

Activity Centre Pilot Program

Key findings report



*Cover image: Development at Johnston
Street, viewed from Victoria Park.
Source: DELWP.*

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1. Introduction

Purpose of 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. These centres were identified as they each offered characteristics and attributes considered helpful for the assessment of development in activity centres.

Plan Melbourne 2017-2050

Policy 2.1.4 Provide certainty about the scale of growth in the suburbs

"In areas where greater change is expected — such as urban renewal precincts and mixed-use and activity centre areas — requirements to adhere to preferred heights will also be strengthened. This will be achieved by improving the way height in strategic locations is managed and decisions are made."

Melbourne's growth and the role of activity centres

As outlined in the metropolitan planning strategy, *Plan Melbourne*, Melbourne is undergoing another strong phase of population growth. Over the past decade, Melbourne has added more than 800,000 residents. Looking forward, it is anticipated that Melbourne will need an additional 1.6 million dwellings and 1.5 million jobs to accommodate this projected population growth by 2051.

To accommodate population growth and maintain Melbourne's enviable liveability, there has been longstanding state strategic policy to direct growth to existing areas that are well served by infrastructure and services.

Plan Melbourne identifies that around 65 per cent of new housing is likely to be in established areas of Melbourne and 35 per cent in greenfield locations. It also provides an aspirational scenario whereby 70 per cent would locate in established areas and 30 per cent in greenfield locations.

Activity centres will be important components to achieving these urban consolidation objectives. They can play a key role both in supporting increased housing supply and accommodating commercial growth, thus ensuring Melbourne maintains a competitive commercial market and can facilitate local access to employment.

This policy and subsequent statutory implementation has generally been effective in targeting growth to desired areas where there is greater opportunity for more intensive development.

Information from *Housing outcomes in established Melbourne, 2005 to 2016* (DELWP 2017) shown in Table 1 overleaf, outlines that over the 2005 to 2016 period, 220,000 dwellings were added to established areas of Melbourne of which 113,000 (approximately 50% of net new dwellings) were either inside or within 400 metres of an activity centre. As at December 2016, nearly a third of Melbourne's 1.42 million dwellings in established areas were within 400 metres of an activity centre. Significantly, the core areas of activity centres increased their housing stock by almost 90% (from approximately 86,000 dwellings in 2005 to 160,000 in 2016).

Table 2 also demonstrates the activity centres that have undergone the highest change in dwelling stock from 2005-2016.

Table 1. Proportion of development in established Melbourne* in and around Activity centres (400 metres) 2005-2016.

	Established areas dwellings	In and around Activity Centres	%
2005	1,200,000	335,000	28%
2016	1,420,000	448,000	32%
Change	220,000	113,000	51%

*Established Melbourne is defined as the 25 local government areas in Melbourne that do not include a growth area. Source: (Housing Development Data, DELWP, 2018)



Ballarat Street, Yarraville. Source: DELWP.

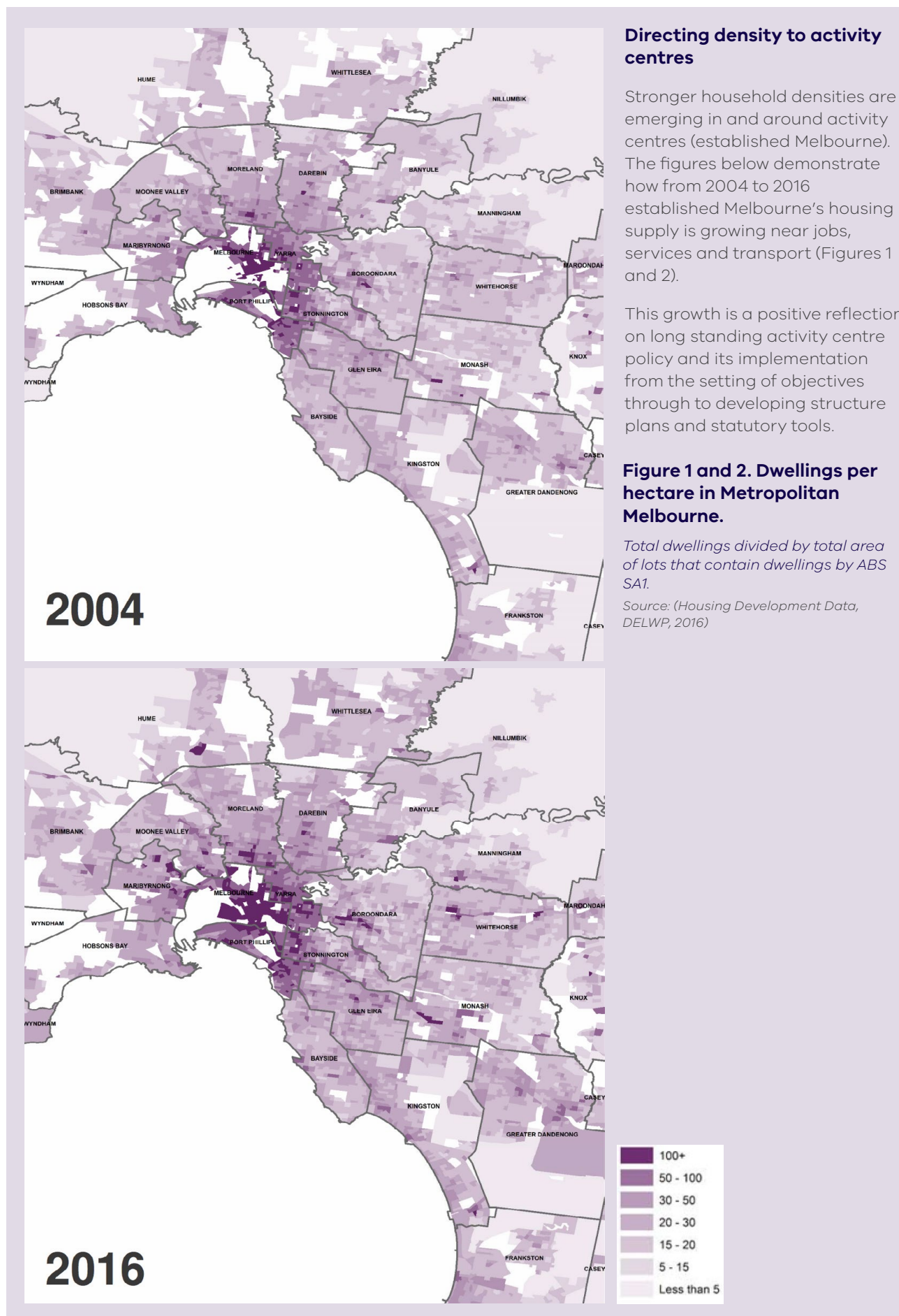


Table 2: Activity centres with highest change in dwelling stock within the Activity Centre boundary 2005-2016

Activity Centre Name	Stock 2004	Stock 2016	Change 2005-2016
Melbourne	17,476	52,192	34,716
Prahran/South Yarra	2,836	8,476	5,640
Brunswick	1,293	5,196	3,903
Port Melbourne-Bay Street	4,009	6,237	2,228
Richmond-Victoria Street	1,401	3,252	1,851
Box Hill	1,315	2,990	1,675
Doncaster Hill	423	1,878	1,455
Fitzroy-Smith Street	2,296	3,721	1,425
Footscray	1,047	2,330	1,283
Richmond-Bridge Road	185	1,401	1,216
Dandenong	925	1,899	974
Richmond-Swan Street	4,845	5,813	968
North Essendon	263	1,170	907
Hawthorn-Glenferrie Road	47	843	796
St Kilda	1,129	1,851	722

Note: Data in this was updated in April 2018.

