

**Draft Melbourne Planning Scheme Amendment C407melb  
Arden Structure Plan**

**Advisory Committee Report**

*Planning and Environment Act 1987*

**2 May 2022**

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*Planning and Environment Act 1987*

Advisory Committee Report pursuant to section 151 of the PE Act

Draft Melbourne Planning Scheme Amendment C407melb

Arden Structure Plan

**2 May 2022**



Lester Townsend, Chair



Geoffrey Carruthers, Member



Peter Marshall, Member



Lisa Riddle, Member

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## Glossary and abbreviations

|                |  |
|----------------|--|
| 60:30:10 share | A mode split of 60 per cent public transport, 30 per cent active transport (walking and cycling), and 10 per cent private vehicles |
| AEP            | Annual Exceedance Probability  |
| Asphalt Plant  | Citywide Asphalt Plant at 208 – 292 Arden Street   |
| BAO            | Buffer Area Overlay  |
| CBD            | Central Business District  |
| CCZ            | Capital City Zone  |
| the Committee  | Victorian Planning Authority (VPA) Projects Standing Advisory Committee  |
| Council        | Melbourne City Council   |
| DCP            | Development Contributions Plan   |
| DCPO           | Development Contributions Plan Overlay   |
| DDO            | Design and Development Overlay   |
| DELWP          | Department of Environment, Land, Water and Planning  |
| EIA            | Economic Impact Assessment   |
| EPA            | Environmental Protection Authority   |
| ESD            | Ecologically Sustainable Design  |
| FAR            | Floor Area Ratio   |
| GFA            | Gross Floor Area   |
| HIA            | Housing Industry Association   |
| HO             | Heritage Overlay   |
| ICP            | Infrastructure Contributions Plan  |
| IN3Z           | Industrial 3 Zone  |
| ISMOS          | Integrated Stormwater Management Open Space  |
| MCA            | Main Catchment Area under the Development Contributions Plan   |
| MSS            | Municipal Strategic Statement  |
| NFA            | Net Floor Area   |
| NMFC           | North Melbourne Football Club  |
| PAO            | Public Acquisition Overlay   |
| PE Act         | <i>Planning and Environment Act 1987</i>   |
| PO             | Parking Overlay  |
| PPN            | Planning Practice Note   |
| PPRZ           | Public Park and Recreation Zone  |

|                     |   |
|---------------------|---|
| Practitioners Guide | Practitioners Guide to Victorian Planning Schemes                       |
| SCO                 | Special Controls Overlay  |
| SUZ                 | Special Use Zone  |
| UDIA                | Urban Development Institute of Australia                                |
| URCRS               | Urban Renewal Cost Recovery Scheme (a drainage cost recovery mechanism) |
| VCAT                | Victorian Civil and Administrative Tribunal                             |
| VPA                 | Victorian Planning Authority  |
| VPP                 | Victoria Planning Provisions  |



## Overview

### Amendment summary

|                    |   |
|--------------------|---|
| The Amendment      | Draft Melbourne Planning Scheme Amendment C407melb  |
| Common name        | Arden Structure Plan  |
| Brief description  | The purpose of the Amendment is to implement the Arden Structure Plan, August 2021 by introducing new planning controls to guide the urban renewal of the Arden precinct and its transition to a vibrant, mixed use innovation precinct comprising four distinct and diverse neighbourhoods |
| Planning authority | Victorian Planning Authority  |
| Planning Scheme    | Melbourne Planning Scheme   |
| Council            | Melbourne City Council  |
| Subject land       | The Amendment applies to the Arden urban renewal precinct, North Melbourne  |
| Exhibition         | 13 September to 11 October 2021   |
| Submissions        | Number of Submissions: 110  |

### Committee process

|                        |  |
|------------------------|--|
| The Committee          | Lester Townsend, Chair with Members Geoffrey Carruthers, Peter Marshall, and Lisa Riddle       |
| Directions Hearing     | 9 December 2021, video conference  |
| Committee Hearing      | 8, 9, 10, 11, 16, 17, 18, 21, 22, 23 and 24 February, 2, 3, 4, 9, 10, 22, 23 and 25 March 2022 |
| Site inspections       | Accompanied, 24 February 2022  |
| Parties to the Hearing | See Appendix B   |
| Citation               | VPA Projects SAC Referral 6 – Arden Structure Plan [2022] PPV                                  |
| Date of this report    | 2 May 2022   |

## About the Committee

The Victorian Planning Authority (VPA) Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning in July 2020. The purpose of the Committee is set out in its Terms of Reference dated 17 July 2020:

... provide timely advice to the Minister for Planning and the VPA on specific matters referred to it related to various proposals, including but not limited to structure plans, infrastructure and development contribution plans, framework plans, development plans and any associated draft planning scheme amendment and planning permits.

The Terms of Reference set out that the Committee is to consider unresolved issues. In doing so it must consider:

- The relevant components of the referred plan and associated draft planning scheme amendment and any associated planning permit (if relevant) that relate to the submissions or issues referred to it
- The referred submissions
- *Plan Melbourne*
- Any relevant Regional Growth Plan or Growth Corridor Plan
- The applicable Planning Scheme
- Relevant State and local policy
- Any other material referred to it.

The VPA has prepared draft Amendment C407melb to the Melbourne Planning Scheme which proposes to implement the Arden Structure Plan and related Development Contributions Plan. The submissions from the informal exhibition of the draft Amendment were referred to the Committee on 14 November 2021 by the Minister for Planning. The referral is known as Referral 6 and was accompanied by the following documents:

- Submissions summary table prepared by the VPA
- Background reports and supporting documentation.

The members of the Committee dealing with Referral 6 were:

- Lester Townsend, Chair
- Geoffrey Carruthers, Member
- Peter Marshall, Member
- Lisa Riddle, Member.

Kimberly Martin, Senior Project Officer at Planning Panels Victoria, assisted the Committee.

## Executive summary

The purpose of Draft Melbourne Planning Scheme Amendment C407melb (the Amendment) is to implement the *Arden Structure Plan*, August 2021 by introducing new planning controls into the Melbourne Planning Scheme. The controls seek to guide the urban renewal of the Arden precinct and its transition to a vibrant, mixed use innovation area comprising four distinct and diverse neighbourhoods.

The Arden precinct surrounds the new Arden metro station, one of five new stations on the new Metro Tunnel linking the Cranbourne, Pakenham and Sunbury train lines.

The precinct is expected to deliver 34,000 jobs and 15,000 residents.

The Amendment was exhibited between 13 September to 11 October 2021.

Key issues raised in submissions included:

- infrastructure delivery and the development contributions
- drainage, including how flooding will be managed
- whether population targets are appropriate and justified
- transport, including traffic generation from future development, and availability of car parking in the precinct
- affordable housing
- cultural heritage
- urban structure, including concerns about specific elements of the Structure Plan
- planning scheme drafting
- amenity buffers and contamination
- whether the proposed planning controls ensure an appropriate mix of uses
- built form, including whether the proposed scale, height and density of development is appropriate
- sustainability
- the appropriateness of third party notice and appeal exemptions
- open space, including the appropriateness of the designation and quantity of open space.

### (i) Threshold issues

#### More than a planning project

The urban renewal of Arden requires more than just planning scheme changes. The State Government will need to take a hands-on role to deliver the vision for the precinct, not just because of the amount of government land involved but because of the need to deliver significant drainage infrastructure.

Delivery of the drainage works will require the relocation of the Citywide depot which includes an asphalt plant. This should be progressed as a matter of priority.

The cost of delivering the drainage infrastructure is significant. Some works and land acquisition for a combined retarding basin and open space (an Integrated Stormwater Management and Open Space) will be funded as part of a Development Contributions Plan (DCP) but works will also be funded by a separate Urban Renewal Cost Recovery Scheme process. The DCP is not anticipated to raise the full cost of the works it funds. The State has committed to bearing the risk of additional costs in delivering the necessary infrastructure.

The expert conclave report on drainage raised a number of issues that suggest that while the drainage strategy could deliver an appropriate planning outcome, it might not be the optimal solution to mitigation of the flooding risk. Given the complexity of these issues the VPA might wish to review the drainage strategy in the light of the additional expert analysis.

### **The role of Arden**

There were competing submissions as to whether Arden was intended to be part of the Central City. The Committee thinks it is, but more importantly the planning scheme should be unambiguous about this through clear policy statements and in the application of controls. A Special Use Zone has been proposed but there was no strategic justification for this zone choice. The scheme would be clearer if the Capital City Zone were applied.

### **Transport and access**

The Structure Plan anticipates a mode split of 60 per cent public transport, 30 per cent active transport (walking and cycling), and 10 per cent private vehicles. New high capacity public transport routes are identified and a fine grain urban structure is proposed. Car parking is intended to be delivered in consolidated parking structures, to maximise the potential for shared use of spaces and avoid issues of empty private car spaces attached to apartments, but never used.

While some concerns were raised about specific pedestrian links, there were few issues with the basic transport settings. Detailed concerns about how the planning scheme could set mandatory maximum car parking rates were raised. The Committee supports including maximum rates in the zone so that they can be mandatory, unless delivered as part of a consolidated approach to car parking.

### **Affordable housing**

The Amendment proposes policy to deliver 6 per cent of dwellings as affordable housing. The Council said this should be a mandatory requirement. The Committee agrees, subject to confirmation of a legal power to include mandatory requirements. Imposing this requirement before the land is rezoned for redevelopment means the 'cost' of the provision can be factored into the land price future developers pay for the land.

## **(ii) Refining the controls**

### **A refined process**

Through the exhibition and hearing process the VPA sought to respond to submissions and proposed many refinements to the controls. The Committee generally accepts these refinements.

### **Removing duplication**

The Committee has identified two key structural approaches to the controls that would reduce unnecessary duplication of planning scheme text:

- the four exhibited Design and Development Overlay (DDO) Schedules can be consolidated into one schedule
- Design and Development Overlay Schedule 1 which deals with detailed design issues can be applied (with a few adjustments) to avoid the need to deal with these issues in a repetitive fashion in the consolidated DDO.

### **Consistent and complete policy**

The Amendment proposes some changes to the policy in the planning scheme but leaves some policy areas unchanged. For example, it is not proposed to identify the precinct on the Economic Development Map at figure 3 in the Municipal Strategic Statement. A review of all the local policy to ensure this important renewal area is appropriately recognised is recommended.

### **Land use issues**

There were two main issues raised in relation to land use control in the zone:

- how to ensure that a sufficient quantum of non-residential space is delivered
- whether it was appropriate to prohibit certain uses within the measurement distance of a gas pipeline that traverses the precinct.

The Committee concludes that these are more drafting issues than policy issues, and the controls can be changed to effectively address these issues.

### **Built form issues**

The main issues in the Hearing process related to built form issues, specifically around:

- street wall heights
- setbacks
- floor area ratio controls
- protection of open spaces from overshadowing.

The Committee had the benefit of evidence from urban designers Leanne Hodyl and Mark Sheppard. This evidence was informed by detailed modelling including additional modelling produced at the experts' request. The experts were in broad agreement with some specific points of disagreement. The VPA did not accept the experts' view even when they agreed.

The Committee considers that planning is strongest when it takes an evidence-based approach and this is the approach the Committee has taken, generally adopting the experts' recommendations.

The issue of mandatory controls was raised in relation to a number of the built form controls. The Committee considers that whether a mandatory control is justified needs to be assessed in the context of the strategy that the Amendment is seeking to achieve, and the objectives of a proposed control. In this case the Committee supports mandatory floor area ratio controls as part of a suite of controls that has discretionary heights and setbacks. Setting mandatory floor area ratio controls will deliver a mix of mandatory and discretionary controls that best align with the urban design vision for the precinct. The Committee notes that the density allowed for by the controls is as high or higher than some of the densest parts of Melbourne.

### **Involving third parties**

Concerns were raised about the exclusion of third parties from planning processes. The Committee supports the approach put forward by Council to require notice of planning permits, but to restrict the right of third parties to appeal decisions of the responsible authority.

**(iii) Recommendations**

Based on the reasons set out in this Report, the Committee recommends that Draft Melbourne Planning Scheme Amendment C407melb be adopted as exhibited subject to the variations outlined by the VPA in its closing submissions (Documents 132 and 139), but subject to the following recommendations:

1. Review the Drainage Strategy, finalise the works required under the Urban Renewal Cost Recovery Scheme, and set a clear implementation timetable as a matter of priority.
2. Apply the Capital City Zone:
  - a) in place of the Special Use Zone to remove any ambiguity as to whether Arden is part of the Central City
  - b) to all the land, including the land to be acquired and the adjoining public land, to make it clear the land is not intended to have an industrial future.
3. Consolidate the Design and Development Overlay Schedules 80, 81, 82 and 83 into one schedule.
4. Put the affordable housing contribution requirements in the zone so they can be made mandatory, subject to establishing that there is a legal power under the Planning and Environment Act to do so.
5. Control car parking numbers in the zone (alongside motor cycle and bicycle parking) so that:
  - a permit is required to provide car parking
  - provision above specified rates can only be by way of consolidated parking.
6. Review the proposed policy changes to include as many as possible of the proposed provisions in the zone or Design and Development Overlays.
7. Take a more consistent approach to design issues across the Central City by:
  - a) applying Design and Development Overlay Schedule 1 amended as needed to deal with:
    - the indicative laneways
    - laneway width.
  - b) removing detailed design requirements from the consolidated Design and Development Overlay except the proposed laneways
8. Revise the Amendment documentation to:
  - a) retain notice provisions in the zone and overlays
  - b) exempt third party appeal rights (as proposed)
  - c) make the City of Melbourne a recommending referral authority for matters where it is not the responsible authority as proposed, but with necessary changes to the Schedule to Clause 66.04 (Referral of Permit Applications Under Local Provisions).
9. Review all the relevant local policy with the aim of having clear and consistent designations that accurately reflect the importance of Arden including:
  - a) treating Arden and Macaulay as separate areas
  - b) changing references to the Vision to the Arden Structure Plan vision, for all references throughout policy

- c) seeking a closer alignment with the headings and content of the Structure Plan to assist in ensuring transparency with the reference document
  - d) presenting the proposed purpose and character of Arden in the policy
  - e) giving more emphasis to the importance of the retail activities around Barwise Street
  - f) moving the provisions for Ecologically Sustainable Design generally as proposed to the consolidated Design and Development Overlay but redrafted as needed to be presented as requirements using 'should'.
10. In the Table of uses in the zone:
- a) change the Section 1 condition next to Accommodation (other than Camping and caravan park, Corrective Institution, Group accommodation, Host farm, Residential hotel) to include:
 

Where located in the Arden Central Innovation or Arden North sub-precincts shown on Plan 1 to Schedule 7 to Clause 37.01, must either:

    - Be located above the first six storeys (ground to fifth floor), except for the part of a building that provides access such as a lobby or entrance, and any frontage at ground floor level must not exceed 4 metres.
    - Occupy no more than 40 per cent of the net Floor Area of the above ground floor area.
  - b) delete the conditions opposite industry in Section 2
  - c) audit the Table of uses to ensure compliance with drafting requirements.
11. Modify the Public Acquisition Overlay Schedule 8 to align the acquisition for the extension of Fogarty Street on the south side of Arden Street to the property boundary to the east of the acquisition area.
12. In the consolidated Design and Development Overlay:
- a) do not provide a blanket exemption from mandatory controls for existing uses
  - b) change the definitions as follows:
    - list them in alphabetical order
    - do not include the definitions from Design and Development Overlay Schedule 1
    - change 'additional shadow' to read:
 

Additional shadow means any shadow cast beyond any shadow cast from existing buildings or works, but not a shadow cast by existing or proposed incidental elements such as canopies, kiosks, artworks, screens or trees, which are not included in the additional shadow calculation.
    - change 'Setback' so it begins: "*Setback means ...*"
  - c) update the Street wall height requirements to change the exclusion to read:
 

The building is on a corner where more than one street wall height applies, in which case, the taller preferred maximum street wall height applies as specified in that table and also to half the frontage with the lower street wall height.
  - d) update the Street wall height table as shown in Recommendation Table 1 below
  - e) use separate tables for internal building separation and setbacks from boundary
  - f) update the Setback table to read (as separate tables) as shown in Recommendation Tables 2A and 2B below

- g) update the Building height and Floor Area Ratio table to read as shown in Recommendation Table 3 below (with sub-precinct notations and mapping updated accordingly)
- h) update the solar protection provisions to read:
 

Buildings must not cast any additional shadow beyond that cast by the applicable street wall height or existing buildings, whichever is the greater, for the ...
- i) update the solar protection table to be consistent with the controls approved for the balance of the municipality based on Recommendation Table 4 below
- j) adjust the text in relation to laneways so that it works in conjunction with Design and Development Overlay Schedule 1 and ensures that the maximum distance between through-block links is less than 200 metres
- k) review the Decision guidelines to remove unnecessary text and ensure guidelines are expressed in policy neutral language.

Recommendation Table 1: Street wall height

| Location                                      | Qualification   | Building height     | Preferred minimum street wall height | Preferred maximum street wall height  |
|---|---|---------------------|--------------------------------------|---------------------------------------|
| Barwise Street                                |   | None specified      | None specified                       | 17 metres                             |
| Dryburgh Street                               | Victoria Street to Queensberry Street   | None specified      | None specified                       | 11 metres                             |
|   | Queensberry Street to Arden Street  | None specified      | None specified                       | 17 metres                             |
| Stawell Street                                |   | None specified      | None specified                       | 14 metres                             |
| Immediately adjacent to a proposed open space |   | 41 metres or less   | 17 metres                            | 33 metres or 27 metres in Arden North |
|   |   | More than 41 metres | 17 metres                            | 25 metres                             |
| Other Locations                               | Laneway or Streets less than 16 metres wide in Arden Central Innovation or 20 metres wide in other areas  | None specified      | None specified                       | 17 metres                             |
|   | Street wider than 16 in Arden Central Innovation or 20 metres in other areas and less than 30 metres wide | 41 metres or less   | 17 metres                            | 33 metres or 27 metres in Arden North |
|   |   | More than 41 metres | 17 metres                            | 17 metres                             |
|   | Streets 30 or more metres wide  | 41 metres or less   | 17 metres                            | 33 metres or 27 metres in Arden North |
|   |   | More than 41 metres | 17 metres                            | 25 metres                             |



Recommendation Table 2A: Setbacks

| Location   | Part of building   | Building height                                     | Preferred minimum Setback  |
|--|--|---|--|
| The west side frontage of Munster Terrace and Anderson Street between Queensberry Street and Miller Street | Below the preferred street wall height   | As specified elsewhere in this table                |  |
|  | Above the street wall height   | Up to 34 metres                                     | 7.5 metres   |
|  |  | 34 metres and over                                  | 18 metres  |
| 189-197 Arden Street for the Laurens Street frontage   | Below preferred street wall height   | None specified                                      | From Laurens Street: 10 metres   |
|  | Above the preferred street wall height   | As specified elsewhere in this table                |  |
| Facing a laneway, street or public open space  | Below the street wall height or if facing a laneway below 25 metres high         | None specified                                      | Where a new or widened laneway is sought: half the width of the laneway  |
|  |  |   | Any part of a building not within 0.3 metres of the side or rear boundary: 4.5 metres  |
|  |  |   | Any part of a building not within 0.3 metres of the side or rear boundary and which provides the primary outlook from a dwelling: 6 metres |
|  |  |   | A wall containing habitable room windows facing a laneway: 4.5 metres except where the boundary abuts an existing or proposed laneway      |
|  | Above the street wall height or if facing a laneway above 25 metres high         | Up to 8 metres above the street wall                | 3 metres   |
|  |  | From 8 metres above the street wall up to 64 metres | 5 metres   |
|  |  | Greater than 64 metres                              | 7.5 metres   |
| Facing side or rear boundary   | Below the street wall height or 25 metres if not street wall height is specified | None specified                                      | Any part of a building not within 0.3 metres of the side or rear boundary: 4.5 metres  |
|  |  |   | Any part of a building not within 0.3 metres of the side or rear boundary and which provides the primary outlook from a dwelling: 6 metres |
|  | Above the street wall height or 25 metres if not street wall height is specified | Up to 51 metres                                     | 5 metres   |
|  |  | Above 51 metres and up to 64 metres                 | 7.5 metres   |
|  |  | Above 64 metres and up to 81 metres                 | 10 metres  |
|  |  | Above 81 metres                                     | 12.5 metres  |

Recommendation Table 2B: Building separation

| Part of building                        | Building height                     | Preferred minimum Setback |
|---|-------------------------------------|---------------------------|
| Building(s) separation on the same site | Up to 51 metres                     | 10 metres                 |
|   | Above 51 metres and up to 64 metres | 15 metres                 |
|   | Above 64 metres and up to 81 metres | 20 metres                 |
|   | Greater than 81 metres              | 25 metres                 |

Recommendation Table 3: Building height and Floor Area Ratio

| Location on Map 1  | Discretionary Building Height | Maximum FAR | Mandatory or Discretionary FAR |
|--|-------------------------------|-------------|--------------------------------|
| DDO80: Lot A   | 33 metres                     | 6:1         | Mandatory                      |
| DDO80: Lot B   | 57 metres                     | 8:1         | Mandatory                      |
| DDO80: Lot C   | 65 metres                     | 8:1         | Mandatory                      |
| DDO80: Lot D   | 81 metres                     | 10:1        | Mandatory                      |
| DDO80: Lot E   | 134 metres                    | 17:1        | Mandatory                      |
| DDO81: Lot A   | 51 metres                     | 6:1         | Mandatory                      |
| DDO81: Lot B   | 83 metres                     | 12:1        | Mandatory                      |
| DDO81: Lot C   | 134 metres                    | 17:1        | Mandatory                      |
| DDO81: Lot C opposite park ● shown below   | 65 metres                     | 8:1         |                                |
| DDO81: Lot C triangle lot ✦ shown below  | 83 metres                     | 12:1        |                                |
| DDO82: Lot A   | 51 metres                     | 6:1         | Mandatory                      |
| DDO82: Lot B (with the boundary adjusted generally as proposed by Mr Sheppard, as shown below) | 64 metres                     | 9:1         | Mandatory                      |
| DDO83: Lot A (Excluding HO area)   | 25 metres                     | 5:1         | Mandatory                      |
| DDO83: Lot B   | 33 metres                     | 6:1         | Mandatory                      |
| DDO83: Lot C   | 64 metres                     | 7:1         | Mandatory                      |
| DDO83: Lot D   | 64 metres                     | 8:1         | Mandatory                      |



Recommendation Table 4

| Area on Map 2                               | Date and hours         | Mandatory or discretionary Solar protection |
|---|------------------------|---|
| Neighbourhood Park                          | 22 June, 11am–2pm      | Mandatory                                   |
| Capital City Open Space                     | 22 September, 11am–2pm | Mandatory                                   |
| North Melbourne Recreation Reserve          | 22 September, 11am–2pm | Discretionary                               |
| Clayton Reserve                             | 22 September, 11am–2pm | Discretionary                               |
| Integrated stormwater management open space | 22 September, 11am–2pm | Discretionary                               |
| Arden Station Forecourt                     | 22 September, 11am–2pm | Discretionary                               |

# 1 Introduction

## 1.1 The Precinct

The Amendment applies to the Arden urban renewal precinct.

Comprising approximately 44.6 hectares, the Arden precinct is located west of North Melbourne's established residential area and south of the Macaulay urban renewal precinct. Generally, the precinct is bounded by Macaulay Road, Boundary Road, Dryburgh Street and the Upfield rail corridor to the west. Figure 1 shows the location of the precinct which is coloured [red box].

**Figure 1: Arden's transport network local context**



Source: Structure Plan , Figure 17. Precinct coloured by the Committee

The vision for the precinct is:

Arden will be a new destination for Melbourne, setting the standard for urban renewal. It will contribute to a future Melbourne that is not only the world's most liveable city, but also one of the most forward-looking.

With its rapid rail connections to the Parkville National Employment and Innovation Cluster, the Central Business District and Melbourne's western suburbs, Arden is ideally placed to be an international innovation and technology precinct.

This new employment hub will be pivotal to the growth of Victoria's knowledge economy and advancing Melbourne's strengths as a progressive, innovative and connected local and global city.

The precinct will have its own civic heart and character. It will remain connected to its Aboriginal and industrial heritage as it changes to support a diverse resident and worker population. It will become a new neighbourhood of Melbourne with quality and affordable housing, a thriving network of open spaces, active transport links, and adaptable community facilities, schools and workspaces. Arden will be at the forefront of sustainable development, embracing new ways to live, learn, work and travel in an energy efficient district. Water will

be safely managed to become a visible feature in the landscape, while green spaces, trees and water will help the precinct become a cooler, greener version of the city.

The Moonee Ponds Creek corridor will be revitalised as a new green spine for Melbourne. It will be a celebrated waterway with a valued environmental and cultural heritage, serving recreational, biodiversity habitat and active transport functions. The creek corridor will be an essential link for Arden and neighbouring urban renewal precincts.

Partnerships with all levels of government, the community and the private sector will deliver the eight key directions that support the vision for Arden.

## 1.2 The Amendment

The purpose of the Amendment is to implement the *Arden Structure Plan*, August 2021 by introducing new planning controls into the Melbourne Planning Scheme. The controls seek to guide the urban renewal of the Arden precinct and its transition to a vibrant, mixed use innovation area comprising four distinct and diverse neighbourhoods.

Specifically, the Amendment proposes to:

- amend the Municipal Strategic Statement and local policy at:
  - Clause 21.04 (Settlement) to adjust the geography of Arden but leave it as a 'Proposed urban renewal area'
  - Clause 21.13 (Urban Renewal Areas) to include policy basis and objectives specific to Arden
  - Clause 21.14 (Proposed Urban Renewal Areas) to update references to Arden
  - Clause 22.28 (Arden Urban Renewal Policy) to introduce a new local planning policy to provide guidance and assist with the exercise of discretion in the assessment of planning permit applications in Arden
- rezone part of the land in the precinct to Special Use Zone (SUZ) with a new Schedule 7
- at Clause 43.02 (Design and Development Overlay):
  - introduce new precinct specific:
    - Schedule 80 Arden Central Innovation sub-precinct
    - Schedule 81 Arden Central Mixed-Use sub-precinct
    - Schedule 81 Arden North sub-precinct
    - Schedule 83 Laurens Street sub-precinct
  - delete:
    - Schedule 26 North Melbourne, West Melbourne and Arden-Macaulay Noise Attenuation Area
    - Schedule 31 North Melbourne Central
    - Schedule 32 North Melbourne Peripheral
    - Schedule 63A8 Macaulay Urban Renewal Area, Kensington and North Melbourne
- at Clause 45.09 (Parking Overlay):
  - introduce a new Schedule 14 to encourage sustainable transport patterns and the provision of alternative forms of parking
  - delete Schedule 12
- apply the new Public Acquisition Overlay:
  - Schedule 8 in favour of Department of Transport for the purposes of key road extensions on land at:
    - 215 Arden Street, North Melbourne
    - 215-227 Arden Street, North Melbourne
    - 217 Arden Street, North Melbourne
    - 229-235 Arden Street, North Melbourne

- 29-47 Laurens Street, West Melbourne
- 49-63 Laurens Street, North Melbourne
- 5/233 Arden Street, North Melbourne
- 8/49-63 Laurens Street, North Melbourne
- Schedule 9 in favour of Department of Transport for the storage of water to mitigate the flooding risk of significant storm events on land at:
  - 208-292 Arden Street, North Melbourne
  - 2-52 Gracie Street, North Melbourne
  - 2-54 Green Street, North Melbourne
  - 49 Henderson Street, North Melbourne
  - 54-60 Gracie Street, North Melbourne
  - 62-70 Gracie Street, North Melbourne
  - 63-119 Langford Street, North Melbourne
- at Clause 44.08 (Buffer Area Overlay) introduce new schedules to manage use and development impacted by the Citywide Asphalt Plant:
  - Schedule 1 for the moderate risk buffer area
  - Schedule 2 for the medium risk buffer area
- at Clause 45.06 (Development Contributions Plan Overlay) amend:
  - Schedule 3 (DCPO3) to enable implementation of the Arden Development Contributions Plan, August 2021
  - the boundary of the DCPO3 to apply the overlay consistent with the precinct boundaries by:
    - including allotments south of Macaulay Road, between Langford St and Boundary Road and delete the Development Contributions Plan Overlay (DCPO2) associated with the Macaulay precinct from these properties
    - delete the DCPO3 from allotments south of Victoria Street, which are included in the West Melbourne precinct area
- apply the Environmental Audit Overlay
- amend the Schedule to Clause 66.04 to require referral of certain permit application to the Environmental Protection Agency, Melbourne City Council and Secretary to the Department of Transport until 31 December 2026, and thereafter VicTrack
- amend the Schedule to Clause 66.06 to require notice of certain permit applications to be given to the gas pipeline licensee
- amend the Schedule to Clause 72.04 to include new incorporated documents:
  - Arden Parking Precinct Plan, August 2021
  - Arden Precinct Cross Sections, August 2021
  - Arden Development Contributions Plan, August 2021
- include a new background document titled Arden Structure Plan, August 2021

## 1.3 Procedural issues

### Hearing process

A number of parties raised issues with a range of timing constraints. The Committee sought to balance the needs of the parties who sought more time to finalise evidence with the needs of the parties who were not able to delay their participation in this matter. The Committee notes that the dates of the Hearing were flagged in advance but not confirmed.

At the Direction Hearing, the VPA proposed an alternative hearing arrangement with four phases including roundtable discussions before the testing of evidence. Not all parties supported this approach noting that its intended efficiencies may be illusory, and that it potentially required longer attendance at the Hearings than a more traditional format.

The Committee advised it had recent experience with roundtable approaches and considered that in this instance the broad approach presented by the VPA (and supported by Council) was likely to result in a more efficient hearing process.

The Hearing proceeded with the following phases:

- The first phase of the Hearing provided an opportunity for the perspectives of all parties to be ventilated and for submitters to identify their issues with the Amendment. There were three parts to this:
  - VPA and Council opening statements
  - statements and submissions from parties requesting less than two hours (and not calling evidence)
  - opening statements from parties calling evidence made following meetings of experts.
- A roundtable discussion phase with topics identified by the Committee following opening statements of the VPA and Council, and with the benefit of the statement of issues lodged by parties.
- Presentation and testing of expert witness evidence by theme. Not all experts needed to be called.
- Closing submissions.
- Without prejudice drafting comments by way of an on the papers.

Although the process was spread out over a longer period than a traditional hearing it was efficient in its time use and allowed parties to focus on issues in dispute.

### **Consolidated DDO**

On reviewing the controls the Committee formed the view that a consolidated DDO in place of four separate DDOs would be more efficient. The Committee produced a consolidated version and this became the basis for subsequent discussions and submissions.

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

Key issues raised in submissions included:

- Delivery issues:
  - Delivery and acquisition, including the appropriateness of the precinct delivery strategy, the water infrastructure and open space delivery strategy, clarity around the process of land acquisition, potential impacts of the Windfall Gains Tax on the rezoned land, uncertainty around public transport delivery and how existing businesses will transition from the precinct.
  - Infrastructure delivery and the DCP, including potential impacts of development within the precinct on the North Melbourne Football Club (NMFC), how any shortfall in funding will be addressed through alternative funding mechanisms, whether there is a need for additional community infrastructure such as secondary schools and sports, recreation facilities and cycling infrastructure in the precinct, the adequacy of consideration to the public realm, the justification behind the design and costs of infrastructure items in the DCP, whether there is a clear need and nexus of items in



the DCP, use of works-in-kind agreements to deliver infrastructure items and whether the specific exclusions from the DCP are appropriate.

- Drainage, including potential for flooding of the precinct, how flooding will be managed through the proposed flood management strategy, the appropriateness of stormwater and drainage infrastructure design and how investment will occur for the revitalisation of Moonee Ponds Creek.
- Land supply, including whether population targets are appropriate and justified, concern around the feasibility of new development and costs incurred to develop within the precinct and whether employment targets and floor space for employment uses are suitable.
- Transport, including traffic generation from future development, whether the modelling informing controls is sufficient, the appropriateness of proposed car parking measures and availability of car parking in the precinct, concern about integration with active transport for cycling and pedestrians and public transport infrastructure access.
- Affordable housing, including whether provisions should be mandatory or voluntary, clarity about how affordable housing outcomes are delivered and implemented, and whether the proposed rate of 6 per cent is sufficient and strategically justified.
- Cultural heritage, including whether Aboriginal Cultural Heritage, place names and signage have had appropriate regard to the cultural significance of the precinct.
- Refining the controls:
  - Urban structure, including concerns about specific elements of the Structure Plan and the adequacy of the planning scheme amendment preparation and consultation process.
  - Planning scheme drafting, including concerns about whether the proposed planning control drafting gives effect to the outcomes sought by the Structure Plan.
  - Amenity, buffers and contamination, including potential health risks from the existing Citywide asphalt plant, the adequacy of proposed noise attenuation and vibration measures, the appropriateness of the Buffer Area Overlay (BAO) schedules to the Citywide plant, and whether contaminated land measures and use of the Environmental Audit Overlay are suitably applied.
  - Land use and zoning, including whether the proposed planning controls ensure an appropriate mix of uses throughout the precinct, concern with the drafting of the Special Use Zone (SUZ) schedule regarding use and buildings and works, whether local policy provides suitable support for the zone and overlay provisions, and whether the provisions appropriately manage the potential for land use conflicts with existing industrial uses.
  - Built form, including whether the built form controls are strategically justified, whether the proposed scale, height and density of development is appropriate, concerns about drafting of the DDO schedules to deliver built form outcomes, potential impacts on the amenity of adjoining areas and neighbourhood character, the adequacy of proposed provisions for detailed design, wind, internal design and overshadowing impacts, whether design excellence provisions are suitable and the proposed response to places of heritage significance.
  - Sustainability, including whether sufficient consideration has been given to biodiversity values, and whether the proposed planning controls are adequate to implement and secure climate resilience and sustainability targets.
  - The appropriateness of third party notice and appeal exemptions.



- Open space, including the appropriateness of the designation and quantity of open space throughout the precinct for future users, concern about revitalisation of Moonee Ponds Creek and concern about whether provisions for biodiversity, wildlife and tree canopy within the precinct will deliver the outcomes sought by the Structure Plan.

## 1.5 What has been considered

The Committee is an Advisory Committee established under section 151 of the *Planning and Environment Act 1987* (PE Act). Section 151 permits the Minister to appoint advisory committees to consider ‘any matters which the Minister refers to them’. In the Minister’s letter of referral, the Committee was requested to deal with the issues raised in submissions thematically. The VPA submitted in closing:

6. In accordance with the Terms of Reference, the Committee must consider (relevantly):
  - (a) the relevant components of the referred plan and associated draft planning scheme amendment
  - (b) the referred submissions
  - (c) Plan Melbourne
  - (d) any relevant Regional Growth Plan or Growth Corridor Plan
  - (e) the applicable Planning Scheme
  - (f) relevant State and local policy
  - (g) any other material referred to it.
10. The VPA has considered the submissions to the Amendment and supports changes arising from recommendations made by the expert witnesses, including experts called to give evidence by the VPA in support of the Amendment.
11. The basis for the VPA’s position in relation to the various recommendations made by the VPA’s experts have been recorded in **Document 95**, and the VPA’s position in relation to the recommendations arising from the urban design conclave are recorded in **Document 117**.
12. The VPA has also prepared a response to a number of the questions posed by the Committee during the course of the roundtable discussions and the hearing. ...

The Committee broadly accepts the changes proposed by the VPA to the draft Amendment, except where it specifically recommends otherwise.

The Committee considered published background reports, 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 Committee in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

The Committee 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.

## 1.6 Overall assessment

Arden is clearly identified in policy as an urban renewal area and the completion of the metro tunnel will dramatically improve public transport accessibility. The issues are around the precise parameters that ought to guide that urban renewal.

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

This Report deals with the issues under the following headings:

- Physical and planning context
- Threshold issues and the approach of the Committee
- Proposed urban structure
- Structure of controls and policy
- Proposed policy changes
- Proposed zone
- Proposed public acquisitions and open space delivery
- Proposed Buffer Area Overlay
- Proposed Design and Development Overlay
- Development Contributions and charges.

## 2 Physical and planning context

This Chapter outlines the context and planning policies that apply to the area, and outlines the proposed urban structure for Arden.

### 2.1 The Metro Tunnel and Plan Melbourne

The 2008 Victorian Transport Plan proposed a rail tunnel from Footscray to Caulfield via the Central Business District (CBD). That project, the Metro Tunnel, is currently under construction. The project is anticipated to open in late 2025 – in about three and a half years.

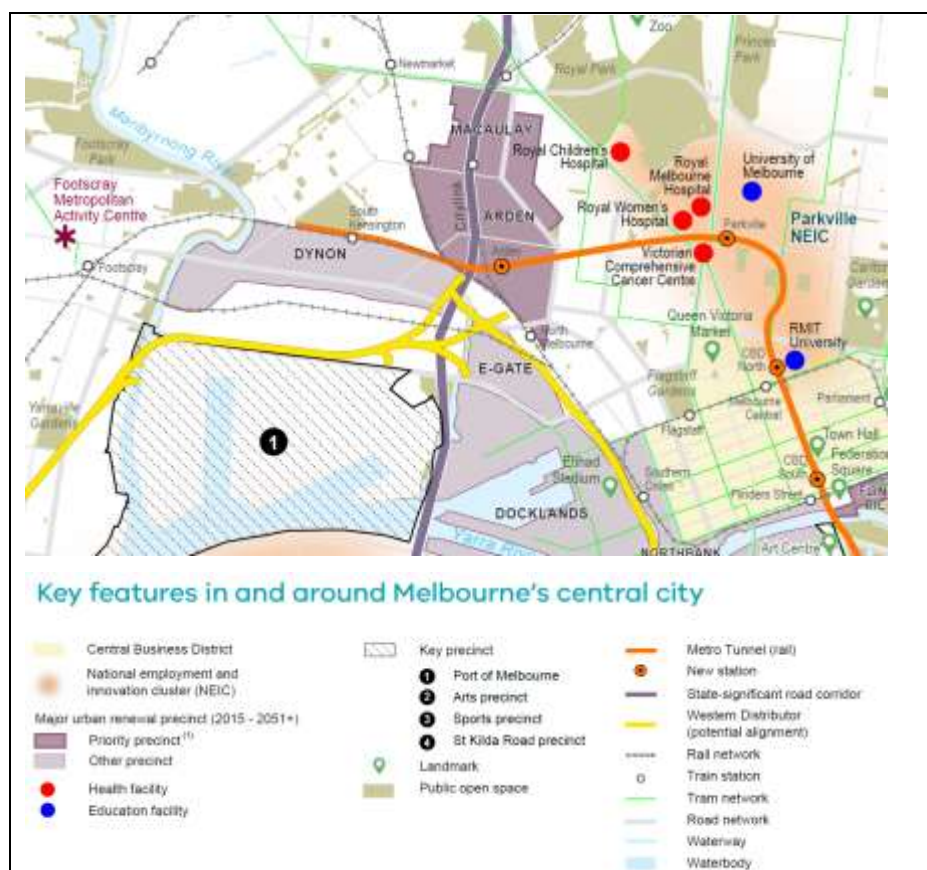
The Metro Tunnel includes five new underground stations, one of which is proposed at Arden. The tunnel will connect the Pakenham and Cranbourne lines with the Sunbury line and a proposed connection to Melbourne Airport, and allow these lines to bypass Flinders Street Station and the City Loop while still stopping in the CBD.

*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. Plan Melbourne sets out Policy:

- 3.1.1 Create a metro-style rail system with 'turn up and go' frequency and reliability.

The Metro Tunnel is part of a broader vision for the area in and around Melbourne's Central City that includes Arden as a priority urban renewal area.


**Figure 2: Central city features from Plan Melbourne**






Source: Plan Melbourne


## 2.2 Existing constraints

The precinct has a number of significant constraints. Under the heading 'Arden Today' the Structure Plan identifies:

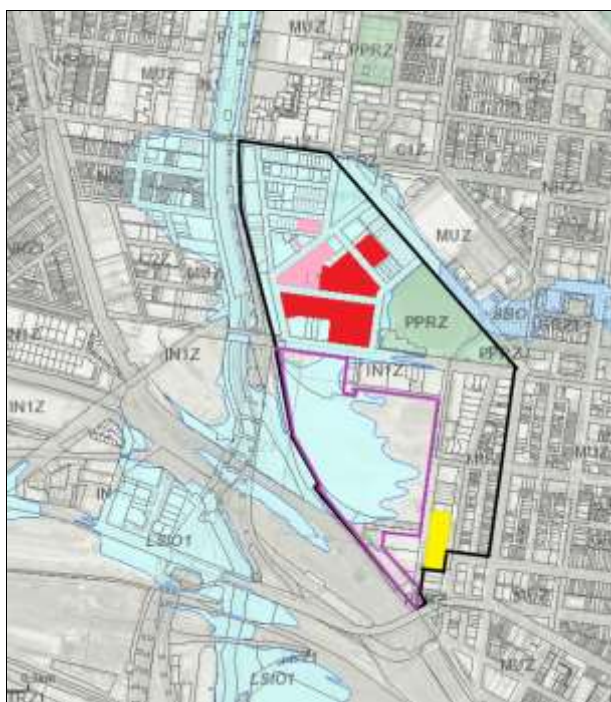
- **Flooding:** Formerly a low-lying wetland, much of Arden is prone to flooding today, shown as  on Figure 3.
- **Heritage:** Arden is home to heritage buildings, in particular converted warehousing, sawtooth industrial buildings and 19th century homes.
- **Contamination:** Arden's industrial history has left a legacy of land contamination, and some sites may need remediation before they can be developed.

Constraints also include:

- At grade Upfield rail line that runs parallel to the Moonee Ponds Creek acting as a barrier to the creek and constraining the ability to construct levies to protect against flooding.
- Existing land uses inimical to urban renewal:
  -  The Lost Dogs Home – the barking dogs are loud at night
  -  Citywide – there is noise and odour from its asphalt plant (see discussion below)
  -  George Weston Foods – there is noise and dust from its milling operation.

There are also significant opportunities some of which flow from the fact that the Victorian Government is the largest landowner, holding much of the land to the south west of the precinct around Arden Station, .

**Figure 3: Location of key land uses**



Source: Prepared by the Committee; approximate only


Citywide is a wholly-owned subsidiary of the Melbourne City Council (Council) although is governed by an independent board and functions as a separate legal and commercial entity.

Citywide owns approximately 3 hectares of land. Citywide uses the land to provide a wide range of critical services to municipalities in the inner Melbourne area. These include waste collection, civil infrastructure (including road and drainage) maintenance, and arboricultural, horticultural and

open space services. In this regard, while Citywide is a private company, its services provide a clear and direct benefit to the community.

