

**Stonnington Planning Scheme
Referral 36: Cabrini Hospital**

Priority Projects Standing Advisory Committee Report

Planning and Environment Act 1987

14 December 2023

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

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report pursuant to section 151 of the PE Act

Stonnington Planning Scheme

Referral 36: Cabrini Hospital

14 December 2023

Members of the Priority Projects Standing Advisory Committee who considered this referral:



Con Tsotsoros, Chair



Sarah Carlisle, Deputy Chair



Peter Edwards, Member



Professor Rob Adams AM, Member

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Glossary and abbreviations

2009 heritage study	City of Stonnington Heritage Overlay Gap Study: Heritage Overlay Precincts Final Report (Bryce Raworth Pty Ltd, March 2009)
the Amendment	Stonnington Planning Scheme draft Amendment C333ston
Cabrini Malvern or the hospital	Cabrini Hospital, Wattletree Road, Malvern
the Committee	Priority Projects Standing Advisory Committee
Council	Stonnington City Council
DELWP	Department of Environment, Land, Water and Planning (former)
DPO	Development Plan Overlay
DTP	Department of Transport and Planning
Heritage assessment	Cabrini Private Hospital Redevelopment: Heritage Comments on Demolition of 4 Coonil Crescent, Malvern (Anita Brady Heritage, 2 November 2022)
Heritage report	Cabrini Hospital Redevelopment: Heritage Appraisal (Lovell Chen, June 2023)
HO375 Precinct	Coonil Estate Precinct (HO375 Precinct)
master plan	draft Cabrini Malvern Master Plan (HSPC Health Architects, November 2022)
Ministerial Direction 7(5)	Ministerial Direction on the Form and Content of Planning Schemes
Practitioner's Guide	Practitioner's guide to Victoria's planning schemes (Version 1.5 (Department of Environment, Land, Water and Planning, April 2022)
PE Act	<i>Planning and Environment Act 1987</i>
SUZ	Special Use Zone
VCAT	Victorian Civil and Administrative Tribunal

Notes: The number following a zone or overlay code is a schedule number

1 Overview

(i) Referral summary

Referral summary	
Referral date	11 August 2023
Members	Con Tsotsoros (Chair), Sarah Carlisle (Deputy Chair), Prof Rob Adams AM, Peter Edwards
Committee assisted by	Georgia Brodrick, Project Officer, Office of Planning Panels Victoria
Referral description	Make changes to the Planning Scheme to facilitate the expansion and redevelopment of Cabrini Hospital
Subject land	177-183 & 185-189 Wattletree Road, 2 and 4 Coonil Crescent and Part Coonil Crescent Road Reserve, Malvern
Site inspection	Accompanied and unaccompanied, 6 October 2023
Amendment (C333ston)	
Description	Stonnington Amendment C333ston seeks to rezone the main hospital site, current at grade car park, 2 and 4 Coonil Crescent and part of the Coonil Crescent road reserve to Special Use Zone Schedule 2
Planning Authority	Minister for Planning
Proponent	Cabrini Health Limited
Planning permit (PA23023098)	
Description	The planning permit seeks approval for Stage 1B works as proposed in the draft master plan and Stage 1B development plans to enable the existing theatre block in the north-west corner of the subject land to develop new theatres and holding rooms
Permit Applicant	Cabrini Health Limited
Combined application (Amendment and planning permit)	
Exhibition	23 June to 24 July 2023
Submissions	72

(ii) Committee process

Committee process	
Directions Hearing	14 September 2023
Hearing	24, 25, 26, 30, 31 October and 2, 3 and 17 November 2023
Parties	<p>Cabrini Health Limited represented by Chris Townshend KC and Nicola Collingwood of Counsel, instructed by Tyrone Rath and Mark Naughton of Planning & Property Partners Pty Ltd, with an overview provided by Sue Williams, Chief Executive Officer. Cabrini Health Limited called expert evidence on:</p> <ul style="list-style-type: none"> - built form from Leanne Hodyl of Hodyl & Co - heritage from Kate Gray of Lovell Chen - landscape and vegetation from Tim Vernon of CDA Design Group - strategic and statutory planning from Alison Milner of Milner Planning Advisory - traffic and parking from Jason Walsh of Traffix Group - urban design from Craig Czarny of Hansen Partnership <p>Stonnington City Council represented by Andrew Walker of Counsel and Kate Lyle of Counsel, who called expert evidence on:</p> <ul style="list-style-type: none"> - planning from Dr Stephen Rowley of RCI Planning - heritage from Michelle Bashta of Extent Heritage <p>Adam and Dana Davidson, and Emma and Matt Preston, represented by Andrew Iser of Best Hooper Lawyers, who called expert evidence on:</p> <ul style="list-style-type: none"> - planning from Andrew Clarke of Matrix Planning Australia Pty Ltd <p>Alison Murray Amanda McDougall Cameron Malingbrough Kaye Beeson Kaye Fallick Lilian Johnstone Luke Daley</p>
Citation	Priority Projects Standing Advisory Committee Referral 36 [2023] PPV
Date of this report	14 December 2023

2 Executive Summary

In 1958, St Frances Xavier Cabrini Hospital (Cabrini Malvern) officially opened with 140 beds at 183 Wattletree Road, Malvern. Since then, Melbourne's population has increased from 1,726,100 to over 5,000,000 people in 2022. Cabrini Malvern has expanded several times to respond to a growing population and health demands. Currently, Cabrini Malvern has 473 beds, 20 operating theatres and an emergency department. It provides 55,000 surgeries, hundreds of thousands of in-patient and day cases, treatments and procedures each year. About 920,000 people rely on Cabrini Malvern to improve health and to save lives.

Cabrini Malvern purchased 185-189 Wattletree Road and 2 and 4 Coonil Crescent many years ago to help expand its activities. More recently, it completed the *Cabrini Malvern, Master Plan, November 2022* (master plan), supported by technical reports, which presents its longer-term vision for all its land and the Coonil Crescent road reserve (between Wattletree Road and Derril Avenue) currently owned by Stonnington City Council.

The Heritage Overlay (HO375) applies to a notable proportion of properties which formed part of the original Coonil Estate including 4 Coonil Crescent. Restrictive covenants in similar terms to that which applies to 2 Coonil Crescent apply sporadically to other properties in the Coonil Estate.

The master plan and reports informed the proposed planning provisions and permit conditions for the combined draft Amendment C333ston and draft Permit PA2302308 application (the proposal). The proposal seeks to:

- approve Permit PA2302308 for Stage 1B works proposed in the master plan
- rezone the subject land to Special Use Zone Schedule 2
- delete Incorporated Plan Overlay Schedule 1 from the main hospital site
- delete the Heritage Overlay (HO375) from 4 Coonil Crescent
- apply a new Development Plan Overlay Schedule 6 to the subject land
- revise Clause 52.02 (Easements, restrictions and reserves) to remove the restrictive covenant from 2 Coonil Crescent
- revise the Clause 72.01 Schedule to make the Minister for Planning the responsible authority for the subject land.

The Department of Transport and Planning exhibited the proposal from 23 June to 24 July 2023 and received 72 submissions, of which 24 copied the same proforma content. The Minister for Planning referred issues raised in the submissions to the Committee for its consideration and advice.

The community was consulted and provided with opportunities to express their views through:

- broad-scale exhibition of the proposal, resulting in 72 written submissions which identified issues
- the Hearing process where submitters were able to be heard by an independent Committee
- community consultation conducted by Cabrini Hospital in three different phases in July 2022, July 2023 and in August 2023.

The Committee's findings and recommendations are informed by and respond to issues raised in submissions through this extensive community consultation. They include changes proposed by the Proponent after listening to community feedback.

Issues raised in submissions regarding the Amendment and referred to the Committee related to:

- strategic issues
- schedule provisions
- heritage – impact on the existing Coonil Estate Precinct if the Heritage Overlay is removed from 4 Coonil Crescent and larger built form is enabled
- design response and amenity
- traffic, parking and potential loss of the Coonil Crescent road reserve
- construction impact
- the responsible authority for the subject land
- restrictive covenant
- drafting issues with the permit conditions and proposed planning provisions.

The Committee's findings to these issues are outlined in the following sections.

Planning permit

No submission provided any planning reason to refuse the permit application proposing to expand the existing theatre block. The Committee has accepted most of Council's requested changes to the permit conditions. All findings outlined below relate to the Amendment.

Strategic issues

The Amendment should be prepared and progress because it:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is well founded and strategically justified
- applies the appropriate zone and overlay from the Victoria Planning Provisions.

It is appropriate to rezone the subject land to the Special Use Zone subject to there being design and development provisions which address potential on-site and off-site impacts. The existing Residential Growth Zone and Neighbourhood Residential Zone purposes and provisions are inappropriate for hospital uses and Cabrini Malvern's expansion to meet community health needs.

It is appropriate to apply the Development Plan Overlay to the subject land. The Development Plan Overlay enables provisions for a future development plan and planning permits to consider potential on-site and off-site impacts and interface issues. The comprehensive community consultation since 2022 has helped shape the proposed development plan and associated provisions. A notable proportion of the Committee's recommended changes directly respond to community feedback. Therefore, there should only be public notice of a future permit application which is inconsistent with the development plan.

Schedule provisions

Land uses specified in Special Use Zone Schedule 2 should be:

- in conjunction with the hospital use
- prohibited if they are not specified in Sections 1 and 2 of the schedule
- consistent with those shown in Appendix D:1.

The exhibited Special Use Zone Schedule 2 sign provisions in Clause 5.0 do not reflect the subject land's context within a high amenity residential area. They should be revised to 'None specified' so that the default Clause 52.05 provisions including relevant decision guidelines can apply.

Development Plan Overlay Schedule 6 should:

- not require the development plan to be displayed for public comment because this is not enabled by the head provision and any decision influenced through such a process may result in procedural issues
- have greater detail and certainty than the provisions in the exhibited version in the absence of third party notice and review
- not include decision guidelines because they are not enabled by the head provisions, not included in Ministerial Direction 7(5) and therefore not allowed by section 7(6) of the *Planning and Environment Act 1987*.

Heritage – Coonil Estate Precinct (HO375)

Demolishing the building at 4 Coonil Crescent, Malvern will negatively impact the Coonil Estate Precinct (HO375) because it would lose a contributory property. However, it would not negatively impact the precinct's heritage significance specified in the Statement of Significance, because the remaining properties would continue to present as a cohesive place.

The Heritage Overlay (HO375) should be removed from 4 Coonil Crescent, Malvern:

- to facilitate the subject land's development plan which includes the demolition of the heritage building
- only if new heritage-related provisions are introduced through Development Plan Overlay Schedule 6 to give certainty that new development will not negatively impact the precinct's heritage significance, consistent with policy at Clause 15.03-1L.

To ensure future built form on the subject land does not negatively impact the Coonil Estate Precinct (HO375), Development Plan Overlay Schedule 6 should:

- increase the minimum setback for the building envelope to Derril Avenue from a discretionary 6 metres to a mandatory minimum 10 metres
- reduce the eastern-most building envelope to 3 storeys along its eastern boundary and its northern (Derril Avenue) section
- express the maximum number of storeys as mandatory provisions.

There is no heritage-related reason to require a heritage interpretation strategy.

Design response and amenity

Built form

Future built form enabled by the exhibited DPO6 building envelopes would not appropriately respond to the subject land or surrounding residential area if the envelopes are applied in their exhibited form. The exhibited Stage 2 building setback of 6 metres from Derril Avenue is inappropriate because it would:

- be insufficient to mitigate the visual dominance of a bulky building of up to 14.7 metres (since revised to 12.7 metres) from surrounding residential streets
- unreasonably impact the Derril Avenue streetscape through its inconsistent design response.

The Stage 2 building should be set back at least 10 metres from the Derril Avenue boundary to mitigate its scale, be generally consistent with other setbacks in Derril Avenue, and to enable canopy trees which would help soften views towards the building.

The setback of 9 metres along the subject land's eastern boundary is generally appropriate as a landscape buffer to support the hospital's amenity. However, it should have a built form break

mid-way along the Stage 2 building envelope to reduce overall bulk and to increase sun penetration to the eastern properties.

The areas shown in Figure 8 should have deep soil to enable canopy trees.

There will be reasonable on-site and off-site amenity impacts regarding overshadowing if buildings are revised to the Committee recommended building envelopes shown in Figure 7. The issue of overlooking cannot be determined at this stage because the Amendment proposes building envelopes which do not include the location of windows.

Development Plan Overlay Schedule 6 should be revised to apply the mandatory maximum heights and minimum setbacks specified in Plans 1 and 2. It should also require a site master plan to include:

- building height transitioning from the west corner down to the east and north edges of the site
- the impact of the built form on vistas and view lines from the adjacent heritage precinct
- building envelopes for new buildings including maximum building heights, minimum separation distances between buildings, and minimum setbacks from street frontages in accordance with Plans 1 and 2.

Eastern access and setback

The setback proposed to accommodate a pedestrian link and services along the subject land's eastern boundary is inappropriate because:

- its location at the extreme end of the subject land will not make it easily discoverable by pedestrians
- its 90-metre length at this location will result in insufficient passive surveillance at its furthest points away from the street, resulting in potential safety issues.

The pedestrian path should be relocated to a 9-metre-wide reservation between the Stages 1D and 2 building envelopes because:

- it would be better located between buildings with active frontages along both sides to provide a safer path day and night
- it would be a more direct route between the traffic lights and tram stop at Wattletree Road (south) to the Coonil Crescent and Derril Avenue corner (north)
- 9 metres is wide enough for a pedestrian path and landscaping.

The 9-metre setback along the subject land's eastern boundary should remain without a pedestrian path:

- to act as a landscape buffer to abutting residential properties
- to support Cabrini Malvern's on-site amenity
- to potentially relocate services currently in the Coonil Crescent road reserve
- and with a built form break mid-way along the Stage 2 building envelope to reduce overall bulk and to increase sun penetration to the eastern properties.

Mandatory provisions

The building envelope heights and setbacks and the minimum pedestrian link width should be expressed as mandatory provisions in Development Plan Overlay Schedule 6.

Open space, landscaping, and trees

The dimensions and location of open space proposed in the exhibited Development Plan Overlay Schedule 6 will not result in attractive and functional spaces. Open space should be directed more towards quieter locations with more northern sunlight.

The recommended 10-metre building setback to Derril Avenue should have a lawn and row of mature evergreen trees in deep soil along the building frontage to help screen part of the Stage 2 building from the neighbouring residential area. The Committee recommended a break along the eastern elevation of the Stage 2 building envelope which should be landscaped to help further buffer the eastern residential area from the hospital.

An arborist report should be required to ensure the retention and protection of all existing mature trees likely to be impacted by future development stages.

Environmentally sustainable design

Future development should be constructed to a minimum 5-Star Green Star energy rating or to the current rating at that time if higher than 5 stars.

Parking, traffic, and road reserve***Parking***

Cabrini Malvern should accommodate all its parking needs on-site. This can be addressed through a separate process during the detail design.

Development Plan Overlay Schedule 6 should:

- include medical floor areas in the parking rates so that parking demand is met
- require a car parking management plan indicating how car parking on-site will be managed to minimise effects on the surrounding road network.

Stonnington City Council, as the relevant road manager, is responsible for making decisions about parking restrictions on neighbouring streets.

The traffic and car parking plan required by Development Plan Overlay Schedule 6 should establish the appropriate car parking supply for each stage by calculating the floor areas and hospital beds / point of care with Mr Walsh's car parking rates specified in Table 7.

Traffic

Traffic associated with the Cabrini Malvern expansion is unlikely to unreasonably impact traffic conditions or amenity in the surrounding road network, including local streets. The proposed left in – left out car park access point at Wattletree Road at the east end of the subject land is appropriate.

Special Use Zone Schedule 2 should require a traffic management plan. Development Plan Overlay Schedule 6 should include the Pedestrian Network Strategy requirement.

Coonil Crescent road reserve

It is appropriate and justified to:

- use the Coonil Crescent road reserve between Wattletree Road and Derril Avenue to expand Cabrini Hospital
- relocate infrastructure such as powerlines and drainage from the road reserve

- include planning provisions regarding the road reserve closure until the land is sold to Cabrini Malvern.

Other issues

The hospital's catchment stretches beyond Stonnington's municipal boundary and decisions about how it uses and develops its land will affect the ability to meet health-related planning objectives at a regional and state level. The broader present and future community will rely on the timely expansion of Cabrini Malvern which itself relies on timely planning decisions. It is appropriate and justified for the Minister for Planning to be the responsible authority for the subject land.

Development Plan Overlay Schedule 6 should require a construction management plan be approved to the satisfaction of the responsible authority before construction starts to help minimise impacts on the surrounding residential area and hospital staff, patients and visitors.

Restrictive covenant

The restrictive covenant should be removed from 2 Coonil Crescent because its removal:

- is consistent with the principles outlined by the Mornington Peninsula C46 Panel and endorsed by many subsequent panels
- will facilitate a proposal that is consistent with the Victorian planning objectives, and complies with the Planning Scheme
- will result in broader community benefits resulting from Cabrini Malvern's expansion which, on balance, will outweigh the negative impacts on interested parties including beneficiaries of the covenant.

The Amendment will deliver a net community benefit, and the interests of all Victorians is better served by the removal of the covenant.

Form and Content

Special Use Zone Schedule 2 and Development Plan Overlay Schedule 6 should be revised to make drafting changes which improve their clarity and operation, as shown in Appendix D. This includes deleting the decisions guidelines from Development Plan Overlay Schedule 6 which are not enabled by the parent provisions or by Ministerial Direction 7(5).

Consistent with advice in Planning Practice Notes 22 and 57, all car parking variations must be provided using the Parking Overlay. The following parking rates for the subject land should be specified in a Parking Overlay Schedule rather than Development Plan Overlay Schedule 6:

- Points of care (beds): 1.3 spaces for each hospital bed provided
- Medical / Consulting suites: 3.5 spaces for each 100 square metres of net floor area.

(i) Recommendations

The Priority Projects Standing Advisory Committee recommends the Minister for Planning:

- 1. Prepare, adopt and approve Stonnington Planning Scheme Amendment C333ston as exhibited subject to:**
 - a) revising Special Use Zone Schedule 2, as shown in Appendix D:1**
 - b) revising Development Plan Overlay Schedule 6, as shown in Appendix D:2**
 - c) applying a new Parking Overlay Schedule for the subject land which specifies**
 - Points of care (beds): 1.3 spaces for each hospital bed provided**
 - Medical / Consulting suites: 3.5 spaces for each 100 square metres of net floor area.**
- 2. Approve and grant Permit PA2302308 subject to the conditions shown in Appendix D:3.**

3 Introduction

3.1 Terms of Reference and referral letter

The Minister for Planning appointed the Priority Projects Standing Advisory Committee (the Committee) on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference dated 9 September 2023 (Appendix E) to:

... provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program (DFP), or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

The Minister for Planning approved a revised Terms of Reference for the Committee after the matter was referred. The updated Terms of Reference do not affect the task of the Committee for this referral.

(i) Issues referred to the Committee

The Minister for Planning provided a referral letter dated 16 July 2023 to the Lead Chair of the Committee which requires the Committee's advice on specified issues. Table 1 outlines these issues and the relevant chapters with the Committee's response.

Table 1 Requested advice and relevant report chapters

Requested advice and recommendations	Report chapter
Recommendations	
Should the Minister for Planning approve the Amendment?	2
Should the Minister for Planning approve the permit?	2
Advice on referred issues	
Approach to the zone and overlay	6.2 and 6.3
Heritage Overlay (HO375) removal	8.2
Impact on the Coonil Estate heritage precinct (HO375)	8.3
Future use of buildings	7.1
Encroachment into the residential area	8
Built form including building siting, height and bulk	8
Off-site amenity impacts including overshadowing and overlooking	8
Neighbourhood character	8
Landscaping and tree retention	9.3
Pedestrian access and safety	10
Traffic and car parking concerns	10
Part closure of Coonil Crescent	10.3
Relocating infrastructure from the Coonil Crescent road reserve	10.3
Construction impacts including noise, waste and site access	11.1
Restrictive covenant removal	12

The Committee has:

- reviewed over 2,600 pages of information when preparing its report within the 20 business days specified in the Terms of Reference
- considered all referred issues in submissions and evidence but has had to be selective in what is included in this report.

(ii) Planning permit application

There were submissions which objected to the permit application proposing internal works to expand the existing theatre block. None provided clear planning reasons, but it appears that some objected because:

- the Department of Transport and Planning (DTP) fast-tracked the application
- they objected to the Amendment and the permit formed part of a combined application.

Environment Protection Authority highlighted that its submission did not address the permit application. Council supported the permit in principle and suggested minor drafting changes to the permit conditions which did not change their intent.

This report focusses on the Amendment.

3.2 Background

Table 2 Chronology of events

Background summary	
Before 2022	
24 Jan 1948	An existing hospital on the subject land was taken over by 10 Sisters from Italy
11 May 1958	St Frances Xavier Cabrini Hospital was officially opened and was the largest private hospital in Victoria with 140 beds
10 Sep 1999	Victorian Civil and Administrative Tribunal (VCAT) issued Planning Permit 6/99 to demolish 13 Coonil Crescent and to expand Cabrini Malvern
23 Oct 2003	Council issued Planning Permit 962/03 for buildings and works associated with the café
7 Dec 2005	Council issued Planning Permit 1188/05 for additional office space at 5 Coonil Crescent (now known as 183 Wattletree Road)
4 Feb 2010	Heritage Overlay (HO375) introduced to properties in the Coonil Estate including 4 Coonil Crescent [Amendment C88]
22 Jul 2011	Council issued Planning Permit 437/11 for buildings and works for a Section 2 use (Hospital) in the (then) Residential 1 Zone
6 May 2013	VCAT directed Council to issue Planning Permit 279/12 to construct the third floor to Medical Centres 2 and 3
18 May 2016	VCAT directed Council to issue Planning Permit 975/15 to construct the 7 storey Gandel Wing and associated buildings and works
2022	
12 Jul	Proponent conducted community consultation regarding the current expansion proposal

7 Dec	Proponent lodged a formal request with the Development Facilitation Program seeking approval from the Minister for Planning for a combined planning scheme amendment and permit application (the proposal) for the subject land [PE Act section 96A]
23 Dec	Development Facilitation Program requested further information
2023	
16 Jan	Development Facilitation Program sought initial high-level comments from Council and referral authorities
Feb	DTP sought Council feedback on the proposal
10 Feb	Proponent provided further information in response to 23 Dec 2022 request
10 Mar	Council provided preliminary advice to DTP, advising the proposal was prematurely submitted and key matters needed further consideration and resolution
14 Apr	Council's Chief Executive Officer under delegation resolved to begin the statutory process for a Council decision on whether to close and sell part of the Coonil Crescent road reserve as it was no longer reasonably required for general public use
10 May	Council provided public notice of the proposal to discontinue and sell Coonil Crescent [section 223 of the Local Government Act 2020]
16 May	Development Facilitation Program requested further information
23 May	Council was notified that DTP accepted the proposal through the Development Facilitation Program
9 Jun	Proponent provided further information in response to 9 Jun 2022 request Public notice for discontinuing Coonil Crescent ended
23 Jun to 24 Jul	Amendment and permit were exhibited and received 72 submissions
26 Jun	Development Facilitation Program provided directed notice to residents within 200 metres of the subject land
25 Jul	Council provided an unendorsed interim submission to DTP
31 Jul	Proponent conducted second community consultation
1 Aug	Council provided an endorsed submission to DTP
11 Aug	Minister for Planning referred the proposal to the Committee
17 Aug	Proponent conducted third community consultation
28 Aug	Council considered seven submissions on whether to discontinue and sell Coonil Crescent and resolved to defer the decision
9 Sep	Minister for Planning revised the Terms of Reference
30 Oct	Council resolved to defer the decision on whether to discontinue and sell Coonil Crescent until 20 Nov 2023
20 Nov	Council resolved that the Coonil Crescent road reserve between Derril Avenue and Wattletree Road was not required for public use, and to discontinue and sell the road reserve

4 Subject land and planning context

4.1 Subject land and surrounds

As outlined in the Proponent's submission, the hospital serves a catchment of about 920,000 people and provides the following medical services each year:

- 90,000 episodes of in-patient care, 51,000 day cases and 55,000 surgeries
- 25,000 emergency attendances
- 23,000 oncology day-treatments
- 2,000 child births
- 133,000 medical imaging procedures.

The subject land's zones, overlays and context are shown in Table 3 and Figure 1.

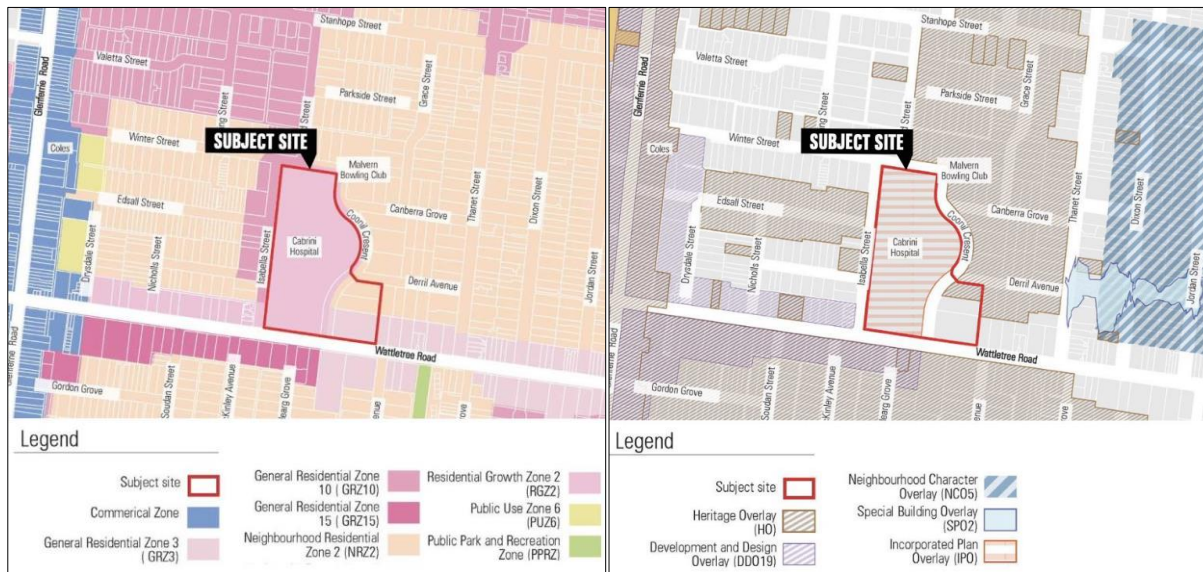
Table 3 Existing zones, overlays and context

Subject land and surrounds	
Subject land	
Address:	- 183 and 185-189 Wattletree Road, 2 and 4 Coonil Crescent, Malvern and part of the Coonil Crescent road reserve
Zones:	- Residential Growth Zone Schedule 2 – 183 and 185-189 Wattletree Road - Neighbourhood Residential Zone Schedule 2 – 2 and 4 Coonil Crescent
Overlays:	- Incorporated Plan Overlay Schedule 1 (IPO1) – 183 and 185-189 Wattletree Road - Heritage Overlay (HO375) – Coonil Estate Precinct including 4 Coonil Crescent
Existing hospital:	- 473 beds and 20 operating theatres and associated facilities - intensive care unit, day treatment facilities, and maternity and paediatric care - supporting facilities such as pathology, medical imaging, pharmacy and café
Surrounding land	
South:	- Transport Zone 2 on the 20-metre-wide Wattletree Road reservation - General Residential Zone Schedule 15 on properties along Wattletree Road - Heritage Overlay (HO156) on the entire area south of Wattletree Road - Tram stops on Wattletree Road for tram services to Melbourne Central City - Malvern Train Station about 650 metre walk from the subject land
East:	- General Residential Zone Schedule 3 on properties along Wattletree Road and Neighbourhood Residential Zone Schedule 2 on all other properties - Heritage Overlay (HO375) on most properties
North:	- Neighbourhood Residential Zone Schedule 2 and General Residential Zone Schedule 10 north of Winter Street - Tram stop on High Street for tram services to Melbourne Central City about 480 metre walk north of subject land

Subject land and surrounds

- West:
- Neighbourhood Residential Zone and General Residential Zone west of Isabella Street
 - Built form of up to 13.5 metres is emerging along Wattletree Road (Residential Growth Zone Schedule 2)
 - Malvern Major Activity Centre about 280 metres from the subject land, with trams along Glenferrie Road

Figure 1 Existing zones and overlay maps



Source: Proponent Part A submission

4.2 Planning Scheme

The Residential Growth Zone requires a permit for land uses in Section 1 which do not meet the conditions and buildings and works associated with a hospital use. A hospital use is not nested under any uses specified in the table of uses.

There are other relevant requirements in the Incorporated Plan Overlay, Development Contributions Plan Overlay, and Clauses 52.06 (Car Parking), 52.29 (Land adjacent to the principal road network) and Clause 52.34 (Bicycle facilities).

Table 4 shows planning policy provisions relevant to the Amendment and permit application.

Table 4 Relevant planning policy provisions

State	Regional	Local
2 (Municipal planning strategy)		
		<ul style="list-style-type: none"> - 02.02 (Vision) - 02.03 (Strategic directions) - 02.03-1 (Settlement) - 02.03-1 (Environmental risks and amenity) - 02.03-4 (Built environment and heritage) - 02.03-8 (Infrastructure) - 02.04 (Strategic framework plan)
11 (Settlement)		
11.01 (Victoria)	- 11.01-1R (Settlement – Metropolitan Melbourne)	- 11.01-1L (Settlement)
- 11.01-1S (Settlement)		- 11.01-1L-02 (Social impacts)
11.02 (Managing growth)		
<ul style="list-style-type: none"> - 11.02-1S (Supply of urban land) - 11.02-2S (Structure planning) 		
11.03 (Planning for places)	- 11.03-1R (Activity centres – Metropolitan Melbourne)	- 11.03-1L-01 (Activity centres)
- 11.03-1S (Activity centres)		
13 (Environmental risks and amenity)		
13.05 (Noise)		
- 13.05-1S (Noise management)		
13.06 (Air quality)		
- 13.06-1S (Air quality management)		
13.07 (Amenity, human health and safety)		
- 13.07-1S (Land use compatibility)		<ul style="list-style-type: none"> - 13.07-1L-01 (Amenity) - 13.07-1L-02 (Commercial and community uses in residential zones) - 13.07-1L-03 (Institutional uses)
15 (Built environment and heritage)		
15.01 (Built environment)	- 15.01-1R (Urban design – Metropolitan Melbourne)	- 15.01-1L-01 (Urban design)
- 15.01-1S (Urban design)		- 15.01-1L-03 (Signs)
- 15.01-2S (Building design)		- 15.01-2L-01 (Building design)
- 15.01-5S (Neighbourhood character)		
15.02 (Sustainable development)		- 15.02-1L (Environmentally sustainable development)
15.03 (Heritage)		- 15.03-1L (Heritage)
- 15.03-1S (Heritage conservation)		
17 (Economic development)		
17.01 (Employment)	- 17.01-1R (Diversified economy)	- 17.01-1L (Diversified economy)
- 17.01-1S (Diversified economy)		

State	Regional	Local
17.02 (Commercial)		
- 17.02-1S (Business)		
18 (Transport)		
18.01 (Land use and transport)		
- 18.01-1S (Land use and transport integration)		- 18.01-3L (Sustainable transport)
- 18.01-3S (Sustainable and safe transport)		
18.02 (Movement and networks)		
- 18.02-3S (Public transport)	- 18.02-3R (Principal public transport network)	- 18.02-3L (Public transport)
		- 18.02-4L-02 (Car parking)
19 (Infrastructure)		
19.02 (Community infrastructure)		
- 19.02-1S (Health facilities)	- 19.02-1R (Health precincts – Metropolitan Melbourne)	
19.03 (Development infrastructure)		
- 19.03-2S (Infrastructure design and provision)		- 19.03-3L-02 (Water sensitive urban design)
- 19.03-3S (Integrated water management)		

5 Amendment and planning permit application

References in this report to the Amendment, the permit, master plan and development plan refer to draft versions.

