

**Monash Planning Scheme Amendment C167mona  
Mount Waverley Major Activity Centre**

**Panel Report**

*Planning and Environment Act 1987*

**25 January 2024**

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### How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Monash Planning Scheme Amendment C167mona

Mount Waverley Major Activity Centre

**25 January 2024**



Alison McFarlane, Chair



Rodger Eade, Member

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## Glossary and abbreviations

Amendment	Monash Planning Scheme Amendment C167mona
C1Z	Commercial 1 Zone
Central car park	285-291 Stephensons Road, Mount Waverley (Site 2 on Figure 1)
Council	Monash City Council
Council car park	331-343 Stephensons Road, Mount Waverley (Site 6 on Figure 1)
DDO#	Design and Development Overlay Schedule #
DJLI	DJLI Pty Ltd
DJLI property	275-283 Stephensons Road, Mount Waverley (Site 1 on Figure 1)
ESD	Environmentally sustainable development
GRZ#	General Residential Zone Schedule #
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
PUZ#	Public Use Zone #
RGZ#	Residential Growth Zone #
Ritchies	Ritchies Stores Pty Ltd
Virginia Street car park	Land bound by Winbourne Road (north), Alexander Street (west), Virginia Street (south) and laneway (east) (Site 3 on Figure 1)
Woolworths	Woolworths Group Limited
Woolworths northern property	Northern lot of 64-74 Virginia Road, Mount Waverley (CP 104420) (Site 4 on Figure 1)
Woolworths southern property	Southern lot of 64-74 Virginia Road, Mount Waverley (CP 104420) (Site 5 on Figure 1)

## Overview

### Amendment summary

The Amendment	Monash Planning Scheme Amendment C167mona
Common name	Mount Waverley Major Activity Centre
Brief description	Implement the Mount Waverley Activity Centre Structure Plan, 2021
Subject land	Mount Waverley Major Activity Centre
Planning Authority	Monash City Council
Authorisation	6 September 2023, with conditions
Exhibition	9 June to 4 August 2023
Submissions	Number of Submissions: 21 Opposed/changes: 15 (Refer Appendix A)

### Panel process

The Panel	Alison McFarlane (Chair), Rodger Eade
Supported by	Laura Agius
Directions Hearing	Video conference, 24 October 2023
Panel Hearing	Planning Panels Victoria and video conference, 30 November and 1, 5-7 December 2023
Site inspections	Unaccompanied, 21 November 2023
Parties to the Hearing	<ul style="list-style-type: none"> <li>- Monash City Council represented by John Rantino of Maddocks Lawyers, who called expert evidence on planning and urban design from Tim Biles of Tim Biles Project</li> <li>- Woolworths Group Limited represented by Emma Peppler of Counsel, instructed by Michelle Blackburn of Corrs Chambers Westgarth, who called expert evidence on planning from Marco Negri of Contour, and economics from Justin Ganly of Deep End Services</li> <li>- Ritchies Stores Pty Ltd represented by Ian Munt of Counsel, instructed by Hansen Partnership</li> <li>- DJLI Pty Ltd represented by Barnaby Chessell SC, instructed by Linda Choi and Tamara Brezzi of Norton Rose Fulbright Australia, who called expert evidence on urban design from Mark Sheppard of Urbis</li> </ul>
Citation	Monash PSA C167mona [2024] PPV
Date of this report	25 January 2024

## Executive summary

Mount Waverley plays an important role in the City of Monash. At its heart is a convenient shopping destination that is highly valued by locals. As planning and design expert Tim Biles put it:

There is in the current Mt Waverley a 'certain something' that makes it feel like a good place to shop and visit. Denis Denuito from 'The Castle' might call it ... 'the vibe', and a planner perhaps the consequence of 'considered urban design' over decades. The local community refers to it as a 'village'.

Monash Planning Scheme Amendment C167mona (the Amendment) has been pursued by Monash Council to implement the *Mount Waverley Activity Centre Structure Plan, 2021*. The Amendment proposes to introduce planning provisions that will guide land use and built form outcomes and strike a balance between attributes that make Mount Waverley ripe for housing and growth, and its village qualities.

The Amendment is the culmination of approximately five years of study and analysis and engagement with the community. Following formal exhibition of the Amendment in June and July 2023, the Panel was referred 21 submissions that raised a range of strategic issues and design and development issues.

The strategic role of the Mount Waverley Major Activity Centre (MWMAC) as a focus for intensification is expressed in Plan Melbourne, the Planning Policy Framework and Council's Municipal Strategic Statement. This role was not challenged by submitters. While not unique, the locational advantages of a major activity centre on a train line cannot be understated. For the MWMAC, this attribute along with its proximity to a national employment cluster, are significant drivers for intensification.

The main issue in dispute was whether the Amendment delivers planning provisions that will enable the centre to properly fulfil this strategic role. At the core of the dispute were different views on how 'village character' should drive or temper expectations for intensification and built form outcomes.

The Panel considers the proposed built form provisions are respectful of the attributes that are valued by the Mount Waverley community. It is unnecessary to replicate the existing low profile of buildings to continue the 'village feel' and 'village character'. However, it is important that future development maintains a human scale and sense of openness through a strong and active podium that maintain views to the sky. That will be achieved through the street wall height provisions that will work in tandem with preferred overall building heights.

The translation of a structure plan into scheme provisions is a critical part of the strategic planning process. A failure to properly translate a plan into the Planning Scheme risks the intent of the plan not being realised. Poor translation and drafting can also give rise to planning disputes which are costly and time consuming and delay community benefits, like new housing

Submissions demonstrated some provisions in the Design and Development Overlay Schedule 17 lacked precision to properly guide development and would instead lead to unnecessary disputes about the meaning of terms and the practicality of requirements. The Panel agrees with many of the proposals put forward by submitters to address these concerns.

On balance, subject to its recommendations, the Panel is satisfied the Amendment is well founded and strategically justified and should proceed. Decision makers, applicants and the community

alike will benefit from a clear planning framework that has anticipated the development pressure that will inevitably come to Mount Waverley in the future.

## Recommendations

Based on the reasons set out in this Report, the Panel recommends that Monash Planning Scheme Amendment C167mona be adopted as exhibited subject to the following:

1. **Amend the built form polices in Clause 22.16 as shown in the Panel preferred version in Appendix D:1 to delete content that duplicates other provisions of the Planning Scheme.**
2. **Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to:**
  - a) **revise Table 1 (Preferred maximum building heights) to:**
    - **express preferred building heights in Table 1 in metres only**
    - **increase the preferred height for land at 275-283 Stephenson's Road, Mount Waverley (labelled as C4) from 18.5 metres to 29 metres**
  - b) **revise Table 1 (Residential interface setbacks) to apply:**
    - **Type 2 to 'D3 – western boundary'**
    - **Type 3 to 'D3 – southern boundary'**
  - c) **revise Figure 1 (Built form map) to:**
    - **increase the preferred height for land at 275-283 Stephenson's Road, Mount Waverley (labelled as C4) from 18.5 metres to 29 metres**
    - **show public spaces and the principal pedestrian network (or insert a new map)**
    - **show the central pedestrian spine between the Mount Waverley Train Station and Winbourne Road as part of the principal pedestrian network**
    - **show that part of the central pedestrian spine between Winbourne Road and Virginia Street as 'indicative – final alignment to be determined'**
    - **delete the 'primary active frontage' from the western boundary of 275-283 Stephenson's Road and 1-9 Hamilton Place**
    - **replace the Type 3 Interface with Type 2 Interface on the (i) western boundary of the Woolworths southern property at 64-74 Virginia Street and (ii) southern boundary of the land at 331-343 Stephenson's Road**
  - d) **in Clause 1.0, revise the design objectives to clearly direct the outcomes to be delivered by future development**
  - e) **in Clause 2.0,:**
    - **delete *Development should not overshadow key public parks, plaza's (sic) and places***
    - **delete *Development should be designed to limit significant loss of sunlight to public areas, particularly through the middle of the day during winter***
    - **clearly set the limit of discretion that applies under each requirement**
    - **replace the primary and secondary active frontage requirements with *"Development should maximise use of clear glazing at ground level adjacent to a primary active frontage on Figure 1. Development should use clear glazing at ground level adjacent to a secondary active frontage on Figure 1 where practical"***

- replace the requirement for floor to floor heights with *“Buildings should have a minimum floor to floor dimensions of 4.2 metres at ground floor”*
  - replace the Sherwood Park Road view lines requires with *“Buildings on the south side of Virginia Street should be designed to minimise their visibility from Sherwood Road Park”*
- f) in Clause 6.0, insert the following decision guidelines:
- *Whether development overshadows public spaces or the principal pedestrian network between 11am-2pm at the equinox*
  - *Whether development retains existing canopy trees or provides for the establishment of new canopy trees.*

**Further recommendation**

3. Subject to the approval of Amendment C167mona, as a matter of priority, steps should be taken to ensure that Clause 22.03 does not apply to the Mount Waverley Major Activity Centre.

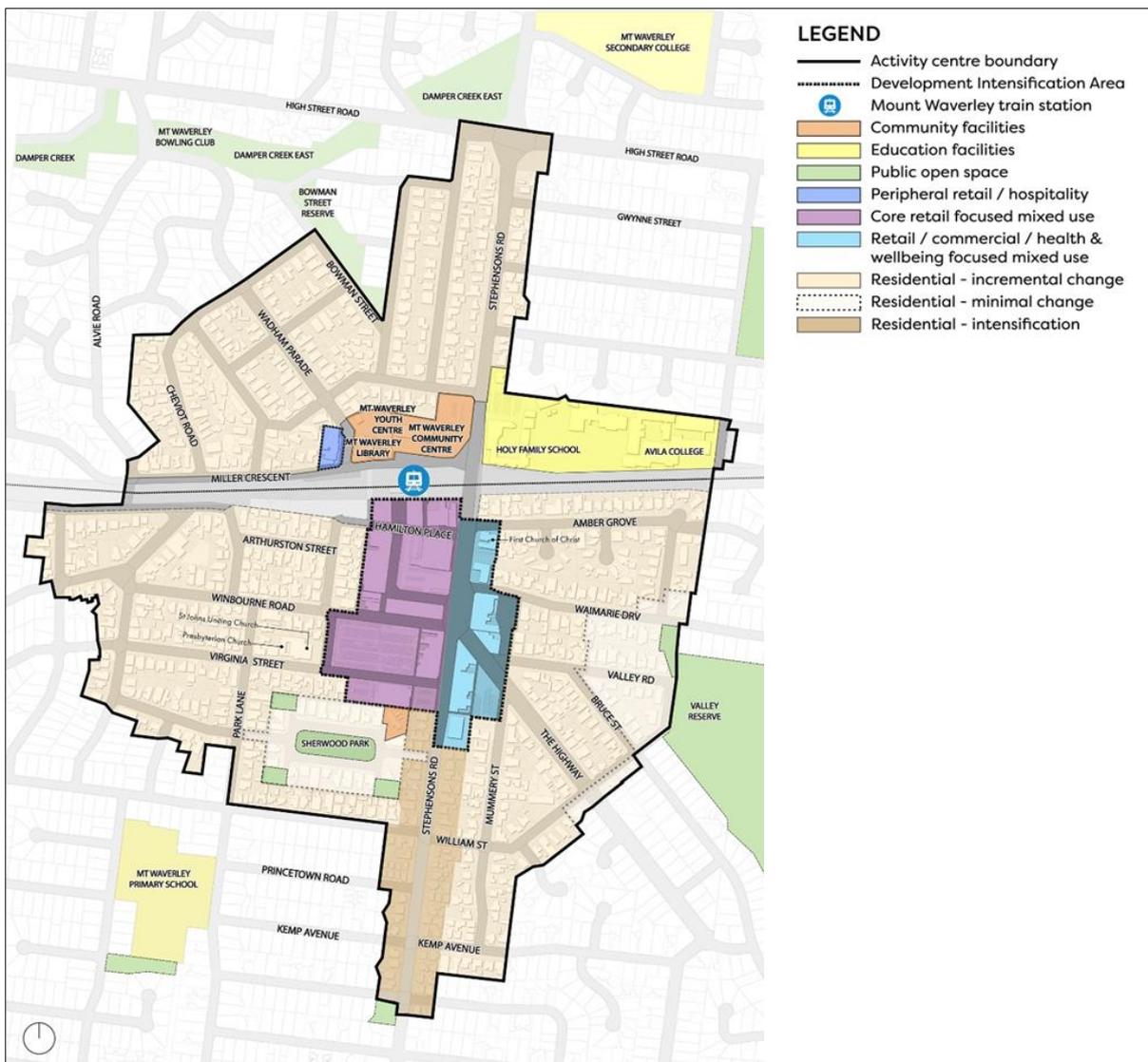
# 1 Introduction

## 1.1 The Amendment

### (i) Amendment land and description

The purpose of the Monash Planning Scheme Amendment C167mona (the Amendment) is to implement the *Mount Waverley Activity Centre Structure Plan, 2021*. The Amendment applies to land in the Mount Waverley Major Activity Centre (MWMAC) shown in Figure 1.

**Figure 1 Mount Waverley Major Activity Centre Structure Plan**



Source: Map 1 of Clause 22.16, Mount Waverley Activity Centre Structure Plan

Geographically, the MWMAC makes up 5.67 per cent of the broader Mount Waverley suburb.

### (ii) What the Amendment does

The Amendment proposes to make the changes set out in Table 1.

**Table 1 Summary of Amendment**

Provision	Change
<b>Local Planning Policy Framework</b>	
Municipal Strategic Statement	- amend Clause 21.06 to reflect the outcomes and recommendations of the Structure Plan
Local Planning Policies	- introduce a new local policy at Clause 22.16 (Mount Waverley Activity Centre Structure Plan) for the major activity centre
<b>Zones</b>	
Neighbourhood Residential Zone Schedule 5	- rezone 12, 14-34 and 37 Sherwood Road from General Residential Zone Schedule 3 (GRZ3) to the Neighbourhood Residential Zone Schedule 5 (Sherwood Road Heritage Precinct) (NRZ5)
General Residential Zone Schedule 11	- rezone land around the Mount Waverley Major Activity Centre from General Residential Zone Schedule 2 (GRZ2) to the General Residential Zone Schedule 11 (GRZ11) - rezone 11-33 William Street (odd numbers) and 20-28 Park Lane (even numbers) from GRZ3 to GRZ11
General Residential Zone Schedule 13	- rezone land along Stephenson's Road generally between Virginia Street at Charlton Street GRZ2 to General Residential Zone Schedule 13 (GRZ13)
Commercial 1 Zone	- rezone part 331-343 Stephenson's Road from Public Use Zone 6 (Local Government) (PUZ6) to Commercial 1 Zone (C1Z) - rezone 47-61 Virginia Street from part Residential Growth Zone Schedule 2 (RGZ2) and part PUZ6 to C1Z - rezone part 64-74 Virginia Street from part RGZ2 and part PUZ6 to C1Z - rezone 256 Stephenson's Road from RGZ2 to C1Z - rezone 256A Stephenson's Road from PUZ6 to C1Z - rezone part 258-260 Stephenson's Road from part RGZ2 and part PUZ6 to C1Z
<b>Overlays</b>	
Design and Development Overlay 1	- delete Design and Development Overlay Schedule 1 from 318-322 Stephenson's Road
Design and Development Overlay Schedule 3	- delete Design and Development Overlay Schedule 3 (DDO3) from 12, 14-34 and 37 Sherwood Road - amend DDO3 to be clearer and to remove provisions that are proposed to be applied in the NRZ5
Design and Development Overlay 17	- introduce and apply Design and Development Overlay Schedule 17 (DDO17) to the Mount Waverley Major Activity Centre
<b>Particular provisions</b>	
Gaming	- amend the Clause 52.28 Schedule to include land to be rezoned to C1Z

Provision	Change
<b>Operational provisions</b>	
Background documents	- amend the Clause 72.08 Schedule to include the <i>Mount Waverley Activity Centre Structure Plan, 2021</i> (Structure Plan) as a background document

## 1.2 Background

Monash City Council (Council) provided a detailed background to the Amendment in its Part A submission, including a chronology of events. The Panel has summarised this in Table 2.

