Measurable criteria to assess development applications exceeding preferred heights Analysis and Recommendations



Prepared by MGS Architects August 2018

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Description

Measurable criteria to assess development applications exceeding preferred heights: Analysis and Recommendations

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Client

Department of Environment, Land, Water and Planning

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Introduction

Planning Schemes in Victoria are premised on a performancebased approach to planning, allowing discretion as to how specified objectives are achieved. The underlying principle of a performance-based scheme is to "accommodate variation, innovation, unforeseen uses and development or circumstances peculiar to a particular application to produce results beneficial to the community" (PPN59). As a result, development control in Victoria is generally a matter of assessing applications on a case-by-case basis against objectives and performance-based outcomes rather than mandatory requirements.

Mandatory controls for building heights have typically been used by exception rather than as a norm in the Victorian planning system. As set out in Practice Note 59, mandatory controls have only been encouraged where there are unusually strong heritage, character or environmental considerations. In these locations mandatory controls can be used to provide more clarity where discretionary controls are insufficient to deliver a preferred outcome.

Applying a performance-based approach to the consideration of building heights has led to many examples where approved heights greatly exceed the discretionary heights in the planning scheme. The lack of certainty around outcomes has in some cases eroded community trust in the planning process.

In June 2018, MGS Architects was engaged by the Department of Environment Land, Water, and Planning (DELWP) to identify and test potential responses to the issue of controlling heights that exceed discretionary limits. DELWP has requested criteria that will deliver "more certainty and less subjectivity" in development assessment. The two main questions are as follows:

- What type of considerations should be accepted for applications above preferred heights?
- How could they be measured / quantified in the planning scheme so they can be assessed in a non-subjective manner?

These questions will be addressed through the three sections of this report. Firstly we provide an analysis of recent development approval case studies where approved heights exceeded discretionary limits. These have been selected to illustrate the range of issues considered during the planning process. The second section provides a range of potential conceptual approaches to limit on the extent of discretion for assessing heights, with the aim of reducing the extent of exceedance of discretionary height limits. The final section provides recommendations on potential controls that could form part of a toolkit adaptable to different contexts across Melbourne.



Case studies

This section consists of an analysis of six different cases where height formed a central matter of dispute in the planning assessment process.

The cases were selected by MGS in consultation with DELWP against the following criteria:

- The approved height for the planning application should demonstrably exceed the preferred height identified for the location.
- Located within or immediately abutting an activity centre, preferably where there is strategic guidance from a structure plan. The land should preferably be zoned for commercial or mixed use.
- The project should be recent, examined at VCAT from 2010 onwards and preferably constructed or currently under construction.

The selection highlights a range of locations across Melbourne, with different contexts and issues under consideration. The cases demonstrate a mix of both good and bad outcomes for the local area.



3-39 & 2-10 Nelson Place & 16-20 Kanowna Street, Williamstown

Former Port Phillip Woollen Mills site



Status

Under construction

Approved height

30m (+4m lift overrun) / 10 storeys

Preferred height

25m

Activity Centre

1.5km from the centre of the Ferguson Street Activity Centre

Relevant planning controls

MUZ/DDO11/HO8

VCAT

NP Development Pty Ltd v Hobsons Bay CC & Ors (Including Summary) (Red Dot) [2014] VCAT 861

Outcome

The decision of the Responsible Authority was set aside with a permit granted with conditions.

Key Lessons

 Atypical use of the term 'indicative' height; concluded that the term should be read in the context of the planning provision in which it is found. This caused some confusion for some nearby members of the general public.



DDO11 made reference to 'indicative' heights rather than maximum height (later changed by C105). This unusual language led the Tribunal to assess height against DDO11 design objectives, response to context and the built form outcomes. The project rectified contamination and delivered laneways, though this was not directly considered in relation to the height.

The former Port Phillip Woollen Mills (PPWM) had long been identified as a key strategic site for significant residential development, culminating in the rezoning of the land to Mixed Use Zone and the application of a DDO (DDO11). The applicant sought approval to demolish a building within a heritage overlay alongside a major hazard facility and construct multiple dwellings in the form of apartments and townhouses.

Alongside matters relating to its location opposite a Major Hazard Facility, the demolition of the Nugget Factory and potential adverse impacts upon neighbouring heritage built form, a key consideration for the tribunal was the reference to an 'indicative' height of 25 metres in the DDO11 provisions. It was stated within that "buildings should be constructed generally in accordance with the indicative building heights specified in the Table to this schedule". The unusual use of the term 'indicative' in contrast to more commonly used terms of 'preferred' or 'maximum' had resulted in debate with regard to its meaning and force. The Tribunal also made mention of the fact that the DDO11 also identified specific a area as 'Advisory Area', in which 'maximum' heights were specified.





Former PPWM site. Image: AV Jennings

Approved proposal. Images: AV Jennings

On this basis of this difference, VCAT observed that:

"Indicative heights expressed in DDO11 are just that, indicative or suggestive, and can be more or less. There is discretion to allow buildings that are taller than the 'indicative building height'."

By establishing that indicative heights were in effect discretionary, VCAT determined that whether the greater height of the proposed building is acceptable should be considered in relation to a satisfactory response to the design objectives and 'built form outcomes' contained within DDO11.

The Tribunal noted that the provisions of DDO11 had clearly envisaged a high degree a change in built form on this site in the form of higher density urban renewal at increased heights and scale. In considering this strategic context, the greater height of the proposed development was found to be acceptable having regard of the DDO11 design objectives.

It is notable that the proposal delivered a range of what can be considered public benefits but that in this case the benefit was not directly incentivised or facilitated by the provision of extra height. The proposal delivers a more permeable site compared to the large factory site that preceded it through the provision of publicly accessible laneways. The applicant also rectified contamination issues that affected the site.

'Indicative' height

This case study establishes that a reference to an 'indicative' height would allow discretion for taller buildings to be considered on a case-by-case basis. The matter of discretion of whether the height of a proposal is acceptable would then require consideration of the decision guidelines contained in the relevant planning provision in which the word 'indicative' height is found within. VCAT stated the following:

"That is not to say that any increase above the 'indicative building height' will be acceptable. A judgement call needs to be made in each case. In this case, having regard to the relevant matters to be taken into account, we find the proposal to accord with the indicative height set out in DDO11."

Part of the negative response towards the project from parts of the local community was caused by the confusion of intent in the strategic planning policy. The wording of DDO11 was subsequently changed to clarify that the intended control should be mandatory, however this occurred after the planning permit was granted by VCAT.

2-16 Northumberland Street, Collingwood



Status

Approved

Approved height

6 / 13 storeys (48m approximately)

Preferred height

No preferred heights stated explicitly, rather a performance based outcome is specified: "Development above 4 storeys should demonstrate a high standard of architectural design and minimise overshadowing of adjoining streets, public spaces or private properties"

Activity Centre

Smith Street Major Activity Centre

Relevant planning controls

C2Z / DDO2 / DDO11

VCAT

Grocon (Northumberland St) Developer Pty Ltd v Yarra CC [2017] VCAT 753

Outcome

LGA officers recommended permit be granted (with no conditions requiring deletion of levels). Council granted with condition requiring deletion of three levels. VCAT set aside decision of the Responsible Authority with a permit granted with conditions.

Key Lessons

- Lack of strategic justification in condition requiring the deletion of three levels in absence of preferred maximum height and assessment criteria relating to heights.
- Height controls, particularly if they are performance based, need continual review to avoid the risk of being superseded by changing circumstances.



The height of the proposal was justified partially by the delivery of "high quality architecture", including contribution to heritage, permeability and the public realm.

