

Planning and Environment Act 1987

Interim Panel Report

Melbourne Planning Scheme Amendment C323

Melbourne Arts Precinct

3 December 2018

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Interim Interim Panel Report pursuant to section 25 of the Act

Melbourne Planning Scheme Amendment C323

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Dalia Cook, Chair



Lorina Nervegna, Member

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List of Abbreviations

Amendment	Amendment C323 to the Melbourne Planning Scheme
Blueprint	<i>Melbourne Arts Precinct Blueprint 2014</i>
CCZ	Capital City Zone
Council	Melbourne City Council
CV	Creative Victoria
DDO	Design and Development Overlay
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
Planning scheme	Melbourne Planning Scheme
PPF	Planning Policy Framework
Precinct	Melbourne Arts Precinct as delineated in the exhibited Amendment documentation
Structure Plan	<i>Southbank Structure Plan 2010</i>
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Melbourne Planning Scheme Amendment C323
Common name	Melbourne Arts Precinct
Brief description	Introduction of Schedule 7 to the Capital City Zone pertaining to the Melbourne Arts Precinct to enhance provision for creative industries at lower levels of buildings. Amendments are proposed to Design and Development Overlay Schedules 1 and 60 (Precinct 4A and 4B), together with associated policy changes to the Municipal Strategic Statement and Local Planning Policy at Clause 22.01.
Subject land	Identified in Figure 1
The Proponent	Creative Victoria
Planning Authority	Melbourne City Council
Authorisation	19 March 2018
Exhibition	13 April to 21 May 2018
Submissions	Number of Submissions: 4 Opposed (in part): 4

Panel process

The Panel	Dalia Cook, Chair and Lorina Nervegna, Member
Directions Hearing	6 September 2018
Panel Hearing and workshop	17 and 18 October 2018
Site inspections	Unaccompanied, 5 November 2018
Appearances	<p>Ms Marita Foley of Counsel instructed by Harwood Andrews on behalf of Creative Victoria.</p> <p>She called the following expert witnesses:</p> <ul style="list-style-type: none"> • Ms Catherine Heggen, Town Planner, Message Consultants • Mr John Henshall, Economist, Essential Economics <p>Ms Sarah Porritt of Counsel by direct brief on behalf of Melbourne City Council</p> <p>Ms Wendy Lasica</p> <p>Mr David Passarella, Solicitor, Mills Oakley for Pacific Asia Express Pty Ltd and AAW Global Logistics Pty Ltd</p> <p>Mr Mark Naughton and Mr Johan Moylan, Solicitors, Planning and Property Partners for LSH Group Australia</p>

Citation	Melbourne PSA C323 [2018] PPV
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Date of this Report	3 December 2018
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Executive summary

(i) Summary

The Melbourne Arts Precinct (Arts Precinct) contributes to the culture, economy and social vibrancy of Victoria and is of recognised State significance.

The Arts Precinct forms part of the Central City and has important physical and functional connections with other areas of Southbank, the Yarra River corridor and Federation Square.

The Precinct hosts a high proportion of Victoria's premier arts institutions and arts education facilities, many of which operate from land in State ownership. A high proportion of these facilities are renowned for their exemplar architecture and urban design and represent important Melbourne landmarks.

The Arts Precinct also encompasses private land, especially as it extends along the Sturt Street linear spine to Kings Way, South Melbourne.

The Amendment is proposed by Creative Victoria, under the auspices of the Department of Economic Development, Jobs, Transport and Resources. Subject to resolution of appropriate drafting, the Amendment was substantially supported by and prepared in collaboration with Melbourne City Council.

The Amendment appears to have been precipitated by a series of recent planning permit approvals for substantial redevelopment proposals on private land in the Precinct. These approvals generally allow conventional residential towers with more confined provision (if any) for arts or related uses within lower levels that make a more direct contribution to the intended purposes of the Precinct.

The Amendment seeks to safeguard and enhance the role of the Precinct in fostering art, cultural and creative endeavours. It proposes to include the Precinct in a separate, permanent schedule to the Capital City Zone, providing appropriate land use and development controls. The Amendment would also have the potential to make associated changes to relevant planning policy to integrate with, and set the scene for, outcomes sought for the Precinct.

A key aspect is a preference for a vertical mix of uses, encouraging the establishment and expansion of creative industries on the four lower levels of buildings or to a height of 16 metres. The Amendment also purports to seek active street frontages and increased interaction with the public realm.

A surprisingly limited number of submissions were received in response to notification. Three submissions came from private landowners in the Precinct. One was from a private individual with experience in the creative industries and town planning.

Key issues raised in submissions pertained to:

- the extent of site footprints for creative industries within the lower floors of each proposed building and the demand for such spaces, as well as potential commercial impacts
- practical considerations, such as how the provision and management of spaces for creative industry could be achieved

- the operation of the proposed provisions to land with height controls directing lower or mid rise buildings
- the ability to use land for offices on lower levels of buildings as-of-right if associated with creative industries or for residential use, subject to discretion
- suggested refinements to ensure consistent operation of the proposed controls, including appropriate decision guidelines and relevant exemptions from notice and review rights for relevant permit applications
- broader concerns about how the vision seeking enhancement of the Precinct would be achieved, including governance models.

The Panel enquired about the extent of consultation with existing creative industry providers within the Precinct to date. The Panel was subsequently provided with further submissions in support of the Amendment from premier existing arts and educational institutions within the Precinct in advance of the full hearing, although these were not formally referred to it by Council as the planning authority.

All parties supported the notion of providing a specific Capital City Zone Schedule for the Precinct.

Early in the hearing process, the Panel observed that the purpose of the Amendment appeared to have merit and was strongly consistent with policy documents both within and outside the Melbourne Planning Scheme. However, the Panel expressed substantive concerns about the drafting of the Amendment and its consequential ability to achieve its intended purpose via its proposed approach to land use and development.

Creative Victoria identified similar concerns and proposed an updated version of the Amendment which it handed up at the Directions Hearing. This was further refined before the full hearing and circulated to parties for comment.

In view of this, the Panel encouraged a collaborative approach within the context of the Hearing. This enabled options for enhancement of the exhibited Amendment to be explored jointly.

Ultimately, Council in its role as planning authority declined to give further notice of the version of the Amendment proposed by Creative Victoria and refined at the Panel workshop. Creative Victoria expressed its strong disappointment that this course of action was not pursued, as foreshadowed in earlier Panel directions.

As a consequence, the Panel is obliged to evaluate the Amendment as exhibited. The Panel concludes:

- The role of the Melbourne Arts Precinct and the need for the Amendment in principle is consistent with strategic policy directions. The Panel supports the provision of a specific schedule to the Capital City Zone for the Precinct given its uniqueness and recognised significance. Therefore, it provides direction for further work rather than recommending that the Amendment be abandoned due to perceived deficiencies in content and drafting.
- The additions proposed to local planning policy proposed by Ms Heggen are necessary and supported in principle, subject to due process being followed.
- The absence of suitable land use definitions within the Victoria Planning Provision is an inherent challenge to freeing up creative industry uses within the Precinct from the need for planning permission. While not ideal, in these circumstances, the

addition of a definition of ‘creative industries’ in the Capital City Zone (Schedule 7) as proposed by Creative Victoria would provide practical guidance at this point in time.

- The Panel supports the element of the Amendment that seeks to safeguard and provide floorspace for creative industries within the lower four levels of new buildings as sound - being one of a number of potential approaches that could be adopted to enhance the preferred purpose of the Precinct. This is especially important since past experience demonstrates that this is unlikely to be offered consistently by developers in response to market forces alone.
- Given the extent of discretion to allow other commercial, retail or accommodation uses in lower and upper levels of buildings, the Panel considers that proposed Capital City Zone (Schedule 7) strikes an appropriate balance between the strategic needs of the Arts Precinct and the ability of individual site owners to develop their land.
- Notwithstanding the above, the Panel has particular concerns about the workability of the exhibited version of the Amendment as drafted and does not support its adoption in the current form. The re-worked version of the Amendment documentation suggested by Creative Victoria represents a significant improvement on the originally exhibited version and is more likely to be capable of realistic implementation. However, at minimum, further public notification should be undertaken.
- Even on the most favourable drafting of the version preferred by Creative Victoria as the proponent, the proposed Schedule arguably represents a missed opportunity to recognise, protect and expand on the features of the Precinct. It could potentially be refined to:
 - delineate what makes the precinct unique or to identify the future character sought for the precinct either in its purpose, controls or decision guidelines
 - identify and address the future needs of arts institutions within the Arts Precinct, as distinct from transferring existing zone provisions that apply to the Southbank area of Melbourne as a whole.
- Current Design and Development Overlay provisions including the proposed amendment to Design and Development Overlay (Schedule 1) as part of this Amendment substantially lack suitable direction for the Arts Precinct. The interaction between the Design and Development Overlays and the strategic planning work being undertaken in respect of proposed a new Design and Development Overlay proposed within C308 – Central City and Southbank Urban Design should be considered carefully.
- The provisions of CCZ7 do not propose any transitional provisions. It is unclear what effect it may have on existing permissions granted, for example, whether new use permissions would need to be obtained before certain uses could start on the lower levels of newly constructed or existing buildings. Council should evaluate this scenario in detail to consider if this is both intended and workable.

It is important for the new suite of controls to be well considered, tailored and effective. As a preferred approach, the planning authority is encouraged to retain the interim controls of the Capital City Zone (Schedule 7) in their current form until more comprehensive and directed permanent controls are developed and implemented in conjunction with Creative

Victoria, with the input of stakeholders and landowners in line with the recommendations of this Report.

(ii) Recommendations

1. The Panel recommends that:

- a) Melbourne City Council resolve to undertake further work and associated re-notification of an updated version of Melbourne Planning Scheme Amendment C323 in conjunction with Creative Victoria, with the benefit of the Panel's suggestions.**
- b) Melbourne City Council consider whether to request this Panel to consider further submissions or any revised exhibited documents to make final recommendations in due course.**

1 Introduction

1.1 The Amendment

(i) Amendment description

Creative Victoria (CV) is the proponent for the Amendment. It is a State government body that is part of the Department of Economic Development, Jobs, Transport and Resources (DEDJTR).

Its role is to champion, grow and support Victoria's creative industries. CV also oversees Victoria's State-owned arts and cultural organisations as well as a portfolio of State-owned cultural facilities and collections.¹

The Amendment as exhibited proposes to:

- introduce a new Schedule 7 to the Capital City Zone – Melbourne Arts Precinct (CCZ7) (Clause 37.04). This is intended to replace the interim control introduced by Amendment C330² on a permanent basis
- amend Schedule 1 to the Design and Development Overlay – Active Street Frontages (DDO1) (Clause 43.02) to include reference to CCZ7
- make consequential amendments to local planning policy at Clause 22.01 (Urban Design in the Capital City) to include reference to CCZ7
- delete Schedule 12 of the Parking Overlay (PO12) and apply Schedule 1 of the Parking Overlay (PO1) to nominated land rezoned from General Residential Zone (Schedule 1).

(ii) Purpose of the Amendment

In recent years, CV and Council noticed an increase in conventional residential and commercial development in the Arts Precinct. As a result, they determined that a more directed approach was required using controls in the planning scheme to facilitate creative spaces within it.

The Amendment as exhibited seeks to safeguard the Arts Precinct to ensure that it continues to foster art, cultural and creative outcomes. As exhibited, it would:

- provide a new suite of purposes
- nominate particular of 'as-of-right', 'permit required' and prohibited uses. The CCZ is one of few zones that enables a bespoke table of uses to be provided. Principally, the Amendment as exhibited seeks to tailor uses to the future needs of the Arts Precinct by encouraging creative industry uses within the first four storeys of buildings. It would provide discretion for other uses to be approved in appropriate circumstances by reference to targeted decision guidelines. It would also support office and residential use of higher levels of buildings within the Precinct
- provide relevant requirements and decision guidelines

¹ As stated in its Part A submission (Document 6).

² A Ministerial Amendment gazetted on 7 March 2018. The current controls would apply until 31 March 2019.

- purport to seek an increase in streetscape activation and improve interaction with the public realm, potentially by modifying relevant local planning policy and Design and Development Overlay provisions
- ensure that appropriate car parking requirements are applied to land in the Precinct.

1.2 Background to the Amendment

Much strategic work has been undertaken in recent years to understand, enhance and protect the Arts Precinct.

The *Southbank Structure Plan 2010* (Structure Plan) is the strategic basis of a number of provisions in the planning scheme. It is a reference document in Design and Development Overlay Schedules 3 (Traffic Conflict Frontage – Capital City Zone) and 60 (Special Character Areas – Built Form, Southbank), and Clause 22.01 (Urban Design within the Capital City Zone) as an outcome of Amendment C171. It is not listed as a reference document in DDO1 (Active Street Frontages).

The Structure Plan identified current fragmented zoning as a key challenge for the delivery of its vision for the Arts Precinct. In response, it recommended development of a coherent planning framework, including tailored zoning provisions.³

The Structure Plan also suggested that a focus should be on ensuring that Sturt Street provides for a broader spectrum of creative industry activity to complement existing arts facilities and reinforce Southbank as the arts and cultural centre of Victoria.

The main outcomes of other relevant studies relevant to this Amendment are summarised in Chapter 3.

Beyond providing the strategic impetus for this Amendment, the Panel observes that relatively little of this detailed work has been translated into policies and controls within the planning scheme to date. It considers that there is significant scope for this strategic work to directly influence the content of the new CCZ7 and associated DDO and policy provisions.

(i) VCAT decisions

In part, the timing of this particular Amendment was precipitated by a series of permits granted for private land within the Arts Precinct for residential and commercial development.

It became apparent to Council and CV that Schedule 3 to the CCZ which applied to the Arts Precinct at the time allowed Accommodation and Office as-of-right (no permit required) but did not make express provision for creative industries, notwithstanding support in the zone for a mix of uses that maintain and enhance the arts and cultural significance of the precinct.

Two decisions of the Victorian Civil and Administrative Tribunal (VCAT) were noted as instrumental. It became apparent when considering these permit applications that inadequate direction had been provided in the planning scheme to guide land use and development in the Arts Precinct to achieve strategic objectives. Moreover, at that time, key strategic objectives largely sat outside the planning scheme provisions.

³ Pages 24, 28, 75, 76 and 79.

A significant concern was the inability to resist primarily apartment buildings which would make little contribution to the enhancement of the area as a delineated Arts Precinct, as well as the perceived lack of activation particularly at ground and the lower (podium) levels of the tower forms.

Tisza Pty Ltd v Minister for Planning [2017] VCAT 1989

The application was a review of a failure to grant a permit within time for a proposed 18 storey mixed use building at 135 Sturt Street Southbank. In this case, Council as a referral authority opposed the proposed development on two grounds. Firstly in relation to the scale and bulk of the proposed built form and secondly in relation to the impact of the use and development on the Arts Precinct. In the week prior to the Hearing the Minister for Planning also determined to oppose the grant of a permit on the same grounds as Council.

The Tribunal⁴ found that the CCZ3 which applied to the land at the time fundamentally contemplated and allowed conventional residential apartments, since the use of land for dwellings was as-of-right. It also highlighted a lack of policy provisions and decision guidelines seeking to protect and enhance the values of the Melbourne Arts Precinct, as follows:⁵

[54] The purposes of Schedule 3 to the Capital City Zone (CCZ3) provide a relatively strong framework to support the uses that contribute to the Arts Precinct's status:

- To maintain and enhance the role of Southbank as a cultural and arts precinct.*
- To develop Sturt Street as an arts and performance precinct with services and activities for local residents and visitors.*
- To support art facilities and creative industry businesses along Sturt Street.*

[55] However, the CCZ3 provides for a wide range of land uses as-of-right, including the mix of land uses proposed for the review site. This is despite the fact that the table of uses in the Schedule to the Capital City Zone can be completely tailored to the needs of individual precincts. The manner in which the Schedule to the Zone that applies to Southbank has been drafted makes it very difficult, if not impossible, for the provisions of the CCZ3 to support and implement the stated purposes. ...

[60] We are tasked with implementing the Melbourne Planning Scheme as we find it, and not reading beyond its clear guidance to implement other outcomes, however desirable they may appear. ...

[77] We understand the submissions made on behalf of Council that in fact these commercial premises could be occupied by a range of uses, which could have little to no synergy with the surrounding Arts Precinct. We think that such an outcome is unlikely, given the significant level of activity created immediately adjacent to the review site by the Malthouse Theatre, the Australian Centre for Contemporary Art, and other arts related uses. It would seem to us likely that a future commercial operator will understand this local market, and propose

⁴ Constituted by Members Deidun and Axford.

⁵ At para 55.

land uses that provide a synergy and a benefit to these arts-based activities, and their visitors. While we understand that we cannot be assured of such an outcome, nor compel it, for the reasons which we have already set out above we are not persuaded that such an outcome is either required or encouraged by the Melbourne Planning Scheme in order for a permit to be granted for this proposed development.

In addition, the Tribunal in that case was not persuaded that it was appropriate to require particular built form modifications to achieve targeted outcomes for the Arts Precinct as sought by Council since the planning provisions as they stood lacked appropriate direction.

One Sturt Street Pty Ltd v Melbourne CC [2018] VCAT 1170

The interim controls of CCZ3 had been introduced into the planning scheme by Ministerial Amendment shortly before this hearing. The application dealt with an application for review of a failure to grant a permit within time for a proposed 18 storey mixed use building at 153 Sturt Street Southbank.

The Tribunal⁶ granted a permit with conditions for a mixed use building comprising residential apartments, deleting one level from the tower to achieve a floor area ratio (FAR) of 10:1 as required under DDO60. Ground level treatments were modified to enhance activation and four levels of arts studios at podium level were altered to allow for sufficient room dimensions and floor-to-ceiling heights, with residential apartments removed from the podium level.

This decision did not address policy issues and the Tribunal did not make specific findings on the effectiveness of the interim controls, instead limiting its findings to the applying the provisions of the planning scheme as it found them.

(ii) The Amendment area

The Amendment applies to land shown in Figure 1. Figure 2 depicts the key existing arts and cultural uses within the Arts Precinct.

⁶ Constituted by Senior Member Baird and Member Nervegna.

