

## Hobsons Bay Planning Scheme Amendment C133hbay

### **Panel Report**

*Planning and Environment Act 1987*

**5 January 2023**

---

### How will this report be used?

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

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

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

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

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

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

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

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Hobsons Bay Planning Scheme Amendment C133hbay

**5 January 2023**



Michael Kirsch, Chair



Ian Gibson, Member

## Contents

	Page
<b>1 Introduction.....</b>	<b>9</b>
1.1 The Amendment.....	9
1.2 Background .....	11
1.3 The Panel’s approach .....	13
1.4 Limitations .....	15
1.5 Strategic justification .....	15
<b>2 Precincts, areas and sites .....</b>	<b>16</b>
2.1 Hall Street precinct .....	16
2.2 Salisbury and Woods Streets.....	23
2.3 Walker Street .....	25
2.4 Derwent Street car park.....	29
2.5 481 Melbourne Road, Newport.....	30
<b>3 Newport Terminal MHF and pipelines .....</b>	<b>32</b>
3.1 The issue .....	32
3.2 Background .....	32
3.3 Evidence and submissions .....	32
3.4 Discussion .....	35
3.5 Conclusions and recommendations .....	36
<b>4 Noise impacts .....</b>	<b>37</b>
4.1 The issue .....	37
4.2 Background .....	37
4.3 Submissions.....	37
4.4 Discussion .....	38
4.5 Conclusions and recommendations .....	39
<b>5 Heritage.....</b>	<b>40</b>
5.1 Oxford Street Newport (HO23).....	40
5.2 William Street Newport (HO23).....	47
<b>6 Other issues .....</b>	<b>50</b>
6.1 Building heights.....	50
6.2 Traffic, parking and movement.....	50
6.3 Drainage.....	51
<b>Appendix A Submitters to the Amendment .....</b>	<b>53</b>
<b>Appendix B Parties to the Panel Hearing.....</b>	<b>54</b>
<b>Appendix C Document list.....</b>	<b>55</b>
<b>Appendix D Planning context.....</b>	<b>56</b>
D:1 Planning policy framework.....	56
D:2 Other relevant planning strategies and policies .....	57
D:3 Planning Scheme Amendments.....	59
D:4 Ministerial Directions, Planning Practice Notes and guides .....	60

## List of Tables

	Page
Table 1 Council's summary of key issues.....	14

## List of Figures

	Page
Figure 1 Area affected by the Amendment.....	9
Figure 2 Inner and outer Structure Plan areas and precincts.....	12
Figure 3 Proposed Hall Street precinct rezonings.....	16
Figure 4 Exhibited DDO12, Map 1 .....	17
Figure 5 Proposed Salisbury and Woods Street rezoning.....	23
Figure 6 Proposed Walker Street rezoning.....	26
Figure 7 DDO7 Map 1.....	26
Figure 8 Oxford Street HO23.....	40
Figure 9 35 Oxford Street Newport.....	41
Figure 10 William Street HO23.....	47
Figure 11 Application of residential zones through Amendment C131hbay.....	60

## Glossary and abbreviations

BAO	Buffer Area Overlay
C1Z	Commercial 1 Zone
Council	Hobsons Bay Council
D	Document
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
EPA	Environment Protection Authority
Gap Study	Inner Newport Heritage Gap Study, Methodology Report, 2022
GRZ	General Residential Zone
HO	Heritage Overlay
IPAA	Inner Planning Advisory Area
ISA	Inner Safety Area

LAMP	Local Area Movement Plan
LNAC	Large Neighbourhood Activity Centre
MHF	Major Hazard Facility
MPS	Municipal Planning Strategy
MUZ	Mixed Use Zone
NRZ	Neighbourhood Residential Zone
OPAA	Outer Planning Advisory Area
OSA	Outer Safety Area
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
PPN	Planning Practice Note
RGZ	Residential Growth Zone
S	Submission
SNAC	Small Neighbourhood Activity Centre
Structure Plan	Newport Structure Plan, 2021
Urban Design Guidelines	Newport Structure Plan Urban Design Guidelines, 2021
Viva	Viva Energy Australia
VPP	Victoria Planning Provisions
WorkSafe	WorkSafe Victoria

## Overview

### Amendment summary

The Amendment	Hobsons Bay Planning Scheme Amendment C133hbay
Brief description	The Amendment implements the Newport Structure Plan and Inner Newport Heritage Gap Study through the application of local policy, zones and overlays
Subject land	Newport
Planning Authority	Hobsons Bay Council
Authorisation	6 April 2022
Exhibition	30 June 2020 to 12 August 2022
Submissions	Number of Submissions: 37 (refer to Appendix A) including 34 objecting submissions

### Panel process

The Panel	Michael Kirsch (Chair) and Ian Gibson (Member)
Directions Hearing	Video conference, 2 November 2022
Panel Hearing	Video conference, 2, 5, 7 and 8 December 2022
Site inspections	Unaccompanied, 30 November 2022
Parties to the Hearing	Refer to Appendix B
Citation	Hobsons Bay PSA C133hbay [2022] PPV
Date of this report	5 January 2023

## Executive summary

Hobsons Bay Planning Scheme Amendment C133hbay (the Amendment) seeks to implement the Newport Structure Plan and Inner Newport Heritage Gap Study. It complements a suite of recent strategic planning projects, much of which was successfully implemented through Amendment C131hbay.

Key issues raised in submissions related to:

- amenity and other impacts associated with residential and commercial development
- the selection of zones and schedules
- the application of Design and Development Overlay schedules
- building height and design controls
- mandatory built form controls in the Hall Street precinct
- heritage protection
- risks associated with the Newport Terminal Major Hazard Facility and pipelines
- noise issues associated with the rail corridor.

The Panel has considered submissions and evidence on these matters and has recommended some relatively confined changes to better address issues and in response to changes sought in submissions. These recommendations are intended to refine the Amendment rather than introduce any fundamental changes.

The Panel notes the safety and risk issues associated with the Newport Terminal Major Hazard Facility and pipelines that were raised by Viva Energy Australia and Mr Allum. Although the Panel is satisfied the Amendment should proceed, subject to some related refinements, the Amendment has highlighted the need to progress the application of the Buffer Area Overlay, confirm the areas that might be impacted and review process issues such as referral provisions. Although Council has not adopted the lead role in addressing these matters, the Panel encourages Council to continue its discussions with relevant authorities and stakeholders.

The Amendment introduces four Design and Development Overlay schedules that include various mandatory built form controls. The use of mandatory controls was challenged in relation to the Hall Street precinct and the Panel has concluded the controls are warranted in that precinct. It has not reviewed or formed any views about the use of mandatory controls elsewhere in the Amendment.

The Panel supports the heritage elements of the Amendment, including the post-exhibition changes proposed by Council and the removal of various properties from the exhibited Heritage Overlay. The only point of difference with Council is the Panel's recommendation that 35 Oxford Street Newport not be included in the overlay.

Finally, the Panel notes that the Amendment is the culmination of significant work by Council and builds on the comprehensive suite of projects that have been completed in recent years. The Panel commends Council for this and is satisfied the Amendment will provide a more contemporary and considered planning framework to manage future land use and development in Newport.

## Recommendations

Based on the reasons set out in this Report, the Panel recommends that Hobsons Bay Planning Scheme Amendment C133hbay be adopted as exhibited subject to the following:

1. In Design and Development Overlay Schedule 12, add the following 'design or built form element' and 'requirement' to Table 1:

DESIGN OR BUILT FORM ELEMENT	REQUIREMENT
Residential Interface	New buildings must meet the requirements of Clause 55.04-5 – Standard B21 for overshadowing of existing private open space.

2. In Design and Development Overlay Schedule 7, remove Area D from Map 1, delete Table 4 and make any other consequential changes that are necessary.
3. In planning scheme maps 10DDO and 11DDO, remove Design and Development Overlay Schedule 7 from the area to be zoned Residential Growth Zone Schedule 3 (Area D).
4. In Design and Development Overlay Schedule 6, Clause 1.0 (Design objective) replace the fifth Design objective with:
 

*To ensure development is designed to mitigate noise impacts from the railway corridor, is set back from pipeline infrastructure and responds to any constraints associated with the Newport Terminal Major Hazard Facility.*
5. In Design and Development Overlay Schedule 6, Clause 6.0 (Decision guidelines) include the following:
 

*Whether the proposal adequately responds to any constraints associated with the Newport Terminal Major Hazard Facility.*
6. In Design and Development Overlay Schedule 12, Clause 5.0 (Application requirements) include the following:
 

*A report that considers noise and vibration impacts associated with the rail corridor and whether any attenuation works are required and recommended.*
7. Remove 33, 34, 35, 36 and 38 Oxford Street, Newport from the exhibited Heritage Overlay 23, apply the Neighbourhood Residential Zone Schedule 5 and make any other consequential changes that are necessary.
8. Remove 54 William Street, Newport from the exhibited Heritage Overlay 23, apply the Neighbourhood Residential Zone Schedule 5 and make any other consequential changes that are necessary.



# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to implement the relevant elements of the Newport Structure Plan, October 2021 (the Structure Plan) and Inner Newport Heritage Gap Study, June 2022 (Gap Study) that apply to the areas shown below.

**Figure 1** Area affected by the Amendment



SOURCE: Explanatory report

Specifically, the Amendment proposes to:

- replace Clause 02.03 to include reference to the Newport Large Neighbourhood Activity Centre (LNAC) in the strategic directions
- replace Clause 02.04 to include an updated Strategic Framework Plan and Residential Development Framework Plan
- replace Clause 11.03-1L Activity Centres to introduce local policy related to the Newport LNAC
- insert new Clause 18.01-1L Newport integrated transport
- insert a new Schedule 2 to Clause 32.04 Mixed Use Zone (MUZ)
- rezone properties from General Residential Zone (GRZ), Schedule 1 to MUZ, Schedule 2
- insert a new Schedule 3 to Clause 32.07 Residential Growth Zone (RGZ)
- rezone properties from GRZ1 to RGZ3

- replace GRZ, Schedules 2 and 8 with new schedules
- insert a new GRZ, Schedule 9
- rezone properties from GRZ1 to GRZ3, GRZ8 and GRZ9
- replace Neighbourhood Residential Zone (NRZ), Schedule 4 with a new NRZ4
- rezone properties from GRZ1 to NRZ3, NRZ4 and NRZ5
- rezone properties from GRZ1 to Commercial 1 Zone (C1Z)
- rezone properties from GRZ2 to C1Z
- replace the Schedule to Clause 43.01 Heritage Overlay (HO) with a revised schedule to reflect the findings of the Gap Study
- update HO22 and HO23 precinct boundaries by adding and removing properties and introduce a new Mason Street Ecclesiastical and Residential Heritage Precinct HO322.
- delete HO182 as properties will be included in the proposed HO322
- insert new Design and Development Overlay (DDO), Schedules 6, 7, 12, and 18
- introduce DDO6, DDO7, DDO12, and DDO18 to land within the Newport LNAC
- apply the Environmental Audit Overlay to four properties
- include Statements of Significance for HO22, HO23 and HO322 as incorporated documents
- include the Structure Plan and Gap Study as background documents and update the Hobsons Bay Heritage Study with the new title Hobsons Bay Heritage Study (Hobsons Bay City Council et al., 2007 amended 2022).

Council's Part A submission (D4) included a comprehensive chronology of the key steps relating to background investigations, consultation and the preparation of the Amendment. It also included a tabular response to the conditions of authorisation.

## **(ii) Newport**

The Amendment applies to the suburb of Newport and the area shown in Figure 1.

The Structure Plan describes the suburb as follows:

Newport is a highly liveable place located less than 12 kilometres south-west of the Melbourne CBD, between Spotswood and Williamstown. Its industrial heritage, creative spirit, position at the entry into Hobsons Bay, and excellent public transport attract residents and visitors. As a result, Newport has been experiencing steady growth and incremental change, and previous strategies for managing growth and development in the centre are now out of date. This is especially the case within the context of unprecedented growth in the greater Melbourne area that is likely to have a continuing impact on Newport.<sup>1</sup>

The land identified as the 'Newport Structure Plan Area' comprises the Newport LNAC (Clause 02.04 Strategic Framework Plan).

Council described Newport's key characteristics as:

- its proximity to Melbourne CBD, Williamstown, the Westgate Freeway, Princess Highway and the Western Ring Road
- its role as a transport hub
- period architecture of varying heritage values, bluestone laneways
- strong industrial character and established village character
- arts and cultural precinct

<sup>1</sup> Newport Structure Plan 2021

- natural features such as Yarra River and quality open spaces including regionally significant Newport Lakes
- diverse cultural base.

Based on its review of the Structure Plan and background documents, together with its inspections of the area affected by the Amendment it is clear that the structure planning process has had to address a range of challenging issues, including:

- an activity centre divided by the railway line and the Melbourne Road overpass
- complicated movement and access arrangements
- extensive areas subject to heritage protection
- extensive fine grained residential and commercial subdivision and development
- constraints associated with the Newport terminal Major Hazard Facility (MHF) and pipelines
- an activity centre that comprises differing and sometimes unconnected precincts.

## 1.2 Background

### (i) Newport Structure Plan, 2021

The Structure Plan was prepared as the primary strategy for guiding land use, development, and public realm improvements within the activity centre. It sets the long-term vision and identifies a series of objectives, strategies and actions for how the vision will be realised over a 15-20 year planning period.

Design and built form elements of the Structure Plan were informed by the Newport Structure Plan Urban Design Guidelines 2021 (the Urban Design Guidelines).

The Structure Plan builds on earlier strategic work, elements of which were implemented through Amendment C131, including the:

- Hobsons Bay Housing Strategy, 2017
- Neighbourhood Character Study, 2019
- Hobsons Bay Activity Centre Strategy (2019 -2036), 2019.

The Structure Plan defines an 'inner' area focussed on where the maximum amount of change is expected and an 'outer' area where key change areas interface with the surrounding residential areas (refer to Figure 2, below). The inner area identifies five 'precincts' based on previous strategic studies:

- Hall Street
- Mason Street
- Arts and Recreation
- Northern Gateway
- Southern Gateway.

