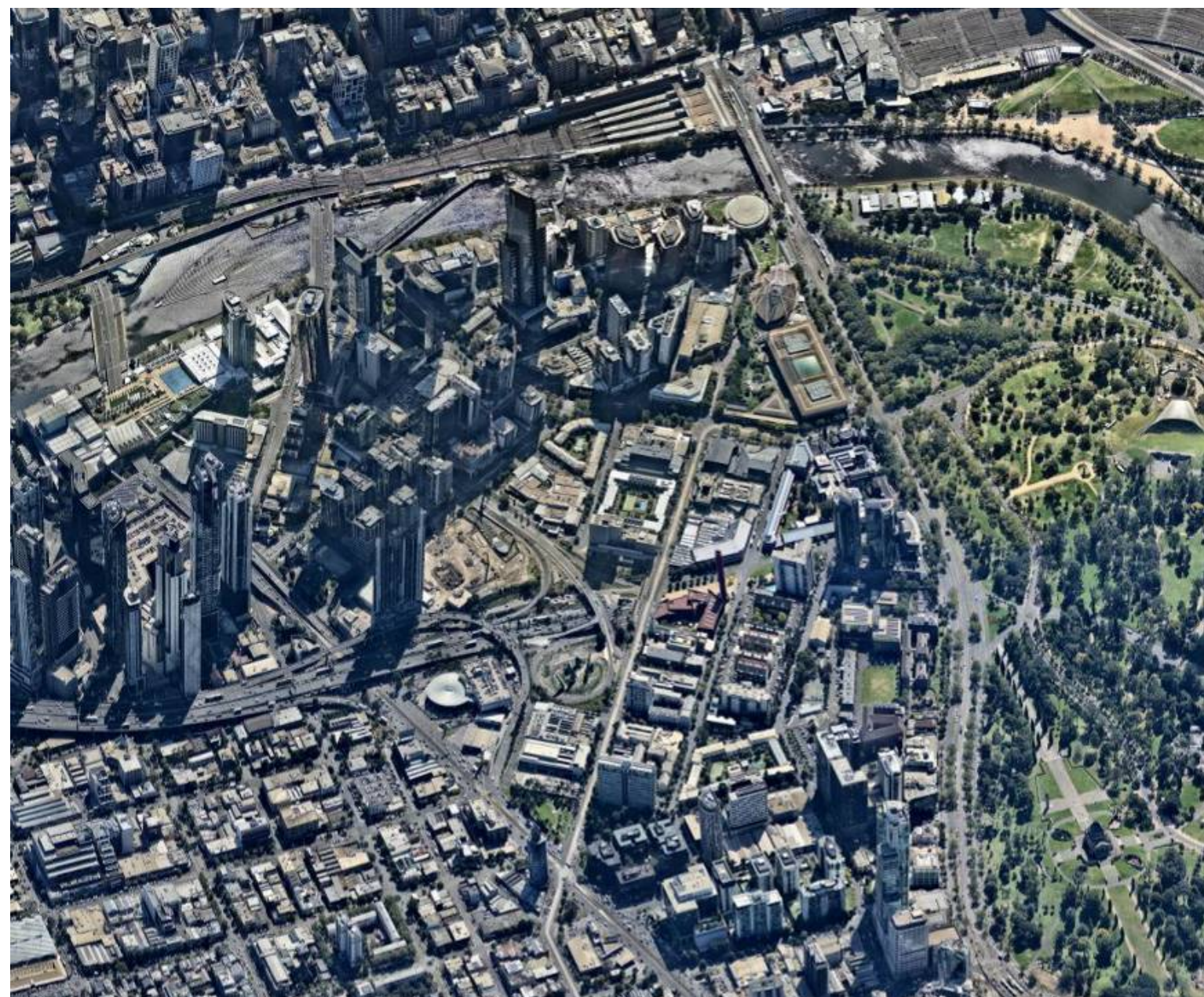


Melbourne Planning Scheme Amendment C323 Melbourne Arts Precinct, Southbank

Addendum to October 2018 Town Planning Evidence
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Prepared for Creative Victoria

October 2019



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1 Preamble

1.1 Introduction

In October 2018 the Panel considered Amendment C323 (Am C323) to the Melbourne Planning Scheme which seeks to introduce permanent planning controls for the Melbourne Arts Precinct in Southbank.

On 3 December 2018, the Panel issued an Interim Panel Report which concluded that whilst there is broad policy support for the Amendment, it had concerns with the adequacy of the Amendment as exhibited.

The Panel's view was that, whilst refinements to the controls that were 'workshopped' during the course of the hearing addressed some of the identified shortcomings, these changes ought to be the subject of further exhibition. In addition the Panel identified further work that in its view should be undertaken to provide an enduring planning framework for the Arts Precinct.

*"...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."*¹

Since the interim Panel Report was released, the Amendment has been revised by the Melbourne City Council in conjunction with Creative Victoria to respond to the issues raised by the Panel (the revised Amendment). The revisions take the form of amendments to the proposed Capital City Zone Schedule (CCZ7) and the inclusion of changes to various clauses in the MSS to provide supportive policy directions.

The revised Amendment was re-exhibited from IN July 2019 and a total of 12 submissions were received, some of which are supportive of the revised Amendment and others of which raise concerns.

I have been requested by Creative Victoria and Melbourne City Council to prepare this addendum to my original expert evidence statement of October 2018 to address the planning merits of the revised Amendment.

1.2 Summary of assessment

My instructions are principally to consider the appropriateness of the revised Amendment in terms of both the suitability of the changes that have been made; and whether there is justification for the proposed approach where the suggestions of the Panel have not been adopted and an alternative is proposed.

This addendum does not address the broader strategic policy and urban context of the Arts Precinct which were addressed in my original evidence and are well understood by the Panel, except where this is directly relevant to the issues presented by the revised Amendment.

However, in undertaking a detailed consideration of the revised Amendment, I have also considered whether there have been any relevant changes to the planning context, or physical changes that need to be taken into account.

Accordingly I have structured my assessment around the following questions:

- What were the principal issues identified in the Interim Panel Report?
- What changes have been made to the Amendment
- What issues have been raised by submitters?
- Has there been any relevant change to the planning or physical context since the Panel last considered Am C323?

- Does the revised version of Am C323 deliver an appropriate planning outcome?

My conclusion is that, whilst in some areas the revised Amendment departs from the approach recommended by the Panel, it provides a sound and logical basis for permanent controls and associated policy directions, subject to some minor further refinements recommended later in this addendum report.

My reasons for these conclusions are set out in the following section of this document.

Additional background information is included in the appendices as follows:

- **Appendix A** – Current planning controls and policy
- **Appendix B** – Re-Exhibited CCZ Schedule 7
- **Appendix C** – Witness Statement

¹ Interim Panel Report, page 17

2 Assessment

2.1 What were the principal recommendations of the Panel in its Interim Report?

Whilst the Panel was of the view that the original Amendment was consistent with strategic policy directions for the Melbourne Arts Precinct, it expressed concerns about the workability of the Amendment as drafted and declined to support it in its exhibited form. Whilst some of the refinements suggested by Creative Victoria during the course of the hearing were found to have merit, the Panel was obliged to evaluate the amendment as exhibited.