Figure 1: The subject land (from Explanatory Report)

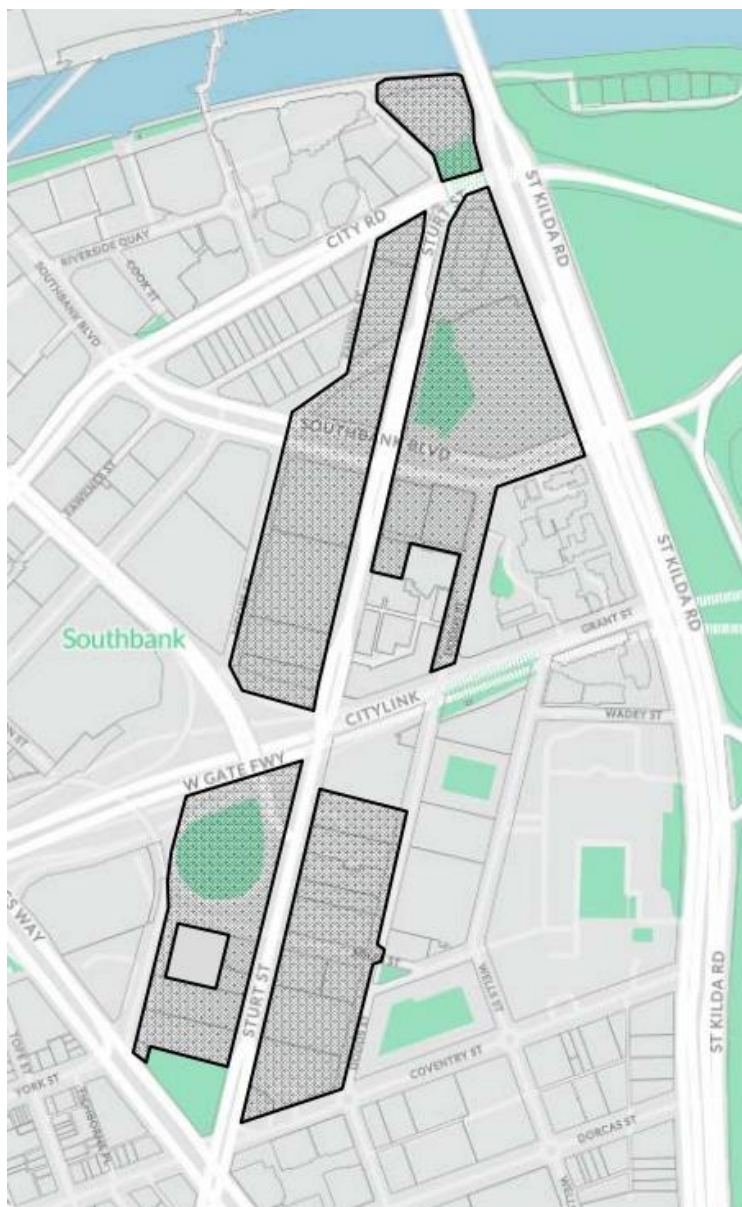
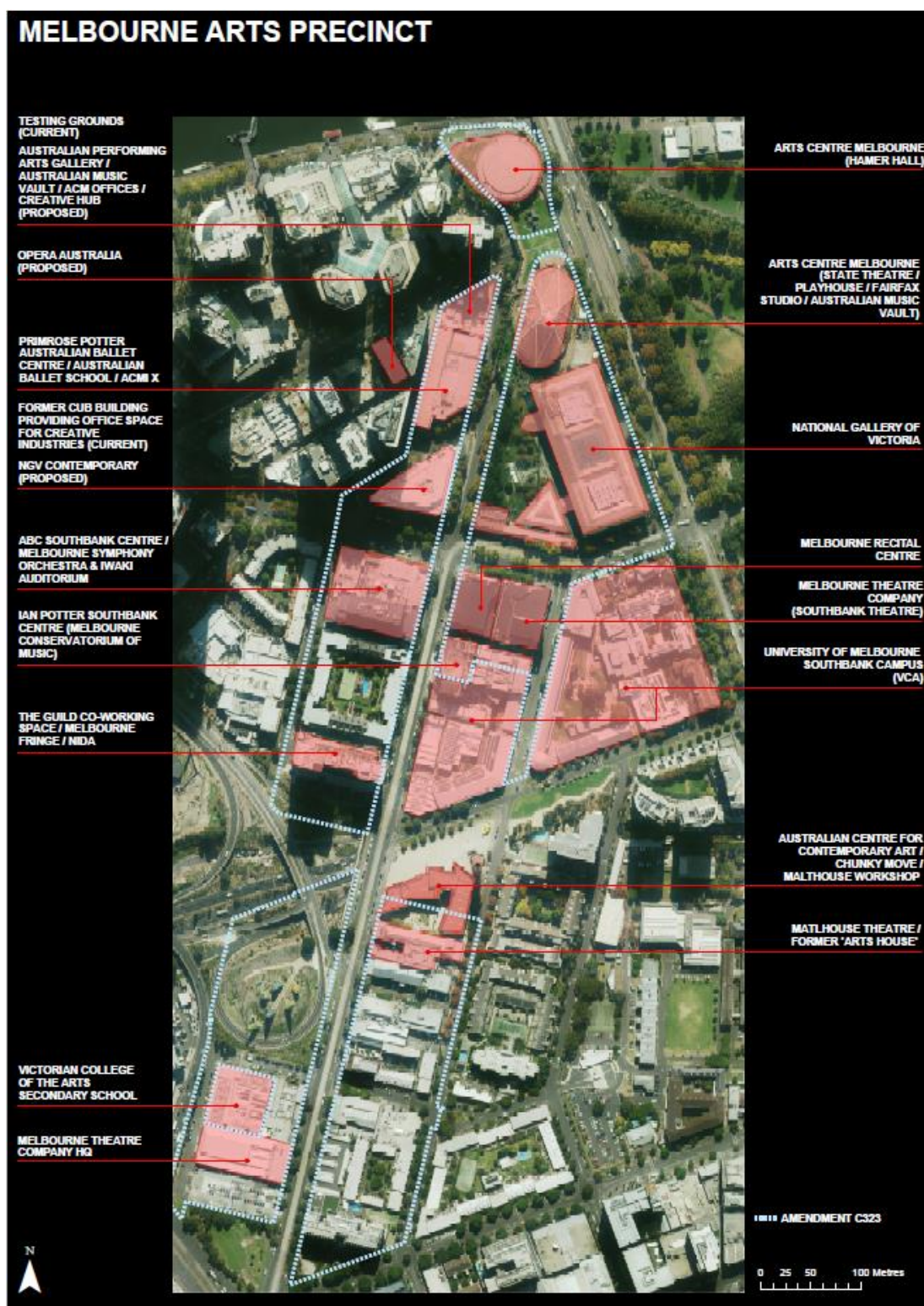


Figure 2: The proposed extent of Capital City Zone (Schedule 7), prepared by Creative Victoria



It is apparent from this marked up aerial photograph that the Arts Precinct houses numerous established arts and creative institutions and agencies, including:

- The Arts Centre (Theatre, Concert Hall and Spire)
- National Gallery of Victoria
- Melbourne Recital Centre

- Australian Ballet Centre
- Malthouse Theatre
- Southbank Theatre
- ABC Southbank Centre
- Melbourne Symphony Orchestra and Iwaki Auditorium.

The Victorian College of the Arts, Victorian College of the Arts Secondary School properties and the Australian Centre for Contemporary Art sites are excluded from the proposed CCZ7 being within the Public Use Zone. The Panel notes that these landholdings are sizeable, centrally located and are used for purposes that directly align with the purposes of the Arts Precinct proposed in the schedule.

From the Panel's perspective, the concentration of these key facilities within the Arts Precinct should not simply be viewed as a collection of arts and creative industries facilities grouped in close proximity to one other and to the city centre contextually. Planning decisions first made over four decades ago to reinvent the south of the Yarra River corridor to house the state's arts centre, theatre and gallery have resulted in a premier Arts Precinct that is distinguished by a formidable collection of exemplar architecture, designed by many notable Australian architects and landscape architects. This tradition largely continues with recently completed and proposed creative industries sites and masterplans.

The Panel spent time investigating how the boundaries of the Arts Precinct had been mapped for the purposes of CCZ7. The most obvious explanation for selecting this boundary for this Amendment was that it was designed to align with framework maps already contained in the planning scheme (such as those in Clause 21.08 – Economic Development and 21.13 – Urban Renewal Areas).

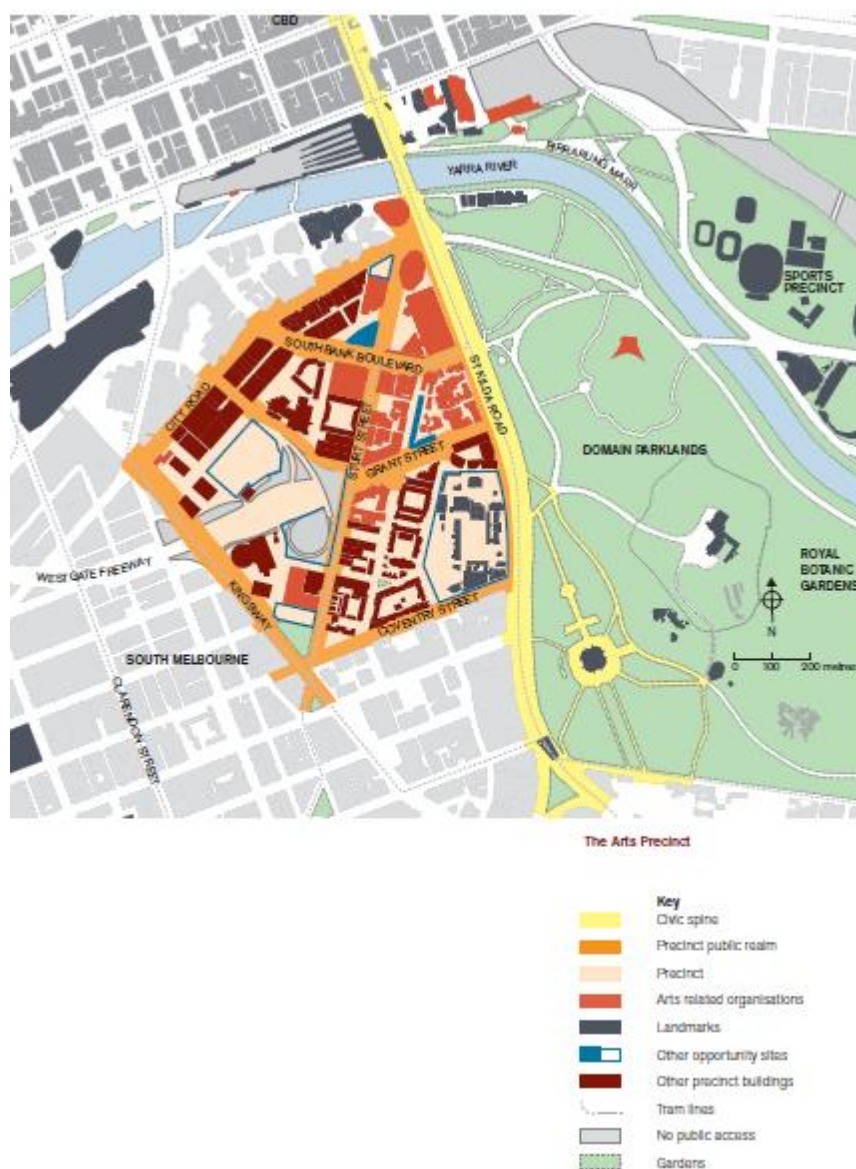
In terms of the detail, the Panel was assisted by the description by CV in its Part A submission, which confirmed that VicRoads had advised that some land within the proposed Amendment area forms part of the declared CityLink road and should be excluded (to be rezoned to Road Zone Category 1).⁷

The Sturt Street Spine in and of itself has long been recognised and promoted as a key arts cultural spine of State significance.⁸ It is noteworthy that the Arts Precinct boundaries as defined by the Amendment differ from those in other strategic documents that underpin the Amendment to some extent, in particular the *Melbourne Arts Precinct Blueprint 2014* (Blueprint) (see Figure 3).

The Panel acknowledges that the work underpinning the development of the Blueprint is a collaboration between all three tiers of government and relevant government agencies that has produced a comprehensive analysis of the challenges and opportunities to revitalise and further develop the premier Arts Precinct for Melbourne.

⁷ Page 19-20, (Document 6).

⁸ Page 24, *Southbank Structure Plan 2010*

Figure 3: The Arts Precinct as defined in the Melbourne Arts Precinct Blueprint

The Panel notes that the initial study area of the Blueprint Working Group extended over the St Kilda Road boulevard and the Flinders Street gateway to include other key arts facilities such as the Sidney Myer Music Bowl, the Australian Centre for the Moving Image, the Ian Potter Centre and Artplay within Birrarung Marr. This study area sought to understand the relationship between the Arts Precinct as a natural extension of other successful nearby public spaces and facilities to understand the influence of nearby attractions and consider the visitor experience as a whole.⁹

For the purposes of that document, the precinct boundary was defined as land bounded by Southbank Boulevard to the north, Kingsway to the west, Coventry Street to the south and St Kilda Road to the east in recognition of the following:

Past efforts to consolidate and build a sense of place for the Arts Precinct have focussed on Sturt Street. The Blueprint defines the Arts Precinct as a broader

⁹ Page 10, Melbourne Arts Precinct Blueprint 2014

*area, providing opportunities for consolidation as a major visitor destination through connections to the gardens, Flinders Street Station Federation Square and South Melbourne.*¹⁰

It appears that CV in conjunction with Council determined to progress the current planning controls to what is essentially the core of the area, being the Sturt Street 'spine', rather than the more fulsome 'Melbourne Arts Precinct' identified in other strategic work. In the Panel's opinion, this runs the risk of a loss of contextual understanding of the broader area and key connections within it and outwards.

The Panel agrees with Ms Lasica, a private submitter, that there is potentially scope for the boundaries of the Precinct as documented in the Amendment to be revisited – potentially widened beyond the Sturt Street spine to provide greater opportunities for an integrated and diverse arts precinct. This would call for careful consideration of the most appropriate zone provisions for such land as a starting point.

1.3 Public notice and approach to the Hearing

(i) Notice and submissions

CV advised that exhibition had involved extensive notice including letters to affected owners and occupiers as well as prescribed Ministers, notices in newspapers, a notice in the Victoria Government Gazette, documentation online and copies available at Council offices.¹¹

Originally, only a limited number of submissions were received in respect of the Amendment in response to notification – three from landowners in the Arts Precinct and one from a private individual (town planner and arts practitioner).

In summary, submissions raised the following issues:

- the purpose of CCZ7 was broadly supported but its drafting should be refined to acknowledge the potential for non-arts uses on lower levels of buildings
- the new land use controls should apply to Sturt Street property frontages only, not to the full depth of sites
- to provide for the fair, orderly, economic and sustainable use and development of land in accordance with section 4 of the *Planning and Environment Act 1987*, discretion should be permitted for uses other than arts uses on the four levels of buildings, especially where height controls apply
- mixed use development should be encouraged explicitly to assist in activation and revitalisation at a precinct level
- exemptions from notice and review provisions for certain types of land use should be expanded given the underlying CCZ provisions that apply
- incentives should be provided to proponents who provide creative spaces within Arts Precinct, such as development bonuses
- offices should continue to be as-of-right since they fit with the vision for the Arts Precinct
- the opportunity should be taken up to clarify the extent of Floor Area Requirements with respect to DDO60 Areas 4A and 4B (with one being mandatory and the other

¹⁰ Page 22, Melbourne Arts Precinct Blueprint 2014

¹¹ CV Part A submission, p17.

discretionary, even when they apply to a site with two street frontages used as a consolidated parcel)

- how can the Amendment ensure that diverse arts and cultural uses will eventuate in spaces to be provided at lower levels of buildings? Which body would have governance and oversight of the implementation of this policy?

On the one hand, the Panel is conscious that the scope of the submissions by affected landowners were somewhat confined. A number of these have existing permits or current permit applications with Council for the redevelopment of their sites.¹²

On the other hand, the submission by Ms Lasica raised far broader issues about how the vision for the Arts Precinct could be achieved in practice. To some extent, her submission raises limitations inherent in the capacity of planning provisions to achieve integrated outcomes. It also emphasises the need for a suite of initiatives beyond planning controls and policies needed to support and implement the vision for the Arts Precinct successfully.

The Panel sought to ensure that relevant stakeholders had the opportunity for input regarding the content of the Amendment and enquired about the level of engagement with and support from arts/cultural institutions or agencies within the Arts Precinct.

This led to additional liaison between CV and its industry partners including members of the Sturt Street Arts Precinct Forum and the Creative Spaces Working Group.¹³ A number of written letters in support of the Amendment were forwarded to the Panel after the notification period closed from:

- Professor Barry Conyngham, Dean, Faculty of the Victorian College of the Arts and Melbourne Conservatorium of Music, University of Melbourne
- Max Delany, CEO and Artistic Director, Australian Centre for Contemporary Art
- Claire Spencer, CEO, Arts Centre Melbourne
- Ann Tonks, Interim CEO/ Executive Director, Chunky Move
- Euan Murdoch, CEO, Melbourne Recital Centre
- Tony Ellwood AM, Director, National Gallery of Victoria
- Antony Reed, CEO, Game Developers' Association of Australia
- Arie Rain Glorie, Program Director and Curator, Testing Grounds
- Dr Louise Baker, School Council President, Victorian College of the Arts Secondary School.

Although not formally referred by Council to the Panel as submissions, the Panel proposes to have general regard to the content of these letters in forming its views, since they were provided by established creative industry or arts education providers within the Arts Precinct. Parties to the Hearing had an opportunity to respond to these documents.

CV also confirmed that the Office of the Victorian Government Architect had been a member of the working group that prepared the Blueprint and had been requested by DELWP to provide advice on specific development proposals in the Arts Precinct.

¹² These were documented by CV in its submissions in response to a Panel request.

¹³ Explained in CV Part A submission, p18 and 19.

(ii) Changes following exhibition

Council resolved to make a number of changes to the Amendment in response to submissions received within time, including:¹⁴

- provision for use of land for Office without a planning permit under the CCZ provisions if ‘associated with arts uses’ and meeting specified requirements to condition 1 of clause 1.0
- exempting certain permit applications for the use of land in the zone from notice and review rights
- refinements to decision guidelines including acknowledgement of flexibility in floor to ceiling requirements to facilitate arts uses
- a preference for the first five levels of buildings to have a ‘casing’ of arts uses or other active uses.

Further changes proposed by CV during refinement of the Amendment and circulated to parties included:

- more substantial amendments proposed to CCZ7 and to DDO1 including the addition of a definition of ‘creative industries’ within CCZ7
- an addition to the referral requirement in clause 66.04 for Council to be a recommending referral authority¹⁵
- changes to local planning policy to reflect the objectives for the Arts Precinct
- resolving mapping anomalies pertaining to sites included in both the Public Use Zone and CCZ7.¹⁶

CV’s version of the CCZ discussed at the Panel workshop is included in Appendix C and is addressed further in Chapter 4.

Ms Heggen who gave expert planning evidence on behalf of CV regarded, in essence, this updated schedule to be a sound basis for a finalised amendment. She regarded the changes as involving ‘beneficial refinements’ to the proposed purposes of the schedule, considering that these were ‘more concise expressions of intent’. Overall, she considered that the proposed schedule would *“do the heavy lifting but [wouldn’t] use a heavy hand”*.

