

Planning and Environment Act 1987

Panel Report

**Moreland Planning Scheme Amendment C164
Brunswick Activity Centre former industrial land**

7 August 2018

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Moreland Planning Scheme Amendment C164

Brunswick Activity Centre former industrial land

7 August 2018

A stylized, handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

David Merrett, Chair

A handwritten signature in black ink, featuring a large, prominent loop at the top and a series of smaller loops below it.

Debra Butcher, Member

A handwritten signature in black ink, with the name 'Kate Partenio' written in a cursive style.

Kate Partenio, Member

Contents

	Page
1 Introduction.....	1
1.1 The Amendment.....	1
1.2 Planning history for the Brunswick Activity Centre	2
1.3 Panel process.....	4
1.4 Summary of issues raised in submissions	5
1.5 DELWP advice	6
1.6 Amendment VC148	6
1.7 Matters not addressed in this report	6
1.8 Post exhibition changes and the approach of the Panel.....	7
1.9 Issues dealt with in this Report	7
2 Planning context	9
2.1 Policy framework.....	9
2.2 Ministerial Directions and Practice Notes.....	10
2.3 Discussion	10
3 General issues.....	12
3.1 Traffic and parking.....	12
3.2 Land in two zones/two MILS categories	13
3.3 Submission from Rod Duncan	14
3.4 Residential amenity.....	16
3.5 Building height.....	16
3.6 Notice and third party appeal rights	17
4 Environmental Audit Overlay	19
4.1 Overview.....	19
4.2 The issue	21
4.3 6 and 8 Ann Street.....	21
4.4 10 Pitt Street.....	27
4.5 Recommendations.....	29
5 Sydney Road	30
5.1 MILS Areas 29 and 30 (Albion Street)	30
5.2 MILS Areas 63 and 72 (Hope and Ballarat Streets)	34
5.3 MILS Areas 61 and 71 (Dawson and Michael Streets)	38
5.4 MILS Areas 68, 69 and 70 (Edward, Dodd and Weston Streets).....	40
5.5 MILS Areas 59 and 60 (Barkly Street).....	47
6 Lygon Street.....	51
6.1 MILS Areas 41, 42, 43 and 73	52
6.2 MILS Areas 44 and 45 (Victoria and Ann Streets)	56
6.3 MILS Area 46 (Albert Street)	59
6.4 MILS Areas 47 and 48 (Pitt Street and Glenlyon Road).....	61

6.5	MILS Areas 51, 52, 53, 54 and 55 (Barkly Street, Brunswick Road, St Phillip Street and Weston Street).....	62
7	Nicholson Street	67
7.1	MILS Area 38 (Corner Blyth and Nicholson Streets)	67
7.2	MILS Area 39 (Victoria Street)	68
Appendix A	Submitters to the Amendment	
Appendix B	Document list	
Appendix C	Schedules 18, 19 and 20 of the Design and Development Overlay supported by the Panel	

List of Figures

	Page
Figure 1	Brunswick Activity Centre Category 2 and 3 land1
Figure 2	Extent of the structure plan area and the activity centre area.....3
Figure 3	Impact of quarry on 10 Pitt Street28
Figure 4	MILS Areas 29 and 3030
Figure 5	MILS Areas 29 and 30 – proposed built form guidance31
Figure 6	MILS Areas 63 and 7235
Figure 7	17-19 Hope Street36
Figure 8	523 Sydney Road36
Figure 9	MILS Areas 61 and 7138
Figure 10	MILS Areas 68, 69 and 7041
Figure 11	1-5 Weston Street and 12 Edward Street43
Figure 12	MILS Areas 68, 69 and 70 - proposed built form guidance46
Figure 13	MILS Areas 59 and 6048
Figure 14	MILS Areas 41, 42, 43/73, 44, 45 and 46.....51
Figure 15	MILS Areas 47 and 4851
Figure 16	MILS Areas 41, 42, 43 and 73 – proposed built form guidance52
Figure 17	MILS Areas 44 and 45 – proposed built form guidance57
Figure 18	160-164 Victoria Street57
Figure 19	154-158 Victoria Street58

Figure 20	MILS Areas 51 and 52 – proposed built form guidance	63
Figure 21	MILS Areas 53, 54 and 55 – proposed built form guidance	64
Figure 22	MILS Areas 38 and 39	67
Figure 23	MILS Areas 38 and 39 – proposed built form guidance	69

List of Tables

	Page
Table 1	Parties to the Panel Hearing..... 4
Table 2	EAO application rationale..... 20

List of Abbreviations

Background report	Brunswick Activity Centre Moreland Industrial Land Strategy Implementation Background Report August 2017
BAC	Brunswick Activity Centre
BSP 2010	Brunswick Structure Plan 2010
BSP 2018	Brunswick Activity Centre Structure Plan 2018
C1Z	Commercial 1 Zone
DELWP	Department of Environment, Land, Water and Planning
EAO	Environmental Audit Overlay
EPA	Environment Protection Authority
PPN30	Planning Practice Note No. 30 – Potentially Contaminated Land
GRZ	General Residential Zone
HO	Heritage Overlay
IN1Z	Industrial 1 Zone
IN3Z	Industrial 3 Zone
MD1	Ministerial Direction No.1 – Potentially Contaminated Land
MILS	Moreland Industrial Land Strategy 2015-2030
MILUS	Moreland Industrial Land Use Strategy 2004
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
<i>Plan Melbourne</i>	Plan Melbourne 2017-2050
PO	Parking Overlay
PPRZ	Public Park and Recreation Zone
PUZ	Public Use Zone
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Moreland Planning Scheme Amendment C164
Common name	Brunswick Activity Centre former industrial land
Brief description	Implements the recommendations of the Moreland Industrial Land Strategy 2015-2030 for the Brunswick Activity Centre
Subject land	Brunswick Activity Centre
Planning Authority	Moreland City Council
Authorisation	16 September 2017
Exhibition	16 November 2017 to 22 January 2018
Submissions	Number of Submissions: 139

Panel process

The Panel	David Merrett (Chair), Debra Butcher and Kate Partenio
Directions Hearing	Fleming Park Hall, Brunswick East, 14 May 2018
Panel Hearing	Planning Panels Victoria, 4, 5, 6, 7 and 8 June 2018
Site inspections	Unaccompanied, 14 May and 8 June 2018
Appearances	Refer to Table 1
Citation	Moreland PSA C164 [2018] PPV
Date of this Report	7 August 2018

Executive summary

(i) Summary

Moreland Planning Scheme Amendment C164 (the Amendment) seeks to implement the recommendations of the Moreland Industrial Land Strategy 2015-2030 for land in the Brunswick Activity Centre. The Brunswick Activity Centre comprises the Sydney Road, Lygon Street and Nicholson Street commercial corridors in Brunswick and Brunswick East.

Council has relied upon a combination of landowner-initiated and Council-initiated planning scheme amendments to implement the recommendations of the Moreland Industrial Land Strategy 2015-2030 for the many former industrial precincts in its municipality. Council has initiated this Amendment as there was a need for a consistent, broad and strategic approach to the Brunswick Activity Centre.

The Amendment applies to 30 former industrial areas which were categorised as either:

- Category 2 (Employment areas) which will generally be rezoned to the Commercial 1 Zone
- Category 3 (Transition residential) which will generally be rezoned to the Mixed Use Zone.

The key statutory tool, apart from the zoning of the land, is the Design and Development Overlay which is already used in the Brunswick Activity Centre and will be applied to most of the land the subject of this amendment:

- Schedule 18 of the Design and Development Overlay – Sydney Road
- Schedule 19 of the Design and Development Overlay – Lygon Street
- Schedule 20 of the Design and Development Overlay – Nicholson Street.

The Parking Overlay and the Environmental Audit Overlay are also to be applied to some of the land the subject of this Amendment.

Between 2016 and 2036, the population of Brunswick and Brunswick East is expected to grow by 27 per cent and 55 per cent respectively. The majority of this growth will occur in the Brunswick Activity Centre, which is identified as a Major Activity Centre in *Plan Melbourne 2017-2050*. This is consistent with Policy 2.2.3 of *Plan Melbourne* that seeks to “support new housing in activity centres and other places that offer good access to jobs, services and public transport.”

In response to exhibition, 139 submissions were received to Amendment C164. Council summarised the issues raised in submissions as:

- building height
- amenity impacts
- traffic congestion
- car parking
- public open space
- zone choice
- heritage
- infrastructure

- Environmental Audit Overlay
- change to the Strategic Framework Plan boundary.

The Panel has considered all of these issues and is satisfied that provisions are in place in the Design and Development Overlay to address amenity impacts, heritage impacts and building heights. The approach to parking and traffic issues is to encourage a modal shift to public transport and cycling. Schedule 1 to the Parking Overlay reflects this by not requiring visitor parking for developments. A municipal-wide Development Contributions Plan will generate funds to support new development and community infrastructure.

The remaining issues are more substantive and include:

- building height – there were requests to increase and reduce building heights. The Panel found that requests to increase building heights were not justified as they are discretionary, not mandatory and where appropriate increased heights have been approved
- public open space – the key issue was whether the Edward Street car park should be used as public open space. The Panel found that it was premature to apply a zone that reflected the conversion of the car park (in full or in part) to a public park, but noted Council had broadly identified this as one of its roles and further master planning was required to guide the application of zones
- Environmental Audit Overlay – Council proposed to apply the overlay to land that is used for a sensitive use (i.e. residential) and where it was the subject of contamination from adjoining land or partly found to be used as a quarry. The Panel found that Council was overly conservative in applying the overlay to land in 6 and 8 Ann Street and recommends it be deleted. The Panel support its application to land at 10 Pitt Street on the basis of the previous quarrying of the land and the unknown fill that was used
- zone choice – the Panel found that the use of the Commercial 1 Zone and the Mixed Use Zone were appropriate in line with the applicable MILS categories. However, it has recommended a tailored approach in circumstances where either the land was within two MILS Areas or two zones to ensure the outcome was not anomalous and/or result in an unreasonable restriction to existing and/or future land uses as a result of access arrangements
- strategic framework plan boundary – the Panel supports the revision of the activity centre boundary on the strategic framework plan to reflect the inclusion of new land through this Amendment in the activity centre.

Since the start of planning for the Brunswick Activity Centre in 2010, Council had not turned its mind objectively to whether land should remain in the activity centre or not. Simply, the approach was to include former industrial land in the activity centre. The Panel noted that some areas have a strong and consistent residential character at the periphery of the activity centre with little or no non-residential uses. The Panel has recommended that Council review these areas at the next review of the industrial or activity centre strategy and consider the exclusion of these areas if the opportunities presented by their inclusion in the activity centre have not been taken. These areas have a Heritage Overlay applied which significantly limits re-development.

The Panel generally concludes, subject to the recommendations contained this report, that:

- the Amendment is consistent with the policy direction provided by *Plan Melbourne* for its major activity centres by providing for significant housing growth and employment growth.
- The Amendment is consistent with the Moreland Industrial Land Strategy 2015-2030
- the use of the Commercial 1 Zone and the Mixed Use Zone for Category 2 and Category 3 land is appropriate.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Moreland Planning Scheme Amendment C164 be adopted as exhibited subject to the following:

1. **Adopt the post exhibition versions of Schedules 18, 19 and 20 to the Design and Development Overlay (Document 1, Attachment 6) subject to changes made by the Panel as shown in Appendix C and other specific recommendations provided in this report.**
2. **Amend Clause 21.02 (Vision), Map 1B Strategic Framework Plan to ensure the land added to the Brunswick Activity Centre with the application of a Design and Development Overlay is shown within the Brunswick Activity Centre boundary.**
3. **Delete the Environmental Audit Overlay from 6 and 8 Ann Street, Brunswick.**
4. **Delete the Commercial 1 Zone from the rear (western) portion of 523 Sydney Road as defined by Category 3 land and replace it with the Mixed Use Zone.**
5. **Apply the Commercial 1 Zone to the narrow strip of land (Certificate of Title Volume 10054 Folio 748, Lot 1 TP 807632A) between 1-5 Weston Street and 12-14 Edward Street.**
6. **Delete the Commercial 1 Zone to the northern portion of 13-15 Edward Street (Edward Street car park) and replace it with the Mixed Use Zone consistent with the MILS Category 3 designation.**
7. **Delete the Commercial 1 Zone to the eastern portion of 59-61 Edward Street, which fronts Charles Street, and replace it with the Mixed Use Zone consistent with the MILS Category 3 designation.**
8. **Amend Schedules 18, 19 and 20 to the Design and Development Overlay (Document 1, Attachment 6):**
 - a) **at Clause 2.0 by deleting the title “*Moreland Industrial Land Strategy – Category 2 Employment Areas*” and replacing it with “*Category 2 Employment Areas*”.**
 - b) **at Clause 5.0 by deleting “*the Moreland Industrial Land Strategy 2015-2030*” and replacing it with “*how development within Category 2 Employment areas responds to the built form requirements for Category 2 Employment areas*”.**
9. **Amend Schedule 19 to the Design and Development Overlay to delete the 17 metre height limit for MILS Area 41 north of Albert Street and replace it with 14 metres.**
10. **Delete the Commercial 1 Zone from the rear of 154-158 Victoria Street, Brunswick as defined by Category 3 land and replace it with the Mixed Use Zone.**

- 11. Amend the legend of each map in Schedules 18, 19 and 20 to the Design and Development Overlay to “*Preferred Heights (mid rise)*”.**

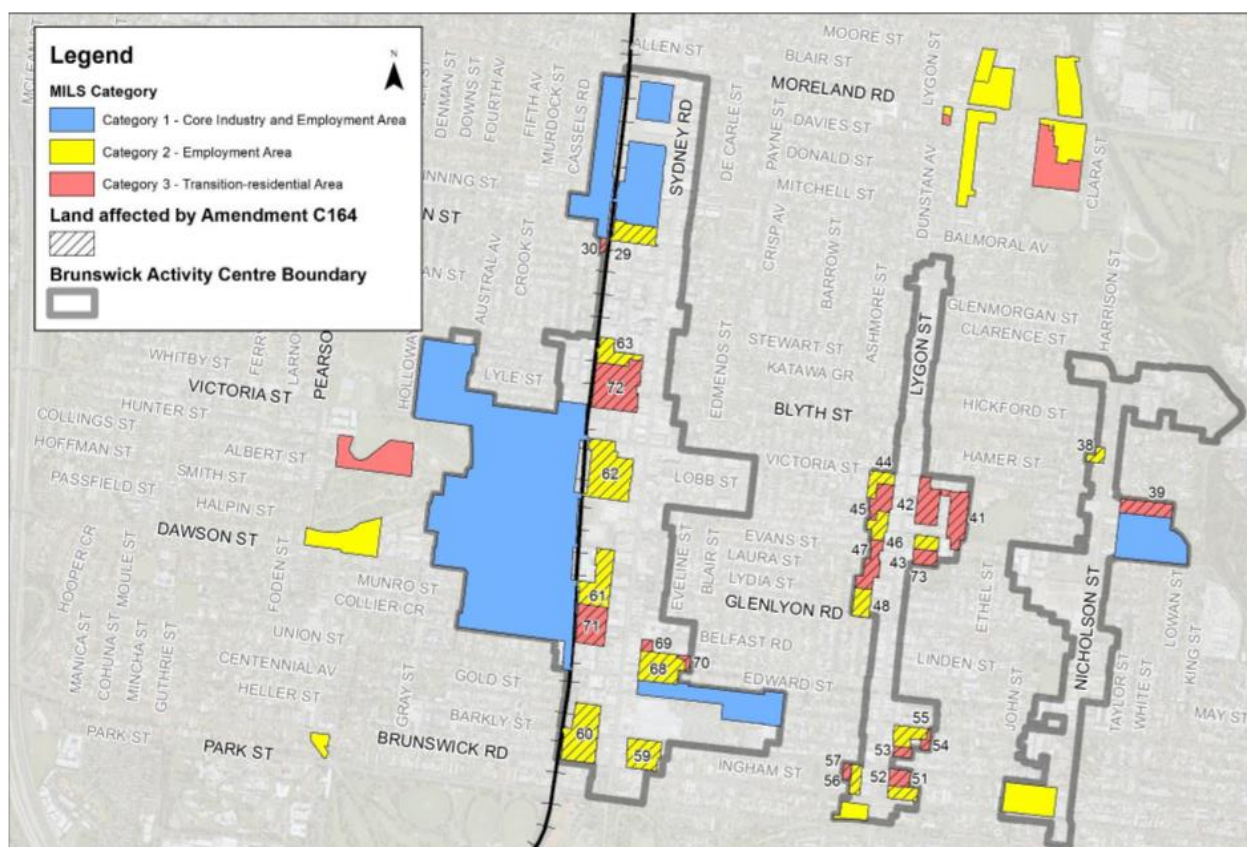
1 Introduction

1.1 The Amendment

The Amendment applies to industrial land within the Brunswick Activity Centre (BAC) identified in the Moreland Industrial Land Strategy 2015-2030 (MILS) as Category 2 Employment and Category 3 Transition-residential.

Figure 1 shows the Category 2 and 3 areas in the BAC affected by the Amendment.

Figure 1 Brunswick Activity Centre Category 2 and 3 land



The BAC comprises three parallel and separate commercial areas along Sydney Road, Lygon Street and Nicholson Street.

The Amendment proposes to:

- rezone land within the BAC, as follows:
 - Commercial 1 Zone (C1Z) land to Mixed Use Zone (MUZ) (30 properties)
 - Commercial 2 Zone to C1Z (5 properties)
 - Commercial 2 Zone to MUZ (35 properties)
 - Industrial 1 Zone (IN1Z) to C1Z (14 properties)
 - Industrial 3 Zone (IN3Z) to C1Z (46 properties)
 - IN3Z to MUZ (58 properties)
- apply Schedules 18, 19 and 20 to the Design and Development Overlay (DDO) to ensure a consistent approach to built form design within the activity centre

- modify DDO18, DDO19 and DDO20 to include specific built form guidance for Category 2 – Employment Areas
- apply the Environmental Audit Overlay (EAO) to sites identified as potentially contaminated land
- apply the Parking Overlay (PO1) to land rezoned to Commercial 1 Zone and Mixed Use Zone, to manage car parking in the activity centre.

Council prepared a background report¹ that provides a useful summary of the Amendment and how each MILS area was addressed and the reasons for this. The Panel refers to the background report throughout this report.

Appendix A contains a list of the submitters to the Amendment.

Appendix B contains the document list.

1.2 Planning history for the Brunswick Activity Centre

The BAC is located along the three commercial corridors of Sydney Road, Lygon Street and Nicholson Street in Brunswick and Brunswick East (refer to Figure 2). Each corridor is separated by established residential areas that are not included in the activity centre boundary.

Strategic planning for the BAC has been an ongoing process since the former Moreland Industrial Land Use Strategy 2004 (MILUS) was introduced into the planning scheme by Amendment C75 in November 2006.

The Brunswick Structure Plan 2010 (BSP 2010) was adopted by Council in August 2010. Amendment C105 approved interim built form controls for the Brunswick Major Activity Centre (as it was then known) for one year from September 2010. The intent of the controls was to ensure that the objectives and requirements of the BSP 2010 were considered while a more comprehensive planning scheme amendment was prepared, which became known as Amendment C134. Amendment C121 extended the interim controls to May 2012 while further work was completed for Amendment C134. A further request (Amendment C135) to extend the interim controls was not supported by the Minister for Planning.

Amendment C134 was exhibited in 2014 and received 70 submissions. Council resolved to refer the Amendment to an independent planning panel with mandatory height controls. The Panel did not support mandatory height controls, a position which Council ultimately supported when it was adopted in July 2015. It was approved in August 2016. Amendment C134 applied permanent built form controls through DDO18 (Sydney Road), DDO19 (Lygon Street) and DDO20 (Nicholson Street). A key recommendation of the Panel was to prepare a consolidated, policy neutral reference document for the BAC to replace individual pieces of strategic work (such as the Sydney Road/Upfield Corridor Strategic Framework Plan 2014, the BSP 2010 and the BSP Addendum 2012).

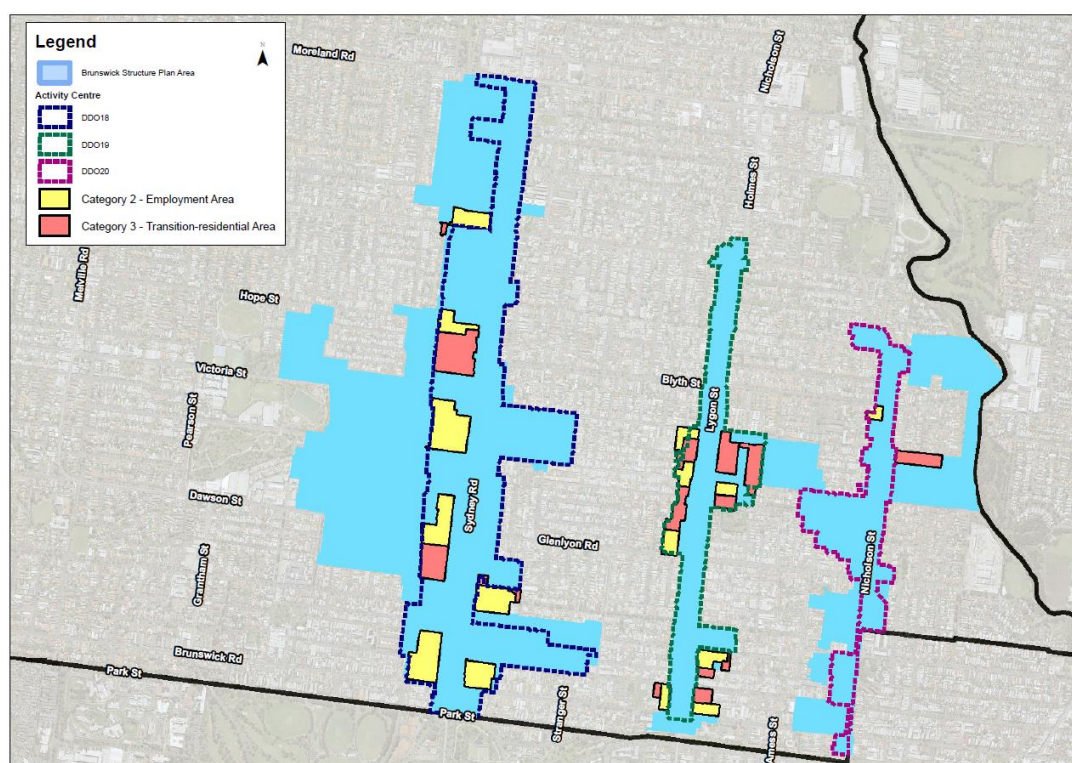
¹ Brunswick Activity Centre Moreland Industrial Land Strategy Implementation Background Report August 2017

MILS was adopted by Council in July 2016 and replaced the MILUS in the planning scheme as a reference document by Amendment C158 (approved April 2017). MILS simplified the number of strategic categories from five to three.

Council prepared a revised Brunswick Structure Plan 2018² (BSP 2018) to reflect the changes proposed by Amendment C134.

Amendment C167 introduces the BSP 2018 as a reference document; but is yet to be approved by the Minister for Planning. The BSP 2018 clarifies the boundaries of the structure plan area and the activity centre area and was amended in April 2018 from an earlier 2016 version. Figure 2 shows the structure plan area includes the activity centre plus the Category 1 Industrial land (et al). The BAC is defined by the extent of the DDO controls that affect the activity centre (Figure 2).

Figure 2 Extent of the structure plan area and the activity centre area



This Amendment (C164) extends the activity centre boundary by extending the DDOs to apply to land being rezoned and provide appropriate built form guidance. The Amendment does not change the structure plan area boundary.

Council anticipates that further Amendments will be required to implement MILS; most likely initiated as private planning scheme amendments for specific land. The relevant DDO would be applied to guide future development and a corresponding extension of the activity centre boundary would be required.

² The title of this document is Brunswick Activity Centre Structure Plan 2016, however the Panel has used the abbreviation "BSP 2018" which is the term Council has used.

(i) The commercial corridors

The Sydney Road commercial area commences at Park Street in the south to Moreland Road in the north. It generally includes land east and west of Sydney Road that does not have direct frontage to it and is the largest strip shopping centre in the BAC.

The Lygon Street commercial area is more defined along the Lygon Street corridor, extending into east/west streets, but not to the degree of Sydney Road. It extends from Brunswick Road in the south to Albion Street in the north.

The Nicholson Street commercial area represents the eastern extent of the BAC. In the southern half, land east of Nicholson Street is within the City of Yarra. It extends from Brunswick Road in the south to Stewart Street in the north.

1.3 Panel process

At its meeting of 11 April 2018, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 27 April 2018 and comprised David Merrett (Chair), Debra Butcher and Kate Partenio.

Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Moreland City Council	Richard Tolliday, Kim Giaquinta and Nia Kolokas who called the following expert witness: - Ian Kluckow, land contamination, Golder
La Triestina Food and Manufacturing	Kyle O'Brien of Clement-Stone Town Planners
Triple R Broadcasters	Eleni Carrol of HWL Ebsworth Lawyers
Pia Herbert and Lester Townsend	Pia Herbert
Zivkovic, de la Coeur, Plompen and O'Toole	Richard Umbers of Peninsula Planning Consultants, who called the following witness: - Rory McPhillips, land contamination, Atma Environmental
Erica Plompen	
Wexham Holdings	John Carey of Minter Ellison
Dempton Industries	John Cicero of Best Hooper Solicitors
ID Barkly Street	Sean McArdle of Norton Rose Fulbright
Rod Duncan	
Edward Batrouney	
Peter Hansen	
David Eddy	

Kathryn Wellings

Christina Bozsán

Submitter 43 (1-7 Wilson Street Developer) and Submitter 112 (Nicholas Bourns) both withdrew from their allocated hearing time. Mr Naughton, on behalf of Submitter 43, advised it was satisfied with the post exhibition changes to the Amendment. The submission of Submitter 112 was delivered by Christina Bozsán (Submitter 107).

1.4 Summary of issues raised in submissions

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

(i) Moreland City Council

The key issues for Council were:

- to ensure the new zones and controls were consistent with MILS
- to avoid re-categorisation of land or the removal of land from the activity centre as these matters were settled in Amendment C158.

(ii) Relevant agencies

VicRoads (72) and the Environment Protection Authority (EPA - 135) did not object to the Amendment. The EPA considered Council would need to manage the interface of new residential development with existing industries and apply the agent of change principle. The EPA supported the application of the EAO to land identified as potentially contaminated. On this issue, the EPA stated:

Where land is identified as potentially contaminated and proposed that an environmental audit overlay is not applicable, an environmental site assessment which is peer reviewed by an independent, suitably qualified professional is strongly recommended, to verify this.

(iii) Individual submitters or groups of submitters

The key issues by submitters can be generally categorised as:

- Building height – some considered heights to be excessive and that they should be reduced to two to four storeys. In several instances landowners sought to increase building heights.
- Amenity impacts – arising from future development such as overshadowing and overlooking.
- Traffic congestion – the Amendment would increase traffic congestion.
- Car parking – the Amendment would increase parking congestion.
- Open space – concern about the lack of open space and the Amendments impact on existing open spaces.
- Zone choice – alternate zones were put forward such as the greater use of the MUZ and the use of the General Residential Zone (GRZ).

- Heritage – concern that development would unreasonably impact the heritage significance of areas.
- Infrastructure – existing infrastructure could not support greater density.
- Environmental Audit Overlay – concern the EAO had been applied to residential properties without evidence it was contaminated.
- Boundary of the BAC – concern as to how this was defined.

Many of these issues remain unresolved and are the subject of discussion in the following chapters. Those that are specific to a commercial area within the BAC are addressed in the relevant chapter. The more general issues (such as traffic, parking, amenity, open space and building height are considered in the Chapter 3 (General issues).

Some submissions raised the loss of property value as a point of objection. This issue is not considered to be relevant in planning assessments. This approach is consistent with other Panel, Advisory Committee and VCAT determinations. This report does not address this issue any further.

1.5 DELWP advice

The Department of Environment, Land, Water and Planning (DELWP) required a reduction in the number of design objectives in each DDO to a maximum of five, which is consistent with the Ministerial Direction on Form and Content of Planning Schemes.

1.6 Amendment VC148

Amendment VC148 was introduced into all Victorian planning scheme on 31 July 2018 and replaces the State Planning Policy Framework with a Planning Policy Framework, amongst other initiatives from the Smart Planning program. The assessment culminating in this report was completed prior to the introduction of Amendment VC148. Council should review the Amendment against Amendment VC148 prior to its adoption. The Panel notes that it may largely remove the need for the PO1.

Any Planning Scheme clause numbers referred to in this report reflect clauses which existed before Amendment VC148 was introduced.

1.7 Matters not addressed in this report

Not all MILS Areas affected by this Amendment were the subject of submissions or where general issues have been raised these have been addressed in Chapter 3. On this basis, the Panel does not specifically address the following MILS Areas and considers the exhibited controls are appropriate:

- MILS Area 48 (145 Glenlyon Road)
- MILS Area 56 (Barkly Street/Brunswick Road)
- MILS Area 57 (140 Barkly Street)
- MILS Area 62 (Victoria and Albert Streets).

1.8 Post exhibition changes and the approach of the Panel

Apart from the rezoning of land, the three key statutory tools to implement the direction of MILS in the BAC are the application of the current DDO18 (Sydney Road), DDO19 (Lygon Street) and DDO20 (Nicholson Street), with some post exhibition changes.

Council supported the following post exhibition changes in response to submissions:

- Amend the map to the Design and Development Overlay Schedule 19, to correct a previous error in the mapping of heights for the property at 20 Leinster Grove, Brunswick.
- Extend the boundary of the BAC in the Municipal Strategic Statement (MSS) at Clause 21.02 to include the properties proposed to be rezoned and included in the Design and Development Overlay Schedules 18, 19 and 20.

The post-exhibition changes to the three DDO schedules also addressed the conditions included in the Ministerial Authorisation for the Amendment which required conformity with the Ministerial Direction on the Form and Content of Planning Schemes.

A number of other errors and edits were also identified and included in the amended schedules.

As part of its Part A submission, Council provided Attachment 6 that contained all three DDO schedules with post exhibition changes included. The Panel has used these versions (to be known as “Document 1, Attachment 6”) as a basis for the recommendations in the report, not the exhibited versions of the DDO schedules.

Appendix C to this report contains the versions of DDO18, DDO19 and DDO20 that are supported by the Panel.

(i) Recommendation

The Panel recommends:

- 1. Adopt the post exhibition versions of Schedules 18, 19 and 20 to the Design and Development Overlay (Document 1, Attachment 6) subject to changes made by the Panel as shown in Appendix C and other specific recommendations provided in this report.**

1.9 Issues dealt with in this Report

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

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

This report deals with the issues under the following headings:

- Chapter 2 - Planning context
- Chapter 3 - General issues

- Chapter 4 - Environmental Audit Overlay
- Chapter 5 - Sydney Road
- Chapter 6 - Lygon Street
- Chapter 7 - Nicholson Street.

2 Planning context

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

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

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework:

- Clause 13.03-1 (Use of contaminated and potentially contaminated land) seeks to "ensure that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely." The Amendment supports this by applying the EAO to land which might be developed for a sensitive use.
- Clause 15.01-2 (Urban design principles) seeks to "achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties." The Amendment achieves this by applying the DDO to guide future development.
- Clause 16.01-2 (Location of residential development) seeks to "locate new housing in or close to activity centres and in urban renewal precincts and sites that offer good access to jobs, services and transport." The Amendment supports this objective by rezoning land to facilitate the creation of new housing, which is close to existing infrastructure including services, employment and transport.

Council submitted the Amendment was consistent with the following directions of *Plan Melbourne 2017-2050 (Plan Melbourne)* to:

- create a city structure that strengthens Melbourne's competitiveness for jobs and investment
- improve access to jobs across Melbourne and closer to where people live
- create development opportunities at urban renewal precincts across Melbourne
- manage the supply of new housing in the right locations to meet population growth and create a sustainable city
- deliver more housing closer to jobs and public transport
- facilitate decision making processes for housing in the right locations
- create a city of 20-minute neighbourhoods.

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

(ii) Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

- Clause 21.02 (Vision) which outlines Council's direction for a sustainable Moreland with a more resilient community, more attractive, with more accessible and safe places with a stronger local economy that provides the services to meet the needs of a growing community
- Clause 21.03-2 (Land for industry and economic regeneration) refers to Category 2 (Objective 5) and Category 3 (objective 6) land and the role it plays in retaining local employment and contributing to housing supply
- Clause 21.03-4 (Urban design, built form and landscape design) seeks to ensure development responds and contributes to its context and any relevant heritage significance.

The Amendment responds to this by applying planning controls that implement the role that has been identified for employment land by MILS.

2.2 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 Strategy)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

Planning Practice Notes

Council submitted that the Amendment is consistent with:

- Planning Practice Note 30 (PPN30) Potentially Contaminated Land, June 2005
- Planning Practice Note 46 (PPN46) Strategic Assessment Guidelines, June 2015.