The proposal sought to develop the land for the construction of buildings of six and 13 storeys accommodating offices, a café and associated car parking – a commercial development in an area identified as a key employment precinct in the City of Yarra. This case represents a less common situation where the proposed use was strongly strategically supported in an area otherwise at risk of losing jobs due to residential development, however the planning control that was drafted to support commercial built form was unreasonable. The DDO requirement to avoid overshadowing was intended to reduce heights and thus encourage commercial uses by disincentivising larger residential development. Over the time since its adoption the preferred built form for commercial uses has changed, meaning that the DDO inadvertently acted against its original intent.

Council's planning officers assessing the proposal had prepared a comprehensive report recommending that the Council grant a permit subject to conditions, none of which required a reduction in the overall building height. In adopting this recommendation Council inserted an additional condition requiring the deletion of three levels, bringing the number of storeys from 13 to 10 storeys. The consequence of the loss of 3 levels would mean that the main commercial tenant wouldn't fit into the building. As a result, the applicant had requested VCAT to review the decision of council with the height of the proposed main tower at 13 storeys forming the central matter of dispute. The applicable planning provision (DDO11) outlined a preferred future character of which the following are relevant to height:

"A consistent streetscape with active street-frontages and well articulated buildings with street façades built to a height of up to 3-4 storeys. Taller built form will be set back from property boundaries and spaced to create new interest and variety in building forms."

With regards to 'taller built form', DDO11 stated that "developments above four storeys should: demonstrate a high standard of architectural design; minimise overshadowing of adjoining streets, public spaces or private properties." The site's location in an area acknowledged in the scheme as transforming from a low-rise context into 'pockets of higher development', alongside the council's acceptance for a 10 storey building, provided strategic justification for such taller built form to be considered. The emergence of existing and approved taller multilevel developments the opposite side of Wellington Street also provided further justification for the proposed height.

In part this line of reasoning provided confirmation of Council's fear that any approval of increased height in this location would subsequently be used as a precedent for future applications. This would progressively ratchet up the acceptable height for the precinct.

In the absence of a preferred maximum height requirement, the matter for determination at VCAT was whether the proposal demonstrated a 'high standard of architectural design' and that overshadowing on adjoining streets, public spaces and private properties was acceptably minimised.

The site's constrained context in a narrow street of meant that overshadowing was considered to be unavoidable, particularly on the eastern footpath where overshadowing already occurred in the morning from existing buildings. On the western footpath, VCAT found that the level of overshadowing resulting from the proposed built form was minimised by a setback from Wellington Street – on the basis of overshadowing, the tribunal found that reductions in height were not justified.

The tribunal was persuaded that the proposal demonstrated a high standard of architecture. The tribunal noted the contributions made by transitions between buildings, the composition of two buildings, building separation and the provision of a public pedestrian thoroughfare.



Images: JWA

Absence of preferred heights

The council's condition requiring the deletion of three levels was found to lack sound strategic justification and the proposal was determined to have met the criteria contained in the DDO11 provisions. With specific regard to height, the Tribunal cited the site's strategic context as an area undergoing change to higher developments in the MSS, emergent taller forms and deemed the height variance between the proposed office tower and the nearby tallest building (Yorkshire Brewery) to be of a magnitude that would not result in a discordant outcome in relation to the broader built form.

This case demonstrates the challenges of a purely performance-based control where there is no explicit height limit and the adopted performance measure acts against the overall land use objective for the precinct. If the performance measure becomes outdated or redundant and is set aside there will be little restriction on progressively increased heights being approved with reference to earlier approved precedent.

677-679 Victoria Street, Abbotsford

Honeywell site



Status

Constructed

Approved height

11 storeys (38m)

Preferred height

28m / 9 storeys used in VCAT case as preferred maximum, with following details:

- 10m maximum for 0-5m from MMSL (mandatory minimum setback line from the Yarra River).
- 18m maximum for 5-15m from MMSL.
- 18m discretionary beyond 15m from MMSL

Activity Centre

Victoria Street Major Activity Centre

Relevant planning controls

B5Z / DDO2 / DDO4

VCAT

Colquhoun & Ors v Yarra CC [2010] VCAT 1710

Outcome

LGA supported the proposal but was taken to VCAT by Boroondara and other objectors.

Key Lessons

 A mechanism for allowing increased height in exchange for the delivery of public benefit was integrated into the DDO schedule, providing clarity and incentivising a higher quality outcome.



Image: Domain

Generally, the proposed height was deemed acceptable for a strategic redevelopment site context and no justification was found by VCAT to reduce heights as sought by objectors. The project delivered additional setbacks from the river, new connections and improved landscape. These benefits were negotiated with the City of Yarra (which supported the proposal).

The development was a substantial mixed-used project consisting of predominately residential dwellings with commercial components constructed over multiple stages consisting of three buildings of varying heights, of all which exceed the preferred heights stated in the respective DDO provisions. The tallest building, at 38 storeys (11 storeys), exceeded the preferred height by 10m / 3 storeys.

The design objectives of DDO4 note the importance of providing a transition in scale between commercial and industrial development and nearby low rise residential development. Alongside this point the objectives also refer to the importance of providing a publicly accessible riverside open space and an improved riverside pathway system. More specifically, the DDO includes the following pivotal requirement (reproduced in part):

The desirable minimum building setback is 20 metres from the crest line at ground level and greater setbacks are encouraged. For developments providing setbacks of 20 metres or more, building heights exceeding the height/setback ratio set out above may be permitted subject to the following:

 The area of the building setback should be developed as an appropriately landscaped open space complementing the River corridor and with universal public access.



Image: Jellis Craig

 Any additional building volume above the typical height/ setback ratio should not exceed the usable building volume which could have been created within the setback area beyond the 10 metre absolute minimum.

The effect of this requirement is to directly relate additional height to the provision of a benefit that supports the design objectives of the overlay. Additional height provides for the delivery of increased landscape provision in the river corridor.

The applicant for this project took up this opportunity and increased the building setback from the river. The project also delivered two new pedestrian linkages from Victoria Street to the Yarra River, of which the main one would be publicly accessible and the smaller partially private and public. These links were agreed by Council and the developers as a negotiated exchange of development potential between portions of the site, effectively relocating development potential as additional height at the top of the building.

Council ultimately supported the planning application and granted a permit. The matter was bought to VCAT by a group of objectors including the Boroondara City Council who requested for the tribunal to review the notice of decision and sought a 'moderation' in the height, scale and mass of the proposed development.

The tribunal ultimately accepted the interpretation of Council in applying the DDO requirements to the assessment of the proposed development. The logic of allowing for a controlled amount of additional height in exchange for additional setbacks and the provision of a ground level pedestrian link was supported by the tribunal.

Negotiated benefits and drafting of DDO

This case demonstrates an example of how the height and built form outcomes of the planning process can be controlled without imposing mandatory height limits. In this case the structure of the DDO allowed for both the clear definition of preferred heights and a mechanism to control the extent of discretion in exceeding this height. The flexibility built into this planning approach incentivised the delivery of a public benefit while providing clarity for all parties.

The secondary benefit of this approach was the transparency of the negotiation between Council and the applicant. The direct link between height and public benefit meant that the planning assessment was more straightforward and provided a robust basis for Council's decision to grant a permit.

241 & 257 Toorak Road & 625 Chapel Street, South Yarra

Former Fun Factory site



*Note: no explicit height limit applies to this site. This percentage represents the difference between the approved height and the highest approved nearby development.

