

**Glen Eira Planning Scheme Amendment C231glen  
Caulfield South Neighbourhood Activity Centre  
Built Form Framework**

**Panel Report**

*Planning and Environment Act 1987*

**20 December 2022**

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### How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Glen Eira Planning Scheme Amendment C231glen

Common name: Caulfield South Neighbourhood Activity Centre Built Form Framework

**20 December 2022**



Rodger Eade, Chair



Sally Conway, Member

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## Glossary and abbreviations

Council	Glen Eira City Council
City Plan	<i>Glen Eira City Plan: Activity Centre, Housing and Local Economic Strategy</i>
DDO11	Design and Development Overlay Schedule 11
Framework	<i>Caulfield South Neighbourhood Activity Centre Built Form Framework (September 2021)</i>
HO	Heritage Overlay
NAC	Caulfield South Neighbourhood Activity Centre
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Glen Eira Planning Scheme
PPN	Planning Practice Note
PPF	Planning Policy Framework
RCTC	Catholic Parish of Holy Cross

## Overview

Amendment summary	
The Amendment	Glen Eira Planning Scheme Amendment C231glen
Common name	Caulfield South Built Form Framework
Brief description	Implements built form controls for the Caulfield South Neighbourhood Activity Centre
Subject land	All Commercial 1 zoned land in the Caulfield South Neighbourhood Activity Centre, in Glen Huntly Road, broadly between Kooyong and Hawthorn Roads
Planning Authority	Glen Eira City Council
Authorisation	2 June 2022
Exhibition	9 June to 11 July and 11 August to 12 September 2022
Submissions	Number of Submissions: 25 with two in support of the Amendment, seven supporting it subject to changes, one opposed but requesting changes and the remaining 15 opposed. Submitters are listed in Appendix A

Panel process	
The Panel	Rodger Eade (Chair) and Sally Conway, Member
Directions Hearing	By video conference, 14 October 2022
Panel Hearing	By video conference, 22 to 24 November 2022
Site inspections	Unaccompanied, 17 November 2022
Citation	Glen Eira PSA C231glen [2022] PPV
Date of this report	20 December 2022

## Executive summary

The Caulfield South Neighbourhood Activity Centre is experiencing considerable pressure for growth in medium density residential development. Currently this is most evident in the vicinity of the intersection of Glen Huntly and Hawthorn Roads. As a result of this pressure Glen Eira City Council has undertaken strategic planning work in this centre and two others where similar growth pressures are being experienced.

This strategic planning work underpins Amendment C231 to Glen Eira Planning Scheme which proposes to introduce a new Schedule 11 to the Design and Development Overlay (DDO11). This new schedule includes built form provisions to guide new development in the centre. DDO11 is underpinned by the *Caulfield South Neighbourhood Activity Centre Built Form Framework September 2021* (Framework) and the Amendment introduces it into the Planning Scheme as a Background Document at Clause 72.08.

DDO11 divides the centre into four precincts and provides both centre wide and precinct specific guidance for various elements of built form, including maximum building heights, street wall heights and setbacks, particularly for upper levels where the new development has the potential to impact on the streetscape and surrounding residential areas.

Key issues raised in submissions included:

- increased density and development – is both too restrictive, or not restrictive enough
- development will lead to increased congestion in laneways and the surrounding streets
- undesirable impact on local amenity
- inconsistencies between the underpinning policies
- proposed built form controls don't accurately reflect underpinning policies.

The Framework which underpins DDO11 builds on previous strategic work undertaken by Council, including the *Glen Eira City Plan: Activity Centre, Housing and Local Economic Strategy* (City Plan). The overarching objectives of the recently approved *Glen Eira Housing Strategy 2022* and the Framework align albeit the Housing Strategy was approved by Council after the exhibition of the Amendment. The Panel finds that the Framework includes an analysis of the centre at a much more detailed level than undertaken for the City Plan and thus recommends a more comprehensive and considered suite of built form provisions. Not surprisingly due to the more rigorous analysis undertaken, these provisions differ from some of the recommendations in the City Plan and this has caused confusion amongst some submitters.

The Panel finds that the Amendment appropriately implements a number of parts of broader state and metropolitan policy with respect to concentrating residential growth in and around activity centres.

The Panel concludes:

- That Amendment C231glen to the Glen Eira Planning Scheme is broadly strategically justified.
- That the precinct based approach to built form controls is appropriate and that there should not be any site specific controls introduced.
- Mandatory height controls are justified for Precinct 3, the precinct where a Heritage Overlay applies but are not justified in any other precinct in the centre.

- Mandatory and preferred maximum building heights as proposed are appropriate.
- Street wall heights and minimum building setbacks as proposed are appropriate.
- Direct vehicle access to Glen Huntly and Hawthorn Roads should be avoided where possible.
- The laneways to the rear of properties with a frontage to Glen Huntly and Hawthorn Roads have limited capacity for increased traffic and that situation will need to be monitored by Council and when warranted, action taken to manage increased traffic flows.
- The surrounding street network has the capacity to absorb increased traffic without unacceptable impacts on residential amenity.
- Design and Development Overlay Schedule 11 is appropriately drafted subject to minor changes.

### Recommendations

Based on the reasons set out in this Report, the Panel recommends that Glen Eira Planning Scheme Amendment C231glen be adopted as exhibited subject to the following:

1. **Amend Diagram 2 in Design and Development Overlay Schedule 11 to replace the 8 metre boundary wall height with a height of 7.5 metres.**
2. **Amend the Table in Clause 2.0 to include land at 613-625 Glen Huntly Road in the Precinct 4 provision which specifies a preferred 11 metre street wall height.**
3. **Amend Design and Development Overlay Schedule 11 as follows:**
  - a) **Add the words “minimising vehicle disruption” after the words “ground floor” in the fourth paragraph under Clause 1.**
  - b) **Add the words “whichever is the lesser” at the end of each entry for Precincts 2, 3 and 4 in the Street wall height table in Clause 2.**
  - c) **Delete the sentence beginning “Building height...” in the second paragraph under the heading of “Building form and design” in Clause 2.**
  - d) **Delete the sentence beginning “Incorporate environmentally...” under the heading of “Building form and design” in Clause 2.**
  - e) **Delete the words “for land in a commercial zone” from the third paragraph under the heading of “Building form and design”**
  - f) **Replace the sentence beginning “Avoid repetitive...” under the heading of “Building form and design” in Clause 2 with the sentence “Provide consistent setbacks above the street wall for at least two thirds of the upper levels.”**
  - g) **Add the words “where possible” to the end of the sentence beginning “Provide loading...” under the heading “Access and services” in Clause 2**
  - h) **Add the following under the heading of Access and Services in Clause 2:**

**“New vehicle crossovers to Hawthorn Road and Glen Huntly Road should be avoided.**

**Development on a laneway should include a rear/side setback or a corner splay at ground floor, to facilitate the ongoing functionality of the laneway and allow for building services and car park access.**

**Permanent obstructions within a rear/side setback or splay to a laneway should be avoided.”**

- i) Add the following as a new dot point 2 under the heading of “Application requirements” in Clause 5

“A Traffic and Parking Assessment Report which includes an assessment of the cumulative impacts of traffic and parking in the Precinct including an assessment of ongoing functionality of laneway/s and relevant local streets.”

- j) Amend Diagram 4 to show all building heights and setbacks in metres, consistent with the relevant table in Clause 2.
- k) Amend the plan in Clause 6 to apply the light blue colour of Precinct 3 to the land at 707 Glen Huntly Road.
- l) Amend the heading in Column 2 of the table under the heading “Building setbacks” to read “Preferred minimum building setbacks.”

- 4. Amend the *Caulfield South Neighbourhood Activity Centre Built Form Framework* to ensure that it is consistent with Schedule 11 to the Design and Development Overlay.

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of Amendment C231glen is to implement the built form objectives and requirements of the *Caulfield South Neighbourhood Activity Centre Built Form Framework (September 2021)* (the Framework). The Amendment seeks to provide permanent built form controls for land within the Caulfield South Activity Centre.

Specifically, the Amendment proposes to:

- introduce a new schedule to Clause 43.02 Design and Development Overlay – Schedule 11 (DDO11) Caulfield South Neighbourhood Activity Centre (NAC)
- introduce the *Caulfield South Neighbourhood Activity Centre Built Form Framework (September 2021)* as a background document within Clause 72.08 Background Documents.

### (ii) The subject land

The Amendment applies to land shown in Figure 1, specifically the following properties:

- 542-722 and 758-804 Glenhuntly Road (even numbers)
- 589-867 Glenhuntly Road (odd numbers)
- 307-325 Kooyong Road (odd numbers)
- 306-414 Hawthorn Road (even numbers)
- 357-385 Hawthorn Road (odd numbers)
- 2 Cedar Street
- 136 Murray Street
- 17, 33, 1/39 & 2/39 Murray Lane.

**Figure 1** Caulfield South Neighbourhood Activity Centre



Source: Caulfield South Neighbourhood Activity Centre Built Form Framework, Tract, September 2021

## 1.2 Background

Like a number of neighbourhood activity centres in relatively close proximity to the CBD, which have good public transport access, the NAC is experiencing pressures for medium density residential development. This is occurring particularly along Hawthorn Road towards the eastern end of the NAC.

To manage the expected growth, Glen Eira City Council (Council) wishes to implement built form provisions for the whole of the centre, excluding some public uses. These provisions will provide guidance on built form, and include maximum building heights, street wall heights, upper-level setbacks, front setbacks and residential interface requirements.

Council engaged Tract Consultants to assist in developing a built form framework for the NAC. It is proposed that the report prepared by Tract, *Caulfield South Neighbourhood Activity Centre Built Form Framework (September 2021)* (the Framework) be introduced into Clause 72.08 of the Glen Eira Planning Scheme (the Planning Scheme) by this Amendment.

Key milestones in the development of this Amendment are set out in Table 1.

**Table 1** Key milestone events

Date	Event
23 February 2021	Commencement of the preparation of built form framework plans for: <ul style="list-style-type: none"> <li>- Caulfield South</li> <li>- Caulfield Park</li> <li>- Bentleigh East</li> </ul>
6 April 2021	Council resolved to defer commencement of community consultation for the three built form framework plans to allow clarification of matters by Council officers.
Mid-April 2021	Meeting held between Council officers and the Caulfield South trader group.
27 April 2021	Council resolved to release the three built form framework plans for community consultation.
3 May 2021	Consultation on the three draft built form framework plans commences.
17 May 2021	A further meeting held between Council officers and the Caulfield South trader group.
2 June 2021	Online information session held for the draft version of the Built Form Framework Plan.
23 November 2021	Council resolved to: <ul style="list-style-type: none"> <li>- adopt the three built form framework plans</li> <li>- request that the Minister for Planning grant authorisation to prepare and exhibit the Amendment in accordance with Section 8A of the Act.</li> </ul>
25 February 2022	Minister for Planning authorised Council to prepare the Amendment in accordance with section 8A of the Act, subject to one condition.
26 April 2022	The revision 9 version of the Framework Plan is finalised, correcting two errors noted by Council officers.

