

Planning and Environment Act 1987

Final Panel Report

Melbourne Planning Scheme Amendment C323

Melbourne Arts Precinct

16 December 2019

Planning and Environment Act 1987

Final Panel Report pursuant to section 25 of the Act

Melbourne Planning Scheme Amendment C323

Melbourne Arts Precinct

16 December 2019

A handwritten signature in black ink, appearing to read 'Dalia Cook'.

Dalia Cook, Chair

A handwritten signature in black ink, appearing to read 'L. Nervegna'.

Lorina Nervegna, Member

Contents

	Page
1 Introduction.....	1
1.1 The Amendment and its refinement.....	1
1.2 Related strategic work.....	3
1.3 Procedural issues.....	5
1.4 Summary of issues raised in submissions following re-exhibition.....	6
1.5 Panel approach.....	6
2 Strategic support for the Amendment	7
2.1 Earlier Panel conclusions	7
2.2 Further submissions and evidence.....	7
2.3 Discussion and conclusion.....	8
3 Policy provisions	10
3.1 The issue	10
3.2 Evidence and submissions.....	10
3.3 Discussion	11
3.4 Conclusion and recommendations.....	13
4 Capital City Zone (Schedule 7)	14
4.1 Geographic extent of the controls	14
4.2 Purposes of the Capital City Zone Schedule 7	16
4.3 Table of uses.....	23
4.4 Application requirements – land use and development.....	26
4.5 Decision guidelines – land use and development.....	29
4.6 Referral of permit applications to Creative Victoria	36
4.7 Potential transitional provisions	38
5 Further response to submissions	41
5.1 Pacific Asia Express.....	41
5.2 LSH Group Australia Pty Ltd	42
5.3 Manoa Pty Ltd	43
5.4 Other matters raised by submitters.....	44
Appendix A Submitters to the Amendment	
Appendix B Document list	
Appendix C Panel preferred version of Clause 21.13	
Appendix D Panel preferred version of Capital City Zone (Schedule 7)	

List of Figures

	Page
Figure 1 Proposed mapping of Melbourne Arts Precinct for the purpose of Schedule 7 to the Capital City Zone	1
Figure 2 The Ian Potter Southbank Centre, Sturt Street Southbank (John Wardle Architects 2019), public forecourt and cafe (integrated with heritage façade)	30
Figure 3 152-160 Sturt Street.....	31
Figure 4 Sturt Street entrance to the Melbourne Recital Centre and to the right is the Dodds Street elevation of the Southbank Theatre (both by Ashton Raggatt McDougall, 2009) with glimpses of the Victorian College of the Arts School of Drama building in the background to the left of the image (Edmond and Corrigan, 2002)	33

Glossary and abbreviations

Amendment	Amendment C323 to the Melbourne Planning Scheme
CCZ7	Capital City Zone (Schedule 7)
Council	Melbourne City Council
CV	Creative Victoria
DDOX	Design and Development Overlay (Schedule X)
DELWP	Department of Environment, Land, Water and Planning
MSS	Municipal Strategic Statement
OVGA	Office of the Victorian Government Architect
planning scheme	Melbourne Planning Scheme
Precinct	Melbourne Arts Precinct as delineated in the exhibited Amendment documentation
Transformation Project	Melbourne Arts Precinct Transformation Project

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 arts, cultural and creative uses and improve street activation. Amendments are made to Design and Development Overlay Schedule 1, together with associated policy changes to the Municipal Strategic Statement and Local Planning Policy at Clause 22.01. A mapping correction is made under the Parking Overlay.
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, with re-exhibition from 20 June to 25 July 2019
Submissions	Number of original submissions: 4 Submissions following re-exhibition: 12

Panel process

The Panel	Dalia Cook, Chair and Lorina Nervegna, Member
Further Directions Hearing	PPV, 19 September 2019
Further Panel Hearing	Creative Victoria, 28 and 29 October 2019
Further site inspection	Unaccompanied, 13 November 2019
Appearances	<p>Mr Ian Munt of Counsel for Creative Victoria and Melbourne City Council. He called:</p> <ul style="list-style-type: none"> Ms Catherine Heggen, Town Planner, Message Consultants to give expert evidence Mr Daniel Tatton, Manager Strategic Infrastructure Development, Creative Victoria to explain the Melbourne Arts Precinct Transformation Project <p>Ms Wendy Lasica in person</p> <p>Mr David Passarella, Solicitor, Mills Oakley for Pacific Asia Express Pty Ltd</p> <p>Mr Mark Naughton, Solicitor, Planning and Property Partners for LSH Group Australia</p>

	Mr Cameron Gentle, Town Planner, Hansen Partnership, for Manoa Pty Ltd
Citation	Melbourne PSA C323 [2019] PPV
Date of this Report	16 December 2019

Executive summary

The Melbourne Arts Precinct is a recognised and highly valued destination of state and national significance on the edge of the central city extending along the Sturt Street spine. It is anchored by substantial arts institutions with an ambitious planned expansion and reinvigoration process underway. The Precinct also comprises land in private ownership, some of which is used for arts, creative and cultural purposes while other land is used for conventional retail, commercial and residential use.

The Amendment seeks to strengthen the role and function of the Precinct, through changes to local policy and the introduction of a new schedule to the Capital City Zone. A principal mechanism is to encourage the lower four levels of buildings to be used for arts, creative and cultural purposes by creating a tailored table of uses, supported by relevant application requirements and decision guidelines. An inherent challenge is the absence of a definition of 'Creative industry' or similar in the Victoria Planning Provisions.

The Panel originally considered the Amendment in 2018 and issued an interim report following a hearing. It made specific suggestions for further work to improve the content of the Amendment, to provide for more comprehensive outcomes. The Panel reinforces the importance of reading this report in conjunction with the Interim Report, since the analysis and discussion largely continue to apply and are therefore not repeated.

Reflecting on the process, the Panel considers that both the original and updated Amendment have substantially the same content. However, the Amendment was refined and re-exhibited and further submissions were received and referred to the Panel. Melbourne City Council as planning authority and Creative Victoria as proponent have joined together to present a unified position on the Amendment.

Submissions in response to re-exhibition generally expressed support for the concept of a strengthened arts precinct, but raised detailed concerns about the proposed wording and operation of the Capital City Zone (Schedule 7) as the key planning scheme tool.

This is the final Panel report in respect of all outstanding issues. It should be read in conjunction with the views expressed by the Panel in its Interim Report which are largely maintained unless specifically noted.

The Panel concludes that there is sound strategic support for the Amendment. It supports the inclusion of detailed local policy provisions subject to minor refinement as well as the inclusion of a requirement to refer permit applications for use or development to Creative Victoria as a recommending referral authority.

That said, the planning controls need to be mindful of commercial realities, to ensure both the viability of land use and development in the Precinct as well as its overall vibrancy. It has approached its consideration of the Amendment in both its Interim and Final Report with these considerations in mind.

Overall, the Panel is satisfied that the key components of the Capital City Zone (Schedule 7) represent a suitable way forward, subject to recommendations about its detailed content. It will also be important to apply its provisions consistent with the new purpose of this schedule while seeking to achieve workable outcomes.

The schedule has been drafted with an intention to change the status quo, especially for private development in the Precinct, to provide space for arts, creative, and cultural uses in integrated development and land use proposals. It is one potential but legitimate way of seeking to achieve such outcomes and has sought to strike a balance between conventional commercial interests and the need to strengthen the operation and presentation of the Melbourne Arts Precinct.

It will be important for Council to review the operation of CCZ7 in the short to medium term once practical outcomes emerge.

Based on the reasons set out in this Report, the Panel recommends that Melbourne Planning Scheme Amendment C323 be adopted as exhibited subject to the following:

- 1. Amend Local Planning Policy in Clause 21.13 as provided in Appendix C.**
- 2. Council consider the relationship between the provisions of Amendment C323 and the provisions and operation of Amendment C308 to ensure consistent outcomes and terminology, depending on which amendment progresses to approval first.**
- 3. Amend Schedule 7 to the Capital City Zone as provided in Appendix D.**
- 4. Review the practical operation of CCZ7 in the context of the programmed review of the Melbourne Planning Scheme if not earlier.**
- 5. Amend the trigger in Clause 66.04 of the Melbourne Planning Scheme for referral to Creative Victoria to “Any permit application for use or development of land in the first 16 metres of a building above natural ground level or lower four storeys of the building, whichever is the lesser”.**

1 Introduction

1.1 The Amendment and its refinement

(i) Amendment as originally exhibited

The Amendment is intended to provide permanent land use and development controls for the Melbourne Arts Precinct (Precinct) to replace the interim controls currently in place.¹ It applies to land in Figure 1.

Figure 1 Proposed mapping of Melbourne Arts Precinct for the purpose of Schedule 7 to the Capital City Zone



¹ Introduced by Amendment C330.

The Amendment as originally exhibited and as re-exhibited proposes to:

- introduce a new Schedule 7 to the Capital City Zone – Melbourne Arts Precinct (CCZ7) (Clause 37.04) in the Melbourne Planning Scheme (planning scheme)
- 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 and apply Schedule 1 of the Parking Overlay to nominated land rezoned from General Residential Zone (Schedule 1).

The re-exhibited Amendment also proposes additional local planning policy provisions at Clause 21 in the Municipal Strategic Statement (MSS).

(ii) Interim Panel Report

The Panel issued an interim report dated 3 December 2018.² Its substantial finding was that the Amendment was strategically justified and it supported the use of a schedule to the CCZ but recommended further work before adoption, including re-exhibition.

The Panel regarded the proposed CCZ7 as somewhat of a “*missed opportunity to recognise, protect and expand on the features of the Precinct*”.³ It suggested the Amendment could potentially be refined to:

- delineate what makes the Precinct unique or to identify the future character sought
- identify and address the future needs of arts institutions, as distinct from transferring existing zone provisions that apply to the Southbank area of Melbourne as a whole
- consider expanding the geographic definition of the Precinct.⁴

The Panel also observed that current Design and Development Overlay provisions substantially lacked suitable direction for the Precinct. It recommended that Melbourne City Council (Council) carefully consider the interaction between this Amendment and the strategic planning work being undertaken in respect of a proposed new Design and Development Overlay (Central Melbourne Urban Design) being introduced by Amendment C308.

Recommendations were made for future work on refinements recommended by Creative Victoria (CV) (as it was a separately represented authority) and other parties that were not adopted by Council. The Panel also suggested that the need for transitional provisions be considered.

The Panel reinforces the importance of reading this report in conjunction with its Interim Report, since the analysis and discussion largely continue to apply and is therefore not repeated in this report.

² Melbourne C323 Interim Report (PSA) (2018) PPV 116.

³ Executive Summary.

⁴ Ms Lasica (Submitter 4 and 9, respectively) reinforced the Panel’s comments in this regard.

(iii) Re-exhibited Amendment

Council advised that it had considered the Panel's interim recommendations and had worked in partnership with CV to enhance the effectiveness of the Amendment. Essentially, the same planning scheme mechanisms are proposed in the re-exhibited Amendment, subject to:

- alteration and refinement of the provisions of Schedule 7 to the CCZ
- enhanced changes to local planning policy in the MSS at Clause 21.

The Panel regards this work more in the nature of 'fine tuning' rather than representing substantial change to the Amendment as originally exhibited.

Ms Heggen confirmed in her evidence on behalf of Council and CV that the physical context of the Precinct remained largely as it was at the date of the original Hearing, with public realm works advancing somewhat. Council also confirmed that no new planning permits had been granted since that time.

1.2 Related strategic work

(i) Amendment C308 to the Melbourne Planning Scheme

Amendment C308 proposes a revised urban design approach for the Central City and Southbank through a new Design and Development Overlay Schedule 1 – Central Melbourne Urban Design (DDO1). This would replace the existing DDO1 – Active Street Frontages and delete clause 22.01 – Urban Design within the Capital City Zone. It would be accompanied by the *Central Melbourne Design Guide*, which is proposed to be included as an incorporated document in Clause 72.04 of the planning scheme. Significantly for this Amendment, DDO1 is proposed to apply to all land within the Precinct.

The proposed DDO1 would consolidate many existing urban design policies and controls to guide the delivery of a high standard of urban design, architecture and landscape architecture in central Melbourne. It is intended to complement existing built form (building envelope) DDOs with a greater emphasis on the quality of a building's interface with the public realm.

