

# Height and setback controls for activity centres

Planning Practice Note 60

SEPTEMBER 2018

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

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

## Activity centres

Activity centres are a focus for commercial, retailing, employment, community, transport, entertainment and other services, and are places where people shop, work, meet, relax and live. State planning policy encourages the concentration of these services within activity centres, and recognises that activity centres are also ideally placed to provide for different types of housing, including higher density housing. As such, activity centres are a major focus for change in metropolitan Melbourne.

A key strategy of metropolitan planning policy in the *Victoria Planning Provisions (VPP)* is to build up activity centres as a focus for housing and economic growth by ensuring Metropolitan and Major Activity Centres:

- can accommodate ongoing investment and change in retail, office, service and residential markets
- provide for a mix of activities that generate high numbers of trips including business, retail, services and entertainment
- have the potential to grow sustainably and support more intensive housing developments without conflicting with surrounding land uses
- provide for services and infrastructure to support population growth
- identify areas for urban renewal.

To support how growth is managed, Clause 11.02 of the Planning Policy Framework includes strategies that seek to ensure that sufficient land is available to meet forecast demand, that planning to accommodate projected population growth over at least a 15-year period should occur and that clear direction on locations where that growth should occur is provided.

## The role of structure planning for activity centres

Change in and around activity centres is anticipated and encouraged by state planning policy but needs to be managed carefully. This will ensure that new development maintains an appropriate level of amenity, and integrates with existing and proposed land uses and built forms. State policy seeks to manage change in and around activity centres through structure planning.

Structure planning is the process of developing a strategic framework for the integrated development of an activity centre and surrounds. Structure plans provide the foundation for activity centre change by clarifying preferred directions for future growth and articulating how this change will be managed.



Structure plans should be formulated in a collaborative manner with the local community and landowners and should be informed and supported by a range of studies and background research.

*Planning Practice Note 58: Structure Planning for Activity Centres* provides guidance to councils on the structure planning process, including the inputs and outputs required. Background research required to underpin a structure plan is outlined in the *Ruby Town Structure Plan Background Report Outline (2010)* and includes consideration of the following:

- Policy context – Metropolitan Planning Strategy & Municipal Strategic Statement, other relevant Council policies
- Demographic, Housing and Economic Profile,
- Movement and Transport
- Physical infrastructure
- Social Infrastructure
- Built form
- Heritage
- Recreation facilities and needs
- Community arts and cultural
- Open space
- Environment and sustainability

As part of the structure planning process preferred built form outcomes, including maximum building heights or setbacks, may be proposed.

Structure planning should be undertaken for all Metropolitan and Major Activity Centres. However, it may not always be necessary for councils to undertake detailed structure planning for smaller activity centres (eg. Neighbourhood Activity Centres). In these instances, a comprehensive built form analysis will need to be undertaken to identify preferred built form outcomes and provide the basis for any proposed controls.

### Development of height and setback controls

Height and setback controls can be appropriate so long as they are not aimed at restricting the built form, but at facilitating good design outcomes.

Proposed height and setback controls must be soundly based on the outcomes of strategic research and background analysis that demonstrates consistency with state and regional policy and includes a comprehensive built form analysis.

### Consistency with state and regional policy

A council will need to demonstrate that any proposed height and setback controls are consistent with state and regional policy and allow for an appropriate level of change over time.

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

A council will need to be able to demonstrate that there is sufficient land and capacity available to meet forecast demand and projected population growth over at least a 15-year period, and beyond this to a 30-year horizon, including how an activity centre contributes to this need.

### Comprehensive built form analysis

A council will need to demonstrate that proposed height and setback controls are based on identifiable objectives or outcomes. Proposed height controls must be selected as a result of undertaking a comprehensive built form analysis that achieves the following:

- identifies significant opportunities for change within an activity centre and explores alternative built form objectives and outcomes to accommodate this change
- includes an analysis of visual and amenity impacts, solar access and overshadowing impacts and any impact on environmental conditions within the centre, including in respect of wind
- identifies any significant physical features, such as views to or from the activity centre or topography that needs to be considered
- identifies and articulates how new development should address street frontages and laneways or relate to adjacent residential areas
- selects appropriate heights and built form outcomes at a precinct level through evaluation of built form objectives, land use outcomes and economic growth consistent with state and regional policy.