Status

Under construction

Approved height

190m / 57 storeys

Preferred height

None explicitly specified

Activity Centre

Prahran South Yarra Principal Activity Centre

Planning controls

C1Z/DDO8

VCAT

Capitol South Yarra Pty Ltd v Stonnington CC [2015] VCAT 908

Outcome

The decision of the Responsible Authority was set aside with a permit granted with conditions.

Key Lessons

- The absence of a preferred maximum height meant that terms such as "landmark" and "iconic podium-tower development" in DD08 became the relevant consideration for decision makers.
- Expanded capital city context used as strategic justification, outweighing the impacts on the local context.
- The combination of the above points led to a very tall, out of context building.



Former Fun Factory site. Image: Herald Sun

In the absence of height controls, VCAT determined that proper assessment must be undertaken with regard to the design objectives contained within the DDO8, which specified that the site to "accommodate an iconic podium-tower development".

The absence of a preferred height limit for the subject site was influenced by the earlier interpretation of the C58 Planning Panel reviewing the DDO8 schedule. The Forrest Hill Structure Plan identified a preferred height for the subject site (97.5m) but in reviewing this figure, the Panel recommended that no limit should be placed on the site. Their position was that an appropriate response should be assessed against the design objectives at the time of a planning assessment.

The design objectives set out in DDO8 pertaining to this particular site include the following points relevant to height:

- To reinforce the primary gateway significance of the Fun Factory site to the Forrest Hill Precinct and Prahran South Yarra Principal Activity Centre. [emphasis added]
- To accommodate an *iconic* podium-tower development. [emphasis added]
- To avoid an **overbearing** presence on Toorak Road, Chapel Street and the Forrest Hill Precinct.

The history of this site is complex, involving multiple applications over many years, each of which involved an increased height for the proposed development. In the final instance of this sequence of applications, Council refused to grant a permit for the proposed development due to its excessive height, insufficient setbacks and excessive overshadowing of the private and public realm.



Approved proposal. Image: Bates Smart

Unsurprisingly, during a review of Council's decision VCAT did not find any definitive height control in the DDO8 provisions. The tribunal determined that proper assessment of the proposal needed be undertaken in relation to the DDO8 design objectives. The tribunal supported the submissions of multiple expert witnesses that attested to the iconic and highly prominent nature of the design response. The tribunal concluded that the "iconic, slender, sculptured building" would be an "architectural landmark", setting aside Council's decision and granting a permit.

During the long history of assessing proposals for the subject site, almost no consideration was given of the public benefits delivered by the proposal or required to support the magnitude of height in consideration for the site. There was no discussion of potential community facilities, public space links or contributions to housing affordability, for example. There was some consideration of offsite impacts but this was limited to overshadowing and traffic generation. Both impacts were substantial but this was weighed against the call for an iconic architectural design response.

The justification for height was established through the importance of the precinct within metropolitan plans such as Plan Melbourne and the landmark quality of this particular site. It is unclear if this would result in any meaningful limit to the height permissible in this location, since each increase in height only increases the landmark quality of the proposal.

Expanded capital city context

This case raises the issue of whether the absence of preferred maximum heights had led to an increased level of discretion at VCAT. This was noted where the tribunal had considered the height of the building within a greater breadth of context, taking into account the aspirations of Plan Melbourne for an expanded central city in its determination. VCAT had taken into consideration arguments put forth on behalf of the proponent that the proposal was not dissimilar to the Eureka Tower and Railto Towers, as taller forms amongst other buildings, concluding the following:

"This in our view will reinforce the gateway significance of the Prahran South Yarra Activity Centre, as well as the Forrest Hill Precinct as an 'urban renewal precinct'."

233-1237 Nepean Highway and 60-64 Matthieson Street, Highett

50%



Status

Registration and sales

Approved height

45m (RL83-84) / 14 storeys

Preferred height

8 storeys (RL70) with reference document accompanying DDO21 assuming a commercial development with 3.7m floor-to-floor heights

Activity Centre

Southland Principal Activity Centre

Planning controls

MUZ / DDO21

VCAT

Golden Asset Highett Pty Ltd v Kingston CC [2017] VCAT 921

Outcome

Kingston City Council had failed to grant a permit within the prescribed time and opposed a permit being issued. On VCAT review a permit was granted with conditions requiring the deletion of two levels from the eastern tower to ensure an appropriate transition to lower scale residential interface.

Key Lessons

- The rationale for the heights specified in reference documents was weakly addressed in the DDO provisions.
- The mismatch between the heights in metres and the preferred number of storeys required interpretation.
- "Gateway", "landmark", "corner" provided discretion to consider buildings of greater height while "transition" ensured that the lower intended height towards the residential interface was respected.



View of the proposed development from Nepean Highway

The relevant DDO control sets a preferred height of 8 levels for the subject site. However the reference document cited in DDO21 assumed commercial floor-to-floor heights, equating to a 10-11 storey residential building. On review, VCAT considered that the off-site impacts of the development were minimised by the highway interface, though VCAT set out conditions to further transition down to sensitive residential interfaces.

The proposal sought to develop the land for a mixed-use development comprising of two towers of 8 and 12-14 storeys. The council would have refused a permit on the basis that the height exceeded the preferred heights contained within DDO21 provisions, which contained the following heights specific to the site:

Buildings and works should not exceed a maximum height of:

- 8 storeys to the Nepean Highway and Karen Street corner.
- 3 storeys to Matthieson Street frontage and boundary with adjoining properties at 1227-1229 Nepean Highway and 58 Matthieson Street.

In addition to a maximum height, DDO21 contained general requirements for the building design to encourage higher built form elements on the site to create the presence of a "landmark" building to Nepean Highway with appropriate transitions to residential interfaces.



View from adjacent suburban streets, showing the transition towards residential areas to the north (sourced from VCAT Evidence)

One matter of dispute considered at VCAT concerned the application and effective force of the height limits expressed in metres in the reference document (RL70) as they differed from the DDO21 provisions in addition to being stated as "indicative" within the reference document. The Tribunal determined that these heights should be considered a preferred height limit. In addition, the reference document had assumed a commercial building on site of eight storeys, with higher floor-to-floor heights, and would equate to a residential building of 10 to 11 storeys. The site's status as a 'gateway' within the activity centre and location near the new Southland station, in consideration with the directions of *Plan Melbourne* to deliver more housing close to jobs and public transport, were cited as supporting grounds for the height.

In summary, the Tribunal found the proposed height at the Nepean Highway interface to be acceptable having regard to its physical and strategic context, though it set out conditions requiring the deletion of two levels at its northern residential interface to ensure an acceptable transition down to adjoining residences.

This is a notable finding, since it is not the highest portion of the proposed development that required changes in the Tribunal's view to acceptably meet the requirements of DDO21. The absolute height of the proposal was acceptable, however the height transition to adjoining residential areas was found to be insufficient.

Heights specified in reference documents

This case highlighted the importance of ensuring that the rationale for heights specified in supporting reference documents be clearly communicated in the DDO provisions. In this case the particular logic of floor to floor heights intended to allow for commercial development was lost when translated to a simple measurement in the DDO schedule.

This case also highlights the importance of clarifying the reasons for applying differing heights across a given site. The use of the term 'transition' assisted the Tribunal in interpreting the different roles of height towards the less sensitive southern interface, where the form could act as a "landmark gateway", from the height oriented towards the more sensitive northern interface.

A more stringently enforced maximum height may not deliver a better outcome here, since it is the height in the transition area that was in question rather than the less contentious peak of the tower towards the south.