In particular, Ms Heggen considered the definition of ‘creative industries’ to be a positive addition to the schedule since it would recognise the diverse range of activities and outputs that are associated with the creative sector. She also explained that such a definition would assist in interpreting the purpose of the zone, whether conditions for section 1 uses are met and to guide consideration of the decision guidelines. These issues are discussed in more detail in Chapter 4.

(iii) Role of the Panel

From the outset, the Panel recognises the significance of this Amendment to the future development of the Arts Precinct. For reasons explained later in this report, it supports the underlying objectives of the Amendment.

¹⁴ At the Future Melbourne Committee meeting on 7 August 2018.

¹⁵ For sites with floor area proposed above 25,000 sqm where the Minister for Planning is the responsible authority.

¹⁶ Para 20, CV Part A submission, such as land within the operations of the Victorian College of the Arts that CV recommends be included in the Public Use Zone. At the Hearing, Council confirmed its intention to address this via a separate Amendment.

The Panel is conscious of its key role to consider the Amendment in light of issues raised by submissions and to make recommendations accordingly. However, in an Amendment of this type, the Panel considers that it has a crucial role as an experienced and independent 'sounding board'. Therefore, it sought to satisfy itself about the ability of the planning controls and policies to achieve the stated purpose.

In light of this, the Panel adopted a proactive approach at the Directions Hearing to highlight concerns about the way specific planning controls and policies were drafted in the exhibited version.

(iv) Format of the Panel Hearing and associated workshop

At the Directions Hearing, the Panel suggested that, subject to the agreement and input of the parties, part of the Hearing could take the form of a targeted workshop to consider the drafting and operation of the planning controls and policies. The parties supported this approach. A timetable was established for the provision of further material, evidence and the circulation of revised planning controls and policies.

As an outcome of the Directions Hearing, a period of time was notionally allocated for re-exhibition of the Amendment, recognising that the proposed changes to the planning controls arising from the workshop may justify further notice. A reserved hearing day was set aside for further submissions from parties and rights of reply following re-notification.

The Hearing involved an outline of submissions from the parties as well as independent town planning and economic evidence called by CV which was subject to cross examination. Towards the conclusion of Day 1 of the Hearing, the Panel prepared a workshop outline with the assistance of the parties.

Day 2 of the Hearing included the workshop (drafting) component, which evaluated and considered potential revisions to the Amendment documentation, based on issues drawn from submissions and the Panel. Much of the Panel process centred on evaluating the refined suggested version of the Amendment as proposed by CV (referred to as the 'track changes' schedule).

As an outcome of the workshop, Council was requested to give notice of a revised CV preferred version of the Amendment.

It appears that Council substantially supported a number of the proposed changes, but not all of the changes requested by CV. Therefore, it declined to give notice of this version of the Amendment, preferring to obtain the recommendations of the Panel before deciding on any future steps.

CV expressed great disappointment with Council's decision as the planning authority.

For reasons outlined below, the Panel has concerns about the adequacy of the Amendment as exhibited. It also takes the view that notable potential improvements were suggested in the refinement of the Amendment through the Panel process, including greater direction and increased balance in the purpose of Schedule 7 to the CCZ. Beyond this, the Panel considers that further work is still required to draft an effective permanent schedule to the zone.

The proposed changes, of themselves, warrant further exhibition, but such exhibition would be wasted effort without the further work required to the controls. This set of

circumstances has led the Panel to issue an interim Panel Report, with recommendations for further work, including more effective public and stakeholder consultation and further notification.

The Panel for this Amendment will not conclude its current appointment until it is advised by Council as the planning authority whether its services will be required to consider any further submissions or evidence.

1.4 The way forward

Key conclusions establish that there is merit in differentiating the state significant Melbourne Arts Precinct via its own schedule to the Capital City Zone. This would be consistent with comprehensive policy directions to date.

However, the Panel has concerns about the effectiveness of the proposed direction and drafting of the Amendment that cannot be remedied without further consideration and most likely re-exhibition. For these reasons, the Panel is disinclined to finalise the Melbourne Arts Precinct Amendment within the confines of the drafting undertaken to date.

The version of the Amendment proposed by CV may form a more reasonable starting point but, even so, the Panel identifies further work that should be undertaken to formulate a precinct-specific Amendment to be implemented on an ongoing basis.

The Panel is also conscious that its interim position has been formed in light of relatively limited public submissions received in respect of the Amendment at this stage. Some submitters have recommended that further notification and public participation opportunities be provided.

Given the nature of the further work required, the Panel recommends that fulsome further public notification be undertaken after the planning authority and proponent progress the Amendment. As mentioned, the Panel maintains its role in this Amendment to enable any further submissions to be referred to it for consideration.

1.5 Issues dealt with in this Report

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, submissions, evidence and other material presented to it during the Hearing and workshop.¹⁷

This report addresses the following key issues:

- Strategic justification
- Proposed changes to policy
- Proposed CCZ7
- Changes to DDO provisions
- Other issues
 - Institutional uses
 - Governance.

¹⁷ All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

2 Strategic justification

The Panel has given considerable weight to the policy context of the Amendment since it provides direct support to the outcomes sought by the CCZ7, DDO1 and the expanded policies within the planning scheme.

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report. This was supplemented by the submissions on behalf of CV. In summary, Council considers that the Amendment has strong policy support and that it integrates well with other strategic work and public realm upgrades in the broader area.

2.1 Policy framework

The Amendment is principally aimed at the fair, orderly and economic use and development of land. It proposes to build on a variety of policies within the planning scheme that seek to enhance arts, cultural and entertainment facilities, while taking account commercial and public realm aspects of these land uses.

(i) Plan Melbourne 2017-2050

Council expressed the view that the Amendment was consistent with Plan Melbourne, especially in providing opportunities to establish and expand creative industries in the Precinct.

It referred to Directions 1.1 and Action 2 in particular:

- *to identify opportunities to establish and expand creative industries, small businesses and tourism*
- *to improve the public realm, open space, social, cultural and recreational facilities that support the central city's economic functions.*

Direction 4.2 is especially relevant since it seeks to:

Support the growth and development of Melbourne's cultural precincts and creative industries

- *The city's dynamic arts culture will be supported and facilitated – ensuring spaces and facilities are created that encourage cultural innovation and new forms of artistic expression throughout the metropolitan area. This policy will help Victoria's cultural precincts and creative industries remain sustainable and attract investment, reinforcing Melbourne's multicultural diversity through a commitment to cultural events and programs and associated infrastructure and creative business opportunities.*

The *Plan Melbourne 2017-2050 Implementation Plan* refers to DEDJTR as the lead agency in consultation with Council in the medium term. CV is a body established in 2015 under the auspices of this department. Action 64 is to identify opportunities for emerging creative industries to access affordable spaces, which is one objective of the Amendment.

(ii) State Planning Policy Framework

Council and CV submitted that the Amendment was supported by clauses in the former State Planning Policy Framework pertaining to:

- Clause 11.02-1 regarding adequate supply of land
- Clause 11.06-1 to create a city structure that drives productivity, attracts investment, supports innovation and creates jobs
- Clause 15.01-1 to create places that provide a sense of place and cultural identity and enhance the public realm
- Clause 17.01-1 and 17.02-4 to encourage development to meet community needs while providing net community benefit with aggregation and sustainability of commercial facilities. To create opportunities for innovation, including within emerging and existing industries and education
- Clause 17.03 to encourage tourism
- Clause 19.02 “to develop a strong cultural environment and increase access to arts, recreation and other cultural facilities”.

The Amendment was prepared by reference to the planning scheme as it existed before the changes instigated by Amendment VC148.¹⁸ The Panel has reviewed the updated Planning Policy Framework (PPF) and considers that the changes are unlikely to have a material impact on the contents of this Amendment.

For completeness and to ensure consistent content and terminology, the Panel recommends that Council (with input from CV) reviews the updated planning policy provisions and makes any consequential adjustments required to the Amendment documentation as it progresses.

(iii) Local Planning Policy Framework

Council and CV submitted that the Arts Precinct forms a core component of the Central City, which is diverse and relevantly includes strength in business, creative industries and tourism. They considered that the Amendment is supported by the following aspects of Local Planning Policy Framework:

- policies recognising Melbourne as a national and international leader in creative endeavours, specifically acknowledging the premier arts and cultural institutions along the Sturt Street spine (clause 21.02-4) and its potential for urban renewal as part of Southbank (clause 21.04-1.2). Policies expressly seeking to support arts, entertainment, cultural and educational facilities and attractions in Southbank (clause 21.10-6).
- urban design policies, especially those seeking active street frontages and an enhanced public realm (clauses 21.06-1 and 21.13-1)
- business and employment policies.

The Arts Precinct is addressed in the current Municipal Strategic Statement, most directly in clause 21.13 concerning Urban Renewal Areas. These include:

- *Maintain low rise development on the northern and southern sides of the Yarra River and Arts Precinct to maintain the low scale river edge to protect key views to the Arts Centre Spire and prevent overshadowing of the south bank of the River ...*
- *Encourage medium scale development in the Arts Precinct and the areas to the east of Moore Street and to the south of City Link.*

¹⁸ On 31 July 2018.

- *Encourage a continuous network of through block links to increase permeability, amenity and safety and to improve access to the Yarra River and Arts Precinct.*
- *Support arts and education uses and facilities at Southbank.*
- *Support arts, entertainment, cultural, educational attractions in Southbank, especially in the Arts Precinct.*¹⁹

Figure 7 to clause 21.13 pertains to Southbank. The boundaries of the area identified as the Arts Precinct are generally similar to those within the current Amendment (although it includes the Victorian College of the Arts land). The Figure notes that “A *Southbank Structure Plan* has been prepared to guide future land use and development in this area. Key elements of this Plan will be implemented through Melbourne Planning Scheme Amendment C171 which is currently under consideration” (as at June 2012).

In practice, this was superseded by the introduction of relevant Design and Development Overlays as an outcome of Amendment C171, together with subsequent work in Amendment C270 (Central City Built Form Review) to introduce a comprehensive suite of built form controls.

(iv) Clause 22.01 – Urban Design within the Capital City Zone

The Amendment seeks to amend Clause 22.01 by referencing CCZ7 in the policy (in addition to existing references to CCZ1, CCZ2 and CCZ3 at present).

There is no proposal to include specific urban design policies for the Arts Precinct in the proposed wording of clause 22.01.

Council, and Ms Heggen in evidence, advised the Panel that clause 22.01 is proposed to be deleted through the upcoming Amendment C308 (Central City and Southbank Urban Design), which seeks to consolidate many of the urban design policies that currently apply to the Central City and Southbank. The Panel was not advised how the Arts Precinct would be specifically dealt with in this new suite of policies and controls.

(v) Other planning strategies or policies used in formulating the Amendment

The strategic work that relates to Southbank and the Melbourne Arts Precinct is extensive and has evolved over a lengthy period of time. Key documents are the Southbank Structure Plan 2010 and Melbourne Arts Precinct Blueprint 2014.

The Panel has summarised key elements of other relevant policy documents which have influenced the direction and content of the Amendment in Table 1.

Southbank Structure Plan 2010

The *Southbank Structure Plan 2010* (Structure Plan) built on work undertaken in the *Southbank Structure Plan (Final Draft) 1999* and the *Southbank Plan 2007*. It described the evolution and rejuvenation of Southbank in the 1980s around the time of the completion of the Arts Centre, National Gallery of Victoria and Hamer Hall and in response to the major initiative ‘Engaging with the Yarra River’.

¹⁹ Clause 21.13-1 relating to Southbank.

Acknowledging that it takes decades to realise such a major urban renewal project of this scale, the Structure Plan sought to redress some of the perceived disadvantages that arose under the planning context of the time, describing low cohesion of the public realm and inactive street frontages in the environs south of the Arts Centre, National Gallery and Concert Hall.

A key strategic aim of the Structure Plan was to address perceived failings of land use controls and undertake major capital works to improve the public realm (Project Initiative 4). This was given effect by Amendment C171 (Southbank Structure Plan)²⁰, which implemented a suite of modifications to the Melbourne Planning Scheme by modifying the existing zone, overlay and policy regime and introduced the Structure Plan as a reference document into the Planning Scheme. Relevant to this Amendment is:

Land use recommendation 4: Deliver the Sturt Street Cultural Spine using the planning scheme and other mechanisms to encourage the growth of many, smaller scale uses along the street to complement the existing arts and cultural venues.

Melbourne Arts Precinct Blueprint 2014

Consistent with the Structure Plan, the *Melbourne Arts Precinct Blueprint 2014* (Blueprint) was a stakeholder-led process involving key arts, education and government agencies. The vision for the Blueprint included high quality urban design and amenity both in public and private realm; co-location of cultural arts facilities that encourages artistic endeavour; and collaborative governance for arts and cultural organisations. Notably, the Blueprint defined Arts Precinct Boundary as delineated by Southbank Boulevard, St Kilda Road, Coventry Street and Kingsway.

Three key reports were commissioned through the Blueprint process:

- Peter Elliot Architecture, *Southbank Arts Precinct Architectural Design Blueprint* (2013)
- John Wardle Architects, *Southbank Arts Precinct Urban Design Framework* (2013)
- PricewaterhouseCoopers, *Southbank Arts Precinct Economics, Commercial and Governance Analysis* (2013)

Of these three reports, only the PricewaterhouseCoopers was provided to the Panel for review and was open to comment by parties. In absence of being furnished with the architectural and urban design reports²¹, the Panel cannot fully appreciate the Blueprint recommendations, which focus on high level recommendations relating to governance, policy and a framework for delivering key recommendations.

²⁰ Melbourne C171 (PSA) [2012] PPV 54 (11 May 2012)

²¹ Which cannot reasonably be accessed after the Hearing as a matter of natural justice, where parties have not had the opportunity to comment.

Table 1: Background reports to Amendment C323

Background Strategies	Outcome for Amendment C323
Southbank Structure Plan 2010	<p>Recommended that the land use zoning be modified to provide a coherent planning framework for the Arts Precinct</p> <p>Identified that mixed use, residential and public use zoning along Sturt Street is leading to it being developed as a residential street rather than a vibrant arts and culture precinct and that there is a lack of integration of cultural, residential and complementary activities</p> <p>Land use objectives included:</p> <ul style="list-style-type: none"> - Applying the CCZ to entirety of Sturt Street - Local activity node at Sturt Street and Southbank Boulevard park to address lack of intensity of activity evident within the street - Create second Sturt Street activity node at City Link tunnel entrance to connect suburb and allow new development - Use planning scheme to deliver Sturt Street Cultural Spine by encouraging growth of many, smaller scale creative uses along the street - Recognise and build Sturt Street as a centre with local services and activities and as a cultural arts and performance precinct with services and amenity for residents, patrons and other visitors to establish an integrated residential and cultural precinct - Revise built form controls to support land use objectives
Melbourne Arts Precinct Blueprint 2014	<p>Strategic blueprint developed to present a cohesive urban renewal plan for the Arts Precinct in light of disjointed development</p> <p>Defined the Melbourne Arts Precinct boundary as delineated by Southbank Boulevard, Kingsway, Coventry Street and St Kilda Road</p> <p>Identified Sturt Street as the logical 'arts spine' of the area, capable of becoming a destination in its own right</p> <p>Sturt Street can act as the natural northern gateway of the Arts Precinct to the City</p> <p>Built on the interventions identified in the Structure Plan</p> <p>Suggested several Crown sites which presented opportunities for significant Arts related development</p> <p>Focused on governance, collaboration and negotiation for arts outcomes</p>
Council Plan	<p>A goal was to create a vibrant creative city. To achieve this, it lists as priorities:</p> <ul style="list-style-type: none"> - Provision of public and purpose-built spaces for community arts and performing arts - Provision of co-working and incubator spaces for creative industry practitioners - Facilitating affordable creative spaces for artists.
City of Melbourne Arts Strategy 2014-17	<p>The Arts Strategy contains goals, themes and specific commitments including:</p> <ul style="list-style-type: none"> - Ensure provision of working spaces suitable for a range of art

Background Strategies	Outcome for Amendment C323
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- | | |
|--|--|
| | <ul style="list-style-type: none"> - Provision of affordable creative spaces - Artist use in spaces that are vacant or under-used - Investigate establishing advocacy body for affordable spaces for creative use - Work with State Government to develop Southbank Arts Precinct in line with Arts Strategy |
|--|--|

Creative State 2016-2020	<p>Land use objectives were provided in Section 4.2, with land use strategies and recommendations 1 and 4 of particular relevance, as well as built form objectives in section 4.2</p> <p>Action 7 of Creative State aimed to establish creative working hubs where possible in partnership with government and others</p>
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City of Melbourne Arts Infrastructure Framework	Listed goals relating to provision of creative spaces, providing more affordable housing for artists and creating more live-work spaces
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2.2 Planning scheme provisions

(i) Zones

The land in the proposed CCZ7 is currently subject to interim controls introduced by Amendment C330 in March 2018.²² These are due to expire on 31 March 2019.

Elements of the schedule that are particular to the Arts Precinct include purposes:

To provide for a diversity of art and cultural uses within the first four storeys of buildings ...

To provide for commercial and residential uses above the first four storeys of buildings and development which maximises pedestrian access, provides for active street frontages and integration with the public realm.

A planning permit is required for the use of land for Accommodation or Office within the first four storeys of a building or 16 metres of building height (whichever is lower) or if the frontage at ground level exceeds 2 metres.

Land uses such as Art and craft centre, Cinema based entertainment facility, Dancing school and Education centre are as-of-right – no permit required. Place of assembly, Shop and Food and drink premises other than Hotel or Tavern are as-of-right regardless of size.²³ Most other land uses require a planning permit and minimal uses are prohibited.

As exhibited, CCZ7 replicated the substance of the interim controls, with minor refinement.

(ii) Overlays

A number of Design and Development Overlays apply to land within the Arts Precinct and are sought to be updated consequentially to refer to the new CCZ7, including:

²² Introduced by the Minister for Planning under section 20(4) of the PE Act.

²³ Subject to a few nominated restrictions.

- DDO1 – directed to streetscape activation, with specific nominated standards to meet stated objectives
- DDO60 (Areas 4A and 4B) – directed to Sturt Street and Dodds Street height controls (discretionary 40 metres and mandatory 14 metres respectively).

No overlay provisions are proposed to be changed substantially by this Amendment, although the Panel ultimately recommends that more targeted work in this area is justified.

2.3 Ministerial Directions and Practice Notes

Council and CV submitted that the Amendment meets the relevant requirements of:

- Ministerial Direction 9: Metropolitan Planning Strategy
- Ministerial Direction 11: Strategic Assessment of Amendments²⁴
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the PE Act.

Council and CV submitted that the Amendment is consistent with Planning Practice Note 46 (PPN46) Strategic Assessment Guidelines, June 2015.

