

*Planning and Environment Act 1987*

# Panel Report

Maribyrnong Planning Scheme

Amendment C125

'Footscray Central Activity Area'

**7 February 2014**



*Planning and Environment Act 1987*


Panel Report pursuant to Section 25 of the Act

Maribyrnong Planning Scheme Amendment C125

'Footscray Central Activity Area'



David Merrett, Chair



Alan Chuck, Member



Lorina Nervegna, Member

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## List of Abbreviations

ACZ	Activity Centre Zone
ACZ1	Schedule 1 to the Activity Centre Zone (Footscray Central Activity Area)
the Amendment	Maribyrnong Planning Scheme Amendment C125
CAD	Central Activity District
CDP	Footscray Central Activities District Comprehensive Development Plan 2010
CEM	Footscray City Edge Masterplan 2011
DTPLI	Department of Transport, Planning and Local Infrastructure
DPCD	Department of Planning and Community Development
DPO	Development Plan Overlay
EAO	Environmental Audit Overlay
ERM	Environmental Resources Management Australia
ESD	Environmentally Sustainable Development
FCAA	Footscray Central Activity Area
JRA	Joint Responsible Authority
FCAA	Footscray Central Activity Area
FRPA	Footscray Renewal Project Area
FSP	Footscray Structure Plan
LPPF	Local Planning Policy Framework
MCC	Maribyrnong City Council
MTA	Main Trade Area
MITS	Maribyrnong Integrated Transport Strategy 2011
PDP	Priority Development Panel
PO1	Schedule 1 to the Parking Overlay Footscray Central Activities Area – Inner Parking Precinct
PO2	Schedule 2 to the Parking Overlay Footscray Central Activities Area – Outer Parking Precinct
PUDF	Footscray Station Precinct Planning and Urban Design Framework 2009
PN56	Practice Note 56 - <i>Activity Centre Zone</i>

PN58	Practice Note 58 – <i>Structure planning for activity centres</i>
PTV	Public Transport Victoria
PUZ	Public Use Zone
STA	Secondary Trade Area
SPPF	State Planning Policy Framework
VDRP	Victorian Design Review Panel
VPP	Victoria Planning Provisions

## Executive Summary

Amendment C125 implements the Footscray Structure Plan 2013 (the FSP) for the Footscray Central Activity Area (FCAA). The FSP is informed by a range of other strategic investigations that Council and the State Government have completed over the years.

The FCAA covers a substantial area of approximately 5 square kilometres. There is broad policy and community support for the FCAA to be a focus of substantial development for commercial, retail and residential growth into the future. The FSP addresses more than just built form outcomes and is a comprehensive document. The key issue, however, for the Panel was how this increased built form should be guided by height limits, the ability to consider heights above those preferred and whether guidance should be provided for this and notice and review provisions.

The use of the Activity Centre Zone and its Schedule 1 (ACZ1) to provide the planning framework for this important Activity Centre is supported. Council proposed some changes to the exhibited version of the ACZ1 and throughout the hearing further changes and edits were identified.

This will be an important document to guide the future development and growth of the Footscray area.

### Recommendations

Based on the reasons set out in this Report, the Panel recommends Maribyrnong Planning Scheme Amendment C125 should be adopted subject to the following recommendations:

- 1 Amend Schedule 1 to the Activity Centre Zone as follows:**
  - a Amend the title of the ACZ1 to 'Footscray Central Activity Area'.**
  - b Insert a new Footscray Framework Plan and precinct maps as provided in the post-exhibition version.**
  - c Amend the legend of all precinct maps as it relates to transition areas to 'transition area to lower built form'.**
  - d At Clause 2.0, amend the 1<sup>st</sup> dot point under Housing by listing the full name of the FCAA.**
  - e At Clause 2.0, amend the 9<sup>th</sup> dot point under Housing to:**
    - i To ensure new housing developments address potential amenity impacts including noise, vibration and emissions and implement measures to attenuate any adverse impacts for future residents.***
  - f At Clause 2.0, amend the 2<sup>nd</sup> dot point under Built Form to refer to high architectural and urban design quality instead of 'highest'.**
  - g At Clause 2.0, amend the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> dot points under Environmentally Sustainable Design (ESD) to:**



- i To support development that reduces and manages energy consumption and greenhouse gas emissions, and employs active systems for ESD performance that contribute in a significant way to local, national and international efforts to reduce energy usage and greenhouse gas emissions.*
- ii To encourage water conservation, ensuring that water resources are managed in a sustainable way.*
- iii To encourage the provision of landscaping that considers the provision of habitat, green spaces, green roofs and roof top gardens climate control and reduces the 'urban heat island' effect.*
- h At Clause 3.0, Table of Uses Section 2, add Convenience Restaurant with the condition 'the site must adjoin or have access to, a road in a Road Zone'.**
- i At Clause 3.0, Table of Uses Section 2, delete 'Cinema'.**
- j At Clause 3.0, Table of Uses Section 2 allocate 'Industry' in correct alphabetical order and add the condition:**
  - i Must not be for a use listed in the table to Clause 52.10 of the Maribyrnong Planning Scheme.*
- k At Clause 4.3, indent dot points as appropriate.**
- l At Clause 4.4, under Dwellings, state that a *development should meet the standards and must meet the objectives of Clause 54.***
- m At Clause 4.4, under General built form guidelines, add the following three new dot points:**
  - i New built form in transition areas should provide a transition in scale from larger buildings to adjacent areas with smaller scale built form.*
  - ii Ensure heights of buildings located within transition areas are at the lower end of the preferred height range.*
  - iii Ensure new development that adjoins heritage buildings;*
    - Has regard to the height, scale, rythym and proportions of the heritage buildings including characteristic, fine grain frontage widths.*
    - Locates the greatest massing away from heritage buildings and responds to the lower scale of adjoining heritage buildings.*
    - Has a complimentary scale and façade sensitive to the adjoining heritage buildings.*
- n At Clause 4.4, delete the heading *Built form guidelines in commercial areas.***
- o At Clause 4.4, add a new sub-section titled Environmentally Sustainable Design as follows:**

- i* **Ensure development demonstrates best practice, and identifies the level of sustainability performance standards to be adopted and demonstrates the means by which the agreed level of sustainable performance standards will be achieved.**
  - ii* **The building design and layout of new development should provide good solar access and daylight opportunities.**
  - iii* **Encourage new development to explore options to reduce the amount of waste generated and encourage increased reuse and recycling of waste materials.**
  - iv* **Encourage building materials conservation, including consideration of their environmental impact.**
  - v* **Indoor environmental quality and healthy internal environments should be considered from the outset through the layout and form of buildings.**
  - vi* **Encourage ongoing monitoring and post-occupancy assessment of ESD measures.**
- p** At Clause 5.1-2, amend the 12<sup>th</sup> dot point to:
- i* **To encourage a transition to neighbouring residential areas.**
- q** At Clause 5.1-3, amend the preferred maximum building height by adding for sub-precincts 1A, 1B and 1C:
- i* **2-4 storeys at street frontage.**
- r** At Clause 5.1-4, amend the 6<sup>th</sup> dot point by adding at the end:
- i* **This also applies to buildings not in a transition area but which abut a heritage overlay.**
- s** At Clause 5.1.4, amend the 6<sup>th</sup> dot point as follows:
- i* **Buildings in areas identified as Transition Areas should be designed to make an appropriate transition in height, scale and built form between the higher scale built form and the sensitive interface with lower scale residential buildings. This also applies to buildings not in a transition area but which abut a heritage overlay.**
- t** At Clause 5.2.4, add the following dot point:
- i* **Development should embrace the historical and present day significance of the Footscray Railway Station and adjoining landscaping including the unique 1899 V-junction station that has since served as a major civic building and focal point for Footscray.**
- u** At Clause 5.2-4, amend the 7<sup>th</sup> dot point by adding at the end:
- i* **.... and enable safe and direct access to the station for pedestrians, cyclists and public transport users.**
- v** At Clause 5.2-4, add the following dot point:

- i* **Development should embrace the historical and present day significance of the Footscray Railway Station and adjoining landscaping including the unique 1899 V-junction station that has since served as a major civic building and focal point for Footscray.**
- w** At Clause 5.3-4, insert the following Note regarding Victoria University:
  - i* **Note: While Victoria University is excluded from the Activity Zone Schedule, the objectives and guidelines have been included in the schedule to provide guidance in relation to development within and surrounding the Victoria University sites.**
- x** At Clause 5.4-1 (Precinct Map), add arrows along the Moreland Street frontage of the Ryco site to indicate this as a ‘transition area to lower built form’.
- y** At Clause 5.4-3, amend the 6<sup>th</sup> dot point by adding at the end:
  - i* **.... and port related activities.**
- z** At Clause 5.4-4, amend the 7<sup>th</sup> dot point by adding at the end:
  - i* **.... and port related activities.**
- aa** At Clause 5.5-2, add the following objective:
  - i* **To provide built form that does not result in significant overshadowing of the St Monica’s Primary School.**
- bb** At Clause 5.5-4, add the following decision guideline:
  - i* **Building forms should avoid substantial overshadowing of St Monica’s Primary School between 9am and 3pm on 22 September.**
- cc** At Clause 5.6-2, add a new 6<sup>th</sup> dot point as follows:
  - i* **To encourage residential development that appropriately responds to surrounding land uses and provides good amenity for future residents.**
- dd** At Clause 5.6-4, amend the 2<sup>nd</sup> dot point as follows:
  - i* **Buildings within Transition Areas should provide appropriate reductions in building height and mass towards the existing lower scale buildings at the interface and should not exceed 3 storeys within the transition area.**
- ee** At Clause 6.0, delete ‘70 – 100 Ballarat Road’ from the Table.
- ff** At Clause 6.0, add the following new first paragraph:
  - i* **Prior to the issue of a planning permit for development at the Bus Depot site in Precinct 6B, a Development Plan must be prepared to address the potential built form of the site, its graduation to lower built form at its residential interface, access points or any other matter the responsible authority thinks fit.**
- gg** At Clause 6.0, amend the 8<sup>th</sup> dot point as follows:

- i* **An assessment of the likely effects of railway noise and vibration on the proposed use and measures to attenuate any adverse effects for applications within Precincts 2, 4, 5, 6 South, 7 West and 7 East.**
- hh** At Clause 6.0, add the following new dot points:
  - i* **An Adverse Amenity Impacts Report(s) prepared by a suitably qualified person(s) to the satisfaction of the responsible authority and the Department of Transport, Planning and Local Infrastructure for applications within Precincts 4 and 7East as appropriate that identifies all potential adverse amenity impacts from the use and operation of the Bunbury Street Railway Tunnel and Railway Line. If the report identifies that the proposed use and/or development may be adversely affected, specific recommendations must be provided with the report for appropriate measures to ensure the proposed use and/or development is not adversely affected by the identified impacts.**
  - ii* **A Construction Management Plan (CMP) detailing how the development of the land will be managed to ensure that the amenity and use of the nearby area is not detrimentally affected. The CMP must satisfy the requirements of Public Transport Victoria and Vic Track to ensure that any development of the land, including site works, excavation and earthworks, does not have any impact on the Albion/Werribee Rail Corridors, Bunbury Street Railway Tunnel and Railway Corridor and associated infrastructure.**
- ii** At Clause 6.0, change the now last dot point by using lower case for the sub points.
- jj** At Clause 6.0, remove the indentation of the last dot point.
- kk** At Clause 7.0, retain notice and review rights for buildings and works for all land within Precinct 7.
- ll** At Clause 7.0, under Use, amend the last dot point to:
  - i* **An application within Precincts 7 and 1A.**
- mm** At Clause 8.0, add the following new dot point at the end:
  - i* **The views of Vic Track and Public Transport Victoria**
- nn** At Clause 9.0, place Precinct 7 in the Category 2 - medium limitation advertising category.
- 2** Amend the Table in Schedules 1 and 2 of the Parking Overlay to:
  - a** *For all other Uses listed in Table 1 of Clause 52.06-5, the number of car parking spaces required for a Use shall be calculated by using the Rate in Column B of that Table, and the resulting requirement shall be the minimum.*
- 3** Amend the Schedule to the Heritage Overlay by deleting Heritage Overlay 206.

- 4 Amend the Schedule to Clause 81.01 by deleting reference to the *Joseph Road Urban Framework Plan May 2013*.**
- 5 Amend the labelling of the sub-precincts in the Footscray Structure Plan 2013 to be consistent with the terminology in the ACZ1.**

# 1. Introduction

Maribyrnong Planning Scheme Amendment C125 (the Amendment) was prepared by the Maribyrnong City Council as Planning Authority. As exhibited, the Amendment proposes:

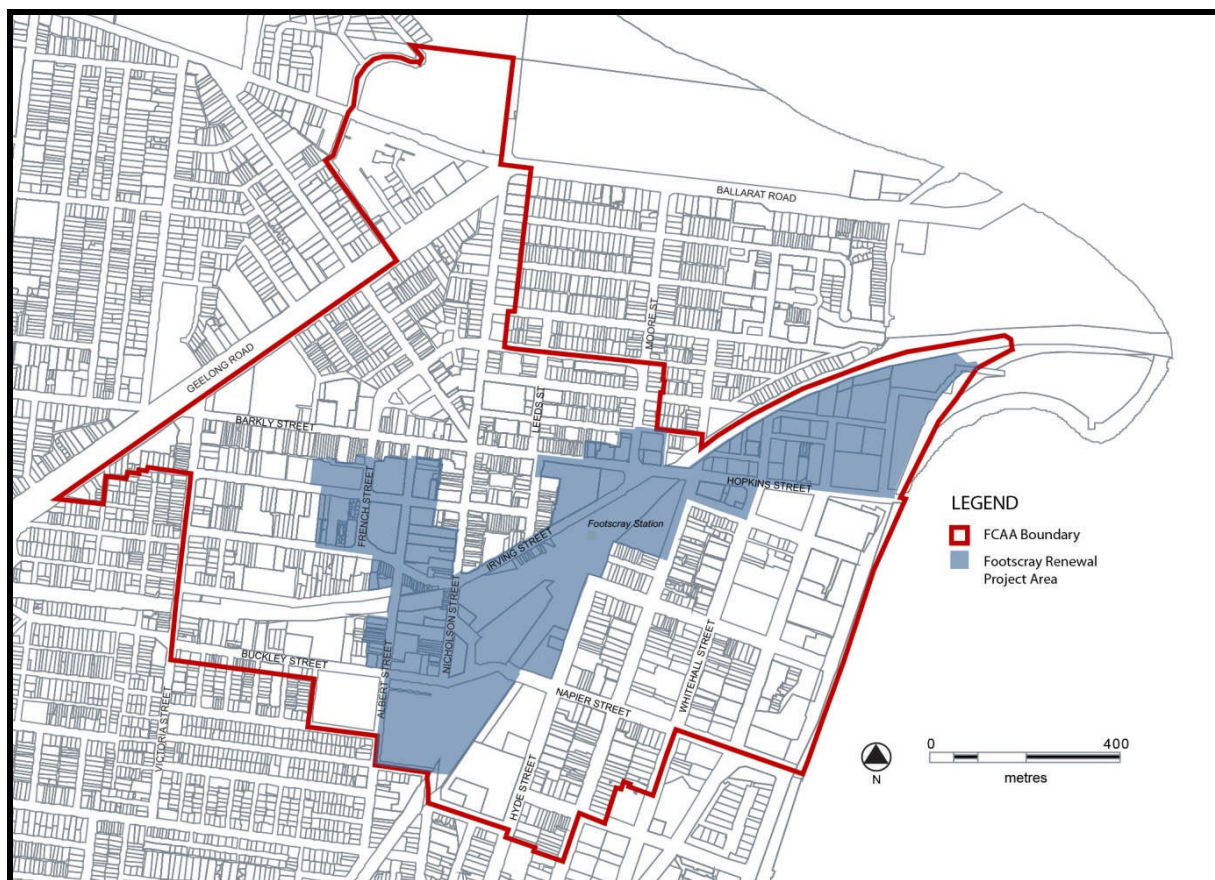
- At Clause 21.11-1 replacing the Footscray Central Activities District with an updated clause.
- At Clause 21.12 updating the Reference Documents list by including:
  - Under the Economic Development heading - listing the Footscray CAA Structure Plan (2013) and the Footscray Skyline Study 2012; and deleting the Footscray CAD Comprehensive Development Plan 2010.
  - Under the Built Environment and Heritage heading – listing the Footscray CAA Heritage Citations 2012.
  - Under the Transport heading – listing the Footscray Car Parking Study (GTA, 2013).
- At Clause 22.01-18 updating the Reference Documents list by adding the Footscray CAA Heritage Citations 2012.
- Deleting Schedule 1 to Clause 37.06 Priority Development Zone which currently applies to the land covered by the Footscray Station Precinct Development Plan (2004).
- Deleting Schedule 2 to Clause 37.06 Priority Development Zone which currently applies to land covered by the Joseph Road Urban Framework Plan.
- At Clause 37.08 introduce the Activity Centre Zone into the planning scheme.
- Introducing Schedule 1 to the Activity Centre Zone for the Footscray Central Activity Area that defines eight precincts within the centre and prescribes the form of development in each precinct and sub-precincts that will meet the planning objectives for the FCAA.
- Rezoning all land within the FCAA (excluding land zoned Public Use 2, Education; Public Use 4 Transport; and Road Zone 1) to the Activity Centre Zone (ACZ).
- Updating the schedule to Clause 43.01 Heritage Overlay to provide individual heritage protection to 17 sites by:
  - Introducing a Heritage Overlay (HO) at:
    - 72 Buckley St, Former Air Raid Precautions Centre: HO193
    - 81-99 Buckley St, Fabian’s Centennial Terrace: HO194
    - 92 Cowper St: HO195
    - 48 Hopkins St, Footscray Hotel: HO196
    - 37 Hyde St, Victorian shop/residence: HO197
    - 59 Napier St, Station Hotel: HO198
    - 42-44 Leeds St, Masonic Hall: HO199
    - 5 Wingfield St, St Joseph’s Convent: HO201
    - 16 Parker St, Luke Greenwood House: HO203
    - 60 Paisley St, Footscray Baptist Church: HO204
    - 43 Victoria St, Victoria Hotel: HO205
    - 238 Nicholson St, Belgravia Hotel: HO206
  - Revising the existing heritage overlay from an archaeological overlay to an architectural and archaeological overlay:
    - HO172: 49 Whitehall St Victorian House

- HO173: 56 Whitehall St Junction Hotel
- HO145: 98-100 Moreland St Mitchell's Bakery Shop and Residence.
- Making consequential changes to the Incorporated document *Historical Archaeological Management Plan* and the schedule at Clause 81.01.
- Introducing an individual heritage overlay on sites within a heritage precinct:
  - 166-168 Nicholson St, Courthouse Hotel: HO200
  - 10 Paisley Street, Former Grand Theatre: HO202
- Making consequential changes to local heritage policy Clause 22.01-4 HO3 (*Footscray Commercial Heritage Area*) to list the two buildings (Courthouse Hotel at 166-168 Nicholson Street, Footscray and Former Grand Theatre at 10 Paisley Street, Footscray) in the listing of individually protected buildings.
- Applying Clause 45.03 Environmental Audit Overlay (EAO) to five sites:
  - 11-13 Whitehall St Footscray (Ryco Hydraulics)
  - 17 Whitehall St Footscray (Ryco Hydraulics)
  - 43-57 Buckley St Seddon (Melbourne bus lines depot)
  - 32-50 Napier St Footscray (BP Service station)
  - 20A Whitehall St Footscray (Budget).
- Introducing Clause 45.09 Parking Overlay and applying Schedule 1 (PO1) to the inner parking precincts and Schedule 2 (PO2) to the outer parking precincts.
- Replacing the Schedule to Clause 52.28-4 (Prohibition of a gaming machine in a strip shopping centre) with an amended schedule.
- Updating the Schedule to Clause 61.03 (Maps comprising part of this scheme) to include the new parking overlays in the list of maps in both maps 8 and 9.

The Amendment applies to land known as the Footscray Central Activity Area (FCAA) as identified in Figure 1, with borders including Geelong Road, Victoria Street, Victoria University campuses, Bristow Street, Cowper and Whitehall Streets, the Maribyrnong River, the railway line to Footscray Station, and Donald Street. It also includes an area known as the Footscray Renewal Project Area (FRPA) around the Footscray Railway Station precinct and the Joseph Road Precinct adjacent to the Maribyrnong River. The Minister for Planning is the Joint Responsible Authority (JRA) and the Maribyrnong City Council is the planning authority for the FRPA. Therefore, in the FRPA, Council's powers to consider planning applications are limited to those that have a value of \$250,000 or less. The Minister for Planning's responsibility is limited to those areas identified for 'transitional change'.

The FCAA has an area of approximately 5 square kilometres.

Figure 1 Amendment land



The Amendment was prepared at the request of Maribyrnong City Council (the proponent) and was authorised by the Department of Transport, Planning and Local Infrastructure (DTPLI) on 21 June 2013. The authorisation was subject to the following conditions:

*As the proposed amendment affects Crown land, Native Title Services Victoria should be given notice of the amendment; and*

*That you liaise with Public Transport Victoria regarding the boundary of the rail corridor through the Central Activity Area.*

The Amendment was placed on public exhibition between 25 July 2013 and 25 August 2013, with 71 submissions (including two late submissions) received as follows:

- 45 were received from residents within or surrounding the FCAA;
- 13 were received from developers with interest/s in developing particular properties within the FCAA;
- 3 were received from other interested stakeholders/landowners, being the Western Region Health Centre, Victoria University and St Monica's Catholic Parish;
- 8 were received from government agencies or other authorities; and
- 2 were received from community groups, being the Maribyrnong Bicycle Users Group and the Footscray Historical Society.

At its meeting of 22 October 2013, Council resolved to refer all submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the



Minister for Planning on 29 October 2013 and comprised David Merrett (Chair), Alan Chuck and Lorina Nervegna.

A Directions Hearing was held in relation to the Amendment on 15 November 2013. Following the Directions Hearing, the Panel undertook an inspection of the subject area and its surrounds.

Council advised the Panel at the Directions Hearing it intended to make post-exhibition changes to the ACZ1 in response to submissions and other edits. This was circulated to all parties on 22 November 2013 and formed the basis of its submission to the Panel. The most substantive changes related to:

- changes sought by Public Transport Victoria (68);
- clarifying and strengthening the provisions and requirements in relation to Environmentally Sustainable Design (ESD);
- adding Convenience shop to the list of section 2 permit required uses to provide clarity in relation to these uses in Precinct 7;
- including new guidelines in relation to built form within transition areas (2 new guidelines) and development adjoining heritage buildings (1 new guideline) under clause 4.4;
- changes to the precinct provisions to ensure consistency with the changes supported to the general provisions; and
- other specific changes to the precinct provisions in response to submissions.

Council also supported:

- the deletion of HO206 for 236-238 Nicholson Street Footscray from the Heritage Overlay Schedule as the site has a demolition permit for the existing buildings. This was the subject of Submission 20 (Motto Towers); and
- a revision of HO201 for 5 Wingfield Street (St Josephs convent) to allow the consideration of prohibited uses. This was the subject of Submission 62 (St Monica's Catholic Parish).

The Panel then met in the offices of Maribyrnong City Council on 9, 10, 11 and 13 December 2013 to hear submissions in respect of the Amendment. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Maribyrnong City Council	Mr Terry Montebello and Ms Briana Eastaugh of Maddocks Lawyers who called the following expert witnesses: <ul style="list-style-type: none"> <li>- Mr Simon McPherson, Urban Designer, SJB Urban</li> <li>- Mr Chris Coath, Traffic Engineer, GTA Consultants</li> </ul>
Grocon Pty Ltd (Submitter No. 31)	Mr Phil Bisset of Minter Ellison Lawyers, who called the following expert witnesses:

	- Mr Mark Sheppard, Urban Designer, David Lock and Associates
C Dobinson Nominees Pty Ltd (47)	Mr Reto Hofmann of the firm Moray and Agnew Lawyers, who called the following expert witnesses: - Mr Vaughan Connor, Town Planner, Contour Consultants
Paisley Pty Ltd and Footscray Plaza Joint Venture Pty Ltd (44)	Mr Giovanni Gattini of the firm G2 Urban Planning
Devcorp (Vic) Pty Ltd (70)	Mr Paul Little of the firm Planning Property Partners
St Monica's Catholic Parish (61)	Mr Gerard Holwell of the firm Gerard Holwell Pty Ltd
Footscray Historical Society (51)	Mr Bill Horrocks
National Trust of Australia (23)	Mr Hugh Bassett
Mr Justin Burgess (36)	
Mr Adrian Kennedy (40)	
Mr Darren Camilleri (58) and Ms Lauren Lees (41)	
Mr Chris Wheelhouse (63)	
Mr Paul Wood and Mr Simon Ellis (35)	
Mr Mike Ledingham (64)	

Ms Meredith Withers, on behalf of Submitter 26 (Victoria University), advised the Panel the University had reached consensus with Council on changes to the Amendment and did not wish to be heard. Mr Ben Speth (11) did not wish to be heard and provided a supplementary written submission for the Panel to consider. Mr Steven Riley (22) also did not wish to be heard and Mr Chris Wheelhouse (63), on the basis of a Panel site inspection on the last day of the hearing, did not wish to be heard. The issue (access to his land) being raised by Mr Wheelhouse was not relevant to this Amendment.

Appendix A contains the full list of submitters and Appendix B contains the list of documents submitted at the hearing.

In reaching its conclusions and recommendations, the Panel has read and considered the submissions and a range of other material referred to it. This includes written submissions, evidence and verbal presentations. The following chapters of this report discuss the issues raised in submissions relating to the Amendment in further detail. Conclusions are provided where appropriate and recommendations are made at the end of each chapter. A consolidated list of recommendations is provided in the Executive Summary.

## 2 The Proposal

### 2.1 The Amendment

The FSP provides the strategic basis for this Amendment. The FSP was adopted by Council on 30 April 2013. It sets out the objectives and strategies required to achieve a unique vision for the FCAA and the preferred mix of activities, built form, spaces and access arrangements.

As noted in the Footscray Structure Plan Background Report (November 2012)<sup>1</sup>:

*Footscray's location on the edge of Melbourne's CBD, and its strong transport links and other infrastructure, mean it is ideally positioned to provide a more diverse and accessible range of housing, jobs and services for Melbourne's western region.*

*The State Government designated central Footscray as a Central Activities District (now Central Activities Area or CAA) in 2008 to help strengthen the policy framework for development in the area. As the only CAA in Melbourne's west, Footscray is a focus for substantial future employment growth, commercial development, housing and public investment.*

The FSP sets the planning framework to guide development for the next 20 years and contains the following 2031 Vision<sup>2</sup>:

*By 2031 the vibrant mixed use centre offers diverse residential, employment and recreation options and is accessible via varied transport methods. An upgraded Footscray Train Station forms the heart of a well connected transport interchange. The core of the centre offers a diverse retail selection that meets the everyday needs of locals and continues to attract regional shoppers.*

*The built heritage and traditional street character fit well with new and innovative architecture that incorporates leading Environmentally Sustainable Design (ESD). The Joseph Road and Station precincts have been transformed and accommodate high density mixed use developments. Neighbourhood precincts within the centre retain their established low scale built form and predominant residential use.*

*The river and its green spaces are a key attraction, providing enhanced recreational and conservation opportunities. These spaces, along with additional pocket park spaces, meet the needs of the future population. The centre is 'green' with large established street trees and high quality public realm environments.*

*Footscray's creative heart is on display and is celebrated making it one of the most liveable and exciting centres in Melbourne.*

The FCAA is divided into 8 precincts, each with their own distinct features and future development expectations. These precincts are:

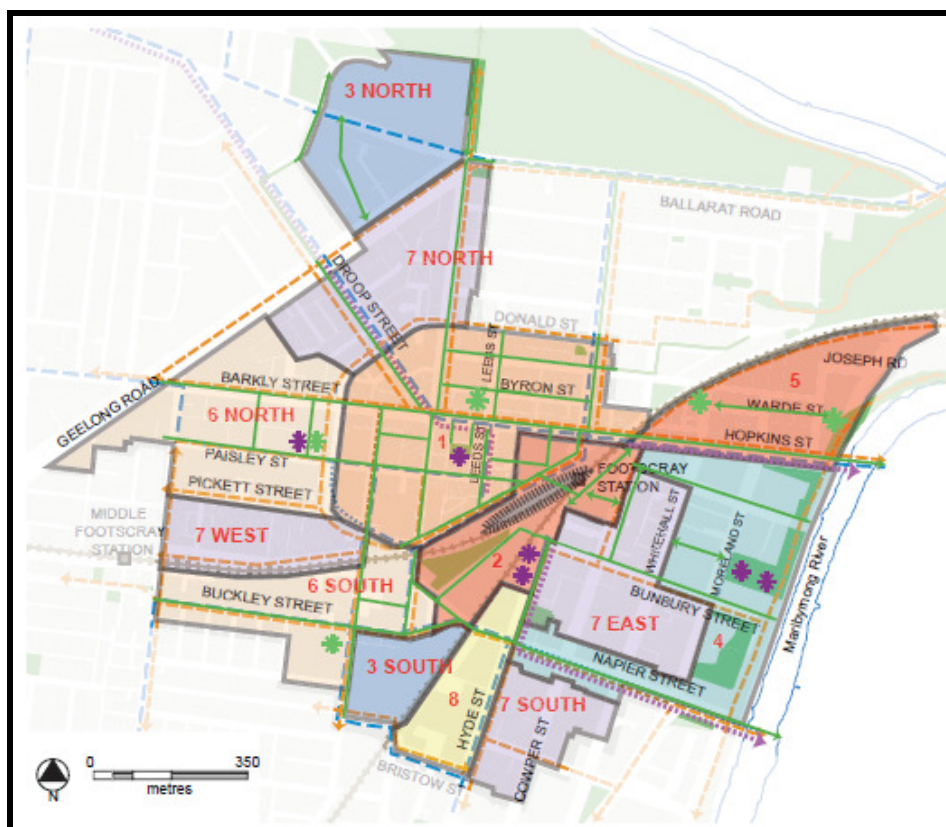
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<sup>1</sup> Footscray Structure Plan Background Report (November 2012), page 5

<sup>2</sup> Footscray Structure Plan 2013, page 6

1. Central
2. Station
3. Victoria University
4. Riverside
5. Joseph Road
6. Peripheral Activity
7. Neighbourhoods
8. Civic

Figure 2<sup>3</sup> Distribution of these precincts.



## 2.2 Background to the proposal

Strategic planning for the Footscray shopping centre has a long history. Much of this history provides the basis for the Footscray Structure Plan 2013. The following provides a summary of each of these supporting documents.

### 2.2.1 Footscray Central Activities District Draft Strategic Framework Plan Report 2010

This report followed the community’s vision for Footscray that was developed in 2005 and re-visioned in 2006 where the general framework for the current precincts was set. The report provides guidance for land use and development.

<sup>3</sup> Footscray Structure Plan 2013, page 35

The Framework's overarching objectives are:

- *To strengthen Footscray's role as the regions key centre for employment, services and public facilities;*
- *To provide for a diverse range of housing, significant CBD-type jobs and commercial services;*
- *To attract the private sector to invest in Footscray;*
- *To promote Footscray as a creative, edgy, affordable, regional and multicultural centre;*
- *To protect and enhance Footscray's existing cultural, socio-economic and land use diversity;*
- *To create a sustainable centre based on walking, cycling, public transport and high quality development; and*
- *To revitalise Footscray as a vibrant, safe and friendly place both day and night.*

A version of the report became known as the Footscray Central Activities District Comprehensive Development Plan 2010 (CDP).

**Amendment C90** proposed to introduce the CDP into the planning scheme. It was initially a joint Department of Planning and Community Development (DPCD) amendment with Council. Changes made prior to the exhibition of Amendment C90 resulted in Council objecting to the Amendment in relation to potentially contaminated land, third party notice and review rights and uses in 'limited change' residential precincts.

Following the Directions Hearing, the Amendment C90 Panel determined to defer the hearing to provide the Department with an opportunity to ensure that the guidelines for the future development within Footscray provided by Amendment C90 were fully integrated with the delivery of major transport initiatives for the area. The Panel raised concerns in relation to how Amendment C90 dealt with potentially contaminated land and stated in its subsequent correspondence dated 12 July 2010 that the issue of contaminated land needed to be addressed, and requested advice from the Department on how Amendment C90 complied with *Ministerial Direction No.1 – Potentially Contaminated Land*. Council supported the deferment.

On 4 August 2010, Council wrote to the Department reiterating its support for the deferment of the hearing and responding to a number of directions raised in the Panel's letter of 12 July 2010. In particular, Council stated its preferred position that the Environmental Audit Overlay (EAO) be applied to sites within the Business 3 Zone and that an application requirement be added to the schedule requiring a preliminary site assessment for potentially contaminated sites.

Ultimately the Minister for Planning abandoned the Amendment, stating the following:

*Since the Amendment was exhibited, a number of policy announcements and legislative changes have occurred that effect the changes that were proposed to the Planning Scheme.*

*I have therefore decided to abandon Amendment C90 to allow a more integrated set of planning controls for the Footscray CAD to be drafted, and for further work to be undertaken to address the key issues raised in the submissions.*

### **2.2.2 Footscray City Edge Masterplan 2011**

The Footscray City Edge Masterplan (CEM) focused on visioning for the wider public realm and areas of community infrastructure. The CEM integrated the key findings of open space, greening, parking and community infrastructure assessments with planning strategies to derive an integrated renewal proposition for Footscray. Key directions have informed the FSP.

### **2.2.3 Footscray Skyline Study 2012**

The 2012 version of this Study updated an original 2005 version and a 2010 version. The 2010 version informed Amendment C90.

The latest version (2012) was required to address the 'new development reality of Footscray'<sup>4</sup>. Several large scale, mixed use and residential developments that 'tested the water' are now complete across the FCAA, resulting in a new and emerging skyline with building heights often well above those suggested in earlier Footscray skyline studies. The Background Report<sup>5</sup> stated *there is a need to proactively guide where taller building heights are appropriate, and where they are not acceptable, and what outcomes will be sought as a result of these developments, such as enhanced public realm, sustainability, amenity and design quality.*

This study was used to guide the preparation of the FSP and new planning controls for the FCAA.

Council advised the key differences between the FSP/ACZ1 and the Skyline Study was<sup>6</sup>:

**Precinct 2 (Station)** – *the Skyline Study allocates a consistent height range of 4–25 storeys across the whole precinct, whereas the Structure Plan / ACZ1 allocates more specific height guidance within the individual sub-precincts which have been translated from existing planning controls in the PDZ1.*

**Precinct 5 (Joseph Road)** – *the Skyline Study allocates a consistent height range of 4–25 storeys across the whole precinct (except in two transitional edges), whereas the Structure Plan / ACZ1 allocates more specific height guidance within the individual sub-precincts which have been drawn from the Joseph Road Urban Framework Plan (May 2013).*

The **Footscray Station Precinct Planning and Urban Design Framework 2009** (PUDF) preceded the 2012 Skyline Study and set heights limits for the Grocon McNab Avenue site of 12-14 storeys which is consistent with the heights provided in the ACZ1. The PUDF addressed a broad range of issues for the Station Precinct (Precinct 2) *through a process of*

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<sup>4</sup> Footscray Central Activities Area Background Report 2012, page 19

<sup>5</sup> Ibid

<sup>6</sup> Council submission, page 22

design-based analysis, investigation, proposals and testing of a number of potential solutions and urban configurations, along with consultation with various stakeholders. Council advised it effectively formed a master plan for the precinct and was prepared by SJB Urban and has been adopted by Council.

**2.2.4 Other Amendments**

**Amendment C105** applies to the Joseph Road Precinct. It was approved by the Minister for Planning on 29 July 2013 under section 20(4) of the Act. This approval occurred during the exhibition of Amendment C125.

Amendment C105 introduced a revised Schedule 2 to the Priority Development Zone, deleted the Design and Development Overlay 1 from the precinct and introduced the Joseph Road Urban Framework Plan May 2013 as an Incorporated Plan.

In its submission to the Panel, Council provided a comparison between the *Joseph Road Urban Framework Plan 2009* (Figure 3 - introduced by Amendment C78), the *Joseph Road Urban Framework Plan May 2013* (Figure 4 - Amendment C105) and the *Joseph Road Urban Framework Plan April 2013* (Figure 5 – Amendment C125).

Figure 3 Joseph Road Urban Framework Plan 2009

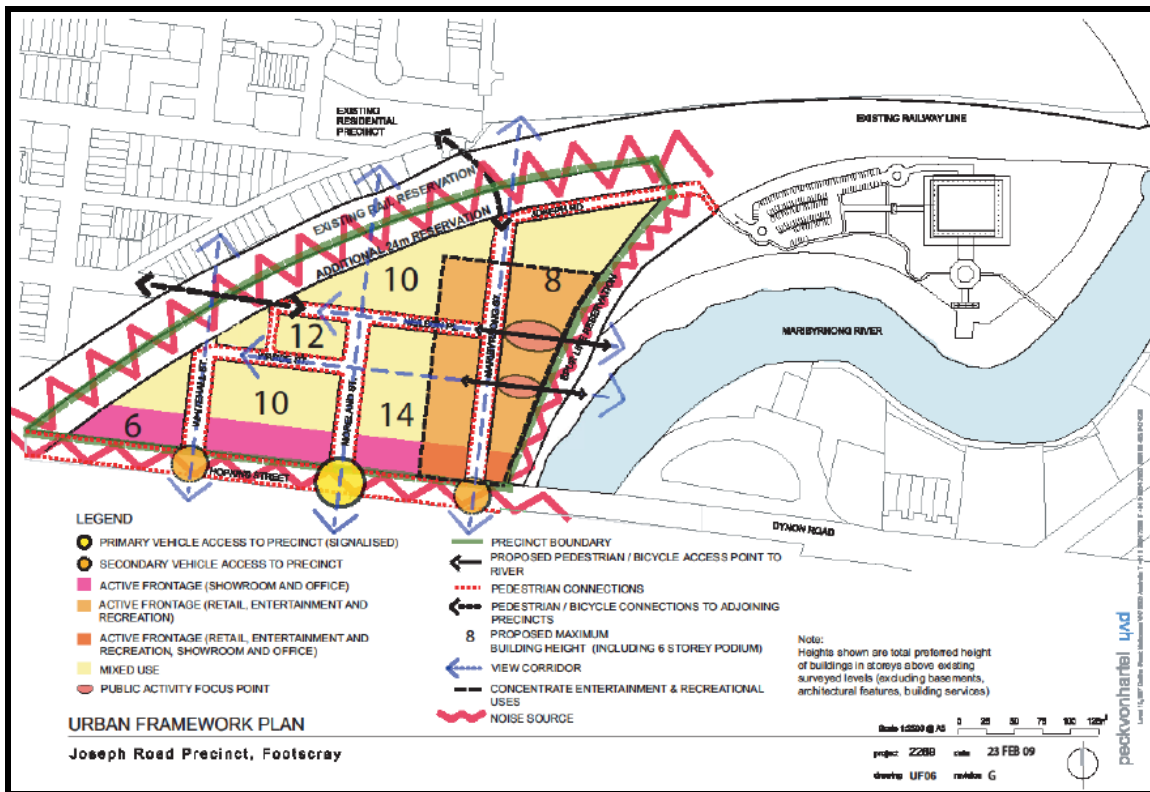
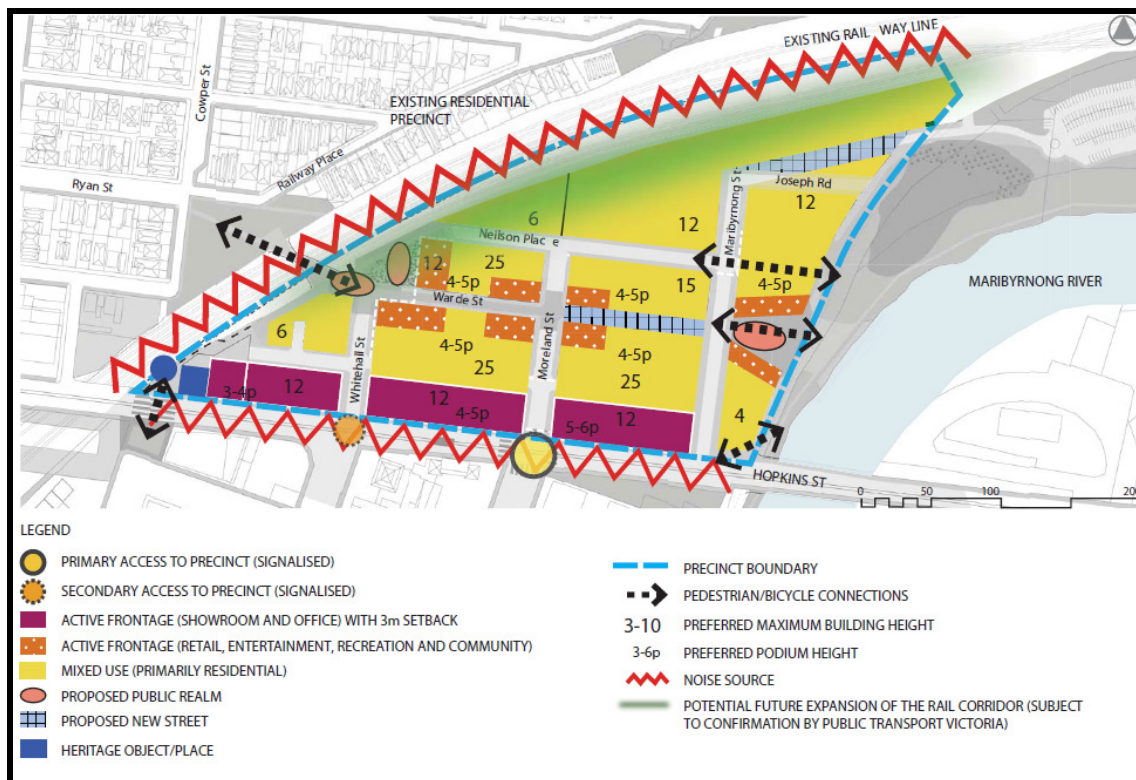


Figure 4 Joseph Road Urban Framework Plan May 2013



Figure 5 Joseph Road Urban Framework Plan April 2013





The numbers on each plan represent the discretionary maximum building height in storeys (e.g. 6) or podium height in storeys (e.g. 3-6p).

Council particularly drew the Panel’s attention to the preferred building height reference in the May 2013 version which states they do not apply if:

*Towers are well separated to provide solar access to the public realm;*

*Substantial overshadowing of land within the St Monica’s School Playground, and within 15 metres of the river’s edge is avoided between 11am and 2pm on 22 September; and*

*The proposed development incorporates sustainable transport principles to the satisfaction of the Responsible Authority, and traffic impacts are minimised and in accordance with the Network Operating Plan.*

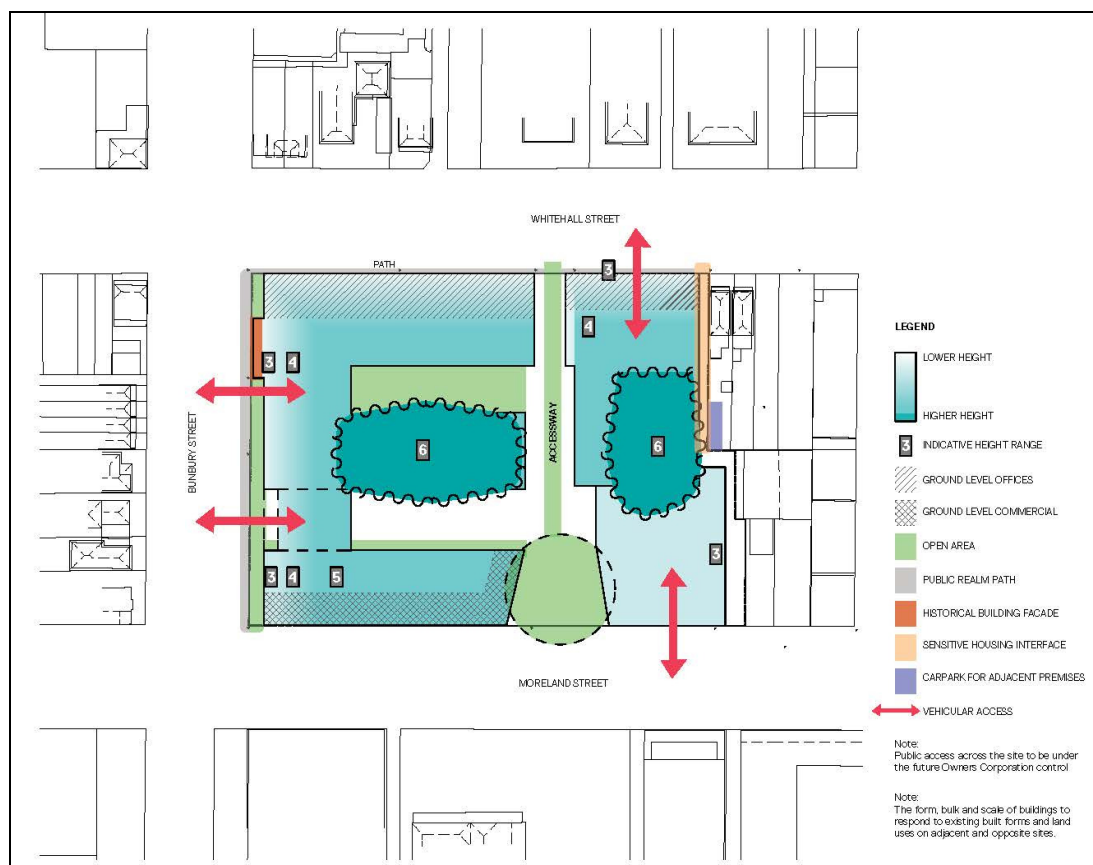
The key differences between the plans will be discussed further in Chapter 6.

**Amendment C122** applies to the ‘Ryco’ site (11-19 Whitehall Street, Footscray) within Precinct 4 of the FCAA. The Amendment proposes a mixed residential and commercial development and seeks to:

- rezone the land from Business 3 Zone (now Commercial 2 Zone) to a Mixed Use Zone; and
- introduce a Development Plan Overlay (DPO16) and EAO to the land.

Figure 6 contains the indicative concept plan that is attached to the DPO16.

Figure 6 DPO16 indicative concept plan



Council advised the proposal includes a preferred maximum building height of 6 storeys which is consistent with the FSP and the Skyline Study.

Council is now considering the recommendations of a Panel that considered submissions to the amendment. On approval of Amendment C125 the Ryco site will cease being a Mixed Use Zone and become ACZ1. The DPO16 will still apply.

### 2.3 Documents supporting Amendment C125

The Amendment is also supported by a range of existing and proposed reference documents in the planning scheme. These are:

#### 2.3.1 Maribyrnong Housing Strategy 2011

The Housing Strategy seeks to identify what types of housing should be provided to support Maribyrnong's growing and changing population. It contains objectives and actions which seek to deliver positive changes in the areas of Housing Diversity, Affordability, Location and Design. It identifies locations suitable for different rates of housing change (substantial, incremental and limited change) to direct development into areas with capacity for growth, and limit change in areas with established heritage and neighbourhood character values. The strategy is a Reference Document in the planning scheme.

#### 2.3.2 Maribyrnong Integrated Transport Strategy 2011

The Maribyrnong Integrated Transport Strategy 2011 (MITS) was completed to establish a long-term plan to guide the development of Maribyrnong's transport system over the next decade. It sets out a vision for a transport network which is sustainable, equitable and

convenient, in response to growth within and outside of Maribyrnong. The MITS was developed with input from the community and a wide cross section of stakeholders. It was supported by research and site investigations to ensure that all issues and community concerns were considered.

### **2.3.3 Footscray CAA Heritage Citations 2013**

Heritage Alliance was engaged to complete the heritage gap study of the FCAA. The purposes of the study were to:

- Identify possible new historic themes to underpin the FCAA;
- Review existing and proposed planning controls for the FCAA; and
- Identify areas where conservation works would improve the heritage value of places.

This is to be introduced as a reference document by Amendment C125.

### **2.3.4 Footscray CAA Car Parking Study 2013**

GTA completed this study and it forms the basis for the introduction of the Parking Overlay and its two schedules. This is to be introduced as a Reference Document by Amendment C125.

### **2.3.5 Potentially Contaminated Land**

Council engaged Environmental Resources Management Australia (ERM) to provide planning and site contamination advice for the FCAA, particularly to address issues that arose from Amendment C90 and for sites that did not have the EAO applied.

### **2.3.6 Footscray Structure Plan (FSP) 2013**

The FSP has been summarised in Chapter 2.1.

## **2.4 Issues dealt with in this report**

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Strategic Planning Context;
- Activity Centre and Precinct Boundaries;
- Land Use;
- Built Form and Height;
- Notice and Review Rights;
- Transport, Traffic and Parking;
- Heritage;
- Infrastructure Provision and Development Contributions;
- Open Space;
- Environmental Site Assessment;
- Master Planning of Key Sites; and
- The drafting of the ACZ1.

## **2.5 Issues on which there were no submissions**

The Panel is not required to report on replacing the existing schedule to Clause 52.28-4 (Prohibition of a gaming machine in a strip shopping centre) with an amended schedule as there were no submissions on this issue.

## 3 Strategic Planning Context

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

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

### 3.1 Policy framework

#### 3.1.1 State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses and documents in the State Planning Policy Framework (SPPF):

Clause 11.01-2 (Activity Centre planning) of the Scheme states:

#### Objective

*To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community.*

#### Strategies

- *Undertake strategic planning for the use and development of land in and around the activity centres*
- *Give clear direction in relation to preferred locations for investment.*
- *Encourage a diversity of housing types at higher densities in and around activity commercial use and expansion*

**Melbourne 2030**, which is still a reference document to clause 11, provides guidance in relation to Central Activities Districts (CADs), which the FCAA was formerly designated. CADs are envisaged to<sup>7</sup>:

- *accommodate the greatest variety of uses and functions and the most intense concentration of development of all the activity centres within the activity centre hierarchy; and*
- *be the preferred location for activities that have State or national significance, and for activities that have a significant impact as trip generators, drawing users from around the metropolitan area and beyond.*

The update to **Melbourne 2030** and **Melbourne @ 5 million** provided additional direction in respect of CADs, defining them in the glossary of terms as:

- The highest order activity centres with the greatest variety of uses and functions and the most intense concentration of development.
- **Melbourne @ 5 million** designated six new CADs with CBD-like functions, including Footscray. It notes that CADs will provide<sup>8</sup>:

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<sup>7</sup> *Melbourne 2030*, page 47

<sup>8</sup> *Melbourne @ 5 million*, page 11

- *Significant CBD-type jobs and commercial services;*
- *A strong and diverse retail sector;*
- *Specialised goods and services drawing on a large regional catchment;*
- *Significant opportunities for housing redevelopment in and around these centres;*
- *High levels of accessibility for walking, cycling, public transport or car by being located at a junction in the Principal Public Transport Network; and*
- *Vibrant centres of community activity with a range of public facilities.*

In October 2013, the State Government released its new metropolitan strategy – ***Plan Melbourne: Metropolitan Planning Strategy***, the Victorian Government’s vision for the city to 2050. *Plan Melbourne* designates the FCAA as a Metropolitan Activity Centre (a place of State Significance) within a new hierarchy of activity centres. Metropolitan Activity Centres are designated with the following rationale<sup>9</sup>:

*To maximise access to goods and services in a limited number of major centres with good public transport networks. These centres will play a major service delivery role, including government health, justice and education services, providing a diverse range of jobs, activities and housing for a subregional catchment.*

Other supportive SPPF clauses are:

- Clause 12 – Environmental and Landscape Values, by facilitating development that will house the projected population growth within a designated Central Activity Area (CAA), capitalising on opportunities for larger population to live within a relatively small ecological footprint.
- Clause 15 – Built Environment and Heritage, by providing heritage protection to new sites within the FCAA, and encouraging high quality urban design, and by ensuring that new land uses and development responds to the built form and cultural context of the centre.
- Clause 16 – Housing, by providing for a diverse range of housing.
- Clause 17 – Economic Development, by ensuring that the centre has opportunities for commercial and residential growth, and providing a framework for the location and management of that growth within the centre.
- Clause 18 – Transport, by encouraging and facilitating growth and development within the FCAA which is well served by public transport.

### **3.1.2 Local Planning Policy Framework**

#### **Municipal Strategic Statement**

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

- Clause 21.04-1 – Activity Centre Planning, by facilitating a mix of uses within the FCAA and providing for higher density housing, a range of retail options, services and

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<sup>9</sup> *Plan Melbourne*, page 27

employment opportunities in an existing centre with excellent access to public transport.

- Clause 21.04-2 – Housing Growth, by facilitating a diverse range of housing.
- Clause 21.06-1 – Urban Design, by facilitating the creation of a well-designed urban environment.
- Clause 21.06-2 – Environmentally Sustainable Development, by encouraging sustainable building design.
- Clause 21.06-3 – Heritage, by protecting places of heritage significance.
- Clause 21.07 – Housing, through the facilitation of a diverse range of housing and by directing increased residential development to identified precincts within the FCAA.
- Clause 21.08 – Economic Development, by facilitating a wide range of compatible activity in the centre and applying development guidelines which provide for positive design outcomes for the area.
- Clause 21.09 – Transport, by facilitating development of a centre which encourages use of public transport and provides for upgrades of existing public transport infrastructure.
- Clause 21.10 – Community and Development Infrastructure, by facilitating the provision of appropriate infrastructure.

The Amendment introduces a new local areas policy for the FCAA at clause 21.11-1 that refers to land use and built form directions for the centre from the FSP.

### **Local Planning Policy**

Relevant local planning policies are:

- Clause 22.01-5 Footscray Heritage Residential Area;
- Clause 22.01-4 Footscray Commercial Heritage Area;
- Clause 22.01-7 Old Footscray Township Residential Heritage Area; and
- Clause 22.05 Preferred Neighbourhood Character Statements.

The Amendment proposes to change the Footscray Commercial Heritage Areas policy by listing two buildings (Courthouse Hotel and Former Grand Theatre) in the list of individually protected buildings.

## **3.2 Planning scheme provisions**

### **3.2.1 Zones**

The Amendment introduces the ACZ across almost all of the FCAA. Land not rezoned include land owned by the Victoria University (Public Use Zone - 2), land zoned Public Use Zone 4 Transport (PUZ4) and land zoned Road Zone Category 1.

### **3.2.2 Overlays**

The Amendment:

- retains the Heritage Overlay where currently applied and adds 17 new sites in the HO;
- introduces the EAO over 5 sites that have been identified as being potentially contaminated; and
- introduces the Parking Overlay and two schedules.

### **3.2.3 Particular provisions**

The Amendment replaces the schedule to clause 52.28-4 (Prohibition of gaming machines in a strip shopping centre).

### **3.2.4 General provisions**

The Amendment updates the schedule to clause 61.03 to reflect the introduction of a new Parking Overlay to the planning scheme.

### **3.3 Ministerial Directions**

The application of the EAO to 5 new sites responds to the provisions of Ministerial Direction No. 1 – Potentially Contaminated Land.

### **3.4 Strategic Assessment**

The Panel concludes that the Amendment is supported by, implements, and proposes new provisions where appropriate to the relevant sections of the State and Local Planning Policy Framework.



## 4 Activity Centre and Precinct Boundaries

### 4.1 The Issue

A number of submissions addressing specific sites questioned the inclusion of these sites in the activity centre boundary or the precinct boundary. This has a wider implication generally for the location of activity centre and precinct boundaries.

### 4.2 Evidence and submissions

A number of submitters (Submission numbers 35, 41 and 58) sought the removal of land from the ACZ1 in Precinct 7 South and East. This was based upon:

- Land south of Parker Street in Precinct 7A South being adjacent to an Industrial 3 Zone. The buffer provisions of Clause 52.10 (Uses with adverse amenity potential) do not apply to land in an ACZ, as they do in a residential zone. Thus the submitter considers there is a reduced ability to protect residential amenity from uses that may be proposed in the industrial zone.
- Land in Precinct 7A East contains small lot sizes with fragmented ownership that is encumbered by a Heritage Overlay. At the hearing these submitters (41 Ms Lees and 58 Mr Camilleri) clarified their position and accepted the land should still be rezoned to the ACZ1 but requested the 'turning on' of notice and review rights for the precinct. This issue is addressed in Chapter 7.

Council submitted the FCAA boundary is consistent with Practice Note 58 – *Structure planning for activity centres (April 2010)* (PN58) which sets out a number of criteria in determining an activity centre boundary. These include:

- *Residential areas that are integrated into the activity centre or surrounded by other uses that have a strong functional inter-relationship with the activity centre even where limited development opportunities exist; and*
- *Key public land uses that have or are intended to have a strong functional inter-relationship with the activity centre even where there are no or limited redevelopment opportunities.*

Council noted the reference in PN58 that residential land within a Heritage Overlay at the periphery of an activity centre could be excluded.

Council submitted the FCAA boundary was determined by Amendment C90 which is now reflected in the Footscray Structure Plan and the ACZ1. In reference to submissions related to the residential areas Council advised the Panel<sup>10</sup>:

*Excising some or all of Precinct 7 from ACZ1 and retaining the residential zonings could address some of the submitters concerns, however, as the centre evolves, holistic planning of transport links, the open space network and centre-wide features will be facilitated by the inclusion of these neighbourhood precincts in the planning for the activity centre. Taking the residential areas out of the ACZ*

<sup>10</sup> Council submission, paragraph 144, page 46

*would make for more fragmented planning of major community and transport infrastructure needed to support population growth.*

The Victoria University (26) submitted:

- That its campuses (Precinct 3 North and South) should be excluded from the Parking Overlay; and
- Land along the Geelong Road that it owns be rezoned from Residential 1 Zone to the Public Use Zone 2 (Education) rather than the ACZ1.

Based upon Council's response to its submission and the evidence of Mr Coath from GTA Consultants (resulting in post exhibition changes to the Amendment), the Victoria University advised the Panel in writing<sup>11</sup> it did not wish to be heard. This was based on the following that has been accepted by Council in its submission to the Panel:

- Schedule 2 to the Parking Overlay be amended to clarify the Column B parking rate represents a minimum parking rate; and
- The Victoria University will commence a separate amendment process to rezone the land it owns on the Geelong Road.

### **4.3 Discussion**

Given the scale of this Amendment and the amount of land that is covered there are surprisingly few submissions that seek a change to the centre or precinct boundaries. The Panel agrees with Council that Amendment C90 had effectively 'bedded down' this issue and the process adopted in the preparation of the FSP involved a significant amount of consultation and opportunity for the landowner and community input.

Even though submitters in Precinct 7A East ultimately put to the Panel the land should be retained in the ACZ1, the Panel does wish to confirm its support for the retention of this land in the ACZ. This is on the basis the precinct does not lie at the periphery of the activity centre and its removal would effectively create an 'inlier' for a significant amount of land in an area that will be strategically important in linking the core of the activity centre with the Maribyrnong River.

This applies equally to Precinct 7A South. However, for this precinct the Panel notes the Council response to submission 35 that clause 52.10 of the VPP could be amended to include reference to the ACZ as a zone that usually would include residential uses at its periphery. The Panel would support this approach and its consideration by the Minister for Planning. It can only be addressed as an issue in this Amendment if the Panel supports the removal of this land from the ACZ1; which it does not. Irrespective of this, the submitter may be comforted by the fact the adjoining land is zoned Industrial 3 that requires a planning permit for industrial uses. The issue of buffers can therefore be addressed as part of the permit process.

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<sup>11</sup> Letter dated 6 December 2013 prepared by Meredith Withers and Associates

The Panel supports the resolution reached with the Victoria University submission, particularly the retention of the Parking Overlay (and its amendment) for the university campuses. As Council states<sup>12</sup>:

*In summary this is to ensure that any non-education use which may be developed is done so in a manner consistent with the objectives of the Parking Overlay.*

#### **4.4 Conclusions**

The Panel finds that:

- **The application of the activity centre boundary and precinct boundaries have followed a thorough strategic process which commenced with Amendment C90 and translated through to the Footscray Structure Plan 2013 and Amendment C125.**
- **The rezoning of residential areas to the ACZ is appropriate, even for those with the Heritage Overlay applied.**
- **The planning permit process for industrial uses in the Industrial 3 Zone adjacent to Precinct 7A South could be used to determine whether there will be any adverse amenity implications.**
- **The amendment to Schedule 2 to the Parking Overlay is appropriate and clarifies the use of minimum parking standards. This alteration should also extend through to Schedule 1.**

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<sup>12</sup> Council submission, paragraph 149, page 47

## 5 Land Use

### 5.1 The Issue

The ACZ1 applies land use guidance for the FCAA via the table contained in clause 3.0 of the schedule. As with all zones, they are categorised as Section 1 - No permit required, Section 2 - Permit required and Section 3 - Prohibited. The schedule to the ACZ can be tailored to apply conditions for each land use and the category in which it falls. The approach taken with this Amendment is to specify uses that must be located in certain precincts, or alternatively those in which it must not. In this respect a Shop must be located in Precinct 1 (other than sub-precinct 1A). This is the central core precinct of the FCAA.

The issue is whether a shop without the need for a permit should be restricted to Precinct 1.

### 5.2 Evidence and submissions

The Dobinson Nominees submission (47) relates to a property in Buckley Street Footscray in Precinct 6C South where a permit is required for Accommodation, Retail premises and Shop uses. It compares this requirement with the provisions of the Commercial 1 Zone (C1Z) which apply to the site where all of these uses are 'as of right' or no permit required.

Mr Connor, in providing planning evidence for Moray and Agnew Solicitors on behalf of the landowner, supported the use of the ACZ for Footscray and then submitted in respect of land uses as follows<sup>13</sup>:

*In my view the proposal to require a permit for these uses represents a backward move, and one that is inconsistent with State policy that support these uses in activity centre locations.*

*The restrictions are also considered inconsistent with the Government's recent review of the Victoria Planning Provisions. This review, which was implemented by Amendment VC100, was aimed at providing greater flexibility and growth opportunities for activity centres.*

Mr Connor also considered greater flexibility in the land uses was consistent with the vision for Precinct 6 contained in the FSP which states<sup>14</sup>:

*This precinct is a lively mixed use area that includes numerous service, educational, commercial, and accommodation uses. The precinct also includes retail uses which complement the retail within the central precinct. Key assets are the individual heritage places and heritage streetscape along Barkly Street, which through ongoing protection and restoration contribute to the overall diversity of the area. The precinct includes medium scale buildings that provide activation at the ground level providing a high amenity pedestrian experience.*

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<sup>13</sup> Connor evidence statement, paragraphs 52 and 53

<sup>14</sup> Footscray Structure Plan 2013, page 52

Council submitted the role of Council is to do more than merely translate existing zone provisions when drafting a new zone. It referred to Practice Note 56 - *Activity Centre Zone* (PN56) which states that<sup>15</sup>:

*A key feature of the zone is to encourage a wide mix of uses and developments within a centre.*

*The associated schedule to the zone can be tailored to the individual needs of the relevant activity centre.*

*In drafting the table of uses for a schedule, the appropriateness of uses should be carefully considered to ensure that future plans for the centre are not compromised. Consideration must be given to facilitating a wide mix of uses appropriate to an activity centre including retail, office, residential, community, recreation and transport uses.*

*Uses can be tailored to specific precincts to give clearer guidance on preferred land uses and precinct locations through Sections 1 and 2 of the table of uses. Section 3 of the table of uses should include those land uses that are not appropriate or desirable in the centre.*

Council referred the Panel to a VCAT decision<sup>16</sup> for the Fountain Gate Activity Centre in 2004 where the Tribunal, as put by the Council, *wrote extensively on the role of councils in structure planning and what structure plans can achieve.*

Council advised the FSP provided the strategic justification to limit retailing in areas outside the core central area of the FCAA on the basis there is a 'notable absence of national chains' and is only attracting 52% of its trade from the main trade area compared to other activity centres that average 70-95%<sup>17</sup>.

In directly addressing the Dobinson Nominees submission Council stated<sup>18</sup>:

*The submission is not surprising. It is illustrative of the constant challenge that many planning authorities have with developers to minimise so-called 'interference' from the Scheme and maximise flexibility. However, the Panel should be cognisant that these developers have a significant role to play in the evolution of the centre. Furthermore, the size of the landholdings invariably mean that poor outcomes in land use planning can have big impacts.*

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<sup>15</sup> Practice Note 56 – Activity Centre Zone, pages 2 and 3

<sup>16</sup> *Jocelyn Meadows Pty Ltd v Casey CC* (2004) VCAT 2627 supported Councils decision to adopt a Development Plan for the Fountain Gate Narre Warren CBD

<sup>17</sup> Footscray Structure Plan 2013, page 13

<sup>18</sup> Council submission, page 49, paragraph 158

### 5.3 Discussion

The Panel wishes firstly to comment generally on the basis for apportioning land uses in the table to the ACZ1. The key points raised by Council were that the FCAA:

- Is a largely under-developed activity centre with significant potential for housing, commercial and retail growth.
- Covers a large area of approximately 5 square kilometres which is one of the largest (by land area) activity centres in Melbourne.
- Only attracts just over half of its custom from its Main Trade Area (MTA) which means there is a significant amount of escape expenditure to other centres and many residents who live locally do not do their main shopping within Footscray. The FSP seeks to increase this share.
- Draws an above average income from its Secondary Trade Area (STA) which will reduce over time as other centre's develop.

The Panel considers this indicates there is a need for developing a policy basis to address these issues.

Specifically, the FSP Background Report, in referring to the Footscray Retail Study 2009, indicates the FCAA will accommodate nearly 160,000 sqm of retail floorspace; an increase of 83,000 sqm from the current 77,000 sqm<sup>19</sup>. A significant portion (6,080 sqm) of this is planned to occur in the Precinct 1 where retail use does not require a planning permit. In relation to the Dobinson Nominees site, Precinct 6 in which it is located is only planned to accommodate between 500-1880 sqm of retail floor space<sup>20</sup>.

The Footscray Retail Study 2009 also established there is a significant oversupply of retail floorspace within the FCAA<sup>21</sup> and an over-reliance on trade from its STA. The FSP Background Report comments:

*If this oversupply continues the centre will continue to trade well below industry accepted, sustainable benchmarks standards. It will also influence the type of tenants likely to establish in the centre and reduce its relevance to key segments of the population within its MTA.*

*Footscray CAA cannot continue to rely on expenditure from the STA. As activity centres in the STA improve their retail offer and better meets residents' needs, it is likely the STA market share will fall over time.*

*The Footscray Retail Study recommends an active policy of consolidation and regeneration to improve the performance of Footscray CAA and recapture expenditure from the MTA.*

The Panel considers there is a justifiable basis for policy intervention in the market to guide retail floorspace to specific areas. The FCAA is not an activity centre where the market will

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<sup>19</sup> Footscray Structure Plan Background Report, pages 14 and 30

<sup>20</sup> Footscray Structure Plan Background Report, page 15, Figure 8

<sup>21</sup> The FSP Background Report estimates this at 22,000 sqm, page 30

necessarily lead regeneration. It is one of the activity centres in Melbourne that will need a strong policy lead to correct market share inequities and consolidate an oversupply of retail floorspace in the centre. An example of where this is working is the redevelopment of some of the key sites within Precinct 1 such as the Footscray Plaza site which will support a full line supermarket and other retail premises.

Mr Connor in his evidence did not address this scenario and focussed upon the recent introduction of the Commercial 1 Zone provisions and reached a conclusion there should be the same flexibility within the ACZ1 for retail uses. Generally this may be the case, however the Panel does not support this in the context of the FCAA as there is a clear policy basis on which to consolidate retail floor space within the core precinct and limit it in other precincts. The Panel also notes the ACZ1 includes Shop uses in Section 2 (without condition) in the table; hence if a strong enough argument can be put for Shop/Retail uses in Precinct 6 (or others for that matter) then there is the ability for this to be 'tested'. On the basis the market analysis and projections have not been challenged by the submitter the Panel places significant weight on this analysis that sets the context for a policy-led regeneration of the FCAA.

The Panel is also comforted by the relatively few submissions that address the distribution of uses in the FCAA; which indicates there is a high degree of acceptance and the provisions are also structured to allow this to be challenged.

The Panel also considers this appropriately addresses the comment made in the Ministerial Authorisation (dated 21 June 2013) where it notes:

*In some cases the new commercial zones that are to be introduced on 1 July 2013 are less restrictive than the proposed ACZ schedule 1.*

It is noted the Ministerial Authorisation did not apply a condition that consistency be achieved between the uses in the ACZ1 and the new C1Z.

There are a number of post-exhibition edits to the table of uses that are addressed in Chapter 14.

## 5.4 Conclusions

The Panel finds that:

- **The Footscray Retail Study 2009 has established:**
  - **the FCAA draws below average income from its MTA and over average income from its STA;**
  - **the income from the STA will decrease over time as other centres develop;**
  - **there is an oversupply of retail floor space in the FCAA; and**
  - **there is a need to consolidate retail floorspace within the core area of the FCAA.**
- **Based on this there is a need for policy intervention in the market to ensure the majority of retail floorspace is located within the core areas of the FCAA and the planning framework should reflect this.**
- **It would be inappropriate for the planning framework for the FCAA to allow Shop/Retail uses without the need for a permit in areas outside of the core precinct as this would undermine the intent of the FSP.**

- **The planning framework does allow for this scenario to be ‘tested’ as Shop/Retail uses are listed as Section 2 uses within the ACZ1 table.**



## **6 Built Form and Height**

### **6.1 The Issue**

The ACZ1 provides built form objectives, preferred maximum building heights (overall and at street level and podium where appropriate) and preferred setbacks (where appropriate). Heights are expressed as discretionary, not mandatory, heights.

Of the 69 submissions received, 45 related directly to built form; 32 of which specifically referred to building height as an issue. The remaining 13 built form submissions raised concerns over building design quality (in terms of architectural and environmentally sustainable design), amenity, setbacks, density and streetscapes.

The key issues raised by submitters were: whether precinct specific building height controls as set out in the ACZ1 are appropriate given the context of particular sites and sub-precincts; if guidance should be provided for heights in excess of the preferred maximum height; and should height be measured in metres or storeys. Other related issues included whether building design quality (in terms of architectural and environmentally sustainable design) and amenity impacts (including overshadowing to public and private spaces) had been fully considered with sufficient guidance in place for future developments. In particular whether off site impacts had been fully considered so that existing uses are not compromised by new developments.

Another key issue submitted by landholders (whose properties were ripe for development) was whether the height controls were limiting higher density developments in areas identified for limited or transformational change.

This chapter is structured to address the general issues of guidance for heights in excess of those preferred and how height should be measured. It then addresses each of the precincts and the relevant issues individually. Precinct 8 (Civic) and Precinct 3 (Victoria University) are not discussed in this chapter as there were no submissions that dealt with built form and height.

Any recommendations are consolidated at the end of the chapter.

### **6.2 Should there be guidance for heights in excess of those preferred?**

#### **6.2.1 Evidence and submissions**

Mr Gattini, on behalf of Footscray Plaza Pty Ltd and Forges, considered there was a lack of guidance for when a preferred height could be exceeded in the ACZ1 and that this guidance would be useful for applicants and Council planners to determine whether greater heights were appropriate.

Mr Connor, providing evidence for Dobson Nominees considered there needed to be clear criteria in the schedule to guide decision makers for when heights above the preferred may be appropriate.

Mr Bisset<sup>22</sup> sought the *inclusion of appropriate criteria to guide the exercise of discretion in relation to applications to exceed preferred maximum heights set out within a relevant Masterplan or Development Plan.*

Council in its closing submission<sup>23</sup> stated:

*It seems somewhat of an unusual approach to provide for a preferred maximum height following detailed analysis and then to virtually invite applications higher than the preferred maximums. One of the roles of planning controls is to provide some measure of certainty to the community so that when they are consulted but then have participation rights removed they should be able to rely more or less on outcomes which are generally consistent with what was put in place as the basis for the removal of their rights.*

.....

*Further to this, Council is not satisfied that the implementation of additional criteria is appropriate or that a list of uniform criteria can be effectively or meaningfully applied across the entire centre.*

### **6.2.2 Discussion**

The Panel is aware of other zone and overlay examples that contain criteria to judge whether greater heights than the preferred outcome is appropriate. These may refer to a superior architectural design, use of ESD principles or others. Council stated in its primary submission *that relevant considerations would include the quality and sustainability of the proposal. Others may include siting, relationships to other buildings, overshadowing, overlooking, connectivity or protection of view lines.*<sup>24</sup> The Panel agrees with Council that setting a prescribed set of criteria to guide this discretion across a significantly large area and where there are a variety of built form outcomes sought would be a challenge. There is evidence already that sites of a considerable size or context have been able to justify a height that may exceed those contained in Council's strategic work. The Panel considers this as evidence the policy framework provides the rigour where required and the flexibility to achieve a higher built form. For this reason the Panel does not support any additional guidance for built form higher than the preferred maximum heights.

## **6.3 Should height be measured in storeys or metres?**

### **6.3.1 Evidence and submissions**

Some submitters queried whether the preferred heights should be expressed in metres, not storeys.

Council noted that *the certainty provided by using metres as the built form parameter is the approach largely preferred in emerging ACZ schedules and is preferred by Panels and*

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<sup>22</sup> Minter Ellison submission, page 9 paragraph 36

<sup>23</sup> Council closing submission, page 5, paragraphs 14 and 15

<sup>24</sup> Council submission, page 57, paragraph 187

*Tribunals that have considered the issue<sup>25</sup>. Council then submitted that many Tribunal and Planning Panels matters that considered this issue considered it in the context of the use of both metres and storeys – whereby there is risk of ambiguity and potential for applicants to adopt the more ‘favourable’ of the two criteria.*

Council considered the expression of height in storeys provides certain flexibility in the heights of various storeys, so that uses with different ceiling height requirements can be integrated into the one building.

### **6.3.2 Discussion**

It is apparent to the Panel that across the breadth of the FCAA, that there will be commercial and residential mixed use developments which individually have different ceiling heights. Also the constraints on underground parking will require podium parking in many high rise developments which is an added complicating factor for ceiling heights. The Panel considers the use of heights expressed in storeys sits comfortably with the use of preferred maximum heights in the ACZ1. The flexibility built into the schedule should provide proponents and Council with the ability to achieve a suitable outcome instead of being restricted to a measure in metres which is quite prescriptive. The Panel also notes that heights expressed in metres would require a significant amount of further work that is not justified or supported by the Panel.

## **6.4 Precinct 1 - Central**

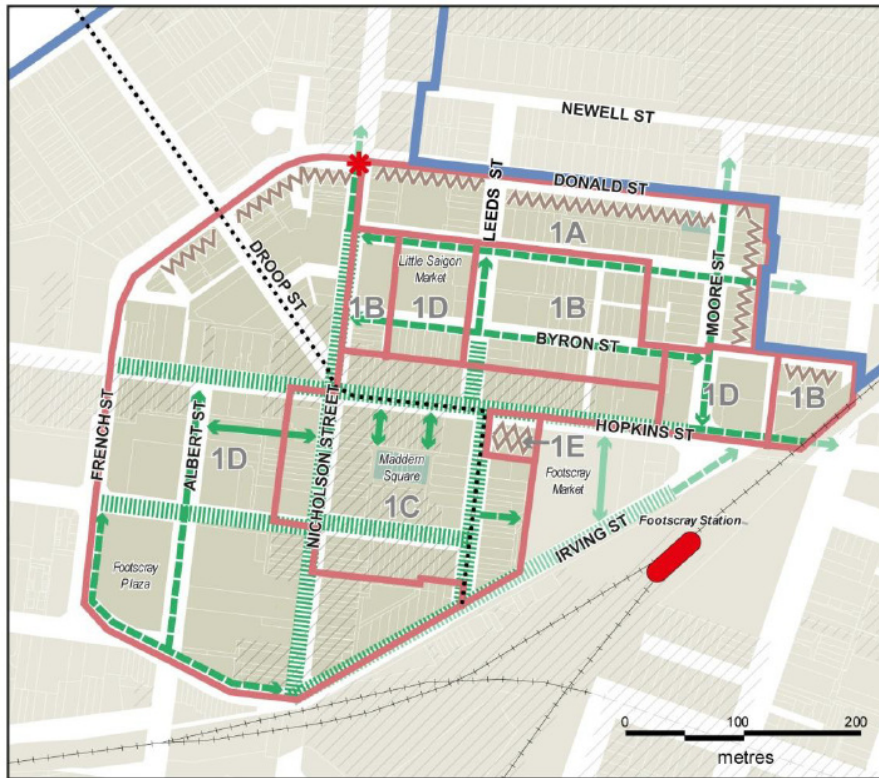
The Central precinct is the heart of the Footscray shopping centre in that it represents the area where key architecture and urban features have formed the genesis for an urban centre for workers, visitors and residents. Key iconic buildings and urban features such as (the historic) Barkly Theatre, the fine grain buildings on Barkly/Hopkins streets, Little Saigon Market, Australia’s first pedestrian mall in Nicholson St and the former Forges department store site describe a varied and textured centre.

Figure 7 identifies the precinct map identifying sub-precincts and existing features and the related building height and setback table.

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<sup>25</sup> Council submission, page 55, paragraph 182

Figure 7 Precinct 1 – Central, Map and Precinct Requirements



**LEGEND**

- Rail Station & Line
- Activity Centre Boundary
- Precinct Boundary
- Sites Subject to Heritage Overlay
- Open Space
- Existing Tram Route
- Main Walking Route
- Potential Pedestrian Link
- Pedestrian Priority Route
- Transition Area
- Planned Pedestrian Signal



Sub-precinct	Preferred maximum building height	Preferred setback
1A	6 storeys	
1B	6 storeys	
1C	3 storeys	
1D	10 storeys	Levels above 5 storeys setback minimum of 5 metres from street frontage
1E	25 storeys	Levels above 5 storeys setback minimum of 5 metres from street frontage

**6.4.1 Evidence and submissions**

Council<sup>26</sup> submitted that Precinct 1 *will stay low scale at the core and develop at moderate heights around it. Land uses will diversify from mainly retail and parking to include more*

<sup>26</sup> Council submission, page 28, paragraph 88

*commercial and community services and medium density shop top housing.* The Panel understands the driver for lower scale development at the core was to recognise and protect the finer grain development character of the precinct and in some instances the heritage character of the precinct.

In his evidence statement, Mr McPherson stated there was a need for ‘a performance based approach’ particularly in light of what was referred to as ‘the new development reality’. That is to say that changing commercial drivers and context needs to be reflected in what is delivered and achieved as opposed to what is set out in the FSP.

Mr McPherson recommended the following changes to the ACZ1:

- Sub-precincts 1A, 1B and 1C do not have a preferred setback in the ACZ, but a preferred 2-4 storey height range is recommended at the street frontage.
- Precinct 1 includes part of the Footscray Market landholding at sub-precinct 1E which has a height of up to 25 storeys. However, Mr McPherson stated that in his view ‘it would be assumed that it would be a podium of up to 4 storeys with a 5 metre setback.’

Site specific submissions were made for land within sub-precincts 1D by Paisley Pty Ltd and Footscray Plaza Development Joint Venture Pty Ltd, as the owner of a number of key development sites at:

- Forges site – split into 3 adjoining sites with an overall land area of 9127 sqm; and
- Footscray Plaza – currently under redevelopment (commercial/retail and 234 apartments) with a land area of 6345 sqm.

Mr Gattini, from G2 Urban Planning and the advocate for the submitter considered that a higher built form at the Forges site (than the 10 storeys contained in the schedule) was warranted and that prescribing the same heights for both the Forges and Footscray Plaza sites was limiting the development potential of the land as they had very different site contexts. He referred to Mr McPherson’s evidence statement that there lacked ‘a clear reasoning behind the heights nominated.’ Mr Gattini supported the identification of his clients’ sites as key development sites in the ACZ1 with greater heights permissible and would ‘recommend that the Panel prevent and remove height limits altogether and instead identify key development sites.’<sup>27</sup>

Mr Gattini considered the design response for the Footscray Plaza site (currently under construction) as very different from the future Forges site for the following reasons:

- The Footscray Plaza has 234 apartments over and above a lower basement of specialty shops and a Coles at ground level; building comprises ground level retail, with 3 levels of above-ground carparking and 10 storeys of residential in total (13 storeys);
- It is designed over an existing building that had another 50 year life;
- The west parcel of the Forges building is over an acre of land and has large frontages to the MAC; the east parcel also has large street frontages; and

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<sup>27</sup> Oral submission

- Stated that ‘we have moved on from the Skyline Study’ and asked ‘how do we procure high quality buildings?’ He considered the use of the Design Review Panel process could be of assistance.

He concluded this demonstrated the need to provide greater flexibility for the Forges sites in its development potential to accommodate greater height.

In response to Mr Gattini’s submission Council stated<sup>28</sup>:

*...it is considered that sites which offer themselves up as strategic redevelopment sites have been appropriately managed and provided for through the built form provisions which provide for a gradation of building heights across the precincts. Furthermore the skyline study has developed a general framework for the skyline of Footscray accepting that different development proposals will naturally lead to a great deal of variety in heights.*

#### **6.4.2 Discussion**

The Panel accepts that Precinct 1 is earmarked to remain a low scale, predominantly pedestrian precinct and considers the sub-precincts have sufficient scope to ensure flexibility in achieving high density residential and commercial buildings as set out in the ACZ1.

The Panel has a concern with the 25 storeys nominated for the south-east corner of Hopkins Street and Leeds Street in sub-precinct 1E (as part of the Footscray Market site) as it is surrounded by sub-precinct 1C on three sides (north, west and south) which has a proposed height of 3 storeys. It is apparent to the Panel the ‘up to 25 storeys’ nominated for this site is a result of its common ownership with the owner of the Footscray market site more so than any proper analysis and planning. The Panel supports the observation from Mr McPherson that a height of this scale would be difficult to achieve. This is a clear anomaly in the schedule and a building is unlikely to be able to be designed in a way that would not result in appreciable off site impacts to Leeds Street. The Panel considers sub-precinct 1E should be deleted and translated into sub-precinct 1C. However the Panel is making no specific recommendation in regard to this due to procedural fairness issue as the Footscray Market landowner did not lodge a submission to the Amendment and was not a party to the hearing. One option for Council to consider is to split the Amendment and place this issue out for a period of further notice (as Part B). If it becomes a contested issue then this Panel could be reconvened to consider the matter. This would be the most efficient method of addressing this issue. The other alternative is to draft a new amendment.

The Panel accepts there are merits in favouring a performance based approach to procuring built form and high quality design as put forward by Mr McPherson’s evidence and Mr Gattini’s submission. However, any notion of removing the preferred height limit altogether is not supported given all the previous strategic work supports height limits in one way or another. Opening up certain sub-precincts to almost unlimited heights would go against the overwhelming community response and indeed Council’s own strategic basis for setting limits at all. As Council submitted in its closing submission<sup>29</sup>:

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<sup>28</sup> Council closing submission, page 6, paragraph 20

<sup>29</sup> Page 7, paragraph 22

*..... actual height should be determined by a site analysis taking into account the scheme provisions. The heights are not ceilings, they are preferred heights over large areas. But neither are they meaningless there to be exceeded in each case.*

Mr McPherson's support (and that of the Skyline Study 2012) for a broad range of heights is contingent on there being a localised master planning process providing greater detail and resolution of preferred built form outcomes. Council does not support the broad use of master planning for the precincts/sub-precincts and supports more defined preferred heights. Generally the Panel supports the use of the exhibited preferred height limits which in conjunction with the objectives and guidelines of the ACZ1 should provide an adequate amount of rigour for development proposals. This applies to all precincts. The issue of master planning for key sites is discussed further in Chapter 13.

The Panel also notes that many other Activity Centres in Melbourne<sup>30</sup> have taken the same approach to setting a preferred building height that is not mandatory.

The Panel acknowledges the position of Council on key development sites and supports the need for detailed site assessments that will inform heights for particular sites through the permit approval process. On the Forges sites a building may well be able to accommodate that is taller than 10 storeys, however for the Panel to make a decision now that it could and reflect this in an increased preferred height for Precinct 1D would be premature and not based on an adequate amount of site assessment.

### **6.4.3 Conclusions**

#### **The Panel finds:**

- **The strategic basis for the preferred heights and built form in Precinct 1 are appropriate for this precinct and have evolved through considerable strategic work with government, community and industry consultation;**
- **There is a need to contain heights in the core to reflect the finer grain character of the precinct;**
- **The height limits set for the sub-precinct 1D are appropriate and removing preferred height limits altogether would not be consistent with Council and community concerns;**
- **Generally the use of the exhibited preferred heights in conjunction with the objectives and decision guidelines of the ACZ1 is superior to the use of a broad range of heights;**
- **The preferred maximum height (25 storeys) at sub precinct 1E is inconsistent with the FSP and previous strategic work. The Panel does not accept aligning built form outcomes with ownership of land as appropriate. Due to procedural fairness issues Council should consider splitting the Amendment, thus providing a period of further notice to the landowner of the Footscray market site, ensuring landowner input is facilitated.**

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<sup>30</sup> Moonee Ponds and Epping Central

## 6.5 Precinct 2 - Station

Precinct 2 is significant as it sets the basis for movement in and around one of the key transport nodes in Melbourne. It also sets a limit around the heritage buildings of Footscray Station while allowing greater building height as developments are located further from the station itself. Other large parcels of land at the Footscray Market, the Binks Ford site, McNab Avenue (including the ‘tear drop’ site) present considerable development opportunities, whereas other sites within the precinct are limited by heritage features and interface with major pedestrian routes to and from the station and tram line termination point and its surrounds.

Figure 8 identifies the precinct map identifying sub precincts and existing features and the related building height and setback table.

Figure 8 Precinct 2 – Station; Map and Precinct Requirements





Sub-precinct	Preferred maximum building height	Preferred setback
2A	15 storeys	
2B	12 storeys	
2C	No built form in public plaza space	
2D	8 storeys	
2E	5 storeys	
2F	3 storeys	
2G	12 storeys on McNab Ave 14 storeys at Teardrop Site	
2H	6 storeys	
2I	25 storeys at Footscray Market site 20 storeys at corner site	
2J	3 storeys on Talbot St interface 6 storeys along Cowper Street interface 10 storeys along railway interface	

### 6.5.1 Evidence and submissions

Council submitted<sup>31</sup> that Precinct 2 *'will be transformed by higher density residential, retail and commercial development, with upgraded public spaces and pedestrian connections to the centre and to a new public transport hub at the Station.'*

Council advised the PUDF for the Station Precinct has informed the heights contained in the ACZ1. Council considered the PUDF was a master planning exercise for the precinct and should inform height for the precinct given its level of detail and analysis, and does not support the broad height ranges (4-25 storeys) contained in the 2012 Skyline Study.

In his evidence, Mr McPherson<sup>32</sup> stated that this *'precinct is well established as a transit oriented development opportunity for high density mixed use redevelopment around the transport node, being a major transport hub at the confluence of three metropolitan rail lines and numerous bus routes in close proximity to the CBD.'* Mr McPherson<sup>33</sup> also noted that:

*the approved Grocon McNab Avenue development exceeds the recommended heights from the Planning and Urban Design Framework 2009 (PUDF). Also the Master Plan for the Binks Ford site and over rail deck (now abandoned by Places Victoria) significantly exceed the above height guidance, driven by development feasibility issues.*

Mr McPherson<sup>34</sup> noted that he did not *'agree that the Market site is suited to double the building height as the McNab Avenue site because both sites are large; both have sensitive/heritage interfaces; and both are adjacent to the transport hub.'*

<sup>31</sup> Council submission, page 28, paragraph 88

<sup>32</sup> McPherson evidence statement, page 18, clause 4.2.1, paragraph 2

<sup>33</sup> McPherson evidence statement, page 19, clause 4.2.3, paragraph 4

<sup>34</sup> McPherson evidence statement, page 22, clause 4.2.3, paragraph 15

Council<sup>35</sup> submitted that it *'rejects the proposition that heights should be driven by development proposals that come forward and are argued to dictate "the emerging development context." Precinct 2, for example, has the same considerations as Precinct 1, including valued open space and significant heritage areas. In light of this, Council considers it appropriate to adopt the same, more refined approach for Precinct 2 as in Precinct 1. The heights limits for the Station Precinct reflect existing outline plans for the railway station area (including the PDZ1). They take into account proximity to heritage sites and open space as well as the opportunity to greatly increase densities close to public transport. Greater heights can be considered if they meet the objectives and criteria in the ACZ1 and Precinct 2 provisions.'*

Mr McPherson in his oral evidence supported the transition in height for sub-precinct 2G from major height at the 'tear drop' site to lower heights at the Station interface.

Mr Bisset, on behalf of Grocon which owns the land bounded by McNab Avenue, Napier Street and Railway Reserve adjacent to the Footscray Station (and located within sub-precinct 2G), submitted that the Station Precinct was identified in the FSP and 2012 Skyline Study as an area for transformational change and the City Edge Master Plan *'identified the area for Substantial Change through redevelopment with heights identified in the range of between 15 and 20 storeys<sup>36</sup>.'* He also noted that *'the Footscray Market to the north of the station building at 20-25 storeys and development of 10 storeys at the railway interface in sub precinct 2J....that it is difficult to reconcile these heights having regard to the stated but untested propositions that development on the Grocon land would lead to inappropriate overshadowing of public spaces...or have adverse built form impacts on surrounding residential areas.'*<sup>37</sup>

Mr Bisset called urban design evidence from Mr Sheppard who supported the use of the 4-25 storeys approach established by the 2012 Skyline Study with a master planning exercise to inform the detail of the height for particular sites. Mr Sheppard supported many of the recommendations of the PUDF in relation to the Grocon land but added<sup>38</sup>:

*However despite the thoroughness of the analysis, there does not appear to be a clear rationale for the proposed building heights. The current approval for buildings reaching heights of up to 18 storeys on the land suggests that the findings of this report may be outdated.*

Mr Sheppard considered the heritage values of the station precinct, including a heritage tree, was a constraint for development along McNab Avenue and noted in his evidence the PUDF sought a built form that steps down towards the Railway reserve, setting back of buildings along the south side of McNab Avenue to allow reinstatement of Avenue planting and the provision of a courtyard or niche in the building form to accommodate a heritage tree. Mr Sheppard did not expressly object to these principles.

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<sup>35</sup> Council submission, page 52, paragraph 167

<sup>36</sup> Minter Ellison submission, page 3, paragraph 4a

<sup>37</sup> Minter Ellison submission, page 5, paragraph 13, 14

<sup>38</sup> Sheppard evidence, page 8, paragraph 14

Council<sup>39</sup> noted in its closing submission that:

*Mr Sheppard was quite frank in stating that he had no basis for identifying a 25 storey height for his client's land. It was simply the upper level of the height range of 4-25 set out in the skyline study. The Planning and Urban Design Framework is a very comprehensive master planning exercise on its face. It was accepted so by the Priority Development Panel. This panel should be loath to simply set it aside for or ignore it in preference for an adhoc approach to the site. As was pointed out in the course of questioning of the witness, (Mr Sheppard) the plan for this area clearly seemed to anticipate that the taller building would be focussed towards the teardrop and then buildings would graduate down towards the station.*

In conclusion, Mr Bisset sought *either the inclusion of a preferred maximum height of 25 storeys for sub precinct 2G or the inclusion of a master planning or development plan process for that Precinct with an indicative height range of 4-25 storeys.*

### **6.5.2 Discussion**

There are currently a number of significant projects underway in the precinct, most notably the Station redevelopment and refurbishment of the heritage building therein and the Grocon office tower on the 'tear drop' site. The FSP provides strategic guidance for the precinct and is informed by the 2012 Skyline Study and the PUDF. The Panel appreciates that the Skyline Study was more than just a document that sets building heights and recognises the only substantive departure from the Skyline Study in the ACZ1 is the use of more defined building heights for Precincts 2 and 5. The Grocon development for the McNab Avenue site (in sub-precinct 2G) has a height above what is contained in the ACZ1 for sub-precinct 2G (14 storeys<sup>40</sup>) however the Panel agrees with Council that a planning framework should not be driven by individually approved developments. The presence of existing (and recently approved) built form, to the panel, is more of a demonstration that variations are possible in context than justification for similar heights across whole precincts.

What the Grocon development does do is set one of the 'bookends' for the sub-precinct. The Panel agrees with Mr McPherson and supports the principle of decreasing height towards the Station, railway reserve and open space and therefore any notion of heights up to 25 storeys for this sub-precinct cannot be supported on this basis. The Panel notes this point has effectively been conceded by the submitter as a proposal for the balance of the sub-precinct is being developed (Document 16) that is consistent with decreasing height towards the station. The Panel also notes this precinct is effectively wedge-shaped and the narrower northern end will have difficulty in achieving heights anywhere near 25 storeys if it is to respect these principles.

The Panel agrees with Mr McPherson that the Market site preferred height limit of twice that of the McNab Avenue site is difficult to reconcile. In particular the sensitive interface with residential and lower scale buildings to the south east, south and south west mean that

<sup>39</sup> Council closing submission, paragraph 2

<sup>40</sup> The Panel was advised 14 storey commercial equated to an 18 storey residential tower

a higher building, of say 25 storeys, would result in significant offsite impacts to these adjoining areas. A number of submissions from local residents oppose a higher building at this site and Council supports retaining the current preferred height controls, notwithstanding that there is already approval for a higher building than as set out in the schedule. The Panel notes that the current height controls for the precinct have evolved with significant consultation and strategic work, but questions the preferred up to 25 storey height limit at the Footscray Market site and has concerns on the offsite impacts, in particular to Leeds Street and the tram line terminus stop that forms a significant pedestrian route to and from the station and station sub precincts. As the landowner did not submit to the Amendment and was not a party to the hearing, the Panel is reluctant to address the Market site further and considers there would be sufficient guidance in the ACZ1 objectives and guidelines to result in an appropriate built form outcome.

### **6.5.3 Conclusions**

#### **The Panel finds:**

- **Building heights for Precinct 2 are soundly based in the Footscray Station Precinct Planning and Urban Design Framework 2009 as the most detailed precinct investigation that has been completed to date;**
- **The principle of a higher built form rising from the lower form of the Station is supported;**
- **The Grocon building at the ‘tear drop’ site and the Station (at significantly lower scale) has set the ‘bookends’ for McNab Avenue. Therefore at a height of 14 commercial storeys the Grocon building should be the tallest building along McNab Avenue;**
- **There is no basis to support a framework that could envisage a height of 25 storeys for McNab Avenue as this would significantly undermine a well accepted principle to have lower built form closer to the station; and**
- **There is little strategic basis for the 25 storey height limit at the Market site.**

## **6.6 Precinct 4 - Riverside**

Precinct 4 (Riverside) is noted for a number of key heritage features, the arts hub and recreational and cultural areas located on the picturesque banks of the Maribyrnong River. It is expected to continue to develop at moderate heights and also contains a significant number of single dwellings both heritage and recent of one and two storeys.

The land bounded by Whitehall, Moreland and Bunbury streets is the Ryco site and was the subject of Amendment C122 and is not discussed in this report.

Figure 9 identifies the precinct map identifying sub precincts and existing features and the related building height and setback table.

Figure 9 Precinct 4 – Riverside; Map and Precinct Requirements



**LEGEND**

- Rail station & line
- Activity Centre boundary
- Precinct boundary
- Sites subject to Heritage Overlay
- Open space
- Striking long views
- Existing tram route
- Potential pedestrian link
- Potential tram line
- Potential traffic calming
- Shared pedestrian/cycle path
- Transition area



Sub-precinct	Preferred maximum building height	Preferred setback
4A	3 storeys	
4B	6 storeys 2 to 3 storeys at the street frontage / podium level	
4C	10 storeys 2 to 3 storeys at the street frontage / podium level	Levels above 5 storeys setback a minimum of 5 metres from street frontage

**6.6.1 Evidence and submissions**

In its submission, Council describes the Riverside precinct as one ‘which will continue redeveloping key sites, at moderate heights. It will keep its heritage features and role as a recreational and cultural centre for the wider area, and be linked to the FCAA by attractive pedestrian and bike ways.’

In his evidence Mr McPherson endorses the view that the preferred heights are appropriate and reiterates the significance of the river front location stating that ‘the river frontage

*provides an important public realm corridor along the western bank of the Maribyrnong River, which ..... is planned to be upgraded and enhanced over time.*<sup>41</sup>

Mr Horrocks, on behalf of the Footscray Historical Society, had concerns over the redevelopment of the Ryco site (at 6 storeys) opposite the historic Henderson House.

### **6.6.2 Discussion**

The Riverside precinct has to date evolved into an attractive and appealing precinct with a mix of high quality public realm at the arts hub on the river bank and a mix of warehouse buildings ripe for conversion and redevelopment as well as fine grain low scale residential and heritage buildings.

Mr Horrocks' concerns regarding the sensitive site frontage to Henderson House is noted, however, development at the Ryco site to the west was considered by Amendment C122. Council's submission<sup>42</sup> contained the indicative concept plan for the Ryco site which indicates a height of 6 storeys at the centre of the block and decreasing to 3 storeys at Moreland Street next to Henderson House. Mr Horrocks supported this outcome and also supported the use of arrows along Moreland Street on the Precinct map at clause 5.4-1 of the ACZ1 to reflect this. The Panel supports this addition to the precinct map.

The low to medium scale preferred height limits will allow for redevelopment to this key area without adversely affecting the amenity of the local community and while enhancing the refurbishment of the streetscapes and surrounds.

### **6.6.3 Conclusions**

**The Panel finds the height and built form guidelines as being a good response to the local area of this precinct and believes that it allows scope for interesting design opportunities to sit alongside finer grain heritage streetscapes in a sympathetic way.**

## **6.7 Precinct 5 – Joseph Road**

Precinct 5 (Joseph Road) is a large tract of land situated to the eastern edge of the FCAA and is located on the banks of the Maribyrnong River. It is essentially a 'brownfield' site that is almost completely vacated by previous industrial activity and is identified in the FSP and existing provisions for 'transformational change'. The Minister for Planning is joint responsible authority with Council. It has an area of 15 hectares.

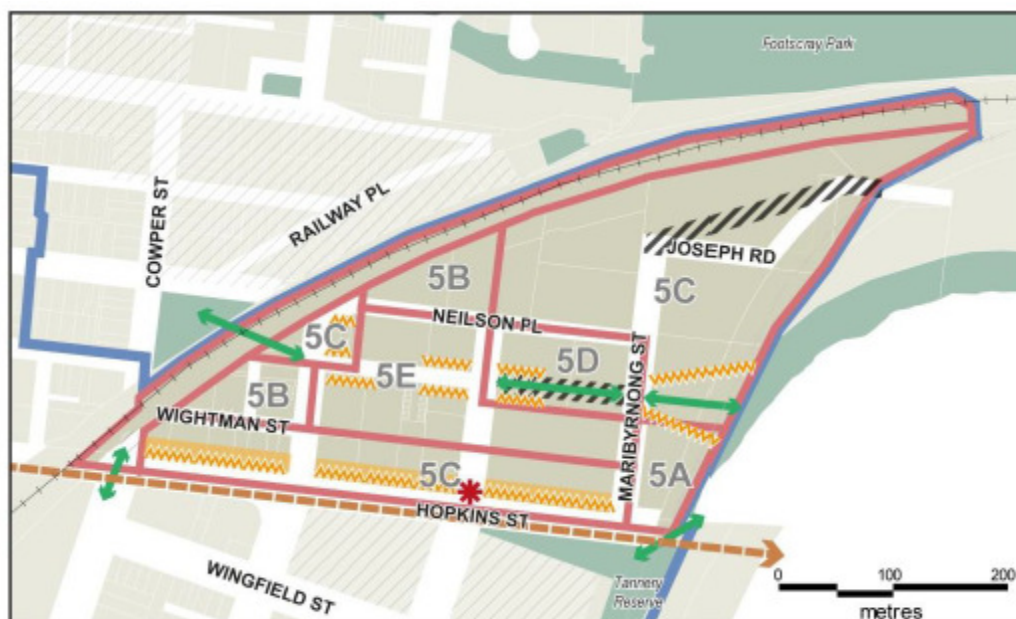
Figure 10 identifies the precinct map identifying sub-precincts and existing features and the related building height and setback table.

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<sup>41</sup> McPherson evidence statement, page 25, clause 4.4.1, paragraph 3

<sup>42</sup> Page 18, Figure 5

Figure 10 Precinct 5 – Joseph Road; Map and Precinct Requirements



**LEGEND**

- Activity Centre Boundary
- Precinct Boundary
- //// Sites Subject to Heritage Overlay
- Open Space
- ↔ Potential Pedestrian Link
- - - Potential Tram Line
- ~ ~ ~ Active Frontage
- ~ ~ ~ Active Frontage With 3m Setback
- /// Proposed New Street
- \* Potential Signalisation



Sub-Precinct	Preferred maximum building height	Preferred setback
5A	4 storeys	
5B	6 storeys	
5C	12 storeys West of Whitehall Street: 3-4 storeys at street frontage / podium level Between Whitehall and Moreland Streets: 4-5 storeys at street frontage / podium level Between Moreland and Maribyrnong Streets: 5-6 storeys at street frontage / podium level	3 metre front setback for buildings along Hopkins Street
5D	15 storeys 4-5 storeys at street frontage / podium level	
5E	25 storeys 4-5 storeys at street frontage / podium level	

### 6.7.1 Evidence and submissions

Council advised the preferred heights for the precinct have evolved over a number of years, as tracked below:

- 2009 Framework Plan – 12-14 storeys (podiums of 4-6 storeys) based upon a 2009 PDP report<sup>43</sup>
- May 2013 Framework Plan – Amendment C105 directed up to 25 storeys (podiums of 4-5 storeys). Eight storeys (4-5 podium) at 2 Hopkins Street.
- April 2013 Framework Plan – Amendment C125 directed up to 25 storeys with 12 storeys (podiums at 4-5 storeys) along Hopkins Street and 4 storeys at 2 Hopkins Street.

Council<sup>44</sup> submitted:

*The proposed height limits in Joseph Road reflect the built form framework which was prepared with input from Council, the State Government and landowners....*

*The ACZ1 proposed heights are up to 25 storeys in part, but graduate downwards where necessary to protect the public realm, particularly open space by the river, key streets and existing facilities such as the St Monica's School and low scale residential areas. There is a continuing need to recognise these sensitive areas directly adjacent to the precinct.*

A number of submissions opposed the range and extent of the preferred heights. The submitters considered that the preferred heights were too high and the landowners thought they were too prescriptive and some believed should be removed altogether.

In his evidence Mr McPherson<sup>45</sup> states *'that in an area earmarked for Transformational Change, an overarching built form height range is appropriate.*

Mr Little, on behalf of Devcorp, the land owners of 2 Hopkins Street (located in the south east corner of Precinct 5 fronting the Maribyrnong River) submitted that the preferred heights should be interpreted as being a guide only and that discussions with the State Government were 'progressing' to include building heights of 14 to 28 storeys with 4-5 storey podiums in an amended submission to the Minister for Planning due to be lodged before the end of 2013.

Council tabled a report prepared by the Office of the Victorian Government Architect (OVGA) Design Review Panel (DRP) that found significant shortcomings of the original application by Devcorp and stated that they held *'...fundamental concerns that the current proposal compromises the public amenity of the Maribyrnong riverside corridor and does not adequately contribute to the realisation of an integrated and successful urban precinct in Footscray.'* It went on to say that apart from the design quality being questionable *'...the panel's firm view that the civic amenity is negatively affected by this proposal.'*

<sup>43</sup> Joseph Road Precinct Footscray Priority Development Panel, February 2009

<sup>44</sup> Council submission, page 52, paragraphs 168 and 169

<sup>45</sup> McPherson evidence statement, page 27, section 4.5.3, paragraph 1



Mr Holwell, appearing on behalf of St Monica's Primary School, raised concerns regarding the offsite impacts from an already approved<sup>46</sup> building at 18-20 Hopkins Street owned by Austpac. This 32 storey building to the north and over the road of Hopkins Street would cause the school playground and classrooms to be cast into shadow at the equinox (i.e. from March through the winter months to September). Mr Holwell provided shadow diagrams (Document 30) to demonstrate this. He pointed out that the school had hitherto enjoyed unfettered solar access to the playground and classrooms for the life of the school (over a hundred years) and that the school community and administration was extremely concerned as to the impact on the children and staff. The shadow diagrams also indicate that building heights consistent with this Amendment would not overshadow the school property at the equinox.

Council drew the Panel's attention to the text contained in the recently approved Amendment C105 Incorporated Plan for this precinct which states the preferred building heights do not apply if:

- Towers are well separated to provide solar access to the public realm;
- Substantial overshadowing of land within the St Monica's School playground, and within 15 m of the river's edge is avoided between 11am and 2pm on 22<sup>nd</sup> September;
- The proposed development incorporates sustainable transport principles to the satisfaction of the responsible authority, and traffic impacts are minimised in accordance with the Network Operating Plan.

Mr Kennedy, a local resident, stated, '...it is difficult to consider what currently is being considered with hitherto unseen densities in the area and that God forbid you would want to raise a family by a river across a school...the proposed buildings would never be allowed on the river and is an abrogation of citizens' and Council's ability to be involved...'

Mr Little also pointed to the schedule to clause 81 which retains the May 2013 version of the framework plan, as a result of Amendment C105, as an incorporated document as evidence consideration should still be given to it. Council noted the approval of Amendment C105 was during the exhibition period for Amendment C125. Council considered the submission opportunistic as the Amendment replaced the PDZ for the precinct with the ACZ1 which was the empowering clause for the consideration of the incorporated plan. Council went on<sup>47</sup>:

*If this issue is of substantial concern to the Panel then Council will not pursue the deletion of the incorporated plan notwithstanding that it will have no further contribution to make. However, it is submitted that the better course is simply to remove the incorporated plan from the scheme consistent with the effect of Amendment C125.*

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<sup>46</sup> This permit allows for 5 residential towers up to 32 storeys containing 966 dwellings

<sup>47</sup> Council closing submission, page 4, paragraph 11

### 6.7.2 Discussion

The ACZ1 addresses off site impacts in its decision guidelines (clause 8.0). These state that:

*The extent that the layout and design of the new use or development minimises the potential for offsite impacts ... ensuring that a new development is designed to address amenity impacts from existing uses.*

The Panel supports the submission by Council that an appropriate threshold for height had been reached along Hopkins Street that addresses off site impacts to the south. The Panel notes if the preferred heights were adhered to for the Auspac site then there would be no overshadowing of the school site at the equinox at all as demonstrated by the shadow diagrams tabled by Mr Holwell. The Panel cannot consider individual proposals for sites, even ones that are approved at significant height, but does note that any heights above the preferred heights will have an off site overshadowing impact on the school.

The Panel also believes the reduced heights (4 storeys at the southern end) provided for 2 Hopkins Street are justified as:

- There is a need to graduate to lower built form along the river;
- This site will be the key entry point to the precinct and the FCAA from the east and a building should demonstrate a graduation to higher built form further east; and
- A lower built form will enable the more equitable sharing of views to the east (river) from within the precinct.

The Panel notes the framework plan under this Amendment does not contain the text noted above that sets some parameters when preferred building heights do not apply. The Panel was provided with what Council understood to be the Network Operating Plan however its relevance to the precinct was far from clear. The Panel also considers the provision relating to St Monica's Primary School would provide for a building height of far greater than 25 storeys before it became relevant. This would not provide for fair and equitable outcomes as the school buildings would remain in shadow for the majority of the day; which is a point the Panel considers as relevant as overshadowing of the playground. Ultimately the Panel supports the deletion of this text. Transformational change will still occur in this precinct without these exclusions. There is an abundance of strategic work and reviews in relation to building height and this Amendment should give weight to this work.

The exhibited version of the ACZ1 makes no reference (either objective or guideline) to the sensitive interface with the school. The Panel supports the insertion of a new objective and precinct guideline to address overshadowing of the school.

Buildings designed in accordance with heights in this Amendment can be to a high standard while protecting the solar access to the school. For example building towers that taper to the south, south east and south west will ameliorate the offsite impacts to the river bank and the sites at the south side of Hopkins Street including St Monica's Primary School. The 12 storey height limit with 4-5 storey podiums along the majority of Hopkins Street (not 2 Hopkins Street) is consistent with this principle.

In regard to the status of the Amendment C105 Incorporated Plan, the Panel agrees with Council that the substance of the incorporated plan is supported by the PDZ and not merely the listing in another schedule of the planning scheme. As Amendment C125 deletes the PDZ

any other reference to the incorporated plan should also be deleted. The Panel does not consider there is any issue of natural justice or procedural fairness as all parties were present at the hearing and aware of the issue and this will tidy up an anomaly created by this Amendment.

**6.7.3 Conclusions**

The Panel considers that the exhibited provisions for this precinct are appropriate and respond to the sensitive interface areas of Hopkins Street and the Maribyrnong River.

There is a need to address an anomaly created by this Amendment by deleting the Joseph Road Urban Framework Plan May 2013 from the schedule to clause 81.01 of the planning scheme.

**6.8 Precinct 6 – Peripheral Activity**

Council described Precinct 6 (Peripheral Activity North and South) as ‘divided into two parts, both of which are expected to evolve with a mix of health, retail, hospitality, aged care, small office and other services to support Footscray’s core. Development will be at moderate heights and well connected to the centre and station by street based pedestrian and cycle paths<sup>48</sup>.’

The precinct comprises larger sites and less of the finer grain subdivision than what occurs in the adjoining areas such as in Precinct 1 or 7. Medium rise (10-12 storeys) residential development has occurred along Barkly Street in recent years and is expected to continue.

Figures 11 and 12 contain the precinct map identifying sub precincts and existing features and the related building height and setback table.

Figure 11 Precinct 6 – Peripheral Activity North; Map



<sup>48</sup> Council submission, page 29, paragraph 88

Figure 12 Precinct 6 – Peripheral Activity South Map and precinct requirements for North and South



**LEGEND**

- Railway line
- Activity Centre Boundary
- Precinct Boundary
- //// Sites Subject to Heritage Overlay
- Main Walking Route
- ..... Pedestrian Priority Route
- On-Road Bike Lane
- Transition Area



Sub-precinct	Preferred maximum building height	Preferred setback
6A	3 storeys 2 to 3 storeys at street frontage	
6B	6 storeys 2 to 3 storeys at street frontage / podium level	
6C	10 storeys 2 to 3 storeys at street frontage / podium level	5 metre upper level setback from street frontage
6D	14 storeys 2 to 3 storey at street frontage / podium	5 metre upper level setback from street frontage

**6.8.1 Evidence and submissions**

Council noted that the recent residential developments were good examples of what could be achieved with the preferred heights in the schedule. It noted the redevelopment of the heritage listed Barkly Theatre which contained up to 12 storeys set back over the rear of the site and allowed the streetscape of Barkly Street in sub-precinct 6D (Precinct 6 North) to not be dominated by the new built form.

Mr McPherson<sup>49</sup> considered that the ACZ1 for Precinct 6 *'...translates the height ranges from the Structure Plan, and so is aligned with the Skyline Study.'*

Mr Kennedy, who resides in Precinct 6 North on Buckley Street agreed with Council that *'...the Barkly Theatre redevelopment was a good example of a developer response and what can be done.'* Mr Kennedy also offered the following in his oral submission:

- The heritage areas of the precinct are relatively untouched; Footscray has been largely forgotten by developers; what the community don't want is what happened at Southbank;
- The built form is the most significant and common concern of local residents and ratepayers and that 10 storeys is still at a human scale and not an island in the sky;
- Suggested podium heights of 2 storey with a 10 storey maximum across the whole FCAA as heights were clearly the most significant issue in response to Council's comments and that the Skyline Study should inform but not be gospel as there appears to be planning fatigue in Council.

Mr Hofmann from Moray and Agnew Lawyers appeared on behalf of Dobinson Nominees (owners of land at 26 Buckley Street within sub-precinct 6C South), submitted that an emphasis on performance based solutions should have preference over prescriptive height controls.

Mr Connor<sup>50</sup> provided planning evidence for Dobinson Nominees and stated that *'...the built form controls for Precinct 6C South are overly restrictive for this activity centre location...and are not responsive to existing approvals in and around the precinct.'* Mr Connor referred the Panel to the approved development of 12 storeys at 16-20 Buckley Street on the corner of Nicholson Street as well as other strategic reasons emanating from the FSP and Skyline Study stressing that the preferred height limits should be interpreted as a guide only. The current application for 26 Buckley Street is for 15 storeys and Mr Connor considered that:

- the preferred height for sub-precinct 6C South should be increased to 12-15 storeys or at a minimum be assigned the highest range available under the Skyline Study of 14 storeys as with Precinct 6D; and
- there should be consistency of language throughout the incorporated documents and the ACZ1 to avoid any future conflicting interpretations and reinforce discretion which exists in relation to built form.

In conclusion Mr Connor submitted that the current design for the site by architects Rothe Lowman responds to adjacent sites.

Mr Ledingham, a resident of Bute Street in Precinct 6B, was concerned with how the Amendment addressed the existing Bus Depot site on the corner of Buckley Street and bordering existing residential and heritage areas. In particular he was concerned the 6 storey height limit *'...would create a highly visible obstruction'*, and expressed concerns that *'such a big site could be possibly developed as a large monolith rather than several smaller built forms.'* Concerns were also expressed regarding potential overshadowing and suggested that

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<sup>49</sup> McPherson evidence statement, page 31, clause 4.6.5, paragraph 1

<sup>50</sup> Connor evidence statement, page 1, section 5, paragraph 2

a 4 storey maximum building height would be more acceptable considering the low rise adjoining residential and heritage areas.

### **6.8.2 Discussion**

This precinct covers large areas of the FCAA at the periphery of the core precincts. The Panel's approach with this precinct is consistent with submissions that request increased height limits for other precincts. The fact that approvals have been granted for developments at greater heights is not a sufficient justification to depart from the exhibited heights. As stated previously it is perhaps an indication that the framework is working in a manner that it is designed to. That is, it provides the ability for increased heights to be considered but that this should be informed by site context and the objectives and design guidelines of the precinct. The Panel is reluctant to consider any departures from this on a site by site basis as this would undermine the need for an overall framework for the precinct and create other unintended consequences such as increase development potential for other sites. The Panel agrees with Council's concluding statement on the Dobinson Nominees submission that *if the case for a taller building is as strong as Mr Connor suggests then on that large site, they should have no trouble in persuading the responsible authority of that.*<sup>51</sup>

The Panel is comfortable with the 6 storey height limit for the Bus Depot site decreasing to its sensitive interface (similar to the Ryco site) but notes, in Chapter 13, that the site should be the subject of a master planning exercise.

The Panel also supports the sub-precinct height limits across the precinct.

### **6.8.3 Conclusions**

**The Panel finds the preferred building heights in the ACZ1 to be appropriate and that sufficient flexibility exists to create new developments and balance community concerns.**

## **6.9 Recommendations**

The Panel recommends:

- 1 The ACZ1 be amended as follows:**
  - a At Clause 5.4-1 (Precinct Map), add arrows along the Moreland Street frontage of the Ryco site to indicate this as a 'transition area to lower built form'.**
  - b At Clause 5.5-2, add the following objective:**
    - To provide built form that does not result in significant overshadowing of the St Monica's Primary School.***
  - c At Clause 5.5-4, add the following decision guideline:**
    - Building forms should avoid substantial overshadowing of St Monica's Primary School between 9am and 3pm on 22 September.***
- 2 The Schedule to Clause 81.01 should be amended by deleting reference to the *Joseph Road Urban Framework Plan May 2013*.**

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<sup>51</sup> Council closing submission, page 3, paragraph 5

## 7 Notice and Review Rights

### 7.1 The Issue

The Activity Centre Zone exempts notice and review rights for uses and buildings and works but provides the ability for a schedule to the zone to have these 'turned on' or for the notice and review rights to be activated in certain circumstances.

The Amendment changes this exemption in the following manner:

- Any buildings greater than a stated height will be the subject of the notice and review provisions. The exemption is retained only for building and works with heights at or less than the preferred maximum building heights contained in Clause 5 of the Schedule.
- For use of land, any application is exempt from the notice and review rights unless:
  - A use is within 30 metres of land (not a road) which is in a residential zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or education centre.
  - A use of land for the purposes of a Gambling premises, Hotel, Nightclub, Place of Assembly or Tavern.
  - A use of land for the purposes of a dwelling other than a dwelling in precinct 7 and Sub Precinct 1A.

The issue is whether the exemption for notice and review should be removed in certain circumstances.

### 7.2 Evidence and submissions

Grocon Group (31), Le Mans Toyota (28), Building Masters (32) and the Department of Transport, Planning and Local Infrastructure (71-DTPLI) objected to the exemption from the usual notice and review rights being removed where proposals exceed the preferred maximum building heights in the precinct provisions.

The Ministerial Authorisation also noted that:

*The Minister for Planning is the Responsible Authority for certain approvals within the Footscray Renewal Area which includes Joseph Road, Precinct 5 of the proposed ACZ schedule 1. I note that the schedule as proposed, does not exempt notice and review for applications exceeding the preferred height, and consider that this may not be entirely consistent with the urban renewal objective for this area. The Department would support all applications within the Joseph Road precinct to be exempt from notice and review.*

Mr Bisset, on behalf of Grocon, submitted that<sup>52</sup>:

*The consequence of this is that not only are the notice requirements more severe under the ACZ than and (sic) under the PDZ, but they are more restrictive than if the land was simply in the Commercial 1 Zone.*

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<sup>52</sup> Grocon submission, page 8 paragraphs 28, 29 and 34

*It is a perverse outcome that land in the ACZ, a zone specifically identified for 'intensive development' attracts more notice and third party rights than an application within a Commercial zone.*

.....

*The suggestion that development above a certain preferred height is the appropriate trigger point to activate the exemption, assumes that the correct preferred maximum height is included within the Planning Scheme in the first place. Whether those heights are 'generous' is irrelevant if those heights are properly based and strategically justified.*

SJB Planning, on behalf of Le Mans Toyota which owns a site in the Joseph Road Precinct (Precinct 5), submitted that all applications for buildings and works will require notice and this was inappropriate in an activity centre.

Meinhardt, on behalf of Building Masters which owns a site at 35 Moreland Street Footscray, was concerned the removal of the exemption would reintroduce 'the potential for substantial delays to occur within the planning application process, and as drafted these are inconsistent with the intended effect of the provisions for exemptions made in Clause 37.08-8'<sup>53</sup>.

DTPLI, as an adviser to the Minister for Planning who is the responsible authority for development within the Footscray Renewal Project Area and 2A Hopkins Street Footscray (Precinct 1D, Precincts 2 and 5), provided a late submission in relation to the Joseph Road Precinct (5) and stated:

*It is the Department's submission that all planning permit applications for development in the Joseph Road Precinct should be exempt from notice and review. This will stimulate growth through a planning process that will allow prompt determination of applications.*

A number of landowners within Precinct 7 (Neighbourhood) submitted that notice and review provisions for buildings and works should be retained in an area where small lot size, fragmented ownership, Heritage Overlay implications and a vision for limited change set by the FSP were present, and to require consultation where a permit seeks to vary the Clause 54 and 55 provisions. Mr Wood and Mr Ellis were also concerned that the use of land for a dwelling should be the subject of notice and review. Council has accepted this.

Council<sup>54</sup> referred the Panel to the Council officer report of 22 October 2013 which states:

*The preferred height ranges for the precinct are drawn from the built form framework plan that was prepared with State Government, Council and land owner input. These height limits and setbacks consider the relationship of sites to proposed open space, to the River frontage, to Hopkins St and to the St Monica's school site. The notice and review provision is only 'switched on' for applications that exceed the height range. This is considered appropriate as development*

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<sup>53</sup> Submission 32, page 4 of 8

<sup>54</sup> Council submission, page 57, paragraph 189



*above the height range may have significant impacts on the surrounding areas, including residential precincts to the north and south, St Monica's and the River to the east. Council will continue to advocate for the height limits to be carried forward to the ACZ.*

Council referred the Panel to a number of other ACZ's where a Panel has supported the retention of notice and review rights where preferred heights were exceeded. These included Whittlesea C130 (Epping Central ACZ) and Moonee Valley C100 (Moonee Ponds ACZ). In Whittlesea C130 the Panel wrote<sup>55</sup>:

*We are conscious that it is difficult to engage those affected, particularly in relation to longer term strategic planning processes, where the framework is complex and an immediate development proposal is not involved...*

*We endorse the principle, established by the ACZ default provision that the exemptions should apply where the key elements of the planning framework are adhered to. We also agree with the views expressed on the issue of third party rights by the recent Moonee Valley C100 Panel. That amendment proposed to trigger third party rights when preferred building heights would be exceeded. The C100 Panel sought to ensure that the circumstances in which exemptions apply was clearly prescribed. The Panel recommended that third party rights be extended in some interface precincts where ResCode amenity standards are not met.*

In response to questioning from the Panel, Council reconsidered its stance on the exemptions in Precinct 7 in its closing submission<sup>56</sup> and advised:

*However, having considered the circumstances of these low change areas further, and in particular those characteristics and development expectations in Precinct 7A, Council considers that there may be merit in retaining notice and review rights in these areas. Should this be supported by the Panel, Council would not oppose this change to the exhibited Amendment. Such a change would seem consistent with the panel's findings in the Epping Central Structure Plan panel viz a viz (sic) the residential areas.*

### **7.3 Discussion**

The Panel appreciates there has been a significant amount of strategic work undertaken by Council and the State Government for the FCAA, particularly for building heights and, where this strategic work is thorough and has involved community input, any proposal to introduce an ACZ should be supported by streamlined provisions, one of which is the default to exempt notice and review rights. The PN56<sup>57</sup> confirms this and states:

*The default provision in the ACZ is that no third party notice, decision or review rights exist for any permit application subject to the zone. This builds on the*

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<sup>55</sup> Whittlesea C130 Panel Report (12 August 2013), page 96

<sup>56</sup> Council closing submission, page 7-8, paragraph 24

<sup>57</sup> PN56 Activity Centre Zone, page 4

*community and stakeholder consultations that are the foundation of structure plans.*

The general principle is if an outcome is known or could be expected and provided for in the planning framework and the process in establishing this framework has been thorough and involved community input then notice and review rights would be unnecessary.

The Panel accepts that the Station and Joseph Road Precincts have been identified for transformational change with building heights up to 25 storeys under existing provisions of the planning scheme. In Chapter 6 the Panel considers a building that adheres to the preferred building heights will still contribute to a 'transformational' change as 'brownfield' redevelopment opportunities. So, the issue is not whether the need for transformational change should be the basis for maintaining notice and review exemptions. The issue for consideration in this chapter is whether notice and review rights should apply when these are exceeded. The Panel considers an analysis of this issue needs to consider the context and sensitivities of the sub-precincts and not assume, as Council put it, a 'free for all' approach to development in the FCAA. An example of this is the context of the St Monica's Primary School (south of Hopkins Street) in Precinct 5 (Joseph Road) where issues of solar access and overshadowing are important considerations. As a general principle the Panel supports the notion that there would be instances where building heights greater than that preferred by a planning framework should be the subject of greater scrutiny. The Panel notes this is specifically contemplated in PN56 on page 4 which states:

*Alternatively, third party notice, decision and review rights could be reinstated in certain precincts (such as in residential precincts), or for particular uses (such as a hotel), or for particular forms of development (such as developments that exceed preferred maximum building heights). (underline added)*

It seems from the Panel's perspective that to allow the consideration of a building of any height without notice and review rights would not be a fair and balanced approach to development as required by objectives of the *Planning and Environment Act 1987*.

The Panel notes the Amendment was exhibited to require notice and review for buildings above the preferred height. If the Panel supports the Department's position, which it does not, then this would be a significant change to the Amendment that may require further notification.

Whether the removal of notice and review rights would have been an obvious implication of the ACZ for the 'mum and dad' landowners particularly within the residential areas is not readily apparent to the Panel. The submission from Ms Lees and Mr Camilleri noted that the removal of notice and review provisions was not explicit in the explanatory report and that this may be a reason for the relatively few submissions on this issue. The Panel has a concern with this and also agrees with the observation made by the Whittlesea C130 Panel that it can be difficult to engage the community where the issue is a long term strategic planning processes and not a defined development proposal.

Ultimately the Panel supports the revised position of Council that in Precinct 7 (Neighbourhood) notice and review rights are retained for building and works. This will not have any demonstrable impact on the ability of the FCAA to meet its housing targets.

## 7.4 Conclusions

The Panel finds that:

- Any removal of third party notice and review rights from the exhibited amendment would be a substantial change and may require further notice;
- The inclusion of notice and review provisions for proposals in excess of preferred building heights is specifically contemplated by the Practice Note 56 *Activity Centre Zone*;
- Providing for notice and review provisions for buildings in excess of the preferred heights is appropriate as;
  - Transformational change will still occur in the Precincts 2 (Station) and 5 (Joseph Road) even if the preferred building heights are adhered to so their removal will not limit the strategic role of these precincts.
  - An understanding of the sensitive interfaces of the precincts should be considered, particularly south of Hopkins Street adjacent to Precinct 5 (Joseph Road). In this regard impacts on solar access and overshadowing are a significant concern and any building above the preferred heights should be the subject of greater scrutiny.
- Neighbourhood residential areas (Precinct 7) will not contribute significantly to the overall potential housing supply within the FCAA;
- Notice and review provisions in Precinct 7 for building and works is appropriate.
- Notice and review provisions in Precinct 7 and Precinct 1A for use is appropriate.

## 7.5 Recommendations

The Panel recommends:

- 1 The ACZ1 be amended as follows:
  - a At Clause 7.0, retain notice and review rights for buildings and works for all land within Precinct 7.
  - b At clause 7.0, under Use, amend the last dot point to:
    - i *An application within Precincts 7 and 1A.*

## 8 Transport, Traffic and Parking

### 8.1 The Issues

Footscray Railway Station (and its associated tracks) is a dominant feature of the FCAA; the Ballarat, Bendigo and Regional Rail Link lines (4 tracks) bisect the suburb, and the Williamstown/Werribee line (2 tracks) further subdivides the southern portion into two. The Bunbury Street tunnel, while visually unobtrusive, provides further constraints to development east of the railway station.

The main pedestrian linkage between the three parts of the FCAA is provided by the new station footbridge, offering covered access, including lifts for the mobility-impaired. Vehicular access is provided by rail under-bridges at Hopkins, Nicholson<sup>58</sup> and Albert Streets, and by rail over-bridges at Napier St (4.0m clearance), Pilgrim St (3.5m clearance) and Victoria St (Middle Footscray Station) (2.9m clearance). To the east, the only crossing is where the riverside pedestrian/cycle path passes under the Saltwater railway bridges; this is too far from the city centre to be of use to any but recreational cyclists.

Thus, while the railway network provides valuable access between Footscray and Melbourne CBD, Geelong, Ballarat and Bendigo, it also creates physical barriers, noise and vibration, and a demand for commuter parking and pick-up/drop-off.

For the purposes of the Amendment, the issues are:

- Parking – whether the Parking Overlay Schedules 1 and 2 are the most appropriate way to address perceived parking problems
- Parking – special cases (e.g. Victoria University)
- Cycling – whether the Amendment should attempt to rectify perceived gaps in the cycling network, e.g. connections across the Maribyrnong River
- Traffic – how the Amendment should deal with existing and future questions of road capacity
- Public Transport – whether the Amendment can address issues relating to train, tram and bus infrastructure.

These issues are discussed below.

### 8.2 Evidence, submissions and discussion

Of the 71 submissions considered by the Panel, 33 (46%) identified transport, traffic and parking (or any combination thereof) as an issue to be addressed. The Council and Public Transport Victoria both made extensive submissions. The Roads Corporation (VicRoads) made no submission.

While parking (in the sense of provision of on-site parking within new developments) is addressed directly by means of a Parking Overlay, the issues of transport, traffic and off-site parking are not specifically addressed by the Amendment.

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<sup>58</sup> Currently closed during re-construction

Many of the submissions raise issues arising from traffic or parking management which, while undoubtedly important to the submitters, cannot be considered by the Panel. The Council may be able to address the issues using its other powers (including under the *Road Management Act 2004*, the *Road Safety Act 1986* and, in particular, the *Local Government Act 1989* Schedule 11).

For completeness, submissions which, in part or wholly, raise issues beyond the scope of the Panel's jurisdiction are listed in Table 2.

Table 2 Submissions the Panel cannot deal with

Submission No	Issue	Panel's Remarks
1	Paisley St car park to be free for 1 hr	Not a planning matter
4	Resident parking in Hyde St being occupied by commuters and police vehicles	Council enforcement matter
5	Need for a pedestrian walk ability task force	Council maintenance/enforcement matters
10	Detailed design matters	Permit stage, not C125
14	(a) Public transport already "bursting at the seams" (b) With increased no of apartments and offices, where are visitors to park? (c) North end of Victoria St at capacity now, driveways constantly blocked	(a) Not a Council matter (b) See below (c) See below
15, 64, 65, 67	Traffic and parking in Walter St arising from redevelopment of the bus depot	Detail planning stage, not C125
16	Raleigh St car park	Detail planning stage, not C125
22	PO2 would change "current parking overlays in Walter St"	Submitter is confusing parking overlays with parking controls. Controls are a Council enforcement matter.
50	(a) No strategy to protect local residents during festivals, events or large-scale activity (b) Residential streets being used as unofficial layover areas for buses	Council enforcement matters.
53	(a) Enforcement of Traffic Management Plans (b) Re-opening of Cowper/Hopkins Sts intersection (c) Rail replacement bus routes	(a) Council enforcement matter. (b) VicRoads/Council management matter. (c) Metro/V/Line/Council matter.
63	Unique situation at 2/113 Cowper Street	Council matter, unrelated to C125.

Specific issues raised in submissions, which are relevant to the Amendment, include:

### **8.2.1 Hierarchy of Roads and Road Capacity**

The following concerns were raised in submissions:

- The road network is already at capacity<sup>59</sup>
- Pedestrianisation may exacerbate traffic problems<sup>60</sup>
- Overflow of traffic and parking into residential areas<sup>61</sup>.

Mr Brewster (14) notes that some roads, such as Victoria St, are already at capacity, and could not accommodate traffic growth arising from the development which might flow from the Amendment.

Mr Brown<sup>62</sup> (49) notes *the road traffic problems of inner Footscray, in particular the tendency of Hopkins-Barkly and Irving Streets to become gridlocked can only [be] expected to worsen as the population density increases. It has to be asked whether in its current configuration the pedestrian zone arrangements in inner Footscray are not exacerbating this situation.*

Submissions 64 and 65 (which are identical) assert *commercial development will increase traffic in this [Precinct 6] residential zone, which is already very congested, in particular, along Buckley St, Hyde St and Albert St during peak times.*

Mr Coath, the Council's traffic and parking expert, when asked if any traffic (as opposed to parking) studies had been carried out, referred to the Council's *Maribyrnong Integrated Transport Study 2011*. This is summarised in Council's submission<sup>63</sup>, and the key policies are:

- Policy 16: Council will work with VicRoads to prepare and deliver Network Operating Plans across the municipality in support of the SmartRoads program.
- Policy 17: Council will work with VicRoads to improve maintenance standards of arterial roads.
- Policy 18: Council will support the Local Area Traffic Management program to protect local areas from through traffic and ensure the highest possible levels of amenity for the community.

Mr Coath noted that through traffic was not specifically dealt with in the Amendment, but would be dealt with in the usual way between VicRoads and the Council in its capacity as road manager.

### **Discussion**

The Amendment does not, of itself, create any new roads, widen or close any existing roads, or alter the hierarchy of highways, main roads and local roads. The Panel is satisfied that the Amendment will make no discernible difference to the hierarchy of roads in the FCAA. Road

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<sup>59</sup> Submitter 14

<sup>60</sup> Submitter 49

<sup>61</sup> Submitters 64, 65

<sup>62</sup> Paragraph 6

<sup>63</sup> Council submission, paragraphs 197-199

capacity throughout the municipality, not just in the FCAA, will continue to be managed by the Council and VicRoads in accordance with their statutory obligations. The Panel is comforted that Council has in place the *Maribyrnong Integrated Transport Study 2011* which will guide further improvements to the traffic network.

### **8.2.2 Walking and Cycling**

The following concerns were raised in submissions:

- Difficulty for pedestrians to gain access to the shopping centre<sup>64</sup>
- Need for bicycle parking facilities within FCAA and better connectivity outside FCAA<sup>65</sup>.

Mr Langenheim (38) referred to Figure 9 on page 25 of the Structure Plan, which identifies a number of 'difficult crossings for pedestrians' which, he says, affirms that *we can't get from our houses to the pedestrian priority parts safely*. Mr Kennedy (40) makes a similar point.

Mr Langenheim calls for bicycle parking for local shoppers *in prime positions*. Mr Kennedy notes that Footscray is *frustratingly cut off . . . from the excellent bike infrastructure on the east [City of Melbourne] side of the Maribyrnong River, particularly due to poor connections and infrastructure along Napier St, and non-existent infrastructure on Hopkins St*. At the hearing, Mr Kennedy emphasised that cycling infrastructure should be provided early, not after the event of development. He noted that the proposed developments on the north side of Hopkins St (Precinct 5 Joseph Road) made no provision for a cycle path.

Maribyrnong Bicycle Users Group (43) thanked the Council for its commitment to improving the provision of cycling facilities in Footscray, but noted that there are inconsistencies between the way cycling infrastructure is shown on the various figures in the Structure Plan. It calls for bicycle access on both sides of Barkly/Hopkins and Buckley/Napier Sts, together with off-road paths wherever possible.

In response, the Council<sup>66</sup> states it *will continue to work with the State Government and developers to improve pedestrian connectivity and amenity. . . [The City Edge Masterplan] includes an ongoing program of upgrading of pedestrian and cycling connectivity into and around Footscray. These plans will need to be revised over time as pedestrian and cycling activity intensifies through the redevelopment of the centre*.

### **Discussion**

The Panel commends the Council on its commitment to improving provisions for cyclists and pedestrians, particularly in linking up areas currently isolated by physical or psychological barriers. The Panel supports the concept of providing improved cycling access along the Hopkins St and Napier St corridors (or on alternative routes parallel to these corridors), and encourages Council to proactively plan for these links in parallel with development of the area, not after it has occurred.

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<sup>64</sup> Submissions 38, 40

<sup>65</sup> Submissions 38, 40, 43

<sup>66</sup> Council Submission, paragraph 207

### 8.2.3 Public Transport

As noted above, public transport is generally the responsibility of the State Government and its agencies, and there is little that the Panel can do to influence the provision, or level, of train, tram, bus and taxi services in the FCAA.

Hobsons Bay City Council (34) supports the concept of extensions of Melbourne's tram network westwards along Dynon Road and Hopkins St, and along Footscray Road and Napier St. Mr Burgess (36), who appeared at the hearing, made a similar point.

Mr Brown (49) makes the point that pedestrians (including the aged and mobility-impaired) should be able to move between the railway station and inner Footscray without having to wait for traffic lights at Irving or Leeds Sts, preferably by means of an extended pedestrian bridge, which offers lifts, escalators and moving walkways, as found in most airports.

Public Transport Victoria (68-PTV) raised a number of concerns with the Amendment as originally exhibited. Council advised the Panel those concerns have now been addressed in the form of post-exhibition changes to the ACZ1 and PTV has no objection to the Amendment.

#### Discussion

The Panel notes that the Amendment will, of itself, have no effect on public transport. The Panel encourages the Council to continue to liaise with the State Government and its agencies to facilitate the expansion and co-ordination of train, tram and bus services throughout the area.

### 8.2.4 Car Parking

The following concerns were raised in submissions:

- Provision for visitor parking for new developments<sup>67</sup>
- Protection of existing residential areas from overflow parking<sup>68</sup>
- Particular concerns of Victoria University<sup>69</sup>.

Mr Brewster (14) asks *with the increase in office spaces and activities, where are the parking spaces for the visitors?*

Motto Towers (20), the owner of a site<sup>70</sup> which has received a planning permit, but which is not yet under construction, takes a different approach. It notes that the proposed Parking Overlay Schedule 2 would require more parking spaces on site than their current permit requires.

Victoria University (26) submitted it is somewhat of a special case regarding parking. Most of its land is zoned Public Use 2 – Education, and is not proposed to be rezoned to the ACZ. Its activities as an education provider under the Minister for Education mean it is exempt from

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<sup>67</sup> Submissions 14, 20

<sup>68</sup> Submissions 54, 55, 56, 57, 59

<sup>69</sup> Submission 26

<sup>70</sup> 16-20 Buckley Street and 236-238 Nicholson Street



planning scheme controls. However, some of its existing or proposed car park areas are currently zoned Residential 1 (along Ballarat Road) and will be rezoned to the ACZ. The original submission requested the university land not have the Parking Overlay applied. However Victoria University provided a letter of withdrawal<sup>71</sup> from the Panel Hearing on the basis of the consensus that had been reached with Council. This consensus included:

- Clarification that the Column B rate in Clause 52.06 represents the minimum parking requirement;
- Addition of a Note to Clause 5.3.4 of the ACZ1 to clarify the university land is not zoned ACZ but that the objectives and guidelines are relevant to provide guidance to the Minister for Education in considering future university development; and
- At some future point Council would consider a request to rezone the land owned by the Victoria University and therefore the initial request to rezone these as part of this Amendment was not pursued.

Building Masters (32) seeks changes to the wording of Schedules 1 and 2 to the Parking Overlay to provide a single car parking ratio range of 0.5 – 1.0 spaces per 1 or 2 bedroom dwelling. The Council Officer's report neither accepted nor rejected the proposed change, stating that the *provisions will be examined to see if there is any scope to make them simpler and reduce permit applications, while still retaining their overall intent.*

Dr White (37) considers that the Amendment contradicts itself, by both calling for *a truly 'walkable' centre improving overall pedestrian safety, mobility and access*<sup>72</sup>; and then listing minimum car parking requirements for each new development type in Schedule 1 to Parking Overlay. Dr White notes the references in the Council's own Parking Study<sup>73</sup> to the need to limit over-provision of parking. He encourages the Council to emulate the City of Melbourne in requiring zero car park spaces per dwelling in certain areas.

By contrast, Ms Hannan and Mr Griggs (39), residents of Walter St, opposite the Bus Depot site, argue that there is *no evidence to support or justify the reduction in demand for car parking ..... the requirements for dwellings should be maintained at the level currently specified in clause 52.06 Table 1.* Mr Coath, the Council's expert, argues that ABS car ownership data do provide evidence justifying lower car parking ratios for the FCAA.

Mr Spano (48) supports a zero parking ratio *close to Footscray inter-modal hub around Footscray Station due to the availability of public transport as opposed to private vehicle use.*

Mr Freer (50) has *strong concern and objection to, inter alia, low and inadequate parking ratios outlined in PO1 zone for large-scale multi-use developments neighbouring to [sic] Precinct 7C.*

Submitter Nos 54, 55, 56 and 57 consider that, in view of the *very high car parking space demand in Footscray (from residents, shoppers, commuters and visitors), waiving car parking requirements for developments in Precinct 7A should be in EXCEPTIONAL circumstances ONLY. It is essential that sites are not viewed in isolation when determining whether to waive*

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<sup>71</sup> Dated 6 December 2013

<sup>72</sup> ACZ1, Movement and Transport, Page 4

<sup>73</sup> Footscray Central Activities Area Car Parking Study GTA Consultants 2013

*the scheduled car parking requirements ..... Any new development in Precinct 7A must provide sufficient car parking to meet its own demands.*

Ms Hall (59) supports *the notion that car parking is sufficient. More parking would simply choke the streets ..... we need to invest in sustainable transport, in particular, improved cycling connections and engineering solutions to slow down traffic on residential streets.*

Similarly, Ms Renton and Mr Thimios (60) note *reducing car parking in the area is a very progressive thing to do that demonstrates great civic leadership, and finally, the car, and car parking, should take second place to people.*

Paisley Pty Ltd and Footscray Plaza Development Joint Venture Pty Ltd (62) support the application of the Parking Overlay Schedule 2, and the parking objectives at Clause 1.0.

Council provided traffic and parking evidence from Mr Coath, of GTA Consultants, the author of the *Footscray Central Activities Area Car Parking Study 2013*. In summary, Mr Coath supports the use of the Parking Overlay, with two Schedules, as a mechanism to manage future parking issues. The PO1 and PO2 introduce:

- Reduced car parking rates to those currently specified within Clause 52.06;
- Motor cycle parking provisions; and
- Appropriate decision guidelines to be considered before reducing the minimum, or providing more than the maximum, number of parking spaces.

In instances where the Tables in Schedules 1 or 2 do not list specific uses, the rates given in Column B of Table 1 of Clause 52.06-5 will apply, and such rates shall represent minimum rates.

## **Discussion**

The diversity of views seen in the submissions demonstrates the difficulty of this issue. From one end of the spectrum (*provide no parking so that they all use public transport*) to the other (*provide ample parking so that there is no overflow to our street*), every position has been advocated.

The Panel, in its limited opportunities to observe current conditions, noted that, while street-level parking was indeed congested, with 'pop-up' car parks on vacant lots well patronised, other public car parks, such as the upper levels of Footscray Market, were almost deserted.

The Panel supports the concept of Parking Overlays as part of the Amendment and as one approach in parking provision and management, but feels that more 'fine tuning' may be required in the future to reflect the difference in conditions between, say, an inner-city development site with no residential interface, and a site in the peripheral area adjacent to existing residences. The Panel agrees that residents on the periphery should not have to bear the burden of overflow parking from the inner areas. The Panel also notes that at-grade parking represents a very poor utilisation of valuable land, and suggests that the Council give consideration to allocating a site for the construction of a multi-level public car park to replace and augment existing at-grade car parks.

The submission on behalf of Victoria University (26) raises the following issues:

- First, given that the majority of the University's land is zoned PUZ2, and is not subject to normal planning controls, should it be included in PO at all?
- Second, as Education Centre is not a specified use in the Table at Clause 3.0 of PO2, the default provisions of Table 1 of Clause 52.06-5 of the Planning Scheme apply: it is not clear if the number of spaces calculated in accordance with that Table is the minimum or the maximum. The Council proposed a small amendment to PO2 to clarify this point, which the Panel supports. This included the reference to Column B parking rates as minimum parking requirements.

The Panel supports the inclusion of those parts of the University's property holdings currently zoned Residential in the ACZ. The Panel also supports the inclusion of a Note to Clause 5.3.4 of the ACZ1, so that the controls associated with the ACZ may give guidance to the Council and Minister for Education in negotiating development on land in the SUZ2. The Panel supports the inclusion of all of the University's land in the Parking Overlay and notes the University's support of this now.

While the Amendment cannot impose retrospective requirements, the submission does tend to reinforce Mr Brewster's concern that developers will provide fewer parking spaces than the standard rates given in PO2.

On the question of the distinction between dwellings of one and two bedrooms in the Table of Car Parking Spaces, the Panel agrees with Mr Coath's response<sup>74</sup> which states:

*The setting of car parking rates for 1 and 2 bedroom dwellings separately recognises the typical differences in car ownership between these dwelling types*

*As such it requires an appropriate parking provision in the instance that a development provides only 2 bedroom dwellings*

*In the instance that a mix of dwellings exist within a residential development such flexibility could still be reasonably provided in allocating car parking between dwellings.*

Finally, the Panel endorses the concept of a Parking Overlay with two schedules, and the Decision Guidelines incorporated into each schedule.

### **8.2.5 Bicycle Parking**

Dr White (37) quoted Recommendation 16 in the GTA Study:

*It is recommended that at a minimum the provision of bicycle parking be provided in accordance with the rates set out within Clause 52.34. Alternatively, the empirical bicycle parking rates set out within the Australian Bicycle Council's handbook developer fact sheet (which typically recommends a greater level of bicycle parking be provided) should be considered to determine an appropriate bicycle parking provision dependent on land use type.*

Dr White questioned why there is no reference to bicycle parking in the Parking Overlay.

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<sup>74</sup> Chris Coath evidence statement, page 18

## Discussion

In response to this issue raised by Dr White, Mr Coath confirmed the PO1 and PO2 do not refer to bicycle parking and the default provisions of clause 52.34 would apply. The Panel supports this position.

As the Australian Bicycle Council's developer fact sheet was not exhibited with the Amendment, and was not tendered in evidence, the Panel is unable to consider it.

## 8.3 Conclusions

### The Panel finds:

- Council must take the lead in setting broad design guidelines for traffic generation and parking demand, and ensuring that each individual development contributes its share of parking space, either on-site or by contribution to municipal schemes.
- Steps which the Council could take include:
  - continuing to liaise with VicRoads to ensure that, as far as possible, through traffic which has no origin or destination within the FCAA should be kept out of the central area;
  - continuing to liaise with VicRoads to ensure that the highways, main roads and local roads within the FCAA have alignments, widths and intersection treatments such that they have sufficient traffic capacity for current and future development;
  - continuing to liaise with the City of Melbourne and government departments with a view to improving the connection of bicycle infrastructure across the Maribyrnong River;
  - continuing to liaise with Public Transport Victoria with a view to extending the tram network westward from Docklands to Footscray;
  - reviewing the bicycle parking provisions of Clause 52.34 of the Maribyrnong Planning Scheme after five years to determine if a higher ratio of bicycle parking needs to be provided in new developments;
  - reviewing the operation of PO Schedules 1 and 2 after five years to determine if changes to the Tables are necessary.

## 8.4 Recommendations

### The Panel recommends:

- 1 The ACZ1 be amended as follows;
  - a At Clause 5.3-4, insert the following Note regarding Victoria University:
    - i *Note: While Victoria University is excluded from the Activity Zone Schedule, the objectives and guidelines have been included in the schedule to provide guidance in relation to development within and surrounding the Victoria University sites.*
  - b Amend the Table in Schedules 1 and 2 to the Parking Overlay to:
    - i *For all other Uses listed in Table 1 of Clause 52.06-5, the number of car parking spaces required for a Use shall be calculated by using the Rate in*

***Column B of that Table, and the resulting requirement shall be the minimum.***

## 9 Heritage

### 9.1 The Issue

There were a range of submissions that supported the use of the Heritage Overlay and its schedule to protect buildings of heritage significance. Conversely a submitter has requested the deletion of the overlay from one particular site.

### 9.2 Evidence and submissions

Council advised there are three ways in which the Amendment acknowledges the need to recognise and protect significant heritage elements and character of the centre. These are:

- The application of new individual heritage overlays to 11 sites;
- The revision of three existing heritage overlays from archaeological overlays to architecture and archaeological overlays. The Historical Archaeological Management Plan (an Incorporated Document) has been updated to reflect this change.
- The application of individual heritage overlays to two sites that are currently within a heritage precinct.

The FSP and ACZ1 also contain specific objectives to protect heritage elements. The following post-exhibition changes to the ACZ1 were supported by Council in responding to the submissions:

- An additional design and development built form guideline at clause 4.4 which seeks to ensure that new development that adjoins heritage buildings responds appropriately according to the three criteria set out<sup>75</sup>;
- An additional strategy at clause 5.2.4 (Station Precinct) to ensure that development embraces the historical and present day significance of the Footscray Railway Station<sup>76</sup>; and
- A revision to one of the Precinct 1 guidelines to note that it also applies to buildings not in a transition area, but which abut a heritage overlay<sup>77</sup>.

The submission (No 20) from Best Hooper on behalf of the Motto Towers Pty Ltd (owner of the Belgravia Hotel at 236 Nicholson Street) sought the deletion of the proposed Heritage Overlay 206 as a development had been approved that did not retain the building and a building permit had been issued for its demolition. On the basis of these approvals Council informed the Panel it supported its deletion.

### 9.3 Discussion

The FCAA has many significant heritage buildings. The Panel commends Council on progressing heritage work for the FCAA and incorporating a greater level of protection for buildings and places than currently provided. The Panel accepts the deletion of HO206 given its particular circumstances and other post-exhibition changes identified above.

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<sup>75</sup> In response to Submissions 21, 23, 29, 36 and 38

<sup>76</sup> In response to Submission 23

<sup>77</sup> In response to Submissions 21, 23, 29, 36 and 38

## 9.4 Recommendations

The Panel recommends:

- 1 The ACZ1 be amended as follows:
  - a At Clause 4.4, add the following dot point at the end of the General built form guidelines:
    - i *New built form in transition areas should provide a transition in scale from larger buildings to adjacent areas with smaller scale built form.*
    - i *Ensure heights of buildings located within transition areas are at the lower end of the preferred height range.*
    - ii *Ensure new development that adjoins heritage buildings:*
      - *Has regard to the height, scale, rhythm and proportions of the heritage buildings including characteristic, fine grain frontage width.*
      - *Locates the greatest massing away from heritage buildings and responds to the lower scale of adjoining heritage buildings.*
      - *Has a complementary scale and façade sensitive to the adjoining heritage building.*
  - b At Clause 5.1.4 amend the 6<sup>th</sup> dot point as follows:
    - i *Buildings in areas identified as Transition Areas should be designed to make an appropriate transition in height, scale and built form between the higher scale built form and the sensitive interface with lower scale residential buildings. This also applies to buildings not in a transition area but which abut a heritage overlay.*
  - c At Clause 5.2.4, add the following dot point:
    - i *Development should embrace the historical and present day significance of the Footscray Railway Station and adjoining landscaping including the unique 1899 V-junction station that has since served as a major civic building and focal point for Footscray.*
2. Delete Heritage Overlay 206 (HO206) from the Heritage Overlay schedule.

## 10 Infrastructure Provision and Development Contributions

### 10.1 The Issue

Several submitters identified the need for the provision of additional infrastructure if the development facilitated by the Amendment is to proceed. Others suggested that such additional infrastructure should be paid for by contributions from those developers who benefit from such infrastructure.

It is necessary to distinguish between infrastructure which is normally provided by contracted agencies for a fee ('utilities' or 'services'), such as reticulated electricity, gas, water and sewerage; and public infrastructure generally provided by the local council, such as roads, footpaths, street lighting, parks and playgrounds. It is mainly the latter which is considered in this chapter.

There is also one issue arising from public utilities, namely the availability of high pressure gas, which is addressed below.

### 10.2 Evidence and submissions

Council in its opening submission referred to earlier studies, which had identified four priority components of community infrastructure as being required in the FCAA:

- A community hub (not defined)
- An early years hub
- Public meeting spaces and facilities
- An arts facility.

Council also noted that, under the present Developer Contributions Overlay Schedule 6 (DCPO6), developers of new dwellings within the FCAA are required to pay a contribution of \$450 per net new dwelling to the Council for provision and maintenance of community facilities. Under the DCPO6:

*The Plan applies to all land located within the Maribyrnong City (south of Ballarat Road) Community Infrastructure Development Contributions Plan area, generally bounded by Sunshine Road, Ashley Street, Suffolk Street, Thompson Street, Ballarat Road, Farnsworth Avenue, Maribyrnong River, Francis Street, Hyde Street, Westgate Freeway, Cawley Road, Hardie Road, Cemetery Road, Geelong Road and the Newport-Sunshine Railway line.*

Council wishes to update the Overlay, and increase the contribution rate, but is waiting for the Minister for Planning to respond to the recent review of developer contributions.

Mr Brewster (14) raised the issue of electricity, water/sewerage and garbage collection, asking how the increased demand will be met and whether the authorities have been asked to *plan for this increased load in a small space inside an old urban area? How much disruption are we to face in the foreseeable future?*

Hobsons Bay City Council (34) expresses concern that *significant and rapid growth within the FCAA could stretch existing resources, placing pressure on adjacent facilities, including those*



*in Hobsons Bay ..... Maribyrnong City Council must be provided with additional resources through developer contributions and State Government funding to ensure that adequate facilities are delivered as part of the redevelopment.*

Mr Burgess (36) made a similar point, with particular reference to Precincts 2 and 5, where the Minister for Planning is joint Responsible Authority. He notes:

*.....if the Minister is going to be the Responsible Authority, the State needs to provide funding for community infrastructure. It is very easy to issue approvals and not be accountable for the consequences – the Minister for Planning must ensure that adequate community infrastructure or funding is provided. Maribyrnong City Council cannot be left under-resourced in this area.*

The issue of availability of high-pressure gas in the FCAA is not specifically addressed in the Amendment. It is described in the *Footscray Structure Plan Draft for Public Consultation 2013*<sup>78</sup>:

*. . Footscray is supplied with low and medium pressure gas. No high pressure gas is available. . . This is a critical issue for developers wanting to use equipment such as boilers, hydronic heating, large commercial kitchens and co-generation/tri-generation facilities. As a result, new developments may be forced to use only electrically powered cooling, heating, hot water and cooking solutions, which are less desirable energy solutions compared to natural gas.*

There were no submissions on this issue.

### **10.3 Discussion**

The Panel agrees that the provision of public infrastructure to a high standard should go hand in hand with the sort of development facilitated by the Amendment. Whether new infrastructure should be funded entirely from developers of new developments or from overall rate revenue, or a combination of the two, is a matter for legitimate debate.

The Panel notes that the Council owns very little land within the FCAA, and is not in a position to take the lead in sponsoring major pieces of public infrastructure. It will have to rely on developers either making space available within their developments, or making funds available with which the Council may purchase appropriate buildings or sites.

The Panel understands that, while the Advisory Committee on Standard Development Contributions has made two reports to the Minister (Dec 2012 and May 2013), the Minister has not yet made his decision. We acknowledge the Council's reluctance to set new developer contributions in advance of the Government's decision, and note Council's intention to respond to the decision when it is made.

Practice Note 56 *Activity Centre Zone* suggests that, where a DCPO already exists, it may continue in parallel with an ACZ.

The Panel regards the absence of high pressure gas supply as a significant constraint for high-rise residential development and the ability to meet ESD requirements as these types of

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<sup>78</sup> Page 32

development would need to rely solely on electrical supply from the grid or other generation sources. However it is beyond the scope of this Amendment to address this regional infrastructure need.

#### **10.4 Conclusions**

**The Panel supports the Council’s intention to review the DPCO framework once the results of the review are known, and notes that higher contribution levels will assist in meeting some of the core infrastructure needs. Other steps which the Council may wish to consider include:**

- **Continuing to assess the need for new and updated public infrastructure within the FCAA.**
- **Liaising with the relevant authorities with a view to having high pressure gas available within the FCAA, or at least the Precincts earmarked for high-rise development, in parallel with, and not after, such development.**

# 11 Open Space

## 11.1 The Issue

Many submissions raised the shortage of open space in the present central area of Footscray, and expressed concern that the redevelopment facilitated by the Amendment would exacerbate this shortage.

The City of Maribyrnong, with its extensive river frontage, is reasonably well provided with public open space, but it is unevenly distributed throughout its municipal area. Major facilities, such as Whitten Oval (West Footscray), Footscray Park and the Maribyrnong Aquatic Centre, are some distance from the FCAA.

This chapter will focus on local public open space, where residents both old and new can kick a football, exercise a dog, or generally enjoy the open air. It does not cover private open space, which is regulated by other planning controls.

## 11.2 Evidence and submissions

Ms Rawson (9) states that she is *'really pleased to see the innovative ways you're trying to create public space in small areas'*. She goes on to call for community gardens for apartment dwellers, suggesting the Raleigh St car park as a site.

The Port of Melbourne Corporation (13) is generally supportive of the Amendment, but wishes to see the Maribyrnong River railway line (or at least the reservation) retained from south of Shepherd Bridge, to be re-connected to the network via a proposed new bridge over the River. The effect of this is that the section of rail track from Shepherd Bridge to Hopetoun Bridge could be redeveloped as a walking or cycle track.

Mr Brewster (14) notes *there are no new parks or green spaces for the western edge of the proposed plan*.

Mrs Hawkins (15), a resident of Walter Street, asks that, if the bus depot site is to be redeveloped, that it be developed as a communal playground or park.

Mr Burgess (36) considers that *all land used as a park should be zoned PPRZ [and not ACZ] to ensure its on-going use as a park*. He notes that Council is currently reviewing the Open Space Strategy 2006, but believes that many of its conclusions are still valid. In particular, he considers that no waiver of open space or other developer contributions should be contemplated; and that a designated park should be identified in Precinct 5 (Joseph Road).

Dr White (37) considered *there is a dramatic omission of public open space provision to go along with the massive development proposed in the FCAA. . . Links to open spaces are currently poor . . . For example, the extremely poor access to Footscray's major open space, Footscray Park, which is cut off by the Princes Highway [sic] . . . Though there are many 'potential links' listed in each of the precincts, there is no commitment at all to any of these, and seemingly no incentive method set out . . . that would facilitate such links*.

In response, the Council referred to its officer's report<sup>79</sup> which states:

*Two new plazas are planned for the Joseph Road Precinct, in addition to the existing open space along the River. The ACZ encourages new development to contribute to public open spaces and the public realm. Council anticipates that when the State Government finalises a new development contributions regime for Victoria further work will be possible on development contributions in urban renewal areas.*

Mr Langenheim (38) notes that a lack of open space was identified as an issue for Amendment C90, and submitted it is not clear that this issue has been addressed in Amendment C125. He adds that *public open space is what office workers use to eat their lunch . . . and get some sun*. He also notes that *much reliance is placed on the consolidated open space against the Maribyrnong River – this space, while large, is also heavily sloped and close to water (making it unsuitable for ball games), it's very windy, subject to flooding and very difficult to access with children ..... It's disconnected from all other Footscray activities*.

Submitters 54, 55, 56 and 57 state succinctly *each Precinct should have a Park*. Submitter 57 goes on to add *or recreation area with children's playground and sufficient facilities for bikes (eg bike lanes)*. Submitter 60 would like to see the Irving St car park redeveloped as an open space, park or recreational site. They would also like to see more trees in streets and public areas.

In response, the Council referred to its officer's report<sup>80</sup> which states:

*The need for more open space close to major activities in Footscray is acknowledged. As in many inner urban areas, space is limited. The FCAA City Edge Masterplan includes several new plazas near the commercial areas on Council-owned land, and plans for pocket parks and playgrounds on found space in streets, such as on verges and median strips.*

At the Panel Hearing, Council added:

*Council is also currently developing an Open Space Strategy that recognises increased population as an influence on open space provision.*

### **11.3 Discussion**

The Panel shares the concern of several submitters that the Amendment does not go far enough in ensuring that sufficient public open space will be available, at locations convenient to each Precinct. A plaza within a building development is no substitute for true outdoor open space. However, the Panel also recognises that it is extremely difficult to 'retro-fit' public open space to current standards into an older, developed area, and that more innovative solutions must be found. Better connections to existing open space, for example in the arts and river precincts, may also assist.

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<sup>79</sup> Page 28

<sup>80</sup> Page 41

The Panel is also concerned that playgrounds in verges and median strips may present traffic hazards, particularly to young children. There may be a possibility of public use of, for example, primary school playgrounds after school hours, and the Council should explore such possibilities.

Practice Note 56 *Activity Centre Zone* states that where it is zoned, e.g. PPRZ, it should retain this zoning. It also implies that, where land is not already zoned PPRZ at the time of creation of the ACZ, it should form part of the ACZ and not be re-zoned. The Panel supports the Council's adoption of this guideline.

## **11.4 Conclusions**

**The Panel finds:**

**Council should take the lead by completing the review of the 2006 Open Space Strategy to:**

- **Identify further public open space opportunities within or proximate to the FCAA;**
- **Where appropriate, consider using the Public Acquisition Overlay as a mechanism to secure new sites/land;**
- **Negotiate with the owners of private open space to make such space available to the public under certain conditions.**

## 12 Environmental Site Assessment

### 12.1 The Issue

The ACZ1 includes a requirement that, in applying for a permit to use land (in any precinct) the applicant must supply certain information to the Responsible Authority. For applications for a change of use, development or buildings and works on sites identified (by the Council) as potentially contaminated land, as listed in a Table in the Schedule, an Environmental Site Assessment, detailing the likelihood of contamination, is required. The Table includes 58 sites. The Assessment must indicate whether a full Environmental Audit is required.

The issue is whether it is reasonable to impose a requirement for an environmental site assessment on all sites listed in the Table, without regard to the type of development proposed.

### 12.2 Evidence and submissions

Victoria University (26) requested that its land at 70 – 100 Ballarat Road be deleted from the Table, as it is not proposed to be rezoned to the ACZ. Council has accepted this.

Meinhardt on behalf of Building Masters (32) (the owner of 34 Moreland St Footscray in Precinct 4), seeks a more transparent and less onerous application process for potentially contaminated land. It requests a copy of the Council's rationale for listing the 58 sites.

Meinhardt refers to the State Government's recent (April 2013) response to the report of the Advisory Committee on Potentially Contaminated Land, and asks why the precinct-wide approach recommended by the Committee has not been adopted in this instance, with the onus (and expense) instead being placed on individual site owners.

The Council Officer's report<sup>81</sup> states:

*A number of other sites that have been identified as being potentially contaminated have been listed in the ACZ Schedule, and are required to include preliminary environmental site assessments as part of future planning applications. The listed sites were identified by an environmental consultant (ERM) on the basis of historical and current zonings and current land uses.*

The ERM Report, dated 3 June 2013, was provided to the Panel and other parties<sup>82</sup> to the hearing in response to a Direction from the Panel. Its authors were not called to give evidence at the Panel hearing. The Report explains that the consultants were engaged to:

- *Undertake a desktop review of the presence of potentially contaminated land within the CAA. Based on this review, provide a list of potentially contaminated sites in the CAA, and make recommendations as to which are appropriate to be included in the EAO; and*
- *Provide advice with regard to appropriate planning mechanisms which can be used to ensure that potentially contaminated land not included in an EAO*

<sup>81</sup> 22 Oct 2013 at page 13 of 272

<sup>82</sup> Maddocks covering letter for evidence distribution dated 2 December 2013

*is appropriately assessed and remediated (if required) to the extent necessary for the proposed land use and development.*

The Council's original list included 38 properties; ERM (the consultants) identified another 23, giving a total of 61 sites. The Consultants took the combined list of properties, and classified each as 'very likely', 'likely', 'possible' or 'unlikely' to be contaminated. The majority were classified as 'unlikely' to be contaminated. The Consultants stopped short of drafting the final clause or table, and it would appear that the wording as exhibited was prepared by Council officers. The Council appears to have incorporated all properties (except the nine included in the EAO) in the Table as requiring preliminary site assessment, despite their 'unlikely' classification<sup>83</sup>.

In response to Submission 32, the Council officer's report<sup>84</sup>, states:

*The preliminary site assessment requirement is considered to provide a minimum level of information to Council to enable it to meet its obligations to protect the public from potential deleterious effects of contamination.*

### **12.3 Discussion**

The Panel notes that, of 58 potentially affected properties, only one owner has queried the imposition of an Environmental Site Assessment. Building Masters did not seek to be heard at the hearing and therefore did not have the opportunity to receive the ERM report. Notwithstanding this the Panel is satisfied the selection process used was appropriate in lieu of more detailed site assessments and consistent with the principle to act with caution in regard to potentially contaminated land, particularly where sensitive uses may be proposed. As a document submitted to the Panel, the ERM report is now public and should be provided to any submitter that did not attend the hearing if it is requested.

### **12.4 Conclusion**

**In the absence of any evidence as to the likelihood of any particular site being contaminated, or as to the cost of the Environmental Site Assessments being called for, the Panel prefers to err on the side of caution, and leave the wording of Clause 6.0 of the Schedule to the ACZ as exhibited, subject to minor amendments as agreed elsewhere.**

### **12.5 Recommendations**

**The Panel recommends:**

**1 The ACZ1 be amended as follows:**

**a At Clause 6.0, delete '70 – 100 Ballarat Road' from the Table.**

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<sup>83</sup> Some properties shown as one in the ERM Report are shown as two in the Table, so the numbers do not balance exactly.

<sup>84</sup> Page 19

## 13 Master planning of large sites

### 13.1 The Issue

The Panel provided Council with a Direction to elaborate on how significant key sites like the Bus Depot site would be master planned prior to a permit process commencing.

### 13.2 Evidence and submissions

Council considered<sup>85</sup>:

*.... that the master planning tool could be of benefit, particularly in the case of the Bus Depot site given its proximity to residential development ..... However Council does not consider that master planning is a tool which is necessary or required in respect of the broader FCAA precincts, including the Joseph Road Precinct which has already been the subject of a number of development applications ..... Despite the points raised regarding master planning by Mr McPherson in his evidence, there is no provision in the ACZ1 for a master planning process and has never been Council's intention or expectation that this would be required..... Furthermore given the fragmented nature of the landholdings within the FCAA, including within the individual precincts, Council considers that there are few opportunities where the benefits of master planning could be realised in the remainder of the centre.*

In its closing submission Council provided two options to address master planning of sites; either apply a DPO to the site or insert the need for a development plan before a permit is granted in the text of the ACZ1. Council considered *at first blush the idea certainly seems sound. However the likely candidate sites are probably not core area per se; they are just large sites. Nevertheless, officers are open minded to the issue.*

### 13.3 Discussion

The Panel agrees with Council that master planning in areas with multiple ownerships, subdivision patterns and desires for development is problematic. However for key sites, the Panel considers there would be benefit and observes the master planning for the Ryco site (Amendment C122) seemed to be a thorough and well accepted approach to a large site. The Bus Depot is the obvious site, with its residential interfaces. Without an ACZ the normal approach would be to apply the DPO. The Panel agrees with the second option of Council that text should be added to the ACZ1 to require a Development Plan for the Bus Depot site prior to the issue of the planning permit. This is countenanced in the Clause 37.08-6 (ACZ) which states that *a schedule may include requirements relating to .... any other requirement or guidelines relating to design or built form of new development.* The precise wording of this new text is guided by this recommendation however if Council believes other matters should be addressed it can be added.

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<sup>85</sup> Council submission, page 42, paragraphs 126-129



## **13.4 Conclusions**

The Panel concludes that given the context of the Bus Depot site there is a need for a Development Plan to guide its eventual development.

## **13.5 Recommendations**

The Panel recommends:

**1 The ACZ1 be amended as follows:**

**a At Clause 6.0 add the following new first paragraph:**

*i Prior to the issue of a planning permit for development at the Bus Depot site in Precinct 6B, a Development Plan must be prepared to address the potential built form of the site, its graduation to lower built form at its residential interface, access points or any other matter the responsible authority thinks fit.*

## 14 The drafting of the ACZ1

### 14.1 The Issue

The ACZ1 is a significant statutory document and was 38 pages long at exhibition. It is inevitable that edits and adjustments to this document and others may occur in response to submissions and issues raised at the hearing.

This chapter documents those changes that have been suggested by the Panel, Council and others. Generally the changes have been accepted by the Panel.

### 14.2 Evidence and submissions

Council provided a post-exhibition version of the ACZ1 with changes tracked in response to submissions received. Council also, in its closing submission provided a consolidated list of issues, edits and improvements that were put forward during the course of the hearing.

### 14.3 Discussion

The Panel does not wish to review each of these in detail, but simply notes that improvements such as these are inevitable and consider that overall it will result in an improved statutory provision.

### 14.4 Recommendations

The Panel recommends:

- ii* The ACZ1 be amended as follows:
  - b** Amend the title of the ACZ1 to 'Footscray Central Activity Area'.
  - c** Insert a new Footscray Framework Plan and precinct maps as provided in the post-exhibition version.
  - d** Amend the legend of all precinct maps as it relates to transition areas to 'transition area to lower built form'.
  - e** At Clause 2.0, amend the 1<sup>st</sup> dot point under Housing by listing the full name of the FCAA.
  - f** At Clause 2.0, amend the 9<sup>th</sup> dot point under Housing to:
    - i* *To ensure new housing developments address potential amenity impacts including noise, vibration and emissions and implement measures to attenuate any adverse impacts for future residents.*
  - g** At Clause 2.0, amend the 2<sup>nd</sup> dot point under Built Form to refer to high architectural and urban design quality instead of 'highest'.
  - h** At Clause 2.0, amend the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> dot points under Environmentally Sustainable Design (ESD) to:
    - i* *To support development that reduces and manages energy consumption and greenhouse gas emissions, and employs active systems for ESD performance that contribute in a significant way to local, national and*

- international efforts to reduce energy usage and greenhouse gas emissions.*
- ii To encourage water conservation, ensuring that water resources are managed in a sustainable way.*
  - iii To encourage the provision of landscaping that considers the provision of habitat, green spaces, green roofs and roof top gardens climate control and reduces the 'urban heat island' effect.*
- i** At Clause 3.0, Table of Uses Section 2, add Convenience Restaurant with the condition 'the site must adjoin or have access to, a road in a Road Zone'.
  - j** At Clause 3.0, Table of Uses Section 2, delete 'Cinema'.
  - k** At Clause 3.0, Table of Uses Section 2, allocate 'Industry' in correct alphabetical order and add the condition:
    - i Must not be for a use listed in the table to Clause 52.10 of the Maribyrnong Planning Scheme.*
  - l** At Clause 4.3, indent dot points as appropriate.
  - m** At Clause 4.4, under Dwellings, state that a *development should meet the standards and must meet the objectives of Clause 54.*
  - n** At Clause 4.4, delete the heading *Built form guidelines in commercial areas.*
  - o** At Clause 4.4, add a new sub-section titled Environmentally Sustainable Design as follows:
    - i Ensure development demonstrates best practice, and identifies the level of sustainability performance standards to be adopted and demonstrates the means by which the agreed level of sustainable performance standards will be achieved.*
    - ii The building design and layout of new development should provide good solar access and daylight opportunities.*
    - iii Encourage new development to explore options to reduce the amount of waste generated and encourage increased reuse and recycling of waste materials.*
    - iv Encourage building materials conservation, including consideration of their environmental impact.*
    - v Indoor environmental quality and healthy internal environments should be considered from the outset through the layout and form of buildings.*
    - vi Encourage ongoing monitoring and post-occupancy assessment of ESD measures.*
  - p** At Clause 5.1-2, amend the 12<sup>th</sup> dot point to:
    - i To encourage a transition to neighbouring residential areas.*

- q** At Clause 5.1-3, amend the preferred maximum building height for sub-precincts 1A, 1B and 1C by adding '**2-4 storeys at street frontage**'.
- r** At Clause 5.1-4, amend the 6<sup>th</sup> dot point by adding at the end:
- i This also applies to buildings not in a transition area but which abut a heritage overlay.*
- s** At Clause 5.2-4, amend the 7<sup>th</sup> dot point by adding at the end:
- i .... and enable safe and direct access to the station for pedestrians, cyclists and public transport users.*
- t** At Clause 5.4-3, amend the 6<sup>th</sup> dot point by adding at the end:
- i .... and port related activities.*
- u** At Clause 5.4-4, amend the 7<sup>th</sup> dot point by adding at the end:
- i .... and port related activities.*
- v** At Clause 5.6-2, add anew 6<sup>th</sup> dot point as follows:
- i To encourage residential development that appropriately responds to surrounding land uses and provides good amenity for future residents.*
- w** At Clause 5.6-4, amend the 2<sup>nd</sup> dot point as follows:
- i Buildings within Transition Areas should provide appropriate reductions in building height and mass towards the existing lower scale buildings at the interface and should not exceed 3 storeys within the transition area.*
- x** At Clause 6.0, amend the 8<sup>th</sup> dot point as follows:
- i An assessment of the likely effects of railway noise and vibration on the proposed use and measures to attenuate any adverse effects for applications within Precincts 2, 4, 5, 6 South, 7 West and 7 East.*
- y** At Clause 6.0, add the following new dot points:
- i An Adverse Amenity Impacts Report(s) prepared by a suitably qualified person(s) to the satisfaction of the responsible authority and the Department of Transport, Planning and Local Infrastructure for applications within Precincts 4 and 7East as appropriate that identifies all potential adverse amenity impacts from the use and operation of the Bunbury Street Railway Tunnel and Railway Line. If the report identifies that the proposed use and/or development may be adversely affected, specific recommendations must be provided with the report for appropriate measures to ensure the proposed use and/or development is not adversely affected by the identified impacts.*
- ii A Construction Management Plan (CMP) detailing how the development of the land will be managed to ensure that the amenity and use of the nearby area is not detrimentally affected. The CMP must satisfy the requirements of Public Transport Victoria and Vic Track to ensure that any*

*development of the land, including site works, excavation and earthworks, does not have any impact on the Albion/Werribee Rail Corridors, Bunbury Street Railway Tunnel and Railway Corridor and associated infrastructure.*

- z** At Clause 6.0, change the now last dot point by using lower case for the sub points.
  - aa** At Clause 6.0, remove the indentation of the last dot point.
  - bb** At Clause 8.0, add the following new dot point at the end:
    - i** *The views of Vic Track and Public Transport Victoria*
  - cc** At Clause 9.0, place Precinct 7 in the Category 2 - medium limitation advertising category.
- 2** Amend the labelling of the sub-precincts in the Footscray Structure Plan 2013 to be consistent with the terminology in the ACZ1.

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## Appendix A List of Submitters

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## List of Submitters

No.	Submitter
1	Anthony Millman
2	Simon Zhi Liang Liao
3	Vanessa Macedo
4	Catherine Broadbent
5	Sylvie Leber
6	Stephanie Warren
7	S Vella
8	Unknown
9	Jane Rawson
10	Tony Ho
11	Ben Speth
12	John Tang
13	Port of Melbourne
14	Neil Brewster
15	Kelly Hawkins
16	Sarah Law
17	Places Victoria
18	Western Region Health
19	Hung Tao
20	Motto Towers
21	Hugh Bassett and Irene Lobaza
22	Katrina Riley
23	National Trust - Inner West
24	Melbourne Airport
25	Moonee Valley City Council
26	Victoria University
27	Sperton Pty Ltd
28	Le Mans Toyota
29	Susan and Alan Murray
30	Nick Pitliangis

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31	Grocon Pty Ltd
32	Ali Abdou
33	Charles and Samantha Hardman
34	Hobsons Bay City Council
35	Paul Wood and Simon Ellis
36	Justin Burgess
37	Marcus White
38	Nano Langenheim
39	Russell Griggs and Donna Hannan
40	Adrian Kennedy
41	Lauren Lees
42	John Tebbutt
43	Mazzabug
44	G2 Urban Planning (Forges and Footscray Plaza)
45	Eamonn Tynan
46	SJB Planning – 1-3 Pickett Street Footscray
47	Contour Consultants - Dobinson Nominees
48	Frank Spano
49	Timothy Brown
50	Shane Freer
51	Footscray Historical Society
52	Wendy Tanner
53	Leon Betheras
54	Jasmine Sandhu
55	Suneet Sandhu
56	Josipa Herceg
57	Tony Mohorovic
58	Darren Camilleri
59	Katie Hall
60	Desley Renton and Steven Thimois
61	Gerard Holwell Pty Ltd - St Moncia's Primary School
62	Dexel Engineering
63	Chris Wheelhouse



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64	Mike Ledingham
65	Agneta Hjort
66	Katrina Lebon
67	Mary Glab
68	Public Transport Victoria
69	Bryn Davies
70	Planning Property Partners – Devcorp Pty Ltd
71	Department of Transport, Planning and Local Infrastructure

## Appendix B Document List

Document No.	Date	Description	Presented by
1	9/12	Planning Authority submissions, appendices and map (A3)	MCC
2		C105 Schedule 2	MCC
3		Joseph Road Precinct PDP report and map	MCC
4		C110 PDZ Schedule 1	MCC
5		Correspondence re Am C90	MCC
6		Joseph Road Structure Plan, Peck von Hartel	MCC
7		Copy of letter from PTV dated 5 Dec 2013	MCC
8		Copy of PowerPoint presentation, Simon McPherson	MCC
9		Draft Master plan, Joseph Road	MCC
10		VCAT decision P1338/2008	MCC
11		PDP report August 2008 "Footscray Transit City Planning Review"	MCC
12		Footscray Station PUDF (A3)	MCC
13	10/12	Design Review Panel Report 2 Hopkins St (Confidential)	MCC
14		Grocon Submission	Grocon
15		Officer's Report 30 Apr 2013 & attachments	Grocon
16		McNab Ave Development Application	Grocon
17		Footscray CAD CDP May 2010	Grocon
18	10/12	Mark Sheppard PowerPoint presentation	Grocon
19		Officer Report 30 Apr 2013	MCC
20		Vaughan Connor PowerPoint presentation	Dobinson

Document No.	Date	Description	Presented by
21		Submission	Dobinson
22		Photographs	Dobinson
23		Belgravia Hotel	Dobinson
24		MCC Submission to 2 Hopkins St Design panel	MCC
25		Ben Speth Submission	Ben Speth
26	11/12	Submission and photos	G2 Urban Planning
27		Planning permit, Footscray Plaza	G2 Urban Planning
28		Submission	Devcorp
29		C105 Incorporated Plan (A3)	Devcorp
30		St Monica's Shadow diagrams (A3)	Holwell
31		Submission	Nat Trust
32		Letter DPCD – MCC re McNab Ave site	MCC
33		Submission	Camilleri & Lees
34		VCAT decision P333/2012	Camilleri & Lees
35		Extract from Panel report	Camilleri & Lees
36		VCAT decision P3671/2012	Camilleri & Lees
37		Contour plan & photo Joseph Road	MCC
38	13/12	Correspondence re 2 Hopkins Street	MCC
39		Network Operations Plan (A3)	MCC
40		Forecast of activity in Footscray CAD	MCC
41	13/12	Forecast of population in Footscray CAD	MCC
42		Submission and attachments	Wood & Ellis

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<b>Document No.</b>	<b>Date</b>	<b>Description</b>	<b>Presented by</b>
43		Submission and attachments	Burgess
44		Closing submission	MCC
45		E-mail from Paul Little re Joseph Road	Devcorp