These services are required 24 hours a day, 7 days a week and include responding urgently to emergency situations to quickly isolate and rectify hazardous and unsafe conditions, examples of which include fallen trees or branches, blocked drains, flooding, sinkholes and traffic management for emergency situations. Citywide submitted that its proximity to inner Melbourne *“is vital in enabling Citywide to respond to these situations promptly and effectively.”*

## 2.3 Planning policy framework

The current Municipal Strategic Statement (MSS) identifies Arden as a ‘Proposed Urban renewal area’ (shown as ‘6B’, , on Figure 4).

The current Clause 21.04-1.2 (Urban renewal areas) states:

### **Arden-Macaulay**

Arden-Macaulay is an area in transition. Since the 1880's, Arden-Macaulay has been primarily an industrial area supporting the city's economy through manufacturing and production. The profile of business activity in the area has been changing with some degree of land under utilisation given its potential in relation to its proximity to the central City.

The Melbourne Metro station project to be located between Citylink and Laurens Street will lead to major change east of the Moonee Ponds Creek.

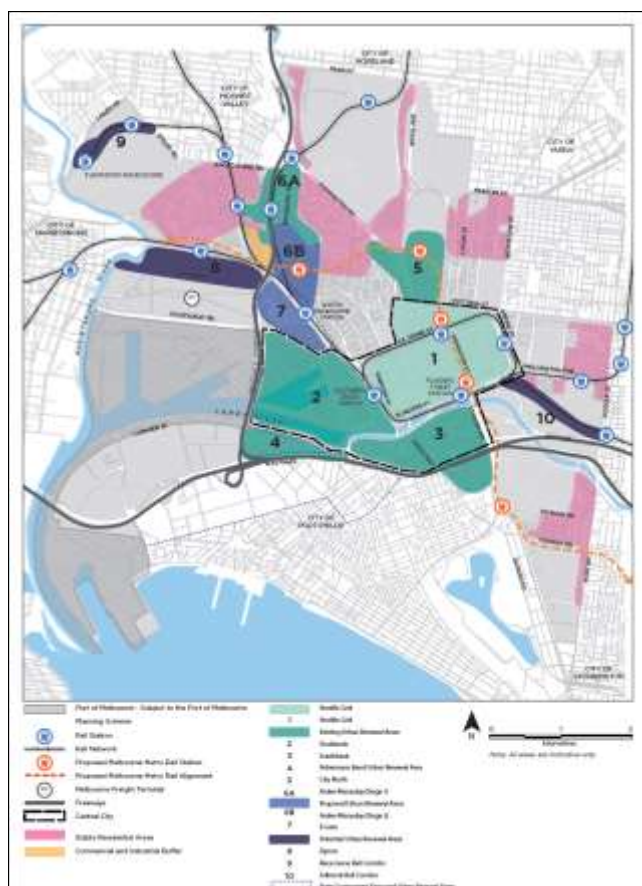
The Arden-Macaulay Structure Plan 2012 has been prepared and adopted by the City of Melbourne and will be implemented into the planning scheme via a planning scheme amendment. The directions of this plan for this local area are still to be inserted into the planning scheme.

Planning controls address the interface between on-going industrial and residential areas, and the interface between new development and existing residential areas and large manufacturing industry will be protected from sensitive uses by a land use buffer of non-residential development and/ or non-sensitive land uses (depicted within Figure 11 as *“Commercial and Industrial Buffer”*). The planning controls are being introduced in two stages (Stage 1 shown as Area 6A and Stage 2 shown as Area 6B on the Growth Framework Plan).

The Arden-Macaulay Structure Plan 2012 currently referenced in the MSS sets out as the first strategic direction *“Develop Arden Central as a new extension of Melbourne's Central City”* and includes plans showing this (see Figure 5).

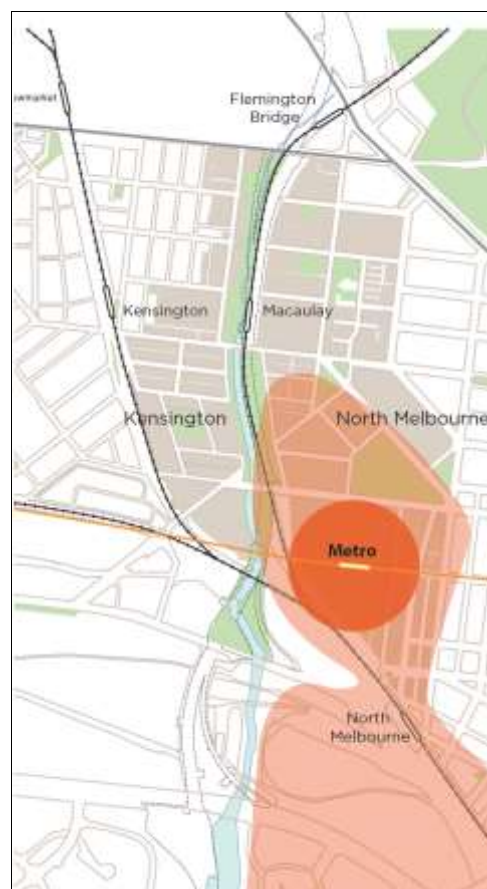


Figure 4: Plan from Melbourne MSS



Source: Current MSS

Figure 5: Plan showing area as part of Central City



Source: Arden-Macaulay Structure Plan 2012

## 2.4 Is Arden part of the Central City?

### (i) The issue

The issue is:

- Does the existing planning context treat Arden as part of the Central City?

### (ii) Evidence and submissions

Plan Melbourne distinguishes between:

**Central Business District (CBD):** Melbourne's original 'Hoddle Grid' street layout bounded by the Yarra River, Spring Street, La Trobe Street and Spencer Street, as well as the triangular area to the north bounded by Victoria, Peel and La Trobe streets.

**Central city:** The area within the inner region that contains key capital city functions and civic facilities, as well as several precincts identified for major and strategic change. It is a larger area than the Melbourne CBD.

**Hoddle Grid:** The grid pattern of streets making up Melbourne's CBD bounded by the Yarra River, Spring Street, La Trobe Street and Spencer Street, as well as the triangular area to the north bounded by Victoria, Peel and La Trobe streets. The grid was designed by Robert Hoddle in 1837.

**Inner Region:** Includes the municipalities of Melbourne, Port Phillip and Yarra City.

The Structure Plan implies Arden is not part of the Central City, stating:

What is Arden?

Arden is a 44.6 hectare urban renewal precinct in North Melbourne, less than 2 kilometres from the Melbourne Central City.

...

#### Objective 15

Provide space for high capacity public transport capable options and improving transport links connecting Arden into the expanding Central City.

Council took the Committee to Plan Melbourne and submitted:

56. From these designations, it is clear that Arden is not part of the expanded Central City. However, as a major urban renewal area, it has a role in providing significant residential and jobs growth and maximising the benefits associated with new transport infrastructure.

The VPA took the Committee to an earlier version of Plan Melbourne where it was clear that Arden was intended to be part of an expanded Central City. The VPA submitted:

47. There is no support in the current iteration of Plan Melbourne, or State and local policy, to suggest a reversal in the strategic direction of the urban renewal precincts identified in 2014 as part of the Expanded Central City.
48. The current Implementation Plan expressly includes Arden within the Central City:  
Leading Arden's urban renewal with significant opportunities to accommodate future population and employment growth in the Central City. It is envisioned that Arden will be a base for 34,000 jobs and 15,000 residents by 2051.
49. Action 3 also expressly acknowledges the urban renewal precincts that are included in the Central City:

#### **Central city urban renewal precincts**

Prepare long-term land-use and infrastructure plans for the state-significant urban renewal precincts in the Central City identified in Plan Melbourne, including Arden, Macaulay, E-Gate, Fishermans Bend, Docklands, Dynon and the Flinders Street Station to Richmond Station Corridor.

The VPA is proposing to rezone the precinct to SUZ7, and not the Capital City Zone (CCZ). This has implications on how the precinct will be perceived. Mr Barnes, who presented planning evidence for Council, considered that the SUZ distinguished Arden from the densities applicable within a CCZ. It was his evidence that a CCZ context is a different context to an urban renewal precinct.

Notwithstanding the drive for Arden to be a very dense place, it was Mr Barnes' evidence that while an amendment should not underdo development potential, this potential needs to be reconciled with the other elements of the Arden Vision to make Arden not only distinctive from the CBD, but distinctive within its own sub-precincts.

### **(iii) Discussion**

The Committee agrees with Council that the fundamental question is, what type of form should Arden have to meet the objectives of Plan Melbourne 2017? The Committee disagrees that this can be divorced from a consideration as to whether Arden is part of the expanded Central City.

There is merit in determining as part of this process whether Arden is to be conceived as part of the Central City or not. The views of both the VPA and Council do not seem internally consistent:

- The VPA submitted that Arden is part of the Central City but has proposed the SUZ not the CCZ and resisted the application of DDO1 which applies in Central City locations.
- Council submitted that Arden is not part of the Central City (despite its clear designation in Council's 2021 structure plan) but sought the application of DDO1 which is designed for Central City type environments.

It is clear the Central City has been expanding as Melbourne grows and develops. This is recognised in the planning scheme. Clause 21.02-1 (Context and history) states:

Around 2000 the Central City expanded again with the urban renewal of redundant port land in Docklands. Around this harbour setting high-density commercial and residential buildings were developed. This significantly expanded the Central City's waterfront aspect. Today the Central City encompasses the Hoddle Grid, Southbank and Docklands.

The current policies in the Melbourne Planning Scheme anticipate that Arden will be part of an expanded Central City:

### **21.03 VISION**

#### **Settlement**

To accommodate the municipality's growth over the coming 20 to 30 years the footprint of intensive growth areas will need to expand beyond Central City (Hoddle Grid, Docklands and Southbank) into designated new urban renewal areas.

Development in established residential areas will be limited to respect the existing neighbourhood character and heritage values of these areas.

An explicit strategy at Clause 21.04-2 (Growth) seems to imply Arden is intended to be part of an expanded Central City.

#### **Objective 2 To direct growth to identified areas.**

Strategy 2.2 Support ongoing urban renewal and Central City expansion in:

- Southbank
- Docklands
- Fishermans Bend Urban Renewal Area
- City North
- Arden-Macaulay.

The Committee notes that in the Melbourne Planning Scheme all land outside of the CCZ and Docklands Zone is covered by Clause 22.17 (Urban Design Outside the Capital City Zone). The Committee was not taken to this policy.<sup>1</sup> This is a policy that would apply if the land is placed in the SUZ.

If Arden is not part of an expanded Central City it is not clear precisely what policy designation it would have. It has not been identified as an activity centre or an employment cluster. 'Urban renewal' refers to a process and so there is a need to articulate what that renewal process ought to achieve by way of urban function and character. Simply saying it is an innovation precinct does not give any indication of its scale or function beyond the type of land use activity envisaged.

The Committee thinks that viewed broadly, policy over the last 10 years at both a State and Council level has envisaged Arden as an extension of the Central City. To avoid future debates on this policy question the Amendment should be unambiguous.

### **(iv) Conclusion**

The Committee concludes:

Arden is part of the Central City and the planning scheme should be unambiguous about this through clear policy statements and in the application of controls.

<sup>1</sup> Of the planning experts who presented a summary of existing policy Ms Peterson and Mr Barnes did not reference this policy, Ms Murray did.



## 3 Threshold issues and the approach of the Committee

This chapter addresses some threshold issues on what will need to happen to achieve the desired outcomes and how the Committee has approached its task.

### 3.1 Making it happen

#### (i) The issue

The issue is:

- Whether there is clear government commitment to the delivery of the vision.

#### (ii) What is proposed

Under objective 29 the Structure Plan states:

A coordinated and collaborative development strategy will be required to ensure the success of the project. The Victorian Government is preparing a development strategy consistent with the key directions outlined in this structure plan.

Consideration of current and future landholders, residents and employers; the delivery of major infrastructure projects in particular the Arden station due to open in 2025; attracting tenants, and the curation of government landholdings to set the precinct's economic direction. The development strategy will also consider works required to make Arden 'development-ready', including precinct-wide flood management, contamination remediation or management, facilitation of the transition of industrial businesses and noise and air pollution attenuation. The coordination of these elements is critical to place creation, investment attraction and community development.

The Victorian Government is committed to the development and curation of Arden to ensure that the objectives of a high quality place to live, and innovative place to work, are achieved.

Early place shaping activities are essential to building identity and community connectedness and support Arden's innovation aspirations particularly around the Arden station opening. (emphasis added)

Strategy 26.2 of the Structure Plan states:

Establish a delivery strategy that outlines whole of precinct development coordination, staging and timing. This will include a strategy for government landholdings, an approach to working with the private development sector, and set out a coordinated approach to the delivery of key infrastructure items.

Appendix 2 of the Structure Plan sets out a Precinct infrastructure plan with 93 infrastructure items.

Despite the espoused commitment of the State Government, Council is nominated as the development agency in the DCP. The DCP at Section 4.6 states that:

Melbourne City Council is the development agency and is responsible for the provision of the designated infrastructure projects which are funded under the DCP and the timing of all works.

The DCP goes on to state this may change in the future with the Department of Transport becoming the development agency for several projects. However, any such transfer is dependent upon written agreement from the Department of Transport (or equivalent).

**(iii) Evidence and submissions**

The Lost Dogs Home submission stated:

82. It is of strong concern to The Lost Dogs' Home that there remains very limited clarity and certainty around the delivery and governance model for implementation of the Plan, the authority(ies) responsible for land acquisition and infrastructure delivery, and the timing for this to occur. There is no timing identified in the Plan for when the future 'delivery strategy' referred to at page 90 of the *Structure Plan* will be commenced or concluded, and what role stakeholders will have to participate in this process or influence the timing of infrastructure delivery.

This view was common among submitters. Council expressed deep concern about assuming the responsibilities of the development agency due to the high risks and costs that are present in delivering the DCP. Referencing Mr De Silva's DCP evidence for the VPA, Council submitted:

252. The evidence of Mr De Silva and opinions he expressed at the roundtable centred on the need for direct government involvement to ensure the area realises its potential. He expressed the view that 'it is not an option to let the constraints work themselves out'.
253. We agree.

Late in the hearing the Committee was informed through the VPA's Part C submission (para 229) that:

The Department of Transport's final position is that it does not agree to be nominated as the development agency under the DCP for projects DR-01; DR-02; DR-03; DR-04; and DR-05.

These projects include the land acquisition of around \$217 million.

Council has made it clear it did not want to be the development agency for these works.

**(iv) Discussion**

The Committee agrees with Council and Mr De Silva that the realisation of urban renewal in the area will require a hands-on approach by the State Government.

The government investment in the metro tunnel is significant, and while this investment underpins the potential for renewal in the precinct it is not sufficient to unlock that potential in and of itself. Arden needs to be more than a government led planning project; it needs to be a government development project.

Government action and investment will be needed to address stormwater issues, deliver the open space, a number of local streets, local public transport and potentially consolidated parking.

The completion of the delivery strategy needs to happen as a priority because a range of decisions and outcomes will flow from this strategy. From the diagram in the *Structure Plan* (Figure 35), it is evident that development is envisaged to occur first around the Arden station with drainage works that affect the north of the precinct to not occur until the mid 2030s. This will leave a large part of the Arden precinct undevelopable for 15 years or more.

An alternative approach would be to consider early completion of all the drainage works required. This would require State intervention through the provision of financing to fund the drainage infrastructure and other required infrastructure. This would help facilitate the development of the whole Arden precinct and deliver on the objectives of the Arden Vision.

Leaving the industrial areas undeveloped for an extended period risks the degradation of the area as businesses will not invest in upgrading and extending their businesses. This will be a drag on the newly developed areas around the new train station.

The relevant legislation does not seem to have contemplated a situation where an agency is made a development agency under a DCP against its express wishes. However, it would appear that if Council is made the development agency for critical works under the DCP, while it could not use the collected funds for other purposes, there would be no legal obligation for it to deliver the works.

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

The Committee concludes:

The State Government will need to take a hands-on role to deliver the vision.

The State Government will need to progress relocation of Citywide and the delivery of the drainage works as a matter of priority.

### **3.2 Cost and financing**

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

The issue is:

- The timing and financing of works to ensure early delivery of key infrastructure.

#### **(ii) What is proposed**

The timing and financing of the infrastructure is uncertain and not well articulated in the DCP.

The DCP gives no information on the timing of delivery of infrastructure, estimating the delivery horizon for most projects to be within the 25 year time horizon of 2021-2046 (DCP, Tables 3-8).

The largest cost in the DCP is land purchase of an 'integrated stormwater management and open space' area (ISMOS) that would serve as a retaining basin and active sport ground.

The collection rate in the DCP is 'capped' and so it will not raise all the funds required for the proposed works. This funding gap is in the order of \$46 million based on today's figures.

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

In its closing submission Council highlighted the State Government has committed in principle to the gap funding and this being reflected in the Arden DCP.

The Structure Plan envisages development to start around the new Arden station. Citywide (Doc 129, para 23) raises the issue of when the ISMOS will be delivered. In its opening submission, the VPA stated that it expects that *"The working drainage strategy will be implemented over time with the majority of works to be completed in 2040"*.

Council identified the need for up front funding, submitting:

254. For significant land holdings required to deliver the DCP there will need to be a forward funding strategy developed to secure this land ahead of contributions being received and Council expect the State to build other infrastructure as 'works in kind' (WIK) and not just offset DCP obligations with land in the first instance. Removing contributions apportionment to certain drainage projects within the DCP under State ownership will help to alleviate this issue to a certain degree.
255. DCP projects including community facility projects proposed for State Government land or land proposed to be acquired by the State to facilitate drainage infrastructure delivery will require intervention at the subdivision stage to ensure projects are delivered, for example, the option for Council to secure space within developments for community facilities is secured through a Section 173 agreement.

Several submitters have questioned the delivery of the required infrastructure. The Theodossi Group (Doc 40, Point 10) stated:

Timing of infrastructure in DCP unclear and there is risk of clarity regarding mechanisms for the collection of financial contributions to fund drainage infrastructure.

The DCP conclave at Matter 11 stated:

Responsibility for any funding 'gap' is a matter that needs to be resolved before the DCP is finalised (noting that apportionment may apply). Options for consideration (within the context of broader resolution of DCP issues) include:

- Council assumes responsibility (not supported by MCC);
- A full cost recovery approach is adopted (PS, para. 101);
- Certain infrastructure projects are removed or the cost apportioned to the DCP reduced;
- or
- An alternative agency or level of Government assumes responsibility for funding the 'gap'.

Matter 12 from the DCP conclave goes onto state "*Nomination of Council as the Development Agency for all DCP items poses some financial and other risks, in particular for drainage items*".

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

The biggest single item is the land acquisition for drainage purposes, proposed under PAO8.

The Committee is broadly satisfied with the costing methodology and the recommendation of the costing experts.

On the project cost side the risk is narrowly confined to the level of contingencies. The project costings have allowed for a 20 per cent contingency, whereas Council has suggested a 30 per cent contingency is appropriate.

There are substantial financial risks related to the final yield to be delivered in the Arden precinct.

The yield for total gross floor area is uncertain both through the discussions on built form but also through the aspirational nature of the targets. Throughout the Hearing there has been pressure to reduce the number of demand units that apply to the DCP. In broad terms, if the number of demand units falls by 10 per cent, then the unit cost will increase by 11 per cent. If the unit rate is capped at the rates outlined in the exhibited DCP as proposed (that is \$21,500 per dwelling), then the 'funding gap' will increase by the commensurate amount.

There is also a risk to funding through not delivering the amount of gross floor area. There is a distinct possibility due to a number of reasons that the total gross floor area will not be delivered. These include:

- development not occurring within the prescribed 25 year timeframe of the DCP
- lots are not amalgamated sufficiently to facilitate highest yield outcomes
- buildings not being built to their maximum size.

This is in contrast to growth area Infrastructure Contributions Plans (ICPs) where development is reasonably straight forward and minimum yields are required through lots per hectare. In recent years, lots per hectare has continually increased ensuring that the ICPs are reasonably well funded. This relative certainty does not exist in urban renewal areas where the development outcomes will be highly variable.

These risks must be borne by the development agency. Council has made it clear it is not prepared to accept these risks.

Due to the large cost of infrastructure, particularly the acquisition of land for the ISMOS, the question of how to finance and fund this acquisition needs to be addressed. The timing of delivery had not been established prior to the exhibition of the DCP. This has been deferred to another process (Strategy 26.2).

The State Government will need to accept these risks. How this is achieved needs to be finalised before the finalisation of the DCP. There are multiple options open to the State Government. It can become the development agency. It could guarantee the funding gap over the life of the DCP. A full cost recovery model is not recommended by the Committee due to the high costs to be borne by developers.

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

The Committee concludes:

Delivery of Strategy 26.2 in the Structure Plan must be completed as soon as practically possible. Other models of delivering and financing the significant drainage should be considered as part of this process.

The State Government should bear the risk of additional costs in delivering the infrastructure proposed to be funded by the Development Contributions Plan.

### **3.3 Acceptable or optimal outcomes**

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

The issue is:

- Should the Amendment seek acceptable or optimal outcomes?

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

Council submitted:

2. From the outset of these closing submissions, it is to be made abundantly clear, the Council does not regard the test of acceptability to be the correct one in respect of planning scheme amendments, as expressed by the VPA in its opening written and verbal submissions, such as at [12]:  
The VPA acknowledges that the successful delivery of the vision for Arden depends upon ensuring that both the vision and the detail embody acceptable outcomes for the future community of Arden.
3. And, at [19]:  
... the planning test with respect to built form and land use outcomes that achieve important policy imperatives is one of acceptability.
4. While it is correct the question of whether a proposal is an acceptable one arises in the context of a decision maker tasked with determining whether or not a planning permit proposal ought to be supported, this is not the case for a planning scheme amendment.
5. Rather, the test is one of optimality in our submissions.
6. And, this is consistent with the language and intent the Arden Vision calls for using phrases such as Arden will “set new standards for urban renewal”, “showcasing the best that Melbourne and Victoria has to offer”, “a world class example of sustainable urban practices”, and will be “at the forefront of sustainable development”, “shaped by exemplary urban design and built form”.

### (iii) Discussion

The Committee distinguishes between project specific approvals and strategic changes to planning schemes.

#### Project specific proposals

Project specific approvals are typically by way of a planning permit, but may also be by way of a planning scheme amendment. Clause 71.03-2 of the Planning Scheme seeks 'acceptable outcomes' for planning permits:

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the Proposal will produce acceptable outcomes in terms of the decision *Guidelines* of this clause.

In *Western Water v Rozen & Anor* [2010] VSC 583, the Supreme Court stated:

The test of acceptable outcomes stated in the clause is informed by the notions of net community benefit and sustainable development. ...

The weight to be given to the various considerations which may be relevant on the one hand, and to particular facts bearing on those considerations on the other hand, is not fixed by the planning scheme but is essentially a matter for the decision maker ...

A consideration of acceptability could involve a consideration of:

- the strategic justification of the specific proposal on the proposed site
- the inherent suitability of the land for the proposed use or development
- off-site impacts including amenity and environmental effects.

Assessing whether a proposal is strategically justified does not mean a panel or advisory committee should seek to assume the broad strategic planning role of local or State Government; it must respect the decisions that have been properly made by government or an authority. That said, this does not imply that the agencies can act without strategic justification.

The Committee notes observations made in the Mildura C56 Panel Report. That panel stated:

... The use to which the land would be put must be defined and the strategic site selection process transparent. Neither occurs here. There was no suggestion even that other sites had been considered and ... submission that the uses could be defined after the land would be purchased fails in a fundamental manner to respond to the need for strategic justification.

In summary, having considered this issue, we conclude that there has not been a thorough or adequate strategic planning process that has positively identified the affected land as being required for the purposes nominated by the acquiring authority. [Page 30]

Where there has been a strategic assessment process the Committee endorses the approach of the panel for Ballarat C185 (PSA) [2015] PPV 103, which considered an amendment to facilitate the relocation of the Ballarat Saleyards. That panel commented:

We agree that it is not our task to identify alternative locations (including the upgrade of the existing facility). While panels and the Tribunal do not assess alternative sites (or proposals), they do, when required, assess the strategic logic of a selected site. This is not to determine that the site is the optimum location, or indeed that it is suitable compared to other sites, but rather that there has been some analysis of what makes a suitable site, and the subject site meets those criteria. The benefit of fully informing a panel about site selection is to help inform the assessment of what makes a site suitable.

A proposal may also be rejected because some elements of poor performance might be determined to be so unacceptable that no amount of compensatory benefit can balance them. For example, in the Crib Point Project Inquiry, the Inquiry and Assessment Committee (IAC) found that the project would have unacceptable effects on the marine environment and should not proceed on this basis:

It has not been demonstrated that the likely and potential environmental impacts on the marine environment are able to be mitigated to an acceptable level and the cumulative impacts of the Project, specifically the impacts associated with the FSRU [Floating Storage and Regasification Unit], are considered unacceptable. In seeking to balance the role of the Port and the Project's impacts on the sensitive marine environment, the IAC does not consider the impact on marine biodiversity and overall cumulative impacts would achieve an acceptable environmental outcome.

In these circumstances, a panel or advisory committee may recommend alternative options for further investigation and comment. This has been done on occasions with certain road projects and in the context of some advisory committees.

### Strategic elements

For the strategic elements of an amendment that are not directed at a specific investment but rather are to guide how an area ought to be used or developed, the Committee is guided by (among other things) Ministerial Direction 11 which has as its purpose:

... to ensure a comprehensive strategic evaluation of a planning scheme amendment and the outcomes it produces.

It requires that in preparing an amendment a planning authority must:

- 3(1) Evaluate and include in the explanatory report a discussion about how the Amendment addresses the following strategic considerations:
  - Why is an amendment required?
  - How does the Amendment implement the objectives of planning in Victoria?
  - How does the Amendment address any environmental, social and economic effects?
  - How does the Amendment address any relevant bushfire risk?
  - Does the Amendment comply with the requirements of any other Minister's Direction applicable to the Amendment?
  - How does the Amendment support or implement the Planning Policy Framework and any adopted State policy?
  - If the planning scheme includes a Local Planning Policy Framework, how does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?
  - If the planning scheme includes a Municipal Planning Strategy, how does the Amendment support or implement the Municipal Planning Strategy?
  - Does the Amendment make proper use of the Victoria Planning Provisions?
  - How does the Amendment address the views of any relevant agency?
  - Does the Amendment address the requirements of the Transport Integration Act 2010?
- 3(2) Assess the impact of the new planning provision on the resource and administration costs of the responsible authority.

Clearly an amendment needs to be strategically justified and where this is not the case it can be fatal for the Amendment. For example in Whitehorse C175, dealing with the Box Hill Metropolitan Activity Centre, the panel recommend abandonment because of a lack of strategic justification:

The Panel cannot find the strategic justification for the Amendment in the *Guidelines* or the material presented to the Panel. It is not the role of the Panel to invent such a justification (if that were even possible) nor to change the proposed controls to something entirely different as proposed by the proforma submissions: that would in effect be a different amendment.

The strategic justification underpinning this ought to be applied consistently. As a general principle it not the role of a panel or advisory committee to go beyond the exhibited amendment and to 'stand in the shoes' of the planning authority. However, the Committee is aware of other amendments (not in the City of Melbourne) where the strategic work that underpins the amendment has not been applied in a consistent fashion, such as where:

- essentially identical parcels of land have been treated differently for no explicit reason
- different built form controls have been applied to essentially identical situations.

In these sorts of cases the Committee thinks it may be appropriate for a panel or advisory committee to consider whether land not covered by the exhibited amendment should be included, or to recommend changes to the amendment.<sup>2</sup>

### **Net community benefit**

A consideration of the Amendment requires the Committee to assess its net community benefit.

The Planning Scheme explains that society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

Clause 71.02-3 (Integrated decision making) of the Planning Scheme sets out how to address issues:

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

Assessing whether a particular proposal will achieve net community benefit involves weighing up the benefits and disbenefits of a proposal having regard to relevant policies (and planning controls for a development plan approval or permit). Essentially this involves considering a ledger that balances a column of benefits against a column of disbenefits. The Committee accepts that despite some entries in the disbenefits column, a proposal might still achieve net community benefit.

### **(iv) Conclusions**

The Committee concludes:

The fundamental test of an Amendment is net community benefit and sustainable outcomes, and the Amendment needs to deliver acceptable outcomes on all its elements

The Committee should generally accept the technical solutions proposed by authorities unless:

- there is no strategic justification of the specific proposal on the proposed site
- the land is inherently unsuitable for the proposed use or development, or the proposal is likely to be unworkable
- the off-site impacts including amenity and environmental effects are unacceptable.

## **3.4 How should the Committee respond to evidence?**

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

The issues is:

- How should the Committee characterise and respond to the urban design evidence?

<sup>2</sup> This might involve further notice.



**(ii) Evidence and submissions**

In oral submissions the VPA characterised the urban design advice as “*subjective preferences about density*”.

Council submitted:

20. ... what the Council has sought to do, and has demonstrated through its willingness to hear, absorb and respond to the expert evidence of both urban designers (who in turn have interpreted, reflected and formed an opinion on the additional modelling that has been carried out) and arrive at an informed position. Council's final position on density controls largely reflects the consensus recommendations put forward by the expert witnesses.
21. In Council's submission, a very significant increase in density is proposed, and it is Ms Hodyl's evidence that even with the proposed reductions to FARs, a very dense built form will result in Arden. Even if the Advisory Committee is minded to agree with Council, and accept the reduced FARs, there ought be no fear as to underdevelopment. It was Ms Hodyl's expert opinion that 'underdevelopment is highly unlikely'.
22. An alternative is to adopt the VPA's FARs for which there is no basis. No strategic basis. No evidence basis. And further, may actually work against the achievement of the objectives for the precinct set out in Plan Melbourne and the Arden Vision.
23. Mr Barnes' evidence was the density 'seems to be very high' and he struggled to reconcile how it aligned with the Arden Vision and ambitions of the *Arden Structure Plan*. His evidence was that the background documents made available to him to form his opinion had no basis for the proposed FARs. To the contrary, and by way of example, the Arden Concept Plan report prepared by MGS architects clearly expressed concerns with achieving the projected densities. Under cross examination, Mr Barnes stated:  
*I couldn't see where the original FARs have come from. I couldn't see a good link to a background report. Part of my observation was they seemed high, the other was there was a lack of justification for them. That justification might exist, but I am not aware of it.*
24. Having come all the way through the Hearing of some several weeks, the Council remains in the dark (alike Mr Barnes) as to where the justification for the changes arises from. Further we remain in the dark as to how the proposed densities have considered and responded to the body of evidence put forward by expert witnesses, including further built form testing, which does not support what has been accepted by the VPA.

Ms Hodyl gave urban design evidence for Council. In Ms Hodyl's opinion a lot of extensive modelling had been undertaken showing the proposed FARs don't work. She said:

The argument they should be higher is flawed and the modelling – increasing them above would be even more problematic. We need mandatory FARs to get proper outcomes.

Mr Sheppard gave urban design evidence for the VPA. It was Mr Sheppard's evidence that:

From an urban design perspective, the gross density numbers don't have a direct relevance. You can have a good and bad outcome with high and low density.

What I am interested in is whether the built form outcomes – and to that extent – my recommendations do affect density. There are other non-urban design factors which need to be taken into account regarding densities.

In response to Mr Sheppard's rationale for the application of mandatory FARs – that the price of renewal land in Arden will necessitate building to the maximum building envelope permitted and will itself stifle innovative design – the VPA submitted (Doc 132):

133. This suggests a lack of faith in the decision maker and fails to consider and weigh the clear guidance provided by the controls, in terms of the character sought within each precinct, and related decision guidelines.
134. It is also simplistic, in that it fails to recognise that site specific opportunities and constraint are part of the architectural design approach, nor is the assertion supported by empirical evidence. The Committee should not undertake strategic planning, nor constrain development in this renewal precinct based on anecdote alone.

135. The extent of disagreement between Ms Hodyl and Mr Sheppard is significant. It exposes the urban design analysis of the operation of the FARs as highly subjective and based substantially on conjecture and speculation about what architects may do.

### **(iii) Discussion**

The VPA's submission seems to be based on the proposition that 'objective' refers to facts, while 'subjective' is anything that involves an opinion.

This approach seems to underestimate professional judgement. Part of the training in many professions is to ensure that the professionals give opinions similar to other members of their profession when faced with similar facts. We do not say that medical doctors make subjective diagnoses, though we accept different doctors might reach different conclusions.

The Committee proceeds on the basis that in the right circumstances, opinions can be objective. It adopts the following distinction between objective and subjective:

- Objective means data or opinions generated from a point of view that is independent of the observer, and which is therefore measurable or verifiable by standards that do not vary from observer to observer.
- Subjective means data or opinions generated from a point of view that depends on something innate and unique to the observer, not verifiable by any outside standard.

What makes a conclusion 'objective' is simply that it is based on an *external, independent* standard. The test is whether Mr Sheppard and Ms Hodyl were following a methodology where they sought to assess the controls (with the help of modelling) against a standard they could articulate, and whether those views were guided by agreed facts. The Committee believes they were. Professionals can hold different opinions and still be objective.

But on a broader level: if the VPA thinks that urban design evidence is by its nature 'subjective' then why call it in the first place? Why pay for the modelling? If the VPA truly believes that urban design evidence is subjective and should not be relied upon it should take this approach in all its hearings and not just when the evidence contradicts its position.

### **(iv) Conclusion**

The Committee concludes:

Planning is strongest when it takes an evidence-based approach and this is the approach the Committee should take.

## **3.5 Mandatory or discretionary controls**

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

The issue is:

- Whether mandatory controls are justified.

### **(ii) What is proposed as mandatory**

The Amendment proposes:

- mandatory FARs for a number of sites
- mandatory protection of some open space from overshadowing

- prohibition of certain uses under the zone, specifically Industrial uses listed in Clause 53.10 that do not meet their threshold distances or are within the measurement length of a specified gas pipeline.

Council has proposed:

- increasing the extent of mandatory FAR and open space overshadowing controls
- the application of DDO1 which deals with design issues to the precinct – this control has a number of mandatory requirements
- making the limit on car parking mandatory.

### (iii) Evidence and submissions

Council submitted (Doc 131 para 48) that that the proposed mandatory FARs it supported provide the flexibility to achieve the vision and fulfil Arden's role, whilst providing for a diversity of land uses and superior public realm outcomes.

Council submitted:

50. The Arden Vision states that "*Arden's reputation as a highly liveable and sustainable precinct will make it a magnet for innovative industries, education and jobs*", and that "*a high quality public realm will support investment attraction*". The evidence has shown that the VPAs proposed built form controls risks overdevelopment that would create an uninviting and poor public realm experience. Without holistic achievement of the Vision, Arden will not be conducive to attracting industry which are notoriously fickle about the level of amenity when making location decisions.

The VPA submitted (Doc 132):

131. The VPA maintains its position in relation to the discretionary nature of the FARs. The mix of mandatory and discretionary controls, including the FARs and solar protection provisions, were carefully resolved in the preparation of the Amendment. The mix of controls has sought to protect key open spaces and sensitive interfaces, whilst maintaining flexibility to achieve and deliver a variety of built form outcomes.

### (iv) Discussion

To justify mandatory provisions it needs to be demonstrated that discretionary provisions are insufficient to achieve desired outcomes.

*Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes* (September 2018) (PPN59) sets out a number of criteria to assess whether or not the benefits of any proposed mandatory provision outweigh any loss of opportunity and the flexibility inherent in a performance-based system.

The Committee makes the following observations and findings in relation to the mandatory built form requirements in the Amendment, having regard to the criteria in PPN59.

#### **Is the mandatory provision strategically supported?**

The provision of the exhibited mandatory FARs is justified on strategic grounds. The proposed mandatory requirements are clearly intended to achieve an objective rather than being simply a prescriptive tool.

#### **Does the mandatory provision provide for the preferred outcome?**

The proposed mandatory requirements would avoid the risk of adverse outcomes in an area where there is likely to be constant pressure for development to exceed the proposed control.

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

The urban design experts having reviewed extensive built form modelling have concluded that proposals not in accordance with the requirements will fail to meet the objectives of the controls and will lead to unacceptable planning outcomes.

### **Will the mandatory provision reduce administrative costs?**

The proposed mandatory provision reduces costs imposed on councils, applicants and the community to the extent that it significantly outweighs the benefit of a performance-based provision.

The key point of difference between Council and the VPA is that the VPA sought more flexibility, not simply it would seem within the proposed built form parameters, but beyond these including the possibility for *“new and evolving land use and built form typologies that may not currently be considered”*, and in this context said *“the Committee should not undertake strategic planning, nor constrain development in this renewal precinct based on anecdote alone.”*<sup>3</sup>

Part of the Committee’s task is to assess the strategic planning that has been carried out. PPN59 presents a criteria:

- Is the mandatory provision appropriate to the majority of proposals?

The Committee thinks that this only makes sense if it is read as:

- Is the mandatory provision appropriate to the majority of strategically consistent proposals?

Strategy works at a number of levels and the broad objectives for an innovation precinct need to be resolved into a coherent urban form. This is what the Amendment does. While this is not the only built form strategy that could be pursued, it is within the chosen strategy that the issue of the appropriateness of mandatory controls needs to be considered. Making this assessment is not tantamount to the Committee undertaking strategic planning – rather, it is ensuring the consistent and efficient application of the planning that has been done to date and that underpins the Amendment.

The Committee has assessed the need for mandatory controls in terms of the loss of flexibility to achieve the urban design strategy that underpins the Amendment, not some broader flexibility to potentially permit something completely different in the future. The flexibility that the VPA sought seems to be the flexibility to adopt a different urban design approach. It is in the VPA’s remit to do this, but it should be by way of a different, or future amendment.

The Committee notes that prohibiting uses under a zone is a type of mandatory control. For the reasons discussed in the Executive Summary the Committee does not consider the prohibitions proposed in the SUZ are strategically justified.

The issue of mandatory maximum parking provisions is discussed in Chapter 5.4

**(v) Conclusions**

The Committee concludes:

Planning controls should be as flexible as possible, but as prescriptive as necessary.

Whether a mandatory control is justified needs to be assessed in the context of the strategy that the Amendment is seeking to achieve, and the objectives of a proposed control.

Whether specific mandatory controls are justified in this case is considered in the following chapters

## 4 Proposed urban structure

This chapter examines issues with the proposed urban structure.

### 4.1 Overall structure

Figure 6 shows the key elements of the Structure Plan.

**Figure 6:** Key Structure Plan elements

#### Land use



The Structure Plan says future zoning in Arden will facilitate a mix of land uses to create an employment focussed and amenity rich mixed use innovation precinct including:

- Arden Central – Innovation, where a potential hospital campus will act as an anchor for innovation and education.
- Arden Central – Mixed-Use and the civic heart of the precinct, with a new neighbourhood open space, proposed government primary school and community hub.
- Arden North – a mix of businesses of various scales, a new community hub and creative industries such as music, media, performing arts, manufacturing and design.
- Laurens Street – will build on its established residential uses to accommodate further residential and small-scale businesses and creative enterprises.

#### Transport



The Structure Plan says that Arden will set a new standard for sustainable transport. Arden will prioritise people walking, cycling and using public transport to meet their daily needs. A walkable street network and protected cycle lanes will connect Arden with surrounding neighbourhoods.

Car parking will be delivered in consolidated locations and other spaces throughout the precinct.

Longer trips will be served by the new Metro Tunnel, connecting Arden to the west of Melbourne, Parkville, the Central City and beyond. It will be supported by the existing North Melbourne and Macaulay stations as well as high capacity public transport capable corridors, to future-proof public transport investments and options into the future.

### Built form

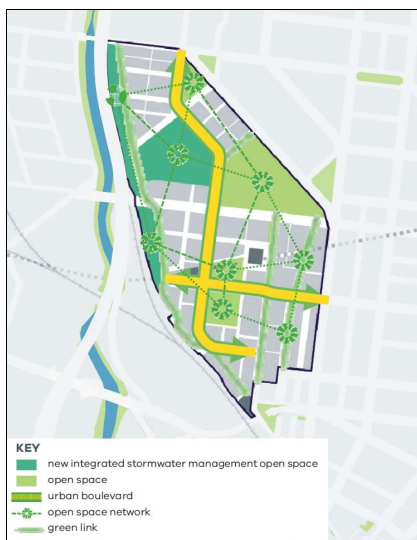


Arden's urban design strategy seeks to ensure consistent, high quality and context sensitive urban design outcomes while encouraging innovation, research and sector based uses with complementary uses within the precinct.


The strategy seeks:


- to drive urban design excellence to benefit the wider precinct
- positive outcomes that avoid or minimise negative impacts of the precinct
- integration of high quality urban design with effective built form outcomes, and
- to manage flooding in new development.

### Public spaces and streets



The Structure Plan says Arden's generous and integrated network of open spaces will celebrate water in the landscape and be a core part of Arden's identity.



The Fogarty Street and Queensberry Street urban boulevards, , will integrate Arden with its surrounding neighbourhood and function as integrated stormwater management open spaces, celebrating water in the streetscape and increasing the precinct's urban canopy and creating biodiversity corridors.

A new integrated stormwater management and open space area is proposed, .

### Street cross sections



The proposed cross sections for proposed roads and streets show:

- , streets intended as transit malls without vehicular access
- , streets, or sides of streets, without car traffic.

## 4.2 The quantum of development and assessing the effects of reduced density

### (i) The issue

The issue is:

- Whether the quantum of development proposed is too high.

### (ii) What is proposed

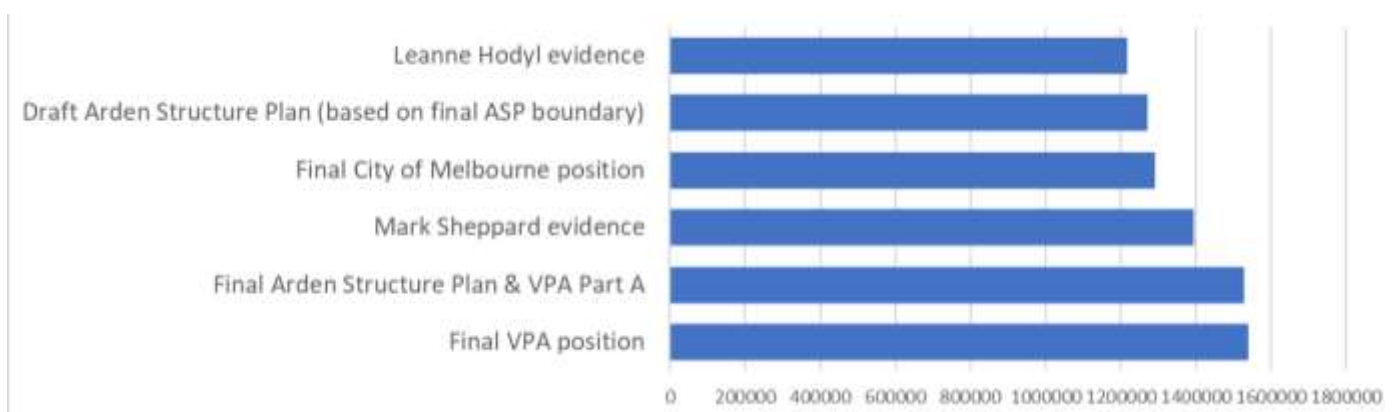
Council submitted (Doc 142) a table (Table 1) to illustrate the estimated allowable densities under each of the schemes put forward. It shows that the recommended FARs proposed by Council sit between the experts' views (+ / - 10 per cent), whilst the Part A position put forward by the VPA increased the controls – increasing the gap of allowable density between them and the views of the experts.