Date	Event
1 June 2022	DELWP officers inform Council officers of further changes that should be made to the Amendment prior to exhibition.
2 June 2022	Updated letter of authorisation issued to reflect the further changes advised by DELWP.
9 June 2022	Exhibition of the Amendment commences.
6 July 2022	Information session held on the Amendment at the Glen Eira Town Hall, attended by approximately 20 community members.
28 July 2022	Planning conference held, chaired by Councillor Zyngier and attended by two submitters.
12 September 2022	Exhibition of the Amendment concludes.
20 September 2022	Council resolved to: <ul style="list-style-type: none"> <li>- receive and note the submissions</li> <li>- note the Council officer's report considering the submissions</li> <li>- request the Minister for Planning appoint an independent panel in accordance with Section 23 of the Act</li> <li>- refer all submissions to the Panel for consideration.</li> </ul>
3 October 2022	Planning Panels Victoria issues its directions hearing letter.
14 October 2022	Directions hearing held via online platform.
22 November 2022	Panel hearing commences.

Source: Council Part A submission, Attachment A

### 1.3 Procedural issues

The Amendment was initially exhibited from 9 June to 11 July 2022 but due to an inadvertent oversight referral authorities and prescribed Ministers were not notified. To correct this oversight the Amendment was further exhibited from 11 August to 12 September 2022. No issue was raised regarding this, and the Panel accepts that the Amendment has been appropriately exhibited.

### 1.4 The Panel's approach

Key issues raised in submissions were:

- increased density and development – is both too restrictive, or not restrictive enough
- development will lead to increased congestion in laneways and the surrounding streets
- undesirable impact on local amenity
- inconsistencies between the underpinning policies
- proposed built form controls don't accurately reflect underpinning policies.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

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. It has reviewed a large volume of material and has had to be

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

This Report deals with the issues under the following headings:

- Strategic issues
- Built form controls
- Other issues.

## **1.5 Limitations**

A number of issues were raised by submitters that are outside the scope of the Amendment and not able to be considered by the Panel. These were:

- Submitter 1 – Disruption caused by construction
- Submitters 17 and 22 – Inadequate consideration of open space provision
- Submitter 21 – Council needs to explore better platforms for community consultation
- Submitter 22 – No noise controls.

Management of construction related issues is a planning permit consideration. The Panel acknowledges management of construction related disruption can become a vexed issue for Council in some instances. Council has a separate process for open space planning and the provision for open space should be managed in that context. The Panel does not comment on Council's consultation mechanisms. Council relies on noise provisions in Clause 58 of the Planning Scheme to manage noise related impacts of new development and the introduction of additional noise policy is outside the scope of the Amendment.

## 2 Strategic issues

### 2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix A highlights key imperatives of relevant provisions and policies.

**Table 2** Planning context

	Relevant references
<b>Victorian planning objectives</b>	- Section 4 of the Planning and Environment Act, 1987
<b>Planning Policy Framework <sup>1</sup></b>	- Clause 11 (Settlement) - Clause 15 (Built environment and heritage) - Clause 16 (Housing) - Clause 17 (Economic development) - Clause 18 Transport) - Clause 21 (Municipal Strategic Statement) - Clause 22.01 (Heritage) - Clause 22.07(Suburb Framework Plans)
<b>Other planning strategies and policies</b>	- Plan Melbourne Direction 4, Policies 4.1, 4.2 - Integrated Transport Strategy, 2018 - Glen Eira Social and Affordable Housing Strategy 2019-2023 - Open Space Strategy Refresh 2020 - Glen Eira City Plan 2020 - Climate Emergency Response Strategy 2021-2025 - Glen Eira Housing Strategy 2022
<b>Planning scheme provisions</b>	- Commercial 1 Zone - Heritage Overlay Schedule 66 - Parking Overlay Schedule 2 - Special Building Overlay (part) - Environmental Audit Overlay (part)
<b>Ministerial directions</b>	- Ministerial Direction 11 (Strategic Assessment of Amendments)
<b>Planning practice notes</b>	- Planning Practice Note 46: Strategic Assessment Guidelines, August 2018 - Planning Practice Note 59: The role of mandatory provisions in planning schemes - Planning Practice Note 60: Height and setback controls in activity centres

<sup>1</sup> A Municipal Planning Strategy has been prepared and is the subject of Planning Scheme Amendment C220, which has been adopted by Council but has not yet been approved by the Minister for Planning. As such it is not considered by the Panel in this report.

## 2.2 Strategic justification

### (i) The issues

There are a number of strategic issues relevant to the Panel's considerations:

- whether there is broad strategic support for the Amendment
- whether there is support in local strategy and policy for the Amendment
- whether the proposed DDO11 is appropriately underpinned by the Framework.

### (ii) Evidence and submissions

Council provided the strategic context for the Amendment in its Part A submission. At the Hearing it relied on the evidence of Mr Glossop who concluded that the Amendment is consistent with and effectively implements State and regional planning policy. No submitter questioned strategic support for the Amendment at this level.

The Panel had directed that Council explain the evolution and strategic reasoning from earlier policy to the built form controls proposed in this Amendment.

In his evidence, Mr Glossop outlined local policy relevant to the Amendment and outlined how the Amendment is a logical progression from higher order local policies and strategies. In particular he emphasised the policy progression from the *Glen Eira City Plan: Activity Centre, Housing and Local Economic Strategy* (City Plan) to the most recent relevant strategic document the *Glen Eira Housing Strategy 2022* (Housing Strategy). He said City Plan informed the development of the Framework and that the overarching objectives of the more recent Housing Strategy align with the Framework albeit there are minor differences in detail. The Housing Strategy was approved by Council after the Framework was developed and exhibited and therefore did not inform the development of the Framework. The Framework underpins DDO11.

Ms Boisbouvier acknowledged that that further strategic work had been done subsequent to City Plan but submitted:

that the controls as proposed and drafted are inadequate and not strategically supported and that therefore they need revision. Revision is required so that they align with the strategic justification for the controls set out in the City Plan and Framework.<sup>2</sup>

Specifically, Ms Boisbouvier submitted that the preferred maximum building height of 15 metres on the southern side of Glen Huntly Road west of Kooyong Road was not strategically justified because City Plan specifies a built form height of three storeys. This issue is discussed further in Chapter 3.1 and 3.5.

Council responded stating:

Council notes the inconsistencies between City Plan and the Framework Plan and, by extension, the Amendment. The inconsistencies are limited to:

- identification of the western side of the activity centre (approximately to the west of Clarinda Street) as being a 'Local Centre', rather than part of the wider Caulfield South 'Neighbourhood Activity Centre'
- some instances of differences in the identified height outcomes<sup>3</sup>

<sup>2</sup> Hearing Submission, Planning & Property Partners for M Boisbouvier, para 19

<sup>3</sup> Council Part B Submission para 33.

Council acknowledged that City Plan provided specific guidance with respect to built form height but emphasised that it was a high level strategic document that recognised the need for more detailed and specific strategic work in respect of housing.

It submitted that City Plan makes clear that:

A separate housing plan is required to satisfy the State Government's expectations for local council housing strategies that support the implementation of residential zones through the Glen Eira Planning Scheme.<sup>4</sup>

And further for Council to:

Undertake structure plans (or similar precinct planning approach) for Glen Eira's activity centres.<sup>5</sup>

Council submitted that the Housing Strategy explicitly references City Plan by stating:

This Housing Strategy will provide the necessary research and detail to introduce policy to implement the broad aims of City Plan.<sup>6</sup>

In discussing the development of the Housing Strategy, Council noted that it was planning to accommodate a further 30,000 people between 2021 and 2036, as forecast in *Victoria in Future (2019)*. This was to meet its fair share of population growth forecast for Melbourne and the South East region.

The Housing Strategy has been recently adopted by Council but has not been implemented through the Planning Scheme.

In his evidence, Mr Glossop noted that City Plan designated the subject land variously as different categories of Substantial Change, 1, 2 and 3 (the desired outcomes for each are explained in Appendix D:2 ii), whereas the Housing Strategy now identifies the whole of the subject land as Substantial Change 3. He identified this as a key difference between City Plan and the Housing Strategy. Mr Glossop stated:

I am not concerned about this difference, given the role played by City Plan in the Planning Scheme. The fact that more detailed work might identify different height levels in a centre is understandable.<sup>7</sup>

Mr Glossop stated that the Design and Development Overlay was an appropriate tool to facilitate the implementation of the Framework and that he was comfortable that the Framework had been appropriately translated into the DDO11 with respect to key metrics such as building height and setbacks. He stated that the building height provisions should be expressed in metres rather than storeys.

### **(iii) Discussion**

The Panel notes that it was not disputed that in the context of State and regional policy there was strategic justification for the Amendment.

The Panel notes the progression in policy from a broader strategic focus through to the more detailed, activity centre specific built form framework. This is a typical policy/strategy hierarchy

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<sup>4</sup> Council Part B Submission, para 38

<sup>5</sup> Council Part B Submission, para 39

<sup>6</sup> Council Part B Submission, para 43

<sup>7</sup> Evidence of Mr Glossop para 38

and as such is not in the Panel's view controversial. That is, progressing from higher level policy to increasing levels of detail, specificity and geographic focus.

The City Plan is an overarching higher level strategic document, which is intended to provide strategic context to update the local planning framework in the Planning Scheme and inform the Municipal Planning Strategy. The question arises as to why City Plan was so specific in its specification of maximum preferred heights in some activity centres. This would not be considered usual for a higher level strategic document such as this. The Panel considers that a possible explanation is in the Purpose of City Plan which says it is to "*provide clear policy direction for all activity centres without an adopted Structure Plan...*"<sup>8</sup> As the Panel understands, at the time of City Plan there was no structure plan for the NAC. The Panel notes that the City Plan includes several key implementation actions, among which include:

- Key action 2: undertake structure plans (or similar precinct planning approach) for Glen Eira's activity centres
- Key action 13: carry out detailed consultation with the community about building design and development guidelines.<sup>9</sup>

It is clear from these actions that City Plan anticipated more detailed analysis of the municipality's activity centres and built form guidelines into the future. It would appear to the Panel that some built form parameters were included as a 'holding position' pending the further activity centre focused work which was foreshadowed. In any case, the Framework is the culmination of that foreshadowed further work and was developed having regard to the recommendations of the City Plan. The Framework was not bound to the specifics in the City Plan, nor should it have been. Its recommendations are appropriately based on the findings of the analysis undertaken. Council acknowledged that it had created a rod for its own back by including this detail in City Plan. However, including that detail in City Plan may have provided the basis for decision making in respect to development applications in activity centres while necessary further strategic work was undertaken.