Source: Housing Development Data 2016

Although policy has been effective in realising growth in and around activity centres, there has been variable reception to the scale and quality of development outcomes.

In particular, there has been community concern regarding the effectiveness of planning controls and policies to realise development outcomes sought through local planning. Complex and inconsistent approaches to local planning policy in planning schemes, imprecise drafting of controls and ambiguity in decision making has often led to conflict between the expectations of the community and the aspiration of developers. This results in lengthy and costly processes and has the effect of undermining the objective of the planning system to provide clarity, certainty and consistency to both the community and developers.

Given this growth and policy context, there is a clear opportunity to ensure height controls continue to accommodate population and household growth in activity centres. This exists with a corresponding challenge to ensuring growth is respectful to existing character, thereby allowing communities to 'age in place' in smaller household developments.



The current situation

Mandatory maximum height controls are being increasingly sought by councils to provide more certainty about building height outcomes in areas designated for change.

Stronger controls are often being sought to control the level of development for housing and commercial space within some municipalities, and to ensure that specific outcomes are achieved. More stringent tools to control development are being sought to preserve existing characteristics of an area and to limit the extent and scale of new development. This is often in response to community expectations.

There is also a view that height controls being proposed are inconsistent with State policy objectives, do not allow for required levels of change, and as such, are compromising the ability of activity centres to accommodate growth.

Councils generally seek to apply height controls only after they have undertaken strategic work to inform their conclusions. However, different councils take different approaches. Some may put strong weight behind built form and urban design testing, whereas others may place larger emphasis on community views, or future floorspace requirements.

There is a need for a more consistent methodology and approach in justifying building height controls, and an opportunity to provide greater clarity regarding the strategic work required from councils.

Guidance available to support planning for activity centres

A range of guidance material has been prepared by the State Government and is currently available to local councils to assist with planning for successful activity centres. A synopsis of this material is provided on the following pages.

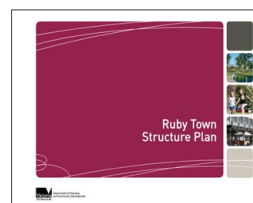


Carlisle Street, Balaclava. Source: DELWP.

'Ruby Town' Model Structure Plan

Based on the fictitious Ruby Town, the plan provides a model structure plan as a template to assist councils to deliver developments and improvements in activity centres. The template outlines basic structure plan elements.

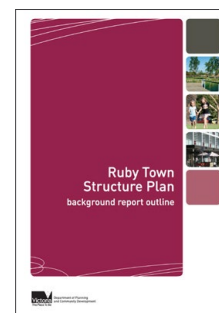
The model structure plan is consistent with the guidance provided by *Planning Practice Note 58: Structure Planning for Activity Centres*.



'Ruby Town' Model Background Report Outline

The *Ruby Town Background Report Outline* details the comprehensive background information that is required to support a structure plan.

It provides a sample table of contents of the issues and topics which should be addressed.



Planning Practice Note 58: Structure Planning for Activity Centres

This provides guidance to councils on the activity centre structure planning process. It covers the reasons for structure planning in activity centres, the policy context, and possible inputs and outputs of the process.

Details are provided about background research Council need to undertake to inform their structure plans. This includes studies and data on existing conditions and potential opportunities; demographic analysis, including population projections, economic and retail analysis; urban design and built form; and transport, services and infrastructure analysis.



Planning Practice Note 59: Role of Mandatory Provisions in Planning Schemes

The Practice Note sets out criteria that can be used to decide whether mandatory provisions may be appropriate in planning schemes. It states that '...mandatory provisions will only be considered where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes'.

While mandatory provisions are generally the exception, there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome. It outlines that in a range of circumstances mandatory provisions will provide certainty and ensure a preferable and efficient outcome. Circumstances could include areas having high heritage value, strong and consistent character themes, or sensitive environmental locations such as being positioned along the coast.



Planning Practice Note 60: Height and Setback Controls for Activity Centres

This practice note provides guidance on the department's preferred approach to the application of height and setback controls for activity centres. It outlines that height and setback controls in activity centres must be based on strategic research and comprehensive built form analysis that is consistent with State policy.

It also states that mandatory height and set back controls will only be considered in 'exceptional circumstances', and that exceptional circumstances may be identified for individual locations or specific and confined precincts and might include:

- sensitive coastal environments
- significant landscape precincts
- significant heritage places
- sites of State significance
- helicopter and aeroplane flight paths.

Urban Design Guidelines for Victoria

The *Urban Design Guidelines for Victoria* have been developed to support state agencies, local councils, and the development sector to deliver liveable, safe places.

The guidelines provide advice on:

- the design of public spaces
- building design in relation to a building's interface with public spaces
- the layout of cities, towns and neighbourhoods.

The *Urban Design Guidelines for Victoria* is a reference document in all planning schemes through the Planning Policy Framework included in the *Victoria Planning Provisions*.

Place Management Information Booklet

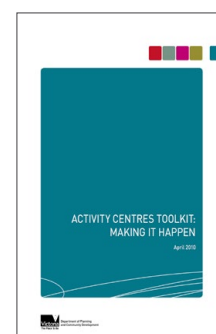
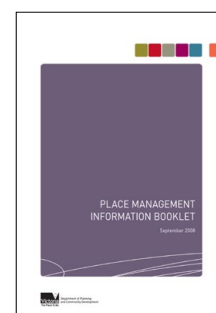
State policy encourages mixed-used development, activity and living in designated activity centres around key transport and access nodes. These areas have a range of stakeholders, residents and community who are affected by the many policies, plans and procedures being implemented.

The place management information booklet assists current and new place managers, local government, business associations, property owners and other government agencies to understand and appreciate place management and how it can facilitate the development of vibrant activity centres and town centres.

Activity Centre Toolkit: Making it Happen

The toolkit outlines methods for councils, the private sector and the Victorian Government to help implement activity centre policy and structure plan initiatives. The toolkit outlines several ways to improve activity centres to become 'development-ready' to attract investment.

It includes several case studies of activity centre planning along with lessons learnt.



2. The pilot program

Activity centres included in the pilot program

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. Centres were chosen to provide unique insights for the pilot program. Each of the pilot centres offered characteristics and attributes helpful for the assessment of development in activity centres and were selected in relation to:

- the level of strategic work undertaken by the council,
- the centre's allowance for an acceptable level of change,
- showing a variety of zonings and overlay approaches, and
- demonstrating instances where development proposals were exceeding preferred height limits.