**Table 1:** Estimated allowable GFA and average FARs

| Estimated allowable GFA (sqm)                                       |           | Average FAR | Arden Central FAR | Arden North FAR | Laurens Street FAR |
|---|-----------|-------------|-------------------|-----------------|--------------------|
| Draft Arden Structure Plan (based on final Structure Plan boundary) | 1,272,130 | 7.8         | 9.9               | 6.2             | 5.9                |
| Final Arden Structure Plan & VPA Part A                             | 1,528,720 | 9.2         | 11.6              | 7.1             | 7.3                |
| Mark Sheppard evidence  | 1,393,040 | 8.4         | 10.3              | 6.8             | 6.8                |
| Leanne Hodyl evidence   | 1,217,520 | 7.4         | 9.4               | 5.8             | 5.5                |
| Final VPA position  | 1,539,150 | 9.3         | 11.6              | 7.1             | 7.5                |
| Final Council position  | 1,290,790 | 7.8         | 10.2              | 5.8             | 5.7                |

Figure 7 shows that extent in variation of the quantum of floor space proposed.

**Figure 7:** Quantum of floor space proposed



Council and the VPA differed on how to calculate the proposed FARs. Council preferred a block by block approach and the VPA preferred a whole of precinct approach. Table 2 shows the average FAR calculated by each of these methods.



**Table 2: Average FAR**

|   | Council preferred<br>method: by<br>structure plan blocks<br>area | VPA preferred<br>Method: by precinct<br>area |
|---|--|--|
| Draft Arden Structure Plan (based on final Structure Plan boundary) | 7.8  | 3:1  |
| Final Arden Structure Plan & VPA Part A                             | 9.2  | 3.4  |
| Mark Sheppard evidence  | 8.4  | 3.1  |
| Leanne Hodyl evidence   | 7.4  | 2.8  |
| Final VPA position  | 9.3  | 3.5  |
| Final Council position  | 7.8  | 2.9  |

**(iii) Evidence and submissions**

Council's main point was that the population targets underpinning the Structure Plan and Amendment no longer reasonably reflected the capacity of the Arden precinct. It was Council's submission that if the land area of the precinct reduces, to maintain the same vision, a commensurate reduction in anticipated growth ought to follow to a level consistent with the original level of density imagined by the vision. Figure 8 shows these changes.

**Figure 8: Changes in development area**

Source: Council's opening submission (densities omitted by Committee)

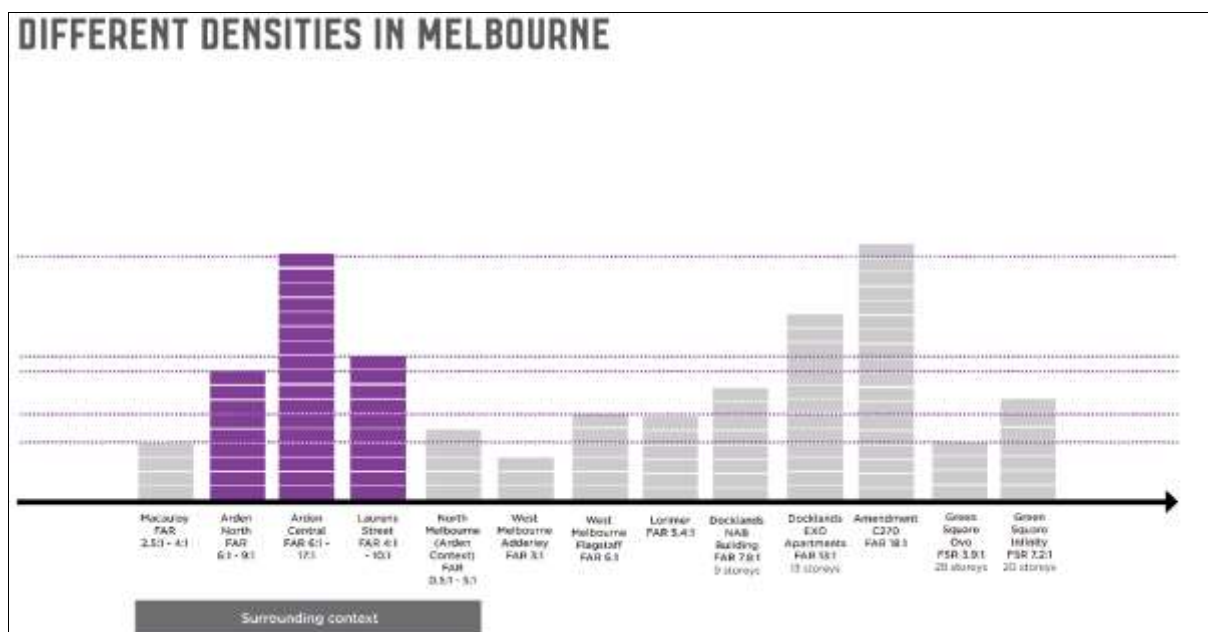
The VPA's response was that the increased areas of open space would offset the reduced area identified for development.

Council submitted in closing:

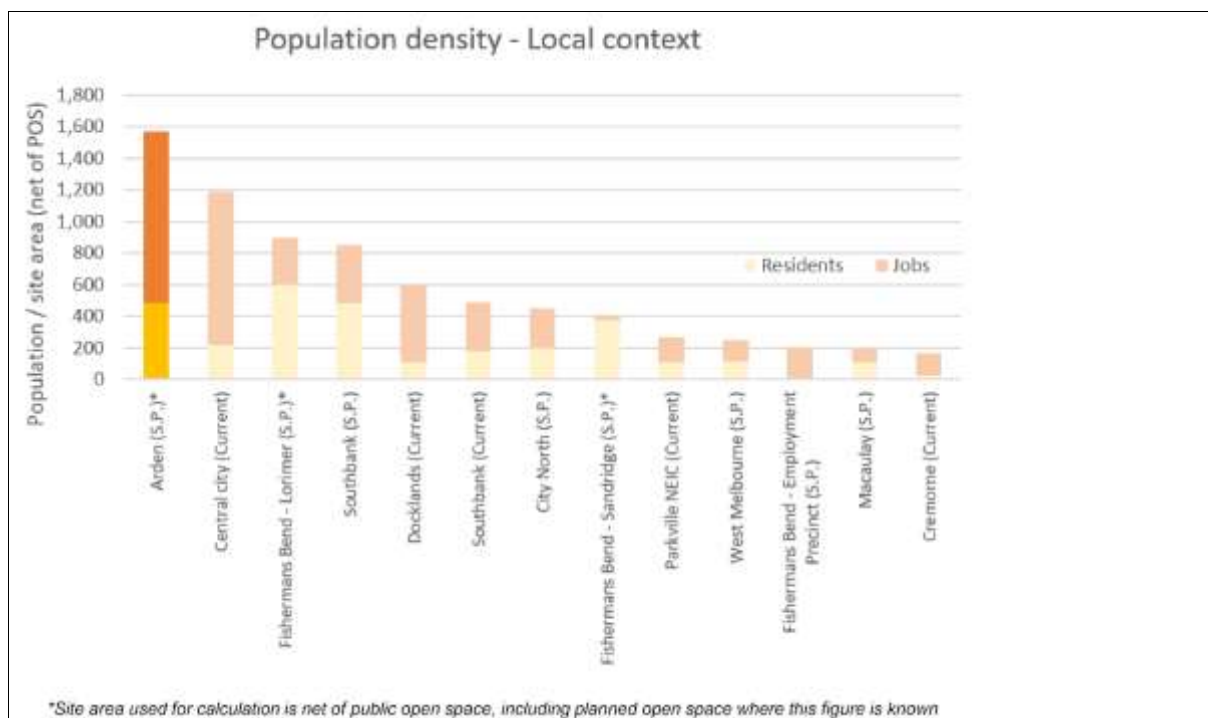
18. Council reiterates the iterative process that ought be applied in relation to population forecasts relative to built form outcomes is as adopted by the Advisory Committee in the Fishermans Bend Panel.

Council presented a number of density comparisons, shown in Figure 9 and Figure 10 (Doc 99).

**Figure 9: Different densities in Melbourne**



**Figure 10: Population density – local context**



Council did not consider that the quantum of development proposed was strategically justified:

10. We commenced at the outset of the Advisory Committee hearing process by asking whether the strategic justification for the Amendment is sound.
11. We maintain that what has and continues to be proposed by the Planning Authority, the VPA, is not strategically justified – either by the Arden Vision, other government policy, or by the substantial body of technical evidence and advice commissioned in preparing the *Arden Structure Plan* and the Amendment or heard as part of the Advisory Committee.

12. In our submission, in order to be strategically justified the Amendment must be changed so as to actually align with, and give the appropriate statutory weight to the Arden Vision, which we note the VPA has argued is government policy, endorsed by Cabinet.
13. We reiterate what we have said all along – we take no issue with the Arden Vision. It remains the case that Council agrees with the vision for Arden that has been published, continuing to regard the achievement of the Vision as very important.
- ...
15. There has been no evidence or compelling submission presented through the course of the hearing that sees us depart from this premise. We remain unpersuaded that there is any logic or sense to holding onto these numbers, and this is even less so following the extensive modelling that has been carried out to demonstrate that the proposed FARs, which seek to deliver on these outdated targets, result in unacceptable outcomes.
16. But, with the benefit of the evidence that has been heard and tested through this hearing, we see a way forward towards an optimal outcome.

The VPA submitted:

8. The VPA considers that both the *Structure Plan* and Amendment satisfy the requirements of PPN46 - *Strategic Assessment Guidelines* for preparing and evaluating planning scheme amendments, and the Minister's Direction No. 11 *Strategic Assessment of Amendments* in that the proposed terms of the Ordinance are strategically sound and sufficiently justified by reference to supporting technical material.
9. The Amendment implements the objectives of planning in Victoria (section 4(a) and 12(1)(a) of the Act), and strategic planning and policy imperatives at the State and local level. The Amendment makes proper use of the VPPs and the proposed planning controls meet the test of "*net community benefit*" which the Scheme requires to be applied to the evaluation of planning scheme amendments.

In addressing submissions to reduce the FARs the VPA submitted in closing:

11. However, at no point has it been suggested by the VPA that reference to 'maximising development opportunities' means there are no limits or there should be increased density irrespective of the context. Throughout submissions the VPA has always emphasised the importance of balancing with the desire to maximise opportunities with other competing and relevant considerations.
12. Other than vague references to the Arden Vision which do not descend to any detailed reference to any part of the Vision, the Council has failed to substantiate any limiting factor that it suggests should temper development expectations from this valuable strategic resource. Or any example of a competing and relevant consideration in the Arden Vision, or policy more broadly that has not been achieved.

Following the urban design evidence and the final opinions reached by Mr Sheppard and Ms Hodyl regarding FARs for specific parcels of land, the VPA commissioned Mr Hrelja to undertake an economic impact assessment (EIA) of three development yield scenarios for Arden. The VPA submitted (Doc 132):

109. The EIA memo provides economic metrics of the design options in order to provide the Advisory Committee with a guide to the potential scale of economic activity that may be associated with adopting the differing design options. Essentially the memo provides information on what could be gained or lost from an economic perspective as a result of selecting particular options. It is accepted that the memo is at a high level. Nonetheless, Mr Hrelja's analysis reveals the following key metrics for the Kinetica and Hodyl revised yield scenarios as compared to the final *Arden Structure Plan*:
110. In terms of construction value, *Structure Plan's* construction phase value is estimated by Mr Hrelja as from \$6.3 billion in the precinct to \$10.9 billion across the economy as a whole when multipliers are considered. Construction activity in line with the *Structure Plan* would support approximately 14,600 job years within the Arden precinct and a total of 24,600 job years across the economy as a whole during the life of construction. In comparison to the *Structure Plan* scenario:
  - (a) The Kinetica scenario would result in the loss of approximately \$526 million in construction value in the precinct, which extrapolates to a loss of \$914 million across the

economy as a whole. This would result in the lost capacity for approximately 1,300 construction job years within the precinct, which extrapolates to a loss of 2,100 job years across the economy as a whole.

- (b) The Hodyl scenario would result in the loss of capacity for approximately \$922 million in construction value in the precinct, which extrapolates to loss of \$1.6 billion across the economy as a whole. This would result in the lost capacity for approximately 2,200 construction job years within the precinct, which extrapolates to a loss of 3,600 job years across the economy as a whole.

Council highlighted that Mr Hrelja's assessment of the economic impacts of the varying densities includes a qualification to the effect that economic activity may be redistributed. The VPA disputed the significance of this.

Ms Hodyl's opinion was that:

Even with the suggested reductions in FAR controls, the FAR controls are very high in the context of other urban renewal areas in Melbourne and elsewhere in Australia. Melbourne has 18:1 – that is one of the highest you will find in a global scale.

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

By any measure this will be a dense area. It will have dense building blocks relieved by significant open space areas.

The VPA's approach in including the open space area results in lower FARs, but if the open space is to be included, then a fair comparison would have included open space when calculating the FARs for Docklands and including the open space immediately adjacent to Southbank and the Hoddle Grid in those figures.

Arden is clearly identified for urban renewal and will benefit from a significant public transport investment. It should be developed to the maximum level consistent with site constraints. These constraints include:

- transport access
- flood issues
- the need to open space provision to serve the population
- impact of surrounding areas
- impact on the public realm.

The Committee notes that in Fishermans Bend there was a need to limit overall development intensity because of transport accessibility reasons. That does not appear to be a constraint here.

There is a real danger in ignoring site constraints on the basis that a more intense development proposal will deliver greater returns. The Committee accepts the VPA's arguments that the open space areas will provide relief to the higher density development, but this cannot be unlimited. The developed areas still need to deliver acceptable built form outcomes. The VPA says it accepts this, but does not accept the urban design evidence as to what that limit is.

The argument that the VPA needed to make to support the higher FARs was to show that they do not exceed accepted site constraints, and that they could deliver acceptable built form outcomes in the context of the urban design aspirations for the precinct. The VPA did not take this line of argument. The Committee presumes this is in part because its own evidence did not support this argument.

The Committee supports flexibility, but recognises flexibility comes at a cost, and presents certain risks. The Committee accepts that there is a risk that without mandatory FARs, future developers will seek simply to fill up the building envelope.

If the FARs proposed by the experts and Council do in fact represent a realistic site constraint then comparing that constraint to a preconceived level of development and calculating the 'cost' is of no probative value. This is not a reason to adopt the higher development potential; at best it is a measure of how overoptimistic the first assessment was. As observed by the Committee in the Hearing, this form of argument means the more a proposal exceeds the constraints, the greater the 'cost' of meeting the constraints. If cost is the reason not to comply with constraints then the greater the excess the less reason to comply.

The critical issue is what is the maximum development potential for each block or the precinct. The experts had the benefit of a substantial amount of modelling to test various development propositions on the land.

The EIA presents a very narrow version of economics and the Committee has not given it much weight. It is an accounting exercise in that the loss of people multiplied by a fixed factor give a loss of production number. The discussion about redistribution is only one element of the economic outcome. Net community benefit includes economics. A real indication of the economic outcome would need something like a cost benefit analysis, which is a quantified form of net community benefit. To say there will be economic loss arising from less density is at best not useful and at worst wrong.

The real benefit to Melbourne of Arden will be the economic benefit that flows from the long term vitality of the area. Part of this equation will be delivering a quality urban environment.

The real benefit of the density comparison is to help answer the question: just how dense will Arden be? The answer is it will be one of the densest precincts in Melbourne.

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

The Committee concludes:

As planning processes progress there can be a need to revise earlier estimates such as overall yield.

The long term economic interest of Victoria is to create an attractive vibrant urban area. This may require placing limits on density that may mean initial estimates are not achieved.

### **4.3 Flooding and the ISMOS**

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

The issues are:

- Whether the working drainage strategy will deliver optimal planning outcome
- Whether the ISMOS is required and in the best location.

#### **(ii) What is proposed**

Before the development of Melbourne there was a significant natural swamp along the Moonee Ponds Creek and despite the construction of levee banks, drains and pump stations in the mid-20th Century, the area has a history of flooding.

Parts of the Arden and Macaulay precincts are subject to a level of flooding incompatible with their urban renewal. Without intervention, flooding poses an unacceptable risk to the safety of the

community, and will continue to lead to extensive property damage, with some areas experiencing flood depths of up to two metres.

To manage the flood risk in Arden, significant above and below ground drainage infrastructure is required. The VPA and Melbourne Water's approach is to manage and mitigate flooding and risk, rather than seek the complete elimination of the risk of flooding.

For Arden to develop into a higher density urban area including residential development, two key strategies are proposed to reduce the risk and severity of flooding:

- the construction of new, and the upgrading of existing, drainage infrastructure
- the implementation of planning controls and other measures to manage development areas and floor levels and to provide an acceptable level of flood risk.

### **New and upgraded drainage infrastructure**

The working drainage strategy was developed in the context of planning constraints including the presence of an APA gas transmission main, potential land contamination, high ground water issues, the identified heritage values of The Lost Dogs' Home building, and the need to include flood storages to retain some floodplain storage within the Arden Precinct.

The working drainage strategy was developed in collaboration with Melbourne Water, Council and the VPA. It refers to the combination of drainage works proposed to enable intensive development of the precinct, while achieving an appropriate level of service for drainage and appropriate flood protection with expected climate conditions in 2100. Adopting the 2100 scenario as the design rainfall event reflects the long term planning required for major developments to provide adequate flood protection for the future community in the Arden precinct.

The working drainage strategy included the following components:

- raised and extended levees for Moonee Ponds Creek
- above ground flood storages (retarding basins)
- an underground flood storage tank beneath the Arden Street (NMFC) Oval
- upgrades to the six pump stations within the Arden Macaulay Precinct
- gravity pipe upgrades, including new gravity pipes and upgrades of existing gravity pipes
- pressure pipe upgrades, including pressurising part of Melbourne Water's Arden Street Main Drain
- site specific works for Arden Central, including a new pump station, gravity pipes, pressure pipes and swales to convey overland flows.

### **Above ground storage: the ISMOS**

Consideration of the different flood storage options involved assessment of the flood management benefits provided by different flood storage footprints. Of particular importance was the need to locate the flood storage in lower-lying land that is already prone to flooding.

The Structure Plan identified a new ISMOS designed to perform a drainage function during heavy rainfall events, and provide an active recreation opportunities for the local community. The Moonee Ponds Creek corridor would also perform an important water management role for the precinct.

The Arden North Storage Investigation (Engeny, 31 March 2021) provided an overview of the options considered for infrastructure provision, and sought to optimise a range of functions consistent with the key directions of the Arden Vision. Melbourne Water and the VPA considered

four drainage options (Doc 46c) seeking to refine drainage solutions for the Arden North sub-precinct:

- Option 1 reflected the Structure Plan, and sought to retain The Lost Dogs' Home building
- Option 2 proposed above ground drainage sufficiently large for a senior football oval (165 metres x 135 metres) with dual purpose soccer pitch(es) within
- Option 3 was similar to Option 2, but expanded the area required in order to provide passive open space as well as a senior football oval (165 metres x 135 metres)
- Option 4 provided for above ground drainage that facilitated an oval (between 147 metres x 120 metres and 151 metres x 123 metres, with dual purpose soccer pitch within the space) and passive open space.

Melbourne Water concluded that all four options were workable and generally comparable in terms of performance. Option 2 did not perform as well because it had the smallest footprint and provided the least storage capacity. Melbourne Water and Engeny also concluded that Option 4 performed similarly in terms of hydrological functionality compared with the site to the north included in the draft Structure Plan. Option 4 was adopted as the working assumption within the *Arden Macaulay Precinct – Flood Management Strategy*.

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

The VPA and Melbourne Water submissions emphasised that no single solution has been identified that could effectively eliminate flooding. Engeny had undertaken significant investigations as part of the work to devise a working drainage strategy to manage flooding within the Arden Macaulay Precinct. The strategy had also involved extensive engagement with other parties including Greater Western Water, the Department of Environment, Land, Water and Planning (DELWP) and Development Victoria (Doc 25, para 85d).

Expert evidence reports were submitted by Mr Clemson of Engeny for the VPA (Doc 31), Mr Bishop for the VPA (Doc 33), Mr Swan for Citywide (Doc 56) and Mr Coombes for RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd (Doc 53). At the direction of the Committee, the four experts met in conclave over three days (10, 11, 14 February 2022), then submitted a signed joint statement.

The expert conclave (Doc 83) reported:

1. The Arden Precinct is indeed flood prone, and this was agreed by all. The drainage strategy reduces flood risk, but there is still residual flood risk. It was also agreed that it is unlikely that flood risk would be entirely eliminated in any project.
2. There was agreement that assumptions required in Melbourne Water Flood Modelling Guidelines, Melbourne Water's requested methodology and the hydrological models provided to Engeny result in an overestimation of 1 percent AEP risk for a range of reasons.
3. The hydrology and hydraulic modelling is generally in accordance with Melbourne Water guidelines. The hydraulic modelling processes are sufficient to achieve a reliable comparison between options to determine the relative performance of options.
4. The requirement by Melbourne Water to adopt certain assumptions for inclusion in modelling is likely driven by policy factors that may not be aligned with the best hydrological outcome.
5. It was generally understood that these assumptions were based on expectations and guidelines provided by Melbourne Water and reflective of other work carried out on behalf of the Authority across numerous other projects.
6. There is uncertainty regarding Moonee Ponds Creek catchment hydrology modelling. Inclusion of cumulative extreme assumptions creates uncertainty and potentially poor understanding of catchment behaviour.
7. Melbourne Water should consider further investigation of the Moonee Ponds Creek catchment hydrological modelling as a publicly available process.

### Evaluation of the proposed working drainage strategy

8. The underpinning drainage strategy could work and results in a substantial reduction in flood risk, but it is not clear if it is an optimal solution due to the uncertainty created by the assumptions in the hydrological modelling, or if there are other options that deliver the same flooding outcome but provide improved planning solutions for future development.
9. The raised / extended levees are considered a key contribution to protecting the area from the potential of far more severe Moonee Ponds Creek driven floods. These levees contribute to increases in downstream peak flood levels.
10. Providing flood storage in Arden North will reduce flood depths and may assist to manage local catchment flooding and improve the performance of the pump stations. There is potential for other locations from the Citywide flood storage to be adopted, while still achieving similar flood management outcomes. The differences in predicted flood levels achieved by different flood storage options is marginal, if a similar flood storage volume and location close to the Langford Street pump station are provided.
11. From a flood management perspective, the best location for the flood storage is generally the lowest part of the landscape. When compared to the 2020 Drainage strategy, the Amendments to the location of the Citywide storage allow for development on land that is has higher residual flood risk than the area south of Gracie Street.
12. There is a risk of locking in the location of the Citywide Flood Storage that may have water travelling across multiple properties to reach an ultimate flood storage in the event of a levee breach. Recognition of this flood mechanism should be considered.
13. Further investigation and design are required regarding the existing gas main, the requirements of the proposed sporting facilities and significant other challenges to test that the proposed flood storage volume within the Citywide flood storage is achievable.
14. The Citywide and Langford Street linear flood storages do not offset the loss of Moonee Ponds Creek floodplain storage or mitigate downstream afflux in Moonee Ponds Creek. If the Citywide Flood storage was not part of the strategy, alternative local drainage works may be required to manage residual flood risk from the local urban catchment (larger pipes/pumps for example). The design of local mitigation should be mindful to remain within the hydraulic capacity of Moonee Ponds Creek so as to not cause problems elsewhere.

### Disagreed opinions and facts

15. Although we agree that the excessive assumptions dominating the modelling imply that the understanding of the flood mechanics may not be complete, we disagree on the significance of the impact of these assumptions on the outcomes of the drainage strategy.
16. Mr Coombes considers that extreme or potentially wrong assumptions should not be presented as conservative or best practice engineering.
17. Mr Swan and Mr Coombes agree that there are too many uncertainties in the current strategy, and the drainage strategy is not sufficiently developed and land acquisition is being locked in too early, and more time should be spent now to identify an optimal solution.
18. Mr Bishop and Mr Clemson consider that, whilst the boundary conditions and flood modelling assumptions are conservative, these are unlikely to have a significant impact on the overall strategy outcomes. The strategy could be further refined through additional hydrologic and hydraulic investigations. Sufficient information exists to determine the location of the flood storage elements of the strategy.

### Location of the ISMOS

The VPA submitted that the location of the ISMOS was preferable having regard to all relevant considerations, including the strategic need for active and passive open space to serve the community of Arden. The dual function of the ISMOS generates significant benefits (Doc 97) that are important to the achievement of high quality open space and liveability outcomes in the Arden precinct. The VPA requested that the Committee should give real weight to those benefits.

The VPA had received submissions from several parties that raised the need for more active recreation open space, the desirability of a second oval to service the NMFC, the desire to retain The Lost Dogs' Home veterinary clinic, improved urban design outcomes including refined finished



floor levels and spatial integration with the precinct. There was also landowner concern regarding the acquisition of their land.

Council supported the high level details including the proposed configuration of the ISMOS. It recognised there is an opportunity within the Urban Renewal Cost Recovery Scheme (URCRS) to ensure the space needed for drainage can be integrated into the community for the public benefit. Council submitted that the ISMOS needed to be realised as a valued piece of community infrastructure.

Council deferred to the VPA, Melbourne Water, and their experts regarding matters of further detail as they related to drainage. In Council's submission, the basis for the need and location of the drainage project at a low point in the precinct was sound. The working drainage strategy mitigates flooding and reduces induced flood risk, predominantly within the Arden precinct, allowing land to be rezoned and facilitating the development outcomes and benefits for the precinct's landowners.

The VPA responded that the evidence of Mr Clemson and Mr Bishop provided a sound technical basis for the proposed drainage arrangements. The VPA submitted that the evidence filed and the matters discussed at the roundtable session do not support or justify changes to the location, size or composition of the proposed drainage infrastructure.

The drainage experts supported the relocation of the drainage storage to the north of the Citywide site, initially considered in the draft Structure Plan. Melbourne Water confirmed that in terms of the overall hydrological outcomes the difference is marginal between the two locations, and the northern location might achieve a better outcome. The VPA considered that the ISMOS is located appropriately, notwithstanding that related drainage infrastructure was proposed by the Structure Plan to be located further north in the lowest part of the precinct.

RSA and Rockford contested the reservation of their land for drainage purposes (Doc 88, para 7), submitting:

- The Arden Precinct is prone to flooding and that strategies are required to mitigate the risk of flooding before the development anticipated by the Structure Plan can occur.
- The proposed Citywide Flood Storage will provide little or no hydrological benefit.
- The combination of flood storage and the provision of open space as encapsulated in the ISMOS fails to provide a fair planning outcome as required by the Planning and Environment Act 1987. It significantly disadvantages RSA and Rockford as it leads to their land being set aside for drainage purposes, in circumstances where the expert evidence suggests that there is no hydrological basis for such a reservation.

Citywide (Doc 129, para 14) submitted that the acquisition of the Citywide land would have negative social and economic consequences for the broader community. It claimed that the public interest in the delivery of the ISMOS was not such that it outweighed the negative impacts associated with a disorderly acquisition of the Citywide land. The submissions claimed that Arden does not need the ISMOS to be developed, because it has its own drainage regime, and that there was no evidence that any delay in the delivery of the ISMOS would interfere with the development of Arden across an appropriate timeframe. Citywide submitted:

... it is simply not open (as a matter of law or fact) to the Committee to find that the ISMOS will perform its supposed drainage and open space functions. Rather, any assessment of the strategic justification for the PAO must be undertaken on the basis that there is real prospect that the ISMOS as currently designed may not be able to perform those functions". (Doc 129, para 27)

#### (iv) Discussion

The working drainage strategy has been developed through the investigation of a broad range of potential measures. Some measures investigated by Melbourne Water and Council were not included in the strategy because they were assessed to be less effective at managing flooding or were not feasible.

It is apparent that further work needs to be undertaken to substantiate that the overall strategy is the best solution for flood mitigation over the 30 years of future urban development in Arden. The experts agree that:

- there is uncertainty regarding Moonee Ponds Creek catchment hydrology modelling
- Melbourne Water should consider further investigation of the Moonee Ponds Creek catchment hydrological modelling as a publicly available process.

The conclave report makes it clear that the experts are not in agreement that the assumptions upon which the modelling was compiled are appropriate.

While Mr Bishop and Mr Clemson considered that there was sufficient information to determine the location of the flood storage elements of the strategy, they agreed that the strategy could be further refined through additional hydrologic and hydraulic investigations.

Mr Swan and Mr Coombes formed the view that there were too many uncertainties in the current strategy, the drainage strategy is not sufficiently developed, land acquisition is being locked in too early, and more time should be spent now to identify an optimal solution.

Mr Coombes opined that extreme or potentially wrong assumptions should not be presented as conservative or best practice engineering.

These disagreements among the four credentialed experts should not be discounted by Melbourne Water or Council when determining the best possible outcome from the drainage strategy.

The ISMOS has a dual function, notwithstanding that the primary function is drainage and flood mitigation.

The VPA, Melbourne Water, Council, and the State Government are four crucial stakeholders that will need to finance and implement these critical infrastructure works (as concluded in Chapter 3 in this report). These Authorities and Departments (including the Department of Transport and Development Victoria) should acknowledge and reflect upon the findings of the conclave, and review the drainage strategy, in consultation with the affected landowners.

It is not clear to the Committee where the demarcation for infrastructure provision and renewal lies. The working drainage strategy plan (Engeny, Figure i, page 4) lists the existing assets and proposed upgrade projects. The latter are shared between Melbourne Water and Council, which presumably indicates ownership and liability. This has not been clearly transposed to the draft DCP, and it may be argued that the cost to landowners and developers for government projects should not reasonably be levied. This applies to the total ISMOS in particular, which includes multiple projects.

The Committee agrees that an ISMOS needs to be established somewhere within the Arden precinct, in conjunction with the other elements of a drainage strategy, including:

- levees
- other above and below ground water storages
- enhanced drainage and pumping infrastructure, and overland surface flows.

The two linear above ground storages appear to the experts to be justified, and the storage under the Arden recreational reserve (NMFC) should be included in the Amendment. It would be prudent for the water stored in the underground tank/s be treated by Melbourne Water to a standard appropriate for reuse irrigation.

The Committee accepts the joint responses from the VPA and Council in relation to the balance of factors required in these deliberations. These are relatively complex decisions that cannot be left without clarity at the beginning of the implementation of the Arden Vision.

Whilst what has been proposed in the Amendment is not unacceptable, it should not be supported without the further analysis that is identified as needed in the conclave report.

#### **(v) Conclusions and recommendation**

The Committee concludes:

The working drainage strategy could deliver an appropriate planning outcome, but this might not be the optimal solution to mitigation of the flooding risk.

The drainage strategy should be reviewed and refined by the VPA, Melbourne Water, and Council, having regard to the expert conclave report (Doc 83).

An ISMOS is supported, but the final location requires further review and additional expert analysis.

The Committee recommends:

**Review the Drainage Strategy, finalise the works required under the Urban Renewal Cost Recovery Scheme, and set a clear implementation timetable as a matter of priority.**

## **4.4 Transport and access**

### **4.4.1 General issues**

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

The issue is:

- Whether the Transport and Access proposal in the Structure Plan is appropriate.

#### **(ii) What is proposed**

The Arden Vision, Structure Plan, and Amendment provisions seek to facilitate a significant shift away from reliance on private car-based transport to more sustainable transport modes. It seeks to prioritise active transport, with a modal share of 60 per cent public transport, 30 per cent active transport (walking and cycling), and 10 per cent private vehicles (60:30:10). Pedestrians and cyclists have priority on key streets.

Residents will have access to day-to-day destinations within 20 minutes by active transport (walking and cycling) or public transport. This is the concept of a 20-minute neighbourhood envisioned by Plan Melbourne, with an emphasis that day-to-day destinations are accessible by sustainable transport.

The Vision emphasises Arden's rapid rail connections to the Parkville National Employment and Innovation Cluster, the CBD, and the western suburbs, which would assist in realising an international innovation and technology precinct.

The Vision states that (Key Directions at page 20):

Arden will provide direct and efficient connections in and around the precinct through safe and attractive public areas. This will include active and public transport networks that will complement the new Arden Station. One of the key directions for the precinct is 'prioritising active transport'.

The Arden Transport Capacity Assessment (GTA, 2018) Doc 55 provided the evidence base that supported the precinct ambition of a 60:30:10 mode share target. The Capacity Assessment found that a 'business-as-usual' approach that lacks transport infrastructure interventions would produce congestion, and limit the potential to drive down car usage to 18 per cent, rather than the target of 10 per cent.

Dedicated public transport lanes within the Arden street network would allow for frequent, fast and reliable public transport services to and from the precinct. High capacity public transport capable corridors were designated in the Transport Plan, to future-proof public transport investments, and to provide options for future public transport provision. Dedicated road space has been set aside in the Transport Plan to facilitate its future delivery.

The key transport connections proposed in the Structure Plan include:

- The high capacity public transport capable corridors aligned with longer term tram and bus planning and transport corridors proposed in the *West Melbourne Structure Plan*.
- The extension of the high capacity public transport capable corridor north of Arden Street along Fogarty Street, Henderson Street and Boundary Road to connect Arden to Macaulay, Travancore and Moonee Ponds.
- Laurens Street would become a key public and active transport route, connecting North Melbourne and Arden stations.
- Ireland Street would form a connection between Arden and West Melbourne.
- Arden Street would connect to the existing network at Abbotsford Street.

The Structure Plan provides for safe, direct and connected protected cycling routes through and to the precinct. The Capital City Trail along Moonee Ponds Creek currently provides regional cycle access to the suburbs in Moonee Valley and Moreland (via Royal Park and the Upfield bike path) and on to Docklands, Footscray and Fisherman's Bend.

New cycling infrastructure that is being constructed as part of the West Gate Tunnel project will provide a shared path along Dynon Road from CityLink over the Moonee Ponds Creek, and the rail corridor to Dryburgh Street. The Structure Plan would facilitate the delivery of cycling infrastructure to fill the gaps in the local network.

Four strategic cycling corridors within Arden are proposed. These corridors are designed to improve cycling to and around major activity centres, and would be routes that cater for the highest cycling volumes, while offering physical protection from motor vehicles. These corridors would extend along Arden Street, with proposed additions to the cycling network along Queensberry Street, Langford Street, and Laurens Street. There would be protected local cycling corridors on Fogarty Street, Henderson Street, Boundary Road (south of Macaulay Road), Macaulay Road, and Victoria Street, to complement the proposed corridors and provide bicycle access to destinations within the precinct.

Objective 17 of the Structure Plan aims to develop a pedestrian network where new and existing streets will be pedestrian friendly. Streets will provide quick and convenient walking and cycling connections between key spaces including Macaulay, Arden and North Melbourne train stations, and the open spaces both within Arden and beyond.

Key elements of the proposed transport network are shown in Figure 11 below.

**Figure 11: The proposed transport network in detail**



Source: Plan 4 of the Structure Plan presenting Arden's Transport Network in 2051

### (iii) Evidence and submissions

The VPA submission referred to Key Direction 5 of the Structure Plan 'Prioritising Active Transport', and Objective 15 which is to:

Facilitate the potential future delivery of a high capacity public transport capable corridor along Laurens Street, Arden Street, Fogarty Street, Henderson Street and Boundary Road (south of Macaulay Road).

The realisation of the Objective would be critical to the Transport and Access outcomes.

The VPA acknowledged the Arden Metro Station as the catalyst for renewal of the Arden precinct, noting it is located at the centre of the precinct. Arden station will deliver accessibility from most parts of Melbourne via the Metro tunnel, including trips to and from the west of Melbourne, Parkville, the Hoddle Grid, and beyond. Access will also be supported by the existing North Melbourne and Macaulay stations.

The SUZ specifies minimum bicycle parking provision based upon anticipated peak occupancy / visitor rates.

Ms Dunstan's expert evidence for the VPA (Doc 29) comprised a review of the Structure Plan, and concluded that the VPA should review the application of traffic conflict frontages, and cross check them with the proposed road cross sections and Plan 4 of the Arden Structure Plan.

The 'Movement and Parking Study' recommended that 5 percent of all off-street parking should be allocated to car share spaces. Table 2 in the exhibited version of the SUZ included a requirement for car share vehicles to be provided at a rate of 1 space per 25 dwellings. Ms Dunstan found that was not consistent with the intent of the Parking Overlay (PO), which is to provide no car parking wherever possible on a site-by-site basis, and was inconsistent with rates in the parking strategy.

Ms Dunstan noted that many of the submissions referred to matters that were not relevant to the proposed planning controls being introduced by the Amendment. The parking strategy focussed on local infrastructure changes or design detail, rather than high level planning. However, it did communicate strong support for sustainable transport outcomes.

Ms Dunstan regarded the revised Part A PO as having addressed Council's principal concerns in relation to the PO.

Council generally supported the Structure Plan, DCP, and draft ordinance as they relate to the planning and delivery of public transport, cycling and pedestrian projects. While Council understood the various stakeholder viewpoints in respect to car parking provision, the Arden urban renewal precinct is premised on active transport and prioritising sustainable transportation modes. The precinct will transition over the lifetime of the project in line with changing user preferences. The various technical studies demonstrate how the proposed targets and approaches align with existing local trends, and provide extensive justification of Arden's unique attributes that lend it to this approach.

Council raised the following points in relation to the Arden transport network for translation into the draft Amendment:

- an additional cross-section to Appendix 2 regarding the Langford Street extension to provide certainty of the future share of the limited road space along this street that maintains the modal hierarchy in Arden
- an amendment to the Queensberry Street cross-section that better aligns with Council's bike lane standards and the character of a future street and major urban boulevard in Arden.

Council noted that the Part A Structure Plan proposed to remove the Macaulay Road street section, which was included to provide certainty for the future protection of bike lanes along the

corridor. This would also respond to Council's resolution that the corridor should be designated a strategic cycling corridor. Council regarded it important that this section be included as a major corridor adjoining the precinct, and an interface between the Arden precinct and the Macaulay urban renewal area to the north and north-east.

The VPA accepted the expert recommendation of Ms Dunstan to update the 'Active Street Frontages' and Weather Protection Frontage maps to better articulate which outcome is intended in the various streets and laneways.

The widening of Barwise Street to 16.3 metres is expected to be taken from the station side of Barwise Street within the VicTrack owned land.

Guntar Graphics submitted (Doc 84, para 65) that the designation of Fogarty and Barwise Streets as 'traffic conflict frontages' should be reconsidered in the context of loading and unloading from Arden Street being likely unviable. Ms Dunstan's review of Map 4 in DDO80 concluded that Arden Street between Fogarty and Laurens Streets is a 'potential modal interchange' in the Structure Plan and access should be prohibited. On this basis Ms Dunstan considered Barwise Street to be more appropriate for vehicle access than Arden Street.

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

There is evidently little of major disagreement with the contents of the Amendment in regards to transport and access. Council broadly supported the Arden Transport Network as identified in the revised (Part A) Structure Plan, subject to minor changes and additions to some street cross sections. Ms Dunstan was not subject cross examination.

The issues raised in other submissions (such as ingress and egress to loading bays, and rear access functions of laneways) can generally be regarded as detailed design matters, which can be addressed following the Amendment as part of permit application processes. The traffic conflict frontages need to be addressed in the Amendment and should be considered in refining the DDOs.

The VPA and Council have no disagreement in relation to Fogarty Street and the laneway and pedestrian access, and that the 'Active Street Frontages' and 'Weather Protection Frontage' maps should be amended as per Ms Dunstan's recommendations.

The Structure Plan appropriately addresses the bicycle network and pedestrian connectivity considerations within and outside Arden, and clearly seeks to ensure that infrastructure is provided to support the disabled and less ambulant. The provision of High Capacity Public Transport that links with the Metro Rail and other stations will provide appropriate access for the sub-precincts, and the future inter modal aspects can be addressed at the detailed design stage. Pedestrian access zones can be designed to share with services-only traffic, and 10 kilometre per hour speed limits applied to bicycles, service vehicles and public transport to prioritise pedestrian use in those thoroughfares.

Barwise Street is intended to be more pedestrian friendly, and only provide limited vehicle access to buildings (cross-section 7). As noted in Ms Dunstan's evidence (Doc 29, page 54), the Fogarty Street extension contains a stormwater management swale along its alignment (cross-section 8), and Laurens Street (cross-section 14) does not accommodate any vehicles, so it is not clear how this intersection of uses will actually be achieved. This transport and access element of the Arden Central sub-precinct will require further revision at a detailed design stage.

Wind impacts through laneways should be considered within the context of previous experience in the CBD, Docklands, and South Bank precincts. Narrow laneways can create wind tunnels. This has been addressed appropriately in the draft DDOs.

More broadly, the Committee sees no compelling evidence having been presented that the Transport Network and access proposal should not be supported.

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

The Committee concludes:

The Transport Network and access proposal set out in the Arden Structure Plan is generally appropriate.

### **4.4.2 Car parking**

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

The issue is:

- Whether the Amendment will deliver the car parking objectives in the Arden Structure Plan.

#### **(ii) What is proposed**

The Precinct Parking Plan provides a strategy for managing car parking within Arden, including the key objective of achieving 90 per cent sustainable transport mode share. Car parking management at a precinct level will play a key role in influencing modal shift over the long term, and in delivering upon the public realm objectives of the Structure Plan.

The Parking Plan sets out principles for movement and parking to support the precinct aspiration as a transport oriented development that leverages its position on the Melbourne public transport network to deliver a low-car use precinct:

- design a movement network to prioritise active transport over private vehicles
- minimise the impact of car parking and associated vehicular movements in Arden
- use car and bicycle parking to rebalance modal priorities in favour of active travel
- people using cars should pay for parking
- prioritise the parking needs of different land uses
- protect amenity and the environment
- support the Arden economy
- plan for the future.

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

The VPA submitted that there are clear benefits in urban design and planning terms from having a smaller number of car spaces in publicly accessible, consolidated car parking facilities:

- The number of vehicle access points can be reduced. This limits the impacts of vehicle access on the transport network by minimising breaks in the footpath, maximising pedestrian amenity and reducing pedestrian-vehicle conflict points.
- A reduction in conflicts between vehicles and cyclists.
- Improved urban design benefits, for example by enabling the provision of increased and uninterrupted active frontages.



- Providing fewer carparking spaces maximises the developable area for other more productive land uses (and addressing affordability).
- Consolidating parking enables better use of smaller sites that cannot efficiently provide on site car parking.

The proposed approach to car parking as outlined in the Structure Plan was generally acceptable to Council. However Council submitted that the draft Amendment did not adequately translate the car parking intentions of the Structure Plan (and earlier work), and will not effectively achieve the intended outcomes. It sought that a consolidated precinct based approach towards car parking be recommended in order to achieve the Arden Vision mode share target, and regarded stronger planning controls (including zero parking rates and incentivisation scheme within the Parking Overlay) as being critical to achieving realisation.