That further strategic work, in both the Housing Strategy and the Framework, has resulted in changes to both the level of Substantial Change designated for some areas and some refinement of height and setback metrics does not surprise the Panel. These are likely to have occurred both because of more detailed strategic work undertaken and changes in the external environment in the ensuing period. Hence the Panel agrees with Mr Glossop that such changes are understandable.

There is a logical progression from the higher order City Plan to the more detailed Framework. For this reason, the Panel does not accept the submission of Ms Boisbouvier about reliance on the height of built form proposed in City Plan. It is of the view that it is the proposed built form controls in the Framework as translated through to DDO11, that are the most recent and therefore the most relevant.

The conclusion drawn by the Panel above, presupposes that the strategic work underpinning the proposed built form controls in DDO11 is appropriate. Ms Boisbouvier submitted that this was not the case. The Panel notes that the section of the Framework addressing each precinct includes a section entitled "*Strategic Justification/ Rationale*". With respect to each precinct this section has discussion of influencing factors including lot size, shadow impacts, transition to surrounding

<sup>8</sup> City Plan p7.

<sup>9</sup> City Plan, p47 (p24 in PDF version)

zonings, amenity impacts on surrounding residential areas and likely internal amenity impacts. While this discussion did not include extensive detail and discussion no evidence was produced that the strategic work was not appropriate, nor was detail provided by the submitter of ways the strategic work was inadequate or what further strategic work was required.

**(iv) Conclusions**

For the reasons set out in this report, the Panel concludes that the Amendment:

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

## 3 Built form controls

### 3.1 Mandatory and discretionary building height controls

#### (i) The issues

The issue is:

- whether it is appropriate to apply a mandatory maximum building height to land in Precinct 3 and a discretionary maximum building height elsewhere in the NAC.

#### (ii) Evidence and submissions

Council described its approach to the development of the built form frameworks for three neighbourhood activity centres, including the NAC (summarised as relevant):

- frameworks were developed for the centres in part to respond to community pressure for permanent planning controls
- the frameworks acknowledge the centres' strategic role as neighbourhood centres in meeting employment and housing needs of a growing population and their physical context in seeking to guide future design outcomes
- 'physical contexts' include the land uses and certain design elements of buildings in and surrounding the centres
- height proposals were developed by expert design consultants who assessed all relevant factors, resulting in heights that could be achieved without adversely impacting local character and amenity
- the frameworks propose mandatory controls in heritage sub precincts with reference to Planning Practice Note 59 The Role of Mandatory Provisions in Planning Schemes (PPN59) which states:

...there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome. Although these circumstances cannot be common practice, they may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast.<sup>10</sup>

It submitted that beyond these heritage areas there was no strategic justification for mandatory provisions elsewhere in the NAC or at heights less than specified in the Framework.

Submissions 14 and 18 did not support the use of mandatory maximum building height limits in Precinct 3 viewing them as too restrictive and seeking to amend the requirement to a preferred provision. The Catholic Parish of Holy Cross (RCTC, Submission 18) submitted that the requirements of PPN59 for mandatory provisions had not been met and that:

- There is no evidence before the Panel that Precinct 3 warrants exceptional treatment or that it is an area of *'high heritage value with strong and consistent character themes'*.
- Having regard to other considerations raised by PPN59, there is also no evidence before the Panel that a mandatory height control is necessary to avoid the risk of adverse outcomes on the RCTC land. This is especially so given the fact of HO66 and heritage policy.<sup>11</sup>

<sup>10</sup> Council Part A submission, para 51

<sup>11</sup> Hearing submission, Best Hooper Lawyers for RCTC, paras 24 and 25

RCTC relied on the expert heritage evidence of Mr Raworth who stated that the controls were too conservative and onerous and that there was not any precinct-based heritage advice to underpin the controls. Mr Raworth expressed the opinion that the precinct was not a particularly unique, pristine or consistent precinct which would warrant mandatory height controls, and in written evidence stated that the additional layer of control provided through the Heritage Overlay and Heritage Policy would manage outcomes beyond the DDO11 requirements.

RCTC submitted that the case for the application of mandatory controls as required by Planning Practice Note 60 (PPN60) (Height and setback controls for activity centres) had not been met. It stated that Council had not demonstrated that other controls would be inadequate to protect unique heritage values, and further that there were no unique heritage values at stake. RCTC submitted that the strategic rationale put forward in the Framework of achieving a percentage of visible heritage built form viewed from the opposite footpath could be met with an additional storey and tabled a sketch diagram to demonstrate.

Mr Glossop commented on the sketch diagram presented by RCTC and agreed that the purported outcome could be theoretically achieved but that it would rely on things such as a fixed street wall height and setback to achieve the outcome consistently. Mr Glossop disagreed that the Framework needed to demonstrate conclusively that the mandatory control is absolutely necessary but that it needed to establish a narrative and rationale for the mandatory provision.

Mr Glossop considered whether a mandatory height provision was appropriate for Precinct 3 in the context of PPN59 (The role of mandatory provisions in planning schemes) and PPN60. He gave evidence that a mandatory height for Precinct 3 (summarised):

- was strategically justified through the Framework, based on high heritage values that require protection
- would protect the dominance of the heritage street wall
- would not undermine the ability of the NAC to achieve broader strategic goals with respect to housing supply
- that proposals of greater height would affect the dominance of the street wall and detract from the heritage streetscape.

Council submitted that the mandatory provision was required to achieve the specific intent for Precinct 3 as expressed in the Framework:

The Glen Huntly Road heritage precinct will continue to be known for its impressive inter-war architecture. New development of up to five storeys will sensitively integrate with the heritage shopfronts and ensure they remain the prominent in the streetscape.<sup>12</sup>

Council relied on submissions from Council's heritage planner, Ms Brasher that:

Mandatory height controls within Precinct 3 aim to protect the visual dominance of the heritage buildings in the precinct. Used in conjunction with a preferred upper floor setback of 5m from the street wall, together they aim to ensure that the majority of view of new additions (when viewed from the opposite side of Glenhuntly Road) is minimised as indicated in Figure 40 on page 58.<sup>13</sup>

Several resident submissions<sup>14</sup> from adjoining or nearby properties to the NAC submitted that maximum building height requirements throughout the entire activity centre should be mandatory to provide certainty and prevent buildings at much greater heights than preferred, particularly in

<sup>12</sup> Council Part B submission, para 91

<sup>13</sup> Council closing submission, para 62

<sup>14</sup> Submissions 3, 11, 16, 19, 22 (verbal submission at the Hearing), 23

Precinct 4. The protection of heritage fabric, neighbourhood character and residential amenity were put forward as reasons that mandatory maximum building heights should be applied.

In the Hearing, Ms Boisbouvier, (Submitter 19), suggested mandatory height controls as her recommended option to be considered by the Panel for Precinct 4. Mr Glossop, responding to questions at the Hearing, stated that he did not believe the Framework provided strategic justification for any mandatory provisions beyond the maximum height requirement proposed for Precinct 3. The issue of appropriate maximum building heights for Precinct 4 is addressed further in Chapter 3.5.

### (iii) Discussion

The Panel recognises that Victorian planning schemes are predominantly performance based to allow for flexibility in the approach to achieve a specified outcome. This performance-based system requires judgement and assessment to decide whether a proposal meets relevant planning objectives or strikes an appropriate balance between competing objectives. Mandatory provisions are considered the exception but will be warranted in some circumstances to provide certainty and an efficient outcome.

PPN59 sets out the following criteria to assist in determining in which circumstances a mandatory provision may be justified:

- is the mandatory provision strategically supported?
- is the mandatory provision appropriate to the majority of proposals?
- does the mandatory provision provide for the preferred outcome?
- will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?
- will the mandatory provision reduce administrative costs?

More specific criteria for introducing mandatory height provisions in activity centres are outlined in PPN60:

Mandatory height or setback controls should only be applied where:

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

There is some overlap between the criteria in PPN59 and PPN60 and the Panel has considered the general intent of their guidance for applying mandatory built form provisions for activity centres.

There was some discussion at the Hearing as to whether this heritage precinct has significant heritage value to justify a mandatory height provision. The Panel accepts Mr Raworth's expert evidence that this precinct is a representative commercial interwar precinct but is not particularly unique. Notwithstanding, the Panel finds that previous assessment has found the precinct to have high heritage value - hence the application of the Heritage Overlay to this area.

The Panel does not consider there is a need to demonstrate that this is an exceptional circumstance. PPN60 is quite explicit in setting criteria for the application of mandatory provisions and exceptional circumstances do not have to be present if Council has undertaken comprehensive strategic work to demonstrate that mandatory provisions are appropriate in the context and that they are absolutely necessary to achieve the preferred built form outcome.

PPN60 specifies that robust and comprehensive strategic work must be:

- consistent with state and regional policy
- current – any supporting structure plan or comprehensive built form analysis should be no more than five years old
- able to accommodate growth in the activity centre over at least a 15 year timeframe, noting the context of the activity centre within the broader activity centre hierarchy, its location and access to public transport, potential for redevelopment and identification of key sites in the centre than can accommodate more intense development compared with the remainder of the centre.

The Panel finds that the Framework meets these criteria and is therefore sufficiently robust and comprehensive. The combination of predominantly preferred maximum building heights across the NAC, alongside one precinct with a mandatory maximum height, will enable an appropriate level of growth and change in accordance with its role in the activity centre hierarchy.

The Panel accepts that the mandatory provision will provide for a preferred outcome as specified through the following objective in the proposed DDO11:

- to ensure development maintains the prominence of the heritage street wall within the Caulfield South Shopping Centre and Environs heritage place, Heritage Overlay (HO66) and respects the significance of the Holy Cross Church.

Both PPN59 and PPN60 emphasise the need to demonstrate that a mandatory provision is absolutely necessary to achieve a preferred built form outcome and that exceeding these parameters would result in an unacceptable outcome. The Panel agrees with Mr Glossop's observation of the sketch diagram presented by RCTC that in order to achieve the preferred visual outcome it relied on other fixed elements (such as street wall height). The Panel notes that other fixed elements cannot be guaranteed as the proposed DDO11 does not contain any other mandatory provisions and the existing built form exhibits some variation. If the majority of new developments were not in accordance with this provision, and greater in height with variations in upper-level setback, the prominence of the heritage street wall could be compromised.

The Panel finds that the Framework provides sufficient justification for the proposed mandatory maximum building height for Precinct 3 and has demonstrated this need. The Panel does not believe it will unduly restrict built form in this location and is consistent with the level of growth and change anticipated for this NAC. Council's reasons for applying mandatory provisions, are generally consistent with Planning Practice Notes 59 and 60.

The Panel agrees with Council and Mr Glossop that the Framework does not provide justification for mandatory maximum building height provisions elsewhere in the NAC.

Discussion regarding the specific metrics for building height provisions is provided in later sections of this report.

#### **(iv) Conclusions**

The Panel concludes that:

- A mandatory maximum building height is appropriate and has been strategically justified for Precinct 3 and that discretionary maximum building heights should apply elsewhere in the NAC.

