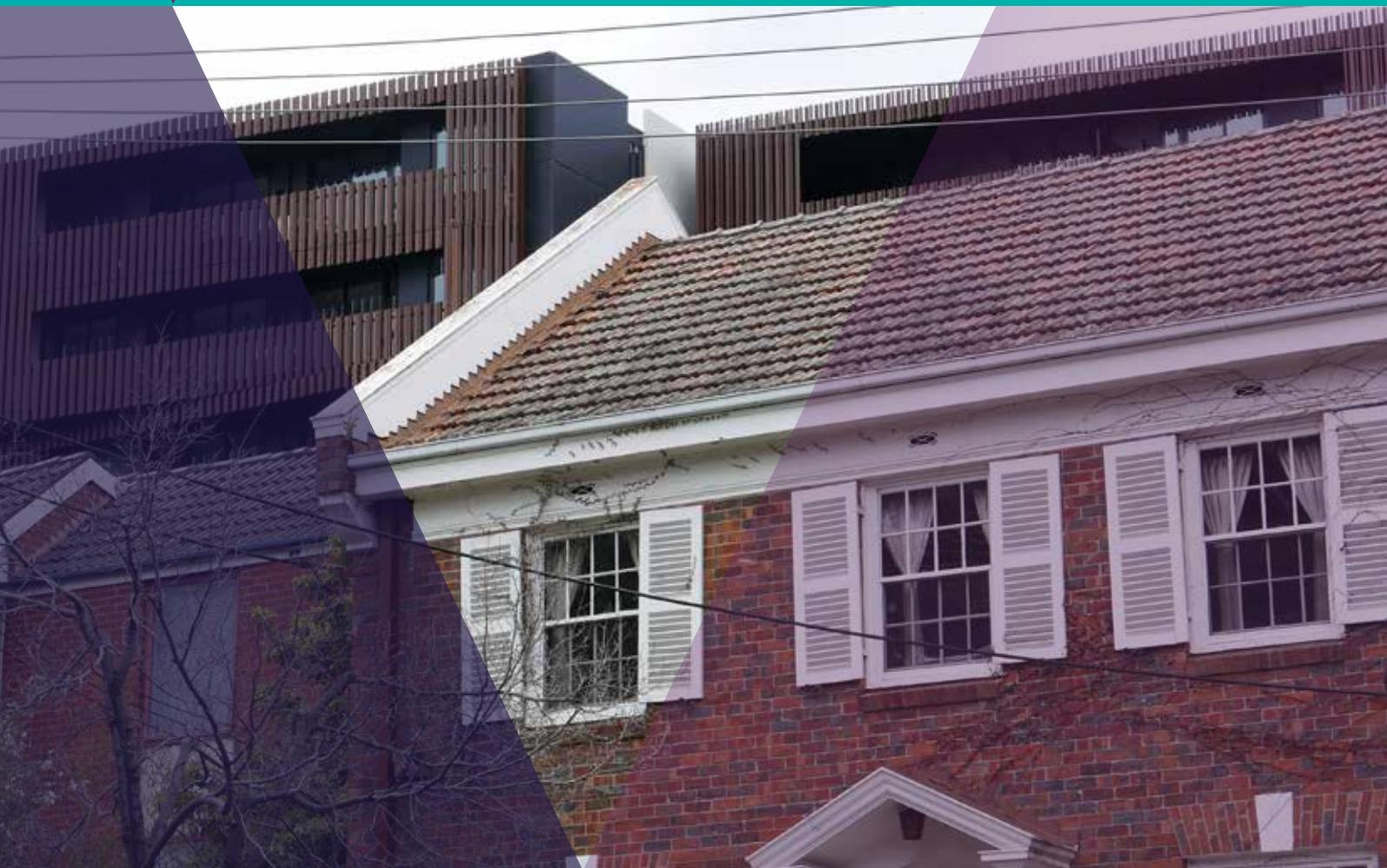


# Amendment C123 to the Banyule Planning Scheme

## Consultation Summary Report





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# Banyule C123: Context and Exhibition

## The Activity Centre Pilot Program

In December 2016 the Minister for Planning announced the Activity Centre Pilot Program (the pilot program).

A key purpose of the pilot program was to identify how planning controls could be used to provide greater clarity and certainty about development heights in activity centres and to ensure the community and developers have a clearer understanding of the form of new development expected in activity centres.

In particular, the pilot was to investigate how planning controls could be improved to better reflect and support strategic work undertaken by councils,

and lessen the instances of proposals far exceeding preferred maximum heights in place and being out of step with community expectations.