2.3 Discussion

MILS underpins the strategic basis of the Amendment. The allocation of the categories was finalised under Amendment C158 that replaced MILUS with MILS and made a number of changes to the Municipal Strategic Statement, including policies that this Amendment relies upon. The question of whether land should be retained for industry or other uses was settled by MILS. The provisions included as part of this Amendment address how the land should be developed, not whether it should be.

Clearly the BAC has been and will continue to be subject to significant urban renewal that may take a number of decades to fully realise. This does not mean that a detailed yet broad land use strategy such as MILS that has only been part of the planning scheme for two years has got everything right. In one circumstance, the Panel has turned its mind to not what the controls should be but whether the land should be included in BAC at all (MILS Area 52). The need for a review of MILS is still a number of years away and this may be the time to consider whether this area should remain in the BAC. This should provide sufficient time to ascertain whether the opportunities presented by the BSP 2018 have been taken.

Plan Melbourne relies on former industrial land to contribute significantly to Melbourne's housing supply – and Moreland will do its fair share of the heavy lifting. The Sydney Road, Lygon Street and Nicholson Street commercial corridors will accommodate a growing residential population in an area that is well serviced with public transport, shopping and other services and facilities. *Plan Melbourne* identifies the BAC as a Major Activity Centre where there is an expectation of new, more densely designed housing.

Council admitted it had taken a conservative approach to the application of the EAO, particularly to land where there are sensitive uses in situ and/or whether the potential contaminant source is adjoining land. This issue remains unresolved and is discussed in Chapter 4.

Council provided a detailed response to the State and Local Planning Policy Frameworks; which the Panel generally endorses. The primacy of State policy is protected by the redevelopment of redundant industrial land for employment and housing uses, in an area with excellent access to transport and services.

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

3 General issues

3.1 Traffic and parking

(i) The issue

The issue is the potential for increased traffic and parking congestion.

(ii) Evidence and submissions

Approximately 25 per cent of submissions raised concerns regarding the potential for increased traffic and parking congestion as a result of increased development in the BAC. Of particular concern was the difficulty of travelling east-west and the impact of limited residential parking in developments, including illegal parking across driveways in streets where high parking demands exist.

Transport for Victoria (59) submitted that it supported the consistent implementation of the parking overlay and a review of the Moreland Integrated Transport Strategy (MITS). It noted that developments may result in increased demand for travel and it was important to minimise parking capacity whilst balancing the needs of the community.

Council submitted that it was currently undertaking a review of MITS, and transport issues related to this Amendment would be addressed as part of that review. Council advised it remains committed to encouraging increased use of public transport as well as walking and cycling to limit the potential for increased traffic. Notwithstanding this, it noted that traffic impacts will need to be addressed in all development proposals and existing planning scheme provisions apply.

In relation to the PO, Council noted that it was introduced by Amendment C123 and since that Amendment had been consistently applied across the municipality in all mixed use, residential growth, commercial and activity centre zones. The PO1 does not reduce the requirement for residential parking, with the exception of an exemption for visitor parking, nor does it impact kerbside parking. As a part of the MITS review, Council advised it is developing a Parking Strategy to explore whether parking rates should be changed and how sustainable transport initiatives can be funded.

(iii) Discussion and conclusions

Whilst rezoning of land and the introduction of a DDO on land will often be supported by a strategic transport assessment, the Council in this instance relies on its strategic work encapsulated in the MITS and the Brunswick Integrated Transport Strategy for this. Noting that a review of this work is presently underway and that assessments of individual development applications will need to consider the traffic and parking impacts, the Panel considers this approach is entirely appropriate.

In relation to the application of the PO, the Panel supports the consistent application of it across the BAC and for Council to review the adequacy of the rates through its parking strategy project. The Council's approach to parking and traffic issues is to encourage a modal shift to

public transport and cycling. PO1 reflects this by not requiring visitor parking for developments.

It is also noted that Amendment VC148 has amended Clause 52.06-5 to now require the application of Column B parking rates to all land within approximately 400 metres of the Principal Public Transport Network. This is consistent with the PO.

In relation to the DDO introducing preferred heights on some of the subject land, it is noted that these heights are guidance in relation to urban design outcomes and do not override any considerations of traffic and parking impacts.

The Panel concludes:

- the consistent application of the PO1 on all land within the activity centre is appropriate
- traffic and parking impacts can be addressed at the planning permit stage and through the MITS review and the Parking Strategy, both projects currently being undertaken by Council.

3.2 Land in two zones/two MILS categories

The general approach of Council to rezone Category 2 land to C1Z and Category 3 land to MUZ is not universal and there are some variations where land is either in two zones or in two MILS categories.

The relevant MILS areas are:

- MILS Area 44: 160-164 Victoria Street
- MILS Areas 44 and 45: 154-158 Victoria Street
- MILS Areas 58 and 68: 1-5 Weston Street and 12-14 Edward Street
- MILS Areas 68 and 69: 13-15 Edward Street (the Edward Street car park)
- MILS Areas 68 and 70: 59-61 Edward Street
- MILS Areas 63 and 72: 17-19 Hope Street
- MILS Area 72: 523 Sydney Road
- MILS Area 73: 240-250 Lygon Street (includes 20 Leinster Grove).

In these circumstances Council advised it would tailor an approach that best fits the context of the land and the strategic direction of MILS. Not all of this land was the subject of submissions however the Panel has addressed each to ensure the 'tailored' outcome is appropriate. This consideration is undertaken in the relevant chapters, as follows:

- Chapter 5 – Sydney Road (1-5 Weston Street and 12-14 Edward Street, 13-15 Edward Street, 59-61 Edward Street, 17-19 Hope Street and 523 Sydney Road)
- Chapter 6 – Lygon Street (154-158 Victoria Street, 160-164 Victoria Street and 240-250 Lygon Street).

The Panel notes that Clause 21.03-2 of the MSS sets out the implementation strategies for the MILS areas. This strategy envisages that a mix of zones may be required over larger sites to ensure that employment uses are prioritised in Category 1 and 2 Employment areas. MILS also states that the MUZ, RGZ or GRZ should be applied in Category 3 Transition-residential areas.

Generally, the Panel considers the proposed zoning of land should be consistent with the relevant MILS land category, unless the zoning would be anomalous for the area or result in an unreasonable restriction to existing and/or future land uses as a result of access arrangements and land being in two zones.

3.3 Submission from Rod Duncan

(i) The issue

Mr Duncan raised the following key issues:

- The strategic justification given the Brunswick Structure Plan (2010) is now almost 10 years old.
- Potential consequences of incremental change given being used in a transformation change locality.
- Value uplift capture opportunities.
- Uncertainty in relation to building heights.
- The simplification of the objectives in the DDOs.
- Correctly defining the BAC boundary.

(ii) Submissions

Strategic justification

Mr Duncan submitted that the amendment would add substantially to the size of the BAC without any review of the statutory regime currently applied. He raised concern that the statutory documents are based on 10 year old studies and did not reflect current issues and trends, including the boundaries of the BAC.

Council submitted in reply that the strategic work underpinning the justification is the MILS and the BSP. Capacity modelling was undertaken in the preparation of the amendment to check generation estimates against forecasted need.

Incremental change

Mr Duncan submitted that the Amendment should be contributory to change rather than simply adopting the existing regime.

Council submitted in reply that the DDOs were only implemented into the scheme just under 2 years and it was too early to initiate a review. A review of the Parking Overlay will be a part of a current review of the Moreland Integrated Transport Study.

Value uplift capture opportunities

Mr Duncan submitted that the Amendment should include mechanisms for value capture due to potential uplift in property values as a result of rezoning.

Council submitted in reply that there is a Development Contributions Plan Overlay over the area, which is the current tool to collect funds for the provision and maintenance of public infrastructure.

Building Heights

Mr Duncan submitted that there needs to be certainty for the community in relation to building heights, which is not provided by the use of 'preferred maximum' heights.

Objectives in the DDOs

Mr Duncan submitted that the simplification of the DDO objectives down to five may have an adverse effect.

Council submitted that the reworking of the objectives was to comply with a direction from the DELWP to limit the number of objectives to five and to avoid the inclusion of metrics in the objectives. To achieve this, some objectives are being combined whilst some are being captured elsewhere in the DDO.

Correctly defining the BAC

Council supported Mr Duncan's request to amend Map 1B Strategic Framework Plan at Clause 21.01 (Vision) to ensure the land added to the BAC with the application of a DDO is now within the BAC boundary.

(iii) Discussion and conclusion

This Amendment primarily seeks to implement the strategic work of MILS, which was introduced into the planning scheme in 2017 (Amendment C158). The Amendment also seeks to extend the application of existing DDOs which were implemented into the Scheme only two years ago (Amendment C134). The Panel agrees with Council that the strategic direction provided by MILS is the appropriate work on which to base the rezoning of Category 2 and Category 3 land and that insufficient time had elapsed to justify a review of the DDOs, including height controls.

Mr Duncan did submit that some boundaries of the BAC should be reviewed. The Panel considers this should be an element of any future review and considers the future role of MILS Area 52 in Barkly Street should be considered further, particularly if the market is not taking advantage of the new provisions. This matter is considered in Chapter 6.5.

The concept of value capture is an emerging issue that the state government has yet to provide direction on. In lieu of this the Panel is satisfied that the existing Development Contributions Plan is the appropriate mechanism to fund local infrastructure needs resulting from changes in land use and intensity.

The reduction of objectives in the DDOs may reduce the intent of the objectives if it is not captured elsewhere in the DDO schedules. However, the Panel is comfortable that the post-exhibition schedules do appropriately capture the intent of the exhibited objectives and so supports the changes proposed by Council in response to the direction from DELWP.

The Panel supports the correct definition of the BAC in Clause 21.02.

(iv) Recommendation

The Panel recommends:

- 2. Amend Clause 21.02 (Vision), Map 1B Strategic Framework Plan to ensure the land added to the Brunswick Activity Centre with the application of a Design and Development Overlay is shown within the Brunswick Activity Centre boundary.**

3.4 Residential amenity

(i) The issue

The issue is whether there is sufficient protection of residential amenity within the DDO schedules.

(ii) Submissions

36 submissions raised concerns with the potential residential amenity impacts such as overshadowing and overlooking.

Council referred the Panel to the provisions of each DDO schedule to demonstrate that residential amenity is to be addressed by permit applicants. The specific provisions were:

- a prescribed street wall height where there is a sensitive interface and significant streetscape (such as heritage significance) that is to be protected
- where there are no prescribed street wall heights for sites containing buildings of individual heritage significance, that appropriate consideration is given to the heritage significance of the site and its context
- recessed upper floor levels defined by the width of a street
- additional setbacks to adjoining residential land outside of the BAC
- detailed design direction (e.g. next to public open space).

(iii) Discussion and conclusion

The Panel is cognisant that the DDO schedules are currently part of the planning scheme and apply to many other areas within the BAC. The Panel considers there is sufficient protection and discretion to allow for residential amenity issues to be addressed and is not willing to make significant changes to existing controls.

In addition, the Panel notes that in the case of land in the MUZ, any buildings or works constructed on a lot that abuts land which is in the GRZ or NRZ must meet the requirements of Clauses 55.04-1 (Side and rear setbacks), 55.04-2 (Walls on boundaries), 55.04-3 (Daylight to existing windows), 55.04-5 (Overshadowing open space) and 55.04- 6 (Overlooking), along that boundary. Other zoning and overlay controls may also apply that also require consideration of residential amenity.

3.5 Building height

(i) The issue

The issue is whether the building heights are appropriate.

(ii) Submissions

87 submissions raised concerns with the building heights in the DDOs to be applied to land rezoned as part of the Amendment. The majority of these submissions considered the proposed heights were excessive and sought the heights be reduced to two to four storeys.

(iii) Discussion and conclusion

There is no doubt the BAC will change significantly over time with a heavy emphasis on employment land and residential apartment buildings. *Plan Melbourne* requires former industrial areas to provide infill housing opportunities to address housing choice and housing affordability. The approach of Council is to have higher built forms along the commercial corridors where there are less sensitive interfaces with lower forms at their periphery. The Panel considers this is appropriate and a widely supported planning principle.

Council noted that the preferred building heights may not be achievable due to smaller land sizes and sensitive interfaces.

Several submissions requested mandatory height controls. These were addressed as part of Amendment C134 and were not supported as they are generally not appropriate in a Major Activity Centre.

Where there were site specific, rather than general issues raised about height, these have been addressed in the chapters associated with the relevant corridors.

3.6 Notice and third party appeal rights**(i) The issue**

The issue is whether development proposals that comply with the height and setback requirements of the DDO schedules should be exempt from notice and third party appeal rights.

(ii) Submissions

The loss of third party appeal rights as a result of the application of DDO18 was a common theme amongst many of the submissions, with submitters concerned that they would not have the ability to comment on any future development that might occur as a result of proposed rezoning.

Council noted that the exemptions included at each DDO schedule only apply in relation to the requirements of the DDO schedule (heights and setbacks) and do not exempt notice requirements that might be afforded under other parts of the planning scheme such as the zones, parking, heritage and environmental audit overlays.

(iii) Discussion and conclusion

The Panel agrees with Council and concludes:

- the exemptions provided in each DDO schedule were put in place by Amendment C134 and were considered an appropriate mechanism to encourage development to meet the preferred height and setback standards for the area

- in relation to submitter concerns about transparency of process, the Panel agrees with the explanation provided by Council that whilst the DDO schedules provide exemption from notice, decision and review rights of the *Planning and Environment Act 1987* (subject to compliance with specified requirements of the DDO) these exemptions do not apply to underlying zone or indeed any other overlay controls that might apply.

The Panel considers that the continued application of these 'exemption' clauses in DDO18, which were approved under a previous amendment, is appropriate.

4 Environmental Audit Overlay

4.1 Overview

The Background Report provides a handy summary of the history of the EAO in the BAC. There has been a number of investigations into potentially contaminated land in the BAC since 2011.

The Background Report advises:

In 2011 as part of background work for Amendment C134, which implemented the Brunswick Structure Plan into the Moreland Planning Scheme, an assessment of potentially contaminated land was conducted by Sinclair Knight Merz (SKM); this investigation culminated in the Brunswick Major Activity Centre – Environmental Audit Overlay Assessment, 15 December 2011 report. This report made recommendations regarding whether the EAO should be applied to land which was rezoned to allow for sensitive uses. Part of these investigations included assessment of land which ultimately wasn't rezoned through the C134 process. Where sites were identified through this process as needing an EAO it is recommended that this is sufficient justification to apply the EAO. Additionally, there were some sites which were recommended to not be included in the EAO. Given the passage of time and an absence of understanding as what may have occurred on the sites since the 2011 report was conducted, these sites have been reassessed by Golder.

Golder prepared an assessment³ in 2017 to support the preparation of the Amendment based on the following agreed methodology established between Council, the EPA and the DELWP:

- *Step 1 – Visual Inspection*
- *Step 2 – Research Historic land use*
- *Step 3 – Based on Step 2, confirm those properties that have had a continuous residential or otherwise non-pollution land uses since first developed*
- *Step 4 – Consider the potential for sub-soil/groundwater contaminants from adjoining properties.*

Using this methodology, Table 2 outlines the rationale used.

Council referred to the Ministerial Advisory Committee Independent Inquiry into the EPA. On 7 June 2018 a trial of a more efficient approach for assessing potentially contaminated land was announced. A Preliminary Risk Screen will test and refine a faster and more cost-effective approach to assessing sites that have a low to medium potential for contamination. The new approach will be based upon a desktop study and site inspection which may include sampling. The Preliminary Risk Screen would determine whether an audit was necessary.

³ *Brunswick MILS Rezoning's Assessment of Potential for Contamination (GOLDER Pty. Ltd. 28 March 2017)*

Table 2 EAO application rationale

Property scenario and assessment detail	Proposed approach to Amendment C164
<ul style="list-style-type: none"> Existing EAO Proposed to be rezoned to allow sensitive uses. 	<p>There are 85 properties which already have an EAO applied to them, and are proposed to be rezoned to allow for sensitive uses to occur. The properties were proposed to be rezoned through Amendment C134 to allow sensitive uses however the properties were ultimately not rezoned. It appears that the EAO may have been applied previously in error, due to mapping not being updated, or pre-emptively.</p> <p>No changes proposed.</p>
<ul style="list-style-type: none"> Proposed to be rezoned to allow for sensitive uses. Previously recommended for inclusion within an EAO however the land has not been rezoned to allow sensitive uses, thus an EAO has not been applied. <p>(SKM, 2011)</p>	<p>There are 22 properties which were previously recommended by the 2011 SKM assessment to be included in an EAO however this was not implemented as the properties were not rezoned to allow sensitive uses.</p> <p>Apply the EAO to these properties.</p>
<ul style="list-style-type: none"> Property has been rezoned to a zone which allows sensitive uses. 	<p>There are 44 properties which have already been rezoned to allow for sensitive uses. Application of the EAO was</p>
<ul style="list-style-type: none"> No EAO applied as not required. <p>(SKM, 2011)</p>	<p>considered at this time and the sites were not identified as having potential for contamination. No EAO was applied.</p> <p>No changes proposed.</p>
<ul style="list-style-type: none"> Property proposed to be rezoned to a zone which allows for sensitive uses. Property has been recommended to be included in an EAO. <p>(Golder, 2017)</p>	<p>There are 98 properties which have been identified as having the potential for contamination and are recommended for inclusion within an EAO.</p> <p>Apply the EAO to the properties.</p>
<ul style="list-style-type: none"> Property is proposed to be rezoned to a zone which allows for sensitive uses. Property has low risk for potential contamination and is not recommended to be included in an EAO. <p>(Golder, 2017)</p>	<p>There are 39 properties which have been assessed as having a low risk for potential contamination and are not recommended for inclusion within an EAO.</p> <p>Do not apply EAO, no changes proposed.</p>

4.2 The issue

The issue is whether the application of the EAO to land already used for sensitive uses is appropriate.

4.3 6 and 8 Ann Street

(i) Evidence and submissions

Council submitted the EAO had been applied to 6 and 8 Ann Street (and 10 Pitt Street) as “*an appropriate response for Council to satisfy itself that the land has been identified as potentially contaminated and (sic) is earmarked for further assessment or remediation.*” For Ann Street, the potential contamination source is not the historic use of the land (which has been residential for many years) but the motor mechanic to the north, at 150-152 Victoria Street, on the basis that groundwater may have been contaminated and the land in Ann Street is adjacent to the mechanic (albeit separated by a three metre wide laneway) and “downstream” of it.

Mr Kluckow provided land contamination evidence on behalf of Council and referred to another report he authored⁴. Mr Kluckow referred to a 2010 agreement between Council, the EPA and the (then) Department of Planning and Community Development to use a four-step approach to identify land that was unlikely to be contaminated during the MILUS process (documented in *Brunswick Major Activity Centre Environmental Audit Overlay Assessment* prepared by Sinclair Knight Merz in 2011 (SKM 2011)), as follows:

- *Visual inspection of all properties within the precinct to identify those that appear to have a long standing non-polluting activity, e.g. residential.*
- *Research the land use history of ‘non-polluting’ sites, using Council rate records and similar data from the Public Records Office and State Library.*
- *Confirm those properties that have had continuous residential use or otherwise non-polluting land uses since first developed.*
- *Gain advice from an environmental consultant or potential for sub-soil / groundwater transport of contamination from adjoining properties.*

Mr Kluckow considered this approach to define potentially contaminated land was broader (by way of an assessment of groundwater impacts from adjoining properties) than that required by Ministerial Direction No. 1 (MD1) which is restricted to an assessment of the use of the site itself. Mr Kluckow accepted that the consideration of contamination from adjoining properties was considered in the PPN30. In establishing whether to apply the EAO “*the approach that was adopted was that where there was some evidence to indicate that the site could be affected by an off-site source of contamination in particular, in discussion with Council, a conservative position in regards to the application of the EAO was taken.*”

Mr Kluckow advised that sites with long established residential uses were then assessed in the context of surrounding uses and the risk they present. Potential contamination risk was assessed against the following factors:

⁴ Amendment C164 – Brunswick MILS Rezonings – Assessment of potential for contamination, Golder March 2018 (Golder 2018)

- *The type of adjacent use and the likelihood of the presence of sufficient volumes of chemicals that could migrate via vapour of groundwater pathways.*
- *The likely direction of migration such as the groundwater flow direction. Groundwater flow direction was estimated from surrounding information.*
- *The proximity of the potentially polluting site to the site being considered. Generally, only sites adjacent to the potential source site were considered potentially affected.*

Mr Kluckow referred to SKM 2011 and noted there was a different outcome for 12 out of the 35 properties commonly assessed. This included 6 and 8 Ann Street where the EAO was to be applied due to groundwater contamination risk from the adjacent mechanic and Pitt Street where the land was part of a former quarry. For Ann Street, he concluded:

In my opinion, the Golder (2018) assessments which differ from SKM (2011) are defensible on the information reviewed and in line with the adopted methodology but may also reflect the final recommendation being more conservative, at the request of Council, where there was uncertainty regarding the potential for contamination from adjacent offsite contamination sources.

A 3 metre wide laneway separates the Ann Street properties and the motor mechanic and Mr Kluckow considered this was sufficient to still consider the uses were adjacent to each other.

Mr Kluckow considered *“motor mechanics have a generally high risk of contamination of groundwater due to their use and storage of liquid fuels and solvents. This is supported by General Practice Note – Potentially Contaminated Land (DSE 2005) which has a table of site uses and their potential for contamination (Table 1). I note that “Automotive repairs/Engine works is considered to have a “High Potential” for contamination consistent with my assessment.”*

Mr Kluckow did not directly investigate the depth of or flow of groundwater under the Ann Street properties and relied upon Environmental Audits for three properties located around the land (not adjacent and some distance from them) to establish that the groundwater flow was in a south east direction towards Merri Creek at a depth of around six to eight metres.

Mr Umbers represented the owners of 6 and 8 Ann Street and called contamination evidence from Mr McPhillips from Atma Environmental. Mr McPhillips summarised his evidence as:

- *Application of an EAO to the sites at No. 6 & No. 8 Ann Street, Brunswick (and potentially other sites subject to the proposed planning amendment) is not appropriate.*
- *The current and historical residential use of the sites at No. 6 & No. 8 Ann Street, Brunswick, does not define the land as ‘Potentially Contaminated Land’ in accordance with the definition under Ministerial Direction No. 1 (“Potentially Contaminated Land”) and thus application of an EAO to the sites is not in accordance with the Direction.*
- *The “potential” for migrating groundwater contamination from the adjacent mechanics at 150-152 Victoria St, which is “possibly” upgradient of the sites, is at best likely to pose a medium potential for contamination at the sites and is unlikely to represent a ‘high potential’ for contamination which would*

significantly and adversely affect use of the land for sensitive uses. In accordance with the DSE General Practice Note on Potentially Contaminated Land (June 2005), an Environmental Audit (or application of an EAO) is required only when land (intended for a sensitive use) presents a 'high potential' for contamination (and not a medium or low potential for contamination). Golder (2018) did not comment on whether (in their expert opinion) the potential for migrating contamination presented a high or medium potential for contamination.

- *The March 2018 report by Golder (used to inform the proposed Amendment), relies upon a highly conservative position – namely that where there is any uncertainty regarding the status of a site the EAO should be applied. This approach is inappropriate and is not consistent with the DSE General Practice Note, which states that “the EAO is not simply a means of identifying land that is, or might be contaminated and should not be used for that purpose” and that “planning authorities should be careful in applying the overlay” to land already used for sensitive purposes.*
- *The methodology used to determine which sites are ‘potentially contaminated’ and require an EAO, should be reviewed and further considered with direct reference to Ministerial Direction No. 1 (“Potentially Contaminated Land”) and the DSE General Practice Note on Potentially Contaminated Land (June 2005), particularly for those sites which are currently used for sensitive uses. Golder (2018) acknowledges that MCC should give further consideration in this regard and the Direction provides an exemption to the requirements for an Environmental Audit/EAO in such circumstances.*

(ii) Discussion

The application of an EAO could be said to be a “blunt tool” to achieve an outcome that could similarly be achieved under other provisions of the planning scheme; and be delivered at the discretion of Council, not as a mandatory and onerous requirement of the EAO. The Panel notes, as an example, that Clauses 54.01-1 and 55.01-1 requires a neighbourhood and site description to consider “*any contaminated soils and filled areas, where known*”. Any development, no matter how small, would require an environmental audit on land, in respect to Ann Street, where the potential source of contamination is from adjoining land. PPN30 confirms this where it notes “*all buildings and works associated with a sensitive use (irrespective of how minor) will trigger the need to undertake an environmental audit.*” Hence, the Panel broadly agrees with Mr McPhillips that the EAO should be applied with caution.

As PPN30 puts it, “*the EAO is not simply a means of identifying land that is or might be contaminated and should not be used for that purpose. Previous zoning is not sufficient justification in itself to justify application of the EAO*”. For sites that already contain sensitive uses (like 6 and 8 Ann Street) “*if there is no evidence of potentially contaminated land it may not be appropriate to apply the EAO to these sites.*”

At a broad level, Moreland is not alone in considering how to deal with residentially used land that may be impacted by on or off-site contamination. This is an issue that is common to much

of inner Melbourne and other areas which could benefit from a state-wide approach, driven by the EPA. The EPA submission provides the Panel with some guidance on this issue where it supported the application of the EAO to land identified as potentially contaminated, but stated:

Where land is identified as potentially contaminated and proposed that an environmental audit overlay is not applicable, an environmental site assessment which is peer reviewed by an independent, suitably qualified professional is strongly recommended, to verify this.

This submission seems appropriate if the land is identified as potentially contaminated and the EAO is not proposed to be applied. It is however predicated on the land being identified as potentially contaminated. The Panel considers the degree of risk/potential for contamination, nexus, context and significance would all be considerations, particularly for off-site contamination, in deciding whether an EAO would be applied. The Panel notes that it did not have the benefit of the EPA attending the Hearing.

In response to questions from Mr Umbers and the Panel, Mr Kluckow:

- conceded current residential use was a matter to be considered and a new sensitive use was unlikely for the land
- confirmed direct investigation by boring or other means is not a requirement of PPN30 in establishing whether there was potential for contamination
- confirmed the depth of groundwater was generally 6 to 8 metres, as taken from other environmental audits in the area. There is the potential of local underground mounding, particularly in basalt, that could divert groundwater from a general flow direction
- agreed the likely risk source is from vapour, not direct contact with groundwater
- confirmed other residentially used land at 2 and 4 Ann Street did not have the EAO applied as it was not considered to be adjacent to the motor mechanic and agreed there is not a threshold separation distance that is used to define “adjacency”
- agreed that PPN30 does not give a specific methodology for assessing off-site contamination risk
- in response to the MD1 purpose that a sensitive use would have to be “*significantly adversely affected by any contamination*”, submitted that PPN30 would help to interpret that but “*the reality is we can’t tell if it is significant or not*”
- confirmed the impact of vapour is greatest above the source and dissipates as you move away from it. Vapour could come from storage of fuel on site and chlorinated hydrocarbons that mechanics typically use
- agreed that the EAO is onerous and a cost of \$50,000 would be typical for an environmental audit and even a small extension to the dwelling would trigger the need for an audit
- agreed that if an EAO was not applied then Council could still require an environmental site assessment under MD1 to consider this issue, which would be a good outcome but “*that is not what we were asked to do.*”

The Panel agrees with Mr Umbers and Mr McPhillips that MD1 is not relevant to land potentially affected by an off-site contamination source (such as 6 and 8 Ann Street) because

the land has not been “used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel”⁵. The Panel therefore concludes that under MD1, the land does not meet this definition and therefore MD1 is not applicable to the land. This is important as it is MD1 that contains the test that Council is required to meet – it must satisfy itself that the environmental conditions of land proposed to be used for a sensitive use is suitable for that use. It is then arguable whether this test is relevant to land affected by off-site contamination. PPN30 seems to address this issue with more discretion where it states “*where sensitive uses already exist on a site the planning authority, before applying an EAO, should satisfy itself that these sites are potentially contaminated (through site history records).*”

The Panel agrees with Council that PPN30 does have application in circumstances where the potential contamination originates from surrounding land. However, PPN30 is clear that Council or a planning authority should generally apply the EAO with caution to land, but allows for more discretion when considering potential contamination from adjoining land. Council supports the application of the EAO and, on that basis and according to PPN30, the land “*is unlikely to be suitable for a sensitive use without more detailed assessment and remediation works or management.*” PPN30 provides an additional distinction for off-site contamination:

Consider any available information about the site: Any potential contamination from surrounding land uses (for example, an adjacent service station known to be causing off-site contamination).

This distinction is important (and appropriate) for an adjacent land contamination source that the bar be set higher and there be confirmation that the contamination is related to adjoining uses. An adjoining land owner that had no involvement in the contaminating use would bear the burden of an environmental audit and the contaminating site may be open to legal challenge. Overall, in the current circumstance the:

- motor mechanic is not known to be causing off-site contamination
- land at 6 and 8 Ann Street is not known to be contaminated
- direction of groundwater flow and whether there is ‘mounding’ that may impede it is unknown.

Mr Kluckow referred in his evidence to Table 1 of PPN30 to establish that automotive repair/engine works have a high potential for contamination. The Panel agrees with this interpretation however the preamble to Table 1 indicates the grading (high, medium or low) is relevant to the land on which the use operates, not adjoining land. Mr Kluckow agreed with the Panel that, in considering adjoining land, the potential for contamination would reduce as you move away from the site. For the Ann Street land it then stands to reason that there is a reduced potential for contamination than what could exist on the motor mechanic site.

Table 1 of PPN30 notes that “chemical storage” and “fuel storage” are activities which have a medium potential for contamination. These are the general activities that both experts considered could be the source of contamination from a motor mechanic, although Mr Kluckow considered there may have historically been nefarious disposal of liquids into the rear laneway which apparently was reasonably common.

⁵ Refer to the definition of potentially contaminated land in Ministerial Direction No. 1

Mr Umbers referred to a local planning policy (Clause 22.03 – Potentially Contaminated Land) in the Maribyrnong Planning Scheme for land that does not have the EAO applied but was previously used for industrial purposes. A similar policy for Moreland would not be appropriate in this circumstance as it does not apply to land that was formerly zoned industrial but has a long history of residential use. A site analysis and design response is one way of capturing this need for further investigation and the requirements of Clauses 54.01-1 and 55.01-1 in relation to medium density housing and development of up to four storeys, does in part identify the need for such matters to be considered, by requiring a description of the location of any contaminated soils and fill areas ‘where known’. Neither approach is ideal – the EAO is too onerous in those circumstances and Clauses 54.01 and 55.01-1 require consideration of contaminated and filled soils “where known”. One of the objectives of planning in Victoria is to allow for the fair development of land and the Panel considers the Council approach of applying the EAO to land already used for sensitive uses where there is no clear evidence of potential contamination is not fair and too onerous. The new EPA trial program is well intended and may result in a better approach for the consideration of these marginal sites.

An alternate and possibly more longer term approach that would require broad input from all stakeholders is to apply the EAO to land that contains established sensitive uses but allow an environmental site assessment, not an audit, to establish whether the land is in an environmental condition suitable for the sensitive use and enable the Council to schedule in land proposals where either an environmental site assessment or environmental audit would not be required. Minor proposals such as dwelling extensions could be exempt from the provisions.

(iii) Conclusion

The Panel concludes the land at 6 and 8 Ann Street:

- does not meet the definition of potentially contaminated land under the provisions of MD1 as it only applies to land that has been “*used for industry, mining or for the storage of chemicals, gas, waste or liquid fuel*”, which is not the case for 6 and 8 Ann Street
- is unlikely to be considered as potentially contaminated land under PPN30 as the motor mechanic at 150-152 Victoria Street Brunswick is not known to be causing off-site contamination, the land is not known to be contaminated and the direction of groundwater flow has not been confirmed under the land
- has no history of the land ever being used for anything other than residential uses
- has a reduced potential for contamination as it is separated from the contaminant site by a three metre wide laneway and the general activities of “fuel storage” and “chemical storage” which are relevant to a motor mechanic have a medium potential for contamination on the land on which contamination occurs, not adjoining land; which does not justify the application of the EAO
- could be required by Council to provide an environmental site assessment if development is proposed.

4.4 10 Pitt Street

(i) Evidence and submissions

For Pitt Street, the contamination source is not groundwater but the historic quarrying of the land and uncertainty of the type of fill that was used to fill it. The quarry crosses the south east corner of 10 Pitt Street (Figure 3), however Mr Kluckow accepted there was some uncertainty with the mapping and whether immediately adjacent land was impacted.

Mr Kluckow concluded:

Whilst I recognise the uncertainty in this assessment, under the methodology adopted, the presence of the quarry on site I consider to be evidence of potential contamination based on mining activity and the potential for filling and so in my opinion a recommendation of an EAO is appropriate for 10 Pitt Street Brunswick.

Ms Plompen (97), land owner of 10 Pitt Street, submitted that her land “*should be exempt from the EAO*” on the basis the land:

- is currently used as a sensitive use
- has had a dwelling on it since at least the 1920s/1930s.