**Table 2** Amendment C167mona chronology of events

Date	Event / Description
29 June 2021	Council resolved to request the Minister for Planning give authorisation to prepare the Amendment
4 May 2022	Council lodged authorisation request with Department of Environment, Land, Water and Planning (now Department of Transport and Planning)
17 May 2022	Department of Environment, Land, Water and Planning advised Council that the request for authorisation required further review
6 September 2022	Authorisation to prepare the Amendment granted with conditions
2023	Council officers undertook further work to address authorisation conditions
28 March 2023	Council considered the changes required by the conditions of authorisation and resolved to endorse those changes.
June-July 2023	Consultation occurred, including: <ul style="list-style-type: none"> <li>- Council's engagement website went live.</li> <li>- Notices were sent to 1645 owners and occupiers of affected and adjoining properties.</li> <li>- Notices were sent to 186 additional parties who'd requested to be kept informed of the Amendment.</li> <li>- Notices were emailed to prescribed Ministers.</li> <li>- Notice was published in The Age and Victorian Government Gazette.</li> </ul>
4 August 2023	Exhibition closed, 20 submissions received
18 August 2023	Late submission received (21 total)
26 September 2023	Council resolved to request the Minister for Planning to appoint a Panel
5 October 2023	Panel appointed

## 1.3 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material

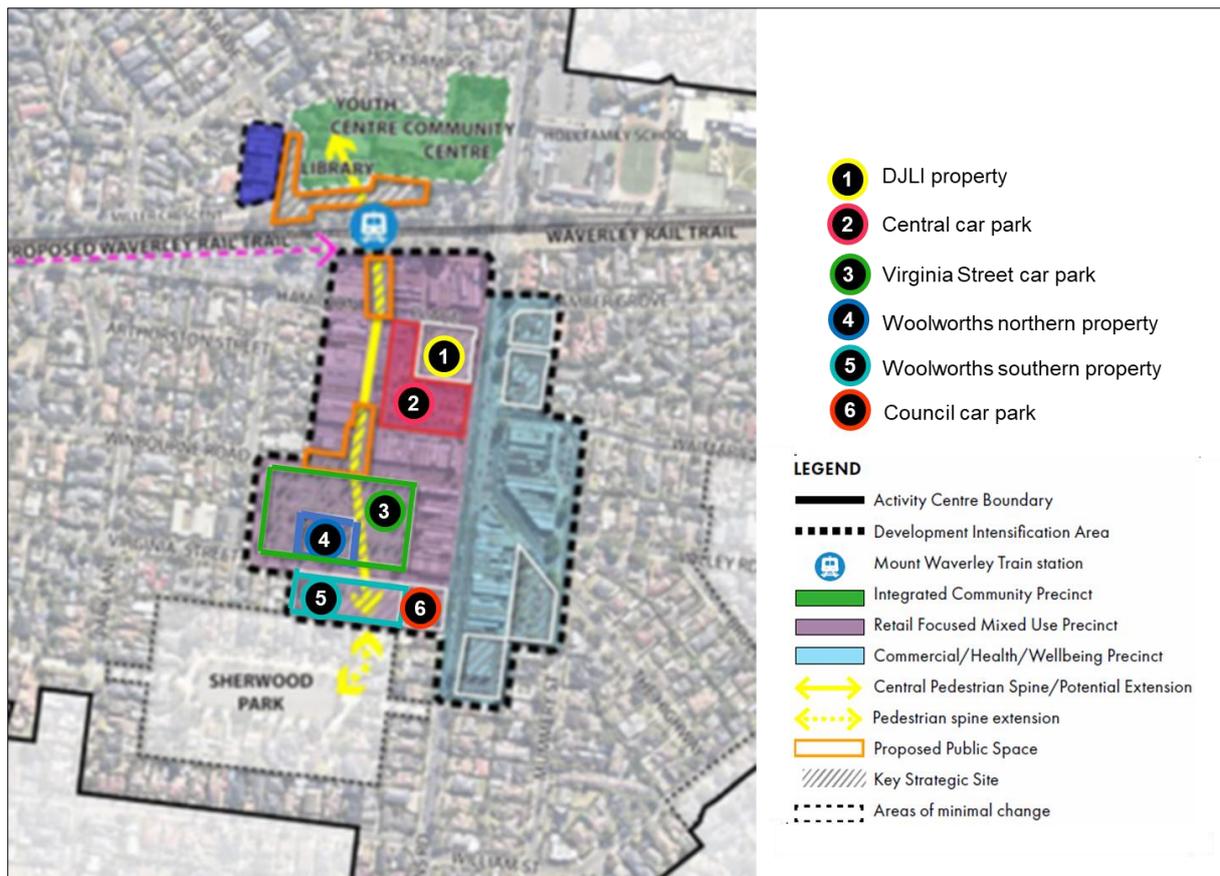
presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Strategic issues
- Design and development issues
- Form and content of the Amendment.

The locations referred to in the report are shown in Figure 2.

**Figure 2** Localities referred to in this report



## 1.4 Limitations

Various submissions raised issues not relevant to the Amendment, including:

- Monash Development Guide for Childcare Centres
- foreign ownership of apartments
- sale of Council land.

These issues are not addressed in this Report.

A submitter noted a single dwelling covenant applies to land in Stephenson's Road. Planning scheme amendments are a common way of varying or removing a restrictive covenant, however a proposal to do so is not part of the Amendment. Accordingly, the Panel has not addressed this issue in this Report.

First Church of Christ Scientist noted it had agreements with Council and the Shell Company providing it with parking benefits. It sought assurance that the Amendment would not affect these benefits. Council confirmed the Amendment has no impact on the agreements in place. As this matter is not relevant to the Amendment, it is not addressed further in this Report.

The Panel's role is confined to considering the unresolved issues raised in submissions. The Panel has not considered the application of residential zones or DDO3 because they were not raised in any submission. The Panel's recommendations should be read accordingly.

## 2 Strategic issues

### 2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix C highlights key imperatives of relevant provisions and policies.

**Table 3** Planning context

	Relevant references
<b>Victorian planning objectives</b>	- section 4 of the <i>Planning and Environment Act 1987</i> (PE Act)
<b>Planning Policy Framework</b>	- Clause 11 Settlement: 11.01-1S (Settlement), 11.02-1S (Supply of urban land), 11.02-2S (Structure planning), 11.03-1S (Activity centres) - Clause 15 Built environment and heritage: 15.01-1S (Urban design), 15.01-1R (Urban design – Metropolitan Melbourne), 15.01-2S (Building design), 15.01-4S (Healthy neighbourhoods), 15.01-5S (Neighbourhood character) - Clause 16 Housing: 16.01-1S (Housing supply) - Clause 17 Economic Development: 17.02-1S (Business) - Clause 18: 18.02-1S (Walking)
<b>Local Planning Policy Framework</b>	- Clause 21.04-3 (Residential development) - Clause 21.05-3 (Economic development) - Clause 21.06-3 (Activity centres) - Clause 22.03 (Industry and business development and character policy)
<b>Other planning strategies and policies</b>	- Plan Melbourne Directions: 1.2 (Improve access to jobs across Melbourne and closer to where people live), 2.1 (Manage the supply of new housing in the right locations to meet population growth and create a sustainable city), 2.2 (Deliver more housing closer to jobs and public transport), 2.5 (Provide greater choice and diversity of housing), 4.3 (Achieve and promote design excellence), 5.1 (Create a city of 20-minute neighbourhoods), 6.4 (Make Melbourne cooler and greener) - Mount Waverley Activity Centre Structure Plan, 2021 - Victorian Housing Statement <sup>1</sup>
<b>Planning scheme provisions</b>	- Clause 32.08 General Residential Zone - Clause 32.09 Neighbourhood Residential Zone - Clause 34.01 Commercial 1 Zone - Clause 43.02 Design and Development Overlay - Clause 52.28 Gaming
<b>Ministerial directions</b>	- Ministerial Direction: The Form and Content of Planning Schemes - Ministerial Direction 9 (Metropolitan Planning Strategy)

<sup>1</sup> The Victorian Housing Statement was released on 23 September 2023 and did not inform the preparation of the Amendment.

Relevant references	
	- Ministerial Direction 11 (Strategic Assessment of Amendments)
<b>Planning practice notes and guidance</b>	- Planning Practice Note 46: Strategic Assessment Guidelines, September 2022
	- Planning Practice Note 58: Structure Planning for Activity Centres, September 2018
	- Planning Practice Note 59: The role of mandatory provisions in planning schemes, August 2023
	- Planning Practice Note 60: Height and setback controls for activity centres, September 2018
	- Planning Practice Note 90: Planning for Housing, July 2023
	- A Practitioner’s Guide to Victorian Planning Schemes Version 1.5, April 2022

## 2.2 The issues

The issues are whether:

- the Amendment is strategically justified
- Monash can achieve its projected municipal demand when considering the supply of housing expected to be delivered in the MWMAC
- the Planning Scheme should manage the number and floor area of supermarkets.

## 2.3 Strategic justification

### (i) Background

The Amendment Explanatory Report states:

The amendment is required to implement the Mount Waverley Structure Plan (2021) which was adopted by Council in March 2021. The Structure Plan will plan for future growth and some intensification in and around the centre, while ensuring that the character of the centre is retained.

There are currently no design controls applying to the commercial area of the major activity centre. While there has been limited demand for increased intensification in this area, a single development could substantially change the character of the area. The proposed Design and Development Overlay will support intensification, yet ensure good design outcomes while retaining key aspects of the village shopping centre character.

The Structure Plan proposes preferred height limits, seeking 3-4 storey height limits for properties around Hamilton Place and other side streets (with upper floor setbacks from residential interfaces), 4- 5 storeys along Stephenson’s Road, with the tallest development (up to 8 stories) on the largest sites and set well back from residential development.

The use of a specific schedule for the General Residential Zone will support some intensification of the area predominantly through townhouses and low-rise apartments and reduced setbacks while retaining the garden city character of the area.

Overall, the amendment will have a net community benefit. It will facilitate increased intensity and economic activity in the centre, facilitate increased housing diversity in an area well serviced by public transport and the daily needs of residents while ensuring that key aspects of the character are retained.

**(ii) Evidence and submissions**

Council submitted the Amendment:

- addresses the objectives planning in Victoria by providing clear guidance on the development outcomes sought in the MWMAC
- supports the local planning policy framework objectives for major activity centres in Monash, particularly objectives for character and scale of new development
- is consistent with Planning Policy Framework (PPF) objectives for settlement, urban design, housing, business and transport
- is consistent with Plan Melbourne, particularly objectives for encouraging housing close to public transport and jobs
- makes proper use of the Victoria Planning Provisions and relevant Planning Practice Notes and guides.

Council explained the Amendment is the culmination of approximately five years of study and analysis. The Amendment was prompted by Council's realisation that the current suite of controls (or lack thereof) would not provide sufficient direction to deliver sustainable and positive development outcomes in the MWMAC.

Council submitted the MWMAC has a distinct village character, expressed through predominantly single and double storey buildings with a fine grain subdivision pattern in the commercial areas of the centre. This *"necessitates built form controls that complement the village character, rather than eroding it"*. This objective is reflected in the Structure Plan and carried through to the proposed local policy and DDO17.

Council noted the *"MWMAC is not and never has been expected to do the 'heavy lifting' in terms of growth within 'major activity centres' within Monash"* and its place in the hierarchy justifies a more nuanced approach to intensification of development. The Amendment seeks to ensure that future growth occurs in a way that successfully balances the valued attributes of the centre while delivering a high quality living and working environment.

Mr Biles, called by Council to provide planning and urban design evidence, stated:

My overall conclusion is that the Structure Plan has been investigated in a thoughtful manner and captures the essence of the Mt Waverley Activity Centre.

It is a Centre with sound credentials, to be built upon and enhanced as opposed to redefinition and rebuilding.

It is important to recognize that it is part of a network of centres that go beyond just the municipality of Monash. It is a part of an evolving and expanding metropolis.

Woolworths submitted the Amendment is *"sensible"* and should be supported subject to some minor refinements (further discussed in Chapter 3).

Mr Negri, called by Woolworths to provide planning evidence, was satisfied the Amendment advances the PPF of the Planning Scheme, by guiding moderate change in the activity centre. He supported the Amendment with minor modifications to the built form provisions.

DJLI Pty Ltd (DJLI) submitted the MWMAC *"is a location that should properly experience land use diversification and intensification over the time horizon of the Structure Plan"* and this should be a paramount consideration in settling the content Amendment. While accepting there is no 'one size fits all' for major activity centres, it is equally the case that planning for these centres must ensure that the strategic potential of the centre is realised. The strategic potential of the MWMAC is a product of:

- its excellent access to public transport infrastructure
- good access to the arterial road network
- proximity to the Monash National Employment and Innovation Cluster
- development patterns that provide clear opportunities for consolidation and intensification.

DJLI submitted ‘village character’ needs to be properly reconciled with the strategic function and potential of the centre which should in turn be reflected in the provisions introduced by the Amendment.

### **(iii) Discussion**

The strategic role of the MWMAC as a focus for intensification is expressed in Plan Melbourne, the PPF and Council’s Municipal Strategic Statement. This role was not challenged by submitters. While not unique, the locational advantages of a major activity centre on a train line cannot be understated. This attribute along with its proximity to a national employment cluster, are significant drivers for intensifying the MWMAC.

The main issue in dispute was whether the Amendment delivers planning provisions that will enable the centre to properly fulfil this strategic role. At the heart of the dispute were different views on how ‘village character’ should drive or temper expectations for intensification and built form outcomes.

The PPF requires planning to ensure sufficient land is available to meet forecast demand, based on projected population growth for a municipality over at least a 15 year period. Built form outcomes for major activity centres are principally informed by policies for activity centre growth and urban design. The policies are not mutually exclusive, however to the extent there is tension between the two, planning must strike a balance in favour of net community benefit.

The Panel is broadly satisfied the Amendment is consistent with the policy framework and provides a framework for growth to meet forecast demand until 2036. This is discussed further in Chapter 2.4 (Housing demand and capacity) and Chapter 3 (Design and development issues).

### **(iv) Findings**

The Panel finds the Amendment supports the strategic role of the MWMAC as a designated location for land use intensification.

## **2.4 Housing demand and capacity**

### **(i) Background**

The Minister for Planning authorised the preparation of the Amendment subject to conditions, one of which required Council to demonstrate the Structure Plan can support forecast population growth. Council subsequently prepared a document entitled *Residential Capacity Analysis* (Document 19).

This assessment notes the Victoria in Future forecast of housing demand is not available at the suburb level for Mount Waverley. To estimate the demand for dwellings in Mount Waverley to 2036, Council used suburb level data from Forecast ID (.id Consultants) and modelled this against Victoria in Future municipal data as shown in Table 4. This generated a demand figure for the Mount Waverley suburb of 1,843 dwellings to 2036.

The Residential Capacity Analysis estimates that the Amendment will yield a potential supply of up to 2,372 dwellings in the MWMAC as shown in Table 5.

Subdivision activity in the Mount Waverley suburb (excluding the MWMAC area) from August 2018 to August 2023 has yielded 494 lots as shown in Table 6.

**Table 4 Modelled dwelling demand for Mount Waverley suburb 2021-2036**

Area	Forecast ID estimate 2021-2036	Victoria in Future estimate 2021-2036
Mount Waverley dwelling growth	1,430	N/A
Monash dwelling growth	13,935	17,960
Proportion	10.26%	10.26%
Modelled allocation to Mount Waverley	N/A	1,843

Source: Document 19

**Table 5 Estimated dwelling capacity of Mount Waverley Major Activity Centre**

Area	Assumptions	Estimated yield
GRZ11	- Redevelopment of all properties not already subdivided with an average yield of 2.5 additional dwellings per lot	892
GRZ13	- Redevelopment of all properties not already subdivided with an average yield of 3.5 additional dwellings per lot	77
Commercial areas	- Footprints developed in full and built to the preferred height, excluding levels one and two which are assumed to be a commercial use - Average apartment size of 65 square metres	1,403
<b>Total</b>		<b>2,372</b>

Source: Document 19

**Table 6 Subdivision activity in Mount Waverley suburb August 2018 to August 2023**

Subdivision type	Quantity	Addition lots created
Mount Waverley suburb excluding activity centre		
2 lots	245	245
3 lots	84	168
4 lots	4	12
5 lots	5	20
6 lots	4	20
7 lots	1	6
8 lots	2	14
10 lots	1	9

Subdivision type	Quantity	Addition lots created
Mount Waverley activity centre		
2 lots	8	8
3 lots	5	10
<b>Total</b>	<b>359</b>	<b>512</b>

Source: Panel adapted from Document 23

## (ii) Submissions

Council submitted that MWMAC has a theoretical supply of 2,372 dwellings (Table 5) which will more than meet the projected demand for housing in the Mount Waverley suburb (1,843 dwellings, Table 4) until 2036.

Council advised that recent past trends in residential development in Mount Waverley (Document 23) shows that over the five-year period from August 2018 to August 2023, there were 359 subdivisions (Document 23). It stated:

Mount Waverley has not experienced the type of intensification as other suburbs such as Clayton, Glen Waverley and Clayton in Monash have. There have not been any subdivision planning permits issued for apartments in the last five years, and townhouse developments generally tend to be lower density than that in the other suburbs listed above.

DJLI submitted:

- the assumptions underpinning Council's Residential Capacity Analysis are unrealistic and it is unlikely that the level of subdivision assumed would occur in such a short time frame
- the Residential Capacity Analysis represented a theoretical maximum capacity and does not represent a likely outcome until 2036
- this gives further weight to its case that a key strategic site such as the DJLI property should be developed to its full potential capacity
- the proposed height requirement for the DJLI property will not allow this.

## (iii) Discussion

Council's data shows in the past five years, an average of 98 lots have been created in the Mount Waverley suburb each year<sup>2</sup>. If the same rate of subdivision was to occur through to 2036, approximately 1,200 new lots might be expected to be created in the Mount Waverley suburb (excluding the activity centre).

The Panel agrees with DJLI that it is highly unlikely the theoretical extra dwelling capacity in the MWMAC will be realised in the short to medium term (Table 5). This is primarily because the existing fine grain lot configuration will be difficult to convert to its modelled capacity.

However, the Panel has not received submissions on an alternative scenario, and it is not its role to speculate on a likely outcome. That said, if only one third (790 dwellings) of the theoretical capacity is realised in the MWMAC (Table 5) and a further 1,200 dwellings delivered in the balance of the Mount Waverley suburb, a total of 1,990 dwellings would exceed the forecast demand of 1,843 dwellings (Table 4).

<sup>2</sup> Table 6, Mount Waverley suburb excluding activity centre total new lots (494)

To maintain the balance between supply and demand, the Panel is firmly of the view that any extra capacity that can be reasonably added to the MWMAC should be considered. This is not reason alone to support additional height in the MWMAC but weighs strongly in its favour.