Council considers the Arden Vision mode share targets to be realistic, but require policy alignment. While there are some positives to be gleaned from the proposed PO, Council submitted that more was needed to:

- secure the early delivery of consolidated precinct car parking on government landholdings
- incentivise the actual delivery of consolidated car parking.

Council agreed in principle with the expert evidence of Ms Dunstan (Doc 29). The Precinct Parking Plan makes it clear implementing a precinct parking approach in Arden requires encouragement and direction. Car parking management can be an effective tool in controlling vehicle demands and extracting planning gain for an urban renewal area. While managed car parking is common, there are few examples of consolidated car parks used to offset the requirements of a development.

Council remained concerned as to the execution of the PO, and queried whether consolidated parking would actually be realised.

The Precinct Parking Plan made it clear the delivery of consolidated car parking cannot be mandated within the Scheme, but that:

Consolidated car parking should be given clear primacy over on-site parking in the planning permit decision-making process.

Council's submission in relation to electric vehicle charging points was that they should be reflected in the proposed ordinance in accordance with Ms Dunstan's recommendation as follows:

All car spaces are to be capable of accommodating electric vehicle charging infrastructure.

Council supported Ms Dunstan's recommendations in relation to car sharing. Car share parking will be important in Arden. Ms Dunstan's recommendations were to remove requiring car share through the zone, because the re-drafting of the Part A PO would trigger a permit for the provision of any car parking (including car share). Ms Dunstan recommended that when car parking is provided that it includes car share and disabled car parking (as a proportion of spaces to be provided). This is proposed as a decision guideline.

The Part A versions of both the PO and SUZ7 make these modifications. Ms Dunstan's evidence also noted that the Active Transport Investigation recommended that 5 per cent of all off-street parking should be allocated as car share either in the SUZ7 or PO.

A number of submissions, particularly those from existing residents in North Melbourne and West Melbourne, expressed concern about whether adequate parking will be provided for new residents and workers in Arden. The main concern was that there will be a shortage of spaces, and

residents of Arden would park in nearby streets in the North Melbourne area to the detriment of existing residents. The VPA's response was that higher quality and quantity of public and active transport will be encouraged. This would require substantial investments in public and active transport being made as part of urban renewal. That investment is being made in Arden, with the Arden Metro station opening in 2025, and active transport prioritised throughout the precinct. The construction of the station and the rail connection to other precincts, including the CBD and Parkville, vastly improves the accessibility of Arden.

The NMFC acknowledged that there was no right to parking privilege surrounding The Huddle recreational ground. The NMFC submission stated that transport in private vehicles to and from the Club's operations for players was important for the players' safety, wellbeing, and risk mitigation. The Huddle, AFLW, AFL attendances numbers totalled approximately 260 per week, including workforce personnel and volunteers (Doc 64, p57). A further 100 attended on AFLW game days, and any additional paid parking in the precinct would impact low socio-economic people and the Club's volunteers. Some of the Club's core business, in particular The Huddle and NMFC women's football programs, operate outside of standard business hours. Time restricted parking creates complexities, in particular on-field training, recovery, rehabilitation, sports science and sports medicine, strength and conditioning. NMFC wanted to ensure that it was not placed at a competitive disadvantage relative to other AFL and AFLW clubs due to the lack of suitable car parking provisions.

The position of submissions for the Theodossi Group was that the proposed PO would restrict the provision of diverse housing options and will actively discourage the provision of larger apartments.

The Housing Industry Association submission noted (Doc 69, para 16) that scenarios such as shared car parking facilities with an apportioned construction cost by allocation and in some cases no associated car parking for a dwelling, can significantly reduce the cost of building housing. The submission cited a 20 per cent cost saving as an estimate for Nightingale apartments, with zero car parking.

Council generally supported the Structure Plan approach to car parking. It sought that an additional strategy be included within the revised (Part A) Structure Plan to contemplate the delivery of consolidated precinct parking in Arden Central, in order to reflect the recommendations of the GTA Movement and Transport Study. The VPA considered the delivery of consolidated precinct parking to be an implementation issue for Council (as the relevant Authority).

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

The expert evidence was that less carparking will encourage the transition to the 60:30:10 usage ratio.

The Committee agrees with Council's position that carparking should be consolidated, and that the provision should be established on a licence basis via a short to medium term permit, rather than a long term use. This would anticipate the transitional changes to the modes of transport and use that are envisaged in the Structure Plan.

The NMFC grounds for special consideration are regarded as valid, and arrangements should be investigated by Council for access to consolidated carparking near the Huddle being established.

The Committee finds that the assertion of the Theodossi Group of submitters, in relation to the size of apartments, will be appropriately addressed via the provision of consolidated carparking.

**(v) Conclusion**

The Committee concludes:

The car parking objectives and approaches in the Structure Plan are appropriate.

## 5 Structure of controls and policy

This chapter addresses issues that go to the structure of the proposed Amendment.

### 5.1 Zone choice and the extent of rezoning

#### (i) The issue

The issue is:

- Whether the SUZ is the appropriate zone to apply.

#### (ii) What is proposed

The Amendment:

- applies the SUZ
- leaves the land to be acquired for the ISMOS in the Industrial 3 Zone (IN3Z).

#### (iii) Evidence and submissions

The Committee asked the VPA why the land was to be rezoned to the SUZ and not the CCZ. The VPA advised that the zone choice was made by DELWP.

In relation to the extent of the zone, it is not applied to the area to be acquired for drainage and open space (not the adjoining public land identified for drainage and open space). Land to be acquired for new roads and connections is proposed to be rezoned.

Citywide submitted:

50. In particular, Citywide sees no reason why – as a matter of planning principle – any part of the Citywide Land should be retained in the IN3Z, rather than being rezoned the SUZ7. The land is all currently in one zone and there is nothing in the physical or strategic context which would suggest it has suddenly become appropriate to zone different parts of the land differently.
51. To the extent there may be some anxiety that applying SUZ7 would affect the compensation payable in respect of the acquisition of part of the Citywide Land being that part which is retained in the IN3Z, this would be a misapprehension. The Point Gourde principle would mean that any change in the value caused by Amendment C407 would be ignored in the valuation of an acquisition for the purposes of the drainage works contemplated in the Structure Plan.

#### (iv) Discussion

Both the CCZ and SUZ include as purposes:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.

Critically the CCZ also includes:

- To enhance the role of Melbourne's Central City as the capital of Victoria and as an area of national and international importance.
- To create through good urban design an attractive, pleasurable, safe and stimulating environment.

Placing the land in the SUZ rather than the CCZ is a clear policy inference that the renewal area is NOT to be considered part of the Central City. If Arden is to be characterised as part of the Central City the Committee considers that it should be placed in the CCZ. See Chapter 2.4 for more detail.

The parent provisions for the SUZ and the CCZ are virtually identical and no change to the schedule would be required to change the zone. It is clear that the land is not intended to have an Industrial future. Land has only been left in the IN3Z because it is proposed to be acquired. Land is not zoned to recognise its current use, but to put in place a regime to manage future use. Leaving the land in the IN3Z potentially confuses the strategic intent for the land and sets up a disconnect between the strategic intent of the land and the applied zone. Panels have cautioned against doing this since the early days of the VPP.

The most appropriate zone for the land to be acquired (and the adjoining public land) is the zone that applies to the whole precinct. This is made especially clear by looking at the plans in the zone schedule which includes the land.

#### **(v) Recommendation**

The Committee recommends:

##### **Apply the Capital City Zone:**

- a) **in place of the Special Use Zone to remove any ambiguity as to whether Arden is part of the Central City**
- b) **to all the land, including the land to be acquired and the adjoining public land, to make it clear the land is not intended to have an industrial future.**

## **5.2 One or four Design and Development Overlays**

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

The issue is:

- Whether there should be four DDOs or one.

#### **(ii) What is proposed**

The Amendment proposed four DDOs with essentially identical text.

The Committee suggested these could be consolidated, and prepared a consolidated version identifying inconsistencies between the DDOs that served no statutory purpose.

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

Council submitted (Doc 131):

- 148. The question that has arisen through the course of the hearing is whether Arden should be subject to DDO80, DDO81, DDO82 and DDO83 as proposed, or whether one consolidated DDO should apply to the entire urban renewal precinct.
- 149. It has become clear to Council that the one DDO approach is to be preferred.
- 150. While an initial reason to oppose this approach may have been due to its length, undertaking the exercise has actually illustrated length is not an issue. Indeed, in Council's submission, a number of gains, such as the consolidation of the tables, maps and plans in the one planning instrument, has proven advantageous and outweighs any dis-benefits.

None of the expert witnesses expressed any real opposition to the consolidated DDO approach.

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

In relation to the combined DDO, the conclusion of the parties was that the combined version had many advantages over the use of four separate DDOs, although it did lead to a longer single document. These advantages include:

- reduced repetition of common design objectives and requirements
- the ability to compare requirements between sub-precincts more clearly highlights the intent for each area
- overall fewer pages are generated for the planning scheme.

The only differences between the various DDOs are to be found in the objectives and the tables that set out heights, FARs and so on.

As separate DDOs the controls have about 19,190 words. Once consolidated, the DDO has about 5,730 words. The consolidated DDO:

- is no harder to use
- is 70 per cent shorter than the combined DDOs
- does not require reading additional text, just finding a different row in a table
- allows a more transparent understanding of the overall development in the precinct.

The only potential reason that separate DDOs are favoured is because DELWP does not support the use of a table setting out the character to be achieved in each sub-precinct. The Committee observes such tables:

- are a feature of a number of existing DDOs in various schemes
- allow a high level comparison of the different areas in the renewal precinct and this is a good thing.

#### (v) Recommendation

The Committee recommends:

**Consolidate the Design and Development Overlay Schedules 80, 81, 82 and 83 into one schedule.**

## 5.3 Affordable housing

### (i) The issue

The issue is:

- Should affordable housing be addressed in policies or in the zone?

### (ii) What is proposed

The Structure Plan recognises that housing plays a critical role in unlocking Arden's potential as an innovation precinct and states that:

Access to diverse, high quality and affordable housing is a priority for the ongoing productivity, liveability and social equality of Melbourne and Victoria. The households requiring this housing could work in the hospitals, cafes schools and other services that underpin Melbourne's global reputation for liveability and prosperity. To retain these qualities, we must invest in affordable housing that is located close to jobs, amenity and services.

Objective 23 of the draft Structure Plan seeks to:

Facilitate inclusive, well designed, sustainable and accessible housing with at least six per cent of all new housing in the precinct being affordable for very low to moderate income households and delivered as social and affordable housing or shared equity.<sup>4</sup>

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<sup>4</sup> Ibid page 80.

The Amendment proposes to introduce policies that provide for the flexible delivery of affordable housing in new development. More particularly, it is policy that development should provide a minimum of six per cent of dwellings at a 50 per cent discount (or an alternative mix of contribution and discount of an equivalent value), within a range of built form typologies.

Delivery mechanisms include:

- the transfer of the affordable housing provision to an agency, body or person which provides affordable housing, included but not limited to Registered Housing Agencies, Rental Housing Agencies and other bodies established or recognised under the *Housing Act 1983*
- holding the affordable housing dwellings in an affordable housing trust managed for the sole purpose of affordable housing
- any other model that provides for affordable housing, subject to the approval of the responsible authority.

The decision guidelines in Clause 4.0 of the SUZ7, relating to permits for buildings and works, include consideration of whether the relevant proposal provides affordable housing, and the purpose of the zone supports and encourages affordable housing.

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

Council submitted that the affordable housing requirement should be mandatory.

The VPA submitted in opening (Doc 51):

174. Some submitters have sought a mandatory requirement for the delivery of affordable housing, however the current planning provisions do not provide for mandatory controls (or inclusionary zoning) as so this proposition is not possible.

In closing the VPA submitted (Doc 139) that its position in relation to the drafting of the affordable housing provisions in the ordinance had not changed, and in response to examples of mandatory provisions stated:

72. Therefore, the 'mandatory' outcomes recorded within the ordinance were in fact already agreed with landowners as a condition of rezoning, rather than being imposed through the provisions of the zone without negotiation.

Ms Peterson in her evidence (Doc 27 at para 11.1.14) concluded:

The opportunity to provide more affordable housing is a key tenet of the draft Amendment. I am satisfied that the policy platform in which the provision of affordable housing is very strongly encouraged and Clause 22.28-3.2 sets a very high benchmark for the provision of housing as part of any residential development. As such, I consider that there would need to be strong justification for affordable housing not to be provided.

In response to cross examination Ms Peterson answered a question of Council's that she would support mandatory provision of affordable housing if this were possible.

George Weston Foods opposes any mandatory requirement relating to the provision of affordable housing. It submitted that there was no justification for a minimum of 6 per cent to be provided. The VPA provided detailed justification for the 6 per cent.

### **(iv) Discussion**

There are numerous examples of planning schemes that mandate affordable housing. The Committee presumes these have legal force. The VPA submitted that the various proponents for the amendments that introduced these controls did not object to the imposition of mandatory

requirements as part of the Amendment. This fact does not make the requirement any less mandatory.

That said, the Committee understands some panels and advisory committees have found that the legislative framework currently supports voluntary contributions but not mandatory contributions.

The provision of affordable housing is tied to the number of dwellings produced and so alternative accommodation provision will not trigger the policy or requirement. The Committee notes the policy is to round up the provision to the next whole number. This means that if a development proposed three dwellings, one would have to be delivered as affordable housing.

The Committee thinks a decision of whether affordable housing should be mandatory needs to consider:

- the potential function and desirability of a renewal precinct that did not provide any affordable housing
- the fact that mandating affordable housing as part of this rezoning, which takes the zone from an industrial to one that encourages high density development will mean the cost of delivering this housing, will be factored into the increase in underlying land value delivered by the Amendment.

The provision of affordable housing will help create a more complete community and provide local housing options for lower paid workers need to support the various innovation activities in the precinct.

The Committee is open minded as to whether the best mechanism is a more detailed provision in the zone, as proposed by Council, or a requirement that a permit contain a condition requiring a section 173 agreement.

#### **(v) Recommendation**

The Committee recommends:

**Put the affordable housing contribution requirements in the zone so they can be made mandatory, subject to establishing that there is a legal power under the Planning and Environment Act to do so.**

## **5.4 Managing parking**

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

The issues is:

- How should parking be controlled?

### **(ii) What is proposed**

The PO sets a maximum rate, but a permit can be granted to allow the provision of parking.

Clause 52.06-2, the parent provision for Car parking states:

If a schedule to the Parking Overlay specifies a maximum parking provision, the maximum provision must not be exceeded except in accordance with a permit issued under Clause 52.06-3.

Clause 52.06-3 states that a permit is required to (among other things):

Provide more than the maximum parking provision specified in a schedule to the Parking Overlay.



In the PO Clause 45.09-3, Permit requirement, states:

A schedule to this overlay may specify that:

- A permit must not be granted to provide more than the maximum parking provision specified in a schedule to this overlay.

As exhibited the Amendment presented maximum rates show in Table 3.

**Table 3: Exhibited maximum car parking rate**

| Use                                 | Rate       | Measure                              |
|-------------------------------------|------------|--------------------------------------|
| Dwelling                            | 0.2 spaces | To each 1 bedroom dwelling           |
|                                     | 0.3 spaces | To each 2 bedroom dwelling           |
|                                     | 0.5 spaces | To each 3 bedroom dwelling           |
| All other uses(Other than Car park) | 3.2 spaces | To each 1000 sqm of gross floor area |

In the final version proposed by the VPA the maximum rate was set to zero and the rates in Table 3 were included under Decision guidelines introduced by:

Where private car parking is proposed, whether the car parking rates exceed those recommended as maximum rates in the Arden Precinct Parking Plan, as specified below: ...

### (iii) Evidence and submissions

Council submitted the car parking rate should be set in the zone so that a permit could not be granted to exceed the indicative rates in in Table 3.

### (iv) Discussion

The statutory regime that is sought is that a permit is required to provide any parking, and that parking (except in a consolidated car park) should not be provided at more than a specified rate.

The Committee supports the ideas behind consolidated parking, but recognises that this will be an innovative approach for Melbourne. To ensure the delivery of consolidated parking the Committee supports mandatory maximum provision outside of consolidated parking. If a developer sought to provide more parking on site than a mandatory maximum, that parking would have to be provided as consolidated parking. Ultimately this may mean the parking is physically provided in the development but managed as consolidated parking.

Because the car parking provisions are primarily aimed at requiring, rather than restricting, the provision of parking, it is not clear to the Committee that a parking overlay schedule can be drafted to require a permit for parking and simultaneously set a mandatory maximum. The Committee therefore supports Council's position that the car parking rate be set in the zone.

### (v) Recommendation

The Committee recommends:

**Control car parking numbers in the zone (alongside motor cycle and bicycle parking) so that:**

- a) a permit is required to provide car parking**
- b) provision above specified rates can only be by way of consolidated parking.**

## 5.5 Policy or controls

### (i) The issue

The issue is:

- Should as many as practicable of the provisions be included in controls rather than policy?

### (ii) What is proposed

The built form objectives and provisions of the Amendment are included in the proposed Arden Urban Renewal Area Policy, the SUZ7 and the DDO Schedules 80, 81, 82 and 83.

Many of the built form requirements are presented in the Arden Urban Renewal Area Policy.

### (iii) Evidence and submissions

Several submitters including Council raised the concern that the use of local policy to implement elements of the Structure Plan does not reflect the importance of the issue as stated in the Structure Plan.

Council submitted that the policy is inappropriate for detailed requirements such as those proposed in relation to Environmentally Sustainable Design (ESD) and public interface, for example. This was supported by Mr Barnes. Relying on his evidence, Council's closing submission stated (Doc 131 at page 36):

There has been no submission or evidence that has changed our view that putting something in local policy is of limited value or effect.

Council's view has only been solidified by the evidence of Mr Barnes who draws on the advice of the Practitioners Guide to the Victorian Planning System that zones and overlays should be used in preference to local policy when available (see paragraphs 84 and 98), and states that such an approach also adds to the overall coherence and usability of the controls.

For present purposes, under the Council's preferred framework, the role of the local policy should be a role limited to providing statutory weight to elements of nuance and detail contained within the Structure Plan that can't practically or technically be articulated within the zones and overlay, but support the exercise of discretion and expression of policy intent of the Arden Structure Plan 2021.

The inclusion of built form provisions in the DDO was supported by Council.

### (iv) Discussion

The Practitioners Guide to the Victorian Planning System is clear that local policy should not fulfil a function that can be accommodated with a zone or overlay provision. The Committee agrees that many of the provisions proposed within the policy could adequately and more appropriately be contained within the DDO or zone schedule. This has the effect of providing greater clarity of the status of the requirements as well as reducing cross referencing between documents for objectives and requirements.

The Committee also notes that the transition of the MSS and Local Policies to the new Planning Policy Framework structure is likely to seek to reduce the length of the policy.

### (v) Recommendation

**Review the proposed policy changes to include as many as possible of the proposed provisions in the zone or Design and Development Overlays.**

## 5.6 The use of a Special Controls Overlay

### (i) The issue

The issues are:

- Is it appropriate to postpone the acquisition of the Citywide land?
- Could a Special Controls Overlay be used to achieve this?

### (ii) What is proposed

Citywide proposed the use of a Special Controls Overlay (SCO) to 'turn off' the proposed controls for a defined period:

The control in this document expires in respect of land identified in Clause 3 of this document upon the earlier of:

- 31 December, 2035; or
- The owner of the land identified in Clause 3 giving written notice to the Planning Authority that it wishes the control to expire on a date that is earlier than 31 December, 2035.

### (iii) Evidence and submissions

Citywide submitted:

- Citywide's primary concern is with the application of Public Acquisition Overlay 9 ('PAO9') to a large area of the Citywide Land, including both its depot north of Green Street and a sufficiently large part of the land on which the Asphalt Plant is located such that acquisition of that land would render the plant non-viable.
- Application of the PAO9 at the time of the gazettal of draft Amendment C407 places Citywide at immediate risk of being acquired with minimal notice, with potentially catastrophic implications for its ability to deliver its services. That in turn would have a severe negative impact on the community which benefits from those services.
- In this regard, Citywide considers that there are three ways to resolve this situation:
  - First, a different drainage solution could be adopted which avoids the need to acquire any Citywide Land. This would enable Citywide to undertake its own transition out of the precinct in a fashion which ensured operational continuity. In this regard, Mr Swan has identified a plausible alternative solution, although Melbourne Water's refusal to provide access to the TUFLOW model has made it impossible for him to model the operation of this solution.
  - Second, the extent of PAO9 could be reduced to be contained north of Green Street. While the acquisition of the Citywide Land north of Green Street would still significantly impair Citywide's ability to provide its services, this would at least avoid a direct impact on the Asphalt Plant.
  - Third, the Structure Plan and Amendment could be further amended in order to provide greater certainty regarding the timing of any acquisition of Citywide's land. Citywide considers this could be achieved through the application of the Specific Controls Overlay and a carefully drafted Incorporated Document. This would enable Citywide, the VPA, Melbourne Water, and other interested parties to move forward on a clear understanding of the likely timeframes for Citywide's transition. Such an outcome would, in Citywide's view, represent a sensible compromise.

The VPA's submission on this topic focussed on:

- the timeframe set in the draft SCO document
- the fact that acquisition of Citywide in a manner that disrupted its business was unlikely because of the additional compensation costs this would incur.

**(iv) Discussion**

The Committee can see broad merit in a control of the form proposed by Citywide, but agrees with the VPA that 2035 is too far away. The control has merit as an innovative way to lock in urban transformation but provide a defined transition period. In this context the Committee considers that the control should have a defined notice period, say two years, that gives some certainty to Citywide without locking the use in for the longer term.

It is understood that the VPA and Citywide are in negotiations about the relocation of Citywide operations. In any case negotiations in the future will be needed. It is said that a good strategy in negotiation is to identify what is cheap for you to give but worth a lot to the other party. Certainty appears to be valued by Citywide. The State Government ought not find this costly to give, or more precisely may find acting in a way that disrupts Citywide's business expensive. The Committee observes that if Council is made the development agency for the acquisition of the Citywide land it will be negotiating with an entity it owns. This may make negotiations easier.

**(v) Conclusions**

The Committee concludes:

The use of the SCO to turn off the controls for a defined period has potential benefits but would need to set a timeframe, or notice period that fitted better with the timing of development aspirations.

## **5.7 Application of Design and Development Overlay Schedule 1**

**(i) The issue**

The issue is:

- What is the best way to deal with city-wide design issues?

**(ii) What is proposed**

The Council proposed that DDO1 which controls design elements in central Melbourne be applied, with some modifications to Arden. The VPA resisted that proposal.

The Committee asked the VPA to tell it what elements of DDO1 it considered were not appropriate for Arden.

The VPA has accepted that a number of requirements from DDO1 should be carried over into the proposed DDO(s).

**(iii) Evidence and submissions**

Both Ms Hodyl and Mr Sheppard confirmed through their evidence the opportunity to apply the DDO1 in Arden.

Council submitted in closing:

218. The Panel in Amendment C308 [which considered submissions to DDO1] concluded the extra weight of a permit trigger in the form of the DDO1 was warranted to regulate urban design in Central Melbourne. Albeit in an urban renewal (and therefore different) context, in Council's submission the application of the DDO1 is also warranted in Arden.
219. Such an approach is consistent with the Arden Vision and Arden Structure Plan both of which place strong emphasis on 'exemplary urban design' and 'designing a distinctive place'.

The VPA provided comments on Council's proposed adaptation of DDO1.

**Table 4: DDO1 elements and VPA comments as to their appropriateness**

| DDO1 element  | VPA comment  |
|---|--|
| Urban structure: Urban Structure relates to the network of main streets, streets, laneways and open spaces which define the size and shape of urban blocks  |  |
| Urban structure that sufficiently fine grained  | The Urban Structure for Arden is contained in the Arden Structure Plan. Generic urban block structure requirements are not relevant to Arden and would undermine the work that has been done to prepare the Plan 2 -Arden's future Urban Structure.  |
| Pedestrian network that reduces walking distance and completes connections  | The generic guidance in DDO1 is not helpful as the proposed pedestrian network is contained in the Arden Structure Plan. However, there could be merit in including additional guidance in the combined DDO80 to ensure development provide an appropriate interface with the proposed pedestrian network in Arden.  |
| Pedestrian connections that are high quality  | There could be merit in including additional guidance in DDO80 to ensure development provide an appropriate interface with the proposed pedestrian network in Arden.   |
| Site layout: Site layout refers to the arrangement of buildings and spaces, including the position of entries, building services and circulation cores and how these elements respond to and reinforce the character of streets and laneways. |  |
| Site layout that reinforces the public realm  | DDO80 contains objective to ensure an appropriate level of street enclosure is provided and buildings make a positive contributes to the streetscape.  |
| Plazas  | Inclusion accepted   |
| Vehicle entries   | Duplicates objectives and requirements in DDO80  |
| Colonnades  | Inclusion accepted.  |
| Building mass: Building mass relates to the three dimensional form of a building, including its scale, height, proportions and composition.   |  |
| Building mass   | Dealt with in built form objectives and requirements in DDO80.   |
| Street walls  | Dealt with in Clause 2.4 of the combined DDO80.  |
| Building program: Building program relates to the position and configuration of internal spaces to a building. This is a key urban design consideration due to the direct relationship of internal areas to the public realm.                 |  |
| Building program  | The requirements in this section of DDO1 are addressed through built form objectives and requirements in other sections of DDO80.<br>Additionally, 'building program' is not a term used in the Arden Structure Plan and the introduction of new terminology at this stage of the process is considered unnecessary. |
| Building services   | Inclusion accepted.  |
| Car parking   | <b>Partially support.</b> The VPA have included the carparking outcomes that relate to adaptable car parking and included at Clause 2.10 Adaptable buildings and inserted a new Clause at <i>Clause 2.11 Car parking</i> for guidance on above ground car parking.   |

| DDO1 element   | VPA comment   |
|--|---|
| Public interfaces: Public interfaces relates to the boundary between a building and the public realm in main streets, streets, laneways and open spaces.   |   |
| Public interfaces  | The majority of the public interface requirements in DDO1 are contained in Clause 2.9 of DDO80.<br>Additional text from DDO1 included.  |
| Facade projections and balconies   | Inclusion accepted.   |
| Weather protection   | Table 6 in DDO80 contains design requirements for weather protection.<br>Additional text from Weather Protection was included in DDO80. |
| Design detail: Design detail refers to the resolution of a contextually responsive building exterior that contributes to the quality of the public realm through its architectural expression, materials and finishes. |   |
| Exterior design  | DDO80 contains aspects of this section of DDO1.<br>Additional text was included in DDO80.   |

#### (iv) Discussion

The main concerns of the VPA were that the DDO1 duplicates elements already in the consolidated DDO for Arden. This begs the question of where this material ought to be located: in the consolidated DDO or DDO1?

The Committee has reviewed DDO1 in detail and cannot see anything inappropriate for Arden that cannot be 'switched off' in DDO1.

Applying DDO1 will make the Planning Scheme easier to use in that it will reduce needless variation in design requirements between different precincts for no strategic reason. This will help designers and Council officers confidently apply the same approaches across different high density areas in Melbourne.

The Committee thinks there is merit in applying the generic requirements about block structure in DDO1 to Arden. These will reinforce the indicative laneway proposal and will come to the fore if the indicative laneways move, or are sought to be moved, for any reason. If the area is to be pedestrian oriented then it ought to have a fine grained block structure.

#### (v) Recommendations

The Committee recommends:

**Take a more consistent approach to design issues across the Central City by:**

- a) applying Design and Development Overlay Schedule 1 amended as needed to deal with:
  - the indicative laneways
  - laneway width
- b) removing detailed design requirements from the consolidated Design and Development Overlay except the proposed laneways.

## 5.8 Third party rights

### (i) The issue

The issue is:

- Whether third party rights should be turned off.

### (ii) What is proposed

It is proposed to generally exempt permits from third party objection and appeal rights, stating, where needed:

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

This exemption does not apply to an application to use land for a Function centre, Nightclub, Tavern, Adult sex bookshop, Amusement parlour or Hotel in Arden North or Laurens Street sub-precincts shown on Plan 1 to Schedule 7 to Clause 37.01.

The Schedule to Clause 72.01 (Administration and Enforcement of this Planning Scheme) makes the Minister for Planning the responsible authority for (among other things):

- development of land as part of a single project or multiple related projects, if it involves:
  - construction of a new building or buildings containing a total gross floor area of more than 25,000 square metres;
  - construction or the carrying out of works (including extensions, alterations or additions to a building or buildings) which will directly create an additional floor area of more than 25,000 square metres of a building or buildings; or
  - demolition or (sic) removal of a building or buildings or part of a building or buildings, if that demolition or removal is to be carried out to enable development within the meaning of one of the sub-paragraphs above;

These exemptions relate to giving notice of an application to:

- 52(1)(a) – owners and occupiers of lots adjoining the land
- 52(1)(b) – a municipal council, if the application applies to or may materially affect land within its municipal district
- 52(1)(d) – to any other persons, if the responsible authority considers that the grant of the permit may cause material detriment to them.

The provisions do not exempt making an objection. They exempt:

- 64(1) – giving the applicant and each person who objected a notice of a decision to grant a permit
- 64(2) – setting out any conditions in such a notice
- 64(3) – waiting to issue a permit to allow for potential appeals.

The provision prevent objector appeals to VCAT:

- 82(1) – allowing an objector to apply to VCAT for review of a decision of the responsible authority to grant a permit.

### (iii) Evidence and submissions

Council did not support the relatively blanket exemptions from notice and review and sought maintaining notice rights but switching off appeal rights.

The VPA submitted (Doc 51) that not providing for notice or third party appeal rights, save for very limited circumstances, reduced administrative cost and delay and, as observed by Ms Peterson,

provided a higher level of certainty for developers in establishing development timeframes and feasibility as a form of priority planning.<sup>5</sup>

Council submitted (Doc 131):

144. Council's position on notification and review rights is one that seeks to retain the opportunity for public engagement with the planning permit application process.
145. This is especially critical where development is within sensitive areas, including Laurens Street sub-precinct, and where development density and form and future land uses have a high degree of uncertainty.
146. Because Council is not the responsible authority for permit applications comprising developments in excess of 25,000 sqm GFA, inevitably it will not be the responsible authority for several development applications. As such, Council wishes to preserve its right to make an application for review if it was of the mind to do so.
147. Council has appended its amended Special Use Zone – Schedule 7 to assist the Committee and the Planning Authority and to demonstrate how these key issues can be addressed through the drafting of the controls.

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

There are three issues:

- the right of third parties to receive notice and to object to development proposals
- the right of third parties to appeal a decision
- the rights of Council, where it is not the responsible authority.

The formal requirement to give notice and consider objections is not a particularly onerous requirement. There are a number of existing uses and residents in the precinct and it is appropriate they receive notice of applications so they can make submissions to the responsible authority. This would allow the responsible authority to better understand the impacts of changes. Retaining this process would also allow potential developers of new uses (for example the operators of the proposed hospital) to voice any concerns about proposed development.

The Committee agrees that the potential for third party appeals to VCAT should be avoided, especially given costs, and long delays that this can entail.

In terms of referral to Council, it is appropriate that it have an opportunity to formally participate in the permit process. Council has a range of responsibilities independent of the planning system and formal involvement of Council ensures civil engineering issues, for example, can be appropriately addressed at the design stage.

#### **(v) Recommendation**

The Committee recommends:

**Revise the Amendment documentation to:**

- a) retain notice provisions in the zone and overlays
- b) exempt third party appeal rights (as proposed)
- c) make the City of Melbourne a recommending referral authority for matters where it is not the responsible authority as proposed, but with necessary changes to the Schedule to Clause 66.04 (Referral of Permit Applications Under Local Provisions).

<sup>5</sup> Ms Peterson's statement at paras 11.1.15 and 11.1.16.



## 6 Proposed policy changes

This chapter deals with the changes required to policies in the planning scheme.

### 6.1 General policy issues

#### (i) The issue

The issue is:

- Do the proposed policy changes create a consistent policy designation?

#### (ii) What is proposed

The Melbourne Planning Scheme distinguishes between, 'existing', 'proposed', and 'potential' urban renewal areas. The MSS presents:

- these areas in a list in Clause 21.01
- their classification and location on Figure 1 at Clause 21.04-1 (Growth Area Framework) shown in Figure 4 on page 21 in this Report
- an overview of the areas in Clause 21.04-1.2
- detailed policy at:
  - 21.13 for Urban renewal
  - 21.14 for Proposed urban renewal
  - 21.15 for Potential urban renewal
- detailed policy for one area, namely Clause 22.27 (Fishermans Bend Urban Renewal Area Policy).

The current scheme presents policy for Arden together with Macaulay as one area 'Arden-Macaulay' in text, even though these are mapped differently. Table 5 shows the changes proposed.

The MSS also presents policies and plans under a range of headings and none of this policy nor these plans are proposed to be changed. This means, for example, Arden will not be designated on the employment framework at Clause 21.08 (Economic Development).

The introduction to Clause 21.11 (Local Areas) presents the city's neighbourhoods; despite the change to the area of Arden, the relevant neighbourhood plan remains unchanged.

**Table 5: Current and proposed policy structure**

|                         | Current                              |                             | Proposed   |                             |
|-------------------------|--------------------------------------|-----------------------------|--|-----------------------------|
|                         | Arden                                | Macaulay                    | Arden  | Macaulay                    |
| Clause 21.01 list       | 21.14 Proposed urban renewal         |                             | 21.14 Proposed urban renewal                         |                             |
| Designation In Figure 1 | Proposed Existing urban renewal area | Existing urban renewal area | Proposed Existing urban renewal area<br>AREA changed | Existing urban renewal area |
| In 21.04-12             | Urban renewal                        |                             | Urban renewal  |                             |

|                   | Current                      | Proposed  |  |
|-------------------|------------------------------|---|--|
| Detailed policy   | 21.14 Proposed urban renewal | 21.13 Urban renewal<br>21.14 Proposed Urban renewal as part of Arden-Macaulay | 21.14 Proposed Urban renewal as part of Arden-Macaulay |
| Additional policy |                              | Clause 22.28  |  |

### (iii) Evidence and submissions

This issue was not raised at the Hearing.

### (iv) Discussion and recommendation

It seems clear to the Committee that there is an incomplete or inconsistent approach to updating policy in the Amendment. There is no longer any purpose in grouping Arden and Macaulay as one area as they are subject to different processes and Arden will have its own structure plan.

The Committee recommends:

**Review all the relevant local policy with the aim of having clear and consistent designations that accurately reflect the importance of Arden including treating Arden and Macaulay as separate areas.**

## 6.2 Proposed policy at Clause 22.28

The Amendment proposes the introduction of a new Policy at Clause 22.28 (Arden Urban Renewal Area Policy), that is to apply to all land within Arden affected by the SUZ7. The policy implements the Vision as set out in the Arden Vision 2018. It contains objectives and strategies relating to a wide range of matters for consideration in the issue of approvals under the zone or other provisions.

It is noted that as the policy is to apply only to land within the SUZ, the policy as exhibited does not apply to the land within the IN3Z or the variety of public purpose zones that currently and will continue to apply or are proposed to apply to land within Arden.

### 6.2.1 Vision

#### (i) The issues

The issues are:

- Should the policy reference the Arden Vision 2018 or the Structure Plan vision?
- Should the structure of the policy more directly reflect the Structure Plan?

#### (ii) What is proposed

Clause 22.28-1 refers to the vision for Arden *“as set out in Arden Vision 2018”*, but does not repeat the vision itself. The Arden Structure Plan contains the same vision as expressed in the Arden Vision document.

**(iii) Evidence and submissions**

In evidence, Mr Barnes notes that the policy refers to the Arden Vision 2018 and recommends altering the reference to the Arden Vision in the Structure Plan as this is the reference document to the policy, not the 2018 document.

In his evidence Mr Barnes contended that:

Considerable detail contained in the structure plan has been lost in the translation into a planning scheme amendment.” (para 57)

One of the areas of ‘disconnect’ he considered arises from a lack of consistency between the Structure Plan and policy in terms of its headings, which has resulted in parts of the intended strategic direction being relocated and lost in the policy. He considered that this resulted also in a lack of transparency and clear inter-relationship between the documents.

Mr Barnes also considered that there is merit in including the Structure Plan as an incorporated document, similar to Precinct Structure Plans for land in the Urban Growth Zone.

**(iv) Discussion and recommendation**

As a matter of principle the Planning Scheme should refer to a reference document, rather than an earlier version of the same document. This is more transparent.

While making no detailed recommendations in this regard, the Committee considers that any further rationalisation of the policy should attempt to more directly align with the headings and content of the Structure Plan to assist in this connection and clarity of purpose.

It is not considered necessary to incorporate the Structure Plan, as the Amendment has effectively taken the relevant matters from a long and complex Plan into an implementation format through the Amendment.

The Committee recommends:

**Review all the relevant local policy with the aim of having clear and consistent designations that accurately reflect the importance of Arden including:**

- a) changing references to the Vision to the Arden Structure Plan vision, for all references throughout policy.**
- b) seeking a closer alignment with the headings and content of the Structure Plan to assist in ensuring transparency with the reference document.**

**6.2.2 Land uses**

The policy supports land uses that are creative and innovative in appropriate precincts, locating highest density employment opportunities close to public transport, housing for a diverse community including affordable housing, and the continued operation of strategically important existing uses and industrial uses that support the urban renewal of the precinct.

**(i) The issues**

The issues are:

- Is the policy implementing the land use intent of the Arden Vision?
- Should the preferred retail activities and location be more defined in the Policy?
- Are the provisions relating to strategically important existing uses and industrial uses supporting the urban renewal of the precinct adequate?

**(ii) What is proposed**

The exhibited policy includes separate clauses relating to several land uses:

- 22.28-3.2 Affordable housing
- 22.28-3.1 Innovative, creative and anchor enterprises
- 22.28-3.6 Industrial land use transition.

In these clauses reference is made to the preferred location of these activities within certain precincts, where relevant. However no overall statement of the preferred uses within each precinct is provided in the exhibited version. In considering the policy further during the Hearing, the VPA determined that the policy should include a clear reference to the preferred land uses within each sub-precinct to assist in land use decisions under the SUZ.

The amended version of the policy submitted by the VPA proposed including text related to land uses drawn from the Structure Plan.

**(iii) Evidence and submissions**

In relation to land use issues in the policy, Council stated in its Closing submission that (Doc 131, pages 35-36):

... the local policy should:

- Include detailed land use visions provided on the page 28 and 29 of the Arden Structure Plan (based on the recommendations of David Barnes, at paragraph 78).
- Provide additional detail on employment and innovation Vision and targets articulated under Objective 2 and 3.
- ... be reviewed in reference to what controls have otherwise been accommodated more appropriately within the zone or overlay, or should be.

Council submitted:

The PSA provides no direction to enable the achievement of other land use outcomes identified in the revised Structure Plan that are key to Arden's liveability and vibrancy, a key factor of success for innovation districts defined in Victorian Government policy. For instance, the PSA does not reflect the ambition for Barwise Street as Arden's primary retail street or facilitate the delivery of commercial car parking rather than individual site parking. (p14)

Mr Barnes' evidence was that the creation of a 'retail focal point' has not been given sufficient attention in the exhibited Amendment. These matters were addressed by the VPA in the revised version of the policy, however Council maintained in its closing submission that further action is required to ensure the intent of the Structure Plan is met.

The Lost Dogs' Home submission noted concerns with the drafting of the policy, as amended by the VPA in its Part A submission. It states:

The text of the two new dot points and the newly worded objective should be amended to reflect the important role which the facilities owned and operated by The Lost Dogs' Home perform in the precinct and the broader community.

The submission stated that the policy should be altered to include specific reference to the veterinary and animal welfare activities of the Lost Dogs Home and associated entities. It is also suggested that the policy should be strengthened by changing the first dot point under Policy basis to read:

This policy supports:

...

- ~~Encouraging~~ The implementation of measures by new uses and developments to implement measures to mitigate against adverse amenity impacts from existing uses.

The VPA subsequently adopted the proposed wording in a corrected form in the final policy version.

In general, submissions from community members supported the proposed land use mix with the emphasis on employment generating, commercial, innovative and health related activities. Some saw the benefits of additional retail and other services for existing residents and others were concerned to ensure that the policy and controls delivered the commercial outcomes.

Land owners submitted that the policy and controls needed to be significantly weighted towards commercial land use outcomes due to the often greater returns available from residential development as witnessed on other redevelopment areas.

Citywide was concerned about the continued operation of the asphalt facility, and considered this required:

... amendment to the proposed Clause 22.28 policy to strengthen its position in relation to existing uses and to identify the Citywide Land as a 'strategically significant industrial use'.

In response the VPA proposed a number of changes to the policy both before and during the hearing process. These changes include:

- changes to the wording of the policy in relation to existing and industrial uses that support the urban renewal of the precinct by the addition of two further Policy basis dot points:
  - Encouraging new uses and developments to implement measures to mitigate against adverse amenity impacts from existing uses.
  - The continued operation of strategically important existing uses and existing industrial uses including those that provide services or materials to the construction industry or support the urban renewal of the precinct.
- changes to the first Objective (new words underlined):
  - To support the urban renewal of Arden as an innovative mixed use precinct, while ensuring new sensitive land uses and development manages potential amenity impacts from industrial uses during the renewal of the precinct.

#### **(iv) Discussion and conclusion**

The changes proposed by the VPA to address concerns raised regarding the land use provisions of the policy at Clause 22.28-3.1 are supported. The greater detail proposed in the policy addresses the primary concerns of those seeking further clarity and accords with the Structure Plan.

The Committee considers that the importance of the retail activities around Barwise Street could be given more emphasis to ensure that the primary role of the function in the precinct, as proposed in the Structure Plan, is realised.

The submissions requesting further detail the of types of industry that are supported in the Policy basis have been adequately accommodated by the proposed changes to the final Policy basis dot point to broaden the consideration of all strategically important existing uses.

The minor wording change proposed to the first dot point under the Policy basis by the Lost Dogs' Home is supported. It is an example of improved and more direct wording that is needed in planning schemes.

The Committee concludes:

The changes proposed by the VPA regarding land use are generally appropriate.

### 6.2.3 Built form objectives

The Committee notes that the Policy and DDOs as exhibited did not include a land use, character or built form statement for each sub-precinct in a format that was easily identifiable and comparable. In reconsidering the proposed policy and the combining of the DDOs, the VPA has included a table at Clause 22.28-3.1 that includes the purpose and character descriptions for each sub-precinct. This provides an overarching context for the built form objectives in the combined DDO.

The Committee recommends:

**Review all the relevant local policy with the aim of having clear and consistent designations that accurately reflect the importance of Arden including:**

- a) presenting the proposed purpose and character of Arden in the policy**
- b) giving more emphasis to the importance of the retail activities around Barwise Street.**

### 6.2.4 Ecologically Sustainable Design

#### (i) The issues

The issues are:

- Are the strategies and policy guidelines appropriate and correctly worded?
- Should these provisions be within the policy or the DDO?