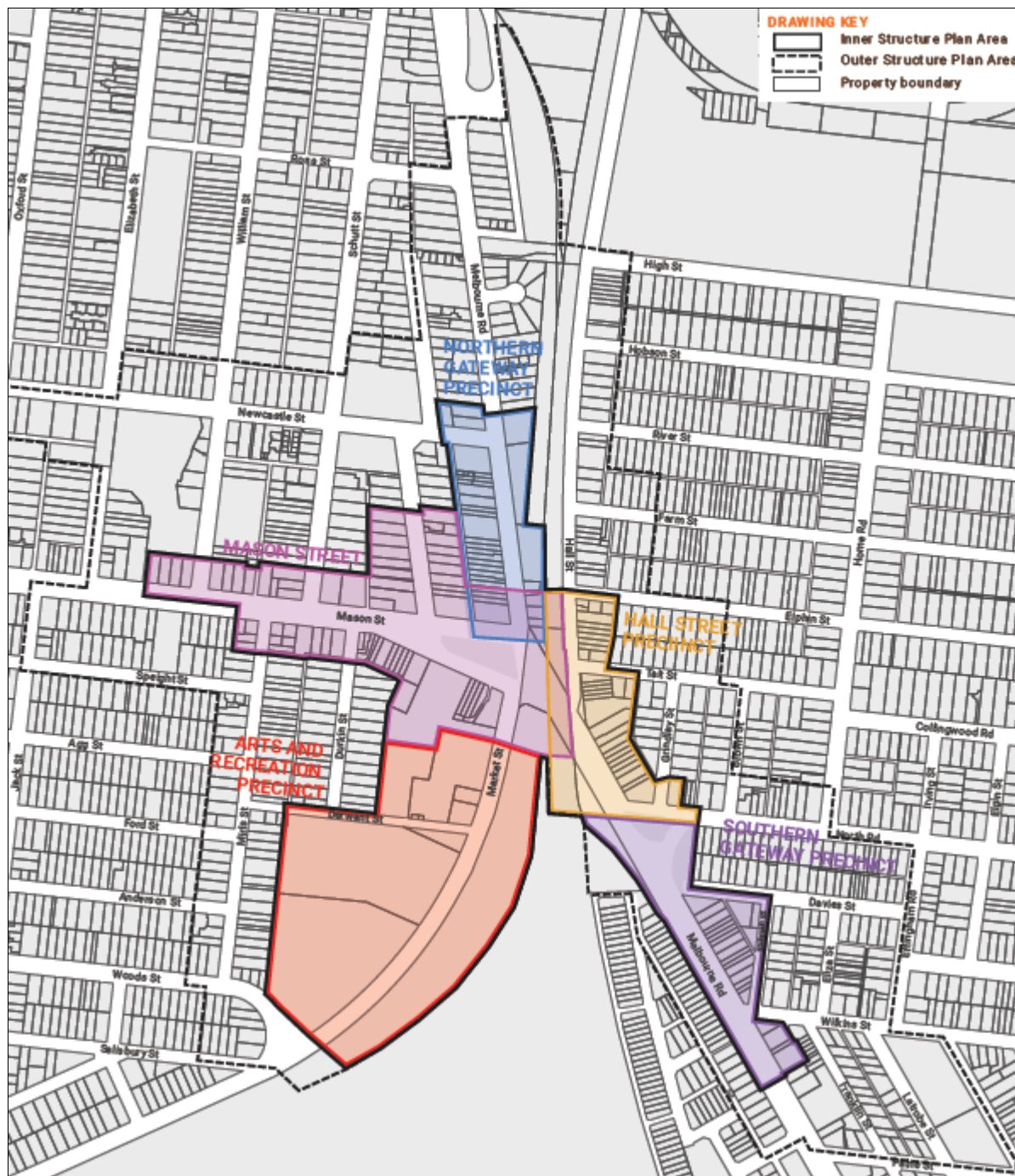
The Structure Plan discusses key issues and opportunities on a centre-wide and precinct basis and includes the following 'vision':

The Newport Activity Centre will build on its intrinsic village charm and heritage character, while recognising the importance and influence of major infrastructure as part of its urban fabric. Quality built form and public realm improvements will provide the key ingredients. Buildings will comprise a mix of heritage and mid-rise contemporary architecture which interprets and responds to Newport's heritage and industrial context.

Heritage precincts will maintain a traditional low-scale character, reinforcing Newport's historic identity.

Well-designed streets, plazas, and public areas will stitch together scattered spaces, and provide a bridge between place and infrastructure needs.<sup>2</sup>

**Figure 2** Inner and outer Structure Plan areas and precincts



SOURCE: Newport Structure Plan

<sup>2</sup> Newport Activity Centre Structure Plan, page 39



In order to achieve the vision, the Structure Plan proposes objectives, strategies and actions under various themes and includes land use, built form and heritage, public realm and open space, and access and movement plans. Intended built form outcomes are expressed through general and precinct-specific built form guidelines drawn from the Urban Design Guidelines.

The Structure Plan concludes with a 'implementation' chapter that addresses public works, planning scheme measures and further work. The chapter recommends a planning scheme amendment to implement the Structure Plan through the Local Planning Policy Framework, zones and overlays.

The Panel is satisfied the Structure Plan is a robust, thorough document underpinned by extensive investigations, analysis and consultation.

## **(ii) Inner Newport Heritage Gap Study, Methodology Report, 2022**

Heritage matters emerged as key issues during the consultation phase for the Structure Plan. As a consequence, Council commissioned the Inner Newport Heritage Gap Study (the Gap Study) in March 2019, deferring consideration of the Structure Plan until the Gap Study had been completed.

Council's Part A submission outlined the timelines for the Gap Study. An initial draft by Lovell Chen Architects and Heritage Consultants was received in December 2019. This was peer reviewed by RBA Architects + Conservation Consultants in January 2021. A further draft of the Heritage Gap Study was then completed in July 2021, taking account of the peer review comments.

Council relied on Ms Brady's review of the methodology and content of the Gap Study which concluded:

- The Inner Newport Heritage Gap Study Methodology Report (Lovell Chen, June 2022) is consistent with the VPP Practice Note in terms of the methodology, content, use of assessment criteria, recommendations for and documenting of the proposed Heritage Overlay controls, and general format and approach. The proposal to include the report as a Background Document to the Planning Scheme is supported.
- The documentation of the heritage precincts, including the heritage citations for the precincts, generally reflect a sound methodological approach, include the typically required content of such citations, and are consistent with the VPP Practice Note. The proposal to include the citations (as part of the Inner Newport Heritage Gap Study Methodology Report) as a Background Document to the Planning Scheme is supported.<sup>3</sup>

The Panel is satisfied the Gap Study is based on appropriate and rigorous historical research, and has benefited from peer review. The study included a rigorous assessment of precincts and individual properties using well-accepted methodology, and included a further review through the evidence of Ms Brady.

The translation of the heritage analysis into the Amendment is also largely consistent with the protocols outlined in Planning Practice Note (PPN) 1 (Applying the Heritage Overlay). Subject to the recommendations in this report, the Panel considers the heritage matters have strong strategic justification.

## **1.3 The Panel's approach**

Council summarised the key issues raised in submissions as follows:

---

<sup>3</sup> D6, page 3

**Table 1** Council's summary of key issues

Theme	Issue
<b>Proposed building height controls, zoning and schedules</b>	<p>Insufficient policy and strategic work to support DDO height controls of 4 and 5 storeys for C1Z.</p> <p>Introduce more shops in Newport Activity Centre.</p> <p>The proposed application of GRZ that would allow for building heights of up to three storeys and the impact on neighbourhood character.</p> <p>The proposed rezoning and application of RGZ that would allow for building heights of up to four storeys and the impact on neighbourhood character.</p> <p>The proposed rezoning from GRZ to NRZ and application of schedule 5 to NRZ</p> <p>The strategic justification for the application of mandatory rather than discretionary controls</p> <p>Insufficient consideration of the interfaces and transition between different building heights / zones.</p>
<b>Heritage</b>	<p>The submissions received requested removal or inclusion of properties into the proposed extension of HO23 in Oxford and William Streets</p>
<b>Amenity</b>	<p>Consideration of potential overshadowing, overlooking and privacy.</p> <p>Request to revise DDOs 7, 12 and 18 to include recommended noise mitigation requirements.</p>
<b>Traffic, access and car parking</b>	<p>Proposed new bus route connections.</p> <p>Improved pedestrian accessibility.</p> <p>Request for signalised pedestrian crossings on Melbourne Road.</p>
<b>Infrastructure</b>	<p>The impacts of future development on drainage.</p>
<b>Risk</b>	<p>Addressing safety and risk issues associated with the MHFs and pipelines.</p>

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.

## 1.4 Limitations

Most of the Amendment was not contested by opposing submissions. The Panel has not reviewed the entire Amendment in detail or specifically considered detailed drafting issues across the full suite of Amendment documents, other than those provisions related to submissions.

The Panel only considered issues associated with mandatory controls in relation to DDO12 and not the other DDO schedules. Only one submission (S18) opposed mandatory controls and this was in relation to the Hall Street precinct (DDO12). During the Hearing, the Panel sought Council's views about whether it should review and make recommendations about mandatory controls in the other DDO schedules. Council addressed this in its closing submission in which it advised:

... Council does not regard the Panel in this instance as properly seized with jurisdiction to make broader comments about the application of heights in a mandatory fashion across other DDOs and is instead confined to commenting on the manner of drafting of the Hall Street Precinct built form requirements.<sup>4</sup>

Council described how it had approached the Hearing, including its responses to submissions and issues, and the provision of evidence. It submitted:

...it would be unfair on the Planning Authority if the Panel proceeded to comment broadly on the use of mandatory heights throughout the Amendment when Council did not anticipate such enquiries would be pursued and recommendations made by the Panel.<sup>5</sup>

The Panel accepts Council's position and has not considered or formed any views about the use of mandatory controls in the Amendment beyond those in DDO12.

## 1.5 Strategic justification

Submissions were generally supportive of the Amendment, and did not challenge the underlying strategic justification. However, they raised concerns about specific issues or provisions that are discussed in the following chapters.

The Panel has reviewed the planning context for the Amendment, including the Planning Policy Framework (PPF), relevant planning strategies and policies, planning scheme amendments, Ministerial Directions and PPNs. The key references are summarised in Appendix D.

The Panel concludes that the Amendment:

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

<sup>4</sup> D21, page 4, Council confirmed verbally that its position was not confined to building heights and also included street setback and residential interface requirements.

<sup>5</sup> D21, page 4

## 2 Precincts, areas and sites

### 2.1 Hall Street precinct

#### (i) The issues

The issues are:

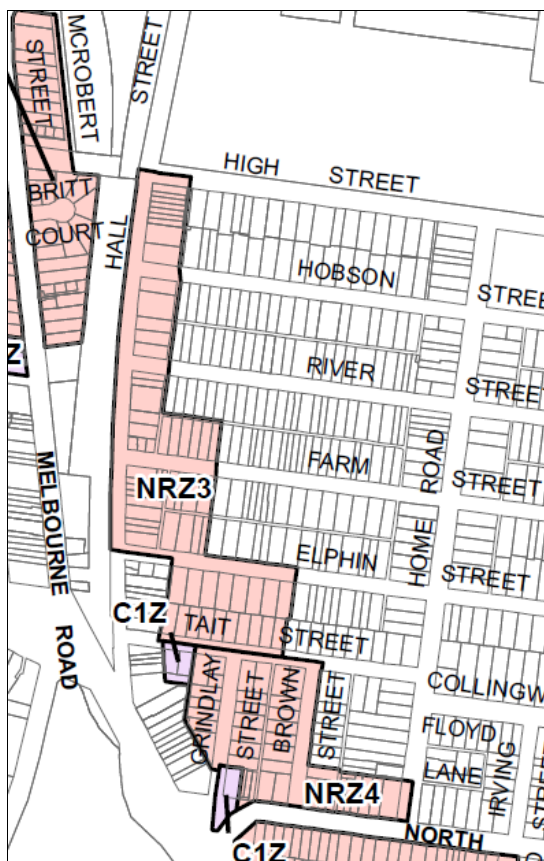
- the building height that should be applied in DDO12 Area A
- whether DDO12 built form controls should be mandatory or discretionary
- the appropriate residential zone to the east of the precinct
- whether a residential interface provision should be included in DDO12
- whether traffic and parking issues are adequately addressed
- potential impacts on school enrolments and capacity.

#### (ii) Background

The broader Hall Street area is currently zoned C1Z, GRZ1 and GRZ2, and various sites are subject to the HO.

As shown in Figure 3, the Amendment proposes to expand the C1Z in two areas to the south of Tait Street, apply the NRZ3 (Heritage areas) to the north of Tait Street and the NRZ4 (Heritage areas, Altona, Newport and Williamstown) to the south of Tait Street.

**Figure 3** Proposed Hall Street precinct rezonings

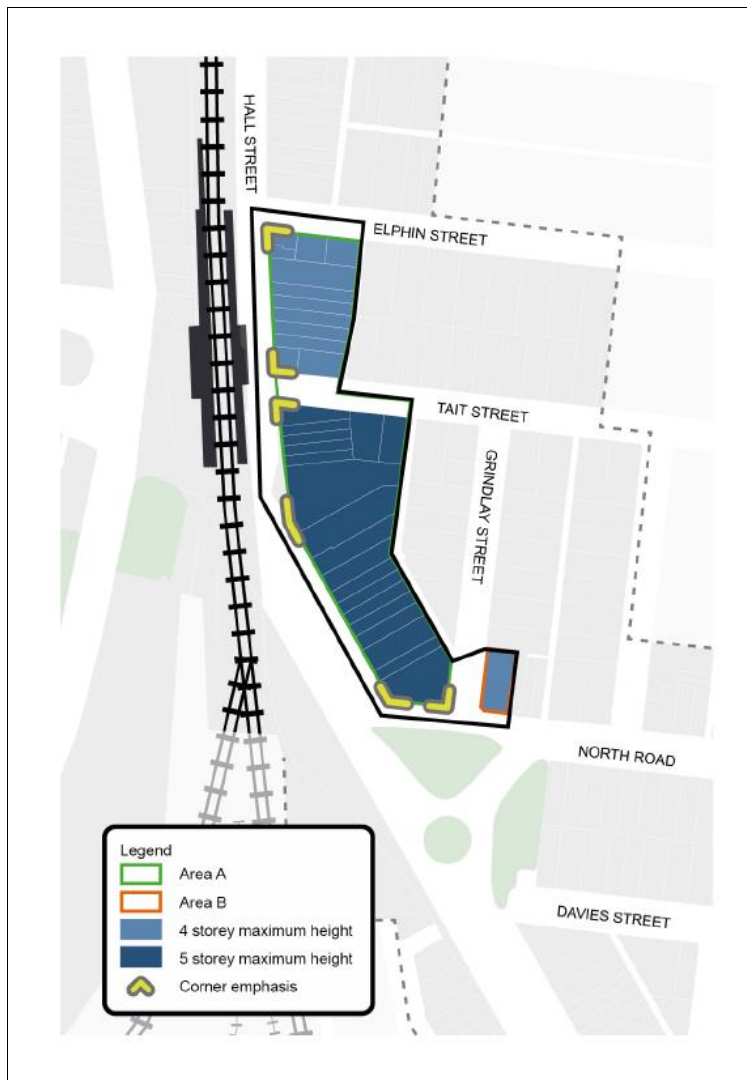


SOURCE: Extract of exhibited rezoning



The Hall Street precinct is within the proposed DDO12, that includes the following the plan at Figure 4.

**Figure 4** Exhibited DDO12, Map 1



SOURCE: Extract of exhibited DDO12

Following its consideration of Professor McGauran's evidence, Council supported his recommendation that an additional requirement be added to DDO12 Table 1. Area A-Hall Street Core:

Residential Interface

New buildings must meet the requirements of Clause 55.04-5 – Standard B21 for overshadowing of existing private open space.<sup>6</sup>

### (iii) Evidence and submissions

Nathan Stanley and Jillian Smith (S18) own 36 and 38-40 Hall Street and were represented by Ms Cincotta at the Hearing. These properties are zoned C1Z and developed with single storey buildings that are separated from the residential area to the east by a laneway. The properties are within the proposed DDO12 Area A shown on Figure 4.

<sup>6</sup> D5, page 31

They generally supported the Amendment but opposed the use of mandatory controls in DDO12 and the four storey maximum building height in Area A, in contrast to the five storey height in Area B. They opposed the application of the NRZ to the east of the commercial area, preferring the GRZ or RGZ.

Ms Cincotta submitted that the use of mandatory controls (building heights, setbacks and floor to ceiling heights) was inconsistent with the predominantly performance based approach of the Victoria Planning Provisions (VPP). She discussed the relevant elements of PPN59 (The role of Mandatory Provisions in Planning Schemes) and PPN60 (Height and setback controls for activity centres), and the references to mandatory provisions in the Urban Design Guidelines, Structure Plan and other Amendment documentation. She submitted that the criteria and 'exceptional circumstances' outlined in the PPNs required to justify mandatory controls had not been demonstrated.

Ms Cincotta outlined various factors she believed had either not been considered or had been inadequately considered in determining the recommended heights, including consolidation opportunities, equitable development, site interfaces, visual impact and sightline analysis, and modelling to assess differing heights and setbacks. Ms Cincotta submitted that the examples of mandatory heights in activity centres<sup>7</sup> that had been referred to and supported by Professor McGauran were not comparable to Newport and that the Amendment was not supported by the type of analysis that had justified those controls.

In the case of C291yara, Ms Cincotta submitted that the justification for mandatory controls was comprehensively addressed in supporting documents<sup>8</sup> that provided a greater level of analysis and detail than provided in the Structure Plan. She submitted that in the absence of that analysis, the use of mandatory controls could not be justified.

