

# Government Land Standing Advisory Committee

## Tranche 8 Report

### Former Peter MacCallum Cancer Centre

19 October 2017

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## List of Abbreviations

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AHD	Australian Height Datum
Amendment C270	Amendment C270 to the Melbourne Planning Scheme which introduced changed built form controls for the Central City
CBD	Central Business District
DDO	Design and Development Overlay
DPO	Development Plan Overlay
FAR	Floor Area Ratio
Heritage Context report	<i>Heritage Context Report</i> , prepared by Lovell Chen for Message Consultants August 2016
PO	Parking Overlay
Redevelopment Controls report	<i>Redevelopment Controls for the former Peter MacCallum Cancer Centre</i> , prepared by Message Consultant for the Department of Treasury and Finance, February 2017
The Committee	The Government Land Standing Advisory Committee

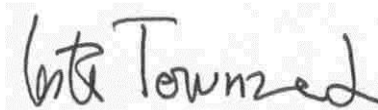
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## About this report

On 4 May 2017, the Minister for Planning referred the Former Peter MacCallum Cancer Centre at 2 St Andrews Place, East Melbourne to the Government Land Standing Advisory Committee as Tranche 8. The Minister requested that the Committee:

*In assessing the future planning provisions for this site, please consider protection of the key view line to Saint Patrick's Cathedral and overshadowing of the Fitzroy Gardens.*

This is the report under Section 151 of the *Planning and Environment Act 1987* of the Government Land Standing Advisory Committee for the Former Peter MacCallum Cancer Centre.



Lester Townsend, Chair



Rachael O'Neill, Member



Tania Quick, Member

19 October 2017

# 1 Summary and recommendation

## 1.1 The site

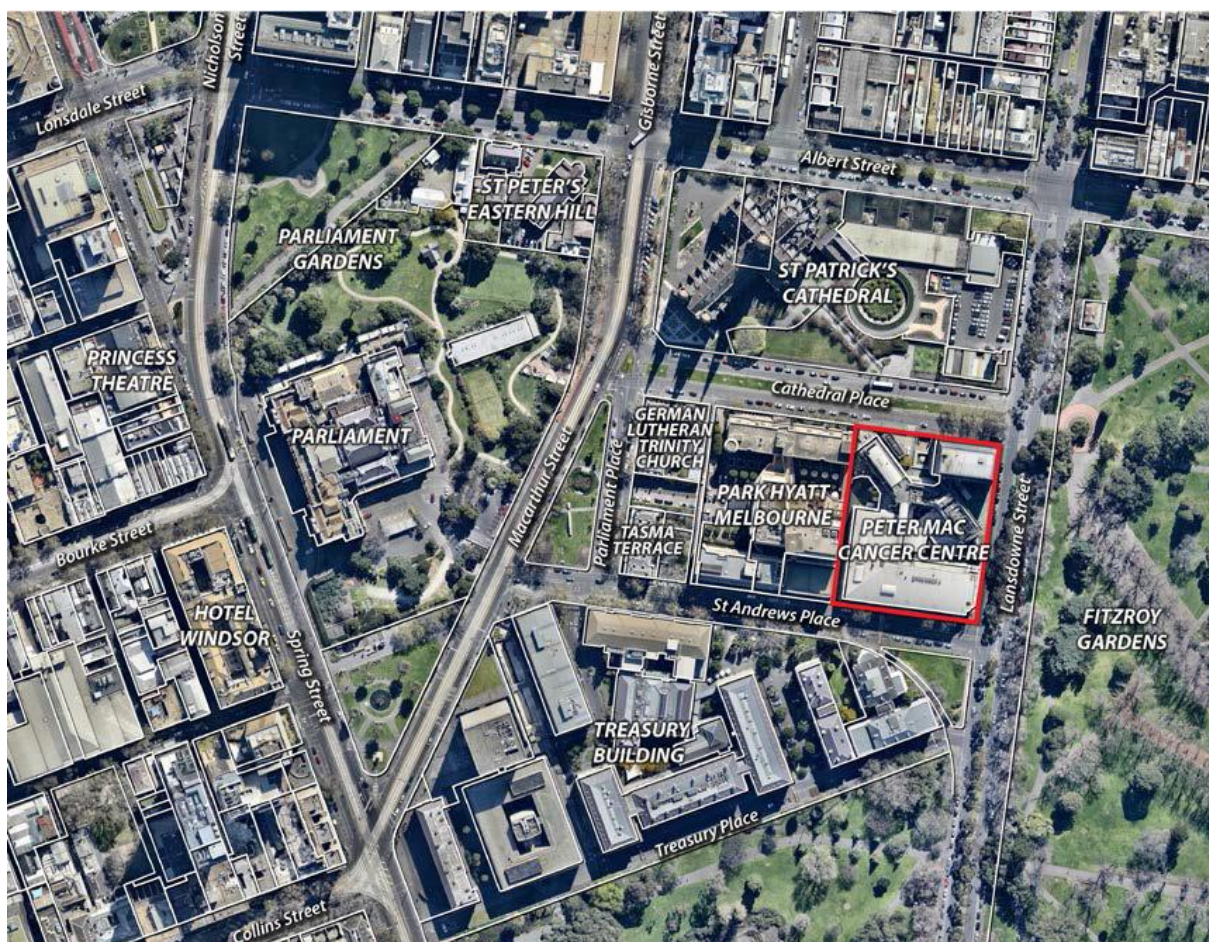
The former Peter MacCallum Cancer Centre (the site) is located at 2 St Andrews Place, East Melbourne and is situated on the eastern edge of the Hoddle Grid (See Figure 1 below).

The site is surrounded by the Parliamentary precinct, Saint Patrick’s Cathedral, Fitzroy Gardens and the Park Hyatt Hotel Melbourne. Until June 2016, the site was used as the Peter MacCallum Cancer Centre which has now relocated to the new Victorian Comprehensive Cancer Centre in Parkville.

The Information Sheet published by the Fast Track Government Land Service describes the site details as follows:

*The site has an area of approximately 8,200 square metres and has a frontage to Lansdowne Street, St Andrews Place and Cathedral Place. There are a number of hospital buildings on site that vary in height between 6 and 10 storeys.*

**Figure 1: Site location**



## 1.2 Issues

Key issues raised in submissions included:

- use of the land
- heritage impacts, and the need for heritage protection of the ‘Crank’ building on the site
- views from key vistas
- interface with abutting streets, in particular the proposed streetwall height of Lansdowne Street and the need for landscaped setbacks in St Andrews Place and Cathedral Place
- the impact of the development on the local context and whether the proposed Design and Development Overlay (DDO) schedule was adequate to ensure an appropriate outcome
- whether the Floor Area Ratio of 9:1 proposed in the DDO schedule was appropriate
- overshadowing of the Fitzroy Gardens and Treasury Gardens
- interfaces with adjoining buildings
- adverse impacts on traffic and parking
- drafting issues.

The Committee considered all expert evidence, written submissions and submissions presented during the Hearing. The Committee also undertook site inspections after the Hearing.

## 1.3 Committee conclusion

The Committee concludes:

- the Mixed Use Zone is an appropriate zone if the land is to be sold
- it is appropriate to retain the existing Parking Overlay – Schedule 12
- it is appropriate to apply the Environmental Audit Overlay.

The Committee concludes it is appropriate to remove the existing DDO13 from the site and apply a new schedule to the DDO to the land but recommends some changes from the exhibited version.

The exhibited schedule to the DDO sets a maximum height of AHD 91, and development below this height will protect the silhouette of Saint Patrick’s Cathedral, Parliament House and Old Treasury Building from key viewpoints.

The streetwall height for Lansdowne Street was primarily set to protect the Fitzroy Gardens from overshadowing at the equinox, but the Committee considers this streetwall height could allow development that is too tall in the local context. The Committee recommends a lower streetwall height and a greater setback of the upper levels to reduce the impact of any development on the local context.

Landscape setbacks are recommended for St Andrews Place and Cathedral Place to reinforce the existing character of these streets.

The Committee considers the build form envelope, which is defined by maximum height and streetwall controls, could allow development that has adverse impacts on the existing valued character of the area.

The schedule to the DDO contains a floor area ratio (FAR) control to manage overall bulk, and sets the limit at a FAR of 9:1. The Committee considers this is too high based on modelling presented at the Hearing which shows it results in bulky development on the site. The Committee was not presented with any detailed information to allow it to determine an appropriate lower FAR and has recommended that the FAR be deleted from the DDO.

The Committee recommends stronger overshadowing controls. The Committee considers Fitzroy Gardens merit a similar level of protection from overshadowing as Birrarung Marr, Batman Park, and Flagstaff Gardens.

The proposed planning provisions make proper use of the Victoria Planning Provisions, but require minor editing to accord with the *Ministerial Direction on The Form and Content of Planning Schemes* published on 25 May 2017. The Committee has recommended changes to achieve compliance.

**Table 1: Existing and proposed controls**

Current planning scheme controls	Proposed planning scheme controls	Advisory recommendation	Committee recommendation
Public Use Zone – Schedule 3	Mixed Use Zone	Mixed Use Zone	
Design and Development Overlay – Schedule 13 (Parliament Area)	Delete Design and Development Overlay – Schedule 13 (Parliament Area) Design and Development Overlay – New Schedule	Delete Design and Development Overlay – Schedule 13 (Parliament Area) Design and Development Overlay – New Schedule (exhibited version with changes)	
Parking Overlay – Schedule 12	<i>Retain</i>	<i>Retain</i>	
–	Environmental Audit Overlay	Environmental Audit Overlay	

## 1.4 Recommendation

The Committee recommends that:

**A planning scheme amendment be prepared and approved for the Former Peter MacCallum Cancer Centre to:**

- 1. Apply the Mixed Use Zone the site aligning the boundary of the new Mixed Use Zone with the midline of Cathedral Place.**
- 2. Apply an Environmental Audit Overlay to the land.**
- 3. Delete Design and Development Overlay – Schedule 13 (Parliament Area) from the land.**

**4. Apply a new schedule to the Design and Development Overlay as shown in Appendix D with the following changes from the exhibited version:**

**4.1 Allow buildings to exceed AHD 91 provided the iconic viewlines are protected.**

**4.2 Specify the following streetwall heights:**

- **For the Lansdowne Street streetwall:**
  - no prescribed ground level setbacks
  - a discretionary streetwall height of 24 metres
  - a discretionary setback above the streetwall of 25 metres
- **For the St Andrews Place streetwall:**
  - a discretionary ground level setback of 4 metres
  - a discretionary streetwall height of 20 metres
  - a discretionary setback above the streetwall of 10 metres
- **For the Cathedral Place streetwall:**
  - a discretionary ground level set back of 4 metres
  - a discretionary streetwall height of 20 metres
  - a discretionary setback above the streetwall of 10 metres.

**4.3 In Table 3, to include a under a new heading ‘Massing and site layout’, the following Design Outcomes:**

- A collection of visually complementary buildings that complement and enhance the Parliament precinct.
- Development that does not read as a single building mass.

**4.4 Delete the floor area ratio requirement.**

**4.5 Apply discretionary overshadowing protection to Treasury Gardens between 11am and 3:00pm between 22 April and 22 September**

**4.6 Apply discretionary overshadowing protection to Fitzroy Gardens between 11am and 2:00pm between 22 April and 22 September.**

**4.7 Explicitly state that new built form may be built to the boundary to abut any existing blank walls.**

**4.8 Make changes to:**

- bring it into compliance with the *Ministerial Direction on The Form and Content of Planning Schemes*
- delete the axonometric diagrams
- improve the drafting.

## **1.5 Process summary**

The following tables set out the details of the process for this matter.

**Table 2: Proposal summary**

Proposal summary	
Tranche and site reference	Tranche 8: site reference FT58
Site address	2 St Andrews Place, East Melbourne
Previous use	Former Peter MacCallum Cancer Centre
Site owner	Department of Health and Human Services
Council	Melbourne City Council
Exhibition	10 July – 18 August 2017
Submissions	15 (See Appendix B)

**Table 3: Proposed planning scheme changes**

Existing controls	Proposed controls
Public Use Zone – Schedule 3	Mixed Use Zone
Design and Development Overlay – Schedule 13 (Parliament Area)	Design and Development Overlay – replacement schedule
Parking Overlay – Schedule 12	Retain
	Environmental Audit Overlay

**Table 4: Committee process**

Committee process	
Members	Lester Townsend, Rachael O’Neill, Tania Quick
Information session	3 August 2017 at Planning Panels Victoria
Hearing	5 – 6 September 2017 at Planning Panels Victoria
Site inspections	19 September 2017
Appearances	<p>Department of Treasury and Finance agents for the site owner, represented by Damien Gardiner of Clayton Utz and calling evidence from:</p> <ul style="list-style-type: none"> <li>- Tim Biles of Message Consultants in Planning and Urban Design</li> <li>- Peter Lovell of Lovell Chen in Heritage</li> </ul> <p>Melbourne City Council represented by Sarah Porritt and calling evidence from:</p> <ul style="list-style-type: none"> <li>- Rob McGauran of MGS Architects in Urban Design</li> <li>- Roger Beeston of RBA Architects in Heritage</li> </ul> <p>East Melbourne Historical Society represented by Jill Fenwick Saint Peter’s Anglican Church, Eastern Hill represented by David Spriggs Elizabeth Anne Rushen</p>



## Committee process

Julia and Richard Fox represented by Julia Fox  
Salta Properties represented by Jamie Govenlock of Urbis  
1 Parliament Square Pty Ltd represented by Laura Thomas of Urbis  
The Roman Catholic Trusts Corporation for the Diocese of  
Melbourne represented by Jim Holdsworth and Dermot Cannon

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Date of this report 19 October 2017

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## 1.6 Issues dealt with in this Report

### 1.6.1 Matters beyond the Terms of Reference of the Committee

#### Use of the site for affordable housing

The role of the Committee, in relation to this site, is to advise the Minister for Planning on the suitability of changes to planning provisions for land proposed to be sold for private development. For this site, it is not the role of the Committee to advise on whether the land is suitable for affordable or social housing, or whether the government ought to set aside some of the land for affordable or social housing.

#### Public open space

Under its Terms of Reference the Committee cannot recommend that the land be zoned for public open space.

#### Obligations around highest and best use

The Committee has considered the issue of ‘highest and best use’ in earlier Tranches. It is clear that the zone, or overlay controls, that deliver highest valuation do not automatically deliver an appropriate planning outcome.

The *Victorian Government Land Transactions Policy*<sup>1</sup> states:

#### **2 Policy**

(c) *Unless an exemption applies as detailed at section (d), Victorian Government agencies:*

(iv) *prior to offering land for sale by a public process, must have in place the most appropriate zoning (and other relevant planning provisions) so that the land can be sold on the basis of its highest and best use.*

There is a difference between an appropriate planning outcome and ‘highest and best use’ for valuations purposes. The requirement for a valuation at the ‘highest and best use’ must come after the appropriate zone (and overlay controls) are chosen. Government policy clearly calls for “*the most appropriate zoning*”.

Clause 11, ‘Settlement’, of the Victoria Planning Provisions includes:

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<sup>1</sup> April 2016

*Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.*

There is no doubt that development on this site should take full advantage of its considerable locational benefits, within the constraints of the site.

### **Range of uses suggested in submissions**

A number of submissions suggested a range of uses for the site. It is not the role of the Committee to recommend specific uses or development proposals for the site.

#### **1.6.2 Issues dealt with in this Report**

This report deals with the issues under the headings of:

- Site constraints and opportunities
  - Zoning context
  - Site history and context
  - Physical constraints
  - Development opportunities
- Issues with the proposed changes
  - What zone is suitable
  - What overlays are suitable
- Issues in achieving an appropriate built form
  - Height: protecting views and vistas
  - Streetwalls
  - Responding to the local context
  - Detailed design issues
  - Drafting issues.

## 2 Site constraints and opportunities

### 2.1 Zoning context

Figures 2 and 3 show the current and proposed zoning.

Figure 2: Current zoning

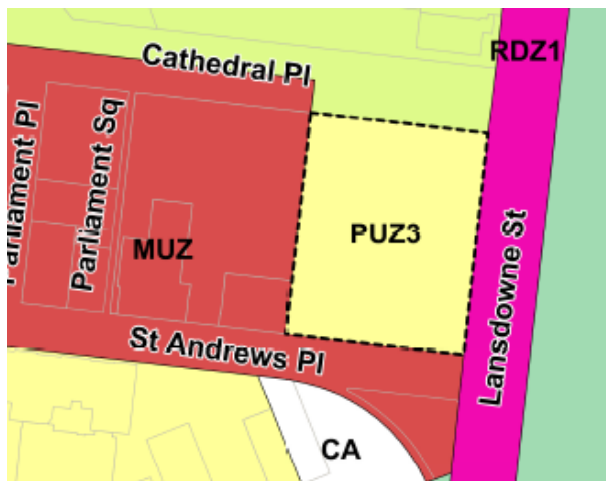
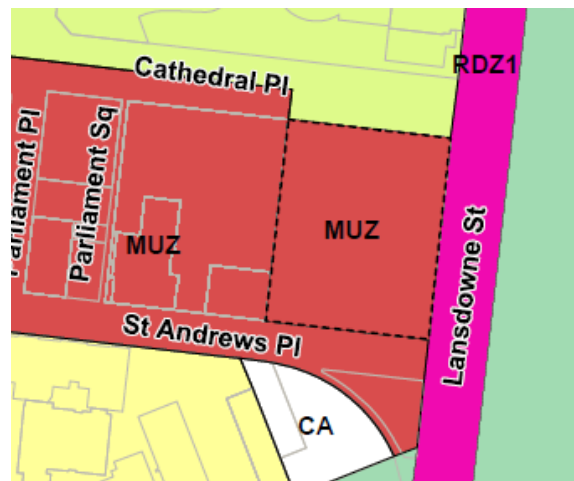


Figure 3: Proposed zoning



### 2.2 Site history and context

#### Site history

The Peter MacCallum Cancer Centre occupied the site until 2016. The site has continuously been used for education and health uses since the mid 1800s. The Heritage Context Report<sup>2</sup> by Lovell Chen describes the site's history:

*The subject site was the location of the former Scotch College as early as 1853 and in 1925 became the site for the St Andrews Hospital following the school's relocation to Hawthorn. A number of buildings were constructed on the site during its occupation, including the 'Crank' Building constructed in three stages between the 1930s and late 1960s and a Nurses Home on St Andrews Place. Architects A & K Henderson were appointed to design the new hospital in 1929, depositing a complex of pavilion wings. The 'Crank' building was the only part of the scheme completed.*

*In the 1970s, the site was redeveloped, with the construction of the building at the corner of Lansdowne Street and Cathedral Place, and the demolition of the former Scotch College buildings. After encountering financial difficulties, St Andrews Hospital was closed and replaced with the Peter MacCallum Cancer Centre in the 1990s. In the mid-1990s, the building at the corner of St Andrews Place and Lansdowne Street was constructed.*

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<sup>2</sup> Heritage Context Report, prepared by Lovell Chen for Message Consultants, August 2016

## The site

The site has a frontage of 81 metres and a depth of 100.7 metres, with an area of approximately 8,100 square metres. There is a fall of approximately 10 metres across the land extending from the northwest corner on Cathedral Place to the southeast corner at the intersection of Lansdowne Street and St Andrews Place.

The site contains a cluster of buildings that range in scale, architectural style and period of construction. The buildings include:

- The ‘Crank’ building – this extends through the site from northwest to southeast and was constructed in stages from 1933 to the 1960s. It rises to a height of eight storeys.
- The ‘Loti and Victor Smorgon’ building – located on the corner of Lansdowne Street and Cathedral Place. The building is sited to both street alignments and rises to a height of 10 storeys with a mansard roof. To the south, the next hospital building presents a streetwall height of three storeys.
- The ‘Smorgon Family’ building – located on the corner of Lansdowne Street and St Andrews Place. The building is set back approximately four metres from St Andrews Place and has a streetwall of four storeys with a recessed level above and a curved roof form. The corner is activated by a terrace that accommodates outdoor seating associated with the cafe. The entrance to the car park is from Lansdowne Street and the port-cohere for patient transport is accessible via St Andrews Place.

## Site context

The site context detailed in the Town Planning Report<sup>3</sup> states:

- *To the east, the site abuts Lansdowne Street beyond which are the Fitzroy Gardens.*
- *To the north, the site abuts Cathedral Place beyond which is Saint Patrick’s Cathedral and its grounds which include administrative buildings, and at grade carpark for Cathedral use and Cathedral gardens. The spire of Saint Patrick’s Cathedral terminates the visual axis along Brunswick Street to the north. The highest point of the Cathedral spire is approximately 100 metres.*
- *To the south, the site abuts St Andrews Place, beyond which are the State Government Offices and Treasury Gardens. Immediately opposite the site is a five storey building located on Commonwealth land, known as 4 Treasury Place.*
- *To the west, the site shares a common boundary with the Park Hyatt Hotel Melbourne property as well as land known as 10 St Andrews Place. The main Park Hyatt Hotel building is approximately 44 metres in height (AHD 77.06). The 10 St Andrews Place building is seven storeys, or*

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<sup>3</sup> *Town Planning Report for the Former Peter MacCallum Cancer Centre site by Message Consultants, April 2017*

*approximately 24 metres in height (AHD 59.69). This building is occupied by mixed uses, with commercial uses predominating.*

The Committee observes that more broadly the site is located beyond the Hoddle Grid, in a predominantly low scale, landscaped setting of religious and government buildings and public gardens.

## **2.3 Physical constraints**

The site has a number of constraints.

### **(i) On site heritage**

There are references to buildings on the site in the Heritage Places Inventory 2014, which is an incorporated document in the Melbourne Planning Scheme. These are as follows:

- 12 St Andrews Place (rear) – ‘D’ grade building, Level 3 streetscape
- Fence (St Andrews H), Cathedral Place – ‘C’ graded, Level 3 streetscape.

These places are not identified in the City of Melbourne i-heritage database.

Whether the ‘Crank’ building and fence should be protected with a Heritage Overlay is discussed in Section 3.2.1 of this report.

### **(ii) Potential contamination**

A preliminary review undertaken by Compass Environmental Pty Ltd has identified that the site has the potential to be contaminated. It is proposed to apply the Environmental Audit Overlay to the site. This issue is discussed at Section 3.2.2 of this report.

### **(iii) Significant views**

Redevelopment of the site has the potential to adversely impact on a number of key views to significant heritage buildings including:

- along Bourke Street to Parliament House
- along Collins Street to the former Treasury building
- along Brunswick Street to Saint Patrick’s Cathedral spire
- from the northwest corner of Albert and Gisborne looking to Saint Patrick’s Cathedral
- from within Fitzroy Gardens.

The issue of views and the discussion regarding appropriate built form outcomes are discussed at Section 4.1 of this report.

### **(iv) Street interfaces**

Adjacent buildings adopt overall heights or streetwall heights that range between five and seven storeys. The buildings to the west of the site fronting St Andrews Place and Cathedral Place and the lower scale 1990s building on the site, adopt setbacks from the street frontages. Landscaping is provided within the setbacks of the adjacent buildings. The appropriateness of the proposed streetwall heights and setbacks is discussed in Section 0 of this report.

**(v) Surrounding heritage buildings and places**

A number of architecturally significant buildings are located within the site context including:

- Old Treasury Building
- New Treasury Building
- Saint Patrick’s Cathedral
- Commonwealth Offices Building
- Treasury Gardens
- Parliament House
- Lutheran Church.

Consideration and assessment as to the appropriateness of the scale of built form in the context of these heritage buildings and places is discussed in Section 4.3 of this report.

**(vi) Overshadowing**

A key consideration is the overshadowing impacts of the future redevelopment of the site on Fitzroy Gardens, including at the winter solstice. Overshadowing is discussed at 4.4 of this report.

**(vii) Vehicle access**

Vehicle access to the site is currently provided from St Andrews Place, Lansdowne Street and Cathedral Place. The basement car park is accessed via Lansdowne Street.

A significant change proposed for future investigation is the closure of the southern carriageway along Cathedral Place. The purpose of this is to create a landscape pedestrian link between the Melbourne CBD and Fitzroy Gardens. There is a need to consider what planning controls, if any, may be required to manage future vehicle access.

## **2.4 Development opportunities**

There are a number of opportunities for this site, including:

- it is in a highly urban, well serviced and accessible location
- it has an attractive location adjacent to parkland
- it is a large, regularly shaped landholding
- the fall across the land facilitates basement car parking

Demolition of existing buildings and development of site responsive, well-sited and designed buildings could create a better outcome than the existing buildings. There is potential for more efficient use of the land, while respecting the significance of the adjacent land uses.

## 3 Issues with the proposed changes

### 3.1 What zone is suitable?

#### (i) Evidence and submissions

The site owner submitted that the Mixed Use Zone, in conjunction with the overlay controls, had been identified as the most appropriate zone for the site, following a “*careful, detailed and comprehensive analysis*”.

The Redevelopment Controls report<sup>4</sup> considered the Commercial 1 Zone and the Mixed Use Zone. The report observed that both zones supported increased housing densities and provided for a range of commercial uses, and concluded:

*Because the Hyatt Hotel and adjacent land was zoned Mixed Use ... it would be better to maintain the geographical continuity of the [Mixed Uses] zone across the Peter MacCallum site rather than in effect ‘spot zone’ it to Commercial 1.*

Submissions generally supported rezoning the site to the Mixed Use Zone, including submissions from Council, 1 Parliament Square Pty Ltd (Hyatt) and Salta Properties.

Individual submitters were opposed to the proposed Mixed Use Zone on the basis that the land should continue to be used for public purposes. Dr Rushen submitted that there is an oversupply of apartments in the inner city area and there is no justification for converting the site to a Mixed Use Zone.

#### (ii) Discussion

The Mixed Use Zone currently applies to the balance of land bound by Parliament Place, St Andrews Place and Cathedral Place. It also applies to the triangular parcel of lawn in front of the Commonwealth government buildings sited opposite the site.

The Committee considers the Mixed Use Zone is appropriate for the site – it is logical to extend the zone that presently applies to the balance of the land in the block bound by four roads rather than introduce an alternate zone.

In terms of the potential range of uses raised in submissions, the Mixed Use Zone allows for a range of uses including accommodation, place of worship, office, medical centre and education centre. It also allows for place of assembly which includes art gallery and exhibition centre.

The Panel notes a mapping anomaly shown in the exhibited material. The zone boundary should extend to centreline of Cathedral Place to align with adjacent zone boundary, and as per accepted mapping practice.

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<sup>4</sup> *Redevelopment Controls for the former Peter MacCallum Cancer Centre*, prepared by Message Consultant for the Department of Treasury and Finance, February 2017.

**(iii) Recommendation**

The Committee recommends:

**Apply the Mixed Use Zone the site aligning the boundary of the new Mixed Use Zone with the midline of Cathedral Place.**

**3.2 What overlays are suitable?**

**3.2.1 Should a Heritage Overlay be applied?**

**(i) What is the issue?**

The site is not currently included in the Heritage Overlay and it is not proposed to apply the Heritage Overlay as part of this amendment. Various submitters including the Council and the National Trust considered that the ‘Crank’ building should be retained and that a Heritage Overlay be applied to the site.

**(ii) Evidence and submissions**

The heritage experts agreed that a precinct-wide Heritage Overlay should be applied; but did not agree when this should occur or whether the current planning scheme amendment was premature in the absence of a Heritage Overlay.

Parties agreed the site context had heritage values and the surrounding built form and landscape was significant. While there are a number of individual Heritage Overlay controls across nearby properties, there is no precinct-wide Heritage Overlay.

The site owner and the Council relied on heritage evidence and called Mr Lovell and Mr Beeston respectively. The Heritage Context Report dated August 2016 prepared by Lovell Chen was appended to Mr Lovell’s evidence. A recommendation of that report, which Mr Lovell supported, was that *“given the individual and collective significance of buildings within the Eastern Hill area, the introduction of a precinct Heritage Overlay controls is an action that should be contemplated”*. Mr Beeston agreed with this suggestion but the expert witnesses differed in view as to the heritage significance of the site and the timing for the introduction of a Heritage Overlay.

Mr Lovell thought that within such a precinct the site would be identified as non-contributory and that the ‘Crank’ building did not warrant the application of an individual Heritage Overlay.

Mr Lovell said that subject to refinement in the wording of the Design and Development Overlay in relation to heritage considerations and limiting the siting of the higher scale of development to adjacent the Hyatt that the *“proposed DDO has been prepared with an awareness of the site location and sensitivities in terms of surrounding buildings of heritage significance”*.

However, Mr Beeston thought that a Heritage Overlay should precede the introduction of a Design and Development Overlay and that he was *“nervous about adopting a Design and Development Overlay before a Heritage Overlay”*. In terms of the significance of the precinct and the site he opined:



*From my preliminary review of the Eastern Hill area, I consider the area to be highly significant, and believe that its significance would be best protected via the application of a precinct Heritage Overlay. As part of a precinct, I believe that the subject site is likely to at least meet the threshold for contributory grading and, subject to further assessment, may be found to meet the threshold for a significant grading.*

Dr Rushen submitted that there was not a Heritage Overlay across the site because the continuation of community uses, to date, would protect the site from development. She submitted that now “*is the time to pause any thought of redevelopment until the appropriate Heritage Overlay is put in place for the site*”.

The East Melbourne Historical Society was also supportive of a precinct-wide Heritage Overlay.

A number of submissions identified the ‘Crank’ building as having heritage significance. Mr Beeston’s gave evidence that:

*The 1933-34 red brick building and its associated fence, is a largely intact example of an Interwar hospital building which is historically significant for its association with the Presbyterian Church who occupied the site from 1850s until the late 20th century.... [it is] a good example of an Interwar hospital building in the Commercial Gothic style [which] is distinguished by the use of decorative brickwork and the distinctive arcaded base...*

The East Melbourne Historical Society submitted that retaining the building and its fence, would ensure that the site, which is an important part of Melbourne’s medical history, was preserved, and would also ensure that this large parcel of land was broken up into smaller parts more appropriate to the built environment of the precinct.

Mr Lovell and Mr Beeston did not agree as to heritage significance of the site and in particular the ‘Crank’ building. Mr Lovell said:

*While as noted in the Heritage Context Report, it is a building of some historical interest in evidencing the evolving institutional development of the site, it is not a building that presents as warranting recognition for its heritage value, nor is it a building which contributes to an important phase of development in the wider precinct. Had it been completed and survived relatively intact, the assessment may have been different, but this is not the case.*

In response to a question by Council, Mr Lovell expressed the view that it was better to provide contemporary development than retain part of a building with no significance.

Mr Beeston concluded that:

*Subject to further assessment, it **may** be determined that the building and its associated red brick fence is of sufficient heritage value to warrant an individual Heritage Overlay ... (emphasis added)*

In answers to questions, Mr Beeston confirmed that he had not undertaken a detailed review.

**(iii) Discussion**

There is no dispute that the site sits within a significant heritage precinct and the Committee agrees that it would be appropriate to explore applying a Heritage Overlay across the precinct, but this is a matter beyond the scope of the Committee.

The Committee agrees with Mr Lovell in that, subject to firm direction and outcomes in the approved Design and Development Overlay, there will sufficient safeguards to preserve the heritage significance of the adjoining properties, in the absence of a precinct-wide Heritage Overlay.

The ‘Crank’ building is part of the original overall scheme for the St Andrews Hospital and that it is the rear of the building that presents to Cathedral Place. The Committee observes that the building has a ‘D’ grading in the Council’s inventory, which is the lowest order contributory building.

The Committee accepts Mr Lovell’s evidence that the ‘Crank’ building does not warrant inclusion in a Heritage Overlay or retention. The Committee notes that Mr Beeston was not definitive in his conclusion that the building warranted protection and did not present a detailed review.

**(iv) Conclusion**

The Committee concludes:

- the introduction of a precinct Heritage Overlay is beyond the scope of the Amendment
- that heritage value of the precinct warrants further consideration as part of a future heritage review
- the ‘Crank’ building does not warrant an individual Heritage Overlay.

**3.2.2 Is an Environmental Audit Overlay required?**

Compass Environmental Pty Ltd prepared a preliminary environmental site assessment dated 10 May 2016. The desktop review identified that the site included the use and storage of radiation materials, chemicals and liquid fuel which indicates the site as having the potential to be contaminated. It noted that further testing is required to determine the level of contamination, if any. Due to the presence of buildings on site the testing is unable to be carried out.

No submitters opposed the inclusion of the site in the Environmental Audit Overlay. Some submitters raised concerns that the demolition of buildings used to treat cancer patients with radiotherapy would lead to adverse environmental impacts. There is no evidence of radioactivity.

*Ministerial Direction No: 1 – Potentially Contaminated Land* requires a planning authority preparing a planning scheme amendment to satisfy itself that the environmental conditions of land proposed for a sensitive use – residential, child care, preschool or primary school – or public open space, will be suitable for that use. If the land is potentially contaminated and a sensitive use is proposed, a planning authority must satisfy itself that the land is suitable by way of an environmental audit.

The Committee accepts that the site is potentially contaminated and given the presence of existing buildings it is appropriate to defer the requirement for an audit. The Environmental Audit Overlay is the appropriate tool to apply to ensure an audit is carried out in the future.

The Committee recommends:

**Apply an Environmental Audit Overlay to the land.**

**3.2.3 Is it appropriate to retain the Parking Overlay – Schedule 12?**

It is proposed to retain the existing Parking Overlay – Schedule 12 that currently applies to the site. The Redevelopment Controls prepared by Message Consultants, February 2017 note that the Parking Overlay should be reviewed in the context of any future, more intense development of the site.

The Council and other submitters supported retention of the Overlay, but a number raised concerns about parking.

The Committee agrees that it is appropriate to retain the Parking Overlay that applies to the site.

The Committee concludes:

- it is appropriate to retain the Parking Overlay – Schedule 12 on the land.

**3.2.4 Should a Design and Development Overlay or Development Plan Overlay be used?**

**(i) What is the issue?**

Is a Development Plan Overlay (DPO) a more appropriate control to guide the redevelopment of the site?

**(ii) Evidence and submissions**

Council initially submitted that a DPO was the most appropriate planning control to achieve an integrated development on the site over time.

1 Parliament Square and Salta supported the use of a DDO. Salta submitted that the DDO controls should be adopted subject to changes.

The site owner submitted that the DDO was the preferred control because it:

- provides some degree of built form certainty for the site without the finalisation of a use and development for the site
- allows a flexible design response
- allows for the community to contribute to the preferred development for the site
- retains third party rights.

The site owner advised that both the Department of Environment, Land Water and Planning and the Council were consulted about the selection of the DDO.

In support of a DDO, Mr Biles observed that a DDO can establish a built form framework and a set of design objectives and is also the only overlay that can deliver both mandatory and discretionary built form controls.

Mr Biles stated that the primary reason to reject a DPO was that to formulate an envelope a reasonable knowledge of the end uses was required and in this instance these were not known. Further, that a DPO could be adopted however, there is an expectation that a broad envelope would be put before the general public to demonstrate how it could be resolved on site.

The Roman Catholic Trust submitted that the review of the DDO for the site should have been undertaken as part of a broader review of the existing DDO13 area and sought recommendations from the Committee to this effect. Dr Rushen submitted that the existing DDO13, which requires development to be “*compatible with the Victorian Character*” and sets a 15 metre height limit, should be retained over the site.

### **(iii) Discussion**

At the Hearing there were no submissions that sought to progress a DPO in place of the DDO. Rather, the focus of submitters was the form and content of the proposed DDO and whether it would successfully realise an appropriate redevelopment of the site.

The Committee agrees that the current DDO is not appropriate because:

- it does not recognise the opportunities presented by the site
- it does not address the site constraints in a sophisticated manner.

The Committee considers that applying a DDO is an appropriate way to manage the redevelopment of the site recognising that other planning controls also apply.

This report makes a number of recommendations for changes to the exhibited DDO – these are shown in Appendix C.

### **(iv) Recommendation**

The Committee recommends:

**Delete Design and Development Overlay – Schedule 13 from the site**

**Apply a new Design and Development Overlay schedule as shown in Appendix D.**

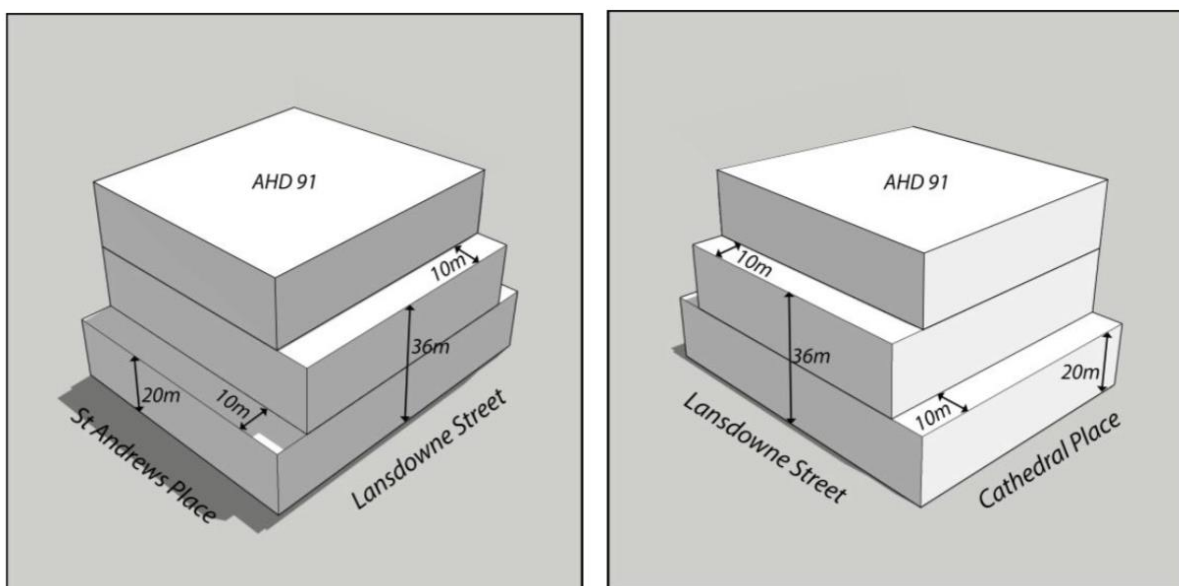
## 4 Issues in achieving an appropriate built form

The DDO presents requirement under four headings:

- height
- streetwalls
- floor area ratio
- building design.

The building envelope that results from the controls in the DDO is shown in Figure 4 which is taken from the DDO.

**Figure 4: Proposed DDO building envelope**



### 4.1 Height: protecting views and vistas

#### (i) What is the issue?

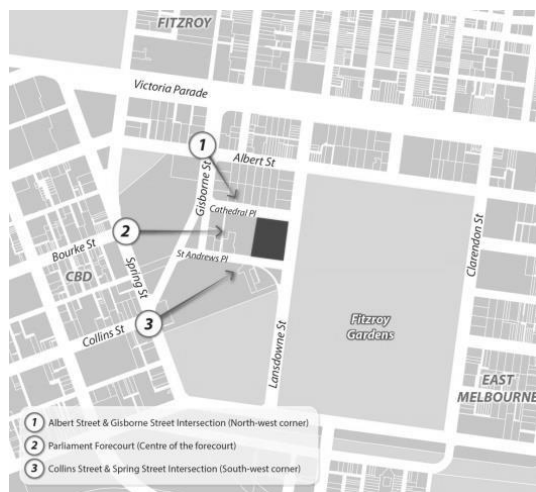
Redevelopment of the site has the potential to adversely impact on a number of key views.

#### (ii) Evidence and submissions

Clause 21.06-1 Urban Design specifically lists views to Parliament House along Bourke Street and to the Old Treasury Building along Collins Street as iconic views to be protected. Clause 21.06 also identifies Saint Patrick's Cathedral as a key 'landmark' building. Views from the nearby Treasury or Fitzroy Gardens are addressed in more general terms in Clause 21.06.

The three principal views identified for protection are shown in Figure 5.

**Figure 5: Key vistas**



The East Melbourne Historical Society and Dr Rushen submitted that the proposal would negatively impact the views to Saint Patrick’s Cathedral.

The overall height of AHD 91 was based on an analysis of views identified in the planning scheme. The site owner submitted:

*The setting of the maximum building height at AHD 91 has been determined following detailed sight line analysis from key vistas of relevance in the Melbourne Planning Scheme. The proposed height control is not a random number, but has been carefully selected based on the sight line analysis ...<sup>5</sup>*

The key findings of the vista and view study<sup>6</sup> concluded that the site has limited impacts on key vistas:

- buildings would need to exceed 55 metres (AHD 91) in height to be seen above the ridgeline of Saint Patrick’s Cathedral from the northwest corner of Albert and Gisborne Streets
- buildings would need to exceed 120 metres in height to break the parapet view of Parliament House
- buildings would need to be over 102 metres in height to be seen above the parapet of Old Treasury Building when viewed from the corner of Collins and Spring Street.

Mr McGauran gave urban design evidence that views from the adjacent Treasury Reserve Precinct should also be considered as sensitive and that the proposed building envelope at AHD 91 with 10 metre setbacks would have a significant and negative impact on views of the Parliamentary precinct from Spring Street and Treasury Gardens. He recommended that no new built form should be visible from any public pathways within the Treasury Gardens. The implications of this recommendation included:

*Indicatively based on the visibility of the Park Hyatt above the parapet as shown in the report new development maximums will need to be lower rather*

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<sup>5</sup> DTF submissions sub para 41

<sup>6</sup> Redevelopment Controls report pages 11–12

*than higher than this adjoining development by approximately six levels that is approximately 20 metres in the midblock area with further reductions to the foreground street interfaces from that currently proposed that is RL71.*

Salta did not question the height of AHD 91 but sought greater flexibility around the mandatory requirements for overall building height. The Salta submission argued that if development is able to satisfy the tests and built form objectives as contained within the DDO, the control should allow for a performance based assessment to be conducted. Salta submitted that a performance based approach has the potential to create exemplary design rather than an over reliance on default mandatory controls in relation to overall building height.

### **(iii) Discussion**

The Committee accepts the evidence of Mr Biles regarding the analysis of key vistas and for AHD 91 to be used as a 'benchmark' for building height based on avoiding visual protrusion above the ridgeline of Saint Patrick's Cathedral. The Committee also notes that Mr Lovell and Mr Beeston both also supported this height, albeit conditional upon it being located more centrally and to the western portion of the site.

In considering more distant, cityscape views, the Committee accepts that a maximum building height of AHD 91 is appropriate in the context of the existing built form on the site and adjoining site, and in the context of a backdrop of taller built form of buildings in the CBD.

While visual impacts on the Treasury Gardens are important they are a different level of significance to the impacts that would result from development appearing behind the silhouette of Saint Patrick's Cathedral, Parliament House or Old Treasury Building. The view of the development from Treasury Gardens is addressed in the section dealing with how the development needs to respond to local context.

The Committee finds merit in Salta's argument that there is opportunity for some greater flexibility around maximum overall height, subject to an assessment against the key view line tests, overshadowing, and other built form outcomes.

Providing flexibility will facilitate active use of the roof area because the access structure to the roof could exceed AHD 91 (provided other tests were met). If AHD 91 is an absolute limit then providing public access to, say, a roof garden or roof top bar would have to be at the expense of a floor level of the building.

### **(iv) Conclusion**

The Committee concludes:

- a maximum building height set at discretionary AHD 91, supported by the mandatory control that 'Buildings must not be visible when viewed from the sightline viewpoints ...(as identified)' will protect iconic views.

The Panel recommends:

**Amend the Design and Development Overlay to allow buildings to exceed AHD 91 provided the iconic views are protected.**

## 4.2 Streetwalls

### 4.2.1 Lansdowne Street

#### (i) What is the issue?

The issue is whether the 36 metre streetwall along Lansdowne Street will facilitate an appropriate built form.

#### (ii) Evidence and submissions

##### Streetwall height

Views from within the Fitzroy Gardens of the site and surrounding buildings are largely obscured by vegetation, with taller built form set largely against a backdrop of taller buildings when seen from most distant vantage points.

The proposed DDO makes provision for a mandatory streetwall height of 36 metres along Lansdowne Street. At either end of the streetwall where it intersects Cathedral Place and St Andrews Place the height must integrate with the 20 metre height on each of these frontages.

Complicating this circumstance is the presence of the existing tall tower on the corner of Cathedral Place and Lansdowne Street – the Loti and Victor Smorgon building – which is considered sufficiently sound to support conversion to a new use within the existing shell. This building is 44 metres high (AHD 79.25). It would have existing use rights and like the former Mercy Hospital on the other side of Fitzroy Gardens could be converted to apartments or another use. It is generally accepted to have an adverse impact on the character of the area because of its design which is not sympathetic to the precinct, due to its height, form and detailing.

The site owner submitted:

*The streetwall height of 36 metres has been selected by reference to the Loti and Victor Smorgon building, and is based on preventing overshadowing of Fitzroy Gardens during the hours of 11am and 2pm on 22 September (the equinox).<sup>7</sup>*

Mr Biles gave evidence that:

*The streetwall height on Lansdowne Street was resolved in response to a number of influences; primary amongst them was the impact of shadow on the Fitzroy Gardens.*

*A streetwall of 11 to 12 storeys is considered a comfortable edge to the gardens and carefully designed, will offer a streetscape condition that is likely to be extensively fractured by windows and balconies.<sup>8</sup>*

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<sup>7</sup> DTF submission par 47

<sup>8</sup> Biles evidence page 6



Mr Biles explained that in developing the planning controls, consideration was given to developing incentives to encourage demolition and replacement of the Loti and Victor Smorgon building. However, it was determined that retention, repurposing and refurbishment of this tower would be an attractive option for any future development interest, and it would be difficult to establish a ‘bonus’ of sufficient value within the planning framework to support the demolition of the building.

Mr Lovell’s gave heritage evidence that:

*With regard to Lansdowne Street the taller podium, reflects the fact that there are no flanking heritage buildings, and the sensitivity is primarily to Fitzroy Gardens. As noted, while a podium of 36 metres will be quite visible from within the gardens it does not present as an element which will diminish their significance.<sup>9</sup>*

In cross examination, Mr Lovell acknowledged that the Loti and Victor Smorgon building was “quite confronting” but emphasised that this was an issue of urban design, rather than an issue of heritage values. Mr Lovell also stated that:

- a 36 metre building on Lansdowne Street would have an impact on the street, but, there were no heritage reasons preventing it
- a 36 metre building on Lansdowne Street would be expected to meet high architectural outcomes in accordance with the provision of Clause 21.06
- that an explicit requirement for ‘design excellence’ in this regard would be appropriate
- the retention of the 44 metre high Loti and Victor Smorgon building did not sit comfortably with the principles underpinning the inclusion of mandatory 10 metre upper level setbacks from Lansdowne Street established in the DDO, and would create a ‘challenging’ relationship with any future 10 metre setback from a 20 metre streetwall to Cathedral Place.

Mr Beeston gave evidence that from a heritage perspective development facing Lansdowne Street should be reduced from 36 metres to about 24 metres, being about the height of the roof ridge of the Commonwealth Offices located opposite the site.<sup>10</sup>

Mr Beeston recommendation for a lower height was based on a number of reasons:

- he considered the 36 metre maximum excessive in the context of an open street where all other buildings in the vicinity, except for the Loti and Victor Smorgon building, have a much lower scale
- the redevelopment of the site is an opportunity to provide a more contextual response to this sensitive area than is presently the case
- a lower height would prevent new buildings being the dominant form at the eastern edge of the civic area directly opposite Fitzroy Gardens.

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<sup>9</sup> Lovell evidence par 38, page 14

<sup>10</sup> Beeston Heritage evidence para 69–71, page 22

In its written submission, Council argued that the uniform allowance of 36 metre streetwall height to Lansdowne Street could result in an uncharacteristic wall of built form for the length of the 100 metres plus frontage, with only compositional relief. It said that this would constitute a significant departure from the openness along the Lansdowne Street between Wellington Parade and Albert Street.

Mr McGauran gave urban design evidence that the proposed streetwall was too high, and supported a design response that presented a lower facade broken up with landscaped areas to provide a substantial landscaping buffer and to enhance the public realm.

He recommended a typical preferred maximum height of five levels (equivalent to 21 metres) for the southern two-thirds of the Lansdowne Street interface, and supported adaptive re-use or replacement of the Loti and Victor Smorgon building encouraging removal of the mansard roof and replacement with a more recessive setback form.

The Roman Catholic Trusts Corporation submitted that the Lansdowne Street streetwall was excessive, being out of scale with the 5-7 storey heights of building in the vicinity.

Dr Rushen raised concern that construction of a ‘tall building’ along the Lansdowne Street interface would create *“a sense of enclosure, hemming in the gardens”*.<sup>11</sup> The East Melbourne Historical Society submitted that the proposed height is *“grossly overbearing and certainly out of keeping with elegant nineteenth century government offices of St Andrews Place and the surrounding neighbourhoods of Jolimont and East Melbourne”*.<sup>12</sup>

### **Ground level setback**

Salta submitted that a potential development of the site was for a premium hotel, and the design approach for such a hotel could potentially include a central, midblock landscaped zone allowing a ‘garden character’ to enter the site.

Mr McGauran recommended a design response that incorporated generous landscaped setbacks in particular to the interface with Lansdowne Street<sup>13</sup> in a manner similar to the development at 300 Albert Street East Melbourne, and generous midblock landscaping areas for canopy trees that contribute to the interface with Fitzroy Gardens and the mitigation of development impacts.<sup>14</sup>

In closing the site owner submitted that it is not necessary to prescribe landscape setbacks given the proximity to Fitzroy Gardens and the already existing tree-lined streets in this area. It is submitted that landscaped setbacks are not necessary and should not be mandated.<sup>15</sup>

### **Setback above street wall**

Clause 21.06-1 Urban Design includes the objective *“to protect iconic views in the city”*. Strategies emphasise the need to be sensitive to views of ‘landmark buildings’ within the area around the site, namely Parliament House, Old Treasury and Saint Patrick’s Cathedral,

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<sup>11</sup> Dr Rushen Verbal submission

<sup>12</sup> EMHS Verbal submission

<sup>13</sup> McGauran evidence para 13k) page 7

<sup>14</sup> McGauran evidence para 25k) page 9

<sup>15</sup> DTF submission par 48

and that the scale and form of new development will need to ensure that these buildings retain any existing prominence.<sup>16</sup>

The Heritage Context Report recommended that taller development be directed towards the centre of the site and to its western boundary. Such taller form exists with the Park Hyatt Hotel, and in views from the west along Cathedral Place there would be limited impact on the Cathedral, and on views to the Fitzroy Gardens.<sup>17</sup>

Mr Lovell's gave evidence that:

*It is important that the scale of new development responds to sensitive views and this is appropriately achieved in the proposed DDO by maintaining low scale development at the perimeter of the site with taller built form accommodated in the centre of the site, consistent with the recommendations of the Lovell Chen Heritage Context Report (revised August 2016).<sup>18</sup>*

Mr Beeston noted that a building of AHD 91 would have an impact on other important views in the area, and so its massing and bulk and setbacks would need to be carefully managed.<sup>19</sup>

Mr McGauran and some submitters also emphasised the extent of upper level setbacks was significantly greater for the Park Hyatt tower than those established by the proposed DDO.

### **(iii) Discussion**

The 36 metre streetwall height was established predominantly based on an analysis of overshadowing of Fitzroy Gardens at 22 September. This is just one of a range of built form influences that must be considered in an integrated manner, to ensure a contextually appropriate and site responsive outcome. For Lansdowne Street the Committee thinks that urban design issues related to the local context are the determining factor for the streetwall as opposed to overshadowing or heritage. The Committee discusses overshadowing in detail in Section 4.4.

Accepting the presence of the existing Loti and Victor Smorgon building, the Committee shares the concern of a number of submitters regarding the provision for a 36 metre streetwall along the full extent of Lansdowne Street. The building envelope does not necessarily represent an ultimate development outcome, but the Committee finds that even *potential* for a streetwall of this along the extent of Lansdowne Street is unacceptable in this context. The Committee agrees with Mr Beeston, Council, the Roman Catholic Trusts Corporation and other submitters that a streetwall of this height in this context would be 'excessive' and 'uncharacteristic'. Mr Lovell, while not sharing Mr Beeston's view that this streetwall height was inappropriate from a heritage perspective, acknowledged that it raised challenging issues of urban design and a need for an explicit requirement for 'design excellence' to ensure an acceptable outcome.

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<sup>16</sup> HCR page 26

<sup>17</sup> HCR pages 30–31

<sup>18</sup> Lovell Heritage evidence page 9

<sup>19</sup> Beeston evidence par 74 page 23

The Committee accepts Mr Beeston’s evidence that a maximum streetwall height of 24 metres would be more appropriate, based on the height of the Commonwealth building.

The Committee is reluctant to make recommendations for a specific ground level setback from Lansdowne Street. There is a role for retaining flexibility for varied design responses and for built form to either directly address the street, or accommodate deeper landscaped zones, along different portions of the Lansdowne Street frontage. The Lansdowne Street frontage also provides an important opportunity to provide activated and visually engaged street frontages.

The Committee agrees that new development will need to respond to sensitive views by maintaining low scale development at the perimeter of the site with taller built form in the centre of the site. To minimise the impact on these sensitive views, the Committee also accepts the evidence of Mr Beeston and Mr McGauran that taller built form should be directed to the western portion of the site. A setback of 25 metres from the Lansdowne Street frontage is recommended to minimise visual impacts.

**(iv) Recommendation**

The Committee recommends:

**Amend the Design and Development Overlay to specify the following streetwall heights:**

**For the Lansdowne Street streetwall:**

- no prescribed ground level setbacks
- a discretionary streetwall height of 24 metres
- a discretionary setback above the streetwall of 25 metres.

**4.2.2 St Andrews Place and Cathedral Place**

**(i) What is the issue?**

The issues are whether:

- the 20 metre streetwall heights along Cathedral Place and St Andrews Place, proposed by the DDO, will facilitate an appropriate built form outcome in the context.
- ground level setbacks and provision for landscaping should be required along the streetscape interfaces.

**(ii) Evidence and submissions**

Mr Lovell and Mr Beeston gave evidence that the proposed 20 metre streetwalls to Cathedral Place and St Andrews Place sat comfortably within the context of adjacent heritage places, although Mr Beeston felt that upper level setbacks should be increased in Cathedral Place and St Andrews Place to match those of the taller component of the Park Hyatt Hotel (around 25 metres).

Mr McGauran did not support the proposed heights and streetwall approaches. Instead he recommended development of 4-5 storeys (equivalent to 17-21 metres) setback from St Andrews Place and Cathedral Place, with upper level setbacks of 25 metres from the street

interface for development above six levels.<sup>20</sup> The Roman Catholic Trusts Corporation submitted that the 10 metre setbacks were inadequate to visually separate any taller element from the podium and suggested a minimum setback of 12 metres.

### **Ground level setbacks and landscaping**

Council submitted that the streetscape response to Cathedral Place and St Andrews Place should include ground level setbacks for landscaping to the streetscape. The Roman Catholic Trusts Corporation agreed with this submission.

Mr Beeston considered that similar setbacks to those of the Park Hyatt should be adopted at the subject site for both St Andrews Place and Cathedral Place.

Mr McGauran included specific recommendations for a 3 metre setback to Cathedral Place.<sup>21</sup> In relation to St Andrews Place, Mr McGauran did not make a specific recommendation, but stated in evidence that development should be:

*... configured in a form that respects and responds to respond to... the generous public landscapes that form part of this street interface to the gardens'.<sup>22</sup>*

Other submissions also raised concerns regarding the lack of ground level setbacks from the street and sought to emphasise the need for provision of landscaped setbacks. Dr Rushen's submitted that:

*... landscaped setbacks are currently an important feature of the site on both the Cathedral frontage and St Andrews Place.*

Ms Fox noted:

*At present, all the buildings on the north side of St Andrews Place (with the exception of Tasma Terrace building...) have a setback with gardens in the front.*

Mr Biles said there was an argument for a hard street edge given the existing presence of street trees, and stated that there was nothing in the DDO preventing landscaped setbacks being provided if a future developer sought to pursue this.

### **(iii) Discussion**

The Committee supports the proposed discretionary 20 metre streetwall heights with 10 metre upper level setbacks as an appropriate response in the context of adjacent heritage places for St Andrews Place and Cathedral Place.

Landscaped setbacks are a feature of St Andrews Place and Cathedral Place and help create the distinct character of the area. The landscape setbacks of the buildings adjoining the site are approximately 4 metres.

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<sup>20</sup> McGauran evidence page 50

<sup>21</sup> McGauran evidence page 50

<sup>22</sup> McGauran evidence Para 13c) page 6–7

The Committee acknowledges that the DDO includes a design outcome to ‘integrated landscaping within the design’ but considers that further, more specific guidance is required in the DDO for landscape setbacks. The Committee considers that the DDO should specify a discretionary 4 metre ground level setback from the street boundary, to make provision for landscaping. This will help ensure the future development reinforces the valued characteristics of these streets. The Committee notes that this will have the effect of increasing upper level setbacks to 14 metres from the street boundary, or 10 metres from the streetwall.

**(iv) Recommendation**

The Committee recommends:

**Amend the Design and Development Overlay to specify the following streetwall heights:**

**For the St Andrews Place streetwall:**

- a discretionary ground level setback of 4 metres
- a discretionary streetwall height of 20 metres
- a discretionary setback above the streetwall of 10 metres

**For the Cathedral Place streetwall:**

- a discretionary ground level set back of 4 metres
- a discretionary streetwall height of 20 metres
- a discretionary setback above the streetwall of 10 metres

### **4.3 Responding to the local context**

The overall height limits and street wall requirements create a building envelope that could contain a building that adversely impacts on valued local characteristics. The issues are whether:

- further controls are needed to ensure an appropriate response to local context
- the proposed FAR of 9:1 is appropriate.

#### **4.3.1 Scale and form of development**

**(i) What is the issue?**

The issue is whether the scale and form of development made possible by the DDO building envelope responds appropriately to its context in terms of urban character, heritage values, amenity of the area, and relationship to surrounding development and whether the DDO should include provisions to:

- require future development to be campus style development comprising ‘buildings in a landscaped setting’
- mandate pedestrian permeability or specify locations for pedestrian through block links.

**(ii) Evidence and submissions**

The Redevelopment Controls report identifies<sup>23</sup>:

- the site has an interesting and valuable site context sitting on the eastern edge of the Hoddle Grid and forming part of a wider precinct developed with ecclesiastical and government buildings in a setting of formal Victorian era public gardens
- the form of buildings to the north and east are relatively low in scale compared to the taller buildings of the Melbourne CBD
- the extensive parklands extending to the east and southeast are located on a topographic condition that falls gently to the Yarra River
- these parklands provide a treed foreground setting to the buildings that make up East Melbourne and the central city skyline
- it is a gracious setting well regarded by Melbournians and visitors to the city.

**Overall height**

Council requested that the DDO be amended to provide the landmark buildings with more explicit protection from visual impact, and to limit the overall height of development to AHD 84 consistent with the height of the adjacent Park Hyatt tower. This submission was supported by the Roman Catholic Trust.

Mr McGauran gave evidence that the Hyatt was of an inappropriate height in the context and should not be used as a benchmark.

Mr Biles thought the DDO retained the distinction in scale in comparison to the taller built form of the CBD and in terms of:

- overall height, specifically in response to the taller adjacent built form of the Park Hyatt and Loti and Victor Smorgon building
- streetwall heights
- FAR control
- performance based objectives and built form outcomes.

**Guidance for a context sensitive development**

Council submitted that the form of the controls proposed does not appropriately respond to the context of the site and sense of place, nor the broader strategic directions and policy guidance in the planning scheme which sets the parameters for preparation of site specific controls via the DDO. This submission highlighted the collective effect of the objectives and strategies of the following planning scheme clauses:

- Clause 15.01 Urban Design
- Clause 21.06-1 Urban Design
- Clause 21.06-2 Heritage
- Clause 21.07-1 Residential Development
- Clause 22.16-2 East Melbourne and Jolimont
- Clause 22.17 Urban design outside the Capital City Zone.

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<sup>23</sup> page 3

Mr McGauran believed that the DDO inadequately responds to the unique attributes of the Eastern Hill Precinct.

This view was not shared by Mr Biles who believed that the DDO would work successfully in concert with other planning provisions in the Melbourne Planning Scheme to appropriately respond to the context. He stated:

*The structure of the DDO is designed to allow flexibility in the design of buildings but within a built form framework that is respectful of the influences and context of the site ...*<sup>24</sup>

He noted:

*...The DDO is not the sole instrument of control over the site. Council has a suite of provisions, including the zone provisions and policy in Clauses 21 and 22 that will work in concert with the DDO to manage development, requiring a site analysis and explanation of the rationale to any design response.*

Council submitted that higher level policies should not be relied upon to drive the development outcomes or moderate development expectations:

*Contrary to the evidence of Mr Biles, the overarching policies do not provide a strong basis to direct the future development on the ... site. This is the role of a site specific control – in this case the DDO proposed...*

*It is submitted that the evidence of Mr McGauran makes it clear that this is a special area calling for a detailed and nuanced response which should be clearly spelt out in the controls rather than being left to the uncertainty of an unspecified ‘negotiated outcome’ with the responsible authority in which there is no real certainty as to the likely design outcome.*<sup>25</sup>

The site owner submitted:

*Taken together, along with the other suite of controls in the Melbourne Planning Scheme, the proposed controls strike the right balance between facilitating the realisation of use of the Site (and therefore its value to the State) for its highest and best use, while ensuring that proper respect is shown to the context in which the Site sits and the sensitivities that arise from its recognised unique context within the Eastern Hill precinct.*

### **Campus style development**

A key theme in evidence provided by Mr McGauran was that development should be in a ‘campus’ or ‘buildings in a landscape setting’, with pedestrian permeability through the site. He stated:

*The design controls for the site should support a campus in landscape response rather than a perimeter block morphology. This would be consistent*

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<sup>24</sup> Biles evidence page 5

<sup>25</sup> COM Submission par 13



*with the history of site development in the precinct and indeed of the subject site and more broadly the attributes of urban character that have been acknowledged as special. It would also better align with the range of controls and heritage overlays already evident in adjoining sites and the contribution to public placemaking undertaken by adjoining development but not suggested in this amendment...*

Mr McGauran recommended that the DDO be amended to include the following specific requirements:

*Development should be legible as a permeable landscaped campus renewal of the site with a network of pedestrian lanes and series of buildings. A single built form will not be supported.<sup>26</sup>*

Council said that the DDO should be amended to include additional or amended design objectives to require development:

- To achieve a number of visually complementary buildings, which complement and enhance the Parliament precinct.
- To achieve a village of buildings in a landscape setting
- To provide buildings separated by landscaped spaces or pedestrian links.<sup>27</sup>

In closing the site owner submitted:

*...the prevailing approach of the area (based on an at ground level perspective) is not akin to a campus, as it is one where the main pedestrian connections are via St Andrews Place and Cathedral Place, albeit they make in themselves enjoyable and pleasant thoroughfares between the city and Fitzroy Gardens.*

### **Pedestrian links**

Council said that the DDO should be amended to achieve high quality pedestrian movement through the site

Mr Biles gave evidence that there is nothing to prevent the inclusion of public movement through the site at the time a permit application is prepared:

*In part however, this depends upon the nature of land use and the degree to which access can be provided, as well as its location through the site.*

*There is enough flexibility in the DDO provisions and site context for detailed planning to provide for public movement through the site.*

In closing the site owner submitted:

*Interestingly, while Mr McGauran accepts that the Site does not currently offer any permeability and that at ground level it does not present as a campus*

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<sup>26</sup> McGauran evidence par 29, page 9

<sup>27</sup> Submission for City of Melbourne para 41 a), f)

*style building, he recommends that a pedestrian link be created across the Site to join St Andrews Place and Cathedral Place.*

### **Design review**

Council Submitted:

*...It is recommended that the ... [Office of the Victorian Government Architect's] Victorian Design Review Panel ... review the DDO proposition and any subsequent development application from the earliest possible stage.*

### **(iii) Discussion**

The Committee accepts there is a unique character in the broader Parliamentary precinct that is distinct and different from that of the CBD. The built character is defined by the scale and architecture of the parliamentary and ecclesiastical buildings within the area (though the presence of existing, more modern buildings including the Park Hyatt and Loti and Victor Smorgon building cannot be ignored).

The Committee agrees that at a precinct or broader contextual level, the site sits within a landscaped setting, created in part by its proximity to existing parks and the presence of street trees and landscaped setbacks, and the landscape setting of many of the buildings.

The concept of 'buildings in a landscaped setting' needs to be understood at a precinct-wide, level, rather than at a site by site level.

The Committee accepts that policy provides high level guidance about the preferred future build form for the area, and there will be a continued role for this policy in driving development outcomes. The DDO needs to be considered in the context of this policy.

The Committee notes the role of Clause 22.17 Urban Design outside the Capital City Zone will have in guiding future development outcomes on the site includes the following specific policy directions:

- *To ensure that development contributes to a pedestrian and vehicular network which ensures pedestrian movement and amenity is a priority and strengthens networks of pedestrian pathways through an area.*
- *To ensure that development creates and maintains a high quality landscape setting.*
- *Developments on large sites are encouraged to provide laneway and pedestrian through block links.*
- *The design of new development is encouraged to provide for new pedestrian links and laneways where there is an absence of such connections.*
- *New development is encouraged to respect and maintain the garden or landscape character of an area where this is a dominant feature of the neighbourhood.*

However, the Committee also agrees with the submissions made that the DDO needs to provide more nuanced guidance about design outcomes. To this extent, the Committee generally accepts some suggestions made by Council regarding the inclusion of additional or amended design objectives, built form outcomes and design outcomes.

The Committee does not agree that it is practical to mandate or prescribe the number of buildings, separation distance between buildings, nor the location and width of any future pedestrian links through the site.

The Committee agrees that development should not read as a single built form, but notes that with a site area of over 8,000 square metres it is highly unlikely that a single built form would be a workable or preferred footprint.

The Committee agrees with the site owner that the proposed DDO is likely to produce a series of separate buildings of differing heights and scale, and while it does not preclude the provision of adequate spacing to allow for movement across the site, this is a matter most appropriately dealt with at the permit application stage and in the context of a particular development proposal. It is not a matter that should be mandated in the planning controls that apply to the site. Existing local policy (Clause 22.17 Urban Design outside the Capital City Zone) applies to the site and supports pedestrian linkages and permeability and will be considered at the permit application stage.

The Office of the Victorian Government Architect Design Review Panel may provide a useful resource in developing and assessing a future design response for the site, but the selection and acceptance of projects for review remains at the discretion of the Office, and the advice of the Office has no statutory status.

#### **(iv) Conclusion and recommendation**

The Committee concludes:

- existing policy at Clause 22.17, in conjunction with amended Built Form Outcomes relating to streetwalls and landscaped setbacks, will provide adequate guidance to achieve appropriate levels landscaped interface
- flexibility should be retained for future development to identify the preferred location for any pedestrian connectivity through the site. A specific location or alignment should not be specified in the diagrams in the DDO.

The Committee recommends:

**Amend the Design and Development Overlay Table 3, to include a under a new heading 'Massing and site layout', the following Design Outcomes:**

- **A collection of visually complementary buildings that complement and enhance the Parliament precinct.**
- **Development that does not read as a single building mass.**

#### **4.3.2 Using floor area ratio to manage development**

##### **(i) What is the issue?**

The issue is whether it is appropriate or necessary to include a mandatory maximum FAR of 9:1 in the proposed DDO to manage development of the site.

##### **(ii) Evidence and submissions**

The proposed DDO building envelope has the potential to deliver a gross floor area of about 120,000 square metres for the site, which represents a FAR of about 15:1.

This quantum of development is not envisaged for the site, so the question becomes, what is a reasonable level of development for the site.

Tessellate prepared a series of indicative developments for the site based upon alternative use options. The indicative development<sup>28</sup> generated approximately 73,000 square metres of floor space for the site, which equates to a FAR of approximately 9:1.

Mr Biles presented modelling of a range of built form scenarios that achieved a FAR of 9:1 and that complied with the other proposed built form requirements in the DDO relating to height, streetwalls, and setbacks. He said that “*the FAR 9:1, coupled with the other controls and provisions of the DDO, will ensure the site is not overdeveloped*”.

The site owner submitted:

*It is submitted that the floor area yield surveys which have informed the setting of the 9:1 FAR for the Site are appropriate when considered in the context of:*

- *the maximum height and setback controls;*
- *the FAR of 18:1 for the neighbouring Hoddle (city) Grid; and*
- *the suite of controls that apply to the site that will be used to assess the adequacy of any permit application and design response...*

The site owner argued that the 9:1 FAR is only the starting point and must be adjusted and shaped by the other requirements of the planning controls, including requirements as to height, overshadowing, design objectives and built form outcomes:

*Simply put, a 9:1 FAR is proposed, there is no opportunity for FAR uplift and if the other requirements of the planning scheme and proposed controls cannot be met the 9:1 FAR will not be realised.*<sup>29</sup>

Council said that the inclusion of a FAR into a planning scheme provision must be handled with great care, because it will generate a clear expectation of the amount of development that is expected to occur on the site:

*... the decision to impose a particular FAR must be very carefully justified and set so as to positively demonstrate that the extent of development proposed will not negatively impact the values of the surrounding area. It is submitted that this has not occurred in this instance.*<sup>30</sup>

Council submitted that a FAR of 9:1 was excessive, and highlighted that the Tessellate report<sup>31</sup> concluded that the yield analysis for created floor space ratios of approximately 6.5:1 to 7:1.

The Council considered a 6:1 is more realistic for this site. This would allow a reasonable yield but allow a much greater flexibility within the site to achieve realistic campus of

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<sup>28</sup> Yield and Development Potential Report by Tessellate Architects, February 2017, page 7

<sup>29</sup> DTF sub par 52, 56–57

<sup>30</sup> COM sub par 34, 37–38

<sup>31</sup> *Peter MacCallum Cancer Centre: Potential uses and associated yields*, prepared by Tessellate Architects, February 2017

buildings without raising unrealistic expectations as to the built form yield which can be achieved on the site.

Mr McGauran found that the basis for a plot ratio approach of 9:1 was “*poorly evidenced and lacking in strategic support*”<sup>32</sup> and “*the current amendment lacks rigour in its application of a 9:1 plot ratio and in my view establishes an unreasonable expectation of development yield*”.<sup>33</sup>

Mr McGauran presented a series of potential configurations for the plot ratio that meet the DDO configurations but “*would have a demonstrable impact on amenity and be contrary to the existing planning policies but would arguably be supportable under the proposed amendment*”.<sup>34</sup> Mr McGauran said that if a FAR was to be included it needed to be “*radically diminished in its ambition*”.

Salta requested a reduced FAR to 8:1 with an endorsed set of performance based design objectives. They argued that the 9:1 FAR could result in a “*rudimentary approach to development across the site*” and a lesser FAR with greater built form flexibility and discretion would result in a better outcome.

The Hyatt supported a FAR of 9:1, whereas the submissions by the National Trust, Royal Historic Society of Victoria, the East Melbourne Historical Society, Dr Rushen, Ms Fox and the Roman Catholic Trust all raised concerns that the proposed 9:1 was inappropriate, excessive or would result in overdevelopment of the site.

In closing the site owner submitted:

*Based on the existing FAR of 4.3:1, the Council's proposed FAR of 6:1 is unreasonable, as it would only provide for minor variance from what is currently built on the site. This will not result in the realisation of the site for its highest and best use, and would indeed undermine and unreasonably constrain the future use and development of the site.*<sup>35</sup>

### **(iii) Discussion**

The Committee agrees that the FAR on its own will not guarantee acceptable built form outcomes. It is a tool that needs to be considered in the context of the full suite of other built form controls and other outcomes that apply.

The Committee also agrees that inclusion of a FAR establishes a ‘development expectation’, albeit with acknowledgment that this expectation may then need to be tempered in order to ensure other built form requirements are achieved. The planning permit process would provide a mechanism for this assessment to occur.

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<sup>32</sup> McGauran evidence page 5

<sup>33</sup> *ibid* page 44

<sup>34</sup> *ibid* page 44

<sup>35</sup> DTF Sub par 52–53

The Committee does not consider that *all* possible massing strategies for a 9:1 FAR need to be acceptable – but it does consider that development intensity of a FAR of 9:1 should have a realistic prospect of approval.

The FAR modelling provided by Mr Biles demonstrated a range of potential built form outcomes that could be achieved at an FAR of 9:1. Mr McGauran's FAR modelling further alternative massing strategies which in his view suggested that it would not be possible to achieve a FAR of 9:1 on site and still achieve the overshadowing requirements and other built form outcomes.

To the Committee, none of these models demonstrate an appropriate built form outcome in the context, in particular due to the streetwall heights up to 36 metres to Lansdowne Street, and absence of ground level setbacks to St Andrews Place or Cathedral Place.

The FAR of 9:1 was determined by Tessellate using the design principles in the proposed DDO and represented an upper limit of potential development yield. However, the Committee has previously recommended changes to the location and massing of overall height, streetwall heights and ground and upper level setbacks, as well as a need for the DDO to provide more explicit design guidance about preferred built form outcomes. This is in recognition of the important role these elements will have in ensuring a contextually appropriate outcome.

The Committee also notes that the benchmark of 18:1 set in the CBD by Amendment C270 is significantly higher than other international benchmarks, and operates in a context of unlimited heights across much of the CBD. In the Bourke Hill Precinct and other Special Character Areas, FARs (and height limits) established by DDO62 and DDO2 respectively include 4:1 (15 metres), 6:1 (20 metres), 10:1 (40 metres), 13:1 (60 metres) and 15:1 (100 metres), but the very small sizes of many lots will constrain the ability to fully realise these FARs.

In the context of revised built form parameters that include a 55 metre height limit over only part of the site, overshadowing controls and increased setbacks, the Committee thinks it is clear that the FAR of 9:1 is not realistic or achievable. Different submissions have suggested reduced FARs of 6:1, 7:1 and 8:1, however, these are supported with little strategic justification. The Committee has not been provided with evidence as to what FAR may be achieved as a result of the revised built form parameters recommended in submissions and evidence. In the absence of this, the Committee is not prepared to recommend an alternate FAR, and believes that the FAR control should be removed from the DDO. The Committee considers specifying a FAR is likely get in the way of achieving an acceptable built form outcome.

#### **(iv) Conclusions**

The Committee concludes:

- the proposed FAR at 9:1 is not adequately justified or demonstrated to be appropriate
- insufficient evidence was provided to determine an appropriate alternative FAR

- revised built form controls will have the desired effect of moderating overall development intensity and delivering a contextually appropriate built form outcome.

The Committee recommends

**Amend the Design and Development Overlay to delete the floor area ratio requirement.**

#### **4.4 Overshadowing**

##### **(i) What is the issue?**

The issues are:

- What overshadowing protection is warranted for Treasury Gardens and Fitzroy Gardens?
- How should 'other public spaces' in the vicinity of the site be treated in regards to overshadowing impacts?
- Should private open space on adjacent properties be provided with explicit overshadowing protection?

##### **(ii) Evidence and submissions**

Mr Biles noted that the location of any tower on the site will be influenced by its shadow impacts on Fitzroy Gardens, and to a certain extent, Treasury Gardens, and that taller built form would most likely be pushed to the centre and western end of the site.

The exhibited DDO includes the objective:

*To maintain sunlight access and avoid overshadowing to adjoining properties including Fitzroy Gardens and Treasure Reserve Precinct.*

The DDO also includes requirement that buildings and works must achieve the built form outcomes for:

*Development that ... protects Fitzroy Gardens from additional shadow between 11am and 2pm on 22 September.*

The Redevelopment Controls report<sup>36</sup> also says that:

*The orientation of the site in relation to the Fitzroy Gardens means that winter shadow from the existing structures on the site do not affect the park before 1:30pm on 22 June. (Committee emphasis)*

The submission for Salta supported the use of the proposed built form outcome relating to overshadowing as a test for assessing overall development height.

Council submitted that Fitzroy Gardens are significant and warrant winter protection, in a similar manner to that established by Amendment C270 for Parliament and Treasury

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<sup>36</sup> page 13

Gardens. This submission requested that the built form outcomes be amended to require buildings which:

*Maintain sunlight access and does not overshadow adjoining properties including Fitzroy Gardens between 11am and 2pm on 22 June.*<sup>37</sup>

Evidence provided by Rob McGauran included an analysis of overshadowing on both the Treasury Reserve and Fitzroy Gardens on 22 June. On behalf of Council and in relation to overshadowing, Mr McGauran recommended:

*That the proposed schedule be amended to provide for no additional overshadowing of the adjoining Treasury Reserve Precinct inclusive of the government offices and St Andrews Place forecourt and parkland areas and Fitzroy Gardens at the winter solstice between 10am and 2pm.*<sup>38</sup>

The site owner submitted the Council has introduced shadow diagrams modelling the impact of the proposed DDO during the winter solstice:

*It is submitted that the proposed DDO control does not seek to address or control overshadowing on this basis, as this was not required by Clause 22.02 of the Melbourne Planning Scheme in developing the proposed DDO.*

In relation to the relevance of overshadowing during the winter solstice the site owner submitted that while this may be relevant in relation to Treasury Gardens, this is not an appropriate requirement to impose with respect to Fitzroy Gardens, having regard to Clause 22.02 – Sunlight to Public Spaces of the Melbourne Planning Scheme. This is on the basis that the Fitzroy Gardens are not specifically identified as a key public place in relation to which particular dates and times can be specified in the planning scheme, with the result that the general requirement relating to overshadowing applies. This requirement specifically notes the hours of 11am to 2pm on 22 September.<sup>39</sup>

Salta sought further clarification regarding the intended application of the proposed overshadowing controls in relation to the wedge of land, located to the south of the site, north west of the Commonwealth buildings at the corner of Lansdowne Street and St Andrews Place, noting the proposed DDO would facilitate a future built form outcome likely to cause shadowing to this space (which is zoned Mixed Use Zone, not Public Park and Recreation Zone).

The submission for Salta suggested that it would be appropriate to create some flexibility in the overall positioning of building height to better achieve an outcome of ‘avoiding’ shadow of this space.

The submission for the Park Hyatt and 1 Parliament Square sought explicit overshadowing protection of the Park Hyatt courtyard and upper floor terraces.

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<sup>37</sup> *ibid*

<sup>38</sup> *ibid* page 54

<sup>39</sup> Submission on behalf of Department of Treasury and Finance, Mr Damian Gardiner, Clayton Utz, para 49–51



The East Melbourne Historical Society submitted that there should be no additional overshadowing of open space at any time of the year. Ms Fox, a local resident, also expressed concern about potential for increased overshadowing impacts on the Fitzroy Gardens, noting that the existing Loti and Victor Smorgon building casts currently overshadow the gardens, “*especially in winter*”.

**(iii) Discussion**

The Committee accepts that Clause 22.02 – Sunlight to Public Spaces provides the appropriate policy basis for the application of overshadowing controls in the DDO

Treasury Gardens is listed in Clause 22.02 – Sunlight to Public Spaces as a ‘key public open space’ and, as a consequence of Amendment C270 to the Melbourne Planning Scheme, is afforded both equinox and winter solstice protection. Both DDO10 and DDO62 include provisions that development must not cast additional shadow over the space between 11:00am and 3:00pm between 22 April and 22 September unless the overshadowing will not unreasonably prejudice the amenity of the space. The Committee accepts that the proposed DDO should be amended to provide overshadowing protection for Treasury Gardens, consistent with the provisions provided elsewhere in the scheme.

As noted by Mr McGauran and Mr Gardiner respectively, the Fitzroy Gardens were excluded from the Amendment C270 study area, and are not listed as a ‘key public space’ and would fall within the policy for ‘Other Public Spaces within the municipality’ under Clause 22.02 – Sunlight to Public Spaces.

However, the Committee accepts Council’s submission regarding the significance of the Fitzroy Gardens warranted a level of solar protection commensurate with other key public spaces.

The Committee considers it appropriate to specify discretionary overshadowing protection equivalent to the level of protection provided for Birrarung Marr, Batman Park, and the Flagstaff Gardens. This can be achieved with protection for Fitzroy Gardens from 22 April to 22 September, using the reduced hours of between 11:00am to 2:00pm, (given the location of the Fitzroy Gardens being slightly further removed from the Hoddle Grid).

In relation to potential overshadowing of the open space at St Andrews Place, the Committee agrees that this space is not (and should not be) a designated key public space, and notes that the changes to the building envelope will further limit the potential for overshadowing of the space. The Committee further notes that in the context of the proximity to both Fitzroy and Treasury Gardens, the amenity and quality of this open space is of limited significance. The Committee considers that the objectives and decision guidelines of Clause 22.02 – Sunlight to Public Spaces will provide appropriate guidance to decision makers regarding potential future overshadowing of this space.

The Committee does not consider it appropriate to explicitly protect the Park Hyatt’s private courtyards and open spaces, by applying policy that applies to public open spaces. The Committee considers that the Design Outcomes of the DDO for building separation to ‘respect the amenity and future development potential of adjacent sites...’, in conjunction with various other relevant provisions of the scheme provide for adequate consideration of offsite amenity impacts.

#### (iv) Conclusions

The Committee recommends:

**Amend the Design and Development Overlay to:**

- **Apply discretionary overshadowing protection to Treasury Gardens between 11am and 3:00pm between 22 April and 22 September**
- **Apply discretionary overshadowing protection to Fitzroy Gardens between 11am and 2:00pm between 22 April and 22 September.**

### 4.5 Detailed design issues

#### 4.5.1 Interface with Park Hyatt boundary

##### (i) What is the issue?

The issue is whether the DDO provides adequate clarity about future interface issues with the Hyatt.

##### (ii) Submission

Mr Biles urban design evidence was that the height had also been influenced by the relationship to existing taller built form on the site and of the neighbouring Park Hyatt, noting:

*At AHD 91, the building would sit approximately 8 metres higher than the tallest part of the Hyatt Hotel to the west at AHD 83.8...*

*The Loti and Victor Smorgon building on the site at present is AHD 83.8.<sup>40</sup>*

The submission by Urbis on behalf of for Hyatt was that in addition to prescribing built form outcomes relating to the streetscape interfaces with St Andrews Place, Cathedral Place, and Lansdowne Street, greater clarity was required regarding the future development interface with the Park Hyatt.

In response to questions from the Panel, Urbis confirmed that the existing eastern most wall of the Park Hyatt was constructed as a blank wall, and it would be appropriate for new built form to also be built on the boundary to this wall. However, the submission also highlighted the presence of the Park Hyatt's internal ground level courtyard and private open space terraces, and sought some consideration for the future amenity of these spaces.

1 Parliament Square Pty Ltd questioned *“the appropriateness of no setback immediately adjacent to the open space”*. As owners of the Park Hyatt, they submitted that the DDO controls should be expanded to require consideration of shadowing on the Park Hyatt courtyard. They also submitted a revision to Table 3 to include a design outcome that addresses amenity of the existing conditions and surrounding open space.

The submission for the Park Hyatt also sought to ensure that the shadowing to the Park Hyatt's ground floor external courtyard, as well as upper floor terraces is limited.

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<sup>40</sup> Biles evidence page 8

**(iii) Discussion**

The proposed DDO establishes a building envelope potentially allowing built form up to AHD 91 along the western boundary of the site which interfaces with the Park Hyatt Hotel, except where 10 metre setbacks apply above the 20 metre streetwalls to the southern (St Andrews Place). The Committee has previously made recommendations for discretionary height limits to be applied, subject to meeting overshadowing and key view line tests, and for taller built form to be setback at least 25 metres from the Lansdowne Street frontage.

Given that the Committee has accepted evidence and made recommendations to direct tallest built form towards the western portion of the site, the Committee considers that it would be appropriate for the DDO to also provide further guidance about expectations regarding the western interface.

The Committee agrees that to the extent that blank walls exist on the western interface, it would be acceptable for new built form to be built on the boundary to this wall. In the interests of reducing potential for future ambiguity or debate, it would be appropriate for this to be explicitly stated in the controls. The Committee notes that Table 3 includes design outcomes for ‘building separation’ which explicitly require consideration of acceptable amenity consequences and equitable development outcomes.

In relation to protecting amenity of the Hotel use, the Committee notes Clause 21.07-1 residential development includes specific policy guidance *“to ensure that reasonable expectations of amenity for existing residential uses are maintained”* and Clause 22.017 Urban Design Outside the Capital City Zone provides further general design guidance to ensure buildings are designed ‘in the round’.

**(iv) Recommendation**

The Committee recommends that:

**Amend the Design and Development Overlay to explicitly state that new built form may be built to the boundary to abut any existing blank walls.**

**4.5.2 Car park access**

Concerns were expressed about the requirement for car access to be from St Andrews Place to maintain the possibility of closure of part of Cathedral Place.

The potential closure of Cathedral Place, could potentially deliver a number of benefits:

- reducing the area of hard paving in the city
- creating a landscape link from the Fitzroy Gardens
- creating a more pleasant pedestrian environment.

Car access from St Andrews Place would seem to make sense given the topography of the site, and would be an improvement to current arrangements of Lansdowne Street which carries through traffic. The Committee concludes the proposed controls around car access are appropriate.

## 4.6 Drafting issues

### 4.6.1 Compliance with *Ministerial Direction on The Form and Content*

The Committee's Terms of Reference require it to provide:

- *An assessment of whether the proposed planning provisions 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.*

The proposed DDO does not comply with the recently updated *Ministerial Direction on The Form and Content of Planning Schemes*.

The Committee makes a number of changes to the proposed DDO to bring it into compliance with the Direction.

The Committee recommends the deletion of the axonometric diagrams because they appear to create more confusion about the scale of development proposed than explain the height and setback requirements.

The Committee has also made changes to improve the drafting by:

- removing duplication
- expressing outcomes in a more consistent fashion
- using consistent expression.

The Committee recommends:

**Amend the Design and Development Overlay to:**

- **bring it into compliance with the *Ministerial Direction on The Form and Content of Planning Schemes***
- **delete of the axonometric diagrams**
- **improve the drafting.**

## Appendix A: About the Government Land Standing Advisory Committee

The Fast Track Government Land Service is a 2015 initiative to deliver changes to planning provisions or correct planning scheme anomalies for land owned by the Victorian Government. The Government Land Standing Advisory Committee (the Committee) is appointed under Part 7, section 151 of the *Planning and Environment Act 1987* in July 2015.

The Minister for Planning approved revised Terms of Reference for the Committee in July 2017.

The purpose of the Committee is:

*... to advise the Minister for Planning on the suitability of changes to planning provisions for land owned, proposed to be owned in the future, or to facilitate the delivery of priority projects by the Victorian Government.*

The Committee consists of:

- Chair: Lester Townsend
- Deputy Chairs: Brett Davis and Mandy Elliott
- Members: Gordon Anderson, Alan Chuck, Jenny Fraser, Rachael O’Neill, John Ostroff, Tania Quick, Cazz Redding and Lynn Sweeney.

The Committee is assisted by Ms Emily To, Project Officer with Planning Panels Victoria.

The Committee’s Terms of Reference state:

25. *The Standing Advisory Committee must produce a written report for the Minister for Planning providing:*
- *An assessment of the appropriateness of any changes of planning provisions, in light of the relevant planning scheme and State and Local Planning Policy Frameworks.*
  - *An assessment of whether the proposed planning provisions 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.*
  - *An assessment of whether planning scheme amendments could be prepared and adopted in relation to each of the proposals.*
  - *An assessment of submissions to the Standing Advisory Committee.*
  - *Any other relevant matters raised in the course of the Standing Advisory Committee Hearing.*
  - *A list of persons who made submissions considered by the Standing Advisory Committee.*
  - *A list of persons consulted or heard.*

## Appendix B: List of submitters

No.	Submitter
1	Anthony White
2	Daniel Lane
3	Jason Ong
4	Saint Peter's Anglican Church, Eastern Hill
5	Elizabeth Anne Rushen (Liz)
6	Melbourne City Council
7	Clayton Utz on behalf of Department of Treasury & Finance
8	Jennifer Noyce & Terry Moran
9	1 Parliament Square Pty Ltd
10	The Roman Catholic Trusts Corporation for the Diocese of Melbourne
11	East Melbourne Historical Society
12	Salta Properties
13	Julia and Richard Fox
14	Heritage Committee, Royal Historical Society of Victoria
15	National Trust of Australia (Victoria)

## Appendix C: Document list

Documents Presented to Hearing (No.)	Description	Presented By
1	PowerPoint presentation of Mr Biles' evidence	Mr Gardiner
2	DDO2 map	Ms Porritt
3	DDO2 Schedule	Ms Porritt
4	DDO62 Schedule	Ms Porritt
5	Massing diagram prepared by Mr McGauran	Ms Porritt
6	Plans for 300 Albert Road, East Melbourne (former Dallas Brooks Hall)	Ms Porritt
7	Potential building envelope prepared by Mr McGauran	Ms Porritt
8	Submission on behalf of City of Melbourne	Ms Porritt
9	Aerial photographs	Ms Porritt
10	Planning controls	Ms Porritt
11	Extract from <i>Plan Melbourne – Outcome 2</i>	Ms Porritt
12	Extract from <i>Homes for Victorians – Section 2</i>	Ms Porritt
13	Extract from <i>Homes for People, Housing Strategy 2014-2018</i>	Ms Porritt
14	Report to Future Melbourne Committee for 300 Albert Road, East Melbourne	Ms Porritt
15	VCAT order for 300 Albert Road, East Melbourne	Ms Porritt
16	Planning Permit for 300 Albert Road, East Melbourne	Ms Porritt
17	DDO20 Schedule	Ms Porritt
18	Shadow diagrams – existing and proposed conditions for 22 June and 22 September	Ms Porritt
19	Streetscape photograph	Dr Rushen
20	Marked up diagram showing potential pedestrian links(extract from Message Consultants report)	Dr Rushen
21	Submission	Dr Rushen
22	Submission	Ms Fox
23	Submission on behalf of Salta	Mr Govenlock
24	Submission on behalf of 1 Parliament Square	Ms Thomas
25	Letter dated 4 September 2017 from Park Hyatt	Ms Thomas
26	Submission on behalf of Roman Catholics trusts Corporation	Mr Holdsworth

Documents Presented to Hearing (No.)	Description	Presented By
27	<i>numbering error</i>	
28	Homes for Victorians document	Mr Gardiner
29	Inclusionary housing pilot on government land fact sheet	Mr Gardiner
30	Clause 22.02 of the Melbourne Planning Scheme	Mr Gardiner
31	Submission on behalf of DTF	Mr Gardiner



## Appendix D: Committee preferred DDO

### Track change version

Added text, ~~Deleted text~~

~~Text moved TO somewhere else~~, Text moved FROM somewhere else

#### SCHEDULE [NUMBER] TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO[number]**.

#### FORMER PETER MacCALLUM CANCER CENTRE SITE

##### 1.0 Design objectives

- To achieve a site responsive, well-designed and high quality architectural and urban design outcome for the former Peter MacCallum Cancer Centre site.
- To manage ensure the visual impact of new building mass, height and bulk ~~in a manner that is~~ respect fuls of the site context including the public realm, Fitzroy Gardens, St Patrick's Cathedral Precinct, Parliament House and Treasury Reserve Precinct.
- To maintain the heritage significance, values, character and visual prominence of the adjacent buildings and places including Parliament House and St Patrick's Cathedral.
- To encourage a visually engaging pedestrian experience around the site and where relevant within the site.
- To maintain sunlight access to adjoining properties and avoid overshadowing ~~to adjoining properties including to~~ Fitzroy Gardens and Treasury Gardens Reserve Precinct.
- ~~To provide a high level of internal amenity for building occupants.~~

##### 2.0 Buildings and works

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

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

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any requirement expressed using the verb must, except that a permit may be granted to replace a building or works existing at the approval date of the planning scheme amendment which introduces this schedule into the Planning Scheme.

##### Height

Buildings should not exceed AHD 91.

~~A permit must not be granted for buildings and works which exceed the Maximum Building Height set down in Table 1 with the exception of:~~

- ~~architectural features, building services and landscaping, but only provided they cannot be seen~~

Buildings must not be visible when viewed from the sightline viewpoints in Figure 2:

- Above Parliament House when viewed from Bourke Street.

- Above St Patrick's Cathedral when viewed from the north west corner of the junction of Albert and Gisborne Streets.
- Above Old Treasury Building when viewed from Collins Street ~~in accordance with the sightline viewpoints identified in Figure 2.~~

~~Buildings and works must achieve the Built Form Outcomes provided in Table 1.~~

~~Buildings should not overshadow the Fitzroy Gardens between 11am and 2pm between 22 April and 22 September.~~

~~Buildings should not overshadow the Treasury Gardens between 11:00am and 3:00pm between 22 April and 22 September.~~

### Streetwalls

~~A permit must not be granted for buildings or works on land with a frontage to Lansdowne Street which exceed the Maximum Streetwall Height and Minimum Upper Level Setback.~~

~~A permit may be granted for buildings or works on land with a frontage to Cathedral Place and St Andrews Place which exceed the Maximum Streetwall Height or the Minimum Upper Level Setback if the proposal achieves the Design Objectives, Built Form Outcomes and Design Requirements.~~

~~The height of buildings or works is the height measured above natural ground level at the point of the building or works to the highest point of the building.~~

~~A permit may be granted to replace a building or works existing at the approval date of the planning scheme amendment which introduces this schedule into the Planning Scheme.~~

~~Buildings should be setback from streets as specified in [Table 2](#).~~

~~Buildings should not exceed the maximum Street wall heights specified in [Table 2](#).~~

~~All Buildings and works must achieve the Built Form Outcomes ~~provided~~ [specified](#) in Table 2.~~

### Floor Area Ratio

~~A permit must not be granted to construct a building or construct or carry out works with a floor area ratio in excess of 9:1 for the whole of the land subject to this Schedule.~~

~~The floor area ratio is the gross floor area above ground of all buildings on a site, including all enclosed areas, services, lifts, car stackers and covered balconies, divided by the area of the site. Voids associated with lifts, car stackers and similar service elements should be considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor.~~

### Building Design

~~Buildings and works should [achieve](#) ~~respond to~~ the ~~Design Features and~~ Design Outcomes identified [specified](#) in [Table 3](#).~~

~~Table 1 to Schedule (Number)~~

<del>MAXIMUM BUILDING HEIGHT</del>	<del>BUILT FORM OUTCOMES</del>
------------------------------------	--------------------------------

AHD 91	<p>Development that:</p> <ul style="list-style-type: none"> <li>protects views of the skylines immediately above the building profiles of Parliament House when viewed from Bourke Street, St Patrick's Cathedral when viewed from the north west corner of the junction of Albert and Gisborne Streets and Old Treasury Building when viewed from Collins Street in accordance with the sightline viewpoints identified in Figure 2.</li> <li>maintains sunlight access and does not overshadow adjoining properties, including Fitzroy Gardens between 11am and 2pm on 22 September.</li> <li>respects and creates an environment with high quality pedestrian amenity.</li> </ul>
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Table 2 to Schedule (Number)

STREET	STREET LEVEL SETBACK	MAXIMUM STREET-WALL HEIGHT	MINIMUM UPPER LEVEL SETBACK	BUILT FORM OUTCOMES
Cathedral Place St Andrews Place	4 metres	20 metres	10 metres from the facade with the exception of 10% of the streetwall length	<p>Development that:</p> <ul style="list-style-type: none"> <li>protects the existing streetwall character in Cathedral Place and St Andrews Place;</li> <li>establishes a consistent and visually engaging streetwall;</li> <li>recesses upper levels of the building behind a streetwall;</li> <li>encourages articulation in the design of upper levels.</li> <li>provides a ground level landscaped setback</li> </ul>
Lansdowne Street	None specified	36m 24 metres	25 metres from the facade with the exception of 10% of the streetwall length	<p>Development that:</p> <ul style="list-style-type: none"> <li>protects Fitzroy Gardens from additional shadow between 11am and 2pm on 22 September;</li> <li>recesses upper levels of the building behind a streetwall</li> </ul> <p>Development that respects the local character and does not overwhelm adjacent heritage buildings.</p>

Table 3 to Schedule (Number)

DESIGN FEATURE	DESIGN OUTCOMES
<a href="#">Massing and site layout</a>	<ul style="list-style-type: none"> <li><a href="#">A collection of visually complementary buildings that complement and enhance the Parliament precinct.</a></li> <li><a href="#">Development that does not read as a single building mass.</a></li> </ul>
Architectural quality	<ul style="list-style-type: none"> <li>A well designed architectural and urban design outcome for the site.</li> <li>The use of high quality, durable and interesting building materials.</li> </ul>
Open space	<ul style="list-style-type: none"> <li>Generous and high quality communal open space(s) at the site.</li> <li><a href="#">An environment with high quality pedestrian amenity.</a></li> </ul>
Active frontages	<ul style="list-style-type: none"> <li>An engaging and active ground level interface is provided <del>around the perimeter of the site</del> <a href="#">along the Lansdowne Street Frontage.</a></li> <li><del>To encourage a</del> mix of land uses at the site.</li> </ul>
Building separation	<ul style="list-style-type: none"> <li>Adequate building separation between structures on the site to ensure acceptable amenity consequences for future occupants.</li> <li><a href="#">Development that respects</a> the amenity and future development potential of adjacent sites to allow for their equitable development. <a href="#">Development may be built to the boundary to abut existing blank walls.</a></li> </ul>
Building articulation	<ul style="list-style-type: none"> <li>Articulation of the building's exterior through a variety of design techniques including, for example, stepped and / or separate forms, architectural features, materiality, fenestration and other openings and landscaping.</li> </ul>
Landscaping	<ul style="list-style-type: none"> <li><del>Integrate</del> Landscaping <a href="#">integrated</a> within the design.</li> <li><a href="#">Landsaped frontages to St Andrews Place and Cathedral Place.</a></li> </ul>
Vehicular access	<ul style="list-style-type: none"> <li>Limited <a href="#">vehicular</a> access points to the site.</li> <li><del>Avoid</del> <a href="#">No</a> vehicular access in Cathedral Place to protect the potential for this road to become an open space link in the future.</li> </ul>
Car Parking	<ul style="list-style-type: none"> <li><del>Minimise the</del> <a href="#">Minimal</a> visibility of car parking and car parking entrances from the public realm.</li> <li><del>Discourage the provision of above ground car parking.</del></li> </ul>

### 3.0 Application requirements

~~An application for permit for buildings and works must be accompanied by:~~

- ~~• A site analysis and urban context report which demonstrates how the proposed building or work achieves each of the Design Objectives, Built Form Outcomes and Design Outcomes of this schedule.~~
- ~~• A 3D digital model of the proposed buildings and works in a format to the satisfaction of the responsible authority for assessing overshadowing and visual impacts caused by the proposal.~~

### 4.0 Subdivision

[None specified](#)

~~A permit cannot be granted to subdivide land which contains buildings which exceed the floor area ratio of 9:1 for the whole of the land subject of this Schedule as per the floor area calculation detailed in Section 2.0.~~

#### 4.0 Advertising signs

None specified

#### 5.0 Decision Guidelines

~~Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:~~

- ~~• The Design Objectives in Section 1.0;~~
- ~~• Whether the development complies with the maximum height and floor area ratio.~~
- ~~• The Built Form Outcomes in Tables 1 and 2~~
- ~~• The Design Requirements in Table 3~~

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

- How the proposed building or works achieve each of the Built Form Outcomes and Design Outcomes of this schedule.
- The overshadowing and visual impacts of the proposed buildings and works assessed using a 3D digital model in a format to the satisfaction of the responsible authority.

#### 6.0 Reference Document

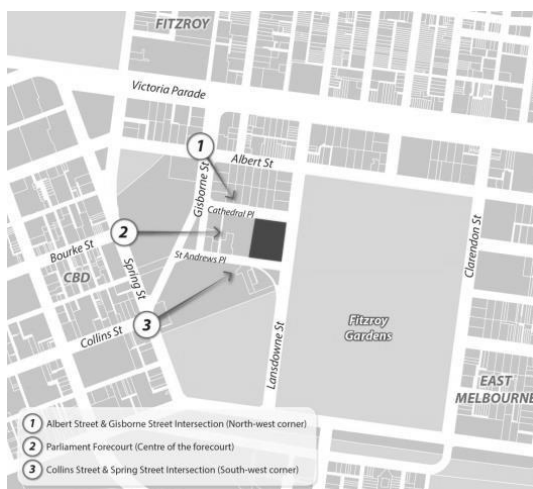
Redevelopment Controls for the Former Peter MacCallum Cancer Centre prepared by Message Consultants (February 2017)

**Figure 1: Height and setback requirements**

**Prepare revised diagram**

**DELETE AXONOMETRIC VIEWS**

**Figure 2: Sightline view points**





## Clean text

### **SCHEDULE [NUMBER] TO THE DESIGN AND DEVELOPMENT OVERLAY**

Shown on the planning scheme map as **DDO[number]**.

### **FORMER PETER MacCALLUM CANCER CENTRE SITE**

#### **1.0 Design objectives**

- To achieve a site responsive, well-designed and high quality architectural and urban design outcome for the former Peter MacCallum Cancer Centre site.
- To ensure the visual impact of new building mass, height and bulk respects the site context including the public realm, Fitzroy Gardens, St Patrick's Cathedral Precinct, Parliament House and Treasury Reserve Precinct.
- To maintain the heritage significance, values, character and visual prominence of the adjacent buildings and places including Parliament House and St Patrick's Cathedral.
- To encourage a visually engaging pedestrian experience around the site and where relevant within the site.
- To maintain sunlight access to adjoining properties and avoid overshadowing to Fitzroy Gardens and Treasury Gardens.

#### **2.0 Buildings and works**

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

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any requirement expressed using the verb must, except that a permit may be granted to replace a building or works existing at the approval date of the planning scheme amendment which introduces this schedule into the Planning Scheme.

##### **Height**

Buildings should not exceed AHD 91.

Buildings must not be visible when viewed from the sightline viewpoints in Figure 2:

- Above Parliament House when viewed from Bourke Street.
- Above St Patrick's Cathedral when viewed from the north west corner of the junction of Albert and Gisborne Streets.
- Above Old Treasury Building when viewed from Collins Street.

Buildings should not overshadow the Fitzroy Gardens between 11am and 2pm between 22 April and 22 September.

Buildings should not overshadow the Treasury Gardens between 11:00am and 3:00pm between 22 April and 22 September.

##### **Streetwalls**

Buildings should be setback from streets as specified in Table 1.

Buildings should not exceed the maximum Street wall heights specified in Table 1.

Buildings and works must achieve the Built Form Outcomes specified in Table 2.

## Building Design

Buildings and works should achieve the Design Outcomes specified in Table 2.

Table 1 to Schedule (Number)

STREET	STREET LEVEL SETBACK	MAXIMUM STREET-WALL HEIGHT	MINIMUM UPPER LEVEL SETBACK	BUILT FORM OUTCOMES
Cathedral Place St Andrews Place	4 metres	20 metres	10 metres from the facade with the exception of 10% of the streetwall length	Development that: <ul style="list-style-type: none"> <li>Protects the existing streetwall character in Cathedral Place and St Andrews Place.</li> <li>Establishes a consistent and visually engaging streetwall.</li> <li>Recesses upper levels of the building behind a streetwall.</li> <li>Encourages articulation in the design of upper levels.</li> <li>Provides a ground level landscaped setback.</li> </ul>
Lansdowne Street	None specified	24 metres	25 metres from the facade with the exception of 10% of the streetwall length	Development that respects the local character and does not overwhelm adjacent heritage buildings.

Table 2 to Schedule (Number)

DESIGN FEATURE	DESIGN OUTCOMES
Massing and site layout	<ul style="list-style-type: none"> <li>A collection of visually complementary buildings that complement and enhance the Parliament precinct.</li> <li>Development that does not read as a single building mass.</li> </ul>
Architectural quality	<ul style="list-style-type: none"> <li>A well designed architectural and urban design outcome for the site.</li> <li>The use of high quality, durable and interesting building materials.</li> </ul>
Open space	<ul style="list-style-type: none"> <li>Generous and high quality communal open space(s) at the site.</li> <li>An environment with high quality pedestrian amenity.</li> </ul>
Active frontages	<ul style="list-style-type: none"> <li>An engaging and active ground level interface is provided along the Lansdowne Street Frontage.</li> <li>A mix of land uses at the site.</li> </ul>
Building separation	<ul style="list-style-type: none"> <li>Adequate building separation between structures on the site to ensure acceptable amenity consequences for future occupants.</li> <li>Development that respects the amenity and future development potential of adjacent sites to allow for their equitable development. Development may be built to the boundary to abut existing blank walls.</li> </ul>
Building articulation	<ul style="list-style-type: none"> <li>Articulation of the building's exterior through a variety of design techniques including, for example, stepped</li> </ul>



DESIGN FEATURE	DESIGN OUTCOMES
	and / or separate forms, architectural features, materiality, fenestration and other openings and landscaping.
Landscaping	<ul style="list-style-type: none"> <li>• Landscaping integrated within the design.</li> <li>• Landscaped frontages to St Andrews Place and Cathedral Place.</li> </ul>
Vehicular access	<ul style="list-style-type: none"> <li>• Limited vehicular access points to the site.</li> <li>• No vehicular access in Cathedral Place to protect the potential for this road to become an open space link in the future.</li> </ul>
Car Parking	<ul style="list-style-type: none"> <li>• Minimal visibility of car parking and car parking entrances from the public realm.</li> </ul>

### 3.0 Subdivision

None specified

### 4.0 Advertising signs

None specified

### 5.0 Decision Guidelines

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

- How the proposed building or works achieve each of the Built Form Outcomes and Design Outcomes of this schedule.
- The overshadowing and visual impacts of the proposed buildings and works assessed using a 3D digital model in a format to the satisfaction of the responsible authority.

### 6.0 Reference Document

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