A comprehensive built form analysis should be completed as part of the structure planning process.



## How to deliver preferred built form outcomes at activity centres

Preferred built form outcomes identified in structure plans should be given effect in planning schemes either through local policy, or a zone or overlay control.

Any built form controls introduced into a planning scheme should provide for development that is in line with a structure plan or comprehensive built form analysis for the activity centre. These controls could be discretionary or mandatory, or a combination of both.

In some instances mandatory height or setback controls may be appropriate in only particular sections of an activity centre and not the entire activity centre. In these instances, it may be appropriate to include a mix of discretionary and mandatory height and setback controls.

### When to apply discretionary controls

The application of discretionary controls, combined with clear design objectives and decision guidelines is the preferred form of height and setback controls.

Discretionary controls are more likely to facilitate appropriate built form outcomes rather than mandatory controls by providing more flexibility to accommodate individual or unique circumstances. Innovative or exemplary design is not of itself reasonable justification to exceed discretionary building height and setback requirements. When appropriate height and setback controls are identified, they should be included in the relevant planning scheme as discretionary controls with clear design objectives and decision guidelines.

Councils may wish to include a range of heights across an activity centre or at individual sites. Where this is done, design objectives and decision guidelines need to be clear and easily understood to provide clarity as to how the range of heights are to be applied and assessed.

### When to apply mandatory controls

Mandatory height and setback controls (that is, controls that cannot be exceeded under any circumstance) will only be considered where they are supported by robust and comprehensive strategic work or where exceptional circumstances warrant their introduction.

Mandatory height or setback controls should only be applied where:

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

In instances where a council is relying on its strategic work as a basis for mandatory height and setback controls they should be specifically reviewed every five years to ensure they are aligned to any updated census data or revisions to the metropolitan planning strategy. The review will need to assess whether the controls are still delivering on the outcomes and objectives for the centre and demonstrate that they are not undermining these going forward.

There may be instances where a time limit is applied to mandatory controls for an activity centre. This approach would allow for a more comprehensive review of the activity centre's role as part of the broader network and its ongoing ability to accommodate an appropriate level of growth. In these instances, a 15-year time limit should be applied.

This will ensure any mandatory controls implemented in this way remain contemporary and appropriate to the local circumstances. In order to continue the operation of the controls beyond this time, a council will need to review its strategic work and demonstrate it meets the criteria in order to have the controls retained.

### Robust and comprehensive strategic work

Where mandatory controls are proposed, a council will be assessed against all of the following:

- **Consistency with state and regional policy:** A council will need to be able to demonstrate that any proposed controls are visionary in nature and propose a preferred future character for the activity centre that aligns with the aspirations of the metropolitan planning strategy and state and regional policies included in the VPP.
- **Currency of work:** Any supporting structure plan or comprehensive built form analysis should be no more than five years old. A council will need to be able to demonstrate that the built form analysis undertaken to support any proposal for mandatory height or setback controls is contemporary, takes account of recent trends and has been subject to a program of public consultation.



- **Capacity to accommodate growth within the activity centre:** Planning for the activity centre must ensure sufficient opportunity is provided for commercial (retailing, office, fringe retailing and other uses such as entertainment) activities needed over at least a 15-year time frame and then into the 30-year horizon as well as anticipated housing growth over the same timeframes. This should include:
  - The role of the activity centre in the broader activity centre network for the municipality.
  - The location of the centre and its access to services, such as public transport.
  - Potential for redevelopment having regard to urban form, lot sizes and topography.
  - Any existing and proposed land uses and identification and analysis of key sites within the activity centre that can accommodate more intense development when compared with the remainder of the activity centre.