Letters of invitation were sent to councils of the nominated centres, and upon acceptance from the respective council, the centre was admitted into the pilot program.

To allow further work to take place as part of the pilot program, interim height controls were applied to the three pilot centres to provide certainty in the short term.

For Moonee Ponds and Ivanhoe their existing preferred maximum height controls were directly converted to mandatory maximum height controls. For Johnston Street, a mix of mandatory and discretionary controls were implemented on an interim basis, generally consistent with the recommendations of council's Johnston Street Local Area Plan (City of Yarra, 2015).



Development in the Moonee Ponds Activity Centre. Source: DELWP.

Assessment of pilot centres as part of the program

An assessment of each of the pilot centres was undertaken as part of the pilot program. This assessment looked at:

- strategic work undertaken for each of the centres, including structure plans and supporting background work,
- the effectiveness of policies and/or controls in place at each of the centres, and
- instances where proposals far exceeded what was expected by the controls in place.

Through this assessment, it was identified that each of the pilot centres had variable success in realising the intent of their structure plans.

Moonee Ponds

Moonee Ponds is a major activity centre that has seen strong development in recent years. Moonee Ponds' could be defined as a 'hybrid' centre, with a mix of strip shopping as well as significant car and rail movement corridors. The centre has a strong retail and commercial floorplate, including the pedestrian oriented Puckle Street precinct which is of heritage value and is characterised by smaller lot sizes.

Council commenced consultation on its structure plan for the centre in late 2011. The structure plan and controls for the centre identify significant opportunity for redevelopment on sites across the centre.

The Moonee Ponds Activity Centre Structure Plan was adopted by council in March 2010, and subsequently updated in June 2012. Planning Scheme Amendment C100 incorporated the key strategies and requirements of the structure plan into an Activity Centre Zone as part of the Moonee Valley Planning Scheme which was gazetted on 30 March 2015.

Despite council having implemented its structure plan for the centre, a significant proportion of recent development proposals have been incongruous with the preferred building height controls specified in the approved structure plan and planning controls. Since the introduction of the Activity Centre Zone, 17 developments have been approved with 9 exceeding preferred height limits.

In undertaking an assessment of work undertaken and controls in place for Moonee Ponds, it was established that there was insufficient guidance provided in supporting strategic work, as well as in the planning scheme, to consistently facilitate positive development outcomes.

As part of the pilot program, Moonee Valley City Council is undertaking a complete review of the strategic planning framework for the centre: encompassing a built form and urban design review; economic feasibility analysis; transport needs assessment; streetscape and open space review; and modelling of wind effects.

The centre currently has interim mandatory maximum controls in place while council undertakes additional strategic work and prepares a full planning scheme amendment to put in place new permanent built form controls for the centre.

Ivanhoe

The Ivanhoe Major Activity Centre has also been subject to development applications exceeding the preferred heights nominated in the planning scheme.

The centre has unique characteristics, largely associated with a ridgeline that runs through the activity centre, giving way to sloped terrain. While also designated as a major activity centre, Ivanhoe provides different insights to that of Moonee Ponds. Ivanhoe's typology could be defined as a 'strip' centre, with Upper Heidelberg road being the most prominent and defining street in the centre.

The Ivanhoe Structure Plan provides an integrated vision for the activity centre and was developed over four years. Throughout its development over 1600 interested members of the Ivanhoe community participated and approximately 700 submissions were received. The initial 2011 structure plan was criticised by the community for not having enough detail and for being too open ended. Consequently council commenced work on a new draft structure plan. The 2012 structure plan adopted by Council in December 2012, gives more detail and guidance, and was translated into the planning scheme as a Design and Development Overlay through Planning Scheme Amendment C93. A subsequent revised version of the structure plan was adopted by council in December 2014.

An assessment of supporting strategic work and planning scheme controls in place for Ivanhoe was undertaken. It was determined that there is a strong suite of strategic planning work that translates into the Design and Development Overlay for the centre.

Given the volume of strategic planning undertaken by Banyule City Council in recent times, as well as the considerable public consultation completed for the controls, a 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 proposes to implement mandatory maximum height controls at the Ivanhoe Activity Centre on a permanent basis (Banyule C123). A total of 79 submissions were received, 66 of which support the introduction of the amendment and 13 of which were unsupportive of the amendment.

Johnston Street

Johnston Street is a Neighbourhood Activity Centre, also characterised by its strip centre. It is well located and well supported by services and transport. Importantly, the centre has areas of heritage value needing appropriate planning to respond to these characteristics, in comparison to areas within the activity centre designated for change.

Yarra City Council recently finalised research, analysis and strategic planning for the Johnston Street Neighbourhood Activity Centre, culminating in the adoption of the Johnston Street Local Area Plan (City of Yarra, 2015). The plan provides a framework to manage and guide change for the Johnston Street Activity Centre and provides the basis for future planning scheme amendments. It provides focus and direction on matters such as changes in land use and activity, physical changes to streets and public areas, design and scale of buildings, transport and sustainability. The plan was supported by a comprehensive built form analysis that covered physical topography, building typology, subdivision pattern and lot size, building heights, heritage, recent planning applications and permits, and built form character precincts.

The Johnston Street Local Area Plan was adopted by council in December 2015 following extensive community consultation.

Council has undertaken public exhibition of permanent controls for the centre (Amendment C220). A total of 28 submissions were received by council and a Panel Hearing is scheduled for October 2018.

Background research undertaken as part of the pilot program

In addition to focussed investigations of the pilot centres, supplementary research and studies were undertaken to inform the pilot program and an assessment of the effectiveness and operation of preferred height controls in activity centres more broadly was undertaken by DELWP. This has included:

- a review of Planning Panels Victoria (PPV) reports
- a study in relation to the viability of residential development in activity centres
- an analysis of Victorian Civil and Administrative Tribunal (VCAT) cases
- a review and analysis of case studies of approved development applications, and the corresponding planning scheme controls

The outcome of this analysis and research has either informed key findings of the pilot program, or is discussed in more detail below.

Insights from planning scheme amendments (Planning Panels Victoria)

PPV reports on planning scheme amendments associated with activity centres were reviewed to gain an understanding of the commentary and discussion relating to the justification of preferred and mandatory height controls within activity centres.

Conclusions reached by the panels typically align with the State guidance provided in Planning Practice Notes 59 and 60. These practice notes currently advocate that the appropriate (or preferred) means of expressing building height requirements in planning schemes is a discretionary provision.

Some further observations from panel reports:

- Structure planning in Major Activity Centres can use height controls as a legitimate planning tool, to provide certainty.
- Where warranted, height controls are acceptable as a mechanism to ensure that neighbourhood character or heritage is respected.

Mandatory controls at activity centres have generally only been supported by PPV in exceptional circumstances.