#### (ii) What the policy proposes

The exhibited policy includes a provision at Clause 22.28-3.5 (Environmentally Sustainable Design), that contains objectives and policy guidelines that require consideration as relevant that:

- all new buildings over 5000 square metres are or will be certified to the 6 Green Star rating
- all new buildings provide 75 per cent of the total building site area, including 40 per cent of total surface area, as green cover.

The policy advocates the use of green infrastructure, green facades, rooftop, podium or terrace planting that is water efficient, located and designed to be sustainable, viable and resilient, and glazing and materials with a high solar reflectivity index.

#### (iii) Evidence and submissions

The VPA proposed changes to the wording and provision of the policy during the Hearing process in response to drafting issues identified. The VPA submitted that the Policy guidelines in the exhibited Policy at Clause 22.28-3.5 should be altered to delete:

Consider as relevant:

- For all new buildings, providing at least 75 per cent of the total site area as building or landscape elements including the provision of a minimum of 40 per cent total surface area as green cover (green wall, rooftop, canopy and understorey planting, native and indigenous planting or maximises adjacent public realm cooling benefits) to reduce the impact of the urban heat island effect.

And in its place include:

Consider as relevant :

- For all new buildings, providing the equivalent of at least 75% of the development's total site area as building or landscape elements that reduce the impact of the urban heat island effect. These elements:
  - Include Green infrastructure
  - Include roof or facade materials with a high solar reflectivity
  - Include solar panels or shading structures
  - Include hardscaping materials with a high solar reflectivity
  - Should ensure non-glazed facade materials exposed to summer sun have a high solar reflectivity
  - Should use passive cooling and heating techniques to reduce reliance on artificial heating and cooling
  - Should utilise paving treatments which assist in cooling, such as permeable paving or light coloured aggregates, where applicable.
- For all new buildings, providing at least 40% of the total site area will be provided as green cover, including by satisfying the following elements:
  - Species selection and associated planting scheme of native and / or indigenous species which provides habitat for native fauna to the satisfaction of the responsible authority.
  - Green cover which is located to provide maximum benefit in relation of cooling of the adjoining public realm to the satisfaction of the responsible authority. Green walls or facades under this alternate delivery must directly abut the public realm and be on the lower levels of the building.

Council submitted that the provisions in the proposed policy were generally supported although not reflective of the specific wording and strategic intent of the Structure Plan, and that the provisions were better located in the DDO where they would have greater weight as a requirement rather than as a policy matter to 'consider as relevant'. Council submitted:

- Simply put, net zero emissions by 2040 in Arden will not be met under the proposed Draft Amendment. Council maintains that the proposed local policy, which is the only mechanism proposed to address sustainability outcomes in Arden, are inadequate to realise and secure climate resilience and sustainability targets and to realise ESD measures which are clearly articulated in the Arden Structure Plan. Therefore the use of the local policy as the planning mechanism is not supported.
- Council considers that making the achievement of Green Star ratings (or demonstrated equivalent standards, to allow for this dynamic and evolutionary area of technology) requirements in the Zone is the absolute minimum step needed to provide certainty that the VPA's own objective of the SUZ7, that is 'to create a world leading sustainable urban renewal precinct' will be achieved. The use of sustainability ratings tools like Green Star provides the flexibility to adapt over time as technology changes and for sites to respond in a contextual way, rather than requiring specific and fixed technological solutions. (201.)
- Further, Council considers that the requirements within the zone affords sufficient flexibility in terms of response to meeting these standards. (Doc 131, p.40)

In its original written submission to the Amendment Council submitted:

- For example, Strategy 11.2 within the revised Structure Plan to "*require all new buildings to achieve world leading sustainability performance*" as measured by Green Star ratings is reflected in Clause 22.28 as a policy guideline to "*consider as relevant*" whether buildings are "*capable of meeting*" Green Star rating, and does not include the additional detail provided around NABERS and NatHERS ratings requirements. Similarly, Strategy 11.3 within SUZ7 is included as a consideration rather than a requirement as set out within the revised Structure Plan. (Doc 007, Submission 40.54)

The submission concluded:

Accordingly, the PSA does not deliver Arden's Vision, does not demonstrate best practice and is unlikely to facilitate the achievement of Arden's emissions reduction target. Council recommends that all sustainability strategies should be located within an Environmentally Sustainable Design (ESD) DDO and include mandatory provisions to ensure best practice. (Doc 007)

Submissions were received from industry bodies, community members and organisations, and land owners in relation to the proposed policy provisions for ecologically sustainable design. Several submitters strongly supported the ESD elements of the Structure Plan and proposed policy, while others considered the policy was either not strong enough or did not contain sufficient statutory weight as policy.

The UDIA and one land owner submitted that the use of the Green Star certification is an unnecessary administrative and cost burden of no benefit and should be removed. The Property Council supported the use of the Green Star rating system with flexibility to allow future upgrades to meet the standards.

The Lost Dogs' Home submitted that the Policy guideline provision relating to 75 per cent of the site area for building or landscape elements, and for 40 per cent of the surface area to be green cover was problematic. It submitted the provision *"...does not make sense, suffers from a lack of clarity in relation to definitions and should be removed or reworded"* (Doc 077, page 13).

The requirement in the policy for 40 per cent of the building surface area to be green cover is opposed by the UDIA and one land owner as overly prescriptive, very difficult to achieve and unnecessary. The UDIA contends that if it is retained the requirement should be significantly reduced due to the installation cost, building design impact and maintenance issues having regard to overseas experience and Melbourne's climate.

The Committee sought information from the VPA as to local examples where this type of green cover provision had been previously applied. The VPA advised that based on advice from the *"HipvHype technical work"* no examples are available within Victorian planning schemes as 'Green Infrastructure' has not been introduced to Victoria's planning schemes in any way other than broad objectives. Council provided a number of examples from Victorian planning schemes, largely from Development Plan Overlays, that contain a variety of ESD requirements, although none with the measures proposed for Arden. The figure of 40 per cent is consistent with proposed targets underpinning Council's implementation of *Green Our City* and subsequent *Green Factor Tool*, and aligns with the content of Melbourne Amendment C376melb which is still under consideration by the Minister for exhibition.

#### **(iv) Discussion and recommendation**

The wording and emphasis on environmental sustainability in the Structure Plan indicates that greater weight on this issue is warranted in the Amendment.

The Committee considers that the ESD requirements would be better located in a DDO as submitted by Council. The requirements could apply, as they have in a number of other DDOs in Victorian planning schemes, to all development or development of certain size of type.

Inclusion of the ESD requirements in the proposed consolidated DDO would reflect the importance of this aspect of the Arden redevelopment as expressed in the Structure Plan, and in general reflect the broader community's concern, expressed through submissions and engagement through the Structure Plan development, in achieving a high standard of environmental sustainability within the precinct.

The 75 per cent 'green cover' requirement is a provision supported by both the Council and the VPA, and has been altered to relate to site area rather than 'surface area' as originally exhibited. The Committee considers that the revised provision is reasonable, but it could still be made clearer with minor wording changes and by referring to 'including use of vertical surfaces and planter boxes' if this is the intent.



It is noted that the wording of the proposed Policy guidelines requires some minor modification to read correctly. In addition, the use of common words is advocated for policy, and the terms 'green infrastructure' and 'green cover' could be interpreted in a number of ways. It is suggested that these terms be replaced with 'Trees and other vegetation' or similar to indicate the actual meaning.

The Committee recommends:

**Review all the relevant local policy with the aim of having clear and consistent designations that accurately reflect the importance of Arden including moving the provisions for Ecologically Sustainable Design generally as proposed to the consolidated Design and Development Overlay but redrafted as needed to be presented as requirements using 'should'.**

## 7 Proposed zone

This chapter deals with the proposed zone. The Committee has recommended that:

- the CCZ be used in place of the SUZ – this has no impact on the way the schedule is drafted
- the CCZ be applied to the land proposed to be left in IN3Z
- Affordable housing be addressed in the zone
- Parking be addressed in the zone.

### 7.1 Accommodation uses

#### (i) The issue

The issue is:

- The requirement for a permit for Accommodation in the lower six floors of a building.

#### (ii) What is proposed

Section 1 of the table of uses sets out some conditions for uses in the Industry nest as follows:

**Accommodation (other than Camping and caravan park, Corrective Institution, Group accommodation, Host farm, Residential hotel)**

Must be outside the 'high pressure gas transmission pipeline measurement length' (240 metres) shown on Plan 2 to Schedule 7 to Clause 37.01.

Where located in the Arden Central Innovation or Arden North Sub-precinct shown on Plan 1 to Schedule 7 to Clause 37.01 must:

- Be located above the first six storeys (ground to fifth floor), except for part of a building which provides access such as a lobby or entrance; and.
- Any frontage at ground floor level must not exceed 4 metres.

Council proposed additional requirements under Clause 2.0 of the zone:

**Use for Accommodation – Minimum floor area requirement for use other than Accommodation**

Where a permit is required to use land for Accommodation, the development must include the minimum percentage of net floor area allocated to a use other than Accommodation specified in Table 1.

Table 1 Minimum percentage of non-Accommodation floor area

| Sub-Precinct             | Minimum percentage of NFA |
|--------------------------|---------------------------|
| Arden Central Innovation | 60%                       |
| Arden Central Mixed Use  | 60%                       |
| Arden North              | 60%                       |
| Laurens Street           | 0%                        |

These requirements do not apply to:

- An application that seeks to increase the gross floor area of an existing development where the increase in floor area is to be allocated solely to a use other than Accommodation.
- The use of land in accordance with a planning permit for buildings and works granted before the approval date of Amendment C407.

#### (iii) Evidence and submissions

Council did not support the proposed 'first 6 storeys' approach to non-accommodation uses because it considered it to be relatively inflexible:

- 133 ... Council proposes in its preferred version of the SUZ7, a requirement for a development incorporating accommodation in all sub-precincts other than Laurens Street to provide a minimum of 60 per cent of its floor area for a use other than accommodation. Adopting a percentage control, rather than a storey based control, will provide greater flexibility to better arrange uses on a single site, such as different tower forms dedicated to different uses. This control recognises that different tower forms have different floorplate size, servicing and amenity considerations.

The VPA did not adopt Council's recommendation to adopt a percentage of floor area based non-accommodation requirement, commenting:

The proposed mandatory control does not reflect the practicality that some buildings will be entirely for a particular use (such as office or medi-hotel).

This mechanism does not consider single dwellings or change of land use (e.g. from a carpark to a dwelling).

The percentage targets are not supported by technical work.

Council submitted the VPA approach of nominating the first 6 levels of a building in the Land Use Table was a blunt instrument that did not allow a site specific response and undermines the achievement of the jobs target.

Guntar Graphics considered the proposed condition too restrictive:

71. It is acknowledged that a permit may still be granted for a proposal which includes Accommodation uses within the first six storeys. However, this condition is undeniably instructive and suggests a clear preference for non-residential uses in lower levels, which any decision maker will find difficult to ignore.
72. The Landowners submit that a fair compromise is to replace the words 'first six storeys (ground to fifth floor)' with 'first four storeys (ground to third floor)'.

#### (iv) Discussion

The Committee agrees that there may be periods when residential development is more profitable than commercial development (or developers will simply seek to deliver a familiar product) and this may mean that insufficient commercial space is delivered. For this reason it is important to require a permit if a certain amount of commercial space is not part of a development proposal.

It is not clear that a choice has to be made between the two approaches. It would seem possible to draft the controls so that a permit is required for a proposal that seeks to deliver accommodation:

- in the first six levels, or
- more than 40 per cent of the proposed floor area.

#### (v) Recommendation

The Committee recommends:

**In the Table of uses in the zone, change the Section 1 condition next to Accommodation (other than Camping and caravan park, Corrective Institution, Group accommodation, Host farm, Residential hotel) to include:**

**Where located in the Arden Central Innovation or Arden North sub-precincts shown on Plan 1 to Schedule 7 to Clause 37.01 must either:**

- **Be located above the first six storeys (ground to fifth floor), except for the part of a building that provides access such as a lobby or entrance, and any frontage at ground floor level must not exceed 4 metres.**
- **Occupy no more than 40 per cent of the Net Floor Area of the above ground floor area.**

## 7.2 Industrial uses

### (i) The issue

The issue is:

- Whether controls over industrial uses are appropriate.

### (ii) What is proposed

Section 2 of the Table of uses sets out some conditions for uses in the Industry nest as follows:

**Industry (other than Research and development centre, Materials recycling, Refuse disposal, Transfer station and Rural Industry)**

Where located in the Laurens Street or Arden Central Mixed Use Sub-precincts, must not be a purpose listed in the table to Clause 53.10 except for boiler maker, bakery, smallgoods production and joinery.

The land must be at least the following distances from land (not a road) in a residential zone, Activity Centre Zone, Commercial 1 Zone, Capital City Zone, Docklands Zone, land used for a hospital, primary school, or secondary school, land not in this zone used for any other education centre, or land in a Public Acquisition Overlay to be acquired for a hospital, primary school, secondary school, or for any other education centre on land not in this zone:

- The threshold distance, for a purpose listed in the table to Clause 53.10.
- 30 metres, for a purpose not listed in the table to Clause 53.10. If a purpose listed in the table to Clause 53.10.

Where located in the 'high pressure gas transmission pipeline measurement length' (240 metres) shown on Plan 2 to Schedule 7 to Clause 37.01 must not be a purpose listed in the table to Clause 53.10.

### (iii) Evidence and submissions

This issue was discussed briefly at the Hearing but the Committee did not receive detailed submissions.

### (iv) Discussion

The conditions against industry seemed to have been drafted without reference to the actual uses listed in Clause 53.10 or the impact of essentially prohibiting such a wide range of industrial uses.

The Table to Clause 53.10 is for potential amenity impacts. To apply this as if it has some relevance to safety concerns from the pipeline makes no sense whatsoever. What conceivable risk does a 'milk depot' for example pose to the pipeline? If someone wanted to establish a micro dairy (one exists in Fitzroy), why would the planning scheme prohibit it, rather than consider it on its merits? Impact on the gas pipeline can be assessed for specific uses rather than imposing a blanket ban.

More to the point, the proposed controls would essentially prohibit all pharmaceutical production. The Committee can imagine a small highly specialised operation fitting quite well with an innovation area, and yet all such activities regardless of scale are essentially prohibited.

None of this means that any of these uses are automatically appropriate, simply that they ought not be mandatorily excluded.

### (v) Recommendation

The Committee recommends:

**In the Table of uses in the zone, delete the conditions opposite industry in Section 2**

## 7.3 Table of uses

The Committee accepts changes to the Table of uses proposed by the VPA in response to submissions. The Committee notes some departures from drafting advice in the Table of uses:

- in Section 1 'Manufacturing sales' needs to be identified as an 'Other than' use in 'Retail Premises'
- in Section 2 there is no need to list:
  - 'Manufacturing sales' and 'Utility Installation (other than Minor Utility installation)'
  - 'Function centre' separately, it should be removed as an 'Other than' use under 'Place of assembly'
- in Section 2 there is a need to list
  - 'Other than' uses identified in Section 1 that are not listed.

The Committee recommends:

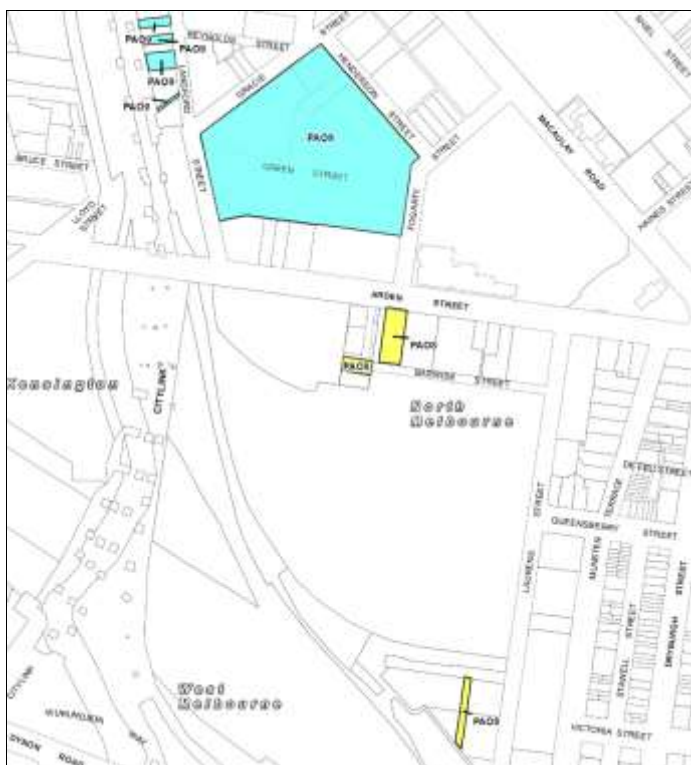
**Audit the Table of uses to ensure compliance with drafting requirements.**

## 8 Proposed public acquisitions and open space delivery



### 8.1 What is proposed

Figure 12 shows the proposed land acquisition, and Table 6 the purpose of the acquisition.

**Figure 12: Proposed PAO**



**Table 6: Purpose of the acquisition**

|   | PS Map | Acquiring Authority                      | Purpose of Acquisition   |
|---|--------|--|--------------------------|
|  | PA08   | Secretary to the Department of Transport | Footpath / road widening |
|  | PA09   | Secretary to the Department of Transport | Drainage / open space    |

### 8.2 RSA Holdings and Rockford Constant Velocity

#### (i) The issue

The issue is:

- The purpose recorded for the acquisition of the RSA and Rockford land.

#### (ii) What is proposed

The Schedule includes the purpose of PA09 as:

Drainage / open space.

**(iii) Evidence and submissions**

RSA and Rockford contested the reservation of their land for drainage purposes (Doc 88, para 7). They acknowledged evidence before the Committee that indicated there may be a sound basis for the proposed reservation of their land for the provision of public open space, but remained silent as to the relative merits of an open space reservation. They acknowledged that they had not sought to submit evidence addressing public open space requirements, design or location.

The position of RSA and Rockford was that:

- The Arden Precinct is prone to flooding and that strategies are required to mitigate the risk of flooding before the development anticipated by the Structure Plan can occur.
- The proposed Citywide Flood Storage will provide little or no hydrological benefit.
- The combination of flood storage and the provision of open space as encapsulated in the ISMOS fails to provide a fair planning outcome as required by the PE Act. It significantly disadvantages RSA and Rockford as it leads to their land being set aside for drainage purposes, in circumstances where the expert evidence suggests that there is no hydrological basis for such a reservation.

Based upon the experts' evidence regarding the provision of public open space for the precinct, RSA and Rockford did not contest the reservation of their land for the provision of public open space. But the concurrent implications of their land supposedly being required for drainage purposes could distort a proper understanding of the capacity of their land to be developed, thereby unfairly blighting the proper characterisation of their land.

Their submission was that fair and orderly planning requires that the RSA and Rockford land is not set aside for drainage purposes. RSA and Rockford sought additional protection of their existing use rights, and further clarity regarding the delivery strategy for the Structure Plan.

RSA and Rockford submitted in closing:

- 2 No parties sought to cross-examine the drainage experts. Accordingly, this document sets out the further qualifications which RSA and Rockford suggest that the SAC ought record:
  - a The RSA Land and the Rockford Land is to be acquired for the dual purpose of drainage and open space for the ISMOS
  - b The SAC is satisfied on the basis of the evidence before it that the acquisition of the RSA Land and Rockford Land is required for the provision of open space
  - c However, there was contested evidence before the SAC as to whether the acquisition of the RSA Land and Rockford Land is required for drainage purposes. Ultimately the SAC did not need make any definitive findings on this issue since it is satisfied that the acquisition of the RSA Land and Rockford Land is required for the provision of open space
  - d Accordingly, any finding by the SAC that the acquisition of the RSA Land and Rockford Land is required for the dual purpose of drainage and open space for the ISMOS, should not be taken as a finding that the SAC is satisfied that the acquisition of the RSA Land and Rockford Land is hydrologically required for drainage purposes
  - e The SAC makes the following specific findings regarding the drainage evidence:
    - The drainage experts agreed that due to the cumulative extreme assumptions inherent in the hydrological modelling it is not clear whether the drainage strategy, of which the ISMOS is a part, represents the optimal drainage solution for the Arden Precinct. This leaves open the question of whether there are other options that deliver the same flooding outcome but provide improved planning solutions for future development.<sup>6</sup>

<sup>6</sup> Expert Conclave joint report on Flooding and Drainage at [8].

- The drainage experts agreed that some level of flood storage is required in the Arden precinct to manage flood risk however, the extent of storage required was disputed. The experts agreed that the modelling undertaken to date did not sufficiently distinguish between the impacts of flood from Moonee Ponds Creek and flooding from the local catchment to enable a clear assessment to be undertaken
- While several options were considered for the delivery of flood storage on the RSA Land, Rockford Land and surrounding parcels, there is no evidence of any detailed consideration of whether flood storage could be provided at an alternative location or the comparative benefits of doing so. The experts agreed that from a flood management perspective, the best location for flood storage is generally the lowest part of the landscape. This is not what the drainage strategy provides for. The location of the ISMOS allows for development on land that has a higher residual flood risk. There is also a further risk inherent in the location of the ISMOS which is that in the event of a levee breach, water must travel across multiple properties to reach the ultimate flood storage.
- No evidence has been proffered which suggests that the RSA Land and Rockford Land possess any inherent or natural features which render it the most suitable location for the ISMOS. Further, no explanation has been provided for the failure to consider or analyse alternate locations for the ISMOS. This means that the SAC is unable to be satisfied that the location of the ISMOS is optimal from a drainage perspective.

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

It is evident that RSA and Rockford accept that Public Open Space, while a necessary planning requirement, is only one factor in the planning for Arden.

It is appropriate that the PAO record the dual purposes for the acquisition of the land as these are the purposes put forward by the acquiring agency and the purposes have a role to play in potential planning permit applications.

The Committee agrees that the proposal by RSA and Rockford in paragraphs 2(a) to 2(d) are an appropriate qualification, subject to some editing.

For the avoidance of doubt, the Committee records:

- The RSA and Rockford land is to be acquired for the dual purpose of drainage and open space for the ISMOS.
- The Committee is satisfied on the basis of the submissions that the acquisition of the RSA and Rockford land is required for the provision of open space.
- However, there was contested evidence before the Committee as to whether the acquisition of the RSA and Rockford land is required for drainage purposes.
- Ultimately the Committee does not need make any definitive findings on this issue since it is satisfied that the acquisition of the RSA and Rockford land is required for the provision of open space.
- The finding by the Committee that the PAO should record the purpose of the acquisition of the RSA and Rockford land as drainage and open space, should not be taken as a finding that the Committee is satisfied that the acquisition of the land is hydrologically required for drainage purposes.

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

The Committee concludes:

The Committee is not able to make findings as to the inherent development potential of any land proposed for acquisition.



It is appropriate that the schedule to the PAO should record the purpose of acquisition of PAO9 as drainage and open space because this is the stated purpose of the acquiring authority.

## 8.3 Guntar Graphics

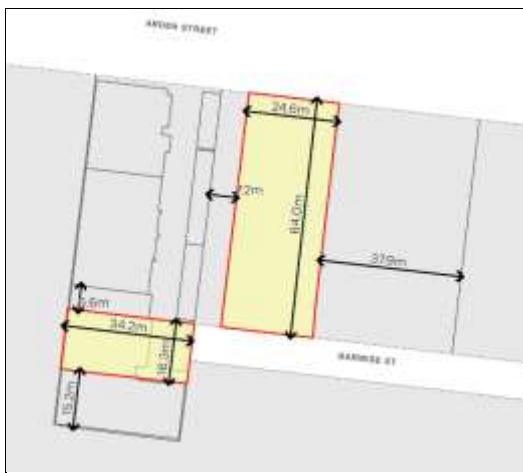
### (i) The issue

The issue is:

- The location of the PAO location on Guntar Graphics land.

### (ii) What is proposed

**Figure 13: PAO8 on Guntar Graphics land**



### (iii) Evidence and submissions

Guntar Graphics was concerned about the width and the location of the PAO. It submitted:

30. It is entirely unnecessary to deliver pedestrian priority zones in the order of 7 metres wide when the Cross Sections Document demonstrates that such pedestrian zones can be accommodated within a width of 4.2 metres. As such, 7 metres is excessive and, frankly, a waste of prominent land which could be better utilised.
31. If Barwise Street is to be extended, the Landowners submit that it is not necessary to widen the road reserve beyond the existing 16.3 metres. In fact, the Barwise Street road reserve could be narrowed, say, to 15.4 metres, and still achieve the desired function (with two x 4.7 metre wide pedestrian zones and two x 3 metre wide vehicle lanes).
32. Similarly, the proposed width of the Fogarty Street extension could be reduced by at least 4.6 metres by narrowing the pedestrian zones to 4.7 metres, or less.
33. These changes would have the obvious benefit of reducing the amount of land to be acquired from Sites 2 and 3 under the PAO8.
34. Moreover, given that the Fogarty Street extension is not proposed to accommodate everyday vehicles or public transport, it is not critical for the road to align precisely with Fogarty Street to the north of Arden Street. It therefore seems nonsensical to locate the road reserve in the middle of Site 2, hindering any significant future development of this prominent site, and otherwise delivering a difficult and awkward remnant part.

The VPA prepared the cross-section for Fogarty Street in consultation with Council and the Department of Transport. This street had never been contemplated as suitable for over-street development. The role and function of Fogarty Street has always been an urban boulevard with broad footpaths, cycling, landscaping and active edges. The separation of development either side

of the street edge would contribute to a distinctive character along Fogarty Street, enabling sky views and reading of the urban form at intervals along its length.

The VPA noted the detailed comment on Cross-section 8 which stated a 10 kilometre per hour speed limit should apply to the Pedestrian Priority Zone, and it should be designed accordingly. The street also includes a 7.0 metre wide section of credited open space.

The VPA did not support any proposition that it is appropriate to encumber the street with development, either through cantilevers, or over-street development. The VPA considered this would be inconsistent with the Arden Vision. It would compromise the integrity of the street as an urban boulevard that connects Arden and forms a key element of the approach to urban design having regard to spacing between buildings, enabling sky views, and a connection for pedestrians and cyclists. It would reduce the quantum of credited open space available within the precinct.

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

While it is true that this acquisition is to allow for the continuation of Fogarty Street it is important to note that this section of Fogarty Street is pedestrian only, and to the north Fogarty Street is a 'transit mall'. There is no need to cater for vehicle traffic from the north to the south and so traffic issues that might flow from shifting the PAO do not arise.

In a context where the VPA is concerned about reductions to yield it makes little sense to put in place an acquisition that will render part of a site difficult to develop.

The Committee agrees with Mr Sheppard that the kink will not undermine the attractiveness of the area.

#### **(v) Recommendation**

The Committee recommends:

**Modify the Public Acquisition Overlay Schedule 8 to align the acquisition for the extension of Fogarty Street on the south side of Arden Street to the property boundary to the west of the acquisition.**

## 9 Proposed Buffer Area Overlay

### (i) The issue

The issue is:

- Whether the proposed BAO is appropriate.

### (ii) What is proposed

It is proposed to apply two schedules of the BAO, as shown in Figure 14.

The Amendment introduces new Schedules 1 and 2 to the BAO, to manage the inner and outer risk buffer areas associated with the Citywide Asphalt Plant (the Asphalt Plant) at 208 – 292 Arden Street.

The new BAO schedules apply to the moderate and medium risk areas nominated in the *Arden Transport Precinct Arden Structure Plan – Amenity Risk Assessment* (GHD, 2021) (the Risk Assessment). The EPA supported the application of the BAO.<sup>7</sup>

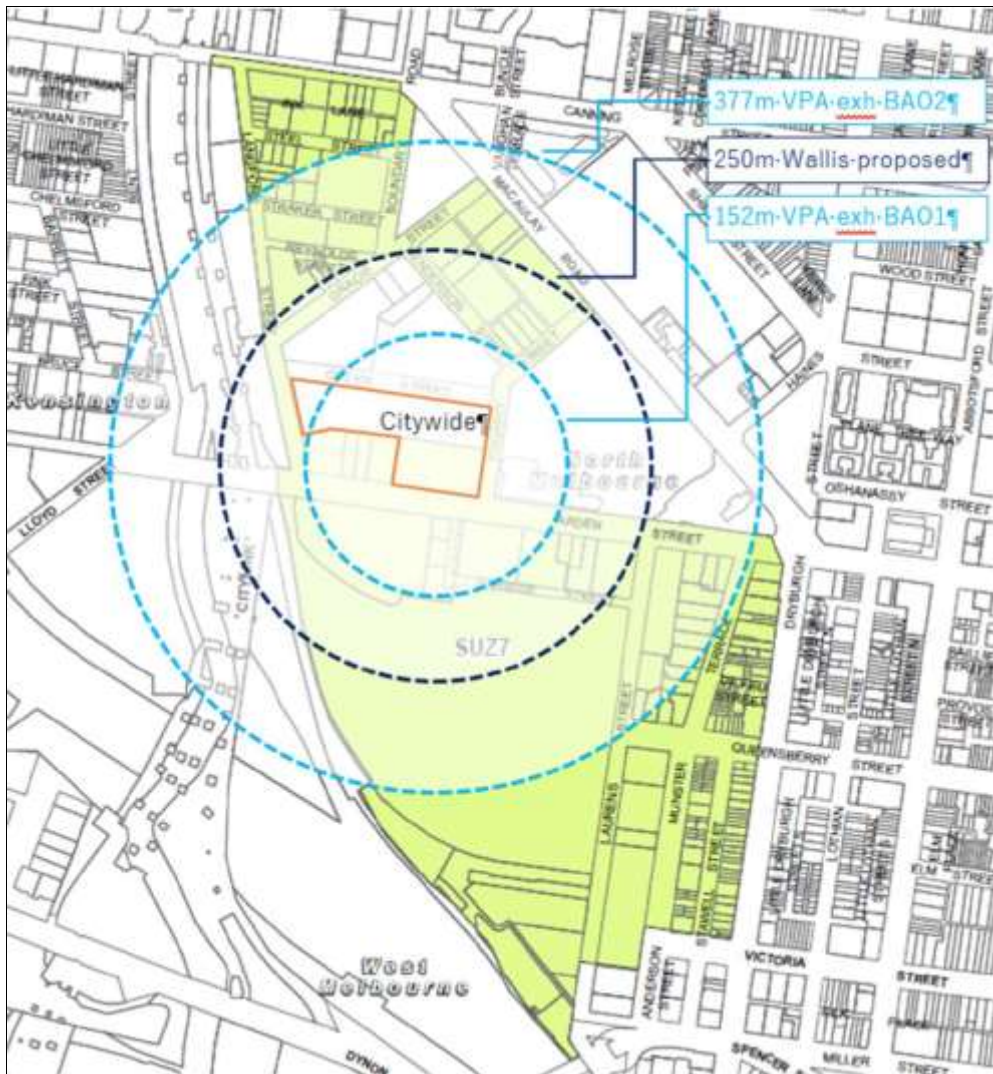
The Risk Assessment identified four industrial businesses with a separation distance in accordance with the EPA separation distance guideline established pursuant to EPA Publication 1518: *Recommended separation distances for industrial air emissions*. Of those industries, only the Asphalt Plant was assessed to present the potential to generate ongoing amenity impacts, by way of odour emissions.

The VPA advised that the BAO schedules had been updated (as presented in its Part A submission) in response to submissions, primarily in relation to matters of clarification. Schedule 1 applying to the Inner Buffer Area has been modified in the Part A version to include a requirement to give notice to the operator of the Asphalt Plant in the case of any permit application to use land or construct a building or carry out works associated with:

- Hospital
- Place of assembly
- Accommodation
- Education centre.

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<sup>7</sup> Submission 53. 76

**Figure 14: Buffer Area Overlay**

Source: Mr McNamara's evidence (Document 58)

### (iii) Evidence and submissions

Citywide submitted:

- 7 One particular aspect of Citywide's operations that requires specific mention is that it operates an asphalt plant on the land at 208-292 Arden Street ('the Asphalt Plant'). That plant is operated as a joint venture with Fulton Hogan. Asphalt from the Asphalt Plant is used to service a wide range of customers, including local government but also major transport infrastructure projects of State significance such as the West Gate Tunnel project.
8. Again, the location of the Citywide Land is vital in allowing Citywide to carry out this function. Hot / warm asphalt mixes have to be delivered promptly or it degrades. The location of the Citywide Land means that asphalt produced at the Asphalt Plant can be delivered promptly across inner Melbourne. Importantly, there is no regular alternative supplier for asphalt in this area – the Asphalt Plant is the only permanent asphalt plant within 5km of the Melbourne CBD.

Mr Wallis gave odour evidence on behalf of Citywide and opined (Doc 57 at page 5):

In conclusion, based on my inspections at the site and my surveys of odour conditions around the boundary of the site, I consider that the highest intensity odour releases come from truck loading and major equipment maintenance.

Guntar Graphics' land is affected by the BAO. It submitted:

38. Sites 2 and 3 are predominantly subject to the proposed BAO1, with a small portion of each site affected by the BAO2. Conversely, Site 1 is almost entirely subject to the BAO2, with a small area in the north-west corner of the site located within the BAO1 area.
39. The Landowners submit that the Application Requirements under the BAO1 are grossly onerous, with the effect that development in key, central areas of Arden will be stymied for particular land uses until an unspecified date.
40. Notably, the Application Requirements under clause 6.0 of the BAO1 differentiate between applications for Hospital or Place of Assembly on the one hand and Accommodation or Education Centre on the other. An application for the former must be accompanied by a site specific amenity assessment, which details the potential amenity impacts from the asphalt plant and recommends design responses to appropriately manage those impacts. An application for the latter must be accompanied by 'formal indication from the Secretary to the Department of Transport confirming that the asphalt plant will cease operation...' or 'suitable evidence from the Secretary to the Department of Transport confirming that risk of odour from the asphalt plant... has been eliminated'.
41. This is problematic, indeed nonsensical, for a number of reasons. There is some particularly poor drafting being advanced before the Committee.

**(iv) Discussion and conclusion**

The Committee acknowledges that the BAO will slow the development of sensitive uses while the Asphalt Plant remains operative on its current site. It is not appropriate for sensitive uses to commence while the plant operates because of the potential adverse impacts of the plant (except if the plant's relocation was guaranteed within a short period of time, say less than three months). This is a strong reason for the government to work with Citywide and facilitate its relocation.

It was suggested at the Hearing that the plant could take measures to reduce its impacts. The Committee does not see this as appropriate. The land will be too well located for higher value uses once the metro tunnel opens, and it would not make sense to invest in an ongoing industrial use.

It may be the case that permits for sensitive uses can be granted ahead of relocation of the Asphalt Plant, if its relocation is underway or imminent.

The Committee has reviewed the drafting of the revised BAO. It disagrees with the submissions of Gunter Graphics that the requirements are 'grossly onerous' or poorly drafted.

The Committee concludes:

The revised Buffer Area Overlay Schedules 1 and 2 are appropriate.

## 10 Proposed Design and Development Overlay

Four DDO Schedules (80, 81, 82 and 83) were exhibited. These are now proposed to be consolidated into one schedule.

The Committee has previously recommended that DDO1 be applied. This will allow the Public interface and design detail and Adaptable buildings requirements to be deleted from the consolidated DDO.

### 10.1 Design objectives

#### (i) The issue

The issue is:

- Are the design objectives appropriate?

#### (ii) What is proposed

The four exhibited DDOs each contain a set of five Design Objectives, as required by the Ministerial Direction on the Form and Content of Planning Schemes. The objectives are drawn from the Structure Plan.

#### (iii) Evidence and submissions

No submissions dealt specifically with the Design Objectives as exhibited. The VPA submitted a track changes version that proposed one wording change to the Schedule 80 objective.

#### (iv) Discussion

Discussion of the exhibited version of the Schedules is not considered necessary as the proposed version of the consolidated Schedule replaces all Design Objectives for each sub-precinct with five more general objectives that are appropriate to accommodate the differences between each sub-precinct while ensuring desired outcomes for Arden.

#### (v) Conclusion

The Committee concludes:

The proposed Design Objectives in the final VPA version of the consolidated DDO Schedule are appropriate.

### 10.2 Buildings and works for which no permit is required

#### (i) The issues

The issues are:

- Should buildings and works by Melbourne Parks and Waterways and Parks Victoria be exempt?
- Should certain minor buildings and works be exempt from permit requirements?

**(ii) What is proposed**

The Amendment proposes a number of exemptions from the parent provision requirement for a permit for all buildings and works. The exemptions at Clause 2.1 include: internal buildings and works where the Gross Floor Area and building height is not increased, and existing building services where the existing height is not increased, in addition to a range of minor alterations.

**(iii) Evidence and submissions**

Council proposed that buildings and works by or on behalf of Melbourne Parks and Waterways or Parks Victoria under a range of enabling Acts should be exempt from a permit requirement. All parties agreed with this proposal. It is noted that this provision should be reviewed to determine whether the entity should be referred to as Melbourne Water.

Submissions from Citywide and Bowens requested that exemptions proposed for existing building services and industrial, trade supplies and warehouse uses be included to enable these uses to upgrade as required, and in accordance with the provisions of the IN3Z.

The VPA proposed to make changes to the exemptions to allow for changes to building services in line with the IN3Z provisions. Changes to the Schedule exemptions are also proposed to accommodate the submissions to enable existing Industry, Trade supplies or Warehouse uses to increase by up to 10 per cent of the gross floor area, provided there is no increase in the extent of non-compliance with the Schedule.

**(iv) Discussion**

The proposal to exempt the authorities from a permit requirement appears appropriate given the extent of works required to establish the ISMOS.

The other exemptions proposed for existing building services and increases in the floor area of the nominated established uses are appropriate to enable transition and minor improvements during the lengthy redevelopment of the Arden precinct.

**(v) Conclusion**

The Committee concludes:

The proposed permit exemptions in Clause 2.1 of the final VPA version of the consolidated DDO Schedule are appropriate.

**10.3 Requirements for established uses****(i) The issue**

The issue is:

- Should uses established prior to the gazettal of the Amendment be exempt from the mandatory provisions of the Schedule?

**(ii) Evidence and submissions**

As previously noted, the Amendment proposes a mix of mandatory and discretionary built form requirements. Citywide submitted that the mandatory requirements of the Schedule should not apply to uses established prior to the gazettal of the Amendment.

The VPA proposed to change the provision at Clause 2.2 of the consolidated DDO schedule to read:

A permit cannot be granted to vary an outcome with the term 'must', unless the permit is associated with a use established prior to the gazettal date of this amendment, in which case the outcome should be met.<sup>8</sup>

### (iii) Discussion

An exemption from the mandatory requirements of the Schedule for all existing uses is quite significant, depending upon which items of the Schedule are mandatory. This matter needs careful consideration:

- partly due to the wording of the provision which refers to a use established prior to the gazettal of the Amendment
- having regard to the fact that the DDO is a development (not a use) overlay
- partly having regard to the extent of the exemption from compliance that will be afforded.

For example, the proposed exemption as worded by the VPA may have the effect of removing all mandatory controls for an apartment development on land currently used for a dwelling.

Linking development controls with uses is considered problematic, and it is partly for this reason and partly due to the potential for the provision to undermine some of the proposed intent for Arden, that this change is not considered appropriate.

### (iv) Recommendation

The Committee recommends:

**In the consolidated Design and Development Overlay, do not provide a blanket exemption from mandatory controls for existing uses.**

## 10.4 Definitions

### (i) The issue

The issue is:

- Are definitions included in the DDO adequate and clear?

### (ii) What is proposed

Definitions for a range of terms are proposed in the DDO Schedule. These are terms referred to within the DDO Schedule, although some are used in other DDOs applying elsewhere in the municipality.

### (iii) Evidence and submissions

Two submitters raised an issue with the definition of the term Floor Area Ratio (FAR). Clarification of the method of the calculation of the floor area above ground level is of concern due to a

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<sup>8</sup> From a drafting perspective it would be clearer not to keep the specific exemption separate from the main requirement which is central to the interpretation of the controls. For example "A permit cannot be granted to vary an outcome with the term 'must'. This does not apply to a permit associated with a use established before to the gazettal date of Amendment (number), but the outcome should be met."



number of properties being subject to a requirement to raise the floor level above the ground level due to flooding.

In response, the VPA proposed to amend the definition of FAR to include the gross floor area of all buildings on site, without reference to ground level specifically. Gross floor area is defined at Clause 73.01 of the Planning Scheme as:

The total floor area of a building, measured from the outside of external walls or the centre of party walls, and includes all roofed areas.

In addition, UDIA submitted that the definition should be altered to exempt 'good things' (for example affordable housing) from the calculation of FAR.

The written submission by George Weston Foods noted a number of concerns with the definitions of street wall, setback and additional shadow. These submissions were addressed by changes to the definitions proposed by the VPA.

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

The resolution of the definition for the FAR proposed by the VPA is satisfactory. The Committee notes that the term 'Floor Area Ratio' is becoming more commonly used in planning schemes and therefore warrants a common definition in the General Terms of the VPPs. It is noted that the term 'Plot Ratio' is defined in the VPPs as:

The gross floor area of all buildings on a site, divided by the area of the site.

The FAR definition proposed in this Amendment varies only by providing more detail as to the method of calculation.

The Committee does not support the exemption of certain land uses from the FAR calculation, as the FAR is a built form control intended to deliver a range of outcomes for the buildings and streetscapes, and land uses can change over time.

The changes to the definitions proposed to address the issues raised by George Weston Foods are acceptable in clarifying the intent, subject to minor drafting changes recommended by the Committee.

The Committee has recommended the application of DDO1 to the Arden precinct, and so there is no need to import the definitions from this DDO as they are not required.

#### **(v) Conclusions and recommendation**

The Committee concludes:

The proposed definitions in Clause 2.3 of the final VPA version of the consolidated DDO Schedule are generally appropriate, other than as specifically recommend by the Committee.

The Committee recommends:

**In the consolidated Design and Development Overlay, change the definitions as follows:**

- **put them in alphabetical order**
- **do not include the definitions from Design and Development Overlay 1**
- **change 'additional shadow' to read:**

**Additional shadow means any shadow cast beyond any shadow cast from existing buildings or works, but not a shadow cast by existing or proposed incidental elements such as canopies, kiosks, artworks,**

screens or trees, which are not included in the additional shadow calculation.

- change 'Setback' so it begins: "*Setback means ...*"

## 10.5 Preferred precinct character

### (i) The issue

The issue is:

- Is the precinct character description included in the DDO Schedule helpful and reflective of the Structure Plan?

### (ii) What is proposed

The combined version of the DDO Schedule includes a table at Clause 2.4 Preferred Precinct Character. The table includes preferred character statements for each Arden sub-precinct:

#### 2.4 Preferred precinct character

##### Built Form Outcomes

A precinct that comprises sub-precincts with a distinctive character.