The Interim Panel Report therefore provides direction for further work to be undertaken to address the issues identified by the Panel. It does not recommend that the Amendment be abandoned, but rather that further strategic work be undertaken to strengthen and refine the Amendment, with such revisions to be the subject of further public notification.

The Panel's key findings in relation to the content and structure of the Amendment are summarised below.

In general terms, the Panel **supported** the following aspects of the exhibited Amendment and refinements suggested through the Panel process:

- The introduction of a specific schedule to the Capital City Zone (CCZ) for the Melbourne Arts Precincts.
- The concept of seeking floor space for creative industries within the lower four levels of new buildings through the inclusion of as-of-right arts and creative uses within the CCZ Schedule 7 and making accommodation and office uses (if not associated with creative industries) permit-required uses.
- The additions to local planning policy recommended in my original evidence, subject to further notification.
- The addition of a definition of 'creative industries' in the CCZ Schedule as proposed by

Creative Victoria to provide practical guidance, given the absence of suitable definitions in the Victorian Planning Provisions (VPPs).

- Retaining the interim controls of the CCZ Schedule 7 in their current form until more comprehensive and directed permanent controls are developed and implemented.

However, the Panel also **recommended** that further work be undertaken to strengthen and refine the Amendment 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
- Consider the role of Design and Development Overlay Schedule 1 (DDO1) in providing guidance for the Arts Precinct and the interaction between DDOs and the strategic planning work being undertaken in respect of proposed a new Design and Development Overlay proposed within Am C308 (Central City and Southbank Urban Design).
- 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.
- Consider whether transitional provisions are required and what the effect of the Amendment may be on existing planning permits.

2.2 What has changed in the revised version of Amendment C323

The revised version of the Amendment that was re-exhibited included a number of wording refinements to Schedule 7 to the CCZ as well as amendments to various clauses in the Municipal Strategic Statement (MSS) and the schedule to Clause 66.04 to include Creative Victoria as a recommending referral authority for applications for use and development in the first four storeys of a building.

The amendments to CCZ7 include:

- Refinements to the purpose of the schedule, which includes a description of the types of arts, culture and creative industry uses encouraged to locate within the precinct, in lieu of providing a definition of creative industries in the schedule.
- Amendments to the table of uses to include floor area limits in Section 1 for food and drink premises, shop and place of worship.
- Amendments to the application guidelines for use of land to require an acoustic assessment for residential uses.
- A range of more general refinements to referral requirements, application requirements and decision guidelines.

The changes to MSS relate to Clauses 21.04 Settlement), 21.08 (Economic Development), 21.10 (Infrastructure) and 21.13 (Urban Renewal Areas) and comprise relatively minor wording additions to recognise and support the role of the Arts Precinct and provide a policy basis for increased legibility and the provision for arts, culture and creative industries in the lower levels of buildings in the precinct.

Whilst the changes respond to the Panel's recommendations, some of the recommendations are open to different interpretations and in other cases an alternative approach is proposed by Council. My assessment of the suitability of the changes is discussed in Section 2.5 of this addendum.

2.3 Has there been any relevant change to the planning or physical context since the Panel last considered Am C323?

From my observations there have been no changes in the physical context of the Arts Precinct since the Panel considered Am C323 in October 2018 that raise any new issues for consideration in this matter.

It is the case that public realm improvements in Southbank Boulevard and Dodds Street have progressed since that time. However, while these works will enhance the physical appearance and connectivity of the northern end of the Arts Precinct generally, they are not directly relevant to the Amendment which is primarily aimed at guiding planning outcomes on privately held land.

Similarly I am not aware of any further Council or VCAT decisions on permit applications within the precinct that have a bearing on the matters before the Panel.

In terms of the planning context, there have been no significant changes in State or local planning policy or changes in the controls affecting the Arts Precinct or neighbouring areas that would change the context in which the Amendment is to be considered.

Am C308 which proposes the introduction of new urban design provisions for the Central City and Southbank has progressed since October 2018.

Am C308 has been exhibited and was considered by a Panel in March 2019.

Overall, the Panel was supportive of Am C308 which proposes to:

- Replace the existing Schedule 1 to the Design and Development Overlay (Active Street Frontages) with a revised schedule
- Delete the policy at Clause 22.01 'Urban Design in the Capital City Zone' and translate the policies of this clause into requirements in Schedule 1 to the Design and Development Overlay
- Delete Schedule 4 (Weather Protection – Capital City Zone) of the Design and Development Overlay and incorporate the provisions of that schedule into Schedule 1.

Some modifications were suggested by the Panel to delete policy at Clause 22.20 (CBD lanes), and Schedule 3 to the DDO (Traffic Conflict Frontages – Capital City Zone) and incorporate these

provisions into the new DDO Schedule 1, as well as refinements to the wording and structure of DDO1 and the Melbourne Design Guide which underpins the new control.

I am instructed that Council is currently considering the Panel's recommendations and is likely to put a further report to the Future Melbourne Committee towards the end of this year.

In broad terms, I maintain the view expressed in my original evidence statement that the land use provisions in the proposed CCZ7 are compatible with and complementary to the urban design directions in the exhibited Am C308, particularly as they relate to the lower levels (first four storeys) of buildings.

Clearly, there will need to be a resolution of the detailed wording of the final controls under both amendments to ensure inconsistencies are avoided. However, this detailed work is most logically undertaken once Council has resolved the final form of Am C308 to be submitted to the Minister for Planning for approval.

In the meantime, the proposed changes to the Clause 22.01 (Urban Design in the Capital City Zone Policy) and the current Schedule 1 to the Design and Development Overlay (DDO1) are necessary to ensure the new CCZ7 control is appropriately referenced in the event that Am C323 is gazetted prior to Am C308.

2.4 What issues have been raised by submitters?

A total of 12 submissions were made in response to the re-exhibition of the Amendment, on behalf of a range of cultural and business organisations, property owners and private individuals.

Of these, the majority either support the Amendment or provide qualified support subject to some suggested refinements to address particular issues and concerns (some of which are beyond the scope of this Amendment).

I note that majority of the concerns relate to matters already considered by the Panel, particularly those that relate to the effect of making accommodation and office uses permit-required within the first four storeys of buildings.

In addition to detailed suggestions regarding wording and the like, additional issues raised in this round of exhibition include:

- The suggestion from existing cultural institutions that development in the precinct should be subject to 'reverse amenity' or 'agent of change' principles in relation to noise.
- Concern that Creative Victoria in its role as a referral body is highly unlikely to ever support applications for Section 2 uses within the first four levels of buildings and that achieving permits for discretionary uses will be challenging.
- The effect of the proposed controls on the capability to lease space within the first four storeys of buildings.

I address these issues in the following section of this addendum in addition to the issues raised previously by the Panel.

2.5 Does the revised version of Am C323 deliver an appropriate planning outcome?

In this section I have firstly considered the changes made in response to the Panel's Interim Report and then considered the additional issues raised in submissions.

2.5.1 Amendments in response to Interim Panel Report

Overall I am supportive of the changes made in the revised Amendment and the way in which it responds to the Panel's commentary, subject to some further minor revisions.

In relation to the strategic policy basis to the new controls, I agree with the thrust of the Panel's commentary that there is scope for more comprehensive policy to be developed to support the arts, culture and creative sectors generally and the Arts Precinct specifically. However, I see these possible initiatives as beyond the scope of Am C323 which has been conceived principally to address a specific land use challenge for the Arts Precinct.

I do note that in general I prefer the more comprehensive MSS additions suggested in the Creative Victoria amended versions tabled at the original hearing (4 October 2018 versions) to the re-exhibited versions which give the arts precinct slightly less prominence.

In relation to the suggestion that the CCZ7 control more fully identify the unique and preferred character of the Arts Precinct, I note that the zone schedule is primarily concerned with land use issues, with references to design primarily relating to the way in which land use is read within the precinct.

There is a logic to an approach to the precinct whereby CCZ7 guides land use, DDO60 guides built form matters, and the forthcoming C308 controls (new DDO1) guide more detailed urban design matters, particularly in relation to the lower levels of a building.

I am not convinced that there is a specific character to the arts precinct that can be easily defined and the delivery of appropriate land use outcomes allied with good urban design consistent with the approach to the whole Central City should deliver appropriate outcomes

Finally, I note that transitional provisions have not been included in the revised CCZ7 control. In my view, it would be logical for such provisions to be added for planning permits that have been granted in the precinct and remain 'live' but have not yet been acted upon. This is likely to be relevant to only a small number of existing planning permits. However, it would avoid a situation where a developer is required to seek further permission for office and accommodation use within the first four storeys of buildings where these uses are already included within existing approvals.

2.5.2 Issues raised in submissions

The following commentary relates to the new issues raised in relation to the re-exhibited amendment.

Noise

Submissions on behalf of existing cultural institutions in the precinct have suggested that the CCZ7 control ought to include 'reverse amenity' or 'agent of change' type provisions to protect existing cultural and arts venues and ensure that the onus of acoustic mitigation is on the developers of new residential buildings.

This is an approach that has been introduced in recent years in relation to live music venues through the provisions of Clause 53.06 (Live Music and Entertainment Noise) to protect live music venues from encroachment by noise sensitive residential uses.

This is a relevant issue for the Arts Precinct as it develops further as a mixed use area, to ensure that existing arts and cultural activities are not curtailed by new noise-sensitive residential uses.

I consider the amended application requirements

which include requirements for residential proposals to assess and mitigate existing noise sources adequately address this issue within the context of a CCZ Schedule.

Further protection could be sought separately by venues used for the performance of music by seeking to become listed in Clause 2.0 of the Schedule to Clause 53.06 as a venue to which this Clause applies.

Creative Victoria as referral authority

It is clear from Creative Victoria's work in pursuing planning controls and its involvement in the planning process for recent developments in the Arts Precinct that it seeks to take an active role in pursuing the delivery of additional space for arts, creative and cultural uses.

The question of Creative Victoria being made a referral authority was considered by the Panel during the original hearing and the Panel agreed that this should occur.

It is no doubt the case that Creative Victoria's primary aim in considering development within the first floor storeys of buildings will be to maximise the delivery of space for arts, creative and cultural uses.

However, its role as a recommending referral authority means that its response is not determinative.

Rather, the responsible authority must consider the any Creative Victoria advice or response in making its decision, in conjunction with the full range of relevant planning considerations, but is not obliged to refuse the application or to include any conditions recommended by Creative Victoria.

The value of making Creative Victoria a formal referral body is that its advice and input can be obtained as a matter of course not just in regard to the quantum of creative or arts floorspace to be provided, but also in relation to the nature of the space and its suitability for arts and creative activities. They may also be able to assist in identifying potential occupiers and providing a

valuable link between the creative sector and the development industry.

Effect on leasing capability

The concern raised relates to the ability for developers or building owners to find viable tenants for floorspace within the lower four storeys of buildings, given a potentially limited pool of creative and cultural occupiers.

Effectively what CCZ7 establishes is a preference for a range of arts and cultural activities and associated uses (including office uses associated with such activities) within the first four storeys. However, alternative uses can be considered if a permit is applied for.

A range of matters would need to be taken into account by a decision maker in assessing whether such discretionary uses could be supported within the first four storeys.

These may include matters such as the extent of any creative or arts floorspace provided; the quality and fit-out of such space; and whether it meets the needs of a specific identified organisation or body. It may also be relevant to consider whether the applicant can demonstrate that a genuine effort has been made to engage with the arts and creative sector to identify potential occupiers and their requirements.

Consideration of such matters will assist the decision-maker in determining whether alternative (Section 2) uses in the first four storeys is supportable and whether only partial provision of arts, cultural and/or creative industry space is justified.

In my view it would be prudent to add decision guidelines to address these circumstance to require consideration of:

- Whether any provision has been made for arts, cultural or creative industries within the development;
- The extent and quality of fitout of any such space within the building;
- Whether a specific arts, cultural or creative

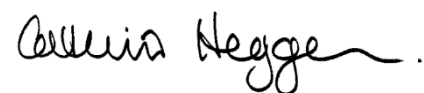
industry occupier has been identified and secured whose needs are met by the development;

- Whether a demonstrated attempt has been made to engage with the creative and cultural sector to identify potential occupiers.

3 Conclusion

In conclusion I am supportive of the re-exhibited version of Amendment C323 subject to some further refinements to address the following principal issues:

- Amend the MSS wording changes so that they reflect the more comprehensive additions suggested in the Creative Victoria amended versions tabled at the original hearing (4 October 2018 versions).
- Insert transitional provisions for planning permits that have been granted but not yet acted upon.
- Include additional decision guidelines into CCZ7 to further guide decision-making for Section 2 uses within the first four storeys of building, to require consideration of:
 - Whether any provision has been made for arts, cultural or creative industries within the development;
 - The extent and quality of fitout of any such space within the building;
 - Whether a specific arts, cultural or creative industry occupier has been identified and secured whose needs are met by the development; and
 - Whether a demonstrated attempt has been made to engage with the creative and cultural sector to identify potential occupiers.



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BTRP FPIA

Appendix A: Existing controls

The Amendment area is affected by the provisions of the Melbourne Planning Scheme (the Planning Scheme). An overview of the relevant statutory and strategic provision that apply to the proposal are set down below.

C1 Zoning

The site is located within the Capital City Zone – Schedule 7 (Melbourne Arts Precinct) CCZ7) pursuant to Clause 37.04.

A zone map extract has been provided at **Figure A1**. The purpose of CCZ is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To enhance the role of Melbourne's central city as the capital of Victoria and as an area of national and international importance.
- To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.
- To create through good urban design an attractive, pleasurable, safe and stimulating environment.

The head control for the CCZ enables a table of uses to be set out in a Schedule to the zone, as well as application requirements, exemptions from notice and review and decision guidelines.

A permit is required to construct a building or construct or carry out works unless the schedule to this zone specifies otherwise.

The purpose of Schedule 7 - Melbourne Arts Precinct, is:

- 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.

Schedule 7 establishes a table of uses with a range of arts and related uses in Section 1 (no permit required). Accommodation and Office are Section 1 uses on the condition that they are not within the first four storeys (16m) above ground level. Schedule 7 is an interim control that expires on 31 March 2019.

C2 Overlays

A combination of five overlays affect the Amendment area, as follows:

- Various schedules to the **Design and Development Overlay (DDO)** affect parts of the Amendment area. Pursuant to Clause 43.02, The purpose of the DDO is:
 - To implement the Municipal Planning Strategy and the Planning Policy Framework.
 - To identify areas which are affected by specific requirements relating to the design and built form of new development.

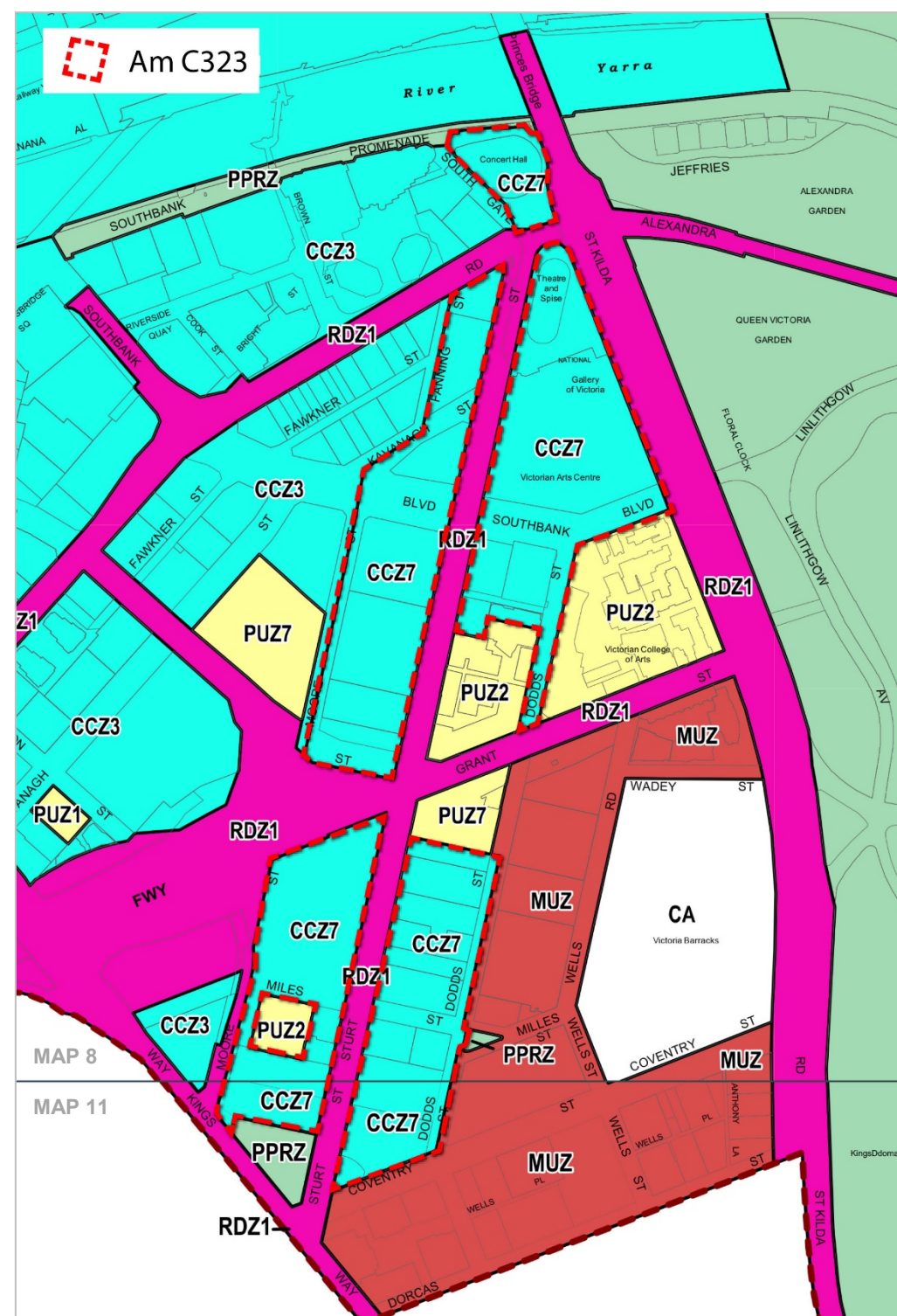


Figure A1 – extract of zone map

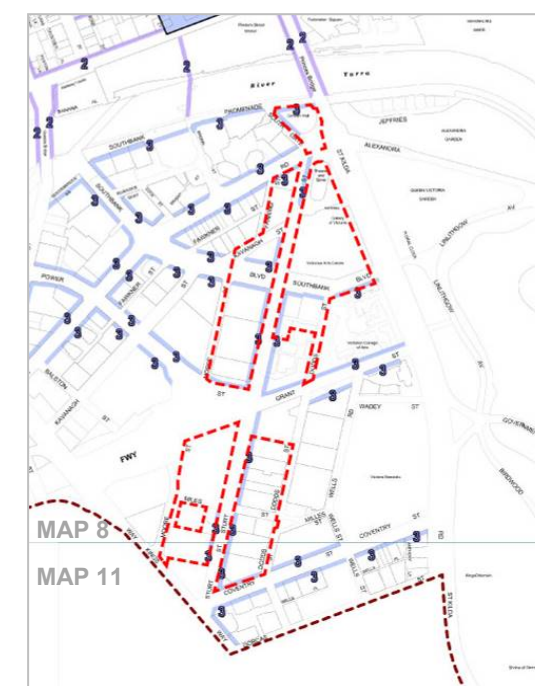


Figure A2 – extract of DDO1 map

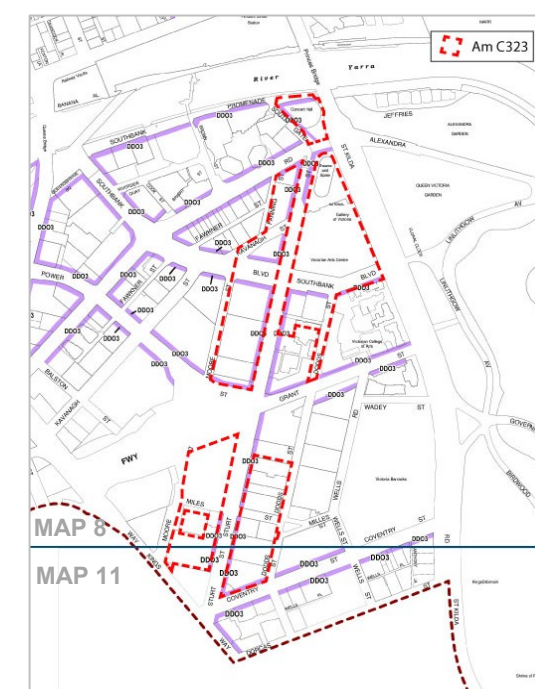


Figure A3 – extract of DDO3 map

Appendix A: Existing controls continued

The following schedules affect the Amendment area:

- Schedule 1 – Area 3 - Major Pedestrian Areas and Key Pedestrian Routes within CCZ1 (DDO1). This schedule addresses active street frontages and opportunities for engagement with pedestrians. A map extract is provided at **Figure A2** (previous page);
- Schedule 3 – Traffic Conflict Frontage (DDO3). DDO3 objectives are to promote pedestrian flow, safety and amenity and to minimise conflict between pedestrians and vehicles. A map extract is provided at **Figure A3** (previous page).
- Schedule 60 - Area7 (Arts Centre) (DDO60A7), Area 4a (DDO60A4A) (Sturt Street) and Area 4b (DDO60A4B) (Dodds Street). DDO60 design objectives aim to ensure the suitability of new developments to each areas context. A map extract of DDO60 Areas has been provided at **Figure A4** and
- Schedule 27 – City Link Exhaust Stack Environs (DDO27). DDO27 design objectives are to ensure that land developed in this area are not adversely affected by the stack, or affect the stack. A map extract is provided at **Figure A5**.
- **Heritage Overlays** (HO391 – 102-118 Sturt Street, South Melbourne and affected HO5 – South Melbourne Precinct) affect parts of the area as shown at Figure A6. Pursuant to Clause 43.0, the purpose of HO is:
 - To implement the Municipal Planning Strategy and the Planning Policy Framework.

- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.

- To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

- **A Land Subject to Inundation Overlay** (LSIO) affects the southern part of the Amendment area as shown at **Figure A7**. Pursuant to Clause 44.04. The purpose of the LSIO is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To reflect any declaration under Division 4 of Part 10 of the Water Act, 1989 where a declaration has been made.

- To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

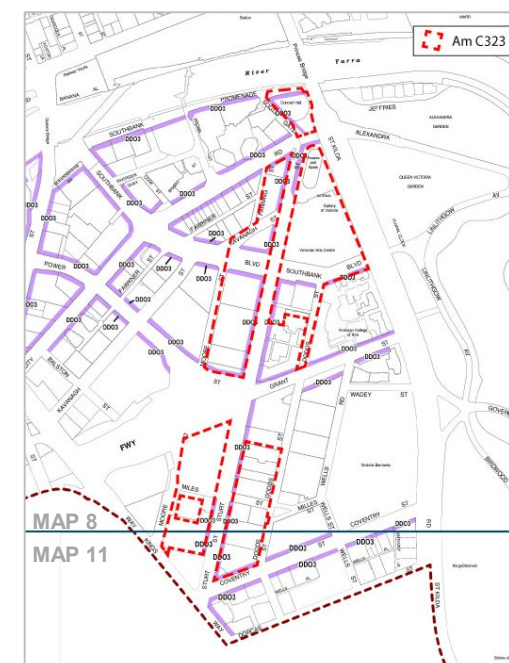


Figure A4 – extract of DDO60 map

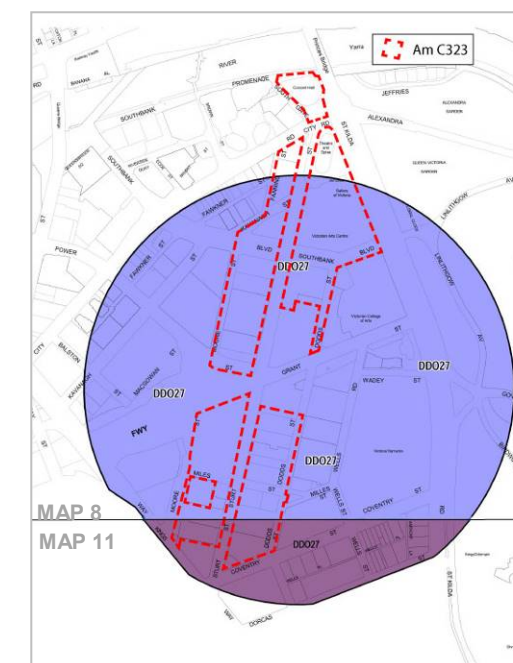


Figure A5 – extract of DDO27 map

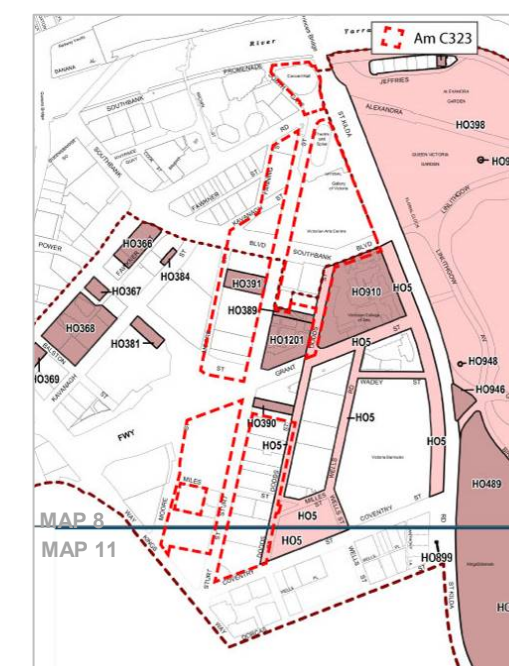


Figure A6 – extract of HO map

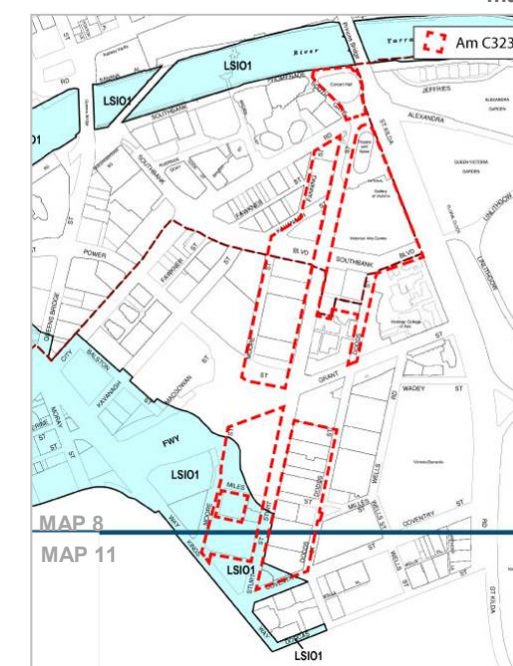


Figure A7 – extract of LSIO map

Appendix A: Existing controls continued

- **Parking Overlays** – Schedule 1 – Capital City Zone - Outside the Retail Core (PO1) and Schedule 12 – Residential Development in Specific Inner City Areas (PO12) affect the Amendment area as shown at **Figure A8**. Pursuant to Clause 45.09, the purpose of the PO is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To facilitate an appropriate provision of car parking spaces in an area.
- To identify areas and uses where local car parking rates apply.
- To identify areas where financial contributions are to be made for the provision of shared car parking.

- A **Road Closure Overlay (RXO)** affects Southbank Promenade as shown at **Figure A9**. Pursuant to Clause 45.04, the purpose of the RXO is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify a road that is closed by an amendment to this planning scheme.

- A **City Link Project Overlay (CLPO)** affects part of the Amendment area as shown at **Figure A10**.

Pursuant to Clause 45.07, the purpose of the CLPO is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure the efficient construction, operation and maintenance of the Melbourne City Link Project, the Exhibition Street Extension Project and

City Link Tulla Widening Project.

- To ensure that the display of a Business identification sign on land no longer required for the Melbourne City Link Project or the Exhibition Street Extension Project is limited to a level that does not compete with the display of signs shown on the plan titled "Melbourne City Link Project - Advertising Sign Locations November 2003".

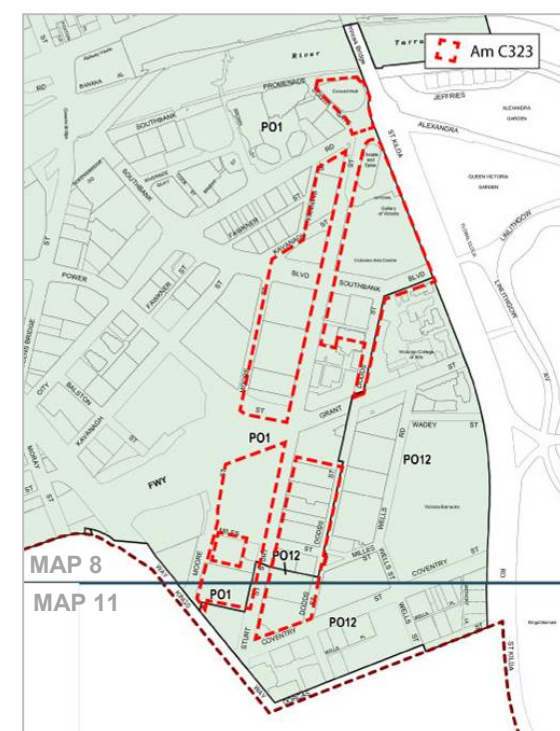


Figure A8 – extract of PO map

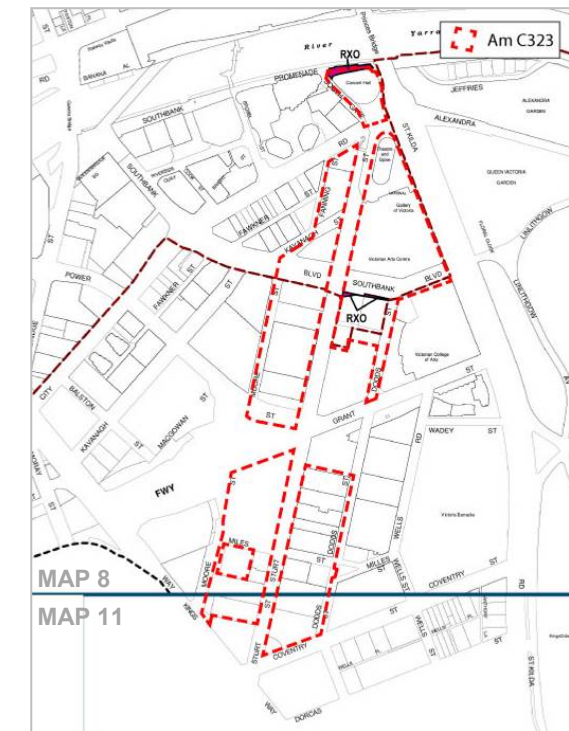


Figure A9 – extract of RXO map

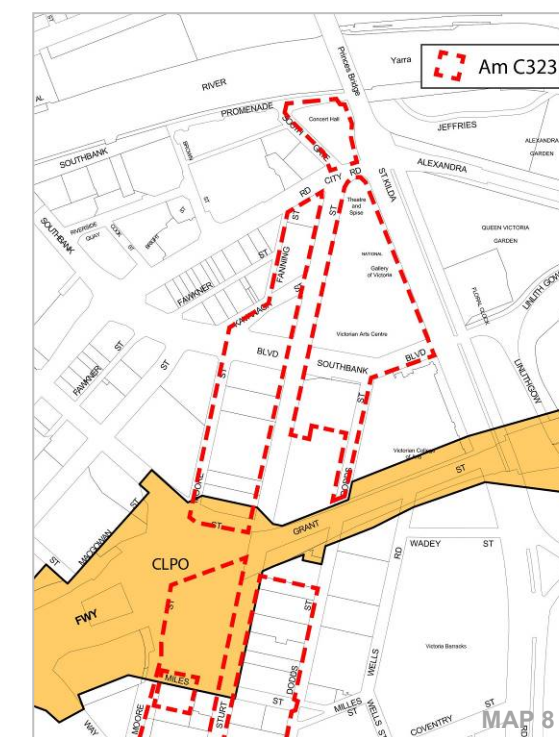


Figure A10 – extract of CLPO map

Appendix B: Re-Exhibited CCZ Schedule 7

MELBOURNE PLANNING SCHEME

MELBOURNE PLANNING SCHEME

SCHEDULE 7 TO CLAUSE 37.04 CAPITAL CITY ZONE

Shown on the planning scheme map as CCZ7.

MELBOURNE ARTS PRECINCT

Purpose

To ~~strengthen, maintain and enhance~~ the Melbourne Arts Precinct as ~~a~~ significant arts and cultural ~~and creative industry~~ 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, support the growth of arts, cultural and creative industry uses such as media, digital screen, design, writing and publishing, literature, fashion, performing arts, digital games development, broadcasting, music, cultural heritage and arts education and craft.~~

To ~~facilitate support the growth of arts, cultural and creative industry sectors and disciplines within the first four storeys of a building by providing appropriate spaces such as performance space, rehearsal space, galleries, workshops, event spaces and studios, 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, ensure that the design of buildings delivers street frontage activation, design excellence and contributes to the legibility of the Melbourne Arts Precinct.~~

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

1.0

Table of uses

Section 1 - Permit not required

| Use | Condition |
|--|---|
| Accommodation (other than Corrective institution) | Must not be located within the first four storeys of a building or within the first 10 metres of building height above ground level, whichever is the lower height, except for part of a building which provides access such as a lobby or entrance. Any frontage at ground floor level must not exceed 2 metres. |
| Art and craft centre | |
| Child care centre | |
| Cinema based entertainment facility | |
| Dancing school | |
| Education centre | |
| Food and drink premises (other than Hotel and Tavern) | |
| Home based occupation | |
| Informal outdoor recreation | |
| Market | |
| Food and drink premises (other than Hotel and Tavern) | <u>The leasable floor area must not exceed 250 square metres</u> |

| Use | Condition |
|--|--|
| Office | Associated with arts, <u>cultural and creative industry</u> uses. Office use not associated with arts, <u>cultural and creative industry</u> uses must not be located within the first four storeys of a building or above the first 10 metres of building height above ground level, whichever is the lower height. Any frontage at ground floor level to the tenancy must not exceed 2 metres. |
| Place of assembly (other than Amusement parlour, Nightclub and Restricted place of assembly) | |
| <u>Place of worship</u> | <u>The gross floor area of buildings must not exceed 250 square metres</u> |
| Postal agency | |
| Railway station | |
| Tramway | |
| <u>Shop (other than Adult sex bookshop, Department Store and Restricted retail premises)</u> | <u>The leasable floor area must not exceed 200 square metres</u> |
| 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 | |
| Car park | Must meet the requirements of Clause 62.06. |
| Corrective institution | |
| Department store | |
| Hotel | |
| Industry | Must not be a purpose listed in the table to Clause <u>532.10.</u> |
| Leisure and recreation (other than Dancing school and Informal outdoor recreation) | |
| Nightclub | |
| Restricted place of assembly | |
| Tavern | |
| Utility installation | |
| Warehouse (other than Freezing and cool storage, and Liquid fuel depot) | |
| Any other use not in Section 1 or 3 | |

ZONES – CLAUSE 37.04 – SCHEDULE 7

POST-EXHIBITION VERSION AMENDMENT C323

PAGE 1 OF 8

ZONES – CLAUSE 37.04 – SCHEDULE 7

EXHIBITION VERSION AMENDMENT C323

PAGE 2 OF 8

Appendix B: Re-Exhibited CCZ Schedule 7 continued

| | MELBOURNE PLANNING SCHEME | MELBOURNE PLANNING SCHEME |
|---|--|--|
| 2.0 <small>Amended Proposed C323</small> | <p>Section 3 - Prohibited</p> <p>Use</p> <p>Freezing and cool storage Liquid fuel depot</p> <hr/> <p>Use of land</p> <p>Application requirements</p> <p><u>The following application requirements apply to an application for a permit under Clause 37.04, in addition to those specified in Clause 37.04 and elsewhere in the planning scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority. An application to use land must be accompanied by the following information, as appropriate:</u></p> <ul style="list-style-type: none"> • The <u>description of the proposed use purpose-of-the-use</u> and the types of activities which will be carried out. • The compatibility of the proposed use with the purpose of the zone. • The likely effects, if any, on nearby uses and residential amenity including noise levels, traffic, parking, the hours of delivery and dispatch of goods and material, hours of operation, <u>light spill, solar and glare.</u> • <u>An application for a residential use must be accompanied by an acoustic assessment to the satisfaction of the responsible authority, which addresses:</u> <ul style="list-style-type: none"> • <u>The likely noise source to impact the development.</u> • <u>The maximum permissible noise from nearby noise sources.</u> • <u>The necessary measures to attenuate these noise impacts, including how the proposal will meet the following requirements:</u> <ul style="list-style-type: none"> • <u>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 L_{eq}, in accordance with the relevant Australian Standards for acoustic control.</u> <p>Exemption from notice and review</p> <p>An application for the use of 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.</p> <p>Referral of applications</p> <p><u>An application for use of the first four storeys of a building must be referred in accordance with sections 55 of the Act to the referral authority specified in the schedule to Clause 66.04.</u></p> <p>Decision guidelines</p> <p>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:</p> <ul style="list-style-type: none"> • <u>The compatibility of the proposed use with the purpose of this schedule.</u> • <u>Whether the proposed use is compatible with the purposes of this zone and would contribute to:</u> <ul style="list-style-type: none"> • <u>Delivering an arts and creative industries precinct of State significance.</u> • <u>Accommodating the needs of creative industry sectors and a growing residential population above the first four storeys of a building.</u> | <p><u>Maximising opportunities for community access and use.</u></p> <ul style="list-style-type: none"> • <u>The compatibility of impact the proposed use will have on the amenity of existing dwellings and adjacent and nearby sites with any existing uses within the same building or on adjoining and nearby land.</u> • <u>The extent to whether the proposed use serves or supports arts, cultural and creative industry uses.</u> • <u>The extent of arts, cultural and creative industry floor spaces relative to the height and overall floor space of the building.</u> <p><u>The effect that existing uses may have on the proposed uses.</u></p> <p>3.0 <small>Amended Proposed C323</small></p> <p>Subdivision</p> <p>Exemption from notice and review</p> <p>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.</p> <p>4.0 <small>Amended Proposed C323</small></p> <p>Buildings and works</p> <p>Permit Requirement</p> <p><u>No permit A permit is not required to construct a building or construct or carry out works for the following:</u></p> <ul style="list-style-type: none"> • 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 Railway purposes. • 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. |
| | ZONES – CLAUSE 37.04 – SCHEDULE 7 EXHIBITION VERSION ACCESSIBILITY FOR DISABILITY ACTIVITY PAGE 3 OF 5 | ZONES – CLAUSE 37.04 – SCHEDULE 7 EXHIBITION VERSION ACCESSIBILITY FOR DISABILITY ACTIVITY PAGE 4 OF 5 |

Appendix B: Re-Exhibited CCZ Schedule 7 continued

| MELBOURNE PLANNING SCHEME | MELBOURNE PLANNING SCHEME |
|---|---|
| <ul style="list-style-type: none"> 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. <p>A permit is required to demolish or remove a building or works. This does not apply to:</p> <ul style="list-style-type: none"> Demolition or removal of temporary structures. Demolition ordered or undertaken by the responsible authority in accordance with the relevant legislation and/or local law. <p>Before deciding on an application to demolish or remove a building, 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:</p> <ul style="list-style-type: none"> 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. <p>Temporary works must be constructed to the satisfaction of the responsible authority. Temporary works may include:</p> <ul style="list-style-type: none"> 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. <p>Application Requirements</p> <p><u>The following application requirements 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 and must accompany an application, as appropriate, to the satisfaction of the responsible authority:</u></p> <ul style="list-style-type: none"> An application for a permit must be accompanied by 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: <ul style="list-style-type: none"> <u>The compatibility of the proposed development with the purpose of this schedule, State Planning Policy Framework and the Local Planning Policy Framework, zone and overlay objectives.</u> 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 and pedestrian safety. Public infrastructure, including reticulated services, traffic and car parking impact. Vistas <u>The intended arts, cultural and creative industry uses, including the floor area and any specifications or requirements.</u> | <p>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.</p> <p>An application for a permit to construct or carry out works for development of a building listed in 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.</p> <p>An application to construct a building or construct or carry out works for a residential or other noise sensitive use, must be accompanied by an Acoustic Assessment to the satisfaction of the responsible authority, which addresses:</p> <ul style="list-style-type: none"> The likely noise sources to impact the proposed 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: <ul style="list-style-type: none"> 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. <p><u>An application to construct podium carparking must:</u></p> <ul style="list-style-type: none"> <u>Locate car parking on the first floor or above.</u> <u>Sleeve car parking at street frontages with suitably designed floorspace including sufficient depth for the nominated arts, cultural and creative industry use.</u> <p>Exemption from notice and review</p> <p>An application to construct a building or construct or carry out works for a use in Section 1 of Clause 37.04-1 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.</p> <p>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.</p> <p>Referral Requirement</p> <p>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.</p> <p><u>An application for development of the first four storeys of a building must be referred in accordance with section 55 of the Act to the referral authority specified in the schedule to Clause 66.04.</u></p> <p>Decision guidelines</p> <p>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:</p> <ul style="list-style-type: none"> <u>The purpose of this schedule, State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.</u> <u>The comments and requirements of relevant authorities, views of the Office of the Victorian Government Architect as appropriate, as to the architectural expression and materiality of the proposal having regard to the significance of the Melbourne Arts Precinct.</u> |
| ZONES – CLAUSE 37.04 – SCHEDULE 7 EXHIBITION VERSION <u>ADDITIONAL FOR REFERRAL NOTION</u> PAGE 5 OF 8 | ZONES – CLAUSE 37.04 – SCHEDULE 7 EXHIBITION VERSION <u>ADDITIONAL FOR REFERRAL NOTION</u> PAGE 6 OF 8 |

Appendix B: Re-Exhibited CCZ Schedule 7 continued

| MELBOURNE PLANNING SCHEME | MELBOURNE PLANNING SCHEME |
|--|---|
| <ul style="list-style-type: none"> ▪ The convenience of ability for pedestrians, bicycles and vehicles access to move within and through the precinct area. ▪ The impact the proposal will have on street amenity if on-site car parking occupies any of the first four floors of a building and whether any above ground car parking is sleeved by arts, cultural and creative industry or other active uses. ▪ The adequacy of car parking provision and loading bays. ▪ The safety and efficiency of adequacy of vehicle entry and egress. ▪ Whether the building is designed to accommodate arts, cultural and creative industry uses as part of the overall development and over time. ▪ Whether the development provides adequate space and floor to ceiling heights so that it could be adapted for arts cultural and creative industry uses in the future. ▪ The provision of landscaping. ▪ Whether the building enables a The ability to establish a visual relationship between occupants of upper floors and pedestrians, and better surveillance of the street. ▪ The interface between the development and the public realm including: <ul style="list-style-type: none"> ▪ Whether the development contributes to the legibility of the Melbourne Arts Precinct as an arts precinct. ▪ Whether the building design at street level provides for active street frontages, pedestrian engagement and weather protection. ▪ The opportunities for passive surveillance of the public realm from occupants of upper storeys of the development. ▪ The impact the proposal will have on street amenity if buildings are not constructed to the street boundary at ground level. ▪ Whether the development would compromise the function, form and capacity of public spaces and public infrastructure. ▪ The impact on the amenity of any dwellings on adjacent sites. ▪ The development potential of adjacent sites, and whether this will cause an unreasonable loss of amenity to the subject site. ▪ 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 of new habitable rooms. ▪ The adequacy and accessibility of Waste and recycling facilities management. ▪ 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 in perpetuity for excessive periods. | <ul style="list-style-type: none"> ▪ 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: <ul style="list-style-type: none"> ▪ 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. <p>Exemption from notice and review</p> <p>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.</p> |
| <p>5.0</p> <p>~(20)~ Proposed C323</p> <p>Advertising Signs</p> <p>A permit is required to construct and display a sign except for: This does not apply to:</p> <ul style="list-style-type: none"> ▪ Advertising signs exempted by Clause 52.05-4 ▪ An under-verandah business sign if: <ul style="list-style-type: none"> ▪ It does not exceed 2.5 metres measured horizontally, 0.5 metres vertically and 0.3 metres between the faces of the sign; | |
| <p>ZONES – CLAUSE 37.04 – SCHEDULE 7</p> <p>EXHIBITION VERSION AMENDED FOR RE-NOTIFICATION</p> <p>PAGE 7 OF 8</p> | <p>ZONES – CLAUSE 37.04 – SCHEDULE 7</p> <p>EXHIBITION VERSION AMENDED FOR RE-NOTIFICATION</p> <p>PAGE 8 OF 8</p> |

Appendix C: Witness statement

Name and Address

Catherine Anne Heggen
Message Consultants Australia Pty Ltd
2/398 Smith Street, Collingwood 3066

Qualifications

- Bachelor of Town and Regional Planning, Melbourne University 1982
- Fellow, Planning Institute of Australia
- Fellow, Victorian Planning and Environmental Law Association

Professional experience

- Current Position: Director, Message Consultants Australia Pty Ltd
- 1985 – Current: Town Planning Consultant
- 1982 – 1985: Town Planner in local government and regional authorities (Australia & overseas)

Professional appointments

- 1996 – 2002: Member, Victoria's Heritage Council
- 1998 – 2002: Chair, Victoria's Heritage Council
- 1998 – 2002: Trustee, Melbourne Heritage Restoration Fund
- 2001 & 2002: Jury Member, Stonnington Urban Design Awards
- 2001: Jury Member, Australian Institute of Landscape Architects (Vic Chapter) Awards
- 2003: Jury Member, Planning Institute of Australia (Vic Division) Awards
- 2004 – ongoing: Member, Heritage Committee to the Building and Estates Committee – University of Melbourne
- 2005 – 2012: Member, Building Committee – Queen Victoria Women's Centre
- 2011 Member, Ministerial Advisory Committee on Planning System Reform

Areas of expertise

- Extensive urban design advice to architects and project managers involved in medium and high density housing and other built form projects.
- Strategic and statutory planning advice to commercial and institutional clients as well as government and alpine management authorities on a range of residential, environmental, tourism, cultural heritage and urban character issues.
- Consulting advice to a wide range of private sector and government clients addressing the management of urban development and rural land use.
- Project planning and coordination of Institutional Master Plans.
- Experience in the preparation of environmental management plans and Environment Effects Statements for extractive industry.
- Preparation and presentation of evidence before VCAT, and various government appointed independent panels and advisory committees.

Expertise to prepare this report

Professional qualifications and expertise in urban design and town planning, including:

- Urban design and building form impact assessment.
- Ongoing involvement in a range of residential, mixed use, institutional, commercial and extractive industry development proposals.
- Ongoing involvement in cultural heritage, urban character and visual and landscape impact issues.
- Experience in new community development, greenfield subdivision projects and institutional Master Plans.
- Specialist experience in medium and high density housing issues.

Investigations and research

In preparing this addendum I have reviewed:

- The Interim Panel Report dated 3 December 2018.
- The revised Amendment C323 documents exhibited in July 2019.
- The current planning controls and policies of relevance to the Amendment.
- The current status of other strategic planning initiatives including Amendment C308 t the Melbourne Planning Scheme.

I confirm that my instructions are to:

- Review the re-exhibited Amendment C323 material and provide my opinion regarding its merits in light of my evidence on the originally exhibited version and the issues raised in the Interim Panel Report.
- Recommend any further changes or refinements to the Amendment as necessary.

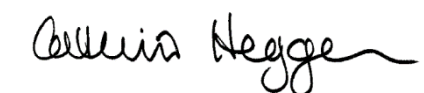
Summary of opinions

My conclusions are summarised in the preamble and conclusion of this report.

Declaration

In accordance with Planning Panels Victoria's Guide to Expert Evidence, I declare that I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

I prepared this report with assistance from Mathew Furness, Associate Director at Message Consultants Australia Pty Ltd.



C A Heggen
BTRP FPIA