**(iv) Findings**

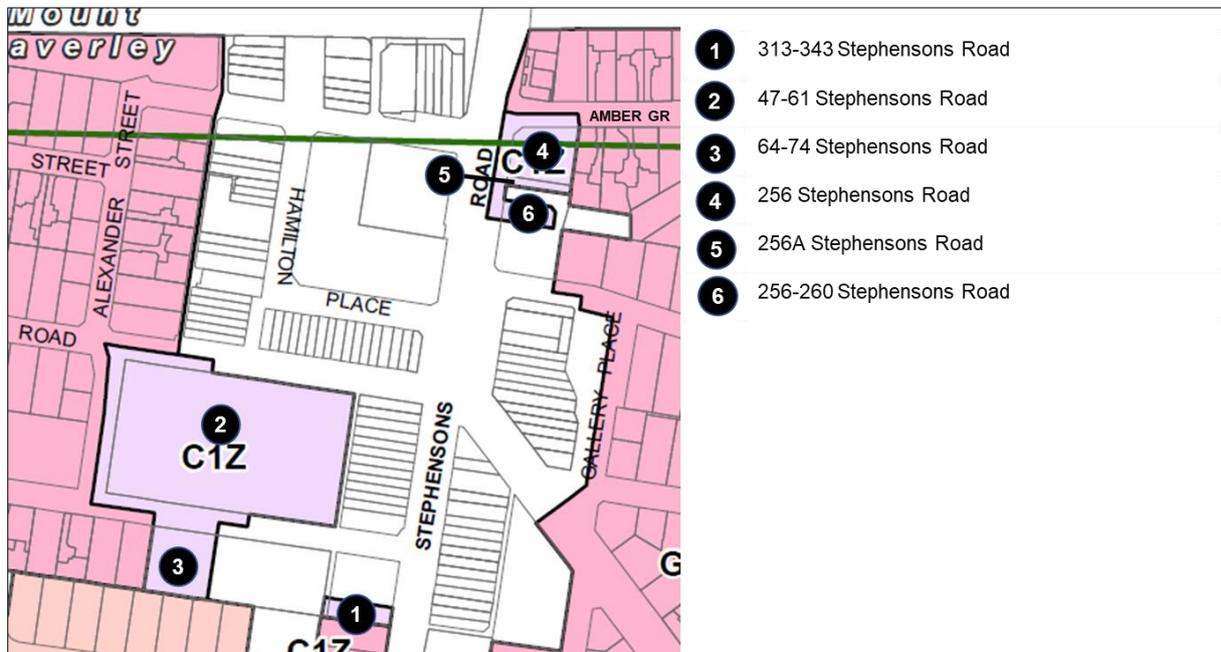
The Panel finds the capacity of the MWMAC to generate new housing supply as a result of the approval of the Amendment may meet forecast demand but possibly not by such a wide margin that further capacity for development could be considered.

**2.5 Commercial floor space**

**(i) Background**

The Amendment proposes to rezone six parcels to C1Z, as shown in Figure 3.

**Figure 3 Properties proposed to be rezoned to Commercial 1 Zone**



Source: Panel adapted from exhibited Amendment

**(ii) Evidence and submissions**

In its initial submission, Ritchies identified concerns about an increase in supermarket floor space in the MWMAC, which could occur if land was rezoned to C1Z as proposed. At the Hearing, Ritchies submitted the Amendment ought to be amended to control the expansion of supermarket floor space in a manner consistent with both the strategic rationale for the Amendment and the long term viability of the MWMAC. It proposed an upper limit might be 4,000 or 4,500 square metres of supermarket floor space.

Ritchies submitted there was confusion between and within the Background Report and Discussion Paper which underpin the Amendment and what is proposed in the Amendment. Ritchies noted the reports used different floorspace expansion scenarios based around different operators. Ritchies submitted that this confusion resulted from a lack of analysis as to what ought to change at the centre.

Ritchies took issue with the notion that the MWMAC needs to grow to maintain viability and to continue to be successful. It considered that there was no analysis that supported such a contention.

In relation to the options for expansion of supermarket floor space, including possible development on the Virginia Street car park site, Ritchies submitted that it is not the role of planning to prescribe the location of supermarkets within a mature centre such as MWMAC.

Ritchies proposed Clause 22.16 (Mount Waverley Activity Centre Structure Plan) be amended by inserting a new objective and new policy as follows:

Objective: To support the ongoing economic viability of existing retail premises within the centre

Policy: Discourage development incorporating additional supermarket floorspace which would have an adverse impact on the economic viability of existing retail premises in the centre.

DJLI submitted its property was strategically significant due to its size and its designation as a gateway site. It noted the terms of a section 173 agreement require that the site is operated as a supermarket. It did not make submissions on floor space required for retail uses or number of supermarkets.

Woolworths called Mr Ganly to provide evidence on the demand for supermarket floorspace in MWMAC. Mr Ganly identified the catchment area for the MWMAC and was satisfied, based on metropolitan wide averages, Mount Waverley was significantly undersupplied with supermarkets. He considered the two supermarkets in the centre were small and outdated by contemporary standards.

Mr Ganly undertook a retail economic assessment of the likely impact within and beyond the existing centre of expanding Woolworths to a full line supermarket of around 3,000 square metres and with accompanying standalone retail offerings. He was satisfied this demonstrated the economic impacts are likely to be well within the bounds of what is generally regarded as acceptable because the impacts would not threaten the viability of any operator or centre.

Mr Ganly undertook his analysis based on current dollar values of sales for future years (future dollars). He confirmed he made no explicit assumption of the likely rate of price increase implied in his analysis.

Mr Negri supported the proposed rezoning of land to the C1Z. In evidence Mr Negri stated:

The proposed rationalisation of zoning to the Commercial 1 Zone for properties with a retail core function in the activity centre will also promote the redevelopment of underutilised land in the activity centre.

Council submitted it is appropriate for the Amendment not to specifically address supermarket floor space, however:

The evidence is in any event strong that the MWMAC can accommodate and will benefit from additional supermarket floor space. Mr Ganly's evidence supports this. The Economic Assessment (Part B of the Background Report) supports this.

Council submitted rezoning the Virginia Street car park to C1Z was the appropriate approach given both its existing use as a car park and its prospective future uses which could include commercial, retail and residential uses in addition to car parking. Council referred to *Planning Practice Note 60: Height and setback controls for activity centres* which indicates that structure planning should ensure sufficient land capacity for future uses over a 15 year period and beyond this to a 30 year horizon.

**(iii) Discussion**

While the Panel agrees with Ritchies that neither the Background Report or the Discussion Paper demonstrate that additional supermarket floor space is required to ensure the continued viability of the MWMAC, it disagrees this is required for the Amendment to be strategically justified. Rather, the tests for the Amendment are whether it “plans for an adequate supply of commercial land in appropriate locations” (Clause 17.02-1S) and supports the retail hierarchy of Monash (Clause 21.06-2). No evidence or submissions has been presented to demonstrate the amount of C1Z land resulting from the approval of the Amendment will be excessive or is likely to result in undesirable outcomes. The Panel supports the use of the C1Z where it is proposed including the Virginia Street car park and notes that this was supported in relevant evidence. It is the appropriate Victoria Planning Provisions tool.

It is unusual not to find at least one full-line supermarket in a major activity centre. The Panel accepts the evidence of Mr Ganly that the MWMAC is underprovided in supermarket floor space, although there is some uncertainty about the extent of under provision based on the boundary of the catchment area. The Panel further accepts the evidence of Mr Ganly that the existing Woolworths could be expanded to full line and accompanied by a range of other retail providers without unacceptable impacts on other operators or other centres in the catchment area. The Panel also notes Mr Ganly’s observation that the opportunity also exists for Ritchies to similarly expand its floor space.

Supermarkets often perform an anchor role in a major activity centre and their location can be critical to the successful operation of a centre. However, it is not the role of planning to prescribe the location of a supermarket in an activity centre nor the total floor area of supermarket or retail provision. The proposal put forward by Ritchies to set a cap on supermarket floor space in the MWMAC is inconsistent with the approach to planning for retail areas implemented through Amendment VC100 which introduced the reformed commercial zones into the Victoria Planning Provisions. A proposal to insert a policy in the Planning Scheme to achieve something that is not allowed for by the C1Z Schedule is contrary to good practice and to drafting guidance.

The inconsistencies within and between the Discussion Paper and Background Report identified by Ritchies are of little consequence. This background material has informed, but is not part of the Amendment, and represents stages of the strategic planning process where certain proposals are put forward, tested and refined.

**(iv) Findings**

The Panel finds:

- It is appropriate rezone land to the Commercial 1 Zone as proposed by the Amendment, including the Virginia Street car park.
- The MWMAC is underprovided with supermarkets, particularly full-line supermarkets, compared with metropolitan wide indicators.
- There is no basis for the Amendment to prescribe the number of supermarkets or the total supermarket floorspace in the MWMAC.

## 2.6 Conclusions

For the reasons set out in this report, the Panel concludes that the Amendment:

- is well founded and strategically justified
- is supported by, and implements, the relevant sections of the Planning Policy Framework
- will deliver a net community benefit and sustainable development as required by Clause 71.02-3
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

# 3 Design and development issues

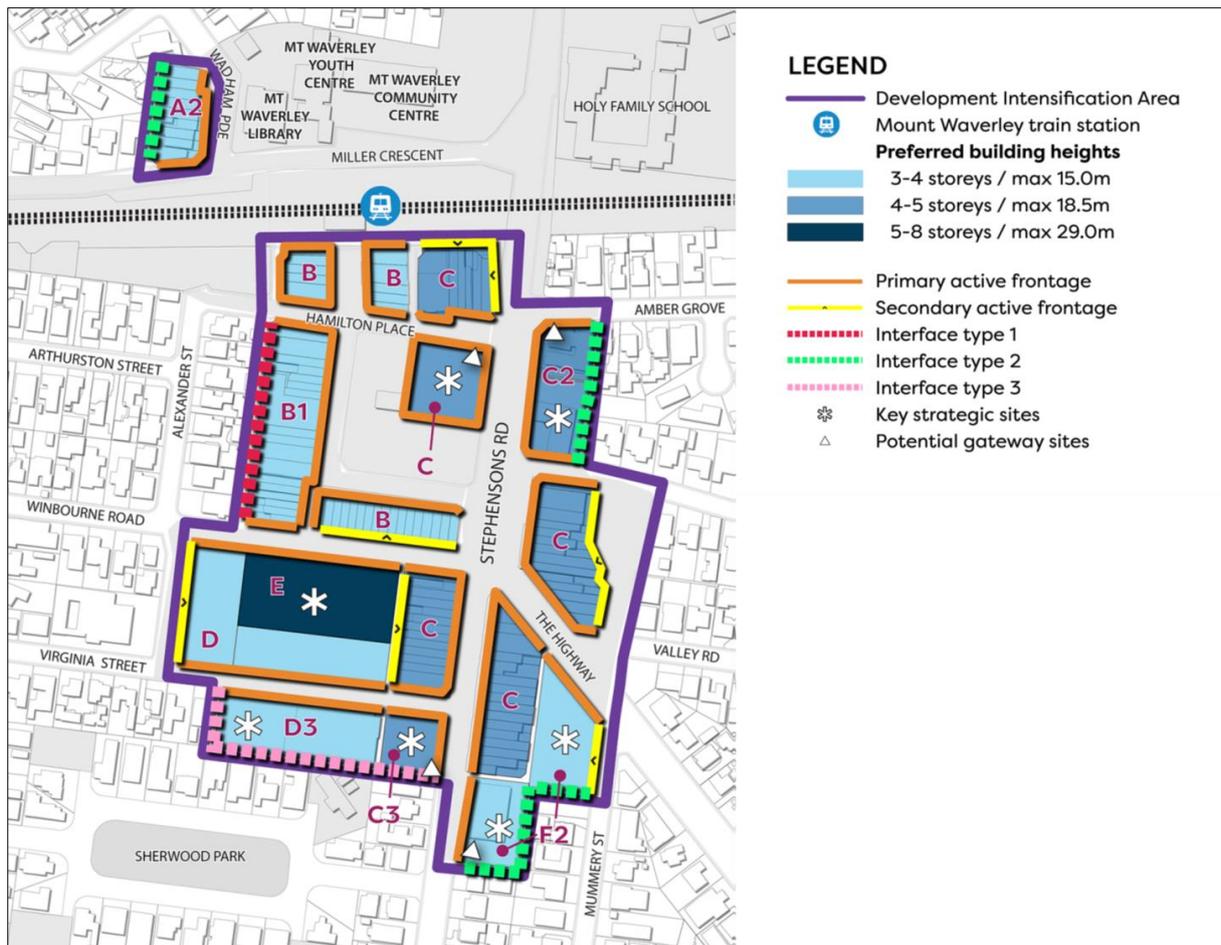
## 3.1 Building heights

### (i) The issue

The issue is whether the preferred the preferred building heights in DDO17 are appropriate.

### (ii) Background

**Figure 4 Mount Waverley Major Activity Centre Built Form Plan**



Source: Map 1 of Design and Development Overlay Schedule 17

The Structure Plan states:

The Plan aims to locate taller buildings on strategic sites that are prominent and centrally located within the commercial core. In these areas, building heights will need to consider how to mitigate overshadowing impacts on surrounding footpaths and public spaces at key times of the year.

For the surrounding residential areas, this Plan recommends retaining existing planning controls. Existing controls support a mix of minimal and incremental development that will deliver medium density housing in the Centre over the next twenty years. This could be in the form of villa units, townhouses and small scale apartment buildings.

DDO17 Clause 2.0 (Buildings and works) provides:

The following building and works requirements apply to an application to construct a building or construct or carry out works:

...

**Building heights**

Building Heights should not exceed the preferred maximum building height specified in Table 1 and Figure 1 to this schedule. The following minimum floor to floor dimensions should apply:

- 4.2 – 4.5 metres for retail or restaurant use
- 3.2 – 3.5 metres for any other use

**Table 1**

Area	Preferred maximum height	Residential Interface setbacks (refer Table 2)
Area A - Wadham Parade	3-4 storeys 15 metres	A2 - Type 2
Area B – Hamilton Place environs	3-4 storeys 15 metres	B1 – Type 1
Area C – Stephenson Road environs	4-5 storeys 18.5 metres	C2 – Type 2 C3 – Type 2
Area D – Virginia Street environs	3-4 storeys 15 metres	D3 – Type 3
Area E – Virginia Street car park north east. This area is set back at least 25 metres from Virginia Street and 32 metres from Alexander Street	5-8 storeys 29 metres	Not applicable
Area F – Part Stephenson Road and Mummy Street	3-4 storeys 15 metres	F2 – Type 2

**(iii) Evidence and submissions**

Community submitters stated the preferred building heights were too high for various reasons, including:

- taller development would erode the centre’s charm and useability
- more intense development would create traffic congestion
- development would overshadow existing housing in Amber Grove and Sherwood Road
- redevelopment of smaller lots with taller buildings could not provide universal access (for example, could not accommodate a lift).

Various submitters proposed DDO17 be modified to:

- make building heights mandatory rather than discretionary
- decrease the preferred height 256 Stephenson Road (shown as C2 on Figure 4) from 5 storeys to 3-4 storeys, consistent with other properties with a residential interface
- decrease overall building heights proposed, generally to 3 to 4 storeys
- increase the preferred height of the DJLI property from 4 to 5 storeys to 8 storeys.

Council submitted the preferred heights in DDO17 are responsive to an intent to:

- focus retail development on the western side of Stephenson Road to strengthen speciality food, retail and hospitality offer
- direct higher built form to the development intensification area where there are fewer sensitive interfaces

- transition heights from the development intensification area to residential interfaces
- provide more housing options in the development intensification area and to a lesser extent in the residential interface area
- maintain the local, convenient feel of the MWMAC.

Council stated when comparing the development opportunities between the Virginia Street car park and the DJLI property, a lower height is warranted on the latter because:

- the DJLI property is a gateway site on a prominent corner
- its contribution to the 'village feel' is different to Virginia Street car park
- it will not be "*shielded*" by lower surrounding built form.

Mr Biles' evidence stated:

- the current centre has a limited number of privately owned large sites and extensive small frontage ownerships particularly on the west and south sides of Hamilton Place
- heights of 3-4 storeys are difficult to deliver as a meaningful expansion of housing numbers because of their separate ownerships and small frontages
- consolidation by public or private initiative is hard to deliver
- the small shops all appear actively engaged in retail that is successful with very few vacancies, unlike some metropolitan centres
- redevelopment of the Central car park and the Virginia Street car park could make "*contributions of substance*" to new housing supply
- given the nature of ownership of the sites (primarily Council with some private interests), a master planning exercise is a better way to resolve the future of these sites than a structure plan.

Mr Biles recommended:

- a master plan be prepared for the Virginia Street car park and Central car park (including the DJLI property)
- DDO17 be amended to designate the Virginia Street car park and Central car park as 'Key Strategic Site – subject to separate built form assessment'.

DJLI submitted that increasing the preferred height for the DJLI property to 29 metres (eight storeys) was justified because:

- mid-rise development in the MWMAC is already promoted by Clause 21.06
- consistent with the evidence of Mr Biles, it would not compromise the village character of the MWMAC
- the site has no sensitive abuttals
- development does not need to be managed to protect the Central car park from overshadowing, which the Structure Plan proposes will remain in place
- even if the Central car park was proposed to be developed in the future, an eight storey building would not compromise its development potential
- Mr Biles preference for a master plan to be prepared for the Central car park and DJLI property would be relevant if Council had indicated an appetite to redevelop the car park, which it has not
- impact of a future development of DJLI property on the Central car park can be properly assessed at the permit application stage
- if the site can properly accommodate a building of eight storeys in scale, the terms of the Amendment should reflect this.