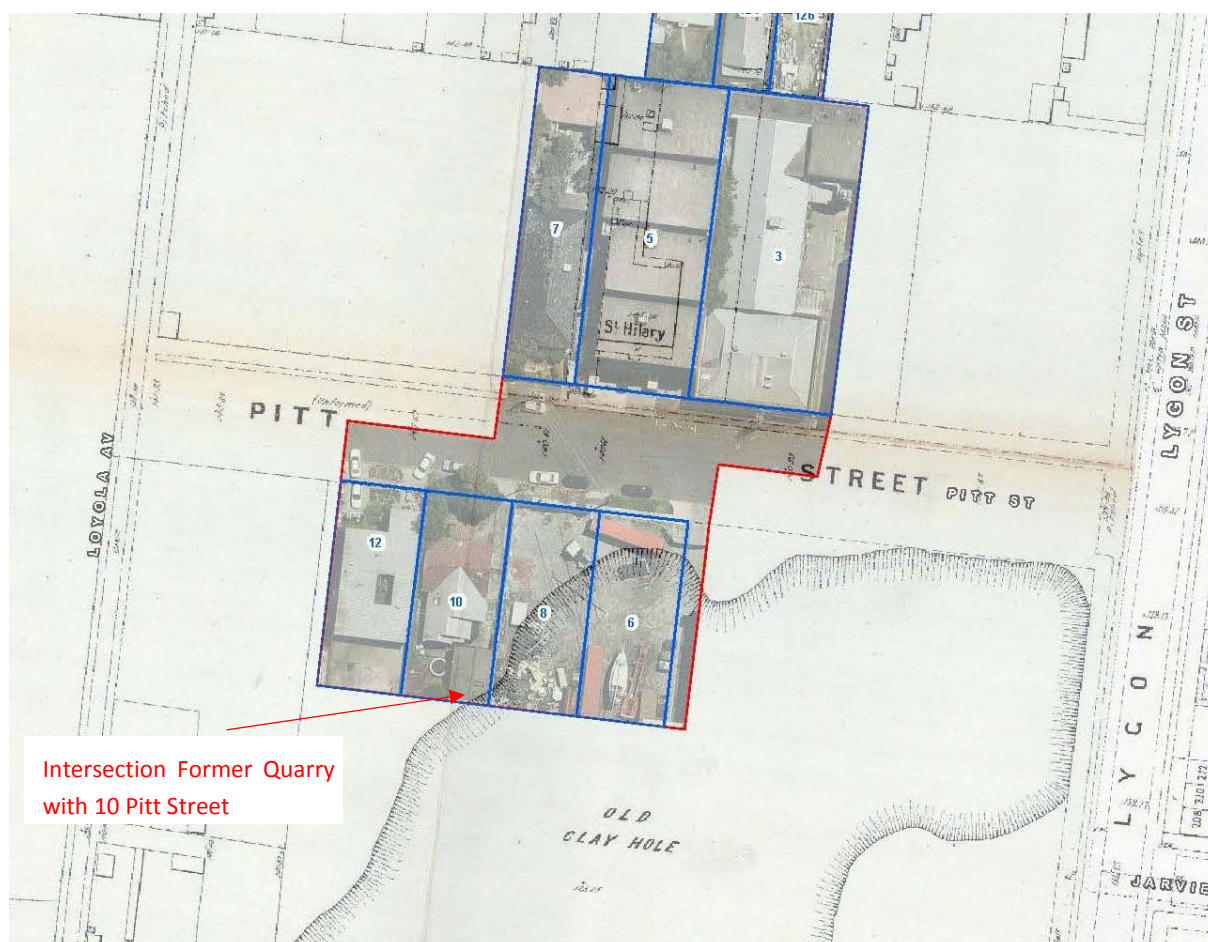
The explanatory statement of MD1 mentions a ground for exemption may be that the potentially contaminated land is already used for a sensitive use. Mr McPhillips accepted that there are not many exemptions sought or granted.

Ms Plompen referred to former Clause 15.06 of the Moreland Planning Scheme (now Clause 13.03-1), Clause 54.01-1, Clause 55.01-1 and PPN30 as other parts of the planning scheme that still require contamination issues to be addressed where the EAO may not be applied.

(ii) Discussion

The evidence that has been put by Council is that a very small portion (around 5 per cent) of the land at 10 Pitt Street was historically used as a quarry and filled with unknown material, and the full application of the EAO to the land was appropriate. The Panel notes the mapping of potential contamination in the planning scheme is not the same as other environmental risks such as flooding where it is only the risk that is mapped. Irrespective of the extent of potential contamination, all of the land has the EAO applied as there is still uncertainty on the extent of it and whether it exists at all.

The evidence that Council has presented relies on historic maps that show the outline of a quarry overlaid by current street layout and lot boundaries. While the contamination source (quarry and its subsequent fill) only affects a very small part of the land, any modifications to the dwelling that is located outside of the quarry area would trigger the need for an environmental audit, even a first storey extension that does not create ground disturbance, as the EAO is to be applied to all of the land.

Figure 3 Impact of quarry on 10 Pitt Street

Unlike its consideration of the land in Ann Street, the Panel agrees that MD1 does apply as the land has a history of mining (quarrying) and therefore Council must satisfy itself that the land is in a suitable condition for the sensitive use.

It is unfortunate for Ms Plompen that the EAO is to be applied based on only a small portion of the land may have been quarried. The Panel refers to Mr Kluckow's comment that this is a point in time in the early 1900s and the quarry may have been larger (or smaller). On the basis of there being some history of the land being used for quarrying, and in the absence of any further assessment work being available which further clarifies the presence or otherwise of contamination on the land, the Panel is satisfied that the EAO should be applied.

The Panel notes that PPN30 lists "filling (imported soil)" with a medium potential for contamination which would not justify the application of the EAO. Council's approach could be seen as overly conservative, however the Panel has been presented with some evidence of quarrying on the land which, under MD1, means it is considered to be potentially contaminated land.

The Panel was uncertain as to whether Ms Plompen was asking the Panel to exempt her land from the requirements of MD1. To clarify, the Panel does not have this power as it is the relevant Minister that can only exempt land from the provisions of MD1. If redevelopment of the land was proposed, then this may provide Ms Plompen with a pathway to consider. Otherwise, if the land is to remain in residential use for a single dwelling (as currently

formatted without any extensions of buildings and works), the EAO will not place an added burden on the land owner.

(iii) Conclusions

The Panel concludes the land at 10 Pitt Street:

- is affected by the provisions of MD1 as the land has a history of quarrying, the extent of which is not known conclusively
- is appropriate for the application of the EAO.

4.5 Recommendations

The Panel recommends:

- 3. Delete the Environmental Audit Overlay from 6 and 8 Ann Street.**

5 Sydney Road

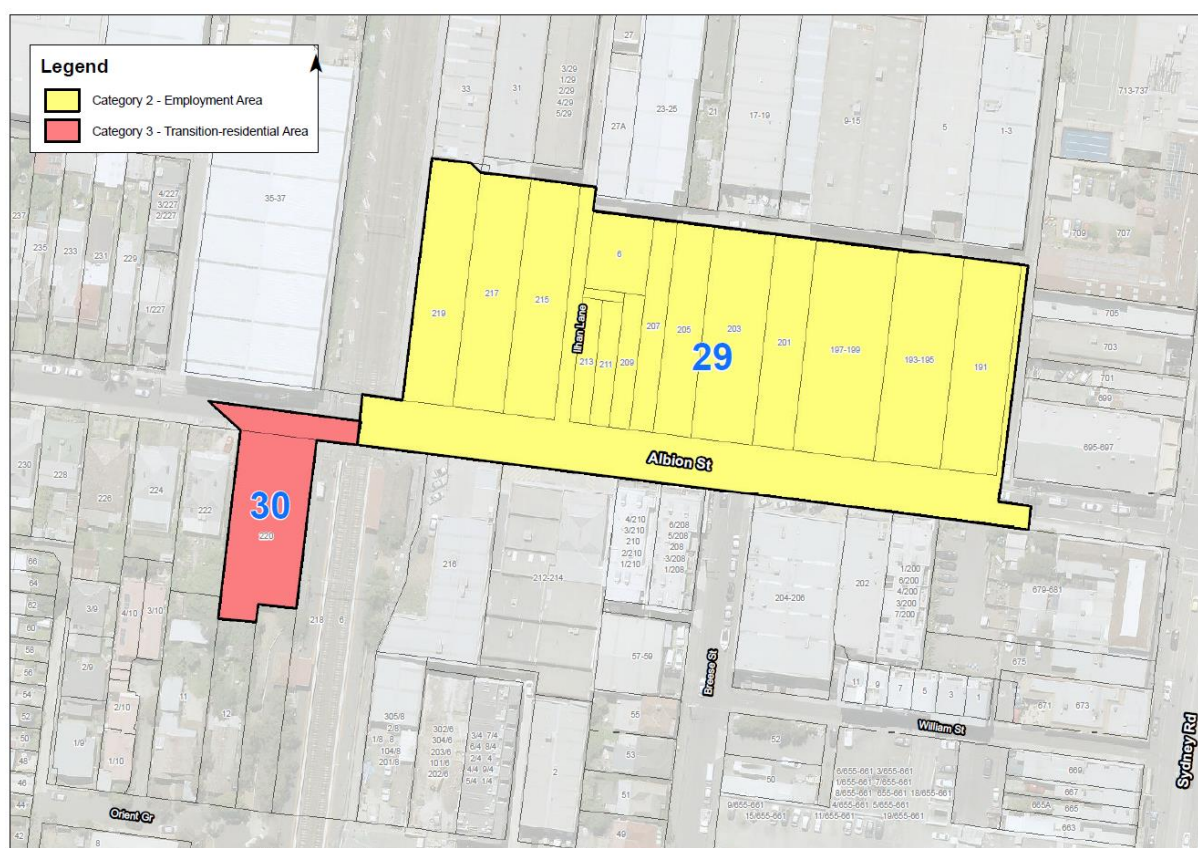
This chapter addresses MILS Areas 29, 30, 59, 60, 61, 63, 68, 69, 70, 71 and 72 in the Sydney Road commercial area.

5.1 MILS Areas 29 and 30 (Albion Street)

(i) Overview

MILS Area 29 is located on the north side of Albion Street, west of Sydney Road and MILS Area 30 is located on the south side of Albion Street, west of the Anstey train station and the Upfield train line, as shown on Figures 4 and 5.

Figure 4 MILS Areas 29 and 30



Both areas are included within Precinct 1E (Anstey Station) of the BSP 2018.

MILS Area 29 is identified as a Category 2 Employment Area and is currently included in the Industrial 1 Zone.

For MILS Area 29, the Amendment proposes to rezone the land to the C1Z, apply DDO18 with a preferred height of 17 metres, apply the EAO to most of the land and apply the PO1.

Figure 5 MILS Areas 29 and 30 – proposed built form guidance

Council summarised the approach to MILS Area 29 as:

Albion Street is a Principal Pedestrian Network (PPN) street therefore solar access to footpaths need to be maintained (DLA Report). Add street wall height control to ensure that development created an appropriate sense of street enclosure (the DDO specifies street wall height= street width with ALBION Street approximate width of 12.5 metres). This will ensure that Albion Street and the properties sought of this narrow street have adequate solar access. The proposed height for the site is the same as per the previous BSP Addendum which is considered still appropriate.

MILS Area 30 is identified as a Category 3 Transition-residential and is currently included in the Industrial 3 Zone.

For MILS Area 30, the Amendment proposes to rezone the land to the MUZ, apply a preferred height of 13.5 metres, apply the EAO and PO1.

Council summarised the approach to MILS Area 30 as:

It is recommended that the maximum building height is lowered to 13.5m or 4 storey from the BSP Addendum's 15m building height (5 storey residential height). The site is an isolated site on western side of Upfield railway where any major height will not create a consistent streetscape. The surrounding land is in the NRZ and has a two storey maximum height. These properties are also affected by a heritage overlay. The site is currently used as a commercial

building and can remain to be use as a business as long as the current DDO's residential frontage (Frontage Type C Residential) is retained to create a ground floor transition to the residential dwellings. The site is a wide site (19 m) which can provide the required DDO's side setback to residential zone outside the activity centre. Additional street wall control is not necessary as the maximum height 13.5m is close to the recommended 12.5m for the street wall.

(ii) The issue

The key issue is whether the MUZ and the DDO18 with a preferred height of 13.5 metres is appropriate for land at 220 Albion Street (MILS Area 30).

(iii) Submissions

Eleven submissions were lodged for MILS Area 30 and the property at 220 Albion Street. The submissions did not address MILS Area 29. One submission supported the proposed changes to the planning controls affecting land at 220 Albion Street and the other ten submissions objected to the proposed changes.

In relation to the proposed rezoning of the land to the MUZ, a number of submissions (including 94, 100 and 122) stated that the zone was inappropriate and that the property should be located in a residential zone (although a particular residential zone was not specified) given the land is isolated from other MUZ land and commercially zoned land given the location of the railway line.

Another key concern also raised in submissions (29, 85, 94, 99, 100, 122 and 138) was the potential for the site to be developed for up four storeys. Submissions stated that this height would be inconsistent with the prevailing neighbourhood character to the west and south which is primarily single or two storey development and is included in the HO. A number of submissions suggested that a two storey height limit would be more appropriate.

Council noted that any future redevelopment of 220 Albion Street would be required to consider the surrounding context of the land, including the HO, as part of any future planning permit application. These issues may put a constraint of the height that could be achieved for the land.

(iv) Discussion

Clause 21.03-2.1 of the MSS, in relation to the application of zones for the Transition Residential Areas (Category 3), states:

Apply the MUZ, Residential Growth Zone or General Residential Zone to Transition Residential Areas (Category 3). Zone selection will be informed by the size and location of the site and the ability to manage off site impacts and integrate with the scale of the surrounding neighbourhood at site or precinct boundaries. Given the objective for Transition Residential Areas to make a contribution to overall housing supply, the Neighbourhood Residential Zone should only be considered in specific circumstances, such as very small and isolated sites.

The Background Report refers to the above clause and states that the MUZ is the most appropriate zone choice for Category 3 areas and that the MUZ will apply to all such areas affected by the Amendment given:

- from a policy perspective, Category 3 areas are intended to accommodate increased density housing and the MUZ facilitates this
- from a land use perspective, the MUZ provides greater flexibility in land uses, including allowing some industrial land uses, which responds to the key direction of MILS to support existing commercial and industrial businesses
- from a built form perspective, the MUZ provides greater flexibility to encourage higher density housing and accordingly the NRZ or GRZ would only be used in locations which are not part of or close to an activity centre and surrounded by low scale residential development.

The Panel acknowledges that the property at 220 Albion Street does not directly abut other MUZ or commercially zoned land; instead it has direct abuttal to land in the NRZ, the Public Use Zone Schedule 4 and land in the HO. In this regard it could be seen to be an 'isolated' site. However, the broader context of the site also needs to be taken into consideration. The land directly north on the opposite side of Albion Street is in the IN3Z, in an area identified as being a 'Core Industry and Employment Area'. This 'core' area extends north almost to Moreland Road, and extends along both sides of the train line. Therefore, the land at 220 Albion Street also forms the southern 'tip' of this significant employment area, making it a site of 'transition' between the industrial land uses to the north, the commercial land uses and train station to the east, and the existing residential development to the west and south.

The Panel is satisfied that the application of the MUZ to 220 Albion Street is appropriate in a locational sense, particularly given its abuttal to the train station. This interface could provide for some commercial use (such as a café) that provides a service to train commuters on the platforms. The GRZ could be a potential option for the site, as suggested in submissions, however the Panel considers that given the broader objectives of MILS, as well as the land use and built forms outcomes that are sought for Category 3 areas, and the strategic direction of the BSP 2018, the MUZ is appropriate, providing appropriate built form parameters are put in place to ensure any future development is respectful of the adjoining lower rise development.

In relation to this issue, the Panel notes the concerns raised about the preferred height of 13.5 metres. The Panel is satisfied that this preferred height is appropriate given the strong policy support that is already provided in the planning scheme for the redevelopment of Category 3 areas along with the locational attributes of the site as discussed above – but once again, subject to built form parameters appropriately managing future development, including heritage values. The Panel agrees with Council that the 13.5 metres may not be achievable on this land given its size and context.

In relation to heritage issues, the Panel considers that the provisions of DDO18 do appropriately address areas of heritage significance and the need for developments within the BAC to be appropriately respectful of any heritage context. In making this observation, the Panel highlights that there are specific decision guidelines relating to heritage matters included in DDO18 as follows:

- *Whether the maximum building height is achievable having regard to lot size, dimensions (width and depth) and/or those sites within or adjoining the Heritage Overlay.*
- *Whether an increased upper level setback is required having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.*
- *Whether the preferred maximum street wall height is achievable having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.*

The Panel is satisfied that there will be adequate built form controls in both DDO18, and in the broader planning scheme provisions, to ensure that any future development of the site will be required to appropriately consider off-site amenity impacts to adjoining properties. The Panel notes that any future application will be required to comply not only with DDO18 but also with the provisions of the MUZ. As discussed in Chapter 3.4, pursuant to Clause 32.04-9 of the MUZ, *“any buildings or works on a lot that abuts land which is in a General Residential Zone, Residential Growth Zone, Neighbourhood Residential Zone or Township Zone must meet the requirements of Clauses 55.04-1, 55.04-2, 55.04-3, 55.05 and 55.04-6.”* These clauses specifically deal with off-site amenity impacts relating to side and rear setbacks, walls on boundaries, protection of daylight to existing windows, overshadowing of open space and overlooking. Therefore, any future development will be required to address these ‘standard’ requirements, regardless of the fact that the site is included in the MUZ.

(v) Conclusions

The Panel concludes:

- the inclusion of MILS Area 30 in the MUZ is supported by relevant policy and is appropriate.
- the application of a ‘preferred height’ of 13.5 metres for MILS Area 30 is appropriate.

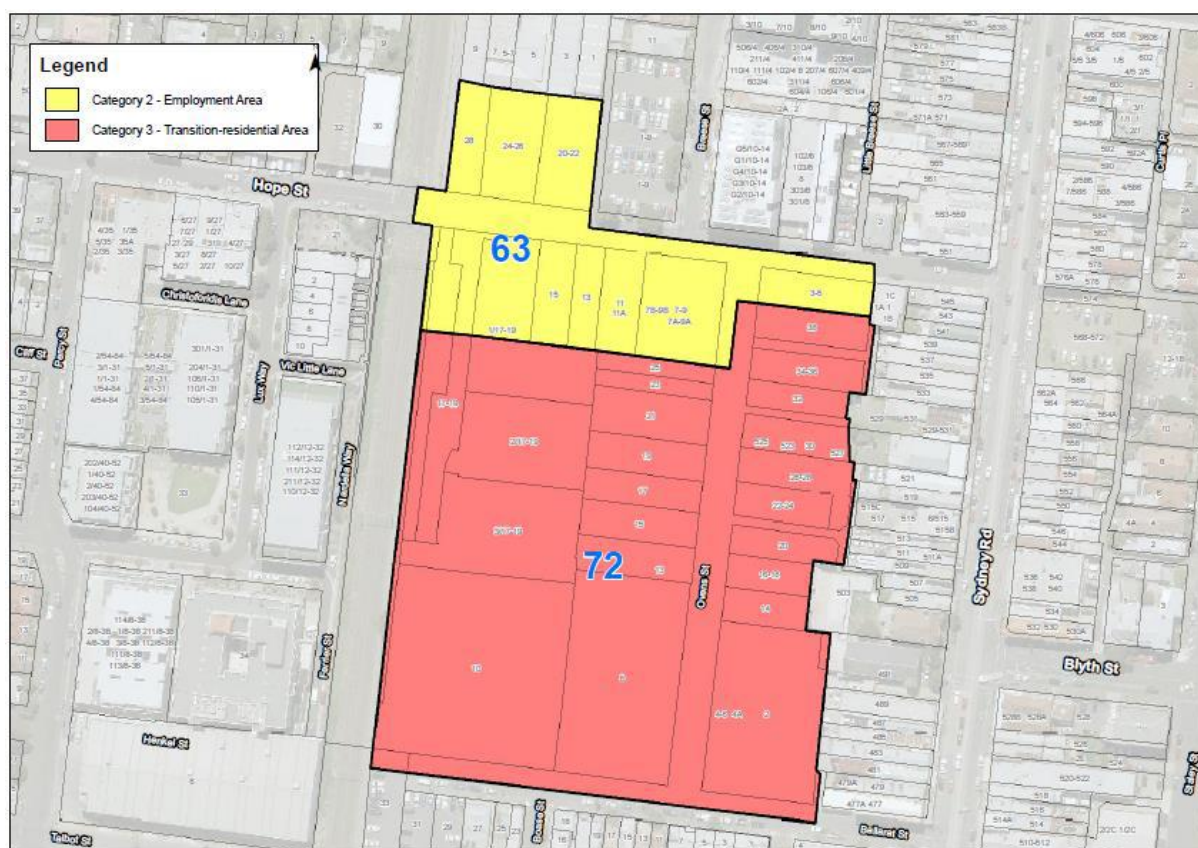
5.2 MILS Areas 63 and 72 (Hope and Ballarat Streets)

(i) Overview

MILS Area 63 is located to the west of Sydney Road, along either side of Hope Street. MILS Area 72 is located to the south of this, along either side of Ovens Street and extending south to Ballarat Street, as shown on Figure 6.

MILS Area 63 is located within two precincts in the BSP 2018. To the north of Hope Street, the land is included in Precinct 1E Anstey Station and to the south of Hope Street is included in Precinct 1D Victoria Street to Hope Street. MILS Area 72, is also included in Precinct 1D.

MILS Area 63 is identified as a Category 2 Employment and is currently included in the C1Z, as well as DDO18. The majority of MILS Area 63 is also currently included in the EAO, apart from the western portion of 17-19 Hope Street. The portion of Area 63 located on the north side of Hope Street is also currently included in PO1.

Figure 6 MILS Areas 63 and 72

For MILS Area 63, the Amendment proposes to apply the EAO to the western portion of 17-19 Hope Street. There are no changes proposed to the existing preferred heights that already apply via DDO18.

MILS Area 72 is identified as a Category 3 Transition-residential and is currently included in the C1Z, as well as DDO18. The majority of the properties within MILS Area 72 are also included in the EAO, with the exception of the western portion of 17-19 Hope Street (which straddles both MILS Area 63 and Area 72) and 16 to 18, 23 and 25 Ovens Street. One property (2-6 Ballarat Street) is also affected by the HO385 (the former Perucci Shirt Factory).

For MILS Area 72, the Amendment proposes to:

- rezone the majority of it to the MUZ, with the exception of 17-19 Hope Street and 523 to 527 Sydney Road, which extends from Sydney Road through to Ovens Street (and incorporates 30 Ovens Street)
- apply the Environmental Audit Overlay to the western portion of 17-19 Hope Street.

There are no changes proposed to the existing preferred heights that already apply via DDO18.

(ii) The issue

The issues are whether:

- the proposed rezoning of 10 Ballarat Street to the MUZ is appropriate
- the application of two zones to 17-19 Hope Street and 523 Sydney Road is appropriate.

(iii) Submissions

Submission 58 related to land at 10 Ballarat Street, located in the south west corner of MILS Area 72, abutting the train line which is designated as a Category 3 area. The submission sought the retention of the C1Z for 10 Ballarat Street on the basis that it is possible to deliver the policy intent for Category 3 areas whilst retaining the land in the C1Z. Council did not support the proposed retention of the C1Z and stated that:

The C1Z has less restrictions on uses such as office and shops than the MUZ. Category 3 areas are intended to transition to residential uses rather than encourage commercial uses. Accommodation in the C1Z is only a section 1 use where [sic] The MUZ sits within the residential suite of zones and is consistent with the framework set out in Council's MSS including the implementation options for the MILS.

17-19 Hope Street (Figure 7) and 523 Sydney Road (Figure 8) are already in the C1Z and are not proposed to be rezoned although the rear of both sites sit within a Category 3 area (MILS Area 72).

Figure 7 17-19 Hope Street

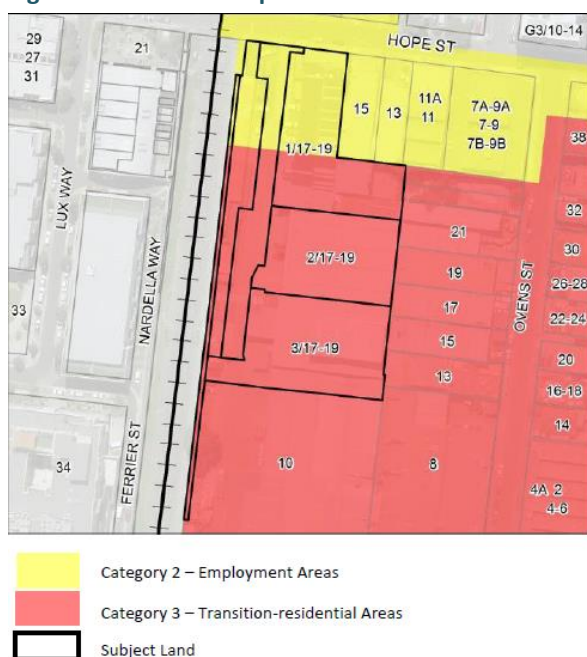
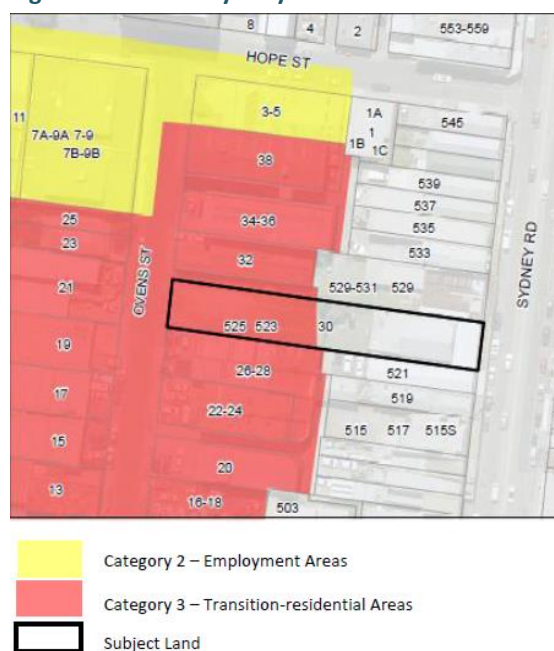


Figure 8 523 Sydney Road



(iv) Discussion

In relation to 10 Ballarat Street, the Panel agrees with Council and considers that the rezoning of the site to the MUZ is appropriate, given:

- the clear policy directions of Clause 21.03-2.1 and MILS in relation to rezoning Category 3 areas
- the separation of the property at 10 Ballarat Street from the 'core' retail strip along Sydney Road, noting that the land is in the south west corner of MILS Area 72 and thus, assuming rezoning of the remainder of MILS Area 72 to the MUZ as proposed, would result in an isolated pocket of C1Z land remaining at the western edge of the activity centre corridor.

The Panel notes that, whilst it wasn't a matter raised by submitters, MILS Area 72 does contain two properties that, if rezoned in accordance with their MILS categories, would result in the properties being located in two different zones.

Land at 17-19 Hope Street, if rezoned to accord with MILS, would result in its southern portion in the MUZ with the northern portion remaining in the C1Z. It is noted that the land to the east and south of the Category 3 area of this land parcel are also proposed to be rezoned to the MUZ as part of the Amendment.

Council addressed this property in the Background Report and stated that it was proposed to retain the whole of the land in the C1Z as the property only has access to Hope Street and rezoning the southern portion could result in "land locking" the rear parcels with a different zoning.

The Panel agrees with the approach taken by Council and considers that this is one example where it is appropriate to retain the existing zone and not reflect the MILS category for the southern portion of the site.

The land at 523 Sydney Road extends between Sydney Road and Ovens Street. The eastern part of the land, fronting Sydney Road, is included in a site specific HO167 (523-527 Sydney Road, Brunswick – Independent Church) where external paint controls apply and prohibited uses may be permitted.

Based on the MILS categories, the western portion of the site should be included the MUZ and the eastern (in HO167) should remain in the C1Z. It is noted that the land to the north, south and west of that portion of the property fronting Ovens Street is proposed to be rezoned to the MUZ as a result of Amendment C164.

The Background Report states that retention of the western portion in the C1Z is appropriate as it still enables the development of land for residential purposes.

The Panel notes that, unlike 17-19 Hope Street, the property at 523 Sydney Road has a dual frontage - although it is the Ovens Street access that would likely be utilised for vehicle access should the property be redeveloped in accordance with the relevant policies and strategic directions of the MILS.

The Panel considers that the proposed rezoning of the properties on either side of Ovens Street to the MUZ as part of Amendment C164, combined with the intended residential nature of the street, and the dual frontage available to 523 Sydney Road, means that this land parcel could be included in two zones, consistent with the MILS categories, and with the Panel's general approach to the issue of land in two zones outlined in Chapter 3.2.

(v) Conclusions

The Panel concludes:

- it is appropriate to rezone 10 Ballarat Street to the MUZ
- the whole of the property at 17-19 Hope Street should be retained in the C1Z
- the property at 523 Sydney Road should be zoned to reflect the applicable MILS categories, with C1Z fronting Sydney Road and the MUZ fronting Ovens Street.

(vi) Recommendation

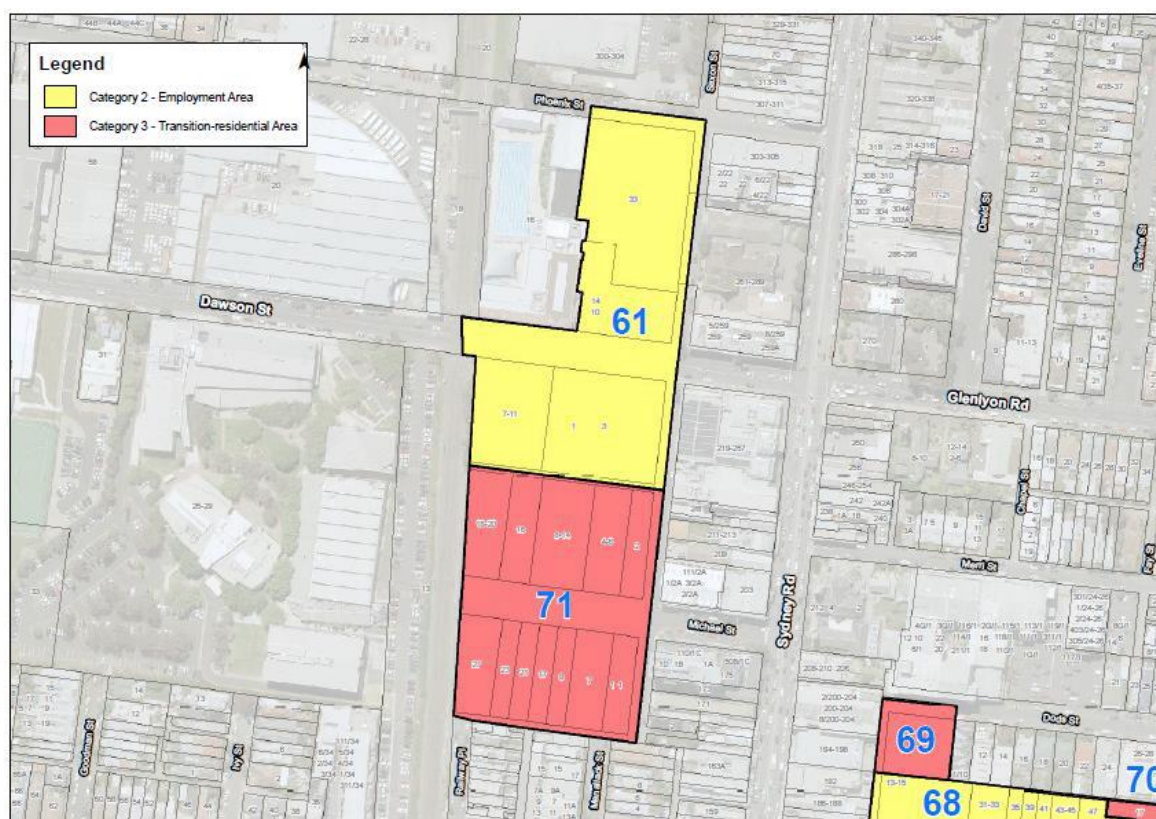
The Panel recommends:

4. Delete the Commercial 1 Zone from the rear (western) portion of 523 Sydney Road as defined by Category 3 land and replace it with the Mixed Use Zone.

5.3 MILS Areas 61 and 71 (Dawson and Michael Streets)**(i) Overview**

MILS Area 61 is located to the west of Sydney Road, west of Saxon Street and extends south of Phoenix Street, beyond Dawson Street. MILS Area 71 directly abuts the south boundary of Area 61 and extends further south, beyond Michael Street. Both areas are shown on Figure 9.

Figure 9 MILS Areas 61 and 71



MILS Areas 61 and 71 are both located in Precinct 1B Civic and Cultural Precinct in the BSP 2018.

MILS Area 61 is identified as a Category 2 Employment Area and is currently included in the C1Z as well as DDO18. Much of MILS Area 61 is also currently included in the EAO (with the exception of 1 Dawson Street) and PO1 (with the exception of 7-11 Dawson Street) as well as the HO.

For MILS Area 61, the primary change that results from the Amendment is the inclusion of Category 2 Employment Areas and accompanying requirements in relation to achieving

commercial built form outcomes and activation in DDO18. There are no changes proposed to the existing preferred heights that already apply via DDO18.