The planning panel for the implementation of the Doncaster Hill Strategy (Manningham C33), noted that mandatory controls were appropriate in their proposed application as they reinforced the strategic vision of the centre, and suitably reflected the centre's regional role regarding housing, retail and commercial development (Case Study 1).

Similarly, the panel that assessed the implementation of the Upper Gully Strategic Plan (Knox C141, later C162), supported the use of mandatory controls for Upper Ferntree Gully in the

Neighbourhood Activity Centre context. The visual impact of the identified height controls was illustrated to the panel from key vantage points. It was deemed that in the clear majority of cases, buildings not in accordance with the building height or other requirements would detract from the essential character of the area, namely view lines to the regionally significant Dandenong Ranges foothills. The significance of the foothills was also prominently expressed throughout local policy.

CASE STUDY 1

Doncaster Hill, Manningham Amendment C33 Panel Report

In preparing built form controls for the centre, the panel report noted that Manningham City Council undertook research to achieve certain strategic outcomes. These strategic outcomes aimed to ensure:

- Consistency with the overall urban form
- No overshadowing of adjoining or nearby properties or public open spaces between 11.30am and 1.30pm on 22 March or 22 September
- No overshadowing of the south side of Doncaster Road between 11.30am and 1.30pm on 22 June
- Protection of the vista of the city skyline visible along Doncaster Road west
- Protection of the same vista from specific viewpoints along Williamsons Road

With these underpinning built form design principles, coupled with the strategic vision for Doncaster Hill, which was deemed to be in accordance with strategic directions at local and metropolitan levels, the panel supported the use of mandatory height controls within the centre.

"It is recognised that the Victorian Planning Provisions were designed as a broadly performance-based planning system with a minimum of mandatory controls. However, it is also a strategically-based system in which the controls must be justified by a sound and clearly expressed planning strategy. Within this system, it is reasonable to suggest that the sounder the strategy, the greater the justification for mandatory controls."

In this case, the controls are based not just on a comprehensive planning strategy, but also on a detailed analysis of alternative urban forms. The analysis examined both visual and amenity impacts, leading to development of building envelopes designed to maximise achievement of the strategy's objectives."



Doncaster Hill Major Activity Centre - image courtesy of Manningham Council

A changing development landscape

An understanding of development economics is important in understanding the factors influencing housing and commercial investment around metropolitan Melbourne.

An Analysis of the Viability of Residential Development in Activity Centres (Spade Consultants Pty Ltd) was undertaken in 2007 to assess development viability within activity centres. As part of the pilot program, a refresh of this study was undertaken – *Viability of High Density Residential Development in Activity Centres REFRESH* (Essential Economics, 2018).

The 2007 analysis noted that costs of construction for higher density development did not alter according to location, however a minimum median house to unit price ratio and threshold was required to ensure viability of development. At the time, this was only realistic in limited locations across metropolitan Melbourne.

The report also outlined the implication of additional costs associated with higher density development and the need to significantly increase height, to approximately 10 storeys, for the project to become viable. This was due to the significant increase in the cost of construction once a building exceeds three storeys due to building regulations. These include:

- Height allowances for construction workers which commence at around four levels
- Requirements for tower cranes beyond six levels
- Requirement for a material hoist.

An update of this study was undertaken as part of the pilot program to look at the modern context, consider changes in factors such as land prices, shifting demographics in activity centres, preferences regarding apartment living, and potential improvements to construction technology.

The 2018 revision has highlighted that:

- The general approach and methodology employed in the 2007 Report continues to provide relevant 'rule of thumb' benchmarks.
- The 2007 Report established that a median house price of around \$600,000 was required to support a viable high density residential market. In 2018 the figure has increased to approximately \$850,000.
- Across the Greater Melbourne area, a considerably greater geographical area is now commercially viable for higher density residential development than was the case in 2007. This was driven largely by increases in the underlying value of land and the larger increases in median house prices relative to the asking price of a standard new two bedroom apartment.
- The increase in the value of land has been greater than the increase in the cost of construction. The identified 'dead zone' of six to ten levels explored in the 2007 Report is now largely an issue confined to those activity centres located significantly further from Melbourne's CBD that are marginal prospects for higher density development.

The positive locational attributes of activity centres, coupled with increased house prices, has increased the demand for apartment construction across metropolitan Melbourne. Increased demand within activity centres places more scrutiny on the performance based measures, and underlines the need for contemporary and effective building height controls.



Commercial Viability of Development in Activity Centres

In 2007, higher density residential development was only considered to be commercially viable in key inner city locations where, given the underlying value of land, the asking price of a new apartment was substantially less than the median house price of the surrounding area. It was established that, typically, the asking price of an apartment needed to be no more than 75% of the median house price in the same area, and preferably lower at around 65%. As a rule of thumb, it was considered that a median house price of around \$600,000 was required to support a viable high density residential market.

These figures were indicative only, and it was noted that locational attributes of individual sites can have an impact on the accuracy of the rule. These locational attributes include:

- Proximity to key attractors such as entertainment precincts, educational or health facilities or popular retail and commercial strips

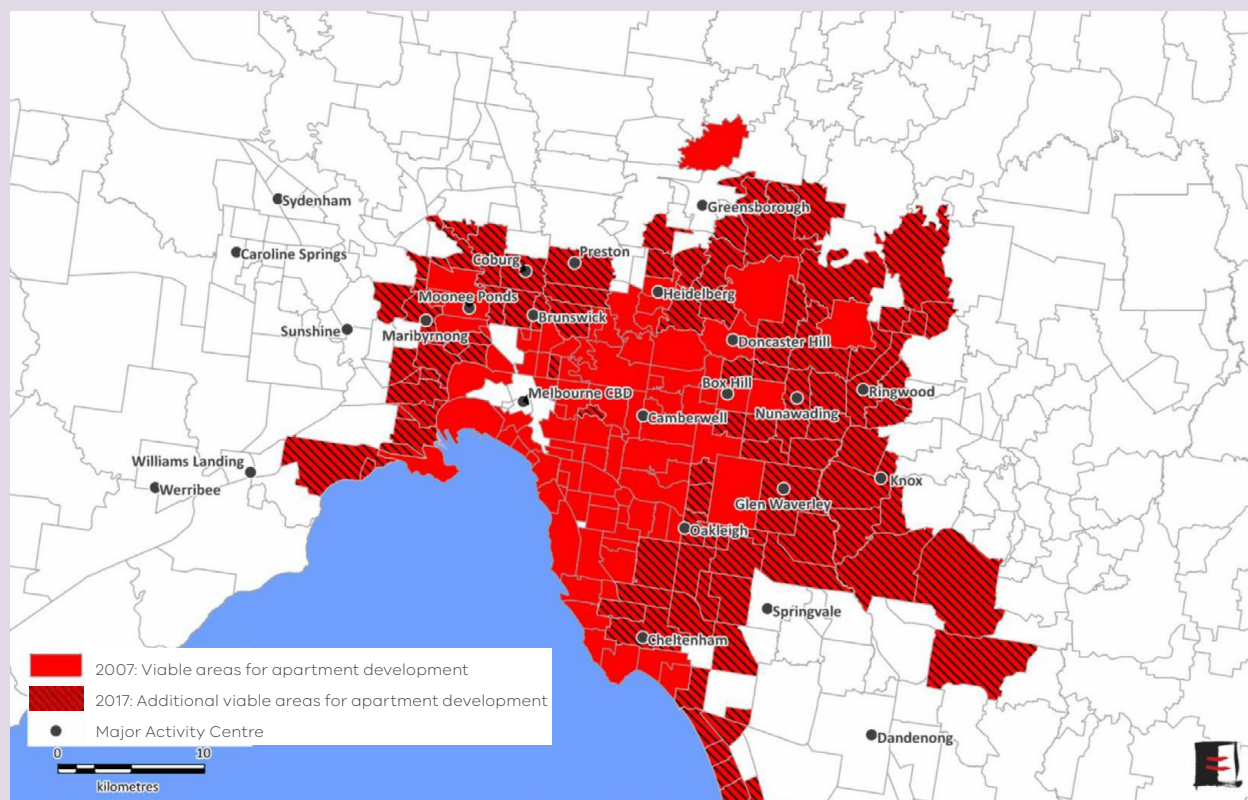
- Proximity to public transport infrastructure and access to key roads
- Proximity to water (beach and rivers) and popular parks or conservation areas
- Opportunity for a view