## 3.2 Residential interface requirements – all precincts

### (i) The issues

The issue is:

- whether a preferred maximum building wall height requirement of 8 metres as shown in Diagram 2 of the exhibited DDO11 is justified and appropriate.

### (ii) Evidence and submissions

The exhibited version of the DDO11 included a preferred maximum boundary wall height of 8 metres for buildings abutting a laneway in a residential zone. This requirement is shown in Diagram 2 of DDO11.

Mr Glossop in written evidence noted that the Framework showed a 7.5 metre height for boundary walls abutting a laneway in a residential zone and could not identify any reason as to why a different height was included in the exhibited DDO11. In his evidence he recommended that the 7.5 metres in the Framework be adopted.

Submission 12 opposed the proposed residential interface requirements and submitted that the standards of Clauses 54, 55 and 58 should be applied instead. Mr Glossop noted that due to the commercial zoning of all land affected by DDO11 only Clause 58 (Apartments) would be applicable to future development. Mr Glossop advised that the only standard in Clause 58 which can be varied is the building setback standard at Clause 58.04-1 and that it contains no measurable building setback standards. For this reason, Mr Glossop gave evidence that the inclusion of setback requirements would provide greater certainty and clarity for decision makers.

Ms Bell, giving evidence for Submitter 12, considered there to be strategic justification for varying the residential interface provision for 322 Hawthorn Road. Ms Bell's opinion was that the existing built form opposite the laneway at 127-129 Murray Street, consisting of a three storey apartment building, was less sensitive than a detached dwelling with secluded private open space might be and that the rear setback requirement should be cognisant of the directed level of change on the intervening land.

Ms Bell recommended that an additional residential interface diagram be included in the proposed DDO11 to apply to land at 322 Hawthorn Road which capped the 45-degree rear setback envelope at 10 metres from the opposite laneway edge. In response to questions from Council at the Hearing, Ms Bell agreed the assessment was based on visibility of upper levels of new development and not overshadowing. Ms Bell agreed that variations could be considered through a permit application process.

Several submitters<sup>15</sup> abutting or nearby to Precinct 4 opposed any change to existing interface requirements to residential areas for reasons including visual intrusion, decrease in residential amenity and loss of privacy.

Council in its closing submission confirmed a preference for 8 metres in lieu of 7.5 metres indicated in the Framework. Council verbally indicated that the reason for this was to provide greater flexibility for commercial development at both ground and first floor levels.

<sup>15</sup> Submissions 8, 9, 10, 11

At the Hearing, neither Mr Glossop nor Ms Bell expressed a preference for either the 7.5 metre or 8 metre building wall height. However, Ms Bell opined that 7.5 metres would still allow for the first two floors of a development to be commercial.

### (iii) Discussion

The Panel agrees with Mr Glossop that the inclusion of residential interface requirements in the proposed DDO11 will provide greater clarity and certainty for decision makers over and above guidance provided in Clause 58. It will also provide more certainty for adjoining residents. The Panel notes that the more stringent interface controls applying to residential land through Clauses 54 and 55 do not apply to any land where DDO11 is proposed as the land is all in the Commercial 1 Zone.

Regarding the appropriate height for walls on boundaries abutting a laneway, the Panel has considered the principles and centre wide design objectives in the Framework (as relevant):

Principle 3 – A centre that emerges sensitively from the surrounding neighbourhood and considers residential interfaces both within and outside the centre.<sup>16</sup>

#### 4.2.1 Design Objectives

- to ensure development protects existing residential amenity and does not overwhelm adjoining residential properties

#### 4.2.2 Design Requirements

- buildings should be designed with a floor-to-floor dimension of a minimum of 4.0 metres at ground floor to enable adaptation for other uses in the future
- development should provide upper level setbacks in accordance with the precinct specific setbacks
- development must satisfy the objectives and standards of Clauses 54, 55 or 58, which aim to protect the amenity of adjoining residential areas.<sup>17</sup>

The Framework provided analysis for each precinct and noted as part of the strategic justification that:

- The amenity of adjoining residential areas will be protected by applying rear upper level setbacks and applying additional requirements of Clause 54, 55 and 58 of the Glen Eira Planning Scheme. The shadow testing demonstrates that the proposed building heights can be achieved whilst maintaining sunlight to private open space to adjoining residential areas.<sup>18</sup>

It is clear from the above, that the Framework seeks to protect adjoining residential amenity by minimising visual intrusion and overshadowing for existing adjoining dwellings. The Panel supports the precinct wide approach adopted by the Framework and noting the discretionary nature of the provision does not support introducing a site specific residential interface provision for 322 Hawthorn Road.

Regarding a variation to the proposed boundary wall height, the Panel notes that this may have only a minor impact on built form bulk or overshadowing of nearby residences. However, the Panel was not provided with any alternative analysis or evidence to support increasing the boundary wall height above that shown in the Framework.

The Panel agrees with Ms Bell that commercial floorspace could be provided at first floor level within a 7.5 metre height envelope while still achieving the preferred minimum height of 4 metres

<sup>16</sup> Caulfield South NAC Built Form Framework, page 40

<sup>17</sup> Caulfield South NAC Built Form Framework, page 42

<sup>18</sup> Caulfield South NAC Built Form Framework, page 45 (and repeated for each precinct)

at ground floor level as sought by the Framework. The provision is a preferred requirement and therefore could be modified on a site-specific basis should circumstances warrant a variation.

#### **(iv) Conclusions and recommendation**

The Panel concludes that:

- The Framework has provided strategic justification for the residential interface provisions proposed in DDO11.
- Site specific residential interface provisions for individual sites are not supported, as the Panel believes the discretionary nature of the provisions provides some ability for a variation through the planning permit application process should this be warranted and demonstrated to be appropriate.
- The Framework presents analysis to support a boundary wall height of 7.5 metres for development abutting a laneway adjacent to a residential zone and evidence has not been provided to vary this requirement.
- Diagram 2 in the proposed DDO11 be amended to show a boundary wall height of 7.5 metres as recommended by the Framework.

The Panel recommends:

- 1. Amend Diagram 2 in Design and Development Overlay Schedule 11 to replace the 8 metre boundary wall height with a height of 7.5 metres.**

### **3.3 Precinct 1**

#### **(i) The issues**

The issues are:

- whether a preferred maximum building height of 18 metres (5 storeys) is appropriate and justified for 322 Hawthorn Road, Caulfield and land between 312-336 Hawthorn Road more generally
- whether a preferred upper-level setback of 5 metres is appropriate and justified for 322 Hawthorn Road, Caulfield.

#### **(ii) Background**

Precinct 1 applies to land along Hawthorn Road, north and south of Glen Huntly Road. A mix of preferred maximum building height provisions are proposed by the DDO11 as follows:

- 306 Hawthorn Road and 379-385 Hawthorn Road – 15 metres (4 storeys)
- 312-336 Hawthorn Road, 365-369 Hawthorn Road and 396-414 Hawthorn Road – 18 metres (5 storeys)
- all other land in Precinct 1 – 21 metres (6 storeys).

The following preferred minimum building setbacks apply to all land in Precinct 1:

- zero front and side setbacks for development up to the height of the street wall
- five metre upper-level setback for development above the street wall
- three metre upper-level setback for development above the street wall facing a secondary street frontage on corner sites.

**(iii) Evidence and submissions****Building height provisions**

Submissions 5 and 12 submitted that heights should be increased in parts of Precinct 1. Submission 5 expressed a preference for a maximum building height of 21 metres for land between 312-336 Hawthorn Road, with a minimum building height of 18 metres, but did provide any reasons or further information in support of this request.

Support for increased heights in mixed use zoning areas generally was supported by Submission 24, suggesting that increased density would make high quality public transport more feasible.

Submitter 12, called expert urban design evidence from Ms Bell, and submitted that a preferred maximum building height of 24 metres should be applied to land at 322 Hawthorn Road to allow a future building envelope to respond to the site's potential for change.

Ms Bell supported the discretionary nature of the building height provisions and the decision guidelines for applications seeking to vary the preferred maximum building height in the DDO11 stating that they *"provide a clear performance criteria (sic) in relation to off-site amenity, upper level visibility and public realm overshadowing"*.<sup>19</sup> Ms Bell did not however support the preferred maximum building height of 18 metres (five storeys) for 322 Hawthorn Road on the basis that (summarised):

- a five storey preferred maximum is misaligned with the development opportunity the site holds and the balance of Precinct 1
- six to eight storeys should be the starting point for considering mid-rise character in Precinct 1 in accordance with the emerging more robust built form character of Hawthorn Road
- the site and surrounds are not affected by heritage
- the lot analysis in the Framework describes the site as an 'Opportunity Lot'
- the site has non-sensitive interfaces to the north, west and south.

Evidence was presented by Ms Bell to demonstrate that a greater height (24.8 metres approx.) at 322 Hawthorn Road would not overshadow the eastern footpath of Hawthorn Road between 12pm-2pm on the 22 September. Ms Bell believed a greater height would also comfortably retain the human scale of the street wall. Ms Bell recommended a preferred maximum building height provision of 24 metres (seven storeys) should apply to 322 Hawthorn Road.

Council did not support the application of increased building heights to individual lots within the NAC and submitted that it would be contrary to the precinct based approach of the Framework. It submitted that:

- Matters relevant to the individual context of each site, including its size, can be considered on a case-by-case basis through the consideration of any future planning permit applications, as indeed is allowable through Council's proposed use of preferred heights over mandatory heights.
- It may well be the case that Council's own identification of these sites as 'opportunity sites' provides strategic justification for variation to the preferred requirements of the DDO11. These matters are best considered where relevant in assessment of planning permit applications.<sup>20</sup>

<sup>19</sup> Evidence of Ms Bell, para 41

<sup>20</sup> Council Part B submission, paras 83 and 84

Mr Glossop gave evidence that the Framework provided appropriate justification for the proposed maximum building heights in DDO11.

Regarding 'mid-rise' character, Council submitted that the Framework clearly established a definition of four to six storeys and that more than six storeys would be considered 'high-rise' in this context.

While not raising the issue through written submission, Submitter 22 raised oral concerns at the Hearing about proposed discretionary maximum building height provisions for Precinct 1 and submitted that a four storey mandatory maximum building height would be appropriate for Precinct 1.

### **Upper-level setback provisions**

Submission 12 submitted that a reduced upper-level setback of four metres, rather than five metres, from the Hawthorn Road frontage should be applied to 322 Hawthorn Road. Ms Bell supported this position and gave evidence that a lesser upper-level setback was warranted due to:

- setbacks generally being less in non-heritage areas than for heritage precincts
- the greater street wall height applied in Precinct 1 as compared with Precinct 3 (where heritage is evident) and therefore a reduced visibility of upper levels in Precinct 1
- limited development constraints in Hawthorn Road as compared to Glen Huntly Road
- an inconsistent streetscape character along Hawthorn Road with typically deeper large lots generating development opportunities along the corridor
- varied emerging upper-level setbacks as part of new developments approved ranging from 2.7 metres to 12.2 metres, depending on the overall height of the building.