This approach to strengthening how building heights are dealt with in areas identified for change was reiterated through policies in Plan Melbourne 2017-2050 (Plan Melbourne) released by the Victorian Government in March 2017.

Three activity centres were identified for inclusion as part of the pilot program – Moonee Ponds in the City of Moonee Valley, Ivanhoe in the City of Banyule and Johnston Street in the City of Yarra.

### Planning for the Ivanhoe Activity Centre

In 2008, Banyule City Council (Council) commenced the structure planning process for the Ivanhoe Activity Centre. A draft structure plan was prepared and exhibited in 2011 with over 700 submissions received. Proposed building height, setbacks and neighbourhood character were key concerns raised in submissions at the time. In consideration of the issues raised, a new draft structure plan was prepared and exhibited in September 2012. A total of 75 submissions were received on the new draft structure plan. After consideration of submissions the final *Ivanhoe Structure Plan* was prepared and later adopted by Council in December 2012.

To implement the *Ivanhoe Structure Plan*, Amendment C93 to the Banyule Planning Scheme was exhibited in December 2013 with 10 submissions received. After hearing submitters, Planning Panels Victoria recommended approval of the Amendment with some changes. A revised version of the structure plan was adopted by Council in December 2014 after revisions were made in accordance with the findings of the Planning Panel.

In May 2015, Amendment C93 was approved by the then Minister for Planning and gazetted. The Amendment introduced two overlays:

- Schedule 11 to the Design and Development Overlay (DDO11): To control the design and built form outcomes in the identified 'Diversity Areas' (Precincts 1-5) of Ivanhoe.
- Schedule 12 to the Design and Development Overlay (DDO12): To guide residential development in the 'Accessible Residential Areas' identified in the *Ivanhoe Structure Plan* as Precinct 7.

On 17 July 2017, Council resolved to accept an invitation to participate in the Activity Centre Pilot Program and requested the establishment of permanent mandatory height controls for Ivanhoe.

As part of the pilot program, interim mandatory maximum building height controls were put in place for the Ivanhoe Activity Centre by Amendment C122 to the Banyule Planning Scheme. Amendment

C122 was approved by the Minister for Planning in November 2017. The interim mandatory maximum building height provisions had an expiry date of 30 September 2018. The interim controls were required to ensure that Council's vision for the Ivanhoe Activity Centre was protected in the short term while further work as part of the pilot program was undertaken.



## Amendment C123 to the Banyule Planning Scheme

Given the volume of strategic planning already undertaken by Banyule City Council on the height controls, as well as the considerable public consultation completed for the controls, a tailored targeted consultation process was proposed to gather views on the merit of translating existing preferred maximum building heights to mandatory maximum building height controls for the centre.

In June 2018 the Minister for Planning, as Planning Authority, exhibited a planning scheme amendment which proposed to implement mandatory height controls at the Ivanhoe Activity Centre on a permanent basis via Amendment C123 to the Banyule Planning Scheme (the Amendment).

Amendment C123 proposed permanent mandatory maximum building height controls for the Ivanhoe Activity Centre. The Minister for Planning undertook targeted consultation and public exhibition process under section 20(5) of *The Planning & Environment Act 1987*.

The Amendment was exhibited from 18 June 2018 to 20 July 2018 (inclusive). As part of this public exhibition process, over 1,200 letters were sent to all owner and occupiers of land for which Design and Development Overlay Schedule 11 (DDO11) applies. Letters were also sent to relevant statutory servicing authorities and previous submitters to the amendment that implemented the Structure Plan (Banyule C93).

There was advertisement in the public notice section of the Heidelberg Leader on Tuesday 19 June 2018. Details and information on how to make a submission were also provided on the Department of Environment, Land, Water and Planning website.

A public information session was held on Thursday 28 June from 6 - 8pm at the council Customer Service Centre, 275 Upper Heidelberg Road, Ivanhoe, for members of the community to ask questions about the Amendment. DELWP and Banyule City Council officers attended the event and answered the queries of the four attendees present on the night.

During the public exhibition period for the Amendment, a total of 79 submissions were received, including 66 supportive and 13 unsupportive submissions. Among all the submissions, 72 were made within the public exhibition period, with 7 late submissions accepted after the closing date of 20 July 2018.