1 Ascot Vale Road, Flemington



Status

Constructed

Approved height

65m / 21 storeys

Preferred height

"Iconic building of high architectural quality, 10 to 14 storeys in height, is encouraged" (Draft Racehorse Road Activity Centre Structure Plan, April 2010)

Activity Centre

Racecourse Road Activity Centre

Planning controls

GR1Z

VCAT

Flemington Development Pty Ltd v Moonee Valley CC [2010] VCAT 1760

Outcome

LGA failed to grant within time prescribed α would have refused. Permit granted with conditions.

Key Lessons

- The poorly defined role of off-site impacts reduced the ability to use these as a limiting factor on height.
- Architectural excellence was not useful as a determining factor.



Image: Nelson Alexander

VCAT formed the view that the proposal represented a high standard of architecture with no unreasonable off-site amenity impact, and that height is considered in relation to an anticipated 'level of change' in the local area.

The proposal sought to develop the land for a 21 storey mixed use development compromising of dwellings, serviced apartments, home offices and retail premises. This height was in excess of the outcome identified in the strategic planning process for the site, albeit lower than previous proposals for the site (which ranged up to 27 storeys).

The location on a triangular-shaped lot the corner of Ascot Vale Road and Epsom Road in Flemington was acknowledged by Council as having the attributes of a strategic development site within the Racecourse Road Activity Centre. The then draft Racecourse Road Activity Centre Structure Plan had identified the site as a "major development site on which an iconic building of high architectural quality, 10 to 14 storeys in height, is encouraged".

This site was subject to a planning process separate to Council's strategic planning. In 2009, a Priority Development Panel Concept Appraisal was undertaken to review a prior proposal for a 27 storey development. The proposal was not supported at that time but the panel noted that:

The site should be able to accommodate development of around 20 storeys, subject to design... because the development will be visually exposed and the site has such an important role to play in creating an identity for the centre, the redevelopment will need to provide a truly great building of exceptional architectural quality.



View west along Racecourse Road (Sourced from VCAT evidence)

During the VCAT review, Council attempted to use the PDP finding to link additional height above their preferred limit of 10-14 storeys to the delivery of exceptional architectural design. The Tribunal did not attempt to resolve if the proposal represented a "truly great building of exceptional architectural quality" but merely noted that it represented a "high standard of architecture" and saw no reason to modify the design solution.

The consideration of off-site impacts by VCAT was limited. Expert witnesses noted the issues with overshadowing and wind shear at ground level. These were dismissed by the Tribunal on the basis that the shadowing would not affect residential areas, only public spaces or commercial areas and that the wind shear was manageable through architectural changes such as doors that could lock during high-wind events. In both instances, the Tribunal was unconcerned that there was little attempt to mitigate the off-site impacts, since the Tribunal did not see a problem with causing impacts to non-residential areas.

In the absence of any formally adopted planning policy and when presented with widely divergent views from multiple expert witnesses, the alignment between the proposal and the PDP's recommendation likely assisted VCAT in supporting the proposed height. Similarly, the unclear definition of off-site impacts meant that this did not become a limiting factor in regards to height.

Unclear rationale for height controls

This case highlights the issue where there is no formally adopted height nor consensus on what measures should be used to determine height limits. Despite multiple reviews of different design approaches over many years the underlying parameters that should apply to this site remained unclear. In fact, the divergence in views appears to have reduced the Tribunal's desire to refuse or amend the heights within the proposed development.

It is particular noteworthy that fine distinctions between "exceptional" and "high" architectural design quality were not useful in controlling heights in this instance.

Conceptual models for assessment

The brief calls for the need for decision guidelines that are "less subjective and provide greater clarity". In order to consider what issues may arise as a result of their application and how they may be resolved, three conceptual models are established here for further discussion. These are:



1

Applying a proportional relationship between preferred & mandatory maximum building heights



2

Assessing acceptable off-site amenity impacts



3

Rearranging or exchanging additional height for contribution of "commensurate public benefit"



Advantages

- Delivers clarity of expectations.
- Ease of implementation.

Limitations

- Simplistic response that reduces the performance-based qualities of the Victorian Planning Provisions.
- Assumes that height limits outlined in planning schemes are up-to-date and have robust strategic justification.
- Requires the adopted preferred maximum height limits to be correct for the specific circumstances of each individual site.
- Inherently arbitrary determination of variance between preferred and mandatory height limits.

Applying a proportional relationship between preferred & mandatory maximum building heights

The application of an explicit relationship between preferred and mandatory maximum height would establish a clear 'ceiling' of what heights may be permitted above the discretionary height limit. This would deliver greater clarity for the wider community on the maximum permissible height in a given location. In principle this might consist of a percentage ratio, where the permissible height could not exceed the discretionary limit by more than a nominated percentage of the preferred height. The conceptual simplicity of a ratio would make this change relatively straightforward to implement across all planning schemes via a change to the VPP.

However, this approach would introduce a number of fundamental issues that might be complex to solve. Introducing a fixed relationship between a maximum permissible height and the nominated preferred heights would undermine the consideration of performance measures when assessing heights for planning permits. There is a distinct risk that the preferred height would be ignored and all applications would begin at the maximum. This reverses the current process where the rationale for exceeding heights needs to be demonstrated. Instead it is possible that the rationale to reduce heights below the maximum will need to be demonstrated.

More generally, a proportional relationship requires a well-defined height limit to already exist within the planning schedules applying to a given site. As shown in the case studies there are numerous examples where there is either no height limit currently in place or the justification and strategic support for the height is out of date. It also requires the nominated height to be specifically correct for every lot, which is not always true of unusual situations such as very large sites.

The choice of what ratio to use introduces further complications. If the ratio is large then the control is relatively weak, allowing and potentially incentivising much larger applications than in the past. However, a smaller ratio that delivers a stronger level of control and closer correspondence between preferred height and maximum heights would need a strong strategic justification to ensure confidence in the planning outcomes that will be delivered.

This approach is oriented towards compliance with requirements. It provides no incentives to deliver improved outcomes beyond the requirements of the scheme.



Advantages

- Allows the individual circumstances of different sites to be taken into account, providing flexibility and allowing for nominated heights to be exceeded where there is no adverse off-site impact.
- Allows for circumstances where the existing planning scheme heights are outof-date or have limited strategic justification.

Limitations

- Does not deliver certainty to the wider community (though the tests should provide more clarity for the planning and development community).
- Difficult to implement where there is no nominated discretionary height limit.
- Off-site impacts are created by more than height alone.

Assessing acceptable off-site amenity impacts

Such as: a) overshadowing; b) wind shear; c) blocking key views; d) overly prominent compared to existing built form character ("visual amenity"); e) fair and orderly development.

Consideration of the off-site impacts from a proposal is a core planning process for development applications. All of the chosen case studies discussed in this report include consideration of one or more types of off-site impact. However, the range of impacts that are considered relevant within the assessment process and the interpretation given to each varies widely from case to case. This reduces the clarity and transparency of the planning process and risks reducing the confidence of assessment outcomes.

If the treatment of off-site impacts were strengthened and made more consistent, the dependability of the planning process would be increased. This would logically result in lesser variance between approved heights and the height limits identified in planning schemes.

There are two necessary components to achieve stronger control over off-site impacts:

- The key principle to embed within planning assessment is the concept that any additional height above the discretionary limit should deliver no additional off-site impacts compared to built form at the preferred height.
- In support of this principle, it will be useful to prepare stronger, measurable definitions of the key amenity impacts, such as those included in the list above. The definitions can be based on established principles already widely adopted within planning schemes such as equinox tests for overshadowing.

The choice of relevant tests and level of stringency in the interpretation of "no additional impacts" could potentially be varied in different locations, however this may increase the complexity of implementation.

