Ms Cook’s evidence that centres such as this one should not be developed with taller building height as this would have an unacceptable visual impact.

In evidence, Ms Cook and Ms Ancell now propose a discretionary 3 storey height with a 4 storey mandatory height for the corner portion of 778 Hawthorn Road, saying that the land is lower at this point, adjacent to Nepean Highway and tram terminus and that a higher form that is partially 4 storeys could suitably emphasise the corner. It is also well separated from ‘Otley’. Council did not support this proposed change.

Ms Cook considered that the maximum building height for 758-768 should be 3 storeys.

Council now supports 4 storeys in its post exhibition concept plan given existing development on that site.
Ms Ancell also supported the mandatory 2 storey height limit and mandatory setbacks from Otley. She supported third storey rooftop conversions like the one which has occurred at 762 Hawthorn Road on properties that form 758-768 Hawthorn Road, but considered that 2 storeys was appropriate for the remaining narrow allotments along the east side of Hawthorn Road. She also recommended that the remainder of setbacks in the centre be discretionary, but this was not supported by Council in light of its formal resolutions for this centre.

Ms Woolf submitted that the Otley property represents the ‘exceptional circumstances’ envisaged by Practice Note 60 and supported mandatory controls as a way of ensuring its protection. Her submission highlighted the impact of the 1970’s subdivision of the Otley property which resulted in what is now the eastern part of the centre, and how close the front façade of the house is to the eastern boundary of the centre. As a single storey building with a 3 storey tower, she submits that it would be overwhelmed by high buildings adjacent to it.

In regard to the development at 762 Hawthorn Road, Ms Woolf outlined the complicated history of approvals that resulted in the existing built form and its consequential negative visual impact on the character of the immediate neighbourhood. She queried the omission of an earlier provision in the DDO schedule requiring the widening of the lane to the west boundary of the centre, which she says is very congested.

Mr Saunders, a local resident, took a different view and considered that it was in the community’s benefit to maximise the potential redevelopment and activation of this activity centre. He considered that a more robust built form could be facilitated by the Amendment.

Discussion and conclusions

There are a number of changes between the re-exhibited version of DDO16 and Council’s ‘Panel version’ and the indicative further amended concept plans. The Panel is obliged to consider the Amendment as exhibited, but has given due regard to Council’s intentions since that time.

The Panel would support street walls on both sides of Hawthorn Road being up to 2 storeys, with potential for a 3 storey street wall on 778 Nepean Highway. However, it considers that there is no justification for mandatory side and rear setbacks in line with ResCode provisions for this activity centre, aside from the direct abuttal to Otley. There is scope for a varied design response to suit individual sites that would suitably maintain adjacent residential amenity and this is also tempered by the presence of laneways behind both sides of the centre.

Having assessed the evidence and undertaken a further site visit, the Panel considers that a higher built form element with a confined footprint, on the corner of 778 and Nepean Highway may have a positive urban design impact by defining the corner and drawing attention away from the large tram infrastructure structure. It would also provide an opportunity to emphasise the corner subject to suitable design. It would therefore agree that there is provision for a confined building height increase on that property, although its preferred height should remain at 3 storeys.

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46 Noting that she describes the single storey building with tower as two storey.
47 It contemplates a minimal fourth storey to provide a suitable cap to the building and definition to the corner, for example.
However, the negative visual impact from almost all vantage points of the 4-5 storey element that forms part of 762 Hawthorn Road has persuaded the Panel that there should be no development above the ridgeline on these properties (so long as the current building remains intact or to an equivalent height for any replacement building). The proposal to allow 4 storey development of these properties would reinforce the poor outcome seen on 762 Hawthorn Road and the Panel therefore prefers a 3 storey discretionary height and would suggest that the discretion to allow taller development should be exercised sparingly in practice.

Both the laneways designated as new connection/extend laneways would appear to be well used and incapable of extension to the north. Ms Woolf’s submission referred to the removal from the DDO schedule of a previous easement to widen the lane, which the Panel assumes was unachievable. The pedestrian thoroughfare shown between 766 and 768 appears aspirational, coming as it does between two of the row of existing terraces. Its purpose is also unclear. This should be rectified in the concept plan.

Recommendation

Council adopt the DDO16 and the concept plan, subject to the following modifications:

- identify 758-768 as Area ‘A’, with a preferred building height of 11.0 metres (3 storeys) and the remainder of the centre on the west side of Hawthorn Road as Area ‘B’ with a preferred building height of 9.0 metres (2 storeys). 778 Nepean Highway would be Area ‘C’ with a preferred building height of 11.0 metres (3 storeys) and a maximum building height of 13.5 metres for a confined potential fourth storey component. Identify land on the east side of Hawthorn Road as Area D with a mandatory maximum building height of 9.0 metres (2 storeys)
- a primary street wall of up to 2 storeys for the centre excluding 778 Nepean Highway to have a street wall of up to 3 storeys
- identify B17 setbacks from ResCode as mandatory for properties Area D but discretionary for Areas A, B and C and include the laneway width within this setback
- delete the ‘pedestrian thoroughfare’
- consequential changes to the legend to the concept plan, to include a table of area heights, confirm mandatory and discretionary heights and setbacks in accordance with Panel recommendations, and the identification of the adjacent heritage property.