It is noted that Amendment C167 also proposes to apply PO1 to 7-11 Dawson Street so that the whole of the MILS Area 61 will be included in the PO1.

MILS Area 71 is identified as a Category 3 - Transition-residential Area and is currently included in the C1Z as well as DDO18 and PO1. Much of MILS Area 71 is also included in the EAO (with the exception of 2 Michael Street) and a number of properties in the south west corner of the area are included in the HO.

For MILS Area 71, the Amendment proposes to rezone all the land to the MUZ. There are no changes proposed to the existing preferred heights that already apply via DDO18.

(ii) The issue

The issue raised relates to increasing density of development in the area, and concerns that the rezoning proposed in MILS Area 71 will further exacerbate this issue.

(iii) Submission

There was one submission lodged (17) that related specifically to the MILS Area 71. The key concerns raised related to the increasing density and height of development in the Brunswick area and requested that if the rezoning does go ahead, a height limit of four storeys should be applied.

In relation to the specific request for a four storey height limit, Council noted in Attachment 5 to its Part A submission that it did not support a reduced height for the site and that:

Area 71 was rezoned to the C1Z (which allows residential and commercial development) and had built form controls applied, including a preferred maximum height of 25m (8 Storeys), as part of Amendment C134, which was approved in August 2016. Amendment C164 does not propose to change the height controls that already exist for these properties. The proposed change to the MUZ is consistent with the outcomes sought by MILS for category 3 transition-residential areas.

(iv) Discussion

The Panel acknowledges the concerns of local residents about potential impacts of higher density housing and has discussed various potential impacts in Chapter 3.

In relation to the density issues raised, the Panel notes that there is clear policy support in the MSS, as well as MILS and the BSP 2018 for the development of higher density housing in MILS Area 71. This policy support is presumably derived from the location of the area in proximity to significant community and educational facilities, the 'buffer' offered by the rail corridor, as well as the retail and commercial offer along Sydney Road which is also likely to be extended along Dawson Street as MILS Area 61 is redeveloped.

Accordingly, the Panel supports the rezoning of MILS Area 71 to the MUZ.

In relation to height, the Panel also notes that, as highlighted by Council, the Amendment does not propose to change the preferred height that applies to MILS Area 71, with the height remaining at 25 metres. The matter of height is not part of this Amendment, as the existing provisions will be retained. Notwithstanding this, the locational attributes of the area and the clear policy support for higher density housing, the Panel can see no reason why this existing preferred height should be reduced to four storeys.

(v) Conclusions

The Panel concludes:

- the MUZ is appropriate for MILS Area 71
- there should be no change to the preferred height of 25 metres for MILS Area 71.

5.4 MILS Areas 68, 69 and 70 (Edward, Dods and Weston Streets)

(i) Overview

MILS Areas 68, 69 and 70 are all located east of Sydney Road. MILS Area 68 is located on either side of Edward Street, MILS Area 69 is located to the north, on the south side of Dods Street, whilst MILS Area 70 is located at the eastern end of MILS Area 69, fronting Charles Street, as shown in Figure 10.

All three areas are included within Precinct 1A – Jewell Station/Sydney Road Gateway of the BSP 2018.

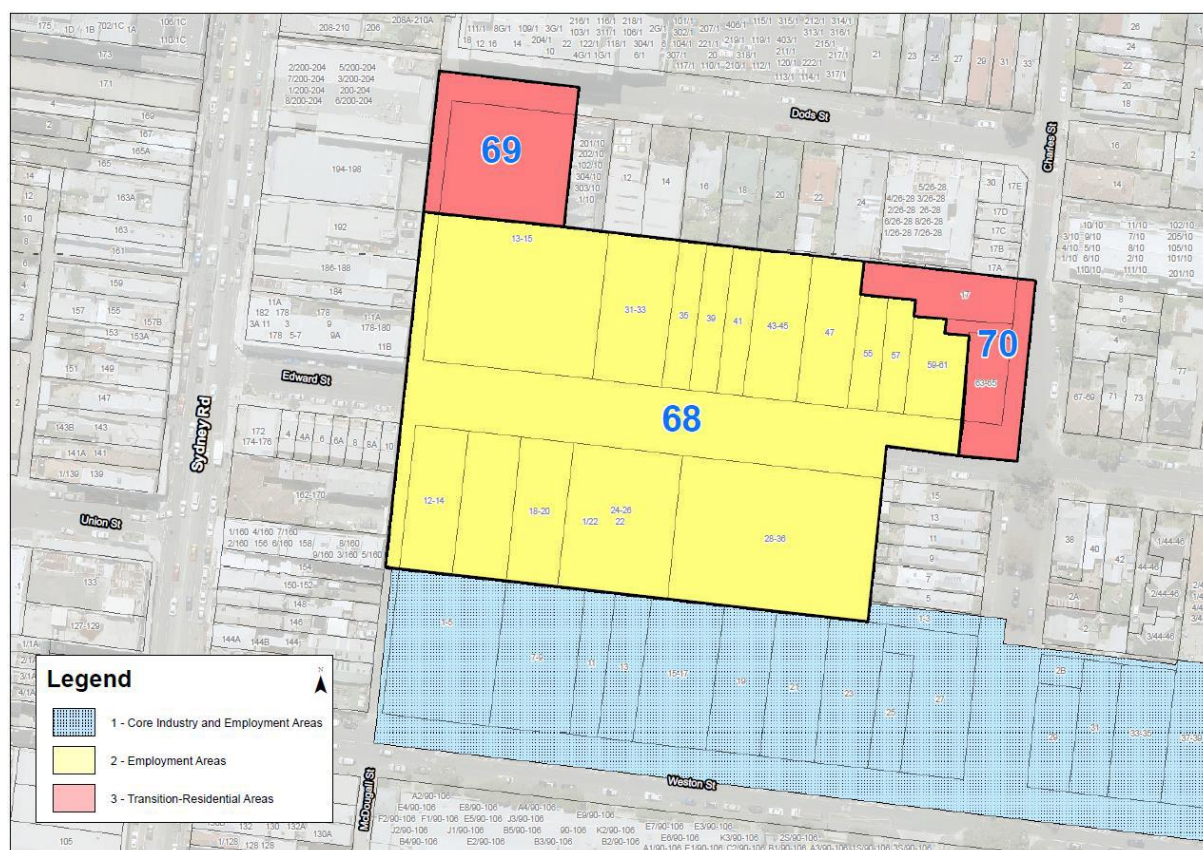
MILS Area 68 is identified as a Category 2 Employment area and is currently included in the Industrial 3 Zone. MILS Area 69 is identified as a Category 3 Transition-residential area and is currently included in the IN3Z. For both MILS Areas 68 and 69, the Amendment proposes to rezone the land to the C1Z, apply DDO18 with a preferred height of 20 metres, apply the EAO and PO1.

MILS Area 70 is identified as a Category 3 Transition-residential area and is currently included in the IN3Z. For MILS Area 70, the Amendment proposes to rezone the land to the MUZ, apply DDO18 with a preferred height of 20 metres, apply the EAO and the PO1.

(ii) The issues

The key issues raised in relation to these three areas are the appropriate zoning of the Edward Street car park (13-15 Edward Street) and the potential for it to be developed for open space purposes.

A number of site specific matters were also raised, which are discussed further below.

Figure 10 MILS Areas 68, 69 and 70**(iii) 1-5 Weston Street and 12-14 Edward Street****Submissions**

Arverne (105) owns five lots at 1-5 Weston Street and 12-14 Edward Street, Brunswick (Figure 11). Two of the lots front Edward Street⁶, a further two lots front Weston Street whilst the fifth lot is a very narrow lot, with an average width of less than 0.15 metres, that separates the Weston Street lots and the Edward Street lots. The Edward Street lots are in MILS Area 68 (Category 2) and the Weston Street lots are in MILS Area 58 (Category 1). It is uncertain into which MILS Area the narrow fifth lot (Certificate of Title Volume 10054 Folio 748, Lot 1 TP 807632A) lies.

1-5 Weston Street contains a single building that extends across four lots, through to Edward Street and consequently is split across two MILS categories. A second building is located at 12 Edward Street and it is uncertain at this time whether it also occupies some of the fifth lot.

The Amendment seeks to apply the C1Z to the two lots fronting Edward Street, whilst the lots along Weston Street will remain in the IN3Z, which will result in the building at 1-5 Weston Street being split across two zones. At the Hearing, Mr Scally on behalf of Arverne, amended its position to one of supporting the amendment and sought, for clarity, that the small fifth

⁶ 12 Edward Street is under a contract of sale to Arverne

lot also be zoned C1Z. Mr Scally advised the Panel that a planning application would be lodged in the future with Council for the use and development of the land as a Cinema complex⁷.

This position was supported by Council. Council noted that it would be contrary to MILS strategy to rezone the land along Weston Street to C1Z as it lies in a Category 1 – Core Industrial and Employment Area, which prohibits residential use, whereas C1Z allows residential use as of right, provided it is located above the ground floor.

Discussion

The Panel for Amendment C158 considered the application of MILS categories in relation to MILS Areas 68, 69 and 70 in circumstances where land would be split into two categories. The Panel specifically discussed 1-5 Weston Street and 12-14 Edward Street and supported the application of two categories in that instance, noting that:

The Panel supports Category 1 for the Weston Street properties as Weston Street, in an inner urban context, does provide a wide street that can support heavy vehicle movements with good access to the surrounding main road network. Mr Hiatt owns a large site with two road frontages. The main portion is on Weston Street and a smaller portion on Edward Street. The Panel is reluctant, as it has done so with other submitters in other areas, to allocate a category on a site-by-site basis. This would effectively undermine the basis of MILS.

The Panel agrees with the C158 Panel report that allocating a MILS category (and subsequently a zone) on a site by site basis has the potential to undermine the basis of MILS.

Accordingly, in the case of the current submission (Arverne) for land at 1-5 Weston Street and 12-14 Edward Street, the Panel supports Council's approach for the land, to retain the IN3Z on the Weston Street land as this is within a strip of industrial uses supported by strategy. The narrow strip of land at the interface of the two zones should be in the C1Z, as should the land fronting Edward Street.

(iv) 13-15 Edward Street (Edward Street car park)

Submissions

Twenty-two submissions raised concerns with the proposed zoning of the Edward Street car park and the application of DDO18 to the land, noting particularly that Council has identified the future use of part of the land for public open space. Some submitters sought to retain the car park for parking. It was suggested by some submitters that the land should be zoned Public Use Zone (PUZ) or Public Park and Recreation Zone (PPRZ).

The Edward Street car park is owned by Council and consists of 4 lot parcels, one fronting Edward Street and three to Dods Street. The property is split across MILS Area 68 (Category 2) and MILS Area 69 (Category 3). The amendment proposes to rezone the entire site to C1Z, which reflects the MILS category on the southern end (Edward Street frontage) of the site.

⁷ Under the current Industrial 3 Zone provisions

Figure 11 1-5 Weston Street and 12 Edward Street

- Category 1 – Core Industrial and Employment Areas
- Category 2 – Employment Areas
- Subject Land
- Part of property to be rezoned

Council noted that the car park was funded via a separate rate scheme and this remains a consideration for any future development proposal for the site. In addition, Council advised that the utilisation of the car park is generally low, this was due to it being a paid car park when other free parking was available nearby; and the demand for the car park could change depending on the outcome of the VicRoads Sydney Road Project, which is considering the implementation of clearways along Sydney Road. Two submissions (30 and 34) sought the retention of the Edward Street car park on the basis that the car parking in the area was difficult already and the loss of the car park would further exacerbate the situation.

Council submitted that the outcomes/objectives of both MILS categories can be achieved through the C1Z, as it allows residential uses as of right above ground level, and that splitting the land between two zones was not a preferred planning outcome. DDO18 recognises the land as a potential site for public open space and the C1Z does not hinder the creation of a park on the land, with Informal Outdoor Recreation being a Section 1 use in that zone.

In relation to the use of PUZ or PPRZ zones, Council noted that use of these zones was not consistent with the purpose of the Amendment to facilitate the implementation of MILS.

Discussion

The Panel acknowledges the strong community support for the creation of a park on the Edward Street car park site as demonstrated by the significant number of submissions lodged in relation to this Amendment and the on-going involvement by the Friends of Edward Street in planning issues, including both Amendment C158 and this current matter.

The Panel also acknowledges the existing policy framework that is in place which offers support for an open space use on the car park site and the designation of the site in DDO18 as *'new green open space on Edward Street'*.

Nonetheless, the Panel does not support the application of the PUZ6 as proposed by Submitter 126. The PUZ6 would limit the use of the site for public use and this zone is typically reserved for public land and buildings. The use of the PPRZ would also be premature given that Council has yet to fully commit to a park on this site and current indications are that a park would only take up approximately one third of the land.

The Panel is also not convinced that there is sufficient justification for applying the C1Z across the whole of the Edward Street car park against the direction provided by MILS. Applying the MUZ to the Dods Street frontage, consistent with MILS Category 3, will give greater direction as to the expected urban design outcome for this street.

An alternative the Panel considered was to retain the existing IN3Z, however this is not consistent with the direction of MILS to transition land, where appropriate, away from industrial use. Changing the existing zoning will not affect the existing use right as a car park. The Panel considers there is sufficient strategic direction in MILS and DDO18 for the future consideration of a local park on the land. The DDO identifies the site for a future park and such a use does not require a use permit in either the C1Z and the MUZ. To rezone the land for public use now would take a strategic leap beyond a threshold that Council is currently at, which would be inappropriate.

(v) 28-36 Edward Street

Submissions

Submitter 81 sought changes to the zone and overlay controls proposed to apply to 28-36 Edward Street (MILS Area 68) to reduce any impacts from future development on the submitters property to the south at 21 Weston Street, which has recently been renovated. The submitter also put forward a second option which was to exclude 28-36 Edward Street from the Amendment, with a third ('last resort') position put that the property at 21 Weston Street should also be rezoned to C1Z. Another submission (136) had an alternative viewpoint in relation to 28-32 Edward Street, advising of their support for the Amendment as exhibited.

Council advised the land at 28-36 Edward Street should be rezoned and DDO18 applied as exhibited, and that no change is supported for 21 Weston Street which falls within a Category 1 area.

Discussion

The Panel considers that it is appropriate for the property to be rezoned to the C1Z as exhibited and retained in DDO18 with a preferred height limit of 20 metres. The Panel

acknowledges the concerns raised by the owners of 21 Weston Street in the context of potential impacts from any future development of 28-36 Edward Street. The Panel considers these concerns can and should be dealt with at the planning permit application stage, noting that as 21 Weston Street is located within an IN3Z, a more robust interface treatment is not unreasonable.

(vi) 59-61 Edward Street

Submissions

Submitter 125, the owner of 59-61 Edward Street, sought to clarify the proposed zoning of the eastern portion of that land parcel which forms a narrow strip of land between 17 Charles Street and 61-63 Edward Street. The submission noted that the configuration of the site is such that the narrow strip of land is located within MILS 70 and thus is Category 3 Transition-residential whereas the majority of the land parcel is in MILS Area 68 and is Category 2 Employment.

Council's response to the submission was that the narrow strip of land fronting Charles Street, but which forms part of 59-61 Edward Street should be included in the C1Z, notwithstanding the fact it is located in a Category 3 area.

Discussion

The Panel does not agree with Council's approach in relation to the narrow strip of land fronting Charles Street that forms part of 59-61 Edward Street, and considers that the MUZ should be applied to the land, consistent with MILS Category 3. The Panel does not believe that the inclusion of the strip of land in the C1Z, with MUZ either side of it, will result in an appropriate planning outcome in the longer term, and could compromise the direction sought by MILS in this location. The longer term development of this Precinct is likely to happen via site consolidation and amalgamations and the Panel considers that including all of the land fronting Charles Street in the MUZ will provide for a more orderly and proper planning outcome.

(vii) Other submissions

Submissions

A significant number of submissions also raised concerns about the proposed preferred maximum height for the MILS Areas 68, 69 and 70 of 20 metres, with submitters arguing that the height would result in development that was inconsistent with the prevailing character of the surrounding area and the resultant increase in densities would in turn generate significant traffic issues.

Discussion

When considering the preferred height of 20 metres for MILS areas 68, 69 and 70, the Panel found the summary and analysis provided in the Background Report extremely useful. It contains Figure 12 that shows the existing and proposed heights for the areas.

Figure 12 MILS Areas 68, 69 and 70 - proposed built form guidance



To the north of the three MILS areas, there is an existing preferred height in place of 20 metres, with the exception of a small area fronting Charles Street, on the south west corner of Dods and Charles Streets, which has a height of 10.5 metres and the area on the north west corner of Charles and Dods Streets which has a preferred height of 15 metres. The Panel is unsure of the rationale for the 10.5 metres preferred height immediately north of MILS Area 70 however notes that the site appears to be occupied by a fairly recent three and four storey development, thus future redevelopment seems unlikely.

To the south of the three MILS areas is a Category 1 Core Industry and Employment area, beyond which is an area between Weston Street and Brunswick Road with a preferred height of 25 metres.

Keeping this context in mind and notwithstanding what appears to be a somewhat anomalous preferred height of 10.5 metres on the south west corner of Charles and Dods, along with the objectives and strategies for the BAC outlined in the BSP 2018 including the more specific built form and heritage objectives for Sydney Road/Upfield Corridor Strategic Framework Plan, the Panel is satisfied that the 20 metres preferred height recommended for MILS Areas 68, 69 and 70 is appropriate.

(viii) Conclusions

The Panel concludes:

- the 'split' zone for 1-5 Weston Street and 12-14 Edward Street is appropriate
- the narrow strip of land between 1-5 Weston Street and 12-14 Edward Street should be included in the C1Z

- there is sufficient policy direction to consider the option of public open space on the Edward Street car park land in the future however the application of the PUZ or PPRZ to the land is not appropriate at this point in time
- the Edward Street car park should be rezoned to reflect the applicable MILS categories, with the C1Z to apply to the southern portion fronting Edward Street and the MUZ to the northern portion fronting Dods Street
- the 20 metre preferred height as exhibited for MILS Areas 68, 69 and 70 is appropriate
- the land at 28-36 Edward Street should be rezoned as exhibited to the C1Z and included in DDO18 as exhibited with a height limit of 20 metres
- the 'sliver' of land fronting Charles Street that forms part of 59-61 Edward Street should be rezoned to the MUZ to reflect the applicable MILS category.

(ix) Recommendations

The Panel recommends:

- 5. Apply the Commercial 1 Zone to the narrow strip of land (Certificate of Title Volume 10054 Folio 748, Lot 1 TP 807632A) between 1-5 Weston Street and 12-14 Edward Street.**
- 6. Delete the Commercial 1 Zone to the northern portion of 13-15 Edward Street (Edward Street car park) and replace it with the Mixed Use Zone consistent with the MILS Category 3 designation.**
- 7. Delete the Commercial 1 Zone to the eastern portion of 59-61 Edward Street, which fronts Charles Street, and replace it with the Mixed Use Zone consistent with the MILS Category 3 designation.**

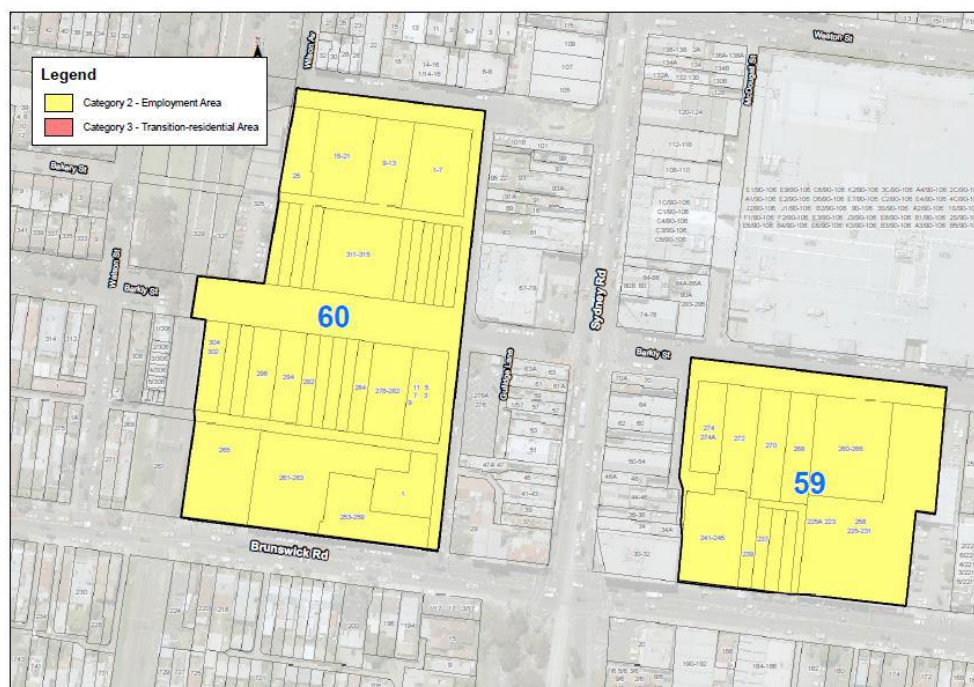
5.5 MILS Areas 59 and 60 (Barkly Street)

(i) Overview

MILS Areas 59 and 60 are located either side of Sydney Road. MILS Area 59 is located to the east of Sydney Road, extending between Barkly Street in the north to Brunswick Road in the south. MILS Area 60 is located to the west of Sydney Road, extending from Wilson Avenue in the north to Brunswick Road in the south. Both areas are shown in Figure 13.

All three areas are included within Precinct 1A – Jewell Station/Sydney Road Gateway of the BSP 2018.

MILS Area 59 is identified as a Category 2 Employment area and is currently included in the C1Z as well as DDO18. Much of MILS Area 59 is also currently included in the EAO (with the exception of a number of properties fronting Brunswick Road) and abuts HO149 (Sydney Road Precinct). For MILS Area 59, the primary change that results from the Amendment is to include reference to the Category 2 Employment Areas and accompanying requirements in relation to achieving commercial built form outcomes and activation DDO18. There are no changes proposed to the existing preferred heights that already apply in DDO18.

Figure 13 MILS Areas 59 and 60

MILS Area 60 is identified as a Category 2 Employment Area and is currently included in the C1Z as well as DDO18 and PO1. Parts of MILS Area 60 are also currently included in the EAO as well as the HO, including HO8 (Barkly Street West Precinct, West Brunswick), HO41 (253-263 Brunswick Road, Brunswick – Former Cable Tram Engine House and Tram Substation) and HO280 (265 Brunswick Road, Brunswick – Former Masonic Temple).

As with MILS Area 59, the primary change that affects properties within MILS Area 60 are the changes proposed to DDO18 relating to Category 2 Employment Areas.

(ii) The issue

The key issue raised was in relation to the proposed changes to DDO18 to include specific provisions associated with Category 2 Areas.

(iii) Submissions

Submitter 1 did not object to the Amendment as it didn't change the existing zoning and restrictions to the landowner's property.

Two submissions (43 and 132) raised concerns about the proposed inclusion of the provisions associated with the Category 2 Employment Areas. The particular concerns related to the proposed inclusion under Clause 1.0 Design Objectives of exhibited DDO18 which read as follows:

Moreland Industrial Land Strategy – Category 2 Employment Areas

- *To encourage development to provide residential accommodation only where it is located above ground floor and first floor employment spaces.*
- *To encourage commercial design built forms at ground and first floor of development.*

- *To encourage commercial activation at the ground level of development.*

Reference to Category 2 Areas is also included at Clause 2.0 Buildings and Works of exhibited DDO18 where the following requirements were included:

Moreland Industrial Land Strategy – Category 2 Employment Areas

- *Development within Category 2 – Employment Areas should achieve commercial built form outcomes, including increased floor to ceiling heights and flexible floor plates, at ground and first floor to facilitate opportunities for employment uses.*
- *Ground floor commercial spaces should provide for activation, for example through entrances, transparent glazing and architectural features which encourage interaction and visual interest.*

In its Part A submission, Council included a post-exhibition version of DDO18 which deleted the objectives in Clause 1.0 but retained the requirements at Clause 2.0. This was in response to matters raised by DELWP over the drafting of DDO18 but also responded to some of the concerns raised in Submissions 43 and 132.

At the Hearing both submitters initially advised that they intended to appear. However, having reviewed Council's Part A submission, Planning and Property Partners, representing 1-7 Wilson Avenue Developer Pty Ltd (Submission No 43) advised that they no longer intended to appear as they were satisfied with the changes proposed in the post-exhibition version of DDO18.

Mr McArdle of Norton Rose Fulbright represented the landowner of 270-272 Barkly Street (Submission No. 132) and submitted that it was not appropriate to identify the MILS as a reference document in DDO18 for a range of reasons, including:

- MILS is primarily a land use strategy and doesn't offer built form or design guidance (which is the role of the DDO)
- the content of MILS which does relate to development and built form matters is already included at Clauses 21.02 to 21.03 of the planning scheme
- the content sought to be included in DDO18 in relation to employment land can be more appropriately described as implementing the policy at Clauses 21.02 to 21.03 rather than MILS directly
- listing MILS as a reference document to DDO18 will add inefficiency to planning decisions and may result in uncertainty due to the land use focus of MILS.

Mr McArdle concluded by requesting that DDO18 be amended to delete the reference to MILS:

- as a reference document in Clause 5.0 (Decision guidelines)
- in the heading of the design requirements at Clause 2.0 that relate to Category 2 Areas.

In Council's closing submission, Council confirmed that it agreed with Mr McArdle that the inclusion of a decision guideline that refers to the MILS and does not include any additional built form guidance to what is already contained elsewhere in the planning scheme is confusing. Council submitted that in place of referring to MILS an alternative decision guideline could be *"how development within Category 2 Employment areas responds to the*

built form requirements for Category 2 Employment areas.” Council advised that the proposed change should apply to the three DDOs (DDO18, DDO19 and DDO20). Council also confirmed that it supported the change suggested by Mr McArdle to delete reference to MILS in the heading at Clause 2.0 and that this change should occur in all three schedules where reference is made to ‘Category 2 Employment Areas’.

(iv) Discussion

The Panel considers that the removal of the design objectives relating to MILS is appropriate and supports the approach taken by Council to this issue in the post exhibition version of DDO18 (as well as DDO19 and DDO20).

The Panel agrees with Mr McArdle and Council in relation to the removal of MILS from the Category 2 heading at Clause 2.0, and the removal of reference to the MILS from Clause 5.0 Decision Guidelines.

Notwithstanding the above, given the strong policy direction to maintain employment land uses in Category 2 areas and thus the focus in DDO18 of ensuring that built form outcomes provide flexibility for this to occur, the Panel considers the alternative decision guideline proposed by Council is appropriate.

(v) Conclusion

The Panel concludes that the proposed changes to the three DDO schedules to remove reference to MILS is appropriate, as is the inclusion of an additional Decision Guideline to require consideration of how applications respond to the built form requirements for Category 2 areas.

(vi) Recommendations

The Panel recommends:

- 8. Amend Schedules 18, 19 and 20 to the Design and Development Overlay (Document 1, Attachment 6):**
 - a) at Clause 2.0 by deleting the title *“Moreland Industrial Land Strategy – Category 2 Employment Areas”* and replacing it with *“Category 2 Employment Areas”*.
 - b) at Clause 5.0 by deleting *“the Moreland Industrial Land Strategy 2015-2030”* and replacing it with *“how development within Category 2 Employment areas responds to the built form requirements for Category 2 Employment areas”*.

6 Lygon Street

This chapter addresses MILS Areas 41, 42, 43/73, 44, 45, 46, 47 and 48 in the Lygon Street commercial area. Figures 14 and 15 show the location of the areas.

Figure 14 MILS Areas 41, 42, 43/73, 44, 45 and 46

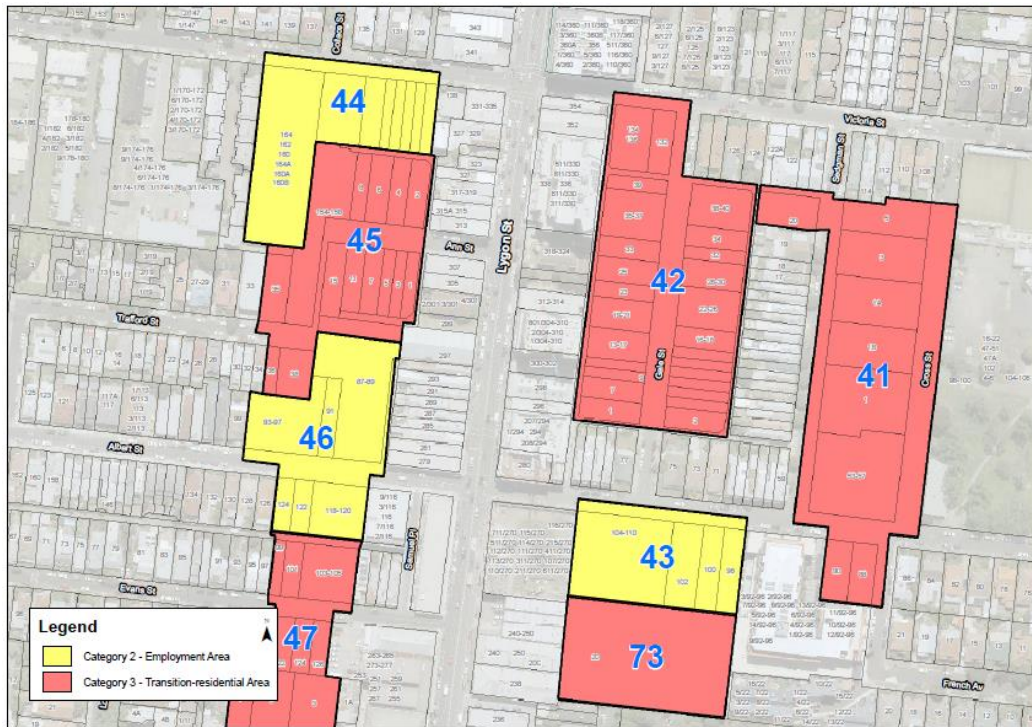
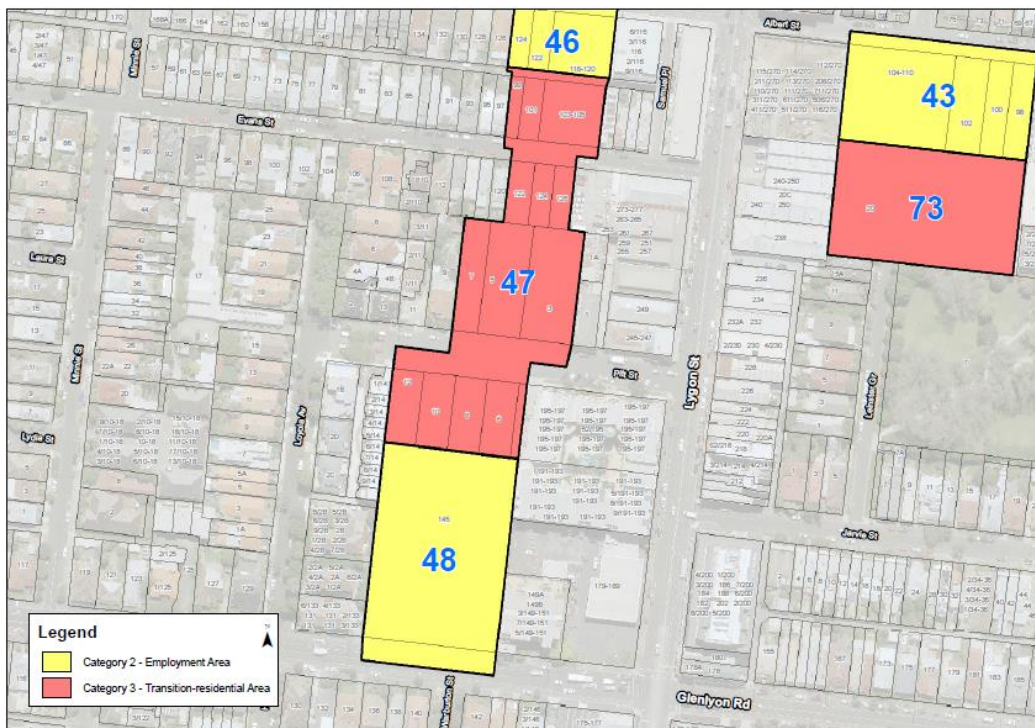


Figure 15 MILS Areas 47 and 48



6.1 MILS Areas 41, 42, 43 and 73

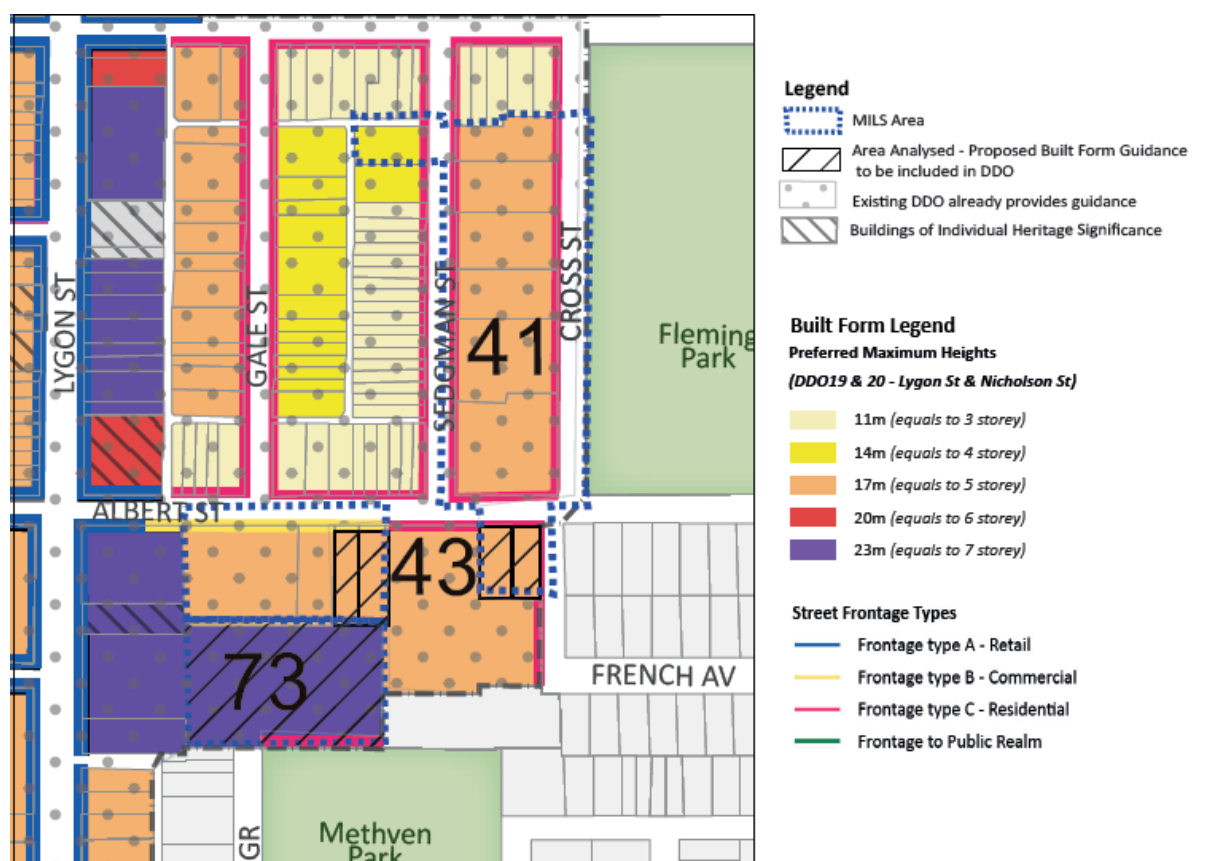
(i) Overview

The Amendment proposes to rezone MILS Areas 41, 42 and 73 to the MUZ, and MILS Area 43 to the C1Z.