Ms Cincotta submitted there was no basis for the differing heights in Areas A and B or the lower height in Area A. She noted that:

- most properties in the precinct have a similar size and depth
- Area A is identified as a 'gateway development site' whereas Area B is not
- Area A is closer to Newport Station
- both areas have similar residential interfaces to the east and are subject to the HO.

Ms Cincotta submitted the NRZ rezoning to the east of the precinct was not strategically justified and would be inconsistent with urban consolidation policies. She noted that it is adjacent to a LNAC, close to public transport and not subject to a HO.

Ms Cincotta advised her clients objected to Professor McGauran's recommendation that DDO12 include an additional residential interface requirement. She submitted the proposal was inappropriate, unnecessary and procedurally unfair because it had not been exhibited.

Submitters (S9, S12, S19, S24 and S29) raised various issues, including concerns about building heights, neighbourhood character, amenity, traffic, parking and local school capacity. They sought a reduction in building heights within the precinct and preferred a mix of two and three storeys (three storeys between North Road and Tait Street, and two storeys between Tait and High Streets).

<sup>7</sup> Amendments C240melb (Bourke Hill) and C291yara (Queens Parade, Clifton Hill)

<sup>8</sup> GJM Heritage Queens Parade Built Form Heritage Analysis (D19) and Hansen Partnership Queens Parade Built Form Review (D20)

The sought other built form controls to address bulk and building mass, overlooking, overshadowing and other amenity issues, although there were no detailed submissions on the adequacy of the exhibited DDO12 provisions. Some provided detailed recommendations about road works, traffic calming measures and car parking and questioned the extent to which the precinct could support additional development, despite its inclusion in a designated LNAC.

Ms McDougall (S9) and Mr Mansell (S19) expanded on these concerns at the Hearing.

Council provided comprehensive submissions that explained why it had included mandatory controls in the DDOs and, in particular, DDO12. Council submitted that the ‘exceptional circumstances’ test referred to by Ms Cincotta had been met and that mandatory controls were appropriate given the ‘constrained nature’ of the activity centre (and the Hall Street precinct) resulting from:

- the single-layered nature of the centre
- the generally small lot sizes, including the lack of strategic development sites
- the need for access to be provided through laneways
- the immediate residential interfaces to most lots
- the surrounding heritage attributes
- risk constraints associated with the Newport Terminal and pipelines.

Council relied on Professor McGauran’s evidence and support for mandatory controls and the exhibited building heights. He described the characteristics of the precinct that he believed warranted mandatory controls and referred to the mandatory controls in other amendments including C240melb, C272yara and C291yara. He noted this is not a ‘brownfield site’ in search of a new character, it has an established character that has been identified for protection.

He outlined the building height analysis he had undertaken in support of the four and five storey building heights and concluded ‘...additional levels could not be added in my view without having a substantive and negative impact on the valued character and coherence of this fine inner-city neighbourhood’.<sup>9</sup>

He noted:

- increasing height would only result in minimal increases in gross floor area because of the various constraints in the controls, together with the fine grained subdivision and narrow lots
- the ‘boomerang’ shape and greater depth and size of lots in Area B would result in less impacts on residential development to the east, compared to Area A
- the character of residential interface to the north of Area A is a consistent one-and two-level form of a domestic scale.

In summary, Professor McGauran noted:

...there are distinctive attributes of the northern section (Area A) of the Hall Street precinct notably its embedded nature within a residential neighbourhood and low-rise character, that are less evident in the southern precinct (Area B) where the interface with residential areas is diminished as a result of the triangulation of the lot patterns and the changing and much greater scale of the public realm of North Road and the Melbourne Road overpass.<sup>10</sup>

He concluded:

<sup>9</sup> D5, page 34

<sup>10</sup> D5, page 28

I am satisfied that the proposed scale strikes an appropriate balance between policy goals for intensification near services and facilities on the one hand and delivering coherent precinct development outcomes on the other that are commensurate with the coherent heritage context of the Village and abutting low scale residential neighbourhoods.<sup>11</sup>

Council supported the exhibited DDO12 design and built form requirements and was satisfied they would address the amenity and related issues raised in submissions. It also supported the additional requirement recommended by Professor McGauran and did not agree with Ms Cincotta that including it in the DDO12 would be transformative or procedurally unfair.

Council submitted the four storey height limit in Area A was consistent with the Structure Plan, was appropriate given the interface with the proposed NRZ3 north of Elphin Street and would allow for a building height transition to the north.

Council submitted that the application of the NRZ3 to the west of the precinct was consistent with its approach to applying the NRZ that was established in Amendment C131hbay and did not support the GRZ or RGZ in this area.

Council noted that traffic and parking are discussed in the Structure Plan and other documents such as Council's Integrated Transport Plan and the Newport and Williamstown Local Area Movement Plan (LAMP). These include various strategies and actions to address issues raised in submissions. It also provided a copy of internal advice in relation to the capacity of laneways within the precinct.

Finally, Council noted that the precinct is within a broader LNAC that has been identified for more intensive development, consistent with Plan Melbourne and activity centre policy. Implicit in this is that the precinct will change over time and amenity and other impacts will need to be managed.

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

##### **Building height in Area A**

The Panel supports the proposed arrangement of building heights in the precinct, including the four storey maximum in Area A. The heights are consistent with the Structure Plan analysis and recommendations, and supported by Professor McGauran's evidence.

The Panel notes the differing characteristics between Areas A and B described by Council and Professor McGauran and agrees that Area B could accommodate a taller building form than Area A. It agrees the precinct should provide a transition in building heights from the northern residential interface in Area A to the higher built form, generally larger lots and 'boomerang' arrangement in Area B. The Panel also notes Mr McGauran's assessment that the additional floor space that might be achieved by increasing the limit to five storeys would be minimal.

##### **Mandatory controls**

The Panel has reviewed submissions and evidence, as well as guidance material such as PPN59 and PPN60, and the amendments, panel reports and other documents that were referred to. It acknowledges the Victorian planning system is predominantly performance based and is intended to provide a degree of freedom in how planning objectives are achieved. Nevertheless, there is an opportunity to apply mandatory provisions where they can be justified and having particular regard to PPN59 and PPN60.

---

<sup>11</sup> D5, p33

PPN59 includes the following criteria to assess whether or not the benefits of a proposed mandatory provision outweigh any loss of opportunity and the flexibility of 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?<sup>12</sup>

PPN60 establishes that mandatory height or setback controls should only be applied where:

- Exceptional circumstances exist; or
- council has undertaken comprehensive strategic work and is able to demonstrate that mandatory controls are appropriate in the context, and
- they are absolutely necessary to achieve the preferred built form outcomes and it can be demonstrated that exceeding these development parameters would result in unacceptable built form outcomes.<sup>13</sup>

Before responding to these matters, the Panel notes that the discussion of mandatory controls in the Urban Design Guidelines, Structure Plan and Amendment documentation was superficial and very generalised.<sup>14</sup> On the basis of those documents alone, the Panel would be reluctant to support mandatory controls in the Hall Street precinct. However, it was assisted by submissions and evidence that addressed the PPNs and particularly Professor McGauran's evidence about the character of the area and the intent and effect of the provisions. He also provided wall height, setback, interface and shadow modelling, elements of which had not been previously available.

With the benefit of that material, the Panel is satisfied the DDO12 mandatory provisions are warranted and are an appropriate response to the character of the area, the outcomes that are sought in the Structure Plan and the role of the LNAC. The Hall Street precinct is relatively isolated from other precincts in what is a disjointed activity centre that Professor McGauran described in his verbal evidence as a '*network of small villages separated by roads, railway and infrastructure*' that consists of '*intimate and contained villages*'. The precinct has a distinct, consistent character and built form, fine grain development, a lengthy interface with residential land that is subject to the HO (and proposed to be rezoned NRZ3) and an elongated frontage to Hall Street with a single lot depth. In combination, these factors contribute to the 'exceptional circumstances' described in PPN60.

In terms of PPN59, the Panel is satisfied the mandatory provisions are strategically supported, will be appropriate to the majority of proposals and provide for the preferred future outcome. They will also provide greater certainty and reduce administrative costs, although these are not significant factors. In terms of PPN60, the Panel acknowledges the distinct characteristics of the precinct and is satisfied the material provided in Council's submissions and particularly Professor McGauran's evidence establish that exceptional circumstances exist and warrant mandatory controls. The Panel does not agree that the additional analysis sought by Ms Cincotta is necessary.

The Panel notes PPN60 provides for mandatory controls be reviewed every five years '*to assess whether the controls are still delivering on the outcomes and objectives for the centre and*

<sup>12</sup> PPN59, page 2

<sup>13</sup> PPN60, page 3

<sup>14</sup> For example, the Structure Plan and Explanatory Report do not include any discussion of PPN59 or PPN60.

*demonstrate that they are not undermining these going forward'*. The Panel would support such a review.

### **The appropriate residential zone to the east of the precinct**

The Panel notes that the proposed NRZ3 and NRZ4 apply to areas entirely within the HO and are consistent with Council's approach to applying the new residential zones in C131hbay.

The Panel does not agree with Mr Stanley and Ms Smith that the proximity of this area to the LNAC and public transport justifies applying the GRZ or RGZ.

### **Residential interface provision**

The Panel is satisfied the additional DDO12 design and built form requirement recommended by Professor McGauran and supported by Council is worthwhile and warranted. It notes that the same requirement was included in the exhibited DDO6 Area A that also shares a residential interface.

The Panel agrees with Council that this change is neither transformative nor procedurally unfair and can proceed as part of the Amendment. The Panel refers to Council's discussion of these issues in its closing submission.<sup>15</sup>

### **Traffic and parking**

The Panel accepts the precinct and general area will continue to experience traffic and parking challenges as it develops and notes this is not uncommon in and around activity centres. However, it is satisfied Council has processes in place to address current and emerging issues and they are not an impediment to the Amendment proceeding. Some submitters seemed to be concerned that the Amendment would facilitate additional or more intensive development than could occur under the current planning scheme provisions. This is not the case, the potential density and scale of development in the area would be reduced by the Amendment, particularly through the application of the NRZ and the DDO12 height provisions.

General traffic and parking issues are discussed in section 7.2 of the report.

### **School and child care enrolments**

School and child care enrolments are matters for the Department of Education and other providers.

## **(v) Conclusions and recommendations**

The Panel concludes:

- The four storey maximum building height in DDO12 - Area A is appropriate.
- The use of mandatory built form controls in DDO12 is justified.
- The NRZ3 and NRZ4 are appropriate for the area to the east of the C1Z.
- The inclusion of Professor McGauran's recommended residential interface provision in DDO12 is appropriate.
- Council has an established planning framework for addressing traffic and parking issues.
- Possible impacts on school enrolments and capacities are beyond the scope of the Amendment.

---

<sup>15</sup> D21, pages 10-12

The Panel recommends:

**In Design and Development Overlay Schedule 12, add the following ‘design or built form element’ and ‘requirement’ to Table 1:**

DESIGN OR BUILT FORM ELEMENT	REQUIREMENT
------------------------------	-------------

Residential Interface	New buildings must meet the requirements of Clause 55.04-5 – Standard B21 for overshadowing of existing private open space.
-----------------------	---

## 2.2 Salisbury and Woods Streets

### (i) The issue

The issue is whether the Salisbury and Woods Streets area proposed to be zoned GRZ3 should be zoned NRZ.

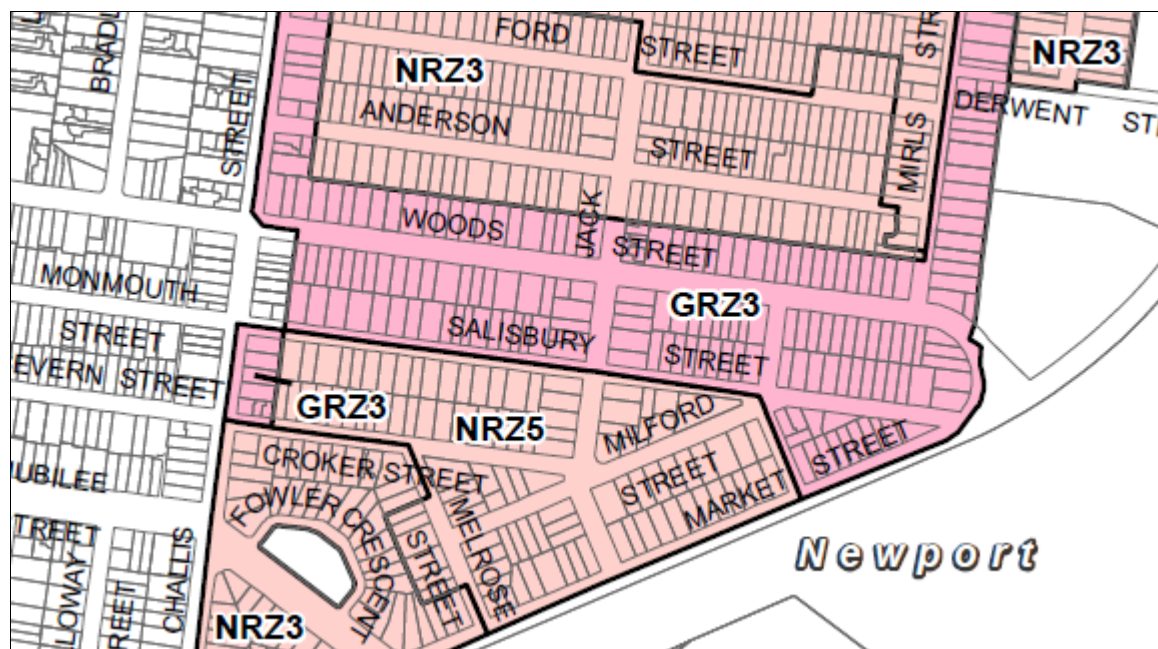
### (ii) Background

Salisbury and Woods Streets (and the surrounding residential area) are currently zoned GRZ1.

The Amendment proposes to apply the GRZ3 (Garden Urban Areas), NRZ3 (Heritage areas) and NRZ5 (Garden Suburban and Garden Court areas) as shown in Figure 5.

The eastern area of Salisbury and Woods Streets is within the Arts and Recreation Precinct.

**Figure 5** Proposed Salisbury and Woods Street rezoning



SOURCE: Extract of exhibited rezoning

### (iii) Evidence and submissions

Submissions (S10, S13, S21, S22, S23 and S26) opposed the proposed GRZ3 rezoning on the north side of Salisbury Street and on both sides of Woods Street. The submitters were concerned about

three storey buildings being developed in the GRZ3 and preferred the maximum two storeys in the NRZ.

Specific concerns related to impacts on neighbourhood character, the capacity to accommodate three storey buildings on smaller lots and the increased potential for amenity impacts such as overlooking, noise and overshadowing. Some submitters believed the residential character in the general area was broadly consistent and Salisbury and Woods Streets should be treated similarly to the area proposed for the NRZ5. Concerns were also raised about the capacity of Salisbury Street to accommodate anticipated traffic and parking impacts.

Council noted the zone changes were informed by the Housing Strategy that identified four levels of housing change (minimal, incremental, moderate and substantial). This framework was implemented through Amendment C131hbay and reflected in the Residential Development Framework Plan at Clause 02.04. The Framework Plan notes the housing change areas in Newport were to be determined by the Newport Structure Plan.

Council submitted the criteria used to inform the new residential zones outlined in the Housing Strategy were reviewed as part of the Amendment C131hbay Panel Report and found to be sound.

Council submitted the application of the GRZ3 to Salisbury and Woods Streets had been proposed because of their proximity to the Challis Street Small Neighbourhood Activity Centre (SNAC) and noted there is already some incremental change occurring in the form of two storey townhouses. The objective of encouraging housing diversity around Challis Street and its role as a SNAC is outlined in the Activity Centres Strategy.

The proposed GRZ3 supports the housing diversity objectives for areas along Woods Street and the north side of Salisbury Street and is consistent with the GRZ3 applied to the north side of Monmouth Street, immediately west of Challis Street to ensure a consistent design outcome.