Council submitted that there is no *“urban design convention that universally supports the use of lesser upper level setbacks from the street wall for areas not subject to a Heritage Overlay”*.<sup>21</sup>

## **(iv) Discussion**

### **Building height provisions**

The Panel supports the precinct based approach employed by the Framework and finds the analysis has appropriately considered relevant factors in establishing the mix of preferred maximum building height provisions for Precinct 1.

The Panel accepts that a few recent development approvals have been granted for sites in Hawthorn Road for maximum building heights exceeding the preferred maximum of 21 metres for Precinct 1. The Panel notes that these applications were considered under existing planning provisions and not the design objectives and requirements of DDO11. The Panel does not consider that they set a precedent for establishing a higher preferred maximum building height provision in Precinct 1 than has been established by the Framework.

Notwithstanding the above, Precinct 1 does exhibit a more robust character than may other parts of the NAC, has not been identified as having heritage significance and mostly adjoins land in the General Residential Zone, rather than more sensitive Neighbourhood Residential Zone. This is reflected in the generally higher preferred maximum building heights applied to Precinct 1 compared with other precincts in the NAC. The Panel does not believe a case has been established for either higher or lower preferred maximums to be implemented in various parts of Precinct 1.

<sup>21</sup> Council Closing submission, para 43.1

The Panel considers it is appropriate to determine specific metrics for individual sites as part of the planning permit process where discretionary provisions apply and is not convinced there is a need to implement additional site-specific building height provisions in the Caulfield South NAC.

### **Upper-level setback provisions**

As noted above, the Panel supports the precinct based approach to built form provisions as recommended by the Framework. In the Panel's experience, upper-level setbacks do often vary throughout activity centres with more sensitive or coherent streetscapes. As was highlighted by Ms Bell, they often have greater upper-level setbacks than other areas. The Panel recognises that Precinct 1 has a more robust character than other precincts and presently has a much less consistent built form and street presentation. However, the Panel understands that the Framework specifically seeks to address street presentation:

Hawthorn Road will continue to evolve into an active street providing more cohesive built form and a continuous street wall.<sup>22</sup>

Further DDO11 includes the following objective:

- to provide a more cohesive built form character and improved street interface along Hawthorn Road and Glenhuntly Road.

The five metre upper-level setback has been consistently applied all along Hawthorn Road in Precinct 1, north and south of Glen Huntly Road. Justification for the provision as expressed in the Framework was to ensure the street wall is the dominant element in the streetscape when viewed from opposite footpaths. The Panel does not consider it appropriate to vary the upper-level setback provision for an individual site within this precinct.

Turning to whether a four-metre upper-level setback might be appropriate more widely for the precinct, that Panel notes that Ms Bell's evidence only considered the impacts of a reduced setback for land at 322 Hawthorn Road. When asked to clarify the reason for selecting a four metre upper-level setback, Ms Bell advised that this was not based on analysis but that four metres was considered a better balance than three metres to ensure upper levels are distinguished. The Panel is not convinced that this provides a compelling reason to introduce a lesser upper-level setback provision for Precinct 1.

As it is a discretionary provision the exact metric that is reasonable for this site, and that will meet the objectives of the proposed DDO11, is best determined through the planning permit application process.

### **(v) Conclusions**

The Panel concludes:

- The preferred maximum building height of 18 metres (five storeys) is appropriate and justified for 322 Hawthorn Road, Caulfield, and land between 312-336 Hawthorn Road more generally.
- The preferred upper-level setback of five metres is appropriate and justified for 322 Hawthorn Road, Caulfield.

<sup>22</sup> South Caulfield NAC Built Form Framework, page 44

## 3.4 Precinct 3

### (i) The issues

The issues are whether the:

- mandatory maximum building height of 15 metres (four storeys) is appropriate and justified for Precinct 3
- preferred upper-level setbacks are appropriate and justified for Precinct 3
- building separation requirements are appropriate and justified for Precinct 3.

### (ii) Background

Precinct 3 applies to all land in the Caulfield South NAC affected by the HO66. In addition to provisions applying to all land in the Caulfield South NAC, DDO11 includes the following specific provisions for Precinct 3:

- a mandatory maximum building height of 15 metres (four storeys)
- a preferred nine metre street wall height (two storeys) or match the height of an existing adjoining heritage building
- for 707 Glen Huntly Road – a six metre front setback for development up to the height of the street wall and side setbacks for development up to the street wall to respond to the Holy Cross Church setting and built form
- all other land – zero front and side setbacks for development up to the street wall, a five metre setback from the street frontage for development above the street wall, and for corner sites a three metre setback to the secondary street frontage for development above the street wall.

### (iii) Evidence and submissions

#### Building height provisions

Submissions 14, 18 and 20 all submitted that additional maximum building heights could be accommodated in Precinct 3 without detracting from the heritage values of the precinct. Submissions 14 and 18 particularly objected to the mandatory nature of building height requirements and this has been considered in Chapter 3.1.

Submission 14 submitted that maximum heights should be the same as Precinct 1 to create uniformity and harmony and to allow more creativity and economic development.

Submission 20 requested a five storeys (18 metre) maximum building height provision if mandatory building heights were pursued. It submitted that a recessive fifth storey could be considered along with setback criteria so as not to detract from the heritage street wall. The submission indicated that massing testing had been undertaken to demonstrate this capability, but modelling was not included with the submission.

Council submitted:

The proposed height limits are derived from a detailed built form analysis in which proposed heights and setbacks were decided on after considering many factors. One consideration was if the heights were respectful to the existing heritage onsite.<sup>23</sup>

Mr Glossop gave evidence that:

<sup>23</sup> Table of written submissions to Amendment C231, page 14

With respect to building height, again the Framework in my opinion provides appropriate justification for these maximum building heights.<sup>24</sup>

Mr Raworth stated at the Hearing that he viewed the issues of height as separate issue to whether they were mandatory and advised that he didn't have a view on a preferred height but did not support the mandatory nature of the provision.

Council clarified in closing that the reference to 'up to five storeys' in the Precinct Overview at 4.5.1 of the Framework was an error and submitted that:

All maps and specific built form requirements for Precinct 3 throughout the Framework reference up to four storeys, notably including the figures that provide the rationale for the nominated height for the precinct on pages 58 to 60. The shadow analysis on pages 61 to 62 reflects a four storey outcome.<sup>25</sup>

### **Setback and building separation provisions**

Submission 14 objected to proposed upper-level setbacks for Precinct 3. It submitted that:

- they are excessive for small land parcels
- there should be no setback from Alder Street (secondary road)
- the upper-level setback from the Glen Huntly Road frontage should be no more than three metres.

Council submitted that the proposed setbacks were based on detailed built form analysis and had regard to the streetscape and adjoining properties.

Mr Raworth gave evidence that:

Going to the question of the Precinct 3 upper level setback, it is appropriate that there be an identified setback of five metres to upper level additions. While not specifically stated in the draft DDO11, this setback is understood to be a preferred minimum rather than mandatory.<sup>26</sup>

Submission 20 opposed the 4.5 metre building separation requirement for habitable room windows and balconies facing a common boundary where a development exceeds three storeys.

Mr Glossop supported the building separation requirements on the basis that the distances expressed are "*what would be ordinarily expected*".<sup>27</sup>

Ms Bell while not commenting specifically on Precinct 3, but rather Precinct 1 which has the same building separation requirements, gave evidence that:

I consider the above separation controls to be appropriate and common. In particular, the 4.5 metre setback generates the ability for a future development on an adjacent site to mirror the development envelope, enabling a nine metre separation between habitable windows or balconies, therefore avoiding the need for screening.

DDO11 falls silent on the introduction of blank party walls on a side boundary above a street wall. However, in my opinion this outcome is not precluded.

On this basis, I support the wording in DDO11 in relation to building separation requirements at side or rear interfaces.<sup>28</sup>

<sup>24</sup> Evidence of Mr Glossop, para 87

<sup>25</sup> Council Closing submission, para 14

<sup>26</sup> Evidence of Mr Raworth, para 43

<sup>27</sup> Evidence of Mr Glossop, para 94

<sup>28</sup> Evidence of Ms Bell, paras 94-97

**(iv) Discussion****Building height provisions**

The proposed mandatory 15 metre building height provision for Precinct 3 is considered in the context of the overall built form framework for the NAC. The Framework facilitates a mid-rise character for the NAC providing for building heights within the four to six storey range. It has allowed for varied mandatory and preferred maximum building height provisions based on the characteristics of the four precincts while seeking to achieve a new built form that will allow for employment and housing growth appropriate to its role in the activity centre hierarchy.

More specifically, one of the objectives of DDO11 is:

- to ensure development maintains the prominence of the heritage street wall within the Caulfield South Shopping Centre and Environs heritage place (HO66) and respects the significance of the Holy Cross Church.

The Panel accepts the analysis in the Framework that building heights greater than four storeys will start to diminish the dominance of the heritage street wall. The Panel acknowledges the sketch diagram submitted by RCTC shows an example where additional building height would have limited additional visibility (discussed at Chapter 3.1) but agrees with Mr Glossop that in order to achieve such an outcome consistently would require specific metrics for other built form elements such as street wall height and upper-level setback. DDO11 does not contemplate mandatory controls beyond the maximum height provision for Precinct 3 or greater upper-level setbacks for additional storeys.

The Panel finds the Framework will facilitate a more consistent and harmonious built form for the Caulfield South NAC but that this does not require the same maximum building height provisions to extend across all precincts. The Panel does not accept that the proposed 15 metre maximum height provision will stifle creativity or economic development opportunities within the NAC or Precinct 3 more specifically.

**Setback and building separation provisions**

The Panel finds that the proposed setback and building separation requirements are strategically justified by the analysis in the Framework and accepts the evidence of Mr Raworth, Mr Glossop and Ms Bell that they are appropriate, common and what would ordinarily be expected.

The Panel was not presented with any evidence or compelling submissions to support alternative or varied setback or building separation requirements.

**(v) Conclusions**

The Panel concludes:

- The mandatory maximum building height of 15 metres (four storeys) is appropriate and justified for Precinct 3.
- The preferred upper-level setbacks are appropriate and justified for Precinct 3
- The building separation requirements are appropriate and justified for Precinct 3.

## 3.5 Precinct 4

### (i) The issues

The issues are:

- whether the preferred maximum building heights are appropriate and justified for land in Precinct 4
- whether the design objectives and decision guidelines for Precinct 4 adequately explain and clarify the desired outcomes for building heights in Precinct 4
- whether the preferred street wall heights are appropriate and justified for Precinct 4.