In addition to this, where mandatory height and setback controls are proposed over most or the entire activity centre, rigorous strategic justification has to be provided and should include:

- a Housing Strategy which examines the city's future housing needs and the role of activity centres (including neighbourhood activity centres) in accommodating these needs
- an activity centre/economic strategy which examines the role of the activity centre as part of a network of centres.

### Exceptional circumstances

Exceptional circumstances may be identified for individual locations or specific and confined precincts, and might include:

- sensitive coastal environments where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment
- significant landscape precincts such as natural waterways, regional parks and areas where dense tree canopies are the dominant feature
- significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values
- significant physical features, such as views to or from the activity centre or topography, where it can be demonstrated that discretionary controls would be inadequate to deliver the desired built form objectives or outcomes for the activity centre
- sites of recognised State significance where building heights can be shown to add to the significance of the place, for example views to the

Shrine of Remembrance and major waterways

- helicopter and aeroplane flight paths and other aeronautical needs.

Where exceptional circumstances are identified, mandatory height and setback controls should only be applied where they are absolutely necessary to achieve the built form objectives or outcomes identified from the comprehensive built form analysis. Where mandatory controls are proposed, it will need to be demonstrated that discretionary controls could result in an unacceptable built form outcome.

### Statutory implementation of height and setback controls

The Activity Centre Zone (ACZ) is the preferred tool to guide and facilitate the use and development of land in Metropolitan and Major activity centres with structure plans. In most instances, height and setback controls would be applied at the precinct level within the ACZ schedule.

The Design and Development Overlay (DDO) is the preferred planning instrument for implementing discretionary and mandatory building heights and setbacks in other situations.

The design objectives and decision guidelines contained within the ACZ or DDO must be well structured and carefully worded to provide clear guidance to both decision makers and designers. This will ensure that any proposal to depart from the nominated heights and setbacks will be able to be rigorously assessed against a clear set of criteria, thereby minimising the likelihood of approval of a proposal which does not implement the design objectives of the ACZ or DDO.

### Consistency in language used to specify height controls

Clear and consistent terms should be used to distinguish between preferred and mandatory maximum building height controls as follows:

- 'Preferred maximum building height' should be used consistently for a performance-based provision in conjunction with 'should'.
- 'Mandatory maximum building height' should be used consistently for a mandatory provision in conjunction with the word 'must'.

The use of uncommon terms such as 'indicative' or use of mutually exclusive terms such as 'must' in conjunction with preferred heights should be avoided.

In instances where there is no identified preferred



height, the principles by which height should be determined for a given site or precinct should be identified, preferably in the form of a measurable performance requirement. Another conceptually stronger approach is the definition of a floor area ratio measurement to act as a benchmark target for a site or precinct.

**Avoid subjective terms and language**

The use of subjective terms in height guidelines should be avoided as they can be confusing and open to manipulation. Qualitative measures that rely on highly subjective assessments or the use of poorly defined criteria, such as "high standard of architecture", as a height guideline should be avoided and should not be seen as a way to achieve a 'bonus' in height.

In addition, the use of descriptive terms such as "landmark", "gateway" and "iconic" can result in a high degree of confusion over the strategic planning intent, particularly around intended height. Often the terms can be misinterpreted to mean that a site is effectively exempt from the range of considerations that would be acceptable on other sites that are not identified with these terms.

As a default position, terms such as "landmark", "gateway" and "iconic" should be avoided, and it should not be assumed that the meaning of these terms is generally known or easy to interpret. Where the terms are included clear guidance should be provided to identify what the intended objective should be for a nominated site. For example, if the site is intended to be clearly higher than its surroundings in order to make it visible from a wider

area then this should be identified.

**References to building heights and setbacks**

The preferred expression of heights and setbacks is in metres and should be in reference to a defined point such as the footpath at the frontage or Australian Height Datum or natural ground level. Reference can also be made to height in terms of storeys, however the definitive control should be in metres.