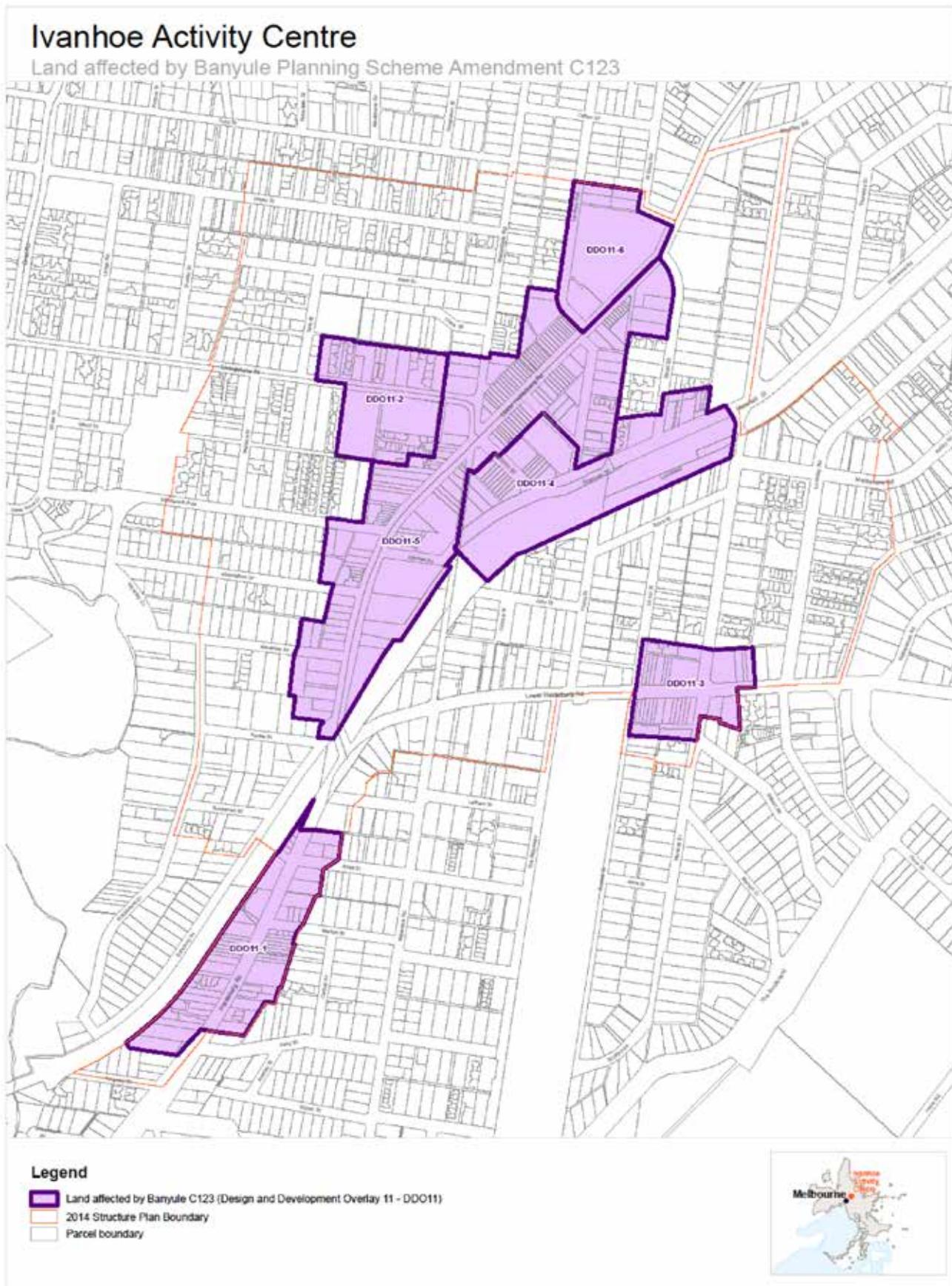


Figure 1. Land affected by Amendment C123 to the Banyule Planning Scheme



## Summary of submissions to Banyule C123

The majority of submissions received on the Amendment were supportive of the introduction of permanent mandatory maximum building height controls. Consistent themes raised in supportive submissions to the Amendment are summarised below:

### **Ensuring Certainty**

The majority of submitters supported mandatory maximum height controls, as they would give certainty to the community and encourage sustainable development in the area. Submissions also cited Victorian Civil and Administrative Tribunal (VCAT) cases where definitions and clauses of DDO11 were interpreted in a manner that was perceived to be inconsistent with the *Ivanhoe Structure Plan*. Many submitters stated that the mandatory nature of the proposed controls in the Amendment will ensure clarity and remove ambiguity and uncertainty for the community, development applicants and decision makers.