Figure 16 provides a snapshot of the proposed controls in DDO19.

A fine grained residential area is located to the north of Albert Street, that is centred around Gale Street, Sedgman Street and Cross Street. The current building height for this area varies between 11 metres (east and west of Sedgman Street), 14 metres (east of Gale Street) and 17 metres (west of Gale Street). The Amendment proposes to increase the building height between Sedgman Street and Cross Street from 11 metres to 17 metres.

Figure 16 MILS Areas 41, 42, 43 and 73 – proposed built form guidance



For land south of Albert Street in MILS Areas 43 and 73, the Amendment proposes to:

- reduce the building height of MILS Area 73 (20 Leinster Grove) from 23 metres (7 storeys) to 17 metres (5 storeys). Council advised this was to correct an error with the approval of Amendment C134.
- introduce a building height for 98 and 100 Albert Street of 17 metres.

(ii) The issues

The issues are whether:

- the proposed increase in preferred height for MILS Area 41 is appropriate

- the height proposed for MILS Area 43 could be increased
- additional Decision Guidelines should be included in the DDO schedules to provide guidance as to when it is appropriate to exceed the maximum preferred height.

(iii) Submissions

Submitter 35 (Hansen), Submitter 107 (Bozsán), Submitter 112 (Bourne) were concerned DDO19 only requires setbacks to residentially zoned land that is outside the BSP 2018 area, not those within, such as the heritage area on the western side of Sedgman Street that is in the NRZ. Mr Hansen suggested Map 1A of DDO19 be amended to require a setback for these properties. Without that Mr Hansen submitted *“the heritage significance of the Sedgman Street properties will be met with a zero setback, sheer 11m urban form at the detriment to its unique heritage streetscape, something that is seen as significant to the community.”* Ms Bozsán was concerned a 17 metre height along Cross Street to the west of Fleming Park and the Brunswick East Bowls Club would create an overshadowing impact.

Submitter 131 (G2 Urban Planning), representing a prospective purchaser of land in Cross Street, noted the exhibited DDO19 was in error as it contained a height of 11 metres, not 17 metres as supported by BSP 2018. Council corrected this with the post exhibition version of DDO19.

Submitter 80 (Wexham Holdings) supported the C1Z for 98-102 Albert Street and requested this land be considered in the context of a block of properties that could form a strategic redevelopment opportunity at 104-110 Albert Street and the rear of 240 Lygon Street (20 Leinster Grove). This would be able to facilitate the pedestrian link that is supported by Council between Albert Street and Methven Park. Mr Carey, of Minter Ellison, cited Bayside Amendment C103 and *Richmond Icon*⁸ as examples where increased height and density has been supported in major activity centres. Mr Carey proposed the following changes to DDO19:

- Increase the building height of 98-102 Albert Street from 17 metres to 23 metres to match that of 20 Leinster Grove.
- Remove references to regulating land use on ground and first floors (for commercial uses) in the DDO19 as this is not its role of function.
- Introduce text to provide guidance on how proposals that exceed the preferred building height, that do not provide commercial uses on the first and ground floors or do not meet the minimum street wall height should be considered. This text included the delivery of the pedestrian link, the provision of active frontages, how it manages impacts on existing open space and heritage areas and the extent of public surveillance of open space and pedestrian links.

Council considered the current building heights in DDO19 (apart from the change to 20 Leinster Grove and Cross Street) were not before the Panel and additional decision guidelines *“would be transformative because it applies to land which is not part of Amendment C164.”* Council referred to other recently approved and constructed development in the area that were at a height above the preferred height as an example that the current drafting is appropriate. The correction of the height to 20 Leinster Grove and Cross Street arose from an

⁸ Richmond Icon Pty Ltd v Yarra City Council 2011 VCAT 2175

error in the approval documents for Amendment C134 and the drafting of the Amendment C164 documents, respectively.

In its right of reply, Council explained how residential land uses within the BAC were treated:

The DDO was originally specifically prepared to protect residentially zoned land from Commercial Zones within the BAC. This is why the DDOs specifically apply protection to residential land outside the BAC to address interface issues. This is because the C1Z only includes buildings and works decision guidelines for the consideration of overlooking and overshadowing of land within residential zones and Council sought to provide greater protection to adjoining properties.

Properties currently or proposed to be zoned MUZ are provided greater protection within the BAC recognising that this is a residential zone and not a commercial zone. For land within or outside the BAC, Clause 32.04-9 of the MUZ relates to buildings on lots that abut another residential zone:

- Any buildings or works constructed on a lot that abuts land which is in a General Residential Zone, Residential Growth Zone, Neighbourhood Residential Zone or Township Zone must meet the requirements of Clauses 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04-6 along that boundary."*

Council confirms its position that the MUZ is an appropriate zone for transition residential areas within the BAC. Further the MUZ includes appropriate setback and amenity guidance to address interfaces within and outside the BAC.

(iv) Discussion

This area presents a good snapshot of the issues that confront Council. The spine of Lygon Street has and will continue to provide the greatest density of development; yet off-corridor areas, including Sedgman (west), Cross and Gale Streets present as finer grained functional residential areas that just happen to be historically zoned for industrial uses and hence included in the BAC and MILS. In this instance, these areas are also "book-ended" by two significant areas of open space (Fleming and Methven Parks). At a broad scale, the Panel considers this context should be recognised in the planning policy and controls that affect the areas and adopt a scaling down of built form to its periphery. The Panel for Amendment C134 considered *"that the final version of DDO19 with discretionary controls provides a good framework to deliver the mid-rise vision for the corridor, and considers the need to transition heights to more sensitive residential areas."*

The Panel understands the increased height for MILS Area 41 between Cross Street and Sedgman Street from 11 metres to 17 metres arose from an error in the drafting of the Amendment. The Panel agrees this block presents as an ideal infill opportunity with larger lots and dual road frontages with a history of industrial use. The BSP 2018 confirms the height intended for Cross Street was 17 metres and also has "Frontage type C - Residential" applied by DDO19, which requires individual door entries to ground floor dwellings and an elevated ground floor to protect privacy.

The Panel does have a concern that a height of 17 metres does not provide for the stepping down of built form to its periphery nor give sufficient consideration to Fleming Park to the east and the residential area in a HO to the west of Sedgman Street. Both Cross Street and

Sedgman Street are narrow streets and the potential of five storey development may not respect these sensitive interfaces, even with recessed upper floors. DDO19 does not nominate a street wall height for this land, which the Panel understands is a reflection of the need for a site specific design response for this land with setbacks to be considered off both streets and a built form that would rise to central parts of the land. Council has generally supported lower built form in off-corridor land, which the Panel considers is appropriate. In this instance, the Panel considers that a height of 17 metres may challenge this approach, however a performance based approach to development in Cross Street may indicate that a height of 17 metres can only be achieved in the middle of the site (if at all) with lower form at the edges. The Panel is conscious that 17 metre height is the same as the BSP Addendum.

Council submitted *“it is worth noting that the majority of heights for this precinct were already tested through the panel process for C134, with the exception of a small number of properties in MILS areas 41, 44 and 45, none of which form the major content in submissions”*. This may be so, but Submission 35 did raise concern over height in Cross Street, the Amendment does introduce a height for Cross Street and therefore the matter is before the Panel. In light of the need for lower forms in the off-corridor areas, the proximity of Fleming Park and residential terraces in Sedgman Street, the Panel considers a height of 14 metres would be more suitable in this context.

The Panel does support the 17 metre height in MILS Area 41 south of Albert Street as the adjoining land has the same height limit.

The Panel accepts that Council has demonstrated that the height for 20 Leinster Grove at 23 metres is an error which evolved from the approval of Amendment C134. The correct height should be 17 metres, particularly as the land is located to the north of Methven Park. On this basis the request by Mr Carey to increase the height of 98-102 Albert Street to 23 metres is not appropriate and would be out of context with surrounding heights. A well designed development with recessed upper levels, active frontages to Methven Park, a pedestrian link between Methven Park and Albert Street and supported by a thorough overshadowing assessment is required for this land.

The Panel acknowledges Mr Carey’s drafting of the additional decision guidelines, however it does have several concerns:

- The new provision would be specific to his clients land and not other land affected by DDO19 – if the Panel was to agree to a set of words it should be on the general understanding that it has a broader application, at least to other key sites or even all land affected by DDO19.
- The difficulty with the proposed text is that it addresses issues that ordinarily should be considered in the development of the land, even if it was restricted to 17 metres. The height of development should not always be bargained away to achieve a good design outcome for land.
- Council has demonstrated that there is a history of moderate height variations (one to two storeys above a limit) in the BAC, some that have been supported by Council and others that have not (and approved by VCAT). In this context, the Panel acknowledges this history and does not consider related decision guidelines, site specific or otherwise is appropriate.

- Any change to the provisions on a broader basis would then be applicable to all land both currently affected by DDO19 and proposed to be included as part of the Amendment and, as identified by Council, could be considered to be transformative.

The Panel is aware of DDOs in other municipalities where guidance is provided for circumstances where additional height or varied setbacks might be supported. However, the Panel considers that for the reasons outlined above, it is not appropriate in this instance.

(v) Conclusions

The Panel concludes:

- the 17 metres height limit for MILS area 41 north of Albert Street is not appropriate and should be replaced by 14 metres
- the 17 metre height limit for 20 Leinster Grove, replacing 23 metres that occurred from an error, is appropriate
- the decision guidelines for the consideration of height above a preferred limit is not appropriate, either as a site specific application or more generally.

(vi) Recommendation

The Panel recommends:

- 9. Amend Schedule 19 to the Design and Development Overlay to delete the 17 metre height limit for MILS Area 41 north of Albert Street and replace it with 14 metres.**

6.2 MILS Areas 44 and 45 (Victoria and Ann Streets)

(i) Overview

MILS Areas 44 and 45 are located on the west side of Lygon Street and extend from Trafford Street in the south to Victoria Street in the north. Ann Street and Trafford Streets are narrow residential streets with some commercial activities extending out from the Lygon Street corridor.

MILS Area 44 fronts Victoria Street with one property extending from Victoria Street through to Trafford Street. MILS Area 45 contains land north and south of Ann Street.

Ann Street is a 'no thru' road with a building height of 11 metres (3 storeys). Higher built form (to 14 metres) is allowed at the end of Ann Street. Figure 17 shows the context of the two areas and the proposed controls.

The EAO that is proposed to be applied to 6 and 8 Ann Street is addressed in Chapter 4.

(ii) The issue

As with other land it has assessed that lack submissions, the Panel addresses two examples (154-158 and 160 Victoria Street) where there are split zones or more than one MILS category to ensure there is an appropriate response.

The other key issue is whether the EAO should be applied to land at 6 and 8 Ann Street in response to the location of a car mechanic to the north of the land that fronts Victoria Street.

Figure 17 MILS Areas 44 and 45 – proposed built form guidance

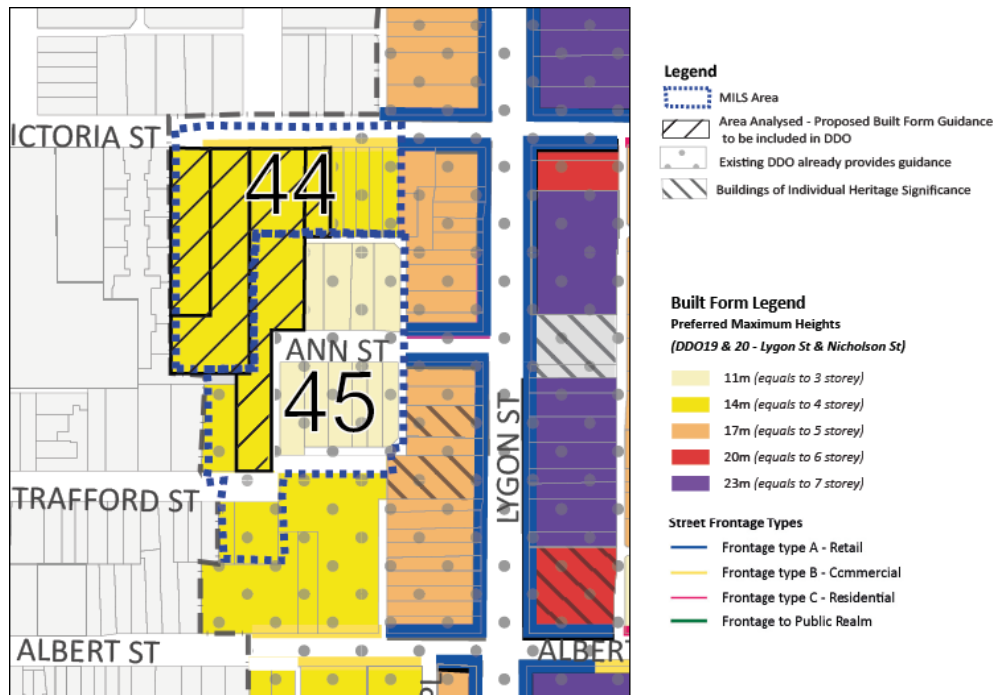
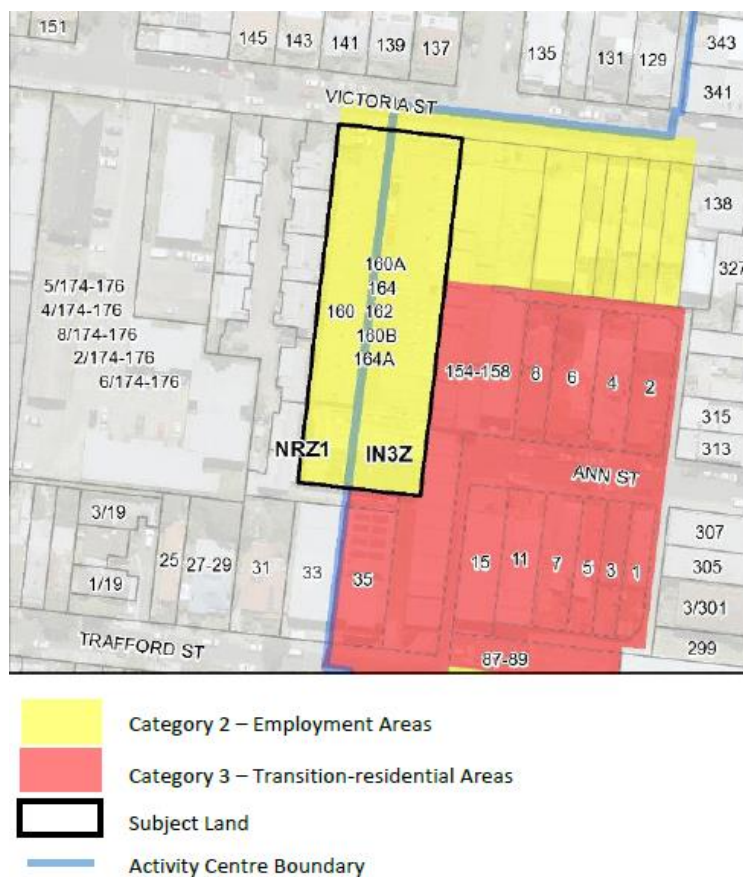


Figure 18 160-164 Victoria Street



(iii) Discussion**160 Victoria Street**

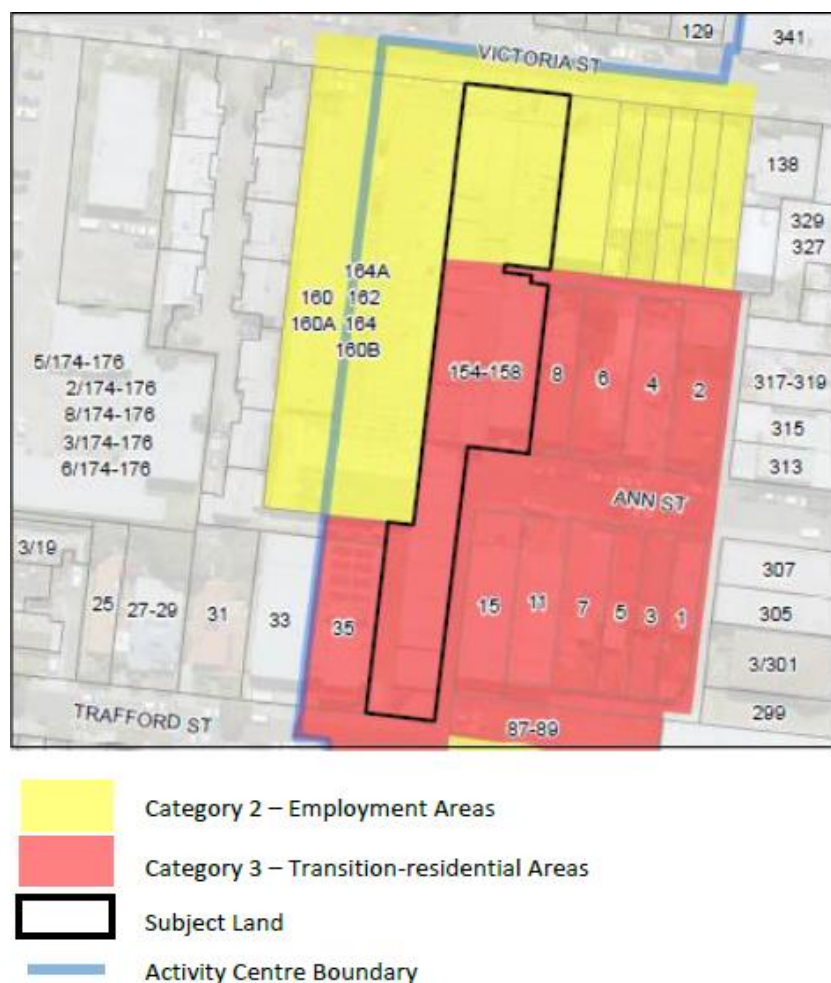
160 Victoria Street (Figure 18) is within MILS Area 44 (Category 2) and currently has split zoning with IN3Z on the eastern side of the property and NRZ1 on the western side. The Amendment seeks to place the whole of the land within the C1Z. This is consistent with the MILS implementation strategy and is supported.

154-158 Victoria Street

154-158 Victoria Street comprises 8 land parcels (Figure 19). The northern part of the land fronting Victoria Street sits within MILS Area 44 (Category 2), whilst the southern part of the land with a frontage to Ann and Trafford Streets are within MILS Area 45 (Category 3).

The C1Z is to be applied to all of the land, however the Background Report supports the residential use at ground level for land in Ann and Trafford Streets⁹. DDO19 proposes a preferred height of 14 metres. Council submitted that a residential use at ground level to the rear of the land would be a requirement of any proposal for the land.

Figure 19 154-158 Victoria Street



⁹ A planning permit is required for a residential use at ground level in the Commercial 1 Zone on land/access wider than 2 metres

The Panel is not convinced that there is sufficient strategic justification to apply the C1Z zone to all of the land. While Council indicated it would not allow commercial uses at ground level for the Ann and Trafford Street frontages, there still may be some opportunity for commercial vehicle access. Ann and Trafford Streets are both small local no-through-road streets that are not ideal for commercial access, noting that the narrow laneway connecting the two streets only supports bicycle and pedestrian connectivity.

As with the Edward Street car park, the Panel considers it preferable to apply the MUZ to the rear of the site, which would be consistent with the abutting Ann Street properties to the east and 35 Trafford Street to the west. This approach should support any attempts to aggregate land as the width of the site may make a single development of the land quite difficult. If this occurs, then the land should be developed in a manner that is consistent with adjoining land.

(iv) Conclusions

The Panel concludes:

- the inclusion of the whole of 160 Victoria Street in the C1Z is appropriate and is supported
- the inclusion of the whole of 154-158 Victoria Street in the C1Z is not supported
- the southern portion of 154-158 Victoria Street that is shown as a Category 3 area should be rezoned to the MUZ.

(v) Recommendation

The Panel recommends:

- 10. Delete the Commercial 1 Zone from the rear of 154-158 Victoria Street, Brunswick as defined by Category 3 land and replace it with the Mixed Use Zone.**

6.3 MILS Area 46 (Albert Street)

(i) Overview

MILS Area 46 is Category 2 land and is to be rezoned to the C1Z. The land is not located in the Lygon Street corridor, but in an off-corridor location. The land extends to Trafford Street in the north to land south of Albert Street. A building height of 14 metres is proposed.

(ii) The issue

The issue is whether the C1Z is appropriate or whether it should be included in the MUZ.

(iii) Submissions

Mr Cicero submitted on behalf of Dempton Industries which owns or has an interest in 87-89 Albert Street (C1Z), 91 Albert Street (C1Z), 93-97 Albert Street (C1Z), 118-120 Albert Street (C1Z) and 38 Trafford Street (MUZ). This land constitutes most of the MILS area and has a total area of 3,586sqm north of Albert Street and 720sqm south of Albert Street.

Mr Cicero supported the MUZ for 38 Trafford Street, however sought the MUZ for the balance of his client's land on the basis:

- the approach lacks strategic justification, including at both the State and Local Planning Policy level and will undermine the growth and development of the BAC
- there is a direct abuttal to other land that is to be zoned MUZ in MILS Areas 45 and 47. The use of one zone (MUZ) across these areas would promote site consolidation with larger land holdings
- the land lacks a frontage to Lygon Street and is separated from it by land that fronts Lygon Street and a laneway
- the northern portion of the land has access to Trafford Street which is a narrow residential street (in the NRZ) inappropriate for commercial traffic
- the four storey height limit allows only the upper two levels to be residential which affects the lands development viability
- ground floor activation at all interfaces would be required.

Council submitted that *“the categorisation of land was not up for debate as part of this (Amendment) process”* and Albert Street is identified as a key pedestrian priority street. In response to Mr Cicero’s observation that MUZ land often results in a wholly residential development, Council submitted this is not the outcome sought by Category 2 areas.

Mr Cicero was not aware of the DELWP direction to reduce the number of DDO objectives to no more than five and remove any metrics from the objectives. He considered the reference to *“mid rise built form character”* in objective 1 without the current reference to 3 to 9 storeys creates uncertainty. Council agreed to amend the DDO schedules to amend the legend of each map attached to the schedules to *“Preferred heights (mid rise)”*.

(iv) Discussion

During the Panel’s inspection of the area it observed, firstly, how narrow Trafford Street was with its residential character and, secondly, that Albert Street is not much wider and does not have the capacity for two way vehicle movements when cars are parked in the street. It may be a pedestrian priority street, however it does not seem to provide for the efficient movement of traffic. An Albert Street frontage may still be able to provide commercial activation, however this should not be allowed for other minor street frontages including Trafford Street. The Panel refers to Council’s response to 154-158 Victoria Street where a permit could be sought in the C1Z for residential uses at ground level. MILS Area 46 seems to be another example where this approach could be supported to avoid commercial uses and commercial access via these minor streets.

The Panel notes that Council has taken a consistent approach with land in Albert Street to the east of Lygon Street (refer to MILS Area 68) where the C1Z has been used. The Panel considers this is a matter that should be monitored to see whether the commercial uses along Albert Street are appropriate and have been or will be supported by the market.

(v) Conclusions

The Panel concludes:

- the C1Z is appropriate for MILS Area 46
- the new reference to mid rise in the maps attached to each DDO schedule is appropriate.

(vi) Recommendation

The Panel recommends:

- 11. Amend the legend of each map in Schedules 18, 19 and 20 to the Design and Development Overlay to “Preferred Heights (mid rise)”.**

6.4 MILS Areas 47 and 48 (Pitt Street and Glenlyon Road)**(i) Overview**

MILS Area 47 is Category 3 land and is to be rezoned to MUZ. MILS Area 48 is Category 2 land and is to be rezoned to C1Z. DDO19 currently applies a height of 14 metres to Pitt Street and Glenlyon Road.

(ii) The issue

The issues are whether:

- an intent of a landowner to not develop land in accordance with MILS undermines the strategy
- the current height controls are appropriate.

(iii) Submissions

Ms Plompen submitted that:

- she has no intention to develop her land at 10 Pitt Street which, she submitted, undermines the intent of MILS for land south of Pitt Street to be developed as a larger development site combined with adjoining land
- the MUZ is not appropriate for a residential street and should be limited to the east of 10 Pitt Street which would still allow for contiguous land in the BAC. 10 and 12 Pitt Street should then be in the Neighbourhood Residential Zone that applies further west and allow for the continued low density residential character and be removed from the BAC.

Ms Wellings (110) made a similar submission that requested the Neighbourhood Residential Zone, and if not, then the GRZ for 9 Pitt Street. A height of 3 storeys or 11 metres was requested.

Mr Eddy (36) owns an apartment at 191-194 Lygon Street and requested the building height of 14 metres for MILS Area 47 be reduced to 11 metres to maintain views to the west and step down to the lower built form within the GRZ.

Council submitted that the intention of the MUZ for Pitt Street is to retain the residential use of the land with no commercial activities at ground level. The height of 14 metres currently applies to the land in DDO19 and is not part of the Amendment.

(iv) Discussion

The Panel is conscious that the Amendment proposes to rezone the land in MILS Area 47 and retain the current height that applies in DDO19. Therefore, the ambit of its consideration is restricted to the zone issue. However, as the Panel has stated in this report, whether the

nominated heights can be achieved particularly where there are smaller lots and sensitive interfaces is a matter that could only be determined by a proposed development and its assessment by Council against the DDO19, the zone and Clauses 54 or 55, as relevant.

Pitt Street is a narrow, dead-end residential street. The Panel agrees with Council that it would not be appropriate to have commercial uses at ground level and that future development might well be entirely residential. The land further west is not within the BAC and is entirely residential in character.

The Panel notes that the C1Z for the narrow strip of land that provides access from Pitt Street to MILS Area 48 is inconsistent with MILS (which supports the MUZ). However, the Panel considers this is appropriate as it is adjacent to the C1Z for the Lygon Street corridor and is linked to a defined development proposal.

The Panel did consider whether this should be another area that is reviewed at the next review of the BAC or MILS given it is a narrow dead-end residential street. However, the Panel is aware the land to the south fronting onto Glenlyon Road (MILS Area 48) may be developed for a supermarket based mixed use development with access onto Pitt Street. The Amendment rezones this access to C1Z to the east of the submitters land (and closer to Lygon Street). On balance, the Panel considers this approach to the zones is appropriate.

(v) Conclusion

The Panel concludes the MUZ for MILS Area 47 (Pitt Street land) is appropriate and the current building height is not part of the Amendment.

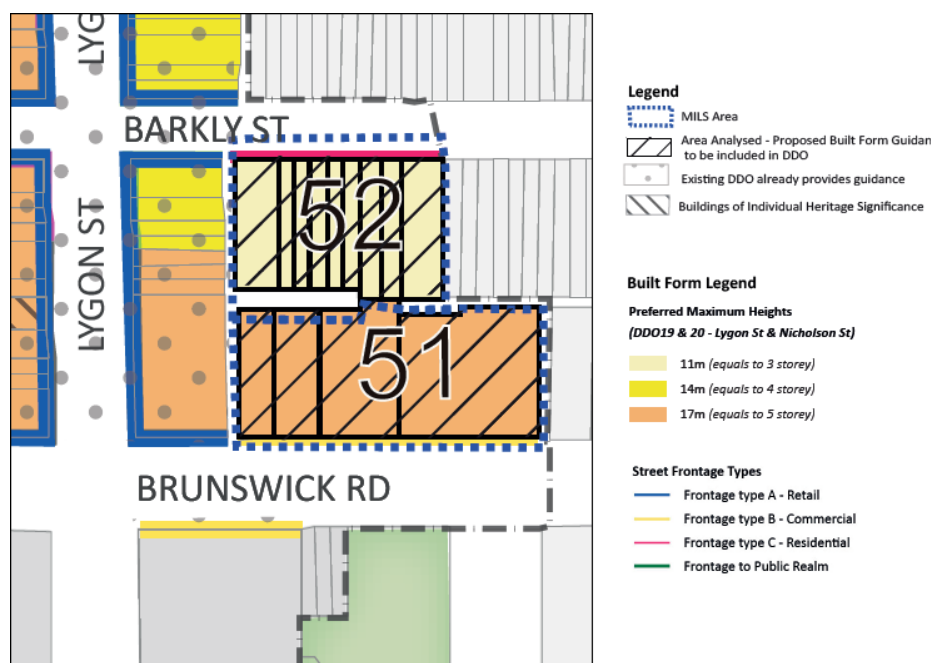
6.5 MILS Areas 51, 52, 53, 54 and 55 (Barkly Street, Brunswick Road, St Phillip Street and Weston Street)

(i) Overview

The locations of MILS Areas 51 and 52 are shown in Figure 20, whilst MILS Areas 53, 54 and 55 are shown in Figure 21.

MILS Area 52 is located to the south of Barkly Street and comprises single and double storey residential terraces bookended by two anomalous and commercially used buildings located at 112 Barkly Street and 128 Barkly Street. To the north of Barkly Street is a similar set of residential terraces that is located outside of the BAC. Land north and south of Barkly Street is within HO14 (Barkly Street East Precinct, East Brunswick). The Amendment proposes to rezone the land to the MUZ and apply DDO19. A building height of 11 metres is to be applied. Council has described the approach as:

The overall control is appropriate for the site. Extend the existing building height control of DDO19 to the site. Although the BSP Addendum suggested 4 storeys for these properties, Brunswick Rd is a very wide street, and therefore a higher building height is appropriate. A five storey preferred height will create a consistent character which wrap around onto Lygon Street. It is noted that the precinct is physically separated from the surrounding residential land via a laneway.

