

**Maribyrnong Planning Scheme Amendment C162mari  
West Footscray Neighbourhood Plan**

**Panel Report**

*Planning and Environment Act 1987*

**2 May 2022**

---

### How will this report be used?

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

The planning authority must consider this report before deciding whether or not to adopt the Amendment.  
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

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

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

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

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

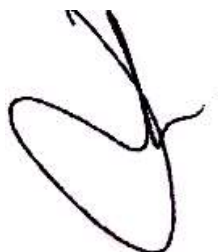
Maribyrnong Planning Scheme Amendment C162mari

West Footscray Neighbourhood Plan

**2 May 2022**



Lisa Kendal, Chair



Jonathan Halaliku, Member

# Contents

	<b>Page</b>
<b>1 Introduction.....</b>	<b>1</b>
1.1 The Amendment.....	1
1.2 Background .....	3
1.3 Procedural issues .....	8
1.4 Summary of issues raised in submissions .....	9
1.5 The Panel’s approach .....	10
1.6 Limitations .....	10
<b>2 Planning context and strategic justification.....</b>	<b>12</b>
2.1 Planning policy framework.....	12
2.2 Other relevant planning strategies and policies .....	13
2.3 Planning scheme provisions .....	14
2.4 Other amendments.....	15
2.5 Ministerial Directions and Practice Notes.....	16
2.6 Evidence and submissions .....	17
2.7 Discussion .....	20
2.8 Conclusion .....	20
<b>3 Land use.....</b>	<b>21</b>
3.1 495-507 Barkly Street, West Footscray.....	21
3.2 Zoning along Warleigh Road .....	26
3.3 Supermarket in Precinct 3 .....	27
<b>4 Built form and character .....</b>	<b>29</b>
4.1 Discretionary or mandatory controls .....	29
4.2 Building heights.....	32
4.3 Neighbourhood character and amenity .....	40
4.4 Protection of heritage architecture .....	45
<b>5 Movement and access.....</b>	<b>47</b>
5.1 The issue .....	47
5.2 Evidence and submissions .....	47
5.3 Discussion .....	48
5.4 Conclusion .....	49
<b>6 Potentially contaminated land.....</b>	<b>50</b>
6.1 The issue .....	50
6.2 The proposal, background and guidance.....	50
6.3 Submissions.....	52
6.4 Discussion .....	52
6.5 Conclusions and recommendations .....	53

<b>7</b>	<b>Licensed gas pipeline</b> .....	<b>54</b>
7.1	The issue .....	54
7.2	Background and relevant policy and legislation .....	54
7.3	Submissions.....	55
7.4	Discussion .....	55
7.5	Conclusion and recommendations.....	56
<b>8</b>	<b>Other issues</b> .....	<b>57</b>
8.1	Social housing.....	57
8.2	Community infrastructure and open space.....	58
8.3	Noise .....	59
8.4	Environmental outcomes .....	61
<b>9</b>	<b>Form and content of the Amendment</b> .....	<b>63</b>

**Appendix A Submitters to the Amendment**

**Appendix B Document list**

**Appendix C Panel preferred versions of the Schedules to the DDO**

**C1 Design and Development Overlay Schedule 7**

**C2 Design and Development Overlay Schedule 8**

**List of Tables**

	<b>Page</b>	
Table 1	Chronology of events .....	3
Table 2	Relationship of precincts in the WFNP and the Amendment .....	6
Table 3	Relevant parts of Plan Melbourne.....	13
Table 4	Zone and overlay purposes .....	14
Table 5	Building height design requirements for each precinct .....	33
Table 6	Summary of discussions and advice from the EPA .....	51

## List of Figures

	<b>Page</b>
Figure 1	WFNP study area – regional context..... 2
Figure 2	Precinct plan..... 2
Figure 3	DDO7 and DDO8 overlay map ..... 3
Figure 4	WFNP Land Use and Built Form Precincts ..... 5
Figure 5	WFEA decision making framework..... 7
Figure 6	Key sites investigated in WFEA ..... 7
Figure 7	West Footscray Inter-war and Post-war Heritage Precincts (Amendment C172mari) ..... 16
Figure 8	West Footscray NAC trade area and surrounding supermarket centres ..... 19
Figure 9	Aerial Photograph of Fabcot Land ..... 21
Figure 10	Preferred maximum heights in the WFNP..... 32
Figure 11	Figure 1 of DDO7 ..... 33
Figure 12	Council updated DDO7 08.03.22 ..... 36
Figure 13	Location plan of area of Heritage Study investigation ..... 45
Figure 14	Existing Licensed Pipeline within West Footscray Village ..... 54
Figure 15	Clause 21.11 West Footscray Activity Centre Framework Plan ..... 64
Figure 16	Barkly Street East and West Footscray Railway Station Precincts Framework Plan..... 65

## Glossary and abbreviations

C1Z	Commercial 1 Zone
Council	Maribyrnong City Council
DDO	Design and Development Overlay
DDO7	Design and Development Overlay – Schedule 7
DDO8	Design and Development Overlay – Schedule 8
DELWP	Department of Environment, Land, Water and Planning
Downer	Downer Group on behalf of AusNet
EAO	Environmental Audit Overlay
EPA	Environment Protection Authority Victoria
ESV	Energy Safe Victoria
Fabcot	Fabcot Pty Ltd

Fabcot Land	495-507 Barkly Street, West Footscray
GRZ	General Residential Zone
GRZ2	General Residential Zone – Schedule 2
Heritage Study	West Footscray Inter-war and Post-war Heritage Precinct Study
Housing Strategy	Maribyrnong Housing Strategy 2018
MD1	Ministerial Direction No. 1 – Potentially Contaminated Land
MD19	Ministerial Direction No. 19 – Preparation and Content of Amendments That May Significantly Impact the Environment, Amenity and Human Health
MUZ	Mixed Use Zone
NAC	Neighbourhood Activity Centre
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Maribyrnong Planning Scheme
PPF	Planning Policy Framework
PPN30	Planning Practice Note 30: Potentially Contaminated Land
PPN46	Planning Practice Note 46: Strategic Assessment Guidelines, August 2018
Practitioner’s Guide	A Practitioner’s Guide to Victorian Planning Schemes
SMS	Safety Management Study
VCAT	Victorian Civil and Administrative Tribunal
WFEA	West Footscray Economic Assessment
WFNP	West Footscray Neighbourhood Plan 2018
VPP	Victoria Planning Provisions

## Overview

### Amendment summary

The Amendment	Maribyrnong Planning Scheme Amendment C162mari
Common name	West Footscray Neighbourhood Plan
Brief description	Implements the land use and built form directions of the West Footscray Neighbourhood Plan 2018
Subject land	Applies to land in Footscray and West Footscray
The Proponent	Maribyrnong City Council
Planning Authority	Maribyrnong City Council
Authorisation	11 September 2020, with conditions
Exhibition	6 November to 14 December 2020
Submissions	Number of Submissions: 43 Opposed, requested changes or further information: 38 (see Appendix B)

### Panel process

The Panel	Lisa Kendal (Chair) and Jonathan Halaliku
Directions Hearing	Video conference, 16 December 2021
Panel Hearing	Video conference, 7, 8 and 9 March 2022
Site inspections	Unaccompanied, 4 March 2022 (Lisa Kendal) and 18 March 2022 (Jonathan Halaliku)
Parties to the Hearing	<p>Maribyrnong City Council represented by David Vorchheimer of HWL Ebsworth Lawyers, called the following expert evidence:</p> <ul style="list-style-type: none"> <li>- Alastair Campbell of Hansen Partnership on urban design</li> <li>- Brian Haratsis of macroplan on economics</li> </ul> <p>Fabcot Pty Ltd represented by Stuart Morris QC of Counsel instructed by Jarryd Gray of MinterEllison, called the following expert evidence:</p> <ul style="list-style-type: none"> <li>- Marco Negri of Contour on town planning</li> <li>- Justin Ganly of Deep End Services on retail economics</li> </ul> <p>Residents of 20 Hewitt Street, represented by Helen Cheng (withdrew prior to the Hearing)</p> <p>Deb Bain-King</p> <p>Arthur Bolkas</p>
Citation	Maribyrnong PSA C162mari [2022] PPV
Date of this report	2 May 2022

## Executive summary

Maribyrnong Planning Scheme Amendment C162mari (the Amendment) seeks to implement the land use and built form directions of the West Footscray Neighbourhood Plan 2018 (WFNP).

The WFNP was prepared to guide growth and development in West Footscray and surrounds. The WFNP is a long term plan that aims to facilitate appropriate land use and built form in the core activity area along Barkly Street and around West Footscray Station. It includes the vision:

A well-connected, vibrant, sustainable and green neighbourhood with inviting open spaces, offering diverse housing choices and facilities that can be accessed safely by all modes of transportation including walking and cycling.

Specifically the Amendment seeks to:

- update the Municipal Strategic Statement to reflect the WFNP and introduce it as a reference document
- rezone selected land in the West Footscray Neighbourhood Activity Centre to apply the commercial zone
- revise and extend design and development provisions in the activity centre, Barkly Street East and West Footscray Railway Station precincts
- identify sites of existing or potential contamination and apply provisions to manage their remediation and redevelopment.

Key issues raised in submissions included:

- land use and activity:
  - whether the Commercial 1 Zone should be applied to 495-507 Barkly Street, West Footscray (Fabcot Land)
  - other issues relating to land zoning
- built form and neighbourhood character:
  - planning provisions should be discretionary or mandatory
  - building heights in the various precincts are too tall
  - a five storey maximum building height for the Fabcot Land is too modest
  - protection of neighbourhood character and amenity
  - protection of heritage architecture
- whether movement and access, including increased pressure on traffic, parking and transport infrastructure, has been adequately considered
- management of potentially contaminated land
- whether the existing licensed gas pipeline has been adequately considered
- other issues including social housing, community infrastructure and open space, noise and environmental outcomes
- form and content of planning provisions.

The Panel accepts the broad strategic justification for the Amendment and considers there will likely be positive environmental, social and economic effects resulting in a net community benefit. The Amendment aims to support additional housing and employment opportunities within close proximity to public transport and services, while strengthening preferred built form and character. The Amendment has the potential to be a key driver of rejuvenation of West Footscray.

The Panel concludes:

- Land use and rezoning
  - It is appropriate for the Panel to consider the proposed rezoning of the Fabcot Land.



- It is appropriate to rezone the Fabcot Land to Commercial 1 Zone, subject to Council satisfying itself that notice requirements are met.
- Built form and character:
  - Building heights and setbacks should be discretionary.
  - The proposed buildings heights are appropriate, subject to the recommendations in this Report.
  - An appropriate building height will need to be determined for the Fabcot Land based on a comprehensive built form analysis, including a context assessment and a site responsive design with consideration of appropriate criteria.
  - The 'Design objectives' in the Schedules to the Design and Development Overlay are strategically justified and appropriate, subject to the recommendations in this Report.
  - The proposed local policy relating to Precinct 4 is strategically justified, and it is appropriate for detailed controls to be developed through a separate strategic planning process.
  - The Amendment will not negatively impact identified heritage architecture.
- Movement and access:
  - The Amendment adequately considers movement and access, in particular the impact of increased development on parking, traffic and transport infrastructure.
- Potentially contaminated land:
  - It is appropriate to apply the Environmental Audit Overlay to the land at 438-440 Barkly Street, Footscray, subject to Council satisfying itself that adequate notice has been given to affected land owners and occupiers.
  - The Explanatory Report should be updated to explain how the Amendment addresses the views of the Environment Protection Authority Victoria.
- Licensed gas pipeline:
  - The Amendment incorporates suitable protections for the licensed gas pipeline, subject to the post exhibition changes proposed by Council.
- The Panel supports the post exhibition changes proposed in Council's final version of the Amendment documents, unless otherwise stated in this Report.

## Recommendations

Based on the reasons set out in this Report, the Panel recommends that Maribyrnong Planning Scheme Amendment C162mari be adopted as exhibited subject to the following:

1. **Rezone 495-507 Barkly Street, West Footscray from the Mixed Use Zone to the Commercial 1 Zone, subject to Council satisfying itself that notice requirements have been met.**
2. **Amend local policy Clause 21.11-6 (West Footscray Neighbourhood Activity Centre, Barkly Street East and West Footscray Railway Station Precincts) to:**
  - a) **Remove reference to the laneways incorrectly referenced in the West Footscray Neighbourhood Activity Centre Framework Plan and Barkly Street East and West Footscray Railway Station Precincts Framework Plan (see Figures 15 and 16 of this Report).**
  - b) **Update the Framework Plan to explain provisions for building height options for larger sites.**

3. Amend Schedules 7 and 8 to the Design and Development Overlay, in accordance with Panel preferred versions in Appendix C of this Report.
4. Amend the Schedule to Clause 66.06 (Notice of Permit Applications under Local Provisions) to include the following notice requirement:

Clause	Kind of application	Person or body to be notified
Schedule 7 to Clause 43.02 (DDO7)	An application for buildings and works on land shown in Figure 2 of Schedule 7 to Clause 43.02.	Owner and licensee of the Footscray to Sunshine gas transmission pipeline.

5. Prior to adoption of the Amendment, update the West Footscray Neighbourhood Plan to:
  - a) Amend the cross sections to reflect changes to the updated built form requirements in the Schedules to the Design and Development Overlay
  - b) Insert a revision date, and ensure the correct version is included as a reference document in the Amendment documents.
6. Subject to Council satisfying itself that notice requirements have been met:
  - a) Apply the Environmental Audit Overlay to 438-440 Barkly Street, Footscray.
  - b) Amend the Explanatory Report to include information about application of the Environmental Audit Overlay to 438-440 Barkly Street, Footscray.
7. Amend the Explanatory Report to explain how the Amendment addresses the views of the Environment Protection Authority.

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to implement the land use and built form directions of the West Footscray Neighbourhood Plan 2018 (WFNP).

Specifically, the Amendment proposes the following changes to the Maribyrnong Planning Scheme (Planning Scheme):

- amend the Municipal Strategic Statement to reflect the WFNP to:
  - update land use and built form policy for West Footscray Neighbourhood Activity Centre (NAC) (Precinct 1) to strengthen its role as the focus for retail, commercial and local services with a residential population in integrated apartment developments
  - introduce new policy for Precincts 2 and 3 to support uses that complement the NAC and facilitate diverse housing opportunities
  - provide guidance on the potential transition of Precinct 4 to residential mixed use development
  - update the municipal framework plans
  - include the WFNP as a Reference Document
  - remove redundant references to the West Footscray Urban Design Framework 2008
- rezone selected land in the West Footscray NAC to Commercial 1 Zone (C1Z)
- inserting Schedule 2 to the General Residential Zone (GRZ2) and apply it to all land in Precinct 2
- rezone land in Precinct 3 to Mixed Use Zone (MUZ)
- revise the Design and Development Overlay (DDO) – Schedule 7 (DDO7) and extend its application to include all land in Precincts 1 and 2, apart from the following properties in Precinct:
  - properties affected by the existing Development Plan Overlay – Schedule 10
  - the rear portion of the Sims IGA supermarket carpark fronting Milton Street
- revise the DDO – Schedule 8 (DDO8) and extend its application to include all land in Precinct 3
- apply the Environmental Audit Overlay (EAO) to:
  - Sims IGA supermarket site at 509-511 Barkly Street, West Footscray
  - land at 8 Cross Street, Footscray.

The Amendment also proposes to correct a mapping anomaly by rezoning all of 45 Hewitt Avenue, Footscray to MUZ to ensure the entire property is in one residential zone.

Maribyrnong City Council (Council) is the proponent for the Amendment.

### (ii) Subject land

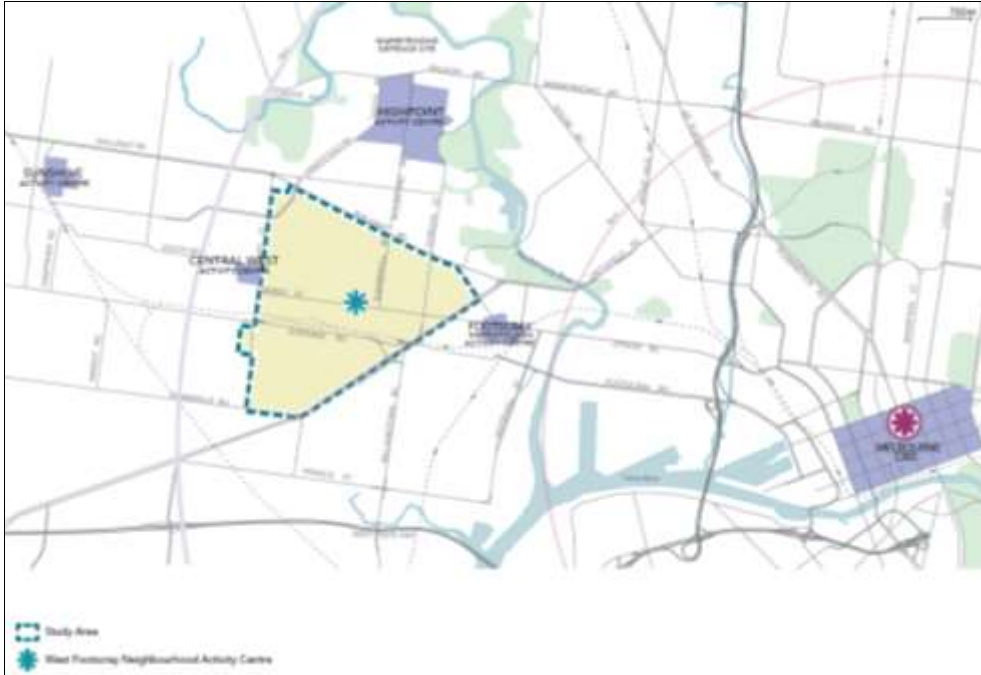
The Amendment applies to land in West Footscray, which is located approximately seven kilometres from the Melbourne central business district (see Figure 1).

The Amendment applies to land within four precincts as shown in Figure 2:

- Precinct 1 - the West Footscray NAC (also referred to as Barkly Village)

- Precinct 2 - Barkly Street East - northern side (northern side of Barkly Street between Summerhill Road and Gordon Street)
- Precinct 3 – West Footscray Railway Station (4, 6 and 8 Cross Street)
- Precinct 4 - Barkly Street East – southern side (southern side of Barkly Street between West Footscray NAC and Whitten Oval).

**Figure 1** WFNP study area – regional context



Source: WFNP, page 11

**Figure 2** Precinct plan



Source: Explanatory Report

The proposed application of DDO7 and DDO8 is shown in Figure 3.

Figure 3 DDO7 and DDO8 overlay map



Source: Amendment C162mari exhibited maps

## 1.2 Background

### (i) Chronology

Council provided details of the strategic work and consultation undertaken in preparation of the WFNP and a detailed chronology of events associated with the Amendment, as summarised by the Panel in Table 1.<sup>1</sup>

Table 1 Chronology of events

Timeframe	Event
<b>Preparation of the WFNP and Housing Strategy</b>	
Late 2016	Preparation of an updated Maribyrnong Housing Strategy (Housing Strategy) commenced
Early 2017	WFNP project commenced
August 2017	WFNP Issues and Opportunities Paper prepared
22 August 2017	Council endorsed the WFNP Issues and Opportunities Paper for community consultation
August to September 2017	Consultation on WFNP Issues and Opportunities Paper
April 2018	West Footscray Economic Assessment (WFEA) prepared by Tim Nott
April 2018	Local Area Traffic Management Study prepared by Cardno
May 2018	Draft WFNP prepared

<sup>1</sup> Document 6, Council's Part A submission

Timeframe	Event
29 May 2018	Council endorsed the draft WFNP for community consultation
June 2018	Consultation on draft WFNP
26 June 2018	Council endorsed draft Housing Strategy 2018
July to October 2018	Final WFNP prepared
30 October 2018	Council endorsed the final WFNP
<b>Preparation and exhibition of the Amendment</b>	
Early 2019	Preparation of draft Amendment commenced
June to July 2019	Early consultation with Environment Protection Authority (EPA)
27 August 2019	Council's City Development Special Committee resolved to request authorisation from the Minister for Planning to prepare and exhibit the Amendment
11 September 2020	Authorisation granted by Department of Environment, Land, Water and Planning (DELWP) with conditions: <ul style="list-style-type: none"> <li>- Refine DDO7 to clarify design objectives and requirements, remove duplication with other sections of the Scheme and correct minor drafting errors.</li> <li>- Create a separate DDO schedule for Precinct 3 (DDO8).</li> <li>- Include the Amendment ordinance in the Amendment Tracking System.</li> <li>- Formally notify the Department of Jobs, Precincts and Regions as part of the exhibition process.</li> </ul>
6 November to 14 December 2020	Public exhibition of the Amendment
<b>Consideration of submissions and referral to Panel</b>	
19 May 2021	Meeting with EPA
May to September 2020	Safety Management Study (SMS) prepared by CNC Group
6 July 2021	Notification to owner of 438 - 440 Barkly Street, Footscray
9 September 2021	Late submission received (submission 43)
9 November 2021	Council's delegate considered all 43 submissions, the SMS and proposed revisions
10 November 2021	Council requested a Panel be appointed
15 November 2021	Panel appointed
17 November 2021	Submitters notified about proposed recommended changes
9 December 2021	Owner of 438 - 440 Barkly Street, Footscray, notified

## (ii) West Footscray Neighbourhood Plan

Council prepared the WFNP to guide growth and development in West Footscray and surrounds. The WFNP is a long term plan that aims to facilitate appropriate land use and built form in the core activity area along Barkly Street and around West Footscray Station. It includes the vision:

A well-connected, vibrant, sustainable and green neighbourhood with inviting open spaces, offering diverse housing choices and facilities that can be accessed safely by all modes of transportation including walking and cycling.

The WFNP supersedes the West Footscray Urban Design Framework 2008 and is designed to respond to the current planning context, with consideration of Plan Melbourne, population and demographic trends, economic growth, development pressures, upgraded West Footscray station and recent strategic work and policies prepared by Council including an updated Housing Strategy which is under preparation.

The WFNP states:

... West Footscray’s population is forecasted to grow from 12,152 in 2016 to 14,247 by 2031\*, with an additional 800 new dwellings forecast\*. Community services, facilities and open space need to respond to the growth of West Footscray and its changing demographics.<sup>2</sup>

The WFNP includes an action to “Prepare and implement a planning scheme amendment to the Maribyrnong Planning Scheme to introduce the zoning and built form guidelines as outlined in this document”.<sup>3</sup>

The Amendment relates to the WFNP Land Use and Built Form Precincts 1 and 2 (see Figure 4). The Amendment then further refined the precincts from two precinct areas into four precinct areas. Council explained the relationship of the two precincts in the WFNP to the four precincts in the Amendment (see Table 2).

**Figure 4** WFNP Land Use and Built Form Precincts



Source: WFNP, page 37

<sup>2</sup> WFNP, page 9. \* Population data and the projections relate to West Footscray suburb boundaries. It is to be noted that the study area contains a small section of Maidstone and Footscray.