### **Adhering to the *Ivanhoe Structure Plan***

A number of submissions stated that the *Ivanhoe Structure Plan* was developed through a comprehensive process involving extensive community consultation. However, despite this, recent development proposals within the Activity Centre have exceeded stated preferred maximum building height controls. Submitters believed that the introduction of mandatory controls will ensure the *Ivanhoe Structure Plan* will be implemented according to the council's vision and broader strategic work.

### **Preserving the amenity and neighbourhood character of Ivanhoe**

A number of submissions reflected that the application of mandatory maximum building heights in the Ivanhoe Activity Centre will help to prevent the erosion of the unique character and identity of the centre through inappropriate development.

Many submitters think that the preferred maximum building height controls encouraged developers to 'push the limits' with building heights, without proper consideration of the environmental and social impact of a proposed development.

Submitters contend that development aligned with the *Ivanhoe Structure Plan* will continue to preserve the 'character' of the Ivanhoe Activity Centre. Notable characteristics raised include a 'village' atmosphere, historic shops and buildings displaying art deco architecture, tree lined streets and distinctive view lines to and from the centre.

### **Reduced time, effort and resources challenging decision making**

Submissions supported mandatory maximum height controls as they believed they will limit unnecessary resources, time and energy spent by the community, developers and Council contesting decision making, particularly when cases proceed to the VCAT. The introduction of mandatory maximum height controls would remove a contestable element of design.

### **Strength of strategic work**

Submissions noted the strategic work undertaken by Banyule City Council that informed the approach to height controls in the activity centre. They believe that the work to date merits the introduction of more certainty regarding built form outcomes. Cited strategic work includes a built form analysis, an assessment of growth capacity and an assessment of landscape and ridgelines among others.



## **Strategic work undertaken by Banyule City Council: Banyule City Council submission**

Banyule City Council has undertaken extensive strategic planning over several years to determine the prescribed building height controls proposed in Amendment C123. This background strategic work includes:

- Directions & Discussion Paper for the First Draft Structure Plan (2007).
- Open Space Analysis for Initial Draft Structure Plan (2007)
- Precincts & Key Sites Map (2010)
- Landscape Assessment for Significant Ridgelines in Banyule (2012)
- Background Analysis for the New Draft Structure Plan (2012)
- Built-Form Analysis for New Draft Structure Plan (2012)
- Ivanhoe Capacity Analysis Structure Plan (2012)

In Council's submission to Amendment C123 they detail why mandatory maximum building height controls are appropriate within the Ivanhoe Activity Centre. Reasoning includes:

- The extensive tree canopy within the centre.
- The significant ridgeline running through the centre.
- The curved nature of the streets throughout the centre.
- The greater development potential and inherent capacity for the Heidelberg Major Activity Centre to absorb greater growth in the municipality given its typology and local context.



## Response to Submissions

Submissions were received that raised concerns and issues regarding the proposed introduction of permanent mandatory maximum building height controls. Key issues raised to the Amendment are summarised below, as well as a response noting if a change should be made to the Amendment.

### The planning scheme amendment process

Some submitters believe that Amendment C123 has not followed due process as it has not undergone a full planning scheme amendment process, thereby raising issues of procedural fairness and transparency.

#### **Response**

This planning scheme amendment process and public exhibition for Amendment C123 has been undertaken in a targeted manner through s.20(5) of the *Planning and Environment Act 1987* (the Act). Despite being targeted to affected land owners and occupiers, the exhibition was largely consistent with the normal requirements for exhibition of a planning scheme amendment as detailed in s.19 of the Act.

Broader exhibition for the Amendment occurred through a public notice in the Heidelberg Leader Newspaper, as well as in the Government Gazette.

All submissions were also accepted, regardless of location.

### Drafting of height controls on sloping sites

Submissions raised concerns that mandatory maximum height controls will remove the potential for flexible design responses thereby creating issues in achieving viable outcomes, particularly on sloping sites within the centre. In regards to sloping sites, different propositions were put forward regarding how an allowance for sloping sites should be accounted for in the mandatory building height context.

#### **Response**

The controls currently provide an additional metre allowance to height on sites with a slope of 2.5 degrees or greater. This additional allowance is consistent with the management of sloping sites in residential zones across the State. The way building heights are measured on sloping land within the Amendment is also consistent with State definition provided in the Victoria Planning Provisions (VPP). The additional height allowance has also been extended to apply to Precinct 1, rather than only Precincts 2-5 as requested by Council.