Further recommendations

Include criteria for an increase in building height above the preferred height using the wording in Figure 3 of this Report.

Remove the proposed inability to grant a planning permit to vary setbacks, except for properties in Area D.

5.5 Design and Development Overlay 17

DDO17 applies to three centres in coastal locations.
Key elements of the re-exhibited version of DDO17 comprise:

- a preferred height of 9 metres with an allowance for sloping land
- criteria to justify height beyond 9 metres to a mandatory height of 11 metres
- 2 storey zero lot line street wall to the primary street frontage
- side and rear setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- at Beach Road and Georgiana Streets Centre, setbacks of 3 metres at ground level, 5 metres at first floor level and 10 metres second floor level where land directly abuts land in the NRZ.

Ms Ancell considered that a proposal of mandatory and discretionary controls were justified since these centres are in sensitive coastal locations, surrounded by NRZ land and are mostly identified for ‘minimal’ growth with no strategic need for the centre to grow vertically (beyond modest growth).

Post exhibition, Council proposed to add a minimum setback of 5 metres from the front boundary where a third storey is proposed.

Changes to the text of DDO17 are discussed in Chapter 6.

5.5.1 Beach Road and Georgiana Street, Sandringham

The centre is classified as SCAC (Mixed Use). Council proposes to include the northern portion of 72 Beach Road (currently NRZ3) in the C1Z so that commercial zoning will apply to the whole centre.

Submissions and evidence

Submissions raised issues of height, setbacks, off site amenity, traffic and parking. They also queried the proposal to rezone part of the petrol station to C1Z.

Sandy Developments Pty Ltd submitted that the centre should be declassified or, alternatively, DDO17 needed to be varied to facilitate appropriate development of the centre. Its submission described the commercial decline of the centre, especially since given the diversification of functions in and around the Sandringham Yacht Club that has increased competition. It suggested there was no reason to believe the centre has any future as a commercial centre linked to boating, or for use as offices. It therefore submitted that the Amendment seeks to entrench a role that is no longer appropriate, as the centre can no longer compete with other small centres - let alone higher order centres.

The Panel notes that Sandy Developments applied to council for planning permission to construct a wholly residential building on its land which Council recently refused - in part because it lacks a commercial component contrary to the purpose of the C1Z.

Sandy Developments relied on the evidence of Mr Henshall and Mr McGurn. Mr Henshall’s economic evidence concluded that the centre does not at present perform a valued economic or commercial role. He also considered that there was no realistic prospect of the centre supporting a convenience role (aside from the petrol station) and that it was not suitably located for this type of retail use given the lack of on street parking, low pedestrian amenity and inability to expand in footprint. Neither was it considered to meet preferred criteria in
the SAC Strategy for commercial (office) floorspace potential as the two nearby activity centres were considered suitable to accommodate forecast demand.

Rather, Mr Henshall identified the highest and best use of the land as residential, referencing its identification as a ‘Strategic Redevelopment Site’ in the Housing Strategy48. He also considered this would represent an opportunity to improve on the area’s sense of place, connecting with its positive locational attributes.

Mr McGurn supported the delisting of the centre as a SAC. He considered that its retention would potentially create uncertainty for “otherwise appropriate land use and development outcomes”.

Mr Szafraniec considered that the centre plays a highly specialised role linked directly to the Sandringham Yacht Club and is therefore designated as a SCAC. He believed that the C1Z more appropriately reflects the existing uses and role of the centre, but that if the existing uses were to relocate, there would be “limited justification to retain or expand the centre for employment purposes, particularly given its location between two MACs [Hampton Street and Sandringham]”. This is generally consistent with the SAC Strategy which comments that “Council could entertain alternative uses for the site, such as residential”.

Ms Ancell considered that the inclusion of part of the petrol station site in a residential zone is an anomaly that should be rectified.

In terms of built form, Mr McGurn supported the replacement of the current coastal DDO1 with a more flexible approach to development but considered that the building height and design requirements of the proposed DDO17 are overly prescriptive and not appropriately justified. He considered that the preferred 2 storey building height and maximum 3 storey height did not adequately recognise the strategic opportunities of the land.

Mr McGurn’s evidence was that limiting the centre to low rise was not supported by any built form analysis and that there is no justification for a mandatory height control in this context. He says that the benefit of having a continuous street wall to Beach Road is not based on any analysis of the coastal location and that a landscaped frontage may instead provide a more appropriate interface. He also disputed the need for the setbacks at the rear interface of the commercial zone in excess of the ResCode B17 standard49, which applies within residential zones. Mr McGurn’s evidence also recommended changes to the design detail of the DDO schedule.

Sandy Developments and other submitters concerning different centres also noted that there is no allowance for architectural features or building services to exceed the mandatory height. At the hearing Ms Cook agreed that an exemption for these should be made.

Council relied on the evidence of Ms Cook and Ms Ancell in respect of built form and urban design outcomes. Ms Ancell supported the mandatory 3 storey limit in acknowledgement of the sensitive coastal location (despite the centre being larger and having opportunity for taller

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48 Which he notes anticipates a two storey building height.
49 DDO17 proposes specific setbacks for land within the centre that has a direct abuttal to land within the NRZ – 3 metres at ground, 5 metres at first and 10 metres at second floors.
built form) and its designation at clause 21.02 as a ‘strategic redevelopment site-minimal growth’ site in the Housing Strategy.