Council noted the GRZ1 that currently applies to this area has a maximum three storey height limit, consistent with the proposed GRZ3. However, the proposed GRZ3 would apply neighbourhood character objectives which must be considered in the assessment of any new residential development:

- To support visual separation between dwellings.
- To provide front gardens that are visible from the street.
- To provide front and rear setbacks that accommodate canopy trees and a high portion of permeable garden area.
- To support front building façades that are well articulated.
- To support garages and carports set back behind the dwelling façade.<sup>16</sup>

These would ensure neighbourhood character is considered.

Council also noted that Clauses 54 and 55 (ResCode) will address amenity impacts raised in submissions.

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

The Panel notes Council's advice about the rationale for applying the GRZ3 and accepts that it is broadly consistent with the framework introduced through Amendment C131hbay. Submitters who opposed the GRZ3 and preferred the NRZ did not justify the NRZ beyond a desire to limit

<sup>16</sup> GRZ3 Neighbourhood character objectives



buildings to two storeys and consequently address anticipated amenity impacts. A more rigorous assessment of the merits of the NRZ, including an assessment against PPN91 (Using the residential zones) would need to underpin a change from the existing GRZ1 to the NRZ.

The area proposed to be zoned GRZ3 is currently zoned GRZ1 within which three storey buildings are permitted. The GRZ3 also has a three storey maximum building height, but includes neighbourhood character objectives together with more guidance in relation to elements of Clauses 54 and 55. The Panel is satisfied this additional guidance will facilitate better design and amenity outcomes than the current zone and better address some of the concerns raised by submitters.

The Panel accepts that proximity to the Challis Street SNAC and the Newport LNAC (more generally) provide a basis for facilitating urban consolidation and preferring the application of the GRZ in this area instead of the NRZ.

The Panel notes that the zoning approach is consistent with the way the zones were structured for the area to the west of Challis Street as part of Amendment C131hbay. That is, the GRZ3 has been applied along the north side of Monmouth Street and the continuation of Woods Street.

The Panel believes that the concerns raised by many submitters were overstated and there seemed to be some misunderstanding of the current zone regime and the proposed changes. The GRZ3 will provide a better framework (in combination with Clauses 54 and 55) for addressing the amenity and character concerns raised by submitters.

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

The Panel concludes the proposed rezoning to GRZ3 along Salisbury Street and Woods Street is appropriate.

## **2.3 Walker Street**

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

The issues are:

- whether the proposed RGZ3 is the appropriate zone
- whether the proposed RGZ3 area should be included in DDO7
- the adequacy of consultation and notification.

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

Walker Street is currently zoned a mixture of GRZ1 and C1Z (southernmost lots along Mason Street).

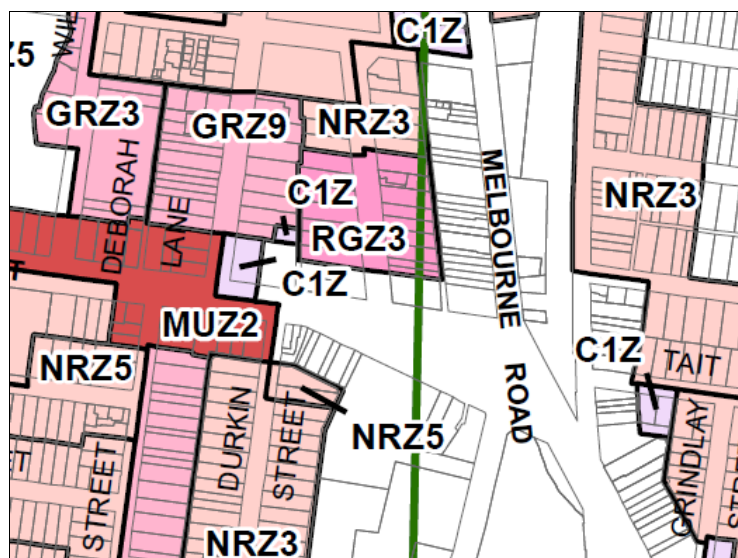
The Amendment proposes to rezone the GRZ1 area to a mixture of RGZ3 (Newport Medium Density Residential area) in the central area of Walker Street, and NRZ3 (Heritage areas) in the northern area of Walker Street subject to existing HO23, as shown on Figure 6. The RGZ3 area is within the proposed DDO7 – Area D as shown on Figure 7.

The Panel notes the DDO7 Area D heritage references were the subject of discussion between Council and DELWP as part of the amendment authorisation process.<sup>17</sup>

---

<sup>17</sup> D8, pages 15-16

Figure 6 Proposed Walker Street rezoning



SOURCE: Extract of exhibited rezoning

Figure 7 DDO7 Map 1



SOURCE: Extract of exhibited DDO7

### (iii) Evidence and submissions

Sarah and Andrew Horsfield (S28) own the property at 6 Walker Street Newport. They opposed the RGZ3 on the basis that it has not been adequately justified and would result in poor planning and design outcomes, particularly at the transition to the NRZ to the north. Ms Horsfield attended the Hearing and submitted it would be more appropriate to apply the GRZ as a transition to the northern area of NRZ3 that is within HO23. She noted this was the only area proposed to be rezoned RGZ3 and because of its small size would contribute little to consolidation objectives.

Ms Horsfield raised various urban design issues, including the change from a predominantly single storey streetscape to four storeys in the RGZ3 and five storeys to the east, along Melbourne Road. She submitted these changes should have been accompanied by more thorough assessments of overshadowing, neighbourhood character, private open space and amenity impacts.

Ms Horsfield submitted the application of the RGZ should be reconsidered on the basis that it presents an inappropriate interface to NRZ properties in the northern half of the street, and does not contain lot typologies that are suitable for four storey development.

Ms Horsfield opposed the application of DDO7 to Walker Street because:

- Encouraging retail, hospitality and commercial uses at ground level and residential above was inappropriate because Walker Street is a residential neighbourhood, not envisaged for commercial use.
- Requiring that development provide active and articulated ground level street frontages should only be intended for commercially zoned land within the retail core of the activity centre.
- There are no built form or setback controls set out in the schedule for Walker Street residential precinct (Area D) – the only direction provided is a generic statement concerning the need to consider adjacent heritage buildings, which duplicates existing planning scheme provisions.

Ms Horsfield submitted the DDO7 does not serve any useful purpose for properties in Area D and *'...presents a clear conflict with the core purpose and objectives of the Residential Growth Zone. The DDO should be removed from Area D in Walker Street on the basis that it creates a direct conflict between the zone and overlay provisions'*.<sup>18</sup>

Ms Horsfield submitted that the notification letter did not properly communicate the scope of the zone and overlay changes proposed for Walker Street and that affected residents would likely be unaware of the changes. She believed Council should delay the Amendment until the residents of Walker Street, particularly those whose properties are to be zoned RGZ, are further consulted.

Council submitted that the proposed application of the RGZ to Walker Street was consistent with policies in support of housing choice in and around activity centres and with PPN91 (Using the Residential Zones). It noted the area is in close proximity to the train station and bus terminal, is within the 'core' of the activity centre, has a limited interface with NRZ to the north, interfaces with areas to the east and south that have been identified for higher density development, interfaces with the GRZ to the west and is within a broader area that has already experienced higher density residential development (5-storey building at the corner of Melbourne Road and Newcastle Street, 4-storey building at the corner of Mason Street and Walker Street). Consequently, a 4-storey building height in Walker Street would not be incongruous with the

<sup>18</sup> S28

surrounding context and future development, although it might require lot consolidation to realise this outcome.

Council described the built form analysis in the Urban Design Guidelines and Structure Plan that had informed the DDO7 design provisions and submitted these provisions, in combination with existing provisions such as ResCode clauses 54 and 55 and clause 15.01-1L-01 (Design in substantial change areas), would address the built form and amenity concerns raised in the submission. In addition, the proposed DDO6 that applies to the east of Walker Street includes a requirement for new buildings to meet the requirements of Clause 55.04-5 – Standard B21 for overshadowing of existing private open space.

Council relied on the evidence of Professor McGauran who described the analysis that had informed the Mason Steet precinct built form provisions in the Urban Design Guidelines, Structure Plan and DDO7. He focussed on building height, setback and interface issues, including the interface with properties on the eastern side of Walker Street. He was satisfied that the combination of existing planning scheme provisions and those included in DDO7 were appropriate.

Council outlined the consultation and notification conducted for the Structure Plan and Amendment and advised it had met the requirements of the Act.

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

##### **Residential Growth Zone**

The use of the RGZ is consistent with overarching zoning approach adopted in Amendment C131hbay that introduced the new residential zones elsewhere in the municipality. As Council noted, the RGZ can be an appropriate tool to support activity centre and housing diversity policies.

The proposed Walker Street RGZ3 is consistent with this approach and recognises the locational characteristics that support higher density residential development in this part of the LNAC, including its central location and proximity to public transport. Although the RGZ3 shares an interface with the proposed NRZ3, this is limited to the two lots on either side of Walker Street, and is in contrast to the more expansive interfaces with the C1Z to the east and south. The Panel notes that a permit has been issued for a five storey residential building with ground floor shops and first floor offices at 1-5 Walker Street (Former Mosque) Newport.

The Panel does not believe the NRZ3 interface warrants the GRZ and is satisfied the RGZ is appropriate because of the land's location and in support of activity centre and housing diversity policies.

##### **Design and Development Overlay 7**

Although Ms Horsfield raised various concerns about the adequacy of the built form analysis that underpinned the zone selection and built form provisions in the DDO7, the Panel is satisfied that the analysis in the Structure Plan was adequate and the proposed and existing provisions will enable built form and amenity issues to be adequately addressed. While there will be some design challenges in addressing various interface issues, these are not uncommon in activity centres and can be resolved through the planning permit process.

The Panel considered whether DDO7 should be removed from the RGZ3 area in response to Ms Horsfield's submission about potential conflict between the DDO7 design objectives (the first two design objectives in relation to land uses and frontages) and the RGZ3. Ms Horsfield noted that the only specific design and built form provisions that apply to Area D relate to the heritage

precinct interface. The Panel agrees these design objectives are not directly relevant to the RGZ3 given their greater focus on commercial rather than residential development and are unlikely to assist the planning permit process. The heritage provisions in Table 4 are largely superfluous because the RGZ3 includes a heritage related design objective, and there are other general heritage protection provisions that would be applicable. For these reasons, the Panel is not satisfied that there is any benefit in including the RGZ3 area in in DDO7 (Area D) and recommends that it be removed.

### **Notification**

The Panel accepts Council's advice about the exhibition and notification arrangements for the Amendment is satisfied the relevant requirements have been met.

There is no apparent basis on which to defer the Amendment while further consultation is conducted with Walker Street residents.

### **(v) Conclusions and recommendations**

The Panel concludes:

- The proposed application of the RGZ3 is consistent with activity centre and housing diversity policies, and should proceed.
- The inclusion of the RGZ3 area (Area D) in DDO7 serves no useful purpose and should be removed.
- The notification of the Amendment was appropriate.

The Panel recommends:

**In Design and Development Overlay Schedule 7, remove Area D from Map 1, delete Table 4 and make any other consequential changes that are necessary.**

**In planning scheme maps 10DDO and 11DDO, remove Design and Development Overlay Schedule 7 from the area to be zoned Residential Growth Zone Schedule 3 (Area D).**

## **2.4 Derwent Street car park**

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

The issue is whether a height control should be applied to the Derwent Street car park in the Paine Reserve.

### **(ii) Background**

The Paine Reserve (and car park) is currently zoned Public Park and Recreation Zone and is not being rezoned by the Amendment.

The Amendment proposes to extend the existing HO22 to the southern area of the Reserve, including the car park.

The Reserve is within the Arts and Recreation precinct.

**(iii) Submissions**

Kate Fraser (S25) submitted the Amendment should apply a maximum building height to proposed HO22 to prevent multi-storey buildings being built in the car park. The submission noted various references in the Structure Plan to the potential redevelopment of the site.

Council acknowledged the Structure Plan identifies the site for potential redevelopment, however it has no current plans for its redevelopment, and the Structure Plan notes that further investigation would be required before any redevelopment could occur. Council also noted that redevelopment would require formal notification and consultation with adjoining landowners and did not believe a height control was necessary.

**(iv) Discussion**

The Panel acknowledges the site has been identified for potential redevelopment, subject to further investigations. While the height of any future redevelopment would be a relevant consideration, particularly having regard to its residential interface to the west, any height controls would require more detailed analysis than has been undertaken to date and would need to be exhibited. In the absence of this, the Panel does not support the application of a height control to the site as part of the Amendment.

**(v) Conclusion**

The Panel concludes the Derwent Street car park does not warrant a building height control as part of the Amendment.

## **2.5 481 Melbourne Road, Newport**

**(i) The issue**

The issue is whether 481 Melbourne Road, Newport should be rezoned.

**(ii) Background**

481 Melbourne Road is currently zoned GRZ1 and is subject to HO199.

The Amendment proposes to rezone the site NRZ5 (Garden Suburban and Garden Court areas).

**(iii) Submissions**

Ali Kaddour (S34) sought this property being exempted from the Amendment because of its particular characteristics, including its large size (1600 square metres), double street frontage (Melbourne Road and Steele Street), and the small scale of the heritage building (it occupies less than one third of the site). The submitter advised the site is currently used as a 22-room residential lodge and there is a current planning permit application for residential redevelopment on part of the site. The submitter was concerned the application would not be supported by Council if the Amendment was approved.

Council advised the property is proposed to be rezoned NRZ5 as it is within a minimal change area and within 500 metres of the Newport Terminal MHF. This approach is consistent with Housing Strategy and new residential zones introduced in Amendment C131hbay. The NRZ5 is the appropriate schedule as the site is located within the Garden Suburban/Garden Court neighbourhood.

**(iv) Discussion**

The Neighbourhood Character Study includes the site within the Garden Suburban precinct and the Housing Strategy identifies it as a minimal change area. The proposed NRZ5 is consistent with these designations and was extensively applied under Amendment C131hbay on a similar basis. While the Panel acknowledges the site's characteristics and potential for redevelopment, it is satisfied the NRZ5 is appropriate and the rezoning should proceed.

**(v) Conclusion**

The Panel concludes the proposed rezoning of 481 Melbourne Road, Newport to NRZ5 is appropriate.

## 3 Newport Terminal MHF and pipelines

### 3.1 The issue

The issue is whether the Amendment appropriately addresses the potential impacts of the Newport Terminal MHF (the Terminal) and pipelines.

### 3.2 Background

Viva Energy Australia (Viva) (S37) operates the Newport Terminal, a fuel distribution centre that stores and handles significant quantities of fuels, lubricants and solvents. The Terminal is located to the north-east of Newport and is classified as a MHF. Viva also owns and operates three pipelines that extend through Newport.

The proposed DDO6 overlaps the south-east area of the Terminal's Outer Planning Advisory Area (OPAA) (300 metre radius) as mapped by WorkSafe Victoria (WorkSafe) (D22). The Amendment does not affect the Inner Planning Advisory Area (IPAA) (185 metre radius).

Since the exhibition of the Amendment, WorkSafe has released revised guidance for land use planning near a major hazard facility.<sup>19</sup> Under the 'flammable' MHF category, the Inner Safety Area (ISA)<sup>20</sup> (formerly the IPAA) distance is 250 metres and the Outer Safety Area (OSA)<sup>21</sup> (formerly the OPAA) distance is 500 metres.

The black oil and white oil pipelines generally run north-south through the Structure Plan area and are located within or adjacent to the proposed DDO6. The Western Altona Geelong Pipeline runs along Home Road before turning diagonally to the south-west along North Road and the rail corridor.

### 3.3 Evidence and submissions

Viva outlined the nature and operation of its facilities with the assistance of Ms McGregor and called risk evidence from Ms Hinson and planning evidence from Mr Gentle.