In 2018, the apartment market across metropolitan Melbourne has substantially matured. A median house price of around \$850,000 is now required to support a viable high density residential market. As illustrated in the map below, this encompasses a more expansive area of metropolitan Melbourne. The reason for this change is largely driven by increases to the underlying value of land, which has increased at a greater rate than the costs associated with higher density construction.

This increased commercial viability highlights the considerable pressure now being placed on activity centres to produce higher density forms of development.

Figure 3. Comparison of areas viable for apartment development based on median house prices (2007 to 2017).

Source: (Essential Economics & Valuer-General Victoria, 2018).



3. Key findings of the pilot program

Strategic work underpinning controls needs to be sound and current

Often planning controls are based upon underpinning strategic work that is no longer fit for purpose in the modern context.

Controls based on out-of-date strategic work that is not consistent with the strategic directions of *Plan Melbourne* are likely to be afforded less weight than contemporary controls based on modern research and analysis. Structure plans and underpinning strategic work need continual review to reduce the risk of being superseded by changing circumstances and having reduced significance in decision making. If performance measures become outdated or redundant, they risk being set aside by decision makers.

The review of VCAT cases demonstrated that, depending on the currency, clarity and quality of local strategic policy, greater weight can be given to broader State policy aspirations to meet population growth and to promote urban consolidation.

A council should also 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.

Any supporting structure plan or comprehensive built form analysis that informs building height controls should be reviewed every five years to broadly align with the census cycles and review of the metropolitan planning strategy.

Key Findings

- If local policy is outdated, greater weight is given to State policy in decision making.
- More clarity is needed on the level of strategic work required by councils as the basis for height controls to ensure it is consistent and less variable.
- Strategic work underpinning any proposed height controls needs to be based on a comprehensive built form analysis that is contemporary and no more than five years old.

Preferred maximum height controls are generally effective

There have been notable instances where development proposals have been approved that far exceed the stated preferred maximum height limit in the corresponding planning scheme. Although these instances have occurred, the extent of exceedances of preferred maximum controls needs to be evaluated.

In activity centres, building height controls have principally been administered through the application of 'preferred' height controls.

Preferred height controls (sometimes described as 'discretionary' heights) are performance-based provisions that allow for flexibility and variation. This means development applications are assessed on a case-by-case basis and heights expressed in planning controls can be exceeded.

The advantage of discretionary controls is that they offer a flexible approach that allows for the individual circumstances of a site to be considered. However, disadvantages of discretionary controls can include delays to resolve planning applications, additional costs and uncertainty for the community about the height and scale of development that may ultimately occur.

As part of the pilot program, the performance of preferred maximum height controls within activity centres was explored. This included investigations into nominated height controls in the planning scheme and development approvals within activity centres across metropolitan Melbourne, as well as a closer look at the operation of controls within the pilot centres.

Within the investigations, average approved development heights were lower than the highest stated preferred height nominated in the planning scheme.

There were exceedances above preferred maximum heights, however, the average approved development heights indicated these approvals were generally the exception and not the norm.

Following these investigations, it has been determined that preferred maximum heights are generally being adhered to within activity centres. This suggests that preferred maximum height controls provide a good basis for decision in areas of change, while also providing flexibility for development applications to respond to specific local context.

Key Findings

- Preferred maximum height controls are generally an effective tool for facilitating development and administering height in activity centres.
- The use of preferred maximum height controls should continue to be the preference for the application of height controls in activity centres.

Mandatory height controls do not necessarily inhibit development

Mandatory maximum building height controls have generally been used in activity centres in exceptional circumstances or where they are necessary to achieve preferred built form outcomes. Given their role in limiting development, there is a claim that mandatory controls stifle investment opportunities.

The perceived regular exceedance of discretionary heights by developers, and the purported favourable stance of VCAT to support such applications, has long been a point of contention for local councils and the community. There is a belief among some councils and the community that preferred heights create uncertainty and the option for using discretion in these decisions is being unacceptably applied.

When mandatory controls are in place, development cannot exceed the stated mandatory maximum heights. While this places a limit or cap on development potential, it improves certainty for developers and the community regarding allowable building height.

Doncaster Hill is a helpful example being a major activity centre that has had mandatory maximum height controls in operation for a substantial length of time. The considerable heights designated in the *Doncaster Hill Strategy* (Manningham City Council, 2002, revised 2004) could be regarded as visionary for the area and this precinct at the time of their introduction. Despite their mandatory nature, the controls have been effective in facilitating development and investment into the activity centre, guiding the introduction of significant higher density developments into the area (refer to Table 2).

When interim mandatory maximum height controls have been introduced through the pilot program, the pilot centres have continued to be considered investment opportunities with new development applications received in accordance with the new controls. Since interim mandatory maximum height controls were introduced in October 2017, Moonee Ponds has received four development applications, while Ivanhoe has received two since November 2017.

These cases demonstrate that, if height controls are set at the appropriate level, mandatory controls do not stifle investment or development opportunities. In addition, it demonstrates that certainty regarding height controls has positive benefits for the development industry. It removes an otherwise contestable aspect of the design, and reduces the need for a potentially lengthy and expensive review process.

Key Findings

- If set at appropriate levels that will deliver desired growth targets, mandatory controls do not necessarily inhibit development and can deliver clarity, certainty and consistency in outcomes.
- Applying a mix of mandatory maximum height controls (for areas of special character requiring certainty in building design responses) and preferred maximum height controls, could be a suitable option for many activity centres.