## **Strategic justification of mandatory height controls**

Some submitters believe that the current preferred maximum height controls are working effectively. They have noted that the Planning Panel for Amendment C93 supported discretionary controls.

Concerns and recommendations were also raised that there is little or no evidence to demonstrate how mandatory controls will work and that Amendment C123 is not supported by existing activity centre policy or existing Practice Notes.

### **Response**

The Planning Panel did not consider mandatory heights as part of Amendment C93. They did, however, support the prescribed heights in Amendment C93 given the strategic work and consultation undertaken by the Council. Amendment C123 will ensure these nominated heights are adhered to.

The interim mandatory maximum height controls have provided an insight into the operation of mandatory height controls in the centre. The interim mandatory controls have been monitored by Banyule City Council and informed their submission to Amendment C123.

Amendment C123 is also deemed consistent with the findings of the Activity Centre Pilot Program, including the revised Planning Practice Note 60: Height and setback controls for activity centres. More information on the outcomes of the Activity Centre Pilot Program, including a Key Findings Report, can be found on the [planning.vic.gov.au/policy-and-strategy/activity-centres/height-controls](https://planning.vic.gov.au/policy-and-strategy/activity-centres/height-controls)

## **Reinsertion of preferred height controls on General Residential Zone (GRZ) land**

Preferred maximum height controls on General Residential Zone land were removed by Amendment C122. It has been requested that these be reinstated.

### **Response**

Land with a residential zone applied within the activity centre also covered by DDO11 already has a mandatory height applied as part of recent reforms to the residential zones. Councils can not designate heights lower than the state-wide mandatory maximum of 11 metres for the General Residential Zone.

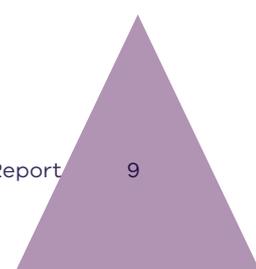
Existing mandatory heights specified in the residential zones will continue to operate and will be unaffected by the Amendment.

## **Allowance of controls relating to 'architectural features'**

A submission expressed that the discretionary provision for architectural features should be made a mandatory provision. The provision states that architectural features should not exceed the height limit by more than 4 metres and should not exceed 10% of the gross floor area of the top of the building level.

### **Response**

Changes have been made to revise drafting of the controls in regards to how they relate to mandatory maximum building heights. The allowances for architectural features has had an additional requirement added to ensure that architectural features are located to reduce visual impact on the surrounding area.





### **Clarification of specified building heights in the 'Legend' of built form plan**

Each built form plan within the DDO has a 'legend' that contains an indicative illustration of how height controls are represented on the built form plan. Two submissions believed this was an inconsistency, and took the illustrative heights in the legend to be the nominated heights for the area, thereby creating confusion.

#### ***Response***

Changes have been made to the legend on each built form plan to improve legibility and clarity regarding nominated height controls.

### **Mapping error on the Upper Heidelberg Road Built Form Plan**

The Upper Heidelberg Road Built Form Plan (DDO11-5B) does not show the correct boundary for DDO11.

#### ***Response***

A correction has been made to the Upper Heidelberg Road Built Form Plan (DDO11-5B) to properly align the precinct boundary.

### **Application of mandatory floor to ceiling heights**

There was discussion that the current discretionary floor to ceiling heights indicated for residential and commercial uses should be made mandatory through the Amendment.

#### ***Response***

Floor to ceiling heights should remain a discretionary provision to provide guidance for preferred outcomes in the centre.

The Building Code of Australia also details requirements for ceiling heights in habitable rooms and the Better Apartments Design Standards provide minimum requirements for apartment developments.



## Other considerations

Other considerations that were raised within the submissions are detailed below. As the intent of the Amendment and the pilot program is to improve certainty regarding existing height controls, the below matters are considered outside the scope of the Amendment. Banyule City Council may wish to consider these matters for future planning in the activity centre.

### **Mandatory setback provisions**

Submitters expressed that setback controls, which are currently discretionary, should also be made mandatory to ensure they are given proper regard in design responses and adhered to in decision making.

### **Changes to specified mandatory maximum height limits**

Some submissions stated alternative height limits for different areas of the Activity Centre.

### **Streetscape considerations**

Submitters articulated that there should be new requirements included to ensure developers also improve the surrounding public realm. Suggestions were made to include provisions to widen of footpaths to accommodate increased pedestrian traffic, provide public open space, as well as tree planting provisions to ensure developments are screened to reduce visual impact.