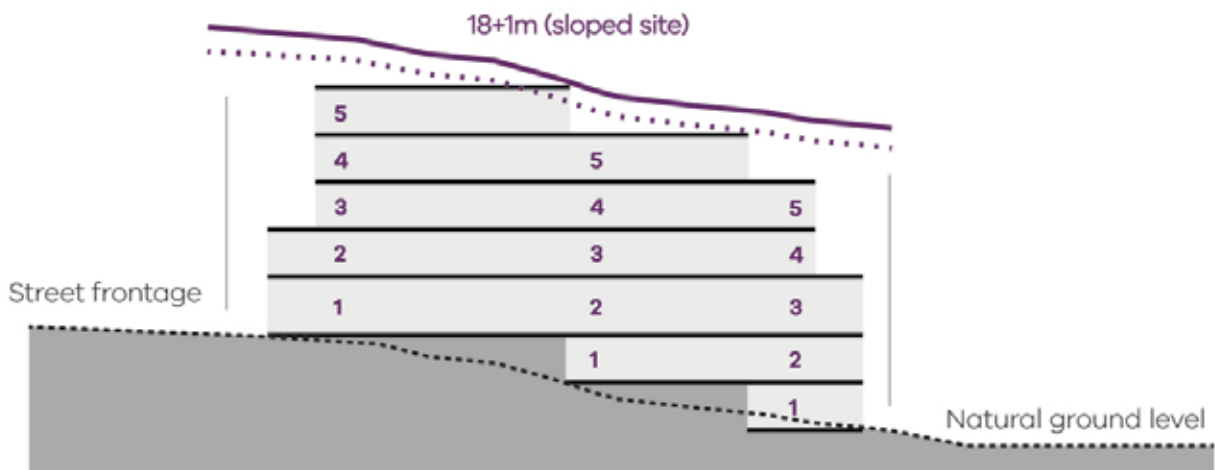
Where references to both metres and storeys are used, adequate allowance should be made for greater floor- to-floor heights needed to support employment uses where the zoning supports these uses.

**Dealing with sloping blocks**

The ordinary definition of building height used across Victoria is as set out at Clause 73.01 of the VPP and is the vertical distance from natural ground level to the roof or parapet at any point. This approach should be applied for sloping sites located within activity centres.

In order to allow for some flexibility on sloping sites, a mandatory maximum building height should allow for an exceedance by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

This approach will ensure that the built form responds to the underlying landform, usually by stepping down the built form.





## Planning publications

The following publications provide best practice guidance on planning for new urban communities, statutory planning processes and drafting statutory documents (as relevant).

### Planning for urban communities

- Ministerial Direction No. 9 Metropolitan Strategy
- *Public Transport Guidelines for Land Use and Development* (Department of Transport 2008)
- *Victorian Cycling Strategy* (VicRoads 2009)
- *Structure Planning for Activity Centres Planning Practice Note 58* (Department of Environment, Land, Water and Planning 2018)
- *Assessment and Response to the Report of the Advisory Committee on Activity Centre Boundaries* (Minister for Planning June 2009)
- *Activity Centre Zone Planning Practice Note 56* (Department of Environment, Land, Water and Planning June 2015)
- *Model Structure Plan – Ruby Town Structure Plan* (Department of Planning and Community Development, April 2010)
- *Ruby Town Structure Plan Background Report Outline* (Department of Planning and Community Development, April 2010)
- *Urban Design Guidelines for Victoria* (Department of Environment, Land, Water and Planning 2017)
- *Apartment Design Guidelines for Victoria* (Department of Environment, Land, Water and Planning 2017)

### Statutory planning processes

- *Using Victoria's Planning System* (Department of Environment, Land, Water and Planning)
- *Planning Practice Note 46: Strategic Assessment Guidelines* (Department of Environment, Land, Water and Planning 2018)

### Using VPP tools and statutory drafting

- *Writing Schedules VPP Practice Note* (Department of Infrastructure 2000)
- *Incorporated and background documents Planning Practice Note 13*: (Department of Environment, Water Land and Planning, September 2018)

### Further information

All practice and advisory notes are available on the department's website:

[www.planning.vic.gov.au](http://www.planning.vic.gov.au)

Further information in relation to planning for activity centres is available on the department's website: [www.planning.vic.gov.au](http://www.planning.vic.gov.au)

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