2.4 Summary of evidence about strategic justification

Ms Heggen gave evidence on behalf of CV that:

*The Melbourne Arts Precinct is a world class hub for the arts and creative endeavours that contributes to the economic and cultural life of the city and state, but requires careful management to ensure its potential is realised in the face of competing development pressures.*²⁵

She considered that there was clear strategic policy support for a specific schedule to the CCZ to encourage the delivery of arts and creative uses within the first four storeys of buildings, as well as to justify tailored decision guidelines.²⁶ She explained that:

The Arts Precinct sits within the broader Southbank Area which has a prevailing CCZ3 zoning and forms part of the expanded central city area ...

In this context, using a bespoke CCZ schedule to manage land use in the Precinct and to establish specific application requirements and decision guidelines in respect of the use and development of land, is a logical application of the available tools in the Victoria Planning Provisions (VPPs) ...

*The Melbourne Arts Precinct is clearly a location that has a specific set of land use and development issues and the use of a tailored CCZ Schedule is, in my view, an appropriate use of the VPPs.*²⁷

2.5 Discussion

The role of the Melbourne Arts Precinct and the Sturt Street spine in particular is recognised in current planning scheme policies at a high level and to some extent in local policies.

²⁴ Paras 38-53 CV Part A submission (Document 6).

²⁵ Chapter 1.3 of her evidence (Document 7).

²⁶ For the most part, she expanded on strategic work as summarised in Chapter 3.1 of this Report.

²⁷ Chapter 2.2.1 of her evidence (Document 7).

However, there is a lack of local policy provisions which reinforce what is sought for the future of the Arts Precinct. This involves protecting and enhancing the values of the Arts Precinct.

The Panel considers that it is necessary as part of the suite of Amendment documentation for policy at the local level to be specifically targeted to the key aspirations for the Arts Precinct, to ground the purposes and controls proposed in CCZ7.

In the absence of this, Council runs a similar risk to its position in the case of *Tisza's case*, that insufficient policies may be in place to guide the exercise of discretion in the manner sought by Council in its day-to-day role as responsible authority for land use and development in the Arts Precinct. The provision of more detailed policy at the local level could also provide guidance for decision making in the Central City area and Southbank more broadly to recognise and protect the interests of the Arts Precinct or to create synergies. Notably, as outlined above, this strategic work has been undertaken recently and addresses various elements for a successful and more vibrant arts precinct. This work is generally comprehensive and has been prepared competently, with the benefit of stakeholder input and often with broader public consultation.

A key recommendation of strategic work adopted by the Amendment is the intention to secure space within the Arts Precinct that could be used for creative endeavours. In the absence of this, the Panel accepts that market forces will be likely to simply continue to dictate preferred land uses which may not be responsive to site's Arts Precinct location.

Regrettably, and perhaps because of the urgency of the Amendment in seeking to preserve arts uses on potential redevelopment sites, the strategic work referred to was not translated in any fulsome way into proposed planning controls and policies, to the detriment of the current Amendment.

As discussed below, the policy inclusions suggested by Ms Heggen in her evidence on behalf of CV (documented in CV's preferred Amendment documentation) represent an appropriate starting point, subject to the Panel's broader identification of matters to consider.

2.6 Conclusion

The Panel finds that there is consistent strategic support in-principle for the Amendment, both as exhibited and as refined through the Panel process. There is justification for a separate schedule to the CCZ to reflect the qualities and significance of the Arts Precinct.

It further agrees that the mechanism of a specific schedule to the CCZ is appropriate as the key VPP tool.

However, a comprehensive set of policies should also be prepared for the planning scheme to provide a firm base on which to establish and embed effective new controls.

The Panel strongly encourages Council and CV to further draw on the strategic work that has been completed for the Arts Precinct to expand the scope, detail and functionality of the Amendment.

3 Proposed changes to policy

3.1 Extent of changes proposed in the exhibited documentation

The issue is whether the proposed changes to policy are adequate to address proposed aspirations for the Arts Precinct.

3.2 Evidence and submissions

The only proposed change to policy in the exhibited Amendment is to make reference to CCZ7 in clause 22.01 local planning policy concerning Urban Design in the Capital City in scope of the policy.

The current purpose of clause 22.01 provides:

- *To ensure that development responds to the underlying framework and fundamental characteristics of the Capital City Zone while establishing its own identity.*
- *To enhance the physical quality and character of Melbourne's streets, lanes and Capital City Zone form through sensitive and innovative design.*
- *To retain views into and out of the Hoddle Grid and Southbank and vistas to important civic or historic landmarks.*
- *To ensure that the design of public spaces, buildings and circulation spaces meets high quality design standards.*
- *To ensure developments contribute to a high quality public realm and to passive surveillance of the public domain.*
- *To incorporate laneways and through-block links to enhance pedestrian movement and permeability.*
- *To improve the experience of the city for pedestrians by providing a human scale to the street wall, weather protection, sunlight access, summer shadow, comfortable wind conditions, active*
- *To address the cumulative impact of the scale, setbacks and height of developments where multiple towers provide the precinct built form context for individual proposals.*
- *To provide adequate separation between towers to achieve sunlight access to streets, avoid a canyon effect, and provide the opportunity for a high level of internal amenity for occupants of adjacent towers.*
- *To maintain identified special character areas where a lower scale of development is appropriate in response to identified attributes.*
- *To encourage the early consideration and integration of public art work into building design to enhance the arts and cultural character of the city.*

The Amendment also seeks to refer to CCZ7 in connection with existing additional objectives for Southbank:

- *To connect and integrate Southbank with the Hoddle Grid and the Yarra River, providing easy and attractive access from all areas of Southbank to and across the river.*
- *To develop pedestrian and cycling connections so that Southbank has a fine grain network encouraging permeability and access.*

- *To encourage the redevelopment of the area bounded by City Road, Kings Way, Haig Street/Lane and the Westgate Freeway into a vibrant, mixed use area that includes smaller premises and establishes a distinct fine grained urban character.*

The Panel was advised by Council that clause 22.01 in its entirety is proposed to be deleted via planning scheme Amendment C308, and that this Amendment was at public exhibition stage at the date of the Hearing.²⁸ The Amendment would focus on a replacement DDO1.

However, when the Panel and parties suggested that they could potentially workshop the content of an enhanced policy to take account of the particular aspirations for the Arts Precinct, Council was reticent. It appeared to take the view that it would be preferable to await guidance from a future Panel as to what form of drafting of built form outcomes could be supported in policy terms before seeking to apply this to the Arts Precinct.

Ms Heggen, in her evidence on behalf of CV identified that there is a need to include specific policy guidance pertaining to the Arts Precinct in the Municipal Strategic Statement (or its future equivalent when the planning scheme is translated to accord with the post VC148 structure). She suggested the following inclusions that do not form part of the exhibited documentation but are considered important additions to the suite of Amendment documentation:

- Clause 21.04-1.2 (Settlement – Urban renewal areas) – under ‘Southbank’, include:
 - Southbank is home to the State’s major arts and cultural institutions and facilities as part of the internationally recognised Arts Precinct and other major activity areas including the Southbank Promenade, Melbourne Convention and Exhibition Centre and the South Wharf complex.
 - reference to a ‘vibrant arts and cultural precinct’ as part of the vision of the *Southbank Structure Plan 2010*.
- Clause 21.08 (Economic Development) – a new subheading Arts and Culture:
 - Melbourne’s status as the cultural capital of Australia is underpinned by its celebrated and diverse arts scene. The internationally significant Arts Precinct is a key driver of Melbourne’s thriving visitor economy and, as home to Victoria’s major arts organisations and arts educational facilities, it is also the engine room of the state’s creative economy.
 - The Arts Precinct is unique in the extent of activities undertaken by a cluster of arts and cultural organisations, encompassing the key arts institutions on St Kilda Road as well as the Australian Broadcasting Corporation, the Victorian College of the Arts, contemporary arts assets along Sturt Street, and key sites on the north bank of the Yarra River such as Federation Square.
 - There is a need to support the ongoing role of the Arts Precinct as an arts and cultural destination by expanding its creative industries presence, encouraging active street frontages and strengthening the legibility of the precinct as an arts and cultural precinct.
 - In Clause 21.08-6 (new – Arts and cultural)

Objective 1 To strengthen the City’s contribution to arts and culture.

²⁸ With Ministerial approval granted in March 2018.

Strategy 1.1 Maintain and enhance the role of the Arts Precinct as the City's primary arts and cultural precinct by facilitating the provision of floor space for creative industries, encouraging active street frontages and strengthening the legibility of the precinct as an arts and cultural precinct.

- Clause 21.10 (Infrastructure) – in Clause 21.10-6 (Cultural/Arts and Entertainment Facilities)

Objective 1 To provide a diverse range of leisure, arts, cultural and entertainment facilities (existing)

Strategy 1.4 (new) Support the expansion of creative industries by providing additional, diverse and appropriate spaces for such uses, particularly in the Arts Precinct.

- Clause 21.13 (Urban Renewal Areas) – substantial variation including:
 - recognition of a mix of arts and cultural uses as preferred uses for Southbank's redevelopment as an extension of the Central City.
 - proposed policy to strengthen the role of the Arts Precinct by facilitating the provision of floor space for creative industries especially at lower storeys of a building would be reinforced (in both Built Environment and Heritage and Infrastructure). This would provide more detail than the existing provision which seeks to 'support arts and education uses and facilities at Southbank'.
 - development contributing to the 'legibility' of the Arts Precinct and having a strong physical and visual relationship with the public realm would be encouraged.

Ms Heggen did not recommend any changes to policy at Clause 22.01 concerning Urban Design within the Capital City Zone. It is unclear whether this was because of her instructions about the scope of the Amendment, whether she considered this unnecessary or believed that it would be addressed in a forthcoming Amendment.

On the whole, Council appeared to support the thrust of the changes to policy suggested by Ms Heggen.

3.3 Discussion

Policy is a central starting point for the evaluation of any application under the planning scheme, being the first purpose of the CCZ and a central consideration in clause 65 of the planning scheme.

The Panel considers that any Amendment that pursues specific purposes for the Arts Precinct also needs to ensure that proposed controls align directly with planning policies that directly assist in the implementation of these controls. Failing this, the effectiveness of the Amendment will be compromised in the manner identified by VCAT in *Tisza's case*.

In this context, the Panel regards the suite of policy changes proposed by Ms Heggen as critical. On the whole, it considers that appropriate locations within the planning scheme have been identified for the inclusion of more specific policy direction for the Arts Precinct, and that the direction planning scheme would pave the way to encourage lower levels of buildings to be used for creative industries, which is the main technique encouraged by the CCZ schedule.

The Panel is specifically supportive of the more detailed policy objectives proposed for the Urban Renewal Areas policy in clause 21.13 but suggests that a distinct sub-heading should be added for the Arts Precinct in light of the current Amendment to further differentiate outcomes sought in that precinct compared with Southbank more broadly.

A more minor drafting concern is whether the term 'legibility of the Arts Precinct' proposed in Clause 21.13 is sufficiently well understood and provides adequate direction for intended outcomes. This could be considered at the stage these policies are reviewed and is addressed further below in the context of CCZ7.

As discussed in Chapter 5, the Panel questioned Council about how the Amendment addresses built form, since buildings and works permission will commonly be required under CCZ7 provisions. In the context of ensuring that appropriate policy provisions are included to support the purposes of the Amendment, the Panel also questions the narrow approach taken by Council as planning authority in response that 'this is essentially a land use Amendment'.

The Panel is concerned that the proposed approach by Council to separate the proposed update of the content of clause 22.01 (through Amendment C308) from this Amendment entirely is too fractured. It is concerned that this would result in policies being addressed one-by-one rather than integrating subject matter when the opportunity arises to achieve a streamlined outcome for a particular precinct under consideration.

The Panel believes that the current Amendment should (if possible) take up the opportunity to address built form in policies of the planning scheme for the Arts Precinct in an integrated way to ensure their effectiveness.

At the very least, the Panel considers that a new purpose would be required in clause 22.01 to address the built form outcomes sought for the Arts Precinct with some level of specificity, such as that identified for the area bounded by City Road/Kingsway etc.

The Panel takes the view that the built form outcomes sought for the Arts Precinct need to be differentiated and clearly specified in the planning scheme in line with existing strategic work. In the absence of this, it will be very challenging in practice to try to support particular built form outcomes for the Arts Precinct compared with broader urban design outcomes sought for the Central City as a whole.

The Panel is conscious of issues concerning the scope to amend local planning policies given that the LPPF will be translated into the new PPF format in the near future. In the absence of specific guidance from the Department of Environment, Land, Water and Planning (DELWP), the Panel considers that Council should focus on a current integrated (already authorised) Amendment, with the timing mechanism for its implementation into the PPF to be addressed in conjunction with DELWP.

3.4 Conclusion

The proposed changes to planning policy forming part of this exhibited Amendment are far too confined. It is insufficient to provide tailored new purposes for the Arts Precinct without establishing a suitable policy setting for their implementation. There needs to be a direct nexus between CCZ7 as the planning control and local policy.

The suggested suite of policy changes proposed by Ms Heggen on behalf of CV should underpin further policy development. Further exhibition should be undertaken to enable public participation for these proposed policy changes.

Delineation of built form objectives for the Arts Precinct (compared to the remainder of Southbank and the Central City) could also be given greater primacy in Clause 22.01 if timing allows.

4 Proposed CCZ7

4.1 Outline of contents

(i) Purpose

Schedule 7 to Clause 37.04 (CCZ) would relate to the Melbourne Arts Precinct as mapped. Proposed purposes as exhibited would include:

To maintain and enhance the Melbourne Arts Precinct as a significant arts and cultural precinct of State significance.

To develop Sturt Street and surrounds as an arts and performance spine with complementary services and activities for local residents and visitors.

To support the growth of creative industry sectors and disciplines such as music and performing arts, fashion, film, television and radio, digital and print media, architecture, design and visual arts.

To provide for a diversity of art and cultural uses within the first four storeys of buildings, including studios, workshops, galleries and rehearsal, performance and events spaces.

To provide for commercial and residential uses above the first four storeys of buildings and development which maximises pedestrian access, provides for active street frontages and integration with the public realm.

(ii) Table of uses

The proposed table of uses would largely replicate those in the interim CCZ7 provisions. That is, a planning permit would be required for the use of land for Accommodation or Office within the first four storeys of a building or 16 metres of building height (whichever is lower) or if the frontage at ground level exceeds 2 metres.

Land uses such as Art and craft centre, Cinema based entertainment facility, Dancing school and Education centre are as-of-right – no permit required. Place of assembly, Shop and Food and drink premises other than Hotel or Tavern are as-of-right regardless of size.²⁹ The Panel notes that uses such as Function centre or Art gallery are included in Exhibition centre, which in turn is ‘nested’ within the land use term Place of Assembly therefore all would be section 1 uses.

Most other land uses require a planning permit including Leisure and recreation. Few uses are prohibited.³⁰

(iii) Other requirements for a permit and application requirements

Under exhibited CCZ7 provisions, applications for the use of land must include as appropriate (in summary):

- the purpose of the use and types of activities to be undertaken
- compatibility of the use with the zone purpose

²⁹ Subject to a few nominated restrictions.

³⁰ Arguably some proposed section 2 uses would also be inappropriate in the zone, such as Corrective institution.

- likely effects (if any) on nearby uses and residential amenity.

Clause 37.04-4 of the head clause requires a planning permit to be obtained to construct a building or to construct or carry out works unless the schedule to the zone specifies otherwise. Clause 4.0 of the Schedule would also require a permit for the demolition or removal of buildings and works. It also provides exemptions from the need for a permit similar to those in Clause 62 of the planning scheme.

Clause 4.0 of the Schedule would require a permit for the development of land to include as appropriate (in summary):

- a written urban context report documenting key planning influences and how the proposal relates to its surroundings (addressing detailed criteria provided)
- upgrades to adjacent footpaths or laneways as appropriate
- a conservation analysis and management plan for properties in the Heritage Overlay.

An application for buildings or works for a residential or 'other noise sensitive use' must include an acoustic assessment (with detailed criteria provided).

Requirements for signs are included in clause 5.0 of the Schedule, with some listed exemptions depending on size and location.³¹ Applications will be referred in accordance with Clause 66.04.

(iv) Decision guidelines

Extensive decision guidelines are now proposed by Council for CCZ7 including:

- capacity for movement through the area
- adequacy of parking and loading
- impacts on amenity of existing and future development, impacts on amenity of dwellings on adjacent sites, including whether adequate noise attenuation will be provided within the development
- the development potential of adjacent sites
- suitability of land proposed for public use
- *whether the development provides space that could be adapted for arts and creative industries in the future*
- *whether the building design at street level provides for active street frontages, pedestrian engagement and weather protection*
- *the ability to establish a visual relationship between occupants of upper floors and pedestrians, and better surveillance of the street by developing the first five levels of buildings with a "casing" of creative industries or other active uses.*
- *the impact the proposal will have on street amenity if on-site parking occupies more than 20% of the length of the street frontages at ground level and in the first five levels of the building and whether any above ground multi-level car parking is sleeved and concealed by active frontages*
- the impacts on public spaces and infrastructure
- provisions relating to demolition and temporary buildings.

³¹ Ultimately, the proposed reference to 'Advertising signs' in clause 5.0 should be changed to 'Signs' to be consistent with VC148 as part of the translation to the new format scheme.

The dot points listed in italics were accidentally omitted from the exhibited document but are proposed to be added by Council since they retain aspects of the former Schedule 3 to the CCZ on which Schedule 7 is modelled and have been tested via a Panel process.

4.2 Proposed changes to the exhibited version

(i) Changes to notice and review

Early in the process, LSH Group Australia (LSH Group) and Pacific Asia Express Pty Ltd (Pacific Asia) pointed out an anomaly with the provisions pertaining to exemptions from notice and review compared with the existing CCZ head clause. In response, CV and Council proposed that the provisions be modified to provide an exemption from an application to use land for an Office or Accommodation or to construct buildings or works for these uses.

The Panel notes that the exemption could be refined further to make reference to Retail premises (as agreed by Council) to reflect the fact that such use is normally a section 1 use in the Capital City Zone.

(ii) CV proposed changes

At the start of the Directions Hearing, CV advised that it had critically evaluated the proposed schedule and provided a substantially marked up version with suggested changes. Both this document and the exhibited document were considered at the Hearing, with the workshop focusing on mainly the document proposed by CV.