### (ii) Background

Precinct 4 applies to the western end of the Caulfield South NAC. A mix of preferred maximum building height provisions are proposed by the DDO11 as follows:

- 542-636 Glen Huntly Road – 15 metres (four storeys)
- 649-697 Glen Huntly Road – 21 metres (six storeys)
- All other land in Precinct 4 – 18 metres (five5 storeys)

The following preferred street wall heights apply to land in Precinct 4:

- 612-672 Glen Huntly Road and 627-697 Glen Huntly Road – 11 metres
- All other land – 9 metres or match the height on an existing adjoining double storey building.

### (iii) Evidence and submissions

#### Building height provisions

Several resident submissions<sup>29</sup> opposed what they perceived as increased preferred maximum building height provisions in Precinct 4 for reasons including visual intrusion, loss of privacy, decrease in residential amenity for adjoining dwellings, protection of heritage buildings and the significance of the character of land affected by the Neighbourhood Character Overlay to the northwest of Precinct 4. These submissions sought to retain controls with heights of not more than nine metres or to match existing adjoining two-storey dwellings.

Council clarified that at present there is no building height controls or guidelines in the planning scheme to guide new development within the NAC and the Amendment seeks to provide guidance about appropriate height controls.<sup>30</sup>

Submission 19 submitted that the preferred maximum building height of 15 metres on the south side of Glen Huntly Road and west of Kooyong Road is not strategically justified and should not be supported. Submission 19 was concerned about maintaining the existing character of the commercial strip and amenity impacts on the established residential area to the rear. It was submitted that the Framework is inconsistent in referencing an appropriate building height for Precinct 4 but that strategic justification in the Framework supports a **maximum** building height of four storeys.<sup>31</sup>

<sup>29</sup> Submissions 8, 9, 10, 11, 13 and 15

<sup>30</sup> Table of written submissions to Amendment C231, page 12

<sup>31</sup> Document 10, Hearing submission for Ms Boisbouvier, para 23

Ms Boisbouvier submitted that the use of terms such as “*preferred maximum building height of four storeys*”, “*up to four storeys*”, and reference to “*four storeys MAX*” in the diagram were likely to lead to confusion.

The weight given to the Housing Strategy in justifying differences in height controls between the City Plan (three storeys) and the Framework (four storeys) was contested on the basis that the Housing Strategy was only recently adopted. It was submitted:

...that a document prepared after the Framework and after the exhibition of this Amendment does not provide justification with the inconsistencies between the City Plan and the Framework upon which this Amendment is based. This is heightened by the fact that there is no analysis of appropriate building height controls in the Housing Strategy.<sup>32</sup>

Submission 19 presented three options for the Panel to consider in relation to building height south of Glen Huntly Road, and west of Kooyong Road, in Precinct 4. That the building height in Clause 2 of DDO11 be amended to:

- a mandatory maximum building height of 15 metres
- a preferred maximum building height of 3 storeys, for example 12 metres
- include wording that buildings and works should not exceed the specified discretionary building height of 15 metres.

In response to a question from the Panel, Ms Boisbouvier confirmed that in relation to the third option this could be included as part of the decision guidelines in the DDO11. In concluding her submission Ms Boisbouvier expressed a preference for the first option.

Submission 18 also submitted that the design objectives and decision guidelines in proposed DDO11 should be amended to explain and clarify the desired outcome for building height to be a maximum of four storeys south of Glen Huntly Road and west of Kooyong Road.

Council submitted that the proposed buildings heights in Precinct 4 are strategically justified by the Framework and clear as to where different heights should apply. For land south of Glen Huntly Road Council submitted:

This preferred height balances the need for housing growth within the activity centre with recognition of its southern interface to land outside of the activity centre and the subsequent need to preserve a level of amenity to this interface.

Residential amenity is sought to be further protected through the proposed inclusion within the DDO11 of setback requirements for interfaces that either directly adjoin residential land or adjoin a laneway that adjoins residential land.<sup>33</sup>

### **Street wall height provisions**

Submission 18 submitted that a discretionary street wall height of 11 metres should be applied to 701-703 Glen Huntly Road to match adjoining properties to the west, rather than the nine metres specified in DDO11, and that this would provide a suitable transition to the 20 metre church tower to the east.

Mr Raworth provided evidence that:

In terms of the proposed Precinct 4 controls applied to 701-703 Glen Huntly Road, it is similarly appropriate that the proposed mandatory control be amended to a preferred street wall height of 11 metres. Putting aside any other considerations, the frontage to 701-703 Glen Huntly Road is relatively broad and has the capacity to support an articulated facade that may include some built form of a greater height than 11m, particularly to the centre of

<sup>32</sup> Document 10, Hearing submission for Ms Boisbouvier, para 27

<sup>33</sup> Council Part B submission, paras 68 and 69

the site or to the west of the site frontage, that would have no impact upon the character and appearance of the adjoining Holy Cross Church to the immediate east.<sup>34</sup>

Council relied on submissions from Council’s principal strategic planner (heritage) that the preferred street wall height for 701-703 Glen Huntly Road would ensure:

...that the steeply pitched slate roof, which is also a significant element in this streetscape ... can also be viewed from a distance as you get closer to the church itself. The church will be able to be viewed as a three dimensional building in the streetscape. Increasing the front wall height to 11m will block viewed to the roofline of the church.<sup>35</sup>

The Panel asked Council to clarify through Direction 18b, inconsistencies in street wall height provisions in the proposed DDO11 for land at 613-625 Glen Huntly Road.

Council submitted that the drafting of the street wall height for Precinct 4 in relation to these properties was incorrect and should instead specify a preferred 11 metre street wall (rather than nine metres) consistent with Diagram 4 of DDO11. Council’s position was based on the strategic justification presented in the Framework which provided that the nine metre street wall height should be applied to properties east and west of Kooyong Road which had a number of double storey shopfronts from the interwar period. Properties between 613-625 Glen Huntly Road, while two storey did not contain interwar period shopfronts.

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

##### **Building height provisions**

The evolution of the City Plan through to the Framework is considered and discussed in Chapter 2.2. The Panel has also considered the proposed application of mandatory and discretionary provisions in Chapter 3.1. Discussions on these issues will not be repeated here. This discussion will focus on the proposed metrics for preferred maximum building height provisions in Precinct 4.

The Panel does not support submissions requesting maximum building heights of not more than nine metres or to match existing adjoining two-storey dwellings in residential zones. The NAC is not in a residential zone and has a role to provide for a level of employment and housing growth commensurate with its place in the activity centre hierarchy for Glen Eira. Nine metres is not the existing maximum building height provision for this centre and DDO11 will provide some certainty about future built form outcomes for development in this NAC.

The Framework has appropriately considered a range of factors in determining the mix of preferred maximum building height provisions. As indicated in Chapter 3.1 the Panel does not consider mandatory height controls justified in this Precinct. The Panel finds that the proposed maximum building height provisions in the DDO11, in combination with residential interface provisions, provide appropriate guidance for consideration of future development applications in Precinct 4 to ensure that new development protects existing residential amenity in accordance with design objectives.

The Panel does not place great weight on the differences Ms Boisbouvier cited with respect to the language used to describe building heights on the south side of Glen Huntly Road west of Kooyong Road, the area of interest to Ms Boisbouvier. The Panel acknowledges that terms “*preferred maximum building height of four storeys*” and “*up to four storeys*” do not mean exactly the same thing. The Panel considers that it might have been preferable for different terminology not to

<sup>34</sup> Evidence of Mr Raworth, para 56

<sup>35</sup> Council Closing submission, para 64

have been used. However, in the context of recommended discretionary controls for this precinct, the Panel considers the differences of terminology as inconsequential.

Ms Boisbouvier referred to the image at Figure 54 of the Framework which has the annotation “4 storey MAX Building Height”. The Panel regards it as unfortunate that such a descriptor is used but considers that it needs to be understood in the context of the accompanying text and the recommendation for discretionary height controls in Precinct 4. The Panel notes that similar terminology is used in Figure 46 which is in Precinct 3 where mandatory height controls are recommended. This gives a misleading impression when comparing Precincts 3 and 4 and this notation should be clarified in the final version of the Framework.

The Framework does not strategically justify a preferred maximum height of three storeys or 12 metres for land south of Glen Huntly Road and west of Kooyong Road. However, the Panel agrees with Submission 18 that the Framework quite strongly supports preferred maximum building heights (for example, through the use of the words ‘limited to’ and ‘up to’) for all precincts. The Panel does not agree that it necessary to introduce new provisions, through the buildings and works clause or decisions guidelines in the DDO11 to clarify this position as it considers the use of the term ‘preferred’ to adequately convey this position.

### **Street wall height provisions**

The Framework identifies the Holy Cross Church as an important landmark in the NAC, visually prominent in the streetscape from both the east and west.

No mention is made of the steeply pitched slate roof, however maintaining views to the Church generally is identified as a key opportunity at Section 2.2.1 of the Framework.

As part of Principle 1 at Section 3.1, the Framework recommended that the prominence of important heritage buildings in the streetscape should be maintained, and that this will be achieved by:

- matching street wall heights of existing contributory and significant heritage buildings
- providing additional ground level setbacks on neighbouring sites to the Holy Cross Church to ensure it remains the dominant feature when looking east and west along Glen Huntly Road.

More specifically for both Precincts 3 and 4, it recommends six metre ground level setbacks for properties immediately adjoining the Church to maintain views to the Church and comments that this setback will maintain clear views to the spires.

Regarding street wall heights, the Framework provides strategic justification as maintaining a two storey street wall height at the western end of Glen Huntly Road to retain this important character element and a three storey street wall elsewhere so as not to overwhelm the streetscape, consistent with more recent development. However, Figure 48 shows land at 701-703 Glen Huntly Road as having a preferred two-storey street wall height to match adjoining height of two-storey heritage.

The Panel appreciates Council’s desire to maintain a three-dimensional view of the most significant elements of the Church into the future and understands that it considers the slate roof to be one of these elements. The Panel cannot, however, find any analysis in the Framework that considers the impact of a street wall at 701-703 Glen Huntly Road on views to the roof and must agree with Mr Iser that Council has not provided evidence or demonstrated through built form massing diagrams that a higher street wall would block views to the roofline.

That being said, the Framework includes a preferred nine metre street wall height for 701-703 Glen Huntly Road and the Panel has not been presented with any analysis to warrant varying this provision. The Panel points to the discretionary nature of the provision. It considers that more comprehensive analysis can take place through a planning permit application process and in the context of the relevant heritage objective of DDO11, which seeks to maintain the prominence of the heritage street wall within the heritage precinct and to ensure that new development respects the significance of the Holy Cross Church.

The Panel accepts Council's explanation that the correct preferred street wall height for land between 613-625 Glen Huntly Road should be 11 metres.

**(v) Conclusions and recommendation**

The Panel concludes:

- The preferred maximum building heights are appropriate and justified for land in Precinct 4.
- The design objectives and decision guidelines for Precinct 4 adequately explain and clarify the desired outcomes for building heights.
- The preferred street wall heights are appropriate and justified for Precinct 4.
- The preferred street wall height for 613-625 Glen Huntly Road should be 11 metres and the Table in Clause 2.0 of DDO11 should be amended to reflect this.