Figure 20 MILS Areas 51 and 52 – proposed built form guidance

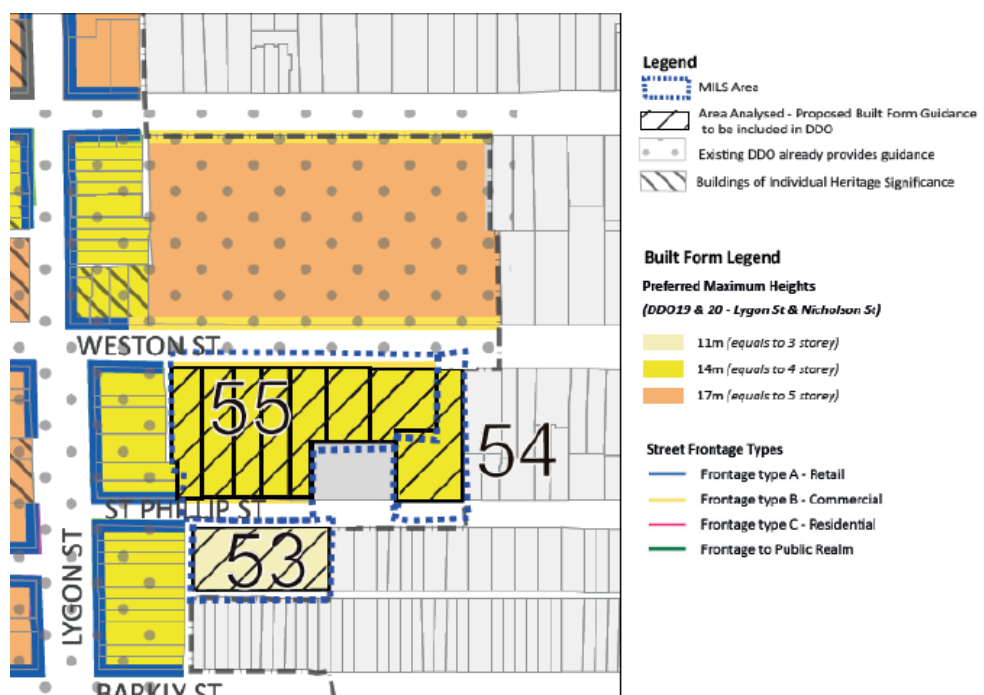
MILS Area 51 is located between MILS Area 52 and Brunswick Road and accommodates commercial uses. The Amendment proposes to rezone the land to the C1Z and apply DDO19. A building height of 17 metres is proposed. Council has described the approach as:

Although occupied by a non-contributory warehouse the site is narrow and located in the middle of Victorian era heritage precinct. Future development should respect the low-density residential character of Barkly St. The proposed height for the site is the same as per the previous BSP Addendum which is considered still appropriate (11m). The site is within a heritage overlay.

MILS Area 53 is located on the south side of St Phillip Street which is a narrow street and is occupied one large double storey brick warehouse building. Council described the approach as:

The proposed height for the site is the same as per the previous BSP Addendum which is considered still appropriate. It is recommended that Frontage C is removed to allow flexibility of other type of street interfaces. The existing 2 storey brick building used as a multi-office/warehouse is considered a good contribution to the street and can be easily retained with the proposed 3 storey height. The sites across the road have a commercial frontage designation, which will create a consistent low/medium-rise commercial precinct which is appropriate for the narrow St Phillip street, and could accommodate small boutique offices or studios. The surrounding land is low scale 1-2 storey residential in character.

It is to be rezoned to MUZ and with the DDO19 applied (11 metre height limit).

Figure 21 MILS Areas 53, 54 and 55 – proposed built form guidance

MILS Area 54 is located to the east of MILS Area 55 and has frontage to both St Phillip Street and Weston Street. It consists of a single property (146 St Phillip Street). It is to be rezoned to MUZ with the DDO19 applied (14 metre height limit). Council describes the approach as:

The proposed height for the site is the same as per the previous BSP Addendum which is considered still appropriate. It is recommended that Frontage C is removed to allow flexibility of other type of street interfaces, responding either to the West (commercial frontage) if amalgamation occur or residential frontage to the East. There is no strong justification for a residential frontage for this isolated frontage control.

MILS Area 55 is the largest of the areas and is to be rezoned to C1Z with a height limit of 14 metres under DDO19. Council describes the approach as:

The proposed height for the site is the same as per the previous BSP Addendum (14m) which is considered still appropriate. These properties have existing commercial built form and a preferred height of 4 storeys will provide an appropriate transition in height from the lower scale development to the south and the higher built form of the former Tip Top site to the north.

(ii) The issues

The issues are whether the proposed height controls are appropriate and whether MILS Area 52 should remain in the BAC in the long term.

(iii) Submissions

Council acknowledged the fine grained residential context of MILS Area 52 in proposing an 11 metre height limit:

These sites are narrow, intact Victorian terraces. Future development should respect the low density residential character of Barkly Street.

Mr Batrouney (118) made a general submission regarding MILS Area 51, 52, 53, 54 and 55. He considered mandatory height limits should be used in all precincts and with reduced heights, as follows:

- MILS Area 51 11 metres (3 storeys) from 17 metres (5 storeys)
- MILS Areas 52 and 53 9 metres (2 storeys) from 11 metres (3 storeys)
- MILS Areas 54 and 55 9 metres (2 storeys) from 14 metres (4 storeys)

This request was based upon the current HO that restricts development potential of land, the intact Victorian terrace streetscape and the single or double storey development along the Barkly Street.

Mr O'Brien made a submission on behalf of La Triestina Food and Manufacturing (114) which owns 85-93 Brunswick Road (MILS Area 51) and 112 Barkly Street, Brunswick East (MILS Area 52). Mr O'Brien submitted that the BSP 2018 had not *"kept pace with surrounding development and emergent built form"* and *"there was scope for higher and more robust built form within Area 51 and 52."* Mr O'Brien supported a 24 metre (7 storeys) height limit for MILS Area 51 and 17 metres (5 storeys) for "the Barkly Street interface." In both circumstances Mr O'Brien considered off-site amenity impacts could be managed by the setbacks within DDO19. The proposed heights would be *"consistent with current heights along Lygon Street near the corner of Brunswick Road and Barkly Street, and is consistent with recently granted permits which have allowed building heights approximately 2 storeys higher than contemplated within the Brunswick Structure Plan."*

The business has now relocated and the site is currently for sale.

With regard to MILS Area 52, Mr O'Brien considered *"there is real possibility that the future development potential of these sites will be compromised by pursuing suggested height limitations that are more reflective of as-of-right heights within the nearby General Residential Zone."*

(iv) Discussion

MILS Area 51 and 52 have a very different current and proposed form arising from the nomination by MILS that Area 51, fronting Brunswick Road is to develop as a commercial area with residential apartments above and Area 52, fronting Barkly Street and with a clear and consistent residential character will have limited development potential with a residential focus.

The Panel does not support the submission from Mr O'Brien that heights be increased as:

- the heights already have in-built flexibility as they are discretionary
- the comparison to heights along Lygon Street and Brunswick Road that were quoted to the Panel by Mr O'Brien ignores the approach of using higher built forms along the corridors of Sydney Road, Lygon Street and Nicholson Street and lower heights in off-corridor locations where there are more sensitive interfaces.

The Panel generally agrees with the direction of MILS for these areas. The question that arises is whether in the long term should MILS Area 52 be retained within the BAC given its consistent

residential character and the application of the HO if the opportunities to develop as presented by MILS are not taken up?

The Panel considers the likelihood of development up to 11 metres high along Barkly Street occurring is limited as:

- all of the area is affected by the HO
- there is a consistent low rise, fine-grained residential character on both sides of Barkly Street with only two anomalous land uses.

In response to whether consideration at any time in the past was given to removing land from the BAC based upon its residential characteristics (such as Barkly Street), Council advised the Panel this was never considered and MILS had only been operable in the planning scheme for two years and it still needs time to “bed down”. Mr Batrouney considered the removal of MILS Area 52 from the BAC would be a good outcome and would assist to retain an intact heritage residential precinct.

The Panel appreciates that opportunities arising from MILS will take some years still to eventuate. However, there will be a time where areas such as MILS Area 52 should be reviewed (perhaps at the next iteration of MILS) if these opportunities have not been taken and the preferred and likely development of the precinct would be more consistent with the GRZ/HO control set that applies to the land north of Barkly Street. The Panels considers this is reasonable and there may be other residential areas that should be considered for removal from the BAC as they are encumbered to such an extent that significant re-development may not occur. If land removal does eventuate then this is unlikely to undermine the intent of MILS or the strategic role of the BAC if it occurs on land at the periphery of the BAC, not along the commercial corridors.

(v) Conclusions

The Panel concludes:

- the exhibited building heights for MILS Areas 51, 52, 53, 54 and 55 are appropriate
- Council should monitor how the opportunities afforded by the new controls are taken up and give consideration to whether residential precincts within the BAC should be removed from the BAC. This should occur at the next review of MILS or the BAC.

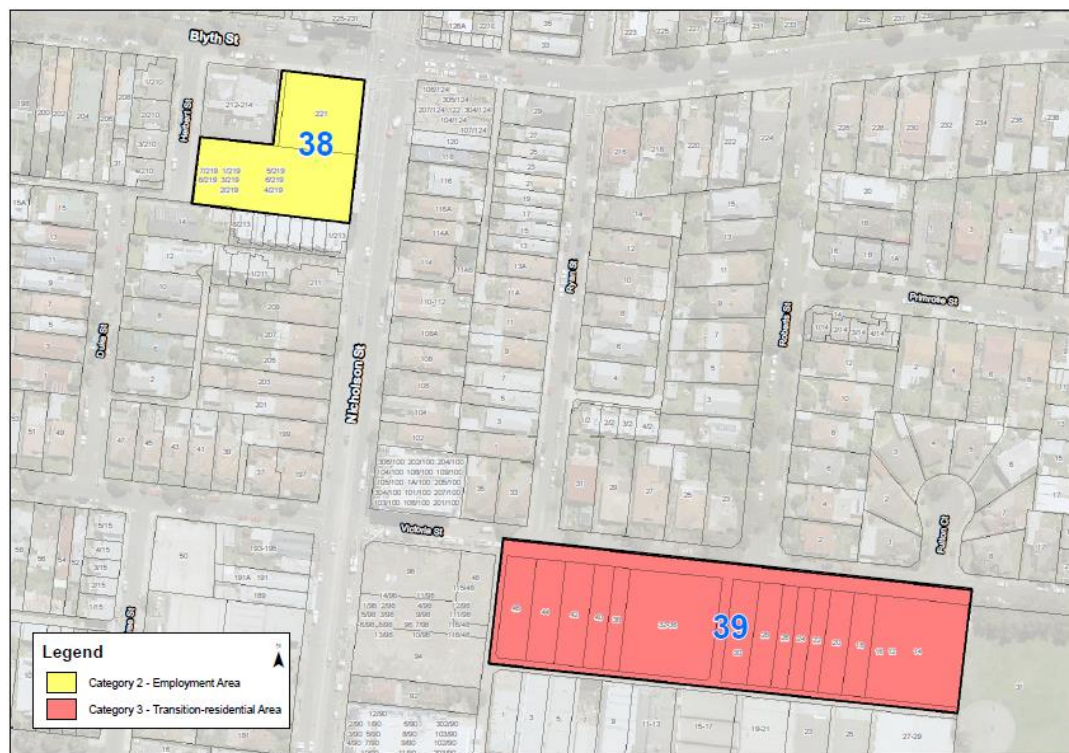
7 Nicholson Street

7.1 MILS Area 38 (Corner Blyth and Nicholson Streets)

(i) Overview

The Amendment proposes to rezone both 219 and 221 Nicholson Street from IN3Z to C1Z and apply the PO1 and EAO to the land. Figure 22 shows the location of each area.

Figure 22 MILS Areas 38 and 39



(ii) The issue

The issue is whether the proposed controls affecting land surrounding 221 Nicholson Street used by the 3RRR radio station are appropriate to allow for its ongoing operation.

(iii) Submissions

Submitter 75 (Triple R Broadcasters 3RRR) submitted that additional changes, either to the objectives or decision guidelines in DDO20 should be considered to improve the protection it currently offers for its Fresnel Zone¹⁰. In particular, it also sought protection of the Fresnel Zone from potential construction activities on sites opposite 3RRR along the east side of Nicholson Street.

Council submitted that DDO20 contains sufficient protection for the Fresnel Zone at 221 Nicholson Street (at Clause 2.0) where it states:

¹⁰ The Fresnel Zone is a region of space between and around a transmitting antenna (at 3RRR) and a receiving antenna (at Mt Dandenong).

The height of any building (including services) on 120, 122 and 124 Nicholson must not impact on the Fresnel Zone associated with radio transmissions from 221 Nicholson Street, Brunswick East. A permit cannot be granted to vary this requirement.

Council submitted that the changes to the objectives are policy neutral and consistent with the Ministerial Direction Form and Content of Planning Schemes to contain DDO objectives to five as well as verbal advice from DELWP that itemised objectives are not permitted in the design objectives.

Council further submitted that protection from construction activities was a matter dealt with through construction management of future development or through the building process.

(iv) Discussion and conclusion

The Panel considers that the protection of the Fresnel Zone for 3RRR is vital to its on-going operations. The ability to transmit a signal is fundamental to the operation of a radio station. The current DDO does not have any reference to the Fresnel Zone in its objectives and therefore the Panel agrees with Council that the proposed changes are considered policy neutral in that respect.

3RRR agreed that this control covered the extent of need, with the exception of construction activities (such as the use of cranes), associated with any development of the properties opposite 3RRR of the east side of Nicholson Street, that may breach the Fresnel Zone. The Panel agrees with Council that protection from construction activities is a matter that falls outside the ambit of DDO20.

7.2 MILS Area 39 (Victoria Street)

(i) Overview

MILS Area 39 is a Category 3 area. The Amendment proposes to change the zoning of all properties in Area 39 from IN3Z to MUZ, consistent with the MILS implementation strategy. In addition, it proposes to apply PO1 and DDO20 to all properties, including an 11 metre preferred height limit and Frontage Type C Residential in DDO20 (Figure 23).

(ii) The issue

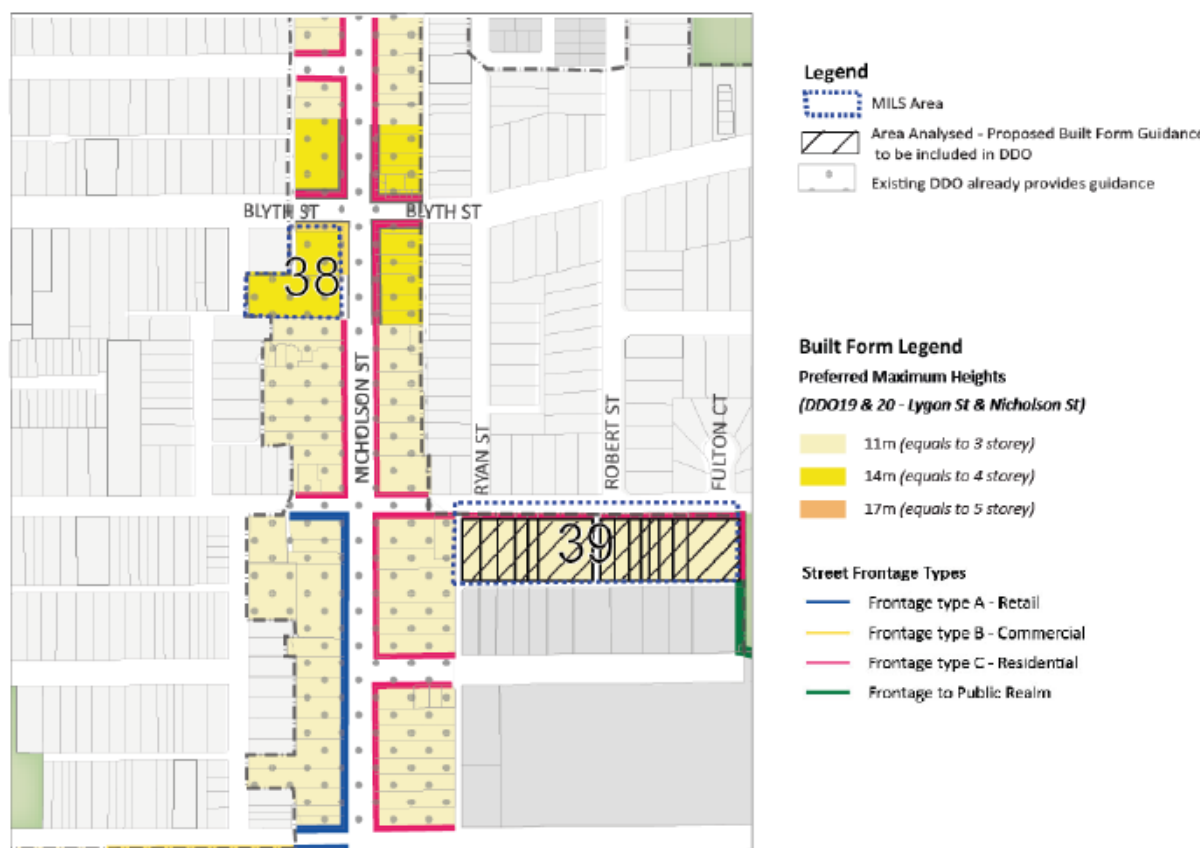
Submissions in this area raised concern in regard to the height controls and traffic issues. There were no submissions regarding the zoning, or application of the PO1 or EAO.

(iii) Submissions

Submitter 9 raised concern that developments may block daylight to her property, 2 Robert Street, which is subject to a HO and is located on the north side of Victoria Street. In recompense she seeks the removal of the HO affecting her property.

Submitter 11 of 30 Victoria Street submitted that this property should have a 15 metre height limit.

Submitter 128 raised concerns about local traffic risks.

Figure 23 MILS Areas 38 and 39 – proposed built form guidance

Council submitted that the proposed preferred maximum 11 metre height limit was appropriate given the primarily single storey properties adjacent to this precinct and the matching 11 metre height control on Nicholson Street at the western end of Victoria Street.

(iv) Discussion

The area contains a mix of predominately single storey residential and industrial buildings. The land abutting the south side of the precinct remains in the IN3Z and also contains primarily single storey buildings, with some two storey buildings up to approximately 9-11 metres.

The area has been designated a Category 3 Transitional Residential land. This category is expected to provide for building heights and types that transition down in scale to the surrounding residential areas. Given the predominantly single storey existing heights in the surrounding area and the 11 metre height control on Nicholson Street it would be inappropriate to set a preferred height limit above 11 metres.

The Panel considers this height is appropriate given the presence of heritage listed houses on the corner of Roberts Street to the immediate north of the area, noting that these heritage properties are on the north side of the road and hence will not be affected by any overshadowing from taller buildings. The DDO also contains an objective to ensure that development is designed to respect the form and design of heritage places. This is also reflected in the decision guidelines at Clause 5.0, which specifically references potential constraints on heights having regard to sites adjoining land in a HO.

In relation to local traffic issues, these are matters that can be dealt with at the planning permit stage, or through Council's standard business.

(v) Conclusions

The Panel concludes:

- the MUZ is appropriate for MILS Area 39
- the proposed maximum height of 11 metres is appropriate for MILS Area 39
- local traffic issues can be appropriately dealt with by Council through other processes.

Appendix A Submitters to the Amendment

No.	Submitter
1	Sotirios Bernard Georgilopoulos
2	Joy Bruns
3	John Graham
4	James Lesh
5	Dr Soula Filippas
6	Con Zotos
7	Anotoli Demellis
8	Mian Ren Zue and Lan Zhen Zhao
9	Anna Rainone
10	Lauren Rech
11	Alex Rio
12	Sarsha Rio
13	Nick Rio
14	Maria Moretto
15	James Kirby
16	Meelam Mahara
17	Katie Milton
18	David Brear
19	Alexandra Lemke
20	Michael Petit
21	Hannah McVean
22	Jo Howard
23	Kaspar Thacker
24	David Nash
25	Mike Denison
26	Amy Stoneham
27	Kellie Holland
28	Edward Creese
29	Simon Hogarth
30	Brigid Barrett
31	Kate Goodwin

32	Priscilla Auyueng
33	Stephanie Poustie
34	Marlene Mansour
35	Peter Hansen
36	David Eddy
37	Graeme and Susan Fisher
38	Paul Sanderson
39	Johnny Tedesco
40	Chantelle Cano
41	Con Pavlidis
42	Best Hooper on behalf of Dempton Industries Pty Ltd et al
43	Planning Property Partners on behalf of 1-7 Wilson Avenue Developer Pty Ltd
44	Koraly Georgiou
45	Lisa Wray
46	Emily Hamilton
47	Michelle Chard
48	Justin Van Wanrooy
49	Fraser Gough
50	Aniera Connell
51	Luke Dale
52	Keith Peryer
53	Lidia Costa
54	Catherine Navon
55	Victoria and James Frost
56	Janice Hooper and Timothy Connell
57	Angelo Tenace
58	Ratio Consultants on behalf of Goal Number 9 Pty Ltd
59	Transport for Victoria
60	Nic Ciampa
61	Nathalie McGlone
62	Matt Low
63	Andrew Johnston
64	Kim (surname not provided)

65	Dave Puckering
66	Kerry and Brian Garrett
67	Julian Whitty
68	Carolyn de Graaf
69	Marnie Vickers
70	Christine and David Downing
71	Trudy Hards
72	VicRoads
73	Alex Stripp
74	Shane Bowden
75	Triple R Broadcasters
76	Michael Matthews
77	Bernard de la Coeur
78	Hilary Briar
79	Elizabeth (surname not provided)
80	Wexham Holdings
81	Ubaldo Comley and Vera Joosten
82	Kate Hoppe
83	Eleonora Georgiou
84	Chris Scott
85	Leslie Glick
86	Stephen Spiller
87	Molly Hibberd
88	Simon Jeppesen
89	Dominic Hogan
90	Jennifer Ho
91	Nicci Tait
92	Tony Bruno
93	Michaela Hill and Kieran Magee
94	Greg De Were and Lisa Edgar
95	Vanessa Bakalis
96	Niki Papadopoulos
97	Erica Plompen

98	Rachel H Berners
99	Angela Altinidis
100	Alexandra and Davis Lemke
101	David Shelton
102	Ric Begg
103	Erin Tibbitts
104	Tim Read
105	Arverne Pty Ltd
106	Glenda Lasslett
107	Christina Bozsán
108	Jonathon Davis (petition)
109	Pia Herbert and Lester Townsend
110	Kathryn Wellings
111	Patrick Kluver
112	Nick Bourns
113	Brenda Upton-Kemp
114	La Triestina Foods and Manufacturing Pty Ltd
115	Vince Boffa
116	Daniel Cook
117	Sharon Cookson and Robert Beveridge
118	Edward Batrouney
119	Rod Duncan
120	Michael Adcock
121	Michael Batten
122	Angela Perkin and Andrew Horton
123	Cristina Drapac
124	April Johnston
125	Southern Manchester Traders Pty Ltd
126	Lizzie Bickmore
126A	Friends of Edward Street Inc.
127	Darryl Chow
128	Pieter Rienks
129	Jennifer Fraser

130	Atma Environmental Pty Ltd
131	G2 Urban Planning on behalf of prospective purchaser of land
132	ID Land Pty Ltd
133	G2 Urban Planning on behalf of Confreight Pty Ltd
134	Urbis on behalf of land owner
135	Environment Protection Authority
136	Pal Hosiery Mills Pty Ltd
137	Best Hooper on behalf of La Strada Investments Pty Ltd
138	Greg De Vere
139	Dr Jessica Davis

Appendix B Document list

No.	Date	Description	Presented by
1	4/6/2018	Council Part A submission and 9 attachments	Council
2	4/6/2018	Expert witness report – Ian Kluckow	Council
3	4/6/2018	Expert witness report – Rory McPhillips	Richard Umbers, Peninsula Planning Consultants
4	4/6/2018	Maps – various	Council
5	4/6/2018	Council Part B submission and 1 attachment	Council
6	4/6/2018	Council Urban Design presentation	Council
7	4/6/2018	DDO22 Moreland Planning Scheme	Council
8	4/6/2018	Caydon CP Developments Pty Ltd v Moreland CC [2014] VCAT 357	Council
9	4/6/2018	Russo v Moreland CC [2010] VCAT 1027	Council
10	4/6/2018	Brunswick Structure Plan Addendum – Map 10 June 2012	Council
11	5/6/2018	Submission on behalf of Submitter 114	Kyle O’Brien, Clement Stone Town Planners
12	5/6/2018	Letter from Submitter 43 dated 5 June 2018	Mark Naughton, Planning and Property Partners
13	5/6/2018	Submission on behalf of Submitter 75.	Eleni Carrol, HWL Ebsworth
14	5/6/2018	Submission on behalf of Submitter 109	Pia Herbert
15	6/6/2018	Council Part B submission – Application of the Environmental Audit Overlay	Council
16	6/6/2018	Ministerial Direction No. 1: Potentially Contaminated Land	Council
17	6/6/2018	Submission of behalf of Submitters 77 and 130	Richard Umbers
18	6/6/2018	Submission (folder) by Submitter 97	Erica Plompen
19	6/6/2018	Submission on behalf of Submitter 132	Sean McArdle, Norton Rose Fulbright
20	6/6/2018	Clause 21.03 of Moreland Planning Scheme	Sean McArdle
21	6/6/2018	Submission on behalf of Submitter 80	John Carey, Minter Ellison
22	6/6/2018	Folder of supporting material (Submitter 80)	John Carey

No.	Date	Description	Presented by
23	6/6/2018	Extract of Moreland Planning Scheme Amendment C134 Panel Report 15 May 2015	John Carey
24	7/6/2018	Submission on behalf of Submitter 42	John Cicero, Best Hooper
25	7/6/2018	Submission by Submitter 119	Rod Duncan
26	7/6/2018	Submission on behalf of Submitter 105	Dominic Scally, Best Hooper
27	8/6/2018	Letter on behalf of Submitter 80	John Carey
28	8/6/2018	Submission by Submitter 35	Peter Hansen
29	8/6/2018	Submission by Submitter 36	David Eddy
30	8/6/2018	Submission by Submitter 30	Kathryn Wellings
31	8/6/2018	Submission by Submitter 118	Edward Batrouney
32	8/6/2018	Council Part C Submission – Right of Reply	Council

Appendix C Schedules 18, 19 and 20 of the Design and Development Overlay supported by the Panel

11/08/2016
Proposed
C164

SCHEDULE 18 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

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

BRUNSWICK ACTIVITY CENTRE – SYDNEY ROAD AND UPFIELD CORRIDOR

1.0

Design objectives

11/08/2016
Proposed
C164

- To encourage a new mid-rise built form with lower built form at the interfaces with the adjoining low rise residential areas
- To complement the valued built form and heritage character along Sydney Road and respect the form, design and context of buildings of individual heritage significance in the precinct.
- To ensure the street wall remains the visually dominant element of all development in Sydney Road and that any height above the street wall is visually recessive, subservient and does not dominate the streetscape appearance.
- To establish a new cohesive built form character in off-corridor locations to the east and west of Sydney Road to achieve an appropriate balance between a sense of enclosure and openness and to ensure new street walls reinforce the existing character of street walls in nominated off-corridor streets.
- To protect the amenity of existing and proposed public open spaces and key pedestrian streets, and maintain reasonable amenity for residential properties within and adjacent to the activity centre.

2.0

Buildings and works

11/08/2016
Proposed
C164

A permit is not required to:

- Install an automatic teller machine.
- Alter an existing building facade provided that:
 - The alteration does not include the installation of an external roller shutter; and
 - At least 80 per cent of the building facade at ground floor level is maintained as an entry or window with clear glazing.
- Construct or extend one dwelling on a lot of more than 300 square metres. This exemption does not apply to:
 - Construct a dwelling if there is at least one dwelling existing on the lot;
 - Construct or extend a dwelling if there are two or more dwellings on the lot;
 - Construct or extend a dwelling if it is on common property; and
 - Construct or extend a front fence within 3 metres of a street if the fence is associated with 1 or more dwellings on a lot or a residential building, and the fence exceeds the maximum height specified in Clause 55.06-2.
- Construct or carry out works normal to a dwelling.
- Construct or extend an outbuilding (other than a garage or carport) on a lot provided the gross floor area of the outbuilding does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works:

Building height

- Building height should not exceed the preferred maximum building heights as shown in the *Sydney Road and Upfield Corridor Overall Building Heights, Map 1A (North) and Map 1B (South)*.
- Building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building. This does not include architectural features and service equipment including plant rooms, lift overruns, structures associated with green roof areas and other such equipment provided that the following criteria are met:
 - No more than 50% of the roof area is occupied by the equipment (other than solar panels);
 - The equipment is located in a position on the roof so as to minimise additional overshadowing on neighbouring properties and public spaces;
 - The equipment does not extend higher than 3.6 metres above the maximum building height; and
- The equipment and screening is integrated into the design of the building to the satisfaction of the responsible authority.

Buildings of individual heritage significance

- Development on sites containing buildings of individual heritage significance where no preferred maximum height is specified on *Map 1A (North) and Map 1B (South)* should demonstrate:
 - How the proposed building height responds to the heritage significance of the site and its context; and
 - How the design objectives of this schedule have been met.

Street walls

- Buildings within the commercial zone and mixed use zone should be constructed to the street frontage.
- Street wall height on the following streets should be between 5 and 8 metres:
 - Barkly Street (west of Sydney Road);
 - Union Street;
 - Manallack Street, Railway Place (north of Union Street);
 - Charles Street; and
 - Thomas Street.
- Street wall heights on the following streets should be between 7 and 10 metres:
 - Little Gold Street;
 - Florence Street;
 - Rosser Street;
 - Frith Street;
 - Beith Street;
 - McIver Street;
 - Howarth Street;
 - Wilkinson Street
 - Merri Street; and
 - Saxon Street.
- Street wall height on Sydney Road (including parapets) must be between 8 and 11 metres. A permit cannot be granted to construct a building or carry out works which are not in accordance

with this requirement. This does not include land on Sydney Road south of Brunswick Street, where the street wall height (including parapets) should be between 8 and 11 metres.

- Street wall height on the following street should be between 8 and 11 metres:
 - Dawson Street;
 - Victoria Street; and
 - Albert Street (east of Sydney Road).
- Street wall heights on the following streets should be between 9 and 12 metres:
 - Albion Street;
 - Breese Street;
 - West Street;
 - Duckett Street;
 - Hope Street;
 - Ovens Street;
 - Merrifield Street;
 - Ballarat Street;
 - Phoenix Street between Sydney Road and the Upfield Rail Line; and
 - Lobb Street.
- Street wall heights on Albert Street (west of Sydney Road) should be between 11 and 14 metres.
- Street wall heights on Dods Street should be between 12 and 15 metres.
- Street wall heights on Wilson Avenue should be between 15 and 18 metres.
- Street wall heights on the following streets should be between 17 and 20 metres:
 - Brunswick Road;
 - Michael Street between Sydney Road and Upfield Rail Line;
 - Weston Street;
 - Staley Street;
 - David Street (West side); and
 - Barkly Street (east of Sydney Road).
- On secondary street frontages of corner properties having the primary frontage to Sydney Road, the street wall height requirements on the Sydney Road frontage also apply to the secondary street frontage for the depth of the upper level setback.
- On the following corner properties, the street wall height at the frontage is to apply to the sideage for the depth of the upper level setback:
 - Black Street and Barkly Street;
 - Black Street and Wilson Avenue;
 - Saxon Street and Michael Street;
 - Saxon Street and Phoenix Street;
 - Henry Street and Albert Street;
 - Breese Street and Victoria Street;
 - Boase Street and Ballarat Street;
 - Boase Street and William Street;
 - Staley Street and Blyth Street (south of Blyth);
 - Frith Street and McIver Street;
 - Frith Street and Howarth Street; and
 - Beith Street and Howarth Street.

- Street facades within the Commercial 1 Zone should extend to both sides of the property boundary.
- Development that seeks to vary the street wall heights must demonstrate how the design objectives and requirements of this schedule will be met.

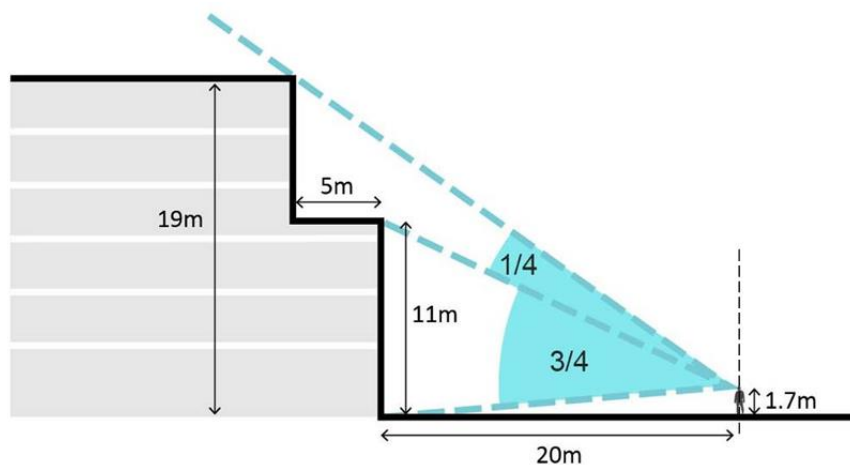
Buildings of individual heritage significance

- Development on sites containing buildings of individual heritage significance where no preferred maximum street wall height is specified on *Map 1A (North)* and *Map 1B (South)* should demonstrate:
 - Whether a street wall is appropriate having regard to heritage significance of the site and its context;
 - How the design objectives of this schedule have been met.

Upper levels (Sydney Road)

- Any part of a building (including balconies but excluding shading devices) above the street wall height should:
 - Be set back at least 5 metres from the street boundary.
 - On narrow corner lots the upper level setback at the secondary street frontage may be varied. Narrow lots are generally those lots where the depth is greater than five times the width, and where the lot size is smaller than 750m².
 - Be designed to ensure that it occupies no more than one quarter of the vertical angle defined by the whole building in the view from an eye-level of 1.7 metres on the opposite side of the street, as illustrated in *Figure 1* below.
 - Where an existing building with a street wall height of less than 11 metres is to be retained for heritage reasons new development may occupy more than one quarter of the vertical angle defined by the whole building outlined in Figure 1 above.
 - Adopt the same street setback for at least 75% of the height of the upper levels to avoid 'wedding cake' built form outcomes.
 - Materials at the upper levels of the building should be distinct from materials of the lower levels of the building.
 - The architectural expression of the upper and lower building components should be complementary and upper levels should be visually recessive.
 - Be designed to respect the form and design of adjacent civic buildings and heritage places.