Mr Sheppard's evidence was:

- the Structure Plan clearly states Key Strategic Sites are to cater for taller buildings
- only one Key Strategic Site is identified to cater for development above 5 storeys (within the Virginia Street Car Park)
- it is understandable that the preferred height for the Key Strategic Sites at the edge of the centre, adjacent to the low rise residential hinterland, are lower
- the DJLI property has strategic attributes that lend themselves for growth, including it is:
  - the second largest private landholding (after Woolworths) in the MWMAC
  - located within 100 metres of the Mount Waverley Train Station
  - located in the core of the MWMAC where the Structure Plan expressly seeks taller building
  - is identified as a gateway site
  - not adjacent to sensitive interfaces, being bound by roads and carpark on all sides
- a 5-8 storey and 29 metre preferred maximum height would better respond to the attributes of the DJLI property and would be consistent with the heights originally proposed for the site in the Draft Mount Waverley Structure Plan
- an 8 storey building on the DJLI property would not undermine the village character of the MWMAC
- the DJLI property is of sufficient size to accommodate increased setbacks to mitigate the visual impact of taller form.

Mr Sheppard recommended DDO17 be amended as it relates to the DJLI property to:

- change the preferred maximum height to 29 metres
- introduce a provision requiring increased setbacks for built form above a height of 18.5 metres.

Mr Negri was satisfied the proposed built form massing (heights and setbacks) provides an appropriate response to the opportunities in the MWMAC in a manner that manages the sensitive interfaces.

In closing, Council stated:

- Council has no intention to develop the Central car park for some alternative or mixed use development
- significant improvements to the carpark and entrance are proposed as part of the action plans described in the Structure Plan
- the Central car park is already appreciated for its walkability and landscaped (canopy treed) character
- separated pedestrian paths through the carpark encourage incidental meeting and mingling of the community
- the Central car park was one of the key features regularly identified during consultation as an important part of the MWMAC.

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

The experts generally agreed the building heights in DDO17 appropriately respond to the policy framework. The Panel agrees because:

- Mount Waverley is a major activity centre identified for intensified development (as discussed in Chapter 2.3)

- the housing capacity resulting from proposed heights is necessary to maintain the balance between supply and demand until 2036 (as discussed in Chapter 2.4)
- the building heights fit within the medium rise profile supported by Clause 21.06.

While consistently referred to by Council and other parties, the Structure Plan does not succinctly describe the ‘village feel’ or ‘village character’ that is sought to be protected. Having regard to material presented through the Hearing, the Panel understands ‘village feel and character’ to be the interplay of the following attributes:

- convenient and local shopping offer
- safe and vibrant streets
- low scale
- fine grain shopfronts
- openness
- tree canopy.

The proposed built form provisions are respectful of these attributes. It is unnecessary to replicate the existing low profile of buildings to continue the ‘village feel’ and ‘village character’. It is important that future development maintains a human scale and sense of openness through a strong and active podium that maintains views to the sky. That is achieved through the street wall height provisions that will work in tandem with preferred maximum building heights.

The two specific sites where the nominated preferred height was in dispute were:

- the DJLI property
- 256 Stephenson Road.

The DJLI property is prominently located in the intensification area. However, it does not have sensitive interfaces, because it is adjoined to the south and west by a public at-grade carpark, to the east by a 30-metre road reserve (Stephenson Road) and to the north by Hamilton Place.

The Structure Plan anticipates the Central car park will remain as a public parking space until at least 2036. The key action identified for the site in the Structure Plan is to *“Improve the safety and efficiency of the central retail car parking area”*. While the central pedestrian spine runs along the western boundary of the site, no part of the car park is identified on any of the detailed plans in the Structure Plan as a current or future public space that would leverage off the spine.

The opportunity for the Central car park to be redeveloped for a mix of uses in the future was well recognised by the parties and experts alike, however this opportunity is not the basis of the Structure Plan sought to be implemented by the Amendment. In these circumstances, the Panel rejects Council’s suggestion that building height on the DJLI property needs to be managed to protect the amenity of the Central car park as it presently exists and is proposed to continue. As succinctly put by DJLI, *“it would be wholly unprecedented for shadow controls to operate over land utilised for the purpose of public car parking”*.

The Panel does not agree that the gateway role is a factor that should limit the height of the DJLI property. Chapter 8 of the Structure Plan nominates paired gateway sites and the northern and southern end of Stephenson Road. The DJLI property is a northern gateway site that is intended to better define the arrival and departure experience into the centre. This intended purpose can be realised by future development at either five storeys or eight storeys. It is unnecessary to mirror building height on gateway sites on either side of Stephenson to fulfil this gateway function.

Overall, the Panel agrees with DJLI that a preferred height of 29 metres would better respond to the strategic attributes of the DJLI property.

Regarding 256 Stephensons Road, the Panel agrees with Council that there is a strong rationale for maximising building heights along Stephensons Road, which is centrally located in the centre and has a wide (30-metre) road reserve. The proposed preferred maximum building height of 18.5 metres strikes an appropriate balance between these attributes and the desire to transition the scale of the development from the intensification area to surrounding residential development.

General submissions proposing reduced height in other part of the centre were expressed in broad terms and were not accompanied by any analysis that demonstrated the proposed preferred maximum building heights were not acceptable.

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

The Panel concludes:

- Building heights in Design and Development Overlay Schedule 17 appropriately respond to the relevant policy framework.
- The preferred building height for 275-283 Stephensons Road, Mount Waverley should be increased from 18.5 metres to 29 metres.
- The preferred building height for 256 Stephensons Road should be maintained at 18.5 metres.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to revise Table 1 (Preferred maximum building heights) and Figure 1 (Built form map) to increase the preferred height for land at 275-283 Stephensons Road, Mount Waverley (labelled as C4) from 18.5 metres to 29 metres.**

## **3.2 Mandatory requirements**

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

The issue is whether requirements for building height in DDO17 should be mandatory.

### **(ii) Background**

A 'mandatory provision' is defined in *Planning Practice Note 59: Mandatory provisions in planning schemes, August 2023* as:

A mandatory provision is a requirement or control that must be met and provides for no opportunity to vary the requirement.

### **(iii) Submissions**

A submitter stated the height provisions should be mandatory rather than discretionary. Council and none of the relevant experts supported this proposal.

### **(iv) Discussion**

Based on the material put to it, the Panel agrees there is no justification for making requirements for building height mandatory.

**(v) Conclusion**

The Panel concludes there is no justification for introducing mandatory requirements for building height.

**3.3 Solar protection****(i) The issue**

The issue is whether solar protection provisions are appropriate.

**(ii) Background**

DDO17 Clause 2.0 (Buildings and works) provides:

The following building and works requirements apply to an application to construct a building or construct or carry out works:

...

Development should not overshadow key public parks, plaza's (sic) and places.

Development should be designed to limit significant loss of sunlight to public areas, particularly through the middle of the day during winter.

Council's Part A submission advised:

Key public park, plaza's (sic) and places – Are public areas serving an open space style function, where pedestrians are prioritised over other transport means, including:

- Hamilton Walk - to the west of 47 Hamilton Place;
- Winbourne Road – the area that closed to traffic;
- Key parts of the pedestrian spine that serve a function beyond pedestrian movement, such as Hamilton Walk does currently; and
- In the future as the Structure Plan is implemented, it could also include other areas, such as in front of the railway station (to the south), or parts of car parks if their use changes.

**(iii) Evidence and submissions**

Woolworths submitted the proposed solar protection provisions are uncertain in their operation and should be deleted or refined. Woolworths agreed with Mr Negri that the provisions should be amended to:

- depict the area subject to sunlight provisions on a plan
- clearly describe the shadow test (time of year, time of day and duration).

DJLI submitted the shadowing provisions were formulated without proper analysis or modelling and would appear to be contrary to the built form outcomes that are expressly promoted by the Structure Plan and DDO17. DJLI emphasised the shadowing provisions must be carefully formulated because 'requirements' must be given effect by development by virtue of Clause 43.02-2.

Council submitted its intent was to consider the impact of overshadowing on any public area, with a higher standard of sunlight sought for public parks, plazas and places. Council proposed to replace the exhibited provisions with a revised requirement and decision guideline as follows:

Requirement (Building form and design): Development should be designed to minimise overshadowing of public areas between 11am-2pm at the equinox.

Decision guideline: Whether the development has been designed to minimise overshadowing of public areas so as to limit adverse amenity impacts between 11am-2pm at the equinox, and not negatively impact the function of public areas.

Council submitted the terms such as “public areas” and “minimise” have their ordinary meaning and are no more uncertain or less capable of application than many other terms used in planning schemes.

Woolworths supported Council’s revised drafting. DJLI proposed the decision guideline be deleted and the requirement be replaced with a more specific provision.

Development should be designed to minimise loss of sunlight to the footpaths of Hamilton Place at the Equinox between 11am – 2pm.

**(iv) Discussion**

The Background Report and Structure Plan provide limited discussion on solar access of public areas or spaces.

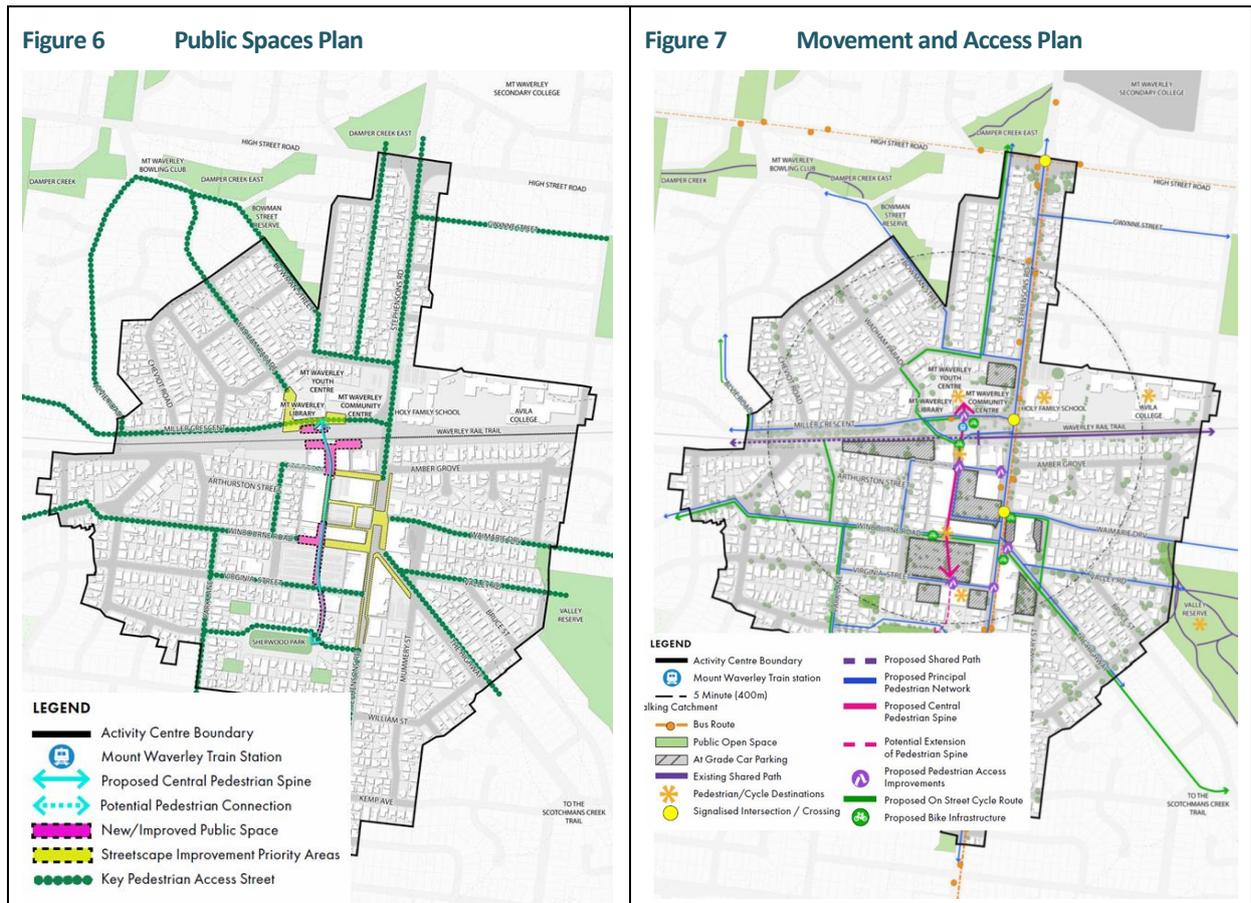
The Background Report discusses an initiative to improve connectivity between the retail centre and Virginia Street car park through development of the Winbourne Road Plaza. The report notes acquisition of an adjacent property will provide an opportunity to improve solar access to the space. This opportunity is reflected in the Structure Plan’s ‘Key Policies and Actions’ to expand Winbourne Plaza, as shown in Figure 5.

**Figure 5 Winbourne Plaza Plan**



Source: Mount Waverley Activity Centre Structure Plan Figure 17

The Structure Plan notes that to mitigate overshadowing impacts taller buildings are proposed to be located on strategic sites that are prominent and centrally located. In these areas “building heights will need to consider how to mitigate overshadowing impacts on surrounding footpaths and public spaces at key times of the year”. The ‘Public Spaces Plan’ in the Structure Plan identifies the location of new and improved public spaces, streetscape improvement priority areas and key pedestrian access streets (Figure 6).



The Panel accepts the origins of the solar access provisions can be found in the Background Report and Structure Plan. However, neither document provides a detailed shadow study examining shadows cast on footpaths and public spaces at spring equinox by:

- existing buildings
- buildings developed in accordance with preferred heights and setbacks
- existing vegetation.

This is important and necessary since many of the proposed public spaces and streetscape improvement areas are in locations where solar access is already compromised because of the existing width of the space, or because they are located on the south side of existing buildings.

Without this detailed information, the Panel does not consider there is sufficient justification to introduce the requirement proposed by Council. Instead, a decision guideline is warranted, with some refinement to Council’s drafting to ensure the meaning of terms can be properly understood. In particular, the following areas should be depicted in DDO17:

- ‘public spaces’ consistent with the ‘New/Improved Public Space’ areas shown on the Public Spaces Plan (Figure 6), excluding the central pedestrian spine south of Winbourne Road
- the ‘principle pedestrian network’ consistent with the Movement and Access Plan (Figure 7).

The Panel’s preferred drafting of the decision guideline is:

Whether development overshadows public spaces or the principal pedestrian network between 11am-2pm at the equinox.

**(v) Conclusions and recommendation**

The Panel concludes:

- There is insufficient analysis to warrant introduction of requirements for solar protection.
- The shadow impact of buildings on defined public spaces and the principal pedestrian network between 11am and 2pm at the equinox is a relevant consideration at the permit stage, warranting a specific decision guideline.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to:**

- delete:**
  - *Development should not overshadow key public parks, plaza's [sic] and places.*
  - *Development should be designed to limit significant loss of sunlight to public areas, particularly through the middle of the day during winter.*
- amend Figure 1 or insert a new map to show public spaces and the principal pedestrian network**
- insert the following decision guideline:**
  - *Whether development overshadows public spaces or the principal pedestrian network between 11am-2pm at the equinox.*

**3.4 Active frontages****(i) The issue**

The issue is whether the designated primary and secondary active frontages are appropriate.

**(ii) Background**

DDO17 Clause 2.0 (Buildings and works) provides:

The following building and works requirements apply to an application to construct a building or construct or carry out works:

...

Development on sites identified with a primary active street frontage in figure 1 to this schedule should utilise permeable and transparent facade treatments and provide for active, customer focused uses at ground level of all primary frontages.

Development on sites identified with a secondary active street frontage in figure 1 to this schedule should contribute to activation of the street at ground level of all secondary frontages.

Primary and secondary active frontages are identified in Figure 4.

**(iii) Evidence and submissions**

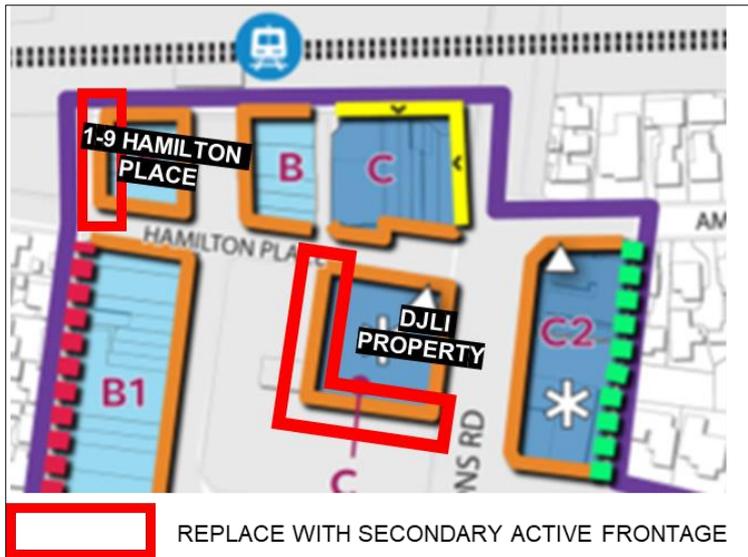
DJLI submitted the active frontage designations on the DJLI property should be revised considering the back of house functions that need to be incorporated into any supermarket development. DJLI noted a section 173 agreement requires that the property is developed as a supermarket (Document 27).

Mr Sheppard stated:

- the DJLI property and the block created by 1-9 Hamilton Place are entirely edged with ‘primary active frontage’
- this is unfeasible as retail uses necessarily have back of house functions such as loading and storage
- the function design of larger floorplate retail uses (such as supermarkets) preclude activation of 100 percent of their shopfloor edges.

Mr Sheppard recommended DDO17 Figure 1 be amended to change the car park edges of the DJLI property to secondary active frontages. He noted a similar change may be appropriate for the western edge of the block comprising 1-9 Hamilton Place.