This concept allows for situations where a discretionary limit has been applied to a precinct but the specific circumstances of each lot have not been examined individually. Yet, it is less clear how the principle can be applied in situations where there is no nominated discretionary height.

This approach allows for a more flexible and accommodating response to height requirements, limiting but not removing the opportunity to exercise discretion. However, it also provides no incentives to deliver any additional benefits for the wider community.

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Advantages

- Allows the planning process to better support the implementation of the objectives of the *Planning and Environment Act 1987.*
- Encourages greater transparency (if clearly articulated in the planning controls) for the public in the negotiation of benefits between parties.
- Allows the individual circumstances in different sites to be taken into context, for instance, larger lots/consolidated sites.
- Ensures that nearby development approvals do not automatically become a precedent for future approvals (future applicants would also need to deliver a public benefit).

Limitations

- Delivers less certainty to the wider community (though the benefits delivered would be a tangible political message).
- Off-site impacts need to be considered alongside the uplift potential — is overshadowing acceptable if it delivers a new school?
- How to calculate benefits using height? (as opposed to easily quantifiable FAR).
- Potentially complex issues in implementation within the VPPs and ensuring that the benefits do not become confused with DCPs.

Previous Examples

- Melbourne Planning Scheme C270; FAU (Floor Area Uplift)
- City of Vancouver, Canada (Density Bonus and Community Benefits Policy)

Rearranging or exchanging additional height to deliver "commensurate public benefit"

Such as: a) precinct permeability or urban form; b) affordable housing; c) employment floorspace targets; d) environmental or landscape benefit; e) provision of school or community infrastructure; f) retention and repair of heritage built form.

By encouraging and incentivising the delivery of good urban design outcomes, an uplift scheme may help facilitate a higher degree of integration in the planning process to support the implementation of the multiple objectives of the *Planning and Environment Act 1987* – particularly where they may appear to be in conflict. However, this approach would deliver less certainty to the wider community as heights would remain discretionary and thus, the lack of clarity of foreseeable built form outcomes may remain an issue for the wider community at large. Taller buildings would still be considered on a case-by-case basis, alongside an assessment of the public benefits it delivers. This may prove to be a tangible political message in gaining the community's support.

The simplest and most transparent version of this approach is to allow for the reorganisation of development potential within a site in order to achieve a public good. For example, additional height might be permissible where it is offset by the reduction in height elsewhere on the site. In effect, the floor area of one portion of the site is moved to another location in the same site.

Allowing for the spatial reorganisation of development potential within the one development application is potentially quite widely applicable in very different contexts across Melbourne. This is because the overall limit to development scale is still set through the planning control. The operation of discretion does not increase the magnitude of development, only encourages its rearrangement to deliver a better public outcome in excess of what is required in the planning schedules. This transparent approach does not need extensive strategic justification, only a policy position such as a structure plan or similar that can assist the Responsible Authority in guiding the preferred outcome. In the absence of a structure plan an applicant could, in principle, still use this mechanism if they can demonstrate a public benefit. The Responsible Authority can assess the 'unsolicited' public benefit on its merits, guided by state-level strategies such as Plan Melbourne, state affordable housing policies and existing VPP provisions on design quality such as the Urban Design Guidelines for Victoria.

A more complex model allows the delivery of public benefit in exchange for floor area uplift in excess of what would otherwise be permissible. Melbourne C270 provides an example of this sort of mechanism, using floor area ratio (FAR) bonuses to incentivise public benefits. Similarly, Vancouver has a 'Density Bonus and Community Benefits Policy' providing multiple community benefit options such as a cash contribution, affordable rental housing, employment floor area and conservation of heritage built form. FAR is utilised as a formula to calculate community benefit required in exchange of exceeding the FAR.

As discussed in the panel review of the Melbourne Planning Scheme Amendment C270, the incorporation of a new uplift mechanism in the planning scheme introduces potentially complex issues with regard to its implementation within the VPPs to ensure they do not become conflated with Developer Contribution Plans (DCPs).

This floor area uplift incentive model is potentially more limited in its application across Melbourne. More substantial strategic justification is required to establish an appropriate set of public benefits accompanied by an appropriate formula to define what represents a 'commensurate' benefit in a given case. This is likely to only be feasible within the CBD (as implemented through C270) and similarly intensive areas of change such as metropolitan activity centres or urban renewal areas.

The issue of off-site impacts potentially remains a complex matter when considered as an exchange for uplift potential. For instance, to what extent can overshadowing be exchanged for a different kind of public benefit? The delivery of a new school or affordable housing is positive but it is a different kind of benefit to the amenity provided by solar access. This question of commensurable exchange of benefits needs to be addressed through the supporting strategic studies.

The off-site impacts created by allowing the reorganisation of development potential is conceptually a less challenging issue to manage. In the ordinary operation of discretion for planning approvals, it is necessary to weigh up competing internal and off-site amenity considerations to determine a balance between public and private good.

Testing the tools: hypothetical scenarios

What implications might occur if each of these potential controls were applied to the case studies?





3-39 & 2-10 Nelson Place & 16-20 Kanowna Street, Williamstown

Note that the approved proposal only exceeded the preferred height by approx. 20%, which is a fairly small variance in proportion to the scale of the development.

Positives

+ Treating the discretionary limit as a mandatory control would better match the desires of the engaged part of the local community.	 An assessment of off-site impacts would provide more flexibility to respond to the site circumstances. 	 A further contribution towards public benefits would help transparently communicate the rationale for height to the wider community.
Negatives		
 Strict mandatory controls might be strategically 	 There are relatively limited off-site impacts, 	 The development already delivered new streets

Strict manuality of might be strategica justified on this site since its circumsta have been conside through a specific DDO, but problem to implement via a schedule to the zoi all sites across the activity centre due the risk of unintend consequences.	ally limited of meaning nces addition red potentia greater atic approve ne for whole to ded	off-site impacts, g that using a "no al impact" might illy allow for heights than the od proposal.	 The diversion of the deliversion of th	red new streets t of the site layout ut necessarily being ivised through onal height. It is cially difficult to ate elements of sign that can be lered a public t from those that are y delivered by the n itself.
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2-16 Northumberland Street, Collingwood

Positives

- + Setting a limit on discretion through a ratio control would mean that any additional height allowed on this site would not become a precedent and potentially justifying greater heights on adjoining sites. The same ratio limit would apply to all sites.
- A schedule to the zone could specify a wider range of relevant off-site impacts to be considered than the single overshadowing test used to determine the height in this instance (though introducing additional off-site impacts would potentially lessen clarity and make the planning assessment more complex).
- This is the most appropriate approach for this site, given that the proposal has delivered placemaking outcomes, restoration/ incorporation of a heritage building and delivery of employment floor space in support of the precinct aims.
- The public benefits approach would help ensure the approved height does not become a precedent for other sites, potentially with lower quality designs. If another site seeks to exceed the limit, its benefits would need to be assessed individually on their merits.

Negatives

- Note that there is no explicit discretionary limit on this site, meaning that a ratio control would not have a direct effect on the clarity of the outcome.
- The control that does exist on this site is out of date and inconsistent with the preferred land use and character outcomes. Allowing a small exceedance would not address this issue.
- Any leeway on heights would equally apply to adjoining sites.

- The height limit for this site is already effectively determined by an off-site impact. More strongly enforcing this control would not lead to a better design outcome.
- The height limit this would create is likely to be more restrictive and deliver a flat, homogeneous development envelope rather than the variety of masses/heights shown in the approved development.
- The limited development yield permitted by the performance control is too low to allow for the preferred outcome simply by rearranging the allowed development yield. The approved outcome would be reliant on a floor area uplift arrangement to justify the additional scale.