Widespread application of mandatory maximum height controls across activity centres could have detrimental consequences

There are potential consequences if mandatory maximum height controls were to be applied to activity centres in a widespread manner.

Activity centres, particularly of the major and metropolitan designation, play an important strategic role in accommodating housing growth and jobs and services. These policy aspirations need to be translated into appropriate height controls for activity centres to realise the strategic objectives and outcomes sought for metropolitan Melbourne. If this is not done effectively, potential consequences could impact on four factors as outlined below:

- **Policy and growth aspirations:** If not set at the appropriate level, mandatory controls could impinge on the objectives and aspirations of *Plan Melbourne* to facilitate long-term growth and improve housing choice in locations close to jobs and services.
- **Permanency of height controls:** Height controls and strategic planning policy need to be able to change to reflect shifts in the socio-economic conditions and growth levels over time. If mandatory maximum height controls are introduced into a planning scheme for an activity centre, they need to be revisited on a regular basis to ensure they continue to provide an appropriate response to the housing and commercial needs of the region in which they are located.
- **Impact on design:** Height is only one design aspect of a development. Other considerations, such as a building's interface to the street, may have a more tangible impact on amenity in the public realm. While mandatory heights may eliminate one aspect of development assessment, by making a proposal either compliant or non-compliant, there are still other important aspects that need to be considered. Compliance with height controls should not limit or lessen the importance of these other considerations.
- **Absorbing and diverting growth pressures:** Widespread application of unsuitably conservative mandatory maximum building height controls across a council's activity centres could potentially redirect development pressures to areas not appropriately planned or positioned to accommodate increased levels of growth. This may include some neighbourhood activity centres as well as discreet mixed use zones.

Key Findings

- Height controls must not encumber an activity 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 Victoria Planning Provisions.
- The application of mandatory height controls needs to be considered in a holistic way across a municipality and a blanket approach to application should be discouraged.
- Mandatory controls should only be applied when certainty in built form outcomes is necessary, and they are supported by strong strategic justification.

Consistent terminology to specify heights should be used

Different terminology and phrases are used in local planning schemes when prescribing preferred maximum or mandatory maximum height controls.

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

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

These terms should be used to ensure consistent language in planning schemes. 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, as they complicate interpretation of performance-based provisions.

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.

Key Findings

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



Development in the Ivanhoe Activity Centre. Source: DELWP.

Preferred heights are more commonly exceeded on larger sites

Larger sites with more capacity to accommodate density more often have larger divergences from preferred heights. This is due to a perceived ability to accommodate higher density development without negatively impacting on surrounding amenity. This is illustrated in Case Study 2 of Moonee Ponds below.

Although preferred height controls have generally been effective, there are still instances where development applications with more than the nominated preferred maximum heights have been approved. While divergences above preferred heights are not an issue in of itself (the controls are prescribed to be flexible), applications considerably above preferred heights can result in outcomes not aligned with the original intent of controls or expectations of the community.

In assessing whether a greater height of a proposed building is acceptable, the design will be assessed to determine if it provides a satisfactory response to the design objectives and identified built form outcomes contained within the relevant zone or overlay. If these considerations are not well articulated, larger sites can see larger divergences from preferred maximum heights.

The cost to purchase these larger sites, or purchasing many adjoining sites for consolidation, can represent a considerable sunk cost. Development proposals can be more opportunistic in nature to ensure a significant return on investment on initial land costs.

Furthermore, a development application that meets height limits has similar costs and risks than a

development application that exceed discretionary heights. Given this, there is a significant potential reward in pushing the boundaries and attempting to exceed discretionary height limits without incurring additional cost and/or risk.

These larger sites are also often designated as 'landmark', 'strategic', or 'gateway' sites within local strategic planning. Interpretation of these ambiguous designations can encourage and result in taller, more visually dominant proposals.

Larger sites, by their inherent size or location within an activity centre, may play a strategic role in fulfilling and implementing local and state policy objectives. Inevitably these sites will have different built form outcomes compared to smaller or more generic sites within a centre.

If the structure planning process identifies that a larger site is of strategic importance, the strategic objectives and role of the site should be clear including any performance requirements for built form, especially if these vary from the objectives for the remainder of the activity centre.

Key Findings

- Larger sites generally have larger divergences away from preferred maximum height controls.
- Built form controls for larger sites, and the associated objectives of the site, need to be carefully considered and articulated by councils when undertaking structure planning.
- Larger strategic development sites should be clearly defined within structure plans and if necessary, specific objectives or performance requirements should be noted for them.

CASE STUDY 2

Buildings Heights and Site Size in Moonee Ponds

Figure 4 illustrates the relationship between building heights and site size. The diagram demonstrate the larger sites are accommodating proportionally larger maximum building heights. This increase in site coverage is not consistent when site size and percentage site coverage are compared.

Figure 5 diagrams also demonstrates that high density built form outcomes don't necessarily result in taller buildings. This means that high density built form outcomes can also be achieved on smaller sites.

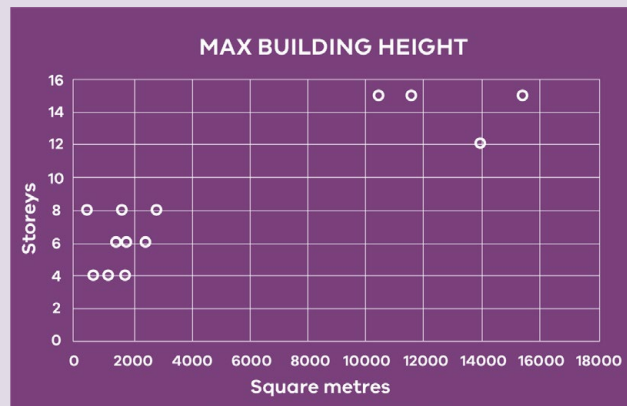


Figure 4. Relationship between building height (storeys, y-axis) and site size in Moonee Ponds.

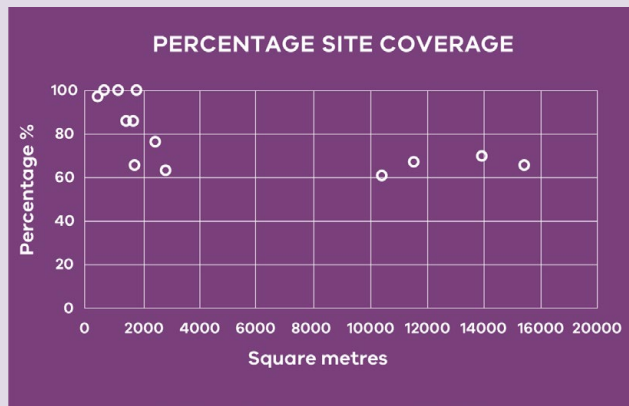


Figure 5. Relationship between percentage of site (y-axis) coverage and site size in Moonee Ponds.

Source: (Hodyl + Co, Moonee Valley City Council, 2018)

Precedents can be set by previous approvals

Although planning applications are assessed on their own individual merits, previous approvals can act as precedents in future decision making.