Ms Hinson provided overviews of the facilities, the risk assessment and management processes, the relevant planning scheme provisions and the Amendment. She generally supported Mr Gentle's recommendations that sought to augment the Amendment provisions to facilitate more effective consultation and better risk management.

Mr Gentle provided overviews of the facilities, the current planning context, the relevant elements of the Structure Plan and Amendment, and relevant MHF controls in other planning schemes. He discussed the implications of the WorkSafe IPAA and OPAA.

<sup>19</sup> <https://www.worksafe.vic.gov.au/land-use-planning-near-major-hazard-facility>

<sup>20</sup> The Inner Safety Area is the area immediately surrounding an MHF where both persons and property could be seriously impacted by a high consequence, low likelihood major incident at the facility. A high consequence incident is where there is potential for injury, fatality and significant damage to property.

<sup>21</sup> The Outer Safety Area is a precautionary safety area that extends beyond the inner safety area where the consequences of a major incident are not likely to cause a fatality but persons present may suffer some injury or adverse effects or be vulnerable in the event of a very large, potentially long duration major incident.



Mr Gentle concluded that there *'is a need, to strengthen and clarify the provisions as they relate to the identification and mitigation of risk associated with the Newport MHF and Pipelines to ensure public safety and good planning outcomes'*.<sup>22</sup>

In relation to the Terminal, he recommended:

- A. Include a purpose in the DDO6 provisions relating to risk associated with the MHF.
- B. Show the OPAA on the map in the DDO6 provisions.
- C. Include application requirements demonstrating appropriate consideration of risks associated with the MHF.
- D. Include decision guidelines requiring consideration of risks associated with the Newport MHF.
- E. Include referral requirements in Schedule to Clause 66.04 for any application within the IPAA and OPAA.
- F. Include notice requirements in the Schedule to Clause 66.04 for any application with the IPAA and OPAA.<sup>23</sup>

In relation to the pipelines, he recommended:

- A. Include a purpose in the DDO6 relating to risk associated with pipelines.
- B. Show pipeline infrastructure on the map in DDO6.
- C. Show additional information in relation to the pipelines on map in the DDO6.
- D. Modify Table 2 in DDO6 to include reference to mitigating risk associated with the pipelines.
- E. Strengthen the application requirements and decision guidelines providing for consideration of risk factors.
- F. Include referral or notice provisions seeking the views of both the pipeline operator and licensee and Energy Safe Victoria.<sup>24</sup>

Viva supported Mr Gentle's recommendations and concluded:

Viva Energy has real and genuine concerns that in the absence of the types of controls outlined in Mr. Gentle's amended DDO6, the Amendment will adversely affect Viva Energy's ability to manage the impact/s of any potential incidents at the Terminal and in relation to its Pipelines.<sup>25</sup>

Mr Allum (S3) raised various safety concerns associated with the Terminal and pipelines, particularly the potential impacts on the residential population within the area. He outlined the recent approval history of the Terminal, issues associated with its construction and various events and investigations into safety issues. The submitter sought various recommendations from the Panel, including the application of the Buffer Area Overlay (BAO).

The Port of Melbourne (S5) noted the input from WorkSafe and Energy Safe Victoria in relation to the Terminal and pipelines and did not object to the Amendment.

The EPA (S17) noted Council sought the views of WorkSafe regarding the MHF (in accordance with Ministerial Direction 20) and was satisfied that relevant issues had been addressed.

Council provided comprehensive responses to these submissions and evidence in its Part B and closing submissions. It also responded to the Panel's direction that it provide advice on any work it has undertaken to apply the BAO or other planning responses to MHFs.

<sup>22</sup> D7, page 33

<sup>23</sup> D13, page 13

<sup>24</sup> D13, page 14

<sup>25</sup> D12, page 18

The key elements of Council's submissions were:

- WorkSafe reviewed the draft Structure Plan and Amendment. It advised Council (in letters dated 7 and 21 January 2022) that it did not object and noted that the proposed NRZ rezonings and height provisions in DDO6 represented a 'tightening' of controls and were 'positive' changes. It foreshadowed the changes to the OPAA and IPAA discussed earlier and advised the increased OPAA is intended to provide greater flexibility for WorkSafe's advice and should be developed on a case-by-case basis. It did not lodge a submission to the formal exhibition of the Amendment.
- Council manages relevant MHF related permit applications in accordance with its policy document Interim Management of Land Use Planning Around Major Hazard Facilities, October 2014.
- Council is aware that DELWP and WorkSafe are intending to consult with Councils in relation to MHFs and the use of the BAO. In light of this, and its lack of technical expertise in this field, Council has not sought to introduce the BAO.
- The Amendment (through the application of the NRZ and built form controls in the DDO6) is a 'tightening' of what could be contemplated under the current provisions.
- Council has sought clarification from WorkSafe in relation to the revised OSA and ISA but is yet to receive a response. It noted that revised ISA and OSA mapping (if it exists) has not been provided to Council or Viva.
- Council has proceeded on the basis that its use of the IPAA and OPAA in place when the Amendment was prepared is the correct approach.
- The DDO6 makes adequate provision for considering pipelines in the assessment of permit applications, including:
  - a design objective in relation to pipeline infrastructure setbacks
  - buildings and works requirements in relation to pipeline easements
  - an Application requirement for a report demonstrating how pipeline infrastructure is addressed
  - a decision guideline in relation to pipelines.
- Council noted that Amendment C114hbay sought to address pipeline issues on a site in South Kingsville and included a Development Plan Overlay requirement for a report to address possible impacts.<sup>26</sup>

Council did not support the changes to DDO6 recommended by Mr Gentle and Viva, submitting that they are unnecessary, and it is not the role of the DDO to manage risk. It submitted that if the Panel concluded additional provisions were necessary, they should be limited to a suitably modified application requirement based on that proposed in Amendment C114hbay:

For sites in Area B and C, a report that outlines the impact of the proposed development on pipeline infrastructure both during construction and post-construction in the context of a pipeline risk assessment, and any measures required to ensure the ongoing maintenance and operation of the pipeline.

This report must be prepared in conjunction with the relevant authorities and stakeholders and according to their requirements. The recommendations of this risk assessment are to be incorporated into the proposal.<sup>27</sup>

<sup>26</sup> The Amendment has been submitted for approval following a Panel Hearing.

<sup>27</sup> D9, page 22

### 3.4 Discussion

The possible risks and constraints associated with the Terminal and pipelines are identified in the Structure Plan and addressed in the Amendment, particularly DDO6 that includes the various pipeline related requirements outlined by Council. The Newport MHF OPAA only partially affects one lot in the north-east corner of the DDO6 (450 Melbourne Road), although this might change if a revised OPAA or OSA is mapped by WorkSafe in the future.

The Panel agrees with Council's observation, shared by WorkSafe, that the Amendment will 'tighten' the existing planning framework and potentially reduce development density and therefore risk. The Panel does not share Mr Gentle's view that the Amendment will somehow increase the risk.

In terms of the OPAA, the Panel agrees with Council that the Amendment should proceed on the basis of the mapped OPAA, not the revised guidance on the WorkSafe website. In its response to the draft Structure Plan and Amendment, WorkSafe acknowledged that the general OPAA/OSA was to be increased but did not object to the Amendment. It also noted that the OSA is for guidance purposes and needed to be applied on a case-by-case basis. In the absence of more detailed and technical analysis of how the revised OSA guidance might be applied to the Newport MHF, the Panel is satisfied the Amendment should rely on the OPAA referred to in the Structure Plan and previously mapped by WorkSafe. The Panel expects that the extent of the OSA would be further explored if and when a BAO is applied.

In relation to 450 Melbourne Road, the site is not currently subject to any building height restrictions, however the proposed DDO6 would apply a four storey maximum building height. This is consistent with the view that the DDO6 will 'tighten' the planning framework and potentially reduce risk. Permit applications would be subject to Council's MHF notification policy.

The DDO6 does not include any specific references to the Terminal and the Panel agrees with Viva that including a reference in the DDO6 design objectives and decision guidelines would alert parties to its existence and potential implications. The Panel does not believe that the OPAA needs to be mapped in the DDO6, and notes the possibility that it will change in the future.

The Panel was not presented with evidence (such as applications that were not notified) to confirm the proposition the current notification arrangements are unsatisfactory or need to be augmented. In addition, the Panel is not aware of WorkSafe's views about Viva's submission that it be a referral authority. Consequently, the Panel is reluctant to introduce these changes as part of the Amendment. Nevertheless, it notes that notification and referral arrangements would likely be reviewed if and when a BAO is applied.

In terms of the pipelines, the Panel is satisfied the DDO6 references in the design objectives, built form provisions, application requirements and decision guidelines are appropriate. The exhibited application requirement relating to pipelines, while less detailed than Council's alternative drafting discussed earlier, is adequate for the purposes of the DDO.

The Panel notes that it does not have the views of Energy Safe Victoria in relation to Viva's submission that it be a referral authority and is reluctant to introduce these changes as part of the Amendment. As noted in relation to the Terminal, referral and notification issues would likely be further reviewed if and when a BAO is applied.

Finally, the Panel notes that the issues around applying the BAO were discussed in the Panel report for Amendment C131hbay, which noted:

The next step, one that falls outside the scope of this Amendment, will be for the Planning Scheme to be amended (based on careful strategic work) to apply the newly created Buffer Area Overlay to the appropriate areas of the City to manage the risks on planning, building and public health posed by the major hazard facilities.<sup>28</sup>

The Panel shares this view in relation to Amendment C133hbay.

### 3.5 Conclusions and recommendations

The Panel concludes:

- The Amendment will not increase the risks associated with the Newport Terminal MHF and pipelines.
- The Amendment should proceed on the basis of the mapped OPAA, not the revised guidance on the WorkSafe website.
- The need for including referral arrangements within this Amendment has not been demonstrated, although referral arrangements warrant further consideration by Council, potentially as part of implementing the BAO.
- The DDO6 would be improved by including additional references to the Newport Terminal MHF.

The Panel recommends:

**In Design and Development Overlay Schedule 6, Clause 1.0 (Design objective) replace the fifth Design objective with:**

***To ensure development is designed to mitigate noise impacts from the railway corridor, is set back from pipeline infrastructure and responds to any constraints associated with the Newport Terminal Major Hazard Facility.***

**In Design and Development Overlay Schedule 6, Clause 6.0 (Decision guidelines) include the following:**

***Whether the proposal adequately responds to any constraints associated with the Newport Terminal Major Hazard Facility.***

---

<sup>28</sup> Amendment C131hbay Panel Report

## 4 Noise impacts

### 4.1 The issue

The issue is whether the Amendment should include additional provisions to address noise impacts.

### 4.2 Background

The exhibited DDO6 includes:

- The following design objective:  
To ensure development is designed to mitigate noise impacts from the railway corridor.
- The following building or built form requirement relating to the railway interface:  
Provide acoustic mitigation and absorption along the railway interface to alleviate noise impacts and minimise the rebound of rail noise onto Hall Street.
- The following application requirement:  
An acoustic assessment report prepared by a qualified acoustic engineer or other suitably skilled person to the satisfaction of the responsible authority which:
  - Takes into consideration, the vibration impact from the rail corridor on the future development.
  - Applies the following noise objectives:
    - 35 dB LAeq,8h when measured within a sleeping area between 10 pm and 6 am.
    - 40 dB LAeq,16h when measured within a living area between 6 am and 10 pm.
  - For areas other than sleeping and living areas, the median value of the range of recommended design sound levels of Australian Standard AS/NZ 2107:2016 (Acoustics – Recommended design sound level and reverberation times for building interiors).
  - Includes recommendations for any noise attenuation measures required to meet the applicable noise level objectives.
  - Includes additional considerations, where relevant, to address:
    - potential noise character (tonality, impulsiveness or intermittency);
    - noise with high energy in the low frequency range; and
    - transient or variable noise that an acoustic assessment report be prepared that addresses various matters.
- The following decision guideline:  
Whether the impact of the potential noise sources have been mitigated through design, layout, and location; and whether this reduces the need for acoustic treatment of buildings or compromises the useability of the building by its occupant.

The exhibited DDOs 7, 12 and 18 include an application requirement in relation to potential noise impacts on surrounding properties, but do not include any provisions related to noise or vibration associated with the rail corridor.

### 4.3 Submissions

The EPA (S17) noted it provided Council with advice on the 2018 and 2022 versions of the Structure Plan, including advice on application requirements relating to noise and vibration impacts associated with the rail corridor, Melbourne Road and existing industry.

The EPA submitted that the application requirement included in DDO6 should be included in DDOs 7, 12 and 18, consistent with its previous advice to Council. It recommended:

Given the proximity of each precinct (all or part of) to the rail corridor or Melbourne Road, EPA suggest that the recommended wording is also copied across each of the DDOs, noting that this requirement may not be applicable to all areas of each precinct (DDO7 for example).<sup>29</sup>

In addition, the EPA recommended the inclusion of:

...an additional requirement that requires permit holders to verify that buildings that will accommodate noise sensitive uses have been constructed in accordance with the recommendations of any acoustic assessment, as a way of ensuring that the intended outcome with respect to noise attenuation has been achieved. We note that this recommendation has not been included in the Schedules to the DDO.<sup>30</sup>

Council submitted that the application requirement in DDO6 was consistent with the Structure Plan's identification of the western side of Hall Street (that directly interfaces with the rail corridor) as one of the areas where acoustic mitigation should be considered.<sup>31</sup> The associated strategy is BFH-3.3:

Require acoustic mitigation from railway noise sources as part of new development in accordance with current standards.<sup>32</sup>

Council noted that land not directly interfacing with the rail corridor is excluded from this approach, including land that is separated by a road (such as the properties to the east of Hall Street). Also excluded is the area along the rail corridor in the Arts and Recreation precinct because it is not proposed to be subject to a DDO. Consequently, the relevant area is confined to the Northern Gateway precinct and DDO6.

Council advised:

The remaining DDO schedules have not sought to include these provisions as, in Council's submission, the physical circumstances do not warrant such provisions, further reflected through the lack of identified need for protection from noise from the rail corridor within the Structure Plan.<sup>33</sup>

Council submitted there is no strategic basis for extending the application requirement beyond the DDO6 and that the area covered by the DDO6 represents a specific scenario that warrants these measures over and above the existing provisions.

Council submitted the existing planning provisions<sup>34</sup> are adequate to require acoustic mitigation measures on a case-by-case basis through the planning permit process, irrespective of any specific requirements in DDO6 or other overlays.

Council did not support the additional requirement sought by the EPA for post-construction verification about the inclusion of recommended noise attenuation works. Council noted that development must occur in accordance with conditions on a planning permit and there are processes for this to be managed and enforced.

## 4.4 Discussion

The Panel acknowledges Council's approach to managing noise impacts is consistent with the findings of the Structure Plan and is intended to augment existing planning scheme provisions for

<sup>29</sup> S17, page 3

<sup>30</sup> S17, page 4

<sup>31</sup> Newport Structure Plan, figure 17

<sup>32</sup> Newport Structure Plan, page 56

<sup>33</sup> D9, page 6

<sup>34</sup> Clause 55.04-8 Noise impact objectives

land that directly abuts the rail corridor. Although the EPA submission refers to other noise sources, including Melbourne Road and existing industry, the Structure Plan does not identify them as issues to be addressed and there are no related provisions in the Amendment.

The Panel is not satisfied the EPA has adequately justified the need to extend the proposed DDO6 application requirement to other DDOs and agrees with Council that other planning scheme provisions can be used to address noise attenuation.

However, the Panel believes that DDO12 should identify the potential for noise impacts associated with the rail corridor. This is in recognition of the lengthy Hall Street interface with the railway and the potential for noise impacts, despite the road separation relied on by Council. The Panel does not believe this is necessary for the other DDO areas given their greater distance from the rail corridor and, as the EPA noted, there are areas within the other DDOs that would not be affected. The Panel believes that DDO12 should include an additional application requirement:

A report that considers noise impacts associated with the rail corridor and whether any attenuation works are required and recommended.

Although this is not as expansive or prescriptive as the DDO6 application requirement sought by the EPA, the Panel believes that the circumstances of the Hall Street precinct are different and warrant greater flexibility.

The Panel does not support the EPA's proposed requirement in the DDOs that a post-construction report be provided to demonstrate that any acoustic treatments recommended in an acoustic report have been implemented. The Panel agrees with Council that compliance issues can and should be dealt with through the planning permit process.

As noted earlier, the EPA's submission included references to impacts associated with Melbourne Road and existing industry. Given that they were not identified as issues in the Structure Plan and in the absence of detailed submissions or evidence, the Panel is unable to make any recommendations about these matters.

## 4.5 Conclusions and recommendations

The Panel concludes:

- DDO6 adequately responds to noise and vibration issues associated with the rail corridor.
- DDO12 should include an additional application requirement that requires potential noise impacts to be considered.

The Panel recommends:

**In Design and Development Overlay Schedule 12, Clause 5.0 (Application requirements) include the following:**

***A report that considers noise and vibration impacts associated with the rail corridor and whether any attenuation works are required and recommended.***

## 5 Heritage

### 5.1 Oxford Street Newport (HO23)

#### (i) The issue

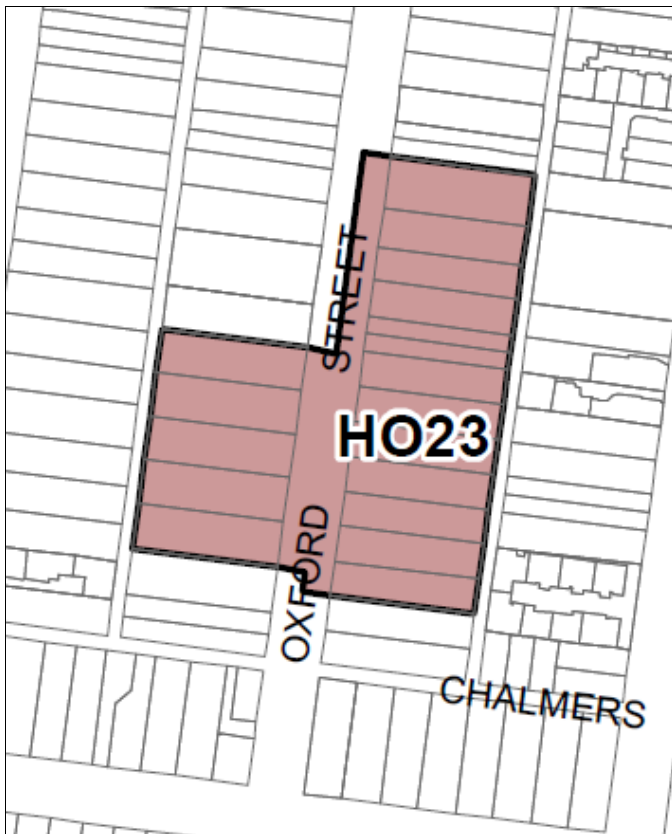
The issue is whether properties in Oxford Street should be removed from or added to the exhibited HO23 Newport Estate Residential Heritage Precinct.

#### (ii) Background

The Amendment proposes to apply HO23 to properties in Oxford Street shown in Figure 8, being 33 to 41 and 34 to 56. HO23 is an existing HO.

The Amendment included consequential zoning and other changes associated with applying HO23.

**Figure 8** Oxford Street HO23



SOURCE: Extract of exhibited HO map

#### (iii) Evidence and submissions

##### 33 Oxford Street

The owners of 33 Oxford Street opposed the application of the HO to the property on the basis that it would reduce its value.

In her evidence, Ms Brady noted that the dwelling is a new building, constructed about February 2020, and is therefore non-contributory to the heritage precinct. She proposed that the HO not be



applied to the property, stating that the remaining buildings from 35 to 41 Oxford Street are all contributory properties, reinforcing the intactness and heritage value of the sub-precinct.

Council agreed that the property not be included in the HO and noted it was one of several properties where dwellings have been demolished, or partly demolished and undergone alterations or additions.

### **34, 36 and 38 Oxford Street**

The owners of 36 Oxford Street opposed the application of the HO to 34, 36 and 38 Oxford Street (as well as 33 Oxford Street), on the basis that the properties had been demolished or redeveloped. They submitted that NRZ5 would be appropriate rather than NRZ3, which applies to land in the HO. If the removal of the HO was not accepted, they proposed that the Amendment include a 'transition' provision.

Ms Brady noted the dwelling at 34 Oxford Street has had a substantial addition constructed in early 2021, impacting on its contributory value, while the contributory buildings at 36 and 38 Oxford Street had been demolished. She concluded that:

Having regard for the changes which have occurred to the properties at 34, 36 and 38 Oxford Street, and their location on the east side of Oxford Street at the south end of the sub-precinct, they are recommended to be removed from the sub-precinct. This would result in the east side of the street, as retained in the sub-precinct, being substantially intact save for the non-contributory townhouse pair at 48 and 48A Oxford Street. The removal of these properties would not have an unacceptable impact on the precinct.<sup>35</sup>

Council supported the removal of these properties from the proposed HO23 and noted the consequential changes to the Amendment this would require.

### **35 Oxford Street**

Mr Murphy (S14) made a submission at the Hearing on behalf of the owner of 35 Oxford Street. He argued the property should not be included in the HO, on the basis that the house had undergone significant internal and external changes, was in poor condition and did not appear to have the heritage significance of places that were not included in the HO (specifically referencing 57, 59 and 61 Oxford Street).

**Figure 9**      **35 Oxford Street Newport**



SOURCE: Brady evidence report (D6), page 41

<sup>35</sup> D6, page 18

He elaborated on his submission at the Hearing and described the changes to the original fabric of the dwelling which differentiate 35 Oxford Street from its neighbours, including:

- timber and brick verandah columns and external decoration
- original entrance door
- original front porch/verandah
- original glazing to all windows
- some of the original windows.<sup>36</sup>

He noted the existing tile roof has been subject to modification over time.

Mr Murphy argued there were significant differences in the features of the dwellings in the exhibited sub-precinct on the west side of Oxford Street from 33 to 41 Oxford Street, meaning that they don't share similarities which contribute to an intact streetscape or share uniform architectural characteristics. The differences include:

- variable setbacks from the street as each has its own individual setback, with some dwellings located closer to the street and others set further into their allotment
- there is diversity in roof materials, pitch, form, height and size
- there are different housing styles within this group and it doesn't present as a contiguous run of similar styled houses as highlighted elsewhere in the neighbourhood
- different exterior cladding materials have been used ranging from plastic/vinyl cladding through to weatherboards.<sup>37</sup>

He referred to 57, 59 and 61 Oxford Street, on the basis that they appeared to have a stronger case for heritage protection than 35 Oxford Street.

In her evidence, Ms Brady stated that *'While it is agreed that the dwelling is modest and simply detailed and has lost some of its original visible external elements, it retains its overall original form and presentation to Oxford Street, and still clearly reads as an interwar bungalow which is part of the precinct's valued character and period of development'*.<sup>38</sup> She concluded that it should be retained in the precinct, and *'it will be part of a section of street (to its north) which retains contributory properties'*.<sup>39</sup>

Council supported Ms Brady's conclusion:

The submitter focussed on the condition of the dwelling on the land, concluding the dwelling is a 'substantially modified house'. While conceding that there have been some modifications to the dwelling, Council contests the assertion that the dwelling is 'substantially' modified (or modified to a degree that diminishes the local heritage significance of the dwelling).

In considering the submission, the Panel is reminded that heritage panels jurisprudence reflects that condition is given low weight in assessment of heritage values at this stage of the planning process (noting greater weight may be given at the subsequent stage). Alterations to the dwelling include replacement of fabric consistent with repairs and routine maintenance (for example, the roof materials) and otherwise are reversible (verandah supports) and have not diminished the cultural heritage significance of the dwelling to a degree that renders the dwelling below the threshold for local heritage recognition as part of a precinct.

Council submits that while the Submitter has accurately identified that there are older heritage buildings in the same street as 35 Oxford Street, these buildings are sufficiently separated from the core of the identified precinct and interrupted by non-contributory fabric

<sup>36</sup> D11, page 1

<sup>37</sup> D11, page 4

<sup>38</sup> D6, page 18

<sup>39</sup> D6, page 18

such that these buildings while of some heritage interest are not able to be 'read' with the balance of the precinct sufficiently to warrant inclusion in the precinct.

Council submits hard and fast rules for the make-up of a precinct are both undesirable and undermine the importance of the coherence of a precinct.<sup>40</sup>

In relation to 57, 59 and 61 Oxford Street, Ms Brady noted that:

...57 Oxford Street is a later and altered bungalow, which would not be considered contributory... 59 and 61 Oxford Street, on the other hand, are simply detailed interwar timber bungalows which could be considered of relevance to the HO23 precinct. However, all these properties are at some distance to the north of the sub-precinct and are separated from it by some 8 or so properties. While there are some intervening dwellings of apparent relevance, this section of the north end of Oxford Street is 'patchy' and not highly intact, and its exclusion from the sub-precinct (including the exclusion of 57, 59 and 61 Oxford Street) is justified in heritage terms.<sup>41</sup>

### 39 Oxford Street

The owner of 39 Oxford Street objected to its inclusion in the HO, on the basis that the parcels of land in Oxford Street do not necessarily follow any particular heritage style, varying between *'Californian Bungalows, Federation style homes, Victorian Style homes, brand new builds and even an empty block of land'*.

The submission listed a number of concerns, including:

- The Amendment would reduce or limit our options of future development/renovations due to a heritage overlay and lengthy processes to get permits passed by planning controls...
- We would like to be able to make full future use of our property as others in the area have prospered from having many interested buyers...
- The neighbourhood character is currently eclectic with many different styles of houses.
- The Amendment C133 Newport Structure Plan does not seem to follow a specific heritage style or age of house...
- We would argue that it is the entirety of Oxford street, with its treescape haven, that provides the neighbourhood with character not just this property alone...
- There are many other parcels that could have been included but were not.<sup>42</sup>

Ms Brady supported retention of the property as a contributory property:

While there are some changes to the dwelling, it retains its overall original form and presentation to Oxford Street, and still clearly reads as an early dwelling in the street with a symmetrical form; it is also part of the precinct's valued character and period of development. It is additionally on the west side of the street, and in a section of Oxford Street, which includes only contributory properties.<sup>43</sup>

Council noted the Gap Study and subsequent peer review supported inclusion of the property in the HO.

### 56 Oxford Street

The owners 56 Oxford Street objected to its inclusion in the HO and the inclusion of the nearby houses at 34 to 54 Oxford Street and 33 to 41 Oxford Street. The submission referenced the inclusion of crossovers and off-street parking, and noted they are not original features of heritage

<sup>40</sup> D21, page 13

<sup>41</sup> D6, page 18

<sup>42</sup> S16, pages 1 and 2

<sup>43</sup> D6, page 20

streetscapes. Further, many of the houses have been renovated, extended or newly built. The submission concluded:

It is not equitable to place building conditions on some houses in the street and not others. With our property being the largest, we are penalised more than any other house in the street. Our property re-sale value is diminished due to future use and development being restricted or prohibited.<sup>44</sup>

Ms Brady supported the retention of 56 Oxford Street in the HO:

The property at 56 Oxford Street ... is recommended to be retained in the sub-precinct as a contributory property. It presents to the street as a substantially intact turn of the nineteenth century timber dwelling, with some original detailing including a bay window and ashlar ruling to the façade. While the condition of the house has been described as poor, future repairs and replacement of fabric would not be prohibited under the Heritage Overlay, and in fact are encouraged. The existence of the carport, vehicle crossover and off-street parking, while not necessarily heritage elements, are acceptable introductions and generally allowed for under the Heritage Overlay.<sup>45</sup>

Council noted the Gap Study recommended inclusion of the property in HO23, and added that property values are not a material consideration in land use planning and not relevant to the Amendment.

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

##### **33 Oxford Street**

The original dwelling at 33 Oxford Street that had been referenced in the Gap Study has been demolished, and a new dwelling was constructed in 2020.

There is therefore no reason to include it as part of the heritage sub-precinct, and it should not be included in HO23. Council outlined various consequential changes to the Amendment that would be required, including the application of the NRZ5 (Garden Suburban and Garden Court Areas) instead of the exhibited NRZ3 (Heritage Areas). The Panel supports those changes.

##### **34, 36 and 38 Oxford Street**

The dwellings at 36 and 38 Oxford Street have been demolished, while 34 Oxford Street has a renovation which dominates the original fabric of the house. The Panel is satisfied they should not be included in HO23, and supports the consequential changes that are necessary, including the application of the NRZ5 instead of the exhibited NRZ3. For this reason, the 'transition' provision sought by the owners is not necessary.

##### **35 Oxford Street**

The Panel considers that inclusion of 35 Oxford Street in HO23 is marginal. While there are many circumstances where properties clearly meet (or do not meet) the criteria listed in PPN1 this is a situation where arguments could support its inclusion or exclusion.

The key argument in favour of its inclusion is maintaining of a contiguous grouping of modest weatherboard houses on both sides of Oxford Street (35 to 41, and 40 to 56 opposite), particularly if the neighbouring 33 Oxford Street and 34, 36 and 38 Oxford Street (on the eastern side of the street) are not included in HO23.

<sup>44</sup> S27, page 1

<sup>45</sup> D6, page 22

The Panel notes submissions that there have been significant internal changes to the dwelling, it is in poor condition, and other places appear to have greater heritage significance. However, the exhibited Amendment did not include any internal controls, the condition of houses is not typically relevant to their heritage significance, and other properties may be the subject of a future heritage study and Amendment process.

The Panel has focused on two issues in determining whether 35 Oxford Street meets the threshold for inclusion in HO23:

- Does it make a significant contribution to the sub-precinct to justify its inclusion?
- Has there been sufficient change in the fabric of the building to undermine its heritage status?

The submitter was correct in noting there is variation in styles across this sub-precinct. However, this is precisely the characteristic the Gap Study considers defines the inherent nature of residential development in this part of Newport.

The Newport Estate Residential Heritage Precinct survives as a discontinuous group of houses located to the north and south of Mason Street, to the west of Melbourne Road. The precinct is defined by houses from the different periods of residential growth between 1880 and the end of WWII. These sometimes survive as long, consistent streetscapes such as the bungalow group along the western side of Schutt Street (north of Anderson Street) or the row of Victorian cottages in William Street (55-69) to more disparate groups such Oxford Street to the north of the Leo Hoffman Reserve which reflects the slow and somewhat sporadic nature of development in Newport.

The precinct retains dwellings from the earliest development of the area such as Victorian-era cottages and villas, many Edwardian-era villas, early bungalows and simple 1920s dwellings in a Californian Bungalow mode, interwar and early Modern dwellings. Most are detached single-storey weatherboard houses set on small blocks. Architecturally, the buildings are notable for their modest scale, inexpensive materiality and their straightforward architectural expressions.<sup>46</sup>

This is noted in the description of the Oxford Street sub-precinct north of Newcastle Street:

By 1890, nine dwellings had been constructed in Oxford Street although substantial development did not begin until the period after WWI. It survives as a mixture of Victorian cottages and interwar bungalows.<sup>47</sup>

The Panel agrees with this assessment. The sub-precinct is partly defined by the variation in styles, so this argument for removal of 35 Oxford Street is weak.

The main issue is therefore whether the changes to the fabric of the building are sufficient to warrant exclusion from the exhibited HO23. The Panel considers that repairs to the tile roof are part of cyclical maintenance and do not detract from the heritage significance of the dwelling, and it is possible that the verandah columns could be replaced with more appropriate versions. However, it accepts that other changes to the front porch, windows and glazing have diminished the heritage values of the property, making it marginal for inclusion.

The fact that 35 Oxford Street is at the southern end of the sub-precinct (given the exclusion of 33 Oxford Street) means that its removal would not fundamentally alter the precinct's integrity.

On balance, the Panel supports its removal from the exhibited HO23 and any consequential changes to the Amendment that are required.

<sup>46</sup> Lovell Chen, Inner Newport Heritage Gap Study: Methodology Report, June 2022, page 11

<sup>47</sup> Ibid., p. 12

In relation to 57, 59 and 61 Oxford Street, the Panel has focused on the properties that were exhibited as part of the Amendment, and notes that applying the HO to additional properties would need to be progressed through a separate amendment, including notification to landowners. The Panel has not formed any views about the heritage values of these properties.

### **39 Oxford Street**

The Panel discounts the argument that future renovations are limited by a HO, but accepts they would need to respect the heritage values of the precinct. Similarly, like many other Panels, it does not accept that market prospects are diminished by heritage considerations; in any case, its focus is on whether the heritage values of the property justify its inclusion in HO23, not on concerns about renovations, property values and development potential.

Similarly, the Panel has discounted the argument that other properties are more worthy of heritage protection than 39 Oxford Street. Other properties may be the subject of future heritage studies and subsequent Amendments, and the Panel has focused on the properties that have been the subject of this Amendment.

The Panel accepts Ms Brady's assessment of the property, which retains its overall original form and presentation to Oxford Street.

As discussed in relation to 35 Oxford Street, the submitter is correct in noting there is variation in housing styles across this sub-precinct. However, the Panel has accepted this variation is central to the heritage values of this part of Newport, and is not an argument that supports exclusion from the Amendment.

### **56 Oxford Street**

The Panel supports Ms Brady's conclusions regarding 56 Oxford Street. The introduction of crossovers and off-street parking do not diminish the heritage value of the place. The Panel agrees that this dwelling is largely intact.

Also, as discussed in relation to 35 Oxford Street, variation in the dwellings along Oxford Street do not preclude their inclusion in a heritage precinct.

The Panel agrees with Council that impacts on property values is not a planning consideration – the issue is whether the property has heritage significance. It therefore concludes that 56 Oxford Street should be retained in the exhibited HO23.

## **(v) Conclusion and recommendation**

The Panel concludes that the exhibited application of HO23 within Oxford Street is justified, with the exceptions of 33, 34, 35, 36 and 38 Oxford Street.

The Panel recommends:

**Remove 33, 34, 35, 36 and 38 Oxford Street, Newport from the exhibited Heritage Overlay 23, apply the Neighbourhood Residential Zone Schedule 5 and make any other consequential changes that are necessary.**

## 5.2 William Street Newport (HO23)

### (i) The issue

The issue is whether properties in William Street should be removed from or added to the exhibited HO23.

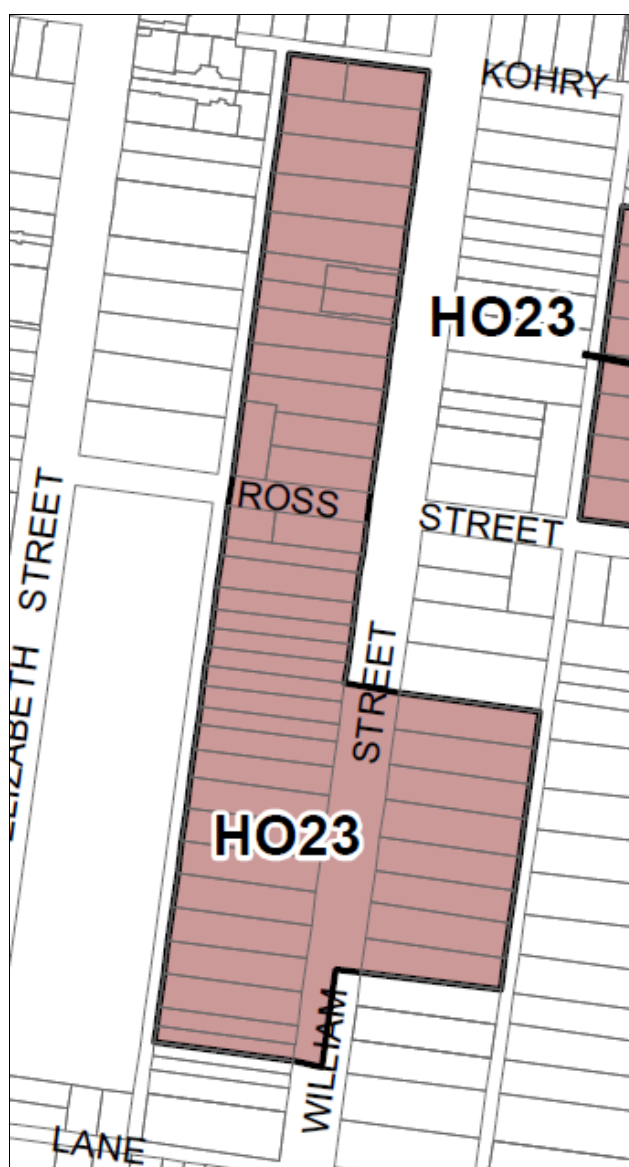
### (ii) Background

The Amendment proposes to apply HO23 to properties in William Street shown in Figure 10.

HO23 is an existing HO – Newport Estate Residential Heritage Precinct.

The Amendment included consequential zoning and other changes associated with applying HO23.

**Figure 10** William Street HO23



SOURCE: Extract of exhibited HO map

**(iii) Evidence and submissions****54 William Street**

The owner of 54 William Street opposed its inclusion in HO23, claiming it has '*very little in the way of heritage features*'. The submission considered the 1946 construction, plain nature of the dwelling, poor condition, aluminium cladding and new red brick feature entrance all detract from its heritage significance. The submission also referred to neighbouring properties having limited heritage features.

Ms Brady accepted that the changes to the dwelling were significant, especially the entrance feature and the aluminium recladding. Given its location at the north end of the east side of the William Street sub-precinct, she concluded '*it can be removed from the precinct without impacting on the precinct*'.<sup>48</sup>

Council supported removal of 54 William Street from HO23 and the consequential changes.

**58, 60 and 62 William Street**

Domonic Wierzbicki (S6) supported the Amendment, but proposed the inclusion of 58, 60 and 62 in HO23:

These contribute to the character of William St and retain the original form. The properties at 60 and 62 William St, were an early subdivision in 1927 which encompassed 13 Ross St Newport (which has heritage overlay). These were built by the same builder and should all have the same level of heritage overlay.<sup>49</sup>

Ms Brady accepted that 60 and 62 William Street could be considered of heritage relevance, but not 58 William Street. She also expressed concern about the integrity and intactness of the William Street precinct.

Council noted that the properties were not included in the Gap Study and are not recommended for inclusion in HO23.

**91 William Street**

The owners and others proposed the removal of 91 William Street from the exhibited HO23, on the basis that the property has changed significantly, with substantial internal alterations, changes to the roof, extensions to the house with aluminium windows, and demolition of the outhouse. Further, there have been major developments in neighbouring properties.

The submission noted the building is proposed to be demolished and replaced with three dwellings.

Ms Brady considered that 91 William Street should be included in HO23:

It presents to the street as a substantially intact interwar timber bungalow, of a type found in the sub-precinct. While the condition of the house has been described as poor, future repairs and replacement of fabric would not be prohibited under the Heritage Overlay, and in fact are encouraged.

Potential future development of the property would be subject to Council approval.

The property is also in a section of William Street, at its north end, which has a high level of intactness and a high proportion of contributory properties.<sup>50</sup>

<sup>48</sup> D6, page 24

<sup>49</sup> S6, page 1

<sup>50</sup> D6, pages 21 and 22



Council supported the retention of the property in the Amendment.

**(iv) Discussion**

**54 William Street**

The Panel has discounted arguments relating to the age and condition of the dwelling, on the basis that the precinct reflects the mix of dates of dwellings and condition is not a matter that determines whether a property has heritage significance.

The Panel has considered the changes in the dwelling, notably the aluminium cladding and rebuilt entrance. While these changes may be reversible, it accepts that the alterations are sufficient to undermine the heritage significance of the property. The alterations, together with the location of the dwelling on the edge of the sub-precinct, have therefore made the inclusion of the place in HO23 marginal. The Panel reached a similar conclusion in relation to 35 Oxford Street. It agrees with the submitter, Ms Brady and Council that it should be removed from the exhibited HO23. The Panel supports the consequential changes outlined by Council.

**58, 60 and 62 William Street**

As noted earlier, the Panel has focused on properties that were exhibited as part of the Amendment. Consequently it has not assessed 58, 60 and 62 William Street and has not formed any views about their heritage significance.

**91 William Street**

The Panel does not consider the internal changes to 91 William Street to be relevant, because internal controls are not proposed. The proposal to redevelop the site is also not relevant to consideration of the property's heritage significance.

The site's location as part of a largely intact sub-precinct reinforces its inclusion in the HO.

The key issue is whether the alterations to the property are sufficient to justify its removal from HO23. The Panel accepts the evidence of MS Brady that it is a substantially intact interwar timber bungalow, of a type found in the sub-precinct. On balance, it accepts its inclusion in HO23.

**(v) Conclusion and recommendation**

The Panel concludes that the exhibited application of HO23 to William Street is justified, with the exception of 54 William Street.

The Panel recommends:

**Remove 54 William Street, Newport from the exhibited Heritage Overlay 23, apply the Neighbourhood Residential Zone Schedule 5 and make any other consequential changes that are necessary.**

## 6 Other issues

### 6.1 Building heights

#### (i) Evidence and submissions

Kathryn Boin (S30) and Jordan Donia (S33) raised various issues related to building heights and sought blanket height controls, such as three to four storeys in the commercial areas and two storeys in residential areas. Ms Rehm (S4) sought a maximum four storey building height in the northern area.

Council relied on the assessment of building heights in the Structure Plan and other background documents such as the Urban Design Guidelines, and the evidence of Professor McGauran. It also noted the role of the Newport LNAC in accommodating future commercial and residential growth.

#### (ii) Discussion

The Panel supports the general arrangement of building heights recommended in the Structure Plan and included in the Amendment, subject to its findings in relation to specific sites and areas discussed elsewhere.

The Panel is satisfied the proposed building heights are broadly consistent with the role of the Newport LNAC and take account of the various constraints and opportunities identified in the background studies, including those focussed on Newport's residential areas. The Panel has not formed any views about whether these heights should be mandatory or discretionary, except for the Hall Street precinct as discussed in chapter 2.1.

For these reasons, the Panel does not support overall reductions in building heights through changes to proposed zones or DDOs.

#### (iii) Conclusion

The Panel concludes proposed building heights are appropriate.

### 6.2 Traffic, parking and movement

#### (i) Submissions

Submissions raised various issues related to road capacity, traffic management, road and pedestrian safety, car parking and bus routes (S1, S2, S5, S7, S8, S9, S12, S15, S19, S24, S29 and S30).

The Port of Melbourne (S5) suggested that the Amendment be referred to Freight Victoria for comment. Council advised that it provided a notification letter and fact sheet to Freight Victoria and did not receive a submission.

Transport Victoria (S36) advised it did not object to the Amendment or request any changes.

Council provided detailed responses to the issues raised in submissions and highlighted:

- the role of the Integrated Transport Plan and the Newport and Williamstown LAMP
- the relevant recommendations and actions in the Structure Plan

- the policy basis for focussing development in and around activity centres, such as the Newport LNAC
- the responsibilities for managing the road and public transport networks
- various local road and parking initiatives
- relevant traffic and parking regulations
- planning scheme provisions in relation to car parking.

Council noted that many of the issues raised in submissions were outside the scope of the Amendment.

## **(ii) Discussion**

The Panel notes the various concerns raised in submissions, particularly those related to the capacity of the local road network and car parking. These are acknowledged in the Structure Plan, Integrated Transport Plan and LAMP which include various strategies and actions intended to address them. The Panel also notes that agencies other than Council are responsible for managing the arterial road network and public transport system, and these are largely outside the scope of the Amendment.

The Panel acknowledges that many of the issues raised in submissions currently exist, but believes that implementing the Structure Plan, Integrated Transport Plan and LAMP will provide a better framework for managing and addressing them. This is important given Newport's activity centre role and the additional growth and development that will come with this. As noted earlier, the Amendment is focussed on better managing development and 'tightening' the planning framework, and will not facilitate additional or more intensive development beyond what could occur under the current planning framework.

The Panel is satisfied that the Amendment will assist in managing the relevant traffic, parking and movement issues and that they do not preclude the Amendment proceeding.

## **(iii) Conclusion**

The Panel concludes the Amendment will assist in managing the relevant traffic, parking and movement issues.

# **6.3 Drainage**

## **(i) Submissions**

Patricia Greenwood (S7) raised concerns about street drainage and increased runoff in the Home Road/Elphin Street area resulting from the increased ratio of hard surface to open land associated with increased building density. The submission noted the current drainage system in the area is inadequate and results in regular street flooding.

Council provided an overview of the various planning scheme provisions that address site coverage, permeability, drainage and stormwater management. It advised that it requires new development to limit post-developed flows to pre-developed levels via on-site detention to avoid adding additional pressure on the drainage system.

Council advised Home Road is included in a program for new and upgraded works within the next ten years.

**(ii) Discussion**

The Panel notes that the Amendment will not facilitate an increase in development density beyond what is possible under the current zoning regime and would be unlikely to exacerbate any existing drainage issues. Nevertheless, it is satisfied that the appropriate planning scheme provisions are in place to manage stormwater and that Council is aware of and intends to address specific issues on Home Road.

**(iii) Conclusion**

The Panel concludes the Amendment will not exacerbate drainage issues and appropriate mechanisms are in place to manage them.

## Appendix A Submitters to the Amendment

No	Submitter	No	Submitter
1	Ping Le	20	Owners of 91 Williams Street et al
2	Robert Wilson	21	Jo Attard
3	Rex Allum	22	Geoff Kaandorp
4	Imogen Rehm	23	Suzannah Lilley
5	Port of Melbourne	24	Lee Smart
6	Dominic Wierzbicki	25	Kate Fraser
7	Patricia Greenwood	26	Joel Waide
8	Peter Ker	27	Owners of 56 Oxford Street
9	Melissa McDougall	28	Sarah and Andrew Horsfield
10	Judy Willis	29	Jason Egbers
11	Owners of 33 Oxford Street	30	Kathryn Boin
12	Sarah Thompson	31	Andrew McLynskey
13	Jennifer Jones	32	Owners of 36 Oxford Street
14	Adrian Murphy	33	Jordan Donia
15	Dario Ceppellini	34	Ali Kaddour
16	Owner of 39 Oxford Street	35	Owner of 54 William Street
17	Environment Protection Authority Victoria	36	Department of Transport
18	Nathan Stanley and Jillian Smith	37	Viva Energy Australia
19	Quintin Mansell		

## Appendix B Parties to the Panel Hearing

Submitter	Represented by
Hobsons Bay City Council	Adeline Lane (Jackson Lane Legal) who called expert evidence on: <ul style="list-style-type: none"> <li>- urban design from Robert McGauran of MGS Architects</li> <li>- heritage from Anita Brady of Anita Brady Heritage</li> </ul>
Sarah and Andrew Horsfield	Sarah Horsfield
Melissa McDougall	
Nathan Stanley and Jillian Smith	Tania Cincotta (Best Hooper Lawyers)
Viva Energy Australia Pty Ltd	Kayla Gregg (Davis Advisory) who called expert evidence on: <ul style="list-style-type: none"> <li>- planning from Cameron Gentle of Hansen Partnership</li> <li>- risk from Diane Hinson of Advisian</li> </ul> Alison McGregor (Viva Energy Australia Pty Ltd) provided an overview of Viva's operations in the Newport area.
Adrian Murphy	
Rex Allum	
Quintin Mansell	
Owners of 36 Oxford Street	

## Appendix C Document list

No.	Date	Description	Provided by
1	3 Nov 22	Panel Directions and Timetable (version 1)	Planning Panels Victoria (PPV)
2	14 Nov 22	Revised Timetable (version 2)	Planning Panels Victoria (PPV)
3	14 Nov 22	Maps of sites referred to in submissions	Hobsons Bay City Council (Council)
4	25 Nov 22	Part A submission	Council
5	25 Nov 22	McGauran urban design evidence	Council
6	25 Nov 22	Brady heritage evidence	Council
7	28 Nov 22	Gentle planning evidence	Viva Energy Australia Pty Ltd (Viva) (S37)
8	28 Nov 22	Hinson risk evidence	Viva
9	2 Dec 22	Part B submission and attachments	Council
10	5 Dec 22	Presentation maps	Sarah Horsfield (S28)
11	6 Dec 22	Submission	Adrian Murphy (S14)
12	6 Dec 22	Overview presentation (updated version received 7 Dec 22)	Viva
13	6 Dec 22	Gentle planning presentation	Viva
14	6 Dec 22	Hinson risk presentation	Viva
15	6 Dec 22	Submission	Nathan Stanley and Jillian Smith (S18)
14	6 Dec 22	Submission	Melissa McDougall (S9)
15	7 Dec 22	V3 Distribution list	PPV
16	7 Dec 22	Submission and attachments	Rex Allum (S3)
17	7 Dec 22	Submission	Owners of 36 Oxford Street
18	7 Dec 22	Submission	Quintin Mansell (S19)
19	7 Dec 22	GJM Heritage Queens Parade Built form Heritage Analysis	Nathan Stanley and Jillian Smith (S18)
20	7 Dec 22	Hansen Partnership Queens Parade Built Form Review	Nathan Stanley and Jillian Smith (S18)
21	8 Dec 22	Closing submission	Council
22	8 Dec 22	Map of Inner and Outer Planning Advisory Areas prepared by WorkSafe	Council
23	9 Dec 22	Response to Panel question about building heights	Council
24	14 Dec 22	Maps of pipeline measurement length	Viva

## Appendix D Planning context

### D:1 Planning policy framework

#### Victorian planning objectives

The key State policy objectives set out in section 4 of the PE Act that are relevant to the Amendment include:

- To provide for the fair, orderly, economic and sustainable use, and development of land.
- To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.
- To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.
- To protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community.
- To balance the present and future interests of all Victorians.

#### Clause 2 (Municipal Planning Strategy)

The key elements of Clause 2 that are relevant to the Amendment include:

- 02.03-1 (Settlement), including activity centre and amenity policies
- 02.03-5 (Built environment and heritage), including building and urban design, neighbourhood character and heritage policies
- 02.03-6 (Housing), including the designation of ‘substantial change areas’
- 02.03-7 (Economic development), including industry, major hazard facilities and tourism

#### Clause 11 (Settlement)

The key elements of Clause 11 that are relevant to the Amendment include:

- 11.02-1S (Supply of urban land)
- 11.02-2S (Structure planning)
- 11.03-1S (Activity centres)
- 11.03-1R (Activity centres – Metropolitan Melbourne)
- 11.03-1L (Activity centres).

#### Clause 13 (Environmental risks and amenity)

The key elements of Clause 13 that are relevant to the Amendment include:

- 13.04-1S (Contaminated and potentially contaminated land)
- 13.05-1S (Noise management)
- 13.06-1S (Air quality management)
- 13.07-1S (Land use compatibility)
- 13.07-2S (Major hazard facilities).

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

The key elements of Clause 15 that are relevant to the Amendment include:

- 15.01-1S (Urban design)
- 15.01-1L–01 (Design in substantial change areas)
- 15.01-2S (Building design)
- 15.01-2L-01 (Building design)



- 15.01-4R (Healthy neighbourhoods – Metropolitan Melbourne)
- 15.01-5S (Neighbourhood character)
- 15.03-1S (Heritage conservation)
- 15.03-1L-01 (Heritage conservation).

#### **Clause 16 (Residential development)**

The key elements of Clause 16 that are relevant to the Amendment include:

- 16.01-1S (Housing supply)
- 16.01-1L (Location of residential development).

#### **Clause 17 (Economic development)**

The key elements of Clause 17 that are relevant to the Amendment include:

- 17.02-S (Business)
- 17.03-1S (Industrial land supply)
- 17.03-2S (Sustainable industry)
- 17.04-1S (Facilitating tourism).

#### **Clause 18 (Transport)**

The key elements of Clause 18 that are relevant to the Amendment include:

- 18.01-2L (Transport system)
- 18.02-4S (Roads).

#### **Clause 19 (Infrastructure)**

The key element of Clause 19 that are relevant to the Amendment include:

- 19.01-3S (Pipeline infrastructure).

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

### **i) Plan Melbourne**

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

Plan Melbourne 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.

The Explanatory Report described how the Amendment achieves the relevant elements of Plan Melbourne, including the following Directions:

- 2.1 (Manage the supply of new housing in the right locations to meet population growth and create a sustainable city)
- 2.2 (Deliver more housing closer to jobs and public transport)
- 2.4 (Facilitate decision-making processes for housing in the right locations)
- 2.5 (Provide greater choice and diversity of housing)
- 3.3 (Improve local travel options to support 20-minute neighbourhoods)
- 4.3 (Achieve and promote design excellence)

- 5.1 (Create a city of 20-minute neighbourhoods)
- 5.2 (Create neighbourhoods that support safe communities and healthy lifestyles)
- 5.4 (Deliver local parks and green neighbourhoods in collaboration with communities)
- 6.1 (Transition to a low-carbon city to enable Victoria to achieve its target of net zero greenhouse gas emissions by 2050)
- 6.3 (Integrate urban development and water cycle management to support a resilient and liveable city)
- 6.4 (Make Melbourne cooler and greener)
- 6.6 (Improve air quality and reduce the impact of excessive noise).

## ii) **Newport Structure Plan Urban Design Guidelines August 2021**

The Newport Structure Plan Urban Design Guidelines (the Urban Design Guidelines) were prepared to inform the Newport Structure Plan and provide a basis for implementing urban design and development controls through the Amendment.

It provides overarching design principles and guidelines, together with more detailed design guidance for each of five precincts including existing and proposed features, built form, streetscape character and environment, access and movement, and various street cross-sections.

The built form sections express building heights as ‘mandatory’ maximum heights, while other elements such as setbacks are expressed as ‘preferred’.

## iii) **Hobsons Bay Activity Centres Strategy (2019-36) July 2019**

The Hobsons Bay Activity Centres Strategy (the Activity Centres Strategy) was in part implemented through Amendment C131hbay that was approved in February 2022.

The Activity Centres Strategy provides an over-arching framework to inform planning, economic development and decision-making about activity centres in Hobsons Bay. It identified Newport as a LNAC, intended to ‘*provide a comprehensive range of retail, commercial and community services meeting virtually all of the basic grocery and convenience needs of the surrounding community*’.<sup>51</sup>

The Activity Centres Strategy noted the Newport LNAC would be the subject of future structure planning and included the actions:

Complete the structure plan for Newport Large NAC to provide guidance on built form and land use outcomes and to build on Newport’s access to public transport.

Include consideration of complex land uses such as proximity to industrial land and protection of heritage where appropriate.<sup>52</sup>

It includes centre-specific guidelines (brochure) for the Newport LNAC that provides a vision and broad urban design directions.

## iv) **Hobsons Bay Housing Strategy 2019**

The Hobsons Bay Housing Strategy (the Housing Strategy) was in part implemented through Amendment C131hbay that was approved in February 2022. It provides a policy framework for managing housing in Hobsons Bay over the next 20 years.

<sup>51</sup> Hobsons Bay Activity Centre Strategy p5

<sup>52</sup> Hobsons Bay Activity Centre Strategy p37-38

The Housing Strategy identified four housing change areas (minimal, incremental, moderate and substantial) and recommended the new residential zones (and other zones) be applied on that basis. It deferred making detailed recommendations about various areas that were the subject of structure planning or urban design processes, including the Newport LNAC.

The Amendment includes various residential and other zones intended to complete the implementation of the Housing Strategy within the Newport LNAC.

#### **v) Neighbourhood Character Study July 2019**

The Neighbourhood Character Study was in part implemented through Amendment C131hbay that was approved in February 2022. It involved a review of the 2002 character study and was intended to inform the application of the new residential zones.

It recommended that the earlier 42 precincts be reduced to 28 precincts based on six neighbourhood character types. Parts of the broader Newport area were recommended for the N4 and N7 Garden Suburban Precincts, E8 and E9 Inner Urban/Garden Suburban Precincts and the E2 Urban Contemporary Precinct.

#### **vi) Integrated Transport Plan 2017-30**

The Integrated Transport Plan sets out a long-term vision for the development of an integrated transport system within Hobsons Bay.

The Structure Plan identifies numerous actions within Newport to improve safe cyclist and pedestrian movement and support a shift towards more active transport.

#### **vii) Newport and Williamstown North Local Area Movement Plan**

The Newport and Williamstown LAMP addresses the planning and management of the current road and transport networks across all modes of transport. Its key purpose is to identify opportunities to improve safety, connections, amenity and accessibility, primarily on the local network.

The LAMP was adopted by Council and recommended various actions and initiatives focussed on sustainable and active transport, and vehicular traffic, including actions within Newport.

### **D:3 Planning Scheme Amendments**

#### **i) Amendment C131hbay - Updated Planning Scheme and new Residential Zones**

Amendment C131hbay was approved by the Minister for Planning on 24 February 2022.

The Amendment replaced the Municipal Strategic Statement and the Local Planning Policy Framework with a:

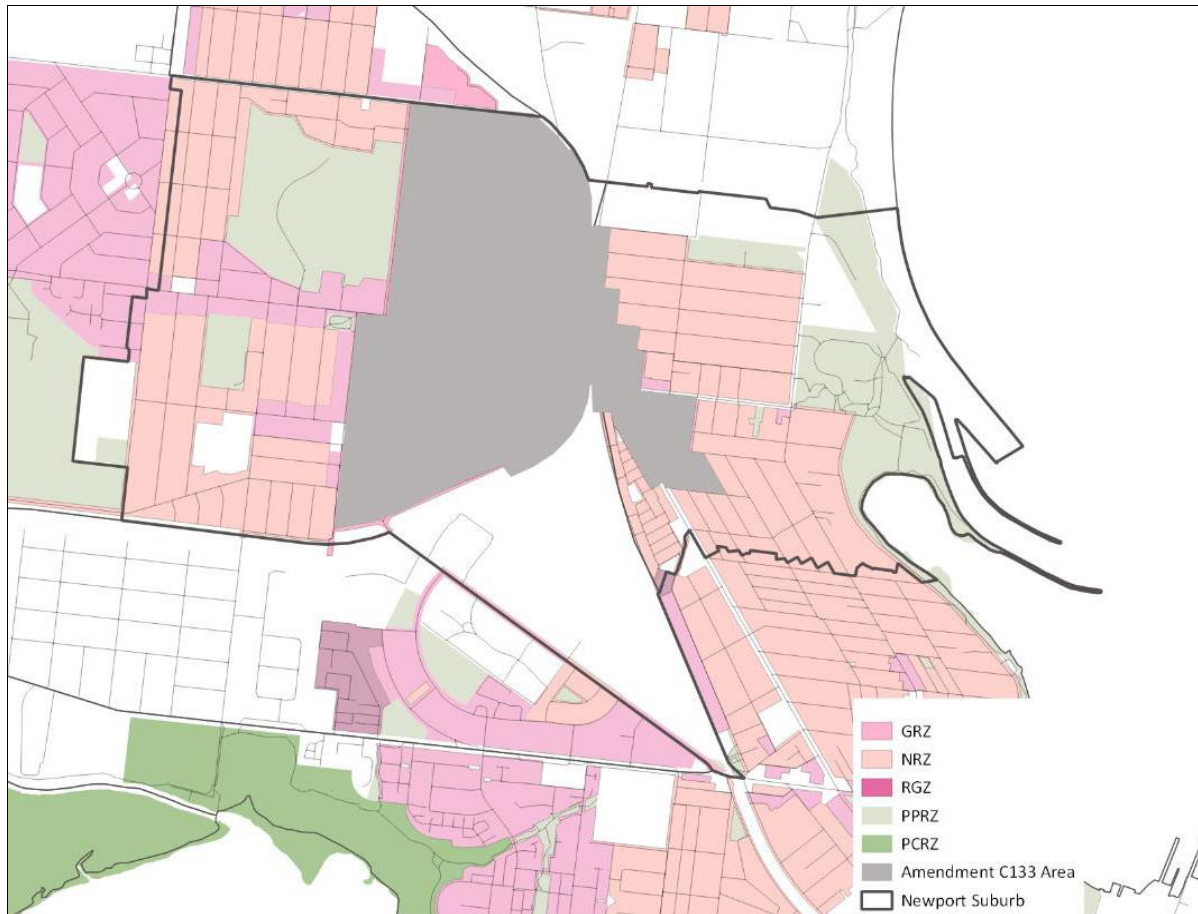
- Municipal Planning Strategy
- local policies within the Planning Policy Framework
- revised local schedules to zones, overlays, particular, operational and general provisions, consistent with the structure introduced by Amendment VC148.

The Amendment also implemented the new residential zones across the municipality and applied Neighbourhood Character Overlays to specific residential areas.

The Amendment applied new residential zones to land in Newport outside the areas covered by the Structure Plan and the Inner Newport Heritage Gap Study, and deferred any rezonings within those areas to Amendment C133hbay. These areas are shown on Figure 11.

The Amendment was the subject of a Panel Report, that recommended approval subject to some minor changes.

**Figure 11** Application of residential zones through Amendment C131hbay



SOURCE: Council's Part A submission (D4)

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

### Ministerial Directions

The Explanatory Report and Council's Part A submission discuss how the Amendment meets the relevant requirements of:

- Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46).
- Ministerial Direction No. 1 Potentially contaminated land (including the application of the EAO)
- Ministerial Direction No. 9 Metropolitan Strategy (as noted earlier in relation to Plan Melbourne)
- Ministerial Direction No. 15 The Planning Scheme Amendment Process

- Ministerial Direction No. 19 The preparation and content of amendments that may significantly impact the environment, amenity and human health (including consultation with the EPA in relation to the Environmental Audit Overlay and noise impacts)
- Ministerial Direction No. 20 Major Hazard Facilities (including consultation with WorkSafe Victoria and the Minister for Economic Development).

That discussion is not repeated here.

### Planning Practice Notes

The Explanatory Report and/or Council's Part A submission discuss how the Amendment meets the relevant requirements of:

- PPN1 Applying the Heritage Overlay
- PPN30 Potentially Contaminated Land
- PPN58 Structure Planning for Activity Centres
- PPN59 The role of Mandatory Provisions in Planning Schemes
- PPN60 Height and Setbacks for Activity Centres
- PPN90 Planning for Housing
- PPN91 Using the Residential Zones.

The Panel directed that Council's Part B submission:

...explain why the building height, street setback and residential interface requirements in DDO6, DDO7, DDO12 and DDO18 are mandatory and not discretionary, having regard to Planning Practice Note 59 The Role of Mandatory Provisions in Planning Schemes and Planning Practice Note 60 Height and Setback Controls for Activity Centres...<sup>53</sup>

The purpose of PPN59 (The Role of Mandatory Provisions in Planning Schemes) is as follows:

This practice note sets out criteria that can be used to decide whether mandatory provisions may be appropriate in planning schemes.

In addition to this practice note, specific criteria and implementation approaches for proposed mandatory height and setback controls at activity centres are dealt with in Planning Practice Note 60 Height and setback controls for activity centres.<sup>54</sup>

The purpose of PPN60 (Height and setback controls for activity centres) is as follows:

This practice note provides guidance on the department's preferred approach to the application of height and setback controls for activity centres.

This practice note should be read in conjunction with Practice Note 58: Structure planning for activity centres and Planning Practice Note 59: The role of mandatory provisions in planning schemes.<sup>55</sup>

Council's responses were included in its Part B submission.

<sup>53</sup> Panel Direction 14 a), Panel's directions and timetable letter dated 3 November 2022

<sup>54</sup> PPN59

<sup>55</sup> PPN60