The Panel recommends:

- 2. Amend the Table in Clause 2.0 to include land at 613-625 Glen Huntly Road in the Precinct 4 provision which specifies a preferred 11 metre street wall height.**

## 4 Other issues

### 4.1 Traffic and access

#### (i) The issues

The issues are:

- whether use of laneways for vehicle access to development is appropriate
- whether Glen Huntly and Hawthorn Road, rather than the laneways to the rear of properties, should be used for vehicle access
- whether there will be an unacceptable increase in the level of traffic in surrounding residential streets

The issue of parking provision in development was not specifically raised by any submitter but is relevant to the Panel's considerations because its provision will impact on the traffic in Murray Lane and other laneways used for development access.

#### (ii) Background

A number of submitters not requesting to be heard at the Hearing raised issues with respect to the use of Murray Lane for access to development with a frontage to Glen Huntly Road and the traffic impacts on Murray Street. The Panel directed that Council provide it with assurance that traffic and parking associated with such developments could be appropriately accommodated. As a result, Council commissioned Mr Furness of the Traffix Group to provide expert evidence.

#### (iii) Evidence and submissions

Submitters 1, 2, 6, and 11 raised issues with respect to the increased traffic in Murray Lane and other access laneways. Submitter 11 suggested that all vehicle and service access should be via Glen Huntly Road.

In his evidence Mr Furness stated that Murray Lane and other laneways have the capacity for increased traffic. He noted that Murray Lane is discontinuous, and its two sections lead to Hawthorn Road via Murray Street and Kooyong Road respectively. He stated that it and other lanes are generally narrow, mostly in the order of three metres in width and have limited provision for passing traffic. He identified some sharp corners where splays may be needed to accommodate efficient vehicle movement.

Mr Furness noted that the narrow frontage of some properties would limit the opportunities for parking provision for residential development. This in turn will have the effect of limiting traffic growth in Murray Lane and other lanes. He noted that in order to access parking on narrow lots from a three metre wide lane the parking would need to be set back approximately three metres from the laneway. He stated that if the side walls of development at ground floor level is also set back three metres this will provide the potential for vehicles passing places and therefore increase the trafficability of the lanes.

Mr Furness stated that if traffic in Murray Lane in particular increases over time, Council could implement a one-way system which would have the impact of increasing the maximum traffic volumes. In order to monitor increased traffic volumes over time, Mr Furness suggested that provision be made within DDO11 for Council to require the preparation of a Traffic and Parking

Assessment Report, to be prepared at the planning permit stage of development. This report would provide for ongoing assessment of the functionality of laneways and surrounding streets.

Mr Furness noted that most laneways were too narrow and had bends that would not allow access by large vehicles such as rubbish removal trucks and furniture moving vans. In addressing the suggestion by Submitters 7 and 11 with respect to traffic access to development being via Glen Huntly Road, Mr Furness noted this was undesirable. He noted that while some existing development has direct access to Glen Huntly Road, including one development which has direct access to basement level parking, this has undesirable impacts on both pedestrian safety and disruptions to traffic flow in the main road. He noted that traffic management authorities actively discouraged such access. He suggested that wording be added to DDO11 to the effect that crossovers to Glen Huntly and Hawthorn Roads should be avoided.

Mr Furness stated that Murray Street has the capacity to absorb additional traffic as does the surrounding street network.

Council accepted the recommendation of Mr Furness and where relevant has included his suggested wording changes in its final recommended version of DDO11 (Document 16).

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

The Panel broadly accepts the evidence and recommendation of Mr Furness.

The Panel agrees that the laneways have limited capacity to absorb increased traffic accessing new development. It agrees with Mr Furness that this should be actively managed by Council and endorses the need for the preparation of traffic reports which allow Council to monitor the cumulative impacts of increased traffic volumes. Recommending the introduction of a one-way traffic system in the laneways is beyond the scope of this Panel's remit but it urges Council to consider this when traffic volumes warrant.

The Panel further agrees with Mr Furness that where car access to development uses Murray Lane that if a setback from a lane is required to access that parking, that permanent obstructions to a rear/ side setback or splay should be avoided at ground floor level, but development may be cantilevered above this accessway at level two and above. The Panel supports the wording Mr Furness suggested be added to DDO11 to achieve this.

The Panel further agrees with Mr Furness that direct vehicle access to Glen Huntly Road and Hawthorn Roads should, be avoided where possible and endorses the wording Mr Furness suggested be added to DDO11.

The Panel acknowledges that the fine grain nature of existing development is likely to lead to limited opportunity to provide on-site parking for at least some development. Where it is provided it should be accessed via the relevant laneway wherever possible.

The Panel acknowledges Mr Furness's advice that the laneways are generally too narrow to accommodate large trucks used for rubbish collection and moving in/out of residents. While there is some opportunity to develop passing points in laneways there is no proposal to widen the laneways over time by acquiring extra width as part of a development proposal. Rubbish collection is highly likely to be via Glen Huntly or Hawthorn Roads in the majority of cases and provision for this will need to be made at the planning permit stage of development. Large vans used for moving in and out are similarly likely to use the main roads. This is regrettable but mainly unavoidable. Time restrictions could be considered at planning permit stage.

The Panel understands residents' expressed concerns about the increase in traffic in surrounding residential areas, Murray Street in particular. The Panel acknowledges that there will inevitably be an increase in traffic but accepts Mr Furness's assurance that the surrounding road and street network has the capacity to absorb the likely increase in traffic. Parts of Murray Street in particular are likely to witness an increase in traffic over time but because it is a no through road, this increase is not considered likely to cause a significant loss of amenity. The traffic impact assessments that will be required as part of the development application for larger developments provide for this to be actively monitored by Council and indeed, residents.

#### **(v) Conclusions**

The Panel concludes:

- That the laneways to the rear of properties with a frontage to Glen Huntly Road as currently configured have a limited capacity to absorb more traffic.
- That Council monitor growth in traffic in the laneways over time and consider converting some to one way traffic as warranted.
- Direct vehicle access to Glenhuntly and Hawthorn Roads should be avoided where possible.
- Because the laneways are generally too narrow to accommodate rubbish removal trucks this aspect will need detailed consideration at the planning permit stage.
- The surrounding street network has the capacity to absorb additional vehicles without an unacceptable impact on residential amenity.
- The wording that Mr Furness suggests be added to DDO11 is supported by the Panel.

## **4.2 Drafting of DDO11**

### **(i) The issues**

The issue:

- whether DDO11 is appropriately drafted.

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

Each of the four expert witnesses made recommendations for changes to DDO11. Of these, three made recommendations with respect to their areas of expertise which are addressed elsewhere in this report. Mr Glossop made some comments and subsequent recommendations aimed at improving the drafting of the Schedule. His recommendations were as follows:

- inclusion of a definition of building height is unnecessary given this is outlined at Clause 73.01
- the reference to 'in a commercial zone' with respect to floor to floor heights is unnecessary given the Amendment only applies to land within a Commercial 1 Zone
- the requirement to incorporate environmentally sustainable design principles is unnecessary given existing policy at Clause 15.01-2S (Building design)
- the mapping shows heights as storeys, whereas practice guidance discourages this in favour of building height shown in metres.<sup>36</sup>

Further he recommended that the wording in the paragraph on repetitive stepped building forms under the Heading of "Building form and design" in Clause 2, be replaced by:

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<sup>36</sup> Exert Evidence of Mr Glossop para 92

Provide consistent setbacks above the street wall for at least two-thirds of upper levels. This applies to both street and rear interfaces. Refer to Diagram 3 below.<sup>37</sup>

Council accepted these recommendations.

No other submitter commented on these recommended changes.

### **(iii) Discussion**

The Panel accepts the wording changes proposed by Mr Glossop and accepted by Council.

The Panel notes that Column 2 of the table under the heading of Building setbacks at Clause 2 of DDO11 is headed "*Minimum building setbacks*". For consistency of approach it should be headed "*Preferred minimum building setbacks*".

Normally a Panel attaches to its report its preferred version of any key Amendment documents. This has not been possible in this instance because Council was unable to provide it with a usable Word version of the Schedule. The Panel understands that this is an issue with the Amendment Tracking System rather than any shortcoming at Council. The Panel has spelt out recommended changes to the exhibited version of DDO11 in the form of recommendations.

### **(iv) Conclusions**

The Panel concludes:

- Include wording changes proposed by Mr Glossop and Mr Furness in DDO11.
- Subject to the changes to wording proposed by Mr Glossop and Mr Furness, the Panel considers DDO11 to be appropriately drafted.
- Diagram 4 in DDO11 should be amended to show heights in metres rather than storeys to make it consistent with the relevant tables in Clause 2.0.
- Amend the heading in Column 2 of the table under the heading "Building setbacks" to read "Preferred minimum building setbacks."

## **4.3 Consistency between the Built Form Framework and DDO11**

### **(i) The issues**

The issues is:

- whether minor inconsistencies between the Framework and DDO11 should be reconciled.

### **(ii) Background**

DDO11 is underpinned by the Framework. As such and to avoid any possible confusion the two should be consistent, albeit it is DDO11 which carries the statutory weight.

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

A number of minor discrepancies between the Framework and DDO11 were identified by both submitters and the Panel. Council acknowledged that despite DDO11 being intended to implement the Framework, discrepancies should not exist as they may cause confusion. Council indicated it was prepared to conduct a thorough post Hearing audit to ensure that the version of

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<sup>37</sup> Exert Evidence of Mr Glossop, para 93

the Framework forwarded to the Minister for approval is consistent with the recommended version of DDO11.

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

The Panel notes that the parent provision for the DDO includes a decision guideline:

- The provisions of any relevant policies and urban design guidelines

The Panel agrees that the Framework and the DDO11 should be consistent and supports the audit of the Framework to be undertaken by Council to make it consistent with the recommended DDO11.

#### **(v) Conclusions**

The Panel concludes:

- Council should undertake a post hearing audit of the Framework to ensure consistency with DDO11.

## **4.4 Recommendations**

The Panel recommends:

### **3. Amend Design and Development Overlay Schedule 11 as follows:**

- Add the words “minimising vehicle disruption” after the words “ground floor” in the fourth paragraph under Clause 1.**
- Add the words “whichever is the lesser” at the end of each entry for Precincts 2, 3 and 4 in the Street wall height table in Clause 2.**
- Delete the sentence beginning “Building height...” in the second paragraph under the heading of “Building form and design” in Clause 2.**
- Delete the sentence beginning “Incorporate environmentally...” under the heading of “Building form and design” in Clause 2.**
- Delete the words “for land in a commercial zone” from the third paragraph under the heading of “Building form and design”**
- Replace the sentence beginning “Avoid repetitive...” under the heading of “Building form and design” in Clause 2 with the sentence “Provide consistent setbacks above the street wall for at least two thirds of the upper levels.”**
- Add the words “where possible” to the end of the sentence beginning “Provide loading...” under the heading “Access and services” in Clause 2**
- Add the following under the heading of Access and Services in Clause 2:**

**“New vehicle crossovers to Hawthorn Road and Glen Huntly Road should be avoided.**

**Development on a laneway should include a rear/side setback or a corner splay at ground floor, to facilitate the ongoing functionality of the laneway and allow for building services and car park access.**

**Permanent obstructions within a rear/side setback or splay to a laneway should be avoided.”**

- Add the following as a new dot point 2 under the heading of “Application requirements” in Clause 5**

- “A Traffic and Parking Assessment Report which includes an assessment of the cumulative impacts of traffic and parking in the Precinct including an assessment of ongoing functionality of laneway/s and relevant local streets.”
  - j) Amend Diagram 4 to show all building heights and setbacks in metres, consistent with the relevant table in Clause 2.
  - k) Amend the plan in Clause 6 to apply the light blue colour of Precinct 3 to the land at 707 Glen Huntly Road.
  - l) Amend the heading in Column 2 of the table under the heading “Building setbacks” to read “Preferred minimum building setbacks.”
4. Amend the *Caulfield South Neighbourhood Activity Centre Built Form Framework* to ensure that it is consistent with Schedule 11 to the Design and Development Overlay.

## Appendix A Submitters to the Amendment

No	Submitter	No	Submitter
1	Mark Hutchison	14	Gabor Fleiszig
2	Catherine Gough-Brady	15	Peter Dotchin
3	Jack Bergman	16	Nicholas Nethercote
4	Konstantinos Tsanaktsidis	17	Geoffrey Paterson
5	Mark Greenberg	18	Henry Wallis
6	Michele Leong	19	Myriam Boisbouvier
7	Nicholas Hynes	20	Kriss Prieditis
8	Helen Willians	21	Gordon Wallace
9	Helen and Brendan Williams	22	Romany Tauber and Jeremy Williams
10	Brendan Williams	23	Michael Holt
11	Rosemary Anne Howell	24	River Kano
12	Genevieve Kour	25	South East Water
13	Maria Tovel		

## Appendix B Parties to the Panel Hearing

Submitter	Represented by
Glen Eira City Council	Adeline Lane of Jackson Lane Legal, who called expert evidence on: <ul style="list-style-type: none"> <li>- Town planning from John Glossop of Glossop Planning</li> <li>- Traffic and access from Leigh Furness of the Traffix Group</li> </ul>
Myriam Boisbouvier	Amanda Johns of Planning and Property Partners
Trevor and Tammy Roth	Andrew Iser of Best Hooper Lawyers , who called expert evidence on: <ul style="list-style-type: none"> <li>- Urban design from Julia Bell of Kinetica Studio</li> </ul>
Catholic Parish of Holy Cross	Andrew Iser of Best Hooper Lawyers, who called expert evidence on: <ul style="list-style-type: none"> <li>- Heritage from Bryce Raworth, Conservation consultant</li> </ul>
Romany Tauber	

## Appendix C Document list

No.	Date	Description	Presented by
1	19 October 2022	Directions and Timetable version 1	Planning Panels Victoria (PPV)
2	4 November 2022	Hearing timetable version 2	PPV
3	10 November 2022	Distribution List version 3	PPV
4	15 November 2022	Council Part A submission and appendices	Jackson Lane Legal
5	“	Expert evidence of Mr Glossop	Jackson Lane Legal
6	“	Expert Evidence of Mr Furness	“
7	“	Expert evidence of Ms Bell	Best Hooper Lawyers for T&T Roth
8	“	Expert evidence of Mr Raworth	Best Hooper Lawyers for Catholic Parish of Holy Cross
9	21 November 2022	Council Part B submission	Jackson Lane Legal
10	“	Hearing submission	Planning & Property Partners for M Boisbouvier
11	22 November 2022	Hearing submission	Best Hooper Lawyers for T&T Roth
12	“	Precinct 1 Built Form Plan	“
13	“	Hearing submission	Best Hooper Lawyers for Catholic Parish of Holy Cross
14	“	City of Yarra, DDO16 – Queens Parade	Jackson Lane Legal
15	24 November 2022	Council Closing submission	Jackson Lane Legal
16	“	Word version of Council’s preferred DDO11	“
17	“	Recent planning permit approval summary details	“

## Appendix D Planning context

### D:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

#### Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the PE Act by:

- providing for the fair, orderly, economic and sustainable use, and the development of land
- conserving and enhancing those buildings, areas or other places which are of scientific, aesthetic or historical interest
- securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- balancing the present and future interests of all Victorians.

#### Clause 11 (Settlement)

The Amendment supports Clause 11 by:

- providing the context and implements the key principles of Plan Melbourne 2017-2050, which includes providing for housing choice and affordability by planning for expected housing needs and reduced ongoing living costs by increasing housing supply near public transport and services.
- providing a framework for the orderly planning of the Caulfield South Neighbourhood Activity Centre in a manner consistent with the directions of Plan Melbourne 2017-2050.

#### Clause 15 (Built environment and heritage)

The Amendment supports Clause 15 by:

- creating safe, functional and good quality urban environments
- ensuring the conservation of places with identified heritage significance

#### Clause 16 (Housing)

The Amendment supports Clause 16 by:

- emphasising the importance of enough quality and diversity of housing
- offering opportunities for more medium density housing near employment and transport

#### Clause 17 (Economic development)

The Amendment supports Clause 17 by:

- facilitating opportunities for a mix of office retail and residential uses throughout the Caulfield South Neighbourhood Activity Centre

#### Clause 18 (Transport)

The Amendment supports Clause 18 by:

- facilitating development in an area that is well served by public transport.

#### Clause 21 (the Municipal Strategic Statement)

The Amendment supports the MSS by:

- (21.04) Housing and Residential Development Glen Eira will undergo moderate population growth and a continued decline in household sizes, consequently highlighting the need to facilitate a wider range of housing types in appropriate locations.
- (21.06) Business The future of smaller centres (such as the Caulfield South Neighbourhood Activity Centre) hinges on future controls allowing for the restructure of these centres and aims to ensure that there is a high standard of urban design within the centre.
- (21.10) Heritage states there is need for clear design guidelines for new development both within and adjacent to heritage precincts to adapt and develop heritage places to suit contemporary lifestyles while maintaining important heritage significance.

### **Clause 22 (local planning policies)**

The Amendment supports local planning policies by:

- (22.01) Heritage Policy outlines the need to identify, protect, enhance and promote understanding of Glen Eira's heritage.
- (22.07) Housing Diversity Area Policy promotes a range of housing types within Neighbourhood Centres given their proximity to public transport, commercial, community educational and recreational facilities.

Amendment C220 to the Glen Eira Planning Scheme which implements a Municipal Planning Strategy for Glen Eira has been adopted by Council but is awaiting final approval by the Minister for Planning. In his evidence Mr Glossop makes reference to a number of relevant clauses. Because of the status of that Amendment these are not repeated here. Relevant policies are listed in D:2.

## **D:2 Other relevant planning strategies and policies**

### **i) Plan Melbourne**

*Plan Melbourne 2017-2050* sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne recognises the role that Neighbourhood Activity Centres play in providing for local and regional needs. At policy 5.1.2 it supports a network of vibrant neighbourhood centres. Further, it supports an integrated approach to policy development and decision making.

### **ii) Glen Eira City Plan 2020**

*The Glen Eira City Plan: Activity Centre, Housing and Local Economic Strategy, 2020* (City Plan), is a key underpinning strategic document for the Amendment. It is proposed to be a background Document at Clause 72.08 as part of Amendment C220. It reflects and is informed by a number of existing Council strategies and documents. Its purpose is to provide a strategic framework to manage growth and change over the next two decades.

City Plan sets out the Activity Centre network for Glen Eira, one of which is the Caulfield South NAC and presents the City Strategic Framework Plan which is proposed to be included at Clause 02.04-2 which Amendment C220 is implemented. The western end of the C231 subject area is

referred to in City Plan as a local centre. It focuses NACs as the location for moderate housing growth.

Of particular relevance to Amendment C231 City Plan identifies areas for future housing as:

- substantial change
- incremental change
- minimal change.

All of the subject area is designated as a substantial change area in City Plan divided between

- Substantial Change 1: housing with a maximum of three storeys
- Substantial Change 2: housing with a maximum of four storeys
- Substantial Change 3: housing with a maximum of five storeys.

Since its adoption by Council this aspect of City Plan has been used in part to guide decision making with respect to development applications

### iii) **Glen Eira Housing Strategy 2022**

The *Glen Eira Housing Strategy 2022* (Housing Strategy) was adopted by Council on 2 November 2022, that is after this Amendment was exhibited. A key driver is the identified need to accommodate population growth.

It is a detailed policy based in state and local policy and detailed demographic and housing analysis. It is based on the need to accommodate an extra approximately 30,000 persons between 2021 and 2036. It undertakes detailed analyses of housing need, types tenure and affordability.

Most relevantly from the perspective of this Amendment it designates all of the subject land as Substantial Change three. While indicative building heights a given for some of the lesser change areas the Strategy indicates that for this category of change there will be buildings of varying heights which are not determined by the Housing Strategy. It does not detail specific requirements for the Substantial Change areas but defers these to later mechanisms such as Design and Development Overlays.

Other Council policies and strategies referred to by Council were:

- Integrated Transport Strategy 2018-2031
- Glen Eira Social and Affordable Housing Strategy 2019-2023
- City of Glen Eira Open Space Strategy Refresh 2020
- Our Climate Emergency Response Strategy 2021-2025

## **D:3 Planning scheme provisions**

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework.

### **i) Zones**

The land is in the Commercial 1 Zone. The purposes of the Zone are:

- To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
- To provide for residential uses at densities complementary to the role and scale of the commercial centre.

## ii) Overlays

The land is subject in part to four Overlays as follows:

- Heritage Overlay Schedule 66 to Glen Huntly Road west of Hawthorn Road and east of Poplar Street
- Special Building Overlay to a number of properties in the eastern section of the NAC
- Environmental Audit Overlay to a number of sites in the south of the NAC
- Parking Overlay with applied including to some residential land surrounding the NAC.

## D:4 Ministerial Directions, Planning Practice Notes and guides

### Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). That discussion is not repeated here.

### Planning Practice Notes

In addition the following PPN are relevant:

- PPN 59: *The Role of Mandatory Provisions in Planning Schemes*: Sets out the circumstances under which mandatory provisions may be applied and criteria for making that judgment.
- PPN 60 *Height and Setback Controls for Activity Centres*: States that controls should be based on facilitating good design outcomes. Gives guidance on when it is appropriate to use mandatory and discretionary height and setback controls

### Practitioner's Guide

*A Practitioner's Guide to Victorian Planning Schemes Version 1.5*, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the VPP in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.