The Panel considering Amendment C308 made a number of recommendations to clarify and refine the controls, mapping and geographical definitions, expression of built form outcomes and design requirements as well as editorial and formatting changes to the *Central Melbourne Design Guide*.⁵

Given the focus of DDO1 on a development's interface with the public realm, specifically at street level and the lower levels of a building (typically the podium), it is relevant that the current amendment will be workable and consistent with the thematic areas included in Amendment C308, namely:

- permeability and through-block connections

⁵ Melbourne C308 (PSA) [2019] PPV 28 (16 May 2019).

- privately owned publicly accessible plazas and laneways
- building alignment
- vehicle parking, loading and waste facilities
- building services where they impact on the public realm
- public realm projections
- weather protection
- active frontages and ground level design
- design detail and building façade materials.

The outcomes of Amendment C308 would apply to all planning scheme CCZ schedules, including CCZ7. Additionally, it would also apply to a number of geographic areas that already have a number of built form or building envelope DDOs applying to Capital City Zones. For the Melbourne Arts Precinct, the relevant built form overlay is DDO60 – Southbank Special Character Areas.

The C308 Panel concluded that the minimum acceptable threshold for design in central Melbourne should be “*high quality design*” – a threshold higher than “*good design*”. However, it supported “*design excellence*” being pursued where development satisfies one of the following conditions:⁶

- abuts significant architecture (heritage or contemporary)
- is hyper dense
- has a complex context
- is on a strategic site or
- is in an area that has a metropolitan function including the Southbank Arts Precinct (current Panel emphasis).

More specifically, Council and CV confirmed their view that Amendment C308:⁷

... is the proper and principal tool for achieving better design consistent with the objectives for the Precinct, the latter [C323] is the tool for achieving the promotion and protection of the Precinct for arts, cultural and creative uses.

In terms of timing, they explained that:⁸

Were Amendment C308 to be approved before the Amendment (and assuming both remained in their current form) the Amendment would no longer need to amend clause 22.01 of the Scheme as that clause would be deleted. Alternatively, if the Amendment were to be approved first then the translation of the policies in clause 22.01 of the Scheme into the revised DDO1 would need to take account of the changes made to clause 22.01 by the Amendment.

The Panel was advised that an officer’s report is likely to be presented to Council in respect of Amendment C308 in January 2020.

⁶ Chapter 2, Threshold issues in managing design, at Chapter 2.1.iv (C308 Panel Report May 2019).

⁷ Part A submission, paragraph 36.

⁸ Part A submission, paragraph 34.

(ii) Melbourne Arts Precinct Transformation Project (Transformation Project)

Mr Tatton on behalf of Council and CV provided the Panel with an overview of the Transformation Project which is to be delivered by Development Victoria over the next decade.⁹ Council and CV explained that the Transformation Project is a “*State government initiative to re-imagine the north extent of the Precinct*”.¹⁰

Works comprise the redevelopment of No 1 City Road with performance spaces, art gallery, music vault and educational facilities, upgrades to the Arts Centre and a new flagship NGV Contemporary development at 77 Southbank Boulevard (the former Carlton United Brewery site). Public realm improvements also include extensive proposed ‘decking’ over Sturt Street.¹¹

The geographic extent of the Melbourne Arts Precinct for the purpose of this Amendment is broader than the land included within the Transformation Project, which focuses in particular on key current and emerging arts institutions near the intersection of Sturt Street and Southbank Boulevard.

The Panel was advised that a Melbourne Arts Precinct Transformation Master Plan including design guidelines was being developed. The Melbourne Arts Precinct Masterplan Steering Committee includes the Department of Premier and Cabinet and the National Gallery of Victoria.

1.3 Procedural issues

Mr Naughton on behalf of LSH Group Australia expressed concern at the resumed Directions Hearing that Council and CV were now proposing to be represented jointly. He explained that it would be difficult for the Panel and parties to be confident that their interests are ‘one’ and would remain as such for the duration of the matter.

Mr Naughton requested that these authorities prepare a joint letter to the Panel and parties, confirming their positions and the nature of their joint representation and instructions to Mr Munt (acting on behalf of both authorities). The Panel made a direction accordingly.

Council and CV provided a letter to the effect that both authorities agree on the text of the Amendment in its modified form, and proposed to present a joint and unified case to the Panel including a joint response to submissions, evidence and representation. They advised that they “*intend to continue to co-operate on Amendment C323 following receipt of the panel’s final report*”.¹²

⁹ He gave oral evidence and was subject to questioning and spoke to a written outline (Document 4A).

¹⁰ Part A submission, paragraph 25.

¹¹ Part A submission, paragraph 26 (d).

¹² Document 2A.

1.4 Summary of issues raised in submissions following re-exhibition

The second round of submissions consisted of a mix of support for the Amendment (subject to changes in some instances) and opposition to particular elements of proposed amended CCZ7 in particular. Matters raised in opposition included:

- the geographic delineation of the Precinct
- concern about the proposal to facilitate arts, cultural and creative industry uses in the first four floors of a building in the purpose and decision guidelines of the CCZ7
- the removal of the additional reference to height in metres leaving the reference to only the first four floors
- opposition to the requirement for a planning permit to use the first four floors of a building for accommodation or office not associated with arts, creative or cultural uses
- the challenges involved with some sites meeting the purpose of the schedule especially if height restrictions apply or large floorplates are provided
- the use of the term “legibility” as part of the Precinct as a desired land use or design response
- misgivings about the potential role of CV as a referral authority.

Some submitters remained concerned that the re-exhibited Amendment did not address their original concerns or would not achieve intended outcomes.

For example, Mr Passarella submitted that although his client (Asia Pacific Express Pty Ltd) broadly supported the Amendment, there were important outstanding issues relating to the redevelopment potential of its site with the new CCZ7 schedule that could render it unfeasible. Likewise, Mr Naughton submitted that his client (LSH Group Australia) remained concerned about the permissible uses at the four lower levels of any new development on their site as well as the wording of the controls with respect to “legibility”. Mr Gentle (for Manoa Pty Ltd) echoed these concerns. These submissions are discussed in further detail at Chapter 5.

1.5 Panel approach

This report deals with the issues under the following headings:

- Strategic support for the Amendment
- Policy provisions
- Capital City Zone (Schedule 7)
- Further response to submissions.

2 Strategic support for the Amendment

2.1 Earlier Panel conclusions

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, albeit to a lesser extent in local policies. Substantial strategic work has also been undertaken for the Precinct¹³ and is continuing as part of the Melbourne Arts Precinct Transformation Project.

The Amendment principally seeks to encourage arts, creative and cultural uses on the lower four floors of buildings in the Precinct. In its Interim Report, the Panel observed that:¹⁴

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.

The Panel concluded on this issue:¹⁵

... 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.

2.2 Further submissions and evidence

When giving evidence for Council and CV, Ms Heggen acknowledged the Panel's earlier conclusions about the nature of the "*missed opportunity*" for the Amendment to reconsider the geographic extent of the Precinct, to identify and build upon features that make the Precinct unique and to more directly meet the needs of established and emerging arts institutions.

¹³ Including the *Southbank Strategic Plan 2010* and the *Melbourne Arts Precinct Blueprint 2014*.

¹⁴ Chapter 2.5.

¹⁵ Chapter 2.6.

Ms Heggen agreed with the Panel, although she considered this was not fatal to the progress of the Amendment and should be pursued in future strategic work, with the current Amendment providing a suitable platform.

The Panel asked Mr Tatton from CV and the parties whether the proposed planning scheme provisions would apply to facilitate the substantial redevelopment and renewal works associated with the Transformation Project. He and Council and CV responded that the approval pathways were still being explored, possibly involving the application of a Development Plan Overlay.¹⁶

In terms of the relationship between the Transformation Project and this Amendment, Council and CV submitted that:¹⁷

Both the Amendment and the Transformation Project have the same objective: to strengthen the role of the Precinct as Victoria's pre-eminent arts, culture and creative industry hub, to encourage greater contact and collaboration between bodies within the Precinct, and to enhance its connections to the balance of Southbank, the Yarra River and the CBD.

It follows the Amendment would not hinder achievement of the Transformation Project and nor would the Transformation Project undermine the Amendment. Rather, the Transformation Project would spur precisely the activity and amenity that would encourage arts, cultural and creative industries to take up space in new mixed use development sites.

2.3 Discussion and conclusion

While the Panel identified greater potential for the Amendment to be re-worked to provide for the future of the Melbourne Arts Precinct, it is not in a position to direct this work either within the scope of this Amendment or otherwise.

For the record, the Panel notes that even with the benefit of the Panel-recommended provisions for Amendment C308, there is still little guidance in the planning scheme to distinguish the existing or preferred built form context of the Sturt Street spine with its iconic arts institution buildings and its potential for active Precinct linkages from the rest of the Capital City or Southbank.

It was evident to the Panel from submissions and evidence for Council and CV at the resumed hearing that they have taken the decision for the time being to largely keep the scope of the Amendment as originally exhibited. That is, its genesis and main focus remain concerned with the need to align the development and use of private land in the Precinct more closely with Precinct objectives. This was consistent with Ms Heggen's description of the Amendment as "*seeking to solve a land use problem*" which would be applied in addition to the Design and Development Overlay – the latter considered as the principal tool to guide appropriate built form.

¹⁶ Presumably in the form of a bespoke schedule.

¹⁷ Part A submission, paragraphs 29-30.

In reality, there are relatively few sites in private ownership in the Precinct that are likely candidates for fulsome redevelopment.¹⁸ Most are south of the new University of Melbourne Ian Potter Southbank Centre building. At the same time, the use and development of those sites has the potential to contribute in a material way to the objectives proposed for the Precinct, especially to extend the recognised extent of the Precinct along the full length of Sturt Street.

Given the scope of the Amendment as it stands, it is appropriate for the Panel to adopt its earlier conclusions in respect of its strategic justification. That is, the Amendment is supported by and implements relevant sections of the Planning Policy Framework and is consistent with relevant Ministerial Directions and Practice Notes. It is suitably founded and strategically justified.

The Amendment should proceed subject to addressing more specific issues raised in submissions which are principally directed at the wording of policy provisions and zone controls as discussed in the following chapters.

¹⁸ While there is a relatively high proportion of existing low rise townhouse development, the ownership arrangements of such land are not known but are anticipated to make it challenging for these sites to be redeveloped in their entirety with taller mixed use buildings with concealed car parking facilities.

3 Policy provisions

3.1 The issue

The originally exhibited Amendment did not propose enhancement of local planning policies to support its content.

At the original Hearing, both Ms Heggen and CV recommended a series of additions to local planning policy to this effect.

The re-exhibited Amendment proposes to add to the following provisions to strengthen the strategic base for the permanent planning controls:

- Clause 21.04 (Settlement)
- Clause 21.08 (Economic Development)
- Clause 21.10 (Infrastructure)
- Clause 21.13 (Urban Renewal areas).

The issue is whether the amended suite of policy provisions in the re-exhibited Amendment is appropriate or should be further refined.

3.2 Evidence and submissions

(i) Policies in Clause 21 (Municipal Strategic Statement)

In evidence at the original Hearing, Ms Heggen recommended a suite of changes to local policies as a suitable adjunct to the provisions of CCZ7. A marked-up version was also proposed by CV at that time.¹⁹ The re-exhibited Amendment included further modifications to policies at Clause 21 of the planning scheme which adopted many of the CV suggestions in principle.

Ms Lasica, an individual submitter, strongly supported the version of local policy as recommended by CV in the original Hearing. She considered this was more detailed and directed to the significance and future planning of the Precinct.

In evidence at the further Hearing, Ms Heggen supported some elements of the version originally proposed by CV that had not been picked up, in preference to the re-exhibited version. Key suggestions by Ms Heggen included:

- amendment to Clause 21.08 (Economic Development) to include:
 - an 'Arts and culture' heading and summary
 - reference to 'culture' in Objective 1 of Clause 21.08-2 'Business'
 - specification of a new objective in Clause 21.08-6
- amendment to Clause 21.13 (Urban Renewal Areas) to include additional dot points:

¹⁹ Document 5.

- under 'Economic Development' to *"strengthen the ongoing role of the Arts Precinct by facilitating the provision of floor space for creative industries in the precinct, particularly within the lower four storeys of a building"*
- under 'Infrastructure' to *"facilitate the provision of floor space for creative industries, including arts and arts education, especially in the Arts Precinct"*.

Council departed from this position and urged the Panel to support policy provisions within the Amendment largely as re-exhibited.

Originally, the Australian Ballet (Submitter 3) requested specific reference in policy to it and other key institutions in the Precinct. In a revised submission to the Panel, it acknowledged that a Precinct-wide approach would be acceptable.²⁰

(ii) Local Planning Policy at Clause 22.01

It is important to note that Clause 22.01 (Urban Design within the Capital City Zone), that is proposed to be amended by Amendment C323 to make specific reference to CCZ7, is also proposed to be deleted by Amendment C308.

The Panel requested Council address the interaction between these two Amendments. The response is recorded in Chapter 1.2 above.

Council submitted that both Amendments seek to lift the quality of urban design in the Precinct, but that this will be principally achieved through C308. The current Amendment would be consistent with C308 by seeking to ensure a threshold of *"design excellence"* in the Precinct including involvement of the Office of the Victorian Government Architect (OVGA) as appropriate.

3.3 Discussion

The iterations of proposed local policy changes presented to the Panel have a similar intent to those discussed at the original Hearing. The question is which form of wording will best reflect current and future aspirations for the Precinct.

An overarching consideration as highlighted by the Panel at the further Hearing is the need for policies in the planning scheme for this Precinct to be generally proportionate to those for other key precincts in the City of Melbourne, such as the urban renewal, employment, sports and entertainment and health and education precincts.

The Melbourne Arts Precinct sits within an important urban renewal area. The Panel considers that a suitable balance has been struck in the wording of amended Clause 21.04 between the arts and culture aspirations for the Precinct, and its context, especially in so far as it puts the Precinct into the broader Southbank context and expands the future vision for the land use mix in an extended central city.

²⁰ Dated 3 September 2019.

Beyond this, the Panel agrees with Council and CV that there is justification to bolster Clause 21.08 (Economic Development) to a limited extent, although it considers that the further inclusion of reference to arts and culture in the heading of Objective 1 to Clause 21.08-2 as supported by Ms Heggen would arguably overstate the influence of this sector over a myriad of others that are not referenced specifically.

The Panel does not have a concluded view about whether it is appropriate to include a separate heading 'Arts and culture' in the outline or opening to Clause 21.08. One reason for this is that no evidence or documentation was provided to identify whether this sector is of comparable economic significance to others already listed, such as retail and business. There are conceivably other sectors that should equally be considered as additions if a full review of this clause was undertaken, such as tourism or sport.

Ultimately, the inclusion proposed by Ms Heggen is not necessary to bolster the policy basis of the Amendment, so long as support for the enhancement of the role and contribution of the Melbourne Arts Precinct with suitable floor space opportunities is identified elsewhere in the policy. The Panel suggests that the inclusion of a separate 'Arts and culture' heading in this part of the clause could potentially be re-visited as part of the conversion of local policies to the Municipal Planning Strategy, which anticipates a potentially more streamlined approach in any case.

The Panel supports the inclusion of the new Strategy 1.8 proposed in the re-exhibited Amendment and regards the following wording as sufficient:

Recognise the contribution of arts, cultural and creative industries to the economic health, vitality and competitive strength of Melbourne.

On balance, the Panel considers that a separate objective in Clause 21.08 with a related strategy (as supported by Ms Heggen) is not warranted unless there are connected strategies that directly pertain to economic development. Instead, it considers that support for the expansion of creative industries and 'Precinct legibility' issues are best addressed under other policies of the planning scheme such as Clause 21.10 (Infrastructure). This is because the Amendment principally relates to floor space allocation and providing additional capacity for arts, cultural or creative use.

The Panel considers that the more detailed aspirations for the Precinct are best addressed in Clause 21.13 (Urban Renewal Areas) as supported by Ms Heggen. It is reasonable to refer to strengthening its ongoing role by providing suitable floor space, as well as the urban design objectives for the Precinct. This level of specificity appropriately draws on the broader policy statements supported by the Panel in the provisions referred to above.

The Panel's preferred version of local planning policy is provided in Appendix C in respect of elements where it has recommended changes. If no changes have been recommended expressly (such as for Clause 22.01), the Panel supports the version of policy as re-exhibited.

Relationship with C308

In summary, the Panel accepts the submission on behalf of Council and CV that the two Amendments are inter-related but generally complementary. At this stage, it is not known which will be progressed first in time.

The Panel also agrees with parties that it will be important for Council to carefully integrate the content of Amendment C323 with the content of Amendment C308, depending on which progresses to approval first. The two Amendments will need to be synthesised for maximum effectiveness in terms of both content and terminology since they are intended to operate side by side.

It appears to the Panel that the approach taken by Amendment C308, to delete the local planning policy provision at Clause 22.01 and to bolster the relevant schedule to the Design and Development Overlay is more consistent with the structure of new format planning schemes introduced by state-wide Amendment VC148.

3.4 Conclusion and recommendations

The Panel concludes:

- The proposed additions and refinements to local planning policy in the re-exhibited Amendment are supported subject to modifications to wording as recommended by the Panel.

The Panel recommends:

- 1. Amend Local Planning Policy at Clause 21.13 as provided in Appendix C.**
- 2. Council consider the relationship between the provisions of Amendment C323 and the provisions and operation of Amendment C308 to ensure consistent outcomes and terminology, depending on which amendment progresses to approval first.**

4 Capital City Zone (Schedule 7)

The CCZ7 is at the heart of this Amendment to facilitate land use and development outcomes to progress the vision for the Melbourne Arts Precinct. The wording of this schedule received substantial attention in submissions and evidence at both hearings and the Panel asked many questions to clarify the intent of its provisions.

4.1 Geographic extent of the controls

(i) The issue

The issue is whether the boundaries of the Precinct are acceptable for the purpose of the CCZ7. This issue was raised by submitters in various guises and by the Panel itself as to whether the area was sufficiently broad to create an integrated, nuanced precinct with scope for complementary land use.

(ii) Submissions

The Australian Ballet submitted that the geographic boundaries of the Arts Precinct should be broadened (and as echoed in Ms Lasica's submission) as follows:²¹

We support the proposition of coordinating understanding of what constitutes the Arts Precinct, noting that the proposed Design and Development Overlay differs from the earlier Blueprint work and the current Melbourne Arts Precinct Transformation scope.

We would suggest a broader application of the mapping, aligning this with current broader precinct and core mapping being undertaken by Development Victoria (including Southbank Boulevard to the west) to ensure that the strategic underpinning State curation of the sector is supported by the planning scheme.

In its revised submission, the Australian Ballet explained:

As the owners of the only privately-owned building directly impacted by the Melbourne Arts Precinct Transformation Plan, we are conscious of the potential impacts of the Plan on any future development of the Primrose Potter Australian Ballet Centre and we are concerned that there may be confusion between the planning amendment and the proposed Design and Development Overlay for the Melbourne Arts Precinct Transformation Plan.

Our recommendation to apply an exemption from Amendment C323 to the holdings of the institutions in the core area, from Hamer Hall to the National Gallery of Victoria, was intended as a potential solution to prevent such confusion.

Another submitter (Number 8) suggested that the Panel should consider excluding low rise residences from the Amendment, since they give the area of Southbank Village its valued character and amenity.

²¹ Submission No 3 from the Australian Ballet, 4 July 2019.

(iii) Discussion

The Precinct boundaries for this Amendment have been set through longstanding strategic work as discussed in the C323 Interim Panel Report. It appears that these were:

... 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*)²²

and that:

The Sturt Street spine in and of itself has long been recognised and promoted as a key arts cultural spine of State significance.²³

This position was re-confirmed by Council and CV at the further Hearing. They also explained that properties such as the University of Melbourne Southbank Campus (Victorian College of the Arts) and the Victorian College of the Arts Secondary School had been excluded from the Precinct boundaries for the purpose of the Amendment because of their inclusion in the Public Use Zone (rather than the Capital City Zone).²⁴

The Panel considers that it is vital that both public and private land used for arts, creative and cultural purposes (including by key institutions) be included in the Precinct where such land is within the Capital City Zone. This position was supported by numerous institutional submitters to the re-exhibited Amendment²⁵ and provides the anchor for the controls proposed.

The fact that more direct forward planning may be undertaken for key institutions using subsequent or varied planning scheme provisions does not preclude the provision of specific zone controls for land in the Precinct, especially when they are consistent with the current and potential future use of major institutions.

It is noteworthy that this Amendment has confined the Precinct boundaries to a core of the original area defined in earlier strategic planning that is, the Sturt Street spine, and not to the larger area of land bounded by Southbank Boulevard to the north, Kings Way to the west, Coventry Street to the south and St Kilda Road to the east as previously demarcated in other strategic work.²⁶ The Panel previously remarked that:²⁷

... this runs the risk of a loss of contextual understanding of the broader area and key connections within it and outwards.

Nevertheless, Council and CV have sought not to revisit the precinct boundaries for the purpose of this Amendment and they remain as exhibited in 2018.

²² Page 11, Melbourne C323 Interim Report.

²³ Page 24, *Southbank Structure Plan 2010*.

²⁴ This responded to questions asked by the Australian Ballet and LSH Group Australia Pty Ltd.

²⁵ Except for the revised position of the Australian Ballet.

²⁶ Including the *Melbourne Arts Precinct Blueprint 2014*.

²⁷ Page 13, C323 Interim Panel Report at Chapter 1.2.

Although the current boundaries also include low scale residential unit development that may not be realistic candidates for redevelopment due to ownership arrangements²⁸, the Panel supports their inclusion in the Precinct. If there was ever practical capacity to agglomerate land interests within such developments, these sites would constitute prime contributors to the vision for the Precinct, being large and often centrally located.

The permissible heights for future development have been included in the planning scheme through earlier amendments following due process. This Panel is not able to revisit the height limits despite concern expressed by local residents about the potential for overdevelopment.

The Panel considers the suitability of including land up to Dodds Street, Southbank within the Precinct boundaries in Chapter 5.1.

(iv) Conclusions

The Panel concludes:

- The Panel maintains the view expressed in its Interim Report that there is scope to extend Precinct boundaries in line with detailed strategic work already undertaken on behalf of Council and key institutions.
- However, the more limited geographic boundaries confirmed for the Precinct by Council and CV in the re-exhibited Amendment are acceptable in so far as they reflect existing mapping of the Precinct in the MSS.

4.2 Purposes of the Capital City Zone Schedule 7

(i) The issues

Some elements of the purposes of the re-exhibited CCZ7 were not overly contentious, such as the intent to strengthen the Precinct as an arts, cultural and creative industry precinct of State significance, which was largely supported by all submitters.

Other proposed purposes were debated at the Hearing. The issues are:

- whether the schedule should seek to facilitate arts, cultural and creative industries or uses by providing appropriate spaces *“within the first four storeys of buildings”*
- the inclusion of proposed examples of arts, creative and cultural industry uses
- the appropriateness of seeking *“design excellence”* for buildings within the Precinct
- the suitability of the aspiration for buildings to contribute to the *“legibility”* of the Precinct.

²⁸ For example, the townhouse complex with centrally located shared open space at 120 Sturt Street, Southbank.

(ii) Facilitating arts, cultural and creative industries in the first four storeys

Evidence and submissions

The Amendment as originally exhibited sought diversity of arts, creative and cultural uses (including studios, galleries, rehearsal spaces and the like) within the *“first four storeys of buildings”*. This was supplemented by greater detail in the Table of uses in proposed Clause 1.0 which referred to *“the first four storeys of a building or within the first 16 metres of building height above ground level, whichever is the lower ...”*

By contrast, the version of the CCZ7 proposed by CV at the original Hearing referred to the more generic term, ‘lower’ floors of buildings, compared with ‘upper’ floors used elsewhere. At the original Hearing, submitters such as LSH Group Australia generally supported the greater flexibility that would be associated with the use of the term ‘lower’ and ‘upper’ floors of buildings.

The re-exhibited version supported by both Council and CV now refers to the first four storeys of a building in both the purpose and Table of uses.

The Panel queried why the alternative reference to *“first 16 metres of a building”* had been deleted given its earlier support for this wording in its Interim Report. Council and CV advised that this was a result of instruction from DELWP. However, DELWP did not provide clear reasoning to the Panel as to why this was necessary or appropriate especially having regard to the Ministerial Direction on the Form and Content of Planning Schemes.

A number of submissions from land owners in the Precinct raised concerns that the reference to a preference for arts, creative and cultural uses within the *“first four floors”* of buildings was too prescriptive; with the consequence that it would either be unachievable or may make certain types of development and land use unviable. This was particularly emphasised by submitters with large land holdings such as Manoa Pty Ltd or with height restrictions such as Pacific Asia Express Pty Ltd as elaborated in Chapter 5. They urged the Panel to reinstate the broader wording referencing ‘lower’ and ‘upper’ floors of buildings if this approach was to be pursued.

It is worth noting here that in Amendment C308, DDO1 will (if approved) require the first 20 metres of a building to consider higher ceiling heights for more adaptable uses. The C308 Panel Report states:²⁹

There is a general issue with respect to ceiling heights as to whether a minimum of 3.5 metres floor to floor heights would be sufficient in the lower 20 metres of a building. This requirement is consistent with the proposed controls for the Southbank Arts Precinct (C323 Interim Report December 2018), but in contrast to other schemes. For example the Panel for Amendment C172 Chapel Street Activity Centre proposed that the minimum floor to floor in the lower floors of a building of 4.0 metres for the first level (ground floor) and 3.8 metres for the subsequent lower floors to cater for future building adaptability; this was in response to the suitability of heights for commercial floors at lower levels.

²⁹ Page 56, Melbourne C308 (PSA) [2019] PPV 28 (16 May 2019).

Discussion

The Panel regards this measure as a key mechanism to facilitate the overarching intent of the Amendment to strengthen the Precinct as an arts, cultural and creative precinct of State significance.

The Panel maintains the position outlined in Chapter 4.4(ii) of its Interim Report. Specifically, it accepts Council and CV's submissions that there is a need to 'change the status quo', especially for emerging private development within the Precinct. In the absence of this, market forces are leading to conventional commercial and residential towers especially along Sturt Street, often without provision or possibility for arts, cultural or creative uses either at development stage or in future retrofits.

The Panel considers that ensuring the provision of appropriate space for arts, cultural and creative uses are entirely legitimate aspects of the Amendment and are a feature that will strengthen the distinctiveness of the Precinct.

Many types of arts, cultural and creative uses have particular physical requirements or are best facilitated by adaptable spaces given diverse demands. Theatre or circus performance or rehearsal spaces may have different requirements to sculpture studios, for example. Many arts, cultural or creative uses may require higher than average ceiling heights or mezzanines.

The question is whether the schedule should specifically nominate the parts of buildings in which such uses are preferred.

In the Panel's opinion, the first (lower) four storeys or, preferably, the first 16 metres of a building whichever is the lower is a reasonable starting point for the reasons explained in its Interim Report.

This view is formed on the basis that the schedule does not seek to mandate the use of lower levels for this purpose, either partially or exclusively. Rather, it is a physical measure intended to guide the exercise of discretion. The Panel believes that this exercise of discretion by decision makers will be critical for the success of this particular measure.

DELWP appears to be seeking a particular approach that references the term 'storeys' which is defined in the planning scheme. Even so, the Panel notes the many complex decisions of the Victorian Civil and Administrative Tribunal as to what constitutes a 'storey'.

The Panel has considered Planning Practice Note 60, September 2018 which relates to Height and setback controls for activity centres. It provides guidance that could be applied equally to this Precinct as follows:

References to building heights and setbacks

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

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

In terms of what is appropriate for the current provisions, floor to ceiling heights already vary across existing development in the Precinct. Arts and creative uses have varying requirements depending on the nature of the use. As explained in its Interim Report, the Panel prefers the 16 metre measure to cater for flexible floor to ceiling heights that are often desirable for creative uses. It explained:³⁰

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.

The Panel notes that Amendment C308 refers to the lower 20 metres of buildings, and recommends floor to ceiling heights at ground level of a minimum of 3.5 metres. The Panel's recommendation for the current Amendment would provide a consistent approach.

The maximum building heights for land along the Sturt Street spine (Area 4A in DDO60) are a preferred maximum of 40 metres, generally consistent with more recent development in the Precinct (with a floor area ratio of 10:1 as a modified requirement). The Panel considers that a discretionary requirement to make provision for arts, creative and cultural uses within the lower four levels or 16 metres of a building, whichever is the lower, is reasonable.

A judgement will need to be made about the extent to which each proposal would in fact contribute to the purpose of the schedule. In some instances, a single purpose-built arts, cultural or creative facility at ground level may be entirely adequate. This will need to be considered in the broader exercise of discretion and relates to the comments throughout this report that the provisions of the schedule will need to be applied qualitatively.

(iii) References to examples of arts, creative and cultural industry uses

Evidence and submissions

The CCZ7 purposes have been redrafted to make specific reference to types of arts, cultural or creative uses such as media, design, literature, fashion, cultural heritage, arts education and the like. Arts Centre Melbourne (Submitter 4) supported this approach to clarify what form artistic and creative offerings may take. Mr Munt advised that the specific types of uses referred to were informed by the current work of CV.

At the original Hearing, CV had proposed a 'note' before the Table of uses describing "*Creative industries*" for the purposes of the schedule. The Panel understood this approach but had some reservations given the desire to streamline the content and format of planning scheme provisions, especially the need for consistent land use definitions across the Victoria Planning Provisions.

³⁰ Page 47, Chapter 4.4 (ii).

At the resumed Hearing, DELWP confirmed that it has no current intention to expand the land use definitions in the Victorian Planning Provisions to include “*Creative industries*” or similar.

The Panel asked the parties whether it would be preferable to refer to broader types of uses, especially given the constantly emerging nature of this industry, as emphasised by Ms Lasica. Those parties who responded indicated that they would be comfortable if the Panel made a recommendation to this effect.

Discussion

The Panel does not see any real benefit in individually documenting creative uses for this Precinct. A risk of making reference to particular types of arts, cultural or creative uses is that it may become outdated within a short period of time, or may suggest that only nominated types of creative uses are encouraged by the schedule.

In reality, such uses are incredibly diverse and it is important to encompass emerging uses over time. Also, not all these uses can be described as ‘industry’. Industry is but one sub-set of such uses, commonly relevant to creative uses.

In these circumstances, the Panel considers it is preferable to refer to “*supporting the growth of a full range of arts and cultural uses and creative industries*”.

(iv) References to ‘design excellence’

Evidence and submissions

Council and CV acknowledged that the proposed DDO1 contained in Amendment C308 sought to elevate the acceptable threshold of design quality in the Arts Precinct to “*design excellence*”, and that this threshold is elevated above the “*high quality*” threshold generally sought in central Melbourne.

This was not expressly contested in the Hearing and no specific submissions were made on this purpose of the CCZ7. Mr Munt submitted that this was a sound objective that would direct new buildings to express a connection to the Arts Precinct in response to Amendment C308.

There was some discussion about how the threshold of “*design excellence*” would be measured or determined and whether the involvement of the Office of the Victorian Government Architect (OVGA) could be a requirement or whether referral of applications to Council’s own internal urban design team would be appropriate.

Mr Tatton advised that for larger civic projects underway, such as No 1 City Road and NGV Contemporary, a Design Quality Team was generally employed to review architectural excellence and that although this was not an OVGA constituted Design Review Panel, the OVGA was represented on this team.

Discussion

The Panel considers that the purpose of the zone ensuring new buildings deliver “*design excellence*” is sound, workable and appropriate for this arts precinct of State significance.

The C308 Panel report provides useful guidance:³¹

When it comes to design excellence, clearly the bar is much higher and requires the skills and talent of highly competent and innovative architects, together with sympathetic clients. This is especially appropriate for strategic sites and civic works. It would be appropriate for Council to advocate for design excellence where any of the following apply:

- the development abuts significant architecture (heritage or contemporary), or
- the development is hyperdense, or
- the development has a complex context, or
- the development is on a strategic site, or
- the development is in an area that has a metropolitan function including the Southbank Arts Precinct.

The key issue is how it can be measured or determined that an application meets this threshold.

The Panel is of the opinion that in assessing whether a proposal meets the threshold of “*design excellence*”, a variety of strategies could be employed such as internal urban design referrals at Council (acknowledging that Council’s Urban Design unit is skilled and well regarded), design review panels (possibly through the OVGA) or other quality based selection methods such as design competitions or peer reviews. This is discussed further in Chapter 4.4 below.

(v) References to contributions to the “*legibility*” of the Precinct

Evidence and submissions

The use of the word “*legibility*” was debated in the Hearing.

Mr Munt on behalf of Council and CV submitted that “*legibility*” is an appropriate word to express the intent of the Amendment and, since “*no-one can think of a better term ... it is important that it is there*”.

Ms Heggen stated that if the term “*legibility*” of the Precinct was not supported, the intent could be expressed in a different manner for example, “*the capacity to read and understand*” the building as part of the Precinct. In her opinion, this would be highly dependent on the use of the lower levels of buildings and the visual connections provided.

LSH Group Australia submitted that the reference to the legibility of the Arts Precinct should be deleted from the schedule as it was subjective and unclear.

³¹ Page 9, C308 Panel Report.

Following the Hearing, the Panel requested that Council and CV give further consideration to whether the use of the term “*legibility*” was suitable or whether another description was preferable. They submitted:³²

MCC and CV have reviewed our position and consider that the term “legibility” best captures a sense of place for the Melbourne Arts Precinct. Legibility will be mainly determined by the delivery of arts, cultural and creative industries on the first four storeys of buildings and through design excellence reinforced by the role of the Office of the Victorian Government Architects. We are unable to provide any other acceptable wording to replace the term “legibility”.

Discussion

In the Panel’s view, a critical point of distinction for successful development in this part of Southbank is that it should connect with or contribute to the sense of place as an arts precinct. Legibility as part of this precinct can be expressed in subtle or more overt ways. It can be expressed by land use, development or both.

The schedule rightly does not seek to prescribe the way this should be achieved. It simply provides this as a desired outcome, which the Panel regards as an important element in strengthening the Precinct, especially towards its southern, less cohesive end.

Past strategic work including the Southbank Structure Plan, the Southbank Study Area and the C171 Panel Report has not singled out the Arts Precinct as warranting specific or unique built form controls to differentiate it from the rest of Southbank or the Hoddle Grid (apart from mandatory height controls given effect through DDO60 through Amendment C270). In short, were it not for differentiating factors in the schedule to the CCZ, buildings in the Arts Precinct would otherwise be subject to the same design requirements and objectives as a tower in the Central City or Southbank.

The Panel expressed the view early in its consideration of the original form of the Amendment that there was justification for considering more defined built form aspirations for the Precinct. Although this was not pursued in full as part of this Amendment, it follows that the more general aspirations of the schedule to establish a sense of place and an integrated relationship with the public realm are supported.

In terms of the language proposed in the schedule, many terms used to express urban design concepts can be hard for a non-specialist to understand. For example, other elements of the schedule that were not opposed include ‘street frontage activation’, ‘passive surveillance’, ‘pedestrian engagement’ and the like. Each of these relies on a qualitative and contextual assessment.

The Panel considers that the concept of legibility is part of this suite of urban design terminology that can be justified to achieve specific requirements. This is subject to two basic provisos – first, that the underlying objective is justified and second, that there is no other simpler, effective alternative. The Panel considers this is the case for this schedule,

³² Document 17.

which seeks to create a precinct that reads as a distinctive and cohesive arts precinct of State significance.

The Panel notes that the term 'legible' is also used in DDO1 proposed in Amendment C308 to describe the physical architecture of a place or element of a building (such as entries, pedestrian connections and urban blocks). The C308 panel supported the use of the term in that context after considering detailed evidence and submissions.

(vi) Conclusions

The Panel concludes:

- It is appropriate for CCZ7 to seek to facilitate arts, cultural and creative uses within the lower four floors of buildings or preferably, within the lower 16 metres of buildings above natural ground level.
- It is preferable to refer to arts and cultural uses and creative industries broadly, rather than seeking to document examples or categories, to allow for a diverse range and emerging uses.
- Consistent with the recommendations of the Panel for Amendment C308, it is reasonable to seek 'design excellence' for buildings in the Melbourne Arts Precinct.
- The term "legibility" of the Precinct in the CCZ7 purposes is capable of being understood and applied to mean establishing a sense of place within an arts precinct. Legibility could derive from a wide range of built form or land use elements.
- Refinement to the wording of the zone purpose should be made consistent with the Panel's preferred version in Appendix D.

4.3 Table of uses

(i) The issues

The issues are the appropriateness of:

- permit requirements for arts, cultural and creative land uses
- permit requirements for conventional office or residential use on the lower four floors of buildings
- the floor area conditions for uses such as Food and drink and Shop without a planning permit.

(ii) Permit triggers for arts, cultural and creative land uses

Evidence and submissions

While arts, creative and cultural uses are encouraged on the four lower levels of buildings, the only uses that could be carried out without a planning permit are most likely confined by the Table of uses at Clause 1.0 in the CCZ7 to:

- Art and craft centre
- Cinema based entertainment facility
- Dancing school
- Education centre

- Home based occupation
- Market
- Office
- Place of Assembly
- Shop.

Parties generally acknowledged the challenges of needing to fit within established land use definitions in the planning scheme within the context of this tailored schedule. However some submitted that the Table of uses does not readily encompass the types of uses contemplated for this precinct. Manufacturing sales was included in the original version of CCZ7 but appears to have been deleted for some unknown reason.

Discussion

While a broad range of arts and creative uses constitute Industry as this term is defined in the planning scheme, the Panel agrees that it would not be reasonable for Industry to be permissible without a planning permit, especially in what is effectively a mixed use precinct.

In the absence of a definition of Creative industry or similar, it is unfortunately inevitable that a relatively high proportion of arts and cultural uses will probably still require a planning permit under the schedule. That said, the purposes, application requirements and decision guidelines are well targeted to provide support where appropriate.

Overall, the Panel concludes that the Amendment makes best use of available planning scheme tools. However, the Panel has some reservations about the practicality of how Office has been approached in the Table of uses.

The use of land for an Office would not require a permit if “*associated with arts, cultural and creative industry uses*”. The responsible authority would presumably intend to identify this through the detailed application requirements proposed in Clause 2.0 which would require a description of the proposed use and the types of activities which will be carried out. It is significant that more detailed information about the proposed layout and operation of the uses would only be required under Clause 4.0 if buildings and works were also proposed.

The Panel fundamentally supports the proposition that offices associated with arts, cultural or creative uses should not require a planning permit in the lower four levels of buildings within the Precinct. While there may be little if any difference in the *built form* outcomes between an office used for these purposes as opposed to other purposes, in *land use* terms, it would be one way of providing complementary, supporting or grouped functions to entrench the focus of the arts precinct.

However, there remains an inherent potential for variable application through the use of the term “associated with”. An assessment will almost always be required, and should be guided by the need for a real and substantial ongoing connection with an arts, cultural or creative industry use, and limited capacity to ensure enforceable outcomes if the type of office use were to change after establishment (for example, if the client base were to change), since there is no practical way to record or commit to the particular type of office use. The Panel does not consider that a section 173 agreement would be justified or practical in these circumstances, especially for an intended as-of-right use.

Provided Council is prepared to adopt this level of assessment and management as the responsible authority administering and enforcing planning permits, the Panel would be prepared to support this general approach in the absence of other feasible alternatives. This aspect of the Amendment should be carefully monitored once operational to confirm its effectiveness.

(iii) Permit triggers for conventional office or residential use

Evidence and submissions

Council and CV acknowledged that a large part of the success of the Amendment will depend on factors outside the statutory framework, but such success is dependent on providing a “lever” in the planning scheme to achieve it. Mr Munt referred to this as “*a targeted intervention*”; a mechanism to alter the development market. Similarly, Ms Heggen supported the Amendment as currently drafted, explaining that it was largely about “*curating*” land use in the Precinct.

LSH Group Australia emphasised in submissions that it was entirely unreasonable to require a planning permit to be obtained for the use of the four lower levels of buildings for offices or accommodation given the Capital City zoning.

Other submitters emphasised aspects of Mr Henshall’s original evidence to the Panel, that not all sites can realistically provide four floors of arts, creative and cultural uses. Site by site consideration will be required.

Pacific Asia Express suggested that other mechanisms could be considered, such as a building height uplift as an incentive to provide arts, cultural and creative uses. This was not the preferred approach taken by CV or Council.

Discussion

This issue is closely tied to the justification for the Amendment. The Panel and parties have accepted the desirability of strengthening the Precinct for arts, creative and cultural use and its consistency with planning scheme policies.

In its Interim Report the Panel accepted that, in the absence of a specific schedule directly targeting land use, the status quo was likely to continue with conventional office and residential towers (perhaps with a confined conventional retail component) potentially crowding out the arts, cultural and creative uses sought for the Precinct. The location of this land within an acclaimed arts destination on the edge of the Central City is a significant drawcard for conventional office and residential development as well as for arts, cultural and creative industry uses.

In this setting, a balance needs to be struck between managing legitimate development expectations with the objectives to enhance the Precinct and support its continued development as a hub for arts, cultural and creative industry uses.

The Panel considers that this balance has been reasonably struck by introducing a requirement for a planning permit if the four lower levels (or 16 metres) of buildings in the Precinct are sought to be used for conventional offices or accommodation. In this way, the Amendment introduces a meaningful point of difference between this Precinct and other

areas of the Central City and Southbank, which the Panel thinks is necessary if the Amendment is to achieve its objectives.

Whether such a permit should be granted will depend on a series of directed decision guidelines that are considered by the Panel further in the following chapter. There is still every opportunity for such uses to occur without permission on upper levels of buildings, noting that many sites have the potential for taller forms of development.

(iv) Floor area conditions

Evidence and submissions

This issue was addressed in depth in submissions and evidence at the original Hearing, and the Panel documented its opinions in Chapter 4 of the Interim Report. The only notable additional comment in response to the re-exhibited Amendment was a suggestion by Mr Naughton that the leasable floor area for an as-of-right Shop should be increased to 250 square metres. This was considered to be more reflective of the condition for an as-or-right Shop in the planning scheme more broadly.

Discussion

The Panel generally supports the scale of Food and drink premises and Place of worship nominated in the schedule for use without a planning permit. The floor area conditions generally strike the right balance between allowing a range of such uses that may complement key preferred uses, while not providing substantial floor space for large format uses of this nature without further consideration as to how they interrelate with the purpose of the Precinct. That said, the Panel supports the increase in the cap for as-of-right Shop to 250 square metres, as this is generally consistent with other examples in the planning scheme and could provide a valued service to residents and visitors while not detracting from the key objectives of the Amendment.

(v) Conclusions

The Panel concludes:

- It is unfortunate, but somewhat inevitable, that many of the types of uses sought to be facilitated in the Precinct will require a planning permit given the lack of detailed land use definitions in the Victoria Planning Provisions.
- It is appropriate for conventional office or residential use of the lower four floors of a building in the Precinct to require a permit.
- The Panel supports the floor area conditions in the Table of uses subject to an increase to the area for a Shop without a planning permit to 250 square metres.

4.4 Application requirements – land use and development

(i) The issues

The issues are the appropriateness of:

- the requirement to specify details of proposed arts, cultural and creative uses
- the requirement for an acoustic assessment for applications for residential use.

(ii) Details of proposed arts, cultural and creative uses

Evidence and submissions

Some submitters were concerned about the application requirement in Clause 4.0 to specify *“the intended arts, cultural and creative industry uses, including the floor area and any specifications or requirements”* as part of an urban context report. LSH Group Australia considered it was not feasible for a developer to know or be able to commit to these details at the stage a planning permit application is applied for.

Council and CV explained that their intention was to generally ensure adequate, adaptable spaces would be provided in new development, capable of providing floor space for a diverse range of arts, creative and cultural uses. This was consistent with both the proposed purpose of the schedule and enhanced policy.

Discussion

The question is how the application requirement should be worded since it cannot be assumed that an ‘end user’ will have been identified or confirmed when lodging a planning permit application.

The Panel agrees that the application requirements should not mandate the provision of information that is dependent on the needs of the actual end user. Rather, at minimum, it should be sufficient to demonstrate that the spaces to be provided are suitable for a range of potential arts, creative and cultural uses.

Therefore, the Panel recommends the use of the words *“Potential arts, cultural and creative uses, including the floor area and specifications or an outline of building features to ensure adaptability for such uses”*. This would be subject to the proviso “as appropriate” in the forward to the dot point.

(iii) Acoustic assessments

Evidence and submissions

The Australian Ballet submitted that the wording of the Amendment does not differentiate between arts-related and non-creative industries in relation to amenity protection. It suggested the following wording for a decision guideline:

Where the development abuts elements of the precinct identified as core current or future Arts organisations or places, a reverse amenity applies to abutting development that recognises the 24/7 nature of world-class arts precinct and their continual change and transformation.

LSH Group Australia questioned how an acoustic assessment to determine the *“maximum permissible noise from nearby noise sources”* would be measured as part of an application requirement.³³

³³ Submission by Planning Property Partners on behalf of LSH (4 July 2019)

Ms Heggen stated that the noise and acoustic issues required an ‘agent of change’ principle to apply for reverse amenity, and that Clause 53.06 (Live Music and Entertainment Noise) applies in setting noise standards and application requirements for new noise sensitive uses. She also suggested that key arts institutions that may generate music and entertainment noise could potentially seek to be included in the schedule to Clause 53.06 to protect performance and rehearsal spaces.³⁴

On Day 1 of the Hearing, Mr Naughton appearing for LSH Group Australia confirmed that the wording of this part of the application requirements would be acceptable.

Discussion

In its Interim Panel Report, the Panel considered the need to protect the ongoing operation and expansion of arts, creative and cultural uses in the Precinct, many of which may generate noise or night time activity. It is important to provide appropriate standards for new residential development in the Precinct to ensure that future residents are provided with a suitable level of protection.

In the case of this Amendment and CCZ7, the application requirements specify what levels of acoustic attenuation must be provided for *new* habitable windows, ensuring the onus is on new developments to protect their own amenity.

The Panel invited parties to the resumed Hearing to comment on the approach taken in the recently introduced Special Use Zone Schedule 6 (Collingwood Arts Precinct) to the Yarra Planning Scheme (SUZ6) which sets out detailed acceptable sound levels to protect nearby existing residential amenity for guidance on suitable noise levels. The Panel agrees with Council and CV that the terminology used for acoustic control in the SUZ6 is not directly transferable to the Melbourne Arts Precinct. Instead, the controls for the Melbourne Arts Precinct can be simplified to refer to the need for sensitive uses to incorporate protective construction measures.

The Panel considers that there was general consensus between the parties that it was appropriate to adopt the same standard used in the CCZ3 currently in the planning scheme namely to limit internal noise levels to a maximum of 45dB LAeq. It approves of the use of this standard in the Melbourne Arts Precinct context but does not consider that there is any need for greater specificity as proposed by the Australian Ballet.

(iv) Conclusions

The Panel concludes:

- A permit application for the use of land should be accompanied by a description of the potential arts, cultural and creative uses capable of or intended to occupy the building, including details the floor area and specifications for such use or uses.

³⁴ Noting that “live music entertainment venue” is defined for the purpose of that provision to include a rehearsal studio or venue used for the performance of music.

Alternatively, an applicant can demonstrate features of these parts of the building that are suitably adaptable to provide for such uses.

- The proposed construction standard for new dwellings to provide noise protection is supported subject to suggested refinement of the information to be provided to identify noise sources in the accompanying acoustic report.

4.5 Decision guidelines – land use and development

The issues are:

- Implementation challenges associated with encouraging buildings to contribute to the “*legibility*” of the Precinct
- How to apply the aspiration for “*design excellence*” and whether the proposed role of the OVGA in the re-exhibited Amendment is appropriate
- Whether there is sufficient flexibility to determine what is a reasonable proportion of buildings to be used for creative and cultural uses on specific sites, such as sizeable sites with large floor plates or confined building heights
- Whether other decision guidelines are warranted.

(i) “Legibility” of the Arts Precinct

Evidence and submissions

One of the more contentious decision guidelines of the proposed CCZ7 relating to buildings and works applications provides that the responsible authority should consider the following as appropriate:

- The interface between the development and the public realm including:
 - Whether the development contributes to the legibility of the Melbourne Arts Precinct as an arts precinct ...

This would apply in addition to considerations such as active street frontages, passive surveillance, impacts on public spaces and infrastructure and the like.

Some submitters regarded this guideline was poorly expressed, unclear in its intent and suggested it be deleted.

Discussion

The Panel views the terminology as being about how a place or urban setting is ‘read or understood’ as per Ms Heggen’s evidence. It regards this decision guideline as intending to encourage land use to provide a ‘sense of place’, respecting and contributing to its setting as part of a State wide arts precinct, rather than a more conventional commercial or residential part of the city.

In the Panel’s view, the reference to “*legibility*” as it appears in the decision guidelines of the CCZ7 is sufficiently flexible to allow applicants an opportunity to frame their design responses in the context of the setting within a precinct of State significance. It would urge developers and their consultant team to ensure that development applications demonstrate that they have given due regard and responded to the unique setting of the particular site within Melbourne’s primary arts precinct.

This Precinct already contains notable buildings demonstrating design excellence and an emerging thoughtful approach to creating integrated public spaces and complementary retail facilities - the most recent being the newly completed Ian Potter Southbank Centre (John Wardle Architects) which sits alongside the Melbourne Recital Centre (ARM Architects).

Figure 2 The Ian Potter Southbank Centre, Sturt Street Southbank (John Wardle Architects 2019), public forecourt and cafe (integrated with heritage façade)



Source: Panel photographs

The Panel disagrees that the use of the term “*legibility*” in this context is unclear. In the case of the Arts Precinct there are numerous ‘visual clues’ from the northern edges of the Precinct that the urban setting one is entering is site specific and different to the Southbank high rise setting and for that matter the Hoddle Grid upon encountering the NGV, Arts Centre and Hamer Hall buildings. As one journeys southwards along the Sturt Street spine, the ‘visual cues’ continue from the Melbourne Recital Centre, Australian Ballet Centre, ABC building, Malthouse and Australian Centre for Contemporary Art. The recently completed Ian Potter Centre is a natural extension of and insertion into these urban forms and a progression of unique architectural forms that spell out a urban language that would be

difficult to read as anything but an arts precinct (for example, it would be difficult to interpret them as purely residential or commercial buildings).

In the Panel's opinion, the land owned by Manoa Pty Ltd is a prime example of a privately developed site with high legibility as part of the Precinct in terms of both built form and land use. It has a considered and 'playful' use of concrete with colourful external artwork combined with its activation through an elevated height glazed ground floor for arts and creative uses that wrap around the façade and side of the building, spilling out into an activated walkway with gallery displays.

Figure 3 152-160 Sturt Street



Source: Google Images

(ii) “Design excellence” and the role of the OVGA

Evidence and submissions

Council and CV explained their view that the characteristics of the Precinct do not readily lend themselves to specific built form guidance in the schedule.

One of the proposed decision guidelines that the responsible authority must consider as appropriate is:

The 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.

Mr Munt submitted for Council and CV that the decision guideline relating to architectural expression and materiality is one mechanism proposed to respond to the Panel's view (expressed in its Interim Report) that the controls should seek to ensure “*design excellence*”, consistent with the CCZ7 purposes.

Ms Heggen considered this was a reasonable requirement to be applied ‘as appropriate’ since it may elevate the design and potential conveyance of the arts occupation of buildings. She considered that there are few redevelopment sites left in the Precinct, and that these should effectively ‘punch above their weight’ in terms of their design contribution given their siting in a special area.

Some submitters such as Pacific Asia Express Pty Ltd regarded this proposed decision guideline as overly onerous on developers.

Discussion

The Panel concluded in its Interim and current Report that an expectation of elevated design standards should apply to the Precinct. The question is how this should best be expressed in decision guidelines.

The Panel supports the wording of this decision guideline as proposed, understanding that it is a flexible guideline.

The basic onus will be on applicants to ensure that development proposals are of a sufficiently high standard for their context within existing and emerging eminent and exemplar buildings in the Precinct. Ultimately, developers and their design teams must understand that what is expected in this sensitive and valued setting is to deliver design responses that demonstrate a highly considered and contextual approach to the design process both in the lower levels and upper forms.

Of equal importance to the architectural merit of the building is the way that it connects with other buildings and the public realm as part of an integrated arts precinct. This is extensively borne out in the proposed DDO1 (via C308) and DDO60 (via C270) and supplemented by the purpose and decision guidelines of CCZ7.

It is also important to provide scope for innovative design in the Precinct, which is an inherent contributor to its uniqueness and attraction. For example, highly valued buildings curated for arts institutions such as the Roy Grounds designed bluestone NGV building are often purpose built and do not always provide conventional 'active' streetscape interfaces.

Decision makers should be careful not to stifle the creative process to the extent that applicants and their design team are weighed down by so many processes and requirements that proposals are compromised and watered down.

Figure 4 Sturt Street entrance to the Melbourne Recital Centre and to the right is the Dodds Street elevation of the Southbank Theatre (both by Ashton Raggatt McDougall, 2009) with glimpses of the Victorian College of the Arts School of Drama building in the background to the left of the image (Edmond and Corrigan, 2002)



Source: Panel photographs

The Panel for C308 also found that mandating a design review panel will not necessarily guarantee design excellence as an outcome. This Panel agrees. The use of the wording ‘as appropriate’ should be seen as allowing flexibility rather than automatically deferring to the OVGA or a design review panel to determine design excellence. It would also be unnecessarily onerous for applicants, decision makers and that body itself to expect all permit applications to be considered by the OVGA.

The Panel expects that a high proportion of permit applications for development of even sizeable buildings could be capably assessed by Council’s own urban design unit or with the benefit of other mechanisms identified above.

The expertise of the OVGA should principally be sought when issues arise because of the nature of this land as part of a precinct. For example, consultation with the OVGA may be justified where the proposed development has potential to affect viewlines or interfaces with key arts institutions or exemplar buildings, or where important issues of integration with the public realm arise.

(iii) Proportion of buildings to be used for arts, creative and cultural uses

Evidence and submissions

This was a key issue raised by submitters, with ‘both sides of the coin’ expressed by the owners of both height restricted sites and those with large site area.

Pacific Asia Express Pty Ltd³⁵ raised concern about the potential interaction between CCZ7 and DDO60. It submitted that it would be very challenging for a development on its land to contribute to the preferred land use mix in CCZ7 given a maximum mandatory building height of 14 metres under the Design and Development Overlay (Schedule 60 – Area 4B Dodds Street). This submitter explained that it would not be reasonable for the lowest four floors of the building to be dedicated to creative or cultural uses in these circumstances. This height contrasts with a maximum building height of 40 metres for much of the Sturt Street spine (Schedule 60 – Area 4A).

A broader concern was that the provisions of the Amendment may deter redevelopment of sites such as these on the periphery of the Precinct, providing greater commercial opportunities in existing building formats.

Submitters such as Manoa Group Pty Ltd and LSH Group Australia raised what is effectively the ‘flipside’ of the submission made by Pacific Asia Express. They were concerned that CCZ7 would impose an excessive burden for sites with large floorplates if there was an expectation that the whole lower four floors needed to be dedicated to creative or cultural uses.

Council and CV considered that the decision guideline for the use of the land seeking to consider *“the extent of arts, cultural and creative industry floor spaces relative to the height and overall floor space of the building”* would provide sufficient flexibility for suitable outcomes in scenarios such as these.

Discussion

The Panel agrees that it is important to direct a decision maker’s attention to the issue of proportionality by reference to the type and density of development that could potentially be achieved on the application site. It regards the proposed drafting as sufficiently flexible to provide for a more confined contribution on sites with reduced height capacity, as well as to contemplate only the partial use of larger lower levels of buildings for arts, creative and cultural uses.

However, it considers it important that a similar decision guideline be included in respect of *buildings and works* applications under the schedule, not only for *use* applications, since this will directly inform the design response.

The Panel also emphasises its comments elsewhere in this report about evaluating contributions to Precinct objectives to achieve workable outcomes.

³⁵ Original submitter 3 and re-exhibited submitter 11.

One other issue that became apparent at the resumed Hearing was the potential for difference in views about what would constitute an arts, creative, cultural or aligned use. For example, Mr Naughton explained the challenges in securing creative industry tenants for his client's proposed development.

The Panel considers that there is scope for some activities conducted under the auspices of the Mercedes Benz business proposed for part of the site to be regarded as arts, cultural or creative land uses. This might include museum space for significant vehicles, display space in connection with the Melbourne Fashion Festival (for which the company is a major sponsor) or associated event space that may be available for hire for creative purposes. This will depend on the real and substantial purpose of these uses as well as whether they are to be characterised as separate or integrated uses.

(iv) Are other additions warranted?

Evidence and submissions

In evidence, Ms Heggen proposed additional decision guidelines pertaining to the extent to which an applicant has sought to make provision for arts, cultural and creative uses within a development. These would include *"whether a demonstrated attempt has been made to engage with the creative and cultural sector to identify potential occupiers"*.

Some commercial landowners in the Precinct expressed concern about this proposal. They were concerned that it would 'raise the bar' in terms of what is required and may be unworkable when having regard to market demand.

Discussion

The Panel considers that many elements of Ms Heggen's suggested decision guidelines are already implicitly included in broad decision guidelines already proposed in the re-exhibited Amendment. These include *"the extent to which the proposed use serves or supports arts, cultural and creative industry uses"* and *"whether the building is designed to accommodate arts, cultural and creative industry uses as part of the overall development ..."*

That said, the Panel sees benefit to both applicants and decision makers by including an extra *application requirement* (rather than a decision guideline) for the use of land to show *"attempts made to engage with the creative and cultural sector to identify potential occupiers"*.

This can be viewed in some respects as a 'best endeavours' clause. For example, an applicant could conceivably highlight a lack of practical options for a particular site or proposal despite best efforts that may justify the favourable exercise of discretion for a more limited floor area or alternative use of lower levels of a building. In conjunction with the referral to Creative Victoria (discussed below) it may also enable more targeted assistance to be provided to an applicant parallel to the planning process to facilitate preferred uses.

(v) Conclusions

Given the relatively bespoke nature of CCZ7 and attempts made to strike a balance between conventional commercial interests and the need to strengthen the operation and

presentation of the Melbourne Arts Precinct, the Panel agrees with the parties and Ms Heggen that it will be important to review its operation once practical outcomes emerge. This is expected to occur in the short to medium term and should be scheduled by Council, at least as part of its regular planning scheme reviews.

The Panel concludes:

- The reference to “*legibility*” as part of an arts precinct in the decision guidelines is appropriate and capable of practical implementation
- Buildings in the Precinct should aspire to design excellence although this is a qualitative measure. There are numerous techniques that could be used to assess this measure. The opinion of the OVGA could potentially be most useful where buildings would have a direct relationship to key institutional buildings or where proposals generate important interactions with the public realm.
- The decision guideline seeking to direct attention to the realistic capacity of a building to facilitate arts, cultural or creative uses is appropriate and especially relevant to properties with confined building heights or large footprints.
- A new decision guideline is warranted to demonstrate efforts engaged in by an applicant to identify potential occupiers given the focus and intended operation of the schedule.

(vi) Recommendations

The Panel recommends:

3. Amend Schedule 7 to the Capital City Zone as provided in Appendix D.

4. Review the practical operation of CCZ7 in the context of the programmed review of the Melbourne Planning Scheme if not earlier.

4.6 Referral of permit applications to Creative Victoria

(i) The issues

The issues are:

- whether it is appropriate to designate CV as a recommending referral authority
- how to identify the relevant ‘trigger’ for referral.

(ii) Evidence and submissions

The re-exhibited Amendment proposes to designate CV as a recommending referral authority in respect of permit applications for the lower four storeys of buildings in the Precinct.

Mr Munt on behalf of CV and Council submitted that there is broad scope in the *Planning and Environment Act 1987* to introduce referral authorities in a planning scheme for nominated types of applications. CV and Council submitted that it was appropriate to include CV since it is the expert agency for the arts, cultural and creative industries in Victoria.

Ms Lasica was a strong supporter of the proposal to refer permit applications to CV, with this authority having relevant information and a supporting role; being in a position to provide important oversight for the long term development of the Precinct.

A number of landowner submitters in the Precinct were concerned that the inclusion of CV as a referral authority might represent a potential 'road block' or at least an additional level of difficulty in obtaining a permit and that this may stifle reasonable commercial expectations for sites in the Precinct. For example, they pointed out that CV would be entitled to become a party to review proceedings at the Victorian Civil and Administrative Tribunal.

Council and CV responded that there was scope for CV to facilitate creative and cultural uses within floor space identified for this purpose and that this could be positive for landowners as well as those in the industry. They also explained that the referral would relate to the use and development of the lower four storeys of buildings but not other types of land use on higher levels of buildings.

(iii) Discussion

Although Melbourne City Council has specialist knowledge of the arts, creative and cultural industries,³⁶ CV is the statutory 'umbrella' authority for these activities and associated development in this field.³⁷ It also has a key role in facilitating the Transformation Project and other relevant initiatives.

Therefore, the Panel supports the inclusion of CV as a recommending referral authority to enable its views to be taken into account. Although it is not a land manager per se such as Parks Victoria or an infrastructure authority such as VicRoads, it is a recognised statutory authority with precisely the type of expertise that is suited to assessing aspects of permit applications under the CCZ7. This aligns directly with the largely specialised purposes of the schedule to the zone.

In responding to the concern by some landowners that referral to CV may make the process more challenging, the Panel acknowledges that referral authorities invariably have a particular area of focus, and it will be up to the responsible authority to balance all inputs to a permit application to assess net community benefit and sustainable development in line with relevant policy.

The Panel has had regard to the fact that CV may also serve a facilitative role for liaison between developers and the creative industry, which would offer a potential benefit to the purposes of the schedule. However this is not of itself sufficient to justify referral authority status.

The Panel has also considered the trigger for referral. It supports referring both use and development applications to CV, since the CCZ7 is targeted towards both use and

³⁶ Including specialised departments facilitating these uses and industries including relevant referrals.

³⁷ Under the *Creative Victoria Act 2017*.

development in seeking to advance the purposes of the Precinct. The actual use and the provision of floor space for future use are equally relevant. However, the Panel recommends that this be expressed in the alternative, as “any permit application for use *or* development of the first four storeys” and with the addition of the words “*of a building in Schedule 7 of the Capital City Zone*” or similar.

The Panel has some residual concern about not wanting to confine CV’s response to only part of a building (if it exceeds four storeys or 16 metres) to enable it to consider issues such as proportionality as raised by submitters. Another alternative would be to refer all applications for use and development in the Precinct (in their entirety).

Given the relatively limited number of sites included in the Precinct, especially those with likely redevelopment capacity, this is unlikely to create any additional burden. However on balance, the Panel prefers the approach of confining the scope of the referral to applications insofar as they relate to the first 16 metres or four storeys of a building whichever is the lower. It is the use and development of this part of a building (not the upper storeys) that the controls identify as contributing to the achievement of the CCZ7 purposes.

(iv) Conclusions and recommendations

The Panel concludes:

- It supports the inclusion of CV as a referral authority for application insofar as they relate to the use or development of the first 16 metres or four storeys of a building in the CCZ7 whichever is the lower.

The Panel recommends:

- 5. Amend the trigger in Clause 66.04 of the Melbourne Planning Scheme for referral to Creative Victoria to “Any permit application for use or development of land in the first 16 metres of a building above natural ground level or lower four storeys of the building, whichever is the lesser”.**

4.7 Potential transitional provisions

(i) The issue

The draft provisions of CCZ7 do not propose any transitional provisions, with the new schedule to take full effect upon gazettal.

The issue is whether the CCZ7 should include transitional provisions, either for existing planning permits or existing permit applications.

(ii) Evidence and submissions

At the Hearing, the Panel asked Council, CV and its witness Ms Heggen to consider whether any transitional provisions should be provided.

Ms Heggen was of the view that it would be reasonable to provide transitional provisions even though there was likely to be only one ‘live’ planning permit that was yet to be acted on in the Precinct. This would ensure that no further land use permission would be required to use the lower levels of that development for offices or accommodation.

Council and CV took a different view. They submitted that the interim provisions have been operative for some time with a similar operation to the controls now under consideration. They also noted the minimal number of properties that may be affected and considered it would not be unreasonable to require a planning permit to be applied for if offices or accommodation was proposed on lower levels of permitted buildings.

Notwithstanding its primary position, the Panel asked Council and CV to provide draft wording for a transitional provision if the Panel decided to support this approach. It suggested:³⁸

Transitional arrangements

The requirements of this schedule do not apply to an application (including an application to amend the permit) made before the approval date of Amendment C323 to this planning scheme. For such applications, the requirements of this scheme, as they were in force immediately before the approval date of Amendment C323 continue to apply.

LSH Group Australia had not requested any transitional provisions be included, either in its written or oral submissions or its two annotated versions of CCZ7 provisions.³⁹

However, LSH Group Australia responded in writing to the Panel strongly opposing the approach suggested by Council and CV. It suggested that *“if there are to be transitional arrangements they should provide that planning scheme requirements as they were in force immediately before the approval of Amendment C330 on 7 March 2018”* (Panel emphasis).⁴⁰ It requested a further opportunity to be heard if *“there are any further developments on this issue”*.

(iii) Discussion

It is likely that accrued or existing use rights would apply to many existing uses in the Precinct. However, if accrued or existing use rights did not apply, practical considerations would need to inform the application of relevant decision guidelines, such as where a change of use was sought for lower levels that would now require planning permission under the amended controls.

Given the above, as well as the long inception time for this Amendment, together with the similar nature of the existing interim controls, the Panel agrees with Council and CV that transitional provisions preserving previous versions of the planning scheme for current permit applications or permitted uses are not warranted.

In particular, the Panel would have reservations about the prospect of reverting to previous CCZ3 provisions for sites such as the LSH Group Australia site (as suggested) given the change in emphasis in future strategic directions for the Precinct.

³⁸ Document 17.

³⁹ Referencing the original and re-exhibited Amendment and the associated original and further Hearings.

⁴⁰ Document 18, noting that Amendment C330 was a Ministerial Amendment introducing the current CCZ7.

(iv) Conclusions

The Panel concludes:

- Properties with the benefit of current planning permits may have accrued or permitted rights otherwise existing use rights would apply in some form. Alternatively, the decision guidelines in CCZ7 can be applied intelligently to existing developments and uses to evaluate their ability to contribute to the purpose of the schedule as amended.
- Transitional provisions are not warranted for current permit applications or existing permits and the new controls should apply upon their gazettal.

5 Further response to submissions

5.1 Pacific Asia Express

(i) Submissions

Pacific Asia Express⁴¹ raised concern about the potential interaction between the CCZ7 and the DDO60. It submitted that it would be very challenging for its site to contribute to the preferred land use mix in the CCZ7 given a maximum mandatory building height of 14 metres under the Design and Development Overlay (Schedule 60 – Area 4B Dodds Street). This submitter explained that the 14 metre height limit would only allow a building of up to four storeys, and it would be unreasonable for the lowest four floors of the building to be dedicated to creative or cultural uses in these circumstances. This height contrasts with a preferred building height of 40 metres for much of the Sturt Street spine (Schedule 60 – Area 4A).

A broader concern was that the provisions of the Amendment may deter redevelopment of sites such as these on the periphery of the Precinct, as greater commercial opportunities may be available in existing building formats or based on existing use rights.

Pacific Asia Express offered a number of potential solutions to the concerns it identified, suggesting that the Panel could recommend this site and the western side of Dodds Street south of Miles Street be excluded from the Precinct and the Amendment or possibly recommend that Council review the maximum building height for this land under the DDO.

Council and CV responded that *“the Amendment would not affect the development capacity of the Precinct. That is governed by Schedule 60 to the Design and Development Overlay”*.⁴²

They also submitted that the controls relating to the use of the first four storeys of a building are discretionary and would be applied having regard to site specific conditions. More specifically, it pointed to the draft decision guideline directing consideration of *“the extent of arts, cultural and creative industry floor spaces relative to the height and overall floor space of the building”*.

(ii) Discussion

This submitter’s site is one of a handful of properties that would be affected by both the CCZ7 together with Area 4B height restrictions under the DDO60.

The Panel agrees that sites that have a mandatory height restriction of 14 metres (or approximately 4 storeys) are likely to have less realistic capacity to contribute to the purposes of the Precinct relating to the use of the lower four floors of a building.

⁴¹ Original submitter 3 and re-exhibited submitter 11.

⁴² Part A submission, paragraph 20.

For example, it would be unreasonable and unrealistic to expect that the entirety of the lower four floors or 16 metres of these sites be developed for creative or cultural activities because this would limit (or possibly even prevent) other types of more conventional commercial or residential use.

Mr Passarella conceded that the Pacific Asia Express site lends itself to a mixed accommodation and creative use. The Panel agrees that this is a reasonable outcome for properties such as these and that it is important for the creation of a vibrant Precinct to provide opportunities in adjacent streets where suitable. It would not be appropriate to 'carve out' this site from the Precinct on this basis.

At the same time, it recognises that different sites and different owners/occupiers will have different capacity to contribute to the particular purposes of the schedule relating to the use of the lower floors for arts, cultural and creative industry purposes. The schedule does not mandate the provision of all floor area within the lower four storeys or 16 metres be provided for creative or cultural use. This position is reinforced by the decision guideline that directs consideration to proportionality of floor space for various uses across a site.

As mentioned at the Hearing, it is not within the ambit of this Panel to recommend changes to the application of various areas within the DDO60 to provide capacity for increased development height. While the provisions will interact to some extent, this change does not automatically flow from the application of the Precinct land use controls.

The Panel concludes that this property should be included in the CCZ7 as proposed. If a permit application was made, consideration will need to be given to the practical extent to which it is reasonable to expect the site to contribute to the relevant Precinct purposes in light of its height limitations (if they remain applicable).

5.2 LSH Group Australia Pty Ltd

(i) Submissions

LSH Group Australia⁴³ submitted that elements of the re-exhibited drafting of the Amendment were a 'backward step' compared with its original drafting and that it would have potentially significant ramifications for private land owners in the Precinct in particular.

It also provided a marked up version of its preferred wording for CCZ7 to assist the Panel's deliberations.⁴⁴

An overarching concern raised by LSH Group Australia was a concern about the practical implementation of the Amendment. Mr Naughton suggested that it may be "*fantastically aspirational*" but queried whether it was really achievable in practice.

⁴³ Original submitter 2 and submitter 10 following re-exhibition.

⁴⁴ Document 14.

(ii) Discussion

Most of the detailed concerns expressed by this submitter have informed the issues identified and considered by the Panel earlier in this Report.

It became apparent to the Panel during the Hearing that some parties such as LSH Group Australia may have overly narrow views on how the purpose of the CCZ7 could be satisfied for any given development proposal.

The Panel views the LSH Group Australia site as a possible valuable contributor to Precinct ambitions through the established sponsorship and curatorial activities it provides through Mercedes Benz. Future development of its site could provide an ideal fit with the Amendment subject to flexibility in the way a development makes provision for arts, cultural and creative uses.

5.3 Manoa Pty Ltd

(i) Submissions

This submitter owns land that has been developed with a sizeable apartment complex with creative uses at ground level, turning into an undercroft promenade to the north. It supported the proposed rezoning and the intent to agglomerate creative uses within the Precinct but explained:

Planning controls focused on facilitating the creation of such a precinct, however, should be mindful of the commercial realities associated with the use and development of land in the precinct. If the controls are overly restrictive they risk jeopardising not only the viability of commercial tenancies but also the overall life and vibrancy of the precinct.⁴⁵

At a more detailed level, it raised what is effectively the ‘flipside’ of the submission made by Pacific Asia Express. It was concerned that the CCZ7 would impose an excessive burden for sites with large floorplates if there was an expectation that the whole lower four floors needed to be dedicated to creative or cultural uses.

(ii) Discussion

The Panel considers that the decision guideline directing the decision maker to consider proportionality ‘cuts both ways’. It is sufficiently flexible to account for large building floorplates, where it is conceivable that a creative or cultural use may be committed to for the whole of the lower level or the front portion of say the two lower levels (as an example), with permission granted for other compatible types of land use within the remaining lower levels.⁴⁶

⁴⁵ Paragraph 29 of submission, Document 15.

⁴⁶ One more obvious complimentary option discussed at the Hearing may potentially be joint working space and accommodation for artists in a flexible layout.

In the Panel's opinion, it is important that the schedule does not propose to establish a fixed percentage for the proportion of a building to be provided for creative or cultural uses. This proportion will vary in each instance due to diverse factors including site features, demand for such use, building location, layout and design, overall site programming, financial viability and more.

The Panel strongly agrees with the observation made on behalf of Manoa Pty Ltd, that the planning controls need to be mindful of commercial realities, to ensure both the viability of land use and development in the Precinct, as well as its overall vibrancy. It has approached its consideration of the Amendment in both its Interim and Final Report with these considerations in mind, including the evidence of Mr Henshall and Ms Heggen as to how these objectives can realistically be achieved.

5.4 Other matters raised by submitters

(i) Submissions

A number of residential landowners or occupiers in the Precinct made submissions, some of whom supported the Amendment as re-exhibited. Others raised concerns about the potential for overdevelopment of the area, including potential increases in traffic and noise.

(ii) Discussion

The Panel appreciated that it can be challenging for existing residents who value particular elements of a neighbourhood when new development is proposed, especially at a substantial scale. The proposed changes to the planning scheme as a result of this Amendment would generally maintain the development potential of sites in the Precinct rather than increasing it. Further, the Amendment deals with this issue by including the proposed decision guideline to consider *"the compatibility of the proposed use with any existing uses within the same building or on adjoining and nearby land"*.

Noise from public realm works (especially at night time) appear to be genuine matters of concern for some residents, but are outside the scope of this Amendment and would need to be raised with Council or the relevant authority directly.

If the concerns pertain to expanded or modified arts facilities producing noise, it is important to recognise that land in the Precinct is included in the Capital City Zone and has a mixed use character. Given the prime inner city location and the vision for the Precinct, it is reasonable to expect increased vibrancy of the area, subject to responsible behaviour by current and future arts, creative and cultural industry tenants as well as compliance with applicable noise standards. Future residents will also benefit from the requirement for acoustic protection within new buildings as included in the CCZ7.

Likewise, to some extent, residents need to anticipate potential increases in traffic in connection with intended increased visitation to the Precinct, as well as from urban renewal initiatives which are foreshadowed in policy and reinforced by current zoning and overlay provisions.

Appendix A Submitters to the Amendment

No.	Submitter (original)	No.	Submitter (re-exhibition)
1	Sturt St Pty Ltd		Dr Jacqui Young
2	LSH Group Australia		Margaret Bernardi
3	Pacific Asia Express Pty Ltd and AAW Global Logistics Pty Ltd		The Australian Ballet
4	Wendy Lasica		Arts Centre Melbourne
5	-		Yarra River Business Association
6	-		Peter Cox
7	-		Testing Grounds
8	-		Stefanie Pearce
9	-		Wendy Lasica
10	-		LSH Group Australia
11	-		Pacific Asia Express Pty Ltd
12	-		Manoa Pty Ltd

Appendix B Document list

No.	Date	Description	Provided by
1	28/10/19	Draft Schedule 7 to Clause 37.04 of the Melbourne Planning Scheme	Council and CV
2	28/10/19	Council and CV Part A submission	Council and CV
2A	30/09/19 & 1/10/19	Letter from Council and CV to Panel regarding instructions	Council and CV
3	28/10/19	Supplementary evidence of Catherine Heggen – initial evidence?	Council and CV
4	28/10/19	Council and CV Part B submission	Council and CV
4A	28/10/19	Melbourne Arts Precinct – Amendment C323 Context Presentation, October 2019	Mr Tatton in evidence for Council and CV
5	28/10/19	Bundle of marked up policy documents created by CV handed to hearing on 4 October 2018	Council and CV
6	28/10/19	Schedule 6 to the Special Use Zone (Collingwood Arts Precinct), Yarra Planning Scheme	Panel
7	28/10/19	Submission	Pacific Asia Express Pty Ltd
8	28/10/19	Planning scheme mapping extracts	Pacific Asia Express Pty Ltd
9	28/10/19	Photographs of 102 Dodds Street, Southbank and surrounds	Pacific Asia Express Pty Ltd
10	28/10/19	Schedule 3, Capital City Zone, Melbourne Planning Scheme	Pacific Asia Express Pty Ltd
11	28/10/19	Extract from the <i>Southbank Structure Plan 2010</i>	Pacific Asia Express Pty Ltd
12	28/10/19	Submitter location map	Council and CV
13	28/10/19	Memorandum Planning & Property Partners dated 28 October 2019	LSH Group Australia
14	28/10/19	Suggested mark ups to Amendment C323	LSH Group Australia
15	29/10/19	Submission	Manoa Pty Ltd
16	29/10/19	Council and CV Part C submission	Council and CV
17	7/11/19	Email from Council responding to Panel questions about transitional provisions and use of the term “legibility”	Council and CV
18	11/11/19	Email responding to transitional provisions correspondence	LSH Group Australia

Appendix C Panel preferred version of Clause 21.13

Instructions for amending Clause 21.13 as re-exhibited:

1. Amend dot point 1 of Economic Development in Clause 21.13-1 to read:

Support Southbank's development as an extension of the Central City, providing a mix of commercial, residential, [arts and cultural](#) land uses.
2. Add a new dot point under Economic Development in Clause 21.13-1 to read:

Strengthen the ongoing role of the Arts Precinct by facilitating the provision of floor space for creative industries and cultural uses in the precinct, particularly within the lower storeys of a building.
3. Replace proposed dot point 8 under Built Environment and Heritage in Clause 21.13-1 with the following:

Encourage development that contributes to the legibility of the Melbourne Arts Precinct as an arts, cultural and creative precinct and provides a strong physical and visual relationship with the public realm.
4. Delete dot point 9 under Built Environment and Heritage (and merge content with Infrastructure in Clause 21.13-1 as per item 5 below).
5. Under Infrastructure in Clause 21.13-1, consolidate dot points 2 and 3 to read:

Support arts and education uses and facilities in Southbank, especially by facilitating the provision of floor space for arts, cultural and creative industries in the lower levels of buildings in the Melbourne Arts Precinct.

Note: No change is recommended to any other local policy provisions beyond the wording proposed in the re-exhibited Amendment.

Appendix D Panel preferred version of Capital City Zone (Schedule 7)

MELBOURNE PLANNING SCHEME

SCHEDULE 7 TO CLAUSE 37.04 CAPITAL CITY ZONE

.../20...
Proposed
C323

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

MELBOURNE ARTS PRECINCT

Purpose

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

To support the growth of a full range of arts, cultural and creative industry and land 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.

Commented [A1]: Refer to Chapter 4.2(iii) of report

To facilitate arts, cultural and creative ~~industry~~ uses within the first ~~four storeys~~ 16 metres (four storeys) of a building by providing appropriate spaces such as performance space, rehearsal space, galleries, workshops, event spaces and studios.

Commented [A2]: Refer to Chapter 4.2(ii) of report

To 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~~ 16 metres (four storeys) of a building.

1.0

.../20...
Proposed
C323

Table of uses

Section 1 - Permit not required

Use	Condition
Accommodation (other than Corrective institution)	Must not be located within the first <u>16 metres of a building above natural ground level or within the first four storeys of a building, whichever is the lesser</u> , 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	
Home based occupation	
Informal outdoor recreation	
Market	
Food and drink premises (other than Hotel and Tavern)	The leasable floor area must not exceed 250 square metres

Commented [A3]: As per comment above

MELBOURNE PLANNING SCHEME

Use	Condition
Office	Associated with arts, cultural and-or creative industry uses. Office use not associated with arts, cultural and-or creative industry uses must not be located within the first <u>16 metres of a building above natural ground level or first four storeys of a building whichever is the lesser</u> . 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)	
Place of worship	The gross floor area of buildings must not exceed 250 square metres
Postal agency Railway station Tramway	
Shop (other than Adult sex bookshop, Department Store and Restricted retail premises)	The leasable floor area must not exceed 2500 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

Commented [A4]: Refer to Chapter 4.3(iv) of report

Section 2 - Permit required

Use	Condition
Adult sex product shop Amusement parlour	
Car park	Must meet the requirements of Clause 52.06.
Corrective institution Department store Hotel	
Industry	Must not be a purpose listed in the table to Clause 532 .10.
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	

Commented [A5]: Correction of typographical error

MELBOURNE PLANNING SCHEME

Section 3 - Prohibited

Use

Freezing and cool storage

Liquid fuel depot

2.0

-/-/20--
Proposed
C323

Use of land

Application requirements

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:

- The 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 the zone.
- Attempts made to engage with the creative and cultural sector to identify potential occupiers
- 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, light spill, solar 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 A description and identification of the location and characteristics of nearby land uses with the potential to generate noise that may likely noise source to impact the development.
 - ~~The maximum permissible noise from nearby noise sources.~~
 - The necessary Relevant standards that apply to the emission or control of noise sources identified above.
 - Measures required to attenuate these noise impacts, including how the proposal will meet the following requirements:
 - 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.

Commented [A6]: Partial acceptance of Ms Heggen's recommendation – see Chapter 4.5 (iv) of report

Commented [A7]: More streamlined suggested wording in response to LSH Group Australia submission – Chapter 4.4 (iii) of report

Commented [A8]: As above

Commented [A9]: Correction of typographical error

Exemption from notice and review

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.

Referral of applications

An application for use of the first ~~four storeys~~ 16 metres (four storeys) of a building, whichever is the lower must be referred in accordance with sections 55 of the Act to the referral authority specified in the schedule to Clause 66.04.

Commented [A10]: Refer to Chapter 4.6 of report

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:

MELBOURNE PLANNING SCHEME

- 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 ~~whether-which~~ the proposed ~~use~~ serves or supports arts, cultural and creative ~~industry-uses~~.
- The extent of ~~floor space for~~ arts, cultural and creative industry ~~or use floor spaces~~ relative to the height and overall floor space of the building.

3.0-1-20-
Proposed
C323**Subdivision****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.

4.0-1-20-
Proposed
C323**Buildings and works****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 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.
- An addition or modification to a verandah, awning, sunblind or canopy of a building to the satisfaction of the responsible authority.

MELBOURNE PLANNING SCHEME

- 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 to demolish or remove a building or works. This does not apply to:

- Demolition or removal of temporary structures.
- 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, 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

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:

- 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:
 - The compatibility of the proposed development with the purpose of this schedule.
 - 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
 - ~~The intended arts, cultural and creative industry uses, including the floor area and any specifications or requirements~~ Potential arts, cultural or creative use, including the floor area and specifications or an outline of building features to ensure adaptability for such uses.

Commented [A11]: Refer Chapter 4.4 (ii) of report

MELBOURNE PLANNING SCHEME

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 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.

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 ~~a~~Acoustic ~~a~~Assessment to the satisfaction of the responsible authority, which addresses:

- ~~The likely noise sources to impact the proposed development.~~
 - ~~The maximum permissible noise from nearby noise sources. A description and identification of the location and characteristics of nearby land uses with the potential to generate noise that may impact the development.~~
 - ~~Relevant standards that apply to the emission or control of noise sources identified above.~~
- 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 L_{Aeq}, in accordance with the relevant Australian Standards for acoustic control.

Commented [A12]: As above

An application to construct podium carparking must:

- Locate car parking on the first floor or above.
- Sleeve car parking at street frontages with suitably designed floor space including sufficient depth for the nominated arts, cultural and creative industry ~~or use~~.

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 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.

An application for development of the first ~~four storeys~~16 metres (four storeys) of a building ~~whichever is the lower~~ must be referred in accordance with section 55 of the Act to the referral authority specified in the schedule to Clause 66.04.

Commented [A13]: As above

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.

MELBOURNE PLANNING SCHEME

- The 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 purpose of this schedule of the Melbourne Arts Precinct.~~
- The extent of floor space for arts, cultural and creative industry or use relative to the height and overall floor space of the building.
- Direct or convenient access through the precinct for ~~The convenience of~~ pedestrians, bicycles and vehicles. access within and through the precinct.
- The impact the proposal will have on street amenity if on-site car parking occupies any of the first four floors or first 16 metres 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 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.
- ~~Whether the building enables 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:
 - 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.
- 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.
- 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.

Commented [A14]: Refer to Chapter 4.5 (iii) of report

Commented [A15]: Addressed in general discussion at Hearing as improvement

Commented [A16]: Regarded as duplicitous given the next dot point

5.0

.../20...
Proposed
C323

Signs

A permit is required to construct and display a sign except for:

- Advertising signs exempted by Clause 52.05-4
- An under-verandah business sign if:

MELBOURNE PLANNING SCHEME

- 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.