Cabrini Hospital Limited (the Proponent):

- has prepared a master plan to guide future development on the subject land
- lodged a combined proposal for Amendment C333ston and Permit PA230308 through section 96A of the *Planning and Environment Act 1987* (PE Act).

5.1 Master plan

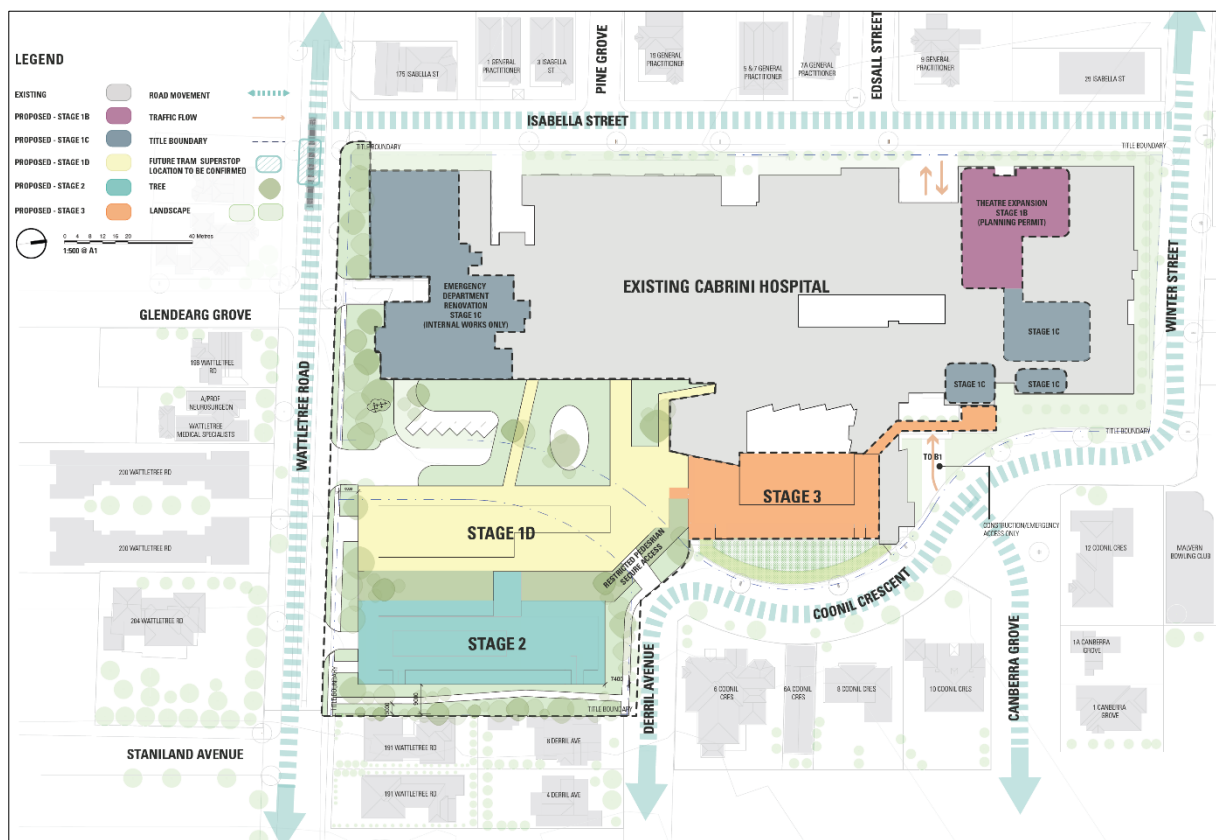
Planning Scheme Clause 13.07-1L-03 (Institutional uses) applies to the subject land and seeks to:

Ensure institutional uses are developed in an orderly manner and are complementary to the context of their surroundings, especially any surrounding residential areas.

It encourages master plans for institutions in residential areas to address management, future use and development, traffic and car parking impacts on the surrounding community.

The master plan proposed for the subject land seeks to facilitate the orderly future redevelopment and expansion of Cabrini Malvern.

Figure 2 Master plan – proposed site staging



Source: Master plan, November 2022 (Document 5)

Stage 1B proposes to expand the existing theatre block in the north-west corner of the subject land for new theatres and holding rooms. This comprises:

- 460 square metres of additional floorspace
- about 1,200 square metres of refurbished floorspace.

Any reference to Stage 1D, 2 or 3 refers to the building envelopes shown in Figure 2.

5.2 Combined proposal

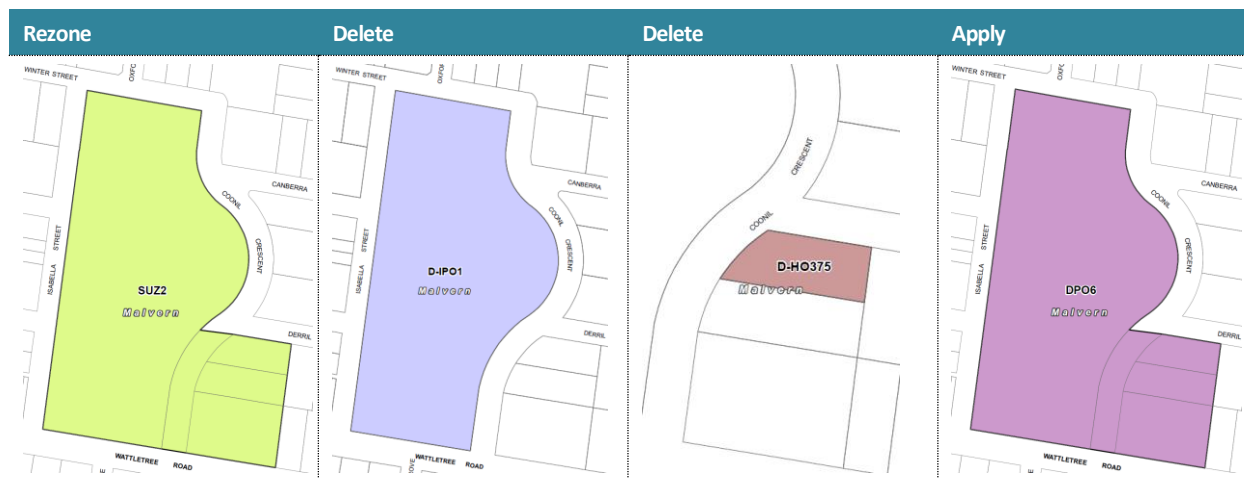
(i) Amendment C333ston

Stonnington Planning Scheme draft Amendment C333ston (the Amendment) proposes to:

- rezone the subject land to Special Use Zone Schedule 2 (SUZ2)
- delete Incorporated Plan Overlay Schedule 1 (IPO1) from the main hospital site
- delete the Heritage Overlay (HO375) from 4 Coonil Crescent
- apply a new Development Plan Overlay Schedule 6 (DPO6) to the subject land
- revise Clause 52.02 (Easements, restrictions and reserves) to remove a restrictive covenant from 2 Coonil Crescent
- revise the Clause 72.01 Schedule to make the Minister for Planning the responsible authority for the subject land.

The zone and overlay changes are shown in Figure 3.

Figure 3 Proposed zone and overlay changes



(ii) Permit PA2302308

Permit PA2302308 seeks approval for Stage 1B works proposed in the *Cabrini Malvern, Master Plan, November 2022* (the master plan) and Stage 1B development plans.

5.3 Supporting documents

The Amendment and permit are supported by:

- Heritage report (Lovell Chen, June 2023)
- Landscape design response (CDA Design Group, March 2022)
- Legal advice: restrictive covenant removal (Planning and Property Partners, 9 June 2023)
- Planning report (Planning and Property Partners, June 2023)
- Property title information

- Survey plan (Veris, 27 June 2022)
- Sustainability report (Integral Group, December 2022)
- Traffic engineering assessment (Salt3, 6 December 2022)
- Urban context report (Hansen Partnership, June 2023)
- Waste management statement (Leigh Design, 5 December 2022).

5.4 Referral responses

The proposal was referred to authorities and agencies for preliminary comments.

DTP did not make a submission and Melbourne Water noted it did not object.

Environmental Protection Authority stated in its preliminary and subsequent submission:

- it considered the application to be of low risk harm to the environment, amenity and human health as a result of pollution and waste
- the draft Explanatory Report should be updated to include reference to its comments in accordance with Ministerial Direction 19
- it considered Environment Protection Authority publications 1820, 1834 and IWRG612.1 where applicable
- noise should be considered at the residential interface.

6 Strategic issues

6.1 Amendment strategic justification

(i) The issue

The issue is whether the Amendment is strategically justified and should be prepared and progressed.

(ii) Evidence and submissions

The Proponent submitted the Amendment:

- is needed to facilitate the orderly expansion of Cabrini Malvern and give certainty about the subject land's long term use and development
- implements the PE Act planning objectives and supports and implements the Planning Policy Framework (relevant clauses shown at Table 4)
- has no significant environmental effect and results in positive social and economic effects through:
 - important and necessary community healthcare services
 - up to 150 ongoing healthcare jobs and 1,500 construction jobs during construction.

Many submissions supported Cabrini Malvern's vision to expand its facilities on the subject land, though there were varying perspectives on how it should be done. They included:

- the hospital buildings being restricted to the main hospital site (the land west of Coonil Crescent)
- reduce the height of buildings east of Coonil Crescent and increase their setbacks
- Cabrini Malvern should expand its facilities elsewhere.

No submission recommended the Amendment be abandoned because of insufficient strategic justification. A local resident supported the Amendment because of the services it would provide to the community.

Expert evidence on planning was called from:

- Ms Milner of Milner Planning Advisory by the Proponent
- Dr Rowley of RCI Planning by Council
- Mr Clarke of Matrix Planning Australia by the Davidsons and Prestons.

Ms Milner considered the Amendment is strategically supported by State and local policy. She referenced Planning Scheme policies which seek to:

- develop social and physical infrastructure in an efficient, equitable, accessible, and timely manner
- recognise social needs by providing land for accessible community resources including health facilities
- ensure growth is planned to allow for the logical and efficient provision and maintenance of infrastructure
- locate and integrate health facilities that consider demographic trends, existing and future demand requirements, and the integration of services into communities
- plan public and private health facilities together, with some degree of flexibility in use

- locate hospitals and other large health facilities in areas of high accessibility to public and private transport
- provide adequate car parking for staff and visitors of health facilities.

Ms Milner referred to Clause 02.03-8 which states:

Stonnington is committed to providing public places and spaces to accommodate community facilities and services that support individuals, families and groups to meet their social needs and enhance community wellbeing.

...

An increasing population is also leading to an increased demand for these services and infrastructure.

Dr Rowley stated:

- there is strong policy support for facilitating the use of the Cabrini hospital site
- expanding Cabrini Malvern into surrounding residential land supports positive community outcomes
- Cabrini Malvern should expand subject to treating amenity issues more carefully.

Mr Clarke considered the future use and development of the subject land would benefit the community. He stated that Cabrini Hospital is:

- a community facility of metropolitan and State significance, and its significance is heightened by its essential services which protect human life and health
- near a major activity centre and on a public transport and arterial route in a highly central and accessible location
- surrounded by residential uses with interface issues that need to be managed.

(iii) Discussion

As outlined in the Proponent's submission and earlier in this report, Cabrini Malvern officially opened in 1958 with 140 beds, making it Victoria's largest private hospital. Since then, Melbourne's population has increased from 1,726,100 to over 5 million in 2022¹. The hospital has expanded several times, including the most recent \$120 million Gandel Wing at the south-west corner of the subject land, completed in 2019.

Currently, Cabrini Malvern has 473 beds, 20 operating theatres and an emergency department. It provides 55,000 surgeries each year, equating to an average of 226 surgeries each working day. This is in addition to the hundreds of thousands of in-patient and day cases, treatments and procedures each year. Its catchment of 920,000 people relies on Cabrini Malvern to improve their health and save their lives.

Recognising the need to expand in response to the growing population within its catchment, Cabrini Malvern:

- previously purchased and occupies 2 and 4 Coonil Crescent on the east side of the road
- completed a master plan in 2022 which outlines future building envelopes and planning considerations across the subject land
- engaged qualified professionals to prepare technical reports which identify and respond to potential impacts arising from the type of development envisaged by the master plan and which informed planning provisions proposed by the Amendment.

¹ Australian Bureau of Statistics

For reasons explained in this report, the existing planning provisions on the subject land are inappropriate for facilitating Cabrini Malvern's objectives and its expansion.

Having said this, Cabrini Malvern seeks to expand to 2 and 4 Coonil Crescent which, until they were purchased, were residential properties forming part of the broader residential area. The Amendment proposes to remove the Heritage Overlay from 4 Coonil Crescent which contributes to a heritage precinct. This is so it can be demolished to enable a larger and bulkier building not consistent with the low density detached dwelling built form on surrounding properties.

There is policy tension between objectives seeking to protect heritage places and respect neighbourhood character with those seeking to protect and facilitate health infrastructure to support healthier communities. On the one hand, Council's policy at Clause 15.03-1L is to conserve and re-use contributory heritage places such as 4 Coonil Crescent. On the other, Council's Municipal Strategic Strategy recognises health care as one of its largest industry sectors and seeks to facilitate community and professional services which include health and social infrastructure.

Planning Scheme Clause 71.02-3 asks the planning authority to undertake integrated decision making when there are competing policy objectives. This is derived from PE Act sections 4(1)(f) and (g)² which seek to facilitate development in accordance with other objectives while balancing the present and future interests of all Victorians.

Consistent with Clause 71.02-3, the Committee reviewed relevant policies to balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. When considering issues in this report, it has given greater weight to human health and lives at Cabrini Malvern's regional catchment level than local heritage and neighbourhood character.

The Committee's approach to weighting should not be interpreted as one set of policy objectives dismissing another. For example, if removing the Heritage Overlay from 4 Coonil Crescent means the building will ultimately be demolished, this would not align with local policy which discourages the demolition of contributory heritage buildings. However, other heritage-related policy objectives would be met if its demolition did not compromise the significance of the remaining heritage precinct.

When weighing up relevant PE Act objectives of planning, State and local policy objectives, and the need to ensure Cabrini Malvern can effectively respond to the community's needs, the Committee considers the Amendment is strategically justified and supported by planning policy.

(iv) Findings

The Committee finds the Amendment should be prepared and progress because it:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is well founded and strategically justified
- applies the appropriate zone and overlay from the Victoria Planning Provisions.

² The objectives of planning in Victoria

6.2 Applying the Special Use Zone

(i) The issue

The issue is whether the rationale for rezoning the subject land to the Special Use Zone is appropriate.

(ii) Background

Planning Practice Note 3 (Applying the Special Use Zone) states:

The Special Use Zone can be applied when:

- a standard zone or a combination of zones, overlays and local policies cannot give effect to the desired objectives or requirements
- the site adjoins more than one zone and the strategic intent for a redevelopment of the site is not known.

...

An Incorporated Plan Overlay or a Development Plan Overlay may also be used to help achieve specific outcomes for a site. These overlays are the preferred tools to give effect to master plans for uses, such as schools and hospitals, and to provide exemptions from third party notice and review for subsequent permit applications.

(iii) Evidence and submissions

There were submissions which supported the SUZ for the subject land. For example, Ms Johnstone considered it an appropriate zone to facilitate a hospital, noting it has been historically applied in this context. They include:

- Epworth Richmond Private Hospital (Yarra SUZ5)
- Residential and Medical Services Precinct (Banyule SUZ3)
- Bendigo Private Hospital (Greater Bendigo SUZ2)
- Peninsula Private Hospital (Frankston SUZ4)
- Latrobe Health and Complementary Uses Precinct (Latrobe SUZ8).

Ms Johnstone submitted that robust and comprehensive built form provisions are needed to properly manage built form outcomes and interface issues in an established high amenity residential area.

The Proponent submitted that applying the SUZ to all the subject land would make a strategic statement the land will be used and developed for hospital needs in the future. It considered the existing Residential Growth Zone and Neighbourhood Residential Zone to be inappropriate because:

- the medical uses have long existed for many decades within the residential surrounds
- the Residential Growth Zone requires a permit for day-to-day uses that already occur on the subject land
- Cabrini Malvern should not have to justify its use each time through a planning permit.

The Proponent referred to Stonnington NFPS (PSA) [1999] PPV 25 where the Panel supported the SUZ for the subject land and stated:

The first issue is essentially one of whether large institutions (or indeed all institutions) should be given any special recognition in the planning scheme by virtue of its use. The Department of Infrastructure has been very clear on this — the new scheme does not have to provide identification for uses. However, some uses are so large or unique (for example golf courses) that they constitute a land use pattern in their own right and need to be managed

and recognised in the scheme. These uses warrant their own zone — rather than being an institution or use in a residential area they help to define the nature and character of the city itself. The issue is at what size or in what circumstances does the use become so extensive that it needs its own zone.

The Proponent also referred to the proposed SUZ purposes which seek:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework
- To provide for the continued use and development of land for a private hospital and associated uses
- To encourage the orderly planning and development of the facility in a manner which does not adversely affect the amenity of the neighbourhood.

Ms Milner considered the subject land's existing zoning to be long outdated and did not align with supporting and achieving strategic intent. She supported the SUZ because:

- it would provide residents and Cabrini Malvern with certainty that the orderly future use and development of the subject land will be supported and facilitated without unreasonably impacting the amenity of the surrounding neighbourhood
- it aligns with relevant planning policy and Planning Practice Note 3 (Applying the Special Use Zone), May 2022
- its schedule can be tailored to meet Cabrini Malvern's specific needs and operations.

Ms Milner referred to the Panel and Advisory Committee process for the new format Stonnington Planning Scheme in 1999 where Council proposed to apply the SUZ to major institutional uses including Cabrini Hospital. The Panel/Committee report stated there was merit in applying the SUZ to the Cabrini Hospital land given the regional nature of its services and its extensive site.

Ms Milner stated Cabrini Malvern's regional nature and role has intensified and grown since that report was completed over 20 years ago.

At the Hearing, Council supported applying SUZ to the subject land subject to changes to SUZ2.

Dr Rowley found rezoning the subject land to SUZ to be appropriate in principle. He stated:

- Cabrini Malvern does not align with the core expectations of the Residential Growth Zone
- the SUZ allows land uses to be tailored to Cabrini Malvern's needs
- SUZ2 should provide clear guidance if notice and review is removed through the DPO.

Mr Clarke did not support the SUZ and stated:

- applying the SUZ was inconsistent with Planning Practice Note 3 which advises the zone is not appropriate when *"future use or development enabled by the zone may cause land use conflicts with the surrounding area"*
- the SUZ would not alter the existing residential zones' potential for land use conflict between Cabrini Malvern and nearby residents
- an incorporated plan has not been prepared for about 20 years so the existing planning regime cannot be regarded as unsuitable.

Mr Clarke stated the Public Use Zone generally applied to major public hospitals in metropolitan Melbourne. He added that private hospitals often have the same zone as the default surrounding zone. He acknowledged the SUZ applies to Epworth Richmond but considered its planning context to be complicated by being in an existing strip shopping centre opposite a medical precinct. Mr Clarke considered Cabrini Malvern's local context to be relatively simple, though it has neighbouring medical and health facilities.

At the Hearing, Mr Clarke said it didn't matter whether the subject land was in Residential Growth Zone or SUZ. He referred to the Gandel Wing approval as an example of development enabled by Residential Growth Zone.

(iv) Discussion

The Minister for Health is exempt from the provisions of any planning scheme through an order³ enabled by section 16 of the PE Act.

This allows a public hospital to use and develop its land without a permit. This facilitative approach does not extend to a private hospital like Cabrini Malvern.

The hospital needs to expand incrementally to respond to Melbourne's growing population and associated health needs without unnecessary regulatory burden. Consistent with advice in Planning Practice Note 3, the Committee considered the subject land's residential zones and finds them to be unsuitable for the needs of Cabrini Malvern and the community.

The subject land should be rezoned from the existing Residential Growth Zone and Neighbourhood Residential Zone. The hospital's operations should be supported by one zone with provisions which support its use and expansion.

The Neighbourhood Residential Zone and Residential Growth Zone:

- have purposes which predominantly focus on residential uses and buildings of single and 2 storey and up to 4 storeys respectively
- have a purpose allowing non-residential uses that serve community needs
- do not specify a hospital as a land use in their provisions (noting that Planning Scheme Clause 73.04-17 does not nestle 'hospital' under a land use group)
- do not have provisions for assessing a permit application for a hospital
- require Cabrini Malvern to apply for a planning permit to use the land as a hospital each time it proposes buildings and works.

The Neighbourhood Residential Zone is inherently unsuitable because it would be virtually impossible for future hospital buildings to meet the zone's third purpose – *"To manage and ensure that development respects the identified neighbourhood character..."* The Neighbourhood Residential Zone is the most restrictive residential zone in Victoria. It seeks low density development and prohibits residential buildings above 9 metres. Hospitals are institutional uses which by their function, need bulkier buildings which should reasonably respond to, rather than respect, surrounding neighbourhood character.

The provisions across the two existing residential zones have:

- resulted in significant regulatory burden on Cabrini Malvern and Council
- not recognised the existing co-existence between Cabrini Malvern and surrounding residential areas.

It is not in the interest of Cabrini Malvern, Council or the local community to require Cabrini Hospital to justify its hospital use each time it seeks a planning permit.

³ 1988 gazetted order states *"Planning schemes shall not be binding on the use and development of land carried out by or on behalf of the ... Minister for Health"*.

The SUZ enables a tailored schedule with appropriate zone provisions which align with Cabrini Malvern's uses. The SUZ would clearly identify Cabrini Malvern's interface with the abutting residential area, which is currently not evident in the Planning Scheme map.

Mr Clarke's example of SUZ5 which applies to Epworth Hospital in Richmond supports the case for applying the SUZ to Cabrini Malvern. The Epworth site is virtually surrounded by the Heritage Overlay and south of residential properties in the Neighbourhood Residential Zone.

That said, the subject land should only be rezoned to SUZ if it is accompanied by additional design and development provisions which appropriately respond to potential on-site and off-site impacts.

(v) Finding

The Committee finds:

- The existing Residential Growth Zone and Neighbourhood Residential Zone purposes and provisions are inappropriate for Cabrini Malvern's uses and its need to expand to meet community health needs without unnecessary regulatory burden.
- It is appropriate to rezone the subject land to the Special Use Zone subject to appropriate design and development provisions being applied which address potential on-site and off-site impacts.

6.3 Applying the Development Plan Overlay

(i) The issue

The issue is whether the rationale for applying the Development Plan Overlay to the subject land is appropriate.

(ii) Background

The Amendment proposes to apply DPO6. The DPO head provision includes purposes which seek:

- To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.
- To exempt an application from notice and review if a development plan has been prepared to the satisfaction of the responsible authority.

The DPO at Clause 43.03-3 states:

If a development plan has been prepared to the satisfaction of the responsible authority, an application under any provision of this planning scheme 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.

Planning Practice Note 23 (Applying the Incorporated Plan and Development Plan Overlays) advises:

The overlay schedules cannot include a requirement for consultation. Responsible authorities should not use non-statutory consultation practices to assist in deciding a planning application. Where notice is being served without a basis in the planning scheme or *Planning and Environment Act 1987*, it is possible that defects in the notice process can be judicially reviewed in the Supreme Court.

(iii) Evidence and submissions

The Proponent submitted the DPO is appropriate because it would:

- support optimal land use and development outcomes for Cabrini Malvern and the local community, while providing sufficient flexibility for designing and developing Cabrini Malvern over time
- provide a framework for future decisions and include built form principles that guide future permit applications.

The Proponent considered the material underpinning the DPO is consistent with advice in Planning Practice Note 23 because it seeks to:

- identify and address opportunities and constraints for the development of the land
- provide direction about development outcomes and the overall form of development
- provide certainty to landowners and third parties about the form of development
- assist in choosing the appropriate planning tools to achieve the desired development outcomes and form of development
- ensure the schedule to the overlay is drafted to achieve the desired development outcomes and facilitate the development.

In its closing submission, the Proponent said it preferred the DPO but was not adamant about the choice between the DPO or Incorporated Plan Overlay (IPO). It considered such a decision is ultimately for DTP or the Minister.

Ms Milner considered the DPO:

- is strategically justified and the most appropriate tool for the subject land
- will provide certainty about the subject land's future use and development while ensuring an appropriate response to its context and surrounds.

Council preferred to retain the existing IPO and apply it to all land affected by the master plan (subject land). It explained the IPO would enable notice for any permit application and keep the community informed of future developments through detail design information. As an example, it referred to Stonnington Planning Scheme DPO2 which requires:

Before approving or amending a development plan, the responsible authority must display the plan for public comment for at least four weeks. The responsible authority must consider any comments received in response to the display of the development plan.

Dr Rowley stated:

- both the IPO and DPO require permits to be "*generally in accordance with*" but their provisions regarding notice and review vary
- the IPO enables its schedule to require a permit for matters that do not generally accord with the plan, whereas the DPO does not
- DPO does not require compliance with the development plan, though Clause 43.02-4 requires permits to be generally in accordance with the plan
- the DPO should not be used where there is significant potential to affect third parties
- the DPO creates uncertainty because the combination of discretionary provisions such as height and setback and removal of notice and review creates a "*highly open-ended approval*".

Dr Rowley referred to Planning Practice Note 23 which states:

Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third-party interests, self-contained land where ownership is limited to one or two parties and land that contain no existing residential population and do not adjoin established residential areas.

He stated there is a strong obligation to resolve issues satisfactorily at the planning scheme amendment stage because the DPO is a highly facilitative tool that will permanently remove future notice and review to adjacent residents. Ms Johnstone agreed.

To mitigate these issues, Dr Rowley recommended to:

- apply the IPO (preferred) rather than the DPO which would enable a permit process to vary the master plan without exempting third party notice
- alternatively, revise DPO6 to include informal notice provisions as proposed by Council, though this does not align with Planning Practice Note 23 guidance
- not apply DPO6 to the eastern part of the subject land and Coonil Crescent
- reduce the differences between the master plan and DPO6 by applying mandatory requirements if DPO6 was applied on all the subject land.

Mr Clarke supported the subject land's existing planning provisions and did not support applying the DPO to the subject land. He explained:

- a plan developed through a DPO can be like the one approved through an IPO
- neither overlay triggers a planning permit application requirement, but both assist in how a permit application is assessed
- the subject land's future use and development is likely to affect third party interests so does not align with advice in Planning Practice Note 23 for applying the DPO
- there is one owner for the multiple lots comprising the subject land.

At the Hearing, there were differing views as to whether the IPO is an outdated overlay.

The 24 proforma submissions stated:

- there had been minimal if any consultation with the local community in the process
- the proposed plans have insufficient detail and do not include architectural plans
- approving the plans with little detail and without further community consultation would enable Cabrini Malvern to do what it wants without objection.

The Proponent provided a table of its community consultation, which is broadly reproduced at Table 5.

Table 5 Cabrini Malvern community consultation

Date / invitees	Discussion	Presenters	Attendees
5.30pm, 12 Jul 2022 by online webinar	- Overview of Cabrini Health - Need for redevelopment	- Sylvia Falzon, Chairman Cabrini Australia	117
- Letter drop to residents in postcode 3144	- Site condition overview	- Sue Williams, Chief Executive, Cabrini Health	
- Targeted social media	- 10-year-view of redevelopment plan	- Dr Fergus Kerr, Group Director Medical Services	
- Glenferrie Road Traders	- Environmental sustainability - Who we have consulted with to date - Questions	- Matt Tymms, Chief Commercial Officer - Mark Naughton, Planning and Property Partners - Lisa Stubb, Contour Planning	

Date / invitees	Discussion	Presenters	Attendees
5.30pm and 7.30pm, 31 Jul 2023 by online webinar - Letter drop to residents within 200 metres of Cabrini Malvern - Email to attendees at previous webinar	- Need to redevelop - Journey so far: overview of stages - Building levels and heights - Heritage matters - Pedestrian access route - Greenspace landscape design - Next steps - Questions	- Sue Williams - Matt Tymms - Louise Alexander, Executive Director Cabrini Malvern	34
5.30pm, 17 Aug 2023 by online webinar - Letter drop to residents within 200 metres of Cabrini Malvern - Email to attendees at previous webinar	- Need to redevelop - Current phase - Building levels and heights: Stage 1D, Stage 2, Stage 3 - Greenspace design overview - Art impressions: view from Derril Avenue - Questions	- Sue Williams - Matt Tymms - Louise Alexander	26

(iv) Discussion

The Victoria Planning Provisions includes the IPO and DPO as available options. There is no evidence that either overlay is outdated or proposed to be phased out.

Planning Practice Note 3 advises the IPO and DPO are preferred:

- for giving effect to master plans for uses such as hospitals
- to exempt third party notice and review from subsequent permit applications.

Planning Practice Note 23:

- includes guidance which should not be misinterpreted as statutory criteria or rules for selecting an overlay
- broadly advises when each overlay should “normally” be applied, based on factors such as potential third party impact and land ownership – it does not advise on specific or special circumstances
- expects there has been appropriate strategic planning and community consultation from the start to ensure that decisions on future planning applications can be made without the need for further consultation.

The Committee has considered whether the proposal is supported by appropriate strategic planning and community consultation, the potential impact on third parties, and land ownership when deciding whether the DPO is appropriate for the subject land.

Strategic planning

As envisaged by Planning Practice Notes 3 and 23, the proposal is informed by a master plan completed in 2022 and supported by technical reports. The proposed DPO6 provisions, including the building envelopes, are broadly based on the master plan and these reports. They provide appropriate strategic planning for supporting the DPO (or the IPO).

Community consultation and potential third party impact

There were conflicting views regarding the appropriateness of community consultation to date. Submissions claiming inadequate consultation do not reconcile with:

- the nature and extent of consultation led by the Proponent since 2022
- the Development Facilitation Program which gave members of the community the opportunity to make a submission to an independent Committee.

Aspects of the exhibited proposal such as public open space, setbacks and the pedestrian link were shaped by feedback from previous community input. The proposal seeks to establish the planning framework which the development plan and permit applications must be generally in accordance with, to appropriately respond to potential off-site impacts and interface issues. The Committee process enabled concerned community members to express their views about potential impacts through submissions which would inform planning provisions to direct future permit applications.

It is unreasonable to expect detailed architectural plans at the planning framework stage of the planning process. The question is whether the community should have notice of a future permit application when detailed architectural plans will be available. If the response is yes, then the DPO should not be applied. The DPO does not enable its schedule to consult on a development plan or to reintroduce notice requirements for a permit application.

The DPO6 Version 2 provisions respond to identified potential impacts, many of which were raised in submissions from community members. The development plan approach will establish a framework to contain future built form within specified envelopes and to provide provisions which ensure potential impacts are appropriately considered to ensure reasonable outcomes. Within this context, the Committee is satisfied the community should only be notified if a future permit application is not generally in accordance with the development plan. Community members should have an opportunity to review and input into an application which departs from the parameters set by the development plan. The DPO provides for this.

Land ownership

Planning Practice Note 23 advises that the DPO should be applied to the subject land because its ownership is limited to one party. The practice note recommends the IPO where land comprises multiple lots in different ownership.

When considering all factors collectively, the Committee is satisfied the DPO is an appropriate planning mechanism to manage future development on the subject land.

(v) Findings

The Committee finds:

- It is appropriate to apply the Development Plan Overlay to the subject land.
- The Development Plan Overlay enables provisions for a future development plan and planning permits to consider potential on-site and off-site impacts and interface issues.

7 Schedule provisions

7.1 Special Use Zone Schedule 2

7.1.1 Land uses

(i) The issue

The issue is whether the proposed land uses and associated conditions are appropriate and justified.

(ii) Evidence and submissions

Planning expert witnesses and Council sought to revise the SUZ land use provisions to:

All uses

- require all uses to be associated with the hospital (Dr Rowley)

Office

- include a condition requiring it be associated with the hospital (Mr Clarke)
- do not require a permit (Section 1) conditional on it being associated with the hospital, and require a permit (Section 2) conditional on total gross floor area across the site not exceeding:
 - 250 square metres (Council)
 - 500 square metres (Ms Milner)

Retail premises

- do not require a permit conditional on being associated with the hospital and the total gross floor area across the site not exceeding 500 square metres, and prohibit the use (Section 3) other than Food and drink premises and Shop (Ms Milner)
- replace with Shop in Section 1 and reduce the total gross floor area in the condition from 500 square metres to 250 square metres, and delete Shop from Section 3 (Council)

Other uses

- add to Section 1 two new land uses (Research and development centre and Food and drink premises) that do not require a permit subject to each use being associated with the hospital and the total gross floor area not exceeding 250 square metres (Council)
- delete Research centre from Section 1 (Council)
- prohibit a Funeral parlour, Leisure and recreation and Industry (except research and development centre) or any use not in Section 1 or 2 (Council).

In response to questions at the Hearing, Mr Clarke:

- acknowledged the hospital use was not specified in its current zone so it needed a permit
- considered there would be little difference to the hospital if SUZ2 did not require a permit to use the subject land for a hospital
- explained the hospital had existing use rights, did not need permission for its use, and it could apply for a planning permit for future development.

(iii) Discussion

SUZ2 provides an opportunity to appropriately facilitate the hospital use and its expansion over time. This requires a judgement on which uses should not require a permit, require a permit or be

prohibited. The Committee agrees that land uses should be associated with the hospital. SUZ2 Versions 1 and 2 achieve this by specifying this condition against non-medical uses and by prohibiting any use not specified in Sections 1 and 2. This association should be expressed as ‘in conjunction with’ to align with Clause 64.02 which defines this term. Chapter 13.2 provides further discussion.

(iv) Findings

The Committee finds that land uses specified in Special Use Zone Schedule 2 should be:

- in conjunction with the hospital use
- prohibited if they are not specified in Sections 1 and 2 of the schedule
- consistent with those shown in Appendix D:1.

7.1.2 Signs

(i) The issue

The issue is whether the Clause 5.0 (Signs) provisions proposed for Special Use Zone Schedule 2 are appropriate.

(ii) Evidence and submissions

Council, Ms Milner and Mr Clarke did not support the proposal to specify in SUZ2 Clause 5.0 (Signs) that a permit may be granted for a sign that does not comply with the requirements of Clause 52.05. They referred to the SUZ parent provision which identifies the zone as Category 3 (High amenity areas) for the purposes of the Clause 52.05 sign provisions.

Council considered Category 3 to be appropriate because of the subject land’s residential context. It proposed⁴ to delete the provision which exempt the advertising requirements.

Ms Milner recommended that SUZ2 Clause 5.0 be revised to reference ‘None specified’ so the default Category 3 in the SUZ parent provision applied. She explained:

- the subject land is in a high amenity residential area
- Category 3 would enable amenity expectations of the surrounding residential area to be appropriately considered and protected.

Mr Clarke found the SUZ2 signs provisions to be inappropriate. He stated:

- the provisions should explicitly prohibit or severely limit signs visible beyond Wattletree Road and the Coonil Crescent access from Wattletree Road
- there is no need for hospital promotional signs to be visible from residential areas north, east and west of the subject land
- any other visible sign should be directional only.

Ms Johnstone did not raise Clause 5.0 as a specific issue in her original submission but objected to it at the Hearing. She submitted that SUZ:

- enables its schedule to specify a different sign category to the one in the parent provision
- does not specify or empower a schedule to allow a permit to be granted for a sign that does not comply with the Clause 52.05 requirements.

⁴ Document 55

Ms Johnstone added that nonetheless, there is no merit or strategic basis to justify Clause 5.0 so it should be deleted. Council agreed with Ms Johnstone's submission and the request to delete this clause.

SUZ2 Version 2 retained the exhibited version of Clause 5.0.

(iii) Discussion

The Committee agrees with submissions and evidence that Clause 5.0 should not enable a permit for a sign that does not comply with the Clause 52.05 requirements. The Clause 52.05 requirements are appropriate given the subject land is surrounded by low density residential properties in a zone regarded as a high amenity area. There is no good strategic reason to vary this.

The two decision guidelines should be deleted because they duplicate the more comprehensive decision guidelines in Clause 52.05-8. Consistent with Ministerial Direction 7(5), content in Clause 5.0 should be replaced with 'None specified'.

(iv) Findings

The Committee finds:

- The exhibited Special Use Zone Schedule 2 sign provisions in Clause 5.0 do not reflect the subject land's context within a high amenity residential area.
- Special Use Zone Schedule 2 Clause 5.0 should be revised to 'None specified' so that the default Clause 52.05 provisions including relevant decision guidelines can apply.

7.2 Development Plan Overlay Schedule 6

7.2.1 Development plan – public display and comment

(i) The issue

The issue is whether it is appropriate for the DPO6 to include provisions which require the responsible authority to display the development plan for public comment and consider any comments received in response to the display of the plan.

(ii) Background

The exhibited DPO6 included a decision guideline requiring the responsible authority to consider any written comments received in response to the display of the development plan, if required by the responsible authority.

DPO6 Versions 1 and 2 excluded any requirement to display the development plan.

(iii) Evidence and submissions

Ms Milner recommended deletion of the decision guideline requiring the responsible authority to consider any written comments received in response to the display of the development plan.

Council requested DPO6 include decision guidelines⁵ which require the responsible authority to:

⁵ Document 54

- display the development plan for public comment for at least four weeks
- consider any comments received in response to the display of the plan.

Council referred to DPO2 as an example where such a provision currently exists in the Stonnington Planning Scheme. It considered some form of notice of a proposed development plan is important for maintaining a cooperative relationship between the responsible authority, the community and Cabrini Malvern.

(iv) Discussion

The Committee has found it is appropriate to apply the DPO to the subject land. One of the DPO's purposes is to *"exempt an application from notice and review if a development plan has been prepared to the satisfaction of the responsible authority"*. The DPO intentionally excludes third party input beyond the planning scheme amendment stage.

The development plan should not be publicly displayed for two reasons – statutory force and expectations.

There is no power in the DPO parent provision to enable the development plan to be publicly displayed or for the responsible authority to consider comments from such public notice. If the responsible authority decides on the development plan based on a process without statutory force, there may be procedural issues.

Displaying the development plan through a non-statutory process creates a false expectation that comments received from the public will inform the responsible authority's decision on whether to approve development plan.

There are DPO schedules in Stonnington and other planning schemes which introduce public display of a development plan to consider public comments. The Committee is not aware of the circumstances which introduced them. However, their existence does not make them appropriate or justify introducing similar provisions for DPO6.

The Committee agrees with DPO6 Version 2 that excludes a requirement to display the development plan.

(v) Finding

The Committee finds that Development Plan Overlay Schedule 6 should:

- not require the development plan to be displayed for public comment because this is not enabled by the head provision and any decision influenced through such a process may result in serious procedural issues
- have greater detail and certainty than the provisions in the exhibited version in the absence of third party notice and review.

7.2.2 Decision guidelines

(i) The issue

The issue is whether it is appropriate to include the proposed decision guidelines in DPO6.

(ii) Evidence and submissions

Ms Milner recommended the decision guidelines reference the purposes of the zone, overlays and any other relevant Planning Scheme provision, and delete reference to comments arising from public comment.

The Proponent added more decision guidelines to DPO6 Version 1 than those in the exhibited version.

At the Hearing, the Committee questioned the ability to add decision guidelines in a DPO schedule when the DPO has no head of power to enable them, Ministerial Direction 7(5) does not include them and section 7(6) of the PE Act states that a “*planning authority must comply with a direction of the Minister under subsection (5)*”.

DPO6 Version 2 excluded the decision guidelines.

(iii) Discussion

The DPO parent provision does not include decision guidelines or provide the head of power to include decision guidelines in its schedule.

Planning Practice Note 23 advises that a DPO schedule cannot introduce decision guidelines for applications in the overlay area that are not generally in accordance with the plan. This may be because the test in DPO6 is whether any future permit application is generally in accordance with the development plan.

Ministerial Direction 7(5) reinforces this by not including decision guidelines in the DPO schedule template. Section 7(6) of the PE Act states that a “*planning authority must comply with a direction of the Minister under subsection (5)*”.

Council submitted the DPO6 decision guidelines would need to be translated across to SUZ2 if they are inappropriate for a DPO schedule.

The Committee agrees with DPO6 Version 2 that excludes decision guidelines.

(iv) Finding

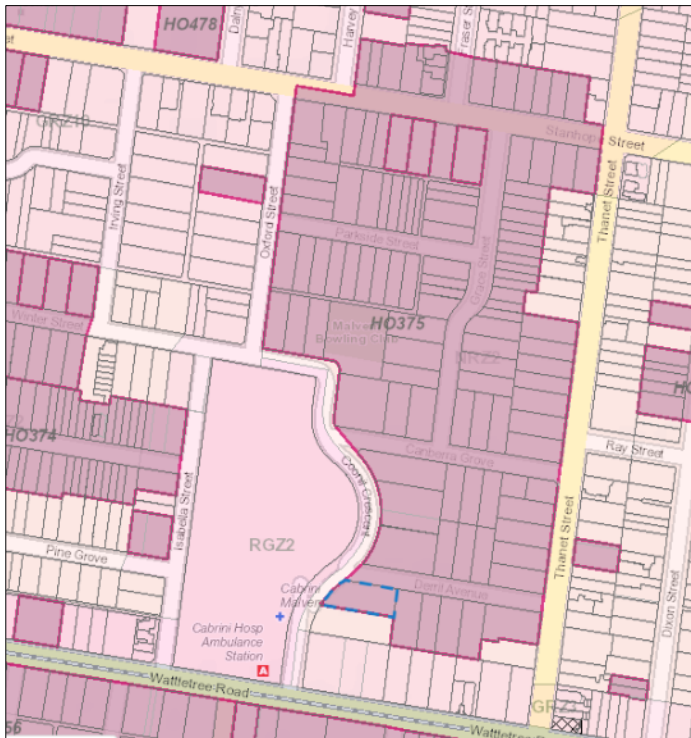
The Committee finds that Development Plan Overlay Schedule 6 should not include decision guidelines because they are not enabled by the parent provisions, not included in Ministerial Direction 7(5) and therefore not allowed by section 7(6) of the *Planning and Environment Act 1987*.

8 Heritage – Coonil Estate Precinct (HO375)

8.1 Background

The Heritage Overlay (HO375) applies to 4 Coonil Crescent, Malvern (part of the subject land). The property, with its Edwardian building, contributes to the Coonil Estate Precinct (HO375 Precinct) shown in Figure 4.

Figure 4 Heritage Overlay (HO375)



Subject land shown with blue border | Source: VicPlan

(i) HO373 Statement of Significance – What is significant?

The Coonil Estate Precinct is a residential area developed in stages during the late nineteenth and early twentieth centuries. The Victorian-era houses in the precinct are predominantly detached brick villas dating from the 1880s coexisting with a smaller number of more modest timber cottages. Most of the Edwardian houses in the precinct were developed through the subdivision of the Coonil Mansion Estate as part of a wave of suburban development that occurred in the Malvern area through the early twentieth century.

Elements which contribute to the significance of the precinct include (but are not limited to):

- the Victorian-era houses including the predominantly detached brick villas dating from the 1880s coexisting with a smaller number of modest timber cottages;
- the Edwardian houses and streetscapes developed through the early twentieth century and including fine examples of the 'Queen Anne' revival style and relatively early examples of the bungalow idiom;
- a selection of dwellings from the 1920s and 1930s which are generally sympathetic in terms of their architectural form, scale, and siting, and as such make useful contributions to the early character of the area;
- the predominantly single storey nature of the precinct. The two-storey scale of the villa, Hadleigh, provides an atypical, but historically important, variation from the scale of the precinct more generally;

- the detached form of the early dwellings with substantial and generally uniform (within each streetscape) front setbacks and side setbacks;
- generous allotments providing landscaped settings for dwellings. A group of modest Victorian cottages in Park Street and semi-detached dwellings in Grace Street form notable but valued variations to the more typical arrangement;
- intactness of built form across all of the periods. Dwellings survive largely unaltered and the area is notable for the absence of prominent additions and alterations. Visible upper level additions to Edwardian buildings are uncommon but typically adopt a discrete dormer form;
- hipped or gabled roofscapes with chimneys and terracotta or slate tiles or plain corrugated galvanised steel cladding
- the extent to which original detailing survives. Nineteenth century buildings typically retain verandahs, polychrome brickwork and ornamental detailing. Edwardian buildings are generally of note for their ornate timber detailing but in Coonil Crescent, Canberra Grove and Thanet Streets this expression is particularly well-preserved;
- low incidence of modern interventions such as parking provisions in front setbacks (particularly in areas such as Park Street where few crossovers exist at all); and,
- the retention of sympathetic low front fences in some sections of the precinct (most notably in sections of Grace Street);
- street layout and subdivision patterns, in particular, the picturesque curvilinear street layouts of Coonil Crescent and Grace Street;
- mature street trees; and,
- bluestone kerbs, channels and laneways (to the extent that they survive).

(ii) Property category

The property at 4 Coonil Crescent is categorised as:

- B 'grade'⁶ in the HO375 Precinct citation schedule of gradings
- C 'grade' in the Victorian Heritage Register
- 'contributory' in the *City of Stonnington Heritage Overlay Gap Study - Heritage Overlay Precincts Final Report* (2009 heritage study).

When compared, B and C 'grades' in the citation's schedule of gradings correspond with the contributory category in the 2009 heritage study.

(iii) Planning policy

Planning Scheme Clause 15.03-L (Heritage):

- applies to all land where the Heritage Overlay applies
- identifies B grade as a significant property and C grade as a contributory property
- seeks to:
 - retain all significant (including B graded) and contributory (C graded) heritage places
 - ensure new development respects the significance of heritage places
- includes strategies to:
 - discourage demolition of significant buildings
 - ensure significant building fabric is retained to conserve the intactness of the heritage streetscape.

⁶ Planning Practice Note 1 states "Letter gradings, for example A, B, C, should not be used".

(iv) Heritage assessment

The heritage assessment prepared by Anita Brady Heritage in November 2022 for the Proponent concluded:

- the property is of heritage value so demolishing the building, even in its altered state, would be a heritage loss
- demolishing the building is acceptable when considering:
 - the former dwelling is not intact because it has lost important original elements and presentation
 - there are more intact dwellings in the HO375 Precinct
 - the property is on the HO375 Precinct's south-west boundary so its loss would have less of an impact than if it was located more centrally
 - the building makes a limited visual contribution to the HO375 Precinct because the property has restricted visibility
 - it would enable a *“significant hospital development and a project of State significance”*.

(v) Heritage report

The heritage report prepared by Lovell Chen in June 2023 for the Proponent concluded:

- demolishing 4 Coonil Crescent will impact the HO375 Precinct by reducing the precinct's extent and the loss of an interesting Edwardian residence
- the impact would not threaten or undermine the precinct's significance
- the built form interface resulting from future redevelopment would not negatively impact the HO375 Precinct's values
- the siting, scale and massing of the proposed new buildings appropriately resolve the heritage interface
- the design response can be further considered and refined during the planning permit stage
- the change represents existing conditions, in some respects.

8.2 4 Coonil Crescent**(i) The issues**

The issues are:

- whether it is appropriate and justified to remove the contributory property at 4 Coonil Crescent, Malvern from the Coonil Estate Precinct (HO375 Precinct) by deleting the Heritage Overlay
- whether the Heritage Overlay should remain so that new buildings at 4 Coonil Crescent can appropriately respond to the heritage fabric in the HO375 Precinct.

(ii) Evidence and submissions

Council objected to the Heritage Overlay being removed from 4 Coonil Crescent and submitted that its heritage adviser:

- did not support the proposal to remove the Heritage Overlay or to demolish the existing building

- considers the existing building is of heritage significance and exhibits features listed in the Statement of Significance
- considers the property's prominent corner location is critical to holding the HO375 Precinct together because it anchors the precinct with a contributory building.

Council submitted that there is insufficient policy basis to remove the Heritage Overlay, and it should remain on the subject land to trigger an assessment against Clause 15.03-1L. This clause states:

- Ensure new buildings:
 - Are readily identifiable as new buildings while respecting and having minimal impact on the significance of the heritage place.
 - Retain vistas and view lines to significant places.
- Ensure that new buildings complement adjacent significant or contributory places and the prevailing character of the precinct, with regard to:
 - Height, street wall height, scale, mass, setbacks, orientation, roof forms, verandahs, fenestration and general form.
 - Relationships between solids and voids and the form and arrangement of window and door openings.
 - Materials, detailing, finishes and colour schemes.

Several submissions considered that removing the Heritage Overlay:

- is inappropriate and contrary to the historical and aesthetic significance of the precinct
- would be incompatible with the residential neighbourhood and enable Cabrini Malvern to expand
- would remove checks and balances for future development on the subject land.

One submission stated:

- it has not been demonstrated that it is appropriate to remove the Heritage Overlay
- the heritage report has downplayed the impact on the precinct, having relied on the building's alterations and limited visibility from the street.

Council called evidence on heritage from Ms Bashta of Extent Heritage. Ms Bashta considered the Amendment does not effectively respond to heritage matters related to the subject land and HO375 Precinct. She stated:

- 4 Coonil Crescent retains the features which contribute to the HO375 Precinct
- the HO375 Statement of Significance identifies views and settings in the Coonil Crescent when heading south along the curvilinear road layout as a contributory feature.

At the Hearing, Ms Bashta acknowledged the Heritage Overlay did not apply to the Coonil Crescent road reserve.

The Proponent called evidence on heritage from Ms Gray of Lovell Chen. Ms Gray considered the heritage interface issues could be managed effectively through the DPO6 requirements subject to adding heritage-related requirements. Consistent with the heritage assessment, she stated demolishing the building at 4 Coonil Crescent would:

- impact the Precinct by losing an interesting altered Edwardian residence and by reducing its physical extent at the south-western corner
- not threaten or undermine the Precinct's significance.

In its closing submission, the Proponent stated:

- 4 Coonil Crescent makes some contribution to the HO375 Precinct, but the building's contribution should not be elevated or exaggerated

- Ms Bashta has overstated the building's contribution when considering its minimal visibility from the public realm, the property's location at the edge of the precinct and its orientation to Coonil Crescent where the roadway and buildings have experienced significant change
- including all the subject land in a contained developable area without the Heritage Overlay is strategically sound because it would enable planning for a regional hospital for benefit of the broader community
- removing the Heritage Overlay would alter the HO375 Precinct's boundary but this precinct already has modified circumstances and excludes Coonil Crescent
- deferring heritage considerations until a replacement building is designed is not orderly planning and would result in uncertainty about the subject land's future.

(iii) Discussion

The HO375 Precinct comprises contributory and non-contributory properties which collectively form one heritage place. The Heritage Overlay (HO375) includes 4 Coonil Crescent as part of the precinct's curtilage. The Committee has considered:

- 4 Coonil Crescent as a contributing element to a larger heritage place and not as a single heritage property with individual significance
- whether removing the property from the HO375 Precinct, as exhibited, will negatively impact the precinct's significance.

The HO375 Precinct will continue to exist for the Stonnington community and will continue to provide benefit to the community provided removing the Heritage Overlay and ultimately demolishing the building at 4 Coonil Crescent does not affect the precinct's significance.

Previous Planning Panels considering the application (as opposed to the removal) of the Heritage Overlay have generally not supported submissions objecting to the overlay based on a property's development potential or competing policy objectives. Panels have referred to the two stage approach to heritage:

- Planning scheme amendment – if a property meets the threshold of local significance, the Heritage Overlay should be applied so that future development can sensitively respond to the identified heritage fabric. Competing objectives cannot be assessed because there are no detailed plans to measure the impact.
- Planning permit application – the responsible authority will assess detailed plans which propose to alter or demolish a building against its impact and competing policy objectives before decision on whether to grant the permit.

The two stage approach to heritage was relevant when Amendment C88 introduced the Heritage Overlay (HO375) to the Coonil Estate, including 4 Coonil Crescent, in 2010. At that early stage, it would not have been possible to assess competing or conflicting policy objectives for an amendment seeking to apply the Heritage Overlay. Development aspirations would have been hypothetical and uncertain without a formal permit application which included definitive plans and designs.

The two stage approach does not apply here. The Heritage Overlay already applies and the hospital is certain about its need to expand, as evident in its master plan and subsequent DPO6. The Committee acknowledges Council's concern about the absence of detailed architectural plans and a degree of uncertainty ahead of a permit application. However, Cabrini Malvern has undertaken significant work to master plan its expansion and it understands the extent of land

needed to enable it. Irrespective of which way the building envelopes are oriented, all options require a new building on land where the heritage house at 4 Coonil Crescent currently exists. While there is uncertainty about the finer design details normally found in architectural plans, the Stage 2 building envelope in Plan 1 of DPO6 provides certainty that the house at 4 Coonil Crescent needs to be demolished to expand Cabrini Malvern.

The Cabrini proposal presents exceptional circumstances that justify removing the Heritage Overlay because:

- there is a demonstrated need and supporting policy to support existing and future regional and state community needs through new buildings on the subject land including 4 Coonil Crescent
- Clause 19.02-1S supports the integration of health facilities in a designated health precinct with highly accessible public and private transport
- there is a staged master plan supported by technical reports on how to respond to growing health needs into the future
- DPO6 will introduce planning provisions which will statutorily recognise a building envelope on 4 Coonil Crescent for a new hospital building and will ultimately inform a future development plan and subsequent permit applications
- given the extent of setbacks and maximum building heights needed to sensitively respond to the HO375 Precinct, every part of the remaining subject land will be needed to accommodate new buildings
- Amendment C333ston seeks to introduce a facilitative planning framework for managing Cabrini Malvern's expansion
- the net community benefit from achieving health-related planning objectives in the interests of present and future generations at a regional scale far outweighs the demolition of one local contributory heritage building
- demolishing 4 Coonil Crescent will not negatively impact the HO375 Precinct's heritage significance for reasons outlined below
- unlike other proposals such as those seeking commercial space or housing, Cabrini Malvern needs to expand within an integrated network of buildings on its existing consolidated land to enable it to function properly
- it is inevitable Cabrini Malvern will need to demolish the building at 4 Coonil Crescent to achieve an expanded, integrated and fit-for-purpose hospital campus.

There is no dispute that 4 Coonil Crescent is a contributory property.

The building at 4 Coonil Crescent is partly obscured by a tall timber paling fence and vegetation. From the public realm, the building's gable and roof present the same development era and style as other houses in the precinct. The tall fence and vegetation are reversible, and their removal would expose a prominent elevation. This would improve its contribution to the precinct.

The building's demolition would negatively impact the HO375 Precinct because there would be one less property contributing to the heritage streetscape. However, this is not the test for assessing the appropriateness of demolishing the building. The property at 4 Coonil Crescent is one piece of the overall precinct. Consistent with Council's local policy, the test is whether demolition "*will not adversely affect the significance of the heritage precinct*".

The HO375 Precinct will continue to meet the local threshold of significance after the building at 4 Coonil Crescent is demolished because:

- the property is on the edge of the HO375 Precinct where realigning the precinct boundary would clearly delineate subject land from the precinct
- the remaining properties will continue to present as a cohesive heritage place
- the Derril Avenue heritage streetscape commences at 2 Derril Avenue, and not 4 Coonil Crescent which presents its side boundary.

Removing the Heritage Overlay from 4 Coonil Crescent will exclude it from the HO375 Precinct. Normally, this would mean development on the property would not need to respond to abutting heritage because it would be outside the precinct's curtilage. However, the scale of development sought by Cabrini Malvern needs to carefully interface with surrounding heritage properties. This would ensure that replacement development is sympathetic to the scale, setback and significance of the abutting heritage precinct.

The Amendment provides an opportunity to introduce new heritage-related provisions in DPO6 which:

- enable a more facilitative process rather than a multi-stage approach while achieving the same outcome – sensitively responding to the HO375 Precinct
- express the need to redevelop 4 Coonil Crescent to achieve broader community outcomes
- achieve the policy outcomes sought by Clause 15.03-1L regarding new built form in a heritage precinct through different provisions.

Heritage-related provisions to help guide future built form on the subject land are discussed in Chapter 8.3.

(iv) Findings

The Committee finds:

- Demolishing the building at 4 Coonil Crescent, Malvern will negatively impact the Coonil Estate Precinct (HO375) because it would lose a contributory property, but it would not negatively impact the precinct's heritage significance specified in the Statement of Significance because the remaining properties would continue to present as a cohesive place.
- The Heritage Overlay (HO375) should be removed from 4 Coonil Crescent, Malvern:
 - to facilitate the subject land's development plan which includes the demolition of the heritage building
 - only if new heritage-related provisions are introduced through DPO6 to give certainty that new development will not negatively impact the precinct's heritage significance, consistent with policy at Clause 15.03-1L.

8.3 Future built form impact on the HO375 Precinct

(i) The issue

The issue is whether future development enabled by deleting the Heritage Overlay and through new provisions will result in an acceptable outcome on remaining the Coonil Estate Precinct (HO375).

(ii) Evidence and submissions

Council referred to the heritage report which states:

There would be an opportunity to further consider and refine the architectural expression and materials at a future planning permit stage.

In this context, it is noted that the draft DPO6 includes the following objective:

To provide development that is of appropriate height and scale which is responsive to the residential context.

It may be appropriate to include an additional and explicit reference to the Coonil Estate Precinct Heritage Overlay (as well as to the 'residential context') and also to reference matters of architectural design (in addition to those of height and scale).

Council submitted the exhibited DPO6 did not include this recommendation. It requested that DPO6 include decision guidelines regarding the design response (including materials and articulation) to the adjoining heritage precinct if the Heritage Overlay is deleted.

Council considered the proposed Derril Avenue setbacks of 6 metres (exhibited DPO6) and 7.4 metres (DPO6 Version 1) to be insufficient for their respective building envelope heights. Council provided an aerial map⁷ showing existing building setbacks around the subject land which varied greatly from 4 to 7.4 metres along Winter Street, 5.9 metres along Isabella Street and 7.2 to 25.4 metres along Coonil Crescent.

Council requested that DPO6 require a development plan to respond to the following objectives and guidelines:

- Ensure that the proposed buildings have regard for the identified heritage values of individual places, and the Coonil Estate Precinct and the Edsall Street Precinct.
- Ensure new buildings:
 - Are readily identifiable as new buildings while respecting and having minimal impact on the significance of the heritage place.
 - Retain vistas and view lines to significant places.

Numerous submissions considered the proposed built form scale and massing will negatively impact the heritage precinct. They explained this form:

- is inconsistent with the precinct's character
- would overwhelm low scale heritage buildings and does not appropriately transition.

Submissions added:

- the heritage report has not appropriately considered the impact the proposed built form will have on the precinct including the streetscape and abutting residential buildings
- the master plan has little regard for the area's heritage character which comprises the street design, character and rhythm such as spacing between buildings.

Ms Bashta considered the proposed works in the master plan would negatively impact the HO375 Precinct. She explained:

- Stage 1D building – would be of substantial scale with insufficient setbacks in an important setting in the precinct, and inconsistent with the precinct's single storey scale
- Stage 2 building – the master plan has insufficient detail regarding its form, detail and materials, noting it will directly interface with heritage properties

⁷ Documents 66A and 66B

- the master plan does not respond to its broader heritage setting regarding the curvilinear form of Coonil Crescent, subdivision patterns, historic landscaping or early original street fabric.

Ms Gray stated:

- the Heritage Overlay and associated planning policy for heritage seek to ensure that new development in heritage places responds to the heritage place's significance
- the master plan has appropriately resolved the siting, scale and massing of proposed new buildings with the HO375 Precinct interface
- DPO6 should include additional explicit requirements for considering the HO375 Precinct interface through the development plan
- redeveloping the subject land as shown in the development plan will change the built form interface but will not negatively impact the values of the HO375 Precinct
- DPO6, with explicit new requirements, can effectively manage the interface between new development and the HO375 Precinct.

Ms Bashta and Ms Gray each considered DPO6 should have additional requirements regarding subject land's interface with the HO375 Precinct.

Mr Bashta recommended DPO6 be revised to include the following provisions:

- built form which is sensitive to adjacent heritage contexts (Objective 2)
- ensuring development responds sensitively to surrounding residential areas in terms of height, scale, setbacks, heritage values and amenity (Objective 3)
- ensuring *"development adjacent or in close proximity to surrounding heritage areas is responsive to identified heritage values through building design including form, materials, finishes and architectural details (including location of services and wayfinding) to complement the surrounding places with identified heritage values"* (new objective)
- including historically sensitive landscaping treatments or fabric (such as bluestone kerbs and channels) and retention of existing trees where relevant, to ensure that an appropriate setting and context for surrounding heritage places is maintained (Objective 5)
- the new principles and design guidelines proposed by Council which seek to:
 - interpret Coonil Crescent's historic curvilinear form, and incorporate salvaged kerbs and gutters
 - retain existing trees in the public realm
 - ensure that specific aspects of new buildings and built form respond to the adjacent heritage precincts
 - reference historical landscape treatments in the landscape design
 - ensure signs in Derril Avenue respond to the HO375 Precinct's heritage context
- Plan 1 specify for Stage 2 built form a maximum height of 2 storeys to Derril Avenue with a 4 storey height setback and limited to the Wattletree Road context as proposed in the master plan
- building setbacks that are consistent or greater than what is shown on Plan 2 to prevent poor heritage outcomes to the HO375 Precinct.

If the IPO is retained, Ms Bashta recommended the following be added to IPO4 Clause 5.0 (Preparation of the Incorporated Plan):

- - A Heritage Interpretation Strategy which includes the following:
 - history of the Cabrini hospital and the surrounding area

- Identification of relevant historical themes and narratives
 - Identification of appropriate interpretative devices
 - Identification of any salvaged materials used in the new development (such as bluestone kerbs and channels)
- A Heritage Impact Assessment prepared by a qualified heritage specialist.

Council requested that Ms Bashta's recommended provisions be included in DPO6, if the Committee supported the DPO rather than the IPO.

Ms Gray considered there were aspects of the master plan and landscape report which are important to the heritage interface but not included in DPO6. Specifically, Ms Gray agreed with the urban context report which summarises key moves shaping the development envelope:

- Stage 2 built form tapers down towards neighbouring, low-scale dwellings to the east
- a 9-metre spatial buffer between the proposed built form and the eastern boundary to reduce potential amenity impacts on neighbouring residents
- a minimum built form setback of 6 metres from Derril Avenue in line with the immediate context.

Ms Gray recommended that DPO6:

- require a setback to the fourth floor on the Stage 2 building
- specify a 9-metre setback to the east
- specify the 6-metre setback to Derril Avenue as a minimum to enable landscaping, noting the 7.4 metres specified in master plan would be beneficial.

In DPO6 Version 1, the Proponent added a new decision guideline:

Design response and built form outcomes

...

- Articulated elevations at the interface to the site's street frontages and immediately adjoining residential properties and materiality having regard to the adjacent heritage precinct.

In DPO6 Version 2, the Proponent added a new development plan requirement for the Site Master Plan to detail:

Design philosophy and a framework for development across the site, including:

...

- The impact of the built form on vistas and view lines from the adjacent heritage precinct.

(iii) Discussion

The Committee has found the Heritage Overlay should only be removed from 4 Coonil Crescent if the provisions proposed through DPO6 are sufficiently certain to ensure future built form does not negatively impact the HO375 Precinct's heritage significance. Matters which may impact the precinct's heritage significance include the setback, height, colours and materials of the Stage 2 building.

Derril Avenue is a streetscape dominated by large street trees in the public nature strips, and low density detached houses set back about 10 metres from the front fence within a garden setting. The streetscape is more robust for about the first 55 metres of Derril Avenue from Coonil Crescent (side boundaries of 4 and 6 Coonil Crescent and frontage of 2 Derril Avenue) where tall solid paling fences obscure views. The more robust streetscape at this western end of Derril Avenue creates a visual break between the subject land and the first properties which present a garden setting.

New built form would be more prominent when viewed from Coonil Crescent looking south. The southern section of Coonil Crescent also presents a robust streetscape, with a tall hedge along 6 Coonil Crescent obscuring views to the heritage fabric and a predominant garage door and high fence presentation along the 6A Coonil Crescent frontage.

Of note, houses on corner properties in the HO375 Precinct have smaller setbacks to the side boundary than the abutting properties with larger front setbacks. For example, the existing side setback for 4 Coonil Crescent is about 6 metres compared to the larger 10 to 12 metre setbacks at abutting properties.

Within this context, 4 Coonil Crescent can accommodate taller built form without negatively impacting the precinct's significance if there is an appropriate minimum building setback from the front property boundary.

The existing hospital building setbacks around the subject land shown on Council's aerial map demonstrate an inconsistent design response to the surrounding HO375 Precinct. The road reserves surrounding the subject land create a greater separation between the subject land and surrounding properties. However, the Derril Avenue setback requires a tailored response because:

- the existing hospital buildings at these locations are lower than what is proposed for the Stage 2 building
- Coonil Crescent, Winter Street and Isabella Street interface a road reserve which further separates the hospital buildings from surrounding properties, whereas there is no road reservation separating future built form on 4 Coonil Crescent from the residential property at 2 Derril Avenue.

The exhibited discretionary setback of 6 metres from Derril Avenue in DPO6 reflects the current alignment, but this is for a domestic sized building. The exhibited discretionary maximum 4 storey building envelope height (equivalent of 16.7 metres or more than five residential storeys) with only a 6 metre setback would dominate and negatively impact the streetscape from different vantage points along Coonil Crescent and Derril Avenue. This may seriously compromise the HO375 Precinct's significance.

The increased minimum setback of 7.4 metres in DPO1 Version 1 may be more suited for 2 storey built form (8.7 metres). This height and setback relationship is comparable to buildings interfacing Coonil Crescent and Winter Street. A greater setback would be needed for taller built form to help diminish the building's dominance on the surrounding heritage streetscape.

The Committee considers a building of the scale enabled by the Stage 2 building envelope in DPO6 Version 1 should have a minimum 10-metre setback from Derril Avenue to mitigate the impact of its height and mass. A smaller setback is likely to result in the building unreasonably dominating the surrounding heritage streetscape, so the setback should be expressed as a mandatory provision.

Regarding changes to DPO6 for responding to surrounding heritage, the Committee prefers the Proponent's provisions rather than Council's. Council's reference to:

- an individual heritage place is not relevant because Cabrini Malvern will be expanding on the eastern side of the subject land where only a heritage precinct exists
- retaining vistas and view lines to significant places (as copied from its policy) is not relevant because there are no such view lines from the subject land.

The Committee was not persuaded by Ms Bashta's recommendation to require a heritage interpretation strategy or to include planning provisions seeking to identify salvaged road materials and use them in future development. These requirements are unjustified because:

- the Heritage Overlay does not apply to the Coonil Crescent road reserve or to the hospital's main site (west of Coonil Crescent) so neither have identified heritage significance
- 2 and 4 Coonil Crescent are later acquisitions and do not relate to Cabrini Malvern's early history.

(iv) Findings

The Committee finds:

- To ensure future built form on the subject land does not negatively impact the Coonil Estate Precinct (HO375), Development Plan Overlay Schedule 6 should, as shown in Appendix D:2:
 - increase the minimum building setback to Derril Avenue from a discretionary 6 metres to a mandatory 10 metres
 - reduce the Stage 2 building envelope to 3 storeys along its eastern boundary and its northern (Derril Avenue) section
 - express the maximum number of storeys for the Stage 2 building envelope as mandatory provisions.
- There is no heritage-related reason to justify planning provisions requiring:
 - a heritage interpretation strategy regarding the history of Cabrini Malvern
 - salvaged materials such as bluestone kerbs and channels to be used in the new development.

9 Design response and amenity

9.1 Built form

(i) The issue

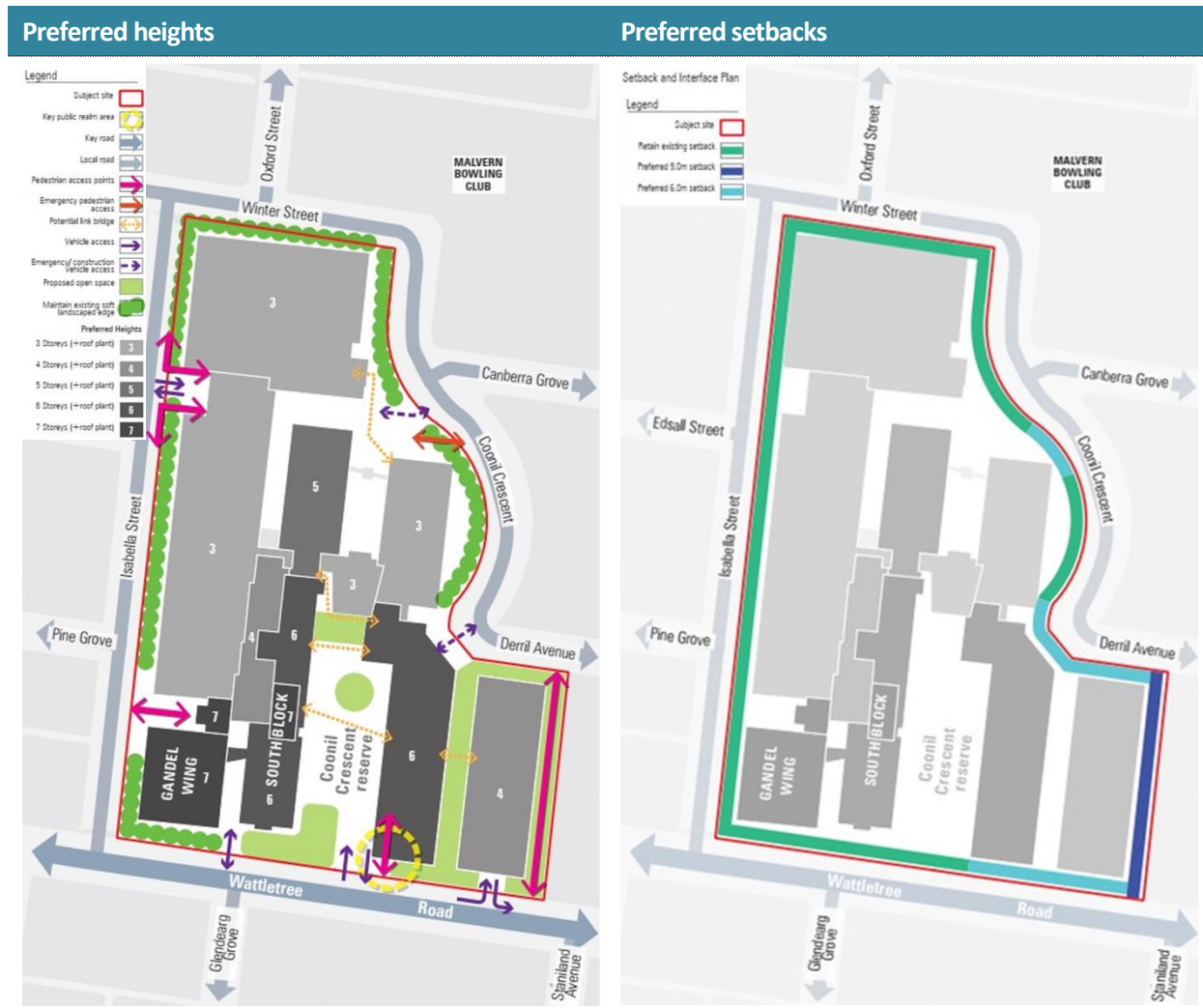
The issues are:

- whether future built form enabled by the proposed DPO6 building envelopes, including siting, building height, setback and bulk, appropriately respond to the subject land and surrounding residential area
- whether the proposed setback of 6 metres from Derril Avenue is appropriate
- whether the proposed setback of 9 metres along the subject land’s eastern boundary is appropriate
- whether there will be reasonable off-site amenity impacts regarding overlooking and overshadowing.

(ii) Background

The exhibited DPO6 preferred heights and setbacks are shown in Figure 5.

Figure 5 Exhibited DPO6 preferred heights and setbacks



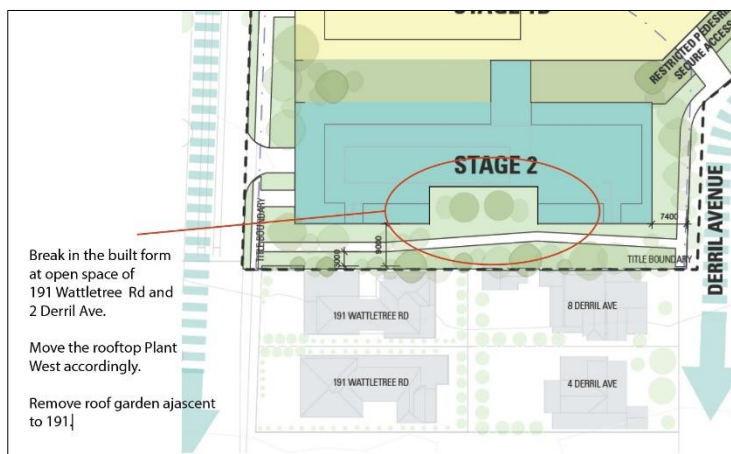
(iii) Evidence and submissions

There were submissions which considered:

- the main hospital site west of Coonil Crescent should be fully established before extending development to the east
- the bulk of development should be along Wattletree Road
- there should be less bulk as the development steps down to the east and north
- the 3 storeys along eastern boundary are equivalent to 4 to 5 residential storeys, given a hospital floor-to-floor height is 4 to 4.5 metres
- the proposed 6 storey development north of Stage 1D would be visually dominant when viewed from Coonil Crescent and Derril Avenue
- the 7.4-metre setback proposed along Derril Avenue is insufficient to buffer the adjacent residential properties and should be increased to 10 metres, as proposed by the Council
- the bulk of the 90-metre-long Stage 2 building envelope along the eastern boundary is excessive and should be broken up mid-way to reduce its impact on the residential properties to the east and to allow more sunlight into the rear gardens of eastern properties.

A submitter provided an alternative Stage 2 building envelope, as shown in Figure 6, to address some of these identified issues.

Figure 6 Alternative proposal to Stage 2 building envelope



Source: Document 80A

Council requested that the exhibited minimum setback of 7.4 metres be increased to a mandatory minimum setback of 10 metres from Derril Avenue and Coonil Crescent. Council considered a 7.4 metre setback is insufficient having regard to:

- the existing character of the area including generous front and rear setbacks
- the landscape setting to be achieved
- the height and extent of the built form proposed along the eastern elevation of the Stage 1D and 2 buildings.

Council agreed with Dr Rowley that matching the prevailing setback line for the dwellings to the east of Derril Avenue is important in this context. It did not oppose the location and minimum setback of 9 metres from the eastern boundary proposed in DPO6 Version 1 to facilitate the new pedestrian connection from Derril Avenue to Wattletree Road.

The Proponent called expert evidence on built form from Ms Hodyl of Hodyl & Co and on urban design from Mr Czarny of Hansen Partnership.

Ms Hodyl and Mr Czarny disagreed with a minimum 10-metre setback to Derril Avenue. Council maintained its position and submitted:

- Mr Vernon and Ms Hodyl had not undertaken a detailed analysis of the existing setbacks
- the Landscape Report identified generous side and rear setbacks as being characteristic of the area.

Ms Milner generally supported the proposed building envelopes but considered the eastern elevation of Stage 2 building envelope should be appropriately articulated. She sought to avoid the presentation of a long and continuously unbroken, potentially 2–4 storey non-residential built form along the residential properties at 2 Derril Avenue and 191 Wattletree Road including their rear seclude private open space.

Mr Czarny and Ms Hodyl considered the bulk along Wattletree Road needed to be broken down to replicate the rhythm established by the existing hospital buildings. This was reflected in the 9-metre separation between the Stage 1D and 2 building envelopes. They each supported the proposed bulk of the buildings. In response to questions, Mr Czarny stated:

- hospitals ‘compete’ with residential form in the same way that other institutional buildings do, but they are an essential component of residential neighbourhoods
- the Gandel building sets the benchmark for heights along Wattletree Road.

Ms Hodyl considered there was an opportunity to improve the design outcome of building setbacks from the eastern interface, Wattletree Road, Coonil Crescent and Derril Avenue.

Mr Vernon (called by the Proponent to present landscape evidence) considered the massing and building envelopes illustrated in the master plan would enable a high quality landscape outcome that responds positively to the broader site context, public realm streetscape character and neighbouring residential properties.

In response to submissions regarding bulk and requests to intensify development on the main hospital site to allow less intensive built form west of Coonil Crescent, the Committee asked through the Proponent whether the hospital architects had considered orienting the buildings in an east-west direction, so their main facades were north facing. The architects advised other orientations were considered to fall short of best practice healthcare design because of:

- distance from operating theatres and critical clinical support
- conflicts with the floor to ceiling height differences with the existing buildings
- staging and construction issues with maintaining hospital services
- insufficient floor areas
- amenity and urban design.

SUZ2 Version 2 was revised to include decision guidelines which required the responsible authority to consider as appropriate:

- Whether the built form provides appropriately designed articulation and materiality, having regard to both internal and external views of the site.
- Whether buildings have been designed in a way that does not unreasonably impact the amenity of the adjoining residential properties and surrounding area, including the effects (if any) of noise, lighting, overshadowing and impact on privacy.
- Whether roof plant and services that sit above the maximum building heights are appropriately screened.

- Whether architectural features that sit above maximum building heights enhance the quality of the building design.

(iv) Discussion

The existing built form transition from the subject land to the surrounding residential neighbourhood is assisted by the width of the surrounding streets combined with tree plantings around the perimeter. This is most successful along Isabella Street, Winter Street and Coonil Crescent where the bulk of the hospital has been mitigated by a combination of road reserve width and perimeter plantings. This condition is not replicated along the eastern boundary where there is no road reserve.

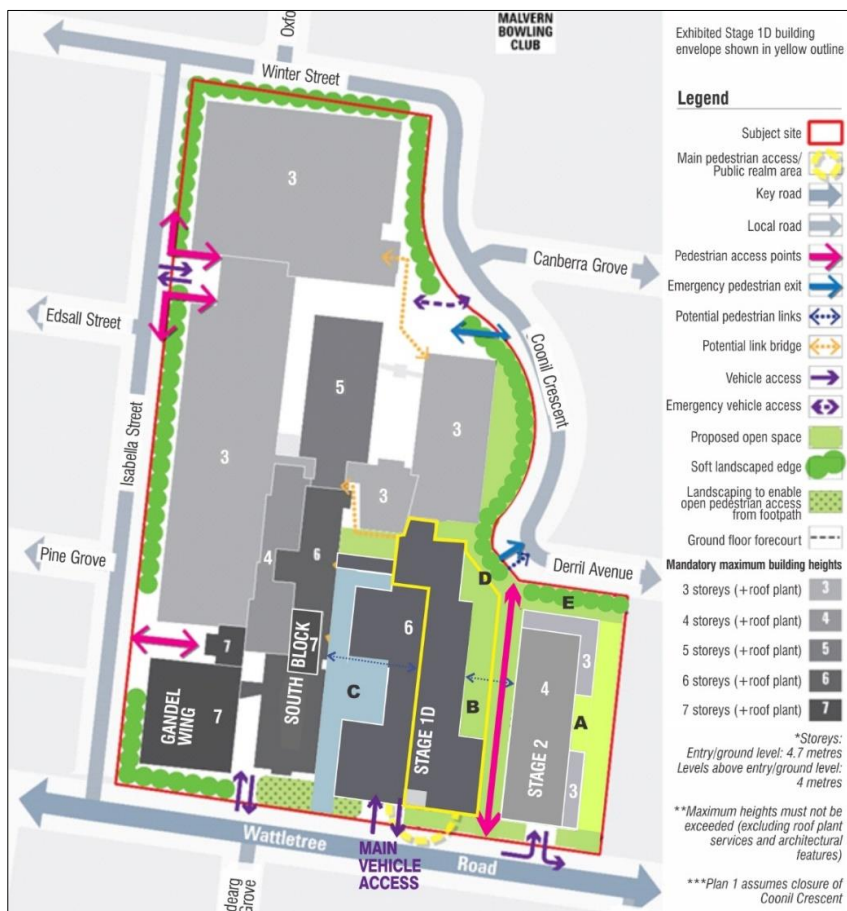
The Proponent’s approach to building heights is for the Gandel Wing building to be the tallest form on the subject land, then to transition down towards the residential area east of the subject land. To achieve this, all building envelope heights must be less than 7 storeys (excluding plant).

In response to evidence and submissions, the Committee considers built form should:

- transition down in height from the 7-storey Gandel Wing
- enable built form of up to 6 storeys in the Stage 1D building envelope
- be more concentrated on land west of Coonil Crescent and closer to Wattletree Road
- be less bulky along the eastern boundary which abuts low scale residential properties.

The Committee considered the different scenarios explored at the Hearing and has represented the revisions it supports in Figure 7. The yellow line represents the exhibited building envelopes.

Figure 7 Committee recommended building envelopes and public open space



Note: Chapter 9.2 discusses area A (landscaped buffer between the hospital and abutting properties)

The Committee then reviewed the revisions against the best practice design outcomes the hospital's architects sought to achieve and is satisfied these can be delivered.

Stage 1D building envelope

Consistent with what the hospital's architects sought to achieve, the revised Stage 1D building envelope would, when compared to the exhibited envelope area shown by the yellow line in Figure 7:

Distance from operating theatres and critical clinical support

- have no area further from the operating theatres than the exhibited building envelopes
- be closer to the theatres for most of the building envelope

Floor-to-ceiling heights

- have the same floor-to-ceiling height differences with the existing building, because the two links proposed in Figure 7 are the same length as exhibited DPO6 Plan 1

Staging and construction while maintaining hospital services

- require the same basement excavation, as shown in Figure 8, so similar alternative hospital service arrangements can be implemented
- include the slab that would be required for the exhibited envelope to support the roof garden over the entrance court
- allow the upper floors of the revised Stage 1D to be built while access is returned to the hospital services

Floor area

- significantly exceed the exhibited envelope area shown by the yellow line in Figure 7

Amenity and urban design

- add flexibility in building design by increasing the envelope and moving the bulk closer to Wattletree Road (west of Coonil Crescent)
- increase floorspace next to transport infrastructure
- increase scope to mitigate the impact on the heritage significance of the HO375 Precinct
- provide better open space opportunities, northern aspect for wards and outlooks onto greenery, all of which are key features of good hospital design.

The hospital would benefit from a larger Stage 1D building envelope because it would provide greater flexibility to design the final form of the building. Neighbouring residents would benefit from the envelope being further to the west, within 9 metres of the existing southern building, and being extended along the Wattletree Road frontage.

Building bulk can be avoided along Wattletree Road through a 9-metre wide setback replicated above the proposed pedestrian entrance to Stage 1D. This, in tandem with the 9-metre gap between Stages 1D and 2, would provide the rhythm sought by Mr Czarny and Ms Hodyl.

Stage 2 building envelope

The Committee agrees with submissions and expert evidence regarding the bulky nature of the continuous Stage 2 building envelope. The Stage 2 building envelope could be predominantly 4 storeys from the Wattletree Road frontage but stepping down to 3 storeys to Derril Avenue and the eastern boundary.

The exhibited envelope may not represent the final form of a future building. However, it would enable a building of up to 16.7 metres (4 storey element) and 12.7 metres (3 storey element) with no break along its eastern elevation, 9 metres from the boundary of low scale residential properties. The 9-metre setback would not address its bulky presentation across about 70 metres, although it would:

- help diminish the building's dominant visual impact
- further open views of the building's bulky eastern elevation from Wattletree Road and Derril Avenue.

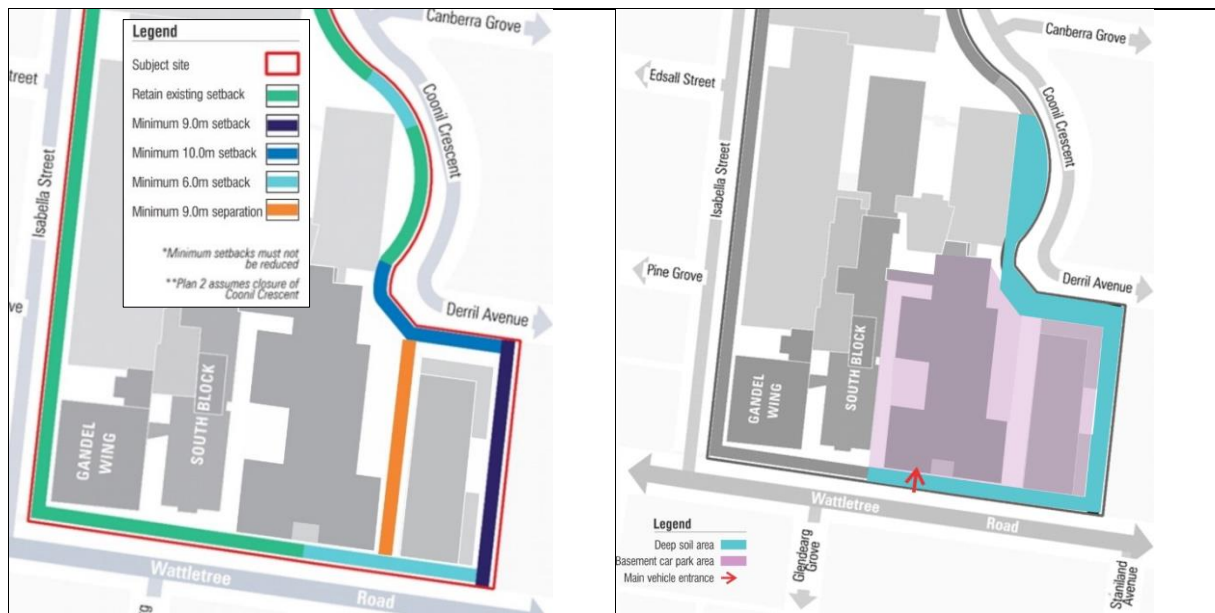
The eastern face of the Stage 2 building envelope should be broken up to better interface with its abutting neighbours. This should be achieved by providing a built form break mid-way along the eastern face. This is shown indicatively as A in Figure 7. This would reduce building bulk and provide greater sun penetration into neighbouring properties. The open space could be used by hospital workers and visitors.

The dimensions for this break were not explored at the Hearing and can be determined during the detail design stage through future approvals. However, the break should be sufficient to minimise bulk and overshadowing to rear private open space of abutting residential properties.

Regarding the building setback from Derril Avenue, the Committee has found in Chapter 8.3 that this should be a minimum of 10 metres to respond to the abutting heritage streetscapes more sensitively. From an urban design perspective, the exhibited setback of 6 metres from Derril Avenue was inappropriate for a building of the scale and bulk envisaged in DPO6.

The Stage 2 building envelope needs to offset the 12.7-metre-tall built form that it would enable along its northern and eastern side. The revised 7.4-metre setback is part way between the exhibited 6 metres and the more consistently applied setbacks of 10 metres or more along Derril Avenue. However, the proposed demolition of 4 Coonil Crescent will remove the understanding that this was once the side of a Coonil Crescent property. It will present itself like a Derril Avenue property where many setbacks are greater than 7.4 metres.

The Committee agrees with Council that the Stage 2 building envelope should be set back at least 10 metres to present a more consistent setback and to help mitigate its scale and bulk. This setback would also enable more intensive tree planting which help soften views towards it from the residential streets.

Figure 8 Committee recommended setbacks, separation distance and deep soil areas

The issue of overlooking cannot be determined at this stage because the Amendment proposes building envelopes which do not include the location of windows.

The Committee agrees with the built form related decision guidelines proposed in SUZ2 Version 2.

(v) Findings

The Committee finds:

- The exhibited building envelopes do not appropriately respond to the subject land or surrounding residential area.
- The exhibited Stage 2 building envelope setback of 6 metres from Derril Avenue is inappropriate from an urban design perspective, because it would:
 - be insufficient to mitigate the visual dominance of a bulky building of up to 14.7 metres (revised to 12.7 metres since exhibition) from surrounding residential streets
 - unreasonably impact the Derril Avenue streetscape through its inconsistency with prevailing setbacks in Derril Avenue
- The Committee's recommended 10 metre setback to Derril Avenue will achieve improved urban design outcomes (in addition to improved heritage outcomes as discussed in Chapter 8.3), including:
 - mitigating the scale of the Stage 2 building
 - general consistency with other setbacks in Derril Avenue
 - opportunities for deep soil planting and canopy trees which would help soften views towards the building.
- The setback of 9 metres along the subject land's eastern boundary is generally appropriate as a landscape buffer to support the hospital's amenity, but should have a built form break mid-way along the Stage 2 building envelope to reduce overall bulk and to increase sun penetration to the eastern properties.
- There will be reasonable on-site and off-site amenity impacts regarding overshadowing if buildings are revised to the Committee-recommended building envelopes shown in Figure 7.
- The areas shown in Figure 8 should have deep soil to enable canopy trees.

- The issue of overlooking cannot be determined at this stage because the Amendment proposes building envelopes which do not include the location of windows.
- The decision guidelines in Special Use Zone 2 Version 2 are supported and have been included in Appendix D:1.
- Development Plan Overlay Schedule 6 should be revised as shown in Appendix D:2 to include:
 - building height transitioning from the west corner down to the east and north edges of the site
 - the impact of the built form on vistas and view lines from the adjacent heritage precinct
 - building envelopes for new buildings including maximum building heights, minimum separation distances between buildings, and minimum setbacks from street frontages in accordance with Plans 1 and 2.

9.2 Eastern access and setback

(i) The issue

The issue is whether a pedestrian link in the proposed 9-metre setback along the subject land's eastern boundary will be safe and convenient.

(ii) Background

The exhibited DPO6 Plan 1 shows a north-south pedestrian link connecting Wattletree Road to Derril Avenue. It is aligned within the 9-metre setback along the subject land's eastern boundary.

(iii) Evidence and submissions

There were submissions which considered the proposed 9-metre setback including the pedestrian access:

- would not be obvious and easily discoverable given its location at the extreme east end of the subject land
- will be perceived as unsafe because it is excessively long and will have minimal to no passive surveillance, particularly at night
- is not wide enough.

Submissions asserted the setback would not be wide enough to:

- accommodate the access pathway and relocated services
- act as a landscape screen for abutting properties to the east
- replace the open space within the Coonil Crescent after the road reserve is closed
- offset the loss of sunlight from the proposed buildings after 3pm when children use the backyards of the eastern properties.

Mr Czarny did not provide a specific detailed response for the pedestrian path but referred to the following strategies:

- Clause 15.01-1L-01 (Urban design) which seeks to:
 - Encourage widened or new pedestrian links that are attractive, accessible, identifiable, well-connected and safe for both day and night-time users and meet the standard requirements for access for all.
- Clause 15.01-2L-01 (Building design) which seeks to:

Provide passive surveillance and overlooking of pedestrian routes by designing buildings with active frontages to streets, lanes and the public realm.

Mr Walsh considered the proposed pedestrian path to be an appropriate link between Derril Avenue and Wattletree Road.

Ms Hodyl stated the pedestrian link and 9-metre setback will:

- be a high-amenity thoroughfare which maintains connectivity through the subject land
- achieve sufficient separation between the hospital and neighbouring residential properties to the east.

Dr Rowley recommended that pedestrian access be maintained through the existing roadway or through a closely equivalent alignment. He said every option should avoid occupying space above the road which could be achieved by redistributing the form of Stage 1D further into the area between Stages 1D and 2. Where it could not be avoided, a sky-bridge like the one at Melbourne Hospital could connect the buildings.

Dr Rowley considered the proposed pedestrian link to be a poor substitute for a public roadway. He explained the narrower 9-metre pedestrian link would:

- likely be read as part of Cabrini Malvern, thereby reducing its legibility and discoverability
- create uncertainty for pedestrians as to whether the link was available for use
- reduce real and perceived safety along the pathway, especially at night
- unlikely have good passive surveillance from the adjoining hospital building, especially after hours.

Dr Rowley questioned the quality of the pedestrian path given the unresolved queries to accommodate power lines and other infrastructure in this space.

Council requested a mandatory minimum building setback of 9 metres from the subject land's eastern boundary. It did not challenge the location of the proposed pedestrian link. Council noted that DPO6 enabled future permits to be 'generally in accordance with' the development plan. This flexibility means the link could be relocated if it is at least 9 metres wide.

The Proponent submitted the pedestrian link:

- would deliver benefits to the local community by retaining access at a convenient location
- does not have to be relocated because there are other minor pedestrian links throughout the subject land
- will be a high amenity space, wide enough to accommodate quality landscaping and to relocate the utilities currently located in the Coonil Crescent road reserve.

The Proponent added, the Pedestrian Network Strategy required by DPO6 will:

- ensure the design of the pedestrian link and other connections address safety and surveillance
- include building design elements to facilitate windows onto the pedestrian link, appropriate lighting and surveillance cameras, where appropriate.

(iv) Discussion

Clauses 15.01-1L-01 and 15.01-2L-01 referred to by Mr Czarny provide good guidance for considering whether the proposed pedestrian link is appropriate. They seek for a pedestrian link

to be attractive, accessible, identifiable, well connected, safe day and night, and with passive surveillance from buildings with active frontages.

Generally, the proposed width of 9 metres is sufficient to accommodate an attractive pedestrian path with landscaping. However, the path as proposed is likely to be viewed as less attractive, less legible and perceived as unsafe because of:

- its enclosure between the Stage 2 envelope (which is likely to be the back of the building) and timber paling fences along about 90 metres of side property boundaries
- its location at the far eastern edge of the subject land and the sides of residential properties
- the size of existing trees proposed to remain on the subject land, and new trees and vegetation.

Residents would eventually become aware of the path's existence and a portion of them may decide to use it, particularly during the day. However, the path would be harder to discover to those new to the area, based on its discreet location.

Conversely, the area between the Stages 1D and 2 building envelopes is:

- near the proposed main hospital access at Wattletree Road where there will be considerable activity
- near the existing Coonil Crescent road reserve alignment.

The Committee agrees with Dr Rowley that the pedestrian path should be near this location.

At this location, a 9-metre-wide landscaped building separation could accommodate a pedestrian link in an attractive setting. It would achieve what is sought by Clauses 15.01-1L-01 and 15.01-2L-01 by:

- having a more direct route between the tram stop on Wattletree Road and Derril Avenue
- creating a safer environment day and night by surrounding the path with active frontages on both sides that encourage passive surveillance
- having a more discoverable and legible path within view of more heavily used spaces
- inviting people to the public open space to its northwest by:
 - combining the pedestrian path with this open space
 - reducing the potential 'gun barrel effect' created by a 90-metre-long path along the eastern boundary of the subject land
- creating a visual connection to Coonil Crescent through its alignment.

The 9-metre setback along the subject land's eastern boundary should remain as a landscaped area to help minimise the impact on abutting residential properties to the east. For built form reasons discussed in Chapter 9.1, the Committee has recommended a built form break mid-way along the Stage 2 building envelope to reduce overall bulk and increase sun penetration to the eastern properties. It would also help reduce the 'gun barrel effect' of this space for hospital staff and patients.

(v) Findings

The Committee finds:

- The pedestrian link along the subject land's eastern boundary is inappropriate because:
 - its location will not make it easily discoverable or legible

- its 90-metre length at this location will result in insufficient passive surveillance, particularly in the central section at its furthest points away from the street, resulting in safety issues.
- The pedestrian link should be relocated to a 9-metre-wide reservation between the Stages 1D and 2 building envelopes because:
 - it would be better located between buildings with active frontages, providing a safer path
 - it would be a more direct route between the traffic lights and tram stop at Wattletree Road (south) to the Coonil Crescent and Derril Avenue corner (north)
 - 9 metres is wide enough for a pedestrian path and landscaping.
- The 9-metre setback along the subject land's eastern boundary should remain a landscaped area (but without a pedestrian path) to:
 - act as a landscape buffer to abutting residential properties
 - support the hospital's on-site amenity.

9.3 Mandatory provisions

(i) The issue

The issue is whether the building envelope heights and setbacks and pedestrian link should be expressed as mandatory provisions in DPO6.

(ii) Evidence and submissions

The Proponent proposed discretionary provisions for building envelope heights and setbacks and the pedestrian link in DPO6 Plan 1 (exhibited and Version 1).

Council submitted the following should be mandatory provisions, to provide a clear outcome for surrounding residents and clear principles for future permit applications:

- maximum building heights and minimum setbacks
- minimum 10-metre setback from Derril Avenue and Coonil Crescent
- minimum 9-metre setback along the eastern boundary, designed as a pedestrian link with passive surveillance.

Council referred to Planning Practice Note 59 regarding mandatory provisions which states:

While mandatory provisions only provide fixed planning outcomes, there are circumstances where they are warranted. Mandatory provisions provide greater certainty and ensure a preferred outcome and more efficient process. Although mandatory provisions are the exception, they may be used to manage:

- areas of high heritage value
- areas of consistent character
- sensitive environmental locations such as along the coast
- building heights in some activity centres.

A balance must be struck between the benefits of a mandatory provision in the achievement of an objective against any resulting loss of opportunity for flexibility in achieving the objective.

Mr Clarke and Dr Rowley supported mandatory provisions given third party notice and review would be permanently removed. Mr Clarke referred specifically to maximum building heights. Dr Rowley considered the following should be mandatory provisions:

- 9-metre eastern setback

- Stage 2 building heights
- maintenance of adequate 24-hour pedestrian access from Derril Avenue to Wattletree Road.

Dr Rowley considered that when Planning Practice Notes 23 and 59 are read and applied in combination, they avoid a scenario where *“discretionary controls are paired with permanent notice exemptions for development proposals that ‘may significantly affect third-party interests’ or ‘adjoin established residential areas’.”*

DPO6 Version 2 expressed the maximum building heights and setbacks as mandatory provisions by:

- adding a note in Plan 1: *“Maximum heights must not be exceeded (excluding roof plant services and architectural features)”*
- adding a note in Plan 2: *“Minimum setbacks must not be reduced”*.

(iii) Discussion

The issue of whether the building envelope heights and setbacks should be expressed as mandatory provisions is resolved because the Proponent agreed to make them mandatory later in the Hearing. This is important for the Stage 1D maximum building heights and minimum 9-metre setback from the subject land’s eastern boundary abutting residential properties where the interface is more sensitive. Increasing height or reducing the setback at these locations may unreasonably impact these neighbouring properties and the adjacent heritage precinct.

Council resolved that the Coonil Crescent road reserve between Derril Avenue and Wattletree Road is not required for public use but requested there be a north-south pedestrian link as part of Cabrini Malvern’s expansion. The Proponent has committed to this link since preparing its master plan and in response to feedback from numerous community consultations.

The proposed pedestrian link needs to be functional, well used and safe to achieve its intended outcome. This requires the link (or separation between buildings) to be at least 9 metres wide and located between the building envelopes for Stages 1D and 2 to provide increased passive surveillance. The pedestrian link’s minimum width should be expressed as mandatory provisions, to ensure the link:

- achieves the aims of Clauses 15.01-1L-01 and 15.01-2L-01 as discussed in Chapter 9.2
- because a reduced width is unlikely to provide sufficient sunlight into the buildings or provide a pleasant all-hour pedestrian link.

Applying mandatory provisions to the maximum building heights, minimum setbacks and minimum pedestrian link width is consistent with guidance in Planning Practice Note 59 for reasons submitted by Council.

This combination of mandatory and discretionary planning provisions will:

- give certainty to surrounding residents that any future development plan or permit application will not be taller than the specified heights, or less than the minimum setbacks and separation distance
- give the hospital the flexibility to vary other provisions where needed to facilitate its expansion, subject to not exceeding the developable envelope areas.

(iv) Finding

The Committee finds the building envelope heights and setbacks and the minimum pedestrian link width should be expressed as mandatory provisions in Development Plan Overlay Schedule 6.

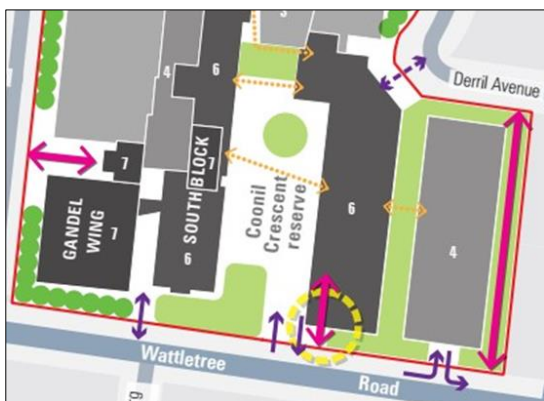
9.4 Open space, landscaping and trees**(i) The issue**

The issue is whether the proposed public space, landscaping and tree removal is appropriate.

(ii) Background

The proposal is supported by a Landscape Concept prepared to inform the master plan. DPO6 Plan 1 identifies proposed open space at locations shown in Figure 9.

Figure 9 Exhibited DPO6 proposed open space

**(iii) Evidence and submissions**

Submissions considered the proposed open space:

- is remote from surrounding residents and poorly located for hospital staff and visitors
- will not provide a quiet contemplative space as a refuge for patients
- is unlikely to be used by the adjacent communities in the same way the existing Coonil Crescent road reserve was used as a community gathering place because it is remote and adjacent to the tram stop and on the major road
- is not suitably proportioned to replace existing open space, including the 9-metre eastern setback.

A submission which sought to protect mature trees on the subject land said the arborist report did not say anything about the loss of very mature trees.

Mr Vernon stated:

- while tree removal is proposed, including some substantial existing trees, other existing canopy trees will be retained
- due to the size of numerous existing trees, their removal will be initially noticeable from various viewsheds
- replacement planting will establish a similar landscape character for the subject land over time.

Mr Vernon found the Landscape Concept will continue the canopy tree character of the area. He considered the DPO6 Plans 1 and 2 were generally in accordance with the Landscape Concept. He recommended DPO6 include requirements for an overall landscape master plan for the site and adjacent areas, including:

- a street tree master plan
- an indicative plant and materials schedule
- a written description of the management of landscaped areas
- principles for how future development will contribute to improving the public realm and promote inviting pedestrian and public spaces
- details of existing trees to be retained, including tree protection zones
- WSUD initiatives integrated in the landscape design
- raised in situ planter details
- irrigation system details
- location of utility services within building setbacks.

Mr Vernon considered his recommendations would ensure the landscaping responds positively to the DPO6 design objectives, including enabling canopy trees in the setbacks, viewing the new buildings in a landscape setting, and high quality landscaping.

Ms Hodyl recommended DPO6 be revised to encourage the replacement of large canopy trees by:

- revising the fifth design objective to seek a high standard of landscaping *“that supports canopy tree planting within the site and at the street interface”*
- including a requirement to assess the extent of significant trees that are proposed to be removed in the existing conditions plan
- requiring the landscape plan to identify the proposed canopy trees.

She also recommended that DPO6 Plan 1 be revised to:

- require the Wattletree Road public space be directly accessible from Wattletree Road
- extend the proposed landscape edge along Derril Avenue and downgrade the proposed emergency/construction vehicle access to pedestrian access of Derril Avenue (to align with the master plan)
- include a larger public space at the main public entrance on Wattletree Road.

In response to a question from the Committee, Council advised that it intended to plant street trees in the section of Derril Avenue and Coonil Avenue where a full intersection once existed.

SUZ2 Version 2 introduced a decision guideline:

- Whether the landscape concept includes high quality outdoor spaces and includes canopy trees around the perimeter of the site, retaining existing trees where practicable.

DPO6 Version 2 revised the exhibited landscape master plan requirements to:

A Landscape Master Plan which includes the following:

- A planting concept within built form setbacks, incorporating landscaping and canopy trees.
- Integration of canopy trees at the perimeters of the site in deep soil.
- Landscaped treatments for pedestrian connections including detailed sections and design for the pedestrian connection between Wattletree Road and Coonil Crescent / Derril Avenue.
- Provision for landscaping and seating within the pedestrian connection along the eastern boundary of the site, to create a high amenity space that also provides a landscaped buffer to adjoining residential properties.

- A street tree master plan.
- An indicative plant and materials schedule.
- Principles for how future development will contribute to improving the public realm and promoting inviting, pedestrian public spaces.
- Tree protection zones for trees to be retained.
- An assessment of significant trees to be removed.
- Integration of water sensitive urban design initiatives.
- Raised in-situ planter design details.
- Irrigation system details.
- Location of any utility services within building setbacks, having regard to especially to planting zones.

DPO6 Version 2 also required a public realm amenity plan to address:

- High quality outdoor spaces for patients and visitors with sunlight access where practicable.

(iv) Discussion

The Proponent is not required to provide public open space on privately owned subject land. Council is responsible for providing and maintaining public open space throughout the municipality.

On 20 November 2023, Council resolved to declare the Coonil Crescent road reserve between Derril Avenue and Wattletree Road as surplus open space. However, development of the scale and intensity of what is proposed on the subject land should provide reasonable open spaces. Where possible, they should be unfenced to enable the broader community to use them.

Cabrini Malvern needs to provide different types of open space including those which separate buildings and space where staff, patients and visitors can recreate. Building setbacks which separate them from abutting residential properties or other buildings will be generally transient spaces with linear proportions. They are fit for their intended purposes which include providing sufficient space for landscaping that will soften and screen the built form. They should not be regarded as being inappropriately proportioned public open spaces.

To achieve their intended function, the following setbacks should have deep soil to support canopy trees, as shown in Figure 8:

- Derril Avenue – the increased 10-metre setback will enable layered vegetation
- eastern setback between Stage 2 and residential properties to the east
- along the Wattletree Road boundary south of the buildings.

The tall trees along Coonil Crescent dominate the residential streetscape. The Committee acknowledges Council's intention to plant street trees in front of the 10-metre setback along Derril Avenue. These new trees will further obscure views to the Stage 2 building when they are fully mature.

The proposed open space along Wattletree Road is unsuitable because it is south facing, would be partly overshadowed by the existing hospital building, and is next to a noisy main road. The area is unlikely to be used by the broader community. Publicly accessible open space would be more functional in a north facing location which attracts sunlight. The areas identified as B, D and E in Figure 7 can collectively provide a larger open space area in a quieter location closer to the surrounding residential area. This larger and better oriented and located public open space:

- would include the 10-metre setback along Derril Avenue
- would require the Stages 1D and 3 buildings to be set back to align with the 10-metre setback along Derril Avenue
- should be grassed and unfenced to allow public access.

The roof garden proposed on the first floor over the main entrance and emergency drop off:

- is unlikely to be perceived as open space or used by the community, hospital staff and patients
- would be lost if the building envelopes are relocated as recommended by the Committee but could be replaced by more functional open spaces in locations A and D as shown in Figure 7.

The subject land has significant trees which add to the amenity of the site and the surrounding area. Any proposal to remove or affect these trees should be assessed to better understand their health and potential impact.

(v) Findings

The Committee finds:

- The dimensions and location of open space proposed in the exhibited Development Plan Overlay Schedule 6 will not result in attractive and functional spaces.
- Open space should be directed towards quieter locations with more northern sunlight.
- The recommended 10-metre building setback to Derril Avenue should have a lawn and row of mature evergreen trees in deep soil along the building frontage to help screen the Stage 2 building from the neighbouring residential area.
- The recommended built form break along the eastern elevation of the Stage 2 building envelope should be landscaped to help further buffer the eastern residential area from the hospital.
- Development Plan Overlay Schedule 6 should require an assessment of existing mature trees likely to be impacted by future development stages.
- The Committee supports the Version 2 changes to the SUZ2 and DPO6 relating to landscaping and a public realm amenity plan which have been included in Appendix D:1 and Appendix D:2.

9.5 Environmentally sustainable design

(i) The issue

The issue is whether the proposal incorporates appropriate environmentally sustainable design features.

(ii) Background

The proposal is supported by a sustainability report prepared by Integral which states the master plan has demonstrated best practice in environmentally sustainable development through:

- a Building Environment Sustainability Scorecard (BESS) score of 50%+ – ‘Best Practice’
- a 100%+ score in the Melbourne Water Stormwater Treatment Objective- Relative Measure (STORM) calculator.

The exhibited DPO6 includes an objective to achieve a built form outcome that implements innovative environmentally sustainable design features.

(iii) Evidence and submissions

Council submitted that to ensure best practice environmentally sustainable design across the subject land, any approved development plan must include an Environmentally Sustainable Development Report. It requested that DPO6 require the subject land to:

- Achieve innovative best-practice sustainable design outcomes, including 5-Star Green Star certification (design and as-built) for buildings over 5000sqm gross floor area, and minimum 50% BESS score for new buildings and works which result in between 100 and 5000sqm additional gross floor area.
- Floorplates are to be designed to maximise access for direct sunlight, natural cross ventilation and passive heating and cooling.
- Take advantage of opportunities for innovative precinct scale environmental sustainability initiatives.

In the DPO6 Version 2, the Proponent added a requirement for a development plan to include:

An Environmental Sustainability Plan, providing overall objectives for:

- Energy performance.
- Water resources.
- Indoor environment quality.
- Stormwater management.
- Transport.
- Waste management.
- Urban ecology considerations.

At the Hearing, the Committee questioned why the proposed buildings had not been orientated to take advantage of the better access to sunlight available through north facing buildings. Through the Proponent, the architects advised that other orientations had been considered but had been overridden by more pressing hospital design principles.

Council requested that DPO6 require a 5-star rating, equivalent to that proposed by the Proponent.

(iv) Discussion

The Committee agrees with Council's provisions which would require future buildings to achieve a minimum 5-Star Green Star energy rating (or the current rating at that time if higher than 5 stars) for buildings over 5000 square metres in gross floor area, and minimum 50% BESS score for new buildings and works which result in between 100 and 5000 square metres of additional gross floor area. They should be combined with the environmentally sustainable design plan provisions which were included in DPO6 Version 2.

(v) Findings

The Committee finds:

- Future development should be constructed to a minimum 5-Star Green Star energy rating or to the current rating at that time if higher than 5 stars.
- Special Use Zone Schedule 2 should require an environmentally sustainable design plan.

- Development Plan Overlay Schedule 6 should require an environmentally sustainable design plan which includes details specified in Appendix D:2.

10 Traffic, parking and road reserve

10.1 Parking

(i) The issue

The issue is whether the proposed number of parking spaces appropriately respond to needs.

(ii) Background

Exhibited SUZ2 included in Clause 2.0 (Use of land):

Amenity of the neighbourhood

The use of land must not adversely affect the amenity of the neighbourhood beyond a level that is reasonably acceptable for the operation of the site as a hospital and medical precinct, as a result of:

- Traffic and car parking generated by the use.

DPO6 Version 1 introduced the car parking rates shown in Table 6.

Table 6 DPO6 Version 1 car parking rates

Use	Rate	Measure
Points of care (beds)	1.3	For each hospital bed provided
Consulting suites	3.5	For each 100 square metres of net floor area

(iii) Evidence and submissions

Council and local residents submitted the hospital expansion would:

- increase parking demand on local streets which were already experiencing a high parking demand
- make it more difficult to find on-street parking.

Council supported the proposed car parking rates shown in Table 6 and SUZ2, and submitted the DPO6 would require a car park management plan to ensure the parking is appropriately managed.

Mr Walsh stated:

- weekday parking surveys for on-street parking identified:
 - short-term parking (1 to 2 hour) had up to 78 per cent occupancy
 - long term parking had up to 89 per cent occupancy
 - consistency with previous studies conducted by other traffic engineers.
- the existing parking restrictions on surrounding streets generally balance the current needs of Cabrini Malvern and existing residents
- it is unlikely future applications will be able to rely on on-street parking to justify a waiver of car parking when considering the existing parking conditions and occupancies of the surrounding streets
- proposed rates shown in DPO6 were appropriate but the floor area should be expanded to include all medical floor areas (not just consulting suites), as shown in Table 7.

Mr Walsh explained this change was necessary so that:

- future parking demand is representative and aligns with empirical car parking data⁸
- future on-street parking demand is accounted for (it had been acknowledged but not previously quantified).

Table 7 Revised car parking provisions

Use	Rate	Measure
Beds / Points of care	1.3	For each hospital bed provided
Medical / Consulting suites	3.5	For each 100 square metres of net floor area

Regarding parking restrictions on surrounding streets, Mr Walsh explained:

- residents can often find on-street parking near their property
- residential streets closest to the hospital, experiencing the highest parking demand were generally provided with a mix of permit zone (resident only parking) and short-term parking such as one or two hour parking
- restrictions became more relaxed further away from the hospital.

To determine the hospital's total parking demand (on-site and on-street), Mr Walsh investigated factors such as journey to work, staff levels, shift changes, previous staff and visitor surveys regarding travel and parking habits. He identified that 207 (at 11am) to 266 (at 1pm/2pm) on-street spaces were likely occupied by hospital staff and visitors as shown in Table 8.⁹

Table 8 Existing parking demand at 11am and 2pm

User	11am			2pm		
	On-site	On-street	Total spaces	On-site	On-street	Total spaces
Visitors [#]	186 (70%)	80 (30%)	266	233 (70%)	100 (30%)	333
Staff* (985)	661	127	787	798	166	964
Total	847	207	1,054	1,031	266	1,297

GTA questionnaire identified around 80% of staff and visitors drive to Cabrini; of those visitors that drive, around 30 per cent choose to park on the street

* 985 staff at 11am | 1,205 staff at 2pm

Having identified existing parking demand, Mr Walsh cross-checked his revised parking provisions and found:

- the existing hospital generated a peak demand for 1,200 spaces based on the revised car parking rates (refer to Table 9)
- peak demand only occurs during the afternoon shift changeover period and lasts for about an hour
- the existing parking demand compared with the parking demand based on the revised rates confirmed the revised numbers are appropriate
- parking demand would be closer to 1,050 car spaces during typical business hours.

⁸ Document 86

⁹ Document 86

Table 9 Existing Hospital – peak parking demand based on revised rates

User	Unit	Rate	Total spaces
Beds/point of care	627	1.3 spaces/bed	815
Medical/consulting suites	11,000 sqm	3.5 spaces/100sqm	385
Total			1,200

The Proponent relied on Mr Walsh’s evidence regarding the appropriate hospital parking rates and supported the key parking outcomes specified in DPO6. It submitted the proposal seeks to ensure the overall parking provision is responsive to demand, with rates and the quantum of parking to be determined according to demand analysis at the permit stage.

In response to a query from the Committee, the Proponent provided floor space areas and bed numbers / point of care for Stages 1D and 2.¹⁰ The figures are summarised as:

- Stage 1D: 8,727 NFA square metres
- Stage 2: 3,443 NFA square metres
- Hospital beds: 50.

(iv) Discussion

The existing suite of parking restrictions on nearby streets endeavours to balance the needs of residents and other users. According to Mr Walsh, residents and their visitors can generally find on-street parking near their property though not necessarily directly in front. The mix of parking restrictions in surrounding streets is consistent with other areas where there is a high demand for parking from competing users such as a nearby activity centre. Council is the road manager for all surrounding streets and is responsible for managing any existing on-street parking issues. Council can continue to monitor and amend parking restrictions on a case-by-case basis should the need arise.

That said, currently there is demand for on-street parking from the hospital. The Committee agrees with Mr Walsh that considering existing parking conditions, any future hospital expansion should provide on-site parking to fully meet its needs.

The Committee agrees with Mr Walsh that the number of parking spaces should be based on all medical floor areas, not just the consulting suites. This enables the total parking demand generated by the hospital expansion to be assessed. Applying these parking provisions to the future hospital expansion will allow for the appropriate level of car parking to be provided, thereby minimising any further adverse impact on neighbouring streets.

The Committee considers that these provisions should be accounted for when preparing the traffic and car parking plan to establish the appropriate car parking supply for each stage.

An appropriate car parking management strategy would be required to encourage the greater uptake of on-site parking, but this is adequately addressed in DPO6 objectives and is not contested by parties.

¹⁰ Document 87(e)

(v) Findings

The Committee finds:

- Development Plan Overlay Schedule 6 should:
 - include all new medical floor areas (as well as the consulting suites) in the parking rates so that the increased parking demand can be met entirely on-site
 - require a car parking management plan indicating how car parking on-site will be managed to minimise effects on the surrounding road network.
- The traffic and car parking plan required by Development Plan Overlay Schedule 6 should establish the appropriate car parking supply for each stage by calculating the floor areas and hospital beds / point of care with Mr Walsh's car parking provisions specified in Table 7.
- Cabrini Malvern should accommodate all its future parking needs on-site.

10.2 Traffic

(i) The issue

The issue is whether traffic generated by the proposal will result in a reasonable impact on the surrounding road network.

(ii) Background

Exhibited SUZ2 included in Clause 2.0 (Use of land):

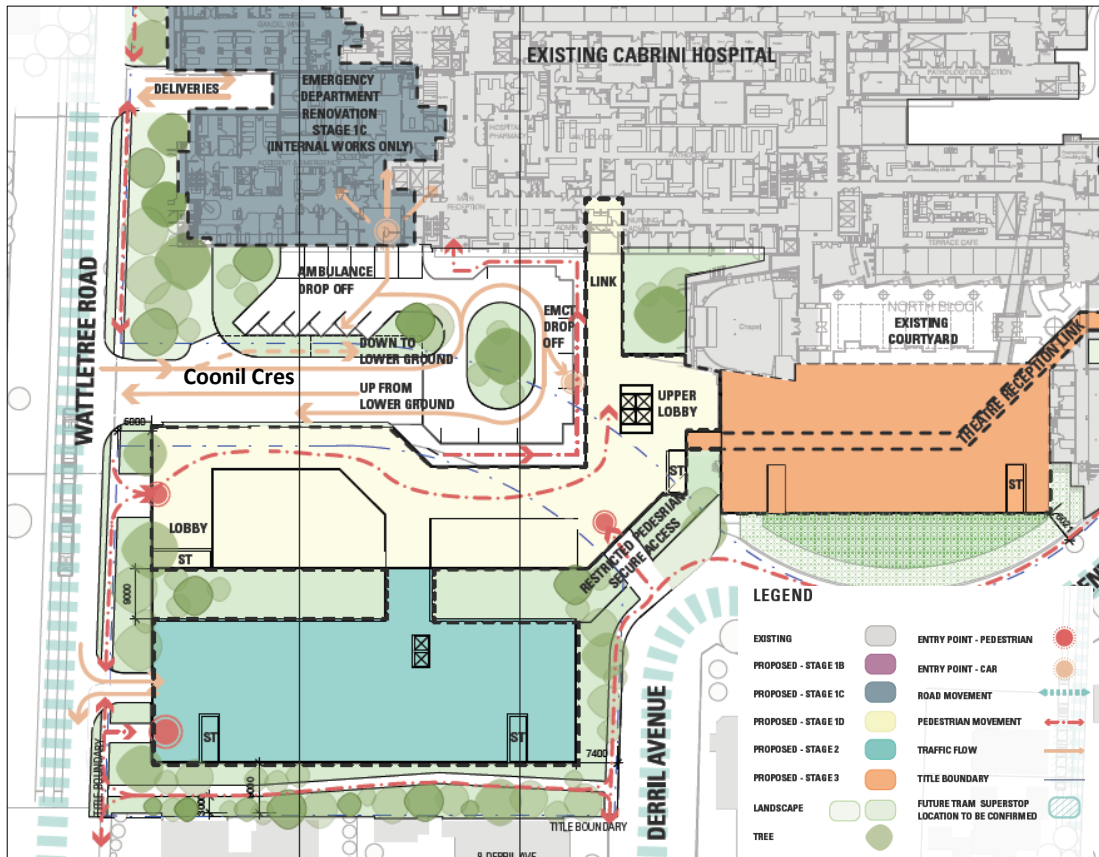
Amenity of the neighbourhood

The use of land must not adversely affect the amenity of the neighbourhood beyond a level that is reasonably acceptable for the operation of the site as a hospital and medical precinct, as a result of:

- Traffic and car parking generated by the use.
- Transport of materials or goods to or from the land.

Cabrini Malvern's proposed access arrangements are shown in Figure 10.

Figure 10 Proposed access arrangements



Source: Document 3 HSPC Draft Development Plans Part 1 – Upper Ground Floor

(iii) Evidence and submissions

Council and local residents considered additional traffic generated by the hospital expansion would negatively affect local streets and amenity.

The Proponent relied on Mr Walsh’s evidence regarding traffic matters but highlighted the proposed design focuses vehicle access on the Wattle Tree Road/Coonil Crescent intersection and seeks to avoid traffic increases on residential streets. It referred to the Salt3 traffic report which was prepared in December 2022 to inform the hospital expansion on the subject land. The Proponent noted Mr Walsh and the Salt3 report were conservative because they assumed a higher level of traffic generation that what would practically occur with the future development.

Mr Walsh stated:

- most traffic would be centred around Wattle Tree Road as there is no new parking proposed to be accessed from Isabella Street, Winter Street, or Coonil Crescent (north)

he agreed with Salt3 that the additional traffic likely to be generated by the hospital expansion (refer to

- Table 10) is low and not expected to significantly impact traffic conditions at or around the subject land.

Table 10 Additional traffic generated by the proposed hospital expansion

Time period (peak hour)	Traffic generation (vehicles per hour)
Wattletree Road, AM	202
Wattletree Road, PM	152
Subject land	235

Source: Mr Walsh evidence Table 7

Mr Walsh added:

- he supported the methodology, assumptions and key findings in the previous Salt3 traffic study
- he agreed with the conservative assumption of a 50 percent increase in parking supply for traffic generating purposes, more than the planned 30 percent increase
- regarding the Wattletree Road/Coonil Crescent intersection:
 - based on his recent traffic surveys and assessment, there would be some deterioration in its operation but it is still expected to adequately service the hospital with manageable impacts on Wattletree Road operation
 - his post-development intersection analysis showed a degree of saturation (which is the ratio of the volume of traffic making a particular movement compared to the maximum capacity for that movement) of 0.89 – this is considered a good/acceptable level of service for a signalised intersection
 - the Salt3 report identified a degree of saturation of 0.79 which is a good level of service
- the proposed new additional car park access point at Wattletree Road towards the eastern end of the subject land is appropriate
- considering the car park size, providing an additional access point introduces redundancy into car park operations
- the proposed left in-left out arrangement at the new access point provides suitable and safe additional access and would reduce traffic loads on the Wattletree Road/Coonil Crescent signalised intersection, further improving its overall operation
- drivers who drop someone off at the public emergency drop off area (around the oval island) can then turn left onto Wattletree Road and enter the car park if they choose to.

At the Hearing, Mr Walsh considered the residential amenity would not be significantly compromised by additional traffic circulating on local streets to access on-street parking because:

- most traffic is concentrated at the Wattletree Road/Coonil Crescent intersection
- there would be negligible additional traffic on side streets as there is little available on-street parking (over and above what is already used by current hospital staff and visitors)
- for comparative purposes, Isabella Street currently accommodates around 2,000 vehicles each day, but its environmental capacity is 3,000 vehicles each day
- traffic on the surrounding local streets is not expected to increase to the capacity limits of those streets.

DPO6 Version 2 included the following requirements:

An Integrated Transport and Access Plan which addresses the following:

- Predicted traffic generation and identification of likely traffic impacts on adjacent roads.

...

A Pedestrian Network Strategy which addresses the following:

- Linkages across the site.
- Consideration of safety and surveillance.
- Public safety plan for pedestrian connections.

Council referred to feedback from its traffic engineer which stated:

- Mr Walsh's traffic survey was conducted just before the September 2023 school holidays and may not represent typical existing conditions
- the Wattletree Road/Coonil Crescent signalised intersection currently performs satisfactorily but its performance would be degraded with additional hospital traffic
- the proposed new car park access point at Wattletree Road is a poor outcome
- all traffic should use the signalised intersection at Coonil Crescent rather than the proposed access point
- DTP is responsible for authorising the Wattletree Road access arrangements because Wattletree Road forms part of the principal road network and is categorised as Transport Road Zone 2.

Council requested that SUZ2 and DPO6 require a comprehensive traffic impact assessment that considers all proposed uses and their impact on the surrounding road network.

(iv) Discussion

The Committee is satisfied that additional traffic associated with the hospital expansion can be accommodated on the existing road network, principally Wattletree Road. Amenity on neighbouring local streets should not be unreasonably affected.

The traffic analysis demonstrates the Wattletree Road/Coonil Crescent signalised intersection will continue to perform adequately into the future. Conducting traffic surveys before school holidays may not represent typical road conditions, however they are sufficiently robust to inform the traffic analysis. Mr Walsh's traffic surveys were conducted, in part, to confirm the validity of the Salt3 investigations.

The Committee agrees with the Salt3 report and Mr Walsh that the Wattletree Road/Coonil Crescent intersection would operate satisfactorily in post-master plan traffic conditions, as well as allowing for future traffic growth along Wattletree Road (a 10-year post-master plan traffic scenario). It also agrees with Mr Walsh that:

- the proposed left in-left out car park access at the eastern end of the subject land is appropriate
- additional traffic associated with the hospital expansion will not unreasonably impact residential amenity because most traffic will use the Wattletree Road/Coonil Crescent intersection
- there would be less traffic using local streets to look for parking because future parking demand should be entirely accommodated on-site.

Ultimately, the additional car park access point on Wattletree Road would be assessed by the responsible authority during detail design.

These measures will help maintain a similar level of amenity in the surrounding residential streets as existing conditions. Some hospital visitors and staff may choose to use limited on-street parking. However, the Committee agrees with Mr Walsh that the level of traffic associated with those seeking on-site parking is likely to be negligible and should not unreasonably affect local traffic conditions or residential amenity.

(v) Findings

The Committee finds:

- Traffic associated with the Cabrini Malvern expansion is unlikely to unreasonably impact traffic conditions or amenity in the surrounding road network, including local streets.
- The proposed left-in left-out car park access point at Wattletree Road toward the eastern end of the subject land is appropriate.
- Special Use Zone Schedule 2 should require a traffic management plan.
- Development Plan Overlay Schedule 6 should include the Pedestrian Network Strategy requirement, as shown in Appendix D:2.

10.3 Coonil Crescent road reserve**(i) The issues**

The issues are whether it is appropriate and justified to:

- use the Coonil Crescent road reserve between Wattletree Road and Derril Avenue to expand the hospital
- relocate infrastructure such as powerlines and drainage from the road reserve.
- include planning provisions regarding the road reserve closure.

(ii) Background

The Amendment contemplates the closure of Coonil Crescent between Derril Avenue and Wattletree Road, in part to facilitate the proposed hospital expansion.

In April 2023, Council commenced a separate process, including public consultation in accordance with *Local Government Act 2020* to discontinue this section of road as it was no longer required for public purposes. At its meeting on 20 November 2023, Council resolved to discontinue the road reserve and sell it to Cabrini Malvern. Council had previously deferred its decision on this matter at its meetings of 28 August and 30 October 2023.

(iii) Evidence and submissions

Numerous submissions did not support closing part of Coonil Crescent due to the loss of:

- green open space currently located in the road reserve
- pedestrian connectivity from Derril Avenue to Wattletree Road and the tram stop.

Council submitted:

- the road closure would potentially impact infrastructure assets (electricity and stormwater drainage) and pedestrian accessibility
- existing infrastructure may restrict the envisaged master plan development, [including the construction of basement car parking
- relocating utilities or creating further easements may create further difficulty in developing in accordance with DPO6 and the master plan.

The proposed replacement pedestrian link to the east of the site is discussed in Chapter 9.2, and loss of open space in Chapter 9.4.

Dr Rowley did not support closing part of Coonil Crescent to enable future hospital expansion based on procedural, logistical and merit reasons. He explained:

- the master plan heavily depends on the road reserve which is in public ownership subject to another process¹¹ so it is contrary to orderly and proper planning
- the powerlines and drainage in the road reserve would need to be relocated
- the proposed access path along the subject land's eastern boundary does not adequately replace the existing arrangement due to its location, insufficient width, lack of surveillance.

The Proponent submitted:

- it is good planning to provide the opportunity for Coonil Crescent to be discontinued while enabling the contingency of it remaining as a public road
- the Amendment retains the aspiration that Council will sooner or later, resolve to discontinue the road
- incorporating Coonil Crescent into the development plan allows for the potential scale and mass built form further away from the side and rear boundaries while optimising potential for health care use on the subject land
- if Coonil Crescent were to remain open it can be accommodated, Plans 1 and 2 would continue to operate, controlling development around the surrounding edges of the subject land
- the fundamental issue with Coonil Crescent appears to be focused on relocating utility assets which would be resolved as part of the future Site master planning and detail design
- it is planned to relocate the stormwater drainage currently in the road reserve along the eastern boundary of the subject land along the proposed pedestrian link.

DPO6 Versions 1 and 2 included a provision which recognised that the Coonil Crescent road reserve may remain:

Closure of Coonil Crescent

If the development plan shows Coonil Crescent retained as a public road, the development plan must be generally in accordance with Plans 1 and 2 but amended to provide building envelopes, landscape areas, access arrangements and other modifications as necessary without reducing site setbacks or increasing building heights.

(iv) Discussion

At its meeting on 20 November 2023, Council resolved this section of the road was not needed as public space and decided to close it and sell it to Cabrini Malvern. This will be achieved through a separate process under the *Local Government Act 2020*.

The Committee supports Coonil Crescent being incorporated into Cabrini Malvern to allow for optimal site development. The negative impacts on infrastructure services, open space and pedestrian accessibility can be ameliorated to an acceptable level.

In major civic developments, infrastructure often needs to be relocated, or easements created to protect infrastructure assets. No evidence was presented that services could not be relocated. Rather, indications were that further investigations are required. The Committee is comfortable that service relocation can and should be addressed during detail design. It is in the Proponent's interest to ensure appropriate solutions are realised. Without them, developing the site to achieve

¹¹ This process has now been resolved with Council's resolution on 20 November 2023.

the optimal outcome would be problematic. The Proponent will need to work with authorities and Council to ensure appropriate solutions for relocating community infrastructure are found.

The provisions regarding the Coonil Crescent road reserve should:

- remain in DPO6 until the land has been transferred to Cabrini Malvern
- be deleted from DPO6 if the land has been transferred to Cabrini Malvern by the time the Amendment is adopted by the Minister for Planning.

(v) Findings

The Committee finds it is appropriate and justified to:

- use the Coonil Crescent road reserve between Wattletree Road and Derril Avenue to expand Cabrini Hospital
- relocate infrastructure such as powerlines and drainage from the road reserve
- include planning provisions regarding the road reserve closure before the land is sold to Cabrini Malvern.

11 Other issues

11.1 Construction impact

(i) The issue

The issue is whether construction impact including noise, waste and site access will be appropriately managed.

(ii) Background

The exhibited DPO6 and Permit PA230308 do not require a construction management plan.

(iii) Evidence and submissions

Environment Protection Authority submitted it is unclear whether potential amenity impacts on nearby residential uses associated with demolition and construction on the subject land have been considered and how they will be managed. It requested that such impacts be addressed in the Amendment documents.

Environment Protection Authority referred to the requirements of the General Environmental Duty which applies to all Victorians and submitted:

If you engage in activities that may give rise to a risk to human health or the environment from pollution or waste, you must understand those risks and take reasonably practicable steps to eliminate or minimise them.

Neighbouring property owners submitted:

- construction will create noise, dust and significant disruption for months
- construction will disrupt the neighbourhood for years
- there is no detail regarding construction impacts including project scope, development extent, estimated construction and disturbance durations
- trucks and trade vehicles will have to use local streets because the proposed closure of Coonil Crescent will restrict them from access to the subject land from Wattle Tree Road
- there may be damage to streets during construction because the plans do not prevent heavy vehicles from accessing the subject land through residential streets.

DPO6 Version 1 included a new requirement under Clause 3.0 (Conditions and requirements for permits):

A permit for construction of a new building must include a condition requiring a Construction Management Plan to be approved prior to the commencement of construction issued in accordance with the development plan.

DPO6 Version 2 revised it to:

A Construction Management Plan must be approved prior to the commencement of construction, to the satisfaction of the responsible authority.

(iv) Discussion

The Committee acknowledges and agrees with the proposal to require a construction management plan before construction starts. This plan would outline how matters such as noise, dust and construction related traffic would be managed during the construction phase, ensuring that impacts on patients, visitors and surrounding residential areas can be acceptably managed.

(v) Findings

The Committee finds that Development Plan Overlay Schedule 6 should require a construction management plan to be approved to the satisfaction of the responsible authority before construction starts to help minimise impacts on hospital patients and visitors and the surrounding residential area.

11.2 Responsible authority**(i) The issue**

The issue is whether it is appropriate and justified to designate the Minister for Planning as the responsible authority for the subject land.

(ii) Evidence and submissions

Many submissions objected to the Minister for Planning being designated as the responsible authority for the subject land. They considered that Council has the expertise to make decisions on the future of the subject land and how it interfaces with the surrounding residential area.

Council objected to the Minister for Planning becoming the responsible authority for the subject land. It submitted that retaining Council as the responsible authority would ensure a consistent approach to permit applications and consideration of local characteristics.

Council referred to the Golf Course Redevelopment Standing Advisory Committee which recently recommended Kingston Council remain as the responsible authority rather than the Minister for Planning. Council agreed with that Committee's report which stated:

As a general principle planning decisions should be dealt with at the most immediate (or local) level that is consistent with their resolution.

...

The Advisory Committee does not support the approval of the Development Plan without further work and changes. If the Development plan is not suitable for approval as part of this process, then there seems to be little advantage in making the Minister the responsible authority. This is likely to further complicate an already complicated process. Maintaining Council as the responsible authority for the Development Plan would also help ensure adequate consultation of a revised Development Plan is undertaken.

Council submitted that any future application would:

- require substantial work to consider
- depend on Council's internal referral system to resolve issues
- require DTP to consult extensively with Council because Council has the local knowledge and expertise
- be slower than Council being the responsible authority because there would be unnecessary double handling between DTP and Council
- financially disadvantage Council because it would still be expected to advise DTP on local matters without the benefit of collecting planning application fees.

Dr Rowley was not persuaded that Ministerial approval would genuinely fast-track future permit applications. He explained that an application under an IPO or DPO would rely heavily on Council's internal referrals and expertise such as traffic and drainage.

The Proponent considered the issue of whether the Minister for Planning should be the responsible authority is a matter for the Government. It added:

- decisions on the development plan or future permits are unlikely to be assisted by the views of surrounding residents or the landowner
- the Planning Scheme is to be amended to support a major regional hospital
- planning for a regional hospital has implications:
 - for the broader community beyond a local or municipal catchment
 - at the State healthcare level including funding, emergency services planning and for assessing the provision of state-level health services
- it is an acknowledged fact that Victoria's healthcare system depends on both public and private facilities
- Council's track record is poor because it demonstrates a preference over time to treat Cabrini Malvern as a local service in a residential setting.

(iii) Discussion

Victoria's health system comprises public and private health hospitals. A public hospital can use and develop its land without a planning permit because the Minister for Health is exempt from the provisions of the Planning Scheme. An order empowered by section 16 of the PE Act enables this. Cabrini Malvern is a regional hospital which forms part of the same health system but is required to apply for a planning permit through Council.

The Committee agrees with aspects of the Proponent's submission for justifying the proposed change. The hospital, along with Victoria's health system, must expand in response to a growing population.

Cabrini Malvern's catchment is beyond Stonnington's municipal boundary and decisions about how it uses and develops its land will affect the ability to meet health-related planning objectives at a regional and state level. Future planning decisions regarding the subject land are therefore of regional and state interest and relevant planning objectives need to be weighed up accordingly.

The Committee agrees with submissions regarding Council's expertise, to the extent that Council's planning officers are professionally qualified to assess permit applications and to make decisions, if delegated to do so. However, this is not the test for deciding whether the Minister for Planning should be the responsible authority, nor does it mean that professionally qualified planners outside of Council cannot similarly assess future permit applications.

There was no evidence presented at the Hearing to demonstrate that making the Minister for Planning the responsible authority would make the permit application process faster for Cabrini Malvern. The Committee has therefore not formed its view based on expediency. The planning permit application process should be efficient and without unnecessary delays irrespective of who is the responsible authority. However, an efficient process still needs time to determine a good planning outcome in the interests of the broader community. In certain instances, faster is not necessarily better.

The community has been consulted and given a reasonable opportunity to express their views regarding Cabrini Malvern's vision for its subject land. This is evident by the extent of changes proposed by the Proponent since exhibition and by the Committee's recommendations in response to issues raised in submissions.

(iv) Finding

The Committee finds it is appropriate and justified for the Minister for Planning to be the responsible authority for the subject land.

12 Restrictive covenant

12.1 Background

The Amendment proposes to revise the Clause 52.02 Schedule to remove the restrictive covenant from 2 Coonil Crescent.

(i) The covenant restrictions

The restrictive covenant that applies to 2 Coonil Crescent (described as Lot 19 on Plan of Subdivision LP5320) was executed on 30 November 1914. The covenant states (Committee’s emphasis):

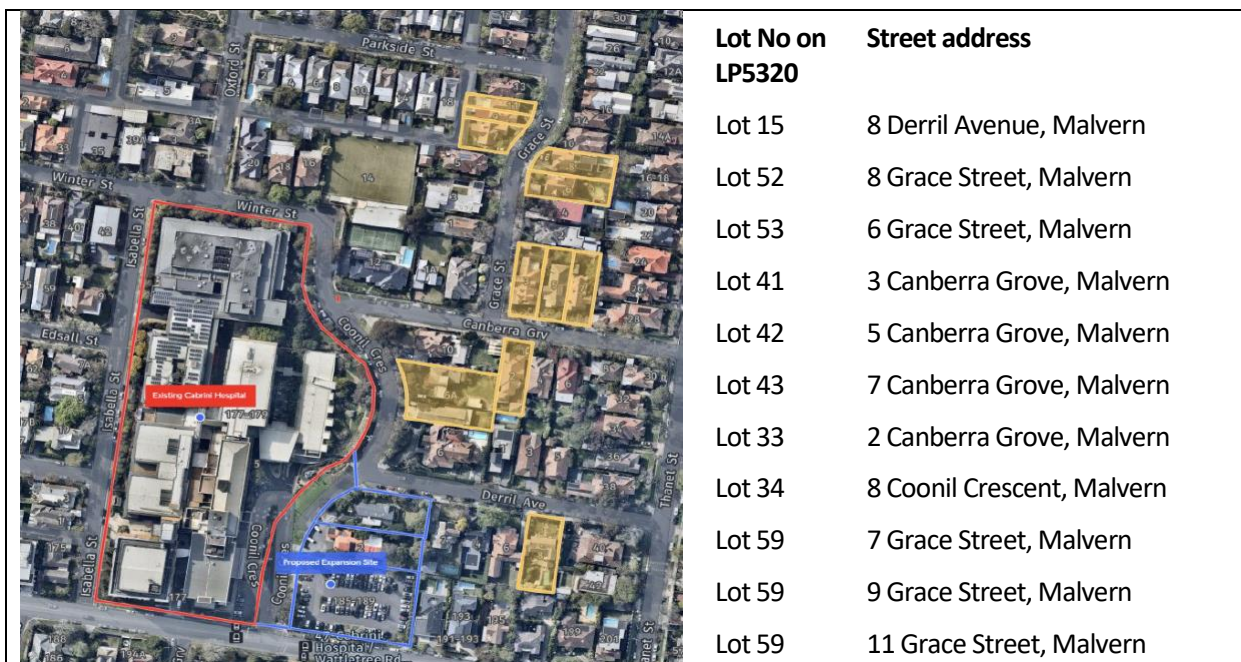
- ... will not at any time or times hereafter quarry on the said land or cart or carry away any stone gravel soil or sand there from or make any excavations therein except such as may be necessary for laying the foundation of any buildings on the said land
- ... not more than one house shall be erected on the said land and that such house so erected shall be of stone or brick or brick and stone with roof of slates or tiles on the main portion thereof at a cost of not less than six hundred pounds exclusive of stables and outbuildings
- ... such buildings shall not be used for any trade or business
- ... will not subdivide the said Lot into smaller allotments nor reduce the frontage thereof to a smaller frontage than appears on the said Plan of Subdivision ...

A covenant in similar terms applied to the main hospital site, and was varied in 2017 pursuant to Permit 0975/15, which allowed the development of the Gandel Wing of Cabrini Malvern. The variation removed the words “*and that such building shall not be used for any trade or business*”.

(ii) The benefitting land

The 11 properties shown in orange in Figure 11 make up the land benefitting from the covenant.

Figure 11 Properties benefitting from the restrictive covenant



Source: Attachment 8 to the Proponent’s Part A submission (Document 32), produced in response to Direction 7(j) (Document 32)

The Development Facilitation Program received objecting submissions from residents of the following addresses which benefit from the covenant:

- 8 Derril Avenue
- 3 Canberra Grove
- 5 Canberra Grove (a signatory to a submission)
- 9 Grace Street
- 8 Coonil Crescent.

These submissions objected to the proposed redevelopment, but not specifically to the removal of the covenant.

Other submitters thought they were beneficiaries of the covenant but are in fact not (although they may be beneficiaries of similar covenants that apply to other properties in the Coonil Estate).

The Proponent wrote to the beneficiaries on 13 October 2023¹² to advise that the recipient is a beneficiary of the covenant and to provide information about the Committee process. No further submissions or correspondence was received in response to that correspondence.

(iii) The principles for varying or removing a covenant

In determining whether the covenant should be removed, the Proponent's submission and legal advice supporting the proposal referred to the approach in the Mornington Peninsula PSA C46 [2004] PPV Panel Report:

- First, the Panel should be satisfied that the Amendment would further the objectives of planning in Victoria. The Panel must have regard to the Minister's Directions, the planning provisions, MSS, strategic plans, policy statements, codes or guidelines in the Scheme, and significant effects the Amendment might have on the environment, or which the environment might have on any use or development envisaged in the Amendment.
- Second, the Panel should consider the interests of affected parties, including the beneficiaries of the covenant. It may be a wise precaution in some instances to direct the Council to engage a lawyer to ensure that the beneficiaries have been correctly identified and notified.
- Third, the Panel should consider whether the removal or variation of the covenant would enable a use or development that complies with the planning scheme.
- Finally, the Panel should balance conflicting policy objectives in favour of net community benefit and sustainable development. If the Panel concludes that there will be a net community benefit and sustainable development it should recommend the variation or removal of the covenant.

12.2 Procedural requirements

The PE Act sets out special requirements for notice of an amendment that seeks to vary or remove a restrictive covenant. In short, all legal beneficiaries of the covenant must be directly notified, and a sign must be placed on the land.

The Committee is satisfied all legal beneficiaries were directly notified, first by the Development Facilitation Program's broad notice to all landowners within 200 metres of the subject land (which included the 11 beneficiaries), and secondly by the Proponent's targeted correspondence to all beneficiaries dated 13 October 2023.

¹² Sent by Planning and Property Partners.

12.3 Evidence and submissions

The Davidsons' and Prestons' original submission raised detailed issues regarding the covenant. Neither the Davidsons nor the Prestons are legal beneficiaries of the covenant. They did not pursue the covenant issues at the Hearing, but maintained their original submission, which stated:

The removal of the restrictive covenant ... is inappropriate, will negatively impact the Coonil Estate and beneficiaries of the Covenant, does not represent orderly planning nor does it achieve net community benefit. The removal of the covenant will unduly interfere with the property rights afforded by the covenant and set an undesirable precedent for the preservation of the highly valued single dwelling covenant in the Coonil Estate that has been instrumental in achieving a low density, residential character to date.

The Davidsons and Prestons submitted:

- one of the main reasons they chose to live in the Coonil Estate was the special heritage and residential character of the locality, which had been protected by the covenants in the area and specifically the covenant affecting 2 Coonil Crescent
- the covenant gives protection to beneficiaries that is not otherwise afforded to them under the Planning Scheme, and provides them with an invaluable property right
- the Proponent did not give sufficient weight to:
 - the rights of the beneficiaries of the covenant
 - the significant detriment that would follow if the covenant was removed
- the impacts on affected persons and beneficiaries are not outweighed by the benefits of what is proposed to be constructed at 2 Coonil Crescent
- removing the covenant would lead to other similar proposals and *“the gradual erosion of the highly valued residential character of the estate and low density environment”*
- the process chosen by the Proponent to remove the covenant was *“an attempt to circumvent the rights of beneficiaries to the covenants, which are properly dealt with by the Supreme Court”*.

The Davidsons and Prestons referred to two Supreme Court decisions involving attempts to remove similar covenants on other properties in the Coonil Estate, one to facilitate a medical centre and the other to facilitate an apartment development.¹³ Both were unsuccessful. The Court found in both cases the covenants remained relevant, and their removal would cause 'substantial injury' to beneficiaries by:

- in the case of the proposed medical centre:
 - allowing the use of the land for trade or business
 - the sign for a medical centre detracting from the residential character of the Coonil Estate
 - converting an open residential back yard into car parking, diminishing one of the valued attributes of the neighbourhood
- in the case of the proposed apartment development:
 - increased density (18 households instead of one)
 - its height, bulk and mass
 - potential for overlooking
- in both cases, traffic impacts.

The Proponent submitted:

¹³ *Freilich v Wharton & Ors* [2013] VSC 533; *Prowse v Johnstone & Ors* [2012] VSC 4

The removal of the covenant from the land at 2 Coonil Crescent is a sensible step as part of consolidating the hospital use and development, and the benefits of removing the restrictions outweigh the disbenefits or detriment on any benefitted landowner; and even if such impacts could be measured, they would not prevail in an assessment of net community benefit.

The Proponent submitted:

- the covenant is effectively redundant
- there has been apparent acquiescence to the use of 2 Coonil Crescent for hospital purposes for the past 14 years
- removing the covenant will facilitate a planning outcome which has strong strategic support, and which is consistent with the Planning Scheme
- no beneficiary of the covenant opposes the removal,¹⁴ and even if they did, they are physically distant and unlikely to be materially affected by its removal
- the community benefit arising from Cabrini Malvern's expansion "*substantially outweighs any adverse impact by reason of the removal of the covenant, in all of the circumstances*".

The Proponent addressed each of the four principles outlined by the Mornington Peninsula C46 Panel, submitting the removal of the covenant would:

- facilitate the expansion of a major hospital facility to be able to meet the regional healthcare needs of future generations, consistent with the Victorian planning objectives
- generate no discernible or material impact to any beneficiary, as:
 - the land has been used for hospital purposes for well over a decade
 - the covenant is defunct and achieves no purpose
 - no legal beneficiary opposes its removal
- enable a use and development that complies with the purposes of the SUZ
- enable a proposal for which any assessment of net benefit "*is all one way*" when weighed against the continued restriction of the use and development of the land.

The Committee asked the Proponent why a different approach had been taken to the similar covenant on the main hospital site when the Gandel Wing was developed. That covenant was varied to remove the reference to trade or business, rather than removed. The Proponent was not able to say why a different approach had been taken but noted by then, the main hospital site had been used and developed as a hospital for many years, whereas 2 Coonil Crescent has only been used for hospital purposes for 14 years, and still has a domestic building on it.

Ms Milner addressed the removal of the covenant in her planning evidence. She stated:

- there is strong strategic support for Cabrini Malvern in the Stonnington Strategic Framework Plan and the Glenferrie Road and High Street Structure Plan
- net community benefit would not be enhanced by restricting the opportunity for Cabrini Malvern to better use 2 Coonil Crescent
- the purpose and benefit of the Covenant has been to confer on beneficiaries a certain expectation about the character and amenity of the affected land they might expect to enjoy in choosing to buy or settle in the neighbourhood
- at the time the subdivision was created in 1911, the development of the surrounding neighbourhood was focussed on the historic Coonil House, which occupied the lot on which the main hospital is now located

¹⁴ As noted in Chapter 12.1(ii), at least five beneficiaries objected to the proposal, although not specifically to the removal of the covenant.

- over time, the character and experience of the neighbourhood and historic estate has “*drastically changed and transformed into a mixed use neighbourhood today accommodating a large hospital use and institutional style development alongside heritage dwellings*”
- while the covenant limits development density and building scale and height, it does not of itself protect amenity regarding building height, setbacks, bulk, car parking, noise, movement, privacy and overlooking, the number of people present on the land, or the provision of landscaping or removal of trees
- the use of 2 Coonil Crescent by Cabrini Malvern in a manner that does not offend the restriction on business or trade could, and has, occurred.

Ms Milner considered that the property rights conferred by the covenant do not have any ‘special status’ by virtue of being conferred by a restrictive covenant, and cited the following passage from the Boroondara C123 [2012] PPV Panel Report:

... Rather the interests of the beneficiaries are to be considered according to the general principles of how the interests of individual persons are considered under the planning scheme and when assessing net community benefit and the benefits and disbenefits of a proposal.

She concluded:

The proposed removal of the restrictive covenant is appropriate and will result in a net community benefit.

12.4 Discussion

A restrictive covenant can be removed by:

1. applying to the Supreme Court under the *Property Law Act 1958*
2. a Deed of Consent under the *Transfer of Land Act 1958*
3. a planning permit application
4. a planning scheme amendment.

Methods 1 and 2 can be difficult and costly and are used infrequently since the PE Act was amended to introduce methods 3 and 4 of removing a covenant.

(i) The principles

The principles for removing a covenant by a planning scheme amendment, set out by the Mornington Peninsula C46 Panel, have been widely accepted and applied by subsequent panels. The Committee agrees that these principles are appropriate to guide consideration of whether it is appropriate to remove the covenant on the title to 2 Coonil Crescent.

The Proponent emphasised that the Committee should take a holistic and strategic approach when applying the principles, guided by the Victorian planning objectives and net community benefit. The Committee agrees. Several panels have found the principles are not tests or preconditions that must be met before a covenant can be varied or removed. Rather, they are general principles to be applied in assessing whether the variation or removal meets the objectives of planning in Victoria and achieves a net community benefit.¹⁵

¹⁵ See, for example, Boroondara C123 (PSA) [2012] PPV 29

Victorian planning objectives

The Committee considers that removal of the covenant would enable the orderly provision and co-ordination of a major regional hospital that has strong strategic support and provides important medical services for the benefit of the Victorian community. It would constitute orderly planning because removing the covenant would:

- align the restrictions on using and developing 2 Coonil Crescent with the Planning Scheme
- allow the subject land to be developed in accordance with Cabrini Malvern’s strategic objectives and the policy directions for medical facilities and precincts outlined in the Planning Scheme.

More broadly, the Amendment constitutes fair and orderly planning by providing certainty for both the Proponent and the surrounding community as to how the subject land will be used and developed in future.

Interests of affected parties

Where a covenant is proposed to be removed to facilitate a particular land use and development outcome, as is the case here, the Committee regards it as appropriate to consider the interests of affected parties in the context of the impacts of the proposed use and development.

The Committee accepts that no legal beneficiaries have objected specifically to the removal of the covenant. They have, however, objected to the proposed use and development, as have a range of other interested parties who are not legal beneficiaries.

While the land at 2 Coonil Crescent has been used for hospital purposes for 14 years, apparently without opposition from affected parties (including legal beneficiaries), Cabrini Malvern’s expansion will result in a much more intensive use of the land for hospital purposes. The removal of the covenant will also facilitate much more intensive built form compared to what is presently on the land or might be allowed were the covenant to remain in place and the land redeveloped for residential purposes.

This will impact the interests of affected parties. The new institutional built form will impact the amenity of the nearby residential properties and the neighbourhood character of the area for the reasons set out in Chapter 9. It will impact the heritage precinct for the reasons set out in Chapter 8. The more intensive use of the subject land will create additional traffic and parking demands, as discussed in Chapter 10.

The Committee is required to balance the present and future interests of all Victorians. It must weigh potential impacts on affected parties against the broader benefits of removing the covenant and facilitating the proposed development and determine whether the Amendment delivers net community benefit.

The Committee accepts Ms Milner’s evidence that the interests of affected parties should be considered in the context of the Planning Scheme, as suggested by the Boroondara C123 Panel. When considering the removal of a covenant using the planning scheme amendment method, the private property rights of the beneficiaries under the covenant are not a significantly weighty factor. Even if they were, the beneficiaries are located some distance from the subject land and will be less directly impacted by the removal of those rights – and the redevelopment facilitated by the removal of the covenant – than other closer neighbours.

While the interests of affected parties (including beneficiaries) will be adversely impacted by removing the covenant, the Committee is satisfied the Amendment will ensure the redevelopment of the subject land (including 2 Coonil Crescent) is subject to high urban design standards that will moderate the impacts on affected parties to deliver acceptable planning outcomes. In particular:

- the purposes of the SUZ2 encourage the orderly planning and development of Cabrini Malvern in a manner which does not adversely affect the amenity of the neighbourhood
- the DPO6 objectives are tailored to ensuring that the proposed development is responsive to its neighbourhood context and that amenity impacts on surrounding properties are not unreasonable
- the DPO6 built form provisions ensure an appropriate transition of built form at the residential interface, including the land at 2 Coonil Crescent, subject to the Committee's recommendations in Chapter 9.

The detriment to affected parties is outweighed by the broader benefits of the proposal in facilitating the delivery or enhanced and expanded health care to the Victorian community.

Planning Scheme compliance

The Committee agrees with the Manningham C72 Panel that the fact that a proposed development may be contrary to a restrictive covenant *"does not mean it is contrary to the objectives and policies of the planning scheme"*.

Removing the covenant will enable a use and development that complies with the Planning Scheme. The proposed expansion will contribute to Cabrini Malvern fulfilling its strategic role, consistent with the Victorian planning objectives and the policy directions in the Planning Scheme. While the proposal could be said to be more consistent with the suite of zoning and overlay provisions proposed by the Amendment, the current zoning and overlay provisions do not prevent the land at 2 Coonil Crescent from being used or developed as proposed.

Net community benefit

The Committee has found the Amendment will deliver a net community benefit, for the reasons set out above and in Chapter 6.

(ii) Other matters

Process and precedent

The Committee adopts the reasoning of the Manningham C72 Panel and the Manningham C112 Panel on the issues of whether the process chosen by the Proponent to remove the covenant is appropriate, and whether removal of the covenant would set a precedent:

The law allows covenants to be removed in appropriate circumstances. Each application to remove a covenant (by whatever method) will be assessed on its merits, and assessed against the relevant statutory tests or criteria that apply. Removal of one covenant in a subdivision does not automatically justify removal of other similar covenants.

Is it necessary to remove the covenant?

The Committee is not required to make findings on whether proposal would breach the covenant, or whether the proposal could proceed without removing the covenant. Nothing in the PE Act, or the Mornington Peninsula C46 principles, requires consideration of whether removal of the covenant is necessary to allow the proposed development to proceed.

That said, the Committee is satisfied there is room for debate as to whether the proposed hospital expansion would breach the covenant – either because a hospital is considered ‘trade or business’ or because the covenant restricts the use of the land to a single dwelling. It is entirely legitimate for the Proponent to seek to have the covenant removed through the Amendment to avoid the risk of possible future legal action for breach of the covenant, and to align the future use and development of its land at 2 Coonil Crescent with the Planning Scheme.

12.5 Findings

The Committee finds that removing the covenant satisfies the relevant principles and should be supported.

13 Amendment and permit drafting

13.1 The Committee's approach

This chapter focuses on drafting matters including comments received from parties in their tracked documents and during discussion at the Hearing. The Committee made directions which enabled:

- the Proponent to provide its final preferred version of the Amendment clauses and permit conditions
- drafting discussion at the Hearing
- the opportunity for a party to provide comments on the Proponent's preferred version
- the Proponent to provide its final response to drafting changes requested by parties.

Comments on the merits of the Amendment and permits are considered in earlier chapters and not have been included in this chapter.

Parties such as Council sought drafting changes to DPO6, though it did not support the DPO on the subject land, in the event the Committee supported these provisions.

The Committee has reviewed the permit conditions and planning provisions, having regard to:

- Writing Planning Permits (Department of Transport and Planning, May 2023)
- Practitioner's guide to Victoria's planning schemes (Practitioners Guide), Version 1.5 (Department of Environment, Land, Water and Planning, April 2022).

Writing Planning Permits states:

Writing effective conditions

General principles for drafting conditions are:

- Ensure the condition is within power.
- Use plain English.
- Use the active voice, not the passive voice.
- Use simple words and avoid problematic expressions.
- Use technical expressions carefully and purposefully.

Writing Planning Permits provides examples of expressions to be generally avoided or used carefully:

- replace 'prior to' with 'before' – it is not plain English
- never use 'shall' – it is not plain English and ambiguous because it is not clear if the obligation is mandatory or discretionary: Alternative: must / are to
- replace 'should' with 'must' – it is unclear whether the obligation is mandatory or discretionary: Alternative: 'must' where an obligation is to be applied.

The Practitioner's Guide states:

- A decision guideline should be 'neutral' and set a 'test' for the decision, not the answer.
- A decision guideline should not include an informal referral requirement.
- Some schedules enable the sign provisions that apply to land to be varied. This should be done only if the existing sign provisions do not respond to the purpose of the zone or overlay, or any zone or overlay objectives.

Environment Protection Authority requested the Explanatory Report be revised to address Ministerial Direction 19.

13.2 Special Use Zone Schedule 2

Key issues identified is expert witness reports and submissions and the Proponent's and Committee's responses are summarised in Table 11.

Table 11 Identified SUZ2 drafting issues and responses

Request / comment	Committee response
General	
Provisions have been drafted poorly and taken a minimal approach (Mr Clarke)	Disagree
Purpose	
The first purpose is not required because it repeats the first purpose of the SUZ provision (Mr Clarke)	Agree. <i>"To implement the State Planning Policy Framework and the Local Planning Policy Framework"</i> should be deleted.
1.0 (Table of uses)	
<p><i>"Must be associated with the hospital"</i> condition is unclear (Mr Clarke)</p> <p>Proponent: Did not agree</p>	<p>Agree. This reference should be replaced with the Victoria Planning Provisions defined term <i>"in conjunction with"</i> – Clause 64.02 states:</p> <p><i>If a provision of this scheme provides that a use of land must be used 'in conjunction with' another use of the land:</i></p> <ul style="list-style-type: none"> - <i>there must be an essential association between the two uses; and</i> - <i>the use must have a genuine, close and continuing functional relationship in its operation with the other use.</i> <p><i>"Where not associated with a hospital"</i> should be deleted in the office use in Section 2 because this relationship is logically evident in Sections 1 and 2.</p>
	<p>The Table of uses should be revised in response to each use's relationship within the Clause 73.04 nesting diagram. For example, SUZ2 proposes to list both a medical centre and an office as Section 1 uses but a medical centre is nested under office in Clause 73.04. This means the condition for an office to be 'in conjunction with the hospital' would also apply to a medical centre. This unintended consequence can be addressed by adding <i>"(other than a medical centre)"</i> next to office.</p> <p>Utility installation should be subject to a permit rather than being prohibited to enable any minor utility installations.</p> <p>Uses should be in alphabetical order.</p>

Request / comment	Committee response
2.0 (Use of land)	
<p>Include 'light spill' in considerations under 'Amenity of the neighbourhood' (Council). Proponent: Light spill was included in all SUZ2 versions.</p>	<p>Light spill has been included in the application requirements for 'Amenity of the neighbourhood' since the exhibited version.</p>
<p>Update decision guidelines to reference the effect of the proposed use on the amenity of the surrounding area.</p>	<p>The 'buildings and works' decision guideline regarding the impact on the amenity of the surrounding area more appropriately responds to this matter.</p>
<p>Unclear on purpose of Clause 2.0 if the hospital and similar uses do not require a permit.</p>	<p>No change needed. Clause 2.0 applies to uses which require a permit.</p>
<p>Application requirements have limited utility because they apply to uses that require a permit and not to the proposed hospital uses. (Mr Clarke)</p>	<p>Noted.</p>
3.0 (Subdivision)	
<p>Provisions are not needed because they appear in the SUZ head clause (Mr Clarke)</p>	<p>Agree to delete the permit requirement because this trigger appears in the parent SUZ.</p>
<p>Update decision guidelines to reference the effect of the proposed use on the amenity of the surrounding area</p>	<p>There is no clear reason why this decision guideline is needed.</p>
4.0 (Buildings and works)	
<p>Permit requirement for buildings and works is not needed because the same provisions appear in the SUZ. (Mr Clarke)</p>	<p>Agree to delete the permit requirement because this trigger appears in the parent SUZ.</p>
<p>It is unclear whether the decision guidelines apply to all SUZ2 permit applications or just for an application for a building and works permit. (Mr Clarke)</p>	<p>SUZ2 has decision guidelines for Clauses 2.0, 3.0 and 4.0. The decision guidelines for each clause are not numbered so it is clear they are relevant to that clause alone.</p>
<p>First decision guideline is not needed because an application under SUZ2 must be generally in accordance with (rather than consistent) with an approved development plan under DPO6. (Mr Clarke) Proponent: replaced 'consistent' with 'generally in accordance'.</p>	<p>Agree to replace 'consistent' with 'generally in accordance'.</p>
<p>Second decision guideline is not needed as it has been drafted as an advocacy submission about net community benefit. (Mr Clarke) Proponent: Deleted the decision guideline.</p>	<p>Agree to delete the decision guideline</p>

Request / comment	Committee response
It is unclear why signage is referenced in the decision guidelines when there are separate provisions for signs (Clause 5.0) (Mr Clarke) Proponent: Deleted the decision guideline.	Agree to delete the sign related decision guideline
Second last decision guideline could include “ <i>building bulk, visual outlook</i> ”. (Mr Clarke) Replace “ <i>future development</i> ” in the last decision guideline with “ <i>existing and future use and development</i> ”. (Mr Clarke) Proponent: deleted this decision guideline. Update the decision guidelines to reference “ <i>The effect of traffic likely to be generated on roads including the need for and provision of a traffic management plan</i> ”. (Mr Clarke)	Agree with the Proponent’s changes.

13.3 Development Plan Overlay Schedule 6

Issues identified is expert witness reports and submissions and the Proponent’s, Council’s and Committee’s responses are summarised in Table 12.

Table 12 Identified DPO6 drafting issues and responses

Request / comment	Committee response
General drafting issues	
The DPO6 is generally lean in content (Mr Clarke)	<ul style="list-style-type: none"> - In its exhibited form, DPO6 lacked the provisions to appropriately guide development over time - As discussed earlier in this report, DPO6 Version 2 is considerably more comprehensive than the exhibited version and can appropriately manage future change, subject to the Committee’s recommended changes
Address details under the schedule name should be deleted (Dr Rowley and Council) Proponent: Did not agree.	The address details under the schedule name should be deleted because it is not enabled by Ministerial Direction 7(5) and the overlay mapping clearly shows the applicable land
There are inconsistencies between the development plan and the master plan	To the extent the Committee supports the master plan, it has recommended changes to the DPO6 to ensure consistency.
Mandatory provisions should be set out in writing and not in images	Agree – mandatory provisions would be more clearly expressed in words rather than a note within an image
1.0 (Objectives)	
Add “ <i>and associated facilities</i> ” in the first objective (Proponent) Council: Did not agree.	Agree – hospitals have associated facilities

Request / comment	Committee response
<p>Delete the objective: <i>To provide development that is of appropriate height and scale which is responsive to the residential context.</i> (Council)</p> <p>Proponent: Did not agree.</p>	<p>Agree to delete objective – this objective is achieved through other recommended objectives</p>
<p>There should be an objective for the pedestrian link: <i>To provide a pedestrian accessway from Wattletree Road to Derril Avenue or Coonil Crescent that is safe and convenient and that will not cause unreasonable amenity impacts to adjoining and nearby residences.</i> (Davidsons and Prestons)</p> <p><i>To maintain a permanent pedestrian connection from Coonil Crescent and Derril Avenue to Wattletree Road that is safe, convenient, direct and attractive.</i> (Council)</p> <p>Proponent: Did not agree.</p>	<p>Agree there should be an objective for the pedestrian link – Council’s draft version is preferred.</p>
<h3>2.0 (Requirement before a permit is granted)</h3>	
<p>This provision is poorly drafted because it seeks to deal with more than minor matters. (Mr Clarke)</p>	<p>Based on the hospital’s needs, do not agree that this provision is poorly drafted.</p>
<p>Clause 2.0 should only deal with site maintenance issues and not seek alternative approval before a development plan is approved. (Mr Clarke)</p> <p>Proponent: Did not agree.</p>	<p>Based on the hospital’s needs, there may be unforeseeable circumstances which may require a permit beyond maintenance issues. Clause 2.0 requires the responsible authority to be satisfied before any permit beyond maintenance is granted.</p>
<p>Reference to “<i>vision for the site</i>” is unclear and should be deleted – there does not appear to be a vision for the site in the Planning Scheme and the vision would be unknown without an approved development plan. (Mr Clarke)</p> <p>Proponent: Deleted the reference.</p>	<p>Agree to delete the reference.</p>
<p>“<i>to be satisfaction of the responsible authority</i>” should be added to ‘The land may be developed in stages’. (Council)</p>	<p>The provision regarding developing land in stage should be deleted because the DPO head provision:</p> <ul style="list-style-type: none"> - enables a development plan to be prepared in stages - does not prevent land being developed in stages - only enables (through Clause 43.02-2) a condition or requirement to be specified.
<h3>3.0 (Conditions and requirements for permits)</h3>	
<p>This exhibited provision has no content. (Council)</p>	<p>Noted</p>

Request / comment	Committee response
<p>This provision lacks substantive content and should require permit conditions and requirements that give effect to the development plan such as:</p> <ul style="list-style-type: none"> - plans provided with Australian Height Datum (AHD) levels - car parking provision, construction standards and car park maintenance - a schedule of building materials and finishes - analytical diagrams regarding overlooking and screening and overshadowing - landscaping plans, landscaping implementation and maintenance - management of car parking areas - waste management - environmental sustainability - any tree protection measures identified in the arboricultural assessment. (Mr Clarke) <p>Proponent: Added further development plan requirements</p>	<p>Agree the exhibited Clause 3.0 had limited guidance and requirements. Version 2 satisfactorily addresses this. Car parking provisions should not be included in this clause for reasons explained elsewhere.</p>
4.0 (Requirements for a development plan)	
<p>Should include detailed principles and guidelines for:</p> <ul style="list-style-type: none"> - built form - expression, materials and detailed design - pedestrian and bicycle access and circulation - public realm and landscaping - vehicle access, circulation and car parking - wayfinding - overshadowing - noise and lighting (Council) <p>Proponent: Did not agree.</p>	<p>Clause 4.0 should:</p> <ul style="list-style-type: none"> - specify requirements for a development plan, consistent with what is enabled by the DPO parent provision - not include general principles and guidelines (as presented by Council) to avoid confusion.

Request / comment	Committee response
<p>Plan 1 should be amended to:</p> <ul style="list-style-type: none"> - explain the meaning of storey, particularly where it commences, and which storeys are included (for example, basement, lower ground and upper ground) - identify the ground level to AHD levels - express more numerical levels in metres AHD rather than solely relying on storeys with limited reference to maximum height levels of parapets - delete the final provision because it allows the responsible authority to waive the need to provide any information that is not relevant to a development stage (Mr Clarke) <p>Proponent: Included storey and ground level height measures.</p>	<p>Plan 1 should:</p> <ul style="list-style-type: none"> - include storey and ground level height measures - clarify that storey excludes a basement.
<p>Car parking rates should:</p> <ul style="list-style-type: none"> - not be included because the DPO parent provision does not include a permit trigger and is unsuitable - be applied through the Parking Overlay which is the appropriate tool when departing from Clause 52.06. (Ms Johnstone) <p>Car parking rates should remain in DPO6 (Proponent and Council)</p> <p>Proponent: Retained car parking rates.</p>	<ul style="list-style-type: none"> - Car parking should be scheduled in through a Parking Overlay Schedule. - Planning Practice Notes 22: <ul style="list-style-type: none"> - states <i>“All local car parking variations must be provided using the Parking Overlay”</i> - acknowledges car parking rates exist in schedules to the Comprehensive Development Zone or IPO but advises against this practice - Planning Practice Note 57 states <i>“Local variations to clause 52.06 can only be introduced using the Parking Overlay and accompanying schedule.”</i>
<p>Notes in Plans 1 and 2 regarding mandatory maximum heights and minimum setbacks should be expressed as provisions.</p>	<p>Agree – mandatory provisions should be expressed as provisions rather than notes in Plans 1 and 2.</p>
<p>5.0 (Decision guidelines)</p>	
<p>Decision guidelines should be deleted.</p> <p>Proponent: Agreed and deleted the decision guidelines.</p>	<ul style="list-style-type: none"> - Ministerial Direction 7(5) does not enable decision guidelines so the proposed guidelines should be deleted. - Informal referral requirements (seeking the views of) should be deleted because this practice is unclear, not good practice, and should, where required, appear as formal statutory notice through the Clause 66.06 Schedule.

13.4 Findings

The Committee finds:

- Special Use Zone Schedule 2 and Development Plan Overlay Schedule 6 should be revised to make drafting changes which improve their clarity and operation, as shown in Appendix D.
- The following parking rates for the subject land should be specified in a Parking Overlay Schedule:
 - Points of care (beds): 1.3 spaces for each hospital bed provided
 - Medical / Consulting suites: 3.5 spaces for each 100 square metres of net floor area.

Appendix A Referral letter

Ms Kathy Mitchell AM
 Panel Chair
 Priority Projects Standing Advisory Committee
 Planning Panels Victoria

Dear Ms Mitchell

DEVELOPMENT FACILITATION PROGRAM – CABRINI HOSPITAL, MALVERN

I refer to draft Planning Scheme Amendment C333ston to the Stonnington Planning Scheme and draft planning permit PA2302308 affecting land at 183 and 185-89 Wattletree Road, 2 and 4 Coonil Crescent, Malvern, and part of the Coonil Crescent Road Reserve (Cabrini Hospital, Malvern). The proposal has been considered by the Development Facilitation Program (DFP), which has deemed that it meets relevant criteria and should be priorities for accelerated assessment and determination.

I am considering whether to prepare, adopt and approve draft Amendment C33ston to the Stonnington Planning Scheme and to grant draft planning permit PA2302308 and exempt myself under section 20(4) of the Planning and Environment Act 1987 (PE ACT) from the requirements of sections 17, 18 and 19 of the PE Act and the Regulations. This would facilitate the proposed redevelopment and expansion of the hospital in accordance with the draft master plan. The request also seeks approval of draft planning permit PA2302308, which propose approval of Stage 1B works.

What the draft amendment does

Draft Amendment C333ston proposes to make the following changes to the Stonnington Planning Scheme:

- Delete Incorporated Plan Overlay Schedule 1 (IPO1) from the main hospital site.
- Delete Heritage Overlay Schedule 375 (HO375) from 4 Coonil Crescent.
- Rezone the main hospital site (183 Wattletree Road), current at-grade car park (185-189 Wattletree Road), 2 and 4 Coonil Crescent and part of the Coonil Crescent Road Reserve to Special Use Zone Schedule 2 (SUZ2).
- Introduce and apply Development Plan Overlay Schedule 6 (DPO6) to the land.
- Amend the Schedule to Clause 52.02 (Easements, Restrictions and Reserves) to remove a restrictive covenant applicable to 2 Coonil Crescent.
- Amend the Schedule to Clause 72.01 of the Stonnington Planning Scheme to make the Minister for Planning the responsible authority for matters under divisions 1, 1A, 2, 3, and 5 of Part 4 and Division 2 of Part 9 of the *Planning and Environment Act 1987* and matters required by a permit or the scheme to be endorsed, approved or done to the satisfaction of the responsible authority, in relation to land at 183-189 Wattletree Road, 2 and 4 Coonil Crescent and Coonil Crescent Road Reserve (part), Malvern (Cabrini Hospital, Malvern).

What the draft master plan does

A draft master plan titled 'Cabrini Malvern, Master Plan – November 2022' seeks to facilitate the orderly future redevelopment and expansion of the hospital. The master plan is proposed to be concurrently considered and approved under the DPO6. This includes:

- Staged redevelopment and expansion of Cabrini Hospital, Malvern, including new buildings comprising administration, palliative care, wards and consulting rooms, up to six storeys and internal works to existing buildings.
- Pedestrian and vehicle access arrangement updated from Wattletree Road/Coonil Crescent including a new ground level entry foyer, updated vehicle access for the emergency department, ambulance pick up and drop off, and new patient/visitor basement parking levels.

What the draft planning permit PA2302308 does

- Draft planning permit PA2302308 seeks approval for Stage 1B works as proposed in the draft master plan and Stage 1B development plans.
- Stage 1B proposes expansion of the existing theatre block in the north-western corner of the site for new theatres and holding rooms. This comprises of 460 square metres of additional floorspace and refurbishment of approximately 1,200 square metres of floorspace. No new beds are proposed under Stage 1B.

The Department of Transport and Planning (DTP) has carried out consultation under section 20 (5) of the PE Act to obtain the views of affected parties. A total of 72 submissions including 68 objections have been received. A number of objections are 'proforma' submissions. The main objector concerns relate to heritage impact, neighbourhood character, encroachment into residential areas, built form (sitting, height and bulk of buildings), offsite amenity impacts (overlooking and overshadowing), impacts from construction (noise, waste and site access), landscaping and tree retention, pedestrian access and safety, future use of buildings, proposed removal of a restrictive covenant, and traffic and car parking concerns.

Stonnington City council has objected to the proposal. The council's principal objection relates to the proposed part closure of Coonil Crescent and relocation of infrastructure within the Coonil Crescent road reserve. The proponent is concurrently pursuing the part closure of Coonil Crescent under the *Local Government Act 2020* through the council. The council also does not support the proposed deletion of HO375 from 4 Coonil Crescent, does not support the proposal for the Minister for Planning to be the responsible authority for the site and makes a number of design and drafting recommendations to the draft master plan, planning controls and permit.

I have determined to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether I should approve draft Amendment C333saton and grant draft planning permit PA2302308. I request your specific advice on the matters raised in submissions and any suggested improvements to the draft amendment and draft permit.

The draft amendment and permit documentation, including application and supporting documents, and submissions will be provided to the committee.

The cost of the committee process will be met by the proponent, Cabrini Health Limited.

Yours sincerely



The Hon Sonya Kilkenny MP

Minister for Planning

11/8/2023

Appendix B Document list

No	Date	Description	Presented by
1	14 Jun 2020	Terms of Reference	Minister for Planning
2023			
2	11 Aug	Letter of Referral	Minister for Planning
3	11 Aug	Development Plan Part 1	Minister for Planning
4	11 Aug	Development Plan Part 2	Minister for Planning
5	11 Aug	Draft Master Plan	Minister for Planning
6	11 Aug	Heritage assessment	Minister for Planning
7	11 Aug	Heritage Report	Minister for Planning
8	11 Aug	Landscape Report	Minister for Planning
9	11 Aug	Legal advice	Minister for Planning
10	11 Aug	Stage 1B Development Plans	Minister for Planning
11	11 Aug	Survey Plan	Minister for Planning
12	11 Aug	Sustainability Report	Minister for Planning
13	11 Aug	Title information	Minister for Planning
14	11 Aug	Town Planning Report	Minister for Planning
15	11 Aug	Traffic Report	Minister for Planning
16	11 Aug	Urban Context Report	Minister for Planning
17	11 Aug	Waste Management Statement	Minister for Planning
18	11 Aug	Exhibited draft Permit PA2302308 (Stage 1B)	Minister for Planning
19	11 Aug	Exhibited draft Development Plan Overlay Schedule 6 (DPO6)	Minister for Planning
20	11 Aug	Exhibited draft DPO6 Map	Minister for Planning
21	11 Aug	Exhibited draft Special Use Zone Schedule 2 (SUZ2)	Minister for Planning
22	11 Aug	Exhibited draft Zone Map (Special Use Zone Schedule 2 Zone)	Minister for Planning
23	11 Aug	Exhibited draft Clause 72.01 Schedule	Minister for Planning
24	11 Aug	Exhibited draft Clause 52.02 Schedule	Minister for Planning
25	11 Aug	Exhibited draft Heritage Overlay (HO375) deletion map	Minister for Planning
26	11 Aug	Exhibited draft Incorporated Plan Overlay Schedule 1 deletion map	Minister for Planning
27	11 Aug	Draft Explanatory Report	Minister for Planning
28	13 Sep	Updated Terms of Reference (9 September 2023)	PPV
29	14 Sep	Submission	David Langmore

No	Date	Description	Presented by
30	19 Sep	Committee directions and timetable – Version 1	PPV
31	27 Sep	Committee directions and timetable – Version 2	PPV
32	2 Oct	GTA Traffic Assessment	Cabrini Health Limited (Proponent)
33	6 Oct	Committee directions and timetable – Version 3	PPV
34	9 Oct	Proponent Part A submission	Proponent
35	10 Oct	Committee directions and timetable – Version 4	PPV
36	16 Oct	Expert witness report – Andrew Clarke	Davidsons and Prestons
37	16 Oct	Expert witness report – Alison Milner	Proponent
38	16 Oct	Expert witness report – Craig Czarny	Proponent
39	16 Oct	Expert witness report – Jason Walsh	Proponent
40	16 Oct	Expert witness report – Kate Gray	Proponent
41	16 Oct	Expert witness report – Leanne Hodyl	Proponent
42	16 Oct	Expert witness report – Tim Vernon	Proponent
43	16 Oct	Expert witness report – Dr Stephen Rowley	Council
44	16 Oct	Expert witness report – Michelle Bashta	Council
45	16 Oct	Draft Incorporated Document (Specific controls for Cabrini Hospital) – Council preferred	Council
46	16 Oct	Draft Incorporated Plan Overlay Schedule 4 – Council preferred	Council
47	18 Oct	Cabrini site inspection maps	Proponent
48	23 Oct	Council opening submission	Council
49	23 Oct	Part B Submission with attachments: <ul style="list-style-type: none"> a) Draft DPO6 (clean) – Version 1 b) Draft DPO6 (tracked changes) – Version 1 c) Corrected table (Part A submission, paragraph 86) d) VCAT 655 – LCM Calvary Health Care Holdings Ltd v Glen Eira CC (Red Dot) e) Panel Report – Stonnington C223ston (Glenferrie Road and High Street Activity Centre) f) Panel and Advisory Committee Report – Stonnington New Format Planning Scheme 	Proponent
50	23 Oct	Committee directions and timetable – Version 5	PPV
51	23 Oct	Hearing presentation – Leanne Hodyl	Proponent
52	25 Oct	Hearing presentation – Alison Milner	Proponent
53	26 Oct	Hearing presentation – Kate Gray	Proponent

No	Date	Description	Presented by
54	26 Oct	Exhibited DPO6 with Council preferred tracked changes	Council
55	26 Oct	Exhibited SUZ2 with Council preferred tracked changes	Council
56	26 Oct	Council internal referral comments with attachments: <ul style="list-style-type: none"> a) Asset Management response to Planning referral b) Email – referral comments on road discontinuance enclosing CEO delegation paper c) Email – referral comments on Environmentally Sustainable Design d) Email – referral comments on vegetation e) Email – referral comments Urban Design f) Email – referral comments on traffic and parking g) Strategic Planning Referral advice h) Email – referral comments on development plans and road discontinuance i) Email – referral comments on heritage j) Urban design comments k) Email – referral comments on Transport and Parking enclosing attachments l) Email – referral comments on Parking and assessment of Jason Walsh’s expert witness statement 	Council
57	27 Oct	Council meeting agenda, 30 October 2023 – Road Discontinuance, with attachments	Council
58	30 Oct	Cabrini Hospital car parking rate tables	PPV
59	30 Oct	Letter from Mr Vernon	Proponent
60	30 Oct	Proponent speaking notes, 30 Oct 2023	Proponent
61	30 Oct	Building orientation indicative massing studies	Proponent
62	30 Oct	Comparative table IPO v DPO	Proponent
63	30 Oct	Overview Cabrini community consultation	Proponent
64	30 Oct	The University of Melbourne v Minister for Planning (includes Summary) (Red Dot) [2011] VCAT 469	Proponent
65	30 Oct	Special Use Zone Schedule 2 – Version 1	Proponent
66	30 Oct	Submission with attachments: <ul style="list-style-type: none"> a) Plan showing setbacks to northern end of Cabrini Hospital b) Plan showing setbacks to southern end of Cabrini Hospital c) Agenda for Council meeting 17 February 2023 	Council
67	30 Oct	Hearing presentation – Ms Bashta	Council

No	Date	Description	Presented by
68	30 Oct	Development Plan Overlay Schedule 6 (clean) – Ms Bashta preferred tracked changes: a) Word version b) Pdf version	Council
69	30 Oct	DPO and IPO – Dr Rowley drafting notes	Council
70	30 Oct	Council proposed Incorporated Plan, Oct 2023 – Dr Rowley preferred tracked changes	Council
71	30 Oct	Development Plan Overlay Schedule 6 (clean) – Dr Rowley preferred tracked changes	Council
72	30 Oct	Council proposed IPO4 – Dr Rowley preferred tracked changes	Council
73	30 Oct	Dustday Investments Pty Ltd v Minister for Planning [2015] VSC 101	Council
74	30 Oct	Committee further directions	PPV
75	1 Nov	Submission with attachments: a) Submission b) Hearing presentation c) 4 Coonil Crescent Council report, 8 April 2013 d) 4 Coonil Crescent Refusal to Grant a Permit, 12 April 2013 e) Cabrini Property Association v Stonnington City Council and others [2000] VCAT 483 f) Heritage Overlay map (Stonnington, 1999) g) Project MGJ Pty Ltd v Stonnington CC [2014] VCAT 249 h) Residential 1 Zone 1999 i) Residential 1 Zone map 1999 j) The Cabrini Property Association v Stonnington City Council and Others [2000] VCAT 483	Davidsons and Prestons
76	1 Nov	Video – Council meeting, 30 Oct 2023	Council
77	1 Nov	Hearing submission	Alison Murray
78	2 Nov	Hearing submission with attachments: a) Cape Otway Road Development Advisory Committee – Stage 1 Report (AC) [2019] PPV 20 b) South Gippsland C65 (PSA) [2016] PPV 25 c) Greater Geelong C139 (PSA) [2008] PPV 79 d) Whitehorse C155 (PSA) [2015] PPV 123 e) Ballarat Station AC (AC) [2016] PPV 46 f) Greater Geelong C134 (PSA) [2007] PPV 73 g) Darebin C45 (PSA) [2005] PPV 45 h) Parking Overlay i) General Residential Zone	Lilian Johnstone

No	Date	Description	Presented by
		<ul style="list-style-type: none"> j) Heritage Overlay k) Clause 15.03 (Heritage) l) Clause 37.01 (Special Use Zone) m) Clause 15.01 (Built environment) n) Clause 52.06 (Car parking) o) General Residential Zone Schedule 3 p) Planning Practice Note 23 (Apply the Incorporated Plan and Development Plan Overlays) q) Planning Practice Note 59 (The role of mandatory provisions in planning schemes) r) The Cabrini Property Association v Stonnington CC [2016] VCAT 1771 s) Brunswick Investment Project Pty Ltd v Moreland CC [2021] VCAT 1191 t) DPO6 – preferred revised version u) SUZ2 – preferred revised version 	
79	3 Nov	Hearing submission	Cameron Malingbrough
80	3 Nov	Hearing submission with attachments: <ul style="list-style-type: none"> a) Alteration to built form b) Proposed level 4 plan c) Levels with RL d) Building height transition across the site elevation south (Lilian Johnstone slide) e) 191 Wattletree Road and Isabella Street sections 	Luke Daley
81	3 Nov	Hearing submission (redacted)	Kaye Fallick
82	6 Nov	Committee Directions and timetable – Version 6	PPV
83	14 Nov	Letter to the Committee attaching: <ul style="list-style-type: none"> a) DPO6 (clean) - Version 2 b) DPO6 (tracked changes) - Version 2 c) IPO4 (clean) - Version 2 d) SUZ2 – IPO and DPO applicable (clean) – Version 2 e) SUZ2 – IPO and DPO applicable (tracked changes) - Version 2 	Proponent
84	16 Nov	Council closing submission attaching: <ul style="list-style-type: none"> a) Incorporated Document – Version 2 b) IPO4 – Version 2 c) SUZ2 – IPO and DPO applicable - Version 2 d) DPO6 – Version 2 	Council

No	Date	Description	Presented by
85	16 Nov	DPO6 (tracked changes) – Version 2	Davidsons and Prestons
86	16 Nov	Part C submission	Proponent
87	21 Nov	Email to Committee with further information attaching: a) Certificate of Title Volume 11103 Folio 166 b) Covenant 676443 c) Instrument of variation of Covenant AN854956 d) Amended Planning Permit 0975/15 e) Email from HSPC confirming total floor area	Proponent
88	21 Nov	Planning Permit PA2302308 (Stage 1B) (track changes)	Proponent

Appendix C Submitters to the Amendment and permit

No	Submitter	No	Submitter
1	Geoff Currey	30	Cameron Malingbrough
2	Elsbeth Newman	31	Doug Bartley
3	Marc van Beek	32	Laurel and Panch Das
4	Josh Bloberg	33	Christa Ray
5	Mariah Lucy	34	James Murchie
6	Rosemary Dowling	35	Luke Daley
7	Dale Martin	36	Anne Lock
8	Osler House	37	Dr David Oliver
9	Sally Howell	38	Amanda McDougall
10	Environment Protection Authority (Victoria)	39	Deb Webb
11	Jenny Ulmer	40	Bill Sideris
12	Ian Tribe	41	Margaret Beattie
13	Kaye Fallick	42	Amanda McDougall
14	John and Anne Dupont-Perfrement	43	Talia Oliver
15	Angela and Robert Morris	44	Tonya Roberts
16	Margaret Hay	45	Troy Keith
17	Tim Nichols	46	Julie Holland and Justin Mulder
18	Amy Guest	47	Eleanor Graves
19	Christopher Miles	48	Lynne Stockley
20	Gillian Miles	49	Robyn and Anton Middendorp
21	Matthew Hung	50	Dianne Keith
22	Lilian Johnstone	51	Samuele Ciaciosi and Jodie McKnight
23	Jonathan Brookes	52	Jonathan Smith
24	Katrina Allen	53	Graham Burton
25	Kirsten Krauskopf	54	Edward Adler
26	Alison Murray	55	John and Susan Filius
27	Lina Di Prisa and Darren Stevens	56	Fiona Johnstone
28	Traci Whitaker	57	Cecila Cole
29	Lucinda Maartens	58	David Vial

No	Submitter	No	Submitter
59	Sheila Knight	66	David Fallick
60	Leeanne E Grigg	67	Jayne Simonson
61	Patricia and Fred Russell	68	Nick Mitsios
62	Henry Maling	69	Stonnington City Council
63	Tim Moore	70	Melbourne Water
64	Kaye Beeson	71	Prue and Graeme Weber
65	Adam and Dana Davidson and Emma and Matt Preston	72	David and Ro Langmore

Appendix D Committee recommended planning provisions and permit conditions

Tracked against the exhibited version as: [Tracked Added](#) ~~Tracked Deleted~~

D:1 Special Use Zone Schedule 2

SCHEDULE 2 TO CLAUSE 37.01 SPECIAL USE ZONE

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

CABRINI HOSPITAL MALVERN

Purpose

~~To implement the State Planning Policy Framework and the Local Planning Policy Framework.~~

To provide for the continued use and development of land for a private hospital and associated uses.

To encourage the orderly planning and development of the facility in a manner which does not adversely affect the amenity of the neighbourhood.

1.0 Table of uses

Section 1 - Permit not required

Use	Condition
Car park	Must be used in conjunction with another Section 1 use.
Child care centre	Must be associated in conjunction with the hospital.
Emergency services facility	
Place of worship	Must be associated in conjunction with the hospital.
Hospital	
Medical Centre	
Office (other than a medical centre)	Must be associated in conjunction with the hospital. Must not exceed 500 square metres in gross floor area on the site.
Retail premises	Must be associated in conjunction with the hospital. Total area across the site m Must not exceed 500 square metres in gross floor area on the site.
Research centre	Must be associated in conjunction with the hospital.
Any use listed in Clause 62.01	Must meet the requirements of Clause 62.01

Section 2 - Permit required

Use	Condition
Residential building	Must be used in associated in conjunction with the hospital.
Place of assembly (other than a Place of worship)	Must be associated in conjunction with the hospital.
Office (other than a medical centre)	Total area across the site m Must not exceed 500 square metres in gross floor area on the site .
Utility installation	Must be in conjunction with the hospital.
Retail premises	Must be in conjunction with the hospital.

Section 3 - Prohibited

Use
Accommodation (other than residential building) Agriculture
Agriculture
Brothel
Crematorium
Display home centre
Earth and energy resources industry
Education centre (other than a Childcare centre)
Service station
Transport terminal
Utility installation
Warehouse
Any other use not in Section 1 or 2

2.0 Use of land

Amenity of the neighbourhood

The use of land must not adversely affect the amenity of the neighbourhood beyond a level that is reasonably acceptable for the operation of the site as a hospital and medical precinct, as a result of:

- Traffic and car parking generated by the use.
- The transport of materials or goods to or from the land.
- The appearance of any building, works or materials.
- Noise generated by the use.

Application requirements

The following application requirements apply to an application for a permit to use land under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- The purpose of the use and the type of activities which will be carried out.
- The likely effects, if any, on adjoining land, including noise levels, traffic, the hours of delivery and despatch of goods and materials, hours of operation and light spill, solar access and glare.

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The purpose of the zone.
- The effect that existing uses on nearby or adjoining land may have on the use. The effect of traffic to be generated on roads.
- The effect of the proposed use on car parking available on the land.

3.0 Subdivision

Permit requirement

~~A permit is required to subdivide land.~~

Application requirements

The following application requirements apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- Any application to subdivide land must state the intended outcome of the proposed subdivision and its strategic impact on the overall operation of the hospital facility, and address the interface and connectivity between land uses on the site and on adjoining land.

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The purpose of the zone.
- The maintenance and retention of publicly accessible areas and links between public and private spaces and the various land uses.
- Provision for vehicles providing for supplies, waste removal and emergency services, and public transport.
- The interface with adjoining zones, especially the relationship with residential areas.
- The effect the subdivision will have on the potential of the site to accommodate the uses which are encouraged in the zone.

4.0 Buildings and works

~~A permit is required to construct a building or to construct or carry out works.~~

Application requirements

The following application requirements apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and, as appropriate, to the satisfaction of the responsible authority:

- Development plans which ~~show~~ include details of the following:

- Building locations, land uses, ~~car parking areas,~~ pedestrian and bike paths, ~~vehicle access locations,~~ and areas and locations of open spaces.
- Applicable ground and building levels.
- Elevation drawings indicating colour and materials of all proposed buildings and works.
- Details of existing and proposed landscaping.
- Details of driveways, vehicle access locations, car parking and loading areas.
- ~~External storage and waste treatment areas.~~
- Interface with adjoining land uses and road network.
- A Waste Management Plan that provides details of ~~indicating waste collection~~ treatment locations, ~~and storage and~~ waste removal facilities and external storage areas.
- A ~~landscape plan~~ Landscape Plan detailing intended planting layout, ~~and~~ species and ongoing management.
- An Environmentally Sustainable Design Plan.
- A Traffic and Car Park Management Plan.

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the application is ~~consistent~~ generally in accordance with an approved development plan.
- ~~Net community benefit, specifically the strategic benefit in delivering health care (including but not limited to surgical procedures, critical care, emergency services and medical research) to the Victorian community.~~
- ~~The built form and visual impact of the proposed development, including signage.~~
- ~~The~~ Whether the built form provides appropriately designed articulation and materiality, having regard to both internal and external views of the site.
- Whether service and loading ~~provision and~~ arrangements are appropriately designed and whether the application includes sufficient details of management of these areas.
- ~~The provision of car parking.~~
- ~~The provision of landscaping.~~
- Whether the landscape concept includes high quality outdoor spaces and includes canopy trees around the perimeter of the site, retaining existing trees where practicable.
- The movement and safety of pedestrians, cyclists and vehicles providing for supplies, waste removal, emergency services and public transport.
- ~~Loading and service areas.~~
- ~~The effect of the proposed~~ Whether buildings ~~and works on~~ have been designed in a way that does not unreasonably impact the amenity of the adjoining residential properties and surrounding area, including the effects (if any) of noise, lighting, overshadowing and impact on privacy.
- ~~The effect of the proposed development on the future development of the land and adjoining area for residential purposes.~~
- Whether roof plant and services that sit above the maximum building heights are appropriately screened.
- Whether architectural features that sit above maximum building heights enhance the quality of the building design.

5.0 Signs

[None specified.](#)

~~A permit may be granted for any sign that does not comply with the requirements of clause 52.05 where it is used or displayed in conjunction with a hospital.~~

~~Before deciding on an application, the responsible authority must consider as appropriate:~~

- ~~▪ The total area, height and number of signs proposed having regard to hospital needs.~~
- ~~▪ The possible effect of the sign on the amenity and efficiency of roads, including the safety of all road users, and effect on the surrounding neighbourhood.~~

D:2 Development Plan Overlay Schedule 6

SCHEDULE 6 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as **DPO6**.

CABRINI HOSPITAL MALVERN

~~This schedule applies to land at 177-183 and 185-187 Wattletree Road, 2 and 4 Coonil Crescent and part of the Coonil Crescent Road Reserve bounded by Wattletree Road to the south, Isabelle Street to the west, Coonil Crescent and Winter Street to the north and Derril Avenue to the east.~~

1.0 Objectives

To achieve the orderly integrated development of the site as a hospital, ~~and~~ medical centre and associated facilities ~~treatment facility. To achieve a built form outcome~~ that demonstrates a high-quality architectural response, implements innovative environmentally sustainable design features, and provides a high standard of amenity for patients and visitors.

~~To provide development that is of appropriate height and scale which is responsive to the residential context.~~

To ensure new development ~~is provided with appropriate levels of car parking and~~ does not ~~adversely~~ unreasonably impact ~~on~~ local traffic conditions.

To facilitate a high standard of landscaping, including opportunities for canopy tree planting around the perimeter of the site.

To maintain a permanent pedestrian connection from Coonil Crescent and Derril Avenue to Wattletree Road that is safe, convenient, direct and attractive.

2.0 Requirement before a permit is granted

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority, provided the responsible authority is satisfied that the subdivision, use, buildings or works will not ~~prejudice the ability of~~ unreasonably undermine potential future use and development ~~to meet the vision for the site.~~

~~The land may be developed in stages.~~

3.0 Conditions and requirements for permits

~~None specified.~~

A permit must not exceed the maximum building heights specified in Plan 1, minimum setback specified in Plan 2 or minimum separation specified in Plan 2.

A Construction Management Plan must be approved before construction starts, to the satisfaction of the responsible authority.

4.0 Requirements for development plan

A development plan must be generally in accordance with Plans 1 and 2, and include the following requirements, as appropriate:

- An Existing Conditions Plan showing:
 - The land to which the development plan applies.

- Orientation, boundaries, dimensions of the site and any easements.
- Contours and levels. All levels must be provided to Australian Height Datum (AHD).
- Existing building footprints.
- Surrounding land uses and development.
- A Site Analysis and Design Response including consideration of:
 - Buildings proposed to be demolished.
 - The proposed development.
 - Vegetation to be retained.
 - Vehicle and pedestrian links ~~into the site.~~
- A Site Master Plan detailing: ~~D~~ design philosophy and a framework for development across the site, including:
 - Building height transitioning from the west corner down to the east and north edges of the site.
 - The impact of the built form on vistas and view lines from the adjacent heritage precinct.
 - Indicative layout for each building including B building envelopes for new buildings including maximum building heights, minimum separation distances between buildings, and minimum setbacks ~~from street frontages~~ in accordance with Plans 1 and 2.
 - ~~—Indicative uses for each building.~~
 - Car parking areas and accessways.
 - Areas and locations of open spaces.
 - A schedule of all materials and finishes.
 - Orientation, overshadowing and overlooking.
 - Linkages from the site to surrounding areas.
 - ~~Overshadowing and overlooking potential.~~
 - Contemplated staging of development.
- A Landscape Master Plan which includes the following:
 - ~~An overall landscape master plan for the site and adjacent areas, including a street tree master plan.~~ A planting concept within built form setbacks, incorporating landscaping and canopy trees.
 - Integration of canopy trees at the perimeters of the site in deep soil.
 - Landscaped treatments for the site and adjacent areas, pedestrian connections including ~~a~~ detailed sections and design for the pedestrian connection between Wattletree Road and Coonil Crescent / Derril Avenue.
 - Provision for landscaping and seating within the pedestrian connection along the eastern boundary of the site, to create a high amenity space that also provides a landscaped buffer to adjoining residential properties.
 - A street tree master plan.
 - An indicative plant and materials schedule.
 - ~~—A written description of the management of landscaped areas.~~

- Principles for how future development will contribute to improving the public realm and promoting inviting, pedestrian public spaces.
- [Tree protection zones for trees to be retained.](#)
- [An assessment of significant trees to be removed.](#)
- [Integration of water sensitive urban design initiatives.](#)
- [Raised in-situ planter design details.](#)
- [Irrigation system details.](#)
- [Location of any utility services within building setbacks, having regard to especially to planting zones.](#)
- An Integrated Transport and Access Plan which addresses the following:
 - ~~Traffic~~ [Predicted traffic generation of the proposed uses and development including identification of likely traffic impacts on the adjoining road network adjacent roads.](#)
 - Movement networks within the ~~development plan area, site~~ for vehicles, bicycles and pedestrians. ~~A management plan for the operation~~
 - [Loading and maintenance of the car parking areas.](#)
 - ~~Points of service~~ [access areas.](#)
 - [Parking provision, having regard to the site from adjoining roads, including any treatments necessary.](#)
 - ~~An assessment of land uses and proposed car parking rates including~~ [set out in Parking Overlay Schedule \[insert number\].](#)
- [A Pedestrian Network Strategy which addresses the location following:](#)
 - [Linkages across the site.](#)
 - [Consideration of all car parking safety and surveillance.](#)
 - [Public safety plan for pedestrian connections.](#)
- [An Environmentally Sustainable ~~ility~~ Design Plan that ensures buildings achieve a 5-Star Green star certification \(design and as-built\) for buildings over 5000sqm gross floor area, and minimum 50% BESS score for new buildings and works which result in between 100 and 5000sqm additional gross floor area \(or the current ratings if higher\), and provide overall objectives for:](#)
 - [Energy performance.](#)
 - [Water resources.](#)
 - [Indoor environment quality.](#)
 - [Stormwater management.](#)
 - [Transport.](#)
 - [Waste management.](#)
 - [Urban ecology considerations.](#)
- [A Public Realm Amenity Plan, which addresses the following:](#)
 - [High quality outdoor spaces for patients and loading bay visitors with sunlight access points where practicable.](#)
 - ~~Bicycle parking and end of trip facilities.~~

- ~~An Arboricultural Assessment undertaken by~~ A high-quality palette of materials and finishes.
- A sense of address to Wattletree Road as a ~~qualified arborist.~~ key frontage and transportation route.
- A Waste Management Plan ~~-~~ which details waste management objectives for the site.

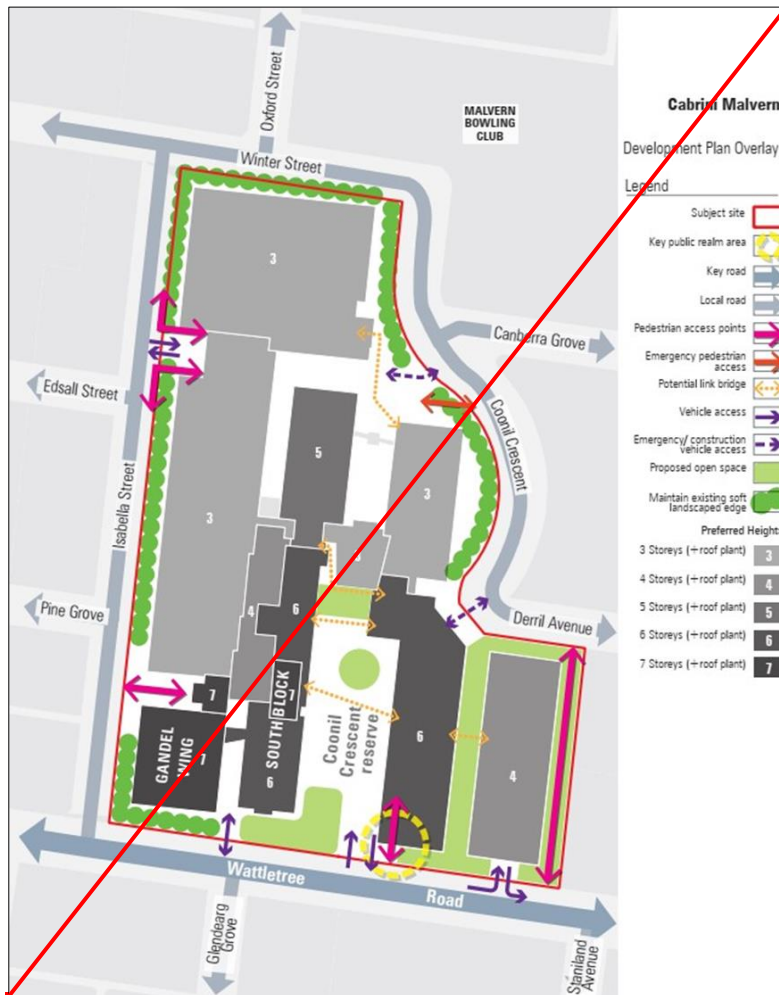
~~The development plan for any part of the site or for any stage of development may be amended from time to time to the satisfaction of the responsible authority.~~

~~The responsible authority may waive the need to provide any of the information detailed above that is not relevant to a stage of development.~~

Closure of Coonil Crescent

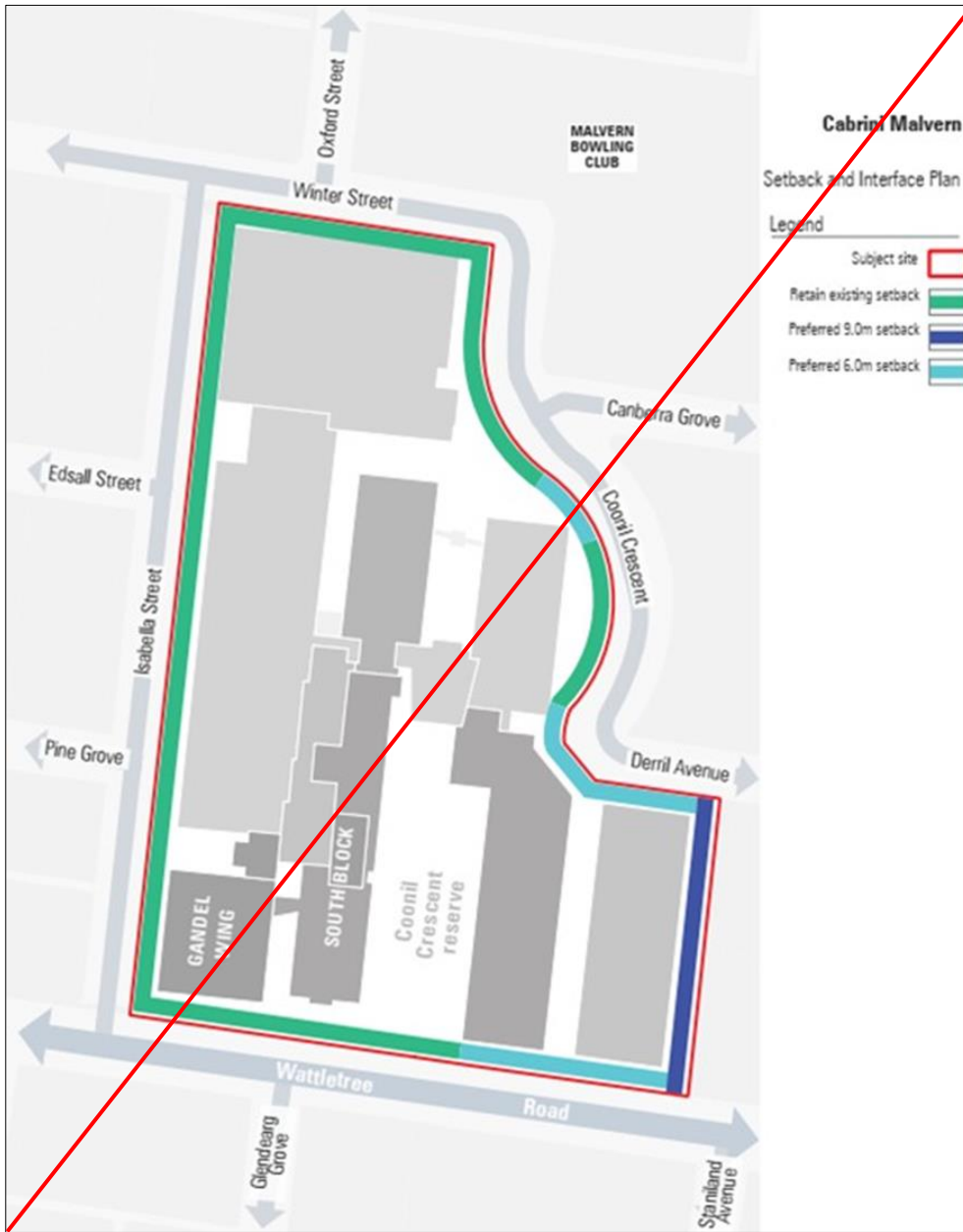
If the development plan shows Coonil Crescent retained as a public road, the development plan must be generally in accordance with Plans 1 and 2 but amended to provide building envelopes, landscape areas, access arrangements and other modifications as necessary without reducing site setbacks or increasing building heights.

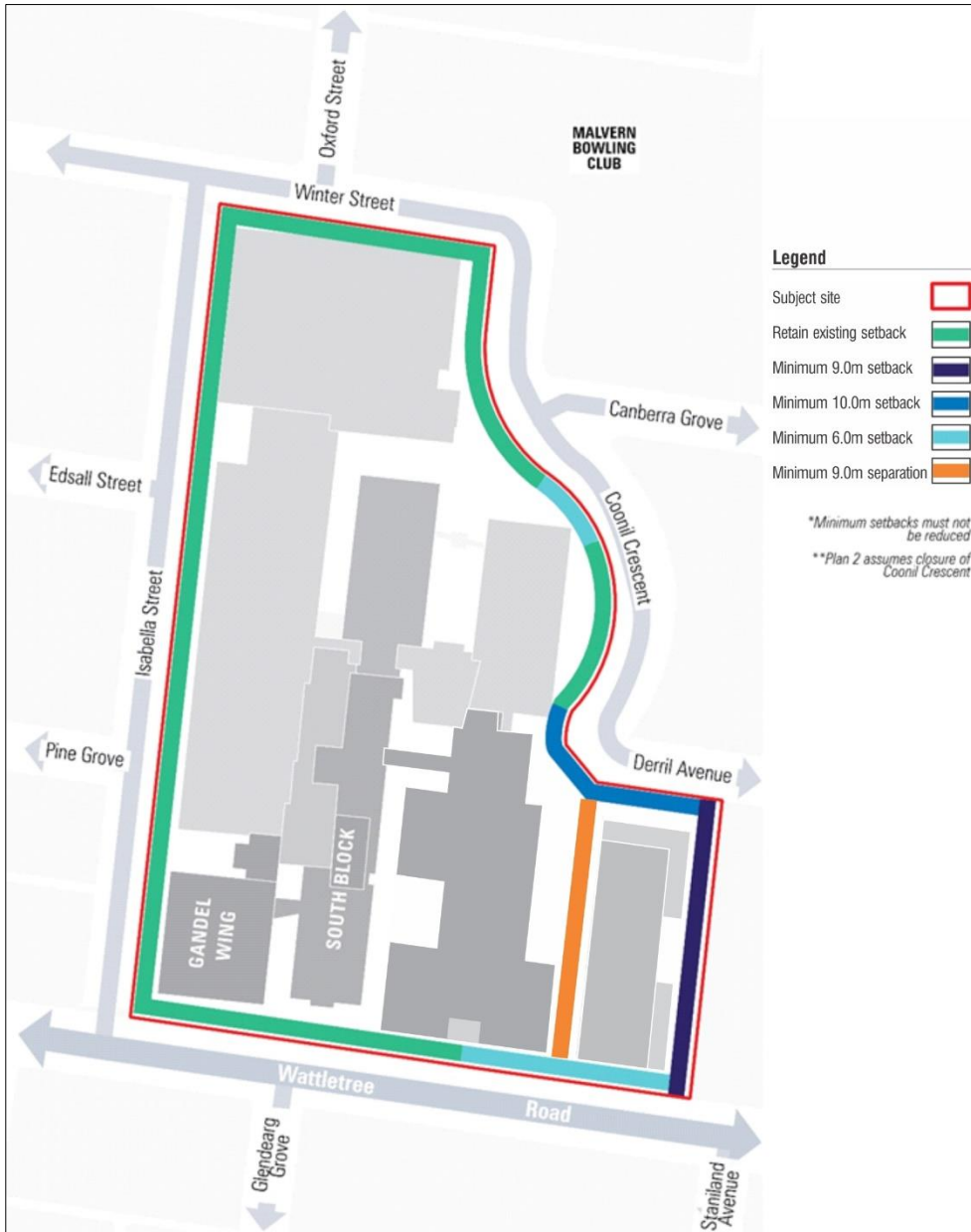
Plan 1 to Schedule 6 to Clause 43.04





Plan 2 to Schedule 6 to Clause 43.04





5.0—Decision guidelines

Before deciding on a request to approve a development plan or a request to amend a development plan, the responsible authority must consider, as appropriate:

Any written comments received in response to the display of the development plan (if required by the responsible authority).

Any views of Transport for Victoria, or equivalent. Any views of the City of Stonnington.

D:3 Permit PA230238

1. Before ~~the commencement of~~ the development starts, ~~1 copy of amended~~ plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. The plans must be drawn to scale ~~and fully with~~ dimensioned ~~sed, must be submitted to and approved by the Responsible Authority~~. The plans must be generally in accordance with the plans Drawing TP01 – TP 11 (inclusive) prepared by HSPC Health Architects, all dated 9 June 2023 and marked 'Rev B' but modified to show:
 - a. ~~[insert any changes]~~
 - ba. Any changes resulting from plans and reports required by conditions 34 (SMP), and 6 (WSUD), 8 (Landscape).
All to the satisfaction of the Responsible Authority.
2. At all times, what the permit allows must be carried out in accordance with the requirements of any document approved under this permit to the satisfaction of the responsible authority.
- ~~23~~. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified ~~for any reason,~~ without the ~~prior~~ written consent of the ~~R~~responsible ~~A~~authority.
- ~~34~~. ~~Prior to the endorsement of any~~ Before plans ~~pursuant to~~ required by Condition 1 are endorsed, a Sustainable ~~Management Plan~~ Design Assessment (SDAMP) must be submitted to and approved by the ~~R~~responsible ~~A~~authority. ~~When approved the SMP will be endorsed and will then form part of the permit.~~ The development must incorporate the sustainable design initiatives outlined in the ~~SDAMP~~ to the satisfaction of the ~~R~~responsible ~~A~~authority. Amendments to the ~~SDAMP~~ must be incorporated into plan changes required ~~under by~~ Condition 1. The report must include, but is not limited to, the following:
 - a. Demonstrate how Best Practice measures from each of the 10 key Sustainable Design Categories of Stonnington Council's Sustainable Design Assessment in the Planning Process ~~(SDAPP)~~ have been addressed.
 - b. Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
 - c. Document ~~the means by which~~ how the appropriate target or performance is to be achieved.
 - d. Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
 - e. Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
- ~~45~~. All works must be undertaken in accordance with the endorsed ~~SDA~~ sustainability Management Plan to the satisfaction of the ~~R~~responsible ~~A~~authority. No alterations to the Sustainable Management Plan may occur without the written consent of the ~~R~~responsible ~~A~~authority.
- ~~5~~. ~~Prior to the occupation of the building, a report from the author of the Sustainability Management Plan approved pursuant to this permit, or similarly qualified person or~~

~~company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Sustainability Management Plan have been implemented in accordance with the approved plan.~~

6. ~~Prior to the endorsement of~~ Before plans are endorsed, the applicant must provide a Water Sensitive Urban Design Response addressing the Application Requirements of the Water Sensitive Urban Design Policy to the satisfaction of the Responsible Authority. All proposed treatments included within the Water Sensitive Urban Design Response must also be indicated on the plans.
7. The project must incorporate the Water Sensitive Urban Design initiatives detailed in the endorsed site plan and/or stormwater management report.
8. ~~Prior to the commencement of the use / occupation of the building, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. Landscaping must then be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.~~
9. This permit will expire if one of the following circumstances applies:
 - f. ~~The~~ development ~~does is~~ not ~~commence~~ started within ~~two~~ 2 years ~~from of~~ issued the date of this permit.
 - g. ~~The~~ development is not completed within ~~four~~ 4 years ~~from of~~ the issue date of this permit.

In accordance with ~~S~~ section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the ~~R~~ responsible ~~A~~ authority ~~may to~~ extend the periods referred to in this condition ~~if a request is made in writing within the prescribed timeframes, where the use allowed by the permit has not yet started.~~

Appendix E Terms of Reference

Extract

Method

7. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
8. The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered
 - c. whether, or which previously collected, submissions are to be considered by the Committee
 - d. how the costs of the Committee will be met.
9. The letter of referral will be a public document.
10. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on the Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
11. The Committee may inform itself in any way it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning
 - b. referred submissions
 - c. the comments of any referral authority
 - d. the views of the project proponent
 - e. the views of the relevant Council and
 - f. the relevant planning scheme.
12. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
13. The Department of Transport and Planning (DTP) will be responsible for any further notification required. New submissions, if required, will be collected by DTP.
14. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
15. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
16. The Committee may:
 - a. assess any matter 'on the papers'
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
17. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

18. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
19. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs

that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

20. The Committee must produce a concise written report to the Minister for Planning providing the following:
- a. a short description of the project
 - b. a short summary and assessment of issues raised in submissions
 - c. a draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral
 - d. any other relevant matters raised during the Committee process
 - e. its recommendations and reasons for its recommendations.
 - f. a list of persons or authorities/agencies who made submissions considered by the Committee and
 - g. a list of persons consulted or heard, including via video conference.
21. Following completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

Timing

22. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
- a. the date of receipt of referral, if no further submission or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

23. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
The costs of the Advisory Committee will be met by each relevant proponent.


Sonya Kilkenny MP
Minister for Planning

Date:

9/9/2023