The Panel considers that many aspects of the proposed CV version have merit and are an improvement on the exhibited version. It makes broad comment about the proposed CV version to provide guidance for the potential future of the Amendment.³²

Key changes proposed by CV as documented in Appendix C seek to:

- refine the purpose to expressly seek to reinforce the State significance of the Arts Precinct and to actively facilitate (as opposed to merely encouraging) the expansion of creative industries and those uses that support them by making provision for creative spaces in the lower levels of buildings
- define the term ‘creative industries’ based on the United National Conference on Trade and Development definition to include a diverse range of activities and outputs. The inclusion of a definition is intended to provide ‘statutory rigour’ to consideration of these uses and application of decision guidelines. CV advised the Panel that DELWP had given in principle approval to the proposal to include a definition in this schedule.
- provide a refined table of uses to:
 - allow Manufacturing sales without a permit
 - allow Office without a permit within lower levels of a building if ‘associated with creative industries’
 - provide a cap on floor space for Food and drink premises (other than Hotel and Tavern which require a permit at any size), Place of Worship and Shop

³² Comments are made on the version circulated to all parties before the Hearing, with regard given to submissions made at the Hearing and workshop. The version circulated after the Hearing as CV ‘preferred’ has not been given any weight by the Panel since other parties were not given an opportunity to respond. This was mainly because the Amendment required further work and re-exhibition in any event.

- remove the section 2 condition formerly attached to Industry (since amenity impacts would be addressed in the permit process)
- refine application requirements, including an acoustic assessment
- exempt the use of land for Office and Accommodation from third party notice and review rights and review rights for the development of land for these uses.³³

Some submitters took issue with the drafting of various amended purposes as suggested by CV. These and other issues raised by the parties in respect of proposed modified application requirements, decision guidelines and the like are addressed below.

Council submitted that it would be particularly supportive of changes to the Amendment that would provide clarity as to how the aims of the Amendment are to be implemented in its decision making. Mr Brendan Cousins, a senior planning officer advised the Panel of the challenges faced in implementing the current interim and former controls applying to the Arts Precinct.

4.3 Economic implications

(i) The issue

Is there is sufficient demand for the creative floor space sought to be delivered under CCZ7 provisions? Would the economic effects of the Amendment be acceptable?

(ii) Evidence and submissions

A number of submitters considered that there was an undemonstrated demand for proposed arts based uses within the four lower levels of buildings for the full depth of sites and that the Amendment may give rise to negative commercial consequences for landowners in the Arts Precinct.

CV submitted that ‘the dynamic nature of creative industries means that they are not simply defined or easily measured in economic terms’. It engaged Mr John Henshall, an experienced economist, to undertake an economic assessment of the Amendment and to provide expert evidence at the Panel Hearing on the following:

- *the demand for additional floors pace for arts/creative industries and complementary services within the Melbourne Arts Precinct;*
- *whether the provision of such uses within all or part of the first four floors of buildings within the amendment area addresses such demand;*
- *the economic contribution of arts/creative industries in Victoria; and*
- *the economic impacts of agglomeration/clustering of like uses in other comparable arts/creative industries areas/precincts.*³⁴

Mr Henshall began by explaining that continuing growth in the inner city residential apartment and office market remains strong. With respect to the office floor space market, he cited a Saville Research report (August 2018) that states:

³³ The Panel understands that this document has been updated to comply with the Ministerial Direction on Form and Content of Planning Schemes.

³⁴ As recorded in his expert report at para 1.6, page 1 (Document 8).

... total office floor space provision in Southbank of 421,900m² and a vacancy rate of 6.9% (by comparison, St Kilda Road has a vacancy rate of 10.6%), ... concludes that investor interest for quality-grade assets in Southbank “remains strong”, with the market witnessing strong rental growth throughout the past 12 to 18 months.³⁵

In his evidence, Mr Henshall stated that the economic benefits of creative industries to the Victorian economy is estimated as contributing \$28 billion per year expressed in 2018 prices based on a BCG 2013 report³⁶, and allowing for modest increases in price inflation and output in real terms over the period 2013 to 2018. He advised:

Overall, creative industries contribute an estimated \$110,000 per job per year (in 2018 prices) to the Victorian economy in terms of GVA and account for some 255,000 jobs, State-wide, based on an update of BCG data. When the employment multiplier (for the service sector) is applied, an estimated further 230,000 jobs are supported throughout the wider metropolitan, state and national economies.

By comparison with other sectors, the creative sector’s contribution to the Victorian economy in terms of Gross Value Added is approximately 19% greater than that of the Construction sector and approximately 14% lower than that of the Manufacturing sector.

Mr Henshall acknowledged that liveability and Melbourne’s reputation as a cultural destination are strategic priorities underpinned by the Amendment. He stated that Melbourne City Council’s *Council Plan 2017-2021* has set the goal for Melbourne as a “Creative City” and according to DEDJTR data, and that Southbank, the Arts Centre and Federation Square are ranked as within the top visitor destinations for Melbourne (at Nos. 3, 8 and 2 respectively). In his evidence, he cited work undertaken by BCG as follows:

In addition to the economic contributions made by the creative and cultural sector, the BCG report also highlights that the sector enhances a city’s liveability, which in turn “can attract and retain global talent for the benefit of all industries” as well as enhancing human capital and innovation, and therefore improving economic outcomes (p.28).

A further report by BCG (Melbourne as a Global Cultural Destination, undated) identifies a number of strategic priorities to improve Melbourne’s position as a global cultural and creative destination, including expanding the supply of creative work spaces, enhancing attraction connectivity, investing in new infrastructure, and improving agency collaboration for mutual gain (p.5). All of these strategic priorities are underpinned by the proposed Amendment C323.

Mr Henshall stated that a key starting point for critically evaluating the likely effectiveness of the Amendment was to analyse the likely trend over the coming decade for floor space in the Arts Precinct in terms of supply and demand. He advised that:

³⁵ Ibid. para 3.3, page 9.

³⁶ Boston Consulting Group, *Victoria’s Creative and Cultural Economy* (2 April 2015)

It is difficult to forecast with precision the likely demand for floor space over time that is required to support the creative industries; this situation is due principally to the breadth and depth of such activities and uses, which can range from a major public hall or performance space, to a small café or bar that services patrons at a performance.

However, broad estimates can be made to guide planning. For example, in 2017 an estimated 2,470 persons were at work in the Precinct (Positive Solutions, 2017), including day-time and night-time workers; if the growth rate observed by Positive Solutions in the period 2012 to 2017 continues (an average of 6.7 per cent per year), the Precinct would support and estimated 5,040 jobs by 2028, doubling the number of current jobs. Even if the growth rate was only one-half of what has been observed in recent times, around 3,550 jobs would be supported in the Precinct by 2028, representing an increase of 1,080 jobs or a 44 per cent increase on the 2017 estimate.

These figures do not include creative industries that may choose to relocate to the Arts Precinct once other uses achieve critical mass. The agglomeration of creative industries is also difficult to predict but expected to be a natural consequence if policy settings allow and have other benefits including creating a 'sense of place' and stimulate vibrancy within the precinct.

Mr Henshall also detailed current space occupied by different civic arts uses such as galleries spaces, exhibition areas, seating capacity in performance spaces and large/small meeting halls, as well as supporting service industries such as cafes, restaurants bars. This aligned with studies by other arts agencies as referred to by CV. He noted that non arts related uses within the Amendment area are typically in smaller freehold landholdings and that comprise tenancies such as a small supermarket, chemist, offices and automotive retail outlets. He stated that:

In broad terms, the freehold sites in the Amendment C323 area generally detract from the integrated arts and creative land use context envisaged for the Arts Precinct. However, these freehold lots also hold significant potential from the perspective of contributing to property and economic development in this locality.

In his opinion, the potential for freehold sites ripe for redevelopment were a key strategic intent of the Amendment. His view was that, without intervention, the risks (in particular along the Sturt Street spine) were that development had the potential to evolve without key consideration given to street activation and encouraging creative industries related tenancies, as had been the case in recent decades. Interventions such as those proposed in the Amendment were considered to complement and support the aims of the Arts Precinct to grow and promote a vibrant corridor, particularly along the Sturt Street spine.

Mr Henshall's evidence identified that there were substantial unutilised opportunities in the Amendment area to foster creative industries and related uses. In his opinion "*this Amendment would free up floor space for the next two decades in art related uses*" (see Figure 3). From his evidence Mr Henshall states:

Creative industries currently comprise approximately 19,560 square metres or 61 per cent of total floor space (31,930 square metres) in the first four storeys

of freehold lots in the Amendment C323 area; however, just over 50 per cent or 17,200 square metres of this floor space is attributable to one lot, namely 2-6 Kavanagh Street which contains the Primrose Potter Australian Ballet Centre.

Category	Total Built Floorspace	Arts & Cultural Use		Non-Arts & Cultural Use		Vacant	
	m ²	m ²	%	m ²	%	m ²	%
Freehold Lots (Storeys 1-4)	14,730	2,360	16.0	10,540	71.6	1,830	12.3

Source: Essential Economics with Nearmap

Figure 3 Estimated Floor space, First Four Storeys, Freehold Lots in the Amendment C323 Area (excluding No. 2-6 Kavanagh Street).

The Panel asked Mr Henshall his views regarding the realistic provision of the first four floors in freehold sites, which differ in scale and ownership. He responded that not all sites could realistically provide creative industries uses for the first four floors, but that the planning authority should have due regard on a site-by-site basis. He also stated that there could be future undefined and emerging industries that could fit the creative industries use category such as drone or game design.

In terms of creative industries uses requiring higher or double storey height spaces, Mr Henshall stated that he had not done an assessment on volumetric rather than floor space provision as it was difficult to specify. He conceded that, in some cases, a floor space calculation was not the only way to assess the provision of suitable spaces for more flexible tenancies (for example sculpture studios, circus or acrobatic rehearsal spaces).

He also agreed with the proposition that there could be other legitimate ways to achieve an outcome that would encourage creative industries, such as a specifying a proportion or percentage of the overall height or floor space of a building but he had not explored this approach.

Ms Foley questioned Mr Henshall on the issue of specifying creative uses floor area provisions prescriptively, to which he replied that *“it can be a dark art”* and should be part of a broader decision making process. In summary, he concluded that:

- reserving the first four floors of a building would be expected to support the growth and development of creative industries in the precinct by increasing supply
- without planning to physically accommodate creative uses in the precinct, opportunities for further consolidation would be lost, which would undermine the significance and potential growth of the precinct
- continuing growth in creative industries in Melbourne will contribute further to its economic development. Further concentration of creative activities in the precinct would consolidate Melbourne’s reputation as a focus for these activities, with contributions to further growth in tourism as a result
- the agglomeration of creative industries within the precinct will increase opportunities for collaboration and improve and reinforce the existing ‘sense of place’, with potential flow on benefits to landowners (albeit unquantified at this point in time).

(iii) Discussion

The Panel finds that Mr Henshall's evidence is based on generally sound methodology with relevant comparative data and analysis to conclude that the Amendment is justified in terms of economic benefit.

The Panel agrees in principle that the provision of lower levels for arts related uses would create social benefit, including to the arts and arts related community and by fostering a greater sense of place within the Sturt Street spine.

The clustering or agglomeration of these activities within close proximity to prized and valued civic facilities (such as the National Gallery of Victoria, Arts Centre, Ballet Centre, Recital Hall to name a few), as well as being adjacent and in close proximity to existing and soon to be completed educational campuses as well as rehearsal and arts related office uses will also have the capacity to further enhance the Arts Centre Precinct for Melbourne. A more vibrant precinct is likely to generate flow on benefits for landowners, as this becomes a more desirable place to live, work and recreate.

(iv) Conclusions

The Panel concludes that there is sound economic justification for the key elements of CCZ7.

4.4 Has the Schedule been drafted effectively?

The Panel is conscious that the CCZ7, DDO1 and policy provisions would apply uniformly across the Arts Precinct – to public and private land, to land used for creative industries or for conventional residential, retail, office or service industries. The challenge is to develop a comprehensive set of provisions that acknowledge each of these types of land uses (where appropriate) while facilitating the enhancement of the Arts Precinct in line with its nominated purposes.

Pertinent questions are whether the proposed CCZ7 appropriately:

- recognises and expand on the values of the Arts Precinct?
- constructs a suitable land use table which:
 - encourages and provides a practical mechanism to safeguard suitable floor space for creative industries?
 - encourages compatible uses in the Arts Precinct, especially those that would increase the vibrancy of the precinct?
- guides decision making in respect of applications for use and development?

(i) Evidence and submissions

There was general acceptance by all parties, including submitters, that the proposed purpose of the zone provided a suitable direction forward for the precinct, subject to some refinement.³⁷

Ms Heggen identified the key issue for the Panel as 'whether the control has been effectively drafted to support beneficial development in the Arts Precinct while ensuring a fair and balanced planning framework for landowners in the area'.³⁸ She lent support to the proposal

³⁷ For example, as identified by LSH Group.

³⁸ Chapter 2.3 of her report.

to include a definition of 'creative industries' for the purposes of the schedule since this would seek to overcome the fact that many creative endeavours do not align neatly with existing land use definitions in the planning scheme.

Some submitters were concerned that the wording of the purposes proposed to be updated by CV would give the wrong impression of what was sought for the precinct. For example, 'to provide for commercial and residential uses within upper storeys of a building'. They were concerned to ensure that this should not be misinterpreted as not providing for commercial and residential uses within lower levels of buildings. LSH Group suggested that the words 'generally' could be added to the purpose when referencing particular types of uses on various levels of a building.

Some submitters sought to have their land excluded from the Schedule because the potential burden was considered too great.

CV submitted that the controls should apply to the Amendment area as a whole and that the controls would be applied in a less coherent way if particular sites were exempted. In respect of whether the provisions should extend to the full depth of sites, it considered that a more confined provision would be less effective in addressing the land use challenges for the precinct. In evidence, Ms Heggen agreed that this was a reasonable target as a preference. Other uses would not necessarily be excluded.

LSH Group Australia and others including Sturt Street Pty Ltd and Pacific Asia Express Pty Ltd/AAW Global Logistics Pty Ltd submitted that if the first floor dedication to creative industries was interpreted as a 'requirement', this would be unachievable for some sites or designs, especially those with mixed use development proposals or height controls. Some urged consideration of relativity of creative industry use compared with other forms of use.

A number of submitters queried the objective basis for preventing accommodation or offices on the entire lower four levels of buildings unless a planning permit was obtained. Some suggested that the reference to 'lower four levels of a building' should simply refer to 'lower' levels of a building.

CV emphasised that the controls are not absolute in respect of creative land uses for the entirety of the four lower levels of buildings, since an important discretion is provided to enable a permit for other uses to be granted if appropriate. It submitted that this inbuilt discretion would ensure that the challenges inherent in the development of particular sites can be considered appropriately at permit application stage.

Ms Heggen referenced the work of renowned urban designer/architect Jan Gehl³⁹, to suggest that the distinctiveness of the Arts Precinct is signalled by a combination of land use and the design expression of buildings, especially in the first four storeys, which are within proximate pedestrian viewlines. These would give a sense of the land uses occupying these storeys.⁴⁰ She therefore regarded the preference for arts related activities on the lower four floors as having a sound rationale.

In her opinion, the proposed schedule 'goes a long way' to seek to secure a genuine mix of uses in the area by creating conditions to secure creative and arts spaces on the lower levels

³⁹ Concerning the 'primary visual engagement zone'.

⁴⁰ Essentially a reversal of the perspective studied by Jan Gehl, where a person within a building would be looking out.

of buildings, with discretion to consider land use departures within lower levels. She explained that:

The preference for arts and creative industries uses in the first four storeys (or 16m) recognises that a critical mass of such uses will be required to realise the vision for the Arts Precinct. In the context of a relatively limited supply of land for redevelopment in the Precinct, I consider this preference an appropriate 'starting point' albeit with the flexibility for a lesser provision to be contemplated, subject to permit applications.

Ms Heggen pointed out that this combines with the opportunity for potentially 'higher value land use' that is, residential or office on upper levels of a building.

Some objectors urged Council to consider providing bonuses for providing arts or cultural uses on lower levels of buildings, such as the potential for a development uplift in terms of height. By contrast, Ms Heggen considered that the area had been long recognised as part of the Arts Precinct and was strongly opposed to the notion of developer 'bonuses'. It was her view that a developer need not be rewarded for achieving the primary purposes of the zone.

Sturt Street Pty Ltd submitted that Office should be listed as an as-of-right use in the zone without condition.

In respect of the version proposed by CV, Council indicated that it would support a condition applying to Office to enable it to be a section 1 use where it was used for creative industries, such as an architectural practice. This would invoke the definition proposed by CV for the purpose of the Schedule.

Ms Heggen generally supported this change since it would recognise the administrative functions associated with the arts and creative sector. She also observed that some creative industry uses take place in an office environment.

A proposed purpose of the Schedule includes "to develop Sturt Street and surrounds as an arts and performance spine with complementary services and facilities for local residents and visitors".

Shop⁴¹ and Food and drink premises (where land is used to sell and consume food and drink for immediate consumption) other than Hotel or Tavern are proposed section 1 uses, irrespective of size in the exhibited documentation.

Throughout the Panel process, Council accepted that it would be more appropriate to place a section 1 condition limiting the size of these uses in line with CV's proposal. CV suggested that a leasable floor area for an as-of-right-shop should be 250 square metres but revised this to 150 square metres to be consistent with the Mixed Use Zone provisions. Ms Heggen preferred up to 200 square metres and Mr Henshall preferred up to 250 square metres. Likewise, LSH Group proposed that Shop have a leasable floor area of 250 square metres otherwise a permit should be required.

CV suggested that Food and drink premises be up to 150 square metres leasable floor area. This was in recognition of their potential to contribute to street activation and to service

⁴¹ With the exception of Adult sex product store (noting that the term is correctly listed in section 2 but is referred to a bookshop in section 1), Department Store and Restricted retail premises.

creative industries in the precinct, while seeking to regulate their scale so they do not limit the opportunity to provide for creative industries.⁴²

Submitters also expressed concern that the mandatory wording of the Application Requirement to 'identify the intended creative industries use' was onerous and unrealistic. CV submitted that the requirement was essential to give effect to the control and without it the Amendment would be undermined. CV's position was generally supported by Council.

An issue was raised by submitters whether equitable development opportunities would be preserved by the provisions of the Amendment if DDOs limited building heights to say, 4 storeys on land within the Arts Precinct, in the case of DDO60.

LSH Group which owns a large gateway site at the entrance to the Arts Precinct⁴³ suggested that decision guidelines should not include assessment of 'relativity' in so far as the height or floor space of a building are concerned because it would have the potential to skew outcomes for taller buildings. It emphasised that there needs to be discretion with an opportunity for negotiation around practical constraints and realistic achievement of functional 'art spaces'.

Ms Heggen considered that it may be reasonable to provide for this in a decision guideline when considering the potential grant of a permit, such as that suggested by CV to consider 'the extent of creative industries floor space relative to the height of the building'.

Council also preferred to reinstate a similar design guideline to that in CC23 providing for consideration of the impact on amenity if on site parking occupied 20 per cent of the street frontage or the first five levels of buildings, and whether it is 'sleeved' or 'cased' by active uses. It provided a diagram from the C308 exhibition documents to illustrate this common design technique.⁴⁴

CV did not support the inclusion of a decision guideline to this effect, since it suggested this would provide a measure of encouragement for parking on street frontages and in the lower levels of buildings contrary to the purpose of the zone. It was concerned that car parking would have the potential to absorb floor space more appropriately allocated to creative industries in line with the purpose of the proposed zone schedule. It preferred for any 'sleeving' requirement to be addressed via a DDO provision if considered appropriate.