Development applications should be considered on their own merits. However surrounding built form context, approved but not yet constructed development, as well as the future envisioned urban form outlined in strategic planning, can be a factor in decision making.

These factors can be cited as a precedent to rationalise the approval of new developments, and can influence the acceptance of increased height, particularly if it is an area designated for change to accommodate higher developments.

Therefore, decisions to approve developments exceeding preferred maximum height controls are being made in anticipation of future built form as predicted for future State planning policy. This is magnified if performance measures within the planning scheme are not clearly articulated or are outdated or redundant.

In addition, instances where previous proposals have exceeded a preferred maximum height limit and gained approval can be seen to set a new 'benchmark' for development going forward, even if it is not aligned to the overall outcomes sought.

Key Findings

- Surrounding built form context, approved but not yet constructed development, as well as the future envisioned urban form, can be a factor in decision making.
- Previously approved proposals that exceed preferred heights can be seen to set a new 'benchmark' for acceptable height in a centre.

Consideration of off-site impacts can vary in decision making

Decision making in activity centres has placed variable weight on the need to minimise off-site impacts when assessing the merit of increased height.

The range of impacts that are considered relevant in the assessment process and the importance given to each, varies from case to case. If decision guidelines are not clearly defined consistency in decision making can be reduced.

If planning controls poorly define and articulate what are acceptable and unacceptable off site impacts associated with a proposal on the site, these factors will have a reduced ability to act as a limiting factor against increased height in decision making.

To ensure proper regard is afforded to off-site impacts, stronger and measurable definitions of the key amenity impacts should be prepared. Criteria for measuring off-site impacts should be tailored to the surrounding environments and local context to ensure that planning assessments account for particular features of the location. Key off-site impacts may include:

- Overshadowing
- Wind shear
- Blocking key views
- Visual amenity (overly prominent compared to existing built form character)

If off-site impacts are well defined it improves their importance in relation to decision making. It should not be expected that the extent of off-site impact allowed might be determined through the design process.

Given this, robust decision guidelines within planning schemes can more positively influence the assessment of development applications. When preferred heights are stated without guidance on acceptable offsite impacts, it is harder for responsible authorities to effectively negotiate preferred built form outcomes.

More holistic built form controls that consider podium heights, street setbacks, side and rear setbacks, overshadowing and wind impacts, and other strategic objectives (such as heritage considerations, existing view lines etc.) provide more guidance for decision makers when assessing development applications.

Key Findings

- **Stronger and more measurable definitions of key amenity impacts should be articulated in planning controls to ensure proper regard is given to them in decision making.**



Use of subjective terminology can lead to uncertainty in outcomes

Subjective language in planning schemes can lead to varying interpretations and uncertainty in outcomes.

Subjective and qualitative language to guide decision making has contributed to uncertainty in outcomes where discretionary heights are applied. Subjective terms can be confusing and are open to manipulation. For example, when it is designated that a proposal above a preferred height should achieve 'an exemplary built form outcome' or 'high standard of architecture', it leaves the planning scheme open to interpretation – particularly for a matter, such as design, which is inherently subjective. These considerations should not be a way to achieve a 'bonus' in height.

In addition, the use of descriptive terms to nominate particular sites, such as 'landmark' or 'gateway' or 'iconic' can also result in confusion over the strategic planning intent and objectives, particularly regarding impact on intended height. This can often result in a misinterpretation that these sites are exempt from the range of considerations that are applied to other sites within the centre.

VCAT cases have demonstrated that height can be viewed as a favourable aspect of design, particularly when assessed against planning schemes that denote, by way of example, 'landmark' or 'iconic' sites. Given this, proposals involving greater height are more likely to be accepted where the site has been nominated with a descriptive term.

In guiding developments that exceed preferred heights, the use of qualitative measures that rely on subjective assessment should be avoided. If a term cannot be measured in a non-subjective manner, then it is not a helpful tool to guide decision making.

If descriptive terms are to be included, clear guidance should be provided on what the intended objectives or outcomes for the site are. For example, if the strategic intent for a 'landmark' site is to contain a built form outcome that is clearly visible from a wider area, then this should be specified.

Key Findings

- **Avoid the use of subjective and contentious terms to describe sites within activity centres.**
- **Design excellence should not be a basis for exceeding preferred heights. Terms in planning controls, such as 'architectural excellence' are unhelpful as a determining factor for height.**



Floor area ratios can guide preferred built form outcomes in activity centres

Floor area ratios are a built form tool that could be used to guide preferred development. They have not been applied in the activity centre context to date.

Floor area ratios are defined as the ratio of a development's total floor area in relation to the size of the piece of land it is being built on. A floor area ratio is calculated by dividing the total floor area built on a site by the total site area depicted as 'total floor area of a building' divided by 'gross developable site areas'.

This approach is well established in other jurisdictions and was pioneered by DELWP and the City of Melbourne for the central city (Amendment C270 to the Melbourne Planning Scheme).

Floor area ratios guide the total amount of floor area that can be developed, it does not directly dictate how a new development should be designed as it is possible to create a variety of building heights and layouts within a set ratio.

The coupling of floor area ratios and height controls is an approach that can allow flexibility in design while also nominating acceptable building heights. It can allow flexibility in a design response to respond to local context while also applying a level of control over development scale. It ensures that no site has an uncapped development potential.

The tool is appropriate for activity centres that have a large variety in site sizes, as the ratio adapts depending on the size of the site to which it is applied.

Key Findings

- Floor area ratios are a flexible built form control that could be appropriate for activity centres that contain a variety of site sizes.
- Floor area ratios can be combined with height controls to provide flexibility for site design responses, while also articulating development limits.



Requirements for public benefits need to be unambiguous

Public benefits are often sought by councils in exchange for developments that exceed preferred maximum heights. However, there is no clear model on how to apply this approach.

Preferred height provides an opportunity to deliver public benefits, however, this must be under strict articulated criteria. Value uplift should not be associated with 'excellence in design' or amenity considerations which must be delivered in all circumstances.

Requirements should be included in the controls that directly relate additional height to the provision of a specified benefit that supports the design objectives of the overlay. By providing a direct link between height and an additional benefit, a flexible approach is still maintained, while providing clarity regarding outcomes sought.

A more complex model allows the delivery of public benefit in exchange for a floor area uplift greater than otherwise permissible. Melbourne C270 provides an example of this sort of mechanism in the context of the central city, using floor area ratio bonuses to given incentives to adding public benefits. If this approach is adopted, proposed public benefits need to be strategically justified.

More substantial strategic justification is required to establish an appropriate set of public benefits accompanied by a pertinent formula to define what represents a 'commensurate' benefit for each case. This approach has only been applied within the central city (as implemented through C270) and is perhaps only feasible in similarly intensive areas of change such as metropolitan activity centres, higher order major activity centres or urban renewal areas.

Key Findings

- If any public benefits are proposed, they need to be matched to specific local needs identified in planning policy and consulted on during the strategic planning process.