<sup>3</sup> Document 6, Council’s Part A submission, page 11

**Table 2 Relationship of precincts in the WFNP and the Amendment**

WFNP Precincts	Corresponding Amendment C162 Precincts
<b>Precinct 1</b> – West Footscray NAC	<b>Precinct 1</b> – West Footscray NAC
<b>Precinct 2</b> – Barkly East/West Footscray station	<b>Precinct 2</b> – Barkly Street East (northern side) <b>Precinct 3</b> – West Footscray Railway Station (4, 6 and 8 Cross Street) <b>Precinct 4</b> – Barkly Street East (southern side)

Source: Council's Part A submission, page 22

### (iii) West Footscray Economic Assessment 2018

The WFEA was prepared to inform the WFNP. It considers external pressures for development that affect land in West Footscray, and the policy environment that affects how sites should be developed to meet community needs.

Specifically it:

discusses economic drivers of change, particularly as they affect the future of several key sites in the area; and provides a framework for deciding whether and how these sites should be rezoned to accommodate new uses. In addition, the report looks at the residential interfaces with local industrial areas and how these may be improved.<sup>4</sup>

The WFEA found the West Footscray NAC plays an important service and employment role for the local and regional community, particularly in the service of food (including culturally specific restaurants), groceries, convenience items and clothing outlets.

The WFEA includes a key finding relating to growth forecasts:

The neighbourhood centre has a local catchment of 9,400 people which is expected to grow to 11,400 by 2041. This growth is forecast here to generate demand for an additional 2,200 sqm of retail and commercial space in the centre over the period, requiring a notional 4,900 sqm of land. Demand could be more if, for example, a higher share of retail spending by residents can be achieved or if more non-retail activity can be attracted.<sup>5</sup>

A 'decision tree' was applied to guide decision making and determine how particular sites should be treated and whether particular proposals will meet policy requirements (see Figure 5).

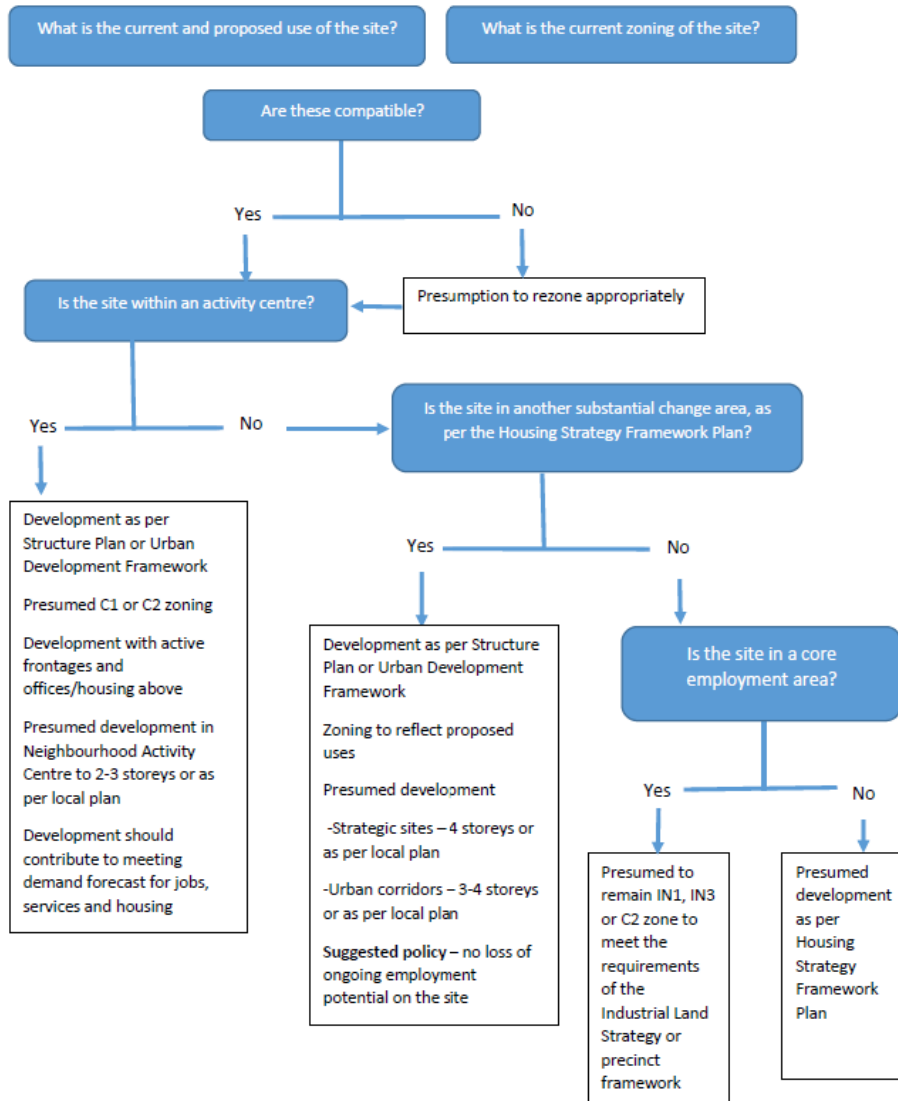
The WFEA includes recommendations on the future zoning and use of six key sites along Barkly Street (see Figure 6). The sites were identified by Council as land which may be under pressure for change.

<sup>4</sup> WFEA, Executive Summary

<sup>5</sup> WFEA, Executive Summary

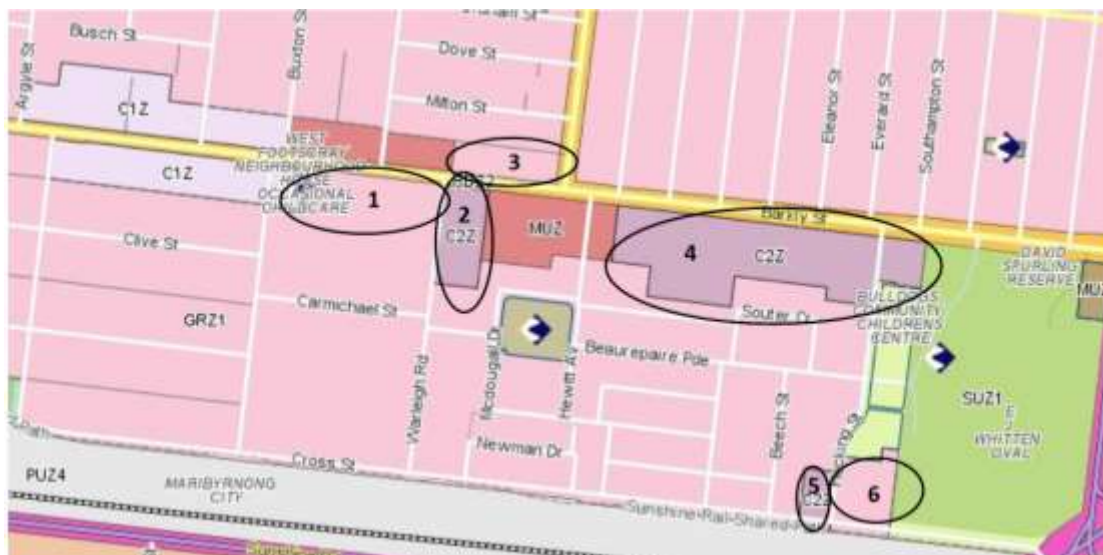


Figure 5 WFEA decision making framework



Source: West Footscray Economic Assessment page 44

Figure 6 Key sites investigated in WFEA



Source: WFEA, Executive Summary

**(iv) Draft Maribyrnong Housing Strategy 2018**

The draft Housing Strategy seeks to manage the City's growing population to 2031 and ensure new development meets current and future needs. The Housing Strategy includes a Housing Framework Plan which nominates the land subject to the Amendment as 'Substantial Change Areas'. 'Substantial Change Areas' are proposed to accommodate the majority of future medium to higher density residential development to meet the municipality's forecast housing needs.

The Amendment reflects the policy directions of the draft Housing Strategy by encouraging development which supports:

- Barky Village as a NAC with high density mixed use development and diverse housing typologies of up to four storeys, or as prescribed in a strategic plan.
- Precinct 2 as an 'urban corridor' with medium density residential development of three to four storeys on consolidated sites with limited vehicle access points on main roads and appropriate transition to adjoining lower scale properties.
- Precincts 3 and 4 as 'strategic development sites' which are urban renewal sites providing opportunity for increased density proximate to activity centres and fixed-line transport, with scale and density subject to site specific planning.

Maribyrnong Amendment C154mari proposes to introduce the Housing Strategy to the Planning Scheme.

**(v) Local Area Traffic Management Study**

A Local Area Traffic Management Study was prepared for West Footscray and Maidstone in 2018, informed by community consultation.

The study investigated traffic, pedestrian and cyclist related issues within local streets and outlines recommended traffic and road safety improvements. The findings of the study were integrated into the WFNP.

**1.3 Procedural issues****(i) Submission 43 / Fabcot Pty Ltd**

Fabcot Pty Ltd (Fabcot) submitted a Request to Heard to the Panel and Mr Jarryd Gray of MinterEllison represented Fabcot at the Directions Hearing.

Fabcot is purchaser of the land at 495-507 Barkly Street, Footscray (Fabcot Land) and proposed to take over the submission of 495507 Barkly Street Pty Ltd (Submitter 43). Mr Gray advised that Fabcot proposed to provide Council with an updated submission.

The Panel asked Mr Gray and Council its view on the submitter status of Fabcot. The discussion was unresolved and the Panel asked Council to clarify whether Fabcot was being referred to the Panel as a submitter to the Hearing. The Panel prepared a version 1 distribution list and timetable which showed Fabcot as representing Submission 43 (to be confirmed).

Following the Directions Hearing, Council confirmed the submitter status of Fabcot and that it had accepted a replacement submission from Fabcot in place of the original submission 43.

The Panel subsequently confirmed Fabcot as a party to the Hearing (21 January).

The replacement submission for Submitter 43 (dated 21 December 2022) was circulated to all parties to the Hearing.<sup>6</sup>

**(ii) Safety Management Study**

Council advised at the Directions Hearing that it had engaged CNC to undertake a Safety Management Study (SMS) in relation to the Amendment, and would provide the Panel with an update relating to the gas transmission pipeline.

On 17 December Council emailed updated information relating to the SMS prepared by CNC, and associated updated submissions from Downer Group on behalf of AusNet (Downer) and Energy Safe Victoria (ESV).

The Panel notes this information was distributed to all parties by Council in its Part A submission.

**(iii) Site visit**

The Panel Chair undertook an unaccompanied site inspection prior to the Hearing.

Due to unforeseen circumstances, Panel member Mr Halaliku was not able to undertake a site visit prior to the hearing. He undertook an unaccompanied site inspection after the Hearing.

At the Hearing the Panel advised parties that if Mr Halaliku's site inspection raised any new issues, the Panel would correspond with parties and leave open the option of reconvening the Hearing. No additional issues were identified and this option was not required.

**(iv) Hearing submissions**

Helen Cheng (Submitter 31) was scheduled to make submissions to the Panel on Wednesday 9 March. She advised the Panel via email on 1 March 2022 that she was no longer available to attend the Hearing.

An updated timetable (version 3) was prepared and distributed to all parties by the Panel on 8 March 2022.

## **1.4 Summary of issues raised in submissions**

Key planning issues raised in submissions relate to:

- land use, rezoning and activity:
  - C1Z should be applied to the Fabcot Land
  - commercial zoning should be extended along Warleigh Road
  - appropriate zoning of laneways
  - a large supermarket should not be located in Precinct 3
- built form and neighbourhood character
  - height controls should be discretionary or mandatory
  - nominated building heights in the various precincts are too tall, and some confusion about proposed building heights
  - nominated five storey maximum building height for the Fabcot Land in Precinct 1 is too modest
  - clarification of what is proposed in Precinct 4

---

<sup>6</sup> Document 13

- opposes apartments/higher density development in the area
- how will neighbourhood character be protected
- need to provide adequate private open space and setbacks
- protection of heritage architecture
- movement and access:
  - must include adequate provision for parking and unloading
  - increased traffic and transport infrastructure and way finding improvements
- management of potentially contaminated land:
  - justification of application of the Environmental Audit Overlay (EAO)
  - seeks more information about appropriate management
- whether the existing licensed gas pipeline has been adequately considered (ESV and Downer)
- other issues:
  - social housing
  - community infrastructure and open space
  - noise
  - environmental outcomes
- form and content of planning provisions.

## 1.5 The Panel's approach

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

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context and strategic justification
- Land use
- Built form and character
- Movement and access
- Potentially contaminated land
- Licensed gas pipeline
- Other issues
- Form and content of the Amendment.

## 1.6 Limitations

Council submitted that a number of issues are outside the scope of this Amendment, including:

- businesses causing nuisance for adjacent residents and in laneways
- promotion and activation of Barkly Village
- provision of a pedestrian and cycling bridge over the railway corridor at Russell Street

- specific public realm upgrades
- redirection of Cross Street.

The Panel accepts Council's position and these issues have not been addressed further in this Report.

## 2 Planning context and strategic justification

### 2.1 Planning policy framework

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

#### Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the *Planning and Environment Act 1987* (PE Act) by:

- improving the planning framework in the West Footscray NAC and two adjacent precincts by providing improved guidance for land use and development
- supporting the role and function of the West Footscray NAC and the Footscray Metropolitan Activity Centre, in particular by helping to rejuvenate the West Footscray NAC with additional commercial/mixed use sites and an increased residential and worker population while protecting the amenity of adjacent residential areas
- ensuring the risks to human health and the environment of potentially contaminated sites are managed.

#### PPF

The Explanatory Report states that the Amendment supports and addresses the following planning policies:

- State PPF:
  - Clause 11 (Settlement) by encouraging growth and development of the West Footscray NAC and adjacent precincts.
  - Clause 15.01 (Built Environment) by implementing improved design and development controls to help create quality urban environments that are safe, healthy, functional and enjoyable with a better sense of place and cultural identity.
  - Clause 15.02 (Sustainable Development) by encouraging land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions through sustainable development.
  - Clause 16 (Housing) by encouraging housing developments in key redevelopment areas that are integrated with infrastructure and services.
  - Clause 17 (Economic Development) by strengthening and diversifying the local economy and facilitating growth in a range of employment sectors, improving access to employment closer to where people live and clustering activities to promote innovation.
  - Clause 18 (Transport) by creating a safer and more sustainable transport system, better integrating land use and transport and coordinating improvements to public transport, walking and cycling networks, as well as land use and development that supports the Principal Public Transport Network.
  - Clause 19 (Infrastructure) by ensuring the development of the necessary physical and social infrastructure to support land use and development.
- Local PPF:
  - Clause 21.04 (Open Space)
  - Clause 21.05 (Environment and Landscape Values)

- Clause 21.06 (Built Environment and Heritage)
- Clause 21.07 (Housing)
- Clause 21.08 (Economic Development)
- Clause 21.09 (Transport)
- Clause 21.10 (Community and Development Infrastructure)
- Clause 21.11 (Local Areas)
- Clause 22.03 (Potentially Contaminated Land Policy).

## 2.2 Other relevant planning strategies and policies

### (i) Plan Melbourne

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

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in Table 3.

**Table 3** Relevant parts of Plan Melbourne

Outcome	Directions	Policies
01 - Melbourne is a productive city that attracts investment, supports innovation and creates jobs	Direction 1.2 – Improve access to jobs across Melbourne and closer to where people live	Policy 1.2.1 - Support the development of a network of activity centres linked by transport
	Direction 1.3 – Create development opportunities at urban renewal precincts across Melbourne	Policy 1.3.1 - Plan for and facilitate the development of urban renewal precincts Policy 1.3.2 - Plan for new development and investment opportunities on the existing and planned transport network
02 - Melbourne provides housing choice in locations close to jobs and services	Direction 2.1 – Manage the supply of new housing in the right locations to meet population growth and create a sustainable city	Policy 2.1.2 - Facilitate an increased percentage of new housing in established areas to create a city of 20-minute neighbourhoods close to existing services, jobs and public transport Policy 2.1.4 - Provide certainty about the scale of growth in the suburbs
	Direction 2.5 – Provide greater choice and diversity of housing	Policy 2.5.1 - Facilitate housing that offers choice and meets changing household needs

Outcome	Directions	Policies
Melbourne is a distinctive and liveable city with quality environments	Direction 4.3 – Achieve and promote design excellence	Policy 4.3.1 - Promote urban design excellence in every aspect of the built environment
Inclusive, vibrant and healthy neighbourhoods	Direction 5.1 – Create a city of 20-minute neighbourhoods	Policy 5.1.1 - Create mixed use neighbourhoods at varying density Policy 5.1.2 - Support a network of vibrant neighbourhood activity centres
Melbourne is a sustainable and resilient city	Direction 6.1 – Transition to a low-carbon city to enable Victoria to achieve its target of net zero greenhouse gas emissions by 2050	Policy 6.1.1 - Improve energy, water and waste performance of buildings through environmentally sustainable development and energy efficiency upgrades

## 2.3 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the PPF. Other purposes of the relevant zones and overlays are set out in Table 4.

**Table 4** Zone and overlay purposes

Control	Purposes/objectives
C1Z	To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. To provide for residential uses at densities complementary to the role and scale of the commercial centre.
C2Z	To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services. To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.
GRZ	To encourage development that respects the neighbourhood character of the area. To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport. To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.
MUZ	To provide for a range of residential, commercial, industrial and other uses which complement the mixed use function of the locality. To provide for housing at higher densities. To encourage development that responds to the existing or preferred neighbourhood character of the area.



Control	Purposes/objectives
	To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.
DDO	To identify areas which are affected by specific requirements relating to the design and built form of new development.
EAO	To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.
Heritage Overlay	<p>To conserve and enhance heritage places of natural or cultural significance.</p> <p>To conserve and enhance those elements which contribute to the significance of heritage places.</p> <p>To ensure that development does not adversely affect the significance of heritage places.</p> <p>To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.</p>

### (i) Particular provisions

Relevant particular provisions include:

- Clause 52.06 (Car Parking)
- Clause 52.34 (Bicycle Facilities)
- Clause 66.06 (Notice of Permit Applications under Local Provisions)
- Clause 71.02-3 (Integrated decision making).

## 2.4 Other amendments

### (i) Amendments VC148 and C154mari

Amendment VC148 was introduced as part of the Victorian Government's Smart Planning Program to simplify and modernise the PPF. Amendment VC148, gazetted on 31 July 2018, made substantial changes to the structure and content of the PPF, as well as other planning scheme provisions.

Amendment VC148 introduced to all planning schemes in Victoria:

- a new a new integrated State, regional and local policy structure – the PPF
- a format to enable the introduction of a Municipal Planning Strategy
- modified schedules to some existing zones, overlays and provisions to accommodate additional local content
- created new operational provisions.

Council explained in its Part A submission that Amendment C154mari had been combined with the translation to the new PPF required by Amendment VC148. Amendment C154mari received conditional authorisation from DELWP on 12 April 2021.

## (ii) Amendments C172mari and C173mari

Council explained that during preparation of the WFNP community consultation identified the need to investigate potential heritage values in the area. Consequently the West Footscray Inter-war and Post-war Heritage Precinct Study (Heritage Study) was prepared and completed in 2021. The Heritage Study forms the basis of Amendment C172mari.

Amendment C172mari proposes to protect eight residential precincts of heritage significance by rezoning to Neighbourhood Residential Zone and applying the Heritage Overlay. Amendment C172mari was authorised on 1 November 2021, and interim Heritage Overlay protection was introduced in December 2021 through Amendment C173mari.

The heritage precincts in Amendment C172mari are located near but do not overlap the land subject to Amendment C162mari (see Figure 7).

**Figure 7 West Footscray Inter-war and Post-war Heritage Precincts (Amendment C172mari)**



Source: Council's Part A submission, page 24

## 2.5 Ministerial Directions and Practice Notes

### Ministerial Directions

The Explanatory Report states that the Amendment has been prepared in compliance with:

- Ministerial Direction – The Form and Content of Planning Schemes
- Ministerial Direction No. 1 – Potentially Contaminated Land (MD1)
- Ministerial Direction No. 9 – Metropolitan Planning Strategy
- Ministerial Direction No. 11 – Strategic Assessment of Amendments
- Ministerial Direction No. 15 - The Planning Scheme Amendment Process
- Ministerial Direction No. 19 – Preparation and Content of Amendments That May Significantly Impact the Environment, Amenity and Human Health (MD19).

### Planning Practice Notes

There are a number of relevant Planning Practice Notes, including:

- Planning Practice Note 30: Potentially Contaminated Land (PPN30)
- Planning Practice Note 46: Strategic Assessment Guidelines, August 2018 (PPN46)

- Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes (PPN59)
- Planning Practice Note 60: Height and Setback Controls for Activity Centres (PPN60).

### Practitioner’s Guide to Victorian Planning Schemes

The Practitioner’s Guide to Victorian Planning Schemes (Practitioner’s Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure that:

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

## 2.6 Evidence and submissions

### Strategic justification

Council submitted the WFNP and WFEA provide the strategic basis for the Amendment. Further, the preparation of the WFNP:

was informed by extensive community and stakeholder consultation, State planning policy, expert economic advice, local area traffic investigations and a range of Council policies and strategies.

Council considered the Amendment was required to:

- reconcile the segmented zoning pattern in Barkly Village to expand and focus retail and commercial opportunities and strengthen street level activity
- update local policy to reflect the strategic direction of the WFNP and remove reference to the Urban Design Framework 2008
- support a diverse mix of housing types and sizes to respond to forecast housing needs
- introduce built form guidelines to manage change in the precincts
- provide a framework for the potential transition of land on the southern side of Barkly Street between Barkly Village and Whitten Oval.

Council relied on the Explanatory Report which states the Amendment will have a positive environmental, social and economic effect resulting in a net community benefit. Benefits would include a more vibrant NAC with high quality development, an improved public realm, reduced reliance on car travel and increased use of active and public transport, increased economic activity, increased safety and wellbeing of the community and appropriate management of environmental risk.

Council called Mr Campbell to give expert evidence on urban design. He was of the opinion that a *“legitimate body of background work has led to the preparation of the exhibited Amendment documentation”*.<sup>7</sup>

Fabcot generally supported the Amendment, considered it made sense from a policy and spatial planning point of view and commended Council for the work. It considered the broad WFNP area entirely appropriate, with the NAC as part of the broader area.

---

<sup>7</sup> EWS Mr Campbell, page 7

Fabcot called Mr Negri of Contour to give evidence on town planning. Mr Negri considered the Amendment had sound strategic support with regard to the PE Act and planning policy.

Several submissions provided broad support for the Amendment. Submission 31, on behalf of the owners of 20 Hewitt Street (abutting the southern boundary of Precincts 1 and 4), was generally supportive of the overall objectives of the Amendment, but considered there were a number of distinct policy gaps relating to cultural diversity and social impact, sustainable housing growth and specific details at the neighbourhood and building scale.

Several submissions sought clarification on what was proposed for Precinct 4. In response, Council submitted that the Amendment seeks to introduce policy but does not include rezoning or specific built form provisions for Precinct 4. This would be subject to a future amendment, following further site investigations and master planning.

### **West Footscray Economic Assessment**

Fabcot questioned the assumptions and conclusions of the WFEA and subsequent recommendations in the WFNP. Its submissions focussed on how the Amendment impacted the Fabcot Land in terms of land use zoning and the proposed drafting of the DDO7. Fabcot considered its land should have been identified and assessed as a key site in the WFEA, however supports the application of the 'decision tree' to other potential development sites.