Mr Szafraniec’s evidence is that if the existing uses were to relocate elsewhere (and the Panel notes that this has already occurred to some extent), there would be limited economic justification to retain or expand the centre for economic purposes.

Council acknowledged that the centre plays a marginal role in the hierarchy, but submitted that, notwithstanding Mr Szafraniec’s opinion, the current lower order functions still support the local economy and the centre’s designation as a SNAC. It supported residential development on upper levels, but opposed total residential use at ground floor in principle.

**Discussion and conclusions**

The Panel considers that there is a good case for de-classifying this centre from the list of SACs encompassed by this Amendment.

To some extent it defers to Mr McGurn’s view that, “put simply, I consider the attempt to classify and define future roles for ‘centres’ of this type puts too much weight on their urban role, potentially to the detriment of achieving the overarching strategic development opportunity”. This is especially the case where there is no economic or other strategic impetus for the ongoing focus of commercial activity on this land, as confirmed by Mr Henshall. Mr Szafraniec was likewise open to this prospect (albeit subject to changes in existing land use being confirmed over time).

The Panel considers that the Amendment needs to be forward-focused for these centres and that it should not wait for existing commercial or retail uses to physically relocate before confirming the realistic future of this land.

Future work may involve consideration by Council as to whether to consider rezoning the land to a residential zone, with less restriction than adjoining NRZ recognising its capacity for strategic redevelopment. Reconsideration of the proposal to rezone part of the petrol station site may also be appropriate if the Panel’s primary recommendation is followed.

The Panel considers that this collection of sites exemplifies the fact that the Housing Strategy which recommends minimal residential growth for this centre should not be used rigidly to assess the redevelopment capacity of centres. It notes that in formulating this Amendment, Council itself has recognised this potential by including the centre in DDO17.

Ms Cook noted in her evidence that the maximum height of residential development along Beach Road in proximity to this centre is 3 storeys. This was considered to support the imposition of a mandatory height limit where council wishes to maintain a low scale character, but in the Panel’s view, an uplift from the height of surrounding dwellings outside the centre may be appropriate for sites in the C1Z. In this centre which comprises two large allotments and which is genuinely a suitable strategic redevelopment site, a preferred height of 4 storeys would be justified.

If this primary recommendation was not adopted, the Panel would agree with Mr McGurn that areas such as this with capacity for growth and change should be able to aspire to a new character reflecting their opportunity and context, and that the site has the potential for well-designed buildings of greater height than DDO17 as drafted would allow. This reflects its visual
separation from the foreshore, commercial legacy and main road location that could support more robust or taller building forms.

The Panel also notes that the application plans for the proposal submitted at the Hearing demonstrate that the front setback should be determined in response to the site context and the overall design of the proposal rather than having a preferred street wall to the street edge. The proposed street wall is of limited urban design benefit and integration with residential neighbourhood beyond would be improved if it were to be removed.

Mr McGurn noted that there is no guidance in DDO17 relating the foreshore context of the centre. The Panel considers that this omission is relevant and should be addressed, particularly so in this centre, where views of built form from the beach are moderated by topography and the road alignment, and there will be unobstructed outlook over the oval opposite from any development. The Panel would agree that, irrespective of the outcome of this centre, a further purpose of the DDO schedule should include achieving a suitable interaction with the foreshore environs (or similar).

On balance, the Panel ordinarily regards exemptions for architectural features and building services as potentially problematic, noting that it can be challenging to identify whether a feature falls within the exemption. However, in the case of centres with relatively confined mandatory controls such as those in DDO17 it would support its inclusion.

It would also be appropriate for the proposed reference to encouraging specialist marine activities within the centre to be removed as a strategy from Clause 21.07.

**Recommendation**

Declassify the Beach Road and Georgiana Street Centre from the list of Small Activity Centres and remove it from DDO17.

Alternatively, if Council adopts DDO17 and the concept plan, it should be subject to the following modifications:

- a preferred height of 11 metres (3 storeys) with allowance for sloping land
- criteria in line with other centres within this Amendment to justify building height beyond 11 metres (3 storeys)
- remove street wall notation
- side and rear setbacks to residentially zoned land generally in accordance with B17 at Clause 55.04-1, with laneway width forming part of the setback
- consequential changes to the legend to the concept plan, and including identification of ‘passive surveillance’ and a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and residential zone.

5.5.2  **Esplanade and Grosvenor Street, Middle Brighton**

This centre is classified as a SNAC. It remains C1Z

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50 See, for example, SGRC Pty Ltd v Melbourne City Council & Ors [2014] VSC 238 and MQ Development Group Pty Ltd v Port Phillip CC [2017] VCAT 2176.
Submissions and evidence

No submissions were made concerning this centre.

Discussion and conclusions

The Panel observed on its site visit that this centre has been largely redeveloped in recent years. It is clearly visible from the beach area adjoining the Brighton Baths. The Panel concludes that DDO17 as proposed is an appropriate control on the land, with a mandatory height control given the need to protect the interface with the foreshore and coastal setting.

It would appear that the majority of the laneway to which the concept plan seeks to connect to the lane which runs along part of the east of the centre has been long subsumed into properties facing Grosvenor and Chelsea Streets. A new connection is clearly unachievable. It should be deleted from the concept plan, along with the requirement for passive surveillance over it.

Recommendation

Council adopt DDO17 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- delete ‘new connections/extend laneways’
- delete ‘provide passive surveillance’
- consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and residential zone.

5.5.3 Keys Street Shopping Centre, Beaumaris

This centre, anchored by the large Victorian Beaumaris Hotel, is classified as a SNAC. It is to retain its C1Z. The overlay was changed from DDO1 to DDO17 in the re-exhibited amendment.

Submissions and evidence

Submissions to the exhibitions of the amendment both supported the proposed DDO and objected to the centre’s classification as a minimal residential growth area, submitting that it makes a significant contribution to residential growth whilst maintaining a valued commercial role.

Both Ms Cook and Ms Ancell supported the application of DDO17 to the centre even though it is identified as ‘minimal’ residential growth since they recognise some opportunities for additional height. They say there needs to be suitable provision for a setback of the third storey to prevent built form dominating the landscape.

Discussion and conclusions

This large centre displays relatively consistent built form, is well defined by the laneways along its edges, but still retains considerable opportunity for further development on the car park areas along Tramway Parade.

The Panel agrees that mandatory controls (albeit at a taller building height) are justified by the Beach Road frontage overlooking the Beaumaris foreshore reserve.
Recommendation

Council adopt DDO17 and the concept plan, subject to the following modifications:

- a street wall described as up to 3 storey
- delete hotel car park site designation as ‘potential redevelopment site’ (as it already been redeveloped)
- consequential changes to the legend to the concept plan, and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and residential zone.

5.5.4 DDO17 conclusions and recommendations

There is a need to include reference to the proximity and interface with the foreshore environs of these centres in the design objectives.

The Panel accepts that the 3 storey building height controls in these centres should remain mandatory as proposed, given the sensitive coastal setting of these locations although it considers that the preference for 2 storey buildings under-represents the capacity of these centres even accounting for this sensitivity.

Given the support for mandatory controls, the Panel recommends the inclusion of an exemption for architectural features or building services.

The Panel recommends that the Beach Road and Georgiana Street centre be de-classified such that the new suite of DDOs will not apply to it. However, if this primary recommendation is not adopted, the Panel considers that there are varied elements of its setting that reduce its comparative coastal sensitivity, such that a 3 storey preferred building height would be appropriate.

Recommendations

Include a design objective “to respond to and enhance the foreshore environment of Port Phillip Bay” or similar.

Delete the component of building height seeking a preferred 2 storey (9 metre) building height.

Delete the criteria for buildings above the preferred height.

Include an exemption for architectural features and building services (wording to be nominated by Council) to be permitted above the mandatory maximum height.

5.6 Design and Development Overlay 19

5.6.1 South Road and Esplanade Avenue, Brighton

This centre is identified as a SNAC (Mixed Use). The portion of the centre to the west of the railway line is MUZ, with the portion to the east C1Z.

This centre was re-exhibited under DDO17 but a post-exhibition change gave it the bespoke DDO19, allocating maximum building heights to different precincts within the centre,
proposing a hierarchy of different heights within the centre based on existing and approved built form.

**Submissions and evidence**

Submissions to the exhibited amendment identified heights and zoning as issues of concern.

Mr Szafraniec noted the unique (split) nature of the centre that resulted in Council applying both the MUZ and C1Z. The centre is close to Brighton Beach and in his opinion provides commercial opportunities for recreation and food services, although population growth in the area is expected to be limited. Therefore, he recommended that the centre be retained as is or support a small expansion within its existing footprint.

Evidence and submissions noted that the potential to improve the quality and functionality of the centre is heavily dependent on the future use and development of key sites in government ownership around the train station. The Panel was not informed of any impending proposals for this land.

Ms Cook and Ms Ancell supported the mandatory controls due to the centre’s sensitive coastal location. Ms Ancell supported the change in height proposed for 40 The Esplanade, because it directly adjoins sites in the NRZ, and the 3-4 storey heights proposed at 24-30 The Esplanade reflect built or approved developments. She proposed a minimum setback of 5 metres for third storey elements above the 2 storey street wall, to minimise building bulk.

**Discussion and conclusions**

For similar reasons expressed for DDO17 centres, the Panel accepts Council’s proposal for mandatory provisions in this centre, albeit at greater heights given more robust built form conditions.

The Panel generally supports the changes proposed by Council to the re-exhibited concept plan, with two exceptions. Firstly, it sees no rationale for designating the rear of the commercially zoned portion of the land as having a 2 storey height limit. It shares with 40 The Esplanade an interface to a NRZ, but in addition to its commercial rather than residential zoning, the adjoining site itself presents as a candidate for redevelopment itself in the short-medium term.

Secondly, the 5 storey building constructed on 32-36 The Esplanade is in the Panel’s view demonstrably at odds with the adjacent built form and offends its coastal interface - a well used beachside area. Its inappropriate height should not be entrenched in the Planning Scheme, or form any precedent for future development of the land. Rather, future heights on this site should be limited to 4 storeys.