Pacific Asia submitted that a further decision guideline should be included for land use applications to consider the economic viability of providing creative uses at the four lower levels of buildings. This aligned with its submissions about the need to make allowance for buildings with maximum heights of five storeys or less (such as its property as it fronts Dodds Street).

LSH Group suggested that the proposed decision guideline pertaining to consideration of whether the development potential of adjoining land would result in an unreasonable loss of amenity for the proposed development was not required. It considered this was a matter to be addressed under clause 65 of the planning scheme in any event.

⁴² CV Part A submission, footnote 30.

⁴³ Which is the subject of a current permit application for a mixed use development.

⁴⁴ Document 7.

Applications for the use or development of Accommodation would be required to provide an acoustic assessment as an application requirement (proposed Clauses 2.0 and 4.0). It is suggested that this needs to include ‘the maximum permissible noise from nearby sources.’

Mr Naughton on behalf of LSH Group queried how this could possibly be achieved for any application that may be proposed on a particular site, given the extent of variability, the lack of information about other noise sources and the like.

Submissions also questioned whether the term ‘legibility’ in the proposed decision guideline ‘whether the development contributes to the legibility of the Melbourne Arts Precinct as an arts and cultural precinct’ contained any real guidance for applicants or Council as it could be open to interpretation.

(ii) Discussion

Purpose

On the whole, the Panel considers that the Amendment as exhibited provides well crafted purposes that identify pertinent key directions for the Arts Precinct. Although there may have been many other mechanisms that could have been selected by the proponent and planning authority, the Panel considers that the nomination of a preference for the four lower levels of buildings to be used for creative industries is an appropriate starting point, subject to monitoring and review of the success of this measure over time.

The Panel considers that the combination of the proposed modified purposes by CV largely work in tandem with the proposed table of uses and the decision guidelines. It agrees with the submissions for CV that adding the word ‘generally’ in the purpose before referencing certain categories of land use (as suggested by LSH) would dilute the focus of the Amendment.

The purpose seeks to provide opportunities for creative industries within the four lower levels of buildings. It also seeks to encourage commercial and residential uses within upper storeys of buildings. On the other hand, the purpose expressly allows for commercial uses within lower storeys in appropriate locations where they ‘serve or support’ creative industries.

Ms Heggen did not shy away from her view of the proposed schedule as a:

reactive planning tool which seeks to provide the ‘levers’ that will allow space for creative or cultural endeavours to be secured through development proposals on individual sites.

It is true that there is no express purpose of the zone that would make specific provision for commercial or residential uses within the lower levels of buildings. In the Panel’s view, this is deliberate since it is not a preferred outcome for the Arts Precinct.

Notwithstanding, an important discretion exists to permit such uses by virtue of the proposed zone table. In general (and subject to more detailed commentary below), the Panel considers that the decision guidelines enable an appropriate balance to be struck – providing a window of opportunity to critically evaluate whether it is appropriate to permit commercial or residential uses at lower levels even where they do not serve or support creative industries.

As a matter of drafting, the Panel considers that the suggestion by LSH Group to include the word 'serve, support or *accompany* creative industries' in the proposed modified last purpose is appropriate to express a suitable adjunct to a creative use and could be added.

Land use term challenges

The Panel agrees with Ms Heggen that it is appropriate for the schedule to tailor its table of uses to achieve its stated purposes. She referenced the recently introduced Commercial 3 Zone which she considered adopts a comparable approach.

Two relevant purposes proposed for the Schedule include:

To support the growth of creative industry sectors and disciplines such as music and performing arts, fashion, film, television and radio, digital print media, architecture, design and visual arts.

To provide for a diversity of art and cultural uses...including studios, workshops, galleries and rehearsal, performance and event spaces.

The Panel observes that a significant practical impediment to encouraging lower levels of buildings to be used for arts/cultural activities is that there are very few defined land use terms in Clause 73.03 that could realistically be include in section 1 of the table of uses.

This is symptomatic of the lack of differentiation or suitable recognition of the diverse range of creative industries in the definitions within the Victoria Planning Provisions. The Panel believes that the report of the Land Use Terms Advisory Committee does not address this matter directly.

A significant issue for the CCZ7 moving forward is that it is anticipated that creative industries will only become more diverse over time, with new categories emerging at a rapid pace. CV advised the Panel that it had made approaches to DELWP to seek to remedy this deficiency, such as by including a land use term 'Creative industries', but that it did not appear that this opportunity would be taken up at least in the near future.

For example, the term 'Art and craft centre' may not be broad enough to include many contemporary creative industries.⁴⁵ Likewise, 'Cinema based entertainment facility' is unlikely to include screen or game design studios or the like if their real and substantial purpose is other than to provide entertainment for the public on the premises.

Although Education centre would properly be included in section 1, other uses such as 'Dancing school' appear to be far narrower in scope compared with more diverse arts/cultural educational facilities already existing in the Arts Precinct, such as the Victorian State Ballet which has multiple functions.

Another obvious issue is that by including all types of Industry as a section 2, permit required use, many creative studios (regardless of size or impact) are likely to require a planning permit even though they are precisely the type of uses encouraged by the schedule.

At the same time, there is no easy way around this level of restriction because of the capacity for some types of industry to cause detriment. Although this land was and will remain in the CCZ, parts of Sturt Street contain buildings that are almost entirely residential.

⁴⁵ This term is defined as 'land used to manufacture, display, and sell works of art or craft, such as handicrafts, paintings and sculptures'.

A fundamental challenge for this Amendment is how to provide sufficient flexibility to encourage creative industries which may inherently have the potential to cause detriment to residential neighbours, whilst addressing current land use conditions in the area (which include dwellings on the lower levels of buildings).

In some respects, the Amendment would give primacy to creative uses or those which enhance the vibrancy of the area without requiring land use permission, such as in the case of Place of Assembly.⁴⁶ The Panel acknowledges that these uses have the potential to cause detriment but considers that it remains appropriate for them to be categorised as section 1 uses given the nature of the zoning and the legitimate purposes of the Amendment.

Office

The Amendment as exhibited seeks to require all types of offices to obtain a permit where they are proposed within the lower four floors or 16 metres of buildings.

There are two issues the Panel identified upfront with the amended proposal to allow Office as-of-right if 'associated with creative industries'. First, should it matter how an office may be used as to whether it is as-of-right or permit-required in the zone? Second, how could Council be satisfied that an office that is established will continue to be used for creative industries?

In built form terms, the Panel acknowledges that an office that may be used by an accountancy, versus an office that may be used to take bookings for a performance space may well be similar. Visible parts of a modern architect's office may appear similar to an accountant's office or a real estate's office.

In a land use sense, however, the Panel suspects that an office that is used in connection with creative industries may well generate synergies between this and other aligned uses within a defined Arts Precinct. For example, clusters of complementary uses may emerge such as those within the existing Guild Co-working space on the western side of Sturt Street.

For this reason on balance, the Panel lends some support to Council and CV's preference to allow offices used for creative industries to be as-of-right in the zone, with other offices to require a planning permit for both use and development.

The practical question is how this could be administered, both for initial establishment and on an ongoing basis.

The Panel queried whether a Creative Industries Plan (or similar) could be provided as a condition for the section 1 use. This would essentially need to specify the proposed use or uses of the premises in sufficient detail to enable Council in administering the provisions to be satisfied that the uses will legitimately support or be associated with creative industries (with a sufficient level of connection) and that the uses are capable of being carried out in the space provided. The document would then provide a record to enable Council in its enforcement capacity to compare actual use at any point in time.⁴⁷

There are a few obvious issues with such a potential plan. The first is whether it is appropriate to require a section 1 use to provide a plan to Council for its consideration or

⁴⁶ Other than Amusement Parlour, Nightclub and Restricted place of assembly which are listed in section 2.

⁴⁷ CV drafted a potential version of such a requirement in its response in Document 8, although it did not consider such a requirement necessary.

approval as a precondition. The second is the administrative burden that may be associated with this at both applicant and council level, as well as the level of knowledge of the nature of the occupation before it starts. The third issue is the capacity for such uses to change over time, with no permit to which the plan would attach to keep it alive and capable of easy amendment in perpetuity.

Given these concerns, Council expressed a tentative view at the Hearing that it would not be inclined to include such a requirement. CV pointed out that applications for buildings and works for section 1 uses would need to provide detail of the layout and potential occupation of these spaces. It also suggested that this precinct will be 'highly curated' by it and Council, bringing an awareness of land use operations.

Ultimately, the Panel believes that Council may need to choose between the practicality of this type of arrangement versus the prospect that offices not being used for creative industries may readily operate in the Arts Precinct without a planning permit for their use.

Shop

The Panel raised concerns about the proposal for a Shop of any size to be as-of-right at the Directions Hearing, since conventional retail facilities have the potential to respond to market demands on lower levels of buildings in locations such as this and may otherwise surpass opportunities for creative industries within this floor space. Such uses also have the real potential to influence the character of the Arts Precinct over time.

That said, the Panel is highly cognisant of the importance of small scale shops and food and drink premises as a potential adjunct to creative uses, with the ability to contribute to greater activation (including at night) and greater diversity within the Arts Precinct. For example, the restaurant/bars in the vicinity of the Melbourne Recital Centre and the Malthouse Theatre are precisely the type of uses that enhance the Arts Precinct and make it attractive for longer visits. Parties referred to the capacity for a bookshop to enliven Sturt Street tenancies.

The Panel recommends that in refining the Amendment, it would be appropriate to consider a section 1 limitation of 200 square metres leasable floor area for Shop, bearing in mind the potential for larger shops to detract from the intended focus of the Arts Precinct.

However, a slightly larger leasable floor area of 250 square metres is recommended for Food and Drink Premises without a permit, since they commonly require additional 'back of house' areas for food preparation and storage. There is also potentially less risk that such uses will detract from the purpose of the Arts Precinct. This is largely consistent with the evidence of Mr Henshall and Ms Heggen.

Brunetti's in Lygon Street was discussed as an example where a food and drink premises could create activation of an area and become a destination in its own right, having a tenancy much larger than 250 square metres, which would become permit required in this setting.

Identifying the creative industry use at permit application stage

The Panel shares concerns about the way the application requirement to identify intended creative uses is drafted. A strict reading of this requirement might mean that if a developer is unable to secure a future tenant for a creative industries use at the planning application

stage then the application could be refused. From the Panel's perspective, the more significant issue is to ensure that suitable or flexible spaces are provided with clear potential to attract creative industry tenants further along the design and construction process. Some future tenants may be unwilling to commit at a planning application stage to a development that may take years to complete. Others could be more attracted to a tenancy when a building is completed and the spaces can be appreciated in a more tangible way.

The Panel believes that it would be onerous to require an applicant to secure or fix a creative industries use at the planning stage and that as long as the provision of flexible internal arrangements are offered then there is a reasonable likelihood that a suitable tenant could be secured once these spaces were nominated for creative uses on endorsed plans.

Not all tenants would want a conventional commercial type space. Some such as sculptors of larger works or circus/ acrobatic rehearsal spaces would warrant much higher ceilings. To this end, the Panel envisions spaces that could be flexible enough to provide 3 to 4 metre ceiling heights, alternatively double height spaces or even mezzanine spaces that allow for greater options for creative industries uses. Visual artists or architects and landscape architects would be more suited to conventional commercial spaces.

The Panel accepts that it may be possible to further refine the application requirements within the schedule to require detailed information about these matters to be provided. For example, towards the end of the Hearing, CV suggested that a requirement could be 'to identify the intended creative industry or industries for the proposal including the floor area of that use and any particular specifications or requirements associated with that use'.⁴⁸ This was supported by Council.

Notwithstanding concern expressed by some submitters about the lack of clarity about precise uses at the application stage, the Panel prefers this drafting, since it would provide greater detail for the assessment of applications in line with the purposes of the zone while remaining generally open as to the content of this requirement.

Whether a use or development contributes to the 'legibility' of the Arts Precinct

The Panel appreciates what is sought by the term 'legibility' as expressed in CCZ7, as indicating that a building or use should 'read' as part of the precinct. However, the use of this term as a planning tool to direct built form outcomes may not be sufficiently well defined.

Insufficient evidence was given as to what this particular guideline actually meant, supported by local examples of built work that achieve this aim. It would have been of assistance if examples drawn from within the precinct were referenced as successful or otherwise to understand what is being sought in terms of an appropriate architectural and urban design outcome that is 'legible' within the precinct.

If the intent is to enhance a design response that is contextually responsive to an arts precinct then arguably there would be innumerable ways to achieve this with a design response, particularly within this precinct. If this is the desired intent, one queries how some of the seminal institutions that now make a valuable contribution to the precinct

⁴⁸ CV also suggested that Council could prepare an internal assessment tool for example, identifying minimum functional requirements for certain creative uses such as dance studio.

would have fared at planning application stage, for example, the Grant Street elevation of the National Gallery or the Sturt Street façade of the Recital Centre.

Greater clarity is required to make a comprehensive assessment of whether this terminology is helpful or workable in achieving the aims of the control. The Panel remains unconvinced that this is currently the case.

At the same time, the Panel strongly encourages at least one of the zone purposes to address the character and built form sought for the precinct, with a corresponding decision guideline or guidelines – potentially one as to character and the other pertaining more to built form and urban design. Collectively, these should seek to draw together key values of the precinct and express a preference for how future land use and development is expected to contribute to its character, design and vibrancy.

On the issue of built form, for instance, CV appeared to acknowledge that there is scope to seek to reinforced host buildings of State significance and to recognize design excellence as the point of difference for this precinct.

The Panel considers that something broader would be more apposite. Ms Heggen's suggestion that this may be worded as a decision guideline *'whether the development establishes a strong design narrative that reflects and supports the arts and cultural role of the Melbourne Arts Precinct'*. This could be a useful starting point, although the term 'narrative' would itself need to be refined to be commonly understood.

First floor levels of buildings or first 16 metres

The Panel supports the condition that Accommodation should not have a frontage exceeding 2 metres at ground level without a permit, noting that this is standard in many commercial zones.

The Panel agrees with CV that the requirement to obtain a permit for Accommodation and certain types of offices within the four lower levels of buildings in their entirety will create a statutory context to secure creative spaces while retaining discretion to consider departures.

In terms of drafting, it is not persuaded that a specific decision guideline needs to consider the ability to establish a visual relationship between occupants of upper floors and pedestrians or the like (as suggested). This was a logical basis for the formulation of the zone provisions and underpins its purposes and use table. A separate requirement is arguably superfluous in these circumstances.

However, the Panel is also not persuaded that the reference to both the lower four levels or 16 metres of the building, whichever is the lower, is appropriate. The approach proposed by the Amendment is not consistent with preferred planning scheme drafting principles. The Panel is aware of other circumstances where providing alternative measures create scope for confusion. This is not an issue that was raised at the Hearing but the Panel has considered this as part of the overall assessment of the potential effectiveness of the control as drafted.

In reality, the rationale for providing the lower four levels as a starting point is quite basic – with Ms Heggen referencing pedestrian viewlines and Mr Henshall confirming that this is a measure that could reasonably be absorbed by the precinct given projected floor space demand.

A related consideration is CV's desire for areas to be made available for creative industries to be sufficiently flexible to cater for a range of activities. One characteristic is adequate floor to ceiling heights, where taller or double storey spaces may be required for performance spaces, sculpture studios, circus training and the like.

On balance, with an emphasis on viewlines, the Panel considers that it is appropriate for all references in the schedule to be to the lower 16 metres of buildings rather than four storeys specifically, encompassing flexibility and the ability for applicants to incorporate lesser storeys if desired (with for example double height ceilings or greater, or mezzanines) within this building volume. The reference to four storeys or 16 metres whichever is lower tends to assume commercial type ceiling heights that may not suit some arts uses. The control would also need to carefully document where the 16 metres measurement is to be taken from, such as from the centre of the site along the primary frontage.

CV proposed a decision guideline 'whether the development is suitably designed to accommodate creative industries both as part of the proposed development and over time'. Council preferred a decision guideline that referenced 'whether the development provides adequate space and floor to ceiling heights so that it could be adapted for arts and creative industries in the future'.

The Panel considers that the issue of the capacity of spaces to be provided is worth addressing in a decision guideline more broadly, not only for sites with limited development potential. The purposes of CCZ7 indicate upfront that commercial and residential use is preferred for upper levels of buildings, so there is little risk that the decision guideline would be interpreted to require a larger proportion of taller buildings to provide creative industries above the four lower levels.

The Panel tends to the view that the original recommended CV version is more flexible to cater for a broader range of potentially relevant considerations. If thought appropriate, it could be supplemented with wording such as 'including the adequacy of proposed floor to ceiling heights'.

By comparison, CV's most recent suggestion to consider 'whether the layout and design of the proposal is suitable to meet the requirements of the intended creative industries and is adaptable for potential future creative industries' is potentially complex for an applicant to address and for a decision maker to evaluate. This calls up similar considerations expressed by the Panel in connection with a 'creative needs analysis' below.

Application requirements and decision guidelines

As a starting point, Council wanted the decision guidelines to provide as much guidance as possible for its officers, especially concerning the amount of floor area to be provided for creative industries.

Mr Cousins, a planning officer of Council, explained that under the interim controls, there are challenges for officers in identifying the built form and land use characteristics of proposed spaces. In his experience, it is more common for floor areas to be simply identified in plan form as 'gallery' or the like. He expressed concern about tokenistic gestures in plans to provide for creative industries, as well as the potential for such spaces to be converted to other uses over time that were less consistent with objectives for the precinct.

The Panel inherently recognises the need for clarity in administering these provisions. At the same time, according to current drafting principles, decision guidelines need to be neutral and cannot be prescriptive.

The Panel has also considered the proposed requirement for a 'needs analysis' or similar and the opposition by submitters.

As pointed out by CV, an overview needs analysis has already been undertaken by Mr Henshall to support the formulation of the Schedule. While it may be reasonable to require details of the capacity of proposed spaces within a building to be adapted or repurposed over time (as proposed), the Panel agrees with various submitters that an 'creative space needs analysis' or its equivalent (as suggested by Council) would not ordinarily be a feasible requirement for an individual permit application. This would require specialist knowledge, in depth investigation and detailed projections.

Another reason why this is not necessarily required is because of the proposed structure of the control – creative uses are encouraged and sought to be prioritised or 'freed up'. An applicant seeking permission for an alternative use on the lower levels of buildings will need to justify to the decision maker why a permit should be granted, by reference to its potential impact on the achievement of objectives sought for the Arts Precinct. In many ways, this reverses the former status quo.