The Johnston Street Activity Centre. Source: DELWP.

Allowances should be made for sloping sites

Clarification is required on how height controls in activity centres apply to sloped sites.

Sloped sites in activity centres pose challenges as built form needs to respond to changes in natural ground level.

The ordinary definition of building height used across Victoria refers to the vertical distance of the building height above natural ground level at any point within the site, as set out at Clause 73.01 of the *Victoria Planning Provisions*. This approach should be applied for sloping sites located within activity centres.

To respond to increased difficulty associated with development on sloped sites, an additional allowance should be provided to proposed developments. It is common practice for an additional allowance of up to one metre to be provided on a site if the slope of the natural ground level, measured at any cross section of the site of the building is wider than eight metres and is greater than 2.5 degrees.

The provision of an extra metre is provided to grant steeper sites with some flexibility on height limits. This approach will ensure that the built form responds to the underlying landform. If a slope moves downwards from its interface to the street, this will result in a stepping down of built form.

This approach also promotes better urban design and amenity outcomes. The stepping of built form encourages closer adjacency between the ground floor level and the surrounding land which increases activation and visual connection at the street interface. It also ensures that the skyline view of a building's silhouette is more vertical in expression, and less dominantly horizontal.

This approach is also consistent with provisions for sloped sites in the residential zones.

Key Findings

- Approaches for height controls on sloping sites in activity centres should be applied in a consistent manner.



Burke Road, Camberwell. Source: DELWP.

4. Implementing the findings of the pilot program

Using the findings of the pilot program, there is an opportunity to provide greater clarity and State level guidance on the breadth and quality of strategic work required to underpin building height controls in activity centres.

To support this, revisions should be made to Planning Practice Notes 58, 59 and 60 to provide guidance in relation to height controls in activity centres.

Revisions to Planning Practice Note 60

The purpose of *Planning Practice Note 60: Height and Setback Controls for Activity Centres* is to provide guidance on the application of height and setback controls in activity centres.

The findings of the pilot program make no change to the preferred approach regarding height and setback controls in activity centres. That is, discretionary controls, combined with clear design objectives continue to be the preferred form of height and setback controls.

Planning Practice Note 60 details that mandatory height and setback controls will only be considered in 'exceptional circumstances', where they are absolutely necessary to achieve the built form objectives or outcomes identified within a comprehensive built form analysis. 'Exceptional circumstances' include sensitive coastal environments, significant landscape precincts, significant heritage places, recognised sites of State significance, and helicopter and aeroplane flight paths.

Based on the findings from the pilot program, there is an opportunity to revise *Planning Practice Note 60* to outline instances, in addition to the identified exceptional circumstances, where mandatory building height controls can be considered in activity centres subject to the fulfilment of clear criteria.

Councils should have an ability to seek greater certainty through the application of mandatory height controls where they have undertaken contemporary and robust strategic work, subject to significant consultation with allowance for growth and change consistent with state policy.

Planning Practice Note 60 should be updated to include greater guidance and detail with the following considerations made when determining appropriate height controls in activity centres:

- **Compliance with State policy:** Built form controls in an activity centre need to appropriately reflect the role of the centre in the metropolitan context. This includes facilitating built form at a level that is strategically aligned with the objectives and aspirations of State planning policy, namely *Plan Melbourne*, and the future Land Use Framework Plans being developed (Action 1 of *Plan Melbourne's Five-year Implementation Plan*).

Built form controls need to suitably align with a centre's given designation – neighbourhood activity centre, major activity centre or metropolitan activity centre. Higher order activity centres are expected to play a more significant regional or subregional role in regards to accommodating growth when compared to neighbourhood activity centres which have a more limited local role.

- **Whole of municipal picture:** In undertaking strategic planning, councils should articulate a vision that demonstrates how growth will be accommodated across their municipality, and how each activity centre will facilitate achievement of the vision.

This may involve detailing, if appropriate, the specialist role that a centre may have within the municipality or even regionally e.g. agglomeration of retail floorspace or educational facilities. If an activity centre is able to inherently accommodate more or less growth, by virtue of its local characteristics, this should be articulated in local policy.

These growth considerations should be articulated in a capacity study that illustrates how proposed built form controls will respond to population, housing and jobs growth challenges.

- **Ability to accommodate growth:** The inherent characteristics of an activity will influence its ability to accommodate growth and different forms of development. For instance, finer grain 'strip shopping' centres will have a different capacity when compared to 'stand alone' centres because of its innate characteristics. Therefore, factors such as location, existing land uses, typology and terrain, and lot sizes should all be considered when considering a centre's growth capacity.

Centres that are well positioned to accommodate a higher level of growth will require a stronger level of strategic analysis and rigor in the justification of mandatory controls.

- **Currency of strategic work:** Contemporary strategic work and analysis must underpin the development of building height controls. It is important that activity centre planning is supported by research and analysis that is regularly reviewed and updated as an activity centre and municipality progresses over time.

As a minimum, a general review should be undertaken every five years to account for updated census data and any revisions to the metropolitan planning strategy. Over the longer term, it is recommended that a more comprehensive review be taken. This more comprehensive review should include a review of any built form controls to ensure they still allow for an appropriate level of change.

If mandatory controls are supported and therefore introduced into a planning scheme, an expiry time limit may need to be considered. This would ensure a full review of the activity centre's role in the broader network and its ability to accommodate an appropriate level of growth is undertaken.

Given the substantial amount of a time and investment it takes to undertake strategic planning for activity centres, in instances where a time limit may be put in place, it should be for 15 years. When this time limit is reached the mandatory provisions would automatically transition to discretionary provisions unless the supporting structure plan and controls are fully reviewed and updated through a planning scheme amendment process.

This approach would ensure that building height controls are regularly reviewed and appropriately reflect the socio-economic context at the time. The scope of a required review will be dependent on the operation of the controls in the modern context and their perceived continued relevance.

The above considerations should not be a checklist of items that will result in the introduction of mandatory height controls if completed. Rather, if mandatory controls are to be appropriately justified, the above considerations need to be addressed in high quality strategic work that ultimately aligns with the expectations and aspirations of *Plan Melbourne*.

Revisions to Planning Practice Notes 58 and 59

Planning Practice Note 58: Structure Planning for Activity Centres, provides guidance to councils on the Activity Centres structure planning process. It covers the reasons for structure planning in Activity Centres, the policy context and possible inputs and outputs in the process.

Planning Practice Note 59: The Role of Mandatory Provision in Planning Schemes, sets out criteria that can be used to decide whether mandatory provisions may be appropriate. It can be used to inform application of controls in a range of circumstances including areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast.

Minor changes should be made to these practice notes to ensure that they continue to align with the revisions made to Planning Practice Note 60.

5. Abbreviations and acronyms

The Act	<i>The Planning and Environment Act 1987</i>
DELWP	Department of Environment, Land, Water and Planning
DDO	Design and Development Overlay
Plan Melbourne	Plan Melbourne 2017-2050
PPN	Planning Practice Note
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions