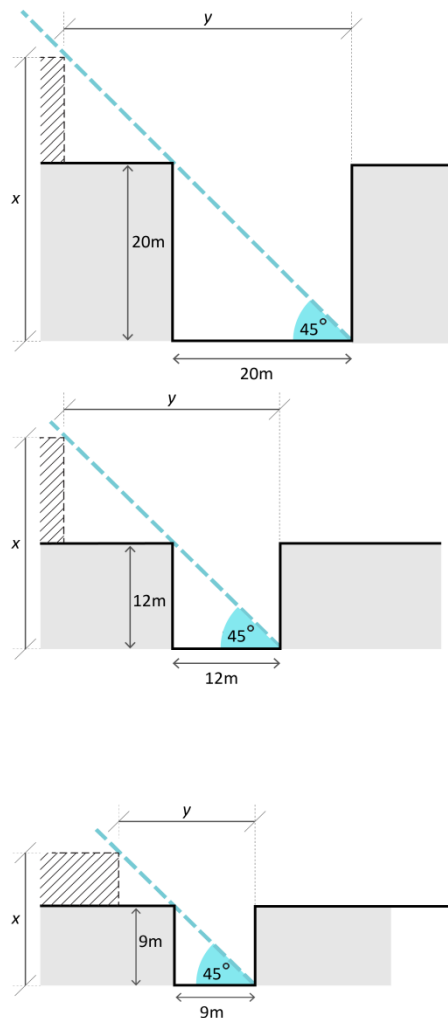
Figure 1: Upper Level Setbacks along Sydney Road



Upper levels (streets other than Sydney Road)

- Any part of a building above the street wall height should:
 - Be setback at least 5 metres from the street boundary. Balconies and other architectural features may protrude into the setback by a maximum of 2 metres.
 - On narrow corner lots the upper level setback at the secondary street frontage may be varied. Narrow lots are generally those lots where the depth is greater than five times the width, and where the lot size is smaller than 750m².
 - From ground level not exceed the horizontal distance from the opposite street boundary as illustrated in *Figure 2* below.
 - Adopt the same street setback for at least 75% of the height of the upper levels to avoid 'wedding cake' built form outcomes.
 - Be designed to respect the form and design of adjacent civic buildings and heritage places.
- Development that seeks to vary the upper level setbacks must demonstrate how the design objectives and requirements of this schedule will be met.

Figure 2: Upper level setbacks and heights (streets other than Sydney Road)



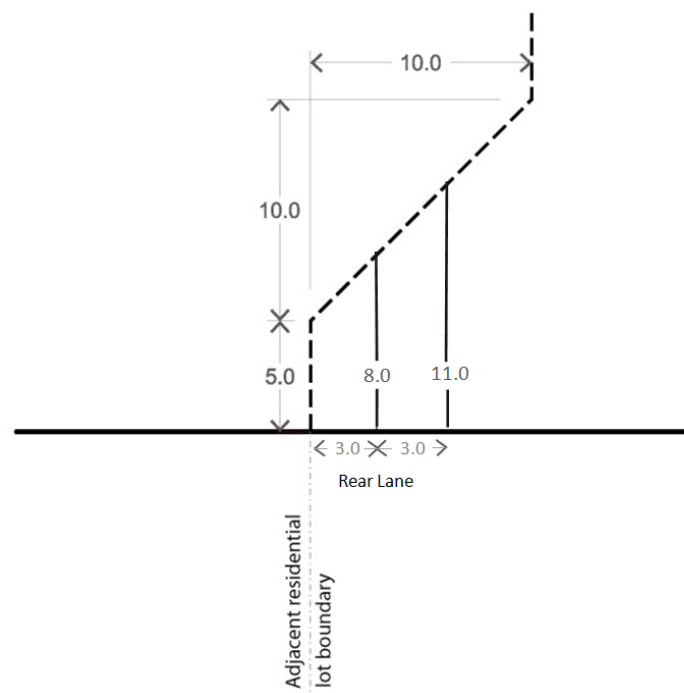
Buildings of individual heritage significance

- Development on sites containing buildings of individual heritage significance where no upper level setback is specified should demonstrate:
 - How the proposed upper level setback responds to the heritage significance of the site and its context; and
 - How the design objectives of this schedule have been met.

Setbacks to residential land

- Any part of a building adjacent to residentially zoned land outside the activity centre (including across a lane) should be set back from the residential boundary at that interface by a dimension equivalent to its height above 5 metres, up to a maximum setback of 10 metres, as illustrated in *Figure 3* below. This equates to:
 - A maximum height of 5 metres at the boundary of the adjacent residential property.
 - A maximum height of 8 metres where the site is separated from the adjacent residential property by a 3 metre wide lane.
 - A maximum height of 11 metres where existing lanes are widened to 6 metres.

Figure 3: Setbacks adjacent to residentially zoned land outside the activity centre



Building layout and detailed design

- Development should incorporate active edges at street level fronting all streets (except rear access lanes) and the Upfield Shared Path in accordance with *Map 3: Building Edge Conditions* to invigorate street life and contribute to a safe and pedestrian friendly environment. The Frontage types in *Map 3* are as follows:
 - Frontage Type A: Retail – A display window and/or entrance, measuring 65 - 80% of the width of the street frontage of each individual premise.
 - Frontage Type B: Commercial – A display window and/or entrance, measuring at least 60% of the width of the street frontage of each individual premise.

- Frontage Type C: Residential – Individual entry doors to ground floor dwellings. Privacy is to be provided by elevating the ground floor approximately 0.5 to 1 metre above the street level and/or provide a landscaped front setback.
- Development that abuts the Upfield Shared Path should be designed to avoid large areas of blank walls. Where unavoidable, large areas of blank walls should be treated with materials, artwork or in other ways that provide an attractive and visually interesting environment.
- Development should incorporate windows in all upper level facades facing streets and the Upfield Shared Path.
- Development should minimise the impact of vehicle access and car parking on the public realm by:
 - Locating vehicle access at the rear of buildings where possible;
 - On secondary frontages, rear access is preferred but where not possible, vehicle access should be provided to the side of corner properties away from the front façade; and
 - Locating car parking where it cannot be seen from the public realm.
- In commercial and mixed use zones, development should have a ground floor ceiling height that allows for a range of commercial uses.
- Development should incorporate awnings over the footpath for the full width of the building frontage along Sydney Road and Key Pedestrian Streets as set out in *Sydney Road and Upfield Corridor Strategic Framework Plan*.
- Services cabinets should be located at the rear of buildings wherever possible, or the side of corner buildings away from the front façade where rear access is not available. Where they can only be located in the front façade, the size of services cabinets should be minimised and they should be integrated with the overall façade design.
- Building facades on the street boundaries of Sydney Road should incorporate vertical articulation to reinforce the prevailing fine-grain pattern of subdivision and buildings.

Public realm

- Development adjacent to Jewell, Brunswick and Anstey Railway Stations should maintain or enhance the visibility of and access to railway station buildings.
- Development should incorporate the proposed public linkages indicatively shown on *Proposed Public Open Space Network, Map 2A (North) and 2B (South)*.
- Development should maximise permeability through the Activity Centre and the accessibility to the Upfield Shared Path.
- Development should not overshadow the opposite footpath of Sydney Road and Key Pedestrian Streets (as defined in *Sydney Road and Upfield Corridor Strategic Framework Plan, Map 4A(North) and 4B(South)*) between 10.00am and 2.00pm at the equinox.
- Development should not overshadow more than 50% of any existing or proposed public space, including parks and plazas, between 10.00am and 2.00pm at the equinox.

Upfield shared path interface

- The ground floor of development abutting the Upfield Shared Path should be set back a minimum of 1 metre.

Category 2 Employment Areas

- Development within Category 2 – Employment Areas should achieve commercial built form outcomes, including increased floor to ceiling heights and flexible floor plates, at ground and first floor to facilitate opportunities for employment uses.

- Ground floor commercial spaces should provide for activation, for example through entrances, transparent glazing and architectural features which encourage interaction and visual interest.

Notice and review

An application to construct a building or construct or carry out works is exempt from the notice requirements of Section 52(1) (a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the *Planning and Environment Act 1987* (the Act) unless the proposal seeks to do any of the following:

- Exceed the preferred maximum building height specified in section 2.0 of this schedule, or
- Exceed the preferred maximum street wall height specified in section 2.0 of this schedule, or
- Reduce the setbacks above the street wall specified in section 2.0 of this schedule, or
- Reduce the rear setback requirements specified in section 2.0 of this schedule.

An application to subdivide land is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

3.0 Subdivision

--/--/20--
C164

None specified.

4.0 Advertising signs

--/--/20--
C164

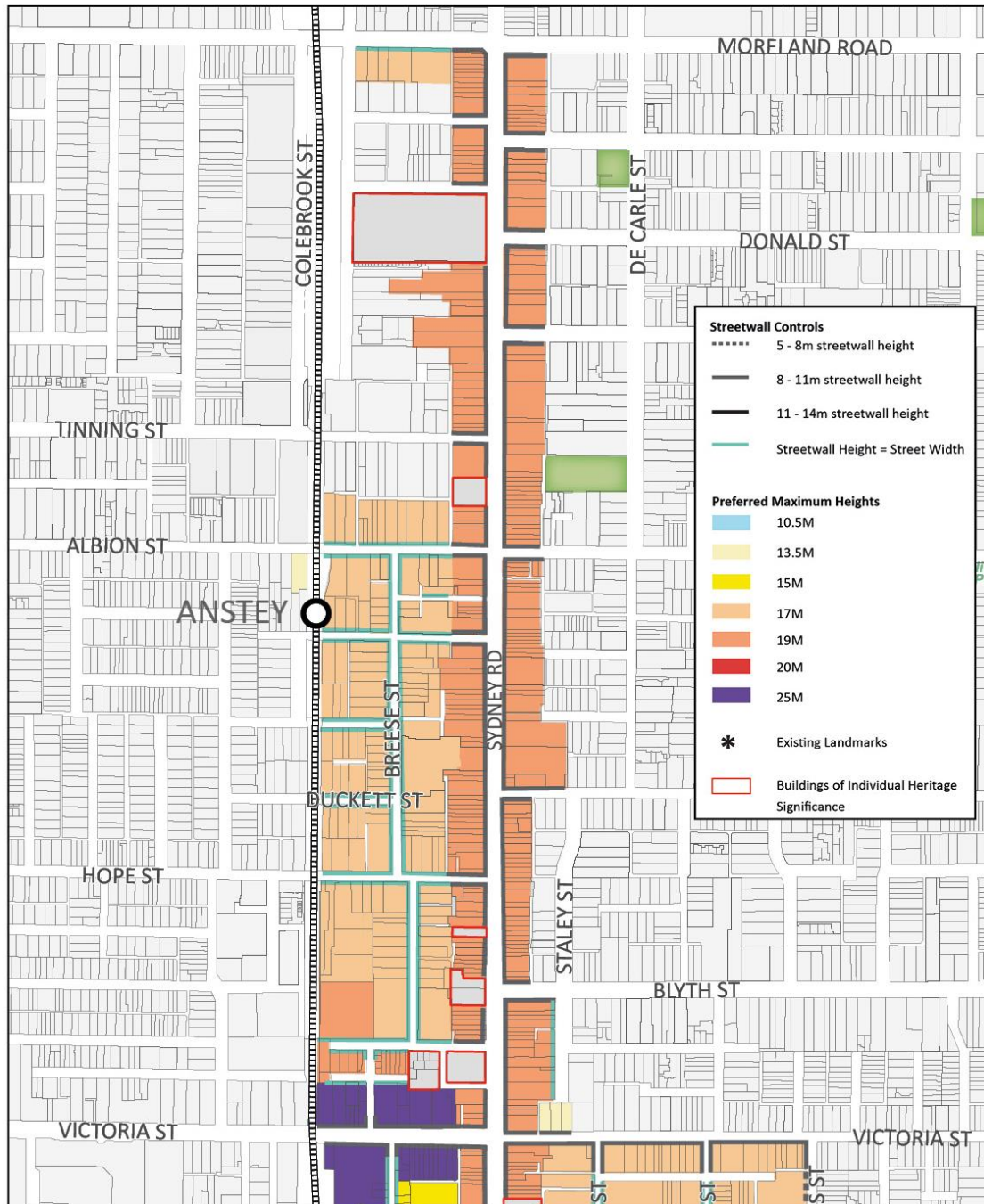
None specified

5.0 Decision guidelines

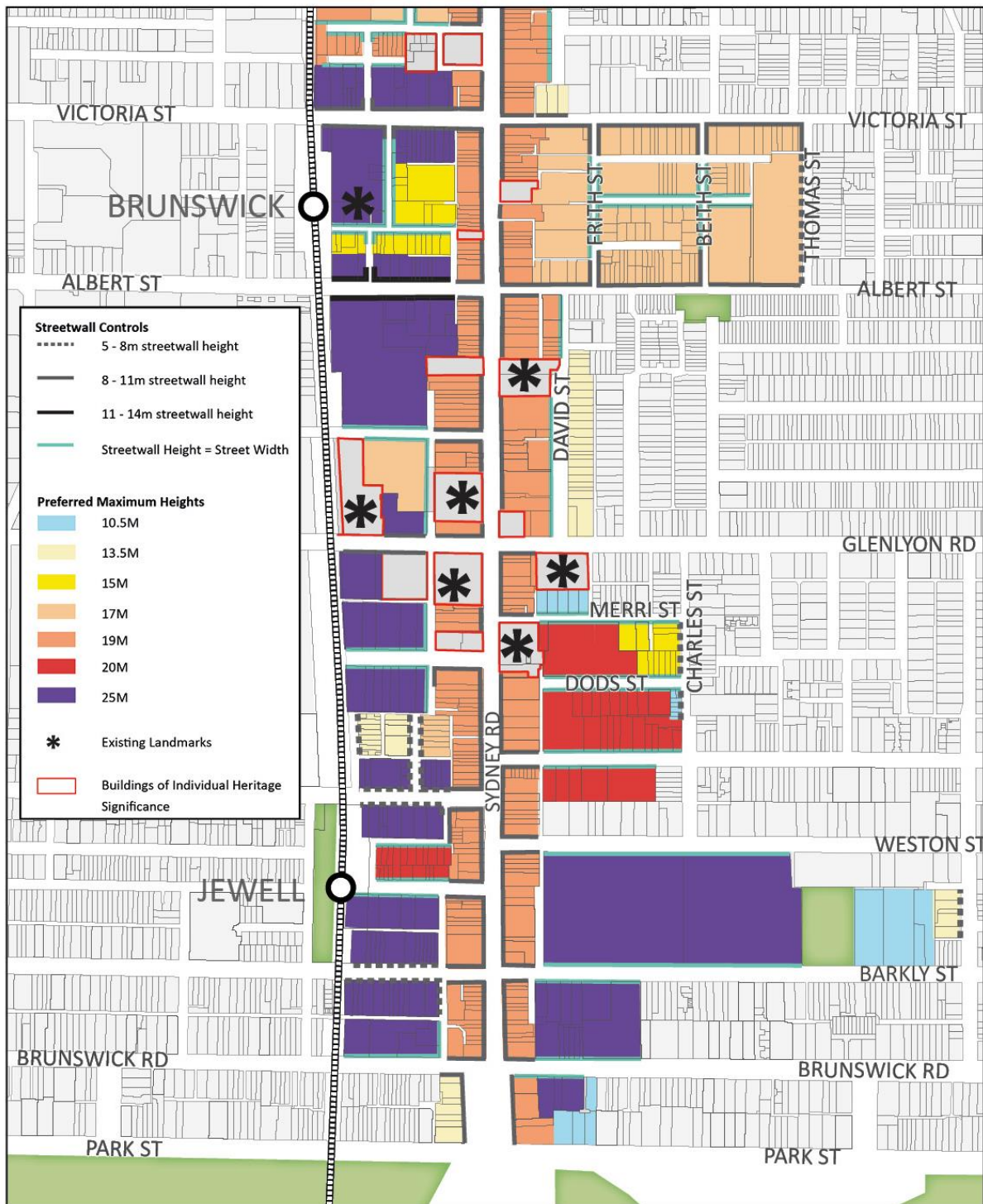
11/08/2016
Proposed
C164

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

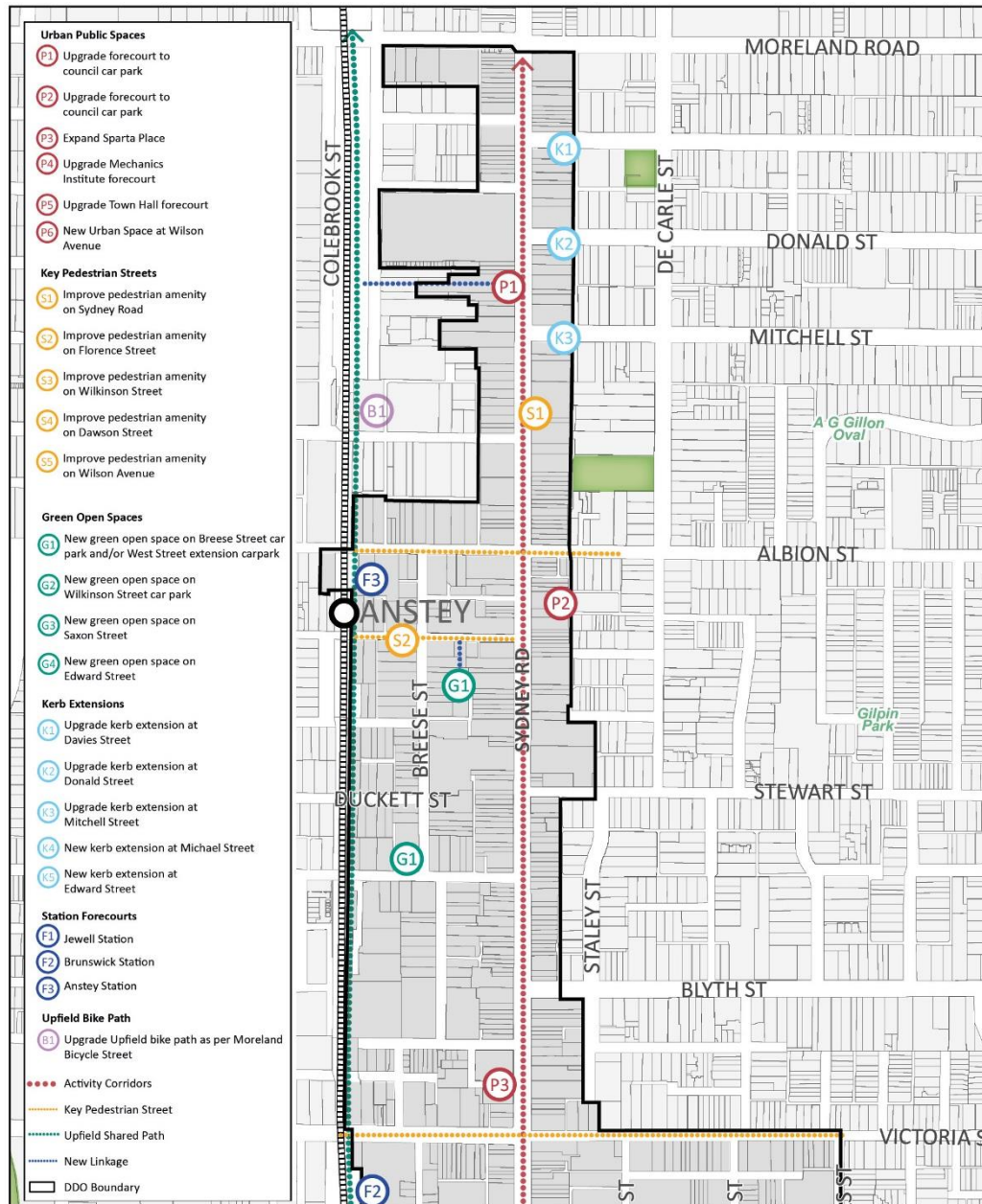
- The Sydney Road and Upfield Corridor Strategic Framework Plan.
- How development within Category 2 Employment areas responds to the built form requirements for Category 2 Employment areas.
- The opportunities and constraints of the site.
- Whether the maximum building height is achievable having regard to lot size, dimensions (width and depth) and/or those sites within or adjoining the Heritage Overlay.
- Whether an increased upper level setback is required having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.
- Whether the preferred maximum street wall height is achievable having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.
- How the development responds to the fine grain character of Sydney Road.
- How the development considers views along Sydney Road to landmark buildings of individual heritage significance.
- The extent to which development achieves the design objectives in Part 1.0 of this schedule.



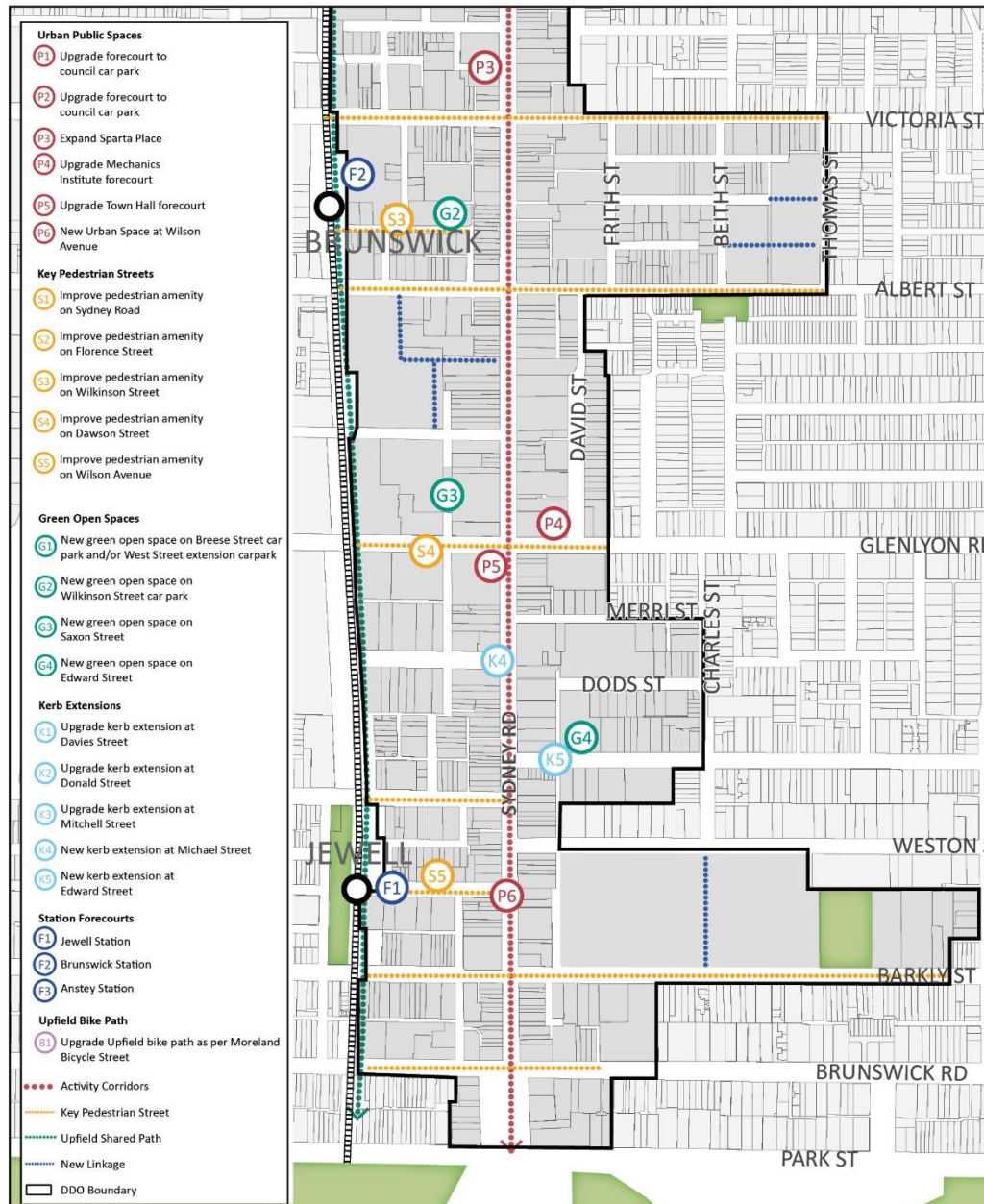
Map 1A: Overall Building and Streetwall Heights (North)



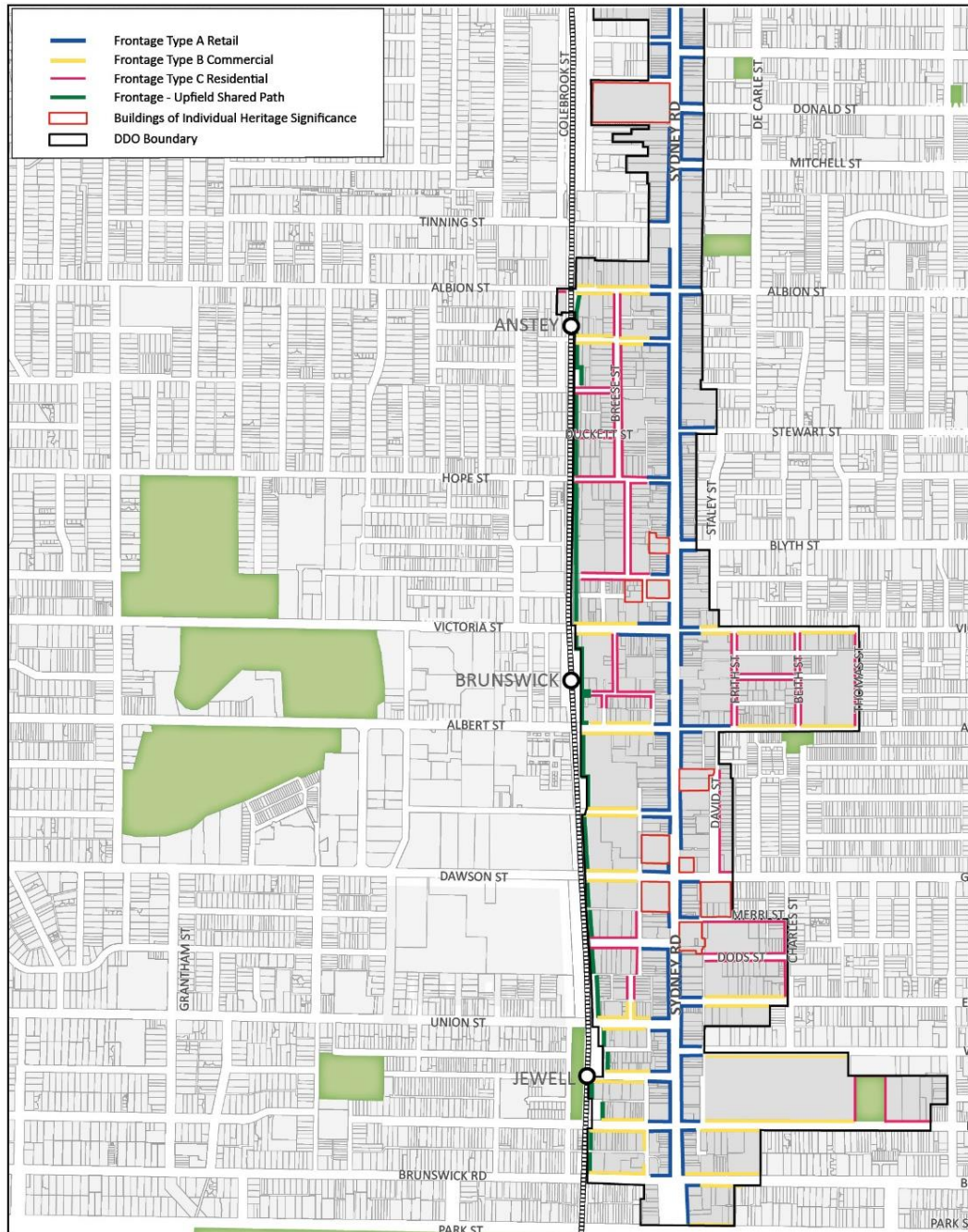
Map 1B: Overall Building and Streetwall Heights (South)



Map 2A: Open Space and Public Realm Network (North)



Map 2B: Open Space and Public Realm Network (South)



Map 3: Building Edge Conditions

SCHEDULE 19 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO19**.

BRUNSWICK ACTIVITY CENTRE – LYGON STREET LOCAL AREA

1.0 Design objectives

11/08/2016
Proposed
C164

- To create a new mid-rise built form character provides a built form transition between the Lygon Activity Corridor and adjoining low-rise residential areas.
- To ensure highly visible development is limited to identified key redevelopment sites and responds to specific design objectives.
- To ensure the street wall remains the visually dominant element of all development in Lygon Street and that any height above the street wall is visually recessive, subservient and does not dominate the streetscape appearance.
- To ensure development is designed to respect the form, design and context of buildings of individual heritage significance.
- To protect and enhance the amenity, and maintain solar access to ~~of~~ existing and proposed public open spaces and key pedestrian streets, and maintain reasonable amenity for residential properties adjacent to within the activity centre.

2.0 Buildings and works

11/08/2016
Proposed
C164

A permit is not required to:

- Install an automatic teller machine.
- Alter an existing building facade provided that:
 - The alteration does not include the installation of an external roller shutter; and
 - At least 80 per cent of the building facade at ground floor level is maintained as an entry or window with clear glazing.
- Construct or extend one dwelling on a lot of more than 300 square metres. This exemption does not apply to:
 - Construct a dwelling if there is at least one dwelling existing on the lot;
 - Construct or extend a dwelling if there are two or more dwellings on the lot;
 - Construct or extend a dwelling if it is on common property; and
 - Construct or extend a front fence within 3 metres of a street if the fence is associated with 1 or more dwellings on a lot or a residential building, and the fence exceeds the maximum height specified in Clause 55.06-2.
- Construct or carry out works normal to a dwelling.
- Construct or extend an outbuilding (other than a garage or carport) on a lot provided the gross floor area of the outbuilding does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works:

Building height

- Building height should not exceed the preferred maximum building heights as shown in *Lygon Street Local Area Built Form Controls, Map 1A (North) and Map 1B (South)*.
- Building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building. This does not include architectural

features and service equipment including plant rooms, lift overruns, structures associated with green roof areas and other such equipment provided that the following criteria are met:

- Not more than 50% of the roof area is occupied by the equipment (other than solar panels);
- The equipment is located in a position on the roof so as to minimise additional overshadowing or neighbouring properties and public spaces;
- The equipment does not extend higher than 3.6 metres above the maximum building height; and
- The equipment and screening is integrated into the design of the building to the satisfaction of the responsible authority.

Buildings of individual heritage significance

- Development on sites containing buildings of individual heritage significance shown on *Map 1A (North)* and *Map 1B (South)* should demonstrate:
 - How the proposed building height responds to the heritage significance of the site and its context; and
 - How the design objectives have been met.

Street walls

- Street wall heights should not exceed the street wall heights specified on *Map 1A (North)*, *Map 1B (South)* and *Diagram 1: Lygon Street Local Area Section Diagrams*.
- Development on key redevelopment sites identified in *Map 1* should demonstrate how the specific design objectives set out in Table 1 have been met.
- Development on sites containing buildings of individual heritage significance shown on *Map 1A (North)* and *Map 1B (South)* where no preferred maximum street wall height is specified should demonstrate:
 - Whether a street wall is appropriate having regard to the heritage significance of the site and its context;
 - How the proposed street wall height responds to the heritage significance of the site and its context; and
 - How the design objectives have been met.
- Development that seeks to vary the upper storey setbacks detailed in *Map 1A (North)*, *Map 1B (South)* and *Diagram 1* should demonstrate how the design objectives and requirements of this schedule will be met.

Upper levels

- Development above the street wall height or behind an existing parapet should be:
 - Set back at least the minimum distance specified in *Map 1A (North)*, *Map 1B (South)* and *Diagram 1*. Balconies must not intrude into this setback.
 - Designed to differentiate it from the building's street wall component through façade articulation and materials.
- Material at the upper levels of buildings should be distinct from materials of the levels of the building.
- The architectural expression of the upper levels and lower level building components should be complementary and upper levels should be visually recessive.
- Development that seeks to reduce the upper level setback specified on *Map 1A (North)*, *Map 1B (South)* and *Diagram 1* should demonstrate how the design objectives will be met.