Economic viability

One challenge with including economic viability as a decision guideline as an express decision guideline is that, in general, private economic considerations are rarely regarded as relevant planning considerations. Therefore, making express allowance for such evidence to be called is unlikely to be effective.

There is also no decision guideline that refers to consideration of encouraging night time activity that is complementary to the Arts Precinct, which would potentially go a long way to enhancing its vitality. This could be considered further.

Opportunities for above ground parking

The Panel appreciates the particular environmental challenges that may arise for certain areas of land in the Arts Precinct that could preclude viable basement parking. This may make it more likely that applicants seek above ground parking (as is a common characteristic of older residential and commercial developments on land in Sturt Street).⁴⁹

With this in mind, Council preferred to reinstate a similar design guideline to that in CC23 providing for consideration of the impact on amenity if on site parking occupied 20% of the street frontage or the first five levels of buildings, and whether it is 'sleeved' or 'cased' by active uses. It provided a diagram from the C308 exhibition documents to illustrate this common design technique.⁵⁰

CV did not support the inclusion of a decision guideline to this effect, since it suggested this would provide a measure of encouragement for parking on street frontages and in the lower levels of buildings contrary to the purpose of the zone. It was concerned that car parking

⁴⁹ The Panel notes that the building considered for 135 Sturt Street included a basement car park combined with some parking at ground level.

would have the potential to absorb floor space more appropriately allocated to creative industries in line with the purpose of the proposed zone schedule. It preferred for any 'sleeving' requirement to be addressed via a DDO provision if considered appropriate.

The Panel considers that it would be reasonable to include a further design objective to consider the impact of any proposed access, parking or loading areas on the potential to provide floor space at lower levels of buildings for creative industries. This would be consistent with the purposes proposed for the zone.

At the same time, it is realistic that in some cases there may be scope for a limited amount of above ground parking depending on the nature of the use and the form of development.

It is probably preferable that design objectives for this scenario are included in the decision guidelines in some way. For example, the terminology could be refined in the manner suggested at the workshop to say 'if parking is sought to be provided on site...whether parking areas are 'sleeved' by creative uses...' Another equally valid but more broad alternative is the version suggested by CV, to 'consider the design and layout of car parking areas (if provided⁵¹) and whether they are consistent with the purpose of the zone'.

Emphasis on amenity and issues of balance

In future, applications for Accommodation will need to address the proposed decision guideline to include appropriate measures to attenuate noise associated with the operation of businesses and activities in the area, specifically including limitations on internal noise levels within habitable rooms of new dwellings.

The Panel considers this entirely appropriate, since primacy is intended to be given in the schedule to the operation of creative industries on the lower levels of buildings of the Arts Precinct. An express consideration of this nature is warranted for the Arts Precinct for a number of reasons, especially since equitable development rights and associated impacts on amenity are likely to be heightened when balancing between the needs of public institutions and private individuals.

However, the Panel agrees with submitters that the way the acoustic impact provision is worded is problematic and suggests that this be addressed more broadly such as 'a description and identification of the location and characteristics of nearby land uses that have the potential to generate noise'. The capacity for noise production from these sources would need to be evaluated by the applicant's expert and then Council to the extent reasonably possible based on information principally available in the public domain.

As an observation, arguably, dot points 10 and 11 of the CV version (on proposed page 7 of 7) could be combined to avoid duplication.

The Panel foresees that 'noise compatibility' is likely to become a more challenging issue if more active creative industries and complementary uses establish on the lower four levels of buildings in Sturt Street in particular. For example, a Function centre or other Place of assembly may be established in the lower levels of building without requiring use permission. Yet, existing buildings and numerous approvals include extensive provision of conventional residential apartments in along the Sturt Street spine which highlight the need for more targeted controls for the precinct moving forward.

⁵¹ Potential Panel addition.

As mentioned, some creative uses also inherently have the potential to generate impacts on amenity. This is acknowledged in the proposed decision guidelines that refer to the impact on the amenity of existing and future development in the precinct and the need for the layout and design of new uses or development to minimise potential for off-site impacts.

The table of uses will provide for certain categories of creative use to operate without a permit, even though they may generate impacts on amenity. Some of these uses could establish within existing spaces without the need for a planning permit.

Council will need to be conscious when granting permission for permit-required creative uses such as Industry and when approving the construction of new works to ensure that impacts on residential amenity are minimised. Importantly, this will need to be balanced in a way that ensures that creative uses are not unreasonably stifled in order to give fulsome effect to the zone purposes.

Ongoing role of Creative Victoria

The Panel agrees with Ms Lasica that CV should be made a referral authority for permit applications under the schedule.

The Panel acknowledges the significant role of CV in the creative industries in Victoria and in the Arts Precinct in particular, recognising its function as a body established by the *Creative Victoria Act 2017*.

The modified version of the schedule proposed by CV would include consideration of its views in addition to relevant authorities as a decision guideline. It is not clear to the Panel that this is accepted drafting practice. This may need to be addressed using the notice and referral clauses of the VPP.

(iii) Conclusions

The Panel concludes that the proposed CCZ as exhibited is problematic. The version proposed by CV is preferable but should be reconsidered or refined as suggested by the Panel.

5 Changes to DDO provisions

5.1 The issue

Would the applicable DDO provisions be capable of working successfully in tandem with CCZ7 to achieve the identified purposes for the Precinct?

A corollary is whether other changes should be proposed to any other Design and Development Overlay in conjunction with this Amendment.

5.2 Evidence and submissions

Amendment C323 proposes to amend Schedule 1 to Clause 43.02 – Design and Development Overlay (DDO1) to include reference to CCZ7 and to make other non-substantive changes to comply with the Form and Content Guidelines.

In general, Ms Heggen referred to the changes proposed to the overlay provisions as ‘tidy ups’.

DDO1 relates specifically to ‘Active Street Frontages’ and the changes relevant to Amendment C323 are contained within clause 43.02-2 Area 3 – Major Pedestrian Areas and Key Pedestrian Routes within CCZ3, CCZ7 and MUZ.

The control provides that buildings in Area 3 (Major pedestrian Areas and Key Pedestrian Routes within CCZ3, CCZ7 and MUZ) should provide:

... a positive architectural response when viewed from street level and provide active street frontages and opportunities for engagement with pedestrians, by providing:

- *At least 5 metres or 80% of the street frontage (whichever is the greater) as an entry or window which allows occupants to engage with the street.*

Other changes were made to DDO1 to address the Form and Content Guidelines.

No substantive submissions were made about the effect of the Amendment on DDO1 and the changes were submitted as being policy neutral.

In part, this is tied to the comment by Ms Porritt on Council instructions this Amendment was a ‘land use amendment - not a built form amendment’, and that issues addressing built form outcomes were dealt with in DDO60 (Special Character Areas – Built Form, Southbank).

In practice, DDO60, as the current built form overlay for Southbank, contains the following Design Objectives for Sturt Street (Area 4):

- *To enhance Sturt Street as a civic spine through the creation of a mid-rise streetscape with high levels of public amenity.*
- *To protect and enhance the culturally significant buildings along Sturt Street.*
- *To ensure development on Sturt Street supports physical and visual connections to the CBD and the Arts Centre Spire.*

5.3 Discussion

(i) Existing provisions

The Amendment purports to seek activated frontages and interaction with the public realm within the Arts Precinct along the Sturt Street spine. However, the Panel considers that the proposed suite of controls would only pay lip service to this important intent. On the whole, there appears to be a dearth of policy or controls in the planning scheme that recognise the built form values or preferred outcomes for the Arts Centre Precinct, as an area with a distinct character and aspirations.

For example, DDO1 only seeks to provide one specific objective concerning the Arts Precinct (as well as other areas). This is discretionary, to provide 'a positive architectural response when viewed from street level and provide active street frontages and opportunities for engagement with pedestrians'.

Aside from the overall lack of meaningful guidance about what is sought in terms of street activation or active interfaces with the public realm, an upfront concern is that the wording of DDO1 implies that the objective will be met if the standard is met namely, a development can demonstrate that the 5 metre or 80 per cent measure of the street frontage is achieved.

Perhaps more significantly, the DDO1 Area 3 is not specific to Sturt Street or for that matter the Arts Precinct, and equally applies to land in CCZ3 and MUZ. In other words, the same suite of controls for 'Active Street Frontages' is proposed for the Arts Precinct in DDO1 as for land flanking the south of the Yarra River corridor that houses Crown Casino, the Eureka Tower, the Melbourne Exhibition and Convention Centre and numerous existing and emerging high rise residential towers and developments. These have vastly different planning and design considerations, as well as generally much greater floor area ratios, density and height.

Beyond this, DDO60 is mostly silent on the Arts Precinct and therefore cannot be relied upon to do any 'heavy lifting' with respect to specific outcomes that the Panel considers should be targeted in conjunction with this Amendment.

Likewise, it is not apparent that the exhibited documents for Amendment C308 provide specific guidance for the Arts Precinct either by way of policy or DDO provisions. Ms Heggen noted that the Special Character Areas identified in Amendment C270 (Central City Built Form Review) apply and would most likely be reflected in the provisions of Amendment C308 provisions. One such area extends to the Arts Precinct proposed boundaries in this Amendment, but it is unclear whether any built form or urban design objectives are proposed specifically for the Arts Precinct or if they would be sufficient tool to reinforce the outcomes sought for this Amendment.

(ii) Directions for additional work

The Panel questions the approach suggested by Council and CV that the Amendment it is capable of achieving its stated objectives of articulated frontages and integration with the public realm. Rather, it has only 'put its toes in the water' so to speak as far as these opportunities are concerned.

The issues identified in the Panel process have highlighted that separate or additional controls are warranted for the Arts Precinct and may be necessary to achieve desired

outcomes for it. Significantly, the CCZ generates a trigger for buildings and works, yet there is no defined specific guidance proposed in the schedule or otherwise for how to achieve its purposes of activated street frontages and an appropriate design response to the public realm.

The Panel is concerned that neither the CCZ Schedule nor the DDO provisions propose to provide any indication about what makes the precinct distinctive, what is valued in a built form sense, or what future preferred character is proposed. Neither does it encourage a culture of innovation in design, which is so prevalent in existing and emerging arts and cultural facilities in the Arts Precinct and further distinguishes it from Southbank and the Central City in terms of scale, contextual concentration and expression.

Likewise, opportunities are missed to expressly seek complementary, activating 'infill' development with urban design techniques such as providing public display areas, places to gather, engage or interact (for example, as part of the adjacency to the Co-working Space/Melbourne Fringe/NIDA).

In the absence of this, it will be left for Council to seek to retrofit more generic built form objectives for land within the Central City or Southbank to land in the Arts Precinct when individual applications arise.

In the Panel's opinion, there is clearly scope for an Amendment of this nature to provide some guidance for buildings and works permit applications (which are also controlled by the zone provisions) and potentially to consider enhanced DDO provisions that are targeted to this particular Precinct. The Panel recommends that DDO1 or DDO60 (or both) be considered for further refinement, preferably within the scope of the current Amendment in conjunction with a more refined purpose in the CCZ (including the reference to the 'legibility' of the Arts Precinct) to guide preferred built form.

This could draw on strategic work undertaken by previous targeted analyses of the Arts Precinct as summarised above. The Panel is disappointed that the supporting reports on architectural and urban design frameworks for the Blueprint were not provided or discussed at the Hearing. It is clear from the discussion within the Blueprint that significant work was undertaken by experienced and important Melbourne architects such as Peter Elliot Architecture and John Wardle Architects who turned their attention to clear themes of activation of the Precinct. It is likely that the Architectural and Urban Design Masterplan would provide valuable insight, guided by recommendations referenced in the Blueprint.

The Amendment has an obvious focus on substantial new buildings. Perhaps just as significant for the vitality and diversity of any specialist precinct are the smaller, more informal uses and developments that absorb more confined opportunities that enhance the precinct. For example, Ms Heggen stated that she had witnessed *"the regeneration of back-street 'meanwhile' uses happening organically in Abbotsford"* where her office is located and that there was a distinction between those types of precincts and this Arts Precinct where the Amendment is *"seeking to retrofit in uses in response to opportunities being absorbed by residential development and lack of integration with arts cultural uses"*.⁵²

Overall, the Panel considers that a balance should be struck using discretionary controls with tailored guidance specific to the Arts Precinct. This should pay particular attention to the

⁵² Ms Heggen's verbal evidence on Day 2 of the Panel Hearing

contextual differentiation between it and the adjoining CCZs (particularly in the remainder of Southbank) including the presence of carefully designed, high quality, iconic buildings housing arts and cultural uses. To be effective, it would also need to provide sufficient flexibility for development of greatly varying scale.

Another issue is that in the Arts Precinct, one size will not fit all. Not all creative uses would suit passive surveillance and good visual connections to the street. Photographers, small galleries or performance spaces may prefer minimal visual connection to the street. Also depending on which side of the street a façade faces may warrant different design responses, for example, west facing facades could provide smaller windows or deeper balconies to mitigate heat gain in warmer months. Inbuilt flexibility and exercise of discretion will be a key to ensuring successful uptake of the aim to foster these uses in the precinct.

5.4 Conclusion

The Panel concludes that there is no reason why the Amendment should be regarded as concerning land use only, when the CCZ7 equally requires buildings and works permission. At minimum, the Panel recommends that Council include an additional purpose in the zone providing preferred built form and character outcomes for the Arts Precinct and include a relevant decision guideline.

As part of or concurrently with this Amendment, it should also consider reviewing relevant overlay provisions to provide greater guidance for built form outcomes sought for the Arts Precinct more specifically.

6 Other issues

6.1 Institutional uses

(i) The issue

Has the Amendment considered the role and needs of the institutional uses within the Precinct sufficiently?

(ii) Evidence and submissions

Ms Foley on behalf of CV submitted that “no one was seeking to question the value of the culture or arts” and that “Melbourne has a reputation in this regard”.⁵³ She submitted that the decision guidelines it proposes in CCZ7 would be sufficient for existing uses, including significant institutional uses that are seeking to expand.

No parties made specific submissions about how the Amendment might affect future uses or development of institutional sites or other significant existing arts and cultural facilities in the Precinct.

There are a wealth of strategies and recommendations in the Blueprint that discuss private and public realm activation for institutional as well as and private land within the Precinct. For example:

*The Blueprint’s approach has been informed by the Melbourne Arts Precinct Urban Design and Architectural Frameworks. These propositional frameworks suggest a raft of projects, from the small and simple to the bold and city changing, that can be used as a guide towards fulfilling the Blueprint’s aspirations.*⁵⁴

(iii) Discussion

In reality, there are a handful of private sites that are ripe for redevelopment within the Arts Precinct that appear to have been in the planning authority’s direct contemplation when formulating the provisions of the CCZ7⁵⁵, leading to a ‘reactionary’ Amendment as characterised by Ms Heggen.

Of its own volition, the Panel enquired at the Hearing how the Amendment would affect the use or development of existing arts and cultural institutions in the Arts Precinct. Council responded to the effect that the Amendment is one which ‘has a neutral effect on Arts institutions since it substantially transfers existing zone provisions applying to these land uses from the Southbank provisions’.

The public realm interfaces of the institutional sites comprise a sizable ‘chunk’ of the Precinct especially if their large interfaces and forecourts are taken into consideration. The Panel questions for example whether the activation of the Sturt Street frontage of the Recital Centre for example could be achieved under the proposed Amendment and whether

⁵³ Day 1 Panel Hearing

⁵⁴ Page 34, para 7, the Melbourne Arts Precinct Blueprint 2014

⁵⁵ The Panel was also informed of a number of current planning permit applications that are currently being processed by Council in accordance with the interim provisions of CCZ7, included at page 23 of CV Part A submission.

the discretionary provisions provide sufficient flexibility to allow for larger sized restaurant or retail outlets at ground level in these circumstances.

Is it practical to encompass these uses under the one control without including decision guidelines specifically for these institutional uses?

The Panel believes that greater guidance for the exercise of discretion should be included in further work that responds to findings and recommendations of the Blueprint and supporting architectural and urban design frameworks. This guidance should include flexibility in planning decision making relating to alterations or expansions to existing institutional facilities, such as larger as-of-right floor areas for associated restaurants or shops which could be contemplated for institutional sites. Relevant exemptions could be tailored to meet the needs of arts and cultural institutions, beyond the more generic exemptions proposed in CCZ7.⁵⁶

The land conditions around the Arts Centre and Gallery and more broadly around the Precinct are not consistent, for example the Arts Centre and Gallery sites are raised in AHD relative to the Sturt Street interfaces. It is conceivable that if activation for the rear of these sites were contemplated, bars and restaurants could be located in raised decks or upper level terraces and not at ground level. The decision guidelines could give guidance as to how discretion for could be exercised for non-standard design responses such as providing activation at upper levels with uses not necessarily related to creative industries.

The Panel would expect the future and ongoing development of the much prized institutional uses to draw upon creative and innovative solutions that do not necessarily fall neatly within the structure of CCZ7. For example, innovative ways of achieving activation within the Precinct could be facilitated more actively with a greater exercise of discretion for institutional uses.

Numerous examples of national and overseas examples abound where arts precincts deal with activation in non-conventional or non-prescriptive ways. In one example, the San Francisco Museum of Modern Art (SFMOMA) encompasses the original Botta design and recent Snøhetta additions as the central focus of the Arts Precinct. SFMOMA encompasses forecourts, rooftop and upper level courtyards hosting food outlets and additional gallery spaces, four storey high green walls in leftover spaces between the old and new as well as outdoor sculpture gardens and so on. The principal forecourt is activated by a visual and spatial connection to a ramped/ stepped pedestrian accessway to further institutional facilities bisected by a busy six lane main street. Vistas are preserved and utilised as the key connecting element back to Botta's bold façade with Snøhetta's intriguing recent addition peering over.

The key learnings from SFMOMA is that innovative and high quality architecture can provide the solutions if allowed, even with challenges such as steep falls in land or retrofitting valued existing institutions.

The Panel expects that that numerous architects and allied professionals who have been involved in the background strategic work to date have turned their minds to these types of challenges and more. It may be possible for these professionals to assist the development of

⁵⁶ The Panel also suggests that these be reviewed against general exemptions that exist elsewhere in the planning scheme.

the Amendment, to peer review the effectiveness of the proposed and reworked controls for institutional uses and indeed the Precinct as a whole.

(iv) Conclusions

The Panel concludes that the Amendment has not addressed the particular needs of institutional uses in the Arts Precinct and this is an urgent focus for further work to progress it both in terms of policy and the CCZ7 controls.

6.2 Governance

(i) The issue

How does the Amendment address issues of implementation and governance?

(ii) Evidence and submissions

Ms Lasica submitted that she was largely supportive of the Amendment as exhibited but had concerns of the lack of a documented governance structure and implementation strategy for creative uses in the Arts Precinct. She advised that one of the recommendation of the PricewaterhouseCoopers⁵⁷ report was a governance model for the Melbourne Arts Precinct. It proposed to create a newly formed entity with planning and programming power to manage the Precinct as follows:

*A dedicated single entity should be established, responsible for both physical development and activation/ marketing of the Precinct. (It should have) ... designated planning powers or clear planning referral rights for development within the Arts Precinct – or for specific zones within the Precinct.*⁵⁸

During the Hearing, Ms Lasica accepted submissions by CV and Council that the Amendment could only deal with planning matters, and that it was not feasible to conflate the two responsibilities.

In response, she suggested that it would be desirable for CV (or another body) to be included as a referral authority to strengthen the aims of the Amendment to give effect to increased opportunities for creative industries in the Precinct.

Ms Heggen largely concurred that the underlying matters raised by Ms Lasica relied on mechanisms outside the statutory planning system. She confirmed that the Amendment would be 'one part of the broader suite of planning and non-planning tools, strategies and interventions' that would need to work together to realise the broader vision for the Arts Precinct.

For example, CV and Council noted that they were both resourced to advance the activation/ marketing activities through various programs including Arts Melbourne.⁵⁹

At this point, the Panel also notes the extensive public works being undertaken in and around the Precinct as part of the 'Transforming Southbank Boulevard and Dodds Street –

⁵⁷ PricewaterhouseCoopers, *Southbank Arts Precinct Economics, Commercial and Governance Analysis* (2013)

⁵⁸ Ibid. page 32

⁵⁹ A division of the Arts and Culture Branch of Melbourne City Council that assists in matching creative industries to available floorspace, among other things.

public realm works'. These works, will among other things, create 2.5 hectares of new public open space, build a new civic square and prioritise pedestrians, public transport and cyclists.

Other initiatives being pursued by CV in the Arts Precinct with stakeholders were documented in its Part A submission and submission presented at the Hearing.⁶⁰

Other seminal initiatives for the Precinct include the proposed NGV Contemporary at 77 Southbank Boulevard and current renewal and expansion of the University of Melbourne (Southbank Campus) Melbourne Conservatorium of Music (Ian Potter Centre) at the northern end of Sturt Street and the recently completed Stables redevelopment as the new Faculty of Fine Arts and Music (Victorian College of the Arts, University of Melbourne) encompassing the adaptive reuse of heritage buildings.

(iii) Discussion

The Panel recognises the capacity of the planning scheme provisions to facilitate an enhanced Arts Precinct is necessarily confined in scope. This was pointed out by Ms Lasica in her submission and was accepted by both Council and CV.

The Panel considers that the ultimate effectiveness of the Amendment will rely on public and private initiatives to be implemented outside the planning scheme. This stems from the facts that:

- Use and development of many large older buildings (including those used by arts institutions) are relatively fixed at this point in time, with minimal streetscape activation provided by some.
- Some significant major arts institutions/creative industries within the Arts Precinct operate from land within the Public Use Zone and are subject to a different suite of controls and opportunities.
- The area of influence and practical operation of the Melbourne Arts Precinct extends beyond the boundaries of the mapped area for CCZ7.
- Inherently, the planning scheme can only encourage or discourage certain forms of land use or development. There are other less tangible but equally important contributors to the vitality, desirability and cohesiveness of an identified arts precinct such as this. The extent to which these opportunities are taken up in practice will depend on private and public commercial factors, government or industry initiatives and locational advantages.
- Underlying challenges to the potential for Sturt Street to function as an integrated arts precinct is its long length, its relative separation from other central areas of activity such as Southbank and Federation Square and (to a lesser extent) the intervening City Link landholding and operations.

(iv) Conclusions

The Panel concludes that issues of governance and implementation will be critical to support the purpose of the Amendment, but the planning provisions can only go so far to provide for this. Many other complementary programs and mechanisms will need to be pursued outside the planning scheme as outlined by Creative Victoria.

⁶⁰ Page 25-26.

Appendix A Submitters to the Amendment

No.	Submitter
1	Sturt Street Pty Ltd
2	LSH Group Australia
3	Pacific Asia Express Pty Ltd and AAW Global Logistics Pty Ltd
4	Wendy Lasica

Appendix B Document list

No.	Date	Description	Provided by
Pre-hearing documents			
1	8/8/18	Letter requesting Panel	Melbourne City Council
2	14/8/18	Instrument of appointment	PPV
3	15/8/18	Panel Directions Hearing notification letter	PPV
4	7/9/18	Panel Directions letter	PPV
5	4/10/18	Amendment Documentation <ul style="list-style-type: none"> a) Schedule 7 to CCZ b) Schedule 1 to DDO c) Schedule to Clause 66.04 d) Clause 21.04 e) Clause 21.10 f) Clause 21.13 g) Clause 22.10 	Creative Victoria
6	4/10/18	Part A submission <ul style="list-style-type: none"> a) Appendix A – List and summaries of background documents b) Appendix B – Background documents c) Appendix C – C330 Interim CCZ7 with C323 Exhibited CCZ7 changes d) Appendix D – Relevant zone and overlay maps and maps of arts land uses e) Appendix E – Letters of support f) Appendix F – VicRoads correspondence g) Appendix G – Relevant Scheme amendments and strategic initiatives h) Appendix H – Permit and permit application material 	Creative Victoria
7	4/10/18	Expert witness report – Catherine Heggen	Creative Victoria
8	4/10/18	Expert witness report – John Henshall	Creative Victoria
Hearing documents			
9	17/10/18	Proposed changes to Melbourne Planning Scheme	Creative Victoria
10	17/10/18	Arts Precinct Map of key creative uses	Creative Victoria
11	17/10/18	Submission for Melbourne City Council	Melbourne City Council
12	17/10/18	Extract from Melbourne C171 Panel Report	Melbourne City Council
13	17/10/18	Submission Creative Victoria	Creative Victoria

No.	Date	Description	Provided by
14	17/10/18	Addendum to evidence of John Henshall	Creative Victoria
15	17/10/18	Extracts of zone and Design and Development Overlay controls (3) from evidence in chief - Catherine Heggen	Creative Victoria
16	17/10/18	Extract of Central Melbourne Design Guide	Melbourne City Council
17	18/10/18	Creative Victoria response to submissions	Creative Victoria
18	18/10/18	Creative Victoria proposed changes via Amendment C323	Creative Victoria
19	18/10/18	LSH preferred version of Melbourne Amendment C323 provisions	LSH Group Australia
20	26/10/18	Creative Victoria final preferred version CC7	Creative Victoria
21	29/10/18	Letter from Planning & Property Partners to Planning Panels Victoria	LSH Group Australia
22	31/10/18	City of Melbourne response to changes to zoning and the planning scheme provisions	Melbourne City Council

Appendix C Version of Capital City Zone (Schedule 7) proposed by Creative Victoria before the Panel Hearing

SCHEDULE 7 TO CLAUSE 37.04 CAPITAL CITY ZONE

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Shown on the planning scheme map as **CCZ7**.

Melbourne arts precinct

Purpose

To strengthen the role of the Melbourne Arts Precinct as an arts and cultural precinct of State significance.

To facilitate the expansion of creative industries by providing additional, diverse and appropriate spaces for such uses within the lower storeys of a building.

To ensure that the design of buildings at lower storeys strengthens the legibility of the Melbourne Arts Precinct as an arts and cultural precinct and provides for active street frontages.

To provide for commercial and residential uses within the upper storeys of a building.

To allow for commercial uses within the lower storeys of a building in appropriate locations where such uses serve or support creative industries.

*Note: For the purpose of this schedule, **creative industries** can be defined as the cycles of creation, production and distribution of goods and services that use creativity and intellectual capital as primary inputs. They comprise a set of knowledge-based activities that produce tangible goods and intangible intellectual or artistic services with creative content.*

Creative industries include uses associated with the arts, culture, screen, design, publishing and advertising and cover diverse disciplines including game development, graphic design, fashion, film making, performing arts, visual arts, publishing, architecture, advertising, media, music, comedy and craft.

1.0

Table of uses

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Section 1 - Permit not required

Use	Condition
Accommodation (other than Corrective institution)	<p>Must not be located within the first four storeys of a building or within the first 16 metres of building height, above ground level, whichever is lower, except for that part of a building which provides access such as a lobby or entrance.</p> <p>Any frontage at ground floor level must not exceed 2 metres.</p>

Use	Condition
Art and craft centre Child care centre Cinema based entertainment facility Dancing school Education centre Home based business Informal outdoor recreation Market Manufacturing sales	
Food and drink premises (other than Hotel and Tavern)	The leasable floor area must not exceed 150 square metres.
Office	Unless associated with creative industries: <ul style="list-style-type: none"> • Must not be located within the first four storeys of a building or within the first 16 metres of building height, above ground level, whichever is lower, except for that part of a building which provides access such as a lobby or entrance; and • Any frontage at ground floor level must not exceed 2 metres.
Place of assembly (other than Amusement parlour, Nightclub, Place of worship and Restricted place of assembly)	
Place of worship	The gross floor area of all buildings must not exceed 250 square metres.
Postal agency Railway station Tramway	
Shop (other than Adult sex product shop, Department store and Restricted retail premises)	The leasable floor area must not exceed 150 square metres.
Any other use not in Section 3	Must be conducted by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the Water Industry Act 1994, the Water Act 1989, the Marine Act, the Port of Melbourne Authority Act 1958, the Parks Victoria Act 1998 or the Crown Land (Reserves) Act 1978.
Any use listed in Clause 62.01	Must meet the requirements of Clause 62.01

Section 2 - Permit required

Use	Condition
Adult sex product shop	
Amusement parlour	
Corrective institution	
Department store	
Hotel	
Industry	
Leisure and recreation (other than Dancing school and Informal outdoor recreation)	
Nightclub	
Restricted place of assembly	
Restricted retail premises	
Tavern	
Warehouse (other than Freezing and cool storage, and Liquid fuel depot)	
Any other use not in Section 1 or 3	

Section 3 - Prohibited

Use
Freezing and cool storage
Liquid fuel depot

2.0

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Use of land**Application requirements**

An application to use land must be accompanied by the following information, as appropriate:

- A description of the proposed use and the types of activities which will be carried out.
- The compatibility of the proposed use with the purpose of this schedule.
- The likely effects, if any, on other uses within the same building and adjoining or nearby land, including noise levels, traffic, parking, the hours of delivery and dispatch of goods and material, hours of operation, light spill, solar access and glare.
- An application for a residential use, must be accompanied by an acoustic assessment to the satisfaction of the responsible authority, which addresses:
 - The likely noise sources to impact the development.
 - The maximum permissible noise from nearby noise sources.
 - The necessary measures to attenuate these noise impacts, including how the proposal will meet the following requirement:
 - Habitable rooms of new dwellings adjacent to high levels of external noise should be designed to limit internal noise levels to a maximum of 45dB Laeq, in accordance with the relevant Australian Standards for acoustic control.

Exemption from notice and review

An application for the use of land for Accommodation or Office is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 37.04, in addition to those specified in Clause 37.04 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The compatibility of the proposed use with the purpose of this schedule.
- The compatibility of the proposed use with any existing uses within the same building or on adjoining and nearby land.
- The extent to which the proposed use serves or supports creative industries.
- The extent of creative industries floor space relative to the height and overall floor space of the building.
- The views of relevant authorities, including Creative Victoria.

3.0

Subdivision

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Proposed
C323

Exemption from notice and review

An application to subdivide land is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

4.0

Buildings and works

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Proposed
C323

Permit Requirement

No permit is required to construct a building or construct or carry out works for the following:

- Buildings or works carried out by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the Water Industry Act 1994, the Water Act 1989, the Marine Act, the Port of Melbourne Authority Act 1958, the Parks Victoria Act 1998 or the Crown Land (Reserves) Act 1978.
- Buildings or works for a Railway.
- Alterations to a building authorised under the Heritage Act, provided the works do not alter the existing building envelope or floor area.
- Footpath vehicle crossovers provided they are constructed to the satisfaction of the responsible authority.
- Bus and tram shelters required for public purposes by or for the Crown or a public authority in accordance with plans and siting to the satisfaction of the responsible authority.
- Decorations, gardens and planting required for public purposes by or for the Crown, a public authority or the City of Melbourne.
- A work of art, statue, fountain or similar civic works required for public purposes by or for the Crown, a public authority or the City of Melbourne.
- Buildings or works or uses on public land for which a current permit exists under a City of Melbourne local law.
- The erection of information booths and kiosks required for public purposes by or for the Crown, a public authority or the City of Melbourne.
- Traffic control works required by or for the Crown, a public authority or the City of Melbourne.
- The construction, or modification, of a waste pipe, flue, vent, duct, exhaust fan, air conditioning plant, lift motor room, skylight, security camera, street heater or similar minor works provided they are to the satisfaction of the responsible authority.

- A modification to the shop front window or entranceway of a building to the satisfaction of the responsible authority having regard to the architectural character of the building.
- An addition or modification to a verandah, awning, sunblind or canopy of a building to the satisfaction of the responsible authority.
- The painting, plastering and external finishing of a building or works to the satisfaction of the responsible authority.
- Changes to glazing of existing windows to not more than 15% reflectivity.
- External works to provide disabled access that complies with all legislative requirements to the satisfaction of the responsible authority.

A permit is required for the demolition or removal of a building or works. This does not apply to:

- Demolition or removal of a temporary structure.
- Demolition ordered or undertaken by the responsible authority in accordance with the relevant legislation and/or local law.

Before deciding on an application to demolish or remove a building or works, the responsible authority may require an agreement pursuant to section 173 of the Planning and Environment Act 1987 between the landowner and the responsible authority requiring, as appropriate:

- Temporary works on the vacant site should it remain vacant for 6 months after completion of the demolition.
- Temporary works on the vacant site where demolition or construction activity has ceased for 6 months, or an aggregate of 6 months, after commencement of the construction.

Temporary works must be constructed to the satisfaction of the responsible authority.

Temporary works may include:

- The construction of temporary buildings for short-term retail or commercial use. Such structures shall include the provision of an active street frontage.
- Landscaping of the site for the purpose of public recreation and open space.

Application Requirements

An application for buildings and works must be accompanied by the following information, as appropriate:

- A written urban context report documenting the key planning influences on the development and how it relates to its surroundings. The urban context report must identify the development opportunities and constraints, and document the effect of the development, as appropriate, in terms of:
 - State Planning Policy Framework and the Local Planning Policy Framework, zone and overlay objectives.
 - Built form and character of adjacent and nearby buildings.
 - Heritage character of adjacent and nearby heritage places.
 - Microclimate, including sunlight, daylight and wind effects on streets and other public spaces.
 - Energy efficiency and waste management.
 - Ground floor street frontages, including visual impacts, pedestrian safety and activation.
 - Public infrastructure, including reticulated services, traffic and car parking impact.
 - Vistas.
 - The legibility of the development as part of the Melbourne Arts Precinct.

An application to construct a building or to construct or carry out works must include, as appropriate, upgrading of adjacent footpaths or laneways to the satisfaction of the responsible authority.

An application to construct a building or to construct or carry out works on a building listed in the schedule to the Heritage Overlay must be accompanied by a conservation analysis and management plan in accordance with the principles of the Australian ICOMOS Charter for the Conservation of Places of Cultural Significance 1992 (The Burra Charter) to the satisfaction of the responsible authority.

An application to construct a building or construct or carry out works for a residential use, must be accompanied by an acoustic assessment to the satisfaction of the responsible authority, which addresses:

- The likely noise sources to impact the development.
- The maximum permissible noise from nearby noise sources.
- The necessary measures to attenuate these noise impacts, including how the proposal will meet the following requirement:
 - Habitable rooms of new dwellings adjacent to high levels of external noise should be designed to limit internal noise levels to a maximum of 45dB Laeq, in accordance with the relevant Australian Standards for acoustic control.

Exemption from notice and review

An application to construct a building or construct or carry out works for a use in Section 1 of Clause 37.04-1 or for Accommodation or Office, is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

An application to demolish or remove a building or works is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act

Referral Requirement

An application for development with a gross floor area exceeding 25,000 square metres must be referred in accordance with section 55 of the Act to the referral authority specified in the schedule to Clause 66.04.

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 37.04, in addition to those specified in Clause 37.04 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The purpose of this schedule.
- The views of relevant authorities, including Creative Victoria.
- The convenience of pedestrian, cyclist and vehicle access within and through the precinct.
- The safety and efficiency of vehicle access to and egress from the land.
- The impact on the amenity of existing and future development in the precinct.
- Whether the development potential of adjoining land will result in an unreasonable loss of amenity for the development.
- The extent that the layout and design of the new use or development minimises the potential for off-site impacts, including from noise, fumes, odour or vibrations, ensuring that:
 - existing uses are not compromised by a new development, or
 - a new development is designed to address amenity impacts from existing uses.

- Whether the development is designed to accommodate creative industries both as part of the proposed development and over time.
- The interface between the development and the public realm, including:
 - The provision of landscaping.
 - Whether the development incorporates public art.
 - Whether the development contributes to the legibility of the Melbourne Arts Precinct as an arts and cultural precinct.
 - Whether the development maximises active uses along all frontages.
 - Whether the development provides a strong physical and visual relationship with the street.
 - Whether the development provides adequate weather protection.
 - The opportunities for passive surveillance of the public realm from occupants of upper storeys of the development.
 - The impact the development will have on the streetscape if buildings are not constructed to the street at ground level.
 - Whether the development will compromise the function, form and capacity of public spaces and public infrastructure.
- Whether the development provides acceptable internal noise levels within habitable rooms of new dwellings taking into account existing or reasonably anticipated future noise sources.
- Whether the development includes appropriate measures to attenuate against noise associated with the operation of other businesses and activities, including limiting internal noise levels within habitable rooms of new dwellings.
- The adequacy and accessibility of waste and recycling facilities.
- Whether the demolition or removal of buildings gives effect to a permit or prior approval for the redevelopment of land.
- Whether the demolition or removal of buildings is required for environmental remediation of contaminated land.
- The provision of temporary buildings and works or landscaping to avoid vacant sites for excessive periods.

5.0 Signs

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Proposed
C323

A permit is required to construct and display a sign. This does not apply to:

- Advertising signs exempted by Clause 52.05-4.
- An under-verandah business sign if:
 - It does not exceed 2.5 metres measured horizontally, 0.5 metres vertically and 0.3 metres between the faces of the sign;
 - It is located between 2.7 metres and 3.5 metres above ground level and perpendicular to the building facade; and
 - It does not contain any animation or intermittent lighting.
- A ground floor business sign cantilevered from a building if:
 - It does not exceed 0.84 metres measured horizontally, 0.61 metres vertically and 0.3 metres between the faces of the sign;
 - It is located between 2.7 metres and 3.5 metres above ground level and perpendicular to the building facade; and
 - It does not contain any animation or intermittent lighting.
- A window display.

- A non-illuminated sign on a verandah fascia, provided no part of the sign protrudes above or below the fascia.
- Renewal or replacement of an existing internally illuminated business identification sign.

Exemption from notice and review

An application to construct or display a sign, is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.