677-679 Victoria Street, Abbotsford

Positives

	03111403				
	[none]	+	Using an off-site impacts approach would likely deliver the same height due to the limited sensitivity of areas potentially overshadowed to the south. If there was a well- defined viewline that required protection then the approved height would be lower. In this case VCAT did not establish any such sensitivity.	+	A public benefit-type approach was used on this site, however it was applied on a site-specific basis through a DDO. A more generally applicable control would allow more sites to benefit from a transparent discussion of the public benefits with the community and provide more certainty for the negotiation.
N	egatives				
-	Enforcing a stricter limit established in proportion to the preferred height would reduce the approved height (if the ratio is small enough), but also would remove the opportunity to incentivise the public benefits delivered by this project. The overall outcome would likely be poorer.	_	Using an off-site impacts approach would remove the incentive to provide the public connectivity benefits delivered by this project.		[none]





241 & 257 Toorak Road & 625 Chapel Street, South Yarra

Positives

- Conceivably a "landmark" could be determined as an increase in allowable height compared to the heights of adjoining properties, placing a more tangible limit on a landmark.
- + The chosen ratio (20% higher, 50% higher, 100%?) would need to be determined considering the reason for its landmark status.
- of off-site impacts within the planning scheme schedule could be mitigated through decision guidelines that reference a series of relevant off-site impacts.
- + The limited consideration + A floor space uplift approach would incentivise the provision of public benefits such as affordable housing or community infrastructure.

Negatives

-	No specific height limit applies to this site, so it is unclear how a ratio approach would work in this instance.	_	The absence of a preferred height means that there is no benchmark that defines acceptable off-site impacts.	-	The absence of a preferred height means that development potential can't be rearranged on the site, since there is very limited restriction to development potential.
			an acceptable off-site impact would be in this context given the comparatively tall form of recently constructed buildings in the area and the level of development expected in a significant activity centre.	_	This has been addressed in the C270 Central City Built Form controls by implementing an 18:1 cap. Using this floor space limit would provide a framework for flexibly negotiating public benefits.





233-1237 Nepean Highway and 60-64 Matthieson Street, Highett

Positives

- A ratio approach would tangibly reduce the approved height in this location if the % measure is set low enough.
- Using "no additional impact" would better protect the sensitive residential interface than a ratio-type approach.
- + The ability to rearrange development potential within the site would more transparently encourage the reduction in height towards the sensitive interface and a commensurate increase in height in the less sensitive portion of the site.
- Further floor area uplift would incentivise the delivery of public benefit and allow for the public communication of rationale for height.

Negatives

- However a ratio approach would not deliver the reduction in height of the lower northern element transitioning to adjoining residential areas. This was the contentious portion where the height was reduced on VCAT review.
- A ratio approach will reduce the highest portions of the scheme but may encourage boxier, more homogeneous heights without transitions in response to context.
- There are relatively limited off-site impacts, meaning that using a "no additional impact" principle might potentially allow for greater heights than the approved scheme, particularly towards the Nepean Hwy interface.

[none]





1 Ascot Vale Road, Flemington

Positives

- + A ratio approach would tangibly reduce the approved height in this location, however it is unclear what benchmark would be used to determine the preferred height.
- The relevance of off-site impacts was not recognised as a significant concern by VCAT. An explicit requirement would address this.
- A clearer list of the relevant off-site impacts, considering impacts to both public realm and private space, would reduce the anomalously large approved height for this site.
- The ability to rearrange development potential within the site would encourage more variation in height within the massing, potentially allowing the corner to be expressed as a taller element while reducing the height in the area nearer to abutting residences.
- + Would deliver greater benefits to the public from a very large project.

Negatives

A clearer definition of A ratio approach will There is a risk that a reduce the overall height generic off-site impact the preferred height limit of the proposal but test based on highwould be necessary to define a benchmark that would not encourage level principles without a more varied range of specific adaptation to allows for rearranged building heights. The this context may fail to floorspace or bonuses. outcome would be adequately control the similarly boxy, though height in this location. lower.

Issues and recommendations

The case studies highlights a range of issues in the planning system which can be summarised by:

- a lack of clarity and consistency in the planning provisions used to guide decision making for heights; and
- a lack of certainty of foreseeable built form outcomes from strategic planning processes.

This undermines the public perception of a fair and orderly process for development approvals.

lss	sues	Recommendations				
1.	Unclear definition of preferred height	Provide advice on drafting planning provisions in relation to height				
2.	Lack of clarity and consistency in height specification					
3.	Use of subjective terms in height guidelines					
4.	Use of contentious terms such as "landmark" or "gateway"					
5.	Timeliness of strategic justification in areas of change	Strengthen the strategic basis for height controls				
6.	Identifying and controlling "strategic" development sites					
7.	Using a simple proportion to limit variance between preferred and approved heights	Undertake a combined toolkit approach for assessment of developments in exceedance of preferred heights				
8.	Finding the balance between incentivising good outcomes while reducing bad outcomes in relation to height exceedance					

Produce further advice on drafting planning provisions in relation to height

Issue 1. What height limit applies in locations where no preferred height is nominated?

 In multiple cases discussed in this report there is either no clearly defined preferred height limit or disagreement over what performance measures define the preferred height.

Recommendation 1

All future structure planning should either specify a numerical height limit for all sites or identify the principles by which height should be determined for a given site, preferably in the form of a measurable performance requirement.

Where existing sites individually lack a preferred height within an activity centre that does have height limits, the preferred height can be set in proportion to the other height guidance within the centre.

For existing activity centres where the structure plan does not set specific heights consideration should be given to a practice note that sets out broad principles that can be used to establish a preferred height. This might refer to precedents set in comparable activity centres or by reference to benchmark standards set by DELWP.

Note that the major rationale for setting benchmark heights is in order to begin assessing "no additional impact" or the delivery of commensurate public benefits. It is not intended that the benchmark height should be used as a mandatory height, but would give guidance to all participants in the process.

A conceptually much stronger approach is the definition of a floor area ratio measurement to act as a benchmark target for all activity centre areas.

It would be difficult to robustly define and justify Specific floor area ratios appropriate for the vast diversity of contexts across Melbourne without specific studies of the individual centres. However a floor area ratio can be used as guidance for a development level that defines the starting point for the assessment of "no additional impact" or the delivery of commensurate public benefits until more detailed studies are undertaken.

This approach is well established in other jurisdictions and has been pioneered by City of Melbourne and DELWP for the central city. The combination of floor area ratios and height limits allows for flexibility to respond to local context but places some level of control over development scale. It ensures that no site has an uncapped development potential.

This process could begin with a practice note providing metropolitan-wide high level guidance. The practice note should allow for more specifically crafted controls for centres where strategic planning investigations justify a particular change either up or down from the benchmark.

Issue 2: Lack of clarity and consistency in the language used to specify height

- Use of uncommon terms such as 'indicative' or use of mutually exclusive terms such as 'must' in conjunction with preferred heights
- Use of storeys without expressing metres, or vice versa.

Recommendation 2

Produce advice to ensure clear and consistent use of terms when specifying height guidelines, whether they are preferred or mandatory heights. This could be in the form of a planning practice note with the following as possible guidance:

- 'Preferred maximum building height' used consistently for a performance based provision;
- 'Mandatory maximum building height' used for a mandatory provision;
- Avoid the use of any alternative terms other than 'preferred' or 'mandatory';
- Use 'should' in conjunction with preferred maximum building heights;
- Use 'must' in conjunction with mandatory maximum building heights;

Consistent with the principle now embedded within the reformed residential zones, heights should generally be expressed in both metres and storeys to remove ambiguity. The measurement in metres should be large enough to allow for the greater floorto-floor heights needed to support employment uses where the zoning supports these uses.

This advice reverses the position outlined in Practice Note 60. It is consistent, however, with the approach discussed in the Planning Panel report for Melbourne C190 and subsequent panels.

Heights expressed solely in metres will generally only be important where there is the need to very specifically control built form outcomes. This might occur where it is necessary to match existing heights (for example, of heritage built form), to control overshadowing or to protect a specific view line. This level of control might better be protected by a well crafted performance requirement with a measurable outcome instead of a numerical figure.

Guidance can be given with an updated practice note to help interpret the translation of meters to storeys where heights are already defined in planning documents or planning schemes.

Issue 3: Use of subjective terms in height guidelines

- Qualitative measures that rely on highly subjective assessment have been linked to height limits.
- Use of poorly defined criteria, such as "high standard of architecture" as a height guideline.

Recommendation 3:

Avoid the use of subjective terms in height guidelines. It is confusing and open to manipulation where a qualitative measure is included as a performance requirement in relation to height.

In the ordinary reading of the planning scheme (particularly when reviewed at VCAT) the base expectation is that a planning proposal demonstrates competence. This is perhaps insufficient in regards to higher density parts of the city where there are more complex interfaces and where the scale of the buildings and the size of the population that might be affected by them is more significant. Higher design quality is a requirement based on the overall size and complexity of the local context, not triggered by exceeding the indicative height limit.

The purpose of introducing qualitative terms linked to height should be clear. If there is a desire to incentivise or reward higher quality design then this could be explicitly linked to a bonus scheme. However, in most cases design quality should not be seen as a bonus. High quality design is not a public benefit in the same way affordable housing or public space links provide a benefit to the wider community. High quality design is a requirement in itself when assessing the appropriateness of a planning application.

Issue 4. The use of terms such as "landmark", "gateway" and "iconic"

- Conflation of terms "gateway" and "landmark" with buildings greater in height or effectively unlimited development potential.
- Use of subjective/aspirational language "iconic".

Recommendation 4:

The use of descriptive terms such as "landmark", "gateway" and "iconic" in planning schemes has resulted in a particularly high degree of confusion over the strategic planning intent, particularly around the intended height. As shown in the case studies examined in this report the terms can be misinterpreted to mean that a site is effectively exempt from the range of considerations that would govern an acceptable height on other sites that are not identified with these terms.

In an ordinary sense the terms indicate that the subject sites should have more visual prominence and have an opportunity to establish a new character. For "gateway" sites these are intended to mark the transition between inside and outside of an area. For "landmark" sites, this might be due to their location at a crossroad, to mark a transport hub or to in some other way provide wayfinding to a specific location. Iconic could have a variety of meanings but again suggests a special prominence compared to other sites.

In all three cases additional height is only one consideration in whether the design response adequately delivers the strategic planning intent. There are many examples of iconic or landmark urban forms within Melbourne that are no taller (or sometimes even distinctly lower) than the surrounding urban form. This is achieved through more prominent or dramatic architectural expression and often through changing the public interface by, for example, reducing street setbacks. In comparison, there are many sites in activity centre structure plans that have been designated gateways and provided with a small number of additional floors as a preferred height limit. It is questionable whether the gateway role is able to be discerned in the resulting development applications if the architectural design response is otherwise undistinguished.

As a default position, terms such as "landmark", "gateway" and "iconic" should be avoided in planning schemes. 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. 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. If the site is intended to support a height visible on a metropolitan scale (as in the Chapel Street example) then this should be made explicit. However, in determining the objective some consideration should be given towards identifying the extent of off-site impacts that are acceptable, in order to give some guidance to assist the planning approval process. Specific height limits are not always appropriate but no site should be left without any performance controls or guidance at all with the expectation that these might be determined through the design process.

For existing planning schemes where the contested terms are already in use guidance should be provided (through a practice note or similar) to clarify that the terms should be interpreted to mean that additional height is a possible outcome for some sites but that the heights need to be justified by reference to the role of the site and its local context.

Clarify the strategic basis for height controls

Issue 5. Timeliness of strategic justification in areas of change

 The strategic studies that justify a particular height limit need to be regularly renewed to ensure that the height controls consider changing circumstances over time.

Recommendation 5:

It is important to regularly review the supporting evidence where a height limit is established using housing studies or built form analysis that refers to the existing conditions at a point in time.

For example, there are structure plans still in operation within the metropolitan area that are based on housing studies completed prior to 2010. This means that the demographic analysis would be based in part on the 12-year old findings of the 2006 census. The strategic direction would be based on superseded metropolitan strategies preceding Plan Melbourne. Inevitably the heights that are derived from these policies are much more contestable than height outcomes based on more recent evidence. In turn, this places more pressure on the discretionary height and reduces confidence in the height limits.

Where the height controls are derived from less dynamic considerations there is less pressure to review them. For example, if a height limit is derived from the need to reduce overshadowing to a key public space then the underlying basis of the control is unchanged. However as shown in the Collingwood case study discussed earlier it is necessary to review whether the control is still appropriate to achieve the strategic objectives of municipal and state planning policy.

In general terms the review cycle might be in the order of every five years, to broadly match the census cycle and the timing of revisions to the metropolitan planning strategy.

Issue 6. Identifying and controlling "strategic" development sites

 Strategic development sites should be clearly defined within structure plans and if necessary, specific objectives or performance requirements should be noted for them.

Recommendation 6:

Some sites by virtue of their inherent size or location within the activity centre will have specific importance towards implementing local strategic planning aims or the aims of the wider metropolitan strategy. Inevitably these sites will have different built form outcomes compared to smaller or more generic sites within a centre. Even in very sensitive localities larger sites might have the potential to define their own built form character while providing adequate transitions to the surrounding area.

Strategic development sites should be identified and considered during the structure planning for each activity centre. Note that not all large sites will necessarily be strategically important. Similarly, a relatively small site may be a strategic development site if it is in a highly significant location. This should be clarified through the strategic planning process.

It is likely that a strategic development site may not have a specific mandatory height limit. It should be clear, however, what the strategic objectives for the site should be (if these vary from the objectives for the remainder of the activity centre) or the performance requirements for built form within strategic sites.

The use of the word "strategic" should not be interpreted to mean that adopted planning policies do not otherwise apply. Strategic development sites may have different built form height outcomes but are not exempt from relevant planning policy or controls.

A combined toolkit approach for assessment



Issue 7: Using a fixed proportional relationship to define a mandatory limit with reference to a preferred height

 Using a ratio to determine the extent of discretion in interpreting preferred heights offers conceptual simplicity but is perhaps only suitable in a relatively limited range of circumstances.

Recommendation 7:

Defining a mandatory height using a fixed proportional relationship to the preferred height (or by extension, directly converting a preferred height measure into a mandatory limit) is in principle relatively simple to implement with limited changes needed to the relevant planning schedules. Extending on the approach used by the DELWP Activity Centres Pilot Program, a clause could be inserted that states that a permit cannot be issued if it exceeds the preferred height by a nominated amount (potentially varied by reference to a schedule, if this is appropriate).

However, as shown in the case studies discussed in this report, using a ratio also introduces a number of problems and challenges. A fixed proportional relationship reduces the performance-based approach of Victorian planning and removes the ability to adapt the height to incentivise higher quality design outcomes.

More significantly, a fixed proportional approach relies on a clearly defined preferred height that is upto-date and specific to all parts of the activity centre, and a simply defined ratio between the preferred and the mandatory limits. This is not necessarily true of all activity centres, meaning that it would not be possible to implement this mechanism via changes to the VPP Clause 34.01 Commercial 1 Zone. It is more likely to be implemented via a change to a specific DDO (where this applies) or a schedule to the zone that allows for more targeted controls. The approach is potentially suited to locations where the impact of summarily reducing built form heights is relatively small, such as:

- In smaller or lower-order activity centres, where the overall magnitude of anticipated change is likely to be small and the proximity to sensitive residential areas is likely to be greater.
- In locations with relatively low height limits, where the change in height between the activity centre and the surrounding residential zones is limited.
- In activity centres with well defined specific height limits for all parts of the centre based on recent strategic justification.

In these locations the likelihood is lower that the permitted maximum height is significantly out of step with policy objectives and community expectations.

This approach could be fine-tuned for different locations by allowing greater or lesser variance between mandatory and preferred limits, specifically, a different ratio perhaps linked to the strength and timeliness of the strategic justification.



Issue 8: Finding the balance between incentivising good outcomes while reducing bad outcomes in relation to height

 The gap between preferred height limits and a maximum acceptable height could be more strongly controlled while allowing a managed degree of flexibility to accommodate unforeseen situations.

Recommendation 8:

A 'toolkit' approach for addressing proposals that exceed preferred heights might be delivered by combining together the conceptual models considered in section 3 of this report. A planning scheme control that combines mitigating offsite impacts, allowing for the rearrangement of development potential within a development site and facilitating the exchange of additional height for the delivery of public benefits would allow for a customised approach towards controlling heights. The combination of approaches provides flexibility to respond to different circumstances across the wide array of different activity centres in Melbourne.

As a high level principle, it may be possible to amend VPP Clause 65.01 to include a requirement ensuring that built form above preferred height limits should mitigate off-site impacts and should deliver a demonstrable benefit for the wider community. A more targeted approach might embed these requirements into the decision guidelines of the VPP commercial and mixed use zone clauses. In all these cases however the effect of this is unpredictable, since there is limited guidance as to how this would be interpreted by decision-makers and during VCAT review. It would be important to back up the VPP change with guidance on interpreting the terminology and baselevel expectations within a practice note. A stronger, more customised approach would involve embedding specific guidance within the relevant schedules that control built form outcomes for specific activity centres. In this approach the criteria for measuring off-site impacts could be fine-tuned for each location to ensure planning assessments account for particular circumstances. Similarly, the preferred range of public benefits may conceivably be matched to specific local needs identified in planning policy. This is effectively a generalised version of the approach taken by the City of Melbourne in the C270 planning scheme amendment.

The principles set out in Melbourne Planning Scheme DDO Schedule 63 (Macaulay Urban Renewal Area), discussed in the C190 Planning Panel report provides a good example of this approach. This case study is discussed further overleaf.

The policy addressing preferred public benefits would also need to address the extent of off-site impacts that would be acceptable by the wider community. This would preferably be established through the strategic planning process, through engagement, to provide a degree of clarity of potentially taller outcomes as a result of contribution.

Case study

Melbourne Planning Scheme C190 DDO63 Macaulay Urban Renewal Area

In 2012, the City of Melbourne adopted the *Arden-Macaulay Structure Plan 2012* which set out an integrated plan for urban renewal based around a vision of "mid-rise" built form. In October 2017, this was implemented (in part) through Amendment C190 which introduced a new DDO schedule 63 (DDO63) to control built form outcomes in the renewal area. This example is noteworthy as a case study of built form height controls that provide clarity with a controlled degree of flexibility for responding to individual site circumstances.

The DDO63 schedule contains a suite of design objectives of which two refer to building heights:

- To create a compact, high density, predominantly mid-rise, 6 – 12 storey walkable neighbourhood that steps down at the interface with the low scale surrounding established residential neighbourhoods
- To provide for higher development that delivers identified demonstrable benefits on large sites that do not interface with the low scale surrounding established residential neighbourhoods. [emphasis ours]

The structure of these objectives is potentially relevant as a more generally applicable model. Firstly, they clearly define a preferred character, in this case of 6 to 12 storeys for the precinct. Secondly, they also refer to the scope for higher developments on large sites but link this height to the delivery of public benefits as long there is no sensitive interface and minimal off-site impacts to existing low scale residential neighbourhoods.

The DDO63 schedule goes on to provide more tangible built form guidance. Under 'Building Heights', the clause sets out the following requirement:

 Development should not exceed the Preferred maximum height in Table 1. All developments

that exceed the **Preferred maximum height in Table 1** must demonstrate each of the following:

- A demonstrable benefit to the broader community that include among others:
 - Exceptional quality of design.
 - A positive contribution to the quality of the public realm.
 - High quality pedestrian links where needed.
 - Good solar access to the public realm.

Table 1: Building heights

Area	Preferred maximum height	Absolute maximum height
A1	10.5m (3 storeys)	14m (4 storeys)
A2	14m (4 storeys)	20m (6 storeys)
A3, A4	20m (6 storeys)	26m (8 storeys)
A5	26m (8 storeys)	N/A
A6	20m (6 storeys)	26m (8 storeys)
A7	28m (9 storeys)	36.4m (12 storeys)
A8	30m (9 storeys)	39m (12 storeys)

This control implements the structure plan recommendation that built form may exceed the preferred height limit but only by a capped amount (approximately 30%) and only where there is a demonstrated public benefit. In effect, this is a simple version of a bonus scheme that incentivises public benefits where heights exceed the preferred height, providing an incentive on appropriate sites to incorporate good urban design and placemaking in their responses.

The schedule consists of clear and consistent use of language in specifying height, although the term 'absolute' is used instead of the more commonly used term 'mandatory'. The heights are presented as a table clearly identifying areas and specifying applicable discretionary and mandatory heights in both metres and storeys. This sets clearer expectations on appropriate floor-to-floor heights to ensure residential amenity is considered in assessment. Furthermore, a subsequent table sets out 'Built form outcomes' for each area to incorporate further, more targeted considerations with regard to off-site impacts for each area. For instance, in Area A3, overlooking and overshadowing of private open space is to be considered alongside solar access.

The Planning Panel report for Amendment C190 supported the mandatory controls for overall building height. Specifically, they noted that the combination of discretionary and mandatory controls still allowed for taller buildings to be accommodated on particular areas while achieving the corresponding built form vision and outcomes contained in the schedule. They state:

We think that this approach is a reasonable way of achieving broader community benefit while realising the limited opportunity for taller development

In considering the more general applicability of this planning instrument it is important to note that it was developed for the purpose of an urban renewal zone with the intention of facilitating substantial change in local character. It may be problematic to use this wording for a centre which directly incorporates sensitive existing uses. There is limited guidance on how to resolve the interface between new and old while preserving development opportunities. It is also not necessarily appropriate to reuse a 30% cap above the preferred height in other activity centres. Here the precinct vision aimed for built form consistency over maximising change, whereas greater formal diversity might be more appropriate elsewhere.

Overall the example provided by DDO63 outlines a positive potential starting point for further consideration and adaptation.

Conclusion

The range of approaches discussed in this report provide options for increasing control over planning applications seeking heights in excess of discretionary limits.

Rather than advocating for a simple reduction in discretion, which is likely to result in unforeseen and potentially poor quality outcomes, this report outlines a range of approaches that can applied generally or be customised to individual circumstances.

Overall this will provide more certainty while also encouraging decisions that are more robust and less likely to cause surprise in the wider community.



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