Fabcot relied on the expert economic evidence from Mr Ganly of Deep End Services. Mr Ganly gave evidence that he had reviewed the WFEA, including population and growth forecasts and underlying assumptions, and had undertaken a separate analysis of the retail characteristics and catchments of the WFNP and surrounding activity centres.

Mr Ganly was of the opinion that:

- the trade area for the NAC was not based on any survey or shopper based data and relied on conservative assumptions around shopper behaviour resulting in a very small trade area
- the population growth forecasts relied on in the WFEA were not appropriate and had resulted in a conservative understanding of growth
- it is unusual that Council identified the list of sites to be considered for rezoning, and it would have been preferable for the WFEA's author to have been able to identify sites.

By way of comparison Mr Ganly determined a likely catchment area for the NAC based on accessible smartphone data (Vista data) which he considered to be more accurate.<sup>8</sup> The Vista data suggested the WFEA trade area only represented approximately 51 per cent of actual sales.

Mr Ganly concluded that the WFEA had relied on overly conservative assumptions which had implications for understanding the current and future retail floorspace requirements for the NAC. Consequently the WFNP had erred in not addressing the need for a full line supermarket at West Footscray.

He considered the Fabcot Land should have been included along with the other key sites assessed for future development. He also noted that while the WFNP was based on the WFEA it did not reference it.

---

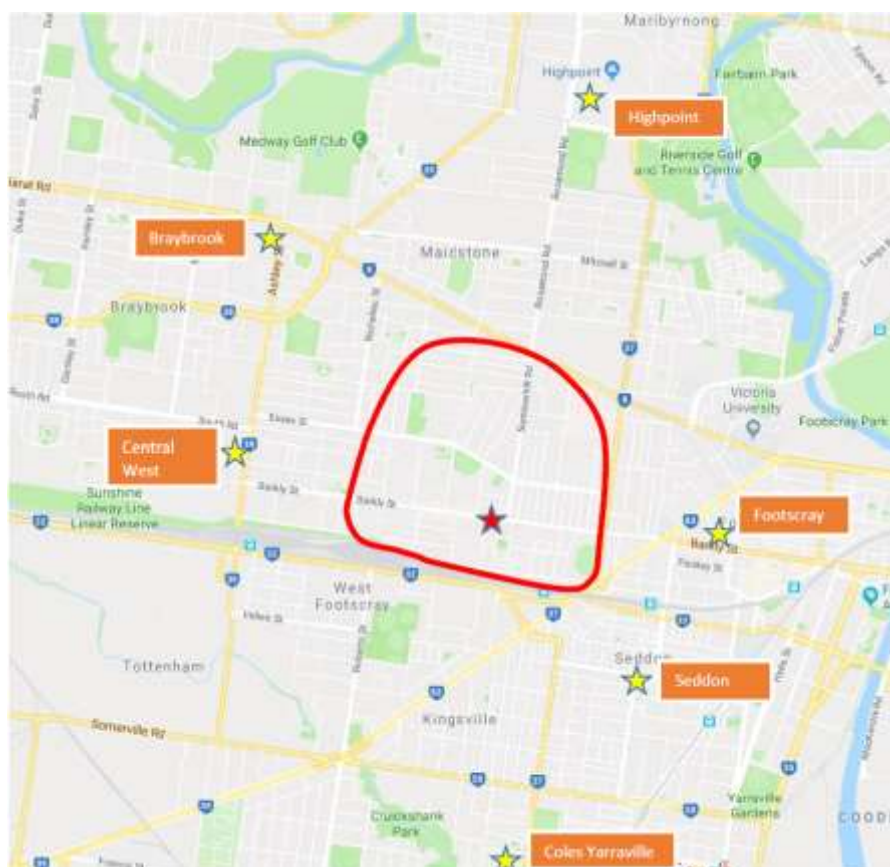
<sup>8</sup> Document 8, Expert Witness Statement – Justin Ganly – “Vista location data provides details of the geolocation of smartphone devices where location services have been switched on as well as the inferred residential address derived from the device's typical location during the evening”.

Council relied on the economic evidence of Mr Haratsis. Mr Haratsis was of the view that the WFEA is not current as it was prepared before the COVID-19 pandemic and Victoria in Future data from 2019, and the underlying assumptions are based on out of date population expectations.

He noted that while the WFEA projected a growth rate of 0.8 per cent within the defined trade area (see Figure 8), while:

- the actual average growth rate between 2012 and 2021 was 2.24 per cent (local statistical area level 2)
- replacement Submission 43 (Fabcot) expected growth in the likely catchment area to increase to 2.9 per cent per annum.

**Figure 8** West Footscray NAC trade area and surrounding supermarket centres



Source: West Footscray Economic Assessment for the Neighbourhood Plan April 2018 (page 19)

Based on an assumption of localised population growth of 2.2 per cent per annum, Mr Haratsis concluded there is:

- currently sufficient demand to support a full line supermarket in the area
- insufficient demand to support both a full line and medium tier supermarket in the short term.

He gave the opinion that if a full line supermarket is proposed adjacent to the existing IGA then an Economic Impact Assessment should be prepared.

Mr Haratsis emphasised the outdated nature of the data relied upon within the WFEA, and that uncertainty around such data was amplified by the economic transition of the area. He considered that upcoming census data would be critical in understanding the socio-economics of the area.

## 2.7 Discussion

The Panel accepts that the WFEA is not intended to be an exhaustive retail assessment. While the assessment would benefit from updated inputs, more refined assumptions and a methodology that widens the scope of investigation, the Panel does not see these deficiencies as fatal to the Amendment.

Experts and submitters were generally in agreement on the strategic basis for the Amendment. The Panel accepts the broad strategic justification for the Amendment, and agrees with Council there will likely be positive environmental, social and economic effects resulting in a net community benefit. The Amendment intends to support additional housing and employment opportunities within close proximity to public transport and services, while strengthening preferred built form character. The Amendment has the potential to be a key driver of rejuvenation of West Footscray.

The Council has foreshadowed additional strategic work to underpin future rezoning of Precinct 4. The Panel is of the view that an updated WFEA would assist to identify opportunities for Precinct 4 and across the entire WFNP area.

While the conservative nature of the assumptions underpinning the WFEA were debated at the Hearing, it was not disputed that the findings of the assessment carry merit and nexus to the strategic objectives for the activity centre.

The Panel is of the view that the WFEA aligns well with the higher order economic drivers of planning policy, including strategies that seek to ensure adequate supply of commercial land in appropriate locations and small scale shopping opportunities that meet the needs of local residents (Clause 17.02-1S Business). Specifically the WFEA finds:

- the West Footscray NAC performs an important role within the Maribyrnong activity centre hierarchy
- that retail and commercial expansion could be accommodated within the NAC and *“some parcels would need to be rezoned to accommodate activity centre expansion, even though they are within the activity centre boundary”*.

This aligns with imperatives of Clause 21.11-6 that acknowledge further development of the NAC should bridge the gaps in street activity along Barkly Street to consolidate the retail area and extend the shopfront character to the eastern end of the centre.

It became evident through the hearing that the WFEA has limitations which extend from assumptions that were made based on the scope of the work. This was most notable in the exclusion of the Fabcot site from the list of key sites, which given its location, spatial and physical characteristics seems anomalous when considering the opportunities it presents to potentially delivering desired outcomes of the WFNP.

Specific matters relating to the Fabcot Land are discussed in other chapters of this Report.

## 2.8 Conclusion

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

## 3 Land use

### 3.1 495-507 Barkly Street, West Footscray

#### (i) Proposal

The Fabcot Land at 495-507 Barkly Street, West Footscray is currently zoned MUZ and is proposed to remain MUZ.

The land is currently subject to site specific DDO7 and an EAO. The Amendment proposes to amend and retain the DDO7 and retain the EAO on the land.

#### (ii) Background

The Fabcot Land is a substantial landholding of 6,291 square metres that comprises three allotments with a combined 83.8 metre frontage to Barkly Street (see Figure 9).

**Figure 9** Aerial Photograph of Fabcot Land



Source: Fabcot replacement submission (Document 13)

Fabcot (the development arm of Woolworths Limited) acquired the land in December 2021 for the specific purpose of developing a mixed use development including a full line supermarket, retail tenancies and residential dwellings.

Fabcot advised the Panel of planning permits associated with Fabcot Land, including for use and development of:

- a five storey building (plus basement) accommodating shops, dwellings and associated car parking (issued on 16 March 2010, since expired)
- a five storey building with shops, dwellings and car parking (issued on 21 December 2015, modified by the Victorian Civil and Administrative Tribunal (VCAT) by order in 2016, since expired)

- multiple three storey buildings with shops, dwellings and car parking (current permit following a VCAT order on 17 April 2020).

**(iii) The issue**

The issue is whether the Fabcot Land should be rezoned to C1Z.

**(iv) Evidence and submissions**

**Is it appropriate to consider the rezoning?**

Fabcot submitted that it was appropriate for the Panel to consider whether rezoning the Fabcot Land is appropriate even though the rezoning was not exhibited as part of the Amendment. Fabcot submitted that its request to amend the Amendment after exhibition is “*squarely within the subject matter of the Amendment*”. Fabcot considered its proposal would result in net community benefit as it would strengthen the commercial role of the Fabcot Land and promote 20 minute neighbourhoods by diversifying the local economy and employment opportunities.

Fabcot submitted:

67. Procedurally, the Panel should have no hesitation in recommending that the Amendment be modified to incorporate the changes requested by Fabcot.
68. In respect of the requested rezoning, it is a matter which is clearly within the contemplation of the Amendment for sites within the activity centre.
69. Notwithstanding, if the Panel is of the view that this change is of such significance that some form of further notice should be given, it is open to the Panel to make a recommendation to this effect.<sup>9</sup>

Fabcot urged the Panel to resist procedural arguments to defer consideration of the proposal to another day. It considered there was no legal basis for this in the PE Act.

It submitted that:

- the proposal clearly did not transform the Amendment
- matters relating to whether public notice of the proposal was adequate could be determined by Council or the Minister for Planning
- the matter before the Panel is whether the principles underpinning the Amendment have been applied in a consistent fashion (with reference to the Panel report for Yarra Planning Scheme Amendment C220 as precedent).

Fabcot considered no further notice would be required, but considered it a role for the Minister to determine when the matter is referred for adoption.

Council submitted in its closing submissions:

- 1.4 Section 19(1)(b) of the *Planning and Environment Act 1987*, a planning authority must give notice of its preparation of an amendment to a planning scheme to the owners and occupiers of land that it believes may be materially affected by the amendment.
- 1.5 In Council's respectful submission, the requirement to advertise relates not just to notifying the IGA supermarket, but also the Banbury development to the south and east of the Fabcot land.
- 1.6 On this basis, it is Council's submission that if the panel considers that the Fabcot site ought be considered for rezoning, such rezoning ought occur in conjunction with any planning scheme amendment for Precinct 4 or alternatively subject to further exhibition. If the Panel is of the view that the Fabcot land ought be considered for rezoning as part

<sup>9</sup> Document 15, Fabcot submission



of the Amendment, Council respectfully submits that notice should be given to the IGA supermarket, and the owners and occupiers of the Banbury development at a minimum.

### Proposed rezoning

Council submitted that the existing MUZ was appropriate and should be retained on the Fabcot Land. It considered the existing zone allows for a mix of complementary uses (commercial and residential) to the centre and was warranted due to the transitional role Council envisages the Fabcot Land playing to the east and its location on the outer edge of Precinct 1.

Council submitted that the Amendment supported the economic role of Precinct 1 (Barkly Village) by unlocking retail/commercial opportunities in the centre's core and creating a continuous high-street/shopfront character at the eastern end.

Council reasoned that the MUZ enables a mixed use higher density and commercial development and is a zone that implements the objectives of the WFNP. Further, Council submitted there is no urgent imperative to rezone the site and that:

The primary focus of rezoning in the NAC is to address the fragmentation caused by GRZ in the core separating existing shops from the IGA supermarket.<sup>10</sup>

Fabcot submitted that the MUZ is inferior to the C1Z in its ability to respond to the economic drivers of the centre's renewal. It submitted that while the MUZ allows for some commercial uses as well as residential use, it does not make it the most appropriate zone. It submitted the:

- MUZ unnecessarily constrains commercial uses
- MUZ allows dwelling as of right along the ground level frontage, which is at odds with the intended role and character of the centre
- purposes of the C1Z better aligns with the strategic context of the Fabcot Land.

Fabcot considered that the Amendment was inconsistent in its approach to rezone all other land within Precinct 1 to C1Z, apart from the Fabcot Land. Fabcot drew the Panel's attention to the WFNP, which states that:

- the activity centre has fragmented zoning that does not necessarily allow for the *"highest and best use of the site and for a range of important strategic directions to be realised"*
- the preferred land use pattern involves strengthening *"the current land use pattern to provide consistent and complementary zoning."*<sup>11</sup>

Fabcot advocated rezoning the Fabcot Land to C1Z as part of the Amendment given:

- the physical context of land
- consistency with the strategic work underpinning the Amendment
- the preferred land use pattern and activity set out in the WFNP.

Fabcot referred to the 'decision tree' in the WFEA (see Chapter 2.6), which states that the land within an activity centre has a presumed Commercial 1 or Commercial 2 zoning, and:

Therefore, simply on the basis that the Fabcot Land is within the activity centre it can be reasonably inferred that it would have been recommended for rezoning to a commercial zone had it been identified as a key site.<sup>12</sup>

<sup>10</sup> Document 21, Council's closing submission

<sup>11</sup> WFNP, pages 18 and 20

<sup>12</sup> Document 15, Fabcot submission, para 33

Fabcot considered that rezoning to C1Z was required to prevent residential development from occurring as of right along the Barkly Street frontage, an outcome that would be at odds with the strategic role and preferred character of Precinct 1 and the NAC more broadly. In broad terms Fabcot considered its proposed changes to the Amendment would achieve a net community benefit by strengthening and diversifying the local economy and contributing to 20 minute neighbourhood objectives.

Mr Negri gave evidence that the C1Z is the most appropriate zone for the Fabcot Land because it would:

- promote a mix of retail, commercial and residential uses
- support apartment buildings that add to the viability of the centre
- strengthen street level activity by allowing a range of ground level retail and commercial uses without a permit to allow for a greater range of uses without requiring planning permission
- better align with the strategic ambition promoted for the Fabcot Land within the Neighbourhood Activity Centre (Clause 21.11-6).

It was Mr Negri's evidence that given the purposes and land use provisions of the C1Z, it is a more appropriate planning tool to manage the use and development and delivery of the WFNP, particularly as it relates to harnessing economic activity and removing approval hurdles for preferred land uses.

#### **(v) Discussion**

In consider the issues of whether the Fabcot Land should be rezoned to C1Z, the Panel has firstly considered whether it is appropriate for the Panel to consider the issue, and secondly whether the proposal has merit.

The Panel agrees with Fabcot that it is squarely in the remit of the Panel to consider whether the proposal to rezone is appropriate. The critical issue is whether the strategic work underpinning the Amendment has been applied consistently, and whether "*essentially identical parcels of land have been treated differently for no explicit reason*".<sup>13</sup> If the proposed rezoning is consistent with the underlying principles and strategic intent of the Amendment, then matters relating to public notice can be considered and addressed if necessary.

As discussed in Chapter 2.7, it appears that there was some inconsistency with identification and assessment of key development sites. While the Panel understands Council's reasoning for identifying investigation sites, it is surprising that the site was not subject to further review as part of the WFNP given the overwhelming physical and strategic attributes of the land such as its size, single ownership and central location. The Panel considers this strengthens the case for consideration of whether rezoning of the land is appropriate.

A key objective of the WFNP is to support the economic role of Barkly Village as a NAC. The WFNP proposes to strengthen the current land use pattern to provide consistent and complementary zoning which delivers new residential and commercial opportunities. Economic development is a key driver of the Amendment.

The Panel considers the WFNP and tools such as the 'decision tree' in the WFEA have established a clear strategic framework for considering the rezoning. When tested against the WFEA 'decision

<sup>13</sup> Yarra Planning Scheme Amendment C220 Panel Report, page 24

tree' the Fabcot Land emerges as a candidate for rezoning despite the Fabcot Land not being put forward in this amendment for rezoning.

In contemplating the appropriate zone the Panel is mindful of the guidance in PPN46, in particular whether the strategic planning exercise in the Amendment makes:

- proper use of the VPP
- uses the most appropriate planning tool to achieve the strategic objectives of the planning scheme
- is consistent with any relevant planning practice note.

The Practitioner's Guide explains the purpose of the MUZ and C1Z:

- MUZ provides for residential uses and a range of complementary commercial, industrial and other uses suitable for areas with a mixed use character
- C1Z applies in mixed use commercial centres for retail, office, business, residential, entertainment and community uses. It allows a wide range of commercial and accommodation uses without a permit, including a supermarket or shop.

While MUZ enables retail/commercial uses it is within the suite of residential zones. PPN91 explains the role and application of the residential zones, specifically MUZ is to be applied to:

...areas suitable for a mixed-use function, including a range of residential, commercial, industrial and other uses. Suitable for areas identified for residential development at higher densities including urban renewal and strategic redevelopment sites.

The Panel accepts that the MUZ allows for a full line supermarket (over 150 square metres) with planning approval, however it concurs with Mr Negri's evidence that the MUZ is residential in nature and may facilitate outcomes that contradict the WFNP. The Panel agrees with Fabcot that the MUZ is not the optimal zone for delivering the economic aspirations of the WFNP on the Fabcot land.

In contrast, the purposes of the C1Z promote residential densities that complement the role and scale of the centre. The Panel considers C1Z to be the appropriate zone for the Fabcot Land having regard to:

- achieving higher order strategic imperatives such as healthy, 20 minute neighbourhoods and give people the ability to meet every day needs within a 20 minute walk
- the C1Z being the most appropriate tool within the VPP to deliver the objectives of the WFNP given the site's physical and policy context
- consistency of zoning and development expectations on the north and south sides of Barkly Street
- future redevelopment of Precinct 4 and potential shifting of the core of the activity centre east of its current location
- strengthening of the street level activity by allowing a range of ground level retail and commercial uses as encouraged within the WFNP
- promoting residential density above street level.

The Panel is persuaded by Fabcot's submission that the Amendment should look to introduce 'optimal' rather than 'compatible' controls to implement the objectives of the WFNP. It is desirable to introduce optimal controls where strategically supported. The Panel considers C1Z represents an optimal control for the Fabcot Land having regard to the objectives of the WFNP and strategic context and physical attributes of the site.

The Panel understands that the proposal to rezone the land to C1Z was not exhibited with the Amendment. While the Panel has focussed on the merits of the proposal rather than the procedural implications, the Panel considers rezoning the Fabcot Land to C1Z may require further notice. The Panel supports the rezoning subject to Council satisfying itself that adequate notice has been given in accordance with statutory requirements.

#### **(vi) Conclusion and recommendation**

The Panel concludes:

- It is appropriate for the Panel to consider the proposed rezoning of the Fabcot Land.
- There is sufficient justification to support the rezoning of the Fabcot Land from MUZ to C1Z.
- It is appropriate to rezone the Fabcot Land to C1Z, subject to Council satisfying itself that notice requirements are met.

The Panel recommends:

**Rezone 495-507 Barkly Street, West Footscray from the Mixed Use Zone to the Commercial 1 Zone, subject to Council satisfying itself that notice requirements have been met.**

## **3.2 Zoning along Warleigh Road**

### **(i) The issue**

The issue is whether the commercial zoning should be extended along Warleigh Road.

### **(ii) Submissions**

Submitter 15 submitted that the commercial zoning should be extended south along Warleigh Road to accommodate more mixed-used residential, retail and commercial activity.

Council opposed the suggestion on the basis that the Amendment seeks to concentrate retail and commercial activities in the NAC. It submitted that extending the commercial zone along Warleigh Road beyond the centre is inconsistent and is not supported.

### **(iii) Discussion**

The WFNP proposes to consolidate land use patterns and promote development and renewal within the boundaries of Precinct 1. This will not only deliver a critical mass of economic land use but protect abutting residential land. Warleigh Road is a 300 plus metre north-south connecting road between Barkly and Cross Street. Both sides of Warleigh Road are zoned GRZ, aside from the IGA fronting Barkly Street which are proposed to be zoned C1Z.

The WFNP does not anticipate non-residential development expanding into the abutting GRZ areas and the Panel supports this approach. It is sound planning policy to ensure non-residential land uses do not 'leak' into residential areas and threaten the quality of residential amenity.

The Panel is mindful that the core activity area of Barkly Street and West Footscray Railway Station is the focus of the land use and built form guidance. The Panel accepts Council's position and does not support the expansion of commercial zoning of the residential areas along Warleigh Road.

**(iv) Conclusion**

The Panel concludes:

- The commercial zoning along Warleigh Road should not be extended.

**3.3 Supermarket in Precinct 3****(i) The issue**

The issue is whether a large supermarket should be supported in Precinct 3.

**(ii) Submissions**

Submitter 41 was concerned the proposal would encourage a large supermarket in Precinct 3, and did not support this. It submitted that new development should not adversely affect the local shopping destinations such as Barkly Village, Seddon, Central West and Footscray.

Council said that it would be inappropriate for a large supermarket development/major retail to occur in Precinct 3. Council submitted that the WFNP was informed by the WFEA which recommended this location as suitable for higher density residential with ground floor employment and limited convenience retail to serve commuters (for example café, newsagent, drycleaner). Council said its policy is for major retail to be focussed in activity centres, such as those identified in the submission.

**(iii) Discussion**

The Amendment proposes Precinct 3 to be zoned MUZ. The MUZ promotes diversity of land use while retaining the primacy of residential land use, and a shop larger than 150 square metres requires a planning permit. This is further complemented by the 'Design objectives' of the accompanying DDO8 which include:

- ... encourage a range of well-designed apartment buildings that support complementary uses at ground floor level.
- ... Improve activation and utilisation of public spaces through active frontages to buildings along roads and public spaces.
- ... development appropriately responds to amenity of surrounding areas.

The Panel accepts that it is not the strategic intent of the WFNP for a supermarket to be located in Precinct 3. Indeed, a full line supermarket in Precinct 3 would likely constitute 'activity leakage' contrary to the land use and activity centre consolidation objectives of the WFNP.

The accompanying policy support to the MUZ is important in delivering strategic intent for this Precinct. Objectives of the exhibited Clause 21.11-6 include *"to limit commercial uses in West Footscray Railway Station Precincts"* and is assisted by strategies to *"ensure that any retail, commercial and other employment uses complement the role of the West Footscray Neighbourhood Activity Centre"*.

While a planning permit may be sought for the development of a site as a supermarket, the proposal would be assessed against the full breadth of the Planning Scheme including the WFNP. The Panel accepts Council's position on this issue.

**(iv) Conclusions**

The Panel concludes:

The MUZ, DDO and accompanying planning policy does not promote a large-scale supermarket in Precinct 3.

A sufficient planning assessment framework will be implemented to ensure proposals are assessed with consideration of the objectives for Precinct 3.

## 4 Built form and character

### 4.1 Discretionary or mandatory controls

#### (i) The issue

The issue is whether the planning controls should be discretionary or mandatory.

#### (ii) Relevant guidelines

A Practitioner's Guide identifies that a DDO is intended to achieve the following planning outcomes:

- ... principally intended to implement requirements based on a demonstrated need to control built form and the built environment, using performance based rather than prescriptive controls.

PPN59 establishes a criterion for assessing whether or not the benefits of any proposed mandatory provision outweigh any loss of opportunity and the flexibility inherent in a performance based system.

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

PPN60 stipulates that mandatory height and setback controls will only be considered where they are supported by robust and comprehensive strategic work or where exceptional circumstances warrant their introduction. Mandatory height or setback controls should only be applied where:

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

#### (iii) Evidence and submissions

Council submitted that mandatory height controls are strategically supported, appropriate to the majority of proposals and will provide for the preferred outcome as set out in the WFNP. It said that given the fine grain setting of Barkly Street (unlikely to facilitate development above four to five storeys), the application of maximum height controls will increase certainty. Council considered this would in turn reduce administration costs in assessment and application preparation.

Council submitted that a number of complementary factors combine to justify mandatory maximum height provisions to achieve good design outcomes; its lower order status in the activity centre hierarchy, the width of Barkly Street through Precinct 1, the proximity of dwellings in the surrounding area and outcomes of the 3D modelling.

Council took the Panel to the Bayside Planning Scheme Amendment C126bays (Small Neighbourhood Activity Centres) Panel report. It suggested Amendment C126bays is a relevant example where mandatory controls have been used to guide built form and character outcomes. Council considered the Panel should give weight to Amendment C126bays as an appropriate precedent for mandatory provisions.

Mr Campbell supported the mandatory maximums in the DDO7 and strong discretion in the DDO8:

...given the clear community desire to maintain the local centre's 'village' feel and ensure appropriate transition in scale to abutting residential properties.

Mr Campbell considered the rigour of built form testing sufficient to warrant the implementation of mandatory provisions, and that the maximum height limits were sufficient to allow infill development consistent with policy.

Fabcot submitted that the DDO7 proposed mandatory height limits fail to meet the need for 'exceptional circumstances' set out within PPN60:

mandatory height and setback controls will only be considered in exceptional circumstances and should only be considered where they are necessary to achieve the built form objectives or outcomes identified from the comprehensive built form analysis.<sup>14</sup>

Mr Negri did not support mandatory building height and street setback requirements, with regard to the guidance set out in PPNs 59 and 60. Mr Negri referred to the tests for applying mandatory provisions in PPN60 and was of the view that this was not a case where there are exceptional circumstances. He did not consider mandatory controls were warranted on the basis that:

There is limited heritage sensitivity. The existing urban framework is sought to be transformed in order to repair deficiencies (i.e. the fragmented shopping street). There are properties of varying size and proportion that have differing development opportunity.

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

The VPPs are premised on mandatory provisions as the exception. Planning guidance states that mandatory provisions should only be applied in exceptional circumstances, and only where they are absolutely necessary to achieve the built form objectives or outcomes identified from the comprehensive built form analysis.

The Panel has considered the proposal against the criteria suggested in PPN59 *"to assess whether or not the benefits of any proposed mandatory provision outweigh any loss of opportunity and the flexibility inherent in a performance-based system"*.

#### Is the mandatory provision strategically supported?

The WFNP underpinning the Amendment does not recommend mandatory controls. Instead it includes preferred maximum building heights, and does not include justification or recommendation for any mandatory built form controls.

Council relied on the 3D modelling to justify mandatory provisions, however the modelling presented as an exercise that documented the controls rather than tested scenarios that would be required to demonstrate the appropriateness of mandatory provisions.

The NAC does not exhibit heritage significance, distinctive physical features or distinctive neighbourhood character, and the Panel is satisfied that exceptional circumstance do not exist.

<sup>14</sup> Document 15, page 13



The Panel notes that similarly the panel for Bayside Planning Scheme Amendment C126bays did not consider mandatory maximum building heights were strategically justified except where they were proposed adjacent to properties of heritage significance.

The Panel is not satisfied that the application of mandatory height provisions is strategically justified.

Is the mandatory provision appropriate to the majority of proposals?

The Panel does not agree with Council that because individual lots are contextually unlikely to achieve heights over four to five storeys then all lots should have a mandatory cap. This approach disregards the ability of land to be consolidated and disregards anomalous sites that can facilitate an innovative design. The Panel considers in this instance a mandatory provision is not appropriate for the majority of sites and may result in lost development opportunities to deliver on the objectives of the WFNP.

Does the mandatory provision provide for the preferred outcome?

It is not clear that mandatory provisions will achieve the WFNP preferred outcomes. The varying physical context from the east to the west of the village may invite varied responses that should be tested against the relevant policy and interface considerations. Good design is contextual in its response and should be achieved with discretion to exercise quality architectural and urban design outcomes unless there is a good strategically justified reason to be more prescriptive.

Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?

It was not demonstrated through the 3D modelling, submissions or evidence that the majority of proposals not in accordance with mandatory provisions would be clearly unacceptable. The analysis illustrated that building heights in the Schedules to the DDO would deliver an acceptable built form outcome, however it did not conclusively illustrate that the taller heights could not also be appropriate.

Will the mandatory provision reduce administrative costs?

While mandatory provisions can reduce administrative costs, the Panel is not persuaded that reduced administrative costs reasonably outweigh lost opportunities to realise full development potential of land in a NAC. As a NAC it is identified to undergo significant change to support its community and the broader catchment over the next 30 years. In the absence of exceptional circumstances the Panel prefers discretionary controls that promote opportunities for innovation and site responsive designs.

The Panel gives weight to the guidance in PPN59 which states *“the VPP process is primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than merely prescriptive mandatory requirements”*.

**(v) Conclusion and recommendation**

The Panel concludes:

- Building heights and setbacks should be discretionary.

The Panel recommends:

**Amend the Schedules to the Design and Development Overlay to make building heights and setbacks discretionary, in accordance with the Panel preferred version in Appendix C.**

## 4.2 Building heights

### (i) The proposal

The proposed building heights are derived from the preferred maximum building heights in the WFNP (see Figure 10).

**Figure 10 Preferred maximum heights in the WFNP**



Source: WFNP, page 22

The proposed DDO7 includes the following ‘Buildings and works’ permit requirement:

A permit cannot be granted to construct a building or construct or carry out works in Precinct 1 or Precinct 2 which are not in accordance with the building height and street setback requirements specified in Tables 1 and 2 of this schedule.

The following buildings and works requirements in Tables 1 and 2 and shown in Figure 1 apply to an application to construct a building or construct or carry out works.

Figure 1 of the Schedules to the DDO (shown at Figure 9 below) shows preferred building heights:

- Precinct 1 - mixed use/commercial – 4 storey (13.5 metres)
- Precinct 2 - residential – 4 storey (13.5 metres)
- Precinct 3 – residential – 8 storey (25.5 metres).

The Schedules to the DDO include design requirements for building heights in each of the precincts. The Panel has summarised these requirements in Table 5. Other requirements relate to setbacks and public realm interface.

The Amendment introduces local policy (Clause 21.11-6) to guide the future development of Precinct 4 to a mixed commercial and higher density residential area with preferred maximum building heights of 6 storeys (19.5 metres).

Figure 11 Figure 1 of DDO7

Figure 1: Preferred Character Plan of Precincts

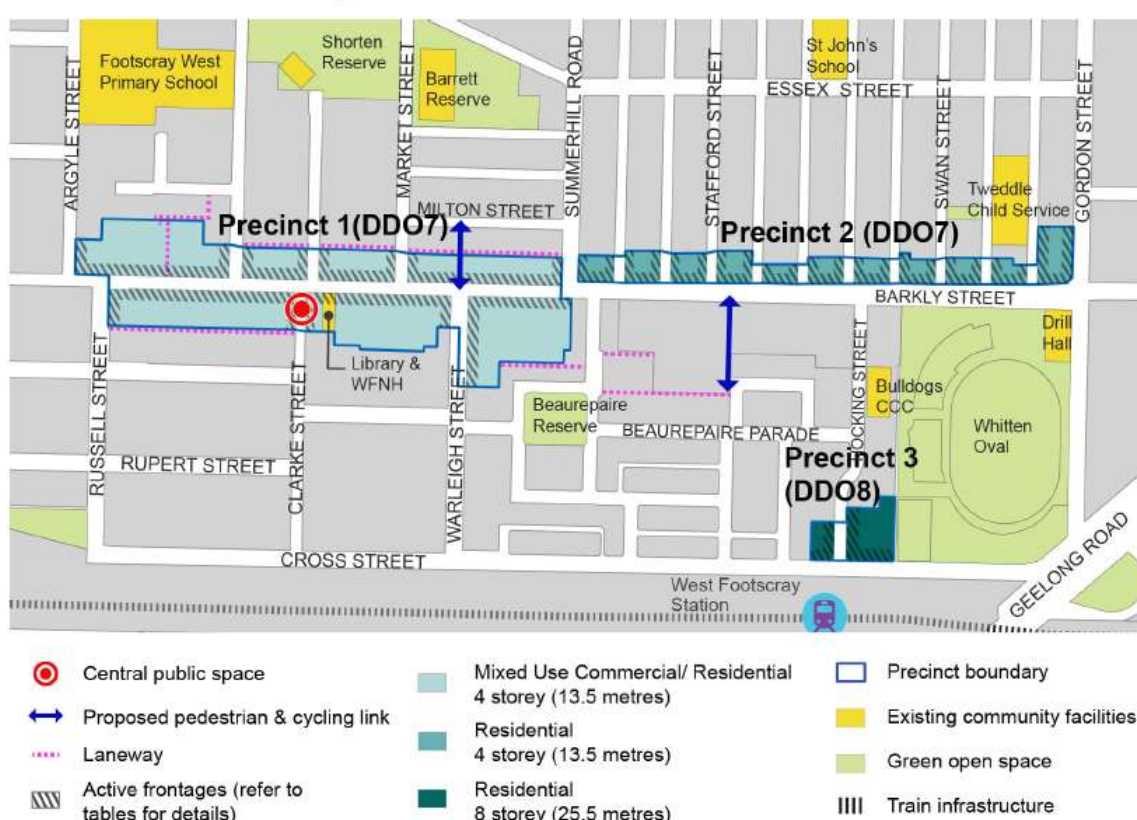


Table 5 Building height design requirements for each precinct

Precinct	Building height requirement
Precinct 1	Building height must not exceed 13.5 metres and four storeys, except for sites greater than 2000 square metres where building height must not exceed 16.5 metres (five storeys).  Height of a storey at the ground floor level of a new building must be at least 4 metres measured from finished floor level to the ceiling.
Precinct 2	Building height must not exceed 13.5 metres and four storeys.
Precinct 3	Building height must not exceed 25.7 metres (eight storeys).

**(ii) The issues**

The issues are whether:

- the proposed building heights are too tall and will result in unacceptable impacts
- the five storey maximum building height for the Fabcot Land is too modest.

**(iii) Evidence and submissions****Appropriate building heights**

Several submitters considered the proposed building heights too tall and likely to result in unacceptable impacts on the public realm, neighbourhood character and amenity of surrounding lower scale residential areas. Submitters 2 and 7 opposed the eight storey height in Precinct 3 as excessive, suggesting it be capped at four storeys. Several submitters were supportive of mandatory building height controls.

Council submitted that the proposed heights in each precinct have been based on detailed analysis of built form to ensure a strong and consistent streetscape, a high level of amenity and to address the interface with abutting lower scale residential development. Council submitted the nominated building heights reflect the capacity to strengthen the role of Barkly Village as a lively, mixed use precinct and the complementary role of the adjacent precincts. The Schedules to the DDO include design provisions requiring new development to recess upper floors and address sensitive residential interfaces to ensure amenity is protected.

Council submitted that the DDO7 includes a combination of mandatory and discretionary controls, designed to provide clear direction to achieve the outcomes sought in WFNP. It stated the proposed planning controls were consistent with guidance in PPN59 and PPN60.

In response to community concerns, Council submitted in its Part B that:

... the DDOs strike an appropriate balance between facilitating growth in and around the Amendment area, whilst being respectful of the community's concerns. It responds to the directions of the *Plan Melbourne*, including Policy.2.1.4 which is to “*provide certainty about the scale of growth in the suburbs*”.

Council relied on the evidence of Mr Campbell. Mr Campbell gave evidence that the 3D modelling analysis undertaken by Council clearly conveyed an “*indicative (massing) arrangement of future forms along the Barkly Street corridor and demonstrates the proposed proportional arrangements between street walls and recessive upper levels*”. It also demonstrated overshadowing impacts on Barkly Street and neighbouring residential properties.<sup>15</sup>

Mr Campbell supported the heights in the DDO7. He considered the building heights to be generally appropriate and aligned with the West Footscray NACs lower order position within the Maribyrnong Activity Centre Hierarchy, and associated expectation of overall development intensity and scale. He was of the view that the overall height provisions offer some flexibility while maintaining clear expectations. He acknowledged that larger sites may have the ability to accommodate an additional upper level provided there are no additional off-site amenity impacts.

Mr Campbell’s Expert Witness Statement included:

The overall height provisions also offer some flexibility and acknowledge that larger sites (sites greater than 2000m<sup>2</sup>) may have the ability to successfully accommodate an additional upper level, that will have no additional off-site amenity impacts. I consider this as an

<sup>15</sup> EWS Mr Campbell, page 8

appropriate provision as it recognises that larger sites can absorb greater building envelopes and it also encourages land consolidation to achieve more efficient development outcomes.

At the Hearing Mr Campbell advised the Panel that on reflection, he considered there could be some discretion in building heights for much larger sites. While he had not given this much thought, he said the DDO7 would need to include some parameters around how this might be done. Mr Campbell responded to a question from Council about what height is appropriate and stated he would consider five to six storeys may be appropriate on larger lots, being mindful of street width and lot depth.

Under cross examination by Fabcot, Mr Campbell stated a provision that exempts sites greater than 4,000 square metres from building height requirements could be inserted into DDO7. He gave the opinion that there could be some discretion for larger sites to facilitate taller built form outcomes provided there were no unreasonable off-site amenity impacts.

Under re-examination Mr Campbell revealed potential criteria for assigning additional height to larger sites, including consideration of impact on abutting residential zones and the NAC, sightlines and respect for fine grain of the NAC.

Further, Mr Campbell suggested minor changes to:

- the height of the street wall in Precinct 1 (DDO7) to accommodate a parapet dimension. He proposed the street wall height requirement be increased to 11.5 metres, noting this would not alter the overall building height dimensions of 13.5 metres and 16.5 metres (for larger sites)
- increase the building height requirement in Precinct 3 (DDO8) by 200 millimetres (to 25.7 metres) to allow for services and to accommodate internal dimensions.

### **Fabcot Land**

Council submitted that the nominated heights for the Fabcot Land were based on a comprehensive urban design analysis. Council submitted the analysis considered street scale, lot size and the purpose and role of Precinct 1. It noted the 'transitioning' role of the Fabcot Land as a relevant factor in determining height, and the need to have regard for the built form east of the Land in Precinct 4.

Fabcot submitted it was not clear how the WFNP was informed by the 3D built form analysis. It questioned how the nominated building height had been set for the Fabcot Land and challenged the validity of the five storey maximum given the size, single ownership and strategic and locational significance of the site. Fabcot stated:

The Built Form Analysis at Part C of the WFNP outlines the emerging character in the NAC, including recent planning approvals but fails to identify unacceptable built form outcomes the WFNP seeks to avoid.

Mr Negri made reference to the history of planning permit activity on the Fabcot Land noting that an approval for a five storey building had previously been granted. He further noted the proximity of the Fabcot Land to Precinct 4 where taller buildings of six storeys were envisaged in the Framework Plan at Clause 21.11-6.<sup>16</sup>

Under cross examination Mr Negri agreed that it would be appropriate to include criteria to guide any discretion relating to building height. He considered the appropriate height should be determined by design and response to agreed criteria. He suggested that it may be appropriate to

<sup>16</sup> (Precinct 4 southern side of Barkly Street).

have taller buildings on the approach to the activity centre. From a policy perspective it is a gateway and has appropriate interfaces.

### Post exhibition proposed changes

Council updated its proposed changes to the building height requirements following Mr Campbell’s evidence. It proposed the introduction of new wording to guide the discretion for building height on lots greater than 5,000 square metres in area (see Figure 12).

Figure 12 Council updated DDO7 08.03.22

Design or Built Form Element	Requirement
Building Height	<p>Building height must not exceed 13.5 metres and four storeys, except for:</p> <ul style="list-style-type: none"> <li>▪ <u>Sites greater than 2000 square metres in area, where building height must not exceed 16.5 metres (five storeys) or</u></li> <li>▪ <u>Sites greater than 5000 square metres in area, where a building may exceed the 16.5m (5 storeys) building height by up to one storey if the building:</u> <ul style="list-style-type: none"> <li>• <u>is designed to minimise the visual appearance of levels above the street wall;</u></li> <li>• <u>does not overwhelm adjoining properties in a residential zone in terms of building scale or bulk, access to daylight, outlook and overshadowing impacts;</u></li> <li>• <u>achieves a greater overall consistency of scale within the streetscape; and</u></li> <li>• <u>respects the fine grain presentation of adjoining land uses fronting the street.</u></li> </ul> </li> </ul> <p>Height of a storey at the ground floor level of a new building must be at least 4 metres measured from finished floor level to <del>the ceiling</del><u>finished floor level.</u></p>

Fabcot acknowledged that the minimum 2,000 square metre land size threshold should remain for sites seeking to exceed four storeys. Fabcot proposed further exemptions for land greater than 4,000 square metres in area and submitted that discretion guiding exceedance should, as a matter of statutory drafting, be decision guidelines.

Fabcot proposed alternative drafting of the DDO as follows:

- introduce an exemption to the proposed DDO7 ‘Buildings and works’ permit requirement as follows:

A permit cannot be granted to construct a building or construct or carry out works in Precinct 1 or Precinct 2 which are not in accordance with the building height and street setback requirements specified in Tables 1 and 2 of this schedule. [This does not apply to a site greater than 4,000 square metres in area.](#)

- introduce additional ‘Decision guidelines’:

If the development does not meet the built form requirements in Table 1, the extent to which the development departs from the built form requirements and whether the development:

- is designed to minimise the visual appearance of levels above the street wall;

- does not overwhelm adjoining properties in a residential zone in terms of building scale or bulk, access to daylight, outlook and overshadowing impacts;
- achieves a greater overall consistency of scale within the streetscape; and
- respects the fine grain presentation of adjoining land uses fronting the street.

#### (iv) Discussion

##### Appropriate building heights

In considering appropriate building heights for the centre the Panel has had regard for planning guidance in PPN60 which states:

... structure plans may propose preferred built form outcomes including minimum or maximum building heights and setbacks. Height and setback controls can be appropriate so long as they are not aimed at restricting the built form, but at facilitating good design outcomes.

Proposed height and setback controls, whether maximum or minimum, must be soundly based on the outcomes of strategic research that includes a **comprehensive built form analysis** that is **consistent with State policy**.

Height controls must not encumber a centre's ability to accommodate community requirements for retail, commercial, housing, community, health, educational and other essential requirements, as consistent with state and regional development policy in the VPP.

Unfortunately Council did not provide a detailed response to the requirements of PPN60. This would have been of assistance to the Panel in understanding the strategic justification for building height requirements.

Alignment of the Amendment with State policy is discussed in other chapters of this Report. The Panel considers the proposal is generally consistent with State policy in that it intends to support and encourage appropriate development in a NAC and surrounding precincts. The Panel acknowledges Council's intent to strengthen the role of Barkly Village as a *"lively, mixed use precinct and the complementary role of the adjacent precincts"*.<sup>17</sup>

The Panel is of the view that while the NAC's position in the hierarchy of activity centres is a consideration, it is not in itself the determining factor of appropriate building height. While one might expect more modest heights in lower order activity centres, the overall heights are primarily a function of physical context, and protection of amenity and the public realm.

In response to questions from the Panel, Council provided 3D modelling for Precinct 1 during the Hearing and for Precincts 2 and 3 after the Hearing.<sup>18</sup> The Panel agrees with Mr Campbell that the 3D modelling demonstrates proposed proportional arrangements, not rigorous testing of options.

In relation to Precinct 1 the modelling demonstrates that building heights combined with street wall heights, setback and transition, would not result in unreasonable impacts on abutting residential areas or Barkly Steet. The Panel is satisfied that the overall heights are guided by contextual considerations such as overshadowing to the southern side of Barkly Street and the protection of sunlight to the southern footpath at the equinox.

The Panel agrees with Council that the amenity provisions for pedestrians and kerbside dining and trading along the southern side of Barkly Street should be protected and DDO7 can achieve this. From a first principles perspective, the Panel is comfortable that generally four to five (for sites larger than 2,000 square metres in area) storey building height in the Barkly Village is appropriate.

<sup>17</sup> Council Part A submission, page 28

<sup>18</sup> Documents 14 and 22

This is not to say taller building heights cannot be achieved under various conditions. There may be instances where taller buildings could be achieved, provided the public realm, high quality design, amenity and appropriate setbacks are achieved. This was explored through submissions and evidence at the Hearing, with options to assess taller buildings against a clear set of parameters suggested by Council and Fabcot. The discretionary building height criteria proposed by Council includes consideration of visual impact and dominance, amenity impacts and character of the surrounding area. Parties generally considered the criteria appropriate and the Panel agrees.

Mr Campbell suggested that land size should be the key trigger for discretion. While Council sought discretionary height controls for sites larger than 5,000 square metres and Fabcot preferred sites larger than 4,000 square metres, the Panel was not provided with any submissions or evidence justifying the proposed land size threshold. The Panel is generally comfortable the criteria for assessing discretionary building height for larger lots of greater than either 4,000 or 5,000 is appropriate. On this basis the Panel supports the land size threshold for trigger of 4,000 square metres.

The Panel supports the modifications proposed by Mr Campbell relating to street wall height, and accepts this will not impose on the public realm and the upper taller levels will be largely concealed behind the street wall profile and from the ground.

Precinct 3 located between the West Footscray Railway Station and Whitten Oval represents a strategic redevelopment site and the eight storey maximum building height was advanced based on the built form analysis. The Panel agrees with Council that the Precinct exhibits a different physical context to Precincts 1 and 2, with less sensitive interfaces to the south, east and northeast.

The Panel accepts Mr Campbell's evidence that the height in Precinct 3 should be increased slightly to accommodate services and required internal building dimensions. The Panel is satisfied that adequate design guidance for the more sensitive north and west interfaces is provided within the DDO8, subject to the recommendations of Mr Campbell. The Panel notes these changes are reflected in Council's final proposed changes.

In relation to submitter general concerns that buildings will be too tall, the Panel is satisfied that the combination of planning controls, that take into consideration site constraints and context, zone and overlay purpose and objectives, design and application requirements and decision guidelines, will ensure a comprehensive and integrated assessment of a development proposal to ensure acceptable impacts on the public realm and amenity of surrounding areas.

### **Fabcot Land**

The Panel agrees with Fabcot that a comprehensive built form analysis for the Fabcot Land was not undertaken. This was verified by Council submissions, extracts of the built form modelling, Council's urban design evidence, and the exclusion of the Fabcot Land from the key investigations for rezoning.

With regard to the tests for comprehensive built form analysis in PPN60, the Panel notes:

- the Fabcot Land was not identified for significant opportunities for change
- there was no analysis of visual and amenity impacts, solar access and overshadowing impacts etcetera undertaken on the Fabcot Land



- while broadly significant physical features, such as views to or from the activity centre or topography were considered, none of these were specifically applied and tested to the Fabcot Land
- broadly the WFNP identifies and articulates how new development should address street frontages and laneways and relate to adjacent residential areas however no such detailed analysis was undertaken for the Fabcot Land.

While it is common for building heights to be determined at a precinct level, the Fabcot Land exhibits strategic and physical attributes that deserve the consideration of site specific built form analysis. Or at the very least, assessment of the Fabcot Land as part of a broader analysis. Neither was undertaken.

The Panel is not satisfied that appropriate consideration and testing has been given to determine the maximum building heights on the Fabcot Land. While a five or more storey building may be appropriate on the site, the Panel is of the view that an appropriate height will need to be determined based on a comprehensive built form analysis, including context assessment and site responsive design with consideration of appropriate criteria as discussed above. The Panel agrees with Mr Negri that it may be appropriate to have taller buildings on the approach to the NAC.

### **Post exhibition proposed changes**

While parties generally agreed on the appropriate criteria for assessing appropriate building height, there was a difference of opinion in how the criteria should be drafted. The Panel prefers the suggestion of Fabcot to include the criteria as decision guidelines as this captures all discretionary elements of the requirements not just building height.

The Panel preferred version of DDO7 at Appendix C1 includes elements of suggestions from Council and Fabcot and other suggestions from the Panel to ensure building height requirements are clear. Notably, the Panel recommends:

- insertion of the land size trigger of 4000 square metres in Table 1
- removal of the first 'Buildings and works requirement' which is premised on mandatory controls. This is no longer required and essentially duplicates the final requirement which refers to the requirements in Table 1 and 2.

The Panel notes that both Figure 1 of the DDO7 and the Framework Plan at Clause 21.11-6 show Precinct 1 as four storeys with no options for larger sites. These plans should be updated to reflect the recommendations of this Report.

Further, the cross sections in the WFNP may need to be updated to reflect changes to the built form requirements in accordance with the evidence of Mr Campbell and the updated requirements in the Schedules to the DDO.

### **(v) Conclusion and recommendations**

The Panel concludes:

- The proposed buildings heights are appropriate, subject to the recommendations in this Report.
- An appropriate building height will need to be determined for the Fabcot Land based on a comprehensive built form analysis, including context assessment and site responsive design with consideration of appropriate criteria.

- The reference to building heights in Precinct 3 should be removed from DDO7, including updating the map and notation on 'Figure 1: Preferred Character Plan of Precincts'.
- Figure 1: Preferred Character Plan of Precincts in DDO8 is not required and should be removed.
- The cross sections in the WFNP may need to be updated to reflect changes to the built form requirements in accordance with the evidence of Mr Campbell and the updated requirements in the Schedules to the DDO.
- Figure 1 in the DDO7 and the Framework Plan at Clause 21.11-6 should be updated to reflect the recommendations of this Report and provide building height options for larger sites.

The Panel recommends:

**Amend the Schedules to the Design and Development Overlay in accordance with Panel preferred versions in Appendix C.**

**Amend local policy Clause 21.11-6 ( West Footscray Neighbourhood Activity Centre, Barkly Street East and West Footscray Railway Station Precincts) to:**

- a) **update the Framework Plan to explain provisions for building height options for larger sites.**

**Prior to adoption of the Amendment, update the West Footscray Neighbourhood Plan to:**

- a) **amend the cross sections to reflect changes to the updated built form requirements in the Schedules to the Design and Development Overlay**
- b) **insert a revision date, and ensure the correct version is included as a reference document in the Amendment documents.**

### 4.3 Neighbourhood character and amenity

#### (i) The issue

The issue is whether the Amendment adequately protects neighbourhood character and amenity.

#### (ii) Evidence and submissions

Council submitted that the introduction of built form guidelines will manage change in the precincts, establish a strong coherent streetscape character, enhance the public realm and protect amenity in the surrounding area. Council said that the controls had been specifically formulated to provide clear direction to achieve the outcomes sought in WFNP.

Council submitted that the WFNP and Schedules to the DDO strike an appropriate balance between facilitating growth in and around the Amendment area, providing opportunities for consolidation, redevelopment and intensification, while balancing neighbourhood character considerations and addressing community concerns.

Council submitted that the WFNP will ensure the fine grain characteristics of Precinct 1 would be protected and reproduced in future development. Land use and built form guidelines in the Amendment were intended to facilitate the objectives of the WFNP such as the principles of identity and diversity, a thriving village, high quality buildings and spaces and a great place to live.

Council submitted the proposed policy guidance in Clause 21.11-6 was intended to set up a framework to guide the future transition of Precinct 4. The Amendment does not include rezoning or specific built form provisions for Precinct 4 as this will be subject to a future amendment, following master planning and site investigations.

Council submitted that built form outcomes envisaged for each precinct are based on detailed analysis. It relied on the evidence of Mr Campbell, who stated:

I consider the proposed built form aspirations and urban design measures contained within Amendment C162 to be sound and worthy of approval as they seek to appropriately manage the future urban form and evolution of the West Footscray Neighbourhood Activity Centre.

Mr Campbell commended the built form guidelines:

In respect of the public realm interface guidelines the proposed provisions seek contemporary best practice urban design outcomes for a street based Activity Centre, requiring active frontages at Ground Floor level and to maintain a fine grain rhythm, concealment of car parking area/s from the street and no vehicle access from the main frontage, legible building entries and continue weather protection across the footpath, etc. I support the provisions as they suitably seek to enhance the streetscape presentation of new buildings and ensure a vibrant environment for pedestrian activity, with vehicle access relegated to secondary frontages (for corner sites) or rear laneways.

Mr Campbell was of the view that the *“provisions will facilitate future development consistent with the preferred outcomes and will foster a desirable future streetscape provide and character”*. He was of the opinion that the side setback provisions are consistent with best practice.

He concluded he was satisfied that principle of modest infill development was appropriate and would allow development to appropriately respond to the valued village character and residential interfaces.

With regard to urban design outcomes, Mr Campbell suggested minor wording refinements to the ‘Design objectives’:

- DDO7:
  - To encourage a range of well designed buildings with a consistent street wall height and fine grain presentation that supports a mix of active uses on ground floor level in the West Footscray Neighbourhood Activity Centre.
  - To encourage a range of well designed low-rise apartment buildings with landscaped front setbacks ~~on~~ and lot consolidated sites consolidation in the Barkly Street East Residential Precinct.
  - To improve activation and utilisation of ~~public spaces~~ the public realm through active frontages to buildings along ~~roads~~ street frontages and public spaces in the activity centre and adjacent precinct.
- DDO8:
  - To encourage ~~a range~~ of well designed apartment buildings that support complementary uses at ground floor level.
  - To facilitate mixed use development that is of high architectural and urban design quality, offers attractive and functional internal and external spaces and provides good amenity.
  - To improve activation and utilisation of ~~public spaces~~ the public realm through active frontages to buildings along ~~roads~~ street frontages and public spaces.

Mr Campbell suggested further refinements to the wording of ‘Building Height’ and ‘Public Realm Interface’ requirements in the Schedules to the DDO.

The changes proposed by Mr Campbell were captured by Council in its final preferred version.

Submitter 35 opposed apartments/higher density development in the area stating that new development should be restricted to 2 storeys. Several submitters said that:

- the heights nominated across the precincts are too tall and would result in unacceptable impacts on the public realm, neighbourhood character, and amenity of surrounding lower scale residential areas
- new development on Barkly Street should be required to retain existing facades to retain unique local character.

Specific issues raised in relation to precincts include:

- Precinct 1
  - objection to proposed height due its potential impact to the Barkly Street village character and the potential for overshadowing of the street<sup>19</sup>
  - concern about the potential change of the character of the area<sup>20</sup>
  - redevelopment in this precinct should incorporate similar 'village' character to surrounding area and be restricted to four storeys
- Precinct 2
  - how will the landscape front garden character be achieved<sup>21</sup>
  - new development needs to incorporate plenty of green space, substantial setbacks from main roads and suitable open space for children
- Precinct 3
  - oppose the eight storey height limit in Precinct 3 as being excessive, incongruous with the surrounding area and likely to cause amenity impacts<sup>22</sup>
- Precinct 4
  - requested more details about the future redevelopment of Precinct 4.<sup>23</sup>

### (iii) Discussion

The WFNP includes built form guidelines that aim to establish a coherent streetscape character along Barkly Street, respond better to the public realm and help protect amenity of the area. The WFNP takes its cues from Barkly Village however also seeks to employ new standards in relation to public realm engagement and amenity protection that, together with the built form guidance, will deliver a renewal of activity and reinvigoration of character in the NAC.

The Panel considers the built form guidance and planning provisions are generally sound on the basis that:

- the design and built form elements (building height, street setback, side and rear setbacks, public realm interface) are measures and design cues that accord with current best practice built form assessment frameworks
- there is a clear nexus between the design guidelines in the WFNP and the objectives in the Schedules to the DDO
- the design guidance for planning permit applicants and Responsible Authority is unambiguous.

<sup>19</sup> Submitter 9 and 13

<sup>20</sup> Submitters 5 and 7

<sup>21</sup> Submitter 7

<sup>22</sup> Submitters 19, 20, 21, 22 and 41

<sup>23</sup> Submitter 31

The Panel is satisfied that the ‘Design objectives’ are balanced and have regard for quality design and appropriate presentation at ground floor while also allowing for improved activation and a range of well designed low-rise apartments. In other words, a balance has been struck between respecting key characteristics while recognising change will occur.

The Panel considers the wording refinements suggested by Mr Campbell assists with understanding the urban design intent and desired built form outcomes. The addition of words relating to ‘fine grain presentation’ in Precinct 1 is important to ensure this characteristic is adequately recognised.

The Panel supports the proposed refinements suggested by Mr Campbell apart from the proposed rewording of the second objective in DDO7 to:

To encourage a range of well designed low-rise apartment buildings with landscaped front setbacks ~~on and lot consolidated sites~~ consolidation in the Barkly Street East Residential Precinct.

The proposed change encourages lot consolidation in Precinct 2. The strategic basis of this is not clear in the WFNP, and the Panel is of the view that further consideration is required to ensure it is consistent with the intent of the WFNP and there are no unintended consequences.

### **Village feel**

The Panel understands the village feel to be as much about the ground plane, streetscape, and public realm as it is about building height. Where building height is recessed and not an imposition on the street, the urban design focus turns to building engagement at street level and the manner in which the ground plane delivers an activated human scale.

The design objectives are supported by a range of design guidelines including public realm interface guidelines that incorporate an active frontage response at all ground level interfaces, and *“the maintenance of a fine grain street pattern of buildings with a 6 metre width at ground level and incorporate vertical articulation”*.

The DDO provides clear guidance and design cues to planning permit applicants and the Responsible Authority to protect and or continue to deliver a fine grain presentation and human scale experience. The Panel considers the proposed policy and provisions will facilitate preferred character outcomes, including creating/reinforcing the village feel sought by submitters.

This issue of building height is discussed in other chapters of this Report.

### **Form**

While some submitters are concerned the WFNP encourages higher density and apartment development, the Panel accepts the proposal is consistent with State and local planning policy which supports the continued growth and diversification of activity centres (Clause 11.03-1S). It is also consistent with housing policy which seeks to direct residential development to identified substantial change areas, and substantial change activity centres (Clause 21.04-2 Housing Growth).

A transition to apartment typology can reasonably be expected to deliver on policy. Application of the C1Z in Precinct 1 further complements the built form objectives of the WFNP by allowing as of right residential land use and form above the street level provided *“any frontage at ground floor does not exceed 2 metres”*.

## Amenity and landscaping

The Panel is satisfied that the Schedules to the DDO provide adequate amenity protection for the public realm and abutting residential interfaces. The amenity tests in the design or built form guidelines provide the Responsible Authority with a balanced assessment framework.

The Panel is comfortable the side setbacks will ensure building separation and the protection of amenity for habitable rooms and spaces. Adoption of the standard rear setback provisions will meet the transition expectations to abutting residential areas as outlined in Clause 21.04-1 (Activity Centre planning), specifically strategies include to:

- Protect areas adjacent to activity centres from negative impacts.
- Discourage uses or new developments in activity centres which will be incompatible with a continued residential presence whether through scale, image or off-site environmental or amenity impacts.<sup>24</sup>

The requirements in the planning provisions will ensure that new buildings at interfaces do not physically overwhelm or intrude on the reasonable privacy of low-rise residential surroundings.

The Panel notes that requirements for Precinct 2 provides generous street setbacks and a requirement to incorporate landscaping, including space for at least one tree. The Panel supports the wording refinement proposed by Mr Campbell to require “*at least one canopy tree per front yard*”.

## Precinct 4

While details around the built form and land use aspirations for Precinct 4 would have assisted in understanding of its future development, the Panel accepts that:

- the proposed policy relating to Precinct 4 aligns with the WFNP
- the policy in the proposed Clause 21.11-6 adequately signals Council’s intentions for Precinct 4 and an appropriately staged approach
- a separate strategic planning exercise is entirely appropriate should the testing and strategic work not yet be completed.

## (iv) Conclusions and recommendation

The Panel concludes:

- The ‘Design objectives’ in the Schedules to the DDO are strategically justified and appropriate, subject to the recommendations of this Report.
- The wording refinements suggested by Mr Campbell are appropriate, apart from the proposed rewording of the second objective in DDO7 relating to lot consolidation.
- The proposed local policy relating to Precinct 4 is strategically justified, and it is appropriate for detailed controls to be developed through a separate strategic planning process.

The Panel recommends:

**Amend the Schedules to the Design and Development Overlay in accordance with the Panel preferred versions in Appendix C of this Report.**

<sup>24</sup> Standard B17 residential profile to Clause 55 and 58 together with Standards B19 and B20 of Clause 55 (D15 of Clause 58)

## 4.4 Protection of heritage architecture

### (i) The issue

The issue is whether the amendment adequately protects heritage architecture.

### (ii) Submissions

Several submitters were concerned the Amendment would result in the loss of heritage architecture. Submitter 33 was concerned about adverse impact on the character of the neighbourhood and suggested engaging historians and artists to interview residents and advise on saving the identity of the area. Submitter 19 suggested that new development on Barkly Street should be required to retain existing facades to retain unique local character.

Council explained the Heritage Study was recently completed, endorsed by Council and formed the basis of Amendments C172mari (permanent controls) and C173mari (interim) (see Chapter 2.4(ii)). The Heritage Study investigated, recorded, assessed and made recommendations across 34 streets in West Footscray (see Figure 13), and was intended to provide:

- an assessment of the heritage values of each house in the entirety of each street
- recommendations for listing them in the Heritage Overlay as heritage precincts.

Council identified the Heritage Overlay had been applied to only four sites relevant to the Amendment.<sup>25</sup> Council submitted that for two of the sites the Amendment either doesn't include zoning or overlay changes or where changes are proposed, they are heritage places protected in approved permits.

**Figure 13** Location plan of area of Heritage Study investigation



Source: West Footscray Post War and Heritage Study 2021, page 8.

<sup>25</sup> HO93 (Drill Hall, 395 Barkly Street); HO94 (Canary Island date palm row and Canary Island Palms, 399-413 Barkly Street); HO95 (Washingtonia Palm at Multiple Sclerosis Centre, rear of 400-406 Barkly Street); HO96 (Nundah, 600 Barkly Street).

**(iii) Discussion**

It is clear to the Panel that Council is well aware of the heritage values within the WFNP area, and Council is advanced in implementing the recommendations of the recently completed Heritage Study in the Planning Scheme.

The heritage protections for the four sites within the Amendment area will remain and any future development of these sites will be required to meet the relevant tests within the Planning Scheme including the Heritage Overlay. The Panel makes no comment on sites outside of the Amendment area.

**(iv) Conclusion**

The Panel concludes:

- The Amendment will not negatively impact identified heritage architecture.



## 5 Movement and access

### 5.1 The issue

The issue is whether the Amendment adequately considers movement and access, in particular the impact of increased development on parking, traffic and transport infrastructure.

### 5.2 Evidence and submissions

Several submitters raised issues relating to movement and access, including:

- Parking
  - more intensive development will increase pressures on street parking and congestion
  - new development must include adequate private parking and unloading facilities
  - parking restrictions should be applied to residential streets
  - more car, bike and scooter parking is needed
- traffic and public transport:
  - pedestrian and cycling infrastructure needs to be improved
  - public transport between West Footscray station and Barkly Village needs to be improved
  - the laneway on the supermarket car park between Milton Street and Summerhill Road should be preserved
  - Barkly Street should be widened to manage congestion.

Council submitted that a key objective of the WFPN is to improve walking, cycling and public transport connections. In tandem with the Amendment it prepared a Local Area Traffic Management Study for West Footscray and Maidstone which informed the WFPN and recommendations are being implemented to improve road and pedestrian safety. Council is also undertaking a range of works derived from the Maribyrnong Bicycle Strategy 2020 – 2030.

Council submitted that the WFPN recognised there would be additional demand for road space and need for traffic management as a result of redevelopment in the area. Council stated in its Part B submission that it was “*acutely aware of the importance of the public realm interface*” and considered minimising the impact of car parking and access on the public realm as paramount.

In relation to car parking it stated that the Amendment is premised on urban consolidation and 20 minute city principles and sought to locate housing growth in locations with good access to services. Accordingly the Schedules to the DDO require new development proposals to:

be informed by an assessment of traffic and transportation issues, including car parking design, provision, access and egress for future residents/occupants and visitors, and the relationship to the pedestrian, cycling and public transport network.<sup>26</sup>

Council considered existing policies in the Planning Scheme and Clause 52.06 (Car parking) would provide sufficient guidance for decision makers on the provisions of car parking for new development.

In closing submissions Council explained that car parking in Barkly Village would be managed in accordance with its Parking Management Policy 2017. The policy seeks to:

- provide car based visitor access that maximises both attractiveness and visitation

<sup>26</sup> Document 6, Council’s Part A submission, page 31

- optimise community benefit by ensuring high vehicle turns
- maintain and enhance residential amenity.

A Parking Management Precinct Plan would be prepared if required.

Council submitted that:

- issues relating to movement and access would be further considered during the master planning for Precinct 4
- it would continue to work with State government and relevant transport agencies to deliver the active and public transport improvements identified in the WFNP.

In relation to car parking, Mr Campbell gave evidence that he supported the proposed planning provisions. He stated that while not strictly an urban design matter, he was confident the Amendment would:

suitably direct the provision of future car parking provision. I also understand that the intent of Council is for necessary car park provision to be incorporated within future developments and be ideally within basement level/s or at Ground level (concealed from view from the public realm). Such an approach to car park provision within contemporary apartment and mixed use developments is appropriate.<sup>27</sup>

Mr Negri considered the Amendment encouraged growth within close proximity to public transport.

### 5.3 Discussion

The Amendment responds to State and local transport planning policy by better integrating land use and transport, and directing growth into areas along the Principal Public Transport Network and which complements the redevelopment of West Footscray Railway Station. In line with 20 minute city principles, it is sound strategic planning practice to encourage urban consolidation and encourage housing growth in locations with good access to transport services.

The Panel commends Council's integrated approach to land use and transport planning. The Local Area Traffic Management Study has informed both the Amendment and a works program to ensure road and transport infrastructure is consistent with the objectives of the WFNP. Further Council has an active Parking Management Policy and associated monitoring program in place.

The Schedules to the DDO appropriately address locally relevant design matters, while Clause 52.09 (Car parking) deals with provision. The Panel notes the proposed Schedules to the DDO include the following relating to car parking and traffic:

- Buildings and works requirements:
  - Where a laneway or secondary street exists, no vehicle access from the main street.
  - Car parking area not visible from the street.
- Application requirements:
  - An assessment of traffic and transportation issues including car parking design, provision, access and egress for future residents/occupants and visitors, and the relationship to the pedestrian, cycling and public transport network.
  - and report demonstrating high standards of environmental sustainability, including:
    - Measures to reduce or manage car parking demand and encourage sustainable alternative transport modes.
- Decision guidelines:

<sup>27</sup> Document 9, EWS Mr Campbell, para 70

- Whether the location, design and layout of car parking is an acceptable response to the public realm.
- The quality of pedestrian, bicycle and vehicular access and egress points and connections.
- The impact of traffic and parking on the road network.

The purposes of Clause 52.09 (Car parking) include:

- ensuring the appropriate supply of car parking
- supporting sustainable transport options
- promoting the efficient use of car parking spaces through the consolidation of car parking facilities
- ensuring car parking does not adversely affect the amenity of the locality
- ensuring the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

The Panel is satisfied that the State planning provisions relating to car parking provision will provide an adequate decision making framework, and the Schedules to the DDO will manage public realm and amenity issues where a planning permit is required.

The Panel has reviewed the Preferred Character Plan at Figure 1 of the DDO7, and accepts Council's submission that preservation of the laneway on the supermarket car park between Milton Street and Summerhill Road is preserved.

The Panel supports Council's commitment to advocacy with relevant State agencies to achieve active and public transport improvements.

The master planning for Precinct 4 presents a significant opportunity to address issues relating to access and movement, and to provide detailed policy and design guidance if appropriate.

## 5.4 Conclusion

The Panel concludes:

- The Amendment adequately considers movement and access, in particular the impact of increased development on parking, traffic and transport infrastructure.

## 6 Potentially contaminated land

### 6.1 The issue

The issue is whether it is appropriate to apply the EAO to land at:

- 509-511 Barkly Street, West Footscray
- 8 Cross Street, Footscray
- 438-440 Barkly Street, Footscray.

### 6.2 The proposal, background and guidance

#### Proposal

The exhibited Amendment proposed to apply the EAO to:

- 509-511 Barkly Street, West Footscray
- 8 Cross Street, Footscray.

Post exhibition Council also proposed to apply the EAO to:

- 438-440 Barkly Street, Footscray.

#### Relevant Ministerial Directions and Planning Guidance

MD1 aims to ensure that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by contamination. MD1 was updated on 27 August 2021 to align with the *Environment Protection Act 2017*.

MD19 requires planning authorities to seek early advice from EPA when undertaking strategic planning processes and preparing planning scheme amendments that may significantly impact Victoria's environment, amenity and/or human health due to pollution and waste. The explanatory report for an amendment must include a statement of how the proposed amendment addresses the views of EPA.

PPN30 provides planning guidance on:

- how to identify potentially contaminated land
- the appropriate level of assessment of contamination in different circumstances
- appropriate provisions in planning scheme amendments
- appropriate conditions on planning permits.

#### Panel Directions

The Panel issued a direction to Council in relation to the proposed Environmental Audit Overlay, to:

- explain the basis of the proposed Environmental Audit Overlay as exhibited and proposed changes
- explain how the proposal has had regard to Ministerial Direction 1 and Planning Practice Note 30
- copies of all relevant correspondence between Council and the EPA
- seek and provide updated advice from the EPA regarding the proposal, including their views on Council's current position on the Amendment in light of the *Environment Protection Act 2017* and associated regulations which came into effect on 1 July 2021

- explain Council's position on whether it is appropriate to introduce to the EAO to 438-440 Barkly Street, Footscray when this was not included in the exhibited Amendment

### Summary of discussions and advice from EPA

Council's Part B submission provided a detailed overview of discussions and advice from the EPA in relation to the Amendment. The Panel has summarised this in Table 6.

**Table 6 Summary of discussions and advice from the EPA**

Timeframe	Activity and advice
June to July 2019	Council undertook early consultation with the EPA regarding the Amendment
17 July 2019	EPA wrote to Council it: <ul style="list-style-type: none"> <li>- notes proposed application of the EAO to 8 Cross Street, Footscray and 509-511 Barkly Street, Footscray</li> <li>- while it prefers site assessment and if necessary remediation prior to rezoning of land, it accepts the EAO as an appropriate tool for Council to signal the need to address potential risk</li> <li>- did not consider it necessary to apply the EAO to 438-440 Barkly Street, Footscray</li> </ul>
10 December 2020	EPA made submission on the Amendment: <ul style="list-style-type: none"> <li>- 509-511 Barkly Street, West Footscray – there does not appear to be sufficient justification to demonstrate the land is potentially contaminated</li> <li>- 8 Cross Street, Footscray – the Amendment documentation does not appear to provide justification which demonstrates the land is potentially contaminated and requires an environmental audit</li> <li>- 438-440 Barkly Street, Footscray – given the land is potentially contaminated and sensitive uses are allowed under the zoning, the EAO should be applied</li> </ul>
19 May 2021	Council meeting with EPA to discuss its submission Council advised it proposed to introduce the EAO to 438-440 Barkly Street, Footscray in addition to the two other properties
6 July 2021 and 9 December 2021	Council wrote to land owners informing of them of its intentions and reasoning, and providing an opportunity to make submission on the Amendment <sup>28</sup>
21 December 2021	Council wrote to the EPA noting that the Panel had requested Council seek clarification from EPA and provide updated advice regarding EPA's views on the Amendment, including EPA's views on Council's current position on the Amendment in light of the <i>Environment Protection Act 2017</i> and associated regulations which came into effect on 1 July 2021.

<sup>28</sup> Document 11, attachments

Timeframe	Activity and advice
31 January 2022	<p>EPA wrote to the Planning Panel noting that:</p> <p>(a) <i>It appears that the amendment is generally consistent with the requirements of the land use framework for the management of potentially contaminated land which supports the implementation of the EP Act 2017.</i></p> <p>(b) <i>What remains outstanding is the need for the planning authority to state the determination in the Explanatory Report that the land is potentially contaminated and satisfy itself that the environmental conditions of that land are or will be suitable for that use through application of the EAO. This is likely to be a straightforward update to the amendment documentation.</i></p> <p>(c) <i>On that basis, EPA does not object to the amendment being approved and have determined that we will not be participating in the hearing process.</i></p>

### 6.3 Submissions

Council submitted it had prepared the Amendment with consideration of MD1 and PPN30, and that it had undertaken the necessary steps to determine that the sites are potentially contaminated. It considered it appropriate to introduce the EAO to the sites:

including 438-440 Barkly Street, Footscray which was not included in the exhibited Amendment, on the basis that all three sites are potentially contaminated, and sensitive uses could be established at all three sites.

It is noted that in 2016 there was an audit of 438-440 Barkly Street, Footscray based on higher density uses which found that the land is contaminated. The audit did not consider all other potential sensitive uses such as childcare. Therefore, further audits may be required.<sup>29</sup>

The Council officer summary of response to submissions (attachment 4 to the Council report of 9 November 2021) explained the basis of potential contamination of relating to 509-511 Barkly Street, West Footscray and 8 Cross Street Footscray. The attachment also stated:

The Explanatory Report for the amendment will be updated to include the additional details in accordance with the new MD1 at adoption stage

Council submitted that application of the EAO to 438-440 Barkly Street, Footscray through the Amendment was appropriate from a procedural perspective given that:

- the site is known to be contaminated due to a previous audit
- the previous audit did not include all sensitive uses
- Council has provided sufficient opportunity for those potentially materially affected to make a submission.

EPA submissions relating to application of the EAO are detailed above. No further submissions were received in relation to the proposal.

### 6.4 Discussion

The Panel accepts Council's justification for why it is appropriate to apply the EAO to all three properties.

Ministerial Direction 15 (The Planning Scheme Amendment Process) and the PE Act detail requirements for public exhibition and notice of a planning scheme amendment. This includes a

<sup>29</sup> Document 11, Council's Part B submission

requirement for a planning authority to give notice to the owners and occupiers of land that it believes may be materially affected by the amendment. Council provided the Panel with copies of correspondence it had sent to the owner of the property at 438-440 Barkly Street, Footscray advising that it proposed to apply the EAO to the land, and explaining the process for a submission.

The Panel accepts that it may be appropriate to apply the EAO to the land at 438-440 Barkly Street, Footscray and understands that Council gave notice and provided an opportunity for submission to the owners of the land following exhibition, and that no submission was received. The Panel considers that prior to adoption Council must determine whether it has adequately provided notice to owners and occupiers of the land that may be materially affected by the Amendment. If Council is satisfied that notice is adequate, it may include application of the EAO to the land at 438-440 Barkly Street, Footscray through the Amendment.

MD19 states the explanatory report for a planning scheme amendment must include a statement of how the proposed amendment addresses the views of the EPA. As noted by the EPA, the exhibited Explanatory Report does not provide an explanation of the determination that the land is potentially contaminated. The Panel agrees with the EPA that the Explanatory Report should be updated to include this information.

## 6.5 Conclusions and recommendations

The Panel concludes:

- It is appropriate to apply the EAO to the land at to 438-440 Barkly Street, Footscray, subject to Council satisfying itself that adequate notice has been given to affected land owners and occupiers.
- The Explanatory Report should be updated to explain how the Amendment addresses the views of the EPA.

The Panel recommends:

**Subject to Council satisfying itself that notice requirements have been met:**

- a) Apply the Environmental Audit Overlay to 438-440 Barkly Street, Footscray**
- b) Amend the Explanatory Report to include information about application of the Environmental Audit Overlay to 438-440 Barkly Street, Footscray.**

**Amend the Explanatory Report to explain how the Amendment addresses the views of the Environment Protection Authority.**

## 7 Licensed gas pipeline

### 7.1 The issue

The issue is whether the Amendment provides suitable protections for the licensed gas pipeline.

### 7.2 Background and relevant policy and legislation

The land affected by the Amendment is in proximity to AusNet Services 400 millimetre diameter gas transmission pipeline (Pipeline Licence 18) which traverses Warleigh Road, Barkly Street and Summerhill Road (see Figure 14). Pipeline Licence 18 is a regulated asset and is operated in accordance with the requirements of the Victorian *Pipelines Act 2005* and relevant Australian Standards.<sup>30</sup>

The *Pipelines Act 2005* requires licensed pipelines be constructed and operated in accordance with Australian Standard 2885: Pipelines—Gas and liquid petroleum (AS (/NZS) 2885). The standard requires pipeline licensees to implement a range of safety measures to reduce foreseeable risks associated with operating a pipeline. This includes considering changes to land use in the vicinity of operational pipelines.

The objective of Clause 19.-01-3S (Pipeline Infrastructure) is to:

- To ensure that gas, oil and other substances are safely delivered to users and to and from port terminals at minimal risk to people, other critical infrastructure and the environment.

**Figure 14** Existing Licensed Pipeline within West Footscray Village



Source: Submission 25 from ESV

<sup>30</sup> The *Pipelines Act 2005* applies to 'transmission' pipelines that have a maximum design pressure exceeding 1050 kilopascal (gaseous hydrocarbons) and 345 kilopascal (liquid hydrocarbons) for the conveyance of gas, oil and other substances.



## 7.3 Submissions

Council submitted the Amendment did not directly impact the pipeline itself and would not fundamentally alter the environment surrounding the pipeline, as the existing planning controls generally allow for higher density development (retail/residential). However it acknowledged the Amendment may encourage and facilitate more development near the pipeline, and may increase the likelihood of a higher concentration of residential uses as a result of the rezoning.

ESV and Downer originally recommended Council seek feedback from the pipeline licensee (AusNet Gas Services) to confirm whether a SMS was required. ESV and Downer submitted that relevant risk mitigation measures from an SMS should be incorporated in the Amendment. They did not object to the Amendment provided conditions were met in relation to the high-pressure gas pipeline that intersects Precincts 1 and 2.

Prior to the Hearing a SMS was submitted to the Panel. Further written submissions were received from Downer and ESV confirming the conditions set out in their original submissions had been addressed, with their conditional support now amended to:

- Specific development/s within proposed planning scheme containing construction activities in the vicinity (3.0m exclusion zone) of the gas transmission pipeline shall adhere to the requirements of the Victorian Pipeline Act 2005 and AusNet Services 'Condition of Works' TS 2607.2 and TS 2607.3.
- Specific development/s within proposed planning scheme that will constitute in High Density or Sensitive land uses within measurement length (as determined by AS/NZS 2885.6), the development/s applicant/s shall conduct Safety Management Study as per requirements of AS/NZS 2885.1:2018 and in conjunction with AusNet Services, to identify and mitigate the threats to the pipeline.

Council proposed post exhibition changes the Amendment to:

- include a notice requirement in the Schedule to Clause 66.06 (Notice of Permit Applications under Local Provisions)<sup>31</sup>
- amend the DDO7 to refer development within 27 metres of the licensed gas pipeline to Clause 66.06 notice requirements
- include a Decision guideline to consider whether the development has been appropriately design in relation to the pipeline.

## 7.4 Discussion

The Planning Scheme recognises the need to protect existing transmission-pressure gas pipelines from further encroachment by residential development or other sensitive land uses, unless suitable additional protection of pipelines is provided.

The Panel notes that Council engaged a qualified pipeline engineer to prepare a SMS in consultation with Downer and ESV in response to the issues raised in submissions, and the recommendations in the SMS were supported by the pipeline licensee on 3 September 2021.

The Panel notes that Council, ESV and Downer were all in agreement that the following findings of the SMS provide suitable protections for the pipeline:

- The pipeline location class is currently T1 Residential.

<sup>31</sup> Notice of Permit Applications under Local Provisions for works within the 3 metre exclusion zone to relevant gas transmission line owner and licensee

- The pipeline location class may need to be changed in future to T2 High Density and Sensitive. The design of the pipeline meets relevant standards for these location classes.
- A SMS is likely to be required during detailed design stage of new development of sites interfacing the pipeline (responsibility of the developer).
- A SMS is likely to be required as part of design phase of new development in the Amendment C162mari area within 27 metres of the pipeline (to be completed by the developer).
- Council should notify service provider AusNet during the planning permit process for these sites.

The Panel agrees with the proposed exhibition changes of Council, in combination with AusNet as an existing Determining Authority under Clause 66 (Referrals and notice provision). The Panel considers this an appropriate response to Clause 19.01-3S and the *Pipelines Act 2005*.

## 7.5 Conclusion and recommendations

The Panel concludes:

- The Amendment incorporates suitable protections for the licensed gas pipeline, subject to the post exhibition changes proposed by Council.

The Panel recommends:

- Amend Design and Development Overlay - Schedule 7 to ensure the license gas pipeline is adequately protected, in accordance with the Panel preferred version shown at Appendix C1.**
- Amend the Schedule to Clause 66.06 (Notice of Permit Applications under Local Provisions) to include the following notice requirement:**

Clause	Kind of application	Person or body to be notified
Schedule 7 to Clause 43.02 (DDO7)	An application for buildings and works on land shown in Figure 2 of Schedule 7 to Clause 43.02.	Owner and licensee of the Footscray to Sunshine gas transmission pipeline.

## 8 Other issues

### 8.1 Social housing

#### (i) The issue

The issue is whether the Amendment should include social housing requirements.

#### (ii) Submissions

Submission 4 raised concerns the Amendment would disadvantage and displace low-income households by causing rents to rise. It sought direct measures to combat isolation and inequality and requirement for accessible social housing to be incorporated into new developments.

Submission 31 broadly supported the Amendment and activation of the NAC, however, considered there are policy gaps. It sought more information on how the Amendment addresses housing diversity and affordability. The submission suggested Council investigate a social partnership to deliver affordable housing.

Council responded by outlining the State Government framework and legislation for considering social and affordable housing in the planning system. Council submitted that it supported and encouraged new development to provide a portion of social and affordable housing, with reference to the draft Housing Strategy and Amendment C154mari which seeks to include policies to ensure inclusive and diverse housing. Council stressed there is currently no provision in planning legislation available to Council to require all new development to provide social housing.

#### (iii) Discussion

The Housing Strategy includes objectives, *“to increase the supply of affordable, public and social housing in the City”* and *“to reduce housing stress in the City”*. Under the housing affordability challenges and opportunities, a range of strategies are listed that contemplate the provision of social affordable housing including:

- Facilitate development of affordable housing across the City
- Maintain and improve the quality of the existing supply of social and public housing
- Support a more spatially even distribution of social, public and affordable housing
- Support private developers to work with registered affordable housing providers.<sup>32</sup>

Further work is required to underpin inclusion of a metric or quantum for delivering social and affordable housing in the Planning Scheme. The existing provisions such as Clause 16.01-25 (Housing Affordability) are a starting point for Council to incorporate social and affordable housing requirements, however appropriate metrics for the contributions must be determined and tested.

#### (iv) Conclusion

The Panel concludes:

- Additional strategic work would be required to determine if specific of social and affordable housing requirements are required and strategically justified.

---

<sup>32</sup> Housing Strategy, page 25

## 8.2 Community infrastructure and open space

### (i) The issue

The issue is whether the Amendment has adequately considered community infrastructure and open space.

### (ii) Background

The Explanatory report explains how the Amendment supports planning for community infrastructure and open space, including how it relates to the following policies:

- Clause 19 – Infrastructure by ensuring the development of the necessary physical and social infrastructure to support land use and development. This includes improved open space provision and networks, community facilities and the integrated provision of all utility services.
- Clause 21.04 – Open Space by improving open space provision and networks, linkages and connections throughout the West Footscray NAC and adjacent precincts and residential areas.
- Clause 21.10 – Community and Development Infrastructure by encouraging and providing improved community, social, cultural, sporting and recreational facilities in the West Footscray NAC and at, and adjacent to, Whitten Oval.

The WFNP states that it has considered the Open Space Strategy 2014. It contains Community Infrastructure and Open Space objectives to:

- Create a high quality public realm that is attractive, safe and walkable.
- To create high quality, flexible community facilities that accommodate the needs of a diverse and growing population.
- To support expansion of facilities at Whitten Oval adjacent to West Footscray Railway Station.
- To increase opportunities for residents to engage in outdoor recreation and leisure.

The WFNP also includes a comprehensive action plan with 20 actions relating to improvements of community infrastructure and open space.

### (iii) Submissions

Submission 4 proposed a new community activity space on Barkly Street, and noted that the Amendment did not include improvements to Council facilities as outlined in the WFNP.

Other issues raised in submissions relating to open space relate to:

- further information on how the open space network had been considered
- the Amendment not adequately considering loss of public open space at Whitten oval and provision of playgrounds
- requests for public realm upgrades to incorporate greening and pedestrians
- no change should be made to Whitten Oval.

Submitters at the Hearing spoke passionately about the need for adequate provision of accessible passive open space.

In relation to issues raised in submissions it stated that the WFNP:

- recognises increasing population and land use change creates additional demand on community infrastructure and public open space

- includes several relevant actions including upgrades to existing open space reserves, opportunities for new parks and renewal of West Footscray Library
- includes public realm upgrades and street tree planting.

In relation to community spaces along Barkly Street, it submitted:

Recent Council initiatives have included a parklet programme to enable outdoor dining on Barkly Street and a pop-up park on the corner of Clarke Street, providing a central open space for community members and visitors to gather in Barkly Village.

In relation to Whitten Oval, Council submitted the Amendment proposed to include a local policy statement that reinforces support for recreational, sporting and community facilities at, and opposite, Whitten Oval.

Council did not propose any changes to the Amendment in response to submissions.

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

The Panel considers the WFNP supports policy intended to ensure adequate and equitable provision of community infrastructure and open space. The Panel supports Council's approach to the WFNP which is integrated plan responding to a range of interrelated objectives including the provision of a safe, accessible and attractive public realm and opportunities for outdoor recreation and leisure.

The Panel notes that the WFNP includes clear objectives and a comprehensive action plan for community infrastructure and open space improvements throughout the West Footscray area. Many of the actions are proposed to be implemented through Council programs not associated with the Amendment.

The Panel accepts Council's response to issues raised in submissions.

#### **(v) Conclusion**

The Panel concludes:

- The Amendment has adequately considered community infrastructure and open space.

### **8.3 Noise**

#### **(i) The issue**

The issue is whether the impact of noise from Whitten Oval events has been adequately addressed in the Amendment.

#### **(ii) Submissions**

Submission 33 raised issues relating to the potential adverse impact of Whitten Oval event noise on residents, and considered new development needs to incorporate noise reduction measures. The submission stated that residents, particularly shift workers, found the sirens distressing in the morning on match days.

Council submitted the Schedules to the DDO include a requirement for assessment of noise impacts for a development proposal. Specifically, new development must be informed by:

An Acoustic Report which includes a detailed assessment of potential noise impacts at different times of the day and week. This includes noise generated from abutting commercial activities and the surrounding road network.

If the report identifies that the proposed use and/or development may be adversely affected, specific recommendations must be provided within the report for appropriate acoustic design treatments to be implemented to ensure the proposed use and/or development is not adversely affected by the identified impacts.

DDO8, which applies to the land immediately abutting Whitten Oval also require:

An adverse amenity impact assessment consisting of a report(s) prepared by a suitably qualified person(s). The report(s) must identify all potential adverse amenity impacts (eg; noise, odour) from nearby land and uses including, but not limited to:

- The recreation facility to the east of the subject site(s).
- Use of the rail corridor to the south of the subject site(s).
- The paint manufacturing facility at Graingers Road, West Footscray.
- The report(s) must include specific design recommendations to address any potential adverse amenity impacts identified.

Both Schedules to the DDO include a decision guideline which requires consideration of whether the response to noise is acceptable.

In response to a question from the Panel about the standards or guidelines requirement to be considered for the acoustic assessment, Council submitted:

The standards / guidelines to be considered and applied for this assessment are the EPA standards/guidelines referenced in the PPF and SEPPs.

Council proposed a post exhibition change to the wording of the 'Application requirements' as follows:

An Acoustic Report [by a suitably qualified acoustic consultant](#), which includes a detailed assessment of potential noise impacts at different times of the day and week. This includes noise generated from abutting commercial activities and the surrounding road network.

### **(iii) Discussion**

The Amendment is intended to support growth and development while protecting the amenity of residential areas. This is consistent with the objectives of the PE Act and planning policy.

The Explanatory Report states that the Amendment will generate positive social and environmental outcomes and that *"High quality urban design and architectural outcomes in new development will complement public realm improvements in the precincts and increase the amenity, safety and attractiveness of the centre"*.

The Panel supports the provisions in the Schedules to the DDO and considers these will result in appropriate assessment of adverse noise impacts and if required, will ensure noise mitigation measures are acceptable. The Panel supports Council's proposed post exhibition change to wording of the Application requirements and considers this will help determine standards.

### **(iv) Conclusion and recommendation**

The Panel concludes:

- The Amendment adequately addresses the impact of noise from Whitten Oval events, subject to amendment to the wording of 'Application requirements' as proposed by Council.

The Panel recommends:

**Amend the Schedule 8 to the Design and Development Overlay to revise the wording of the fifth dot point under the heading ‘Application requirements’, in accordance with the Panel preferred version shown at Appendix C1.**

## 8.4 Environmental outcomes

### (i) The issue

The issue is whether the Amendment adequately explains how environmental outcomes will be achieved.

### (ii) Submissions

Submissions raised issues relating to:

- how environmental benefits would be delivered, in particular green buildings, greening of the public realm and congestion reduction
- specific suggestions for greening and undergrounding powerlines and introducing solar street lights
- and how the Amendment would address urban heat island effect and adaptation to climate change.

Council submitted the Amendment:

addresses environmental objectives by encouraging the needs of the growing West Footscray community to be met locally, reducing reliance on car travel and increasing active and public transport use. New development will be required to demonstrate environmental sustainable design as part of the planning permit process.

Further the requirement for front yard canopy tree will improve the greening of the Amendment area.

The Panel sought clarification of how the proposed decision guideline “*whether the development is environmentally sustainable*” would be assessed.

Council proposed a post exhibition change to the wording of the ‘Decision guidelines’ as follows:

Whether the development is environmentally sustainable [as assessed against the Built Environment Sustainability Scorecard](#).

### (iii) Discussion

The Panel notes that the WFNP includes a number of interrelated objectives and strategies relating to urban greening, sustainable transport and design. While it does not specifically mention climate change adaptation or urban heat island effect, many of the actions will have beneficial outcomes to improve the environmental sustainability of the built environment.

The WFNP strategy that “*new buildings must meet best practice environmentally sustainable design standards*” and refers to Urban Design Guidelines for Victoria, Objective 5.1.8 which relate to sustainable buildings in activity centres.

The ‘Application Requirements’ in the Schedules to the DDO include extensive design considerations relating to environmental sustainability, including:

- Energy efficiency.

- Measures to reduce or manage car parking demand and encourage sustainable alternative transport modes.
- Integrated water management.
- Waste minimisation.
- Building materials.
- Demolition and construction practices.
- Landscaping.
- Indoor environmental quality and natural lighting.
- Other environmental sustainability issues impacting the proposed design.

The Panel considers the Amendment demonstrates a strong commitment to environmental outcomes and includes 'Application requirements' and 'Decision guidelines' to appropriately assess development proposals.

The Panel supports Council's proposed post exhibition change to wording of the 'Decision guidelines' and considers this will help clarify expectations.

**(iv) Conclusion and recommendation**

The Panel concludes:

- The Amendment adequately explains how environmental outcomes will be achieved, subject to amendment to the wording of 'Decision guidelines' as proposed by Council.

The Panel recommends:

**Amend Schedules 7 and 8 to the Design and Development Overlay to revise the wording of 'Decision guidelines', in accordance with the Panel preferred version shown at Appendix C.**



## 9 Form and content of the Amendment

### (i) Submission and evidence

Council submitted it proposed a number of post exhibition changes, as set out in the Council officer report accompanying the Council resolution. These are addressed in other chapters of this Report, apart from:

- removal of any reference to the 'two laneways' in response to submission 31 and submission 43 from the framework plans in Clause 21.11 and precinct plans in DDO7 and DDO8
- correction of minor typographical errors in DDO7.

Mr Campbell was of the view that the proposed Figures 1 in both Schedules to the DDO would be clearer if each contained their own version of the map which illustrates only the extent of land that each Schedule applies to. To avoid confusion Council proposed to refine Figure 1 from DDO7 as suggested by Mr Campbell, and remove Figure 1 from DDO8 as it is not required.

Mr Campbell considered there may be a mapping anomaly with respect to the extent of DDO, which should accord with the extent of MUZ land fronting Cross Street.

Mr Negri gave evidence that the following exemptions should not apply in DDO7 as they may result in under development of land:

- A single dwelling on a site greater than 300 square metres.
- An outbuilding with a gross floor area not more than 10 metres and a maximum building height not more than 3 metres above natural ground level.

Council proposed to remove both exemptions from DDO8 and only the first exemption relating to single dwellings from DDO7.

Further Mr Negri suggested drafting changes, including:

- Replace 'must' with 'should' consistent with my observations above;
- 'Side Setback' should be expressed as 'setback to other land included in DDO7'; and
- 'Rear setback' should be expressed as 'setback to land in the General Residential Zone outside the DDO7'.

He also suggested corrections to Figure 1 in DDO7 relating to laneways.

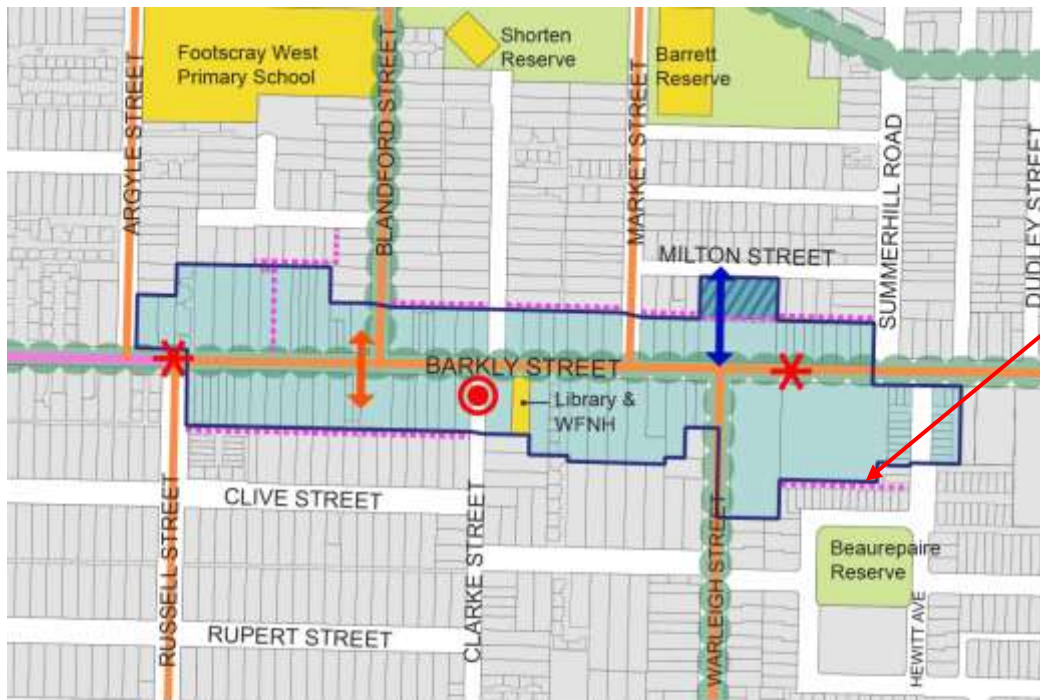
### (ii) Discussion

The drafting changes proposed by Mr Campbell were generally accepted by Council and not challenged by other parties or experts. Council included the changes in its final versions of the Schedules to the DDO. The Panel considers the proposed changes generally improve and clarify drafting, subject to specific changes discussed in other chapters of this Report.

The Panel accepts the identified laneways have been incorrectly referenced in the Amendment documents and should be removed. This is shown in the Panel preferred Panel versions of the Schedules to the DDO, and the laneways required to be removed from Clause 21.11 are shown in Figure 15 and 16.

The Panel has reviewed the mapping and considers there may not be a mapping anomaly with application of DDO8, and that the discrepancy reflects the land to which the DDO8 already applies.

Figure 15 Clause 21.11 West Footscray Activity Centre Framework Plan



Update Framework Plan to remove this laneway

- Central public space
- Public realm 'gateway' treatments
- Laneway
- Green Boulevard
- Existing on road bicycle lane
- Proposed on road bicycle lane
- Proposed pedestrian & cycling link
- Proposed pedestrian crossing
- Existing community facilities
- Green open space
- Activity centre boundary
- Mixed Use Commercial/ Residential 4 storey (13.5 metres)
- Residential 3 storey (11 metres)

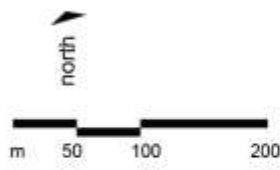
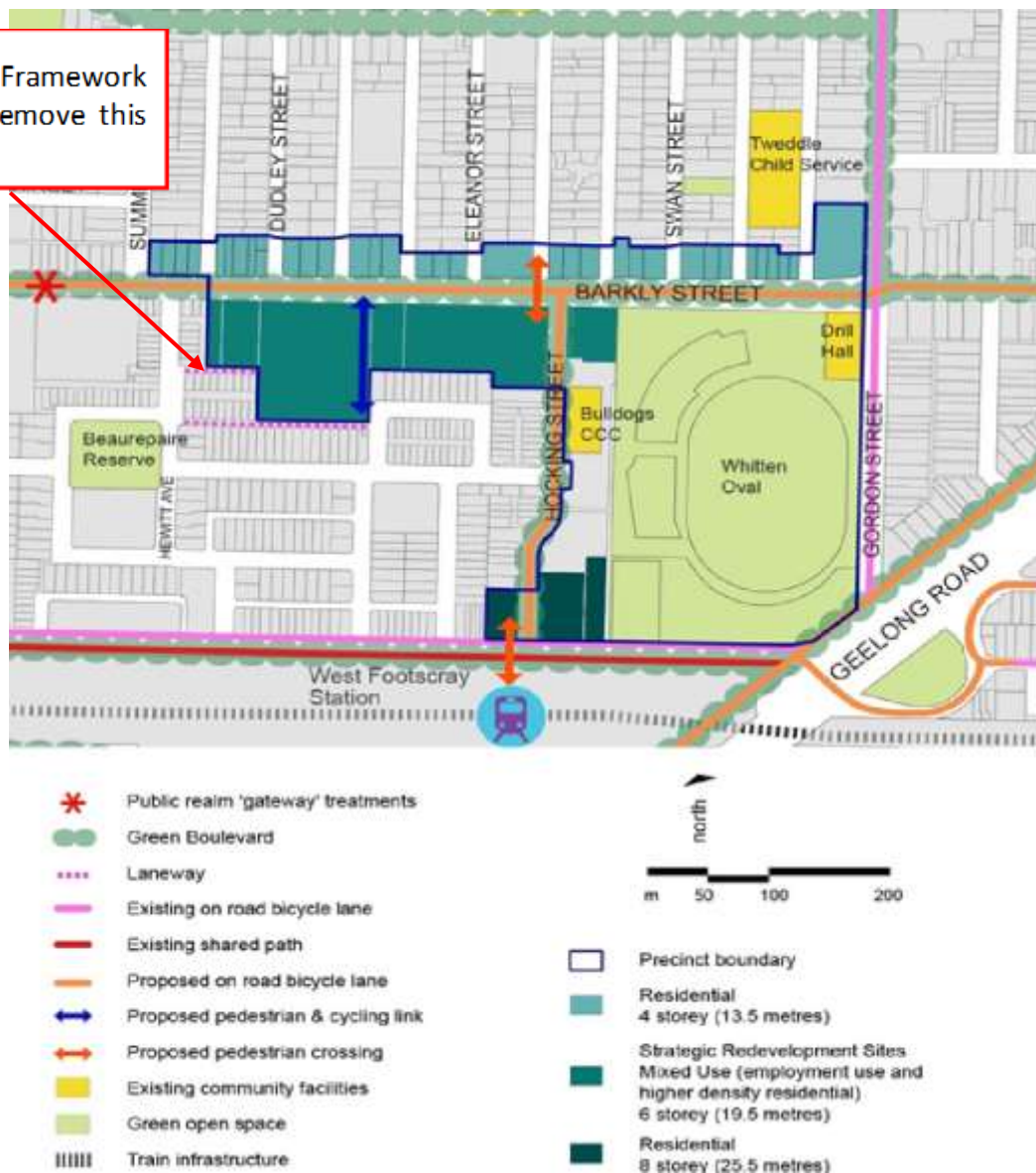


Figure 16 Barkly Street East and West Footscray Railway Station Precincts Framework Plan



With regard to Mr Negri’s drafting suggestions, the Panel agrees the following exemptions should apply to the DDO7, and also the DDO8 as proposed by Council:

- A single dwelling on a site greater than 300 square metres.
- An outbuilding with a gross floor area not more than 10 metres and a maximum building height not more than 3 metres above natural ground level.

As discussed in Chapter 4.1, the Panel agrees that the controls should be discretionary, and the term ‘must’ should be replaced with ‘should’ in the relevant requirements. The need to amend the definitions of side and rear setback was not demonstrated or supported by Council, and the Panel does not recommend this change.

The Panel has reviewed the Amendment documents against the Ministerial Direction on Form and Content and is satisfied that they generally comply with requirements.

Unless otherwise stated in this Report, the Panel supports the post exhibition changes proposed in Council final versions of the Amendment documents. Panel preferred versions of DDO7 and DDO8 are included in Appendix C.

**(iii) Conclusions and recommendations**

The Panel concludes:

- The Panel supports post exhibition changes proposed in Council final versions of the Amendment documents, unless otherwise stated in this Report.
- The removal of reference to the two laneways as proposed by Council in response to submissions is appropriate.
- There does not appear to be a mapping anomaly with application of DDO8.

The Panel recommends:

**Amend local policy Clause 21.11-6 ( West Footscray Neighbourhood Activity Centre, Barkly Street East and West Footscray Railway Station Precincts) to:**

- a) **Remove reference to the laneways incorrectly referenced in the West Footscray Neighbourhood Activity Centre Framework Plan and Barkly Street East and West Footscray Railway Station Precincts Framework Plan (see Figure 15 and 16 of this Report).**

**Amend the Schedules to the Design and Development Overlay in accordance with the Panel preferred versions in Appendix C of this Report.**

## Appendix A Submitters to the Amendment

No.	Submitter
1	Matthew Kehoe
2	Sarah Alexander
3	Katrina Bell
4	Jai Moore, Juniper Bout, Faerlie Burton and Elizabeth Kit
5	Lee Pallas Bryant
6	Juanita Custance
7	Annie Wormald
8	David Lane
9	Emily White
10	Debra Dennis
11	Jordan Garuccio
12	Caitlin MacLeod
13	Leanne Mitchell
14	Elizabeth Duggan
15	Claudia Priori
16	Arthur Bolkas
17	Caitlin Robinson
18	Casey Wright
19	Nathan Goetz and Sarah Poon
20	Jenny Smith
21	David and Elizabeth Hedger
22	Steve Khoury
23	Diana Gardner
24	Lucie Bradley
25	Energy Safe Victoria
26	Brett Fenton
27	City West Water
28	Gina Hough
29	EPA Victoria
30	Melbourne Water
31	Residents of 20 Hewitt Avenue, West Footscray

---

32	Mignon Moyle
33	Deb Bain-King
34	Lindsay Rattray
35	Josh Martin
36	Ross Garnet
37	Mara McSweeney
38	Roger Ting
39	Downer Utilities on behalf of AusNet Gas Services
40	Steve Hubbard
41	Chris Biddle
42	Christy Ho
43	Fabcot Pty Ltd (replacement submitter for original submitter 495507 Barkly Street Pty Ltd)

---

## Appendix B Document list

No.	Date	Description	Provided by
1	21/01/2022	Email confirmation of Fabcot Pty Ltd as a party to the Hearing	Planning Panels Victoria (PPV)
2	21/01/2022	Confirmation of expert witnesses	Fabcot Pty Ltd (Fabcot)
3	21/01/2022	Confirmation of expert witnesses	Maribyrnong City Council (Council)
4	31/01/2022	Updated advice from EPA	Council
5	25/02/2022	Site visit suggestions for the Panel	"
6	28/02/2022	<p>Council Part A submission, with attachments: (30+ docs)</p> <p>General information about the Amendment:</p> <ul style="list-style-type: none"> <li>- Chronology of events</li> <li>- Map of relevant existing and proposed zoning</li> <li>- Map of relevant existing and proposed overlays</li> <li>- Plan showing location of submitters</li> </ul> <p>Strategic documents and background studies:</p> <ul style="list-style-type: none"> <li>- West Footscray Neighbourhood Plan 2018 (WFNP)</li> <li>- West Footscray Urban Design Framework 2008 (UDF 2008; predecessor to WFNP)</li> <li>- WFNP Issues and Opportunities Paper 2017</li> <li>- West Footscray Economic Assessment for the Neighbourhood Plan 2018</li> <li>- West Footscray and Maidstone Local Area Traffic Management Study 2018</li> <li>- Draft Maribyrnong Housing Strategy 2018</li> <li>- West Footscray Inter-war and Post-war Heritage Precinct Study 2021</li> </ul> <p>Exhibited amendment documents</p> <ul style="list-style-type: none"> <li>- Explanatory Report</li> <li>- Notice of the preparation of an amendment</li> <li>- Instruction Sheet</li> <li>- Planning Scheme Ordinance</li> <li>- Planning Scheme Maps</li> <li>- Reference Document (WFNP)</li> <li>- Supporting Document (West Footscray Economic Assessment for the Neighbourhood Plan 2018)</li> </ul> <p>Relevant extracts from the Scheme</p> <ul style="list-style-type: none"> <li>- Planning Policy Framework clauses</li> <li>- Local Planning Policy Framework clauses</li> </ul>	"

No.	Date	Description	Provided by
		Council resolutions	
		<ul style="list-style-type: none"> <li>- Report and Minutes of Council’s City Development Special Committee (CDSC), 22 August 2017 (WFNP Issues and Opportunities Paper)</li> <li>- Report and Minutes of Council’s CDSC, 29 May 2018 (draft WFNP)</li> <li>- Report and Minutes of Council’s City Development Special Committee, 30 October 2018(final WFNP)</li> <li>- Report and Minutes of Council’s City Development Special Committee, 27 August 2019 (Amendment authorisation)</li> <li>- Report of Council’s delegate, signed 9 November 2021 (consideration of submissions and referral to Panel)</li> </ul>	
		Other Amendment documents and correspondence	
		<ul style="list-style-type: none"> <li>- Letter from EPA dated 17 July 2019 (initial advice on the Amendment in accordance with Ministerial Direction 19)</li> <li>- Letter of Authorisation letter with conditions from DELWP dated 11 September 2020</li> <li>- Attachment to DELWP letter dated 11 September 2020 (marked-up DDO)</li> <li>- Safety Management Study – Amendment C162 (Barkly Street West Footscray), prepared by CNC Group, August 2021 ESV response to SMS recommendations dated September 2021</li> <li>- Downer response to SMS recommendations dated September 2021</li> <li>- Letter to owner of 438-440 Barkly Street, Footscray, dated 6 July 2021</li> <li>- Letter to owner of 438-440 Barkly Street, Footscray, dated 9 December 2021.</li> </ul>	
		Recommended tracked-changed revisions to Amendment C162 planning provisions endorsed by Council’s delegate on 9 November 2021.	
7	28/02/2022	Expert Witness Statement – Marco Negri of Contour Town Planners	Fabcot
8	28/02/2022	Expert Witness Statement – Justin Ganly of Deep End services	“
9	28/02/2022	Expert Witness Statement - Alastair Campbell of Hansen Partnership	Council
10	28/02/2022	Expert Witness Statement - Brian Haratsis of macroplan	“
11	04/03/2022	Council Part B submission with attachments <ul style="list-style-type: none"> <li>- Bayside C126 Explanatory Report</li> </ul>	“



No.	Date	Description	Provided by
		<ul style="list-style-type: none"> <li>- Bayside C126 Panel Report</li> <li>- C162mari – Clause 66.06 – recommended revisions</li> <li>- C162mari – DDO7 – recommended revisions Council and Hansen</li> <li>- C162mari – DDO8 recommended revisions Council and Hansen</li> <li>- <i>FSG Corp Australia Pty v Maribyrnong CC</i></li> <li>- Table of specific site references in submissions</li> <li>- Email to EPA (20.12.2021)</li> <li>- EPA letter (17.07.19)</li> <li>- Letter to 438-440 Barkly Street, Footscray (09.12.21)</li> <li>- Letter to 438-440 Barkly Street, Footscray (06.07.21)</li> </ul> <p>Title and Plan of Subdivision for 438-440 Barkly Street, Footscray (Lot 1 on TP689953F &amp; TP247963U)</p>	
12	07/03/2022	Maribyrnong C162mari track changes version of the exhibited clause 21.11 (Local Areas)	“
13	07/03/2022	Woolworths Group replacement submission (Fabcot Pty Ltd) dated 21.12.21	Fabcot
14	07/03/2022	West Footscray Neighbourhood Activity Centre – 3D Model extracts	Council
15	07/03/2022	Submissions on behalf of Fabcot Pty Ltd	Fabcot
15A	08/03/2022	Exhibited Clause 21.11 (tracked-changes version)	Council
16	08/03/2022	DDO7 recommended revisions – updated 8.3.22	“
17	08/03/2022	DDO8 recommended revisions – updated 8.3.22	
18	08/03/2022	Authorities relied upon by Fabcot <ul style="list-style-type: none"> <li>- <i>Anti Cancer Council of Victoria v Melbourne City Council [2003] VCAT 144</i></li> <li>- Brimbank C88 (PSA) [2006] PPV 63</li> <li>- Casey C68 (PSA) [2006] PPV 59</li> <li>- <i>Fabcot Pty Ltd v Glen Eira CC (2020) VCAT 957</i></li> <li>- <i>Kentucky Fried Chicken Pty Ltd v Gantidis (1978) 14 CLR 675 extract</i></li> <li>- <i>Mondib Group Pty Ltd v Moonee Valley City Council [2021] VSC 722</i></li> <li>- Whitehorse C142 (PSA) [2012] PPV 61</li> </ul> Yarra C220 (PSA) [2019] PPV 11 (22 February 2019)	Fabcot
19	08/03/2022	Replication of Mr Brian Haratsis analysis (spreadsheet)	“
20	08/03/2022	DDO7 recommended revisions - Fabcot	“
21	09/03/2022	Council closing submission including attachments: <ul style="list-style-type: none"> <li>- Clause 21.14 – authorisation</li> </ul>	Council

No.	Date	Description	Provided by
		- DDO7 recommended revisions - DDO8 recommended revisions	
22	10/03/2022	Excerpt 3D massing model for precincts 2 and 3	"

---

## Appendix C Panel preferred versions of Schedules 7 and 8 to DDO

Tracked Added

~~Tracked Deleted~~

# C1 Design and Development Overlay Schedule 7

--/---  
Proposed C162mari

## SCHEDULE 7 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO7**.

### WEST FOOTSCRAY NEIGHBOURHOOD ACTIVITY CENTRE AND BARKLY STREET EAST RESIDENTIAL PRECINCT (NORTH SIDE)

#### 1.0 Design objectives

--/---  
Proposed C162mari

To encourage a range of well designed buildings with a consistent street wall height [and fine grain presentation](#) that supports a mix of active uses on ground floor level in the West Footscray Neighbourhood Activity Centre.

To encourage a range of well designed low-rise apartment buildings with landscaped front setbacks on consolidated sites in the Barkly Street East Residential Precinct.

To improve activation and utilisation of [the public spaces realm](#) through active frontages to buildings along ~~roads~~ [street frontages](#) and public spaces in the activity centre and adjacent precinct.

#### 2.0 Buildings and works

--/---  
Proposed C162mari

~~A permit cannot be granted to construct a building or construct or carry out works in Precinct 1 or Precinct 2 which are not in accordance with the building height and street setback requirements specified in Tables 1 and 2 of this schedule.~~

A permit is not required under this overlay for any earthworks associated with the remediation of land in accordance with, or for the purpose of, obtaining a Certificate or Statement of Environmental Audit under the *Environment Protection Act 1970*. Earthworks must be carried out in accordance with a Remediation Action Plan and an Environmental Management Plan endorsed by the EPA appointed environmental auditor for the site.

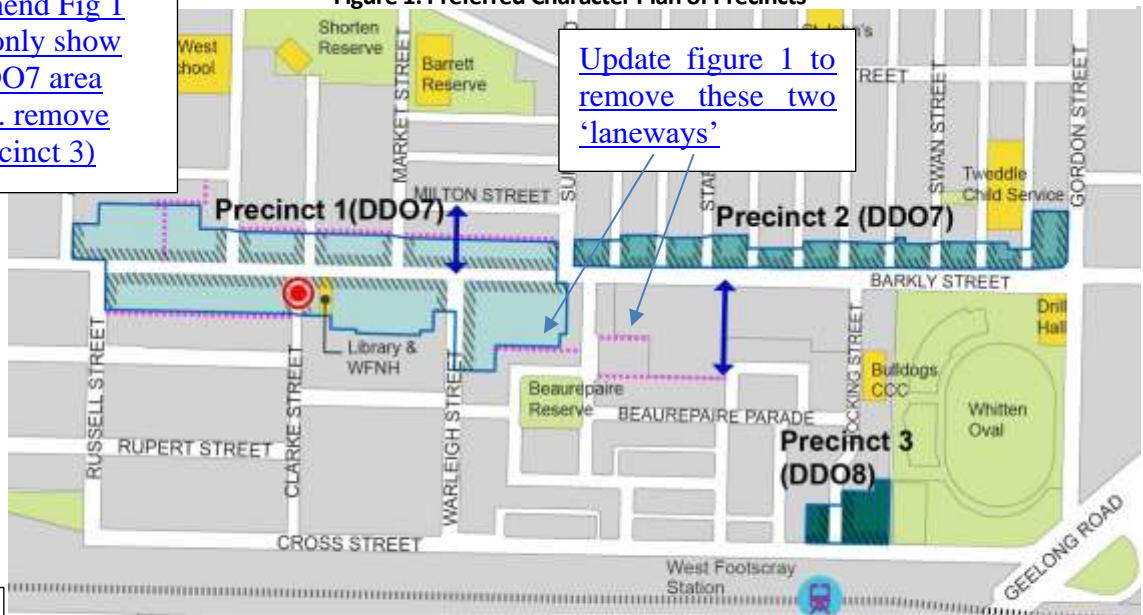
A permit is not required to construct or carry out buildings and works for:

- The installation of an automatic teller machine.
- An alteration to an existing building façade in Precinct 1 provided:
  - The alteration does not include the installation of an external roller shutter.
  - At least 80 per cent of the building façade at ground level is maintained as an entry or window with clear glazing.
- Shade sails to an existing roof deck.
- An awning that projects over a road if it is authorised by the relevant public land manager.
- Buildings and works for the purpose of Local Government, Education or Transport provided the use is carried out by, or on behalf of, the public land manager.
- ~~▪ A single dwelling on a site greater than 300 square metres.~~
- ~~▪ An outbuilding with a gross floor area not more than 10 metres and a maximum building height not more than 3 metres above natural ground level.~~

The following buildings and works requirements in Tables 1 and 2 and shown in Figure 1 apply to an application to construct a building or construct or carry out works.

Amend Fig 1 to only show DDO7 area (i.e. remove Precinct 3)

Figure 1: Preferred Character Plan of Precincts



Update figure 1 to remove these two 'laneways'

Update legend to provide for building height options for larger sites in Precinct 1

- Central public space
- Proposed pedestrian & cycling link
- Laneway
- Active frontages (refer to tables for details)
- Mixed Use Commercial/ Residential 4 storey (13.5 metres)
- Residential 4 storey (13.5 metres)
- Residential 8 storey (25.5 metres)
- Precinct boundary
- Existing community facilities
- Green open space
- Train infrastructure

Table 1: Precinct 1 - West Footscray Neighbourhood Activity Centre

Design or Built Form Element	Requirement
<b>Building Height</b>	<p>Building height <del>must</del> <u>should</u> not exceed 13.5 metres and four storeys, except for sites greater than 2000 square metres where building height <del>must</del> <u>should</u> not exceed 16.5 metres (five storeys). <u>This does not apply to a site greater than 4000 square metres in area.</u></p> <p>Height of a storey at the ground floor level of a new building must be at least 4 metres measured from finished floor level to <del>the ceiling</del> <u>finished floor level</u>.</p>
<b>Street Setback</b>	<p>Walls of buildings <del>must</del> <u>should</u> be set back from the front street:</p> <ul style="list-style-type: none"> <li>▪ 0 metres up to and including a height of <del>4</del> <u>11.5</u> metres (<u>three storeys</u>) with a continuous streetwall edge.</li> <li>▪ minimum 3 metres from the frontage above a height of <del>4</del> <u>11.5</u> metres (<u>three storeys</u>).</li> </ul> <p>For a corner site, walls of buildings should have a 0 metre setback from the side street.</p>
<b>Side Setback</b>	<p>Where a wall does not include a habitable room window or balcony, the wall should be set back 0 metres to a side boundary.</p> <p>Above ground floor level, where a wall includes a habitable room window or balcony, the wall should be set back a 4.5 metres from the side boundary for a minimum length of 3 metres and be clear to the sky (except along the frontage).</p>

Design or Built Form Element	Requirement
<b>Rear Setback</b>	A rear setback of a building should be designed having regard to Standard B17 of Clause 55.04-14, Standard B19 of Clause 55.04-3, Standard B20 of Clause 55.04-4, Standard B21 of Clause 55.04-5, Standard D14 of Clause 58.04-1 and Standard D15 of Clause 58.04-2 of the Maribyrnong Planning Scheme.
<b>Public Realm Interface</b>	<p>Incorporate an active frontage response at all ground level interfaces.</p> <p>Maintain a fine grain street pattern of buildings with a 6 metre width at ground level and incorporate vertical articulation.</p> <p>Ensure north-south pedestrian and cycling connections.</p> <p>Buildings on the north side of Barkly Street should be designed to ensure the footpath on the south side of the street receives full sunlight between 10am and 3pm on the 22 September.</p> <p>Where a laneway or secondary street exists, no vehicle access from the main street.</p> <p>Car parking area not visible from the street.</p> <p>Provide clearly visible and distinct entry points on the ground floor for residential uses on the upper levels (no alcoves or unsecured/setback entries).</p> <p>Incorporate 65-80% glazing and transparency on the ground floor façade.</p> <p>Incorporate windows on all levels of the building façade with direct access and outlook to the street frontage.</p> <p>Incorporate a canopy or awning over the footpath for the full width of the building frontage.</p> <p>Minimise the visual impact of service cabinets on the façade.</p> <p>Limit large signs.</p> <p>Plant and equipment (including air conditioning units and exhausts) should be integrated into the building design and appropriately screened.</p>

**Table 2: Precinct 2 - Barkly Street East Residential Precinct (north side between Summerhill Road and Gordon Street)**

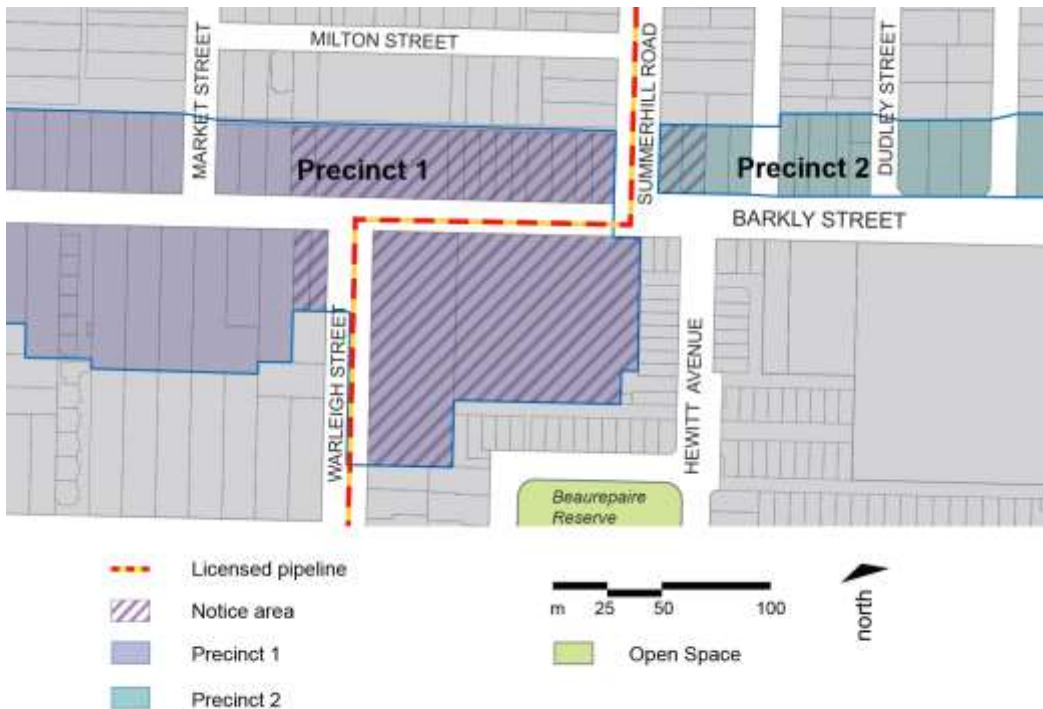
Design or Built Form Element	Requirement
<b>Building Height</b>	Building height <del>must</del> should not exceed 13.5 metres and four storeys.
<b>Street Setback</b>	<p>Walls of buildings <del>must</del> should be set back:</p> <ul style="list-style-type: none"> <li>▪ minimum 3 metres from the front street (incorporating landscaping).</li> <li>▪ minimum 2 metres from the side street.</li> </ul>
<b>Side Setback</b>	<p>Where a wall does not include a habitable room window or balcony, the wall should be set back 0 metres to a side boundary.</p> <p>Above ground floor level, where a wall includes a habitable room window or balcony, the wall should be set back 4.5 metres from the side boundary for a minimum length of 3 metres and be clear to the sky (except along the frontage).</p>

Design or Built Form Element	Requirement
<b>Rear Setback</b>	A rear setback of a building should be designed having regard to Standard B17 of Clause 55.04-4 <sup>1</sup> , Standard B19 of Clause 55.04-3, Standard B20 of Clause 55.04-4, Standard B21 of Clause 55.04-5, and Standard D15 of Clause 58.04-2 of the Maribyrnong Planning Scheme.
<b>Public Realm Interface</b>	<p>Incorporate a <a href="#">residential</a> <del>+</del> active frontage response at all ground level interfaces.</p> <p>Where a laneway or secondary street exists, no vehicle access from the main street.</p> <p>Car parking area not visible from the street.</p> <p>Provide clearly visible and distinct entry points for residential uses (no alcoves or unsecured/setback entries).</p> <p>Incorporate direct entries from the street to ground floor uses.</p> <p>Incorporate windows on all levels of the building façade with direct access and outlook to the street frontage.</p> <p>Incorporate low fences and setbacks to allow landscaped front yards with sufficient space for at least one <a href="#">medium-size canopy</a> tree <a href="#">per front yard</a>.</p> <p>Plant and equipment (including air conditioning units and exhausts) should be integrated into the building design and appropriately screened.</p>

[Development near licensed pipeline](#)

[In accordance with Section 52\(1\)\(c\) of the Act, notice must be given for any application for buildings and works on land within 27 metres of Licensed Pipeline No. 18 shown in Figure 2 of this schedule to the relevant pipeline owner and licensee as specified in the schedule to Clause 66.06.](#)

[Figure 2: Licensed pipeline notice area \(Licence No. 18\)](#)



### 3.0 Subdivision

--/---  
Proposed C162mari

None specified.

### 4.0 Signs

--/---  
Proposed C162mari

None specified.

### 5.0 Application requirements

--/---  
Proposed C162mari

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- A Planning Report that demonstrates how the development satisfies relevant planning policies and clauses of the Maribyrnong Planning Scheme.
- An Urban Design and Context Report that demonstrates how the design responds to the existing urban context, preferred future development of the area, Preferred Character Plan of Precincts shown in Figure 1 and built form requirements in Tables 1 and 2 of this Schedule.
- An assessment of traffic and transportation issues including car parking design, provision, access and egress for future residents/occupants and visitors, and the relationship to the pedestrian, cycling and public transport network.
- An assessment of waste collection, removal and delivery areas for the proposed development.
- An Acoustic Report [by a suitably qualified acoustic consultant](#), which includes a detailed assessment of potential noise impacts at different times of the day and week. This includes noise generated from abutting commercial activities and the surrounding road network.

If the report identifies that the proposed use and/or development may be adversely affected, specific recommendations must be provided within the report for appropriate acoustic design treatments to be implemented to ensure the proposed use and/or development is not adversely affected by the identified impacts.

- A report showing that the design of the development demonstrates high standards of environmental sustainability. The report should assess the design of the proposed development in the following areas:
  - Energy efficiency.
    - Measures to reduce or manage car parking demand and encourage sustainable alternative transport modes.
  - Integrated water management.
  - Waste minimisation.
  - Building materials.
  - Demolition and construction practices.
  - Landscaping.
  - Indoor environmental quality and natural lighting.
  - Other environmental sustainability issues impacting the proposed design.
- A Landscape Plan which shows information relating to:
  - The quantity and both botanical and common names of all proposed plants.
  - The size at time of installation and typical size (height and width) at maturity of all proposed plants.
  - Pot size for understorey planting and height for tree planting.
  - The ongoing management, including the maintenance needs of all plants within common areas.



## 6.0 Decision guidelines

--/-----  
Proposed C162mari

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

- Whether the development meets the built form requirements in Tables 1 and 2 ~~and shown in Figure 2-1~~ of this schedule.
- If the development does not meet the built form requirements in Table 1, the extent to which the development departs from the built form requirements and whether the development:
  - is designed to minimise the visual appearance of levels above the street wall;
  - does not overwhelm adjoining properties in a residential zone in terms of building scale or bulk, access to daylight, outlook and overshadowing impacts;
  - achieves a greater overall consistency of scale within the streetscape; and
  - respects the fine grain presentation of adjoining land uses fronting the street.
- Whether the response to noise, odour and overshadowing is acceptable.
- Whether the development provides suitable daylight, sunlight and outlook to proposed dwellings, habitable areas, landscaped areas and adjacent developments.
- Whether windows, terraces and balconies are appropriately oriented to the street or open space.
- Whether plant and equipment is successfully screened and integrated into the overall building design.
- How the location and design of exhaust flues and air conditioning units will ameliorate odour, heat and visual impacts on adjoining uses and streets.
- Whether the location, design and layout of car parking is an acceptable response to the public realm.
- Whether the development has been appropriately designed in relation to the licensed pipeline referred to in Figure 2 of this schedule and in the schedule to Clause 66.06.
- The quality of pedestrian, bicycle and vehicular access and egress points and connections.
- The impact of traffic and parking on the road network.
- Whether the development is environmentally sustainable as assessed against the Built Environment Sustainability Scorecard.

## C2 Design and Development Overlay Schedule 8

--/--/---  
Proposed C162mari

### SCHEDULE 8 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO8**.

#### WEST FOOTSCRAY RAILWAY STATION MIXED USE PRECINCT

### 1.0 Design objectives

--/--/---  
Proposed C162mari

To encourage ~~a range of~~ well designed apartment buildings that support complementary uses at ground floor level.

To facilitate **mixed use** development that is of high architectural and urban design quality, offers attractive and functional internal and external spaces and provides good amenity.

To improve activation and utilisation of **the public spaces realm** through active frontages to buildings along ~~roads~~ **street frontages** and public spaces.

To ensure development appropriately responds to amenity of surrounding areas.

### 2.0 Buildings and works

--/--/---  
Proposed C162mari

A permit is not required under this overlay for any earthworks associated with the remediation of land in accordance with, or for the purpose of, obtaining a Certificate or Statement of Environmental Audit under the *Environment Protection Act 1970*. Earthworks must be carried out in accordance with a Remediation Action Plan and an Environmental Management Plan endorsed by the EPA appointed environmental auditor for the site.

A permit is not required to construct or carry out buildings and works for:

- The installation of an automatic teller machine.
- Shade sails to an existing roof deck.
- An awning that projects over a road if it is authorised by the relevant public land manager.
- Buildings and works for the purpose of Local Government, Education or Transport provided the use is carried out by, or on behalf of, the public land manager.
- ~~A single dwelling on a site greater than 300 square metres.~~
- ~~An outbuilding with a gross floor area not more than 10 metres and a maximum building height not more than 3 metres above natural ground level.~~

The following buildings and works requirements in Table 1 ~~and shown in Figure 1~~ apply to an application to construct a building or construct or carry out works ~~on land in Precinct 3 shown in Figure 1~~.

Note: delete figure 1

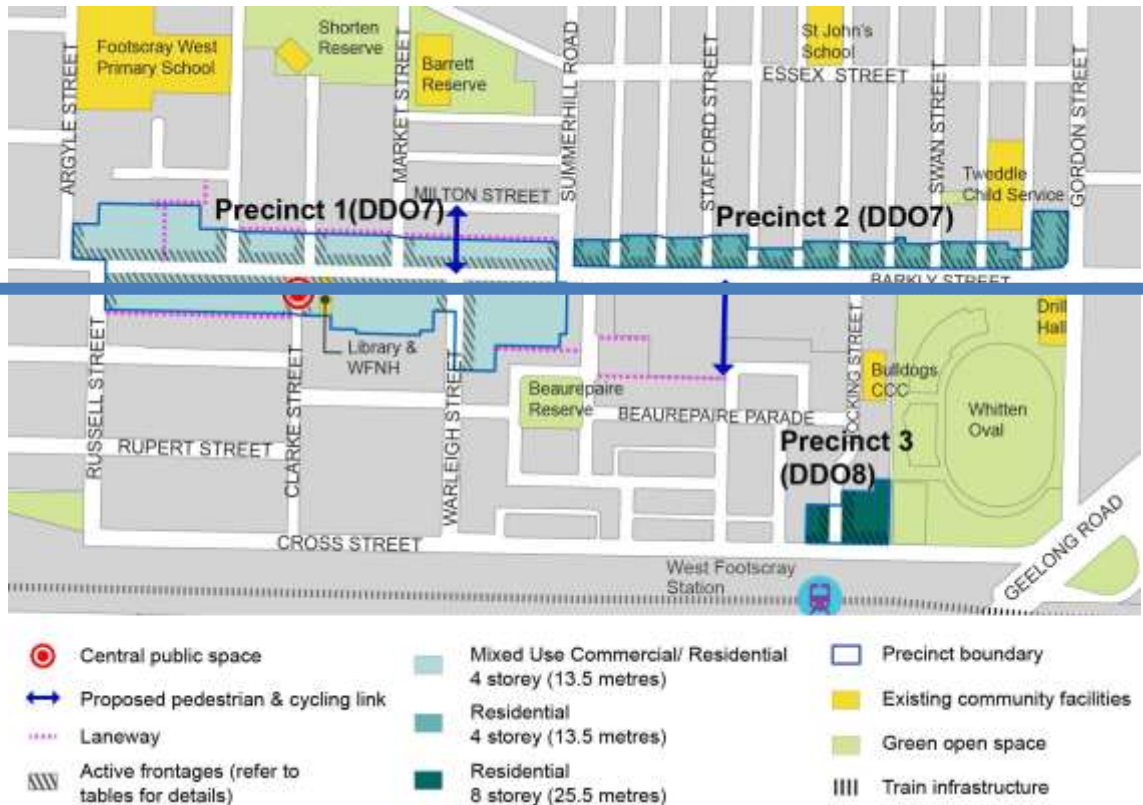


Table 1: West Footscray Railway Station Mixed Use Precinct (4, 6 and 8 Cross Street)

Design or Built Form Element	Requirement
<b>Building Height</b>	Building height <del>must</del> <u>should</u> not exceed 25.5-7 metres (eight storeys).
<b>Street Setback</b>	<p>Walls of buildings should be set back from the front street:</p> <ul style="list-style-type: none"> <li>3 metres at ground level (incorporating landscaping) for development with a ground floor residential use.</li> <li>0 metres to a height of 19.5 metres (<u>6 storeys</u>) with a continuous street wall edge for development with a ground floor commercial use.</li> <li>5 metres above a height of 19.5 metres (6 storeys).</li> </ul> <p>Walls of buildings should be set back from side streets:</p> <ul style="list-style-type: none"> <li>0 metres at ground floor level.</li> <li>3 metres above 19.5 metres (<u>6 storeys</u>).</li> </ul>
<b>Side Setback</b>	<p>Where a wall does not include a habitable room window or balcony, the wall should be set back 0 metres to a side boundary.</p> <p>Above ground floor level, where a wall includes a habitable room window or balcony, the wall should be set back 6 metres from the side (except along the frontage or side street).</p>
<b>Rear Setback</b>	<p>At ground floor level, where a wall does not include a habitable room window or balcony, a 0 metre setback to a rear boundary.</p> <p>At ground floor level, where a wall includes a habitable room window or balcony, a 3 metre setback to a rear boundary.</p> <p><u>For land at 4-6 Cross Street:</u></p> <ul style="list-style-type: none"> <li><del>A</del> <u>A</u>bove ground floor level to a height of 19.5 metres (<u>6 storeys</u>), a 6 metre setback to a rear boundary.</li> </ul>

Design or Built Form Element	Requirement
	<ul style="list-style-type: none"> <li>▪ <del>Above</del> <u>above</u> a height of 19.5 metres <u>(6 storeys)</u>, a 9 metre setback to a rear boundary.</li> </ul> <p><u>For land at 8 Cross Street:</u></p> <ul style="list-style-type: none"> <li>▪ <u>above ground floor level to a height of 13.5 metres (4 storeys), a 6 metre setback to a rear boundary.</u></li> <li>▪ <u>above a height of 13.5 metres (4 storeys), a setback to a rear boundary in accordance with Standard B17 of Clause 55.04-1.</u></li> </ul>
<b>Public Realm Interface</b>	<p>Incorporate an active frontage response at all ground level interfaces.</p> <p>Where a laneway or secondary street exists, no vehicle access from the main street.</p> <p>Car parking area not visible from the street.</p> <p>Provide clearly visible and distinct entry points on the ground floor for residential uses on the upper levels (no alcoves or unsecured/setback entries).</p> <p>Incorporate windows on all levels of the building façade with direct access and outlook to the street frontage.</p> <p>Where ground floor land use is retail or commercial:</p> <p>Incorporate 65-80% glazing and <del>transperancy</del> <u>transparency</u> on the ground floor façade.</p> <ul style="list-style-type: none"> <li>▪ Incorporate a canopy or awning over the footpath for the full width of the building frontage.</li> </ul> <p>Where ground floor land use is residential, incorporate low fences and setbacks to allow landscaped front yards with sufficient space for at least one <del>medium size</del> <u>canopy</u> tree <u>per front yard</u>.</p> <p>Incorporate direct entries from the street to ground floor uses.</p> <p>Minimise the visual impact of service cabinets on the façade.</p> <p>Limit large signs.</p> <p>Plant and equipment (including air conditioning units and exhausts) should be integrated into the building design and appropriately screened.</p>

**3.0 Subdivision**

~~---/---~~  
Proposed C162mari

None specified.

**4.0 Signs**

~~---/---~~  
Proposed C162mari

None specified.

**5.0 Application requirements**

~~---/---~~  
Proposed C162mari

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- A Planning Report that demonstrates how the development satisfies relevant planning policies and clauses of the Maribyrnong Planning Scheme.

- An Urban Design and Context Report that demonstrates how the design responds to the existing urban context, preferred future development of the area, Preferred Character Plan of Precincts shown in Figure 1 and built form requirements in Table 1 of this Schedule.
- An assessment of traffic and transportation issues including car parking design, provision, access and egress for future residents/occupants and visitors, and the relationship to the pedestrian, cycling and public transport network.
- An assessment of waste collection, removal and delivery areas for the proposed development.
- An Acoustic Report [by a suitably qualified acoustic consultant](#) which includes a detailed assessment of potential noise impacts at different times of the day and week. This includes noise generated from abutting commercial activities and the surrounding road network.

If the report identifies that the proposed use and/or development may be adversely affected, specific recommendations must be provided within the report for appropriate acoustic design treatments to be implemented to ensure the proposed use and/or development is not adversely affected by the identified impacts.

- A report showing that the design of the development demonstrates high standards of environmental sustainability. The report should assess the design of the proposed development in the following areas:
  - Energy efficiency.
  - Measures to reduce or manage car parking demand and encourage sustainable alternative transport modes.
  - Integrated water management.
  - Waste minimisation.
  - Building materials.
  - Demolition and construction practices.
  - Landscaping.
  - Indoor environmental quality and natural lighting.
  - Other environmental sustainability issues impacting the proposed design.
- A Landscape Plan which shows information relating to:
  - The quantity and both botanical and common names of all proposed plants.
  - The size at time of installation and typical size (height and width) at maturity of all proposed plants.
  - Pot size for understorey planting and height for tree planting.
  - The ongoing management, including the maintenance needs of all plants within common areas.
- An adverse ~~amaenity~~ [amenity](#) impact assessment consisting of a report(s) prepared by a suitably qualified person(s). The report(s) must identify all potential adverse amenity impacts (eg; noise, odour) from nearby land and uses including, but not limited to:
  - The recreation facility to the east of the subject site(s).
  - Use of the rail corridor to the south of the subject site(s).
  - The paint manufacturing facility at Graingers Road, West Footscray.

The report(s) must include specific design recommendations to address any potential adverse amenity impacts identified.

## 6.0 Decision guidelines

--/--  
Proposed C162mari

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

- Whether the development meets the built form requirements in Tables 1 ~~and 2 and shown in Figure 12~~ of this schedule.

- Whether the response to noise, odour and overshadowing is acceptable.
- Whether the development provides suitable daylight, sunlight and outlook to proposed dwellings, habitable areas, landscaped areas and adjacent developments.
- Whether windows, terraces and balconies are appropriately oriented to the street or open space.
- Whether plant and equipment is successfully screened and integrated into the overall building design.
- How the location and design of exhaust flues and air conditioning units will ameliorate odour, heat and visual impacts on adjoining uses and streets.
- Whether the location, design and layout of car parking is an acceptable response to the public realm.
- The quality of pedestrian, bicycle and vehicular access and egress points and connections.
- The impact of traffic and parking on the road network.
- Whether the development is environmentally sustainable [as assessed against the Built Environment Sustainability Scorecard](#).