##### Built Form Requirements

Buildings and works should contribute to the relevant preferred sub-precinct character in **Table X**.

**Table X: Sub-precinct character**

| Sub-precinct on Map X | Sub-precinct             | Preferred sub-precinct character  |
|-----------------------|--------------------------|---|
| DDO80 Area            | Arden Central Innovation | <p>An innovation precinct with adaptable floorplates that support digital technology, life sciences, health and education uses.</p> <p>A mixture of low to mid-rise development within the core surrounding the new open spaces with taller buildings along Arden Street and adjacent to the railway line, and with a range of typologies to respond to specific land use needs.</p>  |
| DDO81 Area            | Arden Central Mixed Use  | <p>A high quality public realm environment which supports a mix of uses and building forms in mid to high-rise development in the north of the sub-precinct surrounding the new Neighbourhood Park, and high-rise buildings adjacent to the railway line.</p> <p>High-rise development along the rail corridor is in the form of articulated, shaped forms which minimise the visual impact of building bulk in views to and from the Arden Precinct.</p> <p>The Neighbourhood Park achieves a high level of amenity, including good levels of sunlight and minimal adverse wind effects.</p> |
| DDO82 Area            | Arden North              | <p>A pedestrian focused sub-precinct which supports predominantly mid-rise development with a hybrid of perimeter blocks and slender towers to avoid significant overshadowing of Clayton Reserve, North Melbourne Recreation Reserve and the new integrated stormwater management open spaces.</p> <p>The industrial character of existing buildings is retained or interpreted to street facing elevations, including</p>   |

|            |                |   |
|------------|----------------|---|
|            |                | materials, roof profiles, fenestration patterns and façade datums.<br>The height and bulk of new buildings do not overwhelm the public domain, and respond to the emerging scale within and to the areas beyond the precinct, including adjacent structure plan areas.  |
| DDO83 Area | Laurens Street | A walkable precinct with low-rise development along Dryburgh and Stawell Streets and mid-rise development along Laurens Street that transitions at its interface with the established neighbourhoods to the east and the centre of the precinct to the west.<br>Development which adaptively reuses heritage buildings, responds sensitively to heritage fabric either on site or adjacent, and provides tailored setbacks that respond to adjoining development and low scale forms. |

### (iii) Evidence and submissions

In the proposal by the Committee to combine the four exhibited DDO Schedules into one, a hurdle seen by the VPA was the loss of detail previously provided in the five Design Objectives for each Schedule. The inclusion of the table in the combined Schedule replaces the originally proposed sub-precinct Design Objectives. The statements are drawn from the Structure Plan, principally the built form related descriptions of Sub-precincts at pages 28-29 and 36.

No specific submissions were received in relation to this table or the originally proposed Design Objectives in the exhibited DDO schedules.

### (iv) Discussion

As a reflection of the Structure Plan, the sub-precinct character statements are accurate, in some cases using the same words. This provides a clear link between the documents.

### (v) Conclusion

The Committee concludes:

The proposed table of Preferred sub-precinct character in the final VPA version of the consolidated DDO Schedule is appropriate.

## 10.6 Street wall height

### (i) The issues

The issues are:

- Are the street wall heights proposed appropriate?
- Should the provisions be discretionary or mandatory?

### (ii) What is proposed

The final version of the combined DDO tabled by the VPA includes Clause 2.4 Street wall height, which details the intended Built Form Outcomes and Requirements that varied little from those in the exhibited Schedules.

Unopposed changes have been made to the provisions of the final Schedule to add a further dot point to the Built Form Outcomes *“Clearly define the public realm”* and additions to the provision for Built Form Requirements to require buildings to be built to the street, laneway or open space boundary unless they are set back a distance that is publicly useable and open to the sky.

Table 1 of the consolidated DDO Schedule combines all the differing Preferred minimum and Preferred maximum street wall heights that apply to all sub-precincts, and those that apply only to specific sub-precincts. The street wall heights only apply to the tower and podium typology. The preferred street wall heights also vary by the Building height in some instances. These heights in the final version of the consolidated DDO submitted by the VPA do not vary from those in the exhibited versions.

**Table 7: VPA final position on street wall height (Table 1 of the consolidated DDO)**

| Laneway, Street or Interface                                   | Building height             | Preferred minimum street wall height | Preferred maximum street wall height |
|--|-----------------------------|--------------------------------------|--------------------------------------|
| All sub-precinct Areas   |                             |                                      |                                      |
| Laneway or street width of 0 to 9 metres                       | None specified              | 12 metres                            | 17 metres                            |
| Laneway or street width of 9 metres to 16 metres               | None specified              | 13 metres                            | 21 metres                            |
| Laneway or street width greater than 16 metres*                | Up to or equal to 41 metres | 17 metres                            | 33 metres                            |
|  | In excess of 41 metres      | 17 metres                            | 25 metres                            |
| Immediately adjacent to a proposed open space                  | Up to or equal to 41 metres | 17 metres                            | 33 metres                            |
|  | In excess of 41 metres      | 17 metres                            | 25 metres                            |
| Laurens Street sub-precinct Area (DDO83)                       |                             |                                      |                                      |
| Dryburgh Street between Queensberry Street and Victoria Street | None specified              | None specified                       | 11 metres                            |
| Stawell Street   | None specified              | None specified                       | 14 metres                            |
| Dryburgh Street, between Arden Street and Queensberry Street   | None specified              | None specified                       | 17 metres                            |

\*Excludes any street which is specifically listed in **Table 1**

### (iii) Evidence and submissions

Council submitted that a number of the proposed street wall height provisions were inappropriate, supported by the evidence of Ms Hodyl.

The first issue regards the second dot point under Built Form Requirements, which proposes that the higher street wall height on one frontage applies around a corner to a sideage. Council submitted that this will result in “... *overly outsized street walls to almost every lane in Arden.*” Council proposed a change to this provision to limit the extent to which the additional height applies from the corner to a maximum of 50 per cent of the frontage where the lower preferred street wall height applies.

The Urban Design Conclave report details the recommendations of both experts as a result of the discussions and provides refined opinions to their initial evidence.

In general, the evidence of Ms Hodyl and Mr Sheppard was that the preferred minimum street wall heights were too high, and in some cases should not apply at all. The Urban Design conclave report documents the following agreement:

The potential street wall heights on narrow streets and for podium-tower buildings on moderate-width streets are too high. In narrow streets and for podium-tower buildings on moderate-width streets (up to but not including 30 metre wide), the preferred maximum street wall height should be 17 metres, and in narrow streets the preferred minimum street wall height should be deleted. However, the height above which a side or rear setback is required should not be lowered below 25 metre. (para 16a).

In her evidence statement, Ms Hodyl stated:

Removing the minimum street wall height to laneways from the controls delivers significant improved design outcomes (see Figure 14 in the Evidence report), including increased sunlight, less visual dominance of buildings and improved views to sky. (para 107, p32)

Mr Sheppard agreed with this rationale in the Urban Design Conclave report.

There were three points related to street wall height about which the experts did not agree:

- whether the narrow street wall height should apply below a width of 16 metres or 20 metres
- whether the reduced preferred street wall height of 17 metres should apply to all podium tower buildings or only those facing streets of less than 30 metres wide
- whether the following changes identified in Appendix F of Ms Hodyl's statement of evidence should be made:
  - requiring Laneway type 2 to have an appropriate level of street enclosure
  - the use of 'must' in built form outcomes and clause 2.9 requirements
  - the reduction of preferred maximum street wall heights in DDO82 (area) on streets wider than 20 metres and open spaces
  - reduced street wall requirements for buildings on the north side of Barwise Street of minimum 12 metres and maximum of 17 metres.

The VPA submitted that the proposed street wall heights deliver on the Built Form Outcomes, and reflect the relative width of the street or laneway to which they apply. In general, the VPA submitted that the street wall heights form part of a carefully constructed suite of built form controls that will deliver on the vision and objectives of Arden, and the Built Form Outcomes sought by the clause.

The VPA submitted that Ms Hodyl's evidence which proposed a lower level of development in Arden should be disregarded as it does not embrace or have regard to the intended vision of Arden.

The VPA also submitted that in the Arden Central Innovation sub-precinct, in particular, the provisions support the delivery of larger floor plates, and the controls therefore make provision for 'sheer' street walls up to 25 metres (for buildings greater than 41 metres). This is to support delivery of the 'campus style' innovation buildings (that is, not podium tower typology).

The VPA submitted that the preferred minimum street wall height serves a valuable function in all areas of Arden by achieving a consistent built form.

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

A detailed assessment of the proposals and varying views in relation to the street wall heights (as with many of the built form controls) is complex. There are differing views between the urban design experts in some respects, with a high degree of agreement on many. However the VPA

does not agree with the experts' views in most instances, and some land owners also do not agree with some of the evidence presented on behalf of Council or the VPA. The Committee notes that no other urban design experts were called to present evidence to the Committee, although planning experts expressed opinion on the built form controls from a planning perspective.

In general, the Committee thinks that where experts agree on the built form approach, this should be supported unless there is a good broader planning reason not to do so. Quality urban design outcomes are sought in all areas, however in an urban renewal area such as Arden, the opportunity arises to create a new standard. The vision and objectives recognise this opportunity, and place a very high priority on creating a walkable and pedestrian focussed environment, where only 10 per cent of trips will be by vehicle. The positive impact of a high quality urban environment is felt not just by those using the area, but also by those investing as, in the long term, a high quality environment will be valued by future buyers.

The Committee accepts the areas of agreement between the urban design experts as being the basis on which to proceed with the street wall setbacks requirements, for the reasons set out in Chapter 3.4. The areas of disagreement and any provision not addressed during the Conclave are the only areas therefore that need to be determined.

The points of agreement and disagreement compared to the VPA final position are shown in Table 8.

**Table 8: Expert opinion (shown in colour) compared to VPA position on street wall height**

| Location  | Building height             | Preferred minimum street wall height          | Preferred maximum street wall height      |
|---|-----------------------------|---|---|
| Laneway   | None specified              | <del>12 metres</del><br><u>None specified</u> | 17 metres                                 |
| Street width of 9 metres to:<br>- 16 metres (Sheppard)<br>- 20 metres (Hodyl) | None specified              | <del>13 metres</del><br><u>None Specified</u> | <del>21 metres</del><br><u>17 metres</u>  |
| Street width greater than 16/20 metres and less than 30 metres                | Up to or equal to 41 metres | 17 metres                                     | 33 metres or 27 metres in DDO82 (Hodyl)   |
|   | In excess of 41 metres      | 17 metres                                     | <del>25 metres</del><br><u>17 metres</u>  |
| Street width greater than 30 metres   | Up to or equal to 41 metres | 17 metres                                     | 33 metres or 27 metres in DDO82 (Hodyl)   |
|   | In excess of 41 metres      | 17 metres                                     | 25 metres (Sheppard)<br>17 metres (Hodyl) |

#### **Preferred maximum street wall height fronting streets 30 metres or more wide**

The experts agreed that the maximum for street wall height should be reduced from 25 metres to 17 metres for podium tower buildings but did not agree whether the 17 metre maximum street wall height should apply to all podium tower buildings or only those facing streets less than 30 metres wide.

This provision is intended to provide for the innovative / creative industry building format. As noted by the VPA, this building format is particularly important in the Arden Central Innovation sub-precinct. Application of this higher street wall height in the Arden Central Innovation sub-precinct therefore has a rationale that is supported by the land use policy.

A higher street wall height seems appropriate for streets wider than 30 metres, and therefore the Committee considers that the 17 metre street wall height should apply only to buildings facing a street less than 30 metres.

#### **The definition of ‘narrow streets’ for the application of a Preferred maximum street wall height**

The experts did not agree whether the reduced Preferred maximum street wall height of 17 metres should apply to a street of 16 metres or 20 metres wide. The Committee considers that the greater limitation requirement (streets of less than 20 metres wide) should be applied to Arden generally in the interests of supporting a more pleasant pedestrian environment, other than in the Arden Central Innovation sub-precinct where the requirement should apply only to streets up to 16 metres in width to support the land use intent for the area. The lower height street wall should apply to the Barwise Street retail area (utilising the requirement for a street width of 16 metres or less).

#### **Remaining changes identified in Appendix F of Ms Hodyl’s statement**

An appropriate level of street closure is addressed in general requirements of the Built Form Outcomes for Laneway 2, therefore no change is required.

Use of ‘must’ in built form outcomes is not necessary as applications that do not meet the requirements must demonstrate how the development will meet the Design Objectives and Built Form Outcomes.

The Committee supports a reduction in street wall heights in the DDO82 area (Arden North Sub-Precinct) due to the Preferred character statement that places greater emphasis on the pedestrian environment and the importance of buildings not overwhelming the public domain.

#### **Street wall heights on corner sites**

The proposed provision allows for the higher street wall height on one frontage of a site to be carried around to the sideage of the site that would front a narrower street or laneway. The Committee supports Council’s submission that this could result in an unacceptable outcome in the laneways. Council’s alternate provision allowing the greater height to only apply for 50 per cent of the frontage to the narrower street should apply.

#### **General drafting issues**

The table can be restructured so that there is no need to:

- present additional sub-precinct guidance as a separate section
- include the note *“Excludes any street which is specifically listed in Table 1.”*

This drafting is likely to be confusing in practice.

#### **(v) Recommendation**

The Committee recommends:

**Update the street wall height requirements to change the exclusion to read:**

The building is on a corner where more than one street wall height applies, in which case, the taller preferred maximum street wall height applies as specified in that table and also to half the frontage with the lower street wall height.

Update the Street wall height table as shown in Recommendation Table 1 below.

Recommendation Table 1: Street wall height

| Location                                      | Qualification   | Building height     | Preferred minimum street wall height | Preferred maximum street wall height  |
|---|---|---------------------|--------------------------------------|---------------------------------------|
| Barwise Street                                |   | None specified      | None specified                       | 17 metres                             |
| Dryburgh Street                               | Victoria Street to Queensberry Street   | None specified      | None specified                       | 11 metres                             |
|   | Queensberry Street to Arden Street  | None specified      | None specified                       | 17 metres                             |
| Stawell Street                                |   | None specified      | None specified                       | 14 metres                             |
| Immediately adjacent to a proposed open space |   | 41 metres or less   | 17 metres                            | 33 metres or 27 metres in Arden North |
|   |   | More than 41 metres | 17 metres                            | 25 metres                             |
| Other Locations                               | Laneway or Streets less than 16 metres wide in Arden Central Innovation or 20 metres wide in other areas  | None specified      | None specified                       | 17 metres                             |
|   | Street wider than 16 in Arden Central Innovation or 20 metres in other areas and less than 30 metres wide | 41 metres or less   | 17 metres                            | 33 metres or 27 metres in Arden North |
|   |   | More than 41 metres | 17 metres                            | 17 metres                             |
|   | Streets 30 or more metres wide  | 41 metres or less   | 17 metres                            | 33 metres or 27 metres in Arden North |
|   |   | More than 41 metres | 17 metres                            | 25 metres                             |

## 10.7 Building setbacks

### (i) The issue

The issue is:

- Are the proposed building setbacks (above street wall heights) appropriate?

### (ii) What is proposed

Clause 2.5 Building setbacks in the consolidated DDO schedule includes a table of setbacks above the street wall height, shown here as Table 9.

Table 9: VPA final position on setbacks above the street wall height (Table 2 of the consolidated DDO)

| Part of building | Building height | Preferred minimum setback |
|------------------|-----------------|---------------------------|
|------------------|-----------------|---------------------------|



| Part of building  | Building height   | Preferred minimum setback  |
|---|---|--|
| All sub-precinct Areas  |   |  |
| Above the street wall height facing a street or public open space   | Up to 8 metres above the street wall height             | 3 metres   |
|   | Above the street wall height and up to 64 metres        | 5 metres   |
|   | Above the street wall height and greater than 64 metres | 7.5 metres   |
| Below the street wall height  | Any height  | Where a new or widened laneway is sought: half the width of the laneway  |
|   |   | Any part of a building not within 0.3 metres of the side or rear boundary: 4.5 metres  |
|   |   | Any part of a building not within 0.3 metres of the side or rear boundary and which provides the primary outlook from a dwelling: 6 metres |
|   |   | A wall containing habitable room windows facing a laneway: 4.5 metres except where the boundary abuts an existing or proposed laneway      |
| Above the street wall to a side or rear boundary  | Up to 51 metres   | 5 metres   |
|   | Above 51 metres and up to 64 metres                     | 7.5 metres   |
|   | Above 64 metres and up to 81 metres                     | 10 metres  |
|   | Above 81 metres   | 12.5 metres  |
| Building(s) separation on the same site   | Up to 51 metres   | 10 metres  |
|   | Above 51 metres and up to 64 metres                     | 15 metres  |
|   | Above 64 metres and up to 81 metres                     | 20 metres  |
|   | Greater than 81 metres                                  | 25 metres  |
| Laurens Street sub-precinct Area (DDO83)  |   |  |
| Above the street wall height on the west side of Munster Terrace and Anderson Street between Queensberry Street and Miller Street | Up to 34 metres   | 7.5 metres   |
|   | Above 34 metres   | 18 metres  |
| Arden Central Innovation sub-precinct Area (DDO80)  |   |  |

| Part of building                   | Building height | Preferred minimum setback   |
|------------------------------------|-----------------|---|
| Below preferred street wall height | None specified  | 189-197 Arden Street:<br>- 10 metres from Laurens Street.<br>Pedestrian only laneway:<br>- 9 metres (or if applicable 4.5 metres to the common title boundary). |

### (iii) Evidence and submissions

Council raises only one issue in relation to the proposed setbacks, and this is to agree with the urban design experts' proposal in relation to revised setbacks controls for laneways and side and rear setbacks. The Conclave report proposed to insert a new provision as shown in Table 10.

**Table 10: Council proposed addition based on urban design evidence**

| Part of building   | Building height | Preferred minimum setback   |
|--|-----------------|---|
| Below 25 metres high facing a laneway, side or rear boundary | Any height      | Where a new or widened laneway is sought: half the width of the laneway<br><br>Any part of a building not within 0.3 metres of the side or rear boundary: 4.5 metres<br><br>Any part of a building not within 0.3 metres of the side or rear boundary and which provides the primary outlook from a dwelling: 6 metres<br><br>A wall containing habitable room windows facing a laneway: 4.5 metres |

The revised requirements create a lower building form along the laneway and side and rear boundaries, encourage consistent setbacks along these interfaces, and include provisions to ensure minimum setbacks between habitable room windows and for the primary outlook from a dwelling. This is a detailed requirement accompanied by recommended changes to the Decision guidelines to have regard to the proposed additional requirements.

The VPA does not agree with the additional setback control recommended by the experts on the basis that imposition of controls below and above 25 metres adds another metric to the already complex controls, and will result in a 'wedding cake' building typologies.

In relation to setbacks generally, the VPA submitted that:

The minimum building setbacks are provided where a podium tower typology is sought in future development. They seek to provide a 'layering' of built form so that there is a defined street wall and forms above that street wall recede when viewed from the public realm. Setbacks also serve the purpose of light penetration, sky views and wind movement through the precinct. (p8 Doc 132a)

The VPA proposed a setback of 10 metres from the Laurens Street frontage of land at 189-197 Arden Street, which is on the corner of Laurens Street and Arden Street. The Theodossi Group submitted that the setback is "... *not necessary, strategically justified or equitable.*" Ms Murray, who presented planning evidence for the Theodossi Group, considered that:

- There is no evidence as to how the 10 metre setback was calculated
- There is no evidence as to how this land will provide meaningful open space
- The mechanism for re-imbursement of the giving over of the 10 metre setback to the public realm is not addressed in the Amendment

- The space is not incorporated in the Arden Public Realm and Open Space Strategy, 2021
- It appears to duplicate the “green link” already provided along Laurens Street; and
- There are existing and proposed parks within close proximity to Laurens Street. (Doc 85 p20)

Council and the VPA supported the 10 metre setback required along Laurens Street affecting 189-197 Arden Street. The VPA submitted:

The linear park on the corner of Laurens and Arden Streets, extending to Barwise Street is an attractive feature that adds to the amenity of the public realm on the important approach to the Arden Station. It does not seek to duplicate the green link comprising Laurens Street, but rather as Mr Sheppard explained in his evidence to the Committee, has the impact of opening up the southern vista to the Arden Station, contributing to the quality of the public realm and providing important green space for the worker and resident population. It should be retained and no sound basis has been provided for its deletion.

At the location of the proposed linear park, the street width is proposed to be 30m. The 30m width comprises of the existing street width of 20m and the proposed linear park width of 10m. (Doc 132, p86)

Plan 2 of the Arden DCP ‘Future Urban Structure’ clearly identifies that the linear park is identified as new public open space (credited). The label ‘public open space’ is defined in the glossary as *Land that is set aside in the Arden Planning Scheme Amendment for public recreation or public resort, or as parklands, or for similar purposes.*

The Committee notes that the proposed provision relating to 189-197 Arden Street only requires the setbacks below the street wall height, which indicates that the building could cantilever over the setback above this height. It is not clear whether this is the intent of the requirement or not.

George Weston Foods submitted that the setbacks proposed for the Lauren Street Sub-precinct be altered to reduce the Preferred minimum setback from 7.5 metres to 5 metres for buildings up to 34 metres, and from 18 metres to 7.5 metres for buildings above 34 metres.

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

The setback provisions are part of the suite of detailed built form controls proposed for Arden and are difficult to assess in isolation. However, in general there is little dispute among the parties in relation to these proposed requirements. The Committee considers that the setback requirements are well formulated and will achieve the intended outcomes. The areas of dispute require consideration.

#### **Setbacks for laneways, side and rear boundaries**

The detailed setbacks proposed by the Urban Design Conclave for laneways, side and rear boundaries for parts of all buildings below 25 metres high are intended to create an acceptable internal amenity for residential buildings facing across laneways, and a consistent treatment at ground level. In the Committee’s view, these requirements are reasonable and create an equitable development scenario where residential development on one side of a laneway will not be precluded from some outlook regardless of the development on an opposite site. If there is a way to simplify the controls while retaining the intent of the proposed changes, this should be identified.

#### **Laurens Street 10 metre setback**

The need for the setback is not clearly established in the view of the Committee. Nevertheless, Laurens Street has been identified through the strategic documents as being public open space. The setback will assist in increasing visibility of the entrance to the station from the north and this is to be supported.

### Reduced setbacks for Laurens Street sub-precinct

The reduced setbacks proposed by George Weston Foods for its sites are not considered acceptable given the proximity to low scale residences to the east.

### General drafting issues

The Committee thinks the controls would be clearer if building separation were addressed in a separate table.

### (v) Recommendations

The Committee recommends:

**Use separate tables for internal building separation and setbacks from boundary.**

**Update the Setback table (as separate tables) to read as shown in Recommendation Tables 2A and 2B below.**

**Recommended Table 2A: Setbacks**

| Location   | Part of building   | Building height                                     | Preferred minimum Setback  |
|--|--|---|--|
| The west side frontage of Munster Terrace and Anderson Street between Queensberry Street and Miller Street | Below the preferred street wall height                                   | As specified elsewhere in this table                |  |
|  | Above the street wall height   | Up to 34 metres                                     | 7.5 metres   |
|  |  | 34 metres and over                                  | 18 metres  |
| 189-197 Arden Street for the Laurens Street frontage   | Below preferred street wall height                                       | None specified                                      | From Laurens Street: 10 metres   |
|  | Above the preferred street wall height                                   | As specified elsewhere in this table                |  |
| Facing a laneway, street or public open space  | Below the street wall height or if facing a laneway below 25 metres high | None specified                                      | Where a new or widened laneway is sought: half the width of the laneway  |
|  |  |   | Any part of a building not within 0.3 metres of the side or rear boundary: 4.5 metres  |
|  |  |   | Any part of a building not within 0.3 metres of the side or rear boundary and which provides the primary outlook from a dwelling: 6 metres |
|  |  |   | A wall containing habitable room windows facing a laneway: 4.5 metres except where the boundary abuts an existing or proposed laneway      |
|  | Above the street wall height or if facing a laneway above 25 metres high | Up to 8 metres above the street wall                | 3 metres   |
|  |  | From 8 metres above the street wall up to 64 metres | 5 metres   |
|  |  | Greater than 64 metres                              | 7.5 metres   |
| Facing side or rear boundary   | Below the street wall height or 25 metres if not street wall height      | None specified                                      | Any part of a building not within 0.3 metres of the side or rear boundary: 4.5 metres  |

| Location | Part of building   | Building height                     | Preferred minimum Setback  |
|----------|--|-------------------------------------|--|
|          | is specified   |                                     | Any part of a building not within 0.3 metres of the side or rear boundary and which provides the primary outlook from a dwelling: 6 metres |
|          | Above the street wall height or 25 metres if not street wall height is specified | Up to 51 metres                     | 5 metres   |
|          |  | Above 51 metres and up to 64 metres | 7.5 metres   |
|          |  | Above 64 metres and up to 81 metres | 10 metres  |
|          |  | Above 81 metres                     | 12.5 metres  |

Recommended Table 2B: Building separation

| Part of building                        | Building height                     | Preferred minimum Setback |
|---|-------------------------------------|---------------------------|
| Building(s) separation on the same site | Up to 51 metres                     | 10 metres                 |
|   | Above 51 metres and up to 64 metres | 15 metres                 |
|   | Above 64 metres and up to 81 metres | 20 metres                 |
|   | Greater than 81 metres              | 25 metres                 |

## 10.8 Building heights and floor area ratio (FAR)

### 10.8.1 The issues

The issues are:

- Are the FARs a worthwhile addition to the suite of built form controls?
- Are the proposed heights and FARs adequately justified?
- Should both preferred minimum and maximum building heights be required?
- Should the provisions be discretionary or mandatory?

### 10.8.2 What is proposed

Clause 2.6 (Buildings heights and floor area ratio) of the consolidated DDO submitted by the VPA contains discretionary height controls that vary by area within each sub-precinct. The FAR controls also vary by area within each sub-precinct, however Arden Central Innovation and Arden Central Mixed Use and Laurens Street – west sub-precincts have preferred maximum FARs, while in Arden North and Laurens Street – east sub-precincts, mandatory maximum FARs are proposed.

The Clause 2.6 requirements as proposed in the combined DDO Schedule are included in Table 11 below.

Table 11: VPA final position on building heights and Floor Area Ratios (Table 3 of the consolidated DDO)

| Location on Map 1                                  | Discretionary Building Height | Maximum FAR | Mandatory or Discretionary FAR |
|--|-------------------------------|-------------|--------------------------------|
| Arden Central Innovation sub-precinct Area (DDO80) |                               |             |                                |
| Lot A  | 25-33 metres                  | 6:1         | Discretionary                  |
| Lot B  | 33-57 metres                  | 8:1         | Discretionary                  |
| Lot C  | 33-65 metres                  | 8:1         | Discretionary                  |

| Location on Map 1                                 | Discretionary Building Height | Maximum FAR | Mandatory or Discretionary FAR |
|---|-------------------------------|-------------|--------------------------------|
| Lot D   | 49-81 metres                  | 12:1        | Discretionary                  |
| Lot E   | 121-134 metres                | 17:1        | Discretionary                  |
| Arden Central Mixed-Use sub-precinct Area (DDO81) |                               |             |                                |
| Lot A   | 33-51 metres                  | 6:1         | Discretionary                  |
| Lot B   | 65-83 metres                  | 12:1        | Discretionary                  |
| Lot C   | 121-134 metres                | 17:1        | Discretionary                  |
| Arden North sub-precinct Area (DDO82)             |                               |             |                                |
| Lot A   | 33-51 metres                  | 6:1         | Mandatory                      |
| Lot B   | 49-64 metres                  | 9:1         | Mandatory                      |
| Laurens Street sub-precinct Area (DDO83)          |                               |             |                                |
| Lot A*  | 13-25 metres                  | 5:1         | Mandatory                      |
| Lot B   | 25-33 metres                  | 6:1         | Mandatory                      |
| Lot C   | 49-64 metres                  | 8:1         | Discretionary                  |
| Lot D   | 49-64 metres                  | 10:1        | Discretionary                  |

\* Applies to land not subject to a Heritage Overlay only

### 10.8.3 Evidence and submissions

#### (i) FARs as a tool

Evidence and submissions drew attention to the increasingly common use of FAR controls in Melbourne, interstate and overseas as a method to manage inner urban development. The use of FARs as a part of the suite of built form controls in Arden was not disputed.

The source of the proposed controls was questioned by Council and its expert witnesses. Under cross examination, Mr Barnes stated:

I couldn't see where the original FARs have come from. I couldn't see a good link to a background report. Part of my observation was they seemed high, the other was there was a lack of justification for them. That justification might exist, but I am not aware of it.

#### (ii) Discretionary versus mandatory FAR requirements

The issue of whether the FAR controls should be applied across all sub-precincts as mandatory controls occupied much discussion in the submissions.

The first issue to be addressed is the compliance with PPN59, with the following statements in the PPN being particularly relevant:

Mandatory provisions in the VPP are the exception.

Mandatory provisions will only be considered in circumstances where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes.

Several submitters contended that the use of mandatory controls in this instance was inappropriate. The closing submission for George Weston Foods stated:

It has not been established that the mandatory application of the FAR meets the objectives of PPN59. It has not been conclusively demonstrated and the Committee has not been

presented with persuasive evidence to demonstrate this is an exceptional circumstance for permanently restricting the precinct's total available floor space through mandatory FARs. (Closing, para 24)

Mr Barnes referred to the criteria contained in the Practice Note to assess the appropriateness of mandatory controls, and stated:

In my opinion it is appropriate floor area ratios be mandatory in all precincts in Arden. If the Panel (sic) is concerned that this may unreasonably impact on development potential or yield, the numerical values of the ratio should be reviewed, not the mandatory nature of the ratio.

Mr Barnes explained his rationale succinctly:

With a mandatory floor area ratio control, the total floorspace permitted on a site is predetermined and cannot be varied. There is no imperative for developers and architects to push a building up and out to minimum standards. Rather, site yield is set and the design exercise focuses on modulating building locations and articulation on a site. This is especially the case when combined with discretionary building heights and setback. (para 142)

In her evidence Ms Peterson was of the view that the mandatory controls were justified in the precincts to which they were applied in the exhibited Amendment, but not in those where they were not proposed.

Council submitted that mandatory FARs across all sub-precincts are intrinsic to the achievement of the vision for Arden. It suggested that discretionary FAR controls combined with discretionary height controls will create complex implementation issues for Council officers, and that even small exceedances of FAR controls can have significant consequences, the cumulative impact of which could compromise the realisation of the Arden Vision.

In her evidence, Ms Hodyl was strongly in support of mandatory controls as an urban design tool, stating that:

The degree of elasticity allowed in the DDO controls will result in a highly contested development process and poor design quality.

The discretionary FARs are likely to be exceeded. Mandatory FARs are needed for them to be effective at reducing development speculation and ensuring that good design is delivered. (para 223, 225, p64)

While Mr Sheppard initially supported the mix of mandatory and discretionary FAR controls in the exhibited Amendment, the urban design conclave resulted in agreement by Mr Sheppard and Ms Hodyl that:

The use of a combination of FAR and building envelope controls is appropriate.

All maximum FAR provisions should be mandatory in order for the benefits of a combined FAR/buildings regime to be achieved.

The VPA submitted that in some sub-precincts discretionary FARs are required to enable the Arden Vision to be achieved and that the right balance has been struck between mandatory and discretionary FARs, which accords with the PPN59. It submitted that:

Fundamentally, the VPA endorses an approach that does not unreasonably foreclose upon the opportunity for landowners to bring forward, design outcomes that are tailored to site specific circumstances, and are not unreasonably constrained by prescriptive building envelopes.

The VPA contended that this is particularly so in the Arden Central Innovation precinct where maximum flexibility is required to ensure the vision for this precinct is achieved.

The VPA stated that the mix of discretionary and mandatory controls was carefully resolved to protect key open spaces and sensitive interfaces while maintaining flexibility to achieve a variety of

built form outcomes. It submitted that the argument for mandatory controls is simplistic and indicates a lack of faith in the decision maker in considering all relevant factors. The submission was critical of the modelling conclusions and Ms Hodyl's evidence.

The Theodossi Group, supported by the evidence of its planning expert witness Ms Murray, strongly advocated for discretionary FAR controls in relation to its properties and Arden generally. It stated (opening, at page 19):

A discretionary FAR would achieve:

- a clear guide to the scale/volume of development on a particular site
- flexibility for development to respond to its particular site context including its size, opportunities, existing uses, adjoining properties and location in the Precinct
- applied in conjunction with height, setbacks and design objectives, would achieve the desired design outcomes
- would allow for additional floor area to be provided in the Amendment, where appropriate.

And in closing (Doc 130 at paras 13-19):

The Theodossi Group submits that the strategic status of the Precinct as an urban renewal area, its proximity to the CBD, its access to existing and new infrastructure, its opportunity to be an extension of the CBD with distinctive land-use and built form areas and the long-term benefits that maximization of land in Arden will provide, are factors that must be given great weight in assessing the quantum and discretionary/mandatory nature of the FAR.

In this regard, it is submitted that there is no strategic justification for a floor space cap across the whole Arden precinct.

Further, regardless of whether a mandatory FAR achieves an "academic" flexibility of built form on a particular site, the result is that each site is constrained by a permissible floor area. Flexibility to achieve more floor area in an acceptable building envelope is denied by a floor area cap. This is not an appropriate strategic outcome in an urban renewal precinct.

Submissions on behalf of Guntar Graphics agreed with these views.

George Weston Foods submitted that a discretionary control is imperative for the realisation of the redevelopment of its site including significant heritage buildings:

Not all sites are the same and they are not all subject to the same opportunities and constraints. It therefore follows that they should not necessarily all be treated in the same way. Just because a mandatory FAR may be appropriate for a particular site, it may be inappropriate for another, dependent on a site's characteristics. (para 26)

Applications for permits should be judged on their merits to deliver performance based outcomes.

### **(iii) FAR requirements**

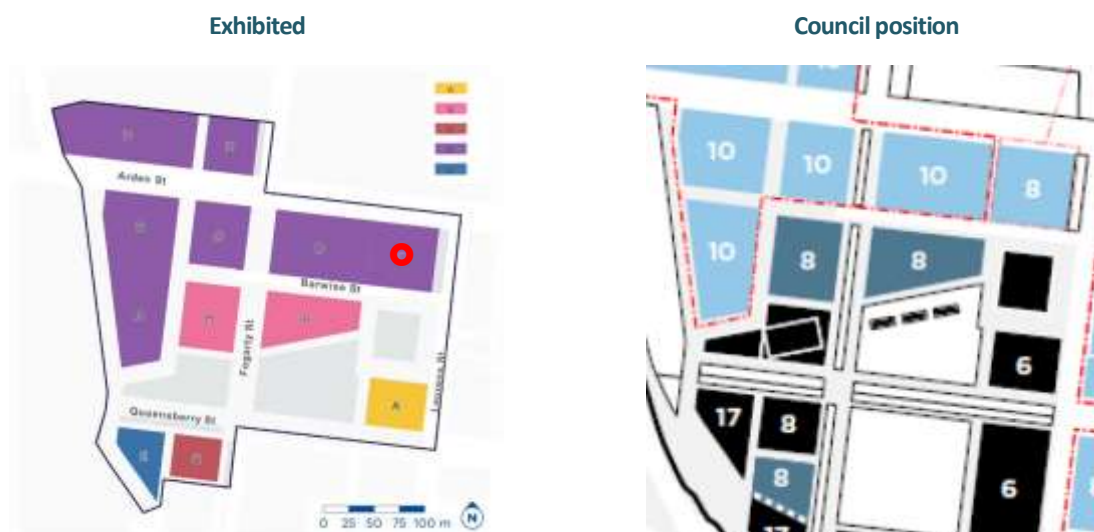
The metrics of the FAR controls in various parts of the Arden precinct were challenged by Council and land owners. Submissions about the detailed FAR requirements by sub-precinct and individual property were presented. Broadly, the arguments centred on the need for flexibility to allow innovative design and opportunity to maximise land use, versus certainty and forcing more focus on urban design outcomes.

In general, the submissions chose to align with either the exhibited Amendment, or one or both of the urban design experts. Council aligned with the recommendations of its urban design expert, Ms Hodyl. The VPA generally supported the exhibited Amendment.

### **Arden Central DDO80**

Figure 15 shows the sub-precinct boundaries for the DDO80 area with the final positions of the VPA, Council and experts shown in Table 12.



**Figure 15: DDO80 sub-precinct boundaries and FARS****Table 12: Arden Central Innovation final positions sourced from Council closing statement (Doc 131a)**

| Area   | VPA Submission     | Final Mark Sheppard | Leanne Hodyl  | Council   |
|--------|--------------------|---------------------|---|---|
| DDO80A | 6:1 discretionary  | 6:1 mandatory       | 6:1 mandatory   | 6:1 mandatory   |
| DDO80B | 8:1 discretionary  | 8:1 mandatory       | 8:1 mandatory   | 8:1 mandatory   |
| DDO80C | 8:1 discretionary  | 8:1 mandatory       | 8:1 mandatory   | 8:1 mandatory   |
| DDO80D | 12:1 discretionary | 10:1 mandatory      | 10:1 mandatory for commercial buildings<br>8:1 mandatory for residential buildings<br>8:1 mandatory for site north of station ● | 10:1 mandatory<br>8:1 mandatory for site north of station |
| DDO80E | 17:1 discretionary | 17:1 mandatory      | 17:1 mandatory  | 17:1 mandatory  |

Submissions for Guntar Graphics agreed with the VPA that the discretionary FAR for its properties in Area DDO80D should remain at 12:1.

The Theodossi Group submitted for its sites in Area DDO80D that the proposal for a mandatory FAR and a reduced FAR to 10:1 or 8:1 is unjustified. Its closing submission stated:

... the suitability of the recommended FAR on the Arden Street Properties and the Arden Street and Munster Terrace Properties must be properly assessed not only against urban design outcomes but against the opportunities that these sites offer in this strategic location including the provision of floor space for employment generating uses.

For the reasons already outlined in the Opening Submissions, the balance should fall on providing flexibility, opportunity and maximization of land-use.

The Theodossi Group agrees with the VPA's response to the Urban Design Conclave at Section 3.8 (paras 31-33)

### Laurens Street DDO83

Figure 16 shows the sub-precinct boundaries for DDO83 with the final positions of the VPA, Council and experts shown in Table 13.

**Figure 16: DDO83 sub-precinct boundaries and FARS****Table 13: Laurens Street sub-precinct final positions sourced from Council closing statement Doc 131a**

| Area   | VPA Final Submission   | Mark Sheppard  | Leanne Hodyl   | Council  |
|--------|--|--|--|--|
| DDO83A | 5:1 mandatory<br>(Applies to land not subject to the HO only. Apply mandatory 14m height limit to HO land) | 5:1 mandatory<br>(Land subject to heritage overlay be excluded from FAR, instead apply mandatory 14m height limit) | 5:1 mandatory<br>(Land subject to heritage overlay be excluded from FAR, instead apply mandatory 14m height limit) | 5:1 mandatory<br>(Land subject to heritage overlay be excluded from FAR, instead apply mandatory 14m height limit) |
| DDO83B | 6:1 mandatory  | 6:1 mandatory  | 5:1 mandatory  | 5:1 mandatory  |
| DDO83C | 8:1 discretionary  | 7:1 mandatory  | 8:1 mandatory to non-heritage overlay (north)<br>6:1 mandatory to heritage overlay 455 (south)                     | 8:1 mandatory to non-heritage overlay (north)<br>6:1 mandatory to heritage overlay 455 (south)                     |
| DDO83D | 10:1 discretionary   | 9:1 mandatory<br>(excluding rail corridor)   | 7:1 mandatory<br>(excluding rail corridor)   | 7:1 mandatory<br>(excluding rail corridor, as per VPA's latest DDO draft)  |

The remaining areas of disagreement between the urban design experts, and the VPA are in Lots B, C and D. Ms Hodyl and Council sought to apply lower FARs to Lot B, C (in part) and Lot D than the VPA and Mr Sheppard. It is noted that most are higher than those proposed in the Structure Plan.

The submission for George Weston Foods stated that in Lot C:

...its site, being large and with the ability to provide public benefits such as adaptive reuse of its heritage fabric, open space, and connections through to the station, should be afforded

flexibility in achieving the optimum outcome for its site. A mandatory control may prevent this being achieved. (para 26)

### Arden North DDO82

Figure 17 shows the sub-precinct boundaries for DDO82 with the final positions of the VPA, Council and experts shown in Table 14.

**Figure 17: DDO82 sub-precinct boundaries and FARS**



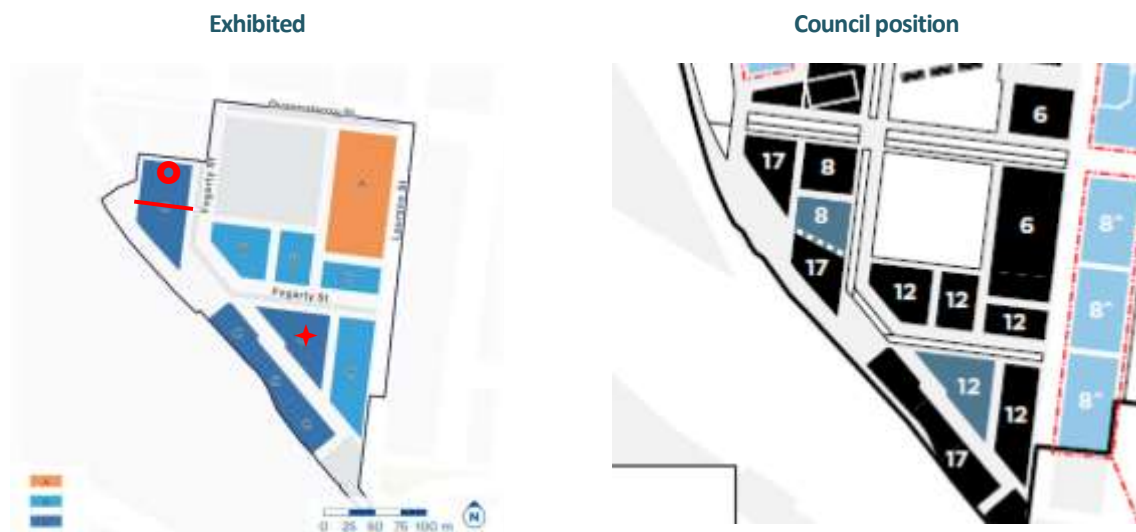
**Table 14: Arden North sub-precinct final positions sourced from Council closing statement (Doc 131a)**



| Lot    | VPA Final Submission | Mark Sheppard  | Leanne Hodyl                    | Council                               |
|--------|----------------------|--|---------------------------------|---------------------------------------|
| DDO82A | 6:1 mandatory        | 6:1 mandatory<br>(Extend Lot A west of the north-south lane) | 5:1 mandatory<br>(Newly mapped) | 5:1 mandatory                         |
| DDO82B | 9:1 mandatory        | 9:1 mandatory<br>(Reduce Lot B extent)                       | 6:1 mandatory<br>(Newly mapped) | 6:1 mandatory (as mapped by Ms Hodyl) |

The areas of disagreement in this sub-precinct relate to the boundary between the higher and lower FAR requirements, and the quantum in Lot B. Both Mr Sheppard and Ms Hodyl recommended reducing the extent of Lot B, but with marginally different boundaries. Ms Hodyl also recommend a lower FAR for a number of blocks.