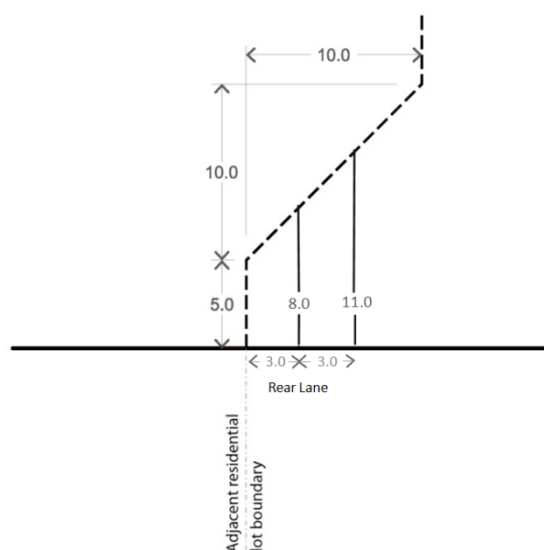
Buildings of individual heritage significance

- Development on sites containing buildings of individual heritage significance shown on *Map 1A (North)*, *Map 1B (South)* where no preferred maximum upper level setback is specified should demonstrate:
 - How the proposed upper level setback responds to the heritage significance of the site and its context; and
 - How the design objectives have been met.

Setbacks to residential land

- Any part of a building adjacent to residentially zoned land outside the activity centre (including across a lane) should be set back from the residential boundary at that interface by a dimension equivalent to its height above 5 metres, up to a maximum setback of 10 metres as shown in *Figure 1* below. This equates to:
 - A maximum height of 5 metres at the common boundary.
 - A maximum height of 8 metres where the site is separated from the adjacent residential property by a 3 metre wide lane.
 - A maximum height of 11 metres where existing lanes are widened to 6 metres.

Figure 1: Setbacks adjacent to residentially zoned land outside the activity centre



Building layout and detailed design

- Development should incorporate active edges at street level fronting all streets (except rear access lanes) in accordance with *Map 12: Precinct 2A*, *Map 14 Precinct 2B* and *Map 16: Precinct 2C* as shown in the *Brunswick Structure Plan, Local Area Two – Lygon Street* to invigorate street life and contribute to a safe and pedestrian friendly environment. The frontage types are as follows:
 - Frontage Type A: Retail (shown in the Brunswick Structure Plan as Type A) A display window and/or entrance, measuring at least 65% - 80% of the width of the street frontage of each individual premises.
 - Frontage Type B: Commercial (shown in the Brunswick Structure Plan as Type B) A display window and/or entrance, measuring at least 60% of the width of the street frontage of each individual premise.

- Frontage Type C: Residential (this requirement applies to property adjacent to other streets laneways or public land not covered by active frontages type A and B) Individual entry doors to ground floor dwellings. Privacy is to be provided by elevating the ground floor approximately 0.5 to 1 metre above the street level and/or provide a landscaped front setback.
- Development should incorporate windows in all upper level facades facing streets.
- Development should minimise the impact of vehicle access and car parking on the public realm by:
 - Locating vehicle access at the rear of buildings where possible;
 - On secondary frontages, rear access is preferred but where vehicle access is not possible should be provided to the side of corner properties away from the front facade; and
 - Locating car parking where it cannot be seen from the public realm.
- In commercial and mixed use zones, development should have a ground floor ceiling height that allows for a range of appropriate uses.
- In commercial zones, development should incorporate awnings over the footpath for the full width of the building frontage.
- Services cabinets should be located at the rear of buildings wherever possible, or the side of corner buildings away from the front façade where rear access is not available. Where they can only be located in the front façade, the size of services cabinets should be minimised and they should be integrated with the overall façade design.
- Building facades on the street boundaries of Lygon Street should incorporate vertical articulation to reinforce the fine-grain the prevailing pattern of subdivision and buildings.

Category 2 Employment Areas

- Development within Category 2 – Employment Areas should achieve commercial built form outcomes, including increased floor to ceiling heights and flexible floor plates, at ground and first floor to facilitate opportunities for employment uses.
- Ground floor commercial spaces should provide for activation, for example through entrances, transparent glazing and architectural features which encourage interaction and visual interest.

Notice and review

An application to construct a building or construct or carry out works is exempt from the notice requirements of Section 52(1) (a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the *Planning and Environment Act 1987* (the Act) unless the proposal seeks to do any of the following:

- Exceed the preferred maximum building height specified in section 2.0 of this schedule, or
- Exceed the preferred maximum street wall height specified in section 2.0 of this schedule, or
- Reduce the setbacks above the street wall specified in section 2.0 of this schedule, or
- Reduce the rear setback requirements specified in section 2.0 of this schedule.

3.0

--/20--
C--

Subdivision

Subdivision of existing sites not associated with a development proposal that achieves the design objectives and requirements of this schedule is discouraged.

Notice and review

An application to subdivide land is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

4.0 Advertising signs

--/20--
C--

None specified

5.0 Decision guidelines

11/08/2016
Proposed
C164

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

- The Brunswick Structure Plan (Local Area Two – Lygon Street).
- How development within Category 2 Employment areas responds to the built form requirements for Category 2 Employment areas.
- The opportunities and constraints of the site.
- How the development responds to the fine grain character of Lygon Street.
- How the development considers views along Lygon Street to buildings of individual significance.
- Whether the maximum building height is achievable having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.

Table 1 – Design Objectives for Key Redevelopment Sites

Lygon Street Northern Gateway

Precinct Design Objectives

To ensure new development contributes to the overall legibility of the Lygon Street Local Area and Brunswick Activity Centre as a whole by defining a high quality gateway at the northern end of Lygon Street.

To enhance the character of the precinct with a new high quality, highly visible and accessible open space adjacent the intersection of Lygon and Albion streets.

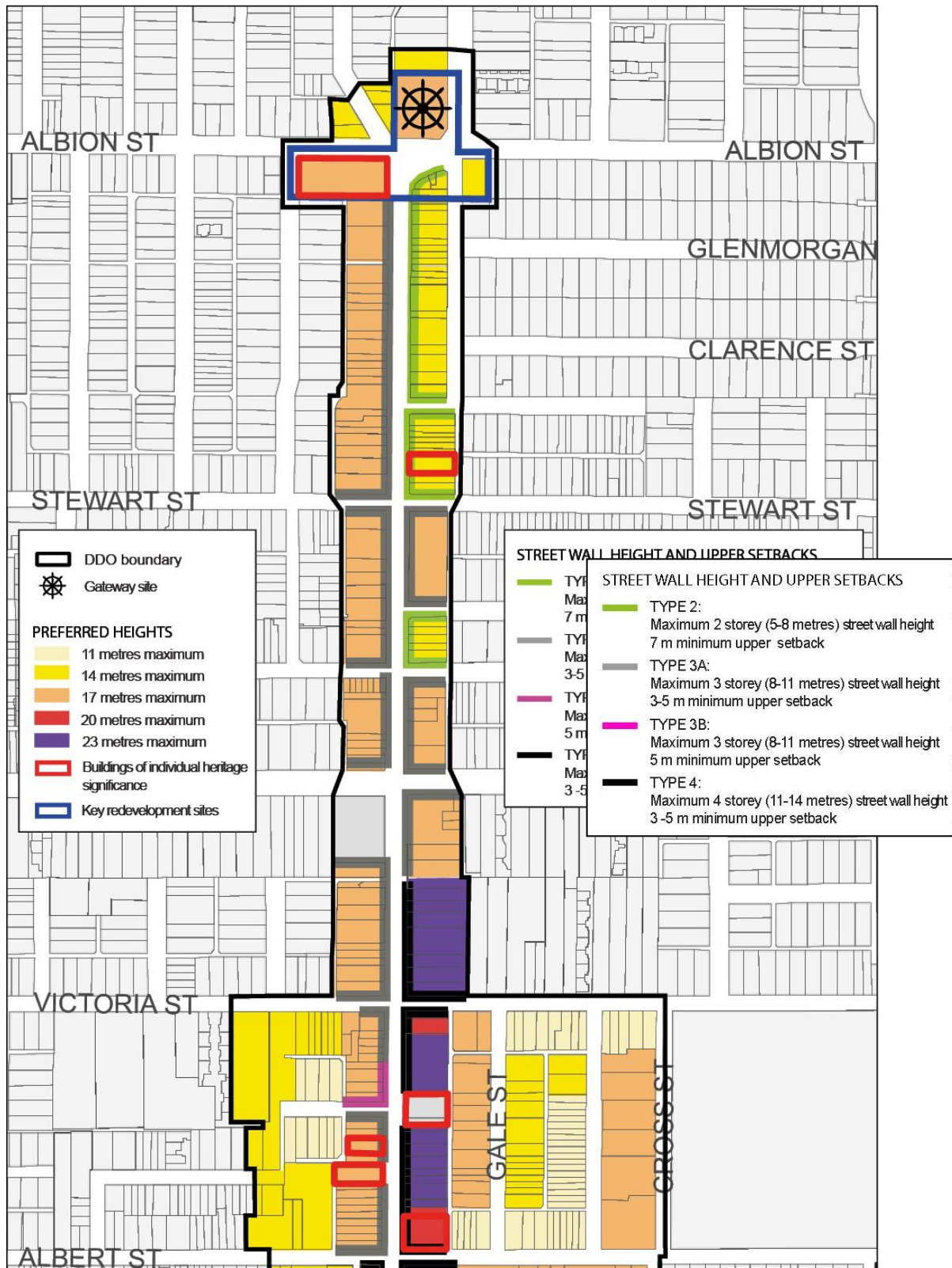
To enhance the view corridor from Holmes Street on approach from the north.

To enhance the view corridor from Lygon Street on approach from the south.

To ensure new development does not dominate the Lyndhurst Hotel.

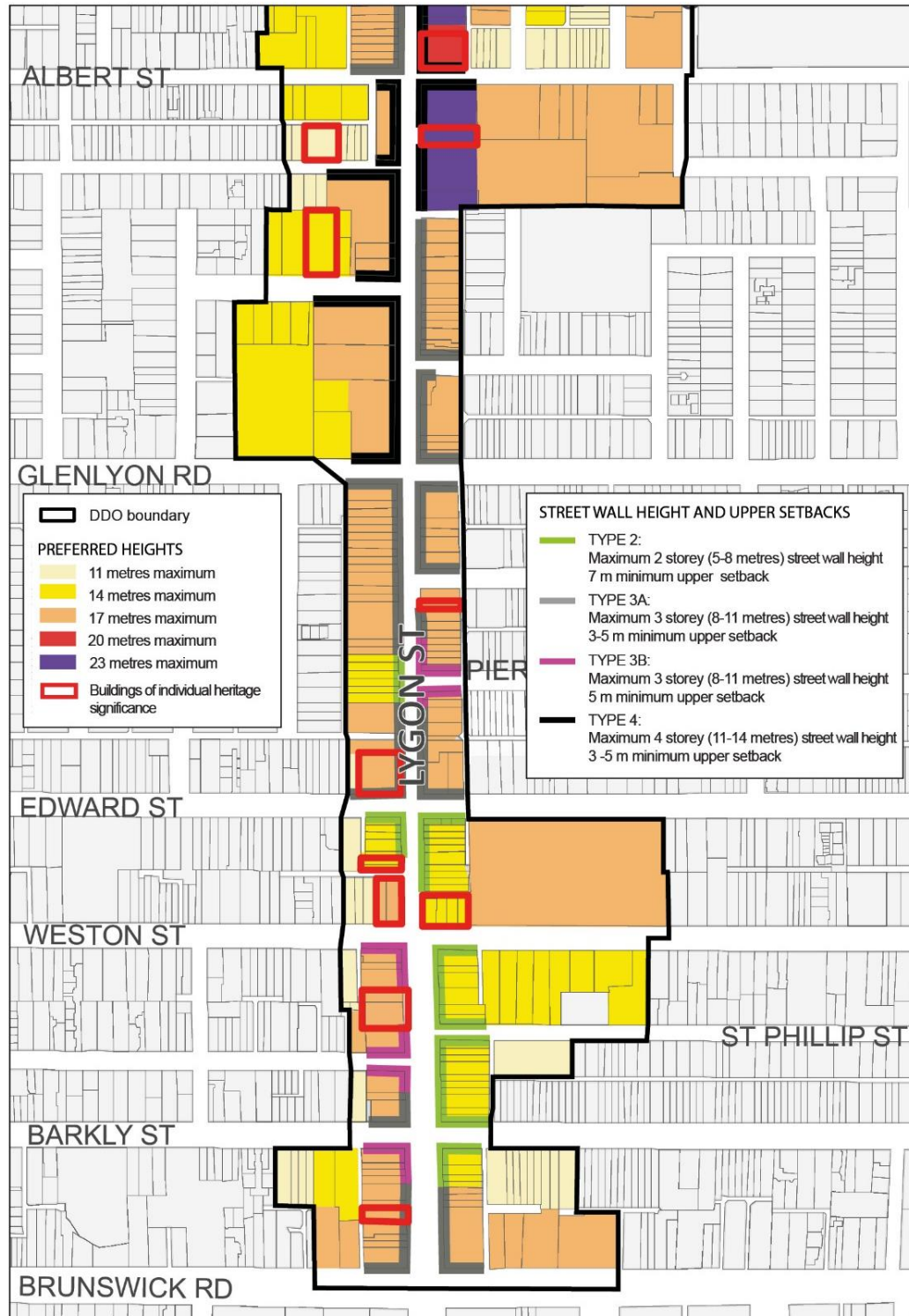
To protect identified heritage places to the east side of Lygon Street.

To integrate high quality public open space into the redevelopment of the property at 1 Holmes Street.



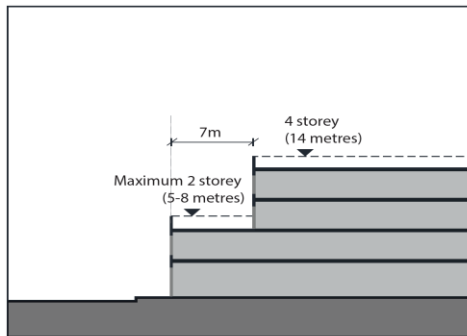
Map 1A: Lygon Street Local Area Built Form Controls (North)

NOTE: COUNCIL TO CHANGE CROSS STREET HEIGHT TO 14 METRES.

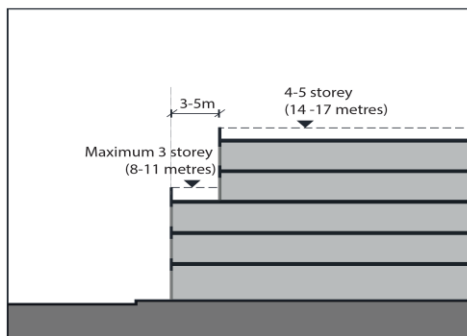


Map 1B: Lygon Street Local Area Built Form Controls (South)

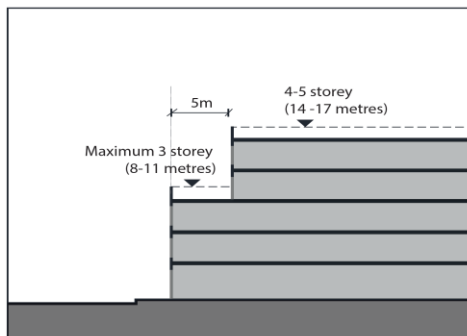
Diagram 1: Lygon Street Local Area Section Diagrams (South)



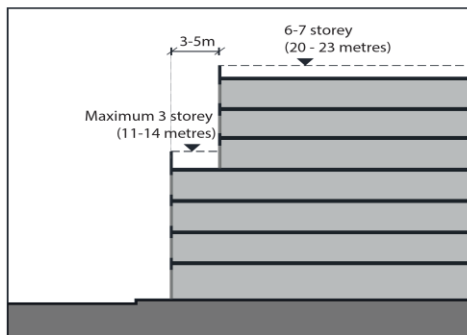
TYPE 2: Maximum 2 storey (5-8 metres) street wall height
7 m minimum upper setback



TYPE 3A: Maximum 3 storey (8-11 metres) street wall height
3-5 m minimum upper setback



TYPE 3B: Maximum 3 storey (8-11 metres) street wall height
5 m minimum upper setback



TYPE 4: Maximum 4 storey (11-14 metres) street wall height
3-5 m minimum upper setback

11/08/2016
Proposed
C164

SCHEDULE 20 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO20**.

BRUNSWICK ACTIVITY CENTRE – NICHOLSON STREET LOCAL AREA

1.0 DESIGN OBJECTIVES

11/08/2016
Proposed
C164

- To create a new mid-rise built form character that provides a built form transition from the Nicholson Street Activity Corridor to adjoining low rise residential areas.
- To ensure development does not dominate and obstruct sightlines to existing key churches and iconic sites.
- To establish a consistent street wall along the western side of Nicholson Street between Miller Street and Albert Street.
- To ensure development is designed to respect the form and design of civic buildings and heritage places.
- To protect and enhance the amenity, and maintain solar access to, ~~of~~ existing and proposed public open spaces and key pedestrian streets, and maintain reasonable amenity for residential properties adjacent to and within the activity centre.

2.0 Buildings and works

11/08/2016
Proposed
C164

A permit is not required if the subject site forms part of a development plan approved in accordance with Schedule 11 to the Development Plan Overlay (DPO11).

A permit is not required to:

- Install an automatic teller machine.
- Alter an existing building facade provided that:
 - The alteration does not include the installation of an external roller shutter; and
 - At least 80 per cent of the building facade at ground floor level is maintained as an entry or window with clear glazing.
- Construct or extend one dwelling on a lot of more than 300 square metres. This exemption does not apply to:
 - Construct a dwelling if there is at least one dwelling existing on the lot;
 - Construct or extend a dwelling if there are two or more dwellings on the lot;
 - Construct or extend a dwelling if it is on common property; and
 - Construct or extend a front fence within 3 metres of a street if the fence is associated with 1 or more dwellings on a lot or a residential building, and the fence exceeds the maximum height specified in Clause 55.06-2.
- Construct or carry out works normal to a dwelling.
- Construct or extend an outbuilding (other than a garage or carport) on a lot provided the gross floor area of the outbuilding does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works:

Building height

- Building height should not exceed the preferred maximum building heights as shown in *Nicholson Street Local Area Built Form Controls, Map 1A (North) and Map 1B (South)*.

- Building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building. This does not include architectural features and service equipment including plant rooms, lift overruns, structures associated with green roof areas and other such equipment provided that the following criteria are met:
 - Not more than 50% of the roof area is occupied by the equipment (other than solar panels);
 - The equipment is located in a position on the roof so as to minimise additional overshadowing or neighbouring properties and public spaces;
 - The equipment does not extend higher than 3.6 metres above the maximum building height; and
 - The equipment and screening is integrated into the design of the building to the satisfaction of the responsible authority.
- Development on sites where no maximum building height is detailed in *Map 1A (North)* and *Map 1B (South)* should demonstrate:
 - How the proposed overall building height responds to its context including any identified heritage places; and
 - How the design objectives and requirements of this schedule have been met.
 - The height of any building (including services) on 120, 122 and 124 Nicholson must not impact on the Fresnel Zone associated with radio transmissions from 221 Nicholson Street, Brunswick East. A permit cannot be granted to vary this requirement.

Street walls

- Street wall heights should not exceed the preferred maximum height specified in *Map 1A (North)*, *Map 1B (South)* and *Diagram 1: Nicholson Street Local Area Section Diagrams*.
- Development that seeks to vary the upper storey setbacks detailed in *Map 1A (North)*, *Map 1B (South)* and *Diagram 1* should demonstrate how the design objectives and requirements of this schedule will be met.

Upper levels

- Development above the street wall height or behind an existing parapet should be:
 - Set back at least the minimum distance specified in *Map 1A (North)*, *Map 1B (South)* and *Diagram 1*. Balconies must not intrude into this setback.
 - Designed to differentiate it from the building's street wall component through façade articulation; and materials.
- Materials at the upper levels of the building should be distinct from materials of the lower levels of the building.
- The architectural expression of the upper level and lower building components should be complementary and upper levels should be visually recessive.
- Development that seeks to reduce the upper level setback specified on *Map 1A (North)*, *Map 1B (South)* and *Diagram 1* should demonstrate how the design objectives will be met.

Setbacks to residential land

- Any part of a building adjacent to residentially-zoned land outside the activity centre (including across a lane) should be set back from the residential boundary at that interface by a dimension equivalent to its height above 5 metres, up to a maximum setback of 10 metres as shown in Figure 1 below. This equates to:
 - A maximum height of 5 metres at the common boundary.

- A maximum height of 8 metres where the site is separated from the adjacent residential property by a 3 metre wide lane.
- A maximum height of 11 metres where existing lanes are widened to 6 metres.

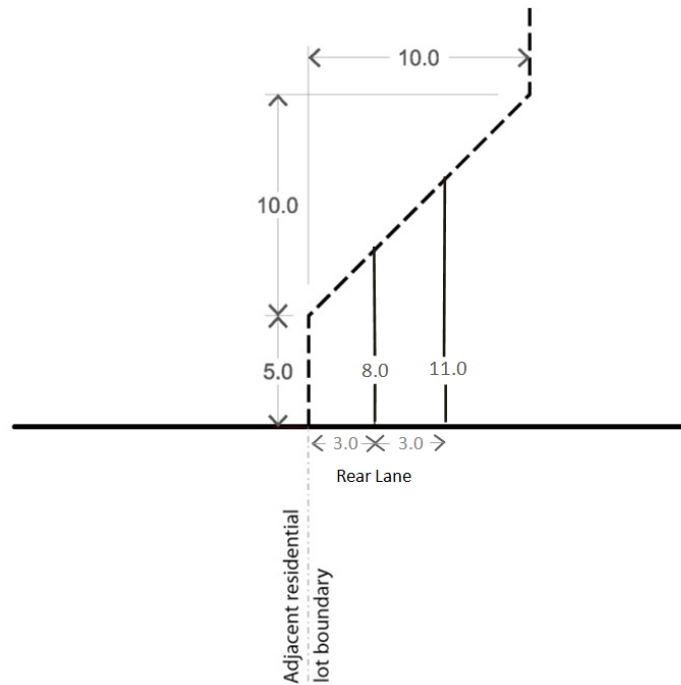


Figure 1: Setbacks adjacent to residentially zoned land outside the activity centre

Buildings layout and detailed design

- Development should incorporate active edges at street level fronting all streets (except rear access lanes) in accordance with Map 12: Precinct 3A, Map 14 Precinct 3B and Map 14: Precinct 3C as shown in the Brunswick Structure Plan Local Area Three – Nicholson Street to invigorate street life and contribute to a safe and pedestrian friendly environment. The frontages are as follows:
 - Frontage Type A: Retail (shown in the Brunswick Structure Plan as Type A) A display window and/or entrance, measuring at least 80% of the width of the street frontage of each individual premises.
 - Frontage Type B: Commercial (shown in the Brunswick Structure Plan as Type B) A display window and/or entrance, measuring at least 60% of the width of the street frontage of each individual premise.
 - Frontage Type C: Residential (this requirement applies to property adjacent to other streets laneways or public land not covered by active frontages type A and B) Individual entry doors to ground floor dwellings. Privacy is to be provided by elevating the ground floor approximately 0.5 to 1 metre above the street level and/or provide a landscaped front setback.
- Development should incorporate windows in all upper level facades facing streets.
- Development should minimise the impact of vehicle access and car parking on the public realm by:
 - Locating vehicle access at the rear of buildings where possible;
 - On secondary frontages, rear access is preferred but where vehicle access is not possible, it should be provided to the side of corner properties away from the front facade; and
 - Locating car parking where it cannot be seen from the public realm.
- In commercial and mixed use zones, development should have a ground floor ceiling height that allows for a range of appropriate uses.

- In commercial zones, development should incorporate awnings over the footpath for the full width of the building frontage.
- Services cabinets should be located at the rear of buildings wherever possible, or the side of corner buildings away from the front façade where rear access is not available. Where they can only be located in the front façade, the size of services cabinets should be minimised and they should be integrated with the overall façade design.
- Building facades on the street boundaries of Nicholson Street should incorporate vertical articulation to reinforce the prevailing pattern of subdivision and buildings.

Category 2 Employment Areas

- Development within Category 2 – Employment Areas should achieve commercial built form outcomes, including increased floor to ceiling heights and flexible floor plates, at ground and first floor to facilitate opportunities for employment uses.
- Ground floor commercial spaces should provide for activation, for example through entrances, transparent glazing and architectural features which encourage interaction and visual interest.

Notice and review

An application to construct a building or construct or carry out works is exempt from the notice requirements of Section 52(1) (a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the *Planning and Environment Act* 1987 (the Act) unless the proposal seeks to do any of the following:

- Exceed the preferred maximum building height specified in section 2.0 of this schedule, or
- Exceed the preferred maximum street wall height specified in section 2.0 of this schedule, or
- Reduce the setbacks above the street wall specified in section 2.0 of this schedule, or
- Reduce the rear setback requirements specified in section 2.0 of this schedule.

3.0

Subdivision

--/20--
C--

Subdivision of existing sites not associated with a development proposal that achieves the design objectives and requirements of this schedule is discouraged.

Notice and review

An application to subdivide land is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

4.0

Advertising signs

--/20--
C--

None specified

5.0

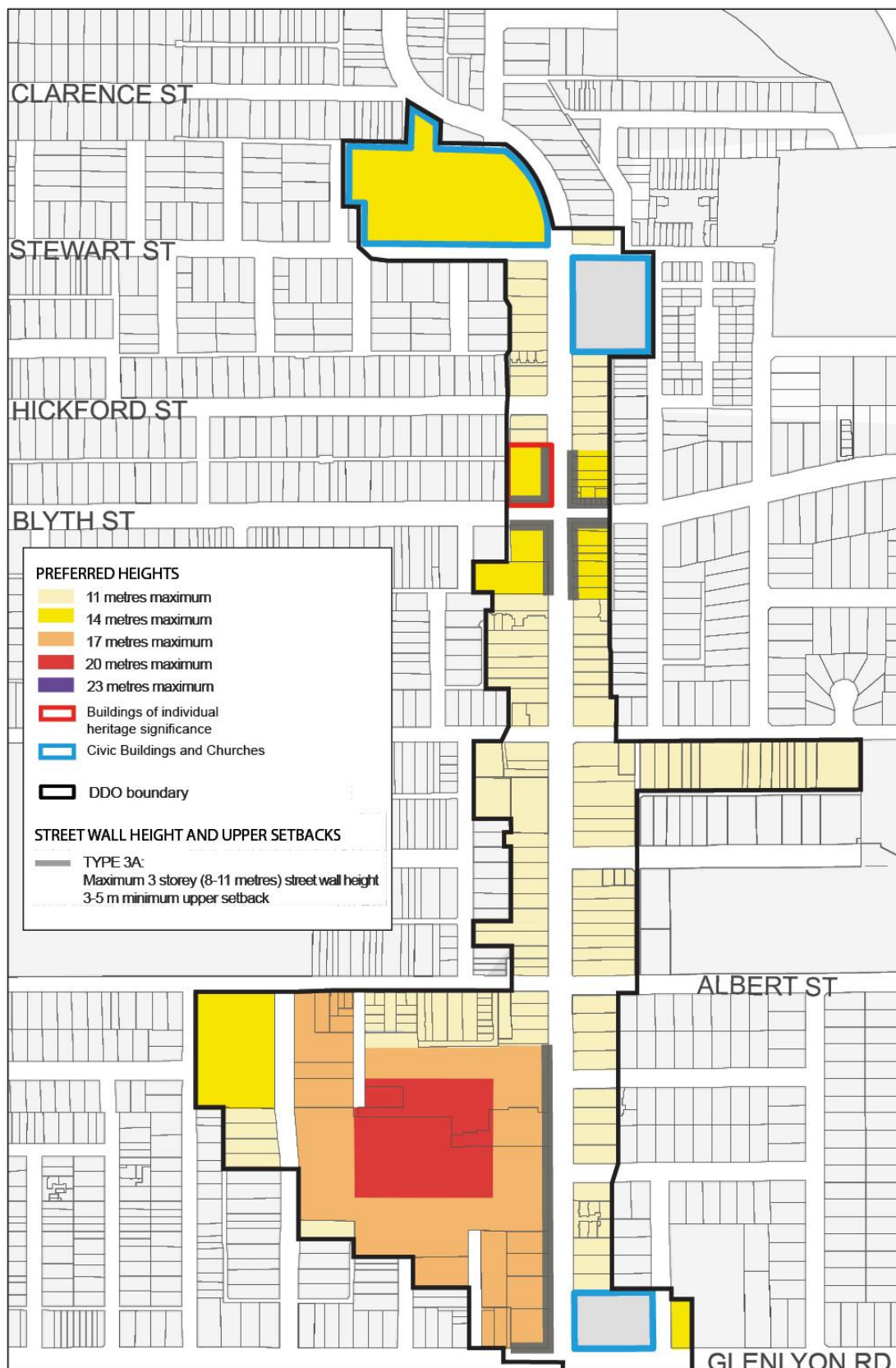
Decision guidelines

11/08/2016
Proposed
C164

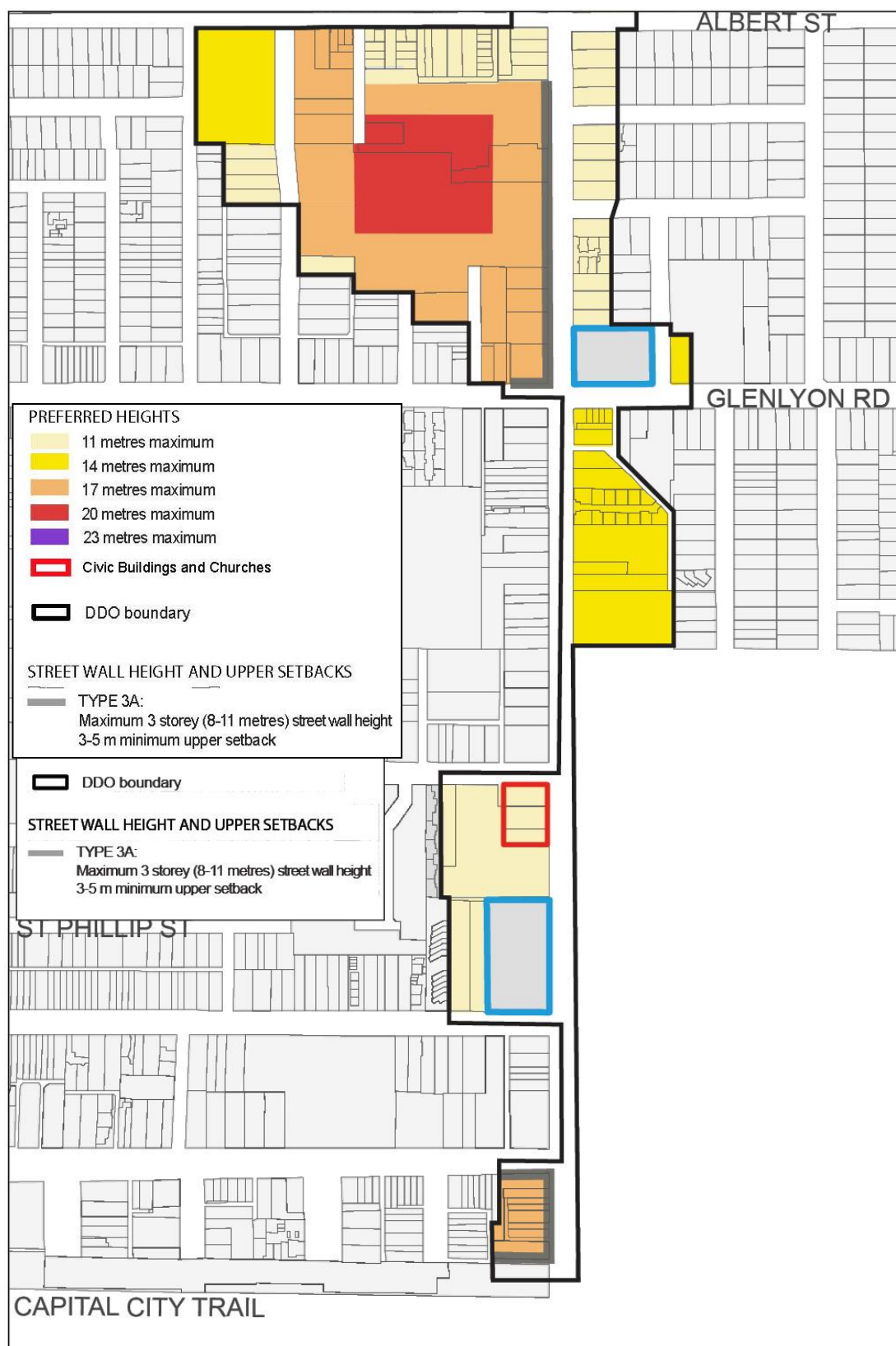
The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The Brunswick Structure Plan (Local Area Three – Nicholson Street).
- How development within Category 2 Employment areas responds to the built form requirements for Category 2 Employment areas.

- Whether any proposal seeking to vary the upper level setbacks meet the design objectives of the schedule.
- The opportunities and constraints of the site, including whether the maximum building height is achievable having regard to lot size, dimensions (width and depth) and/or those sites within or adjoining the Heritage Overlay or any other relevant consideration.



Map 1A: Nicholson Street Local Area Built Form Controls (North)



Map 1B: Nicholson Street Local Area Built Form Controls (South)

Diagram 1: Nicholson Street Local Area Section Diagrams



TYPE 3A: Maximum 3 storey (8-11 metres) street wall height
3-5 m minimum upper setback