**Figure 8** Sheppard recommended changes to active frontage



Source: Panel

In its final version of DDO17 (Document 25), DJLI proposed a specific active frontages requirement for the DJLI property be introduced as follows:

Development on the site identified as precinct C4 in figure 1 to this schedule should contribute to activation of the street at ground level, including through the use of permeable and transparent façade treatments where practicable.

In closing, Council submitted:

- it appropriate for the four public interfaces of the DJLI property to be designated as “primary active street frontages” (noting that two of the frontages are to a carpark and not a street and that it might be necessary or desirable to remove the word “street” from the provision)
- while supermarkets have and need back of house facilities, this assumes that future redevelopment of the site will be for a supermarket, which will not necessarily be the case because of the site’s suitability for a variety of mixed use developments
- current urban design and placemaking policies and practices would all but guarantee that a supermarket in the form of the current IGA will never be built today and it is often the case island sites are sleeved with active uses
- DDO17 does not suggest that every part of a primary street frontage needs to be ‘permeable and transparent’ or ‘active, customer focussed at ground level’
- even as a redeveloped supermarket, the site can be developed in such a way as to meet the building form objective for primary street frontages.

**(iv) Discussion**

The Panel considers it is impractical for the entire perimeter of a commercial block to be designated as 'primary active frontage'. The Panel is mindful that development of the MWMAC is constrained by existing lot sizes and pattern of ownership, and design solutions (like sleeving) that might be available in other settings are not easily implemented in this centre.

Council's approach does not assist proponents and decision makers decide where an active frontage should be prioritised. In the Panel's view, the designation of 'active frontages' should be informed by the Public Places Plan (Figure 6) and Movement and Access Plan (Figure 7). On this basis the 'primary active frontage' designation should be removed from the west boundary of the DJLI property and the west boundary of properties at 1-9 Hamilton Place.

The Panel observes the primary and secondary active frontage provisions are differentiated by a requirement 'to' activate and 'contribute to' the activation of ground levels respectively. The difference in expected outcomes is difficult to gauge with such general drafting. Setting a definitive percentage of glazing to solid wall would have been a more effective way of drafting this requirement. However, within the parameters of the exhibited provision and submissions, the Panel's preferred drafting is:

Development should maximise use of clear glazing at ground level adjacent to a primary active frontage on Figure 1 of DDO17.

Development should use clear glazing at ground level adjacent to a secondary active frontage on Figure 1 of DDO17 where practical.

**(v) Conclusions and recommendations**

The Panel concludes:

- It is not appropriate to designate the entire perimeter of a commercial block as primary active frontage.
- Designated primary and secondary activate frontages should assist proponents and decision makers decide where an active frontage should be prioritised.
- Built form requirements for primary and active frontages should be revised to clarify each of their intents.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to:**

- a) **delete the 'primary active frontage' on Figure 1 from the west boundary of 275-283 Stephensons Road and 1-9 Hamilton Place**
- b) **replace the primary and secondary active frontage requirements in Clause 2.0 with "*Development should maximise use of clear glazing at ground level adjacent to a primary active frontage on Figure 1. Development should use clear glazing at ground level adjacent to a secondary active frontage on Figure 1*".**

**3.5 Interface types****(i) The issue**

The issue is whether designated interface types are appropriate.

## (ii) Background

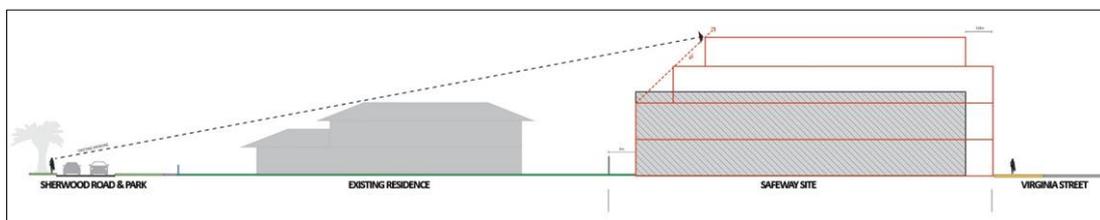
DDO17 provides requirements for rear and side setbacks to sites with a residential interface which include:

- Type 1: 0 metres at ground level, plus an additional one metre set back to every one metre of building height above the third level
- Type 2: 3 metres at ground level, plus an additional one metre setback to every one metre of building height above the third level
- Type 3: 3 metres at ground level, plus an additional one metre setback to every one metre of building height above the second level.

DDO17 also includes the following requirement relating address viewlines from Sherwood Road:

Buildings on the south side of Virginia Street should be designed to minimise their appearance from behind in view lines from Sherwood Road Park as demonstrated in Figure 2 below.

**Figure 2 - Viewlines from Sherwood Road Reserve**



## (iii) Evidence and submissions

### Woolworths southern property

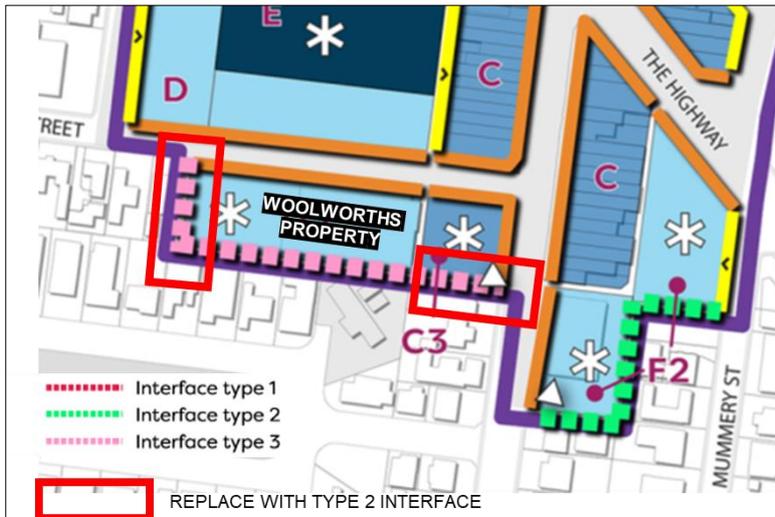
Woolworths noted the Type 3 Interface is slightly more restrictive than the Type 2 Interface because it only nominates a two-storey height before requiring a setback to upper levels, rather than three storeys.

Mr Negri agreed the Type 3 Interface should apply to the southern boundary of the Woolworths southern property because:

- it responds to the residential properties in Sherwood Road
- it manages the visual impact on Sherwood Park
- it provides an acceptable shadow outcome for the neighbouring Sherwood Road properties based on the built form parameters.

However, Mr Negri considered the Type 3 Interface was not warranted along the western boundary of the Woolworths southern property and the south side of the Council car park fronting Stephenson's Road (Site C3 on Figure 9) because these boundaries do not adjoin properties in Sherwood Road. Mr Negri recommended the Type 2 Interface be applied in these locations. Woolworths supported Mr Negri's recommendation.

**Figure 9** Negri recommended changes to interface types



Council did not support Mr Negri’s recommendation, and noted the proposed ground and upper level setbacks will ensure that building form is articulated to provide visual interest and maintain the human scale of the MWMAC.

Woolworths also opposed the Sherwood Road Park view lines requirement in DDO17 and proposed that it be revised as:

Buildings on the south side of Virginia Street should be designed to be architecturally well treated from behind in view lines from Sherwood Road Park.

Council proposed the requirement be revised as:

Buildings on the south side of Virginia Street should be designed to minimise their appearance from behind in view lines from Sherwood Road Park as demonstrated in figure 2 below.

In oral evidence, Mr Biles stated retaining Figure 2 in DDO17 helps bring attention to the need to achieve a “*well considered architectural response*” to buildings that can be viewed from Sherwood Road Park.

### **256 Stephenson’s Road**

A submitter requested the interface treatment be amended from Type 2 to Type 3 if the preferred height for 256 Stephenson’s Road (shown as C2 on Figure 4) was not reduced.

Council submitted the Type 2 Interface was appropriate in this location and that future development would be assessed against a range of provisions to ensure the amenity of the Amber Grove properties was protected.

### **(iv) Discussion**

The Panel agrees with Woolworths that the Type 3 Interface is directed at managing the visual impact of development when viewed from Sherwood Park and Sherwood Road. It is not warranted in the areas identified by Mr Negri (Figure 9). The Type 2 Interface should be applied to these areas, consistent with approach taken to sites A2 and F2 shown on Figure 4, which similarly abut residential properties.

For consistency, the interface for 256 Stephenson's Road (C2) should be maintained as Type 2. As pointed out by Council, the amenity impact of future development on Amber Road properties will be assessed at the permit application stage.

The Sherwood Road Park and properties on the south side of Virginia Street are approximately 50 metres apart. This separation, combined with preferred maximum building height of 18.5 metres, will minimise the visibility of buildings viewed from the park. This outcome can be reinforced through the requirement generally proposed by Council. The Panel's preferred drafting is:

Buildings on the south side of Virginia Street should be designed to minimise their visibility from Sherwood Road Park.

#### (v) Conclusions and recommendation

The Panel concludes:

- The Type 3 Interface should only apply to the southern boundary of properties directly abutting Sherwood Road.
- The Type 2 Interface should be applied to the western boundary of the Woolworths southern property and southern boundary the Council owned car park at 331-343 Stephenson's Road.
- The Type 2 Interface should be retained on the eastern boundary of 256 Stephenson's Road.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to:**

- a) amend Map 1 to replace the Type 3 Interface with Type 2 Interface on the:
  - western boundary of the Woolworths southern property at 64-74 Virginia Street
  - southern boundary of the land at 331-343 Stephenson's Road
- b) amend the 'Residential interface setbacks' in Table 1 to apply:
  - Type 2 to 'D3 – western boundary'
  - Type 3 to 'D3 – southern boundary'
- c) revise the Sherwood Road Park view lines requirement as *"Buildings on the south side of Virginia Street should be designed to minimise their visibility from Sherwood Road Park"*.

### 3.6 Front setbacks

#### (i) The issue

The issue is whether the preferred setback of 256 Stephenson's Road to Amber Grove is appropriate.

#### (ii) Background

The location of 256 Stephenson's Road is shown in Figure 3.

DDO17 Clause 2.0 (Buildings and works) provides:

The following building and works requirements apply to an application to construct a building or construct or carry out works:

**Building setbacks**

Buildings should be built to the boundary shared with any street, including side-streets.

Unless there is an interface with residential land as identified in Figure 1 and Table 2, development above three storeys should be set back at least 3 metres from any street or parking lot boundary including streets at the side and rear.

**(iii) Evidence and submissions**

A submitter sought to increase the preferred setback of 256 Stephenson's Road to Amber Grove for consistency with the prevailing setback of residential development (7.6 metres).

Council's Officer Report of 26 September 2023 stated:

Building commercial development to the street boundary, provided the frontage is activated, is a standard and appropriate design outcome in retail and commercial areas. The DDO requires activated frontage, which will provide surveillance of the street and a more pleasant walking environment. While this does contrast with the generous landscaped front setbacks provided in the residential areas of Amber Grove, it is the best outcome in commercial areas of an activity centre.

**(iv) Discussion**

The edges of the commercial core of the activity centre often present challenges in managing the transition from commercial to residential built form. This is especially so where the edges occur mid-block, rather than at a street or public space.

The Panel agrees with Council that it is appropriate to set a requirement for buildings to be built to front boundaries in the development intensification area, to make effective use of commercial sites.

**(v) Conclusion**

The Panel concludes the preferred front setback requirement for 256 Stephenson's Road should be retained at zero metres.

**3.7 Pedestrian spine****(i) The issues**

The issues are whether:

- the proposed route of the central pedestrian spine is appropriate
- the central pedestrian spine should be recognised in the Amendment.

**(ii) Background**

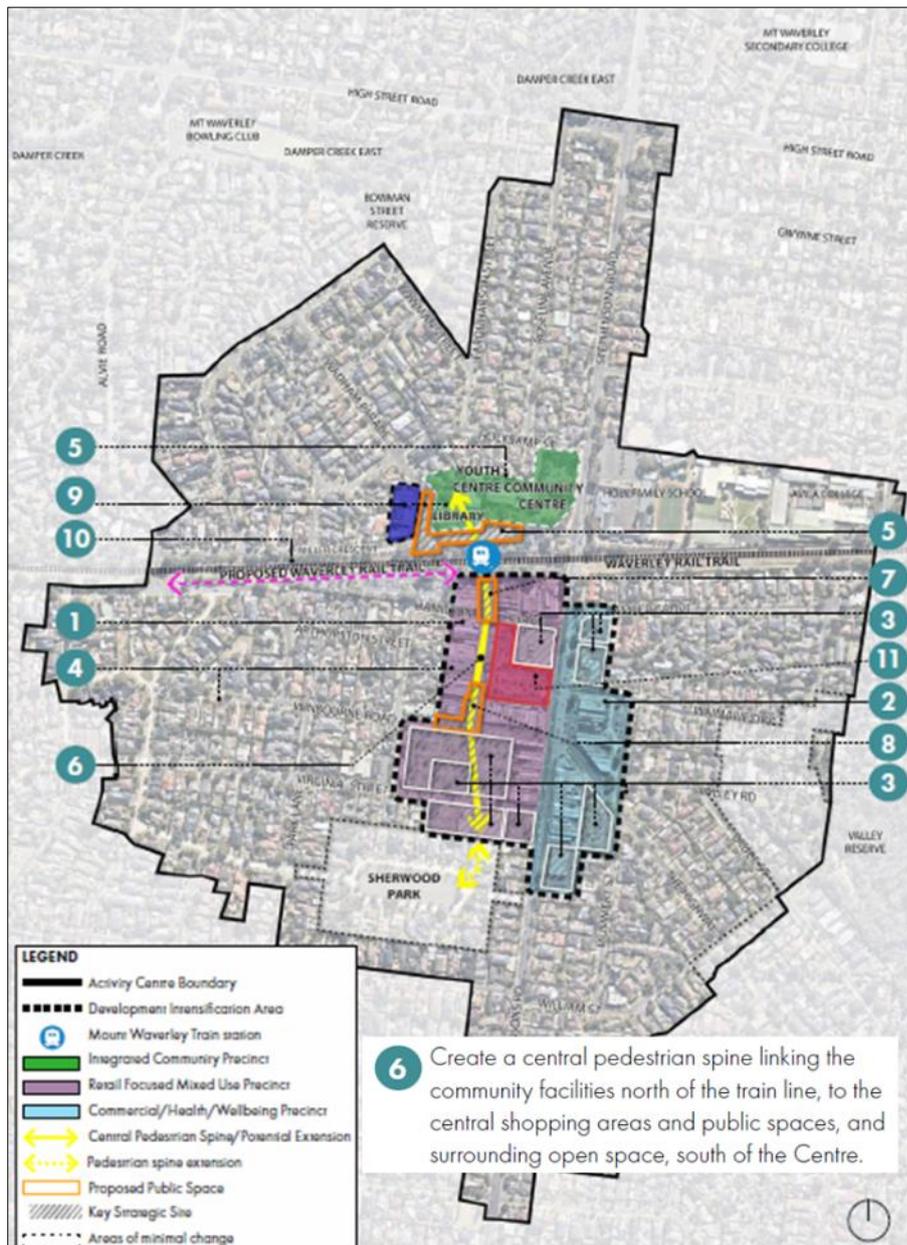
Action 6 of the Structure Plan is:

Create a central pedestrian spine linking the community facilities north of the train line, to the central shopping areas and public spaces, and surrounding open space, south of the Centre.

The location of the pedestrian spine is shown in Figure 10.

Clause 22.16-3 and DDO17 do not refer to the pedestrian spine.

**Figure 10 Mount Waverley Structure Plan Key Policies and Actions**



Source: Mount Waverley Activity Centre Structure Plan Figure 1

**(iii) Evidence and submissions**

A submitter considered there was no need to connect Sherwood Park to the Mount Waverley Train Station, community precinct and library.

Council submitted the Amendment does not reference the central pedestrian spine, primarily because this is a Council action to deliver as a capital project over its own land and with other landowners like Metro Trains over their land. Council noted the spine already exists from the library to Woolworths, but there are many opportunities for its further improvement by:

- landscaping
- improving amenity and accessibility under the train line
- widening footpaths
- improving visibility through Hamilton Walk by acquiring the shop at 47 Hamilton Place.

Other aspects of the central pedestrian spine are a long term aspiration involving acquisitions or substantial changes to the use of the Council land. This includes the proposed connection through the Woolworths southern property to the Sherwood Road.

Council submitted the built form plan in the DDO17 is intended to guide development in accordance with the current street layout and the omission of reference to the central pedestrian spine through the Virginia Street car park was an oversight. Council invited the Panel's advice on how to address the spine in the Amendment, particularly given its conceptual nature.

Mr Biles' evidence stated the central pedestrian spine already functions as a lively conduit to connect the west side of the centre to the train station, public facilities like the library and then south to small frontage shops that are vibrant, activating the foot path with outdoor dining and public seating. He considered the extension and pedestrianisation of the spine is an important initiative in the ongoing life of the MWMAC.

Mr Biles recommended:

- the importance of the central pedestrian spine as a key element in the Structure Plan is positively endorsed
- a design guideline requiring weather protection over footpaths to improve pedestrian amenity along the central pedestrian spine be included the Amendment.

Mr Negri's evidence stated:

- the central pedestrian spine severs the northern Woolworths property and falls over the existing Woolworths supermarket building (on the Woolworths southern property)
- while the Amendment does not include any provisions to implement the central pedestrian spine initiative, it is clearly an important feature of the Structure Plan
- the Structure Plan will have status as an adopted Council strategy and is also proposed to be a Reference Document and a Background Document in the Planning Scheme
- whilst a central pedestrian spine extending from the train station into the retail core of the activity centre has merit, it is not necessary for the central pedestrian spine to extend south of Virginia Street into the residential precinct to the south
- this leg of the pedestrian spine impacts the Woolworths Supermarket and the neighbouring Council childcare centre
- if supported, a link to the residential precinct should follow the road that adjoins the eastern boundary of the Woolworths property
- north of Virginia Street there is opportunity for the pedestrian spine to be aligned to follow existing roads.