The Panel can also envisage redevelopment in the medium term of the railway land, currently partially used as parking for ‘Milano’s’ and partially as station parking. It considers that a 3 storey height should notionally apply to the Esplanade/South Road frontage of the land, tying it into the eastern portion of the centre and relating it to any future development of ‘Milano’s’.

The street wall shown on the concept plan running through ‘Milano’s’ car park has little meaning at this stage of the centre’s development. The new connections/surveillance requirements shown along the access to the station, the provision of surveillance to the two
railway tracks also appear premature and aspirational until such time as the land is redeveloped. That land is also not currently under Council’s control.

**Recommendation**

Council adopt DDO19 and the concept plan, subject to the following modifications:

- mandatory building heights in Areas A and B up to 13.5 metres (4 storeys)
- mandatory building heights in Areas C and D up to 11 metres (3 storeys)
- describe the street wall as up to 3 storey
- delete the new connections/extend laneways shown on the railway land,
- delete ‘provide passive surveillance’ from between the railway tracks
- add a transitional setback to the northern edge of the commercially zoned land in the centre
- remove the ‘secondary active frontage’ from the ‘Milano’s’ car park edge
- consequential and other changes to the legend, applying the star notation to ‘landmark heritage building’ and including a wording change to the description of the transitional setbacks to ‘manage’ rather than ‘limit’ amenity impacts at the interface of the C1Z and residential zone.

**Further recommendations**

Include criteria for an increase in building height above the preferred height using the wording in Figure 3 of this Report.

Delete the preference for side and rear setbacks in line with Clause 55.04-1 for land in Areas A, B and C.

Include an exemption for architectural features and building services (wording to be nominated by Council) to be permitted above the mandatory maximum height.

**5.7 Consolidated conclusions – DDO Schedules**

The Panel concludes:

- The Panel identifies a number of centres where it finds the wording of the DDO schedule and concept plans are generally appropriate.
- On closer consideration, the Panel considers that some proposed DDO schedules are unduly restrictive in guiding the future development capacity within certain centres.
- In some instances, it has recommended an uplift of centres to a DDO schedule with greater capacity for redevelopment. For some centres, it has proposed a preferred setback of upper levels beyond the nominated street wall.
- For the most part (with the exception of some coastal centres and adjacencies to a significant heritage property) the proposed use of mandatory controls is not justified although the content of the various schedules would commonly represent suitable preferred built form scale if adjusted and expressed in discretionary terms.
6 Wording of Design and Development Overlays

6.1 The issue
A number of submitters and expert witnesses suggested that the wording of elements of the DDO schedules was insufficiently resolved to provide for their clear future application. Key issues for each schedule included the adequacy of the design objectives, criteria for exceeding nominated building heights and the wording of proposed design detail and decision guidelines.

The Panel has considered the extent to which it is necessary to make modifications to improve their functionality.

6.2 Submissions and evidence
A number of independent expert witnesses who gave evidence at the Hearing including Mr McGurn and Mr Biacsi considered that aspects of the DDO schedules were poorly worded and should be reviewed carefully. Each addressed this in detail in their expert report.

(i) Design objectives
On the whole, these were considered acceptable in submissions but in some instances, further objectives were recommended. For example, the current DDO1 provides a number of objectives seeking an appropriate response to the foreshore context, but no equivalent provision was made for coastal centres to be included in DDO17.

(ii) Metres versus storeys
Practice Note 59 confirms that a definitive height control should be expressed in metres although a reference can also be made to height in terms of storeys. Where both are used, the Practice Note recommends that adequate allowance should be made for greater floor to ceiling height to support employment uses.

Council proposes to make reference to both metres and storeys when providing mandatory or discretionary heights. Some submissions and expert witnesses suggested a varied approach to this, including Mr Biacsi.

(iii) Criteria for exceeding nominated building heights
Exhibited DDO schedules which provide preferred building heights (some with maximum building heights beyond this) incorporate criteria to be considered when preferred building heights are proposed to be exceeded for a particular proposal. These were generally supported by Ms Ancell and Ms Cook in their evidence.

Considerations include protecting the amenity of adjoining properties; the size of sites; design quality; response to heritage buildings and enhancement of the public realm. It was unclear to submitters whether these considerations were all mandatory (and cumulative).

On the issue of “design excellence”, Practice Note 59 explains that “innovative or exemplary design is not of itself reasonable justification to exceed discretionary building height and setback requirements”. This view was echoed by both Ms Ancell and Mr McGurn who took
the view that a high standard of design should be a feature of all development, regardless of
height. Mr McGurn also pointed out that it can be challenging (and potentially subjective) to
identify exemplary design and that once an element of design has already been developed, it
could no longer be considered ‘innovative’ in the true sense of the word.

(iv) Building setbacks

A number of submitters considered that establishing preferred side and rear setbacks by
reference to ResCode standards was not a reasonable expectation for commercially zoned
land that abuts residential land. For example, the site specific provisions proposed for land in
the Beach Road and Georgiana Street and New and Bay Street centres were opposed by some
land owners.

On the other hand, a number of local residents supported these provisions in light of concerns
that it is important to ensure that development in the activity centre would not unreasonably
impact on the amenity of adjacent or nearby residential land.

Ms Ancell considered that setbacks in activity centres should not be more conservative than
those ordinarily permitted in residential areas.

(v) Design detail and decision guidelines

Some submitters and expert witnesses suggested further clarification was warranted to
preferred elements in the individual DDO schedules. For example, greater attention was
called for in response to the treatment of laneways, features of existing streetscapes, active
street frontages and the like.51

Some modifications were proposed by Council in response, as documented in the ‘Panel
version’ of these provisions, such as changing reference to use in the decision guidelines to
“building form” when referring to impacts on an existing dwelling in a residential zone.

6.3 Discussion

(i) Design objectives

The Panel generally supports the design objectives proposed for the DDO schedules subject
to two refinements.

It agrees that there should be a separate design objective pertaining to the foreshore context
of DDO17. This could be “To respond to and enhance the foreshore environment of Port
Phillip Bay” or similar. It could draw on existing themes from existing DDO1 to the extent
relevant.

The Panel agrees that planning policy anticipates that the character of activity centres,
including SACs, will continue to change over time and development will intensify to an extent
dependant on the features and capacity of each activity centre. On this basis, the Panel
suggests that the design objective referring to respect for urban form and building types

51 See, for example, pages 16-18 of Mr McGurn’s expert report for 76-78 Beach Road, Sandringham.
within the activity centre should reference “preferred” urban form and building types or similar (consistent with the provisions of the relevant schedule).

(ii) **Metres versus storeys**

The Panel has considered how preferred or mandatory building heights should be expressed, and whether allowance has been made for flexible commercial or retail floor to ceiling heights in appropriate instances. For example, it is clear that many buildings, including mixed use buildings, car dealerships, showrooms and bulky goods outlets along the Nepean Highway small activity centres have substantial floor to ceiling heights, especially at ground level.

Building heights in both storeys and metres have been used in DDO schedules in this Planning Scheme for other higher order centres. On balance, the Panel considers that the proposed format would be acceptable, especially since it now recommends that building heights in most centres be discretionary. For example, in the case of the Coles site in the Bluff Road and Highett Road centre, as explained by Mr D’Oliveyra, there would be scope for higher floor to ceiling heights to meet realistic commercial needs. This is another reason why the Panel does not recommend proposed exemptions for architectural features or building services, aside from DDO17 and DDO19.

(iii) **Criteria for exceeding nominated building heights**

Having regard to the Panel’s primary view that, in almost all instances, preferred rather than maximum building heights should be provided in the DDO schedules, the Panel accepts Council’s position that it is appropriate to include provisions to guide the exercise of discretion to exceed these heights. The Panel echoes some of the concerns expressed by experts in the Panel Hearing as to how these have been drafted.

Schedule 8 to the DDO within the existing Planning Scheme pertains to the Sandringham Village Major Activity Centre. In Clause 2.0 it makes provision for an application to vary the requirements of the schedule including preferred building heights. These provisions (or similar) have been applied by VCAT in a number of recent decisions and found to be workable, such as in *Village @ Hampton Pty Ltd v Bayside CC*.\(^{52}\)

The Panel considers that this provision provides an improved approach to the one proposed in the current Amendment and is of the view that is desirable for the wording of provisions for these activities to generally mirror that within the existing Planning Scheme. It proposes relatively minor adjustment (made in ‘track changes’ in Figure 3 for transparency) to this to align with the objectives of this particular Amendment and to have regard to the outcomes sought for SACs in their context.

\(^{52}\) (Corrected) [2018] VCAT 25.
Figure 3  Panel preferred amended criteria for varying preferred building heights

An application to vary the requirements for preferred building heights in this schedule must:

- Identify the design objectives, design requirements and outcomes to be achieved for the proposal as specified in this schedule (as applicable).
- Include an assessment of how any departure from a preferred building height or building setback specified in this schedule assists in achieving the design objectives and design detail and built form outcomes to be achieved for the proposal as specified in this schedule and how it responds to the decision guidelines.
- Demonstrate that the proposal will achieve the following outcomes to the maximum extent possible (as appropriate):
  - A high standard of architectural design.
  - Innovative environmental design.
  - Enhancement of the public realm including minimal overshadowing of adjoining streets and public spaces and residential properties.
  - Minimal impact on the amenity of adjoining residential precincts.
  - Respect for places subject to the Heritage Overlay.
  - Transitions in scale to lower building forms.

An application to vary the requirements in this schedule should also identify (where relevant) whether the site has any particular characteristics or features that warrant the variation and an alternative design response, including lot size or consolidation.53

It may also be appropriate to consider a reference to the effect on equitable development rights as referred to by parties at the Hearing and generally agreed by Council54, although this sometimes causes speculation and may tend to overemphasise private rights over legitimate opportunities for greater height. Its wording would need to be considered carefully.

The Panel suggests that the decision guidelines for schedules incorporating these criteria should probably make reference to them for completeness, such as “the extent to which buildings proposed above preferred heights respond to criteria within this schedule”.

(iv) Building setbacks

The Panel has some reticence in supporting the application of ResCode setbacks to commercially zoned properties in an activity centre where they abut residential properties. Principally, ResCode has been designed for application in residential zones. Applying ResCode setbacks to land within activity centres may place overly restrictive parameters on building envelopes, with potential to hamper reasonable development or land use consistent with the purpose of the zone in deference to the amenity of properties outside the activity centre.

53 These provisions were varied by Amendment C106 in 2014.
54 Noting that this was expressly considered in the context of height above preferred heights in See Pickle Pty Ltd v Bayside CC [2017] VCAT 1581.
At the same time, the Panel notes that the C1Z already requires consideration of various aspects of ResCode and the interface with adjoining residential properties is a relevant consideration under the proposed DDO schedules. There are also examples of generally comparable provisions being applied in existing DDO schedules, even for higher order activity centres in Bayside.

On balance, the Panel would support the proposed provision as a preferred approach, with discretion to vary setbacks in individual circumstances. It also supports Council’s agreement in most instances to include adjacent laneways within the width of these setbacks, since they commonly provide some buffering to residential properties in Bayside’s SACs.

The Panel does not consider that a departure from preferred setbacks necessarily needs to meet the same application requirements it proposes for exceeding preferred building heights (immediately above), with setbacks will need to be considered as part of individual proposals on their merits.

A different approach is supported for properties in the Hawthorn Road centre, Brighton East, in front of the significant heritage property Otley, where mandatory setbacks are considered warranted. Setbacks in the remainder of the centre should be treated the same as for other centres covered by the Amendment.

(v) Design detail and decision guidelines

The Panel accepts the evidence of various expert witnesses and submitters that there are a elements of design detail that do not reflect the realistic opportunities for future development in these activity centres in line with modern planning policy. More specifically, these include:

- “Retaining and reinforcing the pattern and rhythm of narrow building frontages” - each DDO schedule containing this should assess whether this is genuinely part of the preferred character of the activity centre. For example, it would not be warranted for centres where there is already considerable variation in lot and building sizes.

- “Acknowledging the parapets and roof forms of existing buildings on adjacent lots” - with the exception of some centres with consistent building forms, this is unlikely to be important for the future character of SACs with greater capacity for change.

- Reference to laneways, such as “create continuous laneway connections where land abuts a no-through access laneway” - should be consistent with the Panel’s recommendations for the treatment of laneways and other connections in each individual centre, or should be worded more generically to refer to improved connectivity.

- “Ensuring new development is sympathetic in their design to the existing character of the centre and the surrounding residential community” - in the Panel’s view, the need for a “sympathetic” design response to both elements of the physical setting would significantly inhibit the achievement of planning policy for activity centres and diminishes the reasonable capacity for change within nominated centres. This element should be reworded to consider consistency with emerging and preferred character within the centre, and responsiveness to the character of nearby residential areas or similar.

- The decision guideline referencing “transitional setbacks” is also regarded as insufficiently flexible (especially since not all concept plans identify areas for
transitional setbacks). The Panel suggests that the decision guideline be broadened to “appropriate setbacks”.

There are a number of other more minor refinements that could be considered by Council to refine the design detail in line with the evidence of various experts at the Panel hearing, if it was so inclined. However, it does not consider these to be essential. Aside from this, the Panel supports the changes to these elements proposed by Council in its ‘Panel version’ of the DDO schedules.

(vi) Transitional provisions

The Panel agrees with Council that this Amendment has had a long inception and was the subject of extensive public notice. In almost all instances, the proposed DDO schedules would provide more generous opportunities for development (or use, in the case of rezoning) than existing planning scheme provisions. Also, it is likely that properties with existing permits will still be able to act on them. The fact that application requirements may be more onerous for new application or that design detail and the like may be more extensive is not considered to warrant transitional provisions.

(vii) Replacement DDO

Given the ambiguity that continued into the Panel Hearing, the instructions accompanying the Amendment should confirm Council’s intention that in all instances, the proposed DDO schedules will replace the existing DDO schedule for each centre at present.

6.4 Conclusions

The Panel concludes:

- It generally supports the DDO schedules as drafted, except where it identifies preferred changes in the body of this Report.
- It is not persuaded that transitional provisions are required for the provisions of this Amendment. The Amendment documentation should clarify that the new DDO schedules are full replacements for the existing DDO schedule that applies to each centre at present.

Recommendations

In all schedules, in the design objectives include the words “preferred” before the words “urban form and building types”.

In all schedules, include an exemption from buildings and works in the form of the ‘Panel version’.

In all schedules, in design detail, replace “ensure developments are sympathetic in their design to the existing character of the centre and the surrounding residential community” with “ensure developments are sympathetic in their design to the emerging and preferred character of the centre and respond suitably to surrounding residential buildings”.

In all schedules, in decision guidelines, replace “whether the development provides the transitional setbacks to nearby sensitive uses” with “whether the development provides appropriate setbacks to nearby sensitive uses”.
### Appendix A  Submitters to the Amendment

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<tr>
<th>No.</th>
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<td>Mr Andrew Ryan</td>
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<td>Ms Anna Beddoe</td>
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<td>Ms Laykin Teh</td>
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<td>Mr SM Wong and Ms Patricia Lim</td>
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<td>Prof Yuriy and Dr Lilia Kuleshov</td>
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36  Maria La China
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38  R G Lee
39  Kevan Jordan
40  Julie Wallace and Tim Smith
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42  Emma Thompson
43  Stephen Galloway
44  Cathy Collins
45  Jessica Schaefer
46  Natalie O'Brien
47  Cynthia Hunt
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50  Heuji Raper
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52  Loslo Enterprises Pty Ltd
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54  Rosie Elsass
55  Richard Slifierz
56  Mr Simon Russell
57  Matt and Vanessa Findlay
58  South East Water
59  Brightwood Pty Ltd
60  Theodora Jenkin
61  Karrakatta Holdings Pty Ltd
62  Ornella Angela-Maria Princi
63  Vincenzo Princi
64  EPA
65  Simone Boileau
66  Stillwell Motor Group
67  Jefferson Investments Pty Ltd
68  Charman Pty Ltd and Jasbe Investments Pty Ltd
69  Brightwood Pty Ltd
70  Kayes Hotel Discretionary Trust
71  Paul O'Sullivan
72  Adam and Michaela Quick
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82  Karen and Brendon Fitzgerald, Fitzy's Superannuation Fund
83  Sally Bartholomeusz
84  Bronwyn and James Ide
85  Anna Regan and Damian Gillingham
86  Derek Screen
87  Wade Smith
88  Fionna Oliver-Taylor
89  Romana and Ognjen Zec
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## Appendix B  Parties to the Panel Hearing

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<td>Bayside City Council</td>
<td>Terry Montebello, Solicitor of Maddocks Lawyers who called the following expert witnesses:</td>
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<tr>
<td></td>
<td>- Julian Szafraniec, economist, SGS Economics and Planning</td>
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<td>- Sarah Ancell, town planner, Echelon Planning</td>
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<td>- Victoria Cook, urban designer, Catalyst Development Services</td>
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<td>L and V Brighton Pty Ltd</td>
<td>Phil Bisset, Solicitor Minter Ellison who called the following expert witness:</td>
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<tr>
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<td>Stuart McGurn, town planner, Urbis</td>
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<td>Sandy Developments Pty Ltd</td>
<td>Paul Chiappi of Counsel instructed by DSA Law who called the following expert witness:</td>
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<td>Stuart McGurn, town planner, Urbis</td>
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<td>Lowe Group Holding Pty Ltd</td>
<td>Reto Hoffman, Solicitor, Rigby Cooke who called the following expert witness:</td>
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<tr>
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<td>Andrew Biacsi, town planner, Contour</td>
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<td>Brandied Pty Ltd</td>
<td>Ian Pitt QC, Best Hooper Solicitors</td>
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<tr>
<td>Loslo Enterprises Pty Ltd</td>
<td>Ian d’Oliveyra, Network Planning Consultants</td>
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<td>Nick Moutzouris</td>
<td>Ella Turnbull, town planner, Urbis</td>
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<td>Stillwell Motor Group</td>
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### Appendix C  Document list

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## Appendix D  Panel preferred version of DDO building heights

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<td>Mandatory maximum 2 storey (9 metre) building height*</td>
<td>Preferred 2 storey (9 metre) building height with criteria for increased height</td>
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<td>Preferred 2 storey (9 metre) building height* Mandatory maximum 3 storeys (11 metre) building height*, with proposals above 2 storeys (9 metres) to provide relevant justification for additional height</td>
<td>Preferred 3 storey (9 metre) building height with criteria for increased height Some centres have an identified street wall of up to 2 storeys with a preferred setback for upper levels, while others have an identified 3 storey street wall - some with, some without preferred upper level setbacks</td>
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<td>Preferred 4 storey (13.5 metre) building height*, with proposals above that to provide relevant justification for additional height Specific provisions are proposed for certain centres or nominated sites for a preferred 3 storey (11 metre) building height unless land is consolidated into larger allotments.</td>
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<td>Area A - Mandatory maximum 4 storey (13.5 metre) building height* Area B - Mandatory maximum 2 storey (9 metre) building height*</td>
<td>Heights for areas A, B and C changed to preferred, with criteria for increased height Area A - 3 storeys (11 metres) Area B - 2 storeys (9 metres) Area C (778 Hawthorn Road) - 3 storeys with capacity for a minimal fourth storey Area D - mandatory maximum 2 storey (9 metre) building height</td>
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<td>Preferred 2 storey (9 metre) building height* Mandatory maximum 3 storeys (11 metre) building height*, with proposals above 2 storeys (9 metres) to provide relevant justification for additional height</td>
<td>Mandatory 3 storey (11 metre) building height If Beach Road and Georgiana Street centre is retained, a preferred 3 storey (11 metre) building height applies</td>
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<td>Area A - Mandatory maximum 5 storey (16 metre) building height* (reflecting existing constructed building)</td>
<td>Mandatory maximum heights Areas A and B - 4 storeys (13.5 metres) Areas C and D - 3 storeys (9 metre)</td>
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<td>Area D - Mandatory maximum 2 storey (9 metre) building height*</td>
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*with allowance for slope

**Note:** All Panel recommendations include the standard allowance for slope.