### Arden Central Mixed Use DDO81

Figure 18 shows the sub-precinct boundaries for DDO81 with the final positions of the VPA, Council and experts shown in Table 15.

**Figure 17: DDO81 sub-precinct boundaries and FARs****Table 15: Arden Central Mixed Use final positions sourced from Council closing statement (Doc 131a)**

| Lot  | VPA Final Submission | Mark Sheppard  | Leanne Hodyl   | Council        |
|--|----------------------|----------------|----------------|----------------|
| DDO81A (school)  | 6:1 discretionary    | 6:1 mandatory  | 6:1 mandatory  | 6:1 mandatory  |
| DDO81B   | 12:1 discretionary   | 12:1 mandatory | 12:1 mandatory | 12:1 mandatory |
| DDO81C   | 17:1 discretionary   | 17:1 mandatory | 17:1 mandatory | 17:1 mandatory |
| DDO81C opposite park  | 17:1 discretionary   | 8:1 mandatory  | 8:1 mandatory  | 8:1 mandatory  |
| DDO81C triangle lot   |                      | 12:1 mandatory | 12:1 mandatory | 12:1 mandatory |

The disagreement between the parties relates to the boundary between Precincts with an additional block south proposed to be included in the Arden Innovation sub-precinct. The site to be split is in Lot C west of Fogarty Street, shown in the map accompanying Council's final submission. Council and the urban design conclave concluded that this site should be within Lot C of the Arden Central Innovation precinct. The VPA submitted that this block should remain in the Mixed Use precinct as exhibited as:

- splitting the current site in two will limit flexibility and most likely limit land use opportunities for innovation/commercial land uses
- achieving a viable floorplate once the site is split in two will be problematic once building setbacks and wind mitigation measures are applied. (Doc 117, 3.1)

#### **(iv) Gross floor area yield**

In support of the proposed FAR controls, the VPA submitted that:

...the failure to maximise yield consistent with important policy imperatives, and the need to avoid underdevelopment of the Arden precinct should feature in the Committee's decision making. It is important to look forward in planning for the precinct, recognising that transformational change should be embraced and not shied away from.

The VPA provided yield calculations, prepared with Council, that compare the proposed FARs by each urban design expert witness, and the final positions of Council and the VPA. The VPA relied on the table to support its submission that the reduced FARs will unreasonably and overly restrict the development potential of Arden and reduce its ability to meet the objectives of the Vision for the area. The VPA submitted that the opportunities for development should be fully realised in this area as it is a unique proposition, with exceptional locational and agglomeration advantages to accommodate growth in jobs and housing, and development cannot be assumed to be able to locate 'elsewhere'.

#### **(v) Design excellence**

The application requirement at Clause 5.0 of the consolidated DDO Schedule that a design review be undertaken should the maximum FAR be exceeded by a proposal is considered appropriate by all parties, other than Council which submitted that should the FAR requirements be mandatory it will not be effective. Council submitted that the achievement of design excellence should be via *"...an appropriate process rather than another report..."*. Council proposed that the DDO be amended to require high quality design throughout the precinct, and that particular sites should be required to undergo a process demonstrating design excellence. A Design Excellence Map accompanied this submission indicating the sites Council identified as warranting a design review or competition.

The VPA accepted that the Design Excellence Map has a role in identifying gateway sites, in addition to the sites on which the FARs could be exceeded and where the design review process is warranted, and provided amended wording for the consolidated DDO Schedule to this effect.

#### **(vi) Building heights**

##### **Maximum heights**

A large proportion of submitters from the surrounding community, including the North and West Melbourne Association, were concerned at the building heights and densities to be encouraged and allowed within Arden. Many expressed dismay at the 'grossly excessive' proposed heights particularly when compared with nearby development in West and North Melbourne, and the impact of taller buildings on privacy, sunlight access and wind. Many were also concerned at the discretionary nature of many of the controls, fearing that these would be readily exceeded.

Mr Koetsier submitted that the heights proposed in the Laurens Street sub-precinct were excessive and would cast an unacceptable shadow onto properties on the eastern side of the Munster Terrace. His submission was accompanied by diagrams demonstrating his concerns.

In reply to these submissions the VPA drew attention to the directions in Plan Melbourne, the proximity to the CBD, excellent accessibility, increased open space and the major change to the area that will occur due to the new station. The VPA submitted that design excellence is sought through the controls, as well as detailed provisions relating to overshadowing of open space, pedestrian amenity, wind and building setbacks and environmentally sustainable design.

##### **Minimum heights**

The VPA submitted in its closing submission that the preferred minimum height is not necessary for the DDO, subject to some tightening of the controls:

As per Ms Hodyl's response, building heights were expressed as a range as it was deemed to be the best way to manage building typology and achieve a high quality public realm. The building height range also correlate to the preferred mix of building typologies for the sub-precinct, noting that different land uses may have different floor to floor height needs.

The VPA accepts that on a technical measure the lower end of the height range does not serve a clear purpose in the DDO. If the DDOs were tightened up to connect building typologies with the building heights retaining the lower range would support assessment of buildings with larger floor plates and lower heights. I.e. it would manage the assessment of 'campus style' buildings likely for innovation uses.

The VPAs preference is that consideration should be given to strengthening the innovation use development /building design outcomes before considering removing the lower building height ranges. (Doc 132a, p9)

Deletion of the preferred minimum height was also supported by the VPA's urban design expert, Mr Sheppard.

Council stated in its closing submission (Doc 131):

Council has arrived at the position that it does not support the use of the building height range given the difficulty of drafting the DDO to provide sufficient reason for applying the lower range.

Similarly, submissions by Guntar Graphics and George Weston Foods supported removal of the lower height range, citing them as unnecessary.

#### **(vii) 'Double dipping'**

A point was raised in the on the papers drafting comments regarding the potential for 'double dipping' on the FAR controls where a site may be subdivided off once approval for another part of the site had been obtained. Council recommended a section 173 agreement approach while the VPA recommended inserting wording into the application requirements at Clause 5.0 to address this issue at the proposal stage.

### **10.8.4 Discussion – threshold issues**

#### **(i) FAR controls**

The detailed assessment of the proposed FAR requirements occupied substantial discussion and research by the parties for which the Committee is grateful. It is considered that the issue was well ventilated through the submissions and Hearing process, and considerable additional modelling was conducted at the request of parties to determine the assessment of the impact of the proposed controls.

The Committee has undertaken a close review of the presentations from all parties coupled with the various modelling work. The work that has been prepared was of the highest order, despite there being some detailed assessment that disagreed with certain assumptions and the application of them in the diagrams and tables.

In addition, the Committee is aware of other instances of the application of FARs or plot ratios in the achievement of planning and urban design objectives.

#### **Mandatory versus discretionary FAR controls**

The arguments for and against the discretionary nature of some of the FAR controls were strongly presented. The two urban design experts and one planning expert supported or actively advocated for mandatory controls. Two planning experts, Ms Peterson and Ms Murray, opposed mandatory controls. Ms Peterson's opposition appeared mainly to be based on her interpretation of the Practice Note provisions, and Ms Murray advocated primarily on behalf of the properties she was asked to assess.

It is noted that many of the submissions opposing mandatory controls pointed to the discrepancies in agreement between the urban design experts in relation to a number of the requirements for specific areas. The Committee notes, however, a majority of the provisions were agreed between the experts.

The FAR is a powerful tool used in many instances where substantial development pressures and a strong urban design imperative exists, as there is or will be in Arden. Setting a maximum FAR provides certainty to the development industry about the development potential of the property and assists in the high level determining of property values. It assists in containing or tempering expectations of developers. This is useful where a strong design imperative applies, and where there are a number of other considerations in developing a building design.

In Arden there are a multitude of design considerations proposed; it is a highly complex statutory and strategic environment with little existing redevelopment from which to assess the relative suitability of new development. While it has been argued that faith should be put in the responsible authorities and review bodies in implementing the policy and objectives, most of those involved in the Hearing are also involved in the ongoing interpretation of the controls and policies in planning schemes.

The application of a mandatory floor space cap in a major urban renewal area has the added benefit of enabling accurate estimates of public infrastructure requirements and developer contributions.

On balance, the Committee is of the view that the opinions of the experts who are most familiar with the operation and implementation of these controls should be favoured. Three of the four urban design and planning experts who addressed the Committee on this point agreed that mandatory FAR controls were supported or indeed required. While it is not a 'numbers game' in this regard, the Committee was impressed by the detailed analysis and clear conclusions by these experts that the mandatory nature of the controls is warranted.

It is considered that having regard to this and the many issues raised before the Committee regarding the advantages and disadvantages of mandatory controls, the Committee is of the view that some certainty in the provisions will be of benefit to the redevelopment process in Arden, and that mandatory FAR controls are therefore recommended.

## **(ii) Building heights**

The Committee accepts the VPA's arguments that the building heights proposed are appropriate for the Arden Precinct given the importance of achieving the change sought for the area.

There is little support for retaining the minimum height provisions and the Committee agrees that as the lower range generally accords with the minimum street wall height, it serves little purpose. Removing the requirement will also achieve a simpler control.

The VPA suggested that should the preferred minimum building height be removed, additional wording was required. Suggested wording for the strengthening of the provisions was not provided but the Committee considers that this change could be made by the VPA.

## **(iii) Impact of controls on yield**

The calculations of impact of the application of reduced FAR controls on the estimated allowable gross floor area is noted by the Committee. In general, this is not considered an overriding argument with regard to the setting of the FAR quantum. While maximising development opportunity within Arden is one clear objective, the achievement of quality urban design

outcomes is a strongly held objective of the Structure Plan, the proposed policy and the DDO. A superior outcome is sought that will benefit all in the longer term.

**(iv) 'Double dipping'**

The provisions proposed by the VPA to address this issue appear adequate, although there will need to be some method established for the long term 'tracking' of these approvals.

**10.8.5 Discussion – FAR requirements by sub-precinct**

The detailed conclusions of all parties and the recommendations from both urban design experts in relation to the appropriate FAR for each area need to be examined. Where there has been agreement between the experts the Committee accepts the recommendations based on the discussion above and in Chapter 3.4. Where there has been disagreement, a determination needs to be made.

The Committee has been mindful of the need to both provide enough flexibility to create a design tension, and enough certainty to ensure that the floor area can be accommodated. Where FAR controls are considered a little 'tight' (that is, the floor area would fill the proposed built form envelope) this can have the effect of creating a very uniform outcome. Overall however, where controls might be a little 'loose' in some areas, as long as the maximum floor area can be accommodated within the other built form requirements, an acceptable, if not always optimal, outcome can be achieved. The Committee considers that variety of built form will still be achieved where there is an appropriate degree of 'loose' fit.

In general, the Committee supports the recommendations of Mr Sheppard in relation to the maximum FARs. These typically lean to slightly more intensive development.

**(i) Arden Central Innovation sub-precinct (DDO80)**

The area of disagreement between the parties is in relation to Lot D, where only Council and Ms Hodyl are aligned. Mr Sheppard's evidence supporting a 10:1 FAR appears to strike a balance between the higher and lower controls proposed, while still delivering a fairly loose control, enabling the consideration of the other built form controls applying to the sites.

The proposed FARs for the Theodossi Group sites are impacted somewhat by the solar access requirements for Arden Station Forecourt, and also by the proposed 10 metre open space land required along the Laurens Street frontage. In compensation for the loss of the 10 metre frontage area, the VPA has confirmed that the land will be included in the calculation of the FAR of the site. It would seem inappropriate, therefore, for the FAR of the site to which the 10 metre setback is required to be reduced lower than other sites around it as a result of the smaller area of land in which to realise the development opportunity of the site, without compensation.

It is recognised that the modelling indicates that realisation of the full floor area allowable by the FAR will be problematic given the overshadowing requirements of the solar access provisions, however this matter will have to be resolved through the planning approval process, weighing up the different objectives at the time.

**(ii) Laurens Street sub-precinct (DDO83)**

The allowable heights within this sub-precinct are high when viewed from the east. However the existing silos provide some context for the future of the area, the heritage buildings will likely remain and the significant changes in topography present design challenges. It is considered that



the 'wall of buildings' that might be envisaged by nearby residents will not occur having regard to these factors. In addition, the increased setback provisions added for the area south of Queensberry Street will go some way towards addressing the concerns of residents along this interface.

The assessment of the proposed FARs for these Lots has been subject to much discussion.

In Lot A, Council supported a removal of the FAR for these properties in the Heritage Overlay, as does the VPA and the two urban design experts, with reliance on the maximum building height controls. It is considered that this is an appropriate response.

In Lot B it is considered that the 6:1 mandatory FAR will achieve an outcome that will require consideration of a number of other built form considerations, including interface with adjoining lower built form.

In Lot C, which accommodates the George Weston Foods buildings, the inclusion of the substantial heritage buildings with Heritage Overlay controls applying does further complicate the consideration. The redevelopment of the sites in a sensitive manner, having regard also to their strategic location and proximity to low rise residential areas, requires a high degree of design excellence. Having regard for the close proximity to the station, there is a clear strategic imperative to enable development that will capitalise on this opportunity. Therefore on balance the Committee supports the recommendations of Mr Sheppard for a 7:1 FAR that will be determined as an average across the Lot.

In Lot D, the provisions are complicated by the exclusion or inclusion of the rail corridor and the north-south pedestrian connection in the calculations. It is difficult for the Committee to assess this without undertaking all the calculations independently, however the Committee agrees with the advice of both urban design experts that inclusion of the rail corridor in calculations distorts the outcomes and it should be excluded for this reason. The VPA proposes to do this in the updated definitions. It is recognised that Mr Sheppard in his evidence did state that his recommended FAR of 9:1 breaches the maximum height 'marginally'. For this reason the Committee would prefer a maximum FAR of between 9:1 and 7:1 to ensure that the controls are not too tight, however recognises that the modelling of this has not been undertaken.

### **(iii) Arden North Sub-Precinct (DDO82)**

The boundary between the areas of the higher and lower FAR is the main issue of contention. The exhibited boundary would result in a very defined break between the higher and lower development and therefore a staggered boundary that has regard for the proximity to the freeway and the generally lower interface elsewhere is favoured.

It is considered that the slightly larger area proposed by Mr Sheppard is acceptable, as it does allow for a greater area of land to respond to the interface with the elevated freeway. It should however be checked for alignment with property ownership to ensure that larger landholdings can be developed as one.

### **(iv) Recommendation**

The Committee recommends:

**Update the Building heights and Floor Area Ratios as shown in Recommendation Table 3 below (with sub-precinct notations and mapping updated accordingly).**

**Recommendation Table 3: Building height and Floor Area Ratio**

| Location on Map 1  | Discretionary Building Height | Maximum FAR | Mandatory or Discretionary FAR |
|--|-------------------------------|-------------|--------------------------------|
| DDO80: Lot A   | 33 metres                     | 6:1         | Mandatory                      |
| DDO80: Lot B   | 57 metres                     | 8:1         | Mandatory                      |
| DDO80: Lot C   | 65 metres                     | 8:1         | Mandatory                      |
| DDO80: Lot D   | 81 metres                     | 10:1        | Mandatory                      |
| DDO80: Lot E   | 134 metres                    | 17:1        | Mandatory                      |
| DDO81: Lot A   | 51 metres                     | 6:1         | Mandatory                      |
| DDO81: Lot B   | 83 metres                     | 12:1        | Mandatory                      |
| DDO81: Lot C   | 134 metres                    | 17:1        | Mandatory                      |
| DDO81: Lot C opposite park ● shown below   | 65 metres                     | 8:1         |                                |
| DDO81: Lot C triangle lot ★ shown below  | 83 metres                     | 12:1        |                                |
| DDO82: Lot A   | 51 metres                     | 6:1         | Mandatory                      |
| DDO82: Lot B (with the boundary adjusted generally as proposed by Mr Sheppard, as shown below) | 64 metres                     | 9:1         | Mandatory                      |
| DDO83: Lot A (Excluding HO area)   | 25 metres                     | 5:1         | Mandatory                      |
| DDO83: Lot B   | 33 metres                     | 6:1         | Mandatory                      |
| DDO83: Lot C   | 64 metres                     | 7:1         | Mandatory                      |
| DDO83: Lot D   | 64 metres                     | 8:1         | Mandatory                      |



## 10.9 Floor plate maximums

### (i) The issue

The issue is:

- Should floor plate maximums be introduced for certain land uses?

### (ii) What is proposed

The introduction of discretionary floor plates maximums was proposed by Mr Sheppard in his evidence and subsequently amended and agreed in the urban design conclave. The maximums proposed are:

- for buildings taller than 41 metres:

- 900 square metres for Accommodation uses
  - 1350 square metres for other uses
- except in the Arden Central Innovation Sub-Precinct where only the Accommodation floorplate maximum is proposed.

This control is intended to ensure that building forms are broken up sufficiently and do not result in large massing responses.

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

The VPA does not support the proposal although it was considered and tested. The VPA submitted that the controls are unwarranted, onerous and problematic for the delivery of commercial and other land use outcomes. The VPA submitted that there are a number of other objectives, requirements, application requirements and decision guidelines that assist in the assessment and control of visual bulk.

Guntar Graphics submitted that maximum tower floorplates are unwarranted and should be rejected:

Limiting tower floor plates to a maximum of 900 square metres for Accommodation uses or 1,350 square metres for other uses, also undermines the purpose of the proposed setback and tower separation controls, and would undoubtedly lead to an abundance of viable development space being underutilised. (closing p3)

### **(iv) Discussion and conclusion**

The Committee believes that maximum floorplate controls would undoubtedly assist in reducing building mass and visual bulk. However given the extent of other controls proposed, and the number of provisions intended to address this issue, it is considered that this control is not imperative to achieve the desired urban design outcomes.

The Committee notes that DDO1 contains specific requirements that deal with this issue.

The Committee concludes:

Floor plate maximum controls are not required.

## **10.10 Solar protection**

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

The issues are:

- Will the controls result in a pleasant open space environment?
- Should the controls be mandatory for certain open spaces?
- Should the controls align with similar provisions proposed in the Melbourne Planning Scheme?

### **(ii) What is proposed**

Clause 2.7 (Solar protection) of the combined DDO Schedule includes Built Form Requirements which refer to Table 4, which in turn specifies the mandatory or discretionary provisions relating to additional shadow cast over open space areas identified on Map 2 of the Schedule. The exhibited version of the table was amended by the VPA during the Hearing to reflect some of the submissions received.

**Table 16: VPA final position on solar protection (Table 4 of the consolidated DDO)**

| Area on Map 2                               | Date and hours         | Mandatory or discretionary |
|---|------------------------|----------------------------|
| Neighbourhood Park                          | 22 June, 11am-2pm      | Mandatory                  |
| Capital City Open Space                     | 22 September, 11am-2pm | Mandatory                  |
| North Melbourne Recreation Reserve          | 22 September, 11am-2pm | Discretionary              |
| Clayton Reserve                             | 22 September, 11am-2pm | Discretionary              |
| Integrated stormwater management open space | 22 September, 11am-2pm | Discretionary              |
| Arden Station Forecourt                     | 22 September, 11am-2pm | Discretionary              |

**(iii) Evidence and submissions**

Submissions related to the provisions for overshadowing of the Arden Station Forecourt, the mandatory or discretionary nature of all controls and the date and hours proposed. Council, the VPA and the urban design conclave agreed that the removal of the Queensberry Street Linear Park from the exhibited table was appropriate.

Council submitted that more restrictive controls are appropriate, supported by the opinion of Ms Hodyl and other work Council has undertaken in the preparation of Amendment C415melb (formerly 278) to the Melbourne Planning Scheme which is currently with the Minister for Planning for approval. Council sought the conversion of all controls to mandatory, and the extension of the date and hours to 10am–3pm on the winter solstice for all areas other than the Arden Station Forecourt and the Capital City Open Space.

The rationale for these changes is to bring the controls for Arden into alignment with the controls proposed in Amendment C415melb which is to apply to other areas of the municipality outside the Central City, and to recognise the importance of open space in higher density environments.

Ms Hodyl gave evidence that:

Including a balance of Spring and Winter solar access controls to the proposed and existing parks is supported and reflects the approach taken in parts of Melbourne municipality that have the highest levels of densities (i.e. the Hoddle Grid, Southbank and Fishermans Bend). However, access to Winter sun has not been sufficiently considered for the Arden North sub-precinct where a Spring control applies to all open spaces. The modelling also demonstrates that the high FARs will result in limited opportunity for communal open space within the development sites.

Conversion of the solar access controls to a winter controls is recommended for the North Melbourne Recreation Reserve and Clayton Reserve. Sunlight access between 10am–3pm should be adopted. This aligns with the C278 proposition and supports the health and wellbeing of future residents and workers.

As sunlight is critical to the quality of parks the control that applies should be mandatory. (p60)

Council also quoted from the Panel report for Amendment C278 where the increased hours and winter solstice were supported.

The VPA submitted that the proposal by Council and Ms Hodyl that solar access controls should be mandatory should be rejected. The VPA contended:

The current mix of discretionary and mandatory FARs coupled with mandatory (sic) solar controls strike the right balance between the protection of public open spaces and deliver on the Arden Vision. Mandating all solar controls would unnecessarily contain possible development outcomes and limit built form flexibility.

Submissions on behalf of the Theodossi Group, supported by the evidence of its expert witness Ms Murray, sought to delete the solar access provisions in relation to the Arden Station Forecourt on the basis that they are unreasonable. Following on from additional modelling of built form outcomes for the Theodossi sites, Ms Murray concluded:

Given the significant constraint the solar protection of Arden Station Forecourt imposes on the floorplates of surrounding properties and as the Arden Station building will overshadow the forecourt in any case, I recommend deleting the solar protection control.

The VPA supported the discretionary controls as necessary “...to secure the future amenity of this important civic space” and strongly rebutted any argument that the Arden Station Forecourt should be exempt from solar access controls, due to its importance as an entrance and meeting place. The discretionary nature of the controls is considered by the VPA to provide sufficient flexibility to manage the impacts of any overshadowing to an acceptable level.

The submission from My Koetsier proposed that the Munster Terrace linear open space should be subject to overshadowing requirements.

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

The Committee is mindful of the review of the solar access provisions in Amendment C278 (now C415melb) by a recent Planning Panel report. Comments made in that report which point to the importance of the quality and amenity of open spaces to support future population growth are relevant to the consideration of the future growth of Arden. It would seem that consistent controls should apply in Arden as those that will apply elsewhere in the municipality. Given that Amendment C415melb proposes provisions for expanded hours of protection and winter solstice controls for many similar parks in Melbourne, and is with the Minister for approval, it would seem somewhat premature to determine upon the similar proposal in this area of the City.

The Committee considers that the provisions in Arden should align with the provisions implemented by Amendment C415melb, once approved. Should mandatory controls be approved in Amendment C415melb then the controls for all Areas on Map 2 should be mandatory, and should the dates and times be approved as 10am-3pm on 22 June for Amendment C415melb, then the North Melbourne Recreation Reserve, Clayton Reserve and the ISMOS should have the same provisions.

With regard to the Arden Station Forecourt it is noted that the provisions state that buildings must not cast additional shadow above that cast by the street wall height. The Theodossi Group submitted that the Arden Station building itself will overshadow the Forecourt. To enable this situation to be taken into account where a mandatory control is to apply, it is considered that the Built Form Requirements provisions should be amended to read, “*Buildings must not cast any additional shadow beyond that cast by the applicable street wall height or existing buildings, whichever is the greater, for the ...*”

There is no disagreement between the VPA and Council that the Queensberry Street Linear Park be deleted from the table, and that the Capital City Open Space remain at September 11am–2pm. The Committee supports these controls.

The Committee agrees with the position put by Mr Sheppard in his evidence that the Munster Terrace linear open space serves a local function and should not be subject to solar access provisions.

#### (v) Recommendation

The Committee recommends:

**Update the solar protection provisions to read:**

**Buildings must not cast any additional shadow beyond that cast by the applicable street wall height or existing buildings, whichever is the greater, for the ...**

**Update the solar protection table to be consistent with the controls approved for the balance of the municipality based on Recommendation Table 4 below.**

**Recommendation Table 4**

| Area on Map 2                               | Date and hours         | Mandatory or discretionary Solar protection |
|---|------------------------|---|
| Neighbourhood Park                          | 22 June, 11am–2pm      | Mandatory                                   |
| Capital City Open Space                     | 22 September, 11am–2pm | Mandatory                                   |
| North Melbourne Recreation Reserve          | 22 September, 11am–2pm | Discretionary                               |
| Clayton Reserve                             | 22 September, 11am–2pm | Discretionary                               |
| Integrated stormwater management open space | 22 September, 11am–2pm | Discretionary                               |
| Arden Station Forecourt                     | 22 September, 11am–2pm | Discretionary                               |

## 10.11 Laneways

#### (i) The issue

The issue is:

- The location and nature of proposed laneways.

#### (ii) What is proposed

Structure Plan Objective 17 states that streets and laneways surrounding the new station and open spaces will prioritise pedestrians, using slow speed limit shared zones which will also allow access for slow moving cyclists and emergency and service vehicles. Pedestrian priority zones will be enhanced through detailed interventions such as traffic management strategies, urban design, textural pavement changes, place making and canopy cover. Green links will provide additional shading and opportunities for water sensitive urban design and biodiversity.

Through-block links will be provided at regular distances to enable pedestrians and cyclists direct and easy connectivity between key destinations. Links will be generously proportioned according to the transport need and the surrounding buildings' scale and use to ensure they are functional and contribute to a pedestrian friendly public realm.

The requirement to provide laneways is presented in Table 6 of the consolidated DDO as a Public interface and design detail:

Provide for laneways, through links and connections generally as identified in Map 3.

The DDO contains the following requirements in relation to the design of new laneways:

- Pedestrian only (Laneway 1): open to the sky and 9 metres wide
- Shared (Laneway 2): open to the sky and 8 metres wide (applies in DDO82 only).
- Internal (Laneway 3): 9 - 12 metres with proportional void (applies in DDO80 only).
- Through-block links: open to the sky or internal arcades and 6 - 9 metres wide.

### (iii) Evidence and submissions

Council's closing submission included reference to the hierarchy of laneways (Doc 131, Table 2). This laneway hierarchy and the associated active street frontages was supported by an analysis undertaken by Council to demonstrate how all sites can be accessed by service vehicles, and service access only network and accessing sites on non-active street frontages. Council endorsed the benefits of pedestrian friendly streets, including reference to street and laneway design, providing through-block links, and that Fogarty Street being a key north-south connector.

Mr Sheppard's evidence (Doc 28, page 16) noted that submitters raised concerns with the fixed location of laneways across private land that could impact existing operations or future development viability (Submitters 72, 73 and 102). Submitter 102 stated that the focus should be on acceptable pedestrian connectivity, rather than fixed laneway positions. He considered that the discretionary nature of the requirement for laneways generally provided sufficient flexibility for them to respond to land ownership and the design of development. He recommended that the requirements be reworded to provide laneways, through-block links and connections generally as identified in Plan 2 of the Structure Plan.

Mr Sheppard considered the delivery of these through-block links to be problematic, primarily due to the ground conditions in Arden that make basement car parking unfeasible, combined with requirements for above ground parking to be 'sleeved' (to streets). The blocks that would result from the proposed laneways would not be wide enough to accommodate sleeved car parking. He recommended the following changes to the DDOs:

- in Arden North (DDO82, Map 3) deleting the indicative through-block link between Reynolds Street and Gracie Street
- in Arden North (DDO82, Map 3) moving Laneway 1 between Macaulay Road and Henderson Street to the alignment of the existing lane/ indicative through-block link and Laneway 2
- in Laurens Street (DDO83, Map 3) deleting the indicative through-block link between Arden Street and Laurens Street.

Mr Sheppard made four specific recommendations in relations to laneways:

- Amend the DDO80, DDO82 and DDO83 Laneways, through-links, pedestrian and cycling connections requirements to *"provide laneways, through-links and connections generally as identified in Map ...."*.
- In DDO82 Map 3, move Laneway 1 between Macaulay Road and Henderson Street to the alignment of the existing lane/ indicative through-block link and Laneway 2.
- In DDO83 Map 3, delete the indicative through-block link between Arden Street and Laurens Street and update reference to Map 2.
- Review the requirement in DDO82 to widen 'Laneway 2' to 8 metres, given their rear access function.

His expert opinion during the Hearing was that the Laneway 1 between Laurens Street and Munster Terrace would be unnecessary.

The VPA adopted Mr Sheppard's recommendations, and was supported by Council.

#### (iv) Discussion

The Committee observes that the location of laneways is not a design detail but a fundamental requirement on development that has the potential to shape the whole development proposition. It is for this reason it is the first element dealt with in DDO1.

The Committee understands the important role that the hierarchy of laneways would play in the pedestrian and bike movements through and beyond the sub-precincts. A balance must be achieved where the streets and laneways are shared with public transport, private and service vehicles, in order for Objectives 15 and 17 to be realised. The detail design should not be restricted by mandatory controls upon laneways, except to ensure that the distance between the through-block links is less than 200 metres.

There will be a need for consistency in relation to the proposed laneway locations and functions with the introduction of DDO1. The Committee thinks the most efficient way to do this is to keep the laneway plan in the consolidated DDO with an appropriate note under 'Urban structure' in an amended DDO1 along the following lines:

Note: The planning controls for Arden require or indicate new pedestrian links and laneways.

#### (v) Recommendation

The Committee recommends:

**In the consolidated Design and Development Overlay, adjust the text in relation to laneways so that it works in conjunction with Design and Development Overlay 1 and ensures that the maximum distance between through-block links is less than 200 metres.**

## 10.12 General drafting issues

#### (i) The issues

The issues are:

- Many of the Built Form Outcomes are not expressed as an outcome.
- Many of the proposed Decision guidelines in the DDO are not policy neutral.

#### (ii) What is proposed

The consolidated DDO set out Decision guidelines, that are not policy neutral. For example:

- Whether the proposal maintains safe and pleasant pedestrian microclimatic conditions on the footpath adjacent to the development and demonstrates:
  - A maximum of 3 metres per second for sitting which is associated with activities such as outdoor cafes, pool areas, gardens.
  - A maximum of 4 metres per second for standing which is associated with activities such as window shopping, drop off, queuing.
  - A maximum of 5 metres per second for walking adjacent to the development.

The consolidated DDO sets out Built Form Outcomes. Not all of these articulate an outcome and many do not follow logically from the introductory sentence. For example from Clause 2.9:

Buildings and works that:



...

- Design the street interface where finished floor levels are raised in response to flooding, including direct connections at grade to usable space within the ground level with level transitions contained within the building envelope.
- Provide pedestrian amenity on streets shown at **Map 4**, including consideration of weather protection from rain, wind and sun without causing detriment to the streetscape integrity.
- Consider pedestrian flow, safety and amenity, which is prioritised over vehicle access and minimise conflict where possible.
- Provide for high quality pedestrian links as identified on **Map 3** to provide direct pedestrian connection where appropriate.
- Ensure services located on a street do not dominate the pedestrian experience and are designed as an integrated component of the façade.
- Design plazas that are safe and attractive, deliver opportunities for stationary activity and alleviate pedestrian congestion.

### (iii) Evidence and submissions

This matter was not discussed at the Hearing.

### (iv) Discussion

The DDO is modelled on other DDOs that set out Built Form Outcomes. For the most part the Built Form Objectives are short statements of what is to be achieved, but this approach is not taken for Public interface and design detail. If the Committee had not recommended the deletion of this sub- clause and the application of DDO1 it would have recommended a rethinking of the language of this subclause.

The Practitioners Guide explains:

*A Practitioner's Guide to Victorian Planning Schemes* (Version 1.4, April 2020) explains the elements of planning schemes including:

Decision guideline

Sets out, in policy neutral terms, matters that, if relevant, should be considered by the decision maker when exercising a discretion.

Many of the proposed decision guidelines are not policy neutral. This is contrary to drafting advice.

The Committee also observes that some of the text seems to repeat the DDO requirements.

### (v) Recommendation

The Committee recommends:

**In the consolidated Design and Development Overlay:**

- Review the Decision guidelines to remove unnecessary text and ensure guidelines are expressed in policy neutral language.**

# 11 Development contributions and charges

This Chapter deals with development contributions.

Melbourne Amendment C369 introduced an interim DCPO (Schedule 3) that applies to the Arden precinct. The interim development contribution rates are \$17,053 per dwelling, \$193 per square metre of commercial floor space and \$161 per square metre of new retail floor space. DCPO3 applies to a slightly different area than the current proposed Arden precinct. The interim DCPO3 expires on 30 June 2022.

## 11.1 What is proposed?

### (i) The Development Contributions Plan

The Amendment includes a Development Contributions Plan (DCP). The DCP covers the whole Arden Precinct. The DCPO applies to all land within the Arden precinct as a single Main Catchment Area (MCA). The new DCP Main Catchment Area is consistent with the proposed Arden precinct.

The DCP as exhibited seeks to collect \$349,555,062. Of this \$231,520,000 is for land acquisition and \$118,035,062 is for construction. The DCP identifies 60 infrastructure projects broken into the following categories:

- Community Buildings
- Active Open Space
- Open Space Improvements
- Moonee Ponds Creek Projects
- Road Projects
- Cycling Projects
- Pedestrian Projects
- Intersection Projects
- Drainage Land Acquisition Projects.

These projects have been informed by:

- Arden Structure Plan Community Infrastructure Needs Assessment, ASR 2020
- Arden Macaulay Precinct Flood Management Strategy, Engeny 2021
- Arden Public Realm and Open Space Strategy, AECOM 2020
- North Melbourne, West Melbourne and Parkville Active Transport Investigation, GTA 2020.

The Development Infrastructure Levy for the MCA has been set at:

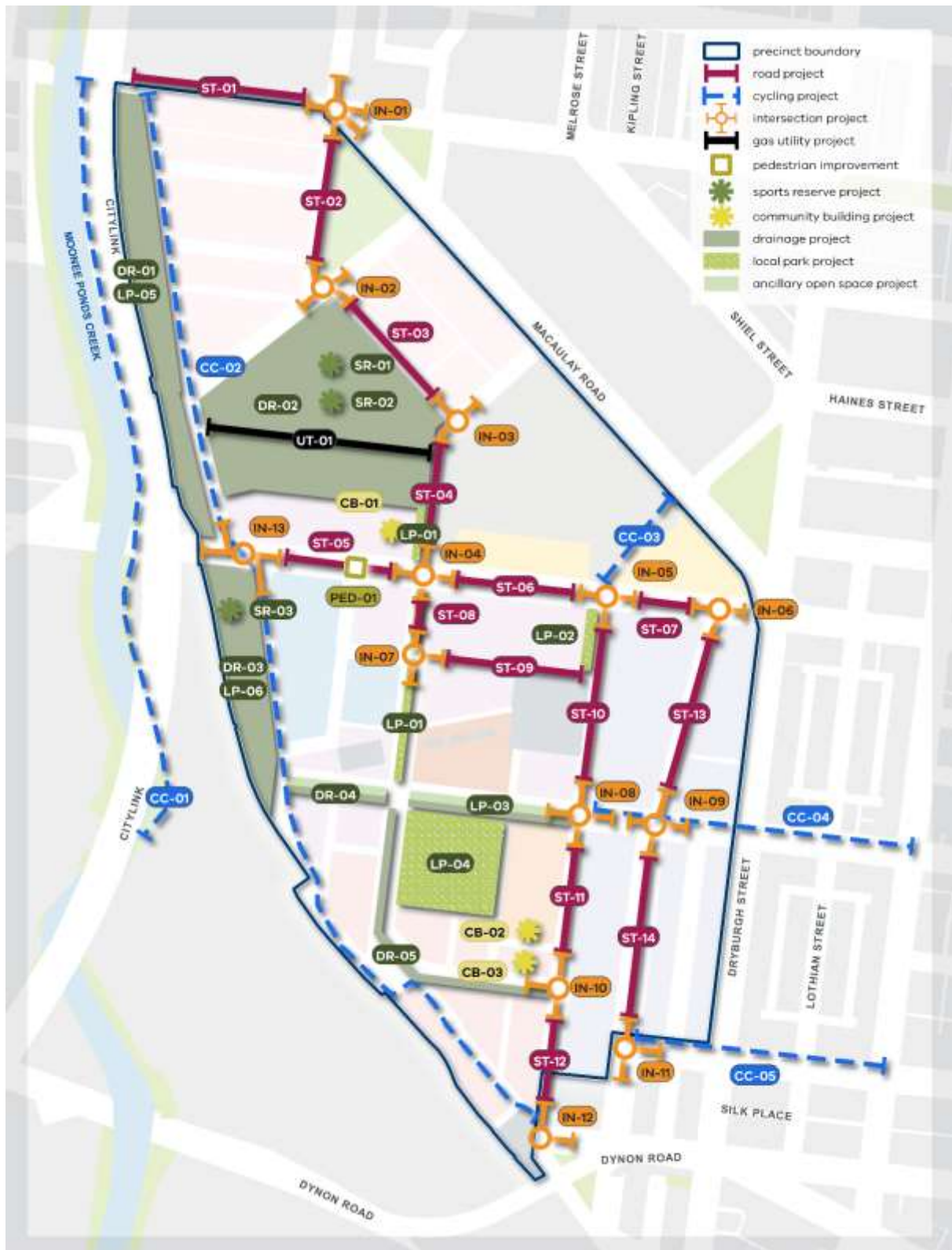
- Residential – \$21,500 per dwelling
- Commercial – \$295.68 per sqm gross lettable floor space
- Retail – \$295.68 per sqm gross lettable floor space.

The Community Infrastructure Levy for the main charge area is:

- Community – \$1,210 per dwelling.

Figure 18 shows the proposed infrastructure items to be included in the DCP.

Figure 18: DCP Projects (Plan 4 of the Arden Development Contributions Plan)



During the Hearing some errors in the DCP were highlighted by the DCP conclave. These errors were corrected and the subsequent table of costs was tabled by the VPA. These differences are relatively minor and do not affect the discussion below.

A conclave was held with two participants, Chris de Silva on behalf of VPA and Paul Shipp on behalf of Council. These two experts subsequently were participants in the DCP roundtable. The

conclave addressed a number of issues with a conclave statement feeding into the issues discussed at the roundtable. The VPA provided a detailed response to each of the issues raised in the conclave which are addressed below.

Council supplied a table of changes to the DCP in conjunction with a marked-up DCP. The VPA has responded to each of these issues. There are 46 changes that are proposed by the Council (Doc 132d). Only 8 of these 46 changes are unconditionally supported. Several of the changes are about clarity in the document. The Committee has not commented on these changes. The substantive changes are dealt with below.

## **(ii) Alternative funding sources**

In addition to the DCP, there are two other funding sources used to directly finance infrastructure in Arden:

- open space contributions through Clause 53.01
- the Urban Renewal Cost Recovery Scheme (URCRS) administered by Melbourne Water.

Developer works also provide a mechanism to deliver uncredited open space.

### **Open space**

The DCP identifies three local parks to be funded through Clause 53.01. The DCP identifies that 6.55 per cent of Net Developable Area is being set aside for credited open space. The Council provides for a 7.06 per cent contribution rate through Clause 53.01.

There are five parks and reserves identified as uncredited open space:

- LP-03 Queensberry Street Linear open space (encumbered land primary use)
- LP-05 Drainage Reserve, west of Langford Street (drainage primary use)
- LP-06 Drainage Reserve, western edge of Arden Central (drainage primary use)
- SR-02 Construction of sporting surface and associated works (drainage primary use)
- SR-03 Construction of skate park (drainage primary use).

Land for uncredited open space is to be funded through the DCP except for the Queensberry Street linear reserve which will be provided through developer works as part of road construction.

Road projects RD-12 and RD-13 deliver a 10–13 metre wide linear reserve within an existing road reserve.

### **Urban Renewal Cost Recovery Scheme**

Melbourne Water have established a new scheme, the Urban Renewal Cost Recovery Scheme (URCRS). Arden is the first precinct to have the scheme implemented. Melbourne Water's website states:<sup>9</sup>

The URCRS funds the necessary major flooding and drainage infrastructure to manage flood risk in the precinct, and enable more areas of Arden to be developed, and in a safer way.

Significant infrastructure is needed to meet this flood and drainage challenge, including:

- large flood storages (both above ground and below)
- levee banks
- pipes and pumps.

<sup>9</sup> (<https://www.melbournewater.Council.au/building-and-works/developer-guides-and-resources/drainage-schemes-and-contribution-rates/urban>)

The URCRS intends to charge developers based on the increase in gross floor area at the subdivision stage. The process is not expected to be completed till later in 2022. An indicative rate of \$80 - \$90 per square metre has been provided. For an average size apartment of 75 square metres, this equates to around \$6,000 to \$6,750 per dwelling.

This is extra to any developer contributions – including for drainage – that are to be collected via the DCP to be implemented through this Amendment.

## 11.2 DCP cost and the funding gap

### (i) The issues

The issues are:

- Whether the cost of the DCP is reasonable.
- Whether the funding gap is appropriately dealt with.

### (ii) What is proposed

The DCP has identified the following costs in Table 17. A total of \$360,654,062 in projects is identified. Of these 96 per cent are to be funded through the DCP.

**Table 17: Summary of costs (VPA Part A, B18, p1)**

| Facility                           | Total cost \$        | Actual cost contribution attributable to development | Proportion of cost attributable to development |
|------------------------------------|----------------------|--|--|
| Community Centres                  | \$19,657,000         | \$8,445,500  | 43%  |
| Local Park Projects                | \$24,214,550         | \$24,214,550   | 100%   |
| Sporting Reserve Projects          | \$15,348,900         | \$15,348,900   | 100%   |
| Street Projects                    | \$53,944,700         | \$51,960,200   | 96%  |
| Cycling Projects                   | \$3,598,912          | \$3,598,912  | 100%   |
| Pedestrian Improvements            | \$383,000            | \$383,000  | 100%   |
| Intersection projects              | \$26,307,000         | \$25,044,000   | 95%  |
| Drainage land acquisition projects | \$217,200,000        | \$217,200,000  | 100%   |
| <b>TOTAL</b>                       | <b>\$360,654,062</b> | <b>\$346,195,062</b>                                 | <b>96%</b>                                     |

There are subsequent changes made to the list of projects suggested by the conclave. These have been addressed by the VPA in its closing submission. These will change the exact figures but the changes will be relatively minor and will not affect the Committee's broad conclusions.

The funding gap arises because the DCP does not propose to charge the full amount per demand unit. The proposed levy of \$21,500 per dwelling is approximately \$3,000 per dwelling below full cost recovery. The same proportional gap exists for the commercial and retail costs. No explanation in the DCP is given for the gap.

At a precinct level the funding gap is about \$46 million depending on the minor adjustments. It has been assumed through the adjustments to the DCP that the unit costs remain the same and the funding gap is floating (that is, the \$21,500 per dwelling rate is constant).

The drainage land acquisition projects cost of \$217,200,000 is significant. This accounts for 60 per cent of total costs apportioned to the DCP. If the acquisition of land for drainage is removed the calculated cost per dwelling falls to approximately \$9,800 (compared to calculated cost of \$24,500 per dwelling).

### **Cost apportionment**

As shown in Table 17 there is an overall cost apportionment of 96 per cent. Only three items in the DCP are not apportioned 100 per cent to the MCA:

- CB-01c – Community Centre Construction – 15 per cent of the cost of this centre is attributed to Arden.
- RD – 01c – Macaulay Road Construction – 50 per cent apportionment shared with the Macaulay precinct.
- IN-01 – Boundary Road / Macaulay Road – 50 per cent apportionment shared with Macaulay precinct.

### **Nexus and equivalence ratios**

The exhibited DCP assumes that all development will generate equivalent demand for drainage, and transport. Only residential development is assumed to generate the need for community facilities including the sporting pavilion.

The DCP has assumed three main land uses, residential, commercial and retail. Commonly in DCPs, a dwelling is used as the demand unit. However, this DCP has used a different methodology that has not been transparently documented in the DCP documentation but was outlined by the VPA in its Part A submission. According to Mr de Silva's expert evidence report the methodology has been based on "per capita based apportionment". This methodology is based on the number of "users" generated by a development type. This approach has been used to reflect the mixed use environment proposed for Arden.

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

A few submitters questioned the high costs of the DCP. HIA (Doc 54) stated that developer charges should be for local infrastructure only and that *"the costs of broader community, social and regional infrastructure should be borne by the whole community and funded from general rate revenue, borrowings, or alternative funding mechanisms"*. Gracie St Holdings (Doc 65) listed a range of extra costs to be borne by developers including *"extensive and costly development contributions"*.

Gracie Street Holdings also listed *"additional, unspecified Melbourne Water charges for flood mitigation"*. UDIA stated that *"There appears to be a significant disconnect in Local and State Government regarding the cumulative impact of development charges and taxes and their impact on the feasibility of residential development and the delivery of new housing, including private market affordable housing"* (Doc 90, page 1).

The funding gap is front and centre in Council's submission. Council does not dispute the cost of the infrastructure except to question the 20 per cent contingency allowance, preferring a 30 per cent contingency. The costs have been prepared by reputable engineering firms and the actual

costs were not disputed within the Hearing. The conclave concluded that *“The project costs and project descriptions are generally well set out within the DCP (with some exceptions)”*.

As one of the mechanisms to remove the funding gap, Council suggests full cost recovery under the DCP, thereby raising the cost per unit (that is \$24,500 per dwelling). From the conclave report under matters for resolution, Matter 11 – *“Responsibility for any “funding gap” is a matter that needs to be resolved before the DCP is finalised (noting that external apportionment may apply).”*

In the conclave report Matter 13 stated that:

Uncertainty regarding beneficiaries of the proposed drainage infrastructure (land and construction) should be addressed/removed prior of finalisation of the DCP). Gracie Street Holdings (Doc 65, Para 95) *“Simply imposing cost recovery on the end point of a flooding conundrum is not, in our submission, an equitable arrangement”*

The inter-relationship with other cost recovery mechanisms was discussed by some submitters. The URCRS administered by Melbourne Water was discussed by Gracie Street Holdings (Doc 65). It submitted that:

It is accepted that a URCRS is a legitimate tool to assist with contributions to the funding of new infrastructure in growth areas, as well as urban renewal areas. However, it is submitted that the base for an URCRS needs to be equitably defined.

Mesh Planning (Doc 23b) undertook a peer review of the DCP and stated:

It is noted that the DCP proposes to fund the land acquisition for the main drainage facility but that the Scheme will fund the construction projects. It is unclear why this distinction has been made noting that other equivalent schemes would also include the land component. It is also unclear whether the Arden DCP area generates the need for the entire land area that is proposed to be funded as there is some reference to the facility being designed to manage a broader need.

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

There has been little or no dispute that the costs of the works – given the drainage solutions – to facilitate the development of the Arden precinct are well articulated and costed.

Apportionment both within the precinct and to external users was not discussed at any length within the DCP document or through the VPA’s submissions. The single catchment area was not discussed at any length. Arden is the first State Significant Urban Renewal DCP to be completed and as such has some untested concepts underpinning the proposal.

The MCA is considered as a single entity for the purposes of the DCP. Any dwelling or floor space allowance for commercial or retail uses is considered exactly the same across the whole precinct. No allowance has been made for location within the precinct. As this is a transformational project and all of the projects are required to ensure the development of the precinct, the Committee believes that this is reasonable.

The DCP only allocates minor usage beyond the confines of the precinct, two road/intersection projects and a community project. It is assumed that the cost of all drainage and flood works within the Arden precinct should be allocated to development within the precinct. The VPA states *“The drainage land acquisition costs have been apportioned to the Arden DCP. These contributions are premised on the user pays principle”* (VPA closing submission para 237). The user pays principle is a simple principle that the consumer pays for what they consume. VPA argues that a fair cost apportionment should align with share of usage. In the case of drainage and flood mitigation, the VPA submitted:

... that usage should be construed as the enjoyment of the following services:

- Protection of land from inundation

- Preservation of access for other properties across land that would otherwise be subject to inundation
- Preservation of access to public realm to the host precinct.

The VPA goes on to argue that there will be “*incidental*” benefits to users beyond the Arden precinct. There is no justification given to why usage beyond the Arden precinct is incidental. The current flood overlay for the Arden precinct extends well into the Macaulay precinct. There were several references in the Hearing to benefits from the flood and drainage works that extend both upstream and downstream of the Arden precinct as well as to the Macaulay precinct.

The Committee agrees that all the users within Arden will benefit to a certain degree from the drainage services and that it is reasonable to charge all users within the precinct at an equivalent rate. However, the Committee is not satisfied that there are no external benefits to the delivery of the drainage works in the precinct.

The VPA stated that the funding gap exists to facilitate early development within the precinct. That is the only justification put forward for the existence of the funding gap.

This gap, to be notionally funded by the State Government, will help facilitate earlier development providing it is delivered early. The derivation of the amount of the funding gap is totally opaque. There was no discussion on the size of the gap. The Committee can only speculate that the gap was derived in reference to the costs being charged in other DCPs. The only fully costed DCPs that are comparable are for growth areas and it could be speculated that the cost per unit was compared to these to find an acceptable level of charges. This would imply a notion of ability-to-pay rather than user pays and raises the question of fairness across different precincts.

This DCP is being put forward early in the development process and it can be argued that the ability to pass the costs backwards to land owners is easier at this stage than when developers have purchased the land. This is a complicated area and the argument is simply put that if the charges arising from a DCP are known before rezoning then those costs will be deducted from the land price. Conversely if charges are added after the developer has purchased the land, the customer will pay higher prices for the end product, for example higher dwelling prices. In reality the outcome is always contextual and every situation is different although these broad concepts hold.

Added to the DCP charges are the costs for Melbourne Water’s URCRS which is substantial as well as the delivery of either land or cash to satisfy the open space charges. These add up to significant levels and means that development within the Arden precinct per unit will be significantly more expensive than surrounding areas that are not subject to the DCP and URCRS charges.

In the flood plan developed by Engeny for Melbourne Water, the working drainage strategy allocates the “*Citywide Flood Storage*”, which is the site of the main land acquisition under PAO9, to Melbourne Water. It is not clear how the drainage projects in the DCP were allocated.

It could be argued that a proportion of the drainage works should be allocated to beyond the Arden precinct. The funding to be supplied by the State Government – allocated to facilitate early development – has the benefit of incidentally providing external funding to the drainage works.

There is no doubt that the DCP charges combined with URCRS and Open Space costs place a direct burden on development. It can be argued that a large proportion of this cost can be absorbed in the price of land due to the early incidence of the DCP. When including the URCRS charge, the cost will be around \$28,000 per dwelling. There is a risk that the high costs may delay development. If this turns out to be the case, the Government may need to intervene to facilitate development.



**(v) Conclusion**

The Committee concludes:

The costs of the projects within the DCP are high but reflect the circumstances of the precinct and are thus reasonable.

It is reasonable to allocate charges equally across the MCA, however it is clear that there are external benefits to the flooding and drainage works and arguably there should be some external apportionment of these costs.

The funding gap to be financed by the State Government provides a defacto external benefit payment. It is not possible for the Committee to determine the external benefit but the State Government payment of the funding gap should cover the external benefits.

**11.3 Relief from DCP****(i) The issue**

The issue is:

- Some community groups have requested relief from the DCP.

**(ii) Evidence and submissions**

The NMFC and Melbourne Archdiocese Catholic Schools (MACS) both have requested exemption from DCP payments.

MACS stated: *“As education and community facilities do not generate a demand for infrastructure, MACS supports their exclusion from generating a DCP payment”* (Doc 63, page 10).

The VPA responded that Government and Non-Government schools are already excluded from the requirements of the DCP (Doc 132, para 295).

The NMFC (Doc 82) sought:

Removal of the amended Schedule 3 to the Development Contributions Plan Overlay (DCPO3) from the existing Reserve located in the Public Park and Recreation Zone (PPRZ) and amendment to the provisions to include an exemption from the Club's activities, where they occur beyond the existing Reserve (e.g. the Huddle as part of the Arden North Community Hub).

The VPA submitted in response, supported by Mr de Silva's evidence, that no evidence or material has been presented to substantiate NMFC's submission. The VPA argued that the DCP cannot foreshadow the Club's future nor any of its potential developments or infrastructure demands. The VPA went on to say that NMFC will have the opportunity at the permit stage to seek an exemption from the DCP.

**(iii) Discussion**

The issue of exempting community services from DCP charges was recently considered in the Panel report for the Moonee Valley Development Contributions Plan (C194moon), amongst other Panel reports.

... the Panel's primary considerations have focussed upon the role of the DCP within the planning scheme, and the DCP Guidelines, 2007, particularly in applying the nine guiding principles.

Whilst these organisations evidently provide facilities for the benefit of the community, it is a common principle in previous municipality wide DCPs that they be levied in a consistent manner.

The Panel (C194moon) concludes that there is no convincing case for excluding not for profit entities from levies under the DCP.

The Committee agrees with this analysis and sees no reason to provide exemptions for the NMFC. The Committee notes that Council has the ability to exempt entities from DCP charges at the permit stage.

#### **(iv) Conclusion**

The Committee concludes:

It is not appropriate to exclude the NMFC from the DCP.

## **11.4 Categorisation of open space**

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

The issue is:

- The categorisation of open space and how it is funded.

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

The conclave report at Matter 16 stated:

The proposed Structure Plan and the DCP include references to multiple types/categories of open space. It would be preferable to rationalise and more clearly define the categories of open space and clarify the nature of any encumbrances which apply. This would enable informed decisions to be made on how each section of open space should be categorised, secured and funded.

The VPA have argued in its closing submission that each category is independent of each other and required (para 250).

In its closing submission Council stated (at para 259):

Clause 53.01 Open Space Contributions are to be used to deliver the City of Melbourne's Open Space Strategy. It is not appropriate to use this mechanism to deliver land for new roads or widened roads when the space is required to serve pedestrians, cyclists, stormwater management, tree planting and landscaping.

The three open space areas under dispute are:

- Fogarty Street (LP-01)
- Laurens Street/Arden Street (LP-02)
- Queensberry Street (LP-03).

The definitions of open space as defined by Council are repeated in Memo – Arden Precinct: Open Space Justification and can be found in the Council Open Space Strategy.

Open space is defined by the Council as:

All publicly owned land that is set aside primarily for recreation, nature conservation, passive outdoor enjoyment and public gatherings. This includes public parks, gardens, reserves, waterways, publicly owned forecourts and squares.

Ancillary open space is defined as:

Ancillary open space refers to other parts of the public realm such as streetscapes and the urban spaces between buildings.

The difference between public open space and ancillary open space is explained within the Council Open Space Strategy Technical Report (2012):

The distinction between public open space and ancillary open space is that non-recreation based uses are the priority for these other areas. In some instances the land may be encumbered by this use for example overshadowed by freeways or subject to frequent flooding, and therefore their design and use as open space is significantly impacted by these other uses or encumbrances. Ancillary open space complements the public open space network, however it should not be considered as a replacement for public open space unless it is unencumbered, and can be formally recognised for this purpose and rezoned as public open space.

The VPA has assessed the three open space areas against the criteria set out in the Council technical report. It concluded that Laurens Street/Arden Street and Fogarty Street should be classified as credited open space. Queensberry Street is encumbered and does not meet the definition of open space.

### **(iii) Discussion**

In principle, the main test of whether the open space is ancillary or not is what is its primary purpose and whether the land is encumbered.

In the DCP, it is clear that the Queensberry Street Linear Open Space is uncredited open space as it is subject to flood inundation and supports other services. For Laurens Street/Arden Street and Fogarty Street linear reserve, the Committee is satisfied that they meet the criteria for open space and should be described as credited open space in the DCP.

### **(iv) Conclusion**

The Committee concludes:

The approach taken to the categorisation of open space as credited or uncredited is appropriate.

## Appendix A Submitters to the Amendment

| No. | Submitter                     |
|-----|-------------------------------|
| 1   | Ralph Kiel                    |
| 2   | John Smith                    |
| 3   | Michael Mordaunt              |
| 4   | Terri Webber                  |
| 5   | William Watt                  |
| 6   | Alicia Doddy                  |
| 7   | Dean Karapoulos               |
| 8   | Guilherme Martins             |
| 9   | Angela Guzyz                  |
| 10  | Winsome Roberts               |
| 11  | Rachel Coleman                |
| 12  | Aixi Axi                      |
| 13  | Hugo Roberts                  |
| 14  | Damon Eisen                   |
| 15  | Robert de Gille               |
| 16  | Digby Drew                    |
| 17  | Chris Elliot                  |
| 18  | Lynda Pham and Laurie Showler |
| 19  | Rory Cahill                   |
| 20  | Eryn McInnes                  |
| 21  | Greg Fletcher                 |
| 22  | Nathan Gordon                 |
| 23  | Harry Ellison                 |
| 24  | Michael Kelly                 |
| 25  | Patrick Alewood               |
| 26  | Vito Manilo                   |
| 27  | Luke Anderson                 |
| 28  | James Milesi                  |
| 29  | Shane Cahill                  |
| 30  | Vern O'Hara                   |
| 31  | Lucy Martiniello              |

| No. | Submitter                              |
|-----|--|
| 32  | Peter Topping                          |
| 33  | Gary Price                             |
| 34  | Richard Gould                          |
| 35  | Dorothy Waterfield                     |
| 36  | Rachel L                               |
| 37  | Katie Roberts                          |
| 38  | Tim Pianta                             |
| 39  | David Sequira                          |
| 40  | City of Melbourne                      |
| 41  | David Stanley                          |
| 42  | Helen Michell                          |
| 43  | WITHDRAWN SUBMISSION                   |
| 44  | Peter Hogg                             |
| 45  | Kai Pratt                              |
| 46  | Kensington Junior Netball Club         |
| 47  | Philip Kwok                            |
| 48  | Gary Bateman                           |
| 49  | Steven Bryant                          |
| 50  | Melbourne Archdiocese Catholic Schools |
| 51  | Myke Leahy                             |
| 52  | Department of Transport                |
| 53  | Environmental Protection Authority     |
| 54  | Housing Industry Association (HIA)     |
| 55  | Mary Cahill                            |
| 56  | Rail Futures Institute Inc             |
| 57  | The Lost Dogs Home                     |
| 58  | OMIC Australia                         |
| 59  | Healthcare for Industry                |
| 60  | Maree Ryan                             |
| 61  | Lisa Ryan                              |
| 62  | Jan Lacey                              |

| No. | Submitter   |
|-----|---|
| 63  | Stephanie Jones   |
| 64  | Adrian Aloï   |
| 65  | Robert Martinovic   |
| 66  | North and West Melbourne Association  |
| 67  | Marlise Brenner   |
| 68  | Adam Cocks  |
| 69  | Matt Geronimi   |
| 70  | John Widmer   |
| 71  | James Ferrari   |
| 72  | Bowens & Pomeroy Pty Ltd  |
| 73  | Guntar Graphics Pty Ltd, Champion Parts Proprietary Limited, I & J Group Holdings Pty Ltd and Belborant Pty Ltd |
| 74  | David Koetsier & Ann Roberts  |
| 75  | Phoebe Dougall  |
| 76  | David Cooper  |
| 77  | Sports and Recreation Victoria  |
| 78  | Friends of the Moonee Ponds Creek   |
| 79  | Theresa Fitzgerald  |
| 80  | Jenni Goricanec   |
| 81  | Town and Country Planning Association Incorporated  |
| 82  | North Melbourne Football Club   |
| 83  | Gracie Street Holdings Pty Ltd  |
| 84  | Energy Safe   |
| 85  | Zachary Sweeney   |
| 86  | Mary Masters  |
| 87  | Paul Arden  |

| No. | Submitter   |
|-----|---|
| 88  | Kensington Association  |
| 89  | City Link Melbourne Ltd                                       |
| 90  | Urban Development Institute of Australia                      |
| 91  | Astrid McGinty  |
| 92  | Bicycle Network   |
| 93  | Mathew Beyer  |
| 94  | The Womens Hospital   |
| 95  | Malcolm Wrest   |
| 96  | Fencing Victoria  |
| 97  | Caitlin Wood  |
| 98  | Erin Dolan  |
| 99  | Citywide Service Solutions Pty Ltd                            |
| 100 | Rockford Constant Velocity Pty Ltd                            |
| 101 | Property Council of Victoria                                  |
| 102 | 12 Landholdings (Rep. BSP Lawyers)                            |
| 103 | RSA Holdings Pty Ltd and Barkly International College Pty Ltd |
| 104 | George Weston Foods Pty Ltd                                   |
| 105 | Greater Western Water   |
| 106 | Kensington Junior Sports Club                                 |
| 107 | Janet Graham  |
| 108 | Melbourne Water (MW)  |
| 109 | Boris Bosanac   |
| 110 | Royal Melbourne Institute of Technology                       |

## Appendix B Parties to the Advisory Committee Hearing

| Submitter  | Represented by  |
|--|---|
| Victorian Planning Authority (VPA) and Melbourne Water   | Marita Foley SC and Nicola Collingwood of Counsel, instructed by Greg Tobin and Aaron Shrimpton of Harwood Andrews, calling evidence in: <ul style="list-style-type: none"> <li>- Development Contribution Plans from Chris DeSilva of Mesh</li> <li>- Drainage from Paul Clemson of Engeny</li> <li>- Planning from Colleen Peterson of Ratio</li> <li>- Traffic from Charmaine Dunstan of Traffix Group</li> <li>- Urban Design from Mark Sheppard of Kinetica</li> </ul> |
| City of Melbourne  | Stuart Morris QC, instructed by Terry Montebello and of Maddocks Lawyers and Ann-Maree Drakos of the City of Melbourne, calling evidence in: <ul style="list-style-type: none"> <li>- Development Contribution Plans from Paul Shipp of Urban Enterprise</li> <li>- Planning from David Barnes of Hansen Partnership</li> <li>- Urban Design from Leanne Hodyl of Hodyl &amp; Co</li> </ul>   |
| Environment Protection Authority   | Trisha Brice  |
| Melbourne Archdiocese Catholic Schools   | Sian Morgan of Urbis  |
| The Lost Dogs' Home  | Matt Hughes and Tiphonie Acreman of Hall and Wilcox   |
| Gracie Street Holdings Pty Ltd   | Hugh Smyth of Urban Planning Collective   |
| North Melbourne Football Club  | Hugh Smyth of Urban Planning Collective   |
| George Weston Foods Limited  | Amanda Johns of MinterEllison   |
| Housing Industry Association   | Roger Cooper  |
| North and West Melbourne Association   | Kevin Chamberlin  |
| Friends of Moonee Ponds Creek Inc  | Kaye Oddie  |
| David Koetsier   |   |
| Guntar Graphics: Guntar Graphics Pty Ltd, Champion Parts Proprietary Limited, I & J Group Holdings Pty Ltd and Belborant Pty Ltd | Mark Naughton and Hannah Wilson of Planning & Property Partners   |

| Submitter   | Represented by  |
|---|---|
| Citywide Service Solutions Pty Ltd  | Rupert Watters of Counsel, instructed by Jamie Truong of Hall & Wilcox, calling evidence in: <ul style="list-style-type: none"> <li>- Drainage from Robert Swan of Hydrology and Risk Consulting</li> <li>- Odour/Emissions from Ian Wallis of Consulting Environmental Engineers</li> <li>- Planning from Bernard McNamara of BMDA Development Advisory</li> </ul> |
| Theodossi Group: Nithe Pty Ltd; 199 Arden Street Pty Ltd, N&C Theodossi Investments No. 4 Pty Ltd, Theodossi Family Pty Ltd, Buton Pty Ltd, Cars by Nicole Pty Ltd, N&C Theodossi Investments No. 2 Pty Ltd and N&C Theodossi Investments Pty Ltd | Jane Sharp of Counsel, instructed by Jane Kovatch of BSP Lawyers, , calling evidence in: <ul style="list-style-type: none"> <li>- Planning from Laura Murray of Ethos Urban</li> </ul>  |
| RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd   | Simon Molesworth QC and Marissa Chorn of Counsel, instructed by Chris Boocock HWL Ebsworth Lawyers, calling evidence in: <ul style="list-style-type: none"> <li>- Drainage from Peter Coombes of Urban Water Cycle Solutions</li> </ul>   |

## Appendix C Document list

| No. | Date        | Description  | Presented by  |
|-----|-------------|--|---|
| 1   | 17 Nov 2021 | Victorian Planning Authority (VPA) Projects Standing Advisory Committee Referral Letter dated 14 November 2021       | Minister for Planning   |
| 2   | "           | Arden Structure Plan, August 2021  | "   |
| 3   | "           | Arden Public Consultation Report, October 2021   | "   |
| 4   | "           | Development Contributions Plan, August 2021  | "   |
| 5   | "           | Draft Amendment C407melb documentation including background documents  | "   |
| 6   | "           | Submissions – 109 total  | "   |
| 7   | "           | Submission Summary Table: Melbourne City Council   | "   |
| 8   | "           | Submission Summary Table: Government Agencies and Authorities  | "   |
| 9   | "           | Submission Summary Table: industry Representatives   | "   |
| 10  | "           | Submission Summary Table: Key Landowners   | "   |
| 11  | "           | Submission Summary Table: Community Submissions  | "   |
| 12  | 23 Nov 2021 | Directions Hearing Notification Letter   | Planning Panels Victoria (PPV)  |
| 13  | 1 Dec 2021  | Letter – Request for DCP estimated land costs, requests for drainage reports and request for adjournment             | RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd   |
| 14  | 2 Dec 2021  | Letter – Request for adjournment   | Guntar Graphics Pty Ltd, Champion Parts Proprietary Limited, & J Group Holdings Pty Ltd and Belborant Pty Ltd |
| 15  | 8 Dec 2021  | Letter – Commentary on dates and proposed draft directions<br>a) Draft Directions                                    | VPA   |
| 16  | 14 Dec 2021 | Directions and Timetable (Version 1)   | PPV   |
| 17  | 17 Dec 2021 | Email – Request for documents referenced in Hayball Built Form Testing   | BSP Lawyers on behalf of consortium of landowners   |
| 18  | "           | Letter – Request for Melbourne Water TUFLOW model  | RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd   |
| 19  | 21 Dec 2021 | Letter – VPA response to Committee Direction 3   | VPA and Melbourne Water   |
| 20  | "           | Letter – VPA response to Committee Direction 2:<br>a) Map of submitter locations<br>b) Map of submitters by postcode | "   |
| 21  | 23 Dec 2021 | Letter – Timing of release of VPA document   | Council   |
| 22  | 24 Dec 2021 | Email – Documents contained within Hayball report (April 2021) including:<br>a) Arden Precinct Parking Plan –        | VPA and Melbourne Water   |



| No. | Date        | Description   | Presented by |
|-----|-------------|---|--------------|
|     |             | Version D (12 August 2021)  |              |
|     |             | b) Arden Precinct Parking Plan – Part 2 Evidence Base– Version D (12 August 2021) |              |
|     |             | c) Arden Urban Renewal Precinct, North Melbourne, Wind Assessment (pg 1-100)      |              |
|     |             | d) Arden Urban Renewal Precinct, North Melbourne, Wind Assessment (pg 101-177)    |              |
|     |             | e) VPA RFQ Procurement Request  |              |
| 23  | “           | Letter – Enclosure of documents including:  | “            |
|     |             | a) Arden Central Flood Strategy   |              |
|     |             | b) Arden DCP Peer Review - Memo to VPA  |              |
|     |             | c) Arden DCP Peer Review  |              |
|     |             | d) Arden Levee Failure Analysis   |              |
|     |             | e) Arden North Storages Investigation   |              |
|     |             | f) Engeny - AAD Assessment  |              |
|     |             | g) Engeny – AGL   |              |
|     |             | h) Engeny - Cloudburst Management Plan Modelling                                  |              |
|     |             | i) Engeny - Concept Design  |              |
|     |             | j) Engeny - Drainage Investigation  |              |
|     |             | k) Engeny - Finalising Options Report   |              |
|     |             | l) Engeny - On Site Storage Report  |              |
|     |             | m) Engeny - Stage 1 Report  |              |
|     |             | n) Engeny – Stage 1 and 2 Report  |              |
|     |             | o) Engeny - Stormwater Harvesting Storage   |              |
|     |             | p) Langford Street Development Feasibility Analysis                               |              |
|     |             | q) Langford Street Flood Storage Investigation                                    |              |
|     |             | r) MGS Arden Final Report (Redacted) 24 December 2021                             |              |
|     |             | s) MPC Model Build Report   |              |
|     |             | t) NMFC Flood Storage Investigation   |              |
| 24  | 10 Jan 2022 | Letter – Constitution of the Committee  | PPV          |
| 25  | 17 Jan 2022 | VPA – Part A Submission including attachments:                                    | VPA          |
|     |             | a) Attachment A - Arden Submissions Table   |              |
|     |             | b) Attachment B - Clean and Tracked Changes Ordinance documents                   |              |
|     |             | c) Attachment C - Track Changes Arden Structure Plan                              |              |
|     |             | d) Attachment D - Arden Public Consultation Report                                |              |
|     |             | e) Attachment E - Explanatory note  |              |

| No. | Date        | Description   | Presented by   |
|-----|-------------|---|--|
|     |             | on land valuations  |  |
|     |             | f) Attachment F - Land Contamination Assessment Arden Urban   |  |
|     |             | g) Attachment G - Arden Precinct Flood Management Policy  |  |
| 26  | "           | VPA – Response to Direction 5b  | "  |
| 27  | 24 Jan 2022 | Expert witness statement – Colleen Peterson (Planning)  | "  |
| 28  | "           | Expert witness statement – Mark Sheppard (Urban Design)   | "  |
| 29  | "           | Expert witness statement – Charmaine Dunstan (Traffic and Transport)  | "  |
| 30  | "           | Expert witness statement – Chris DeSilva (Development Contributions)  | "  |
| 31  | "           | Expert witness statement – Paul Clemson (Drainage)  | "  |
| 32  | "           | Expert witness statement – Alex Hrelja (Land Supply)  | "  |
| 33  | "           | Expert witness statement – Warwick Bishop (Drainage)  | "  |
| 34  | 25 Jan 2022 | Timetable (Version 2)   | PPV  |
| 35  | 31 Jan 2022 | Letter – Response to request for documents  | "  |
| 36  | "           | List of key issues - Melbourne Archdiocese Catholic Schools   | Melbourne Archdiocese Catholic Schools                               |
| 37  | "           | List of key issues - Citywide Service Solutions Pty Ltd   | Citywide Service Solutions Pty Ltd                                   |
| 38  | "           | List of key issues - Environment Protection Authority Victoria  | EPA  |
| 39  | "           | List of key issues - Gracie Street Holdings Pty Ltd and Hamton Arden North Pty Ltd  | Urban Planning Collective on behalf of consortium of landowners      |
| 40  | "           | List of key issues - Nithe Pty Ltd; Cars by Nicole Pty Ltd; 199 Arden Street Pty Ltd; N&C Theodossi Investments No. 2 Pty Ltd; Theodossi Family Pty Ltd; N&C Theodossi Investments Pty Ltd; Buton Pty Ltd and N&C Theodossi Investments No. 4 Pty Ltd | BSP Lawyers on behalf of consortium of landowners                    |
| 41  | "           | List of key issues - Guntar Graphics Pty Ltd, Champion Parts Proprietary Limited, I & J Group Holdings Pty Ltd and Belborant Pty Ltd  | Planning & Property Partners on behalf of a consortium of landowners |
| 42  | "           | List of key issues - RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd  | HWL Ebsworth Lawyers on behalf of a consortium of landowners         |
| 43  | "           | List of key issues - City of Melbourne  | Council  |
| 44  | "           | Expert witness statement – David Barnes (Planning)  | "  |
| 45  | "           | Expert witness statement – Paul Shipp (Development Contributions)   | "  |
| 46  | "           | Letter – Response to request for  | VPA  |

| No. | Date       | Description  | Presented by  |
|-----|------------|--|---|
|     |            | documents from the Committee including attachments:  |   |
|     |            | a) Central City Narrative - SGS - Final Report - February 2016-VPA                                       |   |
|     |            | b) Advisory Note DJPR - Arden Precinct   |   |
|     |            | c) Arden North Flooding + Drainage Investigation   |   |
| 47  | 1 Feb 2022 | List of key issues -The Lost Dogs Home   | Lost Dogs Home  |
| 48  | "          | Expert witness statement – Leanne Hodyl (Urban Design)   | Council   |
| 49  | 4 Feb 2022 | List of key issues -George Weston Foods Ltd  | George Weston Foods Ltd                                     |
| 50  | "          | Letter – Seeking leave to provide expert witness statements  | BSP Lawyers on behalf of consortium of landowners           |
| 51  | 7 Feb 2022 | Opening Statement - VPA  | VPA   |
| 52  | "          | Letter – Seeking leave to provide expert witness statements  | Citywide Service Solutions Pty Ltd                          |
| 53  | "          | Expert witness statement – Peter Coombes (Drainage and Flooding)   | RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd |
| 54  | "          | Letter – Response to requests for extension of time to provide expert witness statements                 | PPV   |
| 55  | "          | Timetable (Version 3)  | "   |
| 56  | "          | Expert witness statement – Robert Swan (Hydrology)   | Citywide Service Solutions Pty Ltd                          |
| 57  | "          | Expert witness statement – Ian Wallis (Odour)  | "   |
| 58  | "          | Expert witness statement – Bernard McNamara (Planning)   | "   |
| 59  | "          | Opening Statement Presentation- VPA  | VPA   |
| 60  | 8 Feb 2022 | Arden Built Form Study - Architectus - Rev 2   | Council   |
| 61  | "          | Opening Statement - City of Melbourne  | Council   |
| 62  | 9 Feb 2022 | Opening Statement - Environment Protection Authority Victoria  | EPA   |
| 63  | "          | Opening Statement - Melbourne Archdiocese Catholic Schools   | Melbourne Archdiocese Catholic Schools                      |
| 64  | "          | Opening Statement - North Melbourne Football   | North Melbourne Football Club [NMFC]                        |
| 65  | "          | Opening Statement - Gracie Street Holdings and Hamton Arden North  | Gracie Street Holdings and Hamton Arden North               |
| 66  | "          | Legal Briefing - Response to question on mandatory and discretionary requirements (DDO)                  |   |
| 67  | "          | Addendum to Submission Expert Witness Statement – Ian Wallis - Environment Protection Authority Victoria | EPA   |
| 68  | "          | Proposed Draft Roundtable Timetable  | Council   |
| 69  | "          | Opening Statement - Housing Industry   | Housing Industry Association (HIA)                          |

| No. | Date        | Description  | Presented by  |
|-----|-------------|--|---|
|     |             | Association (HIA)  |   |
| 70  | "           | Opening Statement - Friends of Moonee Ponds Creek  | Friends of Moonee Ponds Creek   |
| 71  | "           | Opening Statement - City of Melbourne – Higher Resolution Figures  | Council   |
| 72  | "           | Evidence Addendum - Development Contributions - Paul Shipp   | "   |
| 73  | "           | Opening Statement Presentation – David Koetsier  | Mr David Koetsier   |
| 74  | "           | Opening Statement - George Weston Foods Ltd  | George Weston Foods Ltd   |
| 75  | 11 Feb 2022 | Clarification regarding presentation - Melbourne Archdiocese Catholic Schools  | Melbourne Archdiocese Catholic Schools  |
| 76  | "           | Reformatted version of the VPA Part A SUZ7 and DDOs  | PPV   |
| 77  | "           | Opening Statement – The Lost Dogs Home   | Lost Dogs Home  |
| 78  | "           | Response to David Koetsier questions of 8 February 2022  | VPA   |
| 79  | "           | VPA Expert Recommendations – Working Summary of VPA Position   | "   |
| 80  | 14 Feb 2022 | Conclave Statement – Development Contribution Plan   | "   |
| 81  | "           | Conclave Statement – Urban Design  | "   |
| 82  | "           | Expert witness statement – Laura Murray (Planning)   | BSP Lawyers on behalf of consortium of landowners   |
| 83  | 15 Feb 2022 | Conclave Statement – Drainage  | VPA   |
| 84  | "           | Outline of Submissions - Guntar Graphics Pty Ltd, Champion Parts Proprietary Limited, & J Group Holdings Pty Ltd and Belborant Pty Ltd   | Planning & Property Partners on behalf of Guntar Graphics Pty Ltd, Champion Parts Proprietary Limited, & J Group Holdings Pty Ltd and Belborant Pty Ltd |
| 85  | "           | Opening Statement - Cars by Nicole Pty Ltd, Theodossi Family Pty Ltd, N & C Theodossi Investments Pty Ltd, N & C Theodossi Investments No 2 Pty Ltd, N & C Theodossi Investments No 4 Pty Ltd, 199 Arden Street Pty Ltd, Nithe Pty Ltd and Buton Pty Ltd | BSP Lawyers on behalf of consortium of landowners   |
| 86  | "           | Opinion Report - Michael Grey of the Robert Bird Group   | "   |
| 87  | "           | Opening Statement – Citywide Services Pty Ltd  | Citywide Service Solutions Pty Ltd  |
| 88  | 16 Feb 2022 | Opening Statement – RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd  | RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd   |
| 89  | 17 Feb 2022 | Preliminary list of issues for Drainage/Flooding roundtable  | PPV   |
| 90  | 18 Feb 2022 | Preliminary list of issues for Buffers roundtable  | "   |
| 91  | "           | Without prejudice Schedule 14 to the   | Council   |

| No. | Date        | Description  | Presented by                       |
|-----|-------------|--|------------------------------------|
|     |             | Parking Overlay (PO14)<br>a) Tracked Version<br>b) Clean Version   |                                    |
| 92  | 21 Feb 2022 | Preliminary list of issues for DCP roundtable  | PPV                                |
| 93  | "           | Email - Without Prejudice SUZ7 & DDO80 comments:<br>a) Tracked Version Schedule 7 to the Special Use Zone (SUZ7)<br>b) Tracked Version Schedule 80 to the Design & Development Overlay (DDO80) | Council                            |
| 94  | 22 Feb 2022 | Preliminary list of issues for Urban Design roundtable   | PPV                                |
| 95  | "           | VPA Evidence Response Table  | VPA                                |
| 96  | 23 Feb 2022 | Letter – Cross examination of witnesses  | PPV                                |
| 97  | "           | Memo - Benefits of the ISMOS in addition to drainage   | VPA                                |
| 98  | "           | Status of the proposed credited land projects  | "                                  |
| 99  | "           | Density comparison   | Council                            |
| 100 | "           | Density comparison data  | "                                  |
| 101 | 1 Mar 2022  | Letter – Urban Design and Modelling timeframe<br>a) Request for further modelling letter from Mark Sheppard of Kinetica<br>b) Built Form Modelling prepared by Hayball – 28 February 2022      | VPA                                |
| 102 | 2 Mar 2022  | Letter – Advising enclosure of draft proposed Incorporated Document<br>a) Citywide – Draft Incorporated Document   | Citywide Service Solutions Pty Ltd |
| 103 | 3 Mar 2022  | Expert witness presentation – Bernard McNamara (Planning)  | "                                  |
| 104 | "           | Timetable (Version 4)  | PPV                                |
| 105 | 4 Mar 2022  | Letter – Response to Direction 17 and 18 and DDO Schedule  | VPA                                |
| 106 | "           | Future Melbourne Committee report (18 September 2018) 86-108 Laurens Street, North Melbourne   | Council                            |
| 107 | "           | Tribunal Order directing the issue of a permit (8 April 2019) 86-108 Laurens Street, North Melbourne   | "                                  |
| 108 | "           | Planning permit issued by the Minister for Planning (10 April 2019) 86-108 Laurens Street, North Melbourne   | "                                  |
| 109 | "           | Endorsed Plans (17 September 2021) 86-108 Laurens Street, North Melbourne  | "                                  |
| 110 | 7 Mar 2022  | First scope Kinetica 16th February 2022  | VPA                                |

| No. | Date        | Description  | Presented by   |
|-----|-------------|--|--|
| 111 | "           | Second scope Kinetica 2nd March 2022_<br>additional modelling  | "  |
| 112 | "           | Second scope Kinetica 2nd March 2022_<br>no podium carpark   | "  |
| 113 | "           | Arden Built Form Testing Further Site<br>Testing   | "  |
| 114 | 8 Mar 2022  | Memo - Density and Yield Comparisons   | VPA  |
| 115 | "           | DDO1 - City of Melbourne   | Council  |
| 116 | "           | Modelling prepared by Ethos Urban  | BSP Lawyers on behalf of consortium of<br>landowners   |
| 117 | "           | VPA Response to Urban Design Conclave  | VPA  |
| 118 | "           | Development Victoria synthesis of the<br>work on sector building typologies  | "  |
| 119 | "           | Billard Leece for Development Victoria<br>research   | "  |
| 120 | "           | Arden Block Sizes  | "  |
| 121 | "           | Summary analysis of modelling  | Council  |
| 122 | "           | Comparing FARs - Hodyl response to<br>modelling  | "  |
| 123 | "           | Updated position on FARs   | "  |
| 124 | 15 Mar 2022 | VPA Arden Consolidated DDO document  | VPA  |
| 125 | 16 Mar 2022 | Council mark up of Arden Development<br>Contributions Plan   | Council  |
| 126 | "           | Explanatory list of proposed Arden DCP   | "  |
| 127 | 18 Mar 2022 | Suggested changes on drainage findings   | RSA Holdings Pty Ltd and<br>Rockford Constant Velocity Pty Ltd   |
| 128 | 21 Mar 2022 | Closing Submission - Graphics Pty Ltd,<br>Champion Parts Proprietary Limited, & J<br>Group Holdings Pty Ltd and Belborant Pty<br>Ltd   | Planning & Property Partners on behalf of<br>Guntar Graphics Pty Ltd, Champion Parts<br>Proprietary Limited, & J Group Holdings Pty<br>Ltd and Belborant Pty Ltd |
| 129 | "           | Closing Submission - Citywide Service<br>Solutions Pty Ltd   | Citywide Service Solutions Pty Ltd   |
| 130 | "           | Closing Submission - Nithe Pty Ltd; Cars by<br>Nicole Pty Ltd; 199 Arden Street Pty Ltd;<br>N&C Theodossi Investments No. 2 Pty Ltd;<br>Theodossi Family Pty Ltd; N&C Theodossi<br>Investments Pty Ltd; Buton Pty Ltd and<br>N&C Theodossi Investments No. 4 Pty Ltd | BSP Lawyers on behalf of consortium of<br>landowners   |
| 131 | "           | Closing Submission – City of Melbourne<br>a) Floor Area Ratios<br>b) Council - DDO1<br>c) Council - SUZ7<br>d) Council - VPA's DDO80<br>e) Council - PO14<br>f) Council - Draft Arden DCP<br>g) Explanatory table of proposed<br>changes to the Draft Arden DCP      | Council  |
| 132 | "           | Closing Submission –VPA<br>a) Annexure A – Response to<br>Questions on Notice  | VPA  |

| No. | Date        | Description  | Presented by  |
|-----|-------------|--|---|
|     |             | <ul style="list-style-type: none"> <li>b) Annexure B – Economic Impact Assessment</li> <li>c) Annexure C – Arden Document 124 Consolidated DDO with VPA Mark Up</li> <li>d) Annexure D – CoM Arden DCP requested changes with VPA response</li> <li>e) Annexure E – Table of DCP construction and land costs by project</li> <li>f) Direction 5b – VPA Table – Ordinance Changes</li> <li>g) Arden Special Use Zone 7 – VPA Mark Up</li> <li>h) Arden Parking Overlay 14 – VPA Mark Up</li> <li>i) Arden Clause 22.28 – VPA Mark Up</li> </ul> |   |
| 133 | 22 Mar 2022 | <i>Kordister Pty Ltd v Director of Liquor Licensing and the Chief Commission of Policy [2012] VSCA 325</i>   | Council   |
| 134 | “           | Council comments - consolidated DDO (DDO80)  | “   |
| 135 | “           | Council comments - Special Use Zone 7 (SUZ7)   | “   |
| 136 | 24 Mar 2022 | Closing Submission – RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd   | RSA Holdings Pty Ltd and Rockford Constant Velocity Pty Ltd |
| 137 | “           | Closing Submission – George Weston Foods Ltd   | George Weston Foods Ltd                                     |
| 138 | “           | Memorandum - Example Provisions – Affordable Housing & Environmentally Sustainable Development   | Council   |
| 139 | 25 Mar 2022 | Reply Submission – VPA <ul style="list-style-type: none"> <li>a) Appendix 1.a - VPA Reply - SUZ7 mark up</li> <li>b) Appendix 1.b - VPA Reply - SUZ7 - response to CoM</li> <li>c) Appendix 2.a - VPA Reply - DDO80 mark up</li> <li>d) Appendix 2.b - VPA Reply - DDO80 - response to CoM</li> <li>e) Appendix 3 - VPA reply - DDO1 response to CoM</li> <li>f) Appendix 4 - VPA reply - Clause 22-28 mark up</li> <li>g) Appendix 5 - VPA reply - Updated Direction 5b Table</li> </ul>  | VPA   |
| 140 | “           | Further submissions – City of Melbourne  | Council   |
| 141 | “           | Memorandum - Laneway, pedestrian   | “   |

| No. | Date       | Description                                  | Presented by            |
|-----|------------|--|-------------------------|
|     |            | connection and traffic conflict designations |                         |
| 142 | 1 Apr 2022 | Precinct Yield Information                   | VPA                     |
| 143 | 4 Apr 2022 | George Weston Foods Ltd comments on DDO      | George Weston Foods Ltd |

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