Woolworths supported Mr Negri's proposal, adding:

- the location of the central pedestrian spine in the Virginia Street car park should be marked as 'indicative' at this point in time
- the existing pedestrian path through the Virginia Street car park is not straight line, but currently 'dog legs' to the east
- there is no reason the new central pedestrian spine could not contain similar 'dog legs' to link with the most achievable ultimate route

In the alternative, Woolworth submitted:

- the depiction of any pedestrian spine to the south of Virginia Street should be deleted, or
- the Structure Plan should not be made a reference document in the Planning Scheme.

**(iv) Discussion**

The central pedestrian spine forms part of the principal pedestrian network identified on the Movement and Access Plan (Figure 7). The Panel agrees with Mr Biles that the central pedestrian spine is a key element of the Structure Plan. It should inform the built form response to various detailed design issues, including active frontages and solar access to public spaces.

The location of the spine is effectively fixed to the Hamilton Place road reserve between the Mount Waverley Train Station and Winbourne Road. Its location is less definitive south of Winbourne Road through the Virginia Street car park and Woolworths southern property.

There are many options for the future path of the spine through the Virginia Street car park and it will not necessarily follow its existing alignment. This will be a key consideration for Council when it packages its holding for future sale, whenever that may be. For present purposes, the Panel considers it is appropriate for the spine to be shown as part of the principal pedestrian network as 'indicative, final alignment to be determined'.

Extending the spine through the Woolworths southern property is highly aspirational. Council, as the owner of the spine initiative, is not taking steps to progressively deliver this leg of the spine through current capital projects, including its most recent development at the Sherwood Park Pre School Centre, which provides the theoretical connection from the Woolworths southern property to Sherwood Park.

The Panel agrees with Woolworths that the more likely, and practical, extension of the central pedestrian spine south of Virginia Street will be located east of the Woolworths southern property, should that property continue as a supermarket or similar large format retail use. It could potentially be located in the laneway west of the existing Council car park or on Stephenson's Road. That said, the Panel observes Sherwood Park is quite separate to the retail core of the MWMAC and it is not a strong southern anchor to the spine. It is unnecessary for this section of the spine to be shown as part of the principal pedestrian network in DDO17.

The Panel further considers it is unnecessary to make the recommendations sought by Woolworths to alter the alignment of this part of the spine in the Structure Plan, principally because the background document does not form part of the Planning Scheme.

**(v) Conclusions and recommendation**

The Panel concludes:

- The central pedestrian spine should be recognised as part of the principal pedestrian network in DDO17.
- The proposed route of the central pedestrian spine between Winbourne Road and Virginia Street is unresolved. The intent to deliver the connection should be recognised as part of mapping of the principal pedestrian network.
- The proposed extension of the central pedestrian spine south of Virginia Street connecting to Sherwood Park is not sufficiently resolved to warrant recognition as part of the principle pedestrian network in DDO17.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to show the central pedestrian spine:**

- a) between the Mount Waverley Train Station and Winbourne Road as part of the principal pedestrian network
- b) between Winbourne Road and Virginia Street as part of the principal pedestrian network and labelled 'indicative – final alignment to be determined'.

### 3.8 Trees

#### (i) The issue

The issue is whether trees in the activity centre should be protected.

#### (ii) Background

Council's Day 1 version of DDO17 included changes which responded to concerns raised about removal of trees in the Virginia Street car park as follows:

##### Design objective

To maintain and strengthen the centre's sense of place and village feel through the delivery of high quality built form [and landscaped](#) outcomes.

Buildings and Works

##### Buildings and works

[The following buildings and works requirements apply to an application to construct a building or construct or carry out works:]

##### Landscaping

...

[Include the retention of existing canopy trees or the establishment of new canopy trees in any new development of the land bounded by Virginia Street, Alexander Street, Winbourne Road, and the laneway to the rear of shops fronting Stephenson's Road and incorporate canopy trees and landscaping to:](#)

- [maintain and enhance the village feel,](#)
- [soften the impact of any buildings,](#)
- [reduce the impact of the built form on ambient air temperature; and](#)
- [improve the garden character of immediate environs.](#)

Council also proposed Day 1 changes to Clause 22.16-3, adding a 'Landscaping' section under 'Built Form' as follows:

[Encourage the retention of existing canopy trees or the establishment of new canopy trees in any new development of the land bounded by Virginia Street, Alexander Street, Winbourne Road, and the laneway to the rear of shops fronting Stephenson's Road to:](#)

- [maintain and enhance the village feel,](#)
- [soften the impact of any buildings,](#)
- [reduce the impact of the built form on ambient air temperature; and](#)
- [improve the garden character of immediate environs.](#)

#### (iii) Evidence and submissions

A submitter stated rezoning of the Virginia Street car park and subsequent development would result in a loss of trees, which currently provide habitat for wildlife, shade, canopy cover and amenity. The submitter said Council had an environmental obligation to protect treed spaces and encourage planting of more trees to retain the Garden City character of Mount Waverley.

Mr Biles' evidence stated that retaining significant trees is a good outcome because it would maintain and amplify their existing landscape contribution, support environmental outcomes and reinforce the Garden City character of the MWMAC. He considered landscaping provisions should apply to Council-owned car parks as well as private properties.

Mr Negri did not support Council's Day 1 changes to Clause 22.16-3 or DDO17, noting future redevelopment will "*clearly necessitate*" the removal of the trees which "*should be acknowledged and accepted*". Woolworths agreed with Mr Negri, adding:

- the Virginia Street car park is an underutilised parcel of developable land
- any redevelopment of the site may include the provision of underground car parking, which may not be compatible with retaining trees
- landscaping provisions should be clear and realistic about the potential for tree retention and replacement
- Council owns most of the Virginia Street car park and may choose to retain and replace trees at a higher rate than might otherwise be expected in the MWMAC
- it is not necessary or appropriate for there to be landscaping provisions in the Planning Scheme that could be claimed to require the retention and/or replacement of canopy trees in a car parking site such as exists now.

Council did not support the changes suggested by Woolworths or Mr Negri, noting the 'Garden City' character is a key characteristic of Mount Waverley, with the landscaped car parks being a key feature identified by the community in development of the Structure Plan. Council submitted the provisions provide flexibility to remove canopy trees where required for redevelopment, but seek the establishment of new canopy trees as part of new development on the perimeter of a site or in any suitable areas created.

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

A discretionary requirement to retain existing vegetation is impractical in an area earmarked for development intensification in the Structure Plan. Instead, the provision should be redrafted as a decision guideline, which should be expressed as:

Whether development retains existing canopy trees or alternatively provides for the establishment of new canopy trees.

Further, in the Panel's view it is desirable to consider the impact of removing trees and new planting across all land in DDO17, not just the Virginia Street car park. This is consistent with an existing strategy of Clause 15.01-2S (Building design), which provides "*Encourage development to retain existing vegetation*".

Consistent with its discussion and recommendations in Chapter 6.2 (below), the Panel considers it unnecessary to duplicate provisions between Clause 22.16 and DDO17. On this basis, Council's proposed changes to Clause 22.16 are not required.

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

The Panel concludes:

- The proposed requirement to retain existing trees or plant new trees is impractical in areas designated for intensification.
- The requirement should be redrafted as a decision guideline.

- It is unnecessary to repeat content contained in Design and Development Overlay Schedule 17 in Local Planning Policy Clause 22.16 (Mount Waverley Major Activity Centre).

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to insert a new decision guideline “Whether development retains existing canopy trees or alternatively provides for the establishment of new canopy trees”.**

### 3.9 Sustainability

#### (i) The issue

The issue is whether the Amendment supports sustainable development, including longevity of buildings and greater energy efficiency ratings.

#### (ii) Background

Chapter 6 of the Structure Plan provides policies to “strengthen the village’s sense of place”, including:

Ensure that all development supports a sustainable Activity Centre through implementation of best practice environmental sustainable design standards, including energy efficiency and water management.

The Amendment does not include policies or requirements relating to environmental design.

#### (iii) Evidence and submissions

A submitter requested the Amendment address various sustainability issues, including wind impacts of tall buildings, longevity of building structures and building energy ratings.

Council’s Officer Report of 26 September 2023 noted:

- wind effects are assessed at the planning permit stage
- the planning system does not manage longevity of buildings
- Council has an environmentally sustainable design (ESD) policy
- the Department of Transport and Planning has a preference for Statewide ESD policies, rather than locally specific policies
- a proposal to introduce local ESD policies for Mount Waverley is better pursued through a separate Amendment.

#### (iv) Discussion

The Panel is satisfied that local provisions to manage wind effects, building longevity and ESD are not required to support development in the MWMAC, given:

- Clause 15.01-2S (Building design) addresses building design and siting to support ESD
- Clause 58 (Apartment developments) deals with wind impacts where development is five storeys or more.

**(v) Conclusion**

The Panel concludes it is unnecessary for the Amendment to contain specific requirements for sustainable development and wind impacts, as these matters are managed by the Victoria Planning Provisions.

**3.10 Open space****(i) The issue**

The issue is whether the Structure Plan provides appropriate open space to meet the needs of the community.

**(ii) Background**

The Structure Plan identifies existing public open space areas, including Sherwood Park (Figure 1). In addition, the 'Key Policies and Actions Plan' (Figure 10) identifies three proposed 'public spaces', including land south of the existing library, and in two locations at the north and south end of Hamilton Place.

*Planning Practice Note 58: Structure planning for activity centres, September 2018 (PPN58)* states that one of the aims of structure planning is:

- provide for well designed and well located public spaces, (including passive and active open space) that serve the needs of all the community and visitors to the centre.

**(iii) Evidence and submissions**

A submitter stated the Structure Plan's failure to provide open space was a lost opportunity to retain mature trees and enhance the village atmosphere of the MWMAC.

Council's Officer Report of 26 September 2023 stated:

These are detailed development and design issues that are not addressed through a planning scheme amendment.

The Structure Plan includes a green pedestrian spine through the centre and expansion of the Winbourne Avenue plaza, as well as looking at wider footpaths and better pedestrianisation.

...

Council has the most control of the site as the land-owner.

**(iv) Discussion**

The Background Report provides a comprehensive of assessment of open space need and supply in the MWMAC. This has informed the key policies and action of the Structure Plan, including the proposal to create a pedestrian spine linking the central shopping centre with community buildings and open spaces.

The Panel considers that the Structure Plan's failure to 'do more' with the Council-owned car parking assets is a missed opportunity, but not a lost opportunity. Mr Biles recommendation for master planning is a one mechanism to consider the future of these spaces.

Notwithstanding, the Panel is satisfied the Structure Plan has properly considered the open space needs of the existing and future community, and is an acceptable response to relevant policy and guidance.

**(v) Conclusion**

The Panel concludes the Structure Plan provides appropriate open space to meet the needs of the community.

## 4 Form and content of the Amendment

### 4.1 Clause 22.03 Industry and Business Development and Character Policy

#### (i) The issue

The issue is whether Clause 22.03 is relevant and should have been considered in the Amendment.

#### (ii) Background

Clause 22.03 (Industry and Business Development and Character Policy) applies to land in an Industrial 1 Zone or a Commercial 1 or 2 Zone.

Clause 22.03 describes the desired future character of the MWMAC as follows:

New development within this Character Type should respect the scale and form of development of the relevant Major Activity or Neighbourhood Centre, while providing for appropriate change.

Development in the Clayton and Mount Waverley Major Activity Centres and the Pinewood, Syndal and Hughesdale Neighbourhood Centres should generally be compatible with the strategic directions detailed in table 1 of Clause 21.06-3, except where an adopted Structure Plan, or some other mechanism, has identified an alternate direction.

In determining appropriate design parameters, reference should be made to all relevant studies, reports and any structure plan adopted for the Activity Centres.

Relevant studies, reports and structure plans are listed as reference documents to this clause.

In relation to building height policy, Clause 22.03 provides:

- Development complements and does not visually overwhelm surrounding buildings, roads or spaces in terms of building scale, height and bulk.
- Development conforms with the scale and high quality design suitable for the locality.
- Encourage development within the Glen Waverley Major Activity Centre in accordance with the approved Glen Waverley Activity Centre Structure Plan, as identified in Clause 42.03 Schedule 12 (Glen Waverley Major Activity Centre).
- Encourage medium to high rise development within the Oakleigh Major Activity Centre (4 –8 storeys). High rise development should be located adjacent to the Oakleigh railway station, except where an adopted Structure Plan, or some other mechanism, has identified an appropriate height limit.
- Medium rise development should be encouraged in the Brandon Park, Clayton and Mount Waverley Major Activity Centres, except where an adopted Structure Plan, or some other mechanism, has identified an appropriate height limit.

#### (iii) Submissions

Council acknowledged it had overlooked Clause 22.03 in preparing the Amendment. Council submitted:

- the Planning Scheme drafting proceeded on the basis four storeys was medium rise and eight storeys was high rise
- structure planning would be undertaken for activity centres and those structures plans would be the tool for identifying an appropriate height limit
- there is no inconsistency between the thrust of the policies in Clause 22.03 and the controls, requirements and policies in the Amendment.

Notwithstanding, Council submitted there is a basis for saying Clause 22.03 could be excluded for operating in the MWMAC once the Amendment is approved. Council invited the Panel's advice on this matter.

DJLI submitted eight storeys was considered medium rise in contemporary planning practice.

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

The Panel observes Clause 22.03's objectives and policies have been superseded by provisions to be introduced by the Amendment. The Panel agrees with Council that there is a strong basis for excluding the policy operating in the MWMAC once, and if, the Amendment is approved.

Changes to Clause 22.03 were not authorised and exhibited as part of the Amendment. It is a matter for Council and the Minister for Planning to resolve the procedural steps to be taken to facilitate this change, either as part of the Amendment or a new planning scheme amendment. The Panel notes Council's advice that it is working with the Department of Transport and Planning to translate the Planning Scheme into the Amendment VC148 (Planning Policy Framework) format, and this will result in deleting all Clause 22 policies from the Planning Scheme.

This matter should be resolved as a priority. As pointed out by Council, the current local policy could be claimed to encourage a medium rise/four storey built form outcome in the MWMAC. If the policy remains in the Planning Scheme, it will create an internal inconsistency with the provisions introduced by the Amendment. This should be avoided.

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

The Panel concludes:

- The provisions of local policy Clause 22.03 relating to the MWMAC are superseded by provisions to be introduced by the Amendment.
- Clause 22.03 should be excluded from operating in the MWMAC.

The Panel recommends:

##### **Further recommendation**

**Subject to the approval of Amendment C167mona, as a matter of priority, steps should be taken to ensure that Clause 22.03 does not apply to the Mount Waverley Major Activity Centre.**

## **4.2 Clause 22.16 Mount Waverley Activity Centre Structure Plan Policy**

### **4.2.1 Built form policy**

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

The issue is whether the built form policy is appropriate.

#### **(ii) Background**

The exhibited built form policies with Day 1 changes (Document 8b) are:

Support a moderate intensification of built form that is well designed and enhances the garden city character where it is in residential areas.

Ensure that development promotes Crime Prevention Through Environmental Design (principles) particularly by ensuring passive surveillance over public areas.

Avoid visual bulk through by providing building recesses, setback variations, and articulation of building elevations that are visible from the public realm.

Where a building has a secondary active frontage to a car park, encourage pedestrian access to both the primary and secondary active frontages.

Encourage more housing options to meet the diverse community needs and to attract future residents.

Encourage the development of townhouses, villa units and low scale apartment buildings within the incremental change residential areas shown on Map 1 to this clause.

Encourage greater housing intensification in the intensification area shown on Map 1 to this clause.

Encourage development of accessible dwellings for people with limited mobility in close proximity to the shops, train station and bus stops.

The Practitioner's Guide states a policy:

Sets out the strategic basis for the exercise of discretion under other provisions.

### (iii) Submissions

Woolworths proposed the built form policies be revised as recommended by Mr Negri as follows:

Support a moderate intensification of built form that [accommodates land use intensification in the Core retail focussed mixed use area on Map 1 and provides a gradual height transition to neighbouring residential areas](#) ~~is well designed and enhances the garden city character where it is in residential areas.~~

~~Ensure that development promotes Crime Prevention Through Environmental Design (principles) particularly by ensuring passive surveillance over public areas.~~

~~Avoid visual bulk by providing building recesses, setback variations, and articulation of building elevations that are visible from the public realm.~~

Where a building has a secondary active frontage to a car park, encourage pedestrian access to both the primary and secondary active frontages.

Encourage more housing options to meet the diverse community needs and to attract future residents.

Encourage the development of townhouses, villa units and low scale apartment buildings within the incremental change residential areas shown on Map 1 to this clause.

Encourage greater housing intensification in the intensification area shown on Map 1 to this clause.

Encourage development of accessible dwellings for people with limited mobility in close proximity to the shops, train station and bus stops.

Council did not support Woolworths' proposed changes.

### (iv) Discussion

The Panel observes there is much duplication between the proposed built form policies and DDO17 and other provisions of the Planning Scheme. This approach is inconsistent with guidance in the Practitioner's Guide, which states:

Rule 3: A provision must not conflict with or duplicate other legislation, instruments or planning scheme provisions.

The Panel observes the Planning Scheme is yet to be redrafted in the Amendment VC148 (Planning Policy Framework) format, and that its current 'belts and braces' approach to drafting is a legacy approach that is no longer necessary or acceptable.

The Panel's preferred drafting of Clause 22.16:

- sets out the strategic basis for the detailed provisions in DDO3 and DDO17
- deletes policies that duplicate other provisions of the Planning Scheme, for example designing for passive surveillance (Clause 15.01-2S Urban design).

#### (v) Conclusion and recommendation

The Panel concludes that built form policies in Clause 22.16 should not duplicate the provisions of DDO17 or other provisions of the Planning Scheme.

The Panel recommends:

**Amend the built form polices in Clause 22.16 as shown in the Panel preferred version in Appendix D:1 to delete content that duplicates other provisions of the Planning Scheme.**

## 4.3 Design and Development Overlay Schedule 17

### 4.3.1 Objectives

#### (i) The issue

The issue is whether the objectives of DDO17 are appropriate.

#### (ii) Background

The exhibited design objectives of DDO17 with Day 1 changes (Document 8g) are:

To maintain and strengthen the centre's sense of place and village feel through the delivery of high quality built form [and landscape](#) outcomes.

To ensure buildings within core retail areas and along key pedestrian streets contribute to active and engaging street frontages, and support a high level of pedestrian amenity and safety through passive surveillance of public areas.

To encourage excellence in building design by ensuring development improves pedestrian amenity and responds to the characteristics of the site and its context.

To retain the existing fine grain character of commercial buildings around Hamilton Place.

To encourage development that retains human scale and an appropriate transition in building height from the Centre to the adjoining residential areas.

The Practitioner's Guide states an objective:

Specifies the outcomes a decision under a provision should seek to achieve. Objectives can be general or specific to a particular class of use or development regulated by a provision.

#### (iii) Submissions

Woolworths proposed the objectives of DDO17 be revised as recommended by Mr Negri as follows:

To promote mid-rise development in the Mount Waverley Activity Centre accommodating active uses at ground level with offices and/or housing at upper levels and that is arranged to achieve a gradual transition in height to adjoining residential areas.

To ensure buildings within core retail areas and along key pedestrian streets contribute to active and engaging street frontages, and support a high level of pedestrian amenity and safety through passive surveillance of public areas.

To maintain and strengthen the centre's sense of place and village feel and to retain the existing fine grain character of commercial buildings around Hamilton Place.

Council did not support Woolworths' proposed changes and noted that in cross examination, Mr Sheppard broadly agreed the objectives were appropriate.

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

The Panel agrees with Woolworths that the objectives warrant revision to ensure they are focussed and clearly direct the outcomes to be delivered by future development. The objectives drafted by Council do not follow a logical sequence and overlap with one another.

It is clear to the Panel the key design and development matters for this activity centre are:

- strengthening the MWMAC's sense of place and village feel
- retaining fine grain character of commercial buildings around Hamilton Place
- transitioning building scale from the development intensification area to residential areas
- activating the ground floor of new development
- providing safe and enjoyable pedestrian paths
- protecting solar access to key public places.

These key matters should inform the design objectives. The Panel's preferred drafting of the design objectives is:

To ensure buildings and landscaping strengthen the sense of place and village feel.

To retain the fine grain character of buildings in Hamilton Place.

To transition building height from the development intensification area to adjoining residential areas.

To provide active street frontages and provide a high level of pedestrian amenity and safety.

To protect solar access in key public spaces and key pedestrian routes.

#### **(v) Conclusion and recommendation**

The Panel concludes the Design objectives of Design and Development Overlay Schedule 17 should be revised to clearly direct the outcomes to be delivered by future development.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to revise the design objectives in Clause 1.0 to clearly direct the outcomes to be delivered by future development.**

### **4.3.2 Buildings and works requirements**

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

The issue is whether the buildings and works requirements of DDO17 are appropriate.

#### **(ii) Background**

The Practitioner's Guide defines a requirement as follows:

Specifies the limits of a discretion or right under a provision or the conditions under which it must be exercised.

The 'head clause' to the Design and Development Overlay provides at Clause 43.02-2 (Buildings and works):

Buildings and works must be constructed in accordance with any requirements in a schedule to this overlay. A schedule may include requirements relating to:

- Building setbacks.

- Building height.
- Plot ratio.
- Landscaping.
- Any other requirements relating to the design or built form of new development.

A permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise.

### **(iii) Submissions**

DJLI submitted careful drafting is necessary because Clause 43.02-2 requires that buildings and works must be constructed in accordance with requirements.

### **(iv) Discussion**

The Panel agrees with DJLI that all requirements must be carefully drafted to operate effectively with Clause 43.02-2.

While detailed submissions were not made on the drafting of all buildings and works requirements, it is clear to the Panel some require review to comply with drafting guidance. For example, requirements expressed as “*encourage*” or “*consider*” do not set a standard or limit of discretion and do not qualify as requirements.

### **(v) Conclusion and recommendation**

The Panel concludes the buildings and works provisions of Design and Development Overlay Schedule 17 should be revised to clearly set the limit of discretion that applies under each requirement.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to revise the requirements in Clause 2.0 to clearly set the limit of discretion that applies under each requirement.**

## **4.3.3 Building height requirements**

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

The issue is whether requirements for building heights in DDO17 should be expressed in metres or storeys.

### **(ii) Background**

*Planning Practice Note 60: Height and setback controls for activity centres, September 2018* (PPN60) states:

#### **References to building heights and setbacks**

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

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

### **(iii) Submissions**

DJLI submitted it is more appropriate that maximum building heights be expressed in metres rather than storeys, and that a single height be specified for each site (rather than a range). DJLI relied on the evidence of Mr Sheppard, who stated:

It is unclear why the preferred maximum heights are expressed in both storeys and metres, particularly as the schedule does not identify whether one is to take precedence over the other. Planning Practice Note 60 identifies that the preferred expression of heights is in metres. From an urban design perspective, and in order to meet the proposed design objectives, it is the dimensions of the overall building that matter rather than the number of storeys.

In response, Council advised it is common for building heights to be expressed in both metres and storeys, including in the residential zones. The use of both metres and storeys provides clarity for both applicants and the community. Council also confirmed that the intent of the drafting was for both the nominated heights in metres and storeys to be met.

### **(iv) Discussion**

The Panel agrees with Mr Sheppard that height in metres, rather than storeys, is of greater importance to the urban design outcome in Mount Waverley. This is reflected in the material before the Panel, which largely focusses on the shadow impacts of buildings at a given height. The material does not provide a meaningful study of the urban design implications of, for example, a three versus four storey building.

Consistent with the recommendations of PPN60, the definitive preferred building height should be expressed in metres. Council's preference for also referencing storeys in the height provisions is contemplated in PPN60, however in the Panel's view provides little value given 'metres' is the definitive requirement.

While metres and storeys are used in the General Residential Zone and Neighbourhood Residential Zone, these are mandatory requirements, and not readily comparable to the Mount Waverley preferred heights which are discretionary.

### **(v) Conclusion and recommendation**

The Panel concludes preferred maximum building heights should be expressed definitively in metres.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to express preferred maximum building heights in Table 1 in metres only.**

## **4.3.4 Floor to floor dimension requirements**

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

The issue is whether requirements for floor to floor height are appropriate.

**(ii) Background**

DDO17 Clause 2.0 (Buildings and works) provides:

The following building and works requirements apply to an application to construct a building or construct or carry out works:

**Building heights**

...The following minimum floor to floor dimensions should apply:

- 4.2 – 4.5 metres for retail or restaurant use
- 3.2 – 3.5 metres for any other uses.

**(iii) Submissions**

DJLI initially submitted the minimum floor to floor dimensions at Clause 2.0 should be expressed in the precise terms proposed by Mr Sheppard. His evidence was:

It is also unclear why the minimum floor to floor dimensions at clause 2.0 are expressed as a range. What is the purpose of the higher number in each range given that they are minimum requirements? For the avoidance of doubt, I consider that 3.5m is an unreasonably large dimension for residential uses, which typically have floor-to-floor dimensions of 3.05 - 3.2 metres.

In oral evidence, Mr Sheppard added the purpose of specifying floor to floor dimension is to activate the ground floor and provide opportunities to adapt buildings for different uses over time.

Council Officers advised:

- Council has used floor to floor dimensions in DDO schedules in the past, and these have been supported by the Victorian Civil and Administrative Tribunal
- the top of the residential range is above what is often provided, but this is the upper range.

Council's Final Day version of DDO17 (Document 22g) proposed the requirement as:

The following minimum floor to floor dimensions should apply:

- 4.2—~~4.5 metres for retail or restaurant use~~ metres at ground floor
- 3.2—~~3.5 metres for any other uses~~ metres for floors above the ground floor.

DJLI Final Day version of DDO17 (Document 25) proposed the floor to floor dimensions be deleted. Woolworth supported Council's final drafting.

**(iv) Discussion**

The purpose of specifying floor to floor dimensions is to ensure the design of buildings can accommodate employment uses that will activate the ground floor of buildings. This purpose is reflected in the design objectives of DDO17 as exhibited (and recommended by the Panel to be refined.). On this basis, the Panel agrees it is appropriate to set a requirement for the floor to floor dimensions of the ground floor.

The Panel is not satisfied an above ground floor to floor dimension of 3.2 metres is strategically justified in the material supporting the Amendment, noting matters of amenity are dealt with in Clause 58 (Apartment developments).

**(v) Conclusion and recommendation**

The Panel concludes:

- The floor to floor height requirement supports the design objectives of Design and Development Overlay Schedule 17 to ensure building design can accommodate active uses at ground floor level.
- The floor to floor height requirement above ground floor is not strategically justified in the material supporting the Amendment.

The Panel recommends:

**Amend Design and Development Overlay Schedule 17 as shown in the Panel preferred version in Appendix D:2 to replace the requirement for floor to floor heights with *“Buildings should have a minimum floor to floor dimensions of 4.2 metres at ground floor”*.**

## Appendix A Submitters to the Amendment

No	Submitter
1	Vaman Purohit
2	Vinod Havali
3	John Sale
4	Chee Tan
5	Keith Murray
6	Sayesha Hasija
7	Simon Taylor
8	Cameron Lawman
9	Department of Transport and Planning
10	Wayde and Adela Lamb
11	Peter Wilkinson
12	Pamela Brady
13	Sayesha Hasija
14	Ritchies Stores Pty Ltd
15	Terry and Vicki Miller
16	Woolworths Group Ltd
17	Geoffrey and Susan Harmer
18	Daniel
19	DJLI Pty Ltd
20	Melbourne Water
21	Helen Kaye-Smith

## Appendix B Document list

No.	Date	Description	Provided by
1	16 Oct 23	Location of submitters map	Council
2	30 Oct 23	Panel Directions and Hearing Timetable Version 1	Planning Panels Victoria (PPV)
3	16 Nov 23	Part A Submission	Council
4	16 Nov 23	Evidence Statement of Tim Biles with attachments a) Folio of Plans b) Instructions	Council
5	16 Nov 23	Letter of advice from Ethos Urban to Ritchies IGA of 29 May 2019	Ritchies
6	16 Nov 23	Mount Waverley Activity Centre Structure Plan Background Report prepared by Tract Consultants for Monash City Council, December 2018	Council
7	16 Nov 23	Shadow diagrams of commercial areas and residential interfaces, Version 00, 10 November 2023	Council
8	16 Nov 23	Day 1 Amendment documents a) Clause 21.06 b) Clause 22.16 c) Clause 32.08 Schedule 11 d) Clause 32.08 Schedule 13 e) Clause 32.09 Schedule 5 f) Clause 43.02 Schedule 3 g) Clause 43.02 Schedule 17 h) Clause 52.28 Schedule i) Clause 72.08 Schedule	Council
9	23 Nov 23	Evidence Statement of Justin Ganly	Woolworths
10	23 Nov 23	Evidence Statement of Marco Negri	Woolworths
11	23 Nov 23	Evidence Statement of Mark Sheppard	DJLI
12	24 Nov 23	Response to Panel Directions 7c and 7d	Council
13	29 Nov 23	Part B Submission	Council
14	29 Nov 23	Presentation of Tim Biles	Council
15	30 Nov 23	Submission with attachments a) Plan of Consolidation 104420 b) Map of land owned by Woolworths c) Kentucky Fried Chicken Pty Ltd v Gantidis & Anor (1979) 140 CLR 675 d) Mount Waverley Structure Plan Figure 7 and Figure 14 with Woolworths land highlighted	Woolworths

No.	Date	Description	Provided by
16	1 Dec 23	Housing projects for City of Monash	Council
17	4 Dec 23	Outline of Submissions	Ritchies
18	5 Dec 23	Day 3 Clause 43.02 Schedule 17	Council
19	5 Dec 23	Mount Waverley Capacity Analysis	Council
20	5 Dec 23	Mount Waverley Public Places	Council
21	5 Dec 23	Submissions with attachment a) Shadow Diagrams Winbourne Plaza	DJLI
22	6 Dec 23	Final Day Amendment Documents: a) Clause 21.06 b) Clause 22.16 c) Clause 32.08 Schedule 11 d) Clause 32.08 Schedule 13 e) Clause 32.09 Schedule 5 f) Clause 43.02 Schedule 3 g) Clause 43.02 Schedule 17 h) Clause 52.28 Schedule i) Clause 72.08 Schedule	Council
23	7 Dec 23	Analysis of Mount Waverley subdivisions	Council
24	7 Dec 23	Speaker's notes on Closing Submission	Council
25	7 Dec 23	DJLI Final Day version of Clause 43.02 Schedule 17	DJLI
26	7 Dec 23	a) Woolworths Final Day version of Clause 22.16 b) Woolworths Final Day version of Clause 43.02 Schedule 17	Woolworths
27	7 Dec 23	Section 173 Agreement Lot 1 on PS427361L corner of Hamilton Place and Stephenson's Road, Mount Waverley	DJLI
28	7 Dec 23	Ritchies Final Day version of Clause 22.16	Ritchies

## Appendix C Planning context

### C:1 Planning policy framework

Council submitted that the Amendment is supported by the relevant planning framework, which the Panel has summarised below.

#### Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the PE Act by:

- providing clear guidance for landowners, developers and the community as to the type of development outcomes being sought in MWMAC
- seeking to secure high quality activity centres that are available to future residents of Monash.

#### Clause 11 (Settlement)

The objective of Clause 11.01-1S (Settlement) is:

To facilitate the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements.

The objective of Clause 11.02-1S (Supply of urban land) is:

To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.

The objective of Clause 11.02-2S (Structure planning) is:

To facilitate the fair, orderly, economic and sustainable use and development of urban areas.

The objective of Clause 11.03-1S (Activity centres) is:

To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural development into activity centres that are highly accessible to the community.

#### Clause 15 (Built environment and heritage)

The objective of Clause 15.01-1S (Urban design) is:

To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.

The objective of Clause 15.01-1R (Urban design – Metropolitan Melbourne) is:

To create a distinctive and liveable city with quality design and amenity.

The objective of Clause 15.01-2S (Building design) is:

To achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development.

The objective of Clause 15.01-4S (Healthy neighbourhoods) is:

To achieve neighbourhoods that foster healthy and active living and community wellbeing.

The objective of Clause 15.01-5S (Neighbourhood character) is:

To recognise, support and protect neighbourhood character, cultural identity, and sense of place.

#### Clause 16 (Housing)

The objective of Clause 16.01-1S (Housing supply) is:

To facilitate well-located, integrated and diverse housing that meets community needs.

### **Clause 17 (Economic development)**

The objective of Clause 17.02-1S (Business) is:

To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.

### **Clause 18 (Transport)**

The objective of Clause 18.02-1S (Walking) is:

To facilitate an efficient and safe walking network and increase the proportion of trips made by walking.

The Amendment responds to the PPF, and provides for facilitating development in MWMAC while retaining key character attributes of the centre.

### **Clause 21 (the Municipal Strategic Statement)**

The objectives of Clause 21.06 (Major Activity and Neighbourhood Centres) include:

To develop vibrant major activity and neighbourhood centres with a broad mix of uses appropriate to the type of centre and needs of the target population, that have improved access for walking, cycling and levels of public transport services, and that provide a focal point for the community, fostering social and cultural development.

To promote and enhance the unique characteristics of each shopping centre to ensure a strong sense of identity and character, including appropriate signage.

To promote high rise residential development within the Glen Waverley and Oakleigh Major Activity Centres, to support ongoing economic prosperity, social advancement and environmental protection.

To ensure the provision of appropriate buffers and interface between commercial, residential and industrial land uses.

The Amendment responds to these objectives by:

- encouraging a range of uses and prioritising walking and cycling and social and cultural development through both infrastructure to service these and amenity improvements to encourage people to want to undertake those activities in the centre
- applying centre specific design and development overlay seeking to retain the character, and control building heights particularly in Hamilton Place
- encouraging low-rise and mid-rise development in Mount Waverley so as not to detract from Glen Waverley and Oakleigh MAC's
- using the Design and Development Overlay to provide for interface treatments where commercial properties abut residential.

### **Clause 22 (local planning policies)**

The Amendment proposes to introduce Clause 22.16 (Mount Waverley Activity Centre Structure Plan).

## **C:2 Other relevant planning strategies and policies**

### **i) Plan Melbourne**

*Plan Melbourne 2017-2050* sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches

8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved.

**Table 7** Relevant parts of Plan Melbourne

Outcome	Directions	Policies
Melbourne is a productive city that attracts investment, supports innovation and creates jobs	1.2 Improve access to jobs across Melbourne and closer to where people live	1.2.1 Support the development of a network of activity centres linked by transport
Melbourne provides housing choice in locations close to jobs and services	2.1 Manage the supply of new housing in the right locations to meet population growth and create a sustainable city	2.1.2 Facilitate an increased percentage of new housing in established areas to create a city of 20-minute neighbourhoods close to existing services, jobs and public transport 2.1.4 Provide certainty about the scale of growth in the suburbs
	2.2 Deliver more housing closer to jobs and public transport	2.2.1 Facilitate well-designed, high-density residential developments that support a vibrant public realm in Melbourne’s central city
	2.5 Provide greater choice and diversity of housing	2.5.1 Facilitate housing that offers choice and meets changing household needs
Melbourne is a distinctive and liveable city with quality design and amenity	4.3 Achieve and promote design excellence	4.3.1 Promote urban design excellence in every aspect of the built environment
Melbourne is a city of inclusive, vibrant and healthy neighbourhoods	5.1 Create a city of 20-minute neighbourhoods	5.1.1 Create mixed-use neighbourhoods at varying densities
Melbourne is a sustainable and resilient city	6.4 Make Melbourne cooler and greener	6.4.1 Support a cooler Melbourne by greening urban areas, buildings, transport corridors and open spaces to create an urban forest

### C:3 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework.

## i) Zones

The Amendment proposes to rezone land to the C1Z. The purposes of the Zone are:

To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

To provide for residential uses at densities complementary to the role and scale of the commercial centre.

## ii) Overlays

The Amendment proposes to apply various schedules to the DDO to land in the MWMAC. In addition to the common purpose of zones and overlay, the purpose of this overlay is:

To identify areas which are affected by specific requirements relating to the design and built form of new development.

## C:4 Ministerial Directions, Planning Practice Notes and guides

### Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). That discussion is not repeated here.

In addition, Ministerial Direction 9 Metropolitan Planning Strategy is relevant to the Amendment. The Amendment is consistent with this direction because it:

- implements planning outcomes consistent with 20 minute neighbourhood objectives
- supports the provision of more local jobs
- supports an increase in the density and diversity of dwellings in the area
- encourages a higher standard of urban design
- supports improved landscape outcomes and canopy tree provision.

### Planning Practice Notes

The following Planning Practice Notes are relevant to the Amendment:

- Planning Practice Note 58: Structure Planning for Activity Centres, September 2018
- Planning Practice Note 59: The role of mandatory provisions in planning schemes, August 2023
- Planning Practice Note 60: Height and setback controls for activity centres, September 2018
- Planning Practice Note 90: Planning for Housing, July 2023

### Practitioner's Guide

*A Practitioner's Guide to Victorian Planning Schemes Version 1.5*, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

## Appendix D Panel preferred version of the Amendment

### Tracked Added

### ~~Tracked Deleted~~

A summary of changes to Amendment proposed by parties is provided at Appendix E.

## D:1 Clause 22.16

All Panel preferred changes are tracked against Council's Day 1 version (Document 8b)

### 22.16 MOUNT WAVERLEY ACTIVITY CENTRE STRUCTURE PLAN

This policy applies to all land within the Mount Waverley Activity Centre boundary as defined in Map 1 to this clause.

#### 22.16-1 Policy Basis

The purpose of this policy is to implement the Vision, Objectives, Strategies and Actions of the *Mount Waverley Activity Centre Structure Plan – Towards 2036 (2021)*.

The Mount Waverley Major Activity Centre functions as a community focal point, where there are inviting places for people to meet, shop and utilise health and commercial services. The village feel, landscaping and greenery are key focal points of the centre.

#### 22.16-2 Objectives

- To reinforce the role of Mount Waverley Major Activity Centre as a place for the local community to meet their daily and weekly service needs.
- To foster and promote the vibrant village character of the centre and strengthen the sense of place.
- To support diverse housing choices.
- To prioritise easy and safe pedestrian movements through the centre.

#### 22.16-3 Policy

~~If a permit is required for the use and/or development of land, proposals will be assessed on how well they achieve the following aspects of the *Mount Waverley Activity Centre Structure Plan 2021*.~~

It is policy to:

#### Land Use

- Locate and combine land uses within the centre in accordance with Map 1 – Mount Waverley Structure Plan.
- Encourage the consolidation of key retail and hospitality activity on the western side of Stephensons Road to ensure the Centre maintains its convenient and compact nature.
- Encourage development of office, commercial, health, wellbeing and fitness uses on the eastern side of Stephensons Road.
- Encourage commercial and residential uses above ground floor within the commercially zoned areas of the centre.

## Built form

- Support a moderate intensification of built form that is well designed and enhances the garden city character where it is in residential areas.
- ~~Ensure that development promotes Crime Prevention Through Environmental Design(principles) particularly by ensuring passive surveillance over public areas.~~
- Avoid visual bulk through by providing building recesses, setback variations, and articulation of building elevations that are visible from the public realm.
- ~~Where a building has a secondary active frontage to a car park, encourage pedestrian access to both the primary and secondary active frontages.~~
- Encourage more housing options to meet the diverse community needs and to attract future residents.
- Encourage the development of townhouses, villa units and low scale apartment buildings within the incremental change residential areas shown on Map 1 to this clause.
- Encourage greater housing intensification in the intensification area shown on Map 1 to this clause.
- Encourage development of accessible dwellings for people with limited mobility in close proximity to the shops, train station and bus stops.

## Landscaping

- ~~Encourage the retention of existing canopy trees or the establishment of new canopy trees in any new development of the land bounded by Virginia Street, Alexander Street, Winbourne Road, and the laneway to the rear of shops fronting Stephenson's Road to:~~
  - ~~maintain and enhance the village feel;~~
  - ~~soften the impact of any buildings;~~
  - ~~reduce the impact of the built form on ambient air temperature; and~~
  - ~~improve the garden character of immediate environs.~~

## Access and transport

- ~~Encourage service and loading areas that:~~
  - ~~Are well designed and adequate for the future needs of the land uses of the building.~~
  - ~~Minimise impacts on surrounding traffic movements.~~
  - ~~Are located away from the primary frontage.~~
  - ~~Avoid conflicts with cyclists and pedestrians.~~
  - ~~Are screened and/or integrated into the design of the building.~~
- ~~Encourage vehicle accessways and entry and exit points that are designed and located to avoid any conflict points with pedestrians.~~
- ~~Ensure that where conflict points between pedestrian and vehicle movements cannot be avoided, their design prioritises pedestrian safety and ease.~~

## 22.16-4 Reference documents

*Mount Waverley Activity Centre Structure Plan Tract Consultants, March 2021*

## D:2 Design and Development Overlay Schedule 17

All Panel preferred changes are tracked against Council’s Day 1 version (Document 8g)

### SCHEDULE 17 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO17**.

#### MOUNT WAVERLEY ACTIVITY CENTRE

##### 1.0 Design objectives

~~To maintain and strengthen the centre’s sense of place and village feel through the delivery of high quality built form and landscaped outcomes.~~

~~To ensure buildings within core retail areas and along key pedestrian streets contribute to active and engaging street frontages, and support a high level of pedestrian amenity and safety through passive surveillance of public areas.~~

~~To encourage excellence in building design by ensuring development improves pedestrian amenity and responds to the characteristics of the site and its context.~~

~~To retain the existing fine grain character of commercial buildings around Hamilton Place.~~

~~To encourage development that retains human scale and provides appropriate transition in building height from the Centre to the adjoining residential areas.~~

To ensure buildings and landscaping strengthen the sense of place and village feel.

To retain the fine grain character of buildings in Hamilton Place.

To transition building height from the development intensification area to adjoining residential areas.

To activate street frontages and provide a high level of pedestrian amenity and safety.

To protect solar access in key public spaces and key pedestrian routes.

##### .2.0 Buildings and works

The following buildings and works requirements apply to an application to construct a building or construct or carry out works:

##### Building heights

Building H~~heights~~ should not exceed the preferred maximum building height specified in Table 1 and Figure 1 to this schedule. ~~The following minimum floor to floor dimensions should apply:~~

~~4.2 — 4.5 metres for retail or restaurant use~~

~~3.2 — 3.5 metres for any other use~~

Buildings should provide a minimum floor to floor dimension on the ground floor of 4.2 metres.

~~Development should not overshadow key public parks, plaza’s and places.~~

~~Development should be designed to limit significant loss of sunlight to public areas, particularly through the middle of the day during winter.~~

**Table 1 – preferred maximum building heights**

Area	Preferred maximum height	Residential Interface setbacks (refer Table 2)
Area A - Wadham Parade	<del>3-4 storeys</del> 15 metres	A2 - Type 2
Area B – Hamilton Place environs	<del>3-4 storeys</del> 15 metres	B1 – Type 1

Area C – Stephenson Road environs	4-5 storeys C4 – 29 metres Other – 18.5 metres	C2 – Type 2 C3 – Type 2
Area D	3-4 storeys 15 metres	D3 western boundary – Type 2 D3 southern boundary – Type 3
Area E	5-8 storeys 29 metres	Not applicable
Area F	3-4 storeys 15 metres	F2 – Type 2

### Building setbacks

Buildings should be built to the boundary shared with any street, including side-streets.

Unless there is an interface with residential land as identified in Figure 1 and Table 2, development above three storeys should be set back at least 3 metres from any street or parking lot boundary including streets at the side and rear.

Where buildings abut residential land shown on Figure 1 to this schedule, setbacks should be in accordance with Table 2 to this clause.

**Table 2 – Residential interface setbacks**

Interface (see Figure 1)	Preferred minimum setback	Example
Type 1 – Commercial/Laneway/ Residential Interface	0 metres at ground level; plus an additional one metre setback to everyone one metre of building height above the third level	<i>Image to be inserted in final version</i>
Type 2 – Commercial/ Residential Interface	3 metres at ground level; plus an additional one metre setback to everyone one metre of building height above the third level	<i>Image to be inserted in final version</i>
Type 3 – Commercial/ Residential Interface –Sherwood Road	3 metres at ground level; plus an additional one metre setback to everyone one metre of building height above the second level	<i>Image to be inserted in final version</i>

### Building form and design

~~Development on sites identified with a primary active street frontage in figure 1 to this schedule should utilise permeable and transparent facade treatments and provide for active, customer focused uses at ground level of all primary frontages.~~

~~Development on sites identified with a secondary active street frontage in figure 1 to this schedule should contribute to activation of the street at ground level of all secondary frontages.~~

Development should maximise use of clear glazing at ground level adjacent to a primary active frontage on Figure 1.

Development should use clear glazing at ground level adjacent to a secondary active frontage on Figure 1.

Development on gateway sites into the centre shown on figure 1 should be designed to create a sense of arrival at the centre through architectural features of the building.

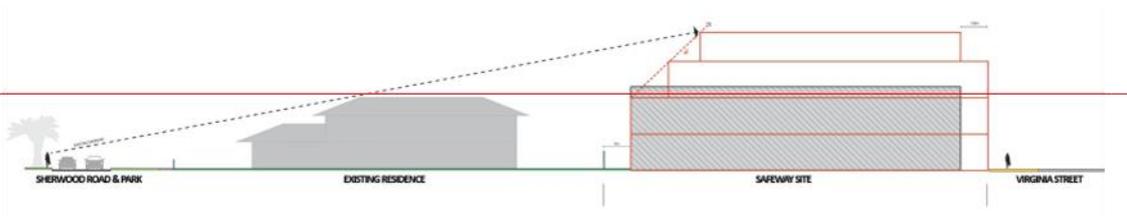
~~Encourage the enhancement of the fine grain streetscape rhythm through~~ Development should breaking up long single building facades ~~through with~~ different facade treatments.

Building design ~~should minimise the visual bulk~~ of large buildings ~~should provide through~~ significant breaks and recesses in building massing.

Buildings that have an interface with residential land shown on figure 1 ~~to this schedule~~ should be designed minimise negative amenity impacts including overlooking, overshadowing, noise and odour to the adjoining residential land.

Buildings on the south side of Virginia Street should be designed to minimise their appearance from behind in view lines from Sherwood Road Park as demonstrated in figure 2 below.

~~Figure 2—Viewlines from Sherwood Road Reserve~~



### Circulation and access

Loading areas and services areas of buildings should be:

- Screened and/or integrated into the design of the building.
- Located away from the primary frontage.
- Located and designed to avoid conflicts with cyclists and pedestrians.
- Designed to minimise impacts on surrounding traffic movements.
- Well designed and adequate for the future needs of the land uses of the building.

### Landscaping

~~Significant trees on sites should be retained wherever possible.~~

~~Include the retention of existing canopy trees or the establishment of new canopy trees in any new development of the land bounded by Virginia Street, Alexander Street, Winbourne Road, and the laneway to the rear of shops fronting Stephenson's Road and incorporate canopy trees and landscaping to:~~

- ~~maintain and enhance the village feel,~~
- ~~soften the impact of any buildings,~~
- ~~reduce the impact of the built form on ambient air temperature; and~~
- ~~improve the garden character of immediate environs.~~

~~Development should consider opportunities for landscaping above the ground level such as through planter boxes, green walls or green roofs built into the building form to contribute to the Garden City character of the area.~~

~~Where any Setbacks are visible from the public realm, they should be landscaped to contribute to complement the Garden City character of the area.~~

### 3.0 Subdivision

None specified.

### 4.0 Signs

None specified.

### 5.0 Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- Where an application proposes to exceed the preferred maximum building height, it must demonstrate how the development will continue to achieve the Design Objectives and all other relevant requirements of this schedule.

- Where an application proposes to exceed the preferred maximum building height on a site with a residential interface, the application must address the impacts and any mitigation measures in relation to the residential land.

## 6.0 Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

~~Whether the development meets the building heights, building setbacks, building form and design, circulation and access, and landscaping requirements specified in this schedule.~~

- Whether development overshadows public spaces or the principal pedestrian network between 11am-2pm at the equinox.
- Whether development retains existing canopy trees or provides for the establishment of new canopy trees.
- Whether development provides opportunities for landscaping above the ground level such as through planter boxes, green walls or green roofs built into the building form to contribute to the Garden City character of the area.

## Reference documents

Mount Waverley Activity Centre Structure Plan Tract Consultants, March 2021

Figure 1 Built form map



## Appendix E Summary of parties proposed changes to the Amendment documents

Clause and version	Tabled by	Document	Summary
<b>21.06</b>			
Exhibition	-	-	<ul style="list-style-type: none"> <li>- insert new objective for MWMAC</li> <li>- insert new content for MWMAC in Table 1</li> <li>- make Structure Plan a reference document</li> </ul>
Day 1	Council	8a	No change
Final Day	Council	22a	No change
<b>22.16</b>			
Exhibition	-	-	New clause
Day 1	Council	8b	<ul style="list-style-type: none"> <li>- amend built form policy for visual bulk</li> <li>- insert new requirement for 'landscaping'</li> </ul>
Negri	Woolworths	10 A3	<ul style="list-style-type: none"> <li>- amend policy basis</li> <li>- amend preamble to policy</li> <li>- amend built form policy</li> <li>- delete reference document</li> </ul>
Final Day	Council	22b	No change to Day 1
Final Day	Woolworths	26a	<ul style="list-style-type: none"> <li>- amend built form policy</li> <li>- delete landscaping policy</li> <li>- option to delete reference document</li> </ul>
Final Day	Ritchies	28	<ul style="list-style-type: none"> <li>- insert new objective</li> <li>- insert new land use policy</li> </ul>
<b>32.08 Schedule 11</b>			
Exhibition	-	-	New clause
Day 1	Council	8c	No change
Final Day	Council	22c	- switch off permit requirement for dwellings on lots between 300-500 square metres
<b>32.08 Schedule 13</b>			
Exhibition	-	-	New clause
Day 1	Council	8d	No change
Final Day	Council	22d	- switch off permit requirement for dwellings on lots between 300-500 square metres
<b>32.09 Schedule 5</b>			
Exhibition	-	-	New clause
Day 1	Council	8e	No change

Clause and version	Tabled by	Document	Summary
Final Day	Council	22e	- switch off permit requirement for dwellings on lots between 300-500 square metres
<b>43.02 Schedule 3</b>			
Exhibition	-	-	- revise design objectives - revise permit requirement for fencing - revise requirements for buildings and works, and fencing
Day 1	Council	8f	No change
Final Day	Council	22f	- further revisions to design objectives - further revisions to permit requirement for fencing - further revisions to requirements for buildings and works, and fencing
<b>43.02 Schedule 17</b>			
Exhibition	-	-	New clause
Day 1	Council	8g	- revise design objectives to include landscaped outcomes - insert requirements for landscaping
Mr Negri	Woolworths	10 A2	- revise design objectives - delete overshadowing requirements, Figure 2 and landscaping requirements - delete reference document
Day 3	Council	18	- delete specific requirements for overshadowing of public parks, plazas and place and public areas - insert general requirement to minimise overshadowing - insert decision guideline for overshadowing
Final Day	Council	22g	- revise requirements for floor to floor dimensions
Final Day	DJLI	25	- delete floor to floor dimension requirements - amend Table 1 to delete storeys and insert preferred height of 29 metres for Area C4 - amend building setback requirements to apply to public areas and public car parks - insert new requirement for additional setback above 18.5 metres - insert a new requirement for Area C4 to contribute to the activation of the street - replace the loss of sunlight provision with a specific requirement for Hamilton Place
Final Day	Woolworths	26b	- revise design objectives - revise floor to floor dimension requirements - revise loss of sunlight requirements - revise Sherwood Park Road view lines requirement, delete Figure 2 - delete landscaping requirements - insert decision guideline for loss of sunlight to public spaces
<b>52.28 Schedule</b>			
Exhibition	-	-	- revise listed properties in Mount Waverley Shopping Centre

Clause and version	Tabled by	Document	Summary
Day 1	Council	8h	No change
Final Day	Council	22h	No change
<b>72.08 Schedule</b>			
Exhibition	-	-	- list Structure Plan as a Background Document
Day 1	Council	8i	No change
Final Day	Council	22i	No change